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But as I perceive the hour is late, I will detain the Convention no longer.

On motion of Mr. Anderson,
The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Thursday, July 24th, 1845,

Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

After some business relating to the mails,

The committee on Privileges and Elections made the following report:

Committee Room, }
July 24th, 1845. }

To the Hon. T. J. Rusk,

President of the Convention:

Your committee, to whom was referred the memorial of a portion of the citizens of Montgomery county, praying that Charles B. Stewart be permitted to take a seat in this Convention, as deputy from said county, have had the same under consideration, and directed me to make the following report:

From the evidence before the committee, they are of opinion Charles B. Stewart is not entitled to a seat in this Convention; they, therefore, recommend the passage of the following resolution:

Resolved, That Charles B. Stewart is not entitled to a seat in this convention, as deputy from the county of Montgomery.

J. B. MILLER,
Chairman.

Mr. Scott offered the following substitute:

Whereas, the county of Montgomery is entitled to four delegates or deputies, in this Convention, by the basis of representation fixed in the President's proclamation, and sanctioned by this body; and

Whereas, it appears to this Convention, that the electors of said county voted for, and elected Gen. Sam. Houston, as one of said deputies,

under the erroneous belief that said Houston was a candidate for their suffrages, and would be present in this body, to represent their interests and wishes; and

Whereas, it further appears to the satisfaction of this Convention, that said Houston will not attend this body, and represent said county during its deliberations; and

Whereas, it is impracticable to refer the election of another deputy to the voters of said county, and have the place of said Houston supplied in time to effect any beneficial result: therefore,

Resolved, That the seat of Gen. Sam. Houston, a deputy elect from the county of Montgomery, be and the same is hereby declared vacant, and that the remaining deputies for said county be and they are hereby, authorized to fill said vacancy, by choosing another or fourth deputy to occupy said seat.

On motion of Mr. Scott, Mr. Stewart was authorized to address the Convention personally or by counsel.

Mr. Love moved to amend the substitute offered by Mr. Scott, by striking out all after the word "vacant," and inserting "and that Charles B. Stewart be entitled to the seat as the fifth highest candidate."

His reasons were, that the documents here show that Mr. Stewart brings with him a greater number of votes than any other individual who could claim a seat under the late election: that Montgomery county was entitled to full representation: that General Houston, in all probability, would not appear; and that the county of Montgomery would be injured to the extent of the failure of one vote in carrying out their views and wishes. And he thought, as had been remarked, that this matter was not controlled by law, but was entirely addressed to the equity of the Convention.

Mr. Brown hoped the amendment would not be made. He was disposed that Montgomery county should have the proper representation, but would rather the three gentlemen here as delegates from that county should take the responsibility of the selection, than to assume any part of it himself. He did not know whom the people of Montgomery county might desire to represent them, nor what might be their views and interests. He would prefer that these three gentlemen who have to go back there to their constituents, and who will be held to a rigid accountability for their choice, should have the power of making it. It was evident to his mind, that Montgomery was entitled to four delegates in this body. It was evident that, in consequence of a mistake which had prevailed over that county, a person had been elected who could not and would not serve; and he was not disposed to visit the consequences of this accident upon that people. He was not willing to refer the election to them, for the effect would be to deprive them of representa-

tion until the close of the session. It was very plain from the petition itself, that Dr. Stewart was not elected by Montgomery county; and he was not willing to vote that he was, nor to elect him for Montgomery county. The responsibility of the election should be cast upon those who represent the county in the Convention.

Barry Gillespie, Esq., then addressed the Convention as counsel for Mr. Stewart.

Mr. *Armstrong* said, that if upon equitable grounds, the delegates from that county would assume the responsibility of choosing this gentleman as the fourth Delegate, he was content. But it seems that the people of Montgomery have manifested most unequivocally their wish that Gen. Sam Houston should be their delegate: and if they wished the name of Sam. Houston placed upon the wall to represent them in fancy alone, we have no right to call the matter in question. He was not satisfied but they would rather prefer to have the name of Sam. Houston only in sound than to have any one else in person. We are bound to infer it from their electing him under all the circumstances and contingencies. If Sam. Houston has treated them with contempt, they must endure it and it belongs to them to call him to account for it. No person has a right to say his seat shall be filled but those who elected him; we have no business upon the petition of a minority to place any other individual there, and oust the name of Sam. Houston. Suppose Mr. Lewis were to withdraw from this House: there are four or five yet behind who were candidates; and upon the same principle the one who only received one hundred and odd votes could come in, the next in his turn, and so on, and claim the seat. He was not opposed to the gentleman taking his seat, by referring the matter to the delegates, but did not wish it to go to the House.

