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Questions and Comments on the Constitutional Provisions Regarding the Election of Congressmen

The "Federal Farmer" comments on the election of Congressmen.

. . . . It is well observed by Montesquieu, that in republican governments the forms of elections are fundamental; and that it is an essential part of the social compact, to ascertain by whom, to whom, when, and in what manner, suffrages are to be given. Wherever we find the regulation of elections have not been carefully fixed by the constitution, or the principles of them, we constantly see new legislatures modifying . . . [their] own form, and changing the spirit of the government to answer partial purposes.

By the proposed plan it is fixed, that the qualifications of the electors of the federal representatives shall be the same as those of the electors of state representatives; though these vary some in the several states the electors are fixed and designated.

The qualifications of the representatives are also fixed and designated, and no person under 25 years of age, not an inhabitant of the state, and not having been seven years a citizen of the United States, can be elected. The clear inference is, that all persons 25 years of age, and upwards, inhabitants of the state, and having been, at any period or periods, seven years citizens of the United States, may be elected representatives. They have a right to be elected by the constitution, and the electors have a right to choose them. This is fixing the federal representation, as to the elected, on a very broad basis. It can be no objection to the elected, that they are Christians, Pagans, Mahometans, or Jews; that they are of any color, rich or poor, convict or not. Hence many men may be elected, who cannot be electors. Gentlemen who have commented so largely upon the wisdom of the constitution, for excluding from being elected young men under a certain age, would have done well to have recollected, that it positively makes pagans, convicts, etc., eligible. The people make the constitution; they exclude a few persons, by certain descriptions, from being elected, and all not thus excluded are clearly admitted. Now a man 25 years old, an inhabitant of the state, and having been a citizen of the states seven years, though afterwards convicted, may be elected, because not within any of the excluding clauses; the same of a beggar, an absentee, etc.

The right of the electors, and eligibility of the elected, being fixed by the people, they cannot be narrowed by the state legislatures, or congress. It is established, that a man being (among other qualifications) an inhabitant of the state, shall be eligible. Now it would be narrowing the right of the people to confine them in their choice to a man, an inhabitant of a particular county or district in the state. Hence it follows, that neither the state legislatures nor congress can establish district elections; that is, divide the state into districts, and confine the electors of each district to the choice of a man resident in it. If the electors could be thus limited in one respect, they might in another be confined to choose a man of a particular religion, of certain property, etc., and thereby half of the persons made eligible by the constitution be excluded. All laws, therefore, for regulating elections must be made on the broad basis of the constitution.

Next, we may observe, that representatives are to be chosen by the people of the state. What is a choice by the people of the state? If each given district in it choose one, will that be a choice within the meaning of the constitution? Must the choice be by plurality of votes, or a majority? In connection with these questions, we must take the 4th Sect., Art I., where it is said the state legislatures shall prescribe the times, places, and manner of holding elections; but congress may make or alter such regulations. By this clause, I suppose, the electors of different towns and districts in the state may be assembled in different places, to give their votes; but when so assembled, by another clause they cannot, by congress or the state legislatures, be restrained from giving their votes for any man an inhabitant of the state, and qualified as to age, and having been a citizen the time required. But I see nothing in the constitution by which to decide, whether the choice shall be by a plurality or a majority of votes. This, in my mind, is by far the most important question in the business of elections. When we say a representative shall be chosen by the people, it seems to imply that he shall be chosen by a majority of them; but states which use the same phraseology in this respect, practice both ways. I believe a majority of the states choose by pluralities; and, I think it probable, that the federal house of representatives will decide that a choice of its members by pluralities is constitutional. A man who has the most votes is chosen in Great Britain. It is this, among other things, that gives every man fair play in the game of influence and corruption. I believe that not much stress was laid upon the objection that congress may assemble the electors at some out of the way place. However, the advocates seem to think they obtain a victory of no small glory and importance, when they can show, with some degree of color, that the evil is rather a possibility than a probability. . .

