Exploiting Asymmetries: A Theory of Democratic Constitutional Hardball

Gretchen Helmke Mary Kroeger Jack Paine*

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Abstract

Constitutional hardball—in which politicians exploit opportunities permitted by the constitution to bias political support in their favor—risks undermining democracy. Yet, why party elites on one side of the aisle adopt such tactics, whereas their competitors may not, remains an open and pressing question. Taking the contemporary United States as our main exemplar, we develop a dynamic game theoretic framework to explore how asymmetries in constitutional bounds—the extent to which one party can legally tilt institutions in their favor—triggers party elites to play constitutional hardball. By showing how self-enforcing constitutional democracy can unravel at the hands of politicians despite adhering to the limits imposed by a constitution, we supply a novel mechanism based on the failure of mutual deterrence. We discuss empirical applications in contemporary American politics to voting rights, gerrymandering, and state expansion.

*Department of Political Science, University of Rochester.

1 INTRODUCTION

How does liberal democracy unravel? Why might the parties and political elites that once helped to enforce the formal and informal institutions of democracy begin to undermine them? For many observers of contemporary politics in the United States these are hardly idle questions. Survey evidence from a wide range of sources, including Freedom House, V-Dem, the Economist, and Bright Line Watch, highlight a disturbing downward trend in the health of American democracy. Day after day, experts and citizens alike express growing alarm with political elites' commitment to the democratic rules of the game, particularly by Republican politicians (Fishkin and Pozen, 2018; Levitsky and Ziblatt, 2018; Dionne Jr, Ornstein and Mann, 2017). Citing extreme partisan gerrymandering, repeated attempts at voter suppression, and efforts to undercount minorities by adding controversial citizenship questions to the U.S. census, one New York Times op-ed bluntly asked, "Do Republicans Even Believe in Democracy Anymore?"[1] These are examples of constitutional hardball, in which politicians exploit opportunities permitted by the constitution to bias political support in their favor despite violating the spirit of democratic rules. Meanwhile, critics are divided between bemoaning Democrats' unwillingness or ineptitude to "play dirty" (Faris, 2018; Belkin, 1999), and exhorting both sides to restore democracy by respecting the rules the game (Levitsky and Ziblatt, 2018). Thus, the pattern of constitutional hardball is largely *asymmetric*, with only one of the two parties frequently subverting democratic norms.

To explain why a party might initiate constitutional hardball and why anti-democratic actions may be asymmetric, we develop a dynamic game theoretic model in which politicians from two parties interact. In each period, the party in power chooses between following principles of representative democracy and taking actions to bias institutions in their favor, which enables them to enjoy a larger share of policy-making influence in the current period and raises their probability of retaining power in the next period. Bounds determined by the constitution limit each parties' ability to tilt the democratic playing field, and constitutional bounds for particular institutions may be narrow or wide. For example, in the United States, the Constitution clearly mandates popular elections for U.S. House representatives to be held every two years (minimal constitutional leeway for changing the rules) but provides scant guidance on drawing congressional district boundaries (considerable leeway). If constitutional bounds for a particular rule are tight, then neither party

[1] https://www.nytimes.com/2019/07/01/opinion/republicans-trump-democracy.html

has much leeway to tilt that institution in its favor. And, even for an institution in which the constitutional bounds are wide, symmetric constitutional bounds can facilitate cooperation: a party that enjoys considerable leeway to shift the bias toward itself may refrain from doing so if the other party also has considerable scope to favorably shift institutions, making its threat to retaliate credible.

Our main insight is that asymmetric constitutional bounds encourage one party to play hardball. The party favored by the constitution can reap considerable electoral gains without fearing severe long-term punishment from the other party. Asymmetric constitutional bounds compromise the basic logic of deterrence that undergirds self-enforcing constitutional democracy. As such, anti-democratic tactics emerge endogenously from politicians who are both *adhering to and exploiting the limits imposed by a democratic constitution*. Contrary to insights from the standard repeated prisoner's dilemma, asymmetric constitutional bounds create these incentives even if the parties are perfectly patient by undermining the ability of one party to punish over the long term in the hardball phase. Nor does the mechanism hinge on closely matched parties grabbing any possible advantage; instead, if the constitutional bounds are asymmetric, cooperation is more likely if the party disfavored by the constitution enjoys high levels of popular support because this enhances their ability to punish the party with constitutional advantages in response to defections—upholding deterrence.

In developing a formal theory of asymmetric constitutional hardball, we extend the burgeoning literature on democratic backsliding in several respects. First, we precisely define backsliding as actions by one or both parties to bias institutions in their favor relative to a benchmark of perfect proportionality, even if *perfect* equality in terms of all voters and all votes counting the same in any real-world constitutional democracy may be impossible to achieve (Dahl, 1967; Riker, 1982). Our working definition of democratic backsliding is thus at once narrower than conventional approaches that include elements such as populist rhetoric, charismatic outsiders, nationalism, and/or xenophobia (e.g., see the checklist developed by Levitsky and Ziblatt 2018), but it is also flexible enough to encompass numerous anti-democratic measures or instances of norm-breaking across multiple political institutions, including many forms of behavior that legal scholars have labeled as examples of constitutional hardball (Tushnet, 2003; Fishkin and Pozen, 2018).

Second, by highlighting how elites can manipulate party support within the bounds of the constitutional order, we articulate novel incentives for backsliding. The classic regime transitions literature analyzes dramatic events such as military coups that clearly constitute democratic reversals (Linz and Stepan, 1978; Acemoglu and Robinson, 2006), but these have become less prevalent in the post-Cold War world relative

to more subtle machinations to subvert representation (Bermeo, 2016). Our focus also differs from several recent analyses of democratic erosion that highlight either the failure of citizens to defend democracy (Graham and Svolik, 2019; Carey et al., 2019; Mounk, 2018), or the role of individual leaders and/or populist outsiders (Nalepa, Vanberg and Chiopris, 2018; Buisseret and van Weelden, 2019). Our focus instead builds more directly on observations by scholars such as Levitsky and Ziblatt (2018) and Fishkin and Pozen (2018) that, at least in contemporary American politics, party insiders have taken most of the initiatives to tilt the playing field. We advance their insights by showing how asymmetric punishment ability causes the breakdown of elite forbearance, which departs from the logic of myopic players in the repeated prisoner's dilemma that animates these and many related discussions of cooperation in politics.

Third, whereas most formal models treat constitutions as coordination or commitment devices (Przeworski, 1991, 2003; Fearon, 2011; Weingast, 1997), we emphasize that constitutions can become tools for undermining rather than upholding democracy. As such, our vision of constitutions shares at least superficial similarities with qualitative critiques of the U.S. Constitution and American democratic history (Dahl, 1967; Levinson, 2006; Mickey, 2015; Lepore, 2018). These scholars draw attention to the anti-democratic roots of the U.S. Constitution—which can be traced to the Framers' desire to build a republic, not a democracy in the modern understanding of the word—and to the various institutional features that have previously and in some cases continue to distort American democracy, which in fact exhibits similarities with many other countries where outgoing elites shaped the constitution to protect their interests (Albertus and Menaldo, 2018). In highlighting how elites might exploit certain silences or gaps within the U.S. constitution to erode democracy, our overarching argument is perhaps most similar to Ginsburg and Huq (2018). We depart, however, by highlighting ways in which the U.S. Constitution is and *is not* malleable (i.e., our concept of constitutional bounds) and how asymmetries in its flexibility can lead parties to play hardball and erode democracy.

Fourth and finally, our model relates to research on the evolution of U.S. democratic institutions. Institutions in American politics are undergoing important historic changes, and some of the most striking trends in American politics involve increases in polarization at every level of government (McCarty, 2019). Some scholars highlight how parties' strategic reactions to polarization has distorted electoral competition (Lee, 2016). Although many theories take institutions as given constructs, many institutional rules are endogenous to conscious choices by politicians. For example, although the "pivotal politics" model takes the filibuster

pivot in the Senate (60 votes) as a fixed constraint for passing policies or approving appointees, senators can vote to change this rule—and, indeed, have for some types of federal appointees in the past decade. Koger (2010) departs from the static approach by arguing that the filibuster has persisted because (1) historically, politicians have exhibited constraint in its usage (or what Levitsky and Ziblatt 2018 call "institutional forbearance"), and (2) it also allows politicians to shift the blame on failed policies. Shepsle (2017) also rejects static models of institutions and instead argues that "what humans devise, they may revise or defy," supported by examples of political actors transgressing rules developed earlier. Binder (2018) and others delve into the conditions under which politicians will bend the rules. Our paper advances these considerations by providing a formal framework to understand the strategic motivations for parties to alter democratic institutions.

The rest of the paper unfolds as follows. In Section 2, we elaborate on our formal definition of democratic backsliding by specifying what we mean by bias and constitutional bounds. In Section 3, we present and analyze our formal model. In Section 4, we elaborate on our model's application to American politics, providing two examples in which constitutional bounds favor Republicans, voting rights and gerrymandering, and one in which the bounds favor Democrats, statehood expansion.

2 Biased Vote Share and Constitutional Bounds

The conceptual underpinnings of our framework are biased vote share and constitutional bounds. We argue that a parsimonious framework for thinking about how institutions can bias the relationship between popular support and vote share—and limitations on political parties' ability to bias support in their favor—encompasses a large range of tactics that scholars usually study separately. This section introduces some formal notation, but we do not consider actors' motivations and strategies until the next section.

We analyze a society in which $v \in (0, 1)$ percent of the electorate votes for political party P_R and $1 - v$ percent votes for party P_D. Given that our application is primarily to the contemporary United States, these labels intentionally correspond with Republican and Democrat, although ideological policy preferences play no role in the analysis to limit our focus to the key mechanism of interest. Under perfect proportionality, P_R wins with probability v. But, in any polity institutional rules can distort to varying degrees the relationship between a party's popular support and its electoral success. We capture this distortion in terms of a biased

probability of winning for P_R:

$$p(v, b) \equiv \frac{(1+b) \cdot v}{(1+b) \cdot v + (1-b) \cdot (1-v)} \tag{1}$$

Depending on the specific substantive context to which we apply the theory, we interchangeably conceive of this term as the altered probability of each party winning a single winner-take-all election (e.g., presidency), or the probability of gaining a majority in a particular legislative district or chamber. The parameter $b \in [-1, 1]$ expresses bias. If $b = 0$, then vote share perfectly maps into P_R's probability of winning (i.e., no bias). However, if b is positive, then the playing field is skewed in favor of P_R, and if b is negative, then it favors P_D. In the extreme case with $b = 1$, we have $p(v, 1) = 1$. There is effectively a Republican autocracy because only Republican voters determine policy influence. The opposite extreme of $b = -1$ corresponds with a Democratic autocracy because $p(v, -1) = 0$.

