Erskine May, Chapter VI, pp. 362-375

Election Petitions: Places and Pensions

Trial of Election Petitions

Scandalous as were the electoral abuses which law and custom formerly permitted, the conduct of the House of Commons, in the trial of election petitions, was more scandalous still. Boroughs were bought and sold,—electors were notoriously bribed by wholesale and retail,—returning officers were partial and corrupt. But, in defiance of all justice and decency, the [363] majority of the House of Commons connived at these practices, when committed by their own party; and only condemned them, when their political opponents were put upon their trial. *Dat veniam corvis,—vexat censura columbas.* The Commons having, for the sake of their own independence, insisted upon an exclusive jurisdiction in matters of election, were not ashamed to prostitute it to party. They were charged with a grave trust, and abused it. They assumed a judicial office, and dishonoured it. This discreditable perversion of justice had grown up with those electoral abuses, which an honest judicature would have tended to correct; and reached its greatest excesses in the reigns of George II. and George III.

Originally, controverted elections had been tried by select committees specially nominated, and afterwards by the Committee of Privileges and Elections. This latter committee had been nominated by the House itself, being composed of Privy Councillors and eminent lawyers, well qualified by their learning for the judicial inquiries entrusted to them. In 1603, it comprised the names of Sir Francis Bacon and Sir Thomas Fleming; in 1623, the names of Sir Edward Coke, Sir Heneage Finch, Mr. Pym, Mr. Glanville, Sir Roger North, and Mr. Selden. The committee was then confined to the members nominated by the House itself: but being afterwards enlarged by the introduction of all Privy Councillors [364] and Gentlemen of the Long Robe, it became, after 1672, an open committee, in which all who came were allowed to have voices. This committee was henceforth exposed to all the evils of large and fluctuating numbers, and an irresponsible constitution; and at length, in the time of Mr. Speaker Onslow, a hearing at the bar of the House itself, which in special cases had already been occasionally resorted to,—was deemed preferable to the less public and responsible judicature of the committee. Here, however, the partiality and injustice of the judges were soon notorious. The merits of the election, on which they affected to adjudicate, were little regarded. To use the words of Mr. Grenville, 'The court was thin to hear, and full to judge.'(1) Parties tried their strength,—the friends of rival candidates canvassed and manoeuvred,—and seats corruptly gained, were as corruptly protected, or voted away. The right of election was wrested from the voters, and usurped by the elected body, who thus exercised a vicious self-election. The ministers of the day, when they commanded a majority, sustained their own friends; and brought all their forces to bear against the members of the Opposition. This flagitious custom formed part of the parliamentary organisation, by which the influence of the crown and its ministers was maintained. It was not until a government was falling, that its friends were in danger of losing their seats. The struggle between Sir Robert Walpole and his enemies was determined in 1741,—[365] not upon any question of public policy,—but by the defeat of the minister on the Chippenham Election Petition.

The Grenville Act

To remedy these evils, and remove the opprobrium of notorious injustice from the House of

Commons, Mr. Grenville introduced, in 1770 his celebrated measure,—since known as the Grenville Act, and a landmark in the Parliamentary history. He proposed to transfer the judicature, in election cases, from the House itself, to a committee of thirteen members, selected by the sitting members and petitioners from a list of forty-nine, chosen by ballot,—to whom each party should add a nominee, to advocate their respective interests. This tribunal, constituted by Act of Parliament, was to decide, without appeal, the merits of every controverted election: being, in fact, a court independent of the House, though composed of its own members. The main objection urged against this measure was that the privileges of the House were compromised, and its discretion limited, by the binding obligations of a statute. It is certain that much might have been done by the authority of the House itself, which was henceforth regulated by a statute,—the only legal power required, being that of administering an oath. But Mr. Grenville distrusted the House of Commons, and saw no security for the permanence, or honest trial of the new system, except in a law which they could not set aside.

