Guide to State Politics and Policy

Districting

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Chapter 14: Districting

Michael P. McDonald

STATE LEGISLATORS ARE ELECTED FROM constituencies that are defined by geographic boundaries known as districts. Eligible voters who call a district home have the right to participate in elections to select its representatives. These district boundaries are redrawn periodically through a curious institution in democratic governance known as redistricting. In redistricting, elections are turned on their head when expert judgment is exercised to decide how to delineate the district boundaries that assign constituents to representatives. A clash of values often ensues when traditional principles, which may promote congruence of district and community boundaries while maintaining a pleasing district shape, run afoul of electoral goals, which may be affected by the inclusion or exclusion within a district of neighborhoods of particular partisan or racial character and even candidates’ homes. Further heightening the tension among these values is the fact that in many states the persons tasked with redistricting are the same state legislators elected from the districts.

A storied history exists of politicians using redistricting to affect electoral outcomes. Patrick Henry supported a Virginia congressional redistricting plan designed to deny James Madison a seat in Congress. In 1812 the infamous gerrymander was given its name (see the Gerrymander box). Later, in the post-Reconstruction era in the South, districts were designed by white Southerners to deny effective representation for newly enfranchised African Americans. Together, these three types of gerrymanders are called incumbent, partisan, and racial gerrymanders, respectively.

Scholars have extensively debated gerrymandering’s effectiveness to shape election outcomes, and even the historical record is mixed. Madison won election to his unfavorable district through an intensive campaign he waged at the urging of Thomas Jefferson. Yet a later president-to-be, Barack Obama, sought opportunities elsewhere after his home was drawn out of a congressional district for which he ran in 2000.
The original gerrymander resulted in an antimajoritarian outcome where Federalists won a vote majority but barely more than a quarter of the seats, following the optimal partisan gerrymandering strategy that allocates an efficient level of partisan strength—not shaved too close as to make future elections competitive—among districts expected to be won by the party that controls redistricting and packing the opposition party into overwhelmingly safe districts. Yet greedy politicians have at times exceeded the optimal strategy, backfiring in what has been called a “dummymander.” Where there is universal agreement is that race-conscious redistricting is effective at promoting or retarding minority representation. The Voting Rights Act of 1965 and its subsequent reauthorizations are credited with the election of thousands of minority candidates at the federal, state, and local levels, in areas where before there were none, although the future direction of voting rights is uncertain due to recent Supreme Court action.

Politicians’ influence over redistricting is constrained. Federal and state constitutions and statutes describe how districts may be drawn and may build firewalls between politicians and line drawers. State variation in laws and who controls processes provide ample fodder for research. Scholars have even played an active role in redistricting, by devising and implementing legal tests and by peeling back the curtain on this arcane process that consumes politicians, but of which the public is largely unaware.

This chapter explores state legislative redistricting. It begins with an overview of the use of districts in state legislatures. It then describes redistricting criteria and institutions, paying particular attention to various commissions. Finally, it reviews scholarly work on the effects of these institutions, with some thoughts on future directions.

The Organization of State Legislative Districts

The U.S. Constitution largely leaves the organization of state legislative elections to the states, with some limited but [p. 176 ↓] consequential federal oversight. As of 2010, the United States had 6,888 state legislative districts, the most common being the single-member district. In Arizona, Idaho, North Dakota, South Dakota, and Washington the upper and lower legislative chambers share the same districts, with the lower chamber
elected from multimember districts. The congruence of chambers’ district boundaries is similar to a practice known as nesting, required or encouraged in fourteen states, whereby each upper chamber district wholly encapsulates two or more single-member lower chamber districts. Vermont and West Virginia have multimember districts for their upper and lower chambers. Maryland and New Hampshire use multimember districts for their lower chamber only. New Hampshire also employs what are known as floterial districts, where districts to the same chamber may overlap. The voting rules for these multimember districts vary; some hold separate at-large elections for each seat, whereas others employ bloc voting, whereby voters receive a number of votes equal to the number of seats and apportion them among the candidates.

The Gerrymander

In 1812 Massachusetts governor Elbridge Gerry’s name was enshrined into American political lore when he signed into law a state senate redistricting plan devised by his Democratic-Republican Party. Senate president Samuel Dana was the likely author of the redistricting plan; however, the *Columbian Centinel* noted the bill originated from a House committee at the direction of House Speaker Joseph Story. Even today, only those in the map room know the true authors of a redistricting plan. The House committee approved two multimember senate districts that divided Essex County along town boundaries and would elect two and three at-large members. An amendment to form one Essex County district to elect five at-large members was proposed by Federalist committee members, but it was voted down.

