

The Book of the Is ~ A book on bridges

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Bryan W. Brickner

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Author's note ~ This book began in September 2001 and was completed in December 2004; President Bush had just been reelected to a second term and the war on terror was three years old. It has not been updated (there's no President Obama yet); it was edited for errors, misnomers and wordiness in 2012 and published in 2013.

Chapter 3

Oligarchy

(Or, What to do with an unconstitutional spirit in the House of Representatives)

1

We were still at war with tribes when Illinois became a state in 1818. The last battle was 14 years later, in 1832, when a chief named Black Hawk and his tribes were chased north into the future Wisconsin (statehood 1848) and defeated by the banks of the Mississippi River at the Battle of Bad Ax. Black Hawk was captured and sent to Washington DC, where he was paraded as a defeated warrior. He was returned to Iowa, paid a pension by the government, and died in 1838.

Now, I'm not interested in throwing a pity-party for chief Black Hawk. I grew up on land that was his, you could say: a farm of 160 acres in Jo Daviess County, Illinois. On a map, the county is in the northwest corner of Illinois – the one that borders Iowa and Wisconsin at the Mississippi River. As a kid growing up there, I was aware that someone had lived here before; for example, we'd find arrowheads in the field after plowing, or just lying there along a river bed.

With Black Hawk, I just want you to see the beginning of something – how something takes on its own life. In 1673, seven French explorers led by Louis Joliet, a fur trader, and Jacques Marquette, a Jesuit missionary, traveled across the land west of Lake Michigan on a mission to find the river referred to as "Messipi." When they found it, they were to follow it to the sea. They traveled by river and portage, and with the help of the locals, they "found" the Mississippi River. They traveled down-river and made it as far as modern-day Arkansas. Here they learned from the local tribes that the Spanish controlled the river if they went any farther. The explorers turned back and traveled 240 miles across the prairie on the Illinois River. From a map perspective, they ended up just south of Lake Michigan by modern-day Joliet, Illinois. That had to be something. I mean, 1673, in the middle of nowhere, with a fur trader, a priest, five other guys, a few guns and a couple of canoes. Think of it – Jamestown, Virginia would have been 66 years old. That's a pioneering spirit.

There's a strange custom in America about not discussing religion and politics in mixed company, but, as we see, it's always been mixed company. All these things keep going on at the same time. I'm sure the aborigine didn't think much of seven men in a couple of canoes. Who would have thought that once seven arrived that they would tell a few, and then trading begins, along with the missionary work, and more traders come, and then settlements and forts. I doubt anyone imagined that seven French explorers signaled the end and I doubt anyone imagined that in 159 years, from the first encounter in 1673 to the last in 1832, that *all* the tribes would be gone from Illinois – a place named after the aborigine.

2

This chapter is on people and representation. Representative government is a human invention. America has been a leader in this idea and it is even what we proposed for the former Soviet states and are implementing in Afghanistan and Iraq. A “constitution” is also individual. We are constituted beings: there are things that make us who we are. The same is true of governments.

Prior to constitutions, kings and queens (monarchies) ruled. With the invention of constitutions, the people claimed a right to government. The writers and ratifiers of our Constitution treated it like *a map of right principles*. They were trying to tame power, to tame factionalism, by giving it time and space to present itself. They weren't trying to silence groups, but to give them a voice. That is the subtle genius that we have lost, but it's in there, in the Constitution, and we're going to see about using it.

