BACKGROUND OF THE CONSTITUTIONAL CONVENTION

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I. THE EMERGENCE OF LEGISLATIVE MALAPPORTIONMENT

This constitutional convention has been summoned for the purpose of reconstituting the New Jersey State Legislature in order to rectify legislative malapportionment. Legislative malapportionment refers generally to the extent to which the apportionment of representatives of a state legislative body differs from the distribution of population throughout the state. The experience of New Jersey in connection with legislative representation, and particularly the emergence of legislative malapportionment, is an experience shared in common with most states throughout the country.

The problem of legislative malapportionment, as it presently exists throughout the country and in New Jersey, is attributable to a combination of factors. Historically the legislatures of many states were constituted on bases which disregarded population completely. In almost two-thirds of the states there were significant restrictions preventing apportionment on population standards in one or both chambers of their legislatures. Thus, in such states, it was by design that the apportionment of representatives in the state legislature would not reflect population.

The discrepancies between population and legislative apportion-
ment, however, were accentuated by massive shifts of population
which, from the turn of the 19th century, have become more
accelerated and pronounced. These population changes were
especially marked by the influx of peoples in the cities and
urban centers and the loss of population in the rural areas.
Even in states where the legislatures were presumably based upon
population standards, the distortions between the apportionment
of legislative representatives and population were compounded
by the failure of such states to reapportion their legislatures
in accordance with their own constitutions.

New Jersey falls within this pattern. The New Jersey
Constitution was one which imposed a significant restriction
on popular apportionment in one of its chambers, namely, the
Senate. Historically, apportionment in the New Jersey Senate
was based upon counties, not population. N.J. Const. (1947),
Art. IV, Sec. II, par. 1. The New Jersey Assembly, in contrast,
reflects population standards by distributing a total of sixty
representatives among the several counties as nearly as may be
in accordance with their inhabitants, but assuring to each
county at least one representative. N.J. Const. (1947),

Art. IV, Sec. II, par. 1. With the expansion and changes of population within the State over the years, New Jersey experienced wide disparities in the apportionment of the Legislature. In the Senate, for example, by 1960 there was a population deviation between the most populous and least populous counties of 19 to 1; and in the Assembly the distortions, while not as significant, nevertheless resulted in a population difference between the smallest and largest single-member constituency of approximately 3 to 1.

With respect to the General Assembly, the New Jersey Constitution provided explicitly for periodic apportionment in accordance with population standards, subject to the limitations as to the total size of the Assembly and the assignment of one member per county. There had not, however, been adherence to this constitutional command. On June 6, 1960, the New Jersey Supreme Court pointed out clearly the constitutional obligation on the part of the Legislature to accomplish reapportionment of the Assembly, Asbury Park Press, Inc. v. Wooley, 33 N.J. 1 (1960). The New Jersey Legislature did thereafter reapportion the Assembly, and its plan of reapportionment was sustained. In re Application of Lamb, 67 N.J. Super. 39 (App. Div. 1961).

It had long been accepted, however, that the states were free of any federal constitutional restrictions in connection with the apportionment of their legislatures in accordance with population. In 1946 the Supreme Court of the United States, in Colgrove v. Green, 328 U.S. 549 (1946), suggested that federal courts should not enter the "political thicket" of state legislative representation. In 1962, however, with the inequities of legislative malapportionment becoming more pronounced, the United States Supreme Court in Baker v. Carr, 369 U.S. 186 (1962) held that the claim of impairment of the right to exercise one's political franchise because of legislative malapportionment was justiciable, that is, federal courts could and must decide the challenge by qualified voters who claimed on federal constitutional grounds the infringement of their right of franchise.

Baker v. Carr was the true beginning. Although the High Court there decided only that there was judicial power to adjudicate claims stemming from state legislative malapportionment, a little more than two years later the Court began to chart the pattern for fair apportionment. In Gray v. Sanders, 372 U.S. 368 (1963), the Court determined that there must be

equality of voter representation in elections for state-wide office. In <u>Wesberry v. Sanders</u>, 376 U.S. 1 (1964), the Court required population equality "as nearly as practicable" among each of the state's congressional districts.

II. THE REAPPORTIONMENT CASES

These beginnings culminated in the Reapportionment Cases, determined by the United States Supreme Court on June 15, 1964 and followed by seven additional per curiam dispositions on June 22, 1964. The net effect of these decisions, of which <u>Reynolds v. Sims</u>, 377 U.S. 553 (1964) is the primary case, was the invalidation of the legislative apportionment systems theretofore prevailing in Alabama, Colorado, New York, Maryland, Virginia, Delaware, Illinois, Washington, Florida, Idaho, Connecticut, Michigan, Ohio and Oklahoma.

The essential holding, as expressed by the Court in <u>Reynolds v. Sims</u>, was that "seats in both houses of a bicameral state legislature must be apportioned on a population basis." A state, the Court said, must "make an honest and good faith effort to construct districts, in both houses of its legis-lature, as nearly of equal population as is practicable."

Of continuing significance were the Court's views

concerning the remedies for legislative malapportionment. It was emphasized that state legislatures "presumably" have the "inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions . . . which comport with federal constitutional requirements." It was recognized, however, that "courts should be cognizant of state constitutional strictures and should attempt to mold reapportionment to the provisions of the state's constitution, insofar as possible."

These guidelines, basically broad and flexible, thrust responsibility for rectifying legislative malapportionment upon the states. The Court, in effect, confirmed in each state the initial power to evolve the proper approach for state legislative representation consistent with federal constitutional standards, but in a manner which would be responsive to local circumstances and traditions.

III. THE NEW JERSEY CASES

The New Jersey case, Jackman v. Bodine, 43 N.J. 453 (1964), involved an attack, essentially on federal constitutional grounds, against the apportionment of both houses of the New Jersey Legislature. The complaint had been filed before the United States Supreme Court reapportionment decisions. The New Jersey Supreme Court initially

deferred a decision on the merits until the reapportionment cases pending before the United States Supreme Court were concluded. After Reynolds v. Sims and the companion cases were decided, the New Jersey Supreme Court rescheduled argument in Jackman v. Bodine and rendered its decision. It held explicitly that the apportionment basis of the Senate "is indifferent to population" and that it "is perfectly plain" that the Senate is malapportioned. Without determining specifically whether or not the Assembly was malapportioned, the Court concluded that "if one house is malapportioned, the deficiency vitiates the entire legislative structure."

With respect to judicial relief, the Court felt that it was unnecessary to explore the "abstract question" whether a malapportioned legislature can exercise legislative functions. "The answer is provided abruptly by sheer necessity. . . . The answer must be that the legislators will continue in office with the powers of their branch of government, subject, however, to the duty of the State to bring the legislative branch into harmony with the Federal Constitution with diligence." The Court rejected judicial initiative for devising a legislative plan "except as a last resort." Based upon the federal guidelines, it concluded that reapportionment must be accomplished to accommodate the next general election in November 1965 and that, "as a practical matter the Legislature must be held to have the power to legislate an interim solution in time for that election."

The basic decision declaring the New Jersey Legislature unconstitutionally apportioned was rendered on November 25, 1964. Foreshadowing this decision, the Senate on November 16, 1964, had adopted a resolution calling for a weighted voting procedure for the passage of legislation in the Senate. On a motion attacking the validity of this proposal, the New Jersey Supreme Court held that the resolution of the Senate was a "nullity" because "the vote necessary for the adoption of legislation may not be fixed by an internal rule or regulation of one branch of the Legislature."

Thereafter, a further application was made by the President of the Senate for a modification of the Court's original judgment requiring temporary apportionment for the November 1965 election. The application sought judicial permission to conduct the election under the existing constitutional apportionment scheme because there were "plans, still tentative, for the calling of a Constitutional Convention." The application was rejected. The Court noted that it would be "the unusual case" in which a delay of proper reapportionment could be justified. With respect to both the responsibility and the timetable for temporary legislative reapportionment, the Court refused to intercede or to relieve the legislature of its obligation because it was not convinced that the houses of the New Jersey Legislature were in fact hopelessly deadlocked on devising a plan for interim apportionment.

Legislative and executive efforts were then concentrated on the passage of a plan for temporary apportionment. A temporary plan was enacted on April 12, 1965 and upheld by the New Jersey court on April 23, 1965. The temporary plan, The Interim Legislative District and Apportionment Act of 1965, L. 1965, c. 19, actually provided only for a reapportionment of the Senate. The New Jersey court implied that there could be greater flexibility and tolerance in adjudging the constitutional sufficiency of an interim or transitional apportionment measure (Jackman v. Bodine, 44 N.J. 414, 417-418 (1965)).

In the initial decision of Jackman v. Bodine, the New Jersey Supreme Court also concerned itself with the proper method for achieving a plan for permanent reapportionment on the constitutional level. It considered the question as to whether such constitutional change could be accomplished only by the people acting through a constitutional convention or by the proposal of constitutional amendments by the Legislature for ratification by the people. It expressed the opinion that the constitutional convention method would unquestionably be valid but left open the question as to whether this mode was exclusive in view of the nature of the subject of legislative reapportionment. Originally, the Court scheduled further argument of this proposition on April 1, 1965, unless prior thereto the Legislature initiated steps for the

call of a constitutional convention. In the Court's later decision
confirming the Interim Legislative District and Apportionment Act
of 1965, the so-called temporary apportionment plan, the Court
reemphasized its original enjoinder that the proper mode for achieving
permanent apportionment on a constitutional level be timely resolved.
Accordingly, it required further argument on the question whether
there must be a constitutional convention for permanent apportion-
ment unless, prior to such argument, a statute were enacted providing
for such a convention. The Legislature was responsive to this
judicial admonition. In advance of further proceedings before the
Court there was enacted on May 10, 1965 the statute providing for
this constitutional convention to consider revisions of the
Legislative Article of the New Jersey Constitution in order to
provide for the apportionment of the New Jersey Legislature.

SINGLE-MEMBER v. MULTI-MEMBER DISTRICTS

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The strident complaints of "people not acres" that were heard in legislative halls during the last two decades were substantially stilled by the "one man - one vote" principle, popularly attributable to the landmark decision of Reynolds v. Sims, 377 U.S. 533 (1964). What Reynolds v. Sims actually held, however, is that the equal protection clause of the Federal constitution requires that seats in both houses of bicameral state legislatures be apportioned substantially on a population basis.

An important facet of any discussion of how this apportionment should be accomplished is whether such apportioned districts should be single-member or multi-member entities. There seems to be no question of the legality of either type of district. In Reynolds itself, Chief Justice Warren indicated, in dicta admittedly, that both types of districts could meet the constitutional requirement:

> "One body could be composed of single-member districts while the other could have at least some multimember districts. (At page 577)....
> Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multi-member or floterial districts." (At page 579)

Again, in Fortson v. Dorsey, 379 U.S. 433 (1965), the same principle was confirmed by the court by a recitation of the above quote from Reynolds, and as late as March 1, 1966, the issue was laid to rest in Harrison v. Schaefer (Docket No. 854, 1966 Term), which affirmed a ruling by the United States District Court for the District of Wyoming that the reapportionment of Wyoming's upper house on a population basis did not require the sub-district-

ing of multi-member districts. On the same date, in Crawford County v. Faubus and Alexander v. Faubus (Docket No. 941-942), the Supreme Court affirmed a ruling of the Arkansas District Court that the 14th amendment is satisfied by a plan that divides Arkansas into 44 lower house districts and 25 upper house districts, some of which districts of both types contain one county, some of which are represented by more than one member, but none of which varies by more than 15% of the ideal population per representative ratio.

Legally it would seem, that in the creation of districts in a search for true constitutional approtionment, one is not limited to districts represented by single members, but rather those with multi-members can be considered, provided that voter equality is maintained.

ADVANTAGES AND DISADVANTAGES

There is no easy or simple solution as to whether a single-member or multi-member district should be used. The issue is again one of those that have their basis in political practicality and cannot be easily resolved in a vacuum. Consideration must be given to many factors, none the least of which are the geographic, economic and political conditions that exist in any state. Perhaps the most cogent and yet the most simple method of placing this question in its proper perspective in the over-all scheme of reapportionment is by stating the accepted pros and cons that have been advanced by the political scientists in the never-ending discussion that goes on with respect to the practicality of each type of district. It must be remembered that these so-called pros and cons are, in

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essence, merely the basically unproven hypothetical arguments which are raised by the defenders of the two essentially different concepts.

It is said that the single-member district encourages excessive provincialism since its constituency is usually small, and the interests in the district are considerably less diverse. A representative of such a district is, therefore, forced to maintain a viewpoint that is focalized on his comparatively small district, and because of the essentially provincial problems of his small district is more conscious of local issues at the expense of the larger community. It follows naturally that he is more susceptible to local pressure groups that by virtue of their size may comprise a majority in a small district and may be a very small minority in the state at large. This, of course, must be counterbalanced by the fact that the minority groups themselves must be considered and can be more effective politically in the small single-member district.

In a multi-member district, minority voting strength can be effectively dulled by the over-all interest of the community, section or even county that would comprise such a district. There is considerable force for the argument, however, that in a multi-member district any strong minority group can influence all the members of a district, which condition might, in the long run, be better for the minority than merely having the provincial allegiance of a single representative in a comparatively small district.

It is alleged that the single-member district, because of its comparative size, produces less able candidates than the multi-member district, the choice of candidates being limited by the very

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size of the district, and since the multi-member district serves a larger constituency, candidates need to be more sophisticated in order to be able to grasp the over-all problems of a larger district.

In fairness, however, to single-member districts, voters in such districts usually have greater personal contact with their representatives, and so the legislator oftentimes reflects more directly the views of his constituents. But, we are advised that in single-member districts it is often that the emphasis rests solely on the personality of candidates rather than upon issues, and all too often, the candidates in single-member districts reflect basically the same views, that is, the views of a majority in the district. In this so-called personality contest, in the single-member district, an incumbent-representative, because of the close personal contact with his constituents, is able to perpetuate himself in office and thereby weakens the principle of political-party influence in the district. All too often the representative finds his loyalties to his constituency greater than his loyalty to a community, a section, or a district, and of course, greater than his loyalty to his political party and the principles which it espouses.

Departing from the theoretical analysis of a candidate in a single-member as opposed to a multi-member district, certain political considerations arise which have a more direct impact upon the choice of districts. For example, from our experience here in New Jersey, it is doubtless that single-member districts as such would require more geographic manipulation than do multi-member districts as population growth and shifts occur, and hence the present spectre of "gerrymandering" arises to a much greater extent.

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Single-member districts can be reasonably assumed to require periodic geographic adjustment to maintain the ideal ratio of representatives to people. The multi-member district, on the other hand, can more readily be used as a method to preserve existing political sub-divisions, or districts that might initially be selected by the simple expedient of altering the number of representatives from any given district.

Multi-member districts more aptly reflect the views of the over-all majority in a state, and conversely, single-member districts seem to have the tendency to produce elections which do not accurately reflect the power of the majority in the legislature. Such a result is obvious when a minority party, for example, achieves narrow victories in a large number of small constituenties, while a party which represents the populous majority might obtain landslide victories in the remainder.

As indicated by Chief Justice Warren in <u>Reynolds v. Sims</u>, a valid argument can be made for using both methods in the apportionment of state legislatures. This can be done through the medium of single-member districts in one house and multi-member districts in the other, such as our New Jersey legislature was formerly constituted, or a combination of both in both houses of the legislature. There are those who say, that in achieving viable bicameralism, the character of each house should vary in the method in which legislators are chosen.

CONCLUSION

It would seem that both single- and multi-member districts may validly be utilized in the creation of a bicameral legislature

in conformity with the Constitution of the United States. Which type of district is better suited cannot be decided in the abstract. There can be no argument with the proposition that a district should ideally be reasonably compact, contiguous and homogeneous and must provide its electors with substantial voter equality. In approaching these goals, we should not readily tear down the sub-divisions of an area that have functioned for a long period of time and which has created electors who are essentially homogeneous. It is within this area of discourse that a decision must be made whether to utilize single- or multi-member districts.

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PRESENT LEGISLATIVE ORGANIZATION

DESCRIPTION AND REPRESENTATION ANALYSIS

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"The Interim Legislative District and Apportionment Act"[1] established, for the years 1966 and 1967 pending the formulation and adoption of a permanent plan, a temporary legislature comprised of

1. a Senate of 29 members apportioned among 14 Senate districts, each district including 1, 2 or 3 whole counties and each district electing at-large 1, 2, 3 or 4 Senators;[2] and

2. a General Assembly of 60 members apportioned among the State's 21 counties, with each county electing at-large 1 to 9 assemblymen.[3]

The composition of the General Assembly established by law in 1961[4] was adopted by reference in "The Interim Legislative District and Apportionment Act". This 1961 act specified that 60 assemblymen shall be apportioned among the 21 counties according to the Method of Equal Proportions,[5] the method devised for, and used in, apportioning the 435 members of the United States House of Representatives among the 50 states.[6] Granted that each district shall be entitled to at least 1 representative, this method is generally regarded as one of the fairest, if not the fairest, method of assigning a given number of representatives among a given number of districts.[7]

Measuring Representation

Until the recent past, most measurements of representation or malrepresentation concerned themselves with situations involving a guarantee of at least 1 representative per district, regardless of population. During the past decade or so, and particularly since Baker v. Carr,[8] the following have been the more common measures employed:

1. Proportionate population deviation. This may be expressed as the population of each district divided by the population of the mean, or "ideal", district, in various forms to produce comparative mixed numbers, fractions, or percentages.[9] Where multi-member districts are used, as in both the Senate and General Assembly, it is expressed as the population represented by each representative divided by the mean, or "ideal" population represented by each representative. In Table I, this method is applied to the present Interim Senate; in Table II, to the 1965 Senate. In Table III, it is applied to the General Assembly. The last column in each of these tables lists the per cent of deviation of the number of people represented by each representative from the mean or "ideal" population per representative. A plus (+) per cent indicates underrepresentation; a minus (-) per cent, overrepresentation.

For comparison purposes, these percentages of population deviation may be expressed as follows:

a. In terms of range--

Present Senate: -20.9% to + 27.3%, or 48.2%

1965 Senate : -83.2% to +219.7%, or 302.9%

Assembly : -52.0% to + 42.5%, or 94.5%

b. In terms of mean--

Present Senate: $\pm$10.9%

1965 Senate : $\pm$68.3%

Assembly : $\pm$ 9.4%

2. Seats deserved. This is obtained by multiplying each district's proportionate share of the total State population by the total number of seats allotted. The number of seats deserved can then be compared with the actual number allotted. (See columns 2 and 3 in Tables I, II and III.)

3. The theoretical minimum percentage of the people of the State that can elect a bare majority of the members of a house.[10] This is obtained by adding the populations represented by each representative, starting with the most overrepresented and proceeding toward the most under-represented until a bare majority of representatives is counted. (See Tables IV, V and VI.):

Present Senate: 47.2% (The "ideal" is 15 ÷ 29, or 51.7%)

1965 Senate : 19.0% (The "ideal" was 11 ÷ 21, or 52.4%)

Assembly : 46.5% (The "ideal" is 31 ÷ 60, or 51.7%)

4. Ratio of largest to smallest population per representative. This is obtained by dividing the largest population per representative by the smallest population per representative:

Present Senate: 165,561 to 266,392, or 1 to 1.609

1965 Senate : 48,555 to 923,545, or 1 to 19.021

Assembly : 45,555 to 143,913, or 1 to 2.964

5. Total representation index. Recently, various devices to measure total representation, i.e., representation in both houses of a bicameral legislature, have been suggested.

Justice Clark, in Baker v. Carr,[11] suggested such a method. He would total the seats allotted to each county in both houses and then proceed to compare these county totals by one or more of the above methods. In multi-county districts, he would apportion the total number of seats equally among the member counties, regardless of population. (See Table VII.) Justice Harlan, in Baker v. Carr,[12] would apportion the total number of seats in multi-county districts among the member counties proportionately on the basis of their comparative populations. (See Table VIII.)

These methods, and others developed to measure total representation, are based on a number of assumptions, which may or may not be acceptable: (a) that membership in the upper house and the lower house are substantially equal in weight, (b) that constituents in single-member and multi-member districts, granted equal populations per

representative, are equally represented, and (c) that underrepresentation in one house can be balanced by a comparable overrepresentation in the other house.

6. County ratio index.[13] A more sophisticated and, perhaps, a more meaningful measure of total county representation is the county ratio index. (See Table IX.) Therein, the per cent of the State population in each county, the per cent of each county's voting power in the lower house (obtained by dividing the number of representatives allotted to the county by the total membership of the house), the per cent of each county's voting power in the upper house, and the mean per cent of these two voting powers are compared. The last column in Table IX lists the county population ratio (i.e., the mean per cent of power of each county in both houses divided by the per cent of the State population). An index of 1.000 would reflect the ideal representation; an index of less than 1.000 would mean underrepresentation, and one of more than 1.000, overrepresentation.

Other methodologies involving consideration of factors other than population; e.g., compactness and contiguity, have been suggested.[14]

FOOTNOTES

1. P.L. 1965, c. 19; N.J.S.A. 52:10B-1 et seq. (set forth in appendix).

2. See "Interim Senate" map in appendix.

3. See "Interim Assembly" map in appendix.

4. P.L. 1961, c. 1; N.J.S.A. 52:10-4 et seq. (set forth in appendix).

5. For a description of the Method of Equal Proportions, see Schmeckebier, Lawrence F., Congressional Apportionment. Washington, D. C.: The Brookings Institution, 1941; Law and Legislative Reference Bureau, New Jersey Legislative Reapportionment.... Trenton: Nov. 1957; Law and Legislative Reference Bureau, What Is The Fairest Method Of Reapportioning the General Assembly Seats Among The Counties?: Trenton, Mar. 1960.