According to the best historical account,¹ the Federalist paper, the *Weekly Messenger*, published a map of the offensive Essex County districts. The paper was displayed at a dinner party where, at the urging of guests, the artist Elkanah Tisdale drew wings onto the salamander-shaped district. (Imaginative Federalists also spied Governor Gerry’s face in silhouette to the lower left of the district.) A poet, Richard Alsop, called the district a “Gerry-mander.” Another apocryphal, poorly sourced account ascribes the cartoon to the celebrated painter Gilbert Stuart and the name to *Columbian Centinel* editor Benjamin Russell, but Russell denied these events. The image was quickly and widely reprinted in Federalist newspapers, and “gerrymander” briefly became slang
for being tricked or deceived. As a cultural meme of its day, it is unsurprising that the gerrymander grew to such mythic proportions that historical figures like Stuart were woven into its tale.

The subject of the cartoon was a senate district drawn with a packing strategy in mind, to waste Federalist votes in a district they would win by an overwhelming margin. Federalist candidates in the district won as intended. Overall, the redistricting plan was brutally effective by limiting Federalists with a mere 27 percent of seats despite winning a narrow majority of votes in the next election. Yet the original gerrymander is now quaint in hindsight. It divided Essex County, but it kept its towns intact. Today, districts have been drawn that follow strip malls, road medians, and even the Colorado River as it flows through the Grand Canyon. Before one gets too offended, these examples all enhanced minority representation, which raises the question: Does shape alone define what is good and bad about a district?

States' legislative districts vary tremendously in their number and population. Pennsylvania's lower chamber has [p. 177 ↓] the most districts, 203. Although New Hampshire's lower chamber consists of 400 members, it currently has only 161 (often) multimember districts. The few single-member districts to that legislative body have the smallest populations among all states, an average of 3,291. At the other extreme, California's forty state senate districts have a greater population than its fifty-three congressional districts. The same is true for Texas's thirty-one state senate districts and thirty-six congressional districts. California's state senate districts have an average population of 931,349, compared with 702,905 for the congressional districts. Vermont's senate has the smallest number of districts; its thirty members are elected from thirteen districts. To put this another way, the state legislative district with the largest population is nearly three hundred times larger than the smallest district, and the state legislative chamber with the most districts has nearly sixteen times more districts than the chamber with the least.

Legislative body size is consequential when combined with redistricting constraints and a state's political geography. For example, Minnesota's senate has sixty-seven districts, and its house has 134 districts. Most Democratic-Farmer-Laborer Party voters are concentrated in Minneapolis. It is thus more difficult to unpack Democrats by bridging equal population districts from the urban core to the outlying Republican suburbs when drawing a house redistricting plan than a senate plan. This tendency has differing effects among states and legislative districts, since the distribution of partisans varies, as does the size of the legislative districts.

State constitutions may allow states to change the number of districts and the number of members assigned to their districts, or constitutional revision may adjust these numbers. These changes are implemented during redistricting, so they are a part of the process. Not much is known about these practices' political consequences. However, an anecdotal example illustrates that the size of a legislative body matters. In the 2012 state court case Cohen v. Cuomo, New York Democrats unsuccessfully argued that the state constitution required the state senate to maintain sixty-two districts, rather than increase to sixty-three districts; Republicans were perceived to benefit from the additional district. As a consequence of changing state legislative body sizes
and district magnitudes, a recent concise history of districting systems among state legislatures is challenging to compile.

State Legislative Redistricting Regulation

District line drawers are constrained by state and federal constitutional and statutory regulations. These regulations may be classified into three categories: institution-selecting, process-based, and outcome-based. Institution-selecting regulations affect who draws the lines, such as a legislature or commission. Process-based regulations constrain how district lines are drawn, such as requiring equal populations or respecting existing political boundaries. Outcome-based regulations attempt to affect a specific electoral outcome, such as the Voting Rights Act and state requirements for partisan fairness.

State legislative redistricting is more regulated than congressional redistricting. Perhaps this is so because state constitutions explicitly describe how their state legislatures are to be organized, including how state legislative districts are to be drawn. The U.S. Constitution delegates congressional redistricting to the states and allows federal government statutory regulation that could nullify state law, but it is not much used except with respect to minority representation that affects all districts and a requirement for single-member congressional districts. Of course, the U.S. Constitution's mandate for population equality is another important redistricting constraint.

State Legislative Redistricting Institutions: Institution-Selecting

Two types of redistricting institutions exist: those that follow the legislative process and those that use commissions at some stage. There are variants, particularly with regard to the role and membership of commissions. Because federal equal-population requirements require that redistricting be undertaken following a census, as do some
state constitutions, state and federal courts may intervene if a state fails to redistrict or if a court finds constitutional defects.

Twenty-eight states use the regular legislative process to devise a redistricting bill that defines their state legislative districts. There are variants. North Carolina's legislature has sole responsibility. Florida's and Kansas's legislatures act without the governor's approval; however, the state supreme court verifies the constitutionality of adopted plans. Maryland's governor proposes plans to the legislature, which become law if the legislature fails to take action.

In Table 14.1, twenty-three states that use commissions for congressional or state legislative redistricting are presented. States may use a commission for only state legislative redistricting, only congressional redistricting, or both. They are classified into one of three types, in accordance with when and how they may take action, either as some step in the legislative process or separated from it. They are further classified by their membership and voting rules, which are critical to understanding how redistricting commissions behave. These procedures can be quite complex, which should caution scholars from assuming that all redistricting commissions behave similarly.

