How the Political Red Lines Disappeared:
A Modern History of American Democratic Norm Decline

by

Peter Wallace Dunphy
Class of 2018

A thesis submitted to the
faculty of Wesleyan University
in partial fulfillment of the requirements for the
Degree of Bachelor of Arts
with Departmental Honors in Government and American Studies

Middletown, Connecticut April, 2018
“Well, when the president does it, that means that it is not illegal.”

- Richard Nixon
ACKNOWLEDGEMENTS

Hillary Clinton once said it takes a village to raise a child. I think it took closer to a metropolis to write this thesis.

I would be remiss if I did not first thank Professor Logan Dancey for serving as my thesis advisor. The most rewarding part of writing a thesis was cultivating an intellectual relationship with Professor Dancey. Thank you for providing me with academic, professional, and emotional encouragement throughout this year-long process. If anyone high up in the Government Department is reading this, I hope this serves as a strong recommendation to give Professor Dancey tenure.

Throughout the year, I also had the immense pleasure of working with the Congressional Politics and Elections Lab to workshop theses and independent research. This group of fantastic scholars, Emma Solomon, Carly King, Tess Counts, and Sam Prescott, both provided incredible feedback while also serving as a fantastic way to spend every Tuesday night.

Appreciation beyond words must be given to Frank Tucci, who has continued to support me throughout this entire endeavor, no matter how annoying it must have been to hear me talk about democratic norms for an entire year. My housemates Aaron Stagoff-Belfort, Austin Dhillon, Eduardo Centeno, and Luke Davoren have made me realize how terrible life would be if I were not living with my best friends. If any of you end up reading this, I’ll admit it here: I was the one who ate the English Muffins. Aaron Sege, Jasmine Masters, Trixie Mattel, Shangela Wadley, Katya Zamolodchikova, and Molly Witten have been fantastic sources of intellectual and personal backing throughout. It’s hard to smile and laugh at times while writing a thesis, but everyone described in this paragraph has helped me do that.

Many people initiated important lines of questioning and provided valuable insights that helped advance the core intellectual arguments of this thesis. The ideas that are constructed in this work would not have been possible without classes I have taken with Asha Rangappa, Sonali Chakravarti, Erika Franklin Fowler, Justin Peck, and Laura Grappo. Those at the Brennan Center for Justice provided key commentary at the early stages of development. Thank you to Fred Dews and Bill Galston at Brookings for allowing me to geek out with you and for providing me with a clutch mug for midnight Espresso breaks.

Finally, I must thank my parents with the deepest gratitude for providing me with help and guidance throughout all my ventures, especially this one. You guys rock.
# TABLE OF CONTENTS

**CHAPTER ONE – INTRODUCTION** .............................................................. 6
How the Political Red Lines Disappeared.................................................. 10
Importance and Relevancy of Thesis......................................................... 12
Overview of How the Political Red Lines Disappeared.............................. 14

**CHAPTER TWO – NORM ACCOUNTABILITY THEORY** ....................... 18
Formal Institutions and Informal Norms................................................... 22
The Consequences of the Informality of Norms ...................................... 29
A New Model.............................................................................................. 31
Norm Adjustment ....................................................................................... 37
Conclusion ................................................................................................. 40

**CHAPTER THREE – LOOSENING THE REINS OF OBLIGATION** ........ 42
The Anti-Democratic Voter ....................................................................... 43
The Shaky Democrat in Polarized Times .................................................. 45
The Door’s Unlocked ................................................................................. 51
Empowered Insurgents ............................................................................. 55
Conclusion ................................................................................................. 61

**CHAPTER FOUR – APPROPRIATING DEMOCRACY** ....................... 64
Gridlock...................................................................................................... 70
Norms and Gridlock .................................................................................. 72
“We Can’t Wait” and Justifications of Governing Norm Violations ............. 75
Slim Majorities and More Recalculation of Incentives.............................. 80
Effects of Governing Norm Erosion on Policy and Governance ............... 82
Inability to Formalize ............................................................................... 85
Dawn of a New Political Culture ............................................................... 86

**CHAPTER FIVE – ELITE COMPLICITY AND ELECTORAL VICTORY: THE ASCENSION OF DONALD TRUMP** ................................................................. 91
The Trump Campaign Begins.................................................................... 93
Justifications for Breaking Norms of Decency and Decorum ....................... 96
Trump Breaks Through the Republican Field .......................................... 99
The “Pivot” and Governing .................................................................... 106
Republican Complicity and James Comey ............................................... 109
Retiring Republicans and Democrats Take an Active Response ............... 117
Conclusion ........................................................................................................................................ 120

