

Inquiring Minds topic – 18 May 2019

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Gerrymandering

Gerrymandering is a legal means for states to manipulate congressional districts in order to promote a particular candidate or party. This procedure often skews the results of elections by diminishing the much touted concepts that “each vote counts,” and “one man, one vote.”

Gerrymandering is perpetuated by both the Democratic and Republican Parties although historically the Republicans have engaged in this practice more often. The results of gerrymandering has led to candidates winning elections despite receiving a minority of votes within a state. In fact, many ascribe the victory of President Trump, in part, to gerrymandering as highlighted by the fact that he was victorious despite the fact that he had fewer votes than his opponent.

In fact, gerrymandering has set off alarms during recent elections due to the fact that two of the last three presidents were elected with a minority of overall votes. Although it would be too simplistic to attribute such victories solely to gerrymandering, the practice seems to distort the concept of a fair and democratic electoral process.

Given the blatant disregard for fairness that the process of gerrymandering engenders, it would seem that citizens of the United States of America would be outraged by its existence. It would also seem reasonable for the Judicial system of the United States of America to safeguard democracy by ending the process of gerrymandering.

However, it seems that the Fathers of our constitution were vague about how state legislatures should select representatives to the United State congress. A conservative reading of the constitution suggests that electing representatives to congress is the function of individual states and not up to the Judiciary branch of government. However, a more Liberal reading indicates that the inherent injustice of gerrymandering should be addressed by the Judiciary branch of government.

This dichotomy is soon slated to be heard by the U.S Supreme Court. All eyes are on the case involving the state of Wisconsin and its process of gerrymandering to elect its representatives to congress. Currently, pundits suggest that the Supreme Court will break its vote along conservative and liberal lines with Justice Kennedy’s vote becoming a deciding factor. Stay tuned!

Questions to consider:

1. Why would gerrymandering be considered a desirable process?
2. Who wins if state districts are no longer determined by invested politicians through gerrymandering? Who loses?
3. What process could replace gerrymandering as a means of electing congress people?
4. What agency of government should determine the legality of gerrymandering...the states or courts?
5. Since some do not consider gerrymandering to be just, why shouldn’t the case be determined by the Justice Department/Supreme Court?
6. Why do people suggest that gerrymandering is undemocratic?

7. President Trump wishes to have the status of immigrants considered in future census-taking. What impact would this have on electing representatives?

What is gerrymandering?

[F fortune.com/2017/10/05/what-is-gerrymandering](https://fortune.com/2017/10/05/what-is-gerrymandering)

The Supreme Court of the United States heard arguments Tuesday for [Wisconsin's partisan gerrymandering case](#). If the justices rule in favor of Wisconsin's Democratic voters, which brought the case against the state's government, this would be the first time the court has struck down the practice.

Partisan gerrymandering involves manipulating the size and shape of electoral districts in order to favor one political party over the other. Sens. John McCain (R-Az.) and Sheldon Whitehouse (D-R.I.) issued a joint statement about the Wisconsin gerrymandering case Tuesday, arguing that “the American people do not like gerrymandering.” So how did slicing and dicing districts get started in the first place?

Here are 5 things you need to know about gerrymandering ahead of a potentially new legal standard for the practice.

Gerrymandering occurs when voting districts are redrawn to benefit one party over another in elections, forcing the other side to “waste” votes. For example, someone drawing district lines might cluster opposition party voters together in one district in order to concentrate their votes so that they influence only a few seats. Or it could mean grouping those opposition voters into districts where the other party has a lock on power—making it very difficult for the opposing party to win elections there.

Achieving this normally means dividing districts up along highly irregular lines to ensure that voters from each party are concentrated in the right areas and spread thin in others, as [the Washington Post illustrates](#) using a popular [explanation adapted from Reddit](#). Now, with the assistance of software, state legislators are able to control gerrymandering or who ends up in a particular district with more precision than ever before.

In Wisconsin, gerrymandering [led to Republicans holding 60% of the state assembly seats](#), according to the *Post*, while the party received less than half of votes. This raised concerns that gerrymandering is [denying constituents their right to vote](#).

