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Book Review

Wandering Lonely as a Cloud: National Citizenship and the Case for Non-Territorial Election Districts

JAMES A. GARDNER

Andrew Rehfeld. *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design*. New York: Cambridge University Press, 2005, 244 pp., \$75.00 (hardcover).

I

IN EARLY 1812, Massachusetts Governor Elbridge Gerry, a staunch Republican, signed into law apportionment legislation designed to ensure Republican control over the state senate in the next election. To achieve this goal, the legislation divided Essex County into two senatorial election districts, and reallocated the town of Chelsea, located just over the border in neighboring Suffolk County, from its former Suffolk County senatorial district to one of the new Essex County districts. The manifest purpose of this legislation was to carve out of Essex County, which in 1811 had comprised a single, solidly Federalist senatorial district, a new district that would elect several Republican state senators. Within weeks the legislation became the object of intense public scorn and outrage, giving rise to a new political term of derision: "gerrymandering."¹

Two hundred years later, the process by which election district lines are drawn still is heaped in public scorn. It is widely condemned as excessively and irremediably par-

tisan. It is blamed for producing a host of uncompetitive and even entirely uncontested elections throughout the nation. Widespread partisan redistricting is said to have created a Congress so bitterly divided by ideology and partisanship as to be incapable of acting in the public good, if indeed it is capable of acting at all. Redistricting practices are excoriated from the left as a tool for suppressing minority political power, from the right for being subjected to manipulation on racial grounds, and from the center for elevating racial symbolism over the substance of minority political claims. Criticizing the shape of electoral districts has become something of a political sport, in which participants compete to supply vividly pejorative adjectives, such as "bizarre," "contorted," "grotesque," "irregular," and "serpentine," and descriptive metaphors, such as "bacon strip," "dumbbell," "jigsaw," and "pseudopod."

Critics have proposed numerous reforms to improve the redistricting process and control its susceptibility to partisan manipulation. Some would impose substantive requirements to constrain the discretion of redistricters: districts must meet mathematical standards of compactness, for example, or must circumscribe objectively identifiable communities of

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¹ Elmer C. Griffith, *The Rise and Development of the Gerrymander* (Chicago: Scott, Foresman and Company, 1907), 19-20, 64-74; George Athan Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (New York: McGraw-Hill Book Co., 1976), 316-18.

interest, or must be politically competitive as measured by major party registration and voting patterns. Others would rely on procedural reforms, such as specifying mandatory line-drawing algorithms, or vesting the power to redistrict in nonpartisan, independent commissions.

Meaningful reform, however, has been elusive. State legislators, not surprisingly, have been slow to adopt reforms that would deprive them of the power to protect themselves and their parties from effective electoral competition. The public, although apparently disgusted by redistricting practices, seems confused about what, if anything to do; reforms have been imposed on the legislature by initiative in some states, such as Arizona, but have been defeated in others, such as California and Ohio. Meanwhile, the U.S. Supreme Court has twice attempted to articulate constitutional limits to partisan gerrymandering, and failed spectacularly on both occasions.² The Court recently accepted a case from Texas that it may use as a vehicle for taking yet another pass at this seemingly intractable problem.³

It is often argued in academic circles that the main reason why the seemingly simple task of drawing election district lines has proven so troublesome is that the baseline is uncertain and contested—we lack, in other words, any universally accepted standards by which to decide what the proper boundaries of a territorial election district ought to be. Should the line be here or there? Should the district stop at this river or mountain range, or span it? Should it include this neighborhood or that? This block? This apartment complex or shopping mall? These are not questions that admit of obvious answers. As Justice Anthony Kennedy wrote in a recent case, “there are yet no agreed upon substantive principles of fairness in districting,” and consequently “we have no basis on which to define clear, manageable, and politically neutral standards for measuring the particular burden a given [districting plan] imposes on representational rights.”⁴

This was not always the case. Throughout much of American history, the proper boundaries of state and federal election districts were generally understood to coincide with the boundaries of the primary units of local gov-

ernance—counties in most of the nation, towns in New England. What was shocking about the eponymous 1812 gerrymander was not so much that politicians manipulated the structure of representation for partisan purposes—such practices were already known in England and colonial America⁵—but that it conspicuously flouted a core tenet of the age holding that county boundaries demarcated genuine differences among populations, and that these differences were meaningful for purposes of legislative representation. Yet even this seemingly firm baseline was never as solid as it appeared, for it simply referred any uncertainty about the proper boundaries of election districts to the prior question of the proper boundaries of counties and towns, a question for which no universally accepted standards existed even then. As a result, nineteenth-century state legislatures sometimes manipulated representation more subtly by adhering faithfully to local government lines, but simply creating new counties and towns, which under existing constitutional rules were then entitled to independent representation.⁶

What little consensus as existed about the proper dimensions of election districts began to erode during the first half of the twentieth century in response to growing population disparities between urban and rural districts that became increasingly difficult to ignore. The coup de grâce was delivered by the U.S. Supreme Court in 1964 when it decided in *Wesberry v. Sanders*⁷ and *Reynolds v. Sims*⁸ that population disparities among election districts violated the federal Constitution. Those decisions ushered in the present era, in which population equality has become the dominant constitutional criterion by which the validity of districts is judged; in which district lines must be dis-

² *Davis v. Bandemer*, 478 U.S. 109 (1986); *Vieth v. Jubelirer*, 541 U.S. 267 (2004).

