Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting 📊 🎓

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Abstract: *In contemporary democracies, backsliding typically occurs through legal machinations. Self-enforcing democracy requires that political parties refrain from exploiting legal opportunities to tilt electoral rules. Using a formal model, we argue that informal norms of mutual forbearance and formal constitutional rules are fundamentally intertwined via a logic of deterrence. By circumscribing how far each party can legally bend the rules, legal bounds create reversion points if mutual forbearance collapses. If legal bounds are symmetric between parties, they deter electoral tilting by making credible each party's threat to punish transgressions by the other. If legal bounds become sufficiently asymmetric, however, the foundations for forbearance crumble. Asymmetries emerge when some groups (a) are more vulnerable than others to legally permissible electoral distortions and (b) favored and disfavored groups sort heavily into parties. We apply this mechanism to explain gerrymandering and voting rights in the United States in the post-Civil Rights era.*

Introduction

In contemporary democracies, backsliding typically occurs through legal machinations and electoral distortions, rather than via military coups, mass repression, or cancelling elections outright. Despite circumscribing legally acceptable actions, formal constitutions are inherently incomplete contracts. Self-enforcing democracy requires that political parties refrain from exploiting legal opportunities to tilt electoral rules. Absent well-established norms of mutual constraint and forbearance against playing "constitutional hardball," words on paper cannot save democracy from unscrupulous politicians (Fishkin and Pozen 2018; Hacker and Pierson 2020; Levitsky and Ziblatt 2018; Tushnet 2003). Instead, incumbents can gradually subvert electoral competition while using a constitution to provide a veneer of legality (Ginsburg and Huq 2018; Hasen 2020; Varol 2014; Versteeg et al. 2020).

Rich descriptions of the descent into constitutional hardball within the United States and other democracies abound, yet we know far less about the strategic underpinnings of mutual forbearance and its breakdown in the face of constitutional opportunities for democratic retrogression. Using a formal model, we argue that informal norms of mutual forbearance and formal constitutional rules are fundamentally intertwined via a logic of deterrence. By circumscribing how far each party can legally bend the rules, legal bounds effectively create reversion points if mutual forbearance breaks down. If legal bounds are symmetric between parties, they deter electoral tilting by making credible each party's threat to

punish transgressions by the other. If legal bounds become sufficiently asymmetric, however, such deterrence collapses and the foundations for forbearance crumble. Asymmetries emerge when (a) some social groups are more vulnerable than others to legally permissible electoral distortions and (b) favored and disfavored groups sort heavily into parties. As James Madison posited for different branches of government, we posit for political parties' legal opportunities: "Ambition must be made to counteract ambition" (Federalist #51).

We apply this mechanism to understand the erosion of forbearance in the United States in the post-Civil Rights era, specifically analyzing gerrymandering and voting rights. This case meets a key scope condition of our formal model—high fidelity to an established, albeit still evolving, constitutional order—while also featuring relatively permissive legal scope for tilting electoral rules. Unlike many modern constitutions (Albertus and Menaldo 2018), the U.S. constitution was not founded to deliberately favor a particular party. Yet the contemporary American constitutional order fails to proscribe certain undemocratic practices that disproportionately restrict the electoral clout of certain social groups (Dahl 2003; Levinson 2006). For example, contemporary constitutional law prohibits parties from writing statutes that explicitly target individuals based on their partisan affiliation, but allows for gerrymandering, which effectively undermines the collective voting influence of urban voters. Similarly, parties cannot directly target voters based on race or income, but can disenfranchise ex-felons and pass voter ID laws, which disproportionately reduce voting access for minorities and poorer voters.

Asymmetries at the level of social groups have engendered legal asymmetries between the major parties because of the extreme sorting of racial, economic, and other demographic groups into the Democratic and Republican parties in recent decades (Mason 2018). Thus, we explain how the widely studied phenomenon of sorting transforms an ostensibly party-neutral constitution into one that simultaneously blesses one party with more leeway for manipulation and less exposure to retaliation. These are precisely the conditions that make mutual forbearance against democratic backsliding difficult to sustain. We combined and extended state-level data to document the emergence of asymmetric legal opportunities to tilt the electoral playing field between the Republican and Democratic parties and the divergence in partisan strategies in recent decades. Our goal is not to rule out all alternative mechanisms, but instead to highlight an underappreciated strategic dynamic that helps to explain why, when, and how the two major parties' support for basic democratic principles has diverged.

Contributions to Existing Research

We contribute to several research agendas. Our approach expands the growing literature on democratic backsliding in the United States and abroad. Although the failure of party leaders to sustain cooperative norms figures prominently in empirical accounts of democratic erosion, recent formal-theoretic work concentrates mainly on failures of vertical accountability between politicians and citizens (Buisseret and Van Weelden 2020; Graham and Svolik 2020; Grillo and Prato 2020; Luo and Przeworski 2020; Nalepa, Vanberg, and Chiopris 2021). By instead examining strategic dynamics *between* party elites, we show how the prospect of future retaliation by the opposition party shapes the incumbent party's decision about engaging in mutual restraint.

Our article also speaks to resurgent interest in the importance of norms for sustaining democracy (Carey et al. 2019; Clayton et al. 2021; Levitsky and Ziblatt 2018). Although existing accounts tend to treat norms among political elites primarily as moral commitments, or shared values of putting country over party, we model mutual forbearance instead as a self-enforcing equilibrium that emerges purely out of parties' self-interest.[1] As well, by building on the observation that constitutions are incomplete contracts, we argue that norms emerge endogenously from the interaction of de jure rules and the de facto distribution of social groups across parties. Thus, in our account, norms are shaped and bounded by the constitutional order, not orthogonal to it.

Of course, mutual forbearance is not inherently pro- or anti-democratic; indeed, in earlier periods of U.S. history, forbearance meant keeping voting reforms off the policy agenda (Mettler and Lieberman 2020; Mickey 2015). We extend our baseline model to capture this essential point by relaxing the assumption that the status quo is necessarily unbiased, and explain how the collapse of forbearance can entail parties pushing for laws that improve democratic representation. By suggesting that the expansion and contraction of democracy may be driven by a similar underlying logic, our work complements existing strategic accounts of changes in suffrage laws (Bateman 2018; Teele 2018) and explains why one party might retaliate against anti-democratic transgressions by promoting pro-democratic reforms. This resonates with key questions in contemporary American politics. We need not assume that Republican politicians are more extreme ideologically or inherently

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[1] See also Invernizzi and Ting (2020) who consider how alternative institutional arrangements and ideology affect prospects for politicians to uphold norms.

less committed to democratic principles than their Democratic Party counterparts. Even if both parties are purely office seeking, asymmetric legal bounds can engender divergent approaches to voting access and reform (cf. Lee 2016).

Our approach also sheds new light on the familiar idea that polarization is toxic to democracy (Drutman 2020; McCarty 2019). Graham and Svolik (2020) show how ideological polarization across individuals, society, and candidates inhibits accountability and sharpens the trade-off between partisanship and democracy. In our model, polarization works through a distinct mechanism. Extreme sorting of social groups into parties transforms legal asymmetries across *voters* into legal asymmetries across *parties*, the key condition in the model that triggers electoral manipulation.

Finally, we contribute to different strands of the applied formal theory literature. One canonical idea we alter is that players necessarily cooperate when they are perfectly patient, as in the standard repeated prisoner's dilemma. By contrast, in our approach, a party favored on the legal bounds reaps long-term (in addition to short-term) gains from shattering the status quo. Thus, regardless of how much political parties value the future, asymmetric legal bounds can undermine mutual forbearance.[2] Other related formal theories feature, as does ours, repeated elections with history-dependent punishments (Alesina 1988; De Figueiredo 2002; Dixit, Grossman, and Gul 2000; Fox 2006; Invernizzi and Ting 2020). A key difference is that, in our model, parties' strategic actions endogenously affect the probability of winning future elections, which encompasses our core focus on changing electoral rules.

