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## Redistricting: California 1971-2001

J. Morgan Kousser

The struggle for control over redistricting has been at the core of California politics since 1970, sparking extremely bitter partisan strife and ultimately undermining both the legitimacy and the institutional capacities of the legislature and the state Supreme Court. The outcomes of these reapportionment wars have been profoundly ironic in three ways: First, while redistricting has markedly increased the representation of ethnic minority groups, which until recently has been a largely uncontroversial enterprise, it has had a much more modest effect on the partisan composition of the legislative and congressional delegations, which has been the principal focus of conflict. Second, while Democrats in general and African-American and Latino Democrats in particular won nearly every reapportionment battle, Republicans were able to turn their own persistent defeats into a seemingly permanent ability to block public policy that they oppose, including redistricting itself. Third, while voters presumably supported limits on legislators' terms partly to minimize partisan squabbling, their action has, in fact, ensured that partisanship will become ever nastier in the legislature, especially in the millennial redistricting.

### 1971: TARGETING YOUR OPPONENTS

The last chance for compromise over redistricting between California's parties may have been blown away by a volley of rifle shots in 1971. Like any good California story, this one starts with a flashback. Despite a pro-Democratic redistricting in 1965, when the state faced up to the strict equal population standards that federal courts had imposed after *Baker v. Carr*, Republicans gained a slight majority in the lower house, the Assembly, in the 1968 election. Assuming that his party would retain control in 1970, and would therefore be able to design a partisan reapportionment, Rep. Jerry Lewis of the Elections and Constitutional Amendments Commit-

tee drafted an internal memo outlining Republican plans. "In my judgment," he proclaimed,

our number one criteria [*sic*] should be a program designed to establish districts in California that will elect the highest possible number of Republicans to the State Legislature and the House of Representatives. A second item for consideration is to include in the plan Democrat [*sic*] districts with sizable majority [*sic*] for those who are measured to be the "least effective members" of the minority party. . . . I believe we have an unusually good opportunity to develop a "balanced and representative plan" which in reality is totally designed for partisan purposes.

Unfortunately for the GOP, the party lost its Assembly majority in the 1970 elections, and Democrats retained a slim majority in the state Senate. To add mortification to defeat, Lewis's revealing memo was left in the committee files when the Democrats took over. When Lewis gave an especially sanctimonious speech on the floor denouncing the Democrats for engaging in what he termed partisan gerrymandering, Democratic Speaker Bob Moretti whipped out the memo, quoting the pertinent passages, no doubt to Democratic guffaws and Republican chagrin. In fact, both parties viewed reapportionment as primarily a partisan battle—the Democrats were just a bit more open about it.

With Ronald Reagan in the governor's chair and thin Democratic majorities in both houses of the legislature and in the congressional delegation, the 1971 redistricting should have been a compromise, an incumbent gerrymander that did not overly advantage or disadvantage either party. It nearly happened that way. In late 1971, Governor Reagan, the Democratic state legislative majority, and the 38 incumbent members of Congress from both parties had agreed on boundaries for the congressional and state Senate seats and had just settled on a redistricting of the state Assembly when a millionaire Anglo Republican upset a Latino Democrat in a special election. Attracting state and national attention in his effort to become the third Latino in the Assembly, Richard Alatorre was a solid favorite to carry a heavily Democratic, ethnically and culturally diverse district in Los Angeles. Alatorre was derailed, Democrats charged, by a series of "dirty tricks" in a West Coast Watergate campaign managed by the future Los Angeles county chairman of the "Committee to Reelect the President"—i.e., President Richard Nixon. Anglo Democratic voters received mail from nonexistent "Democratic committees" at vacant-lot

addresses alleging ties between Alatorre and violent Latino gangs, a radical Chicano political party ran a suspiciously well-funded campaign openly aimed at defeating Alatorre, and on the night before the election, someone fired rifle shots through a window of the house of the campaign manager of Alatorre's Republican opponent—an event that received widespread newspaper and television coverage throughout election day. As the Republican's chief political consultant later remarked about his efforts to defeat Alatorre, "I called the shots."

Having won the district, Republicans demanded that it be redrawn to favor the Republican victor. Outraged Democrats balked, and a potential deal collapsed when Gov. Reagan refused to pledge to endorse agreements negotiated by Republicans in the legislature. After a stormy confrontation between Reagan and the Republican legislative caucus, Democrats passed their own redistricting bill for the Assembly and the bipartisan bills for the other two bodies on Dec. 20, 1971, Reagan immediately vetoed all of them, and power passed to the State Supreme Court. Thus, the 20-year partisan battle over reapportionment in California was set off when an attempt by Democrats to increase ethnic minority representation was blocked by Republicans. Partisan and ethnic factors in California reapportionment are inseparably intertwined.

