# Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting

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**Abstract**

Democratic norms, like democracy itself, must be self-enforcing. We study how the essential norm of mutual forbearance, in which parties refrain from exploiting legal opportunities to tilt elections to their advantage, can be sustained or eroded. Using a dynamic model of strategic deterrence in which formal constitutional provisions serve as reversion points, we show that an equilibrium with forbearance requires each party to be able to punish each other's transgressions. Capacity for retaliation rests on whether the social groups that support each party share equal legal protections. If vulnerable groups are sufficiently sorted, then the party with disfavored voters cannot deter the other party from exploiting legal leeway. We apply this mechanism to understand the growing divergence in support for basic democratic principles by America's two major parties, focusing on gerrymandering and voting rights from the Civil Rights era to the present.

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# 1 INTRODUCTION

In contemporary democracies, backsliding typically occurs through legal machinations and electoral distortions, rather than via military coups, mass repression, or cancelling elections outright. Consequently, recent scholarship grapples with the role of formal constitutions in democratic erosion. At best, constitutional provisions are insufficient. Absent well-established norms of mutual constraint and forbearance against playing "constitutional hardball," words on paper cannot save democracy from unscrupulous politicians (North, Summerhill and Weingast, 2000; Tushnet, 2003; Levitsky and Ziblatt, 2018; Fishkin and Pozen, 2018). At worst, incumbents can use constitutions to gradually subvert democracy while simultaneously giving the process a veneer of legality (Varol, 2014; Ginsburg and Huq, 2018; Versteeg et al., 2020).

Rich descriptions of the descent into constitutional hardball within the United States and other democracies abound, yet we know far less about the strategic underpinnings of mutual forbearance in the face of constitutional opportunities for democratic retrogression. Adopting an equilibrium approach, we fill this gap by turning the problem of mutual restraint on its head. Rather than ask why inter-party forbearance breaks down, we question why it ever exists in the first place. If parties in democratic regimes always seek to maximize their chances of winning elections and staying in power, why would political elites ever withstand the temptation to push electoral rules to their legal limits?

Our main intuition is that informal norms and formal constitutional rules are fundamentally intertwined via a logic of deterrence. Existing constitutional rules and supporting judicial interpretations set parameters for how far each party can legally push the rules to their advantage. Such legal bounds effectively create reversion points for parties that deviate from upholding mutual forbearance. Party elites can be dissuaded from pressing all legally viable opportunities for tilting the electoral playing field if the other party can credibly threaten to retaliate in kind. Norms of mutual restraint can break down, however, if one party begins to enjoy relatively more legal leeway to tilt the rules in their favor, hence undermining the other party's ability to punish them.

We apply this strategic logic to the post-Civil Rights era in the United States, in particular to comprehend the erosion of mutual forbearance in recent decades. This case meets a key scope condition of our formal model—high fidelity to an established, albeit still evolving, constitutional order—while also featuring relatively permissive legal scope for tilting electoral rules. Unlike many modern constitutions (Albertus and Menaldo, 2018), the U.S. constitution was not founded to deliberately favor a particular party. Indeed, no parties existed when the framers wrote the original document. Yet, to the extent that the contemporary American constitutional order effectively permits restricting the rights of certain social groups more than others, it paves the way for important latent legal asymmetries across parties to emerge. For example, contemporary constitutional law prohibits parties from writing statutes that explicitly target individuals based on their partisan affiliation, but allows for gerrymandering that effectively undermines the power of urban voters as a bloc. Similarly, parties cannot directly target voters based on race or income, but can disenfranchise ex-felons and pass voter ID laws, which disproportionately reduce voting access for minorities and poorer voters.

As such vulnerable groups become sorted between parties, we show that inter-party forbearance becomes harder to sustain. Thus, our core mechanism intersects with a key concern in scholarship on American politics: the social sorting of racial, economic, and other demographic groups into the Democratic and Republican parties in recent decades (Bishop, 2009; Mason, 2018). In our framework, sorting transforms an ostensibly party-neutral constitution into one that simultaneously blesses one party with both more leeway for manipulation, and less exposure to retaliation.

The remainder of the article elaborates this idea. The following section situates our approach in the broader literature on democratic erosion, norms, and polarization. Next, we develop our baseline model of mutual forbearance as well as consider theoretical extensions in which (1) parties can punish deviations by either contracting or expanding democracy, and (2) parties operate in a more complex institutional setting, such federalism.

We then apply the model to trace the empirical connections during America's post-Civil Rights

era among legal leeway, partisan sorting, and the relatively recent collapse of forbearance around gerrymandering and voting rights. We combined and extended state-level data to document the emergence of asymmetric legal opportunities between the Republican and Democratic parties and the divergence in partisan strategies over the last few decades. Our goal is not to rule out all other alternative mechanisms, but instead to isolate an underappreciated strategic dynamic that helps to explain why, when, and how the two major parties' support for basic democratic principles has diverged.

We conclude by discussing several possible extensions to our approach. On the theoretical side, we consider how factors such as the closeness of partisan competition (Lee, 2016) and endogenous partisan sorting (Hacker and Pierson, 2020) affect our conclusions. On the empirical side, we suggest how our model might illuminate recent attempts to curb gubernatorial powers, as well as recent proposals to add states to the Union or to abolish the Senate filibuster.

## 2 Contributions to Existing Research

Our theory of mutual forbearance contributes to several literatures. First and foremost, our approach helps to balance and expand the growing scholarship on democratic backsliding in the United States and abroad. Although the failure of party leaders to sustain cooperative norms figures prominently in empirical accounts of democratic erosion, recent formal theoretical work on this topic has tended to concentrate on failures of vertical accountability between politicians and citizens (Buisseret and Van Weelden, 2020; Graham and Svolik, 2020; Grillo and Prato, 2020; Luo and Przeworski, 2020; Nalepa, Vanberg and Chiopris, 2021).[1] We instead examine strategic dynamics *between* party elites and show how the prospect of future retaliation by the opposition party shapes the incumbent party's decision about engaging in mutual restraint. The insights from

[1]Other related formal theories feature, as does ours, repeated elections with history-dependent punishments (Alesina 1988; Dixit, Grossman and Gul 2000; De Figueiredo 2002; Fox 2006). The key difference is that, in our model, parties' strategic actions endogenously affect the probability of winning future elections, which encompasses our core focus on changing electoral rules.

our approach also contrast with the oft-cited logic of the standard repeated prisoner's dilemma game (Levitsky and Ziblatt, 2018; Fishkin and Pozen, 2018). Although we do not rule out that demographic decline among the Republican base may provide some incentive to tilt rules to improve their short-term fortunes, we highlight how inter-party forbearance can collapse even if both parties highly value the future.

Of course, mutual forbearance is not inherently pro- or anti-democratic; indeed, in earlier periods of U.S. history, forbearance often entailed keeping voting reforms off the policy agenda (Mickey, 2015; Mettler and Lieberman, 2020). We extend our baseline model to capture this essential point by relaxing the assumption that the status quo is necessarily unbiased. Depending on the relationship between the location of the status quo relative to the legal bounds, we show how the interaction of institutional and societal factors that leads to the collapse of forbearance can entail parties pushing for laws that improve democratic representation. By suggesting that the expansion and contraction of democracy may be driven by a similar underlying logic, our work complements existing strategic accounts of changes in suffrage laws (Bateman, 2018; Teele, 2018) and provides a unified approach to understanding the contemporary empirical puzzle of why one party might "retaliate" against anti-democratic transgressions by promoting pro-democratic reforms.

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

Finally, our approach sheds new light on the familiar idea that polarization is toxic to democracy. Polarization is widely studied in American politics (see McCarty 2019 for a recent overview),

and has been repeatedly linked to the problem of democratic backsliding. For example, Graham and Svolik (2020) show how ideological polarization across individuals, society, and candidates inhibits accountability and sharpens the trade-off between partisanship and democracy. In our model, polarization works through a distinct mechanism. Because the social sorting of groups between parties clarifies the consequences of exploiting legal loopholes, it makes electoral manipulation less risky and, hence, more attractive.

# 3 Setup of Baseline Model

***Primitives.*** We analyze a strategic interaction between long-lived representative agents of two political parties, $A$ and $B$. The two parties interact in an infinite time horizon with time denoted by $t = 1, 2 \ldots$, and they discount future periods by a common factor $\delta \in (0, 1)$. We further assume that society contains two groups of non-strategic voters, denoted by $x$ and $y$. Each member of both voter groups participates in the election in every period and is assumed to vote sincerely for their most-preferred party, $A$ or $B$. Each voting group is equal-sized and, in an unbiased election, support for the two parties is split 50/50.

***Election.*** The first move in each period is that Nature chooses the winner of the election from a Bernoulli distribution such that $A$ wins with probability:

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

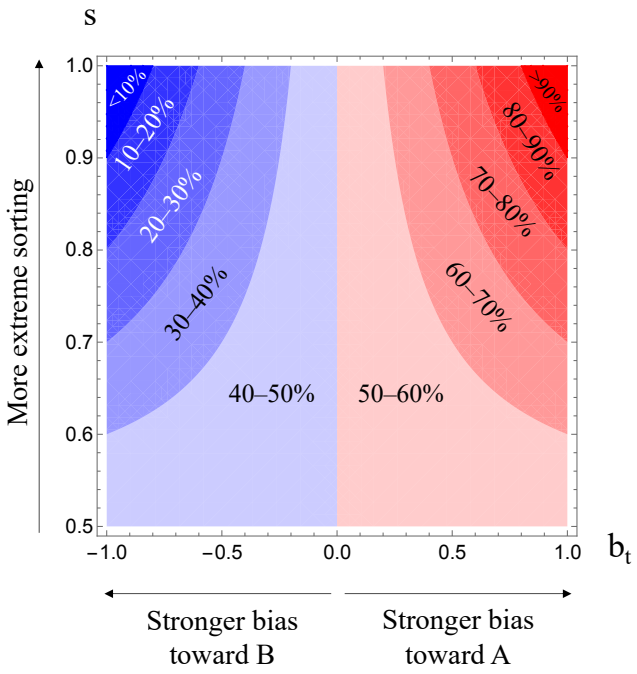
The parameter $s$ denotes the degree of *partisan sorting*. We assume $s \in (0.5, 1]$ percent of voters in group $x$ and $1 - s$ percent of voters in group $y$ each prefer $A$, and the remaining voters prefer $B$. Therefore, $A$ is advantaged among $x$ voters, and the magnitude of this advantage—i.e., the extent of partisan sorting—increases in $s$. At $s = 1$, every $x$ member votes for $A$ and every $y$ member votes for $B$. By contrast, at $s = 0.5$, each voting bloc evenly distributes its votes.

The variable $b_t$ denotes the bias for translating votes into $A$'s probability of winning, and in prin-

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

Figure 1 plots $A$'s probability of winning in period $t$ as a function of $b_t$ and $s$. If the bias favors $x$ voters $\left(b_t > 0\right)$, then $A$ gains from more intense sorting because more $x$ voters support $A$. Conversely, $B$ gains from higher $s$ if the bias favors $y$ voters $\left(b_t < 0\right)$.

**Figure 1: Probability of Winning for *A***




*Notes*: Figure 1 is a contour plot of Equation 1 with $A$'s probability of winning disaggregated into colored deciles.

***Obstruction.*** After Nature chooses the election winner, the losing party decides whether to obstruct the policy agenda. If they do not, then the winning party consumes 1 and the losing party consumes 0. If they obstruct, then the winning party consumes $1 - \phi$, for $\phi \in (0, 1)$, and the losing party

consumes $\epsilon$, for infinitesimal $\epsilon > 0$.[2]

***Tilting the electoral playing field.*** The final move in each period is for the winning party to set the bias parameter for the next period, $b_{t+1}$. We refer to a choice of $b_{t+1} = 0$ as forbearance, and any other choice as deviating (i.e., tilting the electoral rules).

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

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

The game begins with $b_0 = 0$, which implies an unbiased and perfectly democratic status quo. To isolate our core mechanism, differential legal bounds provide the only source of asymmetry between the two parties in the baseline model. Later, we introduce other sources of asymmetry: biased status quo (Section 4.4) and varied opportunities for the election winner to tilt the rules (Section 4.5). In Appendix B.2, we allow for differential size of the voter blocs (hence relaxing our assumption of partisan parity), asymmetric sorting, an S-curve relationship between vote share and the probability of winning, and positive consumption for the losing party. In Appendix B.3, we make sorting endogenous to party strategies.

[2]The core idea behind assuming that joint consumption is lower with obstruction, i.e., $\phi - \epsilon > 0$, is that obstruction reduces policy effectiveness and engenders general distrust of government (Lee, 2016).

Throughout, we assume that the legal bounds are perfectly known and exogenous. The first assumption make the model more parsimonious but could easily be relaxed. 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. Then, it would be possible for a party to pass a law that subsequently gets struck down, and we would simply assume that parties adhere to the courts' decisions. The second assumption is more consequential. Unlike other models of self-enforcing democracy in which actors have an outside option to violently overthrow a democratic regime (Acemoglu and Robinson 2006, ch. 7; Bidner, Francois and Trebbi 2014), a key scope condition of our approach is that the rule of law is well-established and prohibitively costly to violate outright. This is particularly appropriate for countries like the United States with high fidelity to a long-established constitution, but also appears more generally relevant in the post-Cold War era.[3] In the discussion section, we briefly discuss recent congressional battles in the United States over Supreme Court appointments in the context of endogenous legal bounds.

# 4 Model Analysis

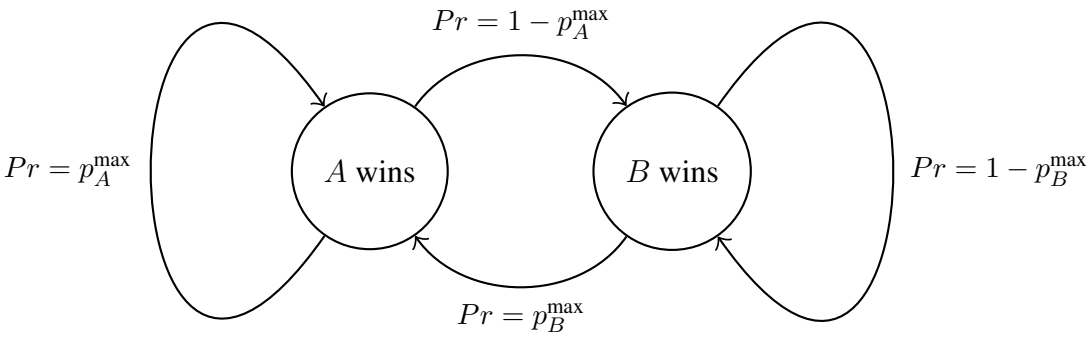
We characterize conditions under which a unique forbearance equilibrium—i.e., neither party ever tilts the rules in their favor—exists in subgame perfect strategies. Asymmetry in the two parties' maximum probability of winning terms undermines inter-party cooperation. Asymmetric legal bounds and extreme partisan sorting trigger these conditions, and perfectly patient actors do not alter these conclusions. Appendix A provides supporting formal details and proofs. We also consider extensions with a biased status quo (which enables pro-democratic norm changes) and federalism.

[3]For example, Versteeg et al. (2020) document the frequency with which modern dictators follow constitutional rules for removing term limits.

## 4.1 FORBEARANCE EQUILIBRIUM

Along a path of play with perpetual forbearance, the winning party chooses $b_t = 0$ in every period, which yields an average per-period expected utility of $\frac{1}{2}$ for each party across the infinite horizon. A forbearance equilibrium exists if and only if both parties prefer this consumption stream over deviating to maximize their probability of winning the next election, which induces each party to play grim-trigger punishment strategies. In any period following a deviation from the status quo, i.e., $b_t \neq 0$, the losing party obstructs and the winning party maximally favors their supporters in the next election. Thus, upon winning, $A$ would maximize the weight of $x$ voters by choosing $b_{t+1} = b_x$, whereas $B$ would maximize the weight of $y$ voters by choosing $b_{t+1} = b_y$. We define $A$'s maximum probability of winning as $p_A^{\max} \equiv p(b_x)$, and $B$'s as $1 - p_B^{\max}$ with $p_B^{\max} \equiv p(b_y)$; recall that Equation 1 defines $p(b_t)$. Figure 2 shows how the probability-of-winning terms fluctuate across periods in the punishment phase depending on which party is in power and can thus tilt the rules in their favor.

**Figure 2: Probabilities of Winning in the Punishment Phase**




Given this construction, neither party can profitably deviate from their assigned action in the punishment phase. The losing party knows that, regardless of their action, the winning party will tilt maximally toward their preferred voter bloc. Consequently, the losing party prefers to obstruct and consume $\epsilon$, rather than 0 (Appendix A.3 discusses why the losing party never obstructs prior to a deviation by the winning party). The contemporaneous winning party knows that—regardless of their action—future-period winners will tilt, which removes any incentive to not tilt

themselves.

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

Proposition 1 presents the conditions under which a forbearance equilibrium (defined formally in Appendix A.1) exists by incorporating incentive-compatibility constraints derived in Appendix A.2. Forbearance fails when the maximum probability-of-winning terms are large in magnitude and asymmetric. If the maximum probability of winning for $A$ not only exceeds that for $B$ $\left(p_A^{\max} \geq 1 - p_B^{\max}\right)$ but by a large magnitude $\left(p_A^{\max} > \hat{p}_A\right)$, then $A$ reaps large gains from deviating whereas $B$'s ability to punish is circumscribed. Identical logic characterizes $B$'s calculus.

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

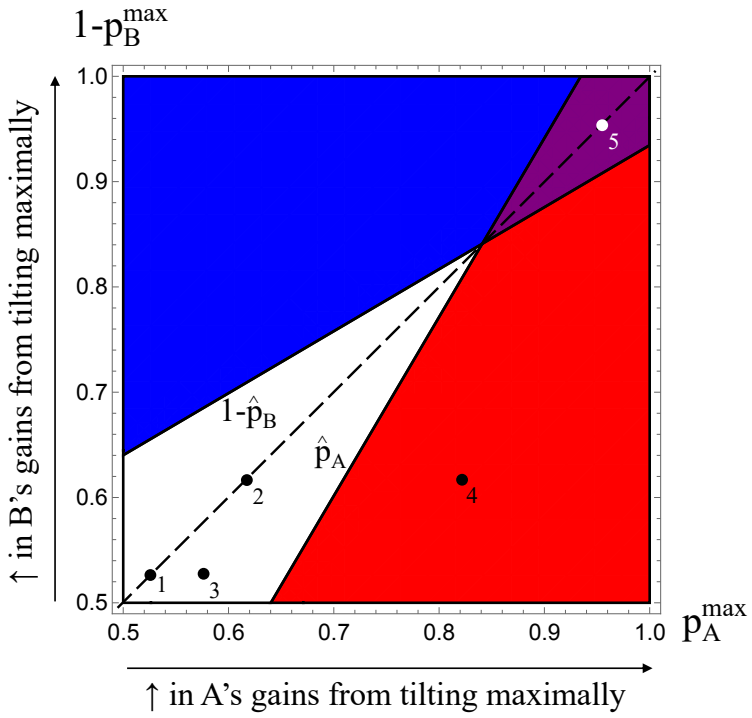
- *If $p_A^{max} \geq 1 - p_B^{max}$, then a forbearance equilibrium exists iff $p_A^{max} \leq \hat{p}_A$.*
- *If $p_A^{max} < 1 - p_B^{max}$, then a forbearance equilibrium exists iff $1 - p_B^{max} \leq 1 - \hat{p}_B$.*

## 4.2 Legal Scope and Partisan Sorting

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

characterized in Proposition 1, $1 - \hat{p}_B$ and $\hat{p}_A$, respectively.

