

**THE GREAT QUESTION FOR THE
PEOPLE!: ESSAYS ON THE
ELECTIVE FRANCHISE; OR,
WHO HAS THE RIGHT TO VOTE?**

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JOHN HANCOCK

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ESSAYS

ON

THE ELECTIVE FRANCHISE;

OR,

WHO HAS THE RIGHT TO VOTE?

BY

JOHN HANCOCK,

COUNSELLOR AT LAW.

"The right which is exercised by the citizens at large, in voting at elections, is one of the most important rights; and in a Republic ought to stand foremost in the estimation of the law. It is a right by which we exist as a free people."—ALEXANDER HAMILTON.

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INTRODUCTION.

THE subject of these few pages is of itself of the highest importance. To no people on earth can it be destitute of interest; and to ourselves at this time it may well take precedence of all others.

The stiff phrase "elective franchise" means the *right of choice*, and a moment's reflection will show us that those who choose the rulers are the virtual governors; and thus the question, "Who shall vote?" resolves itself into the question, "Who shall rule?" If ever a grave theme came before an earnest people, this is one. We shall need all the discoveries of former time, and all the wisdom of our own, to do it justice; and even with all these, we may deferentially exclaim, "Who is sufficient for this thing!"

But while thus impressed with our great responsibility, let us not forget that cowardice is no element of safety. We have not officiously gone out of the beaten track of duty to meddle with this matter. It lies full before us, and will allow of no evasion. The stern necessity of present consideration lies upon us,—the grand panel of the nation,—the present voters of our great republic; and the sacrificed dead and the helpless living unite to remind us in loving earnestness, "for this end were ye born!"

The author, in his search for precedents, has gleaned from the whole field of the past. Greece and Rome, and all the intervening governments send their tributes of experience. Our European fathers are brought to the witness-stand, and after them appear our own wise men from PATRICK HENRY down to EDWARD EVERETT. The amount of valu-

able testimony here condensed is very great, and could not be attained otherwise without much time and expense. We here have the voice of the wise and good speaking to us in grand harmony, and just at the time when the counsel is needed.

We are called upon to fix, or at least to initiate, a new order of things for half a continent! We have uprooted the Thistle and Jamestown weed from the Southern soil; how and with what shall we plant it anew? We find society there actually made up of extremes—of white men and black men alike unfit for responsibility and trust! What fearful materials of which to build the great temple of peace and safety! Of the former dynasty we have as much to deplore as to remember; not a charred beam from the old building will serve us for the new! The former structure as a whole was a warning, and its details each a separate disgrace. The mangled ruins around which Ezra gathered the remnant of Israel, were a good assortment of stone and timber compared with those among which we now walk in the South at once in sorrow and anger.

Shall we then call the former architects to build for us? They set their own house upon shifting sands and made it lean so as to fall upon ours! They had laws to produce and protect crime through a few generations, and to ensure ruin of the whole State at the last. What they have suffered and what we have barely escaped should make us careful for ever.

Whatever else is doubtful, this is clear,—our Rebel leaders must never return to power. However we may pass over their forfeited lives, perpetual banishment from citizenship is theirs. Better leave the field in continual fallow, than gather again the tares and *cheat* as bread for the nation. If the loyal black *may* not yet vote, the rebel white *must* not,—“Be just and fear not,” is the true watchword of the day.

CHAPTER I.

Grecian and Roman customs of Representation and mode of Voting—Cause of their downfall—English Nation during the Fendal Age—Magna Charter—Frequency of elections under William III. and Charles II—Elections in Ireland—Representation in the British American Colonies.

AMONG all the absorbing questions of the day now discussed, relative to the future policy and well-being of the American Republic, there is no one that is paramount to that of the rights and privileges which belong to the people in their individual political capacities; particularly since the recent abortive attempt to overthrow the Government of the Nation has had the effect to change, very materially, the character and political capacities and rights of a large class of the community who, heretofore, have been debarred, except incidentally, of those rights which have been confined, as a general rule, to the privileged classes.

As precedents, however, as well as interesting matters of history, before entering directly upon the subject in question, we shall cite those of ancient Greece and of Rome, as well as that of the more modern Kingdom of Great Britain—from which our ancestors undoubtedly borrowed much of the system upon which our own is based,—as examples of the dangers and disorders which have arisen from the earliest periods down even to the present hour, from the abuse of the political powers entrusted to the general populace, as well as the too great abridgment of their undoubted rights and privileges.

The ancient Greeks and Romans had but very imperfect notions of the value of representation; the number and power of their popular assemblies were so great and so liable to disorder, as to render it a provident measure with them to be guarded in diffusing the privileges of free citizens. Not a tenth part of the people of Athens were admitted to the privileges of voting

in the assemblies of the people, and, indeed, nine-tenths of the inhabitants throughout all Greece were slaves.

