nothing serious to say about either the causes or the solutions of crime and delinquency.

Therefore, I want to set the record straight with the facts.

First, juvenile crime has been increasing steadily from year to year in this country since 1948 under both Republican and Democratic administrations.

Second, contrary to Senator GOLDWATER'S statement that under the Eisenhower administration the Nation's Capital was an example of peaceful progress and a lack of crime, the truth is that the crime rate had its most significant leap forward right in the middle of the Eisenhower administration. For instance, in 1958 crime in Washington, D.C., rose 23 percent. I do not cite this fact to lay crime in the District of Columbia at the door of the Eisenhower administration. I cite it to show that any attempt to make partisan use of crime statistics is pure charlatanism of the worst sort.

Third, Washington, D.C., which Senator GOLDWATER says is peculiarly under the President's influence, is by no means the most glaring example of crime in this country, as he seems to feel. According to the FBI reports, Washington ranks 13th in crime rate among the larger cities in the country.

By contrast, Phoenix, Ariz., where the Senator's own influence and that of his ideology should loom largest, is fourth in the Nation. No wonder the Senator wants to declare war on crime in Washington, D.C., which is about as far away from Phoenix as he can get. I say to the Senator, let us start "moral persuasion" at home in Phoenix.

Fourth, the cold statistics do not bear out Senator GOLDWATER'S contention that centers of civil rights disturbances are centers of crime. FBI reports show that Philadelphia, for instance, has one of the lowest crime rates among the larger cities. The three highest centers of crime, ahead of Phoenix, are Las Vegas, Los Angeles, and Miami.

Fifth, every attempt by Members of Congress to encourage action to combat crime and delinquency was frustrated and blocked under the previous Republican administration. But many of these efforts have borne fruit during the Kennedy-Johnson period. The Juvenile Delinquency and Youth Offense Control Act, and the package of crime control bills are monuments to the zeal of President Kennedy in this field.

For the first time, we have had strong White House support for bills to curb the criminal traffic in dangerous drugs and firearms.

Sixth, whereas the last administration—that is, the Eisenhower administration—never really went after organized crime, Attorney General Kennedy has made a tremendous fight against it. Convictions are up 400 percent and for the first time in our history, the whole law enforcement apparatus of the Federal Government has been mobilized to fight syndicated crime.

Seventh, we have passed, over the opposition of Senator GOLDWATER, a number of bills to attack the causes of crime: racial discrimination, poverty, illiteracy, lack of opportunity, and youth idleness.

I have never wanted to have this issue put on a partisan basis. I have spent much of my life in the field of law enforcement and dealing with young people. It has been a rewarding part of my life. I would be the last to deal on a partisan basis, with the very great problems in this field. But since Senator GOLDWATER and Representative MILLER have brought this issue into politics, I say in the Senate that the Republican response to crime and delinquency has been one of inaction, and the Democratic response has been one of action and I cite the record to prove it.

Moral persuasion by itself never stopped a crime wave. Unless Senator GOLDWATER and Representative MILLER have something more substantial to offer the American people than their own presumed good example, they should quickly retire from the struggle against crime and corruption and leave it to those who view this as a tragic and urgent problem, and not a political bonanza.

I am grateful to my friend and colleague the Senator from Wisconsin for yielding to me at this time. I feel, after the speech of last night, that an answer should be made lest the American people be fooled—which I do not believe will happen—by such reckless and irresponsible attacks in the midst of a political campaign. The only way to curb crime and delinquency is to face the problem. It is not a political problem. It never has been. I do not know of any responsible person in public life who has said it is, until these candidates came along.

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

Mr. DODD. I yield.

Mr. PROXMIRE. I congratulate the Senator on his excellent and forthright statement. He, perhaps to a greater extent than any other Member of the Senate or House, has devoted a great part of his life to law enforcement. He understands about these problems and crime. The Senator from Connecticut not only calls for enforcement, but points to the fact that there has been vigorous enforcement by our Attorney General, in cooperation with local agencies, to a far greater extent than ever before. He points out also that if we are to meet these crime problems, there must be positive programs for providing educational opportunities, job opportunities, and housing opportunities, and getting people out of the bitter life from which they suffer, where they have no place to turn, no future, and no hope.

After all, as the Senator knows, there are some who steal out of necessity. There are other cases in which crimes are committed because of the grossest kind of ignorance.

Of course, as we all know, they are not the only reasons for crime. But it is important that we move ahead with the antipoverty measure, which has been supported by the administration and by the Senator from Connecticut, and with measures for a health program, a National Service Corps, and the health of inductees into the armed services. All such bills, almost without exception, have been opposed by the very men who are criticizing the administration for being responsible for crime in our cities.

Mr. DODD. I am grateful for the Senator's compliments, which I do not deserve. Nevertheless, I am grateful. I am also thankful for his wise observations on this situation.

I have always taken the view, from the time I was in the Federal Bureau of Investigation to the time when I came to the Senate—as I have said I have devoted a good part of my life to law enforcement work—that poor housing, people who are underfed, who do not have a chance of any kind in life, are the breeding grounds for crime. There is no question about it. Anyone who has made an attempt to understand the reasons for crime in this country and elsewhere in the world knows it to be a fact. It is a fact that the Senator and Representative who are candidates on the other side have voted against proposals to alleviate these conditions consistently. I am sure they would not deny it. It is a matter of record. Every person in the law enforcement field knows that there is more to the problem than building more jails and throwing more people into them. If we are to conquer the problem, we must approach it from the standpoint that it has been approached during the Kennedy-Johnson, and other Democratic administrations.

I thank the Senator for his comments.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

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.

Mr. PROXMIRE. Mr. President, the principal argument that has been made right along against the Supreme Court decision and in favor of the Dirksen-Mansfield proposal and recently for the Javits-McCarthy proposal and the modified Javits-McCarthy proposal is that the Supreme Court has been acting in a fashion that has been too precipitous. It has been said that they did not consider the State lagislatures or the fact that it is particularly difficult job for the State legislatures to do. It has been said that they have not given them sufficient time.

This is absolutely untrue. In fact, such fears are not warranted by the Supreme Court decision. An analysis of the reapportionment cases demonstrates that the Supreme Court was well aware of the political problems posed by reapportionment. And the Supreme Court took pains to ease these problems to as great an extent as compatible with the ultimate preservation of constitutional rights. Anyone who has served in State legislatures, anyone who has served in any capacity in State government, knows that this problem of the legislature apportioning itself is one of the most difficult and painful problems that there is. Indeed, we have example after example of legislatures, required to apportion under their constitution, neglecting to do it for many years—in some cases, for 50 years. Usually the constitution of the State will require apportionment after

the decennial census, once every 10 years.

We are very proud of the fact that we have a population representation in both our Assembly and State Senate in the State of Wisconsin. We have had it ever since we became a State in 1848. Nevertheless, we have gone for as long as 20 years—and I believe at one time, 30 years—without apportionment. We rarely apportion in the period immediately after the decennial census, which is what the Constitution requires. This is because there is nothing tougher or more difficult than persuading members of the legislature to apportion themselves out of their own seats—and that is what they would have to do—or, if not themselves, to apportion a friend out of his seat. They have to act in a way which is against human nature.

If there is one common attribute of people in politics, and particularly people elected to legislative office, it is the capacity to like one's fellow officers, to enjoy them, and to try to win their friendship and support.

Nothing is more likely to aggravate, annoy, or alienate a colleague than to vote for a measure which would eliminate or take away part of the constituency which he represents. This would weaken his office, prevent him from returning to office, or end his political career—in fact, murder him politically. This is what has to be done if the legislatures are to comply with the mandates of the courts.

It is no wonder that the legislatures have been reluctant and have only apportioned under duress of court action, and have apportioned very slowly and reluctantly. But, analysis further reveals that lower courts which force legislatures to reapportion without an opportunity to fully consider the ramifications of various plans of reapportionment will not be complying with the constitutional mandate of the Supreme Court, but will be acting contrary to the Supreme Court's instruction to pay close heed to the necessities of the political process.

The court has recognized that it is necessary to proceed with caution, prudence, care, and consideration for the great difficulties involved. They recognized that ample time should be allowed the legislature in which to apportion. It has directed the lower court to proceed accordingly. As a matter of fact, there is probably very little in the Javits-McCarthy modified amendment that we acted on yesterday that could not have come right out of the Supreme Court decision. The spirit was exactly the same as the position of the Supreme Court. As a matter of fact, I suspect that this was the prime purpose of the authors of the amendment.

The Court delievered its most extensive exposition on the question of the timing of court-ordered reapportionments in the Alabama case of Reynolds against Sims. It stated at page 50 of its opinion in the case, that it would not set forth the proper remedies to be utilized by Federal courts in cases involving State legislative apportionment cases because the question of remedies in this new and developing area of law will doubtlessly differ with the circumstances of individual cases and with a variety of local conditions. It is important to note the importance of the Court's deference to local conditions in the setting of the problem of appropriate remedies. Such deference nullifies fears that the judiciary will impose a monolithic fiat upon State conditions that vary greatly and that will respond to a uniform standard with varying degrees of success or failure.

On the other hand, congressional action would necessarily impose a legislative monolithic fiat, a lack of flexibility which the individual courts would not. The Supreme Court instructs the lower courts to administer the apportionment according to the circumstances, according to local conditions, according to all kinds of local circumstances that differ.

We cannot possibly do that in a legislative enactment in a proposal such as the Dirksen-Mansfield proposal, which would have to be uniform for all 50 States and would have to be interpreted and administered, unfortunately, without reference to local conditions. There is not any small Congress, lower Congress, or subordinate Congress that is in a position to sit and hold hearings as the lower courts can hold hearings and act on the basis of consideration.

Mr. President, who are these lower courts which are acting allegedly with such precipitous haste? These are not people from some foreign country. These are not people who have an inborn hatred of everyone elected to a legislature. These are not unreasonable people. They are prudent, thoughtful men appointed by the President of the United States and confirmed by the Senate, after years of practice as lawyers, after demonstrating ability, in many cases on the bench, men who, in many cases, have a great understanding of the legislatures, some of whom have served in State legislatures. Practically all of them have an acquaintenance with members of the State legislatures. They are men who have a settled habit of considering their problem in a judicial atmosphere, proceeding very carefully, and allowing ample time in all their decisions. As a matter of fact, the whole court process in America is ideally made to enable legislatures under a court order to proceed carefully and with full consideration.

Mr. President, many State legislatures have already made good-faith attempts to reapportion. Some of these attempts have been successful; others have foundered on constitutional shoals, these necessitating further attempts which have in turn experienced various degrees of success. On the other hand, some State legislatures have adopted reapportionment plans which can hardly be described as good-faith attempts to give a fairer degree of representation to those who have too long been without the protection afforded by equal representation in the democratic process. Still other legislatures have adamantly refused to make even a gesture in the direction of equal representation. Under the Supreme Court's doctrine that remedial technique will inevitably vary with the variations in circumstances and local conditions, the various degrees of good faith shown in the preparation of reapportionment plans will be a factor in determining the degree of speed to be enforced by the courts.

How inapt and how inappropriate is an edict by the Congress of the United States that would apply to all State legislatures, as compared with the deliberate process of the court, which can hold hearings and consider in great detail, which can hear adverse parties, which can hear all sides and then carefully, after weeks, and sometimes months, of study, hand down a deliberate, thoughtful decision tailored to meet the specific case involved.

Which is better? There is no question in my mind that anyone who really believes in justice, anyone who believes that the proposed apportionment should take place and take place with the greatest possible consideration for the local case, will certainly opt for judicial action rather than for a flat congressional directive which would interfere with it.

The degree of good faith shown by State legislatures is certainly not the only factor relevant to the Supreme Court's doctrine of local circumstances and conditions.

The main contention of those who support the Dirksen proposal is that the Supreme Court is trying to move too fast, to rush the legislatures. Indeed, that was the whole purpose of the Javits-McCarthy proposal. This is plain wrong. The facts do not support that contention. The fact is that the Supreme Court has requested the lower courts to proceed carefully, cautiously, and prudently.

The list of possible variations is as infinite as the ramifications of the political process itself. An attempt to list or describe even a fraction of them would beggar the imagination.

Nevertheless, I shall try to set forth a few other of the more salient political problems that are intimately connected with the question of reapportionment and which, therefore, will play a role in the decisions of lower courts relative to the speed and timing of reapportionment.

The question of how to insure the effective representation of minority interests of all sorts is a problem which will vary with the types of minorities, the location of minorities, the extent to which minority interests overlap with each other and with majority interests, and other relevant considerations that vary within given States. For instance, effective representation of rural interests presents a different problem relative to drawing the boundary lines of political constituencies where the rural interests are a small fraction of total population than where those interests represent a major fraction of State population. In the former case, the rural minorities could be swallowed in districts comprised mainly of urban citizens unless election districts are carefully drawn in such a way as to insure that rural interests can elect a number of representatives fairly proportioned to their numbers.

This does not mean the rural areas would have a greater proportion of representation than the urban areas, but it means that the districts would be so drawn that the farmers and other rural people would be able to elect persons who, in their judgment, would represent their interests and would not be inimical to their interests.

Thus, the drawing of boundaries will doubtlessly be a harder and more time-consuming process in States where it is more difficult to insure fair representation of rural or other minority interests than in States where it is less difficult to do so. This fact would clearly be relevant to the speed with which a court should order reapportionment.

The method of reapportionment normally used in a particular State is another varying local factor that is relevant to the timing of judicially ordered reapportionment. Some States need only undergo a change in the statutory provisions covering apportionment. In other words, mere legislative action will be sufficient to reach the desired end. In other States the subject of apportionment is provided for in the State constitution, which will have to be revised before a permanent reapportionment plan can be adopted. Permanent constitutional revision is bound to be a more time-consuming process than mere statutory change. Furthermore, the amount of time consumed by constitutional change may itself vary with the amending method used by a particular State. Some States require a two-thirds vote of each house of the legislature in order to amend their constitution. Still others require that two consecutive sessions of the legislature approve a constitutional amendment. Yet other States may call a constitutional convention, which will necessitate a previous selection of delegates to the convention. And some States may utilize an initiative and referendum—a method of submitting proposed constitutional amendments to the people which may well result in the rejection of a proposal and a consequent need to begin anew the process of constitutional amendment. All of these variations in the amendment process are relevant to determining the speed with which a reapportionment plan can be effected. All of them indicate that the Supreme Court has not decreed that a monolithic judicial juggernaut shall roll uniformly and unthinkingly over the particularized situations of individual States.

The Supreme Court is proposing to the lower courts that they proceed carefully, based on the particular constitutional requirements, legislative requirements, and population location. They vary in State after State. Obviously, for Congress to say that it should be 1 year or 2 years or any other length of time, would be most unwise, and would impose, instead of the Supreme Court flexible mandate, an explicit mandate which would be very unjust to all concerned.

Those who fear that the recent reapportionment cases will result in hasty and ill-advised reapportionment will doubtlessly answer the foregoing discussion by asserting that the Supreme Court did not rest content with noting the importance of local circumstances and conditions. It also stated, at page 50 of the Alabama case, that it would be the unusual case where a court would be justified in permitting an election to be held under a plan that has previously been adjudged unconstitutional. Standing by itself, isolated from the statements which surround it and the political milieu in which reapportionment is set, this statement could conceivably be interpreted to require immediate reapportionment. But the aforementioned statement can not, in fact, be isolated from its decisional or social milieu. For immediately after stating that it would be the unusual case where an election should be held under an adjudged unconstitutional plan of apportionment, the Supreme Court set forth examples of circumstances where certain elections can be held under an unconstitutional plan. And it is probably safe to say that the circumstances giving rise to the exception may be so pervasive as to engulf the general rule. The Supreme Court said that a lower court may be justified in withholding immediately effective relief where an election is underway and a State's election machinery is already in progress. It said that lower courts should take account of the mechanics and complexities of state elections laws and should act upon equitable principles. It said that,

> A court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in complying with the requirements of the court's decree.

Clearly, then, the Court has set forth principles whose effective implementation requires that lower courts exercise restraint in ordering reapportionment. It would certainly intefere with the election process if, at this late date, any court was to order reapportionment in time for the forthcoming November elections. The primaries have already been held, both conventions have picked their candidates, and political campaigns now occupy the thoughts of those most intimately associated with the political process. Thus, under the Supreme Court's standards lower Federal and State courts would not be warranted in disrupting the November election. No other elections will be held for at least 1 year from this November.

Some elections would be affected. These would be elections that would be held in three States, including New Jersey, in November 1965. In most States, no other election would be held until 2 years from November. In other words, there will be ample time for State legislatures to reapportion themselves without running the risks of adopting hasty or ill-advised plans.

On the other hand, what the Dirksen-Mansfield amendment provides is that any member of the State legislature can stay or stop an apportionment which had been ordered by the Court and was in adjudication, and in doing so would be able to upset an election, including the coming November election.

As every day passes, it appears more likely that the Dirksen-Mansfield amendment cannot have an effect on the coming election, but there is still at least a chance that perhaps it could. If we should adopt the Dirksen amendment in the next few weeks, it would be possible for a member of a State legislature to ask for a stay—and members of State legislatures would certainly do so, because, after all, their careers would be at stake—to enjoin the Court and prevent the election from being held.

Under those circumstances the court would have to schedule an election with different legislative districts. That, of course, would be most confusing. Candidates would have filed under the new election districts, and they would be required to revert to the old districts. In some cases it would be physically impossible for the candidates to refile and for the election to be held in November.

In many cases it would be necessary to hold another primary election. It would require an extraordinary interpretation by the court to permit the November election for many State legislatures to be held at all, if we adopted the Dirksen-Mansfield amendment. In any State where a State legislator requested a stay, under the clear language of the Dirksen amendment the Court would have no choice but to stay and stop the election and prevent the people from voting in the election.

As we pointed out, in virtually every case the apportionment that has been effected under duress from the courts, has been apportionment that has been far more perfect than in the past, in States like Wisconsin and Michigan, in providing for a one man-one vote basis, and it has provided real equality.

If the court abided by the strict language of the Dirksen-Mansfield amendment—and I do not know how it could do other than abide by it—the elections would be voided. The people cannot be without representation, and presumably the old legislatures would hold over.

This is the kind of technical quagmire that we would get into if we adopted the Dirksen-Mansfield amendment.

There are very serious technical objections to the amendment. We are not only against it on theory—that is the primary reason, because it is an unconscionable attack on the Supreme Court—but we are also against it because it would cause tremendous chaos in electing our State legislators in State after State.

Certainly this should be a lesson in the unwisdom of Congress trying to effect apportionment in the States, rather than leaving it to the deliberative, careful, prudent action of the courts.