This Act was at first limited to one year; and Horace Walpole insinuates that Mr. Grenville, when [366] in opposition, was willing 'to give a sore wound to the influence of the crown:' but hoping to return to office, took care not to weaken his own future power as a minister. But the suggestion for making the Act temporary proceeded from Lord Clare, and not from Mr. Grenville, who was honestly persuaded that the 'system must end in the ruin of public liberty, if not checked.' At this time his health and spirits were failing; and he died a few months after the passing of his measure.

The Grenville Act was continued from time to time; and in 1774, Sir Edwin Sandys brought in a bill to make it perpetual. It encountered a strong opposition, especially from Mr. Fox, who dreaded the surrender of the privileges of the House: but the successful operation of the Act, in the five cases which had already been tried under its provisions, was so generally acknowledged, that the bill was passed by a large majority. 'This happy event,' wrote Lord Chatham, 'is a dawn of better times; it is the last prop of Parliament: should it be lost in its passage, the legislature will fall into incurable contempt, and detestation of the nation.' 'The Act does honour to the statute-book, and will endear for ever the memory of the framer.'

This Act was passed on the eve of another general election, which does not appear—so far as evidence [367] is accessible—to have been marked by so much corruption as that of 1768. But the value of boroughs had certainly not declined in the market, as Gatton was sold for £75,000.

Imperfect Success of this Act

For a time this measure undoubtedly introduced a marked improvement in the judicature of the House of Commons. The disruption of the usual party combinations, at that period, was favourable to its success; and the exposure of former abuses discouraged their immediate renewal, in another form. But too soon it became evident, that corruption and party spirit had not been overcome. Crowds now attended the ballot, as they had previously come to the vote, —not to secure justice, but to aid their own political friends. The party which attended in the greatest force, was likely to have the numerical majority of names drawn for the committee. From this list each side proceeded to strike thirteen of its political opponents; and the strongest thus secured a preponderance on the committee. Nor was this all. The ablest men, being most feared by their opponents, were almost invariably struck off,—a process familiarly known as 'knocking the brains out of the committee;' and thus the committee became at once partial and incompetent. The members of the committee were sworn to do justice between the rival candidates; yet the circumstances under which they were notoriously chosen, their own party bias, and a lax conventional morality,—favoured by the obscurity and [368] inconsistencies of the election law, and by the conflicting decisions of incapable tribunals,—led to this equivocal result:—that the right was generally discovered to be on the side of the

candidate who professed the same political opinions as the majority of the committee. A Whig candidate had scant justice from a Tory committee: a Tory candidate pleaded in vain before a Whig committee.

By these means, the majority of the House continued,—with less directness and certainty, and perhaps with less open scandal,—to nominate their own members, as they had done before the Grenville Act. And for half a century, this system, with slight variations of procedure, was suffered to prevail. In 1839, however, the ballot was at length superseded by Sir Robert Peel's Act:(2) committees were reduced to six members, and nominated by an impartial body,—the general committee of elections. The same principle of selection was adhered to in later Acts, with additional securities for impartiality; and the committee was finally reduced to five members.(3) The evil was thus greatly diminished: but still the sinister influence of party was not wholly overcome. In the nomination of election committees, one party or the other necessarily had a majority of one; and though these tribunals undoubtedly became far more able and judicial, their constitution and proceedings [369] too often exposed them to imputations of political bias.(4)

Corruption of Members

Such being the vices and defects of the electoral system,—what were their results upon the House of Commons? Representatives holding their seats by a general system of corruption, could scarcely fail to be themselves corrupt. What they had bought, they were but too ready to sell. And how glittering the prizes offered as the price of their services! Peerages, baronetcies, and other titles of honour,—patronage and court favour for the rich,—places, pensions, and bribes for the needy. All that the government had to bestow, they could command. The rapid increase of honours(5) attests the liberality with which political services were rewarded; while contemporary memoirs and correspondence disclose the arts by which many a peerage has been won.

