

Mehdi Frashëri's contribution to the laws of the Albanian state (1914-1935)

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Abstract

Mehdi Frashëri, during his political activity, had always expressed the conviction that the Albanian state should undertake important reforms, especially in the field of legislation. The aim was unifying the law for the entire population, regardless of their religious beliefs, as well as bringing it closer to Western legislation. It was the duty of the government to bring an end to the consequences of the long Ottoman occupation by giving Albania its rightful place in the region and Europe. Reforms required willpower, cooperation, and sometimes even sacrifice.

Keywords. Mehdi Frashëri, laws, draft laws, Legislative Drafting Commission, State Council, Civil and Criminal Code, Civil Procedure.

Introduction

Mehdi Frashëri during his political activity in Albania, 1913-1944, proved many times that he was a zealous advocate of Western European civilization in all its aspects. In his writings it was stated that the main cause of the centuries-old backwardness of Albania was the centuries-old Ottoman occupation, but not only. Unlike other Balkan people, also conquered by the Ottoman Empire, Albanians embraced the Islamic religion by implementing all its principles in every area of life. This regressed Albania by 5 centuries in comparison to European Civilization. One of the areas that lagged far behind was that of legislation. The Ottoman Empire arrived in Albania with an outdated legal system. Other countries with Christian populations, once liberated from the Ottomans, easily became part of Western civilization because religion was a unifying element. On the contrary, in Albania different religions had created different mentalities and customs but above all different legislations.¹

After the secession from the Ottoman Empire, the opinion that Albania had a complete legal vacuum was also shared by the Great Powers, which declared that its state organization could only be done at the level of the "European concert"². On July 29, 1913, during the Conference of Ambassadors, the International Control Commission was set up, whose task it was to organise the Albanian state. The Commission arrived in Albania in mid-October 1913 consisting of the representative of England, Mr. Lamb, of Italy Mr. Leon, of Austro-Hungary Mr. Petrovich, and of Germany Mr. Wickel and of Russia Mr. Petrajef³. Mehdi Frashëri would also become part of it. This moment would mark the beginning of his work in drafting the important laws of the Albanian state.

¹ Mehdi Frashëri, *Problemet shqiptare*, Tiranë: Plejad, 2006, f. 55.

² Arben Puto, *Historia Diplomatiqe e çështjes Shqiptare 1878-1926*, Tiranë: "Guttenberg", 2010, f. 175.

³ *Përlindja e Shqipëniës*, vjet' i I, n.16, 21/4 vjesht' e I, 1913, f. 4 "Delegatët e Komisiës së Kontrollit".

Mehdi Frashëri's attitude towards the Draft Statute drafted by the International Control Commission

Mehdi Frasherri was elected as the Albanian delegate by the government of Turhan Pasha Përmeti. His official appointment was made by the government on 19 March 1914 and communicated to the ICC at its session on March 24th 1914⁴. This was Frashëri's first participation in the meetings of the Commission. The first discussion of the draft bill took place when Myfit Bey Libohova was a delegate.⁵

Mehdi Frashëri considered some of the articles of the project inappropriate and harmful for the Albanian state. He openly stated his views to the members of the ICC. One such example was Article 4, of Chapter I, which preserved the implementation of the capitulation regime, a legacy from the time of Turkish rule⁶. Capitulations were privileges that the great European states enjoyed in some southern countries and Turkey, putting them in an inferior position. This type of regime guaranteed Christian foreigners in the Ottoman Empire the right to be tried by their respective consuls, the right of self-organization and self-government, the right of circulation and trade, etc., creating the opportunity for European states to interfere in internal affairs⁷. In the case of Albania, which was no longer part of the Ottoman Empire, this regime was inappropriate and unjustified, so Mehdi Frashëri strongly opposed it as an act that violated Albanian sovereignty⁸. At the 75th session of March 25, 1914, he listed the legal arguments in defence of his thesis⁹. According to Frashëri, the treaties, conventions and agreements between Turkey and the European Powers could not be implemented in Albania, except those that were in accordance with European public law and that had a territorial nature because they were drafted taking into account the theocratic style of Turkish government and the way Muslim society was organized. Times had changed in Albania. It was trying to have western legislation; the state was secular and had a western prince at its head. Albanian society consisted of Catholics, Orthodox, Muslims and Bektashis. The latter forbade polygamy, depraved customs, restriction of women's rights and interference of religion in social issues, which proved the western character of Albanian society. In such circumstances, the implementation of capitulations that took into account the incompatibility of Western and Asian customs was unnecessary. Insisting that capitulations would become an obstacle to the development of the Albanian state, he recommended to preserve only the treaties, conventions and international agreements concluded between the Powers and the Ottoman Empire, which were in accordance with the principles of European public law and the new situation in the independent Albanian State¹⁰.