Mr. *Lewis* said: The proposition contained in the substitute for the resolution places me in a peculiarly delicate position. That substitute was drawn up and submitted to the Convention without any reference to my wishes on the subject. Not having been consulted, I was very much in hopes indeed that I should be permitted to stand a silent spectator of the action of this House in relation to the matter. But as this resolution proposes to confer upon the delegates of the county of Montgomery the power to choose a fourth delegate, and as I am one of them, and one who has not solicited the responsibility, I think it due to myself, to those whom I represent upon this floor, and due to this Convention to submit my views upon the subject. I trust, sir, that I never may under any circumstances, be called to a position in life in which I shall not faithfully and promptly, and without regard to consequences, conscientiously discharge the duties which may devolve upon me; and as

it is proposed to impose upon me a responsibility which I am not willing to take, nor do I think the people whom I represent desire it, I deem it due to myself to explain my views, and will endeavor briefly to do so. And permit me to assure gentlemen of this Convention that I feel as much solicitude to have a full representation from Montgomery county as either of my coadjutors: indeed I feel the greatest anxiety that it should be fully represented here; and I wish it could be by the distinguished citizen chosen to fill this place. This, however, may not be the case; and yet, sir, it may be for a part of the session. But, sir, I had come to the conclusion to give a silent vote upon the subject, and in support of the resolution introduced by the committee. I do not think that standing here as a representative of the people in this Convention, I should depart from a rule established by this House, that I should depart from the path of rectitude, in support of any gentleman's application, simply because he is from the county of Montgomery. No, sir, I am governed in my conduct by higher principles; I am not influenced by personal considerations; but shall place the matter on different grounds altogether. I, sir, voted for the resolution which ratified the act of the President in calling this Convention, and the mode and manner designated. I voted for it in the Congress of the Republic, thus giving sanction to the act of the President. The proclamation presents the manner in which elections shall be held, and that prescription has been ratified by the solemn act of this body. Montgomery county was allowed four deputies, to be elected in a particular manner. Being then chosen by the people, they come here with authentic proof that they were the choice of the people. Now without travelling further, I would ask if there is any proof in this case to that effect? Is there a particle of proof here before this Convention that will convince you, sir, that Dr. Stewart has been elected by the people according to the prescriptions of the law? No, sir: there is no such proof. On the contrary, there is decisive proof that he was not elected. This Convention having ratified the act of the President, having given it all the character and sanction of the law of the land, having adopted that particular mode of constituting delegates to this body, it is wholly incompetent for this Convention now to rescind that act and adopt a different mode of election. This action would be of a retrospective character, and have an effect co-extensive with the limits of the country. Such has not been the disposition evinced on former occasions by the Convention, which has closed the door against every one who has not come here in due form of law. I will appeal to you, sir, if this application is made in accordance with the principles of the proclamation? On what ground then does this gentleman claim his seat? By petition. I regret exceedingly that the Chief Justice of that county has taken upon himself to issue two certificates for gentlemen who he says are elected in that county. By reference to the returns made by him to the State Department, it will be seen that General Houston and three others were duly elected delegates from

that county, General Houston heading the list. He then proceeds to issue certificates to those delegates, holding in readiness that of General Houston. I am satisfied that it was the desire of General Houston that he should be run in Montgomery county. Judge Norton remarked in conversation with me that the people of that county would be angry with him if he should not return in time to take his seat. I told him that he had written a letter on the faith of which, and the representations contained in it, General Houston's friends have run him, that he was elected, and there was no certainty of his being back in time. He assured me that he did not do it without first consulting General Houston; that he was desirous of being elected from Montgomery county; if run at all, as that was his residence; that he (Judge Norton,) sat down and wrote the letter with General Houston's approbation, and sent it to Montgomery county. Then, sir, he was engaged as a candidate, though at the time I thought it indiscreet, and hardening some thing for his friends to elect him. Yet the people were desirous to have him in the Convention and gave him a large vote; and as I understood, they have not yet despaired of his return, or perhaps they would have taken the necessary steps to have had an election.

It is insisted that General Houston is not a delegate from Montgomery county, because not a citizen of the county. Now, sir, I understand that he regards himself as a citizen of that county. He lives there: he has made an improvement there, and certainly looks upon it as his residence. But admitting the fact for the sake of argument, let us refer to the example set by the State of Virginia in electing Delegates to the Convention. Did she confine herself to the citizens of any particular county? No, sir: she selected them from all the counties of the State, where the most talented, intelligent and virtuous were to be found. And is there a gentleman here who would have denied General Houston his seat, had he presented himself before this body? Not one, sir.

I find among the names appended to these documents, those of some of my personal friends, but I am compelled to be governed here by other and higher motives than mere personal considerations. Have a majority of the people of that county numbering some eleven or twelve hundred voters petitioned in this case? No, sir.

Thus much I have deemed it my duty to say on this occasion; I regret, sir, that it has devolved upon me to say one word.

Mr. Spott said: I had not intended to participate, Mr. President, nor shall I do so, in the debate upon this subject. I rise merely for the purpose of justifying myself in the eyes of the House, if not of my colleagues, for the course I have pursued upon this occasion. It is true, I did not submit the resolution offered as a substitute to the inspection of my colleagues: I do not recollect whether or not to that of the other. Be that as it may, I presume we respectively retain our liberties as del-

legates from the same county in this convention. Here let me say to my colleagues, through you, Mr. President, that I did not intend to depreciate their importance, or the weight to which their opinions and wishes are entitled. What I did, was done from my own sense of right and wrong, and upon my own responsibility. The terms of the substitute authorizing the remaining deputies to select one: and if my worthy colleague then shall not see proper to sanction this proceeding for the consideration alluded to (and the other delegate also was not consulted,) he is not compelled to do so. The responsibility of introducing this resolution is mine, and mine alone. Let me say, however, that if there is any thing wrong in it, it was not intended, and I hope they will excuse me.

