

**YOU ARE THERE AT THE CONSTITUTIONAL CONVENTION OF
1787 – THE IMPORTANCE OF REPRESENTATION TO
WE THE PEOPLE**

**PART I: What Should The True Principle of Representation Be For
“We The People”?**

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1. Selected Debates from the Notes:

THURSDAY MAY 31

...

In Committee of the whole on Mr. Randolph's propositions.

...

Resol: 4. first clause "that the members of the first branch of the National Legislature ought to be elected by the people of the several States" being taken up,

Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massts. it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Governmt. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Massts. for the reduction of salaries and the attack made on that of the Govr. though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit.

Mr. MASON, argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Govtt. It was, so to speak, to be our House of Commons -- It ought to know & sympathise with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virga., different interests and views arising from difference of produce, of habits &c &c. He admitted that we had been too democratic but was afraid we sd. incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy; considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the national Legislature. All interference between the general and local Governmts. should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the officers of the States, than from the people at large.

Mr. MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the

first -- the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but though it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive & judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shewn that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor & character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.

Mr. BUTLER thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national Legislature by the people.

Massts. ay. Connect. divid. N. York ay. N. Jersey no. Pena. ay. Delawe. divid. Va. ay. N. C. ay. S. C. no. Georga. ay.

...

The Committee then rose & the House

Adjourned [Notes, May 31, 1787]

WEDNESDAY JUNE 6th IN COMMITTEE OF THE WHOLE

Mr. PINKNEY according to previous notice & rule obtained, **moved "that the first branch of the national Legislature be elected by the State Legislatures, and not by the people." contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.**

Mr. RUTLIDGE 2ded. the motion.

Mr. GERRY. Much depends on the mode of election. In England, the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme: hence in Massts. the worst men get into the Legislature. Several members of that Body had lately been convicted of infamous crimes. Men of indigence, ignorance & baseness, spare no pains, however dirty to carry their point agst. men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever agst. aristocracy and monarchy. It was necessary on the one hand that the people should appoint one branch of the Govt. in order to inspire them with the necessary confidence. But he wished the election on the other to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons in certain districts, out of whom the State Legislatures shd. make the appointment.

Mr. WILSON. He wished for vigor in the Govt., but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Govt. ought to possess not only 1st. the force, but 2dly. the mind or sense of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected he said from the Governments, not from the Citizens of the States. The latter had parted as was observed [by Mr. King] with all the necessary powers; and it was immaterial to them, by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people he supposed would be rather more attached to the national Govt. than to the State Govts. as being more important in itself, and more flattering to

their pride. There is no danger of improper elections if made by large districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.

Mr. SHERMAN. If it were in view to abolish the State Govts. the elections ought to be by the people. If the State Govts. are to be continued, it is necessary in order to preserve harmony between the National & State Govts. that the elections to the former shd. be made by the latter. The right of participating in the National Govt. would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few. 1. defence agst. foreign danger. 2 agst. internal disputes & a resort to force. 3. Treaties with foreign nations. 4 regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than large States. States may indeed be too small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Govt. not being able to pervade them. He was for giving the General Govt. power to legislate and execute within a defined province.

Col. MASON. Under the existing Confederacy, Congs. represent the States not the people of the States: their acts operate on the States, not on the individuals. The case will be changed in the new plan of Govt. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel; and that for these purposes shd. even be residents among them. Much he sd. had been alledged agst. democratic elections. He admitted that much might be said; but it was to be considered that no Govt. was free from imperfections & evils; and that improper elections in many instances, were inseparable from Republican Govts. But compare these with the advantage of this Form in favor of the rights of the people, in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter when the former were against it. Was it to be supposed that the State Legislatures then wd. not send to the Natl. legislature patrons of such projects, if the choice depended on them.

Mr. MADISON considered an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Govt. and that this mode under proper regulations had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the General one. -- He differed from the member from Connecticut [Mr. Sharman] in thinking the objects mentioned to be all the principal ones that required a National Govt. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than any thing else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the States. The gentleman [Mr. Sharman] had admitted that in a very small State, faction & oppression wd. prevail. It was to be inferred then that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest tho' less than in the smallest; and were we not thence admonished to enlarge the sphere as far as the nature of the Govt. would admit. This was the only defence agst. the inconveniencies of democracy consistent with the democratic form of Govt. All civilized Societies would be divided into different Sects, Factions, & interests, as they happened to consist of rich & poor, debtors & creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious Sect or that religious Sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, Religion itself may become a motive to persecution & oppression. -- These observations are verified by the Histories of every Country antient & modern. In Greece & Rome the rich & poor, the creditors & debtors, as well as the patricians & plebians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities

of Rome, Athens & Carthage, & their respective provinces: the former possessing the power, & the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of Parliamentary injustice? Because G. Britain had a separate interest real or supposed, & if her authority had been admitted, could have pursued that interest at our expence. We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The Holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a Republican Govt. the Majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d. place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale & in such a form as will controul all the evils wch. have been experienced.

Mr. DICKENSON considered it as essential that one branch of the Legislature shd. be drawn immediately from the people; and as expedient that the other shd. be chosen by the Legislatures of the States. This combination of the State Govts. with the national Govt. was as politic as it was unavoidable. In the formation of the Senate we ought to carry it through such a refining process as will assimilate it as near as may be to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Govt. but for leaving the States a considerable agency in the System. The objection agst. making the former dependent on the latter might be obviated by giving to the Senate an authority permanent & irrevocable for three, five or seven years. Being thus independent they will speak & decide with becoming freedom.

