

A Position Paper

Citizens Redistricting Review: towards a New Gold Standard of Redistricting Reform

Why this position paper?

We believe that a citizen-jury like panel of randomly selected citizens can provide a viable solution to one of the most basic problems of redistricting: how can the public at large be assured that redistricting processes have integrity.

Why redistricting is important?

In the first season of the Netflix hit show *The House of Cards*, Frank Underwood, the House Majority Whip engages in a twisted multi-pronged plot to work behind the scene to run Peter Russo, a congressman from Pennsylvania, to become the Governor of that state. The reason it is urgent for him to place “his” person to the job and the length to which he goes to achieve this goal is that in Pennsylvania the governor controls the redistricting process and having a Republican in the office might prevent Democrats from maintaining their majority (in fact, the Governor has a veto on maps proposed by a commission of five politicians). One may hope that, overall, *The House of Cards* does not describe the inner workings of Washington politics accurately. But one thing they got right, redistricting is a high-stakes process and political players are willing to go a long way to control it.

Redistricting is a “constitutional moment” in the sense that the people re-constitute their boundaries. Redistricting determines what features of our diversity get to be represented. Many times discussion about redistricting focuses narrowly on one such feature - partisan identity: how many Democrats and how many Republicans get a seat. But district boundaries shape representation in other important ways (e.g. number of districts touching the borders, urban vs. rural interests, inner city vs. suburbs, and so forth).

Much of the discussion about redistricting focuses on Congressional redistricting. But redistricting processes take place at all levels of government and can be very contentious even at local levels of government. The following discussion applies to redistricting processes at all levels.

How is redistricting done?

It is beyond the scope of this report to offer a detailed account of the myriad ways that redistricting is done from the state to local levels. For our purpose, we want to briefly highlight the main type of players in the process of redistricting.

- Elected politicians. Most states (or sub-state entities that engage in redistricting) ask elected officials to make or approve redistricting plans via various decision structures that are designed to be either partisan or bipartisan, unicameral or bicameral (and sometimes involve the governor). In general, representative democracies authorize elected officials to make decisions,

including on issues that have long term implications and are political and even partisan in nature, and are expected to be held electorally accountable for the decision. Furthermore, the US Constitution gives the power to approve congressional redistricting to the state legislature (and there are some recent court decisions on the precise meaning of the term). Those who look to limit the role of elected officials in redistricting hold that decisions about election rules should not be made by people who have a stake in the outcome.

- Courts. Courts play a major role in redistricting and often redistricting plans go through protracted litigation. We cannot discuss here the wide body of legal considerations but only highlight few important points. Courts can detect and weed out maps that are unlawful. They cannot discuss whether a proposed redistricting plan is a good plan. Therefore, when there are doubts or room for interpretation courts rightly tend to defer to the legislature (and they sometimes send unlawful plans back to the legislature for revisions). This deference creates a perverse incentive to gerrymander - to create a redistricting plan that pushes the envelope as wide as possible hoping for assent from a deferential court, or worst a request to correct problems.
- Independent Commissions. For reformers, independent commissions are the gold standard of redistricting. There are various ways to structure an independent commission. What is common to all of them is that they are trying to make the process less partisan but having maps drawn by people who are not immediately affiliated with the partisan political process. Indeed, research shows that independent commissions create maps that are less partisan. Commission are viewed as the gold standard since if and when they work as they should, they allow decisions to be removed from the partisan fray. But their weakness is that sometimes they either end up being partisan, perceived by outsiders to be partisan, or both.

Why redistricting creates challenges?

There are two main challenges that the process of redistricting poses. The first, and the more familiar one is what is often described as gerrymandering, the design of district maps with particular illicit biases to advance the electoral prospects of those who draw the map. Gerrymandering is often associated with strangely shaped districts, but the reality is more complicated. Sometimes it is necessary to create strangely shaped districts to advance legitimate goals and developments in mapping and information technologies have transformed the process of redistricting. With rich data from multiple sources about each individual household, redistricting experts create complex simulations that can design maps to meet particular sets of criteria.

