Self-Subverting Democracy

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Abstract

The greatest danger to contemporary democratic regimes is not a coup or a violent crackdown against dissidents, but instead incumbent politicians straining constitutional limits to entrench themselves in power. In such circumstances, constitutions act not as restraining devices against devious politicians, but instead can embolden anti-democratic actions to tilt the electoral playing field. We develop a formal model in which we apply the logic of deterrence to explain how constitutions can lead to self-subverting democracy when three conditions are present: wide legal bounds, asymmetries opportunities between the two parties to tilt the playing field toward their supporters, and high partisan sorting. In contemporary American politics, this framework helps to explain anti-democratic actions by Republican politicians across various institutions, in particular U.S. House districting and voting rights. It also accounts the relatively muted response by Democratic politicians (in these institutions as well as statehood expansion) in terms of the legal constraints they face, as opposed to differences in normative commitments and an unwillingness to "play dirty."

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1 INTRODUCTION

Self-enforcing democracy requires not only that losers accept unfavorable electoral results, but also that winners refrain from using their office to bend rules to stay in power. Whereas many influential theories of democratic transition focus on losers' incentives (O'Donnell and Schmitter, 1986; Przeworski, 1991; Acemoglu and Robinson, 2005; Albertus and Menaldo, 2018), growing research on democratic erosion is aimed at understanding how the guardrails against self-entrenchment by incumbents begin to crumble, which is particularly important in many contemporary cases of democratic decline (Bermeo, 2016; Ginsburg and Huq, 2018; Levitsky and Ziblatt, 2018; Waldner and Lust, 2018; Przeworski, 2019). Our paper aims to formalize the process of party self-entrenchment, or what we refer to as self-subverting democracy. Specifically, we highlight how inherent gaps in constitutional rules and precedents encourage elites to manipulate the rules of the game. We then apply this framework to unify several important strands of the literature on electoral politics in the contemporary United States.

The concept of self-subverting democracy we adhere to in this paper captures one of the fundamental features of democratic erosion in the modern era, a process which has taken root in numerous countries around the globe (Coppedge et al., 2019). Leaders come to power via democratic institutions, but then use these same institutions to gradually tilt the playing field to their advantage. Tilting may occur across any number of institutional arenas, including the courts, the bureaucracy, the media, and the electoral arena, the latter of which is our primary focus. Our account of this process rests fundamentally on the observation that constitutions necessarily admit a range of statutory interpretations and informal behaviors. This provides legal scope for political elites to take advantage of formal and informal rules to further entrench themselves (Helmke and Levitsky, 2006). As observers now widely recognize, elites can thus subvert democracy without ever clearly stepping outside the bounds of constitutional law (Varol, 2014; Levitsky and Ziblatt, 2018; Ginsburg and Huq, 2018; Luo and Przeworski, 2019). In some cases, the extent of tilting is so severe that the regime ceases to be democratic in any meaningful sense, as recently exemplified by Venezuela and Turkey. Yet in many other cases, multi-party competition continues in which each party has a realistic chance of winning, but one party has carved out considerable electoral advantages.

We are only beginning to understand of the strategic dynamics that underpin democratic backsliding via constitutional self-entrenchment. Recent formal theoretic research advances our understanding in the context

of a leader interacting with citizens, and explains that opportunistic politicians can get away with subverting democracy if citizens prioritize partisanship over democracy (Nalepa, Vanberg and Chiopris, 2018; Buisseret and van Weelden, 2019; Luo and Przeworski, 2019; Grillo and Prato, 2020). However, we have little understanding of why competing parties in the political system would fail to check an opportunistic rival. Situated in a dynamic setting, we could imagine that transgressions by one party would be checked by the other party in the future, consistent with James Madison's famous phrase that "ambition must be made to counteract ambition" (Federalist #51). Given obvious incentives for the other party to react, how can one party perpetuate long-term undemocratic advantages for itself?

We supply a novel answer, rooted in the logic of deterrence, to the puzzle of asymmetric democratic erosion. In our model, party leaders interact over an infinite horizon and, at any time they are in power, make decisions about seizing constitutionally permissible opportunities for self-entrenchment. Decisions to exploit legal gaps bolster the incumbent party's probability of winning the next election, but anti-democratic actions also trigger retaliation by the opposing party and create permanent costs to eroding democratic norms. We derive the following implications about how constitutional scope and asymmetries combine with sorting among voters to affect party leaders' willingness to undercut the voting power of citizens who oppose them.

- *Scope.* First, and perhaps most obviously, the degree of legal scope for tilting the electoral playing field matters. At one extreme, if constitutional leeway is so minimal that the broader costs of undermining democratic norms mitigate any advantages from tilting, then incumbents will eschew self-entrenchment regardless of their opponents' capacity to retaliate. At the other extreme, if legal scope is unlimited, then one player can essentially end the game by deviating. As a result, the most interesting dynamics emerge in between these two extremes, in which asymmetry and sorting are essential.

- *Asymmetry.* Second, no constitution is perfectly democratic. Distortions from pure proportionality make some citizens' votes more influential than others. Depending on the distribution of voters across parties, the ability of one party to exploit the legal framework or respond to exploitations by the opposition may be asymmetric, which undermines the ability of the disfavored party to deter its opponent with threats of future punishment. Put differently, if the legal bounds operate such that one party effectively enjoys more leeway than another to exploit them, then our analysis shows that the threat of

inter-elite retaliation is no longer credible and an important mechanism for self-enforcing democracy collapses.

- *Sorting.* A third element of our framework revolves around partisan sorting. Our conception of legal asymmetries applies at the level of voters. If a constitution overweights certain groups over others—for example, rural over urban voters—the key in our framework is whether such groups are effectively sorted by political party. In our analysis, partisan sorting fuels democratic erosion precisely because it maps onto latent asymmetries within the Constitution. Extreme sorting transmutes asymmetries in the relative importance of different voters into stark partisan advantages, which triggers deterrence failure.

These findings contrast in several important ways from existing accounts of democratic erosion. Our mechanism for democratic erosion does not require that parties have different preferences or tastes for democracy. Because anti-democratic tactics emerge endogenously from politicians who simultaneously adhere to and exploit the limits imposed by the constitution, even if parties are equally self-interested, incentives to subvert democracy may be limited to only one. Nor is subversion necessarily driven by a short time horizon commonly seen in the repeated prisoner's dilemma (c.f., Tushnet 2003; Fishkin and Pozen 2018; Levitsky and Ziblatt 2018). Indeed, as we show, if bounds are sufficiently asymmetric, then cooperation is impossible even if parties are perfectly patient. Our argument also cuts against broader concerns that democratic decline necessarily arises from weakly enforced constitutions in which politicians ignore mere "parchment barriers." We instead explain how democracy can erode even when politician adhere to legal limits. Finally, departing from other formal theories that feature repeated elections with history-dependent punishments (Alesina 1988; Dixit, Grossman and Gul 2000; De Figueiredo 2002; Fox 2006; see also Gibilisco et al. 2015), in our model, parties' strategic actions endogenously affect the probability of winning future elections.

Although the model highlights general strategic incentives, it provides particularly important insights into contemporary American politics. Legal asymmetries that favor Republicans help to explain asymmetric actions toward partisan self-entrenchment, which we substantiate following the model analysis. Various provisions of the federal Constitution and existing federal statutes create greater scope for disenfranchising Democratic voters—specifically, African Americans, Hispanics, and Native Americans—and for gerrymandering districts to undermine the electoral weight of Democratic voters—specifically, urban voters. Since the 1990s, many of these disparities have arisen because intensified sorting among voters has brought more and

more "constitutionally disfavored" voters into the Democratic party. This has increased the potential gains to Republican politicians from tilting the playing field. We also examine aspects of the Constitution that could potentially favor Democrats, such as adding Puerto Rico and Washington, D.C. as states, and discuss why Democrats have not capitalized on these latent benefits. Overall, rather than focus on more ideologically extreme conservative news outlets (Fishkin and Pozen, 2018; Pierson and Schickler, 2020) or the personality of political leaders on either side (with the implication that Republicans are simply better at being tough), our focus is solely on the asymmetric legal constraints faced by leaders of the two parties.

We knit together several well-developed but largely disparate literatures within American politics. Our model underscores the strategic advantage enjoyed by Republicans in crafting U.S. House districts and is consistent with Rodden's (2019) account of how partisan sorting affects gerrymandering. We incorporate considerable historical and contemporary evidence on voting restrictions, and build on a smaller historical literature on the strategic incentives that have driven statehood expansion (Stewart and Weingast, 1992; Frymer, 2017). Our focus on institutional change also departs from standard pivotal politics models (with exogenously determined institutional constraints), and instead more closely relates to research on the evolution of Senate rules (Koger, 2010; Shepsle, 2017; Binder, 2018) and the historical emergence of legislative elections and constitutional review in the United States (Gailmard, 2017, 2019). We also provide new microfoundations for existing qualitative critiques of the U.S. Constitution and American democratic history (Dahl, 2003; Levinson, 2012; Mickey, 2015; Lepore, 2018). These scholars discuss 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 various institutional features that distort American democracy.

2 Model Setup

Using a game theoretic model, we explain how the interaction of asymmetric legal opportunities and high partisan sorting causes the legally favored party to deviate to anti-democratic tactics in equilibrium. The model is intentionally spare to isolate this core logic. Besides legal bounds, the parties are symmetric in all respects: they are unitary actors who receive the same rents from winning and pay the same cost to changing the electoral weight of different voting groups. Therefore, we intentionally omit many differences between politicians in and constituents of the real-life Republican and Democratic parties to concentrate on

the effects of asymmetric legal bounds. We provide numerous concrete examples of legal bounds following the model analysis.

We formally analyze a strategic interaction between long-lived representative agents of two political parties, R and D. The labels correspond with Republican and Democrat, although the ideological positions of the real-world parties plays no role in the model. The two parties interact in an infinite time horizon with time denoted by $t \in \mathbb{Z}_+$, and they discount future periods by a common factor $\delta \in (0, 1)$. In each period t, Nature chooses one of the two parties as the winner of an election. After the in-party power consumes its benefit associated with governing, this party then chooses how much electoral weight to allow for different voting blocs, which affects election outcomes in period $t + 1$.

