Chapter 1

“Democracy” and "Representation”: Whose Definition?

At the most fundamental level, discretionary districting ought to be proscribed because it weights the votes of some citizens more heavily than the votes of others. It isn’t the fact that gerrymandering often distorts the major party seats-votes relationship that makes the practice so pernicious. Rather, it is in the giving of discretion to certain officials in deciding where district boundaries are to go. It is like giving each of these individuals two votes while giving one vote to each of the rest of us. The democratic ideal says all votes must be weighted equally; not that the votes of Caucasians are to be weighted by a factor of 1.5; and votes of African-Americans by a factor of 0.5. These examples are ridiculous, you say, but they illustrate exactly what is going on when individual officials are given arbitrary power to set district boundaries. It matters not that these officials may be persons of virtue. It is simply wrong to give them—or any person—any right that necessarily has to be taken from somebody else.

It should not take all this space to state what should be so obvious, but when well-meaning people advocate discretionary districting they unwittingly promote the “weighting” of the votes of all citizens by a factor other than 1.00—the only factor that should be permitted in a democratic society. We oppose discretionary districting, then, not so much because of its possible consequences at the ballot box but because of this “weighting” effect it exerts upon the value of every citizen’s vote. Most proponents of discretionary districting would concede the point we are making here, but they would probably say our argument is too theoretical; that there is no way we can measure the magnitude of this “weighting,” and therefore, of applying a remedy. If congressional districts are drawn by a legislative process in which a gubernatorial veto is a significant factor, a governor’s vote in a congressional election may be worth 100,000 times the vote of the ordinary voter/citizen.
The proponents of discretionary districting, in addition to maintaining there is no realistic alternative, are also likely to believe that only the exercise of discretion by districting experts can achieve other desirable goals in a districting plan. These goals, embodied in what are called result-oriented criteria, will be examined in Chapter 23. When we perform this examination we will see why no plan of geographic districts has ever been offered that satisfies what these experts agree are the major result-oriented criteria.

We begin with the premises of the writers of the Declaration of Independence “that all men are created equal” and have a right to “life, liberty and the pursuit of happiness.” By “men” they meant male property owners of European descent. Two centuries of political evolution in North America have reinterpreted “men” to mean human beings over age 18. To secure “liberty” for all, and to ensure that one man’s exercise of liberty does not impair the rights of others, requires the presence of “good and safe government.” As Thomas Jefferson wrote to Joseph Cabell:

“No, my friend, the way to have good and safe government is not to trust it all to one, but to divide it among the many.”¹

The “it” Jefferson was talking about was power—political power. This reasoning compels the conclusion that each adult human being is entitled to an equal share of political power.² The New England colonists devised a form of government that put into practice this egalitarian ideal: the town meeting, the western world’s best known example of direct democracy.

It would be nice if the public business of states, nations, and the world could be conducted by town meeting. There is one obvious reason why it cannot:³ the number of human beings that can assemble under one roof, and have a chance to be heard within a few hours’ time, is limited. Humankind had to invent a practical alternative for its governance beyond the small community level: indirect, or representative, democracy. By the end of the eighteenth century political semantics had evolved to where the term “direct democracy” had been replaced by simply
“democracy” and “representative democracy” by the term “republican form of government,” or “representative” government.

The framers of the U.S. constitution chose representative government over direct democracy not only “because of the impossibility of assembling large numbers of people in a single place” but for the additional reason that many of them:

“feared and opposed democracy; representation seemed a desirable way to allow such participation in safety. It meant, as Madison says, 'the delegation of the government ... to a small number of citizens elected by the rest,' instead of the conducting of public affairs by all citizens ‘in person.’”

Once we have conceded the necessity of substituting “representative government” for “direct democracy” we face the question of what constitutes “representation.” That depends on what theory of representation one espouses. Professor Hannah Pitkin has, arguably, written the definitive work on what constitutes “representation,” but it fails to meet our need for simple definitions based on what we encounter in our everyday political experience.

Theories of Representation: How They are Related

Pitkin concluded that “representation” wasn’t a word with a single meaning, but a concept. We tried to fit the six theories of representation we encounter in our everyday political experience into Pitkin’s framework and the following is what we came up with.

*Geographic Theory.* Geographic representation on the basis of plurality choice is the dominant electoral mechanism in the United States today. We would readily agree that a geographic theory of representation is satisfied if everyone can point to a representative of theirs who lives close by. The most prevalent complaint about this theory is that within most geographic districts there are minorities (it might be *majorities* if the representative was elected by a plurality of less than 50
percent) of people whose race, religion, gender ... or views on issues of public policy are not shared by their “representative.”