As to the application of C. B. Stewart for a seat in this body, perhaps it would be somewhat indelicate for me to say any thing: as, although I have been a resident in the county for some five or six years, yet I have led so secluded a life, that I am a stranger in the county compared with my colleagues, and much less acquainted with the state of things there. And if I get decently out of this position, I think it will be some time before I shall again propose myself to fill a similar station: for I feel my inability adequately to represent those who sent me here. I think it probable that I, as well as General Houston have deceived them, in our respective competency to represent the great and important county of Montgomery upon this floor. General Houston was elected by an overwhelming majority, and circumstances go to show that had he been there, scarce fifty would have voted against him. I do not know, however, whether they would like his shadow pasted upon the wall or over his seat better than any other representation here present: but this I do know, that they would prefer him to any other citizen there, if they thought he could come here and represent them. Whether he was eligible or not on this occasion is a point of law which I do not argue. I believe the evidence on the clerk's table shows that the people of Montgomery county voted for him, when thought, erroneously as it appears now, that he would be here. It will be seen from the letter of Judge Norton, that he was consulted as to the propriety of running for the county of Harris. He then said that he would prefer Montgomery. It may be and probably is the fact, that he was somewhat solicitous upon the subject at the time. I contend that the people did not have the whole of the facts before them, when they supported him. Some of his warmest friends thought from the evidence before them, that he could not and would not be here to represent them. I, myself, though a candidate at the time, when I did speak on the subject, said that I thought there was some doubt about the matter: for my own part, I had great doubts upon the subject, although sensible to the last, I said very little. I contend then that the people then were deceived in the origin of this matter, and the facts now developed and before the House to day, show that General Houston could not reasonably have ex-

pected at the start to be here. Then if it is due the county of Montgomery to be fully represented, what is the proper mode? I for one would vastly prefer sending this matter back to the people of that county; but the Chief Justice could not declare the seat vacant; and the President could not issue a new writ. It would be entirely useless to refer it back to the people. It is 130 miles to the edge of the county, and it would not be possible for the election to be held in time for the member to reach here much if at all before the end of the session. Then if the right of the county of Montgomery to a full representation is allowed, and the method proposed is not the best, what other shall we adopt? If this mode is not thought sensible, I then hope the amendment of the gentleman from Galveston will prevail, and that the Convention will declare Charles B. Stewart entitled to the seat. It is shown by the returns that Dr. Stewart was but 60 votes behind one of the deputies, but 30 behind another, and 75 before another. This affords sufficient evidence that if not more popular than General Houston, at least the people of Montgomery county have great confidence in him. As regards the comparatively small number of memorialists, I do not think it proves any thing. It will be recollected that the county is a large one, perhaps large enough for three if not more; the people live dispersed without much communication; the time was the busy season of the year; no very great trouble was taken to obtain signatures; and there appears to have been no concert of action: some petitioning the Chief Justice for an unconditional certificate, and others addressing the Convention. If referred back to the people, there can be very little doubt, that Dr. Stewart would obtain as many votes, or more than before. I do not think my opinion, however, entitled to as much regard as my colleagues; for, as I said before, I am comparatively a stranger in the county. But I think the conclusion legitimate, and that the Convention will sustain me in it. I do not wish to throw any responsibility upon my colleagues. It is very easy for them to decline acting in this matter. Let them if they please, leave the seat vacant, and answer to their constituents, as I will answer to them for the introduction of this resolution. I am not governed by personal motives towards Dr. Stewart: I have no particular partiality for him, nor have I any enmity against him. I do not wish to curry favor with any man, or set of men. My only object is to carry out the wishes and maintain the interests of Montgomery county. If my colleagues choose to decline or to elect some other person than Dr. Stewart, they are at liberty to do so. They are not compelled to elect him. A courier can go to Montgomery in four days, and in four days more the man they may choose to elect, can be here. In conclusion, let me say that I hope the substitute of the gentleman from Galveston will be adopted, and that the Convention, from the evidence before them, will declare Dr. Stewart entitled to occupy the seat. He has pledged himself, as I learn from his counsel, that he will vacate his seat immediately upon the arrival of General Houston.

The question was then taken on Mr. Love's amendment, and rejected. On motion of Mr. Ochiltree, a division of the question was had, on the substitute of Mr. Scott.

The first clause of the resolution, declaring the seat of Sam Houston, a deputy elect from the county of Montgomery vacant was rejected.

The second clause, authorizing the deputies from the said county, to fill said vacancy by choosing another, was also rejected.