I'll begin by telling you up front what this is about: it'll be revolutionary, though like it was in 1789, the revolution will be constitutional. Following the Constitution isn't an overturning of value; it is implementing an existing value. Revolution done by following our Constitution may not sound correct – call it re-formation if you prefer. Below, I'll go into depth on a couple of issues to show you what has happened to this power of ours. Again, with the Is, this isn't done out of morality, *per se*. We live under a constitution in the United States, and that of itself isn't that moral. Today, we know from experience that humans like to amass power, and this principle was well known to the founders and ratifiers of the Constitution. They knew that in order to counter this principle of power, to counter its effect, you had to balance power between interests. In our case, the compromise was a balance between states and the people. The framers could have designed and submitted for ratification a system that favored one set of interests over another, or even a Legislative Branch with one chamber (*unicameral*), but they didn't. They wanted a balanced system of checks and created and ratified a Legislative Branch with a House of Representatives, the people's house, and a Senate, the states' house. Nowadays we miss the significance of the separation. I missed it for decades. We've grown accustomed to looking down on people, to think they are not capable of things like self-government, but the ratifiers believed otherwise. They talked of the genius of the American people; they didn't find our genius in our superior intellect, but in our way of sorting out factionalism. They had just come out of a revolutionary/civil war, and they knew how bad things could get and what concepts like liberty and freedom and security meant. The genius of the people was found in allowing a representative of a group to vote another's interest. One representing many; the genius was in the concept,

which meant trusting in the represented interests of others, not simply individuals, but an individual representing individuals (others). The genius is still there today.

What has evolved in the US House of Representatives was never the intent of the members of the Constitutional Convention; neither was it the will of the state governments that ratified the document. The delegates and ratifiers had a good understanding of humans. They also had a good understanding of why a people's house – one described in Federalist 55 by James Madison as a House: "*for the purposes of safety, of local information, and of diffusive sympathy with the whole society.*" They understood why a people's House with its lofty standard would not necessarily protect the people: a high principle is hollow unless you can back it up. Backing it up meant providing a means for supporting them, the factions formed by the people, and to devise a way for them to express themselves. It is this principle that has been misplaced but not lost. The House, as an institution, was designed to be augmented – to grow – and if you do not augment something designed to be augmented, if you do not allow it to grow in response to its environment, then you change a fundamental element of a thing and it becomes something else. That is what has happened to the US House of Representatives. Our House isn't at all what it was intended to be: *it has become a place of the few instead of the many.*

3

Friedrich Hayek wrote a 1945 essay, "The Use of Knowledge in Society." In it is a reminder of why local information is the point of entry for all science, even the science of government. Science is not the sum of all knowledge: there are too many particulars for scientific knowledge to ever have a general rule. (That's why a circle, with parts coming and going, as something moving and changing, seems to be a good thought model for knowledge.) The knowledge anyone possesses has to be known, it has to be in that individual's so-called circle of knowledge; if it's not known – like how to make gunpowder or use a compass – then it is not available as knowledge.

This is useful for pointing to the importance, both theoretically and politically, of a large membership for the House of Representatives. It is the general population who has this knowledge of the particular: it is not found in the few, the oligarchy. It is the locals who know the circumstances of time and place. This theory is also found in *The Federalist Papers*. It is through the knowledge of local conditions that the House was to prosper and keep its balance – to be a counterweight to oligarchy, to rule by the few.

4

There is power in representation, and like all power, it is changeable. The power of the people at the federal level, or at a local level, can be changed. This gets into fractions and ratios, like some of the math from chapter one. Let's start by saying the fraction $1/30,000$ is not equal to the fraction $1/647,000$.

Our system of government places the people's power in a ratio. If we all voted on all the items, a strict democracy, the ratio would be $1/1$. But you can see why that wouldn't work: too many voters and nothing would get done. On the other hand, you can see that a ratio that is disproportionate to the intent of the system, well, you could see how that might shift power to other groups and away from the people, from the citizens.

The idea that one can represent others, be it a group of 300, 3,000, 30,000, or 300,000, and you can see this is a concept we use today. The current ratio of Representative to represented in the US House is higher than it has ever been in our history. Today the ratio is one Representative for every 647,000 people. For reference, here is a list of the ratio's history - marked by census dates. You'll note that the ratio keeps increasing:

US House of Representatives: Representative to Represented Ratio History	
Year	Rep/Represented
1790	1/33,000
1800	1/36,000
1810	1/37,000
1820	1/44,000
1830	1/52,000
1840	1/75,000
1850	1/96,000
1860	1/119,000
1870	1/130,000
1880	1/154,000
1890	1/174,000
1900	1/193,000
1910	1/211,000
1920	1/242,000
1930	1/281,000
1940	1/301,000
1950	1/344,000
1960	1/410,000
1970	1/455,000
1980	1/519,000
1990	1/570,000
2000	1/647,000
2010	1/?

