Table Annexed to Article: Franklin’s Dilemma: Per Capita Meets Per Stirpes at the Federal Convention

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TABLE ANNEXED TO ARTICLE:
**DR. FRANKLIN’S DILEMMA:**
*PER CAPITA MEETS PER STIRPES*
**AT THE FEDERAL CONVENTION**
**TABLE 112A**
*(DR. FRANKLIN TRIES HIS HAND AT THE MATHEMATICAL LOGIC OF THE FEDERAL CONSTITUTION)*

From Farrand (Madison), June 11, vol. 1, pp. 197-8:

The question being abt. to be put Docr. Franklin sd. he had thrown his ideas of the matter on a paper wch. Mr. Wilson read to the Committee in the words following . . .

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But, Sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater; and this is mathematically demonstrable. Suppose for example, that 7 smaller States had each 3 members in the House, and the 6 larger to have one with another 6 members; and that upon a question, two members of each smaller State should be in affirmative and one in the Negative, they will make

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It is then apparent that the 14 carry the question against the 43. and the minority overpowers the majority, contrary to the common practice of Assemblies in all Countries and Ages.
Mr. Gerry, according to previous notice given by him, moved “that the National Executive should be elected by the Executives of the States whose proportion of votes should be the same with that allowed to the States in the election of the Senate.” If the appointment should be made by the Natl.

Legislature, it would lessen that independence of the Executive which ought to prevail, would give birth to intrigue and corruption between the Executive & Legislature previous to the elections and to partiality in the Executive afterwards to the friends who promoted him. Some other mode therefore appeared to him necessary. He proposed that of appointing by the State Executives as most analogous to the principle observed in electing the other branches of the Natl. Govt.; the first branch being chosen by the people of the States, & the 2d. by the Legislatures of the States; he did not see any objection against letting the Executive be appointed by the Executives of the States. He supposed the Executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

Mr. Randolph urged strongly the inexpediency of Mr. Gerry’s mode of appointing the Natl. Executive. The confidence of the people would not be secured by it to the Natl. magistrate. The small States would lose all chance of an appointment from within themselves. Bad appointments would be made; the Executives of the States being little conversant with characters not within their own small spheres. The State Executives too notwithstanding their constitutional independence, being in fact dependent on the State Legislatures will generally be guided by the views of the latter, and prefer either favorites within the States, or such as it may be expected will be most partial to the interests of the State. A Natl. Executive thus chosen will not be likely to defend with becoming vigilance & firmness the national rights against State encroachments. Vacancies also must happen. How can these be filled? He could not suppose either that the Executives would feel the interest in supporting the Natl. Executive which had been imagined. They will not cherish the great Oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the Natl. Executive to the State Executives as proposed by Mr. Gerry Massts. no. Cont. no. N. Y. no. N. J. no. Pa. no. Del. divd. Md. no. Va. no. S. C. no. Geo. no. [Ayes — 0; noes — 9; divided — 1.]

[FN: Journal and Yates include North Carolina voting “no”.

Mr. Patterson moves that the Committee resume the clause relating to the rule of suffrage in the Natl. Legislature.

Mr. Brearly seconds him. He was sorry he said that any question on this point was brought into view. It had been much agitated in Congs. at the time of forming the Confederation and was then rightly settled by allowing to each sovereign...
State an equal vote. Otherwise the smaller States must have been destroyed instead of being saved. The substitution of a ratio, he admitted carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the States by the quota of Congs. Virga. would have 16 votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be 3 large states and 10 small ones. The large States by which he meant Massts. Pena. & Virga. will carry everything before them. It had been admitted, and was known to him from facts within N. Jersey that where large and small counties were united into a district for electing representatives for the district, the large counties always carried their point, and Consequently that the large States would do so. Virga. with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgie with her Solitary vote, and the other little States will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the convention with a view of being as useful as he could in giving energy and stability to the Federal Government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair then it will be asked that Georgia should have an equal vote with Virga.? He would not say it was. What remedy then? One only, that a map of the U. S. be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into 13 equal parts

