

Baker v. Carr

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE HARLAN joins, dissenting.

The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected [369 U.S. 186, 267] only five years ago. The impressive body of rulings thus cast aside reflected the equally uniform course of our political history regarding the relationship between population and legislative representation - a wholly different matter from denial of the franchise to individuals because of race, color, religion or sex. Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. Disregard of inherent limits in the effective exercise of the Court's "judicial Power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined. It may well impair the Court's position as the ultimate organ of "the supreme Law of the Land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority - possessed of neither the purse nor the sword - ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.

A hypothetical claim resting on abstract assumptions is now for the first time made the basis for affording illusory relief for a particular evil even though it foreshadows deeper and more pervasive difficulties in consequence. The claim is hypothetical and the assumptions are abstract because the Court does not vouchsafe the lower courts - state and federal - guidelines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's umbrageous disposition is bound to stimulate in connection with politically motivated reapportionments in so many States. In [369 U.S. 186, 268] such a setting, to promulgate jurisdiction in the abstract is meaningless. It is as devoid of reality as "a brooding omnipresence in the sky," for it conveys no intimation what relief, if any, a District Court is capable of affording that would not invite legislatures to play ducks and drakes with the judiciary. For this Court to direct the District Court to enforce a claim to which the Court has over the years consistently found itself required to deny legal enforcement and at the same time to find it necessary to withhold any guidance to the lower court how to enforce this turnabout, new legal claim, manifests an odd - indeed an esoteric - conception of judicial propriety. One of the Court's supporting opinions, as elucidated by commentary, unwittingly affords a disheartening preview of the mathematical quagmire (apart from divers judicially inappropriate and elusive determinants) into which this Court today catapults the lower courts of the country without so much as adumbrating the basis for a legal calculus as a means of extrication. Even assuming the indispensable intellectual disinterestedness on the part of judges in such matters, they do not have accepted legal standards or criteria or even reliable analogies to draw upon for making judicial judgments. To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly,

omnicompetence to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption and Thomas Jefferson never entertained it.

Recent legislation, creating a district appropriately described as "an atrocity of ingenuity," is not unique. Considering the gross inequality among legislative electoral units within almost every State, the Court naturally shrinks from asserting that in districting at least substantial equality is a constitutional requirement enforceable [369 U.S. 186, 269] by courts. *Room continues to be allowed for weighting. This of course implies that geography, economics, urban-rural conflict, and all the other non-legal factors which have throughout our history entered into political districting are to some extent not to be ruled out in the undefined vista now opened up by review in the federal courts of state reapportionments. To some extent - aye, there's the rub. In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty States. If state courts should for one reason or another find themselves unable to discharge this task, the duty of doing so is put on the federal courts or on this Court, if State views do not satisfy this Court's notion of what is proper districting.

We were soothingly told at the bar of this Court that we need not worry about the kind of remedy a court could effectively fashion once the abstract constitutional right to have courts pass on a state-wide system of electoral districting is recognized as a matter of judicial rhetoric, because legislatures would heed the Court's admonition. This is not only a euphoric hope. It implies a sorry [369 U.S. 186, 270] confession of judicial impotence in place of a frank acknowledgement that there is not under our Constitution a judicial remedy for every political mischief, for every undesirable exercise of legislative power. The Framers carefully and with deliberate forethought refused so to enthrone the judiciary. In this situation, as in others of like nature, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives. In any event there is nothing judicially more unseemly nor more self-defeating than for this Court to make in terrorem pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope.

This is the latest in the series of cases in which the Equal Protection and Due Process Clauses of the Fourteenth Amendment have been invoked in federal courts as restrictions upon the power of the States to allocate electoral weight among the voting populations of their various geographical subdivisions. 1 The present action, which [369 U.S. 186, 271] comes here on appeal from an order of a statutory three-judge District Court dismissing amended complaints seeking declaratory and injunctive relief, challenges the provisions of Tenn. Code Ann., 1955 3-101 to 3-109, which apportion state representative and senatorial seats among Tennessee's ninety-five counties.

The original plaintiffs, citizens and qualified voters entitled to vote for members of the Tennessee Legislature in the several counties in which they respectively reside, bring this action in their own behalf and "on behalf of all other voters in the State of Tennessee," or, as they alternatively assert, "on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated." The cities of Knoxville and Chattanooga, and the Mayor of Nashville - on his own behalf as a qualified voter and, pursuant to an authorizing resolution by the Nashville City Council, as a representative of all the

city's residents - were permitted to intervene as parties plaintiff. [2](#) The defendants are executive officials charged with statutory duties in connection with state elections. [3](#) [369 U.S. 186, 272]

The original plaintiffs' amended complaint avers, in substance, the following. [4](#) The Constitution of the State of Tennessee declares that "elections shall be free and equal," provides that no qualifications other than age, citizenship and specified residence requirements shall be attached to the right of suffrage, and prohibits denying to any person the suffrage to which he is entitled except upon conviction of an infamous crime. Art. I, 5; Art. IV, 1. It requires an enumeration of qualified voters within every term of ten years after 1871 and an apportionment of representatives and senators among the several counties or districts according to the number of qualified voters in each [5](#) at the time of each decennial [369 U.S. 186, 273] enumeration. Art. II, 4, 5, 6. Notwithstanding these provisions, the State Legislature has not reapportioned itself since 1901. The Reapportionment Act of that year, Tenn. Acts 1901, c. 122, now Tenn. Code Ann., 1955, 3-101 to 3-109, [6](#) was unconstitutional when enacted, because not preceded by the required enumeration of qualified voters and because it allocated legislative seats arbitrarily, unequally and discriminatorily, as measured by the 1900 federal census. Moreover, irrespective of the question of its validity in 1901, it is asserted that the Act became "unconstitutional and obsolete" in 1911 by virtue of the decennial reapportionment requirement of the Tennessee Constitution. Continuing a "purposeful and systematic plan to discriminate against a geographical class of persons," recent Tennessee Legislatures have failed, as did their predecessors, to enact reapportionment legislation, although a number of bills providing for reapportionment have been introduced. Because of population shifts since 1901, the apportionment fixed by the Act of that year and still in effect is not proportionate to population, denies to the counties in which the plaintiffs [369 U.S. 186, 274] live an additional number of representatives to which they are entitled, and renders plaintiffs' votes "not as effective as the votes of the voters residing in other senatorial and representative districts . . ." Plaintiffs "suffer a debasement of their votes by virtue of the incorrect, arbitrary, obsolete and unconstitutional apportionment of the General Assembly . . .," and the totality of the malapportionment's effect - which permits a minority of about thirty-seven percent of the voting population of the State to control twenty of the thirty-three members of Tennessee's Senate, and a minority of forty percent of the voting population to control sixty-three of the ninety-nine members of the House - results in "a distortion of the constitutional system" established by the Federal and State Constitutions, prevents the General Assembly "from being a body representative of the people of the State of Tennessee, . . ." and is "contrary to the basic principle of representative government . . .," and "contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence"

Exhibits appended to the complaint purport to demonstrate the extent of the inequalities of which plaintiffs complain. Based upon "approximate voting population," [7](#) these set forth figures showing that the State [369 U.S. 186, 275] Senator from Tennessee's most populous senatorial district represents five and two-tenths times the number of voters represented by the Senator from the least populous district, while the corresponding ratio for most and least populous House districts is more than eighteen to one. The General Assembly thus apportioned has discriminated against the underrepresented counties and in favor of the overrepresented counties in the collection and distribution of various taxes and tax revenues, notably in the distribution of school and highway-improvement funds, [8](#) this discrimination being "made possible and effective" by the Legislature's failure to reapportion itself. Plaintiffs conclude that election of the State

Legislature pursuant to the apportionment fixed by the 1901 Act violates the Tennessee Constitution and deprives them of due process of law and of the equal protection of the laws guaranteed by the Fourteenth Amendment. Their prayer below was for a declaratory judgment striking down the Act, an injunction restraining defendants from any acts necessary to the holding of elections in the districts prescribed by Tenn. Code Ann., 1955, 3-101 to 3-109, until such time as the legislature is reapportioned "according to the [369 U.S. 186, 276] Constitution of the State of Tennessee," and an order directing defendants to declare the next primary and general elections for members of the Tennessee Legislature on an at-large basis - the thirty-three senatorial candidates and the ninety-nine representative candidates receiving the highest number of votes to be declared elected. [9](#)