These technological developments create both challenges and opportunities. In the wrong hands, they can be used to gerrymander. In the right hands, they can be used to expose gerrymandering or to create good districts. This brings the second challenge into sharp relief - what is a good map? In our House-of-Cards-like political environment, much of the scholarly energy is directed at finding ways to detect the illicit gerrymandering. Computer modeling and statistical tools are very helpful. It is often hard to identify the intent of processes that take place

behind closed doors. But statistical tools can help identify maps that are clear outliers. This is done in the following way: computers randomly generate a huge number of possible maps and notes the properties of each of these maps. Then, the feature of a proposed map can be compared to the distribution of the property in these maps. Using this method, for example, it is possible to show that in terms of its partisan asymmetry a particular proposed map is more partisan than 80% or 99% of randomly drawn redistricting maps, or that the districts in another map are on average less compact than those of 65% of the randomly drawn maps. These tools are helpful in identifying the outrageous outliers. But they provide less guidance of how to choose among maps that have less than outrageous features. To be sure, there are common criteria that are used in drawing maps (and in some cases are constitutionally mandated) -- districts have to have roughly equal population (that's the entire purpose of the process), they have to be compact, contiguous, overlap with administrative boundaries, consider communities of interests, create competitive districts, and others. But there is still question of how to weigh the different criteria in selecting a map.

How criteria are weighed, of course, has equally significant consequences to how maps are drawn. Redistricting ultimately presents decision-makers with challenges that are both technical (the drafting of maps) and procedural (the weighing of criteria for both drafting and deciding between maps). Both are equally rife with partisan contention.

For these reasons, discussing and evaluating proposed district maps is tricky and complex process. This complexity is often lost when proposed maps are discussed in the media or even in courts. In both, there is a tendency to focus on one feature of a proposed map (such as irregular shape, or large size) without considering it in the context of the different criteria and in comparison with other options. More broadly, the understanding of the partisan incentives of participants, combined with the fact that this complex process lends itself only to shallow media engagement, makes it difficult to trust the integrity of the process.

The (limited) role of the public in Redistricting.

One way to ensure trust in the integrity of the process is to allow anyone interested to observe and have a voice. While in the past redistricting took place literally behind closed doors, in recent years the process becomes more open and allows venues for participation. However, many of these venues for citizen participation appeal to small group of informed, committed (and likely partisan) citizens. Public input takes different forms. Most commonly, committees conduct public hearings that allow for structured input from stakeholders. Some redistricting authorities allow members of the public to submit entire maps for considerations. Going one step further, in a recent experiment in the city of Peoria, Arizona, the city committed to vote for a map that is submitted by members of the public and that received the highest score based on agreed criteria.

The expectation is that, being removed from the fray of partisan politics, the politicians that get involved can put reasonable proposals on the agenda. Regardless of the intent of engaging the public in redistricting, the fact remains that the same elected officials and political insiders

deliberate and decide upon the maps. The question of integrity in how decisions are made about redistricting remains.

So how would citizen-juries like panels get involved?

Citizens Juries, as a form of public engagement, have a long and varied history of experimentation and use in policy settings. Citizens Juries rely upon a small group of “jurors” that have been randomly selected and demographically stratified to reflect a larger population and convened over multiple days for a facilitated public process to evaluate questions of public policy. Citizens Juries have seen tremendous variability in approaches to their scope and design.

Of particular relevance here is the model of the Citizens’ Initiative Review—a Citizens Jury based program institutionalized into law in 2011 in Oregon. The Citizens’ Initiative Review is an application of the Citizens Jury model, where the jury’s task is to evaluate a ballot measure (or proposition) and provide a balanced evaluation of the pros, cons, and key policy impacts that voters should be aware of before casting their ballot.

It is not the case that there is a lack of experts who are willing to advise on how to vote on each initiative. Rather, the problem that voters face is one of which experts to trust. The CIR helps in providing trustworthy information by closely evaluating the arguments for and against a ballot measure in close deliberation with policy experts. The citizens-panels do not make any decisions. They provide voters information about what ordinary citizens like them concluded after having the opportunity to learn about the process, increasing the integrity of the decisions made on statewide ballot measures.

We believe that a similarly structured Citizens Jury applied to the context of redistricting, which we’re calling the Citizens’ Redistricting Review (CRR), can provide a way to audit the decisions made by those in charge of redistricting and to allow the public at large to have greater confidence in how district maps are drafted and selected.

The function of the CRR is to perform a trustworthy public audit. There can be a variety of ways to design the particular tasks that a CRR will be asked to do to perform this function. While there are many important details still to be filled out about a CRR, this was also the case with the development of a CIR. Over the years, it has been implemented in a variety of ways to achieve its core function - providing a trustworthy public review of argumentation for and against a ballot initiative. The difference is that by now there is a lot of accumulated knowledge on how to design and run an effective citizen panel to help those who want to take on the task of designing a CRR.