The truth of these observations is attested by the commendation which the Court gave to the lower Federal district court in the Alabama case. The Supreme Court stated that the lower court had acted wisely in refusing to stay an impending primary election in Alabama and in giving the Alabama Legislature the initial opportunity to correct its own malapportionment. The Supreme Court stated, at page 51 of the Alabama opinion, that the district court had:

> Correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination and

that judicial relief becomes appropriate only when a legislature fails to reapportion according to Federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

This is the case as to which people have been complaining that the Supreme Court moved in on a State legislature and took jurisdiction it did not deserve and should not have had; that the Supreme Court moved in too hastily; that it was unfair and unjust. But what was the Court's language? The Court said that the district court had—

Correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination and that judicial relief becomes appropriate only when a legislature fails to reapportion according to Federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

The Supreme Court could not have been clearer in saying that the lower court should not be precipitate; should not proceed too rapidly. That is why all the concern expressed by many Senators, including some who support our position, that the Supreme Court is acting too fast, is based on a failure to read the cases. The Supreme Court has not acted precipitately in any of these cases. It has acted with the greatest caution. The Supreme Court had the alternative either of walking away from the situation and saying that it would ignore it until the situation was clearly wrong and conspicuously unthinkable, and that there was a great demand for action; or of acting at once, as it did. But when it acted and stepped into the case, it did not require the State legislatures to move with great speed. Quite the opposite. The Supreme Court said that State legislatures should be given every opportunity to act; that it was their function to act; and that they should act; but that only when the State legislatures failed to act would the Supreme Court move in.

In other words, by commending the district court in the Alabama case, the Court has instructed lower Federal courts that legislatures are not only the most suitable bodies for working out reapportionment plans, but that courts should give legislatures adequate opportunities to develop such plans.

The Court went on to state that the district court had acted properly after the Alabama Legislature had refused to apportion itself properly, in ordering its own temporary plan of reapportionment into effect at a time sufficiently early to permit the holding of elections without great difficulty. In other words, not only has the Supreme Court said that it is proper for the Federal courts to construct reapportionment plans only after legislatures have had adequate opportunity to do so themselves; it has also said that courts should not draw up and effectuate their own reapportionment plans unless such plans will not disrupt elections.

This is the second confusion. Senators have argued that the Supreme Court has stepped in and disrupted elections. They cite the Oklahoma case. We discussed the Oklahoma case in great detail. What did we find? We found that the Oklahoma Legislature had not apportioned since 1921; that there was a glaring inequity against people who live in the populous areas in Oklahoma; that the old apportionment was most unfair; that far from the Supreme Court requiring swift action or inconsiderate action, the Supreme Court had been very careful and had ordered the 1962 legislature to act. The 1962 legislature acted, but it acted in a way that obviously contradicted the Court, completely flouted the Court requirement that there be a one-man, one-vote apportionment. There was no real attempt to do so. What was left for the local court to do except to uphold its own dignity by insisting, once again, that the legislature apportion?

Then there were such delays that there was some inconvenience. Nevertheless, the Governor of Oklahoma has ordered an election, which is to be held on September 29, and held on the basis of population apportionment. In that ball game everyone will be given 3 strikes; not, for some batters, 1 strike, for some 10 strikes; everyone is to be treated equally.

It seems to me that this action was careful, thoughtful, and prudent; but the Oklahoma case has been cited again and again as an example of precipitate speed by the Supreme Court.

I should like to make one final point to demonstrate that courts will adopt an attitude of moderation in their dealings with legislatures that are making good-faith efforts to reapportion themselves. In only one of the six cases decided on June 16 did the Supreme Court lay down a hard and fast time limit on reapportionment. Let me say that again: In only one of the six cases decided on June 16—the famous cases making the one-man, one-vote principle clear, as a matter of individual right—did the Supreme Court impose a hard and fast time limit on reapportionment.

In the Maryland case, it said that under no circumstances should the 1966 elections be held under the present unconstitutional plan of apportionment. What is wrong with that? What is unreasonable about that? If a State has 2 years in which to reapportion, is that rushing it? Is that too great speed? The Supreme Court permitted 2½ years for compliance. Where is the great speed that has been alleged? The Maryland legislators who will be elected in 1966 will hold office until 1970. The 1966 elections are more than 2 years away. There is ample time for the Maryland Legislature to reapportion in a most unhurried manner.

The electoral process in Maryland will not be disrupted. It would be unfair to deprive the citizens of Maryland of effective representation until 1970. In short, the Supreme Court has laid the groundwork for fair rules in the other States, as well, without requiring that there be a specific, definite, hard-and-fast time limitation. The only time limitation the Court provided is, as I have said, more than 2 years away; and that is certainly generous on the basis of any consideration.

This has been a crucial example to those of us who oppose the Dirksen amendment. Those on the other side have said that the Dirksen amendment should be adopted because it is necessary to delay this action in order to give States time to apportion; to permit time for a constitutional amendment to be submitted. The fact is that the record is as clear as it can be that ample time in every case has been provided by the Court, and that the Supreme Court has been judicial in the best sense of the word. It has been thoughtful, careful, and prudent in requiring apportionment. Most important of all, the Supreme Court has done something that Congress can never do. The Supreme Court has said that the lower courts shall use flexibility and shall interpret the requirement for apportionment on the one-man, one-vote basis to permit State legislatures to act; shall grant ample time, so that the legislatures can act, and act with prudence, care, and consideration of their own constitutions and the locations of the people who live in the various States, who will gain or lose representation.

NO COMPARISON BETWEEN CONGRESS AND THE STATE LEGISLATURE

The second objection to the Supreme Court's decision in Reynolds against Sims, the Supreme Court's basic principle that every man should have equal representation in the State legislature—and this is, frankly, a most common objection today—is that there is a Federal analogy or a Federal comparison. I have encountered this many times in Wisconsin. I am sure that every Senator who has gone home and discussed this problem with his constituents has encountered it.

They ask, "If the Senate is not based on population, why should the State legislatures not follow the wisest Constitution any country ever had in history? Should one State legislative body not also be based on an area representation, or county representation, or something of the kind?"

This argument goes as follows: The Senate is composed of two Senators from each State, no matter how large or small, how populous or how sparsely populated. Why should not the State legislature have the same right? Even were I to accept the reasoning—which I do not—I would have to reply that the Dirksen amendment does not apply to any one house of the State legislature, but to both houses. It would prevent either house of a State legislature from reapportioning for at least 2 years, despite the fact that the Supreme Court has affirmed the constitutional necessity of "one man, one vote" in the House of Representatives.

However, returning to the Federal analogy, there is no really fair comparison between the State's acceptance of representation and the State's legislature, and Federal representation in the Congress. This is the statement made by the Supreme Court in the case of Reynolds against Sims. That decision—it was an 8-to-1 decision—a majority decision written by Chief Justice Warren, states on page 37:

Much has been written since our decision in Baker versus Carr about the applicability of the so-called Federal analogy to State legislative apportionment arrangements. After considering the matter, the court be-

low concluded that no conceivable analogy could be drawn between the Federal scheme and the apportionment of seats in the Alabama Legislature under the proposed constitutional amendment.

Thomas Jefferson repeatedly denounced the inequality of representation provided for under the 1776 Virginia constitution and frequently proposed changing the State constitution, to provide that both Houses be apportioned on the basis of population.

In 1816, Thomas Jefferson wrote, that—

Government is a republic in proportion as every member composing it has his equal voice in the direction of its concerns, by representation chosen by himself.

A few years later Thomas Jefferson wrote:

Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation. Prejudice itself cannot be justified.

Those are quotations from Jeffersonian letters. While Jefferson took many contradictory positions on many things, including freedom of the press, he never varied from this principle. He stuck by it to the end of his days, namely, that State legislatures should be apportioned strictly on a population basis.

The Court goes on to say:

We agree with the district court, and find the Federal analogy inapposite and irrelevant to State legislative districting schemes. Attempted reliance on the Federal analogy appears often to be little more than an after-the-fact rationalization offered in defense of maladjusted State apportionment arrangements. The original constitutions of 36 of our States provided that representation in both houses of the State legislatures would be based completely, or predominantly, on population.

Mr. President, let me emphasize those words "the original constitutions of 36 of our States"—the overwhelming majority—nearly three-quarters—provide that representation in both houses would be based completely or predominately on population.

The argument that our Founding Fathers had other ideas for State legislatures is not true.

Continuing the quotation from Chief Justice Warren:

And the Founding Fathers clearly had no intention of establishing a pattern or model for the apportionment of seats in State legislatures when the system of representation in the Federal Congress was adopted. Demonstrative of this is the fact that the Northwest Ordinance—

Under which Wisconsin was carved and I believe the States of Michigan and Illinois also were carved—

adopted in the same year, 1787, as the Federal Constitution, provided—

And our Founding Fathers of course wrote that Northwest Constitution—

for the apportionment of seats in territorial legislatures—

On what basis? On area? No, Mr. President. Continuing the quotation—

solely on the basis of population.

Mr. President, I quote from the Northwest Ordinance:

The inhabitants of said territory shall always be entitled to the benefits * * * of a proportionate representation of the people in the legislature.

In this case we are going along with the malapportioned State legislatures in the States—where the Founding Fathers affirmed they shall always be on a population basis—permitting them to destroy this basic principle as old as the Constitution itself, a principle affirmed and reaffirmed over and over by our Founding Fathers.

Mr. HART. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. HART. I am delighted that the Senator from Wisconsin is developing the point he is underscoring at the moment. I find that there is a widespread misconception concerning it. I should like to inquire of the Senator from Wisconsin if his experience is similar to mine. Many people feel that the composition of the Senate as contrasted with the House of Representatives is the pattern against which the composition of State legislatures should be judged. Perhaps it is more accurate to say that many people feel that those who support the Supreme Court decision in the Reynolds case are inconsistent if at the same time they insist that the composition of the Senate and the House is sound.

The Senator from Wisconsin is making the point historically sound, and persuasive in reason, that there is a vast difference between the negotiations and final settlement leading to the creation of a union of independent States and the organization within each of the independent States of its legislature.

I ask the Senator from Wisconsin if it is not his experience, as it has been mine, that the single most frequently voiced reason for criticism of the Reynolds case is premised on the assumption that a comparison between State legislatures and the Federal Congress should be made.

Mr. PROXMIRE. Yes, indeed. That is true. As I said when I began my remarks—it is something I have often encountered in Wisconsin. That observation is offered even by people who might sympathize with my position and recognize that both houses of the legislature should be based on population. Some of them are critical of the Senate as being not based on population, but at any rate they feel that there is fundamental justification. We have a fine Constitution. It is the greatest Constitution any nation has ever had. It has endured throughout the years. It is the oldest Constitution in effect in any nation. Thus, it deserves reverence because it has served us so well. Why should it not be a model for a State government?

My strong feeling is that this is a model for a great, massive, powerful Federal Government, and that we have a Federal Government that has a virtual monopoly on military power. It has great national taxing power. It makes all the sense in the world to have a Federal system in which the States reserve to themselves, by constitutional right, certain powers, which permit a division of powers and protects the individual against the massive power of the Federal Government. It is understandable and proper that we should jealously protect that right. One way to preserve the integrity of the State, the right of the State, or the real power of the State, is to invest every single State with authority to elect the highest legislative body in the Nation with an equal number of representatives—two representatives. They not only can serve as representatives of the people of the State, but they can also come to Washington as ambassadors from their States. The State reserves to itself the very real power under the 10th amendment. The Federal system should do this. Where is the analogy with the States? There is no such monopoly of military power in any State. The Federal Government has that power. The State does not have it. Thus, from that standpoint, there is no analogy at all.

There is no monolithic, overwhelming, economic or taxing power that a State has. The Federal Government reserves this power to itself. It is such an enormous power that we do not have it. So, from that standpoint, of a protection of individual right against the overwhelming power which might develop, and has developed in many governments, the Federal Government serves us well indeed. But I have not heard one single argument—and I have been on the floor a great deal during this debate—and I challenge any Senator to point to any argument has has been made to the effect that there must be protection afforded against State power by providing that every country shall have equal representation in a State legislature.

The Senator from Michigan knows as well as does the Senator from Wisconsin that our States create the counties. They can abolish the counties. They can merge the counties. They can separate the counties. Indeed, in the State of Wisconsin within the past 3 or 4 years, a new county, Menominee was created out of two or three other counties. There have been serious proposals concerning abolishing other counties because people feel they have inefficient governments. This, after all, was the progmatic compromise that our Founding Fathers made. Either we had a union, or we had not. The States were sovereign countries. They were sovereign nations. They had their own armies. They had their own taxing systems. They had articles of federation that were about as loose as those of the NATO system. The only way that our Founding Fathers could persuade a State like Delaware to come into a union with larger States was to provide that they not lose their identity, but preserved their sovereignty by having equal representation in one branch of Congress.

When we take into consideration their clear, immediate, pragmatic problem, I defy anyone to show any line in the Federalist Papers which would say that because of what the States have done in coming into the Union, a State should provide for something other than a pop-

ulation representation in the State legislature.

Mr. HART. As the Senator from Wisconsin has just reminded us, the best representation of such a claim lies not alone in the silence of the Federalist Papers, but the action in 1787 in the Northwest Ordinance, where, indeed, recognition was given to the proposition that equal apportionment in the State legislatures was the order of the day.

Mr. PROXMIRE. Yes, indeed.

Mr. HART. They were the same Founding Fathers talking at that time that we are told would now tell us that is not so.

Mr. PROXMIRE. They said in the Northwest Ordinance, article II, paragraph 14, of the Northwest Ordinance of 1787:

The inhabitants of the Federal territory shall always be entitled to the benefits of a proportional representation of the people in the legislature.

How can it be more explicit or clear? The Founding Fathers said, emphasized, underlined, and wrote into the law that:

When we create States out of this great, massive territory that obviously in the future will have States, it must be done on a population basis.

There is no qualification to it.

Mr. HART. We were talking about the territory from which came the State that the Senator from Wisconsin is privileged to represent, and the State that the Senator from Michigan is privileged to represent.

Mr. PROXMIRE. Yes, indeed.

Mr. HART. I think the Senator from Wisconsin has spoken most responsively, to the point that, sometimes glibly, almost facetiously, Senators who are privileged to represent States which are larger in population than the average State in the Nation, sometimes suggest, "We are ready for proportional representation in the Senate."

In truth, we are not, for the very reasons that the Senator from Wisconsin pointed out. It is highly desirable, in view of the enormous power that reposes in the Federal Government, that there be the U.S. Senate in which the smallest State in terms of population nonetheless may have an equal vote to the vote of the California's and New York's.

I think the Senator from Wisconsin has presented a very reasonable argument in support of the position which, at root, is a defense of the Reynolds case. He has contributed a great deal, over these days of debate, to a public understanding of the situation that exists.

For weeks the debate has largely pertained to this matter. Does the Senator believe it desirable that one man's vote be equal in weight to any other one man's vote in the organization of State legislatures?

We have appeared to be arguing the desirability of one man, one vote. There are those of us who take this position and feel that the 14th amendment clearly guarantees that one Mr. Smith shall not have any more vote than any other Mr. Smith in any legislature, whether directly, or in terms of the representation that is permitted. But, for me, the debate and the issue that confronts the Senate is far more basic than that.

I wonder if the Senator from Wisconsin would not agree with me that we invite to our cause those who disagree with the Reynolds decision. We invite to our cause those who feel that because of tradition, experience, or whatever it is, one man, one vote is not desirable for a State legislature. We nonetheless invite them to our cause for the reason that we have a written Constitution. We pride ourselves on it. It enumerates certain rights which are guaranteed to each citizen. That Constitution establishes three coequal branches of the Government.

The Supreme Court, as is its charge in the Constitution, is given the responsibility of identifying constitutional rights, and, in the event they are jeopardized, assuring those rights to any citizen from whom it is proposed that they be taken.

Why should not each Member of Congress, whatever his view on reapportionment of State legislatures might be, seek to insure that the written Constitution shall continue to guarantee rights which, in fact, in the printed letter it grants? If the day should come when the independent judiciary is fictional, if the day should come when, because of frustration, or for any other reason, public opinion concludes that a right guaranteed to an individual by the Constitution, as asserted by the Supreme Court, is distasteful, all that is needed to deny it is for the Congress of the United States to say to the Supreme Court, "From now on, you are not going to have jurisdiction to protect that right." Why does it not follow that from that day forward, which would mark the decline of the Republic, the written Constitution would be worth exactly the cost of the paper on which it is printed? Why would we then not be said to have joined those other nations which have delightfully written constitutions which provide all sorts of guarantees to their citizens? But life in those countries is undesirable. Why? Because there is no independent judiciary to protect the rights. The legislative branch can suspend the rights at any time it desires to do so.

It seems to me that this is, at root, what we are really confronted with. Everyone on both sides of the aisle, and across the country, would agree that if the Senator from Wisconsin this afternoon were to pass out submachineguns to the 100 Members of the Senate—if we could find them——

Mr. PROXMIRE. It would be easier to find the machineguns.

Mr. HART. Suppose we were to say, "Let us march across the plaza to the Supreme Court and line those fellows up against the wall and say, We do not like your decision in the Reynolds case. Change it, or go out of business on that issue." Everyone would say, if that were to happen, that that would be the end of the Republic. Is not that correct?

Mr. PROXMIRE. They would, indeed.

Mr. HART. We can fire on that Court with words and with resolutions which, in the long run, can be just as destructive of the Court as machineguns stuck in their faces.

My hope is that as the debate develops, more and more people will realize that the argument is not over whether we like one man, one vote for State legislatures or whether we do not like it. The question really is, Shall we turn at that point in the road marked, "This is the end of constitutional governments?" It is inconceivable to me that if we withdraw jurisdiction from the courts and prevent them from protecting this constitutional right, we shall have not set a precedent which will permit us at our whim to withdraw a whole series of constitutional rights. Once we should have done that, to what would John Citizen turn? Where would be look for the protection of the right to counsel, the right to hold up a picket sign, the right freely to worship? Those are treasures of ours. We cannot alone erode them. We can incinerate them if we once take a course which asserts a right in Congress to nullify any section of the Constitution with respect to rights guaranteed individuals. There are ways to amend the Constitution if we do not like the one-man, one-vote approach, but having the Congress line the Court up against the wall faced with either guns or resolutions is not the way.

Would not the Senator from Wisconsin hope that, as the debate develops, we can enlist those who may indeed feel that the Reynolds case states an undesirable proposition, but nonetheless understand that in the long judgment of history it would be a sad day should the Congress attempt to tell the Court, "Move over. We are sitting on the bench?"

Mr. PROXMIRE. The analogy of the Senator from Michigan of lining the Court against a wall faced with guns is shocking.

Mr. HART. It is an overstatement, and I plead guilty to it.

Mr. PROXMIRE. There is no question that the amendment would have a similar effect. As the Senator from Michigan well knows, we have as one of the strongest proponents on our side a man who has made an eloquent speech for us and who will fight to the end, if he has to sit here until Christmas or Christmas 10 years from now, to oppose the Dirksen amendment, who does not agree with the one-man, one-vote principle and has never pretended that he did. He has been very frank that he does not agree with that principle, but he feels very strongly about the point which the Senator from Michigan has made, and that is the crucial point involved. The question is, Shall we have a Court that has dignity, respect, authority, power, and the ability to review and declare acts of Congress unconstitutional, or shall we not? If Congress should act in this case and overrule the Court, there is no question that we would destroy the Court.