Brushing aside Republican arguments that their proposed districts were more competitive than those of the Democrats, as well as the Democratic answer that the competition in the Republican plan was between Democratic leaders whose districts had been scrambled so that nearly all of them would have to run against each other, Chief Justice Donald Wright in effect postponed the controversy until after the 1972 elections. Despite the fact that the Assembly and Senate districts were no longer equal in population, that the state Supreme Court temporarily kept them as they were, adopted the congressional lines (including five new congressional seats) that both parties had agreed upon, and gave the 1973 legislature a chance to compromise, threatening to have Special Masters draw up a plan if the legislators could not come to an agreement. After Democrats won solid majorities in all three bodies in 1972, incumbents from both parties hammered out a new agreement, but Reagan again vetoed it.

The state Supreme Court appointed three retired Anglo Appeals Court judges, two Democrats and one Republican, and they, in turn, relied on law professor Paul McKaskle and political scientist Gordon Baker to draw the actual redistricting plans. Placing 29 members of the Assembly and 18

senators in districts with at least one other incumbent, the McKaskle-Baker plan, which the Supreme Court approved, appeared likely to decimate the ranks of sitting politicians of both parties. It also substantially increased the possibilities for minorities in Congress, drawing one more majority-black seat than the incumbent-oriented compromise had provided for, and in the state Senate, where McKaskle returned, in effect, to a Democratic plan that Reagan had vetoed. (See Figure 1.) Not subject to the pressures of satisfying the governor and majorities of both houses of the legislature, McKaskle was free to draw squarish districts that looked quite regular on a flat, featureless map, which is how they were typically presented to the public. They were also politically disadvantageous to the Democrats, at least if the conditions of the 1972 elections had continued throughout the decade. Using methods detailed in papers published elsewhere,<sup>1</sup> I estimate that Assembly Democrats would have won only 42 Assembly seats, instead of the 51 that they actually carried, if the 1972 elections had been held using the boundaries drawn by the Masters.

By the time of the 1974 elections, however, the first oil price shock, the 1973-74 recession, the Watergate hearings and resignations, and the pardoning of Richard Nixon had taken place, the electorate had shifted massively away from the GOP, and many districts that McKaskle may have rated as marginally Republican<sup>2</sup> became solidly Democratic. As a result, Democrats gained their largest majority in the Assembly since 1877 and won 28 of the 43 congressional seats. (See Figure 2.) The Democratic landslide was not the result of the McKaskle plans: If the 1974 elections had been held within the 1972 boundaries, instead of those of 1974, I estimate that Democrats would have won one more congressional and three more Assembly seats than they actually did in 1974. Other methods of estimation show the Democrats perhaps gaining a congressional seat as a result of the

<sup>1</sup>"Estimating the Partisan Consequences of Redistricting Plans—Simply," Caltech Social Science Working Paper #929 (June 1995); "Reapportionment Wars: Party, Race, and Redistricting in California, 1971-92," Caltech Social Science Working Paper #930 (August 1995).

<sup>2</sup>The Masters' Papers in the IGS Library indicate that they computed party registration figures from 1970 for their proposed districts in each legislative body, and that they tallied the winners the 1970 gubernatorial and U.S. Senate campaigns for each of their own districts. Surviving papers do not make clear exactly what analysis the Masters or their staff performed on the basis of these figures.