**Figure 3: Asymmetric Tilting Ability and Forbearance Breakdown**




*Parameter values*: $\delta = 0.9$ and $\phi = 0.15$.

The five dots in Figure 3 correspond with different values of the legal bounds ($b_x$ and $b_y$) and sorting ($s$). Asymmetric legal bounds combined with high sorting causes forbearance to break down. At point 1, each party's leeway to favor its supporters is relatively limited and also symmetric: $b_x = -b_y = 0.3$. Sorting is also moderate: $s = 0.6$. Consequently, each party's probability of winning under maximal tilting is $53\%$.[4] This only slightly exceeds their probability of winning under forbearance, $50\%$. Neither party is willing to suffer the permanent obstruction cost of $\phi$ to gain this small, temporary advantage—symmetric legal bounds imply that across the infinitely long punishment phase, each party wins 50% of the time.

Given this baseline, increasing sorting *or* making the legal bounds asymmetric—on their own—

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

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

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

Point 4 illustrates unsustainable forbearance under asymmetric legal bounds ($b_x = 0.8$ and $b_y = 0.3$) *and* high sorting ($s = 0.9$). $A$ gains a huge advantage in periods it tilts (wins next election with probability $82\%$), whereas $B$'s is comparatively smaller (the same $62\%$ figure as with point 2). $B$'s inability to punish $A$ commensurate to the large advantage that $A$ can reap from deviating, which results from more restrictive legal bounds on $B$'s actions, undermines deterrence.[5]

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

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

- *Increasing* $b_x$ *if* $b_x \geq -b_y$*.*
- *Increasing* $b_y$ *in magnitude if* $b_x < -b_y$*.*
- *Increasing* $s$*, which also enhances the magnitude of the previous two effects.*

## 4.3 Deterrence Failure and Long Time Horizons

Patience drives many influential ideas about sustaining forbearance. Premised on the logic of a repeated prisoner's dilemma, actors who value the future highly enough never deviate because they dread the long-term costs of defecting more than they enjoy the one-time gain. In our framework, raising the discount factor $\delta$ similarly narrows the range of parameter values in which deviation occurs.[6] But contrary to standard accounts, even perfectly patient parties may still deviate. Because asymmetric legal bounds create asymmetric ability for the parties to punish each other, a party can achieve *higher* payoffs in the long run from initiating an anti-cooperative spiral. To see this, $A$'s average probability of winning in the punishment phase is $\frac{p_B^{\max}}{1-(p_A^{\max}-p_B^{\max})}$,[7] which exceeds $\frac{1}{2}$ if $A$ enjoys an asymmetric legal advantage, i.e., $p_A^{\max} > 1 - p_B^{\max}$. If $\phi$ is low enough, then $A$ prefers to deviate despite perfect patience.

## 4.4 Pro-Democratic Norm Violations

Our model also applies to situations in which changes to the electoral rules can expand rather than restrict democratic representation. The easiest way to model this is with a biased status quo, $b_{s.q.} \in (-1, 1)$, which generalizes the assumption from the baseline model that the game begins without bias, $b_0 = 0$. This creates an additional source of asymmetry that favors $A$ if $b_{s.q.} > 0$, or $B$ if $b_{s.q.} < 0$. In the stylized example from Figure 4, the status quo is biased toward $A$,

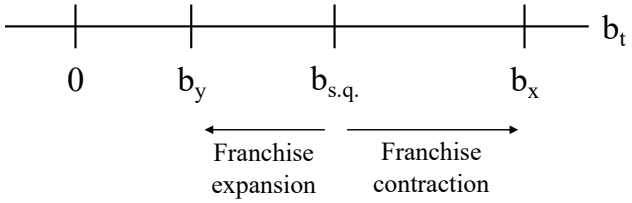
backsliding.

[6] See Appendix Proposition A.1.

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

perhaps because the franchise is small and many citizens that prefer $B$ are disenfranchised. In this scenario, forbearance entails an agreement to keep the franchise small. Hence, one form of deviation by $B$ is to expand the franchise. This still entails a partisan gain because the choice moves electoral fortunes in its favor, yet improves rather than undermines democracy. Thus, whether or not the collapse of forbearance leads one or both parties to forsake or deepen democracy depends fundamentally on the relative locations of each party's legal bound relative to the status quo.[8]

**Figure 4: Franchise Expansion vs. Franchise Contraction**




## 4.5 FEDERALISM

The baseline model assumes a single, unitary government. However, a simple extension enables capturing a more complex institutional setting, such as federalism. In Appendix B.1, we relax the assumption that one party "wins" an election in each period and necessarily can change the rules in their favor. Instead, we assume that the winning party probabilistically has an opportunity to change the rules: $\kappa_A \in (0, 1)$ for $A$ and $\kappa_B \in (0, 1)$ for $B$; otherwise, the bias parameter remains at the value that they inherited in that period. This extension is equivalent to the baseline model when both $\kappa$ probabilities equal 1. This additional source of asymmetry can either contract or reinforce each party's scope for retaliation. In the United States, certain policies can be passed at the state level whereas others require federal statutes. If Party $A$ has a comparative advantage in controlling statehouses, then Party $B$ would need to control the Supreme Court or have unified control over

[8]Note that the status quo can also be undemocratic if, for example, the franchise is small but which (if any) party would gain a systematic advantage from franchise expansion is unclear. See, for example, Teele's (2018) discussion of female franchise expansion, which she argues emerged early in western states because of tight partisan competition.

the elected branches of the federal government to counteract unfavorable measures passed at the state level. Given the difficulty of simultaneously winning the presidency, Senate (plus clearing the filibuster pivot), and House, they are still likely to face constraints on their ability to retaliate even when winning control of one branch. By contrast, when $A$ "wins," they should typically have the opportunity to push policies to the legal bound because they can implement them at the state level. This effectively means $\kappa_A > \kappa_B$. As we show in the appendix, this source of asymmetry can trigger a breakdown of forbearance for a similar reason as do asymmetric legal bounds in the baseline model.[9]

# 5 Unraveling Forbearance in American Politics

The core mechanism in our theory is that parties refrain from fully exploiting legal opportunities to tilt electoral rules in their favor if such opportunities are distributed symmetrically across voter blocs that support each party. If instead certain groups are asymmetrically advantaged *and* sufficiently sorted between the two parties, then mutual forbearance collapses. An empirical implication is that the party who comes to enjoy this dual advantage will initiate defection and reap electoral advantages, whereas attempts to respond in kind by the opposing party will ultimately prove far less successful. Moreover, if the status quo systematically limits the party that is disadvantaged from retaliating in kind, then "punishment" actions by that party may instead seek to expand democratic representation—a response that is at once normatively more attractive, and also rooted fundamentally in the responding party's self-interest. Here we apply this mechanism

[9] As with malleable electoral rules, parties can take strategic actions that affect the likelihood that the other party can change the rules in the future, i.e., modify $\kappa$. In Appendix B.1.2, we discuss how Republicans after the Civil War strategically added states to boost their Senate representation, hence blocking the Democrats from gaining unified control of the central government. In Appendix B.1.3, we discuss why permanent actions (e.g., adding a state to the Union), as opposed to reversible actions (e.g., partisan gerrymandering in a state), do not qualitatively alter our core logic.

to comprehend democratic backsliding and the asymmetric breakdown of norms of forbearance in the U.S.'s post-Civil Rights era. We examine recent battles between Republicans and Democrats over districting and voting rights by detailing the legal bounds that each party faces, how sorting activates latent asymmetries between parties, and how such emergent asymmetries have triggered the collapse of forbearance.

## 5.1 GERRYMANDERING

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

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

districts in its favor (see Appendix C.1 for more details).

**Quantifying asymmetric advantages.** Table 1 quantifies these stark legal asymmetries by estimating how much each party could theoretically bias U.S. House districting in their favor without violating legal bounds. Using data from FiveThirtyEight's (2018) Atlas of Redistricting applicable for the 2010s, we calculated two quantities for every state with multiple House districts: expected number of Republican seats under their best gerrymander (i.e., the districting plan that yields the most expected seats for Republicans) minus their expected number of seats under a proportional plan (i.e., the expected number of seats is proportional to the statewide partisan split), and the same for Democrats.[10] The headline finding is that the most extreme pro-Republican gerrymander nets more seats for Republicans than does the most extreme pro-Democratic gerrymander for Democrats.

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

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

The first two rows of Table 1 evaluate comparisons if, hypothetically, the same party drew the

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

maps in every state, which isolates Democrats' disadvantages when stratifying on which party controls districting. If Republicans enacted their best possible gerrymander in all forty-three states with multiple House districts, they would gain 42.6 seats in expectation relative to the proportional benchmark. The corresponding estimate if Democrats maximally gerrymandered every state in their favor is 36.7. Thus, by this metric of maximal gerrymandering, the Republicans enjoy an advantage of 5.9 seats. This gap is considerably larger, 14.5 seats, in the second row, where we exclude the six states with independent districting commissions. In expectation, Democrats lose 7.9 seats in California alone that they could reap from maximally gerrymandering the state's districts.

The final two rows illustrate how Republicans' advantages in controlling statehouses accentuates their edge in drawing unfair districts.[11] In the third row, we calculate the best-gerrymandering figures for each party among the set of states in which that party (factually) controlled all three elected branches of the state government (i.e. a trifecta) in 2011. Thus, this calculation replicates each party's ability to gerrymander based on actual state-level control over districting during the 2010s. Republicans gain considerably more than Democrats when implementing their best gerrymanders, 28.1 seats compared to 6.3. The seventeen states in which Republicans controlled post-2010 districting collectively contain 204 seats, compared to only 47 seats in the mere six states in which Democrats drew the districts. In the fourth row, we calculate the gerrymandering bias figures while assuming that Republicans can implement their best gerrymander in every state in which they enjoy a partisan advantage (based on presidential election returns from 2012 and 2016), and vice versa for Democrats. This alternative hypothetical mode of allocating partisan control over statehouses again underscores the large net advantage for Republicans at gerrymandering.

**Forbearance collapses.** Gerrymandering, of course, is hardly new in American politics. However, consistent with our argument that wide constitutional bounds alone are insufficient for the emergence of constitutional hardball, the extremity of gerrymandering has fluctuated dramatically

[11] In each, the sample excludes the six states with independent districting commissions.

throughout U.S. history. The Reapportionment Revolution of the 1960s ushered in decades of relatively fair maps amid a period in which in which partisan sorting was considerably lower than today.[12] Yet, in the new millennium, as the two parties became more sorted both ideologically and spatially, restraints on fair map drawing collapsed, particularly among Republicans.

Following several instances of breaking norms by redistricting mid-decade in the 2000s (Tarr and Benenson, 2012, 331), Republicans capitalized on the controversial *Citizens United* ruling in 2010—conservative activists and donors combined with the Republican State Leadership Committee (RSLC) to form a super PAC that invented the Redistricting Majority Project (REDMAP). This project explicitly promoted heavy spending in swing districts in states for which majority control was in reach to gain control over districting (Hertel-Fernandez, 2019). This strategy succeeded in enabling Republicans to draw heavily gerrymandered districts, as they expected to gain a national total of 13.3 more seats than had each state enacted a proportional districting plan. Table 2 shows that these gains came entirely from the seventeen states in which they unilaterally controlled districting, where collectively they expected to win 17.3 more seats in a typical House election than under a proportional plan.[13]

Partisan intent was unambiguous. In court, North Carolina state representative David Lewis quipped that Republicans held a 10-3 advantage in the U.S. House among his state's congressional seats—despite rough partisan balance in statewide vote share—only "because I do not believe it's possible to draw a map with 11 Republicans and two Democrats." In 2019, Lewis reaffirmed that

[12] Ansolabehere and Snyder (2008, 248) conclude: "electoral maps are much fairer now than before 1965. Although partisan biases remain, they are, on the whole, rather small today [i.e., in 2008]." Stephanopoulos and McGhee (2015) concur with this characterization for earlier periods: almost perfect balance in the 1970s, a slight Democratic advantage in the 1980s, and a slight Republican advantage in the 1990s.

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

**Table 2: Districting Plans in States with a Partisan Trifecta in 2011**

| **Republican controlled** | | | |
|---|---|---|---|
| *State* | *Max advantage* | *Actual advantage* | *Difference* |
| South Carolina | 0.9 | 0.9 | 0 |
| Utah | 0.9 | 0.9 | 0 |
| Oklahoma | 0.5 | 0.5 | 0 |
| Alabama | 0.9 | 0.9 | 0 |
| Pennsylvania* | 2.7 | 2.6 | 0.1 |
| North Carolina* | 1.8 | 1.7 | 0.1 |
| Wisconsin | 0.6 | 0.4 | 0.2 |
| Maine | 0.2 | 0 | 0.2 |
| Kansas | 0.5 | 0.3 | 0.2 |
| Michigan | 1.6 | 0.9 | 0.7 |
| Tennessee | 1 | 0.2 | 0.8 |
| Georgia | 2.5 | 1.6 | 0.9 |
| Virginia* | 1.7 | 0.7 | 1 |
| Texas* | 4 | 2.9 | 1.1 |
| Ohio | 3.8 | 2.5 | 1.3 |
| Indiana | 1.7 | 0.3 | 1.4 |
| Florida* | 2.8 | 0 | 2.8 |
| *Sum* | *28.1* | *17.3* | *10.8* |
| **Democratic controlled** | | | |
| *State* | *Max advantage* | *Actual advantage* | *Difference* |
| West Virginia | 0 | 0 | 0 |
| Massachusetts | 1.2 | 1.1 | 0.1 |
| Connecticut | 0.7 | 0.4 | 0.3 |
| Arkansas | 0 | -0.7 | 0.7 |
| Maryland | 2.2 | 1.4 | 0.8 |
| Illinois | 2.2 | 0.7 | 1.5 |
| *Sum* | *6.3* | *2.9* | *3.4* |

*Notes*: Max advantage is the estimated legal bounds from Table 1. Actual advantage is the expected number of seats for the specified party under the districting plan actually enacted, net of the expected number of seats under a proportional plan. The states are ordered by the difference between max advantage and actual advantage.

*Source*: Authors' analysis of data from FiveThirtyEight's Atlas of Redistricting.

*Indicates that a court struck down the original plan (see Appendix Table C.1).

drawing the maps to maximize partisan advantage was "the point."[14] Although many Republican gerrymanders survived scrutiny from the courts, in five cases (including North Carolina), a

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

court struck down a Republican districting plan as unconstitutional, usually for violating the Voting Rights Act (see Appendix Table C.1).[15] These cases not only provide evidence of Republicans pushing this electoral-tilting strategy to its legal limits, but also highlights another institutional mean through which Democrats—who initiated each successful lawsuit—have pushed back.

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

As such, the broader strategy chosen by the Democratic leadership has been instead to push for new federal statutes, such as H.R.1, that *restrict* the legal scope for either party to draw unfair districts.[16] Whereas some puzzle over Democrats' apparent refusal to retaliate by "playing dirty" (Pozen, 2018), the party leadership's preference for such "anti-hardball" tactics is entirely consistent with a strategic response in which institutional constraints relative to the status quo—rather than an inherent distaste for playing hardball—prevent Democrats from simply matching Republican gerrymanders in a tit-for-tat spiral.

[15]This helps to explain why Republicans fell 10.8 seats of our estimate for the legally permissible maximum.

[16]In 2019, the Democratic-controlled House passed H.R.1, the For the People Act, whose pro-democratic provisions include mandating independent districting commissions for each state.

## 5.2 Voter Suppression

**Legal leeway and sorting.** In addition to enjoying wide legal leeway to draw districts, individual states (particularly post-*Shelby*) also have considerable discretion to determine voting requirements. Throughout U.S. history, parties have continually manipulated this scope to disenfranchise or otherwise impose hurdles on voting that disproportionately affect various social groups, most frequently Blacks. Although federal amendments and enforcement statutes, along with accompanying jurisprudence, now prohibit states from denying the right to vote based on race, gender, or ages above 18, considerable leeway remains. For example, states can restrict voter access by requiring photo identification to vote or prohibiting ex-felons from voting. Such laws disproportionately hurt minority voters (i.e., Blacks, Hispanics, Native Americans), who are less likely to possess the types of identification cards that typical voter ID laws require, especially government-issued photo IDs (Barreto et al., 2019). Likewise, due to systemic racial bias in the criminal justice system, ex-felon laws tend to disproportionately disenfranchise Blacks (Manza and Uggen, 2008; Aviram, Bragg and Lewis, 2017).[17] Alternatively, states can expand access by allowing early voting or no-excuse absentee voting.

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

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

Meanwhile, factors consistent with our framework have largely prevented the Democrats from credibly threatening to retaliate in kind. The most direct impediment to suppressing Republican-friendly voter blocs is that Democrats' disadvantages in controlling statehouses throughout the country—in part a product of asymmetric gerrymandering, as described above—hinders their ability to pass targeted state-level laws (e.g., passing voter ID laws that permit student IDs, but not gun licenses). A corollary of this impediment is that, even in states that Democrats do control, certain policies that could be used to undercut rural voters are not set at the state level. For example, individual counties determine the location of polling places.[18] Thus, although a policy such as allocating polling places by population would force rural voters to travel longer distances to vote, the legal bounds here limit Democratic state officials from setting the rules.

Another major problem that Democrats currently face with regard to credible retaliation is the lack of obvious laws whose net impact would, in fact, hinder Republican voters. This accords well with our basic observations about the importance of clearly sorted groups. For example, it is well known that existing voter ID laws also disproportionately impact elderly voters, but the magnitude of this demographic group's sorting into the Republican party is much lower than that of minorities into the Democratic party.[19] Likewise, restricting early voting specifically in ways to try to hinder Republican constituencies also risks backfiring. Eliminating Sundays, for example, might hinder turnout among white evangelical Christians, but this would also hinder access for Black church-goers—which was precisely the effect when Florida Republicans passed a law in 2011 that restricted early voting on the Sunday before election day (Herron and Smith, 2012).