CHAPTER SIX - CONCLUSION ....................................................................................... 123
The French Counterfactual ......................................................................................................... 127
The Trumpian Renaissance? ...................................................................................................... 132
A More Democratic Union ......................................................................................................... 134

BIBLIOGRAPHY ............................................................................................................... 140

APPENDIX ....................................................................................................................... 153
Methodology Framework for James Comey Media Analysis ............................................. 153
LIST OF TABLES AND FIGURES

Table 1.1 - Public Support for Confirmation of the Past Six Supreme Court Nominees ................................................................. 10
Figure 3.1 - Americans' Average Trust in Institutions and Political Parties Over Time ................................................................. 59
Figure 4.1 - Senate Action on Cloture Motions by Congresses ............... 66
Figure 5.1 - Vote Share by the Eventual Winning Candidate .................. 102
Figure 5.2 - Frequency of Argument Type by News Outlet .................... 116
CHAPTER ONE
INTRODUCTION

Antonin Scalia was a polarizing figure in life, to put it mildly. Famous for penning long-winded dissents flowered with colorful language, Scalia’s decisions were a reliably great read. In the 2003 case Lawrence v. Texas, for instance, the Supreme Court ruled a Texas anti-sodomy law unconstitutional. In his dissent, Scalia wrote that the Court’s decision striking down the sodomy law was the “product of a law-profession culture, that has largely signed on to the so-called homosexual agenda.”

As it would happen, Antonin Scalia proved just as polarizing in death. On the morning of February 15, 2016, news broke that Justice Scalia died in his sleep while on a hunting trip in west Texas. Scalia’s death added another gust into the vortex of partisan antagonism accumulating in the build-up to the 2016 presidential election. With nine months left until the election and close to a year left formally in office, President Obama resolved to nominate a justice to the high bench. In a statement shortly after the news broke, Obama pledged “I plan to fulfill my constitutional responsibilities to nominate a successor in due time. There will be plenty of time for me to do so and for the Senate to fulfill its responsibility to give that person a fair hearing and a timely vote.” This nominee, announced on March 16, 2016, was D.C. Circuit Appeals Judge Merrick Garland.

---
Appointing a Supreme Court justice, however, meant that the president would have to lead Garland successfully through a nomination fight in the Republican-controlled Senate. Republican leadership immediately said they would not consider Garland’s nomination. In a statement, Senate Majority Leader Mitch McConnell said “The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new president.” On the stage of the final Republican presidential primary debate, future-nominee Donald Trump echoed the same strategy: “Delay, delay, delay.”

Republicans invoked the “Thurmond Rule” to defend refusing to consider Garland. A 2008 Congressional Research Service report noted that the history of the Thurmond Rule was shaky at best:

In the presidential election years from 1980 to 2004, there was no consistently observed date after which the Judiciary Committee or Senate ceased processing lower court nominations; however, in the three most recent completed presidential election years, the Senate confirmed its last court of appeals nominee in July or earlier, while in the four preceding presidential election years, the Senate confirmed its final court of appeals nominee in October or later.

The Republicans’ unwillingness to confirm Garland represented a sharp moving forward of the date on which the Thurmond Rule starts. President Obama pushed back on any invocation of the Thurmond Rule. The president believed that the Thurmond Rule alone, with its nonuniform history of application, could not inhibit

---

him from seating a justice. “There’s no unwritten law that says that it can only be
done on off years. That’s not in the constitutional text,” the president said in a speech
the day following Scalia’s death.\(^7\)

In their justification of pushing forward the date of not considering a Supreme
Court nominee, Republicans both moralized their decision and brought the refusal to
consider Garland into the partisan frame. The latter was partially achieved by putting
the nomination into the fold of the 2016 election. By doing this, the GOP conflated
the power to fill Scalia’s Supreme Court seat as simply another result of the already
bitterly-partisan election. They moralized their decision by converting the Thurmond
Rule in rhetoric to the “Biden Rule.” The Thurmond Rule has usually, if not always,
been invoked by senators when they were not members of the president’s political
party.\(^8\) As part of that history, Joe Biden, then a senator from Delaware, made similar
remarks opposing judicial nominations by President George H.W. Bush during his
final year in office. On the floor the Senate, Biden said:

