

THE CONVENTION.

WEDNESDAY, November 11.

The Convention assembled, and was opened with prayer by the Rev. Mr. Honor, of the Roman Catholic Church—and the President took the Chair.

On motion of Mr. P. P. Barbour, the Convention resolved into the Committee of the Whole on the Constitution—Mr. Powell in the Chair.

Mr. JOHNSON addressed the Committee in substance as follows:

The subject under consideration has already occupied much time in discussion and will occupy much more during the deliberations of this Committee. Its great importance, its extreme delicacy, entitle it to all the aid we can derive from talent, from temper, from forbearance, from conciliation, from that free interchange of opinion which the most laborious investigation of the subject can afford. On the one hand we are encouraged by the most anxious hopes and by the anticipated benefits to result from success; on the other hand we are alarmed by the most anxious fears; the whole country exhibits to most intense interest; convulsed as they are that upon your deliberations depends much of our fate.

We are engaged in a contest (conceal it as you will) for power—Disguise it as you may, call it by what name you choose call it a discussion of the rights of man in his natural or in his social state, still it is nothing more nor less than a contest for power. Imagine yourself, sir, presiding over a school of philosophers, devising political systems for all relations of man, metaphysical, abstract systems, or if you please, systems of practical utility, but whether they be metaphysical reasoning or practical rules, they are still the arms of power.

And I find a peculiar interest on this occasion because with one party it is my present residence, it is the land of my nativity, to many of whose citizens, I am bound by the strong ties of affinity and blood;—with the other party is my property and constituents, to whom I am bound by every act of kinship, and by the endearments of friendship—by the confidence extended to me before I had entered it, and which has been since continued, though I thought it well might have been lost by my removal. Under these circumstances, had I taken counsel from prudence, I should have held a strict neutrality;—but, Sir, I have looked upon both parties, as component parts of the same community—having some minor interests not exactly in accordance, but identified by the same government—having the same leading interests—having one common object—the integrity, the happiness, the glory of our common country—

I had indulged in the vain, perhaps delusive hope, that I was no incompetent to appreciate all the various and opposing interests, feelings, and passions in common concert for the common weal; and I have not failed still to believe that I may yet realize this hope. I could not preserve this neutrality at this momentary crisis of affairs, when angry discussions were anticipated by all, when divided discussions were feared by many—of this proud when every thing may be lost by negligence, or every thing saved by care, I would not refuse the trust which my constituents have so confidently placed in my integrity, when they had confided to me without pledge, and without instruction, when they have left me unguided, to follow the dictates of my own judgment, and to shape my course with a single eye to what I believe will conduce to the public good.

I have listened to all that has been said, and much has been ably said. I have considered it with anxiety, and am fully satisfied, that by advocating the resolution of the Committee and by opposing the amendment, I shall best advance the interests of my constituents. I am not fond of change. I was no advocate for the call of a Convention. I have thought the present Constitution imperfect in theory and defective in practice. I have thought that the inequality in the representation which the resolution of the Committee is intended to remedy, as well as the inequality in taxation, were evils which required correction for some years. I was a member of that branch of the Legislature where the inequality was the most glaring, and had an opportunity of observing its effects. I represented a district of five counties in the Valley, consisting of a very large proportion of the white population of the Western section. Myself and three others were the representatives of one third part of the white population of the State. I thought I had seen the injurious effect of this striking inequality, for I beheld the interests of the East often arrayed against the interests of the West. I had seen the consequences, had witnessed the heat and anger engendered by the agitation of these conflicting interests, and it had fallen to my lot to be a mediator between both parties. I had seen these contentions fermenting and increasing the evils of the system, separating brethren from brethren, and producing discord, where in truth there existed nothing but a diversity of views.