Mr. Patterson considered the proposition for a proportional representation as striking at the existence of the lesser States. He wd. premise however to an investigation of this question some remarks on the nature structure and powers of the Convention. The Convention he said was formed in pursuance of an Act of Congs. that this act was recited in several of the Commissions, particularly that of Massts. which he required to be read: That the amendment of the confederacy was the object of all the laws and commissions on the subject; that the people of America were sharpsighted and not to be deceived. But the Commissions under which we acted were not only the measure of our power. they denoted also the sentiments of the States on the subject of our deliberation. The idea of a national Govt. as contradistinguished from a federal one, never entered into the mind of any of them, and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme, and if we had the people are not ripe for any other. We must follow the people; the people will not follow us. The proposition could not be maintained whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virga. Massts. & Pa. as the three large States, and the other ten as small ones; repeating the calculations of Mr. Brearly as to the disparity of votes which wd. take place, and affirming that the small States would never agree to it. He said there was no more reason that a great individual State contributing much, should have more votes than a small one contributing little, than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as 40 to 1. ought A for that reason to have 40 times as many votes as B. Such a principle would never be admitted, and if it were admitted would put B entirely at the mercy of A. As A. has more to be protected than B so he ought to contribute more for the common protection. The same may be said of a large State wch. has more to be protected than a small one. Give the large States an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have everything to fear. It was once proposed by Gallo-
way & some others that America should be represented in the British Parlt. and then be bound by its
laws. America could not have been entitled to more than \( \frac{1}{3} \) of the no. of Representatives which would
fall to the share of G. B. Would American rights & interests have been safe under an authority thus
constituted? It has been said that if a Natl. Govt. is to be formed so as to operate on the people and not
on the States, the representatives ought to be drawn from the people. But why so? May not a Legislature
filled by the State Legislatures operate on the people who chuse the State Legislatures? or may not a
practicable coercion be found. He admitted that there was none such in the existing System. He was
attached strongly to the plan of the existing confederacy, in which the people chuse their Legislative
representatives; and the Legislatures their federal representatives. No other amendments were wanting
than to mark the orbits of the States with due precision, and provide for the use of coercion, which was
the great point. He alluded to the hint thrown out heretofore by Mr. Wilson of the necessity to which the
large States might be reduced of confederating among themselves, by a refusal of the others to concur.
Let them unite if they please, but let them remember that they have no authority to compel the others to
unite. N. Jersey will never confederate on the plan before the Committee. She would be swallowed up.
He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan
here but on his return home do everything in his power to defeat it there

Mr. Wilson. hoped if the Confederacy should be dissolved, that a \textit{majority}, that a \textit{minority} of the
States would unite for their safety. He entered elaborately into the defence of a proportional
representation, stating for his first position that as all authority was derived from the people, equal
numbers of people ought to have an equal no. of representatives, and different numbers of people
different numbers of representatives. This principle had been improperly violated in the Confederation,
owing to the urgent circumstances of the time. As to the case of A. & B, stated by Mr. Patterson, he
observed that in districts as large as the States, the number of people

was the best measure of their comparative wealth. Whether therefore wealth or numbers were to form
the ratio it would be the same. Mr. P. admitted persons, not property to be the measure of suffrage. Are
not the citizens of Pena. equal to those of N. Jersey? does it require 150 of the former to balance 50 of
the latter? Representatives of different districts ought clearly to hold the same proportion to each other,
as their respective constituents hold to each other. If the small States will not confederate on this plan,
Pena. & he presumed some other States, would not confederate on any other. We have been told that
each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men
are therefore naturally equal. Can he retain this equality when he becomes a member of civil
Government? He can not. As little can a Sovereign State, when it becomes a member of a federal
Governt. If N. J. will not part with her Sovereignty it is in vain to talk of Govt. A new partition of the
States is desireable, but evidently & totally impracticable.

Mr. Williamson, illustrated the cases by a comparison of the different States, to Counties of
different sizes within the same State; observing that proportional representation was admitted to be just
in the latter case, and could not therefore be fairly contested in the former.