Motions to dismiss for want of jurisdiction of the subject matter and for failure to state a claim were made and granted, 179 F. Supp. 824, the District Court relying upon this Court's series of decisions beginning with *Colegrove v. Green*, [328 U.S. 549](#), rehearing denied, [329 U.S. 825](#), motion for reargument before the full bench denied, [329 U.S. 828](#). The original and intervening plaintiffs bring the case here on appeal. [364 U.S. 898](#). In this Court they have altered their request for relief, suggesting a "step-by-step approach." The first step is a remand to the District Court with directions to vacate the order dismissing the complaint and to enter an order retaining jurisdiction, providing "the necessary spur to legislative action" If this proves insufficient, appellants will ask the "additional spur" of an injunction prohibiting elections under the 1901 Act, or a declaration of the Act's unconstitutionality, or both. Finally, all other means failing, the District Court is invited by the plaintiffs, greatly daring, to order an election at large or redistrict the State itself or through a master. The Solicitor General of the United States, who has filed a brief amicus and argued in favor of reversal, asks the Court on this appeal to hold only that the District Court has "jurisdiction" and may properly exercise it to entertain the plaintiffs' claims on the merits. This would leave to that court after remand the questions of the challenged statute's [369 U.S. 186, 277] constitutionality and of some undefined, unadumbrated relief in the event a constitutional violation is found. After an argument at the last Term, the case was set down for reargument, [366 U.S. 907](#), and heard this Term.

I.

In sustaining appellants' claim, based on the Fourteenth Amendment, that the District Court may entertain this suit, this Court's uniform course of decision over the years is overruled or disregarded. Explicitly it begins with *Colegrove v. Green*, supra, decided in 1946, but its roots run deep in the Court's historic adjudicatory process.

Colegrove held that a federal court should not entertain an action for declaratory and injunctive relief to adjudicate the constitutionality, under the Equal Protection Clause and other federal constitutional and statutory provisions, of a state statute establishing the respective districts for the State's election of Representatives to the Congress. Two opinions were written by the four Justices who composed the majority of the seven sitting members of the Court. Both opinions joining in the result in *Colegrove v. Green* agreed that considerations were controlling which dictated denial of jurisdiction though not in the strict sense of want of power. While the two opinions show a divergence of view regarding some of these considerations, there are important points of concurrence. Both opinions demonstrate a predominant concern, first, with avoiding federal judicial involvement in matters traditionally left to legislative policy making; second,

with respect to the difficulty - in view of the nature of the problems of apportionment and its history in this country - of drawing on or devising judicial standards for judgment, as opposed to legislative determinations, of the part which mere numerical equality among voters should play as a criterion for the allocation of [\[369 U.S. 186, 278\]](#) political power; and, third, with problems of finding appropriate modes of relief - particularly, the problem of resolving the essentially political issue of the relative merits of at-large elections and elections held in districts of unequal population.

The broad applicability of these considerations - summarized in the loose shorthand phrase, "political question" - in cases involving a State's apportionment of voting power among its numerous localities has led the Court, since 1946, to recognize their controlling effect in a variety of situations. (In all these cases decision was by a full Court.) The "political question" principle as applied in *Colegrove* has found wide application commensurate with its function as "one of the rules basic to the federal system and this Court's appropriate place within that structure." *Rescue Army v. Municipal Court*, [331 U.S. 549, 570](#). In *Colegrove v. Barrett*, [330 U.S. 804](#), litigants brought suit in a Federal District Court challenging as offensive to the Equal Protection Clause Illinois' state legislative-apportionment laws. They pointed to state constitutional provisions requiring decennial reapportionment and allocation of seats in proportion to population, alleged a failure to reapportion for more than forty-five years - during which time extensive population shifts had rendered the legislative districts grossly unequal - and sought declaratory and injunctive relief with respect to all elections to be held thereafter. After the complaint was dismissed by the District Court, this Court dismissed an appeal for want of a substantial federal question. A similar District Court decision was affirmed here in *Radford v. Gary*, [352 U.S. 991](#). And cf. *Remmey v. Smith*, [342 U.S. 916](#). In *Tedesco v. Board of Supervisors*, [339 U.S. 940](#), the Court declined to hear, for want of a substantial federal question, the claim that the division of a municipality into voting districts of unequal population for the selection for councilmen fell [\[369 U.S. 186, 279\]](#) afoul of the Fourteenth Amendment, and in *Cox v. Peters*, [342 U.S. 936](#), rehearing denied, [343 U.S. 921](#), it found no substantial federal question raised by a state court's dismissal of a claim for damages for "devaluation" of plaintiff's vote by application of Georgia's county-unit system in a primary election for the Democratic gubernatorial candidate. The same Georgia system was subsequently attacked in a complaint for declaratory judgment and an injunction; the federal district judge declined to take the requisite steps for the convening of a statutory three-judge court; and this Court, in *Hartsfield v. Sloan*, [357 U.S. 916](#), denied a motion for leave to file a petition for a writ of mandamus to compel the district judge to act. In *MacDougall v. Green*, [335 U.S. 281, 283](#), the Court noted that "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government," and, citing the *Colegrove* cases, declined to find in "such broad constitutional concepts as due process and equal protection of the laws," *id.*, at 284, a warrant for federal judicial invalidation of an Illinois statute requiring as a condition for the formation of a new political party the securing of at least two hundred signatures from each of fifty counties. And in *South v. Peters*, [339 U.S. 276](#), another suit attacking Georgia's county-unit law, it affirmed a District Court dismissal, saying

"Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." *Id.*, at 277.

Of course it is important to recognize particular, relevant diversities among comprehensively similar situations. Appellants seek to distinguish several of this Court's prior decisions on one or another ground - *Colegrove v. Green* on the ground that federal, not state, legislative apportionment was involved; *Remmey v. Smith* on the ground that state judicial remedies had not been tried; *Radford v. Gary* on the ground that Oklahoma has the initiative, whereas Tennessee does not. It would only darken counsel to discuss the relevance and significance of each of these assertedly distinguishing factors here and in the context of this entire line of cases. Suffice it that they do not serve to distinguish *Colegrove v. Barrett*, *supra*, which is on all fours with the present case, or to distinguish *Kidd v. McCanless*, [352 U.S. 920](#), in which the full Court without dissent, only five years ago, dismissed on authority of *Colegrove v. Green* and *Anderson v. Jordan*, [343 U.S. 912](#), an appeal from the Supreme Court of Tennessee in which a precisely similar attack was made upon the very statute now challenged. If the weight and momentum of an unvarying course of carefully considered decisions are to be respected, appellants' claims are foreclosed not only by precedents governing the exact facts of the present case but are themselves supported by authority the more persuasive in that it gives effect to the *Colegrove* principle in distinctly varying circumstances in which state arrangements allocating relative degrees of political influence among geographic groups of voters were challenged under the Fourteenth Amendment.

II.

The *Colegrove* doctrine, in the form in which repeated decisions have settled it, was not an innovation. It represents long judicial thought and experience. From its earliest opinions this Court has consistently recognized a class of controversies which do not lend themselves to judicial standards and judicial remedies. To classify the various instances as "political questions" is rather a form [\[369 U.S. 186, 281\]](#) of stating this conclusion than revealing of analysis. [10](#) Some of the cases so labelled have no relevance here. But from others emerge unifying considerations that are compelling.