The inequality of representation, especially in the Senate, has always been one of the chief objects of reform, and the inequality in the tax laws has invariably been connected with it. The law of 1782 provided that inequality—it adopted a standard which, though just at the time of its adoption, had since become unequal and unjust. One had been created by affixing as the standard of value, the average value per acre of the lands. In the first class the average value was estimated to be 10 shillings per acre—in the second, excluding

the counties of Patrick and Henry, and including two large counties in the Valley the average value was seven shillings; in the third it was fixed at five shillings and sixpence, and in the fourth at three shillings. This bill was reported by the Committee, and the Legislature adopted it, deeming it better to do this until a re-assessment could be made for the whole State. The operation of this law of course was unequal, the trans-Allegheny and the Valley districts paid too little, the others paid too much—in consequence of this, the people of the West had constantly been jeered on account of their poverty & for the want of contributing their just share to the discharge of the public burdens;—hence all reform has been impracticable, every attempt has been defeated and controversy alone has been the consequence.

In this state of affairs, (some other causes of excitement intervening,) in 1816, this discontent was seized upon to inflame the public mind—and the fruit was the Staunton Convention—it assembled under excitement, additional alarm was created; but the people I represented was not yet excited—I was deputed to this Convention thus assembled, not to rouse to resentment or stimulate to mischief,—not to excite a larm or agitate commotions, but to endeavor to allay these feelings and to restrain all excess, with this distinct understanding, that all we asked for was the means of correcting the inequality of representation, and inequality of taxation. This, however, was not all then asked for by the Staunton Convention—I thought they asked for too much, they desired a Convention with unlimited powers—we wanted a limited Convention, to remedy these two defects, with a provision in the new Constitution, for its future amendment, well guarded against abuse, to prevent greater mischief. Their proceedings were laid before the Legislature, and a bill was introduced to call a limited Convention, and expressly to equalize taxation, and to extend the right of suffrage. It was afterwards amended and confined to the two first objects omitting the extension of the right of suffrage, and it was thought not wise to ask for the provision of future amendments. That bill passed the House of Delegates, but met with obstacles in the Senate, it was soon followed by a bill to equalize the Senatorial Districts. The first was laid on the table in the Senate to wait the arrival of the other, and both were acted upon together. The Senatorial bill only provided a temporary remedy, the limited Convention bill a permanent one. I advocated the latter, but it was lost—the first was carried by a majority of one only. Both bills were in common obnoxious to the people of the East, and they opposed them both;—but some preferred the Senatorial bill to the other—but when they found the Convention bill was lost, and the other would be passed, a proposition was made by one of those gentlemen from the East, who defeated the Convention bill, that if it could be reconsidered, he would now vote for it in preference—the motion was accordingly made, but he who had promised to give the vote, did not redeem the promise; the motion of course failed, and the Senatorial bill was then taken up and passed.

Permit me to tell you how that thing happened—the gentleman who made the promise, intended to have kept it—it was a bargain, it was a promise made to himself—the passage of the Senatorial Bill was known to depend upon a single member who was considered as doubtful—his vote had been counted upon by both sides—under these circumstances, a gentleman from the East, met a gentleman from the South—they had a conversation, in which the gentleman from the East, was asked if he knew what he was about, and was told, by adhering to his former vote, he might defeat both Bills.—Accordingly when the vote was taken, he voted against the reconsideration. I afterwards enquired to know why he had thus changed his determination. He told me it reminded him how unfit he was for Legislation, for he had been served as he was formerly, in his election to that body, for knowing that the Sheriff of his own county would vote for him, and the Sheriff of his adversary's county would vote for his adversary, he had been persuaded by his opponent, to waive the requiring the Sheriff of his own county, to vote, under the expectation that the Sheriff of the other county would also, not be required to vote—but when they came to the last county, the Sheriff voted for his opponent. I enquired if he had not promised that the Sheriff should not vote? Yes! Do you now intend he shall vote? Yes! Then you intended to deceive me? Certainly! And I now call upon all the voters, to take notice that I have taken you in; and I warn the people against electing you, for if you can thus be elected in the same way you will be cheated out of your votes in the Senate.