Mr. READ. Too much attachment is betrayed to the State Governrs. We must look beyond their continuance. A national Govt. must soon of necessity swallow all of them up. They will soon be reduced to the mere office of electing the National Senate. He was agst. patching up the old federal System: he hoped the idea wd. be dismissed. It would be like putting new cloth on an old garment. The confederation was founded on temporary principles. It cannot last: it cannot be amended. If we do not establish a good Govt. on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a Genl. Govt. The aversion lies among interested men who possess their confidence.

Mr. PIERCE was for an election by the people as to the 1st. branch & by the States as to the 2d. branch; by which means the Citizens of the States wd. be represented both individually & collectively.

General PINKNEY wished to have a good National Govt. & at the same time to leave a considerable share of power in the States. An election of either branch by the people scattered as they are in many States, particularly in S. Carolina was totally impracticable. He differed from gentlemen who thought that a choice by the people wd. be a better guard agst. bad measures, than by the Legislatures. A majority of the people in S. Carolina were notoriously for paper money as a legal tender; the Legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration. The State Legislatures also he said would be more jealous, & more ready to thwart the National Govt., if excluded from a participation in it. The Idea of abolishing these Legislatures wd. never go down.

Mr. WILSON, would not have spoken again, but for what had fallen from Mr. Read; namely, that the idea of preserving the State Govts. ought to be abandoned. He saw no incompatibility between the National & State Govts. provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated Systems antient & modern the reverse had happened; the Generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the 1st. branch by the State Legislatures

as moved by Mr. Pinkney: it was negatived:

**Mass. no. Ct. ay. N. Y. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no.
N. C. no. S. C. ay. Geo. no.**

...

The Come. rose & the House adjd. to 11 OC. [Notes, June 6, 1787]

“MONDAY JULY 9th. IN CONVENTION

Mr. Daniel Carroll from Maryland took his Seat.

Mr. GOVr. MORRIS delivered a report from the Come. of 5 members to whom was committed the clause in the Report of the Come. consisting of a member from each State, stating the proper ratio of Representatives in the 1st. branch, to be as 1 to every 40,000 inhabitants, as follows viz

"The Committee to whom was referred the 1st. clause of the 1st. proposition reported from the grand Committee, beg leave to report

I. [1] that in the 1st. meeting of the Legislature the 1st. branch thereof consist of 56. members of which Number, N. Hamshire shall have 2. Massts. 7. R. Id. 1. Cont 4. N. Y. 5. N. J. 3. Pa. 8. Del. 1. Md. 4. Va. 9. N. C. 5. S. C. 5. Geo. 2. --

II. But as the present situation of the States may probably alter as well in point of wealth as in the number of their inhabitants, that the Legislature be authorized from time to time to augment ye. number of Representatives. And in case any of the States shall hereafter be divided, or any two or more States united, or any new States created within the limits of the United States, the Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

Mr. SHERMAN wished to know on what principles or calculations the Report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congs.

Mr. GORHAM. Some provision of this sort was necessary in the outset. The number of blacks & whites with some regard to supposed wealth was the general guide Fractions could not be observed. The Legislr. is to make alterations from time to time as justice & propriety may require. Two objections prevailed agst. the rate of 1 member for every 40,000. inhts. The 1st. was that the Representation would soon be too numerous: the 2d. that the Westn. States who may have a different interest, might if admitted on that principle by degrees, outvote the Atlantic. Both

these objections are removed. The number will be small in the first instance and may be continued so; and the Atlantic States having ye. Govt. in their own hands, may take care of their own interest, by dealing out the right of Representation in safe proportions to the Western States. These were the views of the Committee.

Mr. L MARTIN wished to know whether the Come. were guided in the ratio, by the wealth or number of inhabitants, of the States, or by both; noting its variations from former apportionments by Congs.

Mr. GOVr. MORRIS & Mr. RUTLIDGE moved to postpone the 1st. paragraph relating to the number of members to be allowed each State in the first instance, and to take up the 2d. paragraph authorizing the Legisre. To alter the number from time to time according to wealth & inhabitants.

The motion was agreed to nem. con.

On Question on the 2d. paragh. taken without any debate

Masts. ay. Cont. ay. N. Y. no. N. J. no. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. SHERMAN moved to refer the 1st. part apportioning the Representatives, to a Comme. of a member from each State.

Mr. GOVr. MORRIS seconded the motion; observing that this was the only case in which such Committees were useful.

Mr. WILLIAMSON. thought it would be necessary to return to the rule of numbers, but that the Western States stood on different footing. If their property shall be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion. Otherwise if their property was not to be equally rated.

Mr. GOVr. MORRIS. The Report is little more than a guess. Wealth was not altogether disregarded by the Come. Where it was apparently in favor of one State, whose nos. were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former: and so vice versa. The Committee meant little more than to bring the matter to

a point for the consideration of the House.

Mr. REED asked why Georgia was allowed 2 members, when her number of inhabitants had stood below that of Delaware.

Mr. GOVr. MORRIS. Such is the rapidity of the population of that State, that before the plan takes effect, it will probably be entitled to 2 Representatives.

Mr. RANDOLPH. disliked the report of the Come. but had been unwilling to object to it. He was apprehensive that as the number was not to be changed till the Natl. Legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the commitmt. to a member from each State.

Mr. PATTERSON considered the proposed estimate for the future according to the Combined rule of numbers and wealth, as too vague. For this reason N. Jersey was agst. it. He could regard negroes slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, & like other property entirely at the will of the Master. Has a man in Virga. a number of votes in proportion to the number of his slaves? And if Negroes are not represented in the States to which they belong, why should they be represented in the Genl. Govt.

