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by STEPHANIE D. MOUSSALLI

FLORIDIANS wrote their first constitution in the winter of 1838-1839 in the panhandle town of St. Joseph. It was implemented in 1845 when Florida was admitted to the Union.[1] Writing a constitution that would pass congressional inspection was an essential step in completing the process from territorial status to statehood in accordance with the Northwest Ordinance of 1787.[2] It had become customary for constitutional conventions to rely on models from older states. From 1776 to 1838, the older states had made 41 different constitutions, giving Florida's founders an extensive and lively constitutional tradition from which to draw.[3] They used Alabama's 1819 Constitution as their principle guide, but also consulted the fundamental laws of Kentucky, Tennessee, Pennsylvania, Indiana, and several of the New England states.[4]

The source documents were only guides, however, not straitjackets. The delegates drew from these sources the provisions which suited their circumstances. In 1838, three circumstances dominated Florida politics-statehood, banks, and slavery. The factions created by the statehood question fought each other throughout the convention and indirectly affected much of the fi-

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1. Florida Constitution (1838), in Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America,* (Washington, DC).
2. See Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, 1987); and Onuf, "Territories and Statehood," in *Encyclopedia of American Political History*, ed. Jack P. Greene, vol. 3 (New York. 1984), 1283-1304.
3. Calculated from Albert L. Sturm, "The Development of American State Constitutions," *Publius* 12 (Winter 1982): 58, Table 1.
4. Alabama Constitution (1819), in Thorpe, *Constitutions,* Stephanie D. Moussalli, "A Symphony of Government Design: Imitation in State Constitutions on the Southern Frontier, 1812-1845" (M.A. thesis, University of West Florida, 1995), 16, 18.

nal Constitution. At the same time, property disputes over banking and slavery influenced most of the debates and, eventually, helped shape the fundamental law.

Florida's statehood factions were regionally based, for reasons dating back to its colonial history. When the United States acquired Florida, the population was located almost entirely in Pensacola and St. Augustine. These towns were separated by 400 nearly impassable land miles, or more than 1,000 dangerous sea miles. The residents did not desire closer contact. East Floridians were consequently dismayed when Andrew Jackson, the territory's first governor, was sent to Pensacola. They immediately began agitating for relocation of the capital. Their complaints were temporarily abated when it was agreed that the territorial council would convene alternately in the two towns until a more central location could be selected?

While East and West Florida were competing, a new section of the territory was growing (see Table 1). Between the Apalachicola and Suwannee rivers, Middle Florida had excellent soil for cotton farming. By 1830, the region was becoming the heart of the territory. In that year, East and West Florida each had about 9,000 residents while Middle Florida had grown to nearly 16,000, an increase from 3,000 in only five years. Such rapid growth led most Floridians in the 1820s to expect quick and early admission to statehood, but their hopes were dashed in the following decade. Although the populations of West and Middle Florida increased steadily through the 1830s growth in East Florida stopped abruptly.

That was because of the nation's Indian removal policy. Bather than relocate to the western lands set aside for them by the U.S. government, the Seminole Indians chose to resist. The ensuing war was fought mostly in East Florida, thus interrupting the modest growth of that section. The 1830 East Florida population of 9,000 had increased by only 100 people by 1838. At that time, Middle Florida had more than 22,000 residents and nearly 15,000 people were living in West Florida. In 1836 and 1837, no East Florida county was able to pay even the minimal territorial taxes.[6] Because

5. U.S. Senate, President's Message, 17th Cong., 1st sess., *Annals of Congress* (December 5, 1821), 16; Dorothy Dodd, *Florida Becomes a State,* (Tallahassee, 1945), 29-30.
6. Dodd, *Florida Becomes a State,* 39.

Table 1. Population growth in Florida by region, 1825-1838.

	West	Middle	East	South
1825	5,780	2,370	5,077	317
1830	9,478	15,779	8,956	517
1838	14,562	22,532	9,102	1,027

Sources: 1825 and 1830– Charlton W. Tebeau, A *History of Florida* (Coral Gables, 1971), 134; 1838– "Census of the Territory of Florida, 1838," in Dodd, *Florida Becomes* a State, 131-132.

of this situation, East Florida favored division of the territory. The compromise of the early 1820s which had led to the Legislative Council's second session being held in St. Augustine and the permanent capital being relocated to Tallahassee collapsed. Fearing an increased tax burden which would certainly follow statehood, East Floridians adamantly demanded continuing territorial status even if that meant division of the territory.