The ratifiers of the Constitution debated this concept in great detail; a ratio of one Representative for every 647,000 would have been irrational. (The founders proposed only three ratios; they are also in The Bill of Rights' *Article the first*: 30,000, 40,000 and 50,000.) They settled on the ratio of one for every 30,000 at the request of George Washington. Ignoring this aspect of our polity (our constitutional representation ratio) is *fracturing* America, when, in fact, the ratio was designed to *fracture* (build) us.

Some may be thinking: "One for every 30,000 is too many." It wasn't to the founders; they would call one for 647,000 *usurpation*. Disregard for constitutional theory (Madison's theory) fosters confusion and destroys legitimacy. The factions (the noise) of 30,000 from the general population were/are supposed to be heard/represented in the House of Representatives. The House was designed with factions in mind; it was where

we were to learn about each other, up close and personal, in a relatively unmediated way.

Not following the exact ratio isn't the point: it is the power principle that matters. We invented constitutions so we wouldn't have to keep arguing and debating these things. Unless there is something the framers and ratifiers missed about humans and power, maybe what they feared is what has happened? Hmm . . . at the least we shouldn't ignore and break the Constitution – that's kind of like disrespecting yourself, isn't it? Americans talk a lot of flag and country, of patriotism, and that is wonderful, but it is our Constitution that sets us apart from other forms of government, and one's constitution matters.

See how something takes on a life of its own – how Illinois grows into a state or how a ratio gets out of line – and it matters less how we got here and more what it is. "What" is the key – as in, "*What is your/our Is?*"

5

As you might imagine, those who wrote, signed, and ratified the Constitution argued. They argued and debated the whole concept of a federal government for four months in Philadelphia. There was a lot of *For* and *Against*. Those in support of a federal constitution were called the Federalists; those with doubts were called the Anti-Federalists. They weren't so much against each other as they were against some of the rules and ideas being codified – things like the ratio of representation, factionalism itself, checks on power, and whether there was a need for a Bill of Rights. Through a process of debate and compromise, their work took effect in the spring of 1789. Today, we seem to believe we can curb factionalism by imposing silence, which isn't how things were designed.

Reforming the House in the spirit of the Constitution will change nearly all aspects of our political system. "*Why*" it hasn't been defended and reformed isn't the focus of this chapter. The power of incumbency is clear and well known, and that explains the most of it: also, a lack of knowledge on our part. Our focus will be on reform, on the future and not the past. *The people's key to the House is the Constitution*. We have the key and the Constitution (law), yet our House is in poor order. *We need a new House*. If we wait for the oligarchs to build our House, we'll be waiting a long time. It is something we've let slip away decade after decade, with the ratio always increasing in favor of the few. We'll talk about the few in a bit, but for now let us call it the power of incumbency. We are told how divided America is, but then something like 99 percent of Representatives are reelected. *The problem is not the elections: it's the size of the districts*. What we have and what the Constitution says are two different things – way different really.

This began to slip into an unconstitutional spirit over 200 years ago, but it's fixable every ten years, and 2010 (or 2020) is our next best time. In the United States we have worked under two rules of government: first with the Articles of Confederation, which we thought to be too weak; second, the Constitution, which appears powerless and yet all-powerful. A constitution is simply a set of agreed upon rules. One of the quirks of ours is that if you are born under one, as we are here, then the rules are just part of being a US citizen. In fact, Americans born here are born into the system. It is the naturalized

citizens who get to take an oath and accept the rules. It's not like those of us born here get to vote on accepting the Constitution or not; maybe we should, part of a citizenship course in high schools – something more than just passing a test your Junior year.

There are lots of numbers in the Constitution, and since they are clear and measurable, it is easy to see their impact. Take the age limit to be president, 35. We wouldn't let a 25-year-old run for office because he or she wouldn't meet the requirement – as the number means something.

