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How we learned to count on one another

Census means more as U.S. history unfolds

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HOUSTON CHRONICLE

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In just a few weeks, on April 1, we will all be counted by the 23rd U.S. census.

As a result, Texas will gain three or four seats in Congress and electoral votes in the next three presidential elections. Texas will also be eligible for billions more dollars of federal aid. Unless, of course, Gov. Rick Perry issues a secession executive order.

Next year the Legislature will redraw the political map of Texas for a decade, potentially affecting 232 districts: 36 congressional, 31 state Senate, 150 state House and 15 State Board of Education. Counties, cities and school districts will redraw thousands more.

Until 1990, redistricting was done with a prayerful attitude. Legislators and staffers spent a lot time on their knees. The state Capitol was their cathedral. Their prayer rug was a large state map with a plastic overlay. A felt-tip marker was the prayer stick and a hand calculator the rosary.

Nowadays it's done on a computer. Move a precinct with a mouse click, and the numbers, displayed at the bottom of the screen, change before your eyes.



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Doubtless we will hear a lot of people shouting, "Gerrymander!"

"Gerrymandering," or drawing a district to elect or defeat a particular candidate, is a time-honored political practice that frequently doesn't work. The definition of "gerrymander" is simple:

I redistrict. You gerrymander.

Here is the most famous gerrymander. It occurred in Massachusetts in 1812. The Jeffersonian Legislature tried to defeat an incumbent Federalist congressman by drawing a district a cartoonist made look like a salamander. Elbridge Gerry was governor, hence the name.

The Federalist won. The gerrymander didn't work.

Frequently at redistricting conferences a speaker will tell a story something like this:

"When I redistricted the (pick a state) House, I drew compact districts with the lowest standard deviations in the Western world. But when I showed it to the speaker, he pointed out that I had one too few districts."

Something like that happened in Texas in 1922. The Legislature left out Swisher County. The Texas Supreme Court put it back in. Makes you

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wonder where the legislators from Swisher County were.

Apportionment

Before redistricting comes reapportionment.

The Constitution apportions two senators and one House member (and three electoral votes) to each state regardless of population. Congress apportions the remaining 385 seats among the states "according to their numbers." That's what the census is for.

The Constitution allots three electoral votes to the District of Columbia. (Texas, by the way, has never ratified the 23rd Amendment giving electoral votes to D.C.)

The apportionment base is not the same as the census count. Congress decides who is counted and where, who is excluded and what questions are asked.

Should the census count government personnel overseas? Prison inmates serving time out of state? Mormon missionaries serving God overseas?

- Sometimes overseas government personnel have been counted but not included. In 1986 Tom Foley from Washington state succeeded Tip O'Neill from Massachusetts as speaker of the House. In 1991 Congress included the overseas personnel and thereby shifted a seat and an electoral vote from Massachusetts to Washington state. Washington had 8,092 more people than Massachusetts. Would Massachusetts have lost the seat and the electoral vote to Washington had Tip O'Neill still been speaker? Go figure. As O'Neill famously remarked, "All politics is local."

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- Inmates are counted where they are imprisoned rather than where they were convicted. Governors who export prisoners to other states, beware. You may be exporting a congressman! And who knows which prisoner is the congressman?

- Missionaries are not counted. After the 2000 census, Utah sued unsuccessfully for a fourth congressional seat and electoral vote at the expense of North Carolina, contending that Mormon missionaries serving overseas should be counted the same as overseas government personnel.

As the folks from Massachusetts and Washington can tell you, those last few hundred can make a difference.

Congress reapportions after every census, except when it doesn't. The 1920 census showed a large influx of immigrants and a population shift to the cities. Urban states would have gained seats rural states lost. Congress did not reapportion because a lot of congressmen would have lost their jobs. Congress ignored the Constitution for a decade, and the House of Representatives became less representative. The country boys won again.

After the 1930 census, at the urging of President Hoover, Congress changed the reapportionment procedure to make it more ministerial and self-enacting.

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Apportionment is as much about electing presidents as about electing Congress. The Constitutional Convention built a small-state bias into both processes by adopting the Connecticut Compromise. The Connecticut Compromise created our bicameral Congress: a Senate for the small states, a House of Representatives for the large ones.

For example, there are three times as many electors per resident of Wyoming, Vermont and Alaska as there are of California, Texas and New York.

The U.S. census

The U.S. census is an essential part of our electoral process. The writers of the Constitution were creating a nation that would have an increasing number of states with increasing populations to be represented by an increasingly large Congress.

Our census has also been used for military purposes:

- In the Civil War, Gen. William Tecumseh Sherman used census maps to chart his march through Georgia to the sea. The maps showed the number of whites, free blacks and slaves in each county. They also showed how the Army could live off the land: the number of horses, mules, cattle and how much wheat, corn, oats and other crops on each farm.

“No military expedition was ever based of sounder or surer data,” Sherman wrote to his daughter Ellen. He could move faster than his foes because he didn't need supply lines. Census figures helped Ulysses S. Grant at Vicksburg just as they helped Moses in the desert.



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The 1940 census helped the Army round up and imprison U.S. citizens of Japanese descent in 1942. One of those internees, Norman Y. Mineta, became secretary of commerce and boss of the Census Bureau 60 years later. Mineta, when he was a California congressman, passed a bill paying each surviving internee \$20,000.

The 2000 census helped the FBI to find Arab-Americans after the 9/11 attacks.

