

On the Prevention of Gerrymandering

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Source: *Political Science Quarterly*, Vol. 76, No. 1 (Mar., 1961), pp. 105-110

Published by: The Academy of Political Science

Stable URL: <https://www.jstor.org/stable/2145973>

Accessed: 11-04-2021 18:07 UTC

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ON THE PREVENTION OF GERRYMANDERING

THE current decennial Census brings up again the possibilities for chicanery in the redrawing of electoral districts. It is sometimes felt that gerrymandering is such an obvious form of chicanery that any political body sincerely desiring to achieve a completely equitable redistricting should have no trouble in carrying out such a purpose. It may, indeed, be possible to proscribe effectively, or at least to avoid, the more extreme manifestations of this art, by laying down rules as to contiguity, compactness, and the like. But whenever the drawing up of the boundaries is left even slightly to the discretion of an interested body, considerable latitude is left for the exercise of the art.

To illustrate with a concrete, though artificial example, suppose a rectangular area, 12 miles from east to west and 6 miles from north to south, which is to elect four representatives, happens to divide politically into nine subareas, each 4 miles from east to west by 2 miles from north to south, with the five areas on the diagonals being predominantly of the Red party, while the four areas in the center of the sides are predominantly Blues, checker-board fashion. One natural districting proposal is to divide the area by bisecting it both north and south and east and west, giving four electoral districts, 6 miles in the east-west direction by 3 miles north to south. In this case the Reds sweep all four seats. Another equally natural one is to divide the east-west dimension in four, thus yielding four rectangular electoral districts of the same shape as before, except that this time the 6-mile dimension is north-south, while the east-west dimension of each district is 3 miles. Now we find the two parties each get two seats. Yet there is no obvious geometrical criterion for distinguishing one subdivision from the other.

Things are not much improved if we attempt to choose on the basis of the political results. In a system of area representation, it is commonplace that the proportionate majority in the legislature will normally be considerably larger than the proportionate majority of the electorate. But how much larger? For this we have no abstract criterion. If the parties are homogeneously distributed geographically, a slight majority of the electorate can secure all of the legislative seats. However, it is extremely unlikely that any random drawing of the electoral boundaries

would produce proportional representation. Thus, while a situation where the minority of the vote elects more than its proportion of the representatives can be considered *prima facie* evidence of gerrymandering, there remains a wide range of results that would at least be compatible with the complete absence of conscious gerrymandering. In the absence of any clear criterion as to what a fair result should be, it is not possible to use the results as a criterion of unfairness in the establishment of electoral districts.

If there is thus no available criterion of substantive fairness, it is necessary, if there is to be any attempt at all to purify the electoral machinery in this respect, to resort to some kind of procedural fairness. This means, in view of the subtle possibilities for favoritism, that the human element must be removed as completely as possible from the redistricting process. In part, this means that the process should be completely mechanical, so that once set up, there is no room at all for human choice. More than this, it means that the selection of the process, which must itself be at least initiated by human action, should be as far removed from the results of the process as possible, in the sense that it should not be possible to predict in any detail the outcome of the process. If this is not done, we may simply transfer the wrangling to an earlier stage and have a fight over which of several alternative processes should be designated, which would be fought not in terms of principle but rather in terms of results in the case at hand. This means that at some stage in the process a random element should be introduced which, while not affecting the general principles that are to be applied, will substantially affect the result in the particular instance, so that legislators in selecting one process rather than another will not be able to base their choice on particular detailed outcomes and will be compelled to base their choice on general principles.

As a somewhat oversimplified picture of what might be done along these lines, we might consider the following procedure. The basic data would be the census tracts with their enumerated populations. The first step would be to draw a particular unassigned census tract at random; call this tract A. The second step would be to determine which of the unassigned census tracts is furthest from A; call this B. Beginning with B, add to B the neighboring contiguous unassigned census tracts in order of increasing distance from B (measured, for example, between the centroids of the tracts) until the population quota has been reached, the population quota being at each stage the ratio of unassigned population to unassigned seats. This, then, consti-

tutes an election district and the process can be repeated beginning with the determination again of which of the now unassigned tracts is furthest from A. If this is C, then a new election district is constructed centered on C and so on.

The purpose of determining B, C, and so on as the tracts furthest from the randomly selected tract A is to insure that insofar as possible the process will not leave enclaves or isolated fringe areas that cannot be amalgamated into contiguous election districts: by moving from the fringe toward the center the likelihood of this happening is made sufficiently small so that on those rare occasions when an enclave does occur, the resulting construction of an election district with non-contiguous parts will be tolerable as a freak for the sake of adhering to the straightforward rule; in any case, the amount of separation that would occur between the parts of the electoral district should not be great. If desirable, it would be possible to insert a rule against the creation of enclaves, simply by stating that if the addition of a particular census tract D to an election district in accordance with the rule of adding them in order of increasing distance from the initial tract for that district, would divide the remaining unassigned census tracts into two (or in rare cases, more than two) non-contiguous parts, then instead of adding D, that census tract shall be added which is not in the same part as tract A, is contiguous with the part of the election district already assembled, and is furthest from D.

It might be felt desirable to add to the random element by specifying that a new drawing of the tract A from among the unassigned tracts should be made each time an election district is completed. This would have the advantage of making the ultimate pattern of districts even more difficult to predict. It would slightly increase the likelihood of potential enclaves, but if these are handled by the anti-enclave provision there should be no difficulty on this score.