Non-strategic voters. Society contains two groups of voters. For concreteness, we refer to these groups as rural and urban, although the following logic is not confined to only geographically differentiated groups. Each member of both groups participates in the election in every period and votes sincerely for their most-preferred party, R or D.[1] Total societal support for the two parties is 50-50, which enables us to avoid unnecessary parameters about *overall* partisan support, but we allow the degree of sorting to vary—that is, the distribution of partisan support across voter blocs. Rural and urban voters each compose half the electorate, and $s \in (0.5, 1)$ percent of rural voters and $1 - s$ percent of urban voters each prefer R. The complementary set of voters prefer D. Therefore, R has a comparative advantage among rural voters, and the magnitude of this comparative advantage—i.e., the extent of geographical sorting—increases in s. At $s = 1$, every rural voter goes Republican and every urban voter goes Democrat. By contrast, at $s = 0.5$, the two voting blocs each evenly distribute their support between Republican and Democrat.

Strategic electoral bias and legal bounds. The only strategic decision in each period is for the in-power party to choose electoral bias in the next period, which determines the probability with which it wins re-election. Specifically, in any period $t - 1$, the in-power power chooses how much to weight the vote of each urban citizen in period t, $\omega_t \in \left[\underline{\omega}, \overline{\omega}\right]$, for the legal bounds $0 < \underline{\omega} < 1 < \overline{\omega}$. To focus attention solely on the *bias* induced by non-equal voting weights, we assume that the mapping from R's weighted voting share to

[1] That is, the voters are not strategic players, and we do not explicitly model their consumption.

its probability of winning an election is perfectly proportional:

$$p(\omega_t) = \frac{\overbrace{s}^{R\text{'s votes from ruralites}} + \overbrace{\omega_t \cdot (1-s)}^{R\text{'s weighted votes from urbanites}}}{\underbrace{1+\omega_t}_{\text{Effective size of the electorate}}}, \tag{1}$$

and D wins with complementary probability $1 - p(\omega_t)$. Because of R's comparative advantage among rural voters, $p(\omega_t)$ obtains its highest value at $\omega_t = \underline{\omega}$, the lowest possible legally permissible weight for urban voters. Conversely, $p(\omega_t)$ obtains its lowest value at $\omega_t = \overline{\omega}$, the highest possible legally permissible weight for urban voters. At $\omega_t = 1$, the two voting blocs are weighted equally. By contrast, any $\omega_t < 1$ biases against urban voters—and therefore against D—and any $\omega_t > 1$ biases against rural voters, and hence against R. At the extremes, $p(0) = s$, implying that urban voters are disenfranchised; and $\lim_{\omega_t \to \infty} p(\omega_t) = 1 - s$, implying that rural voters are disenfranchised. We assume that the game begins without bias, $\omega_0 = 1$.[2]

Consumption. In any period t, the out-of-power party consumes 0. There is a state variable $\alpha_t \in \{0, 1\}$ that affects the consumption of the winning party. This variable equals 0 in any period t such that $\omega_s = 1$ for all $s < t$; and equals 1 in any period t such that the history contains an action $\omega_s \neq 1$, for some $s < t$. The party in power consumes $1 - \alpha_t \cdot \phi$, for $\phi \in (0, 1)$. This implies that if one party ever tilts elections in its favor, then we reach an absorbing state of the game in which consumption for the winning party is lower in all future periods. The underlying idea is that during periods of contested politics, party members face greater incentives to obstruct the priorities of the other party, resulting in lower policy effectiveness and general distrust of government (Lee, 2016; Levitsky and Ziblatt, 2018).

In sum, the timing of events in every period t is:

- Nature chooses the winner of the election from a Bernoulli distribution such that R wins with probability $p(\omega_t)$.
- The winning party consumes $1 - \alpha_t \cdot \phi$ and losing party consumes 0.

[2] Assuming $\omega_0 = 1$ implies that the status quo is more democratic than any possible alternative, and in the conclusion we discuss scenarios in which changing the electoral rules can facilitate rather than undermine democracy.

- The winning party chooses ω_{t+1}.

Discussion of legal bounds. We highlight four important assumptions about the legal bounds. First, the parties are circumscribed to choose policies that lie within legal limits, as opposed to taking actions such as coups that blatantly violate the constitution. Although relevant in some substantive contexts, these types of outside options are not viable in the contemporary United States, nor do they help to illuminate self-subverting democracy by legal means. Second, we assume the legal bounds are common knowledge. Although, in reality, the limits of the law are imprecisely known, as long as actors have accurate assessments of the expected legal bounds, the strategic logic would not change. If we introduced incomplete information about the bounds, it would be possible for a party to pass a law that subsequently gets struck down. Then, our assumption about following the law would be that parties adhere to the courts' decisions. Third, although we interpret $\underline{\omega}$ and $\overline{\omega}$ mainly in legal terms, the normative commitments of members of each party (both officials and voters) can also shape the policies that their party is willing to enact. In our case studies, we highlight existing arguments about normative commitments while also distinguishing the distinct legal opportunities that the Democratic and Republican parties face.

Fourth, the legal bounds are fixed across the infinite horizon. We offer three defenses for this assumption. First, the main upshot is analytical tractability, as it simplifies the construction of each party's incentive-compatibility constraint. We could instead complicate the model by assuming either that the legal bounds follow a specified stochastic process across time, or that the bounds evolve according to strategic decisions. In either case, actors would evaluate their expectations over future legal bounds, and therefore $\underline{\omega}$ and $\overline{\omega}$ would simply represent averages over future time periods rather than fixed quantities. Second, our way of modeling legal bounds still allows flexible interpretation regarding what are the legal bounds in the real world. One reason R might be able to move ω_t toward $\underline{\omega}$ (or, equivalently, for D to move ω_t toward $\overline{\omega}$) is that, when in power, it can influence either the composition or the strategic rulings of the Supreme Court, and these unmodeled actions affect the range of legally possible ω_t choices.[3] Third, over medium-term horizons, it is somewhat difficult to dramatically alter legal bounds. In his survey of U.S. legal history, Ackerman (1991) argues that only during three time periods have actors fundamentally transformed U.S. constitutional law: the 1787 federal convention, Reconstruction, and the New Deal; although below we talk about watershed

[3]See, for example, Clark (2010) on how the threat of court-curbing by the elected branches affects Supreme Court decisions.

events in the 1960s that shaped voting rights and districting pratices.[4] Thus, our model provides a tractable framework for understanding the strategic incentives that party leaders, constrained by legal limits, face to tilting the electoral playing field.

3 Model Analysis

3.1 Incentive Compatibility Constraints

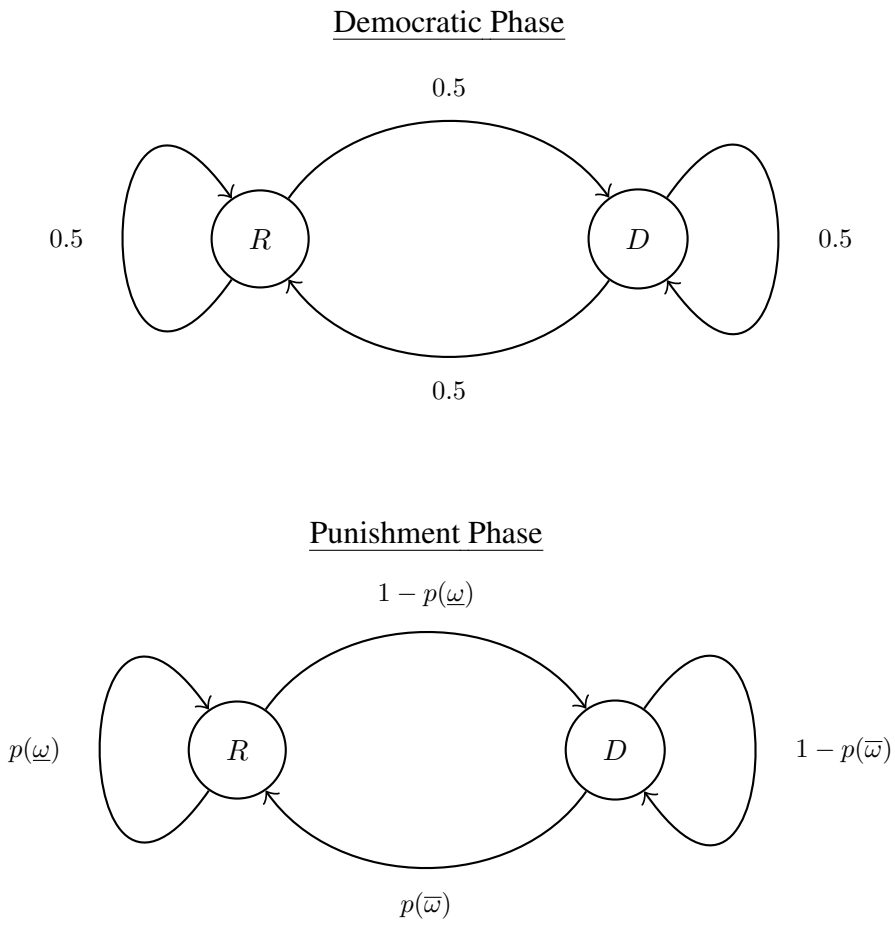
Appendix A presents the incentive compatibility constraints for either party to uphold democratic cooperation (that is, retain the status quo of no bias) rather than to deviate to anti-democratic tactics in a subgame perfect Nash Equilibrium in which, in all periods following any deviation from $\omega_t = 1$, players switch to tilting maximally in their favor. Therefore, a party that deviates gains an immediate electoral advantage by raising its probability of winning the next election, but then R chooses $\omega_t = \underline{\omega}$ and D chooses $\omega_t = \overline{\omega}$ in all subsequent periods. Neither party can profitably deviate in the punishment phase because the other party always plays their most extreme strategy. Additionally, the winner's shares are lower because the state variable switches permanently to $\alpha_t = 1$, and thus R and D consume $1 - \phi$, rather than 1, whenever they are in power. Figure 1 summarizes the probabilities of either party winning in each period.

