

# Redistricting: Reading Between the Lines

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## Key Words

apportionment, representation, race, electoral competition, elections

## Abstract

The redistricting process evokes major questions about representative democracy, fairness, and political accountability. This article covers the state of the field along three dimensions. First, it explains how redistricting bears on questions about racial and minority representation. Second, it examines how redistricting influences electoral competition, focusing on the alleged power of partisans and incumbents to draw maps that eliminate all but token opposition. Third and last, it discusses the issues surrounding the redistricting process itself and how various procedural reforms may influence political outcomes. Although significant progress has been made in understanding how different redistricting schemes create various biases in the electoral system, a review of the literature shows that major questions have not been resolved regarding the effects of redistricting on electoral competition, partisan polarization, and representation of communities of interest, especially minorities. Moreover, there is insufficient evidence from empirical research to justify any particular reform of the redistricting process. In addition to filling these gaps, future work might also broaden the scope of research to assess how redistricting affects other aspects of democracy, including political participation, efficacy, and trust.

## INTRODUCTION

Research on redistricting engages an enormously complex set of issues. The seemingly simple task of drawing lines every so often to catch up with population changes is fraught with legal and moral questions about representative democracy, fairness, and political accountability. The stakes are high for pragmatic reasons too. Line-drawing potentially affects careers of politicians and influences which political party controls government. Given the political implications, it is understandable that for much of American history, the courts have been reluctant to engage the issue directly and, to this day, appear to avoid setting clear legal standards. Yet the courts have ventured into these political questions, starting with *Baker v. Carr* (1962), a case that set in motion dramatic changes in the apportionment and redistricting process. In *Baker*, the plaintiffs argued that rural counties were overrepresented in Tennessee because the state legislature had never bothered to make districts of equal size as the state constitution required.<sup>1</sup> The Supreme Court ruled that questions about electoral apportionment were justiciable, a ruling that invited further challenges on the constitutionality or legality of electoral apportionment schemes. Since 1962, courts have been drawn into debates about how reapportionment and redistricting affect minority representation, partisanship, and other hot-button issues.

Judicial interventions in the reapportionment process during the 1960s stimulated scholarly research on consequences of court decisions, especially the effect of redistricting on the electoral prospects of incumbents (Tufte 1973, Ferejohn 1977). The conventional view was that redistricting would loosen up traditional centers of power, bringing fresh faces to

the legislature. But as incumbency reelection rates increased, scholars debated whether redistricting contributed to this trend. Starting in the 1980s, research turned to the impact of redistricting plans on racial and minority representation, as well as questions about partisan fairness. Since the 1990s, there has been a renewed focus on political competition because the vast majority of legislative incumbents appear invulnerable. With popular calls for greater impartiality in drawing districts, the redistricting process itself has come under intense scrutiny. In recent years, scholars have been assessing how various election laws and institutions promote or impede particularly valued outcomes such as electoral competition.

Implicit in debates over apportionment and redistricting is an understanding of how a polity conceives of representational fairness. Is it simply “one person, one vote” or does representational fairness require descriptive or substantive results? Does representational fairness connote districts that embody geographically bounded interests, or does it require that all citizens or coherent groups of citizens have an equal chance of electing a representative of their choice? To what degree should districts be shaped so that the two major political parties have a fairly equal chance to win a contest? Undoubtedly, preferences for particular electoral laws and redistricting methods will reflect perspectives on such questions. Given the diversity of normative views on the subject, it is not surprising that the literature reveals a lack of consensus about ideal outcomes expected from the redistricting process.

This article covers the state of the field across three dimensions. After providing a short history of reapportionment and redistricting, I explain how redistricting bears on questions about racial and minority representation. Next, I look at how redistricting influences electoral competition, focusing on the alleged power of partisans and incumbents to draw maps that eliminate all but token opposition. Finally, I discuss the issues surrounding the redistricting process itself, and how various procedural reforms may influence political outcomes.

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<sup>1</sup>Plaintiff Charles Baker lived in Shelby County, TN, which had roughly 10 times as many residents as some of the rural districts. The state of Tennessee had not redistricted since 1900, even though its constitution required redistricting every 10 years. Baker argued he failed to receive “equal protection under the laws” as provided by the Fourteenth Amendment.

I conclude with general remarks about the state of the field and recommendations for future research.

## BACKGROUND

The conflict over the state-level redistricting process in the United States is not a recent phenomenon, although the Supreme Court's entry into this realm in the 1960s opened up a new era of controversy. The seeds of uncertainty emerge from a basic constitutional fact: Article 1, Section 2 requires a decennial census for the purpose of assuring a fair distribution of seats in the U.S. House of Representatives. The Constitution is silent, however, about how Representatives from each state should be chosen; the Framers left these decisions to the state legislatures. By the 1840s, 22 of the 31 states used single-member districts for congressional elections, but many others states, including New Jersey, Georgia, New Hampshire, and Alabama used at-large elections or multi-member districts (Calabrese 2007). Legislation proposing single-member districts initially was passed by Congress in 1842 but was resisted by many states and hardly enforced at all (Benenson 1990).

Not surprisingly, the process for selecting state legislators has also varied remarkably through time and across states. During the colonial period and early years of the Republic, many states expressed popular rule by giving representation to towns or counties with little regard for variations in population. In 1777, however, New York broke with this English tradition and took the radical step of requiring popular election of members of both upper and lower chambers of the legislature based on population (Ansolabehere & Snyder 2008). The original constitutions of 25 of the 50 states followed the New York model, whereas other states tied representation to towns and counties in at least one chamber (Ansolabehere & Snyder 2008). The latter practice appeared blessed by the famous Connecticut Compromise at the Constitutional convention when Roger Sherman recommended that one cham-

ber of Congress represent the people and the other represent the states. In this manner, malapportionment was cemented in the U.S. Constitution by giving each state two Senate votes. Through the decades there was significant "backsliding" toward the federal model among states with popular representation in both chambers. By 1960, two thirds of state constitutions provided that the legislature represent counties or towns in at least one chamber, usually in the form of one-county-one vote.

Malapportionment was compounded by the fact that, even for the lower chambers that were supposed to be based on population, many state constitutions did not require postcensus redrawing of lines. So as people moved to cities from rural areas during the great migrations of the industrial revolution, the rural areas became vastly overrepresented and akin to British "rotten boroughs." Indeed, even in states where the constitution mandated periodic redistricting, the legislatures simply ignored their responsibility.

