Still Unequal:
The Failure of One Man-One Vote
to Achieve Fair Representation

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The promise of one man-one vote was great indeed. Of all the activist decisions of the Warren Court, the reapportionment rulings of 1962 and 1964 were among the most important. Scholars wrote at the time that the Warren Court would revolutionize representative government by insisting that Congressional and legislative districts be of equal population.

Equality of population has not happened. At the end of the first full decade of one man-one vote, disparate districts still abound, and the discrimination caused by widespread gerrymandering seems hardly less invidious than it did two decades ago. Blacks and Hispanics still win fewer districts, particularly in the South, than would be indicated by their percentage of the population, and in almost every state Republicans occupy fewer seats than would be indicated by their share of the two-party vote.

The failure of one man-one vote is a failure of the assumption on which the Warren Court based its decisions; namely, that equally populated districts were practical and that equally populated districts were the solution to the more fundamental problem of unequal representation. Years ·ago, H. L. Menchen put the case for equal population in a colorful passage: "The yokels hang on because old apportionments give them an unfair advantage. The vote of a malarious peasant on the lower Eastern Shore counts as much as the votes of twelve Baltimoreans. But that can't last. It is not only unjust and undemocratic, it is absurd."[1]

Chief Justice Warren in *Reynolds v. Sims* laid down the legal theory behind the Court's one man-one vote decision: "Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a state could elect a majority of that state's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result."[2]

Underlying the struggle for equality of population in legislative districts was the belief that equal-sized districts would eliminate the unjust over-representation of some interests and the underrepresentation of others. The National Municipal League in 1962 listed the anticipated beneficial consequences of *Baker v. Carr,* the first reapportionment decision. As a result of this decision, declared the league, "Reapportioned state governments will become more effective parts of our government machinery, unshackling of long-dormant state powers will enable urban problems to be dealt with at state capitals with less reliance on Washington; genuine state constitutional reform is now possible; and cities after decades of denials and frustrations will have the votes to secure essential home rule powers to meet local needs."[3] The reapportioned legislatures would be truly representative, and would be at once more enlightened and more vigorous.

Have these problems been met? With a record number of state legislators having been indicated in 1980 — including a House Speaker in Texas and the leaders of both houses in Washington State — one must question whether state government is better than it was and whether the people should have more faith in the men and women they have elected to the new legislatures. Urban problems are not dealt with at state capitals "with less reliance on Washington"; indeed, the exact opposite is the case. As for state constitutional reform, it is still imposed by groups outside the legislature, as it was with California's Proposition 13. Nor have cities "secured essential home-rule powers to meet local needs." Local government powers have continued drifting upward to the state level, and state powers have continued to drift to Washington, reapportionment notwithstanding.

All things considered, the words of Justice Frankfurter's dissent in *Baker v. Carr* ring prophetically: "A hypothetical claim resting on abstract assumptions is now for the first time made the basis for affording illusory relief for a particular evil, even though it foreshadows deeper and more pervasive difficulties in consequence."[4] The Supreme Court had gone from some observations about the obvious unfairness of apportionments based on something other than population ("Legislators represent people, not trees or acres," said Chief Justice Warren)[5], to a broad conclusion that structural reforms in government would automatically follow from equally populated districts. Now, in the light of the experience of nearly two decades, it seems clear that the results of one man-one vote did not match the expectations.

One man-one vote did, however, achieve two major beneficial reforms: it forced states to follow their own constitutional mandates in districting, and it put an end to the extreme "rotten borough" apportionments that had existed previously in a number of states. Justice Clark in *Baker v. Carr* noted the parade of horrors that was contemporary districting in Tennessee, the state at controversy in the case. Tennessee had not redistricted for decades, and it was in violation of its own state constitutional standards.

