

Culturally-based Redistricting: Putting Communities at the Center of the Reapportionment Process

By Kent Briggs

In the nearly thirty years since *Baker v. Carr* was decided, there has been a steady accumulation and refinement of the federal case law on the equal protection issues involved in reapportionment and redistricting. The issue of population as a basis for redistricting decisions is well-settled while the question of political gerrymandering is part of an emerging line of U.S. Supreme Court precedents beginning with *Davis v. Bandemer* in 1986 that established egregious political gerrymandering as justiciable and a possible violation of the equal protection clause.

The same year that *Banderner* was handed down, *Thornberg v. Gingles* was decided which confirmed a presumptive direction for precedents that attacked redistricting plans that passed muster on population grounds but were suspect because they raised the issue of race in the drawing of district boundaries. Under the guidelines set down in *Thornberg*, one of the points the minority group must show if its claim of racial discrimination is to be granted by the federal courts is that the group is “politically cohesive”.

The “cohesion” test in *Thornberg* introduces an interesting concept with interesting possibilities into the redistricting debates now underway in state legislatures. If the cohesion standard could be satisfied by enlarging this test to include *cultural cohesion* rather than the narrower standard based on race, then the inevitable acrimony that will accompany legislative debates around this issue could be avoided.

A more expansive interpretation of the cohesion test would seem to be consistent with the intent of *Thornberg* because the court held in that case that it was “...the status of the candidate as the *chosen representative* of a particular racial group, not the *race* of the candidate, that is important.” It is on the larger issue of cultural cohesion that the lines of Supreme Court precedents on population, race and gerrymandering converge. Redistricting based on cultural cohesion is a holistic approach to a divisive issue that would allow state legislatures to draw legislative boundaries along community rather than racial lines. This approach is based on the assumption that people who share a common physical, social and economic environment will have common values. Beginning with the individual neighborhood and moving to

larger and larger aggregates, a cultural approach to redistricting recognizes the existence of distinct cultural zones.

James Kent, an Aspen-based ethnographer, has developed an original and intriguing approach to understanding how human geographic boundaries are formed. Kent uses seven descriptors to define cultural zones which provide a physical view of a geographic territory based on human interaction patterns. The cultural descriptors are:

1. Settlement Patterns - population distribution in a geographic area, including historical cycles of how people came and left the area;
2. Publics - segments of the population having common characteristics, interests or recognized demographic features;
3. Networks - informal but structured organization of individuals who support each other in predictable ways because of their commitment to a common purpose, shared activities or common values;
4. Work Routines - the way in which people earn a living, including where and how;
5. Supporting Services - any arrangement people have to take care of each other using family, neighborhood, friendship and other community support systems;
6. Recreational Activities - how and where people spend their leisure time;
7. Geographic Boundaries - any unique physical features that define the extent of a population's routine activities.

An example of how this might work occurred in 1982 when maps and analyses developed by Kent were used by then-U.S. District Judge Sherman Finesilver to redraw the congressional boundaries when Colorado received a sixth representative after the 1980 Census. The Democratic governor and Republican state legislature had reached an impasse and the task of redrawing district lines was thrown into federal court. In order to achieve population balance, either Fort Collins or Pueblo had to be included in a district with all of the sparsely populated counties in the western part of the state. Although Pueblo and Fort Collins were both university towns of similar size situated along Colorado's Front Range at the edge of the Rocky Mountains, they were culturally very different. Pueblo has a large Hispanic population and a strong industrial base while Fort Collins is an agricultural center that is largely white and professional. Both communities are about the same distance from the metro Denver area and were reluctant to be absorbed into its

suburban counties. But based on Kent's analysis of cultural variables, Pueblo was shown to be at the center of several ethnic cultures that reached deeply into the counties of the Western Slope, while Fort Collins was culturally compatible with the urban counties of the Front Range.

Relying in large measure on this information, Judge Finesilver placed Pueblo in the 3rd Congressional District with the rural counties of western Colorado. It has proven to be a good fit. The district has had three representatives since it was created; the incumbent Congressman is Ben Nighthorse Campbell, currently the only Native American serving in Congress.

Using cultural variables does not exclude the court's insistence that racial and political factors be a part of redistricting decisions, but it does allow for a more inclusive approach. The analysis of a state's cultural zones would provide legislators or redistricting commissions information that brings an important unifying dimension to a process too often driven by micro-information.

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