



REAPPORTIONMENT

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California REDISTRICTING in the 1990s The Process and the Public Interest

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On April first, 1990, the census count will once again be taken. It is the first step in determining how many congressional seats will be apportioned to each state, and what the ideal population of all election districts will be for the next decade.

These population shifts will result in boundary changes that will substantially impact politics and all legislation for a decade. Redistricting is not often recognized for what it is—the most political of exercises. This holds true regardless of who is responsible for determining the lines and what rules and standards are adhered to or are ignored.

In almost every state, redistricting has long had a poor image. Both major parties share credit for the reputation, dependent only on which party is in power in the redistricting year. Computers have only made an infinite number of creative variations for district boundaries much easier.

California's 1980s redistricting created an uproar among concerned citizens of all political affiliations. Somewhat surprisingly, two subsequent efforts at reform, both proposals for redistricting by commission, did not win adequate support. Perhaps that is indication of the extent of the dilemmas inherent in redistricting, dilemmas that surface only when actual changes are contemplated.

What's the problem?

What should guide redistricting decisions?

The first problem is that each question raised only produces more questions, rather than answers acceptable to a plurality. Each question raised does surface the ambiguities and complexities of redistricting, and the difficult choices it demands, choices that reflect values that may be shared by only a few, or by many. Each of many considerations needs to be put into the final equation for changes to result in improvements. .

In 1964 Chief Justice Earl Warren wrote that the aim of legislative apportionment is "fair and effective representation." But what is "fair?" and fair to whom? What should be fair, the process

or the outcome, or both? What is "effective?" in whose eyes? how is it measured?

Secondly, our ideas, individually and as a nation, are continually evolving. Even the now-cherished "one person one vote" concept was conclusively affirmed by the courts only 26 years ago.

The League of Women Voters of California is committed to the principle that Politics is a Process for the People. This publication addresses issues and questions intended to promote a better understanding of the redistricting process—the opportunities, the constraints and the forces that shape it—by encouraging discussions that will influence future redistricting decisions.

Basic Legal Requirements

1. The Supreme Court has ruled that the U.S. Constitution requires that all districts of a particular type, within a state, be substantially equal in population. The Constitution gives responsibility for congressional redistricting to the state legislatures.
2. The Federal Voting Rights Act of 1965 requires that districting plans not dilute or diminish the voting strength of racial and linguistic minorities that have suffered past political discrimination. .
3. The California Constitution requires single member districts for Senate, Assembly, Congressional and Board of Equalization seats. Also, all districts of a particular type must be ..
 - reasonably equal in population
 - geographically contiguous
 - consecutively numbered from north to south
 - drawn with respect for the geographic integrity of any city, county, or geographic region, to the extent this does not violate other named requirements.

NOTES: The terms "reapportionment" (to re/allocate proportionally) and "redistricting" (to re/draw boundaries of districts) are often used interchangeably. However, allocating the number of persons each legislator will represent (and nationally how many congressional representatives a state is entitled to,) is correctly termed reapportionment. The subsequent adjustment of boundaries is redistricting.

In this publication, distinctions between congressional and state legislative redistricting are not often made; in general, the same considerations apply equally.

THE HISTORICAL CONTEXT

Nationally

Even a brief overview highlights the evolution of concerns and values relating to representation.

Fearing in part that later Congresses, representing preexisting population centers, might not grant full representation to the population moving westward, our founders required in the Constitution a decennial census which would serve as a basis for reapportioning congressional seats among the states. Thus a state's underrepresentation in Congress was avoided.

However, decisions on drawing lines for congressional and state legislative districts were left entirely to the states. Even the few rules Congress had enacted over the years were never enforced and most were dropped in the early 1900s. Within a state, representation was not usually based on population. As late as 1962, population was the criterion in only 20 state upper houses and 17 lower houses, and until 1913, U.S. Senators were appointed by their own malapportioned state legislatures.

Further, despite major population shifts and changes, it was a rare state legislature that redistricted at regular intervals. For example, Vermont did not reapportion its state legislature between 1793 and 1962. In 1946, Illinois had not redrawn its congressional district lines since 1901, Connecticut since 1911, Louisiana since 1912.

