

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

Supplementary Material

Chapter 7: The Republican Era – Democratic Rights

Massachusetts Constitutional Convention, Debate on Legislative Apportionment (1918)¹

Although Massachusetts still operates under the state constitution adopted in 1780, constitutional conventions periodically meet in that state to consider changes to the text and those conventions have spurred the state legislature (known as the General Court) to draft additional constitutional amendments. One successful amendment was an 1857 measure (following the convention of 1853), that reformed the process for electing members of the state lower house and established that legislative seats would be apportioned by the number of “legal voters.” Delegates at the constitutional convention of 1917–1918 rejected a proposal to apportion seats in the state legislature based on the “whole population” or the number of inhabitants. Massachusetts did not change the state constitutional provisions basing apportionment on the total number of inhabitants until 1970.

Massachusetts was one of the last states to retain apportionment by legal voters, a legacy of anti-immigrant and anti-Boston feelings of the antebellum period (immigrants were part of the total population, but did not vote). The debates of the 1850s continued well into the twentieth century. Delegates from Boston strongly praised the virtues of immigrants and the justice of apportioning more legislative seats to the places where they lived (primarily the city of Boston). Delegates from smaller, interior towns (often on the outskirts of Boston) emphasized the importance of representing their interests in the state legislature and questioned how allowing the voters of Boston to select more state legislators would benefit aliens who could not vote.

Is this debate over the basis of apportionment ultimately just a matter of “control” of legislative power, as one delegate asserted, or are questions of justice and fairness at stake in these debates? If four counties controlled a majority of the seats of the legislature under this arrangement, would it be fairer if Boston controlled a majority of the seats? Are residents who are unable to vote benefited by apportioning more seats to the places where they live? Are immigrants in the same situation as other nonvoting populations, such as women in 1918 or slaves in 1787? Does representative government require that legislatures strictly mirror the distribution of the population within the state? Does the argument for taking into account resident aliens when apportioning legislative seats also imply that resident aliens should be allowed to vote?

JAMES H. BRENNAN of Boston

....
The present method of reapportioning Representatives and Senators is unfair, unequal and indefensible. The idea of apportioning on a basis of legal votes is absolutely contrary to the intent of the Constitution. It is simply a subterfuge, enacted through a constitutional amendment in 1856 and 1857 by strongly partisan Legislatures and adopted in 1857 by an intensely partisan electorate for the sole purpose and intent of keeping the control of the government in the hands of the narrow wing of the then dominant party. At that time there had commenced to flow to our shores that grata stream of present-day American life blood – immigrants and immigration. In order to deprive the foreign-born elements of our Commonwealth of their just representation in the halls of legislation, the cute and crafty minds of that time devised this unequal method of defeating the will of the people – representation on a basis of legal voters. What is a legal voter? The ordinary interpretation of the term is, a citizen of the United States who is not registered but who is eligible. . . .

¹Excerpt taken from *Debates in the Massachusetts Constitutional Convention, 1917–1918*, vol. 3 (Boston: Wright & Potter, 1920).

According to the 1915 census the population of Massachusetts was 3,639,310 people, out of that number there are only 775,889 legal voters in the whole State, or about one person in every five. . . . Is this a republic, where the majority is supposed to rule, or are we in Massachusetts a vest pocket edition of some foreign dynasty where the minority rules? . . .

. . . . Every one of these men, or a great majority of them, are taxed, either on a poll tax or on a property tax. And yet on the basis of apportionment they are not recognized. Is not that taxation without representation, taxing residents of our Commonwealth and taking money for the conduct of the Commonwealth out of their pockets and yet not recognizing them in the fundamental frame of our government?

. . . . [T]he present method is not fair and not just and not democratic in the economic sense of the word: Last year's House of Representatives contained 171 Republicans and 58 Democrats, or a proportion of over three to one. The Senate of Massachusetts contained 34 Republicans and 6 Democrats, or a proportion of almost six to one. The Governor's Council contained seven Republicans and one Democrat, a proportion of seven to one; and yet, there are those who say that we are operating under a representative form of government!

SAMUEL W. GEORGE of Haverhill

I am very much interested in the last analysis of the gentleman's statement as to conditions of our Legislature. As I understand it, this is a proposition to change the Constitution in order to make the State more Democratic? [Laughter]

JAMES H. BRENNAN of Boston

It is not a proposition to make the State more Democratic in a political sense; it is a proposition to make the State more democratic in a government sense. And I believe that we ought to make the State more democratic, because I believe that our State Legislature today is not representative of the people and it does not represent the people—and I do not believe we ought to consider this matter from a party standpoint whatsoever. I am quoting these figures simply to show that our condition of government today is unequal and unfair. It does not matter to me what the political complexion of the Legislature is as long as there is a near division of the dominant parties instead of an unequal division of seven to one. . . .

. . . . I speak from experience. I served in four Legislatures and I know the methods and means that are employed in those bodies, and I believe that the adoption of the initiative and referendum is the best proof in the world that our people are dissatisfied with the present method of apportionment and the present method of representation that we are getting from our Legislatures.