3.2 Asymmetric Bounds and Anti-Democratic Tactics

Given these incentive compatibility constraints, we characterize, in terms of the legal bounds $\underline{\omega}$ and $\overline{\omega}$, the conditions in which a democratic equilibrium exists. Our main result shows why asymmetric legal bounds cause one party to take anti-democratic actions in equilibrium. Figure 2 provides visual intuition by presenting a region plot with $\overline{\omega}$ on the vertical axis and $1/\underline{\omega}$ on the horizontal axis. Inverting the lower legal bound enables us to interpret increases each axis as increasing the legal leeway to tilt for one of the parties. The axes range between perfectly fair weights $\left(\overline{\omega} = 1/\underline{\omega} = 1\right)$ and weights such that either rural votes count four times as much as urban votes $\left(1/\underline{\omega} = 4\right)$ or vice versa $\left(\overline{\omega} = 4\right)$. Higher $1/\underline{\omega}$ corresponds with greater legal leeway for R to tilt elections in its favor, since this implies less potential voting weight for the urban bloc. Similarly, higher $\overline{\omega}$ corresponds with greater legal leeway for D to tilt elections in its

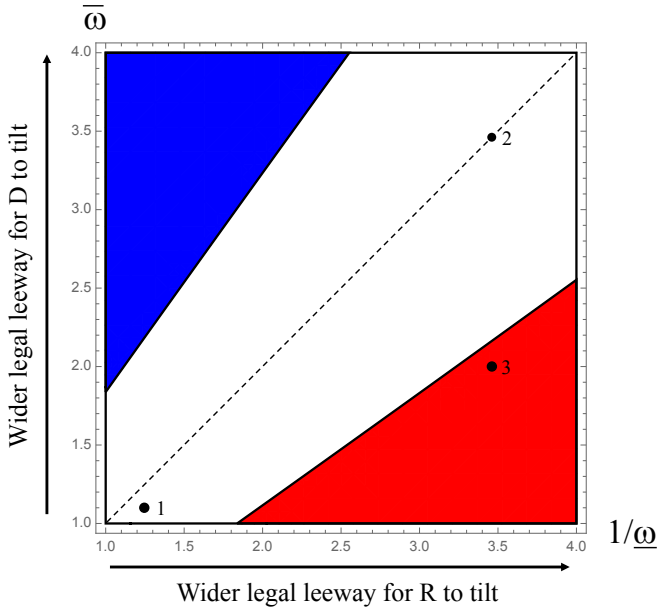
[4] As is standard in dynamic games, the "infinite" part of the infinite horizon setup should not be taken literally. It simply makes it tractable to analyze how future punishments can constrain choices in any particular period of the game.

Figure 1: Transitions in Which Party Controls the Government



favor, since this implies more potential voting weight for the urban bloc. Given the posited grim trigger strategy, these legal bounds on actions are identical what each in-power party will choose in every period in the punishment phase. The dashed 45-degree line $\overline{\omega} = 1/\underline{\omega}$ expresses parameter values at which each party's legal leeway to tilt institutions in their favor is symmetric. To the left of this line, D enjoys greater legal leeway than R to shift institutions in its favor, whereas the opposite is true to the right. The white region indicates values of $\underline{\omega}$ and $\overline{\omega}$ for which both parties cooperate, that is, the incentive compatibility constraints presented in Appendix Equations A.1 and A.5 both hold. In the red region, R can profitably deviate to anti-democratic tactics (Equation A.1 fails), and in the blue region, D can profitably deviate to anti-democratic tactics (Equation A.5 fails). Besides $\underline{\omega}$ and $\overline{\omega}$, we fix the parameters at values stated in the note accompanying the figure.

Figure 2: Wide/Asymmetric Legal Bounds and Anti-Democratic Tilting



Notes: Figure 2 sets $\delta = 0.9$, $\phi = 0.08$, and $s = 0.8$. The axes on each figure are the legal bounds for each party. These are equivalent to the strategies that, following a deviation, each will choose in every period they are in power.

The figure shows that the interaction of wide and asymmetric legal bounds causes at least one party to deviate to anti-democratic tactics. To highlight why wide bounds are necessary, consider the incentives for R to deviate at point 1 in Panel A. Although R enjoys greater legal opportunities to overweight rural voters than does D to overweight urban voters, deviating yields only a small advantage for R because $1/\underline{\omega}$ is so small. Thus, despite D's minimal ability to retaliate, R is unwilling to incur the permanent cost ϕ of the punishment phase. If we fix $1/\underline{\omega}$ at its value in point 1, then R does not deviate even if $\overline{\omega} = 1$. In this case, minimal legal legal scope for tilting undermines R's incentives to pursue any electoral tilting.[5]

To highlight how asymmetries contribute to incentives to deviate, we can compare equilibrium actions at points 2 and 3. At both values, the value of $1/\underline{\omega}$ is higher than for point 1, indicating greater legal opportunities for R to tilt elections in its favor. However, whether or not R will deviate in equilibrium depends on the ability of D to retaliate. Point 2 is on the line of symmetry. Cheating by R enables it to tilt elections fairly substantially in its favor by weighting rural voters at more than three times as much as urban voters. However, D enjoys the same scope of legal opportunities when in power. Thus, when out of power, the

[5]In this and the following paragraphs, the logic for D to deviate is identical.

electoral disadvantage for R is equally large, which creates a deterrent against deviation.[6] By comparison, at point 3, $1/\underline{\omega}$ is the same value as for point 2, but $\overline{\omega}$ is lower. This undermines D's ability to punish R, which causes deterrence to break down. Although deviating triggers a spiral of anti-democratic actions by both sides, R will fare well when both parties go back-and-forth tilting the electoral playing field because the asymmetric punishment opportunities favor R's electoral fortunes.

Proposition 1 (Equilibrium)**.** *The following actions constitute an equilibrium strategy profile. The appendix formally defines every (unique) threshold, and also presents a version of Figure 3 (see below) with labels for each threshold (see Figure A.1). In the democratic phase, with $\alpha_t = 0$, each player takes the following actions in any period t they win an election:*

Case 1. Restricted legal opportunities

- *If $1/\underline{\omega} < 1/\underline{\omega}'$, then R sets $\omega_t = 1$. Point 1 in Figure 2 lies in this region.*
- *If $\overline{\omega} < \overline{\omega}'$, then D sets $\omega_t = 1$.*

Case 2a. Intermediate legal opportunities with symmetric legal bounds

- *If $1/\underline{\omega} \in \left(1/\underline{\omega}', 1/\underline{\omega}''\right)$ and $\overline{\omega} > \tilde{\overline{\omega}}$, then R sets $\omega_t = 1$. See point 2 in Figure 2.*
- *If $\overline{\omega} \in \left(\overline{\omega}', \overline{\omega}''\right)$ and $1/\underline{\omega} > 1/\tilde{\underline{\omega}}$, then D sets $\omega_t = 1$.*

Case 2b. Intermediate legal opportunities with asymmetric legal bounds

- *If $1/\underline{\omega} \in \left(1/\underline{\omega}', 1/\underline{\omega}''\right)$ and $\overline{\omega} < \tilde{\overline{\omega}}$, then R sets $\omega_t = \underline{\omega}$. See point 3 in Figure 2.*
- *If $\overline{\omega} \in \left(\overline{\omega}', \overline{\omega}''\right)$ and $1/\underline{\omega} < 1/\tilde{\underline{\omega}}$, then D sets $\omega_t = \overline{\omega}$.*

Case 3. "Authoritarian" legal opportunities

- *If $1/\underline{\omega} > 1/\underline{\omega}''$, then R sets $\omega_t = \underline{\omega}$. See point 2 in Figure 3.*
- *If $\overline{\omega} > \overline{\omega}''$, then D sets $\omega_t = \overline{\omega}$.*

In the deviation phase, with $\alpha_t = 1$, R chooses $\omega_t = \underline{\omega}$ and D chooses $\omega_t = \overline{\omega}$.

Corollary 1 (Extent of asymmetry)**.** *The more that one party can tilt institutions in their favor when in power, the narrower is the range of legal bounds for which the opposing party will deviate. Formally:*

$$\frac{d\tilde{\overline{\omega}}}{d\left(1/\underline{\omega}\right)} > 0 \qquad \textit{and} \qquad \frac{d\left(1/\tilde{\underline{\omega}}\right)}{d\overline{\omega}} < 0$$

[6] However, as shown below, symmetric punishment opportunities are not sufficient to deter deviation.

3.3 GEOGRAPHIC SORTING

High geographic sorting exacerbates prospects for democratic cooperation. To show this visually, Figure 3 uses the same parameter values as in Figure 2 except it increases s to 1. It shows that each player will deviate under a wider range of parameter values than with lower sorting. Note that in the purple region, both players will deviate (Appendix Equations A.1 and A.5 both fail; see Case 4 in Proposition 1). Thus, the same point 2 at which R did not deviate in Figure 2 falls in the deviation range in Figure 3. The logic is straightforward. Higher s implies that R derives greater benefits from overweighting rural supporters and D derives greater benefits from overweighting urban supporters. Thus, increases in s imply that wider legal bounds translate into a more pronounced anti-democratic advantage whenever a party tilts in their favor. Although sorting also creates an indirect effect that mitigates incentives to deviate—by enhancing the ability of the other party to retaliate when they are in power—the direct effect dominates and at least one party must face stronger incentives to tilt. By contrast, as s shrinks to 0.5 (not depicted), either party gains only a small advantage from deviating even if the legal bounds are considerably tilted in favor of its voters, since these voters only slightly prefer that party. Overall, in terms of incentives to deviate, increasing the extent of geographic sorting has the same effect as making the legal bounds less restrictive, and high-enough geographic sorting is a necessary condition for deviation.

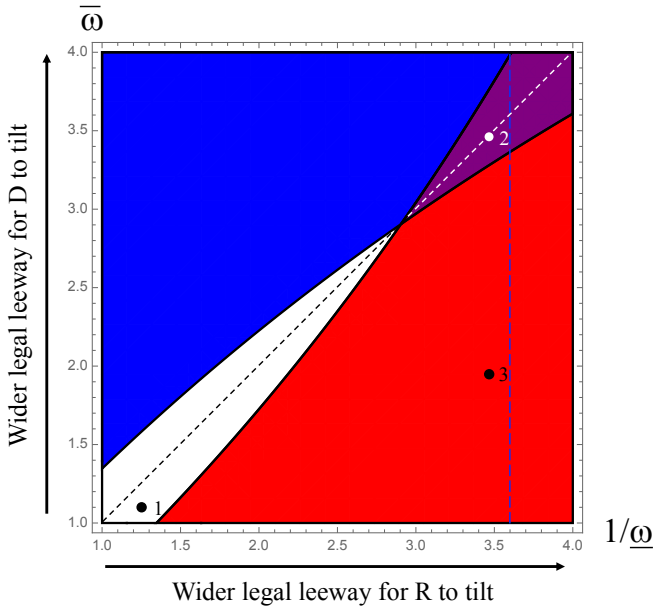
Additionally, all points to the right of the dashed blue line highlight a distinct path to anti-democratic actions, although these parameter values are less substantively relevant because they in effect correspond to an authoritarian regime. Here, R will deviate regardless of $\overline{\omega}$. The legal bounds are so wide that, at least in the medium term, R effectively ends the game by maximally tilting elections in favor of rural voters—despite the underlying 50-50 voter support for each party. Even if D has symmetric ability to overweight urban voters, the low probability with which D will regain power makes this threat less costly to R.[7]

Proposition 2 (Geographic sorting)**.**

> ***Part a.*** *Higher geographical sorting increases the range of parameter values in which at least one party will deviate.*
>
> ***Part b.*** *As $s \to 0.5$, neither party will deviate.*

[7] In countries with unwritten constitutions (UK, New Zealand, Israel) the legal bounds are, in a sense, infinitely wide. However, democratic norms as expressed by high ϕ's can generate a high-enough cost of tilting to push the parameter values outside the purple range.

