

Saml. Woods
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THE NEW CONSTITUTION REVIEWED

BY

A MEMBER OF THE CONVENTION.

The following suggestions are presented for the consideration of every fair minded, honest man who seeks for truth, and is willing to "follow and be led by it:"

The existing Constitution of West Virginia was formed in the midst of war, when passion was stronger than reason, by a body of men all of the same political bias, enlisted in the double purpose of dismembering the State of Virginia and strengthening the military power of the United States in the civil war then flagrant. Having been thus formed, it is not surprising that it failed, in many respects, to secure all the just rights of the citizen. It was submitted to the people of the proposed State of West Virginia for ratification, at a time when no person dared to *spea*k or *vote* against it, save at the peril of his life or liberty. This *farce*, called an election, resulted in a vote of 18,862 in favor of it, to 514 against it. When we remember that the forty-eight counties then composing the State of West Virginia contained 337,691 inhabitants, and not less than 62,000 voters, (See West Virginia Reports, volume 1, page 73.) it will be perceived that not *one-third* of the people ratified it. Every person, familiar with the history of the dark days of 1862, is aware of the fact that the government established under the existing Constitution did not "derive its power from the consent of the governed;" but, on the contrary, it was established, upheld, and enforced upon an unwilling people.

The political party thus placed in power in this State, attempted to per-

petuate its ascendancy by boards of registration, political test oaths, political grand and petit juries, and Courts invited and tempted to render corrupt judgments and decrees against certain classes of persons, by prohibiting them from taking appeals to such judgments.

Under the existing Constitution the Legislature enacted and the Courts enforced laws, inviting honest men to become dishonest, by resisting the payment of their just debts; inviting them to commit any kind of wrong, injury and outrage against the person, property, or liberty of a certain class of persons, by pointing out to them the way to escape all civil responsibility therefor, (See Session Acts 1865, chap. 79) inviting Judges to render corrupt judgments against the same class of persons, by preventing them from taking appeals from their judgments, creating Boards of Registration; to rob the citizens of their right to vote, serve as a juror, hold office, sue, plead, appeal to the Courts, or to teach school or practice the profession of a lawyer.

Under the existing Constitution, the Legislature can, at its pleasure, suspend the great writ of *habeas corpus* so that any person may be arrested and imprisoned without accusation or proof, as long as may be necessary to subdue or win him. The inestimable value of this writ will be understood, when it is remembered that it affords the *only* remedy known to the law, to determine the question whether a man is *lawfully* imprisoned or *not*. By section 6, Article 2, any person, in *time of war*, may be deprived of *life, liberty or property* without *process of law*. By section 8 of

Article 2, any person in *time of war*, accused of crime, may be carried away from his *own county* and tried in *any other county* in the State, and thereby be deprived of the benefit of a trial by a jury of his vicinage. By section 16, Article 4, the Legislature has, at any time, the authority to abolish or *destroy* the State of West Virginia by the simple process of *annexing* to and *admitting into it*, the whole of Virginia. By section 13 of Article 6, the independence of the Judiciary is effectually destroyed by making the tenure of the offices of the Judges wholly dependent upon the unbridled will of the Legislature. It fails to provide any adequate security against defaulting Sheriffs or other officers collecting or disbursing public moneys. It fails to provide for imposing restraints on railroad companies, to prevent them from making unjust discriminations in the rates of freights and travel, against our own people. It fails to provide for the *poor* or the *unfortunate*, either a *homestead* or an *exemption* of personal property.

In view of all these facts, the Democratic members of the Legislature of 1871, proposed to call a Convention of all the people of the State to amend the Constitution. This call was opposed by the whole Republican vote of the State. It was carried by Democratic and Conservative votes. Every delegate elected to the Convention, except *twelve*, was a Democrat or Conservative. The new Constitution is the work of the Democratic and Conservative party. Every Democratic and Conservative delegate in the Convention approved of, and *voted for*, the *new Constitution*, while every one of the "*twelve*" either voted against it or was *absent* when the final vote was taken. The Republican party will vote against the ratification of the new Constitution because the Democratic and Conservative party made it; because their own political excesses and iniquities rendered the call of the Convention necessary or possible, and because every Republican *knows*, as every *Democrat and Conservative* ought to *know*, that if the Republican party can succeed in defeating the ratification of the new Constitution, the Democratic and Conservative party in this State will be defeated and *overthrown*. To accomplish an end so de-

