Redistricting and Representation: Searching for “Fairness” Between the Lines

Vladimir Kogan
Ohio State University

Eric McGhee
Public Policy Institute of California
Anyone who follows politics has seen pictures of “gerrymanders.” These are local, state, or congressional legislative districts so strangely-shaped that they produce a reflexive chuckle. They get colorful names: The Earmuffs. The Pinwheel. The Ribbon of Shame. In fact, the term “gerrymander” is itself such a name, given to a district shaped like a salamander and signed into law by Governor Elbridge Gerry in 1811. While the reason for these districts is not always clear, their very strangeness suggests someone is trying to game the system. Something about them looks unfair, as though they were meant to benefit a narrow interest ahead of the public good.

Redistricting is the process of redrawing the boundaries of districts that elect representatives to a legislative body, often though not always to reflect changes in the places and ways people live that have occurred since the districts were last drawn. But changing district lines is not a politically neutral act. It always alters something about the community each politician represents, and it can also shift the broader balance of power in the political system. The strangely-shaped districts, then, are not accidents. They suggest that the person who drew them was concerned about representing something other than geography.

Whether this is “fair” or not is another question. The term “fairness” is often applied to redistricting without much sense of what it means. In this chapter we discuss some possible meanings people have in mind, including how different dimensions of fairness tend to be measured. We then discuss the trade-offs that are often involved, since redistricting plans can frequently be good on some dimensions of fairness but not others. And we will talk about the strategies that people have used to try to impose one sense of fairness or another on the redistricting process, including fights over who gets to draw the maps and why.
Throughout this discussion, we try to make clear that there are many different definitions of fairness. We touch on the shapes of the districts, their relationship to other political units such as cities and counties that are not redrawn, and their partisan effects. We also emphasize the contingent and multifaceted consequences of reform. Some changes, such as constraints on the drawing of districts or the use of independent commissions, show some promising signs but have also so far produced mixed evidence of meaningful improvement. Other changes, like a series of U.S. Supreme Court decisions in the 1960s, can strike a clearer blow in favor of certain notions of fairness but at the cost of helping promote the modern system of partisan gerrymandering. The point is not that the status quo is good or that reform always leads to a particular result. Rather, once one begins to unpack fairness in redistricting, it can get complicated quickly.

Core Concepts of Fairness in Districting

The least controversial and most consistently obeyed standards of fairness in redistricting are population equality and contiguity. Population equality simply requires that every district represent roughly the same number of people. Residents of districts with fewer people are overrepresented because they get the same numbers of votes in the legislature despite their smaller population.1 A district is contiguous, on the other hand, if every part of the district

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1 This is easiest to see when each district gets one representative (a “single-member district” system), but the same would apply to multi-member districts that had equal numbers of representatives per district. In fact, representation can be distorted even if some districts have more representatives than others, so long as the differences in population are larger than the differences in the number of representatives. The key consideration is the number of residents per representative.
connects to every other part. While contiguity seems obvious, it is not always absolutely required. Without it, representation might be divorced from geography entirely.²

Contiguity and population equality together profoundly constrain the range of districting plans that can be drawn. Contiguity ensures that each district is constructed of neighboring communities, no matter how similar or different those communities might be; population equality forces line drawers to keep adding or subtracting people from a district until it hits the equal population target. As a result, seemingly simple actions like adding a new community to an existing district can disrupt the population equality or contiguity of neighboring districts, which can create ripple effects that dramatically alter an entire region of a redistricting plan.³ This sensitivity helps make line-drawing an enormously complicated and arcane process for which some expert help is virtually essential.

**Geographic Fairness**

Contiguity is actually just one of three main standards of geographic integrity. In addition to contiguity, geographic integrity focuses on compactness, respecting city and county boundaries, and respecting communities of interest.

A plan is compact when the districts come as close as possible to simple shapes like squares or circles. The more wiggles or protruding fingers to a district’s boundary—the more

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² Creative mapmakers have tried to come close. Perhaps the most famous example was the 12th district of North Carolina in 1992, where the district narrowed down at one point to a few lanes of a freeway, only to jump across the freeway and run down the other side later on. The immediate goal was to create a majority-minority district consistent with the Voting Rights Act, though the exact shape of the district was dictated by other goals as well. The U.S. Supreme Court struck the district down in *Shaw v. Reno* (1993) for ignoring traditional redistricting criteria.

