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WORKING PAPER

The Case for Redistricting Juries:

Lessons from British Columbia's Revolutionary Experiment in Democratic Reform*

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> "As the next census approaches… I think we should begin an open bipartisan discussion about ensuring that future attempts at redistricting are as fair as possible…. [T]he fact of the matter is that we now have a system where, too often, our representatives are selecting their voters, as opposed to the voters selecting the representatives. That is a situation that I think the American people should not accept."
>
> --*President Barack Obama*

In April 2010, the U.S. government will conduct its next decennial census, triggering a wave of redistricting that will affect elections at all levels of U.S. government. Anticipating this once-in-a-decade event, policymakers and democratic reform activists throughout the United States are crafting laws to create a more democratically accountable redistricting process.

Central to the current debate on redistricting reform and the call for independent redistricting commissions is the observation that when elected officials can choose their own voters they have an incentive to do so in a way that enhances their own reelection prospects and power even when this conflicts with the public interest. There is much disagreement about the exact nature of this conflict of interest, the extent to which it has anti-democratic consequences, how to remedy its ill effects, and whether some commonly proposed remedies might do more harm than good. But there is little disagreement that elected officials and the public have different interests when it comes to designing political district boundaries (Mann and Cain 2005; Hirsch 2003; Potter, Skaggs, and Wilson 2006; Issacharoff 2002; Kubin 1997; Winburn 2008; McDonald and Samples 2006).

British Columbia's Citizens' Assembly on Electoral Reform suggests one innovative way to solve the conflict of interest problem. British Columbia, a province on the West coast of

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Canada, used an independent commission to reform its electoral system, including changing political district boundaries. But instead of using appointed commissioners, it used randomly selected citizens. On May 12, 2009, British Columbia voters will head to the polls for a second time to vote on a Citizens' Assembly proposed referendum proposed to change the electoral system.

The Citizens' Assembly is the most compelling illustration to date of a new model for redistricting reform based on randomly selected independent redistricting commissions. Other redistricting reforms, notably California's recently passed Proposition 11, have incorporated an element of random selection to address the conflict of interest problem. But they have not developed this idea to the same extent as the Citizens' Assembly.

This working paper argues for an independent redistricting commission, called a "redistricting jury," that combines Citizens' Assembly and traditional jury features. Central to the argument is that whereas previously turning average citizens into redistricting experts could not be done reasonably efficiently, new information technologies combined with suitable public policies could radically change this cost/benefit equation.

British Columbia's Citizens' Assembly on Electoral Reform

In 1996, the Liberal Party in British Columbia, led by Gordon Campbell, received the most votes of any party in the provincial election. Nevertheless, the second place party won a majority of the seats in the legislature. To correct this perceived democratic failure, Campbell promised to create a Citizens' Assembly on Electoral Reform if the Liberals came to power, which they did in the next election in 2000. The Citizens' Assembly was intended to address the conflict of interest elected officials would have if they designed their own electoral system.

Campbell appointed a former leader of the Liberal Party, Gordon Gibson, to propose a detailed implementation plan for the Citizens' Assembly (Gibson 2002). With only minor changes, the recommendations he came up with in 2002 were approved by the legislature in 2003 and implemented the following year.

In 2004, the government, led by the Liberal Party, created a Citizens' Assembly of 160 near-randomly selected citizens and gave it the job of recommending the best possible electoral system for British Columbia. If the Citizens' Assembly recommended a system different from the current one, its recommendations would be placed on the ballot at the next provincial election as a referendum item.

Members were chosen via a stratified random sample. To ensure that the resulting Citizens' Assembly looked like the population of British Columbia, the random selection was stratified over three selection rounds by riding (the name for a political district in British Columbia), gender, and age. Invitations to become members were initially sent to a stratified random

sample of 23,034 individuals. Of those, 1,715 expressed an interest in learning more information about becoming a member. Of those, 1,441 were selected via a second round stratified random sample to attend a local informational session describing the Citizens' Assembly's work and the significant commitment being a member would entail. After the informational sessions, 914 agreed to participate. Of these, 158 (a male and female from each of British Columbia's 79 ridings) were selected via a third round stratified random sample. After this final selection, when it was discovered that no native American British Columbians were in the final 158, two were randomly selected, thus bringing the total to 160, plus an additional vote for the Chair of the Citizens' Assembly (For additional details, see Warren and Pearse 2008; Snider 2008; British Columbia Citizens' Assembly on Electoral Reform 2004). See Table 1 for facts about the Citizens' Assembly's process (from Snider 2008).

All selected members of the Citizens' Assembly were paid $150/day for their participation, plus travel expenses. The total budget, excluding promoting the Citizens' Assembly's referendum ballot item in 2005 and 2009, was $5.5 million (in Canadian dollars).