Although controversy emerged now and then over the distribution of power across districts, routine redistricting in the states did not emerge as standard practice until after the court cases of the 1960s, and even then, many states remained lax carrying it out (Persily et al. 2002). Until that point, the courts were reluctant to enter what Justice Felix Frankfurter termed the "political thicket" of redistricting in his majority opinion in *Colegrove v. Green* (1946). However, *Baker v. Carr* (1962) changed that and ushered in a period of heavy judicial involvement in the politics of redistricting. Two subsequent cases established the principle of one-person-one-vote, which would serve as an overarching framework to guide states in establishing legislative districts. In *Wesberry v. Sanders* (1964), the Court ruled that congressional districts must have equal populations. This was soon followed by *Reynolds v. Sims* (1964), which held that districts in all chambers of the state legislature should also be roughly equal in population. The main effect of *Reynolds* was to eliminate the practice of giving representation of place in the upper chamber. States

could no longer follow the federal model by giving their counties equal votes like the U.S. Senate. The policy consequences were critical: Public resources began to flow to formerly underrepresented areas (Ansolabehere et al. 2002).

Despite the sweeping court decisions to equalize district populations, it remained easy in practice to create “gerrymanders” that diluted the votes of particular groups. Then, as now, the line-drawers had several tools in their kit to favor their side. They could dilute the opposition party’s votes as much as possible by “cracking” its voters across several districts, so that it rarely enjoyed a majority in any district. They could also waste the opposition party’s vote by “packing” its voters into unnecessarily safe districts, so that the party was not competitive in the remaining districts.

Starting in the 1980s, the courts began hearing issues of partisan and racial gerrymanders, the latter especially after amendments to the Voting Rights Act in 1982 (Cain et al. 2005). Thus, the judiciary has been in a position to rule on the legality of various district plans created by state legislatures and even the constitutionality of gerrymanders. In some instances, state courts have overturned redistricting maps and imposed their own when faced with partisan gridlock over plans in the legislature (Persily 2005b). Recently, the Supreme Court entered into an important debate that involved a controversial redistricting plan in Texas in which Republicans captured control of the legislature after the 2002 elections and decided to redraw the districts to their advantage, even though the Democrats had redrawn the maps in 2000 after the census. In a decision that also addressed questions about racial gerrymandering, the court declared in *League of Latin American Citizens (LULAC) v. Perry* (2006) that states may redistrict whenever they choose so long as they do it at least every ten years. The full implications of the *LULAC* decision are unclear, but it appears to open the door for partisan manipulation of districts whenever a new party takes control of government.

## RACE AND REDISTRICTING

Underpinning the one-person-one-vote principle is a fundamental civil rights law, the Voting Rights Act of 1965 (henceforth VRA), that continues to heavily influence the redistricting process. Through the VRA, blacks finally won the franchise by putting teeth into the Fourteenth and Fifteenth Amendments. Since the end of Reconstruction, blacks in the South had been routinely denied the vote through poll taxes, literacy tests, manipulation of election laws, and intimidation. The VRA gave the federal government the authority to intervene in the states to prevent the denial of the franchise due to race or color. It also provided the statutory basis under Section 2—buttressed by the Fourteenth Amendment’s equal-protection clause—for minority groups to bring suit against redistricting plans or voting practices that dilute their votes. Section 5, which was renewed in 2006 for another 25 years, requires states with histories of disenfranchising minority voters to “preclear” redistricting plans through the Department of Justice or U.S. District Court of the District of Columbia. Several scholars have argued that Section 5 should have been expanded beyond the states in the South to include western states with systematic voting discrimination against Native Americans (McDonald 2006a) and Latinos (Garza & DeSipio 2006).

Amendments to the VRA in 1975 (unrelated to Section 5) expanded its protection to include Hispanics, Asian Americans, Aleuts, and Native Americans. Further amendments to Section 2 of the VRA in 1982 made it simpler for plaintiffs to argue for the creation of majority-minority districts, even if dilution was not deemed intentional. In other words, plaintiffs could claim vote dilution if they could demonstrate that the minority group lacks adequate representation in government based on its population (Burke 1999). Subsequent court cases in the 1990s weakened the impact of these amendments, as I discuss below.

A puzzle confronting policy makers in remedying vote dilution is to discern a standard for an “undiluted” vote. What should be

considered a fair share of seats for a particular group? One measure is to compare the proportion of votes from a racial group (or party) to the proportion of seats they win in the legislature. Thus, if the black population is 10%, then 10% of the districts should be majority black to ensure blacks have an opportunity to elect their preferred candidate, presumably a black candidate. The normative argument underlying the creation of such “majority-minority” districts is that black interests are best represented by a black elected official (Guinier 1994).

A proportional measure is problematic, however, because single-member districts tend to exaggerate the share won by the majority group. Highly dispersed minority groups typically suffer because they cannot easily elect a favored candidate in any district (Cain et al. 2005). Such was the case in 1982, when black residents of North Carolina brought suit against the state’s redistricting plan, challenging one single-member district and six multi-member districts on the grounds that the redistricting plan impaired black citizens’ ability to elect representatives of their choice in violation of Section 2 of the VRA. In this case, *Thornburg v. Gingles* (1986), the Supreme Court helped clarify the 1982 amendments to Section 2 and provide guidance in creating majority-minority districts.<sup>2</sup> Under *Gingles*, plaintiffs can force the creation of a majority-minority district if three conditions are met: (a) the minority community must be large and compact enough to form a majority in a single-member district; (b) they must vote cohesively; (c) white bloc voting must ordinarily prevent them from electing their candidate of choice. The Court established a standard of “racial bloc voting” by observing the degree to which the race of voters correlates with the selection of certain candidates (Issacharoff 1992). An aggressive Department of Justice, relying on its interpretation of *Gingles* and *Jeffers v. Clinton* (1991), compelled

several states that were subject to preclearance to create additional majority-minority districts, even if this meant creating strangely shaped districts to encompass a sufficient number of minority voters. After the 1990s round of redistricting, Department of Justice enforcement helped increase the number of majority-minority districts from 29 to 52. As a result, the number of African American representatives increased from 27 in 1990 to 39 in 1992. During the same period, Hispanic representatives increased from 13 to 18 [U.S. Bureau of Census 1993 cited by Parker (1995)].

