*Gerrymandering in America*. By Anthony J. McGann, Charles Anthony Smith, Michael Latner and Alex Keena (Cambridge University Press, 2016)

Writing a book that intervenes in a topical debate while making a lasting scholarly contribution is a high-wire act. Authors must comment on a transient state of affairs while establishing a durable truth. In commenting on the manipulation of legislative districts for political gain and the appropriate standards to proscribe such practice, the authors of *Gerrymandering in America* have identified a topical debate. Partisan gerrymandering is one of the most sharply contested issues in the American federal courts and in the American legal academy. However, the book’s most intriguing contributions are discrete observations, and the potential impact of these observations will be undermined by the facts that the law is complex and changing quickly and the scholarship is fast-moving.

The authors’ main claim is that the US Supreme Court case of *Vieth v. Jubelirer*, 541 U.S. 267 (2004) and its impact on US democratic representation have been broadly ignored. This claim might have been tenable at the time the book was conceived, and had partisan gerrymandering and its consequences post-*Vieth* remained an overlooked phenomenon, the text might be a clarion call to action. It is painful to find fault in authors for declaring their book to be ground-breaking when developments have overtaken it before the ink of the first print run is dry. Yet as is evident from the book’s own engagement with recent scholarship, partisan gerrymandering has become an issue of great interest, and that many of the most salient contributions were complete before *Gerrymandering in America*. The book vividly if briefly engages with the scholarship that has proven to be fulcrum of the current headline-grabbing American litigation over partisan gerrymandering, the work of Nicholas Stephanopolous, Eric McGhee, Jowei Chen and Jonathan Rodden. These scholars offered analytic frameworks that radically departed from existing treatments of the topic, and the claim of novelty by the authors of *Gerrymandering in America* might be vindicated by a methodology that likewise challenged established approaches. However, the text primarily relies upon partisan bias to assess and critique districting practices. As the book recognizes, partisan bias was pioneered in the 1980s, and received significant attention in the Supreme Court (*League of United Latin American Citizens v. Perry*,548 U.S. 399 (2006))and in a subsequent wave of scholarship, more than a decade ago.

The most novel contribution of *Gerrymandering in America* is to categorize state districting plans using two characteristics, degree of responsiveness to voter preference and partisan bias, and to apply this categorization to the 2000 and 2010 state legislative districtings and subsequent elections. The authors’ core observation is that partisan bias increased following the 2010 districting. They then map these findings onto various other political conditions, such as the differing means by which states allocate responsibility for redrawing district lines, and how states differ based on the competitiveness of their elections. The analytic framework and the authors’ results are compelling, but would benefit from greater scrutiny of the legal and democratic norms which the authors invoke. These norms are whether battles for political seats should be highly competitive (that is, if ejecting the incumbent or incumbent party is a desirable feature in a districting plan) and whether districting plans should be permitted to favour a given party. The validity of those norms is debated. For example, the Supreme Court in *Gaffney v. Cummings*,412 U.S. 735 (1973) accepted that a bipartisan gerrymander that produced proportional representation by party identity is permissible. The federal bench has thus apparently rejected the value of responsiveness independent of partisan bias. Likewise, the conditions under which bias towards a party becomes normatively undesirable or legally unacceptable remain contested. Some have proposed that, absent a constitutional mandate for proportional representation, a ‘victory bonus’ in representation for a party that has won the right to draw district lines may be democratically legitimate. The authors engage little with the issues that underlie these questions, forgoing the opportunity to lay a path towards a new interpretation of American representation.