Apportionment and Reconstruction

Now comes one of those deliciously ironic episodes that make history fun!

The original Constitution said only three-fifths of the slaves were to be counted for apportionment. When the North won the Civil War, Congress abolished slavery by the 13th Amendment, thereby putting the other two-fifths of the slaves into the apportionment base.

That would have given the Confederate states 16 more seats in Congress and new electoral votes — enough to give the Democrats control of Congress and elect a president.

“Wait a minute!” thought the Northern Republicans. “We won the Civil War, but we will still have a Southern president. Now we're going to give the Confederates the Capitol *and* the White House? That's what we put the three-fifths

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rule in the Constitution to prevent! We'll fix that!"

Their efforts to do so were not impressive:

- The House impeached President Andrew Johnson for the "high crime and misdemeanor" of firing his secretary of war. Cooler heads prevailed in the Senate — by one vote. That's what Senates are for. As we know from recent history, impeachment is not one of the things Republican congresses do well.

- They passed the 14th Amendment — a ludicrous attempt to deal with the threatened increase in Southern representation. Section 2 gave Congress the power to reduce representation of states that kept blacks from voting. Southern states did so, but so did Northern states. No such reduction was ever made. Section 2 became, in the words of the Congressional Research Service, "little more than a historical curiosity."

- The Republicans passed the 15th Amendment giving blacks and freed slaves the right to vote (and even become president). Unfortunately for the Republicans, for the last century blacks have mostly voted Democratic. In any case, the amendment wasn't very effective until real enabling legislation (the Voting Rights Act) was passed by a Democratic Congress at the urging of a Democratic president in 1965, a century later.

- They considered basing apportionment on voting population rather than total population. That looked good for a while. Southern states would lose 18 seats instead of gaining 16. But that would exclude women and aliens and penalize the New England states. It might even make states think about letting women vote.

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Back to the drawing board.

In the end, for three reasons, the South neither gained nor lost its share of representation:

- Counting the freed blacks just about offset Southern Civil War casualties.

- The Eastern states grew more slowly than the rest of the country and so lost relative share, but Western states (California, Iowa, Michigan, Minnesota, Missouri, Oregon) grew by more than 50 percent.

- The 1870 census was a mess. The South was undercounted by 1.26 million. The black undercount continues. In 1940, 13 percent more black men registered for the draft than were counted by the census in that age group.

One man, one vote

The U.S. Supreme Court refused for years to hear redistricting cases because redistricting was a political issue, a view held strongly by Justice Felix Frankfurter.

Before *Baker v. Carr* in 1962, redistricting fights, at least in Southern states, were not between Democrats and Republicans (there weren't many) but between city folks and country folks (there weren't as many as there used to be). The country folks won because their grandfathers had stacked the constitutional deck.

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Baker v. Carr reshuffled the deck.

Charles W. Baker of Tennessee complained that a 1901 law designed to apportion the seats for the state's General Assembly was virtually ignored. Baker's suit detailed how Tennessee's reapportionment ignored population shifts within the state.

The Texas situation was the same, except that the law and Constitution were followed, not ignored. But the same result was reached. The state Constitution allowed Harris County, with almost 20 percent of the state population, to have only one (3 percent) of 31 senators.

Many legislatures (like Tennessee's and Texas') were dominated by rural legislators. Districts bore little regard to population. Rural legislators represented a lot fewer folks than urban legislators. Legislatures had become unrepresentative.

Baker won, 6-2, Frankfurter dissenting. One man, one vote became the law. A wave of redistricting swept state legislatures, city councils and school boards across the country. Congressional districts soon reflected the new makeup of the legislatures.

Voting Rights Act

A year after Congress passed the Civil Rights Act, President Lyndon B. Johnson urged passage of the Voting Rights Act in these words:

"Rarely are we met with a challenge ... to the values and the purposes and the meaning of our beloved nation. The issue of equal rights for American Negroes is such as an issue ... the

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command of the Constitution is plain. It is wrong — deadly wrong — to deny any of your fellow Americans the right to vote in this country."

The act outlawed literacy tests and poll taxes. All you needed to vote was citizenship and a registration card. The 15th Amendment was finally to be enforced. (The poll tax was eliminated by the 24th Amendment in 1962. The Texas Legislature declined to ratify it as late as 2007.)

The impact of the Voting Rights Act was dramatic. By the end of 1966, only four of the traditional 13 Southern states had less than 50 percent of African-Americans registered to vote. By 1968, even Mississippi had 59 percent of African-Americans registered. African-Americans were elected to office, often for the first time since Reconstruction. The act was the boost the civil rights cause needed to move it swiftly along, and LBJ gets full credit for it.

LBJ famously predicted when he signed the Voting Rights Act that he was signing away the South to the Republicans for a generation. He was wrong. It has now been almost three generations.

Blacks and Hispanics became protected minorities. Renewed in 2006 by Congress, the Voting Rights Act is one of the most important changes in American electoral history. Democrats, men, Indians and Asians, minorities all, are not protected. Thank goodness men are

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not a protected minority, else we would have district lines bisecting bedrooms.

Remember: If you aren't counted, you don't count.

Hobby served as Texas lieutenant governor 1973-91. A fully sourced version of the lecture from which this essay is taken is at www.hobbycomm.com/wph/Essays/Census%20Lecture%202.14.10.doc. Hobby's e-mail address is bill@hobbycomm.com.

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