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To the People of N. Carolina.

Executive Department of N. C., }
Raleigh, July 23, 1866. }

I publish the following letter and order from Brevet Major General Robinson, for the information of the judicial officers, and other citizens of the State:

Bureau Ref's., Freedmen, & A. L. }
Headq'rs, Ass't Com. State of N. C., }
Raleigh, N. C., July 13, 1866. }

His Excellency Jonathan Worth, Governor, &c, Raleigh, N. C.:

Governor:—I have the honor to acknowledge the receipt of your letter of the 11th inst, calling my attention to an act of the General Assembly, passed in 1865, and to the ordinances of the State Convention repealing the provisos of the 9th section of said act, and so modifying the 11th section that "there now exists, under the laws of this State, no discrimination in the distribution of justice to the prejudice of free persons of color," and desiring to be officially informed how, in my opinion, the question of jurisdiction now stands in matters relating to freedmen.

In reply I have the pleasure to inform your Excellency that I have this day issued an order (a copy of which is enclosed) directing the officers and agents of the Freedmen's Bureau to refer all cases to which freedmen are parties, to the proper County and State Courts, with the single exception of claims for wages due under contracts approved or witnessed by officers of the Bureau.

I have made this exception for the reason that the condition of the freedmen is believed to be such that they cannot be subjected to the delay sometimes incident to proceedings in civil Courts.

Trusting that my action may prove satisfactory to the civil authorities, and that there may be no obstacles to the fair administration of justice to all persons, I have the honor to be,

Very respectfully, your ob't serv't,
JNO. C. ROBINSON.
Brevet Maj. Gen'l.

Bureau Ref's., Freedmen & A. L., }
Hdqr's Ass't Com. of N. Carolina. }

General Orders No. 3.

His Excellency, the Governor of North Carolina, having officially notified the Assistant Commissioner that "there now exists, under the laws of this State, no discrimination in the administration of justice to the prejudice of free persons of color," all officers and agents of the Bureau will hereafter refer all cases to which freedmen are parties, to the proper County or State authorities, according to the nature of the case, with the single exception of claims for wages due under contracts approved or witnessed by officers or agents of the Bureau, which, not admitting of delay, will be adjudicated as heretofore.

In case of any failure, neglect or inability of the civil authorities to arrest and bring to trial persons who have been or may hereafter be charged with the commission of crimes and offences against officers, agents, citizens and inhabitants of the United States, irrespective of color, officers in charge of districts are hereby directed to arrest and detain such persons in military confinement, until such time as a proper judicial tribunal may be ready and willing to try them. By command of

Brev't Maj. Gen. Robinson,
CLINTON A. CILLEY, A. A. G.

It is known that there are persons in the State, and out of it, who have sought to make the impression that our judicial officers and juries are so inimical to persons of color, and persons among us who were soldiers in the United States army during the late civil war, or who refused to serve in the Southern armies, that such persons cannot expect justice in our courts. Citizens of this State, who had served in the army of the United States, have filed petitions, addressed to the President of the United States, charging that they were persecuted by our courts, and praying for protection. Upon a reference of the petioners to me, by the President, I have made such investigations as satisfied me, beyond a doubt, that there was no ground for the filing of such petitions. And these investigations, after having been submitted, in detail, for examination, have in each case drawn forth a response of like satisfaction from the national authorities.

Inquisitions have been made, and *ex parte* statements taken from persons who claim to have been aggrieved by the action or non action of our courts and juries. None of these, as yet, so far as I know, even if taken as true, prove any to the prejudice of any judicial officer of the State. The ability and impartiality with which justice has always been administered, even where a negro appealed to our Courts to assert his freedom, have never been questioned at home or abroad. Our present judicial corps will not suffer by comparison with their predecessors at any period of our history. I have referred to these things only to justify me in asking at this time for peculiar diligence and circumspection on the part of all Justices of the Peace, Sheriffs and other judicial and executive officers, in the discharge of their official duties. One of the unhappy sequents of the late civil war is an increase of crime—particularly larceny and burglary, and the too frequent failure to apprehend and punish the criminal. Every good citizen should co-operate with the officers of justice in bringing every violator of the criminal law to justice. We can, in no other way, expect a return of the quiet and security which distinguished our State before the war.