The question being about to be put Mr. Patterson hoped that as so much depended on it, it might
be thought best to postpone the decision till tomorrow, which was done nem. con —

〈The Come. rose & the House adjourned.〉
The clause concerning the rule of suffrage in the natl. Legislature postponed (on Saturday,) was resumed.

Mr. Sharman proposed that the proportion of suffrage in the 1st branch should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more. He said as the States would remain possessed of certain individual rights, each State ought to be able to protect itself: otherwise a few large States will rule the rest. The House of Lords in England he observed had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons that they may be able to defend their rights.

Mr. Rutlidge proposed that the proportion of suffrage in the 1st branch should be according to the quotas of contribution. The justice of this rule he said could not be contested. Mr. Butler urged the same idea: (adding that money was power; and that the States ought to have weight in the Govt. — in proportion to their wealth.) [FN: Taken from Yates.]

Mr. King & Mr. Wilson [FN: In the printed Journal Mr Rutlidge is named as the seconder of the motion.] (in order to bring the question to a point) [FN: Taken from Yates.] moved “that the right of suffrage in (the first branch of) the national Legislature ought not to be according the rule established in the articles of Confederation, but according to some equitable ratio of representation”. The clause so far as it related to suffrage in the first branch was postponed in order to consider this motion:

Mr. Dickenson contended for the actual contributions of the States as the rule of their representation & suffrage (in the first branch). By thus connecting the interest of the States with their duty, the latter would be sure to be performed.

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Mr. King remarked that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imports would be one source of it. If the actual contributions were to be the rule the non-importing States, as Cont. & N. Jersey, wd. be in a bad situation indeed. It might so happen that they wd. have no representation. This situation of particular States had been always one powerful argument in favor of the 5 Per Ct. impost.

The question being abt. to be put Docr. Franklin sd. he had thrown his ideas of the matter on a paper wch. Mr. Wilson read to the Committee in the words following — [FN: In the Franklin Papers in the Library of Congress is the first, or an earlier, draft of this speech which differs from Madison’s copy only in the use of capitals (and in a few cases of spelling).]

Mr Chairman

It has given me a great pleasure to observe that till this point, the proportion of representation, came before us, our debates were carried on with great coolness & temper. If any thing of a contrary kind, has on this occasion appeared. I hope it will not be repeated; for we are sent here to consult not to contend, with each other; and declarations of a fixed opinion, and of determined resolution, never to change it, neither enlighten nor convince us. Positiveness and warmth on one side, naturally beget their like on the other; and tend to create and augment discord & division in a great concern, wherein harmony & Union are extremely necessary to give weight to our Councils, and render them effectual in promoting & securing the common good.
I must own that I was originally of opinion it would be better if every member of Congress, or our national Council, were to consider himself rather as a representative of the whole, than as an Agent for the interests of a particular State; in which case the proportion of members for each State would be of less consequence, & it would not be very material whether they voted by States or individually. But as I find this is not to be expected, I now think the number of Representatives should bear some proportion to the number of the Represented; and that the decisions shd. be by the majority of members, not by the majority of States. This is objected to from an apprehension that the greater States would then swallow up the smaller. I do not at present clearly see what advantage the greater States could propose to themselves by swallowing the smaller, and therefore do not apprehend they would attempt it. I recollect that in the beginning of this Century, when the Union was proposed of the two Kingdoms, England & Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed however that the different proportions of importance in the Union, of the two Nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords; A very great inferiority of numbers! And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of public officers, Civil & military of that nation will find I believe that the North Britons enjoy at least their full proportion of emolument.

But, Sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater; and this is mathematically demonstrable. Suppose for example, that 7 smaller States had each 3 members in the House, and the 6 larger to have one with another 6 members; and that upon a question, two members of each smaller State should be in affirmative and one in the Negative, they will make

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The greater States Sir are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the States. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different Constitution, some with greater others with fewer privileges, it was of importance to the borderers when their boundaries were contested, whether by running the division lines, they were placed on one side or the other. At present when such differences are done away, it is less material. The Interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured. Small States are more easily well & happily governed than large ones. If therefore in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to N. Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and however equally made at first, it would be continually varying by the augmentation of inhabitants in
some States, and their [more] [FN: “more” in Franklin MS.] fixed proportion in others; and thence
frequent occasion for new divisions, I beg leave to propose for the consideration of the Committee
another mode which appears to me to be as equitable, more easily carried into practice, and more
permanent in its nature.