The Citizens' Assembly deliberated for close to a year, mostly on weekends, before making its recommendation. The deliberations occurred from January through November 2004, with the referendum on its recommendation on May 15, 2005. The Citizens' Assembly recommended changing British Columbia's First-Past-the-Post (FPTP) electoral system with one based on the Single Transferable Vote (STV). This included changing and enlarging the political districts.

The referendum received 57.1% of the popular vote but needed 60% to pass. After failing to pass by such a close margin, the government, still led by Campbell, ruled that the Citizens' Assembly's recommendation would be placed on the ballot again, at the next provincial election to be held on May 12, 2009.

For purposes of this working paper, "The Citizens Assembly Model of Democratic (including Redistricting) Reform" refers to a government body, randomly selected, with binding government authority, to deal with a democratic reform question where elected officials collectively have a direct conflict of interest with their constituents.

Table 1. Facts about the Citizens' Assembly's Process

Meetings Start	January 2004
Meetings Finish	November 2004
Date of Final Report	December 10, 2004
1st Referendum Date	May 15, 2005
2nd Refendum Date	May 12, 2009
# of Members (Including Chair)	161
Alternate Members Selected	0
Total Dropouts	1
# of Political Districts	79
Members/District	2
Members Selected From Districts	158
Members Selected at Large (Native Americans)	2
Members Supporting Final Recommendation	95% (145/152)
Voters Supporting 1st Referendum	57.7%
Voters Supporting 2nd Referendum	?
Votes Required to Pass 1st and 2nd Referendum	60%
Budget for Member Deliberations	$5.5 million
Budget for Marketing the 1st and 2nd Referendum	$.5 million
Total Government Budget	$6.5 million
Jurisdiction	Select Electoral System
Formal Power	Place Referendum on Ballot
Status Quo System	First-Past-the-Post
Recommended System	Single Transferable Vote
Stratification Criteria for Random Sample	Gender, Age, District, Aboriginal
Population	4.4 million
Initial Sample Size	23,034
Positive Responses	1,715
% Initial Yield	7%
2nd Round Sample Size (invited to attend info. session)	1,441
Number of Information Sessions	27
Positive Responses After Informational Session	914
Final Round Sample Size	160

British Columbia's Citizens' Assembly is not the only electoral/redistricting body with such attributes. But it carried them to an extreme, especially the extent of random selection, never tried in the United States.

On November 4, 2008 California voters passed Proposition 11, a referendum to create an independent redistricting commission, partially selected through random selection. The redistricting commission consists of 14 members: five Democrats, five Republicans, and four others. Its method of selection may be more complex than for any previous U.S. redistricting

commission. For example, the National Conference of State Legislatures's writeup of the California redistricting system requires more space to explain than any of the redistricting commissions in the other U.S. states (National Conference of State Legislatures February 2009). This complexity was sold to the public, at least in part, as a method to remove politics from the redistricting process. The official pro statement for the Commission, for example, includes the following statement: "The current system where politicians draw their own districts is rigged to make sure they get reelected. Proposition 11 will put voters back in charge and make it easier to vote them out of office if they're not doing their job." (California Secretary of State 2008)

The selection process for Commission members is run by the state auditor and includes the following steps: (Cal-Tax 2008; California Secretary of State 2008)

- The state auditor opens the process to all registered voters.

- The state auditor removes applicants with conflicts of interest (including those who, within the past 10 years, have been political consultants, lobbyists, elected officials, candidates or political donors of $2,000 or more).

- The state auditor establishes an Applicant Review Panel of three independent auditors, selecting randomly from a pool of all state-employed auditors licensed by the California Board of Accountancy. Drawing must continue until the three members include one Democrat, one Republican and one member not registered with either of the two major parties.

- The Applicant Review Panel selects 60 of the most qualified applicants, including 20 Democrats, 20 Republicans and 20 who aren't registered with either major party. Selections must be based on relevant analytical skills, ability to be impartial and "appreciation for California's diverse demographics and geography."

- The pool of 60 is submitted to the Legislature, and the Democratic and Republican leaders of each house are allowed to strike two applicants apiece from each subpool of 20.

- From the remaining applicants, the state auditor randomly draws eight names, including three Democrats, three Republicans and two independents.

- The eight commissioners chosen in the previous step review the remaining pool of applicants, and select six of them to join the commission. The six must include two Democrats, two Republicans and two independents. Each of the six must be approved by at least five votes of the first eight commissioners, with at least two votes from Democrats, two from Republicans and one from an independent. The six appointees

> shall be chosen to "ensure the commission reflects this State's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity."

Note that the method of selecting commission members includes two different types of random selection:

1) The selection of those who select the commissioners. Three auditors are randomly selected from all state-employed and licensed California auditors.