His persistence put the members of the Commission in a difficult position. They were forced to add a clause that the agreements in force would be reviewed later

⁴ Arben Puto, *Çështja Shqiptare në Aktet Ndërkombëtare të Periudhës së Imperializmit*, Tiranë : “8 Nëntori” 1987, f. 554.

⁵ Mehdi Frashëri, *Kujtime: vitet 1913-1933*, Tiranë: “OMSCA-1”, 2005, f. 9.

⁶ Arben Puto, *Pavarësia shqiptare në tryezat e diplomacisë 1912-1914*, Tiranë: Weso, 2008, f. 253.

⁷ Arben Puto, *E drejta ndërkombëtare publike*, botim i 12, Tiranë: Botimet Dudaj, 2010, f. 128.

⁸ M. Frashëri, *Kujtime...*, f. 9.

⁹ A. Puto, *Pavarësia shqiptare ...*, f. 253.

¹⁰ A. Puto, *Çështja shqiptare ...*, f. 557-558.

on and followed by new bilateral agreements. The Austro-Hungarian representative considered Mehdi Frashëri's demands legitimate and justified, but based on the circumstances advised him give up his "Young Turk speed"¹¹. The lack of support from ICC members ensured Mehdi Frashëri's demands remained just an appeal. The capitulation regime remained in force in the Statute of the Albanian state and its change was allowed only by a subsequent decision of the six Great Powers. Likewise, in Chapter X, which was dedicated to the organization of the judiciary, it was stated that "The rights of consulates in the judicial field were kept as they were, based on capitulation"¹². His remarks on this are also recorded in the final report. He also objected to Article 26 of Chapter III, which established the use of **auxiliary** languages in public affairs which, in Frashëri's view, "was more harmful than beneficial"¹³.

Another aspect that Frasherri was greatly concerned about was the economic backwardness of the country. Considering it a weakness which would soon be abused by neighbouring countries, whose intentions towards Albanians were known, he demanded that the Statute restricts the right of foreign companies to buy property in the Albanian state, as strong companies could threaten the independence of the Albanian economy. An appendix should be attached to the Statute to prevent any attempt at installation and colonization by other states¹⁴. Frashëri's proposal faced strong opposition from the Italian delegate, Mr. Leon, who anticipated the old Italian colonization plans to soon become a reality.

Mehdi Frashëri proposed that in the relevant articles of the draft Statute, all concessions and loans of the Albanian state be listed separately. The Austro-Hungarian and Italian representatives were not pleased, due to the agreement signed by the Albanian state for the establishment of the bank with Austro-Hungarian and Italian capital. His idea was supported by the other members of the commission. The Austro-Hungarian representative, Commissar Kral, tried to persuade Frashëri to retract this proposal, as it did not produce solutions for the Albanian state; on the contrary, it could lead to conflicts between the Prince and the government. Mehdi Frashëri did not oblige and voted for the elimination of state loans. He accepted the preservation of concessions, but subject to certain conditions. His attitude disappointed Commissioner Kral, who insinuated that this behaviour demonstrated Albanian hatred against the Austro-Hungarian-Italian economic banking agreement.¹⁵

The statute was adopted on 10 April 1914¹⁶ 216 articles divided into 16 chapters.¹⁷

Mehdi Frashëri's requests and remarks were not supported by other members of the ICC. The very manner in which the Commission was established hindered the performance of its functions. In a situation where the World War was very close, the rivalry between the two world alliances was replicated by the members of the ICC. In fact, they did not take into account what was necessary for Albania, but

¹¹ AIH, Vj. 24-5-529, fl. 42. Projektstatuti , rezistenca kundër regjimeve të kapitulacioneve.

¹² A. Puto, *E Drejta Ndërkombëtare ...*, f. 129.