1. The cases concerning war or foreign affairs, for example, are usually explained by the necessity of the country's speaking with one voice in such matters. While this concern alone undoubtedly accounts for many of the decisions, [11](#) others do not fit the pattern. It would hardly embarrass the conduct of war were this Court to determine, in connection with private transactions between litigants, the date upon which war is to be deemed terminated. But the Court has refused to do so. See, e. g., *The Protector*, 12 Wall. 700; *Brown v. Hiatts*, 15 wall. 177; *Adger v. Alston*, 15 Wall. 555; *Williams v. Bruffy*, [96 U.S. 176, 192](#) -193. It does not suffice to explain such cases as *Ludecke v. Watkins*, [335 U.S. 160](#) - deferring to political determination the question of the duration of war for purposes of the Presidential power to deport alien enemies - that judicial intrusion would seriously [\[369 U.S. 186, 282\]](#) impede the President's power effectively to protect the country's interests in time of war. Of course, this is true; but the precise issue presented is the duration of the time of war which demands the power. Cf. *Martin v. Mott*, 12 Wheat. 19; *Lamar v. Browne*, [92 U.S. 187, 193](#); *Hamilton v. Kentucky Distilleries & Warehouse Co.*, [251 U.S. 146](#); *Kahn v. Anderson*, [255 U.S. 1](#). And even for the purpose of determining the extent of congressional regulatory power over the tribes and dependent communities of Indians, it is ordinarily for Congress, not the Court, to determine whether or not a particular Indian group retains the characteristics constitutionally requisite to confer the power. [12](#) E. g., *United States v. Holliday*, 3 Wall. 407; *Tiger v. Western Investment Co.*, [221](#)

[U.S. 286](#); *United States v. Sandoval*, [231 U.S. 28](#). A controlling factor in such cases is that, decision respecting these kinds of complex matters of policy being traditionally committed not to courts but to the political agencies of government for determination by criteria of political expediency, there exists no standard ascertainable by settled judicial experience or process by reference to which a political decision affecting the question at issue between the parties can be judged. Where the question arises in the course of a litigation involving primarily the adjudication of other issues between the litigants, the Court accepts as a basis for adjudication the political departments' decision of it. But where its determination is the sole function to be served by the exercise of the judicial power, the Court will not entertain the action. See *Chicago & Southern Air Lines, Inc., v. Waterman S. S. Corp.*, [[369 U.S. 186, 283](#)] [333 U.S. 103](#). The dominant consideration is "the lack of satisfactory criteria for a judicial determination . . ." Mr. Chief Justice Hughes, for the Court, in *Coleman v. Miller*, [307 U.S. 433, 454](#)-455. Compare *United States v. Rogers*, 4 How. 567, 572, with *Worcester v. Georgia*, 6 Pet. 515. [13](#)

This may be, like so many questions of law, a matter of degree. Questions have arisen under the Constitution to which adjudication gives answer although the criteria for decision are less than unwavering bright lines. Often in these cases illumination was found in the federal structures established by, or the underlying presuppositions of, the Constitution. With respect to such questions, the Court has recognized that, concerning a particular power of Congress put in issue, ". . . effective restraints on its exercise must proceed from political rather than from judicial processes." *Wickard v. Filburn*, [317 U.S. 111, 120](#). It is also true that even regarding the duration of war and the status of Indian tribes, referred to above as subjects ordinarily committed exclusively to the non-judicial branches, the Court has suggested that some limitations exist upon the range within which the decisions of those branches will be permitted to go unreviewed. See *United States v. Sandoval*, *supra*, at 46; cf. *Chastleton Corp. v. Sinclair*, [264 U.S. 543](#). But this is merely to acknowledge that particular circumstances may differ so greatly in degree as to differ thereby in kind, and that, although within a certain range of cases on a continuum, no standard of distinction can be found to tell between them, other cases will fall above or below the range. The doctrine of political questions, like any other, is not to [[369 U.S. 186, 284](#)] be applied beyond the limits of its own logic, with all the quiddities and abstract disharmonies it may manifest. See the disposition of contentions based on logically distorting views of *Colegrove v. Green* and *Hunter v. Pittsburgh*, [207 U.S. 161](#), in *Gomillion v. Lightfoot*, [364 U.S. 339](#).

2. The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States. The abstention from judicial entry into such areas has been greater even than that which marks the Court's ordinary approach to issues of state power challenged under broad federal guarantees. "We should be very reluctant to decide that we had jurisdiction in such a case, and thus in an action of this nature to supervise and review the political administration of a state government by its own officials and through its own courts. The jurisdiction of this court would only exist in case there had been . . . such a plain and substantial departure from the fundamental principles upon which our government is based that it could with truth and propriety be said that if the judgment were suffered to remain, the party aggrieved would be deprived of his life, liberty or property in violation of the provisions of the Federal Constitution." *Wilson v. North Carolina*, [169 U.S. 586, 596](#). See *Taylor and Marshall v. Beckham* (No. 1), [178 U.S. 548](#); *Walton v. House of Representatives*, [265 U.S. 487](#); *Snowden v. Hughes*, [321 U.S. 1](#). Cf. *In re Sawyer*, [124 U.S. 200, 220](#)-221.

Where, however, state law has made particular federal questions determinative of relations within the structure of state government, not in challenge of it, the Court has resolved such narrow, legally defined questions in proper proceedings. See *Boyd v. Nebraska ex rel. Thayer*, [143 U.S. 135](#). In such instances there is no conflict between state policy and the exercise of federal judicial [[369 U.S. 186, 285](#)] power. This distinction explains the decisions in *Smiley v. Holm*, [285 U.S. 355](#); *Koenig v. Flynn*, [285 U.S. 375](#); and *Carroll v. Becker*, [285 U.S. 380](#), in which the Court released state constitutional provisions prescribing local lawmaking procedures from misconceived restriction of superior federal requirements. Adjudication of the federal claim involved in those cases was not one demanding the accommodation of conflicting interests for which no readily accessible judicial standards could be found. See *McPherson v. Blacker*, [146 U.S. 1](#), in which, in a case coming here on writ of error from the judgment of a state court which had entertained it on the merits, the Court treated as justiciable the claim that a State could not constitutionally select its presidential electors by districts, but held that Art. II, cl. 2, of the Constitution left the mode of choosing electors in the absolute discretion of the States. Cf. *Pope v. Williams*, [193 U.S. 621](#); *Breedlove v. Suttles*, [302 U.S. 277](#). To read with literalness the abstracted jurisdictional discussion in the *McPherson* opinion reveals the danger of conceptions of "justiciability" derived from talk and not from the effective decision in a case. In probing beneath the surface of cases in which the Court has declined to interfere with the actions of political organs of government, of decisive significance is whether in each situation the ultimate decision has been to intervene or not to intervene. Compare the reliance in *South v. Peters*, [339 U.S. 276](#), on *MacDougall v. Green*, [335 U.S. 281](#), and the "jurisdictional" form of the opinion in *Wilson v. North Carolina*, [169 U.S. 586, 596](#), supra.

3. The cases involving Negro disfranchisement are no exception to the principle of avoiding federal judicial intervention into matters of state government in the absence of an explicit and clear constitutional imperative. For here the controlling command of Supreme Law is plain and unequivocal. An end of discrimination against [[369 U.S. 186, 286](#)] the Negro was the compelling motive of the Civil War Amendments. The Fifteenth expresses this in terms, and it is no less true of the Equal Protection Clause of the Fourteenth. *Slaughter-House Cases*, 16 Wall. 36, 67-72; *Strauder v. West Virginia*, [100 U.S. 303, 306](#) -307; *Nixon v. Herndon*, [273 U.S. 536, 541](#). Thus the Court, in cases involving discrimination against the Negro's right to vote, has recognized not only the action at law for damages, [14](#) but, in appropriate circumstances, the extraordinary remedy of declaratory or injunctive relief. [15](#) *Schnell v. Davis*, [336 U.S. 933](#); *Terry v. Adams*, [345 U.S. 461](#). [16](#) Injunctions in these cases, it should be noted, would not have restrained state-wide general elections. Compare *Giles v. Harris*, [189 U.S. 475](#).