³ *League of United Latin American Citizens v. Perry*, 74 U.S.L.W. 3351 (U.S. Dec. 12, 2005) (noting probable jurisdiction in four consolidated appeals).

⁴ *Vieth*, 541 U.S. at 307–08.

⁵ *Griffith*, supra note 1, at 23–29.

⁶ See, e.g., *Griffith*, supra note 1, at 73, 102.

⁷ 376 U.S. 1 (1964).

⁸ 377 U.S. 533 (1964).

carded and remade every decade; and in which no line or boundary whatsoever can lay claim to any greater intrinsic validity or permanence than any other. When it comes to dividing up territory into election districts, we are, truly, at sea.

In his new book *The Concept of Constituency*, Andrew Rehfeld, an Assistant Professor of Political Science at Washington University, offers an explanation for why, in the forty years since *Wesberry*, no consensus has emerged concerning the standards for evaluating the propriety and constitutional validity of congressional election district boundaries (his argument is confined to congressional districts; he makes no corresponding claims about state and local legislative districts). According to Rehfeld, the reason is that the proper baseline against which congressional election districts should be evaluated is not territorial at all. Our problems with evaluating and justifying district lines arise not because we have failed to crack the code for crafting fair and valid territorial districts, but more fundamentally because congressional districts simply should not, as a matter of political theory, be territorially defined. In taking this position, Rehfeld does not argue that the project of drawing territorial elections districts is inherently incoherent; there are reasons, he explains, why using territory as a basis for legislative representation might be desirable. He argues, instead, that the main problem plaguing the redistricting enterprise is that the use of territorial districts has not been properly justified for what it is: a potentially excusable deviation from a proper, non-territorial ideal.

A similar message about the futility and inappropriateness of territorial districting has been delivered before, by advocates of proportional representation (PR). They argue that PR, instead of requiring voters to submit to sorting, permits them instead to sort themselves voluntarily—by partisanship, ideology, race, class, ethnicity, age, and so on—in ways that vary with the contingent political salience of the issues of the day.⁹ But although Rehfeld agrees that large-scale territorial districts for national legislative offices are improper, PR, he contends, is not a satisfactory alternative; indeed, he rejects it for the very characteristics that PR supporters typically commend: it results in

constituencies that are homogeneous and voluntary, qualities that Rehfeld views as undesirable in an electoral constituency.

In *The Concept of Constituency*, Rehfeld offers a third way. Representatives in Congress, he argues, should be elected neither from single-member, territorial election districts nor from multimember PR districts. Instead, he maintains, the ideal structure of congressional representation requires representatives to be elected from randomized, permanent, involuntary, non-territorial, nationwide, single-member election districts. This method of districting, he claims, and this alone, furnishes the baseline against which any other form of districting must be evaluated.

In the current climate of complete and utter confusion, even despair, concerning the direction of redistricting practices, Rehfeld's project is important, laudable, and most welcome. His book is a much-needed attempt to develop a stock of concepts and a vocabulary sufficient to permit reasoned argument and justification in subdividing an electorate into constituencies, and he shows us both by argument and by example how to demand sound justifications for any use of territory as the basis for election districts. More specifically, Rehfeld situates the modern practice of democratic representation within an ancient philosophical debate: how should political institutions be structured so as best to promote the common good? In so doing, he simultaneously plants himself firmly within the rich, new discipline of institutional analysis that cuts across all branches of contemporary social science. The book is written with exceptional clarity, engagingly advances a rich argument, and performs a valuable service by challenging us to pay careful attention to positions and arguments that, as Rehfeld persuasively shows, have not been subjected to adequate scrutiny.

II

The book opens with a brief tour of the conceptual landscape. Territorial districting, Reh-

⁹ Perhaps the most cogent recent statement of this position appears in Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994).

feld argues, is by no means inevitable, as many Americans seem to suppose; it is best conceived as only one of many possible ways in which an electorate might be organized into constituencies. The categorization of citizens by place of residence, rather than by some other criterion such as class or ethnicity, is therefore something that must be justified rather than assumed. Rehfeld reviews ten possible justifications, culled from the democratic literature, for territorial districting. These range from the empirical, such as the claim that meaningfully distinct "communities of interest are normally based on residency patterns" (p. 49), to the theoretical, such as Nancy Schwartz's argument that face-to-face interaction in a territorial election district is necessary to the development of good citizens (p. 50).