**Forbearance collapses.** During the 1960s and 1970s, when the parties were less sorted than they

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

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

are at present, civil rights legislation gained support from factions in both parties.[20] Yet, as the Republican Party has become solidly conservative, religious, rural, and white, and the Democrats more diverse, the parties have dramatically diverged in their support for voting rights. Although Democrats have not been entirely immune from trying to gain an advantage by selectively restricting voting access for Republican-leaning groups,[21] Democrats' strategy of generally seeking to expand voter access to the ballot is consistent with their limited opportunities to play tit-for-tat. Whereas Democrats have thus continued to push the voting rights agenda, the Republican Party leadership has moved in the opposite direction.

To systematically illustrate the divergence between the two parties, we combined and extended several state-level voting restrictions to document patterns over time (see Appendix C.2 for details). Figure 5 summarizes trends over time for three binary measures of voter suppression and access at the state level between 1972 and 2020. We disaggregate by partisan control of statehouses (Republican trifectas in red, Democratic trifectas in blue, and divided cases in purple) and compute averages over five year bins. Panel A adds the three measures, each of which express the fraction of states with a restrictive value on the variable, and higher values indicate greater restrictions.

Consistent with our theory, when vulnerable groups were less sorted (roughly 1970s to 1990s), both parties reduced voting hurdles. As sorting accelerated in the 2000s, Democrats continued to expand access. By contrast, Republicans increasingly adopted suppression measures, but only

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

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

for provisions believed to disproportionately hurt their opponents' supporters (e.g., stricter voter ID laws and ex-felon disenfranchisement laws). Until 2020, Republicans still largely supported measures such as mail-in and absentee voting, which were believed to benefit Republican-leaning groups (e.g., veterans, older voters).[22]

Strict photo ID laws (shown in Panel B), which are often justified to combat the chimera of widespread voter fraud, exhibit perhaps the starkest divergence between the two parties.[23] Building on earlier trends to request some form of identification from voters, between 2006 and 2015, fifteen states—all with Republican trifectas—passed laws that required a photo ID in order to vote. Statistical analyses of correlates of adopting voter ID and related voter restrictions consistently find evidence of a positive, statistically significant, and substantively large estimated effect of Republican state control. Notably, this effect is even larger in states with a larger Black population (Bentele and O'Brien, 2013). As with gerrymandering, North Carolina Republicans illustrate the general trend. After a Democratic governor vetoed a voter ID law in 2011, Republicans later gained a trifecta and in 2013 passed an omnibus bill that, among many provisions to curtail voting access, required photo identification and severely limited which IDs were acceptable.[24]

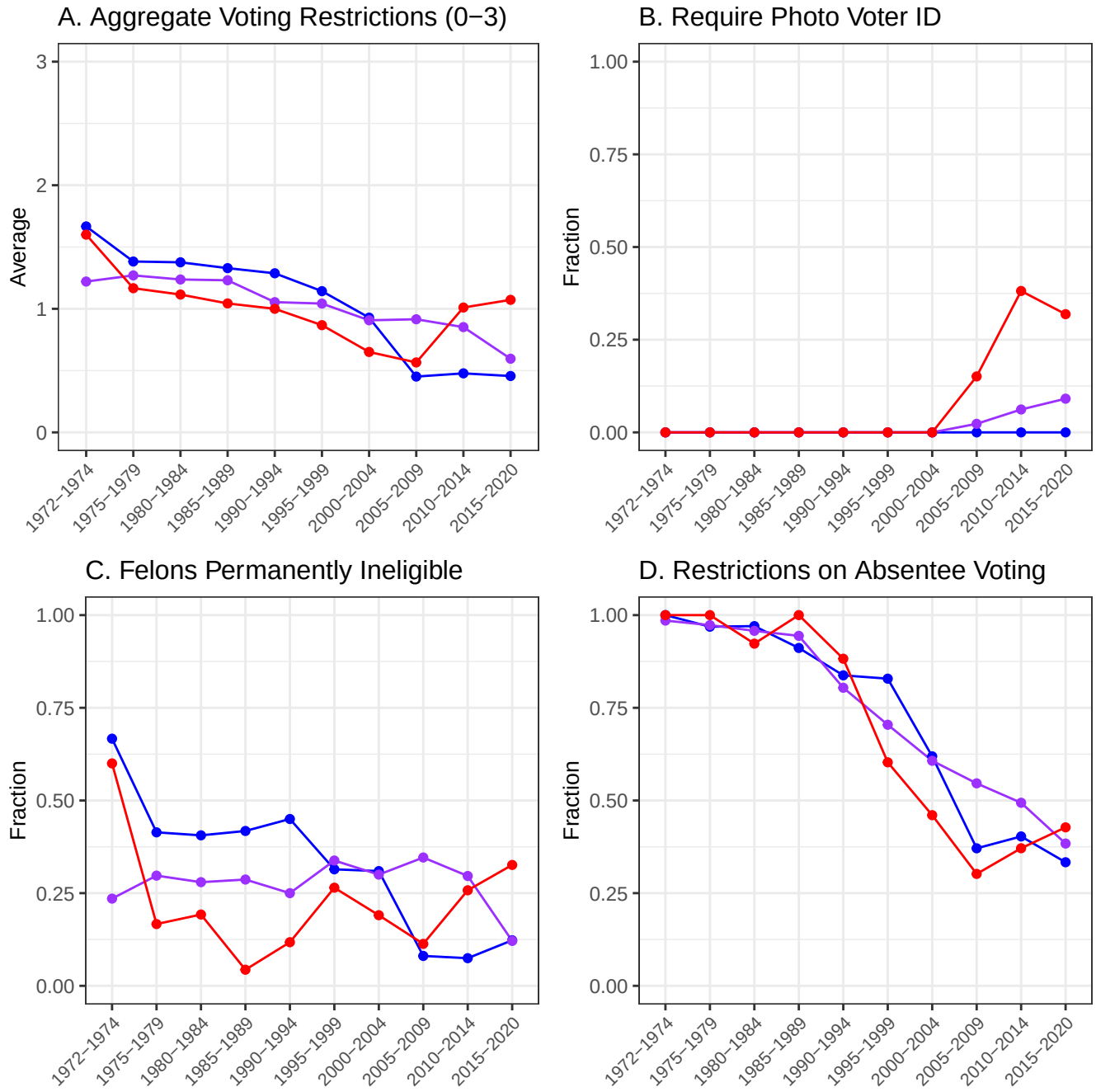
Disenfranchisement of ex-felons illustrates a similar temporal partisan pattern. Dating back to En-

[22]In addition to the data presented in Figure 5, we also tallied every state-level law that expanded or contracted voting access using annual reports from the Brennan Center between 2013 and 2020. Democratic-trifecta states passed at least one pro-voting measure in 41% of years compared to restrictive measures in only 4% of years, with respective figures of 19% and 18% for Republican-trifecta states.

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

[24]Ultimately, federal courts struck down the law for targeting "African Americans with almost surgical provision," and Republicans pursued alternative voter ID laws for the remainder of the decade (Tervo, 2020, 62-65).

**Figure 5: Voting Restrictions by Partisan Control of Statehouses, 1972–2020**




*Notes:* The dependent variables are whether voters are required to present photo identification in order to vote (Panel B); whether ex-felons are permanently disenfranchised, except for clemency from the governor (Panel C); and whether the state does not permit no-excuse absentee voting (Panel D). The y-axis in these panels is the fraction of states with restrictive values of the measure, averaged over states with Republican trifectas (red), Democratic trifectas (blue), and divided government (purple). Panel A sums the fractions from the other panels, and the y-axis is the average number of restrictive provisions among states in each category.

glish law during colonial rule, statutes to *permanently* disenfranchise anyone convicted of a felony became common during Reconstruction. Many states began relaxing these starting in the 1960s (Manza and Uggen, 2008). And, as Panel C shows, by the 1990s, Republican-led states had in fact become more tolerant of voting rights for ex-felons.[25] Yet, over the last decade especially, the tables have turned. As of 2020, only 13% of Democratic-trifecta states permanently bar felons from voting (absent a grant of clemency from the governor), compared to 33% of Republican-controlled states. The discrepancies are even starker when comparing how frequently ex-felons are disenfranchised during their probationary period: 21% for Democratic-trifecta states compared to 81% of Republican-controlled states. Appendix Figure C.2 shows that this gap between Democratic and Republican states is also a recent phenomenon. As an example with clear evidence of partisan intent, in 2019, Republican officials in Florida imposed a de facto poll tax to thwart a state constitutional amendment (passed via a voter initiative in 2018) intended to enfranchise ex-felons.[26]

By contrast, Panel D shows greater similarity between Democrats and Republicans in terms of implementing no-excuse absentee voting, which, if anything, is believed to exhibit a slight pro-Republican bias in normal elections (Biggers and Hanmer, 2015, 195). However, the COVID-19 crisis of 2020 upended this consensus. Given the prospect of traditionally Democratic voters turning to vote-by-mail en masse during the pandemic, Republicans—led by President Trump—repeatedly voiced unfounded claims that expanding voting by mail would unleash massive voter fraud. Republican legislators and operatives in various states (e.g., Wisconsin, Texas) accordingly unleashed a wave of lawsuits to restrict mail-in voting. Many Republicans continued to expound allegations of fraud even after the election, which were uniformly rejected when brought to court.

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

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

Although most states eventually passed a law that voters did not require any excuse (or permitted fear of COVID-19 as an excuse) to vote by mail in the 2020 election, the six exceptions were Republican controlled.[27] The Republican states that did expand voting access for 2020 passed only temporary provisions and many have already begun efforts to roll these back for future elections.[28]

# 6 Discussion

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

This core mechanism helps to make sense of many basic asymmetries between the contemporary Republican and Democratic parties, including their divergent approaches to gerrymandering and voting rights. As urban and minority voters have increasingly sorted into the Democratic party, the Republican party has effectively been able to exploit legal strategies for self-entrenchment at the state level. By contrast, the Democratic party has increasingly focused—albeit largely unsuccessfully thus far—on using federal institutions to limit gerrymandering and expanding voter access. Although we certainly do not rule out a role for differential values and moral commitments

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

[28] https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021.

driving party leaders, our model underscores that such "soft" motivations are not necessary for understanding either party's behavior. A push for democracy-enhancing reforms in the face of attempts to erode democracy is entirely compatible with parties acting purely in their own electoral interests.

Our deterrence framework isolates one set of mechanisms driving democratic backsliding in contemporary American politics, but can also be extended to complement and illuminate other mechanisms. For example, Lee (2016) argues that the historically unusual partisan parity between Democrats and Republicans diminishes parties' incentives to cooperate in Congress. In Appendix B.2, we shed new light on this argument by integrating it into our logic of deterrence and electoral tilting. We highlight parameter values for which forbearance is indeed hardest to sustain when the parties are close to parity, and we also address the consequences of allowing for asymmetric partisan sorting.

Our framework can also be extended to explore the dynamics of endogenous party sorting, which incorporates deliberate choices made by political leaders that push different groups of voters into each party. For example, the Democratic Party gained increased support from urban liberals and Blacks as part of the New Deal coalition decades before the national party adopted a strong civil rights platform, given their fear of losing their southern bloc (Schickler, 2016). Since the 1960s, Republicans have consistently sought to make racial and cultural appeals to rural white voters whereas Democrats often speak of the need to deepen the Civil Rights movement (Hacker and Pierson, 2020). In Appendix B.3, we extend the model such that the incumbent party chooses whether to emphasize economic or cultural issues in its campaign platforms and legislation. We show how asymmetric legal opportunities can further amplify incentives to choose a polarizing platform that captures legally privileged voters. Thus, the underlying institutional structure can itself contribute to partisan polarization.

Finally, our model also invites empirical applications beyond gerrymandering and voter suppres-

sion.[29] Consider recent attempts by Republicans to strip incoming Democratic governors of their power. Our model highlights the incentives that arise from the interaction of permissive legal bounds (given unsettled boundaries regarding separation of powers at the state level) and extreme partisan sorting. In this case, the non-urban concentration of Republican voters advantages Republicans in state legislative elections (given single-member seats) relative to at-large gubernatorial races. Consequently, Republicans benefit in both the long and short run from reducing the power of the governor relative to state legislatures (see Appendix C.3). With respect to state expansion, by contrast, the asymmetric advantage cuts the other way. Because the two most viable territories (Washington, D.C. and Puerto Rico) lean Democrat, and because any opportunities for Republican retaliation by expansion elsewhere are limited, granting statehood has naturally risen to the top of the Democrat's agenda (see Appendix C.4). Recent changes to the Senate filibuster,[30] as well as Democrats' current bid to eliminate it entirely, are somewhat more complicated. On the one hand, and in accordance with our theory, Democrats understand that a malapportioned and Republican-tilted Senate means that eliminating the filibuster could ultimately come to benefit Republicans more than Democrats. On the other hand, as of this writing, Democrats are also keenly aware that the costs of not passing key pieces of legislation, including bills like the For the People Act and the John Lewis Voting Rights Advancement Act, likely outweigh the risks of future retaliation. They

[29]Future work could also evaluate whether these tactics are substitutes or complements. On the one hand, politicians may face greater incentives to suppress the vote in competitive states with tight Senate races because they cannot alter statewide borders (e.g., Republicans in Georgia following the 2020 election; https://www.ajc.com/politics/bill-seeks-two-copies-of-photo-id-to-vote-absentee-in-georgia/2IC372BV2NC3VFNAYIWA4OPQKQ). On the other hand, by inducing high sorting, "packed" House districts may enhance the returns to voter suppression measures.

[30]Specifically, Democrats in 2013 unilaterally eliminating the filibuster for federal court appointments below the Supreme Court level, and Republicans in 2017 unilaterally removing the Supreme Court provision.

also understand that a heavily right-skewed Supreme Court can stifle their legislative priorities, breeding suggestions of adding justices or other court reforms that would, effectively, shift the legal bounds in their favor. Modeling how such tradeoffs across multiple institutional arenas affect party elites' calculus thus constitutes an obvious next frontier for further enriching our deterrence framework.

## REFERENCES


Acemoglu, Daron and James A. Robinson. 2006. Economic Origins of Dictatorship and Democracy. Cambridge University Press.

Albertus, Michael and Victor Menaldo. 2018. Authoritarianism and the Elite Origins of Democracy. Cambridge University Press.

Alesina, Alberto. 1988. "Credibility and Policy Convergence in a Two-Party System with Rational Voters." American Economic Review 78(4):796–805.

Ansolabehere, Stephen and James M Snyder. 2008. The End of Inequality. WW Norton.

Aviram, Hadar, Allyson Bragg and Chelsea Lewis. 2017. "Felon Disenfranchisement." Annual Review of Law and Social Science 13:295–311.

Barreto, Matt A, Stephen Nuño, Gabriel R Sanchez and Hannah L Walker. 2019. "The Racial Implications of Voter Identification Laws in America." American Politics Research 47(2):238–249.

Bateman, David A. 2018. Disenfranchising Democracy. Cambridge.

Bentele, Keith G and Erin E O'Brien. 2013. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." Perspectives on Politics 11(4):1088–1116.

Bidner, Chris, Patrick Francois and Francesco Trebbi. 2014. "A Theory of Minimalist Democracy." https://www.nber.org/papers/w20552.

Biggers, Daniel R. and Michael J. Hanmer. 2015. "Who Makes Voting Convenient?" State Politics & Policy Quarterly 15(2):192–210.

Bishop, Bill. 2009. The Big Sort: Why the Clustering of Like-minded America is Tearing Us Apart. Houghton Mifflin Harcourt.

Buisseret, Peter and Richard Van Weelden. 2020. "Crashing the Party? Elites, Outsiders, and Elections." American Journal of Political Science 64(2):356–370.

Carey, John M, Gretchen Helmke, Brendan Nyhan, Mitchell Sanders and Susan Stokes. 2019. "Searching for Bright Lines in the Trump Presidency." Perspectives on Politics 17(3):699–718.

De Figueiredo, Rui. 2002. "Electoral Competition, Political Uncertainty, and Policy Insulation." American Political Science Review 96(2):321–333.

Dixit, Avinash, Gene M. Grossman and Faruk Gul. 2000. "The Dynamics of Political Compromise." Journal of Political Economy 108(3):531–568.

Fishkin, Joseph and David E Pozen. 2018. "Asymmetric Constitutional Hardball." Columbia Law Review 118(3):915–982.

FiveThirtyEight. 2018. "The Atlas Of Redistricting." https://projects.fivethirtyeight.com/redistricting-maps. Accessed 5/10/20.

Fox, Justin. 2006. "Legislative Cooperation Among Impatient Legislators." Journal of Theoretical Politics 18(1):68–97.

Ginsburg, Tom and Aziz Z Huq. 2018. How to Save a Constitutional Democracy. Chicago.

Graham, Matthew H and Milan W Svolik. 2020. "Democracy in America? Partisanship, Polarization, and the Robustness of Support for Democracy in the United States." American Political Science Review 114(2):392–409.

Grillo, Edoardo and Carlo Prato. 2020. "Reference Points and Democratic Backsliding." https://www.dropbox.com/s/xtaud9sd2vv6elb/DemocraticBacksliding.pdf?dl=0.

Hacker, Jacob S and Paul Pierson. 2020. Let them Eat Tweets: How the Right Rules in an Age of Extreme Inequality. Liveright.

Herron, Michael C and Daniel A Smith. 2012. "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355." Election Law Journal 11(3):331–347.

Hertel-Fernandez, Alex. 2019. State Capture. Oxford.

Highton, Benjamin. 2017. "Voter Identification Laws and Turnout in the United States." Annual Review of Political Science 20:149–167.

Katz, Jonathan N, Gary King and Elizabeth Rosenblatt. 2020. "Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies." American Political Science Review 114(1):164–178.

Lee, Frances E. 2016. Insecure Majorities: Congress and the Perpetual Campaign. Chicago.

Levitsky, Steven and Daniel Ziblatt. 2018. How Democracies Die. Broadway.

Luo, Zhaotian and Adam Przeworski. 2020. "Democracy and Its Vulnerabilities: Dynamics of Democratic Backsliding." https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3469373.

Manza, Jeff and Christopher Uggen. 2008. Locked Out: Felon Disenfranchisement and American Democracy. Oxford.

Mason, Liliana. 2018. Uncivil Agreement. Chicago.

McCarty, Nolan. 2019. Polarization. Oxford.

McGann, Anthony J., Charles Anthony Smith, Michael Latner and Alex Keena. 2016. Gerrymandering in America. Cambridge.

Mettler, Suzanne and Robert C Lieberman. 2020. Four Threats: The Recurring Crises of American Democracy. St. Martin's Press.

