



DEBATE ON THE CONVENTION QUESTION.

CONTINUED.

HOUSE OF COMMONS.
Dec. 18, 1821.

Mr. LEAK—Never did I arise on an occasion in which I felt a greater distrust of my own abilities, than the present; a feeling naturally arising in my breast when I consider the vast importance of the question that is agitated; when I consider the importance of that principle, that is about to be involved in the final determination of the resolutions on your table; that principle that is about to receive a legislative sanction so completely subversive of legislative rights.

Yet I must confess at the same time, notwithstanding this self distrust, notwithstanding my own inability to wipe away the local and sectional feeling already roused by the discussion of this question, and which when agitated, seems to respond with reanimated vigor from every bosom. I say I confess I was never propelled forward by a stronger stimulus. I never felt a more irresistible inducement on entering the wide field of debate. Whether it proceeds from ignorance, or that I am animated by the justness of the cause, I shall not here determine. But here let me declare, that if I thought our essential welfare and privileges as a free and enlightened people demanded it not; if I thought the principle of a representative and popular government, corresponded with the situation in which the freemen of North-Carolina are placed; if I thought I could in any way discharge the duty which I owe, the obligation which I conceive myself to be under to the constituents whom I have the honor to represent, without participating in the unpleasant discussion of a question which has already given rise to a sectional and local feeling, I positively affirm it would be my choice.

In our taking a comprehensive view of the Constitution under which we live, we need not have pointed out the defects existing in that Constitution. We need not be told, as we repeatedly have been this day, that some of its provisions are deficient. We need not be told that equal representation, founded upon the principle of free white population, or upon the mixed principle of population and wealth, can ever be attained under its fostering care. The most superficial glance will corroborate the assertion, and prove to the world, that it is not imaginary, that it is not the wild and capricious whim of fancy, but that it is the steady and unerring hand of wisdom that tells us to suffer not the most minute infringement of our rights. "For the leading defect in all popular or republican governments, is the want of a proper jealousy of the minutest infringements of popular rights."

Let facts speak for themselves, and when these facts are adduced, let that contracted and illiberal spirit of sectional feeling which characterizes us this day, be thrown aside, and let impartial feelings usurp the beam, and unprejudiced reason determine facts. Let arguments be governed by their weight, by the conviction they carry with them, and by that criterion let them rise or fall.

When under the auspices and protection of Divine Providence, these former colonies became free and independent States; when our forefathers resolved to shake off the shackles of ministerial oppression, or sacrifice their lives on the altar of liberty; when those chains of oppression that held us down, those bonds of political association, were burst asunder, it became necessary to establish some laws to prevent anarchy and confusion, to prevent unrestrained liberty from degenerating into licentiousness, for licentiousness is nothing but an ebullition, an exuberance of liberty; it is a speck in the political body, which if suffered to rage uncontrolled, spreads its contagious influence, and, like "Aaron's serpent, swallows up the rest." It was then the people claimed to themselves the right of establishing a free and independent government; a right inherent in themselves, and "formidable to tyrants only." At this time we had just emancipated from that political toralord which had like to have enveloped us in the besom of destruction. It was at such a time the Constitution under which we live was framed; it was in times of difficulty when it was impossible for that reflection and mature deliberation to be exercised, which the importance of the subject demanded; for at no time is it an easy task to frame a code of laws which can buffet the billows of popular rumor and discontent; much less such an one as in its nature has to accommodate the various changes through which we have passed. The more simple idea of order and equity were at that time sufficient to guide those venerable heroes in the revolution, in the formation of a code of laws calculated for the internal administration of justice. But equality of representation, the very basis on which all republican governments are founded: equality of representation, that very principle (which does not even appear to be well understood at this enlightened day, or if understood, is treated with indifference) is in its nature more intricate and perplexed, and requires long experience, together with a conversant knowledge of history, to be well understood by any person.

It has been stated to us by the gentleman from Salisbury, (Mr. Fisher) that serious defects do exist in the constitution, which cry aloud for redress, and that the only method by which redress can be obtained, is by a Convention. This is certainly true, for if it is defective, it can be remedied only by the delegated powers of the people. The sovereignty is in the people, consequently the people have an indefeasible, an unalienable and an incontestible right to modify, change or annul any form of government which does not go to secure the liberties of the governed. If this position, then, can be true, and that it is there is no gentleman on this floor will deny, it is equally true, that every thing that comes in contact with that power, that every thing that prevents the people from having their due weight in legislative proceedings, is a

grievance contrary to the spirit of a Republican government, and which the people certainly have a right to consult together for the common good and redress.

There are in this State, 62 counties, containing a white population, according to the last census, of 419,200. Thirty-five of these counties, (which we will denominate Eastern) contain a white population of 164,976; and the remaining twenty-seven, which we will call Western, contain a white population of 254,224. This division will be observable on a Map, by having drawn a North and South line from Warren county to the South-Carolina line, which will intersect Warren, Wake, &c.