Figure 3: High Geographic Sorting



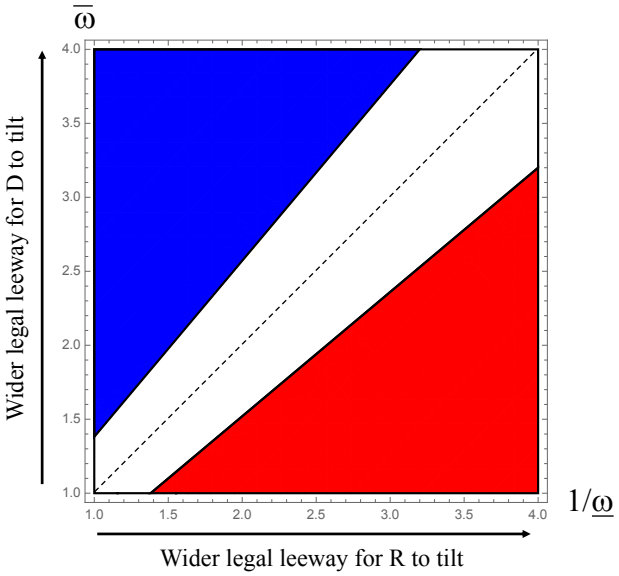
Notes: This is identical to Figure 2 except $s = 0.8$.

3.4 Discounting the Future

The analysis also delivers an important implication about the patience of the two parties, that is, the discount factor δ. 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. More patient players can sustain cooperation because they put higher weight on the long-term costs of defecting compared to the short-term gains, and perfectly patient players never deviate.

However, in our game, deviations are possible in equilibrium even as the parties become perfectly patient, $\delta \to 1$. Figure 4 shows this by using the same parameter values as in Figure 3 but setting $\delta \to 1$. Raising the discount factor exerts a similar effect as reducing the extent of sorting, but the possibility of deviation

Figure 4: Perfectly Patient Actors



Notes: This is identical to Figure 3 except $\delta \to 1$.

remains. The reason is that asymmetric legal bounds create asymmetric ability for the parties to punish each other. Consequently, one party may achieve *higher* payoffs in the long run from initiating an anti-democratic spiral if it enjoys wide scope to tilt institutions in its favor but the other party does not, despite our assumption that the punishment phase undermines policy effectiveness ($\phi > 0$). This contrasts with arguments such as those by Levitsky and Ziblatt (2018) that unfavorable future demographic trends for Republican constituents have caused their party leaders to act undemocratically. Instead, as we show, long-lived parties that highly value the future may still engage in undemocratic behavior.[8]

> **Proposition 3** (Long-term incentives for anti-democratic tilting)**.** *For $\phi \to 0$, a democratic equilibrium does not exist for any $\delta \in (0, 1)$.*

[8]However, $\delta \to 1$ eliminates the purple region in Panel A of Figure 3 in which both parties can profitably deviate from cooperating. This region arises because for any $\delta < 1$, players put more weight on the immediate gains that they receive from tilting. By contrast, over the long term, these advantages wash out because the long-term transition probabilities in a Markov chain are independent of the initial state (see Appendix Lemma A.1), and perfectly patient players care only about the long term. The proof for Proposition 1 can be used to show that if players are perfectly patient, then there is no "authoritarian opportunities" range (shown by substituting $\delta \to 1$ into Equations A.11 and A.12).

3.5 Extension with Federalism

The model highlights the key intuitions about legal scope, asymmetries, and voter sorting in a simple setting with a unitary government. However, as we discuss in the next section on U.S. institutions, it is important distinguish whether a law can be passed at the state level (e.g., drawing House districts, determining voter eligibility) or only at the federal level (e.g., adding a new state). The bicameral Congress and separate presidential elections create the possibility of split government at the federal level, and thousands of additional elections occur at the state and lower levels.[9] To more closely connect the application to the model, it is straightforward to relax the assumption that one party "wins" an election in each period. Suppose that when a party is in power, they will only probabilistically have an opportunity to tilt the playing field in their favor. Denote these probabilities as $\kappa_R \in (0,1)$ for R and $\kappa_D \in (0,1)$ for D. Now, even if the legal bounds are symmetric $\left(\overline{\omega} = 1/\underline{\omega}\right)$, one party enjoys an advantage over the other if $\kappa_R \neq \kappa_D$. Thus, our core insights about asymmetry and legal deterrence are qualitatively identical even if the government is not unitary.

4 Applications to Contemporary American Politics

Quantitative indices document concerning recent trends in U.S. democracy (Freedom House 2019; V-Dem; Bright Line Watch). Many scholars and pundits discuss how, since the 1990s, Republican politicians have frequently sought to gain undemocratic advantages through means such as voter suppression and extreme gerrymandering (Fishkin and Pozen, 2018; Levitsky and Ziblatt, 2018; Dionne Jr, Ornstein and Mann, 2017). Yet rather than openly violate the U.S. federal constitution, these tactics adhere to textual limits of and judicial interpretations of the law; and, when they are judged to overstep, the actors comply with court rulings. Furthermore, these anti-democratic actions have been largely one-sided. Democrat politicians have largely not responded in kind, often to the dismay of leftist critics that encourage Democrats to respond by "playing dirty" (Faris, 2018; Belkin, 2019).

To explain these patterns, we draw empirical evidence from wide-ranging literatures in American politics. We substantiate that the U.S. Constitution allows relatively wide legal bounds that—given current voter sorting between the two major parties—systematically favor Republicans for exploiting institutional rules over

[9] In addition to the 99 state legislative chambers and 50 state executives, there are more than 87,000 local governments (https://www.census.gov/newsroom/press-releases/2017/cog.html).

drawing U.S. House districts and voting rights, and that elected representatives have exploited these asymmetries to gain undemocratic advantages. We also consider statehood expansion and explain how tighter legal bounds have prevented Democrats from capitalizing on a latent advantage, and discuss other institutions more briefly in the conclusion. Our focus departs from accounts based on normative commitments to democracy, a willingness to "play tough," and pressures from interest groups and media outlets. In the presence of stark legal asymmetries, whether or not one party values democracy more than another is immaterial to democratic subversion. Our approach is particularly relevant given recent survey research that reveals a surprisingly high convergence in support for democratic norms by supporters and opponents of President Donald Trump (Bright Line Watch, 2019).

A key background condition for our empirical analysis is the emergence of extreme ideological polarization and geographical partisan sorting in recent decades. Although scholars debate the distinction between mass polarization and mass partisan sorting (Abramowitz and Saunders, 2008; Fiorina and Abrams, 2008; McCarty, 2019), one piece of empirical evidence is uncontroversial: the core of the Democratic party is urban voters and minorities. This is the most relevant pattern for how we conceptualize sorting in the model, one of the three main conditions that engenders self-subverting democracy in the model. Although these patterns originated during the New Deal, urban concentration of Democrats has accelerated in recent decades. Scholars have established this pattern by demonstrating a strong correlation between population density and Democratic vote share (Rodden, 2019) and by using voter registration files to show the concentration of neighborhoods by party (e.g., Sussell, 2013; Martin and Webster, 2018). The distribution of Democratic support in cities naturally creates "packed" areas (i.e., an inefficiently large percentage of Democratic voters), whereas Republicans are "scattered more evenly through the suburban, exurban, and periphery" (Chen and Rodden, 2013). As we discuss below, extreme geographic/racial sorting creates stark implications for the effectiveness of partisan gerrymandering, control of statehouses, and control of federal U.S. institutions, all of which have influenced asymmetries in legal bounds.

4.1 Gerrymandering in the U.S. House

We start by discussing gerrymandering, an area of intense popular debate that significantly shapes partisan electoral futures. After discussing why the legal bounds are relatively wide, we explain and provide evidence that Republican politicians are better able to capitalize on these bounds to punish Democratic supporters,

and consider why Democrats have not pursued successful retaliatory legal tactics.

Legal bounds. Key legal restrictions on how politicians can draw U.S. House districts include a mandate of elections for each House seat every two years (Constitution); Congress determines the total number of seats per state based on a decennial census (Constitution);[10] the districts are single-member and contiguous (originally, federal statute in 1842), equal-sized (Supreme Court rulings in 1960s), and do not artificially crack areas with a majority population of minority groups (amendments to Voting Rights Act of 1965). The legal bounds have evolved considerably over time, although have been largely fixed since the 1960s. Until then, states routinely redrew their borders outside of census years if control of the statehouse flipped, whereas other states did not redraw their borders for decades to protect incumbents, resulting in rampant malapportionment. Strategically drawing districts to gain a partisan advantage is not a new phenomenon, and all major parties have engaged in these stratagems at different periods in U.S. history (Engstrom, 2013).

Despite contemporary legal restrictions on districting plans, politicians still enjoy relatively wide leeway to draw districts to gain a partisan advantage. The federal Constitution provides no guidance on districting within states. In the past few decades, the conservative-leaning Supreme Court has refused to apply to districting the one-person one-vote standards that the Warren Court used to strike down malapportioned House districts. In recent cases such as *Vieth v. Jubelirer* (2004), *Rucho v. Common Cause* (2019), and *Lamone v. Benisek* (2019), 5-4 majorities on the Court ruled that partisan gerrymandering claims are not justiciable (i.e., they are political, not judicial, questions, and thus cannot be struck down by the courts).[11] As Chief Justice John Roberts stated in a 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). Associate Justice Elena Kagan's dissent in this case highlights why these rulings are contested: "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).

[10]There is a norm that states redraw the districts only after a census or if ordered to by the courts, although this is not always followed (e.g., Texas in 2003 after control of the state government flipped from Democrat to Republican.