**TABLE 14.1 Redistricting Commissions in U.S. States**
Commissions may have three roles. **Advisory** commissions propose plans to the legislature for its approval. [p. 178 ↓] [p. 179 ↓] **Backup** commissions engage if the legislative process fails to produce a plan. **Standalone** commissions are solely responsible for redistricting. With the exception of Maine, advisory commissions in three

<table>
<thead>
<tr>
<th>State</th>
<th>Type</th>
<th>Members</th>
<th>Process</th>
<th>Status</th>
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<td>Majority</td>
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<td>Majority</td>
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<td>At least one member (3) does not run in the district it represents.</td>
<td>Majority</td>
</tr>
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</tr>
<tr>
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<td>Majority</td>
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<tr>
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<td>Vermont</td>
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<td>Standing</td>
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</tr>
<tr>
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<td>Standing</td>
<td>At least one member (3) does not run in the district it represents.</td>
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</table>
other states are semipermanent in that they exist by virtue of statute. They may be disbanded by new law. Legislatures commonly convene *ad hoc* advisory commissions, informally or by resolution, when redistricting is impending. A legal complexity is that a legislature [p. 180 ↓] cannot bind a future legislature, so in order to have legal force *ad hoc* redistricting procedures and criteria must be adopted in the session when a redistricting occurs.

Commissions are additionally classified according to their membership and voting rules. *Unbalanced partisan* commissions have an uneven number of commissioners —with a majority of one party or an even number with one party guaranteed to have a supermajority—who are either elected officials, legislative leaders, or their appointees. The distribution of Democrats and Republicans varies according to the party affiliation of elected officials. Of course, in rare instances minor-party candidates win statewide office, but these are discounted for parsimony. For example, the Arkansas Board of Apportionment consists of the governor, secretary of state, and attorney general, so the commission will consist of either three members of one party or two members of one party and one of the other.

*Balanced partisan* commissions begin with an even number of partisans. Some of these commissions, such as those in Idaho and Washington, adopt plans on a supermajority vote, explicitly requiring bipartisan consensus. Others, such as Hawaii and New Jersey’s congressional commission, forge bipartisan compromise through the selection of an additional member; this is a weaker form of bipartisan compromise since the partisan members could deal among themselves without including the additional member. Yet others, such as those in Arizona, California, and New York (a process adopted following the most recent redistricting), attempt to remove partisan politics from the equation by selecting additional members that are not members of one of the two major political parties. Since the partisan composition of these three commissions is fixed, their composition is provided in Table 14.1.

At the outset, or when a commission fails to produce a plan, in some circumstances for Alaska, Colorado, Mississippi, Montana, and New Jersey’s state legislative commissions a state supreme court might select pivotal members. For example, the majority and minority leaders of each chamber of the Colorado legislature select one member to the Colorado Reapportionment Commission, the governor selects three,
and the chief justice selects four of the eleven members. In this case, the court’s commissioners are pivotal and structure the commission’s coalition formation. Since one party usually forms a winning coalition among these court-appointed commissioners, these commissions are classified as unbalanced partisan. New Jersey’s exceptional experience with this framework is discussed below. When additional members are selected when a commission fails to adopt a plan, the failure may be a consequence of current members anticipating the partisan sympathies of future members, thus breaking deadlocks in their favor. Illinois’s unique method involves randomly selecting among two different partisans when the Legislative Redistricting Commission deadlocks. The selection event is held in a public venue, where members of one side cheer while the others bury their heads in their hands after the selection is announced.

As the following discussion of commissions implies, redistricting outcomes may be predicted by institutions and players. When one party controls the legislative process a partisan gerrymander often results. However, a divided legislature does not necessarily result in gridlock over state legislative redistricting. Most frequently, it results in a bicameral logroll where the majority party of each chamber draws its own plan, and these plans are packaged together in one bill, which a governor will approve since his or her party has a stake in the outcome for one of the two chambers. This occurred, for example, in New York and Virginia during the post-2010 redistricting. Gridlock occurs more often when the governor is of a different party than a unified legislature. When gridlock occurs and the courts intervene, judges may choose a plan offered during the political process or, increasingly, draw their own plan. Regarding commissions, when one party controls the commission, a partisan gerrymander usually results. When bipartisan compromise is required—through supermajority rules or bipartisan consensus on the selection of additional members—commissions tend to protect all incumbents in a bipartisan gerrymander.

Sometimes political circumstances outside the regular process induce deviations from expected outcomes. For example, in the post-2000 redistricting, California Democrats, who controlled the state government, compromised with Republicans to institute a bipartisan incumbent-protection map when Republicans threatened to put a redistricting reform initiative on the ballot, which they did later in the decade anyway. The map locked in Democratic gains realized in the 1998 election. In the 1970s through the
1990s, a coalition of Republicans and Democratic African Americans worked against white Democrats on redistricting in southern state legislatures.

