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REPORT

Of Messrs. BOWIE *and* DELLINGER, *from the Committee on the Constitution.*

The undersigned, a minority of the committee on the Constitution, to which was referred various orders and resolutions of the House of Delegates, and the several bills reported to the House suggesting and proposing certain amendments to the Constitution and Form of Government, beg leave to submit the following Report:

For twelve years past the question of amending and reforming the constitution, in some mode or other, has been agitated by the people of the State; and, in the opinion of the undersigned, that question will continue to be an exciting topic of discussion until some settled and definite course is adopted by the Legislature of the State, which may be considered as indicating a permanent and established policy, likely to meet with general acquiescence on the part of the people. The two great political parties of the State are now divided in opinion, as they have hitherto been, as to the best mode to be pursued in reforming the present Constitution. The one party insisting that as the constitution now stands no amendments or alterations can be made, except by two successive acts of the General Assembly, in the mode provided by the fifty-ninth article. The other party maintaining that the people, in the sovreignty of their power as a concentrated mass, have the inherent right to abolish the old and to establish a new constitution or form of government, irrespective of the limitations and restrictions, if there be any such, to be found in the constitution of the State.

The undersigned fully concur in all that has been said on this subject by the majority of the committee, in the report which they have submitted to this House. That the General Assembly have power to make all and any alterations in the constitution which the people may desire, and that, without a change of that instrument, reform, by means of a convention of the people, would be in violation of its express provisions, as well as repugnant to its whole spirit, the undersigned entertain no doubt. The language of the fifty-ninth article is too clear to admit of a doubt. It is "That this form of government, and the declaration of rights, *and no part thereof shall be altered, changed or abolished, unless a bill so to alter, change or abolish the same shall pass the General Assembly.*" These words contain not only an express grant of power to the General Assembly, but they are also words of negation, expressly interdicting all other modes of amendment. It is no answer to this view to say, that the words are to be construed with reference to and in connection with the forty-second article of the bill of rights. It is admitted that they ought to be so construed, and then what benefit can the advocates of conventional reform derive from such a construction. The forty-second article of the bill of rights declares, "That this declaration of rights, or the form of government to be established by this convention, or any part of either of them, *ought not to be altered, changed or abolished by the Legislature of this State*, but in such manner as this convention shall prescribe and direct." Now it is admitted that these words are restrictive only upon the Legislature, and not upon the people. They limit the legislative power alone, while they are wholly silent upon all and every other mode of change. But does it follow that the constitution itself, which does contain words of restriction upon the people, is to be inoperative and void? What the bill of rights omits the constitution supplies.—There is no repugnance between them, and therefore they may stand together, and the provisions of each be gratified. So far from the advocates of conventional reform being assisted by this mode of construing the one with reference to the other, it actually proves the unsoundness of their position. Take them separately and they may stand upon the forty-second article of the bill of rights, and say here at least are to be found no restrictions upon the people. But construe them together, and the fifty-ninth article of the constitution discloses the restrictions at once. They find inserted in the one what was omitted in the other.—There is nothing in any part of the bill of rights which is repugnant to this provision of the constitution. The convention which made the constitution was not prohibited by any article of the bill of rights from imposing such a restriction upon the people. They had the undoubted right, not only to prescribe the mode in which changes to the constitution should be made, but to prohibit all other modes, and having done so, unless amendments are made restoring to the people that which they have parted with, this provision of the constitution will continue to be binding on them to the latest generations.

But it is said by those who advocate the right of the people to change their form of government at will, that the right itself is inherent and unalienable, and that the people could not, if they would, have parted with it. The undersigned are at a loss to know from whence this political axiom, to the extent contended for, is derived. It certainly finds no support either in the bill of rights or the constitution.