What is the true principle of Representation? It is an expedient by which an assembly of certain individs. chosen by the people is substituted in place of the inconvenient meeting of the people themselves.

If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then shd. they be represented. He was also agst. such an indirect encouragemt. of the slave trade; observing that Congs. in their act relating to the change of the 8 art: of Confedn. had been ashamed to use the term "slaves" & had substituted a description.

Mr. MADISON, reminded Mr. Patterson that his doctrine of Representation which was in its principle the genuine one, must for ever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if the people of all the States were collectively met. He suggested as a proper

ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; and in the 2d. which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.

Mr. BUTLER urged warmly the justice & necessity of regarding wealth in the apportionment of Representation.

Mr. KING had always expected that as the Southern States are the richest, they would not league themselves with the Northn. unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in Commerce & other advantages which they will derive from the connection they must not expect to receive them without allowing some advantages in return. Eleven out of 13 of the States had agreed to consider Slaves in the apportionment of taxation; and taxation and Representation ought to go together.

On the question for committing the first paragraph of the Report to a member from each State.

Masts. ay. Cont. ay. N. Y. no. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. ay.

The Come. appointed were Mr. King. Mr. Sherman, Mr. Yates, Mr. Brearly, Mr. Govr. Morris, Mr. Reed, Mr. Carrol, Mr. Madison, Mr. Williamson, Mr. Rutledge, Mr. Houston.

Adjd.” [Notes, July 9, 1787]

“TEUSDAY. JULY 10. IN CONVENTION

Mr. KING reported from the Come. yesterday appointed that the States at the 1st. meeting of the General Legislature, should be represented by 65 members in the following proportions, to wit.

N. Hamshire by 3. Masts. 8. R. 1st. 1. Cont. 5. N. Y. 6. N. J. 4. Pa. 8. Del. 1. Md. 6. Va. 10. N. C. 5. S. C. 5. Georgia 3.

Mr. RUTLIDGE moved that N. Hampshire be reduced from 3 to 2. members. Her numbers did not entitle her to 3 and it was a poor State.

Genl. PINKNEY seconds the motion.

Mr. KING. N. Hamshire has probably more than 120,000 Inhabts. and has an extensive Country of tolerable fertility. Its inhabts therefore may be expected to increase fast. He remarked that the four Eastern States having 800,000 souls, have 1/3 fewer representatives than the four Southern States, having not more than 700,000 souls rating the blacks, as 5 for 3. The Eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great & small States; but between the Southern & Eastern. For this reason he had been ready to yield something in the proportion of representatives for the security of the Southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

Genl. PINKNEY. The Report before it was committed was more favorable to the S. States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the Genl. Government, they will be nothing more than overseers for the Northern States. He did not expect the S. States to be raised to a majority of representatives, but wished them to have something like an equality. At present by the alterations of the Come. in favor of the N. States they are removed farther from it than they were before. One member had indeed

been added to Virga. which he was glad of as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

Mr. WILLIAMSON was not for reducing N. Hamshire from 3 to 2. but for reducing some others. The Southn. Interest must be extremely endangered by the present arrangement. The Northn. States are to have a majority in the first instance and the means of perpetuating it.

Mr. DAYTON observed that the line between the Northn. & Southern interest had been improperly drawn: that Pa. was the dividing State, there being six on each side of her. **Genl. PINKNEY** urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

Mr. GOVr. MORRIS regretted the turn of the debate. The States he found had many Representatives on the floor. Few he fears were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight, but not all the weight. If the Southn. States are to supply money. The Northn. States are to spill their blood. Besides, the probable Revenue to be expected from the S. States has been greatly overrated. He was agst. reducing N. Hamshire.

Mr. RANDOLPH was opposed to a reduction of N. Hamshire, not because she had a full title to three members: but because it was in his contemplation 1. to make it the duty instead of leaving it in the discretion of the Legislature to regulate the representation by a periodical census. 2. to require more than a bare majority of votes in the Legislature in certain cases, & particularly in commercial cases.

On the question for reducing N. Hamshire from 3 to 2 Represents. it passed in the negative

Masts. no. Cont. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. no.

...

On the question for agreeing to the apportionment of Reprs. as amended by the last committee, it passed in the affirmative

Mas. ay. Cont. ay. N. Y. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. BROOM gave notice to the House that he had concurred with a reserve to himself of an intention to claim for his State an equal voice in the 2d. branch: which he thought could not be denied after this concession of the small States as to the first branch.

...”

[Notes, July 10, 1797]

“WEDNESDAY. JULY 11. IN CONVENTION

Mr. RANDOLPH's motion requiring the Legislre. to take a periodical census for the purpose of redressing inequalities in the Representation, was resumed.

Mr. SHERMAN was agst. shackling the Legislature too much. We ought to choose wise & good men, and then confide in them.

Mr. MASON. The greater the difficulty we find in fixing a proper rule of Representation, the more unwilling ought we to be, to throw the task from ourselves, on the Genl. Legislre. He did not object to the conjectural ratio which was to prevail in the outset; but considered a Revision from time to time according to some permanent & precise standard as essential to ye. fair representation required in the 1st. branch. According to the present population of America, the Northn. part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter when the reason no longer continued. From the nature of man we may be sure, that those who have power in their hands will not give it up while they can retain it. On the contrary we know they will always when they can rather increase it. If the S. States therefore should have 3/4 of the people of America within their limits, the Northern will hold fast the majority of Representatives. 1/4 will govern the 3/4 . The S. States will complain: but they may complain from generation to generation without redress. Unless some principle therefore which will do justice to them hereafter shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it, in his State. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence. If the Western States are to be admitted into the Union, as they arise, they must, he wd. repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride & other passions which we have, and will either not unite with or will speedily revolt from the Union, if they are not in all respects placed on an equal footing with their brethren. It has been said they will be poor, and unable to make equal contributions to the general Treasury. He did not know but that in time they would be both more numerous & more wealthy than their Atlantic

brethren. The extent & fertility of their soil, made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants; though not always a precise standard of wealth was sufficiently so for every substantial purpose.

