

## Regarding the "Three-Fifths Rule"

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### 1 Introduction

Every now and then we Americans find ourselves being subjected to "debates" among the prominent political persons and members of the media as to the lingering consequences of the "three-fifths" rule. It is common for those participants to make allegations about the three-fifths rule that fit their ideology or advance their demands. Rather than intrude on their high-level sloganeering, I shall in what follows simply lay out the true history of the matter, such that you, the honest observer, will be armed with the facts. Then you will be able to judge the merits of any arguments presented in those "debates".

Now I must first give a warning on this subject. The provision in question is contained in the third paragraph of Article 1, Section 2 of the U. S. Constitution. However, this provision was superseded by the 14th Amendment, which was ratified by the required number of states on 9 Jul 1868. So, anyone claiming to have been directly harmed by this "three-fifths" provision would have to have been born prior to that date. I am unaware of any people now living who could make a valid claim. Therefore, it is important to keep in mind that, although it is of great historical interest, this entire subject has now been resolved for practical purposes by Constitutional amendment.

We begin with the statement of the provision itself, extracted from the U. S. Constitution as noted above, as ratified by the last of the thirteen original states on 29 May 1790. Actually, the Constitution went into effect before that, since only nine were required to activate it; that occurred on 21 Jun 1788 with the ratification by New Hampshire. The provision in question reads:

*Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.*

This provision concerns the allocation of the number of seats in the House of Representatives, and the method by which "direct taxes" may be imposed by Congress. In this con-

text, "direct taxes" referred to property taxes, head taxes, poll taxes or others which are based directly on population. The number of seats in the House allocated to each state is based on the states' population. In that way, it may be said that the House represents the people, since one seat is given to a certain number of people, regardless of how those are distributed among the states. It is the system by which a highly populated state like California or New York has greater representation in the House than Montana or Wyoming, which are states with comparable or greater land area. Note that four categories of persons are cited in the last part of the provision: a) free persons; b) those bound to a service for a term of years; c) Indians not taxed; and d) three fifths of all other persons. "Those bound to a term of service" refers to "indentured servitude", which was common in the colonial period and early years of the Republic. It refers to people who agreed to work without pay for another person, usually in repayment of the cost of the voyage from Europe. They were "indentured" until the debt was repaid, and then became free. "Indians not taxed" referred to Indians who were living on reservations, with sovereignty under treaties with the U. S. Last, "three fifths of all other persons" is a reference to slaves. The allegation, often made by the illustrious "debaters", is that this provision proves the pervasive hatred and prejudice of the white founders, since they relegated slaves to only three-fifths of a person for determining representation in the House of Representatives. Furthermore, such ratio is alleged to be due to black people being presumed by the founders as less than fully human. As I said, I will provide the facts below, and you may judge for yourselves.

It is important to keep in mind the status of slavery at this time (1788). Of the thirteen original states, only one (Massachusetts) had outlawed slavery altogether. Pennsylvania had passed a law a few years earlier that granted freedom to all persons born to slave parents after a certain date; it would have the effect of gradually eliminating slavery. All the other states permitted slavery, although not all permitted the importation of slaves. It must be said, though, that although slavery existed in twelve of the thirteen states, it was widespread only in four: Georgia, South Carolina, North Carolina, and Virginia.

## **2 The Debate on the Articles of Confederation (1776)**

The earliest widely-available record we have on this subject, that is, the relative ratio of counting free vs. slave persons, is contained in Thomas Jefferson's notes on the debate of the Articles of Confederation in July 1776. Recall that at this time, there was no formal national or federal government of any kind; Congress had appointed itself to regulate the conduct of the war. But a formal union was desirable for many obvious reasons, and one point that must always be considered is to fund such a government. It was agreed in principle that Congress should have the power to requisition funds from each of the states to contribute to the war effort. The question was: upon what basis should Congress requisition various amounts from each state? In other words, should Congress request appropriations on the basis of land, number of people, value of houses, or some other metric? One proposal put forward, and which touches upon our subject, was to base it on the

number and type of inhabitants. We pick up now from Jefferson's notes on that debate, reproduced in full without omission or interruption [1].

#### JEFFERSON'S NOTES OF DEBATE ON CONFEDERATION

On Friday, July 12, [1776] the committee appointed to draw the Articles of Confederation reported them, and on the 22nd the house resolved themselves into a committee to take them into consideration. On the 30th and 31st of that month, and 1st of the ensuing, those articles were debated which determined the proportion, or quota, of money which each state should furnish to the common treasury, and the manner of voting in Congress. The first of these articles was expressed, in original draft, in these words: --

"Art. XI. All charges of war, and all other expenses that shall be incurred for the common defense, or general welfare, and allowed by the United States assembled, shall be defrayed out of a common treasury, which shall be supplied by the several colonies in proportion to the number of inhabitants of every age, sex, and quality, except Indians not paying taxes, in each colony -- a true account of which, distinguishing the white inhabitants, shall be triennially taken, and transmitted to the Assembly of the United States."

Mr. Chase moved that the quotes should be fixed, not by the number of inhabitants of every condition, but by that of the "white inhabitants". He admitted that taxation should always be in proportion to property; that this was, in theory, the true rule; but that, from a variety of difficulties, it was a rule which could never be adopted in practice. The value of the property in every state could never be estimated justly and equally. Some other measures for the wealth of the state must therefore be devised, some standard referred to, which would be more simple. He considered the number of inhabitants as a tolerably good criterion of property, and that this might always be obtained. He therefore thought it the best mode which we could adopt, with one exception only: he observed that negroes are property, and, as such, cannot be distinguished from the lands or personalities held in those states where there are few slaves; that the surplus of profit which a northern farmer is able to lay by, he invests in cattle, horses, etc., whereas a southern farmer lays out the same surplus in slaves. There is no more reason, therefore, for taxing the Southern States on the farmer's head, and on his slave's head, than the northern ones on their farmer's heads and the heads of their cattle; that the method proposed would, therefore, tax the Southern States according to their numbers and their wealth conjunctly, while the Northern would be taxed on numbers only; that negroes, in fact, should not be considered as members of the state, more than cattle, and that they have no more interest in it.

Mr. John Adams observed, that the numbers of people are taken, by this article, as an index of the wealth of the state, and not as objects of taxation; that, as to this matter, it was of no consequence by what name you called your people, whether by that of freemen or of slaves; that, in some countries, the laboring poor are called freemen, in others they were called slaves; but that the difference as to the state was imaginary. What matters it whether a landlord, employing ten laborers on his farm, give them annually as much money as will buy them the necessaries of life, or give them those necessaries at short hand? The ten laborers add as much wealth to the state, increase its exports as much, in the one case as in the other. Certainly five hundred freemen produce no more profits, no greater surplus for the payment of taxes, than five hundred slaves. Therefore the state in which the laborers are called freemen, should be taxed no more than that in which those are called slaves. Suppose, by an extraordinary operation of nature or of law, one half the laborers of a state could, in the course of one night, be transformed into slaves; would the state be made poorer, or the less able to pay taxes? That the condition of the laboring poor in most countries -- that of the fishermen, particularly, in the Northern States -- is as abject as that of slaves. It is the number of laborers which produces the surplus for taxation; and numbers, therefore, indiscriminately, are the fair index to wealth; that it is the use of the word "property" here, and its application to some of the people of the state, which produce the fallacy. How does the southern farmer procure slaves? Either by importation, or by purchase from his neighbor. If he imports a slave, he adds one to the number of laborers in his country, and, proportionably, to its profits, and ability to pay taxes. If he buys from his neighbor, it is only a transfer of a laborer from one farm to another, which does not change the annual produce of the state, and therefore should not change its tax; that if a northern farmer works ten laborers on his farm, he can, it is true, invest the surplus of ten men's labor in cattle; but so may the southern farmer, working ten slaves; that a state of one hundred thousand freemen can maintain no more cattle than one of one hundred thousand slaves. Therefore they have no more of that kind of property. That a slave may, indeed, from the custom of speech, be more properly called the wealth of his master, than the free laborer might be called the wealth of his employer; but as to the state, both were equally its wealth, and should therefore equally add to the quota of its tax.

Mr. Harrison proposed, as a compromise, that two slaves should be counted as one freeman. He affirmed that slaves did not do as much work as freemen, and doubted if two effected more than one; that this was proved by the price of labor -- the hire of a laborer in the southern colonies being from £8 to £12, while in the northern it was generally £24.

Mr. Wilson said that, if this amendment should take place, the southern colonies would have all the benefit of slaves, whilst the northern ones

would bear all the burden; that slaves increase the profits of a state, which the Southern States mean to take for themselves; that they also increase the burden of defense, which would of course fall so much the heavier on the Northern; that slaves occupy the places of freemen, and eat their food. Dismiss your slaves, and freemen will take their places. It is our duty to lay every discouragement on the importation of slaves; but this amendment would give *jus trium liberorum* to him who would import slaves; that other kinds of property were pretty well equally distributed through all the colonies; -- there were as many cattle, horses, and sheep in the north as the south, and south as the north; but not so to slaves; -- that experience has shown that those colonies have always been able to pay most which have the most inhabitants, whether they be black or white; and the practice of the southern colonies has always been to make every farmer pay poll taxes upon all his laborers, whether they be black or white. He acknowledges, indeed, that freemen work the most; but they consume the most also. They do not produce a greater surplus for taxation. The slave is neither fed nor clothed so expensively as a freeman. Again, white women are exempt from labor generally, but negro women are not. In this, then, the Southern States have an advantage, as the article now stands. It has sometimes been said that slavery is necessary, because the commodities they raise would be too dear for market if cultivated by freemen; but now it is said that the labor of slaves is the dearest.

Mr. Payne urged the original resolution of Congress, to proportion the quotas of the states to the number of souls.

Dr. Witherspoon was of opinion that the value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation. This is the true barometer of wealth. The one now proposed is imperfect in itself, and unequal between the states. It has been objected that negroes eat the food of freemen, and therefore should be taxed: horses also eat the food of freemen; therefore they should also be taxed. It has been said, too, that in carrying slaves into the estimate of the taxes the state is to pay, we do no more than those states themselves do, who always take slaves into the estimate of the taxes the individual is to pay. But the cases are not parallel. In the southern colonies slaves pervade the whole colony; but they do not pervade the whole continent. That, as to the original resolution of Congress, to proportion the quotas according to the souls, it was temporary only, and related to the moneys heretofore emitted; whereas we are now entering into a new compact, and therefore stand on original ground.

August 1. -- The question being put, the amendment proposed was rejected by the votes of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, against those of Delaware, Maryland, Virginia, North and South Carolina. Georgia was divided.

Note that while these men had differing views on how taxation ought to be levied, there is no evidence that any distinctions between freemen and slaves was due to a lesser moral quality of one compared to the other. It was all about the money, and the simplest, most equitable way to establish the quota and to collect it. As Adams observed, it makes no difference what people are called from the standpoint of revenue, one is the same as another, and should be equally taxed. Harrison offered up his compromise of counting slaves as half a freeman only because he estimated that a slave contributed only half as much in profit as a freeman. It was a very sensible observation, having nothing to do with the worth of a person, only the worth, that is, the relative value of their output. Who can doubt it? Why would a slave work as hard as a freeman, when all the benefits went to the master? Wilson was wary of the southern states, where slaves were numerous, taking economic advantage of the northern states, and he points out the hypocrisy of the southerners in pretending that slaves were of great economic necessity, but left the master too poor to pay taxes from the proceeds.