Only a very few months ago this particular Congress acted like a two-bit dictator with regard to the Court. A majority of Senators did not like the Court, so what did the Senate do over the protests of the Senator from Michigan and the Senator from Wisconsin? The Senate refused to give them the salary increase that it took for its own Members.

We refused to give them the salary increase which the House recommended. We refused to give the members of the Supreme Court the salary increase that the Randall Commission recommended. That is the kind of cheap, petty action of people who have no understanding of dignity and independence and the right to disagree.

Fundamentally the amendment is in the same spirit as that action. Those who have proposed the amendment are fine and decent persons. The fact is that the only force behind it that I can understand is exactly the same attitude that motivated our petty performance in refusing the salary increase for the Supreme Court Justices. The only talk I heard around the Chamber, at least off the floor and in the cloakrooms, was that "They had it coming to them because we do not like their decisions."

If the Congress of the United States adopted that kind of attitude toward the Congress, that certainly could be the end of the Republic. That is what is at stake here. It is far more important that the one-man, one-vote principle, which the Senator from Michigan and the Senator from Wisconsin enthusiastically support.

Certainly it makes sense that many Senators who disagree with us recognize how great the Court's power of Judicial review is. As Dean Rostow of the Yale Law School said, if we should adopt the Dirksen amendment, we would knock out the linchpin of our Constitution. We would destroy the independence of the judiciary and the authority of the Supreme Court to fulfill its prime obligation under our Constitution and Court interpretations of our Constitution.

Mr. HART. Mr. President, I hope that as the debate develops, it will be to that point, importantly, that the discussion will be aimed. I have said before, and I welcome the opportunity to say again, that the Senator from Wisconsin is making a contribution which at the moment may not be very much noticed. It seems much ado about something that really is not very exciting, but in the long haul will be regarded as a contribution of leadership to what I suspect will be the most important issue that will confront him, me, and the others in the Congress, or so long as we are permitted to remain, absent alone, so far as the Senate is concerned, a resolution declaring war. And in one sense, a declaration of war would be less difficult to resolve, because we can win wars, and we would still have an independent judiciary, costly in blood though the intervening period might be.

I hope that the effort that the Senator from Wisconsin is making to raise the debate to the point at which there is national awareness of what is really involved will succeed. What is really involved is not so much the question of the reapportionment of State legislatures. What is really involved is the question whether we shall continue to have a judiciary which is free and independent to review the question of whether someone's constitutional right has been denied. Nothing is more basic to the system which we preach to the world as so desirable, and nothing could so quickly destroy the system as the elimination of that independent review.

The Senator from Wisconsin has raised the level of the debate to that point, and I hope that we shall maintain it.

Mr. PROXMIRE. I thank the distinguished Senator from Michigan for a highly useful contribution. I think this is a point that Senators will recognize. What is at stake is far more important than representation in State legislatures, vital as that question is. That is a very important right. What is at stake is the question whether or not the Supreme Court will in effect be able to maintain its effective independence and its power of judicial review.

That is not merely the opinion of Senators who are opposing the amendment. It is the opinion of no less an authority than Dean Rostow, of Yale Law School. Dean Rostow is a prudent, thoughtful, and careful man.

I continue with the analogy, reading briefly from the Court's decision in the case of Reynolds against Sims. I refer to the case of Reynolds against Sims to show why there should be no Federal comparison, why it is not fair or honest or accurate to compare the State governments with the Federal Government. The Court states:

> The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our Federal Republic. Arising from unique historical circumstances, it is based on the consideration that in establishing our type of federalism a group of formerly independent States bound themselves together under one National Government. Admittedly, the Original Thirteen States surrendered some of their sovereignty in agreeing to join together "to form a more perfect Union." But at the heart of our constitutional system remains the concept of separate and distinct governmental entities which have delegated some, but not all, of their formerly held powers to the single National Government. The fact that almost three-fourths of our present States were never in fact independently sovereign does not detract from our view that the so-called Federal analogy is inapplicable as a sustaining precedent for State legislative apportionments. The developing history and growth of our Republic cannot cloud the fact that, at the time of the inception of the system of representation in the Federal Congress, a compromise between the larger and smaller States on this matter averted a deadlock in the Constitutional Convention which had threatened to abort the birth of our Nation.

In other words, this was the only way in which we could have a Federal Union. We either had to have that or nothing. To pretend that this was not a compromise made only for this purpose is going a long distance. I have stated that this compromise has served our purposes well, because there are powers which the Federal Government has, and which the State governments obviously do not have, and there are other clear powers which the States have that no counties, by any stretch of the imagination, have. One of the interesting things about the question of Federal analogy is that when people ask about the difference between the Federal and State governments, are answered, there is usually no argument. Once the reason is given for the difference, there is never a contradiction. Our opponents move on to some other subject. There were floor debates on this question before the conventions, but there was no real effort to make a respectable argument that there is an analogy between the Federal and State legislatures. The strongest and most eloquent champion, or any champion, for that matter, of the proposal has not really argued that there is an analogy. They do not base their argument on that point. They do not try to do so. And yet the fact is that this is by far the most popular single reason for justifying malapportioned State legislatures and for having one house based on something other than population. Knock it out, and there is precious little left.

Continuing with the case of Reynolds against Sims:

> In rejecting an asserted analogy to the Federal electoral college in *Gray* v. *Sanders, supra*, we stated:
>
> "We think the analogies to the electoral college, to districting and redistricting, and to other phases of the problems of representation in State or Federal legislatures or conventions are inapposite. The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a State in a statewide election. No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued."
>
> Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of State governmental functions. As stated by the Court in *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them," and the "number, nature, and duration of the powers conferred upon [them] * * * and the territory over which they shall be exercised rests in the absolute discretion of the State." The relationship of the States to the Federal Government could hardly be less analogous.

Let me dwell for a moment on the last point. The Federal Government has no power to revise the boundaries of a State. The Federal Government has no power to abolish a State, or to merge States, or to take any action that would diminish the power or authority of the State. The Federal Government has no power, indeed, to exercise any power over a State that is not explicitly and specifically enumerated in the Constitution.

On the other hand, there is no power that a State does not have over a county. A county reserves absolutely no power. It cannot reserve any power, because it does not have any separate existence other than what the State decides to give to it. Under any State constitution that I have ever heard about, the county is nothing but a convenient administrative creation of the State government, to assist in exercising the functions of the State government.

Under those circumstances, to say that because States, which have a real element of sovereignty, have individual Senators, therefore cunties, which have no existence other than what States wish to give them, should have an equal number of Senators, or that townships should have an equal number of assemblymen, is obviously to try to make an analogy where there is no analogy.

Let us examine the history of our Federal Constitution, so that we may understand more thoroughly the need for each State to have two Members in the Senate, rather than on the basis of population, which makes this arrangement suitable in our National Government and not in our State governments.

I quote from an excellent appendix in the case of Maryland against Tawes, which, I understand, was prepared for the Supreme Court by the Department of Justice:

1. THE HISTORY OF THE FEDERAL CONSTITUTION WITH REGARD TO REPRESENTATION IN CONGRESS

a. The convention: The Confederation of the United States, which was formed in 1777 by the thirteen States, was explicity a confederation of sovereign States. Articles of Confederation, Article II. Each State, although it could have two to seven delegates to the Congress, had a single vote. Id., Art. V. While the power to make treaties and wage war was given to the Congress, most powers were reserved to the States. Id. Art. II, VI. For example, the Congress could not impose taxes, but could only ask the States to contribute particular sums. Id., Art. VIII.

The lack of power of the Confederation to meet the growing problems of the former colonies led to a serious crisis. See The Federalist, Nos. 15–22 (Cooke ed., 1961), pp. 90–146. The convention in Philadelphia was called by the Congress by a resolution dated February 21, 1787, "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union." III Records of the Federal Convention (Farrand ed., 1911),[1] 14. On May 18, 1787, a few days after the first delegates arrived in Philadelphia, Benjamin Franklin described the meeting as "a Convention of the principal people in the several States, for the purpose of revising the federal Constitution, and proposing such amendments as shall be thoroughly necessary." Letter to Richard Price, May 18, 1787, id. at 21. Thus, both the Congress and Franklin conceived of the purpose of the convention as merely to revise the Confederation, but to keep its essential form.

On the other hand, some of the delegates arriving in Philadelphia were proposing to form an entirely different kind of government, a national government[2] in which representation in the legislature would be on the basis of population.

That is the kind of government we are proud to have; a Federal Government, not a national government.

George Mason, a delegate from Virginia, wrote his son on May 20, 1787 (III Farrand 23):

"The most prevalent idea in the principal States seems to be a total alternation of the present Federal system, and substituting a great national council or parliament, consisting of two branches of the legislature, founded upon the principles of equal proportionate representation, with full legislative powers upon all the subjects of the Union; and an executive: and to make the several State legislatures subordinate to the national, by giving the latter the power of a negative upon all such laws as they shall judge contrary to the interest of the Federal Union."

A few days later, on May 21, Mason wrote almost identical words to Arthur Lee. Id. at 24. That same day, George Read, a delegate from Delaware, wrote to John Dickinson, another delegate from Delaware, of a proposal for a new Federal system (id. at 25):

"Some of its principal features are taken from the New York system of government. A house of delegates and senate for a general legislature, as to the great business of the Union. The first of them to be chosen by the legislature of each State, in proportion to its number of white inhabitants, and three-fifths of all others, fixing a number for sending each representative. The second, to wit, the senate, to be elected by the delegates so returned, either from themselves or the people at large, in four great districts, into which the United States are to be divided for the purpose of forming this senate from, which, when so formed, is to be divided into four classes for the purpose of an annual rotation of a fourth of the members.[3]

Obviously, at that point there was no consideration for giving the States equal representation in the Senate, and there was to be, apparently, pretty much of an abolition of the States, and a national council to be developed, very much in the way the House of Representatives is made up now, with the other body consisting of representatives from four geographic districts.

Read warned that the small States must be careful to protect their interests. Ibid. George Mason wrote his son on June 1 that (id. at 32):

"The idea I formerly mentioned to you, before the Convention met, of a great national council, consisting of two branches of the legislature, a judiciary and an executive, upon the principle of fair representation in the legislature, with powers adapted to the great objects of the Union, and consequently a control in these instances, on the State legislatures, is still the prevalent one. Virginia has had the honor of presenting the outlines of the plan."

The convention held its first meeting on May 14, 1787, but was adjoined because of lack of a quorum. I Farrand 1. Soon after regular sessions started on May 25th, the convention started to do its work through a Committee of the Whole. On May 31, in debate on whether the first branch of the legislature should be elected directly by the people, George Mason (I Farrand 48–49):

"Argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Government."

During debate on June 6 on whether the upper house of the new legislature should be elected by the state legislatures instead of the people, Pierce Butler of South Carolina stated that he opposed "determining the mode of election until the ratio of Representation is fixed—if that proceeds on a principle favorable to wealth as well as number of Free Inhabitants, I am content to unit wh. Delaware (Mr. Read) in abolishing the State Legislatures, and becoming one Nation instead of a confedn. of Republics—" [King].[4] I Farrand 144. The next day, in continuing the debate on the same proposals, Madison said that if the Senate was to be elected by the state legislatures (id. at 151):

"We must either depart from the doctrine of proportional representation; or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient."

Madison, that early in the Convention, was on record against equal representation in the Senate.

George Madison stated:

George Mason stated (id. at 161):[5]

"The treaties, leagues, and confederacies between different sovereign, independent powers have been urged as proofs in support of the propriety and justice of the single and equal representation of each individual State in the American Union; and thence conclusions have been drawn that the people of these United States would refuse to adopt a government founded more on an equal representation of the people themselves, than on the distinct representation of each separate, individual State. If the different States in our Union always had been as now substantially and in reality distinct, sovereign and independent, this kind of reasoning would have great force."

On June 8th, Gunning Bedford of Delaware complained of attempts (I Farrand 167):

"To strip the small States of their equal right of suffrage. In this case Delaware would have about 1/90 for its share in the General Councils, whilst Pa. & Va. would possess 1/3 of the whole. This shows the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation."

The next day, June 9th, the Committee of the Whole considered the resolution (I Farrand 181):

"*Resolved*, therefore, that the rights of suffrage in the national legislature ought to be apportioned to the quotas of contribution, or to the number of inhabitants, as the one or other rule may seem best in different cases." [Yates]

A long debate ensued. William Paterson of New Jersey said that (id. at 177):

"The proposition for a proportional representation [struck] at the existence of the lesser States. He wd. premise however to an investigation of this question some remarks on the nature structure and powers of the Convention."

"The Convention he said was formed in pursuance of an Act of Congs. that this act was recited in several of the Commissions, particularly that of Massts. which he required to be read: That the amendment of the confederacy was the object of all the laws and commissions on the subject; that the articles of the confederation were therefore the proper basis of all the proceedings of the Convention. We ought to keep within its limits, or we should be charged by our constituents with usurpation."

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[1] Hereinafter referred to as "Farrand."

[2] The terms national and Federal Government were used by the framers themselves in conflicting ways apparently for partisan advantages. Therefore, the meaning can be ascertained only from the particular context. We, however, use national government to mean a government operating directly on the people in which the States are plainly subordinate. We use Federal Government to mean a government which can regulate certain areas but with the other areas remaining under the authority of sovereign States.

[3] The New York senate and assembly were apportioned by eligible voters. New York constitution of 1777, articles 4, 12.

[4] All references to the proceedings of the constitutional convention are to the official Journal or to Madison's notes unless otherwise indicated. Rufus King of Massachusetts and Robert Yates of New York also made notes of part of the proceedings to which we will occasionally refer.

[5] This quotation is from Mason's notes of a speech which Farrand believes was given on June 7. I Farrand 160–161, note 8.

Paterson then stated (id. at 178):

"A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation."

Paterson's notes for his speech on June 9th state (id. at 186):

"Each State is sovereign, free, and independent, etc. Sovereignty includes Equality—

"If then the States in Union are as States still to continue in Union, they must be considered as Equals—

"13 sovereign and independent States can never constitute one Nation, and at the same Time be States—they may by Treaty make one confederated Body."

James Wilson of Pennsylvania, a proponent of a strong national government (I Farrand 179–180):

"Entered elaborately into the defence of a proportional representation, stating for his first position that as all authority was derived from the people, equal numbers of people ought to have an equal no. of representatives, and different numbers of people different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time. * * * Mr. P. admitted persons, not property to be the measure of suffrage. Are not the citizens of Pena. equal to those of N. Jersey? does it require 150 of the former to balance 50 of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other."

One reason why I am laboring this point is that we should understand carefully that when our Founding Fathers decided on the composition of the Senate, in the process of doing so they argued at great length and with strong feeling the importance of equal representation. They understood this principle. They understood it thoroughly, and they supported it. They knew how vital the principle is to true democracy or to a true republic. They recognized how urgent it is, if there is to be any kind of real fairness and justice.

At the same time, they were confronted with a situation in which they were not merely trying to reconcile 3 million people who at that time wanted to form a union; they were confronted with a situation in which there were 13 separate and distinct entities—in effect, nations which had their own taxing power, each one making contributions to the federated Congress. So it was necessary to make a compromise. But it should be thoroughly understood that in those debates, lasting many days, there was clear protestation and recognition on the part of all delegates to the Convention of the fundamental truth, the deep importance, of equal representation for every citizen.

The fact that the Constitutional Convention eventually reached a compromise, the compromise we know today in our Federal Union, should not obscure the fact that frequently, to a man, they recognized that there was a true, basic, fundamental, vital principle in which they believed, and believed deeply; namely, that politically—not economically, not socially, but politically—men should be equal. They should be equal before the law; they should have an equal vote.

The next speaker, Hugh Williamson, of North Carolina (id. at 180):

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

Here is an important analogy. Our Founding Fathers did consider a comparison with the States. Every time they did, they recognized that the situation was different. The Founding Fathers had established the State legislatures based on population. There was population representation depending on the size of the counties in the States. So they tried to hold that analogy for the Federal Government. Clearly, there was a difference, because the counties had no element of sovereignty or independence; they had no foundation on which to base their claim of representation, whereas the States clearly had such a claim.

I read further:

Judge David Brearly of New Jersey agreed with Paterson (id. at 181–182):

"If the States will remain sovereign, the form of the present resolve is founded on principles of injustice. He then stated the comparative weight of each State—the number of votes 90. Georgia would be 1, Virginia 16, and so of the rest. This vote must defeat itself, or end in despotism. If we must have a national government, what is the remedy? Lay the map of the confederation on the table, and extinguish the present boundary lines of the respective State jurisdictions, and make a new division so that each State is equal—then a government on the present system will be just." [Yates.]

In contrast, Edward Carrington wrote Thomas Jefferson on the same day that the basic issues before the convention (III Farrand 38–39):

"Are reducible to two schemes—the first, a consolidation of the whole Empire into one republic, leaving in the States nothing more than subordinate courts for facilitating the administration of the Laws—the second an investiture of of [sic] a foederal sovereignty with full and independent authority as to the Trade, Revenues, and forces of the Union, and the rights of peace and War, together with a Negative upon all the Acts of the State legislatures. the first idea, I apprehend, would be impracticable, and therefore do not suppose it can be adopted—general Laws through a Country embracing so many climates, productions, and manners, as the United States, would operate many oppressions, & a general legislature would be found incompetent to the formation of local ones, as a majority would, in every instance, be ignorant of, and unaffected by the objects of legislation. Something like the second will probably be formed—indeed I am certain that nothing less than what will give the foederal sovereignty a compleat controul over the State Governments, will be thought worthy of discussion."

On June 11, 1787, a resolution was introduced (I Farrand 192–193):

"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 * * * in proportion to the whole number of white and other free Citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State."

The resolution was passed 9 to 2 by the Committee of the Whole with only New Jersey and Delaware opposing. Roger Sherman of Connecticut then proposed for the first time the plan which was ultimately adopted for the Congress: "[t]hat in the second branch of the National Legislature each State have One vote." Id. at 193. Sherman explained (id. at 204):

"That as the people ought to have the election of one of the branches of the legislature, the legislature of each state ought to have the election of the second branch, in order to preserve the state sovereignty; and that each state ought in this branch to have one vote." [Yates]

The resolution was rejected 6 states to 5. Id. at 193.

That, of course, was the resolution that eventuallly, in very similar form, became our Federal Government.

James Wilson then proposed a resolution, which was seconded by Alexander Hamilton: "that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established in the first." Ibid. This resolution was passed 6 to 5.

That would have provided for population representation in both the House and Senate. There would have been no equal representation in the States. That was Hamilton's resolution, and it passed; whereas the resolution that eventually became effective fa'led at first.

The debate on June 11th centered in large part on whether the legislature should be apportioned according to inhabitants or taxes.[6] John Rutledge of South Carolina (I Farrand 196):

"Proposed that the proportion of suffrage in the 1st branch should be according to the quotas of contribution. The justice of this rule he said could not be contested."

