

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1844.

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TWENTY-FOURTH LEGISLATURE.

No. 38.]

[SENATE.

REPORT AND RESOLVES

TO AMEND

THE CONSTITUTION.

[WM. R. SMITH & Co....Printers.]

STATE OF MAINE.

IN SENATE, February 23, 1844.

ORDERED: That 500 copies of the following Report and Resolves
be printed for the use of the Legislature.

JERE HASKELL, *Secretary.*

R E P O R T .

THE committee to which was committed the subject of investigating the subject of the system of plurality elections, and the usages of other States upon the system of elections, have attended to the duty assigned them, and beg leave to submit the following

R E P O R T :

In all popular assemblies or governments, where decisions of questions depend upon an aggregate expression of individual sentiment, made known by ballot or *viva voce*, it is most natural to conclude that a *majority* of those who vote should control.

Where the question at issue admits of but two sides, and a simple expression of yea or nay is all that is required, this mode of settling it is the most just; but in cases where more than two positions can be taken, and a great diversity of sentiment prevails, the determining it by majorities is sometimes impossible, and instances often occur where manifest injustice can be exercised by a few individuals towards a greater number.

In the strict acceptation of the term "majority," as it is employed in an official count of the votes to determine the result of an election, we mean the number which any candidate had over and above one half of the whole number of ballots cast.

Now it not unfrequently happens that, although a greater number of individuals may desire a result, they are nevertheless debarred from effecting it, by a very few, who, at the present day, emphatically

style themselves the "balance of power." For instance, there may be one hundred and two votes thrown; on the majority system, 52 are necessary for a choice. If it be for a candidate to office, A may have 50, B may have 50, and C only 2. Here an hundred men are held in check by *two*, and they can triumphantly say to the mass, you must either give up your own opinions, and belief and preferences, and combine together, or come over to us.

In other instances, where there are several factions, they can bear more tyrannical sway than this, because there is less prospect of a union, than there is where but three divisions exist.

Where there are, we will say, four or five parties—the numerical strength of each may be such, that a perfect union of any two of them cannot prevail, and there never can be a choice until they come over to a third, or a third to them.

Combinations of figures may be formed almost endlessly, to illustrate this. For example, suppose 100 votes are thrown, necessary for a choice, 51—A has 25, B has 15, C has 16, D has 20, E has 24. Now either two of these factions, if united, cannot effect a choice.

The friends of the majority system contend, with some reason, that although a comparatively few may hold the balance of power, and thus stop the whole operations of a community, or government, yet not so great injustice will be done, as is sometimes the case under the plurality system. By "plurality" is meant the *most*, or highest number. One is said to be elected by a plurality of votes, when he comes in by having the highest number of votes of any of the candidates voted for. In the above instance, where A. has 25, B 15, C has 16, D has 20, E has 24—A would be declared elected, although he had only one quarter of all the votes thrown, while the other three quarters are deprived of their candidate, and must submit to the rule of a small fraction of the whole number. Twenty five thus rule seventy five.

These are extreme cases, it is true, but they are such as often happen in popular elections, and it shows that both systems have their evils, which cannot in the nature of things, be remedied. There are two evils, however, attending the majority system, which

do not so often occur in the plurality system. One evil is, that a very small number, as we before stated, may often times hold the balance of power, prevent a choice *in toto*, and thus deprive a much larger number of individuals of their choice, than we believe can possibly be done by the plurality system, for by this a choice is almost *always made*.

The other evil is, that if all parties should adhere perseveringly to their candidates, there never could be a choice, and the time employed in balloting would be thrown away. While, on the plurality system, the chances of effecting a choice would be incomparably greater, and much time thus saved. It is true, that on the latter plan, in cases where two candidates have an equal number of votes, and those two are the highest number, there would be no choice, but the chances for this occurrence, are much fewer than for the other contingency, and this may be obviated by taking these two highest numbers forming a "tie," and carrying them before another tribunal to decide between them—thus, in this instance, for example, should there be 100 votes thrown for Governor—40 of them for A, and 40 of them for B, and 20 for C; there would then be no choice—but A and B might be presented to the House or to the Senate, or to both in joint ballot, or even back again to the people themselves, as the only candidates from which a choice would or must be made, and although the contingency might happen, that a tie might again occur, yet the chances for it are so remote, that it may be considered next to impossible.

In looking over the constitutions of the several States in the Union, we find that the majority system for certain offices has been departed from in a great number of instances, and the plurality system adopted, and we have never heard any complaint in regard to it.

In the election of President and Vice President, the highest honor in our power to bestow, the electors in Maine are chosen by plurality.

