The Virginia State Convention

Of

1829 - 30

By

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Chapter I

Grievances under the Constitution of 1776

In 1776 Virginia adopted a Constitution which was to remain in force for a period of fifty-three years. Although this Constitution was a step toward a more democratic government, it had many glaring defects. As early as the close of the Revolutionary war the injustice and inadequacy of this constitution had become evident. This was recognized not only by the ones affected diversely but also by many prominent men like Jefferson and Marshall. Almost continuously after the Revolution the subject of reform was brought forward, but the conservatives had always been strong enough to defeat constitutional reform.

In order to understand fully and to appreciate the grievances created by this constitution, it will be necessary to examine the geographical features, the population, and the economic divergencies of the sections of Virginia.

A survey of the chief geographical features of Virginia will reveal the fact that the surface of the state is divided into two unequally inclined planes with a valley running between them.[1] The eastern plane naturally fell into two parts, the Piedmont and the Tidewater divisions. The western plane fell into three parts, the Alleghany highlands, the Cumberland plateau, and the Ohio River section. The valley lying between the two mountain ranges is the famous Shenandoah Valley. Thus it may be apprehended what is meant by the terms, Tidewater, Piedmont, Transmontane, etc.

[1] Ambler, "Sectionalism in Va.," p. 1.

The population of Virginia, while more or less homogenous, was divided into two distinct classes of society. The inhabitants of the Tidewater section formed a most homogenous population, all of the same blood and lineage; they were of "gentle" descent, mainly from the Cavaliers of Charles II. The inhabitants of the Piedmont district had developed a civilization very much like that of the Tidewater section. On all questions affecting their social and political life, the people of the Tidewater and the Piedmont were one. The dwellers of the Shenandoah Valley, separated from the East by the Blue Ridge, developed a social and economic life which differed considerable from that which prevailed on the other side of the mountains. An influx of Germans and Scotch-Irish, beginning in 1720, was responsible for this variation in customs and manners. The people of the western part of the state came mostly from the older part of the state and Maryland. The inhabitants of the Shenandoah Valley turned their eyes westward and were more closely connected to that part of the state. Thus the pioneers of the Shenandoah Valley and the western section of the state were regarded as peasants by the Tidewater and Piedmont patricians.

"Commerce is the grand lever which sets into operation and controls all political movements."[1] The truth of this is a well established fact. We may go further and say, "that the absence of commercial relations is the grand lever which sets in motion many political misunderstandings."[2] That this was the case in Virginia was beyond dispute. Virginia contained an area of 67,000 square miles of territory, divided into two unequal parts, by high mountain ranges. Commerce on the eastern side followed its natural course to the Atlantic Ocean. In the western region, commercial

[1]McGregor, "The Disruption of Va." p. 17
[2]Ibid

relations were carried on with the towns and cities on the Mississippi River or its tributaries. The Old Dominion had made little effort to bring these two sections together by building railroads and canals.

The divergence of interest between the two sections was striking. In the eastern section, agriculture, with its large plantations cultivated by slaves, was the foundation of prosperity. The land of the western section was illsuited for the cultivation of tobacco and cotton; sheep raising and small farming, requiring few laborers, were important. Thus slaves were of little economic value in this section. On the other hand, slaves in the eastern part of the state were the sine qua non of the prosperity of the planters. The West was rich in natural resources which tended to promote manufacturing, while the East was comparatively poor. This lack of natural resources made agriculture all the more a necessity.

This divergence of economic interest had a decided effect upon state legislation. The West demanded laws which would promote internal imporvements, such as, the building of roads, railroads, and canals. The prosperity of this section demanded a good system of banking which the laws of Virginia did not create. Since the eastern part of the state was poor, and since its representatives controlled the state government, laws necessary for the prosperity of the West were not passed. So the outlook of the West would be dark until that section could control the machinery of the state government.

Before 1780 the inhabitants of the western part of the state worked under every political disadvantage which could afflict a free people. Its injustice became even more apparent after 1800, when the

western counties began to fill up rapidly, while in the Tidewater section a distinct retrogression set in. The parallel between the situation in Virginia prior to 1830 and that in England before the Reform Bill of 1832 must instantly suggest itself. The Transmontane counties of Virginia were only a degree less unjustly treated than the great manufacturing districts of England. Thomas Jefferson in a letter to Samuel Kercheval in 1816 spoke of the constitution as being without "leading principles." It denied equality of representation; the Governor was neither elected nor controlled by the people; the higher judges were dependent upon none but themselves.

The legislative power under the constitution was lodged in a House of Delegates and a Senate. In the lower house each county was represented by two members regardless of population. Thus "forty-nine counties adjacent to each other in the eastern and southern section of the state had a majority of the whole number of representatives in the most numerous branch of the legislature, and those counties contained in 1810 only 204,766 white inhabitants, less than one half of the population of the state by 72,138 souls."[1] The Senate was composed of twenty-four members elected from senatorial districts, and in the course of years the shifting of population had rendered the old grouping as much out of date as was the system of representation in the lower house. Thus we find in 1810, 212,036 white persons of Virginia were represented by only four senators, while in another part of the state thirteen senators were chosen by a white population of 162,717. Jefferson declared in 1810 "that the majority of the men in the state who fight for its support and pay taxes are unrepresented in the state legislature, the roll of freeholders entitled to vote not including the half of those on the roll of the militia or of the tax gatherers."[2]

[1] From Staunton Convention of 1816. Quoted in Niles Register, 1816, Vol. 11, pp. 15-23

[2] McGregor, "Disruption of Va." P. 29

It is not surprising, however, to find in Virginia before 1830 the voting principle limited to freeholders, for such was the case in most of the states. Since the Governor was elected by the legislature and the higher judges were appointed by the Governor, no part of the state government was controlled by the western section of the state.

At various times prior to 1817, bills had been introduced in the General Assembly providing for the calling of a constitutional convention. Sometimes they passed the lower house only to be defeated in the upper. Finally the voice of the people could not be stilled and the Assembly was forced to yield to the demands of the western counties; so in 1828 the question was submitted to the people and the proposition was indorsed by a vote of 21,896 to 16,646. Statistics show that seven eights of the Tidewater district was in opposition, the Piedmont district was equally divided, the Shenandoah Valley was overwhelmingly in favor, and three fourths of the Trans-Alleghany voted in the affirmative.[1] On February 10, 1829, the General Assembly passed an act calling for the election of delegates to a convention which should meet in Richmond on October 5, 1829, for the purpose of revising the constitution or drawing up a new one.

The western members of the legislature contended for the election of delegates on a white basis, but a compromise resulted which was favorable to the East. That the system favored the East may be readily seen. Out of a total of ninety-six members, forty-eight were elected from the Tidewater, twenty from the Piedmont, and twenty-eight from the Valley and the Trans-Alleghany section.

[1] Ambler, "Sectionalism in Virginia," p. 144.

As the two older sections supported each other on all important questions, the result was to give to the conservatives a total of sixty-eight out of ninety-six votes.[1] Graphically stated, 362,745 white inhabitants from the Tidewater and Piedmont districts elected sixty-eight delegates while 319,518 white persons in the Valley and Trans-Alleghany sections elected twenty-eight delegates.[2] This inequality had a great influence on the results of the convention's work.

[1] Debates, Va. Conv., 1829-30, p. 335

[2] Ibid., p. 87.

