# Cato Handbook *for* Policymakers

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# 29. Redistricting

***State lawmakers should***

- specify objective criteria for redistricting, such as compactness of districts, contiguity, and congruence with political subdivisions;
- prescribe procedures for redistricting that limit political insiders' discretion in drawing district lines, or entrust the process to those without a vested interest; and
- enact transparency measures, including real-time open-source public access to geographic information data, to allow the public to analyze districting maps under consideration and propose alternative maps.

Elected officials often exercise their power in ways that benefit themselves and their associates even at cost to the public's well-being. A classic example is gerrymandering, the practice of drawing district lines to help ensure the desired result in future elections. The American system tends to leave the power of redistricting in the hands of the same officials whose careers are at stake, and they have routinely misused that power to draw lines with the aim of electing or defeating one or another candidate or party. In a classic gerrymander, the governing party draws many districts in which its own voters hold a comfortable though not overwhelming lead, while packing voters of the opposing party densely into as few districts as possible.

Both parties do it: in states like Texas and North Carolina, Republican-drawn maps have placed Democrats at a disadvantage, while Democrats have done the same to Republicans in states like Illinois and Maryland. When a state legislature is under mixed or split party control, the approach is often one of bipartisan connivance: you protect your incumbents and

we'll protect ours. Third-party and independent voters, as is so common in our system, have no one looking out for their interests at all.

The practice dates far back in history: the name "gerrymander" comes from a dragon-shaped district that Massachusetts Gov. Elbridge Gerry helped devise back in 1812. But it has grown more acute in our own time with the rise of database technologies that can efficiently sort voters by political sympathy down to precincts, city blocks, and even individual buildings. Last year, the *Washington Post* cited Maryland's third congressional district as among the nation's worst offenders. It snakes through four counties and Baltimore city, connected at various points only by water; its silhouette has been compared to that of a praying mantis, a "broken-winged pterodactyl" (a federal judge's phrase), and the blood spatters at a crime scene.

### *Insulating Incumbents*

Handicapping the opposition party is only the start. Creative gerrymandering can insulate incumbents and serve the interests of political insiders in a number of other ways as well:

- Those in charge can punish lawmakers of their own party, as well as opponents, by drawing them unfavorable districts at census time. Incumbents who ignore the leadership's wishes on key votes may find their home address assigned to a tough new district or thrust into a primary fight with a popular colleague. That's one method legislative chieftains use to keep a lid on insurgent forces in their own party.
- Carving up a coherent political community, such as a county or small city, among numerous districts can spare weak incumbents scrutiny of their performance. Residents who do not even know who their representative is, as is common with a scrambled map, are less likely to keep track of how well that representative is serving their interests. With multiple districts, races, and incumbents to follow, press outlets are less likely to do a thorough job of covering any of them.
- Where most seats are seen as belonging to one party or the other, the only meaningful competition tends to come in the primary, and the chief political pressure on incumbents may be to cater to base voters for fear of attracting a primary challenge. Fewer lawmakers have reason to engage with sane voices on the other side.
- When a gerrymandered district sprawls across a state, it's harder for a newcomer to challenge an incumbent. For example, advertising

across multiple media markets is expensive. Making the rounds of local events, such as fairs and parades, winds up wasting a lot of effort on people who vote in other districts. All of which tends to reduce the role of "retail" politics—getting to know constituents face to face or through a strong record in local government—while magnifying the role of fundraising (to afford the high advertising budgets) and cultivating allies among the sorts of interest groups that can turn out disciplined voters statewide.

## The Constitutional Background

In our system, states are in charge of apportioning their own legislatures and have the lead role in apportioning congressional districts as well. Article I, Section 4 of the Constitution reads: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations."

The federal government's role has remained limited. The Voting Rights Act of 1965, following the Equal Protection Clause, bans districting done for a racially discriminatory purpose, and drafters of maps must ensure that they are compliant with the act's rules. The federal courts also enforce population equality among districts in a given state, which, under the Supreme Court's ruling in *Baker v. Carr* (1962), extends to state legislative districts as well as congressional districts. (The Court has allowed more leeway, a variance of roughly 10 percent, for state legislature districting.) And both state and federal districts must be reapportioned at least every 10 years to reflect new census results.

Although the Supreme Court has been urged to interpret various constitutional provisions as banning politically motivated gerrymandering, it has thus far declined to do so. Its rationale has been that it has found no principled standard to apply that would not draw it into a multitude of complicated local disputes.

## Reforming Redistricting

Fortunately, ideas for reforming gerrymandering are almost as old as the practice itself. They fall into three main categories:

1. rules on who is responsible for drawing district lines;
2. rules directing the shape or extent of districts; and
3. rules on the procedures panels should follow.

### *Who Should Draw Lines?*

Who draws the lines? Too often, the answer is a few majority party insiders huddled in a back room. Who *should* draw the lines? One of the ideas that recurs most frequently is to make the process bipartisan, entitling the second largest party to a negotiating position. New Jersey, for example, entrusts redistricting to a panel selected by political figures with an even party balance and a tie-breaking neutral, with the state's supreme court authorized to step in in case of deadlock.

