

Submission to the Ministerial Expert Committee on Electoral Reform

Malcolm Baalman

8 June 2021

The author is (among other things) a political and electoral science commentator. I live in the Riverina region in south-central NSW and commute between both urban and regional places constantly. I have made several submissions to the Commonwealth JSCEM and other state electoral review inquiries over the past decade.

Summary

The Government has Commissioned a Ministerial Expert Committee to review and report on the system for the election of Western Australian Legislative Council.

There are two distinct terms of reference, one relating to voter equality, and the other to a technical matter of the ballot design establishing group voting tickets and its impact on preference transfer flows.

In summary, my answers to the Committee's four lead questions (as provided in the Discussion Paper) are as follows:

- (a) *which model (whole-of-state electorate or region-based) is preferable to achieve electoral equality* – A single state-wide quota, which is to say, the whole-of-state option.
- (b) *the strengths and drawbacks of each model* – Whole-of-state allows for one common quota, which is the ONLY electoral method capable of achieving literal equality of voter influence (and even then, with an unavoidable caveat relating to voters who choose to support very minor candidates).
- (c) *whether any other electoral model, not covered in this Discussion Paper, is better suited to achieve electoral equality, with reasons* – No; no other traditional electoral system can achieve equality in the manner which a single state-wide quote single transferable vote (STV) system can do. (I refer specifically to the category of party-based systems of "PR" seat allocation, which are inevitably significantly less mathematically equal for voters, and also break the direct relationship of accountability of representatives to the electors.)
- (d) *what changes (if any) should be made to the distribution of preferences in the Legislative Council's proportional representation system, including group voting tickets* – Eliminate the group voting ticket system. Separately, repeal the rule that invalidates the votes of people who choose not to mark every preference below the line.

I hope this submission is of use to the Committee, and I would be happy to elaborate further.

How electoral equality might be achieved for all citizens entitled to vote for the Legislative Council

Voter equality

It is clear from the supporting Terms of Reference, the Minister's Opinion, and the Discussion Paper that the primary subject on which the Committee is expected to advise is that of how the electoral system can be reformed to achieve **voter equality** when electing the Council.

The Discussion Paper (as well as the Ministers' Opinion) outlines, in the recent election results, a range of different 'values' of votes in proportion to others. This criticism is well-founded; in a democracy based on the principle that every citizen is of equal status, and every vote in electing representatives is intended to be of 'equal weight', these differences cannot be justified.

Leaving aside the quirky option of giving weighted parliamentary votes to members of parliament, the closest a traditional electoral system can come to conferring 'equality' on each and every voter is for a single statewide quota of votes for the election of each member to be used. This is literally the *only* option to create equality, because any approach which does not declare that it takes the same number of votes to elect a member is, by definition, not conferring equality in terms of vote weight.

This state-wide common quota option is essentially what currently happens in each 4-yearly half-Council election for the New South Wales and South Australian Legislative Councils. As such, an established and tested Australian model is available for easy adoption in Western Australia.

Compared to using a single common quota, every other existing electoral system falls short of equality. Importantly, deviations from the most accurate form of equality begin once the decision is made to divide the whole electorate into electoral regional divisions. Even if an internal quota to win each seat is used *within* each region – as is the case with elections currently to several Australian chambers including the WA Legislative Council – any difference in the number of votes recorded in each region introduces an element of inequality across the state as a whole.

Further, unequal election result differences can be exacerbated by deliberate allocation of different voter population numbers (or more precisely, population/seat ratios) to each region through the boundary-drawing. Obviously the current arrangements for electing the WA Legislative Council have this flaw, and this is the main reason for the Committee's mandate.

Even with the use of regions, a reasonable approximation to equality (if such a phrase is not a self-contradiction) can still be attempted through careful drawing of the divisional boundaries, and indeed the electoral systems for the Tasmanian House of Assembly and the ACT Legislative Assembly display such a design. The Tasmanian electoral authorities in particular have a strong track record of accurately drawing their divisional boundaries to create very close numbers of enrolled voters. The system of election to the Victorian Legislative Council also makes an attempt at regional equality, but is slightly less accurate because (as occurs currently in WA) the Victorian Council regions are based on aggregate boundaries of the lower house electoral divisions, which constrains the ability to draw accurately equal-population upper house electoral divisions.

