the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(For nominations this day received, see the end of Senate proceedings.)

RECESS

Mr. LUCAS. Mr. President, if there are no other Senators who desire to address the Senate, I now move that the Senate take a recess until Monday next at 12 o'clock noon.

The motion was agreed to; and (at 7 o'clock and 51 minutes p. m.) the Senate took a recess until Monday, March 14, 1949, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received March 12 (legislative day of February 21), 1949:

IN THE NAVY

The following-named midshipmen (aviation) to be ensigns in the Navy from the 3d day of June 1949:

John Abbott	Walter N. Haupt
Richard R. Allman	James R. Hoffman
Arthur H. Barie	John E. Huesgen
William H. Barry	Albert N. Into, Jr.
Frank C. Bonansinga	Don M. Isberner
Kenneth C. Bonine	Ralph A. Jenkins
Waldo L. Born	Jack E. Keller
Walter L. Brown	Francis J. Klinker
William L. Burgess, Jr.	Malcolm R. McCann
Edward J. Cosgriff, Jr.	Dwight A. Mahaffy
Robert E. Dobelstien	John E. Marshall
Orion J. Dussia	Ernest L. Masson, Jr.
George Dzamka	Victor E. Menefee, Jr.
Robert W. Fero, Jr.	William H. Mero
Bruce D. Fraites	James R. Messner
Bernard E. Goehring	Raleigh Miller, Jr.
William L. Hall	Charles P. Moore
Arthur D. Hamilton	Donald F. Munday
Kennard R. Hamilton	Leo A. Regan
Evan C. Harris	

The following-named (civilian college graduates) to be ensigns in the Navy from the 3d day of June 1949:

John H. Carroll, Jr.	Robert A. Lewis
Charles W. Cates	Charles E. Swingle
Frederick W. Denton III	Harold R. Podorson
	William E. Rhoads

Thomas J. Moran (civilian college graduate) to be a lieutenant (junior grade) in the Navy (special duty officer).

Harvey L. Rittenhouse (civilian college graduate) to be a lieutenant in the Medical Corps of the Navy.

John H. Schulte (civilian college graduate) to be a lieutenant (junior grade) in the Medical Corps of the Navy.

The following-named (civilian college graduates) to be ensigns in the Supply Corps of the Navy from the 3d day of June 1949:

Junius C. Bell	James C. Protulis
Everette T. Brown, Jr.	John C. Walker III
Dominic V. Cefalu	John R. Waltrip
Thomas J. Ingram III	Anton L. Witte

The following-named (civilian college graduates) to be lieutenants (junior grade) in the Chaplain Corps of the Navy):

Jonathan C. Brown, Jr.
Cornelius J. Griffin.

Howard B. Marble, Jr. (civilian college graduate), to be a lieutenant (junior grade) in the Dental Corps of the Navy.

The following-named to be ensigns in the Nurse Corps of the Navy:

Patricia M. Clark	Shirley M. Riggan
Sophia H. Gormish	Esther M. Thomson
Florence R. Martin	Ethel J. Whitesell
Verna LaJ. Miller	Mildred L. Williams
Lillian A. Patsel	Marjorie R. Wilson
Marie A. Petrovitch	Marion E. Withers

IN THE MARINE CORPS

The following-named officer for appointment to the permanent grade of major general in the Marine Corps:

Field Harris

The following-named officer for appointment to the permanent grade of brigadier general in the Marine Corps:

Christian F. Schilt

The following-named officer for appointment to the temporary grade of brigadier general in the Marine Corps:

Clayton C. Jerome

The following-named officers for appointment to the permanent grade of lieutenant colonel in the Marine Corps:

James O. Appleyard	Jack F. McCollum
Paul E. Becker, Jr.	Martin E. W. Oelrich
Charles H. Cowles	Jonas M. Platt
Eugene A. Dueber, Jr.	Leon A. Ranch
William F. Frank	John T. Rooney
Joseph A. Gray	Nicholas A. Sisak
Walter Holomon	John W. Stevens II
Louis N. King	

The following-named officer for appointment to the permanent grade of lieutenant colonel in the Marine Corps Reserve:

John J. Capolino

The following-named officer for appointment to the permanent grade of captain in the Marine Corps:

Josef I. Reece

The following-named officers for appointment to the permanent grade of first lieutenant in the Marine Corps:

Myrl E. Boys
Robert H. Porter, Jr.

The following-named citizens (civilian college graduates) for appointment to the permanent grade of second lieutenant in the Marine Corps:

John R. Heppert, a citizen of Ohio.
John K. Stewart, a citizen of Kansas.

SENATE

MONDAY, MARCH 14, 1949

(Legislative day of Monday, February 21, 1949)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Rev. Bernard Braskamp, D. D., pastor, Gunton Temple Memorial Presbyterian Church, Washington, D. C., offered the following prayer:

O Thou eternal God, we thank Thee for this new day. Grant that during all its hours we may be filled with a desire to serve our generation according to Thy holy will.

May the spirit of the Master fashion and permeate our character and conduct, our aspirations and hopes, our speech and actions, our attitudes and feelings toward one another and all mankind.

We pray that Thy servants may be guided in some special way by the eternal truth and righteousness of God as they formulate the policies and administer the affairs of government for our beloved country.

Help us to appropriate by faith the inexhaustible resources of divine wisdom which Thou hast placed at our disposal and may we meet our duties and responsibilities calmly and courageously.

In Christ's name we pray. Amen.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORTS OF COMMISSION ON ORGANIZATION OF EXECUTIVE BRANCH OF GOVERNMENT

A letter from the Chairman of the Commission on Organization of the Executive Branch of the Government, transmitting, pursuant to law, a report on the Department of Labor, and separately, in typescript, a meorandum on the Department by George W. Taylor, professor of labor relations, University of Pennsylvania, National War Labor Board (with an accompanying report); to the Committee on Expenditures in the Executive Departments.

A letter from the Chairman of the Commission on Organization of the Executive Branch of the Government, transmitting, pursuant to law, a report on information services as a further addition to the supporting data which accompanied the Commission's report on general management of the executive branch, filed with the Congress on February 7, 1949 (with an accompanying report); to the Committee on Expenditures in the Executive Departments.

A letter from the Chairman of the Commission on Organization of the Executive Branch of the Government, transmitting, pursuant to law, a task force report on independent regulatory commissions (appendix N), as a supplement to the Commission's report on regulatory agencies as well as the Commission's report on Commerce (with an accompanying report); to the Committee on Expenditures in the Executive Branch of the Government.

AMENDMENT OF CLOTURE RULE—AMENDMENT

Mr. MUNDT submitted an amendment intended to be proposed by him to the resolution (S. Res. 15) amending the so-called cloture rule of the Senate, which was ordered to lie on the table and to be printed.

CALL OF THE ROLL

Mr. LUCAS. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Hendrickson	Malone
Anderson	Hickenlooper	Martin
Baldwin	Hill	Maybank
Brewster	Hoey	Miller
Bricker	Holland	Millikin
Bridges	Humphrey	Morse
Butler	Hunt	Mundt
Byrd	Ives	Murray
Cain	Jenner	Myers
Chapman	Johnson, Colo.	Neely
Chavez	Johnson, Tex.	O'Conor
Connally	Johnston, S. C.	O'Mahoney
Cordon	Kem	Pepper
Donnell	Kerr	Reed
Douglas	Kilgore	Robertson
Downey	Knowland	Russell
Eastland	Langer	Saltonstall
Ecton	Lodge	Schoeppel
Ellender	Long	Smith, Maine
Ferguson	Lucas	Smith, N. J.
Flanders	McCarran	Sparkman
Frear	McCarthy	Stennis
George	McFarland	Taft
Gillette	McGrath	Taylor
Green	McKellar	Thomas, Okla.
Gurney	McMahon	Thomas, Utah
Hayden	Magnuson	Thye

Tydings	Wherry	Withers
Vandenberg	Wiley	Young
Watkins	Williams	

Mr. MYERS. I announce that the Senator from Arkansas [Mr. FULBRIGHT] is attending the funeral services of the son of the Senator from Arkansas [Mr. MCCLELLAN] and is therefore necessarily absent.

The Senator from Tennessee [Mr. KEFAUVER] is absent on public business.

The Senator from Arkansas [Mr. MCCLELLAN] is absent because of a death in his family.

The Senator from New York [Mr. WAGNER] is necessarily absent.

Mr. SALTONSTALL. I announce that the Senator from Indiana [Mr. CAPEHART] is necessarily absent.

The Senator from New Hampshire [Mr. TOBEY] is absent on official business.

The VICE PRESIDENT. Eighty-nine Senators having answered to their names, a quorum is present.

AMENDMENT TO CLOTURE RULE

The Senate resumed the consideration of the motion of Mr. LUCAS to proceed to the consideration of Senate Resolution 15, amending the so-called cloture rule of the Senate.

Mr. WILEY. Mr. President, on Friday night, March 11, 1949, I placed in the RECORD a short statement in relation to the issue before the Senate. I had already talked to a number of Senators, among them being the Senator from Arizona [Mr. HAYDEN], cosponsor of the resolution the motion to take up which is pending before the Senate. I have talked with a number of Democrats, including the Senator from Mississippi [Mr. STENNIS]. I personally stated that I would have no objection to fixing the percentage of Senators' votes that would close debate at the present two-thirds or three-fourths.

But Mr. President, I knew that this was but a part of the issue. Therefore, I suggested the ideas, which to everyone appeared absolutely new to them, and which I felt would do the job, to wit: That the resolution, once agreement was reached on the percentage, should contain the provision that the right to filibuster against any change in the rule relating to the percentage, assuming the resolution were adopted, should be retained.

This, as I stated, meant that if there should be an attempt at any time to change the amended rule 22 from two-thirds, or a greater percentage, to a greater or lesser number, cloture could never be invoked. Mr. President, I feel that it is important that we understand that basis.

Our problem is this: To maintain in our Government an appropriate check and balance and at the same time so to constitute the machinery of government that it can function efficiently as a world power. As I stated on Friday last in my statement:

> Changing conditions sometimes require new rules or new interpretations.

During the debate a number of instances have been cited to illustrate the truth of that statement. The Hoover Commission has clearly demonstrated that this conclusion applies not simply to Congress and it has made no recommendations with respect to Congress, but applies to all departments of the Government. It is a significant thing, Mr. President, that this Commission, on which are some of the best brains of our country, have recognized that the changing conditions require changing rules or new interpretations.

Modern inventions and ingenuity have not only made necessary this change, but an added reason is that as a world power, our activities are now far-flung throughout the globe. We have not only, on the one hand, a contracted globe due to our inventiveness and ingenuity, but for the first time, because of the exigencies of the new day, we have reached out and, everywhere on the globe we are in the picture. So we must have an efficient governmental mechanism not only in Congress, but, as stated by the Hoover Commission, in the administrative branch of the Government.

I repeat, the Hoover Commission has made it clear that all departments of Government are dragging their feet and not performing as they should. Therefore we in Congress must make sure we are on our toes, that we are not dragging our feet, that we have a mechanism which will do the job, whatever it is, and that, whatever emergency may arise, our work will be efficient.

Mr. President, if the suggestion I made on March 11 is adopted we will be able to carry through the business before us, and will not be accused of dragging our feet and, Mr. President—I wish to make this very clear—we will also protect the fundamental rights of the private citizens and the fundamental rights of the States.

Mr. President, on practically any measure that comes before this great body there is some misunderstanding at times. I am one of those who believe that the maintenance of checks and balances in Government is imperative, more so than ever in this period. I am not one of those who feel that we can get rid of checks and balances in Government. I want to make myself clear on that subject. I would not vote for the majority provision which has been suggested. I think it would be catastrophic. We shall need all the checks and balances that are fundamentally sound and correct, in the not too distant future, especially when we have to meet the impact of the administration's onward march toward socialism.

If the Senate of the United States had gone like the House in the recent national election, we would have bills in the hopper which would provide for the Government taking over insurance companies and banks. So, Mr. President, the maintenance of checks and balances in the Senate is imperative. It is important that we maintain them to stop the onward march that is in progress all over the world, which has taken over the European continent, and which would wipe out our American concepts which have been maintained by the checks and balances in government.

There is another reason why we should get along with our business. We shall soon have the North Atlantic Pact in our laps. Everyone else has talked about this pact. The newspapers have it. Apparently it has not been released, and yet it has been released. I feel that there should be a complete discussion of the pact, and that the people should be permitted to know the full implications thereof. This is the first time it has been proposed to violate in writing the ancient concepts of George Washington. I am not saying that we should not. Again I point out that we are living in a changed world with changed obligations, changed conditions.

But I am saying that the people of the country should be advised of the implication of the responsibilities and the liabilities. So I say that we had better get on with the big business before us. Let us maintain the checks and balances, and preserve the right in the Senate so that the President alone will not have the veto power, but we shall have the veto power in relation to acts of the President.

Approval of the pact would make it the fundamental law of the land. Mr. President, we do not break promises. The obligations of the pact, as indicated in the newspapers, are clear-cut and definite. We have become involved in two world wars without having any pact or agreement in relation to cooperation and collaboration with other nations. If we had had such an agreement, would the Kaiser have started? If we had had such an agreement would Hitler have started?

I repeat that the purpose of the pact is clear-cut. It says, in the ancient slogan of America, "Do not tread on me," and we add, "Or any of my associates. If you do, I will go to war." We went to war without having such pacts. Now we say to the world, "Do not start anything. You know what we will do."

So I suggest to our brethren who are seeking to find the way out of this legislative dilemma called a filibuster, that they consider the two suggestions, first, a two-thirds vote, and second, a three-fourths vote, and reach some agreement. Then I suggest that we write into the new rule the proviso that if at any time it is suggested that the percentage shall be changed that it shall be subject to filibuster. I believe that if that is done, in a few days we shall be under way. We shall give to the country a demonstration of efficiency, which we must have, and we shall have a mechanism which will work. If it works as it should, we shall wipe out the misunderstandings which are so prevalent, misunderstandings due not simply to ignorance, but due to propaganda which vicious people are sending through the country, the purpose of which is to do away with the legislative branch of government.

Mr. ELLENDER obtained the floor.

Mr. BUTLER. Mr. President, will the Senator yield for an insertion in the RECORD?

Mr. ELLENDER. I decline to yield.

Mr. DONNELL. Mr. President——

Mr. ELLENDER. I yield for a question only.

Mr. DONNELL. I should like to ask the Senator if he has any objection to my asking leave to be excused from the Senate for a certain period?

Mr. ELLENDER. I have. I would lose the floor if I did so.

Mr. DONNELL. Mr. President, I ask unanimous consent that the Senator may not lose the floor——

The VICE PRESIDENT. The Senator cannot yield for that purpose.

Mr. DONNELL. Mr. President, a parliamentary inquiry——

Mr. ELLENDER. Mr. President, I decline to yield.

Mr. DONNELL. Mr. President, will the Chair rule——

Mr. ELLENDER. Mr. President, I decline to yield.

The VICE PRESIDENT. The Senator cannot yield for anything but a question.

Mr. DONNELL. That was not my parliamentary inquiry. The parliamentary inquiry is——

The VICE PRESIDENT. The Senator cannot yield for a parliamentary inquiry.

Mr. DONNELL. Will the Senator yield for a parliamentary inquiry if he does not lose his place on the floor?

Mr. ELLENDER. I cannot do that. As I understand the rule, if I did that I would lose the floor.

The VICE PRESIDENT. The Senator cannot yield for anything but a question.

Mr. DONNELL. I am asking unanimous consent that he may do so without losing the floor.

The VICE PRESIDENT. That is not a question within the rule.

Mr. LUCAS. Mr. President, I demand the regular order.

The VICE PRESIDENT. The Senator from Louisiana declines to yield.

Mr. ELLENDER. Mr. President, this debate involves a single issue: Will free speech continue as the outstanding characteristic of the United States Senate, or will it give way to gag rule? Will the Senate remain a place of last refuge to protect the rights of a free people, or will it become a mere rubber stamp for any political group in power, the majority for the moment?

For 143 years—since 1806—free debate in the Senate has served as a beacon light against tyranny. During that period our country has withstood six wars, including that supreme test of any government's sovereignty—a civil war. We have come through the strain and tension that accompany economic depressions, quick growth in population and area, and changes in political administrations.

Other governments have crumbled under these pressures. Ours remains free and strong. I believe that much credit for that condition results from the Senate's right of unlimited debate. It has operated as a most important element in the system of checks and balances that the authors of our Constitution so wisely provided.

In passing, let me say that I was glad to note the position taken a few moments ago by the distinguished Senator from Wisconsin [Mr. WILEY] on that subject.

It is no mere accident that our Constitutional Government has endured through these years. There have been in the past, and there will be in the future, ambitious men who would compromise the rights and freedoms of Americans. They would readily exploit a legislative majority to run roughshod over the rights of some of our people. But always their attempts are frustrated in the Senate, where the voices of minorities can be heard.

Despite the high-sounding utterances we hear every day in the Senate about democratic procedure and majority will and efficiency of the Senate, I don't believe that anyone can honestly escape the conviction that this movement to change the Senate rules is dictated solely by the agitation of pressure groups to throw a political sop to certain minorities, particularly the Negro. There can be no other consideration, despite all the arguments advanced. It may be charged that the Senate is inefficient, but no Senator can seriously contend that the legislative process has broken down or is even near the breaking point. Senators may inject the issue of national danger, but there is no rational ground for their statements. We have only recently emerged from the most cruel war in history, and this body functioned efficiently throughout that period without surrendering its cherished heritage of freedom of speech. I repeat, Mr. President, there can be no consideration other than politics behind the demands for curtailing debate. This rules change is desired only as a means toward the passage of certain legislation, the President's civil-rights program. During this debate, our majority leader stated that to be the purpose in no uncertain terms. The laws are demanded by certain minorities as their price for political support. The advocates of these proposals would, in my judgment, destroy our most powerful protection against despotism; they would destroy our last citadel of freedom of speech.

It occurs to me, Mr. President, that this consuming desire, on the part of the leadership in both of our great political parties, for the political support of minority groups, has caused many men to lose perspective. I simply cannot understand it. During the 12 years I have been a Member of this body, I have developed a tremendous admiration for many Senators who have always been found in the front line of battle to preserve constitutional Government. I have watched them fight skillfully. I have heard them argue with appeal and effect that the trend toward centralized government must be checked. I have heard them say with force and conviction that executive power must not be allowed to assume a position of predominance. I have heard them warn that bureaucratic tyranny is about to absorb the rights of the individual. At the moment, the Senate has before it a proposal that is so dangerous to constitutional government and so capable of untold evil, that I should expect the instant opposition of these champions of freedom. I should think that these men would stand up again and, pointing to the danger, would give the Senate the benefit of their advice. Surely, they are not blind to the dangers lurking ahead, should they permit cloture to be imposed by a simple majority, as is now being advocated by none other than the President of the United States.

Mr. President, when the first Senate organized in 1789, it adopted, among others, the previous question rule. The rule remained in effect until 1806, when the rules were revised and the previous question rule was omitted. During the 17 years from 1789 to 1806, the previous question was moved only four times, and was invoked only three times. Like several other rules copied from other parliamentary systems, it was found unnecessary or obnoxious. The Senate soon rid itself of it.

From 1806 to 1917, the Senate operated entirely without a cloture rule, except for a brief interval during the Civil War when debate was limited to 5 minutes when the Senate was in secret session considering matters pertinent to the war.

It is interesting and significant that from 1806 until 1917, there were many attempts to impose a permanent cloture rule in the Senate, but they were always voted down.

In 1917, as the United States approached entry into World War I, a cloture rule was adopted as an amendment to rule XXII, and it is still a part of the Senate rules.

I do not think it can be effectively argued that adoption of this rule in 1917 was anything but an emergency, wartime measure. Only three Senators voted against its adoption. Does it stand to reason that for more than a hundred years the Senate, time and time again, rejected cloture proposals, and then, suddenly, in 1917, only three Senators opposed cloture? Very plainly it was a wartime measure, and should be so considered.

Mr. President, the Legislative Reference Service of the Library of Congress recently issued a very interesting thesis, entitled "Limitation of Debate in the United States Senate." This document traces the history of debate in the Senate, presents a discussion of Senate rules, and gives a summary of arguments for and against the practice of filibustering.

One portion of the document has undoubtedly created a false impression. It purports to show a list of 37 measures defeated by filibuster; but as the Senator from Arizona and others have pointed out, this is an error. Only four proposals have thus far been defeated by filibuster. One of these was the obnoxious Force bill of 1890–91, and the other three are the so-called civil rights measures, which I contend are directed at the South, and are resented by the South. The remaining 33 bills listed as defeated by filibusters, although possibly delayed, were ultimately enacted into law.

This document includes some 14 arguments against filibustering. Perhaps the Senators supporting the pending rules change have not endorsed all these arguments. Nevertheless, they are commonly heard, and they have been placed in the RECORD. I want to discuss a few of them and attempt to reveal their false foundations and the fallacious reasoning that dictates them.

Here are two of the arguments; I quote:

Under the practice of filibustering, the basic American principle of majority rule is set at naught. Not only is the majority thwarted in its purpose to enact public measures, it is also coerced into acceptance of measures for which it has no desire or approval.

Filibusters are undemocratic, in that they permit one-third of the Senators present, plus one, to obstruct the majority. This group of Senators may be from only one section of the country, they may be from only one political party, and none of them may have been recently elected. It is a dubious argument to defend the filibuster on the ground that it protects the minority when actually its principal use, actual or potential, is to deny fundamental democratic rights to certain minorities. Most of the really undemocratic conditions in our country today exist because of the threat or use of the filibuster.

In connection with the pending resolution, we hear frequent mention of the term "will of the majority." We hear it argued, as set forth above, that the right of unlimited debate in the Senate thwarts or defeats the will of the majority and sets at nought the so-called principle of majority rule.

If there is a single lesson that should be taught us by a study of American history and by an inspection of the expressions of the men who framed our Constitution, it is, that complete majority rule, in its strict, literal meaning, has never been followed in the United States. The framers of the Constitution never intended it should be practiced. They clearly contemplated a limited majority rule. They devised elaborate controls and restraints designed to prevent the majority of the moment from altering the fundamental structure of the Government. They realized that human beings often act hastily and passionately, and they sensed that the time would come when a majority might seek to impair the freedoms for which they had fought. So they devised an elaborate system of curbs. The right of unlimited, unrestrained debate in the Senate is one of those curbs, and one of the most vital.

The filibuster is labeled an undemocratic practice. It is alleged that it thwarts the will of the majority. If that be true, then it can be argued that the entire Constitution under which we govern ourselves is undemocratic, because there are many devices contained therein which serve the sole purpose of thwarting or defeating the will of the majority. I shall discuss them in a moment.

What is the standard for measurement of the majority's will? How can we accurately determine the sentiments of the majority of the American people? As James Bryce wrote in his book the American Commonwealth, "the obvious weakness of government by opinion is the difficulty of ascertaining it." Senators sponsoring the change in rules say the majority will is being defeated. I wish they would tell us how they know a majority of our people favor one measure or another.

Do Senators determine the majority's will from the volume and content of their mail? That seems unlikely in this day, dominated by highly organized and well-financed pressure groups. Do Senators feel that a majority of the Senate is always an accurate reflection of the majority sentiment? Such a conclusion is patently wrong and unjustified. A majority of the Senate is merely a majority of States, which may or may not include a majority of the American people.

A combination of one-third of the 48 States contains two-thirds of the Nation's population. The remaining two-thirds of the States contain only one-third of the population. A combination of one-fifth of the States—nine States—contains one-half of the total population of the United States.

First. One-fifth of the States—nine States—contain approximately one-half of the population of the United States—1940 census:

New York	13,479,142
Pennsylvania	9,900,180
Illinois	7,897,241
Ohio	6,907,612
California	6,907,387
Texas	6,414,824
Michigan	5,256,106
Massachusetts	4,316,721
New Jersey	4,160,165
Total for 9 States	65,239,378
Total population United States (1940 census)	131,669,275
One-half of population	65,834,638

Second. One-third of the States—16 States—contain approximately two-thirds of the population of the United States—1940 census:

Total for 9 States as listed above	65,239,378
Missouri	3,784,664
North Carolina	3,571,623
Indiana	3,427,796
Wisconsin	3,137,587
Georgia	3,123,723
Tennessee	2,915,841
Kentucky	2,845,627
Total for 16 States	88,046,239
Total population United States (1940 census)	131,669,275
Two-thirds of population	87,779,516

The remaining States would account for the other one-third.

Perhaps some Senators feel that since the House of Representatives is constituted on a proportionate population basis, a majority vote on a measure in that body indicates that a majority of the American people favor a measure. Indeed, if the rules of the Senate are changed to abolish unlimited debate, I believe the Senate will eventually deteriorate until its only function will be to ratify House action. It will probably occupy the same status in our Government as the House of Lords now occupies in the British Parliament.

But let us examine further into the so-called principle of majority rule. Some say when Senators use their right of unlimited debate to prevent or delay legislative action they are guilty of defeating the will of the majority. Let us consider instances wherein the will of the majority is restrained or defeated, not by filibuster or other dilatory tactics, but by the constitutional functioning of our Government.

The House of Representatives can pass a bill by a large majority, a margin that may be so great as to indicate overwhelming popular approval by the American people, if House sentiment is to be judged a measure of the people's sentiment. The bill comes to the Senate, and after full inquiry by committee and after full debate, the Senate votes and rejects the bill. In rejecting such a bill, has not the Senate thwarted the will of the majority as reflected by the House vote? Is the Senate's right to disapprove wrong? Is it undemocratic? Is it a thoroughly democratic procedure for a majority of the Senate, representing possibly a minority of our people, thus to set at naught the so-called principle of majority rule? It happens at every session of Congress. What should we do about it? Amend the Constitution so that either house of Congress would be prohibited from rejecting action of the other?

In 1946 the Congress passed an act, by a preponderant majority in each House, quitclaiming all Federals rights to possession of our tidelands and recognizing full ownership thereof in the several sovereign States. I do not think any Senator will deny that the passage of this act met the approval of a majority of our people, as reflected by their elected representatives in Congress. But what happened? The President vetoed the bill. He exercised his constitutional right arbitrarily to obstruct the people's will. It is legal; it is constitutional. The veto power has been used since Washington's time as a check of majority rule. It has been used by 25 Presidents. All the President of the United States has to do under the Constitution is to state his objections to the legislation. His objections may be a well-reasoned argument that the bill is unconstitutional, or that it is not beneficial to the Nation, or his objection may be that he does not like the color of the paper on which the bill is printed. In the case of a pocket veto, he does not have to state any objections at all. Unless both Houses can muster a two-thirds majority to override the President, his objections are sustained. And in the case of a pocket veto, the Congress has to wait until a new session convenes in order to take corrective action. Is it undemocratic for one man, the President of the United States, with or without valid objection, to defeat the will of a clear majority of the Congress? Do Senators want to amend the Constitution and do away with this offending provision?

Consider another example, legal and constitutional, whereby the majority's will is obstructed by a minority: During the first session of the Eightieth Congress, a tax-reduction measure was passed. It was known as H. R. 1. The House passed it on March 27, 1947, by an exact two-thirds majority, 273 voting for the bill and 137 voting against it. It came over to the Senate, where it was passed on May 28. Voting for the bill were 52 Senators, more than 60 percent of those Senators voting. Would it not appear that such majorities in both Houses indicated that most Americans wanted the law? We all remember what happened. The President vetoed the bill on July 18, returning it to the House with a statement of his objections.

Within minutes after hearing the President's veto message, the House of Representatives voted to override the President. The vote was 299 to 108. Two hundred and ninety-nine House Members—73 percent of those voting—reaffirmed the sentiment of the majority.

When the Senate voted on the matter, 57 Senators voted to override and 36 Senators voted to sustain the President. The Senate, by a 61-percent margin, again announced that its majority favored enactment of the bill. But the Constitution requires a two-thirds majority in each House to override a Presidential veto, and the bill did not become law. This instance presents a clear-cut case: Approximately one-third, 39 percent of the Senate, very definitely frustrated and obstructed the will of 61 percent of the Senate and 73 percent of the House of Representatives. Let us examine the Senate vote on that matter and figure the population aspect. Both Senators from each of 19 States voted to override. They represented a total population of approximately 50,000,000. Both Senators from each of nine States voted to sustain. They represented a total population of approximately 15,000,000. Senators from 20 States split their vote, one voting to sustain and the other voting to override. These States contain approximately 60,000,000 persons. I do not argue this as an accurate estimate, but to be fair, let us assume that each Senator represented half his constituency. Let us suppose that 30,000,000 favored overriding the veto and the other 30,000,000 favored sustaining the President. Thus, we see that some 80,000,000 Americans, just about two-thirds, wanted to override and some 45,000,000 wanted to sustain. Is it not apparent that one-third of the people, with the help of the President and a few Senators, obstructed the will of the other two-thirds?

I do not hear any oratory condemning this undemocratic feature of our Government. I do not recall reading any books condemning this procedure. I do not know of any pressure groups fighting for its removal. It is reasonable to assume, however, that if Presidents should ever exercise their power to veto measures in which pressure groups are interested, the chances are that a clamor for a change would soon be resounding in our legislative halls.

Here is another example: The Congress may pass a bill, possibly without a dissenting vote in either House. The President approves it and it becomes the law of the land, yet a nine-member Supreme Court can nullify it. If the Court divides and renders a 5–4 decision, it might be said that one member of the Court defeated the will of the majority of the American people. There are some who deny that the Court has power of judicial review of congressional acts. They say such provision is not in the Constitution; they are correct. The power of judicial review is not explicitly provided in the Constitution, but it is clearly implied, and time and custom have established that power in the Supreme Court so firmly that it would take a constitutional amendment to remove it. The Supreme Court often defeats the will of the majority. Should we deny the Supreme Court that right?

These are merely a few examples of what the framers of the Constitution had in mind—evidence that they feared majority rule and deliberately wrote into the Constitution elaborate devices by which the dangers of complete majority rule could be eliminated.

Consider how difficult it is to amend the Constitution. Many steps are involved and considerable time is required. If our founding fathers had intended this country to be governed by simple majority rule, it occurs to me that they would have framed the Constitution to allow its change whenever sentiment among a majority of the people called for a change. By the same token, it seems to me that those people who want to change the fundamental character of our Government should first seek to change the Constitution itself by removing all these devices which defeat the majority's will.

To amend the Constitution, it is necessary for both the House and Senate to pass a resolution placing the proposal before the several States. The resolution must pass each House by a two-thirds majority—not a simple majority, but a two-thirds majority. Then the proposal is submitted to the several States. Three-fourths of the States—not a majority and not two-thirds—but three-fourths of the States must ratify the proposed amendment before it can be effective. Each State is free to ratify the amendment or to reject the amendment or to take no action whatsoever. There is no way for the Congress to impose cloture on the State legislatures. The Congress cannot command the State legislatures to vote on the proposition after 96 hours of debate or at 2 o'clock next Tuesday. States can act or they can fail to act. The Louisiana House of Representatives can ratify the amendment without a dissenting vote, the Louisiana Senate can reject it by one vote, and Louisiana's ratification is withheld. If the Louisiana Legislature desires, it can pigeonhole the proposition for 10, 15, 30, or 50 years before considering it, unless a time limit is provided in the proposal. This is a clear example of dilatory tactics. But it is legal; it is constitutional. Shall we change it?

This elaborate system of checks and balances did not just happen. Those safeguards were placed in our Constitution deliberately. They result from a deeply ingrained fear on the part of our founding fathers—fear that a strong executive, exploiting a simple but determined majority of Representatives and Senators, would override the guaranties of freedom unless checked.

Mr. President, as I read the debates that took place at the Federal Convention of 1787, it seems perfectly clear that the men who wrote our Constitution intended the Senate of the United States to be a place where majorities could be sometimes resisted, and not as a place where majorities were always to be accommodated.

At this point I want to read to the Senate a few paragraphs from that debate. I quote only from the remarks of James Madison and Edmund Randolph, but I believe that the fears and opinions they expressed were an accurate reflection of the general temper of the Convention. I quote from Debates in the Federal Convention of 1787 as Reported by James Madison, House Document No. 398, Sixty-ninth Congress, first session:

James Madison, page 169: "The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch."

James Madison, pages 162 and 163: "All civilized societies would be divided into different sects, factions, and interests, as they happened to consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression. These observations are verified by the histories of every country, ancient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces: the former possession the power, and the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and if her authority had been admitted, could have pursued that interest at our expense. (We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.)"

This is still Mr. Madison speaking:

What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a republican government the majority, if united, have always an opportunity. The only remedy is to enlarge the sphere, and thereby divide the community into so great a number of interests and parties, that in the first place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the second place, that in case they should have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale and in such a form as will control all the evils which have been experienced.

Now from page 196 I again quote Mr. Madison:

Mr. Madison considered 7 years as a term by no means too long. What we wished was

to give to the Government that stability which was everywhere called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of 7 years. His fear was that the popular branch would still be too great an overmatch for it. * * * It was to be much lamented that we had so little direct experience to guide us. The constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the senate of Maryland created just suspicions of danger from it. In some instances perhaps it may have erred by yielding to the house of delegates. In every instance of their opposition to the measures of the house of delegates they had had with them the suffrages of the most enlightened and impartial people of the other States as well as of their own. In the States where the senates were chosen in the same manner as the other branches of the legislature, and held their seats for 4 years, the institution was found to be no check whatever against the instabilities of the other branches. He conceived it to be of great importance that a stable and firm government organized in the republican form should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

Those words, Mr. President, are not mine; they are the words of James Madison. I quote further from Mr. Madison, at page 279:

In order to judge of the form to be given to this institution (Senate), it will be proper to take a view of the ends to be served by it. These were first to protect the people against their rules; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would be first aware that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be to divide the trust between bodies of men, who might watch and check each other. * * * It would next occur to such a people that they themselves were liable to temporary errors, through want of information as to their true interest, and that men chosen for a short term and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest that the government be so constituted, as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion would be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence against this danger would be to select a portion of enlightened citizens, whose limited number and firmness might seasonably interpose against impetuous councils. It ought finally to occur to a people deliberating on a government for themselves that as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses be tempted to commit injustice on the minority. * * * How is this danger (of changing interests) to be guarded against on republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded against? Among other means by the establishment of a body in the government sufficiently respectable for its wisdom and virtue, to aid on such emergences, the preponderance of justice by throwing its weight into that scale. Such being the objects of the second branch in the proposed government he thought a considerable duration ought to be given to it.

That was Madison speaking, Mr. President.

I now shall quote a few passages from Edmund Randolph, of Virginia, as they appear on page 128 of the book to which I have just referred:

Mr. Randolph observed that he had * * * stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought against this tendency of our governments; and that a good Senate seemed most likely to answer the purpose.

Mr. Randolph, page 196: "The democratic licentiousness of the State legislatures proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the National Legislature. If it be not a firm body, the other branch being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland constituted on like principles had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure, of the Executive, will in all cases be necessary. A firmness and independence may be the more necessary also in this branch, as it ought to guard the Constitution against encroachments of the Executive who will be apt to form combinations with the demagogs of the popular branch."

Mr. President, I believe that unlimited debate in the Senate is an integral part of this system of checks and balances. I believe that the great and wise men who planned our Constitution intended that the Senate should be a forum where such a check should operate. Just as the power of the Supreme Court is implied as a part of the system of checks and balances, I believe they foresaw and intended that unlimited debate in the Senate should be a part of the system.

I deny that one or even several Senators can obstruct the legislative process, as some advocates of rules change say. I contend that free debate in the Senate has not been abused to an extent where our country has suffered or its interests jeopardized.

I believe that whenever 20 or more Senators from a dozen or more sovereign States are so unanimous in their belief that a measure is unconstitutional, impractical, and greatly injurious to the interests of their constituents, it is in order for the Senate to proceed carefully. Under such circumstances, they are not only justified under the Constitution, but they are duty bound to use every legal means at their command, specifically including the right of unlimited debate, to present their case to the American people.

I deem it highly unwise to attempt to force a law through Congress that would not have a chance of approval by the American people if it were submitted to them for decision. If it were possible to submit to the people of this country, as the sole issue, the President's civil-rights program, I know it would be snowed under.

Another argument that appears in the pamphlet prepared by legislative reference reads:

The constitutional provision that the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal requires an immediate vote when the yeas and nays have been properly demanded.

This is a gross and deliberate misinterpretation of article I, section 5, clause 3 of the Constitution, which states:

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

The entire paragraph deals with the Journal—its keeping, publications, and form. The phrase "yeas and nays * * * shall * * * be entered on the Journal" has to do only with the recording and publication of the yeas and nays. It means only what it says—that whenever a vote is to be taken, one-fifth of Senators present can call for a record vote as distinguished from a voice vote. It does not mean, and cannot intelligently be stretched to mean, that one-fifth of Senators present can shut off debate and require a vote to be taken.

If any further clarification is needed, it is readily furnished in unmistakable form by the actual words of the men who framed the Constitution. The record is very plain that when they wrote this section, they had in mind only the clerical procedure of recording a vote.

On Friday, August 10, 1787, the Constitutional Convention considered this particular section for debate. At that stage of the proceedings, this language was section 7 of article VI, reading as follows:

The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a Journal of their proceedings, and shall, from time to time, publish them; and the yeas and nays of the Members of each House, on any question, shall at the desire of one-fifth part of the Members present, be entered on the Journal.

I quote now from Madison's journal:

Article VI, section 7, was then taken up.

Mr. Gouverneur Morris urged that if the yeas and nays were proper at all, any individual ought to be authorized to call for them; and moved an amendment to that effect. The small States may otherwise be under a disadvantage, and find it difficult to get a concurrence of one-fifth.

Mr. Randolph seconded ye motion.

Mr. Sherman had rather strike out the yeas and nays altogether. They never have done any good, and have done much mischief. They are not proper as the reasons governing the voter never appear along with them.

Mr. Elseworth was of the same opinion.

Colonel Mason liked the section as it stood. It was a middle way between the two extremes.

Mr. Ghorum was opposed to the motion for allowing a single member to call the yeas and nays, and recited the abuses of it in Massachusetts in stuffing the journals with them on frivolous occasions (and) misleading the people who never know the reasons determining the votes.

The motion for allowing a single member to call the yeas and nays was disagreed to (unanimously).

Mr. Carroll and Mr. Randolph moved * * * to strike out the words "each House" and to insert the words "the House of Representatives" * * * and to add to the section the words "and any Member of the Senate shall be at liberty to enter his dissent."

Mr. Gouverneur Morris and Mr. Wilson observed that if the minority were to have a right to enter their votes and reasons, the other side would have a right to complain, if it were not extended to them: and to allow it to both, would fill the Journals, like the records of a court, with replications, rejoinders, etc.

The Convention voted down Mr. Carroll's motion. Without any further debate on that part of the section, the Convention adopted it by unanimous vote on the following day, August 11, 1787. (P. 518 et seq., Debates in the Federal Convention of 1787 as Reported by James Madison, Documents Illustrative of the Formation of the Union of the American States, H. Doc. No. 398, 69th Cong., 1st sess. 1927.)

One of the arguments we frequently hear in support of changing the rules of the Senate is that the Senate is not operating efficiently. It is contended that the efficiency of the Senate could be increased if we had a gag rule to shut off debate.

Mr. President, I do not doubt that for a moment. I believe that it is well established and recognized that loss of efficiency is the price we have to pay for democracy. Almost anybody will admit that a dictatorship can operate faster, smoother, and with less waste than a free government.

One of the most efficient governments in history was the Third Reich. Hitler fashioned a government that was the smoothest piece of governmental machinery the world had ever seen. The government of Germany was too efficient to allow any legislative action that was not to the wishes of the majority. The Reichstag did not dilly-dally over legislative procedure. It did not waste time in debating issues or holding committee hearings. It was efficient to the point where it had only one duty—to roar approval of any measure "the majority" might request. The majority was none other than Adolf Hitler. No time was lost. No dilatory tactics were permitted. No expense was caused by filling the Reichstag Record with speeches. The Reichstag was a marvel of efficiency.

We all remember another great apostle of efficiency, Benito Mussolini. He came to power in Italy by promising to make the trains run on time. He created an efficient government in Italy, and under it the trains did run on time. The Italian legislature also ran on schedule—Mussolini's schedule—entirely unfettered and unhampered by freedom of debate.

I have no information about the Russian legislative body, but whatever it is and wherever it is we can be sure that it is a very efficient body. And I feel safe in asserting that it does not enjoy the privilege of unlimited debate.

If we accept this doctrine of efficiency in our country, what is it going to lead to? Will passage of this resolution alone bring about the millennium? If we curtail debate in the Senate, will that alone bring about the utopia wherein the Senate can do its business efficiently and satisfactorily?

I think not. I think instead that the day will come—and soon—when the leadership in the Senate will be impatient with the two-thirds rule. It requires too much time. It is wasteful. It is inefficient. It defeats the will of the majority. Having the power and the votes to do so, and an efficient two-thirds cloture rule to muzzle the opposition, the leadership will drive through a further change in the interest of efficiency. The rules will be amended whereby a simple majority can shut off debate at any time.

Surely that should be enough to satisfy the disciples of efficiency. If that situation comes about—and it most assuredly will if we vote this pending rules change—if that situation comes about, it portends the absolute finish of democratic government in this country. The system of checks and balances will come to an end. The more or less even keel upon which our Government has operated for so many years will be sharply upset. I think we will discover that unlimited debate in the Senate is the keystone of the system of checks and balances. Remove that keystone, and the whole structure will come tumbling down. The majority of the moment can control everything. The Constitution will be merely a piece of paper. The majority of the moment could revise the Federal courts to assure efficiency in the judicial branch. It could pass any kind of law it wanted. It could pass laws specifically violating the Bill of Rights and even removing the constitutional rights. Who or what is going to stop them? The Supreme Court? Not the Supreme Court. The efficiency experts would have long since taken steps to bring that institution into the orbit of efficiency. This is not preposterous fantasy, Mr. President. Every Senator in this Chamber—and there are few present at the moment—knows how easily the Supreme Court could be changed by a Senate majority. It almost happened a few years ago. The Senator from Texas [Mr. CONNALLY] told us about this just the other day. He said that when the Supreme Court reorganization bill was first proposed it would have passed the Senate by a 3-to-1 majority if cloture had been applied to end debate. Only through free and unlimited debate in the Senate did the American people become aware of the dangers of the proposal. Only by unlimited debate were Senators convinced that the bill should not be passed.

These advocates of efficiency are not going to stop when they have a two-thirds rule, or the simple majority rule that will surely follow. They will soon find that the Senate is running far ahead of its committees. Senate action will be so easy that it will find itself caught up with its work, waiting for the committees to report more bills.

When that situation comes about, Mr. President, the efficiency experts of the Senate will decide that something must be done with the old-fashioned, outmoded, time-wasting, inefficient committees. They will decide that the committees are obstructing the will of the majority. The committees could be described as undemocratic. To remedy that loophole in democracy, the efficiency experts, using their new-found plaything, could easily shut off debate and vote on a proposition to limit the committees in the time they can have to consider legislation. They might provide that whenever a bill is committed it will be accompanied by an order to make a report on the bill within 1 week. They will argue that certainly a week is long enough for a committee to consider a bill. If 48 hours or 96 hours is long enough for the Senate to consider a measure, surely, it is a generous gesture to allow a full week for a committee. Of course, it will probably develop that a committee cannot hear all of its witnesses in a week; so, in the interest of efficiency, it will be necessary to limit the number of witnesses who may appear, and also limit each witness in the amount of time he can consume. Two hours should be sufficient. An efficient witness should be able to say all he has to say on a subject in 2 hours. If he is not an efficient witness, then the committee has no business hearing him at all. "Two hours—that's enough," they would say. And, of course, sooner or later, the efficiency experts will get together and decide that even 2 hours is too long, and they will chop that time down to 1 hour, and then a half-hour, and so on.

That may sound fantastic to Senators, Mr. President, but that is the doctrine, followed to its logical conclusion, we will hear in the interest of efficiency if we permit it to get a start.

Efficiency is a wonderful thing to contemplate. It will be a great and glorious day for the Congress when the efficiency experts get through. Congress will meet on the 3d day of January each year, just as the Constitution provides. There will not be any time lost. The bureaucrats will have a slate of legislation all ready for Congress. The assembly line will go to work immediately, and before the end of the week the Senate can start grinding out bills. This new-found majority power can probably finish everything by the 1st of February, and then all of us can go home. When we get home we may find some soldiers in our back yard to make sure that nobody harms the efficient Senators, but that will be all right. It will all be in the interest of efficiency.

Mr. President, the remarks I have just made may sound fantastic and farfetched, but let the Members of this great body take heed. The movement to obtain a majority cloture rule is already well under way. It has support from both sides of the aisle, although I note considerable change in attitude among my friends on the Republican side as a

result of events of the past week. They have witnessed and felt the efficiency and ruthlessness of a majority voting strictly on party lines. They have seen the tactics employed by a majority in jamming a bill through committee. They have been further enlightened by a recent statement of the President of the United States asking for majority cloture in the United States Senate. They know the purpose behind the President's desire for majority. Their eyes have been opened, and their minds have been cleared of any false ideas or dreams they might have held about the so-called traditions of the Senate and the innate and everlasting spirit of fair play which, according to one of their membership, will always protect a minority group against roughshod tactics by the majority of the moment. As has been pointed out by the Senator from Mississippi [Mr. STENNIS] and by others, the rules of the Senate, and not the superior intellect or integrity of its Members, is what sets the Senate above and apart from any other legislative body in the world.

Mr. President, I fear that majority power will become a dangerous toy, an awful plaything that will be used to push and pull and bounce and destroy American freedoms and liberties. It is dangerous to give a majority unrestrained power. It is like letting little children play with matches. It is like giving whisky to the Indians. It is like giving a pistol to a drunken man.

Another argument advanced against the filibuster, in the pamphlet prepared by the Library of Congress, is that "experience abroad and in the State legislatures indicates that debate can be limited without undemocratic results."

This argument is easily dismissed because there is no basis for comparison between the Senate of the United States and any other legislative body in the world. The highly centralized governments of other countries have done away with the right of free and unlimited debate. No other nation in the world guards the rights of the individual as zealously as does the United States. As to State legislatures, we must remember that they operate in much different spheres of activity. Each of them legislates only on matters affecting a particular State. In addition to the restraints imposed on them by the Constitution of the United States, there are many others spelled out in each State constitution. Almost every State constitution goes into the greatest detail in describing what its legislature can and cannot do.

The United States Senate is unique in history. There is no basis or good reason to compare it with any foreign or State legislative body.

Another argument is that unlimited debate arouses "popular resentment and brings the Senate into disrepute at home and abroad." The term "popular resentment," like the word "majority," is a vague and fleeting term, Mr. President. I know that there are some citizens of our country who resent filibusters. I believe, however, that the persons who desire to amend the Senate rules so as to eliminate the filibuster are not fully cognizant of the far-reaching effects such a change would have on our system of government. I am equally certain there are other citizens who are resentful of efforts to curtail free debate. I am sure that all Senators have learned long ago to take the brickbats along with the roses. Speaking for myself, I have a great deal more fear of the resentment and criticism that may come from hasty, ill-advised legislation, than of criticism resulting from prolonged debate and consideration of a measure.

As to the feeling in foreign countries, I do not believe that should enter into our considerations in this Chamber. There are not many foreigners who care very much about the way the United States Senate functions. I do not expect to hear any foreign outcry against the evils of a filibuster unless it should interfere with the flow of ECA funds.

Another argument against the filibuster is that it costs the taxpayers thousands of dollars, consuming days and weeks of valuable time and many pages of the CONGRESSIONAL RECORD at $71 a page. If someone should undertake the job of counting the pages of the CONGRESSIONAL RECORD filled as the result of filibusters, and compare that figure with the pages of the CONGRESSIONAL RECORD filled with routine debate, proceedings, insertions in the Appendix, and the like, he would come up with a very disappointingly minute percentage. Of course, as is frequently pointed out by the junior Senator from Georgia [Mr. RUSSELL], lengthy discussion does not blossom into a filibuster until it is engaged in by a southern Senator.

I quote another argument. I repeat, Mr. President, these arguments are the ones included in the thesis to which I referred in the first part of my remarks. The thesis was prepared several weeks ago under the auspices of the Library of Congress and was supported by voluminous data on the subject. I quote another argument:

> They (filibusters) impose upon the Senate an indignity which would not be tolerated in any other legislative chamber in the world.

If the author of the statement terms the right of free and unrestrained debate an "indignity," then certainly it is a true statement, for no other country in the world tolerates unlimited debate. It is also true that no other country tolerates individual liberties as we do in America. I hope we can keep our country that way.

Another of the arguments against the filibuster, as set forth in the pamphlet heretofore referred to, asserts that free speech would not be abolished in the Senate by majority cloture because there would be adequate opportunity to discuss a measure both before and after cloture is voted.

Mr. President, curtailment of debate at any time, unless by unanimous consent, is a gag. It makes no difference whether the allotted time is 1 hour or 1 month. Freedom of debate is curtailed if there is any Senator who has anything further to say. A gag is a gag, regardless of how and when applied.

The word "adequate" is another vague and indefinite term. What is adequate in the mind of one Senator may be totally inadequate in the mind of another. "Adequacy of debate" is one of the most frequent arguments for cloture. I do not see how we can establish any time limit that will be adequate under any and all circumstances. A given number of hours may be adequate for debating a private bill or rank-and-file legislation, but totally inadequate for debating a great constitutional question.

When two-thirds cloture or majority cloture is available to the Senate leadership, the Senate rules can be changed at any time, by a two-thirds majority or a simple majority, as the case may be, so that the previous question can be moved, as is now the procedure in the House of Representatives. That point has been thoroughly covered by other Senators during the debates which have heretofore taken place, and I shall not dwell on it at any length at this time. However, I consider this one of the most urgent reasons for defeating any change in the rules of the Senate which curtails the right of Senators to engage in free, unlimited debate.

The proponents of the pending resolution charge that unlimited debate in the Senate permits minority rule instead of majority rule. There is no basis for that charge. The only power afforded a minority by the filibuster is to maintain the status quo of our organic laws. A minority can resist a change in the law under the present rules of the Senate, but it cannot bring about the enactment of new laws. Therefore, the charge that the filibuster permits a minority to rule the country is a gross misrepresentation of the issue.

It is argued that the filibuster prohibits the enactment of social legislation. The answer to that charge is that in the past 15 years the Congress has gone into the field of social legislation to an extent never dreamed of theretofore. We have enacted dozens of laws in this field. There may have been delays in the enactment of such laws, but by its own nature, does not social legislation demand delay and deliberation and investigation and the most careful study? Whenever a law seeks to change existing patterns affecting human behavior, is it not extremely wise to counsel delay until every aspect of the situation can be carefully surveyed and weighed? Is this not the proper approach?

I was not a Member of the Senate when the so-called Wagner Act was passed in 1935, but I understand its enactment came about after most extensive hearings before congressional committees and debate in the Senate. Whether we view the Wagner Act as a good law or a bad law, I think we can find unanimous agreement that the evils it sought to arrest and remedy were real—they existed—they had existed and grown worse during the years. Like a cancerous growth, defects in labor-management relations had grown from bad to worse. They presented a serious situation—a very real danger to the American economy and to domestic tranquillity.

This situation did not present itself for the first time in 1935. The need had been present for years, becoming progressively worse, and pleas for corrective action were made every year by those who advocated changes. But cor-

rective legislation was delayed until the Congress was sure of its ground. The Wagner Act presented a sharp departure from existing standards—from existing patterns of behavior—from existing measurements of value. The Congress showed good judgment in delaying its enactment until it felt certain it was moving in the right direction.

The Taft-Hartley Act was passed in 1947, amid one of the greatest controversies ever witnessed in the Senate. The need for amendment of existing labor legislation did not arise in 1947; far from it. The need had built up during the years since enactment of the Wagner Act. Passage of such a measure as the Taft-Hartley Act was delayed for several years. I recall, Mr. President, when I first came to the Senate in 1938, we held hearings on a proposed amendment to the Wagner Act. The hearings lasted for a period of 6 months. At the end of those long and exhaustive hearings, the committee was not satisfied. A report was never made to the Senate by the committee recommending favorable action on the then pending amendments. Even in the Eightieth Congress passage of the Taft-Hartley bill was delayed for many months. Was it delayed by filibuster? I do not think anybody here can argue it was, although there was some trace of filibuster sentiment on the floor of the Senate.

The Social Security Act was a sharp departure from the thinking of Americans on the subject embraced in the law. There was no filibuster, but passage of the bill came about many years after its need first became apparent.

The area of public-housing legislation is a very controversial one. The first public-housing act was passed in 1937. The need existed long before that. Passage was delayed, not by a filibuster, but by the desire of Congress and the American people to survey carefully the situation before acting.

These are but a few examples. Without exception, one can single out any law bearing on social changes and discover that its passage was delayed for years and years, sometimes by filibuster, sometimes by threat of filibuster, but always by the Congress' desire to make certain that the country was ready for the change and that the law could be administered so as to achieve its purpose.

I think it should always be so. In matters proposing a sharp change from existing social patterns, Congress must not act hastily. The rights of the minority must be given full consideration. Bear in mind, Mr. President, once a program of social reform is undertaken, there can be no turning back.

Mr. President, whenever the Congress considers new legislation, the first question to be determined is: Is this law necessary? Congress should not legislate merely for the sake of legislating. It should not experiment. There should be no abridgment of the rights and freedoms of the people as guaranteed by the Constitution, except by constitutional amendment.

The filibuster has not delayed passage of social legislation. By and large, it has delayed only a certain type of legislation, classified by some persons as social legislation, namely, the FEPC, the anti-poll-tax bill, and the antilynching bill. The Legislative Reference Service has published a list of bills defeated by filibuster. However, as the senior Senator from Arizona pointed out, the account is erroneous. All but four of the bills listed ultimately became law. Of the four that have not been enacted, three of them are included in the President's civil-rights program. The fourth was the infamous force bill of 1890, designed to amend and enforce the election laws of the United States, especially in the South. I have not heard anyone complaining because the force bill was blocked, and I do not expect to hear complaints. So, for all practical purposes, we may concern ourselves only with the three so-called civil-rights bills.

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

Mr. ELLENDER. I yield for a question only.

Mr. LONG. Does the distinguished senior Senator from Louisiana recall that in connection with the force-bill filibuster the move was made to attempt to change the rules of the Senate simply for the purpose of forcing the passage of the force bill, and that that move failed miserably because Senators realized that the real purpose was not to change the Senate rules, but to force through a piece of substantive legislation and to gain advantage in forcing it through?

Mr. ELLENDER. That is correct. I am glad my distinguished colleague has made that point.

Mr. President, do the same standards apply to the civil-rights bills as apply to other examples of social legislation which I have mentioned? Are they fundamentally alike, and if they are not alike, how do they differ? It will be admitted by all fair-minded Senators that there are great differences between the two types of legislation. Social-security and labor legislation affect the population on a Nation-wide basis. They transcend sectional or State boundaries. There is not a State or county or city or village whose citizens are not concerned with such legislation. On the other hand, the civil-rights bills are aimed directly at the South. They will scarcely affect any section of the country other than the South. It is freely admitted by many that the purpose of these bills is to give the Negroes political and social equality with the white people of the South.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Is the Senator of the opinion, and does he agree with me, that if persons from outside the South, who are proposing civil-rights legislation, should have occasion to live in the South and study the social pattern there, they would come to realize that the South is doing a good job in working out its problems, and that those persons would not favor a change if they realized the situation?