sirable to them, it is not unreasonable to expect to find their *leading* men, in every locality, *misrepresenting* the provisions of the new Constitution to as many Democratic voters as can be induced to listen to them. If, however, the Democratic and Conservative party, after its past experience under Republican rule in this State, can permit itself to be *thus misled*, it *deserves* to be *defeated*. If men, pretending and claiming to be Democratic leaders, oppose the ratification of the new Constitution, they deserve to be execrated and driven into the Republican ranks, for whose *success* they are laboring. Take no apology from *such* men! They "cannot serve two masters!" They *cannot* be the friends of the Democratic party in this State and at the same time oppose the adoption of a Constitution which will secure to all men in the future those rights of which they have been so shamefully robbed in the past. This is PLAIN TALK, but it is as TRUE as PLAIN.

It is admitted by all that the late Constitutional Convention was the ablest body of men that ever assembled in this State; that they were freely chosen by *all* the people of the State, at the only full and free election that was ever held in it; and they were earnest, honest and capable men, determined, if possible, to do a *good* work. This Convention, thus composed of the representative men of both parties, formed this *new Constitution*, and sent it out to the people for their ratification, approved and indorsed by the *unanimous vote of every Democratic and Conservative Delegate*. It may, therefore, *safely* and *justly* be taken and accepted by every Democratic and Conservative voter, as an instrument equal and just in all its provisions and acceptable to a large majority of all the people of the State.

By a careful examination of the provisions of the new Constitution it will be perceived that every evil prophecy made by the Republican party as to the course the Convention would pursue has utterly *failed*. No man will be restrained or deprived of any of the rights or privileges now enjoyed by him; no man can *now* be transported out of or forced to leave the State as a punishment for any alleged crime committed in it; no man can *now* be prosecuted

or tried for any offense in any other county than that wherein it was committed, without his consent; the Legislature can no longer suspend the great writ of *habeas corpus*; neither can it any more release delinquent Sheriffs and other collecting officers from liability for public moneys received by them; it has not retaliated upon political opponents for any of the offenses committed by them; it has prohibited for the future all religious or political test oaths as a qualification to vote or hold office, serve as a juror, sue, plead or appeal in the courts, or pursue any profession or employment; it has prohibited the Legislature from ever establishing any Court or Board of Registration.

The new Constitution secures in all actions at common law, where the subject in controversy, exclusive of interest and costs, exceeds \$20.00, a trial by a jury of *twelve* men; it secures to every man a trial by a *jury of twelve freeholders*, to ascertain the value of his property, when taken or *damaged* for public use; it secures to every man, in time of war, as well as peace, his life, liberty and property, so that neither of them can be taken without *due process of law*; it secures to every man charged with crime, a reasonable time to prepare for his defense; it secures to *married women* their separate property, against the debts, liability and control of reckless and improvident husbands; it secures to every husband or parent residing in this State, and to the infant children of deceased parents, a **HOMESTEAD** of the value of ONE THOUSAND DOLLARS, exempt from all debts except such as exist on the 22d day of August next, and except *taxes assessed and purchase money due* upon it, and except, also, debts contracted for the erection of improvements thereon; and it also secures to the same class of persons, for all time to come, the right to hold *personal property* of the value of *two hundred dollars* (the same amount now allowed by law), exempt from the payment of *all debts, past, present or future, excepting only the taxes assessed upon it, and the purchase money agreed to be paid for it.*

By section 9, of Article 11, of the new Constitution, the people of this State will be protected from all unjust discriminations against them, between

through and way freight, and passenger tariffs by all railroads in the State. The system of free schools has been preserved, and its usefulness and efficiency increased by adding to the irrevocable school fund the proceeds of all taxes that may be levied on the revenues of any corporation now existing or hereafter created, by devoting the proceeds of the capitation tax of one dollar on each male inhabitant over the age of *twenty-one* years, exclusively to the annual support of free schools, by requiring all school levies to be reported to, settled and recorded in the County Court, for the inspection of all the tax-payers, so that every one can learn in what manner and for what purposes the school moneys have been disbursed; by restricting the creation of independent school districts, and useless appropriations to Normal Schools. See Article 12, sections 7, 10 and 11.