Figure 1. Ethnic Minority California Legislators, 1970-1994

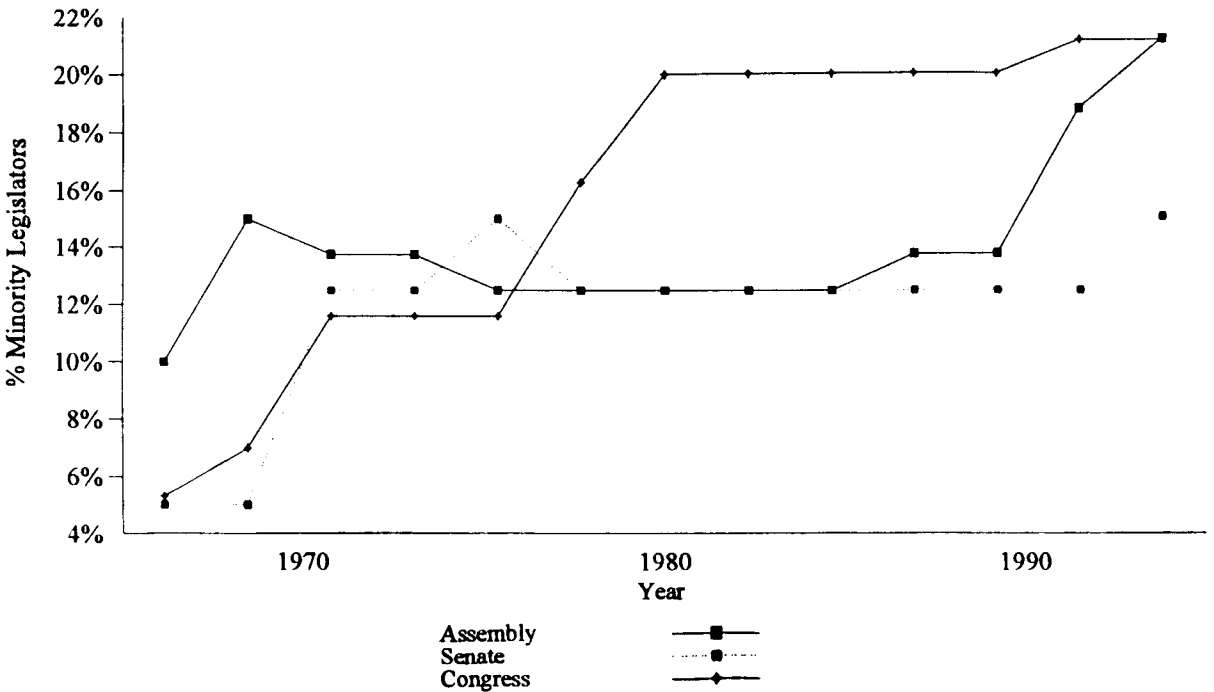
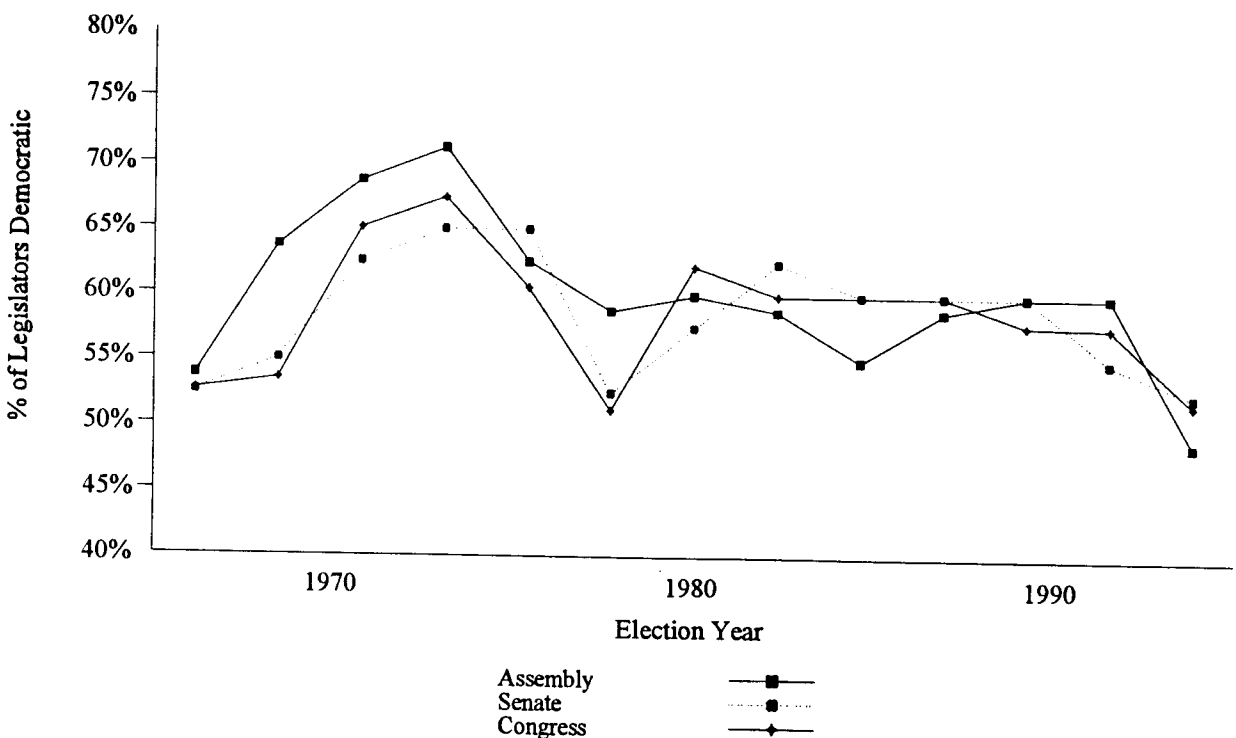


Figure 2. Partisanship of California Legislators, 1970-94



court-ordered plans. In any event, their successes in the 1970s under districting arrangements drawn for the judiciary primarily by McKaskle inclined Democrats to trust that courts and Special Masters, especially if advised by former poverty lawyer McKaskle, would not be terribly unfair to them in reapportionment. This expectation was to become an important consideration in the 1990s redistricting battles.