“amoeba-like” the shape—the less compact it is. Respecting city and county boundaries means favoring plans that keep more political subdivisions intact over plans that divide them across multiple districts. Local government officials tend to prefer such plans because they fear being forgotten when their jurisdictions are divvied among multiple members of the legislature.

Communities of interest are trickier to define. The basic idea is that some geographic areas are not defined by political boundaries like a city or a county but share common interests all the same. But which interests so qualify and how important they might be is a matter for debate. For example, the California constitution offers the following broad definition:

“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”

(California Constitution, Article 21, Sec 2d (4)

This may seem to provide some guidance, but it raises as many questions as it answers. Of the potential criteria—living standards, transportation facilities, etc.—which is most important? What if different characteristics suggest different district lines? How does one decide between them?4

In practice, communities of interest often boil down to the groups that lobby the line-drawing authority the hardest: the ones who draw draft maps, show up at public hearings, write letters, and so forth. As with any other law, a redistricting plan does best when it is sensitive to

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4 The definition in the California constitution only complicates matters by rejecting political parties as a legitimate community of interest, even though parties are the primary way that people of common interests unite in the political sphere.
the needs of those who feel most strongly about it. The plan need not give such interests all or even most of what they want, but to ignore them entirely risks undermining the plan’s legitimacy. “Communities of interest” may be a loose concept, but it can do a good job of representing those intense interests so it is wise to give the idea some credence.5

Together, these concerns about geographic integrity have perhaps the longest history in redistricting, since district-based representation emerged from a time when there were no established political parties and legislators were meant to represent physical places. Even as parties and ideologies have grown more central to politics, the geographic dimension continues to play an important role. Attempts to pull districting too far from its geographic roots have run afoul of either the public or the courts, who consider geography a legitimate governmental objective worth favoring over others. Successful court cases have been founded on geographic concerns, and successful reform efforts have incorporated them. Those who draw the lines ignore geography at their peril.

Partisan Fairness

While geography is certainly an important consideration, when people think of fairness in redistricting they are often thinking in partisan terms. Attacks on a plan’s geography frequently have a partisan motive, such as when one party points to strangely-shaped districts to argue a

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5 The same logic argues against computer-drawn redistricting. Because contiguity, compactness, and population equality all have easy quantitative definitions, it has been suggested that redistricting should amount to little more than plugging parameters into a computer and seeing what comes out. But this approach ignores the communities of interest dimension, so it risks offending the loudest and most powerful voices in any redistricting process. It is doubtful that a process that offended such interests could survive for long.
plan intentionally disadvantages their side. Partisan fairness has grown more important as parties have become more central to modern politics.

When analysts evaluate the partisanship of a redistricting plan, they often want to project election outcomes under a wide range of hypothetical political conditions. For this purpose they can use what is known as the *seats-votes curve*. The seats-votes curve is a useful way of exploring how a party’s statewide share of legislative seats is expected to change as the overall vote share won by its candidates rises and falls across all districts. The analyst starts with the actual election results and resulting seat share and then gradually subtracts from or adds to a party’s vote share in each district by the same amount (usually one percentage point at a time) to simulate electoral waves favoring either party, calculating how many seats each party would hold in each counterfactual election. The resulting seat shares and vote shares are then graphed against each other to provide an overall map of the plan’s dynamics under alternative hypothetical political scenarios. Figure 1 contains an example of such a curve.

The seats-votes curve helps illustrate the two factors that together define partisan competition in redistricting plans: *competitiveness* and *partisan bias*. Competitiveness is relatively straightforward. A plan is more competitive when it has more districts that can be expected to produce a close outcome or even switch partisan hands. As a question of fairness, competition is about balancing the interests of those in and out of power, ensuring that each party gets a fair chance to shape public policy as the mood of the voters changes. There is a variety of ways to measure competition precisely, but in practice all these variations tend to produce similar results.6 In the context of the seats-votes curve, competitiveness is known as

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6 For instance, one could count the number of seats that change hands between elections or the number of seats that have close outcomes (a seat with a close outcome need not actually change hands). There is also a distinction between seats that have a balanced mix of partisans—based
 responsiveness, and it is defined as the steepness (i.e., slope) of the curve across a particular range of vote shares. Two different levels of responsiveness are highlighted on the hypothetical curve in Figure 1. Where the curve is steeper, more seats are competitive because more of them are changing hands for a given change in the vote.