**Descriptive Theory.** This brings us to a second theory of representation which we call the *descriptive* theory. By this theory people are best represented on the basis of their race, religion, gender, national origin, sexual orientation or some combination thereof. Race, religion or gender is the sufficient condition. The oft-quoted metaphor of President John Adams is relevant here. A representative legislature, Adams said, “should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason and act like them.” Pitkin quotes this statement in launching her discussion of descriptive representation, associating it with the “standing for” theories. We think it might better be associated with the “acting for” theories because Adams seems not so much to be concerned that the legislative body *look* like the electorate (as implied by our descriptive theory) as that it “think” and “act” like it. That a “representative” body *think* like the people it represents leads us to a consideration of four remaining theories that embody the heart of the disagreement between ourselves and proponents of discretionary districting. The first of these is the *party* theory of representation.

**Party Theory.** According to this theory people are best represented on the basis of their presumed allegiance to one or another of a spectrum of political parties sufficiently broad to offer any person a satisfactory vehicle to express his political views. It assumes the U.S. electorate can be divided into a manageable number of ideological groups, each coextensive with one of these parties. By this theory the test of “representativeness” of a legislative body is the degree to which the percentage of seats won by each of these parties matches the percentage of votes, in that jurisdiction, cast for candidates of those parties.

**Major-party Theory.** Among contemporary American scholars, however, the party theory has no acknowledged exponents. Instead, a closely related alternative theory is embraced by a
significant number of political scientists—including some of the most influential. This theory we call the *major-party* theory. As with the party theory, it is assumed that people are best represented on the basis of their presumed allegiance to a political party. However, it is also assumed that there are only *two* ideological groups within the electorate of sufficient size to warrant representation in a state legislature or congressional delegation: Democrats and Republicans. The U.S. electorate is neatly divided into just these two ideological groups, each internally homogeneous and philosophically exclusive of the other. In our political analysis of districting plans to determine whether they are partisan gerrymanders, beginning in Chapter 8, we will refer to such an electorate as a *dichotomous*, or an *idealized* electorate. None of the proponents of this major-party theory explicitly states that he predicates his analysis and policy recommendations upon it. His adherence to it is always *implicit*; always unstated; always silent.

**Dixon.** The outstanding example of such adherence is that of Robert G. Dixon, Jr., the dominant authority on political districting of the late 1960s and the 1970s. In 1968 he wrote a book, *Democratic Representation: Reapportionment in Law and Politics*, that won a Woodrow Wilson award from the American Political Science Association as the best book on its subject that year. He was regarded with near-reverence by some colleagues and he influenced a generation of academics. Although his book is titled *Democratic Representation*, nowhere—in 587 pages of text and 45 pages of appendices—is this term defined. We may infer that “democratic” representation is in contrast to *undemocratic* representation, like the symbolic representation Pitkin cites in the case of monarchs or dictators. His book was written in the wake of the first two rounds of one-person-one-vote judicial rulings and one of its major themes is that the numerical equality of district populations those decisions were leading to would not, by itself, assure truly “democratic” representation. The crucial clue to understanding his view of districting is found in this passage:

“The fact that interests and party strength are not spread evenly by residence is the
single most important fact in all apportionment and districting.”

Forty-three pages later we are told what “political elements” deserve a “proportionate voice” under the “representation system”:

“…a fair representation system equitable to both major parties and competing interest groups.”

The picture finally becomes complete with these passages:

“…our central concern is proportionality in political representation...subgroups such as ethnic minorities, occupational classifications, and economic class categories tend to identify more with one party than another. They thus receive their political representation, at least in a rough way, through one political party or the other.”

In short, if “both major parties” are afforded “proportionality,” the “interest groups” which find voice through these parties will be taken care of and the system of representation will be “democratic.” We, therefore feel justified in stating that Dixon adhered to the major party theory of representation.

King. Another influential proponent of the major-party theory of representation is Gary King of Harvard University. His articles appear regularly in academic journals and he has served as an expert witness in major districting litigation. As with Dixon, his adherence to this theory must be inferred from his writings. His first article (co-authored with Robert X. Browning) to appear in the American Political Science Review (APSR) is titled “Democratic Representation and Partisan Bias in Congressional Elections.” The article calls “democratic representation” a “fundamental tenet of democratic theory,” assigns to it the Greek letter ρ (rho), and presents an elegant mathematical definition of the seats-votes relationship for elections conducted over an historical span of time in the American states. The parameter ρ is shown to vary from 1.0 to infinity in the two-party model he
develops and these end-points define two of the three variants of the major-party theory he presumably embraces. It is worth reprinting his graph showing how these variants are related. Consider Figure 1.1.