I beg pardon for detailing the Committee with this anecdote.—The bill was passed. It gave the people of the West their full share of representation.—It gave them nine Senators, when according to the constitution of 1810, they would only have been entitled to eight and a fraction. They already had their share in the House of Delegates—they then had their full share of power, and the new bill provided for the removal of the objection to the inequality of the land tax. Though I preferred the permanent to this temporary relief, yet I was then content rather than expose the whole Constitution to the danger of innovation and injury. I thought our present Constitution was better suited to the genius and character of our people, better adapted to promote our interests, and protect our rights, than all the Constitutions of all the other States of this Union—I preferred it to all, because of its antiquity—I vindicated it because it was the work of our forefathers, and because it was the

child of the revolution.—From the time when this great political inequality was removed, I have constantly opposed the call of any Convention, general or limited, and have labored no little to prevent it. Step by step, side by side, I have followed my noble friend from Chesterfield, (Mr. Leigh) in preserving the old Constitution, and he will bear me witness, that I have fought like a faithful soldier, and did not abandon my arms till victory was wrested from me—but from the time the majority had decided in favor of it, my opposition ceased—from that time all wise men agreed that the Convention should be organized without delay, and all complaints speedily settled.

I have detained you with this explanation, because I thought it due to myself, my consistency. I neither expect nor desire to recommend myself thereby to your favorable acceptance. I submit my remarks with the hope they will not be lost on the candour and intelligence of this Committee. My first duty is to acknowledge the error I fell into in the early stage of these proceedings—the error of supposing that the order of debate ought not to have been decided by the member from Norfolk, who now no longer holds a seat among us. I foolishly imagined that I had learned the rudiments at least of political science before we came here—that we did not now require to be taught our horn book, not to be schooled in the elements of government, that the members of this body had been selected for their wisdom, for their knowledge in the science of government, and for their experience; but I have been informed by all of my mistake; I have been taught to acknowledge my error, by the conclusions to which my adversaries have come, in their arguments during this debate.

It was the misfortune of the gentleman from Frederick, (Mr. Cooke) to suppose that there was settled principles declared by our Bill of Rights, and to think that when he had shown that any proposition was sustained by its principles, it was sufficient, and that any proposition opposed to it should be condemned. But this unfortunate opinion has been made the basis of a most discussive inquiry into the natural rights of man; into an examination of all history, & to a period antecedent even to history itself; into an effort to imagine unimaginable things, and to cast odium upon all principles and all political doctrines. The docteur gentleman from Northampton, [Mr. Upsher] in order to prove how improper abstractions were, indulged in a long train of abstractions and metaphysical arguments, & at last came to this bold conclusion that there were no principles whatever in government. Well may I be supposed in error in imagining there are such principles, when the wit, the talent, the eloquence of the gentleman from Northampton asserts that there are no principles in government. No principles, Sir!—The character of the gentleman is too well known, his talents too well understood to believe that he really entertains a belief in the truth of this assertion, but the nature of the warfare waged here against the doctrines behind which we trench ourselves, compels gentlemen to throw every thing into ridicule and confusion. No principles! because every question relating to government is a question of expediency!—because every government should be made not with reference to any given standard, but with reference to the situation of the people for whom the government is intended—we about the premises and deny the conclusion—does it follow because government should be adapted to the situation of the people, that there are no principles?—The gentleman would tell us with equal truth, through every building should be constructed with intent to suit the business to be transacted in it, as well as the individual tenant, yet that there were no principles of architecture. Surely such reasoning would require no refutation.—I state this to show that the gentleman did not mean what he said.—I suggest that the real object of his argument is as little to be vindicated as the plain meaning of the proposition in its broadest application.—If it was intended to discredit those principles we have been taught to venerate, which have been consecrated by the love of our ancestors, which we have been taught to look to as the guides for our political faith, it is as unwise as untrue. It has neither been the doctrine of ancient or modern times to inculcate such principles—it has not been the opinion of any writer deserving the least respect from the days of Plato, down to the last Southern Review. They are the principles which have been recommended to us for our adoption; for our love—and it is wise that principles which constitute a part of our government itself, should be thrown into disrepute and sustain any argument or proposition, whatever be its character? Thus much with respect to this argument of no principles in government.

