



CENTER FOR THE STUDY OF THE AMERICAN CONSTITUTION

csac.history.wisc.edu > Document Collections > The Founding Period and Slavery > Philadelphia Convention and Slavery > The 3/5 Clause

Debates in the Philadelphia Convention Over the 3/5 Clause 29 May–12 July 1787

ARTICLE I, SECTION 2. 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.

MAY 29, 1787

Edmund Randolph (Va.): Resolved therefore 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.

MAY 30

James Madison (Va.) observing that 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 might be struck out.

Rufus King (Mass.) observed that the quotas of contributions 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 would besides be continually varying.

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

Alexander Hamilton (N.Y.) 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.” *Richard Dobbs Spaight* (N.C.) 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 *Gouverneur Morris* (Pa.), and being generally relished, would have been agreed to: when,

George Read (Del.) 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.

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.

JUNE 9

William Paterson (N.J.) moves that the Committee resume the clause relating to the rule of suffrage in the National Legislature.

[*A long debate followed over whether representation of the states in Congress should remain equal or become proportional.*]

JUNE 11

Roger Sherman (Conn.) proposed that the proportion of suffrage in the first branch should be according to the respective numbers of free 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.

John Rutledge (S.C.) 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.

Pierce Butler (S.C.) 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 James Wilson (Pa.) 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. . . .”

On the question for agreeing to Mr. King’s and Mr. Wilson’s motion it passed in the affirmative Massachusetts ay, Connecticut ay, New York no, New Jersey no, Pennsylvania ay, Delaware no, Maryland divided, Virginia ay, North Carolina ay, South Carolina ay, Georgia ay (7 to 3, with 1 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 *Charles Pinckney* (S.C.), 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 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,” 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 5–7, or 10 years.

Elbridge Gerry (Mass.) 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 the Cattle and horses of the North.

On the question,—Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia were in the affirmative; New Jersey and Delaware in the negative (9 to 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. *Oliver Ellsworth* (Conn.) seconded the motion. On the question for allowing each State one vote in the second branch.

Massachusetts no, Connecticut ay, New York ay, New Jersey ay, Pennsylvania no, Delaware ay, Maryland ay, Virginia no, North Carolina no, South Carolina no, Georgia no (5 to 6).

JUNE 30

Mr. Madison contended that the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large & small States: it lay between the Northern & Southern, and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was that instead of proportioning the votes of the States in both branches [of Congress], to their respective numbers of inhabitants computing the slaves in the ratio of 5 to 3, they should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole number counting the slaves as if free. By this arrangement the Southern Scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion when it is but too apt to arise of itself—the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of interests.

[Between June 11 and July 2 the heated debate over representation continued, centering on the issue of continuing a system of equal state representation or adopting a new system of proportional representation of the states based upon population or wealth. On July 2 the Convention appointed

a grand committee (one delegate from each state) to consider the representation impasse. The committee reported on July 5, recommending that in the first branch of the legislature (i.e., the House of Representatives) each state then in the Union be allowed one representative for every 40,000 inhabitants with three-fifths of the slaves being counted among the inhabitants. Debate then shifted to the numbers of representatives allotted to each state. On July 6 the Convention appointed a committee of five to consider the apportionment of representatives among the states in the first House of Representatives. The committee (consisting of three northerners—Gouverneur Morris, Nathaniel Gorham and Rufus King—and two Southerners—Edmund Randolph and John Rutledge) reported on July 9 that the first House of Representatives should consist of 56 members apportioned accordingly: New Hampshire 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, and Georgia 2. Dividing the country at Delaware, the North received thirty-one representatives to the South's twenty-five. Southerners did not like the division but were pleased that the ratio for apportioning representatives still included three-fifths of the slaves. Northerners liked the initial apportionment of the House of Representatives but some of them worried about the long-term prospects if slaves were part of the ratio. Some Northerners also worried about the reaction of their constituents to allowing representation for three-fifths of the slaves.]

JULY 9

Mr. *Randolph* disliked the report of the Committee but had 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 [i.e., reapportionment], 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. *Paterson* considered the proposed estimate for the future according to the Combined rule 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 at 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 8 article: of Confederation had been ashamed to use the term "slaves" and had substituted a description.

Mr. *Madison* reminded Mr. *Paterson* that his doctrine of Representation which was in its principle the 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 13 of the States had agreed to consider Slaves in the apportionment of taxation; and taxation and Representation ought to go together.

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

Massachusetts ay, Connecticut ay, New York no, New Jersey ay, Pennsylvania ay, Delaware ay, Maryland ay, Virginia ay, North Carolina ay, South Carolina no, Georgia ay (9 to 2).

[On July 10 the committee reported a new apportionment for the first House of Representatives. The 65 representatives would be divided accordingly: New Hampshire 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, South Carolina 5, Georgia 3. The North again dominated this time by an increased margin of 36 to 29. South Carolina delegates John Rutledge and Charles Cotesworth Pinckney moved for the reduction in New Hampshire's representation from three to two, thus reestablishing the difference in representation between the North and South to six representatives. Massachusetts delegate Rufus King defended New Hampshire's allotment of three representatives and suggested that the Convention had reached a pivotal point.]

