WALTER as he attended the University of Oregon, as he rose in politics in the legislature of Oregon, and finally in the Congress of the United States.

I join my colleague, the distinguished Senator from Oregon, in expressing our deep sympathy to his wife, Elizabeth, to his son, and to the members of his family and the many friends he had throughout the State. Mrs. Jordan joins me in expressing our deepest sympathy and condolences in this tragic hour.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. MANSFIELD. Mr. President, I wish to join the senior Senator from Oregon and the Senator from Idaho in sending condolences to Mrs. Norblad and her family upon the passing of her late beloved husband, WALTER NORBLAD, a Representative from Oregon. I had the pleasure of serving with WALTER NORBLAD in the House for a number of years. He was a highly thought of and well-respected Representative of the people. It was with deep sorrow that I heard on the radio yesterday morning that this outstanding legislator had died of a heart attack at the Bethesda Naval Hospital.

On behalf of Mrs. Mansfield and myself, I extend our condolences to his family.

Mr. MAGNUSON. Mr. President, let me add my sympathy to the family of Representative NORBLAD. I have known him for many years. He is one of the fine Representatives of our area, one who was responsible among others for the signing of the treaty which we commemorated in that area.

His passing leaves us sad. The country has suffered a great loss. The northwest area of the country in particular has suffered a great loss.

The PRESIDING OFFICER. Without objection, the resolution is unanimously agreed to. The Chair appoints the senior Senator from Oregon [Mr. MORSE] and the junior Senator from Oregon [Mrs. NEUBERGER] as a committee of the Senate to attend the funeral of Representative NORBLAD.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The PRESIDING OFFICER. Without objection, the Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 1215) offered by the Senator from Illinois [Mr. DIRKSEN] for himself and the Senator from Montana [Mr. MANSFIELD].

Mr. PROXMIRE. Mr. President, on Wednesday I spoke on this issue for some time. At the termination of the day, I had not finished my speech. The distinguished Senator from Illinois [Mr. DOUGLAS] obtained unanimous consent for me to be recognized on Thursday. On Thursday, I wanted to continue my speech after the morning hour. However, after the morning hour, it was impossible to obtain a quorum. Again on Friday, I wanted to continue my speech. It was again impossible to develop a quorum. The same thing was true on Saturday.

I should like very much to continue my speech at this time. However, the distinguished Senator from West Virginia [Mr. RANDOLPH] has a very excellent speech to deliver.

I ask unanimous consent that I may yield to the Senator from West Virginia without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, I am grateful that the able senior Senator from Wisconsin [Mr. PROXMIRE] affords me the opportunity at this time to join in the discussion of the reapportionment proposal which is pending and which has been under much pertinent discussion in the Senate. I do not believe it has been pending too long in view of the many interruptions and the transaction of other business.

I have listened with interest and have been enlightened by the speeches which have been presented in this forum by several Senators. I make special mention of the remarks of the Senator from Illinois [Mr. DOUGLAS], who sits at my right, and the Senator from Wisconsin [Mr. PROXMIRE] who yields to me at this time.

I voted for the Javits-McCarthy-Humphrey compromise resolution, for more than one reason. At least one impelling reason is that I believe it is time to complete the business of the current session of the 88th Congress. I reiterate, however, that I do not want Congress to conclude its work without having taken affirmative action on the passage of the Appalachian Regional Development Act.

I know that there is certain other business that needs to be completed by Congress. I am still hopeful that the conferees may find an area of agreement so that aid to the aged through a health care program within the social security system may become law.

Mr. President, I believe that the language of the Javits-Humphrey-McCarthy substitute, which was defeated 42 to 40, was adequate to explain the sense of Congress without encroaching on the integrity of the judicial branch of the U.S. Government.

The reapportionment issue has gone to the very bedrock of our assumptions regarding the nature of the American system of government under which I hope we shall move forward. I want to have the RECORD reveal my reasons for voting as I did.

I realize that not all Senators rise in this Chamber to give their reasons. That is understandable. But this is an issue which is fundamental. For that reason, I have given study, and a very sincere measure of preparation, to the remarks that I am making. I had several reasons for voting for the Javits-McCarthy-Humphrey substitute to the Dirksen amendment. I believe it is important for me to indicate why I shall vote for an amendment which may come before this body, which amendment has a similar purpose. I am adamant in my opposition to the Dirksen-Mansfield so-called compromise amendment which is pending in this body.

Seldom within the history of the Senate, and certainly not in recent years, have Senators been called on to deliberate the fundamental issue of civil rights, as Senators have done during this session—first with regard to the Civil Rights Act of 1964, and now with regard to the Dirksen-Mansfield amendment on reapportionment. Let us make no mistake about it. A fundamental civil right is very much the issue in this amendment, as, is, the Constitution itself. As two eminent professors of law, referring to the Dirksen-Mansfield proposal, stated in an article in the Washington Post of August 21, 1964:

> If successful here, it would mean the end of the American constitutional system of judicial review and therefore of the American Constitution.

Not within my tenure in the Senate have we been exposed to such a wide array of views on the Constitution and such learned references to the opinions of the founders of the Constitution of the United States. Yet, there is one highly relevant comment by one of the principal authors of that instrument which has not received sufficient emphasis during the debate on this issue. Perhaps it entered the debate and I missed it. But at the risk of repeating the observation of another Senator, I draw attention to the opinion of James Madison, as expressed in the Federalist, No. X, when he stated that—

> No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time.