Where the Nation should be treated to a consideration of constitutional
philosophy, all it will get in such circumstances is partisan bickering
and political posturing from both parties and from both ends of
Pennsylvania Avenue. As a result, it is my view that if a Supreme
Court Justice resigns tomorrow, or within the next several weeks, or
resigns at the end of the summer, President Bush should consider
following the practice of a majority of his predecessors and not-and
not-name a nominee until after the November election is completed.
The Senate, too, Mr. President, must consider how it would respond to
a Supreme Court vacancy that would occur in the full throes of an
election year. It is my view that if the President goes the way of
Presidents Fillmore and Johnson and presses an election-year
nomination, the Senate Judiciary Committee should seriously consider

\(^7\) Steve Benen, “Obama delivers unmistakable message to Republicans,” \textit{MSNBC}, February
17, 2016.

\(^8\) Rutkus and Scott, “Nomination and Confirmation of Lower Federal Court Judges in
Presidential Election Years,” Introduction.
not scheduling confirmation hearings on the nomination until after the political campaign season is over. Republicans could absolve themselves of the impression of wrongdoing by pointing out that President Obama’s own vice president once affirmed this exact strategy.

As Republicans seemed ready to break conventions of Senate action on presidential judicial nominations, Democrats placed their faith in voters to force senators to seat Garland. Senator Brian Schatz of Hawaii said “Republicans are underestimating how awful it is going to be when they go back home for their recess. If you’re here in Washington for too long, you might be mistaken and misled into thinking this is a partisan issue. When they go back home, they’re going to get an earful.” But citizens did not come to the rescue. Widespread pushback in town halls never materialized. According to multiple CNN and Gallup polls, approval for confirming Garland never surpassed a bare majority of voters. A consensus was not built demanding the confirmation of Merrick Garland. Instead, close to half the country either did not want Garland confirmed or did not care. Important polling data from Pew found that Republicans were highly successful at framing their norm violations through a moral and partisan lens. The partisan gap over support for Garland’s confirmation was wider than that for any recent Supreme Court nominee (See: Table 1.1). With Democratic officials unable to stop Republicans from

---

9 Congressional Record, June 25, 1992, S16216-16317.
violating norms, and their pleas to citizens being ignored, Garland never even received a Senate hearing.

**Table 1.1 - Public Support for Confirmation of the Past Six Supreme Court Nominees**

<table>
<thead>
<tr>
<th></th>
<th>Total Percent in Favor of Confirmation</th>
<th>Percent of Republicans in Favor of Confirmation</th>
<th>Percent of Democrats in Favor of Confirmation</th>
<th>Percent of Independents in Favor of Confirmation</th>
<th>Gap Between % of Republicans and Democrats Supporting Confirmation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garland (March 2016)</td>
<td>46</td>
<td>22</td>
<td>70</td>
<td>45</td>
<td>48</td>
</tr>
<tr>
<td>Kagan (May 2010)</td>
<td>33</td>
<td>19</td>
<td>54</td>
<td>28</td>
<td>35</td>
</tr>
<tr>
<td>Sotomayor (June 2009)</td>
<td>50</td>
<td>30</td>
<td>69</td>
<td>47</td>
<td>39</td>
</tr>
<tr>
<td>Alito (Nov. 2005)</td>
<td>40</td>
<td>66</td>
<td>27</td>
<td>34</td>
<td>39</td>
</tr>
<tr>
<td>Miers (Oct. 2005)</td>
<td>33</td>
<td>50</td>
<td>21</td>
<td>32</td>
<td>29</td>
</tr>
<tr>
<td>Roberts (Sept. 2005)</td>
<td>35</td>
<td>56</td>
<td>26</td>
<td>32</td>
<td>30</td>
</tr>
</tbody>
</table>

**How the Political Red Lines Disappeared**

The case of Merrick Garland’s failed nomination exemplifies a monumental, and often invisible, transformation in American government. Although there has not been a major constitutional amendment in close to half a century, the operation of American democracy has changed significantly during that time. The way that we legislate has changed; the way that politicians address each other has changed; the relative strength of the different branches of government have changed. American government has entered into a new phase of development not due to new legislation or constitutional amendments, but rather through the decline of the norms that underpin all aspects of our democracy.
To create democratic norms, actors collectively vacate certain legal rights to action and behavior in the name of stability. Congressional representatives are legally allowed to shut down the government, politicians may tell blatant lies to the public, and the Senate may refuse to consider a president’s Supreme Court nominee. They have traditionally forgone doing so, however, in order to not cross these conventions. Therefore, we may say that these collective informal conventions set the confines for acceptable action – the political red lines.