Chapter II

The Personnel and Organization of the Convention

In calling the Convention of 1829-30, the one thought of the people of Virginia was to send to Richmond, the very best talent which they could find for that delicate duty of changing the present Constitution, without regard to secondary considerations. In some instances, delegates to the Convention, were chosen from districts in which they did not reside. This was to prevent able men from being left out where their services were needed in the great cause of changing the existing Constitution. But, generally speaking, the delegates had the same views as the districts which elected them. The result was a Convention which would compare favorably with the Constitutional Convention of 1787, and brought to Richmond two men who had filled the office of President of the United States; one man who was to fill it afterwards; a man who had been Chief Justice of the Supreme Court of the United States, and four Governors of Virginia, seven United States Senators, and fifteen members of the House of Representatives.[1] It is surprising to find how few of the delegates who had not acquired, or were soon to acquire a conspicuous national reputation, or as great a reputation as any man can possibly attain who has not had a post under the National Government. Even where members had neither National or State fame, they were elected from districts whose inhabitants deemed them to be the most prominent men of the community.

Among the prominent men of the Convention were: James Madison and James Monroe, ex-presidents of the United States; John Tyler, who had been Governor of Virginia and was afterward to be President of the United States;

[1] Bruce, "John Randolph of Roanoke," p. 609.

John Marshall, who had been Chief Justice of the Supreme Court; A. P. Upshur, who had succeeded Daniel Webster as Secretary of State during Tyler's administration, whose untimely death on the Princeton robbed the United State of an efficient servant; L. W. Tazewell, who, besides being a great lawyer, had been Governor of Virginia and a distinguished United States Senator, and who was deemed by Jefferson the most accomplished debater in Congress; P. P. Barbour, who in the course of his career, had been Speaker of the House of Representatives and an Associate Judge of the Supreme Court; B. W. Leigh, who was not only a great lawyer but aided Thomas H. Benton to expunge the censure, which the Senate had imposed upon Andrew Jackson; James Pleasants, who had been a United States Senator and Governor of Virginia; John Y. Mason, who in the course of his career, had been a member of the House or Representatives, Attorney-General of the United States, a United States District Judge, Minister to France, and President of the Virginia Convention of 1850; John Randolph, who had been a United States Congressman; Alexander Campbell, who was founder of the Christian Church; Philip Doddridge, who had served in the House of Representatives and the publisher of one of the first Anti-Slavery publications to receive wide circulation; W. F. Gordon, author of the compromise in the Convention over the basis of representation and, afterwards, the first promoter in the House of Representatives of the Sub-Treasury System; John Wickham, Chapman Johnson, Robert Stanard, and Robert Taylor, four great lawyers whose speeches in the Convention showed them to possess rare endowments; and many other men who were prominent in their communities.

The Convention met in Richmond on Monday, October 5, 1829. All the members were present except six, detained by indisposition.

Mr. Madison addressed the Convention, stating the reasons why

it had been called and the propriety of organizing the body by the appointment of a President. He nominated James Monroe as qualified to fill the Chair; and one whose character and long public service rendered it unnecessary for him to say more. No other candidate being nominated, the question was put on the nomination of Mr. Monroe; and he was elected mem. con.

After having been conducted to the Chair by Mr. Madison and Mr. Marshall, Mr. Monroe addressed the Convention in nearly the following words:

"This Assembly is called for the most important object. It is to amend our Constitution, and thereby to give a new support to our system of free republican government; our Constitution was the first that was formed in our Union, and it has been in operation since: we had at that period, the examples only of the ancient republics before us; we have now the experience of more than a half a century of this, our own Constitution, and of those of all our sister States. If it has defects, as I think it has, experience will have pointed them out, and the ability and integrity of this enlightened body, will recommend such alterations as it deems proper to our constitutents, in whom the power of adopting or rejecting them is exclusively vested."

Shortly after the speech of Mr. Monroe, an election of the minor officers took place which resulted in the following selections: Clerk, G. W. Munford; Sergeant at Arms, William Randolph; Door-keepers Littleberry Allen and W. W. Gray; Printer, Thomas J. Ritchie.

On October 7th a committee of twenty- four members, one from each Senatorial District, was appointed by the Chair, to inquire into the most convenient mode of proceeding in bringing to the consideration of the Convention, such amendments as may be proposed to the present Constitution. This committee made its report on the following day with

the following resolution:

" 1. Resolved, That a committee be appointed to take into consideration the Bill or Declaration of Rights, and to report to the Convention whether in their opinion any,and if any, what amendments are necessary.

" 2. Resolved, That a committee be appointed to take into consideration the Legislative Department of Government, as established by the present Constitution, and to report to this Convention, either a substitute for the same, or such amendments thereto, as in their opinion is necessary, or that no substitute or amendement is necessary.

" 3. Resolved, That the Executive Department of Government as established by the present Constitution, be referred to a committee, to inquire and report whether any, and if any, what amendments are necessary therein.

" 4. Resolved, That the Judical Department of Government as established by the present Constitution, be referred to a committee,to inquire and report whether any, and if any, what amendments are necessary therein."

The Convention passed a resolution whereby each committee was to be composed of twenty-four members, one from each Senatorial district, appointed by the Chair.

After each committee had investigated its subject, the report of the majority was to be presented in the form of a resolution to the Convention, sitting as a Committee of the Whole, for the purpose of discussing and proposing amendments. Then a vote was to be taken to determine what provisions were to be incorporated in the New Constitution.

Chapter III

The Convention

On October 24th, the Legislative Committee made its report, one which precipitated a debate which lasted with but slight intermission until the end of the session. The recommendations of this committee consisted of thirteen resolutions, of which number, the first four were the most important. This committee agreed to the following:

" 1. Resolved, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively.

" 2. Resolved, That a census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1831, the year 1845 and thereafter at least once in every twenty years.

" 3. Resolved, That the right of suffrage be exercised by all who now enjoy it under the present Constitution and the three following classes of citizens, namely, owners of an estate in fee, in remainder or in reversion, leaseholders, and certain heads of families paying revenue to the State."

The two fundamental questions arising from these resolutions were: the basis of representation and the extension of the voting privilege. The Trans-Alleghany was most interested in the former question, for the reason that slaves composed but a small part of the population of its counties. Delegates from the Valley, in which section reside a large and intelligent non-voting class, massed their strength against the restrictions of suffrage, The Piedmont and Tidewater sections upheld the principle that property as well as persons should be represented.

The first great question to come before the Convention, sitting

as a Committee of the Whole, was read by the Chairman for amendments as follows: "Resolved, that in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively." Mr. Green of Culpeper, proposed, that the word "exclusively" be struck out and be replaced by the words "and Taxation combined". Mr. Green's object was to bring up the whole subject for discussion; so that both sides could be heard upon the subject of representation, especially those gentlemen who desired to introduce a new principle of representation into the Constituion.

