

E U M E N E S:

BEING

A COLLECTION OF

P A P E R S,

WRITTEN FOR THE PURPOSE OF EXHIBITING SOME OF THE  
MORE PROMINENT

ERRORS AND OMISSIONS

OF THE

C O N S T I T U T I O N

OF

*NEW-JERSEY,*

AS ESTABLISHED ON THE SECOND DAY OF JULY, ONE THOU-  
SAND SEVEN HUNDRED AND SEVENTY-SIX;

AND TO PROVE THE NECESSITY OF CALLING

A C O N V E N T I O N,

FOR

REVISION AND AMENDMENT.

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T R E N T O N:

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1799.

NUMBER VIII.

DEFECTS OF THE CONSTITUTION, RESPECTING THE QUALIFICATIONS OF ELECTORS AND ELECTED.

IT will not be denied, that a constitution ought distinctly to point out what persons may elect, and who may be elected; and that it should as distinctly prescribe their several qualifications, and render

over-balance the loss on the treasury. The aforesaid writer admits, that the additional expense of an *extra* session, may be near £.500. This is a great deal too much to sink annually forever; more especially as the remedy is so easy, and beneficial. I here subjoin what passed on the article of *Expense*; the reader will perceive, that the fallacy of the objector's argument lies in assuming the fact, that *two* sittings would be *necessary*.

For the STATE GAZETTE.

MR. DAY,

IN a piece published in your paper, of the 16th January last, signed Eumenes, No. VII. among many other extraordinary reasons against the constitution of New-Jersey, is the following:

"The additional sitting, made necessary by the wrong appointment of the first meeting under the constitution, cannot cost the state short of £.3,000 per annum, reckoning the whole expenses at £.75 per day, for 40 days. This is no trifling sum, to be borne for a single year; but when we look at the third article of the constitution, and see that it is fastened upon us forever, it swells to an incalculable evil, and demands a speedy redress."

The public will judge, what credit ought to be given to the assertions of Eumenes, when they find, on examining the public accounts, that the whole expenses of the legislature for the last year, from October, 1796, to October, 1797 (two sittings) for wages, milage, copying, engrossing, printing (including the laws) and all extra expense attending the same, amounted to not more than £.4,360. They sat 69 days, and 11 days for milage, makes 80 days. The expenses for the year before, from October, 1795, to October 1796 (two sittings) amounting in the whole to 86 days, including 11 days for milage, was under £.4,550, the highest expense for any one year, for more than twelve years past.

The following is a statement of one day's expense, if all the members attend:

Wages of the vice-president and speaker, each 20s.	£.2 0 0
50 members, at 17s.	42 10 0
2 clerks, at 20s.	2 0 0
2 door-keepers, at 8s.6d.	0 17 0
	£.47 7 0

The whole expense of copying, printing, stationary, fire-wood, candles, and all extra expenses (except copying, engrossing, and printing the laws) amounted last year to about £.500; proportion for one day, about

7 5 0
£.54 12 0

those qualifications conformable to justice and the public welfare. Indeed, on the proper adjustment of the elective franchise, depends, in a great measure, the liberty of the citizen, and the safety of the government.

Suppose it will take four days, on an adjourned sitting, to bring the business to where they left it, at £.54 per day, will amount to 218 8 0  
 And mileage of the second sitting, 52 members at 55 miles each, on an average, going and returning, at 17s. 243 2 0  
 for 20 miles, amounts to

£461 10 0

Should the annual meeting of the legislature be fixed at any other time of the year, it is very likely they would frequently find it necessary to meet a second time.  
*One of your Subscribers.*

For the STATE GAZETTE.

To one of Mr. Day's Subscribers.

In Mr. Day's Gazette of the 20th inst. I have seen a statement, designed to prove, that I had made an error in computing the annual expense of an additional sitting of the legislature, at £.3,000 per annum. You, it seems, make the expense per diem £.54 12. I computed it at £.75. As far as your statement goes, it is doubtless more accurate than mine, which, I confess, was in some measure conjectural, not having, as you probably have, the bills before me. But allow me to remind you, that I never said the expenditure of the two houses, clerks, &c. would amount to £.75 per diem; if I had, I should stand corrected in an over charge of £.20 8 per day.

My assertion, which you conceive to "extraordinary," was that "the whole costs to the state" could not fall short of £.75 per day, and as you admit that it costs the treasury £.54 12 per day, in wages, &c. if to this you had added the probable costs to the state, in the loss of time sustained by the absence of 52 members of assembly from their homes and employments, you would not very well have rated the loss to the state short of the £.20 8 per day; but if to that loss, you add the time and expenses of parties and witnesses, whose expenses and travelling charges are doubled by a premature session (and you will see, I had this in view at the time I made my estimate, by recurring to what I have said on the subject) I think you will be satisfied, that the "whole cost to the state," is not over rated at £.75 per day.

But then you proceed to say, that I go too far in supposing that one sitting would answer in the room of two, if called at another season of the year: that, however, is my opinion, sir. I believe the first sitting, supposing it 40 days, under the circumstances it is held, as enumerated in the number only of Eumenes which considers this point, is thrown away. You think it may only produce a loss of £.461 10, equal to four days expense. My reasons for the opinion I hold, are before the public; your calling them "extraordinary," is of no consequence; nor does it follow, that if I have fallen into an error in that particular (which I by no means admit) that all my investigations are erroneous. I shall be glad to see my mistakes; and some no doubt will appear, set right with decency; but it is not becoming, let me say, sir, to introduce a supposed correction of error, by an illiberal insinuation, that it was intentional in the writer. I have no intention, nor one inducement to misstate a single circumstance on the subject of the constitution.

EUMENES.