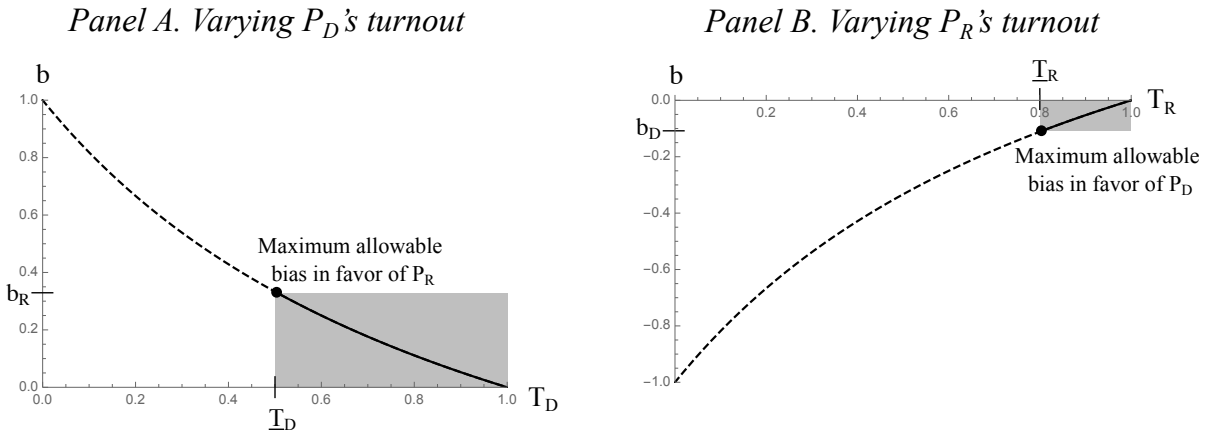
Voter turnout provides a concrete substantive example of the bias term. Suppose that $T_R \in [0, 1]$ percent of P_R supporters and $T_D \in [0, 1]$ percent of P_D supporters turn out to vote. Although many factors affect turnout, as we discuss later in the paper, it is intimately connected to voting rights that generate variance in voter eligibility between Republican and Democratic supporters (e.g., income, race, and gender restrictions earlier in U.S. history, or ex-felons in contemporary politics) or differential costs of voting (differential impact of voter ID laws, distance to polling places, purging voter rolls and disallowing ballots based on factors correlated with race). Given the turnout terms, R's probability of winning equals $\frac{T_R \cdot v}{T_R \cdot v + T_D \cdot (1-v)}$. Setting this term equal to the expression in Equation 1 enables solving for the bias:

$$b = \frac{T_R - T_D}{T_R + T_D}$$

Panel A of Figure 1 fixes $T_R = 1$ and plots b as a function of T_D, and Panel B fixes $T_D = 1$ and plots b as a function of T_R. Substantively, we can think of Panel A as a context in which P_R controls the legislature and determines policies that affect P_D's turnout, and vice versa for Panel B. In Panel A, at the extreme of $T_D = 0$, we have $b = 1$ because only P_R supporters vote. Increases in T_D diminish b because higher turnout among P_D supporters decreases P_R's probability of winning, and $b = 0$ if $T_D = 1$ because both parties enjoy full turnout. Similarly in Panel B, at the extreme of $T_R = 0$, we have $b = -1$ because only P_D

supporters vote. Increases in T_R diminish the magnitude of b because higher turnout among P_R supporters decreases P_D's probability of winning, and $b = 0$ if $T_R = 1$.

Figure 1: Turnout: Biased Vote Share and Constitutional Bounds



The gray regions in the figures highlight the constitutional bounds. Any policies that push either $T_D < \underline{T}_D = 0.5$ or $T_R < \underline{T}_R = 0.8$ fall outside the constitutional bounds, denoted by the dashed black lines in the white regions. Because b strictly decreases in T_D and strictly increases in T_R, combining the two panels shows that these restrictions imply $b \in \left[b_D, b_R\right]$, for the constitutional bounds $-1 < b_D < b_R < 1$ shown in the figures and assumed throughout the analysis. In other words, given the constitutional constraints, P_R cannot choose policies that yield a bias toward itself greater in magnitude than b_R, and P_D cannot choose policies that yield a bias toward itself greater in magnitude than b_D. This is an example of asymmetric bounds because P_R is assumed to enjoy greater leeway to limit turnout among P_D voters than the converse, i.e., $\underline{T}_R > \underline{T}_D$, which in turn implies that the magnitude of b_R exceeds that for b_D. This explains why the gray region is larger in Panel A than B.

To motivate our key concept of constitutional bounds, the following examples highlight both opportunities and limitations for parties to tilt the playing field in their favor. Democratic constitutions do not permit policies that generate arbitrarily low turnout for a particular party. Outright party bans, such as occurred in Argentina in mid-20th century against the Peronist party, are obviously anti-democratic and unimaginable in the current U.S. context. Several amendments to the U.S. Constitution specifically proscribe certain restrictions on voter eligibility:

Fifteenth: "The right of citizens of the United States to vote shall not be denied or abridged by

the United States or by any State on account of race, color, or previous condition of servitude."[2]

Nineteenth: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

Twenty-sixth: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

However, modern democracies also maintain a throng of institutional rules (e.g., electoral thresholds, district magnitude) that effectively eliminate smaller parties from gaining seats (Powell Jr, 2000; Cox, 1997), which is equivalent to diminishing turnout by supporters of these parties. Recent U.S. Supreme Court decisions such as *Shelby County v. Holder* issued in 2013, which weakened preclearance provisions in the Voting Rights Act, demonstrate that voting rights is still an ongoing area of contention in constitutional law. U.S. states have historically enjoyed very wide latitude on voting rights and retain considerable prerogatives even today. This creates scope for either party to take actions that affect T_R and T_D, which in turn affect b.

The next consideration is why constitutional bounds would be asymmetric. In the United States, constitutional provisions that determine the real-world bounds were not written specifically to benefit a particular party, although in many other countries rulers have written or revised constitutions specifically to benefit their own party (Albertus and Menaldo, 2018). Allowing wide leeway to individual states to determine voting rights followed from deals over states' rights and many founders' fear of "democracy" at the 1787 Constitutional Convention—before political parties had formed. The aforementioned amendments specifically protect the rights of certain identity groups based on race, sex, or age, as opposed to provisions based on party affiliation. The extremely high bar for enacting federal amendments virtually ensures some degree of bipartisan support for their passage.[3] However, given the constituencies of different parties, seemingly

[2]Of course, the 15th amendment did not end the struggle over the right to vote for African Americans and other minority groups, as many minorities were disenfranchised between the 1890s and 1960s due to dubious constitutional interpretations by the Supreme Court and rigged constitutional conventions in many southern states, leading Mickey (2015) to characterize this as a period of outright authoritarianism. We note simply that the explicit ban on race at least constrained the *de jure* bans that states placed on voting (e.g., shifting from whites-only rules to literacy and poll taxes, the latter of which were proscribed by the 24th amendment in the 1960s) and that Supreme Court doctrine can evolve over time, as discussed below.

[3]Although this was not true of the Reconstruction amendments, there were clear human rights motives

neutral laws can instead create asymmetries in the ability of parties to bias the rules in their favor, for which we provide many examples from the contemporary United States following the model analysis.

The width of the constitutional bounds depends on the specific institution. The U.S. Constitution allows no flexibility on how many senators represent each state, but is more ambiguous regarding how much power the Senate commands relative to the presidency. There is no flexibility on whether the president will be chosen every four years by electors appointed by each state, but there is considerable flexibility on how states choose their electors. Therefore, even for provisions that appear fixed—like two senators per state and the electoral college—there is usually room for parties to manipulate institutions to their advantage. Regarding these specific institutions, executive power has increased considerably relative to the Senate over time, with senators usually granting considerable leeway to co-partisan presidents. In the run-up to the election of 1800, some states changed how they allocated presidential electors. Virginia switched to a winner-take-all system to maximize the advantage for Thomas Jefferson relative to John Adams, given the presumption that Jefferson would receive a higher vote share in Virginia (Ferling, 2004).

For the sake of tractability, our subsequent formal analysis treats such constitutional boundaries as fixed and known, although the formal results would be identical if instead actors had incomplete information about the precise location of the bounds. We also acknowledge that even without amendments, constitutional bounds can change over time due to changes in societal conventions or changes in the ideological makeup of the Supreme Court. One important example occurred in the 1960s when the Warren Court departed from previous Supreme Court interpretations by mandating equally apportioned U.S. House districts, and it is possible that future Supreme Courts could depart from the interpretation of the current Roberts Court that enables wide scope for gerrymandering U.S. House districts. Although we treat constitutional bounds as fixed across the infinite time horizon in our game, again, the results would be qualitatively similar if these bounds changed exogenously over time.[4] The only important assumption is that there are limits to parties' ability to manipulate the rules in their favor and that these bounds may exhibit asymmetry.

for ending slavery, granting citizenship, and extending the franchise based on race beyond considerations about voting advantages.

[4]In future work, we hope to examine the strategic implications of allowing parties to take actions to endogenously change constitutional bounds, for example, by passing amendments or packing the Supreme Court.

This approach corresponds with mainstream interpretations of the U.S. Constitution that acknowledge certain bright lines while also stressing considerable room for interpretation in other areas, or what Amar (2012) calls the "informal constitution." This conceptualization tacks in between "originalist" views that understate the extent of leeway the U.S. Constitution allows, and more recent scholarship on democratic backsliding in the United States that overstates its flexibility. For example, Ginsburg and Huq (2018, 138) argue that "the range of possible alternate specifications of constitutional rules is almost unlimited, given the majestic vagueness of much of the document's text and the plasticity of historical sources." We instead contend that not all constitutional provisions are equally malleable. When the boundaries bind, our analysis promises considerable traction on how the extent of constitutional leeway and its asymmetry affects decisions by party elites to favor their party to the detriment of democratic representation.

Finally, we assume that neither parties has an outside option to violating constitutional bounds, perhaps by staging a coup.[5] Although relevant in some substantive contexts, these types of outside options are not viable in the contemporary United States. This scope condition enables us to study democratic backsliding in the hard-case scenario in which actors adhere to constitutional rules.

3 Modeling the Strategic Interaction

3.1 Setup

Given this foundation for the key concepts in the model, we now analyze a strategic interaction between two long-lived political parties, P_R and P_D. The two parties interact in an infinite time horizon with time denoted by $t \in \mathbb{Z}_+$, and discount future periods by a common factor $\delta \in (0, 1)$. In each period, a single strategic move occurs in which the party in power chooses political bias $b_t \in \left[b_D, b_R\right]$, motivated above, with the only difference that we now index the political bias parameter by time. Again, "in power" can refer to different possible scenarios, including controlling the presidency or enjoying a majority in a particular legislative chamber.

There are four states of the world determined by which political party is in power, $\rho_t \in \left\{\rho_R, \rho_D\right\}$, and whether the game is in a phase of normal status quo politics or constitutional hardball, $\alpha_t \in \left\{\alpha_{sq}, \alpha_{hard}\right\}$.

[5] If there was incomplete information about the bounds, it would be possible for a party to pass a law that gets struck down. Then, our assumption would be that parties adhere to the courts' decisions.

If $\alpha_t = \alpha_{sq}$, then policy output yields joint consumption of 1. If the party in power chooses $b_t = b_{sq}$, then its policy influence generates a consumption amount $\pi_{sq} \in \left(\frac{1}{2}, 1\right)$, whereas deviating to hardball increases its policy influence to $\pi_{hard} \in \left[\pi_{sq}, 1\right)$. Throughout, we set $b_{sq} = 0$, which implies no bias under normal politics and yields the following natural ranges for the constitutional bounds: $b_R \in (0, 1)$ and $b_D \in (-1, 0)$. If the game has already moved to the hardball phase, $\alpha_t = \alpha_{hard}$, then policy output is lower, yielding joint consumption of $1 - \phi$ with the party in power capturing π_{hard} percent. Assuming $\phi \in [0, 1)$ captures the inefficiencies of contested institutions, for example, the possibility of a constitutional crisis and greater difficulties to finding Pareto-improving policy compromises. Assuming $\pi_{hard} \geq \pi_{sq}$ expresses the possibility that constitutional hardball raises the stakes of the game, which could arise because of executive aggrandizement or a reduction in minority rights in either the Senate or House. Regarding transitions among states, defecting from status quo institutions permanently moves the game to hardball. Formally, if $\alpha_t = \alpha_{sq}$ and $b_t \neq 0$, then $\alpha_{t+1} = \alpha_{hard}$, and α_{sq} is not accessible at any t such that $\alpha_t = \alpha_{hard}$. We assume that the initial state is normal politics, $\alpha_0 = \alpha_{sq}$. The probability with which each party gains power in the next period depends on b_t. Formally, $Pr\left(\rho_{t+1} = \rho_R\right) = p(b_t)$, defined in Equation 1. Figure 2 depicts the state transition functions within either normal politics or hardball politics phases.