During the most flourishing period of the Athenian Democracy, every citizen of the age of eighteen had a right to hold office, and to give a vote at the assemblies of the people. The most crowded assemblies rarely exceeded 8000, though Attica contained 20,000 citizens. All were reckoned citizens whose parents were such. To assume unlawfully the rights of a citizen was punished by being sold into slavery. The assemblies of the people were convened by magistrates, and the chairman or president presided at them, and proposed the subject to be discussed, and had the bills, which had been previously prepared and sanctioned by the senate, (for the fundamental law allowed none others to be considered,) recited, and gave permission to the orators to speak, though the liberty of addressing the people on the subject was open to all. The chairman also put the question to vote, whether to adopt or reject the proposition. The assembly had the right to vary or alter it. The people generally voted by show of hands, and sometimes by ballot. They voted by tribes (of which there were ten,) but a majority of the whole assembly, collectively, decided.

It was owing to this system of assembling the people in masses, and not by representation, to make laws; and from a want of well-defined and distinctive departments, that that celebrated Republic terminated its career in anarchy and despotism.

So, also, in ancient Rome, no tests of property or character were required; and as the people assembled within the walls of that City in immense masses, not merely to vote, but to make laws, it produced the utmost anarchy and corruption, and has justly been regarded as precipitating the fall of that Commonwealth. The Roman slaves were not represented, and Rome exercised the right of absolute sovereignty over the dominions of its auxiliaries. The Roman citizens, who exclusively exercised as voters the power of government, bore, therefore, a very small proportion in numbers to the gross amount of inhabitants. The Roman mode of passing laws, and voting, was under great checks, during the best period of the Government. When a law was proposed and discussed, the people proceeded to vote. The origi-

nal mode of voting was *viva voce*, but at a later period it was by ballot, and applied equally to the election of magistrates, to public trials, and to making and repealing laws. The people were made to pass over a narrow plank into an enclosure, where certain officers delivered to every voter two tablets, one for and one against the proposition, and each person threw into a chest which of them he pleased, and they were pointed off, and the greatest number of points either way determined the sense of the voice of the whole people, who either passed or rejected the law.*

The English nation, during the Feudal Age, enjoyed the blessings of popular representation, and the knights, citizens and burgesses were intended to represent the farmers, merchants and manufacturers, who composed the several orders and classes of people of which the nation was composed.† But the mutations of time and commerce, says Justice KENT, in depopulating ancient boroughs, and in establishing new cities, and great manufacturing establishments, without any direct parliamentary representation, changed the structure of the House of Commons, and rendered it, in theory at least, a very inadequate and imperfect organ of the will of the nation. But, notwithstanding the great imperfections, at this early period, of the constitution of the English House of Commons, nevertheless, in all periods of English History, it felt strongly the vigor of the popular principle.

While on the Continent of Europe the degeneracy of the feudal system, the influence of the Papal hierarchy, the political maxims of the imperial or civil law, and the force of standing armies, extinguished the freedom of the Gothic Governments, and abolished the representation of the people; the English House of Commons continued to be the asylum of European liberty. And when we take into consideration the admirable plan of their judicial polity, and those two distinguished guardians of civil liberty, trial by jury, and the freedom of the press, it is no longer a matter of astonishment that the nation, in full possession of these inestimable blessings, should enjoy greater security of person and property than was ever enjoyed in Athens or

*Mitford's Greece, vol. i. p. 354, 357. Kent's Com., vol. i. part 2, p. 232.

†1 Blackstone's Commentaries, p. 174.

Sparta, Carthage or Rome, or in any of the commonwealths of Italy during the period of the middle ages.

Agreeably to the English historians there existed no deliberative legislative assembly in England prior to the reign of Henry III., which was the era of the establishment of *Magna Charta*, and the introduction of popular representation in England, and of the establishment of the House of Commons, in the time of Henry III. and Edward I. By its provisions no taxation was to be imposed but by Parliament, which was to consist of the higher clergy and nobility, and the tenants of the chief under the crown.

Under the reform acts and down to the present period, the names of electors are required to be registered and to possess certain property qualifications.

The scheme of representation, as a substitute for a meeting of the citizens in person, being but imperfectly known, it is in more modern times that we are to expect examples more instructive and analogous to our own particular case.

The history of this branch of the English Constitution, anterior to the date of *Magna Charta*, is too obscure to yield instruction. The very existence of it has been made a question among political antiquarians. The earliest records of subsequent date prove that Parliaments were to *sit* only every year, not that they were to be *elected* every year. And even these annual sessions were left so much at the direction of the monarch that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambitions. To remedy this grievance, it was provided by a statute, in the reign of Charles II., that the intermission should not be protracted beyond a period of three years. On the accession of William III., when a revolution took place in the Government, it was declared to be among the fundamental rights of the people that Parliaments ought to be held frequently; and under Charles II. it was expressly enacted that a new Parliament shall be called within three years after the determination of the former.* From these facts it appears that

* For an interesting history of this subject see Blackstone's Com., vol. i. chap. ii. p. 145.