

Problem I: The Democratic Function in Electorates of Enormous Size: The Case of the United States

The problem of how to incorporate the democratic element into the actual constitutional structure in a proper balance with the aristocratic and monarchical elements was an major issue at the convention that drafted the Constitution in 1787 and in the ratification debates that followed. Much of the concern focused on the size of the House of Representatives. In 1787, the total population of the United States was less than four million.¹⁵ Approximately twenty percent of the population were black slaves.¹⁶ Of the remaining eighty percent, half were women, none of whom were allowed to vote, and about thirty percent were under voting age.¹⁷ Thus the total possible voting population was less than 1.2 million citizens. How large did the Framers think the House should be? Too small a House would be undemocratic in that it could constitute a cabal against the liberties of the people and would itself be aristocratic. Too large a House would destroy its effectiveness as a deliberative body.

The constitutional convention of 1787 decided on a House of sixty-five members until a census could be taken in 1790.¹⁸ A total population of thirty thousand (including women and children, with slaves counting for three-fifths of a person) was set as the minimum size of a congressional district.¹⁹

15. *The World Almanac*, 1999 (Mahway, N.J.: Premedia Reference, Inc., 1998) p. 376.

16. *The World Almanac*, 1999 (Mahway, N.J.: Premedia Reference, Inc., 1998) p. 378.

17. I have used throughout this essay an estimate of thirty percent of the population as being too young to vote.

18. US Const, Art I, § 2.

19. US Const, Art I, § 2.

In 1790, Congress passed by a two-thirds vote twelve Articles of Amendment to the new Constitution. Articles Three through Twelve were ratified by the States and became the Bill of Rights. Of the remaining two, one was ratified as the 27th Amendment in 1993. The only one of the twelve not to be ratified by the States and become part of the Constitution reads as follows:

Richard Barron Parker: The Perfection of Democracy: Constitutional Design
and the Theory of Mixed Government

Madison was eloquent in his defense of these numbers in *The Federalist Papers* when arguing for ratification of the proposed Constitution.

“Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian Assembly would still have been a mob.”²⁰

In addition to mob rule, too large a House runs the danger of being control-

- Article. I. After the first enumeration required by the first article of the Constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand. From *The Founders' Constitution, Volume 5*, ed. Kurland and Lerner (Chicago: University of Chicago, 1987) p. 40.

It seems clear that at least two-thirds of Congress was willing to support districts of more than fifty thousand. In 1790, the female half of the population was not eligible to vote, and twenty percent of the population were black slaves (but counted only three-fifths of a person in determining the population of a congressional district). Thus only thirty to forty percent of the population of a district was eligible to vote as opposed to about seventy percent now (thirty percent being underage). Under modern conditions of universal suffrage, districts of thirty thousand would contain more voters than districts of fifty thousand in 1790.

20. James Madison, Federalist No. 55 in *The Federalist Papers*, ed. by Clinton Rossiter (New York: Mentor paperback, Penguin, USA, 1961) p. 342.

led by a small group of insiders.

The people can never err more than in supposing that by multiplying their representatives beyond a certain limit they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, *after securing sufficient number for the purposes of safety, of local information, and of diffusive sympathy with the whole society* [italics in original], they will counteract their own views by every addition to their representatives. The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed.²¹

As slavery was abolished and women received the vote and tens of millions of immigrants poured into the United States, the House continued to expand. The House reached its current membership of 435 after the 1910 census. The 1910 census recorded a population of ninety-two million. In 1929, Congress passed a statute permanently fixing the size of the House at 435 members. House districts continued to expand in size. The current population of the United States is about 270 million. Congressional districts now have populations of more than six hundred thousand people, with more than four hundred thousand potential voters per district.²²

At this ratio of voters to representatives, four representatives would have been sufficient to represent the entire United States voting population of 1790. If the current British House of Commons had this ratio of members

21. James Madison, Federalist No. 58 in *The Federalist Papers*, ed. by Clinton Rossiter, (New York: Mentor paperback, Penguin, USA, 1961) pp. 360-361. Madison does look a bit into the future in No. 58, but it seems safe to say that if he had foreseen districts of six hundred thousand citizens, the current size, he would have doubted that the House could provide "diffusive sympathy with the whole society."

22. See Barone and Ujifusa, *The Almanac of American Politics, 1998* (Washington, D.C.: National Journal, 1997) for the population and numbers of voters in each congressional district.

Richard Barron Parker: The Perfection of Democracy: Constitutional Design
and the Theory of Mixed Government

to constituents, there would be only 110 MPs. If the House of Representatives had the same ratio of representatives to constituents as does the current House of Commons, the House of Representatives would have 2,500 members.

