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The Best of Intentions: California's Legislative Redistricting and Adventures in Direct Democracy

Early 20th century Progressives vanquished the powerful railroad companies that dominated California in the 19th century, but their more profound legacy was promoting the idea that the state could be a laboratory for good government. Citizens would make political decisions through “direct democracy”—ballot initiatives that would allow voters to propose their own laws and bypass the legislature altogether. Direct democracy would be the antidote to robber barons and the grubby machine politics that dominated East Coast cities at the time.

Californians have placed great faith in direct democracy ever since, and their latest earnest experiment comes in the form of the Citizens Redistricting Commission. Under rules the state’s voters approved in 2008 and 2010 ballot initiatives, fourteen essentially anonymous members of the public will now do something that only the state’s most powerful politicians could do in the past: draw the districts that determine how California’s 37 million residents will be represented in Sacramento and Washington DC. Four other states have citizen commission input in the redistricting process, but none have as much power as California’s commission, which bypasses the governor and legislature when it draws the maps. It’s the highest-stakes redistricting experiment in American political history and will affect every aspect of public policy in the largest state in the country—highway funds, Medicare funds and the fate of future state budgets.

According to the plan California voters approved, the redistricting commission includes five registered Democrats, five registered Republicans and four voters who aren’t registered with either party. (A frequent objection to the panel is that it was designed so that the two major parties have equal representation, even though registered Democrats outnumber registered Republicans by close to a three-to-two margin in California.) The Commission, which started work on January 1, sounds more like the cast of a sitcom than a group of backroom pols: a stay-at-home mom from Stockton, a chiropractor from Orange County, a rancher from Yolo County, and 11 others from all walks of California life.

The Citizens Redistricting Commission and other ballot initiatives have led to a parallel political process in California that circumvents the elected legislature. Rather than relying on elected representatives to work through legislative compromises that balance different interests, the initiative process allows well-funded factions and cagey political consultants to introduce their own proposals directly to the electorate. More often than not, this approach rips policy questions entirely out of their context. Virtually all voters want to spend more money on schools and parks, and are happy to approve ballot measures that promise to do just that. But those same initiatives often take money away from other worthy programs or rely on budgetary assumptions that may not hold during economic downturns.

In addition, the ballot initiative process often requires voters to make binding decisions about public policies they know virtually nothing about—everything from cloning stem

cells to regulating air pollution to agreements with Native American tribes. Sensitive public policy issues like these often benefit from fine-tuning by experts with PhDs or law degrees, but the initiative process allows some of the most interested players to draw up their dream proposals and then see if Californians will approve them after a chaotic media blitz in the weeks before an election.

One result of this many-cooks-in-the-stew approach to governance is that voters can seem to send mixed signals through the initiative process. Conservatives have limited the legislature's power on tax issues—most notably, by persuading voters in 1978 to pass Proposition 13, which dramatically slashed property taxes. Liberals, meanwhile, have convinced Californians to set aside funding for popular social programs, like Proposition 98's guarantee that a substantial percent of the state's annual budget go to public schools.

This ballot-box budgeting makes it difficult for legislators to resolve the contradictions that emerge through California's ballot initiatives, where voters say they want a lot of government programs but don't particularly want to pay for them. And Californians show few signs of changing their mind about direct democracy and trusting "professional politicians." In 2003, they went so far as to remove Governor Gray Davis in the middle of his term and replace him with a movie action hero. The cult of the political amateur often takes hold, where everyone can be an expert through the ballot initiative process.

In a state where voters have weighed in on ballot initiatives specifying how car insurance companies should set rates and how farmers should treat their chickens, it's perhaps no surprise that voters also agreed to a Byzantine process to select the Citizens Redistricting Commission. It began in 2009, when California's State Auditor chose the 140 most-qualified finalists from the 30,000 Californians who applied to be redistricting commissioners. Fourteen final commissioners were then selected from the 140 finalists through a random drawing and subsequent readjustment to account for geographic and political diversity. Care was taken to create a commission that represents all Californians. Commissioners are white and black, Hispanic and Asian. They hail from large cities like San Diego and San Francisco, as well as small towns like Capitola and Santa Paula. Some have annual incomes in excess of \$250,000; others make less than \$75,000 per year.