It is easy to perceive that there is an essential difference between elections by pluralities and by majorities, between choosing a man in a small or limited district, and choosing a number of men promiscuously by the people of a large state. And while we are almost secure of judicious unbiased elections by majorities in such districts, we have no security against deceptions, influence and corruption in states or large districts in electing by pluralities. When a choice is made by a plurality of votes, it is often made by a very small part of the electors, who attend and give their votes; when by a majority, never by so few as one half of them. The partialities and improprieties attending the former mode may be illustrated by a case that lately happened in one of the middle states. Several representatives were to be chosen by a large number of inhabitants compactly settled, among whom there were four or five thousand voters. Previous to the time of election a number of lists of candidates were published, to divide and distract the voters in general. About half a dozen men of some influence, who had a favorite list to carry, met several times, fixed their list, and agreed to hand it about among all who could probably be induced to adopt it, and to circulate the other lists among their opponents, to divide them. The poll was opened, and several hundred electors, suspecting nothing, attended and put in their votes. The list of the half dozen was carried, and men were found to be chosen, some of whom were very disagreeable to a large majority of the electors. Though several hundred electors voted, men on that list were chosen who had only 45, 43, 44, etc., votes each. They had a plurality, that is, more than any other persons. The votes generally were scattered, and those who made even a feeble combination succeeded in placing highest upon the list several very unthought of and very unpopular men. This evil never could have happened in a town where all the voters meet in one place, and consider no man as elected unless he have a majority, or more than half of all the votes. Clear it is, that the man on whom thus but a small part of the votes are bestowed cannot possess the confidence of the people, or have any considerable degree of influence over them. But as partial, as liable to secret influence, and corruption as the choice by pluralities may be, I think, we cannot avoid it, without essentially increasing the federal representation, and adopting the principle of district elections. There is but one case in which the choice by the majority is

practicable, and that is, where districts are formed of such moderate extent that the electors in each can conveniently meet in one place, and at one time, and proceed to the choice of a representative; when, if no man have a majority or more than half of all the votes the first time, the voters may examine the characters of those brought forward, accommodate, and proceed to repeat their votes till some one shall have that majority. This, I believe, cannot be a case under the constitution proposed in its present form. To explain my ideas, take Massachusetts, for instance. She is entitled to eight representatives. She has 370,000 inhabitants, about 46,000 to one representative. If the elections be so held that the electors throughout the state meet in their several towns or places, and each elector puts in his vote for eight representatives, the votes of the electors will ninety-nine times in a hundred, be so scattered that on collecting the votes from the several towns or places, no man will be found, each of whom have a majority of the votes, and therefore the election will not be made I might add many other observations to evince the superiority and solid advantages of proper district elections, and a choice by a majority, and to prove that many evils attend the contrary practice. These evils we must encounter as the constitution now stands. I see no way to fix elections on a proper footing, and to render tolerably equal and secure the federal representation, but by increasing the representation, so as to have one representative for each district in which the electors may conveniently meet in one place, and at one time, and choose by a majority. Perhaps this might be effected pretty generally, by fixing one representative for each twelve thousand inhabitants; dividing, or fixing the principles for dividing the states into proper districts; and directing the electors of each district to the choice, by a majority, of some men having a permanent interest and residence in it. I speak of a representation tolerably equal, etc., because I am still of opinion, that it is impracticable in this extensive country to have a federal representation sufficiently democratic, or substantially drawn from the body of the people. The principles just mentioned may be the best practical ones we can expect to establish. By thus increasing the representation we not only make it more democratical and secure, strengthen the confidence of the people in it, and thereby render it more nervous and energetic; but it will also enable the people essentially to change, for the better, the principles and forms of elections. To provide for the people's wandering throughout the state for a representative may sometimes enable them to elect a more brilliant or an abler man, than by confining them to districts; but generally this latitude will be used to pernicious purposes, especially connected with the choice by plurality -- when a man in the remote part of the state, perhaps obnoxious at home, but ambitious and intriguing, may be chosen to represent the people in another part of the state far distant, and by a small part of them, or by a faction, or by a combination of some particular description of men among them. This has been long the case in Great Britain; it is the case in several states; nor do I think that such pernicious practices will be merely possible in our federal concerns, but highly probable. By establishing district elections, we exclude none of the best men from being elected; and we fix what, in my mind, is of far more importance than brilliant talents -- I mean a sameness, as to residence and interests, between representative and his constituents. And by the election by a majority, he is sure to be the man, the choice of more than half of them....

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