

LET THE CHIPS FALL WHERE THEY MAY

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The Democratic Audit of Australia states four values it holds dear. The first of these, political equality, is difficult to define in detail. Yet we all try to do that. Being interested in the drawing of boundaries for legislative seats I have never quite decided in my own mind what is commanded by the phrase ‘one vote one value’. It could be argued that ‘one vote one value’ commands that legislative districts be, as nearly as practicable, equal in their numbers of *total population*. Alternatively it could be argued it means equal in their numbers of *electors enrolled and entitled to vote*.

The Americans have an annoying phrase ‘one man one vote’ by which they mean what we would call ‘one vote one value’. However, at least it can be said for the Americans that they have a consistent principle in this matter. By that phrase they mean that legislative districts must be, as nearly as practicable, equal in total population. Australia has no such consistency.

The Fourteenth Amendment of the US Constitution provides that ‘Representatives shall be apportioned among the several States according to their respective numbers’. The enactment of a detailed formula to implement that principle has been left to Congress. Since 1912 there have been 435 members of the House of Representatives. Under the *Permanent Apportionment Act 1929* the apportionment between the States is done automatically following each decennial census by the Census Bureau. While reapportionment is done by the mere calculation of numbers the redistricting within each State is done by the legislature of that State. Hence there is plenty of gerrymandering in States with a large contingent (for example, California, Texas and New York) but there is no malapportionment.

Let me give a typical case. As a consequence of the 1980 Census South Dakota lost its second seat. At that time the First District was held by Representative Thomas A. Daschle (Democrat) while the Second District was held by Representative Clint Roberts (Republican). So at the November 1982 mid-term election South Dakota elected one member ‘at large’. Daschle and Roberts competed with each other for the single seat and Daschle won. This is a

good example of the way the Americans implement the principle ‘let the chips fall where they may’.

This paper is devoted to a very detailed application of this argument in an Australian context. Because of the refusal of our politicians to abide by the principle ‘let the chips fall where they may’ I want to ask myself a question. The question asked here is a simple one: ‘to how many seats in the House of Representatives should each of the Australian Capital Territory and the Northern Territory be entitled?’ This paper is devoted to the answer. I say there should be three seats for the ACT and two for the Northern Territory.

The distribution of seats in the House of Representatives is determined by section 24 of the Constitution which reads:

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several states shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:-

- (i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:
- (ii) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

It can be seen that section 24 is all about determining the numbers between the States. And those numbers are determined by *total population*. How about the Territories? That is covered by section 122 which reads:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

What this provision means is that the Parliament can simply decide how many Territory members there should be and the terms and conditions under which they are to be elected. There used to be no particular dispute about it. Each determination up to, and including, 1988 showed the populations of the States only.

In 1989 the Parliament decided to incorporate Territory populations into a formula with State populations. Consequently, in 1991 the then Electoral Commissioner, Brian Cox, issued a determination covering the six States and both Territories — for the first time. However, because that determination left Territory entitlements unchanged the fact of the incorporation of the Territory statistics went largely unnoticed.

It was the 1994 determination that created interest. While the Northern Territory remained at one seat, the Australian Capital Territory jumped to ‘a remainder greater than one-half of the quota’ and, therefore, became entitled to three seats (Canberra, Fraser and Namadgi) at the March 1996 general election.

The 1996 election was unique for Canberrans. For the *only election ever* they enjoyed ‘one vote one value’ with Tasmanians in the election for the House of Representatives. The exact enrolments were 71,932 in Canberra, 67,774 in Lyons, 67,097 in Denison, 66,864 in Namadgi, 66,017 in Bass, 64,967 in Franklin, 64,374 in Fraser and 63,449 in Braddon. By any standard those elector numbers would be considered to be within a reasonable tolerance.

The policies of the new Howard Government started to take their toll on the Australian Capital Territory. Prior to Howard the ACT population had been growing more rapidly than that for Australia as a whole. It now started to reverse, as is clearly shown in Table 1. Another factor has also been involved. The population growth of Canberra as a city is now taking place increasingly in New South Wales.