Federal courts skirted the issue of standards for equitable representation for 50 years, until in its 1962-64 rulings the U.S. Supreme Court accepted a role in reviewing states' redistricting plans. Today, in 40 states, redistricting proceeds through the legislative process (see p. 8) with both parties redistricting to their party's advantage whenever possible. Nine states use reapportionment commissions or committees (Ark., Colo., Hawaii, Miss., Missouri, Mont., Minn., New Jersey, Ohio, Penn.). Eight more use a commission in back-up or advisory capacity. In Alaska redistricting is the Governor's responsibility.

In California

... prior to 1970

The California Constitutions of 1850 and 1879 based both houses of the legislature on population equality. Six years after the 1920 census had revealed that the population was shifting from north to south and becoming even more urban, a "federal plan" initiative passed. No more than one senator could represent any one county and a maximum of three counties could be represented by one senator. As a result one senator represented 6 million people (Los Angeles County) while another represented three counties with 14,000 people. 30 of the 40 senators were from the north and the south controlled the population-based Assembly. Sectional differences were satisfied. Soon to be replaced by partisan ones, with Republicans able to craft essentially partisan plans in 1951, Democrats in 1961. Voters repeatedly turned back efforts to repeal the "federal plan", but court rulings in the 1960s brought a return to a

population base.

The Constitution provided for a back-up commission comprised of five statewide elected officials, should the legislature fail to reapportion. Never used, this provision was deleted in 1980.

...since 1970

In the early seventies the Republican governor and the Democratic-dominated legislature dueled to a standstill over the proposed redistricting plan. The California Supreme Court intervened. For 1972 it required use of the plan vetoed by the governor for congressional elections and the old 1960s districts for state legislative elections. It required the legislature to draw up another plan for subsequent elections. When the governor and legislature again failed to agree, the court appointed three retired judges ("Special Masters") who developed a plan accepted by the court.

The 1981 redistricting plans provoked charges that the majority (Democratic) party had taken advantage of its control of the executive and legislative branches to carve up the state to its own liking. A referendum petition campaign put the 1981 plans before the voters, who rejected them in June, 1982. Legislative leaders then awaited the November election, since passage of Proposition 14 (see box) would have provided for redistricting by commission. The measure failed. In a special session the legislature passed and the outgoing governor then signed revised plans that were less partisan for the Assembly and Senate, but that improved little on the partisan consequences of congressional districts. Don Sebastiani's 1983 initiative statute to establish still different boundaries was removed from the ballot by the state Supreme Court on the basis that the Constitution provided that redistricting could be done only once after each census. A subsequent commis-

THE CENSUS

Only visiting foreigners and those attached to foreign consulates are excluded from the census count. Courts have ruled that, regardless of their legal status, all aliens who reside here are to be included.

Initially, only free persons and indentured servants counted as "whole" persons. Until 1870, slaves counted as three fifths; not until 1940 were native Americans included in the count.

Census Day is April 1 of years ending in zero. Within nine months the results are reported to the President. The federal and most state constitutions, including California's, require that legislatures redistrict after the census but do not have specific deadlines.

The census counts people and records data including the count for five racial/ethnic/language categories necessary for compliance with the Voting Rights Act. The count is based on individuals' "usual residence"—not their legal or voting residence, nor where they are on Census Day.

sion initiative-Proposition 39-in 1984 also failed (see box on p. 3).

Badham v. Eu was filed in 1983 by the Republican party, charging that the new congressional district lines caused permanent dilution of its voting power. The U.S. District Court ruled in early 1988 that the Republican party is a sufficiently “viable force” in California politics that it cannot claim it has been illegally restrained from fair participation in the political process simply because its representation in the congressional delegation does not match its strength in the population at large. Plaintiff’s appeal to the U.S. Supreme Court has not been heard.

MAJOR COURT DECISIONS

The courts are now increasingly involved in the redistricting process. More than 40 states have current or recently completed litigation involving 1980s redistricting. The challenge to California’s plan, *Badham v. Eu*, is still in the appeal process.

Courts refused to enter the “political thicket” until 1962. They have limited their role to dealing with what is not acceptable without setting standards for what should be done, that being seen as the legislators’ role.

