Gerrymandering Reform Shouldn't Be about Politics

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The US Supreme Court is considering two cases pertaining to gerrymandering in North Carolina and Maryland, and its rulings are eagerly awaited by those who report on or are otherwise concerned about the practice.[1] In a forthcoming study for the Mercatus Center at George Mason University that analyzes many of the issues surrounding gerrymandering, I find that (1) gerrymandering is a substantial public policy problem and should be constrained, (2) the emphasis on partisan interests in much if not most of the public discussion of gerrymandering is misguided, (3) gerrymandering reform should focus instead on limiting the irregularity of district shapes, and (4) reform is best achieved by amending federal law rather than by recruiting the judiciary or deputizing independent commissions to do the job.

Many commentators take it as axiomatic that gerrymandering is a scandalous practice, but is it indeed a pressing policy problem? The case is not as simple as it may appear at first glance. First, not only the US Constitution but multiple federal apportionment acts have historically permitted a certain amount of political gerrymandering, simply by providing that legislators be elected from separate geographical districts, which states are given substantial latitude to draw. Second, the fact that gerrymandering still occurs is evidence that many regard the practice as acceptable, and they will likely resist further constraining it. Third, several of the things Americans have found most offensive about gerrymandering, such as racial discrimination or grossly unequal district populations, have already been struck down as impermissible.[2] And fourth, analysts have struggled to demonstrate certain adverse consequences alleged of partisan gerrymandering, such as its role in rendering US politics more polarized and divisive.

I nevertheless conclude that gerrymandering is indeed a pressing public policy problem and that those belonging to majority as well as minority parties share a common stake in constraining it.

The political consequences of gerrymandering are empirically demonstrable. Where gerrymandering is effective, it should render general elections less competitive while making primary races more so. These effects are observed in practice: for example, the number of US congressional races more competitive in primary contests than in general elections roughly doubled (from 41 to 81) from 2004 to 2016. This increases the electoral value of a political candidate's appeal to a plurality of a district's majority party, while diminishing incentives for candidates to accommodate the views of other parties' members, both during election campaigns and while serving in office. These incentives not only contribute to political polarization, but they also render legislative representation less responsive to the preferences of a district's median voter.

A great deal of public discussion of gerrymandering is counterproductive because it too frequently frames gerrymandering as a practice engaged in by one political party to gain advantage over another. This framing increases resistance to the conclusion that Americans of all parties have a common stake in constraining the practice. It also misses many key effects of gerrymandering, which can serve multiple purposes besides mere partisan advantage, including marginalizing party dissidents and protecting particularly senior or powerful incumbents. In any event, a districting majority party has its own stakes in prudent gerrymandering reform, such as safeguarding the perceived legitimacy of its governing decisions, protecting against a future downturn in its political fortunes, and forestalling disruptive judicial intervention.

Effective and enduring reform of gerrymandering requires, first, an appropriate definition of the problem. Most common definitions of gerrymandering include references to distorting the shapes of legislative districts for the purpose of gaining political advantage. These two concepts—district shape distortion and political advantage—are distinct and separable. It is far more fruitful to focus on constraining the irregularity of district shapes than on attacking perceived partisan advantage.

This conclusion might well be contrary to much conventional wisdom. Anti-gerrymandering advocacy groups, as well as many academic research centers, focus intently on the partisan effects of gerrymandering, often going so far as to define gerrymandering exclusively in terms of the relationship between different parties' statewide support and numbers of legislative seats they hold, without explicit references to district shapes. Treating gerrymandering reform as a political balancing act, however, is unlikely to produce solutions that are enduring or widely accepted as fair.

Framing gerrymandering in partisan terms is unwise. First and foremost, there is no constitutional grounding for the principle that political alliances are entitled to proportional representation. The Constitution protects individual voting rights, but it does not protect every combination of interests, and it certainly does not seek to protect the welfare of political factions, which several of its authors decried.[3] Moreover, framing gerrymandering reform as a means of redistributing a districting party's power to other parties is the surest way to guarantee that members of the current districting party will resist such reform.

Perhaps more importantly, framing reform in terms of partisan balancing would tend toward results that are likely to be unresponsive to many of the ills Americans find in gerrymandering. For example, a map redrawn to balance the interests of two political parties isn't necessarily any less gerrymandered than a map drawn to secure the advantage of one party. Indeed, depending on how voters are arranged within a state, making the symmetric treatment of political parties the essential criterion for reform could actually result in more gerrymandering rather than less.

This last point is particularly important because American society is becoming more segregated along political lines. Just as we should not want gerrymandering to worsen political polarization and self-segregation, we similarly should not want gerrymandering reform to reward political segregation. If voters of one party are underrepresented in a state legislature or congressional delegation, not because of gerrymandering but because they have packed themselves into one small corner of a state, mapmakers should not be obliged to reward this self-segregation by contorting district maps to compensate for it. If partisan balancing becomes the basis for supposed reform, the end result will not necessarily reduce gerrymandering or its ill effects, but will merely redistribute its gains across political parties.

Reforms that focus on reducing the irregularity of congressional district shapes offer greater promise. Compactness requirements have a firm historical grounding in both federal and state apportionment laws. Unlike party-based approaches, compactness standards operate against ongoing societal trends toward segregation and polarization. They offer simplicity, neutrality, and clarity, while also reducing the risk of capricious and controversial judicial interpretation. And they can readily be implemented in federal law in a manner both practical and straightforwardly constitutional.

A simple rule of thumb in federal law limiting the irregularity of congressional district shapes would curtail the potential scope for gerrymandering without injecting partisan objectives. It would also attack gerrymandering where it is most practiced, for the most highly gerrymandered districts are found in states lacking congressional district compactness standards (compactness standards for state legislative districts are more common). My forthcoming study discusses many possible standards but focuses on the potential of employing a particularly simple metric developed by John Mackenzie:[4] specifically, setting a maximum value for the ratio of the square of a district's perimeter to its area, with adjustments for the proportion of a district's boundary over which mapmakers have no discretion.