¹³ A. Puto, *Çështja shqiptare ...*, f. 602-603.

¹⁴ AIH, Vj. 24-5-526, fl. 35. Nga projekt statuti për Shqipërinë, kapitulli I, "L Albanin et son territoire", artikulli 5, shoqëritë kolonizatore.

¹⁵ AIH, Vj. 24-5-548, fl. 38-39. Projektstatuti për Shqipërinë. Kompetencat e kuvendit kombëtar.

¹⁶ Joseph Swire, *Shqipëria, ngritja e një mbretërie*, Tiranë: Dituria, 2005, f. 150.

¹⁷ Antonello Biagini, *Historia e Shqipërisë*. Tiranë: Shtëpia e librit dhe e komunikimit, 2000 f. 120.

implemented the instructions of the respective governments¹⁸. Regardless of Mehdi Frashëri's patriotism, his voice was insignificant compared to the interests of other ICC members.

Mehdi Frashëri's Engagement in the law drafting during 1918-1922

Mehdi Frashëri was appointed Minister of Interior Affairs by the government emerging from the Congress of Durrës, in December 1918. The difficult conditions in which the Albanian people found themselves, occupied by several states, in chaos and anarchy, forced him to issue three laws to maintain order and tranquility in the country. He himself admits that the content of the laws were simple but efficient and successful because they were adapted to the peoples' needs at the time. The first law was about the theft of livestock. According to him, the elders of the village where the cattle was stolen together with the shepherd and the owner would follow the case as long as they could. Those responsible would pay. If the crime traced to another village, the task passed to the elders of this village. The second law was regarding criminals who did not surrender. Escaping gave the police the right to deport their family, burn down their house and seize their property. Although he accepted the primitiveness of this law, Mehdi Frashëri justified it with the difficult time the country was in. He concluded that the effects of the law were positive. The third law was about political crimes and uprisings¹⁹.

He severely punished any insurgent through a political court in an expedited procedure. Mehdi Frashëri stressed that in the process of drafting laws it was very important to be practical and in accordance with the concrete needs of the people. In 1921, during his tenure as Minister of World Affairs, Mehdi Frashëri saw forced labor for men aged 18 to 56 as the only solution to carry out the necessary public works due to the lack of budget. He drafted a 40-article bill and submitted it to parliament. Based on this, the population was divided into two categories. The first category included citizens who would not do manual labor such as: traders, craftsmen, clerks, professionals and business owners. In return they would pay the state a special tax which was calculated on the basis of their profits. The second category comprised of citizens who would do manual labor. They were obliged to work for the state 12 days a year, with all the means at their disposal, at a distance of up to 15 km from the settlement. During the review of the draft law, the parliament reduced the obligation to 6 days²⁰. The change of government right after left the proposal on paper.

Mehdi Frashëri declared himself against any kind of privilege that could be given to different groups within the population because it undermined the state's efforts to strengthen its authority and institutions. He demanded to the government to have the will to end any benefits granted by foreign invaders. In a situation when Albania was independent and had its own national government, allowing foreign privileges was a national betrayal²¹.

The Commission for the Enlargement of the Statute of Lushnja was formed at the

¹⁸ J. Swire, *Shqipëria ...*, f. 159.

¹⁹ M. Frashëri, *Kujtime...*, f. 60-61.

²⁰ *Gazeta e Re*, 30 janar 1929, f.3, Mehdi Frashëri, *Sistemi për të ndrequr rrugë në Shqipëri*.

²¹ M. Frashëri, *Kujtime*, f. 93.

40th meeting of the assembly, on August 1, 1921. Frasherri was chosen by the first parliament to be a member of it and give his best contribution. Other members were Fan Noli, Ndre Mjeda, Koço Tasi, Stavro Vinjau, Ali Këlcyra, Ibrahim Xhindi, Shefqet Daji, Kadri Hoxha, Milto Tutulani, Mustafa Kruja and Luigj Gurakuqi²². The purpose of the commission was to expand the provisions adopted by the Lushnja Congress, which, despite its great importance, had no legal basis. It would mainly supplement the provisions relating to human rights and freedom of the press. The Constituent Assembly, which was not yet convened, would make all the laws related to the governing of the state²³.

