NICHOLAS O. STEPHANOPOULOS

Associate-in-Law, Columbia Law School • 435 West 116th St., New York, NY 10027
(781) 248-8145 • nsteph@law.columbia.edu

EDUCATION

YALE LAW SCHOOL, J.D., 2006

HONORS: Jewell Prize for best student contribution to a law journal
Morris Tyler Moot Court: Harlan Fiske Stone Prize Finalist; Moot Court Board
Thomas Swan Barristers' Union: John Currier Gallagher Prize Finalist
Honors in 16 of 17 graded courses

ACTIVITIES: *Yale Journal of International Law*: Editor-in-Chief (Vol. 31); Articles Editor (Vol. 30)
Yale Law Journal: Projects Editor (Vol. 115); Editor (Vol. 114)
Yale Daily News: Author of biweekly "Post and Riposte" column

UNIVERSITY OF CAMBRIDGE (PEMBROKE COLLEGE), M.Phil in European Studies, 2002

HONORS: Cambridge Overseas Trust Fellowship
Riley Declamation Prize for best speech on a European topic

DISSERTATION: "The European Union's Record in the Balkan Crises of the 1990s"

ACTIVITIES: *Cambridge Student*: Columnist

HARVARD UNIVERSITY, A.B. in Government, *summa cum laude*, 2001

HONORS: Phi Beta Kappa academic honor society
John Harvard Scholarship (all eight semesters)
Kate and Max Greenman Prize for debate

THESIS: "Swinging the Sword of Justice: An Exploration of the Factors Motivating American Humanitarian Intervention in the Post-Cold War Era"

ACTIVITIES: Intercollegiate Model United Nations: Director
International Relations Council: Vice President
Harvard Independent: Columnist; Commentary Section Editor

ACADEMIC PUBLICATIONS (Selected Abstracts on pp. 5-6)

Redistricting and the Territorial Community, 160 U. PA. L. REV. ___ (forthcoming 2012) (work in progress; job talk paper; available on request)

Spatial Diversity (work in progress; available on request)

Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail, 23 J.L. & POL. 331 (2007) (also published in abridged form as an American Constitution Society Issue Brief)

The Case for the Legislative Override, 10 UCLA J. INT'L L. & FOREIGN AFF. 250 (2005) (winner of Jewell Prize)

Recent Development, *Israel's Legal Obligations to Gaza After the Pullout*, 31 YALE J. INT'L L. 524 (2006)

Policy Comment, *Solving the Due Process Problem with Military Commissions*, 114 YALE L.J. 921 (2005)

Case Note, *Stand by Your First Amendment Values, Not Your Ad*, 23 YALE L. & POL'Y REV. 369 (2005)

Book Review, "Terrorism, Freedom, and Security" by Philip B. Heymann, 29 YALE J. INT'L L. 583 (2004)

Book Review, "Distant Proximities" by James N. Rosenau, 29 YALE J. INT'L L. 266 (2004)

TEACHING AND RESEARCH INTERESTS

PRIMARY : Election Law; Civil Procedure; Legislation; Administrative Law; Comparative Public Law; Local Government Law; Constitutional Law

ADDITIONAL: Federal Courts; International Law; Criminal Procedure; Evidence; Law and Social Science

TEACHING EXPERIENCE

COLUMBIA LAW SCHOOL, Associate-in-Law, New York, NY **2010-Present**

Teach Legal Practice Workshop to first-year law students. Assist Professors Jane Ginsburg and Peter Strauss in teaching Legal Methods. Assist Professor Nathaniel Persily with DrawCongress.org redistricting project. Coordinate weekly Associates' and Fellows' Workshop.

YALE LAW SCHOOL, Teaching Assistant, New Haven, CT **Fall 2004**

Assisted Professor Owen Fiss in teaching Civil Procedure to first-year law students. Designed and graded series of assignments. Ran supplemental sessions on Federal Rules of Civil Procedure.