### **3 The Articles of Confederation (1778)**

How did the debate turn out? Did the members of Congress decide that black people in general, and slaves in particular were less than human, and therefore given voting rights in a lesser proportion than whites? Of course not; under the Articles of Confederation, the only institution was Congress: only states were represented, and each state got one vote. It is most comparable to the Senate today, in which each state is represented equally. Representation was not decided by population or proportion between white and black. What about the tax issue? Here is Article 8 of the Articles of Confederation, which states the issue of taxation:

Art. 8. All charges of war, and all other expenses that shall be incurred for the common defense 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.

Referring back to Jefferson's notes, it seems that the opinion by Dr. Witherspoon ultimately was adopted: there is nothing in the Articles by which black and white, free and slave are distinguished. How did this happen? We don't know for sure. Jefferson added a paragraph at the end of his notes simply saying that "These articles, reported July 12, '76, were debated from day to day, and time to time, for two years."

#### 4 The Proposed Amendment to the Articles of Confederation (1783)

The next occasion of debate on our subject occurred in the spring of 1783. The war had been over for all practical purposes since the victory at Yorktown in October of 1781. Unknown to Congress, preliminary articles of peace with Great Britain had been signed in Paris on 20 Jan 1783, but Congress would not learn of it until 23 Mar 1783. Congress was however, mired in debates about how to keep the nation together after the peace. One of the main problems was Congress' inability to borrow money since the collapse of the Continental currency in 1781. Congress had no credit; in fact in the previous year, there was a time when there was no money at all in the treasury. There were essentially two problems. First, the Articles of Confederation did not provide Congress with a revenue stream independent of requisitions from the states; and secondly, the states were not paying their duly assigned requisitions. So, Congress, in early March of 1783, set about debating how to modify the Articles to remedy both of these. On 7 Mar 1783, Congress began debate on a report produced by a Committee on Revenue. It contained eleven sections, of which only the eleventh section relates to our subject (it has two paragraphs). The first ten are recommendations for the imposition of import duties on various items for a period for 25 years, rules for determining which expenses were allowable under the Articles, and the rules by which these changes were to be adopted. Section 11 states [2]:

11. "That, as a more convenient and certain rule of ascertaining the proportions to be supplied by the States, respectively, to the common treasury, the following alteration, in the Articles of Confederation and perpetual union between these States, be, and the same is hereby, agreed to by Congress; and the several States are advised to authorize their respective Delegates to subscribe and ratify the same, as part of the said instrument of union, in the words following, to wit:

" 'So much of the eighth of the Articles of Confederation and perpetual union between the thirteen States of America as is contained in the words following, to wit: "All charges of war, and all other expenses that shall be incurred for the common defense 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," -- is hereby revoked and made void, and in place thereof it is declared and concluded the same having been agreed to in a Congress of the United States, that all charges of war, and all other expenses that shall be incurred for the common defense 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 number of inhabitants, of every

age, sex, and condition, except Indians, not paying taxes in each State; which number shall be triennially taken and transmitted to the United States, in Congress assembled, in such mode as they shall direct and appoint; provided always, that in such numeration no persons shall be included who are bound to servitude for life, according to the laws of the State to which they belong, other than such as may be between the ages of \* ---- years.' "

The items relating to the import duties were debated briefly on 11 Mar, but the ones of interest here were not debated again until 27 Mar. In the meantime, Congress learned of and debated the preliminary articles of peace (12 - 15 Mar), received a note from General Washington on the 17th that there were some members of the business community to whom Congress owed money that were trying to tempt the army to force either the States or Congress to pay them. On the 18th, they modified the rates of import duties. On the 19th they were notified by the Superintendent of Finance that he had received word that Congress could expect no more credit from France or any other European nation. They spent the week from the 20th to the 26th debating various points of the preliminary peace treaty; on a dispute with France about the diplomatic delicacy of signing articles of peace without France's participation; Washington's skill at pre-empting any subversion of the army; and a few items on the import duty issue.

On 27 Mar 1783, Congress resumed debate on the requisition allocation issue in detail. After going over paragraphs 6 through 10 of the 7 Mar report, they debated the 11th and 12th paragraph (both part of the 11th Section), which is pertinent to our subject. Resuming at the official record, which carried over to 28 Mar 1783, we have, regarding the 11th and 12th paragraphs of the 7 Mar 1783 report, without omission or interruption [3]:

(Thursday, March 27, 1783)

(Eleventh and twelfth paragraphs) Mr. Bland, in opposition, said that the value of land was the best rule, and that, at any rate, no change should be attempted until its practicability should be tried.

Mr. Madison thought the value of land could never be justly or satisfactorily obtained; that it would ever be a source of contentions among the States; and that, as a repetition of the valuation would be within the course of twenty-five years, it would, unless exchanged for a more simple rule, mar the whole plan.

Mr. Gorham was in favor of the paragraphs. He represented, in strong terms, the inequality and clamors produced by valuations of land in the State of Massachusetts, and the probability of the evils being increased among the States themselves, which were less tied together, and more likely to be jealous of each other.

Mr. Williamson was in favor of the paragraphs.

Mr. Wilson was strenuous in their favor; said he was in Congress when the Articles of Confederation directing a valuation of land were

agreed to; that it was the effect of the impossibility of compromising the different ideas of the Eastern and Southern States, as to the value of slaves compared with whites, the alternative in question.

Mr. Clark was in favor of them. He said that he was also in Congress when this article was decided; that the Southern States would have agreed to number in preference to the value of land, if half their slaves only should be included; but that the Eastern States would not concur in that proposition.

It was agreed, on all sides, that, instead of fixing the proportion by ages, as the report proposed, it would be best to fix the proportion in absolute numbers. With this view, and that the blank might be filled up, the clause was recommitted.

(Friday, March 28, 1783)

The Committee last mentioned, reported that two blacks be rated as one freeman.

Mr. Wolcott was for rating them as four to three.

Mr. Carroll as four to one.

Mr. Williamson said he was principled against slavery; and he thought slaves an incumbrance to society, instead of increasing its ability to pay taxes.

Mr. Higginson as four to three.

Mr. Rutledge said, for the sake of the object, he would agree to rate slaves as two to one, but he sincerely thought three to one would be a juster proportion.

Mr. Holten as four to three.

Mr. Osgood said he did not go beyond four to three.

On a question of rating them as three to two, the votes were, New Hampshire, aye; Massachusetts no; Rhode Island, divided; Connecticut, aye; New Jersey, aye; Pennsylvania, aye; Delaware, aye; Maryland, no; Virginia, no, North Carolina, no; South Carolina, no.

The paragraph was then postponed, by general consent, some wishing for further time to deliberate on it; but it appearing to be the general opinion that no compromise would be agreed to.

After some further discussions on the report, in which the necessity of some simple and practicable rule of apportionment came fully into view, Mr. Madison said that, in order to give proof of the sincerity of his professions of liberality, he would propose that slaves should be rated as five to three. Mr. Rutledge seconded the motion. Mr. Wilson said he would sacrifice his opinion on this compromise.

Mr. Lee was against changing the rule, but gave it as his opinion that two slaves were not equal to one freeman.

On the question of five to three, it passed in the affirmative; New Hampshire, aye; Massachusetts, divided; Rhode Island, no; Connecticut,

no; New Jersey, aye; Maryland, aye; Virginia, aye; North Carolina, aye; South Carolina, aye.

A motion was then made by Mr. Bland, seconded by Mr. Lee, to strikeout the clause so amended, and on the question "shall it stand," it passed in the negative; New Hampshire, aye; Massachusetts, no; Rhode Island, no; Connecticut, no; New Jersey, aye; Pennsylvania, aye; Delaware, no; Maryland, aye; Virginia, aye; North Carolina, aye; South Carolina, no; so the clause was struck out.

The arguments used by those who were for rating the slaves high were, that the expense of feeding and clothing them was as far below that incident to freemen as their industry and ingenuity were below those of freemen; and that the warm climate within which the States having slaves lay, compared with the rigorous climate and inferior fertility of the others, ought to have great weight in the case; and that the exports of the former States were greater than of the latter. On the other side, it was said, that slaves were not put to labor as young as the children of laboring families; that, having no interest in their labor, they did as little as possible, and omitted every exertion of thought requisite to facilitate and expedite it; that if the exports of the States having slaves exceeded those of the others, their imports were in proportion, slaves being employed wholly in agriculture, not in manufactures; and that, in fact, the balance of trade formerly was much more against the Southern States than the others.

On the main question, New Hampshire, aye; Massachusetts, no; Rhode Island, no; Connecticut, no; New York (Mr. Floyd, aye); New Jersey, aye; Delaware, no; Maryland, aye; Virginia, aye; North Carolina, aye; South Carolina, no.

We observe here an agreed-to compromise in which slaves were to be counted as three-fifths of a freeman. Note the context of the debate. The Northern states wanted to count slaves as equal, or nearly equal (3 to 4) to a freeman, noting that the expenses associated with providing for a slave was proportional to the lower output of slaves compared to a freeman. At the same time, the output produced by slaves could be exported profitably by the southerners, and therefore they could afford to pay taxes on slaves as equal, or nearly equal to freeman. The southerners argued that the children of freemen went to work at a younger age than slaves, that slaves did as little work as possible, and that the larger exports existed only to pay for the larger imports by the Southern States. In no case did any of these men argue that slaves, or black people in general, were to be rated lower than whites owing to some moral deficiency of black people relative to white. As to Madison's note that some argued on the basis of reduced ingenuity by the slaves, it is obvious that slaves would exhibit less ingenuity since they were deliberately kept uneducated by the masters.

Wilson's comment about the earlier debate being based on the value of slaves relative to whites does not relate to any moral sense; only the to the relative amount slaves contrib-

uted to the economy. Again, if slaves produced less per capita than freemen, then it is safe to conclude that it is characteristic of the institution: why would a person in bondage work as hard as a freeman who was able to keep the proceeds of his labor?

Congress resumed its debate on the most important problem, which was how to obtain consistent revenue. The states had mostly been delinquent in the payment of requisitions, which in a sense held Congress hostage, since Congress was not granted any power to raise revenues directly. The sought-for reform was to give Congress the power to impose an import duty to finance the necessary activities of Congress and to pay off the war debts. The culmination of the debate occurred on 18 Apr 1783, in which Congress put forth two recommendations: a) that Congress be allowed to impose an import duty on various products; and b) that Article 8 was to be modified such that requisitions assigned to the states shall be done in proportion to population and not land value. This second recommendation was made as follows [4]:

So much of the 8th of the Articles of Confederation and Perpetual Union, between the thirteen states of America, as is contained in the words following, to wit, "All charges of war, and all other expenses that shall be incurred for the common defense 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," is hereby revoked and made void; and in place thereof, it is declared and concluded, the same having been agreed to in a Congress of the United States, that all charges of war, and all other expenses, that have been, or shall be, incurred for the common defense and general welfare, and allowed by the United States in Congress assembled, except so far as shall be otherwise provided for, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each sate; which number shall be triennially taken an transmitted to the United States in Congress assembled, in such mode as they shall direct and appoint.