A Markovian strategy is a mapping $\sigma_i(\alpha_t, \rho_t) \rightarrow \left[b_D, b_R\right]$, and an equilibrium requires that $\sigma(\alpha_t, \rho_R)$ and $\sigma(\alpha_t, \rho_D)$ are best-responses to each other for all α_t.

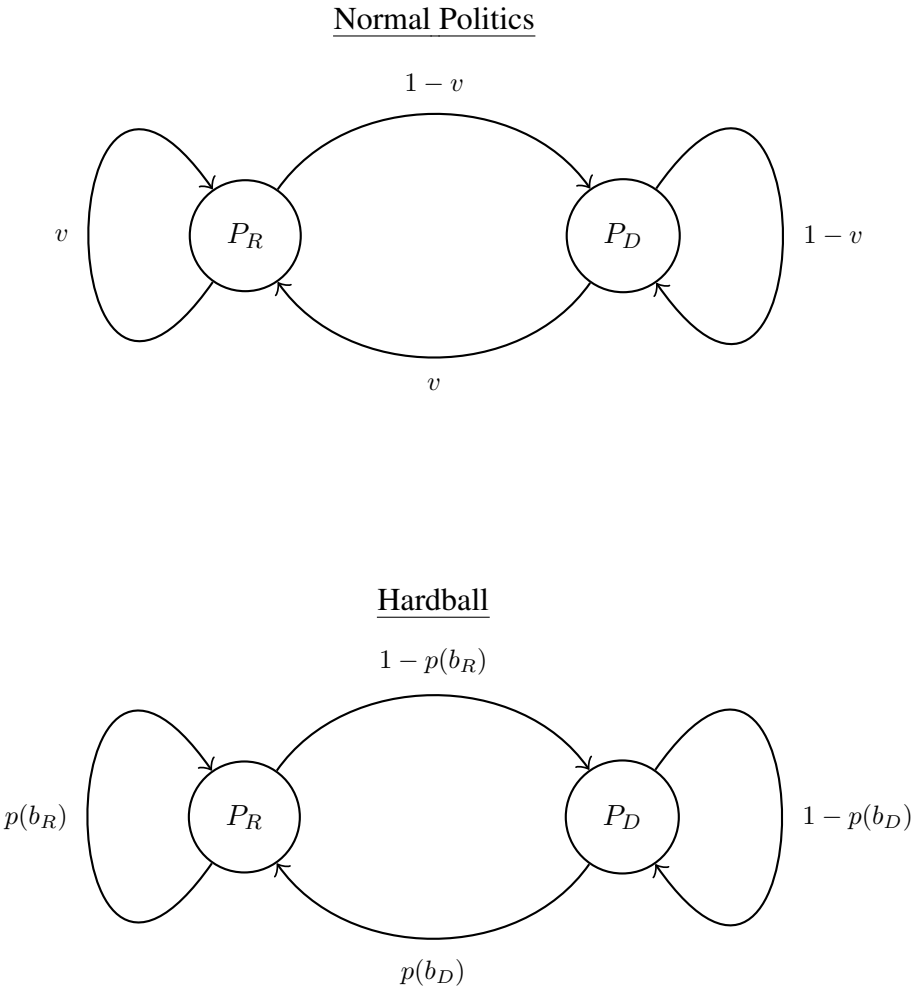
3.2 Incentive Compatibility Constraints for Cooperation

We solve backwards from the non-ergodic hardball state to characterize the conditions in which a cooperative equilibrium exists, that is, $b_t = 0$ for all t. If the game is in hardball, $\alpha_t = \alpha_{hard}$, then neither party has incentives to moderate their choice over institutional distortion. In this stage, a party's choice in any period t does not affect either player's choice in any future period $z > t$, which implies that $\sigma\left(\alpha_{hard}, \rho_R\right) = b_R$ and $\sigma\left(\alpha_{hard}, \rho_D\right) = b_D$.

Knowing this, in the normal politics phase $\alpha_t = \alpha_{sq}$, choosing status-quo institutions is incentive compatible for P_R if and only if:

$$\underbrace{\pi_{sq} + \delta \cdot V_{sq}^R}_{\text{Status quo}} \geq \underbrace{\pi_{hard} + \delta \cdot (1 - \phi) \cdot \left[p(b_R) \cdot V_R^R + \left[1 - p(b_R)\right] \cdot V_D^R\right]}_{\text{Hardball}}, \tag{2}$$

Figure 2: Transitions in Which Party Controls the Government



for:

$$V_{sq}^{R} = \frac{1}{1-\delta} \cdot \Big[v \cdot \pi_{sq} + (1-v) \cdot \big(1 - \pi_{sq}\big) \Big] \tag{3}$$

$$V_{R}^{R} = \pi_{hard} + \delta \cdot \Big[p(b_R) \cdot V_{R}^{R} + \big[1 - p(b_R)\big] \cdot V_{D}^{R} \Big] \tag{4}$$

$$V_{D}^{R} = 1 - \pi_{hard} + \delta \cdot \Big[p(b_D) \cdot V_{R}^{R} + \big[1 - p(b_D)\big] \cdot V_{D}^{R} \Big] \tag{5}$$

The first continuation value, V_{sq}^{R}, expresses P_R's lifetime expected utility if it sticks with the status quo. If a cooperative equilibrium exists, then P_R will win in v percent of periods and consume π_{sq}, and will lose in other periods and consume $1-\pi_{sq}$. Because this occurs over an infinite time horizon, the entire consumption stream is multiplied by $\frac{1}{1-\delta}$.

There are two continuation values for P_R in the hardball state, written as recursive equations. For Equation 4, if P_R is in power at time t, we write the continuation value as V_{R}^{R}. P_R consumes π_{hard} in period t. With probability $p(b_R)$, it retains power in period $t+1$, in which case we start over again with V_{R}^{R}, discounted by a period. With complementary probability, P_R loses power and its continuation value is V_{D}^{R}, defined in Equation 5. If P_R is out of power at time t, then P_R consumes $1 - \pi_{hard}$ in that period. With probability $1 - p(b_D)$, P_D retains power and P_R's continuation value remains V_{D}^{R}, discounted by a period. With complementary probability, P_R regains power and the continuation value moves to V_{R}^{R}. The winning probabilities are a function of b_R in periods P_R holds power and of b_D in periods P_D holds power because, in the hardball phase, the party in power always chooses maximum bias.

Solving out the recursive equations yields an explicit expression for P_R's incentive compatibility constraint that we disaggregate into short term, medium term, and long term effects (discussed below):

$$\underbrace{\pi_{sq} - \pi_{hard}}_{\text{Short term}} + \underbrace{\delta \cdot \left[v \cdot \pi_{sq} + (1-v) \cdot \big(1 - \pi_{sq}\big) - \frac{1-\phi}{1 + \delta \cdot \big[p(b_R) - p(b_D)\big]} \cdot \Big[1 - \pi_{hard} + p(b_R) \cdot (2\pi_{hard} - 1) \Big] \right]}_{\text{Medium term}}$$

$$+ \underbrace{\frac{\delta^2}{1-\delta} \cdot \left[v \cdot \pi_{sq} + (1-v) \cdot \big(1 - \pi_{sq}\big) - \frac{1-\phi}{1 + \delta \cdot \big[p(b_R) - p(b_D)\big]} \cdot \Big[1 - \pi_{hard} + p(b_D) \cdot \pi_{hard} - p(b_R) \cdot \big(1 - \pi_{hard}\big) \Big] \right]}_{\text{Long term}} \geq 0 \tag{6}$$

The intuition for P_D's incentive-compatibility constraint is identical:

$$\underbrace{\pi_{sq} + \delta \cdot V_{sq}^D}_{\text{Status quo}} \geq \underbrace{\pi_{hard} + \delta \cdot (1-\phi) \cdot \Big[\big[1 - p(b_D)\big] \cdot V_D^D + p(b_D) \cdot V_R^D\Big]}_{\text{Hardball}}, \tag{7}$$

for:

$$V_{sq}^D = \frac{1}{1-\delta} \cdot \Big[(1-v) \cdot \pi_{sq} + v \cdot \big(1 - \pi_{sq}\big)\Big] \tag{8}$$

$$V_D^D = \pi_{hard} + \delta \cdot \Big[\big[1 - p(b_D)\big] \cdot V_D^D + p(b_D) \cdot V_R^D\Big] \tag{9}$$

$$V_R^D = 1 - \pi_{hard} + \delta \cdot \Big[\big[1 - p(b_R)\big] \cdot V_D^D + p(b_R) \cdot V_R^D\Big] \tag{10}$$

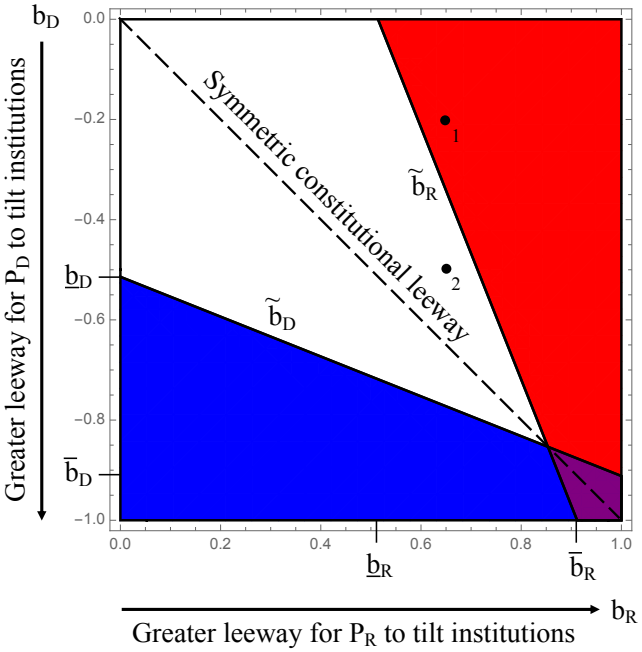
3.3 Constitutional Bounds and Cooperative Equilibrium

We characterize the conditions in which a cooperative equilibrium exists in terms of the constitutional bounds b_R and b_D. This provides our main result by connecting asymmetric bounds to equilibrium hardball politics. Figure 3 provides visual intuition by presenting a region plot with b_R on the horizontal axis and b_D on the vertical axis, fixing the other parameters at values stated in the note accompanying the figure. A higher absolute value of either b_R or b_D corresponds with greater constitutional leeway for either P_R or P_D, respectively, to tilt institutions in its favor. The dashed black line $b_D = -b_R$ expresses parameter values at which each party's constitutional leeway to tilt institutions in their favor is symmetric. Above this line, P_R enjoys greater constitutional leeway than P_D to shift institutions in its favor, whereas the opposite is true below the line of symmetry. The white region indicates values of b_R and b_D for which both parties cooperate, that is, Equations 2 and 7 both hold. In the red region, only P_R can profitably deviate to playing hardball (Equation 2 fails but Equation 7 holds); in the blue region, only P_D can profitably deviate to playing hardball (Equation 2 holds but Equation 7 fails); and in the purple region, both parties can profitably deviate to playing hardball (both equations fail).