Similar problems existed in Congressional districting. The U.S. Constitution says Congressional districts are to be based on population. For the nearly

half-century that he was in the House, Speaker Sam Rayburn represented a tiny Congressional district in north Texas. He purposely kept it small until, by 1960, it had only 216,000 people, while the neighboring Dallas district had nearly a million residents. But Rayburn wanted no part of representing Dallas, particularly when the city's voters began electing right-wing Republicans; moreover, Rayburn used his influence to keep Dallas underrepresented. Many other examples of unfair Congressional districting could be cited, in many states. One man-one vote ended all that.

"Rotten boroughs" were a reality in many state legislatures — though not in all of them — prior to one man-one vote. A famous example was in California, where Los Angeles County, with 35 percent of the population, elected just one state senator, while three tiny counties with a combined population of only 15,000 people also elected one state senator. It was usually overlooked that the people of California regularly voted to retain this districting.[6] In Connecticut, Hartford, with 177,397 people, had two state representatives, while Colebrook, with just 592 people, also had two. In the Connecticut lower house, just 9 percent of the people could elect a majority.

Some of the so-called "rotten boroughs," however, resulted from a rational state policy, with many states patterning their legislatures on the federal system: a popularly elected house and a geographically based senate.

Most often, the states (particularly the large states) followed the federal example by electing one house on a population basis and one house on a county basis. California had gone from two population-based houses to the federal model in 1926, to protect the interests of water-rich and rural northern California against the depredations of thirsty, urbanized southern California, which was greedily eyeing the north's water resources. In Michigan, federal system was enacted in 1952 to save one house for rural and Republican Michigan to stave off encroachments from the Democratic city of Detroit. In Illinois, a 1954 constitutional amendment gave Cook County control of one house, while downstate Illinois controlled the other.

Now all these federal systems are gone, but the concerns that brought them about in the first place linger on. A major regional and political conflict is brewing over the results of the 1980 census. The figures indicate that across the nation, the inner cities have lost population. Black and Hispanic representatives are almost all from the inner cities. Presently there are seventeen black and five Hispanic Congressmen, which means that the percentages of blacks and Hispanics in the Congress are well under the percentages of these two minority groups in the national population. Almost all of the black and Hispanic incumbents, however, represent districts with declining populations, so that the dictates of one man-one vote should actually reduce minority representation in the 1980s, rather than increase it. This is not likely to settle well with blacks and Hispanics, who want more, not fewer, elected officials.

Whites have fled the inner cities, followed to some extent by minority-group members who have attained middle-class status; thus it will be more difficult to draw enough heavily black and Hispanic districts in the 1980s to

establish political equity for those two groups. One possible solution is for minority-based districts to extend into mixed neighborhoods and close-in suburbs to fill out population requirements, but this could endanger minority incumbents in primary elections and deny the suburbs their fair representation. Another possible solution is to purposely draw inner-city districts with smaller populations, as a way of recognizing the need to maintain — and increase — minority representation in Congress and the legislatures. This latter solution, however, conflicts with strict application of the one man-one vote principle.

Further complicating the problem of minority representation is the apparent undercount of population in the inner cities by the Census Bureau. The one man-one vote rulings never addressed the perplexing question of census undercounts, but many minority spokesmen, particularly Hispanics, insist that the 1980 census undercounted their neighborhoods. They may ask for variances from one man-one vote to compensate for this. But the ability of legislatures to adjust district lines to assist minority representatives is limited by one man-one vote restrictions, particularly in the drawing of Congressional districts. *Kirkpatrick v. Pressler*, the last Warren court reapportionment ruling, mandates almost exact mathematical equality in the populations of Congressional districts.

The problems faced in trying to save minority districts are indications of larger problems brought on by population shifts and by the efforts of many urban areas to retain more representation than is justified by their populations. Just as the rural interests developed a stranglehold on many legislatures before one man-one vote, so urban politicians have denied full representation to the suburbs in the years since one man-one vote through the judicious gerrymandering of suburban growth areas.