Mr. ELLENDER. I have talked with men and women from the North who visited the South and who departed with changed minds after having an opportunity to study the situation at first hand. For instance, as I shall point out further along in my remarks, we have a very serious problem in the South, in that in some States almost a majority of the citizens are colored. In a State such as Minnesota, on the other hand, less than one-half of 1 percent of the population is colored, and that one-half of 1 percent live in St. Paul and Minneapolis. In passing, I could point out in Louisiana any number of parishes in which the proportion of colored to white is one-third white and two-thirds colored, and in Mississippi, the proportion in some localities is as much as 4 to 1. So the problems are different. If ever the Senate again considers, or if any Senate committee considers, the anti-poll-tax issue, the anti-lynch-bill issue, or the FEPC question, my hope is that the committee considering the question will ask southern Negroes to appear, or, better yet, that the members of the committee themselves will visit that section and get first-hand information, and not accept information coming from pressure groups in New York, Washington, Chicago, and other cities. These people do not know what the problem is; they are merely playing politics with the entire issue.

I have heard some proponents of the measures, including my friend and colleague, the junior Senator from Minnesota [Mr. HUMPHREY], state that the civil-rights measures are not sectional. I would like to believe those good people. But nobody can dispute the fact that the 13 Southern States, according to the 1940 census, have approximately 75 percent of the Negroes in the country. Forty-nine percent of Mississippi's entire population is Negro. Forty-three percent of South Carolina's population is Negro. Thirty-six percent of Louisiana's population is Negro. The burden of working out a satisfactory arrangement whereby the two races can live together in peace and harmony has fallen entirely on the South. We, in the South, are making good progress in our unceasing efforts to solve the problem. In the past, some of our greatest statesmen representing other sections of the Nation have recognized the existence of that situation, and have tried to help us. I should like to quote from the remarks of one of those great men, the esteemed late Senator from Idaho, Senator Borah. In a speech before the Senate in 1938, in opposition to the enactment of an antilynching bill, Senator Borah made these significant remarks:

> We in the North may be interested in the Negro politically. We care little about him economically. But he is an indispensable factor in the economic development of the South. They can and will do for him far better without our interference or advice than with it. * * * It is true, as is contended here, that at times he has suffered from mob violence in the South, but it is equally true that he has suffered from race riots in the North.
>
> Notwithstanding anything that has been said or that may be said to the contrary,

this is a sectional measure. It is an attempt upon the part of States practically free from the race problem to sit in harsh judgment upon their sister States where the problem is always heavy and sometimes acute.

That is the late Senator Borah speaking, not the senior Senator from Louisiana.

I reject the pending measure as fundamentally not in the interest of the white people of the South, not in the interest of the black people of the South, not in the interest of national unity, not of national solidarity, not in the interest of eliminating crime. History has proven that it will be a failure, and those who suffer most will be the weaker race.

Those are not my words; they are the words of the late lamented Senator Borah, of Idaho, who was an honored Member of this Chamber for many years.

Mr. LONG. Mr. President——

The PRESIDING OFFICER (Mr. MILLER in the chair). Does the Senator from Louisiana yield to his colleague?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Is the Senator of the opinion that a law can be enforced in a section of the country where the tremendous majority of the people are against that law?

Mr. ELLENDER. No, sir. I am in full accord with the sentiments of Senator Borah. In fact, I can make it a little stronger; any unpopular law is difficult of administration no matter where it is applied.

Mr. President, does the same need exist for the civil-rights bills as existed for passage of labor legislation and social-security legislation. Has the need for antilynching, antipoll tax, and FEPC legislation been clearly established? I challenge the Senators who support civil-rights legislation to produce proof that the southern Negroes, who are supposed to be the beneficiaries of this legislation, have asked the Congress for its enactment.

When the Senate has considered social legislation, such as I have previously described, it has heard from all sides. When it enacted the Taft-Hartley Act it heard testimony against the bill by labor leaders day after day. They came freely—they were anxious to come—and they presented their case very well. The labor leaders had a great interest in the bill; they stood to be deprived of certain powers and privileges and immunities if the bill became law. It was proper to allow them to present their case. Testimony was heard from big business, little business, and the public at large.

As I recall, Members of the Senate traveled out of Washington and visited industrial areas, and saw for themselves what was taking place. In other words, there was a very definite and careful investigation. Has such an investigation been made into the merits of the FEPC, the antilynching, and the anti-poll-tax bills? Senators may argue otherwise, but it should be apparent to all that this legislation is concerned only, or at least predominantly, with the colored people.

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

Mr. ELLENDER. I yield for a question.

Mr. LONG. Does the Senator know whether or not the FEPC laws as passed by the various States or municipalities have been effectively enforced?

Mr. ELLENDER. In the State of New York there has been an FEPC law on the statute books for some time. My understanding is that there have been very few offenders punished under the law, as the result of complaints against management. As I remember, the record shows that no serious effort has been made to use the sanctions provided for in the law. Instead, the administrators of the law have more or less tried to get the parties to conciliate their differences. They have not tried to enforce the law to the letter, as might have been necessary in some cases; they have preferred not to test the law. They simply get the parties together to compromise their differences so as not to bring the case to trial.

I do not know what has happened in New Jersey, where a similar law is now on the statute books, but I will say this to my distinguished colleague: in many other States efforts to enact an FEPC law have been badly defeated. I remember particularly the attempt in California, where a people's referendum on the question of an FEPC law resulted in an overwhelming vote against it. As I have said, the same sentiment exists in other States, and I am as certain as I am speaking here today that if the proposed FEPC measure were submited to the people of the United States, only a bare handful would vote for it.

Mr. President, before I was interrupted, I was saying that some 75 percent of our Nation's Negro population lives in the South. They work and own property and raise families there. This legislation is primarily concerned with that 75 percent of the Negro population. Have Senators made any effort to find out how this legislation would affect them? I have been in the Senate for 12 years, but I have yet to see or hear Negroes living in the South testifying before a committee and demanding these laws.

I now wish to digress, Mr. President. As a member of the Senate Committee on Labor and Public Welfare, I heard the testimony on the so-called Ives FEPC bill, which was introduced in the Senate during the Eightieth Congress. We heard many witnesses, but most of them came from the North, people who knew nothing about the situation in the South. So far as I know, absolutely no demand was made by southern colored people for an opportunity to testify. None of them were summoned, none of them were invited. The committee depended entirely upon witnesses, as I have said, who came from large cities, many of them heads of the pressure groups responsible for all this so-called civil-rights agitation.

Of course, I have heard representatives of the National Association for the Advancement of Colored People and the National Negro Congress and other organizations testify before the committees. They say that every Negro in the South lives under constant fear of lynching, that many southern Negroes are prohibited from voting by the poll tax, and that southern Negroes are poor because they are discriminated against in the matter of employment. No doubt there are southern Negroes who are members of their organizations. But these men represent organizations quartered and largely financed in New York and Washington and Chicago. They do not represent the southern Negroes. Has any Senate committee ever visited the area to be affected by these bills and determined for itself the conditions there? It has not happened since I have been in the Senate.

As I have pointed out, in the consideration of other social legislation the Senate has heard evidence of need—long-established, long-aggravated need. Facts and figures and statistics were presented. The Senate has had to be convinced that the need for corrective legislation existed, and that the remedy sought after would cure, rather than aggravate, the situation complained of. The advocates of civil-rights legislation have failed to present a conclusive case to the Senate.

Where is the need for antilynching laws? Alone among American crimes, lynching stands on the threshold of extinction. In 1948 there were three lynchings—and one of those, I might say, was of a white man. In 1947 there was one lynching. Lynching has declined from 130 in 1901 to 1 in 1947 and 3 in 1948. Can any reasonable man, not politically inclined, argue that the South has not progressed in its campaign to eradicate lynching? Has not the South, by its own efforts and without Federal intervention, successfully controlled lynching until it is practically extinct? Can anyone assert, with sincerity, that lynchings in America are so frequent as to warrant Federal action? Does one criminal incident warrant changing the basic law of our land?

I hear it argued that every southern Negro lives in constant fear of lynching. The contenders for Federal laws become eloquent in their argument. With booming voices they tell Senate committees that every Negro in the South goes to bed at night unable to sleep for fear of what may happen in the night. These witnesses wipe tears from their eyes when they tell about wives and little children who weep and wail and complain with bitterness of the social system that will take their pappy away from them before daylight tomorrow morning.

We hear that argument, but can we obtain any proof? Have we heard any southern Negro come before a committee and say that these conditions exist? Have any Senators attempted to establish the truth by asking southern Negroes as to whether or not such a fear exists?

Let us examine the poll-tax issue. I will merely gloss over the subject at this time. I propose to cover the subject adequately later on in the course of my remarks. Without regard to its constitutional aspects, can any Senator stand here and sincerely assert that there is need for Federal action in this field? Even if it were admitted that State poll taxes are unjust, undemocratic, or unwise, can anyone deny that the need for corrective Federal action, if it ever exist-

ed, is rapidly diminishing? Only seven States retain poll-tax laws, and I understand there is much activity in each of those States for repeal. Certainly a few more years, a few more sessions of State legislatures, will eliminate the poll tax, without resort to a law openly violative of the Constitution of the United States. I may say to the Senate, Mr. President, that I propose to elaborate on that before I take my seat. Let the advocates of poll-tax repeal spend their time and efforts in those States where poll taxes exist and I know that they can more effectively accomplish their purpose.

Mr. LONG. Mr. President, will the Senator yield for a question at that point?

Mr. ELLENDER. I yield for a question.

Mr. LONG. As a matter of fact, is it not true that the senior Senator from Louisiana himself assisted in repealing the poll-tax law in the State of Louisiana?

Mr. ELLENDER. I am glad my colleague mentioned that. I happened to be the floor leader in the Louisiana House of Representatives at the time the proposal came up, and I handled the measure on the floor. The repeal measure was carried by a large vote. We took that action under our present laws. I am positive similar action will be taken in the other seven States in which the poll-tax law still exists. As a matter of fact, two States are now waiting for the time to elapse, under the provisions of their constitutions, so they may vote on the question. I believe those States are Virginia and Tennessee. But the point is, as I shall demonstrate to the Senate after a while, poll-tax laws existed from colonial days on up to the time of the formation of the Union. Poll-tax laws existed in the Thirteen Original States. Every one of those States had such laws. I shall show how and under what circumstances the changes in those laws were made.

Let us consider the subject of woman suffrage. That is a cause for which American women had battled for years. Women went to jail in their attempt to cast a ballot. They were denied that right by the States. State laws denied them the right to vote. Did the women of the country come to Congress and try to obtain the passage of a mere Federal act to give them the right to vote? No. They asked Congress to submit a constitutional amendment to the people. After due process that amendment was adopted. It is the nineteenth amendment. That is how woman suffrage came about. That is the process I am now advocating, rather than the passage of a mere act of Congress, as some pressure groups are seeking.

We come now to the FEPC proposal. There is discrimination in employment, just as there is discrimination by all people in all walks of life in all their everyday activities. Every person discriminates. Every person has his own tastes and likes. A man likes a certain automobile because it has certain features that appeal to him. A man buys a double-breasted suit of clothes because he feels he likes it better than another style. A housewife buys a certain brand of soap or bread or soup because she feels that the brand is better, that the merchandise is better suited to her family's needs and likes and tastes. In doing so she discriminates against other brands. By the same token, the grocer from whom she buys might stock her brands at the exclusion of other brands. He is discriminating. He buys and stocks certain brands of goods because he feels that those brands on his shelves will do more for his business than other brands.

There is absolutely no difference between a businessman stocking goods of his choice and employing personnel of his choice. When an employer hires a helper, he is making a purchase—he is purchasing the services of a person. He is motivated by the same desire as in buying goods—to get the most for his money and to get what is best suited for his business. He is under no obligation to give a man a job. No man has a legal or moral or constitutional right to a particular job or any job at all. When a man places his services in the labor market, he can only seek to sell his services to someone who needs them.

All of us would like to have everybody treated fairly in the matter of employment. We pass laws that seek to make jobs available for everybody. None of us likes to see a man denied a job and suffer the resultant hardships just because he is a Negro, or a Jew, or a Japanese, or for that matter just because he is white, Protestant, or a Catholic. But I deny the wisdom of the Federal Government attempting to force employers to buy services they do not want, or to pay for services they do not need, and that are not suited to their business. Men should be free to choose their own associates. Mr. President, more could be said on the subject, but I shall leave the details for further discussion.

Mr. President, it might be pertinent to register at this point of my remarks what a few leading southern Negroes think about the laws which precipitate all this discussion. I think Senators should find their views very important, because the southern Negroes are the ones primarily concerned with this legislation. I think Senators will find their views revealing and significant, because they should certainly know more about this subject than a few well-paid Negro agitators from New York City and Washington.

In December 1948 an outstanding American Negro wrote a magazine article wherein he briefly traced his life, as the son of a slave, through hard times and despair and handicaps to ultimate success. I believe the Senator from North Carolina [Mr. HOEY] mentioned this man the other day and told of the respect and esteem he commands among both races. His name is Charles C. Spaulding. He is president of the North Carolina Mutual Life Insurance Co., which has $131,000,000 worth of life insurance in force. He is president of a bank which has $5,000,000 in resources. He is a director of a bonding company, a building and loan association, and a fire insurance company.

His success story is typically American, and his account of it is truly inspiring. Here is a southern Negro, born in the South, and living in the South. He has spent his lifetime trying to better conditions among his own people in the South and trying to foster cooperation and better feeling between the races. Here is a Negro eminently qualified to speak for southern Negroes. What does he say? Does he tell a story of fear and deprivation and cruel discrimination? Does he counsel young Negroes to leave the unfair South for the democratic North? No. His story speaks of confidence and progress and good will. Like another great Negro, Booker T. Washington, he tells young people of his race to "drop your buckets where you are." He tells them that their opportunity lies in the South. He tells them that their "fair share" of the rewards of life cannot be expected from an act of Congress. He tells them they must work out their own salvation and expect rewards in direct proportion to their hard work and character and integrity.

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

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Since the Senator is discussing Negroes and what they think about these proposed measures, let me ask him if he has received any letters from relatives of Negroes who have been lynched.

Mr. ELLENDER. No; I have not.

Mr. LANGER. Does the Senator believe that relatives of Negroes who have been lynched agree with him?

Mr. ELLENDER. I do not recall ever receiving any letter from any relative of anyone who was ever lynched.

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

Mr. ELLENDER. I yield for a question only.

Mr. LONG. As a matter of fact, is it not true that in the few cases in which persons have been lynched, the man who was lynched was actually a murderer, or a man who had raped some woman of the other race?

Mr. ELLENDER. That is true.

I may say further to my distinguished friend from North Dakota that there has not been a lynching in Louisiana for so many years that I do not remember when one ever happened. I know that there has been none since I have been a Member of the Senate. Therefore there has been no occasion for my constituents to send me letters on that subject.

Mr. LANGER. Mr. President, will the Senator further yield?

Mr. ELLENDER. In a moment. I am as much against lynchings as is my good friend from North Dakota. I say to him, as I stated a moment ago in the course of my remarks, that today the crime of lynching is almost extinct. In 1901 there were as many as 130. Today the situation is entirely changed. Last year there were three, and there was only one the year before that. I should like to have the Senator, in his own time——

Mr. LANGER. Does the Senator mean in Louisiana?

Mr. ELLENDER. No; in the United States. I should like to have the Senator from North Dakota, in his own time, not mine, point out to me any crime that has decreased to such an extent as has

lynching. Then we may be able to discuss the subject more intelligently.

Mr. LANGER. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Last year there was more than one lynching in the State of Georgia alone.

Mr. ELLENDER. I yield for a question only, and not for a statement.

Mr. LANGER. I ask the Senator if it is not true that there was more than one lynching in Georgia last year.

Mr. ELLENDER. As I say, in 1947 there was only one lynching in the entire United States, and last year, 1948, there were three. One of those was a white man. That was in the entire United States. How many murders were there in Chicago, and in New York? I should like to have a capitulation of the number of killings that took place when some poor colored man in the State of New York, let us say, or the State of Illinois, tried to exercise one of the rights given to him under the laws of one of those States. During the debates that took place on the floor of the Senate in 1938, when the antilynching bill was under consideration, I pointed out that in many States laws were passed merely to appease the colored people, and for no other reason. In Pennsylvania laws were passed by the Legislature to permit Negroes to swim in pools where whites swam; and when the Negroes came there to exercise that right a mob started a riot, and many colored people were killed.

We never give to the Negro in the South a right which we do not expect him to exercise. What I am telling the Senator is that the policy in the North, so far as the Negro is concerned, is a policy of appeasement. The so-called civil-rights laws which are being suggested here are for no other purpose than to appease the colored voters, so that they may be persuaded to vote for the Republicans or Democrats in the next election, depending on who makes the most promises.

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

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Does the Senator know that in my State we have only 30 Negroes? So I could not possibly be asking this question for political purposes.

Mr. ELLENDER. Yes; I am aware the Senator's State has few Negroes, and I am surprised that the distinguished Senator from North Dakota should try to impose his judgment on a problem with which he has limited concern and experience. He does not know a thing about the Negroes. What he ought to do is to go down to Louisiana and spend 2 or 3 years. He might then change his opinions somewhat.

Mr. LANGER. Mr. President, will the Senator further yield?

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Does not the Senator know that I have been all through the South, and have studied the question?

Mr. ELLENDER. The Senator may have gone there on a short visit. That may be true; but I am satisfied that if the Senator should remain there for any length of time and study the problem, as we have, and witness the progress made and the advances made in education, he would reach a different conclusion.

I was in the Legislature of the State of Louisiana back in 1921. I was a member of the convention which drafted our present constitution. At that time the amount appropriated by the State of Louisiana to educate both colored and whites was not as much as we are now spending to educate colored people alone.

Mr. LANGER. Mr. President, will the Senator further yield?

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Is it not true that in Louisiana 2 years ago only $5.12 was spent to educate a colored child and $51 to educate a white child?

Mr. ELLENDER. That statement is not correct.

Mr. LANGER. It is correct.

Mr. ELLENDER. Let the Senator produce the evidence in his own time, and not in mine. He will have ample opportunity, and I invite him to do so.

Mr. President, as I previously stated, before I was interrupted—and, by the way, Mr. President, I do not mind interruptions; I invite Senators to ask me questions at any stage of this debate, because I really want the facts to be presented; and if I am unable to instantly produce the facts asked of me, I shall gladly produce them later and insert them in the RECORD.

Mr. LANGER. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. LANGER. Will the Senator tell us how much the State of Louisiana spent for its white children, as compared to its colored children, in 1947?

Mr. ELLENDER. I do not have the figures available at the moment, but I can obtain them for the distinguished Senator. They have been placed in the RECORD so many times, and I should be able to remember them. However, I wish to say to the Senator that Louisiana is making every effort possible in order to give to the Negro children, as well as to the white children of the State, the very best of education. During the course of this debate—I do not expect it to end today—I shall cheerfully present the facts to the Senator for his inspection, if he will be patient. I have the facts available in my office.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Does the Senator know that in the last session of the Louisiana Legislature, all colored school teachers in the State were placed on exactly the same pay scale as the white school teachers; and does the Senator also know that Louisiana is the only State where every school child in the entire State has an opportunity to get free school lunches, and also that every school child in the State receives free school books?

Mr. ELLENDER. Yes; I know that. The trouble is that the Senator from North Dakota is asking for facts in regard to years gone by. However, I shall get for him the information he has requested.

Of course, Mr. President, I admit that Louisiana is a relatively poor State, and I admit that we were not able to give to all our people, including white people, the same school facilities that are provided in more fortunate areas. But all in all, considering our economic situation, I am satisfied that we have done for the children of Louisiana as well as could be expected under the circumstances.

Mr. LANGER. Mr. President, will the Senator yield at this point?

Mr. ELLENDER. I yield for a question.

Mr. LANGER. Referring now to what the Senator——

Mr. ELLENDER. Mr. President, I yield for a question only.

Mr. LANGER. This is going to be a question.

Mr. ELLENDER. I do not want any statement to be made in the guise of a question; I can yield only for a question.

Mr. LANGER. Referring to what the Senator from Louisiana [Mr. LONG] has said about furnishing free school lunches and free textbooks, and particularly about the equality of teachers' pay, is it not true that the equality of pay is entirely due to the bill which the Senator from Ohio [Mr. TAFT] introduced 3 years ago?

Mr. ELLENDER. Of course not. We have been progressively increasing the pay of Negro school teachers, as well as white school teachers, for a long time. We did not need a law or a court order or anything else to make us do it; we have been doing it within our means.

As the distinguished junior Senator from Louisiana stated a moment ago, during the last year the Louisiana Legislature enacted laws which will enable the State of Louisiana to pay the teachers a fair, reasonable salary; and the yardstick established for the whites will apply equally to the colored, and the amount of money now being distributed for the education of children will be applied proportionately.

Of course, I admit that in previous years we were unable to do that; but I believe that in the course of a few years the difference between the money spent for white children and the money spent for colored children and the difference between the amount of money spent for white teachers and the amount of money spent for colored teachers will be entirely eliminated.

Mr. LANGER. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. LANGER. Is it not true that the State of Louisiana is not a poor State at all, but on the contrary in 1947 had a surplus of $20,000,000 and in 1946 had a surplus of nearly $20,000,000, and in 1945 had a surplus of $15,000,000; but at that very time a black child was given an allowance of $5.12 a year for his education, and a white child was given $51.72 for his education?

Mr. ELLENDER. Mr. President, in answer to the Senator's question, I admit that Louisiana is a very rich State in point of natural resources. The only trouble is that the natural resources are

not owned by Louisianians. To the contrary, they are owned by large corporations in Chicago, New York, and various other places, which control all the wealth we have in the great State of Louisiana. The result is that we cannot tax it. All we have been able to do in the past has been to obtain a small pittance; but we have been unable actually to tax those who really make the money from our natural resources. For instance, the Texas Oil Co. is owned by capital located, I believe, in New York, Chicago, and various other large cities and States; the great Gulf Refining Co. is owned by the Mellons, of Pittsburgh; and the Standard Oil Co. is owned by John D. Rockefeller, one of the richest men in the world, at one time. Rockefeller has always been a resident of New York. There is no oil in New York. Yet with the oil he got from Louisiana and from other Southern States, he has been able to accumulate vast wealth.

Mr. President, in the past year, thanks to the present State administration, which now is in the capable hands of the Honorable Earl K. Long, the uncle of my distinguished colleague, we have imposed on these oil companies a somewhat heavier tax. Because of that, today, we are able to pay more to the poor people in the State. Now we are making it possible to give them $50 for old-age assistance. I may say that although the colored people comprise 36 percent of the population of the State and the white people comprise 64 percent, almost 52 percent of the recipients of the $50 old-age assistance are colored. Because of their position and because of these taxes, we have been able more or less to equalize the pay of the teachers, as between colored school teachers and white school teachers; and, moneywise, we have been able to improve the situation of the colored children. We shall be able to spend more money toward their education than we have been able to spend in the past for that purpose.

Mr. LANGER. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a further question.

Mr. LANGER. The Senator does not claim, does he, that North Dakota ever stole anything from Louisiana?

Mr. ELLENDER. I did not accuse anybody of stealing anything.

Mr. LANGER. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Will the Senator not say that North Dakota receives but a fair price for the seed potatoes it ships to Louisiana?

Mr. ELLENDER. I do not know about that. But, since the Senator raises the question, I will say to him that I have been planting seed potatoes for about 26 years. I recall buying seed potatoes once from North Dakota, but I now buy most of my stock from Nebraska. I have found it very beneficial to me to buy seed potatoes from Nebraska rather than from North Dakota. Nebraska seed potatoes seem to be a good deal better than the North Dakota seed potatoes. But that is beside the question.

Mr. LANGER. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question only.

Mr. LANGER. Is it not true the Senator bought Nebraska potatoes because the freight rates were lower from Nebraska than from North Dakota, the difference being 10 cents a hundred?

Mr. ELLENDER. No, indeed. It is because the Nebraska potatoes seem to be a little more prolific than the North Dakota potatoes.

Mr. President, let us get down to serious business now. Before I was interrupted I stated, and I repeat, that I invite interruptions at any time. I was about to quote from an article by Spaulding, a colored man, as I said, who was born and raised in the South, and who has made a great success.

Some of my people are embittered—

I am quoting Spaulding—

Some of my people are embittered and blame the white man in the South for all of their difficulties in life. I honestly can't see it that way, as there are two sides to all questions. Personally, I will never forget the help some of these white men gave us when we were struggling to launch our insurance company.

There has been a great deal of just criticism made about the South. While it may be America's No. 1 problem, I think it is America's No. 1 opportunity for men of good will, prudence, and character. Some of the northern newspapers report only episodes of violence and bitterness of the South, but the great news in the South today is that an increasing number of men of good will of all complexions are working together amicably for the greater prosperity and well-being of all. They are succeeding to a spectacular degree. One evidence of this is that for 10 years the South has led the rest of the United States every single month of every single year in gains in consumer buying. Not only in the South but throughout America my people are maturing and prospering—and launching their own enterprises. (In Durham alone they have more than 160.) During the past decade the number of my people who became managers, skilled craftsmen, and business executives has more than doubled.

What is more exciting to me is that many of the rising business leaders are emerging right here in the South. In Atlanta, Ga., for example, two Negroes operate a chain that includes some of the finest drug stores in the city. And I can take you to several spacious plantations in the Old South that are owned by people of my race whose own parents or grandparents worked there as slaves.

I have traveled through 15 European countries and am convinced that there is no place on this globe where people, whatever their background, can make such progress as right here in America, provided they demonstrate ability, character, and imagination.

Though life begins for me every morning, I am 74, with most of my career behind me. But if I were a young man starting out today I would be excited about the opportunities now opening up in America because of its expanding prosperity and its constant technological advances. The opportunities today are far greater than they were 50 years ago. In fact, there are more challenging careers looking for ambitious, qualified men than can be met. I, personally, would work for the chance to set up my own business, because I believe so firmly that enterprise is where the greatest opportunities lie and where the greatest service can be rendered.

Our capitalistic society in America depends for its growth upon bold young men willing to take a chance on pioneering new fields of service. And it bountifully rewards the skillful pioneer, whatever his origin.

As for myself, I shall always feel grateful that my ancestors were transplanted to North America. It is the best place in the world that I have found to live and leave one's mark.

Mr. President, I hold in my hand an editorial by Davis Lee, publisher of the Newark (N. J.) Telegram, which appeared following the election. In the editorial, the publisher had this to say:

President Harry S. Truman returned to Washington this week from a much deserved vacation at Key West, Fla. However, during his southern sojourn our Chief Executive held many conferences with important national figures, and during one of his confabs he announced that he intends to push his civil-rights program.

This causes one to question Mr. Truman's knowledge of the race situation in these United States. Again one wonders if the President hasn't misconstrued the victory which he received November 2. He says that his election was a mandate from the people to carry out the platform of the Democratic Party. Of course every right-thinking person knows that Mr. Truman was elected because the Republican Party's record was so rotten that the masses feared another depression if Dewey had gotten in. Many southerners who opposed most of the party's platform voted for Mr. Truman because they felt that the Democratic Party would do more for the people. The common man.

One is inclined to wonder if the President is sincere in his declaration of intention, or is he vindictive or just plain bullheaded? If he is sincere then he should familiarize himself with the facts. He should read Joe Louis' life story, which has been running in Life magazine.

Joe made a very significant statement which all advocates of civil rights should read. He declared that even though he was born in Alabama, he had never heard about segregation, discrimination, and Jim Crowism until his family moved to Detroit.

Does Mr. Truman and the advocates of civil rights know that millions of Negroes in the South are not affected by segregation and discrimination? Does he realize that by custom and choice the Negroes stay with their own and the whites do likewise? The southern white man has forced the southern Negro to do business with his own to the extent that in Georgia Negroes own $61,000,000 worth of business. This is not true in any Northern or Eastern State.

Does Mr. Truman know that Negroes in 15 Southern States own and control more cash and real property than the Negroes in the rest of the Nation?

And despite this glowing picture of Negro success and achievement, the South has many shortcomings—it still perpetrates many injustices upon the Negro, but a Federal civil-rights law will not correct these evils and cure its racial ills.

The South is still the poorest section of our Nation, and it is only human that southern whites will provide better schools, hospitals, etc., for their own than for Negroes. After all, they carry the bulk of the tax load.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Is the Senator familiar with the fact that the State of Louisiana during the 1949–50 fiscal year is spending $15,000,000 for the construction of schools for Negroes?

Mr. ELLENDER. I am glad the distinguished Senator brought that to my attention. I know he is very familiar with all those figures, because as I recall he assisted very greatly, when the Legislature of Louisiana was in session, in the passage of the laws that are making such construction possible.

Mr. LONG. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Does the distinguished senior Senator from Louisiana know that in the 1940–41 fiscal year the State of Louisiana spent approximately $2,000,000 for colored education and $14,000,000 for white, and that in its present fiscal year the State of Louisiana is spending $14,000,000, seven times as much, for colored education, against $34,000,000 for white, which puts the pro rata expenditure just about in line for white and colored? Did the Senator know that?

Mr. ELLENDER. That is what I was trying to depict to the distinguished Senator from North Dakota a moment ago when I made the statement that today Louisiana is spending as much if not more money for the colored than we spent 25 years ago for both colored and white.

Now, Mr. President, I desire to continue reading from the editorial written, after the election of Mr. Truman, by Davis Lee, publisher of the Newark (N. J.) Telegram:

If Mr. Truman would foster a program of financial aid to the South like he has to Europe, and with no more strings attached, in a decade it would become a paradise, the land of milk and honey. Ever since the War Between the States the rest of the Nation has criticized, condemned, and taken unfair advantage of the South. Northern agitators who have never been South, and who know absolutely nothing about the fine race relations which exist between the two races, persist in spreading false propaganda.

Mr. Truman's civil-rights program calls for a Federal FEPC, antilynch law, and the repeal of the poll tax. No Federal law is necessary to force southern whites to employ Negroes. They employ more Negroes than are employed by northern whites. In fact you can't find one creditable business in the South which does not employ Negroes.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Is it true that many businesses in the South employ Negroes exclusively, so that if there were an FEPC it would cost thousands of Negroes their jobs?

Mr. ELLENDER. There is no question about that. In my home town there are not many large businesses, but there are almost as many colored persons employed as there are whites. The best painters and plumbers in my home town are colored. Recently I had my house painted, and I was glad to obtain the services of a colored painter, because he was the best we had in my home town. The idea that we shun colored persons and do not give them an opportunity is simply propaganda; it is nothing else.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Are there sawmills and packing plants in Louisiana using exclusively Negro labor?

Mr. ELLENDER. Yes. They are established throughout my parish. There are not very many sawmills, because we have no more timber to cut, but there are several packing plants.

Mr. EASTLAND. Are there not sawmills in the upland section?

Mr. ELLENDER. Yes. I was speaking at that moment of my immediate locality. There are many sawmills located throughout the State. I may say that I do not know of any discrimination practiced in employment matters. Many colored persons are employed in the sawmills and in the sugar factories. There are many sugar factories in my immediate locality. Jobs, such as operating engines, are performed by colored employees. I do not know of any discrimination practiced there. I have a brother who owns a farm not far from where I reside. He has three tractors on the farm, and they are operated by colored employees. There are a number of white persons employed on the place who cut ditch banks, but the colored boys seem to know better how to run tractors than do the white boys, so that the operation of the tractors is performed by the colored boys. The same thing applies in connection with operating trucks that haul sugarcane to the mills. My brother has three or four trucks, as I remember, and I know that at least two of them are operated by colored boys, whereas some of the white boys cut cane and do work which is more menial and for which they receive less pay.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Is it not true that over the entire State of Louisiana, if an FEPC law were in operation and employers should have to hire white and colored employees on a proportional basis, it would cost thousands of Negroes their means of livelihood?

Mr. ELLENDER. There is absolutely no question about it, because many colored persons would have to be discharged in order to make places for white persons who might be in line for their jobs. I believe that would be especially true in Mississippi, where the proportion of colored to white persons is 49 to 51.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a further question.

Mr. EASTLAND. Is it not true that many of those who would lose their jobs would simply have to migrate to the North?

Mr. ELLENDER. I assume that might happen. It would be a natural consequence. If they could not be provided with employment in the South, they would seek elsewhere for it.

Mr. President, I continue to read from the editorial written by Davis Lee:

Last week I was in North and South Carolina, where I saw thousands of buildings going up and I saw more Negro carpenters on the buildings than whites. This is true throughout the South, but it is not true in the North. It is hard for a Negro to get a job above that of a hod carrier in these parts.

Last week in the tidewater area of Virginia I saw more Negroes at work on the ferries than whites. The ferries from Cape Charles to Little Creek are without question the largest in the world, and the entire steward's department is manned by Negroes. These Negroes are so completely in charge that they decide what the white people must eat.

A few weeks ago, when I was in Mississippi, several white businessmen told me that they employ more Negroes than whites. Then what is the purpose of Mr. Truman's FEPC bill? Such a bill would no doubt anger the South to such an extent that millions of Negroes now employed would be thrown out of work.

As for the antilynch bill, it appears that we are getting ready to lock the barn door after the horse has been stolen. There are no lynchings now, and why pass a law to antagonize a people who seem to have the situation well in hand?

I don't believe that Mr. Truman is more interested in the repeal of the poll tax than the governors and many of the Representatives of the poll-tax States. Practically every newspaper in the South is for repeal of the poll tax, but all resent outside interference and northern pressure. The poll tax in the several Southern States does not deny unqualified Negroes the use of the ballot any more than it does whites who cannot qualify. Even southerners feel that while many ignorant Negroes and whites cannot use the franchise intelligently, that the law nevertheless should be repealed. And it will be repealed, but not by force.

Before attempting to force through a Federal civil-rights law to change the customs of the South, Mr. Truman should straighten out the liberal North. If he wants to end segregation and discrimination, why not start with the YMCA and YWCA and the Christian church?

Notre Dame is a religious university, but it will not accept Negro students. There are few summer resorts in the East or North that do not advertise that their places are restricted, which means no Jews are allowed.

Does Mr. Truman know that New Jersey has an FEPC and a civil-rights law, and that both are a joke. Hundreds of big companies still refuse to employ Negroes; that no white hotels in south Jersey will even permit a Negro to drink a coca-cola much less spend the night.

Not long ago the New Jersey State Elks held their annual convention in Salem, N. J., and every white restaurant in town closed up during the 3-day confab to keep from serving Negroes.

Someone should remind our Chief Executive of the existence of our Constitution and the Bill of Rights. The complete enforcement of existing laws will give everyone of us, little and big, full protection of our rights as American citizens.

If our President and the advocates of civil rights are in favor of changing the customs of this Nation, they will have to use a different approach. Congress can't do it. However, a well-rounded program of education will remove all racial barriers in about 200 years from now.

The language which I have just been quoting is not mine, but is the language of Davis Lee, a colored man, who is publisher of the Newark (N. J.) Telegram. I believe it should be read and reread by many Senators who are now advocating a change in our basic laws so as to permit by congressional fiat the elimination of poll taxes or the establishment of FEPC, or similar legislation.

I now yield to my distinguished colleague for a question.

Mr. LONG. Did the senior Senator from Louisiana know that as late as 1939–40 the average pay for a colored school teacher in Louisiana was $502.60, and that in the present fiscal year the average school teacher's pay has been increased to $2,800, which is about six times what it formerly was?

Mr. ELLENDER. I was aware that a considerable increase had been made. As I tried to state to my distinguished colleague from North Dakota, I admit that there was a wide discrepancy years ago, but if the records are studied, he will find progress, and particularly has that been true in the past 2 or 3 years. One of the main reasons is that today we have in Louisiana a governor who has been able to obtain a legislature willing to go along with him in the matter of taxing our natural resources to such an extent that we were able to obtain a sufficient amount of money to provide more for our public schools, and for many other worth-while endeavors in my State.

Mr. LONG. Is it not true that much of this great advance in the State of Louisiana has been due to the fact that the State was fortunate enough to have development of our natural resources which enabled us to find tax revenue sufficient to support such a program?

Mr. ELLENDER. That is correct; there is no doubt about it.

Mr. LONG. Is it not further true that if Senators who are advocating better opportunities for the colored would get behind the Federal aid to education bill and help the other Southern States to obtain sufficient funds so as to educate the colored people the effort would probably contribute more than any other one thing to the solution of the racial problem?

Mr. ELLENDER. That has been my contention for the past 12 years. I am coauthor of a bill for Federal aid to education, as is my distinguished colleague, and I am very hopeful that within the next few weeks we will be able to place that law on the statute books.

Mr. LONG. Do not the facts I have been citing to the Senator in the form of questions pretty well indicate that Southern States are ready and able to give good education to colored children when they have the money available with which to work?

Mr. ELLENDER. There is no doubt about it. As I have pointed out during the course of my remarks, progress has been made in the South, and I do not want anything to occur here which may impede that progress.

Mr. President, I should now like to read from an issue of the Alexandria (Va.) Gazette, quoting in full an article by George S. Schuyler, associate editor of the Pittsburgh Courier, one of the largest Negro newspapers:

HERE'S WHAT SCHUYLER REALLY SAID

(EDITOR'S NOTE.—The following articles were written by Negro Associate Editor George S. Schuyler, of the Pittsburgh Courier, one of the largest Negro newspapers in the United States)

Here, word for word, is what the Pittsburgh Courier Associate Editor George S. Schuyler said about the changing South in his November 6 column, Views and Reviews:

"Now that we are through with the election, I think we should begin to give more attention to the South and the changes taking place there which are all for the better from the viewpoint of the nearly 11,000,000 Negroes who call it home. We should consider what are the opportunities for our people there and how they can be utilized to the best advantage, since over three-quarters of the Negroes live there and, from all appearances, always will.

"Certainly our people are not taking advantage of the available opportunities in that area where the majority of them elect to live. For all of its faults, it is a good country in which to live, and is getting better. After a recent turn through 14 States of the South (an area with which I have been familiar since 1926) it strikes me that, as elsewhere, the biggest handicap Negroes are encountering is themselves.

"Most of what is said and written about the South is untrue. Today it is not a place of terror and persecution, nor has it been in many decades. I am always amused when friends express fear and sympathy because I am going South, assuming wrongly that I am endangering my life. Actually I think no more of visiting the heart of Mississippi or Texas or South Carolina than I do about visiting Minnesota, Maine, or New Mexico.

"I have gone into large towns and small villages in every one of the Southern States and have always been treated as well as anywhere else by both white and colored people. True, there are Jim Crow laws, the existence of which I deplore, but I obey them, and their existence (which irks me) does not blind me to the opportunities Negroes have there. For all the faults of the South, it must be admitted that colored people are better off there than any other minority elsewhere with comparable background—and I believe I have more information about the position of minorities in other countries than most people.

"Right now the South is prosperous. Negroes everywhere can purchase homes and farms, and they are doing so. Nowhere is there studied insult or discourtesy within the social framework of the section, and everywhere Negroes tell me that persecution and police brutality are rarely encountered—and they should know.

"There is less opposition than ever to Negroes voting, and I think it will gradually disappear if Negroes are not misled into voting as a bloc. There is scarcely a city which does not have Negro policemen today. While there have been two or three fatalities and several threats to Negroes in connection with voting, the significant thing is not that they have occurred but that there have been so extremely few.

"Contrasted with the rock-ribbed prejudices and persecutions in comparable areas elsewhere, the tolerance on display in the South today is little short of amazing. Moreover, most southern white people of prominence in every State are apologetic about these shortcomings and the less timid are sincerely trying to better conditions. For this they should get far more credit than professional propagandists are wont to give them.

"There is little or no evidence that the Negroes anywhere in the South are terrorized and none that I have talked with say so. They don't like to be barred from public places or public activities, and there is deep resentment against color discrimination. But they are not hopeless and despairing, any more than the Negroes in the most of the areas outside the South who are subjected to racial proscription. Southern schools for Negroes are not up to the local white standards and certainly not up to the national standards but any honest observer who has visited Dixie periodically can see and must admit that there has been vast improvements in physical plants and teachers' quality and pay. Swarms of Negroes are graduating from high schools and colleges.

"While industrialism is increasing rapidly in the South it is still predominantly agricultural and so are most of the Negroes. Unfortunately our people are not acquiring as much land as they could and should, and too few of them are studying to be scientific farmers. That they could acquire wealth and security, to say nothing of gaining greater respect and power by doing so, is evidenced by the success of the minority that has applied itself to growing better crops and raising better cattle. In all these efforts they have the approbation and cooperation of the civilized minority of whites everywhere in the South.

"It is my sincere opinion that the more widely southern Negroes apply themselves to these economic fundamentals and become more firmly rooted in the southern economy, the easier will the socio-political problems be solved. I find no unanimity among southern whites on what should be done about these problems. In some areas I do not think it would be difficult even to get repeals of the Jim Crow laws regarding transportation—if the campaign were intelligently directed by Negroes in the areas concerned, with outside Negroes and whites staying far in the background.

"Other (and most) areas would be tougher to crack, but it is sounder strategy to work on the more tolerant areas first, and win over some, than to antagonize the whole South by loud, mudslinging campaigns directed from the East and North which accomplish nothing.

"Since most Negroes are going to remain in the South, their leaders will have to learn to act like it, and to push programs of gradualism with greater skill and statesmanship, unswerved by emotional claque from 'abroad.'"

Mr. President, those are not my words. They are the words of a Negro who wrote for the Pittsburgh Courier. I hope Senators who are not present will read that valuable editorial.

I now read a subsequent editorial by Mr. Schuyler, from the same publication, the Pittsburgh Courier:

WE SHOULD HAVE MATURED SUFFICIENTLY TO FACE AND ACCEPT THE TRUTH

The day after the recent Town Hall discussion on "What shall we do about racial segregation?" one of my African Nationalist readers telephoned me to say how much he deplored the fact that Hodding Carter, the Pulitzer prize-winning Mississippi newspaper editor, had quoted from my column of November 6, in confirmation of the improving interracial situation in the South.

I replied that there was nothing to deplore about this; that I had told the truth about the South today, and that Mr. Carter was to be commended for reading The Pittsburgh Courier and learning the truth. It is the men and women of intelligence, understanding, and goodwill, of all colors, in the South who can make that section of the country a better place in which to live.

Conditions in the South are vastly better than they were 20 years ago, and nobody who actually knows the score down there will deny it. They are not what they could and should be, of course, because human beings persist in being human beings. In other words they are petty, selfish, prejudiced, and envious, but at the same ime they are kindly, charitable, and benevolent, too.

We have to recognize people for what they are and try to get along with them as they are. In our individual relationships we get along with people by making allowance for

their shortcomings, by avoiding topics on which they are touchy, by enlisting their sympathies, and by displaying goodwill and a give-and-take spirit. We certainly do not make friends and influence people by offending, insulting, threatening, and smearing them because we do not share their point of view. They have a right to their opinion as we have to our opinion. Almost anybody's opinion can be changed, but in order to do so we must render them amenable, which cannot be done by arousing their antagonism. This is especially true when those whose opinions we would change are in the majority and possess the predominant economic, political, and social power and influence.

As I have stated previously, the nearly 11,000,000 Negroes in the South today obviously wish to remain there, else they would have long departed from the section because no one has stopped them from doing so. It is an insult to these people to say that they are terrorized and persecuted, and nevertheless remain, when the price of bus or railroad coach fare would place them above the Potomac and Ohio Rivers. Since they elect to stay there, they must try to get along there and better their conditions there, which certainly cannot be done by antagonizing the people amongst whom they must live.

It is 85 years since the Negro slaves were emancipated in the South, and their social, economic, and cultural condition has rapidly improved since that time. They have been subjected to mass murder, torture, persecution, and insult since then (like other minority and underprivileged groups the world over), but they are subjected to little of this today. This is primarily due to the goodwill of liberal white people in the South, secondarily to the efforts of the Negroes themselves, and only thirdly to outside pressures.

I have stated here many times that the Negroes themselves in the South can tremendously improve their position through their own efforts and with the help of friendly whites. They can erase illiteracy themselves, they can increase home and farm ownership themselves, they can easily join or set up all sorts of cooperative societies for their economic advancement, they can strengthen themselves spiritually through their religious organizations, they can qualify as registered voters almost everywhere, and, in short, they have it within their power to attain the same cultural level as the whites, and even surpass that of most whites, thus erasing the obvious differences between the two groups.

And the more they succeed in doing this, the more easily will the onerous racial segregation be destroyed, especially as regards discrimination. Ultimately racial segregation will be destroyed with it, but no sane person expects that to occur overnight, as some of our more superficially minded people seem to expect.

Negroes need not expect the central government to force the white majority in the South to drop these barriers, and they are sadly deluding themselves if they think Mr. Truman or anybody else is going to do so. The white people of this country are not going to fight each other again over the Negroes, and the sooner we realize that, the better. Just as Northern whites have striven to settle their differences with Southern whites ever since the Civil War, so must Southern Negroes strive to establish rapport and unity with their Southern white neighbors. There are many ways of doing so but only a few prominent Negroes and whites are attempting them. Unfortunately, those few who are trying it are criticized, smeared, and condemned for doing so, mostly by people far from the scene who can offer no sound alternative.

Of course it is unpopular to say these things, but popularity must ever be sacrificed to truth by honest men with no axes to grind. By this time we Negroes should have matured sufficiently to face and accept the truth.

I repeat, Mr. President, those are not my words, but are the words of a Negro editor, from another of whose editorials I quoted a while ago.

I have before me another editorial by C. C. Carlin, Jr., president and editor of the Alexandria Gazette, of December 27, 1948. The editorial is entitled "How Is Segregation Working in the South?"

HOW IS SEGREGATION WORKING IN THE SOUTH?

The recent political campaign and President Truman"s support of the so-called civil-rights proposals plus the fact that these bills will meet with strong opposition in the next Congress has focused the spotlight on the important question: How is segregation working in the South.

Your editor who was born and has spent his entire life in Virginia has observed the progress of both races under our State laws. Likewise, he has observed the progress in other States of the deep South. This writer, seeking first-hand information, recently visited North Carolina, South Carolina, Kentucky, Georgia, Alabama, Tennessee, Mississippi, and Louisiana where he had an opportunity to study and observe existing conditions as well as the relationship between the two races.

We have never believed that any laws were perfect because they are laws but we feel that southern segregation laws, based on mutual understanding, provide the best possible approach toward the solution of the controversial race relationship.

In these days of abundant transportation, high wages, and full employment, it is self-evident that the majority of our American Negroes have chosen the South as a good place in which to live or 11,000,000 of the 14,000,000 in the United States would not reside here.

In each State we found the friendliest relationship between the two races. All busy working together for their joint benefit and for the most part law abiding and contented.

In the cotton States, where the dollar goes further, we were astonished to find that a cotton picker was paid $4 per 100 pounds and that an expert could pick four to five hundred pounds per day. In most places the picking season lasts 6 months. In fact during the picking season it is extremely difficult for others to obtain help because of the high earnings available in the fields.

Many of these Negro workers own their own homes, farms, profitable shops of all kinds, banks, newspapers, taxicab companies, as well as every conceivable kind of a business.

To top it all, we discovered the town of Mound Bayou, Miss., with a population of approximately 3,000 entirely colored, where white people come to trade but it is said that the sun never sets on a white person in that community. This is truly segregation in reverse.

In New Orleans, and other large southern cities, there are numerous Negro night spots and clubs and we have yet to find the first white man who was ever entertained in any of them. We know of a prominent white theatrical agent who tried every means to obtain admission to the Negro clubs, but who was politely told "this is a Negroes club, white folks are not admitted."

Many of the well-to-do Negro merchants will tell you that they prefer segregation and credit it largely for their success. They contend that if segregation were abolished that they would lose most of their trade to white competitors.

There are a few lower-class whites, usually newcomers to that locality, who are antagonistic to the Negro and who say they should all be sent back to Africa. Some Negroes are irked by segregation but their main complaint seems to be leveled at the school system where they say the white children have the best of it but most of these freely admit that colored schools in the South have greatly improved during the past 10 years and are still improving.

Very few Negroes are disturbed by the poll tax and those who want to vote are able to do so without difficulty.

We did not find any Negroes who were afraid of lynching, in fact we could not find a single Negro who had ever seen a lynching, or had a friend or acquaintance lynched. All told us that they believed the police officers treated them fairly and that when there was trouble with the law it was invariably the fault of the violator.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. Does the poll tax, when used as a prerequisite for voting, disqualify people because of race?

Mr. ELLENDER. Of course not.

Mr. EASTLAND. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. What was the age limit when there was a poll tax in Louisiana?

Mr. ELLENDER. Twenty-one years.

Mr. EASTLAND. What was the limit at which the tax expired?

Mr. ELLENDER. Sixty-five. Persons above 65 could vote without having to pay the poll tax. I may say to the distinguished Senator, as was pointed out a while ago, that I led the fight in the Louisiana Legislature to repeal the poll tax. I believe the poll-tax law ought to be eliminated in every other Southern State, but it ought to be done by due process.

Mr. EASTLAND. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. What does the distinguished Senator mean when he says that it ought to be done legally and as the law provides?

Mr. ELLENDER. For example, I contend that determination of the qualifications of voters is a prerogative of the States. It is the States themselves and not the Congress that should pass upon the question. As I have pointed out in the course of my remarks—and I think it will bear repetition, because I see a few Senators present who were not present a while ago when I made the statement—the distinguished Senator from Mississippi well knows that at one time women were deprived of the right to vote. A famous case arose in the State of Missouri, the case of Minor against Happersett. I know that the distinguished Senator from Wyoming [Mr. O'MAHONEY], who is an able lawyer and a member of the Judiciary Committee of this body, is familiar with that case. In that case the question at issue was whether or not, by State law, a woman could be denied the right to vote. That case found its way to the Supreme Court of the United States, and the Supreme Court held in no uncertain language that the right to spell out the qualifications of voters is a prerogative of the States, denied the right of the fair sex to vote, and sustained the State statute.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question at that point?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. Was it not necessary to amend the Constitution of the United States to give women the right to vote?

Mr. ELLENDER. The distinguished Senator from Mississippi has anticipated me. That was the exact point I was coming to. If the State had the right to say that a woman could or could not vote, how much stronger a case is there for the States having the right to spell out other qualifications? In order to enable the fair sex to be in a position to vote, the nineteenth amendment was adopted, and it is now the law. One of the great leaders in that noble fight was none other than Susan B. Anthony, whose statue adorns this Capitol.

As I have pointed out during this debate, and at other times, most of us from the South favor the abolition of the poll tax, but we want to have it done legally. If the question is ever presented to the Senate, I shall vote in the negative. I want it to be done legally. That is my position, and that is my reason for opposition to the pending measures in the Eighty-first Congress. That was the reason for my opposition to such measures in practically every Congress since I have been a Member of this great body.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. If the poll tax does not disqualify people from voting, why is it not a wholesome tax?

Mr. ELLENDER. Some States—such as Vermont and Massachusetts, I believe; I wish to be corrected, if I am in error—require the payment of poll taxes, but not as a prerequisite for voting. They use such a tax as a means of raising funds. Of course, the poll tax which is obnoxious to the proponents of the anti-poll-tax measure is the poll tax required as a prerequisite for voting. That is where the rub comes, as it were, according to the proponents of the anti-poll-tax measure.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Why should not a person be required to pay a tax in order to vote?

Mr. ELLENDER. That is a question of choice, Mr. President. Some of us think it should be, and others think it should not be. I presume that the distinguished Senator from Mississippi has his own views on the subject. I have mine. Personally, I believe that the imposition of a poll tax, although not as a prerequisite for voting, is a very good way to raise money. For instance, I believe it might be a good way to raise money if we were to put a big tax on bachelors, so that they could at least assist in paying for the education of children in our schools.

Mr. EASTLAND. Mr. President, will the Senator yield for a question at that point?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. What is the Senator up to? Is he trying to get the women's vote?

Mr. ELLENDER. No; I am not trying to do that; but I am saying that the views of some Senators and the views of some other persons differ on the subject of why a poll tax should be imposed.

However, the main cleavage between the proponents and the opponents of a poll tax lies in the question of whether to utilize such a tax as a prerequisite for voting.

So far as concerns the imposition of a poll tax for the purpose, let us say, of raising funds in order to pay for schools or to operate city service or anything of that character, I do not know of much opposition to such a tax.

Mr. EASTLAND. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for another question.

Mr. EASTLAND. Does not the Senator think that voting is a privilege, as it was considered when this Government was adopted?

Mr. ELLENDER. Regardless of whether it is or is not a privilege, somewhat the same question is involved, I might say to the distinguished Senator. I would have no different answer.

For instance, I believe the tax could be imposed in such an amount that many poor people might be deprived of the right to vote, because of their inability to pay the tax; and under such circumstances, I can conceive of ways by which it would be possible for a man of wealth to assist in paying the poll taxes of many of his friends, and thereby obtain a large group of votes. To my way of thinking, that is one of the main objections to the imposition of a poll tax as a prerequisite for voting.

However—and I do not wish to be misunderstood by the distinguished Senator from the State of Mississippi—I think the States have a right to impose a poll tax if they choose to do so, for the simple reason that, as I understand the Constitution of the United States and as I understand the jurisprudence on the subject, the prerogative of stating the qualifications of voters lies in the States, not in the Congress.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. What right has a man to vote if he does not care enough about the privilege of voting to pay a nominal sum toward the upkeep of the schools?

Mr. ELLENDER. That is an argument that has been advanced by the proponents of the poll tax. I may say to the Senator that the same argument permeated all the colonial assemblies, before we became a United States. I shall point out in a few moments to the Senator that many of the colonists thought that a man who was not willing to pay a certain poll tax or who did not own a certain amount of property or did not have a certain amount of education should be denied the right to vote. From all of that have come, of course, the various requirements which have been imposed by the different States of the Union. In a few moments—and I hope the Senator will bear with me—I shall point out all those differences; and during the course of my argument he will be able to note the many reasons advanced by the various States and by the various colonies as to why some of them imposed a poll tax qualification and some of them imposed a property ownership qualification, and some imposed an educational requirement; and of course there were many others. Does the Senator from Mississippi know that the great State of New York, where most of the Jews in the United States live, once prohibited Jews from voting? Think of that. Does the Senator know that at one time in the State of Georgia a Catholic was not permitted to vote? All those matters simply go to show how jealously and how zealously the founders of our Government guarded the right to spell out the qualifications of voters.

Before I conclude, I hope I shall have time to show to the Senate that the Constitution probably would not have been adopted by the Thirteen Original States if there had not been a specific provision—I shall show it historically—that the right to spell out the qualification for voters was to remain a prerequisite of the State, and not to be surrendered by the State.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. What are the voting requirements in Louisiana at the present time?

Mr. ELLENDER. To be 21 years of age and to be able to interpret certain passages of the Constitution. Those are the principal qualifications.

I may say to my distinguished friend, the Senator from Mississippi, that in the city of New Orleans alone from 12,000 to 15,000 Negroes are registered, and no efforts are made anywhere to prevent them from registering. If they come forward to register, they receive the same treatment as do the whites. There is no one to obstruct them. I believe that was ably demonstrated in the State of Mississippi when we held hearings with respect to the late Senator Bilbo. The Senator recalls I was chairman of the committee that held hearings there, and I know what my colleagues on that committee were impressed when they heard from the lips of many of the colored people there that there was no effort made to prevent colored people from registering in the State of Mississippi. We heard more than one colored man. As I remember, there was one who had signed a petition, taking part in the proceedings to oust Senator Bilbo, who came forward and admitted on the stand under oath that he could not point out any case where any colored people had come to apply to vote, who were denied, if they were qualified.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Did the hearings show that the great number of those voted for him?