[11]For a lengthier discussion, see chapter 2 in McGann et al. (2016).

Other than the relevant federal statutes, which rarely change, most of the legislative action for drawing House districts occurs at the state level. For post-2010 redistricting, the state legislature played a role in drawing the borders in 37 of the 43 states with more than one House representative (McGann et al., 2016, 153). Consequently, in most states, unified partisan control of governor's office, state house, and state senate enables exploiting leeway in the legal bounds.

Asymmetries. Although such bounds in principle could create equal opportunities and constraints for the two parties, because of contemporary partisan geography, in practice they advantage Republicans. There are two main reasons. First, the geographic clustering of Democrats creates greater opportunities for Republicans to create extreme partisan gerrymanders beyond Democrats' geography-induced difficulties in single-member districts. Although the precise reasons why are an ongoing area of research (Eubank and Rodden, 2019), a persuasive explanation is that if partisans are tightly concentrated in geographically circumscribed areas—which means that all live in highly co-partisan neighborhoods—it is relatively straightforward to either pack lots of co-partisans into the same district (if the size of the district is smaller than the city) or to crack the city to prevent it from receiving any representatives (if the size of the district is larger than the city). One, although not the only, reason for the geographic clustering of Democrats is that African American and Hispanic populations often live in concentrated regions, and vote overwhelmingly Democratic. In fact, the "packing" of such populations into single districts is mandated by the Voting Rights Act, which compels politicians to create districts with a majority of minority groups wherever possible—a paradoxical consequence of a provision intended to boost minority representation in Congress.[12]

Data from FiveThirtyEight's (2018) gerrymandering project highlight the extent to which legal bounds favor Republicans over Democrats.[13] Using online tools, FiveThirtyEight computes the efficiency gap (a commonly-used measure of the extent of biased districting, which higher values indicating greater bias) un-

[12] https://www.theatlantic.com/politics/archive/2013/06/how-the-voting-rights-act-hurts-democrats-and-minorities/276893/. However, as Rodden (2019, 174-5) discusses, geographic concentration yields a benefit to Democrats in states that are overwhelmingly Republican. Republican officials must concede at least one Democratic House district because it cannot effectively crack a concentrated urban area (e.g., Salt Lake City in Utah) or a majority-minority area (e.g., Birmingham in Alabama).

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

der alternative districting schemes for each state. The two that are relevant for us since they correspond with our concepts of legal bounds are the "best" districting schemes for either Republicans or Democrats, and we computed the difference in efficiency gap for each.[14] 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, yielding a net 8% advantage for Republicans. This figure is close to the sample average. Among the 38 states that have three or more congressional districts, the average difference in efficiency gap favors Republicans by 9% (median is 10%).

The second factor that favors Republicans is their disproportionate control of drawing maps for post-2010 redistricting. Of the 435 House districts, Republicans had a trifecta in government for states that totaled 193 seats, compared to only 44 for Democrats, with the remainder in states with independent commissions, divided government, or a single House distrct (Daley, 2017, xx-xxi). Three factors appear particularly important for explaining this Republican advantage. First, the median state is more conservative than the median national voter.[15] Second, the same geographic and racial factors that naturally pack Democratic voters into inefficiently Democratic House districts create similar disadvantages in state houses and senates (Rodden, 2019). Third, conservative activists and donors combined with the Republican State Leadership Committee (RSLC), a Super PAC that invented the Redistricting Majority Project (REDMAP). This project explicitly aimed to "keep or win Republican control of state legislatures with the largest impact on congressional redistricting" and spent considerable money to target states and implement this strategy for the 2010 elections (Hertel-Fernandez, 2019). Republicans immediately capitalized on the *Citizens United* ruling earlier in 2010 to spend considerably more than was typical in midterm election years (Daley, 2017).

Evidence of strategic behavior. Statistical evidence shows that partisan attempts at gerrymandering indeed tend to reduce the number of Democratic seats in the House beyond what their natural geographic disadvantages dictate. Eubank and Rodden (2019) simulate drawing partisan-neutral House districts to create a counterfactual. They show that after accounting for geographic disadvantages of Democrats, Republicans won approximately 6% more seats in states where they drew the maps. There is abundant documentary evidence that supports evidence of intent. When North Carolina Republicans defended their districting

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

[15] https://fivethirtyeight.com/features/the-congressional-map-is-historically-bias

scheme in court, they explicitly touted its intentional partisan effects while arguing specifically that it was not *racially* motivated. Representative David Lewis stated that North Carolina Republicans held a 10-3 advantage in the U.S. House—despite rough partisan balance in statewide vote share—"because I do not believe it's possible to draw a map with 11 Republicans and two Democrats," which Lewis reaffirmed in 2019.[16] In states like North Carolina and Virginia, Republicans have also taken advantage of the Voting Rights Act to draw districts with far larger African American populations—hence "wasting" more votes in a district guaranteed to vote Democratic—than legally required (Rodden, 2019, 173).

Even when they have tried, Democrats have been unable to neutralize these Republican advantages. Several examples suggest that Democrats have little ability to draw districts that considerably bias in favor of their supporters—instead, they often face impediments to even getting the map back to neutral.[17] There is considerable evidence that Illinois Democrats during post-2010 redistricting engaged in a "great deal of cartographical creativity" amid a "deliberate [search] to maximize partisan advantage" (McGann et al., 2016, 105). However, the efficiency gap for districts in Illinois slightly favors *Republicans*, given the inability to spread out Democratic support from the heavily Democratic city of Chicago in the northeast corner of the state. In 2018, New Jersey Democrats briefly floated a districting plan decried by the Left as a "diabolical gerrymandering scheme."[18] But the Princeton Election Consortium argues that the plan would not in fact have locked in a Democratic majority. Instead, it would have made the relationship between statewide votes and seats more proportional—leaving Democrats vulnerable to Republican-wave elections.[19]

An alternative possibility for Democrats would be to play "anti-hardball" strategies by passing laws that *reduce* the scope of either party to punish the other with unfavorable districts (Pozen, 2018). We do not explicitly consider this possibility in the model, as it would involve endogenously decreasing the width of the legal bounds, but the empirical difficulty of executing such strategies also provides credence for our

[16] https://www.theatlantic.com/ideas/archive/2019/03/ralph-hise-and-david-lewis-nc 585619. See also ongoing legal contentions involving evidence from the private files of the recently deceased Thomas Hofeller, a prominent Republican strategist in particular for his involvement with drawing North Carolina's post-2010 maps.

[17] However, this is not true in all states, as Altman and McDonald (2015) show for Florida.

[18] https://slate.com/news-and-politics/2018/12/new-jersey-gerrymandering-plan-bad. html.

[19] http://election.princeton.edu/2018/12/15/nj-redistricting-amendment-mistakes-in

simplifying assumption of fixed legal bounds. Speculating about these possibilities is useful for highlighting that Democrats in fact face tight legal constraints, as opposed to a problem of limited legal creativity. Given the 5-4 splits in recent relevant Court rulings, if the Supreme Court attained a majority of Democratic-appointed justices, it would likely narrow considerably the legal bounds for gerrymandering. However, this would require controlling both the presidency and the Senate, likely for several electoral cycles.[20] Beyond changing the composition of the Court, if Democrats had unified control of the federal government,[21] they could change the electoral rules. However, commonly discussed proposals such as mandating independent districting commissions for each state would not solve Democrats' underlying geography problem (Rodden, 2019, 264-8). Alternatively, they could attempt to enlarge the size of the House, introduce multi-member districts, or move to proportional representation elections, but these moves carry important costs for Democratic incumbents (e.g., completely redrawn districts, emergence of new parties). Finally, Democrats *could* eliminate the requirement that districts are contiguous, but the absurdity and unpalatable political nature of such a scheme highlights the general difficulties that Democrats would face even if they controlled the federal government.

4.2 Voting Rights

Perhaps the most important political struggle in U.S. history has been the right to vote (Keyssar, 2000). Although evidence on gerrymandering and on voter suppression is usually considered separately, here we show that they follow a common strategic logic in the contemporary period.

Legal bounds. Key legal constraints for voting rights are that states cannot deny the right to vote based on race (Fifteenth Amendment in 1870, Twenty-fourth amendment in 1964, Voting Rights Act of 1965), gender (Nineteenth Amendment in 1920), or age above 18 (Twenty-sixth Amendment in 1971). Although the legal bounds have been largely unchanged since the Twenty-sixth amendment, as with gerrymandering, previously they had evolved considerably over time. The original U.S. Constitution contains no positive right to vote and delegates decisions over voter eligibility to the states. Voting rights became widespread only after mass franchise expansion to white males and subsequent federal amendments. Even the amendments have

[20] We discuss the Supreme Court in more depth in the conclusion.

[21] Winning the presidency, commanding a majority in the House, and either winning 60 Senate seats or gaining a simple majority in the Senate and eliminating the filibuster.

not uniformly succeeded at protecting voting rights, as southern Democrats exploited judicial loopholes in the Fifteenth amendment to disenfranchise African Americans and many poorer whites. The Jim Crow period ended only with federal intervention (Mickey, 2015), culminating with the Voting Rights Act of 1965 and subsequent amendments to the statute, most parts of which the Supreme Court has upheld as constitutional.

Despite crucial advancements, state officials continue to enjoy leeway to suppress voting rights. One constant is weak federal legal protection for the voting rights of convicted criminals. The Thirteenth Amendment states: "Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction" [emphasis added]. A recent landmark Supreme Court case, *Shelby County v. Holder* (2013), eliminated preclearance protections from Section 5 of the Voting Rights Act. This provided states with a history of voter discrimination laws considerably more leeway to implement new voter suppression measures. Thus, states also retain broad discretion over requirements for casting a vote (including possession of identification) and over the time periods that can elapse before non-voters can be removed from the voting rolls. There are countless additional ways that states can affect voting rights and access that we do not discuss here.

Asymmetries. These legal bounds favor Republicans in the contemporary period for two reasons. First, as the previous section discussed, Republicans have dominated state legislatures for the past decade, which has provided the *opportunity* to pass laws that disproportionately target Democratic voters.

Second, the known legal loopholes to suppressing the vote (e.g., felon disenfranchisement, voter-roll purges, voter ID laws) are disproportionately effective against racial minorities, in particular African Americans—who tend to vote Democratic. As of 2016, approximately 6.1 million people nationwide are disenfranchised because of felony convictions, which equals 2.5% of the country's voting-age population.[22] This percentage is considerably larger among African Americans, 7.4%, and exceeds 20% in four states.

