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WORKS

OF

DANIEL WEBSTER.

VOLUME III.

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CHARLES C. LITTLE AND JAMES BROWN.

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QUALIFICATIONS FOR OFFICE.*

IN consequence of the separation of what is now the State of Maine from Massachusetts, in the year 1820, it became necessary to make some change in the constitution of the Commonwealth. The opportunity was thought a favorable one for a general revision of that instrument, which had undergone no amendment since its adoption in 1780. Delegates were accordingly chosen by the people to meet in convention for this purpose, the several towns and districts in the Commonwealth (there were then no cities) being allowed as many delegates as they were respectively entitled to send members to the House of Representatives of the State. Mr. Webster was among the delegates chosen by the town of Boston and took an active and distinguished part in the business of the convention, both in committee-room and in debate.

As soon as the body was organized by the choice of its officers, the chief provisions of the existing constitution were referred to select committees, instructed to consider and report whether any, and if any, what amendments were desirable to be made in them. The subject of the official oaths and subscriptions required by the sixth chapter of the second part of the constitution was referred to a committee for this purpose, of which Mr. Webster was chairman. A report was made by this committee, recommending that, in lieu of all oaths and subscriptions then required, a simple oath of allegiance to the Commonwealth, together with the oath of office, should be taken by all persons chosen or appointed to office. The most important feature of these proposed changes was, that a profession of belief in the Christian religion was no longer required as a qualification for office.

The resolutions reported by this committee became the subject of a discussion, in the course of which, on the 4th of December, 1820, Mr. Webster made the following remarks:—

* Remarks, made on the 4th of December, 1820, in the Convention of Delegates chosen to revise the Constitution of Massachusetts, upon the Resolution relating to Oaths of Office.

It is obvious that the principal alteration proposed by the first resolution is the omission of the declaration of belief in the Christian religion as a qualification for office, in the cases of the governor, lieutenant-governor, councillors, and members of the legislature. I shall content myself on this occasion with stating, shortly and generally, the sentiments of the select committee, as I understand them, on the subject of this resolution.

Two questions naturally present themselves. In the first place, Have the people a right, if in their judgment the security of their government and its due administration demand it, to require a declaration of belief in the Christian religion as a qualification or condition of office? On this question, a majority of the committee held a decided opinion. They thought the people had such a right. By the fundamental principle of popular and elective governments, all office is in the free gift of the people. They may grant or they may withhold it at pleasure; and if it be for them, and them only, to decide whether they will grant office, it is for them to decide, also, on what terms and what conditions they will grant it. Nothing is more unfounded than the notion that any man has a *right* to an office. This must depend on the choice of others, and consequently upon the opinions of others, in relation to his fitness and qualification for office. No man can be said to have a right to that which others may withhold from him at pleasure. There are certain rights, no doubt, which the whole people, or the government as representing the whole people, owe to each individual in return for that obedience and personal service, and those proportionate contributions to the public burdens, which each individual owes to the government. These rights are stated with sufficient accuracy, in the tenth article of the Bill of Rights, in this constitution. "Each individual in society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to the standing laws." Here is no right of *office* enumerated; no right of governing others, or of bearing rule in the State. All bestowment of office remaining in the discretion of the people, they have of course a right to regulate it by any rules which they may deem expedient. Hence the people, by their constitution, prescribe certain qualifications for office, respecting age, property, residence, and taxation. But if office, merely as such, were a *right* which each individual under the social compact

was entitled to claim, all these qualifications would be excluded. Acknowledged rights are not subject, and ought not to be subject, to any such limitation. The right of being protected in life, liberty, and estate is due to all, and cannot be justly denied to any, whatever be their age, property, or residence in the State. These qualifications, then, can only be made requisite as conditions for office, on the ground that *office* is not what any man can demand as matter of right, but rests in the confidence and good-will of those who are to bestow it. In short, it seems to me too plain to be questioned, that the right of office is a matter of discretion, and option, and can never be claimed by any man on the ground of obligation. It would seem to follow, then, that those who confer office may annex any such conditions to it as they think proper. If they prefer one man to another, they may act on that preference. If they regard certain personal qualifications, they may act accordingly, and ground of complaint is given to nobody. Between two candidates, otherwise equally qualified, the people at an election may decide in favor of one because he is a Christian, and against the other because he is not. They may repeat this preference at the next election, on the same ground, and may continue it from year to year.

Now, if the people may, without injustice, act upon this preference, and from a sole regard to this qualification, and refuse in any instance to depart from it, they have an equally clear right to prescribe this qualification beforehand, as a rule for their future government. If they may do it, they may agree to do it. If they deem it necessary, they may so say, beforehand. If the public will may require this qualification at every election as it occurs, the public will may declare itself beforehand, and make such qualification a standing requisite. That cannot be an unjust rule, the compliance with which, in every case, would be right. This qualification has nothing to do with any man's conscience. If he dislike the condition, he may decline the office, in like manner as if he dislike the salary, the rank, or any thing else which the law attaches to it.

But however clear the right may be (and I can hardly suppose any gentleman will dispute it), the *expediency* of retaining the declaration is a more difficult question. It is said not to be necessary, because in this Commonwealth ninety-nine out of

every hundred of the inhabitants profess to believe in the Christian religion. It is sufficiently certain, therefore, that persons of this description, and none others, will ordinarily be chosen to places of public trust. There is as much security, it is said, on this subject, as the necessity of the case requires. And as there is a sort of opprobrium incident to this qualification, — a marking out, for observation and censorious remark, of a single individual, or a very few individuals, who may not be able to make the declaration, — it is an act, if not of injustice, yet of unkindness, and of unnecessary rigor, to call on such individuals to make the declaration, and to exclude them from office if they refuse to do so.

There is also another class of objections, which have been stated. It has been said, that there are many very devout and serious persons, persons who esteem the Christian religion to be above all price, to whom, nevertheless, the terms of this declaration seem somewhat too strong and intense. They seem, to these persons, to require the declaration of that *faith* which is deemed essential to personal salvation; and therefore not at all fit to be adopted as a declaration of belief in Christianity, in a more popular and general sense. It certainly appears to me, that this is a mistaken interpretation of the terms; that they imply only a general assent to the truth of the Christian revelation, and, at most, to the supernatural occurrences which establish its authenticity. There may, however, and there appears to be, *conscience* in this objection; and all conscience ought to be respected. I was not aware, before I attended the discussions in the committee, of the extent to which this objection prevailed.

There is one other consideration to which I will allude, although it was not urged in committee. It is this. This qualification is made applicable only to the executive and the members of the legislature. It would not be easy, perhaps, to say why it should not be extended to the judiciary, if it were thought necessary for any office. There can be no office in which the sense of religious responsibility is more necessary than in that of a judge; especially of those judges who pass, in the last resort, on the lives, liberty, and property of every man. There may be among legislators strong passions and bad passions. There may be party heats and personal bitterness. But legislation is

in its nature general: laws usually affect the whole society; and if mischievous or unjust, the whole society is alarmed, and seeks their repeal. The judiciary power, on the other hand, acts directly on individuals. The injured may suffer, without sympathy or the hope of redress. The last hope of the innocent, under accusation and in distress, is in the integrity of his judges. If this fail, all fails; and there is no remedy, on this side the bar of Heaven. Of all places, therefore, there is none which so imperatively demands that he who occupies it should be under the fear of God, and above all other fear, as the situation of a judge. For these reasons, perhaps, it might be thought that the constitution has not gone far enough, if the provisions already in it were deemed necessary to the public security.

I believe I have stated the substance of the reasons which appeared to have weight with the committee. For my own part, finding this declaration in the constitution, and hearing of no practical evil resulting from it, I should have been willing to retain it, unless considerable objection had been expressed to it. If others were satisfied with it, I should be. I do not consider it, however, essential to retain it, as there is another part of the constitution which recognizes, in the fullest manner, the benefits which civil society derives from those Christian institutions which cherish piety, morality, and religion. I am clearly of opinion, that we should not strike out of the constitution all recognition of the Christian religion. I am desirous, in so solemn a transaction as the establishment of a constitution, that we should keep in it an expression of our respect and attachment to Christianity; — not, indeed, to any of its peculiar forms, but to its general principles.