Mr. ELLENDER. Yes. In the city of Mound Bayou, I believe, in Mississippi, referred to as being an all-Negro city, it was shown that in one or two of the precincts, a large percentage of the voters, who were colored, voted for the late Senator Theodore Bilbo.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. EASTLAND. Will the Senator please tell me whether or not they concurred in our institutions and in the racial principles of Senator Bilbo?

Mr. ELLENDER. There is no doubt about it; absolutely no doubt about it. The record shows it. The record is available for anyone to read.

Mr. President, before I was interrupted I was reading, from the Alexandria Gazette, an editorial by C. C. Carlin. I continue to read:

In the light of our recent experience in the South, we sincerely wish that President Truman and the others who are urging the passage of the "Force Bills"—which in our opinion would put an end to the progress being made between the races in the South—would make a personal survey on race relations in the southern States. If the sponsors are sincere when they say that the purpose of these bills is to aid the Negro race, they should welcome the facts.

Senator J. J. SPARKMAN, of Alabama, has stated that he will introduce a bill in the next Congress to have an impartial committee make a competent and complete survey of racial conditions in the United States which would ascertain the facts prior to congressional consideration of the misnamed civil-rights bills.

The December, 1948 issue of the American Magazine carries a lead story, which every American should read, written by a Negro executive, son of a slave, entitled "What America Means to Me."

The author, Charles C. Spaulding, is president of the $131,000,000 North Carolina Mutual Insurance Co., and is also the president of a bank which has $5,000,000 in resources.

Mr. President, it will be recalled that I read quite an extensive excerpt from the article to which Mr. Carlin refers in his editorial.

In this article, he states in part.

"Some of the northern newspapers report only episodes of violence and bitterness of the South but the great news in the South today is that increasing numbers of men of good will of all complexions are working together amicably for the greater prosperity and well being of all.

"They are successful in a spectacular way. Anyone who still thinks of people of my race as Uncle Remuses will be startled to learn that last year they had a total income of $10,000,000,000 which I will wager would rival the entire income of the people of any one of several countries in Europe today."

Elsewhere on this page we are reproducing two articles which were written by George Schuyler, associate editor of the Pittsburgh Courier, one of the largest Negro newspapers in the country, who visited the South to secure first-hand information on conditions pertaining to the races. We are also reproducing a recent editorial dealing with the racial problem by Editor Davis Lee, publisher of the Newark (N. J.) Telegram, another Negro publication with a large circulation.

We believe these articles are unbiased and ably present the viewpoint of the well-informed Negroes of good will of our Nation.

I could read from many more editorials by eminent writers throughout the United States, but it would be simply clogging the RECORD and perhaps killing more time. I do, however, desire now to read a few quotations from a very interesting book written by a colored man by the name of Joseph Winthrop Holley, D. D., LL. D., founder and president emeritus of Albany State College. The title of the book is "You Can't Build a Chimney From the Top." I am not going to try to take the time of the Senate to read the whole book, although I should like to, because it is very interesting. But I shall content myself with reading a few excerpts from it touching on a few of the questions I have discussed during the course of my remarks. The book deals with the subject of lynching, poll tax, the FEPC, and many of the conditions in the South about which I have been reading. I am sure my good friend, my newly found friend, the distinguished junior Senator from Illinois [Mr. DOUGLAS], could find a good deal of solace by reading the book. I am hopeful that some day in the not too distant future he will read the book and then pay us a long visit in the South, so as to learn by experience what are the problems that confront the South with respect to the Negro. In this book, as I have just indicated, the author deals with lynching. Permit me to quote a few passages or a few paragraphs on the subject of lynching:

As I said at the outset, lynching has been with us a good many years. Fortunately it is on the decline, and if we are patient I am convinced it will soon become a thing of the past.

What is the cause?

He asks.

What is the cure?

He asks.

In the early days a lynching was generally brought about by some vile crime committed against some innocent person, usually a woman, in the heat of passion and excitement; and aided and abetted in not a few cases by whisky, the fire is kindled, men lose their reason, and all the leader has to do is to give orders and they are almost certain to be executed.

The crime of lynching, like all other crimes, has a demoralizing influence upon those who engage in it, and almost invariably the lyncher suffers more than the lynched.

A father took his son to see a Negro hanged by a mob, and at the breakfast table next morning the child said, "Father, I've seen a Negro swung up and his body riddled with bullets; now I want to see one burned at the stake."

Every effort should be made by our moral, religious, and educational forces to prevent crime of all kinds, on the one hand; and every appeal made to the honor, the humanity, and the sense of justice of those entrusted with the making and enforcement of law, on the other.

Lynching should never have been made a political issue. It was during the second administration of President Theodore Roosevelt that lynching was brought to the attention of Congress, and the antilynching bill took the place of the old civil-rights bill, both designed to influence the Negro vote. I have noted, from time to time, that the Republican Party, which sponsored antilynching bills, would have control of both Houses of Congress and the President, and yet could not get an antilynching bill through. When the Republicans lost control of the Government, the Democrats took up the fight for an antilynching bill. They have controlled both Houses and the President, but still no antilynching law has passed.

After all, the main cure for the lynching evil is to remove the cause.

We have here, in Albany, Ga., one of the most outstanding and efficient fire chiefs in the country if not in the world. He teaches the art of preventing fires by the process of eternal vigilance. Houses are built strictly in accordance with the laws governing fire hazards; no materials likely to produce combustion are allowed, and every precaution is taken to protect human life and property when fires do occur, as they will in spite of all cautions. Our chief has the most efficient group of firefighters to be found anywhere and the best firefighting equipment that can be procured. The fire loss in the city for the past few years was 44 cents per capita. The fire insurance rate is lower in Albany than in any other city of its size in the country. Chief Bronsnan's remarkable success in fighting fires is due to his ability to put them out before they start.

With lynching, as with fire, we must prevent it at its source; and the source is the people. The people—black and white—must be taught respect for law and order. They must be taught the dignity and the sacredness of human life, and that no man nor group of men have any right to take that which they cannot give. When these truths are rooted and grounded in the lives of the youth of the Nation, it will be difficult to get them to join a mob to take the life of a fellow man, be he white or black.

Certainly this is not going to stop lynchings altogether—neither does teaching people how to prevent fires keep fires from occurring—but it does make the people antilynching conscious and hence makes it easier for the officers of the law to apprehend and punish those guilty of such deeds.

It should be noted that there has never been a lynching in this county (Dougherty), for the people here are opposed to that method of dealing with lawbreakers. A recent case may be cited as representative:

A young Negro GI who had recently returned from service overseas and had been reemployed by a large packing company at the same wages paid the whites doing the same work, went to a neighborhood store, remained until closing time, and then followed home the owner who lived next door to the store. As the man went up the steps to his front door, the GI demanded that he drop the box in which he carried the cash sales for the day. As the storekeeper turned, the young man shot and killed him.

By Monday (the killing was Saturday night) the boy was arrested, and it was a full month before he was brought to trial. At the trial the court appointed two of the best lawyers at the bar to defend him. He was eventually electrocuted. Throughout, there had been no threat of violence.

To some it may seem difficult, but I am convinced that our approach should be through the State rather than the Federal Government. And the approach should be straightforward, forthright, and manly. The appeal should be to the hearts and consciences and the sense of justice and fair play, to those responsible for making and enforcing the laws of the State. Our method of abuse, agitation, propaganda, and high-pressure politics does more harm than good.

Mr. President, that last sentence is directly in accord with the views of many of us. I recall, very vividly, that in 1938, when the antilynching bill was before this body, I used that thought many times in a discussion of the issue.

Moreover, it is my opinion that the Government at Washington is not going to pass an antilynch law, for such a bill has been before the Congress for 50 years, and I am

afraid it will be there as long as the Negro vote in the doubtful States is the unquestioned balance of power. Both of the major parties have taken us for monumental suckers.

Always I find myself turning from lawmakers and legislation back to the people themselves and to education. That is our slow but safe and sure trail out of the wilderness.

"Give light and the people will find their own way."

Who does not recall the life-long propulsion of the tales in his school readers? Why not begin in the nursery—in our earliest oral storytelling and first schoolbooks? Why not set an earnest, capable committee to create for the South, with an indirect but potent antilynching atmosphere, a human-relations primer?

Let stories lead our small Negro children to the strength of patience and endurance, so that they may not grow too bold or oversmart or mean or bitter between the friction of new hopes and old ill-treatment—such stories as that classic of its kind, the Crucifixion, about the cruelest and deepest of all injuries, and Christ's grandeur when he prayed, "Father, forgive them for they know not what they do." The Negro has so many opportunities to attain the stature of the Saviour in this respect. While first-class general instruction widens his information and exercises his intelligence, the parables and fables of a human-relations primer may revise and develop his native gentleness that so pleasantly disarms and wins his way, and spur him through industry to attain economic success and general respect.

Give the small white southerner credit for remembering from his earliest reading, stories that exhibit movingly the sameness of the human heart in all races.

A Chinese boy, attending a Christian school in China, earnestly searched in picture after picture of the Holy Family for some glimpse of Chinese visitors to Jesus. Finding none, he sorrowed. Afterward, when he grew up and became a distinguished artist, he devoted himself to the world's greatest story, painting all its scenes with Chinese backgrounds and the Apostles and others as members of the yellow race. Such tales as this one of the Chinese boy's hunger and the way in which he satisfied it have a pervasive influence.

Do you remember the story of the stoned frogs who cried out to the persecuting boys, "This may be fun to you but it is death for us?"

It is not impossible that in a decade or two a wisely planned human relations primer, with little or no mention of the problem at which it is aimed, might give us a generation of southerners who would be antilynching conscious.

However, lynching has become a thing of the past, and by the slow process of evolution. There was only one lynching in 1947 and 39 cases where officers of the law prevented them. So far this year (1948) two cases of prevention have occurred and in both cases Negroes were the victims of would-be lynchers.

Mr. President, as I pointed out a moment ago during the course of my remarks, there were three lynchings in 1948. Evidently the lynching of the one white person had been registered at the time this book was written, because, as I have just stated, this book records only two as having taken place in 1948. I continue reading:

During the forty-odd years I have lived and served in Georgia, I have witnessed a growing public resentment of this unfortunate method of dealing with lawbreakers and it is entirely probable that we have seen the end of this thing we call lynching. That is—in the South. Thank God and the good people of both races.

Mr. President, the same author has written a whole chapter on Jim Crow cars, and I propose to read several excerpts for the benefit of the few Senators who are present.

The greatest hardships I have experienced in traveling on Jim Crow cars have been the bad behavior on the part of my own people. During 1903 to 1919, when whisky was plentiful, it was positively unsafe for women to ride on the train on Saturdays and holidays as men would tank up on corn liquor, and the whole environment was surcharged with liquor. Conductors have repeatedly escorted colored women and children into the white coaches to protect them from the evil overtures of their own people. It was necessary for us to teach our school girls how to protect themselves from the approaches of the male of their own people while traveling. And if I had any desire to go into the white coach it would be for protection from my own people.

I quote further from this chapter:

However, as I have said, things have improved wonderfully in the past quarter of a century. Most lines have not only comfortable coaches, but little difficulty is experienced in getting seats and sleeping-car accommodations.

I quote further, Mr. President, from the same author at page 209 of his book, in the chapter Jim Crow Cars:

Only when a fellow who has been up North for a few months and comes back with a chip on his shoulder looking for trouble, is there likely to be trouble. I spent 2 years in Philadelphia and my work was such that I had to use the streetcars and busses to get to and from my work, and the behavior of Negro men, and women, too, on the public carriers was something terrible. And the situation seems to be getting worse.

The better class of colored people themselves are becoming alarmed over the increasing rude conduct of the newcomers from the South. Our Negro newspapers are constantly hammering away at these evildoers but to little avail.

I do not believe in lynching or mob violence. But I do believe that the good Negroes in the large centers, where their own people persist in making trouble for themselves and everybody else, should take these hell raisers out into the parks and fix them so they will not be able to sit down for 30 days.

That is his prescription.

I have known decent colored people to get off the car and take a taxi rather than ride with the rough class of their own people. And I have had these same people tell me that they do not blame the southern people for not wanting to ride in the same cars with colored people.

My own hope is that the Negro leaders, our newspapermen, our ministers of the Gospel, our school teachers, and all others who have the interest of the race at heart, will make up their minds that they will unite in a determined effort to make our people conform to the ordinary requirements of civilized life. For it is difficult to see how we can avoid having Jim Crow cars as long as we have Jim Crow people.

Mr. President, this author has written a very fine chapter on segregation. He has given his views, and I am going to take occasion to read them. I repeat, Mr. President, the book from which I am reading is entitled "You Can't Build a Chimney From the Top," and its author is colored, Joseph Winthrop Holley, D. D., LL. D., founder and president emeritus of Albany State College of Georgia. He starts at page 210 of his book, chapter 13, entitled "Segregation:"

TACT AND TIME ARE NECESSARY PARTS OF THE CURE

If the reasons for my attitude are given due consideration, there will be nothing startling in the fact that I, a Negro of some education, favor segregation in the Southern States for the time being.

The realness of my interest in southern Negroes and in the South, to whom I am happy and proud to belong by birth, and among whom I cast my lot for life by choice, will stand comparison with the interests of advocates and agitators of nonsegregation. My knowledge of conditions, both near and far, surely compares favorably. All my childhood was spent in South Carolina; 13 years of my youth I went to school in the eastern United States; and during the 44 years of my efforts to better my race in south Georgia, I have spent much time in the North, in Europe, and in Africa.

I do not turn from nonsegregation as an ideal; but in impatient and intolerant pursuit of it, I can see only trouble and even tragedy. Ideally, there should be brotherhood among human beings; God is our Father; we are adjured to love each other and be each other's keepers. Yet, Arabs and Jews are fronting each other today in Palestine, dealing out death and destruction, spurning cooperation. India, having gained the boon of independence, has its streets littered with the dead of its irreconcilables.

WELLESLEY COLLEGE,
Wellesley, Mass., June 2, 1947.

DEAR DR. HOLLEY: I am enclosing a letter which is being mailed to B. T. today. I read your letter to the members of the board of admission when B.'s credentials were discussed. I wish you might have been present to see the real interest which the members of the board expressed in Blossom and their very deep regret that she could not be included in our freshman class. If her credentials had been a little less good than those of our successful applicants, we would have accepted her quite readily, but, unfortunately, her scores were so low we felt that it would not be a kindness to her to subject her to the extreme academic competition and pressure which she would be under at Wellesley. I know that this news will be sad for you because of your real interest in B. and your desire to carry out Miss Hazard's wishes, but I am sure that we have done the right thing; and if you had been present at the meeting, I think you would agree.

You may be interested to know that Wellesley is anxious to increase the number of Negro students in this student body, and I am proud to write that this year we were able to accept 5 of the 12 Negro applicants, and that we would have been glad to accept more if their records had indicated that they could carry our work. I know it will be a source of pride to you, too, because we have not accepted such a high percentage of our white applicants this year. Thank you for your interest and understanding. I hope that some day Wellesley can accept one of the girls whom you recommend to carry on the important work in which Miss Hazard was so much interested.

Very sincerely yours,

MARY E. CHASE,
Director of Admission.

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

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. Is it not true that the facts as outlined in the letter are duplicated in medical colleges all over the North, where colored students cannot stand the competition when they must compete with white students?

Mr. ELLENDER. There is no doubt about that. In fact, many white persons are unable to enter certain colleges, such as Harvard, Yale, or Columbia,

whereas they might be able to enter other schools throughout the country. It is common knowledge that various universities have different entrance requirements. Dr. Holley exposes the truth. It is something we must recognize. Under the Constitution of Georgia, as I have just stated, I believe it is incumbent upon the State of Georgia to give to colored persons the same facilities as are provided for white persons. I believe the time is not far distant when the opportunity in Southern States for colored people, even under our segregation laws, will be virtually the same as for whites. I know that we have made marvelous progress in the State of Louisiana. Today we have four eminent Negro colleges in my State. There seems to be satisfaction on the part of the colored race.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. How could Negroes obtain an education unless it were in a segregated institution? Do not the facts show that they cannot compete with white students?

Mr. ELLENDER. In justice to the colored pupils, it may be possible that they did not have the same opportunity to obtain the necessary foundation.

Mr. EASTLAND. That is true.

Mr. ELLENDER. By the way, that same situation exists in our own schools in Louisiana. For many years I have been advocating a consolidation of the high schools in various parishes in my State. The parish in which I live, Terrebonne Parish, is the largest parish in the State of Louisiana. Instead of having a dozen high schools scattered throughout the parish, we have only one, and it is a good one. I am glad to say that the graduates of that high school can enter the portals of almost any university in the United States. In some parishes in Louisiana there are as many as 16 high schools. The money to educate the children in a parish where there are 16 high schools must be divided more or less into 16 pots. Many teachers have as many as two or three subjects to teach. I do not believe it is a reflection on any of those schools, but I do know that many of their graduates could not qualify to enter a number of colleges throughout the United States whose admission requirements are much higher than others. As the distinguished Senator from Mississippi pointed out, the same thing which occurs in our white schools applies also to the colored schools.

Mr. ROBERTSON. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question only.

Mr. ROBERTSON. I wish to say to the distinguished Senator from Louisiana——

Mr. ELLENDER. Mr. President, I yield only for a question.

Mr. ROBERTSON. This is preliminary to framing the question.

Mr. ELLENDER. I ask the Senator, please, to ask a question. I do not yield for a statement.

Mr. ROBERTSON. Does the Senator believe that we can put the spirit of brotherly love into a man's heart by legislative fiat?

Mr. ELLENDER. Not in the least. A moment ago I read from this book, and from various editorials, to the effect that it is taken for granted that it cannot be done. We cannot legislate tolerance, religion, or anything of the kind.

Mr. ROBERTSON. Does the Senator believe that if we are ever effectively and efficiently to solve the problem of giving better opportunities to the colored people in our midst, it must be done at the State and local level?

Mr. ELLENDER. There is no question about that. I have argued that on the floor of the Senate when the antilynching bill was before us. On one occasion I spoke for six successive days. On five other occasions when the question was before us I made the same argument. I believe that if the Senators, especially those who favor such legislation, will take the trouble to study the record, they will conclude that legislation of that sort is not conducive to bettering the relationship in the South between the two races.

Mr. ROBERTSON. Mr. President, is the Senator familiar with the civil-rights cases decided by the Supreme Court in 1882?

Mr. ELLENDER. I am familiar with some of them.

Mr. ROBERTSON. I refer particularly to the one called the Civil Rights Case, reported in One Hundred and Ninth United States Report, page 3.

Mr. ELLENDER. I am not familiar with it.

Mr. ROBERTSON. I ask the Senator if he agrees wholly with what the Court said in that case; and mind you, Mr. President——

Mr. ELLENDER. I do not yield for the purpose of permitting the Senator to make a statement; I shall yield only to permit the distinguished Senator to ask a question.

Mr. ROBERTSON. I ask this question: Does the Senator from Louisiana agree that this is a sound holding—as handed down by the Supreme Court in that case:

> It is absurd to affirm that because the rights of life, liberty, and property (which includes all the civil rights that men have) are by the amendment sought to be protected on the part of the States without due process of law, Congress may therefore provide due process of law for their vindication in every case.

Mr. ELLENDER. Certainly. As I have just indicated from the various editorials and from the book from which I have been quoting, there is no question about that.

Mr. President, we cannot legislate morals; we cannot legislate tolerance. Yet that is what I claim the proponents of some of these civil-rights bills are advocating at the present time. It simply cannot be done.

Mr. ROBERTSON. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for a question.

Mr. ROBERTSON. Do the people of Louisiana have a real sympathy for the colored people of that State and a real desire to help them?

Mr. ELLENDER. Certainly; and I know that their interest in that respect exceeds that to be found in the Northern States.

Mr. ROBERTSON. Does the Senator from Louisiana know of any Southern State——

Mr. ELLENDER. I yield only for a question.

Mr. ROBERTSON. Does the Senator know of any Southern State having a considerable proportion of Negroes in its population that does not have that sentiment toward them?

Mr. ELLENDER. I do not.

Mr. EASTLAND. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. What State has more segregation than Pennsylvania or New York or Illinois?

Mr. ELLENDER. I do not know. As was pointed out in one of the editorials, some colored man who was present actually saw this situation: There was a Negro convention in one of the New Jersey cities; and in order not to serve the colored delegates, all the restaurants closed while the convention there was going on. Yet New Jersey is one of the States which has passed the FEPC law and has been trying to appease the colored people.

Mr. EASTLAND. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question only.

Mr. EASTLAND. Does the distinguished Senator know that the city council of Chicago recently voted for segregation in the housing there, under their housing program?

Mr. ELLENDER. I am not familiar with that, I say to the Senator; but if he says so it must be true. I have no knowledge of it.

Mr. President, I read further from the book:

> The second difficulty that would face us, if we were permitted to enter the University of Georgia, would be our own inertia, or our inability to take advantage of the opportunities when they come.
>
> Harvard and Yale Universities have been open to our people for at least 80 years or nearly a century. And yet, there are hardly a dozen Negroes born and reared in Massachusetts and Connecticut who have graduated from Harvard or Yale. The Negroes who have gone to these great institutions have been from the South and what is true there is generally true from Maine to California.
>
> Then, too, there is Canada, with some of the finest universities on this western continent. Yet, of the many Negroes who found refuge in that country during slavery, few if any have taken advantage of the opportunity at their very doors.
>
> Were the colleges and universities of the South thrown open to him, would the Southern Negro react differently? In other words, would the Negroes in Georgia do what the Northern, Western, and Canadian Negroes have refused to do?
>
> The third obstacle is financial. It costs a full-pay student (and you may depend upon it, the Negro would be full pay plus) $2,000 a year. Where is the Negro family that is able to raise $4,000 a year to send Susie and Jimmy to the University of Georgia?
>
> The fourth hurdle is not external. And there is no hope of leaping it safely now. In entering the University of Georgia, a Negro

would meet a hostile faculty and student body. The man may take the colt to the water but cannot make him drink. Frankly, no self-respecting Negro is going to send his sons and daughters to any college where the students and teachers do not want them and will not treat them like fellow humanbeings. The faculties and students in our white colleges in the South are not ready to receive Negro students.

Taken from any standpoint, the Negro as a group is not ready to profit by going to the white universities of the South. Let us insist instead that we be given our own schools, taught by the best trained men and women we can get. And let us make these colleges as fine as the finest. I am convinced that we can find Negro men and women who are capable of doing just that.

Mixed elementary schools in the Southern States would not be happy places for any of the pupils, and they would be unsatisfactory for other races.

For instance, if the children of both races were forced to attend the same schools, Negro teachers would have to find other forms of employment. Certainly the southern whites are not going to send their children to schools being taught by Negroes, any more than that is being done in the North. Here in Georgia, for example, we have 7,000 Negro teachers, mostly women, drawing more than half a million dollars a month for 12 months in the year and plans are being made to double that amount in the future. Mixed schools would mean that these faithful women would be turned adrift with nowhere to go for their support. And thus another field of opportunity for the young Negro would be closed.

Mixed schools in the South would be wrecked by an inescapable superior and inferior complex. If the white teacher should run true to form, would she not say to the white child, "My little man, you are white," with all of its implications; and to the colored child, "Sammy, you are colored," with all that goes with it?

No; it is best to let us work out our own problems under the guidance of "God, who made and loveth all."

The position I have taken on this question of segregation in our State schools and colleges has had the full approval of some of the leading minds in the country, including Miss Caroline Hazard, who was informed of every step taken by me to get the Negro units divorced from the other units in the university system and have them set up under Negro faculties made up of the most outstanding men and women to be found, with salaries commensurate to the kind and character of work done. The best teachers in our colleges are none too good; for the sicker the patient, the more skillful ought the physician be.

I wish to quote from a letter from Miss Hazard:

"Your letter of August 1 interested me very much. I did see that the Governor had adopted your address as a part of his own message, and it seems to me that your address was a very fine one and entirely reasonable. I think you are right in accepting the segregation of the two races in the schools of the State. Here in my own kindergarten, I find a little pickaninny and she is received without question, but in the South that is too much to expect. If you can only insist upon equal accommodations and, at least in the graded schools, equal facilities, you will do very well. Do let me know how things turn out. Certainly you are a citizen of Georgia and you should exercise the rights and privileges of a citizen of that great State. Thank you for the clippings. Your most eloquent statement makes a very fine climax to the Governor's message."

I not only had the approval of Miss Hazard but of some of the most distinguished and outstanding leaders and scholars of the race. For example, I have before me a letter, written on the day of the election in the heated governor's campaign of 1942 by Dr. Horace Mann Bond, then president of the Fort Valley State College, now president of Lincoln University. It was a source of encouragement and comfort to me:

"Frankly, although it may seem funny, I think, on the one hand, it may be better for our schools if Mr. Talmadge is elected. I know you think this is funny, knowing as you do how much Rosenwald money we have had, but that can't last forever and the school, in the long run, will have to have State money to survive, and I'm really convinced that now is the best chance to make a change from private to public support, even at a temporary loss. Arnall might mean private money for awhile but the time for that is over. This I feel even if I would get lost in the shuffle."

The movement to force the two races to worship in the same churches in the South is another direct and flagrant violation of individual rights. The Pilgrim Fathers came to these shores to find freedom. Neither the church nor the State has any right to interfere with the manner or place of worship of the two races here in the South. Such a coercive movement is fraught with grave danger to both whites and blacks.

Neither race wants mixed congregations. Last year, when the YWCA was in annual session in Atlantic City, N. J., a vote was taken to do away with segregation in the YW and officials were instructed to establish no further separate units.

I asked my 16-year-old daughter if she would like to join the YW (white) on Arch Street, Philadelphia. She promptly said, "No, I'll join the colored YW on Catharine Street but not the white Y. You know, Daddy, the right to worship where you please is one of the four freedoms for which the last world war was fought."

That young girl expresses the sentiments of every normal youth, white and black, in the United States. You might find a few whites, like the followers of Father Divine, who prefer to worship with colored people, but they are not to be taken too seriously as they are not many in number.

Colored people who are honest-to-goodness Christians and are really serving God with a clean heart are not the ones who seek admission into white churches. The few Negroes who would attend white services add no strength to their own churches and would add none to white churches. I pity the white minister who would be dependent upon the colored aristocracy for financial support.

It is the common run of folk, the masses, who support Negro congregations and institutions, and these people would never go to white churches because the preaching of the white minister does not appeal to them. Besides, most colored people take the white man's religion cum grano salis. The white minister cannot dish the Gospel out to suit Aunt Nancy. She wants her preacher, when he gets up in the pulpit and takes a text, to start low, rise high, wax warm, and sit down in a storm.

Negroes who are rightly constituted—and the great majority still are—do not wish to go where they are not wanted. They dislike to ride in motorbusses where there too often is only standing room for them and every lurch of the coach jostles them against someone who openly resents the contact. Some southern Negroes on account of this unpleasantness have given up riding on the busses and have taken to the trains, so they may have the mental comfort of segregation. They distinguish keenly the difference between recognition that is accorded from the heart and the kind invoked by law that tears down old-time consideration on both sides and kindles mutual hard feelings.

I asked Monroe Trotter, editor of the Boston Guardian, "Why do you northern Negroes fight to get Negroes in white colleges when you do not attend them yourselves?"

He replied, "We are fighting for a principle. We want the right to go places whether we go or not."

May it not be questioned seriously whether this is principle and altruism or merely blind vanity? How much would it profit us southern Negroes (or the South, or the North, or the Nation) if these out-of-State individuals should gain for themselves by law their barren point, but lose for us the good will of our white neighbors with whom all of us must live? The northern Negro could, of course, go back North with his pride fattened, but we southern Negroes, to whom the victory meant nothing, would be left to endure the blazing antagonism that this shotgun union would arouse.

Surely it is plain folly to obstruct and embitter our Southern States in their struggle with a painful evolutionary problem. They wish to take care of us, and they will. I had faith in southern men and women when I began my work in Albany, Ga., 43 years ago, and I still have the same faith in and love for the children of those whose aid I have experienced gratefully all these years.

Mr. President, let me repeat, the book from which I am reading is the book written by a Georgia Negro named Joseph Winthrop Holley, D. D., LL. D., founder and president emeritus of Albany State College. The title of the book is "You Can't Build a Chimney From the Top":

Progress has been slow, but we have gone forward. Our difficulties have been primarily educational, based on lack of funds. As long as friends from the outside advanced southern efforts with their contributions our gain was steady, but since radicals, with or without money, began to try not to hasten but to overthrow the southern program there has been growing trouble and confusion and actual retrogression.

Economic conditions are changing rapidly in this part of the country. The Southern States will have more money in the future; their prospects are rich. As they become more able they will wish increasingly to take care of their colored people. If the Nation feels it cannot wait and wants swifter results, Washington might wisely step in financially and speed up the efforts of the Southern States to help us.

Our real and great need now is immediate and generous and understanding help to raise ourselves.

"You cannot build a chimney from the top."

The most effective influence for race tolerance and the most powerful compulsion toward nonsegregation will come as we lift our mass intelligence, skill, and industry into responsible citizenship and Christian character.

Since the above was written I have received some rather interesting and important information which I think will be well to add in this connection:

The Reverend Joseph Wilson Cochran, former secretary of the board of children education of the Presbyterian Church in the United States of America, a life-long friend of the author, was asked to read my work and to write frankly what he thought of it, and to make any suggestions he thought might improve my effort.

Dr. Cochran writes:

"Since receiving your letter and work only 2 days ago, I have spent much time and thought on the matter, reading carefully the story of your life, and your political, social and religious philosophy. I have been deeply moved by it all. And must confess that you have made out a stronger case for racial segregation than I had thought possible. I have a much clearer picture of what the Negro wants in the way of separate schools, churches, and hospitals and why you trust the southern white man to give you

what you want rather than northern educational theorists. Your book is an extremely controversial document and is likely to meet the disapproval of that powerful and growing school of thought that believes the Negro will not get his rights until segregation is entirely eliminated. Your book will be scoffed at up North and praised down South. So what? That doesn't mean that your book would not do good in both areas. Be assured, my dear friend, that I entertain only the liveliest interest in your project and hope you will not abandon your desire to produce a worth-while contribution to a problem that is vexing the best minds of this generation."

In the Atlanta Constitution of February 25, 1947, John W. Clark, trustee of the University of North Carolina has this to say:

"The Julius Rosenwald Fund, working through the Federal Council of Churches, and the CIO is heading a drive to do away with separate schools, colleges, churches, and hospitals for the races in the South. There is good money in attacking southern people and southern traditions."

These statements by Dr. Cochran and Trustee Clark would equal the recommendations of the President's Civil Rights Committee and bring us face-to-face with the abolition of segregation in the South as the only hope for a satisfactory solution of the problem of the races in this section.

My own conviction is that the program is too utopian for the present; that the Congress is not likely to adopt such a radical measure; that if it is passed, it will be difficult to enforce and would do more harm than good in the end.

Not only are the Negro high schools doing work below the standard required for admission into white colleges, but according to reports of the dean of the medical college at Howard University, quite two-thirds of the applicants for the freshman class are utterly unprepared to pursue the courses as laid down, and what is true at Howard is true also at Meharry Medical College. If our people are not trained well enough to enter our Negro professional schools, how can we expect them to enter the white colleges for professional and graduate work?

There is all the difference in the world in the character of the work done by the early missionaries who established our Negro colleges and that done by these same schools today. There has been a steady lowering of standards in both high schools and colleges until we have reached the point where few graduates from our high schools are prepared to do effectively the freshman level of college work, and graduates from our colleges are not prepared for work in professional and graduate schools.

The president of Harvard University says:

"Harvard receives Negro students in its medical college on the same terms as others, but the Negro colleges do not give their students enough premedical training for entrance."

In other words, the training in our Negro colleges is below the standard, so that to do effective professional and graduate work our Negro high schools and colleges will have to be equipped and manned to furnish this basic education without which all other will be vain.

I think it would not be amiss to call attention to sayings and doings of two of America's greatest statesmen and the Negroes' greatest benefactors. The reference is to a recent statement in the Atlanta Constitution and to an editorial appearing in the Macon Telegraph.

The statement from the Atlanta Constitution is by the martyred President Abraham Lincoln: "I am not, nor ever have been, in favor of bringing about, in any way, the social and political quality of the white and black races. I am not, nor ever have been in favor of making voters or jurors of the Negroes, nor of qualifying them to hold office nor to intermarry with white people. There is a physical difference between the white and black races which will forever forbid the two races living together on terms of social and political equality. Inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior; and I, as much as any other man, am in favor of having the superior position assigned to the white race."

From the Macon Telegraph: "I am glad to advise that the Franklin D. Roosevelt deed referred to in our editorial some weeks ago reads as follows: 'This indenture, made and entered into this 9th day of March 1929, between the Meriwether Reserve, Inc. (formerly the Georgia Warm Springs Foundation, Inc.), a corporation under the laws of Delaware, hereafter in this indenture known and designated as grantor, and Rebecca M. Hardaway, of Columbus, Muscogee County, Ga., hereafter in this indenture known and designated as grantee: Witnesseth that:'

"The fourth provision of this deed reads as follows:

" 'Fourth. Neither the land herein conveyed, nor any part thereof, shall be sold, rented, or otherwise disposed of to any Negro or other person of African descent, or to a corporation or association owned or controlled by Negroes.'

"These excerpts are taken from a sworn, certified copy of the original deed, which deed is recorded in the Superior Court of Meriwether County, Ga., under date of November 21, 1945, record 25, page 215."

You can't build your chimney from the top.

Mr. President, I have been reading some very interesting quotations from this book. I intended to read more, but, instead, I now desire to devote a few hours to the poll-tax question.

Mr. GEORGE. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield to the distinguished Senator for a question; yes.

Mr. GEORGE. Was the Senator reading from the book written by Dr. Holley?

Mr. ELLENDER. That is correct.

Mr. GEORGE. He is the head of a colored institution at Albany, Ga.; is he not?

Mr. ELLENDER. That is correct.

Mr. GEORGE. Has the Senator ever had an opportunity to know Dr. Holley or to visit him?

Mr. ELLENDER. No; I never had the pleasure of meeting him.

Mr. GEORGE. Has the Senator ever visited his institution?

Mr. ELLENDER. No; I have not.

Mr. GEORGE. Does the Senator know that the work of Dr. Holley's institution is comparable to the work done by Booker T. Washington at an earlier date?

Mr. ELLENDER. That is what I understand, but I am not familiar with it. I have never visited it, but some day, on my way south from Washington, I propose to make a special trip to visit that institution, as I have done in the past to visit Tuskegee, in Alabama.

Mr. GEORGE. Does the Senator know that Dr. Holley is held in universal high esteem by the white men and women, as well as by the colored men and women, in Georgia.

Mr. ELLENDER. That is my understanding.

Now, Mr. President, as I indicated earlier in my remarks, I propose to deal at length with the question of poll taxes and the various qualifications imposed from colonial days to date. The history of this aspect of the case is most interesting. As I proceed I shall develop that the Colonies from their inception maintained qualifications for voters. When the Colonies formed the Thirteen States of our Union they still jealously and zealously guarded their right to prescribe qualifications for voting.

I propose to demonstrate to the Senate in detail what the provisions were as to the various Colonies, and then as to the States, and follow that by an analysis of many decisions that were rendered by the Supreme Court of the United States, holding conclusively that the right to prescribe qualifications for voters is within the States and not the Congress.

As several cases held, there are no Federal voters; they are all State voters, and their qualifications are prescribed by the States in which respective voters all over the country live.

As early as 1750 there were different qualifications for voting in the different colonies. I quote from Formation of the Union, 1750–1829, by Hart, page 15:

In each there was an elective legislature; in each the suffrage was very limited; everywhere the ownership of land in freehold or other property, or the occupancy of a house was a requisite, just as it was in England for the county suffrage. In many cases there was an additional provision that the voter must possess a specified large quantity of land or must pay specified taxes. In some Colonies there was a religious requirement.

Mind you, now, all these requirements I have just mentioned were prerequisites for the exercise of the voting privilege.

While there were few specific provisions concerning suffrage in the charters of the Colonies, popular elections existed in each of the Colonies from the earliest date down to the Revolution. Popularly elected assemblies carried on local government. Virginia had a House of Burgesses as early as July 30, 1619. And what was the first consideration of these colonial groups who were fiercely protective of their rights?

One of the first tasks of these colonial assemblies was to regulate the elective franchise. (See McCulloch, Suffrage and Its Problems, at p. 18.)

While the qualifications were vague and indefinite, there were many requirements, each a proof of the local regulation of voting qualifications. Even the Crown and the English Parliament made no serious attempt to modify or harmonize the various suffrage regulations. I quote from the same volume, page 19:

This left each colony practically free to pass its own laws providing for the franchise. By the time of the Revolution this practice became thoroughly established, thus allowing each commonwealth to make suffrage laws to fit its peculiar electoral problem.

Down to 1776 there were seven qualifications for the elective franchise. The outstanding one was the landed-property qualification, which probably arose because of the business corporation-like nature of the early Colonies. A piece of land was considered as giving a person the freedom of the company, as provided by Massachusetts in 1621, just as

a block of stock entitles its holder to vote in a corporation.

Porter, History of Suffrage in the United States, pages 3 and 4:

But this very simple test of property-holding could not long hold out alone, although it was the first and the dominating consideration for almost 200 years following. The population became so complex, the interests of colonists expanded so far beyond mere commercial enterprise, that other standards of fitness for participation in the affairs of the community were sought out and established. Strict limitations had been put upon the right to join the company, and after the companies ceased to exist and the Colonies became exclusively political institutions, the same limitations were carried over for the suffrage with some elaboration. They dealt with all the various things which are supposed to determine capacity to take intelligent interest in community affairs. Race, color, sex, age, religion, and residence were now investigated before the applicant was admitted to the suffrage. The theory was that only those who clearly had an interest in the colony—measured in terms of tried standards—should exercise the right of suffrage.

There we find a yardstick or a method of providing qualifications for voters during colonial days.

Virginia had varying requirements. In 1655 a voter had to be a habitant and a householder; in 1699 he had to be 21 years of age, a male habitant and freeholder, Papist barred. By 1762 this had been further refined by the freeholder being particularly required to own 50 acres, or 25 acres and house 12 by 12.

Massachusetts first required religious standards, Puritan and Orthodox, in 1631. By 1691 Massachusetts required a voter to be English and to own 40 shillings freehold or £40 of property.

Connecticut in 1638 required a voter to be a habitant, a Puritan, and a freeman, and varied this by 1702 to specify that he have 40 shillings freehold or £40 property.

Rhode Island, as early as 1665, required a competent estate and barred Christian Papists. By 1767 Rhode Island added to this the requirement of living in a town, plus owning 40 shillings freehold or £40 property.

New Hampshire in 1680 required that a voter be 24 years of age, English, Protestant, and have an estate of £20. By 1728 the last requirement was increased to £50 realty.

North Carolina in 1669 required a voter to be a deist and to have a 50-acre freehold. By 1760 this had varied. The qualifications were 21 years of age, 1½ years residence, British nationality, and a 50-acre freehold.

South Carolina in 1669 required a person to be a deist and to have 50 acres freehold. By 1759 a South Carolina voter had to be white and 21 years of age, Protestant, and have a settled freehold.

Georgia demanded a man to be 21 years of age and to have 50 acres of land, papists barred. In 1775 the land requirement took on a subtle change. It was replaced by the word taxpayer, plus ½ year's residence required, and papists barred.

Pennsylvania in 1683 required a voter to own 100 acres—10 cultivated—or 50 acres—20 cultivated—or pay taxes. In 1700 Pennsylvania required a man to be 21 years of age, a 2-year resident, English, and own 50 acres—12 cultivated—or £50 in property.

Delaware, in 1701, had a 2-year residence requirement, 21-year-age requirement, and land ownership of 50 acres—12 cultivated—or £50 in property. By 1733 British citizenship had been added to the list.

Maryland's only requisite in 1637 was that voters be freemen. In 1718 Maryland had barred Catholics and required 50 acres or £40 property.

New York in 1683 accepted a vote from any freeholder. In 1701 21 years age was requisite and £40 realty was necessary, and Papists and Jews were barred.

New Jersey in 1668 allowed any freeholder to vote. In 1725 that freeholder had to be a 1-year resident, and must own 100 acres or £50 property.

It is interesting to regard some of the varying reasons for the above requirements, keeping in mind that the very fact they have varied in each State, with the particular conditions of growth and the existing population, adds undeniable power to the case I am presenting for each State in the Union, for their own continued right to judge their own needs and provide therefor.

I read from Porter, History of Suffrage in the United States, pages 4 and 5:

Standards of character and fitness varied from one part of the country to another. In Massachusetts the Puritans believed that only by restricting suffrage to men in their churches could the future well-being of the colony be insured. The problem of the "right" to vote became distinctly subordinate. They restricted the suffrage for the good of the community. The fact that their standard of good character (church membership) was narrow is not at all surprising. The character of the man's employment was often considered a criterion of his ability to vote intelligently, and thus college men and clerical officers were presumed to be especially fit for the suffrage.

The philosophy of suffrage has always been more or less opportunistic, if the word is permissible. Suffrage qualifications are determined for decidedly materialistic considerations, and then a theory is evolved to suit the situation. In the early days riot and disorder might accompany an election. The authorities would thereupon fix the qualifications so that the disorderly people could not vote next time. Then would come the theory to justify it—only those owning a certain number of acres would be considered fit to vote, only those of a certain religious faith, and so on. Unquestionably this has happened in times of stress, for theory did not come to be the preliminary determining factor until complete peace and order prevailed, and even then theory was not uncolored by materialistic considerations. Suffrage limitations were bound to adapt themselves to social and economic conditions. In rural Virginia the freehold requirement of 50 acres excluded very few of the best type of men. But such a requirement in an urban community would have been intolerable. Obviously an absolute criterion could not obtain. It became necessary to adopt whatever criterion was calculated to embrace the best men.

Moral qualifications were restricted almost exclusively to New England. It was sometimes necessary for the voter to show proof of his good character. At other times if one were accused of improper conduct it would cost him his vote, although the particular offense was not mentioned in the law. In the South there were restrictions against men of certain race—foreigners and Negroes were excluded.

I read further from Porter History of Suffrage, bottom of page 5 and all of page 6:

All of the restrictions and qualifications can be seen to support one of two fundamental principles: One may be called the theory of right and the other the theory of the good of the state. Every qualification imposed had one of these two principles in view. Either it was established in order to fulfill the right which certain people were supposed to have, or else it was established simply in order to serve the best interest of the state. It might have been said that a man had a right to vote because he owned property, or because he was a resident, or because he paid taxes, or simply because the right to vote was a natural right. And this would be the guiding consideration without regard to the effect it might have on the well-being of the community. Thus in some places nonconformists were allowed to vote because their property right was recognized. Nonresidents were permitted to vote where they owned property solely because they were supposed to have a right to vote on account of their holdings. This theory of right was the first to appear and has always persisted. Each generation would seek to add a new subhead to the title, as it were, and base a right to vote on some new ground.

The other great principle or theory had to do with the good of the state. It developed as soon as the narrow business-corporation concept was abandoned, and it was most emphasized by the Puritans. It continues to the present day but has never been entirely divorced from the theory of right. Under this theory of the good of the state men were excluded because they were not church members, because they were criminals, because they had not been residents a long-enough time. It is not always possible to classify every restriction definitely, but it may be said that one of these two theories controls every modification of the suffrage.

In the North, there were no race qualifications, because the few free Negroes scattered through the northern Colonies seemed to have caused little alarm along suffrage lines. North Carolina, Georgia, South Carolina, and Virginia were the only Colonies which disfranchised Negroes before the time of the Revolution, showing that either very few of them tried to vote or there was little aversion to it, the former probably being correct. At any rate, there was no race issue injected generally into the suffrage regulations. Another generation saw a marked change.

There was in none of the Colonies except Pennsylvania the rigid residence requirement of 2 years. And why the particular need there, true locally, yet not present elsewhere? Probably because of the conservative proprietor's desire to limit the influence of the many recent immigrants.

The property test was the most frequent and weightiest qualification. The cheapness of land led to the requirement above stated, in some instances, that the land be worth a certain sum in money or produce a certain income. Again we see the ever-present variations in the different Colonies. In Georgia there

could not be the same money value requirement as in more thickly populated New England, and conversely, a voter in crowded New England could not have been required to own the same quantity of land as the voter in sparsely settled Georgia. In Virginia the varying standard of 50 acres of land, or 25 acres of land being worked and occupied by a house 12 feet square, or a town lot with a house of similar dimensions, was the answer to the rural versus urban problem. The city dwellers could not acquire land to a broad extent, and the rural dwellers resented a value fixation being set on the land to be held.

Five of the Colonies allowed the substitution of personal property for real estate.

This indicates a distinct concession of the urban communities, and it is significant that four of these States are in the small New England group, where the supply of real estate was limited. This adaptation of the suffrage qualification to the particular economic situation illustrates the willingness of men to adjust their ideas of what is fundamentally right to the needs of the dominant group. (Porter, History of Suffrage in the United States, p. 9.)

The next break-down in this type requirement is from personal property to taxpaying. As conditions change, a trend emerges, the picture alters, and the statutory machinery with which we are equipped permits each State to shift or vary its position with the times.

Religious tests were decisive in New England, and common everywhere except in Pennsylvania. In the South Papists were usually specifically barred. New York barred Jews. Maryland also barred Catholics. Massachusetts supplemented the religious tests by moral-character qualifications. Later a property qualification was inserted as an alternative. Later the religious test disappeared. South Carolina, with her requirement that a voter acknowledge the being of God, was the last State to have the statutory religious standards for suffrage and religion as a qualification for voting passed out with the colonial period.

Citizenship and residence were of comparatively little importance in a new county, predominantly British.

Before turning to the Articles of Confederation and our Constitution, the following words concerning voting qualifications in the Colonies seem particularly appropriate:

It is of moment to note that there were no efforts at uniformity in the regulation of suffrage. In each colony by charter, or more often by acts of the assembly, the elective franchise was controlled independently. This commonwealth treatment of suffrage was the natural result of colonial history. So thoroughly grounded was this policy that when the Colonies seized sovereignty and organized a Federal Government the suffrage program was undisturbed. It continued as the basic foundation on which all Federal elections must rest. (See McCulloch, Suffrage and its Problems at p. 29.)

The truth of the proposition that each State best knows its own conditions and is best equipped to handle them, is shown by the direction of the Continental Congress, on May 10, 1776, following the outbreak of the Revolution, to each of the Colonies to "adopt such governments as shall best conduce to the happiness and safety of their constituents in particular, and America in general." (Hart, Formation of the Union, 1750–1829, at p. 89.) Following these instructions, the Colonies had already begun, before July 4, 1776, to draw up written instruments of government. I now desire to read a few paragraphs from McCulloch on Suffrage and Its Problems. I read from page 30, the first paragraph:

With the separation from the mother country came very little change for the Colonies severally. The Union took the place of the Crown, while the various commonwealth governments went on very much as before. Therefore, suffrage regulations were not disturbed at all; each commonwealth continued to regulate the elective franchise independently. The several States sought directions of the Continental Congress as to framing constitutions to replace the old charters which had been granted by the King. But after this had been done, the two sets of governments moved along independently. The Central Government under the Articles of Confederation interfered with the States as little as possible, and they do not seem to have looked to it even for advice.

The only point at which the two governments could touch even indirectly on suffrage matters was article V, which provided that the delegates to the Confederation Congress should be "appointed in such manner as the legislatures of each State should direct."

Also, quoting directly from the Articles of Confederation, and to demonstrate the doctrines that remained ever uppermost in the minds of the founders of our country, I quote article II:

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

I now read from the Federalist Articles of Confederation, article V, the first paragraph:

For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

Also:

In determining questions in the United States in Congress assembled, each State shall have one vote.

The above provisions show clearly that matters of voting qualifications were to be left strictly to each State. The Articles of Confederation were inadequate and hurried, and later proved insufficient to cope with the changing United States and its manifold problems. A new and far-sighted instrument was needed, a considered and well-debated structure built on a framework with a future. But, it is noteworthy, before we turn from the Articles of Confederation, that even though the country was in the midst of revolution, torn by varying doctrines and lacking in all organization at the time they were written, there was one thing that was not left out. Many important things were left out, much was left a blank, but even in a time of crisis these men who were struggling for a workable governing organ to suit their needs and their hopes, kept one thing before them, the inviolable right of each State to determine the qualification of its voters and to control its own elections. They did not fail to preserve this right in the articles they drafted.

When the Articles of Confederation, which were adopted in time of stress without full cognizance of the problems to be solved and with the States themselves ill defined geographically and politically, proved unsatisfactory and insufficient, it was suggested by Hamilton in 1780, and later by Tom Paine, that a convention be called to revise the Articles of Confederation, and to draft a Constitution of the United States of America.

Let us go back to that convention. There is drama in the air. Vital provisions for the constitutional structure of a new country are in the making. Each delegate has his own theories, his own pet beliefs to advance. All are filled with a desire for the best in government for their new country.

Maj. William Pierce, of Georgia, made some notes of the membership of the convention. Among those historically well known to us today who were prominent in drafting provisions affecting voting qualifications was Rufus King, about whom Major Pierce said:

Mr. King is a man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for 3 years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his countrymen. This gentleman is about 33 years of age, about 5 feet 10 inches high, well formed, a handsome face, with a strong expressive eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him tout en semble, he may with propriety be ranked among the luminaries of the present age. (United States, Formation of the Union—Documents, p. 96, all paragraphs, starting "Mr. King.")

There was Nat Gorham, about whom it is said:

Mr. Gorham is a merchant in Boston, high in reputation, and much in the esteem of his countrymen. He is a man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style; all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no man is more perspicuous and full. He has been President of Congress, and 3 years a Member of that body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner. (United States, Formation of the Union—Documents, p. 96, last paragraph, on Mr. Gorham.)

One of the high lights was Alexander Hamilton.

Colonel Hamilton is deservedly celebrated for his talents. He is a practitioner of the law, and reputed to be a finished scholar.

To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the heart and head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory; it is my opinion that he is rather a convincing speaker, than a blazing orator. Colonel Hamilton requires time to think, he inquires into every part of his subject with the searchings of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on. His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable. (United States, Formation of the Union—Documents, p. 98, last par., "Colonel Hamilton," through paragraph, p. 99.)

From Connecticut came Oliver W. Ellsworth, who was on the Committee of Detail charged with forcing the provisions affecting elections:

Mr. Ellsworth is a judge of the Supreme Court in Connecticut; he is a gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions, in order to take off the force of them, so as to admit the power of his own. Mr. Ellsworth is about 37 years of age, a man much respected for his integrity, and venerated for his abilities. (United States, Formation of the Union, p. 98, 2d par., beginning "Mr. Ellsworth.")

From Pennsylvania, on this committee, came Mr. James Wilson:

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with man, and understands all the passions that influence him. Government seems to have been his peculiar study, all the political institutions of the world he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old. (United States, Formation of the Union, p. 101, 5th par., beginning "Mr. Wilson.")

From Virginia came James Madison and Edmund Randolph:

Mr. Madison is a character who has long been in public life; and what is very remarkable, every person seems to acknowledge his greatness. He blends together the profound politician with the scholar. In the management of every great question he evidently took the lead in the convention, and though he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that council. Mr. Madison is about 37 years of age, a gentleman of great modesty, with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation. (United States, Formation of the Union, p. 104, 1st par., beginning "Mr. Madison.")

Mr. Randolph is Governor of Virginia, a young gentleman in whom unite all the accomplishments of the scholar and the statesman. He came forward with the postulata, or first principles, on which the convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person, and striking manners. Mr. Randolph is about 32 years of age. United States, Formation of the Union, p. 105, 3d par., beginning "Mr. Randolph.")

Robert Morris, with James Wilson, Benjamin Franklin, Gouverneur Morris, and others, represented Pennsylvania:

Robert Morris is a merchant of great eminence and wealth; and able financier, and a worthy patriot. He has an understanding equal to any public object, and possesses an energy of mind that few men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not speaking in the convention I know not, but he never once spoke on any point. This gentleman is about 50 years old. (United States, Formation of the Union, p. 101, 1st par.)

On May 29, 1787, Edmund Randolph presented the following resolution:

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

"*Resolved,* That the National Legislature ought to consist of two branches.

"*Resolved,* That the Members of the first branch of the National Legislature ought to be elected by the people of the several States every (blank) for the term of (blank)." (United States, Formation of the Union, p. 116, all of pars. 2, 3 and in par. 4 to semicolon after "term of.")

Then Mr. Charles Pickney laid before the House the draft of a Federal Government which he had prepared, to be agreed upon between the free and independent States of America. (United States, Formation of the Union, p. 119.)

By all these statesmen the United States was referred to as a Union of free and independent States, a group of varying entities with varying problems, soils, industries, populations, having in mind future additions of more States, united for the common good of all.

Article III of Mr. Pickney's draft reads: "The Members of the House of Delegates shall be chosen every (blank) year by the people of the several States; and the qualifications of the electors shall be the same as those of the electors in the several States for their legislatures." (Elliott, Constitutional Debates, vol. I (first edition), p. 145.)

Pinckney also provided in article 5 of his plan:

Each State shall prescribe the time and manner of holding elections by the people for the House of Delegates. (See III Records of the Federal Convention, p. 597, Appendix D.)

Alexander Hamilton's suggested provision was a general one:

III. The Assembly to consist of persons elected by the people to serve for 3 years (United States, Formation of the Union, p. 979.)

When Mr. Randolph's plan was considered, what was the feeling concerning the provision for election of Members of the first branch of the National Legislature by the people of the several States? The discussion is illuminating in showing the angles considered, which make clear the meaning of the provisions ultimately adopted.

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

Mr. Gerry—

These are his views—

The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

Mr. LONG. Mr. President, will the Senator yield at that point?

The PRESIDING OFFICER (Mr. O'CONOR in the chair). Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Would the Senator not think that, due to better education and a more learned electorate today, perhaps some of that logic might not be as good today as it was at the time it was adopted?

Mr. ELLENDER. There is no question about that, I may say to my distinguished friend. What I am reading now was stated in 1789 or 1779. I am reading from the Formation of Our Union, and the purpose of my reading is to show that not only did the Colonies maintain the right to prescribe who should or should not vote, but that the same right was maintained under the Articles of Confederation and when the Colonies became States under the Constitution. The right of suffrage and the right to prescribe the qualifications of voters was guarded zealously first by the Colonies and then by the States.

As I am going to point out in the course of the debate, if it had not been written into the Constitution that the right to prescribe the qualifications of voters was to remain the prerogative of the States, the Federal Constitution in all probability, would never have been adopted. I continue with the views of Mr. Gerry:

The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

That expression was made many years ago, and as my distinguished colleague, the junior Senator from Louisiana, has pointed out, that situation does not exist today. But it has the effect of demonstrating the extent to which the people of that time desired to go in order to preserve their right to declare who should vote and who should operate the Government.

