

David J. Garrow, "When the Court Ruled on Equal Representation," *Washington Post*, 6 July 2014, p. B7.

"On Democracy's Doorstep: The Inside Story of How the Supreme Court Brought 'One Person, One Vote' to the United States" By J. Douglas Smith. (Hill & Wang) 370 pp. \$35

The civil rights revolution of the 1960s is much remembered, especially in this 50th-anniversary year of the 1964 Civil Rights Act. But the other transformational political revolution of the 1960s is almost entirely forgotten. Between 1962 and 1964, the U.S. Supreme Court, led by Chief Justice Earl Warren, decreed that the Constitution's 14th Amendment required states to draw all legislative districts and U.S. House seats on the basis of population equality alone. That mandate, that the U.S. "conception of political equality . . . can mean only one thing — one person, one vote," as the court stated in 1963, radically altered the composition of state legislatures nationwide.

Prior to the 1960s, political representation in the United States was an "entrenched system of minority rule" in which "residents of small towns and rural areas enjoyed disproportionate political power," J. Douglas Smith writes in this excellent and definitive book. In part, that overtly discriminatory system reflected attitudes voiced by a delegate to New York's 1894 state constitutional convention: "The average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government, to the average citizen in the great cities." But as Smith perceptively and powerfully points out, rural domination of state governments and the widespread disenfranchisement of urban voters reflected first and foremost "the extent to which urban business interests across the United States supported malapportionment and rural political control" thanks to legislators whose appetites for corporate dollars more than complemented their distaste for urban — i.e., black and ethnic — political interests.

Maintenance of such regimes, decade after decade, rested on legislators' refusal to reapportion their chambers, even in states whose constitutions explicitly commanded decennial redrawings. Imbalances grew over time, and "the consequences of malapportionment became more pronounced during and immediately after World War II" as U.S. population shifts intensified. In 1948, reformers in California, where more than 40 percent of the population lived in Los Angeles County yet elected only one of 40 state senators, placed a statewide reapportionment initiative on the fall ballot. Republican Gov. Earl Warren opposed the measure, declaring that "I have always believed the rural counties are of much more significance in the life of our state than the population of those counties would represent." Business interests mounted a highly professional campaign against the proposal, and it suffered a more than 2 to 1 defeat, failing to carry even L.A. County.

Reformers also looked to the courts. A closely divided 1946 Supreme Court ruling appeared to block federal courts' consideration of such claims. Yet in states such as Tennessee and Alabama, where districts drawn in 1901 remained unchanged in 1960, reformers in cities including Nashville and Birmingham saw no other prospects for change, and in 1960 a Tennessee case, *Baker v. Carr*, reached the Supreme Court. Officials in the Eisenhower

administration's Justice Department threw their support behind the case, as did the new Kennedy administration in 1961. Twice that year the court heard arguments in *Baker*, with the Kennedy Justice Department advising the justices that "per capita equality of representation [is] a fundamental American ideal."

In March 1962, a 6-to-2 ruling allowing claims of unequal representation to be heard by federal courts opened the floodgates to more than 70 cases that were soon filed in more than 40 states. Early in November 1963, the Supreme Court heard appeals in challenges to legislative districts in Alabama, Maryland, New York and Virginia, but in more than 12 hours of oral arguments, only one lawyer, John McConnell of Alabama, unequivocally told the justices that the 14th Amendment's equal protection clause required both houses of a state legislature, not just one, to be apportioned entirely by population.

"On Democracy's Doorstep" superbly recounts how, right up through 1963, almost all reapportionment reformers accepted the federal model, whereby a legislature's upper chamber, like the U.S. Senate, would not be based purely on districts' populations, while lower houses, like the House of Representatives, would be. Smith convincingly identifies a little-known Justice Department lawyer, Bruce Terris, as the most influential challenger of that assumption; in July 1963 Terris wrote his boss, Solicitor General Archibald Cox, that "the proper standard under the equal protection clause is that both houses must be apportioned on the basis of population."

A half-century later, that position seems self-evident, but as Smith stresses, in 1963 it was novel and radical, and when the Supreme Court privately conferenced on Nov. 22, 1963, to discuss the four state cases, "not one justice, in the beginning, took the position that all legislative chambers must be based strictly on per capita equality." That conference was interrupted and then postponed by the news from Dallas, and when new President Lyndon B. Johnson prevailed upon Chief Justice Warren to chair an assassination investigative commission, primary responsibility for writing the four opinions fell to young Francis X. Beytagh, Warren's chief law clerk.

Beytagh's first draft in the Alabama case declared that "legislators are elected by voters, not farms or cities or economic interests," and after Warren and five fellow justices endorsed the power of McConnell and Terris's argument, that sentence remained in the lead majority opinion, *Reynolds v. Sims*, when the rulings were issued on June 15, 1964. As Smith emphasizes, no one expected "so sweeping a decision" as what the court mandated.

Remembrances of the 1964 Civil Rights Act often celebrate the crucial roles that Republican legislators Everett Dirksen and William McCulloch played in that bill's passage, but at the same time that Johnson was signing that landmark statute into law, Dirksen and McCulloch were championing a nationwide effort to enact a constitutional amendment to override the Supreme Court's redistricting rulings. That crusade, which won widespread corporate backing, has been almost entirely forgotten, and Smith's impressive research recaptures an otherwise unremembered chapter in U.S. history. He rightly notes that "Dirksen appeared not to fully comprehend that the Supreme Court's reapportionment decisions had

empowered Republican voters in the suburbs every bit as much as they had Democrats in the shrinking cities.”

“On Democracy’s Doorstep” recounts a triumphant story of constitutional reform that dramatically advanced the promise of democracy, yet Smith correctly concludes by emphasizing how the marked escalation of partisan gerrymandering in recent decades, and the Supreme Court’s refusal to confront it, has greatly dulled the promise that “one person, one vote” offered in June 1964.