So it was no surprise when the 1997 determination recorded that the ACT had slipped below the cut-off of ‘a remainder greater than one-half of the quota’. Consequently the October 1998 general election saw the ACT and Northern Territory sharing the distinction of being at the top end of enrolments with Tasmania at the bottom. Canberra had 105,359 electors, Fraser 104,177 and the Northern Territory 105,048. Bass had 65,933 electors, Braddon 62,419, Denison 67,361, Franklin 65,769 and Lyons 68,639.

The true surprise came with the 1999 determination. This was the one giving the Northern Territory its second seat. Consequently, at the 2001 and 2004 elections the ACT elector received the worst value for her/his vote in the country. By contrast the Northern Territory elector received the best value. There is every reason to expect the same in 2007.

Let me give the numbers of electors enrolled to vote at the 2001 general election. In the ACT the electoral division of Canberra had 108,329 electors while Fraser had the highest enrolment in the country at 111,547. In the Northern Territory, by contrast, the electoral division of Lingiari had 56,796 while Solomon (Darwin area) had 53,705, the lowest in the country. Throughout the States the highest enrolment was 97,789 for Calwell (Victoria) while the lowest was 62,599 for Lyons (Tasmania). Such a peculiarity is, however, easily explained. While redistributions and elections are determined on the basis of electors enrolled the distribution of numbers of seats between States and Territories is determined by total population. Consequently, while the relevant numbers of electors in 2001 were 219,876 for the ACT and 110,501 for the NT the relevant populations were 310,935 and 195,366, respectively. So there were virtually two *electors* in the ACT for every one in the NT. However, there were 1.6 *people* in the ACT for every one person in the NT.

It should be mentioned that there is a timetable of rolling redistributions. Not all States undergo the redistribution process at any one time. For example, during the parliamentary term 2001-04 (the 40th Parliament) Victoria, Queensland and South Australia were redistributed. Queensland gained a seat, Bonner. South Australia lost a seat, Bonython. On the other hand Victoria was redistributed to equalise elector numbers. Thus the old seat of Burke was abolished in 2003, taking effect at the 2004 general election. The new seat of Gorton was created and given 82,451 electors of which 37,914 came from Calwell, 19,519 from Maribyrnong, 11,675 from Burke, 8,743 from Lalor and 4,600 from Gellibrand.

In this regard the unusual State is Queensland where recent redistributions have been held always to create an extra seat. Thus the 1991-92 redistribution created Dickson. In 1994 Longman was created and in 1997 Blair. The 1998 and 2001 general elections were conducted on the same boundaries. Then in 2003 Bonner was created while in 2006 yet another new Queensland seat will be created. We do not yet know its name. Nor do we yet know the name of the New South Wales seat to be abolished. See Table 2.

The process of determination occurs during the life of each Parliament, roughly once every three years. During the last term of the Labor federal government (1993–96) the population of the ACT grew more rapidly than that for Australia as a whole. Consequently there were three ACT seats at the March 1996 general election. However, during the first term of the Howard Government population growth for the ACT was slower than that for Australia as a whole. Consequently the third ACT seat was lost at the October 1998 general election. Since all three seats were held by Labor there was no incentive for the Howard Government to protect the ACT from that loss.

During the second term of the Howard Government (1998–2001), the population growth of the Northern Territory was faster than that for Australia as a whole. So the NT was divided into two seats, Solomon (the Darwin area) and Lingiari (the rest). At the November 2001 general election the Country Liberal Party won the Solomon seat with David Tollner becoming its first member. Lingiari was won by Warren Snowdon who had been the Labor member for the Northern Territory when it was a single electorate.

During the parliamentary term 2001–04 (the 40th Parliament) the population growth of the Northern Territory was slower than that for Australia as a whole. Consequently, in the 2003 determination the NT slipped back to a single seat. David Tollner then presented a bill which would have simply asserted that each Territory get two seats regardless of the numbers. However, in order to give legitimacy to the course upon which the Coalition had already decided (namely to protect Tollner from the loss of his seat) a parliamentary enquiry was set up, the main recommendation of which was ‘that the 2003 determination be set aside by government legislation to the extent that it applies to the Northern Territory’. See *Territory Representation: Report of the Inquiry into increasing the minimum representation of the*

Australian Capital Territory and the Northern Territory in the House of Representatives under ‘further reading’ below.