Upon examination it will be found, that the constitution requires amendment upon this head, in several particulars.

First. It has ever been a matter of dispute upon the constitution, whether females, as well as males, are entitled to elect officers of government. If we were to be guided by the letter of the charter, it would seem to place them on the same footing in this particular; and yet, recurring to political right and the nature of things, a very forcible construction has been raised against the admission of women, to participate in the public suffrage.

The fourth article of the constitution declares, that "All inhabitants of this colony of full age, who are worth, &c. shall be entitled to vote for representatives, &c." Those who support the rights of women, say, that "all inhabitants," must mean all women inhabiting, as well as all men; whereas, it is urged on the other side, that the makers must have meant all male inhabitants, and that the expression is to be restrained, so as to arrive at the intent of the framers of the instrument.

This difference of sentiment has given rise to diversity of practice on this head, and furnished a pretence, from which, many an electioneering trick has resulted. I could refer to instances, which would prove what is advanced; but the people want no proofs. It is well known, that women are admitted or rejected, just as it may suit the views of the persons in direction. The thing should be rectified. If women are fit persons to take part in this important franchise, though excluded from other public functions, it should be so expressed in the constitution. They would then know their rights, and those rights could not be sported with, to serve the wretched purposes of a party election.

To my mind (without going into an historical, or philosophical deduction of particulars on the subject) it is evident, that women, generally, are neither, by nature, nor habit, nor education, nor by their necessary condition in society, fitted to perform this duty with credit to themselves, or advantage to the public. (a) The great practical mischief, however, resulting from their admission, under our present form of government, is, that the towns and populous villages gain an unfair advantage over the country, by the greater facility they enjoy over the latter, in drawing out their women to the election.

Many important election contests, have been terminated at last, by these auxiliaries, in favor of candidates supported by town interest. I believe, that the convention, who framed the constitution

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(a) It is perfectly disgusting, to witness the manner in which women are polled at our elections. Nothing can be a greater mockery of this invaluable and sacred right, than to suffer it to be exercised by persons, who do not even pretend to any judgment on the subject.

tion, had no view to the admission of females, either single women or widows, to elect the public officers; but such is the phraseology of the constitution, that it seems a violation of it, not to admit their votes. The best constitutions have guarded against any mistakes, on this head. Those of Massachusetts, New-York, Pennsylvania, Maryland, Vermont, &c. do not admit of female electors. Whether this be right or wrong, the objection to our constitution is, that it does not settle the point, one way or the other, with an absolute certainty.

\*The practice is variable. The generally received opinion, however, is, that the constitution permits it. In this state of the matter, it is not competent for the legislature to interfere. Nothing short of a constitutional declaration can decide the question; which is, in fact, an important one, and is growing more and more so to the country, in proportion, as the towns and villages encrease in numbers and population. For, independent of the theoretic question, it is evident, that the admission of these votes, gives a vast advantage to the thick settled places, over the more dispersed population of the country.(a)

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N U M B E R IX.

THE SAME SUBJECT CONTINUED, IN REGARD TO ELECTORS.

A SECOND objection under this head, is, that the constitution admits to the rights of suffrage, persons, who ought not to be allowed to participate in that important privilege.

If there is a political evil, which may be denominated a radical one, in the constitution of a government, that of permitting foreigners to interfere in, and to exercise the rights of election to office, unquestionably deserves the epithet.

The fourth article of the charter of 1776, declares, that "all inhabitants of the colony of full age, worth £.50, and resident for twelve months in the county, &c. shall be entitled to vote for

(a) Mr. Fox, in his late harangue in the British house of commons, in favor of more equal suffrage, concedes the unfitness of females to share in elections. He says, "no instance of their participation in public suffrage in any government, can be shewn:" and that this right (which many of his party hold to be a natural one, though he affects to stop short of that) is properly denied to the fairest productions of nature. Of widows and spinners above 21, there cannot, I imagine, be fewer than 10,000. It is certainly, not unimportant, to leave doubtful, the rights of so great a number of people.

"members of the legislature, and for all other public officers elected by the people." The construction of the term "inhabitants," has been settled, in practice, to mean all persons, who have dwelt one whole year in a county preceding the election: and this too, is the natural and grammatical signification of the word. To be admitted then to vote in our state, a man need not be a native, nor naturalized, nor a citizen of the United States, nor owe any allegiance to the state; for, even an oath of allegiance is not required by the constitution: and no law can add other terms of admission to vote, than those which are constitutionally prescribed. The deduction from this is, that aliens are placed upon the same footing, in regard to the choice of the officers of government, as the citizens of New-Jersey. If a man has but inhabited for a year, and will swear he is worth £.50, he is a qualified elector in the state of New-Jersey. Does such a proposition, if true, need a comment to display its degrading and baneful tendency? Will any one, who prizes the rights of a citizen; who considers the value of independence; who entertains just notions of the connection there is, between suffrage in a government, and allegiance to that government, defend the admission of foreigners and aliens to exercise those functions, which, in a peculiar manner, constitute the safety, the happiness, and the glory of a free people.

It is evident as the constitution is (and the practice under it, justifies the observation) that our elections are liable to be influenced, and indeed governed, by persons who have no interest in the welfare of the state; who have as little knowledge of the characters fit for office; and who, nine times out of ten, are the mere instruments of party in the state, or the agents of executing designs, formed out of it. What a picture has our elections, for six years past, presented; since an inundation of foreigners has broke in upon the country. French, English, Dutch, and people of almost every nation, and of every description of character, have not only been admitted, but even solicited to help out contending sides in elections for officers of government. In towns, particularly, where such people collect, the evil is more glaring, and the improper advantage it affords over the country interest, in elections, has often been complained of with the greatest reason.(a)

(a) The number of these interlopers in the state, is by no means inconsiderable. Of 200,000 persons inhabiting in it, a fortieth part, or 5,000, may in all reason be accounted. Of the above description, in some counties, they are very numerous; and not unfrequently their ignorance and insolence made instrumental in promoting the purposes of an election. This is so obvious a defect, not to say, so scandalous an outrage upon the rights of American suffrage, that the permission of it would seem to prove, that instead of considering the elective franchise, as the precious palladium of our liberties, we were content to throw it away upon every vagabond in the country.