The commission postponed its work due to the political developments in the country; the violent overthrow of Vrion's government and the subsequent uprising of Elez Isufi in the spring of 1922 delayed the results of his work. The discussion of the project for the expansion of the Statute of Lushnja started in the autumn session of the parliament, on September 11, 1922, in its 39th meeting²⁴. Mehdi Frashëri, who was appointed by the government to accompany the League of Nations Commission, was absent from many of the meetings. He joined the discussions only on the 70th meeting, when the independence of the Law courts and the formation of the Financial Council Control were on the agenda.²⁵

In his discussions, Frashëri stressed that criminal cases were not all equal and could not all have the same trial. Knowing well the turbulent and explosive politics in Albania, he recommended that the articles of the statute be formulated correctly to not allow people who were involved in politics and who had served the homeland to be imprisoned and become victims of their opponents²⁶. Also, he, unlike most other members, was in favor of the extradition of Albanian citizens outside Albania.²⁷

In Mehdi Frashëri's view, Albanians were a difficult people to govern. The long stay in captivity and the abrupt transition had made them ignorant and harsh. Therefore, it was necessary for the parliament to create strong laws and for the officials who enforced them to be ethical and not to abuse the power given to them by the law. Based on this belief, he was in favor of the law that punished political offenses with the death penalty, because unlike other European countries, where revolutions were based on ideals, in Albania they were enacted by people bought with money from foreign countries, therefore had to be dissuaded severely. This was the opinion of the majority of the commission.²⁸

The law on freedom of the press took considerable time in the work of the Commission. Sensitive in this matter, Mehdi Frashëri bolstered his arguments related to the formulation of the law with the legislation of other countries. He referred to American, English and French laws as a good example to be considered by a newly created state such as Albania. Another issue discussed was whether or not the religious clergy were allowed to become deputies. Frashëri thought that the ban

²² AQSH, F 146, V. 1921, D. 81, fl. 195. Mbledhja e 40-të e Kuvendit Kombëtar, 1 gusht 1921.

²³ M. Frashëri, *Problemet shqiptare*, f. 90.

²⁴ Filip Rrumbullaku, *Debat parlamentar para një shekulli*, Tiranë, Ilar, 2008, f. 16.

²⁵ Po aty, f. 198.

²⁶ Po aty, f. 211.

²⁷ Po aty, f. 229.

²⁸ Po aty, f. 229.

would be persecution of people of religion. If all professions had this right, then the clergy, whether Muslim, Catholic or Orthodox, should have it too. In addition, the exclusion from this right would lead to the loss of worldwide sympathy for religious coexistence in Albania.²⁹

Mehdi Frashëri's participation in the Lushnja Statute Expansion Commission lasted until its 92nd meeting. He left on a new mission. Discussions in the Commission continued until December 14, 1922, when the draft was submitted for discussion in parliament. The first chapter of the Statute set out the general provisions on the legislative, executive and judicial branches of government. The second chapter dealt with the provisions on the flag, language, state secularism, compulsory service, etc. The third chapter established the freedoms and rights of citizens while the fourth included "final provisions". The expansion of the Lushnja Statute was an important act, but it was also late. The time it took to draft and approve delayed the consolidation of the state, and fueled the institutional and political crises of 1921 and 1922.³⁰

Presiding over important legislative institutions

On August 5, 1926, the Legislative Drafting Commission³¹ was established, whose task was to draft laws and submit them to parliament for discussion. Mehdi Frashëri was also elected as part of the commission. His view was that the criminal code should be accompanied by drafting of a civil and commercial code and procedures for each. Only then could it be considered complete.³²

Also, Frashëri thought that the Criminal Code should be completely replaced, because the modifications made on the old one would be useless. Its design relied mainly on Italian Penal Code. The Criminal Code came into force on January 1st, 1928.³³ In 1928, the Legislative Drafting Commission was reformed and Mehdi Frashëri was elected as head. His work continued with the drafting of the Civil Code.³⁴ It was based mainly on the French code and came into force on April 1st, 1929³⁵ after getting a majority vote in the senate.³⁶

The New Civil Code regulated the relation between persons of a family, marriage, the rights and duties arising from it, inheritance and wills. Its most important achievement was unifying the laws for all Albanian citizens, regardless of their religion and ending an epoch where laws were different for Catholics and Muslims.³⁷

The adoption of the new codes, especially the Civil Code, received a great response from the press. The most important newspapers at the time considered it the end of an era and the beginning of a new civilized life.³⁸ The 500-year era of the Ottoman

²⁹ Po aty, f. 259-260.