Yet, this is precisely the situation in which the pending Dirksen-Mansfield amendment would place the legislatures of many of the 50 States, and indirectly the Senate of the United States as well. With the proposed constitutional amendment which it anticipated, the Dirksen proposal would place the State legislatures in the morally and politically indefensible position of voting on, and thus perpetuating, the very condition of malapportionment which the Supreme Court has declared unconstitutional. As the able junior Senator from Connecticut [Mr. RIBICOFF] noted, it is hardly just or equitable "to have the rotten boroughs decide whether they should continue to be rotten." And there are few if any Members of this body who, by political associations and personal friendships, are not to some degree also involved with the apportionment problems of their respective States.

This is, in my opinion, one of the elements of greatest mischief in the proposed Dirksen-Mansfield amendment.

If enacted, it would in the most literal sense corrupt the democratic process in the States. It would, in addition, be one of the most retrograde steps that the Congress of the United States could take.

The proponents of the Dirksen-Mansfield compromise to the original Dirksen amendment—which was thrust on the Senate without even the benefit of committee hearings—are Senators for whom I have the highest regard. They are Senators who have, on other issues, maintained the utmost concern for orderly legislative procedure, a careful regard for the rights of the States, and a sincere commitment to harmonious and effective Federal-State relationships. It is for this reason that I am at a loss to understand their support for a measure which would violate each of these principles in such fundamental ways.

I need not belabor the fact that the originally proposed amendment was offered with a rather cavalier disregard for legislative procedure. In the closing days of the session, without benefit of hearings or committee action, it was presented for attachment as a totally inappropriate rider to the foreign aid bill. Such actions, although rare, are not without precedent.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield to the very capable Senator from Wisconsin.

Mr. PROXMIRE. I compliment the Senator from West Virginia on his excellent speech. I particularly think the last point he has made should be stressed and underlined. As he says, this is an important proposal. As I understand, he considers this a civil right, an individual right. He has pointed out how the Dirksen amendment brings the Supreme Court into serious jeopardy. The point he makes is that, in the closing days of the session, without benefit of hearings or committee action, the proposal is presented on a bill which is not germane in any way.

In the judgment of the Senator from West Virginia, who has had many years of experience in the House of Representatives and has had substantial experience in the Senate, is it not extraordinary to propose in this manner a matter of this particular importance, which goes to the very root and heart of the relationship between the Congress and the courts? Does not the Senator consider that the procedure followed with regard to this proposal prevents the Senate and the House from exercising the full deliberation which this kind of very serious proposal merits and requires?

Mr. RANDOLPH. I concur completely with the judgment of the Senator from Wisconsin. I have so stated. I appreciate the emphasis which he has placed on this aspect of the issue. The Senate of the United States is often referred to as the greatest deliberative body in the world. Yet the Dirksen-Mansfield proposal would short circuit the processes of deliberation—on a most fundamental issue—which this body has established to guard against popular panic and hasty legislation.

But what disturbs me even more is that the proponents of the Dirksen-Mansfield amendment, most of whom are among the most stanch defenders of the rights of the individual States, would advocate a bill which would allow "any party or intervenor—or any member of the legislature" to block a reapportionment plan which may have a wide consensus of support throughout a particular State and which may have been developed at great expense and effort by the State. Thus, if that amendment to H.R. 11380 were enacted, the Congress of the United States would, in effect, be giving the green light to any malcontent or lame duck legislator to obstruct any reapportionment plan emanating from a court decision—regardless of the expense to the State or the popular support for such a plan.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. RANDOLPH. I yield.

Mr. PROXMIRE. This is a most significant point. It is not true that wherever there is legislative reapportionment—it is unfortunate but true—at least one and usually several members of the legislature are apportioned out of their seats and their careers ended?

Mr. RANDOLPH. That is true.

Mr. PROXMIRE. Is it not true that in State after State, which has been proceeding very well, in terms of public interest, in providing equitable apportionment, all the painful, tough, gradual adjustment to the situation would be stopped, and stopped cold, and would be stopped cold for a long time, if the Dirksen amendment were adopted?

Mr. RANDOLPH. Yes. I think it would be proper to say that the States would be stultified. I think that situation would result not only in one but in several cases.

There is another and perhaps even more fundamental manner in which the Dirksen amendment would be prejudicial to sovereignty and to a healthy Federal-State relationship. It has become a virtual truism among students and practitioners of government to declare that the States have abdicated many of their powers, rather than having had them seized by the Federal Government. The Federal Government has, in fact, filled the vacuum created, in many instances, by the States inability to meet the needs of a modern industrial society. This failure on the part of many of our States has been due to malapportionment of the State legislatures more than to any other single factor.

Consider but a few of the major problems of so-called Federal intervention today—in the fields of public assistance, slum clearance, urban renewal, urban transit, air and water pollution, and aid to education, for example. These are problems largely associated with our metropolitan areas. And the Federal Government, in fulfilling its responsibilities to the American citizen, has been forced to move into these fields because the rurally dominated State legislatures have too frequently been unresponsive to urban and suburban needs.

It is my firm conviction, therefore, that the reapportionment decisions of the Supreme Court in the Alabama cases and those which preceded during the recent term of the Court will prove to be among the most significant contributions in recent decades to the strengthening of State governments.

In this respect, in particular, I would disagree with the closing argument in the dissent of Justice Harlan, wherein he declared that—

> No thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the Federal Judiciary.

Justice Harlan then concludes that—

> Only one who has an overbearing impatience with the Federal system and its political processes will believe that that cost was not too high or was inevitable. (*Reynolds, et al.* v. *M. O. Sims, et al.*)

What are the major problems of so-called Federal intervention today?

