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It Pays to Pay a Professional: California's Redistricting Compromise of 2002

Lara M. Brown
University of California, Los Angeles

Twenty thousand is nothing to keep your seat. I spend \$2 million every election. If my colleagues are smart, they'll pay their \$20,000 and Michael [Berman] will draw the district they can win in.

-- Congresswoman Loretta Sanchez¹

On September 27, 2001, Governor Gray Davis signed a bill, authorizing the new redistricting plan for California. It was a record – the smoothest decennial redistricting in nearly forty years. It was also something of a surprise given that the Democrats had control of both houses of the state legislature and the governor's office. Most pundits were predicting a Democratic plan would emerge and a bitter partisan battle would ensue. Instead, Democrats from the House and the state Senate hired a political consultant who negotiated a bipartisan deal to protect incumbents – Democrats and Republicans, alike. The plan passed with two-thirds majorities through both houses of the state legislature with minimal wrangling. This may have been the one time when the parties compromised and the people lost.

California now stands with virtually no competition² in its congressional delegation. Inter-party competition has been concentrated into the new seats, or the high-growth areas of the state (i.e., Fresno and the Central Valley), where it seems likely that by the time of the next census, incumbents will again be able to divide these moderately competitive districts into two or more safe seats. Intra-party competition has all but disappeared, with exceptions being made for careless incumbents (e.g., those with a scandal, poor constituency service, or diverging issue sets, etc.), and open seats. While this may be advantageous for incumbents and members of the majority party, for members of the minority party, the question lingers: why go along with a bipartisan deal, where you “lock-in” opposition majorities for years to come? Why not fight, and try to produce a partisan advantage in a future election?

This essay examines the redistricting battles in California, and suggests that politicians have become more individually

¹ “California Redistricting at a Glance,” in *The 2004 Almanac of American Politics*, web version found at: http://nationaljournal.com/pubs/almanac/2004/states/ca/ca_cong.htm last updated July 8, 2003. Washington, DC: National Journal Group Inc.

² For this paper, I examined both inter-party and intra-party competition. Competitive seats are those where the incumbent received less than 65% of the two-party vote share in the general election, or less than 65% of the one-party vote share in the primary election. Safe seats are those where the incumbent received between 65-100% of the two-party vote share in the general election, or between 65-100% of the one-party vote share in the primary election. Detailed results are discussed in a later section.

strategic since the 1970s. They are no longer party loyalists; they are independent actors working to protect their own self-interest, protecting their seat, above all else. This is why minority party members “go along” with incumbency protection plans. These incumbents have turned redistricting into what appears to be a bipartisan compromise, but is more similar to the formal game, “the tragedy of the common,” where each person’s self-interested pursuit on the common ends up collectively leaving it barren. A less responsive congressional delegation and a more entrenched set of incumbents are the results. However, this situation is not entirely without its benefits – California is fortunate to have several members in leadership positions across every Congressional committee, precisely because of their seniority.

A Bit of Background

When scholars explore gerrymandering in the U.S. House of Representatives, or the related trends that have resulted from the practice over the past thirty years (high reelection rates for incumbents, a fewer number of competitive districts, a fewer number of competitive challengers, and a greater concentration of resources), they tend to focus on two separate, but seemingly influential causal factors: the legal battles that have occurred since the U.S. Supreme Court decisions of the 1960s³ asserted the principle of one man-one vote; and the technological developments that have been associated with the information age (Mayhew, 1974; Quinn, 1988; Jacobson, 1987, 1990; Hardy and Heslop, 1990a, 1990b; Kousser, 1997, 1998). The authors describe how theoretically ending malapportionment and setting forth an implicit goal of diversity, has in practice meant

dividing up counties and cities, and drawing minority-majority districts, favoring communities of interest or various racial or ethnic groups. Many explain that while the number of ethnic and racial minorities who hold elective office has increased, it has, to a certain extent, led to an increase in the number of seats becoming non-competitive because, as Kousser explains: “Partisan and ethnic factors in California reapportionment are inseparably intertwined” (1997:139). Researchers also point to improvements in technology, like software programs that can draw districts and target voters using census tract data, as a major factor in the increase of gerrymandered, and generally, safer seats (Quinn, 1988; Hardy and Heslop, 1990a, 1990b).

While the legal and technological developments have significantly changed redistricting, I suggest that parties, politicians, and professionals play important roles as well. Technologies have made the process more precise, but scholars may be placing too much of the emphasis on machines and not enough on the men (or women) behind them. We would do well to remember the Wizard of Oz, and the fragile control he wielded over a seemingly awesome machine. Likewise, while groups will always have influence in politics, but in a state like California where there is no majority population,⁴ it may be just as important to consider how individual politicians perceive themselves as incumbents, rather than as members of a racial group, or for that matter, even as members of a political party. It is conceivable that politicians have begun relying on technology and group affiliations more because they perceive themselves to be more vulnerable in this era of arguably fewer partisan and community attachments among voters (Nie, Verba, and

³ *Baker v. Carr* (1962), *Reynolds v. Sims* (1964), and *Wesberry v. Sanders* (1964).

