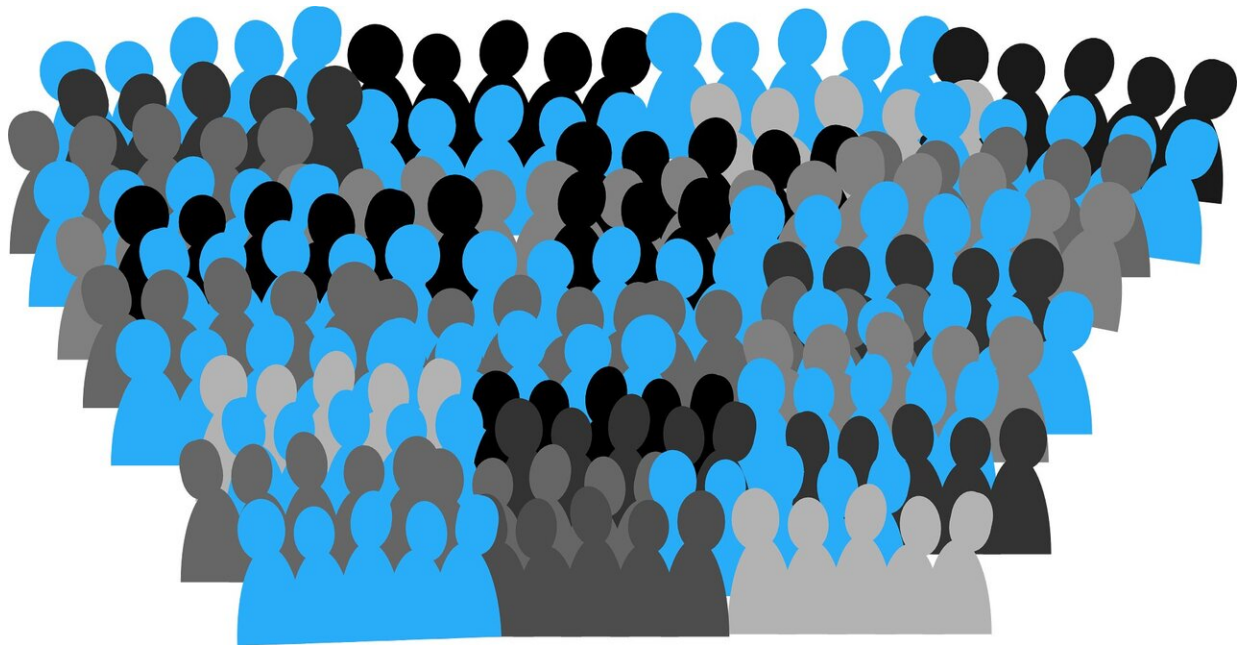


Why 'democracy by deterrence' might be weakening in the United States

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American democracy is in crisis—a majority of scholars and the public agree. Allegations of unfair voting practices, such as voter suppression and gerrymandering, abuses of executive power, and mounting concerns about the legitimacy of elections have become regular occurrence in the United States, rather than isolated events.

If we accept the premise that politicians and political parties generally

want to stay in power, then why would they ever forgo dirty tricks to win elections? The answer may simply boil down to this: Fear of revenge.

Worries over retaliation by the opposition party can deter the incumbent party from using antidemocratic tactics to win, argue a team of political scientists—the University of Rochester's Gretchen Helmke and Jack Paine, and their former colleague Mary Kroeger, now at the University of North Carolina at Chapel Hill. But, they warn, under certain conditions this natural "democratic deterrence" may break down.

In their recent paper, "Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting," published in the *American Journal of Political Science*, the team argues that a self-enforcing democracy requires political parties to refrain from exploiting legal opportunities to tilt electoral rules: Informal norms of mutual restraint and formal constitutional rules are fundamentally intertwined into a "logic of deterrence."

"By circumscribing how far each party can legally bend the rules, these legal bounds create reversion points if mutual forbearance or restraint—if you will—collapses," says Helmke, a professor of political science and one of the cofounders of Bright Line Watch, a non-profit watchdog organization of leading political scientists who monitor US democratic practices from a comparative perspective.

What is 'democracy by deterrence'?

The phrase conveys the idea of a dreaded "tit-for-tat" spiral. Republicans, for example, might forgo using antidemocratic tactics where they disenfranchise Democratic-leaning groups of voters, to avoid a scenario in which Democrats respond by disenfranchising some Republican-leaning voter groups. The team outlines three key factors for understanding the principle of democracy by deterrence in the US:

Scope, asymmetric legal bounds, and partisan sorting.