We find them in the field of public assistance, in slum clearance, in urban renewal, in urban transit, in air and water pollution, and in aid for education, to give some examples which are clearly set forth. These are problems largely associated with the metropolitan areas of the country. The Federal Government, in fulfilling its responsibilities to the American citizen, has been forced to move into these fields because the rurally dominated State legislatures have too frequently been unresponsive to the needs of the urban and suburban sections of our country.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield again to the diligent senior Senator from Wisconsin.

Mr. PROXMIRE. This is a very important and very much overlooked argument. I do not see how it can be answered at all. The "States righters" should be in the front ranks in opposition to the amendment. The argument being made by the Senator from West Virginia makes good sense. If we want the States to assume responsibilities, we should give the people the right to equal representation in both houses of their legislature so that there can be agreement between the two houses and the legislature can act, without one body blocking the other. The Senator from Michigan [Mr. MCNAMARA] pointed to a series of instances in a recent year when the Governor of the State of Michigan, the lower house of the State of Michigan, and the people of the State of Michigan were in favor of measures which a majority of State Senators, representing a minority of the people of the State, had persistently blocked. There were not only one or two such measures, but a series of concrete, specific actions.

If we hear anything at all from the proponents of the Dirksen amendment, it is that the Federal Government has become too big and too domineering. This may be true. But if the States are to solve their own problems should we hamstring them by providing that one house should be apportioned on a basis other than population.

I am glad the Senator from West Virginia has so ably stressed this point and has done so not in generalities, but by pointing to specific areas, such as slum clearance, urban renewal, air and water pollution, and education, in which States should assume those responsibilities, but

where they have not done so because they have been paralyzed.

Mr. RANDOLPH. I am grateful for the cogent comment of the senior Senator from Wisconsin [Mr. PROXMIRE].

It is my firm conviction, I repeat, that the reapportionment decisions of the Supreme Court in the Alabama cases and the cases which were presented during the recent term of court, will prove to be among the most significant contributions in recent decades to the strengthening of State governments.

I agree thoroughly with the proposition which has been set forth, that those who should be in the forefront of vocal opposition to the pending Dirksen-Mansfield amendment should be Senators who have spoken, and I believe will speak again, about States rights on other subjects.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. PROXMIRE. This is a happy thought and a very true and accurate reflection. The Supreme Court has been attacked again and again as an instrument of the Federal Government moving against the States. As the Senator has said, the Supreme Court's decisions would strengthen State governments and would strengthen the Federal system. This is a very important observation. I believe it is the first time in this debate that it has been made; and it has been made in a very constructive and positive way.

Mr. RANDOLPH. I thank the Senator. In this connection, I believe I would have to disagree with the closing argument of Justice Harlan in this case.

I say this particularly to the Senator from Wisconsin and the Senator from Illinois [Mr. DOUGLAS]. The declaration was made that "no thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the Federal judiciary."

Senators will recall that Justice Harlan concluded:

> Only one who has an overbearing impatience at the Federal system and its political processes will believe that that cost was not too high or was inevitable.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. DOUGLAS. Justice Harlan, in effect, is saying, is it not that the overwhelming majority of the Supreme Court had an overbearing impatience with the way in which the legislatures were operating? Is it not correct to say that for 60 years virtually no State legislature would reapportion itself? This was not a hasty decision by the Supreme Court. The Supreme Court withheld its hand for decade after decade, and finally, when the evidence was clear that the leglislatures would not reform themselves, they moved in under the 14th amendment and the requirement for equal protection of the laws. Did not the majority of the Supreme Court show great restraint and patience with the operations of the State legislatures rather than overbearing impatience?

Mr. RANDOLPH. The Senator from Illinois is very convincing on this point. He made it before during this debate. The time not only has arrived, but it has been long overdue.

Rather than having rushed in with excessive haste, the Court showed justifiable restraint. In my view, Justice Harlan, in his dissenting opinion, stepped from the field of law into the field of political prophecy. His prophecy is misconceived, I believe, because his own attention seems directed more to the form than to the substance of Federal-State relations.

The implementation of the recent apportionment decisions will, at first, be a somewhat painful remedy for many of the States. But in the long-term view, reapportionment will infuse a new vitality in State governments, enabling the States, once again, to assume the role of full partnership.

This becomes readily apparent when one reflects on the current tendency of municipal officials to bypass State governments and to appeal directly to the Federal Government for solutions to many of their urban and suburban problems. This tendency is the result of the inability of State governments to cope with these problems under their present systems of apportionment.

When I was a Member of the House of Representatives, I joined in the original sponsoring of the Federal Aid to Airports Act. In the drafting of that legislation, in which I had a part, we were careful that there should be a relationship directly between the Federal Government and the municipalities. We recognized that the need for approval of the local project for an airport could not rest upon the State government, because year after year the States could do little to help support an airport within a particular city, within a metropolitan area, or within a center of population. So the Federal funds went to the cities on a matching basis. Many States fought vigorously in Congress against that provision in the Federal Aid to Airports Act. We in Congress knew that the time had arrived for the development of transportation by air in the United States, with no reflection on the States themselves. Frankly, the States were not realistic and could not grapple with the problems of this new form of transport, which was the operation of scheduled airlines serving thousands of persons daily between specific metropolitan areas. I had not anticipated bringing this example to the attention of the Senate, but it is certainly a valid point. In supporting the authority of cities to issue airport bonds, Justice Cardozo reminded us in 1928 that "Chalcedon was called the city of the blind because its founders rejected the nobler site of Byzantium lying at their feet." To paraphrase Justice Cardozo in this issue, one might say that the State legislatures have been blind to ways of increasing the authority and effectiveness of State government, and the Supreme Court has been called upon to open their eyes and give them sight.

Mr. DOUGLAS. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. I yield.