Let the weakest State say what proportion of money or force it is able and willing to furnish for
the general purposes of the Union.

Let all the others oblige themselves to furnish each an equal proportion.

The whole of these joint supplies to be absolutely in the disposition of Congress.

The Congress in this case to be composed of an equal number of Delegates from each State:

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And their decisions to be by the majority of individual members voting.

If these joint and equal supplies should on particular occasions not be sufficient, Let Congress
make requisitions on the richer and more powerful States for farther aids, to be voluntarily afforded,
leaving to each State the right of considering the necessity and utility of the aid desired, and of giving
more or less as it should be found proper.

This mode is not new, it was formerly practiced with success by the British Government with
respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just
to accept; and in the last war carried on while we were united, they gave us back in five years a million
Sterling. We should probably have continued such voluntary contributions, whenever the occasions
appeared to require them for the common good of the Empire. It was not till they chose to force us, and
to deprive us of the merit and pleasure of voluntary contributions that we refused & resisted. Those
contributions however were to be disposed of at the pleasure of a Government in which we had no
representative. I am therefore persuaded, that they will not be refused to one in which the Representation
shall be equal

My learned colleague (Mr. Wilson) has already mentioned that the present method of voting by
States, was submitted to originally by Congress, under a conviction of its impropriety, inequality, and
injustice. This appears in the words of their Resolution. It is of Sepr. 6. 1774. The words are
“Resolved that in determining questions in this Congs. each colony or province shall have
one vote: the Congs. not being possessed of or at present able to procure materials for
ascertaining the importance of each Colony.”

On the question for agreeing to Mr. Kings and Mr. Wilsons motion. 〈it passed in the
Geo. ay. [Ayes — 7; noes — 3; divided — 1.]
〈It was then moved by Mr. Rutlidge 2ded. by Mr. Butler to add to the words “equitable ratio of
representation” at

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the end of the motion just agreed to, the words “according to the quotas of Contribution. [FN: Taken
from Journal.] On motion of
Mr. Wilson seconded by Mr. C. Pinckney. [FN: Taken from Journal.] this was postponed; in order to add, after, after the words “equitable ratio of representation” the words following “in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State.” [FN: Madison originally had recorded the substance of this motion, but later revised it as given from Journal.] this being the rule in the Act of Congress agreed to by eleven States, for apportioning quotas of revenue on the States. and requiring a census only every 5 — 7, or 10 years.

Mr. Gerry thought property not the rule of representation. Why then shd. the blacks, who were property in the South, be in the rule of representation more than the cattle & horses of the North. [FN: Taken from Yates.] On the question.

Mass: Con: N. Y. Pen: Maryd. Virga. N. C. S. C. and Geo: were in the affirmative: N. J. &. Del: in the negative. [Ayes — 9; noes — 2.] [FN: Madison originally had recorded this vote in his usual form, and confusing two votes in Journal had made a note that New Jersey was there recorded as voting “ay.” Then, apparently seeing his mistake, this was all struck out and the vote rewritten. All of this portion of the records was twice revised by Madison.]

Mr. Sharman moved that a question be taken whether each State shall have 〈one〉 vote [FN: Madison originally had “an equal vote”. Revised from Journal.] in the 2d. branch. Every thing he said depended on this. The smaller States would never agree to the plan on any other principle 〈than an equality of suffrage in this branch. Mr. Elsworth [FN: Taken from Journal.] seconded the motion.〉 On the question for allowing each State 〈one〉 vote in the 2d. branch.


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〈Mr. Wilson & Mr. Hamilton moved that the right of suffrage in the 2d. branch ought to be according to the same rule as in the 1st. branch.〉 [FN: Taken from Journal.]