One of Rehfeld's purposes in reviewing these arguments is to link the ways in which politics is practiced to the modes of its institutionalization, an approach that lays bare the contingencies of present political life. For example, Rehfeld's focus on the institutions of politics allows him to mount a vigorous attack on the old saw that "all politics is local." "The localness of politics," he argues, is "epiphenomenal, nothing more than a byproduct of territorial electoral constituencies. If electoral constituencies were defined by profession . . . all politics would be 'vocational' " (p. 8). Congressional porkbarrel politics thus focuses on the local—roads and bridges, community centers and playgrounds—only and contingently because electoral constituencies are local, thereby furnishing representatives with incentives to deliver to their constituents benefits in a form that can be enjoyed through physical proximity rather than in other ways (pp. 21, 152).

After laying out the conceptual framework, the book moves on to a historical account that attempts to explain how we have arrived at a point where territorial congressional districting is almost universally thought to be the only proper method by which to construct federal legislative constituencies. Rehfeld begins with a concise rehearsal of the history of territorial political constituencies from medieval through colonial times, arguing that territorial representation in those days served a clearly legitimate purpose because localities did in fact com-

prise distinct communities of interest. People lived differently then; "it was by local communities that individuals primarily organized their lives" (p. 69).

Because of its unprecedented size, however, the United States from the beginning raised problems for this long-standing conception of legislative representation. Unless the national legislature were to contain an unwieldy multitude of representatives, congressional election districts would have to be so large that they could not possibly demarcate distinct communities of interest constituted by face-to-face interaction among people who lived and worked together; inevitably, they would contain instead large groups of people who were social, economic, and political strangers to one another. As a result, the practice of territorial districting for an American national legislature would require new justifications, and Rehfeld devotes a good bit of space to scouring the historical record for any such justifications offered by the founding generation.

Along the way, Rehfeld usefully pries apart justifications for national political institutions from those offered to support state and local ones, and he makes a nice argument that the Framers expected citizens to form attachments to the national government not through any set of institutional arrangements, but by giving their allegiance voluntarily, on the basis of good performance (pp. 92–95). National political institutions thus were aimed at ensuring the competence of the federal government on the merits rather than at constructing a national identity directly by, say, channeling citizens into shared social and political contact. Consequently, any attachments of citizens to the national government, if they emerged at all, would be rational rather than sentimental, an entirely different basis from that which undergirded Americans' attachments to their state and local governments (pp. 91–92).

The final portion and analytic heart of the book lays out Rehfeld's normative defense of randomized, permanent, nationwide congressional districts as an ideal from which all deviations must be justified, a position he derives from a wide-ranging analysis of theories of democracy, representation, and democratic deliberation. His basic project is Madisonian: like

Madison, he begins from the assumption that citizens may at times behave self-interestedly, and he therefore takes as his goal the design of institutions capable of simulating the actions that a virtuous citizenry might take, if one existed. Ultimately, he hopes to show how we might construct a national legislature best able to pursue the common good of all (p. 212).

III

Nearly a third of the book is devoted to examining the historical evolution of justifications for territorial districting practices, and the bulk of this account consists of a sustained derivation of the justifications for territorial national election districts that may have motivated the founding generation. Because Rehfeld in the end discounts the historical analysis as inconclusive and ultimately unhelpful, and because the book's main project is one of political theory, I shall focus in this essay primarily on its theoretical derivation of baseline norms for congressional districting. Nevertheless, two aspects of the historical account deserve brief mention, both relating to consequences arising from the book's methodology of historical inquiry.

At the outset of his examination of the thought of the Framers and ratifiers, Rehfeld forthrightly acknowledges that "[a]t the founding of the United States, territorial electoral constituencies were an institutional habit of mind so ingrained in thought and practice that almost no argument about them appears in the literature" (p. 81). He might have done well simply to pack up shop there, for in an effort to squeeze more juice out of a silent, or at least very quiet, historical record, he employs a highly questionable method of inquiry that involves developing, apparently from first philosophical principles, "a list of plausible justifications" (p. 58) for territorial congressional districting, and then scanning the historical record for signs of their consistency with "normative positions or empirical expectations that were widely held on all sides of the founding debates" (p. 58).

This is quite clearly a mode of analysis that, at best, greatly risks overestimating the degree

to which the practices under investigation were self-consciously justified at all by those who employed them; at worst, it risks reading into the record an account that has its source in the investigator's contemporary measuring tool rather than in the actual record. That Rehfeld has fallen into his own methodological trap is suggested by his discovery in the thought of the founding generation of what looks suspiciously like a contemporary theory of deliberative democracy. Of course, he is far from the first to do so; many neo-civic republicans and deliberative democrats have claimed Madison as a forebear, a claim that has always seemed to me to ring hollow given the founding generation's objective epistemology of morals and their embrace of natural law, belief systems in which deliberation offers little of value even to elites, and nothing at all to ordinary citizens who by definition lack the education and leisure necessary to engage in eighteenth-century-style right reason.