HARVARD PROGRAM FOR INTERNATIONAL EDUCATION, Instructor, Cambridge, MA **1998-2000**

Taught weekly classes on international affairs at Boston-area high schools. Curricula rotated each semester and covered topics such as human rights, the United Nations, and globalization.

CLERKSHIP

HON. RAYMOND C. FISHER, NINTH CIRCUIT COURT OF APPEALS, Law Clerk, Pasadena, CA **2006-2007**

Wrote bench memoranda addressing all aspects of federal appellate cases. Worked with judge on draft majority opinions, concurrences, and dissents. Assisted judge with preparations for oral argument.

ACADEMIC PRESENTATIONS

"Returning to Our Redistricting Roots," Law and Society Association Annual Meeting, June 2011

"Spatial Diversity," Columbia Law School, Associates' and Fellows' Workshop, May 2011

"Racial and Political Gerrymandering in 2012," University of Michigan Law School, Michigan Election Law Project Panel, Apr. 2011

"Redistricting and the Territorial Community," Columbia Law School, Associates' and Fellows' Workshop, Jan. 2011

"Writing About Election Law," Jenner & Block LLP, Summer Associate Presentation, June 2010

"Vaulting Beyond *Vieth*," Yale Law School, Seminar on Law and Democracy, Apr. 2005

"The Case for the Legislative Override," Yale Law School, Young Scholars Conference, Mar. 2005

OTHER WORK EXPERIENCE

JENNER & BLOCK LLP, Associate, Washington, DC **2007-2010**

Drafted sections of ten Supreme Court briefs; subjects included Voting Rights Act, campaign finance, Establishment Clause, and criminal procedure. Drafted post-trial filings and appellate briefs for client found liable for defamation. Worked on series of bid protests before Government Accountability Office. Briefed pre-trial motions and carried out discovery in FCA suit against defense contractor. Assisted with drafting of D.C. House Voting Rights Act, revision of D.C. voting laws, and investigation into D.C. voting-machine failures. Defended Florida redistricting initiatives against legal challenges. Analyzed next cycle of redistricting litigation in Texas and Louisiana. Wrote several sections of *The Realist's Guide to Redistricting*.

OBAMA FOR AMERICA, Volunteer Attorney, Washington, DC **2007-2008**

Carried out legal work for Obama presidential campaign. Served in Election Day legal "war room." Matters included litigation over seating of contested Florida delegates, lawsuit attacking Michigan plan to challenge voters with foreclosed homes, and litigation over Ohio's treatment of provisional ballots.

DEPARTMENT OF STATE, OFFICE OF THE LEGAL ADVISER, Intern, Washington, DC **Summer 2006**

Analyzed peace treaties and suggested language for Kosovo final status agreement. Researched international and foreign legal systems as part of Department's response to *Hamdan v. Rumsfeld* decision.

LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, Student-Attorney, New Haven, CT **2005-2006**

Wrote portion of brief challenging Colombian paramilitary amnesty law on proportionality grounds. Assessed continuing Israeli obligations under international law after withdrawal from Gaza Strip.

WILLIAMS & CONNOLLY LLP, Summer Associate, Washington, DC **Summer 2005**

Drafted jury instructions in legal malpractice case. Researched mens rea defenses for news company sued for defamation. Wrote memoranda on civil procedure issues in suit against car distributor.

DEPARTMENT OF JUSTICE, CRIMINAL APPELLATE SECTION, Intern, Washington, DC **Summer 2004**

Wrote memoranda recommending whether to appeal adverse decisions in federal criminal cases. Worked on equal protection and separation-of-powers arguments in *Hamdan v. Rumsfeld* district court litigation.

BAIN & COMPANY, Associate Consultant, New York, NY **2002-2003**

Assisted pharmaceutical client with range of business issues. Helped prioritize client's disease area portfolio, suggested cost savings, and proposed ideas for enhancing R&D productivity. Advised private equity fund clients on merits of proposed acquisitions. Carried out several pro bono projects.