Mr. DOUGLAS. I have flown into Charleston, W. Va., many times. The airport there was built, as I remember, by leveling off the top of a hill. Does the Senator from West Virginia believe that that would have been done at great expense if the Legislature of West Virginia had had the power to determine whether it should be done and had been compelled to appropriate money for it?

Mr. RANDOLPH. I believe the State of West Virginia would not have moved forward with the construction of the Kanawha County Airport. It lacked the financial capacity to assist materially. The cost of constructing an airport in our capital area is high. It has been said that more earth was moved in the construction of that airport, where mountains were leveled, than was moved in the construction of the Panama Canal. It is expensive to build an airport in mountainous terrain. So, as I have done on prior occasions, I compliment the citizenry of Kanawha County for having voted several million dollars of bonded indebtednes and for having accepted the responsibility to participate with the Federal Government in such a meritorious project. The State itself would never have been able to move forward.

Mr. DOUGLAS. Yet that airport has opened up the State of West Virginia to air travel and has been of great assistance in enabling the chemical and other industries to locate in the Kanawha Valley. Is not that true?

Mr. RANDOLPH. The Senator from Illinois is correct. The chemical industry in the Kanawha Valley is likened to that of the world famous Ruhr Valley. A huge complex of the chemical industry has been located in the Kanawha Valley for some 25 or 30 years. I estimate that it directly employs some 25,000 men and women and creates many, many indirect jobs. It is an important industry.

More than 100,000 passengers a year have been boarding planes at the Kanawha County Airport to travel to other sections of the country, and a comparable number of passengers have been arriving. I refer to the scheduled airline service, the carriers serving the city of Charleston, W. Va.

In my opinion, reapportionment would give the metropolitan regions a stronger voice in the councils of their States, and thus would strengthen the States in their relationship with the Federal Government. To illustrate this in a more specific way, I refer to the kind of problem which arises in framing much of the legislation which is reported by the Committee on Public Works, of which I am a member. With respect to air and water pollution measures especially, we have had to exercise great care in writing provisions which would prevent local and municipal officials from bypassing State agencies when seeking Federal allotments or assistance. In such instances, we find the seeming paradox of the Federal Government protecting the interests of the State government in its relationship with its own political subdivisions.

I feel certain that other Senators would recount similar instances with regard to the work within the jurisdictions of their own committees.

I believe such a precaution on the part of the Federal Legislature would not be necessary if State legislatures and the other agencies of State governments more accurately reflected the needs and interests of their metropolitan populations. I believe also that Justice Harlan would have less anxiety about the future impact of the Court's apportionment decisions if he had contended with the problems of Federal, State, and local relationships that come before Congress for continuing attention and, we hope, for affirmative solutions.

At the outset of my remarks, I stated that a fundamental civil right was at issue in the proposed Dirksen-Mansfield amendment. I would not do justice to my own convictions on this issue if I failed to recognize the question of the right of "one-person, one-vote," and the authority of the Supreme Court to adjudicate this issue. Although I would enter the field of constitutional law with much trepidation, it does not seem necessary to me that a person be a constitutional lawyer to recognize the authority of the Supreme Court in this issue.

It is specifically set forth in article III, section 2 of the Constitution which provides:

> In all cases * * * in which a State shall be party, the Supreme Court shall have original jurisdiction.

We understand the English language. This section clearly accords to the Supreme Court and not to the Congress original jurisdiction over apportionment cases in which a citizen files suit against the State in which he is a resident.

Furthermore, we have listened to and have read the comments of Professors Rostow and Emerson. I read from the article in the Washington Post in which they said:

> The exception clause, and the power to establish lower Federal courts, cannot be used to abrogate all judicial power to protect any one basic constitutional right.

Mr. President, the Supreme Court has construed that apportionment cases originate from the equal protection clause of the 14th amendment. The logic of the decision in Reynolds versus Sims, et al, is clear and unassailable when the court declared:

> Diluting the weight of votes because of place of residence impairs basic constitutional rights under the 14th amendment just as much as invidious discriminations based upon factors such as race, *Brown* v. *Board of Education*, 347 U.S. 483, or economic status, *Griffin* v. *Illinois*, 351 U.S. 12, *Douglas* v. *California*, 372 U.S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of State legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future.

I am not dissuaded from my support of the decision of the Court in this instance by the references which have been made to the views of the founders of the Constitution and especially to Madison's doctrine that the "public views" should be "refined and enlarged by passing them through the medium of a chosen body of citizens."

This is, of course, the essence of a republican form of government; but it offers no justification, I say—nor did Madison intend it as such—for malapportionment of our State legislatures in the America of today.

It should be no revelation to any student of American history that our founders—including even such optimistic founders as Jefferson and Madison—harbored a certain skepticism regarding popular government. Nor is it surprising—in view of the many qualifications of property, sex, and condition of servitude—that only 12 or 15 percent of the adult citizens of the United States voted in the early elections in this Republic. But the history of this Nation has been, in large part, the history of the extension of the right—and I call it also the responsibility of suffrage—the ballot, a franchise of freedom. I believe, in this instance, that the Supreme Court has done something which should have been done long ago. But it has done it now. To attempt to divert, to sidetrack, or to stultify it, reflects no credit on the Senate, especially considering the manner in which this question is brought before us.

Mr. PROXMIRE. Mr. President, will the Senator from West Virginia yield?

The PRESIDING OFFICER (Mr. JORDAN of Idaho in the chair). Does the Senator from West Virginia yield to the Senator from Wisconsin?

Mr. RANDOLPH. I yield.

Mr. PROXMIRE. This is a great statement being made by the Senator from West Virginia, especially when he states that the history of the Republic has been to some extent the extension of the franchise, the history of progress, the history of justice and equity. This is true. This has been a tough, long, and hard struggle. Is it not true that the amendment to the Constitution that gave women the right to vote was a highly significant milestone along that path?