(Figure 1.1 about here)

This figure depicts a seats-votes curve, an analytical tool central to some gerrymander analyses, which we shall introduce in Chapter 8, discuss in detail in Chapter 12, and explain the construction thereof in Appendix H. Here we note a solid, straight line running at a 45-degree angle from zero to unity depicting proportional representation (PR). By this variant of the major-party theory a party gains an increment of \( x \) percent seats in the legislative body for each gain of \( x \) percent in the overall vote in the jurisdiction. Under these circumstances \( \rho = 1 \). The other end-point is the dashed line resembling one giant “step” at 50 percent votes showing winner-take-all representation (WTA). By this variant of the major-party theory a party wins no seats in the legislative body until its vote in the jurisdiction barely exceeds 50 percent. At that point it wins every seat. Under these circumstances \( \rho = \infty \). The third variant of the major-party theory—majoritarian representation—is shown by the dash-dot line making an S-curve. Rho can be any value between one and infinity but, in practice, it usually runs between 2 and 3. When it equals 3, the formulation is known as the “cube law,” something that we shall next hear about in Chapter 4. Figure 1.1 depicts majoritarian representation for the cube law. Under majoritarian representation, a party receiving approximately half of the jurisdiction-wide vote will gain an increment of more than \( x \) percent of seats for an incremental gain of \( x \) percent of votes. However, as its share of the jurisdiction-wide vote gets closer to 100 percent, it will gain less than \( x \) percent of seats for an incremental gain of \( x \) percent of votes.

King/Browning tell us that “convincing arguments can be made in favor of each of these types of democratic representation” and “see no a priori reason to believe that one form...is inherently more fair than the others, provided that there is partisan symmetry.” Whereas Dixon
seemed to believe that “fairness” in two-party representation required a “proportionate voice” and “proportionality,” King/Browning opt for this less stringent standard. Here is not the place to argue the merits of these alternative standards. Suffice it to say that by symmetry is meant that if Democrats can win 60 percent of the seats with 55 percent of the vote, then it should be that Republicans could also win 60 percent of the seats should they get 55 percent of the vote. Our objective here is only to describe these alternative theories of representation, point out how their validity is being silently assumed by various scholars, and show how they are related to each other.

Despite the apparent “fairness” of electoral arrangements designed to bring about major-party proportionality/symmetry to some academics, various persons and groups continue to express dis-satisfaction with the “representation” afforded them by the major party theory. They include, of course, adherents of minor parties. They also include the large segment of the electorate that votes for presidential candidates like Ross Perot, and votes for Democratic and Republican candidates for other offices only because they feel they have no other choice with a realistic chance of winning. In addition, significant numbers of people who consider themselves to be Democrats and Republicans also do not feel themselves well “represented” by this theory. It requires no documentation to assert there are significant differences of opinion over issues of public policy among both rank-and-file Democrats, and among Democratic party office-holders. The same goes for Republicans. Current issues which divide both major parties range from abortion and homosexuality to health care and “free trade” agreements (NAFTA, CAFTA, WTO).

The major party theory of representation does not assure us how many of the elected Democrats will be pro-NAFTA and how many will be anti-NAFTA; nor how many of the elected Republicans will be “pro-choice” and how many “pro-life.” The displeasure of anti-NAFTA Democrats over electoral systems that yield what they regard as too many pro-NAFTA Democrat legislators, and of pro-life Republicans over electoral systems that yield what they regard as too
many pro-choice Republican legislators, stems from the fact that it is more important to them that their representatives share their views on issues than share their party label.

*What-People-Think Theory.* This leads us to consideration of a fifth theory of representation: that people should be represented on the basis of what they think. If we return to our New England town meeting paradigm, with its implication that the only reason for having “representatives” is because we can’t all attend the town meeting in person and have to choose surrogates, the logical conclusion is that we would want our “surrogate” to vote the way we would vote, if we could be there ourselves. We wouldn’t care what the color of that surrogate’s skin was, or what party label he/she wore. If they were representing us at a national town meeting, we would want them to vote the way we would have voted on NAFTA—or on a host of other issues.

By this theory, the test of the “representation” of a legislative body would not be the Democrat-Republican seats-votes relationship. A better test might be to poll both the representatives and the people who elected them to determine the correspondence of the views on public policy issues of the representatives with those of the electorate. If 67 percent of the electorate were “pro-choice” and 33 percent “pro-life,” then a poll of the representatives should yield the same breakdown. This concept of, and test for, “representation” would conform to Adams’ vision of a legislature as “an exact portrait, in miniature, of the people at large.”

A legislative body that would meet the criteria of this theory cannot be created from an electoral system based upon geographical districts. The only known means of achieving it would be with a Single Transferable Vote (STV) proportional representation system. This is a much different PR mechanism than the proportional variant of the major-party theory of King/Browning.