The report was a work of political and statistical genius in that it found a way to justify preserving Tollner’s seat without giving back Labor’s third ACT seat – and using fairness arguments to bolster its case. In April 2004 the Parliament enacted the *Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004* to implement the report.

Because of the controversy likely to be created by so serious a violation of the principle known as ‘let the chips fall where they may’, the Australian Statistician, Dennis Trewin, issued an information paper designed to prove that the change could be justified on general grounds. The argument is that population statistics for the Northern Territory contain an undercount much greater than for any other jurisdiction. Thus, by adding two standard errors the population figures are adjusted upwards. Consequently, both for the 2004 and 2007 general elections the Northern Territory has had/will have two seats where it would have only been entitled to one seat under the previous legislation.

Having engaged in the exercise of ‘thinking aloud’ in my opening two paragraphs I now announce my position in the Australian context. It seems to me that, in Australia at least, the concept of ‘one vote one value’ means that electoral divisions must be, as nearly as practicable, equal in their numbers of electors on the roll. If that be accepted then the formula as amended in 2004 is a contrivance producing a gross violation of ‘one vote one value’ as between the Territories. If the formula now based on population were applied to elector numbers there would be three seats for the ACT and one for the Northern Territory. See the right hand column of Table 3. Before the 2004 amendment the population formula actually produced two and one, respectively. So the Parliament set that aside and changed the formula to ensure the preservation of two NT seats into the indefinite future. For the ACT there had been, in 1998, strict adherence to the principle ‘let the chips fall where they may’. For the Northern Territory such an idea was quickly dismissed.

So let me now look at the enrolments for the 2004 general election. Fraser had 118,065 electors and Canberra 109,476. The third biggest was Barker (SA) at 100,934. Now let me go

through the seats in reverse order. The low enrolments were Solomon (NT) at 54,725, Lingiari (NT) at 58,205, Lyons (Tas) at 65,940, Bass (Tas) at 67,941, Denison (Tas) at 69,146, Franklin (Tas) at 69,794, Braddon (Tas) at 69,988 and Moore (WA) at 75,923.

If a third ACT seat had been created along with the second for the Northern Territory then the ACT average would be 75,881. Instead of the present situation (whereby Fraser and Canberra are right at the top) we would probably find that the rank order from the bottom would be Solomon, Lingiari, Lyons, Bass, Denison, Franklin, Braddon, Namadgi, Fraser, Moore and Canberra.

It happens that I am a Fraser elector. However, suppose I lived in Darwin. My vote in Solomon would be worth twice the value of my vote in Fraser. On the basis of the area of the two divisions there can be no argument for a discrepancy between 118,065 electors in Fraser and 54,725 electors in Solomon. The area of Fraser is 535 sq km while that of Solomon is 326 sq km.

A paper by Kimberley Fischer and Stephen Bounds was placed before the Joint Standing Committee on Electoral Matters whereby they found a formula, consistent with democratic and constitutional principles, which would give the ACT three seats with the NT retaining its present two (Table 4). The details need not concern us here. Their paper has my full support. However, in its report the JSCEM chose to ignore this issue.

Before I make my final point two things should be mentioned.

First, Table 1 reveals that three jurisdictions (New South Wales, South Australia and the ACT) each lost one seat over the period from 1996 to 2007. These are jurisdictions in which the ratio of electors to population is above the Australian average. It is interesting to note from Table 2 that New South Wales would still have 50 seats, South Australia still have 12 and the ACT still three if electors were the basis of distributing seats between the jurisdictions.

Second, due to the requirement that electoral boundaries must be reviewed every seven years the ACT did have a redistribution in 2005. The commissioners moved 9,176 electors from

Fraser to Canberra in the suburbs of Barton, Fyshwick, Griffith, Kingston and Narrabundah. That means Canberra will have more electors than Fraser and I shall have the *second poorest* value for my vote of any Australian elector. The projected enrolments for April 2009 are 121,690 for Canberra and 119,410 for Fraser.

Finally, if the Fischer-Bounds formula had been adopted then there would now be 151 members and Barker (SA) would now be the division with the highest enrolment. Given that the area of Barker is 64,015 sq km (the second highest in South Australia) how could I justify its elector numbers being so high?