Mr. RANDOLPH. The Senator is correct, it certainly was a milestone. That battle was not an easy one to win.

Mr. PROXMIRE. Certainly the Civil War amendments which extended the franchise to those who had been slaves, and the benefits which came through the 1957 and 1964 Civil Rights Acts were the implementation of the right to vote. Many of us who were for the 1964 civil rights bill made the argument that one of the most important provisions in the bill was that it gave the minorities—which had been deprived of the right to vote—the right to vote, which is essential to their economic and social progress, as well as to their political progress.

Mr. RANDOLPH. The Senator is correct.

Mr. PROXMIRE. I believe that the Senator from West Virginia is making his point so well that this great Supreme Court decision is in the mainstream of that same struggle, the struggle for political justice, and the struggle for political equality. I am glad that the Senator from West Virginia has hit this point so hard and so eloquently.

Mr. RANDOLPH. I thank the Senator from Wisconsin.

I should like to go further and say that with the establishment of property qualifications, the extension of suffrage during what we know as the Jacksonian period, the adoption of the 14th, 15th, and 19th amendments, and the progressive elimination of the poll tax and the abolishment of the so-called white primaries, we have witnessed the steady extension of the right to vote and the progressive enlightenment of the American people.

The Supreme Court decisions on reapportionment are but the most recent wave of this tide in the advancement of this Republic.

Finally, Mr. President; we come to the question of the checks and balances within our system and the division of authority between the legislative and the judicial branches. Supporters of the Dirksen-Mansfield amendment have proclaimed that the Court has usurped the authority of the legislative branch and that the Justices are legislating and not interpreting the law.

This argument is hardly a new one. It was exploded more than 40 years ago by the scholarly Justice Benjamin N. Cardozo in the lectures which he gave in 1921 at Yale University.

Mr. DOUGLAS. Were not those lectures called "The Nature of the Judicial Process"?

Mr. RANDOLPH. These were the the Storrs Lectures published under the title of "The Nature of the Judicial Process."

Mr. RANDOLPH. The Senator from Illinois is, as usual, correct in his citation.

Speaking of the "open spaces in the law" and the function of the courts in these areas, Justice Cardozo stated that:

> Within the confines of these open spaces and those of precedent and tradition, choice moves with a freedom which stamps its action as creative. The law which is the resulting product is not found, but made. The process, being legislative, demands the legislator's wisdom.
>
> There is in truth nothing revolutionary or even novel in this view of the judicial function. It is the way that courts have gone about their business for centuries in the development of the common law. The difference from age to age is not so much in the recognition of the need that law shall conform itself to an end. It is rather in the nature of the end to which there has been need to conform.

Mr. President, the recent Supreme Court decision, the development of American democracy, and the popular will of American citizens today declare that the end to which Justice Cardozo referred shall be equal representation. The issue is solely and ultimately whether or not we accept equal representation as one of the fundamental goals of American democracy.

This Senator subscribes to the view expressed by Thomas Jefferson when he stated that—

> Equal representation is so fundamental a principle in a true republic that no prejudice

can justify its violation because the prejudices themselves cannot be justified.

I shall not break faith with that principle, which has been so eloquently and accurately set forth.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. DOUGLAS. I congratulate the Senator from West Virginia for his very scholarly and thoughtful address which has discussed this issue in the large. It shows how the Supreme Court dealt with a long-standing abuse which the State legislatures themselves stubbornly refused to correct. His address demonstrates how the Court finally came back to the fundamental principle that the people were entitled to the equal protection of the laws and could not be assured of the equal protection of the laws if the legislatures which made the laws were ones in which the people were grossly unrepresented.

The whole argument of the Senator has been on an extremely high level. I know it will have a great deal of influence not only in West Virginia, but also all over the country.

Would the Senator permit me to give some testimony with reference to my own State?

Mr. RANDOLPH. Yes. I want to hear the testimony.

Mr. DOUGLAS. Illinois contained 10,100,000 people according to the census of population in 1960. Illinois has a State senate consisting of 58 senators. The average allotment of inhabitants per senator would therefore be approximately 17,000.

A number of districts have a much greater population than this. A number of districts have a much smaller population than this.

Let me take the smaller ones first. There is one district with 54,000 people, another with 57,000, another with 59,000, another with 67,000. On the other hand, there is one district with 570,000 people, another with 505,000, and another with over 400,000.

Let us compare the smallest district and the largest district. Fifty-four thousand people elect one State senator. Five hundred and seventy thousand people also elect only one senator. One person in the smallest district therefore has over 10 times the effective voice of a person in the largest district. The people in the smallest district are very nice people. But should they be given 10 times the weight of those in another district?

Mr. RANDOLPH. They should not, if I may interrupt.

Mr. DOUGLAS. Another district has a population of 505,000. That district consists of Du Page and Will Counties. That is a congressional district. There are 24 congressmen and 55 State senators. But, the State senatorial district is identical with the Federal congressional district. Therefore, one man in the smallest district would have approximately 9 times the voice of an inhabitant in the senatorial district with 505,000.

Another congressional district consists of Lake, McHenry, and Boone Counties. It contained 398,000 people in 1960. It has a congressional representative and only one State senatorial representative. It now has well over 400,000 population. It has the same representation as other districts which contain populations of 54,000, 57,000, and 59,000.