Furthermore, all these systems have it in common that, since the relevant boundary-drawing can only be based on pre-election data for enrolments (or alternatively, for populations), they cannot guarantee results that are well-matched to the actual turnout of votes cast. In addition, the more time passes between the boundary-drawing and the holding of any specific election, the greater the inequality that is likely to occur at any election.

The drawing of divisional boundaries also raises a normative problem: are elections meant to achieve equal influence for *those who cast votes*, or are they meant to create equality of influence for the underlying *enrolled voter populations* (or alternatively, for the total populations), regardless of how many people turnout to exercise their vote at any given election? In Australia, with very high rates of both enrolment and of voter turnout, this difference is largely concealed, but it still deserves noting.

Overall, once a structural decision is made to use electoral divisions, voter equality becomes literally impossible, and only approximations to it can be achieved. This clarifies the conclusion that if the goal of an electoral system is voter equality, then the simplest available option – a statewide single common quota system – should always be preferred.

(Further design choices in electoral systems, such as the establishment of single-member electoral divisions, progressively degrade and eliminate any sense of elector equality. But since there is no indication that the Expert Committee is asked to consider moving away from a single-transferable-vote system, these need not be discussed here.)

Recommendation 1: The traditional electoral system most capable of giving voters ‘equality’ of influence would be a state-wide election with a single common quota.

Recommendation 2: If a regional electoral division approach is desired, results will inevitably fall away from giving voters ‘equality’. To minimise such inequality, strict attention will need to be paid to having regions with identical enrolled voter populations.

Regional weighting

Of course, the above principles are not currently observed in Western Australia, in relation to either of the state chambers, both of which feature **regional weighting** in terms of the drawing of electoral division boundaries. Forms of regional weighting have been used throughout the state’s history. Some submitters to the Committee, and many other voices, defend it as a form of compensation for various disadvantages in political influence experienced by regional and remote populations.

Each of Australia’s states and territories (other than the ACT) has a demographic situation where a capital centre is home to over 50% of the total population, with regional and remote localities making up the remainder. The problem of providing political influence that is ‘fair’ to regional people while simultaneously being ‘fair’ (but probably in different terms) to urban people has always been with us. Practical matters of service delivery (health, education, etc), infrastructure provision, telecommunications services, and investment in economic development, environmental protection and other desired outcomes are enduring in our nation’s political systems.

The question presented to this Committee is whether vote weighting is an effective and reasonable solution to this challenge. Is vote weighting compatible with other democratic principles? If vote weighting is provided, it impacts on *every* kind of political decision in the Council, but is it a reasonable result in relation to every political question, or only for those on which regional issues may be relevant? Are there no other available mechanisms, less contradictory to basic principles, which could be adopted to ensure practical fairness to regions in terms of the service delivery, infrastructure and other political issues?

My answer is that vote weighting is incapable of being reconciled with the idea that each citizen is of equal political influence. This basic point of principle is made by many other submitters and commentators to this inquiry. Indeed, it is surely the very reason why this inquiry is even taking place. The Expert Committee’s specified task is to advise the Government on *how* equality can be accomplished, not to give some form of normative recommendation that it is only partially needed.

As to the subsidiary questions, it is worth noting that many political issues – for example social policy questions, matters relating to personal freedoms, questions of criminal law – have no strong relationship to the perceived disadvantage of regional political influence. A Council elected on a basis of weighted voter influence therefore confers greater political influence on regional MLCs on many legislative topics for which regionalism provides no justification at all. This problem cannot be fixed, because it would be entirely impracticable to attempt to draw a definitive line between ‘regional’ and ‘non-regional’ political issues, let alone address the fact that there is no neat definitive boundary between urban and regional localities as a whole. Nor that there are several different kinds of regionality, with various degrees of ‘disadvantage’, across the non-urban state. Nor that the locality, and the impacts, of regional disadvantage themselves change over time.

On the issue of disadvantage in regard to services and infrastructure, the Government and Parliament could look for alternative structural devices to ensure an equitable investment in service delivery, infrastructure, etc in ways which recognise locality-driven disadvantage. All Australian states need to address this question, and have done for over a century. In the end, the success of a state economy depends on a well-integrated economic development across the urban-regional landscape. No state can thrive by having a well-developed metropolis alone.

Some commentators also argue that there are unique difficulties facing MLCs (and MLAs) from regional areas, and all the more so regarding remote areas, in practical aspects of the task of representing their constituents. These indeed should be, and are, addressed by providing additional funding and support to those members of parliament. But this is a practical issue, not one going to policy concerning the most appropriate extent of political influence that should be provided through electoral system design.