Mr. Leigh of Chesterfield laid down the gauntlet to the friends of the proposition reported by the Legislative Committee in these words: "that he did hope that the friends of this proposition would assign their reasons in support of a measure which proposes, in effect, to put the power controlling the wealth of the state, into hands different from those who have that wealth; a plan, which declares that representation shall be regulated by one ratio, and contribution by another: that representation shall be founded on white population alone, and contribution on a ratio double, treble, and quadruple. That he hoped the friends of these new propositions, new at least in the State, if not new thruout the world, would give to those who differed from themselves, some better reasons that that such principles were unknown to our English ancestors, from whom we have derived our institutions; better than the rights of men as held by the French school, ----- . Let us have some plausible reasons -----. Give us something which we may at least call reasons for it: not arithmetical and mathematical reasons; but referring to the actual state as they are; to the circumstances and conditions of the Commonwealth; why we must submit to what I cannot help regarding as the most crying injustice ever attempted in this land. I call upon gentlemen

for these reasons."[1]

Mr. Cooke of Frederick replied: "That he was surprised that the distinguished gentleman from Chesterfield should have ventured to say to that Assembly, that the principle of representation recommended by the Legislative Committee, was new to him, and new in the history of the world. Can the gentleman have forgotten, that the principle that he treats as a novelty, and an innovation, is asserted in the 'Declaration of Rights of the people of Virginia'. For the sake of those principles, their fathers had imperiled their lives, their fortunes, their wives, their children, and their country.---- And for what did they make these mighty sacrifices! For wild abstractions and metaphysical subleties! No, Sir. For the principle of eternal truth: that all power is vested in, and consequently derived from, the people; that all men are, by nature, equally free. And that a majority of the community possesses, by the law of nature and necessity, a right to control its concerns."

Mr. Cooke then showed that the proposed amendment "repudiated the doctrine that the poeple are the only legitimate source and foundation of political power; that it denied the correctness of the principle, that all electors in the Commonwealth are equal in political rights, by conferring on a small number of wealthy electors, congregated in one electorial district, the same power that it confers on a large number of poor electors; that it subverted the jus majoris, the third great principle alluded to, and which is, in fact but a corollary from the first, that sovereignty is vested in the body of the people, and substitutes for it the control of the wealthy few; or in other words the most odious and pernicious and despicable of all aristocracies.

[1]Debates, Va. Conv., 1829-30, p. 53

An aristocracy of wealth." It seemed strange to Mr. Cooke that while other governments were making great strides in carrying out the principle of the sovereignty of the people, that the people in Virginia should seek to narrow, and limit, and restrain its operation.[1]

In reply to Mr. Cooke, Judge Upshur contended, that nature does not decree that the majority shall rule and that the people are not obliged to adopt that principle in their institutions. He addressed the Convention in the following words: "If nature really gives this right to a majority; if as the clear minded gentleman from Frederick supposes, then he impressed upon us by nature, a principle of this sort, which is mandatory upon us, and which we are not at liberty to disregard, in what does this right exist? Is it in mere numbers? If so, every creature must be counted, men, women, and children, the useless as well as the useful; the drone who lives upon the industry of others, as well as the most profitable member of the human race. The law of nature knows no distinction between these classes, and indeed, one of the very postulates on which gentlemen rely is that 'All are by nature equal'. In point of rights, nature does not own any distinction of age or sex. Infancy has equal rights with mature age; and surely it does not consist with the gallantry of the present day, to say that the ladies are not the equals of ourselves ---. Why are not women, and children, and paupers, admitted to the polls? The rule, even if it exists in nature, is worth nothing unless its fair analogies will hold in a state of society. And now can gentlemen venture to limit themselves to white population alone, and yet found their claim on a law of nature which knows no distinction between white and black? By their rule, we are entitled to representation of every slave we possess; and if they will give us this, we shall dispute with them no longer.

[1] Debates, Va. Conv., 1829-30, p. 54.

The majority will then be with us. God forbid, Sir, that I should propose this seriously. I am ready as any gentleman, to disdain every idea of this sort. I use this argument only to show what consequences this demand, founded on a supposed law of nature must inevitably conduct us."[1]

Mr. Upshur further stated that the slave population of the State paid thirty percent of the whole revenue derived from taxation. The slave is first taxed as property and then his labor is taxed. This shows the peculiarity of slave property which subjects it to "double imposition", and which demands a "double security". Under these circumstances, it is right for property to possess an influence in Government and it would be dangerous, to trust this property to paper guarantees, offered by a majority.

It was estimated by Mr. Upshur that one sixth of the power that Virginia enjoyed in the National Councils, was derived from slaves. "Suppose, That a proposition should be made to alter the Constitution of the United States in the particular now under discussion; What could Virginia say, after embracing such a basis as the gentleman has proposed. Sir, the moral force of Virginia has always been felt, and deeply felt, in all important concerns of this nation; and that power has been derived from the unchanging consistency of her principles, and her firmness in maintaining them. Is she now prepared to surrender it, in pursuit of a speculative principle of doubtful propriety, at best, and certainly not demanded by anything in her present condition? If you adopt the combined basis proposed by this amendment, this danger is avoided."

On the following day Mr. Doddridge addressed the Committee in answer to Mr. Upshur. He showed that the present Constitution was drawn up in a time of difficulty and danger. According to this speaker, the present Constitution was intended for the present needs, and not the

[1]Debates, Va. Conv., 1829-30, p. 67

needs of the future ages. "Who composed the Convention which made the election laws under which that of 1776 was elected? It was the House of Burgesses. Here was a body of freeholders, of a certain class, who, unauthorized by the whole, or any part of the people, assumed authority. They authorized that class of freeholders to which they belonged, to elect others of the same class, as their successors, and these latter made the present Constitution." So Mr. Doddridge contended that the present Constitution was not a compact made by "all for the benefit of all" but a compact made by a certain class for the benefit of that class. Mr. Doddridge then proceeded to attack the views presented by Mr. Upshur in regard to property in these words: "The honorable gentleman has, as I have before stated, admitted, that, but for the possession of slaves, in great masses, by the minority, residing mostly in a particular part of the State, the rule of the majority would be safe now. But this property they fear to submit to the legislation of a majority, lest it might be oppressively taxed. Against this abuse the majority had labored to suggest a satisfactory guarantee; but nothing which their ingenuity could invent was satisfactory. Each plan was denounced as mere paper work. To maintain the insufficiency of any constitutional guarantee, it is insisted that neither the dictates of duty, the obligations of oaths, of conscience, and honor, are anything where interest is concerned. That interest is the tyrant passion which can never be controlled. Gentlemen have gone so far in their zeal, as to declare, that there are no principles in government at all. We are candidly told that the minority can accept no security at all except in representation; that the majority of this free land, cannot be trusted by the minority; and that unless the minority can be protected in the way they claim, they never can, nor will be satisfied; and it is to be feared, that their discontents may break out in some-

thing serious, because there can be, as they say, no security except in representation; that is, in the power to govern the State, and thus to rule the majority - they say to us, 'We have many slaves, and you have few, or none. The possession of this property by us, although it is not your crime, is the reason, however, that we claim to exercise over your persons, lives, and property, despotic power. And though it be despotism, yet we must claim and you must submit to it, as nothing else can secure us against your rapacity.'"[1]

Mr. Randolph answered Mr. Doddridge in these words: "Mr. Chairman, the wisest thing this body could do, would be to return to the people from whom they came, re infecta. I am very willing to lend my hand to any very small and moderate reforms, which I can be made to believe that this our ancient Government requires. But, far better would it be that they were never made, and our Constitution remained unchangeable like that of Lycurgus, than that we should break in upon the main pillars of the edifice.