6. 2 U.S.C.A. 2a.

7. Note 5, above.

8. 369 U.S. 186.

9. The reciprocal of this, i.e., population of the mean district divided by the population of the district, is employed by David, Paul T. and Eisenberg, Ralph, Devaluation of the Urban and Suburban Vote: Univ. of Virginia Press, Bureau of Public Administration, 1961.

10. Dauer, Manning J. & Kelsay, Robert G., "Unrepresentative States", 44 National Municipal Review 571-575, 587.

11. 369 U.S. 255.

12. 369 U.S. 340.

13. Clem, Alan L., "Measuring Legislative Malapportionment: In Search of a Better Yardstick", 7 Midwest Journal of Political Science 125 (1963).

14. Weaver, James B. & Hess, Sidney W., "A Procedure for Nonpartisan Districting: Development of Computer Techniques", 73 Yale Law Review 288 (1963); Nagel, Stuart S., "Simplified Bipartisan Computer Redistricting", 17 Stanford Law Review 862 (1965).

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INTERIM LEGISLATIVE DISTRICT AND APPORTIONMENT ACT OF 1965

CHAPTER 19 [31]

SENATE NO. 275

An Act providing for the representation of the people of this State in a temporary New Jersey Legislature.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1.

This act shall be known and may be cited as "The Interim Legislative District and Apportionment Act of 1965."

2.

The Legislature for the legislative years 1966 and 1967 shall consist of a Senate and General Assembly as in this act provided.

3.

The General Assembly is hereby constituted and continued as heretofore and the members of the General Assembly to be elected at the general election to be held on November 2, 1965 shall be in the same number and in the same apportionment among the several counties as heretofore certified by the Secretary of State to the several county clerks pursuant to the provisions of chapter 1 of the laws of 1961.

4.

The Senate shall be composed of 29 members to be elected from 14 Senate districts, constituted and apportioned as follows:

First. The counties of Atlantic, Cape May and Gloucester shall constitute and be called the first district and shall be entitled to 2 members of the Senate.

Second. The counties of Cumberland and Salem shall constitute and be called the second district and shall be entitled to one member of the Senate.

Third. The county of Camden shall constitute and be called the third district and shall be entitled to 2 members of the Senate.

Fourth. The county of Burlington shall constitute and be called the fourth district and shall be entitled to one member of the Senate.

Fifth. The counties of Monmouth and Ocean shall constitute and be called the fifth district and shall be entitled to 2 members of the Senate.

Sixth. The county of Mercer shall constitute and be called the sixth district and shall be entitled to one member of the Senate.

Seventh. The county of Middlesex shall constitute and be called the seventh district and shall be entitled to 2 members of the Senate.

Eighth. The counties of Hunterdon and Somerset shall constitute and be called the eighth district and shall be entitled to one member of the Senate.

Ninth. The county of Union shall constitute and be called the ninth district and shall be entitled to 2 members of the Senate.

Tenth. The counties of Morris, Sussex and Warren shall constitute and be called the tenth district and shall be entitled to 2 members of the Senate.

Eleventh. The county of Essex shall constitute and be called the eleventh district and shall be entitled to 4 members of the Senate.

Twelfth. The county of Hudson shall constitute and be called the twelfth district and shall be entitled to 3 members of the Senate.

Thirteenth. The county of Bergen shall constitute and be called the thirteenth district and shall be entitled to 4 members of the Senate.

Fourteenth. The county of Passaic shall constitute and be called the fourteenth district and shall be entitled to 2 members of the Senate.

31. N.J.S.A. 52:10B–1 to 52:10B–9.

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5.

Where any Senate district is comprised of 2 or more counties and is entitled to 2 members of the Senate, no political party shall nominate more than one candidate from among the residents of any one county.

6.

No person shall be a member of the Senate who shall not have attained the age of 30 years, and have been a citizen and resident of the State for 4 years, and of the district for which he shall be elected for 1 year, next before his election, and unless he be entitled to the right of suffrage.

7.

Candidates for election to the Senate shall be nominated at the primary election for the general election or directly by petition in the same manner and subject to the same provisions heretofore applicable to the nomination of candidates for State Senator pursuant to the provisions of Title 19 of the Revised Statutes except that all nominating petitions shall be signed by legally qualified voters of this State residing within the respective Senate districts, shall be filed with the Secretary of State, and in the event of a vacancy among candidates nominated at the primary election, however caused, the candidate shall be selected by the county committee or committees of the political party in the county or counties, as the case may be, constituting the Senate district wherein such vacancy occurs, subject to the residence requirements provided by this act.

8.

The Secretary of State shall within 3 days after the effective date of this act direct and cause to be delivered to the several county clerks and the county boards of elections a notice stating that members of the Senate and General Assembly are to be elected at the general election to be held on November 2, 1965 and certifying the number of members of the Senate and General Assembly to which each county or the district of which the county is a part is entitled. Immediately upon the receipt of said notice and certification, each county clerk shall cause a copy thereof, certified under his hand to be true and correct, to be delivered to the clerk of each municipality in the county.

9.

When a vacancy shall happen in the Senate in the representation of any Senate district comprised of one county, it may be filled as heretofore and if comprised of 2 or more counties it may be filled as heretofore, except that if the board of chosen freeholders of any county within the Senate district shall signify in writing to the Governor, in case the vacancy occurs during the recess of the Legislature, or after the general election, and before the commencement of the next legislative year, or to the Senate, when in session, the desire of such board that the vacancy shall be filled, then the Governor, or the Senate, as the case may be, shall forthwith, after such signification, issue such writ. Upon the issuance of a writ of election to fill such vacancy, the Secretary of State shall cause copies thereof, certified by him to be true and correct, to be delivered to the county clerk and county board of elections of the county or counties, as the case may be.

10.

This act shall take effect immediately.

Approved and effective April 12, 1965.

New Jersey Revised Statutes 52:10-3 et seq.
52:10-3 STATE GOVERNMENT

52:10-3. Short title

This act [1] shall be known and may be referred to as "The General Assembly Apportionment Act." L.1961, c. 1, p. 11, § 1.

[1] Sections 52:10-3 to 52:10-10.
Effective date see § 52:10-10.

Federal census, see section 52:4-2 and note thereunder.

Title of Act:
An Act to implement Article IV, Section III of the Constitution and to repeal sections 52:10-1 and 52:10-2 of the Revised Statutes. L.1961, c. 1, p. 11.

Library references
States ⚖27.
C.J.S. States § 31.

52:10-4. Number of members

The General Assembly shall consist of 60 members who shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to no less than 1 member. L.1961, c. 1, p. 11, § 2.

Library references
States ⚖27.
C.J.S. States § 31.

52:10-5. Determination of number of members from each county

(a) Within 10 days after the effective date of this act, according to the 1960 census, and within 30 days of the promulgation by the Governor of the certified totals of the number of inhabitants of each county according to the next and each subsequent decennial census made by the United States Government, the number of members of the General Assembly to which each county shall be entitled, shall be determined as nearly as may be according to the Method of Equal Proportions, described in subsection (b).

b. Each county shall first be allotted 1 member. A priority list for the assignment of the remaining members shall then be determined in the following manner. The population of each county shall be divided successively by the square root of the product, commonly referred to as the geometric mean, of each pair of successive integers beginning with 1 and 2 and following with 2 and 3, 3 and 4 and with like successive pairs of integers until the number of quotients so calculated for each county exceeds the total number of members to be allotted to that county. The quotients so calculated for all the counties shall be arranged together in 1 order of magnitude, beginning with the largest, to form the priority list. One remaining member shall then be assigned for each quotient in the priority list, beginning with the largest, until the total number of 60 members shall have been allotted. L.1961, c. 1, p. 11, § 3.

Library references
States ⚖27.
C.J.S. States § 31.

52:10-6. Certification of number of members to county clerks

The Secretary of State shall certify to the several county clerks the number of members of the General Assembly to which each county is entitled. From the date of the certification of the Secretary of State, each county shall be entitled to elect only the number of members of the General Assembly so certified to the county clerk unless such certification shall be made within the 40 days immediately preceding the general election at which members of the General Assembly are to be elected in which case such certification shall not be in effect for that general election. L.1961, c. 1, p. 12, § 4.

Library references
States ⚖27.
C.J.S. States § 31.

52:10-7. Ballot changes

If the certification of the Secretary of State is made after the last day provided in the general election law for the filing of petitions for nominations at the primary election for the general election at which the members of the General Assembly are to be elected but not later than 40 days before such gen-

eral election, the following changes in the ballot can be made but not later than 34 days before such general election:

(a) In a county which is entitled to an increased number of members of the General Assembly, each political party which nominated a candidate for the General Assembly at such primary election may designate, in the same manner provided in the general election laws for the filling of vacancies among candidates nominated at a primary election, as many additional candidates for the General Assembly as the county is entitled to additional members of the General Assembly. Candidates for the General Assembly may also be nominated directly by petition in accordance with the provisions of the general election laws, except that such petitions may be filed with the county clerk no later than 34 days prior to the general election.

(b) In a county which is entitled to a decreased number of members of the General Assembly, the county committee of each political party which nominated a candidate for the General Assembly at such primary election may direct the county clerk to place on the official ballot only as many names of candidates of such party, commencing with the name of the candidate who received the highest total vote at the primary election, as the county is entitled to members of the General Assembly. If the county clerk does not receive such a direction no later than 34 days prior to the general election, the names of all the candidates nominated at the primary election as well as directly by petition shall remain on the official ballot. L.1961, c. 1, p. 12, § 5.

Library references
  Elections ⚮166.
  C.J.S. Elections § 156 et. seq.

52:10–8. Election of members

The member or members of the General Assembly of this State to which any county is entitled under the provisions of this act shall be voted for by the registered voters of the counties respectively, and the person or persons receiving the highest number of votes in the county for such office shall be elected such member or members, as heretofore. L.1961, c. 1, p. 13, § 6.

Library references
  Elections ⚮235.   C.J.S. Elections § 221 et seq.
  States ⚮30.   C.J.S. States § 34.

52:10–9. Repeals

Sections 52:10–1 and 52:10–2 of the Revised Statutes are repealed but nothing herein shall be construed to reduce the term for which any member of the General Assembly was elected. L.1961, c. 1, p. 13, § 7.

52:10–10. Effective date; operative effect

This act shall take effect immediately and shall be operative as to the election of all the members of the General Assembly at the election to be held in November 1961, and thereafter. L.1961, c. 1, p. 13, § 8, approved Feb. 1, 1961.

INTERIM SENATE
P.L. 1965, c. 19

14 DISTRICTS
29 SENATORS

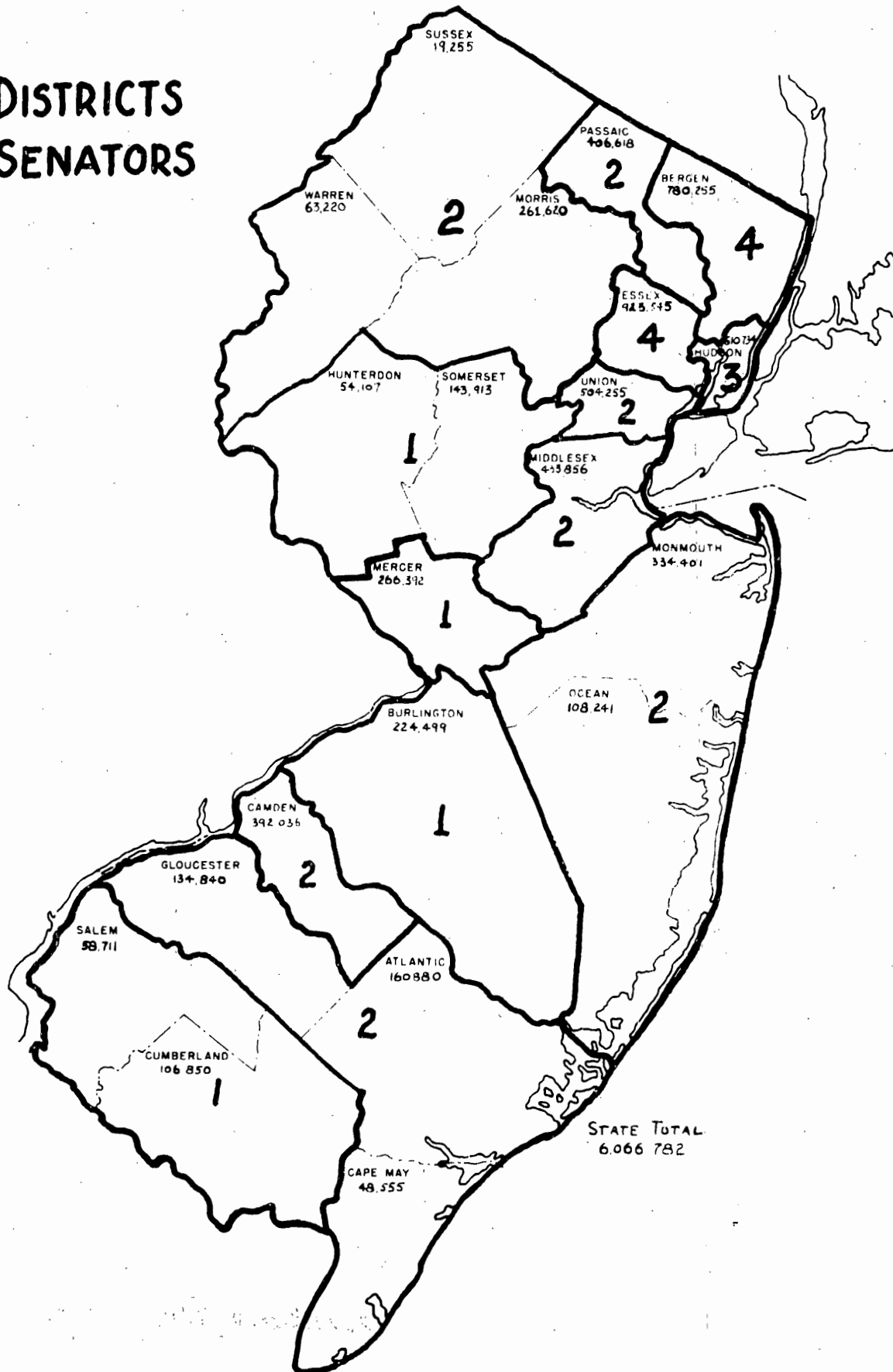| County	Population
SUSSEX	19,255
PASSAIC	406,618
WARREN	63,220
MORRIS	261,620
BERGEN	780,255
ESSEX	925,545
HUNTERDON	54,107
SOMERSET	143,913
UNION	504,255
HUDSON	
MIDDLESEX	413,856
MERCER	266,392
MONMOUTH	334,401
OCEAN	108,241
BURLINGTON	224,499
CAMDEN	392,036
GLOUCESTER	134,840
SALEM	58,711
ATLANTIC	160,880
CUMBERLAND	106,850
CAPE MAY	48,555

STATE TOTAL
6,066,782

TABLE I

Interim Senate

(P.L. 1965, c. 19)

	District	1. Population	2. Senators Deserved	3. Senators Allotted	4. Population Per Senator	5. Per Cent Deviatio
I	Atlantic Cape May Gloucester	160,880 48,555 134,840 344,275	1.646	2	172,138	-17.7
II	Cumberland Salem	106,850 58,711 165,561	.791	1	165,561	-20.9
III	Camden	392,035	1.874	2	196,018	- 6.3
IV	Burlington	224,499	1.073	1	224,499	+ 7.3
V	Monmouth Ocean	334,401 108,241 442,642	2.116	2	221.321	+ 5.8
VI	Mercer	266,392	1.273	1	266,392	+27.3
VII	Middlesex	433,856	2.074	2	216,928	+ 3.7
VIII	Hunterdon Somerset	54,107 143,913 198,020	.947	1	198,020	- 5.3
IX	Union	504,255	2.410	2	252,128	+20.5
X	Morris Sussex Warren	261,620 49,255 63,220 374,095	1.788	2	187,048	-10.6
XI	Essex	923,545	4.415	4	230,886	+10.4
XII	Hudson	610,734	2.919	3	203,578	- 2.7
XIII	Bergen	780,255	3.730	4	195,064	- 6.8
XIV	Passaic	406,618	1.944	2	203,309	- 2.8
		6,066,782	29.000	29	209,199	± 9.4

1. 1960 Federal census.
2. [Col. 1 ÷ 6,066,782] x 29.
3. P.L. 1965, c. 19.
4. Col. 1 ÷ Col. 3.
5. Col. 4 ÷ 209,199, the mean population per senator, i.e.. 6.066.782 ÷ 29.

TABLE II

1965 Senate

County	1. Population	2. Senators Deserved	3. Senators Allotted	4. Per Cent of Deviation
Atlantic	160,880	.557	1	– 43.3
Bergen	780,255	2.701	1	+170.0
Burlington	224,499	.777	1	– 22.3
Camden	392,035	1.357	1	+ 35.7
Cape May	48,555	.168	1	– 83.2
Cumberland	106,850	.370	1	– 63.0
Essex	923,545	3.197	1	+219.7
Gloucester	134,840	.468	1	– 53.2
Hudson	610,734	2.114	1	+111.4
Hunterdon	54,107	.187	1	– 81.3
Mercer	266,392	.922	1	– 7.8
Middlesex	433,856	1.501	1	+ 50.1
Monmouth	334,401	1.157	1	+ 15.7
Morris	261,620	.906	1	– 9.4
Ocean	108,241	.375	1	– 62.5
Passaic	406,618	1.407	1	+ 40.7
Salem	58,711	.203	1	– 79.7
Somerset	143,913	.498	1	– 50.2
Sussex	49,255	.170	1	– 83.0
Union	504,255	1.745	1	+ 74.5
Warren	63,220	.219	1	– 78.1
	6,066,782	21.000	21	$\pm$ 68.3

1. 1960 Federal Census.
2. [Col. 1 ÷ 6,066,782] x 21.
3. 1947 Const., Art. IV, Sect. II, par. 1.
4. Col. 3 ÷ 288,894, the mean population per senator, i.e., 6,066,782 ÷ 21.