On the question to agree to the forgoing act, the yeas and nays required by Mr. Arnold: New Hampshire, aye; Massachusetts, aye, Rhode Island, no; Connecticut, aye; New York, divided; New Jersey, aye; Pennsylvania, aye; Delaware, aye; Maryland, aye; Virginia, aye; North Carolina, aye; South Carolina, aye. So it was resolved in the affirmative.

The Articles of Confederation required that every proposed alteration or amendment be approved unanimously by the thirteen states. This recommendation as cited above was sent out the states, but neither the import duty nor the modification of the provision on determining requisitions was ever agreed to. In fact, the inability of Congress to pay its debts, along with various revolts in the states, and threat of strategic encirclement by Spain and England were the principal causes of the drive for a different type of union, that is, the Constitution of 1787.

At this stage then, Congress had agreed and recommended that requisitions upon the states should be based on population rather than land value, and that slaves were to be counted as three-fifths of a free man for the purpose of assessing the relative ability to pay those requisitions. Nothing else occurred on this topic until the debates in the Constitutional Convention, which is recalled next.

## 5 The Constitutional Convention (1787)

We come now at last to the debates in Philadelphia that produced the Constitution and the most-hated-and-frequently-debated "three-fifths' rule in its final form. The following narrative contains the progress of the debate on this issue in the Federal Convention of 1787.

The first mention of our topic occurred on 29 May 1787, when Edmund Randolph introduced several resolutions for consideration, the second of which read [5]:

2. Resolved, therefore, that the right of suffrage, in the national legislature, ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other may seem best, in different cases.

On the same day, Charles Pinckney submitted a draft of a Constitution for consideration. Regarding the means of allocating seats in the legislature, Article III states [6]:

--- and the legislature shall hereafter regulate the number of delegates by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every \_\_\_\_\_ thousand.

Pinckney did not spell out the method by which the number of inhabitants was to be counted. He did, however, mention a method of direct taxation in his Article VI [7]:

The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description; which number shall, within \_\_\_\_\_ years after the first meeting of the legislature, and within the term of every \_\_\_\_\_ year, be taken, in the manner to be prescribed by the legislature.

On 30 May 1787, some debate occurred on this subject [8]:

(Wednesday, May 30)

The following resolution, being the second, proposed by Mr. Randolph, was taken up, viz.:

"That the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases."

Mr. Madison, observing the words "or to the number of free inhabitants" might occasion debates which would divert the committee from the general question whether the principle of representation should be changed, moved that they be struck out.

Mr. King observed, that the quotas of contribution, which would alone remain as the measure of representation, would not answer; because, waiving every other view of the matter, the revenue might hereafter be so collected by the general government that the sums respectively drawn from the states would not appear, and besides would be continually varying.

Mr. Madison admitted the propriety of the observation, and that some better rule ought to be found.

Col. Hamilton moved to alter the resolution so as to read, "that the rights of suffrage in the national legislature ought to be proportioned to the number of free inhabitants." Mr. Spaight seconded the motion.

It was then moved that the resolution be postponed; which was agreed to.

Mr. Randolph and Mr. Madison then moved the following resolution: "That the rights of suffrage in the national legislature ought to be proportioned."

It was moved, and seconded, to amend it by adding, "and not according to the present system;" which was agreed to.

It was then moved and seconded to alter the resolution so as to read, "That the rights of suffrage in the national legislature ought not to be according to the present system."

It was then moved and seconded to postpone the resolution moved by Mr. Randolph and Mr. Madison; which being agreed to, ---

Mr. Madison moved, in order to get over the difficulties, the following resolution: "That the equality of suffrage established by the Articles of Confederation ought not to prevail in the national legislature; and that an equitable ratio of representation ought to be substituted." This was seconded by Mr. Gouverneur Morris, and being generally relished, would have been agreed to; when

Mr. Read moved, that the whole clause relating to the point of representation be postponed; reminding the committee that the deputies from Delaware were restrained by their commission from assenting to any

change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

Mr. Gouverneur Morris observed, that the valuable assistance of those members could not be lost without real concern; and that so early a proof of discord in the Convention as the secession of a state would add much to the regret; that the change proposed was, however, so fundamental an article in a national government, that it could not be dispensed with.

Mr. Madison observed, that, whatever reason might have existed for the equality of suffrage when the union was a federal one among sovereign states, it must cease when a national government should be put into place. In the former case, the acts of Congress depended so much for their efficacy and on the cooperation of the states, that these had a weight, both within and without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the general government would take effect without the intervention of the state legislatures, a vote from a small state would have the same efficacy and importance as a vote from a large one, and there was the same reason for different numbers of representatives from different states, as from counties of different extents within particular states. He suggested, as an expedient for at once taking the sense of the members on this point, and saving the Delaware deputies from embarrassment, that the question should be taken in committee, and the clause, on report to the House, be postponed without a question there. This, however, did not appear to satisfy Mr. Read.

By several it was observed, that no just construction of the act of Delaware could require or justify a secession of her deputies, even if the resolution were to be carried through the House as well as the committee. It was finally agreed, however, that the clause should be postponed; it being understood that, in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone being agreed to, the committee then rose; the chairman reported progress; and the House, having resolved to resume the subject in committee tomorrow, adjourned to ten o'clock.

It is important to pause here for clarity. The "rights of suffrage" referred to here does not refer to persons; it refers to how the states would vote in the national legislature. Recall, that in the Articles of Confederation, each state received one vote only. When Madison calls for the elimination of "equality of suffrage", he is recommending that the states have differing numbers of votes, based on some as-yet defined criteria. Two possible criteria had already been proposed: a) Randolph's allocation by the amount contributed to the union by each state; and b) Hamilton's method of allocation by the number of free inhabitants in each state.

The next important facet of this debate came on 31 May 1787, when the members debated the general method by which the members of the first branch of the national legislature (i.e., ultimately the House of Representatives) should be chosen. Some were in favor of election by the people, and some were in favor of some other method. Madison's notes of this debate read [9]:

(Thursday, May 31)

In the committee of the whole on Mr. Randolph's resolution, --- the third resolution, "that the national legislature ought to consist of two branches," was agreed to without debate, or dissent, except that of Pennsylvania, --- given probably from complaisance to Dr. Franklin, who was understood to be partial to a single house of legislation.

The fourth resolution, 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 Massachusetts, 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 any due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the governor, 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 depositary of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize 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 Virginia, different interests and views arising from the difference of produce, of habits, etc. etc. He admitted that we have been too democratic, but was afraid we should 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 and policy; con-

sidering 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 prosperity 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, order 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 he wished to give it as broad as 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 governments 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 elected 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 thought 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 and 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 shown 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 and 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 impractical mode.

On the question for an election of the first branch of the national legislature by the people, -- Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, aye, 6; New Jersey, South Carolina, no, 2; Connecticut, Delaware, divided.

So far, then we have an agreement that the legislative branch will consist of two branches, that the voting rights of the states will not be equal as in the Articles of Confederation, and that the members of the first branch of the legislature will be elected directly by the people.

There was a debate on 7 Jun 1787 regarding suffrage of states, but it related only to the manner of choosing the Senate. Since states are represented equally in the Senate, that debate does not enter into our subject. The rules for the first branch resumed again on 9 Jun 1787 [10]:

(Saturday, June 9)

Mr. Patterson moved, that the committee resume the clause relating to the rule of suffrage in the national legislature.

Mr. Brearly seconds him. He was sorry, he said, that any question on this point was brought into view. It had been much agitated in Congress at the time of forming the Confederation, and was then rightly settled by allowing each sovereign state an equal vote. Otherwise, the smaller states must have been destroyed instead of being saved. The substitution of a ratio, he admitted, carried fairness on the face of it, but, on a deeper examination, was unfair and unjust. Judging of the disparity of the states by the quota of Congress, Virginia would have sixteen votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be three large states, and ten small ones. The large states, by which he meant Massachusetts, Pennsylvania, and Virginia, will carry everything before them. It had been admitted, and was known to him facts from within New Jersey, that where large and small counties were united into a district for electing representatives for the district, the large counties always carried their point, and consequently the large states would do so. Virginia with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia, with her solitary vote, and the other little states, will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the convention with a view of being as useful as he could, in giving energy and stability to the federal government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair, then, it will be asked, that Georgia should have an equal vote with Virginia? He would not say it was. What remedy, then? One only: that a map of the

United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts.

Mr. Patterson considered the proposition for a proportional representation as striking at the existence of the lesser states. He would premise, however, to an investigation of this question, some remarks on the nature, structure, and powers of the Convention. The Convention, he said, was formed in pursuance of an act of Congress; that this act was recited in several of the commissions, particularly that of Massachusetts, which he required to be read; that the amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of Confederation were therefore the proper basis of all the proceedings of the Convention; that we ought to keep within its limits, or we should be charged by our constituents with usurpation; that the people of America were sharp-sighted, and not to be deceived. But the commissions under which we acted were not the only measure of our power, they denoted also the sentiments of the states on the subject of our deliberation. The idea of a national government, as contradistinguished from a federal one, never entered into the mind of any of them; and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme; and if we had, the people are not ripe for any other. We must follow the people; the people will not follow us. The proposition could not be maintained, whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it, and sovereignty supposes equality. If we are to be considered as a nation, all state distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virginia, Massachusetts, and Pennsylvania, as the three large states, and the other ten as small ones; repeating the calculations of Mr. Brearly, as to the disparity of votes which would take place, and affirming that the small states would never agree to it. He said there was no more reason that a great individual state, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. If the ratable property of A was to that of B as forty to one, ought A, for that reason, to have forty times as many votes as B? Such a principle would never be admitted; and, if it were admitted, would put B entirely at the mercy of A. As A has more to be protected than B, so he ought to contribute more for the common protection. The same may be said of a large state, which has more to be protected than a small one. Give the large states an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small states will have every thing to fear. It was once proposed by Galloway, and some others, that America should be represented in the British Parliament, and then be bound by its laws. America could not have been

entitled to more than one third of the representatives which would fall to the share of Great Britain: would American rights and interests have been safe under an authority thus constituted? It has been said that, if a national government is to be formed so as to operate on the people, and not on the states, the representatives ought to be drawn from the people. But why so? May not a legislature, filled by state legislatures, operate on the people who choose the state legislatures? Or may not a practicable coercion be found? He admitted that there was none such in the existing system. He was attached strongly to the plan of the existing Confederacy, in which the people choose their legislative representatives, and the legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the states with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint, thrown out by Mr. Wilson, of the necessity to which the large states might be reduced, of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but, on his return home, do every thing in his power to defeat it there.