Moving along the horizontal axis of the figure highlights three distinct ranges of b_R values.[6] First, if $b_R < \underline{b}_R$, then P_R will not initiate hardball regardless of the value of b_D. The inefficiency of hardball politics is too high to justify P_R's modest gains from pushing the (relatively tightly constrained) constitutional envelope. Second, if $b_R > \bar{b}_R$, then P_R will initiate hardball regardless of b_D. For very high values of b_R, P_R can

[6]The intuition is identical if we instead analyze changes in b_D.

Figure 3: Constitutional Bounds and Cooperative Equilibrium



Notes: Figure 3 sets $v = 0.5$, $\delta = 0.9$, $\phi = 0.13$, $\pi_{sq} = 0.6$, and $\pi_{hard} = 0.7$.

effectively end the game by initiating hardball because once it has tilted institutions maximally in its favor, it wins with probability close to 1.

The third, intermediate range $b_R \in \left(\underline{b}_R, \overline{b}_R\right)$ highlights the main finding: asymmetric constitutional bounds undermine cooperation. In this range, P_R will initiate hardball if and only if $b_R > \tilde{b}_R$, and this threshold strictly increases (i.e., P_R requires a higher value of b_R to initiate hardball) as b_D increases in magnitude (i.e., moving down on the vertical axis). At point 1, b_R is considerably larger in magnitude than b_D: 0.65 compared to 0.2. The constitution offers minimal scope for P_D to punish transgressions by P_R, which emboldens P_R to play hardball given its relatively wide scope to tilt institutions in its favor. By contrast, at point 2, the magnitude of b_D increases to 0.5. Despite P_R's wide leeway to bias institutions, it chooses not to because of deterrence: P_D can effectively punish P_R for initiating hardball because the constitution also grants P_D wide scope to tilt institutions in its favor.

Proposition 1 formalizes this logic, stated in terms of threshold values of b_R.

Proposition 1 (Equilibrium). *If ϕ is low enough, then there exist unique thresholds $0 < \underline{b}_R < \overline{b}_R < 1$, and $\tilde{b}_R \in (-1, 1)$ that solves Equation 2 with equality, with the following properties.*

- ***No hardball opportunity.*** *If $b_R < \underline{b}_R$, then P_R does not initiate hardball (Equation 2 holds) for any $b_D \in (-1, 0)$.*
- ***Undeterrable hardball.*** *If $b_R > \overline{b}_R$, then P_R initiates hardball (Equation 2 fails) for all $b_D \in (-1, 0)$.*
- *If $b_R \in \left(\underline{b}_R, \overline{b}_R\right)$, then:*
  - ***Deterred hardball.*** *If $b_R < \tilde{b}_R$, then P_R does not initiate hardball (Equation 2 holds).*
  - ***Asymmetric constitutional bounds and hardball.*** *If $b_R > \tilde{b}_R$, then P_R initiates hardball (Equation 2 fails).*

3.4 Long-Run Incentives to Play Hardball

Many influential ideas about sustaining cooperation are premised on the logic of a repeated prisoner's dilemma with a grim trigger punishment strategy. In that model, when considering whether to cooperate or transgress, players trade off between the short-term gains and long-term costs of transgressing. The benefit to a player from defecting is that it can leave the other player with the "sucker's payoff" by taking an individually beneficial action that yields a short-term gain for itself while leaving its opponent out to dry. However, starting in the next period, the "sucker" responds by punishing the transgressor in every future period, causing the transgressor to consume less in every future period compared to the alternative scenario in which it had never transgressed. One key implication is that more patient players can sustain cooperation because they put higher weight on the long-term costs of defecting compared to the short-term gains.

We intentionally constructed our model to contain an element of this logic by assuming that the defecting party experiences an immediate short-term gain from defecting, since they consume π_{hard} rather than π_{sq}. However, despite loading the model with this familiar element, our game provides a strikingly different implication than the standard repeated prisoner's dilemma: if the constitutional bounds are sufficiently asymmetric, then cooperation is impossible even as the parties become perfectly patient, $\delta \to 1$. Asymmetric constitutional bounds create asymmetric ability for the parties to punish each other. Consequently, one party may achieve *higher* payoffs in the long run from initiating hardball—despite triggering a punishment phase—if it enjoys wide scope to tilt institutions in its favor but the other party does not. Consequently, long-lived parties that highly value the future may still engage in undemocratic behavior.

To explain this logic formally, we need to examine each player's payoffs after hardball begins. If P_R transgresses in period t, then it wins power in probability $t+1$ with higher probability than had it cooperated, $p(b_R)$ rather than v. For any finite number of periods, this initial boost is persistent, that is, in expectation, P_R does better if it is the party that initiates hardball as opposed to P_D initiating hardball (in which case P_D gets the initial probability-of-winning boost). We refer to these as medium-term incentives to play hardball (Equation 6). However, across the infinite time horizon, it does not matter which party initiated hardball because the state transition function is a Markov chain. Lemma 1 expresses P_R's per-period expected probability of winning power in the hardball phase over the long term, that is, as $\delta \to 1$.

Lemma 1 (Long-term probabilities of winning under hardball)**.** *If either party initiates hardball, then the percentage of periods over the infinite horizon in which P_R will hold power equals $q(b_R, b_D) \equiv \frac{p(b_D)}{1+p(b_D)-p(b_R)}$, with a complementary term for P_D.*

If either of the following equations hold, then at least one party benefits in the long run from initiating hardball, contrary to the key intuition from the repeated prisoner's dilemma in which both players are necessarily worse off in the punishment phase.

$$\underbrace{\Big[q(b_R, b_D) \cdot \pi_{hard} + \big[1 - q(b_R, b_D)\big] \cdot (1 - \pi_{hard})\Big] \cdot (1 - \phi)}_{P_R\text{'s long-term per-period average payoff under hardball}} > \underbrace{v \cdot \pi_{sq} + (1 - v) \cdot (1 - \pi_{sq})}_{P_R\text{'s per-period avg. payoff under s.q.}} \tag{11}$$

$$\underbrace{\Big[\big[1 - q(b_R, b_D)\big] \cdot \pi_{hard} + q(b_R, b_D) \cdot (1 - \pi_{hard})\Big] \cdot (1 - \phi)}_{P_D\text{'s long-term per-period average payoff under hardball}} > \underbrace{(1 - v) \cdot \pi_{sq} + v \cdot (1 - \pi_{sq})}_{P_D\text{'s per-period avg. payoff under s.q.}} \tag{12}$$

Long-term payoffs in the hardball phase differ in three ways from payoffs under status quo institutions. First, P_R's probability of winning equals $q(b_R, b_D)$ rather than v. Second, the winner consumes π_{hard} rather than π_{sq}. Third, joint consumption equals $1 - \phi$ rather than 1. Lemma 2 states the conditions under which one party benefits from hardball in the long run.

Lemma 2 (Benefiting from hardball in the long run)**.** *There exists a unique $\tilde{\phi} \in (0, 1)$ such that if $\phi < \tilde{\phi}$, then either Equation 11 or Equation 12 (but not both) holds; and neither equation holds otherwise.*

One component of Lemma 2 resembles the standard prisoner's dilemma logic: if ϕ is large, then the inefficiency of the hardball phase is severe enough that neither player benefits in the long-run from hardball.

However, unlike in the repeated prisoner's dilemma, the fact that hardball is inefficient ($\phi > 0$) is not sufficient for both players to suffer in the punishment phase relative to cooperation. If $\phi = 0$, then generically, either Equation 11 and 12 must hold because the changes unleashed by hardball—different probabilities of winning and a different payoff for the party in power—must favor one party or the other. Only if ϕ is sufficiently large will the party favored by this metric not benefit in the long run from hardball.

For any $\phi \in \left(0, \tilde{\phi}\right)$, given the upper bound $\tilde{\phi}$ defined in Lemma 2, whether or not one player will initiate hardball depends on the asymmetry in constitutional bounds. Figure 4 highlights the intuition by presenting a similar region plot as Figure 3. The only difference from the previous figure is that it sets $\delta \to 1$, therefore depicting only the long-run effect. Although the defection regions are smaller than those in Figure 3 (the dashed lines show the outer bounds of these region in Figure 3),[7] they convey the same basic intuition: if b_R is large in magnitude relative to b_D or vice versa, then one player will initiate hardball—despite the fact that we are solely analyzing long-term incentives—because that player wins considerably more frequently under hardball.[8] By contrast, the inherent symmetry of punishments assumed in the standard repeated prisoner's dilemma (i.e., all parameter values along the dashed black line in Figure 4) implies that neither party can profit in the long run from defecting. Proposition 2 formalizes these claims.

> **Proposition 2** (Long-term incentives for hardball)**.** *If $\phi < \tilde{\phi}$ (defined in Lemma 2), then a cooperative equilibrium does not exist for any $\delta \in (0, 1)$.*

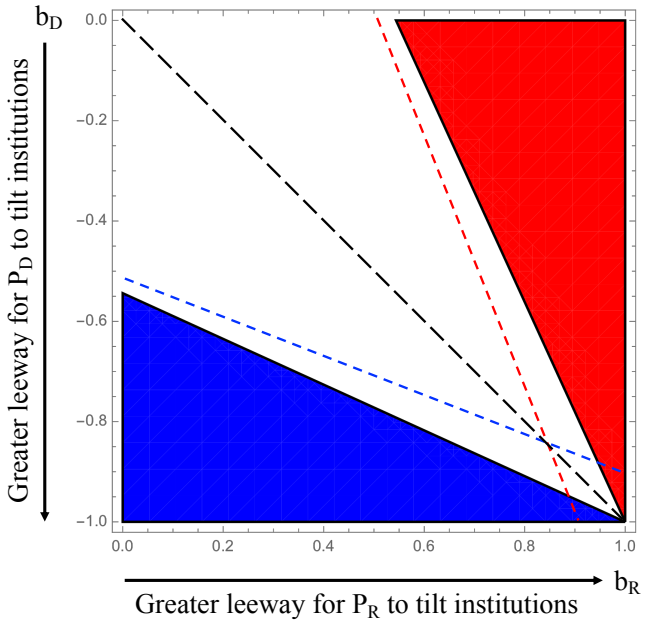
3.5 Partisan Competition

Considerable research on the contemporary United States attributes dysfunctional politics to high partisan competition. Although contested elections are a hallmark of democracy, these arguments highlight the counterintuitive logic that close competition also breeds more acrimonious politics. Lee (2016) provides a particular mechanism connecting high electoral competitiveness to incentives to distort institutions: only

[7] Intuitively, the white space between the dashed line and each respective colored region represents parameter values in which the long-term effect of hardball is negative for both parties, but at least one party initiates hardball anyway because the lower discount factor assumed in Figure 3, $\delta = 0.9$, yields additional short-term and medium-term gains from initiating hardball.

[8] This can only be true for one player, as Lemma 2 formalizes and Figure 4 highlights because it lacks the purple region found in Figure 3.

Figure 4: Asymmetric Constitutional Bounds and Long-Term Hardball Incentives



Notes: Figure 4 uses the same parameter values as Figure 3 except it sets $\delta \to 1$.