The proliferation of majority-minority districts met resistance from traditional political interests, giving the courts another opportunity to intervene and establish more guidelines. In *Shaw v. Reno* (1993), the Supreme Court ruled unconstitutional the oddly shaped Twelfth Congressional District of North Carolina, which had been intended to address the problem of vote dilution. The design implied that the boundaries were based wholly on racial considerations, a practice the Court rejected. In *Miller v. Johnson* (1996), the Court solidified *Shaw*, rejecting an odd-shaped Georgia district that relied predominantly on race. The Court, nonetheless, left open the possibility that a state could defend its predominant use of race in designing districts if it could demonstrate its necessity in fulfilling the goals of the VRA. In practice, however, this defense is difficult to carry out, given the constitutional standard of “strict scrutiny” for cases involving racial classification.

However, a state may escape the strict-scrutiny test by claiming a gerrymander is majority-minority owing to partisan rather than racial considerations, even if in practice the outcome is sometimes the same. In *Easley v. Cromartie* (2001), the Court upheld an odd-shaped version of the Twelfth Congressional District in North Carolina because it argued that the design was based on voting behavior—namely, that blacks tend to vote for Democrats—rather than racial identity. Later, the Court acknowledged in *Vieth v. Jubelirer* (2004) that it could hear claims of partisan

<sup>2</sup>In *Thornburg v. Gingles*, the Supreme Court upheld a North Carolina state court ruling that at-large countywide election of state legislators illegally diluted black voting strength.

discrimination in redistricting cases, but it left open the question of how to test such claims. A district court subsequently affirmed *Vieth* in *LULAC v. Perry* (2006), finding that the Texas redistricting plan that plaintiffs said was blatantly partisan was not, in principle, substantively unfair.

In the aftermath of efforts to create majority-minority districts, several questions naturally follow. First and foremost, does the creation of such districts enhance or diminish representation for African Americans, Hispanics, and other minority groups? The debate over this question comes down to the distinction between descriptive and substantive representation. In descriptive representation, the legislature embodies a portrait of the nation based on outward characteristics such as ethnicity, race, or gender. Substantive representation of a particular group occurs when a legislator consistently advocates the policies preferred by that group (Pitkin 1967). To be sure, the two concepts are not mutually exclusive, although scholars have demonstrated the two kinds of representation could be at odds (Swain 1993, Lublin 1999). There is general agreement that majority-minority districts have been extremely helpful for descriptive representation of several minority groups, but there is little consensus about how much line-drawers need to concentrate minority voters for them to elect minority candidates. The courts have used a “65% rule” suggesting that blacks need to be nearly two thirds of the district population to have an equal chance of electing their preferred candidate (Brace et al. 1988). Research by Cameron et al. (1996) suggests, however, that this percentage is much too high, and that minority candidates have a substantial chance of winning in districts with <50% minority voters. Work by Swain (1993) corroborates this finding, but both are challenged by other studies (Lublin 1997, 1999; Handley et al. 1998) that suggest majority-minority districts remain necessary to elect preferred candidates. Lublin’s work claims that African Americans have an 86% chance of winning in districts that are 55% black and that contain no Latinos. As a result, it is argued that

African Americans would benefit more from the creation of “minority influence districts,” where blacks constitute the swing vote that is crucial to a candidate’s victory (Lublin 1997). The exact standard for predicting minority electoral success remains elusive, but scholars have provided rigorous conceptual frameworks for assessing such standards (Grofman et al. 2001).

The debate intensifies over whether substantive representation is enhanced by increasing the proportion of minority voters in a district. It appears that racial composition of districts positively affects roll call votes of members on civil rights issues (Cameron et al. 1996) and increases liberal voting patterns in the South owing to election of more liberal members (Shotts 2003). There is also a clear relationship between the percent of minority voters in a district and the political party of the representative elected (Handley et al. 1998). Several studies, however, point out that the greater liberal voting record is confined to Democrats and black members who gained black voters in their districts (Bullock 1995, Overby & Cosgrove 1996, Sharpe & Garand 2001), whereas incumbents and Republicans who lost black constituents became less sensitive to concerns of the black community (Swain 1993, Overby & Cosgrove 1996, LeVeaux & Garand 2003).

Some have argued that the concentration of blacks in some districts has actually hurt their representation in several ways. Swain (1993), for example, argues that majority-minority districts are likely to underrepresent black moderates and may decrease the quality of representation by failing to encourage diverse racial coalitions. Likewise, Cameron et al. (1996) argue that the substantive interests of the black community are better served by a broader distribution of black voters across districts than through the election of a small number of black representatives from majority-minority districts. The claim here is that multiple districts with black constituencies spread pressure among more representatives, leading to greater substantive representation of black interests (Lublin 1999). Other scholars are less

troubled about the unintended consequences of majority-minority districts (Engstrom 1995, Grofman & Handley 1998, Petrocik & Desposato 1998) or argue that descriptive representation trumps other concerns (Davidson 1992).

Linked closely to the question of minority representation is how racial gerrymandering affects the partisan fortunes of Democrats. Several studies suggest that the creation of majority-minority districts has hurt the Democratic Party, which traditionally supports black and minority interests. In short, redistricting aimed at helping blacks may aid Republicans in securing more House or state legislative seats because majority-minority seats “waste” Democratic votes (Brace et al. 1987, Hill 1995). Most studies are careful to point out that other trends have generated Republican gains, particularly in the South (Hill 1995, Bernstein 1996, Cameron et al. 1996, Grofman & Handley 1998, Lublin 1999).

There seems to be a consensus that Republican growth in southern state legislatures has been driven by a strong shift among white voters toward Republicans, a trend that dwarfs the consequences of making majority-minority districts. At least two studies have shown that Democrats did not do significantly worse in states that created majority-minority districts than in those that did not (Grofman & Handley 1998, Shotts 2001), although non-majority-minority districts appear more likely to be won by Republican candidates in the South (Lublin 1999).

Given the consensus that majority-minority districts have increased minority representation in significant ways, do they remain necessary in the future? This question is particularly acute if one believes that racial gerrymandering, as practiced currently, could be hurting substantive representation of blacks (Cameron et al. 1996). Some studies suggest that traditional, “race-neutral” redistricting principles, such as compactness, might now serve minority interests just as well, depending on size of minority community and extent of racial segregation in the state (Lowenstein

& Steinberg 1985, Altman 1998, Barabas & Jerit 2004).