Mickey, Robert. 2015. Paths Out of Dixie. Princeton.

Nalepa, Monika, Georg Vanberg and Caterina Chiopris. 2021. "A Wolf in Sheep's Clothing: Citizen Uncertainty and Democratic Backsliding." https://www.monikanalepa.com/uploads/6/6/3/1/66318923/chioprisnalepavanberg.pdf.

North, Douglass C., William Summerhill and Barry R. Weingast. 2000. Order, Disorder and Economic Change: Latin America Versus North America. In Governing for Prosperity, ed. Bruce Bueno de Mesquita and Hilton L. Root. Yale pp. 17–58.

Pozen, David E. 2018. "Hardball and/as Anti-Hardball." N.Y.U. Journal of Legislation & Public Policy 21:949–55.

Rigueur, Leah Wright. 2016. The Loneliness of the Black Republican. Princeton.

Rodden, Jonathan A. 2019. Why Cities Lose. Basic Books.

Schickler, Eric. 2016. Racial Realignment: The Transformation of American Liberalism, 1932–1965. Princeton.

Stephanopoulos, Nicholas O and Eric M McGhee. 2015. "Partisan Gerrymandering and the Efficiency Gap." University of Chicago Law Review 82:831–900.

Tarr, Dave and Bob Benenson. 2012. Elections A to Z. CQ Press.

Teele, Dawn Langan. 2018. Forging the Franchise: The Political Origins of the Women's Vote. Princeton.

Tervo, Caroline. 2020. Why Republicans Went Hard Right in North Carolina. In Upending American Politics, ed. Theda Skocpol and Carolina Tervo. Oxford pp. 53–77.

Tushnet, Mark. 2003. "Constitutional Hardball." John Marshall Law Review 37:523–53.

Varol, Ozan O. 2014. "Stealth Authoritarianism." Iowa Law Review 100:1673–1742.

Versteeg, Mila, Timothy Horley, Anne Meng, Mauricio Guim and Marilyn Guirguis. 2020. "The Law and Politics of Presidential Term Limit Evasion." Columbia Law Review 120(1):173–248.

White, Ismail K and Cheryl N Laird. 2020. Steadfast Democrats: How Social Forces Shape Black Political Behavior. Princeton.

# Online Appendix for "Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting"

# TABLE OF CONTENTS

# A SUPPORTING INFORMATION FOR BASELINE MODEL

This section proves every statement for the baseline formal model presented in the article. We first formally define a strategy profile with forbearance and punishment phases. We then solve for the incentive-compatibility constraints (that is, choosing forbearance over deviating) and explain why the losing party never unilaterally shifts to deviating. Finally, we prove the two propositions stated in the article, plus an additional proposition about the discount factor and forbearance.

## A.1 DEFINING A FORBEARANCE STRATEGY PROFILE

**Definition A.1.**

- ***Forbearance phase.*** *In any period $t$ such that for all prior periods $j < t$ the winning party chose $b_j = 0$ and the losing party did not obstruct:*
  - *The losing party does not obstruct.*
  - *If the losing party did not obstruct in period $t$, then the winning party chooses $b_t = 0$. If instead the losing party obstructed in period $t$, then the winning party tilts maximally: $b_t = b_x$ for $A$ and $b_t = b_y$ for $B$.*
- ***Punishment phase.*** *In any period $t$ such that for at least one prior period $j < t$, either $b_j \neq 0$ or a party obstructed:*
  - *The losing party obstructs.*
  - *The winning party tilts maximally: $b_t = b_x$ for $A$ and $b_t = b_y$ for $B$.*

For this strategy profile to constitute a subgame perfect Nash equilibrium, neither party can have a profitable deviation at any information set. The text explains why the prescribed actions in the punishment phase are incentive compatible for all feasible parameter values. Proposition 1 presents the conditions under which these punishments enforce perpetual forbearance. The following sections provide supporting mathematical details.

## A.2 SOLVING FOR THE INCENTIVE-COMPATIBILITY CONSTRAINTS

Choosing $b_t = 0$ in every period is incentive compatible for $A$ if and only if:

$$\underbrace{1 + \frac{\delta}{1-\delta} \cdot \frac{1}{2}}_{\text{Forbearance}} \geq \underbrace{1 + \delta \cdot \left[p_A^{\max} \cdot V_A^A + (1 - p_A^{\max}) \cdot V_B^A\right]}_{\text{Deviate}}, \tag{A.1}$$

for:

$$V_A^A = 1 - \phi + \delta \cdot \left[p_A^{\max} \cdot V_A^A + (1 - p_A^{\max}) \cdot V_B^A\right] \tag{A.2}$$

$$V_B^A = \delta \cdot \left[p_B^{\max} \cdot V_A^A + (1 - p_B^{\max}) \cdot V_B^A\right] \tag{A.3}$$

The expected future consumption term for the forbearance phase reflects that $A$ wins the election in each period with probability $\frac{1}{2}$, consumes 1 in every period it wins, and 0 in every period it loses.

The entire future consumption stream is multiplied by $\frac{\delta}{1-\delta}$ because of discounting over the infinite time horizon.

We express two continuation values for $A$ in the deviation phase, $V_A^A$ and $V_B^A$, as recursive equations. The superscript refers to the actor, and the subscript to which party is in power in the specified period. To explain Equation A.2, suppose that $A$ wins the election in any period $t$. In equilibrium, this yields contemporaneous consumption of $1-\phi$ because, given the prior deviations, the strategy profile requires that $B$ obstructs. Then, $A$ sets $b_{t+1} = b_x$. Thus, with probability $p_A^{\max}$, $A$ retains power in period $t+1$, in which case we start over again with $V_A^A$, discounted by a period. With complementary probability, $A$ loses power and its continuation value is $V_B^A$, defined in Equation A.3. In any period that $A$ is out of power, it consumes $\epsilon$ from obstructing, although we take the limit to 0. Going forward from such a period, with probability $1-p_B^{\max}$, $B$ retains power and $A$'s continuation value remains $V_B^A$, discounted by a period. With complementary probability, $A$ regains power and the continuation value moves to $V_A^A$. $A$'s probability of winning bounces around between $p_A^{\max}$ and $p_B^{\max}$ across periods because the party in power always chooses maximum bias, as illustrated in Figure 2.

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

$$\textbf{\textit{A}'s IC constraint:} \quad \frac{1}{2} \geq \frac{(1-\delta)\cdot p_A^{\max} + \delta \cdot p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\cdot(1-\phi) \tag{A.4}$$

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

$$\underbrace{1+\frac{\delta}{1-\delta}\cdot\frac{1}{2}}_{\text{Forbearance}} \geq \underbrace{1+\delta\cdot\left[(1-p_B^{\max})\cdot V_B^B + p_B^{\max}\cdot V_A^B\right]}_{\text{Deviate}}, \tag{A.5}$$

for:

$$V_B^B = 1-\phi+\delta\cdot\left[(1-p_B^{\max})\cdot V_B^B + p_B^{\max}\cdot V_A^B\right] \tag{A.6}$$

$$V_A^B = \delta\cdot\left[(1-p_A^{\max})\cdot V_B^B + p_A^{\max}\cdot V_A^B\right] \tag{A.7}$$

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

$$\textbf{\textit{B}'s IC constraint:} \quad \frac{1}{2} \geq \left(1-\frac{p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\right)\cdot(1-\phi) \tag{A.8}$$

## A.3 No Unilateral Obstruction

Setting the losing party's gain from obstruction to be infinitesimal, $\epsilon \to 0$, ensures that neither party unilaterally obstructs in the forbearance phase. That is, the strategy profile defined in Definition A.1 never fails to hold as an equilibrium because the *losing* party triggers the punishment phase by unilaterally obstructing. Such an action would provide an infinitesimally small boost in contemporaneous consumption for the losing party. This negligible benefit from unilateral obstruction is

strictly exceeded by the non-negligible cost, which arises endogenously for the following reason. The winning party moves immediately afterwards within that period, and obstruction triggers the winning party to maximally tilt the election rules in their favor. This action discretely lowers the obstructing party's probability of winning the election in the next period. Thus, in the forbearance phase, the losing party strictly prefers to not obstruct, and consequently to not trigger the winning party to rig the electoral rules.

However, this calculus differs if the parties are in the punishment phase, in which case the losing party obstructs in every period. The losing party benefits from obstruction because $\epsilon > 0$, but does not suffer a cost because the winning party tilts maximally regardless of the losing party's choice.

## A.4 Proof of Proposition 1

**Step 1.** The following preliminary results show that the right-hand side of Equation A.4 strictly increases in each of $p_A^{\max}$ and $p_B^{\max}$, and the right-hand side of Equation A.8 strictly decreases in each of $p_A^{\max}$ and $p_B^{\max}$.

$$\frac{\partial}{\partial p_A^{\max}}\left[\frac{(1-\delta)\cdot p_A^{\max}+\delta\cdot p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\cdot(1-\phi)\right]=\frac{1-\delta\cdot(1-p_B^{\max})}{\left[1-\delta\cdot(p_A^{\max}-p_B^{\max})\right]^2}\cdot(1-\phi)>0 \tag{A.9}$$

$$\frac{\partial}{\partial p_B^{\max}}\left[\frac{(1-\delta)\cdot p_A^{\max}+\delta\cdot p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\cdot(1-\phi)\right]=\frac{\delta\cdot(1-p_A^{\max})}{\left[1-\delta\cdot(p_A^{\max}-p_B^{\max})\right]^2}\cdot(1-\phi)>0 \tag{A.10}$$

$$\frac{\partial}{\partial p_A^{\max}}\left[\left(1-\frac{p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\right)\cdot(1-\phi)\right]=-\frac{\delta\cdot p_B^{\max}}{\left[1-\delta\cdot(p_A^{\max}-p_B^{\max})\right]^2}\cdot(1-\phi)<0 \tag{A.11}$$

$$\frac{\partial}{\partial p_B^{\max}}\left[\left(1-\frac{p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\right)\cdot(1-\phi)\right]=-\frac{1-\delta\cdot p_A^{\max}}{\left[1-\delta\cdot(p_A^{\max}-p_B^{\max})\right]^2}\cdot(1-\phi)<0 \tag{A.12}$$

**Step 2.** The $\hat{p}_A$ threshold is implicitly defined as $\Omega_A(\hat{p}_A)=0$, for:

$$\Omega_A(p_A^{\max})\equiv\frac{1}{2}-\frac{(1-\delta)\cdot p_A^{\max}+\delta\cdot p_B^{\max}}{1-\delta\cdot(p_A^{\max}-p_B^{\max})}\cdot(1-\phi) \tag{A.13}$$

To prove that such a $\hat{p}_A\in(\frac{1}{2},1)$ exists, we show that the IVT (intermediate value theorem) conditions hold. To establish the lower bound, at $p_A^{\max}=\frac{1}{2}$, we have:

$$\Omega_A\left(\frac{1}{2}\right)=\frac{1}{2}-\frac{(1-\delta)\cdot\frac{1}{2}+\delta\cdot p_B^{\max}}{1-\delta\cdot(\frac{1}{2}-p_B^{\max})}\cdot(1-\phi).$$

Equation A.10 implies that $\Omega_A$ strictly decreases in $p_B^{\max}$, which implies that this function reaches its lower bound at $p_B^{\max}=\frac{1}{2}$.[1] Substituting in $p_B^{\max}=\frac{1}{2}$ and simplifying yields $\frac{1}{2}\cdot\phi>0$. To

[1] Note that for $p_A^{\max}=\frac{1}{2}$, this is the only feasible value of $p_B^{\max}$ consistent with assuming $p_A^{\max}\geq 1-p_B^{\max}$.

establish the upper bound, at $p_A^{\max} = 1$, we have:

$$\Omega_A(1) = \frac{1}{2} - (1 - \phi),$$

which is strictly negative for any $\phi < \frac{1}{2}$. Finally, $\Omega_A(p_A^{\max})$ is continuous in $p_A^{\max}$, which establishes that the IVT conditions hold. The unique threshold claim follows from Equation A.9.

**Step 3.** The $\hat{p}_B$ threshold is implicitly defined as $\Omega_B(\hat{p}_B) = 0$, for:

$$\Omega_B(p_B^{\max}) \equiv \frac{1}{2} - \left(1 - \frac{p_B^{\max}}{1 - \delta \cdot (p_A^{\max} - p_B^{\max})}\right) \cdot (1 - \phi) \tag{A.14}$$

To prove that such a $\hat{p}_B \in (0, \frac{1}{2})$ exists, we show that the IVT conditions hold. To establish the lower bound, at $p_B^{\max} = 0$, we have:

$$\Omega_B(0) = \frac{1}{2} - (1 - \phi)$$

which is strictly negative for any $\phi < \frac{1}{2}$. To establish the upper bound, at $p_A^{\max} = \frac{1}{2}$, we have:

$$\Omega_B\left(\frac{1}{2}\right) = \frac{1}{2} - \left(1 - \frac{\frac{1}{2}}{1 - \delta \cdot (p_A^{\max} - \frac{1}{2})}\right) \cdot (1 - \phi).$$

Equation A.11 implies that $\Omega_B$ strictly increases in $p_A^{\max}$, which implies that this function reaches its lower bound at $p_A^{\max} = \frac{1}{2}$.[2] Substituting in $p_A^{\max} = \frac{1}{2}$ and simplifying yields $\frac{1}{2} \cdot \phi > 0$. Finally, $\Omega_B(p_B^{\max})$ is continuous in $p_B^{\max}$, which establishes that the IVT conditions hold. The unique threshold claim follows from Equation A.12.

**Step 4.** The "only if" part of the statements follow directly from the previous steps. If $p_A^{\max} > \hat{p}_A$, then by construction of $\hat{p}_A$, Equation A.4 is violated. If $1 - p_B^{\max} > 1 - \hat{p}_B$, then by construction of $\hat{p}_B$, Equation A.8 is violated.

**Step 5.** We separately prove the "if" part of each statement. We first show that if $p_A^{\max} \geq 1 - p_B^{\max}$ and $p_A^{\max} \leq \hat{p}_A$, then both IC constraints hold. By the converse logic as presented in step 4, the latter inequality implies that $A$'s IC constraint (Equation A.4) holds. The following shows that $B$'s IC constraint (Equation A.8) also holds. We are currently assuming $p_A^{\max} \geq 1 - p_B^{\max}$, which easily rearranges to $p_B^{\max} \geq 1 - p_A^{\max}$. Equation A.12 implies that $\Omega_B$ hits its lower bound at $p_B^{\max} = 1 - p_A^{\max}$. We can express:

$$\Omega_B(1 - p_A^{\max}) = \frac{1}{2} - \frac{p_A^{\max} - \delta \cdot (2p_A^{\max} - 1)}{1 - \delta \cdot (2p_A^{\max} - 1)} \cdot (1 - \phi).$$

It is straightforward to show that this is identical to $\Omega_A$ evaluated at $p_B^{\max} = 1 - p_A^{\max}$. That term is strictly positive because we are currently assuming $p_A^{\max} < \hat{p}_A$, which implies that $A$'s IC constraint

[2] Note that for $p_B^{\max} = \frac{1}{2}$, this is the only feasible value of $p_A^{\max}$ consistent with assuming $p_A^{\max} < 1 - p_B^{\max}$.

holds.

We next show that if $p_A^{\max} < 1 - p_B^{\max}$ and $1 - p_B^{\max} \leq 1 - \hat{p}_B$, then both IC constraints hold. By the converse logic as presented in step 4, the latter inequality implies that $B$'s IC constraint (Equation A.8) holds. The following shows that $A$'s IC constraint (Equation A.4) also holds. We are currently assuming $p_A^{\max} < 1 - p_B^{\max}$. Equation A.9 implies that $\Omega_A$ hits its lower bound at $p_A^{\max} = 1 - p_B^{\max}$. We can express:

$$\Omega_A(1 - p_B^{\max}) = \frac{1}{2} - \frac{1 - p_B^{\max} - \delta \cdot (1 - 2p_B^{\max})}{1 - \delta \cdot (1 - 2p_B^{\max})} \cdot (1 - \phi).$$

It is straightforward to show that this is identical to $\Omega_B$ evaluated at $p_A^{\max} = 1 - p_B^{\max}$. That term is strictly positive because we are currently assuming $1 - p_B^{\max} < 1 - \hat{p}_B$, which implies that $B$'s IC constraint holds. ■

## A.5 Proof of Proposition 2

We use the following in the proof:

$$\frac{\partial p(b_t)}{\partial b_t} = s - \frac{1}{2} > 0 \tag{A.15}$$

$$\frac{\partial p(b_t)}{\partial s} = b_t >< 0 \tag{A.16}$$

$$\frac{\partial^2 p(b_t)}{\partial b_t \partial s} = 1, \tag{A.17}$$

for $p(b_t)$ defined in Equation 1.

Assuming $b_x \geq -b_y$ is equivalent to assuming $p_A^{\max} \geq 1 - p_B^{\max}$. Thus, given Proposition 1, the claim about $b_x$ follows from substituting $b_x$ for $b_t$ in Equation A.15. Additionally, if $b_t = b_x > 0$, then Equation A.16 is strictly positive, which establishes the first-order claim about $s$ for this case.

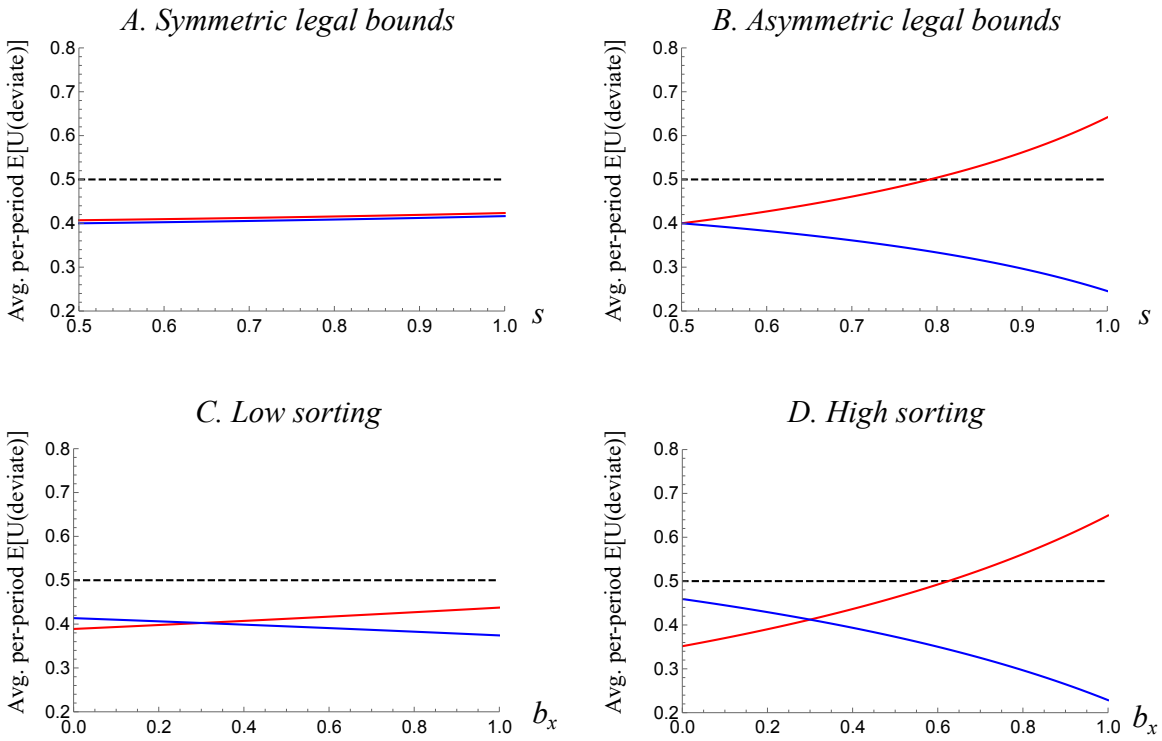
Conversely, assuming $b_x < -b_y$ is equivalent to assuming $p_A^{\max} < 1 - p_B^{\max}$. Thus, given Proposition 1, the claim about $b_y$ follows from substituting $b_y$ for $b_t$ in Equation A.15. Additionally, if $b_t = b_y < 0$, then Equation A.16 is strictly negative, which establishes the first-order claim about $s$ for this case because we are deriving $1 - p(b_y)$.