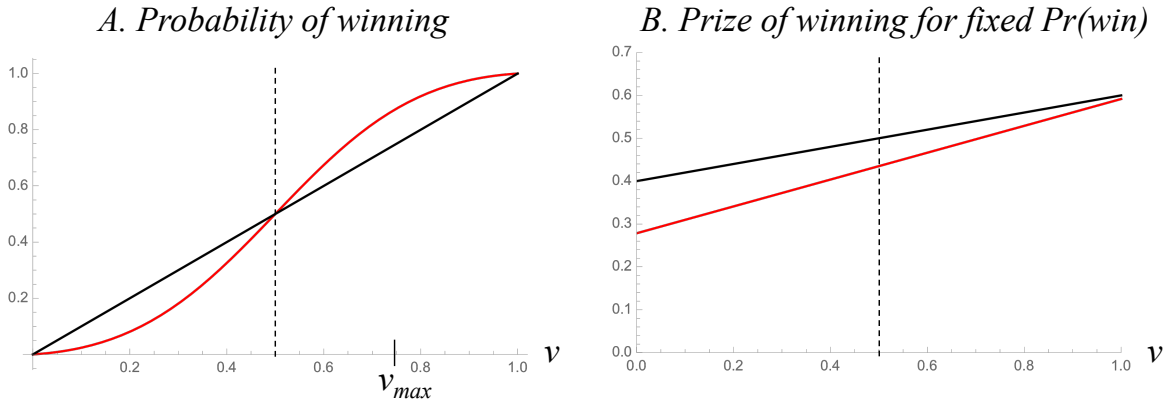
if elections are highly competitive will politicians achieve a large electoral benefit to distorting institutions (she focuses specifically on incentives for obstruction). The specific reasons why she posits this effect differ from the mechanisms in our model, but we can analyze the effects of changing the vote share v on incentives to play hardball.

Contrary to these arguments, close partisan competition does not cause hardball in our model. Although an interior value of v maximizes a party's gain from defecting, this value does not equal 0.5. Instead, if the constitutional bounds are symmetric, then $v = 0.5$ guarantees *cooperation* for a high enough discount factor because the balance between parties implies that neither benefits in the long run from initiating hardball. If instead the constitutional bounds are asymmetric, then moving v to 0.5 can trigger hardball, but only if the shift in votes reinforces the gains to playing hardball for the party advantaged by the constitution, generating a distinct mechanism from existing arguments. Instead, our logic is more consistent with De Figueiredo's (2002) analysis in which high competition undermines incentives for bureaucratic distortion by enabling each party to better punish the other for defection, although he does not consider asymmetry induced by constitutional bounds.

Figure 5 highlights the two countervailing effects of v on P_R's incentives to play hardball while assuming

symmetric constitutional bounds, $b_R = -b_D$. The first effect is partly consistent with the standard intuition: in terms of changing a party's probability of winning, the gains from initiating hardball are greatest at an interior value of v, although $v_{max} = 0.75$ rather than one-half. Panel A depicts this by plotting P_R's unbiased per-period probability of winning in the status quo (black line), which equals v, and its average per-period long-run probability of winning under hardball (red curve), and Lemma 1 provides this term. The red curve is symmetric because the constitutional bounds are symmetric. Distorting the probability of winning favors the more popular party because—by virtue of winning more often—that party more often benefits from the incumbency advantage that biased institutions create. This figure in fact resembles standard statistical models in the apportionment literature for mapping vote share into non-proportional seat share (e.g., Cox and Katz, 2002, 34) by showing that higher b_R—which enables the party in power to more greatly distort the electoral results in its favor in the hardball phase (including P_D given the assumed symmetry in bounds)—decreases the responsiveness of P_R's probability of winning to shifts in v. However, in the 50%-plus range that advantages P_R, this advantage dissipates as v becomes large because P_R's probability of winning approaches 1 even under the perfectly proportional status quo rules. Therefore, an interior value, denoted as v_{max}, maximizes the difference in P_R's average per-period long-term probability of winning under hardball and its per-period probability of winning under the status quo. In the symmetric case, v_{max} equals the midpoint of 0.5 and 1, which is 0.75.

Figure 5: Constituent Effects of Partisan Support



Notes: Panel A sets $b_R = -b_D = 0.7$. Panel B sets $\pi_{sq} = 0.6$ and $\pi_{hard} = 0.68$.

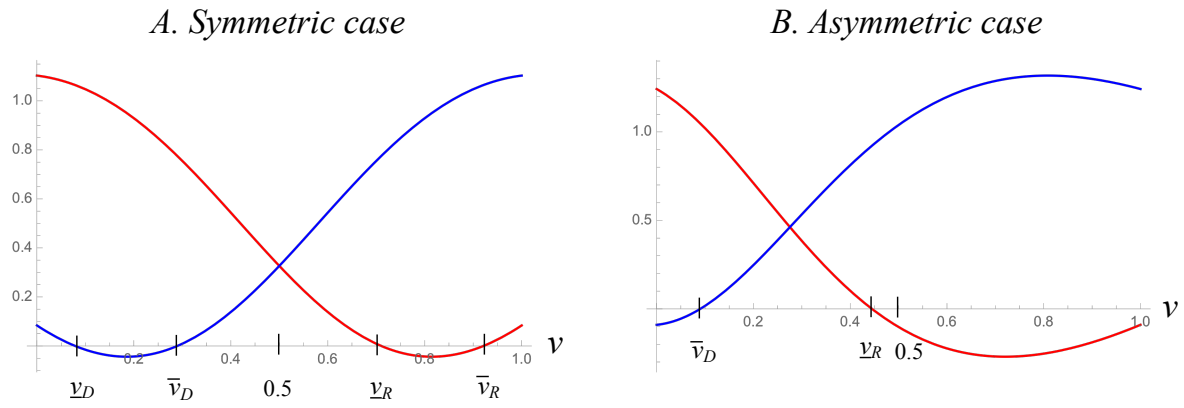
However, another mechanism mitigates against interior values of v maximizing incentives to play hardball. When deciding whether to cooperate or defect, each party considers not only how much hardball affects its

own average probability of winning but also how hardball affects the winning party's payoff. A dominant party benefits more (or loses less) from the discrepancy between $(1-\phi)\cdot\pi_{hard}$ and π_{sq} because it consumes the winner's share more often, even if—as is true for P_R under very high values of v—hardball minimally affects its probability of winning. Panel B depicts this effect by fixing P_R's probability of winning at v and plotting its per-period average consumption if the winner consumes $(1-\phi)\cdot\pi_{hard}$ (red line) as opposed to π_{sq} (black line). At these parameter values, although ϕ is large enough that P_R receives a higher expected payoff under the status quo than hardball for all v (again, while fixing its probability of winning at v), this gap narrows as v increases.

Panel A of Figure 6 combines these two effects to study how v affects the parties' overall incentives to play hardball. The red curve depicts the overall difference between P_R's lifetime expected payoff from cooperating versus playing hardball, and the equivalent curve for P_D is in blue. The assumed parameter values are identical to those in Figure 5. Positive values of the red curve indicate parameter values in which P_R cooperates along the equilibrium path whereas P_R defects if the red curve is negative, and equivalent statements are true for P_D and the blue curve. Unsurprisingly, given the shapes of the curves in Panels A and B, the overall effect of v on either party's incentives to deviate are non-monotonic. First consider the red curve. For all $v < v_{max}$ (shown in Panel A of Figure 5), higher v unambiguously raises defection incentives. The overall effect remains positive for slightly larger values of v, but then it turns negative: the stronger decrease depicted in Panel A of Figure 5 dominates the increase shown in Panel B of Figure 5. In the case depicted here, the combined effects of v cause P_R to defect to hardball if and only if $v \in \left(\underline{v}_R, \overline{v}_R\right)$, for $\underline{v}_R \in (0.5, 1)$ and $\overline{v}_R < 1$. P_R does not defect if $v > \overline{v}_R$ because initiating hardball only minimally increases its probability of winning if its vote share is very high.

Although showing that P_R initiates hardball for moderate but not very low or very high values of v seemingly supports the standard intuition, comparing the blue and red curves demonstrates a more complicated relationship. Similar to P_R, P_D initiates hardball if and only if $v \in \left(\underline{v}_D, \overline{v}_D\right)$, for $\underline{v}_D > 0$ and $\overline{v}_D \in (0, 0.5)$. Both players must choose to cooperate to prevent hardball, which generates three types of ranges of v. The most intriguing range—given its contrast with existing wisdom—is that if $v \in \left(\overline{v}_D, \underline{v}_R\right)$, which contains $v = 0.5$, then hardball does not occur *because* the parties are evenly balanced. As Figure 5 shows, if v is close to 0.5, then the party favored under hardball—the party with the higher vote share—benefits only slightly because the other party can effectively punish it in the hardball phase. The favored party enjoys only

Figure 6: Partisan Support and Hardball Incentives



Notes: Panel A uses the same parameter values as Figure 5 as well as $\delta = 0.9$ and $\phi = 0.13$. Panel B uses the same parameter values except it changes the constitutional bounds to $b_D = -0.2$ and $b_R = 0.65$.

a slight advantage over the disfavored party in terms of setting the (symmetric) bias term to favor itself, and its consumption drops by a magnitude of $1 - \phi$ because it loses nearly as often as it wins. This logic also explains Lemma 3.

> **Lemma 3** (Symmetric bounds and evenly matched parties)**.** *Suppose $b_R = -b_D$. The space of parameter values at which hardball occurs in equilibrium is minimized at $v = 0.5$.*

The other two regions in which cooperation occurs are $v < \underline{v}_D$ and $v > \overline{v}_R$. In these cases, one party wins almost all the time even under normal politics, and its gain from winning slightly more frequently under hardball is not large enough to compensate for the inefficiency of hardball politics. By contrast, P_D initiates hardball if $v \in \left(\underline{v}_D, \overline{v}_D\right)$ and P_R initiates hardball if $v \in \left(\underline{v}_R, \overline{v}_R\right)$ because defecting considerably boosts the favored party's average probability of winning, which results from somewhat but not overwhelmingly higher voter support than the other party.

Panel B considers an asymmetric case that favors P_R in which $b_R = 0.65$ and $b_D = -0.2$. This enables analyzing the interaction between vote share and constitutional bounds. The mechanics are similar to those in the symmetric case, although the thresholds shift. In Panel A, shifting from $v = 0.2$ to $v = 0.5$ moves the game from a hardball region to a cooperative region, but the same shift in v exerts the opposite effect in Panel B. Why? Biasing the constitution in favor of P_R shifts both curves to the left and causes P_D to initiate hardball for a smaller range of parameter values than in Panel A. However, it also causes P_R to

initiate hardball for a larger range of parameter values. Whereas $v = 0.5$ in the symmetric case induces cooperation because both parties balance each other, in the asymmetric case, close partisan competition induces P_R to play hardball because higher v reinforces P_R's constitutional advantage. In this case, lowering v would diminish prospects for hardball by improving P_D's ability to punish. Proposition 3 formalizes this intuition.

Proposition 3 (Partisan competition and hardball)**.** *There exist unique thresholds $\underline{v}_D < \overline{v}_D < \underline{v}_R < \overline{v}_R$ with the following properties:*

- *If $v < \underline{v}_D$, then cooperation occurs along the equilibrium path.*
- *If $v \in \left(\underline{v}_D, \overline{v}_D\right)$, then P_D initiates hardball.*
- *If $v \in \left(\overline{v}_D, \underline{v}_R\right)$, then cooperation occurs along the equilibrium path.*
- *If $v \in \left(\underline{v}_R, \overline{v}_R\right)$, then P_R initiates hardball.*
- *If $v > \underline{v}_R$, then cooperation occurs along the equilibrium path.*

This result offers an important new interpretation of contemporary American politics. Empirically, the two major parties are closely balanced in partisan support and it appears that we are in a period of Republican-led hardball, which is consistent with theories premised on the deleterious effects of heightened partisan competition. However, our model explains why asymmetric constitutional bounds rather than close partisan competition may drive hardball politics. Counterfactually, if the constitutional bounds are symmetric, then $v \approx 0.5$ should induce cooperation rather than defection. Only if the constitutional bounds favor Republicans, as we argue they do, would $v \approx 0.5$ trigger Republican-led hardball, since the asymmetric bounds cause P_R to be favored over P_D at hardball for any value of $v > \underline{v}_R$, and $\underline{v}_R$ is less than 0.5 (see Panel B of Figure 6).