Mr. LONG. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the senior Senator from Louisiana yield to the junior Senator from Louisiana?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Is not the logic expressed therein to some extent applicable today, however, to the extent that possibly it might be wise to consider certain educational qualifications for voters?

Mr. ELLENDER. It is true that very few States are without such qualifications. Many States, it is true, do not require payment of a poll tax as a prerequisite. But many of them require a person to possess certain educational qualifications in order to vote, and many of them today retain the same qualifications as those I have cited heretofore with respect to the Colonies. There have been, of course, certain slight changes.

In many States, as I pointed out a while ago, there was a requirement with respect to religious qualifications. Some prohibited Catholics from voting; in some States Jews could not vote. Some allowed only deists to vote, but those religious qualifications have gradually been eliminated. As I pointed out, South Carolina was the last State of the Union to dispense with religious qualifications.

To continue:

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

Mr. President, I may say the word "republican" as there used was spelled with a small "r", not with a capital "R".

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

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

Mr. Madison considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State legislatures, the second branch elected by the first—the executive by the second together with the first; and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the executive and judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

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

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

On the question for an election of the first branch of the National Legislature by the people:

Mass., ay. Conn., div. N. York, ay. N. Jersey, no. Penn., ay. Delaware, div. Va., ay. N. C., ay. S. C., no. Georgia, ay.

(United States, Formation of the Union, p. 125, starting "Mr. Sherman," all p. 126 and on 127 through words "Georgia, ay.")

In the final report on Mr. Randolph's plan the Committee of the Whole merely said:

3. *Resolved*, That the Members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of 3 years. (United States, Formation of the Union, at p. 201.)

And nothing about voting qualifications, leaving this for specific provision in the States.

On Monday, August 6, the Committee of Detail reported finally the following provision:

(Art. IV, sec. 1). The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within the Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States of the most numerous branch of their own legislature. (See United States, Formation of the Union, at p. 472.)

It is particularly interesting to turn to the reports of the work of the Committee of Detail to see through what stages article IV, section 1 (which is article I, section 2, of our Constitution today) progressed. The very regulations being proposed at this time in this body were suggested in 1787 at the Constitutional Convention and rejected at that time. On June 19 one draft was set forth. It provided:

That the Members of the second Branch of the Legislature of the United States ought to be chosen by the individual legislatures—to be of the age of 30 years at least; to hold their offices for the term of 6 years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the second Branch) during the term for which they are elected, and for 1 year thereafter. (II Farrand, Records of Federal Convention, p. 129 and 130).

The next step was as follows:

The qualification of electors shall be the same (throughout the States, viz) with that in the particular States unless the legislature shall hereafter direct some uniform qualification to prevail through the States. (II Farrand, Records of Federal Convention, p. 139).

(Citizenship; manhood; sanity of mind; previous residence for 1 year, or possession of real property within the State for the whole of 1 year, or enrollment in the militia for the whole of a year.)

Next:

The Members of the House of Representatives shall be chosen biennially by the people of the United States in the following manner. Every freeman of the age of 21 years—having a freehold estate within the United States—who has—having—resided in the United States for the space of one whole year immediately preceding the day of election, and has a freehold estate in at least 50 acres of land. (II Farrand, supra, p. 151.)

Then:

The Members of the House of Representatives shall be chosen every second year—in the manner following—by the people of the several States comprehended within this Union—the time and place and the manner of holding the elections and the rules. The qualifications of the electors shall be (appointed) prescribed by the legislatures of the several States; but their provisions—which they shall make concerning them shall be subject to the control of—concerning them may at any time be altered and superseded by the Legislature of the United States. (II Farrand, supra, p. 153.)

Mr. President, that was a proposal which was made at one time, and I am citing all these various proposals to show how the members of that Convention finally drifted to the provision of the Constitution which is now in that sacred document. In my mind any Senator who will take the time to read these excerpts, to read the history of the present article of the Constitution which gives to the States the right to prescribe qualifications of voters, will come unequivocally

to the conclusion that this was to be done by the States and not by the Congress.

I have taken much time and much effort in digging up this information, Mr. President. At this moment, approximately 6 o'clock, I have been talking almost 6 hours, and four Senators, including the Presiding Officer, have been listening to me.

Mr. MAYBANK. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. MAYBANK. I should like to ask the Senator this question: Did not the Seventy-seventh and Seventy-eighth Congresses confirm what our founding fathers did when the question before this body was that of reducing from 21 to 18 years of age the age limit of those eligible to vote, and did not the State of Georgia, and perhaps another State, reduce the age limit from 21 to 18 years?

Mr. ELLENDER. Yes.

Mr. MAYBANK. Let me ask the Senator this question: Did the Federal Government, which drafted those boys, make any change in the qualifications?

Mr. ELLENDER. Of course the Congress did not undertake to prescribe qualifications, but it worked out a plan whereby those men could vote. The point which I am trying to stress is that if Senators would take the time to study all of the debates which took place when the Convention drafted our present Constitution, they would find, without any doubt, that it was the intention that the States themselves should have the right to define the qualifications of voters. Not only that, but our courts have so held. So I am satisfied that if Senators will open their minds and study the debates and consider Article 2 of the Constitution, and read it carefully, they will find that it is written, in language as plain as language can be, that the qualifications of voters are a prerogative of the States and not of the Congress.

Mr. MAYBANK. Mr. President, will the Senator further yield?

Mr. ELLENDER. I yield for a question.

Mr. MAYBANK. I should like to ask the distinguished Senator from Louisiana if that is not exactly what was worked out in the Seventy-seventh and Seventy-eighth Congresses for those who were in the armed services.

Mr. ELLENDER. Insofar as making facilities available is concerned, that is correct. But, they had to be qualified.

Mr. MAYBANK. By State laws?

Mr. ELLENDER. That is correct; except, as I remember, the poll tax. There was some exception made in that respect. Basically, I believe it was wrong to have done that. Congress had no authority in that respect to take the steps it did. But in an emergency I voted for it, though having doubt as to whether it was a violation of the Constitution. I voted for it so as to give soldiers the right and opportunity to vote. But the law itself did little except follow the State laws in the respective States except as to the poll tax, as I have said.

Again, see the next report:

The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be prescribed by the legislatures of the several States but these provisions concerning them may, at any time, be altered and superseded by the legislature of the United States—the same from time to time as those of the electors, in the several States, of the most numerous branch of their own legislatures.

That proposition was submitted in debate, and I cite it to show the varying views of the members of the Convention and the manner and method proposed by each of them. I cite it merely to show that I do not believe anyone overlooked any argument. In other words, there was free debate on the entire subject, and everyone knew what it was all about. After long debate the present amendment to the Constitution was finally adopted by the Convention, and later ratified by three-fourths of the 13 States.

Mr. MAYBANK. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. MAYBANK. Is it not a fact that the same rule was adopted when provision was made for the election of United States Senators by popular vote? Is it not a fact that that provision is twice in the Constitution?

Mr. ELLENDER. The Senator is correct. Prior to 1913 Senators were chosen by the legislatures of the respective States, as provided by the Constitution. In 1913, when the Constitution was amended so as to make it possible to elect Senators by popular vote, the identical language is employed one-hundred-and-some-odd years previously, which, in effect, stated that the electors choosing Members of the House of Representatives should have the qualifications of electors of the most numerous branch of the State legislature. That language was copied, word for word, when the seventeenth amendment prescribed the new method of election of United States Senators.

Mr. MAYBANK. Is it not a fact that since that language was again placed in the Constitution, it showed that those who were here in the early twentieth century believed in the founding fathers and their conception of government?

Mr. ELLENDER. They must have. That goes without argument.

Every one of these suggestions was thought of long ago. They were discussed and wisely rejected by the framers of our Constitution, when they finally agreed on the form above set out; that is—

The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures. (See Farrand, p. 178, art. IV, sec. 1.)

This point, as all others in the much-debated text, was discussed fully. It is interesting to note what such well-informed and brilliant men as Gouverneur Morris; James Wilson, who was a Justice of the United States; Oliver Ellsworth, who was later Chief Justice of the Supreme Court; Colonel Mason; Benjamin Franklin; John Rutledge, who was also a Chief Justice of the United States; and James Madison, thought of the proposed resolution.

I now quote from Formation of the Union, pages 487, 488, 489, 490, 491, 492:

Mr. GOUVERNEUR MORRIS moved to strike out the last member of the section beginning with the words "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Mr. FITZIMMONS seconded the motion.

Mr. WILLIAMSON was opposed to it.

Mr. WILSON. This part of the report was well considered by the committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard and disagreeable for the same persons at the same time, to vote for representatives in the State legislature and to be excluded from a vote for those in the National Legislature.

Mr. GOUVERNEUR MORRIS. Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States. In some the qualifications are different for the choice of the Governor and of the Representatives; in others for different houses of the legislature. Another objection against the clause as it stands is that it makes the qualifications of the National Legislature depend on the will of the States, which he thought not proper.

Mr. ELLSWORTH thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the National Constitution if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people.

Colonel MASON. The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the Legislature.

Mr. BUTLER. There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. DICKINSON had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defense against the dangerous influence of those multitudes without property and without unpopularity of the innovation it was in his opinion chemirical. The great mass of our citizens is composed at the time of freeholders, and will be pleased with it.

Mr. ELLSWORTH. How shall the freehold be defined? Ought not every man who pays a tax to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear the full share of the public burdens be not allowed a voice in the imposition of them—taxation and representation ought to go together.

Mr. GOUVERNEUR MORRIS. He had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect upon him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it

is now before us, is that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words taxation and representation. The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence, because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining freeholders to be insuperable. Still less that the restriction could be unpopular. Nine-tenths of the people are at present freeholders and these will certainly be pleased with it. As to merchants, etc., if they have wealth and value the right they can acquire it. If not they don't deserve it.

Colonel MASON. We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to and permanent common interest with the society ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment. Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens.

Mr. MADISON. The right to suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature.

When he spoke of the legislature he meant Congress.

A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times a great majority of the people will not only be without land, but any other sort of property. These will either combine under the influence of their common situation; in which case, the rights of property and the public liberty, will not be secure in their hands; or what is more probable, they will become the tools of opulence and ambition, in which case there will be equal danger on another side.

Mr. LONG. Mr. President, will the Senator yield for a question at that point?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to his colleague?

Mr. ELLENDER. I yield for a question, yes.

Mr. LONG. Is it not a fact that since the writing of these papers there has been a great liberalization of all the qualifications for voting by all the States, or at any rate by most of the States that were involved at that time?

Mr. ELLENDER. That is correct. I have previously pointed that out.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a further question.

Mr. LONG. Does not that further prove in historical retrospect that the Federal Government does not have to make the States liberalize their requirements for voting, but that as a historical fact the States have done it of their own accord?

Mr. ELLENDER. That is correct. There is no doubt about that. If the Senator will be patient with me, I have before me data to show how each State, from the formation of the Union, made such changes. Congress did not do anything about it. But the States themselves did it through their own local governments.

The example of England had been misconceived (by Colonel MASON). A very small proportion of the representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States, and it is in the boroughs and cities rather than the counties that bribery most prevailed, and the influence of the Crown on elections was most dangerously exerted.

Doctor FRANKLIN. It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen who were carried in great numbers into the British prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the ships of the enemies to their country, contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this statute was soon followed by another under the succeeding Parliament, subjecting the people who had no votes to peculiar labors and hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. MERCER. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the mode of election by the people. The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia as an example in point. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who being dispersed, will scatter their votes among a variety of candidates.

Mr. RUTLEDGE thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people and make enemies of all those who should be excluded.

On the question for striking out as moved by Mr. GOUVERNEUR MORRIS, from the word qualifications to the end of the article III:

N.H. no. Mas. no. Conn. no. Penn. no. Del. ay. Md. divided. Va. no. N.C. no. S.C. no. Georgia not present.

Adjourned.

WEDNESDAY, AUGUST 8, IN CONVENTION

Art. IV. Sec. 1 being under consideration—Mr. MERCER expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr. GHORUM. He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston where merchants and mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. MADISON). The cities and large towns are not the seat of Crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr. MERCER did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that candidates ought to be nominated by the State legislatures.

On the question of agreeing to art. IV, sec. 1, it passed nem. con. (Quoted from United States, Formation of the Union, all pp. 487–491 to art. IV, sec. 2 on p. 49.)

How timely this discussion is today. How true and to the point. I have no need to search for reasons or to manufacture a logician's arguments. I need only take the very words of men whom history has stamped with greatness and foresight to prove my position.

I repeat some of these well-considered words, in fact, I delight to dwell upon their wisdom.

The right of suffrage was a tender point, and strongly guarded by most of the State constitutions.

The States are the best judges of the circumstances and temper of their own people.

A power to alter the qualifications would be a dangerous power in the hands of the legislature (referring to the National Legislature).

Particularly note what Benjamin Franklin, noted for his practical, earthy, common sense, said:

He did not think that the elected had any right in any case to narrow the privileges of the electors.

Turning now from the remarkable document of James Madison, recording the activities of the Constitutional Convention, to the notes of Rufus King, a delegate from Massachusetts to the Constitutional Convention, corroborating the Madison papers, here is King's record

of the debate over the clause, "electors to be the same as those of the most numerous branch of the State legislature."

MORRIS proposed to strike out the clause and to leave it to the State legislature to establish the qualification of the electors and elected, or to add a clause giving to the national legislature powers to alter the qualifications.

ELLSWORTH. If the legislature can alter the qualifications, they may disqualify three-fourths, or a greater portion of the electors—this would go far to create aristocracy. The clause is safe as it stands—the States have staked their liberties on the qualifications which we have proposed to confirm.

DICKINSON. It is urged that to confine the right of suffrage to the freeholders is a step toward the creation of an aristocracy. This cannot be true. We are all safe by trusting the owners of the soil; and it will not be unpopular to do so, for the freeholders are the more numerous class. Not from freeholders, but from those who are not freeholders, free governments have been endangered. Freeholds are by our laws of inheritance divided among the children of the deceased, and will be parceled out among all the worthy men of the State; the merchants and mechanics may become freeholders; and without being so, they are electors of the State legislatures, who appoint the Senators of the United States.

ELLSWORTH. Why confine the right of suffrage to freeholders? The rule should be that he who pays and is governed, should be an elector. Virtue and talents are not confined to the freeholders, and we ought not to exclude them.

MORRIS. I disregard sounds and am not alarmed with the word "aristocracy," but I dread the thing and will oppose it, and for this reason I think that I shall oppose this Constitution because it will establish an aristocracy. There cannot be an aristocracy of freeholders if they all are electors. But there will be, when a great and rich man can bring his poor dependents to vote in our elections—unless you establish a qualification of property, we shall have an aristocracy. Limit the right of suffrage to freeholders, and it will not be unpopular, because nine-tenths of the inhabitants are freeholders.

MASON. Everyone who is of full age and can give evidence of his common interest in the community should be an elector. By this rule, freeholders alone have not his common interest. The father of a family, who has no freehold, has this interest. When he is dead his children will remain. This is a natural interest or bond which binds men to their country—lands are but an artificial tie. The idea of counting freeholders as the true and only persons to whom the right of suffrage should be confided is an English prejudice. In England, a Twig and Turf are the electors.

MADISON. I am in favor of entrusting the right of suffrage to freeholders only. It is a mistake that we are governed by English attachments. The Knights of the Shires are chosen by freeholders, but the members of the cities and boroughs are elected by freemen without freeholds, and who have as small property as the electors of any other country. Where is the crown influence seen, where is corruption in the elections practiced—not in the counties, but in the cities and boroughs.

FRANKLIN. I am afraid that by depositing the right of suffrage in the freeholders exclusively we shall injure the lower class of freemen. This class possess hardy virtues and great integrity. The Revolutionary War is a glorious testimony in favor of Plebeian virtue—our military and naval men are sensible of this truth. I myself know that our seamen who were prisoners in England refused all the allurements that were made use of, to draw them from their allegiance to their country—threatened with ignominious halters, they still refused. This was not the case with the English seamen, who, on being made prisoners entered into the American service and pointed out where other prisoners could be made—and this arose from a plain cause. The Americans were all free and equal to any of their fellow citizens—the English seamen were not so. In ancient times every freeman was an elector, but afterward England made a law which required that every elector should be a freeholder. This law related to the county elections—the consequence was that the residue of the inhabitants felt themselves disgraced, and in the next parliament a law was made, authorizing the justice of the peace to fix the price of labor and to compel persons who were not freeholders to labor for those who were, at a stated rate, or to be put in prison as idle vagabonds. From this period the commond people of England lost a great portion of attachment to their country.

WEDNESDAY, AUGUST 8. QUALIFICATIONS OF ELECTORS OF REPRESENTATIVES

GORHAM. The qualifications (being such as the several States prescribe for electors of their most numerous branch of the legislature) stand well. Gentlemen are in error, who suppose the electors of cities may not be trusted. In England the members chosen in London, Bristol, and Liverpool are as independent as the members of the counties of England. The Crown has little or no influence in city election, but has great influence in boroughs, where the votes of freeholders are bought and sold. There is no risk in allowing the merchants and mechanics to be electors; they have been so since time immemorial in this country and in England. We must not disregard the habits, usages and prejudices of the people (pp. 873, 874, 875, to top p. 876).

This debate, with the resulting provisions duly considered, was again recorded by Dr. James McHenry, delegate from Maryland. (See United States, Formation of the Union, pages 934 and 935.)

When all the views were aired, and the pros and cons of leaving the qualifications of voters for the National Legislature to be decided by the several States had been debated, the considered result was article I, section 2, of the Constitution of the United States, adopted September 17, 1787:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Every word of that provision had been torn apart in open discussion, until there can be no possible doubt that it was the intention of the framers of the Constitution to leave to State control the field of voting qualifications.

In submitting the Constitution, Dr. Samuel Johnson, the Delegate from Connecticut, added to it the following letter:

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—thence results the necessity of a different organization. It is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interest.

In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid in points of inferior magnitude than might have been otherwise expected, and thus the Constitution, which we now present, is the result of a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable. That it will meet the full and entire approbation of every State is not perhaps to be expected, but each will doubtless consider that had her interest alone been consulted the consequences might have been particularly disagreeable and injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. (United States, Formation of the Union, p. 712.)

Thus we see that at a time when all rights of independent sovereignty could not be secured to each State, when the interest of each State alone could not be considered, when the greatest interest of every American was the consolidation of the Union, even then, when the line was drawn between the rights which had to be surrendered and those which would be reserved, the right to determine the qualifications of voters was reserved to each State.

A comment on this is found in McCulloch, Suffrage and Its Problems, at page 30:

When the more perfect union was formed under the Constitution of the United States, each State had the right to frame its own laws respecting suffrage. Hence article V was carried over into the new Constitution and became article I, section 2: The franchise for the election of the Members of the House of Representatives shall in every State be the same as for the "most numerous branch of the State legislature." The Constitution did not disturb the diversities of suffrage regulations existing in the several Commonwealths: It adopted them. For the Constitution to have been anything but silent on the regulation of suffrage would have been an innovation, and, as Viscount Bryce observed, the members of the Constitutional Convention were too sound political scientists to ignore precedents. Only in three amendments (and only directly in the fifteenth and nineteenth) has the Constitution trenched on the Commonwealth right to regulate suffrage—and even then under extraordinary circumstances. (McCulloch, p. 30, paragraph beginning "When" * * * through first paragraph on p. 31.)

These amendments I shall discuss later, when I have fully covered the formative period.

McCulloch, further commenting, says:

While there has been a revolution in the conception of citizenship, there was no such change in the regulation of suffrage, the determining and regulating power continued to rest with the States. However, much as publicists and reformers may desire a uniform national suffrage law, it is unattainable; expediency and constitutionality are both adverse. In fact such a plan was considered by the Constitutional Convention itself, but it received the vote of only one Commonwealth—Delaware. "The provision made by the convention appears to be the best that lay within their option." The "fathers" were satisfied for the States to continue to make their own suffrage tests, rather than to further prolong the convention and so further endanger the rather slim chances of ratification by the several Commonwealths. The prospect in the convention itself was anything but promising. Even Franklin moved to call in a parson that they might invoke the "assistance of Heaven."

The Constitution conferred the franchise on no one. Likewise citizenship does not bestow suffrage, either upon the natural born or the naturalized alien. The several States have the unqualified right to impose qualifications and regulate suffrage subject only to the limitations in the amendments referred to above. In handing down the decision in the case of *Corfield* v. *Coryell*, Judge Washington in enumerating the privileges and immunities that are usually associated with citizenship, said: "To which is to be added the elective franchise, as regulated and established by the laws or constitutions of the State in which it is exercised." (McCulloch, Suffrage and Its Problems, p. 32, paragraph starting "while" to end of paragraph, and on p. 33, starting line 6, word "The Const." through word "exercised" line 18, p. 33.)

Also note what Hart says in his Formation of the Union, at pages 136–37:

The real boldness of the Constitution is the novelty of the Federal system which it set up. This was the best of the few elaborate written Constitutions ever applied to a federation; and the details were so skillfully arranged that the instrument framed for 13 little agricultural communities works well today for 48 large and populous States. * * * The convention knew how to select institutions that would stand together; it also knew how to reject what would have weakened the structure.

It was a long time before a compromise between the discordant elements could be reached. To declare the country a centralized Nation would destroy the traditions of a century and a half; to leave it an assemblage of States, each claiming independence and sovereignty, would throw away the results of the Revolution. The Convention finally agreed that while the Union should be endowed with adequate powers, the States should retain all powers not specifically granted, and particularly the right to regulate their own internal affairs. (Formation of Union, p. 137, paragraph beginning "it was" through paragraph word "affairs.")

Mr. LONG. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the senior Senator from Louisiana yield to his colleague?

Mr. ELLENDER. I yield to my distinguished colleague for a question.

Mr. LONG. Is the Senator not of the opinion, and does he not believe, that the elaborate discussions to which he has referred were with the view to protecting the States in their right to name their electors, and in prescribing their qualifications? Does he not believe that that was a device to prevent the Central Government from undermining and destroying the State governments themselves?

Mr. ELLENDER. I think there is no question about that. In other words, one of the things the 13 original States feared was that if the power of suffrage were lodged or fixed in the Congress, it could disfranchise many people and that it would place more power in the central government. As I shall point out from the discussions, it will be seen that the States guarded very jealously and zealously the right of suffrage. They saw to it that they retained the full power to spell out the qualifications of voters.

Mr. LONG. Mr. President, will the Senator yield for another question?

The PRESIDING OFFICER. Does the senior Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Is the Senator of the opinion that a Federal law to eliminate a poll-tax requirement would be completely unconstitutional?

Mr. ELLENDER. I may say to my colleague, that is what I have been trying to show here all day. There is absolutely no question about it. That is why I am giving this history, to show beyond doubt that the framers of the Constitution meant what they said when the suffrage article of the Constitution was adopted. As I tried to point out in the course of the debate, many other forms of procedure as to elections were considered. As I pointed out a while ago there were strenuous objections to letting Congress fix the qualifications. In other words the proposal now being made that Congress fix the qualifications was discussed and considered in the Constitutional Convention in 1787. The framers of our present Constitution in no uncertain terms made it clear that the States retained the right to prescribe qualifications, and that that power was not left in the hands of the Congress.

Mr. LONG. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the senior Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. LONG. What would be the Senator's guess as to what would happen if a Federal antipoll tax were enacted and it were contested before the United States Supreme Court?

Mr. ELLENDER. I have no doubt the Supreme Court would declare it unconstitutional. That is my personal opinion. Aside from that, the Senator may have in his mind the question, Why not let it go to the Supreme Court? Every Senator takes an oath that he will obey, respect, and follow the Constitution, and will not violate it. I think it is incumbent on every Member of this body who wants to be true to his oath, indeed, it is his bounden duty, if he knows deep down in his heart that a proposal submitted to this body is unconstitutional to vote against it and do all in his power to prevent its passage.

Mr. LONG. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to his colleague?

Mr. ELLENDER. I yield for a question.

Mr. LONG. Do I correctly understand the Senator's position to be that he feels the Senate should regard itself as just as much the guardian of the Constitution as the United States Supreme Court?

Mr. ELLENDER. There is no doubt about it. Of course, the United States Supreme Court was created for that purpose. It has that duty. In other words, the Supreme Court passes on laws enacted by the Congress. But I believe it is the duty of every Senator elected to this body to maintain the integrity of the Constitution and to observe his oath.

Mr. LONG. Mr. President, will the Senator yield for another question?

The PRESIDING OFFICER. Does the senior Senator from Louisiana yield to the junior Senator?

Mr. ELLENDER. I yield for a further question.

Mr. LONG. In view of the fact that the United States Supreme Court, especially in recent years, has been known to reverse itself on previous decisions, does the Senator not feel that the Supreme Court cannot always be depended upon to decide a question exactly as he thinks it should be decided?

Mr. ELLENDER. That is one reason why I want to exercise my own judgment in fighting and voting against any measure I think is unconstitutional. That is why I am taking certain steps now. I have no doubt the act would be unconstitutional, and I intend to do all in my power to prevent it from being brought to the Supreme Court.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to the Senator from Texas?

Mr. ELLENDER. I yield for a question.

Mr. CONNALLY. Is it not true that the oath taken by Senators requires them to do that? We take an oath to defend the Constitution. When we vote against a bill that is unconstitutional, we are defending the Constitution itself, in accordance with our oath are we not?

Mr. ELLENDER. That is correct. There is no doubt about it at all.

Mr. CONNALLY. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield for a further question.

Mr. CONNALLY. I ask the Senator, Is it not true that we are under no obligation to follow the decisions of the Supreme Court if we conscientiously think the question we are voting upon is unconstitutional?

Mr. ELLENDER. That is correct. Let me quote the oath for the benefit of Senators. I have taken the oath of office three times. I believe the distinguished Senator from Texas has taken it about

five or six times. I hope he takes it many more times.

Mr. CONNALLY. I thank the Senator.

Mr. ELLENDER. The oath reads:

I, TOM CONNALLY, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

That is the oath that every Senator, now sitting in this Chamber, who is now serving in the Senate, took before he assumed his duties as a Senator.

Mr. HILL. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Does not the oath mean that we will not only not vote for and will not support any bill we think is unconstitutional, but that we will do all we can to oppose the bill and to prevent its passage?

Mr. ELLENDER. That is what I stated a moment ago in answer to questions from my distinguished colleague. That is why I am taking so long to make these explanations.

Mr. LONG. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to his colleague?

Mr. ELLENDER. I yield for a question only.

Mr. LONG. I ask, as a point of law, is it not true that when a statute is passed by the Congress, the statute carries a presumption of constitutionality until declared unconstitutional by the United States Supreme Court?

Mr. ELLENDER. That is correct. That is the law.

Mr. HILL. Mr. President, will the Senator yield for a further question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Does not the Senator think that if the States and their representative or delegates in the State conventions which ratified the Constitution had not thought that the matter of suffrage and the question of qualifications of electors were left solely, entirely, and absolutely in the hands of the States, there never would have been any Federal Constitution?

Mr. ELLENDER. There is no doubt about that. I expect to go more into detail regarding that, in the course of this debate. There is no question that it was one of the main points of discussion during the debates preceding the adoption of the Constitution. In the course of the next few hours I shall demonstrate that the conventions of the various States could never have ratified the Constitution except with the understanding that the right to spell out the qualifications of voters was a prerogative of the States and not of the Congress.

Mr. HILL. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true that there was no matter which came before the Constitutional Convention, or which afterwards came before the State conventions which ratified the Constitution, regarding which the delegates in the Constitutional Convention and the delegates in the several State conventions were so jealous and evidenced so much interest as in this very matter of the complete reservation to the States of all power and authority over the qualifications of electors?

Mr. ELLENDER. There is no question about it.

Mr. President, history records that in 1788 there appeared the first edition of the now famous Federalist, a collection of essays written in favor of the new Constitution as agreed upon by the Federal Convention of September 17, 1787.

Mr. HILL. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true that the fathers, in framing the Constitution, did not leave the matter open, did not leave it for the Congress possibly to widen it in some sort of way, but they specifically provided in plain, clear language in the Constitution, that the qualifications for electors for officers in the Federal Government should be the qualifications of those fixed by the States for their representatives in the house of representatives of the State legislatures?

Mr. ELLENDER. Not only is that true, Mr. President, but our own Supreme Court has so held, on many occasions, as I propose to demonstrate from a 30-page brief which I have in this envelope. I am now trying to demonstrate not only that the Colonies were jealous of their prerogative of fixing the qualifications of voters, but the Constitution would never have been ratified by the States unless that provision were placed in the Constitution. I shall further show that the highest court in our land has so construed the Constitution.

Mr. President, history records that in 1788 there appeared the first edition of the now famous Federalist, a collection of essays written in favor of the new Constitution as agreed upon by the Federal Convention on September 17, 1787.

Mr. HILL. Mr. President, will the Senator yield for a further question?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Were not the Federalist papers written by Mr. Hamilton, Mr. Madison, and Mr. Jay, who had been in the Constitutional Convention and who had made the greatest contributions to the writing of the Constitution?

Mr. ELLENDER. That is correct.

Mr. HILL. Is it not true that no men could have spoken with greater authority on the Constitution than did those three men who had played such a large and conspicuous part in the drafting of the Constitution?

Mr. ELLENDER. That is correct. I hope that Senators will take the time to read these extracts. I do not ask them to read the whole article, but only the pertinent parts. It required a great deal of work and research to obtain what I have here, and I am hopeful that many of the Senators who are not present at this moment will read, at least, these excerpts.

Mr. President, the authorship of the Federalist has been the subject of great research and argument. It is now conceded that a number of the papers were written by Alexander Hamilton, some by Madison, and a few by Jay. The distinguished Senator from Alabama has just mentioned those names. He anticipated what I had to say. I quote from an introduction to the work by Henry Cabot Lodge:

The Federalist, furthermore, was the first authoritative interpretation of the Constitution, and was mainly written by the two principal authors of that instrument. It was the first exposition of the Constitution and the first step in the long process of development which has given life, meaning, and importance to the clauses agreed upon at Philadelphia. It has acquired all the weight and sanction of a judicial decision, and has been constantly used as an authority in the settlement of constitutional questions. (The Federalist, Intro., p. XI iii, 2nd para.)

In No. 45, by Madison, in a paper concerned with the question of whether the whole of the mass of Federal power would endanger the State's authority, the author said:

The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. (The Federalist, p. 290, paragraph beginning "The powers delegated.")

Next, let us turn to the Federalist, No. 52, by Hamilton, probably Madison. From the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the Government. I shall begin with the House of Representatives.

The first view to be taken of this part of the Government relates to the qualifications of the electors and the elected.

Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone. To have

reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention.

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

Mr. ELLENDER. For a question.

Mr. HILL. Is it not true that some in the Constitutional Convention thought that the qualifications of the electors should be written into the Constitution?

Mr. ELLENDER. That is correct.

Mr. HILL. Is it not true that some thought that the matter should be more or less left open?

Mr. ELLENDER. That is correct; and some thought, I will say to my distinguished friend, that they should be spelled out by the Congress. I may say to the Senate that I do not know of any proposal which was more thoroughly discussed from all angles than was the one dealing with suffrage. So, there is no question that if a Senator desires to be reasonable himself and will study the question closely, he will have no difficulty in seeing that Congress has no right whatever to fix qualifications for the voters of any State.

As I pointed out on several occasions there are no United States voters. They are all State voters. Their qualifications are fixed by the States, and they have been so fixed ever since we have had States. The provision made by the Convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution.

Mr. HILL. Mr. President, will the Senator yield for another question?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Could language be any clearer than this language in section 2 of article I of the Constitution:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislature.

I ask the Senator, could language be more specific than that?

Mr. ELLENDER. It could not be made clearer.

Mr. HILL. There is no way of misinterpreting it, is there?

Mr. ELLENDER. The Senator is correct.

Mr. HILL. Is it not true that when we provided for direct election of United States Senators, we adopted the same language?

Mr. ELLENDER. The Senator is correct.

Mr. CONNALLY. Mr. President, will the Senator from Louisiana yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. CONNALLY. It occurs to me, as it has heretofore, that in addition to the arbitrary power of the Convention to write what it did about the electors for the most numerous branch of the State legislature having the same qualifications as those prescribed for electors for Members of the House of Representatives, there was a philosophy in that provision as well, in that an elector for a member of the State legislature having the same qualifications as the elector for a Representative, there could be no confusion between the qualifications of a voter in the Federal and the State election.

Mr. ELLENDER. That is correct; there is no doubt about it. All those points were brought out during the debate before that part of the Constitution was actually adopted.

Mr. HILL. Mr. President, will the Senator yield again?

Mr. ELLENDER. For a question.

Mr. HILL. In other words, is it not true that when a citizen of a State becomes a qualified elector to vote for a member of the lower house of the legislature of the State, he then and there becomes a qualified elector to vote for Federal officers?

Mr. ELLENDER. That is correct. I continue to read:

The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the Convention. A Representative of the United States must be of the age of 25 years; must have been 7 years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent; and, during the time of his service, must be in no office under the United States. Under these reasonable limitations, the door of this part of the Federal Government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.

That is from the Federalist, No. 52, pages 327 and 328.

The provision in section 4, clause 1, of article I, provides that—

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Mr. HILL. Mr. President, will the Senator yield again?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true that the last section to which the Senator adverted applies only to the mechanics and does not apply at all to the qualifications of the man or the woman who is to go to the polls, mark the ballot, and drop it into the box?

Mr. ELLENDER. The Senator is correct. The matter here refers to the manner of holding elections. The Senator again anticipated me.

"Manner" here refers to manner of holding elections, the mechanics thereof. Obviously there is no bearing upon voting qualifications. The Congress treated the person of the elector in article I, section 2, and the form or procedure of the election in article I, section 4. That this power was only to be exercised in case of national emergency or failure of the State to provide for an election is made clear by Hamilton in his discussion in the Federalist, No. 59:

They have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs.

That is from the Federalist, page 369, line 22.

Even so, this procedural provision caused considerable objection and discussion in the State conventions which clarified its meaning by argument and emphasized its procedural application only, before they adopted the Constitution. I will discuss this fully in my treatment of the adoption of the Constitution by the various States, which I shall begin at this point.

I read from Formation of the Union, by Hart, pages 140 to 145:

The text of the Constitution was printed and rapidly distributed throughout the Union. It was still but a lifeless draft, and before it could become an instrument of Government the approving action of Congress, of the legislatures, and of State conventions was necessary. On September 28, 1787, the Congress unanimously resolved that the Constitution be transmitted to the State legislatures. The Federal Convention was determined that the consideration of its work should not depend, like the Articles of Confederation, upon the slow and unwilling humor of the legislatures; but that in each State a convention should be summoned solely to express the will of the State upon the acceptance of the Constitution. It had further avoided the rock upon which had been wrecked the amendments proposed by Congress by providing these when nine State conventions should have ratified the Constitution, it was to take effect for those nine. On the same day that Congress in New York was passing its resolution, the Pennsylvania Legislature in Philadelphia was fixing the day for the election of delegates; all the State legislatures followed, except in Rhode Island.

Mr. HILL. Madam President, will the Senator yield for a question?

The PRESIDING OFFICER (Mrs. SMITH of Maine in the chair). Does the Senator from Louisiana yield to the Senator from Alabama?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true, as the Senator has so well and ably brought out, that not only was this whole question of the qualifications of the electors thrashed out in the Constitutional Convention in Philadelphia, but that the question was also raised, discussed, con-

sidered, and thrashed out by the State conventions which met to determine whether or not the Constitution would be ratified by their States?

Mr. ELLENDER. That is correct. I am coming to that. The Senator seems to anticipate me all the time. I propose to discuss what each State convention did, what each legislature did. Some actions were taken by conventions and some by legislatures. I believe I shall be able to demonstrate, without fear of successful contradiction, that the suffrage provision in the Constitution was one which caused more debate than almost any other.

Mr. HILL. Madam President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Louisiana again yield to the Senator from Alabama?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true that these debates show clearly how jealous the States, through their delegates in the State conventions, were of too much concentration of power in the Federal Government?

Mr. ELLENDER. Madam President, I have answered that question two or three times on the Senate floor. That is the reason, to my way of thinking, why they thought they should prevent the creation of a too highly centralized Government. They felt that if they could maintain the right to fix the qualifications of electors it would accomplish the purpose.

Mr. HILL. Madam President, will the Senator yield for one more question?

The PRESIDING OFFICER. Does the Senator from Louisiana yield for another question?

Mr. ELLENDER. I yield for a question.

Mr. HILL. Is it not true that Patrick Henry and George Mason, two of the greatest of all our Revolutionary patriots, opposed in the Virginia Convention and before the people of Virginia, in many speeches——

Mr. ELLENDER. Madam President, the Senator, as I said before, is anticipating. I will bring that all out, if the Senator will just be patient.

Mr. HILL. Very well.

Mr. ELLENDER. Madam President, I continue to read:

> The next 6 months was a period of great anxiety and of national danger. The proposed Constitution was violently attacked in every part of the Union: the President, it was urged, would be a despot, the House of Representatives a corporate tyrant, the Senate an oligarchy. The large States protested that Delaware and Rhode Island would still neutralize the votes of Virginia and Massachusetts in the Senate. The Federal courts were said to be an innovation. It was known that there had been great divisions in the Convention, and that several influential members had left, or at the last moment refused to sign. "The people of this Commonwealth," said Patrick Henry, "are exceedingly uneasy in being brought from that state of full security which they enjoyed, to the present delusive appearance of things."
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> As the State conventions assembled, the excitement grew more intense. Four States alone contained within a few thousand of half the population of the Union: they were Massachusetts, Virginia, New York, and North Carolina. In the convention of each of these States there was opposition strong and stubborn, one of them—North Carolina—adjourned without action; in the other three, ratification was obtained with extreme difficulty and by narrow majorities. The first State to come under the "new roof," as the Constitution was popularly called, was Delaware. In rapid succession followed Pennsylvania, New Jersey, Georgia, and Connecticut.
>
> In Massachusetts, the sixth State, there was a hard fight; the spirit of Shays' Rebellion was still alive; the opposition of Samuel Adams was only overcome by showing him that he was in the minority; John Hancock was put out of the power to interfere by making him the silent president of the convention. It was suggested that Massachusetts ratify on condition that a long list of amendments be adopted by the new government. The friends of the Constitution pointed out that this plan meant only to ratify a part of the Constitution and to reject the rest; each succeeding State would insist on its own list of amendments, and the whole work must be done over. February 6, 1788, the enthusiastic people of Boston knew that the Convention, by a vote of 187 to 167, had ratified the Constitution; the amendments being added not as a condition, but as a suggestion. Maryland, South Carolina, and New Hampshire brought the number up to nine.
>
> Before the ninth ratification was known, the fight had been won also in Virginia. Among the champions of the Constitution were Madison, Edmund Randolph, and John Marshall. James Monroe argued against the system of election which was destined twice to make him President. In spite of the determined opposition of Patrick Henry, and in spite of a proposition to ratify with amendments, the convention accepted. New York still held off. Her acquiescence was geographically necessary; and Alexander Hamilton, by the power of his eloquence and his reason, made clear the advantage of the Constitution to a future commercial state and the eleventh ratification was obtained.
>
> During the session of the convention in Philadelphia, Congress continued to sit in New York; and the Northwest Ordinance was passed at this time. Congress voted that the Constitution had been ratified, September 13, 1788; and that elections should proceed for the officers of the new government, which was to go into operation the first Wednesday in March, 1789.
>
> What, meantime, was the situation of the two States, Rhode Island and North Carolina, which had not ratified the Constitution, and which were, therefore, not entitled to take part in the elections? They had in 1781 entered into a constitution which was to be amended only by unanimous consent; their consent was refused. Had they not a right to insist on the continuance of the old Congress? The new Constitution, they considered, was flatly unconstitutional; it had been ratified by a process unknown to law. The situation was felt to be delicate, and those States were for the time being left to themselves. North Carolina came into the Union by a ratification of November 21, 1789. It was suggested that the trade of States which did not recognize Congress should be cut off, and Rhode Island yielded. May 19, 1790, her ratification completed the Union of the old thirteen States.

Keeping this summary in mind, let us consider in detail the proceedings and debates in the various States as they pertain to voting qualifications.

Delaware's ratification was the first one to be reported in general convention. Elliott's accounts of the constitutional debates contain nothing on Delaware's convention.

Pennsylvania was second to ratify the Constitution. In a speech by Mr. Wilson, on October 28, 1787, on behalf of the Constitution, he made the following observation:

> The legislative department is subdivided into two branches—the House of Representatives and the Senate. Can there be a House of Representatives in the General Government, after the State governments are annihilated? Care is taken to express the character of the electors in such a manner, that even the popular branch of the General Government cannot exist unless the governments of the States continue in existence.
>
> How do I prove this? By the regulation that is made concerning the important subject of giving suffrage. Article I, section 2: "And the electors in each State shall have the qualifications for electors of the most numerous branch of the State legislature." Now, sir, in order to know who are qualified to be electors of the House of Representatives, we are to inquire who are qualified to be electors of the legislature of each State. If there be no legislature in the States, there can be no electors of them: if there be no such electors, there is no criterion to know who are qualified to elect Members of the House of Representatives. By this short, plain deduction, the existence of State legislatures is proved to be essential to the existence of the General Government. (Elliott II, Constitutional Debates, p. 438.)

Concerning section 4 of article 1, Mr. Wilson, who was one of the members of the committee of detail, said:

> I will read it: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators."
>
> And is this a proof that it was intended to carry on this Government after the State governments should be dissolved and abrogated? This clause is not only a proper, but necessary one. I have already shown what pains have been taken in the convention to secure the preservation of the State governments. I hope, sir, that it was no crime to sow the seed of self-preservation in the Federal Government; without this clause, it would not possess self-preserving power. By this clause, the times, places, and manner of holding elections shall be prescribed in each State, by the legislature thereof. I think it highly proper that the Federal Government should throw the exercise of this power into the hands of the State legislatures; but not that it should be placed there entirely without control.
>
> If the Congress had it not in their power to make regulations, what might be the consequences? Some States might make no regulations at all on the subject. And shall the existence of the House of Representatives, the immediate representation of the people in Congress, depend upon the will and pleasure of the State governments? Another thing may possibly happen; I don't say it will; but we were obliged to guard even against possibilities, as well as probabilities. A legislature may be willing to make the necessary regulations; yet the minority of that legislature may, by absenting themselves, break up the house, and prevent the execution of the intention of the majority. I have supposed the case, that some State governments may make no regulations at all; it is possible, also, that they may make improper regulations. I have heard it surmised by the opponents of this Constitution, that the Congress may order the election for Pennsylvania to be held at Pittsburgh, and thence conclude that it would be improper for them to have the exercise of power. But suppose, on the other hand, that the assembly should order an election to be held at Pittsburgh; ought not the General Government to have the power to alter such improper election of one of its

own constituent parts? But there is an additional reason still that shows the necessity of this provisionary clause. The Members of the Senate are elected by the State legislatures. If those legislatures possessed, uncontrolled, the power of prescribing the times, places, and manner, of electing Members of the House of Representatives, the Members of one branch of the General Legislature would be the tenants at will of the electors of the other branch; and the General Government would lie prostrate at the mercy of the legislatures of the several States.

I will ask now, Is the inference fairly drawn that the General Government was intended to swallow up the State governments? Or was it calculated to answer such end? Or do its framers deserve such censure from honorable gentlemen? We find, on examining this paragraph, that it contains nothing more than the maxims of self-preservation, so abundantly secured by this Constitution to the individuals States. Several other objections have been mentioned. I will not, at this time, enter into a discussion of them, though I may hereafter take notice of such as have any show of weight; but I thought it necessary to offer, at this time, the observations I have made, because I consider this as an important subject, and think the objection would be a strong one if it was well founded. (Elliott II, supra, pp. 440–441.)

Again:

The power over elections, and of judging of elections, gives absolute sovereignty. This power is given to every State legislature; yet I see no necessity that the power of absolute sovereignty should accompany it. My general position is, that the absolute sovereignty never goes from the people. (Elliott II, supra, pp. 464–465.)

Mr. Wilson leaves no doubt as to the meaning of the Constitution as he reiterates:

Permit me to proceed to what I deem another excellency of this system: All authority, of every kind, is derived by representation from the people, and the democratic principle is carried into every part of the Government. I had an opportunity, when I spoke first, of going fully into an elucidation of this subject. I mean not now to repeat what I then said.

I proceed to another quality that I think estimable in this system: It secures, in the strongest manner, the right of suffrage. Montesquieu, book 2, chapter 2, speaking of laws relative to democracy, says:

"When the body of the people is possessed of the supreme power, this is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy.

"In a democracy the people are in some respects the sovereign, and in others the subject.

"There can be no exercise of sovereignty but by their suffrages, which are their own will. Now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. And, indeed, it is as important to regulate, in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is, in a monarchy, to know who is the prince, and after what manner he ought to govern."

In this system, it is declared that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution guarantees to every State in the Union a republican form of government. The right of suffrage is fundamental to the republics. (Elliott II, supra, p. 482.)

In response to further objections to article I, section 4, Mr. Wilson said:

It is repeated, again and again, by the honorable gentleman, that "the power over elections, which is given to the General Government in this system is a dangerous power." I must own I feel, myself, surprised that an objection of this kind should be persisted in, after what has been said by the honorable colleague in reply. I think it has appeared, by a minute investigation of the subject, that it would have been not only unwise, but highly improper, in the late Convention, to have omitted this clause, or given less power than it does over elections. Such powers, sir, are enjoyed by every State government in the United States. In some they are of a much greater magnitude; and why should this be the only one deprived of them? Ought not these, as well as every other legislative body, to have the power of judging of the qualifications of its own members? "The times, places, and manner of holding elections for representatives may be altered by Congress." This power, sir, has been shown to be necessary, not only on some particular occasions, but even to the very existence of the Federal Government. I have heard some very improbable suspicions indeed suggested with regard to the manner in which it will be exercised. Let us suppose it may be improperly exercised; is it not more likely so to be by the particular States than by the Government of the United States?—because the General Government will be more studious of the good of the whole than a particular State will be; and therefore, when the power of regulating the time, place, or manner of holding elections, is exercised by the Congress, it will be to correct the improper regulations of a particular State. (Elliott II, supra, p. 509.)

Mr. McKean enumerated the arguments against the Constitution. Number four was that Congress could, by law, deprive the electors of a fair choice of their representatives by fixing improper times, places, and modes of election. He answered that argument as follows:

Every House of Representatives are of necessity to be the judges of the elections, returns, and qualifications of their own Members. It is therefore their province, as well as duty, to see that they are fairly chosen, and are the legal members; for this purpose, it is proper they should have it in their power to provide that the times, places, and manner of election should be such as to insure free and fair elections. (Elliott II, supra, p. 535.)

Obviously this text had reference to procedure only, and insures against the failure of a State to provide for an election; it had no bearing upon the qualifications of the electors, or voters, which was specifically left to the States in article I, section 2.

However, being zealous in their guard of their rights, a group of citizens of Pennsylvania gathered at a meeting in Harrisburg suggested a number of amendments to be submitted to the new Constitution. Among them was the following provision:

That Congress shall not have power to make or alter regulations concerning the time, place, and manner of electing Senators and Representatives, except in case of neglect or refusal by the State to make regulations for the purpose; and then only for such time as such neglect or refusal shall continue. (Elliott II, supra, p. 545, sec. 4.)

Pennsylvania ratified the Constitution December 12, 1787; New Jersey, December 18, 1787.

Connecticut was fourth on the list to come under the roof. I have found no argument specifically on the point of State control of voting qualifications, so I shall only note, in passing, the general observation of Governor Huntingdon, of Connecticut:

The State governments, I think, will not be endangered by the powers vested by this Constitution in the General Government. While I have attended in Congress, I have observed that the Members were quite as strenuous advocates for the rights of their respective States, as for those of the Union. I doubt not but that this will continue to be the case; and hence I infer that the General Government will not have the disposition to encroach upon the States.

On September 17, 1782, Connecticut ratified the Constitution. (Elliott II, supra, p. 199.)

Madam President, the Massachusetts Convention entered upon the consideration of the proposed Constitution on January 9, 1788. Here we find an extensive discussion of section 4, of article I:

Mr. Pierce (from Partridgefield), after reading the fourth section, wished to know the opinion of gentlemen on it, as Congress appeared thereby to have a power to regulate the time, place, and manner of holding elections. In respect to the manner, said Mr. Pierce, suppose the legislature of this State should prescribe that the choice of the Federal Representatives should be in the same manner as that of governor—a majority of all the votes in the State being necessary to make it such—and Congress should deem it an improper manner, and should order that it be as practiced in several of the Southern States, where the highest number of votes makes a choice—have they not power by this section to do so? Again, as to the place, continues Mr. Pierce, may not Congress direct that the election for Massachusetts shall be held in Boston? And if so, it is possible that, previous to the election, a number of the electors may meet, agree upon the eight delegates, and propose the same to a few towns in the vicinity, who, agreeing in sentiment, may meet on the day of election, and carry their list by a major vote. He did not, he said, say that this would be the case; but he wished to know if it was not a possible one.

Mr. Bishop rose, and observed that, by the fourth section, Congress would be enabled to control the elections of Representatives. It has been said, says he, that this power was given in order that refractory States may be made to do their duty. But if so, sir, why was it not so mentioned? If that was the intention, he asked why the clause did not run thus: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof"; but, "if any State shall refuse or neglect so to do, Congress may," etc. This, he said, would admit of no prevarication. (Elliott II, supra, p. 22.)

He proceeded to observe, that if the States shall refuse to do their duty, then let the power be given to Congress to oblige them to do it. But if they do their duty, Congress ought not to have the power to control elections. In an uncontrolled representation, says Mr. Bishop, lies the security of freedom; and he thought by these clauses, that that freedom was sported with. In fact, says he, the moment we give Congress this power, the liberties of the yeomanry of this country are at an end. But he trusted they would never give it; and he felt a consolation from the reflection.

The fourth section, which provides that the State legislatures shall prescribe the time, place, and manner of holding elections, and that Congress may at any time make or alter them, except in those of Senators, though not in regular order, under deliberation.

The Honorable Mr. Strong followed Mr. Bishop, and pointed out the necessity there is for the fourth section. The power, says he, to regulate the elections of our Federal Representatives must be lodged somewhere. I know of but two bodies wherein it can be lodged—the legislatures of the several States, and the General Congress. If the legislative bodies of the States, who must be supposed to know at what time, and in what place and manner, the elections can best be held, should so appoint them, it cannot be supposed that Congress, by the power granted by this section, will alter them; but if the legislature of a State should refuse to make such regulations, the consequence will be, that the Representatives will not be chosen, and the General Government will be dissolved. In such case, can gentlemen say that a power to remedy the evil is not necessary to be lodged somewhere?

Mr. J. C. Jones said, it was not right to argue the possibility of the abuse of any measure against its adoption. The power granted to Congress by the fourth section, says he, is a necessary power; it will provide against negligence and dangerous designs. The Senators and Representatives of this State, Mr. President, are now chosen by a small number of electors; and it is likely we shall grow equally negligent of our Federal elections; or, sir, a State may refuse to send to Congress its Representatives, as Rhode Island has done. Thus we see its necessity.

To say that the power may be abused, is saying what will apply to all power. The Federal Representatives will represent the people; they will be the people; and it is not probable they will abuse themselves. Mr. Jones concluded with repeating, that the arguments against this power could be urged against any power whatever.

Reverend Mr. WEST. I rise to express my astonishment at the arguments of some gentlemen against this section. They have only stated possible objections. I wish the gentlemen would show us that what they so much deprecate is probable. Is it probable that we shall choose men to ruin us? Are we to object to all governments? And because power may be abused, shall we be reduced to anarchy and a state of nature? What hinders our State legislatures from abusing their powers? They may violate the Constitution; they may levy taxes oppressive and intolerable, to the amount of all our property. An argument which proves too much, it is said, proves nothing. Some say Congress may remove the place of elections to the State of South Carolina. This is inconsistent with the words of the Constitution, which says, "that the elections, in each State, shall be prescribed by the legislature thereof," and so forth, and that representation be apportioned according to numbers; it will frustrate the end of the Constitution, and is a reflection on the gentlemen who formed it. Can we, sir, suppose them so wicked, so vile, as to recommend an article so dangerous? (Elliott II, supra, p. 23.)

The debate continued at length, while men sought to construe and interpret, to assure themselves that the State control of its elections was not superseded. The Honorable Mr. King, in the course of his speech, said:

The idea of the honorable gentlemen from Douglass, said he, transcends my understanding; for the power of control given by this section extends to the manner of election, not to qualifications of the electors. (Elliott II, supra, p. 51.)

Madam President, the temper of the convention is well illustrated by the words of Mr. Adams, speaking to the Chair, John Hancock presiding, of the convention.

Another of Your Excellency's propositions is calculated to quiet the apprehensions of gentlemen lest Congress should exercise an unreasonable control over the State legislatures, with regard to the time, place, and manner of holding elections, which, by the fourth section of the first article, are to be prescribed in each State by the legislature thereof, subject to the control of Congress. I have had my fears lest this control should infringe the freedom of elections, which ought ever to be held sacred. Gentlemen who have objected to this controlling power in Congress have expressed their wishes that it had been restricted to such States as may neglect or refuse that power vested in them, and to be exercised by them if they please. Your Excellency proposes, in substance, the same restriction, which, I should think, cannot but meet with their full approbation. (Elliott II, supra, pp. 131 and 132.)

Mr. Mason was still worried over the possibilities of section 4. Said he:

We now come, sir, to the fourth section. Let us see: the time, place, and manner of holding elections, shall be prescribed in each State by the legislature thereof. No objections to this: but, sir, after the flash of lightning comes the peal of thunder. "But Congress may at any time alter them," etc. Here it is, Mr. President, this is the article which is to make Congress omnipotent. Gentlemen say, this is the greatest beauty of the Constitution; this is the greatest security for the people; this is the all in all. Such language have I heard in this house; but, sir, I say, by this power Congress may, if they please, order the election of Federal Representatives for Massachusetts to be at Great Barrington or Machias; and at such a time, too, as shall put it in the power of a few artful and designing men to get themselves elected at their pleasure. (Elliott II, supra, pp. 135 and 136.)

On February 7, 1788, Massachusetts ratified the Constitution, and added to its report these words:

And, as it is the opinion of this convention, that certain amendments and alterations in the said Constitution would remove the fears and quiet the apprehensions of many of the good people of the commonwealth, and more effectually guard against an undue administration of the Federal Government, the convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution. Thirdly, that Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeable to the Constitution. (See Elliott II, supra, p. 177.)

With the qualifications of voters definitely to be regulated by the States under the Constitution, still the people of Massachusetts were so concerned with the possible abuse of the power of Congress over the "time, place, manner," or procedure of an election that they wished it clearly understood that Congress should assume the exercise of such power only in case of extreme necessity, where neglect of duty by a State compelled it.

As pointed out on several occasions, that part of the Constitution dealing with the times, places, and manner of holding elections and so forth dealt only with the mechanics of an election, not with the qualification of voters. That was reserved to the States, as I have been trying to demonstrate. The States themselves, in ratifying the Federal Constitution, saw to it that the right to spell out the qualifications of their electors should be a prerogative of the State, and was not to be exercised by the Congress under any condition.

No. 6 was Georgia, January 2, 1788.