What is the difference between CRRs and independent redistricting commissions:

An independent commission is a government body created by major legislation to handle the task of drawing district maps. Its members are appointed for a number of years and are

considered public officials. Beyond these two features, there is tremendous variability of what constitutes an independent commission. In fact, to the extent members of a redistricting commission are truly independent, the commission can be viewed as a citizen-panel of a sort.

A CRR is an advisory body that meets for a short period of time (few days). Its task is not to draw maps from scratch but to evaluate proposed maps and the process by which they were created. As a formal function of government, like the CIR, the CRR would require a dramatic increase in transparency for how decisions are being made, prior to adoption in this case of a district maps. One of the striking lessons of those who advocate to a CIR is that the structured PR slogans that work in other settings fail miserably when citizens have the opportunity and the tools to look into them.

In this way, a CRR can supplement the work of either a legislative body or an independent commission. The purpose is to fulfill a function of government that is currently missing from either approach - formally mandated transparency in decision-making.

All in all, a CRR is a much leaner than a commission. Redistricting processes are expensive, especially if we count the cost of litigation that surrounds them. Depending on its size and function, a commission can be an expensive body. The cost of CRR is much smaller in comparison, and the review in the "court of public opinion" can reduce the need to litigate maps in courts. Like independent commissions, CRRs can be used in all levels of government.

So what would redistricting jury do?

We have seen that unlike commissions, that are elected to hold an administrative position over an extended period of time, a Citizens Redistricting Review would convene for only few days. This format does not lend itself to asking the participants to draw maps from scratch. Rather, such a panel would be more effective in performing an evaluation task, for which Citizens Juries, like the CIR, have been proven to work effectively. This task can take one of two general forms in the context of redistricting.

- A CRR can choose or evaluate or even decide among a small number of finalist maps. For example, it is possible to have a system where the two parties submit a redistricting plan and the CRR evaluates both and make a recommendation. In such a scenario, those who draw the maps would know in advance that they will be asked to justify the choices they made to a panel of ordinary citizens. This would give them an incentive to make reasonable defensible choices. This model requires the two sides to agree in advance to defend their plan to a CRR.
- A CRR can be asked to evaluate the process by which a redistricting authority have reached a decision in selecting a draft map. In a sense, in this model the CRR performs an audit of the justifications of the major decisions in drafting the map. This model requires the redistricting authority to explain and the justify the choices they have made to the CRR.

Toward a new gold standard for redistricting reform.

In closing, we want to point at some of the lessons learned from practitioners who developed citizen-juries in other contexts. Although redistricting processes take place only once every decade there is still room for experimentation in the current cycle.

Connecting the outcomes of citizens juries to policy decision-making takes three distinct forms, both of which could be applied in the context of redistricting.

Practitioners of citizens juries in multiple countries operate based upon a contract with governments that require formal participation, and a formal response to the findings of the citizens jury. In the context of redistricting, state and local governments seeking to increase the integrity of their redistricting process could follow this model, engaging a CRR on a temporary contract basis.

In contrast to this approach, some citizens juries, like the Citizens' Initiative Review, required a legal mandate (in the CIR's case, it was adopted by the state legislature). With the high stakes nature of redistricting, adopting a CRR could take place through an act of the state or local government, or by way of popular vote via a ballot measure or referendum. While not nearly as common an approach to implementing a citizens jury, in certain cases, this may be the only viable approach to reform.

CRRs can also be used in a third way, as an extra-political process of evaluating an official process. One can imagine a media outlet putting together a CRR as a way to help the public learn and assess the official process.

- The authors invite readers who are intrigued by this proposal to share their thoughts. We are particularly interested in collaborating with readers who have the organizational capacity and resources to experiment with implementing a CRR at state or local level.

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Tyrone Reitman, MPA, has two decades of experience working in the fields of public engagement, legislative advocacy, and policy analysis on issues related to campaign finance reform and deliberative democracy. Formerly the Executive Director of Healthy Democracy (2007-2015), his work to develop and successfully implement Healthy Democracy's flagship program, the Citizens' Initiative Review (CIR), has been recognized for its unique contribution to American democracy by the International Associate for Public Participation and the Ash Center for Democratic Governance at Harvard, among others. In 2017, he founded the Policy Jury Group to further explore how the "Citizens Jury" model of public deliberation could be used by state and local governments. Email: tyrone@democracyplus.org

Amit Ron is an Associate Professor at Arizona State University's School of Social and Behavioral Sciences. His area of research are democratic theory, citizenship and citizens participation, and political economy. Email: amit.ron@asu.edu