4 Application to Contemporary U.S. Institutions

Understanding how asymmetric constitutional bounds contribute to democratic backsliding informs many aspects of contemporary American politics. Here we examine voting rights (specifically, voter identification restrictions), gerrymandering U.S. House districts, and statehood expansion. The first two are key areas that create asymmetric bounds that favor Republicans. Statehood expansion is an area that could potentially favor Democrats, but we address reasons that they have not exploited this asymmetry as well as draw on

historical episodes of state expansion.

4.1 Voter ID Laws

Establishing broad voting rights has constituted one of the most important political struggles in U.S. history (Keyssar, 2000). Despite a nominally "universal" franchise in the contemporary United States, struggles over policies such as voter ID laws show that this is an ongoing area of contention, that is, the constitutional bounds allow leeway for voter discrimination. Such laws effectively impose a cost on voters, although the cost varies by voter. To show how this consideration relates to bias and constitutional bounds, we can return to the voter turnout parameters T_R and T_D introduced in Figure 1 and make them a function of a hurdles-of-voting parameter $h \in \left[0, \overline{h}\right]$, where $h = 0$ might correspond with voting by text and polling places outside of every eligible voter's place of residence, and $h = \overline{h}$ would correspond with strict photo ID provisions and in opposition areas providing the minimum number of polling places without violating the Voting Rights Act and related federal provisions. However, the hurdles-of-voting parameter does not affect all voters' overall cost of voting equally. Suppose this voter-specific cost is distributed uniformly over $\left[0, 1 + \gamma_j \cdot h\right]$, where $j \in \{R, D\}$ indexes Republican and Democratic supporters, respectively. Assuming that all citizens experience the same benefit to voting, normalized to 1, then $T_R = \frac{1}{1+\gamma_R \cdot h}$ percent of Republican supporters will turn out to vote and $T_D = \frac{1}{1+\gamma_D \cdot h}$ percent of Democratic supporters will vote. If an increase in hurdles of voting raises costs of voting for Democratic supporters by a greater magnitude than for Republican supporters, $\gamma_D > \gamma_R$, then we can compute the constitutional bounds:[9]

$$b_R = \frac{(\gamma_D - \gamma_R) \cdot \overline{h}}{2 + (\gamma_D + \gamma_R) \cdot \overline{h}} \qquad\qquad b_D = 0 \tag{13}$$

Equation 13 shows that $\gamma_D > \gamma_R$ implies $b_R > 0$, that is, if voter ID laws create higher costs for Democratic than Republican supporters to vote, then the constitutional bounds favor Republicans. There is considerable empirical support for this assumption. Voter ID laws disproportionately raise the costs of turning out for minority groups such as African Americans, Hispanics, and Native Americans—all Democratic-leaning groups—because they are less likely to have a valid form of identification, as evidence from national-level (Stewart III, 2013; Barreto et al., 2019) and state-level (Barreto, Nuno and Sanchez, 2009; Pastor et al., 2010) surveys consistently show. The common Republican justification for implementing voter ID laws is that

[9] If instead $\gamma_D < \gamma_R$, we would simply swap b_R and b_D in the equation.

there is a widespread problem of voting fraud in U.S. elections. A poll taken of prospective voters in 2016 found that 69% of Trump supporters believed that voter fraud occurs "very/somewhat often" compared to 28% of Clinton supporters.[10] However, contrary to these assertions, empirical evidence consistently rejects allegations of widespread voter fraud (Ahlquist, Mayer and Jackman, 2014).

Supporting the model's predictions for an institution in which the bounds of constitutionally permitted policies are wide and disproportionately favor Republicans, in the past decade Republicans but not Democrats have often eroded democratic representation by passing voter ID laws. In 2000, 14 states requested a form of ID from voters, and by 2016 this had more than doubled to 32 states.[11] And whereas all earlier laws requested but did not require an ID or photo ID to vote, between 2006 and 2015, 15 states passed laws that *required* a photo ID in order for one's vote to count, although court challenges prevented some of these provisions from becoming law. In 14 of the 15 states, Republicans held control of all three branches of state government.[12] In the fifteenth, Arkansas, a Republican-dominated legislature overrode a veto by a Democratic governor to enact the law (Highton, 2017, 153). Statistical analyses of correlates of adopting voter ID and related voter restrictions consistently find evidence demonstrating a positive, statistically significant, and substantively large estimated effect of Republican state control, and this effect is larger in states with more African Americans or that exhibit higher partisan contestation (Bentele and O'Brien, 2013).[13] In some cases, even the specific forms of identification permissible for voting favor Republican over Democratic constituents, for example, allowing hunting licenses but not students' university IDs.

Similar struggles are in progress over the rights of ex-felons to vote. A recent measure via ballot initiative in Florida repealed the state's lifetime voting ban on felons, who are disproportionately non-white and Democratic-leaning. In response to this constitutional amendment, the Republican legislature voted to require ex-felons to repay any fines or fee before they can register to vote, which creates particularly high

[10] https://www.washingtonpost.com/news/the-fix/wp/2016/09/15/poll-nearly-half-of-americans-say-voter-fraud-occurs-often/

[11] https://www.nytimes.com/interactive/2016/11/03/us/elections/how-states-moved-toward-stricter-voter-id-laws.html

[12] Although Virginia's upper house was split in 2013 when it passed the law, there was effectively a Republican majority because the lieutenant governor that broke the tie was Republican (and, in fact, cast the deciding vote).

[13] Numerous additional authors cited in Highton (2017) provide similar results.

hurdles for the many prospective voters that either cannot afford the fines or do not know how much they owe. Ultimately this law may prove to violate constitutional bounds (specifically, the 24th amendment that prohibits poll taxes), but in the meantime Democrats have denounced this legislation as a partisan attempt to manipulate voter turnout.[14]

Although voter ID laws and other hurdles to voting that are in place disproportionately negatively affect Democrats, we can also speculate why Democrats would not retaliate by restricting voting rights through other means for Republican-supporting groups. In our assessment, there is no subset of the electorate that leans heavily Republican that could reasonably be targeted for voter suppression without directly violating the Constitution, i.e., for which b_D is large in magnitude. For example, although older white voters tend to vote Republican, the 26th Amendment prevents denying voting rights based on age (for citizens 18 years or older). Instead, the predominant Democratic response to Republican-led voter suppression has been to propose new legislation that would expand voter rights—such as pushes to make the election day a federal holiday—and therefore reduce the magnitude of b_R.[15] Although strictly speaking our model does not analyze a strategic choice over b_R, taking actions that reduce the opponents' constitutional leeway for biasing voter support in their favor is consistent with the general incentives we highlight.

4.2 Gerrymandering in the U.S. House

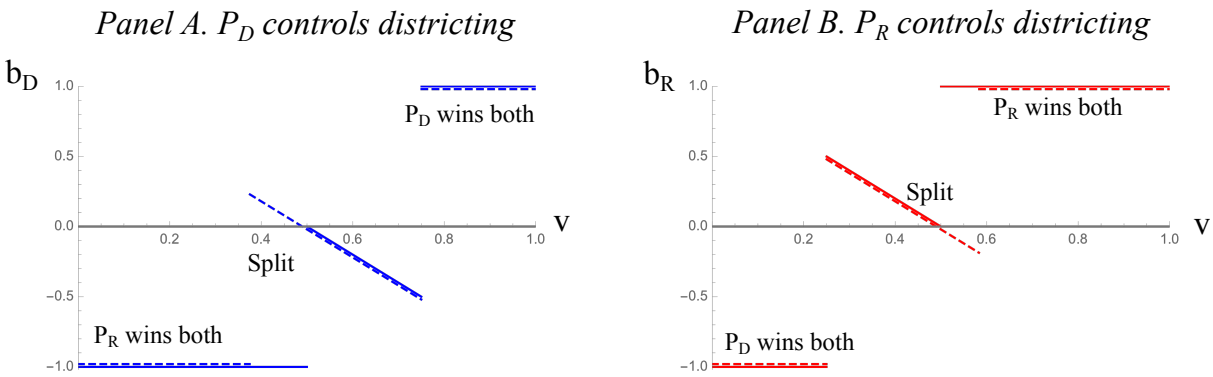
The U.S. Constitution provides politicians with broad discrepancy to draw their own political boundaries, in particular for the U.S. House, resulting in gerrymandered districts that unevenly distribute partisan supporters. Despite constitutional leeway, there are still constitutional bounds: House districts must be contiguous and single-member, contain equal populations (since Supreme Court rulings in the 1960s), and cannot artificially "crack" concentrated populations of a particular minority group (per the Voting Rights Acts of 1965 and subsequent amendments). Figure 7 shows how partisan gerrymandering combined with different constitutional prohibitions affects bias. For simplicity we assume two congressional districts in a particular state, although the underlying logic is the same for more districts. Either P_D (Panel A) or P_R (Panel B) chooses how to allocate voters to districts, $\{v^j\}$, for $j \in \{1, 2\}$. P_D will choose district lines to minimize b and P_R will choose district lines to maximize b, implying that Panel A depicts b_D and Panel B depicts b_R.

[14] https://www.newyorker.com/news/news-desk/the-fight-for-voting-rights-in-florida

[15] https://www.vox.com/policy-and-politics/2019/6/25/18715793/elizabeth-warren-2020-voting-rights-election-security-plan

P_R's vote share v increases along the horizontal axis in both panels.

Figure 7: Gerrymandering, Geography, and Constitutional Bounds



The solid lines, which are symmetric in the two panels, depict a baseline case in which the only constraint on each party's discretion to allocate voters to districts is that each contains half the electorate (i.e., equal apportionment). If less than one-quarter of the electorate supports P_D, $v > 0.75$, then no allocation enables P_D to receive above 50% support in either district. Therefore, despite controlling the districting process, it loses both districts, and $b_D = 1$, that is, the outcome is perfectly biased toward P_R. Conversely, if P_D has more total support than P_R, $v < 0.5$, then P_D can win both districts by making each a microcosm of the state: for $j \in \{1, 2\}$, $v^j = v < 0.5$. This implies $b_D = -1$, that is, the outcome is perfectly biased toward P_D. At intermediate values, $v \in (0.25, 0.5)$, P_D is large enough to win at least one district, but not large enough that it can draw the lines to make itself a majority in both. In this range, $b_D < 0$ because P_D wins half the seats despite garnering support from less than half of the electorate. The intuition is identical for the solid red lines in Panel B that depict b_R.

