

ELBRIDGE GERRY'S
SALAMANDER

*The Electoral Consequences of the
Reapportionment Revolution*

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I

Introduction

ELBRIDGE GERRY'S SALAMANDER

The word *gerrymander* describes a distinctively (albeit not uniquely) American practice, that of redrawing district lines to achieve partisan (or other) advantage. The word also has a distinctively American etymology, dating back to Elbridge Gerry's term as governor of Massachusetts (1810–1812), when political observers made sport of a district drawn by his party that looked something like a salamander.

At the broadest level, indicated by its title, this book is about gerrymandering. The principles of our analysis could be applied to the original Gerry-mander or to any of its various and long line of descendants (for one such effort, see Engstrom 2001).

At a narrower and more specific level, indicated by its subtitle, this book concerns what was arguably the most important change in the practice of American gerrymandering since its invention.¹ Whereas previously the game of drawing salamanders with district lines was limited to legislators and governors, the courts standing scrupulously aside, after 1964 the rules changed. A new process emerged, with new strategic consequences and nuances. We examine how these procedural changes help explain two of the biggest stories in congressional elections since the 1960s: the seemingly invulnerable Democratic majority in the House of Representatives before 1994 and the seemingly unfair and bloated advantage of incumbents over challengers.

¹ The practice of gerrymandering certainly predated the Gerry-mander, but its origin has not been precisely dated, so far as we know.

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THE REAPPORTIONMENT REVOLUTION

The Supreme Court's reapportionment decisions, beginning with *Baker v. Carr* in 1962, were soon hailed by legal scholars as revolutionary (see, e.g., Baker 1966, p. 3; Dixon 1968, p. 99).² They reversed decades of court decisions that had consistently held that the drawing of legislative district lines, fraught though it was with malapportionment and gerrymandering, was not justiciable. They opened the door to a long chain of subsequent litigation, which continued into the 1990s, with important decisions regarding racial gerrymandering. For these and other reasons, the reapportionment decisions now occupy a standard niche in textbooks on the Court.

The Court's decisions did not simply rewrite case law, however. They also sparked a massive wave of extraordinary redistricting in the mid-1960s.³ Both state legislative and congressional districts were redrawn more comprehensively – by far – than at any previous time in our nation's history.

In the immediate aftermath of the Court's decisions and the consequent redistricting, scholars looked carefully for political consequences, yet concluded that they were very small. Neither party seemed to benefit nationwide, as their gains in some states were offset by losses elsewhere. Incumbents did not seem to benefit, as their margins of victory increased even where redistricting did not take place. Policy did not seem to shift toward urban interests in the dramatic way widely anticipated.

These conclusions were surprising, not just because of the magnitude of the judicial shift in doctrine or the depth and breadth of 1960s redistricting action, but also because of two statistical regularities later described in the scholarly literature. First, work on how congressional votes translated into congressional seats outside the South found a consistent pro-Republican bias prior to the 1960s. By one estimate (Erikson 1972, p. 1234), the Democrats could expect to win only 44.6% of the nonsouthern seats when the aggregate vote division was a 50–50 partisan split – indicating a 5.4% pro-Republican bias. This bias abruptly disappeared in the mid-1960s. Second, scholars found that the so-called incumbency advantage – a vote premium putatively derived from the

² (*Re*)*apportionment* refers to the (re)allocation of seats in the U.S. House of Representatives to the states after each decennial census.

³ *Redistricting* refers to the drawing up of new district boundaries within each state – typically but not always pursuant to reapportionment.

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resources of office – jumped up dramatically in 1966, the year of the first election in which a substantial number of districts had been redrawn under court order (Erikson 1972; Gelman and King 1990). The size and abruptness of these two statistical changes, and their coincidence with widespread court-ordered redistricting, seem more than coincidence. Yet the literature has intensely scrutinized these factors and found no causal link between them and redistricting.