The question of control of the redistricting process is consequential to scholars who explore gerrymandering effects. Early studies of congressional redistricting coded control of the state government as equivalent to control of the redistricting process—a potentially erroneous assumption, given the existence of commissions and other complexities. Recent studies code outcomes, which creates a potential tautology when gerrymanders are identified by their expected electoral effects.

When commissions are designed to minimize political influence over the redistricting process, they may be considered “independent” to some degree. However, scholars have been surprisingly befuddled by commissions, on occasion labeling them collectively as independent of a legislature’s politics. This organizational overview should disabuse such notions. Most commissions concentrate political power into [p. 181 ↓] party leaders; they do not remove politics from the equation. Backup commissions, all tending to have an unequal number of partisan members who select plans on a majority vote, are instructive of this dynamic. They serve to enact a plan when the legislature fails in its responsibilities in order to prevent court action; most were created in the wake of the 1960s legal turmoil discussed below. Indeed, these backup commissions invite political maneuvering when politicians in divided government situations anticipate their party will control a backup commission and balk at compromise during the regular legislative process.

Commissioners may be considered more “independent” when regulation is introduced to reduce political influence through regulation of commission membership. Alaska was the first to stipulate in Article IV, Section 6, of the state constitution that no commissioners “may be public employees or officials.” Missouri was the first to restrict commissioners from running for office in the districts they draw. Arizona and California employ both of these regulations, along with complex vetting procedures that attempt to ensure that commissioners are not closely tied to politicians.

Arizona and California, along with Iowa and New Jersey, are generally considered by observers to be the most “independent” commissions. Reformers hold Arizona’s and California’s commissions in high regard: their commissions regulate membership,
apply formal criteria to their decision making, solicit public input, and meet in public. Iowa's advisory commission is also regarded for its independence: nonpartisan legislative support staff draw redistricting plans (without public input) according to formal criteria and forward these plans to the legislature for approval. However, reformers do not advocate it as a reform model. Iowa's process is unlikely to work well in states with politicized support staff, it exists under statutes that can be revised easily, and the legislature could reject the advisory commission's plans to institute their own. New York will likely provides a test case for these assertions, as the state recently adopted by statute major components of the Iowa model for the post-2020 round of redistricting (a companion constitutional revision is in process). New Jersey's state legislative commission is perhaps an underappreciated model of independence. Here, an ostensibly nonpartisan ninth commission member appointed by the New Jersey Supreme Court has traditionally invited the even number and politically balanced partisan members to bid for his or her vote by proposing plans that best conform to a well-defined set of criteria that he or she proposes. All court-appointed members have been academics, starting with Donald Stokes, who initiated a tradition of including an objective measure of partisan fairness as a criterion.³ The problem as a reform model of New Jersey and other states where the state supreme court may appoint pivotal members is that the commission operates “independently” as long as the court is willing to nominate good actors to it.

![Sen. Todd Staples, R-Texas, is shown gazing upon his version of a congressional redistricting map for the state of Texas which was approved by the Senate Jurisdiction Committee on July 22, 2003, in Austin, Texas. The new congressional districts that were approved by the state legislature in the 2003 mid-decade redistricting gave the Texas GOP an advantage over Texas Democrats in Washington, with the Republicans gaining a majority of House seats.](image-url)
Lurking behind redistricting is potential court action. There is no reversion point for redistricting. States must produce a plan on a regular time schedule following the decennial federal census. If a plan is not forthcoming, a court will provide one. If the political parties hold beliefs about the likely action of a court, perhaps due to the ideological character of its judges, then the political party expecting to benefit from a court ruling may refuse to compromise in divided government situations. This was the scenario in Texas during the post-2000 congressional redistricting; legislative Democrats refused to negotiate with the governor in anticipation of a favorable court plan, which they did realize. Texas subsequently received much public attention after Republicans took control of the legislature and embarked upon a mid-decade redistricting in 2003. As the U.S. Supreme Court later ruled, there is no federal prohibition against such action. State law governs if a redistricting authority is allowed a second bite at the apple when a court imposes a plan, or if states are allowed to redistrict at their discretion between censuses. Texas did not have such a state constitutional prohibition.

Even when a redistricting authority successfully adopts a plan, litigation often commences when political losers seek to reverse the outcome in court. Some state constitutions require court review as part of the regular process, and others streamline review by designating the state supreme court as the court of original jurisdiction for redistricting challenges. Increasingly, litigants have looked to state courts for relief over allegations of violations of state constitutional requirements, as state redistricting authorities have learned how to successfully navigate federal voting rights and equal population requirements.

State Legislative Redistricting Criteria: Process-Based

Process-based redistricting regulation attempts to constrain gerrymanders by describing how district lines are drawn. These criteria include drawing districts that are of equal population, contiguous, and compact; respect existing political boundaries, geographic features, communities of interest, and transportation and communication corridors; and
maintain the core of the previous district, among others. Collectively, these criteria are known as traditional redistricting principles.