East Floridians rightly feared that the panhandle counties would force them into statehood by majority vote. The territorial council voted in 1837 for a popular referendum on the question.[7] When the balloting was completed, statehood had won 63 percent of the vote, even though seven of every ten East Floridians had opposed it (see Table 2).

In addition to the Seminole War, another disaster struck in the 1830s. The nationwide Panic of 1837 and ensuing depression hit

Table 2. Votes for statehood by section, territory of Florida.

	West	Middle	East	South	Total
May 1837	69%	81%	29%	52%	64%
Total Votes	1,056	1,418	869	145	3,461
May 1839[a]	39%	75%	27%	76%	51%
Total Votes	1,276	1,438	1,031	284	4,029

[a]The 1839 vote was for ratifying the Constitution, but it was widely seen, both in Congress and in Florida, as a vote on statehood.
Sources: May 1837– Calculated from vote tallies in "Proclamation of Governor Call and Returns of the 1837 Election," 27 July 1837; May 1839– Calculated from "Statement of the Votes For and Against the Constitution," 10 February 1841; both in Dodd, *Florida Becomes a State,* 109-112, 376-378.

7. "An Act to Take a Vote on Statehood," February 12, 1837, in Dodd, *Florida Becomes A State,* 107-108.

Florida hard as a result of the territorial government's policies on banking early in the decade. That crisis further complicated the already intense regional factionalism. In the 1820s and early 1830s, cotton and land prices had boomed in Florida, causing the Middle Florida population explosion. Around 1830, the politically dominant cotton planters of the Tallahassee region, also known as the "Nucleus," were enthusiastically seeking more capital than the territory's infant banks could provide in order to take maximum advantage of the rapidly expanding market in frontier cotton land.[8] The Legislative Council, controlled by the Nucleus, accommodated the planters in 1833 by agreeing to issue "faith bonds," backed by the credit of the territorial government, through a number of the banks.[9] Happy planters borrowed indiscriminately, using as collateral "land that was highly overvalued and slaves that often did not exist."[10] Within a few years, the banks had sold almost four million dollars worth of bonds.[11]

The Seminole War broke out in East Florida in late 1835, ending any benefits to people in that area from the increased capital. Jacksonian anti-banking fervor exploded in the East and also gained ground in West Florida. When the Panic of 1837 struck the nation and brought a 25 percent price deflation, the prices of cotton, and then land, dropped, mortgage payments slowed, and

8. In a statistical analysis of Southern land sales from 1820 to 1860, Lebergott finds the dominant explanatory variable in the first half of the period to be the price of cotton, to which land sales varied in direct proportion. Stanley Lebergott, "The Demand for Land: The United States, 1820-1860," *Journal of Economic History* 45 (June 1985): 201-206.

9. Dodd, *Florida Becomes A State,* 42-46; Herbert J. Doherty, *The Whigs of Florida: 1845-1854,* University of Florida Monographs, no. 1 (Gainesville, 1959), l-3.

10. Larry Schweikart, "Southern Banks and Economic Growth in the Antebellum Period: A Reassessment," *Journal of Southern History* 53 (February 1987): 24. At the convention, one of those happy planters was delegate Samuel Parkhill, who vigorously defended the Union Bank as the cause of Florida's prosperity, and assured his colleagues, as a director of the bank, that it was absolutely sound and taxpayers would never have to cover any losses (James Owen Knauss, ed., "Extracts from the *Times* and the *Floridian:* 'Reports of Convention,'" append. in *Territorial Florida Journalism* (DeLand, FL, 1926), 182-184. Hereinafter Knauss, "Reports of Convention"). According to Schweikart, Parkhill was the second largest stockholder in the Union Bank, and a very "inept businessman," who owed the bank most of what his land and slaves were worth upon his death in 1841. (Schweikart, *Banking in the American South from the Age of Jackson to Reconstruction,* [Baton Rouge, 1987], 197.)