2) The selection of the commissioners. From the pool of applicants left after the auditors' selection of 60 and the legislative leadership's striking of up to 24, 8 applicants are randomly selected. The 8 applicants then choose the remaining 6: 2 Democrats, 2 Republicans, and 2 others.

In comparison to British Columbia's Citizens' Assembly on Electoral Reform, California's redistricting commission may appear very modest. But it embodies the most ambitious use of random selection in U.S. redistricting reform—and possibly even the entire history of U.S. democratic reform. The only other use of random selection in U.S. redistricting reform involves Illinois's redistricting commission. That commission is only a backup if the legislature cannot agree on a redistricting plan. If the commission, which is evenly divided between Republicans and Democrats, also fails to come up with a plan, then the Illinois Supreme Court selects two persons not of the same political party, one of whom is chosen by lot to be the tie breaking member of the commission. This is about as modest a use of random selection as can be imagined (National Conference of State Legislatures 2009).

It is important to keep in mind that British Columbia's Citizens' Assembly on Electoral Reform does not necessarily embody the most effective and efficient implementation of the "Citizens Assembly Model of Democratic Reform." This working paper argues for what is essentially a slimmed down version of that Model labelled a "Redistricting Jury."[1] The Redistricting Jury Model would have been inappropriate in British Columbia because that Citizens' Assembly had a much more ambitious agenda: design an entire electoral system almost from scratch.

The Redistricting Jury Model involves fewer institutional innovations; a smaller role for government elites in setting the Citizens' Assembly's agenda and providing it with subjective information; and significantly less cost to members in terms of time, work and family disruption, and intellectual effort. Whereas British Columbia's Citizens' Assembly met dozens of times over close to a year, a redistricting jury could finish its work in much less time, perhaps, as suggested below, in as little as four days over a several week period.

Key to the argument for redistricting reform juries is that they are more practical now than ever before because of the ability of new information technologies to empower average citizens and public interest groups.

Redistricting Reform Jury Proposal

The redistricting reform jury proposal includes the following features:

1) The redistricting jury takes advantage of the extensive jury infrastructure already developed by the U.S. court system. This includes the random selection of jurors, the use of judges to preside, the adversarial system, the buildings, and the insulation of jurors from bribery and personal lobbying.

2) To be representative of the general populace, the jury has 100+ members, more than any petite or grand jury ever convened in the United States. Go guard against partisan bias, the random jury selection could be stratified by registered party affiliation, so the partisan composition of the jury reflects the populace. The jury may also be stratified by other objective criteria such as gender, geographic area weighted by population, and age bracket.

3) The jury is moderated by a panel of five or more judges, with a rotating presiding judge for the jury-as-a-whole and rotating judges-as-moderators to moderate the face-to-face deliberations of the jury in smaller sub-groups.

4) All government demographic, geographic, and other related redistricting data are available in a structured database format with an open standard such as XML (e.g., "RedistrictingXML") and made available via the Internet with on-demand access and automated, real-time feeds.

5) All government software related to the design of political districts is open source and made available via the Internet with on-demand access and automated update notices.

6) The jury has an accompanying website for interested citizens and groups to submit redistricting plans and open source redistricting simulation software. Interested citizens and groups can also provide brief initial testimony to the jury.

7) All testimony to the jury is webcast and made available in a searchable, downloadable format with automated, real-time feeds.

8) The jury is provided with an internal, private messaging system only available to the jurors.

9) Each juror is given a portable computer (such as a $200 netbook) that can access redistricting simulation software seamlessly linked to actual U.S. Census and related redistricting data. Jurors are given a total of at least a day to explore this software and learn about the principles used to design political districts.

10) After deliberation with each other, the jurors rate written and spoken public comments with thumbs up or thumbs down, indicating whether they want more information/testimony from that source.

11) The finalists selected by the jury submit detailed redistricting plans and are given ample time to argue their case before the jury. Plans submitted by the majority and minority party leaders in both houses of the legislature may automatically be designated finalists.

12) The jurors rank order the detailed redistricting proposals submitted by the finalists. Using the Single Transferable Vote (also called Instant Runoff Voting), the jurors' preferences are aggregated to choose a winning plan. The jurors' job is not to design the best possible redistricting plan, but only to choose the best plan among those submitted.

This proposal is more viable now than ever before because new information technology makes it vastly more efficient to develop redistricting expertise and design districts with actual data. Previously, redistricting was a hugely complex undertaking involving highly skilled manual labor, expensive tools, hard-to-access public datasets, and proprietary software. Designing the particulars of a redistricting plan was well beyond the reach of the average citizen and all but the most motivated and well-heeled interest groups. Accordingly, it was reasonable to restrict redistricting to established experts.