It is only "*when the ends of government are perverted, and the public liberty manifestly endangered, and all other means of redress are ineffectual,*" that the bill of rights recognizes the right of the people to reform the old or establish a new government. Here the right is clearly asserted to be a qualified right. And so far from maintaining the right to change or alter at will to be a right at all times inherent in the people, it denies all right to reform the old or establish a new government, except under circumstances of oppression which would be destructive of public liberty. When these circumstances occur the right begins but not before. It then becomes a right drawn from the instincts of our nature—a right of revolution, founded upon the first of all the laws of nature—the law of self-protection. This right of revolution belongs to the body politic, just as the right of self-defence does to the body natural. They are rights only to be used to prevent the destruction of other political or natural rights, as the case may be, and can only exist when the necessity to exercise them exists. If by inherent and unalienable rights, this right of revolution is meant, under the circumstances alluded to, the undersigned feel no disposition to controvert the proposition; but to any greater extent they cannot go.

In connection with this subject the undersigned beg leave to remark, that the bill of rights no where speaks of the inherent or unalienable rights of the people. It contains no definition of those rights, and we are therefore obliged to look elsewhere to know what is meant by the use of such terms.

The Declaration of Independence places among unalienable rights "life, liberty, and the pursuit of happiness;" and asserts, that the people in the exercise of these rights, "whenever any form of government becomes destructive of these ends, have the right to alter or abolish it, and to institute a new government." The unalienable rights here spoken of, are "life, liberty, and the pursuit of happiness," not the right to abolish the old and to form a new government. As in the bill of rights, so in the Declaration of Independence, this right in the people to alter or abolish an old, and to institute a new government, is alleged to exist only when the ends of government are perverted and the public liberty endangered. The right itself, independently of these circumstances, is not claimed at all, much less is it claimed as an unalienable right. It is only when the unalienable rights of "*life, liberty, and the pursuit of happiness*" are impaired that it is claimed to have any existence whatever. The undersigned are unable to ascertain with any precision, what is meant by those who maintain that the right of the people to alter and amend the constitution, and to form a new one, is an unalienable right, in the enjoyment of which they could not have restricted themselves. If by unalienable is meant not capable of being transferred or delegated, then the undersigned would respectfully suggest, that all governments which have been established by the people, acting through agents of their own selection, are formed in derogation of this unalienable right, and therefore not binding on the people. The right to form a new government necessarily includes the right to alter and change the old, and if the one be an unalienable right, the other must be also. If this be so, then no government can be formed at all, unless by the people themselves, collected together in one great mass, acting without the intervention of agents or delegates. The undersigned would desire to know if these doctrines are to be regarded as sound, upon what principle is it that the advocates of conventional reform claim to have the right to call a convention of delegates from the people?

If the right is an unalienable right it can no more be transferred by the people to a convention than it can be to the Legislature. A convention composed of any number less than the whole, or a majority of the whole people, would be a body of delegated powers only; and if the right to form a new or abolish an old government is a right unalienable in the people, no such right can be transferred by them to any such convention. The advocates of conventional reform, therefore, cannot fail to discover that such arguments have a tendency to defeat, if they are not entirely suicidal to their own objects, and the undersigned will have reason to congratulate themselves, if none more formidable shall be presented to their consideration.

The undersigned yield their most unqualified assent to that great and fundamental principle of the Bill of Rights, which declares, "that all government, of right, originates from the people, is founded in compact only, and instituted solely for the good of the whole." By this, we understand, the framers of our Government to maintain, in opposition to the theory of the *divine right of kings*, on which the monarchical governments of the old world are based, that the people are the rightful source of power; and that all government is derived, from, and founded on, their consent. But when government has once been established by the people, with their consent, and in execution of the compact, the undersigned feel constrained to believe, that the framers of that sacred instrument meant also to maintain, that such government, when formed, is binding on the people to the remotest generations, until changed or altered in the mode prescribed by the Form of Government itself, or until it becomes perverted from its original uses, and wholly destructive of the ends for which it was instituted.

The article of the bill of rights now under review, has reference more immediately to the rghts and power of the people in the *original formation* of government, than it has to the effect and binding force of government on them when established. But in no part of that instrument can the undersigned discover the least justification for the doctrines now openly maintained, that the people in the uncontrolled power of their might have the unlimited right to alter and abolish governments of their own formation whenever it may please them to do so. The undersigned submit that such principles are fraught with the most disastrous consequences to human liberty itself, and if carried to their practical results must necessarily end in the destruction of all good government, and finally in the establishment of anarchy and despotism.