11. Ibid., 170-171.

many banks, including Florida's, temporarily suspended specie payments on their bonds.[12] Although these economic problems eased in most of the territory the following year, the economy in war-torn East Florida remained depressed.[13] Easterners were horrified when the Legislative Council refused to stop the issue of faith bonds. Together with the 1837 scare, this gave East and West Florida enough common ground in opposition to the Nucleus to send an anti-bank majority to the constitutional convention in St. Joseph in December of 1838.[14]

This majority elected an anti-bank East Floridian, Robert Raymond Reid, as convention president– by a majority of one vote- over the pro-bank Nucleus candidate, William Pope Duval. President Reid then appointed the leader of the anti-bank movement, James D. Westcott, to the chair of the Committee on Banking.[15] In the ensuing "very ardent conflict," the convention paid only perfunctory attention to issues unrelated to banking.[16]

The majority of Florida's founders intended to kill, or at least permanently cripple, the banking industry. To be sure, they had a severely anti-bank model to work from in Alabama's 1819 constitution. That document had decreed, among many other restrictions, that only "[o] ne State bank may be established." It further limited the creation of branches to one per legislative session and that only by a difficult two-thirds majority vote.[17] Nevertheless, this model was not extreme enough for the Florida convention. Southern banking historian Larry Schweikart groups Florida together with Alabama as part of the "Newer South," which "lack[ed] vigorous commercial histories," and where "development was based on concepts of state

12. Peter Temin, *The Jacksonian Economy* (New York, 1969), chap. 4 *passim;* Dodd, *Florida Becomes a State,* 44.
13. Ibid., 38-39.
14. Ibid., 44-47; Doherty, Whigs *of Florida,* 45.
15. Florida Constitutional Convention, *Journal of the Proceedings of* a *Convention of Delegates to Form a Constitution for the People of Florida* (St. Joseph, 1839); reprinted in Dodd, *Florida Becomes* a *State,* 132-303 (page references are to reprint); 136, 146. For Reid's long-time opposition to banking, see his diary entry of January 31, 1833 *(Diary, 1833, 1835,* copy, Jacksonville, FL: Historical Records Survey, Works Progress Administration, 1939, pp. 1-2 in W.P.A. copy).
16. David Levy to U.S. Senate, cited in F. W. Hoskins, "The St. Joseph Convention: The Making of Florida's First Constitution," *Florida Historical Quarterly* 16 (October 1937), 107.
17. Ala., art. 6, sub-art. "Establishment of Banks.", sec. 1.

planning and control."[18] Florida's anti-bank "Loco-focos," as the Nucleus contemptuously dubbed them,[19] went much farther than any of their predecessors, though. Article 13, on "Banks and Other Corporations," was "the most radical banking regulation of the period."[20]

Article 13 forbade the legislature to incorporate anything without a two-thirds majority vote and a three-month public notice, or to pledge the state's faith as a guarantee for bank debts. Banks had to be formed by at least 20 people, a majority of whom had to live in the state; their non-renewable charters were limited to 20 years. Banks were forbidden to engage in any business or investments which might be considered non-banking in nature. They could not issue notes for less than five dollars (probably to prevent the common practice of bank notes circulating as currency), and any profits in excess of ten percent had to be set aside as a safety fund. Stockholders were personally liable for the bank's debts, state inspectors were assigned to the banks, and no bank officer was eligible to be a legislator or governor until a year after he had left the bank. For all practical purposes, officially-chartered banking in Florida ended when these regulations went into effect.[21]

At the St. Joseph convention, the Nucleus delegates fought the Loco-foco forces vigorously, and although they failed to modify Article 13, they did affect a number of other sections in the new Constitution. As Nucleus leader William Pope Duval put it, banking "was the great moving lever in this House - it was the main thing, and it gave coloring to every vote that was given . . ."[22] One of the more important decisions affected by the banking issue was the question of popular ratification of the Constitution. Florida's founders decided to send it out for popular ratification, a move that was becoming more common by 1839.[23] Twenty years earlier, Alabama's convention had not done so, and, indeed, through 1830

18. Schweikart, "Southern Banks," 29-30; Schweikart, *Banking in the American South,* 5. See also Schweikart's "Private Bankers in the Antebellum South," *Southern Studies* 25 (Summer 1986), 125-134; and his "Alabama's Antebellum Banks: New Interpretations, New Evidence," *Alabama Review* 38 (July 1985), 202-221. He also includes Arkansas, Mississippi, and Tennessee in the "Newer South."
19. Doherty, *Whigs of Florida,* 7.
20. Schweikart, *Banking* in *the American South,* 171.
21. Fla., art. 6, sec. 3, and art. 13; Schweikart, *Banking in the American South,* 170-174, "Southern Banks," 28, and "Private Bankers," 127.
22. Knauss, "Reports of Convention," 188.
23. Fla., art. 17, sec. 5.