The question was then taken on the adoption of the report and resolution of the committee, declaring that Charles B. Stewart is not entitled to a seat in the Convention as a delegate from Montgomery, and carried. On motion, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Davis, the Convention took up the

ORDERS OF THE DAY.

The amendment of the committee to the 30th section of the report of the committee on the Legislative Department being first in order.

Mr. Runnels said: I had not intended, Mr. President, after the few remarks which I made in committee of the whole upon this subject, to have trespassed again upon the time of the Convention. But since the debate has taken such a wide range, and brought in every thing under the sun, it seems to be rendered necessary that I should give some further explanation of my views with regard to it. This proposition, to my mind, is a very simple one. It is one which materially affects the right of suffrage enjoyed by every free man of this country, and the weight and influence that his vote shall have in the legislation of his country. The report of the committee contemplates basing representation upon the qualified electors of the country: which would give to every individual voter in the community an equal right, attaching all the consequences to his vote that is given to any other voter in the community. The amendment proposed, sir, contemplates a different view of things. It strikes directly at the elective franchise. It gives an individual in one portion of the country at least five times the influence in the legislation of the country with an individual in another portion of the country. Let me illustrate for a moment the practical effect of this amendment upon this community as it exists. I am aware, sir, that in counties or states where there are no geographical distinctions, where all portions of the country are settled by the same description of population, there could be no great disparity of rights, and no material difference between the principle of the amendment and that recommended in

the report of the committee on the Legislative Department. But in a country peculiarly situated as this is, it does make a very material difference. I will suppose a case. I will take my own county, although there are many others similarly situated, and which must be so situated in all time to come; and that county, as I am bound to admit is not reputed as wealthy as the more northern portions of the Republic. The rich lands of that county, as well as Matagorda and Fort Bend, and all the lower Brazos, Colorado and Trinity country, will admit of settlements, plantations for cultivating sugar if you please, or extensive cotton farms. In this region of country there will not be as many free white families as in other portions of the State; for the reason that it is not as healthy, and families will not reside there to the same extent. And the great mass of the slave population must and will be concentrated there, for if these lands are brought into cultivation, it must be done by slave labor. Suppose the county of Brazoria to have four hundred voters. These are mostly young men engaged in managing and carrying on the business of those extensive plantations. Not that I wish it understood that I am one of these extensive planters; it is as much as I can do to live. But I am looking forward to a state of things which sooner or later must exist. There are then four hundred voters in the county of Brazoria, who have no families. By a preceding section of the report they are to be entitled to a vote. But, sir, by this amendment do you give that four hundred an equal weight in your Legislature with the same number elsewhere? No, sir: a county which has the same number of voters, but has four hundred families connected with them, in all numbering two thousand inhabitants, will have at least five times the weight and influence in the Legislature that is given to the first four hundred. Is this equitable; is it just? Some here contend that it is; I insist that it is not. But we have been told that we ought to make free population the basis of representation: because women and children are not otherwise represented. Sir, I would like to know who there is or can be in Texas, that has not a mother, sister, or some female connection? I should like to know if there is any gentleman in this Convention who would pretend to say for a moment that widows and minors could be neglected under a system adopted not only by this government, but by all the American Constitutions, which constitutes free white male persons over the age of twenty-one, the governors of the country? What, sir, is meant by the principles of democracy, so often referred to in this Convention? Is it that the qualified electors in the community shall assemble in person, and settle all questions? Or is it a constitutional representative democracy, by means of which the people will and can do, through their representatives in the Legislature, what they cannot otherwise do in a country of so vast an extent? Upon the principles which are styled the true original primitive principles of democracy, all the people would assemble together for the purpose of deciding all questions; and we should find one individual leading up a wife and five or

six children, claiming to vote for each of them. Does it not seem a strange idea, when the principle is a settled one that none but adults shall vote, to give to the individuals and communities having the largest number of wives and children a right to so many extra votes? It is unreasonable and unjust, and prostrates every thing like the principles of liberty with regard to representation. It might perhaps be just, if every portion of the community were settled alike. But the very condition and position of the country forbid the idea.

It has been said in debate, however, that the country was destined to have a considerable influx of foreign population, that under the laws of the United States they would be required to undergo the process of naturalization; and, consequently, they should have representation in the Legislature; this is to me the most astonishing doctrine, that a population, not citizens, should give to the county in which they may be located additional representation; when other portions of the country having a large population of another description, on which they pay heavy tax are to be excluded from representation in the legislation of the country. I intend no invidious comparison. I entertain, for that description of emigration the highest respect, and would extend to them all the protection of good and salutary laws, protecting them in all their rights, and when they shall have acquired citizenship under the Constitution of the United States; over which this State can exercise no control; it is my desire that they should exercise all the rights of other citizens; and entertain no doubt that we shall find among that interesting class, the truest and best patriots.

In conclusion, the doctrine contained in the amendment is to my mind flagrant and unjust. I impugn the motives of no one in this Convention, and I hope I never shall; I respect all the members of this body, and respect their opinions; but I must reserve to myself the right of speaking and acting for myself.