Mr. Chairman it becomes us in approaching this question now under consideration, to look with attention to the real principles—the true doctrines which lay at the foundation of our government. Much time has been bestowed upon the declaration of rights, it will not be amiss to look at it again with further attention. This declaration is said to be the basis upon which the Constitution itself was formed, the basis, sir, with all just government, was intended to declare those doctrines upon which the revolution was founded, it was intended and an examination will prove that the intention was executed, to embody the doctrines of Sidney and Locke. It had been the province of these distinguished men at the period which preceded and followed the revolution in England to maintain the rights of the people against the rights of the prince, and to deny its legiti-

mate foundation in the will of the prince; inspired by the principles of liberty, which the history of the English government had infused into the people, emboldened by the accession which the rights of the people had gained from the prince, they came forward to prove that all power resided in the people; they did not confine themselves to the governments, which had existed, nor to the experience of mankind under former governments, but they availed themselves of that experience and applied it to the natural and unwearied relation between the governments and the governed. These doctrines clearly illustrated we recorded as the foundations of our government, and they never ought to be treated as abstractions, as visionary theories, but as solemn truths; as the articles of our political faith, and the standard of our political conduct. To recal men to original maxims is recalling them to virtue—this is the language of a great political writer—it is the language of truth, it is the language of our Bill of Rights in the Declaration, that no free government can be sustained but by a recurrence of fundamental principles. The advocates of liberty, the friends of good government, in ancient times, thought it important to exhibit to the people, a standard of perfection, which, though they could not follow, they might at least strive to imitate. The Republic of Plato, was written to exhibit the high standard of perfection to which men might aim, though it was not reasonable to hope they would attain it. The Republic of Cicero, was written to endeavor to recal the Roman people to their ancient virtue—to impress it upon their hearts; and recal them from their aberrations into which they had fallen, and reform the degeneracy of the age—it was written for valuable purposes, and had it been practicable to reform the nation, reform would have been accomplished, and he would have attained his efforts. When Edmund Burke, who was as much afraid of the excesses of the French principles, as any republican ought to be—when he pointed out with eloquence, with prophetic talent, the errors of the French revolution, and its deleterious consequences; did he deny principles—when warning the people of England against these evils; did he content himself with ridiculing principles? or did he refer to the word and spirit of the English Declaration of Rights? It was to this spirit he appealed, when warning against French excess; and it is to the work and spirit of our immortal Bill of Rights, that I now point to bind the affections of every American Statesman. Are we to do nothing to render ours venerated and sacred, or are we to ridicule them in practice? Is this the wisdom of our forefathers? We are told that the education of every people should be shaped according to the circumstances in which they are placed—according to the principles supported by the people—we should then enquire what sort of Legislation is best calculated to support these principles. We passed the law, docking entails—because of the injustice of the system—not because of any intrinsic impropriety in making the elder son richer than the younger, but because it was incompatible with the doctrines of our government.—The same wisdom dictated our statute of descent—that law which declared property should pass to all children equally, rather than to the first born son. Are not these rules of reason, and ought not they to be countenanced? Let us enquire what these doctrines are, and wherefore they are thus obnoxious, and wherefore we should not reverence them.—The first provision of our Bill of Rights is [here he read the 1st article]. The first line then is the language of Locke himself, with a very slight alteration. Locke declares that all men are born equally free, equal and independent; our Bill of Rights, that all men are by nature equally free and independent. We have heard a commentary already upon this word born, and I shall not extend it; but this sentence has given rise to all this declamation upon the natural rights of man. Gentlemen have doubted whether any such rights could be traced to a state of nature, or whether there could be any state precedent to civil society. I am ready to concur in the opinion, that man can no where be found except in a state of society, that he can no where be found without the laws incident to society; this state which precedes all society, never did exist, unless indeed Robinson Crusoe be an instance to the contrary, and the instance given in Bible history; and then it existed only during that time "when man the hermit aighed," and disappeared as soon "as woman smiled," and terminated this state of nature. It is as well a law of our nature that we shall be governed by rules appertaining to society, as that we shall "live, and move, and have our being" for man cannot exist without some law governing his relations one to another—he is compelled to labor for his subsistence—he is actuated by instinct to preserve his being and promote his comforts—that instinct that promotes that comfort and preserves that being, points at the same time to the law which authorizes him to repel the assualt and punish the offender—whether written or unwritten, implied or expressed—and vain is the enquiry into that state supposed to exist with man as an unsocial being. When the Declaration of Rights tells us that men are by nature equally free and independent, it tells us that those laws give to all equal freedom and independence. These doctrines were maintained and were avowed, not for their simple truth, but to declare the more important law directly applicable to the doctrines of government, which was reared upon this foundation, "all men are by nature equally free." &c.—This declaration which thank God we have the authority of the highest tribunal in the State, for saying a part of the Constitution, was intended for the wise purpose