POPULAR PUBLICATIONS

Fox Can't Guard District Henhouse, SOUTH FLORIDA SUN-SENTINEL, Apr. 9, 2011

How to Halt Gerrymandering, NEW REPUBLIC (ONLINE), Apr. 1, 2011

Rank the Vote, NEW REPUBLIC (ONLINE), Oct. 8, 2010

Don't Water Down Hope for Fair Districts, TALLAHASSEE DEMOCRAT, Apr. 25, 2010 (with Gerald Hebert and Leon Russell)

Veil Thine Eyes, NEW REPUBLIC (ONLINE), Dec. 14, 2009

Britain's New Supreme Court, NATIONAL LAW JOURNAL, Dec. 14, 2009

Building a Bigger House, BALTIMORE SUN, Nov. 15, 2009 (with Martina Vandenberg)

Conservative Unease with Common Law, PHILADELPHIA INQUIRER, July 24, 2009

Keep Protecting the Rights of Minority Voters, HOUSTON CHRONICLE, July 20, 2009 (with Paul Smith)

Resurrecting Bush v. Gore, DISSENT (ONLINE), June 1, 2009

What Jefferson Said, NEW REPUBLIC (ONLINE), Dec. 1, 2008

Another Chance at Redistricting in California, LOS ANGELES TIMES, Sept. 27, 2008

Four Out of Nine Ain't Bad, NEW REPUBLIC (ONLINE), June 25, 2008

Not Too Hot to Handle, LEGAL TIMES, Mar. 3, 2008 (with Matthew Jacobs and Lorelie Masters)

Contributor to Huffington Post, Talking Points Memo Café, and American Constitution Society Blog

OTHER

Redistricting Consultant for Congressional Black Caucus (2011)

Board of Directors, American Constitution Society, D.C. Chapter (2009-10)

Advisory Board, Yale Journal of International Law (2008-09)

Admitted to New York Bar (2008) and District of Columbia Bar (2009)

REFERENCES

Heather K. Gerken
J. Skelly Wright Professor of Law
Yale Law School
(203) 432-8022
heather.gerken@yale.edu

Owen M. Fiss
Sterling Professor of Law
Yale Law School
(203) 432-4963
owen.fiss@yale.edu

Nathaniel Persily
Charles Keller Beekman Professor of Law
Columbia Law School
(212) 854-8379
npersi@law.columbia.edu

Richard Briffault
Joseph P. Chamberlain Professor of Legislation
Columbia Law School
(212) 854-2638
brfflt@law.columbia.edu

Robert C. Post
Dean, Sol & Lillian Goldman Professor of Law
Yale Law School
(203) 432-4946
robert.post@yale.edu

Hon. Raymond C. Fisher
Ninth Circuit Court of Appeals
(626) 229-7110
raymond_fisher@ca9.uscourts.gov

Sanford V. Levinson
W. St. John Garwood and W. St. John Garwood,
Jr. Centennial Chair Professor of Government
University of Texas School of Law
(512) 232-1351
slevinson@law.utexas.edu

SELECTED ABSTRACTS

***Redistricting and the Territorial Community*, 160 U. PA. L. REV. ___ (forthcoming 2012) (work in progress; job talk paper; available on request)**

As the next redistricting cycle begins, the courts are stuck in limbo. The Supreme Court has held unanimously that political gerrymandering can be unconstitutional—but it has also rejected every standard suggested to date for distinguishing lawful from unlawful district plans. This Article offers a way out of the impasse. It proposes that courts resolve gerrymandering disputes by examining how well districts correspond to organic geographic communities. Districts ought to be upheld when they coincide with such communities (by which I mean spatially defined groups of people with shared objective interests and subjective affiliations), but struck down when they needlessly disrupt them.