No. 7 was Maryland. Among the amendments proposed to be suggested by the States was the following:

2. That the Congress shall have no power to alter or change the time, place, or manner of holding elections for Senators or Representatives, unless a State shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion, in which cases only, Congress may interfere, until the cause be removed. (See Elliott II, supra, p. 552.)

However, so many amendments were suggested that, through fear of obtaining no security at all for the people, the Constitution was ratified.

In speaking to the Maryland House of Delegates, Mr. James McHenry, referring to the section in the Constitution providing that the qualifications of electors be the same as those of electors for the State legislature, said:

To this section it was objected that if the qualifications of the electors were the same as in the State governments, it would involve in the Federal system all the disorders of a democracy; and it was therefore contended that none but freeholders, permanently interested in the Government, ought to have a right of suffrage. The venerable Franklin opposed to this the natural rights of man—their rights to an immediate voice in the general assemblage of the whole Nation, or to a right of suffrage and representation, and he instanced from general history and particular events the indifference of those, to the prosperity and welfare of the States who were deprived of it. (Farrand III, Records of the Federal Convention, p. 146.)

Also concerning section 4, he said:

It was thought expedient to vest the Congress with the powers contained in this section, which particular exigencies might require them to exercise, and which the immediate representatives of the people can never be supposed capable of wantonly abusing to the prejudice of their constituents—convention had in contemplation the possible events of insurrection, invasion, and even to provide against any disposition that might occur hereafter in any particular State to thwart the measures of the General Government. (Farrand III, supra, p. 148.)

On May 23, 1788, Maryland ratified the Constitution.

South Carolina met in convention to consider the Constitution, May 12, 1788. Speaking of the much-debated fourth section of article I, giving Congress supervisory power over the time, place, and manner of elections, Mr. Pinckney, who was also one of the delegates to the Federal Convention, and in excellent position to know the intention of that body, said:

But if any State should attempt to fix a very inconvenient time for the election, and name (agreeably to the ideas of the honorable gentlemen) only one place in the State, or even one place in one of the five election districts, for the freeholders to assemble to vote, and the people should dislike this arrangement, they can petition the General

Government to redress this inconvenience, and to fix times and places of election of Represenattives in the State in a more convenient manner; for, as this house has a right to fix the times and places of election, in each parish and county, for the members of the house of representatives of this State, so the General Government has a similar right to fix the times and places of election in each State for the Members of the General House of Representatives. Nor is there any real danger to be apprehended from the exercise of this power, as it cannot be supposed that any State will consent to fix the election at inconvenient seasons and places in any other State, lest she herself should hereafter experience the same inconvenience; but it is absolutly necessary that Congress should have this superintending power, lest, by the intrigues of a ruling faction in a State, the Members of the House of Representatives should not really represent the people of the State, and lest the same faction, through partial State views, should altogether refuse to send representatives of the people to the General Government. (Elliott IV, supra, p. 303.)

When South Carolina ratified the Constitution, May 23, 1788, they added this observation, or recommendation, to the ratification:

And whereas it is essential to the preservation of the rights reserved to the several States, and the freedom of the people, under the operations of a general government, that the right of prescribing the manner, time, and places, of holding the elections to the Federal Legislature should be forever inseparably annexed to the sovereignty of the several States, this convention doth declare that the same ought to remain to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the General Government, except in cases where the legislatures of the States shall refuse or neglect to perform and fulfill the same, according to the tenor of the said Constitution. (Elliott I, supra, p. 323.)

New Hampshire acted ninth of all the States, and we find no discussion there of the sections involving voting qualifications. However, we do find New Hampshire, equally watchful, recommending the following amendment, among others, to the Constitution:

III. That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned. (Elliott I, supra, p. 326.)

On September 17, 1787, Virginia ratified the Constitution. The Virginia Convention was lengthy, the debates heated and protracted. Article I, section 2, providing that the electors of the delegates to the House of Representatives shall have the qualifications for electors of the more numerous branch of the State legislature, was read. Mr. George Nicholas spoke as follows—Elliott III, supra, pages 8, 9, 10:

Secondly, as it respects the qualifications of the elected. It has ever been considered a great security to liberty, that very few should be excluded from the right of being chosen to the Legislature. This Constitution has amply attended to this idea. We find no qualifications required except those of age and residence, which create a certainty of their judgment being matured, and of being attached to their State. It has been objected, that they ought to be possessed of landed estates; but, sir, when we reflect that most of the electors are landed men, we must suppose they will fix on those who are in a similar situation with themselves. We find there is a decided majority attached to the landed interest; consequently, the landed interest must prevail in the choice. Should the State be divided into districts, in no one can the mercantile interest by any means have an equal weight in the elections; therefore, the former will be more fully represented in the Congress; and men of eminent abilities are not excluded for the want of landed property. There is another objection which has been echoed from one end of the continent to the other—that Congress may alter the time, place, and manner of holding elections; that they may direct the place of elections to be where it will be impossible for those who have a right to vote, to attend; for instance, that they may order the freeholders of Albemarle to vote in the county of Princess Anne, or vice versa; or regulate elections, otherwise, in such a manner as totally to defeat their purpose, and lay them entirely under the influence of Congress. I flatter myself, that, from an attentive consideration of this power, it will clearly appear that it was essentially necessary to give it to Congress as, without it, there could have been no security for the General Government against the State legislatures. What, Mr. Chairman, is the danger apprehended in this case? If I understand it right, it must be that Congress might cause the elections to be held in the most inconvenient places, and at so inconvenient a time, and in such a manner, as to give them the most undue influence over the choice, nay, even to prevent the elections from being held at all—in order to perpetuate themselves. But what would be the consequence of this measure? It would be this, sir,—that Congress would cease to exist; it would destroy the Congress itself; it would absolutely be an act of suicide; and therefore it can never be expected. This alteration, so much apprehended, must be made by law; that is, with the concurrence of both branches of the Legislature. Will the House of Representatives, the Members of which are chosen only for 2 years, and who depend on the people for their reelection, agree to such an alteration? It is unreasonable to suppose it.

But let us admit, for a moment, that they will: what would be the consequence of passing such a law? It would be, sir, that, after the expiration of the 2 years, at the next election they would either choose such men as would alter the law, or they would resist the Government. An enlightened people will never suffer what was established for their security to be perverted to an act of tyranny. It may be said, perhaps, that resistance would then become vain; Congress are vested with the power of raising an army; to which I say, that if ever Congress shall have an army sufficient for their purpose, and disposed to execute their unlawful commands, before they would act under this disguise, they would pull off the mask, and declare themselves absolute. I ask, Mr. Chairman, is it a novelty in our Government? Have not our State legislatures the power of fixing the time, places, and manner of holding elections? The possible abuse here complained of never can happen as long as the people of the United States are virtuous. As long as they continue to have sentiments of freedom and independence, should the Congress be wicked enough to harbor so absurd an idea as this objection supposes, the people will defeat their attempt by choosing other representatives, who will alter the law. If the State legislatures, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was past for which they were to have been chosen; and as this would eventually put an end to the Union, it ought to be guarded against; and it could only be guarded against by giving this discretionary power, to the Congress, of altering the time, place, and manner of holding the elections. It is absurd to think that Congress will exert this power, or change the time, place, and manner established by the States, if the States will regulate them properly, or so as not to defeat the purposes of the Union. It is urged that the State legislatures ought to be fully and exclusively possessed of this power. Were this the case, it might certainly defeat the Government. As the powers vested by this plan on Congress are taken from the State legislatures, they would be prompted to throw every obstacle in the way of the General Government. It was then necessary that Congress should have this power.

Another strong argument for the necessity of this power is, that, if it was left solely to the States, there might have been as many times of choosing as there are States. States having solely the power of altering or establishing the time of election, it might happen that there should be no Congress. Not only by omitting to fix a time, but also by the elections in the States being at 13 different times, such intervals might elapse between the first and last election, as to prevent there being a sufficient number to form a house; and this might happen at a time when the most urgent business rendered their session necessary; and by this power, this great part of the representation will be always kept full, which will be a security for a due attention to the interest of the community; and also the power of Congress to make the times of elections uniform in all the States, will destroy the continuance of any cabal, as the whole body of Representatives will go out of office at once.

Governor Randolph, although he would not sign the Constitution at the time it was designed, defended it in an impassioned address.

Mr. Henry was equally impassioned in his plea to turn down the Constitution. Note what he says of section 4, article I, as outlined in Elliott III, page 60, as follows:

What can be more defective than the clause concerning the elections? The control given to Congress over the time, place, and manner of holding elections will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the State; or they may be at remote distances from those who have a right of suffrage; hence 9 out of 10 must either not vote at all, or vote for strangers; for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the manner, etc., of electing, well warrants this idea. The natural consequence will be that this democratic branch will possess none of the public confidence; the people will be prejudiced against Representatives chosen in such an injudicious manner.

From Elliott III, pages 110 and 111:

Mr. Corbin, answering Mr. Henry, in part, said "Do the people wish land only to be represented? They have their wish: for the qualifications which the laws of the States require to entitle a man to vote for a State representative are the qualifications required by this plan to vote for a Representative of Congress; and in this State, and most of the others, the possession of a freehold is necessary to entitle a man to the privilege of a vote."

Governor Randolph, also answering Mr. Henry, said:

The State will be laid off and divided into 10 districts: from each of these a man is to be elected. He must be really the choice of the people, not the man who can distribute the most gold; for the riches of Croesus would not avail. The qualifications of the electors being the same as those of the representatives for the State legislatures, and the

election being under the control of the Legislature, the prohibitory provisions against undue means of procuring votes to the State representation extend to the Federal representatives; the extension of the sphere of election to so considerable a district will render it impossible for contracted influence, or local intrigues, or personal interest, to procure an election. Inquiries will be made, by the voters, into the characters of the candidates. Greater talents, and a more extensive reputation, will be necessary to procure an election for the Federal than for the State representation. The Federal representatives must therefore be well known for their integrity, and their knowledge of the country they represent. We shall have 10 men thus elected. What are they going yonder for? Not to consult for Virginia alone, but for the interest of the United States collectively. Will not such men derive sufficient information from their own knowledge of their respective States, and from the codes of the different States? (Elliott III, p. 125, line 24, to line 5, p. 126.)

Mr. Henry retorted at length and resorted to bitter vituperative remarks.

He said:

I shall make a few observations to prove that the power over elections, which is given to Congress, is contrived by the Federal Government, that the people may be deprived of their proper influence in the Government, by destroying the force and effect of their suffrages. Congress is to have a discretionary control over the time, place, and manner of elections. The Representatives are to be elected, consequently, when and where they please. As to the time and place, gentlemen have attempted to obviate the objection by saying, that the time is to happen once in 2 years, and that the place is to be within a particular district, or in the respective counties. But how will they obviate the danger of referring the manner of election to Congress. Those illumined genii may see that this may not endanger the rights of the people, but in my unenlightened understanding, it appears plain and clear that it will impair the popular weight in the Government. Look at the Roman history. They had two ways of voting—the one by tribes, and the other by centuries. By the former, numbers prevailed; in the latter, riches preponderated. According to the mode prescribed, Congress may tell you that they have a right to make the vote of one gentleman go as far as the votes of 100 poor men. The power over the manner admits of the most dangerous latitude. They may modify it as they please. They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution. I should not have thought of this trick or contrivance, had I not seen how the public liberty of Rome was trifled with by the mode of voting by centuries, whereby one rich man had as many votes as a multitude of poor men. The plebeians were trampled on till they resisted. The patricians trampled on the liberties of the plebeians till the latter had the spirit to assert their right to freedom and equality. The result of the American mode of election may be similar. Perhaps I may be told that I have gone through the regions of fancy—that I deal in noisy exclamations and mighty professions of patriotism. Gentlemen may retain their opinions; but I look on that paper as the most fatal plan that could possibly be conceived to enslave a free people. If such be your rage for novelty, take it, and welcome; but you never shall have my consent. My sentiments may appear extravagant, but I can tell you that a number of my fellow citizens have kindred sentiments and I am anxious, if my country should come into the hands of tyranny, to exculpate myself from being in any degree the cause, and to exert my faculties to the utmost to extricate her. Whether I am gratified or not in my beloved form of government, I consider that the more she has plunged into distress, the more it is my duty to relieve her. Whatever may be the result, I shall wait with patience till the day may come when an opportunity shall offer to exert myself in her cause. (Elliott III, pp. 175 and 176.)

Such a piece of legislation as we are now considering in the Senate, if passed, would only vindicate the seemingly wild and hysterical conclusions of Mr. Henry.

Governor Randolph, further answering Mr. Henry, said:

His interpretation of elections must be founded on a misapprehension. The Constitution says, that the times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. It says, in another place, "that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Who would have conceived it possible to deduce, from these clauses, that the power of election was thrown into the hands of the rich? As the electors of the Federal representatives are to have the same qualifications with those of the representatives of this State legislature, or, in other words, as the electors of the one are to be electors of the other, this suggestion is unwarrantable, unless he carries his supposition further, and says that Virginia will agree to her own suicide, by modifying elections in such manner as to throw them into the hands of the rich. The honorable gentleman has not given us a fair object to be attacked; he has not given us any thing substantial to be examined. (Elliott III, p. 202.)

Note here that Governor Randolph particularly observed that the "electors of one are to be the electors of the other"—a principle and result which the bill I am now opposing would seek to change unconstitutionally.

Mr. John Marshall, speaking in behalf of the Constitution, said:

If there be no impropriety in the mode of electing the Representatives, can any danger be apprehended? They are elected by those who can elect representatives in the State legislature. (See Elliott III, supra, p. 230.)

When article I, section 4 was read in its proper turn in the Virginia convention, having been previously discussed in general with the rest of the document—

Mr. Monroe wished that the honorable gentleman, who had been in the Federal convention, would give information respecting the clause concerning elections. He wished to know why Congress had an ultimate control over the time, place, and manner of elections of Representatives, and the time and manner of that of Senators, and also why there was an exception as to the place of electing Senators. (Elliott III, supra, p. 366.)

It was found necessary to leave the regulation of these, in the first place, to the State governments, as being best acquainted with the situation of the people, subject to the control of the General Government in order to enable it to produce uniformity and prevent its own dissolution. And, considering the State governments and General Government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter.

Again, we see the framers of the Constitution intent on the protection of the provision for election by the States, in the event of their negligent failure to provide therefor. At all times they conceded the States' right to provide for voting qualifications in their own limits more suitably than Congress could.

When Virginia finally ratified the Constitution they added a list of amendments which they suggested and sought. Among these was the following:

16. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for Senators, or Representatives, or either of them except when the legislature of any State shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same. (Elliott III, supra, p. 661.)

Again we see a State convention desiring that the meaning of the framers be put into unquestionably plain language.

New York, the tenth State to act, ratified the Constitution July 26, 1788. Apparently, as in most of the State conventions, section 2 of article I, met with approval, as there was no fault to be found with the provision that the qualifications of the electors should be the same as for those of the most numerous branch of the State legislature. But again we find dissatisfaction with the possibilities of abuse latent in section 4 of article I.

Mr. Jones rose and observed that it was a fact universally known that the present Confederation had not proved adequate to the purposes of good government. Whether this arose from the want of powers in the Federal head or from other causes, he would not pretend to determine. Some parts of the proposed plan appeared to him imperfect or at least not satisfactory. He did not think it right that Congress should have the power of prescribing or altering the time, place, and manner of holding elections. He apprehended that the clause might be so construed as to deprive the States of an essential right, which, in the true design of the Constitution, was to be reserved to them. He, therefore, wished the clause might be explained and proposed, for the purpose, the following amendment: *"Resolved,* as the opinion of this committee, that nothing in the Constitution, now under consideration, shall be construed to authorize the Congress to make or alter regulations, in any State, respecting the times, places, or manner of holding elections for Senators or Representatives, unless the legislature of such State shall neglect or refuse to make laws or regulations for the purpose, or, from any circumstance, be incapable of making the same, and then only until the legislature of such State shall make provision in the premises."

The Honorable Mr. Jay said that, as far as he understood the ideas of the gentleman, he seemed to have doubt with respect to this paragraph, and feared it might be misconstrued and abused. He said that every government was imperfect, unless it had a power of preserving itself. Suppose that, by design or accident, the States should neglect to appoint representatives; certainly there should be some constitutional remedy for this evil. The obvious meaning of the paragraph was that, if this neglect should take place, Congress should have power, by law, to support the Government and prevent the dissolution of the Union. He believed this was the design of the Federal Convention. (Elliott II, supra, p. 325.)

Mr. Smith expressed his surprise that the gentleman should want such an explanation. He conceived that the amendment was founded on the fundamental principles of representative government. As the Constitution stood, the whole State might be a single district for election. This would be improper. The State should be divided into as many districts as it sends Representatives. The whole number of Representatives might otherwise be taken from a small part of the State, and the bulk of the people, therefore, might not be fully represented. He would say no more at present on the propriety of the amendment. The principle appeared to him so evident that he hardly knew how to reason upon it until he heard the arguments of the gentlemen in opposition.

Mr. DUANE. I will not examine the merits of the measure the gentleman recommends. If the proposed mode of election be the best, the legislature of this State will undoubtedly adopt it. But I wish the gentleman to prove that his plan will be practicable and will succeed. By the constitution of this State, the Representatives are apportioned among the counties, and it is wisely left to the people to choose whom they will, in their several counties, without any further division into districts. Sir, how do we know the proposal will be agreeable to the other States? Is every State to be compelled to adopt our ideas on all subjects? If the gentleman will reflect, I believe he will be doubtful of the propriety of these things. Will it not seem extraordinary that any one State should presume to dictate to the Union? As the Constitution stands, it will be in the power of each State to regulate this important point. While the legislatures do their duty, the exercise of their discretion is sufficiently secured. Sir, this measure would carry with it a presumption which I should be sorry to see in the acts of this State. It is laying down as a principle that whatever may suit our interest or fancy should be imposed upon our sister States. This does not seem to correspond with that moderation which I hope to see in all the proceedings of this convention.

Mr. SMITH. The gentleman misunderstands me. I did not mean the amendment to operate on the other States. They may use their discretion. The amendment is in the negative. The very design of it is to enable the States to act their discretion, without the control of Congress. So the gentleman's reasoning is directly against himself.

If the argument had any force, it would go against proposing any amendment at all, because, says the gentleman, it would be dictating to the Union. What is the object of our consultations? For my part, I do not know, unless we are to express our sentiments of the Constitution before we adopt it.

It is only exercising the privilege of freemen; and shall we be debarred from this? It is said it is left to the discretion of the States. If this were true, it would be all we contend for. But, sir, Congress can alter as they please any mode adopted by the States. What discretion is there here? The gentleman instances the Constitution of New York as opposed to my argument. I believe that there are now gentlemen in this house who were members of the convention of this State, and who are inclined for an amendment like this. It is to be regretted that it was not adopted. The fact is, as your constitution stands, a man may have a seat in your legislature who is not elected by a majority of his constituents. For my part, I know of no principle that ought to be more fully established than the right of election by a majority.

Mr. DUANE. I neglected to make one observation which I think weighty. The mode of election recommended by the gentleman must be attended with great embarrassments. His idea is that a majority of all the votes should be necessary to return a member. I suppose a State divided into districts. How seldom will it happen that a majority of a district will unite their votes in favor of one man? In a neighboring State, where they have this mode of election, I have been told that it rarely happens that more than one-half unite in a choice. The consequence is they are obliged to make provision, by a previous election, for nomination and another election for appointment, thus suffering the inconvenience of a double election. If the proposition was adopted, I believe we should be seldom represented—the election must be lost. The gentleman will, therefore, I presume, either abandon his project or propose some remedy for the evil I have described.

Mr. SMITH. I think the example the gentleman adduces is in my favor. The States of Massachusetts and Connecticut have regulated elections in the mode I propose, but it has never been considered inconvenient, nor have the people ever been unrepresented. I mention this to show that the thing has not proved impracticable in those States. If not, why should it in New York?

After some further conversation, Mr. Lansing proposed the following modification of Mr. Smith's motion:

"And that nothing in this Constitution shall be construed to prevent the legislature of any State to pass laws, from time to time, to divide such State into as many convenient districts as the State shall be entitled to elect Representatives for Congress, nor to prevent such legislature from making provision that the electors in each district shall choose a citizen of the United States, who shall have been an inhabitant of the district for the term of 1 year immediately preceding the time of his election, for one of the Representatives of such State."

Which being added to the motion of Mr. Jones, the committee passed the succeeding paragraphs without debate, till they came to the second clause of section 6. (Elliott II, supra, pp. 327, 328, and 329.)

On July 26, 1788, the ratification of the Constitution was effected, accompanied by a number of suggested amendments, among which was the one specifically defining those occasions on which Congress might exercise any power over the "time, place, and manner" of elections.

North Carolina remained reluctant and refused to ratify the Constitution until a convention of States was called and certain proposed amendments adopted. Again no exception was taken to section 2 of article I.

The first clause of the fourth section was read.

Mr. SPENCER. Mr. Chairman, it appears to me that this clause, giving this control over the time, place, and manner of holding elections to Congress, does away with the right of the people to choose the Representatives every second year, and impairs the right of the State legislatures to choose the Senators. I wish this matter to be explained.

Governor JOHNSON. Mr. Chairman, I confess that I am a very great admirer of the new Constitution, but I cannot comprehend the reason of this part. The reason urged is that every Government ought to have the power of continuing itself, and that, if the General Government had not this power, the State legislatures might neglect to regulate elections, whereby the Government might be discontinued. As long as the State legislatures have it in their power not to choose the Senators, this power in Congress appears to me altogether useless because they can put an end to the General Government by refusing to choose Senators. But I do not consider this such a blemish in the Constitution as that it ought, for that reason, to be rejected. I observe that every State which has adopted the Constitution and recommended amendments has given directions to remove this objection, and I hope, if this State adopts it, she will do the same.

Mr. SPENCER. Mr. Chairman, it is with great reluctance that I rise upon this important occasion. I have considered with some attention the subject before us. I have paid attention to the Constitution itself, and to the writings on both sides. I considered it on one side as well as on the other, in order to know whether it would be best to adopt it or not. I would not wish to insinuate any reflections on those gentlemen who formed it. I look upon it as a great performance. It has a great deal of merit in it, and it is, perhaps, as much as any set of men could have done. Even if it be true, what gentlemen have observed, that the gentlemen who were delegates to the Federal Convention were not instructed to form a new constitution, but to amend the confederation, this will be immaterial, if it be proper to be adopted. It will be of equal benefit to us, if proper to be adopted in the whole, or in such parts as will be necessary, whether they were expressly delegated for that purpose or not. This appears to me to be a reprehensive clause; because it seems to strike at the State legislatures, and seems to take away that power of elections which reason dictates they ought to have among themselves. It apparently looks forward to a consolidation of the Government of the United States, when the State legislatures may entirely decay away.

This is one of the grounds which have induced me to make objections to the new form of government. It appears to me that the State governments are not sufficiently secured, and that they may be swallowed up by the great mass of powers given to Congress. If that be the case, such power should not be given; for, from all the notions which we have concerning our happiness and well-being, the State governments are the basis of our happiness, security, and prosperity. A large extent of country ought to be divided into such a number of States as that the people may conveniently carry on their own government. This will render the government perfectly agreeable to the genius and wishes of the people. If the United States were to consist of 10 times as many States, they might all have a degree of harmony. Nothing would be wanting but some cement for their connection. On the contrary, if all the United States were to be swallowed up by the great mass of powers given to Congress, the parts that are more distant in this great empire would be governed with less energy. It would not suit the genius of the people to assist in the government. Nothing would support government, in such a case as that, but military coercion. Armies would be necessary in different parts of the United States. The expense which they would cost, and the burdens which they would render necessary to be laid upon the people, would be ruinous. I know of no way that is likely to produce the happiness of the people, but to preserve, as far as possible, the existence of the several States, so that they shall not be swallowed up.

It has been said that the existence of the State governments is essential to that of the General Government, because they choose the Senators. By this clause, it is evident that it is in the power of Congress to make any alterations, except as to the place of choosing Senators. They may alter the time from 6 to 20 years, or to any time; for they have an unlimited control over the time of elections. They have also an absolute control over the election of the Representatives. It deprives the people of the very mode of choosing them. It seems nearly to throw the whole power of election into the hands of Congress. It strikes at the mode, time, and place, of choosing Representatives.

It puts all but the place of electing Senators into the hands of Congress. This supersedes the necessity of continuing the State legislatures. This is such an article as I can give no sanction to, because it strikes at the foundation of the governments on which depends the happiness of the States and the General Government. It is with reluctance I make the objection. I have the highest veneration for the characters of the framers of this Constitution. I mean to make objections only which are necessary to be made. I would not take up time unnecessarily. As to this matter, it strikes at the foundation of everything. I may say more when we come to that part which points out the mode of doing without the agency of the State legislatures.

Mr. IREDELL. Mr. Chairman, I am glad to see so much candor and moderation. The liberal sentiments expressed by the honorable gentleman who spoke last command my respect. No time can be better employed than endeavoring to remove, by fair and just reasoning, every objection which can be made to this Constitution. I apprehend that the honorable gentleman is mistaken as to the extent of the operation of this clause. He supposes that the control of the General Government over elections looks forward to a consolidation of the States, and that the general word "time" may extend to 20, or any number of years. In my humble opinion this clause does by no means warrant such a construction. We ought to compare other parts with it. Does not the Constitution say that Representatives shall be chosen every second year? The right of choosing them, therefore, reverts to the people every second year. No instrument of writing ought to be construed absurdly, when a rational construction can be put upon it. If Congress can prolong the election to any time they please, why is it said that Representatives shall be chosen every second year? They must be chosen every second year; but whether in the month of March, or January, or any other month, may be ascertained, at a future time, by regulations of Congress. The word "time" refers only to the particular month and day within the 2 years. I heartily agree with the gentleman, that, if anything in this Constitution tended to the annihilation of the State governments, instead of exciting the admiration of any man, it ought to excite the resentment and execration. No such wicked intention ought to be suffered. But the gentlemen who formed the Constitution had no such object; nor do I think there is the least ground for that jealousy. The very existence of the General Government depends on that of the State governments. The State legislatures are to choose the Senators. Without a Senate there can be no Congress. The State legislatures are also to direct the manner of choosing the President. Unless, therefore, there are State legislatures to direct that manner, no President can be chosen. The same observation may be made as to the House of Representatives, since, as they are to be chosen by the electors of the most numerous branch of each State legislature, if there are no State legislatures, there are no persons to choose the House of Representatives. Thus it is evident that the very existence of the General Government depends on that of the State legislatures, and of course, that their continuance cannot be endangered by it.

An occasion may arise when the exercise of this ultimate power in Congress may be necessary; as, for instance, if a State should be involved in war, and its legislature could not assemble—as was the case of South Carolina, and occasionally of some other States, during the late war—it might also be useful for this reason—lest a few powerful States should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction. And it seems natural and proper that every government should have in itself the means of its own preservation. A few of the great States might combine to prevent any election of representatives at all, and thus a majority might be wanting to do business; but it would not be so easy to destroy the Government by the nonelection of Senators, because one-third only are to go out at a time, and all the States will be equally represented in the Senate. It is not probable this power would be abused; for, if it should be, the State legislatures would immediately resent it, and their authority over the people will always be extremely great. These reasons induce me to think that the power is both necessary and useful. But I am sensible great jealousy has been entertained concerning it; and as perhaps the danger of a combination, in the manner I have mentioned, to destroy or distress the General Government, is not very probable, it may be better to incur the risk, than occasion any discontent by suffering the clause to continue as it now stands. I should, therefore, not object to the recommendation of an amendment similar to that of other States—that this power in Congress should only be exercised when a State legislature neglected or was disabled from making the regulations required.

Mr. SPENCER. Mr. Chairman, I did not mean to insinuate that designs were made, by the honorable gentlemen who composed the Federal Constitution, against our liberties. I only meant to say that the words in this place were exceeding vague. It may admit of the gentleman's construction; but it may admit of a contrary construction. In a matter of so great moment, words ought not to be so vague and indeterminate. I have said that the States are the basis on which the Government of the United States ought to rest, and which must render us secure. No man wishes more for a Federal Government that I do. I think it necessary for our happiness; but at the same time, when we form a government which must entail happiness or misery on posterity, nothing is of more consequence than settling it so as to exclude animosity and a contest between the general and individual governments. With respect to the mode here mentioned, they are words of very great extent. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing Senators. These words are so vague and uncertain, that it must ultimately destroy the whole liberty of the United States. It strikes at the very existence of the States, and supersedes the necessity of having them at all. I would therefore wish to have it amended in such a manner as that the Congress should not interfere but when the States refused or neglected to regulate elections.

Mr. BLOODWORTH. Mr. Chairman, I trust that such learned arguments as are offered to reconcile our minds to such dangerous powers will not have the intended weight. The House of Representatives is the only democratic branch. This clause may destroy representation entirely. What does it say? "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators." Now, sir, does not this clause give an unlimited and unbounded power to Congress over the times, places, and manner of choosing Representatives? They may make the time of election so long, the place so inconvenient, and the manner so oppressive that it will entirely destroy representation. I hope gentlemen will exercise their own understanding on this occasion and not let their judgment be led away by these shining characters, for whom, however, I have the highest respect. This Constitution, if adopted in its present mode, must end in the subversion of our liberties. Suppose it takes place in North Carolina; can farmers elect them? No, sir. The elections may be in such a manner that men may be appointed who are not representative of the people. This may exist, and it ought to be guarded against. As to the place, suppose Congress should order the elections to be held in the most inconvenient place in the most inconvenient district; could every person entitled to vote attend at such a place? Suppose they should order it to be laid off into so many districts and order the election to be held within each district; yet may not their power over the manner of election enable them to exclude from voting every description of men they please? The democratic branch is so much endangered that no arguments can be made use of to satisfy my mind to it. The honorable gentleman has amused us with learned discussions and told us he will condescend to propose amendments. I hope the representatives of North Carolina will never swallow the Constitution till it is amended.

Mr. GOUDY. Mr. Chairman, the invasion of these States is urged as a reason for this clause. But why did they not mention that it should be only in cases of invasion? But that was not the reason, in my humble opinion. I fear it was a combination against our liberties. I ask, when we give them the purse in one hand and the sword in another, what power have we left? It will lead to an artistocratical government and establish tyranny over us. We are freemen, and we ought to have the privileges of such.

Governor JOHNSTON. Mr. Chairman, I do not impute any impure intentions to the gentlemen who formed this Constitution. I think it unwarrantable in anyone to do it. I believe that were there 20 conventions appointed, and as many constitutions formed, we never could get men more able and disinterested than those who formed this; nor a Constitution less exceptionable than that which is now before you. I am not apprehensive that this article will be attended with all the fatal consequences which the gentleman conceives. I conceive that Congress can have no other power than the States had. The States, with regard to elections, must be governed by the articles of the Constitution; so must Congress. But I believe the power, as it now stands, is unnecessary. I should be perfectly satisfied with it in the mode recommended by the worthy Member on my right hand. Although I should be extremely cautious to adopt any constitution that would endanger the rights and privileges of the people, I have no fear in adopting this Constitution, and then proposing amendments. I feel as much attachment to the rights and privileges of my country as any man in it; and if I thought anything in this Constitution tended to abridge these rights, I would not agree to it. I cannot conceive that this is the case. I have not the least doubt but it will be adopted by a very great majority of the States. For States who have been as jealous of their liberties as any in the world have adopted it, and they are some of the most powerful States. We shall have the assent of all the States in getting amendments. Some gentlemen have apprehensions that Congress will immediately conspire to destroy the liberties of their country. The men of whom Congress will consist are to be chosen from among ourselves. They will be in the same situation with us. They are to be bone of our bone and flesh of our flesh. They cannot injure us without injuring themselves. I have no doubt but we shall choose the best men in the community. Should different men be appointed, they are sufficiently responsible. I therefore think that no danger is to be apprehended.

Mr. M'DOWALL. Mr. Chairman, I have the highest esteem for the gentleman who spoke

last. He has amused us with the fine characters of those who formed that government. Some were good, but some were very imperious, aristocratical, despotic, and monarchial. If parts of it are extremely good, other parts are very bad.

The freedom of election is one of the greatest securities we have for our liberty and privileges. It was supposed by the member from Edenton, that the control over elections was only given to Congress to be used in case of invasion. I differ from him. That could not have been their intention, otherwise they could have expressed it. But, sir, it points forward to the time when there will be no State legislatures—to the consolidation of all the States. The States will be kept up as boards of elections. I think the same men could make a better constitution; for good government is not the work of a short time. They only had their own wisdom. Were they to go now, they would have the wisdom of the United States. Every gentleman who must reflect on this must see it. The adoption of several other States is urged. I hope every gentleman stands for himself, will act according to his own judgment, and will pay no respect to the adoption by the other States. It may embarrass us in some political difficulties, but let us attend to the interest of our constituents.

Mr. Iredell answered, that he stated the case of invasion as only one reason out of many for giving the ultimate control over elections to Congress.

Mr. DAVIE. Mr. Chairman, a consolidation of the States is said by some gentlemen to have been intended. They insinuate that this was the cause of their giving this power of elections. If there were any seeds in this Constitution which might, one day, produce a consolidation it would, sir, with me, be an insuperable objection, I am so perfectly convinced that so extensive a country as this can never be managed by one consolidated government. The Federal Convention were as well convinced as the Members of this House, that the State governments were absolutely necessary to the existence of the Federal Government. They considered them as the great massy pillars on which this political fabric was to be extended and supported; and were fully persuaded that, when they were removed, or should molder down by time, the General Government must tumble into ruin. A very little reflection will show that no department of it can exist without the State governments.

Let us begin with the House of Representatives. Who are to vote for the Federal Representatives? Those who vote for the State representatives. If the State governments vanish, the General Government must vanish also. This is the foundation on which this Government was raised, and without which it cannot possibly exist.

The next department is the Senate. How is it formed? By the States themselves. Do they not choose them? Are they not created by them? And will they not have the interest of the States particularly at heart? The States, sir, can put a final period to the Government, as was observed by a gentleman who thought this power over elections unnecessary. If the State legislatures think proper, they may refuse to choose Senators, and the Government must be destroyed.

Is not this Government a nerveless mass, a dead carcass, without the executive power? Let your representatives be the most vicious demons that ever existed; let them plot against the liberties of America; let them conspire against its happiness—all their machinations will not avail if not put in execution. By whom are their laws and projects to be executed? By the President. How is he created? By electors appointed by the people under the direction of the legislatures—by a union of the interest of the people and the State governments. The State governments can put a veto, at any time, on the General Government, by ceasing to continue the executive power. Admitting the representatives or Senators could make corrupt laws, they can neither execute them themselves, nor appoint the executive. Now, sir, I think it must be clear to every candid mind, that no part of this Government can be continued after the State governments lose their existence, or even their present forms. It may also be easily proved that all federal governments possess an inherent weakness, which continually tends to their destruction. It is to be lamented that all governments of a federal nature have been short-lived.

Such was the fate of the Achaean League, the amphictyonic council, and other ancient confederacies; and this opinion is confirmed by the uniform testimony of all history. There are instances in Europe of confederacies subsisting a considerable time; but their duration must be attributed to circumstances exterior to their government. The Germanic confederacy would not exist a moment, were it not for fear of the surrounding powers, and the interest of the emperor. The history of this confederacy is but a series of factions, dissensions, bloodshed, and civil war. The confederacies of the Swiss, and United Netherlands, would long ago have been destroyed, from their imbecility, had it not been for the fear, and even the policy, of the bordering nations. It is impossible to construct such a government in such a manner as to give it any probable longevity. But, sir, there is an excellent principle in this proposed plan of federal government, which none of these confederacies had, and to the want of which, in a great measure, their imperfections may be justly attributed—I mean the principle of representation. I hope that, by the agency of this principle, if it be not immortal, it will at least be long-lived. I thought it necessary to say this much to detect the futility of that unwarrantable suggestion, that we are to be swallowed up by a great consolidated government. Every part of this Federal Government is dependent on the constitution of the State legislatures for its existence. The whole, sir, can never swallow up its parts. The gentleman from Edenton (Mr. Iredell) has pointed out the reasons of giving this control over elections to Congress, the principle of which was, to prevent a dissolution of the Government by designing States. If all the States were equally possessed of absolute power over their elections, without any control of Congress, danger might be justly apprehended where one State possesses as much territory as four or five others; and some of them, being thinly peopled now, will daily become more numerous and formidable. Without this control in Congress, those large States might successfully combine to destroy the General Government. It was therefore necessary to control any combination of this kind.

Another principal reason was, that it would operate in favor of the people, against the ambitious designs of the Federal Senate. I will illustrate this by matter of fact. The history of the little State of Rhode Island is well-known. An abandoned faction have seized on the reins of government, and frequently refused to have any representation in Congress. If Congress had the power of making the law of elections operate throughout the United States, no State could withdraw itself from the national councils without the consent of a majority of the Members of Congress. Had this been the case, that trifling State would not have withheld its representation. What once happened may happen again; and it was necessary to give Congress this power, to keep the Government in full operation. This being a Federal Government, and involving the interests of several States, and some acts requiring the assent of more than a majority, they ought to be able to keep their representation full. It would have been a solecism, to have a government without any means of self-preservation. The confederation is the only instance of a government without such means, and is a nerveless system, as inadequate to every purpose of government as it is to the security of the liberties of the people of America. When the councils of America have this power over elections, they can, in spite of any faction in any particular State, give the people a representation. Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not to be different in one State from what they are in another. At present, the manner of electing is different in different States. Some elect by ballot, and others viva voce. It will be more convenient to have the manner uniform in all the States. I shall now answer some observations made by the gentleman from Mecklenburg. He has stated that this power over elections gave to Congress power to lengthen the time for which they were elected. Let us read this clause coolly, all prejudice aside, and determine whether this construction be warrantable. The clause runs thus: The times, places, manner, of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators. I take it as a fundamental principle, which is beyond the reach of the general or individual governments to alter, that the representatives shall be chosen every second year, and that the tenure of their office shall be for 2 years; that Senators be chosen every sixth year, and that the tenure of their office be for 6 years. I take it also as a principle, that the electors of the most numerous branch of the State legislatures are to elect the Federal Representatives. Congress has ultimately no power over elections, but what is primarily given to the State legislatures. If Congress had the power of prolonging the time, and so forth, as gentlemen observe, the same powers must be completely vested in the State legislatures.

I call upon every gentleman candidly to declare, whether the State legislatures have the power of altering the time of elections for Representatives from 2 to 4 years, or Senators from 6 to 12; and whether they have the power to require any other qualifications than those of the most numerous branch of the State legislatures; and also whether they have any other power over the manner of elections, any more than the mere mode of the act of choosing; or whether they shall be held by sheriffs, as contradistinguished from any other officer; or whether they shall be by votes, as contradistinguished from ballots, or any other way. If gentlemen will pay attention, they will find that, in the latter part of this clause, Congress has no power but what was given to the States in the first part of the same clause. They may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of elections; for it is established, as fundamental principles, that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives, and that the tenure of their office shall be for 2 years; and likewise, that the Senators shall be elected by the legislatures, and that the tenure of their office shall be for 6 years. When gentlemen view the clause accurately, and see that Congress has only the same power which was in the State legislature, they will not be alarmed. The learned doctor on my right, Mr. Spencer, has also said that Congress might lengthen the time of elections. I am willing to appeal grammatical construction and punctuation. Let me read this, as it stands on paper. (Here he read the clause different ways, expressing the same sense.) Here, in the first part of

the clause, this power over elections is given to the States, and in the latter part the same power is given to Congress, and extending only to the time of holding, the place of holding, and the manner of holding, the elections. Is this not the plain, literal, and grammatical construction of the clause? Is it possible to put any other construction on it, without departing from the natural order, and without deviating from the general meaning of the words, and every rule of grammatical construction? Twist it, torture it, as you may, sir, it is impossible to fix a different sense upon it. The worthy gentleman from New Hanover, whose ardor for the liberty of his country I wish never to be damped, has insinuated that high characters might influence the members on this occasion. I declare, for my own part, I wish every man to be guided by his own conscience and understanding, and by nothing else. Every man has not been bred a politician, nor studied the science of government; yet, when a subject is explained, if the mind is unwarped by prejudice, and not in the leading-strings of other people, gentlemen will do what is right. Were this the case, I would risk my salvation on a right decision. (Elliott, 4, supra, p. 50, starting the first clause of the fourth section, copy all pp. 51, 52, 53, 54, 55, 56 57, 58, 59, 60, 61, 62, to end par. words "right decision.")

Note particularly what Mr. Davie said: "They cannot alter the nature of the elections; for it is established as fundamental principles, that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives."

Mr. Davie said:

This clause, sir, has been the occasion of much groundless alarm and has been the favorite theme of declamation out of doors. I now call upon the gentlemen of the opposition to show that it contains the mischiefs with which they have alarmed and agitated the public mind, and I defy them to support the construction they have put upon it by one single plausible reason. The gentleman from New Hanover has said, in objection to this clause, that Congress may appoint the most inconvenient place in the most inconvenient district, and make the manner of election so oppressive as entirely to destroy representation. If this is considered as possible, he should also reflect that the State legislatures may do the same thing. But this can never happen, sir, until the whole mass of the people become corrupt, when all parchment securities will be of little service. Does that gentleman, or any other gentleman who has the smallest acquaintance with human nature or the spirit of America, suppose that the people will passively relinquish privileges, or suffer the usurpation of powers unwarranted by the Constitution? Does not the right of electing representatives revert to the people every second year? There is nothing in this clause that can impede or destroy this reversion; and although the particular time of year, the particular place in a county or a district, or the particular mode in which elections are to be held, as whether by vote or ballot, be left to Congress to direct, yet this can never deprive the people of the right or privilege of election. He has also added that the democratical branch was in danger from this clause; and with some other gentlemen took it for granted that an aristocracy must arise out of the General Government. This, I take it, from the very nature of the thing, can never happen. Aristocracies grow out of the combination of a few powerful families, where the country or people upon which they are to operate are immediately under their influence; whereas the interest and influence of this Government are too weak and too much diffused ever to bring about such an event. The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the Federal Government can ever have. When aristocracies are formed, they will arise within the individual States. It is, therefore, absolutely necessary that Congress should have a constitutional power to give the people at large a representation in the Government, in order to break and control such dangerous combinations. Let gentlemen show when and how this aristocracy they talk of is to arise out of this Constitution. Are the first members to perpetuate themselves? Is the Constitution to be attacked by such absurd assertions as these, and charged with defects with which it has no possible connection? (Elliott IV, supra, p. 66.)

Mr. Maclaine said:

Mr. Chairman, I thought it very extraordinary that the gentleman who was last on the floor should say that Congress could do what they please with respect to elections, and be warranted by this clause. The gentleman from Halifax (Mr. Davie) has put that construction upon it which reason and common sense will put upon it. Lawyers will often differ on a point of view, but people will seldom differ about so very plain a thing as this. (Elliott IV, supra, pp. 68, 69.)

And the remarks of Mr. Steele are today, 1949, as absolutely pertinent and as directly against the bill before this body as they were when entered by him in 1788:

Mr. STEELE. Mr. Chairman, the gentleman has said that the five Representatives which this State shall be entitled to send to the General Government will go from the seashore. What reason has he to say they will go from the seashore? The time, place, and manner of holding elections are to be prescribed by the legislatures. Our legislature is to regulate the first election, at any event. They will regulate it as they think proper. They may, and most probably will, lay the State off into districts. Who are to vote for them? Every man who has a right to vote for a representative to our legislature will ever have a right to vote for a Representative to the General Government. Does it not expressly provide that the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner of elections does not include that of saying who shall vote: The Constitution expressly states the qualifications which entitle a man to vote for a State representative. It is, then, clearly and indubitably fixed and determined who shall be the electors; and the power over the manner only enables them to determine how these electors shall elect—whether by ballot, or by vote, or by any other way. Is it not a maxim of universal jurisprudence, of reason and common sense, that an instrument or deed of writing shall be so construed as to give validity to all parts of it, if it can be done without involving any absurdity? By construing it in the plain, obvious way I have mentioned, all parts will be valid. (Elliott, 4, supra, p. 71.)

These words should be italicized and underscored in our minds. They state absolutely, that under the Constitution as written, Congress can never constitutionally regulate the qualifications of electors. I agree.

The North Carolina convention suggested the amendment:

4. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion, to prescribe the same. (See Elliott, 4, supra, p. 249.)

The convention adjourned August 4, 1788.

On May 29, 1790, Rhode Island ratified the Constitution, and listed a number of proposed amendments; among these was—

That Congress shall not alter, modify or interfere in, the times, places, or manner, of holding elections for Senators and Representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same, or in case when the provision made by the State is so imperfect as that no consequent election is had, and then only until the legislature of such State shall make provision in the premises. (Elliott, I, supra, p. 336, amendment II.)

What has become of our Constitution as regards the provisions on voting qualifications? We shall see that the words of the framers, and the thoughts and opinions of the men who debated its ratification have been adhered to. Those changes which have been enacted affecting voting qualifications have been done by amendment to the Constitution itself, the only legal way to change the States' own individual regulations on this matter. There have been several amendments touching this subject matter. Why did Congress, in the past, resort to constitutional amendment to effect changes in the qualifications of State electors if their end could have been accomplished by congressional act? Because Congress knew that was the only legal way they could regulate or infringe upon a field specifically delegated to State regulation by the Constitution itself.

I turn now to examine the amendments to our Federal Constitution as they affect section 2 of article I which says, again, that the electors of representatives to Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Some amendments have affected suffrage problems. I shall first list the amendments and then discuss them.

Section 2 of article XIV says that as to any State which denies the right to vote to any male citizen over 21 years of age except for participation in rebellion, or other crime, the basis of representation therein shall be proportionately reduced. This regulation in itself recognizes the right of the State to deny such right if it wishes.

Article XV, which deals with Negro suffrage, is as follows:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation. (Proposed by Congress on February 26, 1869, 915 Stat. L. 346), and ratified by three-fourths of the States by February 3, 1870.)

Article XV, Constitution of the States and United States, page 10.

Article XVII, election of Senators:

The Senate of the United States shall be composed of two Senators from each State,

elected by the people thereof, for 6 years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Article XIX, woman's suffrage:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation. (Proposed by Congress June 5, 1919 (41 Stat. L. 362), and ratified by three-fourths of the States by August 26, 1920.)

Article XV, as we all know, came on the heels of the Civil War, and as a result thereof. It is rather significant, to my mind, that, even at that time Congress made no attempt to interfere by legislation with the States and recognized that an amendment to the Constitution was the only method of attaining that right constitutionally. That is, with the Civil War a recent memory, and the subject of former slavery still a bitter topic, with the abolitionists riding high and the victorious North contending only with carpetbag governments of the worst type in the as yet unreconstructed South, Congress still knew its limitations sufficiently to realize that the qualifications of electors had been left to the State government entirely by the Constitution and the only way to vary such qualifications or affect them at all was to amend the instrument. The amendment itself is specifically self-limiting in scope and leaves the rest of the field in the State's hands.

Though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulations of elections, including the prescribing of qualifications for suffrage, is left by the national Constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment, it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent. (Cooley, Constitutional Limitations, p. 752.)

While I shall discuss later some decisions on the subject of the fifteenth amendment, and also shall go into detail on the State Constitutions, I should like here to quote a general statement concerning conditions between 1812 and 1867 concerning the Negro vote:

Race: Increasing race prejudice had well-nigh eliminated the Negro as an elector. All but six States had written "white" in their constitutions: Massachusetts, New Hampshire, Vermont, Rhode Island, Maine, and New York. However, in the latter State, in order to vote, the Negro must own $250 worth of property on which he had paid the taxes and reside in the Commonwealth 2 years longer than was required of a white man. It is alleged that public opinion was so averse to his voting even in the New England States that the Negro was kept away from the polls in all but two. Chancellor Kent says that the Negro really voted in Maine alone. At least it is a significant fact that New Hampshire (1857) and Vermont (1858) found it necessary to enact laws that Negroes should not be excluded from the polls. Therefore, it fell out that just before the Negro was to have suffrage granted him as a special favor by the fifteenth amendment he was kept from the exercise of the elective franchise most completely. The aforesaid amendment was revolutionary in more ways than one; it struck the word "white" from the constitutions of over 30 States. As an indication of what was to become a local, though intensely bitter, race and suffrage problem about the middle of the following period, note that Oregon in 1857 disfranchised Chinese. Yet the general race test disappeared. (McCulloch, Suffrage and Its Problems, p. 47.)

Speaking of the period immediately following the Civil War, McCulloch says:

Period of problems: This period inherited three growing problems: The question of Negro suffrage, deadlocked in the preceding period, at once became paramount as a post-war measure; the agitation for woman suffrage, stilled during the time of civil strife, was renewed by its zealous advocates; the tendency to allow aliens to vote on mere declarations of intent to become citizens was increased notably. During the epoch some sort of solution is attempted for each of these problems.

At the outset of the period the elective franchise was secured for the Negro by constitutional amendment. The thirteenth amendment had made him a man instead of a chattel. The fourteenth amendment conferred citizenship upon him and incidentally endeavored to insure the ballot to him by providing that when any male citizens over 21 years of age were excluded from the elective franchise (except for crime) the basis of representation of said State in Congress should be proportionately reduced. This incidental treatment of the problem of Negro suffrage not promising satisfactory results, more direct and drastic means were found. The fifteenth amendment (1870) provided that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude. Therefore, the out and out race test for suffrage was displaced irrevocably. However, it should be noted that suffrage was still a commonwealth matter. The United States, through congressional action or court decision, could interfere in questions affecting the elective franchise only when the provisions of the fourteenth and fifteenth amendments were violated. (McCulloch, supra, pp. 51 and 52.)

In the struggle to preserve the Union, which incidentally freed the slaves, the North experienced at least a partial change of sentiment. Especially as the difficult work of reconstruction wore on, the expedient of giving the newly made freemen the ballot gained ground. Yet even in 1865 the Republican Party was opposed to the extension of the franchise to the Negroes. Neither Lincoln nor Johnson proposed such a measure. But finally Sumner's plan prevailed as a party policy. Argument: The Negro was still in subjection, while the South had been freed from slavery; the ballot would make him free indeed. In fact, at that time, it seemed to be a choice between maintaining an army at the South or securing the ballot for the Negro; the latter was regarded as the lesser of two evils. The weapon proved a boomerang. (McCulloch, supra, pp. 80 and 81.)

The radical Republicans insisted on the Negro becoming an elector in the South, while he was disfranchised in the vast majority of the northern Commonwealths. The North threw theories and prejudices to the winds and sought to find a practical solution of the vexing question, "What to do with the Negro?" The thirteenth amendment destroyed slavery; the fourteenth made the Negro a citizen, but not a voter. Finally the fifteenth sought to secure the elective franchise for and to him, in spite of race prejudice and existing adverse and discouraging conditions. Shellenbarger, who proposed a substitute prohibiting any disfranchisement of males 21 years of age, except for crime, pointed out that this amendment would suggest other disqualifying tests than race, color, etc. Subsequent events have shown that this desperate expedient was futile. While the amendment secured temporarily the widest extension of the elective franchise to the Negro, it was extreme and unwise.

What was secured for the Negro by the fifteenth amendment? It did not confer suffrage upon him, nor upon anyone. The States were still left wide latitude aside from its inhibitions. It merely prevented discrimination on account of "race, color, or previous condition of servitude." However, it has been held to confer suffrage indirectly; in extending the franchise to any class of inhabitants, Negroes may not be excluded. To secure a decision under the fifteenth amendment it has been held that the indictment must specify that the elector was excluded because he was a Negro—just such an inference is not sufficient. While power is conferred upon Congress to legislate upon the subject of Commonwealth elections, this may not be done except when an otherwise qualified voter is denied that privilege because of "race, color, or previous condition of servitude." Hence, the redress formerly secured by this amendment was not so sweeping as would at first appear.

The suffrage issue was injected into a Mississippi case, but the Supreme Court upheld the decisions of the State courts; while in a Virginia contention the Court refused to assume jurisdiction. The decision in the case of an Alabama Negro, wherein it was held by the Supreme Court that that tribunal did not have jurisdiction, maintained that the offense, and hence a remedy, was political rather than judicial. The inference was that recourse must be had through Congress acting under the fourteenth amendment. There has been little likelihood of such action. However, the recent decision declaring the Oklahoma grandfather clause unconstitutional is a departure from precedent. It would seem that the fifteenth amendment is to become more effective. The disappearance of shifty and temporary expedients, used under the guise of legality to disfranchise the Negro in the South, should be welcomed. Even the South seems to accept his view of the matter.

The immediate result of the reconstruction policy was to put the Southern Commonwealths under negro rule. Led by political adventurers, the ignorant Negroes gave the

South such a government as has been a nightmare to that section ever since. The big offices were appropriated by the carpetbaggers—the little ones being left to the ignorant Negroes. There was a reign of fraud and extravagance. Preceding 1861 South Carolina's average annual stationery bill had been $400; for 1873 it was $16,000. Six million dollars went through fraudulent bonds. This shameless plundering of the South went on for a time unchecked. The estimated carpetbag deficit of the 11 Southern States totaled $298,020,641.80. They spell "pray" with an "e", and thus spelled they obey the apostolic injunction to "pray without ceasing." Such a state of misgovernment could not long endure. (McCulloch, supra, pp. 82, 83, and 85.)

It is interesting historically to note what some of the Nation's leaders thought of the fifteenth amendment.

Neither Lincoln nor Johnson wished universal manhood suffrage immediately extended to the freedman. Lincoln preferred that it be conferred gradually, first securing it to the very intelligent (those able to read and write) and to those who had served in the Union Army. Johnson advised a similar plan: extending the ballot to those Negroes owning a little property and those able to read and write. The evident purpose was to allow the southern commonwealths to solve the problem—the National Government insisting that those Negroes qualified be allowed to vote. Nor was this plan of solution vain or hopeless. While the South was deeply prejudiced against Negro suffrage, many of the leading men of that section took the same view of the matter. Wade Hampton and L. Q. C. Lamar may be taken as typical men of the South who saw the issue clearly. Wade Hampton of South Carolina wrote: "I realized in 1867 that when a man has been made a citizen of the United States, he could not be debarred from voting on account of his color. Such an exclusion would be opposed to the entire theory of republican institutions." But for the untoward events that preceded the adoption of the fifteenth amendment, the South might have been spared much of the bitterness of reconstruction and the Nation the vexing problems arising from indiscriminate Negro suffrage. The whole people lost their only freind in Lincoln; the troublesome times needed his great mind and greater heart. While the South was proud and unbending even in defeat, Congress was actuated by unstatesmanlike motives and forced upon the prostrate commonwealths an intolerable political situation.

The ablest men of the time were averse to conferring the ballot on the Negro irrespective of his fitness for it. Beecher in 1865 pointed out the futility of such a course and concluded: "You will never be able to secure the elective franchise for the Negro and maintain it for him, except by making him so intelligent that men cannot deny it to him." And so it has fallen out. But the cautious method of treatment was abruptly ended with Lincoln's death and Johnson's unfortunate quarrel with Congress. The extreme faction gained control with dire results for the great suffrage problem. As the hasty system inaugurated by the reconstruction policy of Congress began to bear fruit, even the Negroes deplored the increased degradation of their race. They realized that they were merely tools. The political adventurer from the North pulled the strings. (McCulloch, supra, pp. 91, 92, and 93.)