With a population of 300 million, the US House of Representatives should have more than 10,000 members and not 435. The number 435 is not in the Constitution so don't bother looking. It is a limit set in practice in 1913 and by statute in 1929. The 70th Congress passed a usurpation law regarding itself, *2 U.S.C. 2a & 2b, Election of Senators and Representatives*, the congressional law setting the limit at 435 House members.

6

Let's look at two states, Delaware, the first to ratify the Constitution, and Illinois, the twenty-first, to see how representation forms a state's history. Along with the historical data on *Representation (Rep)*, I've added a column on what each state should have had for representation – the column marked *Constitutional Representation (CRep)*.

Delaware has had only one Representative to the House for practically all of its history (the only exception is two for 1810-1819). Its population has grown from 59,096 in 1790 to 783,600 in 2000. With a population of almost 800,000 and only one Representative, Delaware provides a stark example of ratio abuse; under *Constitutional Representation* Delaware would have a total of 27 Representatives and an increase in representation every 10 years since 1930.

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Delaware US House Representation, 1789-2010			
<u>Year</u>	<u>Population</u>	<u>Rep</u>	<u>CRep</u>
1787	estimated	1	1
1790	59,096	1	2
1800	64,273	1	3
1810	72,674	2	3
1820	72,749	1	3
1830	76,748	1	3
1840	78,085	1	3
1850	91,532	1	4
1860	112,216	1	4
1870	125,015	1	5
1880	146,608	1	5
1890	168,493	1	6
1900	184,735	1	7
1910	202,322	1	7
1920	223,003	1	8
1930	230,380	1	8
1940	266,505	1	9
1950	318,085	1	11
1960	446,292	1	15
1970	548,104	1	19
1980	594,338	1	20
1990	666,168	1	23
2000	783,600	1	27
2010	?	?	?

With Illinois we find growth in population does bring more representation – at least for a while. After becoming a state in 1818, Illinois voted to ban slavery in 1823, so there was not any “three fifths of all other Persons” issue in counting inhabitants; the aborigine were removed by war in 1832, and Illinois has no reservations.

Illinois, with 12.5 million citizens, presently has 19 Representatives in the House; this is the same number it had in 1870 when the population was only 2.5 million. The highest number of federal Representatives (27) peaked from 1910-1930. Beginning in 1940, the number of Representatives has declined from 27 to the current 19; meanwhile, population has increased from 8 million to over 12 million. Under *Constitutional Representation* the number of Representatives should have increased every ten years; the only exception being 1990 when it would have remained at 381.

Illinois US House Representation, 1818-2010			
<u>Year</u>	<u>Population</u>	<u>Rep</u>	<u>CRep</u>
1818	12,282	1	1
1820	55,211	1	2
1830	157,445	3	6
1840	476,183	7	16
1850	851,470	9	29
1860	1,711,951	14	58
1870	2,539,891	19	85
1880	3,077,871	20	103
1890	3,826,352	22	128
1900	4,821,550	25	161
1910	5,638,591	27	188
1920	6,485,280	27	217
1930	7,630,654	27	255
1940	7,897,241	26	264
1950	8,712,176	25	291
1960	10,081,158	24	337
1970	11,110,285	24	371
1980	11,427,409	22	381
1990	11,430,602	20	381
2000	12,419,293	19	414
2010	13,000,000 est.	?	?

7

Our nation has changed since 1920 - though the number of Representatives hasn't; it hasn't been updated to represent women, who received the right to vote by constitutional amendment in 1920. This means women are not represented in the House according to their numbers. In fact, we have given many groups the right to vote (Civil Rights Act of 1964) over the last 85 years, but we haven't given them representation. This will not last; sooner or later the issue of representation will be politicized - *it already is when you think about it.*

Some of our fellow citizens will not like this return to constitutional augmentation of representation. The few (the oligarchy) won't. They'll want to keep the power they have and will be inclined to not share. They have a problem though; it's found in Article 6, Paragraph 3 of our Constitution: "*The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.*"

Hmm . . . this is power that can produce change; for starters, it would make the House look like us.