The government of Maryland is a government founded in compact—not a compact between the people and the convention which framed it, or between the people and the Legislature, but a compact by and among the people themselves—one with the other—all with each, and each with all; by which they have agreed for the good of the whole, not only to be bound, but to remain bound, so long as the original ends of the compact are preserved. A compact which protects the weak against the strong, the rights of minorities against the encroachments of majorities—and secures to each and the whole all the privileges and rights contemplated by it. The constitution and the bill of rights are the fruits of this compact, and constitutes the basis on which it now rests.

They contain provisions by which a change or alteration in the form of government can be made whenever a change is desired. These provisions ought to be adhered to so long as they stand unrepealed. They are the fundamental law of the land, and are therefore binding with the force of law, upon the whole people of the State, and upon each one of them. The undersigned would regard a change of the constitution, in any other mode than the one provided for in that instrument, as a violation of its own provisions, and, consequently, inoperative and void. A change of government under such circumstances could never become legitimate; it would be but usurpation at last, and would so continue until the end of time—never to be justified upon any of those great and cardinal principles of civil liberty which sanctify revolutions and render usurpations just.

But while the undersigned have so far agreed with the majority of the committee, that the Legislature have under existing circumstances no constitutional power to call a convention to form a new constitution, they have felt themselves constrained to differ from the majority as to the expediency of so amending the fifty-ninth article of the present constitution as to provide for the call of a convention of the people for that purpose whenever, under all circumstances, it may be deemed advisable by them—provided the convention shall be constituted in such a manner as to secure to all the counties of the State precisely the same privileges and rights of representation as are now enjoyed by them in the General Assembly. And the undersigned will now proceed to state some of the reasons which have induced them to recommend such an alteration in the constitution at the present time.

Questions connected with a change in the organic law are at all times apt to become of so exciting a character as to engender the severest contentions among those who come within the range of their influences. But more particularly is this apt to be the case when the spirit of party becomes mingled with them, and assumes a prominent control over the feelings and passions. It would be infinitely better for the public interest if such questions were but seldom agitated. But it seems to the undersigned to be of equal, if not of paramount importance, that, when such questions are raised, and the public mind has become inflamed with reference to them, some effort should be made to produce a condition of repose and quiet more compatible with the happiness and prosperity of the people. The undersigned would be happy if they believed they had it in their power to say, that no such distracting and disturbing elements were at work among the people of their own beloved State. They have watched with more than ordinary anxiety the movements within the last two years, which have been made by the people in various portions of the State, upon the subject of Conventional Reform, and in the opinion of the undersigned these movements furnish the strongest indication of an increasing public sentiment in favor of that mode of amending the constitution. The undersigned deem it wholly unnecessary to enquire how far these manifestations of popular sentiment have had their origin in any well settled convictions, that reform is necessary for the public good, or that the present constitution has failed to secure to the people the just rights to which they are entitled. They refer to them simply as matters of fact, calculated in themselves to awaken reflections of the gravest import, and to teach the importance of an attentive and early consideration of the results to which they may lead. It cannot fail to attract the notice of those who are at all careful to observe, that a great and powerful party in the State are united almost to a man in advocating the principle of reform by a convention of the people, whatever differences may exist among them in certain sections of the State, as to the details of its organization. And while another great party are equally united in their patriotic efforts to arrest the progress of principles which they deem to be subversive of the public good, it has occurred to the undersigned, as not being entirely without the range of human probability, that sooner or later we may be called on to witness the triumph of those who are the advocates of a convention without limitation or restriction, and who, regardless of the local and sectional interests guaranteed and secured by the present constitution, under the broad banner of popular rights and popular privileges, may break down all that is valuable and dear to the other and less populous portions of the State. If, in the heedless career of party or sectional jealousies such results shall take place, we may have occacion to take blame to ourselves and to regret, when it will be too late for remedy, that we did not apply the necessary and timely preventives.