Setup of Theoretical Model
Primitives

We analyze a strategic interaction between long-lived representative agents of two political parties, *A* and *B*. The two parties interact in an infinite time horizon with time denoted by $t = 0, 1, 2 \ldots$, and they discount future periods by a common factor $\delta \in (0, 1)$. As a standard refrain for dynamic games, the "infinite" part of our infinite-horizon setup should not be interpreted literally. Instead, it facilitates analyzing how the anticipation

of future punishments can constrain contemporaneous choices.

Society contains two groups of (nonstrategic) voters, denoted by *x* and *y*. An election occurs in each period. All members of both voter blocs participate in every election and vote sincerely for their most preferred party, *A* or *B*.
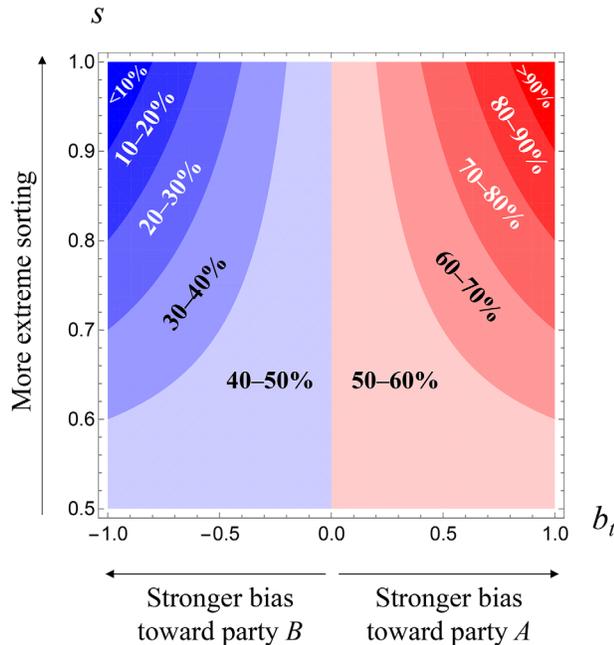
Election

In each period, Nature first chooses the winner of the election from a Bernoulli distribution such that party *A* wins with probability:

$$p(b_t) = \frac{(1 + b_t) \cdot \overbrace{s}^{\% \, x \text{ group who vote } A} + (1 - b_t) \cdot \overbrace{(1 - s)}^{\% \, y \text{ group who vote } A}}{2}. \quad (1)$$

The parameter *s* denotes the degree of *partisan sorting*. Among group *x*, a fraction $s \in (0.5, 1]$ prefer party *A*; and among group *y*, $1 - s$ voters prefer *A*. The remaining voters prefer *B*. Therefore, *A* is advantaged among *x* voters, and the magnitude of this advantage— that is, the extent of partisan sorting—increases in *s*. At $s = 1$, every *x* member votes for party *A* and every *y* member votes for *B*. By contrast, at $s = 0.5$, each voting bloc evenly distributes their votes. Thus, each voting group is equal-sized, support for the two parties is split 50/50 in an unbiased election, votes map proportionally into the probability of winning, and sorting is symmetric. These simplifying assumptions enable us in the baseline model to isolate the effect of asymmetric legal bounds while making the two parties symmetric in every other way. In Supporting Information Appendix B.2 (pp. 12–17), we introduce additional parameters that relax all these assumptions.

The variable b_t denotes the bias for translating votes into party *A*'s probability of winning, and in principle can range between −1 and 1. The election in period *t* is unbiased if $b_t = 0$ and, given 50/50 support for each party, $p(0) = 0.5$. Any $b_t > 0$ biases against *y* voters, and therefore against party *B* given our assumptions about sorting patterns. By contrast, any $b_t < 0$ biases against *x* voters, and hence against party *A*. At one extreme, $b_t = 1$, *y* voters are disenfranchised and *A*'s probability of winning depends solely on their support from *x* voters, $p(1) = s$. At the other extreme, $b_t = -1$, *x* voters are disenfranchised and *A*'s probability of winning depends solely on their support from *y* voters, $p(-1) = 1 - s$.

Figure 1 plots party *A*'s probability of winning in period *t* as a function of bias and sorting. If the bias favors *x* voters ($b_t > 0$), then *A* gains from more intense sorting because more members of the constitutionally favored voter group support the party. Conversely, higher sorting

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[2]Indirectly, this questions the supposition that unfavorable demographic trends among their core voters has caused leaders of the Republican party to act aggressively, although we do not engage with this consideration in depth.

FIGURE 1 Party *A*'s Probability of Winning

Note: Figure 1 is a contour plot of Equation (1) with party *A*'s probability of winning disaggregated into colored deciles.

hurts *A* if the bias favors *y* voters ($b_t < 0$). Thus, sorting among social groups translates disparities among *voters* into disparities among *parties*.

Obstruction

After Nature chooses the election winner, the losing party decides whether to obstruct the policy agenda for that period. If they do not, then the winning party consumes 1 and the losing party consumes 0. If instead the losing party obstructs, then the winning party consumes $1 - \phi$, for $\phi \in (0, 1)$, and the losing party consumes ϵ, for infinitesimal $\epsilon > 0$. Assuming that obstruction lowers joint consumption, $\phi - \epsilon > 0$, encompasses the idea that obstruction reduces policy effectiveness and engenders general distrust of government (Lee 2016).

Tilting the Electoral Rules

Finally, in each period, the winning party sets the bias parameter for the next period, b_{t+1}. We refer to a choice of $b_{t+1} = 0$ as forbearance, and any other choice as deviating (i.e., tilting the electoral rules). The game begins with $b_0 = 0$, which implies an unbiased and perfectly democratic status quo.

Under a regime governed by a constitution, not all values of b_{t+1} are legally permissible. Instead, the *legal scope* for tilting the electoral playing field toward either *x* or *y* voters is circumscribed by constitutional provisions and supporting judicial interpretations. We refer to these as legal bounds, and restrict $b_{t+1} \in [b_y, b_x]$, for $-1 < b_y < 0 < b_x < 1$. Increasing the magnitude of b_x indicates wider legal scope to favor *x* voters, whereas increasing the magnitude of b_y indicates the same for *y* voters.

We define the bounds in terms of groups of voters, not parties, to capture our core supposition that legal machinations cannot *directly* target voters based on their partisan preferences. The legal bounds are symmetric if $b_x = -b_y$. Given our assumptions about sorting, if *x* voters are constitutionally favored ($b_x > -b_y$), then the legal bounds are asymmetric and favor party *A*. Conversely, if *y* voters are constitutionally favored ($b_x < -b_y$), then the asymmetric legal bounds favor *B*.

Assumptions about Legal Bounds

We impose three main assumptions about the legal bounds. First, any action that lies within the legal bounds is costless to implement, whereas any action outside the legal bounds is (implicitly) prohibitively costly to enact. Second, the parties must act within the confines of an established constitutional system. Third, the legal bounds are exogenous and fixed across the infinite horizon.

The first assumption imposes a strict dichotomy between permissible and unconstitutional actions. This enhances tractability, although the insights would be qualitatively similar if we modeled either (a) strictly increasing and strictly convex costs to moving the bias term away from the status quo, or (b) the possibility that an action fails to survive judicial review, and this probability increases the farther is the new policy from the status quo. For example, later we explain why the contemporary legal bounds pertaining to gerrymandering favor Republicans. Yet courts also struck down several post-2010 Republican districting plans, which indicates uncertainty about *precisely* where the legal bounds lie.

Second, unlike other models of self-enforcing democracy in which actors have an outside option to violently overthrow a democratic regime (Acemoglu and Robinson 2006, chap. 7; Bidner, Francois, and Trebbi 2014), a key scope condition of our approach is that the rule of law is well established and prohibitively costly to violate outright. This is particularly appropriate for countries like the United States with high fidelity to a long-established constitution, but also appears more generally relevant in the post–Cold War era. For example,

Versteeg et al. (2020) document that modern rulers typically attempt to remove term limits through *constitutional* means. This relates to the broader observation that legal machinations rather than military coups are the most frequent culprit in recent cases of democratic backsliding, which also motivates other recent formal models of this phenomenon.

