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Can the U.S. Solve Gerrymandering?

Lessons From Unlikely Sources

by Sebastian Marotta

The United States has a gerrymandering problem. Under the regal domes of nearly every statehouse from Providence to Topeka occurs a decennial ritual where legislators plot to ensure that their party's candidates emerge victorious in that decade's elections. They do this not in sinister nighttime rendezvous, but in regular legislative sessions. Legislators meet to redraw the Congressional district map, and overwhelmingly they rig it. States have attempted to wrest this control from the hands of the legislature and preserve democracy by ending gerrymandering – largely to limited success. If the United States truly wants to leave gerrymandering in the past, policymakers must look for help in unexpected places.

Sometimes the most critical issues to democracy can be the least glamorous. Gerrymandering is an obstacle that threatens the representative nature of government in Washington. Largely eliminated in Canada, gerrymandering in the U.S. causes serious disconnects between the electorate and its representatives. Various states have attempted to move away from the flawed system of redistricting that permits state legislatures to

redraw boundaries that favor a certain party or incumbent.¹ Although many notable reforms have occurred in states like New Jersey, Arizona and Florida, attempts still fall short. A more representative system could be created by adopting the Canadian model of seat redistribution together with current reforms in Iowa.

Redistricting, Gerrymandering and Problems

Canada and the United States both have lower houses in their legislative assemblies – the House of Commons and the House of Representatives, respectively – that elect lawmakers on a first-past-the-post basis in each country’s electoral districts. Because this system divides the country into constituencies or districts, it becomes necessary after every census to redistribute and redraw those districts to reflect population changes. This process begins with apportionment, which, in the United States, is mandated after every decennial census according to Article I, Section 2 of the Constitution. Federal law has effectively capped the number of House seats in the U.S. to 435 since the entry of Arizona and New Mexico as states. States with declining populations or those growing relatively slowly lose seats to states that grow more quickly. In 2010, for instance, Ohio lost two seats and Texas gained four.² In Canada, by contrast, there are a number of Constitutional requirements that mandate a minimum level of representation for certain provinces, most notably Quebec.³ Unlike in the U.S., the number of seats in the House of Commons can increase, as occurred with Canada’s 2012 reapportionment that brought the number of seats from 308 to 338.⁴

At this stage, there is nothing controversial about the process. Where redistricting begins to cause problems, however, is the introduction of gerrymandering when redrawing the newly redistributed district boundaries. Gerrymandering is the redistribution of electoral seats to allow a party or incumbent an advantage in upcoming elections. State interests play a role because redistricting is a state responsibility, often falling to their legislatures. As such, if the

Democratic Party controls the Maryland state legislature, they will likely redraw Maryland’s federal congressional districts to favor their fellow federal Democratic candidates. The graphic below explains how this is possible.

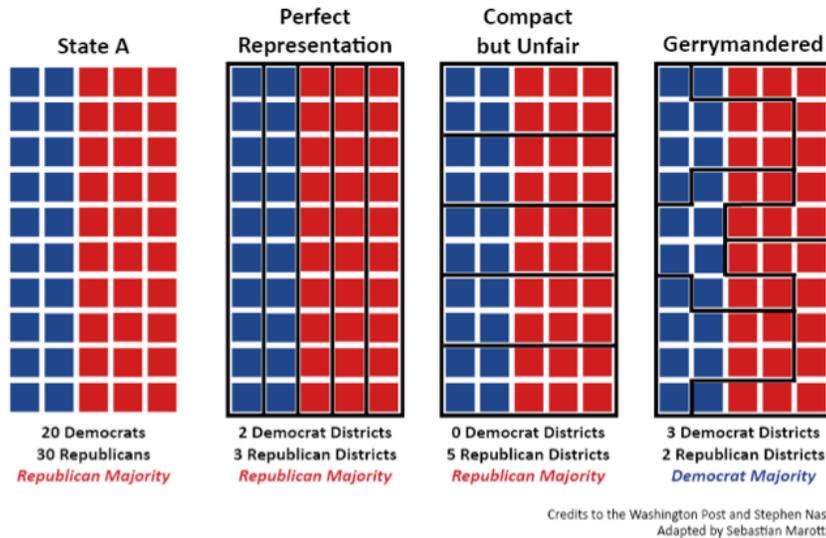
¹ These efforts have been bolstered by the US Supreme Court’s landmark ruling in *Arizona State Legislature v. Arizona Independent Redistricting Commission* in June 2015, http://www.supremecourt.gov/opinions/14pdf/13-1314_kjfl.pdf