Where did the term gerrymandering come from?

The name comes from Elbridge Gerry, a founding father, the fifth vice president of the United States, and the governor of Massachusetts, who signed a bill that created the first curiously misshapen district in the state designed to elect Democratic-Republicans over Federalists in 1812.

Is gerrymandering legal?

There is currently no law against gerrymandering, but the outcome of the Wisconsin gerrymandering case could change that. If the Supreme Court sides with the challengers rather than the Wisconsin government that created the district map, then some forms of [partisan gerrymandering could be ruled unconstitutional](#).

The Wisconsin gerrymandering case will likely come down to Supreme Court Justice and frequent swing-voter Anthony M. Kennedy, [who on Tuesday seemed critical of Wisconsin's 2011 redistricting plan](#).

Is gerrymandering and redistricting the same?

They don't have to be. While gerrymandering takes advantage of redistricting to give the political party in power an advantage over their opponent, redistricting still happens every ten years, as Congressional districts are redrawn based on updated U.S. Census data ([just another reason to be worried about the 2020 Census](#)).

Gerrymandering examples

The Wisconsin case is the example getting all the attention. However, there are [other cases challenging gerrymandering](#) in Maryland and North Carolina. Vox reports that [other highly gerrymandered states](#) include Pennsylvania, Ohio, and Virginia.

Political Road Map: California's election maps, drawn without party favoritism, hit the halfway mark

 [latimes.com/politics/la-pol-ca-road-map-political-districts-parties-20161106-story.html](https://www.latimes.com/politics/la-pol-ca-road-map-political-districts-parties-20161106-story.html) - ny John Myers

California's citizens redistricting commission held dozens of meetings across California in 2011, like this one in Culver City. And commissioners made it clear none of the proposed maps would include political party information. (Lawrence K. Ho/Los Angeles Times)

Few arcane topics have broken through the public consciousness in recent years as well as redistricting, the once-a-decade process of redrawing political maps based on changes in population, race and ethnicity.

In dozens of states, voters are starting to understand that it matters where the lines are drawn. And in the vast majority, it's the state legislators who quietly carve up communities to maximize the political power of whichever party is dominant.

Which is why Tuesday's election here in California offers a glimpse into an alternate universe, what happens when the maps are drawn in public and guided by a bipartisan panel of citizens. And that panel, selected in 2010 and 2011, made one thing very clear: Data on the impact to Democrats and Republicans wouldn't be included.

"We didn't even broach the topic," said Jodie Filkins Webber, a Riverside County Republican who was one of 14 women and men chosen for the redistricting commission created by voters through ballot measures in 2008 and 2010. "Because we were the first commission, we wanted to make a statement."

That statement, an official blind eye to how the new maps would impact political parties, was not required. The voter-approved rules governing map-drawing for the Legislature, the U.S. House of Representatives and the state Board of Equalization said the districts "shall not be drawn" to favor a political party. But the rules do allow the commission to see how many Republicans or Democrats are being lumped together or split apart.

Future commissions may be more lenient on that point; the first panel was unanimous in saying no.

[Political Road Map: The radioactive Republican brand in California » »](#)

"We were all in agreement," said Connie Malloy, one of the citizen panel members who was unaffiliated with any registered party.

Even so, interest groups representing business, labor and minority communities examined each and every potential squiggle on the maps for the net effect on GOP or Democratic political strength. On Aug. 15, 2011, the citizens panel gave final approval to 177 new political districts, letting the partisan chips fall where they may in the 2012 elections and beyond.

This year marks the third of five elections under those districts. Since then, Republicans have lost five of their congressional seats and experienced a shifting but net loss of seats in the Legislature. The party, struggling with [a political brand that's unpopular even among its own ranks](#), faces tough races in several parts of California this week. But unlike other states, it's not political gerrymandering that's being blamed for election results.

Malloy, one of the unaffiliated "independent" commissioners who focuses on voter and civic engagement issues for the nonprofit James Irvine Foundation, believes too many people have seen political parity as a proxy for fair representation.