We are faced with a dilemma not foreseen by Madison. Shall we enlarge that part of the government embodying the democratic function into a body of thousands risking the control of the few and the passions of the mob, or keep that part small and render it aristocratic in nature? Americans have chosen the second horn of this dilemma. The House has now become an aristocratic body. House members are part of the national aristocracy. The House of Representatives functions as a near duplicate of the Senate.

From the point of view of the theory of mixed government that animated the Framers, the House can no longer perform its intended democratic function. House members of course do what they think is best for the country, as do senators, as do all well-intentioned aristocrats, but it is impossible for one person to represent six hundred thousand citizens in the way envisaged by the Framers.

In the absence of a democratic House, the democratic function is now performed by an ad hoc mixture of public opinion polls, media, and lobbies of various sorts.²³ This was nicely illustrated in the recent impeachment of President Clinton by the House. Whatever one thinks of the merits of the impeachment, it was odd that the House voted to impeach even though impeachment was favored by at most thirty percent of the population. The voice of the people was in fact represented not by the House but by the pub-

23. See James S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1995), Chapter 3, for an excellent account of the rise of "public opinion" in American democracy. Fishkin's experiments with "deliberative polls" are an attempt to combine mass democracy and deliberation. I see my suggestion of a very large House as a more practical solution to the same problem. The deliberation would take place between a representative and his constituents rather than among representatives.

lic opinion polls. People defended the actions of the House members in terms appropriate for senators, that is, as wise aristocrats who, if necessary, should act as a check on public opinion. It was left to public opinion polls to provide, in Madison's words, "diffusive sympathy with the whole society."

The Framers were not populists. In the Constitution of 1787, only the House was elected by the people. The Senate was elected by the legislatures of the states and the president by the Electoral College. Yet even the Framers gave the sole power of impeachment to the House. Their idea was that the process of removing the president should not even begin unless the people demand it.

The same sort of formal representation that was missing in the impeachment of President Clinton is also missing in day-to-day congressional legislation. We now have two chambers of aristocrats, senior aristocrats (the Senate) and junior aristocrats (the House). No major part of government supplies the democratic element that the Framers intended to balance the more elite branches of the Senate and the judiciary. No branch of government ensures that the goals of government are in fact those of the general population.

How can the democratic capability be built back into the constitutional structure so that the people are again represented in the normal processes of government rather than having to depend on the media, lobbyists, and public opinion polls?

I propose the following federal statute to help strengthen the democratic element in the American national government.

Congressional districts shall contain a population of at least 31,000, but not more than 35,000. Where possible, district boundaries shall follow town, city, or county lines, and shall be regular in shape when not following a pre-existing boundary.

Congresspersons shall receive a salary of twice the median house-

Richard Barron Parker: The Perfection of Democracy: Constitutional Design
and the Theory of Mixed Government

hold income of all Americans plus an additional amount of the median household income for expenses. The House shall in addition provide a secure computer connection between the congressperson's home or office in his district and the Capital so that he may vote in committee or on the floor of the House from his home district.

A House of 8700 would not be more expensive. The current House employs about eleven thousand staff members, over seven thousand of whom are the staff of individual members.²⁴ The rest are committee staff, leadership staff and other staff necessary to run the House. My plan would pay each member a salary of twice the annual US household income (about \$80,000) plus another \$40,000 for expenses, but no staff would be provided. The members of the new House would be more like full-time voters than legislators.

My proposal would reduce the size of congressional districts by a factor of twenty, from six-hundred thousand to just over thirty thousand, the minimum size permitted by Article One of the Constitution. This would produce a House of 8700 members. People actually voting in each congressional district would number from five to twelve thousand (the current numbers divided by twenty). A state such as Massachusetts, instead of ten representatives, would have two hundred. This proposal does not require amending the Constitution.

Leading citizens in a single town or urban neighborhood would be the normal candidates for House membership. Personal reputation for knowledge of the international and national issues with which the House concerns itself, and the trust of one's neighbors, would be sufficient for election. Money and a media image would not be necessary. It now costs more than one million

24. Ornstein, Mann, and Malbin, *Vital Statistics on Congress, 1993-94* (Washington, D.C.: Congressional Quarterly, Inc., 1994). Cited in *The American Almanac, 1996-97* (Austin, Texas: Hoover's Inc., 1996) Table No. 445, p. 280. *The American Almanac, 1996-97*, is a privately printed edition of the *1996 Statistical Abstract of the United States* published by the Bureau of the Census.

dollars to run for the House against an incumbent.²⁵ Such an entry level threshold ensures that only the rich, or those who can enlist the rich in their support, can run against an incumbent with a chance of winning. My proposal would solve the problems of campaign financing for one branch of the Congress. Because of the small size of the districts in an 8,700 member House, problems of proportional representation of ethnic and racial minorities would also be largely solved.