The dashed lines in both panels assume an additional, geographical, constraint on districting: at least $\alpha \in [0, 1]$ of P_D supporters must be allocated to district 1, with $\alpha = 0.6$ in the figure. This could be either because this bloc is a geographically concentrated minority that cannot be "cracked" without violating the Voting Rights Act, or an urban constituency that cannot be cracked without violating the contiguity of district borders. At extreme values of v, the geography constraint does not change the outcomes: if one party is a large majority, then it will win both districts. However, the geography constraint reduces the magnitude of b_D or b_R if the party that controls districting holds a slim majority of popular support in the state. Examining Panel A, if $v \in (0.375, 0.5)$, then the geography constraint precludes P_D from making

each district a microcosm of the state despite its majority support. From P_D's perspective, the geography constraint inefficiently "packs" its supporters into district 1, leaving P_D without enough supporters left over to also win district 2. Because P_D's supporters compose more than half the population in this range but P_D only gains half the seats, we have $b_D > 0$. The intuition in Panel B with $v \in \left(\frac{1}{2}, \frac{7}{12}\right)$ is similar. In this intermediate range, because P_R has a majority of support in the state, it would optimally "crack" P_D's supporters across the two districts so that P_R would win both seats. However, the geography constraint precludes this action, yielding $b_R < 0$. Combining the two figures shows that the geography constraint weakly reduces the magnitude of b_D and b_R, and that the direction of bias reduction depends on who controls districting and which party has a majority of support. If P_D controls districting and composes a small majority, then the geography constraint limits its ability to tilt the playing field in its favor. If P_R controls districting and composes a small majority, then the geography constraint limits its ability to tilt the playing field in its favor.[16]

Unlike the voting rights example, the theoretical effect of compact groups can go either way, but empirically in contemporary American politics, political leeway to draw U.S. House districts tends to favor Republicans. First, the two major limitations to "unpacking" concentrated pockets of supporters affect Democratic constituencies given the large number of Democratic supporters in urban areas and majority-minority provisions in the Voting Rights Act. The required contiguity of districts implies that Democrats cannot draw boundary lines to combine certain city blocks with larger tracts of land outside the cities, which results in many urban House districts where Democratic candidates routinely win with large margins—even in states such as Illinois and New York where Democrats have controlled the districting process—because there is no way to unpack concentrated urban supporters into different districts. Although grounded in a completely different motivation, majority-minority provisions in the Voting Rights Act yield a similar outcome: in most cases, districts with a majority of African Americans that also vote overwhelmingly Democratic. This carries the normative benefit of increasing prospects of electing minority representatives, but at the cost of distributing Democratic support more evenly across districts (e.g., Lublin, 1997; Cox, 1997; Cox and Katz, 2002).

Second, Republicans carved out systemic advantages for winning control of state legislatures prior to 2012, the first House elections held under new district borders drawn following the 2010 census. Hertel-Fernandez (2019) argues that this success can be attributed to a concerted effort by conservative activists, wealthy

[16]This conditional effect is similar to that found in Shotts (2001).

donors, and big businesses on state politics, specifically, seeing Republican elected in the states and conservative policies passed. The Republican State Leadership Committee (RSLC), a Super Pac which invented the Redistricting Majority Project (REDMAP), which made explicit a concerted plan to "keep or win Republican control of state legislatures with the largest impact on congressional redistricting" and considerable money to target states and implement this strategy. Of the 435 House districts, Republicans drew the borders for 193 compared to 44 for Democrats, and the others were drawn by both parties or independent commissions (Daley, 2017, xx-xxi).

To provide some quantitative evidence in favor of the claim that underlying demographic and legal factors favor Republicans over Democrats for gerrymandering, we used data from Fivethirtyeight's gerrymandering project.[17] Using online tools, they computed the efficiency gap (a commonly used measure of the extent of biased districting, which higher values indicating greater bias) under alternative districting schemes for each state. The two that are relevant for us since they correspond with our concepts of constitutional bounds are the districting schemes that are best for either Republicans or Democrats.[18] For each, we computed the difference in efficiency gap between the best Republican and best Democratic gerrymander. For example, in North Carolina, the bounds range from a 24% efficiency gap in favor of Republicans to a 16% gap in favor of Democrats, for a net 8% advantage over Republicans. In fact, the Republican advantage in North Carolina resembles that for the entire sample. Among the 38 states that have three or more congressional districts, the average difference in efficiency gap favors Republicans by 9% (median is 10%).[19]

At least since 2010, Republicans have capitalized on these latent advantages to engender a sizable partisan districting gap. To document this point, we analyzed efficiency gap data from Fivethirtyeight based on the current post-2010 district borders. Across 38 states with at least three congressional districts, the mean

[17] https://fivethirtyeight.com/tag/the-gerrymandering-project/.

[18] They follow the relevant legal bounds on district drawing such as contiguity and preserving majority-minority districts.

[19] The literature debates the extent to which factors such as geography matter for hindering Democrats in the House. However, our evidence is consistent even with skeptics such as Altman and McDonald (2015), who argue that it is possible in states like Florida to draw neutral districting plans despite the supposed geographical hindrances to Democrats. Our analysis of the Fivethirtyeight data supports this conclusion. We instead contend that Democrats are constrained from *proportionately punishing* Republicans in districting plans, i.e., Republicans face greater opportunities for extreme gerrymanders in their favor.

gap was 7% in favor of Republicans and the median was 10%. In fact, this average difference of 7% is right at the threshold that political scientists commonly use for indicating substantial partisan bias. Furthermore, among individual states with an efficiency gap of at least 7% in favor of one party, only five favor Democrats compared to 23 that favor Republicans. Of course, aggregate efficiency gap measures conflate various contributors, including concerted partisan motives and geographical features. To better isolate intentionality, we also compared the efficiency gaps between states where Republicans controlled districting versus not (Democrat-controlled, divided court-drawn, independent commission). The average efficiency gap for Republican-drawn boundaries was 16% in favor of Republicans versus 0% in other states, and the difference in means is statistically significant at 1%.

These massive gaps in favor of Republicans are relatively recent. Stephanopoulos and McGhee (2015) conclude that the average districting plan between 1972 and 2012 was relatively balanced, but in more recent years has exhibited steadily larger and more pro-Republican gaps. These differences are consistent with blatantly partisan statements such as those by Republican representative David Lewis in North Carolina. His justification in court for why Republicans held a 10-3 House advantage in the state despite rough partisan balance in vote share was not based on non-political Republican advantages in districting but instead "because I do not believe it's possible to draw a map with 11 Republicans and two Democrats." Republicans have also selectively supported the provisions in the Voting Rights Act for majority-minority districts because they pack African Americans into fewer districts, despite also fighting to undermine the preclearance provisions in the Act that limits politicians' discretion over districting.[20] By contrast, even in states like Illinois where evidence suggests that Democrats tried to draw borders in their favor (McGann et al., 2016, 105), the efficiency gap slightly favors Republicans given the underlying impediments for Democrats to draw districts to favor an urban constituency. A recent proposal to gerrymander districts in favor of Democrats in New Jersey was quickly scuttled after condemnation from progressive activists, coupled with analyses suggesting that the plan might not even favor Democrats.[21] Overall, this provides a clear example of an institution in which Republicans enjoy wide scope to distort whereas Democrats have lesser ability to retaliate.

[20] https://www.theatlantic.com/politics/archive/2013/06/how-the-voting-rights-act-hurts-democrats-and-minorities/276893/

[21] https://slate.com/news-and-politics/2018/12/new-jersey-democratic-partisan-gerr

html

Like voting rights, gerrymandering is also an institution that the Supreme Court reviews frequently. Departing from advances under the Warren Court, rulings over the past few decades have facilitated Republican attempts to skew apportionment in their favor. Decisions such as *Vieth v. Jubelirer* (2004) effectively removed most restrictions on partisan gerrymandering that do not violate the standards stated above (e.g., contiguous district, satisfy Voting Rights Act) by refusing to strike down Pennsylvania's partisan gerrymander of its U.S. House seats. The conservative majority on the Court, penned by Antonin Scalia, stated that the one-person-one-vote standards used to strike down malapportionment of U.S. House seats in the 1960s do not apply to districting—despite yielding nearly identical consequences for distorting the relationship between votes and seats (McGann et al., 2016). More recent rulings reaffirm this logic. In 2019, 5-4 rulings in *Rucho v. Common Cause* and *Lamone v. Benisek* held that partisan gerrymandering claims are not justiciable (i.e., they are political, not judicial, questions, and thus cannot be struck down by the courts). As Chief Justice John Roberts put it in the majority opinion, "To hold that legislators cannot take partisan interests into account when drawing district lines would essentially countermand the Framers' decision to entrust districting to political entities" (*Rucho v. Common Cause* 18-422, 588, 2019, pg. 12). However, the distortions to democratic representation are easily apparent. Justice Elena Kagan's dissent in summarizes this concern in a manner that relates directly to our concept of bias: "the partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the right to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives" (*Rucho v. Common Cause* 18-422, 588, 2019 (Kagan, E., dissenting)).

4.3 State Expansion

The expansion of states provides a long-standing example of parties attempting to manipulate partisan control of the branches of government, especially the U.S. Senate. Although the number of senators per state is fixed at two, the U.S. constitution contains an unusual provision for adding new territory with the same legal rights as existing territory—therefore guaranteeing for any new state two senators, at least one House representative, and electoral college votes. In contrast to the previous two examples, state expansion provides a potential avenue for Democrats to bias the rules in their favor because the two most likely candidates to be admitted as states, Washington D.C. and Puerto Rico, each contain a sizable majority of Democratic

voters.[22] In terms of the model, the simplest way to conceive of adding states is increasing turnout (see Figure 1) for the party that benefits more from the extra states.

In the nineteenth century, politicians routinely manipulated state expansion for partisan gains. Several scholars argue that Republicans sought to "secure their hold on the presidency and the Senate in the last quarter of the nineteenth century. This pattern of electoral success allowed them to protect their policies instituted during the Civil War and early Reconstruction, through the election of 1896" (Stewart and Weingast, 1992). In pursuit of these electoral and policy goals and enabled by vague criteria for admission in the Constitution, Republicans broke with pre-war norms and even constitutional requirements of expansion. Several states admitted between 1860 and 1896 period did not meet the congressional population admission norms of the period, which held that the potential state had a population large enough to warrant at least one seat in the House.[23] Of the twelve states admitted between 1861 and 1896, "only six of these states were the size of an average congressional district" (Stewart and Weingast, 1992). Furthermore, Article IV, Section 3 of the Constitution states:

> "New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress."

However, Republicans violated this constitutional provision by carving West Virginia out of Virginia and

[22] Unlike the imposition of voter ID laws or barring ex-felons, granting statehood to D.C. and Puerto Rico would expand rather than contract voter rights, and therefore would not constitute democratic backsliding. With regard to legislative apportionment, adding D.C. would enable Democrats to take advantage of malapportionment in the U.S. Senate because D.C. would be one of the smallest states in the union yet still receive the same number of senators as California and Texas, an argument that Levinson (2006) uses against adding D.C. However, because the malapportioned Senate overall favors Republicans, even in this regard adding D.C. would reduce rather than increase the absolute value of b.

[23] However, there was debate about this criteria, as Stewart and Weingast (1992, 253-254) discuss: "[a]t the low end, many argued that a new state should simply contain 60,00 people" and "[a]t the high end . . . that a new state should contain at least as many people so as to entitle it to one House member without having to fall back on the constitutional guarantee of one House member per state."

admitting it as a separate state without gaining consent from Virginia's legislature. During this period, Republicans reaped considerable benefits from pressing up against the constitutional bounds to add new states. The underlying popular strength of the Democrats and Republicans was evenly matched, though the Republicans retained control over the federal government because the southern states had withdrawn from the national government during succession (Stewart and Weingast, 1992). The opportunity cost to not playing hardball with statehood was high in the 1860s, i.e., high π_{hard}, as Republicans sought to re-elect Abraham Lincoln in 1864 and ratify the 13th Amendment. McCarty, Poole and Rosenthal (2001) question why the Democratic party was unable to counter by engaging and adding states that would favor their partisan interests, which they attribute to what we term asymmetries: there were fewer non-state territories that were perceived as reliable Democratic votes. Democrats were also at a disadvantage because they did not control the federal government, limiting their scope for retaliation.