By comparing the first section of Article 8, of the existing Constitution, with first section of Article 10 of the new Constitution, it will be perceived that *no change whatever* has been made in the system of taxation.

The new Constitution wholly omits section 8 of Article 8 of the existing Constitution. By the insertion of this section the Constitution of 1861 and 1862 undertook to compel the people of this State to pay to the State of Virginia a part of her public debt, *before* she pays her own creditors, or *even* if she should *repudiate* the payment of the whole of it.

When it is remembered that on the first of January, 1872, this debt amounted to at least fifty-one millions of dollars, and that Virginia claims she has the right to charge West Virginia with the payment of one full third of it (or seventeen millions of dollars,, before she pays her creditors, or even whether she pays or repudiates, the propriety of omitting this section and thus leaving her to resort to her *legal* remedies, if she *has any*, cannot be doubted by the taxpayers of West Virginia. The new Constitution secures the integrity and existence of West Virginia as a separate State in the Union, by requiring the consent of a majority of the qualified voters of the State, *before any* additional territory can be an-

nexed to, or admitted into it. It secures the independence of the Judiciary, by removing the judges from the control of the Legislature, so that their Judicial opinions in the future, upon Constitutional questions, will no longer be the mere reflex of the opinions of a partisan legislative majority. It prohibits the Legislature from passing local or special bills in all cases where a general bill can be passed to accomplish the same object; thus all grants of special privileges and advantages to favored parties, will be forever arrested.

The Governor being obliged to approve and sign every bill before it can become a law, will, to a very great extent, be held responsible for the character and constitutionality of the laws.

The offices of Supervisors and their Clerks will be abolished. As a judicial and fiscal tribunal the Board of Supervisors has been found, by experience, to be inefficient and expensive. As an auditing and levying board, it has proved to be reckless and extravagant.

The existing judicial system has been found to be inadequate to hear and determine the constantly increasing number of suits. The necessity for the creation of some inferior Court, between the Circuit Courts and Justices, in which the smaller controversies could be cheaply and quickly determined, was universally admitted. The expenses incurred by suitors, by the unavoidable delays in the Circuit Courts, were ruinous. A new County Court, to supply this want, and to take the place of the Board of Supervisors, is created by the new Constitution. It is so nearly like our former County Court, that it will be familiar in its important features, to all our people. Its jurisdiction is the same as that of the old County Court. It can hold four terms a year for the trial of causes, at an expense of \$10 per day, and no more. It may hold two other terms each year, for the purpose of laying the county levy, &c., at which all of the justices may sit, but at which only a majority of them is required to sit to transact business. The jurisdiction of Justices under the new Constitution will be the same as under the present Constitution, except that in all cases where the subject in controversy exceeds \$20 the defendant,

before trial, can have the case certified to the County Court and tried by a jury of twelve men. The President of the County Court and the Justices will hold their offices for the term of four years, as Justices now do.

The annual cost of the County Court will be much less than that of the Supervisors and their clerk. Take the two following examples, viz: Barbour county, with seven supervisors, who sat 137 days from January 1st, 1864, to January 1st, 1872, a period of eight years, expended as follows: For pay and mileage of Supervisors \$2332.78; for clerk hire for same time, \$1593.75; total for 137 days, \$3926.53, which was an average yearly expense of \$490.82 and a daily expense of \$28.66, and an average daily expense for clerk hire of \$11.63. Upshur county having only six supervisors, during the same period, expended for payment and mileage, \$2615.68, and for clerk hire \$2505.00, making a total of \$5120.68, or an average yearly cost of \$640.08. The annual cost of the County Courts in said counties will be as follows: In Barbour county, four terms of six days each, at \$10 per day, \$240; two terms, one day each, 14 Justices and President of said Court, \$92; being a total expense for one year of \$332, and an annual saving of 158.82. In Upshur county, four terms of six days each \$240; two terms of one day each, with 12 Justices and President of Court, at a further cost of \$80; being a total of \$320, for one year, and an annual saving of \$320.08. Taking these two counties together they show an average annual saving in each county of \$239.45 over the expenses of the Board of Supervisors. Assuming this sum as a fair average of all the counties in the State, the whole annual saving from this source will be \$12,930.30. A similar examination and comparison will show a similar result in every county of the State.