Mr. Wilson hoped, if the Confederacy should be dissolved, that a majority – nay, a minority of the states would unite for their safety. He entered elaborately into the defense of a proportional representation, stating, for his first position, that, as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people, different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the times. As to the case of A and B, stated by Mr. Patterson, he observed that, in districts as large as the states, the number of people was the best measure of their comparative wealth. Whether, therefore, wealth or numbers was to form the ratio, it would be the same. Mr. Patterson admitted persons, not property, to be the measure of suffrage. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other. If the small states will not confederate on this plan, Pennsylvania, and he presumed some other states, would not confederate on any other. We have been told that, each state being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign state, when it becomes a member of a federal government. If New Jersey will

not part with her sovereignty, it is vain to talk of government. A new partition of the states is desirable, but evidently and totally impracticable.

Mr. Williamson illustrated the cases by a comparison of the different states to counties of different sizes within the same state; observing, that proportional representation was admitted to be just in the latter case, and could not, therefore, be fairly contested in the former.

The question being about to be put, Mr. Patterson hoped that, as so much depended on it, it might be thought best to postpone the decisions until tomorrow; which was done, *nem. con.*

The committee rose, and the House adjourned.

The debate continued on 11 Jun 1787 [11]:

(Monday, Jun 11)

In the Committee of the Whole. --- The clause concerning the rule of suffrage in the national legislature, postponed on Saturday, was resumed.

Mr. Sherman proposed, that the proportion of suffrage in the first branch should be according to the respective numbers of inhabitants; and that in the second branch, or Senate, each state should have one vote and no more. He said, as the states would remain possessed of certain individual rights, each state ought to be able to protect itself; otherwise, a few large states will rule the rest. The House of Lords in England, he observed, had certain particular rights under the constitution, and hence they have an equal vote with the House of Commons, that they may be able to defend their rights.

Mr. Rutledge proposed, that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested. Mr. Butler urged the same idea; adding, that money was power; and that the states ought to have weight in the government in proportion to their wealth.

Mr. King and Mr. Wilson, in order to bring the question to a point, moved, "that the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation." The clause, so far as it related to suffrage in the first branch, was postponed, in order to consider this motion.

Mr. Dickinson contended for the actual contributions of the states, as the rule of their representation and suffrage in the first branch. By thus connecting the interests of the states with their duty, the latter were sure to be performed.

Mr. King remarked, that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it. If the actual contributions were to be the rule, the non-importing states, as Connecticut and New Jersey, would be in a bad situa-

tion, indeed. It might so happen that they would have no representation. This situation of particular states has been always one powerful argument in favor of the five percent impost.

The question being about to be put, Dr. Franklin said, he had thrown his ideas of the matter on a paper; which Mr. Wilson read to the committee, in the words following: ---

“Mr. Chairman: It has given me great pleasure to observe, that till this point – the proportion of representation – came before us, our debates were carried on with great coolness and temper. If any thing of a contrary kind has on this occasion appeared, I hope it will not be repeated; for we are sent here to consult, not to contend, with each other; and declarations of a fixed opinion, and of determined resolution never to change it, neither enlighten nor convince us. Positiveness and warmth on one side naturally begat their like on the other, and tend to create and augment discord and division, in a great concern wherein our harmony and union are extremely necessary to give some weight to our councils, and render them effectual in promoting and securing the common good.

“I must own, that I was originally of the opinion that it would be better if every member of Congress, or our national council, were to consider himself rather as a representative of the whole than as an agent for the interests of a particular state; in which case, the proportion of members for each state would be of less consequence, and it would not be very material whether they voted by states or individually. But as I find this is not to be expected, I now think the number of representatives should bear some proportion to the number of the represented, and that the decisions should be by majority of members, not by the majority of the states. This is objected to from an apprehension that the greater states would then swallow up the smaller. I do not at present clearly see what advantage the greater states could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that, in the beginning of this century, when the union was proposed of the two kingdoms, England and Scotland, the Scotch patriots were full of fears, that, unless they had an equal number of representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed, however, that the different proportions of importance in the union of the two nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords – a very great inferiority of numbers. And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of public officers, civil and military, of that nation, will find, I believe, that the North Britons enjoy at least their full proportion of emolument.

"But, sir, in the present mode of voting by states, it is equally in the power of the lesser states to swallow up the greater; and this is mathemati-

cally demonstrable. Suppose, for example, that seven smaller states had each three members in the House, and the six larger to have, one with another, six members; and that, upon a question, two members of each smaller state should be in the affirmative, and one in the negative, they would make -- affirmatives, 14; negative, 7; and that all the larger states should be unanimously in the negative, they would make, negatives, 36; in all, affirmatives, 14, negatives 43.

"It is, then, apparent, that the fourteen carry the question against the forty-three, and the minority overpowers the majority, contrary to the common practice of assemblies in all countries and ages.

"The greater states, sir, are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the states. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different constitution, -- some with greater, others with fewer, privileges, -- it was of importance to the borderers, when their boundaries were contested, whether, by running the division lines, they were placed on one side or the other. At present, when such differences are done away, it is less material. The interest of a state is made up of the interests of its individual members. If they are not injured, the state is not injured. Small states are more easily and happily governed than large ones. If, therefore, in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to New Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division, and however equally made at first, it would be continually varying by the augmentation of inhabitants in some states, and their fixed proportion in others, and thence frequently occasion new divisions, I beg leave to propose, for the consideration of the committee, another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

"Let the weakest state say what proportion of money or force it is able and willing to furnish for the general purposes of the Union;

"Let all the others oblige themselves to furnish each an equal proportion;

"The whole of these joint supplies to be absolutely in the disposition of Congress;

"The Congress, in this case, to be composed of an equal number of delegates from each state;

"And their decisions to be by the majority of individual members voting.

"If these joint and equal supplies should, on particular occasions, not be sufficient, let Congress make requisitions on the richer and more powerful states for further aids, to be voluntarily afforded, leaving to each state the right of considering the necessity and utility of the aid desired, and of giving more or less, as it should be found proper.

This mode is not new. It was formerly practiced with success by the British government with respect to Ireland and the colonies. We sometimes gave even more than they expected, or thought just to accept; and, in the last war, carried on while we were united, they gave us back in five years a million sterling. We should probably have continued in such voluntary contributions, whenever the occasions appeared to require them, for the common good of the empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions, however, were to be disposed of at the pleasure of a government in which we had no representative. I am, therefore, persuaded, that they will not be refused to one in which the representation shall be equal.

My learned colleague (Mr. Wilson) has already mentioned, that the present method of voting by states was submitted to originally by Congress under a conviction of its impropriety, inequality, and injustice. This appears in the words of their resolution. It is of the sixth of September, 1774. The words are, ---

*"Resolved, That, in determining questions in this Congress, each colony or province shall have one vote; the Congress not being possessed of, or at present able to procure, materials for ascertaining the importance of each colony.' "*

On the question for agreeing to Mr. King's and Mr. Wilson's motion, it passed in the affirmative.

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye, 7; New York, New Jersey, Delaware, no, 3; Maryland, divided.

It was then moved by Mr. Rutledge, seconded by Mr. Butler, to add to the words "equitable ratio of representation," at the end of the motion just agreed to, the words "according to the quotas of contribution." On motion of Mr. Wilson, seconded by Mr. Pinckney, this was postponed in order to add, after the words "equitable ratio of representation," the words following -- "in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude of a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state" -- this being the rule in the act of Congress, agreed to by eleven states, for apportioning quotas of revenue on the states, and requiring a census only every five, seven, or ten years.

Mr. Gerry thought property not the rule of representation. Why, then, should the blacks, who were property in the south, be, in the rule of representation, more than cattle and horses of the north?

On the question, --

Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 9; New Jersey, Delaware, no, 2.

Mr. Sherman moved, that a question be taken, whether each state shall have one vote in the second branch. Every thing, he said, depended on this. The smaller states would never agree to the plan on any other principle than an equality of suffrage in this branch.

Mr. Ellsworth seconded the motion. On the question for allowing each state one vote in the second branch, --

Connecticut, New York, New Jersey, Delaware, Maryland, aye, 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6.

Mr. Wilson and Mr. Hamilton moved, that the right of suffrage in the second branch ought to be according to the same rule as in the first branch.

On this question for making the ratio of representation the same in the second as in the first branch, it passed in the affirmative.

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye, 6; Connecticut, New York, New Jersey, Delaware, Maryland, no, 5.

It is important to follow what happened here. Wilson and Pinckney brought up the agreement that had been reached by "eleven states, for apportioning quotas of revenue on the states". That agreement occurred, not in the Constitutional Convention, but in the debate back on 18 Apr 1783 when Congress was trying to reform the Articles of Confederation. What we have here is a subtle, but important shift in context. In 1783, the debate had centered on how to allocate requisitions, and a three-fifths rule regarding slaves was adopted as a compromise because the delegates had difficulty ascertaining how to assess slaves from a purely economic standpoint. But on 11 Jun 1787, the same three-fifths rule was adopted as a means of allocating representation in Congress. In this case, the three-fifths rule was agreed to, not because of any racial bias, but because the underlying method of allocating representatives was still based on the relative amount of contributions each state could pay in direct taxation; i.e., still an economic argument as it had been before.

On 13 Jun 1787, the committee reported out their findings, consisting of 19 resolutions. The only one that concerns us is the seventh one, based on Randolph's original proposal of 30 May, as modified by debate on 11 Jun [12]:

"7. Resolved, That the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles

of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state."

On 15 Jun 1787, Patterson of New Jersey laid before the Convention an alternate plan to that proposed earlier by Randolph. His goal was to establish a system that was more federal than national, aided by several members who thought likewise but for different reasons. The only part of his resolutions that concern our topic is the third one [13]:

(Friday, June 15)

3. Resolved, That whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress assembled be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that, if such requisitions be not complied with in the time specified therein, to direct the collection thereof in the non-complying states, and for that purpose to devise and pass acts directing and authorizing the same; -- provided, that none of the powers hereby vested in the United States in Congress assembled shall be exercised without the consent of at least \_\_\_ states; and in that proportion, if the number of confederated states should hereafter be increased or diminished.

A long debate in committee on Mr. Patterson's recommendations occurred on 19 Jun 1787, which did not touch directly on our subject. In the end, Patterson's proposal was rejected, and the Committee submitted to the entire House the resolutions reported out of committee on 13 Jun 1787. The only two that concern us are the first portion of number three and number seven [14]:

"3. Resolved, That the members of the first branch of the national legislature ought to be elected by the people of the several states, for the term of three years..."

"7. Resolved, That the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other

persons not comprehended in the foregoing description, except Indians not paying taxes, in each state."

The basic principle that the members of the first branch of the legislature were to be directly elected by the people was confirmed by a vote taken on 21 Jun 1787 [15]:

It was then moved and seconded to agree to the 1st clause of the 3rd resolution, as reported from the committee, namely: --

"Resolved, That the members of the first branch of the legislature ought to be elected by the people of the several states:"

Yeas: Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye, 9; Nay: New Jersey, 1. Divided: Maryland, 1.

The debate on the seventh resolution commenced on 28 and 29 Jun, as follows [16]:

(Thursday, June 28)

It was moved and seconded to amend the 7th resolution reported from the committee, so as to read as follows, namely: --

"Resolved, That the right of suffrage in the first branch of the legislature of the United States ought to be in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and description, including those bound to servitude for a term of years, and three fifths of all other person not comprehended in the foregoing description, except Indians not paying taxes, in each state."