This approach, which I call the "territorial community test," has a robust theoretical pedigree. In fact, the proposition that communities develop geographically and require legislative representation has won wide acceptance for most of American history. The courts have also employed variants of the test (without scholars previously having noticed) in several related fields: reapportionment, racial gerrymandering, racial vote dilution, etc. The principle of district-community congruence thus animates much of the relevant case law already. The test is largely unscathed, furthermore, by the unmanageability critique that has doomed every other potential redistricting standard. The courts have shown for decades that they can compare district and community boundaries, and the social science literature confirms the feasibility of such comparisons. Finally, the political implications of the test's adoption would likely be positive. My empirical analysis suggests that partisan bias would decrease, relative to the status quo, while electoral responsiveness and voter participation would rise.

It is true that the territorial community test does not directly address partisan motives or outcomes. But the Court has made clear that it views these issues as doctrinal dead ends. Ironically, the only way left to combat gerrymandering might be to strike at something other than its heart.

***Spatial Diversity* (work in progress; available on request)**

Why do Supreme Court dissents denounce some districts as political gerrymanders but say nothing about other superficially similar districts? Why does the Court deem some majority-minority districts unnecessary under the Voting Rights Act, or even unconstitutional, but uphold other apparently analogous districts? This Article introduces a concept—"spatial diversity"—that helps explain these and many other election law oddities. Spatial diversity refers to the variation of a given factor over geographic space. For example, a district with a normal income distribution is spatially diverse, with respect to earnings, if most rich people live in one area and most poor people live in another. But the district is spatially homogeneous if both rich and poor people are evenly dispersed throughout its territory.

Spatial diversity matters, at least in the electoral realm, because it is linked to a number of democratic pathologies. Both in theory and empirically, voters are less engaged in the political process, and elected officials provide inferior representation, in districts that are spatially diverse along dimensions such as wealth and race. Spatial diversity also seems to animate much of the Court's redistricting case law. It is only spatially diverse districts that have been condemned (in dissents) as political gerrymanders. Similarly, it is the spatial diversity of the relevant minority population that best explains why some majority-minority districts are upheld by the Court while others are struck down.

After exploring the theoretical and doctrinal sides of spatial diversity, the Article aims to quantify (and to map) the concept. Using newly available American Community Survey data as well as a statistical technique known as factor analysis, the Article provides spatial diversity scores for all current Congressional districts. These scores are then used: (1) to identify egregious political gerrymanders; (2) to predict which majority-minority districts might be vulnerable to statutory or constitutional attack; (3) to evaluate the Court's recent claims about various districts and statewide plans; and (4) to confirm that spatial diversity in fact impairs participation and representation. That spatial diversity can be measured, mapped, and applied in this manner underscores the concept's utility.

***Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail*, 23 J.L. & POL. 331 (2007) (also published in abridged form as an American Constitution Society Issue Brief)**

There are several ways, in theory, in which redistricting reform could be achieved. State legislatures could voluntarily cede their line-drawing authority; courts could invalidate flagrant gerrymanders; or popular initiatives could be launched to put in place neutral commissions. Unfortunately, thanks to politicians' self-interest as well as the Supreme Court's recent decisions in *Vieth v. Jubelirer* and *LULAC v. Perry*, the last of these is now the only realistic option for curbing gerrymandering. This Article, accordingly, offers the first normative and empirical examination of redistricting initiatives.

The Article begins by explaining why initiatives are well-suited to the redistricting context, and why commissions are appealing line-drawing institutions. In short, initiatives enable voters to unblock stoppages in the political process (as Ely might put it), and to entrench their preferences through the newly created commissions. Relying on extensive archival research, the Article next analyzes all twelve redistricting initiatives that have taken place over the course of American history. The historical evidence helps illuminate why each measure succeeded or (more commonly) failed.