## N U M B E R X.

THE SAME SUBJECT CONTINUED, IN REGARD TO ELECTORS.

AT the time when the constitution was formed (in 1776) the danger and impropriety of making one year's inhabitancy, the passport of a vote for officers, was not perceived. The convention of that day, must have possessed, not only wisdom, but prophecy, to have foreseen, that in the term of a few years, their country would become the rendezvous of aliens, and the theatre of foreign intrigue and influence. That this should escape their notice, is not surprising; but that there should be one American, or one Jerseyman, who would desire to live a day longer under a constitution, which admits *aliens* to an equal participation of his most precious right of suffrage, is truly a strange phenomenon. I aver it, as the constitution now stands, not only foreigners of every description of character, but the vilest of criminals, convicted and transported, by inhabiting one year in the state, and swearing, true or false, that he is worth fifty pounds, stands upon as high ground of privilege, as the most virtuous and useful citizen: nor can the legislature remedy the evil. The consequence of this shocking relaxation of the rights of suffrage, need not be mentioned. We all know, that foreigners of every description, are indiscriminately admitted into our elections, and have a right so to be. Our polls swarm with the very refuse of English, Irish, Dutch and French emigrations and transportations; with the worst sort of people from the neighboring states; fugitives from justice; absconding debtors; and, in short, all people whom convenience, inclination, intrigue or crimes, induce to take footing in the state.

Other states, which fell into the same error, have wisely and honorably extricated themselves, from this pernicious and degrading principle. Pennsylvania, in her *first* constitution of 1776, proceeded much upon the plan of the Jersey convention. In the bill of rights, article 7, it is declared, "That the elections ought to be free, and that all freemen, having a sufficient evident common interest with, and attachment to, the community, have a right to elect officers, and be elected into office." Departing however, from the principle held up in this declaration, in the frame of government, section 6, the convention declares, "That every freeman of twenty-one years of age, having *resided* in the state *one* year, and paid public taxes, should enjoy the right of an elector." This was better than ours, inasmuch as it made the payment of a tax a condition; but among its amendments in the constitution of 1790, the elective franchise is put on a very different footing. A man now must be a *citizen*, a

freeman, a resident for *two* years, and have paid a tax.<sup>(a)</sup> Had it not been for these precautions, we may readily conceive, how corrupted her elections would have been at this day, over-run as that state is by foreign emigrations.

The constitution of New-York requires an oath of allegiance to the state, from electors. The constitution of Georgia requires, that electors shall be citizens and inhabitants, and have paid tax. Vermont, besides one years residence, requires a very solemn oath of sincerity of intention and attachment to the constitution, from the electors. But, surely, no proofs from forms of government are necessary to establish the impropriety of admitting aliens and foreigners, to take a share in our elections for officers of the state and federal government. If experience of its public mischief, and a conscious sentiment of the indignity it offers to the personal rights of citizenship, are inducements too feeble to produce a change, in vain will reason appeal to the understanding, or the pride of liberty, address its eloquence to the heart.

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 N U M B E R XI.

THE SAME SUBJECT CONTINUED, IN REGARD TO ELECTORS.

IT seems to me impossible, to defend our constitution against both the danger and indignity it offers to our political rights, in admitting aliens, foreigners and others, who profess no allegiance, and in fact, feel no ties of common interest with the citizens of the state, to a participation in our elections.

What then ought to be done? Why rectify the error. This evil of itself removed, is more than an equivalent for any supposable inconveniences which may attend on a convention. But it will be asked, On what terms shall a foreigner be admitted, to the right of an elector for state and congress officers in New-Jersey? I answer, that he ought, at least, to have the qualifications of a citizen of the *United States*, and also to be bound to the allegiance of this state, before he is permitted to interfere in elections.

To entitle an alien to become a citizen of the United States, it is requisite—

1st. That he be a free white person.

(a) Art. 3. In the county where I reside, there are, I venture to affirm, two hundred Irishmen employed at different works, who are never taxed, except at the whipping-post: and yet these fellows are brought to the elections, and their votes, perhaps, placed in equal balance against those of as many respectable and wealthy citizens.

2d. That he have declared, on oath or affirmation in a court of law, three years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, &c. whereof such alien may, at the time, be a citizen or subject.

3d. That, on his admission, he declare, on oath or affirmation, that he has resided within the United States five years at least, and in the state where he takes admission, one year at least; that he will support the constitution of the United States, and abjure all allegiance to any foreign power.

4th. The court not to admit him, unless satisfied of five years residence; and that, during the time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

5th. In case of his having been in any order of nobility, he must make an express renunciation of his title. (a)

These are the requisites, without which an alien cannot be a citizen of the *United States*; and yet, without one of these qualifications, he may be, and is entitled to be an *elector* for officers of the *state* and *general* government, under *our* constitution; for it is to be observed, that the constitution of the United States, does not in the least change the state constitutions, in the terms of admission to a share in the election of representatives in congress; but declares, "that the electors in each state, shall have the qualifications requisite for electors of the most numerous branch of the *state* legislature." (b) Much less does the United States constitution, interfere in regulating the pretensions of electors for *state* officers.

