**Civics 101**

**Episode 16: Gerrymandering**

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***[Virginia Prescott] I‘m Virginia Prescott and this is Civics 101. It's the podcast refresher course on some of the basics that you may have forgotten since, or slept through, in middle school. We try to find the right people to answer your questions about how our democracy works. You can submit those questions through our web sites, email, or Twitter, or our listener line which is how today's question came to us.***

[Voice] Hey guys this is Alan from Brooklyn New York. I am a big fan of the show and I would love to hear an episode about gerrymandering.

***[VP] All right, Alan, got you covered. Today's lesson is all about gerrymandering; how it works when it started and why it is so controversial. And our guide today is Nicholas Stephanopoulos assistant professor of law at the University of Chicago Law School. He was a lawyer for plaintiffs in a federal court ruling that found remapping of Wisconsin's legislative districts to be unconstitutional.***

***[VP] Nick so glad you could be with us.***

[NS] Thank you for having me.

***[VP] OK. Let's start with the basics. Gerrymandering is redistricting along party lines. So let's say we have a very tiny state. There are 50 people in it. Thirty people belong to the blue party. Twenty people belong to the red party. They live on either side in a nice even grid blues on one side red is on the other. So what happens when that gets gerrymandered?***

[NS] So when you gerrymander, let's say the red party would try to draw a whole bunch of districts that have let's say six red voters and four blue voters, and the red party for any remaining blue voters would pack them into districts that are eight or nine or 10 blue voters and zero, one, or two red voters. The objective of the red party would be to make sure that red party candidates got to win by relatively narrow margins, while blue party candidates end up winning by enormous overwhelming margins. We call those two techniques cracking and packing. And they're the essence of how all partisan gerrymandering is carried out. You're wasting as much of the other side's vote as possible, and distributing your own side's voters as efficiently as possible across the different districts.

***[VP] So let me make sure I have this straight. The whole principle of the Constitution, one person one vote, gerrymandering would mean that you divide the district in a way that advantages you?***

[NS] Yeah. And so it's important to understand that gerrymandering can be consistent with respecting one person one vote. You draw a whole bunch of districts, all of which have exactly the same population, so there's no one person one vote problem, but one party is winning an awful lot of close districts and the other side is losing in all of those closely contested districts. And meanwhile the other side is winning all of its districts by enormous supermajorities. So basically one person one vote involves differences in district population whereas gerrymandering is all about manipulating the margins of victory in different districts.

***[VP] How long has this been used?***

[NS] Forever really. You know as long as American elections have been conducted there have been allegations, many of them accurate, about gerrymandering. It's been obvious to line drawers ever since the framing that depending on how you draw districts you can manipulate the margins of victory and benefit one side or harm the other side. So it's not a new phenomenon, although the technology that’s now available to gerrymander is much more sophisticated than was the case in previous periods.

***[VP] In fact the term comes from the early 19th century. Tell us about the origins of this word gerrymander.***

[NS] Yeah sure. So Elbridge Gary was an early governor of Massachusetts and he was the driving force behind one of the original partisan maps in American history for the Massachusetts state legislature in the early 1900s. And so one of the districts in that map looked like a salamander. And so the word salamander got linked with the governor's name, Gary. And so Gary plus salamander eventually turned into gerrymander. And so thus the name was born.

***[VP] So if you do look at maps now of gerrymandered districts they are crazy shapes. You know there's a tendril stretching and curling to include a little parcel across the state map, going like a praying mantis or a salamander. It's clearly deliberate, but it sounds like a dirty word gerrymandering or it's become that way, is it always nefarious?***

[NS] Well it depends who you ask. I would say from a good government ‘small-d’ democratic perspective it is always nefarious. One of the main goals of our democratic system is that the will of the voters should translate fairly and accurately into the composition of the legislature and in turn into what laws are enacted by the legislature and the whole purpose and effect of partisan gerrymandering is to interfere with that accurate translation of the will of the voters. You know the whole point of it is to give one party an unfair advantage in how its popular support translates into seats in the legislature, and then policies enacted. You know, that being said there's obviously differences of degree with partisan gerrymandering, and so more severe more extreme gerrymanders are more problematic than more minor or more subtle gerrymanders. But I do think that the very practice of partisan gerrymandering is an offense to basic democratic values.

