

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era—Democratic Rights/Voting

Virginia Debates Reapportionment and Property Qualifications (1829–30) (expanded)¹

The Virginia Constitutional Convention of 1829–30 was primarily devoted to voting rights. Two issues dominated the agenda. The most important was the apportionment of representatives to the state legislature. The original state constitution, by counting slaves as persons for purposes of representation, sharply increased the percentage of representatives from the slave-rich eastern part of the state. Western delegates insisted that representation be apportioned by the number of eligible voters, not total persons in a county. The other issue was the right to vote. The state constitution in 1829 required that voters have a freehold worth at least \$50. Many Virginians insisted that all taxpayers should have a right to vote. Both reapportionment and voting rights pitted the more affluent eastern counties of the state against the less affluent western counties.

The delegates reached compromises on both issues. Virginians allocated representatives by voters, but relied on an 1820 census that did not fully capture relative population increases in the western counties. The freehold qualification was cut in half, but not eliminated.

The continued malapportionment of the Virginia legislature was consequential. Three years later, Virginia held another constitutional convention. Slavery was a main item on the agenda. Western representatives proposed a gradual emancipation. Their proposal was barely defeated. Had representation in Virginia in 1833 been allocated accurately on the basis of the voting population, Virginia might have taken the first constitutional steps toward becoming a free state.

Consider the new political alignments in Jacksonian America when reading the excerpts below. James Madison, James Monroe, and John Marshall were political opponents during the national era. These elder statesmen all opposed the Jacksonian revolution. Each supported property qualifications for voting and apportionment. Why did these former political rivals unite in the late 1820s? Do you note important differences and similarities between Jacksonian arguments for an expanded franchise and the arguments made during the national era? To what extent did slavery influence arguments made in Virginia?

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“The Memorial of the Non-Freeholders of the City of Richmond,”

Your memorialists . . . belong to that class of citizens, who, not having the good fortune to possess a certain portion of land, are, for that cause only, debarred from the enjoyment of the right of suffrage. Experience has but too clearly evinced . . . by how frail a tenure they hold every other right, who are denied this, the highest prerogative of freemen. . . . Comprising a very large part, probably a majority of male citizens of mature age, they have been passed by, like aliens or slaves, as if destitute of interest, or unworthy of a voice, in measures involving their future political destiny: while the freeholders, sole possessors, under the existing Constitution, of the elective franchise, have, upon the strength of that possession alone, asserted and maintained in themselves, the exclusive power of new modeling the fundamental laws of the State. . . .

How do the principles thus proclaimed [in the Virginia Bill of Rights], accord with the exiting regulation of suffrage? A regulation, which, instead of the equality nature ordains, creates an odious

¹ Excerpts taken from *Proceedings and Debates of the Virginia State Convention of 1829–30* (Richmond: Samuel Shepherd & Co., 1830).

distinction between members of the same community; robs of all share, in the enactment of the laws, a large part of the citizens bound by them, and whose blood and treasure are pledged to maintain them, and vests in a favored class, not in consideration of their public services, but of their private possessions, the highest of all privileges: one which, as in now in flagrant proof, if it does not constitute, at least is held, practically to confer, absolute sovereignty. . . .

. . . To ascribe to a landed possession moral or intellectual endowments, would truly be regarded as ludicrous were it not for the gravity with which the proposition is maintained, and still more for the grave consequences flowing from it. Such possession no more proves him who has it, wiser or better, than it proves him taller or stronger, than him who has it not. That cannot be a fit criterion for the exercise of any right, the possession of which does not indicate the existence, nor the want of if the absence, of any essential qualification.

. . . Your memorialists do not design to institute a comparison: they fear none that can be fairly made between the privileged and the proscribed classes. They may be permitted, however, without disrespect, to remark, that of the latter, not a few possess land: many, though not proprietors, are yet cultivators of the soil: others are engaged in avocations of a different nature, often as useful, presupposing no less integrity, requiring as much intelligence, and as fixed a residence, as agricultural pursuits. Virtue, intelligence are not among the products of the soil. Attachment to property, often a sordid sentiment, is not to be confounded with the sacred flame of patriotism. The love of country, like that of parents and offspring, is engrafted in our nature. It exists in all climates, among all classes, under every possible form of Government. Riches oftener impair it than poverty. Who has it not is a monster.