The undersigned believe that the present time is quite as favorable as any that will occur, for the adoption of some safe and salutary plan by means of which, should a majority of the representatives of the people in the General Assembly deem it necessary or proper to call a convention, such reform may be had as will comport with the interests of all sections of the State, and secure to the people all the benefits to be expected from such just and reasonable amendments of the constitution as time or circumstances may seem to render necessary or proper.

The undersigned have already attempted to show that under the existing constitution no convention of the people to amend or alter any of its provisions, can be rightfully called, either by the Legislature or by the people themselves—the power of amendment being exclusively confided to the General Assembly. To render such a convention constitutional, is however within the power of the General Assembly, by an amendment of the fifty-ninth article of the existing constitution.

The General Assembly have also the power in such amendment to prescribe the mode in which such convention shall be constituted. This power they have not only as the law-making power, but as the constitution-making power of the State. The whole people are bound by the laws and constitution, and must be so, in the nature of things, under all forms of government founded upon the social compact. If this be so, then all conventions, which are but portions of the same people, are equally bound. If the entire mass of the people are not exempt from allegiance to the laws and constitution they can confer no such exemption upon their delegates in convention. The same may be said of the basis of representation and of the general powers and duties of such a convention. If these are limited and prescribed by the organic or fundamental law, which brings such a convention into being, the organic law so limiting and prescribing becomes in this respect the law of its being, and it can be controlled by none other. The undersigned have, therefore, felt no difficulty in supposing, that the General Assembly may regulate the basis of representation in the convention, and otherwise so restrict its action as to make it in all respects acceptable to every portion of the State. If the undersigned entertained any doubts upon this subject, they have found abundant means of being relieved from them, by reference to the constitutions of many of the States of the Union, in which restrictions and limitations of a similar character to those referred to are found to be imposed on the conventions authorized to be called for their amendment—restrictions not only as to the basis of representation, but in some of them upon the general powers of the convention in reference to subjects of particular interest to the people. They refer more particularly to the constitutions of the States of Kentucky, Tennessee, Louisiana, Mississippi, Delaware, and New Hampshire, all of which contain restrictions as to the basis of representation; and to the constitutions of Ohio, Indiana, Illinois, and of most of the non-slaveholding States in which restrictions are imposed on the power to introduce slavery within their limits.

In view of these precedents, the undersigned have not hesitated to recommend such restrictions upon the convention authorized to be called by the proposed amendment of the constitution of Maryland as will disarm it of those terrors which have hitherto been ascribed to it, and render it more likely to meet with the sanction of the people in all portions of the State.

It would seem to be too clear to admit of a reasonable doubt, that if the Legislature, in the exercise of the constitution-making power, is competent to limit or restrict the convention which it may provide, for the purpose of making amendments in regard to questions of the basis of representation and the like, it is also competent for the Legislature to impose any other just and reasonable limitation upon its powers, and particularly upon its mode of organization, which may be called for by a due regard to the public interest. Impressed with these convictions the undersigned propose that the convention when called shall be formed into two bodies—an upper and a lower House. The lower House to consist of the same number of Delegates as now compose the House of Delegates, to be elected in the same manner and proportions as they are now chosen to that body; and the upper House to consist of one from each county and city of Baltimore, to be chosen in the same manner as the members of the Senate are now elected. This organization seems to the undersigned to be entirely unexceptionable, and in their opinion is required by the same considerations of wisdom and policy which, under all governments, have rendered it necessary to provide Senatorial checks upon the popular branch of the legislative departments of government. If such checks have been deemed at all times essential and proper upon the law-making power, the undersigned cannot see why they should not be equally so when the fundamental or organic law is to be made, which controls and regulates all others.

In conclusion, the undersigned beg leave to present the following bill, which they believe substantially embraces the views entertained by them. They present it to the House and to the people of the State, in the discharge of what they conceive to be their duty, under all the circumstances, and respectfully ask that it may be considered.

THOMAS F. BOWIE,
H. WILLIAMS DELLINGER.

AN ACT to alter and amend the fifty-ninth article of the Constitution and Form of Government of the State of Maryland.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That the fifty-ninth article of the Constitution and Form of Government of the State of Maryland, be and the same is hereby altered, changed, and amended, as follows, to wit: