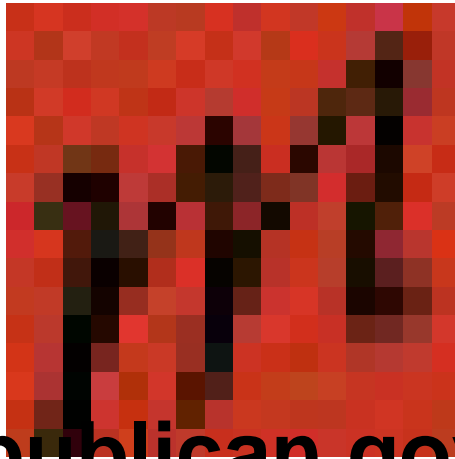


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# II.2 On republican government, and laws relative to democracy

- The Spirit of Law - Book II. On laws which derive directly from the nature of the government -

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## II.2 On republican government, and laws relative to democracy

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When, in a republic, the people as a whole holds the sovereign authority, it is a *democracy*. When the sovereign authority is in the hands of a portion of the people, that is called an *aristocracy*.

The people, in a democracy, are in certain respects the monarch, and in other respects they are the subjects.

They can be the monarch only through their ballots, which are their will. The will of the sovereign is the sovereign itself. The laws which establish the right of suffrage are therefore fundamental in this government. Indeed it is as important to specify how, by whom, to whom, and about what, votes are to be granted, as it is in a monarchy to know who is the monarch, and in what manner he is to govern.

Libanius [1] says that "in Athens an outsider who attended the assembly of the people was punished by death." That is because such a man was usurping the right of sovereignty.

It is essential to fix the number of the citizens who are to constitute the assemblies ; otherwise one could be unsure whether the people have spoken, or only a portion of the people. In Lacedæmon ten thousand citizens were required. In Rome, born small and fated for grandeur ; in Rome, destined to suffer all the vicissitudes of fortune ; in Rome, where sometimes almost all the citizens were outside its walls, at other times all of Italy and part of the world within its walls, this number had not been fixed, [2] and that was one of the main causes of her ruin.

The people that holds the supreme authority must itself do everything it can do well, and what it cannot do well it must do through its ministers.

Its ministers are not its own unless it names them : it is therefore a fundamental maxim of this government that the people names its own ministers, in other words its magistrates.

The people, like monarchs, and even more than they, needs to be led by a council or senate. But for there to be confidence, the people must elect the members, either by choosing them directly, as in Athens, or through some magistrate which they have instituted to elect them, as was practiced in Rome in some instances.

The people are admirable for choosing those to whom they must entrust some part of their authority. They have only to judge solely by things they cannot fail to know and facts that are palpable. They know very well that a man has often been to war, that in it he has had such and such accomplishments : they are therefore quite capable of electing a general. They know that a judge is devoted, that many leave his court satisfied with him, that he has not been convicted of corruption : this is enough for them to elect a prætor. They have been impressed by a citizen's splendor or wealth, which sufficiently enables them to choose a councilor. All these things are facts which they learn better in the public square than a monarch does in his palace. But will they be capable of conducting a piece of business, of examining the sites, the occasions, and the moments, and taking advantage of them ? No, that they cannot do.

If we could doubt the people's natural capacity for discerning merit, we have only to look at the continual succession of remarkable choices made by the Athenians and the Romans, which we will doubtless not ascribe to chance.

We know that in Rome, although the people had accorded themselves the right to raise plebeians to public office, they could not bring themselves to elect them ; and that in Athens, although, by the law of Aristides, magistrates could be drawn from all classes, it never occurred, says Xenophon, [3] that the populace called on the ones who could affect their welfare or their glory.

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As most citizens who have enough competence to elect have too little to be elected, in the same way the people, who are capable enough of overseeing management by other people, are not themselves qualified to manage.

Business must be done, and at a certain pace that is neither too slow nor too fast. But the people always take too much action or too little. Sometimes with a hundred thousand hands they upset everything ; sometimes with a hundred thousand feet they move no faster than insects.

In the popular state the people are divided into certain classes. It is in the manner of making this division that great legislators have excelled, and on it the duration of the democracy and its prosperity have always depended.

Servius Tullius, in the composition of his classes, followed the spirit of aristocracy. We learn from Livy [4] and Dionysius of Halicarnassus [5] how he put the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into one hundred ninety-three centuriæ, which made up six classes ; and placing the wealthy, but a smaller number of them, into the first centuriæ, and the less wealthy, but in greater number, into the following ones, he cast the whole mass of indigents into the last one ; and as each centuria had but one vote, [6] it was means and wealth that conferred suffrage, rather than persons.

Solon divided the people of Athens into four classes. Guided by the spirit of democracy, he did not make them to determine who should elect, but who could be elected ; and leaving to each citizen the right of election, he wanted [7] judges to be electable from each of these four classes, but magistrates to be taken only from the first three, where the affluent citizens were to be found.

As the division of those who are entitled to vote is, in the republic, a fundamental law, the manner of conferring it is another fundamental law.

Suffrage by *lot* is in the nature of democracy ; suffrage by *choice* is in the nature of aristocracy.

Lots are a method of election that aggrieves no one ; it leaves each citizen with a reasonable expectation of serving his country.

But as it is defective in itself, it is in regulating and amending it that great legislators have outdone themselves.

In Athens, Solon established that all military functions would be named by choice, and that senators and judges would be elected by lot.

He wanted the civil magistracies which entail great expense to be assigned by choice, and the others assigned by lot.

But as a corrective to chance he decreed that the election could be made only among those who were candidates ; that the man elected would be examined by judges, [8] and that anyone could object that he was unworthy [9] : it all depended on chance and choice at the same time. When a man's term of magistracy was over, he had to undergo another judgment on the manner in which he had conducted himself. Unqualified men must have been quite reluctant to put their names into the drawing.

The law that specifies the manner of casting votes is another fundamental law in democracy. It is a great question whether voting should be public or secret. Cicero [10] writes that the laws [11] that made it secret in the last phases of the Roman republic were one of the major causes of its fall. As this practice varies in different republics, here is, I

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believe, the way we should consider the matter.

When the people cast their votes, they should no doubt be public [12] ; and this should be regarded as a fundamental law of democracy. The populace needs to be guided by the principal citizens and contained by the gravity of certain personalities. Thus, by making the voting secret in the Roman republic they destroyed everything ; it was no longer possible to guide a populace that was headed toward ruin. But when, in an aristocracy, the body of nobles casts its votes, [13] or in a democracy the senate, [14] as there the only point is to avoid intrigues, the votes cannot be too secret.

Intrigue is dangerous in a senate ; it is dangerous in a body of nobles ; it is not dangerous among the people, whose nature it is to act on impulse. In states where the people have no part in the government, they will get worked up for an actor as they would have for causes. It is a republic's misfortune when there are no more intrigues, and that happens when the people have been corrupted by money ; they become dispassionate, enamored of money, but no longer of causes : unconcerned for the government and for what it is proposing, they tranquilly await their remuneration.

It is again a fundamental law of democracy that the people alone should make laws ; yet there are a thousand situations where the senate must be able to make decisions ; it is even often appropriate to test a law before establishing it. The constitutions of Rome and Athens were most wise. The senate's decrees [15] had force of law for one year, but became permanent only by the will of the people.

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[1] *Declamations*, 17 and 28.

[2] See *Considerations on the Causes of the Greatness of the Romans and of their Decline*, Paris, 1748, ch. ix.

[3] [Pages 691](#) and 692, Wechelius edition of 1596. [*The Athenian Republic*, [Catalogue, no. 2805](#)]

[4] Book I.

[5] Book IV, arts. 15 and following.

[6] For the way this spirit of Servius Tullius was preserved in the republic, see *Considerations on the Causes of the Greatness of the Romans and of their Decline*, ch. ix.

[7] Dionysius of Halicarnassus, *Isocrates*, vol. 2, p. 97, Wechelius ed. [[Catalogue no. 2831](#)] ; [Julius] Pollux [[Catalogue no. 2346](#)], book VIII, ch. x, art. 130.

[8] See the oration of Demosthenes, *De falsa legatione* ['On the embassy'], and the oration *Against Timarcrates*.

[9] They even drew two coupons for each position, one of which assigned the position, and another which named the successor should the first be rejected.

[10] Books I and III of *De legibus*.

[11] They were called *tabulary laws* : each citizen was given two tablets, the first marked with an A for *antiquo*, the other with a U and an R, for *uti rogas*. [The former represents dissent (i.e., for the status quo) and the latter assent ('As you propose').]

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[12] In Athens they raised their hands.

[13] As in Venice.

[14] The thirty tyrants of Athens wanted the ballots of the Areopagites to be public, in order to direct them as they pleased (Lisias, *Orationes*, Against Agoratus, ch. viii).

[15] See Dionysius of Halicarnassus, books IV and IX.