The present annual cost of the existing Judiciary is as follows:

Salaries of thirteen Circuit Judges at \$1800 each.....	\$23,400
Salaries of three Judges of Court of Appeals, \$2050 each.....	6,000
Mileage (say), \$100 each.....	1,600
Total.....	\$31,000

Under the new Constitution the cost will be as follows, viz.:

Salaries of nine Circuit Judges, \$2000 each.....	\$18,000
Salaries of four Judges of Court of Appeals, \$2250 each.....	9,000
Mileage (say), \$100 to each.....	1,300
Total	\$28,300

Being an annual saving of..... \$2,700 which will exactly pay the salary allowed to the Governor.

The annual cost of the salaries of the following officers under the new Constitution will be as follows: Governor, \$2700; Auditor, \$2000; Treasurer, \$1400; Secretary of State, \$1000; Attorney General and Reporter of Court of Appeals, \$1300; Superintendent of Free Schools, \$1500, making a total of \$9900, and *no more*. [See section 19, Article 7.]

The amounts actually paid for said officers from 1864 to 1870, inclusive, for salaries and house rent, were as follows: In 1864, \$7200; in 1865, \$10,350; in 1866, \$11,650; in 1867, \$12,050; in 1868, \$12,050; in 1869, \$10,450; in 1870, \$11,650; total, \$75,400, being an average annual cost of \$10,871.43, which exceeds the annual cost under the new Constitution \$871.43.

The annual sessions of the Legislature have cost the State not less than \$21,000, being an average of \$269.23 to each member, during a session of forty-five days. Under the new Constitution the Legislature will only sit *once* in *two* years, for forty-five days, at an average cost of \$314.23 for each member; and for eighty-nine members, for the whole session, the sum of \$27,966.47, for two years; or the sum of \$13,983.23 for one year, being a further annual saving of \$7016.77. Section 33, of Article 6, also cuts off the postage heretofore allowed members of the Legislature, which was \$10 each, amounting to the sum of \$780; and as nothing in the future can be allowed them for newspapers and stationery, there will be a further annual saving of at least \$780 more. When it is remembered that at least three-fourths of all the laws passed at every session of the Legislature, have been special and local laws, all of which will be prohibited in the future by section 39, of Article 6; and that by section 34, Article 6, all public printing, copying, binding, dis-

tributing the laws and journals, will hereafter be done by the lowest bidder, it will be perceived that there must be a further annual saving from this source, of not less than \$2000.

One of the greatest continual public losses suffered under the existing Constitution, is the inevitable loss sustained by suitors in the Courts, caused by the continuances rendered necessary by the overcrowded condition of the dockets. It is impossible to furnish an *exact* statement of the loss annually resulting from this cause. To aid in making this estimate, let us assume that in at least one half of the fifty-four Circuit Courts of this State, there are on the average, fifty causes continued at each term for want of time to try them; that in each of said causes at least two witnesses on each side are summoned by the Sheriff and attend the Court for two days at each term. The public loss thus caused will, in one year, amount to the following sum, viz:

For issuing 2700 summonses for witnesses, at 25 cents each.....	\$ 675
For issuing 5400 copies, to be used in serving them, at 15 cents each.....	810
For issuing, entering and certifying 5400 witnesses' attendance, at 30 cents each.....	1,620
For entering on order book 1350 continuances, at 50 cents each.....	675
Total clerk's cost at one term.....	\$3,780
Sheriff's cost for same term, summoning 5400 witnesses at 25 cents each....	1,350
Pay of 5400 witnesses, two days each, at \$1.00 per day.....	10,800
Mileage for same, say five miles each, going and returning at 5 cents per mile, 50 cents each.....	2,700

Total cost of continuance for one term..... \$18,630
And for three terms, or one year, it will be..... 55,890

This enormous loss thus caused by the inefficiency of the present Circuit Courts, is far *below* the actual loss as will be apparent to every lawyer and litigant. All this will be avoided, and therefore *saved* by the creation of the County Court which, as has been already shown, is a much cheaper, as well as more efficient inferior tribunal than the Board of Supervisors.