In the above no attempt has been made to take account of political sub-divisions such as towns, counties, wards, and the like. It is likely, of course, to be considered desirable to make election districts coincide as far as possible with other political boundaries. It would be simple enough to provide that whenever a tract from a particular ward, borough, village, town, or county has been included in the course of constructing a particular election district, further additions to that election district shall be made only from the corresponding political entity until either the entire entity has been included or the quota has been reached. In addition, it might be considered desirable to provide against minor

overflows into neighboring jurisdictions. For example, if at any point the inclusion of the entire political unit, to which the last tract assigned belongs, would not cause the population quota to be exceeded by more than, say, 5, 10, or 15 per cent (the percentage used possibly depending on the rank of the political unit), then the entire political unit may be assigned to the election district in question. On the other hand, if at any point during the assignment process a new political unit is about to be entered and the population already assigned to the electoral district has already reached, say, 85, 90, or 95 per cent of the quota, depending on the nature of the political unit, the political unit is to be excluded entirely from the electoral district, unless the inclusion of the political unit would bring the total population of the political unit closer to the quota than its exclusion. In case of exclusion, formation of the electoral district is to be continued, with the unassigned contiguous tract closest to B among those not in the excluded political unit, until either the quota has been reached or there are no contiguous political subdivisions to be included under the above rule.

This procedure, of course, means that a certain unevenness in the population of the electoral districts is to be tolerated for the sake of making them more nearly coterminous with political entities, but in view of the amount of unevenness that is bound to develop in any case as a result of population shifts between redistrictings the gain may be worth the cost. The possibility that the excesses or deficiencies might cumulate so as to leave an unduly large or unduly small population in the last district to be established is obviated by the process of recalculating the quota after each district is established, in terms of the remaining number of districts and the remaining unassigned population.

Many other procedures could of course be devised having roughly the same characteristics, and the above is intended only as an example, to show that it is possible to establish mechanical rules which will eliminate the element of human discretion almost entirely from the process of redistricting, and which if followed would make gerrymandering virtually impossible. Such procedures should be capable of appealing to nearly everyone as essentially fair, while at the same time the random element is sufficiently large so that it would not be possible to develop any very serious attachment for one particular procedure over another on the basis of estimates as to the particular political consequences of applying them to the circumstances of the moment. Politicians are going to be reluctant in most cases to desist from discreet gerrymandering, but it is just barely possible

that presentation of a scheme of this kind would develop sufficient support for its inherent fairness to overcome this reluctance.

But while such a scheme may satisfy demands made on it on grounds of political fairness, and thus be acceptable in a *de novo* situation, in an ongoing situation redistricting involves not only the relative political strength of parties in general but the political fortunes of present incumbents. Of course, to the extent that redistricting involves reductions in the representation of one party or the other, either because of the correction of former gerrymandering, or because of a reduction in the total number of seats allotted to the jurisdiction as a whole, this will involve the ousting of some incumbents, over and above what turnover may be caused by shifts in political strength. But the amount of such turnover may be greater under an impersonal redistricting method than under a politically motivated one. To the extent that the demand for minimizing the turnover is legitimate, it is difficult to see how it can be fully met without reintroducing opportunities to gerrymander. A strictly impersonal method would be likely to produce situations where an incumbent finds himself residing in a new district that is strongly of the opposing political complexion; often, though not always, this will be because a previous gerrymander has been undone, and it will be difficult if not impossible to devise rules for determining in which specific cases the complaint is to be catered to, nor what remedy should be adopted if the complaint appears legitimate. In most cases all that can be done non-politically in such cases is to consider the turnover as part of the fortunes of political strife. Politicians, however, are not likely to take such an objective view of the matter, and this may be one very serious obstacle in the way of adopting a neutral scheme.

On the other hand, there are cases where the above redistricting scheme would result in two incumbents residing in the same district. Of course, where the number of districts is being reduced, some cases of this sort are inevitable, but it would be reasonable to require that they be kept to a minimum. It is not too difficult to devise modifications of the above scheme that will accomplish this, at the expense of somewhat impairing the compactness of the electoral districts. However, if the previous districts were seriously gerrymandered, this may allow some of the effects to carry over into the redistricting, though this is likely to be of very small consequence. More serious, it is difficult to devise a scheme which will not discriminate among incumbents as to the likelihood of their surviving as the sole incumbent in their district,

according either to their being near the center of the entire jurisdiction or on the fringes, or to their being relatively close to other incumbents. It would, of course, be possible to select by lot at the beginning of the procedure those incumbents whose residence location is to be disregarded in drawing up the new districts; this would be likely to further impair the compactness of the resulting districts. But even such a procedure, or indeed any impersonal procedure, is likely to run counter to what may be conceived as a political party's legitimate interest in the political survival of particular incumbents. There are, to be sure, ways of adapting to this situation, as by running the displaced incumbent for another office, or the other legislative chamber, by asking the competing incumbent to withdraw, or even by change of residence. But this difficulty is probably best regarded as one inherent in the practice of requiring a representative to reside in his district, as contrasted with the more flexible British practice.

In summary, elimination of gerrymandering would seem to require the establishment of an automatic and impersonal procedure for carrying out a redistricting. It appears to be not at all difficult to devise rules for doing this which will produce results not markedly inferior to those which would be arrived at by a genuinely disinterested commission. Nevertheless, it is likely to be some time before we put to the test the question of whether incumbents who have a natural interest in preserving an established position can bring themselves to trust their fate to an impersonal procedure, however effective, rather than continue to maneuver in terms of back-room bargaining.

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