A related argument is that small populations in remote localities are inherently *more diverse* (at least in their political opinions and needs) than urban populations, and that this justifies a response through increased representation (by means of members of parliament being chosen by smaller populations). This argument should also be rejected. It is really another form of claim that these citizens should inherently be accorded increased political influence simply by reason of their locality of residence. The argument casually assumes away the diversity of those who live in urban areas. It also assumes that remote populations are fixed in their residence for all time – which they are not – and that linkages between urban and regional interests are not present (for example, this author resides and works in both an urban and a regional location during the course of the week, and has community interests in each locality).

(Finally, it is worth noting that a separate argument could be raised about the representation of, and fair political influence for, Western Australia's Aboriginal populations. At present every citizen of the state is treated identically without regard to race, although disadvantages in Aboriginal communities clearly result in lower rates of enrolment and voting by Aboriginal people. Some nations (for example New Zealand, Scandinavian nations) have developed forms of separate electoral rolls and distinct seats in parliament, or sub-national institutions, to provide indigenous people with representation that is more strongly targeted to their distinct needs. The Committee was not called upon to develop such proposals, but if it did choose to explore such options, the mandate to advise on 'equality' would also apply. Electoral rules for distinct representation should also make use of a common state-wide quota in such a way that every individual voter, regardless of race, was of equal influence in electing numbers of members of Parliament.)

Recommendation 3: *Vote weighting for regional areas is incapable of being reconciled with the idea that each citizen is of equal political influence within the polity. It should be ended.*

The role of the Legislative Council within the Parliament

The Expert Committee's mandate is expressly limited to the rules for electing the Legislative Council. No attention is paid to the system for electing the Legislative Assembly. This is a pity, because the outcome in the recent Assembly election was also spectacularly inappropriate and, in particular, featured dramatic inequality of voting influence for voters across the state.

This is not a reflection on the fact that the state's voters strongly preferred to elect MLAs supporting the apparently successful and effective Labor Government and its popular Premier Mark McGowan. This is entirely a matter for each of them to judge. But the results show that the current electoral system treats very unequally those voters who sought different representation. It also confers very different *effective influence* on voters depending on whether they reside in a closely contested electoral division or in a politically safe one.

The Assembly's 2021 election results, with just half a dozen opposition MPs and no cross-bench members – a situation entirely at odds with the actual first preference votes cast by the electorate as a whole – is inherently a feature of the use of single-member electoral divisions, combined with a

historical moment of strong difference in the relative popularity of the two major political parties. However it should be noted that – in common with all single-member electoral systems – even in times where the major partisan contest is closer the composition of the Assembly often shows a distorted balance of government and opposition members, and presents a stark barrier to representation of the supporters of minor parties and independents in numbers (and from locations) that would provide equal and direct representation of voters. It is simply impossible to create an equally representative assembly out of any electoral system that is based on single-member divisions.

But while the Committee will no doubt accept that an inquiry into the Assembly election is not within its current mandate, there is an indirect impact of this event on the consideration of the choice of alternative electoral system for the Council, which the Committee is charged with considering. With such a lack of diversity in the Assembly, where government is formed and (in theory) most directly held to account, there is an enhanced case for providing for the most politically diverse and representative possible Council. This once again suggests using the single state-wide election option, rather than maintaining the division of the state into regional electoral divisions.

Recommendation 4: The stark results in the Assembly election of 2021, which feature their own form of voter inequality, suggest that an alternative electoral system for the Council should favour the most diverse possible outcome; this once again suggests the choice of a single statewide electoral division system, rather than one based on regions.

The distribution of preferences in the Legislative Council's proportional representation system

Misuse of group voting tickets

This issue is related to ballot paper design, namely the technique – pioneered for the Senate in the 1980s for well-intentioned but misguided reasons – of above-the-line voting linked to ‘group voting tickets’. The device was later copied into the rules for electing the Legislative Councils in NSW, SA, WA and Victoria. The system for electing members of the NSW Legislative Council abandoned the device from the 2003 state elections onward. The equivalent systems for electing the Tasmanian House of Assembly and the ACT Legislative Assembly never adopted this technique.

As the Committee will no doubt understand from the Minister’s Opinion and other sources, and will hear clearly from submitters, the device is easily abused, leading to results which simply could not occur in any ‘natural’ state of voter opinion absent this peculiar ballot paper and vote casting mechanism.