³⁰ Albana Mema, *Institucionet kushtetuese të shtetit shqiptar në vitet 1920-1924*, në *Studime Historike*, nr. 1-2, Tiranë, 2018, f. 162-163.

³¹ *Shqipëria më 1937*, V. I, shtypshkronja Tiranë :“Kristo Luarasi”, 1937, f. 92-93.

³² M. Frashëri, *Kujtime...*, f. 218.

³³ *Shqipëria më 1937*, V. I, f. 92-93.

³⁴ M. Frashëri, *Problemet shqiptare*, f. 95.

³⁵ *Gazeta e Re*, 3 prill 1929, f. 1, “Hyrtja e Kodit Civil në fuqi”.

³⁶ J. Swire, *Shqipëria...*, f. 402.

³⁷ *Gazeta e Re*, 31 mars 1929, f. 1, “Kodit i ri civil”.

³⁸ *Gazeta e Re*, 12 janar 1929, f. 1.

Empire's influence in Albania was coming to an end³⁹. The press supported it heavily, emphasizing that the new codes were the only way towards the unification, strengthening and civilization of the people.⁴⁰

The government considered the implementation of the New Civil Code a "historic day". The Minister of Justice Hqmet Delvina expressed his satisfaction, stating that Albania was finally breaking away from the backward religious laws and dogmas to apply the laws of modern Europe⁴¹. There were also objections, mainly from clergy representatives, related to the recognition of civil marriage and the acceptance of divorce⁴².

In addition to the two codes, the drafting of the law on the organization of the justice system and the annex to the civil procedure were also important to the commission. The draft of Civil Procedure, drafted by Mehdi Frashëri, was based on the Austrian one, but was opposed by judges who insisted that the draft was not appropriate for Albania. Their opposition came as a result of the judges not knowing the Austrian language and not coming from Austrian schools⁴³. Most members of the commission were also against the draft. Lacking the time to find a common language, they came up with a new draft. It was a combination of the Austrian procedure and the existing Turkish one to Mehdi Frashëri's dismay. He would continue working on drafting the civil procedure later, in the function of President of the State Council⁴⁴.

The Legislative Drafting Commission completed its work on March 31st, 1929. The preparation of codes and laws passed to the State Council which was established in April 1929⁴⁵. Mehdi Frashëri was elected its chairman and the members were Ajet Libohova, Sali Tore, Kristo Floqi, Faik Dibra and Fuat Asllani⁴⁶. Later, Martin Ivanaj and Shefqet Frashëri would join the Council.⁴⁷ The State Council established new legal foundations for the jurisdiction of the courts, the administration of evidence, enforcement and mortgages. The Council's next task was to draft the Commercial Code, a job entrusted to Mehdi Frashëri. It was based on new Italian Commercial legislature which had not yet been implemented, but was considered the most suitable. The project drafted by Frashëri raised controversy which was reflected in its delayed approval.⁴⁸ It entered into force on April 1st, 1932.⁴⁹

Likewise, his proposals for amendments to the Civil Procedure aimed at permanently removing the remaining Turkish provisions were not accepted. Frashëri's proposals were again based on Austrian legislation. As the procedure determined how the trial would take place, it was of great importance to the judicial system. From this point of view, Mehdi Frashëri thought that between the Latin system and the one applied in Germanic countries, the latter was much more suitable for Albania. According to him, the Latin system caused great delays in the adjudication of court cases, increasing

³⁹ *Gazeta e Korçës*, 1 prill 1935 f. 1.

⁴⁰ *Demokratia*, 30 mars 1929, f. 2.

⁴¹ *Gazeta e re*, 1 prill 1929, f. 1.

⁴² J. Swire, *Shqipëria...*, f. 402.

⁴³ *Besa*, 11 qershor 1936, f. 2, "Hartimi i procedurës civile".

⁴⁴ M. Frashëri, *Problemet shqiptare*, f. 95-96.

⁴⁵ *Shqipëria më 1937*, V. I, f. 96.

⁴⁶ AQSH, F 155, V. 1929, D I-656, fl. 1.

⁴⁷ AQSH, F 155, V. 1929, D I-656, fl. 1-4.