Mr. President, McCulloch says, and repeats, that this particularized provision for the Negro does not affect State control over every other voting qualification, including, certainly, the existence now of a poll tax as a prerequisite to the exercise of the voting privilege. State control is reaffirmed in article XVII which quotes word for word the tests for electors of Representatives in the first article, second section, of the Constitution, and makes that apply to the electors of Senators as well. In other words, the test that all electors qualified to vote for the most numerous branch of the State legislature shall be qualified to vote for Representatives, set out in 1787 at the Constitutional Convention, is reaffirmed and extended 150 years later.

The nineteenth amendment extends the right to vote to women.

I quote further from McCulloch:

The agitation for woman suffrage became more intense after the enfranchisement of the Negro and began to bear fruit in the multiplication of the number of States that granted school suffrage to women. Also municipal and bond suffrage was extended to women in a few instances. In the West a few commonwealths bestowed upon woman the full elective franchise. Wyoming led in this movement; her full suffrage law bears the date 1869. The number of such States gradually but very slowly increased, extending the movement eastward. Then came the World War and another suffrage revolution. Woman suffrage became a war measure of almost spontaneous proportions. Because constitutional amendments were too slow, a number of State legislatures followed the questionable expedient of granting women the franchise for nonconstitutional offices. Years before, an amendment to the Constitution of the United States, following the lines of the fifteenth amendment and thereby securing the ballot for women, had been offered; but such proposals usually died in a congressional committee. During the war this amendment was brought forward with marked difference in its reception. As the prospective nineteenth amendment it was passed by Congress and submitted to the several States for ratification in 1919 and received the endorsement of the requisite number of commonwealths in 1920. Like the former amendment (fifteenth), the nineteenth amendment disturbs the commonwealth regulation of suffrage as little as possible; it provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on acount of sex." (McCulloch, supra, pp. 52 and 53.)

Until this period, in spite of the agitation of women suffragists, the elective franchise had been confined to males. The constitution of every State so specified. The sagebrush territory of Wyoming had granted women full suffrage in 1869; but this departure only emphasized the universality of the rule. Yet insistent agitation accomplished something. Following the chivalrous example set by Kentucky in 1838, other States allowed women to participate in school elections. While this was a sop thrown to the troublesome agitators for woman suffrage, there was also the idea in the minds of legislators that educational matters rather belonged in woman's sphere. This practice grew until 26 States had extended school suffrage to women. Along with this innovation came another, closely associated with the ownership of property: women were permitted to vote in municipal elections and in voting bonds. This extension of suffrage to women was not so general as that of school suffrage; only nine States saw fit to grant some sort of "municipal suffrage" to women. Meanwhile a few of the sparsely settled States of the Rocky Mountain region followed the pioneer, Wyoming, and extended full suffrage to women. In this section there were no large cities, and, equally significant, the number of men greatly exceeded that of women. However, the movement gathered weight very slowly and by 1910 but four States had taken this advanced stand: Wyoming, Colorado, Utah, and Idaho. But, nothing having happened of startling nature because of woman suffrage in these commonwealths, and agitation becoming more widespread and more insistent, the movement spread; and at the outbreak of the World War the number of States in which women had full suffrage had more than doubled: Washington, California, Oregon, Kansas, and Arizona had fully enfranchised women. During the World War suffrage events moved rapidly: Nevada and Montana were early added to the list, and then the movement invaded the East. After the United States entered the war, New York, Michigan, South Dakota, and Oklahoma extended the ballot to women. This secured full suffrage for women in 15 States. But even a more significant thing was happening. Since constitutional amendments move slowly, the legislatures of 15 States proceeded to grant women suffrage for "nonconstitutional offices," this permitted women to vote for Congressmen and Presidential electors. Frankly, woman suffrage had become a war issue. Under this stress the Anthony amendment was revived and, with the help of the President, pushed through Congress—receiving the required extraordinary majority, June 5, 1919. Then began the ratification by States. Few State legislatures were to meet at an early date in regular session, hence it was necessary for the Governors to call extra sessions—if the amendment was to be ratified in time for women to vote in the election of 1920. With remarkable celerity 35 States ratified. All States west of the Mississippi, excepting Louisiana, had approved the amendment. Most Southern States had rejected it or their legislatures had not been convened; while some New England Governors had refused to call extra sessions. This was the situation in mid-summer. President Wilson, the chairman of central committees, and Presidential nominees brought great pressure to bear in the border States, which had neither ratified nor rejected the amendment; for each party was eager to secure the credit for ratification and thus have a catch appeal to women voters. Finally, after a bitter and close struggle, Tennessee ratified the nineteenth amendment, August 18, 1920; and the word "male" was stricken from the constitutions of 33 States. (McCulloch, supra, pp. 60, 61, and 62.)

In an academic sense, woman suffrage is as old as Plato. However, his dream of women sharing in the political burdens of the state was no more real than were his asses frisking along the highway in the exuberance of republican freedom. It is a far cry from Greek civilization to that of the twentieth century, and the enfranchised woman of today looks out on a vastly different world. The social position of modern women rests on a foundation laid far back in the past. It was for Christianity to give woman a new worth and dignity; she possessed an immortal individuality—a soul. Accordingly, the position of women has ever been the great and outstanding difference between pagan and Christian civilizations. However, it takes time for even religious truth to overcome fixed ideas and customs. Slowly and painfully the world achieved progress. The rise of the Puritan home in England marks the beginning of the highest position ever assigned to woman. Even then, with marked gains in individual liberty and social standing political equality for woman was far in the future. If the relative estimate of womanhood is a sure criterion of civilization, then America enjoys the highest in the world. Therefore, in the United States has come the first agitation for and the widest extension of sexless political equality.

The question of woman suffrage in the United States has been closely associated

with that of the Negro. The half dozen women delegates sent from America to the World's Antislavery Convention, which met in London in June 1840 were emphatically refused seats. Therefore, these women came home pledged to agitate for woman suffrage. Thus, in trying to free the Negro from the bonds of slavery, was the question of woman suffrage precipitated. After several years of local agitation, the first woman's-rights convention met in Seneca Falls, N. Y., in July 1848. Other sections of the country followed this example, and the woman suffrage question was fairly launched. The movement in England did not get under way until 1865. English women had enjoyed municipal suffrage, based like that of men on guild, freehold, and property bases. Thereafter the struggle was begun for parliamentary suffrage. The contest there has been long and bitter. The methods employed by the agitators, while quite British, would have been wholly out of place in America. Finally under stress of the World War, partial success was achieved: In 1918 parliamentary suffrage was extended to some 6,000,000 women, and in 1928 to all.

At the Declaration of Independence universal manhood suffrage was not even a future event in the minds of publicists. Certainly no one contemplated the extension of the ballot to women. Yet, soon thereafter women actually voted. The first instance of undoubted authenticity was in New Jersey in 1797. Women then voted under the Constitution of 1776, which declared that all inhabitants were electors—if otherwise qualified. This was clearly an oversight on the part of the lawmakers and was corrected by a more exact definition in 1807. In the History of Woman Suffrage it is asserted that women had voted in Massachusetts under the charter from 1691 to 1780 and under the Constitution from 1780 to 1785. However, this is mere conjecture. There were no further instances of women exercising the right of suffrage, during the early periods of our national history.

During the decade preceding the Civil War there was considerable agitation for woman suffrage, but the preponderance of the slavery issue kept it in the background. The only tangible result of this early agitation for woman suffrage appears to have been the action of Kansas in 1861, following the earlier example of Kentucky, granting school suffrage to women. When the Negro became a citizen and later an elector—both by amendments to the Federal Constitution—the women agitators for suffrage became impatient in their demands for the ballot. Some presumed to vote, claiming that privilege under the fourteenth amendment. A Mrs. Ricker voted without protest in New Hampshire in 1872. When Susan B. Anthony insisted on voting the same year, she was fined $100—which was never paid. Finally, in 1875, a decision was handed down by the Supreme Court of the United States asserting that the amendment had not contemplated women voting and that the regulation of the elective franchise was entirely within the province of the various States. This stopped women from voting a second time.

Meanwhile, the leaders of the movement were not idle. In 1869 what was known as the sixteenth amendment was urged upon Congress: The right of suffrage in the United States shall be based on citizenship and shall be regulated by Congress; and all citizens of the United States, whether native or naturalized, shall enjoy this right equally without any distinction or discrimination whatever founded on sex. This proposed amendment had two significant features besides its main intent: it would have invalidated at one stroke the declaration of intent tests in a number of States and it would have wrought a suffrage revolution by vesting in Congress the regulation of suffrage instead of leaving this function to the several commonwealths—which had been the custom from colonial days. The first vote obtained on the proposed amendment was in 1887, when the Senate refused to submit it to the States for ratification by a vote of 34 to 16. To have been constitutionally effective, this vote would have had to have been the reverse of what it was. Eleven favorable committee reports have been had on the proposition: five from the Senate and six from the House—the first in 1871, the last in 1893. Since the latter date attention has been directed principally to obtaining favorable action on the part of the States, through woman-suffrage amendments to the Commonwealth constitutions. However, the insistent agitation was bearing some fruit: school suffrage was being extended to women quite generally, and by the opening of the World War 26 States had made such a concession to women, while 9 had conferred either municipal or bond-voting suffrage.

The Territory of Wyoming was the first Commonwealth to grant full suffrage to women. This was done in 1869, while the Territory was not erected into a State until 20 years later. Yet even in 1889 the pioneer State stood alone. There seems to be some doubt as to the facts about the case of Wyoming. The action on 1869 appears to have been treated as a joke. There was no political significance in the measure. However, when the Territory was admitted as a State the opposition to woman suffrage had well-nigh ceased. In 1893 Colorado adopted an amendment to her constitution extending suffrage to women. The majority for the amendment was 6,347; a similar measure lost in 1877 by 5,844. Again it is difficult to get at the facts. Men outnumbered women in the Centennial State by 49,761. However, the measure seems to have been largely the result of the panicky and chaotic condition prevailing there then, and a sort of byproduct of populism. Idaho and Utah extended suffrage to women in 1896. The latter Commonwealth thus returning to its Territorial regulation, which had been annulled by the Federal Government because of the prevalence of polygamy. A woman critic attributed the adoption of woman suffrage in Wyoming to a political trick, in Colorado to populism, and in Utah to polygamy. Anyhow, there were no further concrete results for a number of years. In fact, since New York and Massachusetts had just rejected woman suffrage by overwhelming majorities there seemed little probability that other States would extend the franchise to women. In contrast to Colorado, in the latter State women outnumbered men by over 70,000. Frankly, it was an isolated western fad—ignored by the South and ridiculed by the North. For further advance of woman suffrage the time element was necessary.

Around 1910 the movement took on new life. A number of things contributed to this revival of interest in woman suffrage. Agitation, while persistent, was dignified; it took on more the nature of an educational propaganda. Also the novel suffrage venture of a few sparsely settled States had not caused either an upheaval of the social order or the moral downfall of woman. The rest of the Nation began to look with more respect on the whole question of woman suffrage. Other States began to adopt like amendments enfranchising women. In 1910 Washington gave woman the ballot, in 1911 California extended suffrage to women, and in 1912 Oregon did likewise, thus uniting the Pacific coast in the movement. The same year Arizona and Kansas granted suffrage to women. While the movement had reached beyond the West of high altitudes, it was still confined to the great West, where the States were not averse to trying experiments. The conservative North and South were content to remain on the side-lines. No ordinary course of events would have caused even the North to adopt woman suffrage by a mass movement, much less the ultraconservative South.

Then came the World War. At that time nine States had granted women the elective franchise. When the United States entered the conflict two more had extended political suffrage to women—Nevada and Montana, both in 1914. However, at once woman suffrage became a war measure; the unselfish and heroic war work of the women of America and elsewhere was an unanswerable argument. Whatever woman wanted she should have as a fitting reward for her patriotism. As Mrs. Medill McCormick put it: "We have sacrificed as you have in its defense." Events moved rapidly. The greatest suffrage victory came in New York in 1917. As recently as in 1915, woman suffrage had been lost in that State by an adverse majority of over 185,000. Two years later the women framed a monster petition with over a million signatures of women asking for the ballot and the suffrage amendment carried that year by over 100,000 votes. The advocates of woman suffrage were greatly encouraged and the movement gained momentum. The next year Michigan, South Dakota, and Oklahoma enfranchised women. Similar amendments were submitted in five other States; but, the amending process was too dilatory to suit aroused woman suffrage sentiment and more speedy methods were adopted. The unique plan was devised to enfranchise women by mere legislative action, allowing them to vote in elections for "nonconstitutional offices," such as electors for President and sometimes Members of Congress. Illinois had adopted this expedient in 1913. During the year 1917, Michigan, Nebraska, North Dakota, and Rhode Island enacted similar legislation. Two years later, Tennessee, Missouri, Iowa, Minnesota, Wisconsin, Indiana, Ohio, and Maine did likewise; while Arkansas in 1917 and Texas in 1918 permitted women to vote at primaries only. Therefore, at the close of hostilities women had acquired political suffrage in some form in 29 States—15 by amendments to the commonwealth constitutions and 14 by legislative enactment.

As great as was this victory for woman suffrage, an even more sweeping one was on the way.

Meanwhile the Anthony amendment to the United States Constitution had been urged upon Congress. President Wilson endorsed it as a war measure and brought his influence to bear upon the members of his party in Congress. While he had been uniformly successful in having his way with Congress, the proposed amendment failed of the necessary two-thirds majority in the Senate—though it had passed the House by a vote of 274 to 136, January 10, 1918. The succeeding Congress, while less obedient to the wishes of the President, took up and pressed forward the proposed amendment with such vigor that on June 5, 1919, it was passed by both Houses with the requisite majorities and submitted to the States for ratification. (McCulloch, supra, pp. 109, 110, 111, 112, 113, 114, 115, and 116.)

By September of 1920 a sufficient number of States had ratified for the amendment to become effective.

So what do we have? A Constitution which, since 1787, its inception, has given the control over voting qualifications to the States. This control has been twice abridged, once after the Civil War, in favor of the Negro, once after the World War, in favor of women. It took two wars and sweeping movements to accomplish these changes, and then they were accomplished by amendment to the Constitution. After the fifteenth amendment, the seventeenth amendment reaffirmed

the States' rights to control over voting qualifications. These rights are unchanged in the Constitution today and are absolutely prohibitive of any such abortive legislation as is now being considered in this House.

I have completed the first of three phases of my presentation—that concerned with the United States Constitution. The second phase, which I now approach is concerned with the original State constitutional provisions, and their changes. The third phase will treat many decisions on the subject of voting qualifications, interpreting various constitutional provisions.

Should Senators ask, Why go into all the State regulations to prove the unconstitutionality of the proposed measure abolishing poll tax by congressional act? I reply that the State regulations, stressing their variety and the causes therefor, are essential. I quote from Porter:

Of course, the basis on which a study of the suffrage must be founded would be the constitutional provisions in the various States. Altogether there have been about 120 constitutions drawn up and put in operation since the Declaration of Independence, and the suffrage provisions in these constitutions must be the structural work on which a history of suffrage may be built. They indicate the actual turning points and show in unembellished outline form the trend of thought on the matter of suffrage. But the question at once occurs: Is it necessary to take account of the acts of State legislatures and add statutes to the outline structure? However, a study of the constitutional law on the subject and a survey of statutory acts concerning suffrage lead to the conclusion that the legislative acts are of scarcely any importance and do not need to be added to the constitutional provisions in order to form an adequate basis for a history of suffrage. Writers on constitutional law and the law of elections dispel all scruples on this matter. (Footnote: M. H. Throop (Law of Public Officers, p. 129) says: "The power of the State to regulate the elective franchise is exercised universally by means of provisions in the constitution of each State." He goes on to point out that there is a very small field left for statute law. Acts are sure to be declared void if they prescribe further qualifications than the constitution contains, or if they grant suffrage to any person who does not possess the qualifications stipulated for. However, requirements not in conflict with the spirit of the constitution may be superadded, such as terms of residence in election districts, exclusion of certain public officers from the suffrage, etc. But anything the legislature may do is likely to be of small importance.) But it occasionally happens that the constitution permits the legislature to use discretion in the matter of enlarging the suffrage. Thus in recent years legislatures have been permitted to levy poll taxes as a prerequisite to voting and to impose literacy tests. But authority for these must always be positively found in the constitution itself. (Porter, History of Suffrage in the United States, pp. 14, 15, to top of p. 16.)

First, New Hampshire: In 1776, at the time of the Declaration of Independence, New Hampshire's congress drew up a constitution. It is said that congress was chosen and appointed by the free suffrages of the people of said colony—See Thorpe, 4, Charters and Constitutions, page 2451.

This was the first constitution framed by an American commonwealth. In 1784 a complete constitution was ratified for New Hampshire.

Article XI reads:

All elections ought to be free, and every inhabitant of the State having the proper qualifications, has equal right to elect, and be elected into office. (Art. XI, of Thorpe, 4, supra, p. 2455.)

The electors' qualifications are fully set out, as follows:

The Senate shall be the first branch of the legislature: and the senators shall be chosen in the following manner, viz. Every male inhabitant of each town and parish with town privileges in the several counties in this State, of 21 years of age and upwards, paying for himself a poll tax, shall have a right at the annual or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March; to vote in the town or parish wherein he dwells, for the senators in the county or district whereof he is a member.

And every person qualified as the constitution provides, shall be considered an inhabitant for the purpose of electing and being elected into any office or place within this State, in that town, parish, and plantation where he dwelleth and hath his home.

The selectmen of the several towns and parishes aforesaid, shall, during the choice of Senators, preside at such meetings impartially, and shall receive the votes of all the inhabitants of such towns and parishes present and qualified to vote for Senators, and shall sort and count the same in the meeting, and in the presence of the town clerk, who shall make a fair record in the presence of the selectmen, and in open meeting, of the name of every person voted for, and the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and town clerk; and shall be sealed up and directed to the secretary of the State, with a superscription expressing the purport thereof, and delivered by said clerk to the sheriff of the county in which such town or parish lies, 30 days at least before the first Wednesday of June; and the sheriff of each county, or his deputy, shall deliver all such certificates by him received, into the secretary's office, 17 days at least, before the first Wednesday of June.

And the inhabitants of plantations and places unincorporated, qualified as this constitution provides, who are or shall be required to assess taxes upon themselves toward the support of government, or shall be taxed therefor, shall have the same privilege of voting for Senators in the plantations and places wherein they reside, as the inhabitants of the respective towns and parishes aforesaid have. And the meetings of such plantations and places for that purpose, shall be holden annually in the month of March, at such places respectively therein, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns by this constitution. (Thorp, 4, supra, beginning p. 2459, par. starting "The Senate, etc." to end second par. top p. 2460.)

All persons qualified to vote in the election of senators shall be entitled to vote within the town, district, parish, or place where they dwell in the choice of representatives. Every member of the house of representatives shall be chosen by ballot; and for 2 years at least next preceding his election shall have been an inhabitant of this State, shall have an estate within the town, parish, or place which he may be chosen to represent, of the value of 100 pounds, one-half of which to be a freehold, whereof he is seized in his own right; shall be at the time of his election an inhabitant of the town, parish, or place he may be chosen to represent; shall be of the Protestant religion; and shall cease to represent such town, parish, or place immediately on his ceasing to be qualified as aforesaid (Thorpe, 4, supra, last paragraph p. 2461 through second line top p. 2462.)

In 1792 this was modified somewhat.

SEC. XXVIII. The senate shall be the first branch of the legislature, and the senators shall be chosen in the following manner, viz: Every male inhabitant of each town and parish with town privileges, and places unincorporated, in this State, of 21 years of age and upward, excepting paupers and persons excused from paying taxes at their own request, shall have a right, at the annual or other meeting of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells for the senator in the district whereof he is a member. (Thorpe, 4, supra, p. 2479, sec. XXVIII.)

In 1902 the rather broadened viewpoint in some ways is shown by another amendment, which at the same time shows a rising feeling against aliens.

All elections ought to be free, and every inhabitant of the State having the proper qualifications has equal right to elect and be elected into office, but no person shall have the right to vote or be eligible to office under the constitution of this State who shall not be able to read the constitution in the English language and to write: *Provided, however,* That this provision shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be 60 years of age or upwards on the 1st day of January, A. D. 1904. (Thorpe, 4, supra, p. 2493, pt. II, art. XI.)

In the New Hampshire Constitution of 1784 it was further provided that—

All persons qualified to vote in the election of Senators, shall be entitled to vote, within the (town) district (parish or place) where they dwell, in the choice of Representatives. (Art. XIII, p. 1039, Constitutions of the States and United States.)

And the qualifications remain as above set out.

Chafee sets out the qualifications in summarized form in his report:

Who may vote: Persons who have resided in the town 6 months and have paid all taxes assessed during the preceding year. Women are liable to tax.

Registration: No person shall vote whose name is not on the check list unless it was omitted by mistake and his right to vote was known by the supervisors when list was made.

Need not be renewed by voters who voted at the preceding election. Persons voting at the primary need not re-register for the following general election.

May be effected—how: By personal appearance before the supervisors.

When: 1. In Claremont and Newport last session October 31 when list is revised.

2. In towns with more than 600 voters, supervisors are in session October 27, November 2, and additional days if necessary.

Absent voting: Is permitted only in Presidential elections. Apply to city or town clerk during the 30 days before the election on a blank obtained from secretary of state, city, or town clerk. (Chafee, Summary of General Election Laws of the United States.)

New Hampshire was one of the first four States to set up a tax payment as the sole qualification, omitting the requirement of owning property. It is also of passing interest to note that while almost all States require an elector to be

a citizen, New Hampshire clings to the ancient word "inhabitant." However, the meaning probably is not changed. Also New Hampshire was one of the first to require the educational test, namely, that a voter must read and write English. Also, New Hampshire was one of the six States which never excluded the Negro—see Porter, History of Suffrage in the United States, page 90.

Delaware was chartered in 1701. At this early date the State had assumed control over the qualifications of electors. In article II there was this provision:

And that the qualifications of electors and elected, and all other matters and things relating to elections of representatives to serve in assemblies, though not herein particularly expressed, shall be and remain as by a law of this government made at Newcastle, in the year 1700, entitled "An act to ascertain the number of members of assembly and to regulate the elections." (See Thorpe, I, supra, p. 559.)

In 1776 the Delaware Constitution employed the "property test," then quite a general one.

ART. 3. One of the branches of the legislature shall be called "the house of assembly", and shall consist of seven representatives to be chosen for each county annually of such persons as are freeholders of the same.

ART. 4. The other branch shall be called "the council", and consist of nine members; three to be chosen for each county at the time of the first election of the assembly, who shall be freeholders of the county for which they are chosen, and be upward of 25 years of age. * * *

ART. 5. The right of suffrage in the election of members for both houses shall remain as exercised by law at present; and each house shall choose its own speaker, appoint its own officers, judge of the qualifications and elections of its own members, settle its own rules of proceedings, and direct writs of election for supplying intermediate vacancies.

Thorpe I, supra, page 562, articles 3 and 4, through words "25 years of age"; also article 5, page 563, through sentence ending intermediate vacancies."

In 1792, Delaware, in convention at Newcastle, drew up a new constitution. They provided:

SEC. 1. All elections of governor, senators, and representatives shall be by ballot; and in such elections every white freeman of the age of 21 years, having resided in the State 2 years next before the election, and within that time paid a State or county tax, which shall have been assessed at least 6 months before the election, shall enjoy the right of an elector; and the sons of persons so qualified shall, between the ages of 21 and 22 years, be entitled to vote, although they shall not have paid taxes.

SEC. 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from them.

Thorpe I, supra, article IV, page 574.

We see here the departure from the property test, which was replaced by the payment of a tax. In 1831 Delaware again changed its constitution:

SECTION 1. All elections for governor, senators, representatives, sheriffs, and coroners shall be held on the second Tuesday of November, and be by ballot; and in such elections every free white male citizen of the age of 22 years or upwards, having resided in the State 1 year next before the election, and the last month thereof in the county where he offers to vote, and having within 2 years next before the election paid a county tax, which shall have been assessed at least 6 months before the election, shall enjoy the right of an elector; and every free white male citizen of the age of 21 years, and under the age of 22 years, having resided as aforesaid, shall be entitled to vote without payment of any tax: *Provided*, That no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot, or insane person, or pauper, or person convicted of a crime deemed by law felony, shall enjoy the right of an elector; and that the legislature may impose the forfeiture of the right of suffrage as a punishment for crime.

SEC. 2. Electors shall in all cases except treason, felony, or breach of the peace, be privileged from an arrest during their attendance at elections, and in going to and returning from them.

Thorpe I, supra, article IV, page 589.

It is interesting to note the variations in all the State laws. A mere reading of them shows their vital differences. Each State has suited its own peculiar problems and citizenry, perhaps even its own geographical position. This is entirely proper and to be expected, contrary to the uniformity proposed here to be imposed by unconstitutional legislation.

In 1897 there was another Deleware constitution, providing for the choosing of Representatives, among others, by qualified electors. While the various bills of rights always provide that elections are to be free and equal, it has long been accepted, as stated by many whom I have quoted heretofore, and as shown by decisions which I shall discuss later, that the right to vote is a privilege rather than an absolute right, which must be exercised in accordance with certain regulations set up by each State. In 1897 Delaware ruled:

SECTION 1. The general election shall be held biennially on the Tuesday next after the first Monday in the month of November, and shall be by ballot; but the general assembly may by law prescribe the means, methods, and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption, and intimidation thereat.

SEC. 2. Every male citizen of this State of the age of 21 years who shall have been a resident thereof 1 year next preceding an election, and for the last 3 months a resident of the county, and for the last 30 days a resident of the hundred or election district in which he may offer to vote, and in which he shall have been duly registered as hereinafter provided for, shall be entitled to vote at such election in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, for all officers that now are or hereafter may be elected by the people and upon all questions which may be submitted to the vote of the people; provided, however, that no person who shall attain the age of 21 years after the 1st day of January, in the year of our Lord, 1900, or after that date shall become a citizen of the United States, shall have the right to vote unless he shall be able to read this constitution in the English language and write his name; but these requirements shall not apply to any person who by reason of physical disability shall be unable to comply therewith; and provided also, that no person in the military, naval, or marine service of the United States shall be considered as acquiring a residence in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no idiot or insane person, pauper, or person convicted of a crime deemed by law felony, or incapacitated under the provisions of this constitution from voting, shall enjoy the right of an elector; and the general assembly may impose the forfeiture of the right of suffrage as a punishment for crime. (Thorpe I, supra, p. 620, secs. 1, 2, of art. V.) Here a new refinement is seen—the "education test" is coming in at the end of the century. These are the prevailing qualifications today. Summarizing the qualifications for electors, plus certain administrative provisions concerning soldiers and absentees, see Chafee.

Who may vote: Persons who have resided in the State 1 year, in the county 3 months, and the election district 30 days.

Residents who leave to enter the Federal service or are temporarily absent because of the nature of their business.

Registration: General registration, 1940. Permanent as long as voter retains qualifications.

May be effected: How—In person only, before registrars of the election district. When—One day each week in April, May, and June. Board gives notice of days and hours.

Supplementary registration before registrar August 13 to October 17.

Absent voting: Civilian—The constitutionality of voting by mail is pending in the Supreme Court; nevertheless, the legislature at its last session passed a vote-by-mail law.

Any qualified elector absent from the State or election district, in Federal or State employ, or because of the nature of his work or business, may vote by mail at any general election. Apply to the Clerk of Peace not more than 20 nor less than 3 days prior to election for official ballot on form furnished by the clerk. The ballot will be accompanied by full instructions.

Armed forces: An election is held at the quarters of the commanding officer of each camp. The Governor sends two persons to deliver the necessary supplies, including the ballots. They collect and return the votes and all equipment at the close of the election to the State (Delaware, Chafee report).

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

Mr. ELLENDER. I yield for a question.

Mr. LODGE. Has the Senator seen the bulletin as to the time when the Democratic leader is going to move to adjourn?

Mr. ELLENDER. How could I see it? If the Senator will bring it to me, I will read it.

Mr. LODGE. Mr. President, will the Senator further yield?

Mr. ELLENDER. I yield for a question.

Mr. LODGE. Does not the Senator think that if that report is correct it will come as a very grievous shock to people all over the country who are hoping to see this Congress do something about bigotry and prejudice?

Mr. ELLENDER. I do not know what the situation is. I have been speaking for a little more than 10 hours, and I feel able to go 10 more, if necessary. I am not aware of what has happened. I understood that there might be some plan to end all this. I have not been advised, so I expect to continue to talk.

The problems each State has had to cope with can be seen by the nature of its laws concerning qualifications. Del-

aware was one of the first States to lengthen the period of residence required. The reason—increased immigration creating an alien problem. Such a problem would not and did not exist in many other States. Likewise, Delaware was one of the first States to allow women to participate in school elections, a phase which preceded women's right to vote generally—see McCulloch, Suffrage and Its Problems, pages 38 and 126.

Pennsylvania was chartered as a province in 1681. It is notable that even in this original instrument some consideration of elections and of who could vote was shown. In speaking of the power in William Penn to make laws, and so forth, it says, "according to their best discretions, by and with the advice, assent, and approbation of the freemen of the said country, or the greater part of them, or of their delegates or deputies," and so forth—see 5 Thorpe, supra, page 3037.

Further election laws are found in Penn's Charter of Liberties, 1682:

2. That the freemen of the said province on the 20th day of the twelfth month which shall be in this present year 1682 meet and assemble in some fit place of which timely notice shall be beforehand given by the Governor or his deputies and then and there shall choose of themselves 72 persons of most note for their wisdom, virtue, and ability who shall meet on the 10th day of the first month next ensuing and always be called and act as the provincial council of said province. (See 5 Thorpe, p. 3048, par. 2.)

A similar provision was in the frame of the government of Pennsylvania. See 5 Thorpe, supra, page 3055. Further we find there this provision:

III. That all elections of members, or representatives of the people and freemen of the province of Pennsylvania to serve in provincial council, or general assembly, to be held within the said province, shall be free and voluntary; and that the elector, that shall receive any reward or gift, in meat, drink, moneys, or otherwise, shall forfeit his right to elect; and such person as shall directly or indirectly give, promise, or bestow any such reward as aforesaid, to be elected, shall forfeit his election, and be thereby incapable to serve as aforesaid: and the provincial council and general assembly shall be the sole judges of the regularity, or irregularity of the elections of their own respective members. (See 5 Thorpe, supra, p. 3060, art. III.)

Here we see, in varied form, a provision similar to the bribery prohibitions of today.

In 1696 the following provisions are found in the frame of government.

For the electing of which representatives, it shall and may be lawful to and for all the freemen of this province and territory aforesaid, to meet together on the 10th day of the first month yearly hereafter, in the most convenient and usual place for election, within the respective counties, then and there to choose their said representatives as aforesaid, who shall meet on the 10th day of the third month yearly, in the capital town of the said province, unless the Governor and council shall think fit to appoint another place.

And, to the end it may be known who those are, in this province and territories, who ought to have right of, or to be deemed freemen, to choose, or be chosen, to serve in council and assembly, as aforesaid, be it enacted by the authority aforesaid, that no inhabitant of this province or territories, shall have right of electing, or being elected as aforesaid, unless they be free denizens of this government, and are of the age of 21 years, or upwards, and have 50 acres of land, 10 acres whereof being seated and cleared, or be otherwise worth 50 pounds, lawful money of this government, clear estate, and have been resident within this government for the space of 2 years next before such election. (See Thorpe, p. 3071, line 18.)

There is also a provision that any elector who receives a reward for giving his vote shall forfeit his vote. See 5 Thorpe, supra, page 3073.

The Constitution of Pennsylvania in 1776 was established by general convention in Philadelphia. In the declaration of rights thereof is the following provision:

VII. That all elections ought to be free; and that all free men having a sufficient evident common interest with and attachment to the community, have a right to elect officers, or to be elected into office. (See 5 Thorpe, supra, p. 3083.)

What constitutes an "evident common interest" is defined as follows:

SEC. 5. The freemen of this commonwealth and their sons shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the general assembly shall by law direct, preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed. (See 5 Thorpe, supra, p. 3084, sec. 5.)

In 1790 another constitution was framed. Article III provides as follows:

SECTION 1. In elections by the citizens, every freeman of the age of 21 years, having resided in the State 2 years next before the election, and within that time paid a State or county tax, which shall have been assessed at least 6 months before the election, shall enjoy the rights of an elector: *Provided,* That the sons of persons qualified as aforesaid, between the ages of 21 and 22 years, shall be entitled to vote, although they shall not have paid taxes.

SEC. 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote viva voce.

SEC. 3. Electors shall, in all cases except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from them. (See 5 Thorpe, supra, p. 3096, art. III.)

In 1838 a new Constitution was ratified by a close margin. Article III thereof was:

SECTION 1. In elections by the citizens, every white freeman of the age of 21 years, having resided in this State one year, and in the election district where he offers to vote 10 days immediately preceding such election, and within 2 years paid a State or county tax, which shall have been assessed at least 10 days before the election, shall enjoy the rights of an elector. But a citizen of the United States, who had previously been a qualified voter of this State and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the State 6 months: *Provided,* That white freemen, citizens of the United States, between the ages of 21 and 22 years, and having resided in the State 1 year and in the election district 10 days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

SEC. 2. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote viva voce.

SEC. 3. Electors shall in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance on elections and in going to and returning from them. (See 5 Thorpe, supra, p. 3108–3109, art. III.)

Here for the first time, Mr. President, we find the significant word "white," indicating a new consciousness of the Negro problem even in the Atlantic States.

1873 saw another Constitution come into effect in Pennsylvania. The suffrage provisions are detailed:

SECTION 1. Every male citizen of 21 years of age, possessing the following qualifications, shall be entiled to vote at all elections, subject however to such laws requiring and regulating the registration of electors as the General Assembly may enact:

1. He shall have been a citizen of the United States at least 1 month.

2. He shall have resided in the State 1 year (or, having previously been a qualified elector or native-born citizen of the State, he shall have removed therefrom and returned, then 6 months) immediately preceding the election.

3. He shall have resided in the election district where he shall offer to vote at least 2 months immediately preceding the election.

4. If 22 years of age and upwards, he shall have paid within 2 years a State or county tax, which shall have been assessed at least 2 months and paid at least 1 month before the election.

SEC. 2. The general election shall be held annually on the Tuesday next following the first Monday of November, but the general assembly may by law fix a different day, two-thirds of all the members of each house consenting thereto.

SEC. 3. All elections for city, ward, borough, and township officers, for regular terms of service, shall be held on the third Tuesday of February.

SEC. 4. All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: *Provided,* That secrecy in voting be preserved.

SEC. 5. Electors shall in all cases except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

SEC. 6. Whenever any of the qualified electors of this commonwealth shall be in actual military service, under a requisition from the President of the United States, or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election.

SEC. 7. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the State, but laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class.

SEC. 8. Any person, who shall give, or promise or offer to give, to an elector, any money, reward, or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such

election, and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received. (See 5 Thorpe, supra, pp. 3138–3139, art. VIII, first eight sections.)

Pennsylvania, like Delaware, felt the alien problem, and was one of the first to require a long residence period.

Pennsylvania was one of the few States in the North to have a taxpaying qualification.

As a matter of interest, Mr. President, showing that the privilege of suffrage has always been qualified by the State, according to its own needs and situation, I quote:

In the Pennsylvania Convention of 1789 all joined heartily in the following statement and had it printed in large bold type:

"All power being originally vested in, is derived from, the people, and all free governments originate from their will, are founded on their authority, and instituted for their peace, safety, and happiness; and for the advancement thereof; they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper." (From Pennsylvania Convention, 1789, Minutes, p. 45.)

In spite of this acceptance of an abstract principle, a vigorous effort was early made in the Convention to establish a property qualification for suffrage. Almost feverish eagerness was manifest to get such a restriction in, and it was proposed almost before the business of the Convention was well under way. Eventually there was apprehension that it would not carry, and it did not; in its stead the usual compromise of a taxpaying qualification was introduced. Both these large States and their smaller neighbors were extravagant in formal announcements of the rights of the people. But Massachusetts considered the people to be the property owners. Pennsylvania was one step in advance of Massachusetts and considered the people to be the taxpayers. Abstract pronouncement sounded well until specific definition of the terms was sought, and when the radicals said that the people included all men 21 years of age the fight was on in earnest. (Quote Porter, History of Suffrage in the United States, p. 28, second paragraph to end first paragraph, p. 29.)

Also, there is a remark of interest on Pennsylvania's exclusion of Negroes.

In tracing out the story of the suffrage a year or two later, Pennsylvania looms up large, for in 1837 a convention was held in that State, the records of which filled more than a dozen large volumes, in which the suffrage question fills its share of pages. The property interests made a tremendous effort to come back, as the saying is, but they were only able to cling to the taxpaying requirement; the hot debate which bade fair to lead either side to victory concerned the right of the free Negro to vote. A new tone was struck in this convention in connection with the Negro problem. Heretofore it had been treated almost solely as a political problem; now the other phase of the question was presented with greater emphasis, and it was maintained that other than political considerations would inevitably determine the question despite any action the lawmakers might take. It was pointed out that public sentiment, even where the law was in doubt, arose above all law and the Constitution and would keep the Negro from the polls. It was very significant that men frequently asserted that to give the Negro suffrage would be to imply a promise that could never be carried out. It implied an equality that race characteristics belied. The Indian could not be elevated—he died out; the Negro could not be elevated? They did not undertake to answer the question, and it has not been answered yet, but they stuck tenaciously to the proposition that he could not be elevated and should not be incorporated into the body politic.

That was in the great State of Pennsylvania.

The prospect of Negroes sitting in legislatures, in the jury box, on the bench, at the bar, in all positions of respect and honor, repelled men with such force as to cause them to lose sight of all abstract political doctrine.

Up to about this time the Negro had not been a serious problem, for he was not present in sufficient numbers even to threaten to exercise any great influence in the Government. But the menace was growing. The slavery controversy was waxing hot; the abolitionists were carrying fiery brands wherever they went; in a word, the political situation over slavery was coming to a crucial point, and race prejudice was developing to a point it had never reached before. This race prejudice, or consciousness of racial distinction, was present in the Pennsylvania convention in a way that it was not in the earlier conventions. This accounts for the sort of argument outlined above. Arguments telling of the Negro's rights and extolling his virtues and good qualities could have no effect. No matter what was said men were conscious of a distinction between the races which they viewed with jealousy and growing alarm, and all the old arguments pro and con fell upon deaf ears. From now on men were likely to vote from prejudice one way or the other.

Much opprobrium was heaped upon those who were said to vote against the Negro simply because his skin was dark. But few men really did that; the dark skin was to them merely an outward indication of qualities which fostered the racial antipathy. But in the midst of this illogical prejudice it is satisfying to discover an argument based on expediency. One of the speakers in the convention pointed out that Negroes had all the rights and privileges of citizenship and that it was not expedient to let them vote. They were no more discriminated against than were minors, women, and nontaxpayers. The elective franchise should only be given to those through whom the peace and prosperity of society would be promoted.

The defenders of the Negro followed the usual line. One delegate struck a new chord when he opposed the exclusion of the Negro because the basis of exclusion was a fact over which he had no control—his color. A suffrage qualification, said he, should be such that any man could attain it. A high property test, a taxpaying test, a long residence, age, literacy, were qualifications which a man could acquire, but race or color violated sound principles of democracy and left nothing to strive for; such men were hopelessly disfranchised. This man invoked a new principle of democracy, but his principle would have included women too, although no one thought of that. It merely shows how inevitably both sides were driven to decide the whole proposition on the issue of expediency.

It may be well to consider briefly the question as to whether the Negroes as a group needed special representation. It has been characteristic of the political parties in this country since the break-down of the Federalists in the early part of the nineteenth century that they have cut athwart all social and economic groups. There has been no labor party, no capitalist party, no religious party, no conservative or radical party. All parties have appealed to all classes, rich and poor, East and West. But the advent of the Negro presented a very distinct group, and it was considered by some that such a group needed special representation that could not be attained through any existing parties. However, it is significant that, while the Republican Party has claimed most of the Negroes, there is no essential reason why they should not distribute themselves as the white men have done throughout the other parties. Fortunately no deliberate attempt was made to treat this group as deserving special representation, even though it was considered at this time.

Of course the usual compromises were suggested to let the Negro in, but they were all repudiated, and the Negro was denied the suffrage by a vote of 77 to 45.

I repeat, that was in the great State of Pennsylvania.

This denial of the suffrage to Negroes gave rise to considerable opposition throughout the State, where the abolition movement was relatively strong. The action of Pennsylvania in excluding the Negro marks a turning point in the development of the Negro-suffrage controversy. In a number of States Negroes had not been excluded in the past and never were excluded. There were some other States which had not excluded Negroes in the first place, but as time went on it was found desirable to do so. Pennsylvania was the last of these States. From this time on the actual Negro-suffrage situation did not change until the fourteenth amendment was in effect. (Quote Porter, supra, bottom of p. 85 through line 24, p. 89.)

I am attempting to show by the heterogeneous laws of the 48 States the diversified conditions underlying the variations, and the different peoples, different habits, different economic, industrial, and agricultural set-ups which make it a matter of prime necessity to "render unto Caesar the things which are Caesar's" and cease this attempted unconstitutional meddling with States' affairs.

New Jersey, in the agreement of 1664, which was the concession of the province of New Caesarea, or New Jersey, provided as follows for elections:

That the inhabitants being freemen, or chief agents to others of the province aforesaid; do as soon as this our commission shall arrive, by virtue of a writ in our names by the governor to be for the present (until our seal comes) sealed and signed, make choice of 12 deputies or representatives from amongst themselves; who being chosen are to join with the said governor and council for the making of such laws, ordinances, and constitution as shall be necessary for the present good and welfare of the said province. But so soon as parishes, divisions, tribes, and other distinctions are made, that then the inhabitants or freeholders of the several respective parishes, tribes, divisions, and distinctions aforesaid, do by our writs, under our seals (which we engage, shall be in due time issued) annually meet on the first day of January, and choose freeholders for each respective division, tribe, or parish to be the deputies or representatives of the same: which body of representatives or the major part of them, shall, with the governor and council aforesaid, be the general assembly of the said province, the governor or his deputy being present, unless they shall wilfully refuse, in which case they may appoint themselves a president, during the absence of the governor or the deputy governor. (Quote 5 Thorpe, supra, p. 2537.)

In 1683 in the Fundamental Constitutions for the province of East New Jersey it was provided:

The persons qualified to be freemen, that are capable to choose and be chosen in the great council, shall be every planter and inhabitant dwelling and residing within the province, who hath acquired rights to and is

in possession of 50 acres of ground, and hath cultivated ten acres of it; or in boroughs, who have a house and three acres; or have a house and land only hired, if he can prove he have 50 pounds in stock of his own; and all elections must be free and voluntary, but where any bribe or indirect means can be proved to have been used, both the giver and acquirer shall forfeit their privilege of electing and being elected forever. (See 5 Thorpe, supra, p. 2575, par. 2, No. III first 10 lines.)

In 1776 came the first Constitution of New Jersey as such framed by convention. Article IV contains the voters' qualifications:

ARTICLE IV. That all inhabitants of this colony, of full age, who are worth 50 pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for 12 months immediately preceding the election, shall be entitled to vote for representatives in council and assembly; and also for all other public officers, that shall be elected by the people of the county at large. (See 5 Thorpe supra, p. 2595.)

In 1844 New Jersey drew up another constitution. Here we see the provisions closely following the previous ones.

Right of suffrage: Every male citizen of the United States, of the age of 21 years, who shall have been a resident of this State 1 year, and of the county in which he claims his vote 5 months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be, elective by the people; provided, that no person in the military, naval, or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector; and provided further, that in time of war no elector in the actual military service of the State, or of the United States, in the Army or Navy, thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery. (5 Thorpe, supra, p. 2601, art. 11.)

This constitution was not changed substantially. Chafee summarizes the New Jersey rules today by saying all persons living in the State 1 year and county 5 months can vote; all voters in municipalities must have registered since December 20, 1941, and registration in rural sections to be by house-to-house canvas and personal appearance. At one time long before the nineteenth amendment women were allowed to vote in New Jersey for a short period—see Porter, History of Suffrage in the United States, page 67.

Woman suffrage was almost unheard of up to the middle of the nineteenth century. The exceptional case in New Jersey proves the rule, and the facts have been retold so many times that apologies should be offered for giving them here. In the New Jersey constitution of July 2, 1776, the privilege of voting for assemblymen was given to "all inhabitants of full age who are worth 50 pounds proclamation money." There was nothing to indicate that anybody expected women to take advantage of this clause, and it seems that they did not do so in sufficiently large numbers to attract any attention, for in 1797 the new constitution contained the phrase "all free inhabitants," etc. But some closely contested elections a few years later stimulated interest to such an extent that women did seek to vote, and no legal impediment could be discovered to prevent them. The action ultimately led to such disorders that in 1807 the legislature took proper steps to put a stop to woman suffrage for good and all. (Porter, supra, p. 136, first paragraph.)

New Jersey was one of the first States to allow women to vote in school elections.

In 1820 the Negro problem was felt even in New Jersey, and they altered their constitution to exclude Negroes by defining their qualifications in terms of "white males"—see Porter, supra, page 90.

It is also of interest to note the trend away from property requirements in the absence of the former one when the 1844 constitution was drawn.

Georgia was one of the early colonies which later fell heir to the problems of all southern States. Georgia was chartered in 1732. At a convention in Savannah, Georgia's first constitution was framed and agreed to in 1777. Article IX provided for the qualifications of voters.

All male white inhabitants, of the age of 21 years, and possessed in his own right of £10 value, and liable to pay tax in this State, or being of any mechanic trade, and shall have been resident 6 months in this State, shall have a right to vote at all elections for representatives, or any other officers, herein agreed to be chosen by the people at large; and every person having a right to vote at any election shall vote by ballot personally. (II Thorpe, supra, p. 779, art. IX.)

Here we find the exclusion of the Negroes in the first constitution because of their presence in that State in sufficient numbers at that time to raise the issue. The lack of that presence is reflected in northern and western States by their failure to make any such provisions.

In 1789 another constitution was framed. Here we find:

The electors of the members of both branches of the general assembly shall be citizens and inhabitants of this State, and shall have attained to the age of 21 years, and have paid tax for the year preceding the election, and shall have resided 6 months within the county.

All elections shall be by ballot, and the House of Representatives, in all appointments of the State officers, shall vote for three persons; and a list of the three persons having the highest number of votes shall be signed by the speaker, and sent to the Senate, which shall from such list determine, by a majority of their votes, the officer elected, except militia officers and the secretaries of the governor, who shall be appointed by the governor alone, under such regulations and restrictions as the general assembly may prescribe. The general assembly may vest the appointment of inferior officers in the governor, the courts of justice, or in such other manner as they may by law establish. (II Thorpe, supra, p. 789, art. IV, secs. 1 and 2.)

The "liable to tax" has changed to "have paid tax."

The electors of members of the general assembly shall be citizens and inhabitants of this State, and shall have attained the age of 21 years, and have paid all taxes which which may have been required of them, and which they may have had an opportunity of paying, agreeably to law, for the year preceding the election, and shall have resided 6 months within the country; Provided, that in case of an invasion, and the inhabitants shall be driven from any county, so as to prevent an election therein, such refugee inhabitants, being a majority of the voters of such county, may meet under the direction of any three justices of the peace thereof, in the nearest county not in a state of alarm, and proceed to an election, without having paid such tax so required of electors; and the persons elected thereat shall be entitled to their seats. (II Thorpe, supra, p. 800, art. IV, sec. 1.)

This is found in the 1798 Constitution.

In 1865, just after the Civil War, another constitution came into being. Again note the prominence of the Negro problem:

The electors or members of the general assembly shall be free white male citizens of this State, and shall have attained the age of 21 years, and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeable to law, for the year preceding the election; shall be citizens of the United States, and shall have resided 6 months either in the district or county, and 2 years within this State, and no person not qualified to vote for members of the general assembly shall hold any office in this State. (Thorpe II, supra, p. 820, art V. sec. 1.)

In 1868 Major General Meade called a convention in Atlanta and submitted a constitution to the people, which was ratified by a narrow margin.

SECTION 1. In all elections by the people the electors shall vote by ballot.

SEC. 2. Every male person born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, 21 years old or upward, who shall have resided in this State 6 months next preceding the election, and shall have resided 30 days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year preceding the election (except as hereinafter provided), shall be deemed an elector; and every male citizen of the United States of the age aforesaid (except as hereinafter provided) who may be a resident of the State at the time of the adoption of this constitution shall be deemed an elector, and shall have all the rights of an elector as aforesaid: *Provided*, That no soldier, sailor, or marine in the military or naval service of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath:

"I do swear that I have not given or received, nor do I expect to give or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected, at this election, nor have I given or promised any reward, or made any threat, by which to prevent any person from voting at this election."

SEC. 3. No person convicted of felony or larceny before any court of this State, or of or in the United States, shall be eligible to

any office or appointment of honor or trust within this State, unless he shall have been pardoned.

SEC. 4. No person who is the holder of any public moneys shall be eligible to any office in this State until the same is accounted for and paid into the treasury.

SEC. 5. No person who, after the adoption of this constitution, being a resident of this State, shall engage in a duel in this State, or elsewhere, or shall send or accept a challenge, or be aider or abetter to such duel, shall vote or hold office in this State; and every such person shall also be subject to such punishment as the law may prescribe.

SEC. 6. The general assembly may provide, from time to time, for the registration of all electors, but the following classes of persons shall not be permitted to register, vote, or hold office: (1) Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the penitentiary, or bribery; (2) Idiots or insane persons.

SEC. 7. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest for 5 days before an election, during the election, and 2 days subsequent thereto.

SEC. 8. The sale of intoxicating liquors on days of election is prohibited (Thorpe II, supra, p. 825, art. II, first eight sections).

A problem indigeneous to the particular State has arisen here in the prevalence of the custom of dueling. The State has taken this mode of discouragement, namely, deprivation of voting privilege.

In the Constitution of 1877 the provisions were slightly varied in form but not in substance.

By amendment, the Georgia constitution was made to read:

Article II, section 1:

PAR. I. Registration: After the year 1908, elections by the people shall be by ballot, and only those persons shall be allowed to vote who have been first registered in accordance with the requirements of law. (Added by an amendment adopted October 7, 1908.)

PAR. II. Qualifications of voters: Every male citizen of this State who is a citizen of the United States, 21 years old or upward, not laboring under any of the disabilities named in this article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: *Provided*, That no soldier, sailor, or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State. (As amended October 7, 1908.)

PAR. III. Residence—Poll tax: To entitle a person to register and vote at any election by the people, he shall have resided in the State 1 year next preceding the election, and in the county in which he offers to vote 6 months next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least 6 months prior to the election at which he offers to vote, except when such elections are held within 6 months from the expiration of the time fixed by law for the payment of such taxes. (As amended November 8, 1932.)

PAR. IV. Additional qualifications: Every male citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not disqualified under the provisions of section 2 of article 2 of this Constitution, and who possesses the qualifications prescribed in paragraphs 2 and 3 of this section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the five following subdivisions of this paragraph.

1. Veterans: All persons who have honorably served in the land or naval forces of the United States in the Revolutionary War, or in the War of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the States, or in the war with Spain, or who honorably served in the land or naval forces of the Confederate States or of the State of Georgia in the war between the States; or

2. Descendants of veterans: All persons lawfully descended from those embraced in the classes enumerated in the subdivision next above; or

3. Good character: All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or,

4. Literacy: All persons who can correctly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State, that may be read to them by any one of the registrars.

5. Land ownership: Any person who is the owner in good faith in his own right of at least 40 acres of land situated in this State, upon which he resides, or is the owner in good faith in his own right of property situated in this State and assessed for taxation at the value of $500. (Constitution of the States and United States, p. 360, art. II, pars. 1–4.)

Here are a number of clauses which merit attention. We find the education clause so-called, the literacy tests, and good character clause. Also, it is odd to find a provision requiring property ownership in some form inserted as late as 1908. Georgia had abandoned the property qualification in 1789. See Porter, History of Suffrage in the United States, page 22. Georgia has recently amended its constitution permitting persons who have reached the age of 18 years to vote. Poll taxes have been abolished and I may add that they have been abolished as provided for by the constitution of the State of Georgia.

Connecticut was chartered early in the seventeenth century but it was 1818 before a constitution was drawn in convention at Hartford. Article 6 governed the qualifications of electors:

ART. 6. Of the qualifications of electors:

SECTION 1. All persons who have been, or shall hereafter, previous to the ratification of this constitution, be admitted freemen, according to the existing laws of this State, shall be electors.

SEC. 2. Every white male citizen of the United States, who shall have gained a settlement in this State, attained the age of 21 years, and resided in the town in which he may offer himself to be admitted to the privilege of an elector, at least 6 months preceding; and have a freehold estate of the yearly value of $7 in this State; or, having been enrolled in the militia, shall have performed military duty therein for the term of 1 year next preceding the time he shall offer himself for admission, or being liable thereto shall have been, by authority of law, excused therefrom; or shall have paid a State tax within the year next preceding the time he shall present himself for such admission; and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector.

SEC. 3. The privileges of an elector shall be forfeited by a conviction of bribery, forgery, perjury, dueling, fraudulent bankruptcy, theft, or other offense for which an infamous punishment is inflicted.

SEC. 4. Every elector shall be eligible to any office in this State, except in cases provided for in this constitution.

SEC. 5. The selectmen and town clerk of the several towns shall decide on the qualifications of electors, at such times and in such manner as may be prescribed by law.

SEC. 6. Laws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult, and other improper conduct.

SEC. 7. In all elections of officers of the State, or members of the general assembly, the votes of the electors shall be by ballot.

SEC. 8. At all elections of officers of the State, or members of the general assembly, the electors shall be privileged from arrest during their attendance upon, and going to, and returning from the same, on any civil process.

SEC. 9. The meetings of the electors for the election of the several State officers by law annually to be elected, and members of the general assembly of this State, shall be holden on the first Monday of April in each year. (Thorpe I, supra, p. 544, art. 6.)

Today this has been simplified.

Article VIII, qualifications for electors:

Every white male citizen of the United States, who shall have attained the age of 21 years, who shall have resided in this State for a term of 1 year next preceding, and in the town in which he may offer himself to be admitted to the privileges of an elector, at least 6 months next preceding the time he may so offer himself, and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector. (Constitution of the States and the United States, p. 292, art. VIII.)

The good moral character requisite is present here. Chafee, in his summary, says, briefly:

Who may vote: Persons who have resided in the State 1 year and the town 6 months and are of good moral character.

Persons who are absent in the Federal service or in attendance at an institution of learning.

Registration: Is required of all voters.

Need not be renewed, but previously registered voters should see that their names are on the list by writing city or town registrars before October 6 giving their residence and the last year in which they voted. (Chafee, Summary on Connecticut.)

It also is interesting that Connecticut was one of three States in which male sex was not specified. Connecticut was one of the five States, with New Jersey, Rhode Island, Virginia, and Tennessee, which stuck to the property test, believing the landed man was most to be trusted.

Only property holders were deemed to have a permanent interest in the government and therefore to be the only safe repository of the elective franchise. (See McCulloch, Suffrage and Its Problems, pp. 36 and 39.)

Also, as the older property qualifications broke down, individuals began to be disfranchised for other reasons. As early as 1650 Connecticut—long before their constitution—provided in Andrus Code, that one publicly whipped was dis-

qualified as a freeman and denied the franchise.—See McCulloch, supra, page 39.—Connecticut was one of the first States to allow women to participate in school elections.