A second difficulty with Rehfeld's historical analysis is that, in confining himself to scanning the historical record for evidence that fits his list of *theoretically* plausible justifications, he risks overlooking some justifications for territorial districting that may have rested on less lofty principles. One possibility that sneaks beneath Rehfeld's radar, perhaps in part because he makes an odd, but deliberate, decision to ignore the role of federalism in the Framers' thinking about electoral structures and institutions (pp. 66–67), concerns the territorial subdivision of states for purposes of governmental administration. As mentioned earlier, until the mid-twentieth century it was widely accepted that state and federal legislative districts ought, for all but the most densely populated regions, to lie along county lines. This was no coincidence: counties played an exceedingly important role in the political and administrative life of the states. Consider this 1884 account by the North Carolina Supreme Court:

The counties of this state, like those of most of the states in the Union, are subdivisions of its territory embracing the people who inhabit the same, created by the sovereign authority, and organized for political and civil purposes. . . . The lead-

ing and principal purpose in establishing them is, to effectuate the political organization and civil administration of the state, in respect to its general purposes and policy which require local direction, supervision and control, such as matters of local finance, education, provisions for the poor, the establishment and maintenance of highways and bridges, and in large measure, the administration of public justice. It is through them, mainly, that the powers of government reach and operate directly upon the people, and the people direct and control the government. They are indeed a necessary part and parcel of the subordinate instrumentalities employed in carrying out the general policy of the state in the administration of government. . . . [Their] functions are not always the same; . . . but, generally, they are intended only to be essential aids and political agencies in the administration of the government of the state, and exercise their powers for that purpose.¹⁰

If counties serve mainly as the administrative arms of the state—if they are the primary vehicles by which state power is transmitted downward to the populace—it might well have seemed logical and efficient to make use of these existing conduits to transmit power in the other direction: upward from the people to their government through an electoral system organized along the same administrative matrix.

Granted, this explanation has somewhat less force for congressional districts than for state legislative districts, first because states generally elected far fewer congressional representatives than they had counties, meaning that pre-*Wesberry* federal election districts typically comprised groupings of counties rather than individual counties; and second, because counties typically played no role, or at most a minimal and contingent role, in the downward transmission of national power to the general citizenry. Even so, it may well have been easier for states to administer a congressional election from districts comprised of several adjacent counties than to administer one from a district of comparable population that did not

fall along existing county lines. Moreover, the fact that counties played no formal role as a conduit of national power is not inconsistent with their use as administrative organizing structures in federal elections because, under the peculiar compromise structure of the U.S. Constitution, states—not the federal government—are given primary responsibility for the administration of federal elections.¹¹

IV

Rehfeld ultimately concludes, very plausibly, that the historical justifications for territorial districting are simply not useful for evaluating the practice as it exists today, and he therefore turns in the final portion of the book to what is obviously his main ambition in writing it: to identify from principles of political theory and institutional design the best method for dividing a national citizenry into legislative electoral constituencies, and to evaluate the use of territorial districting against this baseline ideal. The analysis here is rich and wide-ranging, and offers the reader much rewarding food for thought. Yet this is in some ways the least satisfying part of the book, mainly because the analysis, for all its erudition, is deeply shaped by an unexplored and unjustified (though not necessarily unjustifiable) set of closely related assumptions about the nature of the common good of a national community; the ideal form and subjects of national politics; the best kind of representation in a national legislature; the proper division of power between national and subnational governments; and, ultimately and most importantly, the ontology of national citizenship itself. I wish to probe these assumptions, rather than Rehfeld's analytic superstructure, in the balance of this essay.

¹⁰ *White v. Commissioners of Chowan County*, 90 N.C. 437, 438 (1884).

¹¹ U.S. Const. art. I, § 4 provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . ."; art. II, § 1 provides: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . ."

Rehfeld's guiding goal in undertaking a normative analysis of national legislative districting practices is, insofar as possible, to provide through principles of institutional design a blueprint for constructing a Congress that is best able and most motivated to pursue the common good of the national citizenry. As a designer, he begins from the premise that neither citizens nor their representatives can be relied upon to behave at all times in the most desirable ways, and his approach is thus Madisonian in that he aims to create an institutional structure that will simulate the process by which a virtuous citizenry might elect a virtuous Congress (p. 212). The heart of the analysis consists of a defense of the proposition that the ideal electoral sub-constituency should possess three characteristics: it should be stable, involuntary, and, most important of all, heterogeneous. From this set of premises, it follows readily that neither territorial districting nor PR is satisfactory—territorial districting because it divides voters into groups that are insufficiently stable, excessively voluntary, and relatively homogeneous; and PR because it creates constituencies that are completely unstable, totally voluntary, and almost entirely homogeneous.