"---- If this, our venerable parent, must perish, deal the blow who will, it shall never be given by my hand. I will avert it if I can, and if I cannot, in the sincerity of my heart, I declare, I am ready to perish with it. Yet, as the gentleman from Spottsylvania says, I am no candidate for martyrdom. I am too old a man to remove; my associations, my habits, and my property, nail me to the Commonwealth. But, were I a young man, I would, in case this monstrous tyrany be imposed on us, do what a few years ago I should have though parricidal. I would withdraw from your jurisdiction. I would not live under King Numbers. I would not be his steward - nor make him my task-makers. I would obey the principle of self-preservation - a principle we find even in brute creation, in flying from this mischief."[2]

[1] Debates, Va. Const., 1829-30, pp. 79-80

[2] Debates, Va. Conv., 1829-30, p. 321

The contemptuous attitude exhibited by the eastern delegates toward their western colleagues did much to arouse ill feeling between the two sections of the State and to widen the break which had existed before the Convention met. For example, Mr. Leigh, of Chesterfield County, expressed the following opinion: "In every civilized country under the sun some there must be who labor for their daily bread, either by contract with or subjection to others, or to themselves. Slaves in the eastern part of this State fill the place of the peasantry of Europe, of the peasantry or day laborers in the Non-Slaveholding States of the United States. Even in the present state of the population beyond the Alleghany there must be some peasantry ---- That is, men who tend the herds and dig the soil, who have neither real nor personal capital of their own and who earn their daily bread by the sweat of their brow. These, by this scheme are to be all represented - but not our slaves. And yet in political economy the latter fill the same place ----. Now what real share as far as the mind is concerned does any man suppose the peasantry of the West can or will take in the affairs of this State?"[1]

On November 7th, the one Tidewater delegate, Robert B. Taylor, who advocated the adoption of the white basis of population thruout resigned, because he had been requested by his constitutents to support his fellow members from the East. His withdrawl and the election of Grisby weakened the reformers at a time when every vote counted. So tightly were party lines drawn and so embittered did the discussion become that more than once a division of the State was advocated as being the only means of settling the question. Mr. Monroe was fearful of this outcome and he showed the evident danger of a division of the State. He pointed out the disadvantages of such a situation to both sections of the State, and made an earnest plea that a compromise be promoted acceptable to both sections. He admitted that both sections had good arguments;

[1] Debates, Va. Conv., 1829-30, p. 158

but that they were so far apart that it was necessary that both sides make concessions. He urged that the white basis be extended to the lower house and a mixed basis be applied to the Senate. "Such an arrangement would satisfy and meet the needs of both sections," he said.

At this stage of the debates when the outlook seemed dark for a settlement, Mr. Scott introduced an amendment, whereby, the House of Delegates was to be represented upon the basis of population and taxation combined, and the Senate by white population exclusively. Mr. Scott ably defended this proposition but the amendment was rejected by a vote of forty-nine to forty-three. A few days later Mr. Green's amendment was voted upon and it met the same fate by a vote of forty-nine to forty seven.[1] Thus the two sections of the State were farther apart than they were on the day when they met.

After many days of futile debate, Mr. Leigh of Chesterfield offered the following amendment: "That representation in the House of Delegates be apportioned among the several counties, cities, and towns of the Commonwealth, according to their respective members, which will be determined by adding to the whole number of free persons, including those bound to service for a period of years, and excluding Indians not taxed, three-fifths of all other persons."

Mr. Nicholas spoke in behalf of this compromise. He showed that an awful period had been reached in the deliberations and the time was ripe for a compromise. He could conceive of no more awful state of any country than to have its fundamental law changed by a majority of one or two votes. Such a change would be unwise when almost a half of the State was against it. According to Mr. Nicholas, the support of any government is in the confidence of the people; but that when the people believed themselves oppressed by the government, there is little prospect of their yielding to it, without animosities and jealousies.

[1] Debates, Va. Conv., p. 321

In order to prevent such an occurence, Mr. Nicholas advocated the passage of Mr. Leigh's amendment.

Mr. Nicholas then proceeded to show that the Federal number was adopted at the National Convention under circumstances similar to those that existed in this Convention. "An examination of the debates in the Federal Convention showed that it was not exactly a compromise, but a just basis," said Mr. Nicholas. "We have arrived at an awful period in our deliberations. Yes, Sir, we have reached the brink of a precipice. Gentlemen must decide for themselves; and I put it up to the gentlemen of the West, whether they will consent to form an entirely new Constitution for the State by a majority of one, of two, or of five, or ten? It is an awful responsibility for them; and all the ills which may grow out it, be on their hands! I say this, not in anger, but in sorrow. Some of my dearest friends and nearest relatives reside beyond the Blue Ridge. I depreciate the calamity which I behold impending, for their sakes, as much as my own."[1]

Mr. Nicholas had made his plea in vain, for two days later a vote was taken on Mr. Leigh's proposal and it was rejected by a vote of forty-nine to forty-seven.[2] As there seemed to be no spirit of compromise in the Convention, the basis of representation was passed by.

On November 24th the Convention took up the fourth resolution of the Legislative Committee; which is contained in the following words: "Resolved, That the number of members in the Senate of this State ought to be neither increased nor diminished, nor the classification of its members changed.

Mr. Pleasants introduced a resolution whereby the Federal numbers would be the basis of representation in the Senate and the number of Senators increased.

[1] Debates, Va. Conv., 1829-30, p. 322
[2] Ibid, p. 341

Mr. Fauquier proposed the following amendment: "Resolved, That in the apportionment of representation in the Senate, regard shall be had to taxation exclusively; that the Senate shall consist of thirty-six members, and shall have the same legislative powers, in all respects, as the House of Delegates." Mr. Doddridge moved to amend that amendment by basing representation upon free white persons and taxation combined.

Here again there was dissension in the ranks of the Convention. The East wanted representation in the Senate upon property while the West wanted it based upon white persons and taxation. The East wanted the number of Senators increased and the power of that body to be an equal to that of the House of Delegates. On the contrary, the West desired that the number of Senators should remain the same and that the Senate should serve as a check upon the lower house.

For many days the debate raged around these different plans. Mr. Doddridge's amendment was rejected and no substitute was proposed which was acceptable to both sections of the State. It was evident, that if a compromise was to be made, the basis of representation in both houses must be considered together.

Mr. Upshur submitted the following proposition as a basis of compromise:

"Resolved, That the House of Delegates shall consist of one hundred and twenty members, of which number, twenty-six shall be chosen from the first district, twenty-two from the second, thirty-eight from the third, and thrity-four from the third.

Resolved, That the Senate shall consist of thirty members, of which there shall be chosen seven from the first district, six from the second, nine from the third, and eight from the fourth.

"Resolved, That the Legislature shall have the power to rearrange

the representation once in every _____ years upon a fair average of the following ratios: of white population, of white population and taxation, and of the Federal numbers: Provided, that the total number never exceed one hundred and sixty in the House of Delegates, nor forty in the Senate."

In defending this compromise, Mr. Upshur showed that there were the three following parties in the Convention, viz: "Those in favor of a white basis of representation exclusively, those in favor of white population and taxation, and those in favor of the Federal numbers." He stated that his plan was an average of these three ratios, thereby, being just to all parties in the Convention.

On the same day, Mr. Cooke, at the request of some of the western delegates and members from the middle part of the State, submitted the following compromise:

"Resolved, That the Legislature Department be composed of a Senate consisting of thirty-six members and a House of Delegates consisting of one hundred and twenty members.