4. The Court has refused to exercise its jurisdiction to pass on "abstract questions of political power, of sovereignty, of government." *Massachusetts v. Mellon*, [262 U.S. 447, 485](#). See *Texas v. Interstate Commerce Commission*, [258 U.S. 158, 162](#); *New Jersey v. Sargent*, [269 U.S. 328, 337](#). The "political question" doctrine, in this aspect, reflects the policies underlying the requirement of "standing": that the litigant who would challenge official [[369 U.S. 186, 287](#)] action must claim infringement of an interest particular and personal to himself, as distinguished from a cause of dissatisfaction with the general frame and functioning of government - a complaint that the political institutions are awry. See *Stearns v. Wood*, [236 U.S. 75](#); *Fairchild v. Hughes*, [258 U.S. 126](#); *United Public Workers v. Mitchell*, [330 U.S. 75, 89](#) -91. What renders cases of this kind non-justiciable is not necessarily the nature of the parties to them, for the Court has resolved other issues between similar parties; [17](#) nor is it the nature of the

legal question involved, for the same type of question has been adjudicated when presented in other forms of controversy. [18](#) The crux of the matter is that courts are not fit instruments of decision where what is essentially at stake is the composition of those large contests of policy traditionally fought out in non-judicial forums, by which governments and the actions of governments are made and unmade. See *Texas v. White*, 7 Wall. 700; *White v. Hart*, 13 Wall. 646; *Phillips v. Payne*, [92 U.S. 130](#); *Marsh v. Burroughs*, 1 Woods 463, 471-472 (Bradley, Circuit Justice); cf. *Wilson v. Shaw*, [204 U.S. 24](#); but see *Coyle v. Smith*, [221 U.S. 559](#). Thus, where the Cherokee Nation sought by an original motion to restrain the State of Georgia from the enforcement of laws which assimilated Cherokee territory to the State's counties, abrogated Cherokee law, and abolished Cherokee government, the Court held that such a claim was not judicially cognizable. *Cherokee Nation v. Georgia*, 5 Pet. 1. [19](#) And in *Georgia* [[369 U.S. 186, 288](#)] v. *Stanton*, 6 Wall. 50, the Court dismissed for want of jurisdiction a bill by the State of Georgia seeking to enjoin enforcement of the Reconstruction Acts on the ground that the command by military districts which they established extinguished existing state government and replaced it with a form of government unauthorized by the Constitution: [20](#)

"That these matters, both as stated in the body of the bill; and, in the prayers for relief, call for the judgment of the court upon political questions, and, upon rights, not of persons or property, but of a political character, will hardly be denied. For the rights for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a State, with all its constitutional powers and privileges. No case of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the court." *Id.*, at 77. [21](#) [[369 U.S. 186, 289](#)]

5. The influence of these converging considerations - the caution not to undertake decision where standards meet for judicial judgment are lacking, the reluctance to interfere with matters of state government in the absence of an unquestionable and effectively enforceable mandate, the unwillingness to make courts arbiters of the broad issues of political organization historically committed to other institutions and for whose adjustment the judicial process is ill-adapted - has been decisive of the settled line of cases, reaching back more than a century, which holds that Art. IV, 4, of the Constitution, guaranteeing to the States "a Republican Form of Government," [22](#) is not enforceable through the courts. E. g., *O'Neill v. Leamer*, [239 U.S. 244](#); *Mountain Timber Co. v. Washington*, [243 U.S. 219](#); *Cochran v. Board of Education*, [281 U.S. 370](#); *Highland Farms Dairy, Inc., v. Agnew*, [300 U.S. 608](#). [23](#) Claims resting on this specific [[369 U.S. 186, 290](#)] guarantee of the Constitution have been held nonjusticiable which challenged state distribution of powers between the legislative and judicial branches, *Ohio ex rel. Bryant v. Akron Metropolitan Park District*, [281 U.S. 74](#), state delegation of power to municipalities, *Kiernan v. Portland, Oregon*, [223 U.S. 151](#), state adoption of the referendum as a legislative institution, *Ohio ex rel. Davis v. Hildebrandt*, [241 U.S. 565, 569](#), and state restriction upon the power of state constitutional amendment, *Marshall v. Dye*, [231 U.S. 250, 256](#)-257. The subject was fully considered in *Pacific States Telephone & Telegraph Co. v. Oregon*, [223 U.S. 118](#), in which the Court dismissed for want of jurisdiction a writ of error attacking a state license-tax statute enacted by the initiative, on the claim that this mode of legislation was inconsistent with a Republican Form of Government and violated the Equal Protection Clause and other federal guarantees. After nothing ". . . the ruinous destruction of legislative authority in matters purely political which would necessarily be occasioned by giving sanction [[369 U.S.](#)

186, 291] to the doctrine which underlies and would be necessarily involved in sustaining the propositions contended for," [24](#) the Court said:

". . . [The] essentially political nature [of this claim] is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State. It is addressed to the framework and political character of the government by which the statute levying the tax was passed. It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion [[369 U.S. 186, 292](#)] has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form." *Id.*, at 150-151.

The starting point of the doctrine applied in these cases is, of course, *Luther v. Borden*, 7 How. 1. The case arose out of the Dorr Rebellion in Rhode Island in 1841-1842. Rhode Island, at the time of the separation from England, had not adopted a new constitution but had continued, in its existence as an independent State, under its original royal Charter, with certain statutory alterations. This frame of government provided no means for amendment of the fundamental law; the right of suffrage was to be prescribed by legislation, which limited it to freeholders. In the 1830's, largely because of the growth of towns in which there developed a propertied class whose means were not represented by freehold estates, dissatisfaction arose with the suffrage qualifications of the charter government. In addition, population shifts had caused a dated apportionment of seats in the lower house to yield substantial numerical inequality of political influence, even among qualified voters. The towns felt themselves underrepresented, and agitation began for electoral reform. When the charter government failed to respond, popular meetings of those who favored the broader suffrage were held and delegates elected to a convention which met and drafted a state constitution. This constitution provided for universal manhood suffrage (with certain qualifications); and it was to be adopted by vote of the people at elections at which a similarly expansive franchise obtained. This new scheme of government was ratified at the polls and declared effective by the convention, but the government elected and organized under it, with Dorr at its head, never came to power. The [[369 U.S. 186, 293](#)] charter government denied the validity of the convention, the constitution and its government and, after an insignificant skirmish, routed Dorr and his followers. It meanwhile provided for the calling of its own convention, which drafted a constitution that went peacefully into effect in 1843. [25](#)

Luther v. Borden was a trespass action brought by one of Dorr's supporters in a United States Circuit Court to recover damages for the breaking and entering of his house. The defendants justified under military orders pursuant to martial law declared by the charter government, and plaintiff, by his reply, joined issue on the legality of the charter government subsequent to the adoption of the Dorr constitution. Evidence offered by the plaintiff tending to establish that the Dorr government was the rightful government of Rhode Island was rejected by the Circuit Court; the court charged the jury that the charter government was lawful; and on a verdict for defendants, plaintiff brought a writ of error to this Court.

The Court, through Mr. Chief Justice Taney, affirmed. After noting that the issue of the charter government's legality had been resolved in that government's favor by the state courts of Rhode Island - that the state courts, deeming the matter a political one unfit for judicial determination,

had declined to entertain attacks upon the existence and authority of the charter government - the Chief Justice held that the courts of the United States must follow those of the State in this regard. *Id.*, at 39-40. It was recognized that the compulsion to follow [369 U.S. 186, 294] state law would not apply in a federal court in the face of a superior command found in the Federal Constitution, *ibid.*, but no such command was found. The Constitution, the Court said - referring to the Guarantee Clause of the Fourth Article - ". . . as far as it has provided for an emergency of this kind, and authorized the general government to interfere in the domestic concerns of a State, has treated the subject as political in its nature, and placed the power in the hands of that department." *Id.*, at 42.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts." *Ibid.* [26](#) [369 U.S. 186, 295]

In determining this issue non-justiciable, the Court was sensitive to the same considerations to which its later decisions have given the varied applications already discussed. It adverted to the delicacy of judicial intervention into the very structure of government. [27](#) It acknowledged that tradition had long entrusted questions of this nature to non-judicial processes, [28](#) and that judicial processes were unsuited to their decision. [29](#) The absence of guiding standards for judgment was critical, for the question whether the Dorr constitution had been rightfully adopted depended, in part, upon the extent of the franchise to be recognized - the very point of contention over which rebellion had been fought.

". . . [I]f the Circuit Court had entered upon this inquiry, by what rule could it have determined the qualification of voters upon the adoption or rejection of the proposed constitution, unless there was some previous law of the State to guide it? It is the province of a court to expound the law, not to make it. And certainly it is no part of the judicial functions of any court of the United States to prescribe the qualification of voters in a State, giving the right to those to whom it is denied by the written and established constitution and laws of the State, or taking it away from those to whom it is given; nor has it the right to determine what political privileges [369 U.S. 186, 296] the citizens of a State are entitled to, unless there is an established constitution or law to govern its decision." *Id.*, at 41.

Mr. Justice Woodbury (who dissented with respect to the effect of martial law) agreed with the Court regarding the inappropriateness of judicial inquiry into the issues:

"But, fortunately for our freedom from political excitements in judicial duties, this court can never with propriety be called on officially to be the umpire in questions merely political. The

adjustment of these questions belongs to the people and their political representatives, either in the State or general government. These questions relate to matters not to be settled on strict legal principles. They are adjusted rather by inclination, - or prejudice or compromise, often. Some of them succeed or are defeated even by public policy alone, or mere naked power, rather than intrinsic right. . . .