Indeed, there seems to be some movement away from the creation of overwhelmingly black districts—sometimes called “control” districts—toward plans that opt for a greater number of “influence” districts, in which blacks have a high probability of being the swing vote. Typically, the Department of Justice has applied the standard of “retrogression”—which signifies a finding that minority electoral opportunity has been diminished—to decide whether to preclear a plan under Section 5 of the VRA. In *Georgia v. Ashcroft* (2003), however, the Court argued that the Georgia state legislature did not retrogress and violate the VRA when it spread minority voters across districts—in effect implying that the use of majority-minority districts wasted the African American votes in the state by packing them into a few urban districts. Although the proposed Georgia redistricting plan reduced the number of black voters in a district below a majority, it had the support of many in the black community, including some legislators from majority-minority districts. Blacks, however, generally support the creation of majority-minority districts, which help ensure minority representation (Tate 2003).

Research on racial redistricting could now benefit from new theoretical perspectives on minority representation, as well as more empirical work on the link between district racial composition and substantive representation. On the theoretical front, the research needs to provide a stronger conceptual foundation for appraising “fair” representation of minorities (Engstrom & Wildgen 1977, Epstein 2006). What would fairness mean under various scenarios, and why might it be important for one perspective to be privileged over another? The work should also explore how different conceptions of fair districts translate into elite political behavior. At the empirical level, there remains considerable disagreement about the effect of racial gerrymandering on black interests, however defined. At the very least, more work needs to be done to explore the link

between issue preferences of minorities and policy outcomes. Although it may be true that more minorities hold power today due to the creation of majority-minority districts, how does this power translate into substantive results that benefit these communities (Griffin & Newman 2007)? As part of this effort, it might be useful to study the representative-constituent relationship more closely by observing the legislative work of minority elected officials from such districts (Canon 1999, Gay 2007). This work should be linked to the broader research on the behavior and success of minority legislators in legislatures (see, e.g., Bratton & Haynie 1999).

### **PARTISAN AND INCUMBENT-PROTECTING GERRYMANDERS**

Partisan gerrymanders have a long history in the United States. Studies of redistricting in the nineteenth century show that it was not unusual for the party in power to use districting to engineer a favorable electoral outcome. These strategies helped shape the partisan composition of state congressional delegations and, occasionally, were decisive in determining control of Congress (Engstrom 2006). Thus, control over government immediately after the census was prized for the long-term benefits that accrued from possessing the power to draw district lines. Redistricting enables the party in power to increase its “swing ratio,” or the proportion of seats it wins relative to its proportion of the popular vote. Several studies of redistricting in the 1970s and 1980s demonstrated that Democrats were able to increase their swing ratio significantly in the 17 states where they had complete control of redistricting (Abramowitz 1983, Cain 1985, Niemi & Winsky 1992).

It is important to distinguish between partisan and “incumbent-protecting gerrymanders.” Incumbent-protecting gerrymanders seek to increase margins for individual incumbents rather than increase the number of seats for the party. There is speculation that incumbent-protecting gerrymanders have increased in

recent decades, but the evidence is mixed (McDonald 2006c). It certainly seems plausible that such gerrymanders accompanied the rise of candidate-centered politics in the twentieth century. As incumbents began to control their own electoral destinies, bypassing the party organization and its bosses, they had incentives to seek advantages through the redistricting process. Furthermore, with redistricting becoming a fixture after the 1960s, there have been more opportunities in the past four decades to take advantage of the reapportionment process. Prior to the 1960s, it was mostly states that had lost a representative in the apportionment process that were compelled to redistrict; the ones that gained representatives frequently just added an at-large district (Ansolabehere & Snyder 2008).

A countervailing force against rampant incumbent-protecting gerrymanders is that such maneuvering comes at a price for the party. By making incumbents safer, the party wastes votes that could help the party win additional seats (Cain 1985, Wyrick 1991). Because individual incumbents are risk averse, they prefer to prevail by large margins to ensure future victory, regardless of the political environment. Party leaders, in contrast, want winning margins to be safe but small, which means they prefer to spread partisan voters into other districts. Unlike incumbent-protecting gerrymanders, which appear to reduce partisan competition, partisan gerrymanders tend to make seats occupied by the minority party very safe (by “packing” their partisan supporters in those districts), whereas seats held by the majority party become more vulnerable as party leaders spread their partisan supporters across districts to maximize seat gains (Gelman & King 1994a, Cox & Katz 2002, Schaffner et al. 2004). Although incumbents may benefit somewhat from partisan redistricting, they benefit significantly from “bipartisan” gerrymanders (Lyons & Galderisi 1995). These bipartisan agreements, forged through mutual self-interest among officeholders in both parties, keep incumbent districts extremely safe.

Cox & Katz (2002) elucidate the strategies of parties through both formal models and empirical work. They draw on two concepts, partisan bias and responsiveness, that are widely used in the study of elections and redistricting. Cox & Katz measure partisan bias (King & Browning 1987, Grofman et al. 1997) as the difference between a party's share of the vote statewide in a congressional election and its share of congressional districts won. Previous work has shown, for example, that the single-member plurality system tends to create a bias in favor of the majority party in that they gain more seats than their share of the vote (Grofman 1982). The second concept, responsiveness, is a measure of the sensitivity of seat changes to changes in the vote share. When an electoral system is responsive, a small shift in the vote shares creates a large shift in seat shares. According to Cox & Katz, if a party holds unified control of state government, it will make a gerrymander that produces a lot of partisan bias ("packing" the other party's supporters) and responsiveness (not making the majority party districts overly safe). In contrast, divided government tends to produce incumbent-protecting gerrymanders, which generate low levels of bias and responsiveness.

Previous studies on the partisan consequences of redistricting have demonstrated such findings. For example, in 1982, the Democrats gained more congressional seats (relative to their gain in votes) in states they controlled than in states controlled by Republicans (Abramowitz 1983; but see Campagna & Grofman 1990). The 2001–2002 round of redistricting suggests the same pattern, this time with a pro-Republican bias and heightened degree of incumbent protection (Hirsch 2003). In state legislative races, the results appear mixed with respect to bias and overall seat gains right after redistricting, but one cross-sectional study suggests responsiveness declined after redistricting (Niemi & Jackman 1991). However, a longitudinal study across 30 state legislatures shows that redistricting actually increases responsiveness and that any type of redistricting tends to reduce partisan bias (compared to an

electoral system that does not redistrict), even if gerrymanders tend to bias the electoral systems in favor of the party that controls the redistricting (Gelman & King 1994a, McKee et al. 2006).