"That representation in the House of Delegates be based upon white population.

"That representation in the Senate be based upon the Federal numbers.

"That an apportionment be made at the next census taken under the authority of the United States."

In defending this compromise, Mr. Cooke showed that the Convention was divided into two groups. One of these parties wanted representation based upon white population, while the other party was satisfied with the present Constitution. He argued that his compromise was a fair one because it gave one party what it wanted in the House of Delegates and the other party what it desired in the Senate. He concluded his speech in the following words: "Let us resolve before this week shall close,

to settle, and to settle amicably forever, the differences which have so long distracted the Commonwealth. Let us form a Constitution which will unite the people of Virginia as a band of brothers. Let party names, and party criminations and recriminations, be buried in eternal oblivion. Let us hear no more of Eastern men, Middle men, and Western men. Let us hereafter be Virginians and brethern."[1]

Around these two compromises, debate raged for many days. Men from the West, like Campbell and Doddridge, contended that the proposition submitted by Upshur was no compromise at all. The people from the West had desired from the very beginning representation based upon white population alone and had carried their point in the Legislative Committee. So why should they accept Federal numbers in both house or the equivalent?

Gentlemen from the East, like Upshur and Leigh, contended that the proposition submitted by Mr. Cooke was far from a fair compromise. A compromise, according to them, "necessarily implies a surrender of something which the party has power to retain, in consideration of something to be surrendered in return." Mr. Upshur explained the Eastern men's idea of a compromise and showed that the proposition of the West fell short of its terms. The speech of Mr. Upshur was very clear on this point. He spoke as follows: "What then do they offer us under the name of a compromise? Nothing more than this, Sir, that they will consent that we shall retain what we already possess, and what they have not, and never have had, power to take away from us---- Suppose, Sir, that the scepter should pass over to us; suppose we should have, as we probably shall have, power to carry our principle not for the Senate alone, but for both houses of the General Assembly. Can gentlemen imagine that we shall be restrained from doing so, by the acceptance of the proposition of the gentlemen from Frederick? Can we feel

[1] Debates, Va. Conv., 1829-30, p. 496

under any obligation to refrain from the exercise of our power to the fullest extent, merely because gentlemen who could not restrain us, have consented that we should exercise that power to a less degree. How can gnetlemen expect forbearance from us, after having rejected all compromise tendered by us, without having offered on their part, any other terms which we can regard as a compromise at all? It is impossible Sir."[1]

Mr. Doddridge replied in the following words: "We have a majority as to one house, and you as to the other. We cannot adopt our amendment on our principles without your consent, nor can you without us. This view of the situation has induced me to accede to the Federal numbers in the Senate, on securing the white basis in the lower house.--- In the same spirit of frankness, that animates Mr. Upshur, I now say, and for the last time, that yielding us the free white basis in the House of Delegates, with a new apportionment of representation after the next census, I will yield the Federal numbers in the Senate. Further than this I will never go, and here I nail my flag.

"What is there to be done?

"There are three results to our deliberations. One of these is certain. The first, and perhaps the most probable, is an adjournment without doing anything. The second, an agreement by the West to join the East, in forming a Constitution, which the people must reject. The third, and that which I think will happen, if the first does not, that the members of the East will act for themselves, and tender to the people what shall seem to them most advisable."[2]

The last assumption of Mr. Doddridge proved to be correct. For shorty afterwards, Mr. Gordon introduced a resolution which was passed by the Convention.

[1] Debates, Va. Conv., 1829-30, p. 552.
[2] Debates, Va. Conv., 1829-30, p. 555.

This resolution was a modified form of Mr. Upshur's resolution and read as follows:

"Resolved, That the representation of the Senate and House of Delegates of Virginia shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge Mountains, and nineteen East of those Mountains.

"There shall be in the House of Delegates one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district West of the Alleghany Mountains; twenty-four from the Valley; forty from the Blue Ridge to the head of the Tidewater, and thirty-four thence below."

This amendment was accepted by a vote of fifty-five to forty-one.[1] The Conservatives in the Convention were able to pass this provision by a majority of eleven, due to better organization and superior numbers.

The basis of representation does not appear in the Constitution, the number of Senators and Representatives being fixed by districts and counties. This plan, in reality, gave the slaveholding sections almost the same preponderance over the comparatively non-slaveholding sections as would have resulted from the enumeration of three fifths of all slaves in addition to all whites.[2] Thus the West suffered a decisive defeat in the basis of representation.

[1] Debates, Va. Conv., 1829-30, p. 574

[2] Beveridge, "Life of John Marshall," Vol. IV, p. 507

The second great question to come before the Convention was the qualificatians for suffrage. Under the existing Constitution the freehold principle governed suffrage which worked to the disadvantage of the West. The East was firmly opposed to the extension of suffrage, contending that there were too many ignorant voters in the state already. The West was committed to universal suffrage and around this subject debate raged for many weeks.

On November 17th, the Legislative Committee made its report upon the qualifications for voting. This report gave all persons the right to vote who enjoyed that privilege under the existing Constitution, and should be extended to certain male freeholders who did not then enjoy it, and to housekeepers and heads of families who paid taxes.[1] This report was a triumph for the West because it was a step toward universal white suffrage.

Mr. Wilson of Monongalia County offered a substitute for the report of the Committee, which, if adopted, would have given Virginia a most liberal suffrage law. The only qualifications for voting, according to this plan, were to be those of age, residence, enrollment in the militia, and the possession of good character and sound mind. The abolition of the freehold limitation was urged by Mr. Wilson, because, first, it worked a hardship upon the man who was so unfortunate to lose his property; second, because many able persons failed to acquire property; third, because it banished "vast numbers of our young men to the Western States, where this odious restriction does not exist---- I speak of Western Virginia when I say that if the state were called upon to furnish annually her quota of troops to aid the general Government in resisting the attack of all Europe combined, it would not consume our strength or retard our population more than do the restrictions imposed by her laws upon the right of Suffrage."[2]

[1] Debates, Va. Conv., 345

[2] Debates, Va. Conv., 254

Mr. Wilson showed that the poor man took just as much interest in the government as the rich man and that since the interest was the same, the two should have equal power. "Sir, the poor man's pittance is just as dear to him, as the rich man's treasure, because it is his all; aye, and more dear to him, because it is but a pittance, and, therefore, more liable to be exhausted. Suppose that the rich and the poor have equal virtue, (and this I imagine will not be denied), the poor man must and does take as great an interest in good government of the country as the rich man.'

"The truth is, that permanent residence is the best evidence of attachment to the community, and an interest in its welfare. The value of the land is too fluctuating, and its tenure is too uncertain to furnish this evidence. It maybe said that if a man loses his land, and it passes into the hands of others, that other persons will possess this evidence, and will be entitled to vote, and so on through any mutation of property; but from this it would seem, that the right of suffrage is in the land, and not in the people. Suppose a virtuous and intelligent man to-day possessed a farm.-----Everybody will say that he is entitled to vote. Well, suppose that by one of those sudden reverses of fortune, he should be deprived of his farm the next day; is he to be deprived of his rights of suffrage? He is yet virtuous, intelligent, patriotic,-----. Do you suppose that his attachment to his native state, and his interest in its welfare is less now than before? Certainly not! Being deprived of the all commanding influence of wealth, he is still more concerned in the procurement of equal and just laws than ever before."