The proposal is the opposite of a populist one such as Ross Perot's national town meeting. Indeed it is an attempt to answer the need he expresses for more democracy in the national government with a preemptive strike rooted in representative government. The problem with most populist proposals is that they do not recognize the need for aristocratic or monarchical elements in good government. National elites must be free to make quick decisions and design good policies to effect goals approved by the people. Contrary to Perot, most citizens are not capable of voting on the complex issues with which a national legislature must be concerned. (That is the main problem with excessive reliance on public opinion polls.) But they are capable of electing just one of their number to vote for them in a national legislature.

An important innovation would be the extensive use of the Internet. Representatives would be free to stay in their districts and vote in committee or on the floor by computer. The rest of the nation and the world would be free to listen in.

Lobbyists for "special interests" are currently an important part of the education of House members on issues before the House. This educative function would be greatly enhanced as lobbyists' information and arguments circulate to tens of thousands over the Internet. No one person would have to sort through and organize the material. Good ideas would be repeated

25. See Barone and Ujifusa, *The Almanac of American Politics, 1998* (Washington, D.C.: National Journal, 1997) for the amounts of money spent by each candidate in each congressional district.

Richard Barron Parker: The Perfection of Democracy: Constitutional Design
and the Theory of Mixed Government

and become central to the discussion of any given issue. Although discussion and deliberation among the House members themselves would be greatly reduced, the quality of deliberation in the society would be higher, as would the number of participants.²⁶

A House of 8,700 would not be a deliberative body. It would be a mini-electorate of informed attentive citizens who are chosen by their neighbors to vote in the mini-referendums required for any piece of legislation to become law. The House would be a ratifying legitimizing body representing informed public opinion instead of an aristocratic deliberative body duplicating the functions of the Senate.

* * *

How about Madison's two major objections to a much larger house? Will a larger House lead to mob rule? Will such a House lead to control by a small group of insiders? How might things might actually run in a House of 8700 members?

First, Madison's fears were of a face-to-face assembly. Our representatives would be communicating with each other largely by computer. Many of the representatives would seldom leave their districts. Their face-to-face relations would be primarily with their constituents. They would be more likely to be swept up in the passions of their neighbors than in the passions of the House as a whole. But no matter how passionate they might be individually, each representative would cast only one vote in 8700. The passions that unite them with their constituents would be canceled out in the

26. A primitive version of what might occur can be found at the Virtual Congress at www.policy.com. If the participants were actual House members and the votes were for real, both the quality and number of participants in the actual debates and subsidiary discussion groups would be much greater. See James S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1995), Chapter 3, for an account of his experiments with "deliberative polls." My proposal takes his experiments a step further by making (at least one of) the citizens taking part in the "deliberative poll" actual members of the House.

voting in a large House. Madison's argument in Federalist No. 10 that a large republic will be less subject to faction than a small one is directly on point.²⁷ Unless a large part of the entire country was swept by a single passion, the new House would generally be slower to action than the present House. It would be harder to stampede a large House than it is to stampede the current House which is gathered in one physical place. And if, as the Framers anticipated, such a stampede occasionally occurred, then the Senate, the president, or the courts would head it off.

Rather than an excess of passion, the danger of a large House may be that it would be too stable, too much in the middle of the road, too representative of majority opinion. Polls consistently show that Americans are less exercised about abortion, or gun control, the environment, foreign affairs, or any hot political topic than those in Washington. Twenty members dividing a constituency of six hundred thousand are much more likely collectively to have a predictable voting pattern and be closer to the center of the political spectrum than one member representing the entire six hundred thousand. Extreme opinions would cancel each other out.

A large House would combine the virtues of proportional representation of minorities who lived together with the stability of a first past the post system in individual districts. Fringe groups whose members were spread across the country would have less influence than they do now. At present, with only one representative per four hundred thousand voters, fringe groups can make the important marginal difference in close elections with strategic distribution of campaign funds. Currently, a congressman must, unless he is independently wealthy, be beholden to several small interest groups pushing concerns that the vast majority of his constituents do not share. With districts of only twenty thousand voters and little money needed to campaign, candidates are more likely to be leading citizens in the communities that elect them. They are likely to be in the mainstream in their districts. Even in

27. James Madison, Federalist No. 10 in *The Federalist Papers*, ed. by Clinton Rossiter, (New York: Mentor paperback, Penguin, USA, 1961), pp. 85-86.