Your memorialists feel the difficulty of undertaking calmly to repel charges and insinuations involving in infamy to themselves, and so large a portion of their fellow citizens. . . . The freeholders themselves know them to be unfounded. Why, else, are arms placed in the hands of a body of disaffected citizens, so ignorant, so depraved, and so murderous. In the hour of danger, they have drawn no invidious distinctions between the sons of Virginia. The muster rolls have undergone no scrutiny, no comparison with the land books, with a view to expunge those who have been struck from the ranks of freemen. If the landless citizens have been ignominiously driven from the polls, in time of peace, they have at least been generously summoned in war to the battlefield. Nor have they disobeyed the summons, or less profusely than others, poured out their blood in defense of that country, which is asked to disown them. Will it be said they owe allegiance to the Government that gives them protection? Be it so: and if they acknowledge the obligation; if privileges are really extended to them in defense of which they may reasonably be required to shed their blood, have they not motives, irresistible motives, of attachment to the community? Have they not an interest, a deep interest, in perpetuating the blessings they enjoy, and a right, consequently, to guard those blessings, not from foreign aggression merely, but from domestic encroachment.

But, it is said, yield them this right, and they will abuse it: property, that is, landed property, will be rendered insecure, or at least overburdened by those who possess it not. The freeholders, on the contrary, can pass no law in the injury of any other class, which will not more injuriously affect themselves. The alarm is sounded too, of danger from large manufacturing institutions, where one corrupt individual may sway the corrupt votes of thousands. It were a vain task to attempt to meet all the flimsy pretexts urged, to allay all the apprehensions felt or feigned by the enemies of a just and liberal policy. . . . If we are sincerely republican, we must give our confidence to the principles we profess. We have been taught by our fathers, that all power is vested in, and derived from, the people; not the freeholders: that the majority of the community, in whom abides the physical force, have also the political right of creating and remolding at will, their civil institutions. Nor can this right be in any where more safely deposited. The generality of mankind, doubtless, desire to become owners of property: left free to reap the fruits of their labors, they will seek to acquire it honestly. It can never be their interest to overburden, or render precarious, what they themselves desire to enjoy in peace. But should they ever prove as base as the argument supposes, force alone: arms, not votes, could affect their designs; and when that be attempted, what virtue is there in Constitutional restrictions, in mere wax and paper, to

withstand it? To deny to the great body of the people all share in the Government; on suspicion that they may deprive others of their property, to rob them, in advance of their rights, to look to a privileged order as the fountain and depository of all power; is to depart from the fundamental maxims, to destroy the chief beauty, the characteristic feature, indeed, of Republican Government. Nor is the danger of abuse thereby diminished, but greatly augmented. No community can exist, no representative body be formed, in which some one division of persons or section of the country, or some two or more combined, may not preponderate and oppress the rest. The east may be more powerful than the west, the lowlanders than the highlanders, the agricultural than the commercial or manufacturing classes. To give all power, or an undue share, to one, is obviously not to remedy but to ensure that evil. Its safest check, its best corrective, is found in a general admission of all upon a footing of equality. So intimately are the interests of each class in society blended and interwoven, so indispensable is justice to all, that oppression in that case becomes less probable from any one, however powerful. . . .

. . . But if justice is not to be expected, if self-aggrandizement is to be assumed as the sole ruling principle of men in power, then, your memorialists conceive, the interests of the many deserve at least as much to be guarded as those of the few. Conceding the truth of the proposition assumed, what security . . . is there against the injustice of the freeholders? How is the assertion made good, that they can pass no law affecting the rights of others without more injuriously affecting their own? . . .

. . . The enjoyment of all other rights, whether of person or property . . . may be as perfect among those deprived of the privilege of voting, as among those possessing it. It may be as great under a despotism, as under any other form of Government. But they alone deserve to be called free, or have a guarantee for their rights, who participate in the formation of their political institutions, and in the control of those who make and administer the laws. . . . So thought the fathers of the republic. It was the oppressive weight of the taxes imposed by England on America; it was the assertion of a right by to impose any burdens whatever upon those who were not represented; to bind by laws those who had no share, personal or delegated, in their enactment, that roused this continent to arms. . . .