Historically, states imposed traditional redistricting principles on state legislative districts. Redistricting was often synonymous with apportionment, the practice of apportioning districts to local government units based on population. State constitutions often either allocated districts to counties or townships by a proscribed formula or required that districts respect these existing boundaries in some manner. Population statistics were compiled from the federal or in some cases state-run censuses. Implicit in these practices are two traditional principles, population equality and respect for political subdivisions. States might also require contiguity, that all of a district’s geography be connected, and compactness. Policymakers believed that these principles could check gerrymandering, and as the Oklahoma Supreme Court noted in the 1943 case *Jones v. Freeman*, state courts occasionally found that redistricting plans violated state constitutions.

Where the state courts tread lightly, the U.S. Supreme Court feared to go, until 1962. *Baker v. Carr* was a watershed decision in which the Court first held that redistricting was a justiciable question not to be answered by politics alone. The issue at hand was malapportionment, or unequal district populations. Malapportionment occurred when states apportioned legislative seats to counties or townships, with minimal or equal representation guaranteed to each political subdivision. Creeping malapportionment would also occur when a state failed to enact new redistricting plans over a long period of time. As a consequence, populous urban areas received less representation than sparsely populated rural areas. While *Baker* involved Tennessee’s failure to redistrict its state legislature for over sixty years, Connecticut’s lower chamber had perhaps the greatest malapportionment. The state’s apportionment rule resulted in Hartford, a city with a population of more than 177,000, having the same representation as Union, a town of 261 persons.

Population disparities in Connecticut and elsewhere were not as severe near the time of the country’s founding, when many of these apportionment rules were first enshrined into state constitutions. Still, the Founders were keenly aware of how apportionment affected the distribution of power with a state. For example, Jefferson proposed a
rejected Virginia constitution that would have given more power to western localities by virtue of an apportionment formula based on population. Later, apportionment rules had clear antimajoritarian effects by allowing rural populations disproportional representation in state legislatures. When opportunities arose, rural interests would amend state constitutions to enshrine malapportionment schemes that were anticipated to favor their interests.

Connecticut was among many states where federal courts in the wake of *Baker* voided entire sections of state constitutions describing how legislative districts were to be drawn, thereby deemphasizing respect for political subdivisions as a redistricting principle. In response, many states revised their constitutions, and it was during this reactionary period that some states adopted commissions either as a sole redistricting authority or as a backup. Some states retained respect for political boundaries in their constitutions, and recent reforms have reintroduced them as a criterion; today, all but six states respect some political boundary, subordinate to federal requirements. In cases such as *Gaffney v. Cummings*, the U.S. Supreme Court has allowed states leeway to balance other legitimate state goals against the federal equal population requirement, by allowing as much as a 10-percentage-point range in population deviations among the most and least populous state legislative districts. Some states even impose tighter population deviation ranges than what the U.S. Constitution requires.

The U.S. Supreme Court remanded the *Baker* case to a lower court. The Court ruled in subsequent decisions in 1964—*Reynolds v. Sims* and *Wesberry v. Sanders*—that the Fourteenth Amendment to the U.S. Constitution mandated state legislative and congressional districts, respectively, to be of equal population. At the time, observers cheered these rulings for ending the representation disparities between rural and urban areas. The new regime measurably shifted political power toward urban areas, where minority communities were generally located. For this reason, Chief Justice Earl Warren called *Baker v. Carr* the most important [p. 183 ↓] case during his tenure on the Court, over other notable civil rights cases such as *Brown v. Board of Education*.12
The reapportionment revolution dramatically changed redistricting, but it did not necessarily constrain partisan gerrymandering. Two noted scholars state, “population equality guarantees almost no form of fairness beyond numerical equality of population.” Another pair argue that “legislators learned how to take maximum advantage of the equal population requirement” by using the equal population mandate as an excuse to segregate neighborhoods along political residential patterns. Candidates, like then-state senator Barack Obama, learned that lines could be drawn down to the city block to remove their homes from a rival’s district. Consequently, since the reapportionment revolution the number of political subdivisions split by districts has increased and districts’ compactness has decreased.

Thirty-seven states require that state legislative districts be compact. There are over thirty ways to measure district compactness, but only Colorado formally defines compactness in Article V, Section 47(1), of its constitution and only a handful of other states have defined it by statute. Compactness is affected by a state’s geography. The Census Bureau reports population data by census blocks, which are analogous to city blocks in urban areas, tend to follow natural features and roads in rural areas, and never cross political boundaries. States with lengthy coastlines; a substantial number of rivers, lakes, mountains, and other features; or oddly shaped localities have less compact districts than those where district lines can follow straight roads or county boundaries. As a consequence of these complexities, state courts rarely enforce state compactness requirements, and when they do they tend to rely on visual inspection of districts. The U.S. Supreme Court, in *Shaw v. Reno*, imposed a federal compactness requirement with respect to racial gerrymandering alone, finding that there must be a compelling state interest when drawing districts of “bizarre” shape that segregate persons by race.