To recapitulate:

As the constitution now is, all inhabitants of the state, who are worth £.50, and have resided in the county *one* year, may vote for state and congress representatives. Within this description will fall,

1st. All men, bond or free, white or black, or other complexion, who are *natives* of the state.

2d. All unmarried *women*, natives of the state.

3d. *Aliens* and subjects of foreign governments, not citizens of the United States, including convicts, fugitives from justice, and emigrants of every description.

4th. All persons, from other parts of the United States, of every description.

5th. No oath of allegiance or fidelity to the state, or United States, required.

(a) Act of congress, 29th Jan. 1795.

(b) Art. 1.—sec. 2.

As the constitution *ought* to be—(a)

1st. Freemen only, should be admitted to vote.

2d. They should be native citizens of the state, or naturalized citizens of the United States.

3d. They should be residents in the county for a reasonable time, pay taxes, or perhaps possess, some other equivalent qualification.

4th. They should be obliged, if called on, to declare their allegiance to the state of New-Jersey.

Until the rights of electors are put on this, or a similar footing, the citizens of New-Jersey will continue to hold suffrage, in common with aliens and foreigners; with people, perhaps, attached to no government, restless and intriguing, ignorant and vicious; sometimes the leaders, and sometimes the instruments of factious, and disorganizing projects.

## NUMBER XII.

THE SAME SUBJECT CONTINUED, RESPECTING THE ELECTED.

HAVING, in the preceding papers, pointed out certain deficiencies in the constitution relative to *electors*; it may not be amiss, in this number, to consider, how far it might be amended as it respects the qualifications of the *electeds*.

As the constitution now stands, the only qualifications to entitle a man to be placed in the *legislature* of this state, are, that he be an inhabitant and freeholder in the county where chosen, for one year next before the election. And if chosen for Council, that he be worth £.1,000, real and personal estate, within the same county; and if for Assembly, £.500.

It will be perceived at once, that this is placing the right to hold a seat in the government of the state, on much too loose a footing; for as the case now is, a person may be chosen, who,

1st. Is *under twenty-one* years of age.

2d. Who is *not a citizen* of the United States, or the state of New-Jersey.

(a) I have here and there ventured to suggest, what occurred to me as a proper *substitute* of a defective arrangement in some points under the present system; but this is not frequent: and when I do it, it must be understood, as by no means offering to dictate on a subject so important. My main object in these papers, was to *lay before the public*, the defects which exist in the present charter; not to exhibit a better plan. That would have been equally presumptuous and unnecessary. There can be no difficulty in rectifying errors, when discovered.

3d. Who is *not bound by an oath of allegiance* to the state.

4th. Who stands *convicted of infamous offences*.

As to the *first* particular, that of *age*; the constitutions of other states, have guarded against the inconveniences resulting from unripened judgment, and inexperience in the business of legislation. I confess, that I know of no instance, nor have I heard of one, where a choice has fallen upon a person under twenty-one; and therefore, the omission in the constitution has not been followed by any practical ill consequences. Yet it is an error, and if ever a revision takes place, should be attended to. The constitution requires, that the *electors* shall be of full age; which circumstance renders the omission in regard to the *electeds*, on that head, more remarkable. The Pennsylvania constitution, declares, "that no one shall be a Representative, who shall not have attained the age of twenty-one: and that a Senator shall be twenty-five." Maryland, agrees with Pennsylvania, in both particulars. Georgia requires, that a Representative should have attained twenty-one, and a Senator twenty-eight. The constitution of the United States has fixed on twenty-five, as the age of ability for exercising the appointment of a Representative, and thirty, for that of a Senator.

The *second* particular, is of greater consequence; namely, that it is permitted to elect a person into the legislature, who is *not a citizen* of the state. The citizens of this state, are those who were in it at the declaration of independence, and continued under the government then established; and their children born afterwards: also, such persons as have been naturalized by act of assembly, since that period, and prior to the act of congress, passed the 26th of March, 1790. I need not here, point out the arguments against the admission of persons into the legislature, who are not citizens of the state, or who by a residence of one year only, have not had time and opportunity to manifest their attachment to the government, and acquire a competent knowledge of the laws, interests and police of the state.

It will be said, that *aliens*, are by consequence excluded from our legislature, because *freehold* is a necessary qualification, of which an alien cannot be seized. To this it may be answered, that admitting the position to be true, as it respects *foreigners*; yet, certainly, all *citizens of the United States*, are still admissible into our legislature, after *one year's residence*, and purchasing a handfull of earth. And if this is so, the objection is not much lessened; for a longer residence than one year should be required, to qualify a person for a seat in the legislative body of the state, even though he might have been a citizen of another state.<sup>(a)</sup> And it is maintained, by very

<sup>(a)</sup> I may be wrong in my opinion on this subject, but it strikes me as a thing very right and necessary, to guard our legislative body from being invaded too suddenly, by even citizens of the other states. We know, that

intelligent men, that a certain class of aliens may be seized of freehold in this state: there is nothing in the constitution against it; and the fact is, that many of the former colonists, who at the time of the declaration of independence resided in Europe, or who quitted this country before that period, and their children, do now claim, and actually possess freehold in the state, guaranteed by the ninth article of the treaty of 1794; although they acknowledge no allegiance to its government, and profess themselves British subjects, and are so. We know too, that the legislature by *law* permits aliens to hold real estate: they have done it, by a law enabling them to take land in mortgage; and no one can tell whether they may not enact a general law, to admit them to purchase and hold real estate in all cases: and then the circumstance of freehold, as required by the constitution, will be no check upon the admission of foreigners into our legislature, unless the legislature may at the same time disqualify them from holding seats, which is very doubtful.<sup>(a)</sup>

The best of the state governments, are express in the *exclusion* of aliens from the legislature, and requiring a competent time of *residence* for the probation of inhabitants.