Equation A.17 establishes the second-order claim about $s$. ■

Figure A.1 depicts the relationships presented in Proposition 2. In each panel, the y-axis is each party's average per-period expected utility if they deviate during the forbearance phase, with the red curves corresponding to Party $A$ and the blue curves to Party $B$. Whenever a curve is above 0.5, the dashed black line, that party deviates. We highlight the interaction effect in two different ways. First, in Panels A and B, we fix every parameter except for sorting, $s$, which we allow to vary along the x-axis. In Panel A, symmetric legal bounds imply that increases in sorting only minimally enhance incentives to deviate, and neither the red nor blue curves ever exceed 0.5. By

contrast, in Panel B, the legal bounds are asymmetrically tilted toward Party $A$, who optimally tilts when sorting is high enough. Second, in Panels C and D, we fix every parameter except for the legal bounds for Party $A$, $b_x$, which we allow to vary along the x-axis. In Panel C, low sorting implies that making Party $A$'s legal bound more permissive only minimally enhances its incentive to deviate, and thus the red curve never exceeds 0.5. By contrast, in Panel D, high sorting induces Party $A$ to deviate when its legal bound becomes sufficiently permissive.

**Figure A.1: Interaction Effect between Asymmetric Legal Bounds and High Sorting**




*Parameter values*: $\delta = 0.9$, $\phi = 0.15$, and $b_y = -0.3$. In Panel A, $b_x = 0.3$. In Panel B, $b_x = 0.8$. In Panel C, $s = 0.6$. In Panel D, $s = 0.9$.

## A.6 Appendix Proposition A.1

**Proposition A.1** (Discount factor and forbearance)**.** *The range of parameter values in which the favored party (see Proposition 1) upholds forbearance increases in* $\delta$.

**Proof.** Applying the implicit function theorem to Equations A.13 and A.14 yields:

$$\frac{d\hat{p}_A^{\max}}{d\delta} = \frac{(1 - p_A^{\max}) \cdot (p_A^{\max} - p_B^{\max})}{1 - \delta \cdot (1 - p_B^{\max})} > 0$$

$$\frac{d\hat{p}_B^{\max}}{d\delta} = -\frac{p_B^{\max} \cdot (p_A^{\max} - p_B^{\max})}{1 - \delta \cdot p_A^{\max}} < 0$$

■

# B Model Extensions

The following provides additional formal details and empirical examples for the extensions with federalism (Appendix B.1), unbalanced partisan competition (Appendix B.2), and endogenous sorting (Appendix B.3).

## B.1 Federalism

In Section 4.5, we introduced additional parameters $\kappa_A$ and $\kappa_B$ that incorporate multiple simultaneous elections (as occur in a federal system) in a simple way. Here we provide formal details on the extension, discuss a historical application to Republican state-packing in the nineteenth century, and also comment on reversible versus legally irreversible reforms. The core mechanism highlighted in this extension is quite similar to that from the baseline model: asymmetric opportunities to tilt the rules cause forbearance to break down.

### B.1.1 Theory

Assume a setup identical to the baseline model except that, conditional on winning an election in any period $t$, $A$ has a $\kappa_A \in (0,1)$ chance of an opportunity to change the rules and $B$ has a $\kappa_B \in (0,1)$ chance. With complementary probability for each, the winning party must choose $b_{t+1} = b_t$. For this reason, we now need to express the continuation values as a function of the bias term. Equation B.1 is the analog to Equation A.1 for $A$'s incentive-compatibility constraint. The only difference is that the continuation values are expressed a function of $b_t$.

$$1 + \frac{\delta}{1-\delta} \cdot \frac{1}{2} \geq 1 + \delta \cdot \left[ p_A^{\max} \cdot V_A^A(b_x) + \left(1 - p_A^{\max}\right) \cdot V_B^A(b_x) \right] \tag{B.1}$$

To characterize the continuation values, along the equilibrium path, $b_t \in \{b_x, b_y\}$ for any period $t$ in the deviation phase. This reduces to four the number of information sets necessary to derive equilibrium values. Equations B.2 and B.3 are the analogs of Equations A.2 and A.3, respectively. The only alteration is writing the continuation values as a function of $b_t$. If $A$ wins an election and $b_t = b_x$, or if $B$ wins and $b_t = b_y$, then clearly the winning party will leave that policy in place even if they have an opportunity to change the rules because the existing policy already maximizes their probability of winning. Hence, the expressions are qualitatively unchanged from the baseline model.

$$V_A^A(b_x) = 1 - \phi + \delta \cdot \left[ p_A^{\max} \cdot V_A^A(b_x) + \left(1 - p_A^{\max}\right) \cdot V_B^A(b_x) \right] \tag{B.2}$$

$$V_B^A(b_y) = \delta \cdot \left[ p_B^{\max} \cdot V_A^A(b_y) + \left(1 - p_B^{\max}\right) \cdot V_B^A(b_y) \right] \tag{B.3}$$

For Equations B.4 and B.5, the winning party inherits their least-preferred bias term, and clearly wants to change the rules. However, they get this opportunity only with probability $\kappa$ (specifically, $\kappa_A$ for $A$ and $\kappa_B$ for $B$), whereas otherwise $b_t$ stays in place.

$$V_A^A(b_y) = 1 - \phi + \delta \cdot \Big\{ \kappa_A \cdot \Big[ p_A^{\max} \cdot V_A^A(b_x) + \big(1 - p_A^{\max}\big) \cdot V_B^A(b_x) \Big] + (1 - \kappa_A) \cdot \Big[ p_B^{\max} \cdot V_A^A(b_y) + \big(1 - p_B^{\max}\big) \cdot V_B^A(b_y) \Big] \Big\} \tag{B.4}$$

$$V_B^A(b_x) = \delta \cdot \Big\{ \kappa_B \cdot \Big[ p_B^{\max} \cdot V_A^A(b_y) + \big(1 - p_B^{\max}\big) \cdot V_B^A(b_y) \Big] + (1 - \kappa_B) \cdot \Big[ p_A^{\max} \cdot V_A^A(b_x) + \big(1 - p_A^{\max}\big) \cdot V_B^A(b_x) \Big] \Big\} \tag{B.5}$$

Solving the system of equations characterized by Equations B.2 through B.5 and substituting into Equation B.1 enables us to write $A$'s incentive-compatibility constraint in terms of parameters. Note that the right-hand side of Equation B.6 simplifies to that in Equation A.4 if $\kappa_A = \kappa_B = 1$.

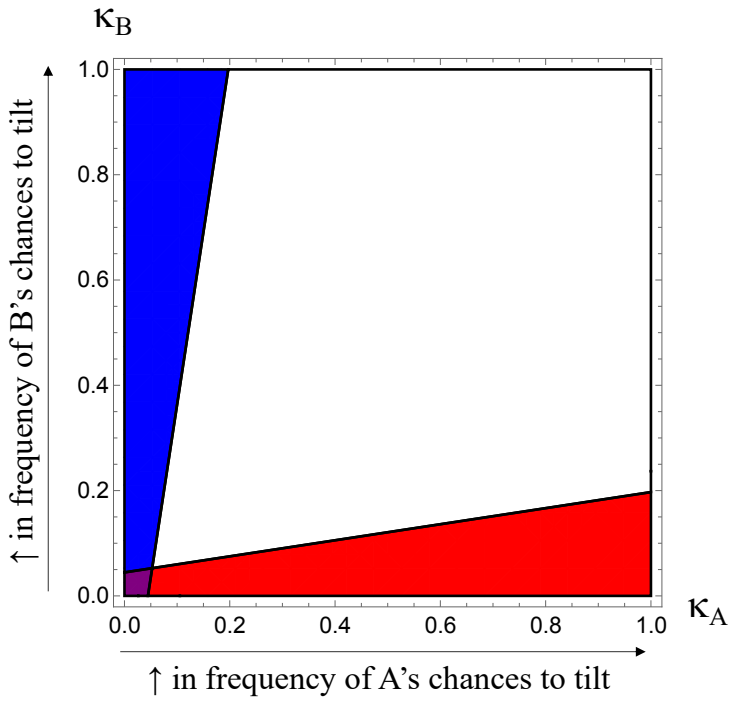
$$\frac{1}{2} \geq \frac{(1-\delta) \cdot p_A^{\max} + \delta \cdot p_B^{\max} \cdot \big[\kappa_B \cdot \big(1 - p_A^{\max}\big) + \kappa_A \cdot p_A^{\max}\big]}{1 - \delta \cdot \big[1 - \kappa_A \cdot p_B^{\max} - \kappa_B \cdot \big(1 - p_A^{\max}\big)\big]} \cdot (1 - \phi) \tag{B.6}$$

The expressions that characterize $B$'s incentive-compatibility constraint are identical and yield:

$$\frac{1}{2} \geq \left(1 - \frac{(1-\delta) \cdot p_B^{\max} + \delta \cdot p_B^{\max} \cdot \big[\kappa_B \cdot \big(1 - p_A^{\max}\big) + \kappa_A \cdot p_A^{\max}\big]}{1 - \delta \cdot \big[1 - \kappa_A \cdot p_B^{\max} - \kappa_B \cdot \big(1 - p_A^{\max}\big)\big]}\right) \cdot (1 - \phi) \tag{B.7}$$

The main result for this extension is qualitatively similar to that for asymmetric legal bounds in the baseline model. Figure B.1 visually summarizes the result, and a similar statement as Proposition 1 characterizes the equilibrium strategy profile for this extension. The parameter values in the figure correspond with those for point 2 in Figure 3, at which point both parties uphold forbearance in the baseline model. The incentive-compatibility constraints are identical to those the baseline model if each party can change the rules in any period they win, i.e., $\kappa_A = \kappa_B = 1$ in the upper-right corner of the figure. However, if we move far enough left or down from that point, one or both players deviate. If $\kappa_B$ is very low (i.e., low value on the y-axis), then even upon winning, $B$ is quite unlikely to have a chance to chance the rules. This emboldens $A$ to deviate from the status quo, as expressed in the red deviation region. Similar to the core intuition in the baseline model, deterrence breaks down because $B$ cannot credibly threaten to punish $A$. Also notable, the size of the "low $\kappa_B$" range increases in $\kappa_A$. Even when $\kappa_B$ is low, because this probability is strictly positive, $B$ can *sometimes* shift the rules in their favor across the infinite horizon. In such circumstances, higher $\kappa_A$ creates more frequent opportunities for $A$ to shift the rules back in their favor—hence emboldening $A$ to deviate from the status quo. The converse intuition explains the blue deviation region for $B$.

**Figure B.1: Asymmetric Chances to Tilt**




*Parameter values*: $\delta = 0.9$, $\phi = 0.15$, $s = 0.9$, $b_x = 0.3$, $b_y = -0.3$.

### B.1.2 Alternative Explanations: Historical State Expansion

As with tilting electoral rules to influence the bias parameter $b_t$, parties can take strategic actions to influence a parameter equivalent to $\kappa$ in the real world. Republicans' strategy of "state packing" in the nineteenth century provides a clear historical example of lowering $\kappa$ for the opposing party.[3] Republicans used their control of the federal government at various periods between the 1860s and 1890s to strategically admit Republican-leaning territories while denying statehood for Democratic-leaning territories (Stewart and Weingast, 1992).[4] This strategy included adding Nevada despite a tiny population, carving West Virginia out of Virginia during the Civil War, and splitting the Dakota territory into two separate states. The main effect was to advantage Republicans in the Senate because each state receives two senators regardless of population. Partisan state expansion enabled Republicans to maintain a majority in the malapportioned Senate in almost every year before World War I, even as Democrats increased their popular vote share and—in many years—controlled a majority in the House. Republicans passed an initial program of activist government in the 1860s and early 1870s, which they insulated from Democratic reversals

[3] We primarily conceptualize the additional $\kappa$ parameter as helping to understand a party's ability to change the rules based on their proclivity for winning federal and state elections. However, $\kappa$ can also capture divided government, e.g., each party's probability of controlling the Senate at any time that they win the presidency.

[4] In Appendix C.4, we discuss the legal bounds associated with adding states to the Union.

by capturing one branch of the federal government.

In this case, deterrence failed not because of sizable asymmetries in the legal bounds, but instead because the viability of adding numerous Republican-leaning states enabled Republicans to set a low value for the Democrats' $\kappa$ parameter. Thus, Democrats lacked the ability to retaliate until far in the future.

### B.1.3 Irreversible Reforms

The state-packing example just discussed highlights a qualitatively different type of reform—one that is irreversible—from our main substantive examples in the article. A party can overturn an unfavorable partisan gerrymander by gaining control of the statehouse. By contrast, any states added to the Union are legally irreversible. Article IV of the federal constitution provides a procedure for adding, but not subtracting, states. Thus, unlike partisan gerrymanders, one party cannot punish the other by removing a previously admitted state.

The core strategic logic of our model is qualitatively unaffected by whether the reforms in question are irreversible or not. Two converse examples highlight this point. First, even if the potential reforms are irreversible, the $\kappa$ terms can still be symmetric. Although a party cannot *remove* an existing state, they can potentially *add* a new state expected to vote for their party. If the set of territories that could feasibly gain statehood are balanced in partisanship, then the $\kappa$ parameters are symmetric. Second, even if the potential reforms are reversible, the $\kappa$ terms can still be asymmetric. The examples from the article support this point. Republicans' advantages in controlling statehouses and the leeway to enact certain anti-democratic provisions at the state level—in comparison to Democrats' need to have unified control of the federal government to pass countermeasures—imply that the Republicans enjoy a value of $\kappa$ than do the Democrats.

## B.2 UNBALANCED PARTISAN COMPETITION

In this section, we provide additional details for an extension mentioned in the discussion section of the article. We generalize the baseline model in four ways by allowing for differential size of the voter blocs, asymmetric sorting, an S-curve relationship between vote share and the probability of winning, and positive consumption for the losing party. These alterations yield two new findings. First, we highlight conditions under which forbearance is hardest to sustain when the parties are close to parity. Second, asymmetric sorting (while holding fixed the total amount of sorting) toward the party favored on the legal bounds decreases prospects for forbearance.

### B.2.1 Setup

The four new elements are:

- *Differential size of the voter blocs.* The measure of $x$ voters is normalized to 1, whereas the measure of $y$ voters is $n > 0$. Therefore, $x$ voters are more numerous than $y$ voters if $n < 1$, and less numerous otherwise. The baseline model is a special case with $n = 1$.
- *Asymmetric sorting.* Assume that $A$ gains support from $s_x \in (0.5, 1]$ percent of $x$ voters and $s_y \in [0, 0.5)$ percent of $y$ voters. Sorting is asymmetric if, for example, $y$ voters strongly support $B$ ($s_y = 0.1$, indicating 90% support for $B$) but $x$ voters only moderately support $A$ ($s_x = 0.6$, indicating 60% support for $A$). The baseline model is a special case of symmetric sorting with $s_y = 1 - s_x$. In that case, if $y$ voters support $B$ at 90%, then $x$ voters must also support $A$ at 90%.

  These first two alterations imply that the effective fraction of voters that support $A$ (after accounting for the bias) is:

$$z(b_t) \equiv \frac{(1 + b_t) \cdot s_x + (1 - b_t) \cdot s_y \cdot n}{1 + b_t + (1 - b_t) \cdot n}. \tag{B.8}$$

  One informative special case is perfect sorting into parties, i.e., $s_x = 1$ and $s_y = 0$. Substituting these terms into Equation B.8, multiplying the numerator and denominator by $\frac{1}{1+n}$, and simplifying yields:

$$z(b_t, v) = \frac{(1 + b_t) \cdot v}{(1 + b_t) \cdot v + (1 - b_t) \cdot (1 - v)}, \tag{B.9}$$

  in which $A$'s fraction of voter support is:

$$v = \frac{1}{1 + n}. \tag{B.10}$$

- *S-curve.* Given $A$'s underlying voter support $z(b_t)$ defined in Equation B.8, we assume this

maps into a probability of winning via the following function:

$$p(b_t) = \frac{\left(\frac{z(b_t)}{1-z(b_t)}\right)^{\rho}}{1 + \left(\frac{z(b_t)}{1-z(b_t)}\right)^{\rho}}, \tag{B.11}$$

for $\rho \geq 1$. The baseline model is a special case of perfect proportionality with $\rho = 1$, in which case this equation simplifies to $p = z$. Any $\rho > 1$ induces an S-shaped relationship between vote share and the probability of winning (see figures below). This is a common functional form in the literature on districting (e.g., King and Browning 1987, 1253; Cox and Katz 2002, 34).

- *Positive consumption for the losing party.* Assume that, in each period, the winning party consumes $\pi \in (0.5, 1]$ and the losing party consumes $1-\pi$. The baseline model is the special case with $\pi = 1$.