Pierce Butler of South Carolina supported Rutledge's proposal (id. at 204):

"[M]oney is strength; and every State ought to have its weight in the national council in proportion to the quantity it possesses." [Yates].

(At this point Mr. WALTERS took the chair as the Presiding Officer.)

Mr. PROXMIRE. I continue to read:

John Dickenson likewise (id. at 196):

"Contended for the actual contributions of the States as the rule of their representation & suffrage in the first branch."

Elbridge Gerry of Massachusetts opposed the proposal because he (id. at 201):

"Thought property not the rule of representation. Why then shd. the blacks, who were property in the South, be in the rule of representation more than the cattle & horses of the North."

Benjamin Franklin said that he thought that (id. at 197–198):

"The number of Representatives should bear some proportion to the number of the Represented; and that the decisions shd. be by the majority of members, not by the majority of States. This is objected to from

[6] New Hampshire still apportions its Senate by taxes paid. The support for this proposition at the convention reflects the belief that apportionment by taxes as well as by population was equitable, since the former constituted the contribution of the States to the Federal Government. On the other hand, equal representation to all the States, regardless of inhabitants or contributions, was considered by the supporters of apportionment according to taxes to be unfair.

an apprehension that the greater States would then swallow up the smaller.

"But, Sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater."

On June 14, the North Carolina delegates wrote to Governor Caswell that the problem of the convention was to form a "Union of Sovereign States, preserving their Civil Liberties and connected together by such Tyes as to Preserve permanent & effective Governments." III Farrand 46.

The New Jersey plan was presented to the convention by Paterson on June 15. Its first sentence emphasized: "That a union of the States merely federal ought to be the sole Object of the Exercise of the Powers vested in this Convention." III Farrand 611. As to Congress, the plan provided (id. at 613):

"Resolved, That every State in the Union as a State possesses an equal Right to, and Share of, Sovereignty, Freedom, and Independance—

"Resolved, therefore, That the Representation in the supreme Legislature ought to be by States, otherwise some of the States in the Union will possess a greater Share of Sovereignty, Freedom, and Independence than others."

I should like to emphasize that it is fascinating that the first resolution passed provided, in the first place, that the House by a 9-to-2 vote should be on a population representation basis, and by a 6-to-5 vote that the Senate should be, after the present organization was rejected; but it was then clear that they would not be able to obtain assent to this kind of representation, although the majority of our Founding Fathers wished it, even recognizing the serious problems they had of State sovereignty, State independence of the small States, which would obviously lose a great deal of their representation. Recognizing all that, our Founding Fathers came down, with a majority deciding, to have a Federal Government of both bodies with equal representation.

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

Mr. PROXMIRE. I yield.

Mr. DOUGLAS. Despite the fact that a majority favored both Houses being put on a population basis, some of the smaller States, notably Delaware, threatened—unless it had equal representation with the larger States in at least one House—not to join the United States of America. The delegate from Delaware threatened that Delaware would make a treaty with a foreign power. In other words, he presented the Convention, so to speak, with a pistol held at its head and asserted, "Unless you grant equality of representation in at least one House, we will not join the Union." It was with that pistol held at its head that finally the Connecticut compromise came up, with one House based on population, the other with two Senators from each State, regardless of size.

Mr. PROXMIRE. The Senator makes an interesting contribution. It underlines the fact that representation in the U.S. Senate, based upon equal representation in the States, was not arrived at with great unanimity on the part of the Founding Fathers. Philosophically it was felt desirable to give the States their sovereignty, but only with the greatest reluctance, recognizing—as the Senator from Illinois has put it so well—that there was a pistol held at the head of the Convention; either that, or no union at all.

Obviously, they had to agree to that kind of Federal Government because the smaller States had a veto power and would not have to accept. This is not a criticism of the Federal Government, which has worked out quite well. We must recognize that there are those who are not only for having a federal system, but also for having equal representation in the States.

An excellent justification of this is the role our federalism plays in protecting individual freedom. Our federal system does this. It preserves the rights of the States and the dignity of the States. No one has ever argued that there is any such analogy with the States. The States do not have any such power as the Federal Government has—the power of the sword and the power of the purse, the kind of overwhelming, massive power centralized in Washington that is a serious threat to individual liberty. There is little threat within the States as long as we have a U.S. Supreme Court that is judicially supreme. Within the States there is exactly the contrary problem—namely, how to get the State government that is sufficiently representative and cohesive so that it can move, and move quickly, to solve its problems at the local and State level, so that it will not be necessary to come to Washington and say, "the two branches of our legislature cannot agree. We cannot get the kind of things we need, because we cannot get our State legislatures to go along on urban renewal, on slum clearance. We cannot solve our educational problems. We cannot solve the health problem; therefore, we have to come to Washington to do it."

Those who believe in States rights, those who believe in States responsibility—and they are inseparable—should recognize the serious importance of permitting the Supreme Court decision to stand, and supporting it and supporting it enthusiastically, recognizing that this is one way we can get the States to operate in an efficient manner so that they can solve their own problems.

Mr. DOUGLAS. In the same year in which the Constitution was approved, the Continental Congress meeting at the same time approved the so-called Northwest Ordinance of 1787.

Mr. PROXMIRE. Yes.

Mr. DOUGLAS. That ordinance provided that in the Northwest Territory, which was originally to become governed as one body, which later became the five States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, the legislative body was to be based in proportion to population.

I should like to read section 9 of the Northwest Ordinance or the appropriate portions thereof:

Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature:

Mr. PROXMIRE. Yes. Article 2, paragraph 14 of this ordinance provides:

The inhabitants of said territory shall always be entitled to the benefits—of a proportionate representation of the people in the legislature.

What could be clearer and more explicit than that?

This is exactly what the Senator has just stated—at the same time and probably close to the same day when these debates were going on—that this is the clear position of our Founding Fathers so far as the State legislatures were concerned.

Mr. President, to continue reading:

The next day, Paterson explained the basic assumptions of the plan (I Farrand 250):

"If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them of ourselves. Our object is not such a Government, as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no Confederacy at present exists, it can not be denied that all the States stand on the footing of equal sovereignty. * * * If we argue on the fact that a Federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it. He reads the 5th. art: of Confederation giving each State a vote—& the 13th. declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties."

Turning to the question of representation, he said (id. at 251):

"If the sovereignty of the States is to be maintained the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty."

James Wilson replied strongly (id. at 253–254):

"He would not repeat the remarks he had formerly made as the principles of Representation, he would only [say] that an inequality in it, has ever been a poison contaminating every branch of Govt. In G. Britain where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of Justice * * *. The political liberty of that Nation, owing to the inequality of representation is at the mercy of its rulers."

Mr. President, James Wilson's words are very interesting today, when many feel that the security of private rights is indeed due largely if not entirely to the purity of tribunals of justice—namely, our Supreme Court.

The political liberty of the Nation, owing to the inequality of representation, is at the mercy of the rulers because we do have an inequality of representation in our State legislatures.

Continuing to read:

Paterson then responded (id. at 259):

"[R]epresentation must be drawn from the states to maintain their independency, and not from the people composing those States.

"The doctrine advanced by a learned gentleman from Pennsylvania [Wilson], that all power is derived from the people, and that in proportion to their numbers they ought to participate equally in the benefits and rights of government, is right in principle, but unfortunately for him, wrong in the application to the question now in debate."

It is interesting that Paterson, who was one of the great opponents of having both Houses of Congress based on population, recognized that his op-

ponents—those who wanted both Houses based on population—were right in principle. There was no disagreement on the principle of one man, one vote. There was clear agreement on both sides of the debate on this matter. But there was argument by Paterson that this was inapplicable to the Federal Government because of the Federal Constitution, and it was inapplicable because there was a sovereignty in the State that had to be recognized.

I believe that we can honestly say that there was no difference of opinion on the part of our Founding Fathers with respect to State governments and other governments. There would have been no difference with regard to the Federal Government if there had not been the serious problem of the independence of sovereignty on the part of the States.

I continue to read:

When independent societies confederate for mutual defence, they do so in their collective capacity; and then each state for those purposes must be considered as one of the contracting parties. Destroy this balance of equality, and you endanger the rights of the lesser societies by the danger of usurpation in the greater.

Let us test the government intended to be made by the Virginia plan on these principles. The representatives in the national legislature are to be in proportion to the number of inhabitants in each state. So far it is right upon the principles of equality, when state distinctions are done away; but those to certain purposes still exist.

I repeat the last statement:

Let us test the government intended to be made by the Virginia plan on these principles. The representatives in the national legislature are to be in proportion to the number of inhabitants in each state. So far it is right upon the principles of equality, when state distinctions are done away; but those to certain purposes still exist.

On June 18, 1787, Alexander Hamilton attacked the New Jersey plan (I Farrand 286):

"Another destructive ingredient in the [New Jersey] plan, is that equality of suffrage which is so much desired by the small States. It is not in human nature that Va. & the large States should consent to it, or if they did that they shd. long abide by it. It shocks too much the ideas of Justice, and every human feeling."

He also submitted to the Committee of the Whole a sketch of a plan for the new government. The plan set the number of Representatives at the start for each State apparently on the basis of population. After that, the plan provided (III id. at 620):

"The Legislature shall provide for the future elections of Representatives, apportioning them in each State, from time to time as nearly as may be to the number of persons described in the 4 § of the VII article, so as that the whole number of Representatives shall never be less than one hundred, nor more than —— hundred. There shall be a Census taken for this purpose within three years after the first meeting of the Legislature, and within every successive period of ten years."

I have previously quoted extensively from Thomas Jefferson. He was clearly, consistently, and invariably on the side of equal representation in the State legislatures. Hamilton was on the side of equal representation, even in the U.S. Senate. But there is no difference of opinion so far as State legislatures are concerned.

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

Mr. PROXMIRE. I yield.

Mr. DOUGLAS. Hamilton is generally regarded as the leader of the conservative forces.

Mr. PROXMIRE. Yes.

Mr. DOUGLAS. So, the man who was the spiritual leader of the Democratic forces, and the man who was the party leader of the conservative forces agreed on the principle that representation should be in proportion to population or in proportion to population which could be counted. There was a problem, of course, as to whether slaves were to be counted as full persons or not.

Mr. PROXMIRE. Yes. Of course, Hamilton was the great champion of the monied interests, of the financial interests. He played a very important and proper role in that capacity. Hamilton was an extremely wise and brilliant man. He recognized that there was no real threat to the financial interest or the monied interests from having a population-representative legislature. And, indeed, there is none now. The Senator from Wisconsin and the Senator from Illinois are not making the argument—and no Senator that I know of is making the argument—that we are fighting for a liberal representation; that this would better serve the interest of any economic group; or that it would injure monied people or people with property.

Hamilton recognized that equal representation was fair and just. What we are fighting for is equal representation for all, and not for any advantage for any group. The Senator from Illinois has gone to great pains to point out that the greatest beneficiaries would be the suburbanites. No one argues that they are the poorest people in our society.

I continue to read:

The composition of the initial Senate was likewise to be prescribed by the Constitution but the number for each State had not been filled in. As to the apportionment of Senators, Hamilton's plan provided (id. at 621):

"The legislature shall provide for the future elections of Senators, for which purpose the States respectively, which have more than one Senator, shall be divided into convenient districts to which the Senators shall be apportioned. A State having but one Senator shall be itself a district. * * *

"The number of Senators shall never be less than 40, nor shall any State, if the same shall not hereafter be divided, ever have less than the number allotted to it in the second section of this article; but the legislature may increase the whole number of Senators, in the same proportion to the whole number of Representatives as 40 is to 100; and such increase beyond the present number, shall be apportioned to the respective States in a ratio to the respective numbers of their Representatives.

"If States shall be divided, or if a new arrangement of the boundaries of two or more States shall take place, the legislature shall apportion the number of Senators (in elections succeeding such division or new arrangement) to which the constituent parts were entitled according to the change of situation, having regard to the number of persons described in the 4 section of the VII article."

Thus, the apportionment of the new Senate was also to be based on population, although no State could have its representation reduced from that prescribed for the first Senate.

James Madison returned to the proposal of Judge Brearly that the boundaries of the States should be redrawn to provide equal population and they should be given equal representation in the legislature.

There we have the third of the great participants in our great Government. At least, many people would regard Hamilton, Madison, and Jefferson as the three great participants. Although, Jefferson was the Ambassador to France and was not present during the initial deliberations, he played a vital part in the preparation of the Bill of Rights. All three were clearly, emphatically, and consistently on the side of population representation. They contended that this was right in principle and should be translated into reality.

Madison said:

It was admitted by both the gentlemen from New Jersey, (Mr. Brearly and Mr. Paterson) that it would not be just to allow Virginia which was 16 times as large as Delaware an equal veto only. Their language was that it would not be safe for Delaware to allow Virginia 16 times as many times. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts.

Madison, however, decided that the plan was impracticable (id. at 322):

"The prospect of many new States to the westward was another consideration of importance. If they shd. come into the Union at all, they would come when they contained but but [sic] few inhabitants. If they should be entitled to vote according to their proportions of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole."

Alexander Martin, of North Carolina, said (id. at 324):

"[The States] entered into the confederation on the footing of equality; that they met now to to [sic] amend it on the same footing, and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of Virginia, Massachusetts, and Pennsylvania."

On June 20, the convention itself began to consider the proposals which had been made in committee. Roger Sherman again repeated his proposal to have two branches of the legislature apportioned differently (id. at 342–343):

"The disparity of the States in point of size he perceived was the main difficulty. But the large States had not yet suffered from the equality of votes enjoyed by the small ones. In all great and general points, the interests of all the States were the same. * * * If the difficulty on the subject of representation can not be otherwise got over, he would agree to have two branches, and a proportional representation in one of them, provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please."

The next day, William Samuel Johnson, of Connecticut, noted that James Wilson and the Virginians had said that they did not want to abolish the States (I Farrand 355):

"He wished it therefore to be well considered whether in case the States, as was proposed, shd. retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the General Government, without giving them each a distinct and equal vote for the purpose of defending themselves in the general councils."

The debate as to representation continued on June 25, 1787. Nathaniel Gorham, of Massachusetts, said that (I Farrand 404—405): "* * * he inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small States. If Virginia should have 16 votes and Delaware with several other States together 16, those from Virginia would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to States, but to counties or other districts of the same State. Accordingly the constitution of Massachusetts had provided that the representatives of the larger districts should not be in an exact ratio to their numbers.[1] And experience he thought had shewn the provision to be expedient."

George Read, of Delaware, complained that the large States had appropriated the western lands which should have been applied to the public debt (id. at 405):

"Let justice be done on this head; let the fund be applied fairly and equally to the discharge of the general debt, and the smaller States who had been injured would listen then perhaps to those ideas of just representation which had been held out."

James Wilson opposed election of the second branch by the State legislatures (id. at 406):

"The General Government is not an assemblage of States, but of individuals for certain political purposes—it is not meant for the States, but for the individuals composing them: the individuals therefore not the States, ought to be represented in it: A proportion in this representation can be preserved in the 2d. as well as in the 1st. branch; and the election can be made by electors chosen by the people for that purpose."

However, his amendment to this effect was not seconded.

Pierce Butler, of South Carolina, proposed postponing the issue as to the election of second branch until the question of representation was decided. James Madison seconded the proposal, but it was rejected 7 to 4. I Farrand 407–408. The convention then voted 9 to 2 to have the second house elected by the State legislatures, with Virginia and Pennsylvania opposing. At this point in his notes Madison dropped a footnote (id. at 408):

"It must be kept in view that the largest States, particularly Pennsylvania and Virginia, always considered the choice of the second branch by the State legislatures as opposed to a proportional representation to which they were attached as a fundamental principle of just government. The smaller States, who had opposite views, were reenforced by the members from the large States most anxious to secure the importance of the State governments."

James Wilson of Pennsylvania likewise said at the convention (id. at 413):

"Equality of representation cannot be established, if the second branch is elected by the State legislatures." [Yates.]

In the debate on June 27 as to whether representation in the first house should be by population, Luther Martin, of Maryland, supported continuation of the State governments as under the Confederation. He said (I Farrand 437–438):

"[A]n equal vote in each State was essential to the federal idea, and was founded in justice and freedom, not merely in policy: that tho the States may give up this right of sovereignty, yet they had not, and ought not: that the States like individuals were in a State of nature equally sovereign and free * * *. [T]he States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty: that the propositions on the table were a system of slavery for 10 States: that as Virginia, Massachusetts, and Pennsylvania have 42/90 of the votes they can do as they please without a miraculous Union of the other ten: that they will have nothing to do, but to gain over 1 of the 10 to make them compleat masters of the rest * * *: that no State in ratifying the Confederation had objected to the equality of votes; that the complaints at present run not agst. this equality but the want of power; that 16 members from Virginia would be more likely to act in concert than a like number formed of members from different States; that instead of a junction of the small States as a remedy, he thought a division of the large States would be more eligible."

Yates' account of this same speech states (id. at 440–441):

"This principle of equality, when applied to individuals, is lost in some degree, when he becomes a member of a society, to which it is transferred; and this society, by the name of state or kingdom is, with respect to others, again on a perfect footing of equality—a right to govern themselves as they please. Nor can any other state, of right, deprive them of this equality. If such a state confederates, it is intended for the good of the whole; and if it again confederate, those rights must be well guarded * * *. We must treat as free states with each other, upon the same terms of equality that men originally formed themselves into societies.

* * * * *

"If the foundation of the existing confederation is well laid, powers may be added—you may safely add a third story to a house where the foundation is good * * *. Price says, that laws made by one man or a set of men, and not by common consent, is slavery—and it is so when applied to States, if you give them an unequal representation."

The next day, Luther Martin continued his speech (I Farrand 444–445):

"[T]he General Government ought to be formed for the States, not for individuals: that if the States were to have votes in proportion to their number of people, it would be the same thing whether their (representatives) were chosen by the legislatures or the people; the smaller States would be equally enslaved * * *."

Mr. President, what all that history does is to reenforce once again that the whole force behind unequal representation in the Senate was based upon a fact of life that existed in 1787. That was that the colonies—the individual States—had sovereignty. They had power. They had individual existence. The argument is entirely an attempt to state the right of States to have representation.

There is no such argument that anyone has adduced for counties, towns, or any other entities to have equal representation, in effect, and therefore malapportionment in various State legislatures. No one has pretended that there is any such problem. There is no analogy whatsoever. That whole problem is strictly based on the fact that representatives in the legislature now have constituencies which are congenial to them, which they know, which they understand, and which will elect them. There is no pretense that there is any basis of principle in the argument carried on in the Congress of the United States. While some of us may decide on the side of Hamilton, Madison, and Jefferson and others on the side of Paterson and some of the others, it is very clear that none of the Founding Fathers would argue that there should be unequal representation in the States.

Their entire argument is founded on the fact that the States did have an existence. They had a sovereignty and they had a power. As the Senator from Illinois [Mr. DOUGLAS] has so well said, the smaller States had in effect a gun at the temple of the larger States. In effect they said, "Either take this or we will veto the whole thing and you will not have a union."