only a handful of states had sent any constitution to the people for approval.[24]

The Florida delegates did not let the people determine the fate of the Constitution because of any concern for the theory of popular sovereignty, or even in deference to a democratic frontier trend. In fact, no plans were made for popular ratification until the last week and a half of the convention. At that point, in early January, the banking controversy had become so acrimonious and intractable that it threatened to dissolve the convention altogether and stymie Florida's chance for statehood.[25]

Despite the Loco-focos' dominance of the proceedings, the pro-bank delegates had enough strength to resist what even some moderates regarded as outrageous excesses in the anti-bank proposals. This gave the Nucleus the opportunity to insist that the final document be submitted to the people for approval. In an age when democratic reverence for the popular will was such that representatives constantly proclaimed their obedience to the *vox populi,* Florida's delegates could hardly have rejected such a pious proposal. On January 5, 1839, they voted for popular ratification by a vote of 52 to three. That action went far toward mollifying enough delegates that negotiations on banking, and therefore on the Constitution, could be resumed.[26] In their need to arbitrate a particularly harsh political dispute, Florida's founders had turned to a solution being used by a growing number of states in the Jacksonian period– let the voters decide.

Another part of Florida's Constitution affected by the banking controversy was the Declaration of Rights. Many constitutions written in the early 19th century contained a provision essentially identical to this one from Alabama's Declaration of Rights: "No *ex post facto* law, nor any law impairing the obligation of contracts shall be made."[27] In a sense, these constitutional restrictions on legislation were superfluous; they are among the very few limits explicitly

24. Gregory G. Schmidt, "Republican Visions: Constitutional Thought and Constitutional Revision in the Eastern United States, 1815-1830" (Ph.D. Diss., University of Illinois at Urbana Champaign, 1981), 107.
25. Dodd, *Florida Becomes A State,* 59-60.
26. Ibid.; *Journal of Convention,* 251.
27. Ala.. art. 1, sec. 19. See also Constitutions of Kentucky (1799), art. 10, sec. 18; Ohio (1802), art. 8, sec. 16; Louisiana (1812), art. 6, sec. 20; Indiana (1816), art: 1, sec. 18; Mississippi (1817), art. 1, sec. 19; Ill. (1818), art. 8, sec. 16; Maine (1819), art. 1, sec. 11; Missouri (1820), art. 18, sec. 17; Arkansas (1836), art. 2, sec. 18; and Texas (1845), art. 1, sec. 14. (In Thorpe, *Constitutions.)*

placed on state action by the original federal Constitution.[28] However, constitutional conventions in frontier territories commonly imposed their own restraints on their new state governments, in part because of the constant uncertainty of land ownership in the territories, and the history of unpredictable political decisions about that ownership.[29]

But Florida's Constitution went farther on these two subjects than did any contemporary constitution, frontier or otherwise. The *ex post facto* ban and the contracts provision appeared in two different sections rather than together in one section, and the former contained rhetorical flourishes emphasizing its importance:

> That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared penal or criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no *ex post facto* law shall ever be made.[30]

As for impairing the obligation of contracts, the Florida Constitution forbade such laws not once, as was customary in other constitutions, but three times, in three separate articles.[31]

One might suspect the aspiring state's founding fathers to have been protesting too much, and one would be right. The Loco-focos wanted to repudiate the territory's faith bonds. The chairman of the Committee on the Bill of Rights, Abram Bellamy, was a leader of this faction, and his committee proposed a Declaration of Rights containing only the ban on *ex post facto* laws quoted above.[32] When George Ward, a Middle Florida delegate and former bank director, proposed that a ban on impairing the obligation of contracts be added, it was immediately recognized as the Nucleus's most powerful attack on the anti-bank movement.[33]

28. Constitution, art. I, sec. 10.
29. For example, the Yazoo land controversy and its resolution in *Fletcher v. Peck* (1810) 6 Cranch, 87. In contrast, older states revising their constitutions at about this time often did not include these provisions; e.g., Constitutions of Connecticut (1818) and New York (1822). (In Thorpe, *Constitutions.)*
30. Fla., art. 1, sec. 18.
31. Fla., art. 1, sec. 19; art, 13, sec. 14; art. 17, sec. 1.
32. *Journal of Convention,* 152-153.
33. Knauss, "Reports of Convention," 167.