Mr. WILLIAMSON was for making it the duty of the Legislature to do what was right & not leaving it at liberty to do or not do it. **He moved that Mr. Randolph's proposition be postponed. in order to consider the following "that in order to ascertain the alterations that may happen in the population & wealth of the several States, a census shall be taken of the free white inhabitants and 3/5 ths. of those of other descriptions on the 1st. year after this Government shall have been adopted and every year thereafter; and that the Representation be regulated accordingly."**

Mr. RANDOLPH agreed that **Mr. Williamson's proposition should stand in the place of his.** He observed that the ratio fixt for the 1st. meeting was a mere conjecture, that it placed the power in the hands of that part of America, which could not always be entitled to it, that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation when justice might so require; by some constitutional provisions. If equality between great & small States be inadmissible, because in that case unequal numbers of Constituents wd. be represented by equal number of votes; was it not equally inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district. If a fair representation of the people be not secured, the injustice of the Govt. will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican Govts. If the danger suggested by Mr. Govr. Morris be real, of advantage being taken of the Legislature in pressing moments, it was an additional reason, for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congs. have pledged the public faith to New States, that they shall be admitted on equal terms. They never would nor ought to accede on any other. The census must be taken under the direction of the General Legislature. The States will be too much interested to take an impartial one for themselves.

...

Mr. GOVr. MORRIS said he had several objections to the proposition of Mr. Williamson. 1. It fettered the Legislature too much. 2. it would exclude some States altogether who would not have a sufficient number to entitle them to a single Representative. 3. it will not consist with the Resolution passed on Saturday last authorising the Legislature to adjust the Representation from time to time on the principles or population & wealth or with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the sd.. Resolution would not be pursued. If as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers & wealth of different Countries, rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth, yet the late defence made by G. Britain, agst. her numerous enemies proved in the clearest manner, that it is entirely fallacious even in this respect.

Mr. KING thought there was great force in the objections of Mr. Govr. Morris: he would however accede to the proposition for the sake of doing something.

Mr. RUTLIDGE contended for the admission of wealth in the estimate by which Representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they shd. not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that "at the end of years after the 1st. meeting of the Legislature, and of every years thereafter, the Legislature shall proportion the Representation according to the principles of wealth & population"

Mr. SHERMAN thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observations of [Mr. Randolph & Mr. Mason,] that the periods & the rule, of revising the

Representation ought to be fixt by the Constitution.

Mr. REID thought the Legislature ought not to be too much shackled. It would make the Constitution like Religious Creeds, embarrassing to those bound to conform to them & more likely to produce dissatisfaction and scism, than harmony and union.

Mr. MASON objected to Mr. Rutledge motion, as requiring of the Legislature something too indefinite & impracticable, and leaving them a pretext for doing nothing.

Mr. WILSON had himself no objection to leaving the Legislature entirely at liberty. But considered wealth as an impracticable rule.

Mr. GHORUM. If the Convention who are comparatively so little biassed by local views are so much perplexed, How can it be expected that the Legislature hereafter under the full bias of those views, will be able to settle a standard. He was convinced by the arguments of others & his own reflections, that the Convention ought to fix some standard or other.

Mr. GOVr. MORRIS. The argts. of others & his own reflections had led him to a very different conclusion. If we can't agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come. Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of [Mr. Mason] relative to the Western Country had not changed his opinion on that head. Among other objections it must be apparent they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The Busy haunts of men not the remote wilderness, was the proper school of political Talents. If the Western people get the power into their hands they will ruin the Atlantic interests. The Back members are always most averse to the best measures. He mentioned the case of Pena. formerly. The lower part of the State had ye. power in the first instance. They kept it in yr. own hands & the Country was ye. better for it. Another objection with him agst. admitting the blacks into the census, was that the people of Pena would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been

raised agst. leaving the adjustment of the Representation from time, to time, to the discretion of the Legislature. The 1. was they would be unwilling to revise it at all. The 2. that by referring to wealth they would be bound by a rule which if willing, they would be unable to execute. The 1st. objn. distrusts their fidelity. But if their duty, their honor & their oaths will not bind them, let us not put into their hands our liberty, and all our other great interests: let us have no Govt. at all. 2 If these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the Come. in the apportionment of Representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the Representatives of the people.

Mr. MADISON, was not a little surprised to hear this implicit confidence urged by a member who on all occasions, had inculcated so strongly, the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice & interest. If the Representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a Revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the Northern Majority, he was still more zealous in exhorting all to a jealousy of Western Majority. To reconcile the gentln. with himself, it must be imagined that he determined the human character by the points of the compass. The truth was that all men having power ought to be distrusted to a certain degree. The case of Pena. had been mentioned where it was admitted that those who were possessed of the power in the original settlement, never admitted the new settlemts. to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs, of the minority; who had opposed & defeated every reform which had been attempted. Virga. was in a lesser degree another example. With regard to the Western States, he was clear & firm in opinion, that no unfavorable distinctions were admissible either in point of justice or policy. He thought also that the hope of contributions to the Treasy. from them had been much underrated. Future contributions it seemed to be understood on all hands would be principally levied on imports & exports. The extent and and fertility of the Western Soil would for a long time give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would

bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, which would of necessity be ye. case, as soon as their population would subject them to any considerable share of the public burdin, imposts on their trade could be collected with less expence & greater certainty, than on that of the Atlantic States. In the mean time, as their supplies must pass thro' the Atlantic States, their contributions would be levied in the same manner with those of the Atlantic States. -- He could not agree that any substantial objection lay agst. fixig numbers for the perpetual standard of Representation. It was said that Representation & taxation were to go together; that taxation and wealth ought to go together, that population & wealth were not measures of each other. He admitted that in different climates, under different forms of Govt. and in different stages of civilization the inference was perfectly just. He would admit that in no situation, numbers of inhabitants were an accurate measure of wealth. He contended however that in the U. States it was sufficiently so for the object in contemplation. Altho' their climate varied considerably, yet as the Govts. the laws, and the manners of all were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labour, would constantly tend to equalize themselves. The value of labour, might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places where the intercourse should be easy & free, with as much certainty as the value of money or any other thing. Wherever labour would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places -- from Europe to Ama. from the Northn. & Middle parts of the U. S. to the Southern & Western. They go where land is cheaper, because there labour is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value, than on the Delaware, it is also true that the same labor will raise twice or thrice, the quantity in the former, that it will raise in the latter situation.

Col. MASON. Agreed with Mr. Govr. Morris that we ought to leave the interests of the people to the Representatives of the people: but the objection was that the Legislature would cease to be the Representatives of the people. It would continue so no longer than the States now containing a majority of the people should retain that majority. As soon

as the Southern & Western population should predominate, which must happen in a few years, the power wd. be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution

On the Question for postponing Mr. Williamson's motion, in order to consider that of Mr. Rutledge it passed in the negative.

Massts. ay. Cont. no. N. J. no. Pa. ay. Del. ay. Md. no. Va. no. N. C. no. S. C. ay. Geo. ay.

**On the question on the first clause of Mr. Williamson's motion as to taking a census of the free inhabitants; it passed in the affirmative
Masts. ay. Cont. ay. N. J. ay. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. no. Geo. no.**

...

A Change of the phraseology of the other clause so as to read; "and the Legislature shall alter or augment the representation accordingly" was agreed to nem. con.

On the question on the whole resolution of Mr. Williamson as amended.

Mas. no. Cont. no. N. J. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no." [Notes, July 11, 1797].

PART II: Why Were Slaves Counted As Three-Fifth's Of A Person?

1. Background: Articles of Confederation: A Design Without Popular Representation, But Which Taxed States By Population

Preamble:

“To all to whom these Presents shall come, we, the undersigned Delegates of the States affixed to our Names send greeting. Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the year of our Lord One Thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in the Words following, viz. “Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

...

Article IV:

In determining questions in the united states, in Congress assembled, each state shall have one vote.

Article VIII.:

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, **shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the united states, in congress assembled, shall, from time to time, direct and appoint.** The taxes for paying that proportion shall be laid and levied by the authority

and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

2. July 11, 1787, In Convention

...

Mr. BUTLER & Genl. PINKNEY insisted that blacks be included in the rule of Representation, equally with the Whites: and for that purpose moved that the words "three fifths" be struck out.

...

Mr. GHORUM. This ratio was fixed by Congs. as a rule of taxation. ...

2. A Design For Popular Representation - Selected Debates From The Notes:

WEDNESDAY, JULY 11, IN CONVENTION

...

Mr. BUTLER & Genl. PINKNEY insisted that blacks be included in the rule of Representation, equally with the Whites: and for that purpose moved that the words "three fifths" be struck out.

Mr. GERRY thought that $3/5$ of them was to say the least the full proportion that could be admitted.

Mr. GHORUM. This ratio was fixed by Congs. as a rule of taxation. Then it was urged by the Delegates representing the States having slaves that the blacks were still more inferior to freemen. At present when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on ye. former occasion had convinced him that $3/5$ was pretty near the just proportion and he should vote according to the same opinion now.

Mr. BUTLER insisted that the labour of a slave in S. Carola. was as productive & valuable as that of a freeman in Massts., that as wealth was the great means of defence and utility to the Nation they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a Government which was instituted principally for the protection of property, and was itself to be supported by property.

Mr. MASON, could not agree to the motion, notwithstanding it was favorable to Virga. because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports & imports, and of course the revenue, would supply the means of feeding & supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of Representation. He could not however regard them as equal to freemen and could not vote for them as such. He added as worthy of remark, that the Southern States have this peculiar species of property, over & above the

other species of property common to all the States.

Mr. WILLIAMSON reminded Mr. Ghorum that if the Southn. States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States on the same occasion contended for their equality. He did not however either then or now, concur in either extreme, but approved of the ratio of 3/5.

On Mr. Butlers motion for considering blacks as equal to Whites in the apportionmt. of Representation.

...

The next clause as to 3/5 of the negroes considered.

Mr. KING. being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with Whites at all, would excite great discontents among the States having no slaves. He had never said as to any particular point that he would in no event acquiesce in & support it; but he wd. say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of Representatives made by the Committee, the Southern States had received more than the number of their white & three fifths of their black inhabitants entitled them to.

Mr. SHERMAN. S. Carola. had not more beyond her proportion than N. York & N. Hampshire, nor either of them more than was necessary in order to avoid fractions or reducing them below their proportion. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances, he was satisfied with it.

Mr. GHORUM. supported the propriety of establishing numbers as the rule. He said that in Massts. estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found even including Boston, that the most exact proportion prevailed between numbers & property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the

people of the Eastern States. But he recollected that when the proposition of Congs. for changing the 8th. art: of Confedn. was before the Legislature of Massts. the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with whites instead of being counted in the ratio of three fifths only.