It ough to be, and I hope it is, the wish, not only of the judiciary, but of every intelligent white man in the State, to protect the lately emancipated negro in all the rights of person and of property, to which he is entitled under the laws, and thus induce him to confide in our justice, and encourage him to be honest and industrious and to everywhere protect and take care of it.

JONATHAN WORTH,
It Governor of North Carolina.

DIED:

In this County on yesterday, at 1 P. M. Chas. [illegible], son of C. H. and M. D. McKenzie, aged [illegible] years.

THE LATE CONVENTION AND ITS PROPOSED CONSTITUTION.

The following letter, which we are permitted to publish, is addressed to a member of the late State Convention. It discusses the proposed change in the basis of representation, and takes the ground that the Convention had no power to revise the Constitution; that its action in this respect is null and void, and cannot be rendered valid by a vote of the people ratifying the same. Although the letter was not originally intended for publication, the points named are discussed with masterly ability, and, indeed, the whole argument is unanswerable.—*Wil. Journal.*

July 2nd, 1866.

My Dear Sir:

* * * * * * * * I need hardly assure you, that my opinion concurs with yours on "the basis of representation," and that, without any reference to the "Statistics" as operating upon the preponderance of numbers in the representation of the different sections of the State. I was well enough satisfied with the previous provisions of our Constitution on this subject, in their practical effect, and would have been content to abide by them still. But I must own that, as things have changed in regard to the negroes, those provisions would not now rest on a principle sound in theory. Yet I think them more sound than the one you adopted in Raleigh. Under our Republican system it seems right that one branch of the Legislature ought to represent persons. When that is said, the question arises, "what persons?" I say *all*; because all are equally affected by the laws that may be enacted. I do not mean that all are to vote for representatives; for my opinion is quite to the contrary. All free men ought to have equal civil rights; that is, security in person and property by the Constitution and the laws made under it. These are natural rights inherent in freedom, and such security is not only due to all persons, as their right, but as essential to the peace and welfare of the body politic. But as to political rights or powers, which are the same things, the considerations are totally different. They consist, not in the rights above mentioned as held *under* the law, but of the powers *over* the Constitution and laws—to make or alter them—which principally consists of the rights of being delegated to make the laws or to choose the delegates. That power or right is not a natural one, but conventional, and according to the sense of the community of the fitness of particular classes for the exercise thereof, regard being had to the homogeneity of the classes, the safety of the existing government, and security, in person and property, of the most numerous, intelligent, virtuous, and valuable portion of the population. These reasons have always excluded women and minors, of the most favored race, from the exercise of political powers in all countries, and do still exclude them; it being deemed impolitic and unsafe to confide such powers to those persons. The same reasons necessarily exclude negroes now, and ought to do so for a long time to come, if not forever. But the enquiry still presents itself, whether, though not voting, they are not, properly, to be included in the estimate of population, when population is assumed as the *proper basis* of representation? It seems to me that they ought. I agree, that "the Federal basis," as it was called, the enumeration at a certain population of them as fixing the representation, is gone; that provision was founded on peculiar circumstances and reasons, which have ceased to be applicable either to the Federal or State representation. But what other provision ought to take its place? There are but two that can be reasonably thought of, if numbers are to regulate representation to any extent; and they are, first, the number of voters, or, secondly, the number of people. Your Convention so called, has adopted neither, but instead of it, says the number of a certain class of the people, namely: the whites in each county shall regulate the number of representatives of the county; thus making white women, married or unmarried, and infants, a part of the basis of representation. I do not complain that those portions of our white people are thus included. But I ask why are they included and why they ought to be included? The answer is plain, that, though non voters, they are as much bound by the laws that may be made, and, therefore, as much interested in them as the white men who did vote for the delegates; and, therefore, the delegates ought to be men who are their neighbors, know their wants and condition, and sympathize with them both in their wants and wishes; and hence, the number of those who represent such people ought to be in proportion to the people of the county, so as, in fact, to represent the whole people, and guard the interests of all, whether voters or not.—This is the principle on which your Body rejected the voters as the criterion of the number of representatives, and took as the criterion the whole white population, including both voters and non-voters.—My objection is, that black free persons were not also included—not as voters, but as fixing the representation in point of numbers.—Every reason for including white women and infants applies with equal force to the blacks, and some of them with greater force. For example: the great burdens of governments in modern times are taxation and military service; in the latter, women are not concerned; in the former, married women but little, and in pole taxes, not at all, whether married or single. Now it most materially concerns blacks, what pole taxes shall be levied, how they shall be appotioned to property taxes, and to what amount they shall be carried. Upon these questions surely those who live where the negroes are most numerous who knew their means, their willingness and their ability to pay this or that tax, are best qualified to judge what revenue can be raised from them, what they cannot or will not willingly pay, or what cannot be exacted without grievious distress and oppression. So with respect to military service, whether they may be safely trusted in it now, or at a future day; whether they shall or shall not be trained to arms, either by compulsion or by permission; again, whether they shall be educated, as they may be able, and as their own voluntary act, or at the public expense; and from what sources the revenue, needed for the purpose, shall or ought to be drawn. These, besides many other points, are vital questions to the negroes, on which those living among them must be better informed; and the representation from the country ought to embrace as many, in proportion to others, as will bring the largest share of the required knowledge, guard the right of these people, keep clear the way for their advancement, and make them as happy as their subordinate and dependent condition will show. It seems to me, therefore, that your Body adopted the very worst basis of representation that could have been selected, both in respect of the white and black classes; and I think it, of itself, an entirely sufficient ground for the popular rejection of the Constitution, so called, by all the citizens of the State, and especially by those who reside in those portions of the State in which the blacks are numerous.