By contrast, partisan bias is about ensuring that the current balance of partisan power in a legislature accurately represents the support each party receives from the electorate. The goal is to ensure that a party holds its “fair” share of seats given how many votes its candidates win at the polls, with bias being any departure from that ideal seat share. When people speak of partisan gerrymandering—the deliberate drawing of districts to advantage one party—they implicitly have some notion of partisan bias in mind.

While there is general agreement about how to measure competitiveness and the measures all tend to agree, there is far less agreement about partisan bias. Ironically, the problem is a lack of consensus about responsiveness. Many different levels of responsiveness have been considered acceptable in a district system. A responsiveness of two is not uncommon—a party gets an extra two percent of the seats for an extra one percent of the vote—but ratios as low as 0.5 and as high as three or four have been observed. Indeed, many observers support higher responsiveness in principle, arguing that large seat shares for the majority party lead to stable governance, where one party gets a clear majority to adopt a coherent policy agenda.

This ambiguity creates real problems for defining gerrymanders. Imagine a state where the majority party earns 55 percent of the total votes cast, and from that claims 60 percent of the seats that have close outcomes for the office the district was created to represent (e.g., U.S. Congress or state legislature).
seats. If the majority party drew a new plan that gave it 70 percent of the seats for the same share of votes, would it be unfair? The level of responsiveness would be higher, but perhaps that level would be essential for stable governance, as mentioned above. Moreover, there is no immediately obvious reason why the status quo of 60 percent was fair and therefore sacrosanct. The majority might just as well claim that 60 percent was unfair to them.

As it happens, there is one standard of fairness everyone seems to agree on: if a party receives a majority of the vote, it should also get a majority of the seats. One measure of partisan bias, symmetry, leverages this fact to construct a measure of fairness. It first identifies the point on the seats-votes curve where each party receives 50 percent of the vote, and then notes how far the seat share deviates from 50 percent at this point. The larger the deviation from 50/50 symmetry, the more biased the redistricting plan. The seats-votes curve in Figure 1 is symmetric in this sense.

Note that symmetry does not really narrow down the range of vote share-seat share combinations that can be considered fair. It only requires that the parties receive equal treatment in a hypothetical tie election. To the consternation of the minority party in our example, it would not rule out a new plan that gave the majority party 10 percent more seats than before, so long as the new plan hypothetically gave the minority half the seats if it won half the votes.

Symmetry can run into problems if the counterfactual is implausible: it does not matter if an outcome is fair if it is unlikely to happen in the real world. Moreover, even small hypothetical shifts in vote share can produce results at odds with common sense, suggesting for example that a plan that increased one party’s seat share actually benefited its opposition instead. Thus, even advocates of symmetry advise against using it for plans where one party wins more than 55 or 60 percent of the vote. That takes a lot of plans off the table.
A newer approach at defining fairness strives to measure the mechanics behind a partisan gerrymander. Gerrymanders are built on wasted votes: votes cast for losing candidates or for a winning candidate in excess of the number needed to win (50-percent plus one in a two-party race). A party gains an advantage if it wastes fewer votes than its opposition, because its votes translate more efficiently into wins.\textsuperscript{7} The \textit{efficiency gap} takes this into account by summing all the wasted votes for each party, subtracting the total for one from the total for the other and dividing by all the votes cast to make the number comparable across redistricting plans.\textsuperscript{8}

The efficiency gap typically produces results very close to symmetry for election systems where the parties are in close competition (the two are actually identical when both parties have half the vote). Moreover, as the vote share for one party increases above 50 percent, the efficiency gap suggests an optimal responsiveness of two: a fair plan should give a party a two percent increase in seat share for every one percent increase in vote share. Thus, the efficiency gap explicitly defines a fair seat share for every possible vote share, something symmetry is unwilling to do. Returning to the example from above, the efficiency gap would consider it unfair to give a party 70 percent of the seats for 55 percent of the vote: the fair outcome would be the original plan that gave the party 60 percent of the seats for 55 percent of the vote instead.

The efficiency gap is not without its drawbacks. It is more volatile: it tends to rise and fall from one election to the next more than symmetry does. The efficiency gap is also based on a principle—equality of wasted votes—that is not as well established as the notion that winning

\textsuperscript{7} Bruce E. Cain, \textit{The Reapportionment Puzzle} (Berkeley, CA: University of California Press).
half the votes should award a party half the seats. Thus, while symmetry requires accepting a counterfactual, to avoid that counterfactual requires accepting balanced wasted votes.