Mr. WILSON did not well see on what principle the admission of blacks in the proportion of three fifths could be explained. Are they admitted as Citizens? then why are they not admitted on an equality with White Citizens? are they admitted as property? then why is not other property admitted into the computation? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pena. as had been intimated by his Colleague [Mr. Govr. Morris]. But he differed from him in thinking numbers of inhabts. so incorrect a measure of wealth. He had seen the Western settlemts. of Pa. and on a comparison of them with the City of Philada. could discover little other difference, than that property was more unequally divided among individuals here than there. Taking the same number in the aggregate in the two situations he believed there would be little difference in their wealth and ability to contribute to the public wants.

Mr. GOVR. MORRIS was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes, and he did not believe those States would ever confederate on terms that would deprive them of that trade.

On Question for agreeing to include 3/5 of the blacks Massts. no. Cont. ay. N. J. no. Pa. no. Del. no. Mard. no. Va. ay. N. C. ay. S. C. no. Geo. ay].

“THURSDAY. JULY 12. IN CONVENTION

Mr. GOVr. MORRIS moved to add to the clause empowering the Legislature to vary the Representation according to the principles of wealth & number of inhabts. a "proviso that taxation shall be in proportion to Representation."

Mr. BUTLER contended again that Representation Sd.. be according to the full number of inhabts. including all the blacks; admitting the justice of Mr. Govr. Morris's motion.

Mr. MASON also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the Legislature by it. It might drive the Legislature to the plan of Requisitions.

Mr. GOVr. MORRIS, admitted that some objections lay agst. his motion, but supposed they would be removed by restraining the rule to direct taxation. With regard to indirect taxes on exports & imports & on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary he was persuaded that the imports & consumption were pretty nearly equal throughout the Union.

General PINKNEY liked the idea. He thought it so just that it could not be objected to. But foresaw that if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said yesterday, concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. S. Carola. has in one year exported to the amount of £600,000 Sterling all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the Legislature from a taxing Exports.

Mr. WILSON approved the principle, but could not see how it could be carried into execution; unless restrained to direct taxation.

Mr. GOVr. MORRIS having so varied his Motion by inserting the word "direct." It passd. nem. con. as follows -- "provided the always that

direct taxation ought to be proportioned to representation."

Mr. DAVIE, said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of Representation for their blacks. He was sure that N. Carola. would never confederate on any terms that did not rate them at least as 3/5 . If the Eastern States meant therefore to exclude them altogether the business was at an end.

Dr. JOHNSON, thought that wealth and population were the true, equitable rule of representation; but he conceived that these two principles resolved themselves into one; population being the best measure of wealth. He concluded therefore that ye. number of people ought to be established as the rule, and that all descriptions including blacks equally with the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a Committee might be appointed to take them into consideration and report thereon.

Mr. GOVr. MORRIS. It has been said that it is high time to speak out, as one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped & believed that all would enter into such a Compact. If they would not he was ready to join with any States that would. But as the Compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southn. States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pena. will never agree to a representation of Negroes. What can be desired by these States more than has been already proposed; that the Legislature shall from time to time regulate Representation according to population & wealth.

Genl. PINKNEY desired that the rule of wealth should be ascertained and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger under a Govr. instituted for the protection of property.

The first clause in the Report of the first Grand Committee was postponed.

Mr. ELSEWORTH. In order to carry into effect the principle established, moved to add to the last clause adopted by the House the words following "and that the rule of contribution by direct taxation for the support of the Government of the U. States shall be the number of white inhabitants, and three fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature."

Mr. BUTLER seconded the motion in order that it might be committed.

Mr. RANDOLPH was not satisfied with the motion. The danger will be revived that the ingenuity of the Legislature may evade or pervert the rule so as to perpetuate the power where it shall be lodged in the first instance. **He proposed in lieu of Mr. Elseworth's motion, "that in order to ascertain the alterations in Representation that may be required from time to time by changes in the relative circumstances of the States, a census shall be taken within two years from the 1st. meeting of the Genl. Legislature of the U.S., and once within the term of every year afterwards, of all the inhabitants in the manner & according to the ratio recommended by Congress in their resolution of the 18th day of Apl. 1783; [rating the blacks at 3/5 of their number] and, that the Legislature of the U.S. shall arrange the Representation accordingly."**

-- He urged strenuously that express security ought to be provided for including slaves in the ratio of Representation. He lamented that such a species of property existed. But as it did exist the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

Mr. ELSEWORTH withdraws his motion & seconds that of Mr. Randolph.

Mr. WILSON observed that less umbrage would perhaps be taken agst. an admission of the slaves into the Rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation: and as representation was to be according to taxation, the end would be equally attained. He accordingly moved & was 2ded. so to alter the last clause adopted by the House, that together with the amendment proposed the

whole should read as follows -- provided always that the representation ought to be proportioned according to direct taxation, and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States. Resolved that a census be taken within two years from the first meeting of the Legislature of the U. States, and once within the term of every years afterwards of all the inhabitants of the U.S. in the manner and according to the ratio recommended by Congress in their Resolution of April 18. 1783; and that the Legislature of the U. S. shall proportion the direct taxation accordingly."

Mr. KING. Altho' this amendment varies the aspect somewhat, he had still two powerful objections agst. tying down the Legislature to the rule of numbers. 1. they were at this time an uncertain index of the relative wealth of the States. 2. if they were a just index at this time it can not be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection it could not be of long duration. He must be shortsighted indeed who does not foresee that whenever the Southern States shall be more numerous than the Northern, they can & will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual, when force shall back their demands. Even in the intervening period, there will no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every Govt. and did not conceive that the proposed confidence as to a periodical readjustment, of the representation exceeded that degree.