declaring the natural limit to be placed upon all governments, which the government of laws intended for the protection of these rights, could not be made to destroy. You are to yield to the government only those things which are necessary to attain the legitimate ends of government; not to yield every thing which government is intended to guard. Your liberty and your lives are not to be yielded, for no government in its legitimate sphere, undertake to claim life, liberty, and the earnings of labor; for they are rightful and unalienable privileges of the individual citizen. I now give it to rescue the declaration of rights from the sneers and obliquy which have been thrown upon it. [Here the second article was read.]

Mr. Johnson having read the second article of the Bill of Rights, declaring "that all power is vested in and consequently derived from the people," &c. proceeded— "This too, Sir, is nothing more than a re-affirmance of the ancient doctrine of Sydney and Locke, which was itself but a denial of the doctrine of Sir Robert Filmer, that the right of the king was of divine origin;—this second article contains a proposition which no one will now date to controvert, and to which no one will now refuse entire submission.

Mr. Johnson then read the third article in the Bill of Rights, "that government is, or ought to be executed for the common benefit, protection and security of the people, nation or community, etc." This section contains a manifest truth, a clear and correct exposition of a standard, by which the excellence of your government may be tested, and a rule by which government itself is to be formed, a standard which is surely unexceptionable, and which should be invariable and inviolable. The first sentence provides the standard and pointing to the object enables you to compare the standard with the object and ascertain whether it be direct or not. What is the standard? "Of all modes and forms of government that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of mal-administration, etc." Surely this opinion is true, if government be instituted for the common benefit, that form is best which produces the greatest share of public good; this gives to gentlemen the full benefit of their argument, for it admits the proposition that practical utility is the standard of all beneficial governments; this I intend to consider when examining the true rule by which the standard should be applied. I state it here, that gentlemen may perceive that in facts there is no distinction or difference between us, and will proceed to the last clause of this third article: "that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, etc. right to reform, alter or abolish it, etc." What is here declared? The right of the majority to reform the government, when it is not found to answer the end in view. No one considering this subject, can deny the truth of this proposition, and there ought to be no difference of opinion as to the method of applying it.—The people grant the power—the people grant the authority to be exercised for their benefit—the people, the majority of the people, have the unalienable, indefeasible and indubitable right to abrogate the power, to deny the authority, and to reform or abolish the government as to this majority shall seem right. The people propose an alteration now—the people who granted the power originally—the people whose happiness is to be promoted seek this change, and shall they be asked by what authority you seek this reform? Shall they be told by one who is opposed to reform, "I can demonstrate that you suffer no inconvenience, you labor under no grievances, you are happy, and no other form of government could procure you the same quantity of good"—and then demand of you why you would alter it? what answer would they not give? We acknowledge your sincerity—we know you believe what you say—but you are arguing to us a question about which you must allow us to feel, to think, to understand for ourselves; how great soever may be your superiority of intellect, your superiority of virtue, your wisdom and your foresight; yet you cannot feel more than ourselves. You are proving to us by logic that we are prosperous and happy; but we feel, we think, we know otherwise, and we care not for your logic. He may tell you, you know that the government has not attained all possible, imaginable happiness; but how can you tell how the new will operate, how can you tell how it will compare with the old Constitution?—They will answer, the right is ours—the stake is ours—the loss is ours—the gain is ours—we feel, we know that happiness has not been secured to us—and it is our province to make the hazard, our risk, and therefore our right to abolish it. Who is to judge between them? The answer proves the principle laid down to be perfectly correct—the majority must judge! The article was not intended to set forth vain and impossible things, for in the nature of things it must result in this, and the majority must judge, and that is the unquestionable meaning. It is not my purpose to take up isolated passages in the Bill of Rights, or consider independent of the Constitution; for I admit that both were made at the same time, and each sheds a light upon the other, and whatever light the Constitution would throw upon the construction of the Bill of Rights, ought to be employed. But there is nothing in the Constitution itself, nor in the commentary, which the great men of that day placed upon it, nothing in the superstructure which denies that the majority have this right. Is there any thing? Nothing. I shall allow other then to consider the two together, for I