Between 2016 and 2018, the Brennan Center estimates that at least 17 million voters were purged from their states' voting rolls.[23] Available evidence suggests that recent voter purges have disproportionately

[22] https://www.sentencingproject.org/publications/6-million-lost-voters-state-leve

[23] https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds.

targeted African Americans. Although the Brennan Center cannot assess how many voters were improperly purged, as opposed to correctly removed from the rolls because they died or moved, they do show that the purge rate in counties previously covered by the preclearance provisions in Section 5 of the Voting Rights Act was 40% higher than in other counties. The federal government originally targeted these counties for preclearance because, historically, officials had systematically excluded large black populations from voting. In the run-up to Georgia's 2018 gubernatorial election, for example, Georgia officials were more than five times more likely remove blacks than other voters from the voter roll for failing a stringent exact-match signature test.[24]

Similarly, studies consistently show that African Americans, Hispanics, and Native Americans are less likely to possess the types of identification cards that typical voter ID laws require (e.g., Barreto et al., 2019).

Evidence of strategic behavior. Republican-controlled states are more likely to implement voter-suppression measures. The evidence is clearest for implementing voter ID laws. In 2000, 14 states requested some identification from voters, and by 2016 this had more than doubled to 32 states.[25] 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 controlled all three branches of state government. 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 of 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).[26]

[24] https://www.nytimes.com/2019/05/15/opinion/stacey-abrams-voting.html.

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

[26] Numerous additional authors cited in Highton (2017) provide similar results. There is ongoing debate in the literature about the *effectiveness* of these provisions, but party elites seem to believe that they provide an advantage. Highton (2017, 163) note that most states lacked stringent voter ID laws when many earlier studies on the vote-suppressing consequences of voter ID laws were conducted.

Initial felon disenfranchisement efforts were responses to the Civil Rights Movement (Weaver, 2007). Although southern Democrats were responsible for many of the initial anti-democratic responses to changes in legal bounds in the 1960s,[27] these states have largely since switched to Republican control and have perpetuated voter restrictions for ex-felons. We calculated that 79% of states with a Republican-majority legislature in 2018 required ex-felons to pay various legal financial obligations before regaining voting rights, compared to 36% among other states.[28] Recent responses by Republicans in Florida to impose a de facto poll tax to thwart a state constitutional amendment (passed via a voter initiative) that would have enfranchised ex-felons exemplifies these actions.[29]

Finally, as noted above for voter roll purges, the purge rate in 2017 and 2018 was considerably higher in counties previously covered by the preclearance provision of the Voting Rights Act. All nine states for which the entire state required preclearance had a Republican legislature in 2018.

By contrast, Democrats enjoy few opportunities to play tit-for-tat by restricting reliable Republican-leaning groups from voting. Consider elderly voters. In the 2016 presidential election, exit polls showed that 58% of whites 65-and-older voted for Donald Trump. Beyond the moral outrage that progressives would likely express in response to deliberate attempts to disenfranchise the elderly, there would be considerable legal impediments to implementing such schemes given the Twenty-sixth amendment and the lack of historical precedents on which to draw. We found one example of an attempt to make it more difficult specifically for retirement communities to vote, but this was *Republican*-sponsored. A bill in the Florida legislature in 2009 (which eventually failed) would have disallowed IDs provided within retirement communities from meeting their voter ID standard (Scher, 2015). In their discussion of asymmetric voter suppression, Fishkin and Pozen (2018) provide one example of Democratic tilting: Democratic attempts to push local school board elections to off-cycle years (also see Anzia 2013). This tactic increases the expected share of teacher-union members in the electorate because they are highly motivated to participate in these elections whereas other voters are not. And, even in this case: "Whatever their drawbacks, off-cycle elections do not actually block Republicans, or anyone else, from voting. If this is as far as Democrats will go, it highlights the limits

[27] See also Komisarchik (2018), who shows that an initial response by southern Democrats to the Voting Rights Act was to turn many elected offices into appointed positions.

[28] This difference is statistically significant at 1%. Data from https://www.law.georgetown.edu/news/too-poor-to-vote-civil-rights-clinic-campaign-legal-center-release-cant-p

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

of their use of hardball in the highly contested constitutional sphere of voting" (Fishkin and Pozen, 2018, 939).

Instead, the most realistic possibilities for Democrats to neutralize their disadvantages are to pass new voting right laws at the federal level, which—like attempts to minimize legal leeway to gerrymander—fall into the category of anti-hardball. In 2019, the Democratic-controlled House passed HR1, "For the People Act of 2019." Its voting rights provisions include introducing a national voter-registration program, making Election Day a federal holiday, requiring non-partisan commissions to draw electoral districts, and limiting efforts to purge voting rolls. However, given Republican opposition, it seems unlikely that this bill will become law unless Democrats gain unified control of the federal government. And even then, the law would garner court challenges for overstepping the power of the federal government to regulate states' electoral procedures.

4.3 State Expansion

Another important component of contemporary debates over voting rights and representation is the prospect of statehood for Washington, D.C. and Puerto Rico. This discussion is somewhat more speculative because it concerns only actions that actors have *not* yet taken, but it is informative because it offers a clear example of how Democrats could potentially bias institutions in their favor, given the expectation that both states would tend to elect Democrats.

Legal bounds. The most concrete legal bound on adding states comes from Article IV, Section 3 of the federal constitution: "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." An additional specific stipulation applies to Washington, D.C. Article I, Section 8, of the federal Constitution states that Congress will exercise exclusive jurisdiction of a federal "District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States."[30] Another possible legal bound arises from the

[30]Some argue that this poses an inconsequential restriction (i.e., D.C. can be added as a state by the standard process, as opposed to only by constitutional amendment), as the new state of D.C. could simply exclude the White House, Congress, and National Mall,

minimum size of territories for statehood, as set in the Northwest Ordinance of 1787. However, state-size guidelines were routinely violated in the nineteenth century (Stewart and Weingast, 1992), and lack legal standing.

Unlike the legal bounds for gerrymandering and voting rights, controlling individual statehouses is not sufficient to induce substantial institutional change on this dimension. Instead, politicians can add a state only by passing a bill at the federal level, in conjunction with political actors in a territory targeted as a state and in states whose territory would be affected. Thus, although the *number* of restrictions on adding states is relatively small, the requirement that changes are made at the federal level (in addition to the specific legal difficulties to adding D.C. as a state) implies that the legal bounds are narrower for this issue than for gerrymandering or voting rights.

Asymmetries. Following the Civil War, Republicans' temporary domination of Congress enabled them to add new Republican-leading territories as states while denying entry for Democratic-leaning territories, a tactic that enabled them to control the Senate for most of the rest of the nineteenth century (Stewart and Weingast, 1992). Currently, the constitutional process for adding states favors Democrats because the two most viable territories to add as states support Democrats. Residents of D.C. have participated in presidential elections since 1964, and the Democratic candidate has received at least 75% of the vote in every presidential election, and at least 90% since 2008. African Americans are the plurality group in D.C. and, historically, have been a majority. The partisan loyalties of Spanish-speaking Puerto Rico are less clear-cut because their territorial legislators are divided by their stance on statehood rather than between Democrats and Republicans. A Washington Post survey after Hurricane Maria finds that more than twice as many Puerto Ricans identify as Democrats versus Republicans, although a high percentage of respondents answer "Other/none" and "Don't know/Refused."[31] Among Puerto Ricans that live on the mainland, 56% identify

which would be left as a federal district. https://www.aclu.org/archive-docs/aclu-legal-analysis-washington-dc-admission-act. However, others challenge this legal position by arguing either that this is an unconstitutional work-around of the "enclave clause" or that a vote from Maryland's state legislature would also be needed because Maryland originally ceded the land for the contemporary federal district. https://www.heritage.org/political-process/report/dc-statehood-not-without-constitutional-amendment.

[31] http://files.kff.org/attachment/Topline-and-Methodology-Views-and-Experiences-o

as Democrats, 28% as Independents, and 16% as Republicans (Ansolabehere and Schaffner, 2017).

There are other possible rearrangements of states, such as Texas or California either dissolving into multiple states or seceding, or disaffected parts of certain states switching to a neighboring state,[32] but these are considerably more far-fetched. Furthermore, any initiative involving multiple states entails the additional hurdle of gaining approval from all the affected state legislatures.

Evidence of strategic behavior. Despite a latent advantage on this constitutional dimension, Democrats have added neither D.C. nor Puerto Rico as a state. Given the legal bounds that disable Democratic-controlled state legislatures from directing this process, and given Republican opposition to statehood for D.C. or Puerto Rico,[33] Democrats would need to control the federal government. Indirect effects related in part to geographical sorting exacerbate this challenge. The malapportioned U.S. Senate requires Democrats to win in some red states to gain a majority because the median state is more conservative than the median national voter. The same racial composition of D.C. and Puerto Rico that generates support for Democrats also creates political impediments for Democratic senators in red states. Historically, states that were not overwhelmingly white and English-speaking faced considerable delays to gaining statehood (Arizona, New Mexico, Oklahoma, Alaska, Hawaii), and gained admission only after the white/English-speaking population increased (Frymer, 2017). A statehood push for D.C. would "risk antagonizing white swing-state voters who may be less sympathetic to the plight of a city whose two major constituencies are African 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."[34] Puerto Rico's admission as a state would likely animate fears of white decline, which many scholars argue is an important source of Republican voter support (Mutz, 2018). Perhaps for these reasons, Democrats did not push to add these states in 2009 when they

[32] https://apnews.com/d9ee8611eb59aedff84160ae1be27d14.

[33] In 2019, Republican Senate majority leader Mitch McConnell decried 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." http://nymag.com/intelligencer/2019/06/mcconnell-representative-democracy-is-full-bore-socialism.html.

[34] https://washingtonmonthly.com/magazine/july-august-2018/political-capital/. NB: As of 2019, only Manchin is still in the Senate.

controlled the presidency, the House, and (briefly) a filibuster-proof majority in the Senate.

5 Conclusion

The greatest danger to contemporary democratic regimes is not a coup or a violent crackdown against dissidents, but instead incumbent politicians straining constitutional limits to entrench themselves in power. In such circumstances, constitutions act not as restraining devices against devious politicians, but instead can embolden anti-democratic actions to tilt the electoral playing field. We develop a formal model in which we apply the logic of deterrence to explain how constitutions can lead to self-subverting democracy when three conditions are present: wide legal bounds, asymmetries opportunities between the two parties to tilt the playing field toward their supporters, and high partisan sorting. In contemporary American politics, this framework helps to explain anti-democratic actions by Republican politicians across various institutions, in particular U.S. House districting and voting rights. It also accounts the relatively muted response by Democratic politicians (in these institutions as well as statehood expansion) in terms of the legal constraints they face, as opposed to differences in normative commitments and an unwillingness to "play dirty."

