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OPINION

The Modern 'Three-fifths' Compromise

Prison gerrymandering deeply undemocratic

By **ROBERT P. ALVAREZ**

Are free and fair elections too much to ask for? Thanks to partisan gerrymandering — and its ugly cousin, prison gerrymandering — the answer is often yes.

High-stakes redistricting battles now underway will help determine next year's midterm elections. In a perfect world, parties would work together to ensure fair representation for their various constituencies. In the real world, the party in power usually redraws district maps to favor itself.

This dirty little trick is called partisan gerrymandering. Both parties do it, but Republicans are taking it to extremes that their own voters don't even support. A majority of Republican voters, like Democrats and independents, favor independent redistricting commissions.

Instead, they're getting absurdly lopsided maps in states like North Carolina and Ohio, where Republican-controlled state legislatures drew maps so partisan that there's a good chance they'll end up in court.

In Ohio, just over 50 percent of voters went with Trump in 2020. Yet Republicans drew a map where 12 of 15 congressional seats — 80 percent — are theirs to lose. In North Carolina, where under 50 percent went for Trump, Republicans awarded themselves over 70 percent of the seats.

Gerrymandering affects every voter in this country in one way or another, but it is especially sinister where it overlaps with our massive prison system. At any given time, there are around 2 million Americans behind bars. And where they're held is a key piece of the gerrymandering puzzle.



Robert P. Alvarez

Most states count their prison populations as residents of the facility where they're held rather than their home address. That practice turns out to be deeply undemocratic.

The majority of prisons are located in rural areas, where they house incarcerated people who are often transferred from more urban areas. When districts are drawn, that means more representation for those rural areas — and less for the urban ones.

This process, called prison gerrymandering, is problematic for a number of reasons.

First, it's unfair. It amounts to stealing political power from diverse urban communities and transferring it to majority-white rural communities.

Second, prison gerrymandering can result in districts that, outside the prison population, fail to meet the minimum number of residents required to satisfy the Constitution's threshold for congressional seats.

This happened in California's 20th congressional district before the state

ended prison gerrymandering in 2011, for example. And it's even more of an issue for state legislative districts today.

For example, House District 8 in Texas would lose 12.59 percent of its population if incarcerated people weren't counted. According to the Texas Civil Rights Project, that's well beyond the threshold traditionally viewed as legally allowable for state legislative districts.

Oklahoma, Florida, and Idaho, among other states, also have state legislative districts that are only viable because of sizable prison populations.

Finally, it reeks of the notorious "three-fifths compromise" that once counted enslaved people toward the political representation of slaveholding states — despite the fact that those enslaved people couldn't vote. Disenfranchised incarcerated people are used the same way today.

If that doesn't fly in the face of the famed "one person, one vote" principle and the Equal Protection Clause of the 14th Amendment, I don't know what does.

The Supreme Court has resisted attempts to fix partisan gerrymandering, let alone prison gerrymandering, and Republicans have uniformly filibustered attempts to address the problem in Congress. After all, those with power rarely give it up willingly.

Thankfully, federal action isn't the only solution. Seven states have officially ended the practice of prison gerrymandering for congressional and state legislative districts. Another four have ended it for state legislative districts only.

Extreme partisan gerrymandering is showing voters across the country how distorted our electoral system is. In the process, voters are learning about the racist practices, like prison gerrymandering, that underpin that system.

That, at least, is a good thing. Robert P. Alvarez is a media relations associate at the Institute for Policy Studies. Op-ed Distributed by OtherWords.org.

Ancestors and Legacies



DJ comes out as Danielle Joy at age 57 in "Our Dad, Danielle," one of the attractions at last month's Portland Film Festival. For the latest on screening this movie, visit ourdaddanielle.com.

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And yet I also can feel the filmmakers working to keep this story real and to give DJ and Becky and their daughters (only one of whom is interviewed for the film) agency in how their story is told. Becky's struggle feels real, as does her love for DJ, and DJ's evident joy in her new-found freedom is as evident as it is complicated. One senses that the load she carried for 57 years is now shared by others who love her; it's sometimes a bit heavy for them perhaps, but she feels light and free and grateful to have traded the old burdens for new ones. Both DJ and Becky evince gratitude and not a trace of self-pity. And DJ embraces her new role as an advocate for others in the trans and queer community, relishing the chance to use the agency she possesses as a prominent attorney even while the opportunities open to her diminish. Others may see her differently and may not so easily afford her the credibility she could count on in the years she lived as a man—but she still claims that credibility. She knows who she is.

Darleen Ortega is a judge on the Oregon Court of Appeals and the first woman of color to serve in that capacity. Her movie and theater review column *Opinionated Judge* appears regularly in *The Portland Observer*. Find her review blog at opinionatedjudge.blogspot.com.


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