Although there is evidence that the majority party can help itself gain seats through gerrymandering, the extent to which gerrymanders negatively affect electoral competition is less clear. To be sure, electoral competition has declined in the past five decades by several measures. For example, the reelection rate of House incumbents has increased from 87% between 1946 and 1950 to 94% between 1952 and 1980, 97% between 1982 and 2000, and 99% in the 2002–2004 elections. And the proportion of relatively close contests—those decided by <10 percentage points—has shown a steady decline since the end of World War II. In the 2002–2004 elections, only 7% of House races were decided by <10%, compared to 22% of House races between 1946 and 1950 (Abramowitz et al. 2006). How much of this increasing electoral safety can be attributed to partisan or incumbent-protecting gerrymanders?

Research suggests that partisan gerrymanders have a neutral or positive effect on competition (Gopian & West 1984, Glazer et al. 1987). However, incumbent-protecting gerrymanders appear to diminish electoral competition by making seats overly safe (Forgette & Winkle 2006) and discouraging strong candidates from entering races because they know the odds are stacked against them (Cox & Katz 2002, Hetherington et al. 2003, Carson et al. 2006). A study of the 2004 state legislative contests in 37 states suggests that partisan redistricting reduces the proportion of marginal seats (defined as seats won by a margin of <20 percentage points) and that racial redistricting reduces both the number of marginal seats and the number of seats contested by the two major parties (Lublin & McDonald 2006). Declining marginal seats, however, appear to result from a confluence of several variables and not simply gerrymanders. Contributing factors include district partisanship, the power of incumbency, and campaign spending by

incumbents, all of which tend to reinforce each other more than in the past (Abramowitz et al. 2006, McDonald 2006b). Indeed, one study observed a large number of candidates from 1942 to 2000 and found that incumbency advantages are not exclusive to legislators—the pattern is the same for statewide offices in the executive (Ansolabehere & Snyder 2002). These findings raise the possibility that a common underlying factor has given incumbents greater advantages in recent decades—not necessarily gerrymandered districts.

Given that 2002 generated an unusually large number of safe seats for congressional incumbents, there is speculation that more states than previously have created bipartisan plans to protect incumbents (Hirsch 2003). The reason for the increase, however, appears not to be that the number of bipartisan gerrymanders has increased, but simply that the larger states, like California, happened to conduct their redistricting using this method after the 2000 census (McDonald 2006c). With more congressional seats in these states, these bipartisan gerrymanders increase the total number of safe seats. Again, such findings suggest gerrymandering is a relatively small part of the story of declining competitiveness (Jacobson 2005, Abramowitz et al. 2006). A more important factor is that voters have become more reluctant since the 1970s to pull the lever contrary to their partisan identification (Jacobson 2006). Thus, it is more difficult for candidates to be competitive if they do not conform to the partisan profile of the local district.

The gerrymander debate takes on deeper significance because some have argued that safe partisan seats tend to increase partisan polarization (Bond & Fleisher 2000, Fiorina et al. 2005, Eilperin 2006). Without a serious challenge from the rival party in the general election, a candidate needs only to satisfy the preferences of primary voters in his or her party rather than straddle the middle ground. Candidates for these seats will be pulled to the extreme ideological positions compared to the candidate for a marginal seat, who must play to the median voter.

Although there is agreement that congressional districts are becoming less mixed than previously, it is unclear whether this is a product of redistricting or of other factors. Abramowitz et al. (2006) argue that the polarization of districts is due largely to demographic and ideological realignment in the electorate rather than redistricting per se. Indeed, they point out that the greatest change in district partisanship occurred *between* redistricting cycles, not immediately after redistricting. Furthermore, polarization is on the rise in U.S. Senate elections, which never undergo redistricting. From this perspective, the real culprit behind district partisanship is that like-minded people have increasingly chosen to live in the same area. McCarty et al. (2006) reach similar conclusions by showing that the distribution of presidential vote across congressional districts is very similar to the distribution of presidential vote across counties. They attribute a large fraction of the polarization in the House of Representatives to “within-district” divergence between the voting records of Democratic and Republican members of Congress. Quite simply, Republican members vote more conservatively than Democrats who represent the same kind of district.

The findings above conflict with work by Swain et al. (1998) and Cain et al. (2005). The different conclusions appear to depend on the measure of district competitiveness employed. The Abramowitz et al. (2006) study uses the normalized presidential vote in congressional districts from 1992, whereas McDonald (2006b) suggests using the normalized presidential vote from the most recent presidential election *prior to redistricting* as a baseline, in this case, 1988. According to McDonald, the former method fails to isolate the effect of redistricting on district partisanship (and by extension, district competitiveness) because it fails to measure how the distribution of partisans changed from the distribution immediately prior to redistricting. He argues that aggregating the same presidential election results (from 1988, for example) within districts before and after redistricting is a preferable form of measurement to

comparing different elections across a redistricting. Gelman & King (1994b) also offer a widely used method to generate relatively unbiased measures of two-party competition, and McCarty et al. (2006) employ a measure of polarization based on the difference between the mean DW-NOMINATE score of House Republicans and the corresponding mean for the Democrats.

Regardless of the root causes of intensely partisan districts, i.e., distinctively “red” and “blue” districts, there seems to be an emerging consensus among scholars that the trend does not bode well for the political process. This is highly ironic given that half a century ago American political scientists called for more “responsible” parties, which stood for something. The parties today clearly stand for something, and the realignment in the electorate and partisan gerrymandering may well play a role in polarizing elites. However, now that party labels carry strong meanings, we are likely to see nationalized elections more frequently and dramatic shifts in voter preferences between the parties. As the Democrats’ successful congressional takeover in 2006 attests, these swings may not make districts impregnable to capture by the rival party, even when they are partisan gerrymandered (Pitney 2006).