The issue has come to prominence in the past half decade. As bizarre results begun to manifest clearly in elections for the Senate in 2013, many commentators (including this author [here](#) at submission #181 to the Commonwealth JSCEM inquiry into the 2013 federal elections) called for reform of this situation, and indeed it was reformed for the 2016 Senate elections. South Australia followed suit. Only the systems for the Legislative Councils in Victoria and Western Australia still retain this device, and in each case recent elections have produced starkly unsatisfactory election results.

Defenders of this technique – a group consisting almost solely of those who have sought to be elected through it and the professional consultant who has made a (perfectly legal) business out of advising them – argue that it is an aide to more diverse representation, allowing minor parties to be elected in greater numbers through their collective use of this ballot design rule. The claim about creating parliamentary diversity is certainly true as to the outcome, but it does not create democratic legitimacy.

Indeed, group voting tickets do not inherently create *more* representation in parliament, but by necessity take away from some voters the representation that they would otherwise achieve, shifting it to other voters supporting micro-parties who would not, in the ordinary course of preference flows reflecting voter decisions, have achieved direct representation by their first-preferred candidates. It is a zero-sum game in terms of the total number of MLCs, but not a fair outcome in terms of representation that voters consciously and deliberately vote to achieve.

None of these points take any sides on the question of whether minor parties and independents deserve to win places in parliaments. They do – if the voters willingly support them. But as a matter of principle no ‘representation’ should be created by any procedure that cannot logically be described as the deliberate and knowing action of the voters that are said to be represented.

Recommendation 5: The ballot design and counting rule providing for ‘group voting tickets’ chosen ‘above-the-line’ should be abolished. Some alternative of the type used now in elections for the Senate or the NSW legislative Council is a reasonable option. However overall, STV-system elections do not need party column voting options and the ballot designs used in elections for the Tasmanian House of Assembly and the ACT legislative Assembly should be the preferred model.

Voiding of votes for failure to preference all candidates

In addition, the current practice of declaring void any ballot where the voter chooses to vote ‘below the line’, but does not fill out every candidate preference correctly (whether from choice or in error) should be abandoned. It is in legal effect a rule that brazenly disenfranchises some voters. This requires the strongest possible justification, and in this situation there is no such justification.

Recommendation 6: Parliament should repeal the deeply inappropriate provision that ballots filled out ‘below the line’, but without full preferencing of every candidate, are declared void, with the voter therefore being disenfranchised.

Appendix: Notes on 'equality' in electing assemblies

Below are some additional notes about the concept of *equality of voter influence* in electing a legislative assembly, relevant to my submission to the Ministerial Expert Committee for the Review of the system for the election of Western Australian Legislative Council, June 2021.

It is intriguing, and rare, that this inquiry is approaching an issue of electoral system design from the perspective of voter equality. The long and often unsatisfactory worldwide history of electoral system reform events, and reform campaigns (usually failed) has almost always considered electoral systems issue through the lens of distributing shares of power between political parties, or addressing some obvious inequity in such power distribution, or else between geographic regions or populations if not political parties. To focus on an aspect of *the rights of the individual voters* is unusual, and is to be welcomed.

The *idea of equality* is hardly a foreign concept to electoral system development. Indeed, equality lies behind many threads of this history. It was present in the very notion of a liberal democracy made up of equal-status citizens that has run for nearly three centuries, and had a prominent place in political theory from the theorists of the French Revolution (and those reacting to it) onward. It is present inherently in all the conceptual foundations of the US republic and its constituent states, even if the obvious history of racial exclusion blighted that principle from the beginning (and de facto, still does in parts of the US today). The great increase in democratic enfranchisement through the 19th century and into the early 20th, including that of women, is itself a caused premise on equality. Equality is inherent in the 19th century Canadian call for 'representation by population', and in the egalitarian framing of Australian colonial and federation constitutional designs. Britain, long a laggard in observing the principle in its practical electoral arrangements, nevertheless was home to the early Chartist cause, the creation of formal movement for the introduction of proportional representation, and in recent years its national 'make votes matter' campaign, all of which (despite presentive varying solutions) have voter equality as their conceptual foundation. The continental development of party-based seat allocation forms of 'proportional representation' (on which, more below) were instituted as a form of assurance that voters of different political persuasions would have some form of 'equal' share of political power. In the mid- 20th century the United States, and later Australia, Canada and other places, saw legal rights and legislative movements to achieve 'one vote one value' by means of equalization of populations in electoral districts; while crude and ultimately ineffective at creating voter equality of influence (as argued below), these movements also were based on a drive to treat all voters as inherent equals in a democratic system. Overall, the history of development of democratic electoral institutions is threaded through with constant, numerous and diverse attempts to achieve something recognisable as voter (or citizen) equality of influence in electing parliaments.