Given these alterations, $A$'s incentive-compatibility constraint is now:

$$\underbrace{p(0) \cdot \pi + \big(1 - p(0)\big) \cdot (1 - \pi)}_{\text{Forbearance}} \geq$$

$$\underbrace{\Big[q(p_A^{\max}, p_B^{\max}) \cdot \pi + \big(1 - q(p_A^{\max}, p_B^{\max})\big) \cdot (1 - \pi)\Big]}_{\text{Deviation}} \cdot (1 - \phi), \tag{B.12}$$

with:

$$q\big(p_A^{\max}, p_B^{\max}\big) \equiv \frac{(1-\delta) \cdot p_A^{\max} + \delta \cdot p_B^{\max}}{1 - \delta \cdot (p_A^{\max} - p_B^{\max})}. \tag{B.13}$$

The last term is the right-hand side of Equation A.4 except the $1-\phi$ term. Additionally, we are now defining $p_A^{\max}$ and $p_B^{\max}$ using the terms from Equations B.8 and B.11. The incentive-compatibility constraint differs from the baseline model only because $A$ gains positive consumption even in periods it loses.

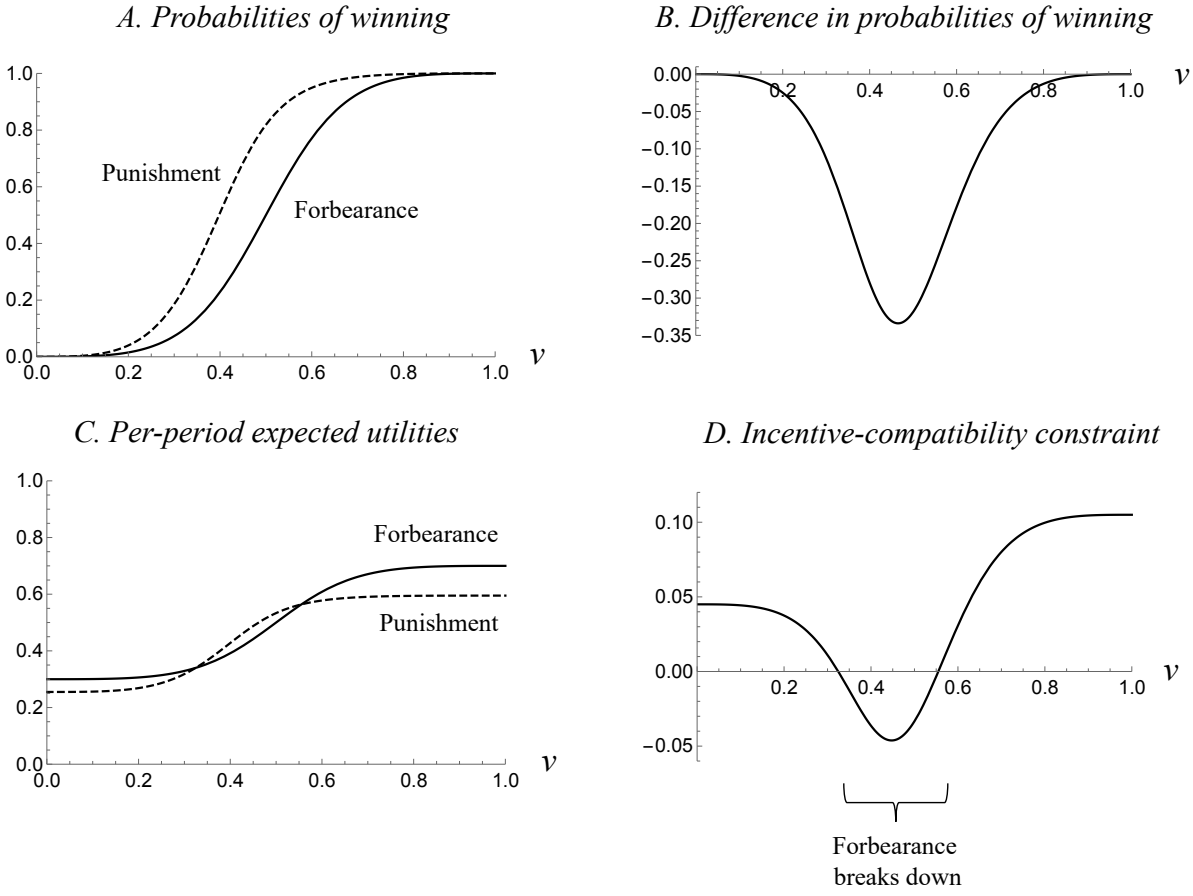
### B.2.2 Analysis of Tight Partisan Competition

This extension enables us to assess an important question in contemporary American politics: does rough parity in voter support for the two parties create incentives to deviate from mutual forbearance? We highlight a set of parameter values in which this is indeed the case. In the following example, favorable legal bounds for Party $A$ imply that it can increase its (average) probability of winning by deviating, which creates incentives to do so. Yet this effect is not sufficient to induce $A$ to deviate. Because of the permanent cost $\phi$ incurred by the winning party in each period of the punishment phase, $A$ deviates only if its gain in probability of winning is sufficiently large. The S-curve relationship between voter support $v$ (see Equation B.10) and the probability of winning implies that this gain is largest at intermediate values of $v$.

The four panels in Figure B.2 summarize the constituent elements that generate this finding, using $z(b_t, v)$ as defined in Equation B.9, $p(b_t)$ defined in Equation B.11, and parameter values stated in

the note accompanying the figure. In every panel, $v$ is on the x-axis, with higher values indicating higher voter support for $A$. We consider only $A$'s incentives to deviate because we assume that $A$ is favored on legal bounds, $b_x > -b_y$. Consequently, analyzing $A$'s incentive-compatibility constraint is sufficient to assess if a forbearance equilibrium exists (see Proposition 1).

**Figure B.2: Breakdown of Forbearance Under Tight Partisan Competition**




*Parameter values*: $b_x = 0.3$, $b_y = 0$, $\rho = 3$, $\delta = 0.7$, $\pi = 0.7$, $\phi = 0.15$, $s_x = 1$, $s_y = 0$.

In Panel A, we compare $A$'s probability of winning under a perpetual forbearance path of play (solid curve) and its average weighted per-period probability of winning in the punishment phase (dashed curve), as expressed in Equation B.13.[5] What ultimately matters for $A$'s incentives to deviate is the *difference* in the probabilities of winning, which Panel B directly assesses. The difference is negative for all values of $v$ (i.e., $A$ wins with higher probability during the punishment rather than the forbearance phase) because the legal bounds favor $A$, but is largest in magnitude

[5] Each curve depicts the S-shaped relationship between $A$'s fraction of voter support and its probability of winning. At very low and very high values of $v$, small increases in $v$ minimally affect $A$'s probability of winning. However, at intermediate values of $v$, the effect is large. The forbearance curve is perfectly symmetrical and unbiased: $A$'s probability of winning equals $50\%$ at $v = 0.5$ because $b_t = 0$. By contrast, $A$'s probability of winning is higher in the punishment phase because of favorable legal bounds, $b_x = 0.3$ and $b_y = 0$.

for intermediate values of $v$ because of the S-curve. If instead $v$ is very small, then only if we raise $b_x$ to very high levels is there a discernible effect on $A$'s probability of winning. Similarly, if $v$ is very large, then $A$ wins with very high probability even without bias.[6]

The probability-of-winning terms in Panel A are a key component of the expressions that ultimately determine whether forbearance is self-enforcing: $A$'s lifetime expected utility under perpetual forbearance (left-hand side of Equation B.12) versus the punishment phase (right-hand side), shown in Panel C. Marginal changes in $v$ exert discernible effects on each of $A$'s expected utility terms only for intermediates values of $v$, and for reasons just discussed, the marginal effects are larger for the punishment curve than for the forbearance curve. By contrast, at very high $v$, $A$ wins with close to probability 1; thus, under forbearance, its per-period expected utility is essentially $\pi = 0.7$, and under punishment, it is $1 - \phi$ multiplied by this amount. Conversely, at very low $v$, $A$ wins with close to probability 0; thus, under forbearance, its per-period expected utility is essentially $1-\pi = 0.3$, and $1-\phi$ times this amount for punishment. Consequently, forbearance is necessarily preferred at low and high $v$, but not necessarily intermediate values. Panel D shows clearly that $A$ deviates only at intermediate values of $v$ by presenting the difference between the two expected utility curves in Panel C, which is $A$'s incentive-compatibility constraint.

This discussion is an existence proof in the sense that the overall relationship between $v$ and forbearance breakdown is indeterminate—the more complicated expressions in this extension make it impossible to generate analytic solutions and characterize more general conditions under which the previous result holds. However, it is possible to highlight some necessary components for the previous result: the S-curve mapping between vote share and probability of winning ($\rho > 1$) and positive consumption for the losing party ($\pi < 1$). The role of the former assumption is straightforward, and plays an important role in the preceding discussion; under perfect proportionality, we do not get an effect like the one shown in Panel B. Assuming $\pi < 1$ plays a more subtle role. If $\pi = 1$ (as in the baseline model), then when $v$ is low, $A$ certainly deviates because it suffers essentially no cost to doing so. It is out of power in nearly every period and therefore almost never suffers the inefficiency cost of obstruction. Thus, it prefers to tilt and gain the higher probability of winning—despite the fact that deviating only minimally raises its probability of winning (as shown for low values of $v$ in Panel A). However, for $\pi < 1$, $A$ consumes even in periods it loses, and hence suffers a non-trivial cost if a fraction $1 - \phi$ of consumption is lost in every period. When $\pi$ is small enough—which indicates a larger share for the losing party—this effect dominates the small gains in probability of winning. Hence, this is a necessary condition to induce $A$ to uphold forbearance at low $v$, which in turn generates the non-monotonic relationship shown in Panel D.

[6] A subtle observation from Panel B is that the greatest difference in the probability-of-winning terms occurs at a value of $v$ strictly less than $0.5$, which is true for any parameter values. To see why, the forbearance curve hits its unique inflection point at $v = 0.5$, whereas the pro-$A$ bias in the punishment curve implies that curve hits its unique inflection point at some $v < 0.5$. Consequently, for any $v$ strictly less than but within a neighborhood of $0.5$, the second derivative is negative for the punishment curve (i.e., the curve is increasing and concave) but positive for the forbearance curve (i.e., increasing and convex). Therefore, decreasing $v$ slightly below $0.5$ necessarily increases the gap between these probabilities. The substantive importance of this observation is that even for parameters in which interior values of $v$ cause deviation, $A$'s strongest incentives to deviate are at value of $v$ lower than exact partisan parity.

One implication from the discussion surrounding Figure B.2 corresponds with Lee's (2016) argument that close partisan parity between Democrats and Republicans diminishes their incentives to cooperate in Congress. She conceptualizes cooperation (or what we term "forbearance") as incentives for minority parties to adopt compromises with the majority party, as opposed to engaging in obstruction and gridlock. Her logic, which differs somewhat from ours, is as follows. When minority parties have low prospects for regaining the majority in the near future, then their only possible gains arise from cooperating with the majority party. By contrast, if the minority party is more competitive, then its members face incentives to obstruct the majority party's agenda; by pandering to their constituency, they expect to bolster their prospects in the next election. According to this logic, the largest gains occur when the two parties are evenly matched, as our extension captures.

Perhaps surprising, the following countervailing effect does not muddy the relationship: although dominant parties gain less from deviating, they are also more immune to punishments by the opposing party—who is less likely to gain power. The effect we highlight dominates because hegemonic parties have a huge advantage over their opponent even without tilting the rules, and therefore do not want to incur the costs of obstruction that would arise in reaction to tilting. This explains why our result differs from that in De Figueiredo (2002). In his model, parties rotate in power over time and, in any period they choose policy, can pursue a compromise policy or a partisan policy. He assumes that if one party ever defects from the compromise policy, then in all future periods they play a grim trigger strategy in which the party in power always plays the partisan policy. In this game, parties can sustain *forbearance* only if they are *roughly balanced* in their partisan support. If instead one party is hegemonic, then they have incentives to deviate because, in the future, they expect to usually control the government.

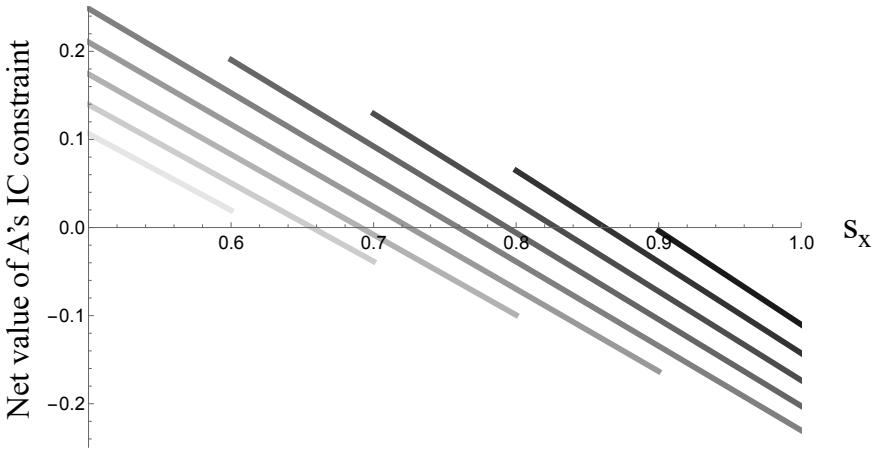
The key difference from our model is that in De Figueiredo (2002), the party that deviates *increases* the average amount consumed in each period they win by deviating to a more extreme (and more preferred) policy, in contrast to the $1 - \phi$ penalty from obstruction during the punishment phase in our model. Instead, the gains from tilting in our model arise from endogenously changing the probability of winning, whereas these probabilities are exogenous in De Figueiredo (2002). Thus, in our model, dominant parties that tilt the rules gain a minimal boost in their probability of winning but lower consumption in periods they win, producing a disincentive to deviate that differs from De Figueiredo's (2002) logic.

### B.2.3 Analysis of Asymmetric Sorting

Another important question in contemporary American politics is how asymmetries in polarization or sorting among the two parties affects prospects for a collapse in forbearance. The present extension enables us to address this question by fixing the *overall* extent to which voters are sorted between the two parties, and then vary the extent to which each voter bloc is sorted between the two parties. As with our core analysis, asymmetric legal bounds matter for understanding the consequences of sorting in American politics: when legally favored voters sort more extremely into the party that has a comparative advantage among these voters, forbearance is more likely to break down.

To isolate the effects of asymmetric sorting, we return to several elements of the baseline model by

**Figure B.3: Asymmetric Sorting and Incentives for Forbearance**




*Parameter values*: $b_x = 0.3$, $b_y = 0$, $\delta = 0.9$, $\phi = 0.15$. Darker colors indicate higher aggregate sorting.

assuming $n = 1$, $\rho = 1$, and $\pi = 1$. Then, using $z(b_t)$ as defined in Equation B.8, we assess how changes in $s_y$ and $s_x$ affect prospects for forbearance. In Figure B.3, we assume that $A$ has the legal advantage ($b_x = 0.3$ and $b_y = 0$). Each line shows the value of $A$'s incentive-compatibility function, with positive values indicating that $A$ exercises forbearance and negative values that $A$ deviates. Each line fixes *aggregate* partisan sorting, with darker colors indicating higher values.[7] On the horizontal axis, we vary the extent to which $x$ voters sort into party $A$. Recall that we always assume $A$ is advantaged among these voters, hence the lower bound of the horizontal axis is $0.5$. Thus, when focusing attention on a particular line but moving rightward along the horizontal axis, we are increasing the fraction of aggregate sorting that comes from $x$ voters supporting Party $A$; and, to keep aggregate sorting fixed, we are decreasing the fraction of $y$ voters that associate with $B$. In the baseline model, aggregate sorting is $2s - 1$, which ranges between 0 and 1 because $s \in (.5, 1]$, and $x$ and $y$ voters each contribute a fraction $0.5$ to total sorting. In this extension, aggregate sorting is $s_x - s_y$, which ranges between 0 and 1 because $s_x \in (0.5, 1]$ and $s_y \in [0, 0.5)$. Given the extra parameter, increases in $s_x$ and decreases in $s_y$ independently enhance aggregate partisan sorting.

Every line is downward sloping in the figure. This implies that regardless of aggregate sorting, Party $A$ is more likely to deviate when $x$ voters are more extremely sorted.

[7] For the lighter lines, the highest possible value of $s_x$ is truncated because larger $s_x$ would cause aggregate sorting to exceed the fixed amount specified for the line. For the darker lines, the lowest possible value of $s_x$ is truncated because smaller $s_x$ would cause aggregate sorting to be lower than the fixed amount specified for the line. Partisan sorting is symmetric at the midpoint of each line segment.

## B.3 Endogenous Partisan Sorting

In the discussion section of the article, we substantively motivated our extension in which partisan sorting is endogenous. Allowing political actors to make strategic choices that affect partisan sorting does not qualitatively change our main implications about how legal bounds affect prospects for forbearance. Instead, we show how asymmetric legal bounds can encourage actions that induce extreme sorting.

Starting from the baseline model, we incorporate two elements of the setup from Appendix B.2: differential size of the voter blocs and asymmetric sorting.[8] Here, we add one additional element. At the outset of the game, $A$ decides whether to emphasize economic or cultural issues in its campaign platforms and legislation. This one-time choice determines the value of the sorting parameters, which are then fixed for the remainder of the game. To align the setup with empirical intuition, we adopt substantive labels: $A$ is the conservative party, members of the $x$ voter bloc are rural, and members of the $y$ voter bloc are urban. The following assumptions restrict attention to substantively interesting parameter values:

- The conservative party knows it will win the election in the first period so that its initial choice of economic versus cultural appeals lines up with a period in which it can also choose whether to tilt the institutional rules.
- Cultural appeals generate more extreme sorting than economic appeals by increasing the conservative party's support among rural voters and decreasing its support among urban voters. Specifically, we assume perfect sorting under cultural appeals (every rural voter supports the conservative party and every urban voter supports the other party) and imperfect sorting under economic appeals, denoted by $s_x \in (0.5, 1)$ and $s_y \in (0, 0.5)$.
- The conservative party's policy platform determines whether the path of play is punishment or forbearance. Specifically, if the conservative party chooses an economic appeal, then forbearance holds along the equilibrium path; but if the conservative party chooses a cultural appeal, then it deviates. Formally, this means that we set the parameters such that each party's incentive-compatibility constraint (Equations A.4 and A.8) holds when the sorting parameters are interior values of $s_x$ and $s_y$, but the conservative party's IC constraint (Equation A.4) fails with $s_x = 1$ and $s_y = 0$; while using Equation B.8 to denote the conservative party's effective voter support.[9]

Given these scope conditions, we can use Equations A.4 and B.8 to show that the conservative party chooses cultural appeals if its lifetime expected utility to a punishment equilibrium with cultural appeals exceeds its lifetime expected utility to a forbearance equilibrium with economic appeals:

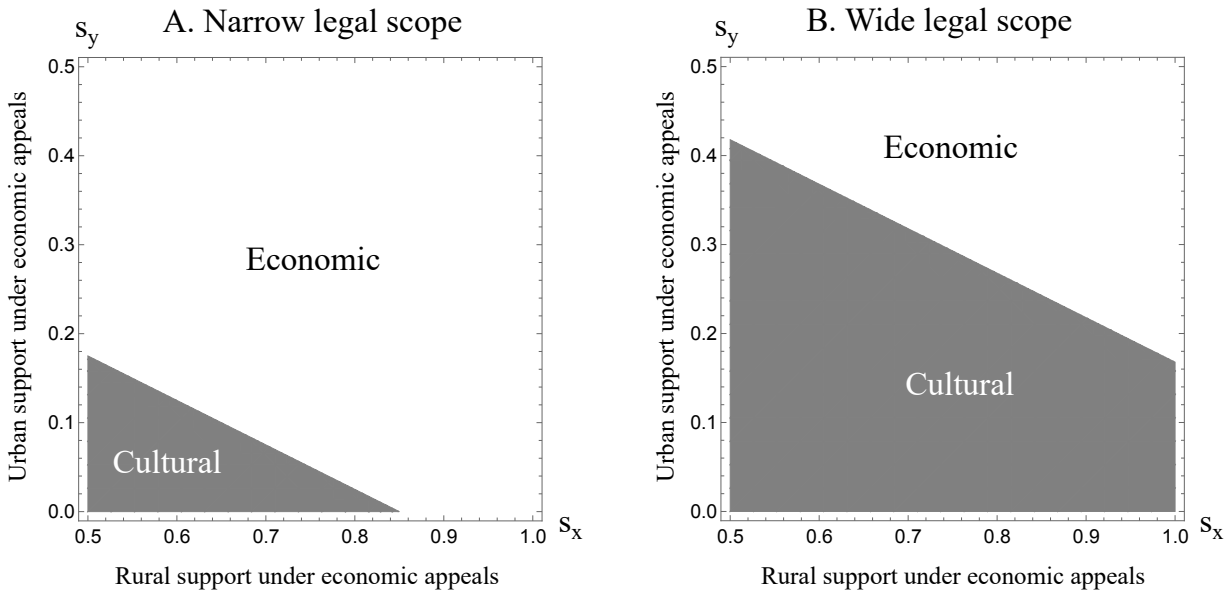
[8] The other elements of that extension are superfluous for the present purposes, so here we set $\rho = 1$ and $\pi = 1$.