With advanced simulation software tied to actual redistricting data the average citizen can conceivably design districts within a few hours, if only by sight, that are better than the districts designed by today's political-elite controlled redistricting bodies after months of effort and extensive use of highly-paid professionals. Partisan and incumbent-protection gerrymanders, for example, are typically misshapen and immediately obvious to the naked eye. The redistricting jury could eyeball and rule out such gerrymanders with minimal effort. The redistricting software could also generate simple statistics about proposed political district plans, such as how many counties are split, how close districts are to the one-person, one-vote standard, and the extent to which geographic barriers are crossed. Over the years, there have been many efforts to develop redistricting software for the general public (e.g., see Redistricter, BARD, and Districting for ArcGIS), but its sophistication and ease-of-use leave much room for improvement.

Information technology has empowered average citizens in countless other walks of life. Publishing a flyer, for example, used to be very expensive and required specialists highly skilled in design, typesetting, and printing. Now it can easily be done by the average individual thanks to modern computers, software, and printers. Similarly, searching for all published use of a particular word or phrase was an impractical task that could cost tens of

millions of dollars and require more than a lifetime of effort. Today, thanks to Google, it can be done near instantaneously.

For information technology to fully empower redistricting juries, civil society must change as well as government policy. In particular, foundations need to fund more ambitious open source software redistricting projects so jurors and outside interest groups can efficiently both learn about and design actual political districts. They also need to fund more ambitious non-profit open redistricting websites to mix government redistricting data and other data in ways that make it useful to jurors and public interest groups.[2]

A model for such linkages between government, foundations, and nonprofit groups has already been established in the open government community, which, with foundation backing, has pushed to revolutionize government transparency policies while creating innovative non-profit websites to access and transform that data in ways that empower citizens who otherwise couldn't afford to access this information and have their voices heard. Snider has described these synergies in the context of legislative media (2008, Forthcoming 2009). Redistricting media have a lot of catching up to do.

A possible schedule for a redistricting jury, spread out over two two-day work sessions, might be:

Day 1: Spend morning listening to the public provide brief demonstrations of redistricting software. Spend rest of day learning about redistricting.

Day 2: Spend morning listening to the public provide brief demonstrations of redistricting plans. Spend rest of day deliberating on those plans.

Take twelve day break from face-to-face meetings. Jurors are welcome to message each other and read the comments submitted to the public redistricting website.

Day 9: Initial Up/Down votes on plans and additional testimony due.

Day 15: Spend morning listening to finalists argue for their favorite redistricting plans. Spend rest of day deliberating on those plans and either come to a vote or repeat the process again tomorrow.

Day 16: Spend morning listening to additional requested testimony. Spend rest of day deliberating and then come to a vote

Compared to other possible citizens assembly based democratic reform proposals (Snider 2009b), a redistricting jury is relatively modest because it relies so heavily on existing institutions. Nevertheless, it is still a radical departure from the status quo and faces the obstacle that elected officials would have a conflict of interest implementing it. Thus, the most politically feasible place to pursue this policy agenda is at the state level, where close to

half of U.S. states have an initiative process that could place this type of proposal on the ballot. It is well recognized in the democratic reform literature that states with the initiative are most likely to pass laws, such as term limits, where elected officials have a conflict of interest. The same political logic should also apply to redistricting reform based on redistricting juries.

Advanced information technology or not, two potential arguments against this redistricting jury proposal relate to the intrinsic complexity of redistricting and the intrinsic redistricting competence of average citizens. If redistricting is so intrinsically complex that it cannot be accomplished by a jury of randomly selected citizens in a reasonably short amount of time, then the redistricting jury proposal isn't viable. A more extreme version of this argument is that average citizens simply lack the intellectual capacity to do redistricting competently. These are the arguments, rarely explicitly made, that have led generations of redistricting reform scholars and advocates to look at commissions made up of experts as the solution to redistricting problems.

One counter to these arguments is to acknowledge that choosing a perfect redistricting plan would take an infinite amount of time but to argue that the appropriate standard should not be perfection but how long it would take for the redistricting jury to do a better job than the current, conflict-of-interest-driven system. Using this standard, the burden on the redistricting jury is much more manageable.

A second counter is that jurors no more need to master all the details of redistricting to choose an excellent redistricting plan than they need to learn how to build a car and compare every part in every car currently for sale in order to choose a car for purchase. The most relevant skill a citizen needs—whether buying a car or choosing a redistricting plan—is the ability to make a good decision about whom to trust. This is a much more manageable decision and one that can be wisely done by a citizen with relatively little skill in redistricting.

