Democracy-Reinforcing Hardball: Can Breaking Democratic Norms Preserve Democratic Values?

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Abstract

The threat of democratic backsliding has prompted growing interest in political "hardball": the pursuit of legal and constitutional changes with the intended purpose of biasing outcomes in favor of one party or set of outcomes over others. Such actions can be construed as constitutional and within the basic rules of the democratic game. But they are in deep tension with a broader concern that these rules ought to be insulated from the political contest for power. This paper provides a new definition of what I call democracy-reinforcing hardball, and a framework for thinking about when it might be successful. I first provide a critical overview of the growing empirical literature on averting democratic backsliding, highlighting how an injunction against hardball limits the scope for implementing its suggested reforms. I then outline the conditions under which hardball might be democracy-reinforcing, and examine three historical cases in which it had the long-term effect of re-stabilizing a democratic political order.

1 Introduction

[1] Committed democrats confronting a backsliding threat have much good advice and few good options. A growing body of work has laid out a menu of strategic responses (eg., Lührmann, 2021; Laebens and Lührmann, 2021; Boese et al., 2021; Ginsburg and Huq, 2018), from building broad electoral coalitions, to pursuing depolarizing political tactics or broadly shared economic growth, or strengthening accountability institutions. The advice is sensible, but faces limited prospects for success. More aggressive alternatives that would more directly constrain or repress the authoritarian threat are largely discouraged for undermining the democratic institutions they are invoked to defend.

Consider the advice to build broad electoral coalitions to secure pro-democratic actors in power. This has to be achieved against an opponent willing to bend or break the rules, often with an allied media ecosystem and access to state resources. And yet democrats are told to act with restraint to not further corrode the democratic system: "as a general rule, [a pro-democratic coalition] should not resist would-be authoritarians by breaking the democratic norms that it ultimately seeks to strengthen" (Eisen et al., 2019, 24). Political hardball – actions that are broadly legal but violate democratic norms (Tushnet, 2004) – are the tool of backsliders, which democratic actors should forswear.

This warning rests on two claims. The first is primarily normative: Aggressive actions to defeat or marginalize backsliders will often be undemocratic. This criticism is widely invoked against "militant democracy" (Capoccia, 2013), but also against hardball actions to empower pro-democratic actors. The second is empirical: Breaking democratic norms, even

[1]The paper's title is borrowed from Julia Azari (2018), who has argued persuasively that we should not mistake the norms and conditions that make democracy work with the values and interactions that define it. I would like to thank my very generous discussants and participants at Oxford and Yale for their invaluable feedback and suggestions, most especially Milan Svolik.

in response to an authoritarian threat, will intensify polarization and provoke escalations that will overwhelm democratic guardrails (Singer, 2018). These claims are reinforcing, in part because contemporary backsliders tend to justify antidemocratic measures in the language of democracy. Preserving a democratic regime might justify short-term violations of democratic norms, but polarization makes it harder for citizens to agree upon whose claim to defending democracy has merit.

This categorical injunction against hardball obscures the conditions under which the normative and empirical arguments against it may or may not hold, and sidelines as a research question the possibility that hardball's effects might be more varied. Drawing on historical case studies and the growing literature on democracy-protection, I provide a framework for thinking about the conditions under which political hardball might help preserve a democratic regime.

Democracy-reinforcing hardball, as I define it, is a political action or institutional change that is at best ambiguously within the boundaries of existing constitutional or democratic norms, and which unambiguously seeks to manipulate institutions in order to bias outcomes, but which is designed to or has the effect of re-establishing a more stable democratic politics over the medium- to long-term. It is a subset of the somewhat more familiar concept of hardball, but is distinguished by limits on the types of actions that it involves and the consequences – realized or intended – that it has on the stability of democratic politics over different time-horizons. Over the short-term, democracy-reinforcing hardball might help keep backsliders out of office; but over the long-term it should incentivize all significant political actors to abide by democratic rules and norms (Pozen, 2019).

Thinking about hardball as potentially democracy-reinforcing is counter-intuitive: It runs counter to an insistence on defending democratic norms of forbearance and mutual toleration (Levitsky and Ziblatt, 2018) and is more regularly associated with backsliders than with democracy's defenders. For example, democratic backsliding can be usefully described as a form of what Fishkin and Pozen called asymmetric hardball, in which one party successively pursues self-advantaging changes that are plausibly legal or enjoy some

democratic sanction without a symmetrical response from the opposition (Fishkin and Pozen, 2018). Both the legality and the limited ability of the opposition to respond have been identified as defining characteristics of contemporary backsliding (eg. Haggard and Kaufman, 2021), and recent literature has suggested that backsliding is enabled in part because its architects do not expect their actions to be punished, whether through a tit-for-tat response from their opponents (Helmke, Kroeger and Paine, 2022) or from voters (eg. Svolik, 2019*b*). Under these conditions, a central goal of democracy reinforcement should be to re-establish a broad expectation of being punished for breaking norms against manipulating institutions for self-entrenchment.

The central argument of this paper is that paradoxically, hardball – usually part of backsliders' arsenal – can at times enhance democrats' ability to achieve this goal. Whether and how this is possible will be context-dependent. But I outline a variety of mechanisms that I expect will make democracy-reinforcing hardball more likely to be successful, such as electoral rule changes that alter the marginal voters whom backsliders need to win, or that advantage contingent democrats within a backsliding coalition. For normative and practical reasons, democracy-reinforcement would ideally involve the expansion of democratic rights or practices (eg. Valelly, 2016). This will not always be possible, and democracy-reinforcing hardball might reasonably involve limited restrictions on democratic rights or practices so long as these do not make the country undemocratic. In either case, a short-term increase in polarization might be an acceptable price to pay if the new institutional environment compels a restoration of democratic restraint over the medium- to long-term.

Section 2 reviews the growing literature on responses to democratic backsliding, the central themes of which are the importance of keeping or getting backsliders out of power, of reinforcing accountability mechanisms that can constrain them, and of doing so while not violating democratic norms of forbearance or restraint. Under backsliding conditions, it will often be impossible to thread this needle. Section 3 lays out a new framework for thinking about democracy-reinforcing hardball, one that aims to make the suggestions described in Section 2 more practicable. I define the concept, distinguish it from other forms

of hardball, and describe what I expect to be common mechanisms for its realization. On this basis, I hypothesize three conditions that should make the successful achievement of democracy-reinforcement more likely. Some of this discussion reiterates advice from the response-oriented literature, but with more explicit consideration of the trade-offs and with different implications for democratic actors' priorities. Section 4 discusses the comparative cases that informed this framework as well as the logic of case selection and comparison. Each case is presented with a shared narrative structure, sketching out the backsliding threat, the substance of hardball responses, and their short- and long-term effects. In each case history, I connect the successes and failures of hardball to the hypothesized conditions in Section 3, while also attending to the dangers and limits that were revealed.

This is primarily a concept-building paper. As such, it puts more weight on the conceptual and theoretical discussion than on identifying potential cross-context empirical indicators. But in both Sections 2 and 3, I take care to delimit the concept and give practical guidance so that other researchers might reliably identify if and when democracy-reinforcing hardball has occurred in other cases. I conclude by discussing how an attention to this concept might enrich our empirical and theoretical research while also providing tractable advice to democracy's defenders.

2 Reversing or averting democratic breakdown

Until recently, there was relatively little scholarship on what might be done to avert a backsliding process once underway. The study of democratic breakdown focused on understanding why some countries' democratic systems collapsed while others did not, rather than how this might be reversed or averted (Thompson 2021, 124, Ginsburg and Huq 2018, but see Capoccia 2005). The most consistent findings emphasized broad structural or historical factors not amenable to practical responses: There is little democratic actors can do to in the short-run to alter patterns of rural inequality or the cultures and conflicts they have engendered, or to retroactively provide a country with a long history of democracy.

Metrics for identifying threats, and prescriptions for responding, can reduce coordi-

nation costs for pro-democratic actors, a pervasive problem in contemporary backsliding dynamics (Haggard and Kaufman, 2021). Scholars in recent years, aided by new measures (Maerz et al., 2021), have accordingly given more attention to diagnosing backsliding threats as they occur and with providing a menu of strategic responses for democrats (eg Ginsburg and Huq, 2018; Boese et al., 2021; Thompson, 2021; Laebens and Lührmann, 2021).

Broadly, this literature stresses that democratic breakdown is not inevitable once backsliding begins. But empirically, it finds that "breakdown" resilience – the probability a democracy will survive once backsliding is underway – has always been and remains low, while "onset" resilience – the probability that such a process will begin – has declined (Boese et al., 2021). On the response side, it outlines a range of strategies for pro-democratic actors to pursue, from long- and medium-term interventions such as fostering economic growth (Brownlee and Miao, 2022) or enhancing democratic responsiveness and education (Finkel and Lim, 2021), to emergency ones such as insulating accountability institutions, building broad coalitions (Eisen et al., 2019), and organizing society-wide protests against executive aggrandizement (Lührmann, 2021, 1029).

As with the earlier literature on democratic breakdown, the factors most conducive to resilience – eg., a country's economic wealth, a longer experience with democratic institutions (Boese et al., 2021) – are generally not responsive to short or medium-term interventions.

Short-term options stress the importance of keeping or getting backsliders out of power or of strengthening accountability institutions – horizontal, diagonal, and vertical (Laebens and Lührmann, 2021) – that might help constrain them when in power. Early in the backsliding process, elites aligned with potential authoritarians are especially important actors, capable of punishing violations of democratic norms and impeding the rise of their less democratic allies (Levitsky and Ziblatt, 2018; Eisen et al., 2019). In preparation for autocrats coming to power, pro-democratic actors are advised to strengthen "horizontal" spaces for independent influence within the state (Lührmann, 2021), such as the legislature, bu-

reaucracy and administrative agencies (including election agencies), and (especially) the judiciary (Boese et al. 2021, 900, see also Ginsburg and Huq 2018, Staton, Reenock and Holsinger 2022), and to insulate these from partisan manipulation. The capacity for "diagonal" accountability – including the media, civil society, or extra-electoral forms of political participation such as protests – should also be strengthened, through greater coordination with civil society around the threat to democracy. While the effectiveness of such "diagonal" mechanisms is debated, they can be important when working in interaction with horizontal accountability (Laebens and Lührmann, 2021, 909), as when backsliders' efforts to undermine checks on executive power provides a focal point for organizing democratic opposition (Laebens and Lührmann, 2021).