Stability in a constituency's population is required, Rehfeld argues, by rudimentary principles of democratic authorization and accountability. Meaningful self-rule requires that elected officials be electorally accountable to those who installed them, and to no others: "The reason a representative is accountable to this group (rather than that one) is that she was authorized by this group (and not that one) to act" (p. 188). True accountability therefore requires that the membership of a constituency remain as stable as possible between elections; ideally, it should not vary at all, not even by the amount associated with routine in- and out-migration from present territorial congressional districts, and certainly not by the amount typically associated with the decennial redistricting process.

The book's argument against voluntary constituency formation is couched mostly as a response to arguments in its favor advanced by advocates of PR, and so need not detain us here. Far more important to the book's analy-

sis is the claim that electoral sub-constituencies should be heterogeneous rather than homogeneous: "only constituencies that look like the nation they collectively represent would provide the right kind of incentives or otherwise enhance a representative's ability to act toward the public good" (p. 204). This claim, Rehfeld argues, holds regardless of whether representatives behave, consistent with pluralist models of politics, as advocates for the particular interests of their constituents or, consistent with republican models, as public-regarding seekers of the common good. In the former case, "when a representative advocated for the good of his constituency he would, by definition, be advocating for the good of the whole" (p. 204). At the same time, a representative proceeding in the republican mode "would face the right kinds of electoral incentives . . . to deliberate freely about the public good" because the representative would be accountable to "the very collective toward whose good he purportedly aims" (p. 204).

From here, it is a short step to the conclusion that election districts should be populated by random assignment because that is the only method by which to ensure true and equal heterogeneity among districts. Preserving the necessary heterogeneity, furthermore, means that district assignments must be involuntary and permanent. And unless we are also willing to force the members of these heterogeneous districts to live in assigned places, something Rehfeld views as unnecessary given the capabilities of modern communications (to say nothing of its normative undesirability), it is clear that the ideal, randomized electoral district must be nonterritorial. In the end, then, Rehfeld finds himself occupying a satisfyingly contrarian position: "rather than assume that representation is always about the representation of subnational groups . . . , I assume the presumption is instead that we can represent the whole, and indeed it is deviations from representation of the whole that must be justified" (p. 212).

Rehfeld is well aware of some of the likely consequences of a system of randomized, nonterritorial districting for the composition and activity of congressional representatives. Because districts would have nearly identical ideological profiles, each district would elect very

similar kinds of representatives, who would differ very little from one another ideologically, and who would therefore have little need to deliberate in Congress about public policy. As a result, in such a system the will of a national majority would be transformed quite directly into policy.

While some might view various aspects of such a system with concern, Rehfeld believes its advantages would well outweigh any disadvantages, at least as an abstract ideal. When each electoral constituency is, in John Adams's words, "an exact portrait in miniature, of the people at large," representatives can get elected only on platforms that appeal to the common good of the whole people (pp. 204–5). The resultant homogeneity of the legislature would produce a convergence of party positions (pp. 226–27), which "could give rise to the formation of a kind of non-partisan, professional legislator less electable under the current, highly partisan electoral system" (p. 227). A decline in the breadth of deliberation within the legislature would be offset by an increase in deliberation within constituencies on account of their greater diversity (p. 235). And denying the majority control over legislative policy, which it should ideally have under any reasonable theory of democracy (pp. 206, 231), is not the way to protect against majority tyranny. Instead of manipulating the electoral system to compensate for injustice, Rehfeld argues, we should address injustice directly, on the merits (p. 232). Finally, if racial, ethnic, and gender diversity in the legislature is deemed absolutely essential, the way to get it is not by manipulating constituencies so that they elect representatives with the desired characteristics, but by frankly and straightforwardly using a quota system for candidates to get the right final mix in the legislature (pp. 237–39).

It must be stressed that Rehfeld does not argue that the system he describes ought actually to be implemented in this or any other existing polity; rather, he argues for it as a defeasible baseline ideal, any deviations from which must be appropriately justified. The book does not explore in any depth the conditions under which deviations from the ideal—including the use of PR or territorial districts—might be justified, but it does suggest that deviations might

be allowable in at least two kinds of circumstances. First, large territorial districts might be appropriate where territory corresponds much more closely to interest than it does in the contemporary United States. Rehfeld explicitly approves of territorial constituencies for local governments, "whose proper function is limited to *local* resource allocations" (p. 158); presumably, he would say the same for national political structures where territory and interest coincide on an appropriately gross scale, a situation that might arise in, say, a highly decentralized, aggregative confederation. Territorially based representation might also be justifiable for systems in which non-proportionate representation of territorially organized groups is a fundamental term of the basic social contract, as in ethnic consociationalism.

V

Is, then, the randomized, nonterritorial congressional election district a plausible ideal? Perhaps, but before we accept Rehfeld's argument, we ought to attend to some of the unarticulated assumptions that underwrite his analysis. These assumptions are neither trivial nor uncontroversial; they concern some of the most fundamental institutions and practices of representative democracy, and strongly influence the shape of the book's normative argument. Bringing such assumptions to a work of political theory is, of course, unavoidable. Ideally, however, a work of political theory ought at least to bring these assumptions into the open, where readers may evaluate them. My purpose here, then, is simply to flush out and scrutinize some of these assumptions.