Running through these debates is an assumption that heightened competition should be the primary end of redistricting reform. Some scholars challenge the premise that increasing competitiveness is necessarily more important than improving representation of different ethnic, racial, or ideological perspectives (Cain 1985, Persily 2002, Buchler 2005, Brunell 2008). In uncompetitive districts, there is a stronger link between legislators’ and constituents’ ideologies. Noncompetitive districts lead to smaller ideological differences between the positions of district median voters and their representatives, since voters are ideologically closer to their legislators in absolute terms. This, in turn, creates a distribution of ideology in the legislature that is closer to the distribution of ideology in the electorate (Cain 1985). In contrast, the creation of competitive districts

cannot simultaneously make legislators responsive to their district median voters and ensure sufficient variation in ideology among the state delegation (Cain 1985). Thus, it is argued that districts with less political competition actually do a better job at serving the preferences of most constituents in the district while ensuring representative outcomes in the legislature (Buchler 2005, Brunell 2008). To be sure, the safe seats for many incumbents mean that the legislature may become less responsive as a whole to national or statewide shifts in political preferences, even if individual legislators remain highly responsive to their constituencies.

The main thrust of these arguments is that achieving greater competitiveness may sacrifice other important political goals. Ideally, a good system would address representativeness, competition, and partisan fairness, i.e., lack of bias and responsiveness (Mann 2005). But scholars are increasingly aware of the enormous uncertainties present in redistricting periods and the complexity of goals pursued by redistricters (Gelman & King 1994a, Desposato & Petrocik 2003). A number of studies have argued, in essence, that looking for neutral or objective principles for redistricting may be a fool’s errand because the rules are bound to help some interests over others, and because such principles cannot be satisfied simultaneously (Butler & Cain 1992, Rush 2000). However, some traditional, “politically neutral” redistricting principles (equal populations, compactness, communities of interest, etc.) appear to diminish incumbency protection, particularly when the state legislature is not the only constituency controlling the redistricting process (Forgette & Platt 2005, Winburn 2008), and reduce policy bias in the legislature (Gilligan & Matsusaka 2006). In looking for an optimal design of redistricting process, one set of scholars has suggested focusing on the expected aggregate utility of voters in the districts (rather than the median voter as done by Gilligan & Matsusaka 2006) to discern the optimal degree of responsiveness, i.e., how to allocate voters with fixed party ideologies across districts to maximize welfare gains (Coate & Knight 2007).

## REDISTRICTING PROCESS

When considering how states actually redraw district lines, one is immediately struck by the variation in approaches across the country. By tradition, state legislatures have typically drawn districts, leaving the courts as final arbiters when lawsuits ensue over the maps. Many states, however, have relegated the process to commissions, which are said to be insulated from partisan politics. These commissions vary considerably in size, selection of committee members, and decision-making rules.

The two basic approaches, legislature or commission, reflect Madisonian versus Progressive perspectives (Mann 2005). The Madisonian view assumes that self-interest plays an important role in all facets of politics, including the creation of electoral rules. To avoid gross bias in political outcomes, institutions must be designed to constrain and channel self-interest toward broader public goals. Properly structured, Madisonian institutions permit—indeed encourage—the robust play of pluralist interests to arrive at fair outcomes. As long as all actors have the (long-term) potential to influence the process, it is entirely legitimate to hand over line-drawing to partisan interests in the state legislature.

The Progressive view, in contrast, recoils from the kind of self-dealing and narrow agendas that potentially emerge from political systems dominated by partisan interests. Progressives at the turn of the twentieth century believed that political parties had failed to address pressing public needs, instead preferring to use government to secure spoils. Rather than give free rein to particularistic interests, which could open the door to unfair or corrupt practices, Progressive-inspired reforms seek rules based on widely accepted norms and expert administration to guide the policy process. Above all, to maintain the legitimacy of the electoral system, the “rules of the game” must be insulated from partisan manipulation (Thompson 2004). For this reason, the Progressive vision supports nonpartisan commissions to draw district boundaries.

The state legislature draws boundaries for Congress in 38 states and for the state legislature in 26 states. The concern, of course, is that the party in power exploits the process to secure unfair electoral advantages. Moreover, these electoral advantages are not limited to the state. Unfair practices at the state level potentially spill over to harming citizens outside the state, since gerrymandering may ultimately influence which party controls the U.S. Congress (Hirsch 2003). To be sure, partisan rigging may be somewhat attenuated through separation of powers and divided government. In many states, for example, the executive has the power to veto maps proposed by the legislature. Moreover, as explained above, legislatures are not free to construct maps willy-nilly because the federal courts have imposed specific requirements: equal numbers of voters, compactness, and contiguity. Many state constitutions or statutes impose additional requirements, such as maintaining communities of interest in their variety of forms, drawing district lines without reference to incumbency or partisanship, and creating competitive districts (Cain et al. 2005).<sup>3</sup>

Currently 20 states rely on commissions to draw districts for congressional or state districts, or both (McDonald 2006c). Most of these commissions were put in place after the court decisions in the 1960s requiring the application of the principle of one-person-one-vote. Some commissions, however, go back earlier, including the Ohio Commission, which was established in 1850 (McDonald 2006c). In most states, commissions provide for partisan representation even if the process eliminates direct control by officeholders. Partisan leaders, for example, may recommend appointees for commission slots. Political appointees, however, are usually disallowed from holding public office or seeking it in the next several election cycles. In some states, such as New Jersey, the

<sup>3</sup>Self-dealing is also limited by only permitting the legislature to draw congressional districts, not state legislative boundaries.

courts select a tiebreaking member from a pool of individuals not associated with either party. One outlier among states is Iowa, which does not allow partisan appointments, but instead relies on nonpartisan legislative staff to draw districts. It would be naive to think that commissions completely avoid partisan politics, even those commissions that disallow political appointments. Expert staff may do the analysis and line-drawing, but they are not immune to political pressure and personal partisan loyalties. Indeed, even the federal courts appear to show favoritism. One study demonstrated that Democratic House members fared better in elections when federal judges with an affiliation with the Democratic Party supervised the reviews of state redistricting plans (Cox & Katz 2002).

### **Do Different Processes Lead to Different Outcomes?**

Here is an essential question in the research and one with important policy implications: Do the different processes for redistricting generate divergent outcomes? In particular, does the handiwork of commissions tend to increase electoral competition compared to that of state legislatures? Implicit in the arguments of scholars who argue for moving redistricting authority out of partisan hands is the belief that commissions would do a better job facilitating competitive elections (Issacharoff 2002). Although one study argues that elections are more competitive when courts and commissions redistrict (Carson & Crespin 2004), the truth is that the research is still in its infancy. A recent book-length analysis makes a compelling argument that focusing on the rules rather than the actors might be a better way to improve the process (Winburn 2008). Most other analyses rely on broad-brush case studies or comparisons based on anecdotal evidence. Thus, there is critical need for systematic, comparative studies over time to assess the consequences of institutional differences (Butler & Cain 1992).