The most effective arena for obstructing or defeating backsliders is "vertical" accountability, ie., elections (Croissant and Diamond 2020; Bunce and Wolchik 2011, but see Ginsburg and Huq 2018). Backsliders typically operate within the formal boundaries of electoral democracy, and gain legitimacy from their purported ability to represent a popular will (Thompson, 2021). Electoral defeats are critical moments when the ability to coordinate against the incumbent is high. Even partial victories by pro-democratic forces can provide cracks in backsliders' claims to popular authority, as well as provide democrats with access to horizontal accountability institutions. Pro-democratic actors, then, should prioritize winning elections (Tomini, Gibril and Bochev, 2023, 129). In practice, they are advised to build broad coalitions that downplay other ideological or policy differences while stressing corruption, the threat to democracy, or engaging in what Somer et al. call "transformative polarization" (Somer, McCoy and Luke, 2021).

This menu of responses is entirely reasonable. But as advice to pro-democratic actors, it takes for granted the very things that a backsliding process has called into question, such as the reliability of accountability mechanisms, the ability to reinforce these or build broad electoral majorities given heightened polarization, or the capacity and courage of civil society. As a backsliding process unfolds, horizontal accountability becomes less reliable, and vertical and diagonal accountability might be all that remains. But strengthening

any of these mechanisms might not be feasible in an already polarized context or where backsliders are already in power.

To date, this literature has not seriously grappled with the possibility that pursuing any of these strategies in backsliding contexts will require aggressive, norm-breaking, actions that are in tension with democratic commitments and carry significant risks of making things worse. Instead, there is a broad consensus that pro-democratic actors should not break existing norms of democratic process and a intuitive worry that "hardball" tactics by pro-democracy actors will intensify polarization (Lührmann, 2021, 1025) and contribute to an "escalation [that] rarely ends well" (Levitsky and Ziblatt, 2018, 109, 217-18). "The opposition", writes Tomini, "should stick with the 'forceless force of the better argument"' (Tomini, Gibril and Bochev, 2023, 129).

In an already polarized context, it is unlikely that strengthening or insulating accountability institutions will be politically acceptable across the political spectrum. Horizontal and diagonal accountability institutions will not always enjoy popular legitimacy, and can be effectively portrayed as anti-democratic. Efforts to strengthen these, or secure their pro-democratic commitments, will often be seen as partisan manipulations intended to weaken or limit a rival. This might turn off potential allies who see these as limiting their own political and policy goals.[2] This is especially important where strengthening or otherwise altering these institutions would require constitutional-level change or circumventing minority veto points. In multiparty systems, acting in coordination to change these institutions will provide fodder for backsliders to claim that the system is rigged against them, giving them further rhetorical justification for their own norm violations (Esen, 2019, 16-17); in two-party systems, such changes will appear as nakedly partisan power grabs unless factions aligned with the backsliders offer their support, which is unlikely given the polarized context.

Building a broad electoral coalition faces the same problem. In anticipating a backslid-

[2]Strengthening these institutions' independence is also unhelpful when the institution has already been packed (Keck, 2021).

ing threat, pro-democratic actors should be more responsive to citizens' concerns (Lührmann, 2021; McCoy and Somer, 2021; Somer, McCoy and Luke, 2021). But the reason they have not been is often structural rather than willful, and political elites likely disagree on the sources of discontent in ways that will reproduce existing patterns of polarization. As a result, efforts to relieve discontent in order to pre-empt backsliding are perhaps just as likely to further polarization as diminish it. Emphasizing the threat to the democratic regime, in place of other policy differences, is an alternative. But backsliding-aligned party elites – along with the public the most important audiences for these appeals – are likely to be unpersuaded by opponents' claims that their allies are a threat to the democratic system, or unwilling to break with their allies, or unconvinced that the backsliders are the more serious threat. Even sincere democrats might find it hard to break with ideologically-aligned allies to support ideologically-distant rivals (Carey et al., 2022; Svolik, 2019*b*), especially when all sides are suggesting their opponents pose the larger threat to democracy. In any case, calling out partisan opponents as threats to democracy is an escalation of political rhetoric that could be portrayed as violating democratic norms of mutual toleration and forbearance; even when accurate, backsliders are likely to respond in kind.

Once backsliders have gained significant legislative representation or control of the executive, the options are further narrowed. Diagonal accountability, such as civil society organized mass protests, can weaken support for an authoritarian government (Laebens and Lührmann, 2021). But they risk a cycle of state-supported counter-mobilization, deepening polarization and the violence authoritarians have long relied on to amass power (Croissant and Diamond, 2020, 11). Building a broad coalition might be even more difficult while in the opposition. Backsliding parties aim at self-entrenchment, often through changes to electoral institutions or by expanding their control over state and civil society institutions, including the media. They then use these to harass the opposition and to focus public attention on cleavages or issues that divide it. They arrest leaders whose popularity or other attributes might make them more electorally effective or better able to hold together a fractious coalition. They take control over election agencies and force the

opposition to spend valuable resources challenging and observing the integrity of the election. Every distortion or harassment makes it harder to build and maintain a sufficiently large pro-democracy coalition.

The recommendations of the democracy-protection literature are worthwhile, and are important contributions to knowledge and to democrats' political options. But implementing or pursuing these in a backsliding context will often require aggressive, partisan actions that make polarization and subsequent norm violations more likely. The literature calls for reinforcing horizontal and diagonal accountability institutions as though these enjoyed consensual support, or the creation of a broad pro-democracy coalition as though polarization was not already leading voters and elites to weigh democratic commitments against their rivals' seeming extremism (Svolik, 2019*b*). But the literature also insists that pro-democratic actors avoid violating norms or bending rules that might make achieving these goals more likely, because to do so would worsen conditions that are already present.

What emerges most clearly from this literature is that there is a profound dilemma between the need to act and the dangers of doing so. The question is whether there is a way out of it.

3 Hardball and Democracy

With a few exceptions (Helmke, Kroeger and Paine, 2022), the literature on democratic backsliding has not analyzed hardball on its own terms. It has instead been invoked to mark out the boundaries of acceptable democratic behavior, or has been subsumed under related but distinct concepts such as the "moderateness" or "radicalism " of an opposition response or its institutional or extra-institutional character or as a form of "militant democracy" (Cleary and Öztürk 2022; Gamboa 2017, 2022; Capoccia 2013; Müller 2012, Ellinas, this volume). This section maps out the concept of hardball and categorizes its occurrence in the literature along three distinct axes: its pervasiveness, its substantive effects on democratic institutions, and its broader systemic effects on democratic interactions. I identify a new scenario in which hardball might be democracy reinforcing, and describe how this relates

to other forms as well as other related concepts in the literature.

The basic idea of "hardball" is not new (Galston, 1989, 1991). The term's recent development comes out of US legal scholarship, where it referred to "political claims and practices – legislative and executive initiatives – that are without much question within the bounds of existing constitutional doctrine and practice but that are nonetheless in some tension with pre-constitutional understandings" (Tushnet, 2004). Both its earlier formulations and subsequent work (Fishkin and Pozen, 2018) expanded the concept beyond constitutional claims-making to include any political action or maneuver that is plausibly allowable given existing political and legal rules and understandings, but which is in tension with or even violates the norms or expectations that shape their practical application. Hardball occurs when a political actor does something which they might be constitutionally or legally entitled to do, whether explicitly, by omission of any prohibition, or by a plausible legal construction, but which a country's political traditions as well as broader democratic norms say that they ought not do. Its basic goal is political advantage, including short-term gains as well as partisan self-entrenchment. This goal is often what moves an otherwise unproblematic action into the realm of normatively suspect hardball: Reforming the constitution to give greater power to the executive is not inherently undemocratic, but doing so to enable a specific party leader to entrench themselves chafes against or outright violates democratic principles and norms. In the literature on democratic backsliding, the concept has largely been equated with an aggressive exercise of institutional prerogatives that are plausibly legal but in tension with explicit constitutional or legal constraints or which violates democratic norms, such as forbearance and mutual toleration (Levitsky and Ziblatt, 2018). This definition provides a first set of boundaries on the concept: Hardball has to be plausibly legal or constitutional within a country's specific traditions; it has to be in some tension with these, and might even outright violate some democratic or political norms that generally ought to be respected; and it has to be used to gain some political advantage.

It is easy to see why scholars reject it as a pro-democratic strategy: for a literature con-

cerned with defending and "activat[ing]" norms (Cleary and Öztürk, 2022, 209), hardball involves stretching or breaking them for political gain. In backsliding contexts, however, these norms are already being broken, and it is not obvious that the best way to secure them in the future is by modeling good behavior. This is a situation, as Galston described it, in which "the political rules are fluid rather than static" and the boundary of acceptable behavior is being shifted: "you may now have a responsibility to consider the use of previously forbidden tactics, either to give your adversary an incentive to return to the status quo ante or to maintain competitive effectiveness in the circumstances your adversary has unilaterally altered to his advantage" (Galston, 1991, 192). Ruling out hardball as a pro-democracy tactic is also hard to reconcile with the historical literature on democratic expansions, in which institutional manipulations for partisan advantage regularly appear as a driving factor in democratization. In these cases, political hardball seems to have expanded and strengthened democratic institutions rather than undermined them.

It is accordingly worth dis-aggregating the broader concept of political hardball, with the goal of understanding its possible range of consequences and the conditions under which these might vary. Table 1 outlines subcategories of political hardball defined by its occurrence within a specific domain, in this case its relevance for democracy.[3]

Democracy is a political regime in which leadership is determined by free and fair competition for the votes of an enfranchised public.[4] Approximately a majority within this public must have a reasonable possibility of removing an incumbent government and selecting its replacement (Przeworski, 2019, 5). To realize this over the long-term, there ought to be broad respect for political rights and civil liberties essential to preference formation and

[3]This distinguishes it from other domains where hardball might be relevant, such as in business ethics or constitutional claims-making, which may or may not be relevant for democracy.

