

Keeping Faith: Chapter 6 - Democracy

One Person, One Vote

- Most states until the 1960s flouted the principle of one-person, one-vote either by design or through inaction. Many states retained legislative district boundaries first drawn at the turn of the twentieth century long after their populations had shifted dramatically. Still other states, even if they went through the motions of redrawing legislative district boundaries after each census, crafted the new districts to perpetuate the existing allocation of power, often relying on state constitutional provisions that deliberately diminished the voting strength of urban areas.
- The systematic effects of malapportionment permeated the political system. Across the country, legislatures controlled by representatives from small towns failed to respond fairly to the needs of urban and suburban residents.

Reapportionment Revolution

- By the 1960s, it had become clear that the political process was incapable of fixing itself. Elected officials at the state and federal levels proved largely impervious to appeals from people they did not represent in the first place.
- In 1962, when the Supreme Court launched what came to be known as the “reapportionment revolution,” typical examples of how seats were allocated include the following: in Maryland, a majority of the state senate could be elected from districts containing only 14.1% of the state’s population; in Colorado and New York, a majority of the lower house of the state legislature could be elected from districts containing roughly a third of those states’ populations.

Reapportionment Cases and the Constitution

- Today the reapportionment cases are widely accepted as faithful interpretations of the constitutional principles of self-government and equality.
- These decisions cannot be explained by appealing to clear textual commands or by invoking original applications of the Constitution. Instead, the decisions illustrate how courts properly interpret the Constitution’s text and principles when confronted with changing social conditions and practical circumstances of inequality.
- Further, the Court’s efforts were part of an evolving conversation that ultimately engaged the political branches in providing greater democracy through legislation to enforce the Reconstruction Amendments.

The Supreme Court Confronts Congressional and State Legislative Malapportionment

- In *Baker v. Carr*, the Supreme Court revisited whether there was a role for judicial review in overseeing the creation of legislative districts. In *Baker*, the Court sidestepped the Guarantee Clause and instead relied on the Equal Protection Clause. That clause, the Court explained, protects individuals against arbitrary state discrimination, and “the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights.”
- Over the next two years, the Court interpreted the Constitution to establish apportionment criteria that we take for granted today. In *Wesberry v. Sanders*, the Court construed Article I, Section 2, which provides that members of the House of Representatives be chosen “by the People of the several States,” to require that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.”¹³ According to the Court, “[t]o say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government.”

- Four months later, in *Reynolds v. Sims*, the Court interpreted the Equal Protection Clause to require a similar equalization of population in state legislative districts. The Court again reached its conclusion by invoking fundamental principles of democracy and equality rather than the original understanding of the Fourteenth Amendment. Chief Justice Warren thought that one person, one vote would help ensure that “henceforth elections would reflect the collective public interest . . . rather than the machinations of special interests.” The Court’s reinvigoration of the Equal Protection Clause as a source of political values spurred a national dialogue on the meaning of political equality.
- In *White v. Regester*, the Court struck down a Texas state redistricting plan even though it complied with one person, one vote because the way districts were drawn in black and Latino areas meant that minority voters “had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.”
- In *City of Mobile v. Bolden*, however, a four-Justice plurality offered a narrow interpretation of the constitutional provisions that prohibit racial discrimination in voting, construing the Fifteenth Amendment to protect only the right to “register and vote without hindrance” and reading the Equal Protection Clause to require that plaintiffs prove that the challenged election was “conceived or operated as a purposeful device to further racial discrimination.” Two years later, Congress responded to *Bolden*’s limited focus on intentional discrimination with an amended version of Section 2 of the Voting Rights Act that embraced a group-disadvantaging conception of political equality.
- Although many challenges remain in ensuring fairness at all levels of the political process, judicial interpretation of the Constitution has facilitated significant progress toward the development of truly representative political institutions. The Supreme Court has played this important role not by adhering to strict construction of constitutional text or by applying constitutional provisions as they would have been applied when ratified.