**Fairness and Minority Representation**

Although it is useful to evaluate redistricting plans in terms of their partisan consequences, not everything politicians do in office is driven by partisan politics. Legislators spend a great deal of time on constituent casework — helping track down lost Social Security checks or aiding constituents applying for veterans benefits. When it comes to casework, recent experimental studies show that race and ethnicity matter a great deal: When minority constituents contact their representatives for help, they are more likely to get a response if the legislator shares a membership of the same ethnic or racial group.\(^9\) In United States, voting is frequently racially polarized — meaning that demographic groups tend to vote as a bloc for the same candidates — and this is particularly true in local elections.\(^10\) Ensuring that minorities successfully get elected to office under such conditions necessitates drawing districts in which minority group voters account for a majority of the electorate.

Providing fair and effective representation for minorities is complicated for two reasons. First, line drawers must navigate a difficult legal terrain filled with many landmines. Failure to draw minority-majority districts under some circumstances may violate the federal Voting Rights Act. However, putting too much emphasis on race and drawing districts “predominantly” for racial reasons risks violating the Equal Protection Clause of the constitution. Second, difficult

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compromises must frequently be made between competing representational goals. Maximizing 
“descriptive representation” — the election of minority officeholders — necessitates drawing 
minority-majority districts. Because minority voters are overwhelmingly Democratic, this results 
in heavily Democratic districts that produce many wasted votes, potentially reducing the overall 
number of seats won by Democrats and making it more difficult to enact policies that minority 
for minority groups may thus require deciding how to strike the appropriate balance between 
substantive and descriptive dimensions of representation.

\textbf{Trade-offs: It's Not Always Easy to Be Fair}

It is certainly possible for all of these standards of fairness to point in the same direction: 
a plan might rate poorly on all the metrics of geographic integrity and produce minimal 
representation for minorities and have low responsiveness and have a bias in terms of both 
symmetry and the efficiency gap. But the odds of this are actually quite low; the standards are at 
least as likely to disagree, requiring some to be prioritized over others.

For example, the facets of geographic integrity are not just different labels for the same 
thing. Cities and suburbs can spread out in all sorts of strange patterns, so keeping them intact 
can be difficult without violating compactness. Communities of interest are even less bound by 
geography and can easily cross city or county borders, especially in large metropolitan areas 
where one city abuts the next. Equal population also takes a toll here: many cities and counties 
contain more people than the equal population mandate allows, making it impossible to keep the 
city intact no matter how politically cohesive it might be.
The standards of partisan fairness can conflict, too. A party gains an advantage in the efficiency gap by winning its own seats with smaller margins. As a result, there is often a tension within the party that controls redistricting between sitting incumbents who want safer seats and party leaders who want to use the wasted votes in these safe seats more effectively elsewhere. Certainly there is nothing that ensures a partisan gerrymander will be uncompetitive, and it can sometimes be difficult to draw a plan that greatly advantages one party (an unfair outcome) without also increasing that same plan’s responsiveness (a fair outcome). As just noted, similar challenges can arise with minority representation. Creating seats that assure minority voters a chance to elect a representative of their choice produces wasted votes that can disadvantage the party the minority voters support.

Moreover, whether a plan violates both geographic integrity and some version of partisan fairness is largely a question of where partisans happen to live. For example, if central cities are dominated by one party while suburban and rural areas are more evenly balanced, it is easy to produce a plan biased against the central city party without undermining any geographic integrity goals at all.

**Redistricting in the States: An Overview**

Until the early 1960s, many of these questions of fairness could be avoided. There was no strict population equality requirement for legislative districts, and so no absolute need to adjust district boundaries to reflect the changes in population that had occurred since the previous population census. Many states would effectively avoid redistricting altogether, carrying the existing boundaries over into the next redistricting cycle and ignoring the possibility
that this violated some standard of fairness. Minority rights were ignored in both court decisions and federal law.

Then through several key decisions in the 1960s, the Supreme Court first articulated its “one man, one vote” principle requiring rough population equality after the release of every new census. This effectively mandated a decennial redistricting cycle timed to each new set of census numbers. Through these cases, the court addressed the sometimes severe population inequality in the maps of the time. Unfortunately, political actors now knew they would have to draw new lines at least once every ten years. This in turn allowed political parties and their leaders to develop strategies and expertise to manipulate the process to try to achieve their political goals.