Major court decisions include:

1. **Colegrove v. Green** (1946). Colegrove argued without success that the disparity in population between congressional districts in Illinois was so great that it violated his Fourteenth Amendment guarantee of equal protection under the law. Justice Frankfurter wrote that “the issue of reapportionment is of a peculiarly political nature and therefore not meet for judicial interpretation.. .The remedy for unfairness in districting is to secure state legislatures that will apportion properly, or to invoke the ample power of Congress.”
2. **Baker v. Carr** (1962). The Tennessee legislature had not been reapportioned since 1901 (despite a state constitutional requirement to do so every ten years.) The U.S. Supreme Court determined that Tennessee might have violated the Fourteenth Amendment, and that the Federal

Unsuccessful Commission Propositions

Proposition 14

Common Cause and the Republican Party led this unsuccessful effort in 1982 to require that a commission draw up redistricting plans, subject to referendum and with review by the California Supreme Court.

Prop. 14 provided detailed directions for the appointment of commissioners. The intent was to acknowledge the political nature of redistricting and to deal with it openly by including three members appointed from each of the two major political parties (two of the three could be members of the current legislature). Any other political party with at least 10% representation in the legislature would appoint one commissioner. Four additional members, including the chair, would then be selected by a panel of seven senior justices from the state Court of Appeal. These four were to be “. . . to the extent practical, knowledgeable, politically independent women and men who will give the commission geographic, social and ethnic diversity, who are not currently officeholders and haven’t held partisan public or party office within the previous five years.”

Prop. 14 required that the commission adopt its redistricting plans by a 2/3 vote. Proponents believed this would force the majority element to negotiate with minority representatives and provide solutions to some of their concerns, thus ultimately developing more representative and less partisan plans.

Proposition 39

In 1984 the Republican Governor proposed redistricting by a commission. This measure also failed to pass. The eight voting members would have been retired judges nominated by the Judicial Council. Names would have been selected by lot by the President of the University of California, four from a list of those originally appointed by a Democratic governor, four by a Republican governor. The two non voting members would be appointed to represent political parties; if another party had 20% of the registered voters at the last election it would also have a non voting member.

Several standards additional to those enacted in 1980 were called for: promoting competitive elections; providing that each Senate district be composed of two adjacent Assembly districts; compactness; district lines that did not cross and common county boundary more than once; preserving communities of interest; no favoritism for any political party or incumbent.

Timelines were spelled out. Commission meetings would be open to the public and public hearings required both before and after preparation of preliminary plans that had to be filed with the Secretary of State at least 60 days before the adoption deadline. Court challenges to the plan had to be filed with the state Supreme Court within 30 days of its adoption; the plan could also be challenged through the referendum process. The costs would be limited to one-half of the amount spent by the legislature in redistricting in 1981-82. A majority vote would be required. In the case of no agreement, one member would be eliminated by lot until a majority of those left approved the plan.

judiciary did have the power to review the apportionment of state legislatures. The decision was history-making, declaring that districting cases are appropriate for courts to hear (justiciable). It expressed confidence that courts would prove able to “fashion relief” where constitutional violations were found.

3. **Gray v. Sanders** (1963). The court held that weighted voting systems are unconstitutional per se. That decision included the now familiar assertion by Justice Douglas that “The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing—one person, one vote.”
4. **Wesberry v. Sanders** (1964). The Supreme Court stated its “one person one vote” rule for congressional districts as follows: “As nearly as is practicable, one man’s vote in a congressional election is to be worth as much as another’s.”
5. **Reynolds v. Sims** (1964). The court applied the same population standard to both houses of a bicameral state legislature.
6. **Davis v. Bandemer** (1986). The Supreme Court for the first time agreed that a federal court could hear a partisan gerrymandering case. Experts disagree on the meaning of the decision, which was based on fragmented opinions of the various justices. The opinion includes: “Unconstitutional discrimination only occurs when the electoral system is arranged in a manner that will consistently degrade a voter’s or group of voters’ influence on the political process as a whole.” Interpretations of the full decision generally agree that:
 - there must be a showing of intent to affect the other party adversely
 - there must be other indicators of exclusion from political power .
 - the redistricting plan must be examined to see if there are adequate valid explanations legitimate state interests’ for the redistricting.