Places and Pensions

From the period of the Revolution, places and pensions were regarded as the price of political dependence; and it has since been the steady policy of Parliament to restrain the number of placemen entitled to sit in the House of Commons. To William III. fell the task of first working out the difficult problem of a constitutional government; and among his expedients for controlling his Parliaments, was that of a multiplication of offices. The country party at once perceived the danger with which their newly-bought [370] liberties were threatened from this cause, and endeavoured to avert it. In 1693, the Commons passed a bill to prohibit all members hereafter chosen from accepting any office under the crown: but the Lords rejected it. In the following year it was renewed, and agreed to by both Houses; when the king refused his assent to it. Later in his reign, however, this principle of disqualification was commenced, —the Commissioners of Revenue Boards being the first to whom it was applied.(6) And at last, in 1700, it was enacted that after the accession of the House of Hanover, 'no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons.'(7) This too stringent provision, however, was repealed,—before it came into operation,—early in the reign of Anne.(8) It was, indeed, incompatible with the working of constitutional government; and if practically enforced, would have brought Parliament into hopeless conflict with the executive.

By the Act of Settlement of that reign, other restrictions were introduced, far better adapted to correct the evils of corrupt influence. The holder of every new office created after the 25th of October, 1705, and every one enjoying a pension from the crown, during pleasure, was incapacitated from sitting in Parliament; and members of the House of Commons accepting [371] any old office from the crown, were obliged to vacate their seats, but were capable of

re-election.(9) It was the object of this latter provision to submit the acceptance of office, by a representative, to the approval of his constituents: a principle which, notwithstanding several attempts to modify it,—has since been resolutely maintained by the legislature.(10) Restrictions were also imposed upon the multiplication of commissioners.(11)

Disqualification Acts

At the commencement of the following reign, incapacity was extended to pensioners for terms of years;(12) but as many pensions were then secretly granted, the law could not be put in force. In the reign of George II. several attempts were made to enforce it: but they all miscarried.(13) Lord Halifax, in debating one of these bills, said that secret pensions were the worst form of bribery: 'A bribe is given for a particular job: a pension is a constant, continual bribe.' Early in the reign of George III. Mr. Rose Fuller—who had been a stanch Whig,—was bought off by a secret pension of £500, which he enjoyed for many years. The cause of his apostasy was not discovered until after his death.

[372] Still the policy of restricting the number of offices capable of being held by members of the House of Commons, was steadily pursued. In 1742, the Place Bill, which had been thrice rejected by the Commons, and twice by the Lords, at length received the Royal assent.(14) It was stated in a Lords' protest, that two hundred appointments were then distributed amongst the members of the House of Commons. This Act added many offices to the list of disqualifications, but chiefly those of clerks and other subordinate officers of the public departments.

By these measures the excessive multiplication of offices had been restrained: but in the reign of George III. their number was still very considerable; and they were used,—almost without disguise,—as the means of obtaining parliamentary support. Horace Walpole has preserved a good example of the unblushing manner in which bargains were made for the votes of members, in exchange for offices. Mr. Grenville wrote him a letter, proposing to appoint his nephew, Lord Orford, to the rangership of St. James's and Hyde Parks. He said, 'If he does choose it, I doubt not of his and his friend Boone's hearty assistance, and believe I shall see you, too, much oftener in the House of Commons. This is offering you a bribe, but 'tis such a one as one honest good-natured man may, without offence, offer to another.' As Walpole did not receive this communication with much warmth, and [373] declined any participation in the bargain, payments due to him on account of his patent offices in the Exchequer, were stopped at the Treasury, for several months. The Whig statesmen of this period, who were striving to reduce the influence of the crown, were keenly alive to the means of corruption which a multiplicity of places still afforded. 'The great number of offices,' said Lord Rockingham, 'of more or less emolument, which are now tenable by parties sitting in Parliament, really operate like prizes in a lottery. An interested man purchases a seat, upon the same principle as a person buys a lottery ticket. The value of the ticket depends upon the quantum of prizes in the wheel.'(15) It was to remove this evil, even more than for the sake of pecuniary saving, that Mr. Burke, in 1780, proposed to abolish thirty-nine offices held by members of the House of Commons, and eleven held by peers. And by Lord Rockingham's act for the regulation of the civil list expenditure in 1782, several offices connected with the government and royal household were suppressed, which had generally been held by members of Parliament; and secret pensions were discontinued.(16)