In practice, the cause of voter equality has not, in fact, enjoyed the success that virtually all of the world's national constitutions purport to guarantee to their citizens. Many flawed electoral systems, utterly failing to provide real voter equality of influence, remain in use now. But since the early 20th century wave of democratisation and enfranchisement, hardly any serious constitutional argument been made that *inequality* should be deliberately incorporated into any electoral system design. (The WA Legislative Council electoral system being, alas, one of the few remaining such systems in the world).

Systemic failures to achieve equality as a result of electoral system design that is poorly thought out, or deliberately maintained in a condition which prevents equality, remain endemic worldwide. Mostly such flawed systems remain in place by reason of deliberately disguised preservation of unequal voter power by the legislatures which hold control of the electoral law, for politics, all too often, is in reality the art of *not giving up power*, and those who attain legislative power through unequal electoral rules rarely reform them.

All of this, happily, is easily corrected, for equality of voter power is in fact quite easy to confer on an electoral system for choosing a legislature. The means of doing so were all invented and clarified by the end of the 19th century, and are in operation today in a few places in the world, of which Australia is arguably the most well-developed of all nation.

Making voters equal

Equality is created by a single, uniform election quota

In short, establishing and providing voter equality through electoral rules is incredibly simple. In a legislative election, the same number of votes should be required for the award of any one seat in the elected assembly. That is all the rule that is required.

This means that the core necessary rule is a common vote quota for each award of a seat in parliament.¹ If every voter in the jurisdiction contributes to the election of representatives using the same quota, then there is equality. If the voters do not all use a common quota, then some form of inequality, small or large, exists.

This quota-equality idea has the simple power of a mathematical axiom. The concept may appear clearer if you consider it articulated in reverse. If any structural aspect of the electoral system has the result that the votes of *different numbers of voters* can elect one representative, then clearly the voters are not equal in influence in electing representatives.

The electoral system which delivers this outcome is known by the term single-transferable vote (STV). Actual implementation of this system of voter equality is unfortunately rare worldwide. No national legislature is elected using voter equality in this manner. At sub-national level, only two Australian states provide equal elections, namely the half-house elections for the New South Wales Legislative Council (around 5 million voters) and the South Australian Legislative Council (around 1 million voters).²

Equality and the 'last seat' in systems with fixed numbers of seats

Despite the powerful equalization effect of a quota, there is one endemic problem in all modern elections, as a result of the traditional structural design that every electoral jurisdiction (and also every electoral region, as will be discussed below) has a fixed number of seats pre-allotted to it.

As long experience with single-transferable vote elections in Australia and elsewhere shows, as the counting of votes progresses, several candidates are awarded seats by achieving the quota, either through first preferences or through the two forms of ballot transfer. But, late in the count, it is normally inevitable that exhaustion of many ballots (for lack of marked preferences) mean that the two candidates vying for the final seat³ do not between them show a flow of preferences which results in any one of the finalists achieving the vote quota. To ensure that the pre-determined number of seats are filled, the traditional response is that the candidate with the highest remaining vote total, even if still 'below quota', is awarded the last seat.

¹ This insight dates from the middle of the 19th century, and is the core of the system of election known as the single transferable vote (STV), early on as the 'Hare system', in Australia since around 1900 as the Hare-Clark system, and recently in the United States as 'ranked choice voting in multi-member electorates'. The core idea is the use of a quota of votes to elect each member of the assembly. The quota is almost universally defined (since the late 19th century) as the calculated lowest number of votes which cannot be won by more candidates than the total number pre-determined to be elected (the 'Droop quota').

To make the system work effectively, the reality that voters do not naturally line up in neat quota numbers must be addressed, and this leads to the two 'transfer' techniques; distributing surpluses from candidates who receive more than a quota of votes, and transferring votes from candidates with low levels of support to alternative candidates according to the voters' sequence of preferences. These two techniques require the recording of a sequence of voter preferences, or 'ranked choices'.