A good place to start is with Rehfeld's underlying conception of the ideal form of national politics. It is to be expected in a democracy that on many or most issues citizens will hold a wide variety of views, and that many of these views will conflict. Every democratic system of governance therefore faces the fundamental question of how to reduce a multiplicity of citizen views to a single policy outcome or set of outcomes, and one of the main distinctions between forms of democracy concerns where within the system the necessary conflict

resolution is to occur. Rehfeld's argument for randomized election districts presupposes that the best and proper locus for the resolution of political conflict is in the electorate rather than in the legislature. This might certainly be true, but it is a presupposition that seems to require some defense.

To see Rehfeld's position on this issue, it is useful to contrast the proposal he advances in *The Concept of Constituency* to a very different proposal, made in a similar spirit, by Robert Weissberg in a well-known 1978 article.¹² In that piece, Weissberg argued that there is no reason why a legislature must be understood as a collection of representatives of individual constituencies, and that an alternative and equally appealing view is to conceive of a legislature as representing a people in its collectivity. In that case, the best way to assemble a legislature truly representative of its people would be not through election of individual legislators by sub-constituencies, but by random selection of the entire body. Citizens would, of course, sacrifice direct electoral control over the legislature, but a legislature in which all segments of society were accurately represented might conceivably implement the people's will even better than one assembled through direct electoral appointment.

Rehfeld's and Weissberg's proposals stand, then, at opposite poles of a spectrum of idealized democratic institutions: for Rehfeld, constituencies should be randomized, resulting in a perfectly homogeneous legislature; for Weissberg, legislators should be randomized, resulting in a perfectly heterogeneous legislature. Yet for all their differences, the most significant distinction between these two proposals concerns where within the system conflict resolution will occur. In Rehfeld's system, all conflict resolution occurs within the electorate and none within the legislature; in Weissberg's system, all conflict resolution occurs within the legislature and none within the electorate. Both systems should, all other things being equal, produce similar policy outcomes somewhere in the vicinity of the preferences of the median voter, so how might we choose between them?

The difficulty, of course, is that all other things are rarely equal, and much therefore turns on a comparison of the institutional set-

tings in which the necessary conflict resolution is expected to take place. With the problem thus framed, it is easy to tick off a host of reasons why we might prefer policy debate and conflict resolution to occur in the legislature rather than in the electorate. For example, allocating conflict resolution to the legislature effectuates a potentially desirable division of labor between citizens and representatives, an arrangement that recent research suggests voters strongly prefer to active individual engagement.¹³ It is also possible, and perhaps even likely, that deliberation will be of higher quality when it occurs among legislators than when it occurs among citizens. Power differentials among deliberators are likely to be fewer and less severe in a legislature than among ordinary citizens, and legislative deliberation can be regulated by procedural rules of fairness in ways that are unavailable to guide the course of spontaneous deliberation among voters. Policy debates by legislatures are also likely to be more transparent than similar debates occurring in the electorate. An exchange within the legislature invoking a more diverse set of viewpoints in the context of a wider-ranging debate might provide a better education for the public than a similar debate occurring privately among citizens, and might lead to broader public exposure to minority views. And so on.

The point here is not that Rehfeld's analysis wrongly shunts conflict resolution out of the legislature and into the electorate. There might be good reasons for doing so. The point is, rather, that Rehfeld assumes that a system allocating conflict resolution to heterogeneous electoral constituencies is ideal, but never offers any reasons to think that it is better on this score than the alternatives he criticizes.

An even more significant tacit assumption that shapes the analysis is Rehfeld's conception of the national common good. At the outset, it is worth noting that Rehfeld offers no evidence, nor even any argument, that territorial dis-

¹² Robert Weissberg, *Collective vs. Dyadic Representation in Congress*, 72 *Am. Pol. Sci. Rev.* 535 (1978).

¹³ John R. Hibbing and Elizabeth Theiss-Morse, *Stealth Democracy: Americans' Beliefs about How Government Should Work* (Cambridge: Cambridge University Press, 2002).

tricting *by itself* presently works against the common good. He does not argue, for example, that territorial districting has resulted in the enactment of specific, identifiable pieces of federal legislation that are destructive of the common good; or that run-of-the-mill legislation coming out of Congress is normatively bad (whether or not this can be attributed to territorial districting); or that any such problems could be cured by a change in the representational basis of the House without also altering constitutional bicameralism (he proposes no reform to the Senate).