The following tabular view will show at a glance where this system obtains, and what offices are filled by this mode of voting.

<i>States.</i>	<i>Officers chosen by plurality.</i>	<i>Remarks.</i>
Connecticut.	Senators.	Legislature chosen every 2 years. { Governor chosen once in 4 years. { Legislature once in two years. { Session held annually. { Governor chosen every 3d year. { Senators chosen every 3d year. { Representatives annually. { Senate every 3 years. { Governor holds office 3 years. { Senate chosen every 3d year. { Governor holds office 2 years. { Senate hold office 4 years. { Representatives hold office 2 yrs. { Session held biennially. { Governor holds office 2 years. { Session biennial. { Elections biennially. { Senate hold office 4 years. { Governor holds office 4 years, and is ineligible to same office for next four years. { Senate hold office 4 years. { Governor holds office 4 years, and is ineligible for next 4 years. { Governor chosen by majority vote in joint ballot of Legisla- ture.
Tennessee.	Governor.	
Michigan.	Governor and Lieut. Gov.	
New York.	Governor and Lieut. Gov.	
Arkansas.	Governor.	
Illinois.	Governor and Lieut. Gov.	
Delaware.	Governor.	
Indiana.	Governor and Lieut. Gov.	
Ohio.	Governor.	
Mississippi.	Governor.	
N. Carolina.	Governor.	
Missouri.	Governor and Lieut. Gov.	
Kentucky.	Governor and Lieut. Gov.	
Virginia.	Senate.	

A constitution has been defined to be "the principles on which a government is formed and conducted."

It has also been remarked that "on the voluntary association of men in sufficient numbers to form a political community, the first step to be taken for their own security and happiness is to agree on the terms on which they are to be united, and to act.

They form a constitution or plan of government suited to their character, their exigencies and their future prospects. They agree that it shall be the supreme rule of obligation among them."

The first compact of the kind, of a genuine republican nature, was drawn up in the cabin of the Mayflower, and subscribed to by the intrepid Puritans, before they had effected a settlement upon the shores of New England*. The principles then and there in-

* The following is a copy of the compact referred to.

In the name of God Amen. We whose names are underwritten, the

culcated have been, as it were, inwoven into the very hearts and souls of the sons of New England. To this veneration of the fundamental principles of republican government thus established, is to be attributed our regard for the laws and good order, and our acquiescence to the operations of the statute, while in existence, even when, in many instances, it is productive of hardships that no arbitrary physical power could enforce. This deep and reverent feeling for the constitution that has been founded on equal rights, and received the sanction of the people, is the palladium of our liberties and the corner stone of our government, and should not be trifled with by often proposing changes for light and trivial causes. For, although it be a duty to make it perfect, yet its stability is a paramount and necessary requisite to ensure happiness to the peo-

loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith, &c. having undertaken for the glory of God and advancement of the christian faith and honor of our king and country, a voyage to plant the first colony in the Northern parts of Virginia, do by these presents, solemnly and mutually in the presence of God and of one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof, do enact, constitute and frame such just and equal laws and ordinances, acts, constitutions and offices from time to time as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due subjection and obedience.

In witness whereof, &c. &c.

Baylies, in commenting upon this compact observes: "This brief, and comprehensive and simple instrument established a most important principle, which is the foundation of all the democratic institutions in America, and is the basis of the Republic.

Many philosophers have since appeared, who have in labored treatises, endeavored to prove the doctrine that the rights of man are inalienable, and nations have bled to defend and enforce them, yet in this dark age, the age of despotism and superstition, when no tongue dared to assert and no pen to write this bold and novel doctrine, which was then as much at defiance with common opinion as with actual power, of which the monarch was held to be the sole fountain, and the theory was universal, that all popular rights were granted by the crown, in this remote wilderness, amongst a small and unknown band of wandering outcasts, the principle *tha. a majority of the people shall govern, was first conceived and was first practically exemplified.*

[Baylies, vol I, p. 89.

ple, and render it productive of the "greatest good to the greatest number."

Impressed with these views of the subject, your committee would recommend caution and circumspection in our action. Considering the great regard which the people have for the majority principle, we would say, that although we find many States enumerated that have adopted the plurality system in the choice of Governors, yet very few, if any, have adopted it in the choice of Representatives to their respective Legislatures.

The object of a change, in our State, from the majority system to the plurality, in the choice of Governor and Senators, would not be productive of any advantage. The desire for this change arises from a wish to do away the necessity for so many meetings and trials for election, as has, of late years, been held, in accordance with the present provisions of the constitution and law. In case of Governor and Senators, the constitution provides that but one popular election should be held, inasmuch that, in case of no choice, the Legislature are directed to make it according to prescribed rules.