Pennsylvania requires, that a Representative shall have been a *citizen and inhabitant*, three years next preceding his election; and that a Senator should have been a *citizen and inhabitant*, four years next before his election. Georgia requires, that a Senator should have been an *inhabitant* of the United States nine years, and three years a *citizen* of that state; and that a Representative shall have been seven years a *citizen* of the United States, and two years an *inhabitant* of that state. Vermont requires, two years residence. By the constitution of the United States, a Representative in congress must have been seven years a *citizen* of the United States, and a Senator must have been nine years a *citizen* of the United States. Indeed, no other proof is necessary, of the defects of the constitution in the particulars before stated, than our own legislative proceedings, which at the same time that they confess the grievance, record a weak and unconstitutional attempt to redress it: for, by an act, passed the 16th December, 1783, sect. 20<sup>(b)</sup> the legislature

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a great many of them are little better than pure aliens: many of them, indeed, are aliens in disguise. We ought at least, to exact from them a longer probation, than twelve months: we know little more of men from Georgia, Kentucky and Tennessee, than from France or Ireland.

<sup>(a)</sup> An act of this kind, was in fact passed on the 6th day of February, 1794; in which the legislature expressly authorizes aliens to *purchase and hold real estate*, in this state; but prohibits them notwithstanding, from holding an *office*. It is however, extremely questionable, whether such prohibition is not absolutely unconstitutional and void in itself; because the constitution expressly allows all *inhabitants* who are *freeholders*, to be elected.

<sup>(a)</sup> I believe that act is repealed; but it proves the sense of the legislature in 1783, as opposed to the constitutional provision on this head. It proves another thing too, that a bad constitution will be violated by its sworn defenders.

declares, "that no person thereafter, shall be elected as a member of the legislative council, or assembly of this state, unless he shall have been a freeholder and inhabitant of the same, for at least *two* years, and a citizen of the United States for at least *seven* years, next before his election;" which provisions are *additions* to the constitution, and of no more force than if the act declared, that no other persons, except the members of that legislature, should be afterwards elected.

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N U M B E R XIII.

THE SAME SUBJECT CONTINUED, IN REGARD TO THE ELECTED.

**T**HE foregoing numbers, were intended to point out an imperfection, in admitting to the legislative department, all persons, without respect to age or citizenship. In this I shall advert to the circumstances of their being admissible, *without any test of allegiance to the government*, and without regard to their *civil conduct* in society as men.

In regular institutions of government, it has ever been held a point essential to the general security, that the persons intrusted with the preservation of the constitution, and placed in offices which impose high duties, and yet afford occasions, and temptations too, of great delinquency, should be bound to support the constitution and government, by a public and solemn declaration of allegiance. It is not a matter of surprize, that the convention of 1776 omitted the insertion of this, as a necessary qualification for public confidence and admission to public office. It will be remembered, that the constitution was formed previous to the declaration of independence: it was not intended for a permanent government, and it would have been considered as a direct act of independency by some, and of treason by others, to have required an oath of allegiance to the then colony of New-Jersey. We had not then, entirely thrown off allegiance to the government of Great Britain. This sufficiently accounts for the suppression of an article, which should be indispensable. As soon, however, as independence was declared, we find the *legislature* very ready to prescribe and enforce the *oath of allegiance* to the government; and so far as a *law* will redress the omission, it is very well. But it must be remembered, that the *law* cannot exclude one from holding a seat in the legislature, provided he has been a *resident* one year in a county, and possesses the necessary *quantum of property*: for the constitution, not requiring any other qualification, the legislative body cannot create any other.

A man therefore, *elected* to serve in the legislature, need neither to be a *citizen*, nor is he bound to declare his attachment to the government by a *profession* of his *allegiance* to it: but may confidently assert his subjection to a foreign power, and his refusal to owe allegiance to this state; and yet be entitled by the constitution to make laws, binding on the lives, liberty, and property of the citizens of New-Jersey. That such persons have got into our legislature, I believe to be a fact. That they may get there, and hold their seats constitutionally, will not always, I trust, remain a blot in the political code of New-Jersey.

The other particular, namely, that the constitution has not disqualified persons from sitting in the legislature, *convicted* by due course of law of *infamous offences*, cannot fail to carry with it its own comment.

The good sense and spirit of the people of New-Jersey, may be thought perhaps, an adequate security against a choice so disgraceful: but admitting (as I do) that this may in general be depended on, yet occasions may occur, in which, by surprize, or party zeal, or from ignorance of the fact, such a thing might happen; and then it would be considered as no small defect in the frame of government, if a felon, a perjurer, or a cheat, should keep his place notwithstanding a conviction of record. Some of the American constitutions have provided against such a contingency; and some legislatures have found reason to regret the omission of it. In case of a revision of our charter, it cannot be thought unimportant to exclude from office, persons, *convict of record*, of any *infamous offence*.<sup>(a)</sup>

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N U M B E R XIV.

THE SAME SUBJECT CONTINUED, ON PROPERTY AS A QUALIFICATION.

**I** SHALL in this paper, submit a few reflections upon that part of the constitution, which prescribes the necessity of a certain *quantum of property*, as a qualification of suffrage.

And *first*, In regard to *electors*. It is required by the constitution,<sup>(b)</sup> that they shall be "*worth* £.50 proclamation money clear

<sup>(a)</sup> The power lodged in the house of assembly at present, to *impeach* for misbehaviour, does not meet this omission; first, because an impeachment only lies against *executive* and *judicial* officers; second, only for offences, *posterior* to the appointment.