ROBERT B. TAYLOR (Norfolk)

Resolved 1st, That the elective franchise should be *uniform*; so that, throughout the State, similar qualifications should confer a similar right of suffrage.

Resolved 2d, That, among those entitled by the Constitution to exercise the elective franchise, there should be *entire equality of suffrage*; so that, in all elections, the suffrage of one qualified voter should avail as much as that of another qualified voter, whatever may be the disparity of their respective fortunes.

Resolved 3d, That equal numbers of qualified voters are entitled to equal representation throughout the State.

Resolved 4th, That as *individual suffrage* should be *equal*, without respect to the disparity of individual fortune, so an *equal number* of qualified voters are entitled to equal representation, without regard to the disparity of their *aggregate* fortunes.

JOHN COOKE (Frederick)

. . .
[The Virginia Declaration of Rights] declares . . . in the first place, "that all power is vested in, and consequently derived from, *the people*."
. . .

... Taking first the insulated proposition, that “all men are, by nature, *equally* free;” I pronounce it to be a great practical truth; a self-evident proposition; the primary postulate of the science of Government. Sir, what does this proposition mean, but that no *one* man is born with a natural right to control any *other* man; that no one man comes into the world with a mark on him, to designate him as possessing superior rights to any other man; that neither God nor nature recognize, in anticipation, the distinctions of bond and free, of despot and slave; but that these distinctions are artificial; are the work of man; are the result of fraud or violence. And who is so bold as to deny this simple truth?

... But it is said, that if it be true that “all men are by nature equally free,” then all men, all women, and all children, are entitled to equal shares of political power; in other words, that they are all entitled to the right of suffrage, which is, practically, political power.

... The framers of that instrument ... did not *express* the self-evident truth that the Creator of the Universe, to render woman more fit for the sphere in which He intended her to act, had made her weak and timid, in comparison with man, and had thus placed her under his *control*, as well as under his protection. That children, also, from the immaturity of their bodies and their minds, are under a like control. ... [N]ature herself had therefore pronounced, on women and children, a sentence of incapacity to exercise political power. They did not say all this; and why? Because to the universal sense of all mankind, these were self-evident truths. They meant, therefore, this, and no more: that all the members of a community, of mature reason, and free agents by situation, are originally and by nature, *equally* entitled to the exercise of political power, or a voice in the Government.

... In affirming and declaring the *jus majoris* to be the law of all free communities, they did but declare the simple and obvious truth, that the essential character of a free Government, of a Government whose movements are regulated by numbers, involves the *necessity* of a submission by the *minority* to the *majority*. ...

The Bill of Rights declared, that *the people* are the only legitimate source and fountain of political power.—The resolution of the Committee affirms this doctrine, by proposing, that in apportioning representation, or political power, regard shall be had to *the people* exclusively. Not to wealth, not to overgrown sectional interests, not to the supposed rights of the counties; but to the white population; to *the people* only. The Bill of Rights asserts the political equality of the citizens.—The resolution proposes to give to that principle a practical existence in our Government, by abolishing the inveterate abuse of the *equal* representation of *unequal* counties, and equalizing, as nearly as may be, the electoral districts throughout the Commonwealth, on the basis of free white population alone.

The Bill of Rights pronounces the *jus majoris* to be the law of all free communities, by attributing to the majority of a community, the power to reform, alter or abolish, at its will and pleasure, the very Government itself, and consequently the lesser power of deciding, without appeal, in all matters of *ordinary legislation*.—The resolution proposes to give practical effect to the *jus majoris*, by making each Delegate the representative of an *equal number* of the people, so that the voice of a majority of the Delegates, will be the voice of a majority of the people. It proposes, in short, to establish that beautiful harmony between our theoretical principles and our practical regulation; the want of which, has been, for fifty years, the reproach of Virginia. ...

JUDGE ABEL UPSHUR (Northampton)

... In a community like our own, no Government can gain the undivided affection, nor secure the undivided support of the people, unless it spring from a fair and equitable compromise of interests. ...