So, while we do not have in Illinois the ludicrous example that exists in Vermont where a hamlet with 36 people elects a member of the State legislature, and the largest city with a population of 38,000 also elects only one member of the State legislature it is bad enough. Illinois does not have the absurd condition which exists in California, where 14,500 people elect a State senator, and the over 6 million people in Los Angeles County also only elect one State senator. Still there are improvements that can be made. But 29 percent of the people are in districts which elect a majority of the State senate.

There is one other conclusion which I should like to introduce in the RECORD before I stop. That is that the three worst underrepresented districts are not inside the city of Chicago. They are in suburban districts.

For example, a district with 570,000 people, the first Illinois senatorial district, consisting of the cities of Cicero, Berwin, and Oak Park and Leyden, and Proviso Townships, is the most underrepresented group. Du Page and Will Counties have a population of 505,000, or approximately 3 times the size of what should be the average district. Those are suburban counties directly to the west and south of Cook County. Lake, McHenry, and Boone Counties, which constitute the precise area included in the 12th Congressional District, now have over 400,000 people. This is 2½ times the size of the average district. That is a suburban district. All of these are within the metropolitan area. All of these districts are at the moment strongly Republican. We hope that can be changed. But, at the moment, they are strongly Republican. What strikes me is the fact that so many of our Republican friends—I do not say all of them—are saying this is a struggle between the cities and rural areas. It is not so much that, as a struggle between the suburban areas and the underpopulated rural areas. And we, who are contending for more equal representation, are fighting the battles of the suburban areas even more than we are fighting the battle of the urban areas. I hope very much that these issues can become known and properly emphasized.

I regret that I have intruded upon the philosophic tenor of the speech of the Senator from West Virginia, which was couched in admirable general terms. But, sometimes the meaty specific reinforces the general philosophy and logic.

I again congratulate the Senator from West Virginia. He has made an excellent contribution to the discussion.

Mr. RANDOLPH. Mr. President, I thank the scholarly senior Senator from Illinois. If this were a problem for West Virginia alone, it would not be my purpose to sand here in the Chamber and object. The imbalance in the legislative bodies of the Senate and House of Delegates in West Virginia is not appreciable. Our legislature has acted resolutely to meet its responsibilities in this vital area of representation.

Apportionment is not the most pressing problem in West Virginia. But a very real principle is involved. That principle is whether we actually believe in equal representation as not only a sought for goal but now—at least in the Supreme Court's action—a realizable goal. I do not wish to see it thwarted.

Mr. DOUGLAS. Of course, the Supreme Court has never said that there must be precise arithmetical equality. The Court specified substantial equality, which would allow a certain percentage of tolerance on either side of the average.

Mr. RANDOLPH. Yes, flexibility is built into the Court's decisions.

Mr. DOUGLAS. That is expressly stated in the decisions of the Court.

Mr. RANDOLPH. My colleague is correct.

Mr. PROXMIRE. Mr. President, will the Senator yield briefly before he leaves?

Mr. RANDOLPH. I yield.

Mr. PROXMIRE. I know that the Senator has an urgent appointment which he must keep. I, too, wish to commend the distinguished Senator from West Virginia on a brilliant speech—a speech that was not only long and hard on the philosophy and principle involved, but also excellent in terms of specifics. I thought the example which the Senator gave us from his own experience in the Public Works Committee was particular helpful and useful. It showed clearly how the failure of the States to apportion properly and be representative in their legislatures interferes with their relationships with their own cities and their own localities, necessitating adjustments to be made at the Federal level which are often awkward and prevent full justice being done to the people within the State.

Also, as the Senator from West Virginia made emphatically clear, inequality in apportionment makes it necessary for the Federal Government to move into situations that otherwise the States might be able to handle for themselves.

Mr. RANDOLPH. I again thank the Senator from Wisconsin and the Senator from Illinois, who have been gracious and generous in their references to my effort here today. I say to both of them that there are times when we feel an urge—and I have felt it—to stand, to speak, and to serve in support of a principle which needs to be emphasized. So to the extent that I have reinforced and supplemented that which the Senators from Wisconsin and Illinois have so well said, I know that my contribution at least is a sincere one. I hope it will add something to an affirmative determination on the part of the Senate to approve, rather than to tear apart, a historic decision, in the onward sweep of American democracy, enunciated by the Supreme Court.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from West Virginia for his fine speech.

Now, Mr. President, for what purpose is the Senate now tied up with the Dirksen amendment to the foreign aid bill? Why? Strictly from the standpoint of

those who want the Dirksen amendment. What difference will it make whether we act on it this year or whether we have action pro or con next year? The fact is that there is not one single State legislature which will meet before January 1965. If we should fail to act now, our failure could have no effect that I can understand on actions by State legislatures next year. Therefore, I hope that the leadership on both sides of the aisle will give very real consideration to the possibility of ending this unfortunate stalemate by withdrawing the Dirksen amendment and pressing in 1965, when the decks will be clear for action and it will be possible to stay with the subject, and when it will be possible to have Senators attend these debates and it will be possible to have more than one quorum call a day.

It is no legislative secret that it is the duty of Senators who favor a proposal to obtain a quorum. It is their responsibility, not ours. It is not the responsibility of those who are opposing a measure.

During the civil rights debate those of us who were for the civil rights bill worked hard and long, and made great sacrifices in terms of not being able to get out to our States and make speeches around the country, canceling commitments in order to be present in the Senate for quorum calls.