Mr. PINKNEY moved to amend Mr. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." This he urged was nothing more than justice. The blacks are the labourers, the peasants of the Southern States: they are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with Representation.

...

On Mr. Pinkney's motion for rating blacks as equal to Whites instead of as 3/5 --

**Mas.no. Cont.no. [Dr Johnson ay] N.J.no. Pa.no. [3 agst. 2.] Del.no.
Md.no. Va.no. N.C.no. S.C.ay. Geo -- ay.**

...

On the question on ye. whole proposition; as proportioning representation to direct taxation & both to the white & 3/5 of black inhabitants, & requiring a Census within six years --& within every ten years afterwards.

**Mas.divd. Cont.ay. N.J.no. Pa.ay. Del.no. Md.ay. Va.ay. N.C.ay.
S.C.divd. Geo.ay.” [Notes, July 12, 1787]**

“FRIDAY JULY 13. IN CONVENTION

...

On the motion of Mr. Randolph, the vote of Saturday last authorising the Legislr. to adjust from time to time, the representation upon the principles of wealth & numbers of inhabitants was reconsidered by common consent in order to strike out "Wealth" and adjust the resolution to that requiring periodical revisions according to the number of whites & three fifths of the blacks: the motion was in the words following --

"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the U. S. be authorized from time to time to apportion the number of representatives: and in case any of the States shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. the Legislature of U. S. shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants; according to the provisions hereafter mentioned."

Mr. GOVr. MORRIS opposed the alteration as leaving still an incoherence. If Negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabts. they ought to be added in their entire number, and not in the proportion of 3/5 . If as property, the word wealth was right, and striking it out, would produce the very inconsistency which it was meant to get rid of. -- The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He wd. candidly state the result. A distinction had been set up & urged, between the Nn. & Southn. States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in, and that the Southn. Gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public Councils. The consequence of such a transfer of power from the maritime to the interior & landed interest will he foresees be such an oppression of commerce, that he shall be obliged to vote for ye. vicious principle of equality in the 2d. branch in order to provide some defence for the N. States agst. it. But to come more to the point; either this distinction is fictitious or

real; if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southn. States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the middle States in point of policy to take: to join their Eastern brethren according to his ideas. If the Southn. States get the power into their hands, and be joined as they will be with the interior Country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. the interior Country having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northn. & middle States will have agst. this danger. It has been said that N. C. S. C., and Georgia only will in a little time have a majority of the people of America. They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.

Mr. BUTLER. The security the Southn. States want is that their negroes may not be taken from them, which some gentlemen within or without doors, have a very good mind to do. It was not supposed that N. C. S. C. & Geo. would have more people than all the other States, but many more relatively to the other States than they now have. The people & strength of America are evidently bearing Southwardly & S. westwdly.

Mr. WILSON. If a general declaration would satisfy any gentleman he had no indisposition to declare his sentiments. Conceiving that all men wherever placed have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. If the interior Country should acquire this majority, it will not only have the right, but will avail themselves of it whether we will or no. This jealousy misled the policy of G. Britain with regard to America. The fatal maxims espoused by her were that the Colonies were growing too fast, and that their growth must be stinted in time. What were the consequences? first. enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if

like jealousy & policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out. No one has yet ventured to attempt it. Congs. have never been able to discover a better. No State as far as he had heard, has suggested any other. In 1783, after elaborate discussion of a measure of wealth all were satisfied then as they are now that the rule of numbers, does not differ much from the combined rule of numbers & wealth. Again he could not agree that property was the sole or the primary object of Governmt. & society. The cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural & precise measure of Representation. And with respect to property, they could not vary much from the precise measure. In no point of view however could the establishmt. of numbers as the rule of representation in the 1st. branch vary his opinion as to the impropriety of letting a vicious principle into the 2d. branch. –

On the Question to strike out wealth, & to make the change as moved by Mr. Randolph, it passed in the affirmative --

Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. divid. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Mr. REED moved to insert after the word -- "divided," "or enlarged by addition of territory" which was agreed to nem. con. [his object probably was to provide for such cases as an enlargemt. of Delaware by annexing to it the Peninsula on the East side of Chesapeak]

Adjourned" [Notes, July 13, 1787]

C. The Three-Fifths Clause And Sections One and Two of The Fourteenth Amendment

“Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ...

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

.... “

[July 9, 1868].

**D. The Nineteenth Amendment Grants Voting Rights to Women,
Who Had Always Been Counted for the Purposes of Redistricting**

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

....”

[August 18, 1920]

E. Where We Are Today: Redistricting: Every *Qualified* Voter Is Entitled Equal Representation, Which Requires State or Federal Electoral Districts Be Drawn To Accomplish That Result As Near As Feasible

Reynolds v. Sims, 377 U.S. 533 (1964):

“ ...

Undeniably, the Constitution of the United States protects the right of all **qualified citizens** to vote, in state as well as in federal, elections. [Id. at 554 (emphasis added)].

...

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. [Id. at 555].

...

Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit. [Id. at 557].

...

And, finally, we concluded:

The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing -- one person, one vote”. [Id. at 558].

In *Wesberry v. Sanders*, 376 U. S. 1, decided earlier this Term, ... [w]e **determined that the constitutional test for the validity of congressional districting schemes was one of substantial equality of**

population among the various districts established by a state legislature for the election of members of the Federal House of Representatives.” [Id. at 559 (emphasis added)].

“...Our problem, then, is to ascertain, in the instant cases, whether there are any constitutionally cognizable principles which would justify departures from the basic standard of equality among voters in the apportionment of seats in state legislatures.[Id. at 561 (emphasis added)].