The qualitatively important component of the third assumption is that constitutional provisions are more difficult to change than statutory laws. This assumption is undoubtedly met in the United States because of the exceedingly difficult procedures for passing formal amendments and the broad powers of judicial review exercised by the Supreme Court. Certainly, judicial interpretations of the Constitution—and hence the legal bounds—can change over time, as considerable ambiguity remains for interpreting certain key provisions (e.g., the 14th Amendment). Furthermore, strategic actions by elected politicians can alter the partisan composition of courts and influence their decisions (Bonica and Sen 2020; Clark 2010; Whittington 2005). However, given the importance of precedent, large and rapid shifts in doctrine are rare. Ackerman (1991) argues in his survey of U.S. legal history that since 1787, only the Reconstruction and New Deal periods represented fundamental transformations in U.S. constitutional law. Subsequent decisions in the 1960s to uphold the key provisions of the Voting Rights Act and that enacted the Reapportionment Revolution also constituted qualitative shifts, and this is the starting period for our empirical analysis below. Thus, although legal bounds can indeed change, assuming that the strategic actors perceive these bounds as generally stable has considerable empirical purchase.[3]

Formal Analysis

We characterize the conditions under which an equilibrium exists in subgame perfect strategies such that the winning party always upholds forbearance and the losing party never obstructs. Interparty cooperation is impossible if the two parties' maximum probability-of-winning terms, that is, their constitutional reversion points, are sufficiently asymmetric. The interaction of asymmetric legal bounds and extreme partisan sorting engenders asymmetric reversion points, even if the actors are perfectly patient. Supporting Information Appendix A (pp. 1–7) provides supporting formal details and proofs.

Sustaining Mutual Forbearance

Along a path of play with perpetual forbearance ($b_t = 0$) and no obstruction, average per-period consumption is $\frac{1}{2}$ for each party (50% chance of winning and consuming 1, and otherwise 0). A necessary condition for this path to constitute an equilibrium is that both parties prefer this consumption stream over deviating to maximize their probability of winning the next election. We assume that deviation induces each party to play grim-trigger punishment strategies in all future periods: party A maximizes the weight of x voters by choosing $b_{t+1} = b_x$, B maximizes the weight of y voters by choosing $b_{t+1} = b_y$, and the losing party obstructs. We define A's maximum probability of winning as $p_A^{\max} \equiv p(b_x)$, and B's as $1 - p_B^{\max}$ with $p_B^{\max} \equiv p(b_y)$; recall that Equation (1) defines $p(b_t)$. Figure 2 shows how the probability-of-winning terms fluctuate across periods in the punishment phase depending on which party is in power and can tilt the rules in their favor.

These punishment strategies demonstrate how formal constitutional provisions influence informal norms. Either party can always exploit their legal bound, which we conceive of as arising from the constitution. Thus, the informal norm of forbearance holds along the equilibrium path only if both players forgo exercising their extreme constitutional option.[4]

Proposition 1 presents the conditions under which an equilibrium exists with perpetual forbearance, and Supporting Information Definition A.1 (p. 1) defines the full strategy profile with grim-trigger punishments. The incentive-compatibility constraints derived in Supporting Information Appendix A.3 (p. 2) show that forbearance fails when the maximum probability-of-winning terms are large in magnitude and asymmetric. If the maximum probability of winning for party A not only exceeds that for party B ($p_A^{\max} \geq 1 - p_B^{\max}$) but by a large-enough magnitude ($p_A^{\max} > \hat{p}_A$), then A reaps large gains from deviating whereas B's ability to punish is circumscribed. Identical logic characterizes B's calculus.

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[3]In the concluding discussion section, we summarize an extension with endogenous sorting. This relates to the idea of endogenous legal bounds because parties take actions that influence *which* voters support them; in turn, this affects how legal asymmetries at the voter level map into legal asymmetries between the parties.

[4]In Supporting Information Appendixes A.1 (p. 1) and A.2 (p. 1), we explain why the punishment phase is incentive compatible and why neither party will ever deviate unilaterally.

FIGURE 2 Equilibrium Probabilities of Winning in the Punishment Phase
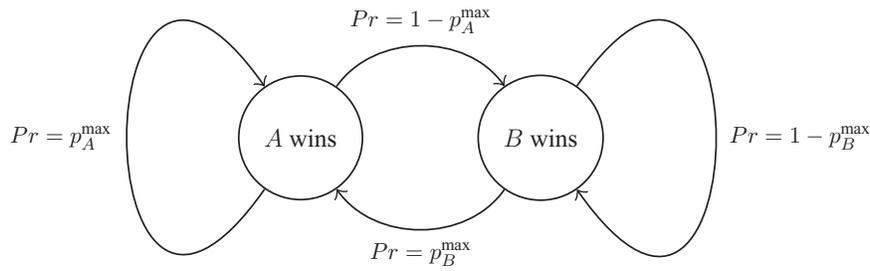
Note: Figure 2 depicts the equilibrium probabilities with which each party wins an election in the punishment phase. These terms depend on which party won the preceding election and hence changed the rules in their favor.

Proposition 1 (Forbearance equilibrium). *For $\phi < \frac{1}{2}$, unique threshold values $\hat{p}_A \in (\frac{1}{2}, 1)$ and $\hat{p}_B \in (0, \frac{1}{2})$ exist with the following properties:*

- *If party A is favored, $p_A^{max} \geq 1 - p_B^{max}$, then an equilibrium with perpetual forbearance exists if and only if $p_A^{max} \leq \hat{p}_A$.*
- *If party B is favored, $p_A^{max} < 1 - p_B^{max}$, then an equilibrium with perpetual forbearance exists if and only if $1 - p_B^{max} \leq 1 - \hat{p}_B$.*

Legal Bounds and Partisan Sorting

The interaction between legal bounds and partisan sorting determines when forbearance collapses. To illustrate our main findings, Figure 3 presents a region plot with party A's maximum probability of winning, $p_A^{\max}$, on the horizontal axis and party B's maximum probability of winning, $1 - p_B^{\max}$, on the vertical axis. The dashed 45° line $p_A^{\max} = 1 - p_B^{\max}$ expresses parameter values at which each party's ability to punish the other is symmetric. B is advantaged left of this line, and A to the right. The white region indicates parameter values for which both parties uphold forbearance. In the red region, A's incentive-compatibility constraint fails (see Supporting Information Equation (A.4), p. 3); in the blue region, B's incentive-compatibility constraint fails (see Supporting Information Equation (A.8), p. 3); and in the purple region, both parties prefer deviation over forbearance. The bottom edge of the blue deviation region and the left edge of the red deviation region correspond with $1 - \hat{p}_B$ and $\hat{p}_A$, respectively (see Proposition 1).

The five dots in Figure 3 correspond with different values of the legal bounds (b_x and b_y) and sorting (s). Asymmetric legal bounds combined with high sorting causes forbearance to break down. At point 1, each

party's leeway to favor their supporters is relatively limited and also symmetric: $b_x = -b_y = 0.3$. Sorting is also moderate: $s = 0.6$. Consequently, each party's probability of winning under maximal tilting is 53%.[5] This only slightly exceeds their probability of winning under forbearance, 50%. Neither party is willing to suffer the permanent obstruction cost ϕ to gain this small, *temporary* advantage. Symmetric legal bounds imply that each party wins 50% of the time across the infinitely long punishment phase.

Given this baseline, increasing sorting *or* making the legal bounds asymmetric—on their own—does not cause either party to deviate. Higher sorting at point 2, with $s = 0.9$, raises each party's maximum probability of winning to 62%. Thus, high partisan sorting enables each party to create a reasonably large advantage for itself by magnifying the advantage from overweighting their preferred voter group. However, each party knows that the opposition enjoys the same scope of legal opportunities when in power. Thus, when out of power, their electoral disadvantage is equally large, which deters deviation.

At point 3, sorting is low, $s = 0.6$, but the legal bounds are asymmetric: $b_x = 0.8$ and $b_y = 0.3$. This asymmetry favors party A because of their advantage among x voters. B has minimal ability to punish A—as with point 1, B's maximum probability of winning is 53%. However, because sorting is low, A's maximum probability of winning is also relatively low, 58%, which undermines incentives to deviate. In fact, as the voter groups become perfectly unsorted, $s \to 0.5$, then each party's maximum probability of winning converges to 50%—their probability of winning under forbearance—even with asymmetric legal bounds.