INTERIM ASSEMBLY
P.L. 1961, c.1; P.L. 1965, c.19

21 COUNTIES
60 ASSYMN

SUSSEX
19,255

1

PASSAIC
406,618

4

BERGEN
780,255

7

WARREN
63,220

1

MORRIS
261,620

2

ESSEX
923,545

9

HUDSON
610,734

6

HUNTERDON
54,107

1

SOMERSET
143,913

1

UNION
504,255

5

MIDDLESEX
433,856

4

MERCER
266,392

3

MONMOUTH
334,401

3

BURLINGTON
224,499

2

OCEAN
108,241

1

CAMDEN
392,035

4

GLOUCESTER
134,840

1

SALEM
58,711

1

ATLANTIC
160,880

2

CUMBERLAND
106,850

1

CAPE MAY
48,555

1

STATE TOTAL
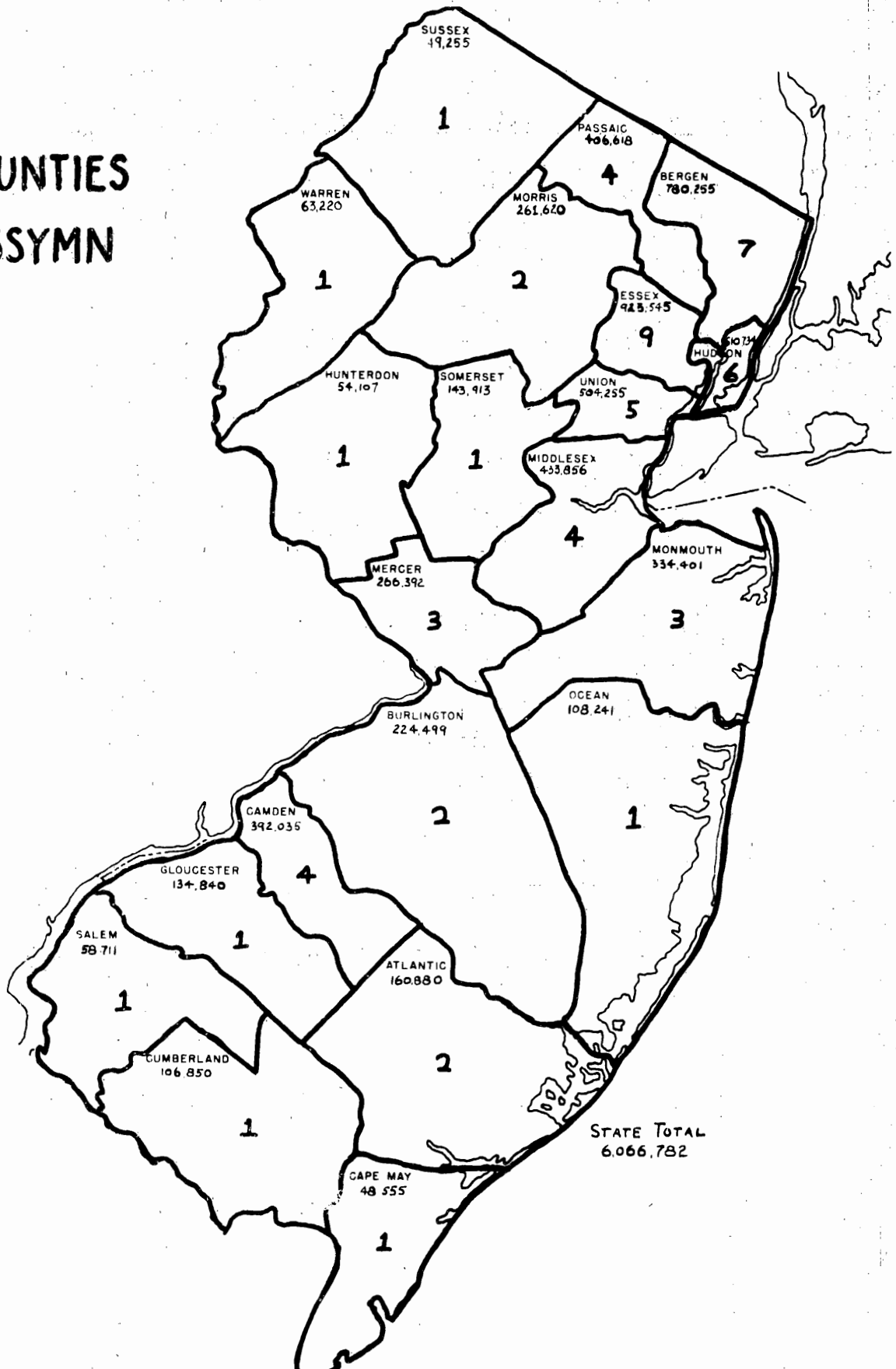6,066,782

TABLE III

General Assembly

(P.L. 1965, c. 19; P.L. 1961, c. 1)

1. County	Population	2. Assembly seats Deserved	3. Assembly seats Awarded	4. Population per Assemblyman	5. Per cent of Deviation
Atlantic	160,880	1.591	2	80,440	-20.5
Bergen	780,255	7.717	7	111,465	+10.5
Burlington	224,499	2.220	2	112,250	+11.0
Camden	392,035	3.877	4	98,009	- 3.1
Cape May	48,555	.480	1	48,555	-52.0
Cumberland	106,850	1.057	1	106,850	+ 5.7
Essex	923,545	9.134	9	102,616	+ 1.5
Gloucester	134,840	1.334	1	134,840	+33.4
Hudson	610,734	6.040	6	101,789	+ 0.7
Hunterdon	54,107	.535	1	54,107	-46.5
Mercer	266,392	2.635	3	88,797	-12.2
Middlesex	433,856	4.291	4	108,464	+ 7.3
Monmouth	334,401	3.307	3	111,467	+10.2
Morris	261,620	2.587	2	130,810	+29.4
Ocean	108,241	1.070	1	108,241	+ 7.0
Passaic	406,618	4.021	4	101,655	+ 0.5
Salem	58,711	.581	1	58,711	-41.9
Somerset	143,913	1.423	1	143,913	+42.5
Sussex	49,255	.487	1	49,255	-51.3
Union	504,255	4.987	5	100,851	- 0.3
Warren	63,220	.625	1	63,220	-37.5
	6,066,782	60.000	60	101,113	+ -10.9

1. 1960 Federal Census
2. [Col. 1 ÷ 6,066,782] x 60
3. P.L. 1965, c. 19; P. L. 1961, c. 1
4. Col. 1 ÷ Col. 3
5. Col. 4 ÷ 101,113, the mean population per assemblyman, i.e.,
    6,066,782 ÷ 60.

TABLE IV

Present Senate

Cum. %	Cumulative Population	No.	Senator	Population Represented	No.	Cumulative Population	Cum. %
100.0	6,066,786	29	Sal-Cumb	165,561	1	165,561	2.7
97.3	5,901,225	28	Gl-At-CM	172,138	2	337,699	5.6
94.4	5,729,087	27	Gl-At-CM	172,138	3	509,837	8.4
91.6	5,556,949	26	Mor-Sus-War	187,048	4	696,885	11.5
88.5	5,369,901	25	Mor-Sus-War	187,048	5	883,933	14.6
85.4	5,182,853	24	Bergen	195,064	6	1,078,997	17.8
82.2	4,987,789	23	Bergen	195,064	7	1,274,061	21.0
79.0	4,792,725	22	Bergen	195,064	8	1,469,125	24.2
75.8	4,597,661	21	Bergen	195,064	9	1,664,189	27.4
72.6	4,402,597	20	Camden	196,018	10	1,860,207	30.7
69.3	4,206,579	19	Camden	196,018	11	2,056,225	33.9
66.1	4,010,561	18	Som-Hunt	198,020	12	2,254,245	37.2
62.8	3,812,541	17	Passaic	203,309	13	2,457,554	40.5
59.5	3,609,232	16	Passaic	203,309	14	2,660,863	43.9
56.1	3,405,923	15	Hudson	203,578	15	2,864,441	47.2
52.8	3,202,345	14	Hudson	203,578	16	3,068,019	50.8
49.4	2,998,767	13	Hudson	203,578	17	3,271,597	53.9
46.1	2,795,189	12	Middlesex	216,928	18	3,488,525	57.5
42.5	2,578,261	11	Middlesex	216,928	19	3,705,453	61.1
38.9	2,361,333	10	Mon-Oc	221,321	20	3,926,774	64.7
35.3	2,140,012	9	Mon-Oc	221,321	21	4,148,095	68.4
31.6	1,918,691	8	Burlington	224,499	22	4,372,594	72.1
27.9	1,694,192	7	Essex	230,886	23	4,603,480	75.9
24.1	1,463,306	6	Essex	230,886	24	4,834,366	79.7
20.3	1,232,420	5	Essex	230,886	25	5,065,252	83.5
16.5	1,001,534	4	Essex	230,886	26	5,296,138	87.3
12.7	770,648	3	Union	252,128	27	5,548,266	91.5
8.5	518,520	2	Union	252,128	28	5,800,394	95.6
4.4	266,392	1	Mercer	266,392	29	6,066,786	100.0

TABLE V

1965 Senate

Cumulative Per Cent	Cumulative Population	No.	Senator	Population Represented	No.	Cumulative Population	Cumulative Per Cent
100.0	6,066,782	21	Cape May	48,555	1	48,555	.8
99.2	6,018,227	20	Sussex	49,255	2	97,810	1.6
98.4	5,968,972	19	Hunterdon	54,107	3	151,917	2.5
97.5	5,914,865	18	Salem	58,711	4	210,628	3.5
96.5	5,856,154	17	Warren	63,220	5	273,848	4.5
95.5	5,792,934	16	Cumberland	106,850	6	380,698	6.3
93.7	5,686,084	15	Ocean	108,241	7	488,939	8.1
91.9	5,577,843	14	Gloucester	134,840	8	623,779	10.3
89.7	5,443,003	13	Somerset	143,913	9	767,692	12.7
87.3	5,299,090	12	Atlantic	160,880	10	928,572	15.3
84.7	5,138,210	11	Burlington	244,499	11	1,153,071	19.0
81.0	4,913,711	10	Morris	261,620	12	1,414,691	23.3
76.7	4,652,091	9	Mercer	266,392	13	1,681,083	27.7
72.3	4,385,699	8	Monmouth	334,401	14	2,015,484	33.2
66.8	4,051,298	7	Camden	392,035	15	2,407,519	39.7
60.3	3,659,263	6	Passaic	406,618	16	2,814,137	46.4
53.6	3,252,645	5	Middlesex	433,856	17	3,247,993	53.5
46.5	2,818,789	4	Union	504,255	18	3,752,248	61.8
38.2	2,314,534	3	Hudson	610,734	19	4,362,982	71.9
28.1	1,703,800	2	Bergen	780,255	20	5,143,237	84.8
15.2	923,545	1	Essex	923,545	21	6,066,782	100.0

TABLE VI

General Assembly

Cum. %	Cumulative Population	No.	Assemblyman	Population Represented	No.	Cumulative Population	Cum. %
100.0	6,066,784	60	Cape May	48,555	1	48,555	0.8
99.2	6,018,229	59	Sussex	49,255	2	97,810	1.6
98.4	5,968,974	58	Hunterdon	54,107	3	151,917	2.5
97.5	5,914,867	57	Salem	58,711	4	210,628	3.5
96.5	5,856,156	56	Warren	63,220	5	273,848	4.5
95.5	5,792,936	55	Atlantic	80,440	6	354,288	5.8
94.2	5,712,496	54	Atlantic	80,440	7	434,728	7.2
92.8	5,632,056	53	Mercer	88,797	8	523,525	8.6
91.4	5,543,259	52	Mercer	88,797	9	612,322	10.1
89.9	5,454,462	51	Mercer	88,797	10	701,119	11.6
88.4	5,365,665	50	Camden	98,009	11	799,128	13.2
86.8	5,267,656	49	Camden	98,009	12	897,137	14.8
85.2	5,169,647	48	Camden	98,009	13	995,146	16.4
83.6	5,071,638	47	Camden	98,009	14	1,093,155	18.0
82.0	4,973,629	46	Union	100,851	15	1,194,006	19.7
80.3	4,872,778	45	Union	100,851	16	1,294,857	21.3
78.7	4,771,927	44	Union	100,851	17	1,395,708	23.0
77.0	4,671,076	43	Union	100,851	18	1,496,559	24.7
75.3	4,570,225	42	Union	100,851	19	1,597,410	26.3
73.7	4,469,374	41	Passaic	101,655	20	1,699,065	28.0
72.0	4,367,719	40	Passaic	101,655	21	1,800,720	29.7
70.3	4,266,064	39	Passaic	101,655	22	1,902,375	31.4
68.6	4,164,409	38	Passaic	101,655	23	2,004,030	33.0
67.0	4,062,754	37	Hudson	101,789	24	2,105,819	34.7
65.3	3,960,965	36	Hudson	101,789	25	2,207,608	36.4
63.6	3,859,176	35	Hudson	101,789	26	2,309,397	38.1
61.9	3,757,387	34	Hudson	101,789	27	2,411,186	39.7
60.3	3,655,598	33	Hudson	101,789	28	2,512,975	41.4
58.6	3,553,809	32	Hudson	101,789	29	2,614,764	43.1
56.9	3,452,020	31	Essex	102,616	30	2,717,380	44.8
55.2	3,349,404	30	Essex	102,616	31	2,819,996	46.5
53.5	3,246,788	29	Essex	102,616	32	2,922,612	48.2
51.8	3,144,172	28	Essex	102,616	33	3,025,228	49.9
50.1	3,041,556	27	Essex	102,616	34	3,127,844	51.6
48.4	2,938,940	26	Essex	102,616	35	3,230,460	53.2

TABLE VI
(cont'd)

Cum. %	Cumulative Population	No.	Assemblyman	Population Represented	No.	Cumulative Population	Cum. %
46.8	2,836,324	25	Essex	102,616	36	3,333,076	54.9
45.1	2,733,708	24	Essex	102,616	37	3,435,692	56.6
43.4	2,631,092	23	Essex	102,616	38	3,538,308	58.3
41.7	2,528,476	22	Cumberland	106,850	39	3,645,158	60.1
39.9	2,421,626	21	Ocean	108,241	40	3,753,399	61.9
38.1	2,313,385	20	Middlesex	108,464	41	3,861,863	63.7
36.3	2,204,921	19	Middlesex	108,464	42	3,970,327	65.4
34.6	2,096,457	18	Middlesex	108,464	43	4,078,791	67.2
32.8	1,987,993	17	Middlesex	108,464	44	4,187,255	69.0
31.0	1,879,529	16	Monmouth	111,467	45	4,298,722	70.9
29.1	1,768,062	15	Monmouth	111,467	46	4,410,189	72.7
27.3	1,656,595	14	Monmouth	111,467	47	4,521,656	74.5
25.5	1,545,128	13	Bergen	111,465	48	4,633,121	76.4
23.6	1,433,663	12	Bergen	111,465	49	4,744,586	78.2
21.8	1,322,198	11	Bergen	111,465	50	4,856,051	80.0
20.0	1,210,733	10	Bergen	111,465	51	4,967,516	81.9
18.1	1,099,268	9	Bergen	111,465	52	5,078,981	83.7
16.3	987,803	8	Bergen	111,465	53	5,190,446	85.6
14.4	876,338	7	Bergen	111,465	54	5,301,911	87.4
12.6	764,873	6	Burlington	112,250	55	5,414,161	89.2
10.8	652,623	5	Burlington	112,250	56	5,526,411	91.1
8.9	540,373	4	Morris	130,810	57	5,657,221	93.2
6.8	409,563	3	Morris	130,810	58	5,788,031	95.4
4.6	278,753	2	Gloucester	134,840	59	5,922,871	97.6
2.4	143,913	1	Somerset	143,913	60	6,066,784	100.0

TABLE VII

<u>Senate Plus General Assembly</u>
<u>Total County Representation</u>
<u>(P.L.1965, c.19; P.L.1961, c.1)</u>

County	Population	Assembly Seats	Senate Seats	Total Seats	Population Per Seat	Per cent of Deviation
Atlantic	160,880	2	.667	2.667	60,322	-11.5
Bergen	780,255	7	4.000	11.000	70,932	+ 4.1
Burlington	224,499	2	1.000	3.000	74,833	+ 9.8
Camden	392,035	4	2.000	6.000	65,339	- 4.1
Cape May	48,555	1	.667	1.667	29,127	-57.3
Cumberland	106,850	1	.500	1.500	71,233	+ 4.5
Essex	923,545	9	4.000	13.000	71,042	+ 4.2
Gloucester	134,340	1	.667	1.667	80,588	+18.2
Hudson	610,734	6	3.000	9.000	67,859	- 0.5
Hunterdon	54,107	1	.500	1.500	36,071	-47.1
Mercer	266,392	3	1.000	4.000	66,598	- 2.3
Middlesex	433,856	4	2.000	6.000	72,309	+ 6.1
Monmouth	334,401	3	1.000	4.000	83,600	+22.6
Morris	261,620	2	.667	2.667	98,095	+43.9
Ocean	108,241	1	1.000	2.000	54,121	-20.6
Passaic	406,618	4	2.000	6.000	67,770	- 0.6
Salem	58,711	1	.500	1.500	39,141	-42.6
Somerset	143,913	1	.500	1.500	95,942	+40.7
Sussex	49,255	1	.667	1.667	29,547	-56.7
Union	504,255	5	2.000	7.000	72,036	+ 5.7
Warren	63,220	1	.667	1.667	37,924	-44.4
	6,066,782	60	29.000	89.000	68,166	±21.3

TABLE VIII

Senate Plus General Assembly
Total County Representation
(P.L. 1965,c.19; P.L. 1961,c.1)

County	Population	Assembly Seats	Senate Seats*	Total Seats	Population per Seat	Per Cent of Deviation
Atlantic	160,880	2	.934	2.934	54,833	-19.6
Bergen	780,255	7	4.	11.	70,932	+ 4.1
Burlington	224,499	2	1.	3.	74,833	+ 9.8
Camden	392,035	4	2.	6.	65,339	- 4.1
Cape May	48,555	1	.282	1.282	37,874	-44.4
Cumberland	106,850	1	.645	1.645	64,954	- 4.7
Essex	923,545	9	4.	13.	71,042	+ 4.2
Gloucester	134,340	1	.784	1.784	75,303	+10.5
Hudson	610,734	6	3	9.	67,859	- 0.5
Hunterdon	54,107	1	.273	1.273	42,504	-37.6
Mercer	266,392	3	1.	4.	66,598	- 2.3
Middlesex	433,856	4	2.	6.	72,309	+ 6.1
Monmouth	334,401	3	1.511	4.511	74,130	+ 8.7
Morris	261,620	2	1.398	3.398	76,992	+12.9
Ocean	108,241	1	.489	1.489	72,694	+ 6.6
Passaic	406,618	4	2.	6.	67,770	- 0.6
Salem	58,711	1	.355	1.355	43,329	-36.4
Somerset	143,913	1	.727	1.727	83,331	+22.2
Sussex	49,255	1	.264	1.264	38,968	-42.8
Union	504,255	5	2.	7.	72,036	+ 5.7
Warren	63,220	1	.338	1.338	47,250	-30.7
						+
	6,066,782	60	29.000	89.000	68,166	-15.0

*In multi-county Senate districts, district seats apportioned
among member counties in proportion to county populations.

TABLE IX

Senate Plus General Assembly
"County Ratio Index"
(P.L. 1965, c. 19; P.L. 1961, c. 1)

County	Population[1]	Per Cent[2] of State Pop.	No. of[3] Assembly Seats	Per Cent[4] of Assembly Power	No. of[5] Senate Seats	Per Cent[6] of Senate Power	Mean %[7] of Power in Both Houses	Differential[8] Between Representation and Pop. Ratio	County[9] Pop. Ratio
Essex	923,545	15.223	9	15.000	4.000	13.794	14.397	-.826	.946
Bergen	780,255	12.861	7	11.667	4.000	13.794	12.731	-.130	.990
Hudson	610,734	10.067	6	10.000	3.000	10.345	10.173	+.106	1.011
Union	504,255	8.312	5	8.333	2.000	6.897	7.615	-.679	.916
Middlesex	433,856	7.151	4	6.667	2.000	6.897	6.782	-.369	.948
Passaic	406,618	6.702	4	6.667	2.000	6.897	6.782	+.080	1.012
Camden	392,035	6.462	4	6.667	2.000	6.897	6.782	+.320	1.050
Monmouth	334,401	5.512	3	5.000	1.510	5.207	5.104	-.408	.926
Mercer	266,392	4.391	3	5.000	1.000	3.448	4.224	-.167	.962
Morris	261,620	4.312	2	3.333	1.398	4.821	4.077	-.235	.946
Burlington	224,499	3.700	2	3.333	1.000	3.448	3.391	-.309	.916
Atlantic	160,880	2.652	2	3.333	.934	3.221	3.277	+.625	1.236
Somerset	143,913	2.372	1	1.667	.727	2.507	2.087	-.285	.880
Gloucester	134,840	2.223	1	1.667	.780	2.690	2.179	-.044	.980
Ocean	108,241	1.784	1	1.667	.490	1.690	1.679	-.105	.941
Cumberland	106,850	1.761	1	1.667	.645	2.224	1.946	+.185	1.105
Warren	63,220	1.042	1	1.667	.338	1.166	1.417	+.375	1.360
Salem	58,711	.968	1	1.667	.355	1.224	1.446	+.478	1.494
Hunterdon	54,107	.892	1	1.667	.273	.941	1.304	+.412	1.462
Sussex	49,255	.812	1	1.667	.264	.910	1.289	+.477	1.587
Cape May	48,555	.800	1	1.667	.282	.972	1.320	+.520	1.650
	6,066,782	100.000	60	100.000	29.000	100.000	100.000	+/- .339	

TABLE IX
(cont'd)

1. 1960 Federal Census.
2. Col. 1 ÷ 6,066,782.
3. P.L. 1965, c. 19; P.L. 1961, c. 1.
4. Col. 3 ÷ 60.
5. P.L. 1965, c. 19; P.L. 1961, c. 1; in each multi-county district, the number of senators assigned to district is apportioned among the member counties on the basis of their relative populations.
6. Col. 5 ÷ 29.
7. [Col. 4 + Col. 6] ÷ 2.
8. Col. 7 - Col. 2.
9. Col. 7 ÷ Col. 2.

THE BASIS OF LEGISLATIVE APPORTIONMENT (INHABITANTS, CITIZENS, REGISTERED VOTERS, ACTUAL VOTERS OR OTHER)

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The historic Supreme Court decisions on legislative reapportionment in _Reynolds v Sims_ (377 U.S. 533) and allied cases raised as many or more questions than they answered. One of the unanswered questions is: "What should be the basis of legislative apportionment: inhabitants, citizens, registered voters, actual voters or some other measure?"

In requiring that both houses of a state legislature be apportioned substantially on a population basis, the Court declared:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in the houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."[1]

Unfortunately, however, the Court has been vague about the word "population". In _Reynolds_, the Court used "numbers of people", "voters", "citizens" and "qualified voters" as if each were synonyms for "population". Elsewhere in the same opinion, the Chief Justice used the phrase "residents, or citizens, or voters" as if the terms were distinguishable.

Inhabitants, citizens, registered voters and voters are among the bases of legislative apportionment that have been and are employed

by the states in apportioning the seats of a state legislature.
For very practical reasons, most states, including New Jersey,[2] use "inhabitants", as enumerated by the U.S. Bureau of the Census.

The ambiguity of the <u>Reynolds</u> decision and the lack of any later judicial clarification cast a shadow of doubt as to whether all of these bases or only some or one of them is constitutionally acceptable. Can a state use "citizen population" or "registered voters" or "votes cast in the last gubernatorial election" or another base other than inhabitants? If indeed it can, then what are the comparative merits of each of these various permissable alternatives?