All states except Arkansas, Kentucky, and Rhode Island require that state legislative districts be contiguous to some degree, although this simple concept has been stretched to its limits. States have taken liberties as to what constitutes contiguity when districts stretch over water—what Article IV, Section 6(1), (3), of Hawaii’s constitution refers to as “canoe districts”—by assigning an island to a district on a distant shore. Districts' contiguity is also challenged when they respect political boundaries of
questionable contiguity. In the post-2010 redistricting, Virginia’s 5th house district was connected at a point, what is termed “point contiguity,” so that it could accommodate a point-contiguous piece of the city of Bristol. In the 2000s Wisconsin’s 61st assembly district was functionally noncontiguous due to the assignment of a noncontiguous Racine city ward to the district; the state rectified this constitutional defect by declaring in statute that all wards are contiguous.

Contiguity, compactness, and respect for political subdivisions tap into a deeper concept of representation, which a federal court described as speaking to “relationships that are facilitated by shared interests in a political community.”

Eighteen states require that districts respect communities of interest, which in practice may or may not coincide with political subdivisions, be contiguous, or be compact. Communities of interest may be defined by ethnic, cultural, economic, geographic, demographic, communication, and transportation factors, among others. State courts have on occasion found violations of communities of interest. However, the concept is fuzzy and thereby allows redistricting authorities wide latitude to decide what constitutes a community of interest. Better definitions are needed, and perhaps social media innovations will enable new and more concrete measures.

Ten states require that state legislative districts attempt to keep intact the previous district’s core. Sometimes this is infeasible when within-state migration is so dramatic that drawing equal population districts requires collapsing one or more districts in one region so that they may be added to another. Population changes may also create what is known as a ripple effect, where like a dropped pebble’s ripples on the surface of a pond, the changes to one district affect neighboring districts, and so on.

Respecting traditional redistricting principles may improve representation. Scholars have found that constituent-representative linkages are improved when district lines follow existing political boundaries or media markets. Although there are outstanding legal issues regarding the ever-changing interpretation of federal requirements, states and localities have generally learned how to draw districts that meet federal voting rights law. Recent successful reform efforts in states such as Arizona, California, Florida, and New York suggest that litigation over state criteria will continue to increase.
State Legislative Redistricting Criteria: Outcome-Based

Where process-based regulation describes traditional redistricting criteria that can be directly measured and applied during redistricting, such as district compactness, outcome-based redistricting forecasts what may happen in proposed districts. Outcome-based criteria include the explicit electoral goals of partisan fairness, minority representation, and electoral competition. This is an area where social scientists shine when they apply their training to evaluate these goals, in their capacity as consultants to redistricting authorities, as expert witnesses during litigation, and even as commissioners.

[p. 184 ↓ ] In 1986 the U.S. Supreme Court, in *Davis v. Bandemer*, found partisan gerrymandering to be justiciable. In subsequent litigation the swing justice on this matter, Justice Anthony Kennedy, has not found a standard that would trigger the Court to overturn a map on partisan gerrymandering grounds. Scholars have taken Justice Kennedy's reluctance as an invitation to devise standards grounded in well-established scholarly methods. However, during the post-2010 census redistricting, federal courts found no violations of alleged partisan gerrymandering in Illinois, North Carolina, and Texas. With some states contemplating apportioning Electoral College votes among congressional districts instead of assigning them to the statewide winner, a move expected to favor Republicans, partisan gerrymandering may continue to be highly litigated.

With federal court action unlikely for the moment, reformers have looked elsewhere to cage the gerrymander. One method is to explicitly require political outcomes by law. Eight states have followed Hawaii's prohibition found in Article IV, Section 6, of the state constitution that “No district shall be so drawn as to unduly favor a person or faction.” Arizona and Washington require that an effort be made to make districts competitive. Unlike the federal courts, state courts have on occasion enforced these state outcome-based criteria. Most recently, the Florida Supreme Court found a senate plan violated a state constitutional partisan fairness provision approved by voters in 2010.
Political parties execute gerrymanders by developing measures of the underlying partisan strength of districts by calculating previous vote totals for statewide offices within districts. These statistics are then used to forecast election results within prospective districts. Another reform technique is to deny a redistricting authority election data. Arizona and Iowa forbid their commissions from access to political data at some stage of the redistricting process (a process-based regulation). The hope is that a politically blind redistricting that follows a proscribed set of *prima facie* neutral rules will result in a neutral outcome. Scholars have similarly proposed that traditional redistricting principles be used to prevent gerrymandering, even recommending to program a computer to do the job, although technical challenges limit successful optimization algorithms to all but simple redistricting problems.