But I ask the liberty of expressing further and more general reasons for the opinion. I entertain that the so called Constitution is no Constitution at all, and, for that reason, ought to be rejected without regard to its provisions, whether good or bad, approved or disapproved. I do not know your opinion on this point, as I have not read much of your proceedings. * * * * * * * * * * * *

I will therefore, proceed to state my views for your consideration—hoping that they will meet your approbation, or, if not, that you will favor me with yours in opposition, that I, too, may have both sides before me, and be, myself, brought back to the right path from which I may have strayed.

I consider, that this is no Constitution, because your Convention was not a legitimate Convention, and had no power to make a Constitution for us, or to alter that which we had and have; and that it cannot be made a Constitution, even by popular sanction. If these positions be correct, it ought to be rejected by the people, as the easiest, simplest, and most efficient method of settling the points at rest, and avoiding many perplexing and dangerous questions before the Judiciary. I object to the organization of your Body as a Convention, because it was called without the consent of the people of North Carolina, by the President of the United States, or under his orders; an act of clear and despotic usurpation, which could not give the Body any authority to bind the State or its inhabitants. If it be said the President, or his satrap—his Governor of a Province—did not call, or rather constitute the Convention, but the delegates were elected by the people, and thereby the body was duly constituted. I deny it directly and positively. The delegates were not the choice of the people: for in the proclamation calling it, the qualifications of the persons who might be eligible and those of the persons who might vote for them, were strictly presented in a manner variant from our fundamental law, and excluding from each class a large portion—some would say the best portion—of our qualified citizens. In many cases our people were not represented, but, in fact, were misrepresented. The acts of such a body cannot be said to be those of the people of the State. They are not entitled to obedience, and cannot be, or, at least, ought not to be judicially recognized. The whole proceeding arose out of arbitrary assumption, overthrowing all notions of popular government, and destructive of the very first principles of Republican freedom; and when it is put to the people for their sanction or rejection, then let every man who was excluded from voting for a delegate say: "No! I had no voice in making it—in choosing the men who did make it, and I wish not now to be dragooned into its adoption;" and let every man whose neighbor or friend was thus excluded also say: "No! The best men in the country were not allowed a voice in constituting the Convention or electing its members, and, and I will not sanction their ostracism by fixing on them a Constitution—an unalterable law—imposed on them by a body in which they were not heard, and from which they were expressly excluded by irresponsible military power or its subordinate and servile instruments;" and let every citizen of North Carolina, too, say: "No! I scorn and reject an instrument tendered to me under the name of a Constitution of North Carolina which the people of North Carolina did not make, and which was made for them by men in the guise of our representatives, who were not our representatives, but those of a power exercising at the time the authority of a conqueror in military possession of our territory, and arrogating to itself the right of superseding all our civil offices and abrogating our laws." Let the people cry, "We will have nothing to do with such a Convention or any Constitution proposed by it. If the Constitution needs amendment (and we do not inquire into that now,) we will, at the proper time, a time of quiet, and one when the reason of every man will have its due play and office, choose good men, at a free election, and by the voice of all our people, who shall revise and amend that instrument. In other words, *we will make a Constitution for ourselves*, and not another for us!" But supposing that in the *quasi* revolutionary condition of the last