The alien problem was felt in Connecticut, an Eastern State with industrial and manufacturing areas. In Connecticut:

A constitutional amendment was passed in 1855 prescribing that ability to read the constitution or statutes would be a requirement for exercising the right of suffrage. There is no doubt that this was aimed directly at the foreigners, although natives must have come under it also. (See Porter, History of Suffrage in United States, p. 118.)

Massachusetts was first chartered in 1620 by King James, under the charter of New England, which was surrendered in 1639 to King Charles. In 1780 was drawn up the first constitution or form of government for the commonwealth of Massachusetts. Part the first, article IX, provides:

All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments. (Thorpe, 3, supra, p. 1891, art. IX.)

What these qualifications are we find in article II, chapter I.

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this Commonwealth; to be called by the selectmen, and warned in due course of law, at least 7 days before the (first Monday in April) for the purpose of electing persons to be senators and councilors (and at such meetings every male inhabitant of 21 years of age and upward, having a freehold estate within the commonwealth, of the annual income of 3 pounds or any estate of the value of 60 pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant). And to remove all doubts concerning the meaning of the word "inhabitant" in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this State, in that town, district, or plantation where he dwelleth, or hath his home.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for councilors and senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually (on the same first Monday in April), at such place in the plantations, respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for councilors and senators in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly. (Thorpe, 3, supra, p. 1895, art. II, p. 1896, art. II, p. 1896.)

The qualifications for voting for the House of Representatives is similar.

ART. IV. Every male person, being 21 years of age, and resident in any particular town in this commonwealth for the space of 1 year next preceding, having a freehold estate within the said town of the annual income of £3, or any estate of the value of £60, shall have a right to vote in the choice of a representative or representatives for the said town. (Thorpe, 3, supra, p. 1898, art. IV.)

This was amended to eliminate the property qualification.

ART. III. Every male citizen of 21 years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the commonwealth 1 year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators, or representatives (and all who shall have paid, by himself, or his parent, master, or guardian, any State or county tax, which shall, within 2 years next preceding such election, have been assessed upon him, in any town or district of this commonwealth; and also every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above-mentioned, shall have a right to vote in such election of governor, lieutenant governor, senators, and representatives; and no other person shall be entitled to vote in such elections). (Thorpe, 3, supra, p. 1912, art. III.)

Then the education requirement came in the form of another amendment.

ART. XX. No person shall have the right to vote, or be eligible to office under the constitution of this commonwealth, who shall not be able to read the constitution in the English language, and write his name: *Provided, however,* That the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be 60 years of age or upwards at the time this amendment shall take effect. (Thorpe, 3, supra, p. 1919, art. XX.)

Then we see the arising of a definite alien problem in article XXIII.

ART. XXIII. (No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for 2 years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *Provided,* That this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof: *And, provided, further,* That it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom.) (Thorpe, 3, supra, p. 1920, art. XXIII.)

Upon further consideration this article was later specifically repealed by article XXVI. Also special consideration was voted to service or ex-service men by article XXVIII.

ART. XXVIII. No person having served in the Army or Navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of being a pauper, or, if a pauper, because of the nonpayment of poll tax. (Thorpe, 3, supra, p. 1921, art. XXVIII.)

It is interesting to note that article XXIII was adopted in 1859 and repealed immediately after the Civil War. Chafee says:

Who may vote: Persons who have resided in the State 1 year and the city or town 6 months. Male voters are subject to poll tax.

Persons who are absent on the day of the biennial State election. (Chafee's summary on Massachusetts, first section only, "Who may vote,")

Certain other details were added by further amendments.

ART. XXIX. Election law: The general court shall have full power and authority to provide for the inhabitants of the towns in this commonwealth more than one place of public meeting within the limits of each town for the election of officers under the constitution, and to prescribe the manner of calling, holding, and conducting such meetings. All the provisions of the existing constitution inconsistent with the provisions herein contained are hereby annulled.

ART. XXX. Residence requirements for voting: No person, otherwise qualified to vote in elections for governor, lieutenant governor, senators, and representatives, shall, by reason of a change of residence within the Commonwealth, be disqualified from voting for said officers in the city or town from which he has removed his residence until the expiration of six calendar months from the time of such removal.

ART. XXXI. Voting qualifications for ex-soldiers: Article 28 of the amendments of the constitution is hereby amended by striking out in the fourth line thereof the words "being a pauper," and inserting in place thereof the words "receiving or having received aid from any city or town," and also by striking out in said fourth line the words "if a pauper," so that the article as amended shall read as follows: "Article XXVIII. No person having served in the Army or Navy of the United States in time of war, and having been honorably discharged from such service, if otherwise qualified to vote, shall be disqualified therefor on account of receiving or having received aid from any city or town, or because of the nonpayment of a poll tax.

ART. XXXII. Taxpaying qualifications for voting: So much of article III of the amendments of the Constitution of the Commonwealth as is contained in the following words: "And who shall have paid, by himself, or his parent, master, or guardian, any State or county tax, which shall, within 2 years next preceding such election, have been assessed upon him, in any town or district of this Commonwealth; and also every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned," is hereby annulled. (Constitution of the States and the United States, pp. 788 and 789, arts. XXIX, XXX, XXXI, XXXII.)

In the last of these, the taxpaying qualifications were removed, by the State, as is proper. In 1924 amendment LXVIII was passed:

ART. LXVIII. Woman suffrage: Article III of the amendments to the constitution, as amended, is hereby further amended by striking out, in the first line, the word "male." (Constitution of the States and the United States, p. 799, art. LXVIII.)

In the early days Massachusetts had the property requirement frequently found in constitutions and later outmoded. Porter says:

Ideal starting points could readily be found in the abstractions of the Declaration of Independence. Here is a resolution passed in the Massachusetts constitutional convention

of 1779. "*Resolved*, That it is the essence of a free republic that the people be governed by fixed laws of their own making." This particular convention was perfectly honest in this declaration and still considered it thoroughly consistent to restrict "the people," who should govern the State, to property owners. Such resolutions as this were later turned against the very men who made them. Abstract propositions of right continually proved to be boomerangs and struck with telling force. "All elections ought to be free, and all the male inhabitants of this commonwealth, having sufficient qualifications, have an equal right to elect officers." The little phrase about having sufficient qualifications was weak indeed against the contention that all the male inhabitants had an equal right to elect officers. (Porter, History of Suffrage in United States, p. 28.)

In speaking of Massachusetts and Pennsylvania, "Massachusetts," says Porter, "considered the people to be the property owners."

The transition from the property-owner requirement in Massachusetts was a very slow one.

In Massachusetts the property qualification for suffrage had made its last stand in 1820, when a constitutional convention was called to amend the old constitution. Popular interest was aroused in the matter of suffrage extension, and there was every indication that property was going to be hard pressed to hold its own. The sentiment prevailed that every man who was subject to do service for the State or who contributed to its support in the way of taxes was entitled to a vote. The practical side of the issue was stressed much more than the philosophical. Why the ballot should have been looked upon as the only fitting reward for paying taxes it is hard to see. The State protects life, liberty, and property and performs all the obligations and functions implied thereby. But these seem not to have been recognized as a return for taxation. Suffrage extensionists seem to have blinded themselves to the many good things they have received from the State as citizens, not as voters.

The defenders of property tests quickly demolished the theory of right invoked by those seeking to extend the suffrage. The argument was then immediately shifted to the question of expediency. It was said that the property test encouraged industry, economy, and prudence and gave dignity and importance to those who chose and those who were chosen. Further, it was said that men who had no property should not act, even indirectly, on those who had, and exploit their wealth. To permit these things would work ruin to the State. Other men believed that the property qualification had a very salutary effect on young men, inducing them to practice industry and careful habits.

It is also interesting to note some perversions of the old democratic arguments. It was said that to let the unpropertied vote would surely mean their exploitation by employers, and then the State would have, not a free electorate, but one controlled by capitalists able to swing elections at will. Another perversion that had been used before was utilized to defend the taxpaying qualification. Instead of "no taxation without representation," it was declared there should be "no representation without taxation." The most talented statesmen of the country were present and defended the property test in one way or another. The venerable John Adams was there and painted dire pictures of what would happen if the franchise were extended. Daniel Webster and Joseph Storey gave ample support.

But in spite of all this talent, property tests did not stand a chance. The arguments were attacked sometimes with able retorts, more often with fallacious reasoning; but it made no difference, men had had enough of special privilege and were determined to get rid of discrimination on the basis of property. Men said that they had a natural right to vote, but it only took a few words to ruin that argument utterly. Men said that they should not be governed without their consent, but the others pointed to the Negroes. Men said that they should not be taxed without being represented, but the others pointed to women. Men said that universal suffrage was a glorious ideal, but the others pointed to minors. Men said that they should be permitted to vote in order to defend their rights, but the others pointed to manifold benefits received from the Government even by those who could not vote. Finally men said that they were going to vote anyhow, and the others threw up their hands in despair. The best talent in the country, profound arguments, historical evidence presented by the learned Adams, all the conservative forces of the State, could not stay the onward sweep of suffrage expansion. The only thing that accounts for it is a deep-seated, firm, but more or less unreasoning, conviction that all men should vote. Rude men from rural districts would stand helpless before the intellectual statesmen thundering at them in resounding periods. They would voice a few idle arguments and then vote on the strength of their inbred conviction. The most impressive thing about this entire movement toward broader suffrage is that men came to be filled with a fixed determination that as this country was a democracy all men should have a hand in running it. They were ready to argue, but were determined to have their way in any event. The political thought of the past 20 years had brought men to a realization that they were part of the Government, and now they wanted to get their hands in it.

But in Massachusetts the process had been very slow. It will be remembered that the normal progress was from real-estate property tests to a personal-property alternative, to taxpaying, and then to no limitation. Massachusetts had reached only the point of transition from the personal-property alternative to taxpaying, for this convention provided an amendment to the constitution that all who paid a State or county tax should vote. (Porter, History of Suffrage in United States, pp. 69–72.)

In 1853 a convention was held in Massachusetts and the taxpaying qualification came in for thorough debate. As it was the last time the question was discussed on the basis of the old standards it may be worth while to give the arguments some attention, although not much that was new appeared. The history of suffrage in Massachusetts had been typical. There had first been real-estate qualification, then the personalty alternative, then the substitution of taxpaying, and now even that was nearly worn out. The smallness of the tax was much dwelt upon. As it was only a dollar and a half, advocates thought that no objection should be made. But it was pointed out that whether or not the poor man could afford that small sum, or ought to afford it, he simply would not. It would seem to him like throwing money away, and he would prefer to lose his vote. This undoubtedly was true, and it was also true that the conservatives hoped that just that thing would happen.

It is unnecessary to review the old arguments. "All governments derive just powers from the consent of the governed. Nontaxpayers are part of the governed." "Men should be represented in government—not their dollars."

[FOOTNOTE.—Massachusetts Convention, 1853, Debates. A member said that he quoted Benjamin Franklin, as follows: "You require that a man shall have $60 worth of property, or he shall not vote. Very well, take an illustration. Here is a man today who owns a jackass, and the jackass is worth $60. Today the man is a voter and goes to the polls with his jackass and deposits his vote. Tomorrow the jackass dies. The next day the man comes to vote without his jackass and he cannot vote at all. Now tell me, which was the voter, the man or the jackass?" Fortunately, someone informed the gentleman that he was quoting Tom Paine and not the venerable Franklin.]

On the other hand, "Representation should only go with taxation"; "those who pay for supporting the government should have the exclusive right to control it." All these and other arguments were of course exploited. And the never-failing natural-rights philosopher was also present.

[FOOTNOTE.—Mr. Simonds spoke thus: "You have no right to deprive him of this privilege. And I ask if it is not time that we should assert this declaration of the Bill of Rights, that this is a right which belongs to every man—a right which we can neither give nor take away from him?"]

A strong effort was made to introduce a new sort of compromise. It was proposed to retain the taxpaying qualification for town meetings. Indeed, it was remarkable that so many were willing to grant full suffrage for everything except town elections. They seemed not to care so much who voted for President and Governor, but only the best men in the community should vote for hogreeve. It is a striking illustration of the reverence and jealousy men held for the time-honored town meetings. In the rural districts it was the most important thing in their lives.

The small-tax requirement hung on, however, for 10 years longer, and finally gave way in 1863. North Carolina abolished her requirement in 1868. That left Delaware, Pennsylvania, and Rhode Island. The first of these did not give it up until 1897, and it still holds in the other two States; but it must be remarked again that any kind of a tax requirement connected with suffrage since 1860 has been practically nothing but a registry fee, and several States accomplish the same end by requiring that men must pay their poll taxes before voting. The old-fashioned taxpaying test as a compromise with property qualifications was gone before the Civil War. (Porter, supra, p. 108–111.)

As immigration was heavier in Massachusetts and neighboring States than almost anywhere else, the antialien feeling ran higher.

In Massachusetts there was an even more determined effort to get rid of the foreigner, and more elaborate steps were taken there than anywhere else. In 1857 an amendment to the constitution was passed requiring that all voters must be able to read the constitution and write their own names. And in order to pacify a certain portion of the native element that would find such a test prohibitive, it was not to apply to anyone over 60 years of age or to anyone who already exercised the franchise. Two years later another amendment was passed requiring foreigners to remain in the State for 2 years after naturalization before they could vote. This seems to mark the highest point in the opposition to aliens, and it is worth noting that it was the ignorant, poverty-stricken, famished, unwashed Irish Catholic rowdy whom the country may thank for bringing forth literacy tests. They were applied freely to the Negro in future years and today are being used on general principles, but they originated practically for the benefit of the Irishman. (Porter, supra, p. 118–119.)

When the women's suffrage problem arose, the arguments advanced were the old ones turned to a new use:

There was no trouble in adjusting the old arguments to suit the new occasion. For

more than half a century the advocates of broader suffrage had been filling up their arsenal with weapons to use upon conservatives. Many of the liberals were shocked beyond expression and left speechless when the women raided their armory, took their weapons, and went forth to use them as they had seen them used by men. Natural, inalienable, inherent right. No taxation without representation. Government by consent of the governed. All that old-time revolutionary philosophy with its mixture of truth and abominations was revived once more and spread broadcast by the abolitionists and woman-suffrage advocates alike.

Characteristic of this sort of argument is a statement to be found in the records of the Massachusetts constitutional convention of 1853:

I maintain first that the people have a certain natural right, which under special conditions of society manifests itself in the form of a right to vote. I maintain secondly that the women of Massachusetts are people existing under those special conditions of society. I maintain finally, and by necessary consequence, that the women of Massachusetts have a natural right to vote.

That is the sort of argument that marked the beginning of the woman-suffrage movement. Once more the strange phenomenon appeared—the suffrage expanding on a wave of specious doctrine. But it caught the popular fancy and served to bring the issue forward. (Porter, supra, pp. 140–141.)

However, at that time Massachusetts voted the measure down by a large majority.

Maryland was chartered in 1632 by King Charles. In 1776 Maryland's constitution was formed. In the Declaration of Rights we find:

That the right in the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose, elections ought to be free and frequent, and every man, having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage. (Thorpe, 3, supra, p. 1687, art. V.)

The qualifications appear in article II of the Constitution:

That the House of Delegates shall be chosen in the following manner: All freemen, above 21 years of age, having a freehold of 50 acres of land, in the county in which they offer to vote, and residing therein—and all freemen, having property in this State above the value of 30 pounds current money, and having resided in the county, in which they offer to vote, one whole year next preceding the election, shall have a right of suffrage, in the election of delegates for such county: and all freemen, so qualified, shall, on the first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year thereafter, assemble in the counties, in which they are respectively qualified to vote, at the courthouse, in the said counties; or at such other place as the legislature shall direct; and, when assembled, they shall proceed to elect, viva voce, four delegates, for their respective counties, of the most wise, sensible, and discreet of the people, residents in the county where they are to be chosen, one whole year next preceding the election, above 21 years of age, and having, in the State, real or personal property above the value of 500 pounds current money; and upon the final casting of the polls, the four persons who shall appear to have the greatest number of legal votes shall be declared and returned duly elected for their respective counties. (Thorpe, 3, p. 1691, art. II.)

In 1810 this was amended as follows:

ART. XIV. That every free, white, male citizen of this State, above 21 years of age, and no other, having resided 12 months within this State, and 6 months in the county, or in the city of Annapolis or Baltimore, next preceding the election at which he offers to vote, shall have a right of suffrage, and shall vote, by ballot, in the election of such county or city, or either of them, for electors of the President and Vice President of the United States, for Representatives of this State in the Congress of the United States, for delegates to the general assembly of this State, electors of the senate, and sheriffs. (Thorpe, 3, supra, p. 1705, art. XIV.)

In 1851 Maryland adopted a new constitution. In the declaration of rights we find the following:

ART. 5. That the right of the people to participate in the legislature is the best security of liberty, and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free, white, male citizen having the qualifications prescribed by the constitution ought to have the right of suffrage. (Thorpe, 3, supra, p. 1713, art. 5.)

This is set out fully in article I:

Every free white male person, of 21 years of age or upward, who shall have been 1 year next preceding the election a resident of the State, and for 6 months a resident of the city of Baltimore, or of any county in which he may offer to vote, and being at the time of the election a citizen of the United States, shall be entitled to vote in the ward or election district in which he resides, in all elections hereafter to be held; and at all such elections the vote shall be taken by ballot. And in case any county or city shall be so divided as to form portions of different electoral districts for the election of Congressman, Senator, delegate, or other officer or officers, than to entitle a person to vote for such officer, he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for 6 months next preceding the election; but a person who shall have acquired a residence in such county or city entitling him to vote at any such election, shall be entitled to vote in the election district from which he removed until he shall have acquired a residence in the part of the county or city to which he has removed.

SEC. 2. That if any person shall give, or offer to give, directly or indirectly, any bribe, present, or reward, or any promise, or any security for the payment or delivery of money or any other thing to induce any voter to refrain from casting his vote, or forcibly to prevent him in any way from voting or to obtain or procure a vote for any candidate or person proposed or voted for as elector of President and Vice President of the United States, or Representative in Congress, or for any office of profit or trust created by the constitution or laws of this State, or by the ordinances or authority of the mayor and city council of Baltimore, the person giving or offering to give, and the person receiving the same, and any person who gives or causes to be given an illegal vote, knowing it to be so, at any election to be hereafter held in this State, shall, on conviction in a court of law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote in any election thereafter. (Thorpe, 3, supra, pp. 1716, 1717.)

In 1864 a new constitution was ratified in Maryland by a slim plurality of 375 votes. Article 7 of the bill of rights provides:

That the right of the people to participate in the legislature is the best security of liberty and the foundation of all free government; for this purpose elections ought to be free and frequent, and every free white male citizen, having the qualifications prescribed by the constitution, ought to have the right of suffrage. (Thorpe, 3, supra, p. 1742.)

SECTION 1. All elections shall be by ballot, and every white male citizen of the United States, of the age of 21 years or upward, who shall have resided in the State 1 year next preceding the election, and 6 months in any county, or in any legislative district of Baltimore City, and who shall comply with the provisions of this article of the constitution, shall be entitled to vote at all elections hereafter held in this State; and in case any county or city shall be so divided as to form portions of different electoral districts for the election of Congressman, Senator, delegate, or other officer or officers, then to entitle a person to vote for such officer he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for 6 months next preceding the election; but a person who shall have acquired a residence in such county or city entitling him to vote at any such election shall be entitled to vote in the election district from which he removed, until he shall have aquired a residence in the part of the county or city to which he has removed.

SEC. 2. The general assembly shall provide by law for a uniform registration of the names of voters in this State, which registration shall be evidence of the qualification of said voters to vote at any election thereafter held, but no person shall be excluded from voting at any election on acount of not being registered until the general assembly shall have passed an act of registration, and the same shall have been carried into effect, after which no person shall vote unless his name appears on the register. The general assembly shall also provide by law for taking the votes of soldiers in the Army of the United States serving in the field.

SEC. 3. No person above the age of 21 years, convicted of larceny or other infamous crime, unless pardoned by the governor, shall ever thereafter be entitled to vote at any election in this State, and no lunatic, or person non compos mentis, shall be entitled to vote.

SEC. 4. No person who has at any time been in armed hostility to the United States, or the lawful authorities thereof, or who has been in any manner in the service of the so-called Confederate States of America, and no person who has voluntarily left this State and gone within the military lines of the so-called Confederate States or armies, with the purpose of adhering to said States or armies, and no person who has given any aid, comfort, countenance, or support to those engaged in armed hostility to the United States, or in any manner adhered to the enemies of the United States, either by contributing to the enemies of the United States, or unlawfully sending within the lines of such enemies money, or goods, or letters, or information, or who has disloyally held communication with the enemies of the United States, or who has advised any person to enter the service of the said enemies, or aided any person so to enter, or who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of said enemies over the arms of the United States, shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit, or trust under the laws of this State, unless since such unlawful acts he shall have voluntarily entered into the military service of the United

States, and have been honorably discharged therefrom, or shall be on the day of election actually and voluntarily in such service, or unless he shall be restored to his full rights of citizenship by an act of the general assembly passed by a vote of two-thirds of all the members elected to each house; and it shall be the duty of all officers of registration and judges of election carefully to exclude from voting, or being registered, all persons so as above disqualified; and the judges of election at the first election held under this constitution shall, and at any subsequent election may, administer to any person offering to vote the following oath or affirmation: "I do swear (or affirm) that I am a citizen of the United States; that I have never given any aid, countenance, or support to those in armed hostility to the United States; that I have never expressed a desire for the triumph of said enemies over the arms of the United States; and that I will bear true faith and allegiance to the United States and support the Constitution and laws thereof as the supreme law of the land, any law or any ordinance of any State to the contrary notwithstanding; that I will in all respects demean myself as a loyal citizen of the United States, and I make this oath or affirmation without any reservation or evasion, and I believe it to be binding on me"; and any person declining to take such oath shall not be allowed to vote, but the taking of such oath shall not be deemed conclusive evidence of the rights of such person to vote; and any person swearing or affirming falsely shall be liable to penalties of perjury, and it shall be the duty of the proper officers of registration to allow no person to be registered until he shall have taken the oath or affirmation above set out, and it shall be the duty of the judges of election in all their returns of the first election held under this Constitution to state in their said returns that every person who has voted has taken such oath or affirmation. But the provisions of this section in relation to acts against the United States shall not apply to any person not a citizen of the United States who shall have committed such acts while in the service of some foreign country at war against the United States, and who has, since such acts, been naturalized, or may be naturalized, under the laws of the United States, and the oath above set forth shall be taken in the case of such persons in such sense.

SEC. 5. If any person shall give, or offer to give, directly or indirectly, or hath given, or offered to give, since the 4th day of July, 1851, any bribe, present, or reward, or any promise, or any security for the payment or delivery of money or any other thing to induce any voter to refrain from casting his vote, or forcibly to prevent him in any way from voting, or to procure a vote, for any candidate or person proposed or voted for as elector of President and Vice President of the United States or Representative in Congress, or for any office of profit or trust created by the constitution or laws of this State, or by the ordinances or authority of the mayor and City Council of Baltimore, the person giving, or offering to give, and the person receiving the same, and any person who gives, or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, or who shall be guilty of or accessory to a fraud, force, surprise, or bribery to procure himself or any other person to be nominated to any office, national, State, or municipal, shall on conviction in a court of law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. (Thorpe, 3, supra, pp. 1746, 1747.)

The feeling in Maryland made evident by these provisions needs no clarification.

The year 1867 saw another constitution, with little change in the bill of rights. However, the end of the war and the readmission of Confederate States to the Union is reflected by the omission of certain noticeable prohibitions and exclusions in the 1864 constitution:

SECTION 1. All elections shall be by ballot; and every white male citizen of the United States of the age of 21 years or upward who has been a resident of the State for 1 year and of the legislative district of Baltimore City, or of the county, in which he may offer to vote for 6 months next preceding the election shall be entitled to vote in the ward or election district in which he resides at all elections hereafter to be held in this State; and in case any county or city shall be so divided as to form portions of different electoral districts for the election of Representatives in Congress, Senators, Delegates, or other officers, then to entitle a person to vote for such officer he must have been a resident of that part of the county or city which shall form a part of the electoral district in which he offers to vote for 6 months next preceding the election; but a person who shall have acquired a residence in such county or city entitling him to vote at any such election shall be entitled to vote in the election district from which he removed until he shall have acquired a residence in the part of the county or city to which he has removed.

SEC. 2. No person above the age of 21 years, convicted of larceny or other infamous crime, unless pardoned by the governor, shall ever thereafter be entitled to vote at any election in this State; and no person under guardianship, as a lunatic, or as a person non compos mentis, shall be entitled to vote.

SEC. 3. If any person shall give, or offer to give, directly or indirectly, any bribe, present, or reward, or any promise, or any security, for the payment or the delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate or person proposed, or voted for, as elector of President and Vice President of the United States, or Representative in Congress, or for any office of profit or trust, created by the constitution or laws of this State, or by the ordinances, or authority of the mayor and City Council of Baltimore, the person giving, or offering to give, and the person receiving the same, and any person who gives, or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a court of law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. (Thorpe, 3, pp. 1783, 1784.)

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

The VICE PRESIDENT. Does the Senator from Louisiana yield to the Senator from Illinois?

Mr. ELLENDER. I yield for a question.

Mr. LUCAS. Will the Senator yield the floor in order that I may make a motion to adjourn?

Mr. ELLENDER. No; I do not think I want to do that at the moment. If I may be permitted to make a motion and ask unanimous consent that I may go on with my speech tomorrow, without losing my rights, I shall be glad to do that.

A discussion of the prohibitions affecting citizens of the Confederacy, is found in the Self-Reconstruction of Maryland, by William Starr Myers:

The late autumn of the year 1864 found the Union men strongly entrenched in power in Maryland. Aided by the sympathy of the National Government—both active and passive—they had during the preceding 6 months elected a State convention, formed a new constitution which abolished slavery and made many radical changes in the government, and accomplished its adoption at the polls.

A narrow majority of 375 out of a total of 59,973 votes cast had been secured for the constitution only by the somewhat doubtful expedient of permitting Maryland soldiers in the field to vote on the question, their overwhelming approval altering the adverse result in the State at large. But the Union party leaders felt no uneasiness as far as the future was concerned, for the constitution of 1864 was designed, rightly or wrongly, not only to free the slaves but to secure a permanent hold of the party in power.

The element was known as the Union Party during the war, and was compcsed of the more loyal and active citizens of the State, who not only desired that Maryland should stand by the Union, but believed that the South should be conquered and that President Lincoln and the national administration should be given hearty and unswerving support. The party included men who had been of various political affiliations in times past, and it held together fairly well in spite of radical differences of opinion on many topics of State and National policy. The Republican Party did not exist under that name till at least a year after the close of the war, and the process of its formation will be shown in the events about to be narrated.

Mr. WHERRY. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I will gladly yield for a question.

Mr. WHERRY. I could not hear exactly the colloquy——

Mr. ELLENDER. I will yield for a question.

Mr. WHERRY. May I ask the Senator if he would speak in louder tones so we could know what his answer was to the question of the majority leader? We could not hear over here.

Mr. ELLENDER. As I understand, the majority leader asked me if I was willing to give up the floor in order that he might move to recess or adjourn. My answer to him was that if I could obtain unanimous consent to continue my speech tomorrow, without losing the rights I now have, I would do that; I would consent to it.

Mr. WHERRY. I do not want to be presumptuous, but my understanding is——

Mr. ELLENDER. I do not yield for anything but a question, Mr. President.

Mr. WHERRY. Will the Senator yield further for a question?

Mr. ELLENDER. I yield for a question.

Mr. WHERRY. What the Senator is saying is that——

Mr. ELLENDER. I yield for a question.

Mr. WHERRY. Would the Senator, if he was assured that he could have unanimous consent to continue his

speech tomorrow when the Senate convenes——

Mr. ELLENDER. Under those circumstances I would yield for a recess, yes.

Mr. WHERRY. I do not know what is in the mind of the majority leader.

Mr. ELLENDER. I yield for a question, Mr. President. I want to be protected. I do not want to lose the floor.

I continue to read:

The Democratic Party in the State, defeated and discredited, still kept up all the active opposition of which it was capable. It condemned the policies of Lincoln and his administration, and more or less acknowledged the right of the Southern States to secede, though all the while protesting its loyalty to the Union, and its hope that Maryland would remain in the old federation.

The new constitution is worthy of careful attention. The Union party based their hopes on those provisions which were designed to exclude from the franchise all Southern sympathizers and other disloyal persons, and furthermore they intended so to carry out its mandate for a registration of the voters of the State that their opponents would be further rendered powerless at the polls.

Twenty-seven Johns Hopkins Studies, pages 9 and 10.

The constitution directed, in addition, that the legislature should pass laws requiring the voter's oath to be taken by the president, directors, trustees, or agents of corporations created or authorized by the laws of this State, teachers or superintendents of the public schools, colleges, or other institutions of learning; attorneys at law, jurors, and such other persons as the general assembly shall from time to time prescribe. Moreover, a very dangerous power was placed in the hands of the judges of election, who alone were permitted to decide as to what was conclusive evidence of the right of a person to vote. The sinister effects of this provision soon made themselves felt, and as we shall see, almost led to bloodshed in the exciting days that followed.

The aspect of military affairs in the South at this time could only add to the confidence of the Union men of Maryland. It was during the autumn of 1864 that Grant, after the awful slaughter of the Wilderness and Cold Harbor, was at last tightening his grip on Lee at Richmond and Petersburg. Sherman, by his masterful campaign from Resaca to Atlanta, overcame the brilliant strategy of Johnston and the reckless bravery of Hood, and entered upon his march to the sea. Sheridan defeated Early and drove him out of the Shenandoah Valley, and finally, to crown all, Thomas annihilated Hood's army at Nashville. Surely the Confederacy was in its death throes and the Union would be saved. This was no time to look for weak-kneed sympathy with rebellion.

An election for National and State officials was to take place on November 8, 1864. Governor Augustus W. Bradford on November 3 issued a proclamation or open letter addressed to the judges of election, giving it as his opinion that this would be the first election under the new constitution (by executive proclamation of October 29, it went into effect on November 1, 1864), and saying that it was obligatory upon the judges to observe the requirements and administer the test oath to all applying to vote.

A large number of these officials who were to conduct the election in Baltimore City, said to have been about one-third of the total for that district, held a meeting in the criminal court room on November 3, and unanimously decided to administer the oath to all voters. This oath was not to be taken as conclusive evidence of loyalty, but in addition citizens were to be sworn to give true answers to such other questions as should be propounded to them, in order to satisfy the judges of their right to the ballot. A second and more largely attended meeting of the judges was held in the same place on November 7 to consider the question which had arisen and caused some controversy, as to whether they had the right to commit for perjury, and if so, whether or not they should proceed to use it. After some debate, it was deicided to leave this question to individual discretion, but to keep a list of the rejected votes for future action. This matter seems in the end to have made little trouble at the election, which was very quiet, many persons of doubtful patriotic status refraining from an attempt to vote. There were few arrests by order of the judges.

Great interest in this election was aroused by the fact that not only was a full State ticket to be voted upon, but electors for President and Vice President also were to be chosen. The Union Party ratified the national Republican nominations of Abraham Lincoln and Andrew Johnson, and held its State convention on October 18, 1864, in Temperance Temple, Baltimore. A very patriotic platform was adopted, declaring the determination to stand by the administration until this wicked rebellion has been crushed out, and every Rebel made to bow in submission to the Constitution and the laws of the land, and every foot of territory brought under the dominion of the Federal Government. Candidates were nominated for all the State offices, headed by Thomas Swann of Baltimore City for governor and Dr. Christopher C. Cox, of Talbot County, for lieutenant governor. The Democratic Party made its nominations through its State central committee, which met in Baltimore on October 27, and arranged a ticket including Judge Ezekiel F. Chambers, of Kent County, for governor, and Oden Bowie of Prince George's County for lieutenant governor.

The result of the election was, as had been expected, a victory for the Union Party, the vote being as follows: For governor, Swann, 40,579; Chambers, 32,068; Swann's majority, 8,511. For lieutenant governor, Cox, 41,828; Bowie, 32,178. Lincoln carried the State by 7,432 majority, and for Congress, Edwin H. Webster, of Harford County, Charles E. Phelps, of Baltimore City, and Francis Thomas, of Allegany County, were successful in the Second, Third, and Fourth Districts, respectfully. The Democrats, however, carried two districts, electing Hiram McCullough, of Cecil County, in the first, and Benjamin G. Harris, of St. Mary's County, in the fifth.

In the general assembly of the State the Union Party secured a large majority in the house of delegates, but the results of the election showed that the membership of the senate would stand: Democrats 13, Union Party 11. Fortunately for the latter, W. M. Holland, Democratic senator-elect from Dorchester County, resigned on November 15, saying that circumstances of a domestic character beyond his control made it extremely inconvenient for him to serve. A special election was held on December 23 to fill the vacancy and Thomas K. Carroll, the Union candidate, was elected by a good majority. This made a tie on a party vote, but the deciding vote would be cast by Lieutenant Governor Cox. In spite of test oaths, partisan judges of election, and the supporting influence of the National Government, the Democratic Party in Maryland had made a fairly good showing, and there was a possibility of the Union control being shaken, or even broken, at any time. This was evidently realized, and efforts were at once made by the leaders of the latter party to guard against any such contingency. An editorial in the Baltimore American on the preceding October 19 had said:

"It is of the utmost importance that the control of the affairs of Maryland should be in the hands of capable, honorable, and loyal men, who will administer them not only to the direct benefit of the State itself but with regard to the maintenance and prosperity of the entire Union. The fortunes of Maryland and of the Union are indissolubly linked together, and to fill the State offices with men who have the integrity of the whole Union at heart is the true way to advance the interests of the State itself."

This statement voices the opinion of the more sober and responsible leaders in the Union cause, and gives a very fair idea of the principles upon which they based their actions during the political struggles of the following 2 years.

The general assembly met at Annapolis on January 4, 1865. In his message Governor Bradford recommended for passage various measures designed to carry out certain provisions of the new constitution, and in adition he desired that action be taken looking toward the procuring of compensation from the National Government for slaves emancipated under the State constitution, in accordance with President Lincoln's message of March 6, 1862. Also, he argued sensibly that some other time and tribunal than the day and judges of election be provided, to determine who may vote under the new laws and regulations. The neglect on the part of the legislature of this common-sense matter of justice and order was another cause of the turmoil and trouble of the succeeding years.

According to article II, sections 1 and 2, of the new constitution, the term of office of Governor Swann and Lieutenant Governor Cox was to commence on January 11, 1865, but the new executive was not to enter upon the discharge of his duties until the expiration of the term for which Governor Bradford had been elected. The latter had been inaugurated on January 8, 1862, hence he held office till January 10, 1866, and continued the able administration he had given the State during the preceding years of trial and perplexity.

The inauguration of the new executive and his subordinate took place in the senate chamber at Annapolis on the appointed day. Governor Swann's inaugural address called upon the legislature to forget the dissensions and heartburnings of the past, and come together once more, in a spirit of conciliation and harmony, to give our best energies, as one party, to the work of reconstruction and reorganization upon which we are entering with such prospects of admitted and assured success. He favored foreign colonization of Negroes, recommended an attempt to procure national compensation for the slaves, and significantly closed as follows:

"It is not a very agreeable reflection to the State of Maryland, in looking back upon the past, that many of her citizens have entertained, and not infrequently expressed sympathies with the objects of this rebellion. Such evidences of disaffection at the South have been summarily dealt with heretofore, by the offer of the alternative of the oath of allegiance to the so-called Confederate States, or prompt expulsion beyond their lines. The recognition of such a rule here would doubtless have been received as in the righest degree tyrannical and oppressive. It is hardly reasonable to expect, however, that this Government will permit itself to be sacrificed by those upon whom it has a right to rely, and who have made their election to share the protection of its laws. In standing by the Union, Maryland will know how to discriminate between its friends and enemies, and the time has passed when those

who really desire its dissolution will be permitted to make a virtue of their disloyalty, or to claim participation in the poltical power of the State. Differences of opinion upon National and State politics may exist without treason; but the paramount obligation of loyalty cannot be compromised, and the citizen who turns away from his duty of allegiance to his Government—no matter upon what pretext—forfeits the privileges which it confers, and the protection which attaches to the rights of citizenship."

Lieutenant Governor Cox immediately entered upon his duties as President of the Senate, the office of lieutenant governor having been created by the constitution of 1864.

The senate on February 14, by a vote of 11 yeas to 10 nays, unseated, on the ground of disloyalty, Littleton Maclin, Democratic senator from Howard County, and Republican opponent, Hart B. Holton, was declared elected. Samuel A. Graham, of Somerset County contested upon the same grounds the seat of Levin L. Waters, the Democratic senator from that county, but the matter was deferred to the next session of the legislature in order that further testimony in the case might be taken, and was finally dropped, perhaps in consideration of the fact that a Union Party majority in the senate was now secured.

Mr. LUCAS. Mr. President, will the Senator yield for a question?

Mr. ELLENDER. I yield for a question.

Mr. LUCAS. Will the Senator now yield the floor in order that I may make a motion?

Mr. ELLENDER. Mr. President, as I understand the rules, if I myself should make a motion, I would not lose the floor. I therefore wish now to ask unanimous consent, should the Senate take a recess upon the granting of this unanimous consent, that when the Senate reconvenes at 12 o'clock noon today, I may retain the floor and not lose my rights.

Mr. MORSE. Mr. President, I object.

The VICE PRESIDENT. The Senator from Oregon objects.

Mr. ELLENDER. I continue to read from Myers' account:

Turning our attention to the work of the legislative session, we find that on February 1 Governor Bradford submitted to both houses the thirteenth amendment to the Constitution of the United States. It was advanced to its third reading on the same day by the house of delegates, passing its second reading by a vote of 53 yeas to 24 nays. The Senate referred it to a committee and on February 3 finally passed it by a strict party vote of 11 affirmative from the Union Party, 10 negative from the Democrats. The house immediately passed it on its final vote, by acclamation.

Some little strife was stirred up over the question of the election of a United States Senator to fill out the unexpired term of the late Thomas H. Hicks, but John A. J. Creswell, of the Eastern Shore, was finally chosen by a large mapority on March 9, his leading opponent, Lieutenant Governor Cox, having withdrawn from the contest.

Two most important bills were passed by the assembly at this session. One was the act dealing with the status of the colored population of the State and was voted by large majorities on March 24. "All the disabilities which had necessarily attached to the Negro as a consequence of the institution of slavery were removed, with two exceptions, one disqualifying Negroes from being witnesses in cases where white men were concerned, and the other authorizing Negroes to be sold for crime for the same period that a white man might be confined in the penitentiary for the same offense."

The other bill was to provide for the registration of the voters of the State according to the requirements of the new constitution. It was reported in the house of delegates, on March 8, 1865, and after a hard struggle against it on the part of the opposition it was passed on March 22, by the vote of 51 yeas to 23 nays. The Senate, after more vain opposition on the part of the Democrats, passed it finally on March 24, by a vote of 13 to 6. This act, famous in the history of the State, which formed a center for most of the political strife of the period, provided that the Governor was to appoint three citizens most known for loyalty, firmness, and uprightness as registers in each ward or election district, also three men to register the soldiers and sailors of the State, who were to visit the several regiments, camps, and hospitals, and have the results placed upon the books of the various districts. From these lists, entry on which was indispensable in order to exercise suffrage, they were to exclude all disloyal persons, and might even refuse to permit them to register, after taking the oath of allegiance.

To these officers of registration was further given power—

"To compel the attendance of witnesses for the purpose of ascertaining the qualifications or disqualifications of persons registered; they shall have power to issue summons, attachments, and commitments of any sheriff or constable, who shall serve such process, as if issued by a judge of the circuit court, or a justice of the peace, and shall receive the same fees and in the same manner as allowed by the law in State cases."

The intent of the act was well summed up in an editorial of the Baltimore Sun of July 11, 1865, as follows:

"It will be seen that the question of the right of suffrage under the Constitution and the law, is left entirely to the discretion and judgment of the various officers of registration, who are to be appointed by the Governor, in the city and counties, from which judgment there is no appeal—and the disqualification is perpetual unless the person is restored to civil rights through military service or a vote of two-thirds of all the members elected to each house of the general assembly."

The following clause included in the bill as originally reported to the House of Delegates was stricken out by a majority of only one vote in that body:

"Section 19, be it enacted. That the officers of registration for the purpose of ascertaining more fully whether any person is disqualified under the fourth section of article first (of) the Constitution, shall. if such person's right is challenged, or they have not personal knowledge, propound the following among other questions: Have you ever given aid to the rebellion by advice, by giving or sending information? Have you ever given or sent money, clothing, provisions, medicine, or any munitions of war to persons engaged in the rebellion? Have you ever given shelter or protection to persons engaged in the rebellion? Have you ever advised or encouraged any person to enter the rebel service? Have you ever assisted any one to enter such service by furnishing them with money, provisions, advice, letters, or information? Have you ever in conversation or by writing justified those engaged in entering into the rebellion? Have you ever expressed a wish or desire for the success of the rebel arms or for the defeat of the Union arms? Have you ever rejoiced over any of the successes of the rebel arms or defeat of the Union arms? Have you ever desired or wished that the rebel forces might defeat the Union forces?"

It would be difficult to imagine a more stringent or dangerous measure, one more hostile to the idea of a constitutional and orderly democratic government, or one more open to abuse.

After spasmodic attempts to pass a measure requiring the oath of allegiance of all officers of corporations, and another calculated to secure compensation for emancipated slaves from the United States Government, but from which nothing ever came, the legislature finally adjourned on March 27, 1865.

It is now necessary, in order to make our narrative complete, to retrace our steps a little in point of time. During this period the important question of the Negro population was agitating the people of Maryland. All slaves had become free on November 1, 1864, when the constitution went into effect, and there were now nearly 90,000 "freedmen" to be dealt with, besides a nearly equal number of Negroes who had been free when abolition was accomplished. When we think of this herd of human beings, little more than half civilized, poor, ignorant, and helpless, suddenly raised in legal status from a position of servitude to the proud estate of man, with all the attendant duties and obligations, we must realize that they still remain completely under the power of the white population. A few wished to treat them as being what they were in fact, children in intelligence with an almost unlimited potentiality of physical power, but the larger number naturally looked upon them with the contempt of former masters. Sometimes, at the other extreme, there was foolish talk about immediate social and political equality.

When the October election showed the adoption of the constitution, the major part of the people of Maryland loyally acquiesced in the result, but many of the more tenacious slaveholders speedily took advantage of an old provision in the "Black Code" of State laws that Negro slave children could be bound out for terms of apprenticeship without the consent of their parents. With the more or less open connivance of many of the court officials they had the slave and effectively the grand purpose of the people of the State of Maryland * * * (therefore) there should be remedies extraordinary for all their (i. e., the freedmen's) grievances—remedies instantaneous without money or reward—and somebody to have care for them, to protect them, to show them the way to the freedom of which they have yet but vague and undefined ideas.

The order provided further that all freedmen were to be considered under special military protection until the legislature should by its enactments make such protection unnecessary, that provost marshals in their several districts, "particularly those on the eastern and western shores," should "hear all complaints made to them by persons within the meaning of this order" and "collect and forward information and proofs of wrongs done to such persons, and generally * * * render Major Este such assistance as he may require in the performance of his duty." Finally, "lest the money derived from donations, and from fines collected, prove insufficient to support the institution in a manner corresponding to its importance, Major Este will proceed to make a list of all the avowed rebel sympathizers resident in the city of Baltimore, with a view to levying such contributions upon them in aid of the Freedmen's Rest as may be from time to time required."

Early in January, General Wallace abolished the Freedmen's Bureau in Maryland and made his report to the general assembly. A reading of this report and the documents submitted therewith should fill every fair-minded person of today with a deep sympathy for the Negroes in their helpless condition at this time. The details there disclosed of all the suffering, sorrow, and injustice which they endured render one heartsick, even though an allowance be made for the exaggerations of heated partisanship and an excited state of public feeling.

As we have seen, the legislature, in response to the report, passed a bill removing practically all the disabilities from the Negro population which had been laid upon them under the slave code, and affairs gradually settled themselves according to the new economic and social conditions which are still in existence today. This readjustment did not come all at once, but only after much injustice and many wrongs had been committed by both whites and blacks. (At as late a date as November 1, 1866, Gen. O. O. Howard, chief of the national "Freedmen's Bureau," stated in his report to the Secretary of War that "frequent complaints are received of outrages and atrocities without parallel committed against freedmen" in portions of Maryland.) Richmond fell before Grant's victorious army on April 3, 1865, and by the end of the month both Lee and Johnston had surrendered. This was the practical ending of the military operations of the Civil War. About 20,000 men from Maryland had taken service in the armies of the Confederacy, and the survivors were soon paroled and began to return home in large numbers. The Union men were much elated and joined in a hearty celebration of the national triumph of their cause, but as the ex-Confederates began to show themselves about the streets and to frequent their old haunts and a large immigration from the South, particularly from Virginia, began to set in, this feeling gave way to alarm, too often accompanied by signs of prejudice and vindictiveness. The party in power at once began to foresee and to fear what finally took place—an active coalition between the Democrats and the southern sympathizers and the eventual overthrow of the Union Party in the State. The Registration Act had been passed just in time, and when signs of opposition to it began to appear its advocates decided to fight to the last ditch to keep it on the statute books and in active operation.

The assassination of President Lincoln on April 14, 1865, threw the Union people for a time into a panic, and naturally increased hostility toward the ex-Confederates, whom they imagined to be undertaking a new method of warfare, by means of murder and secret criminal intrigue. Gen. W. W. Morris, for a short time in command of the Middle Department, issued orders on April 15, placing Baltimore under stringent martial law, and including a provision that "paroled prisoners of war (Rebels), arriving in this department are hereby ordered to report at once to the nearest provost marshal, in order that their names may be registered, their papers examined, and such passes furnished them as may be necessary for their protection. Such prisoners of war will not be permitted to wear the uniform of the army and navy of the so-called Confederate States, but must abandon their uniforms within 12 hours after reporting to the provost marshal, and adopt civilian dress."

General Wallace, who resumed command a few days later, extended these repressive measures, and was actively assisted by the officers of the United Stats Army stationed in various parts of the State. After the death of J. Wilkes Booth and the capture of the other conspirators, the military bonds were gradually relaxed, the National Government wisely leaving the settlement of the various difficulties in Maryland to the people of the State.

Mr. LUCAS. Mr. President, will the Senator yield so that I may make a motion to adjourn?

Mr. ELLENDER. I notice quite a number of Senators are desirous of leaving. I have now been on the floor for a little more than 12 hours. I feel that I could go on until 6 o'clock. But it seems as though some Senators want to recess. I should like very much to retain the floor, but I presume, if I were to renew my request to retain the floor by unanimous consent, there would be objection. It is not my purpose to keep Senators listening to my remarks. I do not feel very tired. I feel I could go on, but, in order to accommodate the majority and the minority, I will take my seat.

LEAVE OF ABSENCE

During the delivery of Mr. ELLENDER's speech,

Mr. ELLENDER. Mr. President, with the understanding that I shall not lose the floor and that none of my rights shall be impaired, I ask unanimous consent to make a unanimous-consent request. I understand that the Senator from Missouri [Mr. DONNELL] wants to absent himself from the Senate for a couple of days. I ask unanimous consent that, beginning at 4 o'clock this afternoon, he be excused from attendance on the Senate until 12 o'clock noon on Wednesday next.

The PRESIDING OFFICER (Mr. O'CONOR in the chair). The Senator from Louisiana asks unanimous consent that the Senator from Missouri [Mr. DONNELL] be excused from attendance on the sessions of the Senate beginning at 4 o'clock this afternoon until 12 o'clock noon on Wednesday next. The Senator makes the request with the understanding that it will not impair his right to the floor. Is there objection? The Chair hears none, and it is so ordered.

Mr. ELLENDER. I also ask that this interruption may be placed at the close of my speech.

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

AMENDMENT OF CLOTURE RULE

The Senate resumed the consideration of the motion of Mr. LUCAS to proceed to the consideration of Senate Resolution 15, amending the so-called cloture rule of the Senate.

After the conclusion of Mr. ELLENDER's speech,

Mr. WHERRY. Mr. President, before the Senator from Louisiana takes his seat, will he yield?

Mr. ELLENDER. I yield for a question.

Mr. WHERRY. My understanding was that the majority leader requested the Senator to yield in order that the Senator from Illinois might make a motion to adjourn.

The VICE PRESIDENT. The Chair may say to the Senator from Louisiana and to others, if the motion to adjourn is made and carried, tomorrow will be a new day's business, and there will be nothing before the Senate.

Mr. WHERRY. That is correct.

Mr. LUCAS. Mr. President——

The VICE PRESIDENT. The Senator from Illinois.

Mr. LUCAS. I asked the Senator from Louisiana to yield the floor in order that I might make a motion to adjourn, for this reason——

Mr. ELLENDER. What was the request?

Mr. LUCAS. Mr. President, I thought I had the floor. Do I have the floor?

The VICE PRESIDENT. The Chair understood the Senator from Louisiana to yield the floor, and the Chair recognized the Senator from Illinois.

Mr. ELLENDER. If a motion is to be made to recess or to adjourn, very well.

The VICE PRESIDENT. The Senator from Illinois has the floor.

Mr. LUCAS. Mr. President, I requested that the Senator from Louisiana yield the floor in order that I might make a motion to adjourn. As everyone knows, in the earlier part of the evening it was impossible for all groups who have been in conference to reach any agreement with respect to the compromise upon the rules. Since that time, however, it has been reported to me by the minority leader of the Senate that he still believes there is an opportunity for some amicable arrangement satisfactory to all parties in interest who can be reached. I have not received any information of that kind from the distinguished Senator from Georgia [Mr. RUSSELL] with respect to any compromise that might be acceptable to him. All the negotiations have come through the minority leader, the Senator from Nebraska. I presume he has been in touch with the Senator from Georgia, and probably with the Senator from Virginia [Mr. BYRD] with respect to the matter; otherwise, the Senator from Louisiana probably would not have yielded the floor at this time.

Mr. President, I have been attempting in good faith to compromise the situation, and insofar as the Senator from Illinois is concerned, I am still willing to postpone action in the Senate in order that we may give a further opportunity for the various groups who are interested to see whether some arrangement cannot be made whereby we can set aside the pending question and go along caring for the backlog of legislation which is now on the calendar. During the afternoon, it seemed to me perhaps there was no opportunity for an agreement, and after conferring with a number of Senators on this side of the aisle who are vitally interested and concerned about our program, it was deemed advisable that at the first available opportunity the Senator from Illinois should move that the Senate adjourn, with a view to coming back tomorrow, if the motion could be agreed to, and immediately starting work upon the calendar and vital measures now ready for consideration.

However, as I have indicated, I am willing, and I am sure every other Senator is willing, further to postpone any action on the question of adjournment, and merely take a recess until tomorrow at noon, with a view of ascertaining, in the meantime, whether it is possible to reach the settlement which we all hope may be made.

The VICE PRESIDENT. If the Senator will allow the Chair to make a suggestion, it is already tomorrow. A motion made at this time to adjourn or take a recess until tomorrow would carry us over until Wednesday.

Mr. LUCAS. I thank the Vice President for the suggestion. I do not want to do that. I want to move to adjourn or

take a recess until 12 o'clock noon today, Tuesday.

I now yield to the Senator from Nebraska.

Mr. WHERRY. Mr. President, I appreciate very much the action of the majority leader in yielding to me for an observation. He mentioned the fact that he had a conversation with me and that there was a possibility that we might continue our efforts to work out some solution which might be taken back to the respective caucuses or conferences and to the membership of the Senate. I was interested in some of the remarks which the majority leader made regarding our efforts. I think that inasmuch as the majority leader has mentioned it, and inasmuch as some statements have been made, especially by the Senator from Rhode Island [Mr. McGRATH] relative to the conferences, it is only fair that time be given to those who took part in the conferences to make their own statements of what actually happened in them, so that the Members of the Senate may know what we attempted to do, not as a committee, but as individual Senators, attempting to arrive at a solution which we might recommend so that some action could be taken regarding a change of the rule. I think the majority leader should grant that request. I think we should individually make to the Senate statements of what took place, and set forth what the real facts are.

I say to the majority leader, and I say it as one who appreciates his duties and responsibilities, that this is a tremendous action that is about to be taken—an adjournment or a recess. There is so little difference between those who have been negotiating that I think another effort should be made to reach a solution. The differences are so slight that it seems to me those of us who wish to deal with men as men should meet once again. I am satisfied that we can resolve the differences.

I am not asking the majority leader to move to take a recess. He can use his own judgment as to what he thinks he should do. My opinion is that we should not adjourn until every effort has been made to resolve the differences. I say to the majority leader again that if he moves that the Senate take a recess, I shall cooperate to the very best of my ability to see if there is some way in which we can resolve the very small differences which exist between those Senators who are doing their level best to bring about a solution. Otherwise, if we adjourn, the pending motion, of course, will go out with the adjournment, and we shall have lost an opportunity of a lifetime to amend a Senate rule so as to make it possible to bring up legislation in an orderly fashion.

So, Mr. President, I leave it with the majority leader. I make the observation that I think every effort which can be made should be made. I have had a little responsibility in the past 2 years. I obtained acquiescence to unanimous-consent requests when most the Senators thought nothing could be done. I think we can reach a solution if we can have a good night's sleep, come back, and make up our minds that we are going to do our level best to go along. On the other hand, certainly if the majority leader feels that all efforts have been exhausted and that all that is left to do is to adjourn, he can make that decision. But once again let me say I am perfectly willing to do all I can if an opportunity is given to see if we can resolve the differences which lie between us.

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

Mr. LUCAS. I yield.

Mr. McGRATH. Mr. President, I should like to know to what the Senator from Nebraska refers when he says that the Senator from Rhode Island has interfered with any plans to bring about a compromise.

Mr. WHERRY. Mr. President, the release which I read, which was issued by the Senator from Rhode Island, as the chairman of the Democratic National Committee——

Mr. McGRATH. As a Senator in this Chamber, sir, I have as much right to issue a release as has the Senator from Nebraska.

Mr. WHERRY. I am not objecting to the release. The Senator can issue all the releases he wants to so far as I am concerned. But inasmuch as a release was issued which contains statements which do not correspond with my opinion of the facts, I think every Senator has a right to express his reactions regarding what happened in the meetings and to express his individual views, in view of the references made by the Senator from Rhode Island in his release tonight. I do not have the release with me; but if we take a recess until tomorrow, I shall be glad to take the floor in my own right, bring the release with me, and compare it with the facts of the meetings, to the satisfaction of the Members of the Senate, indicating that there is a very small difference between Senators who want to resolve them. Up to this moment I have given my word that I would not say anything publicly as to what happened in the meetings, and I have not done so; but I think, now that it has been made an issue, we have a right to state what happened in those meetings, so that all Senators will understand what the program was and what we were trying to accomplish.

Mr. McGRATH. I think I should be permitted——

The VICE PRESIDENT. The Senator from Illinois has the floor.

Mr. LUCAS. I yield to the Senator from Rhode Island.

Mr. McGRATH. I think I should be permitted to say that a brief review of the negotiations which have gone on since we adjourned on Saturday indicates that we were supposed to appoint a committee——

Mr. RUSSELL. Mr. President, a point of order.