I understand that the distinguished Senator from Illinois [Mr. DOUGLAS] was present for more quorum calls than any other Senator at that time. Perhaps there were two or three others who did as well as he did. We were then able to get a quorum in less than 20 minutes; usually, 15 minutes. We were unable to get a single quorum on Thursday; we were not able to get a quorum on Friday. Today we have been in session since 12 o'clock and nearly an hour was required—50 minutes—to get a quorum, although Senators were urged to return to Washington, D.C. As time goes on it is obvious that it will be harder and harder to maintain a quorum. In the absence of a quorum it is difficult for the Senator from Wisconsin to see how we can be criticized by our opposition and taunted about not speaking to a full Chamber. After all, if the proponents of the measure cannot deliver Senators to the Chamber so that the Senate might be held in session, it is not our responsibility—at least those of us who oppose the amendment—to continue talking. If we do talk, we are hopeful that our opposition will see that Senators are present.

Mr. DOUGLAS. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. PELL in the chair). Does the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. DOUGLAS. Is it not true that during the debate on the civil rights bill well over 100 quorum calls were called by the opponents of the civil rights measure, and they were live quorum calls which were demanded?

Mr. PROXMIRE. The Senator is correct. Live quorums were demanded.

Mr. DOUGLAS. We have asked for only one live quorum. Still the advocates of the Dirksen amendment have not taken the hint, and have not appeared on the floor to defend their position. Is that not true?

Mr. PROXMIRE. That is absolutely true. It seems to me that the proponents of the measure have given only a very brief time in support of their position, although the debate relates to a most important constitutional issue. No hearings have been held on the question. No record is before the Senate. We have no record from the House, though the measure would have most serious consequences on all 50 of our State legislatures.

Mr. DOUGLAS. I believe the RECORD will show that my colleague, the junior Senator from Illinois [Mr. DIRKSEN], who is chief sponsor of the amendment, spoke for less than 1 hour. He did not speak again. Later, on the Democratic side, the Senator from Montana [Mr. MANSFIELD], who is a cosponsor of the amendment, spoke for 10 minutes. Neither one of them has spoken since. There may have been one brief speech in support of the proposal, but there has been virtually no discussion.

During the debate on the civil rights issue, those of us who were in favor of civil rights felt an obligation to present our side of the case. We felt that we should not depend upon pure muscle, but that we should try to argue the points involved.

The RECORD will show that for 3 weeks we conducted a debate with Senators going into every phase of the civil rights bill in great detail so that a case might be laid before the Senate and the country.

Now the supporters of the Dirksen-Mansfield amendment in effect refuse to do that. They have refused to state their case. They will not come to the floor of the Senate. In many cases they have helped to prevent a live quorum from being obtained. They are depending on the strength of the groups behind them, and possibly of the organizations of the two parties.

Mr. PROXMIRE. The situation is most peculiar, particularly in view of what has happened in the course of the debate. One might think that time was working on their side. What has happened? On the move for cloture, I presume the minority leader, the distinguished junior Senator from Illinois [Mr. DIRKSEN], would not have filed a cloture motion if he did not believe that he had a good prospect of getting a two-thirds vote in favor of that motion. I am sure that he was confident that he could get it. Not only did he feel that he could get the necessary two-thirds vote, but also after the debate had gone on, after the situation had been explained and our arguments had been made, the cloture motion was defeated by a vote of more than two to one.

Furthermore, even more convincing was what happened to the Tuck bill. The Tuck bill passed the House by 40 votes. But what a spectacular change transpired in congressional attitude after that House action. The bill came over to the Senate. It was offered as an amendment, and was defeated, as I recall, by a vote of 56 to 21—a resounding and overwhelming defeat.

The Tuck bill embraced the same principle as the Dirksen amendment. In view of the circumstances, in view of the fact that the opposition seems to be losing ground, in view of the fact that the Senate came close to passing a proposal that would have in essence approved what the Supreme Court did, one would think that Senators who desire to have the Dirksen amendment passed would at least come to the floor and make their arguments in favor of it.

The speech just made by the distinguished Senator from West Virginia [Mr. RANDOLPH] pointed out that the Founding Fathers had some question and some reservation about universal suffrage. He pointed out a statistic that I had always been curious about. Something like 10 or 12, or perhaps 15, percent of the adults, in the early years of our Republic, actually voted. Of course, all women were excluded from voting. Slaves were excluded from voting. There were property qualifications in many States. Presumably, there was greater difficulty in voting. In spite of all this, as I have been trying to show, and as I tried to demonstate on Wednesday last, our Founding Fathers came out overwhelmingly and unanimously on the side of proportional representation, on the side of population representation in the State legislatures.

The only reason why the Congress of the United States has been organized on a different basis, the only reason why the Constitution provides for a Senate of the United States that is not based on population representation, is that it was the only way we could have had a Union. Many of us have argued that this was a wise decision. I feel that it was, but it was not on the basis of any principle. It was arrived at because it was the only way that the States could combine to form a Union.

Elbridge Gerry supported the compromise in these words:

> We were, however, in a peculiar situation. We were neither the same nation nor different nations. We ought not, therefore, to pursue the one or the other of these ideas too closely. If no compromise should take place what will be the consequence? A sécession he foresaw would take place; for some gentlemen seem decided on it; two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.

It was clear, in the words of Elbridge Gerry, that it was not a matter of accepting a great principle in having the Senate represent States, instead of people. It was a matter of getting the kind of unity necessary to preserve the independence of the United States of America.

George Mason agreed with him in these words:

> There must be some accommodation on this point, or we shall make little further

progress in the work. Accommodation was the object of the House in the appointment of the committee; and of the committee in the report they had made. And however liable the report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some gentlemen.

No one could contend that the counties or the cities within States have the sovereign power which the States had, and which they were willing to cede to a Federal system at the Constitutional Convention. Those who argue that since the Congress is composed of one House based on something other than population, and therefore the States should be, constantly overlook the fact that the States had the sovereignty, the power, the taxing power, virtually all the attributes of individual nations, when they came together. In the history of the United States there has never been a time when counties or cities came together to cede powers to a State.