[9] It does not matter whether Party $B$'s IC constraint (Equation A.8) holds or fails with $s_x$ and $s_y$ at interior values.

$$\underbrace{\frac{s_x + s_y \cdot n}{1+n}}_{\text{Economic appeals and forbearance}} < \underbrace{\frac{(1-\delta)\cdot\frac{1+b_x}{1+b_x+(1-b_x)\cdot n} + \delta\cdot\frac{1+b_y}{1+b_y+(1-b_y)\cdot n}}{1-\delta\cdot\left(\frac{1+b_x}{1+b_x+(1-b_x)\cdot n} - \frac{1+b_y}{1+b_y+(1-b_y)\cdot n}\right)}\cdot(1-\phi)}_{\text{Cultural appeals and punishment}}$$

This extension yields comparative statics that are intuitive given the preceding findings. Figure B.4 visually summarizes the main insights.[10] Each panel is a region plot in which the shaded region corresponds with parameter values in which the conservative party chooses cultural appeals. We vary the conservative party's support among rural voters under economic appeals ($s_x$) on the horizontal axis and its support among urban voters under economic appeals ($s_y$) on the vertical axis. Recall that we assume perfect sorting if the conservative party chooses cultural appeals, and hence we can interpret the sorting parameters under economic appeals relative to their respective values under cultural appeals. Panel A isolates the effects of endogenous sorting, as opposed to other elements in our model, by assuming that neither player has any legal leeway to tilt the playing field, $b_x = b_y = 0$. By contrast, in Panel B, the legal bounds asymmetrically favor party $A$ because $b_x = 0.6$ whereas $b_y = 0$.

**Figure B.4: Support for Conservative Party and Incentives to Stoke Division**




*Parameters*: $b_y = 0$, $n = 2$, $\delta = 0.9$, $\phi = 0.15$. In Panel A, $b_x = 0$. In Panel B, $b_x = 0.6$.

Figure B.4 highlights three factors that encourage the conservative party to focus on cultural appeals:

1. Relatively low support from rural $x$ voters under economic appeals, i.e., moving leftward in either panel. In this case, the conservative party has much to gain by switching the focus to

[10] Unlike with Figure B.2 in Appendix B.2, the intuition from this figure is straightforward to generalize for a broader set of parameter values.

cultural issues given the considerably greater resonance of its cultural rather than economic policies among rural voters.

2. Low support from urban $y$ voters under economic appeals, i.e., moving downward in either panel. In this case, the conservative party has little to lose by switching the focus to cultural issues given its low support among urban $y$ residents regardless of its policy platform. These first two results are notable because they do not hinge on asymmetric legal bounds, as Panel A demonstrates.

3. Wide legal bounds that asymmetrically favor the conservative party, i.e., moving from Panel A to Panel B. Wider legal bounds raise the conservative party's benefit to deviating by creating more leeway to favor rural $x$ voters. This last finding highlights that introducing endogenous sorting does not qualitatively alter the core intuition from the baseline model.

These factors also highlight two distinct motivations for conservative parties to switch from economic to cultural appeals that carry different normative implications for the health of democracy.

- **Competing for votes.** With $b_x = 0$, the conservative party deviates only if the amount of support it gains among rural $x$ voters is large relative to the amount of support it loses among urban $y$ voters. This is consistent with the core idea in democratic competition that parties should shift their platforms to win popular support, even if the consequence of extreme polarization is normatively undesirable for other reasons.

- **Tilting the playing field.** Higher $b_x$ complements these incentives to deviate. This case is highly inconsistent with basic notions of democracy. The conservative party is encouraged to pursue divisive policies because it enjoys considerable leeway to over-weight its supporters—that is, changing the rules rather than adopting popular policies. Anti-democratic tilting enlarges the conservative party's gains from maximizing its support from urban $x$ relative to rural $y$ voters. This is similar to the baseline model, with the addition that the conservative party takes strategic actions that induce extreme sorting—which highlights for conservative parties a complementarity between tilting the electoral rules and pursuing culturally divisive appeals.

# C Supplementary Information for Empirical Application

The first two sections provide supporting information about gerrymandering and voting rights, as discussed in the article. The following sections consider additional applications summarized briefly in the discussion section of the article: state-level separation of powers and state expansion.

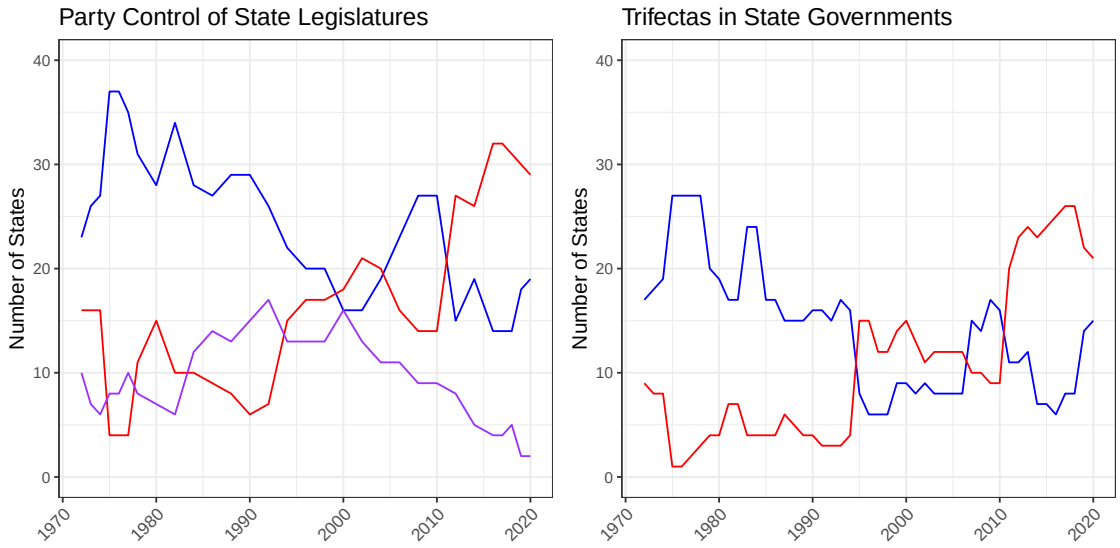
## C.1 Gerrymandering

### C.1.1 Geographic Concentration and Biased Districting

In the article, we briefly discussed why extreme partisan sorting creates a disadvantage for Democrats at gerrymandering legislative districts. Extreme geographic sorting enables Republicans to draw highly favorable maps in many states if they control districting, whereas Democratic map-drawers face greater constraints. Tight concentration of Democratic voters in urban areas enables Republican map-drawers to either pack Democratic voters into the same district (if the size of the district is smaller than the city) or to crack the city to prevent its residents from electing a preferred representative, if the size of the district is larger than the city (Rodden, 2019; Eubank and Rodden, 2019). In fact, packing minority 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. By contrast, Democrats that control districting cannot draw commensurately packed Republican districts, whose support is more geographically diffuse. A particularly important legal constraint is district contiguity. Otherwise, Democratic map-drawers could draw non-contiguous districts in which densely Democratic city blocks overwhelm Republican strongholds in rural areas merged into the same district. Existing scholarship provides various pieces of evidence that Democratic voters are inefficiently geographically concentrated for the purposes of districting: Chen and Rodden (2013) use automated districting simulations, Sussell (2013) and Martin and Webster (2018) use voter registration files to show the concentration of neighborhoods by party, and Rodden (2019) demonstrates a strong correlation between population density and Democratic vote share.

Natural geographic concentration and asymmetric possibilities for gerrymandering also create a disadvantage for Democrats to control statehouses—which is needed to gain the opportunity to draw the districts. This contributed to Republicans' disproportionate control over districting following the 2010 census. In the 2010 elections, Republicans achieved a trifecta in government for multi-district states that totaled 204 seats, compared to 47 for Democrats; the remaining states had independent commissions or divided government. One contributing factor was natural regression for the governing party, the Democrats, in midterm elections. However, rather than a simple mean-reversion story, Republican control of state legislatures and trifectas in fact accelerated *after* 2010 (see Figure C.1). Overall, the same geographic and racial factors that naturally pack Democratic voters into U.S. House districts also create disadvantages in state houses and senates (Rodden, 2019).

## Figure C.1: State-Level Partisan Control, 1972–2020




Blue lines are number of Democratic-controlled states, red are Republican-controlled states, and purple is split (plus Nebraska).

Data sources for party control:

- 1960–1977: Klarner (2013)
- 1977–2016: https://web.education.wisc.edu/nwhillman/index.php/2017/02/01/party-control-in-congress-and-state-legislatures
- 2016–2020: https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx

Data sources for trifectas:

- 1960–2011: Klarner (2013)
- 2012–2020: Ballotpedia (2020)

### C.1.2 Court Cases Against Unconstitutional Gerrymanders

Table C.1 lists every post-2010 districting plan that a court struck down. We interpret these cases of evidence both that Republicans are seeking to push their advantages to the legal maximum and that Democrats are pushing back.

**Table C.1: Successful Court Challenges to Republican Redistricting Plans Post-2010**

| *State* | *Outcome* | *Details on legal challenges* |
|---|---|---|
| Florida | State court strikes down map for violating state constitution | Legislative privilege on the release of legislative communications about redistricting and state constitutional challenges (specifically, a 2010 state constitutional amendment to ban partisan gerrymandering). The case was bought by the "League of Women Voters, Common Cause and coalition of Democrat-leaning voters" (Tampa Bay Times). |
| North Carolina | Federal court strikes down map for violating Voting Rights Act (VRA) | In November 2011, state Democrats (later joined by community groups) filed suit on the grounds of racial packing and split precincts. Congressional plan was struck down (on the unjustified use of race) by federal court in 2016. Subsequent remedial plan struck down by state court "as a partisan gerrymander in violation of the state constitution." |
| Pennsylvania | State court strikes down map for violating state constitution | Partisan challenge; "On June 15, 2017, the League of Women Voters of Pennsylvania and a group of Democratic Pennsylvania voters challenged the state's 2011 congressional map in state court as an unconstitutional partisan gerrymander under the state constitution" (NCSL). |
| Texas | Federal court strikes down map for violating VRA | Plaintiffs in the challenges bought against the Texas Congressional plans include the League of United Latin American Citizens, the Mexican American Legislative Caucus, the Texas State Conference of N.A.A.C.P. Units, three members of Congress and Texas voters (NYT). Many challenges and back-and-forth between lower courts and Supreme Court. Equal population, Equal Protection, and racial (VRA) challenges; federal court found that "the racially discriminatory intent and effects that it previously found in the 2011 plans carry over into the 2013 plans where those district lines remain unchanged" (NCSL). |
| Virginia | Federal court strikes down map for violating VRA | Racial (equal protection) challenges; Court ruled in favor of Democratic plaintiffs and struck down plan in 2014, based on "unjustified predominant use of race; on Jan. 7, 2016, the court drew a remedial plan itself" (All About Redistricting). |

*Notes:* The table lists every post-2010 districting plan that a court (either state or federal) struck down. In every case, Republicans drew the maps and were the defendant in court.

*Sources:*

Information about the state, party control of redistricting, and challenge from https://live-all-about-redistricting.pantheonsite.io/resources/maps-across-the-cycle-2010-congress.

Information about the nature of the challenge from https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx.

Florida:

- Tampa Bay Times: https://www.tampabay.com/news/politics/stateroundup/documents-reveal-secret-florida-senate-process-to-draw-district-maps/2242077/
- Vox: https://www.vox.com/2015/12/5/9851152/florida-gerrymandering-ruling
- Washington Post: https://www.washingtonpost.com/news/morning-mix/wp/2015/07/10/one-of-americas-snakiest-congressional-districts-has-just-been-trashed-by-the-florida-supreme-court/

- Washington Post: https://www.washingtonpost.com/news/the-fix/wp/2014/08/05/the-tricky-racial-politics-of-undoing-gerrymandering-in-florida/

North Carolina:

- Ballotopedia: https://ballotpedia.org/Redistricting_in_North_Carolina_after_the_2010_census
- All About Redistricting: https://redistricting.lls.edu/state/north-carolina/?cycle=2020&level=Congress&startdate=
- New York Times: https://www.nytimes.com/2019/06/27/us/what-is-gerrymandering.html

Pennsylvania:

- National Conference of State Legislatures (NCSL): https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx
- Brennan Center: https://www.brennancenter.org/our-work/analysis-opinion/pennsylvanias-partisan-gerrymandering-saga-ends-victory-voters
- New York Times: https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html
- NPR: https://www.npr.org/2018/03/19/594993409/supreme-court-delivers-blow-to-republicans-declines-to-take-up-pa-redistricting

Texas:

- NCSL: https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx
- NPR: https://www.npr.org/2012/01/20/145532526/high-court-scraps-lower-courts-redistricting-maps
- New York Times: https://www.nytimes.com/2017/08/15/us/texas-districts-unconstitutional.html

Virginia:

- All About Redistricting: https://redistricting.lls.edu/state/virginia/?cycle=2020&level=Congress&startdate=
- Washington Post: https://www.washingtonpost.com/local/virginia-politics/court-throws-out-virginia-congressional-map/2014/10/07/97fb866a-4e56-11e4-8c24-487e92bc997b_story.html

## C.2 VOTER SUPPRESSION

**Data for Figure 5.** Numerous studies examine the relationship at the state level between party control, switches in party control, and the adoption of policies either expand or contract voting rights (e.g., Yoshinaka and Grose, 2005; Bentele and O'Brien, 2013; Rocha and Matsubayashi, 2014; Biggers and Hanmer, 2015, 2017; Grumbach, 2018). We draw from this literature to compile several variables that measure different aspects of voting restrictions at the state level. Our starting point for the variables was existing studies with data on years that a policy was enacted, or panel data for a subset of years in our temporal sample. We supplemented these datasets with additional sources to create panel variables with complete data on each restriction in place between 1972 and 2020 in every state (although we omit Nebraska from the sample because of its non-partisan state legislature).

- STRICT PHOTO VOTER ID
  - *Description*: Variable equals 1 in any year a state requires voters to present a valid photo ID to vote, and 0 otherwise.
  - Our starting point was Table 2 of Highton (2017), which indicates the year in which a state passed a strict photo ID law (in almost all cases, the requirement that a voter show a photo ID in order to cast a ballot) for any state that did so between 2005 (the first year such a law was enacted) and 2015. We converted this information into a panel variable and updated the information through 2020 using data from the National Conference of State Legislatures (NCSL; https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx) and additional sources listed below. The following lists every state that at one point adopted a strict photo voter ID law, but the law was changed or struck down at some point before or during 2020.
    - Arkansas: ended in 2014 (https://www.brennancenter.org/our-work/analysis-opinion/arkansas-photo-id-law-struck-down-violates-state-constitution).
    - Missouri: ended in 2006 (https://www.ncsl.org/documents/LSSS/VoterIDdoc.pdf).
    - North Carolina: ended in 2015 (https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx).
    - North Dakota: ended in 2016 (https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx).
    - Pennsylvania: ended in 2014 (https://www.nytimes.com/2014/01/18/us/politics/pennsylvania-voter-id-law-struck-down.html).
    - Texas: ended in 2017 (https://www.ncsl.org/research/elections-and-campaigns/states-and-election-reform-the-canvass-june-2017.aspx).
    - Virginia: ended in 2020 (https://www.thecentersquare.com/virginia/photo-identification-no-longer-needed-to-vote-in-virginia/article_b478018e-c235-11ea-9b45-d734b44a9abd.html).

- EX-FELON DISENFRANCHISEMENT
  - *Description*: Main variable (used in Figure 5) equals 1 in any year a state permanently disenfranchises anyone convicted of a felony, and 0 otherwise. The variables used in Figure C.2 are similarly structured as indicators for whether parolees or probationers are restricted from voting.
  - For the main felon disenfranchisement variable, we use Behrens, Uggen and Manza's (2003) panel variable for 1972–2002. We updated the data for 2003–2019 using the Sentencing Project (Table 2. Felony Disenfranchisement Policy Changes, 1997–2019, https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer), and for 2020 as well (*Table 1: Summary of State Felony Disenfranchisement Restrictions in 2020*: https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction).
  - Indicators for whether the state adopted and keeps parolees or probationers restricted from voting come from the Sentencing Project. In order to create that dataset, we take *Table 1: Categories of Felons Disenfranchised under State Law* (https://www.sentencingproject.org/wp-content/uploads/2016/01/Losing-the-Vote-The-Impact-of-Felony-Disenfranchisement-Laws-in-the-United-States.pdf) as the starting point to anchor the state policies in place in 1998. We update the states that changed policies with *Table 2: Felony Disenfranchisement Policy Changes, 1997-2016* (https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer) and updating to 2020 and verifying with various annual Sentencing Project Reports and information from *Table A3.2: Summary of State Felon Disfranchisement Restrictions* in Manza and Uggen (2008):
    - https://web.archive.org/web/20081022231012/http://www.sentencingproject.org/tmp/File/table7.pdf
    - https://sentencingproject.org/wp-content/uploads/2016/01/State-Level-Estimates-of-Felon-Disenfranchisement-in-the-United-States-2010.pdf
    - https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016
    - https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer
    - https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction
  - Some of the 1998 Sentencing Project listings exhibit discrepancies with other sources:
    - Texas: Although the Sentencing Project categorizes TX as permanently disenfranchising ex-felons, in 1998, the legislature allowed ex-felons to vote post-sentencing (https://www.opensocietyfoundations.org/uploads/63a2cd15-c53c-4e72-b7ef-dcf7ceb8031d/legchanges-report.pdf), which we incorporate into our coding.