If the aggregate amount of white population, viz: 419,200 be divided by 186, the number of representatives elected by the 62 counties, excluding the borough towns, it will give 2253, as the number each man ought to represent, and the 27 counties, which now have 81 representatives, by this mode of calculating ought to have 112, and the 35 counties which now have 105, ought to have only 74.

But as we stand at present, you will find, if you will take the aggregate amount of the Eastern white population, and divide it by the number of representatives they now have; and take the aggregate amount of the Western white population, and divide it by the number of representatives we now have, you will find, I say, that every 1571 souls in the 35 counties before alluded to, have as great a share in enacting laws, and have the same weight in our legislative body, as every 3139 in the remaining 27 have. How to reconcile this with my notions of a republican government, I confess I am somewhat at a loss to determine, if the white population is taken as the correct principle on which to build a representative government, and it certainly should, in most cases, be the very pivot on which they turn. The number of representatives that each county would be entitled to, upon the footing of equal representation, would be as follows:

Anson	5	Caswell	3	Lincoln	6	Robeson	2
Ashe	1	Chowan	1	Lenoir	1	Richmond	2
Beaufort	2	Duplin	2	Moore	2	Randolph	4
Bertie	2	Edgewood	3	Montgomery	3	Rutherford	5
Buncombe	4	Franklin	2	Martin	1	Rockingham	3
Burke	5	Guilford	5	Mecklenburg	5	Rowan	9
Brunswick	1	Gates	1	Nash	2	Stokes	5
Bladen	1	Greene	1	Northampton	2	Sampson	2
Cabarrus	2	Granville	3	N. Hanover	2	Surry	4
Columbus	1	Haywood	1	Onslow	1	Tyrrell	1
Curruck	2	Hertford	1	Orange	7	Warren	2
Craven	2	Hyde	1	Person	2	Washington	1
Camden	1	Halifax	2	Pasquotank	2	Wake	5
Carteret	1	Iredell	4	Perquimons	2	Wilkes	3
Chatham	3	Johnston	2	Pitt	2	Wayne	2
Cumberland	4	Jones	1				

By this calculation, we have returned 162 members, omitting fractional parts, which operates as much against the large counties as the small. Which shows us the number each county would be entitled to individually, and the 27 counties collectively, would have 100, and the 35 would have 62. But, as we stand at present, the Eastern counties, with a white population of 164,976, have a greater share in enacting laws, than the Western counties have with 254,224. If this, then, is consistent with the genius of republicanism, I confess it is a political phenomenon hitherto unknown to me, and if it is, I sincerely hope that I may never belong to that clan. But it is stated by gentlemen of the opposition, that representation ought to be apportioned upon the mixed principle of population and wealth. In answer to this argument, I say, already have we the wealth of the State sufficiently represented in the House of Senate; and, indeed, it appears to me, that this is another aristocratic feature which lugged itself into our Constitution. In the 7th section of the Constitution it is expressly declared, that no person shall be entitled to vote for a member of the Senate, unless he is possessed at the same time, of 50 acres of land.

But it is also stated that in the representation for Congress, the black population is taken into consideration. This is certainly true; but I will ask the gentlemen that advance this, whether it was done from motives of equity, or motives of policy? whether it was done from a conscientious belief that they were entitled to representation, or from a knowledge that the Southern States would not enter into a compact, would not enter into a political union, without some guarantee of this species of property? If, then, this is quoted as a precedent upholding the principle of mixed representation, I answer that that precedent had its origin in necessity; that it was founded, not upon political right, but rather political expediency; that had we not had that provision in our Constitution, that that species of property, then held as valuable, and in which our wealth mostly consisted, would ere this have been loaded with excise upon excise, to such a degree as would have rendered them a burthen on our shoulders. In this light do I view that clause, as a *sine qua non* condition, as a kind of compromise between the Northern and Southern States.

I do not wish here to be understood as disapproving of that principle in the federal government, for the situation of the times rendered it indispensable—but I do not wish it quoted as a principle upon which we are to build our political tenets of right or wrong, unless it undergoes this explanation. It is rather an appeal to our interest than to our judgment; it is an indirect attack upon that part of our political rampart which of all others is most vulnerable, viz. our avarice.

But for the respect I have for the opinion I entertain of the gentlemen of the opposition, which compels me to bow with implicit confidence to their superior talents, we will see how that affects the matter under discussion. We will see whether in point of federal numbers, or any other calculation, if the scale does not preponderate to the West.