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

Mr. PROXMIRE. I am happy to yield to the Senator from Illinois.

Mr. DOUGLAS. The Continental Congress indeed called itself the Confederate Congress, indicating that under the Articles of Confederation we were not a federation but a confederation, and that therefore the residual sovereignty rested in the States. The Federal Government had only those powers which the States voluntarily consigned to them. Of course, our southern friends said that the confederation continued in reality down to and including 1861. We of the North maintained that out of the confederation came a federation, and that particularly for the States which joined we became a nation.

Furthermore, it is true that the Virginia program—the so-called Virginia plan—which Madison proposed, provided for a strong national government. Great powers were given to the National Government to legislate for the general welfare. Madison later was somewhat ashamed of that, and I believe that is one of the reasons why he did not publish his journal of the Constitutional Convention for so many years. But the larger States yielded only on the question of equal representation in the Senate, because that was the price of union. If they had not yielded, the country probably would have broken up into three regional federations—the New England States, the Middle States, stretching from New York to Pennsylvania, possibly including Maryland, and the Southern States—and our lot would have been very difficult. In order to get the Union, the larger States consented to equal representation in the Senate.

The Senator from Wisconsin is making a valuable point—that no one questioned the fact that, inside the respective States, the basic principle was to be representation according to population; and in the Northwest Ordinance, which a coordinate body, the Continental Congress, or the Confederate Congress, passed in the same year, there is provision for representation according to population. So the Senator from Wisconsin is on sound constitutional grounds in this matter.

Mr. PROXMIRE. The Senator from Illinois stresses a point which I think

[1] The Massachusetts constitution of 1780 provided that the Senate would be apportioned among the districts on the basis of taxes paid. Pt. II, ch. I, sec. 2, art. I. One member of the House of Representatives was apportioned to each town having 150 votes and an additional member for every 225 additional voters, except that each existing town was given at least one. Pt. II, ch. I, sec. 3, art. II.

must be fully appreciated; and that is that when our Federal Union was formed, all the power was in the hands of the States.

Mr. DOUGLAS. That is, originally.

Mr. PROXMIRE. Yes; originally it was in the hands of the States. The States formed a Union. There was a confederacy that had an agreement to act together, in concert, in military matters, and so forth.

Mr. DOUGLAS. The laws enacted by the Continental Congress or the Confederate Congress did not operate directly upon individuals, but only through the States.

Mr. PROXMIRE. And the power of the States was so great that the Continental Congress had no power to tax.

Mr. DOUGLAS. That is correct.

Mr. PROXMIRE. It accepted contributions.

Mr. DOUGLAS. From the States, but it had no power to tax individuals.

Mr. PROXMIRE. It is important to stress the fact that when the Union came into existence and created the Legislature the power was in the hands of the States. On the other hand, when the States decided to create counties and townships, the States had and retained complete and total power. They could abolish county governments. There are many proposals to do so. Many people conceive a county government as an inefficient administrative device. All it is is an administrative device for convenience. Therefore the argument for equal representation by county evaporates. It is not there, because the counties did not create the States. Nobody has pretended they did.

Continuing to read from Yates:

"In a Federal Government, a majority of States must and ought to tax. In the local government of States, counties may be unequal—still numbers, not property, govern. What is the government now forming over States or persons? As to the latter, their rights cannot be the object of a General Government—These are already secured by their guardians, the State governments. The General Government is therefore intended only to protect and guard the rights of the states as States. * * *

"Representation on Federal principles can only flow from State societies * * *.

"Your General Government cannot be just or equal upon the Virginia plan, unless you abolish State interests. If this cannot be done, you must go back to principles purely Federal.

* * * * *

"The admission of the larger States into the confederation, on the principles of equality, is dangerous. But on the Virginia system, it is ruinous and destructive. Still it is the true interest of all the States to confederate * * *."

I am laboring the point because the idea we must recognize is that there are States and we must recognize that the States have power and are entities and have an identification. But where is the analogy?

To go on with the Yates argument:

"I would rather confederate with any single state, than submit to the Virginia plan. But we are already confederated, and no power on earth can dissolve it but by the consent of all the contracting powers—and four States, on this floor, have already declared their opposition to annihilate it * * *."

James Madison, in opposing the motion of Lansing that "the representation of the first branch be according to the articles of the confederation" [Yates] (I Farrand 455), said that (id. at 446–449):

"[H]e was much disposed to concur in any expedient not inconsistent with fundamental principles, that could remove the difficulty concerning the rule or representation. But he could neither be convinced that the rule contended for was just, nor necessary for the safety of the small States against the large States. That it was not just, had been conceded by Mr. Breerly [sic] and Mr. Patterson [sic] themselves. The expedient proposed by them was a new partition of the territory of the United States. The fallacy of the reasoning drawn from the equality of sovereign States in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, and making laws for the government of them. If France, England, and Spain were to enter into a treaty for the regulation of commerce and so forth with the Prince of Monaco and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Would the case be the same if a council were to be formed of deputies from each with authority and discretion, to raise money, levy troops, determine the value of coin, and so forth? Would 30 or 40 million of people submit their fortunes into the hands of a few thousands? If they did it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are counties of the same States represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the National Legislature."

It is interesting that Madison should give that analogy, because he assumed that within the States the counties would be represented in proportion to their numbers. He asked, Why are the counties of the same State represented in proportion to their numbers? It is the only principle on which it could be defended in the States. This is exactly what the Dirksen proposal would destroy.

Madison goes on to say:

"Is it because, the larger have more at stake than the smaller? The case will be the same with the larger and smaller States. Is it because the laws are to operate immediately on their persons and properties? The same is the case in some degree as the articles of confederation stand; the same will be the case in a far greater degree under the plan proposed to be substituted. * * * By the plan proposed a complete power of taxation, the highest prerogative of supremacy is proposed to be vested in the National Government. Many other powers are added which assimilate it to the government of individual States. The negative on the State laws proposed, will make it an essential branch of the State legislatures and of course will require that it should be exercised by a body established on like principles with the other branches of those legislatures. * * *

* * * * *

"In a word; the two extremes before us are a perfect separation and a perfect incorporation, of the 13 States. In the first case they would be independent nations subject to no law but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case the smaller States would have everything to fear from the larger. In the last they would have nothing to fear. The true policy of the small States therefore lies in promoting those principles and that form of government which will more approximate the States to the condition of counties."

Yates reports that Madison said (id. at 457):

"There is danger in the idea of the gentleman from Connecticut. Unjust representation will ever produce it. In the United Netherlands, Holland governs the whole, although she has only one vote. The counties in Virginia are exceedingly disproportionate, and yet the smaller has an equal vote with the greater, and no inconvenience arises."

Returning to the analogy of England's rotten boroughs, James Wilson said (I Farrand 449–450):

"The leading argument of those who contend for equality of votes among the States is that the States as such being equal, and being represented not as districts of individuals, but in their political and corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning the representation of the buroughs in England which has been allowed on all hands to be the rotten part of the Constitution, is perfectly right and proper. They are like the States represented in their corporate capacity like the States therefore they are entitled to equal voices, old Sarum (a rotten borough) to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with old Sarums for London instead of two which is her proper share, sends four representatives to Parliament."

This rotten borough analogy, which was criticized when the Senator from Pennsylvania proposed it in properly labeling the Dirksen amendment, seems to me to be perfectly appropriate and proper. The fact is that we do have rotten boroughs. Nobody has riveted that fact more clearly during the debates in the Senate than has the Senator from Illinois, who pointed out that in some cases one person has 1,000 times the representation in some States than another person has. If this is not rotten borough representation, what is?

Mr. DOUGLAS. In the State of Vermont, 1 hamlet of 36 people sends 1 representative to the State legislature, and a city of 38,000 also sends 1 representative.

Mr. PROXMIRE. One hamlet?

Mr. DOUGLAS. One hamlet of thirty-six people.

Mr. PROXMIRE. Thirty-six people?

Mr. DOUGLAS. That hamlet sends one representative to the Vermont House of Representatives. A city of 38,000 also sends 1 representative.

Mr. PROXMIRE. What possible justification can there be for that? That is certainly a rotten borough situation. It is an abysmal denial of the rights of some of the people of Vermont to have a vote mean something, or mean what it should mean; namely, that all people have an equal opportunity.

Mr. DOUGLAS. They are following the scheme laid down in the constitution of 1793, 171 years ago.

Mr. PROXMIRE. In the Vermont constitution?

Mr. DOUGLAS. Yes.

Mr. PROXMIRE. What they are doing is assuming that the population of Vermont has not moved at all from farms to cities for 173 years.

Mr. DOUGLAS. Yes; whereas in the meantime the cities of Burlington, Montpelier, and other cities, have developed.

Mr. PROXMIRE. What we are calling for is recognition of the fact that when a man moves from one area to another, from a small town to a city, or from a city to a suburb, he retain his representation, and does not lose it.

Mr. DOUGLAS. Yes.

Mr. PROXMIRE. When a farmer moves from his farm to a city, he loses his representation.

Mr. DOUGLAS. Or has it diminished to a very small proportion.

Mr. PROXMIRE. The Senator states it better.

Mr. DOUGLAS. That is true also in California, where 1 district with a population of 14,500 people sends 1 man to the California Senate, and the county of Los Angeles, with more than 6 million people, also sends 1 to the senate.

Mr. PROXMIRE. How can there be any justification for it?

Mr. DOUGLAS. There cannot be.

Mr. PROXMIRE. How can any argument be made that that is fair and just, that we should amend the foreign aid bill and thus deprive the President of the United States of his right of veto, and that we should damage the Supreme Court's dignity and independence and right of review in order to protect that kind of injustice?

Mr. DOUGLAS. It passeth human understanding.

Mr. PROXMIRE. I agree.

Yates says that Wilson stated (id. at 457):

"I should be glad to hear the gentleman from Maryland explain himself upon the remarks of Old Sarum, when compared with the city of London. This he has allowed to be an unjust proportion; as in the one place one man sends two members, and in the other 1 million are represented by four members. I would be glad to hear how he applies this to the larger and smaller States in America; and whether the borough, as a borough, is represented, or the people of the borough."

Luther Martin answered that Britain's rotten boroughs were not analogous since (ibid.):

"Individuals, as composing a part of the whole of one consolidated government, are there represented" [Yates].

Roger Sherman argued for concessions by the larger State to protect the smaller. Id. at 450. He further stated (id. at 457):

"In society, the poor are equal to the rich in voting, although one pays more than the other. This arises from an equal distribution of liberty amongst all ranks; and it is, on the same grounds, secured to the states in the confederation * * *" [Yates].

Mr. President, I should like to interrupt my reading once again to emphasize that our Founding Fathers, in all these debates, without any question, agreed that the only argument that could be made for unequal representation in the Senate is that the States have a degree of sovereignty, and that that was the only principle on which it could be done. There is no analogy so far as our State governments are concerned. The counties of the State are the creatures of the States.

Our Founding Fathers came down unanimously, without question, on the side of equal representation in the State legislatures.

Hugh Williamson, of North Carolina, supported representation based on population on the ground (id. at 456):

"If any argument will admit of demonstration, it is that which declares, that all men have an equal right in society. Against this position, I have heard, as yet, no argument, and I could wish to hear what could be said against it * * *" [Yates].

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

Mr. PROXMIRE. I yield.

Mr. CASE. I am interested in the Senator's argument. I wonder if he could tell me the name of the document from which he is reading these very interesting excerpts.

Mr. PROXMIRE. This is a document which was prepared by the Department of Justice for the Supreme Court, as amicus curiae, in the Maryland against Tawes case. It is dated October 9, 1963. It is probably the best and most concise analysis of the debates in the Constitutional Convention, when the delegates decided on the form of our government and on representation in the House and in the Senate.

What I am contending is that the most popular analogy, the most frequent objection that one hears to the one-man, one-vote rule and against the population representation principle is the Federal analogy. The U.S. Senate is not based on population. We defend it, and we are for it.

There is a great difference between the U.S. Senate and its responsibility, and the senate of a State legislature.

The practical argument I make, in addition to the philosophical argument, is that we have a Federal system. The State injects its great power between the individual citizen of the State and the Federal Government. It is a division of power which I believe almost all Members of the Senate support.

Mr. DOUGLAS. Mr. President, I should like to enter a demurrer to what the Senator from Wisconsin has said. He said we believe in equality of representation of the States in the U.S. Senate, and that we will defend that principle.

I prefer to say that we acquiesce in it. There is nothing we can do about it.

The fifth article of the Constitution provides that no amendment which may be made prior to 1808 shall affect the first and fourth clauses in the ninth section of the first article—which relates to the importation of slaves—and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

That part of the Constitution cannot be amended. That provides for equal representation in the Senate. There is nothing we can do about it. We from the big States bear this cross. It is a heavy cross.

If anyone wishes to be a second-class citizen, he does not have to be a Negro in Mississippi. He need only be a Senator from a large State. He need only be a Senator from a large State to really know what second-class or third-class citizenship amounts to. The control of the Senate is in the hands of States of approximately one-fourth of the population of the country.

I do not think it is a wise arrangement, but this matter was settled 177 years ago. It is the price which the big States had to pay for union. We acquiesce in it. We bow our shoulders under the yoke. The nails are driven into our body daily. We suffer from it. The inhabitants of our States suffer from it. There is nothing we can do about it. Therefore, on the whole, we keep silent about it.

However, when the Senator from Wisconsin says that we will defend it, I say that I will not defend it. I merely acquiesce in it and suffer under it.

Mr. PROXMIRE. There are those with whom I disagree who say that the Senate is the South's revenge on the Nation for the Civil War.

Mr. DOUGLAS. William S. White has said it. He said that the South in the Senate is indeed the revenge of the South for Gettysburg.

Mr. PROXMIRE. It is very uncomfortable to find myself in disagreement with the Senator from Illinois, who is a great scholar and a great man and a leader in this debate. However, I must say that I disagree vigorously with him, because I believe our Federal system has served us well. Wisconsin is, perhaps, an average State, because Wisconsin has about 2 percent of the people and we have appropriate representation in the U.S. Senate. From that standpoint we have perfect representation, as a matter of fact. Michigan, New Jersey, and Illinois are underrepresented, on that basis, but they have such excellent Senators, such great Senators, that those States really do not need more representation.

Mr. DOUGLAS. In Illinois we have 6 percent of the population of the country but only 2 percent of the representation. The State of New York has 17 million people, and probably close to 9 percent of the population, but only 2 percent of the representation.

The State of California has 17 million people, and only 2 percent of the representation. The 8 largest States have a population of 80 million, and at least 45 percent of the population, but have only 16 Senators.

The Mountain States, with a population of less than 6 million, have 16 Senators.

Mr. CASE. With respect to the interesting colloquy between the Senator from Wisconsin and the Senator from Illinois, on the wisdom of the system by which the States are represented in the U.S. Senate, the Constitution clearly and unequivocally determines how the apportionment of State legislatures shall be accomplished.

Mr. PROXMIRE. The Senator is absolutely correct. The Senator from Wisconsin, and, I believe, the Senator from New Jersey and the Senator from Michigan all agree on the fundamental principle that there is equal representation in the State governments, as the Supreme Court decided in Reynolds against

Sims, our differences over the U.S. Senate are irrelevant.

Mr. CASE. Mr. President, I ask unanimous consent that this word of mine appear immediately after the most gracious reference by the Senator from Wisconsin and the Senator from Illinois. I express appreciation for this most undeserved encomium.

Mr. PROXMIRE. I thank the Senator from New Jersey. He is a mighty valiant ally. It is wonderful to have him on our side.

On June 29, William Samuel Johnson, of Connecticut, supported Roger Sherman's proposal that one house be apportioned on population and the other be apportioned equally among the States. In doing so, he explicitly based this proposal on a compromise as to the nature of the new government (I Farrand 461–462).

William Samuel Johnson, of Connecticut——

Mr. DOUGLAS. Not Dr. Samuel Johnson, of England.

Mr. PROXMIRE. No, indeed; William Samuel Johnson, of Connecticut. He said:

The controversy must be endless whilst gentlemen differ in the grounds of their arguments; those on one side considering the States as districts of people composing one political society; those on the other considering them as so many political societies. The fact is that the States do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. * * * On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in one branch the people, ought to be represented; in the other, the States.

Here we have, by the gentleman from Connecticut who supported Roger Sherman's proposal, which was eventually adopted—it was finally agreed upon as a compromise—an explicit expression, an explicit recognition of what the Senate really is. At the time of the Constitutional Convention, Senators were deemed to represent the States—not the people of the States, but the States. Indeed, until an amendment to the Constitution changed the practice, Senators were elected by the legislatures of the States. That was one of the express purposes, I assume, for electing Senators by the legislatures. We do not represent the people; we represent the States.

What analogy is there to the counties? Has anyone ever heard of a county board electing members of the State legislature? That would be ridiculous. There is no analogy whatsoever.

It seems to me it is necessary to labor this point in detail, really to nail it to the mast. There are those who say, "Yes, but what about the Federal Government?" It has been said in the Senate by some distinguished opponents that there is such an analogy. But the report from which I am reading is as clear and explicit as it can be that there is no analogy as compared with the Federal Government; that there was no delegate of the Continental Congress who argued that the States should be represented on any basis other than population.

I especially draw attention to William Samuel Johnson's assumption that a parish or a county has influence in proportion to the number of its inhabitants. This is the principle we are fighting for today, and it was generally accepted at the time of the Constitutional Convention.

Rufus King's account of this speech is (id. at 476–477):

"Those who contend for an equality of votes among the States, define a State to be a mere association of men and then say these associations are equal—on the other hand those who contend for a representation in proportion to numbers. Define a State to be a district of country with a certain number of inhabitants, like a parish or county, and then say, these districts shd. have an influence in proportion to their number of inhabitants—both reason justly from year premises—we must then compromise—let both parties be gratified—let one House or branch be formed by one rule and [sic] the other by another."

Certainly every body will agree that counties are associations of men; no one pretends that they are anything else.

Madison continued to oppose the compromise because it overemphasized the sovereignty of the States under the new Constitution and because equal representation by States was unjust (I Farrand 463–464):

Another point ought to be stressed in connection with the debates in the constitutional convention. James Madison is regarded as the father of the Constitution. He was one of the strongest holdouts against the mixed nature of the Government. Madison was a prominent man. He was the strongest opponent of even the kind of compromise that was arrived at to permit the Senate of the United States to have equal representation from each of the States. The report states Madison's views, as follows:

"[T]he mixed nature of the Government ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States, as now confederated * * *. Under the proposed Government, the powers of the States will be much further reduced. According to the views of every member, the General Government will have powers far beyond those exercised by the British Parliament when the States were part of the British Empire. It will in particular have the power, without the consent of the State legislatures, to levy money directly on the people themselves; and therefore not to divest such unequal portions of the people as composed the several States, of an equal voice, would subject the system to the reproaches and evils which have resulted from the vicious representation in Great Britain.

"He entreated the gentlemen representing the small States to renounce a principle which was confessedly unjust, which could never be admitted, and if admitted must infuse mortality into a Constitution which we wished to last forever."