The anti-bank chairman of the Committee on Banking, James Westcott, immediately moved to amend the suggested provision by declaring "the supremacy of the law over all contracts and all corporations," and insisted that it was the power of the law, not the obligation of contracts, which "should in no case be circumscribed or abridged." In any event, he "would never consent to invest the Legislature with authority to create odious privileges and monopolies, and then dignify them with the name of contracts."[34]

A leading moderate, Alfred Woodward of West Florida, himself a member of the Bill of Rights Committee, asked how it was "possible to declare the entire supremacy of the law, and in the same breath assert the right of riding over all law and all obligations."[35] Since the moderates' vote could decide banking issues, their concern for the inviolability of contracts became one of the convention's most debated subjects. Westcott and other Loco-foco leaders argued that Congress had the power to nullify the faith bonds because a territory and its citizens were subject to the authority of Congress. Possessing no political rights, they were only "'a plantation of the states and the council the *overseer.* "[36]

This assault on the theory of inalienable rights spurred the horrified Woodward to make the longest speech recorded for the Florida convention.[37] "*[The People themselves in their high sovereign capacity,* cannot in forming a social compact infringe upon primary rights, without *subverting the very foundation of civil society itself,"* he declared. William Wyatt agreed, and pointed out that the doctrines underlying the assault on the obligations of contract were "monstrous," because "they assume all the grounds contended for by the abolitionists of the North, in relation to the powers of congress over Territories, and their right to abolish slavery in the Territory of Florida."[38]

This comparison of anti-bankery to anti-slavery caused an enormous uproar, after which Wyatt conceded that he

> did not mean to say . . . that those gentlemen were abolitionists. . . . In using the word treason, I meant to say, that

34. Ibid., 167, 169.
35. Ibid., 169.
36. Ibid., 191, 194,205; emphasis in the original.
37. Ibid., 196-215.
38. Ibid., 200, 192, emphases in the original.

> if an avowed abolitionist was to entertain such doctrines in this place, it would be denounced by every southerner as treason, and I sir, would not answer for his life.[39]

The reporter recorded "much cheering" after this patriotic concession, but Wyatt had made a point that resonated throughout the antebellum South; that "it is only a lack of the right" to abolish slavery that prevented Congress from doing so, and for Southerners to accept the alienability of rights was to accept the end of slavery. Alfred Woodward completed the argument by pointing out that it also meant Southerners accepting the status of slaves vis-a-vis the federal government, "with no power, no right, no privilege, but the abject privilege of the slave– the mere permission of supplication, with the necessity of submission."[40]

The essence of American slavery was the complete absence of rights, as Woodward was pointing out.[41] A large majority of the delegates believed the new state's Constitution must protect the rights of non-slaves even in the odious case of banks. Such arguments were powerful enough to put the protection of contracts into the Florida Constitution three times, but they were not powerful enough actually to protect the holders of the faith bonds. The convention resolved, by a vote of 29 to 26, to petition Congress to remedy "the evils" of the bonds "by altering, repealing, or amending the charters that have been granted" to the banks of Florida.[42] And when the deflationary Panic of 1839 hit Florida a few months later, popular hatred of banking rose to such a pitch that, in 1842, the people by referendum repudiated four million dollars worth of contractual obligations in the form of the controversial faith bonds.[43]

The commercial cotton growers had lost the bank debate at the St. Joseph convention. They did much better, though, with the slavery-related sections of the Constitution. Perhaps partly as compensation for the banking losses, some anti-bank delegates agreed with the Nucleus that they should support slavery far more vigor-

39. Ibid., 192-193.
40. Ibid., 194; see also 204-205.
41. See the thorough discussion of this point and of the problems it created in a lib eral republic in James Oakes's *Slavery and Freedom: An Interpretation of the Old South* (New York, 1990).
42. *Journal of Convention,* 232-233, 253.
43. Schweikart, *Banking in the American South,* 170-174.

ously than had their Alabama predecessors, and in fact, more than was customary in other Southern constitutions of the time. The Florida Constitution thus included sweeping denials of legislative authority that did not appear in the Alabama document.[44] For instance, Alabama's legislature was allowed to pass emancipation laws with the consent and compensation of the owners, but Florida's lawmakers had "no power to pass laws for the emancipation of slaves." Alabama's legislature could define who could be enslaved and then forbid the importation of people of any other "age or description;" Florida had to accept any person defined as a slave in any other state. Alabama's legislature had the power to prevent commercial importation of slaves, and to require the humane treatment of slaves on penalty of forced sale of the mistreated victim, but was forbidden to deny a slave the right to trial by jury. Florida omitted all these provisions, but did give its general assembly the power to prevent freedmen from coming into the state. This last provision caused considerable trouble during Congressional hearings, as did the prohibition of legislative emancipation.[45] Because of these changes, the slavery sections of Florida's Constitution were only a third as long as the comparable sections in Alabama.