The federal population of this State is 551,007, which, if we divide by the same number of representatives, 186 will give 2962, which, if we then divide into the federal population of each county, will give the following result:

Anson	3	Cabarrus	2	Tyrrel	1	Wilkes	3
Ashe	1	Caswell	3	Wayne	2	Wake	5
Buncombe	5	Duplin	2	Hertford	3	Mecklenburg	4
Burke	4	Edgewood	3	Haywood	1	Martin	1
Beaufort	2	Franklin	2	Iredell	3	Moore	2
Bladen	2	Guilford	4	Jones	1	Montgomery	2
Bertie	2	Granville	4	Johnston	2	Northampton	3
Brunswick	1	Gates	1	Lenoir	1	Nash	2
Camden	1	Greene	1	Lincoln	5	Robeson	2
Cumberland	3	Hyde	1	Person	2	Rowan	3
Curruck	2	Halifax	4	Perquimons	2	Surry	3
Carteret	1	New-Hanover	2	Rutherford	4	Stokes	4
Columbus	1	Onslow	1	Rockingham	3	Sampson	2
Chatham	3	Orange	7	Richmond	2	Washington	1
Chowan	1	Pitt	2	Randolph	3	Warren	1
Craven	3	Pasquotank	2				

The above table returns 151 members, and shows that the twenty-seven western counties which now have 81, are entitled to 88, and the thirty-five eastern counties which have 105, ought to have only 63. In this, as in the other table, fractional parts are omitted.

Having now sufficiently proven the inequality of representation, not only on the basis of white population, but on the principle of population and wealth; I shall next proceed to touch at a few of those points in our Constitution, which, in my opinion need amendment. This I am under the necessity of doing, having been already anticipated in some of the remarks, that I wished to suggest to this committee, on this occasion, and which it is with pleasure I have seen, have been placed in a more advantageous position, than I could have done myself.

It has been stated by the gentleman from Newbern, as a proof of the excellency of the Constitution, under which we live, that experience has tested its utility—that it has protected us for near half a century, from convulsions without, and intestine divisions within—that under its fostering hand, have we arisen to almost the pinnacle of fame. This is partly true, but still it does not prove that the people of North-Carolina do not labor under any inequality in their representation; it does not prove that 2 and 2 are not 4. All this might possibly have been attained under a government more aristocratic than our own, and experience is about this day to teach us the cause of its duration; it is about to shew us, that mankind are ever more disposed to endure evils whilst evils are tolerable, than to resort to new and untried projects.

The Constitution, in the 14th section, declares, that the Senate and House of Commons shall have power to appoint the general and field officers of the militia. Of the impropriety of this section, I trust every gentleman in this House will concur with me.

Whenever any power is taken out of the hands of the people and vested in any other tribunal, it is done upon the principle that the exercise of that power would be abused by the body from whence it is taken.

Let us see how far this, then, accords with the office in point. Can any gentleman on this floor pretend to doubt, for a moment, that the people of North-Carolina are not better capable of choosing their militia officers, than the legislative body is? Can it be conjectured, that the different divisions and brigades of the militia, are not reasonably supposed to be better capable of judging of the qualifications of the opposing candidates, than this Legislature is? Besides, it is one of the principles of a popular government, where the power is vested in the people, and where the people claim to themselves the privilege of exercising that power—that merit—that qualification—that private respectability should be the only passports to honor and preferment. Which, then, are most liable to disregard these requisitions, the legislative body or the people. Let a man but strut the soldier, or ape the hero, a few days, and any office which this body can bestow, will be thrown upon him. It is not that we make a wanton abuse of our authority, but it is that we have not the opportunity of judging. If you want a stronger proof of this abuse, turn your eyes to the melancholy, to the degrading state of your militia. See if you cannot recognise among its officers, some men without one ray of military science, without one claim to private respectability.

Then before you can withhold from the people the right of electing their own militia officers, you must give some additional proof of the benefits resulting from the present mode of election.

There are cases in which certain powers would be best to be lodged in the breast of this legislative body. Such, for example, as the Judiciary appointments. And this is for the best of reasons, for the people collectively are not presumed judges of their qualifications. But the question before us is one in which they are the only judges, where the different merit of the candidates is the subject of every day's discussion. If gentlemen doubt the propriety of this mode of election, I would refer them to South-Carolina for an example, to that state from which we may draw many useful lessons. There the people are trusted to elect their own officers, and they never yet have abused that trust. To such a pride in military discipline abused in that State, that men of the greatest wealth and highest respectability seek even subaltern commands.

The next question to which I would call the attention of this committee is the appointment of Judges. The 18th article of the Constitution declares, that the General Assembly, by joint ballot of both Houses, shall appoint Judges of the Supreme Courts of Law and Equity. My objection to this section is not the mode of appointment, for I have before said that is and ought to be vested in this legislative body. But it is the difficulty of removing them from office in case of inability or any other sufficient cause. I confess that I here recommend the innovation of an important principle; and I wish that my experience enabled me to speak with greater certainty. But when we want experience we have to apply to precedent; we look to see if others have ever realized the evils which we strongly anticipate. In looking over the Constitutions of the different States, we find that Vermont has not