⁴ According to the 2000 census, every ethnic and racial group in California is now officially a minority (comprises under 50% of the total population of the state).

Petrocik, 1976; Putnam, 2000). Incumbents may be desperately looking for ties that will bind them to their constituents.

A Walk Through Time

California's history of redistricting involves a few noteworthy players. First, the late Democratic Congressman Phil Burton, who not only masterminded the bipartisan deal protecting incumbents in 1967, but also had a hand in the 1971 and 1981 plans.⁵ Next is Michael Berman, the consultant on the 2002 plan, who learned the art of redistricting as Burton's protégé. He also happens to be the brother of current Democratic Congressman Howard Berman, a former Assemblyman, who had been in line for Speaker in 1980. Third is Chief Justice Rose Bird, who had been appointed to California's Supreme Court by Governor Jerry Brown, and who frustrated the Republicans in both the 1972 and 1982 redistricting battles enough that they ran a "nine million dollar campaign in 1986 to replace" her (Kousser, 1997:148). These three players were involved in one way or another in each of the last four redistricting plans, and it is their political legacies that seem to have taught California politicians that it is better to individually bargain, than to engage in a partisan battle.

The 1967 compromise was the last "sweetheart" incumbent deal until 2002 came along. Burton managed the process, becoming the congressional "delegation's spokesman on reapportionment, the man other members would permit to draw the lines and negotiate deals; and he protected both parties...[he] later described his role as protector of the state's seniority in Congress" (Quinn, 1988:32). Burton advocated for exactly what Berman accomplished in 2002—a risk-adverse approach. Most incumbents were pleased with

his strategy, but some Republicans, especially those who were heartened by President Nixon's victory in 1968 felt they should try harder to have more seats be competitive by the time of the next census.

California was awarded five new congressional seats in 1971. The Democrats, with narrow legislative majorities in both houses, passed a partisan plan drawn up by Burton (and Berman) with an eye towards increasing ethnic and racial minority representation across the state, but Governor Ronald Reagan vetoed the legislation. The state Supreme Court adopted the congressional lines, but placed on hold the final state legislative boundaries until after the 1972 elections. Even after the Democrats gained seats in November, a compromise with the Governor could not be reached. Eventually, a "Special Masters" commission, made up of three court appointees, drew the lines, and in November of 1973, the Court approved the redistricting plan.

Still carrying a grudge against Reagan, the Democrats reacted in 1981 with another highly partisan redistricting plan. Republicans, out of fear of the Berman brothers, helped elect Willie Brown as Assembly Speaker. This did them little good when Speaker Brown put Rep. Burton and Berman to the task of drawing the redistricting plan. Governor Jerry Brown then signed the legislation, further infuriating Republicans. They challenged the plan legally, but Chief Justice Bird and the state Supreme Court ruled mostly with the Democrats. The districts were used in the 1982 elections, despite their having been rejected by the voters (Republicans had placed them on the June ballot in the form of referenda), and the Democratic majorities increased—the number of Democrats in the congressional delegation rose from 22 to 28, while the number of Republicans declined from 21 to 17. Shortly after the election, a

⁵ 1967 was California's first redistricting after the landmark Supreme Court decisions in 1962 and 1964.

bipartisan compromise that protected incumbents passed the state legislature, and

outgoing Governor Jerry Brown approved it on January 2, 1983.

Table 1: Incumbent Reelection Rates After Redistricting, 1968-2002

<i>Election Type</i>	Year	Mean Vote Share* (%)	Number of Incumbents Who Ran	Competitive† Races N (%)	Safe Races N (N Receiving 100%)
<i>General</i>	1968	67.6	36	14 (38.9)	22 (1)
<i>General</i>	1972	68.9	35	11 (31.4)	24 (1)
<i>General</i>	1982	67.4	36	15 (41.7)	21 (2)
<i>General</i>	1992	66.5	36	16 (44.4)	20 (2)
<i>General</i>	2002	69.9	49	9 (18.4)	40 (0)
<i>Primary</i>	1968	90.4	36	3 (8.3)	33 (21)
<i>Primary</i>	1972	90.4	36	4 (11.1)	32 (26)
<i>Primary</i>	1982	93.2	37	2 (5.4)	35 (28)
<i>Primary</i>	1992	79.9	38	11 (28.9)	27 (16)
<i>Primary</i>	2002	93.2	50	1 (2.0)	49 (32)

* Mean vote share is the mean percentage of the two-party vote share in the general election and the mean percentage of the one-party vote share in the primary election. It is calculated using only those incumbents' vote shares that chose to run. In other words, omitted are those who resigned or retired (i.e., received a "zero," in the dataset).

† Competitive races and safe seats are defined in footnote 2.