⁴⁸ M. Frashëri, *Kujtime*, f. 226.

⁴⁹ *Shqipëria më 1937*, V. I, f. 97.

their cost, while that of Germanic countries resolved the cases quickly, thus aligning to the tradition of Albanians who were used to solving problems with the elders of the country, without costs and without delays. Mehdi Frashëri did not connect the opposition to his proposals with their inadequacy, but simply with the selfishness and personal greed of the rulers, who found it impossible to accept the achievements of one person. With his departure from the Council of State, the process of drafting these projects would be suspended indefinitely⁵⁰. Another important responsibility of Mehdi Frashëri was directing the Commission for Agrarian Reform. Members were Said Toptani, Agjah Libohova and Grigor Vanaku⁵¹. The situation farmers faced in Albania was quite serious and a significant portion of the Albanian economy's issues were related. Ahmet Zogu was clear that he could no longer avoid the agrarian issue in the first session of the parliament of the Monarchy, on December 10, 1928, when he announced the beginning of work on drafting the law for agrarian reform⁵².

The draft based mainly on Frashër's thoughts was considered radical by the politics of the time. He foresaw the provision of land to all farmers, which required large areas. In its enactment, the land would be taken away from prolific landowners and beys. For this reason, the policy, which largely consisted of targeting the rich and their interests did not garner enough support. The government decided to bring in a foreign specialist to study the situation and draft a new bill. Mehdi Frashëri stated that it was not known whether the specialist was brought by the king or imposed by the Italian government, indirectly accusing King Zogu of indecision in resolving the agrarian issue.⁵³

The Italian specialist, Lorenzoni came to Albania in August 1929. He analyzed the country's economy⁵⁴ and the law he drafted was approved by parliament in 1930. In Mehdi Frashëri's view, the adopted agrarian reform law was not even worth discussing. He openly expressed his opinion in the first meeting with Mr. Lorenzoni. Convinced that he could do nothing to avoid Italian and Albanian beys interfering in the drafting and adoption of the agrarian reform law, he resigned from the commission.⁵⁵ By supporting internal colonization of farmland by highlanders, all indications were that the Italian government did not want to resolve the issues at hand. According to Mehdi Frashëri, the responsibility for the adoption of an unsuitable law lay with Albanian politicians, who in order to protect their narrow personal interests, were ready to sacrifice their country as well.⁵⁶

Conclusions

Albania after declaring its independence faced many problems of different natures. In addition to economic poverty, its territory and sovereignty gained by blood after many centuries of war and effort was endangered daily. Exactly for this, Mehdi

⁵⁰ M. Frashëri, *Problemet shqiptare*, f.96-97.

⁵¹ M. Frashëri, *Kujtime...*, f. 226-227.

⁵² *Gazeta e re*, 11 dhjetor 1928, f.1.

⁵³ M. Frashëri, *Probleme Shqiptare*, f. 177.

⁵⁴ *Monarkia Shqiptare 1928-1939*, përmbledhje studimesh botuar nga Qendra e Studimeve Albanologjike , Instituti i Historisë, Tiranë: Toena, 2011. Kareco, *Reforma agrare demokratike nga një Monark*, f. 81.

⁵⁵ M. Frashëri, *Kujtime* , f. 226- 227.

⁵⁶ M. Frashëri, *Probleme Shqiptare*, f. 175.

Frashëri, emphasized that undertaking extensive reforms was the only opportunity to set the state on strong and stable foundations. He won the sympathy of the Albanian public and intellectuals, not only because he presented a solution to every problem, but also because he had the courage to speak openly against any element that would be an obstacle to the country's progress. He did not hesitate to come out against the clergy of different religious, without making any distinction between them, when the people's need demanded it. He also opposed the country's rich class favoring the poor farmer and peasant. Mehdi Frashëri did not bother to strengthen his position in Albanian politics but constantly and publicly asked the people working in the government to put national interests before personal ones and to serve the common good. He worked to draft strong, enforceable, and equal laws for all. He called for an end to unjust social differentiation, lawlessness, nepotism and corruption. His attitude in the years '20 -30 had identified him as one of the most valued figures in the Albanian public. In 1935, when Albania was in a real political crisis, he was selected by the king as the most beloved candidate of the people to lead the government.

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