Candidates usually tout their political experience when running for office, but redistricting commission candidates instead had to demonstrate their lack of experience in the state's political process. Rules specifically prohibit the panel from including anyone who has run for legislature, worked for a state legislator, donated \$2,000 or more to a candidate, or been a lobbyist. Ultimately, the commission is designed to enlist Californians who have somehow preserved their political purity. No one who has regularly rubbed elbows with Diane Feinstein or Arnold Schwarzenegger will be allowed anywhere near the redistricting maps.

At a redistricting commission meeting at the State Capitol in February, the comity that Americans often say they want from their representatives prevailed. Republican and Democratic commissioners sat next to each other and smiled politely. No one accused

fellow commissioners of destroying California's democracy—at least not yet. Everything about the new citizen commission comports with the highest standards of transparency, right down to the live Internet broadcasts of all proceedings. These televised deliberations about the Voting Rights Act, Fresno County's demography, and California voter registration databases constitute one of the strangest—and least watched—reality TV programs out there.

When members of the public spoke at the hearing, the transparency-obsessed commissioners went out of their way to disclose all contacts they've had with the person, even if it was nodding hello in the elevator. ("I think I may have spoken to Eugene Lee before, but it's been many years," Commissioner Angelo Anchetta earnestly confessed at one point.) Commissioners made respectful comments to the public, as when Michelle DiGullio thanked the League of Women Voters' Trudy Schafer for her remarks on efforts to teach voters more about redistricting.

"Thank you, Ms. Schafer. As you've often been one of the few people in our audience, I've always appreciated you being there," DiGullio said, as other commissioners laughed.

This is a far cry from California's recent redistricting efforts and their attendant political lore. In the early 1980s, then-Congressman Phillip Burton, the legendary Democratic powerbroker, famously sketched preliminary legislative districts on a cocktail napkin. The results of his handiwork, which Burton described as his "contribution to modern art," eventually ended up in court. Republican Governor Pete Wilson deliberately derailed the Democratic legislature's redistricting maps in the 1990s, his critics contend, so that it *would* end up in court—meaning Republican-appointed California Supreme Court judges would intervene.

By 2002, California Democrats and Republicans called a redistricting truce of sorts, with Democrats in the majority agreeing to protect Republican incumbents rather than allowing things to get messy by pushing for bigger gains. This kind of political calculation has informed every aspect of redistricting in the past. For instance, when legislative leaders had the power to redraw districts, they used it as one more lever for party discipline. Just as a long-term Assembly Speaker like Willie Brown could offer plum committee appointments to Democrats who helped him pass budgets, he could just as easily turn around and draw districts designed to punish Democrats who wouldn't play ball.

Now the map drawing takes place in plain view of anyone who wants to watch. In the early months, this has translated into the relatively tame spectacle of fourteen commissioners sitting around a table, often at a hearing room in the State Capitol, talking to the few members of the public who show up at meetings. Once the commission comes up with actual maps this summer—maps that cleave neighborhoods, separate representatives from the voters they've relied on for re-election, and establish even the hint of a partisan advantage—these public meetings will suddenly be anything but tame.

The redistricting commission is inching closer to that point where they will draw real lines with real-life consequences. With the release of the 2010 census results in March, the commission now has actual numbers to work with and is evaluating recent changes in the state's demographic landscape. Heavily Democratic population centers like Oakland and Long Beach have shrunk or stayed the same size since 2000, and will lose clout in Sacramento and Washington. The population in Republican-trending areas like Riverside and San Bernardino Counties, meanwhile, has grown by double-digit percentages, and will command a larger share of California's representation.