REEXAMINING THE CONSEQUENCES OF THE REAPPORTIONMENT REVOLUTION

This book reexamines the electoral consequences of the reapportionment revolution. The bulk of the previous literature has focused on the primary *substantive* consequence of the Court's decisions – the eradication of malapportionment in U.S. legislative districts at both the state and federal levels. Our work focuses on the primary *procedural* consequences of the Court's decisions – the redefinition of the legally mandated default outcome to the redistricting processes in the 50 states, and the increased regularity and frequency with which redistrictings were undertaken. We use these procedural shifts to explain sea changes in two struggles central to congressional elections: that between Democrats and Republicans, on the one hand, and that between incumbents and challengers, on the other.

Democrats and Republicans

As regards the partisan struggle between Democrats and Republicans, our argument starts by noting that the Supreme Court's decisions fundamentally altered the *reversionary* (or default) *outcome* of the redistricting processes in the states. That is, they altered what would happen at law should the state government fail to enact a new congressional districting statute. Once one controls properly for the nature of the legal reversion when analyzing the impact of redistricting, several consequences of the Court's reapportionment decisions come into focus.

First, these decisions made the courts strategic players in all subsequent redistricting actions. The courts were players in those cases where an explicit suit had been brought, because the courts then determined the reversion. But even where no suit had yet been brought, each party might worry that the other would bring a suit, were the redistricting plan not to its liking, at which point each party had to worry about where

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the suit would be brought and what reversion the relevant court would impose.

Second, the courts' ability to set the reversion, combined with the latitude they had in the early years after *Wesberry v. Sanders* in deciding when a plan was sufficiently well apportioned, gave them substantial influence over the final districting plans adopted. Thus, the partisan complexion of the federal judiciary in the 1960s played a central role in redistricting outcomes, as will be seen.

Third, the Supreme Court's decisions unleashed a wave of redistricting just after Lyndon Baines Johnson's landslide victory over Barry Goldwater in 1964 had substantially weakened Republican control of nonsouthern state governments and during a period when the federal judiciary was heavily Democratic. Thus, redistricting in the 1960s was conducted *by* state governments that were less often under unified Republican control than had historically been the case and *under the supervision of* courts that were largely Democratic. This combination produced a substantial net partisan advantage for the Democrats, evidenced not only in the abrupt disappearance of pro-Republican bias outside the South but also in the detailed patterns of how vote shares changed when district lines were redrawn.

Our explanation of the partisan consequences of the reapportionment revolution is quite different from those offered in the literature, both in the line of argument pursued (no one has stressed reversionary outcomes and the strategic role of the courts in the previous literature) and in the conclusion reached (that there was a substantial net partisan consequence directly attributable to the reapportionment revolution). We detail our argument and findings in Part II of the book.

Incumbents and Challengers

As regards the electoral struggle between incumbents and challengers, we argue that the key to understanding the dramatic growth in the apparent advantage of incumbents is to recognize that they are strategic agents, deciding whether to seek reelection or not based on their forecast vote shares. We show that much of the incumbency advantage, as previously measured, reflects incumbents' prudence – getting out when the getting is good – rather than their superior campaigning ability or resources.

We then explore how redistricting affected incumbents' prudential exits and challengers' strategic entries. One line of argument concerns anticipations of redistricting. After the Supreme Court's reapportionment

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decisions, politicians soon realized that redistrictings, rare and not always foreseeable beforehand, would now be unavoidable and regular. This recognition, in turn, facilitated better coordination between incumbents and strong challengers, inducing a stronger redistricting rhythm to congressional entry and exit. Better coordination meant that incumbents more often got out in the face of a particularly formidable challenge, increasing the statistical association between running an incumbent and the incumbent party's vote share.