"Another evil, alarming and little foreseen, involved in regarding these as questions for the final arbitrament of judges would be, that in such an event all political privileges and rights would, in a dispute among the people, depend on our decision finally. . . . [D]isputed points in making constitutions, depending often, as before shown, on policy, inclination, popular resolves, and popular will, . . . if the people, in the distribution of powers under the constitution, should ever think of making judges supreme arbiters in political controversies, when not selected by nor, frequently, amenable to them, nor at liberty to follow such various considerations in their judgments as belong to mere political questions, they will dethrone themselves and lose one of their own invaluable birthrights; building up in this way - slowly, but surely - a new sovereign power in the [369 U.S. 186, 297] republic, in most respects irresponsible and unchangeable for life, and one more dangerous, in theory at least, than the worst elective oligarchy in the worst of times. . . ." *Id.*, at 51-53. [30](#)

III.

The present case involves all of the elements that have made the Guarantee Clause cases non-justiciable. It is, in effect, a Guarantee Clause claim masquerading under a different label. But it cannot make the case more fit for judicial action that appellants invoke the Fourteenth Amendment rather than Art. IV, 4, where, in fact, the gist of their complaint is the same - unless it can be found that the Fourteenth Amendment speaks with greater particularity to their situation. We have been admonished to avoid "the tyranny of labels." *Snyder v. Massachusetts*, [291 U.S. 97, 114](#). Art. IV, 4, is not committed by express constitutional terms to Congress. It is the nature of the controversies arising under it, nothing else, which has made it judicially unenforceable. Of course, if a controversy falls within judicial power, it depends "on how he [the plaintiff] casts his action," *Pan American Petroleum Corp. v. Superior Court*, [366 U.S. 656, 662](#), whether he brings himself within a jurisdictional statute. But where judicial competence is wanting, it cannot be created by invoking one clause of the Constitution rather than another. When what was essentially a Guarantee Clause claim was sought to be laid, as well, under the Equal Protection Clause in *Pacific States Telephone & Telegraph Co. v. Oregon*, *supra*, the Court had no difficulty in "dispelling [369 U.S. 186, 298] any mere confusion resulting from forms of expression and considering the substance of things" [223 U.S., at 140](#).

Here appellants attack "the State as a State," precisely as it was perceived to be attacked in the *Pacific States* case, *id.*, at 150. Their complaint is that the basis of representation of the Tennessee Legislature hurts them. They assert that "a minority now rules in Tennessee," that the apportionment statute results in a "distortion of the constitutional system," that the General Assembly is no longer "a body representative of the people of the State of Tennessee," all "contrary to the basic principle of representative government" Accepting appellants' own formulation of the issue, one can know this handsaw from a hawk. Such a claim would be non-

justiciable not merely under Art. IV, 4, but under any clause of the Constitution, by virtue of the very fact that a federal court is not a forum for political debate. *Massachusetts v. Mellon*, supra.

But appellants, of course, do not rest on this claim simpliciter. In invoking the Equal Protection Clause, they assert that the distortion of representative government complained of is produced by systematic discrimination against them, by way of "a debasement of their votes" Does this characterization, with due regard for the facts from which it is derived, add anything to appellants' case? [31](#)

At first blush, this charge of discrimination based on legislative underrepresentation is given the appearance of [\[369 U.S. 186, 299\]](#) a more private, less impersonal claim, than the assertion that the frame of government is askew. Appellants appear as representatives of a class that is prejudiced as a class, in contradistinction to the polity in its entirety. However, the discrimination relied on is the deprivation of what appellants conceive to be their proportionate share of political influence. This, of course, is the practical effect of any allocation of power within the institutions of government. Hardly any distribution of political authority that could be assailed as rendering government non-republican would fail similarly to operate to the prejudice of some groups, and to the advantage of others, within the body politic. It would be ingenuous not to see, or consciously blind to deny, that the real battle over the initiative and referendum, or over a delegation of power to local rather than state-wide authority, is the battle between forces whose influence is disparate among the various organs of government to whom power may be given. No shift of power but works a corresponding shift in political influence among the groups composing a society.

What, then, is this question of legislative apportionment? Appellants invoke the right to vote and to have their votes counted. [32](#) But they are permitted to vote and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state [\[369 U.S. 186, 300\]](#) councils. Their complaint is simply that the representatives are not sufficiently numerous or powerful - in short, that Tennessee has adopted a basis of representation with which they are dissatisfied. Talk of "debasement" or "dilution" is circular talk. One cannot speak of "debasement" or "dilution" of the value of a vote until there is first defined a standard of reference as to what a vote should be worth. What is actually asked of the Court in this case is to choose among competing bases of representation - ultimately, really, among competing theories of political philosophy - in order to establish an appropriate frame of government for the State of Tennessee and thereby for all the States of the Union.

In such a matter, abstract analogies which ignore the facts of history deal in unrealities; they betray reason. This is not a case in which a State has, through a device however oblique and sophisticated, denied Negroes or Jews or redheaded persons a vote, or given them only a third or a sixth of a vote. That was *Gomillion v. Lightfoot*, [364 U.S. 339](#). What Tennessee illustrates is an old and still widespread method of representation - representation by local geographical division, only in part respective of population - in preference to others, others, forsooth, more appealing. Appellants contest this choice and seek to make this Court the arbiter of the disagreement. They would make the Equal Protection Clause the charter of adjudication, asserting that the equality which it guarantees comports, if not the assurance of equal weight to every voter's vote, at least the basic conception that representation ought to be proportionate to

population, a standard by reference to which the reasonableness of apportionment plans may be judged.

To find such a political conception legally enforceable in the broad and unspecific guarantee of equal protection is to rewrite the Constitution. See *Luther v. Borden*, supra. Certainly, "equal protection" is no more secure [369 U.S. 186, 301] a foundation for judicial judgment of the permissibility of varying forms of representative government than is "Republican Form." Indeed since "equal protection of the laws" can only mean an equality of persons standing in the same relation to whatever governmental action is challenged, the determination whether treatment is equal presupposes a determination concerning the nature of the relationship. This, with respect to apportionment, means an inquiry into the theoretic base of representation in an acceptably republican state. For a court could not determine the equal-protection issue without in fact first determining the Republican-Form issue, simply because what is reasonable for equal-protection purposes will depend upon what frame of government, basically, is allowed. To divorce "equal protection" from "Republican Form" is to talk about half a question.

The notion that representation proportioned to the geographic spread of population is so universally accepted as a necessary element of equality between man and man that it must be taken to be the standard of a political equality preserved by the Fourteenth Amendment - that it is, in appellants' words "the basic principle of representative government" - is, to put it bluntly, not true. However desirable and however desired by some among the great political thinkers and framers of our government, it has never been generally practiced, today or in the past. It was not the English system, it was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominantly practiced by the States at the time of adoption of the Fourteenth Amendment, it is not predominantly practiced by the States today. Unless judges, the judges of this Court, are to make their private views of political wisdom the measure of the Constitution - views which in all honesty cannot but give the appearance, if not reflect the reality, of [369 U.S. 186, 302] involvement with the business of partisan politics so inescapably a part of apportionment controversies - the Fourteenth Amendment, "itself a historical product," *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31, provides no guide for judicial oversight of the representation problem.