Justice Byron White insightfully noted in *Gaffney* that “this politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results.” Frank Parker calls such gerrymandering that may occur when following traditional redistricting principles “second order bias,” and provides an example of a locality implementing an unconstitutional racial gerrymander by equalizing districts’ road mileage. Scholars find that a compactness criterion tends to disfavor a geographically concentrated political party by inefficiently concentrating their voters in districts they will overwhelmingly win, such as the modern Democrats. Similarly, there are limits to the number of competitive districts that can be drawn within a state. The degree of these tendencies is state-specific: factors include the size of the legislative districts and distribution of partisans across a state.

A technological innovation in the post-2010 redistricting is the widespread accessibility of redistricting software that enables nonexperts to draw legal redistricting plans. Reform advocates drew hundreds of legal redistricting plans at all levels of government, enabling robust comparisons against redistricting authorities' plans. These public plans confirm Democrats are generally inefficiently concentrated in urban cores, from a redistricting standpoint, when drawing districts favoring compactness and respect for local political boundaries. Comparisons of these public plans to those engineered by redistricting authorities demonstrate gerrymanders largely disregard criteria such as compactness and respect for local political boundaries. Furthermore, partisan fairness
and district competitiveness can be balanced against traditional redistricting criteria. Doing so produces plans that in comparison to those that are adopted by redistricting authorities are equal or less in population deviation, are more compact, respect more political boundaries, are more politically fair, have more competitive districts, and even have equal or greater opportunities for minorities to elect candidates of their choice. Redistricting plans produced through political processes are often so far from optimum on these criteria that it is possible to both have and eat the proverbial cake.

As the following discussion indicates, an alternative approach to removing political considerations during plan development is to explicitly use electoral data to craft a fair political outcome—to use a tool of the gerrymander against it. Donald Stokes, when he was the ninth member of the New Jersey state legislative redistricting commission, used social science methodologies to evaluate partisan bias. A plan with no bias is one where a party that receives 50 percent of the vote averaged across the districts wins 50 percent of the seats (averaging is important to control for lower turnout, particularly among predominantly minority districts). Michael P. McDonald—the author of this chapter—used similar methodologies as a consultant to Arizona’s commission post-2000 to recommend adjustments to increase district competition, which is also sometimes called responsiveness, or the change in seats for a given change in votes.

This may be a future direction of reform. Florida adopted partisan fairness criteria in 2010, and in the past decade Ohio reformers have twice placed unsuccessful redistricting reform ballot measures before voters that would create an independent commission that would consider partisan fairness and district competition. Ohio reformers can take heart that California adopted redistricting reform this past decade following previous failed attempts. Although California’s criteria do not include partisan fairness or district competition, these were values that advocates favoring passage of the ballot initiative claimed would result from the reform. With the number of states dwindling where ballot initiatives can be used to reform redistricting, reform will likely be slow. Reform will have to come from elected officials in many states, and it may. New York governor Andrew Cuomo recently used his veto power to pressure the legislature to enact redistricting reform.

Ironically, despite intensive politics surrounding redistricting—legislatures deadlocked in special sessions, litigation, and reform efforts, all costing hundreds of millions of dollars
each decade—the scholarly research is mixed regarding the effectiveness of partisan and incumbent protection gerrymandering. Many scholars find effects, while others find little or none. Recent scholarship has begun to resolve these conflicting findings. Even though legislators use redistricting to pad competitive districts with additional partisans to protect vulnerable seats or shore up a legislative majority, elections tend to be more competitive immediately following a redistricting. Confusion arises when scholars conflate the underlying partisanship of a district with election outcomes; the former can be affected by redistricting, the latter is determined by many factors outside of redistricting: candidate quality, scandal, and national and state mood, among others. Still, scholars have found that redistricting is related to election factors beyond district composition that create greater electoral volatility. Incumbents have lower incumbency advantage among the new, unfamiliar constituents added to their district, which may then induce quality challengers to contest the temporarily vulnerable incumbents. To put this another way, legislative elections are complex processes of which redistricting is but one component.

Perhaps the conflicting research is a reason why the federal courts have been reticent about adopting a gerrymandering standard. However, federal courts have enthusiastically embraced social science methodologies in another arena of redistricting law: minority voting rights. Sections 2 and 5 of the Voting Rights Act require states and localities to draw districts to promote racial and ethnic representation under certain circumstances. Section 2 applies nationally. The U.S. Supreme Court articulated in *Thornburg v. Gingles* that a district must be drawn to enable a minority community an opportunity to elect a candidate of its choice when a minority community is sufficiently large and compact, racially polarized voting is present, and there is a past history of discrimination. In *Bartlett v. Strickland*, the Supreme Court stated that in order to have a Section 2 claim, plaintiffs must demonstrate it is possible to draw a district where the minority community is at least 50 percent of the voting-age population of the district. Section 5 applies to certain “covered jurisdictions,” located primarily in the South, and generally requires that when a change to an election law occurs, including redistricting, the ability of minorities to participate in the electoral process cannot be diminished, or retrogressed.
Recently, in *Shelby v. Holder*, the Supreme Court ruled that the formula for determining which jurisdictions are covered by Section 5 of the Voting Rights Act, found in Section 4, is out of date and unconstitutional. As a result, until Congress acts to revise the coverage formula, no jurisdictions are bound by Section 5. Section 2 is still operative, and through Section 2 litigation a few jurisdictions are bound by so-called “bail-in” provisions similar to Section 5, found in [p. 186 ↓] Section 3 of the act. With Section 5 preventing many potentially discriminatory laws from being implemented, it remains to be seen if Section 2 alone can provide a sufficient deterrent for future electoral discrimination against minority communities.  

