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FOREWORD

When the United States, in 1790, began its career as a nation, the legislatures, state and federal, stood high in public esteem. One of the chief reasons for this was the fact that, unlike most colonial governors and judges, the legislatures had been that part of the government most closely associated with and representative of popular sentiment and feeling for independence, even though not perhaps completely representative of all classes. This place the legislatures continued to occupy for several decades thereafter. But subsequent to the high point of congressional power immediately following the Civil War, a rapid decline in legislative prestige and, to a limited extent, even in legislative power, occurred. This decline has continued even until today. The judiciary, state and federal, often vigorously asserted restraints over legislative power and activity, and the executive, together with the modern administrative agencies, often showed bold and resolute leadership ostensibly at least on behalf of the whole people, and in accord with the desires of the people, as contrasted with the sometimes less modern ideas of particularized geographical, social, and economic interests which allegedly dominated many legislative bodies.

The causes for this decline in American legislative prestige and leadership are numerous and complex. Certainly one factor was various structural defects in the typical American legislature. For example, in the states the bicameral legislature ceased to serve any useful function. The second house there often seemed to have no other reason for existence than to delay or obstruct legislative action. Equally if not more important was the widespread feeling among the electorate that for various reasons the legislature had ceased to be truly representative of the wishes of all the people and had become frequently a tool for certain favored classes or interests. Substantially contributing to this feeling of nonrepresentation was the patent under or over representation of many localities in the state or federal legislature arising from the failure properly and periodically to reapportion the seats in that body.

Two interdependent factors are involved in American legislative apportionment. First, there is the determination, on some basis such as population, for example, of the geographical, political, social, economic, or other unit, all the voters of which only shall be entitled to elect one or more representatives. These units may be states, counties, cities, precincts, wards, geographical districts, etc. Second, is the determina-

tion of how many representatives each such unit shall be entitled to have in each branch of the legislature. Frequently, of course, when two or more representatives are assigned to the unit, an attempt may be made to divide the unit itself into as many parts as there are representatives, on the basis of a single representative per district.

The federal Constitution itself disposes of these problems for the Senate, but by requiring the House of Representatives to be apportioned among the states on the basis of population, it presents these issues in a particularly difficult form in the sensitive area of federal-state relationships. To what extent can and should Congress itself prescribe for the states apportionment in the House of Representatives? Congress has always fixed the total number of representatives each state shall have, but it has proceeded very cautiously in laying down any standards which the states must follow in apportioning and electing their respective allotments of representatives.

The states, therefore, have had to solve both the problems of apportioning their representatives in the House of Representatives and of apportioning membership in the state legislatures. Unfortunately, these problems do not lend themselves to a simple, exact, mathematical solution. Mathematics, as Professor Willcox shows, can devise several equally sound methods, but the ultimate choice of one of these methods must be based upon other considerations—for example, political, social, economic, or geographic—depending on which formula one believes gives the most desirable form of representation. Agreement on which of and the extent to which these other more intangible factors (and even their nature) should be given weight is not easy to reach.

Granted the lack of any single scientifically perfect solution, one can still find glaring injustices in many existing apportionments for both federal and state legislatures. Examples of gross under or over representation among groups and districts in the same state are common, even where apportionment is constitutionally and allegedly based upon population. Remedies for failure properly to apportion are not easy to find. The courts are understandably reluctant to interfere and are not too well equipped to act. At most they can but invalidate an incorrect apportionment and cannot prescribe a proper one. The executive must tread cautiously in a matter peculiarly affecting the legislature, particularly where he may as well be accused of improper political motives as the legislators. The legislators themselves as recipients of the improper apportionment are not disposed to change the status quo, which they find so beneficial to them. The voters may be powerless to force action because of the very restrictions they seek to change. Even in the case of the House of Representatives, where perhaps Congress could, if it chose, take strong action, there seems little probability of such action and grave doubt as to its wisdom, feasibility, or proper form. Should or would Congress deny representation to a state it considered had improperly apportioned? Should or would Congress itself redistrict such a state? Even if Congress could constitutionally do

so, would it be desirable or helpful to have judicial review of state apportionments? The use of the modern administrative body of impartial experts may not commend itself. After all, the issues involved fundamentally are such that there are no experts, or perhaps the people—the voters and the legislators—are the experts.

This symposium attempts to explore and discuss to some extent the various problems and issues and some of the solutions that have been adopted or proposed. Surely this is a subject fundamental to the successful operation of our state and federal governments in their present form.

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