It entails overcoming some major practical problems that we shall defer discussing until Chapter 40. If these problems could be overcome, however, and a legislative body elected which
passed the “polling” test described above, there might still be persons who were dissatisfied. One might share the following view of Danny Kleinman:5

“I don’t want my representative to vote as I would vote, nor to think what I think. Rather I want him to think as I would think, but with the advantages of the research of his legislative staff and knowledge I may not have. For example, NAFTA is very complex and I might get it wrong if I had to decide on my own without elaborate study. I would trust my congressman to get it right, however, as long as he shared my general viewpoint and represented my interests. It’s congruence of viewpoint and interests, not specific beliefs and policies, that should determine representation...”6

Let’s consider the sixth, and final, of the “current theories” we said, “embody the heart of the disagreement between ourselves and the proponents of discretionary districting.”

*Permissive Theory.* This theory we might call the “permissive” theory. By it people can be represented on any basis they wish. Most of them would probably want to be represented on the basis of what they think, but there would be some who might choose to be represented by someone from their geographical area, even if that representative’s views on public policy were opposed to the voter’s.

For this reason, a legislative body elected according to the permissive theory might not pass the “polling” test that is the arbiter of representation mandated by the What-People-Think theory. The means of achieving a legislative body meeting the requirements of this theory is identical to that for achieving one meeting the requirements of the what-people-think theory: STV-PR. That is a great strength of this electoral system: it does permit people to choose their representative on any basis they choose. A feminist is free to vote for a candidate of the “Christian Right” who lives in her
neighborhood, in preference to a Gloria Steinem who lives in a distant city—if geographic proximity is that voter’s primary requirement.

Democracy

A definition of democracy may be arrived at from two perspectives. First, we may define it in terms of how representative of the polity, as a whole, is the group of individuals who exercise decision-making power in its behalf. If that decision-making body is large and fairly chosen, it will likely be more democratic than one that is small and unfairly chosen. A decision-making body having many members is inherently more democratic (all other factors remaining the same) than one having few members. The ultimate degree of democracy is achieved when the decision-making body is the same as the polity—the New England town meeting. This book’s authors define democracy as government in which political power is dispersed to the widest extent possible. It is an ideal—an ideal we may struggle to get closer to but never fully attain. These judgments we regard as self-evident and they lead us straight to the second perspective from which we may define democracy: power. We take it as self-evident that a body in which power is highly dispersed is more democratic than one in which power is highly concentrated.

So we return to Page One where we find Jefferson saying that the way to “good and safe government” is to divide power among the many. It seems like common sense and nothing that should take a whole book to make the case for. Yet, we are about to write an entire book to make the case for “dividing among the many” the power to pre-determine election outcomes in the United States of America by discretionary drawing of congressional and state legislative district boundaries.

The argument of the proponents of discretionary districting boils down to this: the legislative body in question must be “representative.” It will be representative if the districting plan by which it was elected achieves symmetry in the major-party seats-votes relationship. To ensure that the plan achieves bipartisan symmetry discretion must be given to persons chosen by major-party leaders
who will know how to employ political and demographic data to craft a plan that achieves such symmetry.

At the beginning we said we believe “each adult human being is entitled to an equal share of political power.” Discretion must be removed from political districting because it gives enormous political power to a few persons, taking it away from everyone else. It is the antithesis of giving everyone an “equal share of political power.”

Parts I, III, IV and the first half of VI will examine three lawsuits brought against partisan gerrymandering since 1981 to see what can be learned from them. This examination will acquaint us with the four tests for such gerrymandering proposed by academics, extant as of 1990. In part V we show how to remove discretion from districting and introduce two more tests for partisan gerrymandering that appeared after 1990. In the last half of Part VI we present two constitutional arguments that can be made against congressional gerrymandering of any kind, one of which is also applicable to state legislative gerrymandering of any kind. In Part VII we examine the first and only lawsuit in U.S. history to challenge bipartisan gerrymandering and discuss two additional cases which erect disturbing precedents. In Chapter 39 of Part VIII we consider alternative remedies and in Chapter 40 of Part VIII return to the question posed by the title of this chapter.

Notes

1 Padover, pg. 6.
2 This view is consistent with the fact that presidents, governors, and other officials are temporarily permitted to exercise limited powers over the rest of us. Our power is equal to theirs, in the ultimate sense, so long as they are accountable to us. Persons may also be denied their equal share of political power as punishment for crime.
3 We need to qualify this statement. Kleinman points out that direct democracy “may soon become practical in the main when each household has the means of a cost-free, or nearly cost-free, communication with a computer in the legislature that can register citizens’ votes on pending bills. We may all be able to ‘assemble’ again under one electronic ‘roof’ and only the discussions by those assembled would remain impractical” (Letter to senior author dated 24 February, 1995). Indeed, the 1992 independent presidential candidate Ross Perot has advanced “electronic town hall” proposals that would approximate what Kleinman describes.
4 Pitkin, pg. 191.
5 Danny Kleinmn is a mathematically gifted democracy advocate and personal friend of the senior author.