A juror's decision, for example, might boil down to "do I trust the Democratic or Republican parties more than my state chapter of Common Cause or The League of Women Voters to design a more democratically accountable set of political districts?" Once the question is framed this way, the citizen just has to choose the redistricting plan proposed by the trusted source. This, in fact, is the way legislators make most of their decisions about the hundreds or thousands of bills they are asked to vote on during a given legislative session (Kingdon 1973). In many cases, they are making far weightier decisions with only a few minutes of deliberation about whom they should trust (e.g., their party or committee leader) to decide their vote. If this decision making process is good enough for legislators allocating billions of dollars and deciding the future of public education, safety, and health, why not for average citizens making less weighty decisions?

Juries vs. Other Types of Redistricting Public Bodies

Let us now place the Citizens Assembly Redistricting Model in the Context of other redistricting reform approaches. The three major approaches to minimizing elected officials' conflict of interest in designing districts are to change the 1) electoral system, 2) redistricting principles, and 3) redistricting bodies. Changing the electoral system can minimize or eliminate the redistricting conflict of interest problem. For example, there is no redistricting conflict of interest problem with U.S. Senators or in states with only one member of the House of Representatives because there are no districts to modify as a result of population changes. Shifting to a list proportional electoral system, where voters select political parties across an entire nation or region, also eliminates this problem. The literature on redistricting reform rarely considers such electoral reform, presumably because it is considered either undesirable or impractical. It also greatly complicates the analysis because switching electoral systems involves many considerations other than only changing political district lines. The British Columbia Citizens' Assembly on Electoral Reform undertook such a larger task, with new political district lines a relatively small part of their overall set of recommendations.

The redistricting conflict of interest problem can also be minimized by forcing elected officials to follow certain principles in their redistricting. Examples of such principles that have been judicially recognized are compactness, contiguity, preservation of counties and other political subdivisions, preservation of communities of interest, preservation of cores of prior districts, protection of incumbents, and compliance with Section 2 of the Voting Rights Act (National Conference of State Legislatures 2009). Such redistrictng principles, when codified in law, can constrain the potential for anti-democratic partisan and incumbent-protection gerrymanders. But many of these redistricting principles are ambiguous, mutually inconsistent, and unenforceable, thus limiting their practical effectiveness (National Conference of State Legislatures 2009; Hirsch and Ortiz 2005; Mann and Cain 2005).

Given the perceived limitations of the two approaches above, much of the literature on redistricting reform centers on changing who does the redistricting. The goal with this approach is to remove the redistricting power from the direct control of the politicians who have a conflict of interest in exercising it. A body with redistricting powers may also reform the electoral system and establish the redistricting principles used as the basis for redistricting, but those problems are considered secondary to solving the conflict of interest problem directly; that is, by changing who has the power to redistrict.

Changing the redistricting body may be characterized as an interest-based approach to redistricting. The various types of interest-based redistricting reform can be analyzed with principal-agent theory.

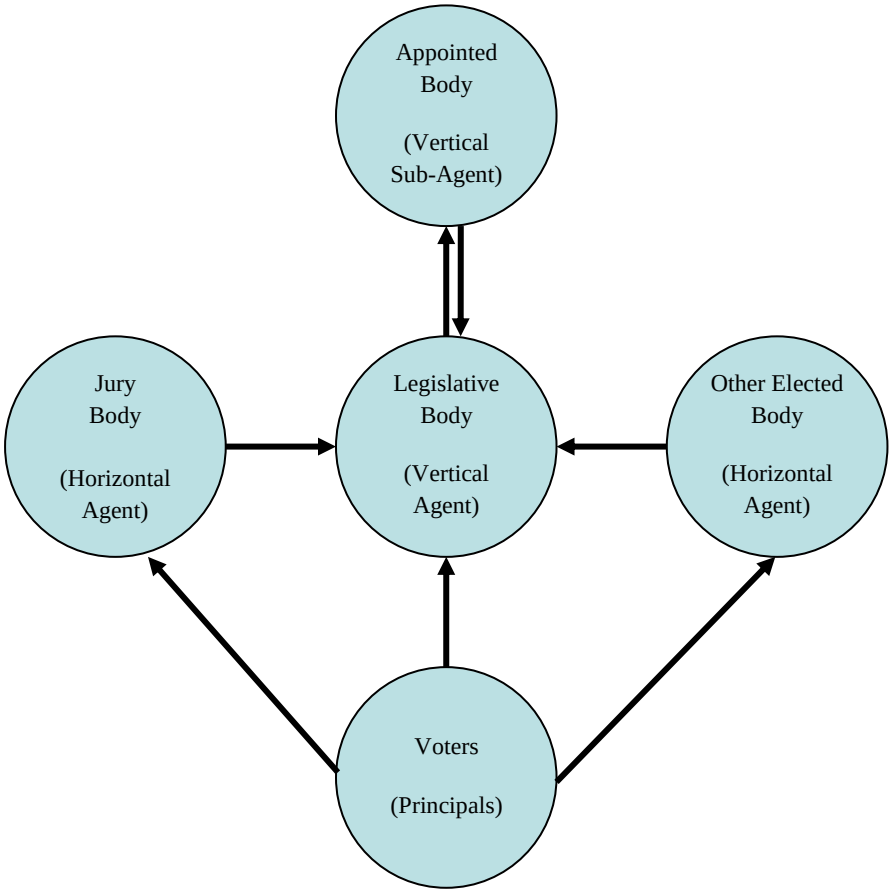
A Principal-Agent Model of Different Types of Redistricting Reform