The crowning victory for Florida's slave owners came in the apportionment of representation. The census enumeration was to include "all the inhabitants of the State, and to the whole number of free white inhabitants shall be added three-fifths of the number of slaves."[46] Representation in the lower chamber would be apportioned entirely on this basis, while the Senate districts would be periodically re-drawn according to the three-fifths provision as nearly as possible without dividing any county. Both chambers would have a minimum of one member from each county (for the House) or district (for the Senate).[47]

Although the three-fifths feature, or "federal ratio," existed in the U.S. Constitution, this augmentation of political power for the slave-owning minority did not commonly exist within Southern states. On the contrary, the non-slave-owning white majority typi-

44. Ala., art. 6, sub-art. "Slaves;" Fla., art. 16, sets. 1, 2, and 3.
45. *Congressional Globe* 28th Cong., 2d sess., 1845, 14, pp. 283-285, 377-383, 377-388. See also remarks of John Quincy Adams in Leonard Richards, *The Life* and *Times of Congressman John Quincy Adams* (New York, 1986), 102.
46. Fla., art. 9, sec. 1.
47. Ibid., sets. 1,2, 3, and 4.

cally forced the planters to accept a majority-based apportionment without regard to property in slaves. In Alabama, for instance, the southern cotton-belt counties made a very strong bid for the three-fifths rule, but lost to the larger contingent of delegates from the faster-growing white counties of north Alabama.[48] Besides Florida's provision, only Georgia's 1798 Constitution and North Carolina's amendment of 1835 used the federal ratio prior to 1845. In both cases, the three-fifths provision affected only the lower legislative chamber, not both the House and the Senate as in Florida.[49]

Indeed, the three-fifths rule directly undercut the frontier rush to abolish the influence of property on representation. Florida's Bill of Rights explicitly forbade requiring voters or office-holders to own property,[50] but the federal apportionment ratio undermined this nearly universal suffrage for white men. Slave owners thus gained extra political weight in both legislative chambers. It was a plum that Alabama planters could only admire and envy from afar.

Why were Floridian slave owners able to win so much more political power and protection for their property than were Alabama's? In part, the slave owners of the late 1830s throughout the South had more reason to exert every effort to protect their livelihoods. The delegitimization of the political representation of property was proceeding apace, and nowhere faster than on the frontier. In fact, slavery itself was sometimes threatened by Southern state legislatures. Some Old South states, such as Virginia,

48. Malcolm Cook McMillan, *Constitutional Development in Alabama, 1798-1901: A Study* in *Politics, the Negro, and Sectionalism*, James Sprunt Studies in History and Political Science, ed. Fletcher M. Green, et al. (Chapel Hill, 1955), 36-37.

49. Constitutions of Georgia (1798), art. 1, sec. 7, and as amended in 1843, and North Carolina (1776), art. 1, sec. 2 as amended in 1835; before 1835, the North Carolina constitution did not use the 3/5 ratio. (In Thorpe, *Constitutions.*)

50. Fla., art. 1, sec. 4. Legal scholar Robert Steinfeld notes that in the nation as a whole, most antebellum constitutions included property or tax-paying requirements for the franchise, or at least excluded paupers from voting. Most of the exceptions to this rule were in frontier states like Alabama and Florida. Robert J. Steinfeld, "Property and Suffrage in the Early American Republic," *Stanford Law Review* 41 (January 1989), 353-354. Historian Chilton Williamson points out that surveying and title-granting took so long on the frontier that property owners were often technically ineligible to vote, leading to frequent demands for the relaxation of franchise qualifications in frontier territories and states. Chilton Williamson, *American Suffrage: From Property to Democracy, 1760-1860* (Princeton, 1960), 209-214.