[4]As Jee et al argue (2022), analyses of democratic backsliding should provide a definition of democracy in order to understand the baseline from which backsliding is a deviation.

Table 1: Categorizing Hardball

1. How is its use distributed across political spectrum?	
Asymmetric	*Symmetric*
• Use is concentrated among one cluster of political actors (Fishkin & Pozen, 2018) • Use can be reciprocal, but magnitude is greater on one side	• Use is diffused across political system • Danger of escalating responses and reactive sequences (Valelly 2016) • Symmetry might also restrain further escalations (Helmke et al 2022)
2. What is its effect on scope of democratic rights and practices?	
Democracy-Expanding	*Democracy-Constricting*
• Expands scope of democratic rights, equalizes political voice, makes institutions more responsive to public opinion • Historically significant driver of democratization (eg. Teele 2018)	• Restricts scope of democratic rights, moves away from equality of voice, makes institutions less responsive to public opinion • Historically significant driver of de-democratization (Bateman 2018)
3. What is the effect on political order and interactions between political actors?	
Democracy-Reinforcing	*Democracy-Undermining*
• Might empower pro-democratic actors over short-term • Over medium-/long-term restores a symmetrical expectation of sanctioning and behavioral restraint • Potentially de-polarizes politics • Makes parties more responsive to pro-democratic voters	• Empowers backsliders over short-term • Corrodes public faith in institutions and/or actors expectation of sanction • Intensifies polarization over multiple time-horizons • Potentially invites escalating responses and reactive sequences (see symmetric)

political organizing (Dahl, 1971); but also either institutional arrangements or adhered-to norms and practices that limit the capacity of incumbents to entrench themselves (eg., Haggard and Kaufman, 2021, 3-4). A sense of mutual security among the politically relevant classes across multiple elections is essential to democratic turnover, and this rests less on specified rights or institutions than on the expectations of political actors. This might not properly be part of democracy's definition, but nonetheless constitute a vitally important condition under which it is more likely to endure across multiple elections.

Each of these are matters of degree. Democracy can be achieved through a diverse family of institutional arrangements, and restrictive, de-democratizing changes to a particular dimension might move a regime from one part of the democratic space to another without

leaving it altogether.[5] Because the space is multi-dimensional, minor constrictions along some dimensions might even be balanced by resulting improvements along others. At some point, however, de-democratizing changes along any or multiple of these dimensions might become so severe that the regime can no longer be coded as a democracy.

Within this domain, the literature has suggested three axes along which the use of hardball and its consequences can be categorized: its pervasiveness and distribution, its consequences for democratic institutions, and its broader systemic effects on political interactions and expectations. For each of these, however, the literature has focused more on one pole than the other, obscuring the full range of hardball's possible consequences.

A first axis refers to how widespread hardball actions are in the political system and how their use is distributed. "Asymmetric hardball" describes political maneuvering that "violates or strains constitutional conventions for partisan ends" which is concentrated on among one cluster of political actors (Fishkin and Pozen, 2018; Helmke, Kroeger and Paine, 2022). While developed separately from comparative politics debates on democratic backsliding, asymmetric hardball captures many of its defining characteristics: the threat to democratic institutions is concentrated in a particular party, it operates within and through the established institutions and processes rather than flagrantly breaking with law and constitutional rules, and it is incremental, as a backsliding party engages in successive, often small acts of norm violation or institutional revision whose effects accumulate gradually into a substantial biasing of the playing field. Asymmetric hardball has attracted more sustained attention, largely because it raises the question of how the "other side" should respond as well as the puzzle of how it can persist given the obvious incentive to respond in kind. Helmke et al (2022) provide a theoretical explanation rooted in the limit that hardball be

[5]An example is the ending of non-resident voting rights: A constriction of democratic rights, but one about which there have always been legitimate democratic critiques and which has never been a universally recognized feature of democratic regimes (Pogonyi, 2014).

plausibly constitutional and in the varying ambiguity of constitutional provisions. For our purposes, two critical insights emerge from their account: the anticipation of symmetrical responses might deter hardball in the first place; but that responding in-kind might require even more aggressive pushing of the boundaries.[6] The possibility of symmetric responses – the other pole on this axis – has received less theoretical attention. But it might characterize either the situation worried about in the democratic-response literature, where adherence to democratic norms has broken down across the board, or the Galston and Helmke et al suggestion that symmetry might limit hardball by re-establishing deterrence. It remains unclear the conditions under which one outcome is more likely than the other.

A second axis concerns the consequences of hardball on the scope of democratic rights and practices. While the concept is not usually named as such, the literature on democratic expansions has emphasized as one recurring pathway the deliberate manipulation of electoral rules – eg., expanding the right to vote or making unelected institutions elective – to achieve partisan advantage (Teele, 2018; Valelly, 2016). This has also been a theme in the literature on the constriction of democratic rights (Valelly, 2004; **?**). While such constrictions are properly recognized as de-democratizing, conditional on their scope they often do not transition a regime from democratic to undemocratic. A neutral category might fall between these poles, covering actions that impact the substance of democratic rights and practices but which leave these neither more nor less democratic (eg., moving from one biased electoral system to an equally biased system advantaging a different set of similarly sized groups). Expansive and constrictive reforms often become hardball because the motivation of their architects and the process through which they are pursued. Moving to a more representative electoral system might be a democratic-expansion, but if pushed

[6]In the Helmke et al model, one party might be able to gain advantage through democratically dubious but constitutionally permissible actions – eg,. gerrymandering – while the other could only gain a symmetrical advantage through a more aggressive reinterpretation of what the constitution allows.

without broad support as part of a partisan scheme of self-entrenchment it would rightly violate democratic norms against manipulating fundamental institutions for partisan gain.

The principal concern with hardball is not its effects on the scope of democratic rights, but with it potential effects on the interactions between significant political actors. Democracy is constituted by institutions and norms that regulate contests for power, in part by sustaining an expectation that opponents will not use state power to entrench themselves (eg. Przeworski, 2019, 1991). A democratic equilibrium is one in which this expectation is sufficiently pervasive that actors choose to act with restraint because they anticipate the same from others making the same calculation or because they anticipate that they would be punished electorally for failing to do so (Graham and Svolik 2020, 394, Svolik 2019*a*). One hypothesized effect of hardball, and the primary basis for the injunction against it, is that it will undermine the expectations governing these interactions. Asymmetric hardball might gradually tilt the playing field toward a single party; symmetrical responses might re-balance the playing field while justifying further norm violations and making every election a prelude to new efforts at entrenchment. Hardball reforms might broaden the scope of democratic rights, but corrode the expectations of mutual restraint and forbearance that encourage short-term losers to continue to play the democratic game.

The possibility that hardball will be democracy-undermining in this sense has a compelling logic and some empirical support (Gamboa, 2017; Ziblatt, 2017). Pozen, however, has suggested that its effects along this dimension might vary given choices over institutional design (2019). For example, if a backsliding process is driven by a party's expectation that it will not be sanctioned by its voters for self-entrenchment, then reforms that compel it to win broader majorities might short-circuit this logic. In this case, hardball might be democracy-reinforcing, by re-establishing a political incentive to mutually adhere to democratic norms, processes or institutions. That is, some instances of hardball might have the effect over the medium- to long-term of reinforcing adherence to norms that had been violated, regardless of what happens over the short-term. This has not been widely considered in the literature.

To be accurately categorized as democracy-reinforcing, a hardball action needs to be described with additional criteria to those listed above. It is hardball insofar as it includes actions that are plausibly authorized by a given constitutional or legal order, but which are in considerable tension with these or violate democratic or political norms against their use; and it is intended to gain political advantage, including some measure of self-entrenchment. But to be democracy-reinforcing requires an evaluation of its systemic effects on a democratic political system. For one, it needs to be either democracy-expanding, neutral, or, if democracy-constricting, narrow in scope and within the bounds of legitimately defensible democratic arrangements. More fundamentally, to be democracy-reinforcing hardball's effects should not just be short-term political advantage for pro-democratic actors, but a broader change to the political system that reinforces pro-democratic behavior over the medium- to long-term. The standard is whether it re-establishes a system-wide incentive to abide by democratic rules and norms over the medium- to long-term. Hardball might, over the short term, keep would-be backsliders out of power. But if it simply replaced backsliders' self-entrenchment with "democrats" self-entrenchment, creating a new "winner's dilemma" (Roberts, Pepinsky and Bunce, 2022), it would just be a reversal of the backsliding asymmetry. To be democracy-reinforcing, hardball must instead have the eventual effect of inducing significant political actors adhere to democratic norms.

With these concept boundaries, hardball and its possibly democracy-reinforcing consequences can be distinguished from related concepts in the literature, such as the distinction between radical and moderate goals, or institutional and extra-institutional tactics (Gamboa, 2017, 2022; Cleary and Öztürk, 2022), or from "militant democracy" (Müller, 2012; Capoccia, 2013). First, hardball is defined by different coordinates. As defined by Cleary and Öztürk (2022), the distinction between radical and moderate goals concerns the desire to remove or constrain the executive. This usage makes it an option for oppositions rather than incumbents, and exclusively focused on the executive.

For hardball, the "radicalism" or "moderation" of a political action is defined instead by its plausibility and tension relative to existing constitutional and legal understandings.

Removing an executive might be a radical action, but in some countries might be a broadly supported choice operating within perfectly normal constitutional channels. Hardball also covers a potentially much wider range of actions by both incumbents and oppositions.

Whether an action is extra-institutional or not concerns the forum through which politics is played. The theoretical concern with extra-institutional actions is that they are likely to be seen as less legitimate and thus more polarizing. As I discuss below, this is also a critical concern for hardball. But the degree to which this is true will be less a function of whether an action is occurs through institutions than by whether it is understood as acceptable – even if aggressive or undesirable – behavior within a particular political context. Hardball played through institutional channels can be extremely provocative.

To be clear, these are extremely useful ways of distinguishing goals and tactics and have been used to great effect by Gamboa and Cleary and Öztürk (Gamboa, 2017, 2022; Cleary and Öztürk, 2022). For many purposes they will be preferable, and no doubt easier to code. But while they overlap with hardball, they tap into different concepts.