Mr. Anderson said: Mr. President, I feel but little disposed to intrude any remarks that I may have to make at this time, upon the exhausted patience of this body. But I feel confident that the importance of the subject will plead my apology, if any were necessary. I am not possessed of the oratory of embellishing argument, as other gentlemen, with the flights of fancy and the beauties of rhetoric. It is not my aim; utility and truth I aim at; let me but triumph over error, and I will cheerfully yield to him the meed of praise, who is justly entitled to it, by superior talent and gifted oratory. The flights of genius may for a while delight, but it is only unimpassioned reason that is useful in discussion.

Mr. President, I cannot concur with the amendment proposed by the committee of the whole. I am decidedly in favor of the section as it now stands reported by the standing committee on the legislative department. I can but briefly notice the position assumed by gentlemen ad-

verse to the section as it now reads. The honorable gentleman from Harrison argues with great confidence, that we have not the right to place the basis of representation upon the electoral vote, for, says he, it is in opposition to that plain and important feature of the Bill of Rights which declares, "that all free persons when they form a compact have equal rights." In the first place, that section of the Bill of Rights is intended to protect individuals from unjust legislation and oppressive legal decision. It is intended as a restraint, to prevent the destruction of any great and essential right which might not be provided for, and the mooted of which might be injurious to human liberty, and consequently cannot apply to the present subject inasmuch as this is one of a general kind. If the application of this doctrine could have any effect it could not favor the gentleman, for by carrying out his principle, and admitting it to be correct, I could with more justice claim its support. For instance, he proposes to fix the basis of representation upon free white population. Well, let us fix it thus, and examine its bearing. To illustrate its operation, we will state a case. One county in the East, from whence the gentleman hails, has five thousand souls, possessing four hundred voters; a county in the West, from whence I have the honor to come, has two thousand souls, and an equal number of voters; and, in the course of our progress, (and we are at this time in a state of war,) if it should be necessary to call forth the militia of the country, his county furnishes as many only as mine, to protect, guard and defend the institutions of the State. Thus far we would be equal, and thus far also, his principle would justly apply; but after peace is restored, and the great and essential rights are all to be submitted for political action, how does it then rest? The gentleman's county would send two representatives to my one, when I had contributed in the protection and defence of the country as much as he. Does this operate equally? Does it operate consistently with republican principles? In the one case, we are called upon to contribute equally in the defence of the country. We encounter all the dangers, hardships and privation incident to a state of war as well as in the civil support of the government. In the other, we are denied the rights of representation equally with the rest; or, in other words, when we are actually needed for the salvation of our dearest rights, they call upon us, and we are compelled to go; but when they are secured, we are spurned away, and told, with great gravity, that inasmuch as it would be impolitic for us to have your influence in legislation, no matter how just it may be, yet you shall be denied this great and essential privilege, representation, equal to the support you have rendered.

Sir, such a doctrine as this is at variance with the organic principle of our institutions, repugnant to common reason and justice, and I hope will receive its merited rebuke. We are assembled here, Mr. President, for the purpose of framing a Constitution, which is to be equal in its operation, for general and not for special purposes. But it does seem

to me that if we concur with the amendments adopted by the committee of the whole, we strike a deadly blow at equal privileges, derogatory at once to free principles, and subversive of political rights. I have placed this question, then, stripped of its unnatural attire upon natural rights combined with political expedience, and ask gentlemen to meet me fairly upon the position I assume. The gentleman from San Augustine, Mr. Henderson, argues against the electoral vote, and bases the gist of his remarks upon a violation of female rights, he asserts, and supposes a case. Suppose, said he, a female, widow of large possessions, (and who must from that fact contribute largely towards the support of the government,) he denied the rights of representation upon number; here you present an unequal right. Mr. President I think not: for if she possesses the property, the gentleman supposes she has all the other qualities requisite, not only in a short time to be represented in legislation, but actually represented with a helpmate qualified to fill all her wants, political included. I see the gentleman smile; I will therefore attempt to change him into seriousness by an answer to his argument. I started out by saying in proportion to the individual services claimed, should also the individual claim the right of representation, in order to prevent the increase of burthens disproportioned to his rights. Now I ask when were the females of our country ever called upon to confront with their placid smiles the austere look which war induces, when have they ever shouldered their weapons in defence of their country? Until he can show a case, his reasons for his position desert him. On the contrary, they have served as a pretext for many a man to shrink from responsibility in the defence of his country. But still I do not concede that they are not represented, but hold that they have full representation in proportion to the means contributed. Why talk about their great rights, and still deny them the greatest rights, which is that of becoming representatives themselves? To run further after the gentleman's argument would be to pursue a phantom, or attempt to reach the end of the rainbow, in expectation of finding a substance. And, women are a good deal like rainbows, very handsome, delicate, and not very tangible. Mr. President: I shall not press this silly nonsense further against the assertions of gentlemen who have brought so little argument to render their position palatable to the minds of members.