- **Scope:** The US has well-established norms of adhering to judicial interpretations of a written [constitution](#), which means a military coup or the refusal to hold scheduled elections is near inconceivable. Yet, despite hard legal bounds in the Constitution, there's still considerable legal scope to tilt the electoral playing field. Unlike most developed democracies, the US has no national elections commission, and state politicians have considerable leeway to determine who can vote, and to draw boundaries for congressional districts in ways that give their own party an advantage, a practice known as gerrymandering.
- **Asymmetric legal bounds:** Limits on legally permissible actions don't necessarily affect both parties equally—one side might enjoy more scope to bend the rules than the other, which can cause democratic deterrence to fail because the party with the advantage is less fearful of punishment by the other side.
- **Partisan sorting:** Implicitly, the US Constitution favors some groups over others. Despite various federal amendments that have expanded voting rights, the scope of voting rights has narrowed for some groups through practices such as excluding former felons, requiring photo identification to cast a ballot, and the purging of voter rolls. While all of these tactics are legally viable, they are empirically tied to race, the political scientists note. Black and Hispanic voters in particular, they argue, face greater hurdles than white voters when politicians impose restrictions along these dimensions.

Says Kroeger, "If race is highly correlated with party identification or high partisan sorting, the party that disproportionately receives more support from white voters enjoys greater legal scope to disenfranchise supporters of the opposing party. In the US right now, that's the Republican Party." Conversely, she adds, "If race were not highly

correlated with partisan support, the Republican Party would perceive fewer gains from using these tactics, which ultimately would make 'democracy by deterrence' more effective."

How 'democracy by deterrence' breaks down

As part of their formal model of "democracy by deterrence" the team stipulates that:

- If legal bounds are symmetric between parties, they deter electoral [rule](#) bending by making each party's threat to punish transgressions by the other likely.
- If legal bounds become sufficiently asymmetric, however, the foundations for restraint crumble. Asymmetries emerge when some groups (a) are more vulnerable than others to legally permissible electoral distortions and (b) groups that are more vulnerable vote overwhelmingly for one party over the other.

The Constitution, of course, was not written with parties in mind. But according to Helmke, some features of the constitutional order give disproportionate weight to some citizens, which then translates into an advantage for parties: "If the rules make it easier to gerrymander urban districts as opposed to rural districts and Democratic voters tend to live in urban districts while Republicans tend to live in rural districts, then the constitutional order ends up giving the GOP an advantage when it comes to gerrymandering, even if both parties want to engage in the practice."

The political scientists focus specifically on gerrymandering and voting rights/voter suppression in the post-Civil Rights era. The fact that seat allocation is not based proportionally on the percentage of votes that each party receives tends to favor the fewer rural voters (largely Republican) over the larger number of urban voters (largely

Democratic), resulting in strong asymmetry. While voting districts must be equally sized, be contiguous (without gaps between members of the same district), and not be artificially dispersed, there is no requirement that the percentage of seats held by each party in a state must correspond to the percentage of votes that each party receives.

The team notes that the lack of proportional representation makes it easier for Republican politicians to concentrate large numbers of Democratic [voters](#) into a small number of [districts](#) that are almost entirely Democratic. As with voter suppression, there is a failure of deterrence; Republicans can pursue this strategy with impunity, and Democrats are largely powerless to retaliate, they write.

"Gerrymandering and vote suppression are two key areas of contemporary American electoral politics that really threaten our fundamental principles of democratic representation," says Paine, an associate professor of political science whose research focuses on authoritarian politics.

"Another troubling development," Paine adds, "is that these asymmetries are now affecting another sacred democratic principle—conceding electoral loss. Republicans increasingly seem inclined to use their advantage in statehouses to gain leverage over vote counting in the 2024 election." This practice can undermine the public's trust in fair elections—a necessary hallmark of a stable democracy.

What can be done to prevent antidemocratic rule bending?

Reducing the legal scope for antidemocratic tilting and fixing asymmetries in the US Constitution is difficult. According to the team, the hurdles for passing federal amendments are high, and the current

Supreme Court majority has consistently chosen not to intervene on charges of voting rights or fair districting violations.

"But we cannot begin to understand the maladies in contemporary US politics without understanding how deterrence can uphold [democracy](#), and why deterrence is failing in many facets of American politics," warns Helmke.

More information: Gretchen Helmke et al, Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting, *American Journal of Political Science* (2021). [DOI: 10.1111/ajps.12668](https://doi.org/10.1111/ajps.12668)

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