Yates reports concerning this speech that Madison said (id. at 472):

"If the power is not immediately derived from the people, in proportion to their numbers we may make a paper confederacy, but that will be all."

Alexander Hamilton likewise supported apportionment based solely on population (I Farrand 465–466):

"Mr. Hamilton observed that individuals forming political societies modify their rights differently, with regard to suffrage. Examples of it are found in all the States. In all of them some individuals are deprived of the right altogether, not having the requisite qualification of property. * * * In like manner States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as States are a collection of individual men which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition. Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been sd. that if the smaller States renounce their equality, they renounce at the same time their liberty.

"The truth is it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger. The State of Delaware having 40,000 souls will lose power, if she has one-tenth only of the votes allowed to Pennslyvania having 400,000: but will the people of Delaware: be less free, if each citizen has an equal vote with each citizen of Pennsylvania. He admitted that common residence within the same State would produce a certain degree of attachment; and that this principle might have a certain influence in public affairs. He thought, however, that this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it, as there could not be any ground for combination among the States whose influence was most dreaded. * * * No considerable inconvenience had been found from the division of the State of New York into different districts, of different sizes."

Incidentally, both houses of the New York Legislature have been apportioned as to the eligibility of its voters according to the New York constitution of 1777.

Let me repeat that principle of Alexander Hamilton.

There can be no truer principle than this, that every individual in the community at large has an equal right to the protection of government.

That sounds almost like the 14th amendment. This was stated by Alexander Hamilton in 1787.

To repeat:

There can be no truer principle than this, that every individual in the community at large has an equal right to the protection of government.

It is very interesting that Alexander Hamilton argued this, when he was talking about the equal right to vote. He used the part of this language almost verbatim which was adopted by our Government, later, when the 14th amendment became law.

Hamilton goes on to say:

"If therefore three States contain a majority of the inhabitants of America, ought they to be governed by a minority? * * * [The larger States] are to surrender their rights—for what? for the preservation of an artificial being. We propose a free government—can it be so if partial distinctions are maintained? * * * In the State of New York, five counties, form a majority of representatives, and yet the government is in no danger, because the laws have a general operation. The small States exaggerate their

danger, and on this ground contend for an undue proportion of power."

I can imagine what Alexander Hamilton would have said about this debate. After all, he was up against a situation confronting the States which at that time were recognized as truly sovereign. They had the sole right to tax. They had given only modest rights to the Confederacy at the time. Yet Hamilton felt so strongly about this principle, he felt that the principle was so basic to a democracy that he argued, even under these circumstances, that the States should have equal representation in the U.S. Senate.

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

Mr. PROXMIRE. I yield.

Mr. DOUGLAS. Is it not a sad thing that those who call on the name of Hamilton, who regard themselves as the exponents of the Hamiltonian tradition, have so far departed from the principles of Hamilton that they advocate and defend inequality of representation in the various State legislatures?

Mr. PROXMIRE. Yes, indeed; and as we say, Hamilton was a man who championed, by and large, the interests of property. He recognized deeply the contributions that wealth makes. He was a true conservative. He was a conservative in the usual sense. He was a champion of the well-to-do person and the person who was skilled and able. Yet he recognized that if we were to have a true democracy, it must be based upon equal representation. He further recognized that this constitutes no threat whatsoever to any legitimate need or interest or protection of property.

Mr. DOUGLAS. Mr. President, in this morning's Washington Post, a very illuminating letter was published on the question of apportionment. It was written and signed by Henry W. Edgerton.

Mr. Edgerton was, for many years, a circuit judge in the Federal Circuit Court of Appeals for the District of Columbia. He was one of the most eminent jurists who ever served in that capacity. Prior to that time, he was dean of the Cornell Law School, the great law school from which Charles Evans Hughes was graduated, and which has also produced many eminent lawyers, such as Myron Taylor, the former president of the United States Steel Corp.

Mr. Edgerton was, on many occasions, mentioned for appointment to the U.S. Supreme Court. I regret that this appointment was not accomplished. He would have added luster to that Court.

Mr. Edgerton has retired from regular active service as a circuit judge. But he felt impelled to write this letter as a citizen. And he made it clear that he was writing only as a citizen.

He points out that the Constitution in article III states:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

He goes on to point out that the Constitution also declares that "the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," and so forth.

In cases arising under that clause of the Constitution, we should remember the first section of the 14th amendment, which forbids any State to deny to any person the equal protection of the laws. In this chain of cases, beginning in the Tennessee case and going on to the Alabama case, a cognate case, and concluding with the Colorado case, the Supreme Court correctly pointed out that people cannot be granted equal protection of the laws if they are unequally, and grossly unequally, represented in the legislatures which make the laws.

Several weeks ago the House of Representatives passed a bill which would nullify the Supreme Court decisions by forbidding both the Supreme Court and the district courts from considering any cases dealing with reapportionment. I am happy that the Senate defeated the Tuck bill presented yesterday to the Senate by the very able Senator from South Carolina [Mr. THURMOND], and I am very glad that it was defeated by a crushing vote. If that bill had become law and were to be observed, it would remove reapportionment cases, insofar as the Congress could do so, from the judicial power of the United States. But, as Judge Edgerton pointed out, because those are cases arising under the Constitution, Congress has no power to do so.

The Tuck bill—or the Thurmond amendment—would undoubtedly have been declared unconstitutional by the Supreme Court if it had been passed by Congress. That would have brought about not only a direct conflict between the Congress and the court, against which the very able Senator from New York [Mr. JAVITS] has warned us, but it would have occurred only after a considerable period of time during which the case would have been tested in the district and circuit courts; and perhaps 3 or 4 years would have elapsed before the Supreme Court would finally declare the Tuck bill or the Thurmond amendment to be unconstitutional. During that time the processes of reapportionment would probably have been stilled and stopped, and the State legislatures would have been continued in their present malapportioned representation. Ample time would therefore have been afforded for a constitutional amendment to be drafted and submitted to the States. The amendment could have been ratified by the malapportioned State legislatures.

During that time the constitutional right to the equal protection of the laws would, so far as Congress is concerned, have been suspended and, indeed, perhaps ultimately denied so far as Congress is concerned.

Judge Edgerton was correct in pointing out that the proposal would have been a usurpation of power on the part of Congress which we do not constitutionally possess. For the time being the Tuck-Thurmond amendment is a thing of the past. But the Dirksen-Mansfield amendment is with us and is the pending business.

Notice the next sentence in the letter of Judge Edgerton:

For the same reason, Congress has no power to require delay in such cases, as a different bill now pending in the Senate proposes to do.

That "different bill," of course, is the Dirksen-Mansfield amendment. Judge Edgerton is saying that just as Congress has no power to forbid the Supreme Court or the district courts to consider the apportionment of State legislatures for a permanent period of time, so it has no right to postpone or delay hearing by the courts in apportionment proceedings. The rights inhere to individuals and cannot be postponed or delayed.

Judge Edgerton went on to say that it is, of course, true that—

The Constitution says, "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." And Congress may "ordain and establish" inferior courts.

Which it did in the judicial bill introduced, I believe, by James Madison in 1789.

Judge Edgerton went on to say—

But these constitutional provisions no more authorize Congress to prevent the judicial power of the United States from enforcing the right to equal protection of the laws than the same provisions authorize Congress to prevent the judicial power from enforcing the right to freedom of speech, or trial by jury, or any other constitutional right.

Judge Edgerton continues—

Congress cannot nullify constitutional rights by the simple device of forbidding U.S. courts to decide cases in which these rights are involved. Congress may redistribute among U.S. courts the judicial power to enforce constitutional rights, but Congress cannot eliminate or reduce that power. The Constitution, like other documents, must be read as a whole.

The constitutional grant to U.S. courts of the judicial power to decide all cases "arising under this Constitution" is not subject to any implicit proviso to the effect: provided Congress is willing. The constitutional grant to Congress of the legislative power to determine what questions may be decided by what courts is subject to an implicit proviso to the effect: provided, that the judicial power conferred by the Constitution upon U.S. courts may not be abridged.

The letter is able, concise, and to the point. It bears out what the Senator from Montana [Mr. METCALF], the Senator from Wisconsin [Mr. NELSON], and others of us have been contending for on the floor of the Senate for many days.

As a great public service this great and noble judge has given advice to the Congress and to the public. I only hope that it may be followed and that it may discourage the sponsors of the Dirksen-Mansfield amendment from pursuing their cause any further.

Mr. President, in the same issue of the Washington Post this morning, there appeared an editorial on the defeat of the substitute for the Dirksen-Mansfield amendment. I do not agree with all the chastisement which the editorial indulged in about those of us who voted for the substitute.

We did so in order to avoid a greater evil and in the belief that the language was harmless and that it might serve as a pacifier, so to speak, for those who wanted to strip the Court of its powers but were somewhat ashamed of the action they had taken and were looking for a way out. But in the cause of the

Court, we are willing to accept chastisement even from our friends, or perhaps I should say particularly from our friends.

The final conclusion of the Post editorial is extremely interesting. It reads:

> The choice now is between continuation of the liberals' filibuster against the Dirksen proposal and abandonment of the whole project. The latter course would be infinitely preferable.

Of course it would be preferable.

The editorial does not suggest that those of us who are opposed to the Dirksen amendment should stop our educational campaign to inform the country and the Senate. We do not propose to stop the educational campaign, because we are already having an influence on public opinion. We hope very much that the Dirksen amendment will be abandoned, laid on the table, relegated to the ash heap or the garbage can. That is really what should happen, and we hope very much that some Senator will rise either this week or next week with a motion to table. We would support that motion very readily. I think it would get more votes than it did last time.

When the Senator from Vermont [Mr. AIKEN] made his motion to table, he did it in the hope that it would throw the forces opposed to the Dirksen-Mansfield amendment into confusion. For a moment or two it looked as though he would succeed, because there were some amongst our number who felt that the move came so suddenly that some of our group would not be able to see what was behind the situation—a motion to table being not debatable—and would not wish to expose what was thought possibly was our weakness.

Though the motion came suddenly, without debate, the Members of the Senate rallied around with extraordinary vigor, and there were 38 votes for tabling, although the Senator from Vermont voted against his own motion, and 49 against tabling. At least five Senators who were absent would have voted for tabling. So there were 43 for tabling. At the beginning we had no more than 12, so we increased our forces from 12 to 43.

Yesterday in the vote on the substitute Javits-McCarthy-Humphrey revised amendment, which the members of this group played a leading part in framing, we got 40 votes to 42. Again, if we had been able to obtain the presence of absent Senators, we would have had a majority. So our numbers are increasing.

Who would have thought the Tuck bill, which carried in the other body by a vote of 226 to 175, would have been defeated in the Senate by a vote of 56 to 21—2½ to 1?

No, Mr. President; the people of this country are beginning to find out what these proposals to rob the Supreme Court of its legitimate powers and constitutional powers really amount to, and they are having an effect on the votes in the Senate.

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

Mr. DOUGLAS. I yield.

Mr. PROXMIRE. Does the Senator know very many on our side, who would have preferred the Javits-McCarthy compromise to ending the whole thing? Did we not all want to end it? Did we not prefer that?

Mr. DOUGLAS. Yes; very much.

Mr. PROXMIRE. Would not the Senator agree that the great speech made by the Senator from Oregon [Mr. MORSE] on this subject yesterday was a speech we could all support and say "hallelujah" to, and that we had to adopt the modifying amendment as a tactic and with great reluctance?

Mr. DOUGLAS. Yes.

Mr. PROXMIRE. Is it not also true that the editorial implies that, rather than have us continue talking on the matter, it would be better to end the whole thing? But is that not our very purpose in talking?

Mr. DOUGLAS. It is our purpose, by marshaling the information and arguments, that we shall convince the Senate and the country that the amendment should be laid aside.

Mr. PROXMIRE. That is the purpose of our talking.

Mr. DOUGLAS. It is interesting that the advocates of the Dirksen-Mansfield amendment have not really defended their point of view. My colleague from Illinois spoke about an hour and said he was going to speak again. He has not spoken. The Senator from Montana [Mr. MANSFIELD] spoke for about 10 minutes, and said that was all he was going to say. Virtually no one, with one exception, has taken the floor to advocate the measure. They thought they had the votes. We started out not having the votes, but we have argued the fact of existing malapportionment in State legislatures, we have argued on the basis of constitutional law, principles, and public policy, and we are gradually convincing the Senate and the country.

I wish our opponents would take the field and discuss the matter in terms of what should be done, but they evidently feel that their cause is so poor that it should not be exposed to public view. They will depend upon muscle to get it through. That muscle is fast evaporating.

We have proven once again that a few Senators clad in the armour of righteousness can overpower the forces of evil. The dragon of malapportionment has been mortally wounded. It is not yet dead, but its groans and screams can be heard in this Chamber and elsewhere. The Senator from Wisconsin [Mr. PROXMIRE] has played the role of St. George in lancing and piercing the dragon, just as in Raphael's painting St. George thrusts the dragon and one almost hears the screams of the dragon. We have heard the screams, but they are not screams of victory yet; they are screams of mortal wounds and ultimate death.

Mr. PROXMIRE. The Senator from Wisconsin has been carrying the lance. The senior Senator from Illinois [Mr. DOUGLAS] is obviously St. George.

Mr. DOUGLAS. Oh, no.

Mr. PROXMIRE. I would not identify the dragon.

Mr. DOUGLAS. Mr. President, I ask unanimous consent that the two editorials from the Washington Post be inserted at the conclusion of my remarks.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 16, 1964]

SUBSTITUTE DEFEATED

Defeat of the compromise "sense of Congress" resolution by the Senate yesterday leaves that body in a perilous State of calm in which it can move neither backward nor forward. Last week the Senate emphatically rejected Senator DIRKSEN's move to cut off debate. Then it refused to discard his scheme to delay application of the Supreme Court's decisions in the State reapportionment cases, and now it has voted down a proposed milder substitute.

We agree with the critics of the Javits-McCarthy-Humphrey substitute. It was an unnecessary and unfortunate gesture designed to tell the courts that they should act reasonably and responsibly. Senator MORSE was right in saying that it carried an implied insult to the Supreme Court. Many of the Senators who voted for it did so only in the hope of preventing more drastic legislative action.

The choice now is between continuation of the liberals' filibuster against the Dirksen proposal and abandonment of the whole project. The latter course would be infinitely preferable. Even if the grave constitutional objections to this venture could be overlooked, there is no indication that the Senate can agree upon a practical course of action. And if it did, its emphatic rejection of the repulsive Tuck bill passed by the House indicated that the chance for reconciliation of the views of the two houses would be meager.

The 88th Congress cannot afford to have its final session sputter out in a futile row over encroachment upon the courts. The effect would be to defeat vital legislation still awaiting enactment, to mar an otherwise creditable record and to frustrate every Member who is eager to hit the campaign trail.

[From the Washington Post, Sept. 16, 1964]

APPORTIONMENT TANGLE

I have retired from regular active service as a circuit judge of the U.S. Court of Appeals for the District of Columbia Circuit and am interested in apportionment only as a citizen.

The Constitution says "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." And "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," etc. In cases "arising under" the clause of the Constitution that forbids a State to deny to any person the equal protection of the laws, the Supreme Court has decided that both houses of a State legislature must be apportioned on a population basis so that each person's vote shall have equal weight with every other person's.

The House of Representatives has passed a bill that would nullify these Supreme Court decisions by (1) forbidding the Supreme Court to review cases concerning apportionment of State legislatures and (2) forbidding U.S. district courts to decide such cases in the first place. If this bill were to become law and were observed, it would remove such cases from the "judicial power of the United States." Because these are cases "arising under this Constitution," Congress has no power to do so. For the same reason, Congress has no power to require delay in

such cases, as a different bill now pending in the Senate proposes to do.

The Constitution says "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." And Congress may "ordain and establish" inferior courts. But these constitutional provisions no more authorize Congress to prevent the judicial power of the United States from enforcing the right to equal protection of the laws than the same provisions authorize Congress to prevent the judicial power from enforcing the right to freedom of speech, or trial by jury, or any other constitutional right.

Congress cannot nullify constitutional rights by the simple device of forbidding U.S. courts to decide cases in which these rights are involved. Congress may redistribute among U.S. courts the judicial power to enforce constitutional rights, but Congress cannot eliminate or reduce that power. The Constitution, like other documents, must be read as a whole.

The constitutional grant to U.S. courts of the judicial power to decide all cases "arising under this Constitution" is not subject to any implicit proviso to the effect: provided Congress is willing. The constitutional grant to Congress of the legislative power to determine what questions may be decided by what courts is subject to an implicit provisio to the effect: "provided, that the judicial power conferred by the Constitution upon U.S. courts may not be abridged."

HENRY W. EDGERTON,
Washington.

Mr. PROXMIRE. Mr. President, to return to the debates of 1787 at the Constitutional Convention, I had read the very interesting statement by Madison with respect to the equal rights of individuals.

Elbridge Gerry of Massachusetts also agreed with Madison and said:

[W]e never were independent States, were not such now, & never could be even on the principles of the Confederation. The States & the advocates for them were intoxicated with the idea of their sovereignty. He was a member of Congress at the time the federal articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was agst. his Judgment, and under the pressure of public danger, and the obstinacy of the lesser States.

Luther Martin replied to Gerry that (id. at 468): "[T]he language of the States being Sovereign & independent, was once familiar & understood; though it seemed now so strange & obscure. He read those passages in the articles of Confederation which describe them in that language."

The convention rejected the motion of Robert Lansing to have the first branch elected on same basis as the Congress of the Confederation, i.e., equal representation by States, by a vote of 6 to 4 with one State divided. By the converse vote, the convention adopted the resolution reported by the Committee of the Whole "that the rule of suffrage in the 1st branch ought not to be according to that established by the Articles of Confederation." (I Farrand 468.)

Oliver Ellsworth of Connecticut then again proposed the compromise first suggested by Sherman (id. at 468–469):

"That the rule of suffrage in the 2d. branch be the same with that established by the articles of confederation". He was not sorry on the whole he said that the vote just passed, had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the 2d. branch. We were partly national; partly federal. The proportional representation in the first branch was conformable to the national principle & would secure the large States agst. the small. An equality of voices was conformable to the federal principle and was necessary to secure the Small States agst. the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other. * * * The existing confederation was founded on the equality of the States in the article of suffrage: was it meant to pay no regard to this antecedent plighted faith."

Abraham Baldwin of Georgia opposed Ellsworth's motion on the ground that the second house should represent property. (Id. at 469–470.) George Read of Delaware agreed in part with Madison and Hamilton (id. at 471):

"If [the government was to be] more national, I would be for a representation proportionate to population." [Yates]

James Wilson, on June 30th, strongly opposed Ellsworth's motion to allow each State an equal vote in the second branch. He rejected threats that convention would otherwise fail (I Farrand 482–484):

"If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds. The votes of yesterday agst. the just principle of representation, were as 22 to 90 of the people of America. Taking the opinions to be the same on this point, * * * the question will be shall less than ¼ of the U. States withdraw themselves from the Union, or shall more than ¾ renounce the inherent, indisputable, and unalienable rights of men, in favor of the artificial systems of States. If issue must be joined, it was on this point he would chuse to join it. The gentleman from Connecticut [Ellsworth] in supposing that the prepondenancy secured to the majority in the 1st. branch had removed the objections to an equality of votes in the 2d. branch for the security of the minority narrowed the case extremely. Such an equality will enable the minority to controul in all cases whatsoever, the sentiments and interests of the majority."