Rehfeld does, however, have something to say about porkbarrel politics—certainly a species of legislation that might be thought inconsistent with the common good—and argues, as indicated above, that political pork tends to be local only because congressional districts are territorial. On the other hand, he clearly believes that porkbarrel politics would not cease if the basis of districting were changed; only the form in which pork is delivered would change along with the basis of districting (pp. 152, 222). The nub of his argument seems to be that any impulse representatives feel to return favors to their districts will be channeled by a structure of randomized, non-territorial districts into a form that by definition serves the common good.

What kind of pork or other benefits would representatives elected from such districts bring back in order to earn credit from their constituents for serving district interests? Presumably, it will tend to be legislation or spending that most directly benefits the district's median voter, as such benefits will earn representatives the biggest bang for the buck. But since randomization will produce a system in which the median voter in each district has the same preferences as the median voter nationwide, legislation that benefits the district's median voter necessarily conduces not just to the good of the people of the district, but to the good of all, nationwide. Rehfeld's proposed districts thus are structured so as to strip away incentives for Congress to consider issues linked to localities and specific interest groups; the idea seems to be that this will elevate congressional concerns by limiting Congress to dealing with issues of very broad concern—*national* issues.

This view of the matter is certainly coherent and plausible, but it rests firmly on two important and contestable assumptions about the common good of a nation. Specifically, it assumes that a national legislature (as opposed to other institutions) best serves the common good when it (a) deals solely with issues of concern to national majorities, and (b) takes positions on such issues in accord with the preferences of national majorities. Neither one of these propositions is so self-evidently true that it can be accepted without some defense.

First, it is at least possible that the good of a nation is linked to the good of its parts in such a way as to make national concern with and satisfaction of local or other minoritarian needs a valid way of promoting the good of all. Would the rebuilding of New Orleans after its destruction by Hurricane Katrina, for example, conduce to the national good or only to the local or regional good? Rehfeld acknowledges the difficulties raised by such questions, but contends that his system presupposes no particular conception of the national good (pp. 229–30), and would therefore be neutral on such matters. If a national majority thinks that the good of the nation would be promoted in the long run by actions that conduce most immediately to the good of some special or local interest, he argues, then it is appropriate for Congress to take up such issues, and it will have the proper incentives to do so (pp. 233–34).

I am not sure that this response is entirely satisfactory. Although it is true that a system of randomized, nonterritorial districts would be consistent with both tightly nationalized and loosely decentralized conceptions of the national interest, such a system is not designed to respond to different conceptions of the national good; it is designed to respond to the *beliefs of a national majority* concerning the meaning of the national good. The more pertinent question, then, is this: do we have any reason to expect a national majority of voters to be equally open to arguments that spending federal money to rebuild New Orleans is or is not conducive to the common good? I'm not sure we do. The vast majority of voters in every non-territorial electoral district will live far from New Orleans, will never have visited New Or-

leans, and will never have derived any benefit, so far as they can imagine, from New Orleans. Citizens may be grouped in nonterritorial districts, but they are still situated locally. It would take an unusual act of collective transcendence of individual situatedness, it seems to me, for a majority of voters in a majority of districts to embrace the proposition that using national resources to deliver benefits that in the short term are tightly focused and localized would be in the interest of all. I shall return to this point shortly.

Rehfeld's second unstated, and controversial, assumption about the common good, closely related to the first, is that the national good is by definition furthered by satisfaction of the preferences of the median voter—the result his districting system is designed to bring about. This is certainly true on a Downsian model of politics, but it is clearly false on a civic republican model, a model that requires representatives to use their independent judgment and to deliberate with one another to determine the content of the common good. This problem is exacerbated by the fact that Rehfeld's ideal system is one in which very little deliberation is likely to occur in the House because all representatives will have very similar views—in fact, they will have views corresponding to those of the national median voter. Here, then, the book seems, notwithstanding the author's disclaimers (e.g., p. 229), to tilt decisively toward a substantive conception of the common good.

There is, however, another situation in which Rehfeld's proposal for randomized, nonterritorial districts clearly would direct congressional attention toward the common good of all: if all citizens are substantially homogeneous in their political preferences, or if they are at least capable of behaving as though they were homogeneous by ignoring aspects of their localness and individuality, and by concentrating, when they elect congressional representatives, solely on issues properly of concern to the entire nation. This observation leads me to raise one final concern about the book's underlying assumptions, a concern based less on any single piece of evidence than on a feeling gathered impressionistically after spending considerable

time with the book. My concern is this: that Rehfeld rests his argument, at some ultimate level, on an unarticulated ontology of national citizenship that abstracts citizens in their national capacity from their civic situatedness as citizens of, and actors in and upon, state and local polities. There is a sense, that is to say, in which Rehfeld seems to think that Americans, *qua* Americans, are in some sense “really” or “naturally” cosmopolitan citizens of the nation, and that reforms are needed to liberate them from institutional structures that inappropriately force them, against their true and better judgment, to gaze at their toes when their natural tendency is to gaze upward, toward the horizon, if not indeed toward the heavens of national communion.