It was moved and seconded to erase the word "not" from the first clause of the 7th resolution, so as to read, --

"Resolved, That the right of suffrage in the in the second branch of the legislature of the United States ought to be according to the rule established in the Articles of Confederation."

The determination of the house on the motion for erasing the word "not" from the 1st clause of the 7th resolution was postponed, at the request of the deputies of the state of New York, till tomorrow.

And then the house adjourned till tomorrow, at 11 o'clock, A. M.

(Friday, June 29)

It was moved and seconded to strike out the word "not" out of the 1st clause of the 7th resolution reported from the committee.

On the question to strike it out, it passed in the negative.

Yeas: Connecticut, New York, New Jersey, Delaware, 4. Nays: Massachusetts, Pennsylvania, Virginia, North Carolina, Georgia, 6. Divided: Maryland, 1.

It was then moved and seconded to agree to the first clause of the 7th resolution, as reported from the committee, namely: -- "Resolved, that the

right of suffrage in the first branch of the legislature of the United States ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation."

On the question to agree, it passed in the affirmative.

Yeas: Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. Nays: Connecticut, New York, New Jersey, Delaware, 4. Divided, Maryland, 1.

On 2 Jul 1787, a committee was appointed to attempt to resolve the impasse on the 8th resolution and remaining portions of the 7th resolution. Mr. Rutledge also proposed a modification of the 7th resolution on 5 Jul, but it was rejected. On 5 Jul 1787, the committee reported out its recommendation, in two resolutions. Although they do not relate directly to our subject, they caused some debate on it. Only the first of these is relevant, and reads in part [17]:

"1. That, in the first branch of the legislature, each of the states now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh resolution of the Committee of the whole House..."

A debate on our subject did not begin until 6 Jul 1787; here the report referred to is the one provided on 5 Jul, the debate was as follows [18]:

(Friday, July 6)

In Convention. -- Mr. Gouverneur Morris moved to commit so much of the report as relates to "one member for every forty thousand inhabitants." His view was, that they might absolutely fix the number for each state in the first instance; leaving the legislature at liberty to provide for changes in the relative importance of the states, and for the case of new states.

Mr. Wilson seconded the motion; but with a view of leaving the committee under no implied shackles.

Mr. Gorham apprehended great inconvenience from fixing directly the number of representatives to be allowed to each state. He thought the number of inhabitants the true guide; though perhaps some departure might be expedient from the full proportion. The states, also, would vary in their relative extent by separations of parts of the largest states. A part of Virginia is now on the point of a separation. In the province of Maine, a convention is at this time deliberating on a separation from Massachusetts. In such events, the number of representatives ought certainly to be reduced. He hoped to see all the states made small by proper divisions, instead of their becoming formidable, as was apprehended, to the small states. He conceived, that, let the government be modified as it might, there would be a constant tendency in the state governments to encroach

upon it; it was of importance, therefore, that the extent of the states should be reduced as much, and as fast, as possible. The stronger the government shall be made in the first instance, the more easily will these divisions be effected; as it will be of less consequence, in the opinion of the states, whether they be of great or small extent.

Mr. Gerry did not think, with his colleague, that the larger states ought to be cut up. This policy has been inculcated by the middling and small states, ungenerously, and contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the states be reduced to the size of counties. If this policy should still actuate the small states, the large ones could not confederate safely with them; but would be obliged to consult their safety by confederating only with each other. He favored the commitment, and thought that representation ought to be in the combined ratio of numbers of inhabitants and wealth, and not of either singly.

Mr. King wished the clause to be committed, chiefly in order to detach it from the report, with which it had no connection. He thought, also, that the ratio of representation proposed could not be safely fixed, since in a century and a half our computed increase of population would carry the number of representatives to an enormous excess; that the number of inhabitants was not the proper index of ability and wealth; that property was the primary object of society; and that, in fixing a ratio, this ought not to be excluded from the estimate. With regard to new states, he observed, that there was something peculiar in the business, which had not been noticed. The United States were now admitted to be proprietors of the country north-west of the Ohio. Congress, by one of their ordinances, have impolitically laid it out into ten states, and have made it a fundamental article of compact with those who may become settlers, that, as soon as the number in any one state shall equal that of the smallest of the thirteen original states, it may claim admission into the Union. Delaware does not contain, it is computed, more than thirty-five thousand souls; and, for obvious reasons, will not increase much for a considerable time. It is possible, then, that, if this plan be persisted in by Congress, ten new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pennsylvania. The plan, as it respects one of the new states, is already irrevocable -- the sale of the lands having commenced, and the purchasers and settlers will immediately become entitled to all the privileges of the compact.

Mr. Butler agreed to the commitment, if the committee were to be left at liberty. He was persuaded that, the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection, the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old and the new states. He contended

strenuously, that property was the only just measure of representation. This was the great object of government; the great cause of war; the great means of carrying it on.

Mr. Pinckney saw no good reason for committing. The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial states. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with the whites; but would agree to the ratio settled by Congress. He contended that Congress had no right, under the Articles of Confederation, to authorize the admission of new states, no such case having been provided for.

Mr. Davy was for committing the clause, in order to get at the merits of the question arising on the report. He seemed to think that wealth or property ought to be represented in the second branch; and numbers in the first branch.

On the motion for committing, as made by Mr. Gouverneur Morris, --  
Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye, 7; New York, New Jersey, Delaware, no, 3; Maryland, divided.

So the issue of representation at the ratio of one for every forty thousand, and how the forty thousand were to be determined, was committed, that is, sent to a committee of five (G. Morris, Gorham, Randolph, Rutledge, and King). They had their discussions, and made a report on 9 Jul, 1787, where debate on our subject, although indirect, resumes [19]:

(Monday, July 9)

In Convention - Mr. Daniel Carroll, from Maryland, took his seat.

Mr. Gouverneur Morris delivered a report from the committee of five members, to whom was committed the clause in the report of the committee consisting of a member from each state, stating the proper ratio of representatives in the first branch to be as one to every forty thousand inhabitants, as follows, viz.:

"The committee to whom was referred the first clause of the first proposition reported from the grand committee, beg leave to report:

"That, in the first meeting of the legislature, the first branch thereof consist of fifty-six members, of which number New Hampshire shall have 2, Massachusetts, 7, Rhode Island, 1, Connecticut, 4, New York, 5, New Jersey, 3, Pennsylvania, 8, Delaware, 1, Maryland 4, Virginia, 9, North Carolina, 5, South Carolina, 5, Georgia, 2.

"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 the number of representatives. And in case any of the states shall hereinafter 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 Congress.

Mr. Gorham. Some provision of this sort was necessary in the outset. The number of blacks and whites, with some regard to supposed wealth, was the general guide. The legislature is to make alterations from time to time, as justice and propriety may require. Two objections prevailed against the rule of one member for every forty thousand inhabitants. The first was, that the representation would soon be too numerous; the second, that the Western 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 the government 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 committee were guided in the ratio by the wealth or number of inhabitants of the states, or both; noting its variations from former apportionments by Congress.

Mr. Gouverneur Morris and Mr. Rutledge moved to postpone the first paragraph, relating to the number of members to be allowed each state in the first instance, and take up the second paragraph, authorizing the legislature to alter the number from time to time, according to wealth and inhabitants. The motion was agreed to, *nem. con.*

On the question on the second paragraph, taken without any debate, -- Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 9; New York, New Jersey, no, 2.

Mr. Sherman moved to refer the first part, apportioning the representatives, to a committee of a member of each state.

Mr. Gouverneur Morris seconded the motion, observing that this was the only case in which committees were useful.

Mr. Williamson thought it would be necessary to return to the rule of numbers, but that the Western States stood on a different footing. If their property should 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. Gouverneur Morris. The report is little more than a guess. Wealth was not altogether disregarded by the committee. Where it was apparently in favor of one state, whose numbers were superior to the numbers of another by a fraction only, a member extraordinary was allowed to the former, or so vice versa. The committee meant little more than to bring the matter to a point for the consideration of the House.

Mr. Read asked why Georgia was allowed two members, when her inhabitants had stood below that of Delaware.

Mr. Gouverneur Morris. Such is the rapidity of the population of that states, that, before the plan takes effect, it will probably be entitled to two representatives.

Mr. Randolph disliked the report of the committee, but has been unwilling to object to it. He was apprehensive that, as the number was not to be changed till the national 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 commitment to a member from each state.

Mr. Patterson considered the proposed estimate for the future, according to the combined rules of numbers and wealth, as too vague. For this reason New Jersey was against it. He could regard negro 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, and, like other property, entirely a the will of the master. Has a man in Virginia 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 general government? What is the true principle of representation? It is an expedient by which an assembly of certain individuals, 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 should they be represented? He was also against such an indirect encouragement of the slave trade, observing, that Congress, in their act relating to the change of the eighth article of Confederation, had been ashamed to use the term "slaves", and had substituted a description.

Mr. Madison reminded Mr. Patterson that his doctrine of representation, which was, in principle, a genuine one, must forever 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 second, 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 and 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 Northern, unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in commerce, and 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 thirteen 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, --

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye, 9; New York, South Carolina, no, 2.

One again, we see here that slaves were to be counted as part of the formula for representation only on the basis of how much their labor contributed to wealth -- the means of assessing taxation. The committee considered the proportions, and revised it to 65 members in the first branch initially. The Convention then debated the fine points on how some states should have greater or fewer representatives. They agreed to a formula on 10 Jul 1787. The portion of the debate attendant to our subject resumed on 11 Jul 1787 [20]:

(Wednesday, July 11)

In Convention. -- Mr. Randolph's motion, requiring the legislature to take a periodical census, for the purpose of redressing inequalities in the representation, was resumed.

Mr. Sherman was against shackling the legislature too much. We ought to choose wise and 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 general legislature. He did not object to the conjec-tural ratio which was to prevail in the outset; but considered a revision from time to time, according to some permanent and precise standard, as essential to the fair representation required in the first branch. According to the present population of America, the northern 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 that they will always, when they can, rather increase it. If the Southern States, therefore, should have three fourths of the people of America within their limits, the Northern will hold fast the majority of representatives. One fourth will govern the three fourths. The Southern 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 into 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 would repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride, and 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 and more wealthy than their Atlantic brethren. The extent and fertility of their soil made this probable; and although 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 numbers of inhabitants, though not always a precise standard of wealth, was sufficiently so for every substantial purpose.

Mr. Williamson was for making it a duty of the legislature to do what was right, and not leaving it at liberty to do or not to do it. He moved that Mr. Randolph's propositions be postponed, in order to consider the following: -- "that, in order to ascertain the alterations that may happen in the population and wealth of the several states, a census shall be taken of the free white inhabitants, and three fifths of those of other description, on the first 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 place of his. He observed, that the ratio fixed for the first 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 and small states be inadmissible, because in that case unequal numbers of constituents would be represented by equal numbers of votes, was it not equally inadmissible, that a larger and more populous district of America should hereafter have less representation than a smaller and less populous district? If a fair representation of the people be not secured, the injustice of the government will shake it to its foundations. What relates to suffrage is justly stated, by the celebrated Montesquieu, as a fundamental article in republican governments. If the danger suggested by Mr. Gouverneur 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. Congress 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. Butler and Gen. Pinckney insisted that blacks be included in the rule of representation equally with whites; and for that purpose moved that the words "three fifths" be struck out.