I digress here to call attention to Wilson's interesting words, that if the minority of the people in the small States should have this control over the Union, the ones in the majority would renounce the inherent, indisputable, and unalienable rights of men, in favor of the artificial systems of States.

The first man to bring this into this debate was the senior Senator from Illinois [Mr. DOUGLAS], who was challenged as to why he would not agree to a constitutional amendment which would provide that one House should be based on population.

He said there are certain unalienable rights. I remind the Senate that these were the precise words used in 1787 by James Wilson in making precisely the same point, but making it on a weaker basis, because he was opposing even giving the States equal representation in our U.S. Senate.

Mr. DOUGLAS. Thomas Jefferson was ahead of both of us, because in the preamble to the Declaration of Independence he speaks of the unalienable rights of man, which it is the purpose of governments to secure.

Mr. PROXMIRE. John Locke, of course, preceded Thomas Jefferson. He wrote almost the verbative text of the Declaration of Independence before Thomas Jefferson.

Mr. DOUGLAS. Except that Locke emphasized life, liberty, and property, whereas Jefferson emphasized life, liberty, and the pursuit of happiness as being the basic rights. Property had its rights, but it was subordinate to the pursuit of happiness. George Mason deserves a great amount of credit, because he emphasized something more than mere life, liberty, and property.

Mr. PROXMIRE. Oh, yes; his contribution was great. But I wish to stress, of course, that it was James Wilson and PAUL DOUGLAS who agree that this unalienable concept relates to the equal rights that people should have in representation in their legislatures.

The Senator from Illinois has argued that this is an unalienable right in the State legislature. I believe that all our Founding Fathers would agree.

Mr. DOUGLAS. When the Senator revises his remarks for the RECORD, I hope he will omit my name, because I do not regard myself as worthy of unloosing the latches of the shoes of James Wilson, Thomas Jefferson, or George Mason.

Mr. PROXMIRE. No Senator is more worthy.

I continue to read:

Seven States will controul six; seven States according to the estimates that had been used, composed 24/90 of the whole people. It would be in the power of less than ⅓ to overrule ⅔ whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for men, or for the imaginary beings called States? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told that one third, compose the greater number of States. The rule of suffrage ought on every principle to be the same in the 2d. as in the 1st. branch. * * * If the motion should be agreed to, we shall leave the U.S. fettered precisely as heretofore; with the additional mortification of seeing the good purposes of ye fair representation of the people in the 1st. branch, defeated in 2d. Twenty four will still controul sixty six.

Ellsworth replied that (id. at 484–485):

"The capital objection of Mr. Wilson "that the minority will rule the majority" is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight * * * No instance [of a confederacy] [2] has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building. When we need only repair the roof. No salutary measure has been lost for want of a majority of the States, to favor it. If security be all that the great States wish for the 1st. branch secures them. * * * He appealed again to the obligations of the federal pact which was still in force, and which had been entered into with so much solemnity, persuading himself that some regard would still be paid to the plighted faith under which each State small as well as great, held an equal right of suffrage in the General Councils."

Supporting Wilson, Madison said that speakers had urged (id. at 486):

"Continually that an equality of votes in the 2d. branch was not only necessary to secure the small, but would be perfectly safe to the large ones whose majority in the 1st.

[2] Farrand has taken this phrase from the account of Yates. I Farrand 484, note 5.

branch was an effectual bulwark. But notwithstanding this apparent defence, the Majority of States might still injure the majority of people."

1. They could obstruct the wishes and interests of the majority.

I suppose that has happened in the Senate too.

2. They could extort measures repugnant to the wishes and interest of the majority.

I believe that has happened occasionally.

3. They could impose measures adverse thereto; as the second branch will probably exercise some great powers, in which the first will not participate.

That obviously is also a wise observation by Madison.

William Richardson Davie of North Carolina agreed with Ellsworth, opposing the resolution approved by the Committee of the Whole (I Farrand 487–488):

"The Report of the Committee allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will according to this rule be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. * * * [I]f a proportional representation was attended with insuperable difficulties, the making the Senate the Representative of the States, looked like bringing us back to Congs. again, and shutting out all the advantages expected from it. * * * He thought that in general there were extremes on both sides. We were partly federal, partly national in our Union. And he did not see why the Govt. might not in some respects operate on the States, in others on the people."

Attempting to meet Davie's objection, Wilson (id. at 488):

"Admitted the question concerning the number of Senators, to be embarrassing. If the smallest States be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest States will contain 100,000 souls at least. Let there be then one Senator in each for every 100,000 souls, and let the States not having that no. of inhabitants be allowed one. He was willing himself to submit to this temporary concession to the small States: and threw out the idea as a ground of compromise."

Benjamin Franklin then summarized the debate (I Farrand 488):

"The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit the artist takes a little from both, and makes a good joint. In like manner here both sides must part with some of their demands, in order that they may join in some accommodating proposition."

To resolve the impasse, he proposed the following resolution (id. at 489):

"That the Legislatures of the several States shall choose & send an equal number of Delegates, namely who are to compose the 2d. branch of the General Legislature—"

However, while the resolution also gave each State an equal voice on several important issues involving the States such as issues affecting their sovereignty, voting strength was to be calculated by taxes paid with regard to appropriations bills.

Benjamin Franklin explained that (id. at 499):

"Let the senate be elected by the states equally—in all acts of sovereignty and authority, let the votes be equally taken—the same in the appointment of all officers, and salaries; but in passing of laws, each state shall have a right of suffrage in proportion to the sums they respectively contribute." [Yates]

Rufus King rejected all proposals for giving each State an equal vote and said that he was (I Farrand 489–490):

"Filled with astonishment that if we were convinced that every man in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of State sovereignty: * * * that he could not therefore but repeat his amazement that when a just Govern. founded on a fair representation of the people of America was within our reach, we should renounce the blessing, from an attachment to the ideal freedom & importance of States: that should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a Govt. founded in a vicious principle of representation and which must be as shortlived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by Mr. Wilson: but he never could listen to an equality of votes as proposed in the motion."

Mr. President, that argument by Rufus King once again emphasizes the fact that the only way that our Founding Fathers ever could contemplate providing equal representation for the States in the Senate was to recognize that, illusion that it might be, and artificial creature that a State might be, at least it was a distinct and real entity with a power that was great enough to be a real power; in my judgment the only basic and overriding power in existence in this place at the time.

There was a confederacy, but it was a weak, tentative confederacy; it was nothing more than a treaty or an alliance among the States. Yet, in spite of this, many of the Founding Fathers, close to a majority—in fact, those representing a majority of the people in the Colonies at that time—felt that even under those circumstances, the U.S. Senate should be based on population.

So a compromise was made, and it was made because it was recognized that it was the only way there could be a union. But the Founding Fathers also recognized that the States did, in fact, have sovereign power, an existence, a reality; and also that if there were to be a Federal system, the States should have the dignity of having two representatives in the national body, so that the dignity and sovereignty of the States would be recognized.

Mr. President, I am happy to yield to the distinguished Senator from Illinois.

Mr. DOUGLAS. Mr. President, I congratulate the Senator from Wisconsin for his able statement.

It is my understanding that the Senator from Wisconsin will shortly move, at the instance of the Senate leadership, that the Senate adjourn until the time for convening tomorrow. When that motion is made, I wish to make some comments of my own; namely, that the Senator from Wisconsin should be granted the right to the floor when the Senate convenes tomorrow. I shall not make that request now, but I shall make it when the motion for adjournment is made.

SILVER FOR DEFENSE NEEDS

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Colorado [Mr. DOMINICK], without losing my right to the floor, and that his remarks will appear after mine.

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

Mr. DOMINICK. Mr. President, I appreciate the courtesy of the Senator from Wisconsin in yielding to me at this time.

Mr. President, on September 14, 1964—last Monday—I was privileged to appear before and speak to the annual convention of the American Mining Congress in Portland, Oreg.

In that speech I outlined the source of many of the basic problems facing the mining industry, problems based on Government management and control in great degree.

I dwelt at some length on the silver crisis. I called the situation a mess, and I likened the Government's position to the story of the Italian general in World War II who, after a disastrous battle, stood on a hill with his aide and watched his troops streaming all over the countryside in all directions. He turned to his aide and cried, "Where are they running? Where are they running? I am their leader and must run in front."

This is the Government's position, so far as silver is concerned, and the crisis we are in right now.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of my speech previously referred to.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY SENATOR PETER H. DOMINICK TO THE AMERICAN MINING CONGRESS, PORTLAND, OREG., SEPTEMBER 14, 1964

Mr. Chairman, colleagues, ladies and gentlemen, it is always a pleasure to have the chance to meet with those men and women whose daily business activities fall into the highest of all categories, productive creativity. Without the development of our natural resources, from water to uranium, this country, and in fact the world, would still be existing in the dark ages. It is a privilege for me to have the opportunity of discussing with you some problems of your industry which daily become more difficult to solve as we seem to continue the trend toward an all-powerful central government.

* * * * *

Now it strikes me that the Federal Government instead of trying to keep half of you flying all the time has been going out of its way to prevent half of you from flying. In every mining field there are constantly increasing Federal controls over your activities.

Let's just outline a few. In the lead-zinc field, continued State Department pressures have prevented passage of realistic legislation to cut back import quotas and provide support for the domestic industry. As a result, the country becomes more and more reliant on foreign supplies.

In the gold mining field, constant and fierce resistance has been expressed by the executive departments of the Federal Government to all efforts to explore programs to revitalize the gold mining industry. Opposition has been sharply expressed even to hold-

ing hearings on the problems and as a result, no legislation has been possible.

In the uranium field, the Government entered into long-range contracts to purchase concentrate from South Africa and Canada. Then it provided economic exploration stimuli for U.S. production and very soon we had enough supplies in this country to supply foreseeable needs. At that point the Federal Government started cutting back on domestic uranium procurement, limited milling contracts, and decimated the domestic uranium mining industry while leaving a few companies in a position to stay alive perhaps long enough to enter the private industrial field.

In the meanwhile the foreign contracts were stretched out and we continue to buy foreign uranium concentrates.

In the shale oil field the Interior Department has created more complexities than a Philadelphia lawyer could invent. I have just attended the reopening of the Rifle oil shale facility for research and development of this fabulous natural resource, the reopening representing the culmination of years of intensive effort by legislators and private industry against an array of Federal executive opinion. But this reopening, while a significant step forward, is only the first of a series of steps that need to be taken. The solicitor's office has raised a myriad of problems with respect to patent applications on oil shale lands. Recent decisions of the Department, in fact, raise questions which might well deter even the most resolute from trying to establish a valid discovery in any type of mineral. It now seems to be their position that no mining location can be patented unless the applicant can prove that the mineral is commercially profitable at the very moment of the decision. The fact that it might be a valuable mineral in the ordinary sense of the word, or that it might have been commercially operable a month before presentation or might be commercially operable 1 month later with an anticipated change in price or technology is apparently not enough. This, of course, effects all minerals but is even more pointed when directed at oil shale where commercial development has not yet occurred. In addition, despite a horde of suggested rules and regulations submitted to Interior at its request by private industry, and educational research groups, no visible progress has been made in developing programs for leasing of public lands for oil shale research and development.

Without trying to detail all the problems, which are probably better known to you than to me, I do want to outline for you what can only be called a crisis—to put it mildly the silver situation is a mess. The industry has been urging the Treasury for more than 3 years to develop programs to handle the problem but to no avail. It affects every person who wants to get a cup of coffee, a coke, or a pack of cigarettes from a vending machine. It affects the manufacturers of photographic equipment, batteries and other items to which silver is an essential ingredient. It affects our dollar bills, our banks and our national defense. It has been tentatively discussed by Treasury officials and some witnesses for industry before the Senate Banking and Currency Committee and the House Committee on Government Operations. It has involved the Federal Reserve system in disputes with its own members and has led to a flury of activity in the mints.

* * * * *

The law of supply and demand and the efforts to avoid its effect are certainly key factors in the situation. A few figures will make this crystal clear.

As of the end of 1963, consumptive demand for silver is estimated as follows, in million ounces:

Consumptive demand for silver

[In million ounces]

	United States	Other countries	Total
Industrial	110.0	137.0	247.0
Coinage	111.3	60.9	172.2
Total	221.3	197.9	419.2

Against these totals production for the same period is estimated at United States, 36, other countries, 174.5; total, 210.5.

From this you can see that total world production in 1963 was 11 million ounces less than U.S. demands alone and approximately one-half of total demands. In addition, you will note that U.S. silver production was about one-sixth of U.S. consumption.

To offset this imbalance the United States had a major supply of silver, located at West Point and San Francisco, estimated at the end of 1963 to be 1½ billion ounces. Obviously, this amount even at the noted rate of depletion would suffice for a considerable period of time but as anticipated by many industry leaders and legislators, consumptive pressures have risen sharply and changed the picture.

As we all know silver coins in the United States have become more and more scarce. It has been necessary to offset this with crash programs to provide more pennies, nickels, dimes, quarters, and half dollars. New presses have been dug out of Defense warehouses, contracts have been given by the Mint to private suppliers for the necessary metallic strip, and productive capacity of our two Mints has been sharply increased. It is estimated that by the fall of 1964, U.S. coin production will have tripled over the comparative period of 1963. This, of course, is a necessary and highly commendable effort by the Mint officials to meet the needs of all Americans. At the same time it can be seen that our use of silver for coins will increase at a tremendous rate and there is every indication that the need for this increased use of silver for coinage will continue.

In April 1964, the Treasury informed me that for the 10-month period, June 1963 to April 1964, 91 million ounces of silver had been set aside for coinage and added that there was on hand sufficient silver for coinage requirements to 1972. Once again, as anticipated and noted above, the demand has far exceeded the hearing estimates.

In 1963, the Silver Purchase Act was repealed and provision made to retire all $1 silver certificates and replace them with Federal Reserve notes. Silver certificates in bulk have been presented to the Treasury for silver bullion and for the period June 4, 1963, to April 2, 1964, the Treasury has informed me that $215.5 million worth of silver certificates were redeemed.

At that time there remained outstanding $1.9 billion of silver certificates and redemptions of these continue at an accelerated rate.

These pressures in turn have steadily increased the silver price on the open market until it threatens to break through the silver value of $1.29 in a silver dollar. If the price should push as far as $1.38, approximately equal to the silver content in lesser coins, considerable fear has been expressed that all U.S. coins will be melted into silver bullion and drive coinage wholly out of circulation.

Hence, the Treasury releases silver from its supply in amounts approximately equal to silver certificates returned to the Federal Reserve System and to date has held the price to $1.29+ to protect its coinage.

From this brief summary you can see that we have a mess. The law of supply and demand wants to raise silver prices substantially. The Treasury releases have prevented this. The time is not far off when Treasury supplies will not be sufficient to hold the price and supply silver for coinage. The vending companies want to keep present coinage as their machines use them at an annual rate of $3.2 billion. Industrial users want to continue to get silver at cheap prices. Producers recognize that silver output cannot be substantially increased without a substantial price rise.

The situation at the moment can only be compared to an overheated pressure cooker with a blocked release valve. Everything is cooking but no one has yet turned off the flame or rigged a substitute relief valve. Reliable estimates now indicate that the whole matter will explode in or before 1966 unless solutions are found.

Some of your industry have been working hard on the problems and various trial balloons have been floated by the Treasury. These have ranged from doubling the monetary value of existing coins, to calling back all existing coins and replacing them with nonsilver alloys. The former would automatically increase silver prices to the users and, hence, is being resisted strenuously. The latter would involve not only opposition from the vending companies which would have to revamp all their machines at enormous cost, but the political reaction of the American people to demonetization, particularly by an administration which has often been termed fiscally irresponsible.

I suggest that a number of solutions to the silver problem are feasible.

We need silver for defense. Then let's set aside within existing Treasury supplies an amount sufficient to meet these needs—perhaps 300 to 500 million ounces.

We need relief for our coinage. Perhaps this could be worked out with less capital dislocation to industrial users by issuing a new series of coins in 20-, 30-, 40-, and 70-cent pieces containing a lower silver content. Sooner or later under Gresham's law these would drive out existing coins but it might give needed time relief by letting silver prices rise to stimulate production without introducing nonsilver coins.

I do not pretend to have a pat solution for all of these problems but there are some facts which stand out.

Production of silver is artificially low because of governmental restraints on the operation of the law of supply and demand.

Production of lead-zinc is artificially low because of governmental insistance on improving the economy of other countries.

Production of gold is artificially low because of governmental enforcement of a 1935 price-setting order.

Production of oil from oil shale is being sharply hampered because of governmental legal and policy restrictions.

As a result of these governmental policies, the mining industry has been forced into programs calling for subsidies and the creation of artificial markets for its products. I know that you do not like this, but you have been forced to agree in many cases in order to survive, even on a limited basis.

The American mining industry has an astounding resilience. My faith in it leads me to believe that these problems can and will be solved. Almost all solutions will require some kind of Federal legislative action or the pressure cooker will explode. Needless to say, I look forward to working with you in finding these solutions.

Mr. DOMINICK. Mr. President, upon my return, I had received more recent information from Mr. Robert V. Roosa, Under Secretary of the Treasury. I believe that this information further highlights the crisis we face and the mess we

are in. I ask unanimous consent to insert at this point in the RECORD a copy of my letter of September 8, 1964, to Under Secretary Roosa and a copy of his reply, together with the tables provided.

There being no objection, the letters and tables were ordered to be printed in the RECORD, as follows:

SEPTEMBER 8, 1964.

The Honorable ROBERT V. ROOSA,
Under Secretary for Monetary Affairs,
Department of the Treasury,
Washington, D.C.

DEAR MR. ROOSA: As you know, I have been concerned with the silver situation for some time and have spoken to you about it on the telephone as well as in committee hearings.

As assistance to my full understanding of our position, it would be most helpful if you would have someone on your staff furnish me with the following data:

1. The amount of silver in fine ounces and in dollar value held by the Treasury as of the most recent reporting date;
2. The difference in these figures from the same figures as of the end of 1963, 1962, 1961, and 1960;
3. The dollar volume of silver certificates retired since passage of the recent act, and the amount of fine ounces released to cover the retirements;
4. The rate of retirement of silver certificates on a monthly basis computed in dollars and in fine ounces;
5. The estimated amount of Treasury silver to be used for coinage this year and for calendar 1965;
6. The actual or estimated amount of silver released by the Treasury which is going into the hands of overseas holders;
7. The amount of silver being purchased by the Treasury, if any;
8. The rate of silver withdrawals from the Treasury to supply demands of other governmental agencies computed in dollars and fine ounces.