1. Great Britain. Writing in 1958, Professor W. J. M. Mackenzie aptly summarized the British history of the principle of representation proportioned to population: "Equal electoral districts' formed part of the programme of radical reform in England in the 1830s, the only part of that programme which has not been realised." 33 Until the late nineteenth century, the sole base of representation (with certain exceptions not now relevant) was the local geographical unit: each county or borough returned its fixed number of members, usually two for the English units, regardless of population. 34 Prior to the Reform Act of 1832, this system was marked by the almost total disfranchisement of the populous northern industrial centers, which had grown to significant size at the advent of the Industrial Revolution and had not been granted borough representation, and by the existence of the rotten borough, playing its substantial part in the Crown's struggle for continued control of the Commons. 35 In 1831, ten southernmost English counties, numbering three and a quarter million people, had two hundred and thirty-five parliamentary representatives, while the six northernmost counties, with more than three and a half million people, had sixty-eight. 36 It was said that one hundred and eighty persons appointed three hundred and [369 U.S. 186, 303] fifty members in the Commons. 37 Less than

a half century earlier, Madison in the Federalist had remarked that half the House was returned by less than six thousand of the eight million people of England and Scotland. [38](#)

The Act of 1832, the product of a fierce partisan political struggle and the occasion of charges of gerrymandering not without foundation, [39](#) effected eradication of only the most extreme numerical inequalities of the unreformed system. It did not adopt the principle of representation based on population, but merely disfranchised certain among the rotten borough and enfranchised most of the urban centers - still quite without regard to their relative numbers. [40](#) In the wake of the Act there remained substantial electoral inequality: the boroughs of Cornwall were represented sixteen times as weightily, judged by population, as the county's eastern division; the average ratio of seats to population in ten agricultural counties was four and a half times that in ten manufacturing divisions; Honiton, with about three thousand inhabitants, was equally represented with Liverpool, which had four hundred thousand. [41](#) In 1866 apportionment by population began to be advocated generally in the House, but was not made the basis of the redistribution of 1867, although the act of that year did apportion representation more evenly, gauged by the population standard. [42](#) Population shifts increased the surviving inequalities; by 1884 the representation ratio [369 U.S. 186, 304] in many small boroughs was more than twenty-two times that of Birmingham or Manchester, forty-to-one disparities could be found elsewhere, and, in sum, in the 1870's and 1880's, a fourth of the electorate returned two-thirds of the members of the House. [43](#)

The first systematic English attempt to distribute seats by population was the Redistribution Act of 1885. [44](#) The statute still left ratios of inequality of as much as seven to one, [45](#) which had increased to fifteen to one by 1912. [46](#) In 1918 Parliament again responded to "shockingly bad" conditions of inequality, [47](#) and to partisan political inspiration, [48](#) by redistribution. [49](#) In 1944, redistribution was put on a periodic footing by the House of Commons (Redistribution of Seats) Act of that year, [50](#) which committed a continuing primary responsibility for reapportioning the Commons to administrative agencies (Boundary Commissions for England, Scotland, Wales and Northern Ireland, respectively). [51](#) The Commissions, having regard to certain rules prescribed for their guidance, are to prepare at designated intervals reports for the Home Secretary's submission to Parliament, along with the draft of an Order in Council to give effect to the [369 U.S. 186, 305] Commissions' recommendations. The districting rules adopt the basic principle of representation by population, although the principle is significantly modified by directions to respect local geographic boundaries as far as practicable, and by discretion to take account of special geographical conditions, including the size, shape and accessibility of constituencies. Under the original 1944 Act, the rules provided that (subject to the exercise of the discretion respecting special geographical conditions and to regard for the total size of the House of Commons as prescribed by the Act) so far as practicable, the single-member districts should not deviate more than twenty-five percent from the electoral quota (population divided by number of constituencies). However, apparently at the recommendation of the Boundary Commission for England, the twenty-five percent standard was eliminated as too restrictive in 1947, and replaced by the flexible provision that constituencies are to be as near the electoral quota as practicable, a rule which is expressly subordinated both to the consideration of special geographic conditions and to that of preserving local boundaries. [52](#) Free of the twenty-five percent rule, the Commissions drew up plans of distribution in which inequalities among the districts run, in ordinary cases, as high as two to one and, in the case of a few extraordinary constituencies, three to one. [53](#) The action of the Boundary Commission for England was twice challenged in the

courts in 1954 - the claim being that the Commission had violated statutory rules [369 U.S. 186, 306] prescribing the standards for its judgment - and in both cases the Judges declined to intervene. In *Hammersmith Borough Council v. Boundary Commission for England*, [54](#) Harman, J., was of opinion that the nature of the controversy and the scheme of the Acts made the matter inappropriate for judicial interference, and in *Harper v. Home Secretary*, [55](#) the Court of Appeal, per Evershed, M. R., quoting Harman, J., with approval, adverted to the wide range of discretion entrusted to the Commission under the Acts, and remarking the delicate character of the parliamentary issues in which it was sought to engage the court, reached the same conclusion. [56](#)

The House of Commons (Redistribution of Seats) Act, 1958, [57](#) made two further amendments to the law. Responsive to the recommendation of the Boundary Commission for England, [58](#) the interval permitted between Commission reports was more than doubled, to a new maximum of fifteen years. [59](#) And at the suggestion of the same Commission that "It would ease the future labours of the Commission and remove much local irritation if Rule 5 [requiring that the electorate of each constituency be as near the electoral quota as practicable] were to be so amended as to allow us to make recommendations preserving the status quo in any area where such a course appeared to be desirable and not inconsistent [369 U.S. 186, 307] with the broad intention of the Rules," [60](#) the Commissions were directed to consider the inconvenience attendant upon the alteration of constituencies, and the local ties which such alteration might break. The Home Secretary's view of this amendment was that it worked to erect "a presumption against making changes unless there is a very strong case for them." [61](#)

2. The Colonies and the Union. For the guiding political theorists of the Revolutionary generation, the English system of representation, in its most salient aspects of numerical inequality, was a model to be avoided, not followed. [62](#) Nevertheless, the basic English principle of apportioning representatives among the local governmental entities, towns or counties, rather than among units of approximately equal population, had early taken root in the colonies. [63](#) In some, as in Massachusetts and Rhode Island, numbers of electors were taken into account, in a rough fashion, by allotting increasing fixed quotas of representatives to several towns or classes of towns graduated by population, but in most of the colonies delegates were allowed to the local units without respect to numbers. [64](#) This resulted in grossly unequal electoral units. [65](#) The representation ratio in one North Carolina county was more than eight times that in another. [66](#) Moreover, American rotten boroughs had appeared, [67](#) and apportionment was made an instrument first in the political [369 U.S. 186, 308] struggles between the King or the royal governors and the colonial legislatures, [68](#) and, later, between the older tidewater regions in the colonies and the growing interior. [69](#) Madison in the Philadelphia Convention adverted to the "inequality of the Representation in the Legislatures of particular States, . . ." [70](#) arguing that it was necessary to confer on Congress the power ultimately to regulate the times, places and manner of selecting Representatives, [71](#) in order to forestall the overrepresented counties' securing themselves a similar overrepresentation in the national councils. The example of South Carolina, where Charleston's overrepresentation was a continuing bone of contention between the tidewater and the back country, was cited by Madison in the Virginia Convention and by King in the Massachusetts Convention, in support of the same power, and King also spoke of the extreme numerical inequality arising from Connecticut's town-representation system. [72](#)

Such inequalities survived the constitutional period. The United States Constitution itself did not largely adopt the principle of numbers. Apportionment of the national legislature among the States was one of the most difficult problems for the Convention; [73](#) its solution - involving State representation in the Senate [74](#) and the three-fifths compromise in the House [75](#) - left neither chamber apportioned proportionately to population. [369 U.S. 186, 309] Within the States, electoral power continued to be allotted to favor the tidewater. [76](#) Jefferson, in his Notes on Virginia, recorded the "very unequal" representation there: individual counties differing in population by a ratio of more than seventeen to one elected the same number of representatives, and those nineteen thousand of Virginia's fifty thousand men who lived between the falls of the rivers and the seacoast returned half the State's senators and almost half its delegates. [77](#) In South Carolina in 1790, the three lower districts, with a white population of less than twenty-nine thousand elected twenty senators and seventy assembly members; while in the uplands more than one hundred and eleven thousand white persons elected seventeen senators and fifty-four assemblymen. [78](#)

In the early nineteenth century, the demands of the interior became more insistent. The apportionment quarrel in Virginia was a major factor in precipitating the calling of a constitutional convention in 1829. Bitter animosities racked the convention, threatening the State with disunion. At last a compromise which gave the three hundred and twenty thousand people of the west thirteen senators, as against the nineteen senators returned by the three hundred sixty-three thousand people of the east, commanded agreement. It was adopted at the polls but left the western counties so dissatisfied that there were threats of revolt and realignment with the State of Maryland. [79](#)

Maryland, however, had her own numerical disproportions. In 1820, one representative vote in Calvert County [369 U.S. 186, 310] was worth five in Frederick County, and almost two hundred thousand people were represented by eighteen members, while fifty thousand others elected twenty. [80](#) This was the result of the county-representation system of allotment. And, except for Massachusetts which, after a long struggle, did adopt representation by population at the mid-century, a similar town-representation principle continued to prevail in various forms throughout New England, with all its attendant, often gross inequalities. [81](#)

