

John De Witt II, Boston *American Herald*, 29 October 1787

To the FREE CITIZENS of the COMMONWEALTH of MASSACHUSETTS. . . .

That the want of a Bill of Rights to accompany this proposed System, is a solid objection to it, provided there is nothing exceptionable in the System itself, I do not assert.—If, however, there is at any time, a propriety in having one, it would not have been amiss here. A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of that society. They are so precious in themselves, that they would never be parted with, did not the preservation of the remainder require it. They are entrusted in the hands of those, who are very willing to receive them, who are naturally fond of exercising of them, and whose passions are always striving to make a bad use of them.—They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas, that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy. The necessity of this accuracy and this precision increases in proportion to the greatness of the sacrifice and the numbers who make it.—That a Constitution for the United States does not require a Bill of Rights, when it is considered, that a Constitution for an individual State would, I cannot conceive.—The difference between them is only in the numbers of the parties concerned; they are both a compact between the Governors and Governed, the letter of which must be adhered to in discussing their powers. That which is not expressly granted, is of course retained.

The Compact itself is a recital upon paper of that proportion of the subject's natural rights, intended to be parted with, for the benefit of adverting to it in case of dispute. Miserable indeed would be the situation of those individual States who have not prefixed to their Constitutions a Bill of Rights, if, as a very respectable, learned Gentleman at the Southward observes, "the People, when they established the powers of legislation under their separate Governments, invested their Representatives with every right and authority which they did not, in explicit terms, reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction is efficient and complete." In other words, those powers which the people by their Constitutions expressly give them, they enjoy by positive grant, and those remaining ones, which they never meant to give them, and which the Constitutions say nothing about, they enjoy by tacit implication, so that by one means and by the other, they became possessed of the whole.—This doctrine is but poorly calculated for the meridian of America, where the nature of compact, the mode of construing them, and the principles upon which society is founded, are so accurately known and universally diffused. That insatiable thirst for unconditional controul over our fellow-creatures, and the facility of sounds to convey essentially different ideas, produced the first Bill of Rights ever prefixed to a Frame of Government. The people, altho' fully sensible that they reserved every tittle of power they did not expressly grant away, yet afraid that the words made use of, to express those rights so granted might convey more than they originally intended, they chose at the same moment to express in different language those rights which the agreement did not include, and which they never designed to part with, endeavoring thereby to prevent any cause

for future altercation and the intrusion into society of that doctrine of tacit implication which has been the favorite theme of every tyrant from the origin of all governments to the present day. . . .

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