These techniques have been in operation in Australia since around 1900, in Ireland since 1920, and are used in other nations and in many non-legislative contexts around the world. The details of operation of vote counting are well-established present no computational difficulties in the modern world.

² Even in these cases, the total Council chambers are in fact made up of a composite of two elections held 4 years apart (with members serving 8-year terms), which means the composite chamber is not, strictly speaking, elected on the basis of absolute equality.

³ Or in rare cases, three candidates vying for the remaining two seats, and so on.

This is a practical solution, of course, as a means of awarding the correct pre-determined number of seats. It is justifiable awarding the final seat to the candidate in the most supported position is the correct choice, since obviously all the other alternative candidates won fewer votes. But – there is clearly inequality here; for the voters who backed the ‘last seat winner’ have been able to send a representative to the legislature with fewer votes than those groups who sent each of the other representatives. In effect, those voter have become slightly more influential than the voters who sent the other representatives. The outcome represents the least-worst outcome, and still represents a system yielding far more equality than many other electoral systems but it can no longer claim to yield ‘pure’ equality.

The most principles means of avoiding this outcome is to cease the practice of awarding any seats without a quota.⁴ And that would mean abandoning the idea of the pre-determined number of seats being fixed, which in turn would trigger other concerns and consequences. That problem could be ameliorated by applying an artificial lower quota, to make up for the strictness of the quota-or-no-seat approach by increasing the number of quota winners. But even using such a fix, certainty about the final number of seat awards could no longer be guaranteed.

All of this raises the question, why is it even necessary to fix the number of seats awarded in advance? Why not favour the preservation of voter equality in awarding all seats, and calmly accept that the total number of winners might vary a little? It is likely, for example, to vary by only +/-1 seats from any nominal target result, depending on the care with which the quota is pre-determined.

To fully consider these options, what needs to be recognised is that the underlying issue is that *equalization* is here being attempted *twice* – once by fixing the number of seats in advance (usually relative to population), and a second time by using an equalizing electoral system with a quota. The two forms of equalization cannot be truly synchronised and inevitably conflict with one another (although admittedly only to a degree which might seem slight, the outcome perhaps being acceptable in the grand scheme of considerations). This issue will be explored further below.

A few voters always miss out

One unavoidable caveat to the equality idea, affecting all electoral systems, should be noted. In any election, even one conducted with a single common election quota, some small number of voters will fail to secure any representative. Some electors, of course, fail to show up at the polls, and no system can provide for their representation.⁵ A few more will submit blank ballots, or otherwise complete a ballot with errors which prevent it from being counted.⁶ But even beyond these categories, some voters simply choose to vote for candidates who in the event win very small levels of support, and as a result their vote does not lead to the election of a representative. This is endemic to any electoral system. The equal-quota STV voting system is, however, the most benign towards such voters of all electoral systems, because the relatively low quota (compared for example to the equivalent vote target in single-member plurality voting systems) reduces this category of unrepresented voters to a much lower number, and additionally STV systems of ballot transfer allow many of these voters to become represented by a second or later choice candidate. Among all voting systems, quota-STV keeps the unrepresented voter result to the lowest possible level. By contrast, for example, systems of single-member division plurality voting (ie: the first-

⁴ The approach of ballot invalidation by compulsory full preferencing also avoids the problem of ‘below quota’ last seat awards, but at the cost of disenfranchising a significant number of voters.

⁵ Australia and its subnational jurisdictions maintain very strong systems of citizen enrolment (registration), believed to be 98-99% of eligible citizens, and have legislated for compulsory voting, following which around 95% of enrolled voters do indeed cast votes. In many other countries worldwide both registration and actual voter turnout are much lower than this.

⁶ Some, but not all, Australian jurisdictions have legislated electoral rules that invalidate the ballots of a small number of voters for failure to mark preferences for every candidate, which rule is unnecessary to the successful operation of the voting system and in effect constitutes a form of disenfranchisement.

past-the-post system) can reach unsuccessful (or unrepresented) vote proportions as high as an astonishing 75% of all voters.⁷

Breaking the electorate into electoral regions begins to introduce inequality

Even with electoral system based on STV's quota concept, the idea of dividing the electorate into geographical regions, or arbitrarily determined electoral districts, was present from early on.⁸ The electoral systems for several Australian state chambers, and the federal Senate, as well as the national systems in Ireland, Northern Ireland and Malta all use such divisions. Using a quota within each division creates a result of voter equality within that division, just as a whole-of-jurisdiction system does. But taken in aggregate, across the whole of the jurisdiction, voters influence becomes unequal, due to the inevitable differences in the quotas in each division.