[5]To calculate this and the following terms, we evaluate Equation (1) with the specified parameter values.

FIGURE 3   Maximum Tilting Possibilities and Equilibrium Forbearance
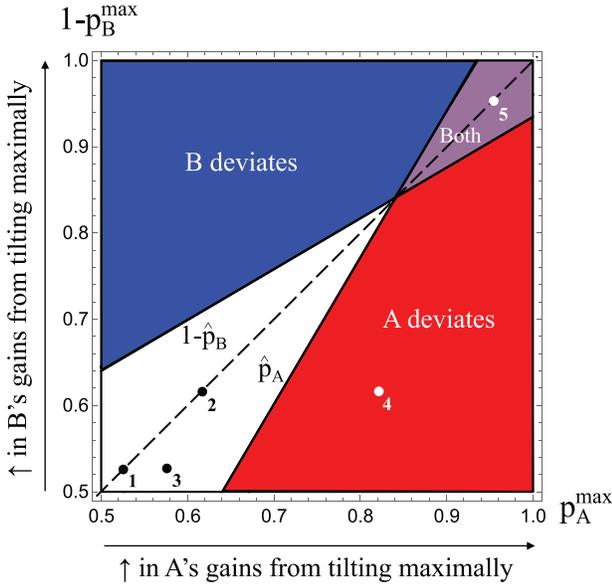
Note: Figure 3 is a region plot that depicts equilibrium outcomes as a function of each party's maximum probability of winning. An equilibrium with perpetual forbearance exists only in the white region; otherwise, at least one party has a profitable deviation. Parameter values are $\delta = 0.9$ and $\phi = 0.15$.

Point 4 illustrates when forbearance is unsustainable: asymmetric legal bounds ($b_x = 0.8$ and $b_y = 0.3$) *and* high sorting ($s = 0.9$). Party A gains a larger advantage in periods they set their maximum probability of winning (82%) than does B (62%). More restrictive legal bounds on B's actions make them unable to punish A commensurate to the large advantage that A can reap from deviating, which undermines deterrence. Concomitantly, relative to point 4, *increasing* party B's legal scope for tilting can potentially *restore* forbearance by deterring A from deviating.[6]

Proposition 2 (Interaction effect of asymmetric legal bounds and partisan sorting)**.** *Each of the following decreases the range of parameter values in which an equilibrium with perpetual forbearance exists:*

- *Increasing the magnitude of the legal bound for the favored party: b_x if $b_x \geq -b_y$, and b_y if $b_x < -b_y$.*
- *Increasing s, which also enhances the magnitude of the effects for the legal bounds.*

Deterrence Failure Despite Long Time Horizons

Contrary to conventional wisdom, even perfectly patient parties may deviate in our model. Patience drives many influential ideas about sustaining cooperation. Premised on the logic of a repeated prisoner's dilemma, high valuation of the future deters deviation. Patient players dread the long-term costs of punishment more than they enjoy the one-time gain from defecting. Yet here, a party favored considerably on the legal bounds achieves *higher* payoffs in the long run from initiating a punishment cycle. To see this, A's average probability of winning in the punishment phase is $\frac{p_B^{max}}{1-(p_A^{max}-p_B^{max})}$,[7] which exceeds $\frac{1}{2}$ if A enjoys an asymmetric legal advantage, that is, $p_A^{max} > 1 - p_B^{max}$. If ϕ is low enough, then A deviates despite perfect patience. However, increasing the discount factor δ does *narrow* the range of parameter values in which deviation occurs by reducing the short-term gains from electoral tilting (see Supporting Information Proposition A.1, p. 1).

Extensions

To isolate the new mechanism about asymmetric legal bounds, the baseline model abstracts away from other sources of asymmetry. Here we add additional parameters to capture empirically relevant features of American politics.

Pro-Democratic Norm Violations

Our model applies to situations in which a collapse in forbearance via changes to the electoral rules can expand rather than restrict democratic representation

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[6]Point 5 highlights that asymmetric legal bounds are not necessary for deviation. Here, despite symmetric legal bounds, neither party's incentive-compatibility constraint holds. Each party can gain a huge advantage from deviating because of very permissive legal bounds ($b_x = -b_y = 0.9$) and extreme sorting ($s = 1$). Under these conditions, either party effectively ends the game by tilting the rules toward their comparative-advantage voter bloc. Despite the other party's high ability to retaliate, the low probability of losing power after gaining it makes this retaliatory threat toothless. However, such extremely permissive legal bounds, which enable game-ending entrenchment, are incompatible with a constitutional regime, and thus not relevant for our focus on democratic backsliding.

[7]This is the right-hand side of A's incentive-compatibility constraint shown in Supporting Information Equation (A.4), p. 3 (excepting the $1 - \phi$ term), with $\delta \to 1$.

FIGURE 4   Franchise Expansion versus Franchise Contraction
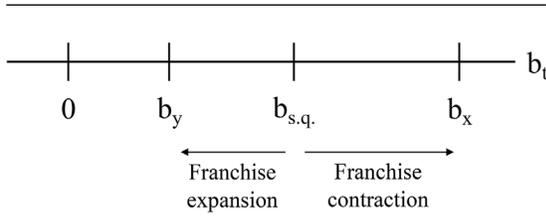
Note: Figure 4 illustrates a set of parameter values in which Party *B* can reduce overall bias by tilting the electoral rules in their favor because the status quo is biased against *y* voters (indicated by $0 < b_y < b_{s.q.}$).

(Pozen 2018). The simplest way to model this is with a biased status quo, $b_{s.q.} \in (-1, 1)$, which generalizes the assumption from the baseline model that the game begins without bias, $b_0 = 0$. This creates an additional source of asymmetry that favors party *A* if $b_{s.q.} > 0$, or *B* if $b_{s.q.} < 0$. Figure 4 highlights parameter values in which the status quo is biased toward *A*, perhaps because the franchise is small and disenfranchised citizens disproportionately prefer *B*. In this scenario, forbearance entails an agreement to keep the franchise small. Hence, *B* can deviate by *expanding* the franchise. This still entails a partisan gain because the choice moves electoral fortunes in their favor, yet improves rather than undermines democracy. Thus, the collapse of forbearance can engender either democratic erosion or deepening, depending on the relative location of each party's legal bound relative to the status quo.

Countermajoritarian Provisions

The framers of the U.S. Constitution imposed numerous impediments to unfettered majority rule, including separation of powers among three branches of government, a bicameral legislature, and federalism. Such countermajoritarian provisions ensure that the "winning" party (e.g., controls the presidency) cannot always enact desired changes in legislation, even within the legal bounds. In Supporting Information Appendix B.1 (pp. 8–11), we formalize this consideration in a simple way by assuming that countermajoritarian provisions might block the winning party from changing the rules, which occurs with probability $1 - \kappa_A$ for *A* and $1 - \kappa_B$ for *B*. The baseline model is a special case in which each κ probability equals 1.

In principle, Madisonian institutions can equally constrain each party from unilaterally changing laws. In practice, however, biases that affect the ability to control

certain chambers can create disproportionate hurdles for one party. For example, because of trends we discuss in more depth below, the advantage that Republicans enjoy among rural voters creates a pro-Republican bias in the malapportioned U.S. Senate and in controlling statehouses in swing states, and hence $\kappa_A \neq \kappa_B$. In the Supporting Information Appendix, we show that this asymmetry creates similar incentives as do asymmetric legal bounds for the favored party to reject forbearance.[8]

Relaxing Simplifying Assumptions

In Supporting Information Appendix B.2 (pp. 12–17), we add additional parameters to relax numerous simplifying assumptions from the baseline model: differential size of the voter blocs, asymmetric sorting, S-curve relationship between vote share and the probability of winning, and positive consumption for the losing party. In addition to demonstrating robustness, these alterations also enable us to relate our logic of deterrence and electoral tilting to complementary explanations for constitutional hardball in the United States. For example, Lee (2016) argues that the historically unusual partisan parity between Democrats and Republicans in recent decades has diminished their incentives to cooperate in Congress. We highlight parameter values for which forbearance is indeed hardest to sustain when the parties are close to parity.