### THE 1980s: PROTRACTED WAR OVER REDISTRICTING

As the 1980s round of redistricting approached, the political situation in California had changed considerably. Six percent fewer voters registered with one of the two major parties in 1980 than in 1972, and the volatility of voters and their tendency to split tickets rose with the amount of political independence. Although Democrat Jerry Brown had replaced Republican Ronald Reagan as governor and the Democrats still held the edge in both houses of the legislature and the state's congressional delegation, their majorities had been much reduced by the reverberations of the Proposition 13 (property tax reduction) campaign in 1978 and the electoral thunder of Ronald Reagan's presidential campaign in 1980. After the 1976 election, the numbers of Democratic seats in the Assembly, Senate, and Congress, respectively, were 57, 26, and 29; after the 1980 election, 49, 21, and 22. While Republicans wished to lock in or improve on their recent gains with favorable district lines—they asserted a right to between six-tenths and two thirds of the congressional seats—Democrats wanted to reclaim several close districts that they had previously controlled. The Democratic majority on the state Supreme Court was more solid, 6 to 1, but Republicans had already backed an almost-successful campaign against the state's first female chief justice, Rose Bird, three of the Jerry Brown-appointed justices were subject to voter rejection on the 1982 ballot, and Republicans hoped that threatened judges would veto any partisan Democratic reapportionment. If all else failed, Republicans believed that they might be able to cut a deal with the Democrats. It was this last belief that so inflamed the fight for the Assembly Speakership in 1980.

Since Jess Unruh modernized the California legislature during the 1960s, the Speaker has been the state's second most powerful official, centrally coordinating fundraising and campaign planning, controlling the agenda and appointing all committee chairs in the Assembly, doling out or denying perquisites, and using these powers to foster or blight legislation

and careers. Because the Speaker is elected by the members of the Assembly and can theoretically be replaced at any time, she must be particularly concerned with redistricting. In 1980, Republicans were frantic over the prospect that Howard Berman might become Speaker and his brother Michael, a reapportionment staffer in 1971, might be put in charge of reapportionment. In another ironic twist, Republicans defeated the Bernans by throwing their support to Willie Brown, later their *bête noire* in every sense of the word. All they received from Brown was veto power over Republican committee assignments and a vague promise of partisan fairness in redistricting. More tangibly, the Republicans got corporate allies to finance a computerized redistricting operation at the Rose Institute of Claremont McKenna College, staffed by veterans of the 1971 Republican redistricting effort, and threatened lawsuits and referenda if the Democratic plans did not meet with Republican approval.

They did not, especially the congressional plan drawn by San Francisco Congressman Phil Burton—without a computer, but with the help of a mechanical adding machine and, more importantly, of Michael Berman. Together, Burton and Berman drew safe districts for their friends and relatives, paid back a few old enemies, and, without much pressure from the Voting Rights Act, tripled the number of congressional seats that Latinos could expect to win. Latino and black support for the Democrats also guaranteed fair treatment for ethnic minorities in Assembly and Senate redistricting. In the Assembly, which he had managed to enter in the Watergate landslide election, Richard Alatorre became chairman of the Elections and Reapportionment Committee and, with his chief consultant, Bruce Cain, substantially increased the number of Assembly districts in which Latinos could strongly influence the outcome. Along with Speaker Brown, an African American, Alatorre also made sure that state Senate and congressional lines were fair to blacks, Latinos, and Asian Americans. In no reapportionment in the state's history have members of ethnic minorities had more power than in 1981—a sharp contrast to the all-Anglo Masters' redistrictings of 1973 and 1991.

Republicans exploded, one likening the Democratic plans to the Nazi Holocaust, another comparing Speaker Brown (unfavorably) to the contemporary Iranian theocrat, the Ayatollah Khomeini, while a third, speaking in the understated manner so characteristic of attorneys, called the Burton plan "the most egregious partisan gerrymander, not only of this decade but any other decade as well." Charging that the Democratic lines

would cost them from six to 10 seats in Congress, Republicans qualified the first referendum ever held on specific reapportionment plans in the history of the state for the June 1982 primary ballot, and they petitioned a federal district court and the state Supreme Court to enjoin operation of the redistricting of all three legislative bodies until the voters had had a chance to overturn them. They insisted that the judges ignore the facts that, unlike the 1971 and 1972 plans, the 1981 statutes had passed both houses of the legislature and been signed by the governor, and that, if an injunction were granted, completely new primaries would have to be held in either the pre-1981 districts or in new ones devised by the courts.