8

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Recall the Federalists supported ratification. Three of them, Alexander Hamilton, James Madison, and John Jay, wrote a collection of essays called *The Federalist Papers*. At the time of ratification, the Federalists defended the concept of *constitutional representation*. They wrote essays to the people of New York to convince them to ratify the Constitution (which New York did). The documents make clear, and we will go into some detail below, that the Federalists believed one Representative for every 30,000 inhabitants would make the House safe, and also more importantly, *keep it safe*, in its role of balancing power.

The Convention designed the House to be a dynamic institution, bound to change, with an equal place in power. It was built to channel factionalism *into* representative government.

As the country grew in population, the ratifiers knew the number of Representatives would also grow. Writing in Federalist 55, Madison projected: "*At the expiration of twenty-five years, according to the computed rate of increase, the number of representatives will amount to two hundred, and of fifty years, to four hundred.*"

The Convention agreed that the Legislative Branch would represent the people and the states. This was one of the early key compromises – called the Connecticut Compromise. They agreed to divide the legislature into two sections to split the law-making power. State representation was set at two members for all, thus making large and small states equal. The House of Representatives is where size mattered: as a state's population grew, so would representation. For example, Delaware and New York would be represented equally in the Senate with two members, and the difference in population would be represented in the House.

If we look at Article 1, Section 2, Clause 3, we can find what was agreed to and ratified. This section included the most recognizable failure of the Constitution: the "*three fifths*" deal. At the Convention, Southern states wanted slaves to count toward representation; Northern states didn't. The "compromise" was to count: "*the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons [slaves].*" This aspect of Clause 3 was replaced by the 14th Amendment (1868).

Clause 3 also states that a census must be taken within three years of ratification – and it was – and that every 10 years a census be taken for the purposes of representation – and it has been. Clause 3 also apportioned the first House based on agreement. Since there wasn't a census to work with, they simply agreed to the number of Representatives for each state. These numbers were based on a state's estimated population; for example, it was proposed that New York would begin with six Representatives and Delaware with one.

In the Senate the founders agreed to two Senators for each state; for the House they chose this wording: "*The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative.*" At the time, this theory of representation – that one could represent 30,000 – it was a big deal. In the state legislatures of the period, the representation ratio was often much lower. For example,

we read in Federalist 55, that in Pennsylvania the ratio was one for every four or five thousand, in Rhode Island one for a thousand, and in several Georgia districts they had an incredibly low ratio of one for ten.

People at the time realized, and we should also, that there is no magic number when it comes to ratios and representation. Madison knew this and said so in Federalist 55: *"Nothing can be more fallacious than to found our political calculations on arithmetical principles."* One for every 30,000 isn't a magical ratio that solves all of our problems and makes everyone happy. In fact, Madison warns us of thinking that a large assembly will make us a better nation. His fear of the mob was evident: *"In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."*

George Washington is our Socrates. He presided over the drafting of our Constitution as *President of the Convention* and chose not to speak during the deliberations. He was silent (during debates) until the last day, 17 September 1787. After the proposed Constitution had been read aloud, he rose and announced a request. He asked those gathered to make one change: he asked them to *lower* the ratio for representation from, *"one for every forty Thousand,"* to *"one for every thirty Thousand."* The request was unanimously approved and the change was made – then they signed it.

Remember that moment: George Washington, war hero, deliverer and arguably the person most responsible for our revolution, he requested a *lowering* of the ratio to provide the House with *more* power. Yet every time since then, the Representatives have declined to keep the ratio lower: it's in their interest, and not ours, to keep representation small. Twenty-one censuses in a row and you'd think just once we'd side with Washington's leadership on *We the People's* House.

9

In Federalist 56, Madison defends the House against the charge that it: *"will be too small to possess a due knowledge of the interests of its constituents."* The founders wanted to insure local interests were represented; Madison's theories require representatives to bring local knowledge to the federal House. The founders also believed: *"every Representative will have much information to acquire concerning all other States."*

The House wasn't (just) designed as a place to make laws: it was designed as a place of knowledge as well. Not only would a large House send more representatives to Washington, it would also send more representatives back home with new knowledge. The initial House had 65 members: the current has 435. It's hard to see how 435 can come home and let 300 million of us know what's going on – thus the form letters.

