Introduction

The essence of any democratic regime is the competitive election of officeholders. It is only by making candidates compete for their seats that politicians can be held accountable by the public. In the American system, the framers of the Constitution envisioned that one governing body—the House of Representatives—would be especially responsive to the preferences and needs of the citizenry. In George Mason's words, the House "was to be the grand depository of the democratic principles of the government." Yet ironically, it is "the People's House" that has gradually become the representative institution least subject to electoral competition. The roots of this curious change are complex, but one critical element is the peculiar means by which congressional district boundaries are drawn in the United States. The redistricting process—its evolution, abuse, and impact on American democracy—is the subject of this book.

Redistricting is for the most part a subject of cyclical interest. Interest in the line-drawing process grows toward the end of every decade in anticipation of a new census and the reapportionment of congressional seats. In the run-up to a new round of redistricting, national parties battle to improve their electoral

control of states where opportunities are ripe for seat gains or losses, while states organize themselves for the upcoming task, legislators jockey for positions on key redistricting committees, technical consultants ready their wares for sale, journalists bone up on the issue, and reformers hold numerous conferences in the hope of improving what seems to them to be an excessively political procedure.

But even in the quiet interval between censuses, there are occasional flare-ups. Between 1982 and 1993 and into the 1990s, in the heyday of aggressive enforcement of the Voting Rights Act (VRA), the Justice Department and minority advocacy groups challenged many existing electoral arrangements, including district lines, at all levels. Contested jurisdictions often capitulated in the face of expensive litigation, redrawing their lines mid-cycle. In other instances, some states could not resolve their districting problems politically and ended up in drawn-out legal cases involving both state and federal issues. Occasionally, those legal matters were not finally resolved until several years after the census.

The 2000 round of redistricting deviated a bit from the usual pattern. There was far less VRA controversy than many had predicted. Political jurisdictions were somehow able to steer a course between the "Don't do too little" commandment of *Thornburg* v. *Gingles* (1986),[1] which set the criteria under which majority-minority districts were to be drawn, and the "Don't do too much" commandment of *Shaw* v. *Reno* (1993) and its progeny,[2] which prohibited using race as the predominant factor in line drawing. A few large states that had experienced acrimonious partisan redistricting in the past, such as California, surprised many observers by achieving bipartisan agreement when they could have done otherwise. (Of course, there remained some states, such as Pennsylvania, Michigan, and Georgia, that followed the familiar pattern of producing partisan plans.) Since screams of outrage most often come from minority party elected officials and party activists, the prevalence of more bipartisan plans, especially in the larger states, had the effect of muting the controversy that usually followed previous rounds of line drawing. Bipartisan plans brought about more bipartisan satisfaction and fewer audible complaints from the usual suspects.

But the calm did not last for long. With a narrowly divided Congress and an increasingly partisan agenda, the Republicans, led by House Majority Leader Tom DeLay, opted to take advantage of a mid-decade opportunity to draw lines in Texas more to their liking. Despite a valiant attempt

to run and hide, Texas Democrats could only stall the inevitable. Representative DeLay had his way, and the Republican legislature in Texas was able to transform a more neutral court plan into a more partisan Republican one that resulted in six more Republican seats. (One Democratic incumbent switched parties, another resigned, and four were defeated in the general election.) Suddenly the norm of redistricting tranquility between decades was under siege: if there was political advantage to be had, why wait?

At the same time, the strikingly uncompetitive 2002 and 2004 elections and the gradual erosion of September 11 unity caused observers to take a second look at the consequences of bipartisan plans. If bipartisan plans made incumbents in both parties safer, was it possible that they were making state legislatures and Congress more ideological at the same time? Ironically, plans that aim at bipartisan accord might actually produce more partisan discord if safe seats contribute to more ideological extremism, and, vice versa, partisan plans might make the districts of at least the majority party a little less safe and hence more moderate on the margin. Observers began to ask whether the prevalence of bipartisan redistricting played a part in the polarization of the federal and state legislatures.

One role of this volume is to take stock of what is known about the polarization question and to look more broadly at the issue of redistricting reform. If the process is defective, then the time to fix it is mid-decade—before political actors begin to view the whole issue in light of how it affects particular districts and their political careers.

