AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era—Democratic Rights

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**Illinois Debate over Legislative Apportionment** (1927)[1]

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*The Illinois Constitution of 1870 provided, "The General Assembly shall apportion the State every ten years . . . by dividing the population of the State, as ascertained by the Federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the senate. The State shall be divided into fifty-one senatorial districts. . . . formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable, an equal number of inhabitants." The state legislature redrew district boundaries after the 1900 census, but failed to do so after that. As a result of differences in population growth, the old senatorial districts were no longer even close to equally populated. The most important political effect of the legislative refusal to reapportion was the underrepresentation of Chicago residents in the state legislature. Chicago's Cook County doubled in size, both in population and in the size of its Senate delegation between the adoption of the 1870 constitution and the last apportionment in 1901. Cook County continued to grow rapidly during the first quarter of the twentieth century. Politicians in the rest of the state, fearful of urban political domination, simply refrained from carrying out their state constitutional obligation to redraw the electoral map every decade. By 1920, half the population of Illinois lived in Chicago, but less than 40 percent of the legislators represented voters from that city. Reapportionment had important policy consequences because urban and rural interests were often sharply at odds on issues ranging from state economic policy to alcohol prohibition. At the same time, incumbent legislators were well aware that reapportionment would eliminate many of their seats. The draft Illinois constitution of 1922 restricted the number of legislative seats that could be allocated to Cook County, but the voters refused to ratify that constitution.*

*Illinois was not alone. In the nineteenth century, legislatures reapportioned districts frequently, sometimes more often than once every ten years. Complaints about reapportionment in the nineteenth century were primarily about how legislative seats were distributed. Legislatures were frequently accused of gerrymandering legislative districts for the sake of partisan advantage. Nineteenth century courts were sometimes willing to undo what the legislature had done. By contrast, the problem in the first half of the twentieth century was legislative inaction, as legislators defaulted on their state constitutional responsibility to update district boundaries over time. In a period of rapid urbanization, many states elected officials, like those in Illinois, were unwilling or unable to redraw the political map in ways that shifted legislative power from rural voters and politicians to urban voters and politicians. The situation in Illinois was by no means extreme. By 1960, for example, only 10 percent of the voters controlled a majority of the state Senate seats in California. =In Florida a similar percentage of voters controlled a majority of both houses of the state legislature.*

*Numerous lawsuits seeking to force the legislature to reapportion were filed in the state courts, but none was successful. Most notably, in* Fergus v. Marks *(IL 1926), the state supreme court concluded that the judiciary had no power to remedy malapportioned districts. Redistricting was an exclusively legislative responsibility. The next year, senators representing urban constituencies in the state pushed for the appointment of a committee to redraw the legislative map based on the 1920 census. The resolution passed the state senate by one vote, but failed in the lower chamber.*

*The Illinois state legislature was eventually reapportioned in 1955 after a political compromise orchestrated by the governor secured a rural majority in the state senate in exchange for an urban majority in the state house. State officials made an independent commission responsible for Future redistricting whenever the legislature failed*

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[1]Excerpt taken from *Debate on Senate Joint Resolution No. 1 before the Senate Fifty-Fifth General Assembly of Illinois* (Springfield, IL: Phillips Bros., 1927).



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*to adopt or schedule a plan. That compromise was undone by the U.S. Supreme Court's actions in* Baker v. Carr *(1961).*

*Is the provision governing legislative apportionment in the 1870 constitution mandatory? How should officials determine the meaning of that provision? How should subsequent political actors deal with constitutional provisions that no longer work as anticipated? Are they obliged to adhere to the constitutional text if the conditions that justified the adoption of that text no longer hold? Were downstate legislators justified in voting against any effort to reapportion? Is there any justifiable basis for apportioning political power other than by "one person, one vote"?*

SENATOR JOHN DAILEY of Peoria[2]

In the introduction of this resolution I was prompted by the sole motive of following the constitutional command as it appealed to my conscience and my sense of official duty. I have never considered the solution of a constitutional question upon the basis of locality, of geography, of interests, of prejudice, of predilection, or of any other motive excepting only upon the fair and honest construction of the terms of the Constitution itself. . . .