Mr. Gerry thought that three fifths of them was, to say the least, the full proportion that could be admitted.

Mr. Gorham. This ratio was fixed by Congress 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 the former occasion had convinced him that three fifths was pretty near the just proportion, and he should vote according to the same opinion now.

Mr. Butler insisted, that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth was the great means of defense 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 notion, notwithstanding it was favorable to Virginia, because he thought it unjust. It was certain that he slaves were valuable, as they raised the value of land, increased exports and imports, and, of course, the revenue; would supply the means of feeding and 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 and above the other species of property common to all the states.

Mr. Williamson reminded Mr. Gorham, that, if the Southern 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 three fifths.

On Mr. Butler's motion, for considering blacks as equal to whites in apportionment of representation, --

Delaware, South Carolina, Georgia, aye, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no, 7; New York, not on the floor.

Mr. Gouverneur Morris said he had several objections to the proposition of Mr. Williamson. In the first place, it fettered the legislature too much. In the second place, it would exclude some states altogether, who would not have a sufficient number to entitle them to a single representation. In the third place, it will not consist with the resolution passed on Saturday last, authorizing the legislature to adjust the representation, from time to time, on the principle of population and wealth; nor with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the said 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 and 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 defense made by Great Britain against 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. Gouverneur Morris. He would, however, accede to the proposition, for the sake of doing something.

Mr. Rutledge 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 should 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 first meeting of the legislature, and of every --- years thereafter, the legislature shall proportion the representation according to the principles of wealth and population."

Mr. Read 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 it, and more likely to produce dissatisfaction than harmony and union.

Mr. Mason objected to Mr. Rutledge's motion, as requiring of the legislature something too indefinite and 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. Gorham. If the Convention, who are comparatively so little biased 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 and his own reflections, that the Convention ought to fix some standard or other.

Mr. Gouverneur Morris. The arguments of others, and his own reflections, had led him to a very different conclusion. If we cannot 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 Pennsylvania formerly. The lower part of the state had the power in the first instance. They kept it in their own hands, and the country was the better for it. Another objection with him, against admitting the blacks into the census, was, that the people of Pennsylvania 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 against leaving the adjustment of the representation, from time to time, to the discretion of the legislature. The first was, they would be unwilling to revise it at all. The second, that, by referring to wealth, they would be bound by a rule which, if willing, they would be unable to execute. The first objection distrusts their fidelity. But if their duty, honor, and 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 government at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the committee 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 and 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 till more zealous in exhorting all to a jealousy of a western majority. To reconcile the gentleman 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 Pennsylvania had been mentioned, where it was admitted that those who were possessed of the power in the original settlement never admitted the new settlements 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 and defeated every reform which had been attempted. Virginia was, in a less degree, another example. With regard to the Western States, he was clear and 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 treasury from them had been much underrated. Future contributions, it seemed to be understood on all hands, would be principally levied on imports and exports. The extent 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 up to them (which would, of necessity, be the case as soon as their population would subject them to any considerable share of the public burden,) imposts on their trade could be collected with less expense and greater certainty than on that of the Atlantic States. In the mean time, as their supplies must pass through 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 against fixing numbers for the perpetual standard of representation. It was said that representation and taxation were to go together; that taxation and wealth ought to go together, that population and wealth were not measures of each other. He admitted that, in different climates, under different forms of government, 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 United States it was sufficiently so for the object in contemplation. Although their climate varies considerably, yet, as the governments, 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 labor, would constantly tend to equalize themselves. The value of labor might be considered as the principal criterion of wealth, and the ability to support taxes, and this would find its level in different places, where the intercourse should be easy and free, with as much certainty as the value of money or any other thing. Wherever labor 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 America -- from the northern and middle parts of the United States to the southern and western. They go where land is cheaper, be-

cause there labor 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, than it will raise in the latter situation.

Col. Mason agreed with Mr. G. 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 restrain that majority. As soon as the southern and western population should predominate, which must happen in a few years, the power would 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, --

Massachusetts, Pennsylvania, Delaware, South Carolina, Georgia, aye, 5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, no, 5.

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, --

Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, aye, 6; Delaware, Maryland, South Carolina, Georgia, no, 4.

The next clause, as to three fifths of the negroes, being 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 with no slaves. He had never said, as to any particular point, that he would in no event acquiesce in an support it; but he would 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 and three fifths of their black inhabitants entitled them to.

Mr. Sherman. South Carolina had not more beyond her proportion than New York and New 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. Gorham supported the propriety of establishing numbers as the rule. He said that in Massachusetts 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 and 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 Congress for changing the eighth article of the Confederation was before legislature of Massachusetts, the only difficulty then was, to satisfy them that the negroes ought not to have been counted equally with the 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? There 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 Pennsylvania, as had been intimated by his colleague (Mr. Gouverneur Morris). But he differed from him in thinking numbers of inhabitants so incorrect a measure of wealth. He had seen the western settlements of Pennsylvania, and, on a comparison of them with the city of Philadelphia, could discover little other difference than that property was more unequally divided 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. Gouverneur 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 the question for agreeing to include three fifths of the blacks, --

Connecticut, Virginia, North Carolina, Georgia, aye, 4; Massachusetts, new Jersey, Pennsylvania, Delaware, Maryland, South Carolina, no, 6.

On the question as to taking the census "the first year after the meeting of the legislature," --

Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye, 7; Connecticut, Maryland, Georgia, no, 3.

On filling the blank for the periodical census with fifteen years, -- agreed to, *nem. con.*

Mr. Madison moved to add, after "fifteen years," the words "at least," that the legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion, for adding "at least," it passed in the negative, the states being equally divided.

Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye, 5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no, 5.

A change in 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, --

Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

So it was rejected unanimously.

Adjourned.

Once again, we see that the debate centered on the most expedient way to allocate representation in Congress, as to whether it should be done by population alone, by an estimate of wealth alone, or by some compromise regarding how to count the slaves, where were technically property for the purposes of taxation. Those opposed to slavery, like Mr. Morris, were in favor of counting slaves as three-fifths because doing so would give the slave-owning states more power in Congress than a full counting; that power would then be used to promote, or at least protect the institution of slavery. This is hardly the sentiment of a racist. Southern states wanted slaves to be counted equally with whites on the same principle. This is evident in the argument between Williamson and Gorham: that the Southern states were engaging in hypocrisy in this regard -- when it came counting people to gauge the amount of taxes to be paid, the Southern states wanted to reduce the black people to low ratios; but when it came to counting for the purposes of representation, they wanted equality. Likewise, the Northern States wanted high ratios because that would increase the Southern taxation, and thus decrease their own. The concept that this was fundamentally a debate on economic terms is reinforced by the type of comments made about the future influence of the western states which did not yet exist.

The debate continued the next day, as follows [21]:

(Thursday, July 12)

In Convention. -- Mr. Gouverneur Morris moved to add, to the clause empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso, "that taxation shall be in proportion to representation."

Mr. Butler contended, again, that representation should be according to the full number of inhabitants, including all the blacks, admitting the justice of Mr. Gouverneur Morris' 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. Gouverneur Morris admitted that some objections lay against his motion, but supposed they would be removed by restraining the rule to direct taxation. With regard to indirect taxes on exports and imports, and on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary, he was persuaded that the imports and consumption were pretty nearly equal throughout the Union.

Gen. Pinckney 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, (by Mr. Gouverneur Morris,) yesterday, concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. South Carolina 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 into the system, restraining the legislature from taxing exports.

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

Mr. Gouverneur Morris having so varied his motion by inserting the word "direct," it passed, *nem. con.*, as follows: "provided always that direct taxation ought to be proportioned to representation."

Mr. Davie said it was high time 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 North Carolina would never confederate on any terms that did not rate them at least as three fifths. 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 rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth. He concluded, therefore, that the number of people ought to be established as the rule, and that all descriptions, including blacks equally with 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 them.

Mr. Gouverneur Morris. It had 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 and believed that all would enter into such a compact. If they would not, he was ready to join with any other states that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern 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 Pennsylvania will never agree to a representation of negroes. What can be desired by these states more than has already been proposed -- that the legislature shall, from time to time, regulate representation according to wealth and population?

Gen. Pinckney 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 government instituted for the protection of property.

The first clause in the report of the first grand committee was postponed.

Mr. Ellsworth, 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 United 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. Ellsworth'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 first meeting of the general legislature of the United States, and once within the term of every --- years afterwards, of all the inhabitants, in the manner and according to the ratio recommended by Congress, in their resolution of the 18th of April, 1783, (rating the blacks at three fifths of their number,) and that the legislature of the United States 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. Ellsworth withdraws his motion, and seconds that of Mr. Randolph.

Mr. Wilson observed that less umbrage would, perhaps, be taken against an admission of the slaves into the rule of representation, if it should be so expressed as to make them indirectly only an ingredient of 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, and was seconded, 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 United States, and once within the term of every --- years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th of April, 1783, and that the legislature of the United States shall proportion the direct taxation accordingly."

Mr. King. Although this amendment varies the aspect somewhat, he had still two powerful objections against tying down the legislature to the rule of numbers, -- first, they were at this time an uncertain index of the relative wealth of the states; secondly, if they were a just index at this time, it cannot 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 and 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 be 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 government; and did not conceive that the proposed confidence, as to a periodical adjustment of the representation, exceeded that degree.

Mr. Pinckney moved to amend Mr. Randolph's motion, so as make "blacks equal to the whites in the ratio of representation." This, he urged, was nothing more than justice. The blacks are the laborers, 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.

Gen. Pinckney moves to insert six years, instead of two, as the period, computing from the first meeting of the legislature, within which the first census should be taken. On this question for inserting "six" years instead of "two," in the proposition of Mr. Wilson, it passed in the affirmative.

Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, aye, 5; Massachusetts, Virginia, North Carolina, Georgia, no, 4; Delaware, divided.

On the question for filling the blank for the periodical census with "twenty years," it passed in the negative.

Connecticut, New Jersey, Pennsylvania, aye, 3; Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 7.

On the question for ten years, it passed in the affirmative.

Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 8; Connecticut, New Jersey, no, 2.

On Mr. Pinckney's motion, for rating blacks as equal to whites, instead of as three fifths, --

South Carolina, Georgia, aye, 2; Massachusetts, Connecticut, (Dr. Johnson, aye,) New Jersey, Pennsylvania (three against two,) Delaware, Maryland, Virginia, North Carolina, no, 8.

Mr. Randolph's proposition, as varied by Mr. Wilson, being read, for taking the question as a whole, --

Mr. Gerry urged that the principle of it could not be carried into execution, as the states were not to be taxed as states. With regard to taxes on imposts, he conceived they would be more productive where there were no slaves than where there were, the consumption being greater.

Mr. Ellsworth. In case of a poll-tax, there would be no difficulty. But there would probably be none. The sum allotted to a state may be levied without difficulty, according to the plan used by the state in raising its own supplies.