GERRYMANDERS

How can a gerrymander be identified? By its shape? Only when votes and seats won tell the story? By the linedrawing process itself, if certain groups are excluded from the decision-making or the public has no access to it? Is an odd-shaped district proof of gerrymandering? The courts themselves have struggled to identify a gerrymander.

While the practice of gerrymandering dates back to 1788, the term was coined in 1812 when Elbridge Gerry was governor and the Massachusetts state legislature created districts, including a salamander-shaped one, that benefitted their party.

Gerrymandering is now defined as the drawing of district lines for a particular purpose—generally to benefit one political party or an incumbent. This is accomplished either by the concentration in a few districts or the dispersal among many districts, of supporters’ strength.

In the end, the real purpose of any line may be masked by claims of good intentions. Lines that look awkward may be drawn for a purpose generally agreed to be valid, for example, providing a group with very different economic interests their own legislative representation. “Affirmative gerrymanders” can be drawn to help protect the voting strength of minority-group populations.

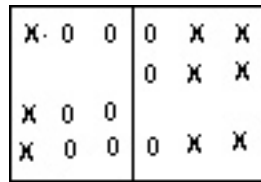
A gerrymandered district is not necessarily distinguishable by an odd shape, for creative use of data fed into computers can create regular-shaped districts that have been gerrymandered.

The following diagrams illustrate how district lines can be manipulated to serve different purposes. The actual process is, of course, infinitely more complex, for criteria other than population equality will ordinarily need to be applied. **Each time a district boundary is altered the boundaries of other districts are affected.** In the diagrams each symbol represents the same number of voters.

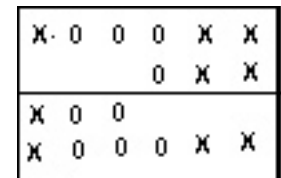
Set I shows a county that is to be divided into two districts. The county has an equal number of members of Party X and Party O.

A plan that divides the county vertically will produce a political result that is radically different from a plan that divides it horizontally. Since in both cases each party will probably win a seat, can either plan be considered “unfair”? If all else is equal, which is more “fair” to the voters? to candidates?

Set I



Plan A: Concentration of voters guarantees a “safe” seat for each party



Plan B: Dispersal of party voters means that the seats become more competitive for candidates of both parties.

Note: The 1981 lines of our 6th Congressional district earned California the Elbridge Gerry Memorial Award for Creative Cartography, despite intense national competition. Even after the 1982 revisions California maintained its leadership, thanks especially to the 27th, 32nd and 42nd districts.

Set II illustrates a somewhat more complex districting situation with a larger population and a sizeable racial minority in the county. Four districts are to be drawn. Party X has 45% of the voters. Party O's 55% is made up of 30% racial minority voters (designated Om) and 25% racial majority voters (designated O). Party O assumes that racial minority voters (Om) will vote for majority candidates if no minority candidates are running. Majority voters in Party O, on the other hand, may vote for Party X candidates to prevent minority candidates of their own party from winning.

Set II

0 Om	Om Om
X X X	O O Om
O O	X Om
X X X	X Om

Plan C: Om voters are concentrated to assure one seat for a minority candidate. Other Party O voters are dispersed so that Party X candidates will win all the other three seats. Party O is outraged because it has a numerical majority of votes, but not the majority of seats

0 Om Om	Om Om
X X X	O O Om
O O	X Om
X X X	X Om

Plan D: X voters are excessively concentrated in one district so that there will be more votes cast for the Party X candidate than are needed to win. Some votes are "wasted." Om voters are dispersed so that Party O candidates can win three seats, including one "safe" seat for a minority candidate.

0 Om Om Om
X X X O O Om
O O X Om
X X X X Om

Plan E: Party X and Party O have an equal number of seats. "Safe" Party O minority and majority seats are created.

0 Om Om Om
X X X O O Om
O O X Om
X X X X Om

Plan F: Party X voters are excessively dispersed to create three "safe" seats for Party O candidates, including a "safe" seat for a minority candidate. Party X voters challenge the plan.

STANDARDS FOR DISTRICT LINES

Even under ideal circumstances, not all desired standards are attainable. In addition, it is common for even "desirable" standards such as equal population and adhering to a city boundary, to conflict. They must be prioritized.

