

of 1776 deemed it wise and prudent to provide, by express prohibitions, against legislative encroachments upon popular sovereignty. It was therefore declared in the 42nd article of the Bill of Rights, "that this declaration of rights, or the form of government to be established by this convention, or any part of either of them ought not to be altered, changed or abolished by the legislature of this State, but in such manner as this convention shall prescribe and direct." Accordingly, by the 59th article of the constitution, the convention did prescribe the manner in which changes were to be effected by the legislature. That article declares "that this form of government and the declaration of rights, and no part thereof shall be altered, changed or abolished, unless a bill so to alter, change or abolish the same, shall pass the General Assembly, and be published at least three months before a new election of delegates, in the first session after such a new election."

Thus, then, are three separate provisions in the charter of government, which, by a fair construction, are easily reconciled. The one, asserts the right of the people of the State without limitation, to regulate its internal government and polity; the other, in negative terms confers upon the Legislature the power to alter the constitution, upon certain conditions, and in a particular manner, to be hereafter prescribed; the third prescribes the manner in which that power is to be exercised. The general exertion of the power by the people, concurrently with its limited exercise by the Legislature, is not inconsistent. Treated as mere limitations upon the authority of the Legislature, the two latter provisions are not only consistent with each other, but they readily harmonize with the former. Regarded as superseding the right of the people to change the form of government by the agency of a convention, the 42nd and 59th articles are irreconcilable and both of them operate to render nugatory the 2nd article of the Bill of Rights.

The power of the people to change the organic law, is inherent and inalienable, and the convention which formed the constitution, even if it so intended, possessed no authority to transfer or supersede it. The recorded opinions of many of the wisest jurists and most illustrious statesmen of the country, as well as the practice of this and other States and governments, concur in this position. Rawls, in his able work upon the constitution, speaking of the occasional necessity for alterations and amendments, says, "the people retains, the people cannot perhaps divest itself of the power to make such alterations. If a particular mode of effecting such alterations has been agreed on, it is most convenient to adhere to it, but it is not exclusively binding." Judge Story, speaking of the declaration of independence says: "It was an act of original inherent sovereignty by the people themselves, resulting from their right to change their government and to institute a new government whenever necessary for their safety and happiness." Mr. Madison, in his celebrated report on the Virginia resolutions of 1798, says: "The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind."

Judge Wilson says: "Permit me to mention one great principle - the vital principle, I may well call it which diffuses animation and vigor through all others. The principle I mean is this: that the supreme or sovereign power of the society resides in the citizens at large, and that, therefore, they always retain the right of abolishing, altering or amending the constitution at whatever time and in whatever manner they shall deem it expedient." "As to the people, however, in whom the sovereign power resides, from their authority, the constitution originates; for their safety and felicity it is established."