Possibly the greatest failure of one man-one vote is that it does not deter gerrymandering — not just the partisan variety of gerrymandering, but a more sophisticated form whereby entrenched politicians hold onto their seats at the expense of communities deserving greater representation. One objective of one man-one vote was to eliminate forever the rotten borough, and to reward areas of growing population with more Congressional and legislative representation. Fifteen years ago the rotten boroughs were located in the small towns and the cow counties, but now they are in the big cities which are jammed with legislative districts of steadily declining population. Politicians found in 1965 that they could not save the federal senates, but sophisticated gerrymandering since then has preserved the seats of many entrenched urban legislators often at the expense of both racial minorities and Republicans.

At the end of the 1970s, suburban communities in almost every state were underrepresented. Suburbs were either divided up for political advantage or, in several cases in the Sunbelt states, jammed together in such a way as to produce outrageously oversized districts. The responsibility for these developments can be laid at the doorsteps of both political parties.

Several Republican legislatures in 1971 divided up heavily Republican suburban areas so as to maximize their political influence. For example, the

Phoenix suburbs are presently divided among three Congressional districts, two of which wander far out into the "pinto" counties. Somewhat the same pattern was followed in Colorado, where three districts extend outward from Denver like slices of pie. In Washington State, where the courts redistricted in 1972, King County (Seattle) includes parts of five Congressional districts, but only two of these districts lie wholly within the county. Thus Seattle suburbs are represented by Congressmen from Bellingham, Olympia, and Bremerton.

Possibly the worst case in the country of suburban underrepresentation is found in Dallas-Fort Worth. In the 1960s, the Texas legislature was cited as an extreme example of rural legislative domination, with districts carefully drawn to deny full representation to urban voters, minorities, and Republicans. Fifteen years under one man-one vote has brought about surprisingly few changes. The Dallas-Fort Worth metropolitan area had almost exactly the right population in 1971 for five Congressional districts, but gerrymandering reduced the area's total Congressional representation to four seats. Large parts of both cities were placed in a long, narrow district that snakes its way through the countryside nearly to Houston, and that is predominantly a rural rather than an urban or suburban district. Other Dallas-Fort Worth suburbs were included in a rural northeast Texas seat.

Partisan considerations as well as rural interests influenced the districting of Dallas-Fort Worth in the 1970s. This metropolitan area almost always supports Republicans at the top of the ticket. In 1976, for example, Gerald Ford received nearly 55 percent of the vote in the Dallas-Fort Worth counties. In the same election, Republican Congressional candidates won 44 percent of the total Congressional vote in the districts covering Dallas and Fort Worth; yet of the six districts included wholly or partially in the metropolitan area, Republicans won only one. In 1978, with the lone G.O.P. Congressman running unopposed, Republican candidates received a larger share than the Democrats of the total Congressional vote in the six-district area, yet the Democrats again won five of the six districts.

These remarkable election results did not come about by accident. The heavily Democratic Texas Legislature drew lines, eventually approved by the courts, specifically aimed at reducing Republican electoral chances; in the process, the two growing communities of Dallas and Fort Worth were seriously underrepresented. Under current districting, Fort Worth's Republican suburbs are divided between two districts, one with a majority of its population in rural Democratic counties, the other with its majority located in downtown Dallas precincts. The fast-growing north Dallas precincts are all concentrated into the area's sole G.O.P. House district, making this district one of the most solidly Republican seats in the nation. (The north Dallas district went 72 percent for Ford in 1976.) Another district in the area swallows a few east Dallas suburbs before wandering off to the Oklahoma border. Yet another seat is entirely within Tarrant County (Fort Worth) but includes only the most Democratic parts of the county. The only seat entirely within

Dallas County extends from the black precincts of central Dallas to suburban Mesquite and Garland.