Another line of argument begins by noting that the eradication of pro-Republican bias in the translation of congressional votes into seats resulted in an abrupt decline in the Republicans' probability of attaining a majority of seats in the House of Representatives. This intensification of the Republicans' minority status exacerbated a syndrome of recruitment-related woes for the party, resulting in significantly larger estimated incumbency advantages for the Republicans than for the Democrats. This last finding, nonobvious and unnoticed in the previous literature, is much at odds with previous theories of why the incumbency advantage arose but follows naturally from our emphasis on strategic entry and exit (as will be shown).

Normative Concerns

To the extent that our explanation of the reapportionment revolution's electoral consequences is correct, these consequences do not pose the threats to our system that many scholars, journalists, and politicians have associated with them. Those who have seen the increasing resources attached to congressional office as increasing the incumbency advantage, and hence bolstering the Democrats' perennial majority status, have correctly been worried. Whenever the resources of public office are used to insulate individual politicians from electoral risk, their accountability to their constituents is weakened. Whenever government resources are used to entrench a single party in government, its accountability to the public at large is weakened. Thus, insulation from electoral risk of the kind suspected would, at a single stroke, debilitate the two fundamental accountability relationships of a democratic system of government.

However, by our story, the insulation of House incumbents is more apparent than real. It is not just that incumbents always "run scared," per Mann (1977) and others. It is that they retire when scared off, and this propensity inflates standard estimates of the incumbency advantage. Indeed, by our estimates, the incumbency advantage enjoyed by

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Democratic incumbents was never – even after 1966 – statistically discernible from zero. Nor, at the aggregate level, has the Democratic party had an unfair advantage in how votes translate into seats.⁴ The major premises of the preceding arguments thus largely disappear.

EXCLUDING THE “SOUTH”

In the first part of this book, we focus on redistricting actions in the period before (1946–1962) and immediately after (1964–1970) the Supreme Court’s reapportionment decisions. In this part, we exclude southern states from the analysis. There are two main justifications for doing so.

First, the legal default to the redistricting process plays a central role in our theory, yet this default was entirely different in the South from elsewhere. Following enactment of the Voting Rights Act in 1965, the Section 5 preclearance rules imposed on seven southern states made the Justice Department the primary arbiter of redistricting plans rather than the courts. Moreover, these Section 5 states were subject to unique legal restrictions on their redistricting plans, such as prohibitions on vote dilution and retrogression.

Second, our theory of redistricting assumes that there was a significant level of interparty competition and that both parties were unitary actors seeking to maximize their respective expected seat shares.⁵ In the South, however, especially before passage of the Voting Rights Act but also in the early years thereafter, the Democratic party utterly dominated the scene and the Republicans were a hopeless minority. We believe that southern redistricting before and even in the 1960s was much more a matter of factional infighting within the dominant party than partisan gerrymandering fought out between the parties.

All told, the politics of redistricting in the South has been theoretically quite distinctive for most of the postwar era on which we focus. Although the basic principles of our approach could be adapted to study southern redistricting, the specific model we employ cannot. Thus, we leave the South for another time.⁶

⁴ For a contrary view regarding whether partisan bias has been near zero, see Campbell (1996).

⁵ More precisely, we assume that parties seek to maximize the utility they derive from their seats. This allows the model to recognize that parties’ attitudes toward risk mattered, as explained in Chapter 3.

⁶ For a recent examination of the politics of redistricting in the South, see Canon (1999).

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To be consistent, of course, we should exclude *all* states that were subject to Section 5 preclearance or were “uncompetitive.” The first criterion (Section 5 preclearance) is not an issue because no nonsouthern states were affected until after the period of focus in the first part of the book (1946–1970). To systematize the second criterion, we consulted the well-known Ranney index of party competition for the period that most closely matched our period of primary focus (*viz.*, 1964–1970, the elections immediately after the relevant reapportionment decision).⁷ All states that were more competitive than all of the already-excluded southern states were included in our analyses. Two border states, Maryland and Tennessee, were even less competitive than some already-excluded states, however, and were accordingly also excluded. Thus, our definition of what is “southern” is slightly more expansive than the definition often used in the literature.