***[VP] So who decides how these districts are drawn?***

[NS] So that varies from state to state. But in general the new district map is just like any other law. And so it has to be passed by the state legislature and then signed by the governor. So in general it's just the elected branches of the state government that choose what districts will look like

***[VP] The elected branches are the people in power, so one party or another is often favored.***

[NS] Exactly. So you know very often a single party will have complete control of the state government in a given state. And so in that circumstance that party gets to choose what the district lines will look like. So it's not a surprise that when a single party has full control over redistricting that the party will often give itself a big advantage.

***[VP] And in late last year a federal court struck down Wisconsin's legislative districts charging them with being unconstitutional, gerrymandered to favor Republicans in this case. Similar case in North Carolina also in Virginia. Now what do they say makes this unconstitutional?***

[NS] So the test that we proposed in Wisconsin and that the court adopted in the Wisconsin case has three parts. The first part is that plaintiffs have to prove that a map was drawn with the intent of benefiting a particular party. The second part is that plaintiffs have to show that a map actually has a big discriminatory partisan effect in favor of the party that drew the map. And the third part of the test is that there has to be no neutral or legitimate justification for this big partisan discrepancy. So the partisan effect can't simply be the product of the political geography of the state for example. And so in Wisconsin the court found that all three elements of that test were satisfied, and that combination of factors is what led the court to strike down the Wisconsin map.

***[VP] Well this is Democrats bringing this gerrymandering case in front of federal courts in Wisconsin. But Republicans have made similar arguments in Illinois against Democrats. Can we fairly say that gerrymandering favors one party or the other?***

[NS] So it's clear that both sides when they're in control of the state government are very happy to engage in partisan gerrymandering. And in both the current cycle and in previous decades there have been any number of cases where Democrats have been just as ruthless and as aggressive in partisan gerrymandering as Republicans. That being said, in 2011 when all of the current cycle’s maps were drawn, the Republicans happened to be in control of a lot more state governments than Democrats. And so at the moment there are a lot more Republican gerrymanders than there are democratic gerrymanders, but that's just a function of the distribution of party control this decade, it doesn't necessarily hold for other points in time.

***[VP] You said in 2011, is there a particular time when districts are redrawn?***

[NS] Yeah typically districts are redrawn after the most recent census. And so the census takes place every 10 years. And shortly after the census is when every state and every county and every city in the country has to redraw their district lines in order to achieve equal population among the districts. The next round of redistricting is going to happen in 2021, after we get the returns from the 2020 census.

***[VP] I've also read arguments advocating for redistricting to be done by algorithms, so untouched by human hands. Would that take the politics out of redistricting?***

[NS] Well it depends on how exactly you did the algorithms. If you if you told an algorithm just draw me a bunch of circular districts. It's quite possible you'd end up with an unintentional gerrymander significantly favoring or, or disfavoring one side or another. However, these days you can also enter electoral requirements into the algorithm. So if you told the algorithm draw me districts that are circular, that respect towns and counties and the don't benefit or disadvantage either party by more than a certain amount, then an algorithm could potentially fully take politics out of redistricting. So in that case you would have neither political motive, nor would you have a significant electoral advantage or disadvantage for either side because you would program the algorithm not to produce such an advantage or disadvantage.

***[VP] So Professor Stefanopoulos, we as civics students, what do you think is the most important thing we take away about gerrymandering?***

[NS] That it's one of the biggest undemocratic features of modern American politics, that it's responsible for dramatic distortions of political outcomes at both the state level and the federal level and the local level around the country, and that if we're going to really fix American democracy and improve American democracy, solving the problem of gerrymandering is one of the very most important things for us to do in every state and every locality in the country.

***[VP] Nick Stefanopoulos, professor of law at the University of Chicago Law School. Thank you for speaking with us.***

[NS] Thank you very much.