year the military power of the conqueror was either according to natural and national law, or by usurpation, competent to the power exercised on this subject, and that our people, avoiding further resistance, chose rather to submit to such usurpation and acquiesce in its behests. Yet surely, surely, the Body organized by the conqueror, under the name of a Convention, cannot in its acts validly transcend the authority conferred on it when it was called, and assume to perform the very highest of all obligated power, that of framing a Constitution of government, in respect of all the powers which can be conferred, and of all the restrictions which can be imposed by a people on all the different departments of government. Yet such is the fact here. Mr. Johnson required a Convention to perform certain specific acts; to annul the ordinance of secession and tender a return to the Union, or claim its continued existence under the Constitution of the United States; to emancipate the slaves and ordain that slavery shall never hereafter exist in this State, and to repudiate the State "war debt." All these were done; the two first promptly, and in satisfactory terms; and the third, at the last moment, under subjection and in conformity to orders, after having once refused to adopt the measure. All was done, I say, that was required, and Mr. Johnson proclaimed that he had got all he wanted; that we were back as a State and might choose our representatives in Congress in conformity to our rights as a State, and to our law regulating elections. Was there any thing more for *that* Convention to do? Were they chosen for any other purpose, even by those who were allowed to vote for the members? How dare they, then, go on to frame a Constitution, a law, for all time, which is to be binding on those who elected them for the ends, and also on that large portion of the patriots and heroes—"unpardoned rebels"—who were not allowed to vote at all? The pretention is without parallel or precedent, until the present term of Radical assumption of power in a dominant military or a numerical majority, without respect for rights or the Constitution. As far as they safely can, and whenever they can, the people ought to resist that pretension. This they can peacefully do, when called on and allowed to vote; and I trust they will do so on this occasion without commotion, in support of the great principle of human liberty—that a people have the right to make their own Constitution, and not be made subject to one imposed on them, by force or fraud, any extraneous power, or by a fraction of their fellow citizens.

You will perceive, that I have hitherto discussed this subject, as depending on the original and natural rights of our people, unaffected by any provision of our pre-existing Constitution; and, even on that basis, I deny the authority of your Convention to make or propose a new or modified form of government for us. But the clause in our Constitution, touching its amendment, or the call for a Convention for that purpose, is so clear and so precise against any such Convention as we have had, as to put the point beyond doubt or argument, as it seems to me. Two modes of amending the Constitution are provided: One through the agency of the General Assembly, proposing an amendment for ratification by a vote of the people, which need not be considered here; the other, by a Convention called in a manner prescribed in the Constitution, which is the matter now for consideration. It is obvious, that, in prescribing these two, all other modes are excluded by irresistible inference. In respect to a Convention, the words are, "No Convention of the people shall be called by the General Assembly unless by the concurrence of two thirds of all the members of each House of the General Assembly." In either case, the regularly constituted authority of the organized government is required to initiate an alteration of the government, which was no doubt, upon the sound principle laid down in the Rhode Island case, in order to avoid popular commotions, revolutions, and uncertainty as to what is the Constitution. If, then, the two modes designated are the only ones by which the Constitution can be altered, it is clear that this last—so-called—Convention was not a *Constitutional Convention*, and therefore its acts are *void*.