In the modern era, Democrats have not pursued state expansion with the same zeal despite similar enjoying a similar asymmetry as Republicans in the 1860s. Contemporary Democrats have enjoyed fewer opportunities to add states, although there was a window in 2009 where they controlled the presidency and a filibuster-proof majority in the Senate—but did not attempt to add D.C. and Puerto Rico as states. Scholars have posited many possible reasons that lie outside the scope of our analysis, including a lack of preparedness in 2009 for the necessary steps to add states given other legislative priorities (Faris, 2018) and a possible unwillingness to confront Republicans.[24] Yet other considerations fall squarely within our framework: fear that adding these states would not actually push b in Democrats' favor because of spillover effects. Pundits postulate that Democrats making a major push to add D.C. as a state would "risk antagonizing white swing-state voters who may be less sympathetic to the plight of a city whose two major constituencies are African

[24]In 2018, Democratic Senator Sheldon Whitehouse questioned the addition of Puerto Rico by speculating on how the Republicans would respond: "The problem of Puerto Rico is it does throw off the balance so you get concerns like, who do [Republicans] find, where they can get an offsetting addition to the states?" Although thinking about strategic reactions by the other side is central to our framework, given empirical considerations, this is a confusing statement given the absence of obvious non-state territories with which Republicans could retaliate with by adding as states. https://www.vox.com/policy-and-politics/2018/10/26/18024542/dc-puerto-rico-statehood-senate-democracy.

Americans and white liberal elites. Picking up two reliably blue Senate seats might not matter if the Claire McCaskills or Joe Manchins of the Senate lose theirs in the process."[25] The Hispanic majority in Puerto Rico would also animate fears of white decline that many scholars have argued to bolster Republican voter support (Mutz, 2018). Leading Republicans have indeed previewed their attack on this front. In 1993, in a bill for D.C. statehood, Republican House representative Tom DeLay declared, "The District, a liberal bastion of corruption and crime, doesn't even come close to meeting statehood requirements."[26] More recently, Republican Senate majority leader Mitch McConnell decried that Democrats "plan to make the District of Columbia a state—that'd give them two new Democratic senators—Puerto Rico a state, that would give them two more new Democratic senators . . . this is a full bore socialism on the march in the House."[27]

5 Conclusion

Models of self-enforcing democracy highlight the prerequisite that no relevant political actors benefit from undermining the rules of the game (Przeworski, 1991, 2003; Fearon, 2011; Weingast, 1997; Acemoglu and Robinson, 2006). In Weingast's (1997) canonical model of democracy and the rule of law, for example, citizens keep political leaders in line by their willingness and ability to punish transgressions. Here, we explore related but distinct questions about insider *party elites* and their commitment to defend democracy. Without discounting the general importance of voters, we doubt that any electorate—which tends to be relatively uninformed about policy and politics—can truly hold in check politicians that seek to distort the democratic system. To understand contemporary American politics, as well as comparative cases of democratic backsliding, requires understanding how self-enforcing democracy can erode among party elites.

We supply one set of answers to this question that centers on how a constitution may serve to differentially incentivize party elites to roll back democracy. Specifically, we examine how constitutional bounds affect

[25] https://washingtonmonthly.com/magazine/july-august-2018/political-capital/

[26] https://washingtonmonthly.com/magazine/july-august-2018/political-capital/

[27] http://nymag.com/intelligencer/2019/06/mcconnell-representative-democracy-is-fu
html

the strategic decisions of party elites to bias or not rules that inflate or distort their own support in a dynamic game theoretic model. We find that short-run incentives unambiguously encourage this form of democratic backsliding. However, in contrast to the standard repeated prisoner's dilemma game, we show that long-term incentives to play hardball can go either way, depending on whether the constitutional scope enjoyed by both parties to bias the rules is symmetric or asymmetric. If the constitutional bounds are symmetric, then the logic of deterrence ensures that democracy remains self-enforcing, even if the bounds for each party are relatively wide. However, asymmetric partisan opportunities to tilt the political playing field can instead result in constitutional hardball, even if the aggressor party is highly patient.

Several opportunities for extension stand out. On the empirical side, we have only begun to consider how our model illuminates and provides a set of micro-foundations for a range of polarizing initiatives, which are often considered in isolation from each other. The model sheds light on strategic decisions to implement voter identification laws amongst some groups and difficulties in restricting or expanding the franchise to other groups that are correlated with Democratic vote share. Gerrymandering in the U.S. House is another area ripe for manipulation and also characterized by asymmetries which favor Republicans' ability to control the process and draw the boundaries. Finally, we examine decisions surrounding statehood in the Reconstruction era and discussion surrounding statehood expansion today. These dynamic interactions animate some of the most contentious debates in American politics today and we show that the model can help us understand the motivations for action and responses. Though we limit the discussion to these three applications, there are many other institutions and venues of the U.S. political world that are ripe to study through the lens of our model. The framework can help us understand a range of political dramas such as court packing or expansion attempts, altering the power of various branches of government depending on the party in power or blatantly stripping powers from the governor in states in states with Republican legislatures and newly-elected Democratic governors, increasing oversight of the executive branch by Congress or special councils, and strategically imposing term limits. The range of applications that could fall under the umbrella of the model's framework demonstrate the importance of understanding these interactions.

On the theoretical side, we envision at least two paths for further investigation. The first revolves around relaxing our working assumption that the costs of adopting hardball (ϕ in our model) are spread evenly across the parties. As numerous observers of contemporary American politics have noted, because ideological polarization itself has been asymmetric, this also makes it less costly for the Right to engage in hardball (see

Fishkin and Pozen 2018). Incorporating such differences in the price of bias more fully into the model would allow a richer, yet still theoretically unified, analyses of why and when party elites adopt different strategies. Evidence from conjoint analyses indeed show that Democratic supporters are more likely to punish norm violations than Republican supporters (Carey et al. 2019b, 7).[28]

The second area of investigation is to consider a more complicated set of strategic choices available to elites in which hardball options exist across multiple arenas simultaneously. In other words, court-packing by the Right may be met by state expansion on the Left. To the extent that credible threats of retaliation can be linked and thus deterred across issues, the core question is whether and under what conditions such linkages help restore mutual deterrence or simply feed escalation.

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[28] https://preprints-api.apsanet.org/apsa/assets/orp/resource/5d02becd39ef0400184a49fd/original/blw-party-donors.pdf.

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Online Appendix

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LIST OF FIGURES

A PROOFS FOR FORMAL MODEL

Proof of Lemma 1. We prove the lemma under more general conditions than stated in the text by assuming that if $\alpha_t = \alpha_{sq}$ and P_R chooses $b_t \neq 0$, then $Pr(\rho_{t+1} = \rho_R) = q$, for any $q \in (0, 1)$. The present-discounted percentage of periods in which P_R holds power equals:

$$(1-\delta) \cdot \Big[q \cdot V_R^R(\pi_{hard} = 1) + (1-q) \cdot V_D^R(\pi_{hard} = 1)\Big], \tag{A.1}$$

for V_R^R and V_D^R recursively defined in Equations 4 and 5. Solving those equations and substituting into Equation A.1 yields:

$$\frac{(1-\delta) \cdot q + \delta \cdot p(b_D)}{1 + \delta \cdot \big[p(b_D) - p(b_R)\big]} \tag{A.2}$$

Taking the limit $\delta \to 1$ yields the term stated in the lemma. An identical proof strategy yields an equivalent term if P_D initiates hardball, which follows because the assumed Markov transition process is ergodic. ■

Proof of Lemma 2. Use the terms from Equations 11 and 12 to define:

$$\Theta(\phi) \equiv \max\Big\{m_R \cdot (1-\phi) - \beta_R, m_D \cdot (1-\phi) - \beta_D\Big\},$$

for:

$$\begin{aligned} m_R &\equiv q(b_R, b_D) \cdot \pi_{hard} + \big[1 - q(b_R, b_D)\big] \cdot (1 - \pi_{hard}) \\ \beta_R &\equiv p_R(b_{sq}) \cdot \pi_{sq} + \big[1 - p_R(b_{sq})\big] \cdot (1 - \pi_{sq}) \\ m_D &\equiv q(b_R, b_D) \cdot (1 - \pi_{hard}) + \big[1 - q(b_R, b_D)\big] \cdot \pi_{hard} \\ \beta_D &\equiv p_R(b_{sq}) \cdot (1 - \pi_{sq}) + \big[1 - p_R(b_{sq})\big] \cdot \pi_{sq} \end{aligned}$$

To prove that at most one of Equation 11 and 12 can hold, adding Equations 11 and 12 yields the inequality $\phi < 0$, which violates the assumption that hardball is costly.

Then need to show that there exists a unique $\tilde{\phi} \in (0,1)$ such that $\Theta\big(\tilde{\phi}\big) = 0$ and $\tilde{\phi}$ strictly decreases in ϕ. Existence follows from verifying that the conditions for the intermediate value theorem hold. For the upper bound, $\Theta(1) = \max\big\{-\beta_R, -\beta_D\big\} < 0$, where the sign of the inequality follows because $p_R \in (0,1)$ and $\pi_{sq} \in (0,1)$ imply that $\beta_R > 0$ and $\beta_D > 0$. For the lower bound, prove by contradiction that, generically, $\Theta(0) > 0$. Two cases to consider for the contradiction hypothesis. First, $\Theta(0) < 0$. Then we have:

$$q \cdot \pi_{hard} + (1-q) \cdot (1 - \pi_{hard}) < p_R \cdot \pi_{sq} + (1 - p_R) \cdot (1 - \pi_{sq})$$

and

$$q \cdot (1 - \pi_{hard}) + (1-q) \cdot \pi_{hard} < p_R \cdot (1 - \pi_{sq}) + (1 - p_R) \cdot \pi_{sq}$$

Adding these two inequalities yields $1 > 1$, a contradiction. The second case is $\Theta(0) = 0$, which is true only for a singleton set of parameter values that satisfy:

$$q \cdot \pi_{hard} + (1-q) \cdot (1 - \pi_{hard}) = p_R \cdot \pi_{sq} + (1 - p_R) \cdot (1 - \pi_{sq}).$$

To establish that Θ is continuous in ϕ, note that $m_R \cdot (1-\phi) - \beta_R$ and $m_D \cdot (1-\phi) - \beta_D$ are each continuous in ϕ. Because they are each linear functions of ϕ, they intersect at most once at $\phi = \hat{\phi} \equiv 1 - \frac{\beta_R - \beta_D}{m_R - m_D}$. Need to show:

$$\lim_{\phi \to \hat{\phi}^-} \Theta(\phi) = \lim_{\phi \to \hat{\phi}^+} \Theta(\phi)$$

Substituting in for $\hat{\phi}$ yields

$$m_R \cdot \frac{\beta_R - \beta_D}{m_R - m_D} - \beta_R = m_D \cdot \frac{\beta_R - \beta_D}{m_R - m_D} - \beta_D,$$

which algebra shows to be a true statement.

Showing that Θ strictly decreases in ϕ follows from two facts. First, $m_R \cdot (1-\phi) - \beta_R$ and $m_D \cdot (1-\phi) - \beta_D$ each strictly decrease in ϕ. Second, given the existence proof, it suffices to show that Θ strictly decreases in ϕ at $\phi = \hat{\phi}$. We will consider the case in which:

$$\Theta(\phi) = \begin{cases} m_R \cdot (1-\phi) - \beta_R & \text{if } \phi < \hat{\phi} \\ m_D \cdot (1-\phi) - \beta_D & \text{if } \phi > \hat{\phi}, \end{cases}$$

although the logic is identical for the opposite switching case. It suffices to show that for all $\epsilon > 0$, we have:

$$m_R \cdot \left[1 - \left(\hat{\phi} - \frac{\epsilon}{2}\right)\right] - \beta_R > m_D \cdot \left[1 - \left(\hat{\phi} + \frac{\epsilon}{2}\right)\right] - \beta_D$$

Substituting in for $\hat{\phi}$ and rearranging yields $\epsilon > 0$, which we assumed. ■