Sir, the abolition doctrine has found its way into the very merits of this question. It may have an important bearing. I do not pretend to deny it; enough has been said upon it, and I am not called upon to offer any more in addition. I appeal though to every member present, in behalf of individual rights, and public justice, and general utility, to reflect deeply upon this important subject, so that local interest may not weigh down the general good. I ask them not to exercise a physical force, but the strong power of moral influence, individual rectitude and political justice, and believing that the result of this question will be an illustrious commentary upon the wisdom which characterizes deliberative assemblies, I submit its decision with a full confidence in its just issue.

Mr. Moore said: The gentleman from Bexar observed that we had started up a bugbear; that we distrusted foreigners, that we were afraid of European emigration. Sir, I do not fear it. I will say to that gentleman that I shall rejoice to see any portion of the Caucasian race come here and enjoy the blessings of our institutions; I shall welcome the Norwegian and the Spaniard alike, let them come from the far North, to the pillars of Hercules, they are all welcome, if they come to aid us in maintaining our rights and liberties, if they will fight for the standard of freedom, they should enjoy with us all the privileges of Texans. It is not these, I fear. No, sir, strike out the term "white," and what will be the result? Hordes of Mexican Indians may come in here from the West, and may be more formidable than the enemy you have vanquished. Silently they will come moving in; they will come back in thousands to Bexar, in thousands to Goliad, perhaps to Nacogdoches, and what will be the consequence? Ten, twenty, thirty, forty, fifty thousand may come in here, and vanquish you at the ballot box, though you are invincible in arms. This is no idle dream; no bugbear; it is the truth. We have received recent information from the West, that large numbers are now on their way to Texas, intending soon to settle at Bexar. I fear not the Castilian race, but I fear those who, though they speak the Spanish language, are but the descendants of that degraded and despicable race which Cortez conquered. They, if we adopt the amendment, will have a representation equal to that of the Anglo-Saxon or European races.

That honorable gentleman observed that he had regarded me as hisingleman, so far as democracy was concerned. It is true that I used the term democracy, but not in a partizan sense. I stated that the only pure republican or democratic basis was that of qualified electors. Under a democracy, women and children do not come in and vote. Go to the Indian tribes; do the squaws and children participate in their councils? Go to any country you choose; to that which is in the highest state of civilization; do the women and children come to its assemblies representing themselves? No, sir, it is the lord of creation himself, in his pride, and strength, and dignity, who comes there to legislate for the inferior portion of his race, for the weak and the feeble of his country. You are called here to lay the foundations of a government which will last perhaps through all time. Let its foundations be firm; firm as the rock upon which this city rests; build them in adamant, that they may defy the waves of time. You represent a high and noble race, the Anglo-Saxon or American race.

"Pride in their port, defiance in their eye,
I see the lords of human kind pass by."

Bugbears frighten them not. But while I would lay firm the foundations of our government, I would fix them upon such a basis as intelligent freemen would respect and seek to perpetuate. Talk not

to me of a democracy which brings the mean, grovelling, yellow race of Mexico, I say the Indian race of Mexicans, upon an equality of rights and privileges with the free born races of Europe. The God of nature has made them inferior; he has made the African and the red man inferior to the white. Let them if they wish, like the Choctaws and Cherokees form a separate government; but not come here to poison the institutions of the Caucasian race.

Mr. Darnell offered the following as an amendment to the amendment of the Committee: "Provided that foreigners shall not be included in the numerical strength, until they shall have become citizens according to the laws of the U. States." In support of which he addressed the Convention as follows:

Mr. President: If I understand the ground taken in opposition to the amendment, it is this, and no other, that the people of Texas may be imposed upon by foreigners who may come in and participate in our counsels, without having acquired citizenship under the laws of the United States. If that is the only objection, it will become at once of no force upon the adoption of this amendment proposed by myself. It is argued, sir, by some gentleman, that one portion of the community, the fair sex, should not be represented, or at least that our ladies should be placed on a level with the African fair sex, who are not known, and should not be, any further than as a portion of the slave population. What will be the effect of the proposition before the House? It amounts to this, that you place the negro population in comparison with those of the white population who have no vote in the counsels of the country. If that is a fair proposition, I should like to see it more fairly demonstrated, than it has yet been done upon this floor. It was said by one of the gentlemen, that if the country was invaded, and war declared, that those persons occupying these farms would be the first to be called upon to defend the rights of the citizens; and that if we adopted the principle of population as a basis, they would be deprived of a right and called upon at the same time to defend the country when others were exonerated. Now, sir, who defend the country? Those who cultivate negro farms and occupy a prominent position? Or is it the bone and sinew who are compelled at all times to take up arms when called upon? Who are those who are always ready to defend their country? Those people sir, who live in the counties filled up with a white population. The negroes are not called out, sir. The class of young men from seventeen to twenty one years of age, though forced to bear arms in defence of the country is not represented at all. I for one, sir, am unwilling to place the negroes on an equality with the white population in this matter. I recognize no distinction between the different portions of this country. I contend that the white population is that which should be regarded in the counsels of legislation.