This careful apportionment denies fair representation not only to many Republicans in the two counties, but also to the local minority communities. If the Dallas black precincts were not divided among three of the districts, a black Democratic could win a Congressional seat in Dallas. There were nearly a quarter-million blacks in Dallas according to the 1970 census, and perhaps an additional 75,000 to 100,000 Hispanics — enough to dominate one Congressional district if their neighborhoods were united in one seat. But to place all these Democratic voters in one district would make two, and possibly three, of the remaining Dallas-Fort Worth seats safely Republican. In many parts of Texas, in fact, there is a strong Republican base that has been unable — due to the state's districting plan — to elect Republican candidates. In 1978, Republican Congressional candidates in Texas won 41 percent of the two-party vote, but because of the way the seats are drawn, the G.O.P. elected only 17 percent of the Congressmen.

If suburbanites lost representation in Texas because of partisan politics, suburbs in Chicago lost representation because of downright antipathy to the suburbs. Illinois is sharply divided into three political areas: downstate, which is usually though not consistently Republican, the staunchly Republican Chicago suburbs, and the solidly Democratic city of Chicago. In the 1950s, a plan was adopted to give the downstate area control of one house of the legislature and Cook County control of the other house. But within Cook County the two areas, the suburbs and Chicago, rarely see eye to eye. For more than a decade, for example, they have squabbled over the Regional Transportation Authority, which is almost as divisive an issue in Illinois as is the water politics in California.

In the 1971 redistricting, Cook County was deserving of just under half the legislative seats (each of which elects three state representatives and one senator). However, population shifts within Cook County meant that more of the Cook County districts should go to the suburbs and less to Chicago. Cook County at the time had an informal "Chinese wall" which divided the Daley-dominated Chicago from the suburbs, and it was generally agreed that no legislator could adequately represent both the city and its suburbs; therefore, no district should overlap this wall. Daley's Democrats, however, made a deal with downstate Republicans in 1971 to place 11 districts entirely within Chicago and 9 others around the periphery in such a way that they were dominated by Chicago. The suburbs, resented and distrusted by both the Daley Democrats and the downstate Republicans, were on the losing end of the deal, receiving only 10 districts to represent their interests. The "wall" was thus breached in such a way that 20 districts are Chicago-dominated, three more than the city deserves based on population. All 20 are heavily Democratic, just as the 10 suburban seats are safely Republican. In 1978, the Illinois House elections resulted in 89 Democrats and 88 Republicans winning election. Had Cook and neighboring DePage

Counties been properly divided in 1971 — i.e., to yield 17 Chicago (Democratic) seats and 13 suburban (Republican) seats — the G.O.P. probably would have won control of the Illinois House in 1978.

In California, unfair representation is a case of the old centers of political power refusing to give way to the new and growing communities. In the days before one man - one vote, San Francisco generally managed to assure itself of more representation in the popularly elected Assembly than its suburbs, even though the city lost population at every census since 1950. One man - one vote was supposed to rectify San Francisco's overrepresentation, but through several redistrictings since 1965, San Francisco has still ended up dominating more Congressional, State Senate, and Assembly districts than it is entitled to by population. In the 1971 legislative redistricting plan, for example, San Francisco received two Congressional and two Senate districts, and three Assembly districts — one Assembly seat less than it enjoyed in the 1960s, but still more than it deserved. The 1971 plan failed to survive a gubernatorial veto, and the State Supreme Court then drew up its own redistricting plan for California, to go into effect in 1973. Despite one man - one vote, the court drew a plan that gave San Francisco exactly the same number of legislators that it had had in the 1971 plan. Some observers in 1973 were bothered by the fact that the court had drawn lines to give the two Burton brothers safe Congressional districts in San Francisco — at the expense of suburban Marin County, and in defiance of the fact that San Francisco would almost certainly continue to lose population to Marin for the remainder of the decade. The city also retained its two state senators, a Republican and a Democrat, at the expense of additional representation for suburban San Mateo County, and San Francisco maintained control of three Assembly districts.