Definitions of Population

While the reapportionment situation in the various states has changed constantly in the period subsequent to the <u>Reynolds</u> decision, a recent survey[3] indicated that 30 states use some definition of population in apportioning both houses of their legislatures and 48 states employ this standard in some measure in one house. The definitions of population vary, but the great majority, 72%, use total population figures. The table below delineates the definitions used and the number of chambers apportioned by the use of each.[4]

Criteria[5]	Number of Chambers
Total population	56
Total population, nontaxed Indians excluded	3
Total population, aliens excluded	3
Total population, nontaxed Indians and aliens excluded	3

Criteria-Continued	Number of Chambers
Total population, Indians not taxed and members of the Armed Forces	2
Total population, aliens not eligible for naturalization excluded	1
Male inhabitants 21 years and over	2
Civilians only	1
Qualified voters	3
Legal voters	2
Qualified electors	1
Votes cast for Governor in last general election	1
	78

Table 1[6.] of the Appendix contains a very brief synopsis of the definitions of population employed in the apportionment formulas of the states prior to Reynolds.

These definitions suggest three basic standards:

1.   The most common standard is the total population, using the number of inhabitants reported by the Bureau of the Census in its decennial censuses. If some "adjustment" is to be made, the census figures may exclude aliens, Indians not taxed, inmates of mental institutions or prisons, or college students. New Jersey uses the unadjusted census data, New York uses "citizens", Minnesota excludes nontaxable Indians, North Carolina omits both aliens and Indians not taxed, Washington excludes Indians not taxed and military personnel in active service, and Maine omits students and military personnel and their dependents not having a fixed residence in the State and foreigners not naturalized.

2.   A second standard is the number of persons qualified to vote. This can be defined as the number of registered voters. Several states use "qualified voters" as the standard, Indiana counts only male inhabitants 21 years of age and over, while Massachusetts uses "legal voters". A U.S. District Court in Hawaii recently upheld the use of "registered voters" in the reapportionment of that state's lower house.[7]

3.   The third standard is the number of actual voters. An election or elections for one or more state offices, usually governor, senator or representative, are selected and the number of votes cast therein is used as the apportionment base. The only legislative body now employing this standard is the Arizona House of Representatives, which uses "votes cast in the last gubernatorial election".[8] A Federal District Court in New York, however, recently struck down a reapportionment plan for that state's legislature that contained a similar provision.[9]

The Constitutionality of Various Apportionment Bases

While the overwhelming majority of states traditionally have used "inhabitants" as the measure of population, the language in Reynolds suggests to some that "voters" may be an acceptable and valid standard. Throughout its recent reapportionment decisions, the Court referred to the individual and personal right to vote. At one point in Reynolds, it declared:

"Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the selection of state legislators". (Emphasis added.)[10].

On the other hand, in the same opinion, the Court argued that the vote of a voter residing in a district containing substantially more inhabitants than another district is diluted in proportion to the difference between the number of inhabitants in each district.

This vague language poses some serious questions about the nature of population "equality". Would an apportionment based on inhabitants which resulted in districts of equal population, but where, because of the concentration of significant numbers of persons ineligible to vote, such as nonresident college students or military personnel, the difference in the number of voters in the two districts is quite substantial, pass judicial muster? Likewise, if the apportionment is based on equal numbers of registered voters or actual voters, would it meet the constitutional test if there were substantial differences in the number of inhabitants in each district? Additionally, of course, if actual voters is the measure, the choice of which election or elections to use affects the question of "equality".

Thus far the Supreme Court has not resolved these questions. It has avoided tackling them on two occasions subsequent to Reynolds v Sims. In Davis v Mann (377 U.S. 678), the State of Virginia attempted to justify substantial population disparities on the grounds that the larger population districts contained high percentages of nonresident military personnel and their families. The Court, however, rejected this argument on several grounds, none of which met the crucial questions.

The Supreme Court also sidestepped these constitutional questions in affirming per curiam a Federal district court's decision in the New York case of WMCA v Lomenzo (377 U.S. 633). The district court, while approving the use of New York's traditional measure of population -- "citizens" -- invalidated a reapportionment plan which used the votes cast in the 1962 gubernatorial election.

The following language of the decision, however, indicates that the court's objection to the plan was based primarily on the policy reasons behind its enactment and not on the use of the standard actual voters:

> "We do not mean to suggest that there may not be sound
> policy reasons for changing the state's base for legislative
> apportionment from citizen population to actual voters....
> We say only that under the particular circumstances within
> which this change actually occurred, these policy reasons
> are not sufficient to dispel the inference of discrimination
> against city dwellers."[11].

Federal district courts in two other states, Hawaii and Maryland, recently rendered conflicting decisions regarding the use of registered voters. This standard was upheld in Hawaii, Holt v. Richardson (238 F. Supp. 468), decided in February, 1965. The district court believed that this base was justified, primarily because, if inhabitants were used, a single district with a very large concentration of military personnel could elect a majority of the senators. The court declared that:

> "If total population were to be the only acceptable
> criteria upon which legislative representation could be
> based, in Hawaii grossly absurd and disastrous results
> would flow from a blind adherence to the 'elusive "one-
> person-one-vote" aphorism'."[12].

In Maryland, <u>Ellis v. Mayor and City Council of Baltimore</u>
(234 F. Supp. 945), however, another Federal district court invalidated
the use of registered voters as the basis of the Baltimore municipal
governing body's reapportionment plan. This court, in noting that the
populations and the numbers of registered voters varied considerably
among the wards, stated:

> "...We conclude that the Equal Protection Clause of the
> Constitution of the United States requires that the validity
> of any apportionment be tested on the basis of population,
> rather than on the basis of registered voters; but by either
> test, Section 16 fails to meet the requirements of equal
> protection."[13].

In considering the difficult constitutional questions involved
it is well to keep in mind the following language of the U. S. Supreme
Court in <u>Reynolds</u>:

> "By holding that as a federal constitutional requisite
> both houses of a state legislature must be apportioned on
> a population basis, we mean that the Equal Protection Clause
> requires that a State make an honest and good faith effort
> to construct districts, in both houses of its legislature,
> as nearly of equal population as is practicable. We realize
> that it is a practical impossibility to arrange legislative
> districts so that each one has an identical number of residents,
> or citizens or voters. Mathematical exactness, or precision is
> hardly a workable constitutional requirement."[14].

Comparative Merits of Various Bases

Assuming for the moment at least that either an inhabitant
or a voter approach is constitutionally permissable, what are their
advantages and disadvantages? What is the most desirable standard
for use in New Jersey?

The answers to these questions depend in large measure upon one's interpretation of the language of the U.S. Supreme Court's decision in <u>Reynolds v Sims</u> and allied cases. Proponents of the inhabitant approach argue that <u>Reynolds</u> requires that each legislator represent the same number of inhabitants. Those who advocate the voter approach contend that the Court's decision means that an individual's vote may not be diluted, that the crucial factor is voter equality.

(a) Inhabitants

Adherents to this approach argue that, if a legislator is to represent all of the people of his district, all inhabitants must be included in the apportionment formula. This standard has historic legitimacy in New Jersey and in most other states, and, because it is based on U.S. Bureau of the Census data, it is simple, cost-free to the states, official, objective and respected.

Opponents of this approach point out that the use of inhabitants gives representation to those who do not participate in the electoral process (children, inmates of prisons and mental institutions, aliens, non-resident military personnel and students) and makes impossible reapportionment more frequently than every ten years (unless an interim census is undertaken). Additionally, the census data contain certain inaccuracies and census tracts do not correspond in most cases to the potitical subdivisions traditionally employed in the apportionment process.

(b) Citizens

The use of citizens may be justified in some states, but in most states, including New Jersey, its disadvantages probably outweigh its merits. It excludes certain people (aliens) who do not participate

in the electoral process, it is costly and lacks tradition in most
states.

New York State, however, has used a citizen base since 1894,
when 21% of the inhabitants of one of the counties of New York City
were aliens while only 5.5% of the upstate population could be so
classified.[15] Such situations, it is contended, justify the use of
this standard. By 1960 in New York, however, no county's population
included more than 6.7% aliens,[16] so justification for this base
was lessened considerably, particularly in view of the costs of the
special censuses required (estimated at $288,000 in 1950 and
$395,000 in 1960).[17] An interim census for New York State was
estimated by the U.S. Bureau of the Census to take one year and
cost $4.5 million.[18]

(c) Registered voters

The advantages of using registered voters are that all persons
eligible to vote and who register to do so are represented, it is
simple, the data correspond to wards and election districts and are
readily available if a statewide system of permanent personal
registration is used, it permits reapportionment at intervals more
frequently than every ten years, it reflects population shifts and
promotes participation in the electoral process by encouraging
voter registration.

However, if in a democracy all are to be represented, the use
of registered voters does not achieve this end because it excludes
all except those citizens who take the time and the trouble to
register. Also, uniform application of this standard throughout a
state may be difficult to attain because registration procedures

may vary considerably from place to place. Tradition in most states is not on the side of this basis of apportionment.

Proponents of this standard contend that its use is particularly justified in states such as Hawaii, Alaska and Washington, in which large numbers of persons ineligible to vote (military personnel and their families) are concentrated in one or several districts. The use of an inhabitant base in such situations gives considerable relative voting strength to the voters of such districts.

On the other hand, the use of a registered voter base in the South with the probable objective of reducing the representation of Negroes (few of whom are registered to vote) would probably not escape judicial disapproval.

(d) Actual Voters

While experience with this basis of apportionment is limited, its advantages and disadvantages are readily discernible. Voter figures are accurate, readily available, reflect population shifts in some measure, and their use makes reapportionment feasible more frequently than every 10 years and encourages citizens to exercise their voting privilege.

Several major disadvantages stand out, however. Many question the desirability, as well as the constitutionality of excluding all inhabitants except those eligible citizens who choose to exercise their franchise in a particular election or elections. One of the basic problems is which election to choose. There are merits and demerits in any choice, but, in any case, many extraneous factors_ weather, natural disaster, epidemic, local issues, candidates' personalities_influence voter turnout and, thus, future apportionments.

Using an average of several elections for one or more offices will
tend to reduce the influence of such factors, however.

Summary

The traditional basis of apportionment in New Jersey and most
other states is "inhabitants". Citizens, registered voters and
voters are among the other bases used.

While some Federal district and state courts have invalidated
or upheld reapportionment plans embodying bases other than inhabitants,
it is not clear from the United States Supreme Court's decisions in
Reynolds v Sims and subsequent cases whether such bases are con-
stitutionally permissable.

Each of these various bases has certain advantages and dis-
advantages. The use of inhabitants is traditional, simple, cost-free
to the states and is based upon the official, respected enumeration
of the U.S. Bureau of the Census. The use of a voter base, while
necessarily excluding many inhabitants, permits reapportionment more
frequently than every 10 years, if desired, and encourages participa-
ion in the electoral process. There may be greater justification
for its use in certain states in which large numbers of inhabitants
who are ineligible to participate in the electoral process are
concentrated in one or a few areas than in states where this situation
is not evident.

APPENDIX

Table I

Various Definitions of Population Used in Apportioning State Legislative Districts *

State	Population used to determine, in some way, the apportionment of the:		Population defined by:	
	Senate	House	Senate	House
Alabama	yes	yes	total	total
Alaska	yes	yes	total	civilian
Arizona	no	yes		votes cast for governor of last general election
Arkansas	no	yes		total
California	no	yes		population excluding aliens ineligible for naturalization
Colorado	yes	yes	total	total
Connecticut	yes	yes	total	total
Florida	yes	yes	total	total
Georgia	no	yes		total
Hawaii	no	yes		total
Idaho	no	yes		total
Illinois	no	yes		total
Indiana	yes	yes	both Houses on basis of male inhabitants 21 years of age and over	
Iowa	yes	yes	total	total
Kansas	yes	yes	total	total
Kentucky	yes	yes	total	total
Louisiana	yes	yes	total	total
Maine	yes	yes	excludes aliens and Indians not taxed	excludes aliens
Maryland	no	yes		total
Massachusetts	yes	yes	legal voters	legal voters
Michigan	no	yes		total
Minnesota	yes	yes	excludes nontaxable Indians	excludes nontaxable Indians
Missouri	yes	yes	total	total
Montana	no	yes		total
Nebraska	yes		excludes nontaxable Indians	(unicameral)
Nevada	no	yes		total
New Jersey	no	yes		total
New Mexico	no	yes		total
New York	yes	yes	excluding aliens	excluding aliens
North Carolina	yes	yes	excluding aliens and Indians not taxed	excluding aliens and Indians not taxed
North Dakota	yes	yes	total	total
Ohio	yes	yes	total	total
Oklahoma	yes	yes	total	total
Oregon	yes	yes	total	total
Pennsylvania	yes	yes	total	total
Rhode Island	yes	yes	qualified voters	total
South Carolina	no	yes		total
South Dakota	yes	yes	total	total
Tennessee	yes	yes	qualified voters	qualified voters
Texas	yes	yes	qualified electors	total
Utah	yes	yes	total	total
Vermont	yes	no	total	----
Virginia	yes	yes	total	total
Washington	yes	yes	excluding Indians not taxed and members of the Armed Forces	excluding Indians not taxed and members of the Armed Forces
West Virginia	yes	yes	total	total
Wisconsin	yes	yes	total	total
Wyoming	yes	yes	total	total

* Information obtained from the Report of the Advisory Commission on Intergovernmental Relations, "Apportionment of State Legislatures," December 1962, Superintendent of Documents, Government Printing Office, Washington 25, D.C.

FOOTNOTES

1. <u>Reynolds</u> <u>v</u> <u>Sims</u>, 377 U.S. 568

2. <u>Constitution of the State of New Jersey</u>, Art. IV, Sec. 3, Par. 1:
   "...The members of the General Assembly shall be apportioned
   among the several counties as nearly as may be according
   to the number of their inhabitants, but each county shall
   at all times be intitled to one member and the whole number
   of members shall never exceed sixty...."

   N. J. Rev. Stat. § 1:1-2:
   "...Population; inhabitants. The word 'population', when
   used in any statute, shall be taken to mean the population
   as shown by the latest Federal census effective within this
   State, and shall be construed as synonymous with
   'inhabitants'..."

   N. J. Rev. Stat. § 52:10-4:
   "The General Assembly shall consist of 60 members who shall
   be apportioned among the several counties as nearly as may
   be according to the number of their inhabitants, but each
   county shall at all times be entitled to no less than 1
   member."

3. California Assembly Committee on Elections and Reapportionment,
   <u>Reapportionment in California: Consultants' Report to the Assembly</u>,
   <u>Vol. 7, No. 9, April 1965</u>.

4. <u>Ibid</u>, p. 90

5. <u>Ibid</u>, p. 90

6. <u>Ibid</u>, p. 87

7. <u>Holt</u> <u>v</u> <u>Richardson</u> 238 F. Supp. 468

8. <u>Reapportionment in California Consultants' Report to Assembly</u>, p. 87

9. <u>WMCA</u> <u>v</u> <u>Lomenzo</u>, 238 F. Supp. 916

10. <u>Reynolds</u> <u>v</u> <u>Sims</u>, 377 U.S. 565

11. <u>WMCA</u> <u>v</u> <u>Lomenzo</u>, 238 F. Supp 924, 925

12. <u>Holt</u> <u>v</u> <u>Richardson</u>, 238 F. Supp. 474

13. <u>Ellis</u> <u>v</u> <u>Mayor and City Council of Baltimore</u>, 234 F. Supp. 949

14. <u>Reynolds</u> <u>v</u> <u>Sims</u>, 377 U.S. 577

15. Ruth C. Silva, "The Population Base for Apportionment of the
    New York Legislature", 32 <u>Fordham Law Review</u> 17 (1963-64)

16. <u>Ibid</u>, p. 17

17. New York State <u>Citizens Committee on Reapportionment</u>, Dec. 1, 1964,
    p. 13 footnote

18. <u>Ibid</u>, p. 17

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THE PREVENTION OF GERRYMANDERING

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"Gerrymandering" is the process of devising geographical boundaries for legislative constituencies which will result in the maximum advantage for one political party. It has been called the "art of political cartography". In New Jersey, during the 41 years from 1852 to 1893, when assemblymen were elected from single-member districts within the counties, the process was raised to a high degree of artistry. In 1881, a Democratic newspaper commented:[1]

> "The counties are so cut and carved as to make unnatural divisions and give the Republican localities more numerous representation and the Democratic localities less than they would be entitled to if the divisions were naturally or fairly made. The object is to perpetuate power without regard to the principle of representation. It is an infamous abuse of legislative power, and it will sooner or later be resented by the people."

Eight years later, a Republican counterpart observed:[2]

> "The Democratic gerrymandering bill is an outrageous but picturesque burlesque. It pays no regard whatever to homogeneity of political or other associations and interests, to equality of representation or to any other time-honored usage in the arrangement of our Assembly districts...The act is so outrageous and insulting it will likely defeat its own object."

Techniques of Gerrymandering

Three separate techniques of gerrymandering have been identified and described by Andrew Hacker:[3]

(1) **Excess Votes** - An attempt may be made to concentrate most of the voters of the opposition party in a single district which they will win by a huge majority, thus leaving the other districts to be carried by small margins by

candidates of the party creating the gerrymander. For
example, the 1871 creation of the Horseshoe District in
Jersey City was an attempt by the Republicans of that
day to confine most of the Democratic voting strength
to one General Assembly district, leaving the other
districts of Hudson County as possible or probable
Republican constituencies.[4]

(2) Wasted Votes - A second variety of gerrymander identified
by Hacker may be used by a party with an over-all majority
of the popular vote. If this majority can be spread
evenly throughout the entire state, the majority party
can win every district. The votes of the minority, even
though they might constitute a substantial portion of the
total, would result in no electoral victories if they
were spread evenly. For example, in 1868 Republican
candidates polled 41 per cent of the popular vote in the
six Hudson County General Assembly districts, but the
Democrats won every seat.

(3) Effective Votes and Unequal Districts - Hacker's third form
of gerrymandering involves the creation of districts of
very unequal size. Thus, some districts are conceded
to the opposition party, but these districts are made
excessively large. The result is that the party doing
the gerrymandering may win a large proportion of the
contests in the election, while polling only a relatively
small number of votes. For example, in 1893 the Essex
County General Assembly districts electing Deomcrats
averaged 20,172 in population, while the districts

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electing Republicans averaged 31,571, with the result that a county-wide popular majority gained the Republicans only three out of eleven seats.

The ease with which these three techniques of gerrymander may be recognized varies. The third type -- effective votes and unequal districts -- is easy to identify, because of the large variations in the total population of the districts. The first type -- excess votes -- usually is not too hard to identify, if some time is taken to analyze voting patterns. Also, this type of gerrymander often results in the common picture of a gerrymander -- districts with highly distorted shapes when seen on a map. The second type of gerrymander -- wasted votes -- is much the most subtle and the most difficult to identify. In fact, in many suspected cases it may not really be a gerrymander at all, since the electoral results may derive from a normal dispersion of voting strength throughout the state.

Prevention of Gerrymandering

There probably is only one sure way of preventing gerrymandering. This is by selecting a type of legislative apportionment which will eliminate the periodic drawing of district boundary lines. Basically, there are two types of apportionment:

(1) the distribution of seats to constituencies whose boundaries are fixed in advance. For example, in the New Jersey General Assembly, the 60 seats are distributed among the counties in proportion to the number of inhabitants in each county.

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(2) the districting of the state into constituencies of
    equal population, each constituency to elect the same
    number of representatives. For example, the state has
    been divided into 15 Congressional districts, each of
    which elects one Congressman.

If the first type of apportionment -- distribution to
fixed-boundary constituencies -- is used, there will be no
gerrymandering problem, since there will be no opportunity
to manipulate district boundaries. The boundaries of the
constituencies can be fixed in the Constitution, the data
on which the distribution of seats is to be based can be
explicitly stated, and the mathematical formula for the
distribution of seats can be specified.

A second way in which gerrymandering _might_ be prevented
would be to find some completely objective person or procedure
to carry out the districting process. Whether any human
being or group of human beings could be sufficiently
objective may be questioned. The use of computers for this
purpose has been suggested.[5] However, based on the experience
thus far in New York State, where the procedure has been
tried, the development of this technique probably has not
yet progressed far enough to be very satisfactory.

Limitations on Gerrymandering

If it is considered desirable to use a type of apportion-
ment involving districting, and if there is no satisfactory
way found to provide for some absolutely objective manner of
drawing districts, then the most that can be done is to
establish in the Constitution certain safeguards which will

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tend to limit the extent of gerrymandering. Several things can be done along these lines.

Population Limits

In order to inhibit the third variety of gerrymandering listed by Hacker, limitations may be placed on the degree to which the districts may vary in population. For example, it could be required that no district deviate by more than 5 per cent, 10 per cent, or 15 per cent from the average district size.

Contiguous Territory

Secondly, districts may be required to be formed of contiguous territory. That is, the area of all components of the district must adjoin each other. Contiguity appears to be an obvious requirement, for if it is not required, there is probably no point in establishing geographical constituencies. However, the task of testing for the presence of contiguity is not always easy, especially when bodies of water intervene between land areas. For example, is Richmond contiguous with Brooklyn? Is Bayonne contiguous with Elizabeth?

Compact Territory

A third limitation on gerrymandering is a requirement that districts be formed of compact territory. This would strike particularly at the first of Hacker's gerrymander varieties -- the excess vote technique. But the definition and measurement of "compactness" is not a simple matter. Various approaches have been used, including relating the area of a district to the area of the smallest possible

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circumscribing circle.[6] Presumably, the closer the shape
of the district approaches a circle, the greater the degree
of compactness.