The same can be said of militant democracy: "legal instruments that curtail rights of expression and participation based on political viewpoint," or more broadly "legal measures that restrict political rights to protect liberal democratic institutions"(Capoccia 2013, 209, Bourne and Rijpkema 2022, 375, Müller 2012, Ellinas, this volume). These are institutional by definition, and are clearly in violation of critical democratic rules. Like using hardball to reinforce democracy, their justification is that a democratic regime should have the tools to defend itself, and that narrow violations of democratic or liberal rights might be appropriate in some situations. The use of militant democracy provisions, or other legally authorized actions, such as prosecuting a former president, may or may not be hardball depending on the context. If narrow use of militant democracy provisions are part of the expected politics of a particular country, used by major parties against fringe anti-system actors, they might not meet the criteria for hardball provided above (even if they are normatively suspect on liberal or other grounds). It is when their use is exceptional and in tension with the norms governing their deployment that they potentially become cases of hardball.

Second, unlike these concepts, and unlike the general concept of hardball, the scenarios outlined in Table 1 are ways to code the outcome of a case. They are more analytical categories than categories of practice, outcomes that political actors might aim at but whose occurrence can only be evaluated retrospectively. Motivation matters for identifying whether an action is hardball or not; but less so for evaluating its consequences. Hardball might reinforce democracy through no credit of its architects, who might have stumbled into a more durably democratic regime while striving for short-term advantage. Political actors can unilaterally decide to play hardball, but not whether this will become asymmetrical. They can choose tactics intended to expand or constrict democratic rights, but they cannot be sure this will be the effect. They can design hardball with an eye towards reinforcing democracy, but whether they succeed can only be evaluated retrospectively. This makes the category of democracy-reinforcing hardball analytically different than the menu of choices over goals and tactics, even those these might very usefully inform political actors' choices about whether to engage in hardball and what form it might take.

It is clear that identifying any particular instance of democracy-reinforcing hardball will be highly context dependent, and there are not likely to be generalizable empirical indicators of its occurrence. We cannot know what is plausibly constitutional within a given country, nor what is within the bounds of expected political maneuvering, without knowing its specific rules and traditions. As I discuss in the next section, certain institutional changes might be more likely to suggest the presence of hardball than others. But expert evaluations are the most plausible basis for assessing whether these met the criteria in any given case and whether the political interactions within a country became more supportive or corrosive of democracy. Since the concept is relatively new, it has not been a focus of cross-national data collection.[7] The potential universe of political hardball actions is enormous, but it might nonetheless be feasible to build cross-national datasets compiling expert evaluations of whether any of the scenarios described in Table 1 are occurring, and for cod-

[7]Recent empirical innovations (Maerz et al., 2021) might provide a foundation for how to this could be done.

ing cases according to their contribution to backsliding and potential use in preventing it. While labor intensive, the coding questions to be asked of any particular case are relatively straightforward: Was there a backsliding or other threat to democratic politics? Were hardball actions – given the criteria above – an important part of this dynamic, whether from backsliders or their opponents? Were hardball responses to backsliding democracy-expanding or not-so-constricting as to make the regime undemocratic? And on balance does the evidence suggest these responses had positive, negative, or neutral consequences on democratic interactions and behaviors over the medium- to long-term, relative to the appropriate counterfactual.

Defining the appropriate counterfactual is essential: for some purposes the comparison might be whether democracy-reinforcing hardball resulted in less stable democratic institutions than might have existed before backsliding began, the likely more important comparison will be to a counterfactual endpoint of the ongoing backsliding process. Hardball might successfully reinforce democracy by averting breakdown or further backsliding, but leave democratic institutions and practices more vulnerable than had been the case before backsliding began.

3.1 Strategic Considerations

Strategic Considerations

Hardball actions, like the remedies and responses analyzed in the disrupting backsliding literature (Lührmann, 2021), is an expansive category that could cover institutional reforms as well procedural changes and even different rhetorical or organizational tactics. For these to be democracy-reinforcing, however, the effect of a hardball action will need to have a substantial effect on political incentives or on the distribution of political power. This makes it more likely that democracy reinforcing hardball will be associated with certain types of institutional reforms that alter the "rules of the game." Two of the most prominent in the literature, used by democratizers and backsliders alike, are the inclusion or exclusion of new political actors (Valelly, 2016; Pogonyi, 2014), and reforms that alter how political support

is translated into institutional outcomes. Changes to the composition of the electorate, while often motivated by partisan advantage (Teele, 2018; **?**), can "force, trick, lure, or cajole nondemocrats into democratic behavior" over the long-term (Rustow, 1970, 344-45). Norms and constitutional commitments to adult suffrage might limit the scope for manipulation but do not preclude it: enfranchising or disenfranchising national populations living abroad, or persons under 18 years of age, or changed registration and identification procedures have all been used to strategic partisan advantage. Political actors, instead of changing who is able to participate and their likelihood of doing so, can also manipulate how their preferences are translated into political power. All election systems produce some level of bias (eg Çarkoğlu and Aksen, 2019), distorting the distribution of preferences within a legislature from those in the voting public. Legislative and constitutional procedures similarly limit or enhance the ability of electoral or legislative majorities to act. When any of these biases become sufficiently severe, or when they durably encode a political inequality, the regime might be considered undemocratic. A "reasonably level playing field" (Capoccia this volume, Levitsky and Way 2010) is for that reason an important feature of democratic regimes. But some level of bias is inevitable, and can be manipulated to compel political actors to alter their behavior by changing the calculations for how to win political power.

Other plausible reforms might be less institutional than organizational or tactical. These are intended to change the types of appeals able to gain political traction, not through institutional changes to the electorate or in how preferences are translated into power but by changing the ability of civil society actors to organize and to sanction certain types of political behavior. Truman (1959) highlighted the importance of mezzo-level party or civil society actors in enforcing democratic norms. If the capacity of such actors to coordinate against anti-democratic or illiberal tactics were enhanced, including through state action, it might serve both the short-term interests of securing pro-democratic actors in power and a long-term interest in establishing a constraint against backsliding tactics. Whether this constitutes hardball will depend on the degree to which such coordination violates or stretches constitutional or democratic rules and norms, which might, for example, restrict viewpoint

discrimination in allocating state support to civil society. Actions of this type have been given considerable emphasis in the literature on averting backsliding, such as engaging in transformative polarization (McCoy and Somer, 2021) or persuading backsliding-aligned elites to reconsider their positions (Ginsburg and Huq, 2018; Levitsky and Ziblatt, 2018). Depending on the context these might not always constitute hardball but, as discussed in Section 2, they very often will: coordinating civil society actors to frame a political party or movement as an existential threat to a democratic regime, however accurate, is at the very least in serious tension with norms of mutual toleration and forbearance.

These three types of actions provide a preliminary list of what democracy-reinforcing hardball might look like in practice. They all involve political manipulations that could advantage specific actors in the short-term while altering incentives to encourage a different politics over the long-term. For practical reasons, and in contrast to much of the focus in the literature, where the danger is executive aggrandizement and so begins once a backslider is in power, this makes democracy-reinforcing hardball more likely to be a tool of government than of oppositions (Capoccia, this volume). But this is not required by definition, and hardball actions might plausibly be democracy-reinforcing when used by oppositions against incumbents, as when oppositions continue to have substantial powers of initiative or veto, or when a more pro-democracy civil society has substantial influence and independence.

In evaluating whether or not hardball should be part of the strategic response to backsliding, pro-democratic actors need to weigh the hoped for effects against the dangers. The dangers of political hardball, and the reason why scholars advise against its use in defense of democracy, are a normative concern that aggressive responses might subvert democratic institutions, for example by repressing illiberal but popular movements (Lührmann, 2021, 1025), and empirical hypotheses that doing so will intensify polarization, invite an escalating cycle of retaliatory responses, and might weaken democrats' standing with the public.

The most compelling empirical evidence comes from Gamboa (2017; 2022) and Cleary and ´Ozt´urk (2022), who find that more aggressive opposition tactics spurred greater executive aggrandizement while more restrained ones bought time until the next election or

allowed the opposition to defeat autocratic reforms. Too aggressive responses to backsliding threats no doubt can "creat[e] severe institutional damage and can deepen political cleavages" (Cleary and Öztürk, 2022, 210). It is difficult to envision a scenario in which political hardball, over the short term, does not worsen polarization and generate threats to retaliate in kind. Since polarization and at least some level of norm erosion has already begun, and backsliders have at least some public support, these worries do not justify a categorical injunction against hardball. They do, however, impose constraints on when and how pro-democratic actors should consider turning hardball, and point to possible tradeoffs across different time-horizons.

A first strategic consideration is simply how aggressively pro-democracy actors should act, ie., how much they bend or break existing rules or norms. This needs to be weighed against their actions' likely impact on achieving short- or longer-term goals and the backlash they are likely to provoke among their opponents and possibly a wider public. Actions that significantly stretch norms for marginal gains, or do so for policy goals unrelated to a more fundamental defense of democratic institutions, will likely not be worth the polarizing reaction likely to follow. Hardball directed at achieving policy goals whose connection to the defense of democratic institutions is distant and likely operating only over a long-time horizon (eg., redressing inequality) might not promise sufficient short-term benefits or protection to be worth the risks. Democracy-reinforcing hardball should instead be directed at keeping backsliders out of power over the short-and medium-term and making backsliding less likely over the long-term. The less a reform has to do with these goals, the less plausible it is that it will help pro-democracy actors whether any short-term backlash, the less likely it is that it will be worth the risk.

The aggressiveness needed to achieve these goals will usually be determined by circumstances outside of pro-democrats' control. If backsliding is driven by a constitutionally embedded asymmetry in parties' ability to entrench themselves (Helmke, Kroeger and Paine, 2022), then democracy-reinforcing hardball might require a much more substantial norm-breaking than its democracy-undermining counterpart. This will surely raise suspi-

cions within the pro-democracy ranks, inducing a polarized reaction from their opponents and possibly cost them public support. The degree to which an action is seen as breaking with constitutional, political, or legal conventions or norms will also vary according to a country's specific historical experiences and laws. In general, however, we should expect the broad pattern sketched by Capoccia (this volume) to hold: hardball will be less appropriate but perhaps more effective the further out a backsliding threat, when democrats are in a 'prevention' rather than 'containment' scenario, but less effective once backsliders are in power.