Finally, the Article considers the twelve initiatives holistically in order (1) to better understand the factors that account for their passage or rejection and (2) to glean lessons that reformers can apply in future campaigns. The Article's key finding is that, contrary to the academic conventional wisdom, the measures tend to fail because of the strident opposition of the majority party in the state legislature. Conversely, the measures succeed only when some factor—e.g., favorable national developments, the enthusiastic support of the state's media establishment, rifts between the majority party's executive branch officers and its legislators—defuses the majority party's resistance. Reformers, then, should wait for auspicious moments before launching initiatives, and should aim at all costs to prevent the legislative majority from unifying in opposition.

***The Case for the Legislative Override*, 10 UCLA J. INT'L L. & FOREIGN AFF. 250 (2005) (winner of Jewell Prize)**

What is the optimal arrangement of judicial review? Most scholars who have sought to answer this question have assumed that there are only two worthwhile alternatives: judicial supremacy and parliamentary sovereignty. The literature has neglected the conceptual space that exists between these two poles, in particular the innovative legislative override model. Under this model, the courts retain their authority to invalidate legislation on constitutional grounds, but their decisions may be overridden by the legislature.

The Article begins by describing and evaluating the experiences of the two countries that have adopted the override: Canada and Israel. It concludes that the override has functioned reasonably well in both cases, though its performance could have been improved through better institutional design. The Article then introduces a refined override arrangement that promises to protect fundamental rights while also promoting democratic decision-making. The hallmarks of this arrangement are a supermajority requirement, a ban on preemptive override use, and a sunset provision. The claim is that these features would foster vibrant inter-branch dialogue and result in court decisions being overridden only when they incite deep and abiding opposition. Finally, the Article explains which institutional and political contexts are hospitable to the override and which are not. The override is well-suited to countries with respected legislatures and strong human rights records, but a poor fit for countries in which minorities face the realistic threat of majoritarian oppression.

NICHOLAS O. STEPHANOPOULOS

Associate-in-Law, Columbia Law School • 435 West 116th St., New York, NY 10027
(781) 248-8145 • nsteph@law.columbia.edu

Academic Research Agenda

Election law is a field that has emerged from the shadow of constitutional law only in the last two decades. As a result, there are several areas in the election law landscape that have not yet been fully surveyed. For instance, most of the literature on redistricting focuses on electoral outcomes and minority representation. Scholars less commonly address the implications of district arrangements for other important democratic values. Similarly, the field is oriented toward the American legal and political experience. Not as much attention is paid to the lessons that can be drawn from other countries' encounters with issues such as reapportionment, voting rights, and gerrymandering. And while election law scholars often *borrow* insights from other domains (in both law and social science), ideas and arguments do not flow as regularly in the opposite direction. As Heather Gerken has put it, the "sensibilities that permeate" election law are not deployed sufficiently to "reframe conventional debates" in the rest of the academy.

My research agenda centers on filling these lacunae. First, in a series of current projects, I am exploring the role of the geographic community in redistricting. The possibility that districts could reflect the underlying spatial patterns in which people live—and not just political or racial calculations—has long been neglected. Through a blend of theoretical, doctrinal, and empirical analysis, I hope to revive the conception of districts as organic units rather than artificial entities divorced from their local context. I aim both to develop tests for resolving different kinds of redistricting disputes and to call attention to the communal commitment that underpins our system of geographic constituencies.

Second, in the longer term, I intend to write a set of articles on comparative election law. I am especially interested in assessing key lines of U.S. doctrine (the one-person, one-vote rule, the lack of a viable cause of action for political gerrymandering, racial vote dilution, etc.) in light of other countries' experiences. I also plan to evaluate the efficacy of the various redistricting criteria that are employed around America and the world. Lastly, also in the longer term, I have in mind several projects that straddle the boundaries between election law and other subjects. One project would apply insights from redistricting to the debates over local government boundaries; another would investigate the role of the geographic community in constitutional law; still another would probe what Congress's frequent overrides of Supreme Court decisions in the Voting Rights Act ("VRA") context mean for the field of statutory interpretation.