On the question on the whole proposition, as proportioning representation to direct taxation, and both to the white and three fifths of the black inhabitants, and requiring a census within six years, and within every ten years afterwards, --

Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, aye, 6; New Jersey, Delaware, no, 2; Massachusetts, South Carolina, divided.

Adjourned.

The debate continued the next day, but this time the focus was on representation in the "second branch", that is, the Senate. However, the debate soon turned again to the degree to which relative wealth should affect representation in Congress, and to what degree the population was an accurate indicator of wealth. In the end, they settled on the method of counting as before, and extended that principle to all new states that might enter the union. Herewith the debate on 13 Jul 1787 [21]:

(Friday, July 13)

In Convention. -- It being moved to postpone the clause in the report of the committee of eleven as to the originating of money bills in the first branch, in order to take up the following, "that in the second branch each state shall have an equal voice," --

Mr. Gerry moved to add, as an amendment to the last clause agreed to be the House, "that from the first meeting of the legislature of the United States till a census shall be taken, all moneys to be raised for supplying the public treasury by direct taxation shall be assessed on the inhabitants of the several states according to the number of their representatives respectively in the first branch." He said this would be as just before as after the census, according to the general principle that taxation and representation ought to go together.

Mr. Williamson feared that New Hampshire will have reason to complain. Three members were allotted to her as a liberal allowance, for this reason, among others -- that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would choose to retain the number on the condition of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. Gerry's motion.

Mr. Read could not approve of the proposition. He had observed, he said, in the committee a backwardness, in some of the members from the large states, to take their full proportion of representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just and accurate adjustment of representation and taxation to each other.

Mr. Gouverneur Morris and Mr. Madison answered, that the charge itself involved an acquittal; since, notwithstanding the augmentation of the number of members allotted to Massachusetts and Virginia, the motion for proportioning the burdens thereto was made by a member from the former state, and was approved by Mr. Madison, from the latter, who was on the committee. Mr. Gouverneur Morris said, that he thought Pennsylvania had her due share in eight members; and he could not in candor ask for more. Mr. Madison said, that, having always conceived that the difference of interest in the United States lay not between the large and small, but the Northern and Southern States, and finding that the number of members allotted to the Northern States was greatly superior, he should have preferred an addition of two members to the Southern States -- to wit, one to North and one to South Carolina, rather than of one member to Virginia. He liked the present motion, because it tended to moderate the views both of the opponents and advocates for rating very high the negroes.

Mr. Ellsworth hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions cannot be regarded in apportioning the number of representatives, the rule will be unjust, until an actual census shall be made. After that, taxation may be precisely proportioned, according to the principle established, to the number of inhabitants.

Mr. Wilson hoped the motion would not be withdrawn. If it should, it will be made from another quarter. The rule will be as reasonable and just before, as after, a census. As to fractional numbers, the census will not destroy, but ascertain them. And they will have the same effect after, as before, the census; for, as he understands the rule, it is to be adjusted not to the number of inhabitants, but of representatives.

Mr. Sherman opposed the motion. He thought the legislature ought to be left at liberty; in which case they would probably conform to the principles observed by Congress.

Mr. Mason did not know that Virginia would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the census would be as just as it would be rendered by an actual census.

Mr. Ellsworth and Mr. Gerry moved to postpone the motion of Mr. Gerry.

On the question, it passed in the negative.

Connecticut, New Jersey, Delaware, Maryland, aye, 4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6.

On the question on Mr. Gerry's motion, it passed in the negative, the states being equally divided.

Massachusetts, Pennsylvania, North Carolina, South Carolina, Georgia, aye, 5; Connecticut, New Jersey, Delaware, Maryland, Virginia, no, 5.

Mr. Gerry, finding that the loss of the question had proceeded from an objection, with some, to the proposed assessment of direct taxes on the *inhabitants* of the states, which might restrain the legislature to a poll-tax, moved his proposition again, but so varied as to authorize the assessment on the *states*, which leaves the mode to the legislature, viz.: "that, from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the said several states, according to the number of their representatives respectively in the first branch."

On this varied question, it passed in the affirmative.

Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye, 5; Connecticut, New Jersey, Delaware, Maryland, no, 4; Pennsylvania, divided.

On the motion of Mr. Randolph, the vote of Monday last, authorizing the legislature to adjust, from time to time, the representation upon the principles of wealth and 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 and 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 United States be authorized, from time to time, to apportion the number of representatives;

and, in case of the states shall hereafter be divided, or any two or more states united, or new states created within the limits of the United States, the legislature of the United States 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. Gouverneur 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 inhabitants, they ought to be added in their entire number, and not in the proportion of three fifths. If as property, the word *wealth* was right; and striking it out would produce the very inconsistency which it meant to get rid of. The train of business, and the late turn which it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction had been set up, and urged, between the Northern and Southern States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the southern 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 and landed interest, will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defense for the Northern States against it. But, to come more to the point -- either this distinction is fictitious or real; if fictitious, let it be dismissed, and 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 Southern 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 Southern 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 Northern and Middle States will have against this danger. It has been said that North Carolina, South Carolina, 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 Southern 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 North Carolina, South Carolina, and Georgia, would have more people than all the other states, but many more relatively to the other states than they now have. The people and strength of America are evidently bearing southwardly, and south-westwardly.

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 itself of it, whether we will or no. This jealousy misled the policy of Great 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 and 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. Congress have never been able to discover a better. No state, as far as he had heard, had suggested any other. In 1783, after elaborate discussion of a measure of wealth, all were satisfied then, as they now are, that the rule of numbers does not differ much from the combined rule of numbers and wealth. Again, he could not agree that property was the sole source or primary object of government or society. The cultivation and 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 and 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 establishment of numbers, as the rule of representation in the first branch, vary his opinion as to the impropriety of letting a vicious principle into the second branch.

On the question to strike out *wealth*, and the make the change as moved by Mr. Randolph, it passed in the affirmative.

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 9; Delaware, divided.

Mr. Read moved to insert, after the word "divided," "or enlarged by addition of territory;" which was agreed to, *nem con*.

Adjourned.

The allocation of votes in the Senate was debated on 14 Jul, resulting in equal representation by states. On 16 Jul, the Convention reviewed the items that had been agreed to in

the several previous sessions. The "report" referred to is the one provided by the committee to the House on 9 Jul, containing amended provisions as agreed to between that day and the 16th.

(Monday, July 16)

In Convention -- On the question for agreeing to the whole report, as amended, and including the equality of votes in the second branch, it passed in the affirmative.

Connecticut, New Jersey, Delaware, Maryland, North Carolina (Mr. Spaight, no), aye, 5; Pennsylvania, Virginia, South Carolina, Georgia, no, 4; Massachusetts, divided (Mr. Gerry, Mr. Strong, aye; Mr. King, Mr. Gorham, no).

The whole, thus passed, in the words following, viz.: --

"Resolved, That, in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number New Hampshire shall send 3, Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; Georgia, 3. But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by the addition of new territory, or any two states united, or any new states created within the limits of the United States, the legislature of the United States 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; provided always, that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration 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 six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th day of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

Recall that the three-fifths rule is part of the formula agreed to by Congress on 18 Apr 1783, and is therefore incorporated by reference into the Constitution. This provision was reviewed but not altered in the 26 Jul 1787 session, at which time a committee was appointed to generate a draft Constitution based on the agreed-to items. The draft was reported out of committee on 6 Aug 1787. The only portions which concern our subject

are Article 4, Section 4 and Article 7, Section 3, as follows [22]; but section 4 of Article 7 is also included because it relates to a later discussion of slavery as an institution:

(August 6)

(Draft Constitution)

[Art. 4] "Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

[Art. 4] "Sect. 4. As the proportions of numbers in the different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as to or more states may be united; as new states will be erected within the limits of the United States, -- the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

[Art. 7] "Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such manner as the said legislature shall direct."

[Art. 7] "Sect. 4. No tax or duty shall be laid by the legislature on articles exported from an state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited."

There was a short debate on 8 Aug 1787 regarding the two pertinent sections of Article 4 as follows [23]:

(August 8)

Article 4, Section 3 was then taken up.

Gen. Pinckney and Mr. Pinckney moved that the number of representatives allotted to South Carolina be "six."

On the question, --

Delaware, North Carolina, South Carolina, Georgia, aye, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, no, 7.

The third section of Article 4 was then agreed to.

Article 4, Section 4 was then taken up.

Mr. Williamson moved to strike out, "according to the provisions hereinafter made," and to insert the words "according to the rule hereinafter to be provided for direct taxation." -- See article 7, section 3.

On the question for agreeing to Mr. Williamson's amendment, --

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 9; New Jersey, Delaware, no. 2.

Mr. King wished to know what influence the vote just passed was meant to have on the succeeding part of the report, concerning the admission of slaves into the rule of representation. He could not reconcile his mind to the article, if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore, because he had hoped that this concession would have produced a readiness, which had not been manifested, to strengthen the general government, and to mark a full confidence in it. The report under consideration had, by the tenor of it, put an end to all these hopes. In two great points, the hands of the legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? What are the great objects of the general system? First, defense against foreign invasion; secondly, against internal sedition. Shall all the states, then, be bound to defend each, and shall each be at liberty to introduce a weakness which will render the defense more difficult? Shall one part of the United States be bound to defend another part, and that other part be at liberty, not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters? There was so much inequality and unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation would have taken place on this subject; that, at least, a time would have been limited for the importation of slaves. He never could agree to let them be imported without limitation, and then be represented in the national legislature. Indeed, he could so little persuade himself of the rectitude of any such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. Sherman regarded the slave trade as iniquitous; but the point of representation having been settled, after much difficulty and deliberation, he did not think himself bound to make opposition; especially as the pre-

sent article, as amended, did not preclude any arrangement whatever on that point, in another place of the report.

Mr. Madison objected to one for every forty thousand inhabitants as a perpetual rule. The future increase of population, if the Union should be permanent, will render the number of representatives excessive.

Mr. Gorham. It is not to be supposed that the government will last so long as to produce this effect. Can it be supposed that this vast country, including the western territory, will, one hundred and fifty years hence, remain one nation?

Mr. Ellsworth. If the government should continue so long, alterations may be made in the Constitution, in the manner proposed in a subsequent article.

Mr. Sherman and Mr. Madison moved to insert the words "not exceeding" before the words "one for every forty thousand;" which was agreed to, *nem. con.*

Mr. Gouverneur Morris moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point. He would never concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other states having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States, and enter New York, the effects of the institution become visible. Passing through the Jerseys, and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwestwardly, and every step you take, through the great regions of slaves, presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this, -- that the inhabitants of Georgia and South Carolina, who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow-creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes, in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey, who views, with a laudable horror, no nefarious a practice. He would add, that domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favor-

ite offspring of aristocracy. And what is the proposed compensation to the Northern States, for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defense of the Southern States, for their defense against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The legislature will have indefinite power to tax them by excises, and duties on imports, both of which will fall heavier on them than on the southern inhabitants; for the bodea tea used by a northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side, the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defense; nay, they are to be encouraged to it, by an assurance of having their votes in the national government increased in proportion; and are, at the same time, to have their exports and their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportional to representation. It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports, and excises. For what, then, are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution.