<sup>(b)</sup> Art. 4.

"estate," to entitle them to a vote for representatives, and also for all other public officers, who are elected by the people of the county at large.

The objections to this article are,

I. That it does not prescribe by what evidence it shall be ascertained, that a person who offers his vote is worth fifty pounds clear estate.

II. That this omission has given rise to a legislative provision in the case; namely, that the fact of property, shall be made out on the oath or affirmation of the voter; (a) from which has resulted the following bad consequences;

1st. That the judges and inspectors of elections, have not been, nor ever will be, uniform in the execution of that article of the constitution. In some places, and at some times, it is rigidly adhered to, just as party or whim prevails. At other times and places, it is neglected or refused to be put in execution, either because the judges imagine it unjust, or because popular opinion is against the regulation. From this source then, has proceeded corruption, partiality, or criminal disregard in the officers appointed to conduct elections.

2nd. It has proved a fruitful source of perjury, and false swearing at elections, in the state of New-Jersey. Hundreds of people have been prevailed on to swear themselves qualified in point of property, that were not so, and who knew they were not qualified. Others have been induced to it, under the most preposterous notions of mental evasion. (b)

III. A third objection to this part of the constitution is, that it excludes many from the rights of suffrage, who ought to enjoy it freely.

1st. A great many persons are averse to taking an oath or affirmation on the subject: and, though unquestionably qualified in point of property, would prefer relinquishing their vote, rather than be subjected to purchase it, by taking an oath or affirmation of any kind.

2nd. Another class of the community, often give up their pretensions to suffrage, from a scruple of conscience, if called on,

(a) Wils. laws, 348.

(b) A man being asked, after taking an oath at an election, how he could justify it to his conscience, as he well knew that all the property he ever had, was not worth £.50? answered, that he did it very rightly; for the law did not require him to swear, he had clear property to the value of £.50. but that "he" (the voter) "was worth £.50;" and that he valued himself at a great deal more than that. The words of the oath run thus, "I verily believe that I am worth fifty pounds clear estate, &c." Others are known to supply the word "of;" and so swear themselves clear of estate, instead of clear estate. And many other weak and wicked evasions are fabricated, to get over the test of property, prescribed in the constitution.

in swearing to the clear value of their property. Men engaged in trade; people of large families, and small incomes; beginners in business of any kind, who set out upon credit, whether farmers, mechanics, tradesmen, or professional characters, may pursue an honest and industrious course of life for many years, before they can be satisfied in swearing they believe themselves to have a clear estate of even fifty pounds. This may be thought strange at first view; but on reflection, I am certain it will be found, that a great number of virtuous, industrious, and useful men in society, would be excluded from the common rights of citizens, if this branch of the constitution were rigidly carried into execution.

3rd. The article contemplates the age of twenty-one, as the period of admission to vote for representatives; and yet, by requiring the voter to be worth a clear estate, it by consequence excludes all persons from the age of twenty-one, until they shall have acquired the clear property specified in the constitution.

This operates with peculiar hardship, upon a very respectable portion of the people of New-Jersey. I mean, the sons of freeholders, and others, who have attained twenty-one, and who become immediately taxable, liable to military duty, and other public contributions; and yet not being born to a clear estate, some length of time may elapse, before they are admissible to the rank of electors. (a)

Many other objections are raised against the test of fifty pounds clear estate, as a qualification for an elector: as, that bad men will swear themselves over it, and good men, though not perhaps worth fifty pounds clear estate, yet being useful citizens, paying taxes, and sharing in the common burthens of society, ought not, because their income does not exceed their expenditures, to be deprived of this peculiar badge of freemen.

The foregoing objections are worthy of consideration. It is certainly possible, to put this matter on a better footing. How that may be done, I shall endeavor to point out in a future number.

(a) It must be acknowledged, that this injudicious regulation is not always enforced. The omission of it however, is a breach of official trust in the officers, and of a very solemn oath: still it is a part of the constitution, and is converted to purposes, destructive of fair election and good morals.

## NUMBER XV.

## THE SAME SUBJECT CONTINUED.

THE preceding number, having pointed out some of the objections against that part of the constitution, which makes fifty pounds clear estate an essential requisite in an elector, so far as the regulation tends to *immorality* of conduct, and criminal evasions of the rule; I shall in this paper, take a view of the *principle* upon which that article is predicated, and point out what has been supposed, a more rational and just footing to place this right upon.

Why a man should be worth fifty pounds clear estate, to qualify him properly to choose the person he would wish to have the charge over his life, liberty and privileges as a citizen, is a problem not easily solved, by an appeal to reason and justice. If it is said, that fifty pounds in money or land, makes him more a man or citizen, than one who may not be worth five pounds, or a shilling, it is an assertion without proof, and requires no refutation. If it is said, that a man who possesses fifty pounds, will be wiser than his neighbor who has but ten pounds; nature and experience teaches us, to smile at the simplicity of such a thought. If it is said, that the elector of fifty pounds, will be a better citizen, or a more honest man, than him of five pounds, is there any evidence of this, resulting from an acquaintance with human nature? Well then, if fifty pounds clear estate, does not make a man or a citizen, nor endow him with wisdom, nor give him honesty, why should the want of it exclude him from the rights of suffrage, and make him a mere blank in the common association?

It will be said perhaps, that *property* is a pledge for the fidelity of the voter; the sentiment, that he has something to protect, will secure him on the side of honest and intelligent representatives. But, allow me to ask, whether on the supposition, that a citizen were depraved enough to bring his mind to vote for wicked or incapable rulers, it can be presumed that the small stake of fifty pounds in the common stock, would serve to check him in his madness? It will not, I persuade myself, be answered in the affirmative. Besides, a person who would act so degraded and wicked a part, would not hesitate to forswear himself, to get the privilege of voting.