. . . .

. . . . [T]he Constitution commands us to act, and it is not for us to say whether its mandate is good or wise or prudent. We cannot substitute our individual judgments or opinions or prejudices or ideas for that of the people as embodied in the Constitution itself.

. . . .

[W]e have failed to perform our constitutional duty since the year 1901, or since the year 1921, the date of the last decennial federal census, is no excuse for our own failure to obey the clear and unmistakable constitutional duty. Nor is the flagrant disregard of constitutional command justification for continued apathy in its enforcement.

. . . .

I am not going to read the debates [of the Federal Constitutional Convention of 1787] to you other than to tell you what one of the members, Gouverneur Morris had in mind. He looked forward, to that range of new states which would soon be formed in the west. He thought the rule of representation ought to be so fixed as to secure to the Atlantic State a prevalence in the national council. The new states will know less of the public interest than these. . . . Provision ought, he insisted, therefore to be made to prevent the maritime states from being outvoted by them. . . . To sum up his view, he maintained that; "If the western people get the power into their hands, they will ruin the Atlantic interests."

. . . . [T]he consensus of opinion was against Gouverneur Morris. Thus Mr. Mason of Virginia . . . replied:

> "Strong objection has been drawn from the danger to the Atlantic interests from new Western States. *Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to states which are not yet in existence?* If the Western States are to be admitted to the Union, as they arise, they must be treated as equals and be subjected to no degrading discriminations They will have the same pride and other passions which we have, and will not unite with or will speedily revolt from, the Union, if they are not in all respects placed on equal footing with their brethren."

[2]Peoria was a small (but rapidly growing), downstate city, and in 1927 Senator Dailey was understood to be positioning himself for a statewide executive office, which required the support of Chicago politicians and voters.



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Had Gouverneur Morris's opinion prevailed, the citizens of the West would have regarded the East in the same manner in which the English did the representatives of "rotten boroughs" and dissensions would have arisen that might easily have torn the United States asunder. But his opinion did not prevail. . . .

Now as to the Senate! Time alone will demonstrate whether representation, geographically and territorially, by two members for each state, in the Senate of the United States, will prove wise or unwise. . . . The great states, the big states in the Constitutional Convention at Philadelphia opposed the idea. . . .

. . . . The greatest minds of this Convention were against unequal representation or limitation Finally, upon the unpatriotic threats of the four small states . . . that if this disproportionate method were not employed, they would join hands in a union with foreign powers to strangle and kill the young republic, the provision about equal representation in the Senate was adopted. . . .

. . . .

From 1787 to the present Constitution, every change has been made to liberalize constitutional provisions so as to create (a) equality of representation, and (b) representation of all persons, majority and minority alike. To refuse to apportion is to create inequality and to prevent representations of minority and majority alike, and so to act contra to the historical evolution of Illinois constitutional prohibitions.

. . . .

Chicago pays nearly two-thirds of the inheritance taxes, and almost one-half of the general taxes of the State. It pays for over one-third of the hard roads of Illinois, and gets about one-twenty-fifth in mileage. Yet Chicago does not complain. Chicago has responded liberally and patriotically. . . . [B]ut there is nothing that creates local consciousness so much as denial of constitutional rights to any community or class or individual.

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SENATOR W. S. JEWELL of Lewistown

. . . .

. . . . [W]e get . . . to the real merits of this proposition, and that is the question of whether or not at this time, under present conditions, under the present circumstances, without regard to consequences, we propose to reapportion the State of Illinois without any limitation to the County of Cook and any other County in the State. . . .

Today, we have in Illinois more than six and a half millions of people, who . . . more than three millions reside in the territorial district of Chicago itself, and possibly about half . . . of the people of the State reside in the County of Cook. In other words, just about as many people today reside in the County of Cook as in the other hundred and one counties in the State.

Nor is that all. . . . [E]very time three hundred and sixty-five days roll around . . . the population of a City the size of Decatur is literally added to the population of Cook County. . . . While the last Federal census discloses this alarming fact that in many down-state counties the population was barely holding its own, and in many of the agricultural districts of the State the population has actually decreased in the last ten years. . . .