Mr. Dayton seconded the motion. He did it, he said, that his sentiments on the subject might appear, whatever might be the fate of the amendment.

Mr. Sherman did not regard the admission of the negroes into the ratio of representation as liable to such insuperable objections. It was the ratio of freemen of the Southern States who were, in fact, to be represented according to the taxes paid by them, and the negroes are only included in the estimate of the taxes. This was his idea of the matter.

Mr. Pinckney considered the fisheries, and the western frontier, as more burdensome to the United States than the slaves. He thought this could be demonstrated, if the occasion were a proper one.

Mr. Wilson thought the motion premature. An agreement to the clause would be no bar to the object of it.

On the question, on the motion to insert "free" before "inhabitants," --

New Jersey, aye, 1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

On the suggestion of Mr. Dickinson, the words, "provided that each state shall have one representative, at least," were added, *nem. con.*

Article 4, section 4, as amended, was agreed to, *nem. con.*

So, we have at this point, the initial allocation of the House of Representatives among the states, to be modified per the rule for determining direct taxation; which in turn is to be determined by the decennial census, in which the three-fifths rule for slaves was invoked. As the record shows, the three-fifths rule was a compromise reached initially in 1783 when the debate concerned how to fairly assess the relative economic benefit of slaves as compared to free men. Far from implying a racial motive, it was in fact an indirect condemnation of slavery as a viable economic institution. It was all about the money, so to speak; there was no indication that the relative moral value of black people was involved in this assessment.

The debate on 20 Aug 1787 mostly concerned the topic of how to define treason; but two modifications to the Art. 7, Sect. 3 of the 6 Aug 1787 draft were made that day, as follows [24]:

(August 20)

Article 7, section 3 was taken up. The words "white and others" were struck out, *nem. con.*, as superfluous.

Mr. Ellsworth moved to require the first census to be taken within "three," instead of "six," years from the first meeting of the legislature; and on the question, --

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye, 9; South Carolina, Georgia, no, 2.

Mr. King asked what was the precise meaning of *direct* taxation. No one answered.

Mr. Gerry moved to add to Article 7, section 3, the following clause: --

"That, from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several states, according to the number of their representatives respectively in the first branch."

Mr. Langdon. This would bear unreasonably hard on New Hampshire, and he must be opposed to it.

Mr. Carroll opposed it. The number of representatives did not admit of a proportion exact enough for a rule of taxation.

Before any question, the House adjourned.

The debate on 21 Aug 1787 mostly concerned other topics, but Article 7, Section 3 was agreed to in that debate, 10 - 1. The debate on Article 7, Section 4 resumed, and the discussion focused on the utility of a tax on exports. They agreed to prohibit a tax on exports. Then the debate turned on the part of Article 7, Section 4 that dealt with prohibition or taxation on slaves, which is not attendant to our subject. It is interesting, though, to observe how the framers of the Constitution treated slavery, as follows [25]:

(August 21)

On the question on Article 7, section 4, as far as to "no tax shall be laid on exports," it passed in the affirmative, --

Massachusetts, Connecticut, Maryland, Virginia (Gen Washington and Mr. Madison, no), North Carolina, South Carolina, Georgia, aye, 7; New Hampshire, New Jersey, Pennsylvania, Delaware, no, 4.

Mr. L. Martin proposed to vary article 7, section 4 so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And, in the third place, it was inconsistent with the principles of the revolution, and dishonorable to the American character, to have such a feature in the Constitution.

Mr. Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections, and would readily exempt the other states from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Mr. Ellsworth was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. Pinckney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that state has expressly and watchfully excepted that of meddling with the importation of negroes. If the states be all left at liberty on this subject, South Carolina may perhaps, be degrees, do of herself what is wished, as Virginia and Maryland have already done.

Adjourned.

(August 22)

In Convention - Article 7, Section 4 was resumed.

Mr. Sherman was for leaving the clause as it stands. He disapproved of the slave trade; yet, as the states were now possessed of the right to import slaves, as the public good did not require it to be taken from them, as a it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it.

He observed, that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell, to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The western people are already calling out for slaves for their new lands, and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punished national sins by national calamities. He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential, in every point of view, that the general government should have power to prevent the increase of slavery.

Mr. Ellsworth, as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further, and free those already in the country. As slaves also multiply so fast in Virginia and Maryland, that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of foreign influence, that will become a motive to kind treatment of the slaves.

Mr. Pinckney. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome, and other ancient states; the sanction given by France, England, Holland, and other modern states. In all ages, one half of mankind have been slaves. If the Southern States were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

Gen. Pinckney declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution, and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said, the royal assent, before the revolution, had never been refused to South Carolina, as to Virginia. He contended, that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. Baldwin had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point. That state has always hitherto supposed a general government to be the pursuit of the central states, who wished to have a vortex for every thing; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ----, which he said, was a respectable class of people, who carried their ethics beyond the mere equality of men, extending their humanity to the claims of the whole animal creation.

Mr. Wilson observed that, if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is, in fact, a bounty on that article.

Mr. Gerry thought we had nothing to do with the conduct of the states as to slaves, but ought to be careful not to give any sanction to it.

Mr. Dickinson considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the states by the Constitution. The true question was, whether the national happiness would be promoted or impeded by the importation; and this question ought to be left to the national government, not to the states particularly interested. If England and France permit slavery slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southern States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the general government.

Mr. Williamson stated the law of North Carolina on the subject, to wit, that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a state licensing manumission. He thought the Southern States could not be members of the Union, if the clause should be rejected; and that it was wrong to force any thing down not absolutely necessary, and which any state must disagree to.

Mr. King thought the subject should be considered in a political light only. If two states will not agree to the Constitution, as stated on one side, he could affirm with equal belief, on the other, that great and equal opposition would be experienced from the other states. He remarked on the exemption of slaves from duty, whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and Middle States.

Mr. Langdon was strenuous for giving the power to the general government. He could not, with a good conscience, leave it with the states, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves.

Gen. Pinckney thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time; but only stop them occasionally, as she now does. He moved to commit the clause, that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been stated.

Mr. Rutledge. If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is in vain. The people of those states will never be such fools as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of Gen. Pinckney for a commitment.

Mr. Gouverneur Morris wished the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the Northern and Southern States.

Mr. Butler declared, that he never would agree to the power of taxing exports.

Mr. Sherman said it was better to let the Southern States import slaves than to part with them, if they made that a *sine qua non*. He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were *property*. He acknowledged that, if the power of prohibiting the importation should be given to the general government, it would be exercised. He thought it would be its duty to exercise the power.

Mr. Read was for the commitment, provided the clause concerning taxes on exports should also be committed.

Mr. Sherman observed, that that clause had been agreed to, and therefore should not be committed.

Mr. Randolph was for committing, in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Constitution as exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the states having no slaves. On the other hand, two states might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of sections 4 and 5 of Article 7, --

Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye, 7; New Hampshire, Pennsylvania, Delaware, no, 3; Massachusetts, absent.

Here we see that some of the founders desired abolish slavery while others wanted to at least restrict it and cause it to die off gradually. But, it was evident that at least two states, and possibly a third, would refuse to join the Union of slavery were restricted too much or prohibited. For that reason, slavery was left intact as an institution: the only restrictions on it were a prohibition on importation after 1808, and a duty on importation was permitted. It is important to remember the importance of including all the states into the Union, at the expense of continuing to allow slavery. The main issue at this time was Spain's activity in the west, and its desire to encroach on the American states where it could. Spain was already prohibiting navigation on the Mississippi River, and was unwilling to negotiate. What if the three southern states had refused to join the Union? It is difficult to say; it is possible that they would have remained independent, but they could just as easily fallen prey to either Britain or Spain. In that case, slavery would still have been allowed as it had under Britain; Spain, meanwhile, held most of South America in slavery.

A committee was appointed to compile all the changes made to the 6 Aug 1787 draft, which was reported out in a near-final version on 12 Sep 1787. Article 7, sections 3 and 4 of the 6 Aug draft were placed Article 1, Section 2 of the final version. A few minor

changes to the relevant section were agreed to on 13 Sep 1787, in which the word 'servitude' was changed to 'service', and 'forty' was changed to 'thirty'.

So here you have the true and complete story of how the three-fifths rule came into being. As I mentioned earlier, it was superseded by the 14th Amendment in 1868.

## 6 Summary

The candid reader should now see that the debates that led to the adoption of the "three-fifths" rule were all based on how to fairly judge the economic contribution of slaves relative to freemen. The fact that they concluded that slaves should be rated lower in economic terms proves, if it proves anything, that the founders recognized, at least intuitively, that slavery was not economically competitive in the long run.

It is no secret that some of the founders hated the institution of slavery; that others were fond of it since it allowed them to avoid hard work; and that others disliked it but regarded it as a necessary evil in the short term. Each member of the Convention no doubt had their prejudices about other people, including north vs. south as well as black vs. white. But there is no evidence from the historical record that the three-fifths rule came about because of a consensus on the part of the founders that black people were inherently morally inferior to whites. To claim otherwise is evidence of a race-baiting crusade and willful ignorance of historical facts. So now you know the facts, from which you may judge the quality of argument presented by our modern "debaters".

## References

- [1] Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, Philadelphia: J. B. Lippincott & Co., 1881, Vol. 1, pp. 70-74
- [2] Ibid., Vol. 5, pp. 63, 64
- [3] Ibid., Vol. 5, pp. 77-80
- [4] op. cit. Elliot, Vol. 1, pp. 93-95
- [5] op. cit., Elliot, Vol. 5, p. 127
- [6] Ibid., Vol. 5, p. 129
- [7] Ibid., Vol. 5, p. 130
- [8] Ibid., Vol. 5, pp. 134, 135
- [9] Ibid., Vol. 5, pp. 135-137
- [10] Ibid., Vol. 5, pp. 175-178
- [11] Ibid., Vol. 5, pp. 178-182
- [12] Ibid., Vol. 5, p. 190
- [13] Ibid., Vol. 5, p. 192
- [14] Ibid., Vol. 1, p. 182. It should be noted that the detailed exposition of the committee report of 13 Jun 1787 is not contained in Madison's papers, and is therefore not in

Vol. 5 of Elliot. It is contained in the summary section in Elliot's Vol. 1, with the annotation "Paper deposited by President Washington, in the Department of State."

- [15] Ibid, Vol. 1, p. 184
- [16] Ibid., Vol. 1, pp. 191, 192; Vol. 5, pp. 253, 259
- [17] Ibid., Vol. 5, p. 274
- [18] Ibid., Vol. 5, pp. 280, 281
- [19] Ibid., Vol. 5, pp. 288-290
- [20] Ibid., Vol. 5, pp. 294-302
- [21] Ibid., Vol. 5, pp. 306-309
- [22] Ibid., Vol. 5, pp. 377, 378
- [23] Ibid., Vol. 5, pp. 391-394
- [24] Ibid., Vol. 5, p. 451
- [25] Ibid., Vol. 5, pp. 457-461