Yielding then, that Mr. Johnson's and Mr. Holden's Convention might, by popular acquiescence, adopt for us the measures demanded by them, yet it had no existence as a Convention of the people of North Carolina under their Constitution, and could not, therefore, alter that instrument in any of those points which affect our internal organization as a distinct republican State; for example, the basis of representation, the qualifications of the representatives, and of the voters; the number and jurisdiction of Courts; the appointment of the judges thereof; the tenure of their office, and that of the executive, or the like. No disquisition can render these points clearer than the short and simple paragraph of the Constitution itself. The conclusion can only be evaded by establishing as a truth, that the clause of the Constitution was no longer in force, and that position cannot be true, unless it be also admitted, that no other part of it was in force, or, in other words, that by virtue of the war and its results, we were a people without Constitution or law of any sort. It necessarily comes to that, and that never ought to be, and never can be, yielded. Perhaps it would be sufficient for our present purposes, to say, that, even your Convention does not assert such a doctrine, but plainly proceeds upon a contrary one, by professing to "amend" our old Constitution, as still subsisting, and not to make one *ab origine*, and by designating the old laws still in force as contra distinguished from those passed by Legislatures sitting under the auspices of secession. Indeed, it is impossible under any aspect of any law, as understood among civilized nations and in modern times, that a whole people can be treated or considered as being without any law or ministers of the law, even by Conquerors. The security of person, and the rights of property, and the obligation of contracts still subsist. Can it, for instance, be supposed for a moment, that upon the death of a proprietor, there is no rule of succession to his real and personal estates, and that the first occupant may appropriate them, or that no body can? On the contrary, I say, that the laws of North Carolina were still her laws, including her fundamental law, and, if so, it is then to be deduced, that there could be no Convention to abrogate or to alter that law, unless called and chosen in the manner prescribed in it, and that, as a corollary, your Convention had no power in the premises, and its pretended powers and acts ought not to be confirmed by the people, if the people could confirm them, but ought to be opposed and rejected. It would seem that that body was aware of the defect of its powers, from the submission of those acts to the people, thus seeking the requisite confirmation. But, in truth, such confirmation cannot be derived from that source; for the same provision in the Constitution, which makes the Convention a nullity, equally excludes the efficiency of a popular majority to annul one Constitution and make another. As the act of a people living under a constitutional Government, even the veto of the majority is *proprio vigore* ineffectual, without the assent of the subsisting Constitutional Government, and its directions for taking the vote and ascertaining the majority. Without such previous authority and regulations, the majority, if physically able, may overthrow the existing Government, but it can only do so by revolution and not as possessing a legitimate delegated office and power. I need not, however, dilate further on this topic as the grounds and authorities on which the doctrine depends are, according to my recollections, set forth in the argument and opinion given by the Supreme Court in *Dorr's case*.—Then, if a people of a State cannot, by their own direct vote, abrogate or make a Constitution, without the previous sanction of authority in power under the existing Government, as in *Dorr's case*, much less can they do it, when the Constitution then subsisting especially provides two other modes for effecting these purposes and excludes all besides, which is our case.