To account for these changes, the redistricting commissioners will need to demonstrate mathematical precision, geographic dexterity, and a Solomonic sense of political fairness. Under California's Census results, each of the state's 53 Congressional districts should encompass 702,904 residents. The state's most dramatic "rotten boroughs" are in Southern California. With growth in Riverside County, Republican Mary Bono Mack's 45th Congressional district now contains 914,209 residents. Democratic Congressman Xavier Becerra's 31st Congressional district in Los Angeles County, on the other hand, now contains only 611,366 residents. Bono Mack's district needs to shrink and Becerra's needs to grow, or else the cherished democratic principle of one man, one vote will no longer apply in California.

The simplest solution would be to change district maps so that some of Bono Mack's constituents transfer into Becerra's district, but there's no simple solution when it comes to redistricting. Becerra and Bono Mack's districts don't border each other, and it would be difficult (if not geographically impossible) to link voters in Palm Springs with voters in Los Angeles 100 miles away. Three Congressional districts lie between Becerra and Bono Mack's districts, and any attempt to redraw the boundaries will set a process of dominoes falling all across the map. Long-term Southern California Congressional incumbents like Howard Berman could suddenly have to introduce themselves to a new set of constituents and face more difficult races for re-election in 2012.

When California legislators from the majority party drew districts in the past, the boundaries fell predictably along party lines. Democrats drew friendly districts that accentuated strongholds in Alameda and Los Angeles Counties, while Republicans protected bastions in San Diego and Orange Counties. As a result, people in the same town might not be in the same Congressional district, even when they live directly across the street from one another. Yet the craftiest partisan operative must still abide by some redistricting rules. In 1962, the U.S. Supreme Court ruled in *Baker v. Carr* that federal courts are allowed to review redistricting efforts for constitutional violations. The 1964 *Reynolds v. Sims* case ordered that state legislature districts be roughly equal in size. And the 1965 federal Voting Rights Act offered more protections, stipulating that states could not dilute minority voters' influence through creative redistricting. Under the VRA, any group of voters that feels disenfranchised by a new map can bring their case to court.

With all of these rules, a few of California's more peculiarly shaped Congressional districts in each redistricting cycle become political Rorschach tests—their implausible boundaries suggesting political opponents' nefariousness. For Northern California

conservatives, the offending district from 2001 was Congressional District 11. In that case, Democrats drew a district that diluted conservative constituencies in San Joaquin Valley cities like Lodi and Tracy by attaching them to Bay Area suburbs like Danville and Pleasanton, where Democrats are more competitive. Not coincidentally, District 11 is the only Congressional seat where a California incumbent lost an election in the last decade, as Democrat Jerry McNerney unseated conservative Republican Richard Pombo there in 2008. One of the major arguments for the new redistricting system is that citizen commissioners will be much more likely to draw competitive districts than politicians who want to protect their partisan allies.

And California's Republicans, who've faced political extinction in recent years, have placed perhaps the greatest hope in the redistricting process. It's hard to fathom at a time when Democrats count on California to remain in the blue-state column in every election, but moderate Republicans from Earl Warren to Pete Wilson held power in Sacramento through much of the 20th century. Republicans hope that district maps drawn by someone other than Democratic leaders will enable them to become more competitive in the state. Arnold Schwarzenegger is the only Republican to have any statewide political success in California in the last decade. And Schwarzenegger, the beneficiary of a recall election that bypassed the traditional party system, hardly took the conventional Republican path to power.

Instead, Republican moderates have watched in vain as centrists like Tom Campbell have lost in recent years to more ideological figures like Carly Fiorina in primaries that only excite the party's conservative base. Any hope to use the redistricting process to build Republican strength in the state, however, runs into one significant obstacle. Republicans, like Democrats, tend to clump together in like-minded communities. There just aren't enough Republicans living in an even distribution throughout the state to make more districts competitive. Absent a major Republican relocation program that has conservatives moving from Riverside County (where they comfortably hold sway) to a place like Fresno County (where they could tip the scales in a Republican direction), redrawing the district maps will only accomplish so much.