Maryland, and Delaware, had even come close to abolishing slavery.[51] In Florida in 1832, acting governor Westcott, though a supporter of slavery, had urged the Legislative Council to more carefully regulate the importation of slaves and more severely punish masters who allowed slaves to use firearms.[52]

The polite fiction of white equality was breaking up as the non-slave owners used their numbers to try to prevent the continued externalization of the costs of slavery. In Florida in the 1830s these costs had included the taxpayers' assuming the risks of the planters' faith bonds, and then paying for the bonds when they failed. Impoverished East Floridians were also being forced to accept the elevated expenses of a statehood sought primarily by the wealthy Middle Florida planters. While Easterners had lost the statehood fight, at the constitutional convention they decisively won the bank fight. In fact, not content with eliminating the public risk in banking, they had successfully attacked what they saw as the source of the problem, and almost destroyed banking altogether. They had even petitioned Congress to expropriate current bond holders by repealing existing bank charters.

The formerly omnipotent Middle Florida Nucleus could see the writing on the wall. A future democratic majority might not be content with simply regulating slavery. Although the planters had the advantage of being in the fastest-growing and most populous section of the territory, their area– Middle Florida– had been under-represented in the apportionment of delegates to the constitutional convention.[53] They believed they needed both additional political weight and a ban on legislative action to thwart eventual expropriation.

The undemocratic elements of the Constitution's apportionment scheme elicited attacks from more than one direction after the convention was over. In a letter to the *Floridian* in February, a former delegate, presumably from Middle Florida, opposed ratification of the new Constitution on the grounds that populous counties such as Leon in Middle Florida would still be under-

51. See William W. Freehling *The Road to Disunion*, Vol. I, *Secessionists at Bay, 1776-1854* (New York, 1990), especially Part 3, for a detailed discussion of the interplay of slave owners and non-slave owners in Southern politics, and of the near-misses concerning slavery in upper South legislatures.
52. Florida, Territorial Legislative Council, "Message of Governor," 10th sess., *Journal of the Legislative Council* (3 January 1832), 9.
53. Dodd, *Florida Becomes* a *State,* 39.

represented. This was because "Dade [County], without freeholders enough to form a Jury, and Musquito [County], without people enough, men and women included, to create a riot, are each entitled forever to one Representative."[54] The one-representative minimum for each county in effect gave weight to geography, favoring the relatively depopulated East and South. On the other hand, the federal ratio gave political power to property, favoring Middle Florida, as an outraged writer for the St. Augustine News pointed out on the eve of statehood:

> If, therefore, East and West Florida should be forced into State Government under this Constitution, they will go in manacles, shackled, and disfranchised, to be the bondsmen and slaves of Union Bank nabobs, or of the representation by this Constitution unjustly extended to their slaves.[55]

There is some evidence of vote trading or at least compromising between the Nucleus and the Loco-focos at the convention. For instance, the anti-bank East Florida president, Robert Raymond Reid, appointed a Middle Florida planter, John M. Partridge, to chair the "Committee on General Provisions, including the subject of Domestic Slavery." Two of the committee's five members were from East Florida, but the group nevertheless wrote the strongly pro-slavery provisions which went into the final Constitution. Furthermore, all but one of the committee members voted for the resolution to ask Congress to renege on the faith bonds.[56] Thus, this committee demonstrated that pro-slavery did not necessarily lead to pro-bankery, and also that anti-bankery did not equal anti-slavery.

In the convention as a whole, the two factions may have been making a similar public show of respect for each other's rights, when enough Nucleus members voted for the anti-bank Article 13 to help pass it, and enough East Floridian delegates voted for the no-legislative-emancipation and federal ratio provisions to pass them. According to these provisions, taxpayers' money could not

54. Tallahassee *Floridian*, February 2, 1839, as quoted in Knauss, "Reports of Convention," 221.
55. St. Augustine *News*, February 8, 1845.
56. *Journal of Convention*, 147, 253; Dodd, *Florida Becomes A State*, 444.

be legislated away to support planters, and planters' slaves could not be legislated away by a non-slave-owning majority. Of course, both factions were comfortable with denying rights to political outsiders-the anti-bank group to the bond-holders, many of whom lived outside the Territory,[57] and the planters to the slaves, as abolitionists never tired of reminding them.