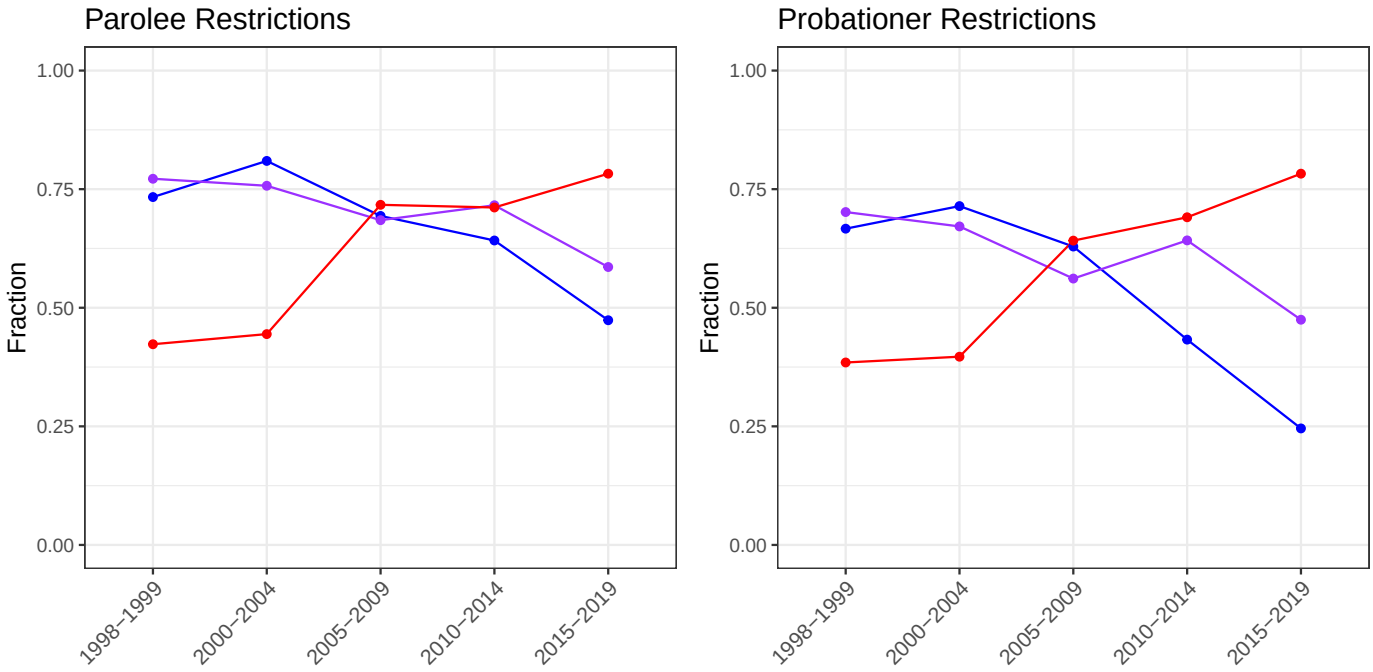
    - Louisiana: The Sentencing Project lists LA as permitting parolees and probationers to vote in 1998, and switching to restricting both categories in 2010. However, the actual interpretation by state officials is that no voting is allowed during any part of the sentence (https://www.prisonlegalnews.org/media/publications/2005%20sentencing%20project%20report%20on%20voting%20laws.pdf). Thus, we code parolees and probationers as disenfranchised throughout the time period.
    - Idaho: The Sentencing Project lists Idaho as permitting parolees and probationers to vote in 1998, whereas Manza and Uggen (2008) list both categories as restricted in 2002. However, there were no changes to state law listed in https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer, so we code both categories as restricted throughout the entire time period.

- RESTRICTIONS ON ABSENTEE VOTING
  - *Description*: Variable equals 1 in any year a state lacks no-excuse absentee voting, and 0 otherwise. This keeps with our convention of positive values indicating voter restrictions.
  - Biggers and Hanmer (2015) provide state-level panel data on no-excuse absentee voting policies from from 1972–2010. NCSL or Ballotopedia provide lists of states that have no-excuse absentee voting in 2020 (https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx; https://ballotpedia.org/Absentee/mail-in_voting,_2020). We use NCSL and Ballotopedia to update Biggers and Hanmer (2015) to 2020. If either NCSL or Ballotopedia list the state as having no-excuse absentee voting in 2020 but the state is not listed as having no-excuse absentee voting in the Biggers and Hanmer (2015) dataset, we consulted the additional sources listed below to discern in which year the policy was implemented.
    - Michigan adopted no-excuse absentee voting in 2018 via ballot initiative (https://www.liebertpub.com/doi/pdf/10.1089/elj.2020.066).
    - Minnesota adopted no-excuse absentee voting in 2013 (Hassell 2017; https://www.startribune.com/no-excuse-needed-to-vote-absentee-in-minnesota/264181781/).
    - Virginia adopted no-excuse absentee voting in 2020 (https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1; https://www.whsv.com/content/news/Va-lawmakers-pass-bill-to-allow-no-excuse-absentee-voting-568146341.html).

- One coding assumption we use to complete the panel data is once a state adopts no-excuse absentee voting, we code it as having this provision through 2020. To justify this assumption, we analyzed Biggers and Hanmer's (2015) replication data as well as annual reports from the Brennan Center, which do not contain any counterexamples.
    * While Minnesota "adopted no-excuse absentee voting on a trial basis in 1991, permitting residents to vote in this manner only for the 1992 presidential election," because of the temporary nature, Biggers and Hanmer (2015) code the state as never enacting this policy (Biggers and Hanmer, 2015, Supplemental Appendix). Every other state in their replication dataset unambiguously supports our coding assumption.
    * Several states proposed bills in 2014 to roll back absentee voting, but none were enacted (https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2015). In several instances, bills to restrict no-excuse absentee voting passed one, but not both, chambers (e.g., the Kentucky House in 2018 https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2018 and the Georgia Senate in 2020 https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020). Some states passed legislation to alter who can collect and turn in absentee ballots, but without repealing no-excuse absentee voting (e.g., https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2016 and https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2017).
    * Although our coding assumption appears accurate for the previous decade, scholars who extend the dataset past 2020 will need to incorporate reversals that several state legislatures seemed primed to adopt. As of February 2021, Missouri, Pennsylvania, "Arizona, Georgia, North Dakota, and Oklahoma also seek to eliminate no-excuse absentee voting" (https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2021).

**Additional patterns in ex-felon disenfranchisement.** In Figure 5, we use a measure with long temporal coverage that indicates whether ex-felons are *permanently* disenfranchised. To provide more insights into divergent patterns of ex-felon disenfranchisement between Democratic- and Republican-controlled states, we bring together a range of systematic state-level data on different categories of ex-felon disenfranchisement over the past two decades. States that allow ex-felons to vote in some capacity (i.e., score a 0 on our main measure) do so to different degrees. Some states allow felons to vote even while imprisoned, others while on parole, and others while on probation. Figure C.2 present plots for state restrictions on parolee and probationer voting rights. Note that any state that disenfranchises parolees also disenfranchises probationers, hence the right panel is the more restrictive measure. The patterns are qualitatively similar to those in Figure 5 for permanent ex-felon disenfranchisement: a reversal of fortunes over the time period such that Republican-controlled states are now considerably more likely than are Democratic-controlled states to restrict voting rights for ex-felons.

**Figure C.2: Parolee/Probationer Restrictions by Partisan Control of Statehouses, 1998–2020**



## C.3 State-Level Separation of Powers

Since 2016, Republican-controlled legislatures in four states (North Carolina, Wisconsin, Michigan, Kansas) have attempted to strip key prerogatives from the governor after a Democrat was elected to replace a Republican governor. In North Carolina, a series of bills passed in a special session mandated that the incoming governor's cabinet appointments must receive legislative approval, cut the size of the governor's administration, changed the Board of Elections to be controlled by Republicans in election years, and gave the Republican-controlled appeals court the first right to hear lawsuits instead of the Democratic-controlled state Supreme Court. Election law scholar Rick Hasen claimed that North Carolina set a "precedent in playing a kind of political hardball that we haven't seen in other places."[11] The Republican House Speaker in Wisconsin, Robin Vos, explicitly stated the partisan intent of their rule changes: "we are going to have a very liberal governor who is going to enact policies that are in direct contrast to what many of us believe in." Although state courts have struck down many of these laws for violating separation-of-powers clauses in the state constitution, a back and forth between the courts and legislature continues as Republican legislators attempt to modify the laws to survive judicial review.[12]

Our theory highlights the importance of permissive legal bounds combined with extreme partisan sorting. Aside from the obvious potential short-term gains from these actions, over the longer term, Republicans benefit from a weakened governor because of their comparative advantage in controlling state legislatures. In swing states, the relationship between vote share and legislative seats (with single-member districts) is biased in favor of Republicans for reasons related to partisan sorting discussed in the section on gerrymandering.[13] However, Republicans lack this advantage in at-large gubernatorial elections. Thus, in states like North Carolina, a scenario in which a Democrat occupies the governor's office while the Republicans hold a majority in both state legislative chambers is more likely than the converse. This creates an incentive to exploit legal leeway to weaken the powers of the governor. Moreover, Republicans can anticipate the ability to block possible future Democratic attempts to strengthen gubernatorial powers even further because, in these four states, Republicans' comparative advantage in controlling the state legislature is also an absolute advantage.

[11] https://www.vox.com/policy-and-politics/2018/12/5/18125544/north-carolina-power-grab-wisconsin-michigan-lame-duck.

[12] https://www.nytimes.com/2018/12/05/us/politics/wisconsin-governor-legal-challenge.html

[13] By contrast, in heavily Republican states, the geographic concentration of Democrats can actually work to their advantage by making it impossible to make each district a microcosm of the state (in which case Republicans could win every seat). Rodden (2019) discusses the examples of Alabama and Utah for U.S. House districting, although the same point applies to state legislatures.

## C.4 Asymmetric Opportunities for 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 (see Appendix B.1.2 for historical cases of adding states). This discussion is somewhat more speculative because it concerns only actions *not* yet taken, but offers a clear example of a unilateral action that Democrats could take to bias institutions in their favor given the expectation that both states would tend to elect Democrats. Yet as with the possible actions we highlight for Democrats in the article with regard to gerrymandering and voting rights, these institutional reforms would expand rather than contract voting rights.

**Legal leeway and sorting.** 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." Another possible legal bound arises from the 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.

An additional specific stipulation for D.C. arises in Article I, Section 8 of the federal constitution: 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." Some argue that this poses an inconsequential restriction. That is, D.C. can be added as a state by the standard process, as opposed to only by constitutional amendment. The new state of D.C. would simply exclude the White House, Congress, and National Mall, which would remain as the federal district (American Civil Liberties Union, 2019). However, others challenge this legal position by arguing that either (a) this is an unconstitutional work-around of the "enclave clause" or (b) a vote from Maryland's state legislature would also be needed because Maryland originally ceded the land for the contemporary federal district (Heritage Foundation, 1993).

Unlike the legal bounds for gerrymandering and voting rights, controlling individual statehouses is not sufficient to make institutional changes that pertain to adding states. Instead, politicians can add a state only by passing a bill at the federal level, in conjunction with political actors in the territory targeted for statehood and in any state containing territory that 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 more restrictive on this dimension of institutional reform than for gerrymandering or voting rights.

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% in each since 2008. Blacks are the plurality group in D.C. and, in the past, were the majority. The partisan loyalties of voters in predominantly Spanish-speaking Puerto Rico are less clear-cut because legislators in their territorial body are

distinguished by their stance on statehood rather than by Democrat/Republican. However, suggestive of their partisan lean, a Washington Post survey after Hurricane Maria in 2017 found that more than twice as many Puerto Ricans identify as Democrats versus Republicans, although a high percentage of respondents answered "Other/none" and "Don't know/Refused" (Washington Post, 2018). Among Puerto Ricans that live on the mainland, as of 2017, 56% identified as Democrats, 28% as Independents, and 16% as Republicans (Ansolabehere and Schaffner, 2017). Other rearrangements of states are possible, such as Texas or California either dissolving into multiple states or seceding, or disaffected parts of certain states switching to a neighboring state,[14] but these are considerably more far-fetched. Furthermore, any initiative involving multiple states requires the additional hurdle of gaining approval from each affected state legislature.

**Strategic rationales for inaction by Democrats.** Despite a latent advantage on this dimension, Democrats have added neither D.C. nor Puerto Rico as a state. Democrats would need unified control the federal government and to eliminate the Senate filibuster to add either. The legal bounds prevent Democratic-controlled state legislatures from directing this process, and Republicans intensely oppose statehood for either D.C. or Puerto Rico. 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."[15]

Indirect effects related in part to geographical sorting exacerbate this challenge. The malapportioned U.S. Senate requires Democrats to win in some redder 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, for similar discriminatory reasons, Mormons in Utah), 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."[16] 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). These reasons contributed to the decision by Democrats to not prioritize adding these states in 2009 when they controlled the presidency, the House, and (briefly) a filibuster-proof majority in the Senate; they instead used their floor time to debate and pass the Affordable Care Act (Faris, 2018, 54).

[14] For example, merging parts of western Virginia into West Virginia (https://apnews.com/article/d9ee8611eb59aedff84160ae1be27d14).

[15] https://nymag.com/intelligencer/2019/06/mcconnell-representative-democracy-is-full-bore-socialism.html.

[16] https://washingtonmonthly.com/magazine/july-august-2018/political-capital. NB: McCaskill lost re-election in 2018.

# REFERENCES


American Civil Liberties Union. 2019. "ACLU Legal Analysis of the Washington, D.C. Admission Act." https://www.aclu.org/archive-docs/aclu-legal-analysis-washington-dc-admission-act.

Ansolabehere, Stephen and Brian F. Schaffner. 2017. "CCES Common Content, 2016.". **URL:** *https://doi.org/10.7910/DVN/GDF6Z0*

Ballotpedia. 2020. "Who Runs the States, Partisanship Results, State Government Trifectas." https://ballotpedia.org/Ballotpedia:Who_Runs_the_States,_Partisanship_Results,_State_Government_Trifectas.

Behrens, Angela, Christopher Uggen and Jeff Manza. 2003. "Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850–2002." American Journal of Sociology 109(3):559–605.

Bentele, Keith G and Erin E O'Brien. 2013. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." Perspectives on Politics 11(4):1088–1116.

Biggers, Daniel R. and Michael J. Hanmer. 2015. "Who Makes Voting Convenient?" State Politics & Policy Quarterly 15(2):192–210.

Biggers, Daniel R. and Michael J. Hanmer. 2017. "Understanding the Adoption of Voter Identification Laws in the American States." American Politics Research 45(4):560–588.

Chen, Jowei and Jonathan Rodden. 2013. "Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures." Quarterly Journal of Political Science 8(3):239–269.

Cox, Gary W and Jonathan N Katz. 2002. Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution. Cambridge University Press.

De Figueiredo, Rui. 2002. "Electoral Competition, Political Uncertainty, and Policy Insulation." American Political Science Review 96(2):321–333.

Eubank, Nicholas and Jonathan Rodden. 2019. "Who is My Neighbor? The Spatial Efficiency of Partisanship." https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025082.

Faris, David. 2018. It's Time to Fight Dirty: How Democrats Can Build a Lasting Majority in American Politics. Melville House.

Frymer, Paul. 2017. Building an American Empire. Princeton University Press.

Grumbach, Jacob M. 2018. "From Backwaters to Major Policymakers: Policy Polarization in the States, 1970–2014." Perspectives on Politics 16(2):416–435.

Hassell, Hans JG. 2017. "Teaching voters new tricks: The effect of partisan absentee vote-by-mail get-out-the-vote efforts." Research & Politics 4(1):1–6.

Heritage Foundation, The. 1993. "D.C. Statehood: Not Without a Constitutional Amendment." https://www.heritage.org/political-process/report/dc-statehood-not-without-constitutional-amendment.

Highton, Benjamin. 2017. "Voter Identification Laws and Turnout in the United States." Annual Review of Political Science 20:149–167.

King, Gary and Robert X. Browning. 1987. "Democratic Representation and Partisan Bias in Congressional Elections." American Political Science Review 81(4):1251–1273.

Klarner, Carl. 2013. "State Partisan Balance Data, 1937 - 2011.".
**URL:** *https://doi.org/10.7910/DVN/LZHMG3*

Lee, Frances E. 2016. Insecure Majorities: Congress and the Perpetual Campaign. Chicago.

Manza, Jeff and Christopher Uggen. 2008. Locked Out: Felon Disenfranchisement and American Democracy. Oxford.

Martin, Gregory J and Steven W Webster. 2018. "Does residential sorting explain geographic polarization?" Political Science Research and Methods 8(2):215–231.

Mutz, Diana C. 2018. "Status threat, not economic hardship, explains the 2016 presidential vote." Proceedings of the National Academy of Sciences 115(19):E4330–E4339.

Rocha, Rene R. and Tetsuya Matsubayashi. 2014. "The Politics of Race and Voter ID Laws in the States: The Return of Jim Crow?" Political Research Quarterly 67(3):666–679.

Rodden, Jonathan A. 2019. Why Cities Lose. Basic Books.

Stewart, Charles and Barry R Weingast. 1992. "Stacking the Senate, Changing the Nation." Studies in American Political Development 6(2):223–271.

Sussell, Jesse. 2013. "New support for the big sort hypothesis: an assessment of partisan geographic sorting in California, 1992–2010." PS: Political Science & Politics 46(4):768–773.

Washington Post. 2018. "Survey of Puerto Rico Residents." http://files.kff.org/attachment/Topline-and-Methodology-Views-and-Experiences-of-Puerto-Ricans-One-Year-After-Maria.

Yoshinaka, Antoine and Christian R. Grose. 2005. "Partisan Politics and Electoral Design." State and Local Government Review 37(1):49–60.