Sources: America Votes and CA Secretary of State's website (<http://www.ss.ca.gov/elections/elections.htm>)

By the 1992 redistricting, the Republicans were on top, holding both the governorship and a 6-1 majority on the state Supreme Court, giving Governor Pete Wilson essentially had a "double veto" power over the Democratically-controlled legislature. The Democrats passed three separate plans through the legislature, believing Wilson would negotiate on at least one because he was on public record as having discussed the importance of a "fair" plan. Instead, Wilson vetoed them all, turning the issue over to the state Supreme Court. Redistricting responsibility fell to the Republican-leaning "Special Masters," and Supreme Court ratified the plan on party-line votes in late January of 1992.

The years 1967 and 2002 were the exceptions to the rule of partisan battles. Compromises seem only to have occurred when one side was clearly in the majority and

favored "locking-in" their gains, over pursuing a strategy of increasing seats. The minority party tended to "go along" with these deals because it ensured that they would not lose further power. When the parties held different branches of government, or the majorities were slim, partisan bickering seemed to prosper. But these were the strategic calculations made by the parties. What were those for the individual incumbents?

Every incumbent (presumably) wants to be reelected, and with minimal effort. The alignment of a member's self-interest and a party's interests are likely fairly common. What was unusual about 2002 was that incumbents did not rely on their political parties (or their senior members) to express their individual self-interest. They relied on a professional. Whereas, in 1967 Burton was clearly operating in behalf of the Democratic

Party, by 2002, Berman was functioning as a hired gun. In other words, Burton worked for the Democratic Party and their incumbents, while Berman worked for those incumbents who paid him.

A Look at the Numbers

As Table 1 reveals, most of the plans appeared to have produced similar levels of competition, between 30-45% of incumbents

Table 2: Incumbent Choices and Win-Loss Records

<i>Election Type</i>	Year	Mean Vote Share* (%)	Number of Incumbents Who Ran	Competitive† Races N (%)	Safe Races N (N Receiving 100%)
<i>General</i>	1968	38	36	36	0
<i>General</i>	1972	38	35	35	0
<i>General</i>	1982	43	36	34	2
<i>General</i>	1992	45	36	35	1
<i>General</i>	2002	52	50	50	0
<i>Primary</i>	1968	38	36	36	0
<i>Primary</i>	1972	38	36	35	1
<i>Primary</i>	1982	43	37	36	1
<i>Primary</i>	1992	45	38	36	2
<i>Primary</i>	2002	52	50	49	1

Sources: America Votes and CA Secretary of State's website (<http://www.ss.ca.gov/elections/elections.htm>)

who ran in the general election had competitive races and between 5-12% of incumbents who ran in the primary election had competitive races.

The most effective plan in terms of reducing competition was 2002 – only 18% of incumbents had competitive general elections and only 2% had a competitive primary election. Simply put, it pays to pay a professional. The 1992 plan, developed at the behest of the Republicans by Special Masters, created the most competition, nearly 29% of incumbents had competitive primary races and over 44% had competitive general election campaigns.

Each year, a few members chose not to run or they lost their elections. As can be seen in Table 2, the 2002 election shows was unique: out of the 52 incumbents, 2 chose not to run, and the one member who lost in the primary election was none other than Rep. Gary Condit,

who was battling allegations of both infidelity and foul play in the Chandra Levy intern scandal.

Implications

The significant decrease in competition in 2002 has a number of implications, not the least of which involve the state of our representative democracy and the ability of the California public to express its preference at the polls. Voters are not able to affect their representation because competition is not present. Unless an individual moves to a district that places them among a like-minded majority, they are unlikely to be heard through their vote. Wrighton (2004) delves into these issues deeply in his essay, weighing the framers intent of the institutional structure of the U.S. House of Representatives with the developments of the past thirty years. These

implications are serious ones and should be further explored over the next decade as California districts may or may not grow to become competitive once again.

The flip side is that the California public is likely enjoying a number of benefits (abstract and concrete) because more than a dozen members of its congressional delegation have served in the House for over twenty years. Five Republican members hold committee chairmanships, including Rep. Bill Thomas, who is Chairman of Ways and Means, and another six Democratic members hold the first or second ranking positions for the minority on a total of twenty-one committees in Congress.⁶ There is not an important committee in Congress where Californians do not have a senior, and subsequently, powerful voice representing them.

The implications of individual members acting strategically, instead of as members of a political party whose collective benefits are weighed against those of the individual members, are troubling. While the framers initially hoped that America would survive without parties, it quickly became obvious that this was not possible – that the ends would tear against the middle, unless there were larger goals that united members. If we have come to a time when members serve only themselves, then it is quite possible that the common will be bare for many future generations.

After reviewing California's history, and given the findings that the "Special Masters" plan of 1992 seemed to increase competition, while the 2002 compromise produced the least amount of competition, it seems worthy to investigate further the possibility of more redistricting plans being done by appointed or otherwise independent commissions. Removing self-interest for both the parties and

the members may be the best answer to "unrigging" the game. Congresswoman Loretta Sanchez was correct in assessing her self-interest, "\$20,000 is cheap," but the effects of this decision on the parties, the public, and eventually on the institution of Congress may cost much more than anyone had bargained for.

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⁶ Data gathered from the U.S. House of Representatives website located at: <http://www.house.gov>.

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