The San Francisco results of the 1970s were probably dictated by geography rather than politics, and it was no doubt necessary to divide the suburban communities in order to give any logic at all to the districting plan. The strongly entrenched politicians in the area all happened to be from San Francisco, however, and so they have dominated the new districts. This is evidence that one man - one vote can be frustrated even when there is no conscious effort to do so. Across the Bay, however, in Alameda County, another urban community has been losing population, and here the suburbs have been purposely denied additional seats.

Thirty years ago, Berkeley was a quiet college community, the fashionable Oakland hills were San Francisco's eastern suburbs, and Hayward was a factory town. But then freeways, congestion, and social strife sent suburbanites eastward across the hills and into Pleasanton, Livermore, and the residential communities of Contra Costa County. Throughout the 1960s, its major cities, Berkeley and Oakland, actually lost population.

One thing Oakland and Berkeley did not lose was their legislators. Despite a much faster growth rate in the suburbs, the ratio of Berkeley-Oakland-Hayward districts to Contra Costa-Pleasanton-Livermore districts has hardly

changed in the past two decades. The district lines first drawn by the legislature in 1971, and later by the courts in 1973, ran fingers from Berkeley-Oakland-Hayward out into the suburbs, taking in just enough population so that the districts would meet one man-one vote requirements but not enough so that the suburbs could dominate the new districts. Two Congressional, two Senate, and two Assembly districts run from the urban center out into the suburbs, and all but one of these returned urban legislators throughout the 1970s. A voter living in Lafayette or Orinda, upper-income suburban communities, was represented in Congress, in the State Senate, and in the Assembly by politicians from Berkeley, each of whom reflected the politics of Berkeley, not the suburbs.

Not only have California's suburban areas been underrepresented since one man-one vote by dispersal and division, but the suburbs have also lost additional districts through the politicians' technique of concentrating all the potential growth areas into just a few districts. Because of fast growth, a district that was of average size in 1971 might have been 50 percent oversized by 1975 and 100 percent oversized by now. The 1973 California reapportionment created several concentration districts, while leaving other districts that were bound to experience only very slow growth, or no growth at all. As a result, there was by 1980 a population difference of 340,000 persons between the largest Congressional district in California and the smallest. There is also a greater differential now in the total number of votes cast between the largest and the smallest California districts than there was in 1958[7] — and the plan followed in the 1950s had purposely varied populations between districts. Although every California district was theoretically of equal population in 1971, they were not of equal growth potential. Unfortunately, the one man-one vote principle never addressed the problem of the concentration district.

Some concentration districts are the result of geography, others of politics. Both before and after the implementation of one man-one vote, the largest districts in California were found in southern Orange County, the fastest-growing part of the state. Districts in this area tend to be socially, politically, and economically homogeneous. The only way to equalize their populations over the course of a decade is to disperse their populations, but that in itself is a form of gerrymandering and would also create districts of dubious community of interest. Orange County will almost certainly continue growing, and its districts will continue to be oversized. The concentration district, with its guarantee of rapid growth, is evidence of the impracticality of one man-one vote over the long run. Widespread disparity in Congressional district populations has existed in most of the larger states for at least the past half-dozen years.

Some concentration districts are not at all accidental. San Diego County has three Congressional districts, two of which in 1979 were estimated to be at just the state population average, and one which exceeds the average by more than a quarter of a million people. It was well known in 1971 that

northern San Diego County would grow rapidly over the coming decade, and that the populations of central and southern San Diego County would remain static. Yet when the County's district lines were drawn by the Supreme Court in 1973, all of northern San Diego County went into one district, with the result that the county's three districts now feature highly disproportionate populations.

Houston is an example of a concentration district created for political purposes. All of fast-growing west Houston, the center of Republican strength in the city, went into a single Congressional district so that Democrats could dominate the other three Houston districts. By 1978, the western district cast 156,000 votes in the race for governor; its neighbors, a central-city district and a working-class district in east Houston, cast 50,000 and 65,000 votes respectively. Estimates indicate the western district may be the size of two full Congressional districts by now.