In 1793, the Parliament of Ireland adopted the principles of the English act of Anne, and disqualified the holders of all offices under the crown or lord-lieutenant, created after that time. On the union with Ireland, all the [374] disqualifications for the Irish Parliament were extended to the Parliament of the United Kingdom; and several new disqualifications were created, in reference to other Irish offices.(17)

Results of this Policy

The general scheme of official disfranchisement was now complete: but the jealousy of Parliament was still shown by the disqualification of new officers appointed by Acts of Parliament. So constant has been this policy, that upwards of one hundred statutes, still in force, contain clauses of disqualification; and many similar statutes have been passed, which have since expired, or have been repealed.

The result of this vigilant jealousy has been a great reduction of the number of placemen sitting in the House of Commons. In the first Parliament of George I., there had been two hundred and seventy-one members holding offices, pensions, and sinecures. In the first Parliament of George II. there were two hundred and fifty-seven: in the first Parliament of George IV. there were but eighty nine, exclusive of officers in the army and navy. The number of placemen, sitting in the House of Commons, has been further reduced by the abolition and consolidation of offices; and in 1823, there were only sixty members holding civil offices and pensions, and eighty-three holding naval and military commissions.

[375] The policy of disqualification has been maintained to the present time. The English judges had been excluded from the House of Commons, by the law of Parliament. In the interests of justice, as well as on grounds of constitutional policy, this exclusion was extended to their brethren of the Scottish bench, in the reign of George II.,(18) and to the judges of the courts in Ireland, in the reign of George IV.(19) In 1840, the same principle was applied to the Judge of the Admiralty Court.(20) All the new judges in equity were disqualified by the acts under which they were constituted. The solitary judge still enjoying the capacity of sitting in the House of Commons, is the Master of the Rolls. In 1863, a bill was introduced to withdraw this exceptional privilege: but it was defeated by a masterly speech of Mr. Macaulay.(21) These various disqualifications were deemed necessary for securing the independence of Parliament; and their policy is still recognised, when the dangers they were designed to avert, are less to be apprehended. It is true that independence has been purchased at the cost of much intellectual eminence, which the House of Commons could ill afford to spare: but this sacrifice was due to constitutional freedom, and it has been wisely made.

Footnotes.

1. This had been previously said of the House of Lords, by the Duke of Argyll.
2. 2 and 3 Vict. c. 38; Hans. Deb., 3rd Ser., xlv. 379; Ibid., xlvii. 576, etc.
3. 4 and 5 Vict c. 58, and 11 and 12 Vict. c. 98; Report on Controverted Elections, 1844, No. 373.
4. At length, in 1868, the trial of controverted elections was transferred to judges of the superior courts. 31 and 32 Vict. c. 125.
5. See supra, p. 277.
6. 4 and 5 Will. and Mary, c. 21 (Stamps); 11 and 12 Will. III. c. 2 (Excise).
7. 12 and 13 Will. III. c. 2, s. 3.
8. 4 Anne, c. 8, s. 25.
9. 6 Anne, c. 7.
10. A modification of this law, however, was made by the Reform Act of 1867, in favour of members who may be removed from one office under the Crown to another.—30 and 31 Vict., c. 102, s. 52, and sch. H.
11. 6 Anne, c. 7.
12. 1 Geo. I. c. 56.
13. No less than six bills were passed by the Commons, and rejected by the Lords; Parl. Hist., viii. 789; Ibid., ix. 369; Ibid., xi. 510; Ibid., xii. 591
14. 15 Geo. II. c.22.
15. Rockingham Mem., ii. 339.

16. 22 Geo. III. c. 82; Wraxall's Mem., iii. 44, 50, 54. See also supra, 256.
17. 41 Geo. III. c. 52.
18. 7 Geo. II. c. 16.
19. 1 and 2 Geo. IV c. 44.
20. Much to the personal regret of all who were acquainted with that eminent man, Dr. Lushington, who lost the seat in which he had so long distinguished himself.
21. Judges' Exclusion Bill, June 1st, 1853; Hans. Deb., 3rd Ser., cxxvii. 996.

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