As in 1971, the state Supreme Court unanimously decided to put the new congressional districts into effect immediately, because otherwise, the two additional members of Congress would have to be selected at-large, which was illegal under a 1967 federal law. But unlike the case decided a decade earlier, the Court also ruled that the 1982 elections for the Assembly and the Senate should be held in the districts created by the legislature. For a four-three majority, Chief Justice Rose Bird wrote that to use the old, by now severely malapportioned districts would violate the equal population requirement that courts had ruled to be implicit in the federal and state constitutions. Republicans responded by threatening to join an ongoing effort to defeat the four Jerry Brown-appointed members of the Court, and the party did oppose three of them in the November election. In the federal court, Republican moves for a temporary injunction against the plans on the grounds that they favored the Democratic party, that they had not yet been precleared by the U.S. Department of Justice, and that shifts in Senate lines would prevent some voters from selecting senators for six years were unceremoniously rejected. The GOP was more successful in the June referendum, as voters objected to each of the Democratic plans by margins of 62-65 percent, setting the stage for a November 1982 vote on a redistricting commission.

Written by Republican activist and attorney Vigo Nielsen, Jr., backed by the good government group Common Cause, and bankrolled by \$400,000 from the state Republican party, the complicated 10-person commission plan appeared, on the surface at least, so carefully balanced between the two major political parties that it was likely to result in a bipartisan gerrymander. (Proponents of the plan, numbered Proposition 14 on the November ballot, did not stress this implication of their handiwork.) Six members were to be representatives of the two major parties selected by partisan caucuses in the

Assembly and Senate and by the state party chairpersons. Four "independent" members who were, in the words of the initiative, to "bring ethnic, social and geographic diversity to the commission" were to be chosen by a two-thirds vote of the seven most senior justices on the State Court of Appeals. Since it took seven votes to adopt a plan in the commission, at least one partisan from each side would have to approve any redistricting. If the commission deadlocked, the state Supreme Court had 60 days to draw up a proposal, probably using the commission and its staff as Special Masters.

While the commission was directed to encourage electoral competition, there was no mention of protection of the rights of ethnic minorities as a goal of its plans—an omission that Democrats and representatives of minority groups pounced upon. Proposition 14 got lost in the cacophony of elections for state officers and a U.S. senator, and showier propositions on handgun and nuclear arms control. In any event, after November but before Republican governor George Deukmejian could be sworn in, Democrats drew compromise redistricting plans that appealed to enough Republican legislators to obtain two-thirds majorities (which precluded another referendum), and lame-duck governor Jerry Brown signed them. By this time, most agreed with Senate Minority Leader Bill Campbell's remark: "I'm sick and tired of reapportionment."

Two groups, however, were not: extreme right-wing Republicans, who had no desire to see incumbents of either party solidified in control, and Republican political consultants, whose livelihood depended on the expectation of close elections. They united in early 1983 behind plans drawn at the Rose Institute and initially financed by state Assemblyman and wine company heir Don Sebastiani. Responding to the rightward pressure, the Republican State Committee pledged \$300,000 for the Sebastiani Initiative, a statute consisting largely of maps of regularly shaped districts, which were actually designed to decimate Democrats, particularly those from minority groups. Privately, Democrats quipped that Sebastiani had jammed so many African Americans into one Los Angeles Assembly district that it contained more blacks "than any district this side of Lagos, Nigeria." Governor Deukmejian set a special election for December 13, 1983, a date whose proximity to religious holidays guaranteed a low turnout.

This time, Democrats went to court, stressing not only Sebastiani's minority vote dilution, but also the state constitutional provision mandating a reapportionment every decade, which had been interpreted by a previous state Supreme Court decision to set both a minimum and a maximum of one

rearrangement of lines every 10 years. In a 6-1, party-line vote, Chief Justice Bird and the state Supreme Court ignored the federal minority vote dilution point, but agreed with the Democrats on the once-a-decade provision, dismissing the Republican argument that since no election had been held under the lame-duck lines, the redistricting had not actually become final yet. The justices therefore enjoined the proposed December election.

Although Common Cause next proposed a reapportionment commission that would go into effect only in 1991 and Sebastiani floated an initiative that renamed his maps a constitutional amendment in order to sidestep the Bird Court, Gov. Deukmejian and the Republican leadership rejected both in favor of a new commission, set up by state constitutional amendment, that would draw lines that would take effect in 1986. Rejecting the partisan balance of the defeated Proposition 14, the governor proposed to draw the commission from among the justices of the State Courts of Appeals. When the State Judicial Council objected that the task was too political for sitting judges to be involved in, Deukmejian substituted retired Appeals Court justices. Both the second proposal and the judges' reaction to the first provided the very well-funded Democratic campaign against the commission with lines of attack. The commission would inevitably tarnish the judicial emine, Democrats announced in simplistic television commercials, billboards, and targeted mail, because judges would be picked with an eye to their future partisan loyalties. And retired judges, 34 of the 38 of whom in 1984 were Anglo males, many having resumed lucrative law practices, were hardly representative of minorities and women and might have clients who would benefit from a reapportionment biased in a particular direction. Republicans countered with advertising that treated Democratic politicians as if they had recently invented gerrymandering, bringing a previously pristine process into disrepute, and they announced that the Democrats' boundaries were so biased that Republicans would seriously contest only a few marginal seats, devoting their millions instead to the commission fight. In practical terms, this meant that Republicans conceded seats to the Democrats in their potentially strongest election of the decade, allowing Democrats to solidify their positions with the electorate. Voters responded to this unedifying spectacle, which only served to blacken the reputations of all politicians further, by rejecting Deukmejian's commission by a 55-45 percent margin on the same day in November 1984 that they overwhelmingly elected Ronald Reagan to a second term as president.