OUTLINE OF THE BOOK

This book is divided into four parts: an introduction, two main substantive parts, and a conclusion. The next chapter sets the stage by describing the Court’s decisions, the condition of congressional districts before and after redistricting, and the reasons offered in the literature as to why redistricting should have been relatively inconsequential. In the same chapter, we also elaborate on the theoretical importance of the reversionary outcome to redistricting, describe how it changed with the Court’s decisions, and argue that this provides the key to a long-standing puzzle about congressional elections in the 1960s.

Chapter 3 begins Part II by presenting the first half of a general model of the redistricting process(es) in the American states. Chapter 4 uses this model to estimate bias and responsiveness in postwar congressional elections outside the South. Our results clearly demonstrate the importance of the reversionary outcome even before the Court’s reapportionment decisions. Chapters 5 and 6 extend the model to include the courts as strategic actors, as is appropriate for redistricting actions after *Baker v. Carr*. Our empirical results show that the partisanship of the judges supervising redistricting cases in the 1960s was at least as important as which party controlled state government in affecting the character of the plan adopted.

⁷ The closest match to the 1964–1970 time period is the index for 1962–1973 published in Ranney (1971).

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The findings of Chapters 3–6 can be interpreted broadly as follows: outside the South, the nation’s congressional districts were mostly products of Republican gerrymanders before *Baker* but increasingly products of bipartisan plans or Democratic gerrymanders afterward. If this general thesis is correct, it implies some very specific district-level consequences of redistricting in the 1960s. Chapter 7 investigates these implications and finds them to hold.

In Chapter 8, we set the stage for the analyses of Part III in two ways. First, we review classic evidence that congressional incumbents abruptly began winning by larger vote margins in the 1960s, review previous attempts to explain this and the related increase in the *incumbency advantage*, and sketch our own explanation. Second, we show that Republican incumbents’ margins increased more than did Democratic incumbents’ margins, and that the Republican incumbency advantage increased more than did the Democratic incumbency advantage (when measured, as is typical, in vote shares). We thus add to the list of explananda that a complete model of postwar congressional elections must address: although there was no systematic difference between the two parties’ incumbency advantages before the reapportionment revolution, afterward Republicans tended to benefit more from incumbency.

In Chapters 9 and 10, we seek to explain the patterns of growth in the incumbency advantage as consequences of the reapportionment revolution’s impact on political recruitment and career planning. Chapter 9 explores how incumbents’ ability to enter or exit in light of their vote forecasts affects previous estimates of the incumbency advantage. Chapter 10 demonstrates that entry by strong challengers and voluntary exit by incumbents have followed the redistricting cycle more regularly since the mid-1960s, arguing that this partly explains the increasing success of incumbents and strong challengers at avoiding contests against one another. Chapter 11 argues that the considerable differences between the two parties in recruitment and career paths that emerged after the mid-1960s stem in good part from (1) the reapportionment revolution’s eradication of pro-Republican bias (shown in Part II), which (2) intensified the Republicans’ minority status and hence (3) drove a wedge between how candidates of the two parties valued House seats. Chapter 12 concludes our discussion of the incumbency advantage and compares our thesis to previous explanations.

In Chapter 13 (Part IV), we review the various consequences of the reapportionment revolution. In understanding both the battle between Republicans and Democrats and that between incumbents and chal-

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lengers, we stress political expectations. Anticipation of what courts would and would not allow had been irrelevant and abruptly became essential; this, along with the wave of redistricting action, put a sudden end to pro-Republican bias. Anticipation of the next redistricting had been relatively infrequent and difficult and abruptly became regular and easy; this suddenly increased the extent to which conventional measures of the incumbency advantage overestimated its size. Finally, anticipations of the Democrats' probability of securing a majority in the House (either at the next election or over a somewhat longer time horizon) changed after the eradication of pro-Republican bias; this increased several differences between the parties in recruitment, career paths, and campaigning.