Division of Political Subdivisions

A fourth limitation on gerrymandering is a requirement
that district boundaries follow the boundaries of existing
political subdivisions. The United States Supreme Court
has specifically recognized this in Reynolds v. Sims, where
it was pointed out that some deviations in population might
be permissible in order that gerrymandering might be limited
by keeping political subdivisions intact.[7] Limitations on
the splitting of political subdivisions may be considered
in two ways:

(1) There may be a requirement that no district split a
municipality (or county) which has fewer inhabitants
than the number required to establish the municipality
as a district in its own right. For example, if New
Jersey, with a population of 6,066,782 persons in 1960,
were to be divided into 60 districts, the average population
per district would be 101,113. A strict application of
the rule would state that no municipality with fewer
than 101,113 inhabitants could be split in forming the
districts. Some flexibility could be introduced by
allowing a percentage deviation from this figure. A
rule of this sort would avoid such situations as in 1881,
when Oxford Township, with a population of only 4,594
persons, was split between two Warren County districts
averaging 18,294 in size; in this case the Republican

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side of the township was placed in the district where it could do the most good for the party.

(2) A second requirement of this type would deal with political subdivisions having more than the average population per district. Using the statistics given above, Newark, with a population of 405,220 in 1960, would have to be divided into more than one district if population equality were to be achieved. But the question is, how many parts? A limitation on the number of parts into which such large political subdivisions may be split will help to inhibit gerrymandering. This limitation can be defined as "the whole number found by dividing the population of the subdivision by the average size of a district, or that number <u>plus</u> <u>one</u>". In the above case of Newark then, the municipal population, 405,220, divided by the average district size, 101,113, would yield a figure of 4.01. Application of the rule would indicate that Newark would have to be divided into <u>at least four</u> parts, and that it could be divided into <u>no more than five</u> parts.

Fixed Term for Districts

A fifth limitation on gerrymandering could consist of a requirement that the districts, once established, must remain in effect until after the next census of population. One aspect of New Jersey's use of General Assembly districts in the nineteenth century which led to ever-increasing gerrymandering was the fact that each annual Legislature could revise the district boundaries in an effort to

perpetuate itself in office. Thus, in addition to the
re-drawing of districts which occurred normally after every
census, the boundaries frequently were changed between
censuses. If this could be avoided, the shifts in population
concentration and in political affiliation and strength which
take place gradually over the years could blur the effect of
many gerrymanders which otherwise could continually be kept
up to date.

Conclusion

Gerrymandering can be a temptation to the party in power,
a frustration to their opposition, and a potent irritant to
the political process. It probably can be prevented
absolutely only by absolute avoidance of the type of apportion-
ment in which it is possible -- districting. If, however,
there are believed to be good and sufficient reasons for employ-
ing this type of apportionment, then steps can and should be
taken to limit or inhibit the creation of the most extreme
future gerrymanders.

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FOOTNOTES

[1] <u>Daily True American</u> (Trenton), March 8, 1881.

[2] <u>Daily State Gazette</u> (Trenton), February 20, 1889.

[3] Andrew Hacker, <u>Congressional Districting, The Issue of Equal Representation</u> (Washington: The Brookings Institution, 1963), pp. 46-53.

[4] New Jersey examples have been used here wherever possible. Most of them are taken from a manuscript now being prepared for publication by Alan Shank and Ernest C. Reock, Jr., at the Rutgers University Bureau of Government Research.

[5] James B. Weaver and Sidney W. Hess, "Districting by Machine", <u>National Civic Review</u>, LIII, June, 1964, pp. 293-6. Same authors, "A Procedure for Nonpartisan Districting: Development of Computer Techniques", 73 <u>Yale Law Journal</u> 288 (1963).

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[7] 37 <u>U.S.</u> 553 (1964)

UNICAMERALISM V. BICAMERALISM

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There are two parts to the issue of the number of
houses that a state legislature should have. One relates rather
directly to the matter of apportionment, the other has to do with
legislative effectiveness. In a more general sense, however, both
relate to a broader question of how to arrange for the most effective
type of legislative establishment.

GENERAL BACKGROUND

1. Origin. The general practice of creating two houses
for legislative bodies in the United States has two main ancestors.
One reaches back into feudal times in Europe and to England in
particular. The other is our own Federal Constitution as it was
launched in 1789. In the period immediately preceding the rise of
the modern nation-state, the whole social order was regarded as
being composed of separate estates or classes. Spokesmen were
needed for these estates so they could deal with each other and with
third parties, including the king. This eventually produced a
simplification in England under which a House of Lords came to be
composed of all lords of the realm. In a strict sense, the House
of Lords in England is not, even today, a representative body.

Commoners, however, being so numerous, they were
necessarily represented by a relatively few of their numbers. As
the notion of a citizenship of the country, independent of class
or estate membership, developed the conditions that earlier required
separate bodies of lords and commoners declined. This was beginning

to happen by the time the United States gained its independence.
There had been, however, a kind of a bicameralism in the governments
of the various colonies. The king's representatives and his few
close advisors were recognized in charters and later in the first
state constitutions as constituting a separate house. But the
general notion that the individual was a citizen of his country
first and member of a class, or estate, second was fully accepted by
the time of the first state constitutions. Under the Articles of
Confederation, there was only one house for the legislature, but it,
of course, represented the people through their citizenship of their
states, rather than directly. It is probably safe to say that the
conditions which led originally to the bicameral pattern have not
existed for a long time.

The more immediate ancestor of the practice of setting up
a bicameral-type legislature was its use in the drafting of the
Federal Constitution to effect a compromise between the large and
small states--i.e., large and small in terms of population. The
small states went along because they were given equal representation
in the Senate. The more populous states agreed because they were
represented on the basis of their population in the House of
Representatives. Thus the provision for a two-house body for the
Federal Government reinforced the two-house habit that had its roots
in colonial experience.

With only the most minor exceptions, the states, and at
times even cities, followed the two-house pattern. The only major
and durable exception has been Nebraska, which adopted by referendum
a constitutional amendment providing a unicameral legislature. The
amendment was adopted by the voters in 1934 and the first members

elected in 1936. Thus Nebraska provides the only really useful first-hand experience with a one-house legislature in modern times.

2. <u>Developments</u>. In distinguishing between the two houses in the legislatures in the various states two practices appear. One practice was based on both houses being apportioned on the basis of population with the larger house simply being composed of more members, each member representing a smaller district. The other practice, the one adopted by New Jersey, followed the federal model closely with the counties treated essentially the same as the sovereign states of the union, each being given equal representation in the smaller body.

Now the requirement that both bodies in a state legislature be based on population has raised a question of the justification for a second house, and this has revived some interest in the unicameral idea.

RELATION TO THE APPORTIONMENT ISSUE

As a general proposition, adoption of a unicameral legislature does not solve any apportionment problem. A unicameral legislature may be apportioned to follow the principle of "one man, one vote" or it may negate that principle by its members representing unequal districts. In a more practical sense, however, the unicameral system probably facilitates the carrying out of the "one man, one vote" principle for two reasons.

In the first place, it simplifies the task of making approximately equal districts. To create two sets of districts, both of which are based upon equal population size is about twice as much work as creating only one set. If there are two houses

there almost has to be some difference between the two houses, but under the new principle this difference cannot be in number of people per district, within each house.

In the second place, the principle of numerical equality of constituencies is so strongly supported that with only one house it would have to give top priority to equality. Lack of equality in one house could not be exchanged for an offsetting advantage in another. This general equality is, of course, required by the court decisions but presumably there will be degrees of latitude or tolerance of something short of absolute equality. With only one house it is not likely that any delegate will settle for less than equality.

Thus the political practicalities as well as the technical practicalities probably suggest that a unicameral legislature would facilitate coming closest to equal districts at the time of apportionment.

LEGISLATIVE EFFECTIVENESS

Since a two-house legislature cannot be used to provide apportionment on any other basis than population equality, and since either a one- or a two-house legislature may be apportioned equitably, we come to the question of other advantages and disadvantages of the bicameral form on the one hand and the unicameral on the other. On this matter alone, there is one major argument for bicameralism and one offsetting argument for unicameralism.

1. Advantages of a bicameral legislature. It is argued that even if the basis of representation is the same in each of two

houses, legislation will get a more careful and judicious scrutiny
if it has to run the gauntlet of two separate houses, each with its
own committees and officers and leaders. If one house (either
house) should get stampeded by some emotional issue there would
always be the other house to give the action a second look. The
presumption is that if it has to go through two houses at different
times and eventually in the same form it is more apt to be the
mature and considered judgment of what is good for the state. It is
also implied that this longer and more complex process makes it
possible to be surer that all interests get a reasonably good hear-
ing before action is taken.

2. Advantages of a unicameral legislature. The major
benefit claimed for the unicameral legislature, aside from the
apportionment convenience suggested above, is almost the opposite.
The unicameral supporters tend to see the major problem not so much
as a matter of getting more careful and judicious consideration,
but a matter of getting any action at all. Thus they have a tendency
to see the second house as being simply another device by which
interests which do not want any legislation are more readily able to
thwart legislative action. It was this advantage of a one-house
legislature that Senator George Norris used most strenuously in his
campaign to secure the adoption of a unicameral legislature in
Nebraska. Norris centered his attack on the conference committee
which is necessary to reconcile differences between the two houses
in a bicameral set up. Norris saw the conference committee as the
main instrument used to block legislative action, or to control it.

Reduced cost, better salaries for legislators, getting better members, and improving staff work were also arguments used but were not very important. The Nebraska amendment also provided for non-partisan election of legislators but that is not an integral part of unicameralism.

The Nebraska experience, which is all we have, does not seem to give a clear answer on the matter of effectiveness. Opinions and evaluations are different but there does not seem to be much evidence that the claims of the proponents have been borne out, nor the fears of the opponents realized. Each person will, of course, have to evaluate the Nebraska experience for himself. In this connection the article by Hugo Srb which is cited in the bibliography which has been furnished is especially helpful. Mr. Srb served as Secretary of the Senate in the last years of the bicameral legislature in Nebraska, and continued on in the same capacity for the unicameral. He unquestionably knows more about the operation of the unicameral in Nebraska than any other person.

SUMMARY

It has been pointed out that the class basis of the original multi-house legislatures long ago ceased to exist and really never existed in the United States. The states as political units, however, came to be represented apart from their population and there was a resurgence of bicameralism which spread not only to state legislatures but for a time even to cities. The representation on any basis other than population, however, has now been forbidden by the courts, and the usefulness of the two-house legislature as a type has been thrown into question.

It has been pointed out that the adoption of a unicameral legislature might facilitate equality in apportionment but that it is not necessary for achieving that equality demanded by the court. It was further pointed out that on the basis of legislative effectiveness, the main argument for two houses is to be sure that ill-considered policies do not get adopted, whereas the main argument for the unicameral is that it permits a majority to be effective and not to be thwarted by complex machinery for the enactment of legislation.

RETAINING COUNTIES AS LEGISLATIVE DISTRICTS

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I. INTRODUCTION

The purpose of this monograph is to explore the
considerations involved in determining whether or not the
county should be retained as the basic unit for legislative
districts. The answers to the complex problems raised by
the apportionment question penetrate to the heart of our
democracy and they will determine the political structure
of our state in its broadest sense. Structure conditions
the process of politics, which in turn determines the results
of specific policy issues.

Any such inquiry must necessarily involve itself
with a review of at least some of the following:

> A. The decisional law.
>
> B. The experience of other states.
>
> C. The history of the county in New
>   Jersey.
>
> D. The conflicting policy considera-
>   tions as to whether or not the
>   county as a legislative unit best
>   serves our needs.

This monograph will attempt to treat with each of these
subjects in an effort to provide an informational base
for each delegate's own ultimate resolution of the
determinative question.

II. THE DECISIONAL LAW

A. Baker v. Carr to Reynolds v. Sims.[1]

The primary mandate of the case law as established by the United States Supreme Court in <u>Baker v. Carr</u> is that the basic constitutional standard of the equal protection clause requires that seats in the houses of the state legislatures be apportioned on a population basis. The touchstone of the holding is "one man, one vote".

<u>Baker v. Carr</u> was only the beginning of a case by case formulation of more definitive guideposts as to the constitutional framework within which a state would have to construct its reapportionment foundations. A plethora of cases followed <u>Baker v. Carr</u>, both in the state and federal courts. The holdings in these cases ranged a wide spectrum from a ruling in one state that both houses of the state legislature must be apportioned on a strict population basis[2] to a holding that states could follow the federal analogy.[3]

B. The Impact of Reynolds v. Sims.

On June 15th, 1964, the Supreme Court of the United States handed down the decision of <u>Reynolds v. Sims</u> and the companion cases holding that the then existing methods for selecting the houses of the state legislature in Alabama, New York, Colorado, Delware, Maryland and Virginia were unconstitutional.[4] These cases fail to provide any specific constitutional yardstick in a mathematical sense for

determining where fair representation differs from invidious discrimination. Chief Justice Warren's opinion prescribed broad guideposts to be followed, recognizing that what might be marginally permissible in one state might be unsatisfactory in another. In sum, these cases establish the following strictures for the states:

1. The equal protection clause demands that both houses of a bicameral legislature be apportioned on the basis of districts of substantially equal population.

2. Exact or precise equality of population among districts is not a constitutional prerequisite, however, weighing votes of citizens differently by any method or means merely because of where they reside is unjustifiable.

3. It is the state's obligation under the law to make an honest and good faith effort to construct districts in both houses of its legislature as nearly equal in population as is practicable.

4. Consideration of local political subdivision boundaries and composing districts of contiguous territory will be recognized factors justifying minor divergence from the strict population standard so long as the equal population principle is not significantly diluted.

5. Each state's case will be judged on its own particular facts to determine if there has been good faith adherence to the equal population principle, recognizing that divergence from the strict population standard will be considered to be legitimate only if based upon considerations

incident to effecting a rational state policy such as (a) insuring some voice to political subdivisions as political subdivisions and (b) deterring the possibility of gerrymandering.

C. Impact of the Arithmetic Approach.

While the court in Reynolds v. Sims was careful to point out that mathematical precision is not a constitutional prerequisite in achieving a legally supportable reapportionment plan, the cases, nevertheless, evidence concern with the impact of arithmetic disparity between districts and view this disparity as a primary focus of their inquiry in determining the validity of a plan. The two principal mathematical factors examined by the court are (1) the maximum population variance ratio which, simply stated, is the comparison between the most populous district and the least populous district, and (2) the minimum percentage of the state's total population which, under the apportionment scheme, theoretically can elect a majority of the challenged legislative body.[5]

Thus, in Davis v. Mann the Supreme Court found a population variance in the senate districts so that one county had but .65 of its ideal share of senatorial representation, and another county but .70 of such share, while the maximum population variance ratio was 2.65 to 1 in the senate. In the house one county was given only .42 of its ideal representation and the population variance ratio

was 4.36 to 1.   This apportionment was held to be invalid.

The statistical data on apportionment in cases decided by the Supreme Court, prepared by the Ohio Legislative Service Commission,[6] graphically demonstrate the reaction of the court result-wise to the percentages of mathematical disparity.

The most recent pronouncements of the federal courts emphasize the importance of the arithmetic factor. Thus, in Yancey v. Faubus in the United States District Court for the Eastern District of Arkansas, LR-64-C-96, affirmed by the United States Supreme Court, Docket 941,942, on March 1st, 1966, the reapportionment plan of the State of Arkansas was reviewed. The plan was attacked on the grounds that it created multi-county and multi-member districts for both houses and adherence to county lines in creating the respective districts resulted in such disparities of population as to violate the "one man, one vote" rule. The three-judge District Court found that while there were variations from the strict population standard none of these variations exceeded the 15% suggested as tolerable in Toombs v. Fortson[7] and Wesberry v. Vandiver.[8] The language of the court affirmed on this opinion held that:

> "It is quite true, as counsel point
> out, that a variation of not more than
> 15 percent or any other variation is
> not permitted automatically by the 14th
> Amendment. But, the authorities do sug-
> gest that a deviation of not more than
> 15 percent either way is tolerable, and

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in general the deviations involved in
the plan under consideration are sub-
stantially less than 15 percent.

"In general, the Senate deviations are
not great, and in only one District is
the 15 percent figure approached closely.
In four of the 25 Districts the deviation
from the ideal is less than one percent.
The average variation in the 13 over
represented Senate Districts is 4.97 per-
cent, and the average variation in the
12 under represented Districts in that
House is 4.61 percent. The spread be-
tween those average variations is 9.58
percent.

"Deviations from the ideal ratio are
somewhat more marked in the House than
in the Senate. In the House the aver-
age over representation is about 6.84
percent, and the average under represen-
tation is about 6.65 percent. Those
variations from the ideal do not greatly
exceed either way the Senate variations,
but the spread is wider, being 13.49
percent.

"We recognize that in both Houses
there are individual variations both
above and below the averages, but with
its imperfections, the plan is certain-
ly an improvement over the apportionment
which existed prior to the Board's ac-
tion, and the Board's plan goes far to-
ward correcting the imbalance in repre-
sentation of the rural over the urban
areas of the State which brought about
the litigation in the first place. We
are persuaded that the plan should be
given our approval."[9]

III.   THE EXPERIENCE OF OTHER STATES

Of those states reporting by way of legislative

commission, California, Ohio and New York have incorporated

considerations of a recognition of the county as a legislative

district. Thus, in Senate Bill No. 6 of the State of California, the statement of intent in justifying the adoption of that bill reveals that the fundamental factor incorporated in the bill is the recognition of political subdivision boundaries in districting.[10] One rationale for this choice is crystalized by Professor Dixon as follows:

> "Counties are the building blocks
> of American political life, thought,
> and action. In addition to the ob-
> vious virtues of stability and con-
> tinuity, and indeed as a result of
> them, counties are the basic units
> for political party organization,
> for state administration, for plan-
> ning, zoning, and regional arrange-
> ments, for civic federation organiza-
> tion, for social organization, and
> for business and industrial organi-
> zation in most instances. In their
> own right counties provide an increas-
> ingly broad range of services and
> controls."[11]

Colorado, Connecticut, Delaware, Idaho, Michigan, Nebraska, Tennessee and Washington follow a multitude of plans ignoring the county and other political subdivisions as the basis for the legislative unit.[12]

IV. THE HISTORY OF THE COUNTY IN NEW JERSEY

New Jersey's twenty-one counties are the direct descendents of their pre-Norman England ancestor as a convenient territotial and political subdivision for the administration of central government affairs. Since 1857 not a single new county has been created, nor was any established during the seventy-one years prior to 1824.[13] Interestingly enough from their colonial beginnings until the last colonial

legislature there was equalization of representation on a population basis until New Jersey's sixth county, Morris, was created from Hunterdon in 1739. This imbalance was off-set by the establishment in 1748 of Cumberland from Salem. From 1791, when all of the counties had equal representation in each house, population inequality commenced and was main-tained in differing degrees until 1962.[14] The early New Jersey experience in this regard mirrored to a large extent the experience throughout the country.[15]

New Jersey's county has been essentially in accord with the basis of its creation; it has functioned as admin-istrative agent to the State.[16] Throughout the country the impact of modern social and economic development has as-signed a vital significance to county government. Rapid population growth, redistribution of the population and in-creased urbanization have blurred the distinct boundaries separating the governmental responsibilities of the local units and defining intergovernmental relations. The re-gional problems of service, planning and development engen-dered by such developments have focused upon the county as the proper unit of government to handle these new responsi-bilities. Thus, in New Jersey, counties have taken on new powers and duties and within the rapid urbanization of New Jersey have become essentially the unit of regional govern-ment.

The New Jersey Supreme Court, in Jackman v. Bodine, defined the role of the county in New Jersey's political his-

tory:

> "In this connection we note that
> the counties of our State were es-
> tablished to meet the needs of popu-
> lation centers as they developed,
> and that whatever partisan advantage
> may have been thought to reside in
> the creation of a particular county,
> county lines have not since been
> manipulated for such gain. No new
> counties have been established since
> 1857, and as a practical matter under
> our existing Constitution no one today
> would attempt to gerrymander county
> lines for partisan purposes. The cit-
> izens of each county have a community
> of interest by virtue of their common
> responsibility to provide for public
> needs and their investment in the
> plants and facilities established to
> that end. Anciently, and still today,
> the counties reflect different econ-
> omic interests, although of course
> these economic interests are not per-
> fectly contained or separated by any
> political line, municipal, county or
> State. So, certain counties have a
> dominant concern with manufacturing
> and commerce; others have a large
> stake in agriculture; still others
> lean heavily upon the resort indus-
> try; and finally a few counties have
> a special interest in the products
> of the sea. And of course there may
> be competing area interests in such
> matters as highways, taxation, and
> water supply."[17]

V. POLICY CONSIDERATIONS REGARDING THE RETENTION OF THE COUNTY AS THE LEGISLATIVE UNIT.

The primary arguments made in support of retain-

ing the county as the legislative unit are that if county

lines are ignored a consideration of an effective represen-

tational unit will be destroyed and an infinite range of districting discretion and gerrymandering freedom will arise.[18] In addition to the advantage of preventing flagrant gerrymandering, it has been suggested that this view promotes a citizen's understanding of government by avoiding the proliferation of electoral districts.[19]

Opposing arguments suggest that the retention of the county as a legislative district necessarily results in producing variations from the strict population standard of "one man, one vote". Legislators should represent people, not trees or acres, and legislators should be elected by voters, not by farms or cities or economic interests. A strict population standard in the creation of legislative districts is the essential ingredient to the protection and maintenance of a viable democracy.