Other factors add to the dilemma of looking to standards to resolve criticisms: each standard applied makes each subsequent standard more difficult to implement; moving a district line impacts on other lines; individuals value various standards differently and their ideas sometimes change in different situations; with each application of a given standard there may be different political consequences; in the end, the state must be divided into a specified number of equally populous, contiguous districts, without any "leftover" territory.

How does each standard affect the fairness of representation? Which standards should take precedence? circumstances? How does the standard influence the effectiveness of representation? How can implementation of the standard be evaluated? Is consensus possible on any of these questions?

Required Standards

1. Reasonably Equal Population. What is "reasonable"? What is an acceptable deviation? Under what circumstances, if any, should it be waived? What does "population" include?

Recognizing that it is unrealistic to hold to exact mathematical equality, some states have set maximum allowable deviations, generally between 1% and 5%. However, for one congressional plan, the courts ruled that 0.6% could not be justified; another court decision let stand a deviation of more than 10%.

Requiring precise equality among the congressional districts within a state is challenged by some, since distribution of the 435 seats among the 50 states (with at least one to each state) inevitably entails substantial variations in the ideal district populations among the different states. Does it make sense to insist that all twenty-two districts in Illinois be equal when each would be 7.3% more populous than each of the five districts in Colorado and 4.4% less populous than each of the nine in Missouri? Other cross-state discrepancies are even greater. The margin of error in the census figures is estimated at 1% to 2.5% and the undercounting of the poor and minorities at 5% to 6%.

The census count is generally accepted as the population that is to be represented. Children, felons and resident

*The deviation is the sum of the largest spread above and below the ideal (mean) population for each district. For example, if the most populous district is 5% over the mean, and the least populous is 2% under the mean, the deviation is 7%.

aliens, who are unable to vote, as well as individuals who are unregistered but otherwise eligible to vote, are all included, or everyone is affected by decisions of elected officials. Thus “one-person-one vote” is itself an inaccurate term, for districts that are equal in population may have unequal numbers eligible to vote.

The census interpretation of “population” is a thorn in the side of some states, and of some jurisdictions *within* states, where few aliens reside. The area with the higher count gets greater representation. A proposal to use only registered voters as the basis for redistricting surfaces periodically as it did again in California in early 1988.

2. The Federal Voting Rights Act. This Act prohibits redistricting which reduces or dilutes the voting strength of racial and linguistic minorities that have suffered past political discrimination. The debate centers on the best ways to achieve it. It is an especially complex issue.

Is the best strategy to have people of any given group spread throughout several districts, hoping that all the representatives will be responsive to what the group members say? Or is it better to concentrate group members in a few districts where they would be in the majority and more apt to elect the group’s choice of representatives? At present, minority groups seem to want the latter, sometimes influenced by leaders’ own interest in running for office. Such concentration does not assure that those elected will be members of that group, but by improving the group’s ability to elect representatives of its choice it may reduce the sense of alienation from the political process.

3. Geographic Contiguity. Contiguity is considered an important and logical standard, but it, too, is open to interpretation. After all, all parts of a spider are contiguous. Two areas joined by a narrow strip of land satisfy this standard. Is that an acceptable interpretation? Does a bridge make two shores contiguous? However interpreted, it is possible to imagine what could happen without this standard.

4. Respect for the Geographic Integrity of any City, County, or Geographic Region. It is argued that voters’ confusion is minimized when election boundaries follow already familiar lines and that voters of a city or county have common interests. Many states recognize the value of this standard. Some people, however, argue that “fair representation” hinges on factors quite irrelevant to existing political boundaries. What is more important, adhering to a city line or to the ideal population?

The plan for the 1970s created five equi-populous geographic regions (that rarely crossed county lines) in order to contain within one region the ripple effect of each boundary adjustment. This was not adhered to in the final 1980s redistricting.

Other Considerations

1. Compactness. There are several complex formulas for measuring district compactness, among them: the number of sides; how many times lines drawn between opposite extremities cross district borders; the total length of all boundaries; the proximity of population to the district’s center.

It is generally believed that requiring compactness eliminates gerrymandering. However, compactness only inhibits it, and even can have the same effect as a gerrymander. A rigid standard for compactness can result in an area’s majority party receiving considerably more votes than needed to elect a candidate. This can give the other party a numerical advantage in other areas. Compactness can also discriminate against dispersed strength (see diagrams, Plan C).