Additional strategic considerations concern how to sustain or produce majority support. To be democracy reinforcing, there needs to be some feasible hardball strategy that could achieve pro-democratic actors' short-term goals while being either democracy-expanding or not so constricting that it cannot be reasonably defended. There are many contexts where this is unlikely. If a backsliding party is broadly popular and likely to win despite a well-functioning and relatively unbiased electoral system, a pro-democratic government will be hard pressed to find democratically defensible reforms that will keep them out. In this case, which describes many of the cases studied by Gamboa and Cleary and Öztürk (Gamboa, 2022; Cleary and Öztürk, 2022), pro-democratic actors should calibrate their actions to stall for time and hope for issues that will split their opponents or substantially hurt their public standing. Hardball might be least appropriate in these circumstances, which often occur relatively late in the backsliding process.

A more advantageous condition is when backsliders' strength rests more on institutional factors than on broad public support, and where pro-democratic actors are currently in or returning to power; or when the backsliding coalition is fractious, with contingent democrats in its ranks. If a backsliding party represents a minority of public opinion, but is advantaged by the electoral system or the distribution of its supporters, it will be much easier to design institutional reforms that could advantage a pro-democratic coalition and keep backsliders out of power. Changes to the election or nomination system could empower contingent democrats currently allied with backsliders, taking advantage of factional disputes within

the backsliding coalition to box out the most extreme forces. Shoring up accountability institutions is similarly easier if backsliders' influence over a legislative or constitutional process rests on minoritarian veto points rather than majority control.

Over the medium- to long-term, whatever reforms are produced by democracy-reinforcing hardball need to be treated as legitimate by most political actors (Linz and Stepan, 1996). In practice, this means they need to abide by and validate the new rules, regardless of whether they like them. Reforms should be designed with an eye towards generating this. They might intentionally advantage political actors beyond the immediate ranks of a pro-democratic coalition, including contingent backsliders whose support might be bought off by the promise of gain in a changed landscape. If hardball reforms marginalize extremist actors, making it harder for them to win executive offices or exercise legislative influence, they might also compel them to change their behavior. Ideally, a pro-democratic coalition would be able to select reforms that are already popular with the public, making support for them more intuitive and muting a partisan-drive backlash. But they should also coordinate approval of reforms among civil society and the media, fostering a commitment to the new system in the electorate and mezzo-level institutions. Pro-democracy actors should expect a backlash, but design their interventions and coordinate their implementation to limit this to a backsliders' base rather than allowing it to diffuse through public opinion more broadly (eg., Rekker & van Spanje, 2021). The goal is not consensus or conversion, but to generate sustained behavioral support for the new rules. This might be easier when a backsliders' coalition is fractious, but also when a pro-democratic coalition has a robust relationship with civil society, or when its hardball tactics align with case-specific political traditions or histories.

Generating broad buy-in might be easier when it is clear that over the long-term hardball reforms would not simply reverse the situation and give erstwhile democrats an undeterred capacity to entrench themselves in power. If, as Helmke et al. argue (2022), asymmetric hardball occurs when constitutional rules unevenly distribute the scope for legally permissible electoral distortions across parties and groups, then democracy-reinforcing hardball

might aim to (re)establish a symmetry that would allow "democracy by deterrence." Pro-democratic strategists should design institutional reforms so that any short-term advantages gained by a pro-democracy party will erode as backsliders moderate, become more democracy-respecting in their behavior, or are marginalized and replaced by other political forces. Strategies should make as credible as possible democrats' commitments to not self-entrench. This might include selecting a leadership figure of advanced age; explicitly laying out a finite menu of reforms that a pro-democracy coalition would pursue, signaling in advance a limited duration; or engaging with international organizations that might provide external monitoring and send a costly signal to domestic observers (Pevehouse, 2003).

These considerations are sufficiently abstract that they can be listed in general terms, but also tractable enough that they can be mapped to case-specific circumstances and to the underlying backsliding process. Analysts and strategists should look to the sources and distribution of backsliders' public support, be mindful of rivalries and factions within the backsliding coalition, and evaluate the resources and capabilities that pro-democracy actors have in their relationship to civil society. In designing reforms, they should consider how these might work in the interests of contingent democrats and the prospects for the reforms being popular with voters. For example, expansions of democratic rights are often popular, at least when they target the already-enfranchised, and so I suspect democracy-expanding hardball might generally be more effective at democracy-reinforcement. Prosecutions of backsliding leaders, so long as these do not seriously impair legal rights or democratic norms, have similar advantages. Corruption and criminality are usually unpopular, and all leaders have internal rivals who might use a prosecution to sideline them.

Success will ultimately depend on the responses of the electorate, of political actors outside a pro-democratic coalition, and on actors in the media and civil society. The short-term consequence is likely to be increased polarization and a heightened danger of democracy-undermining responses. At the worse, a pro-democracy coalition would find that its actions cost it significant public support and that it cannot weather any backlash over the short-term. These dangers caution against its use. But these considerations also

help to evaluate where the context might be more favorable, and inform how hardball might be calibrated. If reforms can be designed that will likely produce a significantly changed political environment, one that is able to sustain public support over the short-term and elite buy-in over the medium- to long term, and which leads to backsliders being increasingly marginalized or willing to again participate in democratic politics on a symmetrical and restrained basis, then it might well be worth the risks.

4 Democracy-Reinforcing Hardball in Practice

The discussion so far has focused on developing the concept of democracy-reinforcing hardball as it relates to the existing literature. The remainder of the paper provides descriptive case studies of how particular instances of democratic crisis might analyzed in terms of this concept. The purpose of the comparison is not to leverage cross-case variation to evaluate a theory about when hardball might be democracy-reinforcing, which would require a different selection of cases with greater variation in the outcome. Rather, I describe particular cases in terms of this concept (Mahoney, 2004, 93-95) to demonstrate its potential utility.

Historical cases were selected because of the importance of long-run dynamics to the concept of democracy-reinforcing hardball. I am interested in whether political interactions and behavior became more supportive of democracy over the span of multiple years and decades. This requires historical cases and perspective, so that long-term trends can be distinguished from short-term dynamics. Two of the cases, Edwardian UK and Reconstruction USA, have also been influentially used to inform contemporary analyses (Ziblatt, 2017; Levitsky and Ziblatt, 2018). Including them here allows for greater engagement with these accounts, while the third – Fourth Republic France – enables an extension of the terms of this engagement to what is generally a less-familiar case. Finally, for concept-building and hypothesis-generating case studies, it can be useful to leverage cases with which the researcher has greater familiarity (Collier, 1999). Background knowledge of these cases is in part what led me to believe the concept might be important and informed the concept development. This made them promising sites for evaluating its empirical possibility,

providing potential counter-examples to those usually cited to substantiate the claim that hardball-like actions are generally democracy-undermining.

The case studies follow a similar structure: The relevant context is first described, most important being the backsliding process or other threat to democratic institutions. I then describe the hardball actions, situating them relative to the categories described in Table 1 and the potential mechanisms for democracy-reinforcement described in Section 3. I then describe how political dynamics changed over the long-term. I conclude the section with a descriptive evaluation of how hardball might have contributed to democracy-reinforcement, comparing contextual factors across the cases, and discussing its tradeoffs and limits.

4.1 Post-Reconstruction USA

4.1.1 Democratic Crisis: Intensifying Polarization

After a bloody civil war (1860-64), democracy in the USA was threatened by Intense polarization (Kalmoe, 2020), diminishing trust in the integrity of elections, widespread violations of political norms, and substantial political violence (Mettler and Lieberman, 2020).[8] The rhetoric of the period pitched elections – whether at the state or federal level – as an existential contest over the future of the Republic. The Republican Party warned that a Democratic Party victory would restore traitors to power (Graber, 2023); the Democratic Party claimed Republicans were violating the spirit and substance of the constitution. Recent experiences with intimidation in elections during the war (Bensel, 2004) gave both sides reasons to anticipate that the other would look to entrench themselves in power.

The assassination of Republican President Abraham Lincoln, a symptom of the escalating political stakes, put his Democratic vice-president Andrew Johnson in office. Johnson quickly turned to hardball tactics in the hopes of consolidating his position, including offering amnesty to all white southerners who took a loyalty oath, an aggressive exercise

[8]For an account of current threats to US democracy, see (Lieberman and Schlozman, this volume).

of his veto authority to protect restrictive labor and civil codes against freed-persons, his recognition of new southern governments elected with only minimal post-war institutional reform (in place of provisional governors appointed by him), and his unilateral decision to begin re-admitting southern states to the Union. The latter two threatened to entrench the Democratic Party in power: white Democrats in southern states, most of them former Confederates, would have much greater weight in Congress and presidential elections, because formerly enslaved persons would now count fully towards apportionment but would continue to be disenfranchised.

4.1.2 The Substance of Hardball

Hardball at this juncture was reciprocal, probably even symmetrical and suggestive of the spiraling scenario warned against by the democracy-protection literature. But the existing constitutional framework meant that Johnson could more easily pursue partisan advantage with lesser norm violations. It was the existing constitution that allowed both Black disenfranchisement and white state governments to count no-longer enslaved Black persons towards their weight in legislative and presidential elections; existing legal and political norms left it to the white southern population to determine their own political institutions, slavery now excepted; between the constitution and previous uses, the president had clear authority to veto legislation he disliked; and while the constitution was silent on what should be done with the states formerly in insurrection, existing democratic norms and political expectations both suggested they should be readmitted into the federal structure rather than governed through provisional appointments made by the president and authorized effectively by his role as commander-in-chief.