Mr. King. He believed [northerners] to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great and small States; but between the Southern and Eastern. For this reason he had been ready to yield something in the proportion of representatives for the security of the Southern. No principle would justify the giving them a majority. They were brought near as an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

Charles Cotesworth Pinckney (S.C.). The Report before it was committed was more favorable to the Southern States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the General Government, they will be nothing more than overseers for the Northern States. He did not expect the Southern States to be raised to a majority of representatives, but wished them to have something like an equality. At present by the alterations of the Committee in favor of the Northern States they are removed farther from it than they were before. One member indeed had been added to Virginia which he was glad of as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

Hugh Williamson (N.C.) was not for reducing New Hampshire from 3 to 2, but for reducing some others. The Southern Interest must be extremely endangered by the present arrangement. The Northern States are to have a majority in the first instance and the means of perpetuating it.

General Pinckney urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

Gouverneur Morris regretted the turn of the debate. The States he found had many Representatives on the floor. Few he feared were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to

have its weight, but not all the weight. If the Southern States are to supply money, the Northern States are to spill their blood. Besides, the probable Revenue to be expected from the Southern States has been greatly overrated. He was against reducing New Hampshire.

Mr. Randolph was opposed to a reduction of New Hampshire, not because she had a full title to three members; but because it was in his contemplation first to make it the duty instead of leaving it to the discretion of the Legislature to regulate the representation by a periodical census. Secondly to require more than a bare majority of votes in the Legislature in certain cases, and particularly in commercial cases.

On the question for reducing New Hampshire from 3 to 2 Representatives it passed in the negative (8 to 2).

JULY 11

Mr. Butler and General Pinckney insisted that blacks be included in the rule of Representation, *equally* with the Whites: and for that purpose moved that the words “three-fifths” be struck out.

Mr. Gerry thought that $\frac{3}{5}$ of them was to say the least the full proportion that could be admitted.

Nathaniel Gorham (Mass.). 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 $\frac{3}{5}$ was pretty near the just proportion and he should vote according to the same opinion now.

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

George Mason (Va.) could not agree to the motion, notwithstanding it was favorable to Virginia because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the 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 $\frac{3}{5}$.

On *Mr. Butler's* motion for considering blacks as equal to Whites in the apportionment of Representatives.

Massachusetts no, Connecticut no, New York not on the floor, New Jersey no, Pennsylvania no, Delaware ay, Maryland no, Virginia no, North Carolina no, South Carolina ay, Georgia ay (7 to 3). . . .

The next clause as to 3/5 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 having no slaves. He had never said as to any particular point that he would in no event acquiesce in and 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. Gorham supported the propriety of establishing numbers as the rule. . . . 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 changing the 8th article: of Confederation was before the 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? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pennsylvania as had been intimated by his Colleague [Gouverneur Morris]. But he differed from him in thinking numbers of inhabitants so incorrect a measure of wealth.

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 3/5 of the blacks.

Massachusetts no, Connecticut ay, New Jersey no, Pennsylvania no, Delaware no, Maryland no, Virginia ay, North Carolina ay, South Carolina no, Georgia ay (4 to 6).

JULY 12

Gouverneur Morris moved to add to the clause empowering the Legislature to vary the Representation according to the principles of wealth and number 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's* motion.

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

William Samuel Johnson (Conn.) 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 the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a Committee might be appointed to take them into consideration and report thereon.

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 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 been already proposed; that the Legislature shall from time to time regulate Representation according to population and wealth.

General 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, if all the inhabitants in the manner and according to the ratio recommended by Congress in their resolution of the 18th day of April 1783 [rating blacks at 3/5 of their number]; and, that the Legislature of the U.S. shall arrange the Representation accordingly,” —He urged strenuously that express security ought to be provided for including slaves in the ratio of Representation. He lamented that such a species of property existed. But as it did exist the holders of it would require this security. It was perceived that the design was entertained by some 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 in the rule, by saying that they should enter into the rule of taxation: and as representation was to be according to taxation, the end would be equally attained. He accordingly moved 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 U.S. in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April 1783; and that the Legislature of the U.S. shall proportion the direct taxation accordingly.”

Mr. King. Although this amendment varies the aspect somewhat, he had still two powerful objects 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 can not be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection it could not be of long duration. He must be shortsighted indeed who does not foresee that whenever the Southern States shall be more numerous than the Northern, they can 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 readjustment, of the representation exceeded that degree.

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

On Mr. Pinckney’s motion for rating blacks as equal to Whites instead of as 3/5—

Massachusetts no, Connecticut no, New Jersey no, Pennsylvania no, Delaware no, Maryland no, Virginia no, North Carolina no, South Carolina ay, Georgia ay (2 to 9).

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

Massachusetts divided, Connecticut ay, New Jersey no, Pennsylvania ay, Delaware no, Maryland ay, Virginia ay, North Carolina ay, South Carolina divided, Georgia ay (6 to 2 with 2 divided).