VI. THE INTERIM SENATE AND THE INTERIM ASSEMBLY.[20]

The interim senate and the interim assembly provide for the use of the county as a legislative district. In both houses the percentage of deviation in a number of districts exceeds 15%. It must be pointed out that no comfort can be taken from the holding by the New Jersey Supreme Court of the validity of the interim plan for the court pointed out that:

> ". . . we are mindful that we are
> dealing with a plan for the tempo-
> rary reapportionment of the Legis-
> lature rather than its permanent

structure. We appreciate also the
practical problems involved in mak-
ing a transition from the histori-
cal representative pattern in this
State to one in which each county
will no longer have an equal vote
in one of the houses.

"With respect to the first issue
mentioned above, that the basic de-
sign of Chapter 19 violates the doc-
trine of Reynolds v. Sims, we note
that that case recognized the pro-
priety of taking into account exist-
ing county lines in forming legisla-
tive election districts, provided the
plan does not submerge the primary
concept of equality of vote. If such
lines are used, obviously the dis-
tricts cannot be of equal population,
and the deviations are likely to be
larger than those incidental to the
creation of original districts in-
different to existing or other polit-
ical subdivisions. Such inequality
as may be unavoidable because of the
use of county lines may be offset by
other considerations. One is that
the drawing of original lines involves
the problem of gerrymandering. Another
is that counties do represent existing
political, governmental and economic
interests and thus constitute effective
units for representational purposes.
In our first opinion we noted the im-
portant (sic) of the county in the
political and economic life of our
State, 45 N.J. at p. 462-3.

"In indicating in our second opin-
ion in this cause that the General
Assembly as now constituted could con-
tinue for temporary purposes, we had
in mind that while the deviations
might well be too great in a permanent
plan, those deviations would be toler-
able in a transitional one, if the
total temporary plan were compatible
with the objective of Reynolds v.
Sims".[21] (Emphasis supplied).

VII. CONCLUSION

The case law, from <u>Baker v. Carr</u> to <u>Yancey v.</u> <u>Faubus</u>, suggests the conclusion that a legislative district founded upon the county may be sustainable so long as the divergences from a strict population standard are based upon legitimate considerations incident to the effectuation of a rational state policy. There is no litmus paper test for determining when fair representation becomes invidious discrimination but it is not unreasonable to assume at this point that if variations from the strict population standard do not exceed 15% and they are the result of an honest good faith effort by the state to construct districts based on present counties in both houses of its legislature as nearly equal of population as is practicable, and if they do not operate to minimize or cancel out the voting strength of racial or political elements of the voting population, the plan may pass constitutional muster.[22]

Laying aside considerations of law in regard to retaining counties as legislative districts the ultimate decision must be one of policy and it is this policy decision which is posed to the delegates. The value judgment which must be made is whether the considerations of history, geography, and the protection from the evils of gerrymandering outweigh the benefits which may result from a firm adherence to the strict population standard in the construction of legislative districts totally ignoring county lines.

FOOTNOTES

1. Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964).

2. Scholle v. Hare, 367 Mich. 176, 116 N.W. 2d 350 (1962).

3. Maryland Committee for Fair Representation v. Tawes, 31 U.S. Law Week 2016, Ciruit Court for Anne Arundel County (June 28, 1962).

4. Reynolds v. Sims, 377 U.S. 533, Alabama; WMCA v. Lomenzo, 377 U.S. 633, New York; Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, Maryland; Davis v. Mann, 377 U.S. 678, Virginia; Roman v. Sincock, 377 U.S. 695, Delaware; Lucas v. 44th General Assembly, 377 U.S. 713, Colorado.

5. Report of the Subcommittee on Reapportionment of the Senate General Research Committee, State of California, 1965, p.11.

6. Staff Research Report No. 65, Legislative Reapportionment, Ohio Legislative Service Commission, 1965, p.28 (See Statistical Data chart annexed hereto - p. iii).

7. Toombs v. Fortson, N.D. Ga., 241 F. Supp. 65.

8. Wesberry v. Vandiver, N.D. Ga., 206 F. Supp. 276, rev'd on other grounds, Wesberry v. Sanders, 376 U.S. 1.

9. Yancey v. Faubus, U.S. District Court Eastern District of Arkansas Civil Docket #LR-64-C-96 at page 9 and 10, affirmed U.S. Supreme Court, 34 U.S.L. Week 3289.

10. Report of the Subcommittee on Reapportionment of the Senate General Research Committee, State of California, 1965, p. 15.

11. Robert G. Dixon, Jr. "Reapportionment Perspectives: What is Fair Representation?", 51 American Bar Association Journal 319, at 323 (April 1965).

12. Staff Research Report No. 65, Legislative Reapportionment, Ohio Legislative Service Commission, 1965, pp. 60-64, 67, 68.

13. Harris I. Effross, Origins of Post-Colonial Counties in New Jersey, reprinted from the proceedings of the New Jersey Historical Society, Vol. LXXXI, No. 2, April 1963.

14. Ernest C. Reock, Jr., Population Inequality Among Counties in the New Jersey Legislature 1791-1962, Bureau of Government Research, Rutgers, New Brunswick, 1963.

15. Robert B. McKay, "The Reapportionment Decision: Retrospect and Prospect", 51 <u>American Bar Association Journal</u> 128, February 1965.

16. John Bebout, <u>Model County Charter</u>, National Municipal League, introduction, xi-xii (1956); James M. Collier, <u>County Government in New Jersey</u>, Bureau of Government Research, Rutgers-The State University, 1952, pp. 3-6; Cape May County Planning Board, <u>County Government: Structure and Building Space Needs</u>, 1960, pp. 11-14; Mark B. Feldman and Everett L. Jassy, "The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas", 73 <u>Harvard Law Review</u> 526 (1960), Note.

17. <u>Jackman v. Bodine</u>, 43 N.J. 462, 463 (1964).

18. Dixon, "Reapportionment Perspectives: What is Fair Representation?" p. 323.

19. William J. D. Boyd, <u>Patterns of Apportionment</u>, New York, National Municipal League, September 1962 (pp. 8-9, 14-15).

20. P.L. 1965, c.19.

21. <u>Jackman v. Bodine</u>, 44 N.J. 417, 418 (1965).

22. <u>Fortson v. Dorsey</u>, 379 U.S. 433 (1965).

STATISTICAL DATA ON APPORTIONMENT IN CASES DECIDED BY SUPREME COURT[*]

(1960 Population Figures Used)

State		Largest	Smallest	Average	Per Cent Over or Under Average	Value of vote Largest to Smallest	Per Cent of Population to Elect Majority
Alabama[a]	House	104,767	6,731	30,818	+240 - 77	16 to 1	25.7
	Senate	634,864	15,417	93,278	+585 - 83	41 to 1	25.1
Colorado[b]	Senate	71,871	19,983	44,973	+ 59.8 - 55.5	3.6 to 1	33.2
Delaware	House	Not used in court opinion				12 to 1	28.
	Senate	Not used in court opinion				15 to 1	21
Maryland	House	37,879	6,541	21,807	+ 73 - 70	6 to 1	35.6
	Senate	492,428	15,481	106,920	+360.5 - 81.1	32 to 1	14.1
New York[c]	Assembly	190,343	14,974	111,882	+ 70.1 - 86.6	12.7 to 1	37.5
	Senate	425,267	162,840	284,926	+ 49 - 42	26 to 1	38.1
Virginia	House	95,064	21,825	39,669	+103.9 - 44.9	4.36 to 1	40.5
	Senate	163,401	61,730	99,174	+ 64.7 - 37.6	2.65 to 1	41.1
Ohio[d] 1963-64 Session	House	148,700	10,274	70,850	+109.8 - 85	14.4 to 1	29.4
	Senate	439,347	228,466	294,133	+ 49.4 - 22.3	1.9 to 1	44.7

[a] The Court considered not only the existing apportionment but two proposed changes; the figures given are for existing apportionment.

[b] Only the Senate was clearly unconstitutional.

[c] Figures based on proposed reapportionment using 1960 figures but following existing constitutional and statutory provisions.

[d] Over a 10-year period, additional representatives are elected from populous counties so the percentage over average would be reduced.

SIZE OF THE LEGISLATURE

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Origin of Present Size, 21-60

The size of the Assembly has not been changed since 1844, and the Senate has stood at 21 since Union County was established in 1857. The population of New Jersey in the 1840's was 372,859, and now is 6,066,782 (1960 census).

Comparison to Other States

New Jersey ranks 7th in population among the 50 States, but 45th in the size of its Legislature. "Only Hawaii with 76 legislators, Nevada with 64, Alaska with 60, Delaware with 52 and Nebraska with 43, have fewer than New Jersey's 81 members."[1]

Senates vary in size from 17 members in Delaware and Nevada to 67 in Minnesota, with an average of 37; lower houses range from 35 in Delaware to 400 in New Hampshire, with an average of approximately 120.

"Curiously enough, the four largest lower houses are found in the New England states of New Hampshire (400), Vermont (246), Massachusetts (240), and Connecticut (294), a fact to be attributed in part at least to a tendency to give representation to every town, however small in population. The combined membership of these four chambers comprises more than one-fifth of the total membership of the (fifty) lower houses."[2]

James Bryce pointed to the fact that the size of state legislatures has varied so from one part of the country to another, and offered this explanation: "In the New England States local feeling was and is intensely strong, and every little town wanted to have its members. In the West and South, local divisions have had less natural life; in fact, they are artificial divisions rather than genuine communities that arose spontaneously. Hence the same reason did not exist in the West and South for having a large Assembly; while the distrust of representatives, the desire to have as few of them as possible and pay them as little as possible, have been specially strong motives in the West and South, as also in New York and Pennsylvania, and have caused a restriction of numbers."[3]

The Constitution of the State of New Jersey limits the size of the Assembly to 60, and specifies that each county shall have one Senator: "The members of the General Assembly shall be apportioned among the several counties as nearly as may be according to the number of their inhabitants, but each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty."[4]

Comparison of the Size of New Jersey's Legislature to That
of Other States of Somewhat Similar Populations

	Rank in Popula- tion	Population (1960)	Area (Sq. Miles)	House Size	Senate Size	Ratio of 2 Houses
Ohio	5	9,706,397	40,972	139	38	3-1
Texas	6	9,579,677	262,840	150	31	5-1
Mich.	7	7,823,194	57,019	110	34	3-1
N. J.	8	6,066,782	7,521	60	21	3-1
Mass.	9	5,148,578	7,867	240	40	6-1
Fla.	10	4,951,560	54,252	95	38	2 1/2-1
Ind.	11	4,662,498	36,185	100	50	2-1
N.Car.	12	4,556,155	49,067	120	50	2 1/2-1
Mo.	13	4,319,813	69,138	157	34	4-1

Propositions About the Size of the Legislature

(1) Representation of interests.

(a) Two extreme viewpoints:

(1) Herman Finer: "For good law, representative-
ness is of cardinal importance; all men get the sense that
they are being duly heard in the uses of authority . . . In
my own opinion, the claims of thorough representativeness have
a very high order of validity. As for procedural clumsiness,
since so large a part of legislative work is already done in
committees, there is very little harm in increasing the size
of the legislature. . . . . . . In a planning age, the
legislature must be bigger. If time cannot be stretched
beyond three hundred and sixty-five days in a year, then the
legislature's burdens must be borne by multiplying its
working members."[5]

(2) Hamilton or Madison in The Federalist: "In
all legislative assemblies the greater the number composing
them may be, the fewer will be the men who will in fact

direct their proceedings. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacities. . . . The people can never err more than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. Experience will forever admonish them that, on the contrary, after securing a sufficient number for the purposes of safety, of local information, and of diffusive sympathy with the whole society, they will counteract their own views by every addition to the representatives."[6]

(b) Consensus today: It appears to be, from the literature examined, that most of our legislatures are too large, and that rather than increase their size, one should concentrate on apportionment and methods of election.

(2) Experience and ability.

(a) There are a limited number of persons with outstanding ability who are willing to run for elective office.

(b) Legislative positions may lose their attraction for able persons if the size of the legislature is so large that one loses his individual influence in it.

(c) "In Nebraska the general judgment is that with the reduction in the number of legislators there came a noticeable increase in their average ability. Whether a still greater rise in the level of ability would follow a further reduction is not known."[7] Nebraska has 43 members in the one House.

(3) Responsibility.

Smaller legislative bodies may produce a greater
sense of responsibility on the part of the legislator if he
knows that his influence is greater and that his vote does
count for more. There are greater incentives for hard work,
if the amount of work does not thereby become overwhelming.

(4) Size and Number of Committees.

Large legislative bodies tend to have more committees.
This may lead to the fractionization of work and to needless
and harmful duplication. "Attempts to reduce the number of
committees without reducing the number of legislative members
have been only partly successful. On the other hand, a sub-
stantial reduction in the number of members is soon followed
by a reduction in the number of committees."[8]

The Eagleton study found that in "terms of number of
committees New Jersey stands well below the national average
with twelve standing committees in each house." It found a
problem, however, in the distribution of bills to the
committees, with 5 of the 12 committees in the Senate having
received 70.9 per cent of bills referred, and similarly in
the Assembly.[9]

(5) Staffing

New Jersey is weak in regard to provisions for staffs
for the legislature, and probably will continue to be so.
Good staffing could, of course, point toward fewer members of
the legislature, rather than more.

(6) Area to be Represented

New Jersey is not faced with any major problem here

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because of the fact that it has one of the smallest areas of States with its population centering about two poles and beginning to extend along the corridor.

(7) Expense.

This should not be considered a major factor in determining size, inasmuch as figures show that the cost of operating a state legislature is not one of the larger items in the budget of a state. It is estimated that the saving to Nebraska through the adoption of the unicameral system was only about 15 per cent of the legislative expense.

Patterns

Three general patterns relevant to the problem of the size of the houses of the New Jersey Legislature may be discerned throughout the country:

Pattern Number One

A two-to-one ratio in numbers of members between the lower house and the upper house. This could mean, for example, that the New Jersey Assembly could remain at 60, and the size of the Senate be increased to 30.

(1) With an Assembly of 60, the average district population in New Jersey would be 101,113, and the maximum district population no more than 116,280. These numbers are well within the figures generally accepted for representation of populations, which normally are considered adequate even up to 300,000 persons per representative.

(2) Other States having Assemblies of approximately the size of that of New Jersey are:

Colorado	65
Hawaii	51
Idaho	59
Nevada	47
New Mexico	66
Oregon	60
S. Dakota	75
Utah	64
Wyoming	56

(3) An increase in the size of the Senate would be supported by the foregoing propositions as applied to the upper house in New Jersey. Especially convincing in this regard are the work loads of the Senators in representing their constituents and in serving on key committees without the possibility of adequate staffing.

(4) The tradition in New Jersey, and many other States, has been that of a 3-1 ratio between size of the lower house and the upper, there seems to be little else to recommend that split. With a 2-1 ratio (60-30, as recommended in this first proposal), New Jersey would be in line with the following states which have approximately a 2-1, rather than a 3-1, ratio between the two houses:

Alaska	40-20
California	80-40
Colorado	65-35
Delaware	35-17
Hawaii	51-25
(Idaho	59-44)
Indiana	100-50
Iowa	108-50
Minnesota	135-67
Montana	94-56
New Mexico	66-32
Oregon	60-30
(Rhode Is.	100-44)
S. Dakota	75-35
Washington	99-49
Wyoming	56-27

(5) States having Senates of about 30 members:

Alaska	35
Arizona	28
Arkansas	35
California	40
Colorado	35
Connecticut	36
Florida	38
Hawaii	25
Kansas	40
Kentucky	38
Louisiana	39
Maine	33
Maryland	29
Massachusetts	40
Michigan	34
Missouri	34
New Hampshire	24
New Mexico	32
Ohio	38
Oregon	30
South Dakota	35
Tennessee	33
Texas	31
Utah	25
Vermont	30
Virginia	40
West Virginia	32
Wisconsin	33
Wyoming	27

(6) The only State having exactly the numbers of 60-30

is Oregon:

				Population Repres.	
State	Population	Area	Counties	House	Senate
Oregon	1,768,687	96,248	36	29,478	58,956
New Jersey	6,066,782	7,521	21	101,113	202,226

(under the 60-30
reorganization)

Pattern Number Two

A three-to-one ratio in numbers of members between the

lower house and the upper house. This could be applied to the

New Jersey Legislature, without drastic changes in sizes of

the houses, by increasing the Assembly to 75, and the

Senate to 25.

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(1) This would maintain the traditional 3-1 ratio.

(2) States having Assemblies of about 75:

Arizona	80	(lower house:	28)
California	80	(lower house:	40)
New Mexico	66	(lower house:	32)
South Dakota	75	(lower house:	35)

(3) Queries:

(a) Does the 3-1 tradition have any real justification?

(b) Is the increase of 4 Senators enough to take care of the burden of the Senators in New Jersey?

(c) Is there justification for the increase in the size of the Assembly, just to maintain the 3-1 ratio-- or for other reasons? This would bring the average population representation for the Assemblymen down to 80,890 (as compared to 101,113 with 60 members).

Pattern Number Three

A three-to-one ratio in numbers of members between the lower house and the upper house. This could be applied to the New Jersey Legislature, with increases in sizes of both houses, by increasing the Assembly to 90, and the Senate to 30.

(1) This would maintain the traditional 3-1 ratio.

(2) It would increase the size of the Senate to that considered necessary under Proposal One for the workload of the Senate.

(3) States having Assemblies (or lower houses) of about 90:

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Arizona	80
Arkansas	100
California	80
Florida	95
Indiana	100
Kentucky	100
Montana	94
Rhode Is.	100
Tennessee	99
Virginia	100
Washington	99
West. Va.	100
Wisconsin	100

(4) Queries:

(a) Does the 3-1 tradition have any real justification?

(b) Is there justification for the increase in the size of the Assembly to 90, just to maintain the 3-1 ratio -- or for other reasons? This would bring the average population representation for the Assemblymen down to 67,408 (as compared to 101,113 with 60 members).

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FOOTNOTES

[1] Eagleton Institute, The New Jersey Legislature (1963), p. 4.

[2] Clyde F. Snider, American State and Local Government (1950)
   (with figures updated by me), p. 166.

[3] The American Commonwealth (1893), vol. I. p. 487.

[4] Art. IV, sec. III, par. 1.

[5] The Theory and Practice of Modern Government, rev. ed., 1949.
   p. 390.

[6] No. 58.

[7&8] This section relies, in part, upon William Anderson and
   Edward Weidner, State and Local Government (1951),
   pp. 334-335.

[9] pp. 22-23.

THE USE OF CONGRESSIONAL DISTRICTS AS LEGISLATIVE DISTRICTS

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THE BACKGROUND

The idea that New Jersey's Congressional districts should be used as districts for the election of state legislators arose because (1) the state was facing the two tasks of restructuring its legislature and redrawing its Congressional district lines, and (2) the number of Congressional districts (15) was closely proportional to the existing size of the legislature (21 Senators; 60 Assemblymen).[1]

Proposing that both problems be solved simultaneously, the "1 - 2 - 4" plan was offered early in January, 1965.[2] This called for the redrawing of New Jersey's Congressional districts to accord with the "one man, one vote" principle, and the election of two state Senators and four Assemblymen from each reconstructed district. A similar plan was advanced by some members of the Meyner Commission in the February, 1965, report of that agency.[3]

This memorandum is designed to acquaint the delegates with the options and general implications of such plans, and the principal arguments for and against them. Many of these arguments, as will become clear to the reader, are speculative in nature. Hence, the author has not attempted to draw up a box score for the two sides. The delegate's own box score will depend largely on his political values and his reading of the political future of New Jersey.

THE OPTIONS

The Convention may use Congressional districts as the districts for the upper house, for the lower house, or both houses of a bicameral legislature -- or as the base units for a unicameral system. This does not close out the Convention's options. If the Convention decides, for example, to continue the present bicameral system, Senators and Assemblymen can be chosen at-large from the Congressional districts; all can be chosen from single-member districts within the encompassing boundaries of the Congressional districts; there can be a combination of at-large Senators and single-member district Assemblymen (or vice versa).

Any particular combination will affect the reasonableness of the pro and con arguments which are presented in the following pages. In order to give the delegates a general grasp of the problem, thus, the author is hypothesizing a "1 - 2 - 4" setup in which state Senators are elected at-large and the Assemblymen are chosen from single-member districts within each Congressional district.

THE IMPLICATIONS

There are at least three broad implications in the use of Congressional districts as legislative districts:

1. The size of the New Jersey legislature will vary automatically with increases and decreases in the number of Congressional seats assigned to the state. If, as may well happen, New Jersey gains a Congressional seat following the 1970 census, the Senate would be increased in size to 32

members, the Assembly to 64. Redrawing the Congressional district lines would handle the problem of Senate districts, but some -- perhaps all -- of the Assembly district lines would have to be redrawn in the early 1970's.

2. New Jersey will fulfill the requirements of the "one man, one vote" principle. The jurisdiction of federal and state courts has been extended to the question of the proper population size of Congressional districts, and it may be assumed that they will continue to exercise responsibility in this field. The state legislature (or other redistricting agency) will be under judicial pressure to keep New Jersey's Congressional districts correlated with the population changes recorded by each federal census.