If the object is to preserve purity in elections, in overawing men by the sense of danger to their *property*, from electing improper characters, the sum fixed in the constitution is far below the standard of terror.

Those who advocate the principle of *property*, as a test of the fitness of a man to have a choice in the appointment of his rulers, forget that property is not the *only* object of value to be guarded in a state of political freedom; if it were, there might be some pretence for vesting the appointments to office, among the happy number of those who could count up fifty pounds. Every member of society is interested by ties which connect him to its interest and welfare, with infinitely more constancy than those which can possibly result, from the contemplation of preserving his fifty pounds from the unjust spoliations of power.

Every citizen has (besides property) his liberty, his life, and his just rights in society to be protected; and these are equally important, and common to all the members of the community. The poor man's freedom is, perhaps, his sweetest enjoyment; ought he not then to be consulted in the choice of those, who have the power to infringe it? His life is dear to him; ought he not to have a choice of those who are arbiters of his fate? He is subject to the payment of taxes, according to his property, or upon his poll; ought he not to participate in electing those who assess him? He must fight, if his government chooses to go to war; ought he not to be represented in that government? His conduct as a citizen, is regulated by laws; he must act according to law, he must be punished according to law; ought he not to be heard by his representatives, in adjusting the rules by which he is to walk, and affixing the penalties to be incurred by the infraction of them? In short, every argument which can be urged in favor of the right of suffrage for the wealthy man (saying that only of his property) applies with equal strength, if not greater, in favor of permitting all virtuous citizens (however circumstanced in regard to property) to have an interest in the appointment of those who are to legislate over them.

Take from any citizen the right of suffrage, and he is disfranchised; he is a slave among his equals. If it were right to discriminate between one citizen and another in this respect, justice would perhaps decide in favor of that class of the community, whose low estate deprived them of influence; the rich and the powerful will take care of themselves: the least privilege which the poor should enjoy, is that of giving a solitary vote for their rulers.

But I am far from contrasting descriptions of men, with a view to excite jealousies, and thereby gain a false bias in favor of my theory. What I aim at, is to shew that a test of fifty pounds clear estate, is no just criterion of virtue, of wisdom, or of utility among men. As has been before shewn, it leads in practice, to perjury and evasion: bad men will not regard it; good men, and such too as have the necessary estate, fly from the scrutiny of an oath, and a vast number of loyal citizens, industrious and useful members of society, who pay taxes, profess allegiance, and are ready to suffer

and die for their country, by this unjust (not to say foolish) test, are excluded by the constitution from the most innocent, and most precious right of freemen.<sup>(a)</sup>

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N U M B E R X V I.

THE SAME SUBJECT CONTINUED.

**T**HE two preceding papers shew the impolicy of that regulation, which makes fifty pounds clear estate, a necessary qualification to the right of suffrage.

It may now be asked, what substitute can be proposed, not liable to the objection stated against this part of the constitution, and at the same time, competent to the exclusion of mendicants and others, who from extreme poverty, may be presumed not to have a sufficient common pecuniary interest in the society, to attach them to its welfare. I answer, that *taxation* is the proper and natural test of ability, and furnishes a more certain criterion of a common interest, than that which the constitution contains. He who contributes to the public expense, must be presumed interested in the public welfare, and ought to be represented in the government which commands his person, and calls for the fruits of his industry. It is of no importance that this contribution may be small, it will be in proportion to his ability, if the taxes are justly assessed, and when a man complies with that, he is on a footing, in respect to political right, with the most opulent citizen, unless it should be thought, that every citizen ought to have a direct suffrage in proportion to his property, which is an idea never entertained by any of our constitutions, and altogether repugnant to a republican system; no man was ever thought entitled to two votes, because he paid twice as much tax as his neighbor. This shews, that it is not the comparative proportion of property and contribution, which entitles a man to exercise the elective franchise, but his contributing according to his ability. And the very article objected to, that of making fifty pounds a common standard, proves, that inequa-

<sup>(a)</sup> I admit that the possession of *property*, especially freehold, furnishes some security for the integrity of the elector; but, as was stated in the preceding paper, there is great difficulty in carrying such a test into execution. The proof must depend on the oath of the voter; the bad consequences of which have been universally acknowledged. It is evident, that this criterion must exclude a very great number of persons, every way entitled to a participation of the government. These inconveniences are removed, and yet the purity of elections sustained, by making *taxation, residence, and freedom*; essential qualifications.

lity of fortune, was never designed to create inequality in the general system of suffrage.

This test then, is better than that defined in the constitution, namely, clear estate of fifty pounds value.

*First.* Because it admits *all* citizens to a share in the choice of their representatives, who *pay* to the support of government, whereas the other does not.

*Second.* Because it extends to the citizen an opportunity of being represented, as well in his *personal*, as his pecuniary interests; whereas the other, by placing his right to vote upon the mere footing of an arbitrary *quantum* of *property*, disfranchises him of his most important rights, those of sharing in the formation of laws, which are to affect his life, his person, his liberty and enjoyments, as well as his property.

*Third.* Because this is a test, not so readily *evaded* as the other, more uniform in its operation, and which affords to the conductors of elections, by a mere inspection of the tax rolls, *certain* evidence of the voter's right to be admitted.

*Fourth.* Because it avoids the evil *consequences* of the other, arising from the multiplication of oaths, and the consequent temptations to perjury and false swearing; the difficulties and criminality of officers, in enforcing or omitting the test; the unnecessary obstacles which it opposes to conscientious scruples, and above all, to its baneful influence upon the integrity and fairness of elections.