Now this is in many ways an attractive image, but as an ideal it is far from neutral; it rests on very clear and specific assumptions about how human beings behave and interact politically. Our own political tradition, it seems to me, looks at things very differently. With its division of power among territorially defined states and localities; a federal structure that creates a perpetual power struggle between territorial states and an all-encompassing nation; a national Senate in which the interests of territorial states are permanently represented; and a long tradition of territorial districting in the House,¹⁴ the American political framework seems to rest upon a conception of the common good and of national politics according to which the best way to promote the good of all is for the institutions of national governance to serve to a considerable extent as forums for the resolution of competing claims about the ad-

¹⁴ The territoriality of representation in the House is no less entrenched than it is in the Senate: under Section 2 of the Fourteenth Amendment of the U.S. Constitution, “Representatives shall be apportioned among the several States according to their respective numbers” (emphasis added). Thus, even if Congress repealed the Apportionment Act and permitted states to elect congressional delegations at large, which was the case prior to 1842, House members would still represent territory to some irreducible degree. States could still use nonterritorial districting (or PR, for that matter) to elect their congressional delegations, but Rehfeld's proposal for *nationwide* nonterritorial districts would require a constitutional amendment.

vancement and protection of local and regional interests. This may not be a very elevating view of politics, and it may not be in some abstract sense the best view, but it seems to be, to some degree, our view, at least insofar as it is backed by and entrenched within constitutionalized norms.

Finally, there is the question of whether the norm of cosmopolitan national citizenship toward which Rehfeld gestures is truly desirable or, within the institutional structure he posits, even humanly possible. As Benedict Anderson has persuasively shown, we should never underestimate the power of human beings to imagine themselves members of communities, even very large ones.¹⁵ Yet in Anderson's account, membership in a shared community generally requires a plausible account—also imagined if necessary—of how membership was acquired and maintained, a set of customs and traditions by which community members must abide, perhaps even an account of a shared, communal telos—in short, a working narrative history.

Can Americans, embedded in a complex, multi-layered structure of competing governmental power centers and a pluralistic politics dominated by contending private interest groups and associations give a plausible account of themselves as national citizens that would permit them to imagine themselves, upon being assigned to one of Rehfeld's randomized, non-territorial election districts, members of a meaningful political community? Would they know how to act, and would they understand the proper motivations and behavior of members of such a district community to be the ones Rehfeld assumes? Perhaps. Still, in contemplating these questions we might do well to heed Alasdair MacIntyre's injunction to remember that "all morality is always to some degree tied to the socially local and particular and that the aspirations of the morality of modernity to a universality freed from all particularity is an illusion." Such freedom, MacIntyre warns, is "more like the freedom of ghosts—of those whose human substance approached vanishing point—than of men."¹⁶

I wonder therefore whether the denizens of Rehfeld's randomized, nonterritorial election

districts—those completely adventitious groupings of strangers who together inhabit no particular place and who share no human bond or activity other than the duty to perform a single public act every two years—can plausibly be expected diligently to pursue some abstract notion of the national good divorced from the interests of the other, much more concrete communities in which, for all other purposes, they live, work, and play. Wordsworth, it is true, "wandered lonely as a cloud/ That floats on high o'er vales and hills,"¹⁷ but no one, I think, would mistake the United States for a nation of Wordsworths. If anything, Americans probably better fit—or at least long have been thought to fit—the account given by Tocqueville:

It is difficult to draw [an American] out of his own circle to interest him in the destiny of the state, because he does not clearly understand what influence the destiny of the state can have upon his own lot. But if it be proposed to make a road across the end of his estate, he will see at a glance that there is a connection between this small public affair and his greatest private affairs; and he will discover, without its being shown to him, the close tie which unites private to general interest.¹⁸

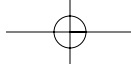
American political life, that is to say, may focus on the local at least as much as on the national; in many ways and for many purposes it is a politics of roadways and fence posts rather than one of lofty principle and abstract reasoning. Rehfeld works hard to deflect the charge that his ideal is utopian on account of

¹⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (rev. ed.) (New York: Verso, 1991).

¹⁶ Alasdair MacIntyre, *After Virtue* (2d ed.) (Notre Dame, IN: University of Notre Dame Press, 1984), 126–27.

¹⁷ William Wordsworth, "I Wandered Lonely as a Cloud," in William Wordsworth, *Selected Poems and Prefaces*, Jack Stillingier, ed. (Boston: Houghton Mifflin, 1965), 191.

¹⁸ Alexis de Tocqueville, *Democracy in America*, excerpted in Michael McGiffert, ed., *The Character of Americans* (rev. ed.) (Homewood, IL: The Dorsey Press, 1970), 50.



the difficulties associated with conducting electoral politics almost solely through electronic communications over the internet, but in the end, the real utopianism of his baseline ideal may be in the capacity it presupposes among citizens to conceive of themselves as citizens of an American nation that is somehow distinct from its concretely local manifestations.

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