At about the same time, the courts began to intervene to protect minority rights in the redistricting arena by establishing a variety of standards that could not be violated. More relevant for today’s redistricting, the Voting Rights Act of 1965 and later amendments began legally requiring redistricting to consider whether minority voters had the ability to elect candidates of their choice. These legal requirements, while weakened somewhat by recent court decisions, are still sufficiently strong to outweigh many of the other goals a state might want to pursue.

In most states, the drawing of new political maps is done through the regular legislative process, requiring adoption by each house of the state legislature and approval (subject to legislative override) of the governor. Thus, winning control of state governments in census years is a critically important objective of the national political parties, since it allows them to shape not only the district lines used to elect state legislators but also each state’s congressional map.12

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12 For an example of recent Republican efforts to win state legislative and gubernatorial elections to control the redistricting process, see David Daley, *Ratf***cked: The True Story Behind the Secret Plan to Steal America’s Democracy* (New York: Liveright Publishing Corporation, 2016).
If one party controls the entire process in a state, some variant of a partisan gerrymander is likely to result. If neither party gets full control of the legislative and executive branches, the parties often agree on a “bipartisan gerrymander” with low responsiveness that locks in the current balance of partisan power. Absent such a compromise, in the days before “one man, one vote,” the parties might have just allowed the existing plan to carry over. But today a new plan must be drawn to account for changes in population, so in situations where the two parties can’t agree the courts usually step in to impose their own redistricting plans.¹³

It is also important to remember that state legislators and governors do not have a wholly free hand to engage in gerrymandering. Most obviously, the maps they produce must meet the population equality requirements laid out by the Supreme Court. Similarly, the federal Voting Rights Act and other Supreme Court decisions from the 1980s and 1990s impose additional limitations, requiring the drawing of districts in which racial and ethnic minorities represent the majority of voters in some circumstances and prohibiting the creation of such minority-majority districts in others. Individual states will often have their own rules, usually requiring some commitment to geographic integrity. While such requirements do constrain the ultimate plan that is adopted, they usually allow enough wiggle room for parties to pursue their political objectives as well.

Of course, not all states hand the redistricting powers to their governors and legislatures. Many rely on appointed commissions to oversee the process.¹⁴ In most cases, however,

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¹³ The type of map the court is likely to create can be predicted with some accuracy by knowing the partisanship of the judges or officials who appointed them, so leaders of the two major parties incorporate expectations about what the court-imposed maps will look like into their bargaining strategies.

governors, state legislative leaders, and other partisan elected officials either make up the membership of these commissions or play an active role in the selection of the redistricting commissioners. As a result, the partisan redistricting dynamics just described do a good job of approximating the process in many commission states as well. Only a handful of states have truly independent redistricting commissions, a recent reform that we examine in more detail in the next section.

**Experiences with Reform**

In theory, voters are supposed to select their elected representatives. A common refrain from political reformers is that gerrymandering flips this idea on its head: legislators use their power over the process to pick their voters. Aside from the obvious conflict of interest that state legislators face when drawing their own political maps, gerrymandering is frequently blamed — in many cases inaccurately\(^\text{15}\) — for all sorts of political ills and pathologies. This has helped create momentum among public interest groups such as Common Cause and the League of Women voters (not to mention many ordinary citizens) for finding ways to reform the process. This section summarizes the experiences of states with the three most common types of reforms attempted in recent decades.

Before describing each of these efforts, we should note that the empirical evidence on the consequences of reforms is generally mixed. While there is some evidence that court- and commission-drawn plans produce higher levels of competition and bipartisan incumbent-protection plans are the least competitive, the findings vary across studies, time periods and

\(^{15}\) See, e.g., Eric McGhee, *Redistricting and Legislative Partisanship* (San Francisco: Public Policy Institute of California).
methodologies. Moreover, efforts to assess the partisan fairness of plans produced under alternative rules rely on varying measures and definition of key concepts, including “fairness” itself, making it difficult to compare results across studies. One thing that is clear from this research, however, is that redistricting rules and institutions are far from the only — or most important — factor that determines how votes ultimately get translated into seats. Political geography constrains all line-drawers, and the unpredictability of partisan tides across elections cycles mean that today’s ingenious partisan gerrymander can become tomorrow’s electoral disaster.