Most reform proposals floated these days seek to go further in separating the process from incumbent control. In recent years, serious redistricting reform has caught on, especially in Western states, including Washington, Idaho, Alaska, and Colorado. In the first two of these states, the process is entrusted to a commission whose members are mostly selected by elected officials, but who themselves must be citizens not holding office. Voters in Arizona and California, by way of ballot initiatives, have gone the furthest by creating what are closer to fully independent citizen commissions, in whose selection lawmakers have a more limited role.

Although each model has its own details, some features are typical. The selection process is usually meant to avoid empaneling a majority of loyalists from a single party. Elected officials themselves and their families are frequently excluded, and sometimes so are persons who have been candidates recently or are political professionals. Where citizens themselves volunteer, there is commonly some screening process; details vary as to which neutral body does the screening and how, but the intent is to find civic-minded individuals who are qualified for the work. Some plans use random or lottery selection for at least one phase of the screening. That system offers the advantage—as with the process for selecting juries in court cases—of impeding any scheme to "wire" the process to ensure that particular persons get chosen.

In a category of its own—and deserving special mention—is the system used in Iowa. It assigns redistricting to the same nonpartisan civil service staff that provides legislative services such as bill analysis at the capitol. Although Iowa's system is often praised for its fair results, it may owe some of that success to features of the local political scene not replicated everywhere. For example, Iowa has a fairly even party balance and a legislative staff whose nonpartisan bona fides are accepted by lawmakers of both parties.

### *What Should Districts Look Like?*

The most essential task in redistricting reform is to provide clear and objective rules for governing how districts are drawn. The three most widely accepted standards are as follows:

**Contiguous.** All parts of a district should touch. Although this seems obvious, careful language helps prevent such tricks as corner-to-corner connections or circuitous connections over water.

**Compact.** Districts should look more like turtles than snakes, more like dustpans than rakes. It is not necessary to trust to intuition: at least two mathematical measures of compactness are widely employed. Colorado writes one of them, the "total perimeter" test, into its constitution: "Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible." The other test—"radius" or "length/width"—is used in a number of states, including Michigan.

**Congruent.** Where possible, districts should respect the boundaries of smaller political subdivisions, such as counties and towns, and should nest within other districts. No one rule fits every state, because the basic unit of political organization varies from state to state (around much of America it is the county, but in New England it is more typically the town). Some states provide that smaller units cannot be split between districts unless there is no other alternative. Another convenient measure of congruence is the number of county splits in a plan, with lower numbers ordinarily better.

If too many criteria are prescribed, then a dangerous degree of discretion is reintroduced into the process, especially if the commission is given latitude to balance among them. For example, some proposals have suggested that a commission take into account vaguely defined "communities of interest" in assembling districts. But almost anything can be called a community of interest. For example, a coastal low-income suburban industrial enclave could be linked to other coastal areas, other low-income areas, other suburban areas, and so forth. Interested parties will find more ways to manipulate outcomes.

### *How Should the Process Work?*

The rules by which a redistricting commission does its work are important as well. One powerful tool is "blinding," that is, directing the panel not to consider current party registration or past voting records in assembling population blocks. Even more powerful is to direct a panel not to consider the location of residence of any individual, such as incumbents or potential

challengers. Although incumbent-blinding has potential inconveniences—it may wrench a lawmaker out of a district where he or she is well loved, or throw three incumbents into the same district—it has proved practical in states like Iowa and serves as a badge of seriousness in refusing to cater to incumbent interests.

Once a panel agrees on a proposed map, it is typically sent to the legislature for approval. Since giving lawmakers unlimited power to amend the map before approving it is suspiciously akin to letting them draw the map from scratch, some states allow only an up-or-down vote, with any rejection kicked back for a second try. Provisions for judicial review should also be drafted with care: if court review is too weak, participants may feel free to ignore the law; but if it is too easy to sue, courts may wind up mostly drawing the maps themselves. Beleaguered citizen participants would then be left with the unpleasantness of being hauled into court without a sense of accomplishment to make up for it in the end.

Finally, reflecting how rapidly technology has changed in this area, data transparency practices now have great potential to transform redistricting for the better. Public hearings and online comment registers have been a familiar part of the process. Now, provided a state cooperates by making the data available in correct formats, free or inexpensively available software allows almost any computer user to analyze the full data set behind a map, using geographic information systems (GIS) methods. In several states, this has already led to fruitful back-and-forth exchanges in which members of the public offer maps of their own, identify shortcomings in proposed maps, or both. Sometimes these submissions improve the commission's final plan; at other times, they serve as a vehicle for judicial review, as when the Pennsylvania Supreme Court invalidated a map drawn by lawmakers as clearly inferior to a map that had been submitted by Amanda Holt, an Allentown piano teacher.

## Conclusion

Redistricting reform makes sense for its own sake and as a safeguard against the entrenchment and insulation of a permanent political class. Voters should choose legislators, not the other way around. It's time for every state to catch up.

### Suggested Readings

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