What does that mean? The meaning is that within a short time . . . The City of Chicago will have . . . a majority of all of the voters of Illinois, and when that time comes, if they can get their warring elements up there in Chicago together . . . Chicago will then have the power to elect the Governor of this State [and] every State Officer in Illinois, from within the limits of Cook County, or people friendly to the interests of Cook County. . . .

Nor is that all. They can elect both United States Senators and the majority of the Illinois delegation to Congress. . . .

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If, in addition to that power which will come through population alone, we take such action now as will shortly give to Chicago and Cook County a majority of the members of this Senate and a majority of the members of the House, then I appeal to any fair-minded man if . . . Chicago will not have the power to completely and absolutely dictate to the entire State of Illinois her industrial and political affairs. And for one, I do not believe that is to the best interests either of the people down-state nor the people of Chicago itself. . . .

But we are told, in effect, that it doesn't make any difference what we want to do, that it doesn't make any difference what we would like to do, doesn't make any difference about conditions, about circumstances or consequences, that it doesn't make any difference whether right or wrong, that every particle of legislative discretion has been taken from us . . . and that today our hands are tied behind our backs. . . . For one, I cannot agree with that, as a fair, reasonable construction of the Constitution of this State or of our official oaths.

. . . . [I]f there is any rule of law known to the lawyers better than any other, it is this, that there is a rule of construction . . . that you take all of the provisions of that act and you construe it altogether. And in that construction you seek to find and ascertain, if possible, the intent of the legislative body that enacted or adopted it, and seek to apply the reasonable rule of construction, and in many instances the words in that act and Constitution are not literally construed, and time and time again the highest courts of this land have said . . . where the word "shall" is used that "shall" doesn't mean that at all, but means "may." That is a familiar construction to every lawyer in this body.

. . . .

I take it that after all it is a wholesome public policy in the United States of America that representation in legislative bodies does not depend alone upon population but in part at least upon geographical territory. I refer to the Federal Constitution and to the United States Senate. . . .

. . . .

SENATOR JESSE L. DECK of Decatur

. . . .

Do you know that until the time of the Revolution and the adoption of the Constitution of this Country, there was but one House in the Federal Congress? Do you know why [the Founders] provided for another House in the Federal law-making body? It was because of the very proposition we are confronting today, the great populous centers. They recognized the fact it was inimical to the highest and best interests of free government that there should never be a possibility of any particular congested locality dominating the law-making body of the Nation, and therefore, in the wisdom of these men they placed a limitation of power against the strong and mighty States of this Union. . . .

I call your attention to the fact that Illinois is the thirteenth State that has to deal with this proposition of the danger of the centralization of too much power, in any given community and populous center. Twelve states have preceded us in making provision that no large populous center can ever dominate the law-making body of the State in which it is situated. In every instance the populous center has been limited in its representation. . . .

. . . .

. . . . Today it is the duty of the Senate to consider all the facts involved in the construction of that word "shall" as applied to the duties of this body. When I consider the pages of history and see that [whoever] measured up to the stature of statesmanship, has taken a position against the undue centralization of legislative power in populous centers, I must, in obedience to my duty as a representative of the State, construe the word "shall" in the interests of all the people of the State, as I conceive them to be. . . .

. . . . I want to say to you that when the Constitution of 1870 was adopted, that the membership of that Constitutional Convention never dreamed of a situation such as confronts us today, or they never



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would have used a word in this connection that had even the semblance of mandatory direction as against this body in the performance of its duty. . . .

. . . .

SENATOR A. H. ROBERTS of Chicago

. . . .

There have been efforts made here to show that it was not the intention of the framers of the Constitution to require a new apportionment every ten years. Those who make that claim certainly cannot be serious. The framers of the Constitution were not only serious-minded men, they were men of the highest intelligence. They desired representation in both branches of the General Assembly to be based on population and that alone, and expressed that desire in plain language. . . .

. . . .

This is what our fathers wrote in the State Constitution on the subject of apportionment, and I for one will not profane their memory even by insinuating that they did not write what they meant or did not mean what they wrote. . . .