The answer I give would be two-fold. First, so far as the States are concerned (in contrast to the Territories) the Constitution does not permit any evasion of the principle ‘let the chips fall where they may’. Second, if one studies a map of Barker one can see how well-defined its boundaries are. On its current map (drawn in 2003) Barker has a clear northern section, the River Murray, and southern section, the South-East of South Australia, including Mount Gambier. The 2004 general election was the first ever in which the whole of the River Murray in South Australia was included in the one federal division.

On the constitutional question I have sought the best legal advice and been reassured that the Fischer-Bounds scheme is constitutional. Given that there are now 76 senators, then twice that number is 152. I have no doubt that a House of Representatives of 151 members meets the description ‘as nearly as practicable, twice the number of the senators’.

Further Reading

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Kimberley Fischer and Stephen Bounds, *The 10% system: A fairer system for Territory entitlements*, Submission to the Joint Standing Committee on Electoral Matters, February 2005, Canberra. The link is <http://www.aph.gov.au/house/committee/em/elect04/subs/sub055.pdf>

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Kenneth C. Martis and Gregory A. Elmes *The Historical Atlas of State Power in Congress, 1790-1990*, Congressional Quarterly, Washington, 1993.

Iain McLean and David Butler (Editors), *Fixing the Boundaries: Defining and Redefining Single-Member Electoral Districts*, Dartmouth Publishing, 1996.

Bob McMullan, 'Canberrans denied a fair say in Parliament', *Canberra Times*, 31 March 2005.

The Parliament of the Commonwealth of Australia, Joint Standing Committee on Electoral Matters, November 2003, *Territory Representation: Report of the Inquiry into increasing the*

minimum representation of the Australian Capital Territory and the Northern Territory in the House of Representatives, Canberra.

Nelson W. Polsby (Editor), *Reapportionment in the 1970s*, University of California Press, 1971.

Dennis Trewin, Australian Statistician, *Determining Seats in the House of Representatives – Legislative Requirements for Provision of ABS Statistics*, Information Paper, Australian Bureau of Statistics, May 2005, Canberra.

Table 1: Populations of ACT and Entitlements as Recently Determined by Electoral Commissioners

Date	Commissioner	Population	Gain	Seat Entitlement	Actual Seats	Next Election
March 1991	Brian Cox	284,985	- - -	2.466	2	March 1993
March 1994	Brian Cox	299,843	14,858	2.504	3	March 1996
February 1997	Bill Gray	308,393	8,550	2.495	2	October 1998
December 1999	Andy Becker	310,935	2,542	2.425	2	November 2001
February 2003	Andy Becker	322,871	11,936	2.421	2	October 2004
November 2005	Ian Campbell	325,790	2,919	2.375	2	November 2007?

Table 2: House of Representatives Seats at Recent General Elections

State/Territory	1996	1998	2001	2004	2007
New South Wales	50	50	50	50	49
Victoria	37	37	37	37	37
Queensland	26	27	27	28	29
Western Australia	14	14	15	15	15
South Australia	12	12	12	11	11

Tasmania	5	5	5	5	5
Australian Capital Territory	3	2	2	2	2
Northern Territory	1	1	2	2	2
Total	148	148	150	150	150

Table 3: Distribution of Seats by Jurisdiction

State/Territory	Quotas by Population March 1994	Quotas by Population November 2005	Quotas by Enrolled Electors November 2005
New South Wales	50.314	49.317	50.225
Victoria	37.280	36.544	38.108
Queensland	26.176	28.767	28.728
Western Australia	14.061	14.608	14.492
South Australia	12.226	11.229	12.208
Tasmania	3.944	3.534	3.978
Australian Capital Territory	2.504	2.375	2.640
Northern Territory	1.428	1.505	1.316

Table 4: Elector Numbers, Populations and Seat Numbers for the Australian Capital Territory and the Northern Territory

Territory	Electors Enrolled 2004	Population 2005	Seats 2001 2004 2007	Seats by Population 2005	Seats by Electors 2005	Fischer-Bounds Suggested Entitlement
ACT	227,541	325,790	2	2	3	3
NT	112,930	206,492	2	2	1	2
Ratio	2.015 to one	1.578 to one				