Principal-Agent theory provides a useful way to categorize and evaluate the strengths of the different types of interest-based redistricting reforms. In principal-agent theory, a principal delegates a task to an agent. There are a number of reasons why a principal might delegate a task to an agent, but the most common one is that the agent can more efficiently perform the task. Voters, for example, delegate democratic governance tasks to elected representatives for the same reason they delegate legal tasks to lawyers, medical tasks to doctors, and car production tasks to car companies: it is impractical and inefficient for them to take on all these tasks themselves.

The major problem with delegation is that agents may have an incentive to act opportunistically; that is, to act in their own interest rather than the interest of their principals. Legislators, for example, may have an interest in drawing political district lines that raise barriers to entry for potential political competitors when the public might like to see those barriers lowered.

Figure 1 depicts the different types of agents potentially involved in redistricting reform. The two basic types of agents are vertical and horizontal. The vertical agent is the agent with the primary responsibility to peform a task. Horizontal agents (which include the so-called "checks & balances" system built into the U.S. Constitution) ensure that the vertical agents do not acquire too much power in relation to principals and are held accountable for their actions. They are horizontal to the vertical agent, not the principal. In relation to the principal, they are also a vertical agent. For legislative redistricting, the direct vertical agent is the legislature, and the horizontal agents include all other agents who serve to check the legislature's power and ensure that it is held democratically accountable to voters.

Figure 1. Typology of Redistricting Models (arrows point in direction of accountability)



Vertical agents can further divided into those that are direct and indirect. The legislature is the direct agent and any body appointed by the legislature, such as judges and bipartisan or partisan commissions, is an indirect agent, labeled a sub-agent.

Note that whenever an agent delegates a task to a sub-agent, such as a redistricting body, it is granting a measure of independence to that body. Thus, the various appointed redistricting bodies are legitimately called "independent redistricting bodies," even if they must be wary of biting the hand that feeds them personally or endangering long-term support for their sub-agent institution.

However, from the standpoint of principal-agent theory, there are different degrees of conflict-of-interest independence. Sub-agent independence offers less independence than horizontal agent independence because the primarily duty of loyalty of a sub-agent is to the agent whereas the primary duty of loyalty of a horizontal agent is to the principal.

Horizontal agents fall into two broad classes: elected and randomly selected. For Congress, elected horizontal agents include the executive branch and state legislatures. British Columbia's Citizens' Assembly on Electoral Reform is a randomly selected horizontal agent.

All forms of vertical subagents have been bundled into one category, including appointed judges, bipartisan commissions, and partisan commissions. The justification for this unusual combination is that all vertical sub-agents will be fundamentally constrained not to act in the public interest by elected officials' conflict of interest in appointing them. This does not imply that bipartisan independent commissions may not be more democratically accountable than partisan ones. The point is simply that both types of commissions face fundamentally similar constraints, even if the details of those constraints may vary. The large literature on the "judicial thicket," the observation that judges rarely rule on laws such as redistricting reforms where elected officials potentially have a collective and direct conflict of interest with voters, provides evidence of this incentive system for judges, who are often thought to be more independent than appointed commissions (Gerken 2004).

All forms of elected horizontal agents have also been bundled into one category. Again, such bundling is highly unusual. For example, when a state legislature picks its own district lines, that's generally considered to involve a greater conflict of interest with the public than when it picks Congressional district lines. However, all elected officials at the federal and state levels tend to have many dependencies on each other and corresponding opportunities to trade favors. Members of the same party will be hesitant to alienate each other. A president of the U.S. who wants to pass controversial healthcare reform as his top priority may not want to use up his political capital with Congress trying to pass redistricting reform. A state legislator who wants Congressional pork for his district and to be invited to the blue ribbon cutting ceremony to take credit for it may not want to alienate the member of Congress in his district, who also may be contributing to his political campaigns and sharing valuable political and public policy information. In contrast, a well-designed horizontal jury agent is fundamentally different because it can avoid such entangling and corrupting relationships.

All these principal-agent categories are ideal categories in the sense of Weberian ideal categories. That is, they help us think clearly about a problem but don't necessarily exist in the real world. In practice, most redistricting systems involve a mix of categories, if only because judicial review is a central part of the redistricting process.