Once again, what at first blush seems simple has many implications and must be seen as but one consideration among many. As an independent standard, what is its value? What should take precedence, city boundaries or compactness? Sometimes or always? Should rivers or mountains or freeways be a factor if they separate populations of different orientations? Just for this situation, or always? Is a compact district a fairer district?

2. Partisan Interests. Political parties have always had an enormous stake in redistricting. Comfortable majorities help them carry out their policies and programs. It should not be surprising that parties struggle to dominate the process.

To varying degrees, the majority party within almost every state legislature often uses its power to create a plan that operates to its future advantage and minimize its opponents’ opportunities (see Gerrymanders). Such advantages are sometimes short-lived. In partisan-gerrymandered districts the primary election is often the more decisive election. Is control over redistricting an abuse of party influence or is it an appropriate application? If the power situation were reversed would opinions change?

3. Safe vs. Competitive Seats. Incumbents have great advantages in an election. Even in a “competitive” district a popular incumbent can win easily. But generally incumbents seek to make their seat “safe” beyond competitive threat.

Clearly, California, with the seventh largest economy in the world, needs the experience of career legislators who know their districts well and bring in-depth knowledge of solutions to statewide problems. But do seats that are “safe” for incumbents also perpetuate incompetency or discourage responsiveness? Do they stifle opportunities to get issues out into the open at election time? Can capable people be induced to run against even a marginally popular incumbent? Do critics feel differently when most incumbents belong to their party?

It is easier to support the concept of “competitive seats” than it is to determine whether or not a seat is competitive or will remain so for a decade. With a mobile

population, California voters who reject loyalty to anyone party, and the variable of each candidate's attractiveness to voters, predictions are very difficult. Thus voters have the power to correct "safe seat" abuses-and they do.

When the major parties cooperate to produce a bipartisan plan-an approach sometimes held out as ideal-the result is very likely to be simply incumbent-centered in place of party-centered.

While there are hazards in incumbent-led legislative redistricting they must be balanced against the hazards of redistricting by commission. (See summary of arguments, page 7.)

- 4. Communities of Interest.** In addition to groups specifically protected by the Voting Rights Act, and cities and counties protected to some extent by the California Constitution, there are multiple other communities of interest that may resist being split. They can be based on ethnicity, culture, religion, socio-economic level, trade area, rural location, urban neighborhood or overriding concern for a major issue.

Are there political advantages in a concentrated mass? Or does a less homogeneous, more diverse district better assure that representatives will take more moderate positions and consider more points of view? While most people are sympathetic to taking communities of interest into account, clearly difficulties and conflicts arise in deciding what qualifies as a "community of interest." What priority should this standard be given?

- 5. Congruent Boundaries for Each Senate and Two Assembly Seats.** With 80 Assembly and 40 Senate seats in the California legislature, it is possible to combine two Assembly districts to make one Senate district. This was done for the 1970s, then dropped. It was included in Proposition 39. What are the advantages? The disadvantages? It probably makes districts more comprehensible to the electorate and might contribute to reducing voter apathy. It could make the redistricting process itself more efficient and less susceptible to tailor-made gerrymanders.

The idea is very unpopular with most legislators. It would force substantial remapping, with changes that could work to the disadvantage of a substantial number of incumbents, and it represents a threat to senators because their seats would be more vulnerable to challenge by assembly members.

- 6. Proportionality.** Some of the most heated redistricting arguments in this decade have been over correlating the percentage of seats won by a party's candidates with the percentage of votes cast for all of that party's candidates statewide. As an example of disproportion, in 1984 one party won a majority of votes statewide, but 40% (18/45) of the congressional seats. While proportionality has a common sense appeal of being "fair", there are major hazards in trying to achieve it in a system with single-member district, "winner takes all" elections. In the extreme, if voters of all parties were uniformly distributed throughout the

state, all seats in an election could be won by candidates of the majority party.

In addition, what quantitative data should be used as the measure? past voting records? party registration when only 58% of voters register as either Democrats or Republicans? Although the argument will continue, proportional representation as a measure of redistricting fairness has limited support.