² U.S. Census Bureau, *Apportionment Population and Number of Representatives by State*, U.S. Department of Commerce, 2010. http://www.census.gov/2010census/news/pdf/apport2010_table1.pdf

³ Article 37, *Constitution of Canada*, Department of Justice, 1867-1982. <http://laws-lois.justice.gc.ca/eng/Const/page-2.html#h-6>

⁴ *Redistribution: Federal Electoral Districts*, Federal Electoral Boundaries Commission, 2012. <http://www.redecoupage-federal-redistribution.ca/content.asp?document=home>

Gerrymandering Explained



There is an inherent conflict of interest in this system that needs little explanation. To continue with the example of Maryland, gerrymandering works by concentrating Republican voters in a few districts and leaving the rest with slight Democratic majorities. A visual result is often a number of skinny, snaking districts that connect urban centers to consolidate left-wing voters. In this way, Maryland's state legislature was able to ensure that only one of its eight congressmen (12.5% of the Maryland delegation) was Republican in 2012, despite the fact that 36% of Marylanders voted Republican in the presidential election.

Gerrymandering is a serious problem that affects a large number of states to varying degrees. Republicans account for the majority of gerrymandering incidents, but Democrats are also to blame in states like Maryland. Among other egregious examples are North Carolina, Pennsylvania, Ohio, Kentucky and Texas. *Vox News* even goes so far as to argue that gerrymandering is responsible for the 2012 election that gave Republicans a 234-201 majority in the House, despite the fact that 1.4 million more Americans cast their ballots for a Democrat.⁵ That is likely an overstatement, however, since lopsided results are a reality of first-past-the-post systems. Gerrymandering nonetheless has an incredible impact on the fairness of representation that Americans expect from their government.

How Canada Eliminated Gerrymandering

Gerrymandering is the result of politicization of the redistribution process and no U.S. state has fully succeeded in de-politicizing its congressional redistricting. Canada, in contrast, has

⁵ Andrew Prokop, "US elections are rigged. But Canada knows how to fix them," *Vox*, February 25, 2015. <http://www.vox.com/2014/4/15/5604284/us-elections-are-rigged-but-canada-knows-how-to-fix-them>

achieved this goal almost completely by removing politicians from the process.⁶

From Confederation in 1867 until the 1960s, Canada's redistributions were as gerrymandered and widely deplored as those in the U.S. are now – probably more, in fact, since Parliament itself redrew the seats.⁷ By the early 1900s, the process was taken on by specialized regional parliamentary committees where the ruling majority party essentially decided how the map would be redrawn to its advantage.⁸ In 1955, Manitoba made a successful transition to a non-partisan provincial redistribution commission composed of the provincial Chief Justice,

Chief Electoral Officer and President of the University of Manitoba.⁹ The Liberal government in Ottawa, with support from the opposition Conservatives, enacted the *Electoral Boundaries Readjustment Act* of 1964 based on the Manitoba model.¹⁰ After every decennial census, the Federal Electoral Boundaries Commission for each province meets to redraw the map. The commissions are chaired by a provincial supreme court judge, with two members appointed from that province by the Speaker of the House of Commons.¹¹ Those members are almost exclusively former electoral officers, university professors, statisticians or civil servants. None are current politicians. The Act reads: "No person is eligible to be a member of a commission while that person is a member of the Senate or House of Commons or is a member of a legislative assembly or legislative council of a province."¹²

As a result of these changes, gerrymandering has become a non-issue in Canadian politics. The articles decrying blatant gerrymanders – still common in the U.S. – have been absent since the *Electoral Boundaries Act* was passed 50 years ago.

Could the Canadian System Work in the U.S.?