Unraveling Forbearance in American Politics

The core mechanism in our theory is that parties refrain from fully exploiting legal opportunities to tilt electoral rules in their favor if such opportunities are distributed symmetrically across voter blocs that support each party. If instead certain groups are asymmetrically advantaged *and* sufficiently sorted between the two parties, then mutual forbearance collapses. An empirical implication is that the party who comes to enjoy this dual advantage will initiate defection and reap electoral advantages, whereas attempts to respond in kind by the opposing

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[8]As with malleable electoral rules, parties can take strategic actions that affect partisan bias in the countermajoritarian parameter κ. In Supporting Information Appendix B.1 (pp. 8–11), we discuss how Republicans after the Civil War strategically added states to boost their Senate representation, hence blocking the Democrats from gaining unified control of the central government. We also discuss why permanent actions (e.g., adding a state to the Union), as opposed to reversible actions (e.g., partisan gerrymandering in a state), do not qualitatively alter our core logic.

party will ultimately prove far less successful. Moreover, if the status quo systematically limits the disadvantaged party from retaliating in kind, then "punishment" actions by that party may instead expand democratic representation—a response that is more normatively attractive, but also rooted fundamentally in the retaliating party's self-interest. Here we apply this mechanism to comprehend democratic backsliding and the asymmetric breakdown of norms of forbearance in the post-Civil Rights United States. We examine recent battles between Republicans and Democrats over districting and voting rights by detailing the legal bounds that each party faces, how sorting has activated latent asymmetries between the parties, and how such emergent asymmetries have triggered the collapse of forbearance.

Gerrymandering

Legal Leeway and Sorting. Under the U.S. Constitution, state politicians have wide leeway to determine how electoral districts are drawn. Unlike other modern democracies, no unified federal agency oversees the process. Other than requiring that districts are single-member and contiguous, equal-sized, and satisfy the Voting Rights Act (in particular by not targeting voters by race except to preserve majority-minority districts), parties are essentially unfettered. In recent decades, the U.S. Supreme Court has confirmed such latitude by consistently ruling that partisan gerrymandering claims are beyond its jurisdiction (McGann et al. 2016, chap. 2). Consequently, in most states, either party with unified control over a state government can exploit leeway in the legal bounds.

Yet as is well known, territorially contiguous districts usually favor geographically dispersed groups of voters and hurt geographically concentrated groups of voters. Thus, as urban voters have increasingly sorted into the Democratic Party, the legal bounds over districting have come to asymmetrically favor Republicans. Although this demographic trend began during the New Deal, it has accelerated dramatically over the past three decades (Rodden 2019). Republican officials can effectively pack Democratic voters into a small number of districts, whereas Democratic officials face challenges to do the same for more geographically diffuse Republican voters. Thus, within a typical state, a Republican map-drawer can create a stronger partisan advantage when maximally gerrymandering than can a Democratic map-drawer. Geographic patterns of partisan support and asymmetric returns to gerrymandering between the parties, in turn, create a pro-Republican bias for controlling

statehouses. This positions them to manipulate national congressional districts in their favor (see Supporting Information Appendix C.1, pp. 21–24, for more details).

Quantifying Asymmetric Advantages. Table 1 quantifies stark legal asymmetries between the major parties. We estimate how much each party could theoretically bias U.S. House districting in their favor without violating legal bounds. The headline finding is that the most extreme pro-Republican gerrymander nets more seats for Republicans than does the most extreme pro-Democratic gerrymander for Democrats.

Using data from FiveThirtyEight's (2018) Atlas of Redistricting applicable for the 2010s, we computed two quantities for every state with multiple House districts: expected number of Republican seats under their best gerrymander (i.e., the districting plan that yields the most expected seats for Republicans) minus their expected number of seats under a proportional plan (i.e., expected number of seats is proportional to the statewide partisan split),[9] and the same for Democrats.[10] The first two rows of Table 1 evaluate comparisons if, hypothetically, the same party drew the maps in every state, which isolates Democrats' disadvantages when stratifying on which party controls districting. If Republicans enacted their best possible gerrymander in all 43 states with multiple House districts, they would gain 42.6 seats in expectation relative to the proportional benchmark. The corresponding estimate if Democrats maximally gerrymandered every state in their favor is 36.7. Thus, by this metric of maximal gerrymandering, the Republicans enjoy an advantage of 5.9 seats. This gap is considerably larger, 14.5 seats, in the second row, where we exclude the six states with independent districting commissions. In expectation, Democrats lose 7.9 seats in California alone that they could reap from maximally gerrymandering the state's districts.

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[9]Expected seats is calculated based on congressional election data averaged between 2006 and 2016. See the codebook for additional details.

[10]The extensive political science literature on gerrymandering focuses on how to estimate the magnitude of bias in empirically enacted districting plans (e.g., Katz, King, and Rosenblatt 2020; Stephanopoulos and McGhee 2015). To estimate legal bounds, we ask a different question (without taking a firm position on how to best measure bias): how much bias could, hypothetically, each party create for itself by creating maximally gerrymandered districts, subject to adhering to the legal bounds? This requires estimating partisan fortunes under hypothetical districting plans, which makes the FiveThirtyEight data uniquely suitable for our needs. The takeaways from Table 1 are qualitatively similar when instead estimating bias using the efficiency gap (not reported), although the object of more direct interest is net gain in seats by party.

TABLE 1 Partisan Gains from Exploiting Legal Bounds: U.S. House Districting

	Republicans	Democrats	Net GOP Advantage
Stratify on which party controls districting			
1. All states	42.6	36.7	5.9
2. States without nonpartisan districting	40.3	25.8	14.5
Incorporate Republican advantage in controlling statehouses			
3. States in which party drew post-2010 districts	28.1	6.3	21.8
4. States with partisan advantage	31.3	11.7	19.6

The final two rows illustrate how Republicans' advantages in controlling statehouses accentuates their edge in drawing unfair districts among the states without independent districting commissions. In the third row, we calculate the best gerrymandering figures for each party among the set of states in which that party (factually) controlled all three elected branches of the state government (i.e., a trifecta) in 2011. Thus, this calculation replicates each party's ability to gerrymander based on actual state-level control over districting during the 2010s. Republicans gain considerably more than Democrats when implementing their best gerrymanders, 28.1 seats compared to 6.3. The seventeen states in which Republicans controlled post-2010 districting collectively contain 204 seats, compared to only 47 seats in the mere six states in which Democrats drew the districts. In the fourth row, we calculate the gerrymandering bias figures while assuming that Republicans can implement their best gerrymander in every state in which they enjoy a partisan advantage (based on presidential election returns from 2012 and 2016), and vice versa for Democrats. This alternative hypothetical mode of allocating partisan control over statehouses again underscores the large net advantage for Republicans at gerrymandering.

Forbearance Collapses. Partisan gerrymandering dates back to the founding of the republic. However, supporting our argument that wide constitutional bounds alone are insufficient for the emergence of constitutional hardball, the extremity of gerrymandering has fluctuated dramatically throughout U.S. history. The Reapportionment Revolution of the 1960s ushered in decades of relatively fair maps amid a period in which partisan sorting was considerably lower than today (Ansolabehere and Snyder 2008, 248; Stephanopoulos and McGhee 2015). Yet in the new millennium, as the two parties became more sorted both ideologically and spatially, restraints on fair map drawing collapsed, particularly among Republicans. Aided by advances in mapping technology, post-2010

districting plans netted 13.3 seats for Republicans compared to their expected seat total under proportional districting plans in every state (again using the FiveThirtyEight estimates for a typical election). These gains came entirely from the 17 states in which they unilaterally controlled districting (see Table 2), where collectively they expected to win 17.3 more seats in a typical House election than under a proportional plan.[11]

Evidence of partisan intent is unambiguous. Following several instances of breaking norms by redistricting mid-decade in the 2000s, Republicans capitalized on the controversial *Citizens United* ruling in 2010. To gain control over districting, Republicans created the Redistricting Majority Project (REDMAP) to promote heavy spending in swing districts in states for which majority control was in reach (Hertel-Fernandez 2019). Later, when defending a Republican-drawn map in court, North Carolina state representative David Lewis openly defended partisan intent. Despite rough partisan balance in statewide vote share, he quipped that Republicans held a 10-3 advantage in the U.S. House among his state's congressional seats only "because I do not believe it's possible to draw a map with 11 Republicans and two Democrats." In 2019, Lewis reaffirmed that drawing the maps to maximize partisan advantage was "the point."[12] Although many Republican gerrymanders survived scrutiny from the courts, in five cases (including North Carolina), a court struck down a Republican districting plan as unconstitutional, usually for violating the Voting Rights Act (see Supporting Information Table C.1, p. 23).[13] These cases not only provide evidence of

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[11]By contrast, the bias is close to zero in the 21 states with multiple House districts and neither party had a trifecta (total gain of 1.1 seats for Democrats relative to proportional).