Court Intervention

Just as the Supreme Court’s “one man, one vote” precedents created the modern redistricting process, they opened the door to a potential judicial remedy to gerrymandering. After all, the similarity between the malapportionment struck down by the court in the 1960s and modern-day gerrymandering is striking. In the former, rural over-representation meant that it took fewer votes for elected officials representing rural areas to win their seat than was the case in major cities, effectively diluting the votes of urban residents. Partisan gerrymanders similarly allow one party to win each seat with fewer votes than its opponents, effectively diluting the political influence of opposition voters. If the U.S. constitution’s Equal Protection Clause outlaws malapportionment, doesn’t it also apply to partisan gerrymanders? Since the 1960s, the

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16 For a recent overview of the empirical literature, see Nicholas Goedert, Forthcoming, “The Pseudoparadox of Partisan Mapmaking and Congressional Competition,” *State Politics and Policy Quarterly*.

17 On the transient partisan effects of redistricting, see Eric McGhee, “Measuring Partisan Bias.”
courts have seen a number of lawsuits attempting to have gerrymandered redistricting plans struck down as unconstitutional exactly for this reason.

In a pivotal 1986 case, *Davis v. Bandemer*, a narrowly divided Supreme Court ruled for the first time that a partisan gerrymander could, in theory, be unconstitutional. However, even the justices who agreed that such a possibility could exist in principle disagreed about the precise test the court should use to determine whether a particular redistricting plan was in fact unconstitutional. A plurality of the court proposed a standard that set the bar so high that it made it almost impossible to win a constitutional challenge. Indeed, in the thirty years since the decision, not a single redistricting plan has been struck down as an unconstitutional partisan gerrymander. As the late Supreme Court Justice Antonin Scalia summarized in a later redistricting case, the true legacy of the *Bandemer* decision was to begin “years of judicial effort with virtually nothing to show for it.”

Despite this history of failure, each round of redistricting produces new waves of lawsuits seeking to overturn allegedly gerrymandered plans. For example, there is currently a challenge by Republicans to the congressional map in Maryland, as well as a challenge by Democrats to the Wisconsin legislative assembly map that uses the efficiency gap to make its case. As of this writing, neither case has been resolved.

**Tying the Gerrymanders’ Hands**

Given the unwillingness of the Supreme Court to provide legal relief, reformers in some states have imposed specific requirements on state legislators to prevent them from drawing gerrymanders in the first place. Many state constitutions have constraints related to geographic

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integrity. For example, 19 states require compactness, while a slightly different 19 have some requirement to respect city and county boundaries. Legal scholars Daniel Polsby and Robert Popper have argued that the purpose of such requirements is to create “procedural safeguards” that can restrain “partisan lust”:

The compactness requirement interdicts a technique that is indispensable to creating effective gerrymanders. People do not naturally arrange themselves to suit the purpose of a gerrymander. Residents must be placed in appropriate districts. Toward this end, district lines are stretched and shrunk, and in the process districts become noncompact. Thus, when compactness is a constraint, a gerrymander’s job is noticeably harder. A compactness requirement would not end all gerrymandering, but it would diminish its practical value to partisans.

But as already noted, geographic integrity does not necessarily lead to partisan fairness. The political geography of the United States — with heavily Democratic urban areas and more balanced suburban and rural areas — means that even objective, apolitical requirements can often result in poor representational outcomes. Florida offers a good example. In the 2000 presidential election, Republican George Bush beat Democrat Al Gore in Florida by just a few hundred votes out of nearly six million cast, but Republicans claimed 70 percent of the congressional districts drawn by the state’s Republican legislature and governor. Surprisingly, when two political scientists programmed a computer algorithm to randomly generate hundreds of compact maps—completely blind to the partisan consequences—the results were no better for

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19 Legal scholar Justin Levitt provides an excellent summary of the state-specific requirements on his invaluable website, All About Redistricting, available at http://redistricting.lls.edu/where-tablefed.php.

Democrats than the plan in place in 2002. The lesson is that taking intentional gerrymandering off the table still leaves many potential “unintentional gerrymanders.” Requirements to mechanically maximize objective measures such as compactness may even make such gerrymanders more likely.

Several states attempt to overcome this challenge by including clearly political requirements in their list of criteria. For example, the Arizona constitution states that, “To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.” In Florida, reform groups recently led a successful statewide initiative campaign to add the following language to the state constitution: “No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent.”