"Looking at party data is a short cut, and a faulty one, for trying to decide who voters are, and what they care about," she said.

California's independent redistricting commission will get new members by the end of the decade, commissioners who will use Census data collected in 2020 to redraw the boundaries. To serve, commissioners must apply through a lengthy and non-partisan process. Thousands of people submitted applications in 2011.

In all, seven states use redistricting commissions rather than legislators to draw political maps. But none are as independent as the California panel, where commissioners said the greatest success may be the end of closed-door deal-making that left citizens with no clue as to what happened, or why.

"What has really come about," said Filkins Webber, "is greater transparency."

How the New Math of Gerrymandering Works

 [nytimes.com/interactive/2017/10/03/upshot/how-the-new-math-of-gerrymandering-works-supreme-court.html](https://www.nytimes.com/interactive/2017/10/03/upshot/how-the-new-math-of-gerrymandering-works-supreme-court.html) - by [NATE COHN](#) and [QUOCTRUNG BUI](#) OCT. 3, 2017

The Supreme Court is considering a gerrymandering case in Wisconsin. At the core of the debate is a new way to measure gerrymandering. Here's the simple math behind it. [Related Article](#)

Ever since Justice Anthony M. Kennedy left the door open to a "[workable standard](#)" to limit partisan gerrymandering, political scientists have sought to construct a measure to satisfy him. On Tuesday, the Supreme Court will [hear a case](#) that will test whether they've pulled it off.

At the center of the case is the "**efficiency gap**," a relatively new measure of partisan gerrymandering. A federal court in Wisconsin ruled in November that the state's [Republican](#)-controlled legislature had discriminated against [Democratic](#) voters, and it partly relied on the efficiency gap to find that the Wisconsin State Assembly map was an unconstitutional partisan gerrymander.

Whether it's persuasive to Justice Kennedy — expected to be the key swing vote in the case — is another matter. The efficiency gap is not a perfect measure. But it would probably address many of gerrymandering's problems, with few downsides.

Here's what the efficiency gap is, what it does well, what it doesn't do so well — and what it might ultimately mean for American democracy.

What Is It?

In general, the goal of a partisan gerrymander is to force the other side to “waste” votes, and that’s exactly what the efficiency gap measures.

A wasted vote is one that doesn’t contribute to winning any additional districts. All of the votes beyond what’s necessary to win a district are “wasted” in victory. All votes are wasted in defeat, since they didn’t result in any seat at all. There are two types of wasted votes: **1** All the votes cast for the losing candidate. **2** All the “extra” votes for the winning candidate.

Partisan gerrymandering follows this logic by employing so-called packing and cracking, two tactics to force the other side to waste votes. With packing, one party’s votes are concentrated into a district, resulting in wasted votes in lopsided victories. With cracking, one party’s votes are split among several districts that lean safely to the other side.

The efficiency gap measurement aims to summarize the effect of gerrymandering by identifying all of the wasted votes in victory and defeat for both parties. It then adds them up, finds the difference between the two sides, and divides that by the total number of votes in a state. This yields a single percentage figure: the efficiency gap. The creators of the measurement, Eric McGhee, research fellow at the Public Policy Institute of California, and Nicholas Stephanopoulos, professor at the University of Chicago Law School, propose that a gap of 7 percent or higher should be enough to find that a state may have committed an unconstitutional partisan gerrymander.

What do wasted votes look like? Let’s look at Maryland’s Sixth Congressional District, which extends to the D.C. suburbs to give Democrats an additional seat. **1** Democratic votes: 186k. **2** Republican votes: 133k. **3** Votes needed to win: 159k. Democrats won. They received 186,000 votes, but needed only 159,000 to win, so those roughly 26,000 votes are considered wasted. Republicans lost, so all those 133,000 votes are considered wasted. How does this play out in the rest of the state?

1 510,000 Democratic votes and 789,000 Republican votes are wasted in Maryland. **2** Which means that, on net, Maryland wasted 279,000 Republican votes. **3** The efficiency gap is net-wasted votes as a share of a state’s total vote, which means that Maryland has a 10.7 percent efficiency gap that favors the Democrats.