After this loss, Sebastiani tried again to interest Republican party leaders in his initiative, but they preferred to continue their federal lawsuit challenging the redistricting as unconstitutionally partisan, a suit that gained credibility in 1986, when the U.S. Supreme Court, in an Indiana case, ruled partisan gerrymandering justiciable. In 1989, however, the Supreme Court summarily affirmed a three-judge district court's decision that the Burton plan was not sufficiently partisan to be unconstitutional.

Republicans then proposed two reapportionment initiatives in 1990. The first, Proposition 118, aimed at forcing a bipartisan or perhaps pro-Republican plan by requiring that any redistricting scheme be passed by two-thirds of both houses of the legislature, signed by the governor, and ratified by the voters. The second, Proposition 119, established a judge-appointed commission of five Democrats, five Republicans, and two independents. Although both propositions set out guidelines about following geographic and city-county boundaries and requiring "competitive" districts, neither mentioned protection of ethnic voters, leaving the propositions open to charges by Democrats that "both measures are designed to aid Republicans by concentrating ethnic minorities into a few districts." Environmentalists joined ethnic minorities and labor unions in opposing both measures, while major corporations and the Republican National Committee poured money into the pro-118/119 campaigns. Although each side spent about three million dollars, the Democratic campaign, masterminded by Michael Berman and his partner Carl D'Agostino, proved more skillful, as voters turned down both propositions by two-to-one margins.

In three other elections with direct connections with reapportionment, however, the Republicans were more successful, setting the stage for their strategy in 1991 and beyond. First, they spearheaded an unprecedented nine million dollar campaign in 1986 to replace Chief Justice Bird, another liberal Anglo justice, and the first Latino liberal associate justice with a Republican majority on the state Supreme Court. Believing that begging for money, running commercials, and making campaign speeches were improper for jurists, Bird and her colleagues could not or would not respond to the virulent assaults on them. All three lost and were supplanted by Deukmejian appointees, most prominently the governor's former law partner, Malcolm Lucas, Central Casting's image of a chief justice, under whose aegis the California Court led the nation in affirming death penalties and voiding consumer protections. Thus, Republicans eagerly politicized the judiciary, as the Democrats' campaign against Deukmejian's commission

proposal in 1984 had warned of, because of an underlying desire to control redistricting. Second, after bashing Speaker Willie Brown for a decade, often placing a picture of Brown next to that of their Democratic opponents in Assembly contests in heavily Anglo districts, Republicans found a way to retire him: a limit of three two-year terms for every member of the Assembly and two four-year terms for the Senate. This November 1990 initiative, heavily backed by the state GOP, also ensured that no incumbent in 1991 would have much of an incentive to compromise on a reapportionment plan, since she could enjoy her seat for at most two more terms, and that no veteran legislator, except perhaps some who switched houses, would be around for the redistricting of 2001. Even if Democrats retained their majorities in the legislature in 1990, then, it would be harder to find Republicans who would compromise with them in return for safer seats. Third, Republicans fought especially hard to win the governorship in 1990, which Republican National Committee Chairman Lee Atwater called his committee's "No. 1 national goal," because, as Atwater put it, "the governorship of California has more than any other single thing to do with the national reapportionment." After spending much of the decade and many millions of dollars condemning the Democratic redistricting of 1981-82 and seeking to overturn it, Republicans gained a second veto over the state's redistricting in 1991 (the first was control of the state Supreme Court) with Pete Wilson's hard-fought victory over Dianne Feinstein in the gubernatorial race.

But was the Republican party's wrath of the 1980s exaggerated, its funds seemingly spent irrationally? Did Phil Burton singlehandedly reverse the "Reagan Revolution" of 1980, as one Republican redistricting consultant put it? My statistical analyses, detailed in other papers, echo a statement that Burton made before he died in 1983: "The most important thing you do, before anything else, is you get yourself in a position (to) draw the lines for (your own) district. Then, you draw them for all your friends before you draw anyone else's." After tailor-making very safe districts for their allies and bolstering other Democratic incumbents, Burton and Berman just did not have enough Democratic voters left to affect the partisan balance markedly. In extremely adverse years for Democratic legislative and congressional candidates, such as 1980, they might have held at most three more seats under the Burton plan, while under very favorable conditions for Democrats, such as 1982, they would probably have won more seats under the 1973 Masters' plans.