10

In Federalist 57, the charge is found in the title of the essay: *The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation.* This one paints a portrait of a House of Representatives from the general population. Madison asks: *"Who are to be the electors of the federal representatives?"* We the People is the easy answer, but he wrote it supremely:

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Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.

As there would be no qualification for office (*“not of wealth, of birth, of religious faith, or of civil profession”*), the people would choose a local to “confer the representative trust.” In the voice of someone who believed in conferring the representative trust, Madison anticipated the relationship between the representative and constituent to be based on: *“Duty, gratitude, interest, and ambition itself.”*

Again from Federalist 57:

The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of federal representatives.

Today, with an approximate population of *sixty thousand souls*, Dubuque, Iowa would be equal to the founders’ Philadelphia. Today with 1.5 million souls, Philadelphia would warrant more than fifty federal Representatives under *Constitutional Representation*.

11

The previous charge might raise some eyebrows as it looks a lot like what has happened. We can look at why Madison said this wouldn’t happen, as discussed in Federalist 58, and maybe we can see why one for every *thirty Thousand* is a fair and agreed upon number.

In Federalist 58, Madison again places the charge to be defended in the title: *“Objection That The Number of Members Will Not Be Augmented as the Progress of Population Demands Considered.”* Madison and the others saw the problem clearly and even anticipated what we now face. Here is also where we see an assumption made by the Constitutional Convention breakdown: *the founders thought the large states would defend this principle.*

Perhaps it just hasn’t happened yet, as it probably will be the large states that will demand House augmentation. Madison: *“There is a peculiarity in the federal Constitution which insures a watchful attention in a majority both of the people and of their representatives to a constitutional augmentation of the latter.”*

I see how Madison is still going to be correct; he and the others thought augmentation would take place because the general population in the larger states would demand it. If states like California, New York, Texas, Florida, Illinois, Michigan, and Ohio, if they demanded constitutional representation, they would achieve it.

This “peculiarity” hasn’t materialized only because the large states haven’t demanded it. Madison wrote that from the interest of the large states: *“it may with certainty be inferred that the larger States will be strenuous advocates for increasing the number and weight of that part of the legislature in which their influence predominates.”* Madison argued that if there

were problems, the general population could step in by building a coalition of the constitutionally willing:

Should the representatives or people, therefore, of the smaller States oppose at any time a reasonable addition of members, a coalition of a very few States will be sufficient to overrule the opposition; a coalition which, notwithstanding the rivalry and local prejudices which might prevent it on ordinary occasions, would not fail to take place, when not merely prompted by common interest, but justified by equity and the principles of the Constitution.

12

The peculiarity that Madison talked about is hibernating. One can fault the people for not knowing, but the Representatives know: they take the oath.

We've lost touch with a government we've lost interest in. What we have now is oligarchy and it's going to keep causing problems: like going to war and never declaring it and/or waiting for peace and never making it.

We will hear all kinds of things in our new House of representation; in fact, we'll have to build a *new* US House of Representatives in order to have enough seats for everyone. A reading of *The Federalist Papers* shows the House was designed to be noisy. We have become a nation of *public opinion polls* rather than *public opinion makers*. The general population has surrendered its *voices* without knowing it; instead of moving into a bigger House to accommodate our growing population (more factions), Congress moved to keep factions out - contrary to our founding's constitutional logic.

One Representative for every *thirty Thousand* makes everything closer, bridging distance in ways editorials and episodes of *The Simpsons* cannot.

13

The representatives themselves, how different they would look if their districts were 21 times smaller than they are today. There would still be your media stars and party positions, though even that influence would be different.