First the States are created, and it is the States which create the cities, counties, or other administrative conveniences through which the States operate; but there is no basis for saying that there should be an individual identity in a county which warrants its representation in a State legislature.

James Madison, father of the Constitution, and others were unwilling, even in the face of a need to compromise State sovereignty with national unity, to promote the principle of equal State representation. James Madison fought hard for equal popular representation in the U.S. Congress, even in the Senate.

[Madison] expressed his apprehensions that if the proper foundation of Government was destroyed, by substituting an equality in place of a proportional representation, no proper superstructure would be raised.

What Madison meant was that there should not be equal representation for each State because we would destroy the principle that one man had one vote so far as the Federal Government is concerned. Madison was strongly for the principle and believed deeply in it.

[Madison] reminded [the small States] of the consequences of laying the existing confederation on improper principles. * * * It had been very properly observed by Mr. Patterson [sic] that representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents if convened, would respectively have. Was not this remark as applicable to one branch of the representation as to the other? But it had been said that the Government would in its operation be partly Federal, partly National; that although in the latter respect the representatives of the people ought to be in proportion to the people: yet in the former it ought to be according to the number of States. If there was any solidity in this distinction he was ready to abide by it, if there was none it ought to be abandoned.

This was Madison's clear principle that he said in the 1787 constitutional debates must be accepted.

In all cases where the General Government is to act on the people, let the people be represented and the votes be proportional. In all cases where the Government is to act on the States as such, in like manner as Congress now acts on them, let the States be represented and the votes be equal. This was the true ground of compromise if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the General Government was not to operate on the people individually.

This particular point is philosophical but it is vital. Madison saw the Federal Government as acting directly on individuals, that therefore that they ought to have equal representation; to him it was only with the greatest reluctance that there should be a compromise essential to get a union. He agreed with Jefferson, Hamilton, and others that the States should have equal popular representation in their own State legislatures.

Madison pointed out that:

The practicability of making laws, with coercive sanctions, for the States as political bodies, had been exploded on all hands. * * * He enumerated the objections against an equality of votes in the second branch.

This was Madison's argument against the kind of decision to which the Constitutional Convention finally came with respect to equal representation in the Senate for large and small States.

Madison listed his objections, as follows:

1. The minority could negative the will of the majority of the people.
2. They could extort measures by making them a condition of their assent to other necessary measures.
3. They could obtrude measure on the majority by virtue of the peculiar powers which would be vested in the Senate.
4. The evil instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality.
5. The perpetuity it would give to the preponderance of the northern against the southern scale was a serious consideration.

James Wilson agreed with Madison (id. at 10): "A vice in the representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not in argument at least been yet contradicted."

What Wilson could point out is that despite the fact that there had been serious and extended debate by our Founding Fathers, there was no contradiction of the fundamental principle that each man should have an equal vote. To this principle all of our Founding Fathers agreed.

James Madison implied clearly his view that apportionment of State legislatures on some basis other than population was unfair and that a provision was necessary in the new Constitution to prevent the persons who as a result of malapportionment controlled State government from running congressional elections to serve their own interests (id. at 241): "Besides the inequality of the representation in the legislatures of particular States would produce a like inequality in their representation in the National Legislature as it was presumable that the counties having the power in the former case would secure it to themselves in the latter.

Objections to the Senate's consideration of treaties was based on the fact that Senators represented States rather than an equal number of people.

George Mason supported the proposal that revenue bills must originate in House of Representatives and cannot be modified in Senate on the ground that (II Farrand 273–274): "1. The Senate did not represent the people but the States in their political character. It was improper therefore that it should tax the people. * * * The House of Lords does not represent nor tax the people because not elected by the people. * * * the pursestrings should be in the hands of the representatives of the people."

* * * * *

Much of the opposition on September 8 to the proposal that treaties must be ratified by two thirds of the Senate arose from the fact that a minority of the people will elect a majority of the Senators. Hugh Williamson of North Carolina (II Farrand 548): "remarked that treaties are to be made in the branch of the Government where there may be a majority of the States without a majority of the people. Eight men may be a majority of a quorum, and should not have the power to decide the conditions of peace."

Elbridge Gerry similarly stressed (ibid): "* * * the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one-fifth of the people."

I wish to continue this speech, because I think it is very important to document the attitude of our Founding Fathers in establishing our Constitution.

I wish to yield to the Senator from Oregon, but first I wish to make it clear that my experience has no doubt been the experience of other Senators also, namely, that the main objection, the prime question asked by those who oppose the Supreme Court's decision in Reynolds against Sims and to the course the Supreme Court has taken is, Why cannot States have the same kind of representation in their legislatures that the Federal Government has provided for in its two Houses of Congress?

I believe it is necessary to go back to these debates to document fully and accurately and exactly why we have a U.S. Senate and why the Founding Fathers felt very strongly about one fundamental principle of democracy. That each man should have one vote. Under no circumstances would the Founding Fathers compromise that principle, with the single exception that they felt they had to have a Federal Union, and that the only way they could get a union was to compromise and permit each State to have an equal number of Senators.

I shall come back to this point a little later, but at this time I ask unanimous consent that I may yield to the distinguished Senator from Oregon [Mr. MORSE], without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PRESIDENT'S TOUR OF PACIFIC NORTHWESTERN STATES

Mr. MORSE. Mr. President, I thank the Senator very much for yielding to me. I doubt that it will be necessary for him to come back to his subject today. I have been advised that it is contemplated that the Senate will recess or adjourn at a reasonable hour this afternoon. I have asked the Senator from Wisconsin to yield to me at this time be-