...

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.... And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. [Id. at 562].

State legislatures are, historically, the fountainhead of representative government in this country. ... But representative government is, in essence, self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as **qualified voters** through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less. [Id. at 563, 564].

...

To the extent that a citizen's right to vote is debased, he is that much less a citizen. ...The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable

become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged -- the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.” [Id. at 567].

...

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. [Id. at 568].

...

While mathematical nicety is not a constitutional requisite,” [Id. at 569].

See also related cases based upon the Equal Protection Clause of the Fourteenth Amendment: *Baker v. Carr*, 369 U.S. 186 (1962)(establishing federal judicial review over redistricting and voting procedures); *Grey v. Sanders*, 372 U.S. 368 (1963)(voter dilution in state elections); *Wesberry v. Sanders*, 376 U.S. 1(1964) (congressional redistricting plan); *Bush v. Gore*, 531 U.S. 98 (2000)(using disparate vote counting methods in different State counties violates the Equal Protection Clause).

And see, U.S. Const., Amend XXIV (24!) banning any tax as a prerequisite to vote:

“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

....” [January 23, 1964].

F. Connect The Dots:

Notice in *Reynolds v. Sims*, above, the Court refers to the constitutional rights of “qualified” voters, that is, a citizen who is authorized to vote in a particular election because he or she meets the eligibility criteria to vote. *See*, for example, New Jersey Constitution, [1947]:

N.J CONST. [1947] , ARTICLE II ELECTIONS AND SUFFRAGE, SECTION I

...

3. (a) Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people; and

3(b) (Deleted by amendment, effective December 5, 1974.)

3(c) Any person registered as a voter in any election district of this State who has removed or shall remove to another state or to another county within this State and is not able there to qualify to vote by reason of an insufficient period of residence in such state or county, shall, as a citizen of the United States, have the right to vote for electors for President and Vice President of the United States, only, by Presidential Elector Absentee Ballot, in the county from which he has removed, in such manner as the Legislature shall provide. Article II, paragraph 3 amended effective December 5, 1974.

...

5. No person in the military, naval or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this State.

6. No idiot or insane person shall enjoy the right of suffrage.

7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any

person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

The State Legislators pass laws setting forth election procedures, but must abide by the above eligibility criteria. Note, our State constitution requires that to be eligible, a voter must be a United States citizen. (N.J. Const. [1947]. Art. II, Sec. 1, Par. 3 (a).

Where Are The Dots Today?:

- a. Some voting rights advocates claim: “count every vote” from every voter, whether qualified or not. Is there a problem with that? Can you explain what it is?
- b. What about policies designed to assure all voters are qualified? Such as voter ID or verification procedures for mail in ballots? Do these promote or detract from the integrity of the election process?
- c. Do you see a connection between political equality, representative government based on the principles of ‘one person one vote’, and meaningful procedures to eliminate unqualified voters from voting?
- d. If, in an election, the votes of unqualified and qualified votes are cast and counted, has voter suppression occurred? If so, how? If not, why not?

G. Reading/Viewing For Fun:

The book: "The Last Hurrah", Edwin O'Connor (1957)

The movie: "The Last Hurrah" (John Ford, Director) (1958)

H. The Bigger Picture: What Would You Have Done if You Were There?

Consider again the comments of the delegates on July 11, especially those of Mr. King and Mr. Gov'r Morris, and on July 12, of Mr. Davie and Mr. Gov'r Morris. Do you think the delegates believed it was possible to prepare a draft without the 3/5's clause?

The Constitution advanced humankind's pursuit of a more just society – it is the reason that some form of self-governance predominates in the world today. But, that advance came at a price! The delegates had to make an accommodation to slavery. The alternative option the delegates faced was a continuation and failure of the inadequate Articles of Confederation, and the likely reorganization of the former colonies into several smaller confederations. In other words, no America.

What do you think? Did the delegates make the right choice, even if it meant that the institution of slavery was not abolished? Here is what Abraham Lincoln thought, as expressed in his Second Inaugural address, delivered in March, 1864, 41 days before his death:

"Fellow countrymen: at this second appearing to take the oath of the presidential office there is less occasion for an extended address than there was at the first. ...

"On the occasion corresponding to this four years ago all thoughts were anxiously directed to an impending civil war. All dreaded it ~ all sought to avert it. ... Both parties deprecated war but one of them would make war rather than let the nation survive, and the other would accept war rather than let it perish. And the war came.

"One eighth of the whole population were colored slaves not distributed generally over the union but localized in the southern part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was somehow the cause of the war. To strengthen perpetuate and extend this interest was the object for which the insurgents would rend the Union even by war while the government claimed no right to do more than to restrict the territorial enlargement of it. Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with or even

before the conflict itself should cease. Each looked for an easier triumph and a result less fundamental and astounding. **Both read the same Bible and pray to the same God and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces but let us judge not that we be not judged. The prayers of both could not be answered ~ that of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offenses for it must needs be that offenses come but woe to that man by whom the offense cometh." If we shall suppose that American slavery is one of those offenses which in the providence of God must needs come but which having continued through His appointed time He now wills to remove and that He gives to both North and South this terrible war as the woe due to those by whom the offense came shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him. Fondly do we hope ~ fervently do we pray ~ that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk and until every drop of blood drawn with the lash shall be paid by another drawn with the sword as was said three thousand years ago so still it must be said 'the judgments of the Lord are true and righteous altogether.'**

"With malice toward none with charity for all with firmness in the right as God gives us to see the right let us strive on to finish the work we are in to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan ~ to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

[Linclon, March 4, 1864 (emphasis added)].