There are unfortunately several problems with adopting the pure Canadian model in the U.S., stemming from the realities of federalism and polarization.

1. *Article I, Section 4 the U.S. Constitution grants the states authority to administer federal elections.* This makes it impossible for Congress to pass a bill similar to the

⁶ Similar procedures exist in the UK and Australia.

⁷ Charles Paul Hoffman, "The Gerrymander and the Commission: Drawing Electoral Districts in the United States and Canada," *Manitoba Law Journal*, 31:2 (2005-6): 345.

⁸ *Ibid*, 346.

⁹ *Ibid*.

¹⁰ Hoffman, 348.

¹¹ *Electoral Boundaries Readjustment Act*, Department of Justice, 1985. <http://laws-lois.justice.gc.ca/eng/acts/E-3/page-3.html#docCont>

¹² *Ibid*.

Canadian *Electoral Boundaries Act* and establish commissions for every state. This means that commissions would have to be created by each state, voluntarily limiting its own authority. This is obviously unlikely.

2. *Many American judges are elected.* According to the American Bar Association, 38 states use elections of some sort to select their supreme court judges.¹³ Especially in the seven states that employ partisan elections, it would be difficult to consider judges to be non-partisan officials as is done in the Canadian system.
3. *There are no non-partisan politicians.* Canada requires that the Speaker of the House of Commons, an elected MP but whose daily job requires him to be effectively apolitical, select redistribution commission members. In the U.S., most positions of power are elected. This makes it very difficult to appoint commission members in a non-partisan manner. The solution frequently employed in the U.S. is to appoint an equal number of partisan members, but this approach is fraught with problems.
4. Americans often have access to party registration information. While party registration is not done in Canada, authorities responsible for redistricting in the U.S. often use this data to determine where to draw boundaries (and how to gerrymander them successfully).

Hope From Iowa?

In many ways, Iowa's redistricting system most closely resembles Canada's. Since 1980, Iowa's non-partisan Legislative Services Agency has been responsible for congressional and state redistricting. Composed of geographers and lawyers sequestered for 45 days once every decade, the agency draws a map from scratch with no access to voter registration or even the addresses of current legislators.¹⁴ The map is then shown to the Iowa legislature for approval, and if it is rejected three times, it goes to the state supreme court. Iowa politicians are supportive of the process. While they acknowledge that it can be inconvenient, they feel that it is fair, democratic and eventually evens out for all parties involved.¹⁵ Except for the composition of the board and the fact that the legislature gets final approval, the Iowa system

¹³ "Fact Sheet on Judicial Selection Methods in the States," *American Bar Association*, Date unknown. http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf

¹⁴ Tracy Jan, "Iowa keeps partisanship off the map," *The Boston Globe*, December 8, 2013. <https://www.bostonglobe.com/news/politics/2013/12/08/iowa-redistricting-takes-partisanship-out-mapmaking/efehCnJvNtLMIAFSQ8gp7I/story.html>

¹⁵ Ibid.

is similar to Canada's. Importantly, the results are virtually un-gerrymandered.¹⁶ One drawback is that in a more heterogeneous and polarized state than Iowa, the legislature would likely prove to be more of an obstacle to the process. Only by eliminating or changing this step of legislative approval would the Iowa system become fully de-politicized. An option would be to follow the Florida model and send the maps directly to the state supreme court for approval, or to take from Arizona's system and have a bipartisan commission approve the final map.

Reform from Coast to Coast

A perennial critique of Iowa's 35-year-old redistricting model is that it is unfeasible in a state with fewer cornfields and more skyscrapers. Canada's success in redistribution proves this wrong. A combination of the two systems would be beneficial in resolving the United States' longstanding redistricting crisis. Such changes would be deeply unpopular with legislators seeking to preserve their incumbency and advantages. However, as occurred in Canada and Iowa, there may well be a time across the United States where dissatisfaction reaches a point that reforms will finally become appealing.



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¹⁶ Christopher Ingraham, "How Gerrymandered is your Congressional district?" *The Washington Post*, May 15, 2014. <http://www.washingtonpost.com/wp-srv/special/politics/gerrymandering/>