[12]See https://www.theatlantic.com/ideas/archive/2019/03/ralph-hise-and-david-lewis-nc-gerrymandering/585619.

[13]This helps to explain why the districting plans enacted by Republicans fell 10.8 seats short of our estimate for the legally permissible maximum.

TABLE 2 Districting Plans in States with a Partisan Trifecta in 2011

Republican Controlled

State	Max Advantage	Actual Advantage	Difference
South Carolina	0.9	0.9	0.0
Utah	0.9	0.9	0.0
Oklahoma	0.5	0.5	0.0
Alabama	0.9	0.9	0.0
Pennsylvania[a]	2.7	2.6	0.1
North Carolina[a]	1.8	1.7	0.1
Wisconsin	0.6	0.4	0.2
Maine	0.2	0.0	0.2
Kansas	0.5	0.3	0.2
Michigan	1.6	0.9	0.7
Tennessee	1.0	0.2	0.8
Georgia	2.5	1.6	0.9
Virginia[a]	1.7	0.7	1.0
Texas[a]	4.0	2.9	1.1
Ohio	3.8	2.5	1.3
Indiana	1.7	0.3	1.4
Florida[a]	2.8	0.0	2.8
Sum	*28.1*	*17.3*	*10.8*

Democratic Controlled

State	Max Advantage	Actual Advantage	Difference
West Virginia	0.0	0.0	0.0
Massachusetts	1.2	1.1	0.1
Connecticut	0.7	0.4	0.3
Arkansas	0.0	−0.7	0.7
Maryland	2.2	1.4	0.8
Illinois	2.2	0.7	1.5
Sum	*6.3*	*2.9*	*3.4*

Source: Authors' analysis of data from FiveThirtyEight's Atlas of Redistricting.
Note: Max advantage is the estimated legal bounds from Table 1 (see the identical figures of 28.1 and 6.3 in row 3 of Table 1). Actual advantage is the expected number of seats for the specified party under the districting plan actually enacted, net of the expected number of seats under a proportional plan. The states are ordered by the difference between max advantage and actual advantage.
[a] A court struck down the original plan (see Supporting Information Table C.1, p. 23).

Republicans pushing this electoral-tilting strategy to its legal limits but also highlight another institutional channel through which Democrats—who initiated each successful lawsuit—have pushed back.

Beyond simply countering Republican transgressions in court, Democrats also tried to gain advantages in states where they drew the districts. These actions are consistent with the punishment phase implied by our model, and inconsistent with an explanation based on an intrinsic commitment to democratic values. However, as Table 2 shows, they controlled fewer states (six) and faced limited scope to favorably tilt districts within the states they controlled (maximum possible gain of 6.3 seats relative to proportional). In each of Maryland and Massachusetts, Democrats drew lines that yielded one extra seat in expectation, and Maryland's governor admitted partisan intent: shifting a seat from a Republican to Democrat was "certainly my hope, and it was part of my intent."[14] Illinois provides a clear example of Democrats attempting and largely failing to skew districting in their favor because their voters are concentrated in a single city, Chicago. Illinois Democrats engaged in a "great deal of cartographical creativity" amid a "deliberate [search] to maximize partisan advantage" (McGann et al. 2016, 105).

Instead, national Democratic leaders have focused on countering Republican efforts by promoting new federal statutes, such as the For the People Act, that *restrict* the legal scope for either party to draw unfair districts (the Democratic-controlled House passed this bill in 2019 and 2021 along party-line votes). The party leadership's preference for "anti-hardball" tactics is entirely consistent with a strategic response in which institutional constraints relative to the status quo—rather than a normative distaste for playing hardball—prevent Democrats from simply matching Republican gerrymanders in a tit-for-tat spiral. Furthermore, the structure of the federal government (see our extension with countermajoritarian provisions) disproportionately hinders Democrats' ability to retaliate even with anti-hardball provisions. Separation of powers not only makes it inherently difficult to pass federal statutes without cooperation from both parties, but in particular for Democrats because of considerable bias toward rural voters in the Senate.[15]

Voter Suppression

Legal Leeway and Sorting. In addition to enjoying wide legal leeway to draw districts, individual states (particularly post-*Shelby*) have considerable discretion to determine voting requirements. Throughout U.S. history,

[14] See the Appendix to Graham and Svolik (2020).

[15] See https://fivethirtyeight.com/features/the-senates-rural-skew-makes-it-very-hard-for-democrats-to-win-the-supreme-court.

parties have continually manipulated this scope to disenfranchise or otherwise impose hurdles on voting that disproportionately affect various social groups, most frequently Blacks (e.g., Komisarchik 2020; Kousser 1974). Although federal amendments and enforcement statutes, along with accompanying jurisprudence, now prohibit states from denying the right to vote based on race, gender, or ages above 18, considerable leeway remains. For example, states can restrict voter access by requiring photo identification to vote or prohibiting ex-felons from voting. Such laws disproportionately hurt minority voters (i.e., Blacks, Hispanics, Native Americans) who are less likely to possess the types of identification cards that typical voter ID laws require, especially government-issued photo IDs (Barreto et al. 2019). Likewise, due to systemic racial bias in the criminal justice system, ex-felon laws tend to disproportionately disenfranchise Blacks (Aviram, Bragg, and Lewis 2017; Manza and Uggen 2008).[16] Alternatively, states can expand access by allowing early voting or no-excuse absentee voting.

Heavy sorting of Blacks and other racial minorities into the Democratic party in recent decades (Mason 2018; White and Laird 2020, 66–9) has yielded a clear legal path for Republicans to discriminate against Democratic voters. Although many techniques from the Jim Crow era are now outlawed, there is clear historical precedence for measures that disproportionately hinder Black voters. Concurrently, Republicans flipped statehouses in the South in the 1990s and 2000s—states with large Black populations and a history of racially targeted voting restrictions—which has further enabled the party to capitalize on emergent asymmetries.

Meanwhile, factors consistent with our framework prevent the Democrats from credibly threatening to retaliate in kind, even if they wanted to play tit for tat. The most direct impediment to suppressing Republican-friendly voter blocs is that Democrats' disadvantages in controlling statehouses throughout the country—in part a product of asymmetric gerrymandering, as described above—hinders their ability to pass targeted state-level laws (e.g., passing voter ID laws that permit student IDs, but not gun licenses). Even in states that Democrats do control, certain policies that could in principle be used to undercut rural voters are not determined at the state level. For example, individual counties determine the

location of polling places.[17] Thus, although allocating polling places by population would force rural voters to travel longer distances to vote, the legal bounds here limit Democratic state officials from setting the rules.

Another major problem that Democrats currently face with regard to credible retaliation is the lack of obvious laws whose net impact would, in fact, hinder Republican voters. This accords well with our basic observations about the importance of clearly sorted groups. For example, although existing voter ID laws disproportionately impact elderly voters, this demographic group is less heavily sorted into the Republican party than are minorities into the Democratic party.[18] Likewise, restricting early voting specifically in ways to try to hinder Republican constituencies also risks backfiring. Eliminating Sundays, for example, might hinder turnout among white evangelical Christians, but this would also hinder access for Black churchgoers. This was precisely the effect when Florida Republicans passed a law in 2011 to restrict early voting on the Sunday before election day (Herron and Smith 2012).