In my work, I aim to weave together three different strands of election law scholarship. The first, which is exemplified by scholars such as Gerken, Samuel Issacharoff, and Richard Pildes, is heavily theoretical and focuses on the structural aspects of the law of democracy. The second, which appears in some of the writings of Richard Hasen and Daniel Lowenstein, is more concerned with the specific doctrinal moves that the Court makes in this arena. And the third, which is associated with Adam Cox and Nathaniel Persily, applies the data-driven perspective of political science to election law issues. My projects combine elements of all of these approaches. They are

motivated by broad questions of democratic theory, and they seek to answer these questions through both detailed doctrinal analysis and rigorous empirical investigation.[1]

My work is also informed by the three years that I spent as an election law specialist at Jenner & Block LLP. While in private practice, I worked on Supreme Court cases involving voter identification laws, both major sections of the VRA, and campaign finance. I was involved as well in trial litigation over voting-machine failures, ballot access, and redistricting initiatives. These experiences illuminated for me the serious practical consequences of election law disputes. They also exposed me to the powerful partisan forces that often explain why the disputes arose in the first place. As a result, I would like to think that my scholarship is both more grounded in, and more applicable to, real-world controversies.

I. Current Projects

A. *Redistricting and the Territorial Community*

My job talk paper, *Redistricting and the Territorial Community*, 160 U. Pa. L. Rev. ___ (forthcoming 2012), seeks to fill the doctrinal and theoretical void left by the Supreme Court's recent political gerrymandering decisions. In these decisions, the Court recognized that gerrymandering *can* sometimes be unconstitutional—but it also rejected every proposed standard for distinguishing lawful from unlawful district plans. My paper contends that courts should resolve gerrymandering disputes by analyzing how well districts correspond to organic geographic communities (by which I mean spatially defined groups of people with shared objective interests and subjective affiliations). In my view, districts should be upheld when they coincide with such communities, but invalidated when they needlessly disrupt them.

My case for the "territorial community test" begins with an elaboration of the democratic values that underlie it. I argue that the test is rooted in a coherent theory of representation—that meaningful communities arise on the basis of geography and require a voice in the legislature—and that this theory is particularly consistent with the American commitment to geographic districting. I then trace the communal thread through several lines of election law doctrine. My claim is that the ideal of district-community congruence already animates (and unifies) court decisions in areas such as reapportionment, racial vote dilution, and racial gerrymandering. For instance, districts that correspond to political subdivisions are allowed to deviate from perfect population equality, while districts that coincide with cohesive minority communities are insulated from most legal challenges.

I next assess the test's judicial manageability—the attribute allegedly missing from all of the standards rejected so far by the Court. The state courts' records enforcing requirements that districts respect communities of interest suggest that the test is in fact workable. So too do the efforts of social scientists who have both identified communities using various techniques and calculated levels of district-community congruence. Lastly, I carry out an empirical study in order to predict the political consequences of the test's adoption. I analyze how partisan bias, electoral responsiveness, voter turnout, and minority representation differ between states that pay heed to

[1] A prior work of mine that made use of these three types of analysis is *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail*, 23 J.L. & Pol. 331 (2007). In this Article, I argued in favor of popular initiatives that aim to establish redistricting commissions, and I sought to determine why most such initiatives over the last half-century have failed.

community boundaries when they redraw their district maps and states that do not. I find that bias is markedly lower in the community-respecting states, responsiveness and turnout are markedly higher, and minority representation is essentially unchanged.

B. *Spatial Diversity*

My other work in progress, *Spatial Diversity*, complements my job talk paper both conceptually and quantitatively. It aims to *measure* how well districts correspond to communities—and in so doing, to introduce a new concept, "spatial diversity," to the election law literature. By this term, I mean the variation of a given factor over geographic space. If the factor takes on different values in different areas within a larger entity, then the entity is spatially diverse (or heterogeneous). But if the factor stays relatively constant throughout the entity's territory, then the entity is spatially non-diverse (or homogeneous). For example, a district with a normal income distribution is spatially diverse, with respect to earnings, if most rich people live in one area and most poor people live in another. But the district is spatially homogeneous if both rich and poor people are evenly dispersed throughout it.