We arrive then, at these results: that the Convention was not constitutional; it had no powers and could not make a Constitution; that for the same reason the people have no powers, and that as neither the Convention nor the people had any power in the premises, by consequence, both together are equally destitute of the requisite power. The Convention was an unauthorized body, and, therefore, no more than a voluntary collection of so many men—a caucus, recommending to the people to adopt by their vote a certain instrument as our Constitution, a thing which the people, under our Constitution, are not competent to do on that recommendation, and, therefore, the conjoint resolutions and votes of the two bodies have no more effect than that of either by itself. I conclude it is no Constitution, and cannot be made one by what has been done, or can be done now.

What, then, does it behoove the people to do? They ought, it seems to me, promptly and decisively to reject the whole project. If it be suggested, that, in our experience, all Conventions, since those of '76, which formed our original Constitution, have regularly made them worse and worse, and, therefore, we had better take this than run further risks, and especially that, at least, those who approve of the alterations shall give their suffrage for adoption. I reply no! The great principle of political and civil liberty, that a people may, and ought to make a Constitution and Government for themselves; that in so doing they ought to be careful to proceed in the regular and peaceful method which is prescribed, instead of an unauthorized, irregular and usurped mode, from which uncertainty as to the validity of their doings, and consequent commotions arise, furnish the strongest reasons why every man should give his voice against the instrument now proposed, and wait for the action of the Legislature. The proposing of amendments to the people, or the duly calling of a Convention which would have legitimate power to adopt them.

Let me here adduce a case, which I ought to have added to the efficiency of the popular vote *per se*. I adduce it, because it is level to the apprehensions of every one, and exhibits in a strong light the correctness of the argument against the popular power—a mere majority—over the Constitution of a nation. The case to which I allude, is that of the Government of the United States. The Constitution there specifies the modes of amendment; modes intended to protect minorities against superior numbers.—Now, suppose, upon this assumption, that the people may do as to them listeth, and that the majority of the people are the people, an attempt were made to alter the Federal Constitution, by a vote of the whole population of the United States,—what sort of a Constitution should we have—who could endure it, especially at the South—who would endure it and hold it to be a Constitution? So it is under the provisions of our State Constitution. Then let our people with one voice reject it. That will quiet everything, and we may begin anew, in a lawful way, to make the Constitution what we wish it. But, if approved by the people and proclaimed by the Governor, all the questions upon the validity of the instrument and the powers of the Convention arise — questions affecting the right to all the old and the new offices, and the objections of the so called Constitution—no bounds can be set to the disquietude incident to them, nor to the embarrassments of the Judiciary.

I have now, I believe, said all that I have to say on these subjects. I owe you an apology for the desultory mode of presenting them, on the spur of the occasion of receiving your letter, and without premeditation, expressions, &c.

* * * * *

Your friend, &c.

DR. CUMMING AND HIS PROPHECIES.

Dr. Cumming lectured recently at Halifax, England, on the "Signs of the Times." The lecturer did not claim to be a prophet, but expressed his belief that these were solemn and startling times, and that the world was on the point of great events. The great lines of prophecy, he said, seem to intersect the year 1867. The world, he blieved, would not be destroyed, but would endure forever in a more purified and exalted state. Though he was unable to explain the increase of Catholicism in England, he believed the heart of the country was still true to Protestantism. In 1792 there were five thousand priests in Paris; but though the population of the city had doubled itself since that time, there were now nine hundred priests only in Paris. He believed the Saturday evening of the world was very near, and that on the Sabbath of one thousand years which was at hand, there would be a sunrise which would experience no western declension.

JACK HAMILTON'S CONVENTION.

We are glad to be able, through the kindness of a correspondent, to inform the people of North Carolina (who know nothing of the man) that Mr. Byron Laflin, who signed the call for Jack Hamilton's Convention as a citizen of their State, is a New Yorker, and resides in Herkimer county. He went down South a few months ago as Deputy Marshal or something of the kind, and has, we learn, been very busy in proceedings for the confiscation of the property of the Southern people.

We have also heard that, the Hon. Richard Busteed of New York, who is now sojourning in Alabama as Judge of the United States District Court of that State, is to be one of the delegates to the "Jack Hamilton" Convention from Alabama.

Anger is dangerous to happiness.