In addition to the foregoing, if the action of the Convention in repealing section 8 of Article 8 of the existing Constitution in regard to the public debt of Virginia be accepted as a *finality* on that subject, as in all probability it *will* and *must* be, then there

will be a further saving of the whole of that alleged liability which the most sanguine friend of West Virginia never placed lower than one million, and which Virginia claims is seventeen millions of dollars. The annual interest on the *smaller sum* is sixty thousand dollars, and on the larger sum, one million and twenty thousand dollars; all of which will be saved to the tax-payers. When the action of the Convention on this subject shall have been ratified by the adoption of the new Constitution, that will indeed be a bold and *reckless* Legislature that will dare to increase the burden of taxes now borne by the tax-payers of West Virginia by saddling upon their backs even *one million* of the public debt of Virginia, for which they have received no equivalent in the past, and can receive none in the future.

During the period from 1866 to 1870 the Legislature appropriated and paid out of the public treasury the enormous sum of \$53,200 for the expenses incurred in the registration of voters. This sum, so expended and used only to *disfranchise Democrats*, would be sufficient to pay the salary of the Governor under the new Constitution, for more than *nineteen and two-thirds years*. The new Constitution, by preventing the creation of Boards of Registration, will render such expenditures in the future impossible.

As elections hereafter will occur only *once* in two years, instead of every year, there will be a further yearly saving equal to one-half the cost of an election, which we estimate at the sum of \$10,000, although Governor Stevenson, in his message of 1871, estimated it at the sum of \$20,000, being an annual saving from this source of \$5000. It is not pretended that the foregoing items of public expenditure which will be saved to the tax-payers are perfectly accurate, or that no other saving will accrue under the new Constitution; but it is intended to assert and prove that in every one of the particulars hereinbefore enumerated the annual saving will be *fully as much* as is here stated. No other sources of expenditure exist in the new, that are not found in the *existing* Constitution.

So that the annual saving will stand thus:

Cost of continuing 1350 causes one year	\$55,890.00
Difference between cost of County Court and Board of Supervisors, one year.....	12,930.00
Difference in Judges' salary and mileage.....	2,700.00
Difference of Executive offices.....	871.43
Difference of Legislature each year	7,016.77
Postage to members of Legislature	756.00
Amount saved by <i>biennial</i> instead of annual elections, which is one-half of \$10,000.....	5,000.00
Stationery, newspapers, &c.....	780.00
In diminished amount of printing	2,000.00
Annual interest upon \$1,000,000 of the public debt of Virginia.....	60,000.00
Total annual saving will be.....	\$147,968.20