Republicans in Congress responded with hardball tactics of their own, with the short-term goals of constraining an aggrandizing executive and keeping the Democratic Party out of power. The actions involved both democracy-expanding, democratically-neutral, and democracy-constricting hardball. The first included a constitutional amendment that changed the basis of apportionment, potentially limiting the disenfranchisement increment

southern states expected to receive upon readmission; and that established national rights to due process and equal protection, which along with the civil rights acts and the Freedmen's Bureau facilitated Black political participation and organizing. It also included legislation that enfranchised Black men in most southern states (and took over the process of registering and administering elections from local authorities who would not have accepted this expansion). The tenure in office act – in which Congress claimed greater authority over the composition of the president's cabinet and top officials – and the impeachment of President Johnson were more neutral in their substantive democratic implications, though the former was of questionable constitutionality and the latter unprecedented.

The democracy-constricting hardball was also substantial: The disenfranchisement of many former Confederates, and the imposition of military rule over much of the South. To be democracy-reinforcing, these actions would have to be narrow in scope and critical to achieving democratic values along other dimensions. The rationale for Confederate disenfranchisement was to punish treason (Graber 2023), but it was clearly expected to advantage Republicans and deprive regional backsliders of leadership. But it was also limited: Disenfranchisement could be ended by amnesty bills (a general amnesty bill passed in 1872), and most states disenfranchised only a narrow category of Confederates. All but one ceased to do so by 1871. Excluding the leadership of an insurrection from political rights plausibly falls within the boundaries of acceptable democratic practices, but even if it does not it was quickly abandoned. Military rule was not narrow in scope but was also temporary. Critically, the payoff for this constriction of democracy was a profound expansion of democratic rights and practices along other dimensions. Its end was explicitly conditioned on states' securing rights of equal protection and political voice in state and national constitutions (ratifying the national constitutional amendment was a precondition for the removal of military rule), and the new constitutions abolished racial proscriptions on voting and legal rights and fostered a competitive political system.

Republican hardball was plausibly within constitutional limits, but less clearly than Johnson's: it required an effective re-establishment of military rule in states with legally

organized civil governments, and would not allow states to be restored to civil government and the protections of the federal constitution unless they voted to amend that constitution to secure Republican political priorities. Even its substantial democracy-expanding consequences were clearly in tension with constitutional and democratic norms. Because the existing constitution favored the less democratic political party, expanding and preserving democracy required more substantial norm violations than were needed to re-entrench this party.

4.1.3 Short and Long-Term Consequences

Republican hardball achieved its immediate objectives: Johnson was marginalized; the southern states returned on a substantially more democratic basis; and the backsliding party was defeated. It also produced a dangerous backlash. This was most clearly evident in the South, where violence against Black and white Republicans was intense (Logan, 2019). But the backlash occurred throughout the country, and the election of 1868 took place in a highly polarized environment amid questions about the basic integrity of elections and the existential future of the country. The immediate fruit of democracy-expanding hardball was to secure Republicans in power.

Over the medium- to long-term, however it had had the effect of substantially altering political incentives and of reinforcing democratic politics for a generation. In 1872, the backsliding party did not even field a candidate, instead endorsing the Liberal Republican nominee. This was followed by a faction of the Democratic Party's embrace of the "new departure," a which sought renewed electoral viability by explicitly recognizing the legitimacy of Republican hardball. Southern Democrats between 1870 and 1890 remained at-best contingent democrats. But increasing numbers of Black men were elected to public office, the region's politics were competitive, and political movements began organizing along biracial lines. In the North, Democrats by the 1880s were supporting state-level civil rights acts and explicitly appealing to Black voters (Grossman, 1976; **?**).

Democratic moderation was begrudging, driven by intra-party factions looking for ad-

vantage within the changed political landscape. But the result was that Republican hardball gained some post hoc legitimacy through reinforcement across the political spectrum. Polarization in legislative voting and rhetoric remained high, but its actual substance declined considerably (Lee, 2016). The new equilibrium – well before Black disenfranchisement – was one where both parties acted with greater restraint.

In the 1890s, however, the South's nascent democracy was eradicated. This was not a continuation of a hardball cycle begun under Reconstruction. The southern states were never consolidated democracies, but they were more democratic between 1870 and 1890 than they ever had been or would be again for eighty years. Democracy-reinforcement had established a (unstable) democratic equilibrium in the South, one that lasted a generation but which was overturned by new political actors confronting new political dynamics.

Ironically, greater democratic restraint in the North made it harder to reinforce southern democracy. In 1890, as new disenfranchisement efforts were beginning, Republicans attempted to pass another voting rights measure. The bill itself was much more restrained than earlier efforts to protect voting rights, which the Supreme Court had subsequently ruled unconstitutional; it is not clear whether its substance was a sufficient break with existing norms or expectations to even constitute hardball. To pass it, however, would have required congressional Republicans to change legislative rules to achieve a partisan priority: they did this in the House of Representatives but failed to do in the Senate. Public opposition had grown as civil society and the media presented Republican actions as an electorally motivated act of hardball rather than a warranted response to an emerging threat to national democracy. A willingness to again engage in hardball might have helped the US avoid the worst of the subnational authoritarian regimes.

4.2 Turn of the Century United Kingdom

4.2.1 Democratic Crisis: Right-Wing Radicalization

The most significant backsliding threat in UK history occurred in the early 20th century, when a radicalizing Unionist (Conservative) Party joined with protestant activists in Ulster

in an assault on the constitutional order. This was just the most spectacular manifestation of a longer period of polarization, driven by right-wing radicalization, and corrosion in the norms and expectations that had governed UK politics. Radicalization was driven by two substantive issues and one institutional feature. The first was the suspicion of the aristocracy that gradual democratization would lead to wealth redistribution and abolition of their prerogatives (Ziblatt, 2017). The second was the place of Ireland in the Union, an example of what Linz called an "unsolvable problem" conducive to democratic breakdown (Linz, 1978; Lustick, 1993, 50). The act of union that created the UK had been intended to reconfigure Ireland's colonial relationship with Great Britain, securing protestant dominance by enhancing the power of the British parliament over what had been and would remain a British colony. Nonetheless, there were few periods in the subsequent century that were not marked by violence and disorder rooted in its colonial status and the unequal relationship between the Catholic majority and the protestant, primarily settler, "ascendancy." Since the mid-century famine, Ireland had been over-represented in the Union; the expansion of voting rights and protections had also resulted in the election of more Irish nationalists to parliament. When the Liberal Party under Gladstone proposed Home Rule (government over most local affairs by the partially expanded Irish electorate), the party split and a coalition of Conservatives and Liberal Unionists gained political ascendancy (O'Leary, 2019, 345).

The unelected House of Lords was a third, institutional, factor driving conservative radicalization. The expansions of the suffrage in the 1860s and 1880s had produced an electorate that was more supportive of redistribution and, likely to a lesser extent, of a change in Ireland's constitutional status. Preferences on these issues were cross-cutting, and so conservatives could compete for the new electorate's lower middle-class, and even some working-class, voters by emphasizing Ireland and empire in their campaigns (Ziblatt, 2017). This was a viable strategy but hardly secure, and conservative and unionists could still lose legislative majorities in the Commons. The normal course might have been to moderate to prevent losing altogether on these issues. But aristocratic and unionist dominance of the

unelected chamber, combined with its authority to reject legislation, dampened elections' potential compulsion to moderation and provided a minoritarian check for the aristocracy and protestant unionists against public preferences.[9]

4.2.2 Hardball Dynamics

Fortifying the Lords' authority, however, required a rejection of emerging constraints against it. This was justified by increasingly radical rhetoric that effectively rejected not just democracy but the authority of elected governments – and of the Liberal party – to represent the nation. The constitutional authority of the second chamber was fluid in this period. Its approval was required for any bill to pass. But constitutional norms of self-restraint had emerged over the 19th century, with the chamber generally backing down when a government with a Commons majority was determined upon legislation (Sayle, 2021, 526).

In the 1880s, Unionists led by Lord Salisbury began claiming that it was the Lords who were the real representatives of the nation, justifying a much more aggressive use of its veto on issues of its choosing. The Lords, they claimed, should back down only after a general election run on that particular question, and only if the government won a sufficient but undefined majority to be a genuine national mandate. When unionists lost their Commons majority in 1892, and Commons-passed a new Liberal Home Rule bill, Salisbury now claimed that the government needed to have carried a majority of *English* seats – discounting those won in Ireland and Scotland – (Sayle, 2021, 527). The bill was rejected in the Lords 41 to 419. Salisbury's new interpretation of the role of the Lords was, as one Liberal described it, "a claim for annual Parliaments when we are in office and septennial Parliaments when they are" (Norton, 2012, 447).

The pushing of the Lords' constitutional prerogatives and rejection of the understandings and norms that constrained their use was a political hardball that tilted the playing field and helped entrench conservative and unionist priorities against their opponents. It

[9]In 1906, only 15% of the Lords were Liberals (Norton, 2012, 447).

ensured that the Unionist Party could not be compelled by elections alone to compromise on what it defined to be core issues.

When Liberals came to power in 1906, winning both a majority of seats and clearly outpolling the Unionists, the Lords broke further with constitutional restraints and vetoed or amended beyond recognition the bulk of the Liberals' agenda. This provoked Liberal responses: The Commons passed a resolution stating its long-term intent to restrict the Lords' veto and in 1909 included their legislative agenda in the budget (Norton, 2012, 449). The latter was constitutionally allowable, but violated parliamentary norms against including substantial changes to policy in money bills. The Lords, in a further violation of constitutional norms that limited their authority over money bills, then rejected this. The ensuing election saw the Liberals reduced in number and votes, but able to hold together a parliamentary majority on the budget with the emerging Labour Party and, pivotally, that of Irish Parliamentary Party.

The Unionist leadership at this point directed the Lords to back down. But Unionist radicalization had already made further restraint unlikely, and the "xenophobic, demagogic" radical right demanded the party "fight the Liberal enemy with . . . ruthlessness and determination" (Searle, 1979, 83-84). The incoming Unionist leader – Andrew Bonar Law – would soon placate them through further escalations and violent rhetoric.

As in post-Reconstruction USA, this was a scenario where reciprocal hardball actions were becoming common and de-stabilizing expectations about whether existing norms would be respected. It was likely asymmetrical in substance, with Unionist hardball in the use of the Lords' veto imposing a formidable barrier to Liberal priorities and making resolution of the situation in Ireland effectively impossible. As in the Helmke et al (Helmke, Kroeger and Paine, 2022) model, Unionist hardball benefited from the existing constitution, which unambiguously allowed the Lords to reject legislation, with fuzzier norms constraining when this should be done.