After explaining the concept, I argue that spatial diversity matters, at least in the electoral realm, because it is linked to a number of democratic pathologies. Both in theory and empirically, voters are less likely to engage in the political process, and elected officials are less likely to represent their constituents effectively, in districts that are spatially diverse along dimensions such as wealth and race. I next examine the (previously unremarked) role that spatial diversity has played in a range of doctrinal fields. In the political gerrymandering context, several Justices have seen spatially diverse districts as red flags that partisan shenanigans were afoot. Similarly, in the context of race and redistricting, the Court has held that spatially diverse minority groups are not entitled to their own districts under the VRA—and that if they *are* placed in the same districts, the Equal Protection Clause may well be violated.

In the final section of the paper, I aim to quantify and to map spatial diversity. Using a technique known as factor analysis, I condense dozens of demographic and socioeconomic variables (newly available at the Census tract level) into a small number of composite factors. I then calculate how heterogeneous each current Congressional district's tracts are in terms of these factors. The more heterogeneous the tracts, the more spatially diverse the district, and vice versa. The resulting scores enable me to make a series of empirical and doctrinal contributions. I confirm that spatial diversity is related to key electoral metrics such as bias, responsiveness, participation, and representation. I identify and spatially depict both districts that might be political gerrymanders (because of their high overall diversity) and districts that might be vulnerable to attack under the VRA or the Equal Protection Clause (because of the high heterogeneity of their minority populations). And I revisit a number of the Court's recent redistricting cases in order to assess quantitatively the claims the Justices made about various districts and statewide plans.

In *Spatial Diversity*, I only analyze *current* Congressional districts. In a short follow-up piece, *Forecasting the Flashpoints*, I plan to evaluate the districts that are now being drawn nationwide for the *next* decade's elections. Using the same statistical approach, I will rank the new districts (and statewide plans), compare them to their predecessors, and make predictions about the litigation that is sure to unfold over the next few years. Just as courts seized upon measures of district compactness in past redistricting cycles, it is my hope that participants in future debates about gerrymandering and vote dilution will benefit from the spatial diversity scores that I calculate.

II. Future Projects

A. Comparative Election Law

In the longer term, I intend to carry out a set of projects that involve comparative election law. To date, American scholars have tended to neglect the approaches taken by other countries in apportioning districts, preventing line-drawing abuses, and ensuring representation for minority groups. Some of these approaches, however, are quite promising and deserve consideration by U.S. academics and policymakers. Britain and other Commonwealth countries, for example, employ neutral commissions to draw district lines. Some Australian states reject the one-person, one-vote principle, while another Australian jurisdiction requires district lines to be drawn so that a popular majority should always be able to win a majority of legislative seats. Canadian courts downplay the individualist chord of American election law in favor of group-based notions of "effective representation." And many countries guarantee minority representation through explicitly reserved seats rather than race-conscious redistricting.

In one future article, I would like to evaluate key lines of U.S. doctrine in light of these foreign experiences. My preliminary view is that the approaches taken by other countries dramatize a number of deep flaws in American election law. They show, for instance, that a rigid application of the one-person, one-vote rule shortchanges values such as preserving geographic communities and representing sparsely populated areas. They also illustrate the inefficiency of providing for minority representation through decentralized litigation. Minorities are better represented in many countries, at a fraction of the cost and social conflict, thanks to different institutional design choices. Perhaps most importantly, even a cursory look abroad suggests that the extraordinarily high level of judicial involvement in American redistricting stems from the politicization of the line-drawing process. In countries that employ more technocratic methods for designing district boundaries, courts have not delved nearly as deep into the political thicket.