We conclude by discussing possible future extensions of the theoretical framework, additional U.S. institutions, comparisons to earlier periods, and some broader implications about the U.S. Constitution. Our theoretical approach can be expanded in several directions. Although we explain how asymmetric legal bounds can explain the *onset* of spirals of anti-democratic actions, our formal model does not address how these spirals either escalate or end. Enriching the setup may highlight additional dynamics of hardball, such as initiation followed by future escalation by the disfavored party. Similarly, actors could response to transgressions in one arena by exploiting advantages in another. In the contemporary United States, for example, it is possible that Democrats will respond to their present disadvantages in legal bounds by adding justices to the Supreme Court, which also speaks to future extensions of the theory in which actors can alter the legal bounds. Parties could either take actions to accentuate an unfair advantage, or choose "anti-hardball" tactics that generate a more even playing field. Expanding the framework in this manner could also provide more insight into the conditions under which institutional change can be pro- rather than anti-democratic.

On the empirical side, we presented evidence from two arenas that most clearly highlight the deleterious effects of legal asymmetries: gerrymandering and voter suppression. However, critics and scholars raise

concern about many other institutions as well. In several states since 2016, Republican-controlled legislatures voted to strip key powers from the governor in the lame duck period during a transition from a Republican to Democratic governor. Our approach provides insight. Geographic concentration of Democrats gives Republicans a comparative advantage in winning state legislatures relative to winning at-large, statewide gubernational elections, particularly in highly competitive states. Thus, extending our strategic approach slightly to think about separation of powers, it is clear how Republicans could gain long-term advantages from keeping governors weak in highly competitive states—similar to tactics by Democrats in states such as Georgia during the Solid South period (Mickey, 2015). Another arena of concern is the scope of presidential power (Ginsburg and Huq, 2018). Although many concerns are specifically with Donald Trump's use of presidential power, the broader trend of presidents amassing more power for themselves is common to both parties in the United States (Chiou and Rothenberg, 2017). Despite relative symmetries over time between the two parties in their ability to win the presidency, this perhaps provides an example in which the short-term gains from defecting—given the immediate and large partisan gains to flexing presidential power—outweigh longer-term concerns about an overly powerful chief executive. We have less to say directly about "fixed" countermajoritarian institutions such as the malapportioned U.S. Senate or the Electoral College. However, fixed sources of bias can create additional strategic incentives to subvert democratic representation by weakening politicians' incentives to pursue more popular policies that would facilitate winning a majority.

Future work could also apply our framework to place the contemporary United States in historical perspective. The extent of anti-democratic tactics since the mid-1990s is striking in comparison to the preceding three decades that featured considerable expansion of the franchise, improved registration access, and minimal gerrymandering. But contemporary tactics have parallels in prior periods of intense partisan polarization (e.g., 1790s, 1850s, 1880s) that ended either with the collapse of the existing party system, revolutions in voting rights (pro- or anti-democratic), or mass violence. These periods may provide insights into prospects for contemporary anti-democratic tactics to either escalate or end.

Finally, we situate the U.S. federal constitution in comparative perspective. Regarding the three theoretical conditions that explain self-subverting democracy—wide legal bounds, asymmetries, and sorting—the U.S. constitution features perhaps the worst-case scenario for the first two. Unlike many modern constitutions, the document is vague about core tenets of democracy such as voting rights and gerrymandering. This

creates wide legal leeway for politicians to discriminate against certain voting blocs. However, high hurdles to amending the document and entrenched norms of judicial supremacy make it difficult to eliminate any partisan legal asymmetries that arise. By contrast, the unwritten British constitution generates stronger deterrence against anti-democratic tactics by creating more symmetric opportunities for the major parties to tilt the electoral playing field—if one party tries to tilt, the other would face few impediments to retaliating when it retakes the majority. Amending the British constitution is no different than passing a normal statute law via majority vote in a unicameral chamber whose statutes are (mostly) not subject to judicial review, and the majoritarian electoral system usually yields a majority party in the House of Commons (Loughlin, 2013).

Moving to contemporary problems with American democracy, latent asymmetries in the U.S. Constitution combined with the hyper-sorting that has occurred in recent decades has engendered two parties sharply divided not only on ideological lines—the focus of much of the literature—but also with regard to legal leeway to favor their supporters, on which we focus. Therefore, although the U.S. Constitution predates political parties and was thus not designed to favor any party over others, the current constitutional order enables considerable advantages on which Republicans have capitalized in recent decades, which exemplifies self-subverting democracy.

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A Proofs for Formal Model

Before proving Proposition 1, we need to derive the incentive compatibility constraints for each party. If $\alpha_t = 0$, then choosing $\omega_t = 1$ is incentive compatible for R if and only if:

$$\underbrace{1 + \frac{\delta}{1-\delta} \cdot \frac{1}{2}}_{\text{Democratic}} \geq \underbrace{1 + \delta \cdot \left[p(\underline{\omega}) \cdot V_R^R + \left[1 - p(\underline{\omega})\right] \cdot V_D^R\right]}_{\text{Deviation}}, \tag{A.1}$$

for:

$$V_R^R = 1 - \phi + \delta \cdot \left[p(\underline{\omega}) \cdot V_R^R + \left[1 - p(\underline{\omega})\right] \cdot V_D^R\right] \tag{A.2}$$

$$V_D^R = \delta \cdot \left[p(\overline{\omega}) \cdot V_R^R + \left[1 - p(\overline{\omega})\right] \cdot V_D^R\right] \tag{A.3}$$

The expected consumption term for the democratic phase arises because R wins half the time, consumes 1 in every period it wins, and 0 in every period it loses. 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 R in the deviation phase, written as recursive equations. For Equation A.2, if R is in power at time t, we write the continuation value as V_R^R. R consumes $1-\phi$ in period t. With probability $p(\underline{\omega})$, 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, R loses power and its continuation value is V_D^R, defined in Equation A.3. In any period that R is out of power, it consumes 0. With probability $1-p(\overline{\omega})$, D retains power and R's continuation value remains V_D^R, discounted by a period. With complementary probability, R regains power and the continuation value moves to V_R^R. The winning probabilities are a function of $\underline{\omega}$ in periods R holds power and of $\overline{\omega}$ in periods D holds power because, in the deviation phase, the party in power always chooses maximum bias.

Solving Equations A.2 and A.3, substituting into Equation A.1, and simplifying yields the following incentive-compatibility constraint:

$$\frac{1}{2} > \frac{(1-\phi)\cdot\Big[(1-\delta)\cdot p(\underline{\omega}) + \delta\cdot p(\overline{\omega})\Big]}{1-\delta\cdot\big[p(\underline{\omega})-p(\overline{\omega})\big]} \tag{A.4}$$

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

$$\underbrace{1+\frac{\delta}{1-\delta}\cdot\frac{1}{2}}_{\text{Democratic}} \geq \underbrace{1+\delta\cdot\Big[\big[1-p(\overline{\omega})\big]\cdot V_D^D + p(\overline{\omega})\cdot V_R^D\Big]}_{\text{Deviation}}, \tag{A.5}$$

for:

$$V_D^D = 1-\phi+\delta\cdot\Big[\big[1-p(\overline{\omega})\big]\cdot V_D^D + p(\overline{\omega})\cdot V_R^D\Big] \tag{A.6}$$

$$V_R^D = \delta\cdot\Big[\big[1-p(\underline{\omega})\big]\cdot V_D^D + p(\underline{\omega})\cdot V_R^D\Big] \tag{A.7}$$

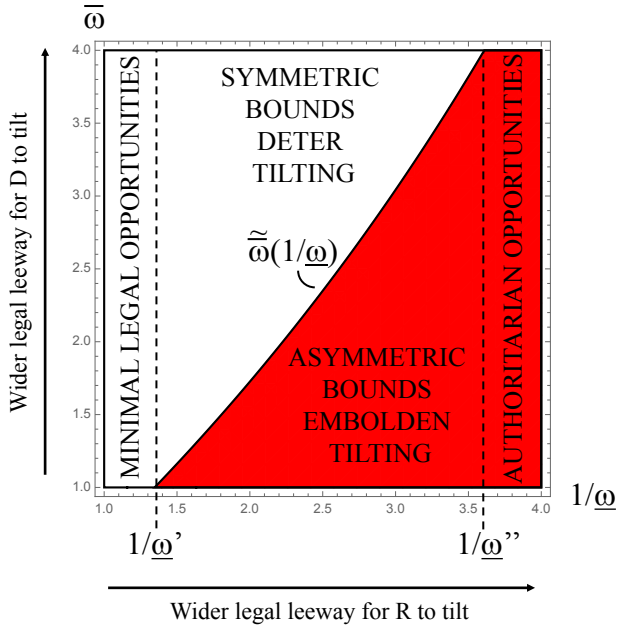
Solving Equations A.6 and A.7, substituting into Equation A.5, and simplifying yields the following incentive-compatibility constraint:

$$\frac{1}{2} > \frac{(1-\phi)\cdot\Big[1-(1-\delta)\cdot p(\overline{\omega})-\delta\cdot p(\underline{\omega})\Big]}{1-\delta\cdot\big[p(\underline{\omega})-p(\overline{\omega})\big]} \tag{A.8}$$

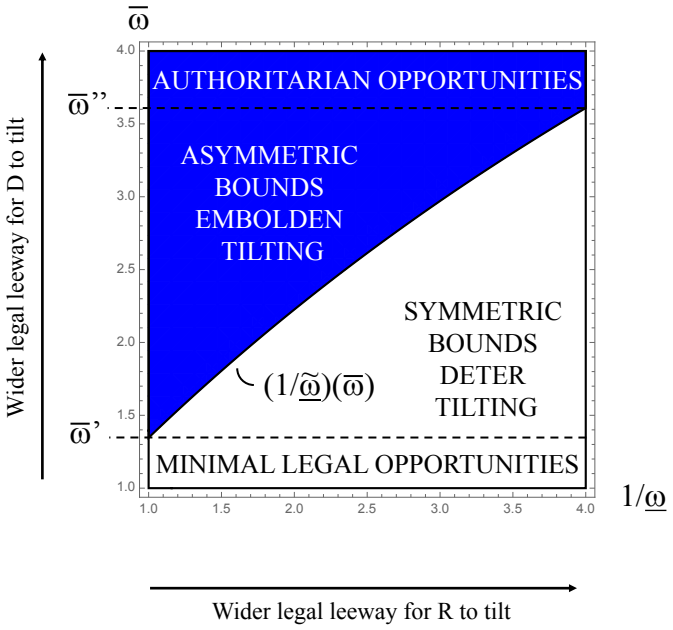
The following reproduces the deviation region for R in Figure 3 but marked with the various labels introduced in Proposition 1. The intuition for the thresholds for D is identical.