The practice of creating concentration districts has had a nearly uniform political impact, and the losers are the Republicans. The west Houston district is perhaps the most Republican Congressional district in the United States. In 1976, it gave Gerald Ford 74 percent of the vote; meanwhile, the second largest district in Texas, the north Dallas concentration seat, gave 72 percent of its presidential vote to Ford. California's two most oversized districts went 67 percent and 59 percent for Ford. All of these areas elect solidly Republican legislative delegations, but because the communities are under-represented, they send fewer legislators to the state capitals than would otherwise be the case.

Republicans should not look to the 1981 redistricting to rectify these inequities. Of course, some additional suburban seats will be created and G.O.P. candidates will be favored to win them. But if the nationwide pattern of the 1971 redistricting is followed, suburban areas will not get as much additional representation as they deserve, and certainly nowhere near the number of seats they should control over the next decade. Republicans will continue to win fewer seats than would be indicated by their share of the two-party vote. All these results derive from the methodology used to build districts in most metropolitan areas of the United States.

Politically, urban America consists of four concentric circles. At the outer edge of the metropolitan region is a ring of high-income suburbs, which are invariably the most Republican parts of the region. In southern California, this ring would include places like Thousand Oaks, Redlands, Newport Beach. The next circle consists of politically marginal suburbs; places that were on the outer edge of development ten or twenty years ago. Towns like Ontario, Anaheim and the upper San Fernando Valley fit into this ring. Here is where elections are won or lost. Next comes a series of white working-class communities, the inner suburbs that may have been Republican a generation ago, but generally return Democratic legislators now. Places like El Monte, Lakewood and Hawthorne fit here. The innermost circle are the minority neighborhoods of the city center. This circle of communities is losing popu-

lation outwards, but many entrenched politicians depend on it for their political base. The pressures in redistricting begin with the inner circle and push outward.

When the reapportionment process begins in 1981, the first districts created will be those in the city center, where minorities will be fighting to prevent the loss of districts due to population decline. Blacks and Hispanics will try to extend their districts outward from the city center in order to increase their populations while maintaining minority dominance. Since many minorities are moving away from the ghettos and barrios and to the surrounding transitional neighborhoods, this may not be that difficult a task. Politically, it will be very difficult for legislatures to actually reduce the number of minority seats, although if strict one man – one vote standards are adhered to, some minority districts may be collapsed.

Saving the minority districts will surely involve displacing some white Congressmen and legislators, mostly Democrats with working-class constituencies. Many of these working-class districts became more Democratic over the past decade as minorities moved into them from the central cities. There will be pressure to extend these districts into the suburbs to provide seats for their entrenched incumbents. In that case, a balancing act will be required: the white Democrats do not want districts with such large minority populations that their renominations will be endangered, but at the same time, they do not want so many suburban Republicans that they will have trouble in the fall.

Most Republican legislators are found in the outer suburbs, and for the most part they will welcome an outward push for their seats. One of the notable political phenomena of the 1970s was the collapse of the Republican base in many of the nation's older suburbs. In 1970, Santa Monica and Santa Ana, California, were safely Republican; by 1980 they have been transformed into Democratic strongholds. Many Republicans holding seats that were safe when they were created in 1971, have watched their victory margins shrink as Republicans moved away and Democrats, fleeing the central cities, moved in. These Republican legislators will want to follow their voters.

Few incumbent Republicans will object to districts located far from any city center. That the G.O.P. districts may be placed in growing suburbs, and may soon become overpopulated, is largely irrelevant to the incumbents. Thus Republican and Democratic incumbents will work together in 1981 to create concentration districts — the Democrats seeing such districts as dumping places for excess Republican voters, the Republicans as places offering safe seats. At the same time, the inner suburbs may be divided up to provide enough population to save displaced white Democratic incumbents. Suburban representation will suffer and, in the long term, the interests of the Republican party. There will be fewer seats where Republicans can reasonably hope to win, although there will be a substantial number of oversized and heavily Republican districts for the benefit of G.O.P. incumbents.