The Liberals' next move was a substantial escalation. The government introduced the Parliament Act, which would effectively replace the Lords' veto with the ability to delay

legislation for two years. The reform was intended to achieve short-term legislative outcomes, but was recognized as having the more transformative consequences of facilitating a revision of Ireland's constitutional status and forcing conservatives and the aristocracy to accommodate to public support for redistribution. As the conservative manifesto would put it, "behind the Single Chamber conspiracy lurk Socialism and Home Rule" (O'Leary, 2019, 299). The Lords rejected the bill, forcing a new election in which only Labour and the IPP gained seats and vote share. At this stage, the government was able to announce that the King had committed to creating sufficient peers to push the Parliament Act through should it be defeated or substantively amended by the upper chamber. Faced with certain defeat, the Unionist leadership agreed to have the Lords vote the bill through. The radical right, however, held out in opposition.

4.2.3 Short and Long Term Consequences

The Liberals' escalation of hardball directly and indirectly helped resolve the underlying issues driving conservative radicalization. The Parliament Act expanded the government's scope for legislative action and made clear that the continued constitutional status of Ireland would not last. This made it extremely destabilizing in the short-term: after a Home Rule bill was passed by the Commons in 1912, Unionists used the two-year delay in the Lords to foster an insurrection that challenged the authority of the elected government over the army. This was the culmination of conservative radicalization and a severe threat to representative government.

But over the long-term, hardball likely facilitated the marginalization of the radical right and strengthened the hand of moderates within the Conservative Party. It made all-but-inevitable a fundamental change in Ireland's 19th century constitutional status, which would have substantially removed the issue from the UK political agenda and, with it, the issue that most galvanized the radical right and won it broader English support. The first world war, the Easter Rising, and the war of independence make any definitive statement about what would have happened impossible. The details of Ireland's changed status would

emerge in the course of wars and revolution (O'Leary, 2019, 311-62).[10]

Still, the Parliament Act meant that even before WWI unionists could no longer count on the Lords as an institutional backstop, altering expectations about what was politically feasible. It drove a wedge between unionists in the north and south of Ireland, a separation present already with Commons passage of the Home Rule bill in 1912 and only deepening in subsequent years: the latter "realized that they would be under an Irish jurisdiction no matter what would happen" (O'Leary, 2019, 299-300, 332) while the former insisted on full exclusion from Irish authority. It also diminished the space between English Conservatives and Liberals, with the first gradually conceding that the unionist status quo was finished and the second much more quickly accepting to exclude from Home Rule some portion of Ulster for some period of time. The Parliament Act made it possible to legislate a change to Ireland's constitutional status, intensifying short-term polarization but altering the incentives over the long-term in a way more conducive to British (not necessarily Irish) stability.

More generally, the Act shifted the Conservative party's political calculus. Ziblatt highlights the importance of the party's deepening organizational capacity after 1910, which enabled the party leadership to "manufactur[e]" a constitutional crisis "for political gain within the existing political system" (Ziblatt, 2017, 161-63). This would be deepened again after the war (McCrillis, 1998). An important impetus for these reforms was the party's 1910 electoral defeats and the 1918 expansion of the suffrage (Loyton-Henry 1978, 662, Ziblatt 2017, 162). No longer able to rely on the Lords' veto, and by late-1910 having underperformed in three successive elections, the party redoubled their efforts to win voters through organizational outreach and appeals to new constituencies. Their success possibly eased their acceptance of additional suffrage reform in 1918, which the party leadership

[10]The experiences of WWI, including coalition government and the desire to reduce the "brutalization" (Lawrence, 2003) of politics that followed, likely facilitated a more moderate politics in the 1920s.

accepted despite a majority of the members being opposed (Close, 1977, 902). The challenge posed by the radical right and Unionists was lessened by a capable Conservative Party leadership that was interested more in winning elections than restoring the privileges of the aristocracy or protestant ascendancy in Ireland. But the abolition of the Lords' veto and the expansion of the electorate – and the successive investments in party organizing that resulted – reinforced this type of leadership against others. With Ireland largely removed as an issue, and a deepening mass political operation in place, the Conservatives could make redistribution the central issue of the 1920s (McCrillis, 1998). Ironically, this was probably safer terrain for democracy than the emphasis on Union and empire.

4.3 Fourth Republic France

4.3.1 Democratic Crisis: Anti-System Parties and Government Instability

The French Fourth Republic ended when factions of the army revolted in Algeria and threatened to take Paris. To re-establish order, parliament invested Charles De Gaulle – whom the army supported – as prime minister with extensive authority to resolve the immediate crisis and draft a new constitution. The crisis was the product of a decade of government instability due to the strength of antisystem parties, which complicated any resolution to the Algerian crisis; and more immediately, the radicalization of army officers, Algerian settlers, and their conservative allies, who feared both decolonization and that the French Communist Party (PCF) might take power.

The PCF won more votes than any other party in every national election of the 4th Republic, reliably carrying a quarter of the electorate. The party had been a member of a coalition government between 1944 and 1947, until a strike wave in 1947 led it to vote against the government of which they were part. Its ministers were expelled, and the socialists and other major parties committed themselves to a type of *cordon sanitaire*, refusing to invite the PCF into ministries or coordinate legislative positions. Throughout the 1950s, the country's largest party was rejected as a legitimate participant in government (Aron, 1959).

The arithmetic for building a governing coalition was even harder so long as other antisystem parties: on the right, the Gaullists until they split in 1953, and the fascist Poujadists after 1956, were similarly excluded. "On average . . . little more than two-thirds of the parliamentary seats could be considered as even potentially available to any designated premier" (Petry, 1992, 384). The resulting lack of a stable governing majority made the escalating crisis in Algeria nearly impossible to resolve (Grosser 1967, 398; see Smith 1974, 219). Any government that did not embrace severe repression in Algeria was accused by the right-wing of "surrenderism." Unwilling to work with the PCF, successive governments authorized an escalation of violence and repression that pushed Algeria further into resistance (Lustick, 1993, 251).

In 1958, the far-right "ultras" and the military seized power in Algiers and threatened an invasion of France were De Gaulle not invested as prime minister. The non-PCF left and centrist parties responded to the emergency by joining with the right to vote in de Gaulle as prime minister, with the authority to rule by ordinances and to draft a new constitution.

4.3.2 Hardball Dynamics

France has a long tradition of responding to regime-level threats by altering the electoral system, a form of hardball exercised by monarchical, imperial, and republican governments.[11] Political observers regularly blamed the electoral system for playing "into the hands of those who would destroy the Fourth Republic" (Steadman, 1956, 76), and successive French governments continued the earlier tradition. The electoral system had been revised in 1951 to limit the influence of the PCF and Gaullists (Steadman, 1956). In 1956, the assembly invalidated the elections of twenty percent of the Poujadists (Shields, 2004, 40). Alongside other changes intended to reduce Communist influence, including making it easier to prosecute PCF deputies, the second chamber, which lacked the authority to veto most legislation, was given new legislative powers to strengthen the hand of the

[11]For example, the Boulangerist threat in the late 19th century was defeated through election law reform (and fraud) (Ahmed 2013, 152, Fulton 1991, 327).

pro-system parties who had a reliable majority in the indirectly elected chamber (Pierce, 1955; Campbell, 1955, 222). Procedurally, the cabinet of René Mayer violated the constitutional "convention, although not a rule," against the government forcing constitutional or electoral reform if parliament had already taken the initiative (Campbell, 1955, 78-79).

These were all either clearly or plausibly constitutional, but in targeting specific parties and manipulating election law to produce pro-government outcomes they were clearly in tension with underlying constitutional and democratic principles. Hardball at this stage was, in its substantive effect on democratic rights and practices, largely neutral or mildly constricting; it was also largely asymmetric, so far as it was directed by the center against the extremes. But the effect of the reforms was limited: They did not seriously reduce the influence of the antisystem parties nor establish a foundation for cabinet stability. They likely strengthened the belief that the constitution required much more profound revision (Campbell, 1955, 97) and that doing so was an appropriate method for achieving partisan gain.

The army's actions, by contrast, were clearly outside the bounds of plausibly constitutional behavior. De Gaulle's allies, in coordinating with the army, similarly went beyond hardball to subversion of the constitutional order. Nonetheless, in the government's response "not only the law but the constitutional conventions were observed" (Williams, 1963, 1).

De Gaulle's constitutional reforms were much more aggressive hardball than had been pursued by earlier Fourth Republic governments. They had two main components: The substantial empowering of the executive and a much more thoroughgoing revision of the electoral system. Empowering the executive is not necessarily a constriction of democracy, but in this case it was. The president would be indirectly elected by other elected officials, for a seven-year period without term limits.[12]

The reform of the electoral system was at best neutral, but moved substantially away

[12]The office was made directly elected in 1962, when de Gaulle believed it would empower him further. Direct elections would have allowed French citizens in Algeria, including

from proportionally representing electoral support in legislative seats. Its architects believed the old electoral system had advantaged anti-system parties (Elgie, 2005), and broadly supported some form of quasi-majoritarian rather than proportional system. De Gaulle insisted that legislative elections should be in single-member constituency-based districts, likely forgoing gains for his party but further marginalizing the PCF and avoiding "the 'problem' of dealing with a very large right-wing majority in the National Assembly" (Elgie, 2005). Presidential elections would require an absolute majority, with a second-round runoff. The electoral reform also made it prohibitive for small parties to compete; allowed candidates to name their successors in case of death or appointment to the ministry; and created new districts that deliberately under-represented areas of PCF strength (Graham, 1959, 48-49).

4.3.3 Short and Long Term Consequences

Despite its overall constriction of democratic rights and practices, the reforms were arguably balanced by the gains along other dimensions. Government instability had made any resolution to Algeria impossible, encouraged radicalization, and opened the door for political action by the army. The first legislative elections weakened the antisystem parties. The PCF saw a slight decline in its vote share (from 26% to 21% [2nd round]), but an evisceration of its seats: from 25% of the assembly to 2%. The Poujadists were all but wiped out. The Gaullists (now the system party) and right-wing Independents did well, though other pro-system parties such as the Socialists and republicans declined. The overall effect was to remove one major source of cabinet instability (Huber and Martinez-Gallardo, 2004), the presence of a massive bloc of anti-system legislators.