Social science methods are used in two voting rights areas. In the first, racial voting statistics are analyzed to determine compliance with the Voting Rights Act, to forecast if a current or proposed district will elect a minority candidate of choice. The secret ballot presents a difficulty because individuals' behavior cannot be observed directly; their behavior must be inferred from aggregate data, which are subject to what is known as the ecological inference problem. The statistical methodologies used widely today to “solve” this problem were developed in the 1950s, to which scholars have since proposed refinements. In the second, historians conduct archival research to uncover past history of discrimination.
There is widespread agreement that the Voting Rights Act, for which the statistical methods play a small role, should be credited with the election of thousands of minorities to offices across the country. Where a scholarly debate arises is to what degree minority descriptive representation conflicts with their substantive representation. Minority opportunity districts tend to be the most Democratic of all districts, and thus potentially are an effective packing strategy for Republicans when drawing a district to elect a minority candidate of choice diminishes the number of districts where whites and minorities may form coalitions to elect candidates that generally support minorities' policy preferences. Still, with Republicans now in control of many state governments where voting rights districts exist, they might find a cracking strategy to be effective, but are prevented from implementing such a strategy due to the Voting Rights Act. The effective demise of Section 5 means that some districts that might have been effective at electing a minority candidate of choice in the past will no longer be protected by the Voting Rights Act: those districts where the minority community comprises less than 50 percent of the voting-age population, but where the minority community was capable of electing a candidate of choice with sufficient crossover voting from other racial or ethnic groups.

While scholars agree that racial gerrymandering affects substantive racial representation, there is less agreement if redistricting affects the ideological polarization of Congress. A simple correlation of congressional ideological voting scores with districts’ presidential vote reveals a positive correlation, as predicted by the Median Voter Theorem, with the most extreme ideological members tending to be elected from the safest districts. However, even if every district were made to be perfectly competitive, there remains substantial ideological separation between the legislative party caucuses. This latter observation is a static counterfactual, applied to current politics. If the conditional party government model is correct, an infusion of more moderates elected from competitive districts would result in a change in internal legislative rules that enforce party cohesion and ideological separation of the party caucuses. Still, the best evidence is that redistricting, like competitive elections, is but one component of a complex process that generally affects the quality of representation.
The Future of State Legislative Redistricting Scholarship

The public knows little about redistricting;\textsuperscript{40} this is not surprising, given the public's overall meager political knowledge. State politics scholars have a similar lack of understanding about state legislative redistricting. Many studies cited in this chapter analyze congressional redistricting. Perhaps the profession can be forgiven for this lapse since state legislative district data has been difficult to obtain. The good news is that this is no longer true. The Census Bureau has recently collected and disseminated more state legislative district data, states are providing more data online, and even social scientists are offering data and software.\textsuperscript{41}

This is an exciting time for the study of state legislative redistricting. Scholars can now test if the institutions that affect congressional redistricting similarly affect state legislative redistricting, and if the redistricting process has similar effects on politics as those observed at the federal level. There are good reasons to believe that new substantive findings will be discovered. With but two exceptions there are a much greater number of state legislative districts within each state, thereby offering more opportunities to finely slice and dice constituencies, and there is variation in district magnitude, which does not exist for single-member congressional districts. Recent data collection of state legislator roll-call voting has enabled reproduction of state legislative voting scores, which enable replication of the congressional polarization studies while leveraging the greater variability of state legislative districts. Finally, state legislative redistricting stakes are higher than congressional redistricting. No single state controls the fate of every congressional district, whereas state redistricting authorities are responsible for drawing their entire legislature. Where state legislators draw legislative districts, they draw their own districts, whereas congressional districts are represented by someone else. With greater motivation and opportunity to be observed in state legislative redistricting, perhaps state politics scholars will rediscover why the original gerrymander involved a state senate district.

\[p. 187 \downarrow\]
Notes


15. Altman, “Traditional Districting Principles.”


22. Statewide offices are favored since they are uncontaminated by district-specific campaign factors, such as a particularly strong incumbent who has warded off challengers or a weak incumbent who is the subject of a scandal. Scholars have proposed more sophisticated methods that seek to control for district-specific campaign effects. See Andrew Gelman and Gary King, “A Unified Method of Evaluating Electoral Systems and Redistricting Plans,” *American Journal of Political Science* 38 (1994): 514–554.


30. Gelman and King, “Enhancing Democracy through Legislative Redistricting.”


Suggested Reading


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