Such explicitly political requirements probably have more potential to avoid gerrymandered districts. To date, however, their practical impact has been mixed. Despite Arizona’s explicit competiveness requirement, for example, just one of the state’s nine congressional districts was won by fewer than 5 percent of the vote in 2014 (and just two by fewer than 10 percent). Similarly, a Florida judge found in 2014 that the state’s redistricting plan violated the constitutional fairness requirement, documenting evidence that “Republican political consultants or operatives did, in fact, conspire to manipulate and influence the redistricting

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process.” But when the state legislature responded to the ruling by essentially readopting the same plan with just few minor changes, the judge accepted it.

**Independent Redistricting Commissions**

The latest series of reform efforts has focused on avoiding the redistricting conflict of interest problem entirely, by handing the job of drawing district lines to completely independent redistricting commissions. Recall that, although a number of states use some sort of commission for this purpose, most of the people who serve on these commissions are political insiders doing the bidding of their parties. The key feature of the independent model, by contrast, is that elected officials have very limited say over the appointment of redistricting commissioners, and no ability to veto or modify the maps the commission finally adopts. Currently, only California and Arizona use truly independent commissions for their redistricting. In both states, the commissions are fairly new: In California, 2011 was the first redistricting overseen by the body, while the Arizona commission began its work a decade earlier. It is fair to say that the experience of both states has been encouraging, but far from perfect.

There are two hurdles that stand in the way of successfully implementing the independent commission model. First, the commission system must prevent one party from hijacking the

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23 This plan was later struck down by the Florida Supreme Court, and the case remains in the courts as we write this. More than halfway to the next redistricting cycle, Florida is still without permanent political maps.

process. This is usually accomplished by mandating bipartisan membership and requiring at least some members of each party to sign on to the final plan. But what if the commission deadlocks? It is very difficult to design a fallback option that does not end up tilting the playing field toward one side. Neither California (which gives the final say to the courts in the case of gridlock) nor Arizona (which relies on nominally nonpartisan commissioners as tiebreakers) has found a particularly good solution to this problem. So far the courts have shown a fair amount of deference to the commissions, but that may not last.

Second, insulating the commissions from direct political control requires commissioners who are not redistricting experts— and certainly don’t have the computer or legal skills necessary to draw up political maps. Thus, independent commissions must rely heavily on technical consultants. Given the partisan history of redistricting, these consultants almost always have experience working with one of the two major political parties. Even when these consultants do their work impartially, appearances matter. Perceived partisanship among the staff opens the door to partisan suspicions and aspersions. The commissions in Arizona and California certainly faced plenty of both during the last redistricting round, with Republicans accusing both commissions of gerrymandering their respective states to help Democrats. (We found no evidence of this in California.) In neither state did the move to independent commissions produce a dramatic increase in the number of competitive districts, though the number was notably higher for the congressional plan in California.

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Concluding Thoughts

In this chapter, we have sought to provide a brief overview of redistricting as it operates in the American context. As we hope our discussion made clear, drawing political maps is a complex process requiring difficult tradeoffs. In order to produce fair representation, we must first agree on what “fairness” means and then design a process to ensure that this definition is the guiding principle that shapes the ultimate redistricting plan. At present, no state has found a completely satisfying solution to either challenge.

We leave the reader with three concluding thoughts that should remain at the forefront of every serious discussion of gerrymandering and potential reforms to avoid it. First, judging a redistricting plan by the shape of the districts it produces is akin to judging a book by its cover. Although shape alone can, to a certain extent, speak to the plan’s geographic integrity, it often tells us very little about its ultimate representational consequences.

Second, redistricting is a multidimensional process that can necessitate difficult tradeoffs between competing conceptions of fair representation. Reasonable people may ultimately disagree about the relative weights that should be put on partisan fairness, geographic integrity, responsiveness, minority representation, and the like.

Finally, gerrymandering is a serious democratic problem that has no easy solution. Simplistic reforms that seek to tie the hands of legislators or impose inflexible goals or targets — particularly those that emphasize geographic or aesthetic considerations — risk producing unintended gerrymanders that lead to many the same democratic problems as the intentional kind. This does not mean, however, that carefully thought-out reforms cannot improve on the
processes currently used in each state. The key is to be sensitive to the complexity of the problem. Each redistricting system must be viewed on its own for the complex mixture of people, geography, and politics that it is.
Figure 1. Example seats-votes curve

Note: Figure shows a hypothetical seats-votes curve. The curve is symmetric, with the line passing through the point where half the votes lead to half the seats. Ranges of higher and lower responsiveness are highlighted on the curve. The curve has a responsiveness of approximately 2 in and around 50 percent of the vote.