The 1958 referendum campaign to approve the new constitution saw sporadic violence between communists and Gaullists, but the PCF did not boycott elections or use its organizational strength in the unions to oppose the 5th Republic in the streets. Instead, over the medium to long-term influence within the party shifted towards those open to building

Muslims, to vote on equal terms as on the mainland (Elgie, 2005).

coalitions with other left-wing parties, a strategy begun before 1958 but made irresistible under the new electoral system. The PCF never accepted the new regime (Libbey, 1976, 146). But the 5th Republic was sufficiently popular, and had won overwhelming validation in the 1958 referendum (83% to 17%), that they were effectively forced to abide by its rules.

Doing so pushed the party into a posture that increasingly sustained the regime (Linz, 1994, 51). In the first direct presidential elections in 1965, the PFC "decided to avert a humiliation at the polls ... and chose instead to participate in (and legitimise) the presidency by supporting the independent Mitterrand" (Bell, 2018, 33). Mitterand's surprising strength further solidified this commitment to a broader left coalition, a "strategic choice" that repeatedly pushed the party to moderate its rhetoric and positions (Libbey, 1976, 146). Its ambivalent and even oppositional stance on May 1968 led some analysts to argue that the PCF now served as an integrating force in the French political system (Lavau, 1969). While many factors likely contributed to this shift, the party's "deradicalization" was sustained by an electoral calculus (Charlton 1979, 41; Cole 2000, 34).

The other long-term consequence was the re-subordination of the army to civilian control and a final resolution to the Algerian crisis. Shifting authority to the president, and to de Gaulle in particular, was intended to persuade the army to submit to civilian control (Linz, 1994, 50). De Gaulle's greater scope for action was a function of both the new electoral system and the insulated presidency, which helped subordinate most of the military leadership to his authority and marginalize the most committed die-hards. The political right-wing was "forced to choose between participation in cabinets and a hardline toward Algeria," and when a faction chose the latter they were turned out by parliamentary leaders (Lustick, 1993, 318). De Gaulle did not need to cobble together an unstable majority for his Algerian policy, and needed to undertake only the more straightforward task of maintaining the support of the army and marginalizing the radicals.

Along almost every dimension, the Fifth Republic was less democratic than the Fourth. Radical right violence against political opponents or immigrants, often in collusion with

the police or security forces[13], continued. It faced a profound crisis in 1968, a manifestation of continued opposition to the regime and its institutions; and the growing strength of the radical right since the 1980s has led to a (now faltering) use of the cordon sanitaire. But the long-term tendency for most significant political actors has been to work within its institutions, and this was productive of some level of mutual restraint and forbearance.

4.4 Discussion and limits

Each of these cases illustrates the possibility that hardball actions might, over the long-term, be democracy-reinforcing by altering political incentives. None of these are ambiguously positive cases, however, and this suggests some of the limits and tradeoffs of using hardball to reinforce democracy.

Backsliding, antisystem, or radicalizing parties' political advantages in each country rested as much on institutions as on real public support. This was most true in the US and UK, which opened avenues for institutional reform (Black suffrage, reform of the House of Lords and subsequent electoral and constitutional reforms) that were democracy-expanding but which would also have large effects on political incentives. In France, the antisystem parties did not have greater legislative strength than their voting support warranted. Hardball here was much more difficult to reconcile with democratic principles. The French case, with its less democratic process and constriction of democratic rights, reveals a conceptual continuity between backsliding and democracy-reinforcing hardball: Hardball was democracy-reinforcing so far as it led a widening circle of actors to abide by democratic rules and norms; but it was a regime that was substantially less democratic and whose institutions were designed to entrench a particular ruler.

In each case, hardball changed political incentives to encourage once-radicalizing parties to appeal to broader constituencies. Because there were factions within these parties who would be advantaged by doing so, hardball aligned with the interests of actors within the radicalizing or backsliding parties. The reforms themselves were also either mostly popular

[13]These include the Force de police auxiliare and the Service d'action civique.

or could rely on civil society organizations to defend them. These factors allowed much of the hardball reforms to be seen as or treated as legitimate over the medium- to long-term. This is best captured by the French case: Hardball was not only in the interest of a contingent backslider, it was largely directed by him. The popularity of the new regime, the active promotion of it by most non-communist parties and civil society, limited the PCF's and the ultras' room to maneuver. Liberal hardball in the UK similarly benefited from its compatibility with the goals of factions of the conservative and unionist coalition and from public and civil society support. Reform of the Lords had a substantial constituency and could be presented as the culmination of a broader political discussion that preceded the Parliament Act.[14] As Ziblatt has persuasively argued, the conservative leadership was a faction that was more interested in winning elections than pressing the radicalizing positions of its right win (Ziblatt, 2017). They could echo the radicals' rhetoric about Parliament Act being an overthrow of the constitution in the short-term, and abandon it as political circumstances changed. The leadership accommodated so quickly to the new landscape that they did not seriously press for a restored veto as part of the 1918 reform act (Mccrillis, 1993), and afterwards were so adapt at winning in mass elections that they declined to advance it while in power.

Republican hardball in the US was similarly facilitated by factional divisions within the backsliding coalition, with contingent democrats who were able to maneuver in the new environment acquiescing in the change and helping entrench these as parts of the new constitutional order (Grossman, 1976). Republicans, however, could rely less on public opinion and civil society to defend national voting and civil rights protections. Black voting had never been popular, and intellectuals and public commentary had largely turned

[14]The design of hardball also helped anchor eventual public support. An alternative would have been to have the King create new peers, the traditional way of resolving conflict between the chambers: this would have required upwards of 400 new peers, a huge expansion that would have stretched public support and advanced no coherent principle.

against it by the late 19th century. Support dissipated as the threat to the regime retreated (Graber 2023). This made Black disenfranchisement, when it occurred, appear less partisan and more respectable.

5 Conclusion

The goal of this paper has been to delineate democracy-reinforcing hardball as a concept, show that it accurately describes some important responses to democratic crisis, and to provide a preliminary description of how it might work and what might make it more likely. The hope is that it will open up a research agenda that might both advance our understanding of democratic breakdown and consolidation, as well as provide pro-democratic actors with a better sense of their options.

The danger of hardball is that it will inflame polarization, weakening constraints and democratic norms. To be democracy-reinforcing, hardball proposals should identify how these will sustain pro-democratic actors in power or achieve some other critical short-term goal, but also how it will reduce polarization and induce greater respect for democratic rules over the medium- to long-term. For both normative and practical reasons, hardball should ideally be democracy-expanding. Svolik (2019*b*, 26) has shown that while partisan and ideological priorities often trump democratic commitments, there can nonetheless be a cost to backing undemocratic measures (see also Cleary and Öztürk, 2022; Gamboa, 2017). Reforms that align with a public's own democratic commitments are likely to be more effective than those that reinforce backsliders' claims of an elite-rigged and biased system.

The criteria for hardball to be democracy-reinforcing are stringent, and in many situations the strategic considerations that make this more likely will not be present. Even where they are, it is likely to present severe tradeoffs (France) or provoke regime-level threats (the UK) and might not be sufficient for sustaining a democratic regime against subsequent threats (the US). A post-hardball democracy might be more vulnerable than it had been before a backsliding process began, even if it is more secure and democratic than would have happened had backsliding continued.

The case studies are historical by necessity, given that democracy-reinforcing hardball is expected to have different consequences over the short- and long-terms. They also present different types of democratic crisis than the executive aggrandizement by a backsliding party most common today, and each occurs in the context of civil war, emancipation, or protracted and violent decolonization processes. What is their contemporary relevance?

The cases share critical features with contemporary democratic backsliding, including intensifying polarization, radicalization, and a willingness to break democratic norms and manipulate institutions for partisan gain. They also speak directly to contemporary concerns about the possibility that hardball motivated by a defense of democratic institutions might inflame polarization, undermine norms and expectations about forbearance, and alienate the public. However, instead of beginning where much of the contemporary literature does – with backsliding executives in office and looking to aggrandize their authority – the cases occur more in what Capoccia refers to as the "containment" stage (Capoccia, this volume). That is when democracy-reinforcing hardball might be most useful, and where these cases are most relevant.

The high stakes of politics in these three cases reflect profound conflicts over nation and membership, a feature of much contemporary polarization as well (McCoy and Somer, 2021). No doubt the stakes were made more dire by state violence in civil war or colonialism.[15] But perhaps the most significant way in which this mattered for these three cases is that it provided an opportunity for substantially changing the political landscape through mass enfranchisement and decolonization.[16] Finding democracy-expanding reforms that would produce similarly large changes in political incentives will be more difficult in most

[15]Many countries today facing backsliding threats or looking to reinforce democracy face similar issues, whether in Kashmir, Kurdistan, Gaza, or Donbas.

[16]Settlers in Algeria and Ireland continued to be relevant in French and UK politics, whether by moving to the mainland or by continuing to hold ascendancy in a post-partition bastion. But they were much less able to generate broad public support.

cases. At the same time, the resulting backlash might be less severe.

Future research should examine the conditions under which hardball might be democracy-reinforcing when the crisis is less severe or immediate, in countries confronting illiberalism but not yet a threat to electoral democracy, and in countries where the backslider is already in office when it might be a tool of the opposition or institutions of horizontal accountability.[17] It should build on related work on asymmetrical hardball (Helmke, Kroeger and Paine, 2022), on how democratic commitments can be undermined or activated, and on the conditions under which norms and expectations of forbearance and mutual toleration emerge (Svolik, 2019*a*), in trying to establish the micro-foundations and institutional contexts in which these outcomes are more or less likely.

The recognition that hardball can often be corrosive of democratic institutions often ends the conversation. Hopefully, a recognition that under come conditions it can reinforce these institutions over the long-term might help open one up.

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[17]Possible examples might include the actions of Ukraine's parliament in 2014, or Honduras's Supreme Court in 2009, or the role of the Korean national assembly and Supreme Court in the impeachment of Park Geun-Hye.

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