Partisan gerrymanders may, in fact, confer advantages, but the evidence is weak that

commissions would actually do a better job. Take Iowa, for example, whose nonpartisan process earns plaudits for creating competitive districts. Iowa may be a singular case in which it would be hard not to create competitive seats. The political geography and culture are relatively homogeneous, with partisan loyalties spread uniformly throughout the state (Mann 2005). To be sure, given enough flexibility in designing boundaries, it would be possible to create lopsided districts in practically any state, but it is surely easier where partisans self-select into different communities.

Some research indicates that outcomes such as political competition are affected more by external factors than by the character of the institution making the districts. For example, the Voting Rights Act, which stimulated the creation of majority-minority districts, appears to dampen electoral competition (Lublin & McDonald 2006). Others cite the importance of residential patterns that make it difficult to create competitive districts (Wildgen & Engstrom 1980). Such patterns severely hamper the ability of line-drawers to make competitive districts without violating established federal guidelines and norms, especially the requirement for “compactness” and keeping “communities of interest” intact.

One conspicuous dilemma in addressing the question about consequences is the widespread disagreement about what constitutes a good outcome. Regarding competition, for example, scholars use many different measures. Should competition be assessed by incumbent turnover, the number of marginal seats, or the proportion of contested seats? In terms of partisan fairness, should we examine the swing ratio or simply whether candidates from either major party have a reasonable chance at winning? It is also important to keep in mind that the impact of institutions may be slight. Commissions, for example, may do a better job than politicians at increasing the level of competition, but the marginal change may not alter the situation on the ground. Few seats will truly become competitive under either scenario. And as discussed above, the value of pursuing

competition as a redistricting outcome may be dubious.

The courts have not necessarily helped matters because they have set a high but unclear standard for assessing the fairness of plans. In *Davis v. Bandemer* (1986), the Supreme Court found that partisan gerrymandering was justiciable but argued that the rival party must be effectively shut out of politics in order to have a claim, or as the Court put it, only when there is “continued frustration of the will of a majority of the voters or a denial to a minority of voters of a fair chance to influence the political process.” But what is the evidence proving discriminatory effect? To be sure, the Court implied in *Bandemer* that the electoral system need not provide proportionality; a party has no right to expect its share of votes to equal the share of seats received. The Court appeared to raise the bar even higher with its decision in *Vieth v. Jubelirer* (2004). This case involved the Pennsylvania redistricting process, which was controlled by the Republicans and resulted in big gains for their congressional delegation. With 46% of statewide vote, they won 65% of seats (12 Republican and 7 Democratic) (Bullock 1995). In a fractured opinion, Justice Kennedy argued that there was no manageable standard of proof for invalidating this partisan gerrymander and that the plan did not seem so arbitrary as to be unconstitutional.

Even if the courts etched clearer standards, scholars would still confront some methodological problems in assessing outcomes. Measuring partisan bias is not a simple task; it requires sophisticated empirical instruments about which there may be disagreement among political scientists. There is some hope that the increasing use of computing technology, such as Geographic Information Systems (GIS), can be used to create nonbiased processes, e.g., computer-driven randomization, to solve the redistricting impasse (Engstrom & Wildgen 1977, Altman et al. 2005). But its use presents new kinds of challenges. Such technology may help analyze the fairness of maps, but surely it can also be used to further partisan ends (Curry 1999). Some scholars have been able to demon-

strate discriminatory intent by revealing partisan strategies that systematically undermine the electoral opportunities of the rival party (Cranor et al. 1989). However, the *Bandemer* decision appears to require studies to show effects over time with respect to district voting patterns, election results, and voter preferences about policies. Several important studies have helped the courts begin to understand how to evaluate partisan “fairness” (Gelman & King 1994a,b; King & Browning 1987), and scholars have been active in submitting amicus briefs based on such studies (Grofman & King 2007).

### Do We Need Reform?

It is understandable why pressure for reform grew in the 1990s and picked up steam after the 2000 redistricting. Driven by fear that competition was vanishing, proposals emerged that focused on establishing objective criteria to promote competition and create commissions that would be insulated from politics (McDonald 2006c). As with most political reforms, the process was pushed by popular initiative. Redistricting reform passed in Washington in 1983, Idaho in 1994, Alaska in 1998, and Arizona in 2000.

The 2006 elections may give pause to the reform movement, as Democrats were swept into power in Congress and as many as nine legislative chambers. In Pennsylvania, for example, the 2006 midterm elections led to an increase in the number of Democrats in the congressional delegation by four, so they now control 11 out of 19 seats. Yet this turnaround occurred under the same plan for which the Democrats sued the state (*Vieth v. Jubiler*) because they argued that the partisan gerrymander created by the Republican-controlled legislature was unconstitutional.

Although the popular press has called for continued efforts to change the system, noting that levels of competition remain relatively low despite the results of the 2006 and 2008 elections, the public may wonder what all the fuss is about (*New York Times* 2006, *Washington Post* 2006). Indeed, interest in reform appeared

to be waning even before the 2006 elections. In Ohio and California, for example, two redistricting reform measures failed in 2005 by large margins. One hurdle for reformers is that the public sometimes perceives such initiatives as overly complicated and self-serving. Political battles over initiatives suggest to the average voter that sponsors have something personal to gain from reform. It does not help that vocal minorities often oppose such measures (McDonald 2006c). However, blatant power grabs in the legislature may make the issue more salient as the next period of apportionment and redistricting approaches. With Congress in the balance, the incentive for both parties to pursue partisan gerrymanders remains very strong. The public may react through popular initiative and remove the entire process from the legislature. Paradoxically, a reform such as term limits, which has been implemented through the initiative by citizens desiring greater legislative turnover, has actually made the redistricting process more partisan and strengthened the majority party (Schaffner et al. 2004).