3. The States at the time of ratification of the Fourteenth Amendment, and those later admitted. The several state conventions throughout the first half of the nineteenth century were the scenes of fierce sectional and party strifes respecting the geographic allocation of representation. [82](#) Their product was a wide variety of apportionment methods which recognized the element of population in differing ways and degrees. Particularly pertinent to appraisal of the contention that the Fourteenth Amendment embodied a standard limiting the freedom of the States with regard to the principles and bases of local legislative apportionment is an examination of the apportionment provisions of the thirty-three States which ratified the Amendment between 1866 and 1870, at their respective times of ratification. These may be considered in two groups: (A) the ratifying States other than the ten Southern States whose constitutions, at the time of ratification or shortly thereafter, were the work of the Reconstruction Act conventions; [83](#) and [369 U.S. 186, 311] (B) the ten Reconstruction-Act States. All thirty-three are significant, because they demonstrate how unfounded is the assumption that the ratifying States could have agreed on a standard apportionment theory or practice, and how baseless the suggestion that by voting for the Equal Protection Clause they sought to establish a

test mold for apportionment which - if appellants' argument is sound - struck down sub silentio not a few of their own state constitutional provisions. But the constitutions of the ten Reconstruction-Act States have an added importance, for it is scarcely to be thought that the Congress which was so solicitous for the adoption of the Fourteenth Amendment as to make the readmission of the late rebel States to Congress turn on their respective ratifications of it, would have approved constitutions which - again, under appellants' theory - contemporaneously offended the Amendment.

A. Of the twenty-three ratifying States of the first group, seven or eight had constitutions which demanded or allowed apportionment of both houses on the basis of population, [84](#) unqualifiedly or with only qualifications respecting the preservation of local boundaries. [85](#) Three [[369 U.S. 186, 312](#)] more apportioned on what was essentially a population base, but provided that in one house counties having a specified fraction of a ratio - a moiety or two-thirds - should have a representative. [86](#) Since each of these three States limited the size of their chambers, the fractional rule could operate - and, at least in Michigan, has in fact operated [87](#) - to produce substantial numerical inequalities [[369 U.S. 186, 313](#)] in favor of the sparsely populated counties. [88](#) Iowa favored her small counties by the rule that no more than four counties might be combined in a representative district, [89](#) and New York and Kansas compromised population and county-representation principles by assuring every county, regardless of the number of its inhabitants, at least one seat in their respective Houses. [90](#)

Ohio and Maine recognized the factor of numbers by a different device. The former gave a House representative to each county having half a ratio, two representatives for a ratio and three-quarters, three representatives for three ratios, and a single additional representative for each additional ratio. [91](#) The latter, after apportioning among counties on a population base, gave each town of fifteen hundred inhabitants one representative, each town of three thousand, seven hundred and fifty inhabitants two representatives, and so on in increasing intervals to twenty-six thousand, two hundred and fifty inhabitants - towns of that size or larger receiving the maximum permitted number of representatives: seven. [92](#) The departure from numerical equality under these systems is apparent: in Maine, assuming the incidence of towns in [[369 U.S. 186, 314](#)] all categories, representative ratios would differ by factors of two and a half to one, at a minimum. Similarly, Missouri gave each of its counties, however small, one representative, two representatives for three ratios, three representatives for six ratios, and one additional representative for each three ratios above six. [93](#) New Hampshire allotted a representative to each town of one hundred and fifty ratable male polls of voting age and one more representative for each increment of three hundred above that figure; [94](#) its Senate was not apportioned by population but among districts based on the proportion of direct taxes paid. [95](#) In Pennsylvania, the basis of apportionment in both houses was taxable inhabitants; and in the House every county of at least thirty-five hundred taxables had a representative, nor could more than three counties be joined in forming a representative district; while in the Senate no city or county could have more than four of the State's twenty-five to thirty-three senators. [96](#)

Finally, four States apportioned at least one House with no regard whatever to population. In Connecticut [97](#) and Vermont [98](#) representation in the House was on a town basis; Rhode Island gave one senator to each of its towns or cities, [99](#) and New Jersey, one to each of its counties. [100](#) [[369 U.S. 186, 315](#)] Nor, in any of these States, was the other House apportioned on a strict principle of equal numbers: Connecticut gave each of its counties a minimum of two

senators [101](#) and Vermont, one; [102](#) New Jersey assured each county a representative; [103](#) and in Rhode Island, which gave at least one representative to each town or city, no town or city could have more than one-sixth of the total number in the House. [104](#)

B. Among the ten late Confederate States affected by the Reconstruction Acts, in only four did it appear that apportionment of both state legislative houses would or might be based strictly on population. [105](#) In North Carolina, [106](#) South Carolina, [107](#) Louisiana, [108](#) and Alabama, [109](#) each county (in the case of Louisiana, each parish) was assured at least one seat in the lower House irrespective of numbers - a distribution which exhausted, respectively, [369 U.S. 186, 316] on the basis of the number of then-existing counties, three-quarters, one-quarter, two-fifths and three-fifths of the maximum possible number of representatives, before a single seat was available for assignment on a population basis; and in South Carolina, moreover, the Senate was composed of one member elected from each county, except that Charleston sent two. [110](#) In Florida's House, each county had one seat guaranteed and an additional seat for every thousand registered voters up to a maximum of four representatives; [111](#) while Georgia, whose Senate seats were distributed among forty-four single-member districts each composed of three contiguous counties, [112](#) assigned representation in its House as follows: three seats to each of the six most populous counties, two to each of the thirty-one next most populous, one to each of the remaining ninety-five. [113](#) As might be expected, the one-representative-per-county minimum pattern has proved incompatible with numerical equality, [114](#) and Georgia's [369 U.S. 186, 317] county-clustering system has produced representative-ratio disparities, between the largest and smallest counties, of more than sixty to one. [115](#)

C. The constitutions [116](#) of the thirteen States which Congress admitted to the Union after the ratification of the Fourteenth Amendment showed a similar pattern. Six of them required or permitted apportionment of both Houses by population, subject only to qualifications concerning local boundaries. [117](#) Wyoming, apportioning by population, guaranteed to each of its counties at least one seat in each House, [118](#) and Idaho, which prescribed (after the first legislative session) that apportionment should be "as may be provided by law," gave each county at least one representative. [119](#) In Oklahoma, House members were apportioned among counties so as to give one [369 U.S. 186, 318] seat for half a ratio, two for a ratio and three-quarters, and one for each additional ratio up to a maximum of seven representatives per county. [120](#) Montana required reapportionment of its House on the basis of periodic enumerations according to ratios to be fixed by law [121](#) but its counties were represented as counties in the Senate, each county having one senator. [122](#) Alaska [123](#) and Hawaii [124](#) each apportioned a number of senators among constitutionally fixed districts; their respective Houses were to be periodically reapportioned by population, subject to a moiety rule in Alaska [125](#) and to Hawaii's guarantee of one representative to each of four constitutionally designated areas. [126](#) The Arizona Constitution assigned representation to each county in each house, giving one or two senators and from one to seven representatives to each, and making no provision for reapportionment. [127](#) [369 U.S. 186, 319]

4. Contemporary apportionment. Detailed recent studies are available to describe the present-day constitutional and statutory status of apportionment in the fifty States. [128](#) They demonstrate a decided twentieth-century trend away from population as the exclusive base of representation. Today, only a dozen state constitutions provide for periodic legislative reapportionment of both houses by a substantially unqualified application of the population standard, [129](#) and only about

a dozen more prescribe such reapportionment for even a single chamber. "Specific provision for county representation in at least one house of the state legislature has been increasingly adopted since the end of the 19th century. . . ." [130](#) More than twenty States now guarantee each county at least one seat in one of their houses regardless of population, and in nine others county or town units are given equal representation in one legislative branch, whatever the number of each unit's inhabitants. Of course, numerically considered, "These provisions invariably result in over-representation of the least populated areas. . . ." [131](#) And in an effort to curb the political dominance of metropolitan regions, at least ten States now limit the maximum entitlement of any single county (or, in some cases, city) [[369 U.S. 186, 320](#)] in one legislative house - another source of substantial numerical disproportion. [132](#)

Moreover, it is common knowledge that the legislatures have not kept reapportionment up to date, even where state constitutions in terms require it. [133](#) In particular, the pattern of according greater per capita representation to rural, relatively sparsely populated areas - the same pattern which finds expression in various state constitutional provisions, [134](#) and which has been given effect in England and elsewhere [135](#) - has, in some of the States, been made the law by legislative inaction in the face of [[369 U.S. 186, 321](#)] population shifts. [136](#) Throughout the country, urban and suburban areas tend to be given higher representation ratios than do rural areas. [137](#)