It is, of course, possible to play out the election count using the same common quota across each of the electoral divisions. But as discussed above, the problem of 'last seats' and fixed pre-determined seat numbers would remain. Using a common quota would have the initial nominal impact of rendering every effective vote equal, but so long as fixed seat numbers are part of the system design, there must still be elected some 'below quota' candidates awarded last seats. The impact of using a uniform common quota across different electoral divisions – which has never been done in real elections – is hard to foresee, but a priori it would seem likely that there would be, on average, slightly more inequality overall in the variations in the votes needed to elect below quota winners, compared to the degree of variation resulting from using bespoke quotas for each electoral division.

The 'radical alternative' equality approximation based on party support totals

The idea of 'equality' of voter influence lay behind the development in the 19th century of the term 'proportional representation', or 'proportionate representation'.⁹ By the end of that century, however, a new use of the term 'PR' had arisen to indicate systems where voters indicated support not for candidates, but for political parties. In these systems the aggregate votes to support each party were used to perform mathematical 'seat allocation' calculations awarding numbers of the available seats to each party. Under these 'party list' electoral systems, voters lost control of the actual individuals who would 'represent' them in parliament.

In effect, this was a radical approach which turned parliaments into a power-sharing system between political parties, instead of a system for directly elected representatives chosen by the voters to make up the parliament. The emergence of this approach mirrored the growth of powerful parliamentary political parties in the late 19th century, and variations of this electoral system came to be strongly favoured in most new democracies or reformed electoral systems throughout the 20th century. During this process some modest reforms were adopted in some nations to allow the possibility of voters influencing which party candidates would go to the top of the 'list' – a variant often termed 'open lists' – but these variants have not proved effective to reshape the predominant role of political parties. Well over half the world's democracies now use some form of electoral system based on the party list approach (maps [here](#)¹⁰), although they are much less commonly seen in the English-speaking nations with 'Westminster' system origins.

Even leaving aside that the 'list' election system is a decisive move away from a tradition that parliaments are made up of directly elected representative individual MPs, returning to the issue of equality we can see that the list form of 'proportional' representation is only a partial success. Like the seat allocation approach to allotting numbers of seats to states or regions – pioneered in the American Constitution and used in many countries today – party list PR suffers from the

⁷ In recent UK elections seats have been won by vote shares as low as around 25% of the total valid vote, which is of course an even lower share of the total registered voters.

⁸ Among the earliest proponents of such an approach was the Australian Catherine Spence, in *A Plea for Pure Democracy* (1861)

⁹ Other terms such as 'equal representation' and also 'effective representation' (the latter can be credited to Catherine Spence) were also used.

¹⁰ <https://onelections.net/background-information/world/introduction-to-assemblies/>

mathematical problem of trying to match a limited and fixed number of seats to percentages of the vote share. The result is unavoidably varying degrees of inequality, with some voters getting their nominal share of representatives rounded up, and others being rounded down. Among the different available mathematical formulae for doing this, some formulae favour larger parties (the widely used D'Hondt formula), while others do not (the less common Saint-Lague formula). These influence variations have caused the political science profession to develop 'indices of disproportionality' to attempt to track the levels of inequality seen in each election outcome. What is revealed by this is that these list-PR electoral systems cannot ever render all voters equal in influence, because they have shifted to a different mathematical approach, which does not even attempt to link the selection of representatives to voters in an equalized manner. They provide 'rough approximations' of equality, to be sure, but never more. And to repeat, these electoral systems are decisively *not* systems of direct election.

Systems of quotaless plurality voting – and their serious loss of equality

Moving even further away from systems with an equalizing quota we find those common electoral systems with a simple approach to awarding seats to the most supported candidates in each of many electoral divisions (the 'plurality; winner').

The most common of these is the 'first past the post' system of plurality winners in each of many single-member divisions, the electoral approach used in many large nations including India, the United States, Nigeria, the United Kingdom, Canada, Pakistan, Malaysia and others – typically nations linked to British political traditions. (Australia uses a variant of this structure, with preferential voting modifying its outcomes a little and opening up space for minor parties and independents to influence the political landscape.)