- 7. Absolute Size of Districts.** Today each California assemblymember represents roughly 350,000 people; each state senator represents 700,000-75,000 more than a delegate to Congress. With a projected population in the year 2000 of 36 million the figures may increase to 450,000 and 900,000. Should the size of the legislature be increased?

How many people can one elected individual represent before the sheer number affects "fair and effective" representation? 500,000? 900,000? 2 million? Should the size of an elected body be expanded when a certain ratio is reached? The issue is applicable to elected bodies at many levels. Some feel that the situation in Los Angeles, where each Supervisor represents 1.5 million residents, is a violation of the Voting Rights Act.

RESPONSIBILITY FOR REDISTRICTING

Regardless who is responsible for redistricting, the rules that govern the process demand careful attention: they substantially influence the outcome as well as the public perception of fairness.

The Legislature

California's recent legislative redistricting (see page 1) has been widely criticized by many responsible citizens of all political persuasions. Criticisms focus on secretiveness, lack of public access, abuse of power by the majority party, self interest of legislators and the rush (or failure) to meet deadlines. However, some of these same criticisms could also apply to a redistricting commission.

How can grounds for criticism be reduced? Might firm lines for completion of the various steps in the process improve both accountability and the plans? Should proposed plans be open to public scrutiny at hearings? At what stage? What role do standards play? Would requiring more than a majority vote for approval put a brake on abuses by the ruling party? Would giving one party effective veto power be considered untenable? Could the legislature be persuaded to adopt new rules? Could changes be made early in the decade, before party strengths in the redistricting year are known?

A Commission (see also Propositions 14 and 39)

Nine states redistrict by commission. In California, proposals for a redistricting commission are likely to recur. In considering a commission, its rules, makeup and appointment procedures

are crucial issues. Colorado's commission is appointed by the three branches of government and no more than six of the ten members can belong to the same party. Montana provides for both geographic and party representation in its five-member commission; as in Pennsylvania, four of the five are selected by the legislature, the fifth by the first four. Hawaii's commission is similar; legislative leaders select eight commissioners who then select a ninth to serve as chair.

Who should be on a redistricting commission? party officials? legislators? citizens-at-large? representatives of public interest groups, minorities, socioeconomic groups? judges? Should a geographic mix be assured? Should women be proportionate to their numbers statewide? **Who should make the appointments?** How can partisan balance be assured? What should be the role for the many independents? How many people should be on the commission? In other states the number varies from three to twenty. What rules should govern the task?

If the judiciary is involved as a "neutral" in appointing or serving, what assurance is there that their individual partisan interests will not influence them? Does their involvement constitute a violation of the separation of powers? What happens if the commission deadlocks? Should agreement require one vote from each of several types of appointments or appointment sources? A majority vote? Two-thirds vote?

Redistricting is so political an issue that there is wide acknowledgment that "neutral" or "nonpartisan" commissions are an impossibility. At the outset, for example, most appointments will be made by persons with partisan credentials. Also, the redistricting may result in elections that favor one party over another, and the commission will probably be perceived as having been partisan.

HOW THE LEGISLATURE DEVELOPS A REDISTRICTING PLAN

A committee in each house, with party representation similar to that of the full house, sets the rules and parameters which the committee staff is to apply to redistricting that chamber. There may be statewide hearings on this aspect of the redistricting.

In practice, all will depend on power relationships-on whether one party is in complete control, or whether one party has blocking power either in one chamber or with the

governor-and on intra-party power plays. Congressional redistricting is done by the leadership of the majority party's congressional delegation, subject also to power relationships in Sacramento.

The committees themselves have little direct role in developing a plan. *Committee staffs* have the major roles, with involvement by each committee's majority party chair and other leaders of that party. Staff members meet with each legislator to determine what each is and is not ready to give up. Sometimes a party representative is present.

With complex computer programs the staffs are able to show the results of many different computations, applying any desired standards and considerations, in any desired priority, to the detailed demographic data. After some months a first draft is produced and privately circulated. If individual legislators are not satisfied with their proposed district lines, negotiations begin. Legislators of the majority party have considerably more negotiating power than do others. *It is during this long stage that bargaining takes place, decisions are made, and ultimate priorities evolve.*

In each house after successful negotiations with enough legislators to win approval by the full house, the plan comes to the committee for hearings. At these hearings in Sacramento details of the plans first become public. Plans are difficult to analyze. Comprehensive, accurate maps are expensive and not easily accessible and the standards that have been applied can be hard to identify.