The VICE PRESIDENT. The Senator will state it.

Mr. RUSSELL. I make the point of order that the Senator from Rhode Island is not asking a question.

Mr. LUCAS. I yield the floor, Mr. President.

The VICE PRESIDENT. Does the Senator from Rhode Island wish to take the floor in his own right?

Mr. McGRATH. Yes, Mr. President, I wish to take the floor in my own right.

The VICE PRESIDENT. The Senator from Rhode Island is recognized.

Mr. McGRATH. Mr. President, I regret that the Senator from Georgia has seen fit to make a point of order against me.

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

Mr. McGRATH. I yield for a question.

Mr. RUSSELL. Does not the Senator from Rhode Island know that those Senators who are on the floor cannot open their mouths, except to propound an interrogatory, without being assailed on a point of order?

Mr. McGRATH. I realize that, but the Senator from Georgia did not raise a point of order against the minority leader who was expounding on the position he had taken.

Mr. RUSSELL. Mr. President, will the Senator yield for a question?

Mr. McGRATH. I yield for a question.

Mr. RUSSELL. Was the Senator from Rhode Island in the Chamber a few days ago when the Senator from Georgia raised the point with the Chair, when he had sought to apply the rule to the majority leader, and that the Senator from Georgia expressed the thought that the rules applied to himself and to every other Senator, and that he thought the majority leader should have some latitude?

Mr. McGRATH. I was in the Chamber, and I recognized that the request was within the rules of the Senate. I also recognized the fact that the minority leader was addressing himself to this problem a few moments ago, and the Senator from Georgia was in his seat and did not raise the point of order which he has attempted to raise against me.

Mr. RUSSELL. Mr. President, will the Senator yield for a question?

Mr. McGRATH. I yield for a question.

Mr. RUSSELL. Mr. President, I should like to ask the Senator if he was in the Chamber when that statement was made?

Mr. McGRATH. Yes; I was in the Chamber.

Mr. RUSSELL. And if he did not hear me say I thought the same rules applied to the majority leader and the minority leader that applied to the other Senators on the floor?

Mr. McGRATH. The Senator said majority leader.

Mr. RUSSELL. I intended to include the minority leader, if I did not say it.

Mr. McGRATH. I heard what the Senator said. When the majority leader rose and some one attempted to make a point of order, the Senator rose and of course said a point of order should not be raised against the majority leader.

Mr. RUSSELL. Will the Senator yield for a further question?

Mr. McGRATH. I yield.

Mr. RUSSELL. If the Senator was present, did he not hear me say that I asked unanimous consent that the majority leader be permitted to make such statements in his time, as the leader of the Senate, as he desired, without being charged with the time?

Mr. McGRATH. That is true, so far as the majority leader was concerned.

Mr. RUSSELL. Will the Senator yield for a further question?

The VICE PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Georgia?

Mr. McGRATH. May I finish my answer? The Senate could hardly function at all if it were the policy to silence the majority leader.

Mr. RUSSELL. I should like to ask the Senator one further question, and then I shall desist.

Mr. McGRATH. I yield.

Mr. RUSSELL. I should like to ask the distinguished Senator from Rhode Island if he does not think that the minority leader should also have some rights in connection with the operation of the Senate, and if he does not know if the rule had been applied to the present distinguished occupant of the Chair for the past 2 years, it would have permanently paralyzed the functions of the minority on the floor of the Senate.

Mr. McGRATH. I believe that to a degree, but I think it should be qualified to this extent, that when the minority leader or the majority leader makes references to another Senator such as have been made tonight, the Senator should be given the courtesy of making a reply.

Mr. RUSSELL. Does not the Senator know I made not the slightest objection to the Senator making a reply, that I am sitting here awaiting his reply, but that I merely objected to the Senator speaking in the time of the majority leader?

Mr. McGRATH. The Senator raised a point of order against the Senator for making his reply.

Mr. RUSSELL. I should like to ask the Senator if it was not made because he was speaking in the time of the majority leader.

Mr. McGRATH. I do not know what was in the Senator's mind when he made his point of order. All I know is that he attempted to make a point of order which would have taken me off the floor.

Mr. RUSSELL. Does not the Senator know that he had a perfect right to the floor if the majority leader was willing to yield the floor?

Mr. McGRATH. Yes; I know that.

Mr. President, I was about to review the procedings which transpired since last Saturday night, because the representation had been made by the superintending forces that there might be a chance of coming to some agreement and some understanding with respect to the matter which is now engaging the attention of the Senate.

Representatives of the three contending parties were appointed, and some time, some place, on some day, they had a meeting. I was not present at the meeting. I had no part in it. I know what transpired only by the reports which came to me—and I am sure they came to every other Senator who was interested from those who represented them—to the effect that some progress was being made, that it was possible that a compromise could be reached in this situation, and that nothing more was to be said.

I was not further informed until I read in the morning newspapers the so-called Wherry resolution, which proposed that the solution of our problem was that we should now adopt for all intents and purposes a three-quarter constitutional majority-cloture rule.

I said this morning, Mr. President, and I repeated today any number of times, and not more than 2 hours ago for the last time, that in my opinion as a Senator, as a spokesman for my party, and as a spokesman for the American people, this is not a compromise at all, but that it is a step backward, a step 30 years backward, Mr. President, because if such a rule were adopted, if the so-called Wherry compromise—and I understand the minority leader was very anxious to have his name associated with it—were adopted, it would mean that we could not apply cloture in the Senate unless we were able to get at least 4 and possibly 12 more names to cloture petitions in the future than we are required to get now under the rule, and therefore I said to the American people, as it was my right and duty to do, that this in my opinion was not a compromise.

Mr. President, I stand by that statement, both as a Senator and as the head of one of the great political parties, the great political party which won the last election, if you please, and I say here and now that any compromise that may come back to this Chamber will meet with high opposition on the floor, in the press, and in the country, if it attempts to take a backward step.

I am unashamed of what I said to the press, and I shall defend it to the end, here and elsewhere, the minority leader to the contrary notwithstanding.

Mr. KNOWLAND. Mr. President, I had not intended to get into this debate this evening. I happen to be one of those on this side of the aisle who voted to sustain the ruling of the Vice President last Thursday night when it was made.

I think that from the time I came to the Senate, three and a half years ago, up to the present time, I have been as interested in the problem of getting an effectual cloture rule as has any other Member of the Senate, and have worked very diligently to see if we could not have an effective rule.

In January of this year the members of the minority party on the Committee on Rules and Administration endeavored to bring on to the floor of the Senate in the early part of the session a cloture rule, which could be amply debated at a time when the Senate was adjourning over 3-day periods. Both in the committee, and at the time a resolution was offered by the junior Senator from California to bring to the floor of the Senate for action a cloture resolution, it was pointed out time and time again that if the Senate ever was to change its cloture rule, it should be done in the first 30 or 45 days of a legislative session, but that the responsibility must rest upon the majority party. They did not determine to bring the cloture rule forward in the early part of this session, when we were adjourning for 3-day periods. They delayed until an accumulation of legislation began flowing down to the floor of the Senate.

I certainly endeavored, with others of my colleagues who felt as I did, to cooperate with the majority leader.

Mr. MYERS. Mr. President——

Mr. KNOWLAND. I shall be glad to answer questions after I conclude, but I decline to yield at this time.

I offered to cooperate with the able majority leader in trying to arrive at some reasonable compromise so that the Senate would not be at the mercy of a small handful of Senators, who could completely tie this body into knots and completely obstruct the legislative process.

Our whole representative system of government rests upon the willingness of the men who sit in this Chamber to make their views meet and finally come together with a reasonable compromise. There is not a single piece of legislation which has ever been proposed as to which we could not, if each individual Senator introduced a bill, find that there would probably be 96 different bills and 96 different points of view. But the American constitutional representative process makes for the meeting of minds and gradually getting a piece of legislation which will have the support of the majority of the Members of this body.

It was in that spirit that this informal committee was set up and met last Sunday. I think every member of that committee recognized that if everyone stood adamant we would have a deadlock, we would get no effective cloture rule, and in the final analysis, unless some reasonable compromise were reached, the Senate would be left absolutely without an effective cloture rule, and we would be in the position we have been in for the period since 1917, when our very ineffective cloture rule was adopted. Because of that situation there was a desire to give and take, and to try and arrive at a reasonable compromise.

Now just how unreasonable is this situation that was presented? The Senator from Rhode Island [Mr. McGRATH], apparently has charged that the minority leader, the Senator from Nebraska [Mr. WHERRY], himself was proposing a three-quarters rule. That is not the fact. I believe the Senator from Rhode Island knows that it is not the fact. At least the Members who sat in committee know that it is not the fact. The Senator from Nebraska——

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

Mr. KNOWLAND. I will yield when I have finished my statement.

The Senator from Nebraska has consistently been for a two-thirds cloture. The Hayden-Wherry resolution itself, which was reported by the Committee on Rules and Administration in the Eightieth Congress—and precisely the

same resolution was reported in the Eighty-first Congress—provides, as every Member of this body who will examine Senate Resolution 15 can see, that we have the simple two-thirds requirement that is now in rule XXII, with the exception that the authors of that resolution and the members of the Committee on Rules and Administration endeavored to close the loophole. That has consistently been the position of the able Senator from Nebraska, the minority leader.

But, in order to get a meeting of minds, and because some of those from the South who had a different point of view had requested that he write into it as a basis of discussion the words "three-quarters," he did so, though he made it perfectly clear, and every man who attended that conference, if he will recollect, will have to testify to the fact, that he was not for a three-quarters rule, that he was not proposing it, that it was merely there because it was requested by some of the southern Senators.

On this issue I have disagreed with some of my friends and able colleagues from the South. But I want to pay them a tribute tonight. Though we have disagreed, I believe that they entered the conference with an open mind, attempting to find some middle ground around which we might gather and present to the Senate of the United States a reasonable compromise that could have the overwhelming support of a large number of Senators indeed, I believe an overwhelming majority of the Senate of the United States.

How different, as a matter of fact, is the present two-thirds rule from the constitutional two-thirds rule which was the basis of the compromise proposal? If there are 96 Senators in the Senate Chamber present, under the present two-thirds rule it requires 64 Senators to obtain cloture. Under the constitutional two-thirds proposal it requires the same 64 Senators.

If there is one absentee in the Senate of the United States, and there are only 95 Senators present, it requires 64 Senators, under the present two-thirds rule, and it requires 64 under the requirement of two-thirds of the entire membership of the Senate.

If there are 94 Senators present in the Senate, it will require 63 on the basis of two-thirds of those present, and 64 under a constitutional two-thirds, a difference of one Senator.

If there are 93 Senators present it will require 62 under the two-thirds of those present, and 64 under the two-thirds of the whole Senate.

Now as a practical matter, whenever there is a cloture vote history has shown that there has been an average of more than 90 Senators either present and voting or paired. Therefore the difference is a very small difference indeed between a two-thirds vote and a constitutional two-thirds vote. And I say to those on the majority side of the aisle, who have kicked over this possibility of compromise, that they assume a heavy responsibility when they do so, because they leave the Senate of the United States defenseless. The responsibility for any filibusters hereafter, the responsibility for blocking legislation upon a motion to take up a measure, regardless of what that measure may be, is going to rest squarely upon the shoulders of the majority leadership if they block this one fair effort at a reasonable compromise.

I do not know on what basis they intend to do this, but I do say—and I believe it can be said without fear of contradiction—that we had a fine opportunity of adopting in its original form the Hayden-Wherry resolution up to the time the President of the United States injected himself into this controversy. He was first injected into the controversy by the able majority leader when he came out of the White House and said that the President of the United States felt that the Congress should adopt a new cloture resolution. If he had stood on that, I still think we could have won the fight. But did he stop there? He did not. The President of the United States, going beyond his jurisdiction or his proper function as an executive officer of the Government, losing sight of the fact that we do have a separation of powers, again injected himself into the situation, and came out in favor of a simple majority. He completely left his own leadership in the Senate of the United States clear out on the end of a limb. Not even his leadership in the Senate of the United States could support him on that fantastic proposal.

When we had almost arrived at a reasonable solution, when every man who sat in that conference had a reason, when he left it on Sunday, to believe that in good faith the southern Senators would go to their conference, those of us on this side of the aisle representing two different points of view would go to our conference, and the majority leadership would go to their conference—and all of us, I think, had a reasonable idea that we would be able to work out this situation—then what happened overnight? I do not know what happened. I do not know whether telephone calls came in from Florida or elsewhere, but apparently overnight this situation was just kicked in the teeth, the props were kicked from under the only reasonable solution we might have.

I do not know why this is being done. It seems to me that we are losing the last best hope we have at this session of the Congress to secure an effective cloture. One almost gains the impression that on this matter, like the negotiations conducted by Molotov, they do not want any fair and reasonable solution to the problem. But I say that if this reasonable proposition fails, the responsibility must rest upon the shoulders of the majority leadership of this Chamber.

Mr. WHERRY and other Senators addressed the Chair.

The VICE PRESIDENT. The Chair recognizes the Senator from Nebraska.

Mr. WHERRY. Mr. President, I appreciate the observations made by the Senator from California. I do not mean in any way to inject vociferous arguments here at this point in the debate on the rule. But I certainly feel as I felt when I requested the conferences, that all those who attended the conferences should have a right to bring the facts to the Senate for the information of the Senate.

I appreciate very much the remarks of the Senator from California, who is one who has been constantly in favor of a constitutional majority, one who has given untiringly of his efforts to bring about a change in the cloture rule. He knows, and every other Member of his group knows, including the majority leader, that I was asked to put down on paper something that would be tangible, upon which all those who were present might have some basis for discussion.

Mr. LUCAS. Mr. President, will the Senator yield there?

Mr. WHERRY. Yes.

Mr. LUCAS. I do not know a single thing about the 75 percent majority proposal—how it got there in the beginning.

Mr. WHERRY. Did I not say I was only for a two-thirds majority only?

Mr. LUCAS. The Senator said he was for a constitutional two-thirds after he got to the conference. I am talking about how the 75 percent proposal arose in the beginning. Do not associate me with that, because I had nothing to do with the resolution whatsoever until the Senator from Nebraska presented it to me in his office some time Saturday night. It was all prepared at that time.

Mr. WHERRY. That is true. I have no quarrel with that statement.

Mr. LUCAS. Just leave me out of the original 75 percent.

Mr. WHERRY. If the majority leader does not want to corroborate the statement I made when I presented this work sheet, when I stated to the group that I was attempting to put down the minimum which those who were interested would support, I shall have to do the best I can.

Mr. LUCAS. Mr. President——

Mr. WHERRY. Mr. President, I decline to yield.

Mr. LUCAS. I was trying to help the Senator.

Mr. WHERRY. I appreciate the Senator's help; but the way he is helping me is not very much assistance so far.

Mr. CHAVEZ. Mr. President——

Mr. WHERRY. I stated at the beginning that I was not for some of the provisions on the working sheet; that I was not for the three-fourths vote on the particular cloture proposal mentioned, either with respect to the rules, or with respect to everything besides the rules.

Mr. MCGRATH. Mr. President——

Mr. WHERRY. I will not yield until I am through with this statement.

Mr. MCGRATH. I merely wanted the Senator to yield for a question.

The VICE PRESIDENT. The Senator declines to yield.

Mr. WHERRY. I said in the beginning, and I said half a dozen times in our discussions, and I stated at the close, that so far as I was concerned, I could never go along with the three-fourth's proposal; but there were those who said that the basis must depend on the minimum which was included in the work sheet for our discussion.

I handed those sheets to the Members, and when we got through I asked them to give them back to me. I was not in favor of some of the provisions. One or two Members said they wanted to keep them and submit them to their associates. I said, "If you want to keep them,

I want you to take a pencil and change every one of the 'three-fourths' to 'two-thirds.'" Mr. Trice was present, and he changed every one he could get his hands on.

Those are the facts about the work sheet, upon which we tried to set down in black and white what each faction would have to have as a minimum, to constitute a basis for discussion.

Mr. CHAVEZ. Mr. President——

Mr. WHERRY. Let me finish my statement, please.

The VICE PRESIDENT. The Senator declines to yield.

Mr. WHERRY. I left that meeting with the firm conviction that we were agreed on the principles of what we were trying to do. I should like to take 2 or 3 minutes to make a few observations as to what we tried to do, to use it as a basis——

Mr. MYERS. Mr. President, will the Senator yield for a question?

Mr. WHERRY. I will not yield until I am through.

We applied the Hayden-Wherry resolution to everything that could possibly be brought before the Senate, with the exception of the rules. That is the formula on which we started. There were those in the group who wanted to protect the rights they had under the rules. We said, "All right; we will try to give you protection on the rules, provided you will make the concession on everything else but an amendment of the rules." I think that is sound.

The Senator from Rhode Island [Mr. McGRATH] says in his statement to the press that—

> The administration forces, at a caucus, almost unanimously rejected a GOP proposal to limit debate on the vote of 64 Senators.

Mr. President, in the caucus this afternoon everyone present, with the exception of the majority leader, agreed on a two-thirds vote of the membership of the Senate. Everyone but the majority leader——

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

Mr. CHAVEZ. Mr. President——

Mr. WHERRY. Everyone but the majority leader agreed to take this proposal back to the respective conferences and put it up to the conferences to get further instructions.

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

Mr. WHERRY. I will not yield until I finish this statement. Then I shall be glad to yield to the Senator.

Mr. MYERS. Will the Senator yield to correct a statement of fact?

The VICE PRESIDENT. The Senator declines to yield, and no Senator has the right to interrupt him unless he yields.

Mr. WHERRY. A genuine effort was being made by those of us who were interested in changing the rules. We said then, and I say now, that all the rights that ever have been gained because of precedents which have been established, and all the rights now available under the rules would be preserved so far as the rules are concerned. There would be no change. So there can be no quarrel with that proposal.

Mr. MYERS rose.

Mr. WHERRY. Just a moment.

The proposal upon which there has been a basis of agreement is that the rules remain the same so far as the limitation of debate is concerned as relates to an amendment to the rules themselves. Every right in that respect which has ever existed would be preserved. Nothing would be taken away, with one exception, and that is that if and when a motion to amend the rules is finally taken up, if it ever gets that far—and in that respect there would be 100 percent protection against the motion to take up an amendment to the rules—but if it gets there, instead of the two-thirds vote, there would be a constitutional two-thirds. Every Senator present in that caucus, including the majority leader, agree to that. It was not a GOP plan.

Mr. McGRATH. Mr. President——

Mr. WHERRY. That much of the recommendation was agreed upon by every Member in that conference.

Mr. McGRATH and Mr. CHAVEZ addressed the Chair.

The VICE PRESIDENT. Does the Senator yield, and if so, to whom?

Mr. WHERRY. I will not yield until I finish my statement.

The VICE PRESIDENT. The Senator declines to yield.

Mr. WHERRY. The Senator from Rhode Island says tonight, "We are not going to compromise in any way that would make the rule stiffer than it is now."

I do not agree with that statement. It does not represent the facts. I feel that it does not carry all the information. I have a very high regard for the Senator from Rhode Island, but I speak as one who has studied the rules with the Senator from Arizona [Mr. HAYDEN], one of the most able authorities on rules in the Senate. He has been here for a great many years.

This is the first time we have been able to obtain approval of a proposal under which cloture could be applied to a motion to take up a measure. We have never had it before.

Rule III relates to amending the Journal. This is the first time, notwithstanding rule III, and notwithstanding rule VI, that we have been able to obtain approval of a proposal to obtain cloture, so that if any Senator wanted to get a bill off the calendar and he should move to take it up, that motion, under the agreement which I should like to see brought to the floor of the Senate, would be subject to cloture. A cloture petition would apply to amending the Journal; and notwithstanding rule VI, it would be possible to obtain a vote on cloture so that legislation could be brought up.

We have never had such a thing before. That certainly is giving up, to my mind, a great deal of protection which has been insisted upon by those who do not want to give it up. I refer to Senators from the Southland.

The only concession we have made is with respect to the two-thirds rule, if and when a cloture petition is filed. The rule now is two-thirds of those present and voting. We agreed to the constitutional two-thirds. The only difference is the difference in the vote on a cloture petition, as between two-thirds of the membership voting, and two-thirds of the membership of the Senate. It was shown to us time and again that, based upon past votes, that difference did not amount to a vote and a half. I am sure that Senators will agree with that statement.

Mr. MYERS and Mr. CHAVEZ addressed the Chair.

The VICE PRESIDENT. Does the Senator from Nebraska yield; and if so, to whom?

Mr. WHERRY. I decline to yield at this time. I wish to complete my statement.

The VICE PRESIDENT. The Senator declines to yield.

Mr. WHERRY. I should like to inform Senators as to what happened at these meetings, and I should like to correct the impression that I ever favored a three-fourths rule. From the first I stated that I would not support it. The only concession I have made has been to go along with the Senator from Arizona [Mr. HAYDEN] and support the change from a vote of two-thirds of the Senators present to a constitutional two-thirds of the Senate. He himself has agreed with the group with respect to that change in the rule. The only one who has objected to the constitutional two-thirds is the majority leader; and he agreed to the proposal with respect to a change in the rules. So it comes down to one little difference. If it is desired to invoke cloture on a motion to take up a piece of legislation, whether it relates to the civil-rights program, or labor, or anything else, all that is necessary to do under the new proposal is to make the motion. If debate ensues on that motion and if Senators feel that the debate should terminate, under the proposed change a cloture petition would lie on that motion. That was never possible before. With the new rule, even the amendment of the Journal would be taken out of the picture. With the new rule, rule VI would be out of the picture, so that a cloture vote could actually be taken on a motion to take up proposed legislation, and then, after the proposed legislation were taken up, a cloture vote could be taken on the proposed legislation itself.

I did not inject the matter of civil rights into this picture. I made it plain that I was interested only in changing the rule. But I say that if any of the civil-rights measures—I will not say all of them—are attempted to be brought up under this new provision or rule, they will be able to be brought up, and Senators will have a chance to have them passed. That is something that has not been possible before. So I say to the Senator from Rhode Island in all sincerity that this proposal is not a stiffening of the rule.

I should like to see all of us agree on this proposal. I should like to bring it up as the Hayden-Wherry resolution came up, so that all of us can agree. Personally, I should like to have the two-thirds vote apply, and I say that again on the floor. But I am willing to go to the two-thirds constitutional vote, in order to get everything we need in connection with bringing about an amendment of the rule, because I think 90 percent of our need involves having this

new rule apply to everything but the rules themselves.

This is the first time that a change in the rules has been asked for in all the years I have been here, and of course it is under the cloture rule. Perhaps I should say that beginning 2 years ago was the first rule change attempt we have had made. But 90 percent of the things we bring up here are not rule changes; they are motions to bring up proposed legislation.

I say now, and I want to say it on the floor, that I am getting along with all groups. The majority leader has been very fair to us, and has expressed his own opinions. So far as I know, we are in complete harmony. I personally feel that he has gone a long way to try to compose these differences.

I also wish to pay my compliments to the Senator from Georgia [Mr. RUSSELL] and the Senator from Virginia [Mr. BYRD]. I tell the Senate that they are giving up an endless amount of rights when they agree to have a cloture petition applied to a motion to bring up proposed legislation; and every fair man will agree with that statement.

The only difference is between a two-thirds vote and a two-thirds constitutional vote; and the agreement was that that difference would run about a vote and a half.

Now I yield, first to the Senator from New Mexico [Mr. CHAVEZ].

Mr. CHAVEZ. No, Mr. President; I wish to speak in my own time.

Mr. WHERRY. Very well; then I shall be glad to yield to the Senator from Rhode Island.

Mr. McGRATH. Mr. President, the Senator from Nebraska has said that he does not have the figures. I happen to have them. Does the Senator from Nebraska realize that the average vote on the last 19 clotures applied for in the Senate has been 83 votes, which means a difference of 12, or two-thirds means a difference of 8—not 1½?

Mr. WHERRY. I do not recall all the figures, but I know that on the four measures where cloture was applied, it would not have made one iota of difference. They were carried, as I recall, by votes of 76 to 3 or 81 to some other small number; so it would not have made a bit of difference whether it was a constitutional two-thirds or whether it was two-thirds of a majority; and I am talking about the votes on cloture which carried in the Senate.

Mr. McGRATH. Mr. President, will the Senator yield at this point?

Mr. WHERRY. Yes; I am glad to yield.

Mr. McGRATH. Does the Senator dispute the accuracy of the figures I gave, which are the actual figures of the experience in the Senate?

Mr. WHERRY. I do not know where the Senator from Rhode Island got the figures, and I do not know whether they are accurate.

Mr. McGRATH. I got them from the Office of the Senate itself.

Mr. WHERRY. If the Senator from Rhode Island says they are accurate, I take his word for it.

Mr. TAFT. Mr. President, will the Senator yield for a question?

Mr. WHERRY. I yield.

Mr. TAFT. Is it not true, however, that the fact that fewer than 90 Senators vote is not an evidence of what can be done if the Senators know they have to vote, but is only evidence that there were a large number of pairs on those occasions?

Mr. WHERRY. Certainly.

Mr. TAFT. In other words, there were pairs, by which Senators did not have to be present.

Under the rule proposed by the Senator, as I understand it, or by the conference, every Senator could be included in the vote, except Senators who were absolutely so ill that they could not get to the Senate. Otherwise the majority could always get every vote they had in the Senate.

Mr. WHERRY. Certainly.

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

Mr. WHERRY. I ask the Senator to wait a moment, please.

Furthermore, Mr. President, if each Senator was in his seat, where he ought to be if he is living—I admit there are times when we have vacancies because of death—but if we have a full roster, as we have had for a month and a half, and if all Senators are in their seats, there is not a bit of difference between a two-thirds vote and a two-thirds constitutional vote. If Senators are here, they will vote; and if the matter is important enough that cloture on it is desired, Senators should be here. So in reality we would not be giving up a thing, unless there were a vacancy which was caused by death.

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

Mr. WHERRY. I yield.

Mr. MYERS. Do I correctly understand that the Senator from Nebraska is still interested in working out a compromise?

Mr. WHERRY. Yes, sir.

Mr. MYERS. Then let me ask why the Senator is engaging in so much political debate.

Mr. WHERRY. Mr. President, I do not yield for any more of that kind of political observation. The Senator can accuse me of being political if he wishes to do so; but I say I am only interested in changing this rule. I have the courage to stand here and take all the heat you want to pour on me; and when you get all through, I have nothing but a sincere purpose to apply cloture to a rule to take up proposed legislation. The Senator from Pennsylvania is the one man, along with the Senator from Illinois, the majority leader, who should be helping me, because they have to get their program before the Senate of the United States. If they will help us get this rule, they will be able to get most of their program before the Senate by means of a cloture rule; but if they do not, some of their programs will not get before the Senate, because they will not be able to apply cloture on a motion to take up a measure.

Mr. MYERS. Mr. President, will the Senator yield further?

Mr. WHERRY. I yield, if the Senator does not get into a political discussion. I am not discussing this matter on the basis of a political angle.

Mr. MYERS. I know the Senator is not doing that so far.

Mr. WHERRY. I thank the Senator.

Mr. MYERS. But why do we have such a long conversation at this hour in the morning; why these long speeches at this hour in the morning?

Mr. WHERRY. I shall be glad to state the case. The reason for that is that I merely requested of the majority leader that, inasmuch as the Senator from Rhode Island had issued a statement which I did not think conformed with the facts as I know them, each and every Senator should have a right to rise on the floor of the Senate and give his own version. Certainly we were there and took part in it, and I thought we should have a right to report to the Senate.

Mr. MYERS. Mr. President, will the Senator further yield for a brief question?

Mr. WHERRY. First, Mr. President, there is something else I want to say. In every one of these discussions, I want my colleagues to know that I have the highest regard for the work the Senator from California [Mr. KNOWLAND] and the Senator from Massachusetts [Mr. SALTONSTALL] have done. I could not ask for finer cooperation. I want everyone to know that we did not guarantee any agreement. All we said we could do was to have a possible understanding of this proposed solution, and that we would take it back to our conferences, and then would abide by the direction of the conference; we said that none of us was speaking in any way but individually, that there was no official or formal committee. I opposed having a committee organized. I thought the matter came in the right way, from the majority leader, who extended the invitation, and also from the majority whip or deputy majority leader or whatever the proper title may be. I am glad that the Senator from Massachusetts [Mr. SALTONSTALL] and all the other Senators were there.

Mr. President, we had reached the place where, with the exception of just one thing—and that is the difference between a two-thirds vote by the Senators present and a two-thirds constitutional vote—we were ready to take a step which to my mind would revolutionize the future of the Senate in respect to the bringing up of legislation. That does not stiffen the rule; it broadens it; and any fair man will agree with that statement.

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

Mr. WHERRY. Certainly I yield. I thought the Senator from Pennsylvania wanted the Senate to take a recess.

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

Mr. WHERRY. I shall be glad to yield, except I am through with my main speech; and if Senators wish to have the Senate take a recess, I shall be glad to yield the floor.

Mr. CHAVEZ. Mr. President, I wish to make a speech in my own time, when I obtain an opportunity to do so.

The VICE PRESIDENT. The Senator from New Mexico is recognized.

Mr. CHAVEZ. Mr. President, I think the difficulty at this hour in the morning is that both the majority leader and the minority leader take themselves too seriously. [Laughter.]

They appear to be worried about whether we change rule XX and rule XXII. What the American people are interested in is whether the Senate is going to function.

They are not interested in what the majority leader or the minority leader might think or any maneuverings made in accordance with their judgment and in the best of faith. They do not care anything about that whatever. The question before us now is this: Is the Senate going to do its duty, or are we going to wrangle as to whether the majority leader thinks the minority leader did something or the minority leader says that the majority leader did something? Now, we should be ashamed of ourselves. It is now 20 minutes to 2 o'clock in the morning, and the majority leader and the minority leader are arguing as to what happened in an impromptu meeting as to how to get together. Beautiful. A wonderful thing to tell the peoples of the world, when we are trying to prove that democracy really works.

Mr. President, I am for civil rights, but I am for orderly government first. I want this body to function. Yes, I am for FEPC; I am for antilynching legislation, and for other civil rights. I love all the Senators from the South. I do not agree with them in their philosophy. But, by the eternal! merely because we cannot get antilynching legislation or anti-poll-tax legislation or FEPC, are we to stop the work of the Senate? Are we merely going to argue about getting some Senators together in a meeting room? They think they are hot. They are not. I believe in the Senate of the United States. Senators were elected to do their duty in this body. The sooner we get together the better. If we are licked on civil rights, well, we are just licked. That is all there is to it. The majority leader could quit his effort right now. We cannot put the civil-rights program through. I want to, but we just cannot. Are we going to quit and not pass the deficiency bill? Are we not going to pass certain other bills which are necessary for the country? Are we going to argue forever about this thing? I think the majority leader and the minority leader had better get together and find some way to get the Senate functioning.

Mr. MORSE. Mr. President, I hesitate to rise to speak at this hour of the morning, but there were some remarks made by the Senator from Nebraska and the Senator from California with which I am in complete disagreement. Therefore, for the RECORD, and at the time the remarks are made, I wish to answer them.

As we all know, for a great many years prior to 1946 the Democrats were in control of the Senate. They did not take effective steps to adopt a cloture rule so as to make it possible to control filibustering in the Senate. So much, from the standpoint of the responsibility of the Democratic Party on this issue.

But during the Eightieth Congress the Republicans were in control of the Senate. What did the Republicans do about making that fight which sometime must be made if we are to check filibustering in the Senate? By and large, they did nothing. For a large part of that time the Senator from Nebraska was acting majority leader on the Republican side of the aisle. I want to say what I have said before, that the Republican Party cannot escape its responsibility between the years of 1946 and 1948 for not doing anything effective about checking the filibuster in the Senate. There is no question about the fact, at least in the cloak rooms, if they do not want to admit it on the floor of the Senate, that there is a general admission that a great deal of political strategy is taking place in regard to party position on this issue.

The responsibility of the Senate, Democrats and Republicans alike, who really want to do something about filibustering in the Senate, is to join forces and drive the filibuster off the floor of the Senate, by sitting here for as many hours and days and weeks as necessary to break it. I think we could break the present filibuster in 10 days if we were willing to sit here as Republicans and Democrats in continuous session to break it. Of course, it would cost a price; it would cost a price in respect to certain legislation; but the American people are never going to get rid of the practice of the filibuster in the Senate without paying a price, because whenever this fight is made, there is always going to be some important legislation backlogged as a result of it. I am willing to trust the American people on that issue, and I happen to hold to the point of view that an overwhelming majority of the American people want the practice of filibustering in the Senate stopped.

I also happen to hold to the point of view, contrary to that held by my good friend the Senator from California [Mr. KNOWLAND], for whom I have an exceedingly high respect, that the American people do not think it fantastic to make a fight for majority rule in the Senate. Why? It is the principle of majority rule that controls in the overwhelming majority of the State legislatures in limiting debate. It is majority rule that prevails in the House of Representatives in regard to a limitation of debate. Since when does it become fantastic to stand for the principle of majority rule in limiting debate in the Senate? The only thing fantastic about it is that there has been for many years a strong minority in the Senate from a section of our country that has taken the position it ought to have the right preserved to it to domineer the majority in the Senate by filibuster tactics.

They talk about our sitting here as ambassadors from our States. I say that notion of representation in the Senate died with Calhoun and with the War Between the States. We sit here, in my judgment, to do the people's business, and we cannot do the people's business, in my judgment, with any such proposal as I have heard from the lips of the Senator from Nebraska tonight, which he calls a compromise, that does not in effect involve a tightening of the cloture rule.

The statistics cited by the Senator from California and also by the Senator from Nebraska include pairs and dead pairs. Senators who have gone away and walked off the floor of the Senate cannot be included in any statistical analysis of what the effect of the proposal made by the Senator from Nebraska will be.

The Senator from Rhode Island is correct when he points out that in the last 19 cloture-petition attempts in the Senate, the average vote was 83. That means that in some instances the vote was down to 76. But what the Senator from California and the Senator from Nebraska are overlooking is that when there is a constitutional two-thirds requirement, men are encouraged to take "walk-out powders" in the Senate and let the Sergeant at Arms find them—if he can. Mr. President, if you will check up on the experiences of the attempts of the Sergeants at Arms over the years to find Senators who do not want to be found, I will tell you that the constitutional two-thirds majority will open the way, will open the door to some very unfortunate practices in the Senate if what we are actually trying to do is have an effective cloture rule against filibustering.

I said at one time that if I went along with anything other than a majority rule, I would go along with the Hayden-Wherry resolution. It does not make much difference whether I go along with it or not, because, for the present, I think the Senator from Arizona [Mr. HAYDEN] and the Senator from Nebraska [Mr. WHERRY], if they can get it to a vote, will get a majority vote for it in the Senate of the United States. But that will not solve the problem, because, in my judgment, time will show that it will not effectively check filibusters. We shall not check filibusters in this body until we come to majority rule. I am perfectly willing to let the last forum decide that, which will be the people of the Nation, if we have to take this issue to them in the next 4 to 6 years.

I desire to say, in closing, Mr. President, that I shall continue to fight for majority rule in the Senate, and I do not care what adjectives any colleague wants to attach to that fight for what I consider to be a basic tenet of American democracy. The Senator from California can call it fantastic if he wants to, but I will meet him anywhere in California, before his own constituents, and let them decide whether the issue I am fighting for in the Senate of the United States is fantastic, because I believe the people of America believe that the time has come to put majority rule into practice in the Senate. They will not reach the judgment, Mr. President, that it is fantastic.

I say to the Senator from Nebraska that I am not in the slightest degree interested in such a compromise as that which he has outlined tonight. The only way he will get it by me is by a motion by which I shall be outvoted. He will never get it by me on any parliamentary basis that requires unanimous consent.

I repeat what I have said several times since I have been in the Senate, that once again the time is here for Republicans to stand up and be counted before the minority groups of America who want to know whether we are going to protect their civil rights by meeting head-on this filibuster intimidation which is raised in this case, by continuous sessions for so long as it shall take to drive the filibusterers down in the fight which they are waging against the majority.

Mr. President, it was day before yesterday that a Senator stood up on the floor of the Senate and compared the fight which some of us are making for majority rule in the Senate with communistic tactics. Let me say that the commonest communistic tactic is to use minority devices to defeat the majority. That is my answer to that Senator who sought to spread on the RECORD the innuendo that those of us who are fighting for majority rule in the Senate of the United States are fighting for a communistic principle.

Once again I say, in closing, Mr. President, that I am willing at any time to let the American people decide whether the fight I have made, and which I shall continue to make, in the Senate for majority rule conforms to their idea of democratic processes.

Mr. HUMPHREY and Mr. TAYLOR addressed the Chair.

The VICE PRESIDENT. The Senator from Minnesota.

Mr. HUMPHREY. Mr. President, I realize the lateness of the hour, but, as some Senator said a moment ago, there does not seem to be any great desire on the part of my colleagues to go to their restful homes. Apparently, every Senator has been properly excused by his beloved wife, and is permitted to have the evening out. On that basis, I should like to make a few remarks in reference to what I have just heard on the other side of the aisle from the distinguished junior Senator from Oregon [Mr. MORSE].

I want the Senator from Oregon to know, referring to his comments of a few days ago in the Senate, that I took exception to one of his remarks in which he said he was the only Member of the Senate who upheld the position of the President of the United States as to the majority-rule principle in the application of cloture. I am sure that both of us, in discussing this subject in a friendly manner, realize that on this side of the aisle the junior Senator from Minnesota has stood for the majority-rule principle. I have stood for it, recognizing that there were not very many other adherents, but recognizing it was a sound principle; and I think I shall live to see the day when it is adopted in the Senate of the United States.

I have heard a great deal about compromise. I have attended some of the caucuses in which we have talked about compromise, and I have said, in no uncompromising terms, that I was not for any compromise beyond what has already been compromised in the Hayden-Wherry resolution. I submit to this body that the Hayden-Wherry resolution is compromise No. 1. Why do I say that? First of all, there are those of us who believe in majority rule. I gather from some of the remarks in this honorable body that it is almost subversive to favor majority rule in these days. But there are some Senators in this body who believe in unlimited debate, and between the poles of majority rule and unlimited debate, where there is no application of cloture, is a compromise which can be well termed a compromise of the Hayden-Wherry resolution. I am willing to support the Hayden-Wherry resolution—period. I am willing to support it because I recognize it to be a sensible, honorable compromise. I fully appreciate that we cannot all have our way, and I think it is about time we started talking about who gives when the giving needs to be done. It must come on both sides of a compromise, not simply on one side. There is not a single principle in American constitutional government which gives a minority an unrestrained right to obstruct the action of a majority.

I have heard tonight about a so-called constitutional two-thirds majority. I should like to say to the distinguished Senator from Nebraska that it is not a constitutional two-thirds majority; it is an unconstitutional two-thirds majority. I submit to the Members of the Senate that the Constitution of the United States, if it is based upon any one principle, is based upon the single principle of the ability of the majority of the Members of the House of Representatives and of the United States Senate to conduct the business of the Nation. I submit that in the Constitution, wherever there is any difference expressed, it is the exceptions which are outlined in the Constitution. The five particular exceptions in which a two-thirds vote is required—and not a two-thirds constitutional majority vote—we cannot find those words in the Constitution—are as follows:

A two-thirds vote is required for the submission of a constitutional amendment.

A two-thirds vote is required to expel a Member.

A two-thirds vote is required to pass a measure over the President's veto.

A two-thirds vote is required for the purpose of approving a treaty.

A two-thirds vote is required in the Senate when it sits as a court of impeachment.

Everything else in the Constitution is based upon the principle of the majority, all argument notwithstanding.

I should like to call something else to the attention of the Senate. We left the Articles of Confederation when we adopted the Constitution of the United States. The Articles of Confederation permitted a handful of States to place a veto upon the will of the majority. The Articles of Confederation provided, by their express terms, that 4 States out of the 13 could in many instances stop the whole processes of government. I submit to the Members of this honorable body that one of the reasons we abandoned the Articles of Confederation was because of the stalemate of government, the inactivity of government, the failure of government, because of the single fact that a willful minority could stop the onward progress of a majority.

Let me make a few other comments regarding majority rule. I have listened here, day in and day out, and I have attended the sessions of the Senate almost as attentively, and surely as patiently, as have most of the Members of the Senate. I have heard two terms bandied about in such manner that I could hardly believe my ears.

I was brought up to believe that there was no greater honor that could come to a man in this whole Nation than to be selected by his fellow citizens to serve in the greatest parliamentary body in the world, the Congress of the United States. I was likewise brought up to believe that human rights were far more important than property rights, that human rights were God-like in their nature.

I likewise was brought up to believe that a majority will make fewer mistakes in the long run than any selected minority. I never did believe in minority rule, nor do I now. I do not believe in minority rule in Europe. I do not believe in minority rule in America, even if it is by veto or negative action. Yet on the floor of the Senate I have heard repeatedly about the Constitution of this country, and the prerogatives of the Senate, that there is a great prerogative of the minority. If there is any prerogative in the Constitution it is the prerogative of the majority to conduct the business of the country, and not of the minority to obstruct it.

We have heard a great deal about the Constitution. That Constitution is a living instrument, it is an instrument which needs the full protection of every Member of the Senate. I did not take an oath to uphold the rules of the Senate; I took an oath of office to uphold the Constitution of the United States. I am not going to be a party to any kind of a compromise that will bind my hands, and the hands of others, as to changing the rules of the Senate by making it any more difficult to change them than it is now. Frankly I would much rather we would lose the fight on honest, decent principles than to go into some kind of a willy-nilly compromise which may prejudice us for the months and the years to come.

Mr. President, there are some other things I should like to say which have occurred to me since I have been a Member of the Senate. It used to be that back in the times of the feudal era the philosophers argued how many angels could dance on the point of a needle. Now it is getting to be wondered how many Senators can talk about a loophole in a rule.

We have heard much about the loopholes in the rules of the Senate. As has been so well stated by the Senator from Oregon, and as was so eloquently stated by the leader of my party, the Democratic Party, the distinguished Senator from Rhode Island [Mr. MCGRATH], the people of the United States of America are not really particularly concerned about some of the prerogatives of Senators. They are a great deal more concerned about some of the things which they want to see enacted into legislation.

At a time when we are trying to tell the whole world about the validity of constitutional government, at a time when we are trying to tell the world how American democracy works, at a time when we are trying to show to the people of Italy, who are under constant threat of totalitarian government, at a time when we are trying to show France that this Government will work, at a time when we are trying to pierce the iron curtain with our ideas, what are we doing here? We are making a circus out of the United States Senate. I say, as some other Senator said here tonight, it is indeed shameful, not shameful only because of what we do, but shameful because of some of the things that have been said.

I wonder what young boys and girls in the schools of America think when they hear distinguished Senators scorn the principle of majority rule. I wonder what young men and women think when they hear, it seems to me in a sort of indifferent manner, talk, and consideration of what we call civil rights.

Mr. President, I did not come here to pose any civil-rights legislation the first day, the second day, the first week, or the second week. I am not one of those who believe in priority legislation. I think all this legislation is important, and I hope my colleagues on the other side of the aisle think it is important. I think rent control is important; indeed, very important. I think the social-security program expansion is important, that Federal aid to education is important, that the Missouri Valley Authority and the Columbia Valley Authority are important, that the St. Lawrence waterway is important, that the ECA is important. But if we leave the rules of the Senate as they are now, or if we accept the so-called compromise—and I call it an unconstitutional compromise—there could be a filibuster on any one of these programs.

I am convinced, from what I have heard, that there are some who are not going to be too happy about the extension of rent control. How do I know we are not going to have a filibuster on that? I understand there are some not too happy about the North Atlantic Pact. Perhaps we will have a filibuster on that. I have heard there are some who are not too happy about the extension of ECA. I think it is about time we changed the rules in the way proposed, and I can believe, with the Senator from Oregon, that now, right now, is the time to change the rules.

Now just let me say one other thing. I said in our caucus the other day that there are some things I may not agree with, and let me give an example. There is flood control. We have had very few floods in the State of Minnesota. We have had minor overflows of creeks, and once in a while of a river. I do not know how some of my colleagues from the South would like to have the junior Senator from Minnesota stand up and conduct a filibuster on flood control. I know that would be absolutely ridiculous. Of course we need flood-control legislation and flood-control appropriations. That is giving to what we call the national welfare, giving to some people where they have not had a rain in 2 years, much less a flood.

How about support for cotton? I have not heard of any cotton being raised in my State, but I know the Government of the United States needs the Government support price for cotton, and I am going to try to go along with that kind of a program. If I wanted to stand up and say, "I believe in the right of the minority to have unlimited debate," we could stop that program, too. I have heard the Senator from Louisiana say he was not tired when he got through. I can assure him that my physique is fully capable of taking on as arduous a task as he has assumed, and take it on for possibly longer.

There are some not in favor of Federal aid to education. There have always been disputes as to that. Yet I submit that represented in this body are some States, more interested in education than others, that have been fighting this filibuster. In my State for every dollar we get we are going to give three. And so the program is not going to do me any good, and it would be the right of the minority to stand up and carry on the battle against it; but I take the national point of view.

That is not the way we built America. This is not 48 sovereign States; this is the United States of America. This is one Nation, indivisible, just one great United States, and the sooner we get it into our minds that we are living in the twentieth century, when everyone is important in every part of the country, the sooner we will get into our minds that every part of the country is dependent on the others. The sooner we make up our minds that we have to work together as a team and not singly, the sooner we will give America the kind of legislation it needs.

We have heard tonight of a constitutional two-thirds majority. I want the Senator from Nebraska to know that since 1917 only three times has there been, in 19 tries at the application of cloture, a constitutional majority. In only 12 out of 15 times, just 12, has there been even a simple majority. It does not seem to me that even the application of the simple majority principle would be too extreme.

Mr. ROBERTSON. Mr. President, will the Senator from Minnesota yield?

Mr. HUMPHREY. I yield for a question.

Mr. ROBERTSON. Since 1917 has there been a single instance of an attempt to invoke cloture except in the case of the so-called civil-rights measures, as to which some Members of the Senate were willing not to be present when the voting occurred?

Mr. HUMPHREY. I do not have the facts as to that, but during the past 11 years there have been 6 attempts to close debate on the civil-rights bills, and the votes on none of those occasions were such that they would represent a two-thirds or constitutional majority. In six instances they did not even have a simple majority.

Mr. President, let me make my position clear. The fact that there was failure on civil-rights legislation then is no reason why we need to continue to fail. I am one of those who would like to meet with some of the gentlemen regarding this matter and see what we could work out. I heard the distinguished Representative from Arkansas, BROOKS HAYS, make a speech in which he had some very constructive proposals, not negative proposals, but positive, affirmative proposals, on civil-rights legislation. Whether we get civil rights in this session or not is not the issue. I submit to my friends who have been carrying on this filibuster that civil-rights legislation is just as inevitable as social-security legislation was. There were those who fought the social-security program in the same identical manner they are fighting the civil-rights program. We are not talking about civil rights here. We are talking about a rule in the United States Senate. Whatever it may be, that rule needs to be cleared up and made operative. I may say, Mr. President, that I did not write it. I have not been in the Senate long. Many other Senators have had much greater opportunity to deal with this matter than those of us who are freshmen Senators. But I can assure Senators that the people of the United States of America want the United States Senate to function, and they want it to function under the kind of rules by which they can secure the enactment of legislation.

They are not at all interested whether we are gentlemen to each other here. They are not at all interested whether we go around to each other and work these things out so we are all happy. The people of the country want to know that we are going to pass legislation about which they are going to be happy. We are the servants of the people, I remind the Senate. They are not our servants. The Congress belongs to the people. It does not belong to us. The rules of the Senate belong to the people. They do not belong to us. The Constitution is the mechanism by which the people of the United States can make their will felt in the processes of government. Sometimes I think we get so cozy, we become so secure when we get into our 6-year terms, that we forget that there may be some people out in the country who are expecting things to be done.

I should like to call to the attention of every Senator the brilliant address which was made on the floor of the Senate by the Senator from Florida [Mr. PEPPER]. Last night I read that address twice, once to myself and once to my family and friends. I asked the distinguished Senator from Florida how many of his colleagues were present to listen to him. He said, "A sizable number. Some came and some went." But I submit that there has been no address on the floor of the Senate which has more clearly presented the argument in behalf of the change of the rules than that which was made by the Senator from Florida. I think it should be must reading. Since we have prerogatives, let us have a prerogative on reading for each and every one of us, to apply ourselves just a little bit to reading that very important elucidation of the facts pertaining to this particular issue.

I wanted to say what I have said, Mr. President, because frankly I think it needs to be said. I think it has been said

by others, but I wanted it said from this side. I say to the Senator from Oregon, if he can talk his colleagues on his side of the aisle into favoring majority rule, we will work on our colleagues on this side, and I say to the Senator from Oregon that if he cannot, then let us adopt the Hayden-Wherry resolution. But, for goodness' sake, let us not permit ourselves to be talked into something that is called a compromise, which is not a compromise at all. Compromise was made in the Committee on Rules and Administration. That is where the compromise was made. That is all the compromise the junior Senator from Minnesota is going to stand for so far as his vote is concerned.

I think, if Senators go back to their people and ask them what they think about the matter, they will learn that the position which has been announced over here is the position that has pretty much public support. It might not be a bad idea if we all take that position.

Mr. LUCAS. Mr. President, I shall not detain the Senate very much longer, but I feel that some brief remarks and observations are necessary to be made before a motion is made to take a recess.

When the distinguished chairman of the Committee on Rules and Administration came to me earlier in the evening and said he desired to talk to me about a further compromise with respect to the pending matter, we recalled that in the earlier part of the evening we found it impossible to reach an agreement. I gave the information to the press at that time that we could not reach an agreement; that I would return to the floor of the Senate and at the first available opportunity move to adjourn, and that I hoped I might be able to secure enough votes to carry the motion.

In the meantime I heard it rumored back and forth that I was not going to secure the votes to adjourn, which would have been perfectly all right with me. So far as the majority leader is concerned, I am willing to assume the responsibility for what has happened up to now. My good friend, the Senator from California [Mr. KNOWLAND] has suggested that we are going to have to assume that responsibility, and I am willing to assume the responsibility for the move which has been made up to now.

The Senator from Nebraska [Mr. WHERRY], the minority leader, said he wanted to talk to me, so the Senator from Arizona [Mr. HAYDEN] and I went and talked to the minority leader. He said, "Senator LUCAS, I think there is an opportunity probably to compromise this thing and settle it yet, if you are willing to have the Senate take a recess rather than adjourn tonight." He said, "I will talk to the Senator from Virginia [Mr. BYRD] and the Senator from Georgia [Mr. RUSSELL] about it."

I have not heard yet from either one of those Senators in the debate. I should like to know whether the arrangement is satisfactory to either the Senator from Virginia or the Senator from Georgia with respect to adjournment or the taking of a recess. Both Senators are just as vitally interested and probably more so with respect to this situation than are the Senator from Illinois or the Senator from Nebraska.

Mr. President, I am an agreeable man, a sympathetic individual, but at the same time there comes a time for action, and I feel that that time has come. Never since I have been in the Senate has it been more necessary for the Senate to do one thing or another; either to accept the compromise which was proposed this afternoon by the Senator from Illinois or take some other action. As I told those with whom I conferred, I would have to come before my committee again, but I thought I could sell that idea to them, and I would be glad to try it, and that I was for it myself.

Mr. President, we have either got to fish or cut bait. The time has arrived for action. I see the log jam of important legislation there now is. Rent control is an extremely important matter. It must be considered by the United States Senate before the date of the expiration of the rent-control law. If we are going to have round-the-clock sessions, as some of my distinguished friends have suggested, it will simply mean that no legislation of any kind can be considered by a single committee of the United States Senate, because we have been given notice that under those circumstances no committee would be permitted to meet, and under those circumstances, Mr. President, as majority leader, I would refuse to permit any kind or character of unanimous-consent request to go through the Senate. So if round-the-clock sessions are to be the program, then there absolutely can be no action of any kind.

I know that some Senators would love that kind of a program. I know that some Senators would like to see everything presented by President Truman in his campaign last year go down to defeat. I know that there is a great deal behind this effort. Senators are not fooling the American people with this kind of a proposition. The trouble is that 9 times out of 10 the American people are far ahead of every individual Senator. They know what is going on. We cannot fool anyone.

Mr. President, I never expected to participate in this kind of debate tonight. I was under the impression that we were going to return to the Senate Chamber, that I would make a brief statement about adjourning, and that my friend from Nebraska [Mr. WHERRY] would say that he thought we could reach a compromise, and perhaps suggest a recess. But instead of that, the time had come for individual Senators who wanted to make certain speeches about what happened, and spread themselves on the floor of the United States Senate, to which I have no objection. But I did not quite have that understanding. It is perfectly all right to do that. I have enjoyed the speeches; especially did I enjoy the speech of my good friend from New Mexico [Mr. CHAVEZ], in which he chided the minority leader and the majority leader because we were arguing over who did this, and who did that. I think there was some merit in what he said.

After all, it does not make much difference. There may be a slight misunderstanding here and there. The question finally is, Are we going to get action or are we not? I do not want anyone to question my good faith with respect to any meeting which I attended.

Mr. President, I am about to make a motion that the Senate take a recess. I am going to keep that agreement. I do not know whether Senators will vote with me or not. I may not be able to carry the vote. I understand that the coalition is strong enough to keep us from either taking a recess or adjourning, if it wishes to do so. That is perfectly all right with me, if they want to do it. In the mean time, if we take a recess and can work out something in the morning before noon, I shall certainly be very happy to do it. But when we come back at noon tomorrow, if we cannot reach some agreement, I hope I can get the Senate to agree with me and adjourn in order that we may take up important measures which are now pending on the calendar.

Mr. President, I should like to ask my good friend the Senator from Georgia [Mr. RUSSELL] if he agrees with the arrangement which the Senator from Nebraska [Mr. WHERRY] has suggested, if he was a party to it, or if he knows anything about it.

Mr. RUSSELL. Mr. President, would the Senator mind repeating his question?

Mr. LUCAS. I merely stated that the Senator from Nebraska came to me and said that if we would take a recess until tomorrow he thought there was an excellent opportunity to reach some compromise, and that he wished to make one further effort to do so. He stated that he would talk with the Senator from Georgia and the Senator from Virginia to see if that plan was satisfactory. I wonder if he did talk with the Senator from Georgia, and whether or not the proposal is satisfactory to the Senator from Georgia.

Mr. RUSSELL. Mr. President, the Senator from Nebraska did consult with the Senator from Virginia and the Senator from Georgia, and asked us if we would not participate in one further conference. I want to be perfectly frank with the Senator from Illinois. In view of the attitude which has been taken, I think there is only a faint hope of accomplishing anything. I told the Senator from Nebraska that I would try to be reasonable, and would attend conferences on this matter to the end.

Mr. LUCAS. I thank the Senator from Georgia. I have never questioned the statement made by the Senator from Nebraska, but I wanted to corroborate it on the floor of the Senate, because up to this time neither the Senator from Georgia nor the Senator from Virginia has said anything about the tentative agreement or understanding which they had with respect to further conferences tomorrow.

RECESS

Mr. President, I move that the Senate take a recess until 12 o'clock noon today.

The motion was agreed to; and (at 2 o'clock and 25 minutes a. m., Tuesday, March 15, 1949), the Senate took a recess until 12 o'clock meridian of the same day.