There are two kinds of majority. There is a majority in *interest*, as well as a majority in number. If the first be within the contemplation of gentlemen, there is an end of all discussion. It is precisely the principle for which we contend, and we shall be happy to unite with them in so regulating this matter, that those who have the greatest stake in the Government, shall have the greatest share of power in the

administration of it. But this is not what gentlemen mean. They mean, for they distinctly say so, that a majority in number only, without regard to property, shall give the rule. It is the propriety of this rule, which I now propose to examine.

...
... Gentlemen must themselves admit, that all men are by nature *equal* for this is the very foundation of their claim of right in a majority. If this be so, each individual has his rights, which are precisely equal to the rights of his fellow. But the right of a majority to rule, necessarily implies a right to impose restraints, in some form or other; either upon the freedom of opinion or the freedom of action. And what follows? Each one of three, enjoys the same rights with each one of four, and yet it is gravely said, that because four is a majority of the seven, *that* majority has a right to restrain, to abridge, and consequently, to destroy all the rights of the lesser number. That is to say, while all are by nature equal, and all derive from nature the same rights in every respect, there shall yet be a number, only one less than a majority of the whole, who may not by the law of nature possess any rights at all!

...
... If nature really gives this right to a majority; ... in what does the right consist? Is it in mere numbers? If so, every creature must be counted, men, women and children; the useless as well as the useful; the drone who lives upon the industry of others, as well as the most profitable member of the human family. The law of nature knows no distinction between these classes, and indeed, one of the very postulates on which gentlemen rely, is that "*all* are by nature equal." ... If in the estimate of numbers, all are counted, why exclude any from the right of suffrage? Why are not women, and children, and paupers, admitted to the polls? ... And how can gentlemen venture to limit themselves to *white* population alone, and yet found their claim on a law of nature which knows no distinction between white and black? ...

...
... Sir, the true meaning of the equality of men ... was happily expressed by the gentleman from Culpepper (Mr. Green) when he said that "all men are so far equal by the law of nature, that when they enter into a state of society, no one can claim a natural right to rule over another." And for the same reason, no ten men can claim a natural right to rule over any nine men.

... There is no one among us so wild and visionary, as to desire universal suffrage; and yet it is perfectly certain that, at the moment when you limit that right, in however small a degree, you depart from the *principle* that a majority shall rule. If you establish any disqualification whatever, there is no *natural necessity*, nor even a *moral certainty*, that a majority in any given community, will not come within the exception. ...

...
If the interests of the several parts of the Commonwealth were identical, it would be, we admit, safe and proper that a majority of *persons only* should give the rule of political power. But our interests are not identical, and the difference between us arises from property alone. We therefore contend that property ought to be considered, in fixing the basis of representation.

What, sir, are the constituent elements of society? *Persons and property*. What are the subjects of Legislation? *Persons and property*. ... Society cannot exist without property; it constitutes the full half of its being. Take away all protection from property, and our next business is to cut each other's throats. All experience proves this. The safety of men depends on the safety of property; the rights of persons must mingle in the ruin of the rights of property. ... And what are the subjects upon which the law-making power is called to act? *Persons and property*. To these two subjects, and not to one of them alone, is the business of legislation confined" And of these two, it may be fairly asserted that property is not only of *equal*, but even of more importance. ...

...
... We do not propose to represent money, *but the rights and interests which spring from the possession of money*. ... If men enter into the social compact upon unequal terms; if one man brings into the partnership, his rights of person alone, and another brings into it, equal rights of person and all the rights of property beside, can they be said to have an equal interest in the common stock? Shall not he

who has most at stake; who has, not only a *greater* interest, but a *peculiar* interest in society, possess an authority proportioned to that interest, and adequate to its protection. . . .

. . . .
. . . Why do you not admit a pauper to vote? He is a person: he counts one in your numerical majority. In rights strictly personal, he has as much interest in the Government as any other citizen. He is liable to commit the same offences, and to become exposed to the same punishments as the rich man. Why, then, shall he not vote? Because, thereby, he would receive an influence over property; and all who own it, feel it to be unsafe, to put the power of controlling it, into the hands of those who are not the owners. . . . Let us be consistent. Let us openly acknowledge the truth; let us boldly take the bull by the horns, and incorporate this influence of property as a leading principle in our Constitution. We cannot be otherwise consistent with ourselves.