There are multiple ways in which this approach destroys any semblance of equality of voter influence. One initial defect is *malapportionment*, where the electoral divisions are composed of different numbers of population or of electors. This alone renders it impossible for true equality to be present. Many advanced democracies, notably Canada, Australia and more recently Britain, have instituted regular systems for reviewing divisional boundaries to attempt to equalise divisional populations: this was a goal of the mid-20th century 'one vote one value' movement. But these institutional arrangements, no matter how well administered, only partially *minimise inequality*, they cannot possibly *create equality*.

Next, when elections are actually held, different numbers of registered voters will actually participate, further scrambling the variation in the numbers of votes needed to elect each member to a legislature.

But even more powerful is the effect of differences in likelihood of each electoral division being closely contested. In these electoral systems many seats become 'safe' for a locally dominant political party, and the difference between these electoral divisions and those that are closely contested rapidly dominates the electoral tactics of competing parties, and in turn the political outcomes which the resulting legislatures create. In these circumstances, any hope of equality of influence for the totality of all voters across the jurisdiction is lost.

As a final insult, there is the possibility of *gerrymandering*, where political forces empowered to draw the underlying electoral boundaries actually contrive to corral localities of known party support so as to rot the overall seat win outcomes in favour of electing more members of the predominant political party controlling the process. The United States has long been rife with this malady – and it is about to get much worse.

The lesson is clear; as a matter of mathematical reality, it is simply impossible to create an equally representative assembly out of any electoral system based on single-member divisions.

Making *populations* equal

The 'two-equalities' problem; equalizing voters, or populations

It was noted above that many electoral systems in fact attempt to create equalization of voter power (however imperfectly) not once but *twice*.

Firstly, in many systems, fixed numbers of parliamentary seats are allotted to various states, geographical regions, or deliberately constructed electoral divisions. This is always done using seat allocation formulae, which as mentioned above cannot generate literal equality, but only approximations of it. The basis of these calculations is not actual votes, but figures for populations either of all persons, or of citizens, or perhaps numbers of registered voters.

Then secondly, at least in those electoral systems promising some form of 'proportional representation', there is attempted a second equalisation, which as discussed above may be done either through a second form of party-based seat allocation (once again, imperfect and incapable of literal equality, but only of approximations, and also with the great weakness that the voter-representative connection is only indirect), or in the less common cases through various forms of the single transferable vote (which as discussed above involves some degree of overall voter inequality if subordinate electoral divisions are used, but can come close to true equality if a single common quota is adopted). But more importantly, all of these electoral systems use as their basis of calculation the votes actually cast in an election.

Combining the two forms of 'equalization', one based on population data and one based on votes cast, further complicates the notion of voters being treated as equal. Underneath this problem is a normative question: should the goal of equal voter influence mean equalization at the level of the regional population, or in terms of those who actually cast votes? Arguments can be made for either and both. But without doubt, it is impossible to achieve literal equality for both goals simultaneously.

The only obvious solution to this conundrum is to not use regional electoral divisions at all, but always to elect a parliamentary assembly from a single pool of votes, using a common quota. In that circumstance, the resulting representatives of the whole electorate at least involve no element of region-based inequality. In contrast, if regions are used, almost any system of double-equalization, or some contrivance of re-weighting quota-based votes after their casting, becomes unavoidably complicated as well as fundamentally incapable of providing true equality.

Conclusion

Across the democratic world today there are signs in many nations of democratic frustration and fatigue, or a loss of credibility status by long-established major governing political parties, and in some countries of resort to (or at least levels of acceptance of) populist movements that lack loyalty to democratic institutions. Serious challenges to the exercise of rights of enfranchisement are even present – indeed in the United States they are being actively prompted by influential parts of the Republican Party. Revolt against decades of increasing failure of economic fairness and of growing economic inequality are present everywhere in degrees.

Democracy itself is under challenge. In many places, discussions of electoral system reform and of wider constitutional reform are stronger than at any point since the early 20th century.

It is timely in the current Review in Western Australia to be returning to a discussion of structural voter equality. For without a reliable commitment to equality, it is hard to see that established democracies can mount a lasting defence of their present institutions. Adjusting electoral institutions to at least grant this promised principle – a principle that even now few political forces would deny the legitimacy of – should be basic to any exercise in improving electoral institutions and maintaining their public credibility. The electoral make-up of the WA Legislative Council is hardly the worst in the world, but it is one of the very few which maintains a structural rule that knowingly, indisputably results in voter inequality. It should be promptly reformed.