From this brief overview, it seems clear that the empirical record on redistricting processes is weak. We need more studies of how rules and institutions matter. These studies need to be connected explicitly to empirical and theoretical understandings of representation. How does changing the rules matter in terms of democratic theory and practice? Competitiveness appears to be the most significant concern, but it is not necessarily synonymous with fairness or meaningful representation (Ostdiek 1995, Buchler 2005). Inevitably, there are tradeoffs. Legal scholars tend to favor putting in place an impartial process—the Progressive vision—arguing that fairness can only be achieved when laws are “above” politics (Kubin 1997, Issacharoff 2002). Not surprisingly, many (though not all) political scientists tend to embrace the Madisonian notion that it is not possible, nor desirable, to take politics out of the process (Persily 2005a, Cain 1985). Although scores of scholars believe reform is necessary, there is little consensus about the best approach. Most experts would like to see some

balance between partisan and “neutral” efforts, but few, if any, believe that redistricting reform is a panacea to improve electoral competition (McDonald 2006c, Mann 2005, Stokes 1998).

## CONCLUDING REMARKS

A review of the literature on redistricting makes it plain that researchers have tackled difficult theoretical and empirical questions. The court decisions since the 1960s have sparked scholarly debate on a range of issues, particularly related to minority representation and partisan gerrymandering. But although the era inspired significant research, we remain far from consensus on major questions, and new paths of research should be explored.

1. *Electoral competition.* To what extent does redistricting increase the incumbency advantage and diminish electoral competition? To what extent are recent redistricting plans more biased or less responsive than those of past generations?
2. *Partisan polarization.* Has redistricting increased partisan polarization at the elite level?
3. *Majority-minority districts.* Do majority-minority districts advantage Republican candidates? Are majority-minority districts still necessary and, if so, what proportion of minorities is necessary to ensure a high probability of electing preferred candidates without “wasting” votes? Do candidates represent voters differently in majority-minority districts?
4. *Redistricting process.* What institutional procedure for redrawing lines would satisfy democratic goals of fairness and accountability, among others? Is it necessary, or even possible, to exclude partisan politics from the process in order to achieve such goals?

It should not be surprising that so many questions are outstanding in a field as complex as redistricting. The field is awash in multiple, if unspoken, perspectives about the meaning of representation, and whether the basis for representation rests primarily with the individual or

“communities of interest.” Thus, the empirical findings tend to draw different responses from different scholars, depending on their theories about representation. Furthermore, the field is rife with methodological challenges that make it difficult to disentangle the effects of redistricting from other political trends, including partisan realignment and the strengthening of incumbency. Despite these challenges, however, these questions are sufficiently interesting and important to attract scrutiny from a wide range of scholars who are willing to employ a variety of approaches to solve these puzzles.

With this in mind, the following paths of research are recommended. First, the field has not been plowed sufficiently in the area of political theory. Before it is possible to say much more about the relationship between district boundaries and political outcomes, scholars need to develop and exploit more robust understandings of political representation, at least in the context of single-member districts. (The distinction between descriptive and substantive representation has been useful but is wearing thin as a means to analyze questions related to how citizens choose their legislators.) This is no small task, but pursuing it might create additional theoretical scaffolding from which to assess the consequences of various redistricting methods and outcomes.

At the empirical level, researchers need to examine representation as it works in practice. How, in fact, do candidates in majority-minority districts represent their constituents? Is representation in such districts qualitatively different from other districts, and how so? How are whites represented in these districts? The answers to such questions may come from collecting individual-level survey data in a healthy sample of congressional districts. It may also come from “soaking and poking” to see how candidate or officeholder behavior varies systematically across districts. The comparative baseline for such a study is Fenno’s (1978) classic, *Home Style*. So far, this kind of approach to the question of representation has been spearheaded by Swain (1993).

More broadly, scholars need to study the relationship between redistricting outcomes—namely the bias and responsiveness of various electoral systems—and policy outcomes. The conceptual tools and data should be available to make this crucial link between political institutions and policy outcomes. Such work might help the courts appraise the partisan or racial fairness of various redistricting plans because it might generate clearer or more robust standards of representational rights. As it stands, the Supreme Court is reluctant to reject partisan gerrymanders simply because one party appears to gain advantages in the redistricting process. Justice Kennedy said as much in his opinion in *LULAC v. Perry* (2006), arguing that “a successful claim attempting to identify unconstitutional acts of partisan gerrymandering must . . . show a burden, as measured by a reliable standard, on the complainants’ representational rights” (p. 11). From the courts’ perspective, no such standard exists to test the constitutionality of partisan gerrymanders, which leaves an opening for scholars to explore.

Scholars might create further insights about the redistricting process if they also broaden their inquiry to new questions. Overall, the research has focused too narrowly on representation, accountability, and political competition rather than other aspects of democracy, such as the effect of redistricting on political participation, political efficacy, and trust in government. If research reveals systematic links between redistricting methods and such particular outcomes, then policy makers will have a richer perspective when considering alternative redistricting schemes.

One area with a glaring hole is the study of the redistricting process itself. We lack a solid understanding about how decision-making rules and institutions may tend to create particular outcomes, such as electorally competitive districts. It would be useful to conduct large-*n* comparative studies of the American states over time as a way of observing the consequences of different institutional configurations. It would also help to extend the comparative analysis to an international context, perhaps

starting with a study of the Commonwealth nations. Regrettably, current assessments of the redistricting process rely primarily on diffuse and descriptive accounts of various procedural regimes and outcomes. At this point, more attention should be given to structured, focused comparisons that are rooted in relevant institutional and organizational theory. Such studies would enable scholars to test hypotheses about behavior and outcomes.

By providing rigorous tests of well-articulated hypotheses, scholars would be laying the foundation for policy makers to choose among alternative redistricting reforms. In recent years, public interest advocates have made a case for moving the redistricting process out of the hands of politicians. These calls for change receive support in the mainstream press, including the nation's preeminent newspapers.

There may be good arguments for pursuing reforms, but there is insufficient evidence

from empirical research to justify choosing one strategy over another. This is not an argument against reform, per se, but a recommendation for a more temperate path before making significant changes. Politicians have been involved in the redistricting process since the beginning of the Republic. What has changed now that justifies intervention? Although electoral competition has long been in decline, the 2006 and 2008 elections did not appear to make a strong case for reform. Citizens can still "throw the bums out" when the national mood turns against Congress. Some incremental experimentation may be warranted. But we should keep in mind that political elites lack a strong consensus about how much to advance competing goals, including competition, accountability, and representation for communities of interest. In the meanwhile, scholars can continue to make important contributions to shed light on the ongoing puzzles attributed to redistricting.

## DISCLOSURE STATEMENT

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## Errata

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