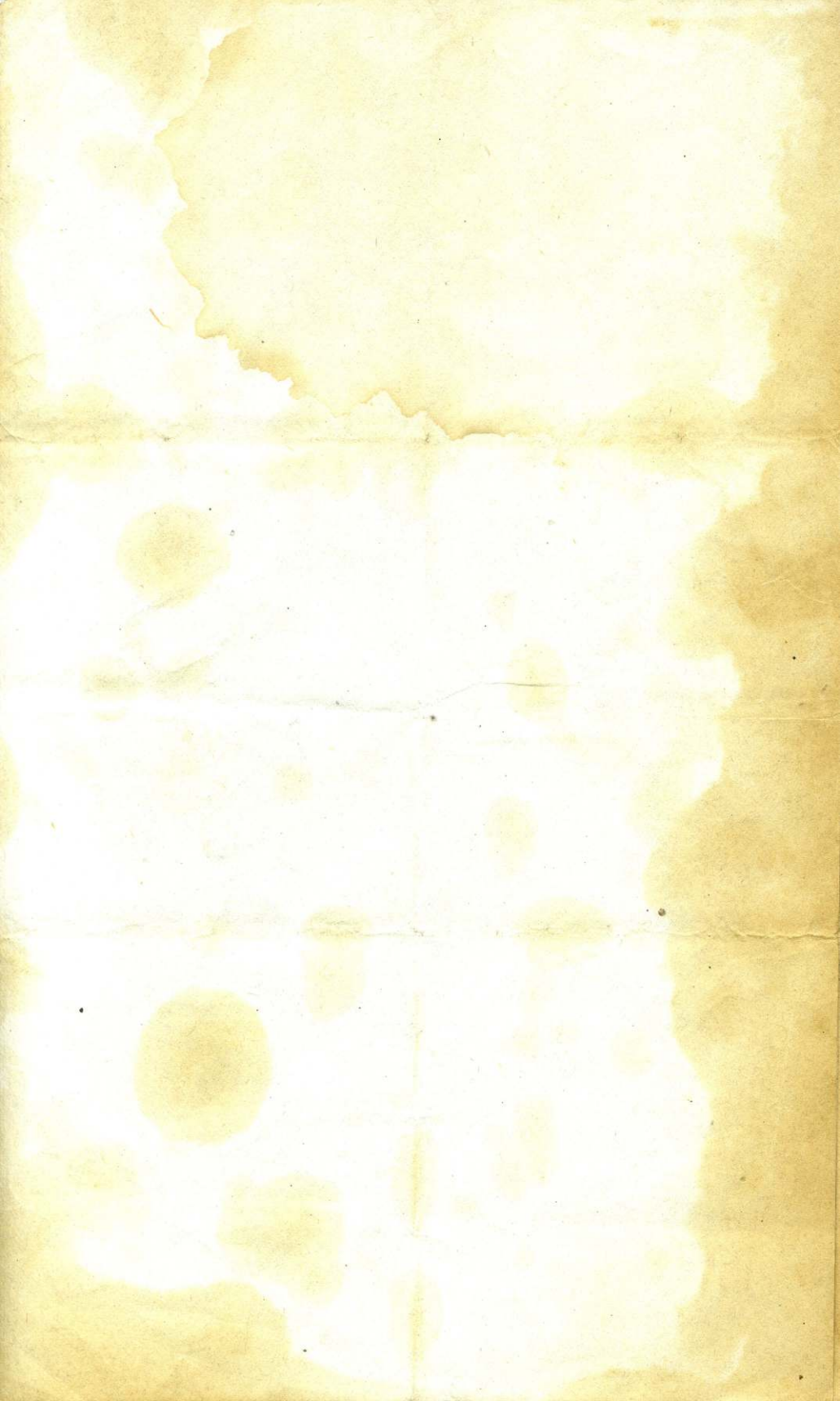
By the provisions of the 13th Article of the new Constitution the land titles of this State will be forever settled in favor of the actual occupant who has been in possession and paid the taxes, and *against* the land speculator who has never had actual possession, and who has never paid the taxes due on his land.

In this imperfect review of the principal features of the new Constitution, it is clear to every unprejudiced mind that it secures to all the citizens of the State equal rights and privileges; that it proscribes no man or class of men; that it retaliates no wrong upon any party; that the separate existence of West Virginia is secured; that the independence of the judiciary is beyond partisan control; that the system of free schools is sacredly preserved; the irreducible school fund increased; the just and proper accountability for school moneys secured and enforced; a cheap and efficient county court established; an intricate and expensive township and county organization abolished; the expenses of the Government diminished in all its departments; the land titles of the country settled and secured to the *bona fide* settler; the Legislature restrained from useless and mischievous legislation; the people secured from State and county indebtedness; while at the same time every useful and healthful function of good government has been preserved.

Every reasonable expectation of the people has been fully realized by the labors of the Convention. Let us, by a hearty endorsement and adoption of the new Constitution, labor with equal honesty and zeal to secure what we have gained, and to conduct the Government under its provisions in such manner as will command public approval.

SAMUEL WOODS.

Phillippi, W. Va., June 20, 1872.



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