With regard to the remarks made about the abolitionists, to the fears expressed that they may get power into their hand here, if the principle is adopted, that population shall govern, they seem to me vain, futile and groundless. If the gentlemen are sincere, there is one position which they may take; to exclude all persons emigrating from a country where abolition principles prevail. You must declare that voters shall not come here from those countries, otherwise the object cannot be obtained. Is there a proposition to that effect before this body? No, sir; nothing of the kind. But, sir, I have no such apprehensions. I believe this subject is one which should not be agitated here; such arguments as these should not be published to the world; they cannot result in good. I cannot see the force of any of the arguments adduced in favor of excluding population and making voters the basis of representation; I believe there cannot be any weight in them. If I could believe that a portion of the white population would attempt to infringe the rights of others, I might go with the gentleman; but I cannot believe it, and hence I cannot conscientiously vote for the other proposition. As regards the amendment, I propose that no foreigner shall be included in the enumeration until he shall have lived in the country five years, or the time necessary to acquire citizenship under the government of the U. States. This will obviate the objections of gentlemen, without excluding any who have the right to vote.

Mr. Howard said; I think, Mr. President, that this amendment would leave the matter where the Committee placed it. Without noticing the observations of the gentleman from Harris, who may rest assured I shall never attack him, I only wish to place my views upon this question in their true light, and free them from a little unintentional misrepresentation. I wish to show that the position which I occupy was that of the fathers of the American Revolution and American government. It seems unpopular now to talk of "taxation and representation," but the time has been when that question was a pillar of strength and the battle cry that led to victory. Its history does not begin there; it was this question with which the advocates of liberty resisted the tyranny and oppression of the Tudors and Stewarts; and from that, the great principle was established in the parliament of England that the consent of the people through their representations in the lower house should be necessary to any measure intended to draw money from them by means of taxation. "Taxation and representation" is then a principle of the American Union; it was a principle which governed the men who framed the Constitution of the American Union; and there were men there as wise as any in any age, certainly as wise as any in the American Union at this moment.

It becomes necessary here to draw a distinction or two, before I proceed. As I conceive, there is a most material difference between the right of suffrage and representation. Representation is the end,

the right of suffrage the means. Representative government is the great principle of the union and all the state governments. That representation is to be effected by means of the right of suffrage is another principle. A distinction has been spoken of between natural and civil rights. It has been said that the right of suffrage is exclusively a civil right. Sir, I do not understand how, in human affairs, we can separate natural and civil rights, and draw a distinction between them. In all things there is a right and a wrong, and in all things natural justice. We cannot say that this is a mere matter of political expediency; for, if so, it is perfectly immaterial whether one tenth of the freemen in the community vote, or all vote. I deny, sir, that you can deprive the great majority of the community of their votes, without infringing upon the principles of natural justice. The right of representation, however, is a natural, as well as a civil right. What is it; upon what does it rest? All free governments rest upon the assent of the governed. It is from that we say the people can make and unmake the government at pleasure; from that we say that all political power emanates from the people; because of the presumed consent without which it is the republican principle that no government is binding upon the people. It is a natural right existing in the very nature of things; in the very definition of all forms of republican institutions. The two rights are entirely distinct.

The position which I took was this: that representation should be based upon numbers, and that property should go with it, and in adopting that basis, real property does go with it; and then I maintain, we have the true principle, which is that of "representation and taxation." Mr. Madison says, in the *Federalist*, which by the way is not a federal book, that "it is agreed upon all sides, that numbers is the best scale of wealth and taxation, as they are the only proper scale of representation." And again he says, "We have hitherto proceeded upon the idea that representation related to persons only and not at all to property. But is it a just idea? Government is instituted no less for the protection of property than for that of the persons of individuals." Mr. Jefferson, in his *Notes on Virginia*, condemned the basis adopted in the Virginia constitution, because representation was not apportioned according to number. There were the two great apostles of American constitutional liberty; they were the men who presided over the birth of republican government upon this continent. And to charge them with a want of republicanism, because they maintained this principle, would require a degree of self complacency which I do not profess to entertain. There may be some who talk a great deal of democracy without understanding what the fathers of our doctrine and faith as a people have promulgated in relation to it. But as long as I keep myself within the line of these great precedents, I shall think I have at least some guide, some rudder, some chart, by which to steer my bark. But the precedents do not stop here. This doctrine which is called so

novel, that representation and taxation ought to go together, and that it is best to blend the two, by taking numbers as the basis of representation, is also the doctrine of the best book of constitutional law in this country, it is the doctrine promulgated by Judge Story. [Here Mr. Howard read several passages from the commentaries, illustrating this doctrine.] This doctrine may be new to some, but it seems to be as old as the American confederation. We see that it has been one of the great principles of the American government from its origin to the present moment, that representation and property should go together, as one and inseparable. And why is it so? Men talk about the defenders of their country; but, sir, money constitutes the sinews of war as well as the flesh and blood of the people. I shall not permit myself to be warped from one of the foundations of society by any declamation against the right of property. Now if this is the best basis because it embraces all the property as well as all the freemen of the country, taking the two together, it includes all the interests and all the rights of the community. Now the people may make suffrage as free as they please; but they cannot make a government without regarding the great and essential interest of property, one of the solid foundations of all human society, as it must be of human government. And no declamation about the poor man's rights and privileges, shall make no shield from the assertion of a doctrine which lies at the very foundation of society, and which has been the doctrine of American republicans from the earliest construction of their government to the present moment.