In regard to the choice of Representatives, your committee have come to the conclusion that facts warrant some change.

We have all of us seen that such has been the state of political parties in very many districts, that it is often times difficult, if not impossible, to effect a choice.

Some districts met last year, thirteen or fourteen times, without effecting a choice, and during the present winter, some districts are not yet represented, although six successive meetings have been held for the purpose of effecting a choice. This state of things certainly demands a remedy.

We would therefore beg leave to report the accompanying Resolve, providing that in case of no choice of Representative on the first trial by a majority, a plurality shall elect on the second meeting held for the purpose of choosing said officer.

Upon the other question submitted to us, viz: the change in regard to holding the sessions of the Legislature, from an annual one to biennial, being one of mere economy, involving no fundamental or essential principle of the modes of election, or procedure after

election, we recommend no action, it being but a few years since the people acted upon and negated it.

All of which is respectfully submitted.

SOLOMON BROOKS,	}	<i>Senate.</i>
JOHN ANDERSON,		
JOSEPH BROWN,		
E. HOLMES,		
M. B. TOWNSEND,		
WM. C. ALLEN,	}	<i>House.</i>
FREDERIC FRYE,		
WILLIAM PAINE,		
WILLIAM NOYES,		
JAMES M. LEACH,		
PAUL PEARSON,		
JOHN KING,		

STATE OF MAINE.

RESOLVES to amend the Constitution relative to the election of Representatives to the Legislature by plurality of votes.

RESOLVED, *by the Senate and House of Representatives in Legislature assembled*, That the fifth section of the first part of article fourth of the Constitution, which provides that a majority of votes shall be necessary to elect a Representative to the Legislature, shall be so altered and amended by striking out the words—"at every future meeting until an election shall have been effected" and inserting after the words—"same proceedings shall be had," the following words, viz:—**WHEN THE PERSON WHO SHALL HAVE THE HIGHEST NUMBER OF VOTES SHALL BE DECLARED ELECTED, AND THE ALDERMEN OF CITIES, THE SELECTMEN OF TOWNS NOT CLASSED, OR THE SELECTMEN OF TOWNS AND ASSESSORS OF PLANTATIONS CLASSED, SHALL FORM A LIST OF PERSONS VOTED FOR, WITH THE NUMBER OF VOTES OF EACH PERSON AGAINST HIS NAME, CERTIFIED IN THE WAY AND MANNER HERETOFORE PRESCRIBED, AND HAND IT TO THE PER-**

20 SON SO ELECTED WITHIN TEN DAYS NEXT AFTER
21 SUCH ELECTION. AND IN CASE NO CHOICE IS
22 EFFECTED, THE SAME PROCEEDINGS IN RELATION TO
23 THE TIME OF HOLDING FUTURE MEETINGS AS IS PRO-
24 VIDED BY LAW SHALL BE HAD UNTIL A PLURALITY OF
25 VOTES SHALL ELECT. *Provided*, that a majority of the
26 inhabitants of this State, who are constitutionally
27 entitled to vote for State officers, shall at the annual
28 meetings to be held on the second Monday of Sep-
29 tember next decide in favor of such amendment.

RESOLVED, That it shall be the duty of the alder-
2 men of cities, selectmen of towns and assessors of
3 plantations, in this State, to insert an article in their
4 warrants respectively, by which the annual meetings
5 in September next shall be notified and called, to re-
6 quire the inhabitants constitutionally qualified to vote
7 as aforesaid, to give in their votes on the question,
8 whether the proposed amendment to the constitution
9 shall be made—those in favor of amending voting
10 YEA, those opposed, voting NAY. And it shall be
11 the duty of the said aldermen, selectmen and asses-
12 sors to receive the votes of said inhabitants in such
13 manner as a majority thereof shall direct, and it shall
14 be the duty of the clerks of the said cities, towns and
15 plantations respectively, to make a true record of the
16 votes so received and counted, and to make a fair
17 copy of the same, which shall be duly attested by the
18 said aldermen and clerks of cities, and selectmen and
19 clerks of towns, and the assessors and clerks of plan-

20 tations, and sealed up in open town meeting, and the
21 clerks of the several cities, towns and plantations res-
22 pectively, shall cause the same to be delivered into the
23 office of the secretary of State twenty days at least
24 before the first Wednesday of January in the year of
25 our Lord one thousand eight hundred and forty five.
26 And the secretary of State shall lay the same before
27 the legislature; and if it shall be found that a majority
28 of the votes so returned shall be in favor of the amend-
29 ment proposed as aforesaid, said amendment shall
30 then be considered as adopted, and shall form a part
31 of the constitution of this State.