One for every *thirty Thousand* would challenge the two party system and they would adapt. It would allow for open, unaffiliated candidates. I grew up in Illinois' Jo Daviess County, which borders Iowa and Wisconsin; the county's population is about 28,000, so basically, due to Illinois' geography/borders, someone local would be going to Washington. (*That sounds good to me.*) The interests, concerns and ideas of Jo Daviess County would be represented in Congress. (*That sounds even better to me.*)

Media would be deepened and dispersed. With 10,000 Representatives for a population of 300 million, there would be more to cover and more to understand. With many Representatives, they would reflect their communities. There would actually be different kinds of people - Arab-Americans, for example - in the House, so we would have some human intelligence on cultures and religions. You might see your Representative getting his or her coffee in the morning, or not going to church on Sunday, or taking in a local Blue Grass festival. You might have the occasion to see your Representative at the

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grocery store buying red potatoes and an inexpensive Merlot. Citizens would have a much easier time getting to know a federal representative, and *vice versa*.

Corporations and individuals would still try to control the process with money, though the money would be dispersed based on population and not consolidated by incumbency.

A new House would move factionalism about issues like racism, classism and religion, it would take that factionalism and move it to a political realm where it can be discussed, debated, and resolved. (Yes, resolved.) For example, and almost by definition, the more you know about someone the less likely you are to be ignorant. As Madison noted in Federalist 55, our representatives were to take knowledge home – back to our communities. They were to speak *as and for* American citizens. Perhaps they would report things like “Arab-Americans aren’t . . .” and perhaps they would speak of things the television won’t touch because it doesn’t sell advertising.

14

Let’s examine Congress’ war-making power (Article 1, Section 8) and discuss how a constitutional House would change things. Politics is driven by both rationality and irrationality. As we gather in a House of thousands instead of hundreds we will see different results. *We the People* talking is constitutionalism, the antidote to anarchy and oligarchy.

In 2003, syndicated columnist David Broder wrote about Congress and its lack of support for war responsibilities. I agree with him, as today Representatives can vote for war resolutions without suffering any possible election disadvantage – they can put the responsibility and blame on the commander-in-chief and our generals. Look at the election in 2004, not between President Bush and Senator Kerry, but at how divided we were over war and yet practically every federal Representative gets reelected – every time, every election. Half of this argument appears in Broder’s essay, aptly titled: “Congress shrinks from war responsibilities – members ignoring the Constitution.” Broder referred to the lack of a war declaration as an institutional failure: more to our point, it is a constitutional failure. Broder provides a wordy quote from our House of Representatives International Relations Committee Report – rather than a constitutional declaration of war – supporting the invasion of Iraq. This is where the language about presidential use of force comes up; we are told, constitutionally speaking, this means war, except there is no declaration of war, constitutionally. Here’s how the House committee put it:

The committee hopes that the use of military force can be avoided. It believes, however, that providing the president with the authority he needs to use force is the best way to avoid its use.

So we are going to provide the commander-in-chief, any of them, as this will happen again, we are going to provide them the authority to use force as the best way to avoid its use. Hmm. That’s like saying: “I’m going to give you this weapon (power) as the best way to avoid its use.” I don’t think that sort of logic works well in war. If chosen or forced upon, almost everyone agrees war should be done with clear intentions. See how the

House fails us in this role? The House, in its small size and large ratio, it doesn't inform the government how the general population feels. Opinion polls aren't the same as debate. Too often President Bush is taking the heat for the Iraq operation, but it is the House that is failing us institutionally; Bush is using the power available and that is his option. All this "*use of military force*" isn't a declaration of war though: Article 1, Section 8 of our Constitution says Congress shall, "*declare War.*"

Broder closes his essay with a traditional call for Congress to "reassert its role." It isn't Congress who is shirking their responsibilities, but us, the citizens. If there isn't constitutional representation, then they aren't following the most basic of rules, and there appears to be no way of controlling them, unless they affirm the words they swore to uphold; until that happens, they aren't representing the general population or the Constitution, in war or any other topic.