Forbearance Collapses. During the 1960s and 1970s, when the parties were less sorted than at present, civil rights legislation gained support from factions in both parties.[19] Yet as the Republican Party has become solidly conservative, evangelical Christian, rural, and white, and the Democrats more diverse, the parties have dramatically diverged in their support for voting rights. Although Democrats sometimes have tried to gain an advantage by selectively restricting voting access for Republican-leaning groups,[20] Democrats' strategy of generally seeking to expand voter access to the ballot is consistent with their limited opportunities to play tit for tat. Democrats have pushed a pro-voting rights agenda,

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[16] As of 2016, approximately 6.1 million people nationwide, or 2.5% of the country's voting-age population, were disenfranchised because of felony convictions. Among Blacks, the nationwide total stood at 7.4% and exceeded 20% in four states; see https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016.

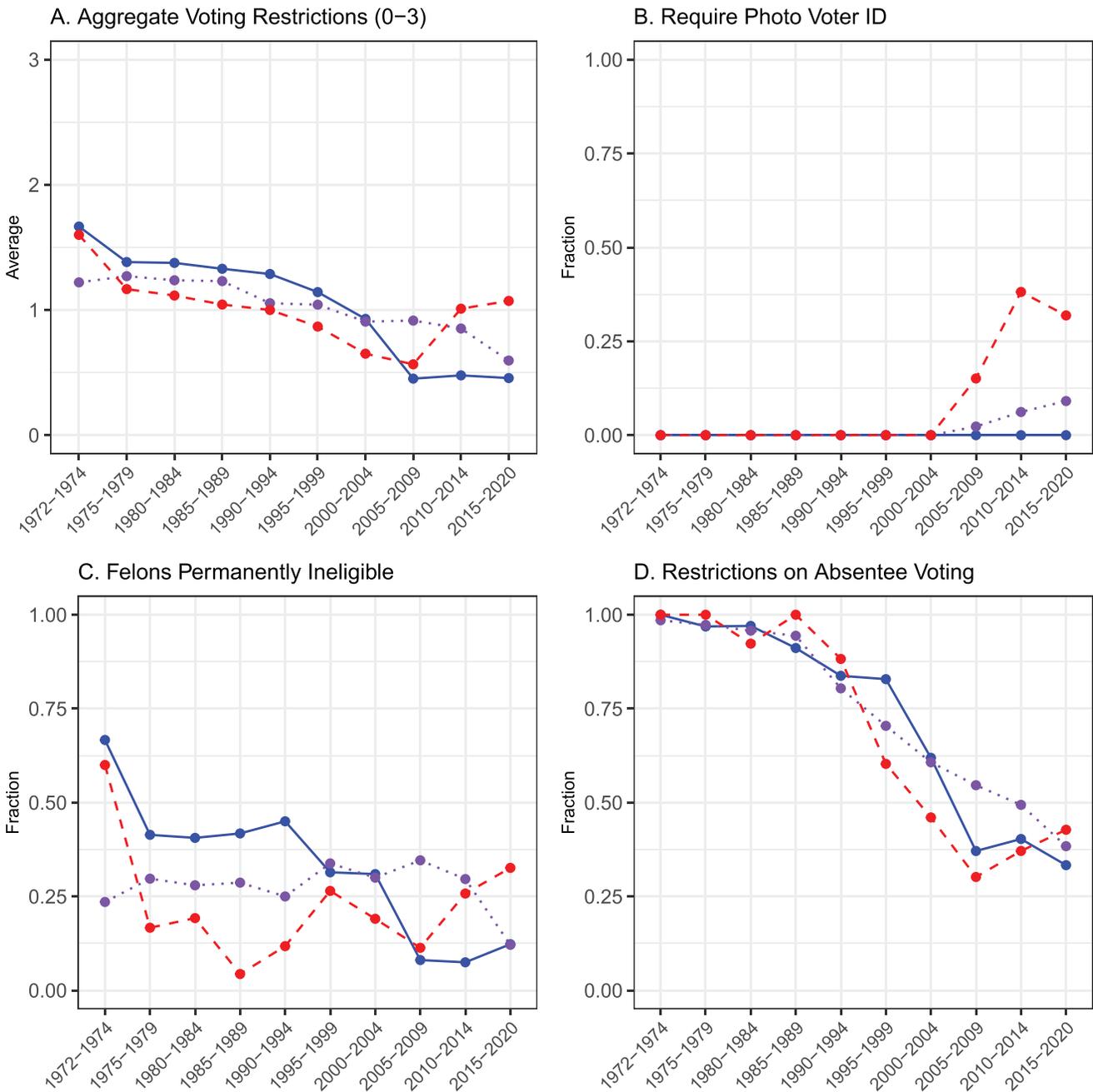[17] See https://www.ncsl.org/research/elections-and-campaigns/polling-places.aspx.

[18] Although voters over 65 favored the Republican over Democratic candidate on average by 6% in the 2016 and 2020 elections, the pro-Democratic gap was 78% for Blacks and 36% for Hispanics. Computed by authors from CNN exit polls.

[19] Northern Democrats led the push for the Voting Rights Act of 1965, as well as its renewal and amendments in 1970, 1975, and 1982, but this legislation also received support from Republican presidents and congresspeople. Rigueur (2016) discusses Gerald Ford's concerted outreach to Black voters. However, there were also early cross-currents, exemplified by Richard Nixon's "Southern Strategy."

[20] For example, in 1995, the Democratic governor of Oregon vetoed a bill for universal mail-in voting passed by a Republican-controlled legislature. Democrats admitted privately: "It'll help rural white voters, and it won't help our base, and it's a bad idea"; see https://www.wired.com/story/weird-partisan-math-vote-by-mail.

FIGURE 5 Voting Restrictions by Partisan Control of Statehouses, 1972–2020

A. Aggregate Voting Restrictions (0–3)

B. Require Photo Voter ID

C. Felons Permanently Ineligible

D. Restrictions on Absentee Voting

Note: The dependent variables are whether voters are required to present photo identification (Panel B); whether ex-felons are permanently disenfranchised, except for clemency from the governor (Panel C); and whether the state prohibits no-excuse absentee voting (Panel D). The *y*-axis in these panels is the fraction of states with restrictive values of the measure, averaged over states with Republican trifectas (red/dashed), Democratic trifectas (blue/solid), and divided government (purple/dotted). Panel A sums the fractions from the other panels, and the *y*-axis is the average number of restrictive provisions among states in each category.

whereas the Republican Party leadership has moved in the opposite direction.

To systematically illustrate the divergence between the two parties, we combined and extended several state-level voting restrictions to document patterns over time (see Supporting Information Appendix C.2, pp. 25–29, for details). Figure 5 summarizes trends for three binary measures of voter suppression and access at the state level between 1972 and 2020. We disaggregate by partisan control of statehouses (Republican trifectas in

red (dashed line), Democratic trifectas in blue (solid line), and divided cases in purple (dotted line)) and compute averages over five-year bins. Panel A adds the three measures, each of which express the fraction of states with a restrictive value on the variable, and higher values indicate greater restrictions.

Consistent with our theory, forbearance against enacting new voter restrictions held when vulnerable groups were less heavily sorted from the 1970s–90s. Instead, the general trend was to relax penalties for ex-felons and expand access to absentee balloting. As sorting accelerated in the 2000s, Democrats continued to expand access. By contrast, Republicans increasingly adopted suppression measures, but only for provisions believed to disproportionately hurt their opponents' supporters, such as stricter voter ID laws and ex-felon disenfranchisement laws. Until 2020, Republicans generally supported measures such as mail-in and absentee voting believed to benefit Republican-leaning groups (e.g., veterans, older voters).[21]

Strict photo ID laws (shown in Panel B), often justified to combat the chimera of widespread voter fraud, exhibit stark interparty divergence. Building on earlier trends to request some form of identification from voters, between 2006 and 2015, 15 states—all with Republican trifectas—passed laws that required a photo ID to vote. Statistical analyses of correlates of adopting voter ID and related voter restrictions consistently find evidence of a positive, statistically significant, and substantively large estimated effect of Republican state control; and this effect is accentuated in states with a larger Black population (Bentele and O'Brien 2013).[22] As with gerrymandering, North Carolina Republicans illustrate the general trend. After a Democratic governor vetoed a voter ID law in 2011, Republicans later gained a trifecta and in 2013 passed an omnibus bill that, among many provisions to curtail voting access, required photo identification and severely limited which IDs were acceptable. Federal courts struck down the law for targeting

"African Americans with almost surgical provision," and Republicans pursued alternative voter ID laws for the remainder of the decade (Tervo 2020, 62–65).