The most regular of all possible shapes is a perfect circle. The ratio of the square of a circle's perimeter (i.e., its circumference) to its area is roughly 12.57. A typical congressional district has a ratio closer to that of a 10 × 1 rectangle, which is more irregular than most districts in the sense of being much longer than it is wide, but also more regular in the sense of having perfectly straight sides. Such a rectangle exhibits a ratio of 48.4.

The study finds that roughly 5 percent of current congressional districts have ratios in excess of 150, after adjustments for natural boundaries such as coastlines and state borders are incorporated. Hence, a federal law limiting the allowable ratio to no more than 150 (so adjusted) would render roughly 5 percent of current congressional districts' boundaries illegal (also affecting their adjacent districts). The highly irregular 18th congressional district of Texas is a typical example of a district that would have to be (slightly) redrawn to meet this standard.[5]

Alternatively, a limit of 125 would bring the percentage of "illegal" current congressional districts closer to 10 percent. Such a standard would be tripped by districts such as the Colorado 1st.[6] For a highly gerrymandered state such as Maryland, this more restrictive standard would almost certainly require redrawing the entire state's congressional district boundaries, because other districts would share borders with the several that are ruled out of bounds.

To render the federal limit more readily understandable, this limit could be normalized by dividing the ratio by 4π, which is the ratio for a circle. A ratio normalized in this way would therefore express how irregular a district is relative to a perfect circle. Whether this normalization would be deemed desirable would depend in part on whether lawmakers felt comfortable writing the transcendental number π into federal law. With this adjustment, a ratio of roughly 125 would be normalized to 10, whereas a ratio of roughly 150 would be normalized to 12. Setting a normalized ratio limit somewhere between 10 and 12 would thus invalidate roughly 5 to 8 percent of current congressional districts (and their neighbors).

It is within Congress's power to enact such a limit. The Constitution explicitly recognizes Congress's authority to set rules for congressional elections, and federal law has contained compactness requirements in the past.[7] Doing so would also be preferable to recruiting the courts to invent a nebulous and controversial standard for determining when partisan gerrymandering has become excessive. Such a limit would also offer clarity to district mapmakers, enabling them to be less concerned about judicial intervention invalidating their maps. It would also be a better solution than delegating the job of districting to ostensibly independent commissions.

Many states have turned to independent commissions to draw legislative district maps.[8] But the academic evidence does not show that bipartisan commissions draw better or less gerrymandered maps than state legislatures. If the goal is a stable, enduring solution to gerrymandering, a straightforward modification of federal law offers a much more promising approach than the disparate results of various commissions established in different states around the country.

The current politically focused discussion of the genuine problem of gerrymandering ill serves the objective of durable reform. Gerrymandering's reformers would do well to abandon initiatives and metrics that focus on balancing partisan interests, and refocus their efforts on the historical purpose of legislative districting—which is, simply, that Americans who vote within the same constituency should live reasonably near one another.

ABOUT THE AUTHOR

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Blahous's media appearances range from *The Diane Rehm Show* and Fox News to C-SPAN's *Washington Journal*. He was named to *SmartMoney*'s "Power 30" list in 2005 and has written for the *Wall Street Journal*, the *Washington Post, Financial Times, Politico, National Review, Harvard Journal on Legislation, National Affairs, Journal of Chemical Physics*, and *Baseball Research Journal*, among others.

Blahous is the author of *Social Security: The Unfinished Work* and *Pension Wise: Confronting Employer Pension Underfunding and Sparing Taxpayers the Next Bailout*, as well as the influential studies "The Costs of a National Single-Payer Healthcare System" and "The Fiscal Consequences of the Affordable Care Act."

Blahous served as a public trustee for Social Security and Medicare from 2010 through 2015. He was formerly the deputy director of President George W. Bush's National Economic Council, special assistant to the president for economic policy, and executive director of the bipartisan President's Commission to Strengthen Social Security. He recently served on the Bipartisan Policy Center's Commission on Retirement Security and Personal Savings.

Blahous received his PhD in computational quantum chemistry from the University of California at Berkeley and his BA from Princeton University.

NOTES

1. Amy Howe, "Court Puts Partisan-Gerrymandering Rulings on Hold," *SCOTUSblog*, May 24, 2019.

2. Shaw v. Reno, 509 U.S. 630 (1993) (racial discrimination); Wesberry v. Sanders, 376 U.S. 1 (1964) (grossly unequal populations).

3. Avalon Project, Lillian Goldman Law Library, Yale Law School, "Washington's Farewell Address 1796," accessed June 21, 2019, https://avalon.law.yale.edu/18th_century/washing.asp.

4. John MacKenzie, *Gerrymandering and Legislator Efficiency* (Newark, DE: University of Delaware, 2009).

5. BiggestUSCities.com, "18th Congressional District, Texas Demographics," July 2, 2018, https://www.biggestuscities.com/demographics/tx/18th-congressional-district.

6. Google Maps, "Rep. Diana DeGette - Colorado's 1st District," accessed June 21, 2019, https://www.google.com/maps/d/viewer?mid=1T0bL3m0jDcKr-TSnqUKLR_gB7NI&t=m&msa=0&source=embed&ie=UTF8&ll=39.721976%2C-104.86450200000002&spn=0.369695%2C0.583649&z=10.

7. For example, see Vieth v. Jubelirer, 541 U.S. 267 (2004).

8. Peter Miller and Bernard Grofman, "Redistricting Commissions in the Western United States," *UC Irvine Law Review* 3, no. 3 (2013): 637–68.