It was not necessary for the members of the Constitutional Convention of 1870 . . . to get their definition of simple words like "shall" from Judges of Courts; they got their definitions of words where I get mine, from Noah Webster, who says that "shall" means duty, necessity, obligation, or must. Let me call your attention to the fact that the word "shall" is used in the Constitution not less than thirty times, and in every instance it means duty, necessity, obligation, must, and nothing else. . . .

. . . .

Members of the Senate, each article, section and any amendment is equally sacred. It is as important and as much our duty to enforce one as it is the other. You should not be permitted to pick out the laws that you will obey and those that you will not obey. The correct rule is "enforce all the laws at all times against everybody." The same is true in regard to the State Constitution. . . . Our Constitution would be but a scrap of paper if we as law-makers, directly or indirectly refuse to live up to each and every provision of the Constitution.

. . . .

SENATOR HENRY M. DUNLAP of Savoy

. . . .

A great deal of stress has been laid on three propositions by the newspapers of Chicago and those members who have spoken on this condition in this body. One is that government is founded on representation by population; another is that Chicago pays half of the taxes in this State; the third is that it is their right by a constitutional provision. . . .

But is government founded on such a precedent? I think it shows a decided lack of knowledge to say that. If you will read the Constitution of the United States you will see immediately that it is only one of the principles upon which their government is founded, representation by population in the lower House is one and the other that of representation by territorial area. Under the latter the little State of Delaware has just as many members in the United States Senate as the State of Pennsylvania. . . . Now how can there be any consistency in an argument that says that in a republic representation shall be founded absolutely upon a representation by population? . . .

Take our own State of Illinois. In our county organization, we proceed along the same lines, we are not represented by population upon our Board of Supervisors. A little township in my County of Champaign casts nine votes in the last primary election. They have a population in that little township of perhaps two or three hundred people. There are large townships there with a population of over 4,500 and they have the same representation. . . . So that in our county organization, representation is founded more largely upon township proposition than upon population.



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We believe our fathers who formulated the Constitution of the United States had in mind the thought that representation by population would be the right sort of representation in a democracy. But the representatives in the federal constitutional convention having the fear that the smaller states would not be dominated by two or three of the larger states, they very wisely, I think, limited the representation in one branch of the Congress, the Senate to two Senators from any one State. That is what we should come to here.

Now, as to the matter of taxation, does Chicago, does Cook County pay its fair share of taxes into the State Treasury? . . . Absolutely not. . . .

. . . . On automobiles upon which taxes are paid in Illinois, ninety-three percent are assessed downstate and seven percent in Chicago, or in the County of Cook. And yet you claim that you have forty percent of all of the automobiles in the State in Cook County. If so, why don't you pay your taxes?

. . . .

Of materials and manufactured articles, we know Chicago ranks equal if not greater than all the rest of the State combined, but downstate pays ninety-seven percent of all taxes on those articles, and Cook County pays three percent.

. . . .

There are fourteen states in the Union that have limited the representation of the large cities of those states. There is no one State except Illinois that has a large city that is likely to dominate the political commonwealth but what have limited representation of that large city. What does Chicago ask, then? They are asking that they may have something that no other State in the Union has. . . . [T]here is no reason why any one county in the State of Illinois should control the State of Illinois. . . .

. . . . There isn't any question but that those who formulated the Constitution in 1870 intended this State should be redistricted every ten years. I don't question that. You may call it a mandate, or a direction upon the General Assembly, or whatever you like, but when you come down to what our duties are, let us are see what our oath of office says here. There is something else besides obeying the Constitution.

. . . . It means we solemnly swear we will be loyal to the interests of Illinois, that is what it means.

. . . . I don't think under this oath of ours we should be expected to reapportion the State of Illinois when we know, down in our hearts that if we reapportion it we are doing that which will bring calamity upon this State and upon the City of Chicago.

. . . .

Constitutions are passed for the purpose of protecting the minority. It won't be very long until downstate will be in the minority, and we should see that the minority is protected, and if you take that all into consideration, then this proposition that was voted in 1870 giving Chicago representation by population becomes null and void, because it says you must protect the interests of the minority as well as the majority when you formulate the constitution.

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