This process of adding up the wasted votes in each district is a little cumbersome. But this formula can be simplified to a theoretical relationship between vote share and the number of seats that a party should win.

Over all, it’s a simple measure that elegantly follows the logic of partisan gerrymandering. And it satisfies many of Justice Kennedy’s requirements for a gerrymandering test. It does not, for instance, require an analysis of hypothetical elections, and it’s straightforward enough to understand.

What Works Well

Does it work? Well, the results do look about right.

The congressional and state legislative maps that have been considered most notorious are found to be in violation using this standard.

Exactly which states violate the efficiency gap depends a bit on the details. Wisconsin’s state legislative districts are in question in the case, but the basic issues are the same for congressional maps, and we’ll

focus on those here.

There are two potential standards for whether a state's congressional map is in violation: the 7 percent threshold suggested earlier, or if the plan costs a party two seats in a state. Small states are likelier to fail the percentage threshold test, while the two-seat threshold is more likely to trip up big states. There are also judgment calls needed on how to handle uncontested elections — here, we impute the results and turnout using a model based on recent congressional and presidential election results. But the conclusion is basically the same no matter the approach.

In looking at the 2016 congressional elections, there are five states in violation by both the seat and percentage measures: Pennsylvania, Texas, North Carolina, New York and Michigan. With the exception of New York, no one would dispute that these lines were ruthlessly drawn to favor the Republicans.

In addition, there's a longer list of medium-size states that violate the percentage measure but don't quite hit a two-seat threshold. Ohio, Georgia, Maryland, South Carolina, Virginia and Alabama all have efficiency gaps over 10 percentage points in favor of the party that controlled redistricting, while Indiana has a 9 percent efficiency gap. All of these congressional maps could be vulnerable to a legal challenge under the proposed standard.

These results would largely pass the “gut-check” test for most fair-minded observers. But they're not quite perfect either, and they hint at some of the limitations of the test. Illinois, where Democrats plainly used the redistricting process to their advantage, is considered well balanced by this measure. It actually has a Republican-leaning efficiency gap. And New York, drawn by a court-appointed magistrate, is considered a Republican gerrymander with a 10 percent efficiency gap in favor of the Republicans. But in truth, few would argue that New York's map is balanced against the Democrats at all, let alone by so much.

So what's going on? Political geography.

What Doesn't Work Well

Gerrymandering isn't the only reason one party might “waste” many more votes than the other. Parties can naturally “pack” or “crack” themselves, simply because of how their voters are distributed geographically.

The efficiency gap doesn't distinguish between votes wasted by gerrymandering or by natural causes. That's probably the biggest practical limitation of the measure.

It's not a small issue. Democrats routinely win major cities with more than 80 percent of the vote. Nationally, virtually all of the seats with the most wasted votes in victory are Democratic-held urban districts. For the most part, they're not gerrymandered at all.

The congressional districts (in 2016) with the most wasted votes tend to be urban Democratic strongholds. The effect of all of these wasted Democratic votes in urban areas is considerable. It's enough, for instance, to make a fair map in New York look like a partisan gerrymander. There, Hillary Clinton won more than 75 percent of the major party vote in 10 of the state's 27 districts. But no gerrymandering was required as Mrs. Clinton won 81 percent of the major party vote in densely populated New York City.

Similarly, the efficiency gap measure makes Illinois's Democratic gerrymander look like a balanced map. Mrs. Clinton won 78 percent of the major party vote in Cook County, which includes 40 percent

of Illinois's population. The Democrats made a herculean effort to undo this disadvantage. They unpacked Chicago and Cook County as best they could, spoking the city's districts out to the suburbs, exurbs and even the countryside. But even this was insufficient to give the Democrats a real advantage. Republicans and Donald J. Trump still won seven of Illinois's 18 congressional districts, even in a state Mrs. Clinton carried easily.

Geography is probably the biggest reason Republicans are skeptical of the efficiency gap. Various amicus briefs contend that the measure is biased against Republicans. They argue that a remedy could even require maps that violate nonpartisan criteria, like those districts that spoke out of Chicago.