Many new suburban legislators who should be elected over the next decade will never have a chance to run. Preliminary population figures indicate that Los Angeles should lose three Assembly districts, but in the past, Los Angeles districts have been stretched into the suburbs to give most incumbents safe seats. Chicago should give up five districts, two to the Cook County suburbs and three to the "collar" counties surrounding the city. Most of the older eastern cities should lose seats to their suburbs, just as the northeastern states will lose Congressional districts to the Sunbelt states.

But will the cities lose seats, or will the ideal of one man-one vote be frustrated again for the next ten years? A slavish insistence on exact mathematical equality between districts did not produce just representation in the 1970s, and it will not in the 1980s.

Fortunately, U.S. Supreme Court decisions during the 1970s give some reason to hope that districts of almost exactly equal size will not be necessary in the 1981 reapportionment. In *Gaffney v. Cummings*, the court ruled: "Minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the 14th Amendment."[8] In *Mahan v. Howell*, the court let stand a legislative districting plan with significant deviations, because the districts followed existing jurisdictional lines. Although the exact mathematical standards of the *Kirkpatrick* case still prevail for Congressional districts, these later rulings do give reason to believe that districts with some population variance can be justified as long as they advance a rational state policy.

One variance sure to be advanced is smaller inner-city districts, justified by supposed census undercounts in minority neighborhoods. Thus minorities may be given more seats than the raw numbers of the census would provide them. A more controversial but no less justified variance would allow for underpopulated districts in suburban areas where future growth potential can be adequately demonstrated. It takes little foresight to show that Houston and Dallas, or southern Orange and northern San Diego Counties, will continue to grow. To conform to the spirit of one man-one vote, such counties might be slightly overrepresented in 1981, in order to redress underrepresentation in the 1970s and to anticipate growth in the 1980s.

The politicians may frown on these variances, but there is reason to expect that the courts will find them to be rational and justified. At the very least, the courts ought to recognize that the suburbs have suffered gerrymandered representation during the era of the one man-one vote, and that truly "fair" representation depends on more than just equally populated districts. Some state reform groups have advanced objective reapportionment criteria to deter gerrymandering. In California, a state ballot proposition has written law criteria that will make it more difficult to extend districts willy-nilly beyond city and county lines.

The idea that citizens should be represented in Congress and in the legislatures with mathematically equal districts, so nobly expressed in the

reapportionment decisions of the 1960s, is not so much flawed as it is impractical. But the notion of fair and equitable representation can be met, and disticts can be drawn which will reflect the popular will over the next decade. The difficulty will be in convincing those drawing the lines in 1981 to place fairness and equity first, and to keep politics secondary, as they go about their task.

FOOTNOTES

[1]Quoted in Howard H. Hamilton, *Legislative Apportionment* (New York: Harper and Row, 1964), p. 97.

[2]*Reynolds v. Sims*, 377 U.S. 533 (1964).

[3]"Consequences of Decision," *National Civic Review*, October 1962, p. 481.

[4]*Baker v. Carr*, 369 U.S. 186 (1962), Justice Frankfurter dissent.

[5]*Reynolds v. Sims*, 377 U.S. 533 (1964).

[6]California's federally based State Senate was challenged by initiatives in 1928, 1948, 1960, and 1962. Each time, the electorate voted to retain the system.

[7]In 1958, the most votes were cast in Congressional District 25, 269,415; the least in CD 5, 99,191, a differential of 2.7 to 1. In 1978, the most votes were cast in CD 43, 243,458; the least in CD 25, 68,086. The differential was 3.5 to 1.

[8]*Gaffney v. Cummings*, 412 U.S. 735 (1973).