Over-broad claims undermine some of the authors’ conclusions, including some that are derived from this intriguing quantitative framework. The book suggests that the *Vieth* decision bears significant causal responsibility for increased bias in state districting plans. While advancing this claim, the authors identify various alternative explanations for the increased partisan bias. After describing this complexity, the authors fail to reach a satisfying conclusion regarding ultimate causal responsibility for the fractious condition of legislative redistricting. Given the importance which the broader arc of the book attributes to *Vieth,* this is not a wholly satisfying endpoint. Likewise, significant attention is dedicated to the question of whether the ‘natural’ distribution of Democrat and Republican voters tends to favour Republicans in the districting process. The authors say that legislative intention is responsible for partisan bias, and then acknowledge that Democrats have a natural (sometimes insurmountable) disadvantage in districting owing to geographical factors. The most theoretically interesting question is evoked by this problem: what is the normative responsibility of legislatures with regards to districting by partisan identity when there are conditions that facilitate certain biases and may naturally benefit certain factions? Rather than address that question, the authors fall back on a semantic distinction. This is between forms of geographic favourability which they call ‘strong’ (inevitable due to natural voter distribution) and ‘weak’ (granting legislatures the *opportunity* to benefit one party over the other). They argue that only the ‘weak’ form is present, and that this is sufficient to show that bias should be attributed to the legislature. This claim may be correct in the most literal sense, as state legislatures are the agents that implement district plans. However, the argument becomes circular: when districts are biased, that is because legislatures have drawn biased districts. The authors ignore the fact that any districting plan will balance multiple competing factors, and that any entity responsible for districting must make trade-offs. Such discretion *does* create the opportunity for self-serving partisan line-drawing. How should such self-serving conduct be evaluated? The book helps one to see that this is the question, but the does not fully explore it.

Various subtle but important aspects of the case law are also underappreciated in the authors’ analysis. The book boldly treats *Vieth* as a complete judicial disavowal of intervention in partisan gerrymandering. In fact only the conservative plurality so held. Justice Kennedy famously refused to conclude that partisan gerrymandering is necessarilynon-justiciable, leaving open the possibility that future developments could enable appropriate judicial intervention. The authors recognize that the prior law under *Davis v. Bandemer*,478 U.S. 109 (1986) produced little direct judicial nullification of gerrymanders and was generally seen as ineffective. However, they still maintain that *Vieth* was decisive in changing legislative behaviour and increasing partisan bias. The book’s structure thus depends upon an overly simplified view of the law and its impact upon legislative behaviour. The treatment of other leading decisions is also somewhat cursory. For example, the Supreme Court decision *Karcher v. Daggett*,462 U.S. 725 (1983) indicates the appropriate factors that a districting may take into account (such as contiguity of communities or existing geographic features). These factors (whose normative validity is a separate issue) might contribute to the ‘weak’ sense of geographical partisan bias, or at least complicate any conclusion that the ‘weak’ tendency towards bias is the result of intentional legislative action. But *Karcher* receives limited attention, as does the fact that intrinsically superior baseline principles for districting are yet to be found and broadly accepted.

The latter half of the book offers a series of historical and theoretical commentaries on the legal character of partisan gerrymandering. While each of these commentaries provides a provocative perspective, they are not integrated with the quantitative core of the book, and each provides a brief take on issues of great complexity and depth. For example, one of the chapters argues that *Vieth*, by enabling states to shape national representation through gerrymanders, realizes the Anti-Federalist preference for a weak national government. This is an interesting observation regarding how partisan gerrymandering gives state legislatures an additional political lever. However, as a description of the hydraulics of power it is inaccurate: the districting that led to the *Vieth* litigation itself was partly induced by the *national* Republican Party’s instruction to the Pennsylvania Republicans to punish the Democratic Party for advancing Democratic gerrymanders in other states. If politicized districting serves to benefit any class of political actor, it would seem to be party elites. The question of how courts should intervene to regulate party-voter interaction is a thorny question as thoroughly entangled with issues of race and wealth as with the one-person, one-vote principle. Likewise, the book’s key claim that equal protection doctrine requires a principle of majority rule by party identity hangs on unspoken substantive assumptions. For example, the book requires one to assume that party identity is sufficiently fixed to deserve treatment as an equal protection category, or that personal party identity has moral or legal status analogous to the individual right expressed by one-person one-vote.

The book thus raises more questions than it answers, particularly from a legal perspective. Given the fast-paced transformation of law and scholarship surrounding partisan gerrymandering, this may dampen its impact. Its most interesting and defensible assertions are discrete, and would do better as stand-alone arguments advanced with a targeted focus. This is particularly true of its core quantitative analysis, which is a strong a candidate for illuminating the practical effects of partisan gerrymandering.

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