Mr. Trezvant spoke against the Wilson amendment which was to abolish the freehold principle. He showed that if the provisions of that amendment were carried out, that it would add to the number of voters

[1]Debates, Va. Conv. 352

in the state more than 60,000. That would mean that the government would be transferred from the hands of 40,000 voters, who had the deepest interests at stake, to the 60,000, who had comparatively but little interest. In regard to Mr. Wilson's statement that the suffrage requirements were driving many young men to other states, Mr. Trezvant considered this mere figment of fancy. He challenged the ones who believed this, to go to other states and enquire of such Virginians their opinion upon the subject. "Will they be found to revile Virginia with curses, because, while citizens here, they enjoyed not the Rights of Suffrage? No, they would hold a very different language, and instead of complaints of tyranny and oppression, they would speak in terms of the profoundest veneration of her political institutions."[1]

Mr. Morgan of Monongalia in speaking in behalf of the Wilson Amendment gave the following statistics: "The number of freehold voters in the state, may be estimated at 45,000, and not more. I shall consider them as that number. From the free white population of 1820, and the hypothetical increase since that time, there are now in the state more than 140,000 free white male citizens over twenty-one years of age. Deduct from this number the voters, and you find 95,000 free white men excluded from the polls. But, Sir, deduct from this number 5, 10, or if you please 15,000 for paupers and others who ought to be excluded, and you still have 80,000; leaving the Government in the hands of little more than one-third of the people. I am then justified in saying that the Government is in the hands of the few; that it is held and exercised by that few, who hold it by virtue of their freehold estates. I ask you now, Sir, if our Government be not to some extent aristocratical in its form? It is so considered by some men of great wisdom, and I believe generally by the people of other States of this Union. Are we to close our eyes to these facts? Or are we to consider

[1]Debates, Va. Conv., 370.

them as having some influence on our deliberations? Sir, we ought to consider them."[1]

The East answered the arguments of the West in the person of B.W. Leigh. This gentleman upheld the freeholder and showed the part he played in the government and the reasons why he played this part. He showed that in Virginia, the great mass of intelligence and virtue resided in that stout and generous yeomanry, the freeholders of the land; they owned not only all of the real property of the Commonwealth, but almost all of the personal property also; they fed, clothed, and educated all the classes, and took the deepest interest in the public welfare. "They alone support the government, constantly in peace, as well as occasionally in war -- they fight as well as pay -- and they feed and clothe and pay all who do fight.

"Now, Sir, is the freehold qualification contrary to any sound principle of Republican Government? Gentlemen insist that it is -- and they appeal to the Bill of Rights, in which it is declared, that 'all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the Rights of Suffrage.' We acknowledge the principle, in its utmost extent -- but we tell them, that it is only the general abstract principle, and that the question is as to its application in practice -- what is the sufficient evidence of common interest with, and attachment to, the community, which ought to be required as to the qualification of Suffrage? We tell them, that the very men, who laid down that abstract principle, did, at the very same time, in their practical application of it, require a freehold in land, as the qualification. The only answer they give us, is, simply to repeat the principle: relying on the authority of the Bill of Rights for the principle, which nobody disputes, and rejecting the authority of the Constitution, framed by the same men, as to the practical appli-

[1] Debates, Va. Conv., 379

cation of it, which is the point in the debate, they eternally repeat the principle. Now, I affirm, as the Convention of 1776 affirmed in the Constitution, that a freehold, or other certain, permanent, independent interest, in land, is the best and only sufficient evidence of permanent common interest with and attachment to the community."

In answer to the charge that the government of Virginia was an oligarchy, Mr. Leigh showed that there were 82,000 freeholders in the state. He showed that the number of tax-payers was 92,000, showing that it was apparent that the number of freeholders was to that of the tax-payers more than eight to ten.[1] Was it possible, according to Mr. Leigh, to have an oligarchy, when the government was vested in more than eight-tenths of the people!

Many amendments were offered by the East to retain the freehold principle but they were defeated. Likewise, the West offered amendments to gain manhood suffrage, but they were defeated also. While the conservatives were not able to retain the freehold principle, they were successful, in substituting for it, property qualifications for voting. They were able to do this because of better organization and had the powerful influence of John Marhsll, Madison, and Giles. The members of the Convention desiring manhood suffrage and, yet, realizing that it was doomed to defeat, then used their power to obtain as small a property qualification as possible. This resulted in the following qualifications which were inserted in the new Constitution: "All male citizens, twenty-one years old and over, having the right to vote under the Old Constitution; all citizens possessing an estate of freehold in land of the value of twenty-five dollars; all citizens, being possessed as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars; all citizens who shall

[1] Debates, Va., Conv., 403.

own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every citizen, who has been a housekeeper and head of a family within the city, town, or election district where he may offer to vote, and who shall have been assessed and paid a part of the revenue of the state; all persons of unsound mind, or who shall be a pauper, or a Non-Commissioned officer, seamen or marine shall not be allowed to vote.[1]

While this provision was a disappointment to the western members of the Conventions, desiring manhood suffrage, in reality, it was a victory for them as it was a step toward manhood suffrage.

[1]Constitution of Va., 1830, Art. III, Section 14.

The Executive Deparment of government of Virginia under the Constitution of 1776 was composed of the Governor and his Council, consisting of eight members. The Governor was elected by the Legislature which made him responsible to that body. The reformers, mainly from Trans-Alleghany section and the Valley, since they were unable to control the Legislature, were never able to select the Chief Executive of the state. One of the reforms advocated by them was to have the Governor elected directly by the people. Likewise, the Executive Council was elected by the Legislature, and in the course of years, this body had been hostile to the interests of the West on more than one occasion. So it is not strange to find the members of the Convention from the West advocating the abolishment of that Council. The reformers were also desirious of having the office of sheriff filled by direct election instead of being appointed by the County Courts.

The Executive Committee made its report on November 25th. Its report provided for the following: "That the Chief Executive Office ought to vested in a Governor, elected by the Legislature; that the Executive Council, as present organized, ought to be abolished, and that it was inexpedient to provide any other Executive Council; that the sheriffs in the different counties in the Commonwealth, shall, hefeafter, be elected by the voters qualified to vote for the most numerous branch of the Legislature."

These were the points of contention and the debate raged many days before a final settlement was made. In the committee room, the reformers carried their point in two provision out of the three.

When the resolution providing for the election of the Governor was brought before the Convention, Mr. Doddridge proposed an amendment to it, whereby the Governor would be elected directly by the people instead of being elected by the Legislature.

Mr. Doddridge gave several reasons for advocating this change.

According to his views, the Executive, Legislature, and Judical Departments should be separated and the duties of neither should be exercised by another department. "This, with some exceptions, would be admitted as a general rule." Mr. Doddridge showed that under the present system, the Executive of Virginia is an emanation of the Legislature power, since he is appointed every year, and is responsible, only to those to whom he is looking for reappointment.[1]

In order to stress his arguments, Mr. Doddridge quoted from Mr. Jefferson in the following words: "All the powers of Government result to the Legislature. The concentration of these in the same hands is precisely the definition of despotic Government. It will be no alleviation, that these powers will be exercised by a plurality of persons, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the Republic of Venice. --- Governments are republican only as they embody the will of their people and execute it." [2]

The Conservatives had few real arguments against the election of the Governor by the people. They tried to show that in the end the same result was accomplished, since the people elected the members to Legislature.