3. Great political power will be concentrated in the hands of the state legislature (or other redistricting agency) at the time when Congressional district lines are redrawn. Those legislators will develop the scheme by which the state selects its U. S. Representatives, and will simultaneously create the basic format of the New Jersey legislature for at least a 10-year period.

ARGUMENTS FOR

1. By using Congressional districts as legislative districts, the job of apportionment is simplified now; the job of reapportionment is simplified in the future. As one report phrased things:

> Districting is a frustrating process, especially to the incumbent representatives; there is no reason why the process should be complicated by two sets of districts, so long as population is the basis in both cases.[4]

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2. The scheme can be easily understood by the average voter. If, on the other hand, New Jersey's citizens are presented with a welter of criss-crossing Congressional and legislative districts, their interest in government -- both national and state -- will lag.

3. State-federal cooperation will be furthered by having Congressmen represent the constituencies around which the state legislature is structured. Common interests and problems will lead to better lines of communication among the citizens, their representatives in Trenton, and their representatives in Washington.

4. Since Congressional districts will also serve as legislative districts, the state legislature (or other redistricting agency) will be under great public pressure to avoid gerrymandering. The federal courts will also be acting as watchdogs, enforcing any Congressional standards that may be established to prevent gerrymandering.[5]

ARGUMENTS AGAINST

1. The adoption of such a plan (1 - 2 - 4) would violate the bipartisan spirit of the Convention. The New Jersey legislature is under court mandate to redraw our Congressional district lines in time for the next primary elections. (The target date is April 11th.) If the Convention uses these Congressional districts as legislative districts, it will be abdicating its responsibility to the Governor and a legislature -- all of one political party.

2. New Jersey's 1965 reapportionment woes suggest that, as a matter of practical politics, it is easier to get a

consensus on plans that work with the counties as base units.
Adherence to counties (or groups of counties) as legislative
districts is, in addition, more in accord with the home rule
traditions and party structures of New Jersey. Maintaining
lines of communication among our counties, municipalities,
and the state legislature should be the prime objective of
the Convention.

3. The Convention will have more flexibility in dealing with
such questions as the optimum size of the legislature, the
representation of local and regional interests, if it does
not tie its hands to the "magic number" of 15.

4. Partisan gerrymandering is invited. With the stakes so high,
i.e., control of New Jersey's legislature as well as her
Congressional delegation, what future legislature (or other
redistricting agency) will be able to resist the temptation
to gerrymander? One should not ask more of the political
process than it can bear, human nature being what it is.

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interested delegate is referred to the various bills introduced
in 1965 which proposed tying legislative districts to Con-
gressional districts (e.g. S156, S172, S173, S175, S178, S207, S208,
SCR11, SCR12, SCR13, A545, A546, A579, A580, A581, ACR21, ACR22,
ACR23), and the following:

Ernest C. Reock and Stanley H. Friedelbaum, Congressional
   Districting in New Jersey (New Brunswick, 1956).

Bureau of Government Research, New Jersey Congressional Districts:
   A Plan for the 'Sixties (New Brunswick, 1960).

[1]No state uses Congressional districts as the base for its legislature nor, as far as can be ascertained, does any state contemplate such usage. The large size of the typical state legislature precludes such a neat correlation as "1 - 2 - 4."

[2]The plan was presented by former State Senator Wesley L. Lance. This was not, however, the first time that the use of Congressional districts as legislative districts had been suggested. In 1960, Assemblyman (now Senator) William Musto proposed that Assembly districts be coterminous with Congressional districts. Refer to ACR No. 42.

[3]Report of the New Jersey Legislative Reapportionment and Congressional Redistricting Planning Commission, pp. 33 ff.

[4]Bureau of Government Research, Apportionment of the New Jersey Legislature (New Brunswick, 1964), p. 11.

[5]N.B. Although anti-gerrymandering provisions were in effect during the 19th and early 20th centuries, there are none on the federal statute books today.

NONPOPULATION FACTORS IN LEGISLATIVE DISTRICTING

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There is considerable opinion among judges, lawyers and political scientists that factors other than population can be legitimately taken into account in establishing both congressional and state legislative districts. In its decision of Reynolds v. Sims, the United States Supreme Court did not rule out the consideration of nonpopulation factors in drawing district lines. On the contrary, the Court specifically suggested some factors which it said would be "constitutionally valid", so long as the resulting apportionment plan did not subvert the "overriding objective... of substantial equality of population among the various districts..."[1] Speaking for the majority, Chief Justice Earl Warren said:

> "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivisions or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."[2]

On the other hand, the Court enumerated certain factors which it indicated were not relevant to representative democracy. It concluded that "...neither history alone, nor economic or other sorts of group interests are permissible factors in attempting to justify disparities from population-based representation."[3] In rejecting these factors, the Court did not place the states in an apportionment strait jacket as some of its critics contend. In fact, just the

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opposite is true. As Robert McKay has pointed out: "...in allowing states to 'maintain the integrity of various political subdivisions' against a background of substantial equality, the Court simply reserved to the states the traditional room for experimentation and maneuver."[4] Given the general guidelines as set forth by the Court in Reynolds, this paper will examine briefly the nonpopulation factors which the delegates to the 1966 New Jersey Constitutional Convention might wish to give some attention.

Compactness and Contiguity

Aside from the equal population principle, the two most important requirements for equitable districting are compactness and contiguity. In short, these factors provide that legislative districts be composed of as compact and contiguous areas as practicable. If compactness and contiguity are ignored, it is relatively easy for a legislature to indulge in gerrymandering for partisan purposes while at the same time satisfying the equal population requirement. In commenting on this point, Andrew Hacker observed that: "...New York's experience has demonstrated that significant gerrymandering is possible even when all districts show no more than a 15 percent variation from the norm."[5]

Compactness and contiguity are largely matters of degree, and consequently, there is some question as to what constitutes a "compact and contiguous" district. Unfortunately, the courts have been somewhat vague in answering this question. Fortunately, however, Ernest C. Reock, Jr. and others have developed rather precise methods for measuring these standards.[6] Contiguity

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does not present much of a problem, since most districts are comprised of contiguous territory. The difficulty usually arises with compactness. Reock's rule on compactness might be helpful for illustrative purposes:

> "The most compact plane figure is the circle, for here the maximum area is enclosed within a given perimeter. The circle, therefore, can be used as the ideal of compactness, just as the average district population is used as the ideal of population equality. The degree of compactness of any district may be measured by the relationship between the area of the district and the area of the smallest possible circumscribing circle."[7]

Circular districts are undoubtedly beyond expectation, but the use of mechanical computers could make the above geometric measurements readily available. With this information in hand, it would not be too difficult to establish constituencies that have as much as 75 per cent of their territory within the "ideal of compactness." Actually the problem is that districts can be too compact. Again as Hacker points out, "...it is not clear that setting a standard of compactness would solve more gerrymandering problems than it could create, or at least perpetuate."[8]

Community of Interests

The argument is often advanced for creating constituencies which are relatively homogeneous in make-up. The objective is the establishment of legislative districts composed of citizens with similar interests and goals. It is argued that in such districts the voters would have sufficient political power to elect representatives who are not only "one of their own kind", but who also share their basic interests. Thus, complaints are frequently voiced when redistricting divides an area that is supposedly of this nature:

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"In modern cities people of similar interests, culture
or income tend to live close to one another and to
develop close-knit neighborhoods. Over the years these
form harmonious and durable ties with surrounding
neighborhoods of somewhat different cultural backgrounds.
The people in such groups of neighborhoods have every
right to expect that the state, in readjusting Congressional
and legislative districts, will take cognizance of their
historical associations and common interests so that any
change will entail minimum disruption of their traditional
political pattern."[9]

The major problem with using community of interest as

a standard for legislative districting is in identifying and

isolating the interest or interests held in common. As a

result of this difficulty, community of interest has usually

been omitted as a districting standard. The difficulty

arises from the fact that each resident in a particular area

has numerous interests, and therefore, it would be virtually

impossible to determine which of those interests is to be

given priority and used as a basis for establishing a

constituency. For example in New Jersey "...a farmer in

Sussex County may have more in common with another farmer

from Cumberland County than he has with a merchant in Newton

or a new homeowner who commutes to work in Paterson."[10]

Nor does it follow that the political power of the urban

voter will be enhanced by merging cultural neighborhood

boundaries with those of the constituency. As a matter of

fact, in districts where this occurs such as New York City's

18th District (Harlem), the citizens frequently are unable

to use their votes to maximum advantage. Perhaps the most

that can be done about community of interest is to adopt the

standards of compactness and contiguity. As one observer has

indicated: "If it is assumed that persons with like interests

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often live close together, then a really compact and contiguous constituency may give as much emphasis to a community of interest as is desirable."[11]

Topography

Topographic features of the landscape, such as rivers, mountain ranges and other impediments to easy travel have occasionally been considered in determining constituency boundaries. Several decades ago, political geographer, Carl Sauer, presented a fairly persuasive case for using topography as a criterion in districting.[12] A great deal of his argument was predicated upon the concept of "geographic unity" and the permanency of natural geographic areas. An approach similar to Sauer's can be found in the Alaska constitution (Article XIV, Section 3), which provides for districts based upon river drainage areas.

In an earlier period of American history when methods of transportation and communications were slow, topography was undoubtedly an important consideration in drawing the limits of a constituency. Under modern day conditions, however, this factor has declined appreciably in relative importance. While topography still may be of concern in some areas, it does not lend itself to objective measurement as a districting standard; nor is it of particular revelance to the representative function in the democratic process. Moreover, the U.S. Supreme Court has taken an exceedingly dim view of using geographical factors: "...people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in

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the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations."[13]

Incumbent's Interests

A tradition deeply imbedded in American politics requires that a legislator reside within the district which he represents. In most states, the tradition has the added legal force of a constitutional rule. As a result, serious consideration must be given to the importance of this factor in drawing up a redistricting plan. Alfred De Grazia has summarized the interests of an incumbent legislator which are affected by reapportionment:

> "...the typical legislator suffers from the long proceedings; the need to guard himself against too much tampering with his own boundaries; the need to lose thousands of known constituents and to acquire thousands more who are completely unknown; the need to reorganize associational ties of many kinds with churches, union locals, businessmen, clubs, and the like; the necessary struggle for power with other legislators with whom he had hitherto been at peace; the need to read new newspapers; perhaps a change in his own home address; the possibility of increased risk of losing his seat; the need to shuffle his staff around to accommodate new interests and drop old; the need to reconsider his factional alignments in the legislature; the need to familiarize himself with new units of government, new school districts, and all their legislative needs."[14]

It is not just the incumbent legislator who is affected. The constituents, who have come to know him well, may suffer from a change in district lines that deprives them of his knowledge, experience and services. If a large number of experienced legislators are retired as a consequence of reapportionment, the work of the legislature may suffer, at least temporarily. Professors Steiner and Gove suggested

in a study a few years ago that: "Redistricting proposals
that dislodge a minimum number of sitting members, irrespective
of party, will be favored over proposals that do not take
into account sitting members."[15] It must be said, however,
that preservation of an incumbent does not necessarily
guarantee better representation.

Whole Municipalities

Theoretically, it is possible to devise a completely
new districting plan for New Jersey without any regard for
municipal boundaries. Even if this were a desirable objective,
it is by no means practical. Besides, there are several
valid reasons for maintaining whole municipalities wherever
possible. A leading student of reapportionment has outlined
these reasons as follows:

> "There is nothing intrinsically difficult about
> drawing legislative representation district lines
> to satisfy the equal-population principle even
> while following local political subdivision lines
> to a substantial extent. Indeed, these already-
> existing lines make the task simpler so long as
> rigid adherence to any one such set of lines, such
> as county lines, is not required. City, township,
> village, census tract, or even ward and precinct
> lines may sometimes be more meaningful. The practice
> of adhering to existing lines is also helpful in
> minimizing the always-present risk of gerrymander."[16]

Furthermore, in most cases political organizations
are tailored to municipal boundaries. It does not make
much sense to ignore these boundaries in order to satisfy
some districting requirement of low priority. In developing
a districting plan for the State of New York, the recent
Advisory Council on Reapportionment applied the principle
of "whole municipalities" to a considerable extent.[17] While
it is realized that district lines will of necessity have to

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be drawn through some large municipalities in order to comply with the equal-population requirement, nevertheless, municipal boundaries should be retained where feasible.

Conclusion

In summary, the U.S. Supreme Court has declared that nonpopulation factors may be appropriately considered in redistricting. Among those which the Court has expressly ruled out include economic and group interests as well as topographical factors. If one accepts the Court's guidelines on reapportionment, then legislative districts should be comprised of as compact and contiguous areas as practicable. Compliance with these two standards will sufficiently take into account the community of interest factor. And lastly, municipal boundaries should be respected wherever possible in the drawing of district lines.

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FOOTNOTES

[1] <u>Reynolds</u> V. <u>Sims</u>, 377 U.S. 533, 578-579 (1964).

[2] <u>Ibid</u>., 579.

[3] <u>Ibid</u>., 579-580.

[4] Robert B. McKay, <u>Reapportionment: The Law and Politics of Equal Representation</u> (New York, 1965), 254.

[5] Andrew Hacker, <u>Congressional Districting: The Issue of Equal Representation</u> (Washington, D.C., 1963), 66-67.

[6] Ernest C. Reock, Jr., "Measuring Compactness as a Requirement of Legislative Apportionment" 5 <u>Midwest Journal of Political Science</u> 70 (1961). See also James B. Weaver and Sidney W. Hess, "A Procedure for Non-Partisan Districting: Development of Computer Techniques," 73 <u>Yale Law Journal</u> 289 (1963).

[7] Ibid., 71.

[8] Andrew Hacker, op. cit., 69.

[9] Quoted in ibid., 68.

[10] Bureau of Government Research, Rutgers, The State
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[11] Ernest C. Reock, Jr., "Standards for the Apportionment
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[12] See Carl O. Sauer, Geography and the Gerrymander",
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[13] Reynolds v. Sims 377 U.S. 533, 580 (1964).

[14] Alfred De Grazia, Apportionment and Representative
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[15] Gilbert Y. Steiner and Samuel K. Gove, The Legislature
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[16] Robert B. McKay, op. cit., 271.

[17] See Report of Advisory Council on Reapportionment to
the Legislature of the State of New York (December,
1965), Appendix C, 26-32.

ALLOWABLE AND DESIRABLE POPULATION DEVIATIONS

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Chief Justice Warren, speaking for the United States Supreme Court in the case of Reynolds v. Sims,[1] said:

> "The Equal Protection Clause (of the federal constitution) demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races....We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."

A few paragraphs further in the same opinion, however, the Chief Justice granted:

> "We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."

A basic question facing anyone designing an apportionment plan, then must be: "How equal is 'substantially equal'?" Thus far, the United States Supreme Court has not been of much help in answering the question. In fact, again in Reynolds v. Sims, Chief Justice Warren stated:

> "For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. What is marginally possible in one State may be unsatisfactory in another, depending on the particular circumstances of the case."

While a wide variety of lower court decisions have been rendered, and they eventually may result in providing an answer, at the present time there does not appear to be any accepted judicial consensus as to just how equal "substantially equal" must be.

The Measurement of Inequality

One of the most common statistical measures of inequality is the relative deviation of the individual constituencies from the average for all constituencies.[2] It is found by:

(1) dividing the total population of the state by the number of seats in the legislative body to find the average population per seat (frequently known as the "representative ratio"),

(2) calculating the population per seat for each constituency, and

(3) finding the amount by which the population per seat in each constituency differs from the average, and expressing this amount as a percentage of the average.

For example, New Jersey's population, 6,066,782, divided by the 29 seats in the State Senate, yields an average population per seat (representative ratio) of 209,199. Burlington County, with a population of 224,499 persons, is 15,300 above the average. This is a relative deviation of +7.3 per cent from the average. It could also be said in this case that Burlington County was 7.3 per cent under-represented.

Justification for Some Deviation

As indicated on page 1, the United States Supreme Court has recognized that absolute equality is practically impossible to attain. And in Reynolds v. Sims certain factors were cited as permissible justifications for some inequality. Chief Justice Warren listed the following objectives as grounds for permitting legislative constituencies to deviate

somewhat from the "substantially equal" rule:

(1) to maintain the integrity and voice of political sub-
   divisions,

(2) to provide for compact districts of contiguous territory.

Both of these factors, in Warren's view, can be justified
as measures to prevent the gerrymandering of districts,
while the first has an independent claim for recognition,
since:

> "...Local government entities are frequently charged
> with various responsibilities incident to the operation
> of state government. In many states much of the
> Legislature's activity involves the enactment of so-
> called local legislation, directed only to the concerns
> of particular subdivisions."

To these reasons cited by the Chief Justice for not
requiring precise population equality among constituencies
may be added the following:

(3) if census data are to be used as a basis for the

   apportionment, there is a substantial time lag between

   the date on which the inhabitants of an area are

   counted (April 1 of the census year) and the date when

   this population count may be reflected in legislative

   representation. For example, after the 1950 census the

   New Jersey results were not available from the Bureau

   of the Census until late in 1951, and they were not

   officially certified to the Governor until February,

   1952.[3] This meant that elections under a reapportionment

   plan based upon certified data could not be held until

   at least 1953, and the legislators elected at that time

   could not take office until January, 1954, three years

   and nine months after the population had been counted.

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During all of this time the population distributions were changing. Even under ideal conditions, the population distribution in New Jersey cannot be reflected in legislative representation in less than one year and nine months after the count is made.

(4) Furthermore, if U. S. Bureau of the Census data on number of inhabitants are to be used, it should be recognized that these data themselves are not precisely accurate. For example, the nation-wide error due to under-counting of population has been estimated at about 1.7 to 2.0 per cent, with some evidence that errors of this sort are a bit higher in New Jersey. In addition, other errors of various types may occur in the census data.[4]

Examples of Limitations on Deviation

Opinions and practice have varied in connection with the maximum relative deviation which may be permitted. Illinois, as early as 1870, adopted a constitutional provision requiring that no senatorial or representative district might be created having less than four-fifths of a representative ratio;[5] this is the equivalent of a -20 per cent deviation. No restriction was placed on the maximum size of the district. Missouri, in its 1945 Constitution, permitted, at most, a 25 per cent relative deviation, either plus or minus, from the average district size.[6] In 1951, a Committee of the American Political Science Association recommended that no congressional district be permitted to deviate by more than

15 per cent from the average.[7] In recent years, bills
have been introduced into Congress stipulating 10, 15, or
20 per cent as the maximum permissible deviation for
congressional districts; a bill setting the limit at 15 per
cent passed the House of Representatives in 1965, but has
not been enacted by the U. S. Senate. In connection with a
similar problem in local government, New Jersey's Optional
Municipal Charter Act of 1950 provides that no municipal
ward may differ in population by more than 10 per cent from
any other ward.[8] This is far more stringent than a plus or
minus 10 per cent deviation from the average.

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Factors Affecting the Degree of Equality
Which Can Be Attained

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A number of other considerations have an impact on
the degree of equality which should be expected from an
apportionment plan. The importance attached to each of these
factors must be weighed against the importance of statistical
equality.

The Type of Apportionment Used

Basically, there are two types of apportionment:
(1) the distribution of seats to constituencies whose
boundaries are fixed in advance. For example, in the New
Jersey General Assembly, the 60 seats are distributed
among the counties in proportion to the number of in-
habitants in each county.
(2) the districting of the state into constituencies of
equal population, each constituency to elect the same
number of representatives. For example, the state has

been divided into 15 congressional districts, each of which elects one Congressman.

Generally speaking, the first type of apportionment -- the distribution of seats to fixed-boundary constituencies -- will tend to result in _less equal_ constituencies. This becomes particularly acute where some of the constituencies are on the borderline between receiving one or two seats. For example, if the state has 6,000,000 inhabitants, and there are 60 seats to be distributed, the "representative ratio" or average population per seat would be 100,000 persons. If a constituency had 150,000 residents, it would show a relative deviation of +50 per cent if it were given one seat, and a relative deviation of -25 per cent if given two seats.

On the other hand, if the boundary lines of the constituencies can be adjusted through the other type of apportionment -- districting -- the tendency will be to facilitate the creation of _more equal_ constituencies.

The Prevention of Gerrymandering

Various provisions which may be written into a constitution to prevent gerrymandering -- such as require- ments for contiguous and compact districts, districts which follow political subdivision lines, etc. -- may have the effect of making it more difficult to achieve con- stituencies with relatively equal populations per repre- sentative. If there is a fear of gerrymandering, then some equality of representation may have to be sacrificed

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to limit the gerrymandering.

The Importance of Maintaining Political Subdivisions Intact

Rather precise population equality often can be achieved if counties and municipalities are split into smaller geographical pieces. If it is considered highly important to maintain counties and municipalities as whole entities within legislative constituencies, then less equal constituencies may have to be accepted.

The Number of Seats in the Legislative Body

The size of the legislative body could have a significant effect on the degree of population equality which may be attained.

(1) If distribution of seats to fixed-boundary constituencies is used, a larger number of seats probably will tend to provide more equal constituencies, since this will tend to eliminate the sort of dilemma posed by the small constituency, as described on page 6.