I am fully aware that this problem is a "ticklish" one, that you and others are working on possible solutions, and that publicity is being avoided. The above information, however, is not readily available to me through other sources and will help my analysis of proposed solutions which reach me from private sources.

Sincerely,

PETER H. DOMINICK,
U.S. Senator.

UNDER SECRETARY OF THE TREASURY,
Washington.

Hon. PETER H. DOMINICK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMINICK: This is in reply to your letter of September 8, in which you raise several questions about the silver stocks of the Treasury.

In answer to the first two questions of your letter, there is enclosed a table showing in ounces and dollars the amount of silver bullion held at the end of calendar years 1960, 1961, 1962, and 1963, as well as the amount held on September 3, 1964, the latest date available. For your information, silver dollars have also been included in the table.

In answer to questions 3 and 4, there is enclosed a table showing the silver certificates that have been retired in order to secure silver bullion for coinage, as well as the silver certificates that have been exchanged for bullion by the public; also, the number of silver dollars that have been paid out with the resulting retirement of silver certificates.

In answer to question 5, on the basis of present legislation and appropriation, it is estimated that 195 million ounces of silver will be used for coinage in 1964, and 235 million ounces in 1965. (It should be noted that the estimated silver used in coinage in 1964 and 1965 reflect the high level of output required to meet the current coin shortage, to which hoarding is contributing. As the shortage is overcome, coinage needs will decline.)

In answer to your question 6, concerning private individuals or firms dealing in silver, we do not attempt to supervise the use of silver after silver certificates have been redeemed, any more than we attempt to supervise the use of silver dollars when they are obtained through the redemption of silver certificates. Silver bullion and ore-bearing materials are exported and imported and as a rule there is a net importation of silver into the United States. There are enclosed tables covering the exports and imports of silver bullion and ore-bearing materials on a monthly basis for the calendar year 1963 and the first 7 months of 1964.

In answer to question 7, the Treasury purchased 242,021.37 ounces of silver in calendar year 1962; 344,331.14 ounces in calendar year 1963; and 241,229.23 ounces through July of this year. Practically all the silver purchased was that which was contained as an integral part of gold deposits.

The rate of silver withdrawals from the Treasury to supply demand of other Government agencies which you requested in question 8, amounted to 674,320.24 ounces in calendar year 1961; 390,630.15 ounces in calendar year 1962; 6,112,219.75 ounces in calendar year 1963; and 5,071,673.25 ounces so far in 1964.

I trust this will provide the information you wish.

Sincerely yours,

ROBERT V. ROOSA.

Reduction in silver bullion and silver dollars securing certificates, by months, beginning June 1963

[Daily Treasury statement basis]

Month	Bullion released for coinage		Bullion exchanged for certification		Silver dollars paid out (net)
	Ounces	Value	Ounces	Value	
1963—June [1]	4,000,000	$5,171,717.17			$3,896,577
July	5,000,000	6,464,646.46			7,080,350
August	15,000,000	19,393,939.38			8,439,125
September	9,000,000	11,636,363.63	772,481.5	$998,764	3,500,032
October	10,000,000	12,929,292.92	3,591,055.6	4,642,981	3,648,029
November	8,000,000	10,343,434.34	6,845,056.5	8,850,174	6,044,528
December	9,000,000	11,636,363.62	7,764,502.7	10,038,953	8,488,424
1964—January	5,000,000	6,464,646.46	3,403,615.4	4,400,634	1,292,172
February	15,000,000	19,393,939.38	1,804,806.4	2,333,487	3,009,297
March	15,000,000	19,393,939.38	3,572,474.6	4,618,957	21,309,365
April	15,000,000	19,393,939.38	7,281,678.9	9,414,696	[2] (23,767)
May	14,000,000	18,101,010.09	3,688,775.6	4,769,326	37,313
June	11,000,000	14,222,222.21	9,418,659.7	12,177,661	3,452
July	18,000,000	23,272,727.26	2,117,453.8	2,737,718	[2] (496)
August	19,000,000	24,565,656.55	5,740,999.2	7,422,706	[2] (3,958)
Total	172,000,000	222,383,838.23	56,001,559.9	72,406,057	66,720,443

[1] Public Law 88-36 passed June 4, 1963.

[2] Increase.

U.S. exports and imports of silver, by months, January through July 1964

[In troy ounces]

	Exports			Imports			Net (exports (+) or imports (−))
	Ore and base bullion	Bullion refined	Total	Ore and base bullion	Bullion refined	Total	
January	21,025	3,881,498	3,902,523	4,678,797	713,335	5,392,132	−1,489,609
February	69,228	5,214,897	5,284,125	4,009,460	975,941	4,985,401	+298,724
March	55,132	3,295,987	3,351,119	4,028,941	702,701	4,731,642	−1,380,523
April	51,488	8,375,380	8,426,868	1,896,889	621,571	2,518,460	+5,908,408
May	71,303	2,785,047	2,856,350	4,533,471	1,058,904	5,592,375	−2,736,025
June	91,764	3,519,504	3,611,268	3,132,244	622,322	3,754,566	−143,298
July	65,507	4,674,370	4,739,877	4,165,664	963,424	5,129,088	−389,211
Total	425,447	31,746,683	32,172,130	26,445,466	5,658,198	32,103,664	+68,466

Source: Bureau of the Census, Department of Commerce.

U.S. exports and imports of silver, by months, 1963

[In troy ounces]

	Exports			Imports			Net (exports (+) or imports (−))
	Ore and base bullion	Bullion refined	Total	Ore and base bullion	Bullion refined	Total	
January	5,394	2,054,195	2,059,589	2,881,279	1,002,818	3,884,097	−1,824,508
February	108,000	2,454,231	2,562,231	3,718,094	864,873	4,582,967	−2,020,736
March	17,326	1,200,096	1,217,422	3,210,774	3,217,007	6,427,781	−5,210,359
April	36,800	2,517,077	2,553,877	2,936,474	1,005,476	3,941,950	−1,388,073
May	28,100	2,095,823	2,123,923	3,978,088	1,594,525	5,572,613	−3,448,690
June	18,650	2,005,692	2,024,342	4,342,350	1,360,005	5,972,355	−3,948,013
July		112,928	112,928	3,621,792	1,706,989	5,328,781	−5,215,853
August	18,000	1,179,390	1,197,390	3,228,975	858,426	4,087,401	−2,890,011
September	488,982	1,607,846	2,096,828	4,180,859	1,841,083	6,021,942	−3,925,114
October	78,590	4,204,798	4,283,388	2,682,594	1,699,236	4,381,830	−98,442
November	497,702	8,088,802	8,586,504	2,659,946	1,112,650	3,772,596	+4,813,908
December		2,665,633	2,665,633	4,219,207	868,617	5,087,824	−2,422,191
Total	1,297,544	30,186,511	31,484,055	41,660,432	17,401,705	59,062,137	−27,578,082

Source: Bureau of the Census, Department of Commerce.

Treasury's holdings of silver bullion and dollars, 1960–63 and Sept. 3, 1964

	Silver bullion backing silver certificates		Other silver bullion		Silver dollars backing silver certificates		Total ounces	Total dollars	Decrease	
	Ounces	Dollars	Ounces	Dollars	Ounces	Dollars			Ounces	Dollars
End of calendar year—										
1960	1,741,839,335.5	2,252,075,098.77	123,528,745.3	88,899,932.12	124,862,183.9	161,437,975	1,990,230,264.7	2,502,413,005.89		
1961	1,730,539,335.5	2,237,464,997.77	28,457,383.6	24,183,871,64	101,039,729.6	130,637,226	1,860,036,448.7	2,392,286,095.41	130,193,816.0	110,126,910.48
1962	1,654,494,335.4	2,139,144,189.75	36,987,896.9	30,478,599.35	73,642,576.3	95,214,644	1,765,124,808.6	2,264,837,433.10	94,911,640.1	127,448,662.31
1963	1,532,538,548.6	1,981,463,980.59	25,223,063.6	18,802,183.90	22,097,981.1	28,571,127	1,579,859,593.3	2,028,837,291.49	185,265,215.3	236,000,141.61
Sept. 3, 1964	1,382,873,446.3	1,787,957,585.88	21,092,766.4	19,761,663.91	2,279,921.3	2,947,777	1,406,236,134.0	1,810,667,026.79	173,613,459.3	218,170,264.70
Total decrease									583,984,130.7	691,745,979.10

Mr. DOMINICK. Mr. President, first of all, in my speech I recommended that the Treasury set aside a specific amount of silver in ounces for defense purposes.

I wish now to point out the reasoning for this, or the reasons behind it; and I can do it very simply by quoting from one or two statements made by Under Secretary Roosa in answering my letter.

The first thing he said was:

> The rate of silver withdrawals from the Treasury to supply demand of other Government agencies which you requested in question 8, amounted to 674,320.24 ounces in calendar year 1961; 890,630.15 ounces in calendar year 1962; 6,112,219.75 ounces in calendar year 1963; and 5,071,673.25 ounces so far in 1964.

Thereby showing that there has been at least an increase of 10 times between 1961 and to date in the demand by other governmental agencies for silver supplies held by the Treasury. These are largely used, for example, in batteries, photographic supplies, and in defense needs, including the Polaris submarine.

It is worthy of note that unless we do something about setting a supply of silver aside for defense needs, we are suddenly going to find ourselves trapped in the position where we do not have enough production of silver in the United States to even supply the defense needs of this country.

So long as we have a supply on hand of silver presently available in the Treasury, it seems to me to be nonsense not to set aside some portion of this silver for that purpose.

The Interior Department came out today to have a study made to meet the Department of Interior's primary responsibility to assure an adequate supply of minerals to meet industrial and strategic needs of the Nation as effectively as possible.

So the Interior Department itself is aware of this situation.

As I pointed out in the speech, the Treasury informed me in April of 1964 that we had enough silver to take care of coinage requirements until 1972. And even though we were experiencing coin shortages in April of this year, the problem has now become much worse. The Treasury has now embarked on a crash program to supply enough coins for the country. This, they hope, will offset the shortage. They plan to double production from 4.3 billion coins in fiscal 1964 to 8 billion in fiscal 1965. This is extremely important. This is one of the fundamental things that we must do through the mint—provide enough coins to be able to supply the American public with their needs.

After the Treasury stopped their outright market sales in November 1961, the outflow of silver from their stocks still continued to increase. During the calendar year 1963, this outflow doubled from calendar year 1962. It does not take a mathematical genius to determine that the Treasury will be out of silver for coinage purposes, or perhaps for any other purpose, long before 1972. Some reliable sources estimate that it may happen as early as 1966.

Our domestic production of silver continues to seriously lag behind our domestic consumption. The United States consumes six times more silver than it can produce and production continues to decrease while consumption increases. Throughout the world the problem is nearly as acute. World consumption continues to exceed world production by a 2-to-1 margin. In fact, the 1963 world production figures were 210.5 million ounces while the consumption of the United States alone was 221.3 million ounces, or more than the entire world production.

The U.S. Treasury continues to serve as the "bargain basement" for the world. And, I am talking about their supply of silver. The Treasury holds the price of silver at about $1.29 an ounce by selling its silver under the guise of redeeming silver certificates. The law of supply and demand is thwarted in this manner. For instance, during 1963 the Treasury imported 59,062,137 ounces of silver, but exported 31,484,055 ounces. Through July of 1964, we have imported 32,103,664 ounces, but we have exported 32,172,130 ounces. Thus, through July of this year, we have actually sold, during 1964, 68,466 ounces more silver to foreign countries than we have purchased from them. What kind of idiotic nonsense is this? Why are we selling more silver abroad than we are importing? The answer is simple—it seems to me, at least. The Treasury is trying to hold the price at $1.29. They are trying to avoid the law of supply and demand. If there were plenty of silver in the Treasury, it might work; but with our rapidly dwindling supply, it becomes dangerous. The reason that the Treasury continues to keep the price down is that they fear a rise in price would cause our coins to be melted down for their silver content. Obviously, coins are already being hoarded—Gresham's law is already beginning to operate. The thrust of my remarks today is that we must come to grips with the basic issue. We will only be able to produce more silver in this country when we allow the price of silver to seek its price in the market.

I do not have any "pat" answer as to how this may be handled. But I do have a couple of suggestions which might be of real use in trying to solve the silver problem. I insist that we must face our problems now, while there is yet time, instead of waiting until our silver is all gone. We ought at least to be able to sit down with the authorities, to bring this problem out into the open, and to try to find some rational solutions to the problem.

Only today the Department of Interior announced a program which it described as designed to alleviate the silver shortage and stimulate domestic production. I ask unanimous consent to have a copy of this release printed at this point in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

INTERIOR TAKES ACTION TO EXPAND SUPPLIES OF SILVER

The Department of the Interior announced today that it is taking action to forestall a possible shortage of silver and to expand supplies of silver for essential national defense and civilian requirements, such as rocket and jet aircraft construction.

A special study, conducted by the Bureau of Mines on instructions from Secretary of the Interior Stewart L. Udall, reveals:

New uses for silver in solid fuel rockets, supersonic jets, and special purpose batteries, added to conventional strategic uses, make any shortage of silver a potential threat to national security.

While domestic mines have produced an average of only 34 million troy ounces annually over the past 5 years, average domestic consumption over the same period has been 106 million troy ounces annually, over three times the volume of production from mines.

From 60 to 65 percent of silver from domestic sources is derived as a byproduct from processing ores mined principally for their lead, zinc, or copper content. The report stated that, as a result, increased silver prices cannot be wholly effective in stimulating silver output.

The Nation's principal foreign suppliers of silver—Canada, Mexico, and Peru—also obtain most of their silver as a byproduct of other mining activity. Also, the free world has been a deficit silver supply area for 5 years. With the outlook for continued shortage, imports cannot be looked to as a likely solution.

To meet the Department of the Interior's primary responsibility to assure adequate supplies of minerals to meet the industrial and strategic needs of the Nation as effectively as possible, Secretary Udall has:

Directed the Office of Minerals Exploration—after he consulted with appropriate congressional committees—to increase the percentage of Federal financial assistance from a current maximum of 50 percent to 75 percent of the total cost of new private silver exploration ventures.

Instructed the Office of Minerals and Solid Fuels to determine potential silver supplies available to meet mobilization needs and to develop information needed to establish an adequate mobilization base.

Ordered the Geological Survey to initiate a reconnaissance program to outline favorable areas for the occurrence of near-surface, high-silver deposits in Nevada. Initial work will entail geologic mapping and geothermal reconnaissance. Later studies will utilize experimental methods and techniques, and may include physical exploration of promising areas.

Directed the Bureau of Mines to place particular emphasis on silver in mining and metallurgical research and also in its nationwide resource evaluation investigations.

"We intend to make every effort to insure a silver supply adequate to the Nation's needs," Secretary Udall said. "Developments are being watched closely and the Department is giving top priority to all aspects of the silver situation."

Mr. DOMINICK. Mr. President, the gist of this announcement is that they propose to increase the percentage of Federal financial assistance by the Office of Minerals Exploration from 50 to 75 percent of the total cost of new private silver ventures. This proposal would not affect the price, mind you; it would merely increase the percentage of Federal funds to be used in finding new supplies. We will have to wait to get the opinions of the mining experts to see how meaningful this proposal may be. However, I should like to point out that there is considerable disagreement between various silver interests over this issue. In recent hearings, the spokesmen for the silver users contended that new domestic silver production could not be stimulated even if the price of silver doubled. This is disputed by mining experts. The Treasury, quite artfully, has said it does not really know.

I hope that this latest proposal will be of help, but I must point out that it still does not come to grips with the law of supply and demand. No matter how much Government assistance a miner gets, he still must market his product. If he cannot market his product at the current market price, then we have not really solved anything, no matter how much Federal money we may put into it.

I must also point out that if additional silver supplies are discovered through this stimulation, it will take a considerable period of time before production can be obtained, even if a price rise made such production profitable.

As I stated, I certainly hope that the Interior Department's actions will be helpful to the production of additional silver supplies. But I would suspect that it may be more calculated to obtain votes for western Democratic Senators now in tough races for reelection.

I say this deliberately. It seems to me that we have not tried to come to grips with the fundamental problem. That problem is that one cannot get marketed additional supplies of silver until such time as the law of supply and demand has operated, the price if silver has gone up, and thereby stimulated the production of additional silver. In the meantime, while we are doing that, we may devise some system to help out with problems which this will create in our coinage problem which we are now facing.

RELIEF OF NORA ISABELLA SAMUELLI

Mr. PROXMIRE. Mr. President, the Committee on the Judiciary yesterday ordered that two private claim bills, S. 2413 and S. 2414, for the relief of Nora Isabella Samuelli be favorably reported to the Senate.

In behalf of the Senator from Kentucky [Mr. COOPER], I wish to say that he had introduced the bills on December 20, 1963, for himself and the Senators from New York [Mr. JAVITS and Mr. KEATING], and is very glad that the committee has recommended their enactment.

The Senator from Connecticut [Mr. DODD] had also introduced a bill on this subject, and, as a member of the Committee on the Judiciary, has worked unceasingly to search out the facts and to secure the approval of the bills.

The Sentaor from Rhode Island [Mr. PELL] has also joined from the beginning in the efforts of the Senators to assure fair and proper relief for Miss Samuelli. Also, the Senator from Indiana [Mr. HARTKE] has been in touch with the committee, expressing his support for these bills.

Because of their deep interest and help on this case, the Senator from Kentucky has asked me to ask unanimous consent that the names of Senator DODD, Senator PELL, and Senator HARTKE be added as cosponsors of S. 2413 and S. 2414 when the bills are reported by the committee.

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

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. PROXMIRE. Mr. President, at the specific request of the leadership, I move that the Senate adjourn until 11 o'clock tomorrow morning.

Mr. DOUGLAS. Mr. President, will the Senator from Wisconsin withhold his motion?

Mr. PROXMIRE. Mr. President, I withhold my motion.

Mr. DOUGLAS. Before the motion is made, I ask unanimous consent that when the Senate reconvenes tomorrow, the Senator from Wisconsin [Mr. PROXMIRE] shall have the right to the floor and be privileged to continue his speech after the morning hour.

The PRESIDING OFFICER. After morning business has been concluded?

Mr. DOUGLAS. After morning business has been concluded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOUGLAS. Before the motion to adjourn is renewed, I invite the attention of Senators and the country to the significance of the statement of the Senator from Wisconsin that this action is being taken at the request of the Senate leadership. It is now almost 6 o'clock in the evening. Generally, the Senate convenes at 12 o'clock noon. But the Senate leadership wishes to have the Senate convene an hour earlier tomorrow. We are very glad to conform to this request.

The RECORD will bear out the fact that we who are opposed to the Dirksen-Mansfield amendment were ready to have a vote on the Javits-McCarthy-Humphrey substitute on Monday instead of Tuesday, but the leadership found it impossible to get a group together on Monday and so asked to have the vote go over until Tuesday. We have made every effort to be cooperative.