Disenfranchisement of ex-felons illustrates a similar temporal partisan pattern. Dating back to English law during colonial rule, statutes to *permanently* disenfranchise anyone convicted of a felony became common during Reconstruction. Many states began relaxing these starting in the 1960s (Manza and Uggen 2008). And, as Panel C shows, by the 1990s, Republican-led states had in fact become more tolerant of voting rights for ex-felons.[23] Yet the past decade exhibits the opposite pattern. As of 2020, only 13% of Democratic-trifecta states permanently bar felons from voting (absent a grant of clemency from the governor), compared to 33% of Republican-controlled states. The discrepancies are even starker when comparing how frequently ex-felons are disenfranchised during their probationary period: 21% for Democratic-trifecta states compared to 81% of Republican-controlled states. Supporting Information Figure C.2 (p. 29) shows that this gap between Democratic and Republican states is also a recent phenomenon. As an example with clear evidence of partisan intent, in 2019, Republican officials in Florida imposed a de facto poll tax to thwart a state constitutional amendment (passed via a voter initiative in 2018) intended to enfranchise ex-felons.[24]

By contrast, Panel D shows greater similarity between Democrats and Republicans for no-excuse absentee voting, which is believed to exhibit a slight pro-Republican bias in normal elections (Biggers and Hanmer 2015, 195). However, the COVID-19 crisis of 2020 upended this consensus. Given the prospect of traditionally Democratic voters turning to vote-by-mail en masse during the pandemic, Republicans—led by President Trump—repeatedly voiced unfounded claims that expanding voting by mail would unleash massive voter fraud. Republican legislators and operatives in various states (e.g., Wisconsin, Texas) accordingly unleashed a wave of lawsuits to restrict mail-in voting. Republicans continued to expound wholly unsubstantiated allegations of fraud even after the election, which were uniformly rejected when brought to court. Although most states eventually passed a law that voters did not require any excuse (or permitted fear of COVID-19 as an

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[21]In addition to the data presented in Figure 5, we also tallied every state-level law that expanded or contracted voting access using annual reports from the Brennan Center between 2013 and 2020. Democratic-trifecta states passed at least one pro-voting measure in 41% of years compared to restrictive measures in only 4% of years, with respective figures of 19% and 18% for Republican-trifecta states. Similarly, Grumbach (2021) examines voting-right indicators between 2000 and 2018 and demonstrates that, among numerous plausible covariates, only Republican-party control is systematically correlated with enacting voter restrictions.

[22]Despite ongoing debate about the *effectiveness* of these provisions (Highton 2017), Republican party elites and conservative interest groups certainly act as though they *believe* that such restrictions provide an advantage.

[23]Meanwhile, restrictive provisions often enjoyed bipartisan support. For example, Democratic president Bill Clinton signed the federal "three strikes law" in 1994, which massively increased overall incarceration levels, particularly among Black men.

[24]See https://www.newyorker.com/news/news-desk/the-fight-for-voting-rights-in-florida-isnt-over.

excuse) to vote by mail in the 2020 election, the six exceptions were Republican controlled.[25] Between January and May 2021, 14 states (all with either a Republican trifecta or a veto-proof legislative majority) passed bills to restrict voting access, including twelve states that targeted vote by mail.[26]

Discussion

Even in democracies, politicians can exploit constitutional loopholes to gain undemocratic electoral advantages. When do political leaders uphold norms of mutual forbearance, rather than maximally exploit such opportunities? Our answer is that informal norms and formal constitutional rules are fundamentally intertwined via a logic of deterrence. Party elites can be deterred from pressing all legally viable opportunities for tilting the electoral playing field if the other party can credibly threaten to retaliate in kind. Constitutions and supporting judicial interpretations determine how far each party can legally push the rules to their advantage. Formal rules create reversion points if mutual forbearance breaks down, which occurs when one party gains asymmetric legal leeway to tilt the electoral rules in their favor.

This core mechanism helps to make sense of many basic asymmetries between the contemporary Republican and Democratic parties, including their divergent approaches to gerrymandering and voting rights. As urban and minority voters have increasingly sorted into the Democratic party, the Republican party has effectively been able to exploit legal strategies for self-entrenchment at the state level. By contrast, the Democratic party has increasingly focused—albeit largely unsuccessfully thus far—on using federal institutions to limit gerrymandering and expanding voter access. Although we certainly do not rule out a role for differential values and moral commitments driving party leaders, our model underscores that such "soft" motivations are not necessary for understanding either party's behavior. A push for democracy-enhancing reforms in the face of attempts to erode democracy is entirely compatible with parties acting purely in their own electoral interests.

Our framework can be expanded in several directions. Although our baseline model treats partisan sorting as an exogenous parameter, clearly politicians

often make deliberate choices that push different groups of voters into each party. For example, the Democratic Party gained increased support from urban liberals and Blacks as part of the New Deal coalition decades before the national party adopted a strong civil rights platform, given their fear of losing their southern bloc (Schickler 2016). And since the 1960s, Republicans have consistently sought to make racial and cultural appeals to rural white voters whereas Democrats often speak of the need to deepen the Civil Rights movement (Hacker and Pierson 2020). In Supporting Information Appendix B.3 (pp. 18–20), we explore such strategic sorting by incorporating into our model the incumbent party's choice over whether to emphasize economic or cultural issues in their campaign platforms and legislation. We show how asymmetric legal opportunities can further amplify incentives to choose a polarizing platform that captures legally privileged voters. Thus, although fully capturing these dynamics demands further exploration, this helps pinpoint how the underlying institutional structure can itself contribute to partisan polarization.

Our model also invites several empirical applications beyond gerrymandering and voter suppression. Consider recent attempts by Republicans to strip incoming Democratic governors of their power. Our model highlights the incentives that arise from the interaction of permissive legal bounds (given unsettled boundaries regarding separation of powers at the state level) and extreme partisan sorting. In this case, the nonurban concentration of Republican voters advantages Republicans in state legislative elections (given single-member seats) relative to at-large gubernatorial races. Consequently, Republicans benefit in both the long and short run from reducing the power of the governor relative to state legislatures (see Supporting Information Appendix C.3, p. 30). With respect to state expansion, the asymmetric advantage cuts the other way. Because the two most viable potential states (Washington, DC and Puerto Rico) lean Democrat, and because any opportunities for Republican retaliation by expansion elsewhere are limited, granting statehood has naturally risen to the top of the Democrats' agenda (see Supporting Information Appendix C.4, pp. 31–32).

Yet as discussions over reforming the Senate filibuster highlight, partisan implications are not always clear-cut. In 2013, Democrats unilaterally eliminated the filibuster for federal court appointments below the Supreme Court level; in 2017, Republicans unilaterally removed the Supreme Court provision; and many elected Democrats support eliminating the legislative filibuster entirely as of 2021. On the one hand, and in accordance with our theory, Democrats understand that a malapportioned and Republican-tilted Senate

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[25]See https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx.

[26]See https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021.

means that eliminating the filibuster could ultimately come to benefit Republicans more than Democrats. On the other hand, as of this writing, Democrats are also keenly aware that the costs of not passing key pieces of legislation, including bills such as the For the People Act and the John Lewis Voting Rights Advancement Act, likely outweigh the risks of future retaliation. They also understand that a heavily right-skewed Supreme Court can stifle their legislative priorities, breeding suggestions of adding justices or other court reforms that would, they hope, shift the legal bounds in their favor. Modeling how such trade-offs across multiple institutional arenas affect party elites' calculus constitutes an obvious frontier for further enriching our deterrence framework.

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Supporting Information

Additional supporting information may be found online in the Supporting Information section at the end of the article.

Appendix A: Supporting Information for Baseline Model
Appendix B: Model Extensions
Appendix C: Supplementary Information for Empirical Applications