(2) If districting is used, a larger number of seats probably will tend toward less equal constituencies, if by increasing the number of seats the number of constituencies also is increased.

The Relationship Between the Size of the Geographical "Building Blocks" and the Size of the Constituencies

Especially in districting a state, the legislative constituencies usually are put together by grouping various geographic "building blocks" of territory in which the number of inhabitants is known. Such "building blocks" may be census enumeration districts, census tracts, municipalities, or

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counties. The relationship between the size of the average "building block" and the size of the average constituency will have a substantial effect on the degree of equality which it may be possible to attain.

(1) As the "building blocks" become larger in relation to the constituencies, the constituencies will tend to be less equal.

(2) As the "building blocks" become smaller in relation to the constituencies, the constituencies will tend to become more equal.

The Characteristics of Population Growth

If all areas of the state were growing at approximately the same rate, there would be no difficulty in keeping constituencies equal, and the time lag in the implementation of an apportionment plan would have no significance. However, the extent to which different parts of a state vary in growth rates will have an inverse effect upon the degree of population equality which can reasonably be sought. This will be particularly true as the number of individual constituencies is increased, for the tendency then will be to create constituencies which are growing at radically different rates. If fewer, but larger, constituencies are used, the tendency will be to create areas which are growing at more nearly the same speed, and thus more equal constituencies will result.

Conclusion

The two theses emphasized in this paper have been:

(1) the lack of consensus as to the allowable deviation in

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population, and

(2) the large number of other factors which may make some

deviation permissible, and even <u>desirable</u>.

In writing constitutional apportionment provisions, the
designers of a plan probably should re-phrase the question
posed on page 1, and express it as two questions:

(a) How much population deviation will the courts <u>accept</u>

as still providing for "substantially equal" representation?

(b) Within these limits, how much population should be

<u>utilized</u> in order to provide for other desirable appor-

tionment factors?

The answer to the first question remains unclear.
The United States Supreme Court has expressly avoided
giving guidance. The New Jersey Supreme Court has permitted
deviations of from +42.4 per cent to -52.0 per cent to stand
for the temporary apportionment of the General Assembly used
in the 1965 elections. But they have stated in this con-
nection:[9]

> "In indicating in our second opinion in this cause that
> the General Assembly as now constituted could continue
> for temporary purposes, we had in mind that while the
> deviations might well be too great in a permanent plan,
> those deviations would be tolerable in a transitional
> one, if the total temporary plan were compatible with
> the objective of <u>Reynolds</u> v. <u>Sims</u>."

Similar language was used in connection with the
temporary plan for apportionment of the State Senate, where
the deviations ranged from +27.3 per cent to -20.9 per
cent:[10]

> "...the single question before us is whether the
> foregoing distribution (of seats in the Senate)
> will satisfy the demands of <u>Reynolds</u> v. <u>Sims</u> for

the purpose of a temporary Legislature. While we recognize room for dispute, we are persuaded that... (the distribution)...is constitutional for such temporary purpose.

"In view of the suggestion made during the oral argument that our approval of...(the distribution)... might be construed to forecast the view that a like arrangement would be acceptable for permanent purposes, we re-emphasize that we are dealing only with the sufficiency of the plan for interim purposes and nothing contained herein should be deemed to suggest that we would find it suitable as a permanent arrangement."

Although no limit was made explicit, these statements would seem to indicate that the existing deviations of the temporary apportionment plan are too great to stand in a permanent plan. Just how much lower they must be remains unknown. A guess, but only a guess, is that the maximum relative deviation may not exceed, at most, 25 per cent. And the ceiling may well be lower than this figure.

The answer to the second question must depend upon the relative importance assigned to each apportionment consideration by those who draw up the plan.

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FOOTNOTES

[1] 37 U.S. 553 (1964)

[2] Two other fairly common measures of inequality are:
   (a) the minimum percentage of the State's population
      residing in constituencies electing a majority of
      the legislative body, and
   (b) the ratio between the largest and smallest
      constituencies.
For a description of these measures and an application to
   New Jersey, see Ernest C. Reock, Jr., Population
   Inequality Among Counties in the New Jersey Legislature,
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[3] New Jersey Legislative Reapportionment (Trenton: Law and
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[4] Don F. Heisel, Parameters of Aging (New Brunswick: Urban
   Studies Center, Rutgers, The State University, 1965),
   Appendix.

[5] Constitution of Illinois (1870), Article IV, Section 6.

[6] Constitution of Missouri (1945), Article III, Section 7.

[7] "The Reapportionment of Congress," American Political
   Science Review, XLV (1951), 153-57.

[8] New Jersey Statutes Annotated 40:69A-200.

[9] Jackman v. Bodine, 44 N.J. 414.

[10] Ibid.

METHODS FOR FUTURE REAPPORTIONMENT OR REDISTRICTING

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A. RELATIONSHIP TO OTHER ASPECTS OF REPRESENTATION

The feasibility of establishing a system for automatic or self-executing reapportionment in the future will depend to a considerable extent on the system for allocation of seats eventually embodied in the Constitutional amendment. And the feasibility of providing for future reapportionment by some body or agency other than the Legislature, while partly dependent on the same factors, will also be dependent on the structure, composition and selection of the separate body or agency.

It is not the purpose of this monograph to evaluate one or another system for the allocation of seats insofar as they will determine the kind of legislature to be constructed. What will be done is to analyze the major choices available for consideration and to indicate the extent to which each one tends to lend itself to the mechanisms under discussion.[1]

At the outset, perhaps the most important distinction to be made is between two basic systems for allocating seats. One system establishes fixed geographical areas or divisions, with set boundaries, and selects a formula for distributing seats or votes for each area. This is generally called an "apportionment." The other system fixes the number of seats or selects some formula to express a ratio between the con-stituency and a seat, and then requires that areas of sub-stantially equal constituency or multiples thereof be drawn

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or redrawn with each realignment. This is usually called a "districting."[2]

B. UTILITY OF COMPUTER TECHNOLOGY

Mention should be made, too, of the possibility of using electronic computers to make reapportionment or redistricting layouts as new census results are certified. There are computers in existence which can either allocate seats or draw the boundary lines for new districts. But while these devices have great capabilities and can process a vast amount of detail in a very short time, it must be understood that they can only function with fully explicit instructions. Particularly in connection with systems that require the redrawing of lines, it would not be until a set of specific rules had been laid down, establishing criteria for the measurement of the results, that it would be possible to prepare instructions for the operation of the computer. For this reason, it is believed that at the present time the usefulness of computers will tend to be restricted, perhaps to the role of preparing a variety of possible solutions, from which that one most generally acceptable can be selected, or for testing the quality of a proposed arrangement.[3]

C. IMPORTANCE OF DEFINING ALL VARIABLES

This state of affairs is not due to any defect or shortcoming in computer technology. Rather, it is due to the fact that aside from the basic concept of "one man, one vote," and the general recognition that other factors may be given some weight so long as they do not submerge the major index, the rules or guides for the fair apportionment of state legislatures have neither been laid down nor agreed upon. There is not, for

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example, any specific limit to the extent of permissible variations. If 6,000,000 people are to be represented by 60 legislators, the "perfect" unit would contain 100,000 people. A deviation of 10% would accept units as low as 90,000 and as high as 110,000. A deviation of 15% (such as has been suggested for Congressional districts by H.R. 5505, 89th Congress, 1st Session) would permit units as low as 85,000 and as high as 115,000, or a comparative size of 1.35 to 1.[4]

In the example given, if 30 seats are assigned to areas with 85,000 people (15% below the target) and 30 to seats with 115,000 people (15% above), a majority vote of the body, or 31, could be composed of the 30 overrepresented areas plus one underrepresented area, for a total of 2,665,000 people or 44.4% of the entire population; and the remainder of 3,335,000 people (55.6%) would have only 29 seats. This is a measure of the maximum divergence from the "one man, one vote" concept that could exist with a limit of 15%, whether the divergence be accidental or deliberate.

D. COMPACTNESS AND CONTIGUITY

Aside from the size of the constituency, perhaps the next two criteria generally viewed as essential is that each area be composed of "contiguous" territory, and be as "compact" as practicable. These would be fairly simple measures to apply if population were more or less evenly distributed over the area of the State, and if the shape of the State were some regular geometric figure. In New Jersey, neither condition prevails. Actual population is highly concentrated

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along the New York-Philadelphia axis, and only 52 of the State's municipalities, out of the total of 567, contain more than 50% of the total 1960 census population. See Table attached. In addition, that which may appear to be contiguous on a map may be quite disconnected on the ground. The technique of map drawing simply has not progressed to the point where population concentration, topography, transport facilities and other seemingly unrelated features can all be graphically portrayed on a two-dimensional sketch.

"Compactness" is also an unsettled concept. In terms of plane geometry, it is true that the most "compact" figure which a given area can take is the circle, and "compactness" can be measured theoretically by scribing a circle that will just contain a district and comparing the area of the district with the area of the circle. But on the ground, and in a functional sense, this may not be true at all. If the normal travel time between point A and point B is normally 15 minutes, and between A and C, 30 minutes, a district containing A and B would be functionally more compact than one containing A and C, even though A and B are 15 miles apart and A and C only 7 miles apart. The Weaver-Hess formula mentioned in the footnotes attempts to give weight to these elements.[5]

One facet of "community of interest," an extremely vague concept, is that which arises from the dynamic character of urban and suburban populations. Large numbers of people reside in one locality but spend most of their conscious and productive waking hours at some other location. If the two

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locations are in separate representative areas, a serious practical obstacle is presented to a real achievement of a "community of interest" representation. One solution to this problem could be to extend to eligible voters the option to select, as the place where he will cast his ballot, either the locality where he resides or the locality where he is regularly employed. For apportionment purposes this would require that registration or voting records be the basis for measuring equality of representation.

For these and other reasons, any provisions for automatic or self-executing reapportionment must be so drawn in relation to the system adopted as to be capable of purely ministerial application, whether the work be done by people or by computers.[6]

E.   TESTING THE RESULTS

The test of whether this requirement has been met is whether the reapportionment resulting from any ensuing set of census figures will be the same whether figured out by one person or by another. That is, once a new set of census figures comes in, it should not matter who applies them to the apportionment of seats. This amounts to saying that the nature of the system and of the formula must be such that on any given set of census figures, there will be but a single choice available.

The present state of the art is such that this condition can be expected to be met only under a system which establishes fixed boundaries for the constituencies and with elections at large within any area entitled to more than

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one vote.

It also means that if some limit, such as 15%, is
to be placed on population deviations, the system must
also include an arrangement for fractional or weighted
voting after seats have been allocated as well as possible.
This is because it is too much to expect that the elements
that bring about population growth in any given location
will permit a distribution that will nicely fit into
quantities with no more than a 15% deviation. The opposite
is to be expected.[7] [8]

Nor can a system such as that under discussion avoid
this part of the problem by adopting some mechanism for
combining two or more adjacent areas to bring the aggregate
within the specified limits. This is for at least two
reasons: first, there is no reason to suppose that the
deviations of two adjacent areas will tend to offset each
other and, second, the process of combining areas in a re-
apportionment involves precisely the same difficulties as
the drawing of new lines, and this is excluded under the
assumed conditions, simply because it may result in the
existence of more than one choice.

The situation with Atlantic, Cape May, Cumberland and
Salem counties under the 1960 census will illustrate this
point. The "perfect" population per member, with 60 seats
to represent 6,066,782 people, is 101,113; Cape May has
only 48,555, or 52% less than it should for a single seat.
Atlantic, which is adjacent to Cape May, has 160,880, or
20.5% less than it should for two seats. One choice would

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be to combine these two counties for a total of 209,435 which is about 3% more than needed for two seats. But Cape May could also be combined with Cumberland (106,850, or 5.7% more than needed) and Salem (58,711, or 41.9% less than needed), for a total of 214,116 which is about 6% more than needed for two seats. Both choices are well within the 15% goal, and the difference of 4,681 is only about 1% of the total of the four counties. Similarly, a combination of Cape May and Atlantic would compel a combination of Gloucester and Salem, for a total of 193,551 which is about 4% less than needed for 2 seats; while a combination of Cape May, Cumberland and Salem would probably compel a combination of Gloucester and Atlantic, both of which are off by more than 15%, for a total of 295,720 for 3 seats, which is about 2.5% less than needed.

F. CRITERIA FOR A REAPPORTIONMENT AGENCY

Assuming that the system to be adopted is one that contemplates the combining of areas or otherwise the drawing of new lines to effect a reapportionment on an ensuing census, then it must be recognized that unless some wholly arbitrary rules are to be adopted, the process will not be substantially mechanical but will involve some degree of choice. This is because any system in which new lines may be drawn will inherently be capable of satisfaction by a large number of valid arrangements, and the apportionment process will consist largely of selecting some one arrangement out of the many. Regardless of who is entrusted with this function, some expression of a guide, norm or standard

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will be essential in order to restrict the number of choices. The only possible exception may be if the agency to perform this function is separately established to perform this sole function and if the members composing it are directly elected by the people on a basis conforming to federal standards. This would be, in effect, an ad hoc legislature whose members would be elected at the first general election after new census results are certified, so that its work could be completed in time for the primaries in the next ensuing election of legislators. It would itself be a "reapportioned" body that might be expected to be more impartial than one that is not.

Aside from that approach, which is novel, the question comes down to deciding on an agency to do the job and whether it should be done directly or only after the legislature in office has had an opportunity within a specified time to settle on a new districting.

There are sharp differences of view on the question whether the initial opportunity to redistrict should rest with the legislature. The argument that the legislature should be excluded rests upon the fact that it was the failure of legislatures to act, sometimes for many decades despite constitutional mandates, that brought on the extreme pressures resulting in the reapportionment decisions. It is also rested on the concept that if the census figures indicate substantial changes (and high population mobility may cause just that), the legislature in office will tend to be more badly malapportioned and hence more likely to

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select a biased choice that will lean toward a perpetuation of control. This could continue and protect a minority control and deprive the public of its remedy at the ballot box. Lastly, the argument runs, even though judicial remedies are now available to challenge a bad reapportionment, the process of review can take so long, especially if appeal to the United States Supreme Court is involved, that a good part of the decade may be consumed in expensive litigation before a remedy is achieved.[9]

The argument the other way rests on the claim that the past history is not a sound basis on which to ground future performance, because that history was compiled in an era when there was no judicial remedy available. It is pointed out that once it was settled that judicial remedies are available, and that the reapportionment process must be completed in time for the next election (with some rare exceptions), prompt and effective action was taken, and that this is more indicative of future performance.[10]

It also rests upon the view that the normal legislative process should be allowed to function, drawing upon the knowledge and experience of persons most familiar with the problems of reapportionment. Concern about delay can easily be met by specifying a deadline for enactment, and concern about validity and ensuing litigation can be met by a requirement for direct and automatic review of the results by the Supreme Court, with authority and direction to make such adjustments as may be needed to render the plan valid if it be found defective.

When the system is one that allows for more than one choice of arrangement on a new set of census figures, some objective "yardstick" is needed to narrow down the choices to a single one that meets constitutional standards. The subject has been analyzed in some depth.[11] It would seem that one possible test would be to specify, as an over-all check, that all possible combinations of legislative majorities carry with them a population of more than half the total. But this would, in essence, be an apportionment with no deviation and is probably too strict for reality. Perhaps some arbitrary level, such as 70.7% (reciprocal of the square root of 2) would be a sufficiently high degree of perfection and yet within practical reach.

SUMMARY

1. For the purpose of simplifying future reallocations, and to make feasible some ministerial or automatic application of new census figures, a system based on fixed boundaries and distributions among them according to the selected population index is the most feasible one.

2. Even on such an arrangement, it is likely that the size of the unit represented by a single seat will be too large on occasion to permit an allocation within some fixed limit, such as 15%. Hence the system needs to be supplemented with a finer adjustment device, such as fractional or weighted voting. Means for small increases or decreases in the total number of seats could alleviate this problem to a degree.

3. If the system calls for redrawing district lines (or combining existing districts, which amounts to the same thing), each set of census figures will offer a fairly large number of "valid" choices. Unless a complete set of rigid and arbitrary rules can be agreed on or laid down, ministerial application is excluded. Some final, independent body with a degree of discretion, would be needed. Even here, expression of specific guides, norms or standards for the exercise of the discretion would be needed to test the results.

TABLE OF MUNICIPALITIES WHOSE 1960 POPULATION IS MORE THAN HALF THE STATE TOTAL.
(6,066,782)

Newark	405,220	Middletown	39,675
Jersey City	276,101	Perth Amboy	38,007
Paterson	143,663	Vineland	37,685
Camden	117,159	Kearny	37,472
Trenton	114,167	Fair Lawn	36,421
Elizabeth	107,698	Orange	35,789
Clifton	82,084	West New York	35,547
Woodbridge	78,846	Belleville	35,005
East Orange	77,259	Pennsauken	33,771
Bayonne	74,215	Delaware Township	31,522
Hamilton Township	65,035	Westfield	31,447
Atlantic City	59,544	Hackensack	30,521
Irvington	59,379	Nutley	29,513
Passaic	53,693	Wayne Township	29,353
Union City	52,180	Garfield	29,253
Bloomfield	51,867	New Hanover	28,528
Union	51,499	Rahway	27,699
Hoboken	48,441	Bergenfield	27,203
Plainfield	45,330	Ewing Township	26,628
Edison Township	44,799	Cranford	26,424
Montclair	43,129	Long Branch	26,228
North Bergen	42,387	Englewood	26,057
Teaneck	42,085	Parsippany-Troy Hills	25,557
New Brunswick	40,139	Ridgewood	25,391
Linden	39,931	Maplewood	23,977
West Orange	39,895	Summit	23,677
		Total	3,054,975

[1] A good many of the pros and cons on most of the significant aspects, e.g., bicameralism, multi-member districts, types of "population base" available, limits or deviations, number of seats, and so on, are informatively presented by "Reapportionment in New Jersey", January, 1965, issued by the N.J. Committee for Fair Representation. See, especially, the discussion at pp. 19 to 22, dealing with the mechanisms available or used for subsequent apportionments.

[2] If it should be desired to gear legislative representation to congressional districts, a number of limitations automatically appear. The number of seats must be a variable, consisting either of the same number, or a multiple of the same number, as there are congressional seats, which is a variable. Multimember districts are ruled out except on a basis which has an equal number of seats per district. Future reapportionments could only be accomplished by a redrawing of lines, the only adjustment method available for congressional districts. Total population alone (and not citizens, registered voters, actual voters, or some other such base) could be recognized for the establishment of district areas.

[3] For a general discussion of this approach, see De Silva, "Reapportionment and Redistricting", in 213 Scientific American, 20 (Nov. 1965). Description of a program for a computer which takes account of equality of representation, contiguity and compactness, and political impact of a specific reapportionment is found in Nagel, "Simplified Bipartisan Computer Redistricting", 17 Stanford Law Review 863 (May, 1965).

[4] The combination of fixed geographical areas, such as counties, and some number of seats, such as 60, can result in considerable variations even with as impartial and objective an allocation system as that provided by the "method of equal proportions." See, for example, Appendix H to the Report of the N. J. Legislative Reapportionment and Congressional Redistricting Planning Commission (February 5, 1965) showing the deviations in the present Assembly ranging from 5 counties overrepresented by some 20.5% to 52%, and 3 counties underrepresented by some 29.4% to 42.5%. At the same time, the average deviation for all counties combined is only 10.7%.

[5] "A procedure for Nonpartisan Districting: Development of Computer Techniques." Weaver and Hess, in 73 Yale Law Journal 288 (Dec. 1963).

[6] An example of one completely ministerial formula for reapportionment is found in the current statute by which the Assembly was reapportioned in 1961. The Secretary of State is designated as legislative agent to make the calculations and certify the results according to the "method of equal proportions." See P.L. 1961, c. 1 (N.J.S.A. 52:10-3 to 52:10-10).

[7] One of the earliest discussions of "weighted voting" appeared in a report prepared for the General Assembly, by Dr. Anthony Ralston of the Electronic Computing Laboratory, Leeds, England. "A Fresh Look at Legislative Reapportionment in New Jersey", June, 1960, especially at pp. 20 to 22.

[8] The availability of systems such as "weighted" or "proportional" voting has been explored to some extent, and is at this stage open to debate. See, for example, the opinion of the Attorney General, January 24, 1965, Appendix F to the Report of the N. J. Legislative Reapportionment and Congressional Redistricting Planning Commission (February 5, 1965).

[9] As long ago as 1893, the self-perpetuating character of malapportioned legislatures was noted by the former New Jersey Supreme Court in State v. Wrightson, 56 N.J.L. 185, at p. 214, when it observed that: "Relief from these wrongs through the ballot-box cannot be assured, the majority in the legislature being elected under this system by a minority of the legal voters of the state."

[10] The Senate has always been composed of one member from each county. As the counties are not sovereign but can be created, abolished or modified by the legislature, both the size and representative character of that body has always been legally in the hands of the legislature. For a review of the changes in counties made since the first Constitution, see Effross, "Origins of Post-Colonial Counties in New Jersey", Vol. LXXXI, Proceedings of the N. J. Historical Society, at pp. 103 et seq.

[11] A highly sophisticated discussion of techniques for evaluating the acceptability of a specific apportionment is found in "Measuring Malapportionment", by Schubert and Harris, 58 American Political Science Review, pp. 302 et seq. (June, 1964).