Recall the days after September 11th as we saw it all begin. On Friday, 14 September, the House of Representatives approved a resolution authorizing President Bush to "use all necessary and appropriate force" against the perpetrators of the deadly terrorist attack. The Senate passes the measure the same day. Saturday, 15 September, President Bush says the United States is "*at war.*" Tuesday, 18 September, Bush signs the Congressional resolution authorizing military action against those behind the attacks. That's been over three years now . . . *what does the end look like?*

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Members of Congress sang on the steps of the Capitol; it was the evening of September 11th, and they were there for a news conference. Before the news conference they sang *God Bless America* and not our national anthem, *The Star-Spangled Banner*. Singing the anthem, a song about bravery under attack during the Battle of Baltimore (17 September 1814), that would have been appropriate - particularly given the fact that Muslims, Christians and Jews pray to the same God, *the God of Abraham*. Nonetheless, I was saddened to see so few, knowing how many could have been there - the thousands instead of the hundreds - knowing there could be, constitutionally, over 10,000 singers, a chorus of 10,000 Representatives and 100 Senators, and them singing a song - whichever song - that would have been impressive. It would have been Americans of all types singing together and reflecting a unified country in a way 435 plus 100 just can't do.

The general theory of power in our Constitution is dispersion; separate power to keep any one group or faction from consolidating it. Conversely, through dispersion, power of a kind increases: the power of *We the People*. In our citizens - that's our collective genius. The Senate was designed to represent the states: the House was designed to represent the inhabitants of each state. By trading representation for a small House, power has not been dispersed, but consolidated.

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The question is clear: *how is it that we don't accept George Washington's law as it is written in our Constitution?*

Oligarchy

Most Americans would tell you that *constitutional law beats congressional law*. For example, we wouldn't let a Congress pass a law changing the requirement concerning the age of a Representative or presidential citizenship; you'd have to amend the Constitution in order to bring about that sort of change.

It appears that in order to get our representative power back, all we have to do is ask. As humans, we often bemoan our situation instead of looking around at what is available. The Constitution is available to us and loaded with under-utilized power. That power is located, not in the number of representatives *per se*, but in the power of sharing and communicating local information. A House in which there are only 435 representing 300 million does not provide this function today. According to the design of our Constitution, the strength and genius of the American people is in our power to channel factionalism. We have been known to exclude whole groups - "Indians not taxed" - and made the worth of others a percent of an ideal - "three fifths of all other Persons." The Is takes the Constitution as is: a code of self-government. Unlike religious texts, the Constitution was ratified; that means it was accepted by *We the People* and not by a single act of a Congress.

One thing is for sure: nothing will happen unless the general population begins talking about this; they, the few, will offer compromises and diversions, but staying the constitutional course will make them build a House of Representatives for the many. As mentioned above, they have to if words still mean anything.

Here's *The Oath* again; it merits a second reading: "*The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.*"

Those are clear words, self-evident you might say, and individuals like George Washington saw fit to risk it all for them. Remind yourself of him standing there on the last day of the Convention; imagine him mulling over the idea of lowering the ratio of Representative to represented. He had a thought come to mind; he made a decision on the merits of the matter, in his brain, with him thinking something in the affirmative like, "*Yes, this is a good thing.*" He then mentions the change, the change to a smaller ratio and larger house, and a vote is taken: unanimous.

Washington recommended lowering the ratio from the agreed upon one for every forty thousand to the still constitutional ratio of one for every *thirty Thousand*. Washington sat there all summer and didn't say a thing - not a thing - during all of the debates, not until the end, and then he spoke to us - perhaps even to us in the future - and he asked that the ratio be lowered, which means he wanted a large House. When this change arrives, as it will, sooner or later, it will be interesting to see if Washington's ideas and intentions are heard; like Derrida said of Nietzsche - it is the *ear of the other* that marks one's signature, as it is the present that has the power to uphold George Washington's wish, not him or the past. So recall the circle and imagine, if you will, in part of the circle are the current incumbents, the few, representing the current state of the Constitution,

and in another part are Madison, Hamilton, Jay, Franklin, and Washington, representing the words and spirit of the Constitution: the question remaining – *Where are you?*

William Pierce, an attendee at the Convention, would be with Washington. During the summer Pierce wrote brief sketches about the men in attendance. About George Washington he noted: "*Having conducted these states to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa, he may be said to be the deliverer of his Country.*"

Yes, but as we've seen, it isn't always so easy to follow the advice of a deliverer.