After the hearings the committees may make revisions before voting to bring the redistricting bill to their full house for member discussion and vote. Legislators are interested primarily in the remapping of their immediate area, and support or oppose the bill on that or on party grounds. Although both houses must approve the final three bills, in practice, and depending on power relationships, the two houses debate only their own redistricting.

When passed by one house the bill goes to the redistricting committee of the other house for public hearings, the second of the two times public comment is heard. After the vote it goes to that full house for a vote, then to the governor for signing. Short of a successful court challenge the plans will then be law for ten years.

In summary, the redistricting process has been virtually closed to substantive public scrutiny. Most legislators' accountability for the process and for the three statewide redistricting plans that finally emerge is very limited.

**WHO COULD DESIGN A PLAN THAT BEST ASSURES
FAIR AND EFFECTIVE REPRESENTATION IN THE PUBLIC INTEREST?
A SUMMARY OF ARGUMENTS**

Favoring the Legislature

Favoring a Commission

<ul style="list-style-type: none"> Legislators are accountable to the public at the polls. 	<ul style="list-style-type: none"> When districts have been gerrymandered in favor of incumbents or one party, removing those legislators becomes almost impossible. Accountability no longer means anything.
<ul style="list-style-type: none"> The legislature is representative of the diversity of the total population. No commission can come close to that. The California Advisory Committee to the U.S. Civil Rights Commission favored legislative redistricting, concerned that minority gains in representation in the legislature could not be reflected on a commission. 	<ul style="list-style-type: none"> A commission would not have the built-in self-interest of legislators and would focus on statewide fairness. A commission would act in the best interests of all residents including minorities protected by the Voting Rights Act.
<ul style="list-style-type: none"> Negotiations among 40 or 80 may be more difficult but a pluralistic society is better served. 	<ul style="list-style-type: none"> A smaller redistricting body would require reconciliation of fewer positions and would foster greater adherence to principles and standards. In practice, legislative redistricting is also done by only a few people.
<ul style="list-style-type: none"> Legislators are elected, not appointed. They have weathered public scrutiny Legislators have experience and superior qualifications in balancing interests and achieving compromise among different groups. It is wrong to assume that all legislators have a conflict of interest; the priorities for many do not include partisan or personal gain. Redistricting is inherently very political in nature, so it is wiser to address it through a political body, in the political arena. 	<ul style="list-style-type: none"> Redistricting involves change and commissioners are not committed to the status quo, the way legislators are. Commission decisions would be the result of reasoned deliberations and not deals and swaps that violate important standards. There is an inherent and intolerable conflict of interest in the legislature redistricting itself. Incumbent and party interests are the only priorities. A commission would end the abuse of power by the majority party. It would not have legislators' incentive to diminish or enhance any party's power.
<ul style="list-style-type: none"> Incumbents know best the make-up of their districts and the possible effects of different boundary changes. Incumbent protection promotes the public interest by providing stability and experience. 	<ul style="list-style-type: none"> A commission has no reason for excessive secrecy. It would open up the redistricting process and not be influenced by special interests. A commission has no interest in self-preservation. It can restore public confidence in redistricting.
<ul style="list-style-type: none"> Who can be trusted to appoint commissioners who would act in the public interest? A nonpartisan commission is an impossibility. Anyone asked to serve would be a politically informed person and would have substantial political biases. 	<ul style="list-style-type: none"> There are many knowledgeable and honorable individuals who would serve in good faith and accomplish redistricting in the public interest.
<ul style="list-style-type: none"> Appointment of a commission is an elitist act. All interested parties will try to influence commissioners hiding behind the "neutrality". Legislators, too, are persons of integrity. 	<ul style="list-style-type: none"> Legislators just want to protect their jobs. Redistricting affects elections for the entire decade. It should be entrusted to persons of proven integrity.
<ul style="list-style-type: none"> Commission plans have been challenged in court. 	<ul style="list-style-type: none"> A plan developed by an independent, bipartisan group would be less vulnerable to court challenge.

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