Nevertheless, the mix of components can vary substantially. For example, California's redistricting commission, created with the passage of Proposition 11, creates a hybrid body with horizontal jury and vertical sub-agent components. In contrast, in Alaska the governor appoints two redistricting commission members, the president of the Senate one, the speaker of the House one, and the chief justice of the Supreme Court one. This combines both vertical sub-agent and horizontal elected components.

Table 2 elaborates on the strengths and weaknesses of the various incentive-based redistricting models. The first five columns correspond to the actors depicted in Figure 1. The sixth column is for possible mixes of those actors in redistricting bodies.

Table 2. Strengths and Weaknesses of Redistricting Selection Models

	Principals	Vertical Agents		Horizontal Agents		Mixed Agents
		Direct	Indirect	Elected	Jury	
Examples	Town Meeting	Elected Legislature	Appointed Partisan or Bipartisan Commission, Judiciary	Elected Executive or Judicial Branch, State Legislature	Randomly Selected Citizens Assembly	Mixed Member Commission (e.g., California's Redistricting Commission)
Cost to Develop Expertise	Prohibitive	Low	Low	Low	High (but dropping)	(?)
Conflict of Interest (Bias)	Low	High	Medium	Medium	Low	(?)

The different models are characterized along two dimensions: cost to develop redistricting expertise, and the redistricters' conflict of interest with principals. Average citizens clearly start with less expertise than public officials or those likely to be appointed by those officials to a redistricting commission. Those with the greatest conflict of interest are legislators and those appointed by them or otherwise dependent on them. The interesting tradeoff is that those with the greatest conflict of interest are least costly to society to turn into expert redistricters because they already have substantial expertise as a result of their experience in public life. Average citizens, in contrast, lack such conflicts of interest but can be very expensive to turn into experts.

Note that the two models with the least conflict of interest do not presently exist in U.S. state and federal redistricting. These are when political districts are selected by either principals directly (also known as direct democracy) or horizontal jury agents. The direct democracy approach doesn't exist because it's totally impractical in a modern, complex society (Dahl and Tufte 1973). In theory, voters could bypass representative democracy and choose political districts on their own the way small Vermont towns host a town meeting to conduct

the government's business or via a ballot initiative. However, since redistricting is a complex and time consuming undertaking, it would be prohibitively expensive to try to turn all citizens into redistricting experts. Ballot initiatives have been widely used to pass proposals for general redistricting principles and independent redistricting bodies. But no serious argument has been made that conventional mechanisms of direct democracy should be used to design and vote on concrete redistricting plans.

The argument for redistricting juries is similar to the argument for conventional polling, which uses a relatively small representative sample to arrive at essentially the same democratic result that would be achieved by polling the entire population. The advantage is that using a representative sample as opposed to the whole population may reduce costs by orders of magnitude. Even training a few hundred average citizens to become competent redistricters would have been prohibitive until recently. But thanks to the type of technologies and institutions described here, this need not continue to be the case. This is why the cost to develop expertise for jury horizontal agents is characterized as high but dropping.

A redistricting jury is no panacea. Compared to what are widely considered to be the least biased alternatives, partisan or bipartisan commissions, redistricting juries are much less likely to propose incumbent-protection gerrymanders because they have much less to gain by doing so. Compared to partisan commissions, they are still likely to exhibit some partisan bias, but less so. In most states, the median voter is an independent, and these voters will presumably not support a partisan gerrymander. Where one party overwhelmingly dominates a state, a partisan gerrymander seems reasonably likely—but no worse than what would have been generated with a partisan commission and without the same pro-incumbent bias. In regard to minority rights, there is no guarantee a redistricting jury would be any better than other commission forms. (Indeed, protecting minority rights is a cause of tension for all democratic bodies that adhere to the principle of political equality and thus decide by majority vote.) But its decisions would be subject to the same type of judicial review, so should be no worse.

Conclusion

Democratic institutions are not fixed in stone. They can and should evolve based on changing technology, economics, and norms within a society. British Columbia's Citizens' Assembly on Electoral Reform blazed a trail in using randomly selected citizens to conduct democratic reform when elected officials have a blatant conflict of interest in doing so. But the British Columbia Model is needlessly revolutionary for the relatively modest requirements of redistricting. A "redistricting jury," largely based on existing institutions, is adequate for that purpose.

Redistricting systems that allow elected officials a large measure of control over how their political districts are drawn and thus who their voters are create a conflict of interest with

voters. There are many redistricting systems that have evolved to mitigate that conflict of interest but none has the same potential as redistricting juries to substantially reduce or even eliminate it. Critical to the feasibility of redistricting juries is the development of information technologies and civil society institutions that empower average citizens to develop redistricting expertise at only a tiny fraction of the time and expense historically required.