The talk about widows is very foreign to the subject. Who proposed that widows should sit in the halls of legislation? Who proposed that females should legislate to places of power or trust? It strikes me as entirely unnecessary that this matter should be dragged into the debate, so far as the right of suffrage is concerned. Gentlemen seem to confound the two things, suffrage and representation, things as different as night and day; one is the end, and the other the means. It is said that upon the same principle females ought to be allowed to vote. I cannot see the analogy. There is a necessity for the happiness and order of society that the male should exercise the great functions of society, that this distinction should exist. But when we come to representation the rule is different. The question has been argued here, as though the man who exercised the right of suffrage was responsible only to himself, as though it were nothing but a personal privilege. It is not so; he exercises that right for society; he exercises it for the whole of his family. He represents those whom the laws do not allow to be otherwise represented there by his vote; the infant, the minor and the female. It is found consistent to represent them by the male vote for the sake of order and security.

I do not wish to draw any distinction between the different classes in the community; I do not wish to do anything which may array one

interest against another, or provoke feelings of hostility. I wish to adopt a basis which shall represent every interest and every class in society. But as I understand it the basis recommended in the Report, declares that nobody is to be represented but qualified electors. It is no answer to say that these qualified electors may put in action and establish rules to protect all. It may be true: they may protect all; but then all are not represented. In adopting this rule, therefore, you will provide for a large class of people, who are found in the country, and must necessarily be governed, whom you cannot neglect and so not propose to exclude, the European population. Here let me say, that in speaking of this population, I am not holding out a pin hook to catch qualified voters; because I do not expect it to increase the number of qualified voters in the community, as they must remain here for years to become qualified. What is increased? Their representation according to numbers. And is it not in itself just? They are subject to work upon the highway, to do military duty, to fight for the country, and to pay taxes for its support. And is it not just that their interest should be represented? As I conceive, it is no more than fair. This basis is no great novelty; it is the very basis adopted in your present constitution. The innovation is in the Report of the Committee.

I do not perceive any danger to be apprehended from this population so much talked about. But even admitting the danger I do not see how the means proposed to be adopted can have any effect. If a particular institution is to be attacked by foreign votes, it is to be done by qualified electors, and not by women and children, and acres, and cows and calves, or by cotton fields or sugar fields. And it strikes me that, by shutting out all property influence, and making qualified electors the exclusive basis, you are placing it more within the reach of attack; for many of these qualified electors may not possess a single slave: while those who are not electors may own large plantations and slaves.

I think the basis proposed will be partial, unequal and injurious in its operation, and instead of having the effect anticipated, will cause precisely the opposite consequence. For it must necessarily array the hostile feelings of our foreign immigration against the Constitution itself: I do not see how it is to be avoided. And now permit me to say, that while I am no native American, I am yet an advocate for maintaining the naturalization laws of the United States, as they are. I think them salutary laws in themselves; it is a salutary principle which obliges emigrants, before they can vote, to serve that apprenticeship, to make them acquainted with our laws and institutions. But it strikes me as unjust to say that during that time neither their property nor their interest shall have any representation. I will not enter here into the defence of the European population; I will not expatiate upon their vices or their virtues. But I must say one thing with regard to the German population of the country. I feel bound as a matter of Justice to say that they are never disorganizers, never radicals; they never attack

property. On the contrary, there are none more industrious, more sober, more frugal, or more successful in acquiring property and identifying themselves with the soil and the institutions of the country. Point me to a German, who has been in the country five years, though he has nothing but the labor of his own hands, and I will show you a man who has acquired a little land, who has built him a little cottage, and secured his comforts around him. He advocates the rights of property always; is never a prey to demagogues; never embraces revolutionary doctrines; he is a strong lover of order. I do not ask any haste in imparting to him the right of suffrage, but I do say he is entitled, in some degree, to representation. There cannot be shown a single solitary instance where the German population has shown any disposition to interfere, as a population, with the peculiar institutions of the country. Some such feeling may have been detected in one or two petty princes from Europe, without power, or influence or place among the great German population of this country. I know of no population which is more zealous for annexation than this class which it is proposed to exclude from representation. This much I will say as a matter of justice to myself.

Mr. *Mayfield* said that the amendment offered by the gentleman from San Augustine, would compel him if he could have the patience of the Convention, to lay before them his views and opinions on this grave and important question. And as the evening was far advanced, and the patience of the Convention had been much taxed, he would move that the report lie on the table, and that this question be made the special order of the day for to-morrow at 11 o'clock.

Carried; and

The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Friday morning, July 25, 1845.

Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Lewis offered the following resolution:

Resolved, That the committee on the Judiciary department of the Constitution, be instructed to inquire into the propriety of authorizing the Legislature to establish separate chancery courts whenever it shall be deemed expedient to do so.