claim the same right. I claim the right to consider them both, and believe necessary to interpret them properly, then is declared? That as governments made for the benefit of the people, have the right, when it is found that this intention to alter or abolish it was this Constitution to be recalled to the notice of those who could contend in sanction, or that we have any ground to doubt its validity. It was sent to the people, not with the Bill of Rights concealed, but both together, openly and fully.—The great men of that day, our virtuous forefathers, told our ancestors believe the government we gave you the best we can adapt to your condition and when you believe it not so good, the right and can abolish it—you can do it as long as you please, until it shall declare it no longer obligatory; was the compact entered into at the time and is it not the most solemn of all pacts? Can it be more distinctly remembered? We look then not to the nature, but to the compact of society, which declares expressly the right of the majority to reform, alter or abolish it, and this proposition then enunciated, does not lead to the conclusion, that therefore, the majority have the right to control the Legislation of the country; it does not prove that the majority may not confer upon the minority powers of Legislation; that is a question of property; but the question which it should be carried, justly considering those things which should be in our deliberations, the majority have the right to reform; they have, they should at least be allowed to explain their opinions, and decisions shall give the law. It will occur to you, sir, that the consideration of this question, is calculated to produce the delicacy in the deliberations of the House; we came here to enquire the will of this majority; how then is it ascertained? The people are not seated here in proportion to their numbers, therefore, what may be in fact the majority of the members of the House, may not be the will of a majority of constituents.—For what is to be decided here in proportion to their numbers, therefore, what may be in fact the majority of the members of the House, may not be the will of a majority of constituents.—Every instrument must be understood with reference to the subject of which it treats.—We are informed another part of this instrument, which the parties to the compact. "Every instrument having a permanent common interest and attachment to the community, the right of suffrage"—the qualified voters, then, are the parties—they are the citizenry, to a majority of which the right to reform or alter the government belongs; the majority then of these qualified voters give the rule; and the difficulty which arises, is, how is this majority to be ascertained? We cannot declare, that our present majority of the whole people, we must vote however, and all questions must be decided by our majorities, the full knowledge that they do not represent majorities of the people. They however is entitled to consider their ought to have its weight in recommending forbearance, a spirit of conciliation, and ing disposition, a feeling of mutual concession; it is entitled to weight as to the subject of lean majorities, and ten referred to by gentlemen here; for lean majority decide against this question, they will decide against a majority of the people; but if a lean majority decide in favor of this proposition, they will decide in favor of a great majority of constituents. These matters are to be weighed for as much as their worth, and they are entitled to weight as to we are considering how the proposition adopted or rejected here, will effect the people, or will be submitted to by them.

Mr. J. repeated his declaration, that the question was to be decided by practical utility. But he contended that this so well calculated to mislead us, this doctrine of practical utility is not understood. It has been found that all laws had proved useful or salutary to men. What is your test of moral utility? Is it any thing else but this practical utility; and this makes one thing moral or that immoral.—Without would not our prejudices and interests constantly mislead us? Why is murder moral? not because the loss of some would be injurious to society; but because it would be wrong to permit men to take the taking away life. Why is a reference to contracts proper? It is not because in any particular case, it might be productive of good to violate a contract; but because the faith of contracts is necessary to bind society together. Why is the parent love his child? But because is essential to keep society together. Godwin's morality has been narrow and contracted—when he advocated the practical utility which was erroneous and its application of it in a more extensive view of consequences.

Mr. J. said, that the people had necessary in the Constitution; and the legislative Committee has proposed to alter the representation on the basis of population. The gentleman from Cumberland had proposed to amend it, by restoring the white basis. He proceeded to examine both.—But it was not to be understood by the word "exclusively," that the election District, which has a Representative in the House of Delegates, should have an equal proportion of white population—but that, that population was the basis, without regard to property. That manner this power was to be apportioned among the whites, was a matter

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