Figure A.1: Deviation Regions from Figure 3 with Marked Labels

A. Republican Deviation Region



B. Democratic Deviation Region



Notes: These are the same components of the deviation regions as in Figure 3.

Proof of Proposition 1. The first step for deriving the thresholds stated in the proposition to show:

$$\frac{\partial p(\omega_t)}{\partial \omega_t} = -\frac{2s-1}{(1+\omega_t)^2} < 0 \tag{A.9}$$

Next, show that the right-hand side of Equation A.4 strictly decreases in each of $\underline{\omega}$ and $\overline{\omega}$, and the right-hand side of Equation A.8 strictly increases in in each of $\underline{\omega}$ and $\overline{\omega}$.

$$\frac{\partial}{\partial \underline{\omega}}\left[\frac{(1-\phi)\cdot\left[p(\underline{\omega})-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]}{1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]}\right] = \frac{(1-\phi)\cdot\left[1-\delta\cdot\left[1-p(\overline{\omega})\right]\right]}{\left[1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]^2}\cdot\frac{\partial p(\underline{\omega})}{\partial \underline{\omega}} < 0$$

$$\frac{\partial}{\partial \overline{\omega}}\left[\frac{(1-\phi)\cdot\left[p(\underline{\omega})-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]}{1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]}\right] = \frac{(1-\phi)\cdot\delta\cdot\left[1-p(\underline{\omega})\right]}{\left[1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]^2}\cdot\frac{\partial p(\overline{\omega})}{\partial \overline{\omega}} < 0$$

$$\frac{\partial}{\partial \underline{\omega}}\left[\frac{(1-\phi)\cdot\left[1-p(\overline{\omega})-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]}{1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]}\right] = -\frac{(1-\phi)\cdot\delta\cdot p(\overline{\omega})}{\left[1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]\right]^2}\cdot\frac{\partial p(\underline{\omega})}{\partial \underline{\omega}} > 0$$

$$\frac{\partial}{\partial \overline{\omega}}\left[\frac{(1-\phi)\cdot\Big[1-p(\overline{\omega})-\delta\cdot\big[p(\underline{\omega})-p(\overline{\omega})\big]\Big]}{1-\delta\cdot\big[p(\underline{\omega})-p(\overline{\omega})\big]}\right]=-\frac{(1-\phi)\cdot\big[1-\delta\cdot p(\underline{\omega})\big]}{\Big[1-\delta\cdot\big[p(\underline{\omega})-p(\overline{\omega})\big]\Big]^2}\cdot\frac{\partial p(\overline{\omega})}{\partial\overline{\omega}}>0 \quad \text{(A.10)}$$

Now we derive the thresholds stated in the proposition. Given the strict monotonicity results just proven, the upper bound for R's payoff occurs when $\overline{\omega}=1$, in which case $p(\overline{\omega})=\frac{1}{2}$. Therefore, if R does not deviate at $\overline{\omega}=1$, then it will not deviate for any $\overline{\omega}$. This enables us to implicitly characterize:

$$\frac{1}{2}=\frac{(1-\phi)\cdot\Big[p(\underline{\omega}')-\delta\cdot\big[p(\underline{\omega}')-\frac{1}{2}\big]\Big]}{1-\delta\cdot\big[p(\underline{\omega}')-\frac{1}{2}\big]}$$

The lower bound for R's payoff occurs when $\overline{\omega}\to\infty$, in which case $p(\overline{\omega})=0$. Therefore, if R deviates at $\overline{\omega}\to\infty$, then it will deviate for all $\overline{\omega}$. This enables us to implicitly characterize:

$$\frac{1}{2}=\frac{(1-\phi)\cdot(1-\delta)\cdot p(\underline{\omega}'')}{1-\delta\cdot p(\underline{\omega}'')} \quad \text{(A.11)}$$

These boundaries, along with the monotonicity results, also allow us to characterize the threshold for the unique $\tilde{\overline{\omega}}\in\big[\underline{\omega},\overline{\omega}\big]$ that satisfies:

$$\frac{1}{2}=\frac{(1-\phi)\cdot\Big[p(\underline{\omega})-\delta\cdot\big[p(\underline{\omega})-p(\tilde{\overline{\omega}})\big]\Big]}{1-\delta\cdot\big[p(\underline{\omega})-p(\tilde{\overline{\omega}})\big]}$$

The three thresholds for D can be characterized analogously. The upper bound for D's payoff occurs when $\underline{\omega}=1$, in which case $p(\underline{\omega})=\frac{1}{2}$. Therefore, if D does not deviate at $\underline{\omega}=1$, then it will not deviate for any $\underline{\omega}$. This enables us to implicitly characterize:

$$\frac{1}{2}=\frac{(1-\phi)\cdot\Big[1-p(\overline{\omega}')-\delta\cdot\big[\frac{1}{2}-p(\overline{\omega}')\big]\Big]}{1-\delta\cdot\big[\frac{1}{2}-p(\overline{\omega}')\big]}$$

The lower bound for D's payoff occurs when $\underline{\omega}=0$, in which case $p(\underline{\omega})=1$. Therefore, if R deviates at $\underline{\omega}=0$, then it will deviate for all $\underline{\omega}$. This enables us to implicitly characterize:

$$\frac{1}{2}=\frac{(1-\phi)\cdot(1-\delta)\cdot\big[1-p(\overline{\omega}'')\big]}{1-\delta\cdot\big[1-p(\overline{\omega}'')\big]} \quad \text{(A.12)}$$

These boundaries, along with the monotonicity results, also allow us to characterize the threshold for the unique $\tilde{\underline{\omega}}\in\big[\underline{\omega},\overline{\omega}\big]$ that satisfies:

$$\frac{1}{2}=\frac{(1-\phi)\cdot\Big[1-p(\overline{\omega})-\delta\cdot\big[p(\tilde{\underline{\omega}})-p(\overline{\omega})\big]\Big]}{1-\delta\cdot\big[p(\tilde{\underline{\omega}})-p(\overline{\omega})\big]} \quad \text{(A.13)}$$

By construction of these thresholds, if $\alpha_t=0$, then neither player can profitably deviate from their

assigned actions. If $\alpha_t = 1$, then their future continuation values are the same as stated for the deviation phase in Equations A.1 and A.5 regardless of their period t action, and therefore they cannot deviate from choosing the largest feasible amount of tilting. ■

Proof of Corollary 1. Setting $y = 1/\underline{\omega}$, we can then use the implicit function theorem to yield:

$$\frac{d\tilde{\overline{\omega}}}{dy} = \underbrace{\frac{1-\delta\left[1-\cdot p(\tilde{\overline{\omega}})\right]}{\delta\cdot\left[1-p(\underline{\omega})\right]}\cdot\underline{\omega}^2}_{(+)}\cdot\underbrace{\frac{\overbrace{\frac{\partial p(\underline{\omega})}{\partial\underline{\omega}}}^{(-)}}{\frac{\partial p(\tilde{\overline{\omega}})}{\partial\tilde{\overline{\omega}}}}}_{(-)} > 0$$

For the next result, define the right-hand side of Equation A.13 as $h\big(\tilde{\underline{\omega}}\big)$. Thus, we have $h\big(\tilde{\underline{\omega}}\big) = 1/2$. Because this function satisfies the conditions for the implicit function theorem, we can rearrange this to yield $z \equiv 1/\tilde{\underline{\omega}} = \frac{1}{h^{-1}(1/2)}$. Applying the implicit function theorem yields:

$$\frac{dz}{d\overline{\omega}} = -\frac{(h^{-1})'(1/2)}{\left[h^{-1}(1/2)\right]^2} = -\frac{1}{h'(1/2)\cdot\left[h^{-1}(1/2)\right]^2} < 0,$$

where the second equality follows from (again) applying the inverse function theorem. The strict positivity of the denominator follows from Equation A.10, and therefore the overall term is strictly negative. ■

Proof of Proposition 2, part a. It suffices to show that an increase in s strictly increases the sum of the terms on the right-hand sides of Equations A.4 and A.8:

$$\frac{d}{ds}\left[\frac{(1-\phi)\cdot\left[1+(1-2\delta)\cdot\left[p(\underline{\omega}-p(\overline{\omega})\right]\right]}{1-\delta\cdot\left[p(\underline{\omega})-p(\overline{\omega})\right]}\right] = \frac{2\cdot(1-\delta)\cdot(1+\overline{\omega})\cdot(1-\phi)\cdot(\overline{\omega}-\underline{\omega})\cdot(1+\underline{\omega})}{\Big[(1+\overline{\omega})\cdot(1+\underline{\omega})-\delta\cdot(2s-1)\cdot(\overline{\omega}-\underline{\omega})\Big]^2} > 0$$

Part b. It is easy to demonstrate that the right-hand side of Equation A.4 and of Equation A.8 converges to $0.5\cdot(1-\phi)$ for $s \to 0.5$, which is strictly less than the left-hand side of each inequality.

Proof of Proposition 3. Suppose not. Then Equations A.4 and A.8 each hold at $\phi \to 0$. Adding these two inequalities and solving yields $\delta > 1$, a contradiction. ■

Lemma A.1 provides insight into why high δ eliminates the short-term incentives to deviate. Over the infinite horizon, the percentage of periods in which each party holds power in the deviation phase is not a function of which party deviated.

Lemma A.1 (Long-term probabilities of winning under hardball)**.** *If either party initiates hardball, then the percentage of periods over the infinite horizon in which R will hold power equals $\frac{p(\overline{\omega})}{1+p(\overline{\omega})-p(\underline{\omega})}$. This probability does not depend on which party deviates.*

Proof of Lemma A.1. If we set $\phi = 0$ and $\delta = 0$, on the right-hand side of Equation A.4, then this expression calculates the percentage of periods in which R holds power with each period weighted equally. Algebraic simplification yields the term stated in the lemma. Performing the same steps on Equation A.8 yields an identical term. ■