. . . . I also want to point out to you that four counties in this State . . . have 125 members of the Massachusetts House of Representatives. Four counties out of fourteen have over 50 percent of the total membership. . . . Is that mathematical accuracy? I cannot see where it is mathematically accurate, and I defy anybody to prove [that this] is a democratic form of government. . . . Is that equality?

TIMOTHY F. QUINN of Sharon

I hope that this resolution will be rejected. . . . The passage of this resolution would be very unfair to the districts which have a small and stable population and would be advantageous to those populous centers, manufacturing centers, which have a large floating population. These districts will increase their membership, whereas the small and stable towns, the small communities, will decrease their membership. . . .

MARTIN M. LOMASNEY of Boston

....

Some men here little understand what those of us who are the sons of aliens learned at our fathers' knees about the benefits of this country conferred upon the alien and his sons. . . . [W]e always were taught to support the flag and stand by the government because of the equal rights and equal opportunities it gave to us and to them.

....

What is the history of aliens in Massachusetts? They cannot become citizens unless they comply with your naturalization laws. No matter how honest an alien may be, no matter what his capacity may be, if he cannot read and write the English language he cannot become a qualified voter. Massachusetts passed that law. It takes time for a man to acquire that qualification. . . . Take the sons of the aliens out of the present draft, and that is based upon population, and I think some of you men who came over in different boats, before my parents did, would see the difference [in American military strength]. We have in this Convention a presiding officer—his son is over there [in Europe fighting in World War I]. . . . But without the sons of aliens over there where would your numbers be?

....

. . . . We are sending these young men, the cream of the country, the youth of the Nation, to fight for democracy for the world, and you are sitting here, in this Constitutional Convention, and you are denying the same people here the right to be counted in the apportionment. . . . Where is the justice of your position?

LINCOLN BRYANT of Milton

I should like to ask the gentleman if he is willing to give these aliens representation and allow them to vote?

MARTIN M. LOMASNEY of Boston

I know the gentleman understands that I do not believe in that proposition. . . .

SAMUEL W. GEORGE of Haverhill

I understand the tenor of the delegate's remarks is that if we should include the aliens in our population in apportioning our Representatives they would be a great deal better off. They cannot vote; they do not have any more rights; but the simple fact that Boston and some other great cities can have from ten to twenty more Representatives in the General Court will increase the happiness of those aliens who cannot take part. Now, I want to ask my friend, if for seventy-two years the nine Southern States did not have a law by which three-fifths of the Negro population was entitled to representation, and never voted—I want to ask him how much advantage the Negro got out of that law?

MARTIN M. LOMASNEY of Boston

I have no sympathy with any movement to disenfranchise the Negro or deny him his rights as a man. . . .

CHARLES L. UNDERHILL of Somerville

....

The argument has been made . . . that this country is an asylum for the oppressed of all lands. It is the only asylum in the world that is governed or partially governed by its inmates. That is no reflection upon those who come to our shores. But, sir, until this asylum of ours works its cure upon those who arrive each year, until it works a complete change, so that they may accept our institutions and our manner of living, I think they should have no part in the government of the asylum.

We all realize that the trend of immigration has changed; that the alien of today is not the picture in our minds of the alien of yesterday, or the alien of the time of the forefathers. . . .

Let us differentiate between aliens and aliens. Everybody knows the Irish race have made good citizens. Everybody knows that when they once come to our shores they stay here, they do not go back to Ireland, they make good citizens, and their young people make better citizens, because of the teachings and the opportunities given to them in this country. The stock is good, but it takes the opportunity to make it better.

. . . . There are thousands of men today in detention camps all over the country interned by our government. Why? Because they are aliens? No; because they were alien enemies, and dangerous men to be left at large in our communities. That is the alien I am talking about. . . .

MICHAEL A. SULLIVAN of Lawrence

. . . . Obviously, all the people for whom the government is established cannot vote. Children cannot vote, and the age at which young men are admitted to the suffrage has been fixed, rather arbitrarily, at twenty-one. Women at the present time, in this Commonwealth at least, have not the right to vote.

Some say these are questions of expediency only. . . . They are above all questions of right and justice.

This government is established, not for the benefit of the voter, but for the benefit of all the people. . . . The basis of representation ought to be the people for whose benefit the government is established, and that means the whole people. That means children, that means women, that means aliens.

SAMUEL W. GEORGE of Haverhill

. . . .
We all know what this argument means. There is only one object in view. It is the same object that the southern States had for seventy-two years when they wanted to control this country. They reckoned in the three-fifths representation of the colored race. I do not understand that anybody contended that the slave was any better off simply because he was reckoned into the apportionment and given a representative. I cannot think that any alien who is not a voter in Massachusetts is going to be any better off because he is reckoned as one of those who is part of the population. . . .

I doubt very much the wisdom of such talk. We all know very well the various States have different ways of apportionment of members of the General Court. The State of Maryland, one of the most democratic States in the Union, is divided up in such way that Baltimore never can have over one-third of the membership of the Legislature. Almost every State takes into consideration . . . that in order to give the widest possible representation it has been deemed wise . . . not to have it based entirely upon population, and it seems to me that the Massachusetts idea of having it based upon legal votes is fair and just. . . . It is simply a question of control. Today we have a better representation in Massachusetts than we should if we had representation based upon population rather than legal voters.