That hasn't stopped moderate Republicans from trying. As governor, Schwarzenegger supported several different redistricting ballot initiatives as part of his effort to create a "post-partisan" California. Democrats in the state legislature opposed changes to the redistricting system they controlled, but party leaders like Fabian Nunez and Don Perata became less concerned about redistricting reform (and less effective in stopping it) once Californians voted in 2008 to keep legislative term limits in place. If Perata and Nunez couldn't stay in office, redistricting wasn't their problem.

California voters in 2005 rejected Schwarzenegger's redistricting proposal, which would have required Democratic and Republican legislative leaders to hand redistricting over to a panel of three retired judges. Schwarzenegger preferred that arrangement, because it would have meant Republican legislative leaders could ensure that at least one judge on the panel would be a Republican appointee.

After that defeat, Schwarzenegger worked with good-government groups like the League of Women Voters and AARP to promote the current 14-member Citizens Redistricting Panel, which voters approved in 2008 and expanded in 2010 to include Congressional districts. With that victory, Republicans succeeded in removing redistricting from the Democrats who have dominated the legislature in recent decades. Still, it's unclear that a citizen redistricting panel system—even with a disproportionate number of Republicans serving on it—will create districts that benefit the moderate Republicans that Schwarzenegger originally intended to help.

Yet committed Republicans are still showing up at redistricting hearings. On a day when Tea Party members were outside the Capitol rallying against public sector unions, self-proclaimed Tea Party member Carol Heymeyer came into the redistricting hearing to complain that the commission has not done enough to publicize its efforts—effectively shutting Republicans out of the process, she argued.

“None of us knew about this session—none of us,” said Heymeyer, an active participant in Contra Costa tax groups. “I have people constantly asking me, ‘Is there a redistricting committee? What’s going on?’”

Redistricting meetings have drawn interest from other organizations as well, such as the Mexican-American Legal Defense Fund and Asian Pacific American Legal Center. These groups have politically sensitive antennae and await the release of decennial census numbers with the glee of a five-year-old on Christmas Eve. Without prompting, they can talk about topics like the growth of the Latino population in Monterrey County since 1980. But if California’s most politically engaged individuals are the only ones really watching the redistricting, it’s not clear how nonpartisan the process will ultimately be.

Since California’s new redistricting commissioners have never drawn the state’s district maps before, they face considerable obstacles. Four commissioners hold law degrees, and several work as professional data analysts, but the arcane rules of redistricting mean experts must review commission’s efforts at every turn. It’s a major challenge facing proponents of pure, apolitical redistricting: if commissioners were insulated from previous partisan-driven redistricting efforts, must they reinvent the redistricting process entirely? That’s not possible, and probably not desirable, and it’s wise for them to turn to election lawyers and data managers for advice. But in introducing these specialists to the redistricting chambers, are the commissioners introducing partisanship by the back door?

That concern emerged powerfully in March, when members of the public showed up to a meeting to register complaints about the redistricting commission’s choice of technical advisors. Republican leaders like state party chairman Ron Nehring expressed displeasure about the commission’s consideration of the electoral data management firm Q2, which was established by Bruce Cain, a UC Berkeley political science professor who supervised California’s 1981 redistricting when he worked for Democratic legislators. Public sector union members, meanwhile, warned the commission against hiring the Rose Institute for Redistricting Reform, which these groups saw as unduly sympathetic to Republican causes.

Both Q2 and the Rose Institute attempted to assure the committee that their organizations' line drawers were nonpartisan figures that were protected from political pressure. Q2's Karin MacDonald pointed out that California's State Legislature created her firm through a bipartisan vote and that she and her staff are registered as decline-to-state voters. The Rose Institute's principal investigator Doug Johnson described himself as an academic who happens to be registered with the Republican Party.