The stark fact is that if among the numerous widely varying principles and practices that control state legislative apportionment today there is any generally prevailing feature, that feature is geographic inequality in relation to the population standard. [138](#) Examples could be endlessly multiplied. In New Jersey, counties of [[369 U.S. 186, 322](#)] thirty-five thousand and of more than nine hundred and five thousand inhabitants respectively each have a single senator. [139](#) Representative districts in Minnesota range from 7,290 inhabitants to 107,246 inhabitants. [140](#) Ratios of senatorial representation in California vary as much as two hundred and ninety-seven to one. [141](#) In Oklahoma, the range is ten to one for House constituencies and roughly sixteen to one for Senate constituencies. [142](#) Colebrook, Connecticut - population 592 - elects two House representatives; Hartford - population 177,397 - also elects two. [143](#) The first, third and fifth of these examples are the products of constitutional provisions which subordinate population to regional considerations in apportionment; the second is the result of legislative inaction; the fourth derives from both constitutional and legislative sources. A survey made in 1955, in sum, reveals that less than thirty percent of the population inhabit districts sufficient to elect a House majority in thirteen States and a Senate majority in nineteen States. [144](#) These figures show more than individual variations from a generally accepted standard of electoral equality. They show that there is not - as there has never been - a standard by [[369 U.S. 186, 323](#)] which the place of equality as a factor in apportionment can be measured.

Manifestly, the Equal Protection Clause supplies no clearer guide for judicial examination of apportionment methods than would the Guarantee Clause itself. Apportionment, by its character, is a subject of extraordinary complexity, involving - even after the fundamental theoretical issues concerning what is to be represented in a representative legislature have been fought out or compromised - considerations of geography, demography, electoral convenience, economic and social cohesions or divergencies among particular local groups, communications, the practical effects of political institutions like the lobby and the city machine, ancient traditions and ties of settled usage, respect for proven incumbents of long experience and senior status, mathematical

mechanics, censuses compiling relevant data, and a host of others. [145](#) [369 U.S. 186, 324] Legislative responses throughout the country to the reapportionment demands of the 1960 Census have glaringly confirmed that these are not factors that lend themselves to evaluations of a nature that are the staple of judicial determinations or for which judges are equipped to adjudicate by legal training or experience or native wit. And this is the more so true because in every strand of this complicated, intricate web of values meet the contending forces of partisan politics. [146](#) The practical significance of apportionment is that the next election results may differ because of it. Apportionment battles are overwhelmingly party or intra-party contests. [147](#) It will add a virulent source of friction and tension in federal-state relations to embroil the federal judiciary in them. [148](#) [369 U.S. 186, 325]

IV.

Appellants, however, contend that the federal courts may provide the standard which the Fourteenth Amendment lacks by reference to the provisions of the constitution of Tennessee. The argument is that although the same or greater disparities of electoral strength may be suffered to exist immune from federal judicial review in States where they result from apportionment legislation consistent with state constitutions, the Tennessee Legislature may not abridge the rights which, on its face, its own constitution appears to give, without by that act denying equal protection of the laws. It is said that the law of Tennessee, as expressed by the words of its written constitution, has made the basic choice among policies in favor of representation proportioned to population, and that it is no longer open to the State to allot its voting power on other principles.

This reasoning does not bear analysis. Like claims invoking state constitutional requirement have been rejected here and for good reason. It is settled that whatever federal consequences may derive from a discrimination worked by a state statute must be the same as if the same discrimination were written into the [369 U.S. 186, 326] State's fundamental law. *Nashville, C. & St. L. R. Co. v. Browning*, [310 U.S. 362](#). And see *Castillo v. McConnico*, [168 U.S. 674](#); *Coulter v. Louisville & N. R. Co.*, [196 U.S. 599, 608](#) -609; *Owensboro Waterworks Co. v. Owensboro*, [200 U.S. 38](#); *Hebert v. Louisiana*, [272 U.S. 312, 316](#) -317; *Snowden v. Hughes*, [321 U.S. 1, 11](#). Appellants complain of a practice which, by their own allegations, has been the law of Tennessee for sixty years. They allege that the Apportionment Act of 1901 created unequal districts when passed and still maintains unequal districts. They allege that the Legislature has since 1901 purposefully retained unequal districts. And the Supreme Court of Tennessee has refused to invalidate the law establishing these unequal districts. *Kidd v. McCanless*, 200 Tenn. 273, 292 S. W. 2d 40; appeal dismissed here in [352 U.S. 920](#). In these circumstances, what was said in the *Browning* case, *supra*, at 369, clearly governs this case:

". . . Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner

complains, are often tougher and truer law than the dead words of the written text. . . . [T]he Equal Protection Clause is not a command of candor. . . ." [369 U.S. 186, 327]

Tennessee's law and its policy respecting apportionment are what 60 years of practice show them to be, not what appellants cull from the unenforced and, according to its own judiciary, unenforceable words of its Constitution. The statute comes here on the same footing, therefore, as would the apportionment laws of New Jersey, California or Connecticut, [149](#) and is unaffected by its supposed repugnance to the state constitutional language on which appellants rely. [150](#)

In another aspect, however, the *Kidd v. McCanless* case, *supra*, introduces a factor peculiar to this litigation, which only emphasizes the duty of declining the exercise of federal judicial jurisdiction. In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their non-justiciability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid [369 U.S. 186, 328] of implied compulsion of injunctive or other relief would be an idle threat. [151](#) Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweeping political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts.

In Tennessee, moreover, the *McCanless* case has closed off several among even these unsatisfactory and dangerous modes of relief. That case was a suit in the state courts attacking the 1901 Reapportionment Act and seeking a declaration and an injunction of the Act's enforcement or, alternatively, a writ of mandamus compelling state election officials to hold the elections at large, or, again alternatively, a decree of the court reapportioning the State. The Chancellor denied all coercive relief, but entertained the suit for the purpose of rendering a declaratory judgment. It was his view that despite an invalidation of the statute under which the present legislature was elected, that body would continue to possess de facto authority to reapportion, and that therefore the maintaining of the suit did not threaten the disruption of the government. The Tennessee Supreme Court agreed that no coercive relief could be granted; in particular, it said, "There is no provision of law for election of our General Assembly by an election at large over the State." 200 Tenn., at 277, 292 S. W. 2d, at 42. Thus, a legislature elected at [369 U.S. 186, 329] large would not be the legally constituted legislative authority of the State. The court reversed, however, the Chancellor's determination to give declaratory relief, holding that the ground of demurrer which asserted that a striking down of the statute would disrupt the orderly process of government should have been sustained:

"(4) It seems obvious and we therefore hold that if the Act of 1901 is to be declared unconstitutional, then the de facto doctrine cannot be applied to maintain the present members of the General Assembly in office. If the Chancellor is correct in holding that this statute has expired by the passage of the decade following its enactment then for the same reason all prior apportionment acts have expired by a like lapse of time and are non-existent. Therefore we

would not only not have any existing members of the General Assembly but we would have no apportionment act whatever under which a new election could be held for the election of members to the General Assembly.

.....

"The ultimate result of holding this Act unconstitutional by reason of the lapse of time would be to deprive us of the present Legislature and the means of electing a new one and ultimately bring about the destruction of the State itself." 200 Tenn., at 281-282, 292 S. W. 2d, at 44.

A federal court enforcing the Federal Constitution is not, to be sure, bound by the remedial doctrines of the state courts. But it must consider as pertinent to the propriety or impropriety of exercising its jurisdiction those state-law effects of its decree which it cannot itself control. A federal court cannot provide the authority requisite to make a legislature the proper governing body of the State of Tennessee. And it cannot be doubted that the striking [369 U.S. 186, 330] down of the statute here challenged on equal protection grounds, no less than on grounds of failure to reapportion decennially, would deprive the State of all valid apportionment legislation and - under the ruling in *McCanless* - deprive the State of an effective law-based legislative branch. Just such considerations, among others here present, were determinative in *Luther v. Borden* and the Oregon initiative cases. [152](#)

Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action. The judgment of the District Court, in dismissing the complaint for failure to state a claim on which relief can be granted, should therefore be affirmed.