There's some merit to the Republican argument. If Democrats are at a geographic disadvantage compared with the Republicans, Democrats would generally have more flexibility to draw maps that deviate from nonpartisan standards, like compactness or following jurisdictional lines, without generating a 7 percent efficiency gap violation as they have in Illinois. Republicans, meanwhile, might draw relatively fair maps that might seem to disadvantage Democrats. Indiana is a good example.

One could argue that the courts shouldn't view Democratic gerrymanders as especially troubling if they don't create the same burden on Republican voters to translate their votes to seats, but Republicans are unlikely to see it that way.

Making matters worse for the Republicans: The efficiency gap isn't great at measuring the one big Democratic geography advantage: Hispanic districts. Here, the Democrats' advantage is that they can translate votes to seats at an efficient rate, thanks to the extremely low turnout-to-population ratio of Hispanic areas, which, for good measure, are not always overwhelmingly Democratic. The efficiency gap, if anything, gets this backward. It's measuring wasted votes, after all, and the low turnout of these districts means that the Republicans waste very few in Hispanic districts.

Right now, Illinois and New York are probably the only two states where the efficiency gap is misled by geography. But it could be a much bigger issue in the future. An easy way to tell is to look at the 2016 presidential race rather than U.S. House races. Based on presidential results, efficiency gap violations would spread to 18 of the 26 states with more than five congressional districts. The nonpartisan maps in Arizona and Minnesota, the bipartisan map in New Jersey, and, incredibly, the Democratic-drawn map in Illinois would all violate the 7 percent threshold in favor of the Republicans.

It's worth noting that there isn't much danger that "fair" maps will be found to be unconstitutional gerrymanders, even if they fail the efficiency gap. Under the test proposed by the plaintiffs, the courts would have to find motive as well. Similarly, the state would have the opportunity to show that the imbalance was because of political geography.

But the presidential election results nonetheless show how significant the Democratic geography disadvantage has become. It can easily create the appearance of a partisan gerrymander. It is directionally consistent with the notion that the Democratic geography disadvantage would somewhat bias the efficiency gap measure against the Republicans. And it hints at a core challenge for the plaintiffs: The efficiency gap isn't as easy as it looks.

The Role of the Courts

The courts would have to assess whether geography explains the "efficiency gap" in just about every case.

In the Wisconsin case, the federal court concluded that political geography did not explain the entirety of the Republican edge because there were alternative plans with a smaller Republican advantage.

If this ultimately becomes a standard way to rebut the geography argument, as it has in racial gerrymandering cases, gerrymandering opponents will probably be well off. It is usually possible to draw a relatively fair map, even in states where geography really does significantly burden one party.

But things get more complicated if the courts don't simply accept the presence of an alternative, fair plan as proof that geography isn't responsible. After all, the fact that a more balanced map was possible doesn't prove that a less balanced map was a result of partisan gerrymandering, as the New York and Minnesota maps plainly show.

The difference between the presidential election results and congressional election results hints at another problem: The efficiency gap is very noisy. It can shift back and forth from cycle to cycle. That's mainly because the efficiency gap emphasizes the difference between winning and losing a district. If you win by one vote, all of your opponents' votes are wasted, and just one of yours; lose by one vote and the opposite is true.

As a result, the courts would probably need to look across many elections to assess whether a map is in violation. They would also probably check to see whether the result would be very different if the election had gone a little differently. The courts will undoubtedly consider other potential measures of partisan symmetry or gerrymandering, including whether the map violates nonpartisan criteria like compactness or violating jurisdictional lines.

None of this represents an insurmountable challenge to the efficiency gap. But it means that the efficiency gap isn't really what it seems. It is not a test of partisan gerrymandering. It is a test of whether a congressional map burdens the voters of a political party to an extent that is likely to be persistent for a decade. Whether voters were burdened because of an unconstitutional partisan gerrymander, geography or bad luck is another matter. It's the sort of matter that the courts have been resolving for decades in racial gerrymandering cases, but that doesn't mean it's easy or clear.

HOW TO STEAL AN ELECTION