In another comparative article, I would like to examine the handful of jurisdictions worldwide that draw districts based in part on projected electoral outcomes. South Australia requires that partisan bias be near zero in close elections, so that if a party wins a majority of the statewide vote it also wins a majority of the seats in the legislature. Three American states (Arizona, Washington, and Wisconsin) include competitiveness as one of their official redistricting criteria. Yet even though outcome-oriented approaches have long been advocated by election law scholars, there has been no systematic effort to determine how well the existing approaches have worked. I would want to find out if South Australia actually enjoys a lower level of bias than other Australian states. Similarly, I would want to see if Arizona, Washington, and Wisconsin in fact have more competitive elections than their peers. The answers to these empirical questions are crucial to the evaluation of redistricting tests that revolve around electoral outcomes.[2]

B. Election Law's Intersections

Also in the longer term, my interest in the legal role of the geographic community should give rise to at least two more projects, both addressing fields other than pure election law. First, I

[2] In a prior comparative law piece, *The Case for the Legislative Override*, 10 UCLA J. Int'l L. & Foreign Aff. (2005), I analyzed the records of the two countries, Canada and Israel, that allow their legislatures to override court decisions interpreting their constitutions. I also introduced and defended a refined legislative override arrangement.

intend to apply principles from the redistricting realm to the formation and alteration of local government boundaries. Though electoral districts and local governments have a great deal in common, as spatially defined units of governance and representation, very little scholarship considers them in tandem. I would like to forge new ties between these nominally separate domains. In particular, I plan to argue for more vigorous judicial policing of local government incorporation and annexation, modeled on the aggressive posture that I would like courts to adopt in redistricting disputes. For instance, state laws that require local governments to correspond to communities of interest (which closely resemble analogous laws for electoral districts) should be enforced more strictly. Similarly, the constitutional rule that districts cannot be drawn with race as the predominant motive should be extended to local governments—where racial segregation is far more prevalent and pernicious.

Second, I am interested in exploring the function of the geographic community in both the electoral and non-electoral spheres of constitutional law. In the electoral sphere, as my job talk paper explains, a normative vision of districts that are congruent with underlying communities animates much of the Court's case law. Largely unnoticed by scholars, a similarly positive conception of the local community recurs in several other lines of doctrine: the Establishment Clause's bar on government actions that reduce people's standing in their community on the basis of religion, the deference to community standards in determining whether speech is obscene, the right to a jury that is drawn from a fair cross-section of the community, etc. My tentative thesis is that these diverse doctrinal strands all reflect the Court's commitment to a constitutional order in which federal and state governments are not the only relevant actors. Sub-state communities matter as well, and may generate local legal environments that diverge substantially from the preferences of federal and state authorities.

In a third project that straddles doctrinal boundaries, I intend to highlight (and try to explain) the unusual pattern of interaction between Congress and the Court in the context of the Voting Rights Act. Though Congressional overrides are usually rare, several of the Court's most important VRA decisions have been reversed in recent years. Even more interestingly, all of the overridden decisions were politically conservative, in that they tended to limit the Act's scope, and all of them were reversed by a Republican president and at least one Republican chamber of Congress. In my view, this pattern reveals a Court whose positions on minority representation are dramatically at odds with those of both other branches *and* both major parties. One possible explanation for the Court's record is that it has extended its disapproval of racial preferences to the voting rights field without fully grasping the ways in which this field differs from settings such as education and employment. Another is that the Court is insufficiently attuned to the Act's sunset provisions, which repeatedly force it onto Congress's agenda and provide Congress with obvious opportunities to override decisions with which it disagrees.

* * * *

Of course, these projects do not exhaust my academic ambitions. I have several more ideas for future articles that are not yet as fully developed, and I also expect that the experience of teaching substantive courses will be very intellectually fruitful. But I hope that this research agenda still gives a good sense of the scholar that I aspire to be: focused on (but not limited to) election law, attentive to the experiences of other countries, and equally comfortable with democratic theory, doctrinal analysis, and empirical investigation.