A vote was taken on Mr. Doddridge's amendment and it was rejected, forty-seven noes to forty-six ayes.

Since the reformers could not carry their motion in regard to the election of the Governor, the main issue concerning the Governor, shifted to the number of years he should serve. In the end it was agreed that he should be elected by the Legislature for a term of three years.

The report of the Executive Committee had provided for the abolishment of the Executive Council.

[1] Debates, Va. Conv., 1829-30, p.466

[2] Debates, Va. Conv., 1829-30, p.475

However, when the subject was brought up for consideration, Mr. Nicholas introduced an amendment, providing for an Executive Council, consisting of four members, elected by both Houses of the Assembly. While this amendment was rejected, it was evident that a majority of the Convention was in favor of a Council of some kind.

There existed in the Convention two views of the Executive Council and its relation to the Governor. The conservative view was expressed by Giles and Leigh. These men contended that in the past fifty-five years the Executive Council had attended to its duties, and many happy effects to the public peace had been the result. Not once had usurpation or oppression been employed by this body. Mr. Giles said, "Why destroy an institution that has proved its worth by going through two wars without a single act of oppression?" These two men defended the existing system because: first, it divided the power of the Executive patronage, so as to make it innocuous; second, it supplied the Governor with experience and information essential to the right discharge of his duty; third, it gave him mature and recorded advice on all his official acts.[1]

The radical view was expressed by Mr. Doddridge. According to this gentleman's way of thinking, "the Executive Council was a shield behind which the Governor could skulk with the utmost security, it was not responsible to the people, members of the Council hoped to hold their positions for life and become citizens of Richmond rather than representatives of the people, and that the Executive Council tended to disperse rather than concentrate Executive power."[2]

After many proposals had been made and rejected, Mr. Cloptan introduced the following amendment: "There shall be a Council of State,

[1]Debates, Va. Conv., 1829-30, p. 491

[2]Ibid, p. 477

to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both Houses of the General Assembly, and remain in office three years. But of those first elected, one, to be designated by lot, shall remain in office for one year only, and one other, to be designated in like manner, shall remain in office for two years only." This amendment was accepted by a vote of fifty-one to forty-four.[1]

On November 27th, the fifth resolution of the Executive Committee was taken up which read as follows: "Resolved, That the Sheriffs of the different Counties in the Commonwealth, shall hereafter be elected by the voters qualified to vote for the most numerous branch of the Legislature."

Mr. Henderson moved to strike out Resolved, (in effect to destroy the resolution.)

Mr. Naylor spoke in behalf of the resolution. He showed that it is essential to the character of a Republican Government, that the people directly or indirectly, have the power of appointing all publich officers. Did the selection of sheriffs meet this requirement? Not so, in Mr. Naylor's opinion. He showed his opinion in these words: "There is no office in this government, so far, or so entirely removed from the control of the people in his appointment or otherwise, as the Sheriff. They have no agency in his appointment either directly or indirectly. He is a creature of the County Courts, and the County Courts create themselves."[2]

What abuses did this system of selection bring about? Mr. Henderson exposed them in these words: "And it is now the universal practice, which every one of those County Court Magistrates, who receive the office,

[1] Debates, Va. Conv., 1829-30, p. 856

[2] Debates, Va., Conv., 1829-30, p.486

to sell it for the highest price they can obtain, and in some instances, as I have been informed, this has been done at public auction---. And on account of the illict gains which are to be made in that office, many of those who form the office, give for it more than the whole fees would amount to, which is manifestly done upon the calculation of indemifying themselves by speculations and exactions in one shape or another, from unfortunate debtors, to a large extent. Yes, Sir, and by these means, the misfortunes of the unfortunates are every day aggravated to an extreme degree."[1]

A vote was taken on the fifth resolution and it was rejected by a vote of fifty-seven to thirty-four.[2] So the Sheriffs were to be appointed by the County Courts in the New Constitution.

Ranking next to the question of the basis of suffrage and representation was that of judiciary reform. To accomplish this reform was one of the objects for which the Convention had been called. Under the Constitution of 1776 the Judiciary of Virginia was not merely a matter of courts and judges; it involved the entire social and political organization of the state. It had both good and bad qualities.

The heart of the Judiciary System was the County Courts. These local tribunals consisted of justices of the peace who sat together as County Courts for the hearing and decision of the most important cases. These justices of the peace were appointed for life by the Governor. In case of vacancies the remaining justices made recommendations for them, and while the Governor did not have to accept the nominations, to do so had been a long established custom. Since the Legislature chose the Governor; and the justices of the peace, in most cases, selected the candidates for the Legislature -- seldom was a man elected to the State Legislature who was not approved by the County Courts.

[1]Debates, Va. Conv., 1829-30, p.486

[2]Ibid, p. 487

In theory, a more oligarchic system never was devised for the government of a free state; but in practice, it responded to the variations of public opinion with almost the precision of a thermometer.[1] For example, nearly all the justices were Federalists during Washington's Administration and, later, went over to Jefferson during his administration. While the system worked well in Virginia, it was offensive to liberal-minded men who belived in democracy as a principle. Moreover, this system was more powerful in slaveholding sections than in the"free labor", sections.

The report of the Judiciary Committee was made by Marshall and also was written by him.[2] This report provided for the re-organization of the State Judiciary, but did not seek to change the system of appointing judges. The two most important provisions of the report were: "No modification or abolition of any Court, shall be construed to deprive any Judge of his office"; and "Judges may be removed from office by a vote of the General Assembly: but two-thirds of the whole number of each House must concur in such vote."

On November 30th, the Convention considered the first resolution of the Judiciary Committee. It read as follows: "Resolved, That the judicial power be vested in a Court of Appeals, in such inferior Courts, as the Legislature from time to time ordain and establish, and in the County Courts."[3]

An amendment was proposed to strike out County Courts and a debate ensued long and acrimonious. Mr. Marshall voted in opposition. He explained that any objection to the system did not warrant the abolishment of the Courts. If the jurisdiction of these courts were con-

[1]Ambler, "Sectionalism in Va.," 139
[2]Debates, Va. Conv., p. 872
[3]Debates, Va. Conv., 1829-30, p. 502

sidered defective, the system should be so modified, as to make their jurisdiction more perfect. He believed that the County Courts were essential and showed that their abolishment would affect the whole internal police. He expressed his opinion in these words: "I am not in the habit of bestowing extravagant eulogies upon my countrymen. I would rather hear them pronounced by others: but it is the truth that no State in the Union, has hitherto enjoyed more complete internal quiet than Virginia. There is no part of America, where less disquiet and less of ill-feeling between man and man is to be found than in this Commonwealth, and I most firmly believe that this state of things is mainly to be ascribed to the practical operation of our County Courts. The Magistrates who compose the Courts, consist in general of the best men in their respective counties. They act in the spirit of peacemakers, and allay, rather than excite the small differences which will sometimes arise among neighbors. It is certainly much owing to this, that so much harmony prevails amongst us. These Courts must be preserved: if we part with them, can we be sure that we shall retain among our justices of the peace the same respectability and weight of character as are now to be found? I think not."[1]