Besides partisan acrimony and the mid-decade redistricting issue, two other features of the American legislative approach to redistricting have long bothered reformers, especially in light of data and software innovations. First, except for the handful of states with commission systems or those where the courts draw district lines because of a breakdown in the political system, state legislators vote on their own lines and U.S. House incumbents and the national parties work closely with them to draw congressional lines. Some critics believe that this practice creates a conflict of interest, arguing that drawing the boundaries of the districts in which they run gives legislators a personal "benefit" analogous to the benefit that they might gain by voting on legislation that might affect businesses or property that they own. Skeptics of that view note that an expanded definition of conflict of interest such as this opens the door to saying that any legislative vote that earns popular votes potentially creates a conflict of

interest. Whatever position one takes, legislature-drawn lines indisputably give incumbents some ability, constrained by law and geography, to define their electoral battleground, and that can be unfair to challengers or minority parties.

Second, as with much legislation, significant parts of legislative plans are designed in secret, beyond public view, and give short shrift to public submissions. In contrast, state redistricting commissions, as in Arizona, and city redistricting commissions, as in San Diego or San Francisco, allow much more transparency. With advances in computer technology, more members of the public have access to redistricting data and software and appropriately demand to have their ideas for drawing districts heard. Both of these criticisms of the usual legislative procedures raise the question of whether there is a better way to draw lines.

This volume seeks to answer that question and to review the evolution—legal, technical, and political—of redistricting over the last several decades. The first chapter, by Bruce E. Cain, Karin Mac Donald, and Michael McDonald, looks at the shifting redistricting debate over time, arguing that the current period marks the resolution of most federal issues and the emergence of state and local considerations such as the requirement to create competitive seats or to take account of communities of interest. Chapter 1 also considers whether redistricting has lessened congressional competition and finds some evidence that it has.

If competition has lessened because of redistricting, what are the implications for American democracy? One effect is ideological polarization, as discussed, but there may be others as well. In chapter 2, L. Sandy Maisel, Cherie D. Maestas, and Walter J. Stone explore the idea that legislative redistricting may also decrease the number of strong candidates willing to run for office, thereby depriving voters of a full range of choices. Drawing from their Candidate Emergence Study, the authors find evidence of a connection between boundary changes, potential candidates' expectations of winning, and their likelihood of running. Maisel, Maestas, and Stone express concern that any process that favors incumbents and party interests will diminish competition and the quality of candidates.

Redistricting is ultimately a technical task: lines are drawn on the basis of census data, geographical units, and political returns. In large states, that fact can lead to huge data sets and complex technical considerations. In the 1970s and 1980s, much of the work was done by hand, which limited the ability of line drawers to negotiate and share information. In chapter 3, Micah Altman, Karin Mac Donald, and Michael McDonald trace the evo-

lution of the software and data used in redistricting and suggest that it has increased the speed and accuracy of the process. They find that the implications of that increase are important but do not necessarily substantiate pundits' claims or the fears expressed by the courts.

Legal thinking on redistricting has changed almost as dramatically as the software. At the beginning of the 2000 round of redistricting, there was considerable speculation about how court rulings in the late 1990s would affect the implementation of the Voting Rights Act. In chapter 4, Nathaniel Persily examines that issue and also the latest attempt to interest the Supreme Court in political gerrymandering, *Vieth* v. *Jublierer*.[3] Reviewing the legal developments that led to the current state of redistricting law, Persily discusses how persistent tensions—between rules and standards, activism and restraint, individual and group rights—have created a confusing and inconsistent legal picture. This "massive superstructure of constraints" on district line drawing at all levels still allows a lot of room for political bargaining.

Thomas E. Mann concludes the volume with chapter 5, wherein he looks at the options for reform. While he reviews a wide range of potential constitutional, statutory, and judicial levers for change at the federal and state levels, he focuses especially on the experiences of redistricting commissions. Mann argues that the time might be ripe for taking redistricting out of the hands of state legislatures and giving it to independent commissions such as the one in Arizona. It is desirable and possible, he concludes, to embrace methods of redistricting that lie somewhere between an entirely neutral, apolitical process, one notably short on practical wisdom, and the ordinary political process, whose results are notably short on public interest.

Notes

1. *Thornburg* v. *Gingles*, 478 U.S. 30 (1986).
2. *Shaw* v. *Reno*, 509 U.S. 630 (1993).
3. *Vieth* v. *Jublierer*, 124 S. Ct. 1769 (2004).