*Fifth.* Because it is a better proof, even of real *ability*; than the other, and equally excludes from a share in the elections those who, from absolute poverty or insignificance, ought not to share in them. And,

*Sixth.* Because it is more consonant, in every respect, to the true principles of a pure republican form of government, which consists in the extension of the representative privilege to its greatest practical latitude; and more especially, so far at least, as to connect the duty of submission to taxation, with its correspondent right of representation.

The justness of the preceding remarks, on the impolicy of that part of our constitution under consideration, may derive confirmation, by adverting to the result of reflections and experience on this point, in the state of Pennsylvania. In the amended constitution of that state, proof of property, as a qualification for an elector, is not required.<sup>(a)</sup> Payment of a *tax* is established as a better standard, and I trust, on deliberation, it will be found in every respect, and under all the forms of elective government, at once the most equitable, safe, and convenient regulation.<sup>(b)</sup>

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<sup>(a)</sup> Const. Penn. 1790, Art. 3, sec. 1.

<sup>(b)</sup> In addition to the weight which *precedent* gives to the reasoning on this head, it may be observed, that the constitution of Delaware, revised in

## NUMBER XVII.

## THE SUBJECT CONTINUED, AND RECAPITULATED.

**T**O sum up what has been said against the present constitutional regulation, respecting the *qualification of voters*, I shall in this paper recapitulate the subject.

The article runs thus, "That all inhabitants of this colony of full age, who are worth fifty pounds proclamation money clear estate in the same, and have resided within the county in which they claim a vote, for twelve months immediately preceding the election, shall be entitled to vote for representatives in council and assembly; and also, for all other public officers that shall be elected by the people of the county at large."

The objections insisted upon are,

*First.* That it either directly admits, or else leaves doubtful, the right of *women* to vote at elections. *Second.* That it admits to our elections, *aliens*; foreigners and *bondmen*. *(a)* *Third.* That the term of *residence* is too short. *Fourth.* That it places the qualification of a voter, upon the fact of his possessing *fifty pounds clear estate*.

The ill consequences deducible from this analysis of the article, may be referred to, under the separate heads of discussion in the preceding papers. If the objections are well founded, the remedy is practicable: nothing more is required, than to amend the constitution, by varying the prior arrangement in such manner as to obviate its errors.

The last convention of Pennsylvania, have an article in their constitution, defining the *qualification of voters*. And it is remarkable that it avoids, in every particular, the objectionable features in the Jersey regulations on the same point. It runs thus: "In elections by the citizens, every freeman of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election,

1790, the constitution of South-Carolina, revised in 1790, the constitution of New-Hampshire, revised in 1792, the constitution of Georgia, revised in 1795, have each of them adopted the *criterion of taxability*, as most consonant to political justice; and when it is considered too, that this mode not only extends the right of suffrage to all who should enjoy it, but also makes it a man's interest as a citizen, to be on the *tax roll*, I must conceive that the argument for *revision* on this head of the constitution, is not to be answered upon any fair scale of reasoning.

*(a)* I speak here of *servants*, white and black, not of *slaves*, although they certainly fall within the description of "inhabitants," and may be worth fifty pounds.

"shall enjoy the rights of an elector."*(a)* This provision then, confines the right to *citizens*; ours does not. It requires *two years residence* in the state; ours does not. It confers it on *freemen only*; ours does not. It excludes *women*; ours does not. It puts the ability of a voter, upon the fact of paying *tax*; ours does not.

There is an additional *proviso* in the article referred to, from the Pennsylvania constitution, namely, "That the *sons of qualified persons*, between the age of twenty-one and twenty-two years, shall be entitled to vote, although they shall not have paid taxes." This appears to be an equitable provision, in favor of a very respectable and considerable portion of people, who, though arrived at the age of citizenship, are yet not likely to be detached immediately from their parents' family, nor to become fair objects of taxation. Not to deprive them therefore of a voice in the general suffrage after twenty-one, and yet to refrain the right of voting, unless a tax is paid, a year after the expiration of their minority is allowed, during which they are entitled to vote, although no tax is paid; but after twenty-two, payment of tax is an essential condition of the right.

I think, upon due consideration of the subject treated of in several of the foregoing numbers, it must be evident to all impartial men, that the constitution is vastly defective, in the primary object of defining the qualification of electors: I say, *primary* object; for upon the proper adjustment of that franchise, depends in a great measure the purity of elections, the peace, stability, and just ends of a republican constitution. *(b)*

It will be perceived that my general principle is, to extend the rights of suffrage (under certain *other necessary qualifications*, such as residence, &c.) to all who contribute by *taxes*, to the support of government.

It will be found, that next to a proper disposition of checks in the *legislative* branches, the true secret of a republican constitution, lies in conferring on the *electors* the freest forms of *suffrage*, and on the *elect*ed the most efficient powers of *government*.

*(a)* Art. 3, sec. 1, const. of 1790.

*(b)* I could quote many of the most approved writers on government, in support of this opinion; I shall content myself with referring to two only: *Sir William Blackstone*, in his admired commentaries, says, "In a democracy there can be no exercise of sovereignty but by *suffrage*, which is the declaration of the *people's will*. In all democracies, therefore, it is of the utmost importance to regulate by whom, and in what manner, the *suffrages* are to be given: and the Athenians were so justly jealous of this prerogative, that a stranger who interfered in the assemblies of the people, was punished by their laws with death; because such a man was esteemed guilty of *high treason*, by *usurping* those rights of sovereignty to which he had no title:" 1 vol. 170. The author of "*The Spirit of Laws*," the profound *Baron de Montesquieu*, says, "There can be no exercise of sovereignty, but by their