Mr. Campbell of Brooke County spoke against the County Court System. He showed that one of the most illustrious sages which Virginia had produced, the immortal Jefferson had testified against them. In order to show one of Virginia's Governor's opinion of the County Courts, he read from Judge Tyler's message in 1810, which read as follows: "As to the County Courts, every experienced and reflecting man must see and feel the incompetency of these persons whose daily associations prevent any acquisition in legal knowledge, to discharge the important trust reposed in them of deciding between man and man, on their most important legal and equitable rights. Suppose it should become necessary, as it

[1]Debates, Va. Conv., 1829-30, 505

often is, that instructions should be moved to aid the jury as to the evidence adduced on a point of law arising out of the facts of a cause, what respect will an intelligent jury pay to them when they are sensible that a little time before the justices were only jury-men, and could not be made judges of the law by a mere translation of them from a jury-man to the bench? They would in such a case act for themselves, well knowing that the blind cannot lead the blind. Besides, it is not just to call for so much public duty from the magistrates, without any compensation, except that precarious one arising out of the office of Sheriff which may be obtained once perhaps in the course of one's life."[1]

To show other evils arising from the County Court System, Mr. Campbell quoted from the dissertations of Judge St. Geo. Tucker: "Justices of the bench may be elected to either branch of the Legislature, and are very frequently elected to the House of Delegates, while the character of the justice is emerged in that of Legislator, he is under the present system, constitutionally authorized to legislate for himself. He may enact the law under which he choses to officiate at home and thus, make his own office, what he wishes it to be. He can also in part create the Governor, who is afterwards to appoint and commission such of his friends as he may nominate to fill vacancies on the bench. He may also, assist, in creating the Judges of the Supreme Court, who, are to judge of his official proceedings. Under the present system he may, and in part does, create and govern all the state officers, from the Treasurer down to the State Attorney in his own County."[2]

Mr. Campbell concluded his speech in these words: "Does not another of our political moxims teach -- that no man, or set of men, are entitled to exclusive, or separate emoluments or privileges from the

[1] Debates, Va. Conv., 1829-30 p. 526

[2] Debates, Va. Conv., 1829-30 p. 527-28.

Community, but in consideration of public services, which not being descendable, neither ought the offices of Magistrate, Legislator, or Judge be hereditary? Does not the County Court System virtually repudiate the maxim? Does not the system confer exclusive privileges, without, and anterior to any public services? And does not it tend to make the magistracy hereditary in certain families?"

The question was taken on stricking out the County Courts and was decided in the negative.

The second part of the resolution submitted by Judiciary Committee was taken up which read as follows: "That no modification or abolition of any court, shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any judicial duties, which the Legislature shall assign him."

Mr. Barbour was of the opinion that the clause providing for the retention of Judges after their court had been abolished should be struck out. He showed that perhaps the time might come when certain courts, at the present recognized by the judicial system, should be found useless. In that case, there remained more judges than could be beneficially employed. This provision, if permitted to stand in the Constitution, would prevent the Legislature from ridding the state of the existing evil.

Mr. Marshall had a different opinion and he made an earnest and impressive plea in its behalf: "What are the duties of a judge? He has to pass between the Government and the man whom that Government is prosecuting: between the most powerful individual in the Community, and the poorest and most unpopular. It is of the last importance, that in the exercise of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not ~~any~~ every man feel that his own personal security and the security of his property depends on that

fairness? "The Judical Department comes home in its effects to every mans fireside: it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience?

"You do not allow a man to perform the duties of a jury-man or a judge, if he has one dollar of interest in the matter to be decided: and will you allow a Judge to give a decision when his office may depend upon it? When his decision may offend a powerful and influential man?

"Your salaries do not allow any of your Judges to lay up for old age: The longer he remains in office, the more dependent he becomes upon his office. He wishes to retain it; if he did not wish to retain it, he would not have accepted it. And will you make me believe if the manner of his decisions may affect the tenure of his office, the man himself will not be affected by that consideration? -- The whole good which may grow out of this Convention, be it what it may, will never compensate for the evil of changing the tenure of the Judical office."[1]

A sharp debate occurred between Marshall and Giles just before a vote was taken on striking out the objectionable clause. To keep Judges in office, although that office was destroyed, "was nothing less than to establish a privileged corps in a free community," said Mr. Giles. Mr. Marshall had said, "that a Judge ought to be responsible to only God and his conscience." Although "one of the first objects in view, in calling the Convention, was to make the Judges responsible -- not nominally, but really responsible," Marshall actually proposed to establish "a privileged order of men." Another part of Mr. Marshall's plan, said Giles, required the concurrent vote of both Houses of the Legislature to remove a judge from the bench. "This was inserted, for what?" To

[1]Debates, Va. Conv., 1829-30 p. 616

prevent the Legislature from removing a judge "Whenever his conduct had been such, that he became unpopular and odious to the people" -- the very power the Legislature ought to have.

Mr. Marshall replied in the following words: "The question constantly recurs -- do you mean that the Judges shall be removable at the will of the Legislature? The gentleman speaks of responsibility. Respnsibility to what? To the will of the Legislature? Can there be no responsibility, unless your Judges shall be removable at pleasure? Will nothing short of this satisfy gentlemen? Then, indeed, there is an end to independence.

"If your Judges are to be removed at the will of the Legislature, all that you look for from fidility, from knowledge, from capacity is gone and gone forever."

Seldom has an appeal been so fruitful of votes. The inviolability of the Judical Tenure was sustained by a vote of 56 to 29.[1]

The subject of the Judiciary did not seriously arise again. As it turned out, the Constitution, when adopted, contained in substance, the Judiciary provisions which Marshall had written and reported at the beginning of that body's deliberations.

The last two weeks of the Convention were taken up with the consideration of minor questions. The Bill of Rights of the Constitution of 1776 was inserted in the New Constitution. A resolution introduced endorsing a free public school system was rejected. A provision for future amendments to the constitution was removed from the final draft by a vote of sity-eight to twenty-five. It was at this point that John Randolph prophesied that the New Constitution would not last twenty years.

The Convention ended its work January 14, 1830, with the adoption of

[1]Debates, Va. Conv., 1829-30 p. 726

the Constitution by a vote of fifty-five to forty.[1] On the negative side were all the delegates from the Trans-Alleghany, one of the Valley representatives and a Mr. Stanard from Spottslvania County. "The sentiment among the western members seemed to be that in the constitution of 1830 they had not been given even half a loaf; that the Tidewater planters had again succeeded in frustrating all attempts to make Virginia a democratic state in a democratic Union.[2]

The Constitution was submitted to the qualified voters of the state at the regular April election and after a bitter contest, the new frame of government was ratified by a vote of 26,055 to 15,563.[3] The northern Panhandle rejected it by 1,014, to 3, and in no western county was there anything more than a mere scattering of votes in the affirmative. The Valley supported strongly the New Constitution, an action which was a virtual rejection of the action of the Valley delegates in the Convention.

[1]Debates, Va. Conv., 1829-30 p. 882

[2]McGregor, "The Disruption of Virginia," p. 46

[3]Debates, Va. Conv., 1829-30, p. 903

Bibliography

A. J. Beveridge, "The Life of John Marshall." Vol. IV

W. B. Bruce, "John Randolph of Roanoke." Vol. I.

J. C. McGregor, "The Disruption of Virginia."

L. G. Tyler, "History of Virginia." Vol. II.

Debates of the Virginia State Convention of 1829-30

Ambler, "Sectionalism in Virginia."

Ambler, "Life of Thomas J. Ritchie."