The popular vote on ratifying the new Constitution took place in May of 1839, and it was very close (see Table 2). Now that a "yes" vote might bring immediate statehood, only 51 percent of the electorate favored it, in contrast to the 64 percent favorable vote two years earlier. East Floridians continued to oppose statehood as strongly as ever, while three out of four Middle Floridians still supported it. South Florida's pro-state majority had jumped from 52 to 76 percent, but the total number of voters there was negligible. The big change had occurred in West Florida, where only 39 percent of the voters now wanted statehood. Still, however tiny the pro-state majority, it prevailed, and convention president Reid pronounced the Constitution ratified in October.[58]

The final decision on statehood rested with Congress, and as far as that body was concerned, the ratification of Florida's Constitution and the vote for statehood had settled the question of the territory's position, no matter how passionate the opposition of the anti-state minority. As for Congress's own position, it was the slavery question that would determine Florida's fate. The need to balance the free and slave interests in the Senate had dominated the admission of every state throughout Florida's long territorial period. Certainly Florida would not be admitted without a free-state companion, so the territory's eager planters had to await the development of Iowa. The free-state match did not suffice to win the votes of some Northern congressmen who objected vehemently to the Constitution's anti-freedmen and anti-legislative emancipation provisions. Finally, however, on March 3 of 1845, Florida and Iowa were admitted to the Union together.[59]

The St. Joseph convention had written Florida's first Constitution in just five and a half weeks. The delegates worked constantly,

57. Dodd, *Florida Becomes a State,* 43.
58. "Proclamation of President of the Constitutional Convention," October 21, 1839, in Dodd, Florida *Becomes* a *State,* 340.
59. *An Act for the Admission of Iowa and Florida into the Union, Statutes at Large,* 5 (1845).

even on Christmas Day, but it still took too long in their own opinion. President Reid spent the first part of his farewell address explaining why the convention had lasted more than the "one or two weeks" they had expected.[60] The irascible Samuel Bellamy bluntly expressed the general attitude toward time on the second day of the convention:

> Many of us, Sir, who are here are not politicians; we do not look to politics as an object from whence to derive a support for our families; we take no delight in party strife, or political turmoil. . . . One day of the sitting of the Convention has already passed, and nothing has been done. Another will pass away and we shall find ourselves where we first began, and if we progress in this manner, we shall find ourselves here in the month of March.[61]

President Reid excused the convention's excessive length partly on the grounds of a lack of books. "[F] or the models of constitutional legislation; the opinions of the great law givers of the world; the history of past and present times," he said, ". . . we were dependent almost entirely, upon memory."[62] Perhaps so, but Florida's founding fathers nevertheless wrote a document which closely followed the constitutional trends of their time. In particular, they drastically reduced the legislature's authority over banks and slavery. Clipping the legislature's wings was a national trend in the early 19th century, although the particular problems excluded from legislative control varied across states. To the Revolutionary War generation, popular sovereignty had meant absolute reliance on the legislative branch as the direct voice of the people, their defender against despotism. In the Jacksonian era, however, Florida's founders conformed to constitutional norms in removing important issues from the assembly's authority.[63]

60. *Journal of Convention,* 300.
61. Quoted in F. W. Hoskins, "The St. Joseph Convention: The Making of Florida's First Constitution," *Florida Historical Quarterly* 16 (October 1937), 97-98.
62. *Journal of Convention,* 301.
63. Lawrence M. Friedman, "State Constitutions in Historical Perspective," *Annals of the American Academy of Political and Social Science* 496 (March 1988), 37; Fletcher M. Green, *Constitutional Development in the South Atlantic States, 1776-1860: A Study in the Evolution of Democracy* (Chapel Hill, 1930; reprint, New York DaCapo Press, 1971), 85; Schmidt, "Republican Visions," 21; Sturm, "Development of American State Constitutions," 61-64.

They also conformed to national trends toward increasingly popularized government in allowing the people to vote directly on constitutional ratification. Furthermore, Florida joined the progressive radicalization of Southern politics on slavery by adopting the three-fifths ratio for legislative apportionment. In short, the delegates in St. Joseph used the government designs of their time to broker potentially violent local disputes, and managed to produce a constitution that the majority of voters could agree on.

When statehood came in 1845, former delegate Benjamin Wright summed up the efforts and compromises that had gone into the new state's first Constitution: "Constitution making now is no very difficult task, and ours is as good as any other.'" Floridians, both the reluctant and the eager, were thoroughly absorbed into the Union under that Constitution, and eventually accepted its legitimacy. What more could reasonably be asked of the Northwest Ordinance's federal state-making process, or of Florida's founding fathers?

64. Reprinted in "Contemporaneous Reactions to Statehood," *Florida Historical Quarterly* 23 (April 1945), 203. I have been unable to locate the original piece for verification.