. . . .
. . . [A] peculiar interest, and a great, and important, and leading interest, is presented in our slaves; an interest which predominates throughout the Eastern divisions of the State, whilst it is of secondary consequence West of the Blue Ridge. And what, let us now inquire, are its claims to consideration?

. . . .
. . . One [sixth] of the power which we possess in the national councils, is derived from slaves. We obtain that power by counting three-fifths of the whole number, in apportioning representation among the several States. Sir, we live in times of great political changes. Some new doctrine or other is broached almost every day; and it is impossible to foresee what changes in our political condition, a single year may bring about. Suppose a proposition should be made to alter the Constitution of the United States in the particular now under consideration; what could Virginia say, after embracing such a basis as gentlemen propose? Would she not be told by those who abhor this species of property, and who are restive under the power which it confers, "you have abandoned this principle in your own institutions, and with what face can you claim it, in your connections with us?"

. . . I think Sir, it must be manifest by this time, unless indeed, my labor has been wholly thrown away, that property is entitled to protection, and that our property imperiously demands *that kind of protection* which flows from the possession of power. Gentlemen admit that our property is peculiar, and that it requires protection, but they deny to it the power to protect itself. And what equivalent do they offer to us? . . . They offer us Constitutional guarantees; but of what value will they be to us in practice? No paper guarantee was ever yet worth any thing, unless the whole, or at least a majority of the community, were interested in maintaining it. . . .

. . . .
. . . I ask, even upon the very principle of this equality, where can the political power of this Commonwealth, be most *safely* deposited? So far as rights of person are concerned, we are all precisely equal, and the slave-holder can have no imaginable motive to do injustice in that respect. In the exercise of the tax-laying power, from which alone, injustice is to be apprehended, he has not the power to make any injurious discrimination. Among all the articles which have ever yet been made the subjects of taxation within this Commonwealth, which of them is not found on this side of the mountain, in just and fair proportion, at least? How, then, can we tax the west, without also taxing ourselves, in the same mode, and in just proportion? But reverse the case. There is not in the west, in any considerable degree, *one* species of property which constitutes the full half of our wealth, and which has always presented a ready subject for taxation. Give the power to the west, and will there be no temptation to abuse it? No temptation to shake off the public burthens from themselves, and throw an unjust proportion of them upon the slaveholder?

JAMES MADISON (Orange)

. . . [P]ersons now and property are the two great subjects on which Governments are to act; and that the rights of persons, and the rights of property, are the objects, for the protection of which

Government was instituted. These rights cannot well be separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right. The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse. . . . In republics, the great danger is, that the majority may not sufficiently respect the rights of the minority. Some gentlemen, consulting the purity and generosity of their own minds, without advert to the lessons of experience, would find a security against that danger, in our social feelings; in a respect for character; in the dictates of the monitor within; in the interests of individuals; in the aggregate interests of the community. But man is known to be a selfish, as well as a social being. Respect for character, though often a salutary restraint, is but too often overruled by other motives. When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safe-guard; and besides, that conscience itself may be deluded; may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is often found to be an overmatch for those considerations. These favorable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provision belonging to Government and Law. They will always, in proportion as they prevail, be favorable to a mild administration of both: but they can never be relied on as a guaranty of the rights of the minority against a majority disposed to take unjust advantage of its power. The only effectual safeguard to the rights of the minority, must be laid in such a basis and structure of the Government itself, as may afford, in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side.

To come more nearly to the subject before the Committee, viz.: that peculiar feature in our community, which calls for a peculiar division in the basis of our government, I mean the colored part of our population. It is apprehended, if the power of the Commonwealth shall be in the hands of a majority, who have no interest in this species of property, that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners. It would seem, therefore, if we can incorporate that interest into the basis of our system, it will be the most apposite and effectual security that can be devised. Such an arrangement is recommended to me by many very important considerations. It is due to justice; due to humanity; due to truth; to the sympathies of our nature; in fine, to our character as a people, both abroad and at home, that they should be considered, as much as possible, in the light of human beings, and not as mere property. As such, they are acted upon by our laws, and have an interest in our laws. They may be considered as making a part, though a degraded part, of the families to which they belong. The Federal number [three-fifths], as it is called, is particularly recommended to attention in forming a basis of Representation, by its simplicity, its certainty, its stability, and its permanency.