Republicans, perhaps deliberately, confused what political scientists would call "bias" with what they term "responsiveness." To get two-thirds majorities in the legislature and widespread support in the congressional delegation, the framers of the 1981-82 plans strengthened incumbents of both parties, making it more difficult for either primary or general election challengers to win. This risk-averse strategy guaranteed California Democrats more power through seniority in Congress, but cost them the ability to make large gains in seats if the political tides shifted in their favor. In a word, Phil Burton was a strategic conservative, and the Burton partisan gerrymander was largely a fiction.

### THE 1990s: REPUBLICAN MASTERY

Although Democrats in 1991 controlled the Assembly, 48-32, the Senate, 24-15 with one independent, and the congressional delegation, 26-19, the increased importance of the Voting Rights Act and the Republicans' double veto power dictated a simple Democratic strategy: conciliate minorities and make a deal with either extremist or moderate Republicans. Thus, Democrats gave major reapportionment committee and staff positions to Latinos, instructed redistricting technicians to group together nearby areas of ethnic minority concentration, and proposed three complete sets of redistricting plans. "Plan A," the Democrats' preferred districting arrangement, was offered to be bargained away or pressed in court, should negotiations break down. "Plan B," the congressional part of which was endorsed by Newt Gingrich, concentrated Republicans in seats thought to be strongly anti-abortion and anti-gun control, and was designed to appeal to right-wingers. "Plan C," in which Republican seats were created in areas that were considered pro-choice or pro-environment, was believed to be more attractive to the supposedly "moderate" Pete Wilson.

The goal of Republicans, Governor Wilson's aides announced, was a "fair" reapportionment, while the more straightforward spokesman for the Republican congressional delegation said he sought "the maximum number of Republican seats." Wilson's strategy, therefore, was even simpler than that of the Democrats: Refuse to negotiate or to let any other Republican negotiate with any Democrat, appoint a "commission" nominally balanced in partisanship, gender, and race without consulting any Democratic or minority group leader, veto all legislative plans, turn the issue over to the state Supreme Court—which Wilson aides privately referred to as "Pete's

law firm"—and suggest that the court's Special Masters use the commission's proposal as a starting point. But the governor's commission took so long to complete its plans that they lost whatever publicity value they might have had if offered in the midst of legislative consideration, and the commission's "pretty" districts so obviously reduced African-American and Latino representation, guaranteeing a likely successful suit under the Voting Rights Act, that Wilson's chief redistricting consultant had to fix up the districts in black and Latino areas before the commission's plans could be made public. Insensitive to minority vote dilution, inefficient, and, as we shall see, radically biased in favor of the Republicans, the commission's performance made the voters' rejections of commission proposals during the 1980s seem prescient.

Faintly hoping that Wilson might accept what he would not negotiate about, the Democrats despairingly passed all three of their sets of reapportionment plans, but the governor immediately vetoed every one, the 6-1 Republican state Supreme Court named as Special Masters three retired appellate judges, all of whom had been appointed by Republican governors, and they, in turn, picked Paul McKaskle as their expert, as the 1973 Masters had. This time, McKaskle's plans delighted the Republicans, promising a "Democratic disaster of major proportions," according to one pundit. Democrats noted that while McKaskle constructed many "majority-minority" districts, which generally help Republicans by concentrating highly probable Democratic voters, he made no effort, unlike the Democrats in 1981 and 1991, to draw "influence districts." Such districts, in which minorities cannot by themselves elect a candidate of choice, but where they can strongly affect the choice of the district winner, often help Democrats by focusing Democratic support on a larger, but still limited number of seats.

Between late January 1992, when the Masters' plan was ratified, in party-line votes, by the state Supreme Court and a three-judge federal panel, and the November 1992 election, Democratic registration surged more than it had in any presidential year since 1976, the California depression caused George Bush to abandon the state as hopeless by October 1, Democratic turnout swelled, and moderate Republican voters frequently abandoned "Christian right" Republican nominees, such as one who accused the U.S. Army of practicing witchcraft. In a very good year for the Democrats, they won 30 of the 52 congressional seats, 48 of the 80 in the Assembly, and controlled 22 Senate seats, with two more independent and three vacant.



Although there was only a minuscule shift in party registration percentages from 1992 to 1994, the Democratic percentage of the two-party vote in the average congressional or Assembly district in California dropped to from 57 percent to 52 percent, and Democrats held only 27 of the congressional seats, 39 in the Assembly, and 21 in the Senate.

None of these totals, however, captures what those who drew the Masters' plans should have expected to be the political outcomes of their designs when they drew them, or allows a comparison between the effects of the Masters' plan and other proposed plans. Suppose we calculate (again with methods detailed in other papers) what would have happened if the voters had behaved just as they did in November 1992, except that their patterns of registration had been those of February 1992. I concentrate on congressional elections for simplicity. Then with 57 percent of the vote, Democrats would have probably have elected only 28 members of Congress under the Masters' plan or the Governor's Commission, only 24 under a Republican plan, but 33 under the Democrats' "Plan A."