The model of a redistricting jury proposed here is by no means the last word on citizens assembly based democratic reform. But it does point to a relatively simple, elegant, and practical way to implement such reform for an important area of democratic governance where the foxes have for too long been granted the power to guard the chicken coops.

References

British Columbia Citizens' Assembly on Electoral Reform. 2004. Making Every Vote Count: The British Columbia Citizens' Assembly on Electoral Reform Technical Report. Vancouver, British Columbia: British Columbia Citizens' Assembly on Electoral Reform.

Cal-Tax. 2008. *Proposition 11* 2008 [cited December 1 2008]. Available from http://www.caltax.org/RedistrictingInitiativeAnalysis.pdf.

California Secretary of State. 2008. *Official Voter Information Guide* 2008 [cited December 1 2008]. Available from http://voterguide.sos.ca.gov/past/2008/general/pdf-guide/Props/arguments-rebuttals/prop11-arguments-pg72-73.pdf.

———. 2008. *Proposition 11* 2008 [cited December 1 2008]. Available from http://voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop11.

Dahl, Robert Alan, and Edward R. Tufte. 1973. *Size and Democracy, The Politics of the smaller European democracies*. Stanford, Calif.,: Stanford University Press.

Gerken, Heather K. 2004. Lost in the Political Thicket: The Court, Election Law, and the Doctrinal Interregnum. *University of Pennsylvania Law Review* 153 (1):503-540.

Gibson, Gordon. 2002. Report on the Constitution of the Citizens' Assembly on Electoral Reform, Submitted to the Honorary P. Geoffrey Plant, Attorney General of British Columbia. Vancouver, British Columbia.

Hirsch, Sam. 2003. The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting. *Election Law Journal* 2 (2).

Hirsch, Sam, and Daniel Ortiz. 2005. Beyond Party Lines: Principles for Redistricting Reform. Alexandria, VA: Reform Institute.

Issacharoff, Samuel. 2002. GERRYMANDERING AND POLITICAL CARTELS. *Harvard Law Review* 116 (2):593.

Kingdon, John W. 1973. *Congressmen's Voting Decisions*. New York,: Harper & Row.

Kubin, Jeffrey C. 1997. The Case for Redistricting Commissions. *Texas Law Review* 75 (4):837.

Mann, Thomas E., and Bruce E. Cain. 2005. *Party lines : competition, partisanship, and congressional redistricting*. Washington, D.C.: Brookings Institution Press.

McDonald, Michael, and John Curtis Samples. 2006. *The Marketplace of emocracy: Electoral Competition and American Politics*. Washington, D.C.: Cato Institute : Brookings Institution Press.

National Conference of State Legislatures. 2009. Redistricting Law 2010. Denver, Colorado: National Conference of State Legislatures.

———. February 2009. Redistricting Law 2010. Denver, Colorado: National Conference of State Legislatures.

Potter, Trevor, David Skaggs, and Mary G. Wilson. 2006. Building a National Redistricting Reform Movement: Redistricting Conference Report. Salt Lake City: League of Women Voters, Campaign Legal Center, Council for Excellence in Government.

Snider, J.H. 2008. Crackpot or Genius? Canada Steps onto the World Stage as a Democratic Innovator. *Journal of Public Deliberation* (1), http://services.bepress.com/jpd/vol4/iss1/art12

———. 2008. The Dismal Politics of Legislative Transparency. In *Would You Ask Turkeys To Mandate Thanksgiving?* Cambridge, MA: Shorenstein Center on the Press, Politics, and Public Policy.

———. 2008. Using Citizens Assemblies to Reform the Process of Democratic Reform. In *Would You Ask Turkeys To Mandate Thanksgiving?* Cambridge, MA: Shorenstein Center on the Press, Politics, and Public Policy.

———. Forthcoming 2009. Would You Ask Turkeys To Mandate Thanksgiving? The Dismal Politics of Legislative Transparency. *Journal of Information Technology and Politics* 6 (2).

Warren, Mark, and Hilary Pearse. 2008. *Designing deliberative democracy: The British Columbia Citizens' Assembly, Theories of institutional design*. Cambridge, UK: Cambridge University Press.

Winburn, Jonathan. 2008. *The Realities of Redistricting: Following the rules and limiting gerrymandering in state legislative redistricting*. Lanham: Lexington Books.

Notes

1 Snider has also developed a "fat" version of this model in a paper to be presented at the Annual Meeting of the American Political Science Association, September 3-6, 2009, in Toronto, Canada.

2 In an email dated April 28, 2009, Yale Law School student, Travis Crum, informed Snider that he has launched an Open Redistricting Project. Snider believes this is an excellent idea. George Mason Univeristy Professor Michael P. McDonald, a redistricting expert, is pursuing similar ideas.