So all of the sudden, there was a whiff of partisan witch hunting at a commission that prides itself on being above suspicion—the veritable wife of Caesar in a town full of Sacramento politicians. David Salaverry, a Berkeley Republican, claimed that the Q2/Rose Institute issue proved that the commission he'd hoped would be apolitical was nothing of the sort.

“As a conservative, as a Republican, what I want is a fair fight,” Salaverry said. “I’m afraid that we’re not going to get that. I’m here because I’m really concerned that the institutional left, with its powerful entrenched alphabet groups, will end up gerrymandering California all over again, by driving a freight train through this Commission.

Not surprisingly, public sector union representatives at the meeting took exception to Salaverry's characterization. Joshua Golka of the California School Employees Association said he was “not a freight train conductor” out to ride roughshod through the commission. He said he “represented roughly 200,000 school bus drivers, custodians, food service workers, and other employees that work in our schools. They look a lot like California looks, and they are concerned about this process.”

The commission ultimately selected Q2 over the Rose Institute, disqualifying Rose due to its lack of transparency regarding donors. California Republicans cried foul, and it probably didn't help that the commissioners' final vote against Rose fell roughly along party lines, with the Decline to State commissioners aligning with Democratic commissioners.

By late May or early June, the commission plans to have maps ready to share with the public. After a period of public comment—where the commission will consult voters in a tour around the state—the commission is scheduled to approve final maps on August 15. Approval requires “yes” votes from at least three Democratic commissioners, three Republican commissioners and three nonpartisan commissioners. This scenario means as few as two nonpartisan (or three partisan) commissioners from the board of 14 could scupper any plan they don't like. And no matter how hard the commissioners try to find a compromise palatable to everyone, California citizens who feel the new maps discriminate on the basis of geography, race or other classification can sue. In all likelihood, someone will.

The dispute about the redistricting commission's technical advisor will not be the last argument over whether or not this apolitical redistricting board is all that apolitical. A

week after the Q2/Rose Institute flap, the commission decided against enlisting the election law services of Nielsen Merksamer, a Sacramento-based law group, on the basis that it is a “lobbying firm.” (It also has well-known ties to Republicans). The commission chose Gibson, Dunn & Crutcher instead, only to backtrack when they learned that Gibson was also a “lobbying firm” whose lawyers had given campaign money to more Democrats than Republicans, by a 3 to 1 margin.

Ultimately, the new Redistricting Commission shows that Californians still believe they can do a better job than the politicians they elect to run the state, and that partisanship corrodes good governance at the state level. But even under this new citizen-driven redistricting system, partisanship seems to lurk around every corner. The commission’s choice of technical advisors drew scrutiny for possible partisan motives. Their choice of lawyers drew a similar reaction. It’s hard to see how the final redistricting maps they draw in August will elicit a different response.

Yet, there’s always been the temptation to think the map of California is infinitely malleable, since California began as an act of imagination before it was ever a territory on a map. The idea of California made its first appearance in Garci Rodríguez de Montalvo’s *Las Sergas de Esplandián*, a 16th-century Spanish romance novel about Amazons. These women lived on an island full of natural wonders, located somewhere between the East Indies and the Garden of Eden. It was named California after its Queen Calafia, a leader who tamed monstrous flying animals into a fighting force and set her eyes on conquest.

In the 1530s, Spanish explorers discovered a land of remarkable abundance between the Pacific and the Sierras. It reminded them of the fevered dreams from Rodríguez de Montalvo’s novel, and so they christened it “California.” The discovery of gold in the Sierras only seemed to confirm the notion of the region’s special potential. When California entered the United States in 1850, it came with a temptation that gold would bring a future that defied all expectations. That temptation still has a powerful influence on California politics, where voters like direct democracy and making up their own rules as they go along.