If voters had behaved as they did in 1994, but with the February 1992 registration figures, then the Masters' Plan would have given them only 22 congressional seats, the Governor's Commission, 19, the Republican plan, the same 24, and Plan A, 28. In a Democratic landslide, in other words, the Masters' Plan, at the time it was put into force, could be expected to give Democrats less than proportional representation; in a year when a Democrat in a typical district won 52 percent of the vote, the Masters' plan could be expected to award Democrats only 42 percent of the seats—less than the Republican plan. If the best test of the nonpartisanship of a plan is not the process that produced it or the posts held by its authors, then the 1991 Masters' plans were more favorable to the Republicans than the Burton "partisan gerrymander" had been toward the Democrats 10 years earlier. And the compact-looking Governor's Commission plan was even more skewed, for it would have rewarded the Republicans in 1994 with 63 percent of the seats, when they received only 48 percent of the two-party votes in the average district.

## 2001: A SPECULATION

The prevailing interpretation of the Voting Rights Act during the redistricting of the 1990s encouraged line drawers in legislatures, courts, and commissions throughout the nation to construct districts, however

unfairly they looked on maps, in which African Americans and Latinos had opportunities to elect candidates of their choice, even if voting was polarized by race. The results were the largest upsurge in minority legislators since the First Reconstruction after the Civil War and, in a more than equal and opposite reaction, a condemnation of "racial gerrymandering" by the majority on the U.S. Supreme Court. In the 1993 and 1995 decisions in *Shaw v. Reno* and *Miller v. Johnson*, a 5-4 majority of the U.S. Supreme Court decided that anyone who lived in a particular majority-minority congressional district had a right to challenge its boundaries in court whatever the district's shape, and that if the "predominant" reason for drawing it was racial, it might be declared unconstitutional and redrawn. Plaintiffs did not have to prove, as plaintiffs usually do, that they were damaged by the action of the defendants or even that they might be injured in the future, and majority-Anglo districts were seemingly immune from attack. (Courts had always largely ignored racial gerrymandering *against* blacks and Latinos, which has been going on since 1871.)

Ironically enough, on the same day that they handed down the *Miller* decision, the justices affirmed a federal district court's refusal to overturn the redistricting of California, even though the published report of the Special Masters, which was quoted extensively in the plaintiffs' briefs, openly admitted that they had first drawn the maximum number of majority-minority districts before beginning to set other boundaries. Race in other words, was admittedly the predominant reason for drawing these districts. If these directly contradictory precedents are allowed to stand, all that can be said about the extent of protection that the law will provide to ethnic minorities during the 2001 reapportionment is that it will be lawyers' feast. Should the California decision be ignored or overruled, minorities could lose half or more of their California seats, as they likely would have under the plans of the Governor's Commission in 1991. Some commentators have even suggested that any future attempts by Congress to the states to alleviate the dilution of minority votes will be ruled unconstitutional. On the other hand, if *Miller* is reversed or sidestepped, then minority representation should continue to grow as the minority percentages of California's population do.

Whatever happens to ethnic minorities, term limits are almost certain to undermine any attempt at a bipartisan compromise over redistricting in 2001. Since it seems highly probable that the Republicans will control the state Supreme Court, the only hope for avoiding a bitter partisan conflict

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will be for that party to win the governorship in 1998 and majorities in both houses of the legislature in 2000. Even if the Democrats won all three, they could expect the Republican majority on the state Supreme Court, which after all was put into place partly to guard the party during redistricting, to find some reason to unravel the legislative handiwork and substitute a plan of its own. The Democrats' experience with the "nonpartisan" plans of 1991, drawn without any consultation with Democratic legislators, members of Congress, or other officials, will discourage them from putting as much trust in judicially managed redistricting as they did in 1991.

It seems likely, therefore, that the Democrats will sponsor an initiative in 1998 or 2000 to turn redistricting over to a bipartisan commission, ironically probably something resembling the Nielsen Commission that they defeated in November 1982. In a double reverse, the Republicans will probably oppose such a commission, especially if they think that they might control majorities of both houses of the legislature after the 2000 election. Whether the commission, if it is put into effect, will be able to restore any semblance of what in retrospect seems the uncomplicated and benign world of the legislature before those 1971 rifle shots, is extremely doubtful. Perhaps the anarchy, party disloyalty, and bizarre behavior in 1995 that denied the Republicans the Speakership that they had apparently won for the first time since 1970 and corroded what was left of the once-proud Assembly's reputation was an ironic retribution for past dirty tricks perpetrated by the party of Richard Nixon.

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