Crossing these boundaries breaks the expectations of how government will be run, thus destabilizing the system. In order to prevent this from happening, political elites and voters play an important role in establishing a system of political coercion to deter officials from attempting to cross red lines. When this system operates effectively, when both elites and voters prove willing to inflict political retaliation on those caught violating norms, democratic conventions are healthy in the country. Often because they are simply “the way things are” or the rules of the game, these conventions are invisible to the general public and even to many political observers and officials.

When the system breaks down, however, the inverse happens. Individuals feel empowered to defy conventions in order to advance themselves. They reclaim their legal rights forfeited in the name of stability and democratic custom. Government destabilizes as the rules of the game are rules no longer. When conventions are brought into the fray of party polarization, often the number of violations accrue through a tit-for-tat escalation, similar to how Mitch McConnell built off the precedent of Joe Biden to block Garland’s confirmation. More and more, instead of
healthy democratic norms existing in the United States, the alternative scenario in which the system for upholding conventions collapses becomes commonplace.

**Importance and Relevancy of Thesis**

Donald Trump’s ascension and his victory in the 2016 campaign has challenged many core beliefs and understandings of how our system of government is supposed to work. Many political red lines once seen as holding the force of law have gone crossed without provoking significant political punishment. The rise of Trump and his irreverence for these invisible conventions have made democratic norms a higher-salience topic in the media. *The Atlantic*,¹³ *Politico*,¹⁴ *The Washington Post*,¹⁵ *The New Yorker*,¹⁶ and *The New York Times*¹⁷ have begun to spend more time covering the topic. While their reporting is both illuminating and requisite in starting a national discussion surrounding democratic conventions, their work is limited by their natural tendency to attribute the full blame of the crisis of norms on Donald Trump. The weakness of norms exposed by Donald Trump existed before Trump’s rise and will likely continue after he leaves office.

Second, norms have been an understudied field within political science scholarship. Other disciplines of social studies, namely sociology, have long emphasized the centrality of norms in shaping the society in which we live. Among

---

notable works, Judith Butler’s *Gender Trouble* argues that gender is constructed out of societal conventions.18 This is not to say that political science has not seen major contributions in the field of norms. One of the first major pieces was a 1964 article by Herbert McClosky.19 More recent work by Julia Azari and Jennifer Smith,20 Christopher Achen and Larry Bartels,21 and Steven Levitsky and Daniel Ziblatt22 have added new breath into the field. Important legal articles as well have brought attention to the subject. In particular, David Pozen,23 Mark Tushnet,24 and Keith Whittington25 have all contributed valuable writings. The rise of Donald Trump is likely to spur renewed attention to the topic.

My thesis, *How the Political Red Lines Disappeared: A Modern History of American Democratic Norm Decline*, expands on the work of these individuals to consider the decline of democratic conventions holistically and in the proper frame. I create a new theory for understanding the facets surrounding democratic norms, examine what key components have led to weak enforcement of the mechanisms described in that theory, then trace how my theoretical contention manifests in multiple jurisdictions of politics. Only by speaking of democratic conventions in the

correct terms and with the proper knowledge of how they are enforced may we break through both the partisan back and forth and the attraction to attribute this phenomenon solely to Trump. To accomplish this task, my work may be both understood as a work of theory as well as a work of history. I see little distinction between the two, as the former only puts the latter in better perspective.

**Overview of How the Political Red Lines Disappeared**

To lay the theoretical foundation for the rest of the text, the following chapter, Chapter Two: A Norm Accountability Theory will study the interaction of voters and elites in upholding democratic conventions. The chapter will focus on the relationship between formal institutions and informal democratic norms, concluding that norms create stability in government by producing a set of predictable outcomes in similar situations. As Azari and Smith point out, norms add padding around formal institutions, allowing each actor to know what behavior is acceptable within the legal confines of such institutions.  

Formal institutions, made by statutes and constitutional text, are enforced through formalized legal means such as courts and the police. Those who violate informal conventions will not be jailed, but instead suffer political consequences. These punishments are inflicted by elites and voters, setting up a form of political coercion to deter actors from violating conventions. Their ability to sanction those who violate norms, through political means for elites

---

and through elections for voters, acts as a form of accountability to compel obligations to norms.

Modern politics, however, is interfering in the smooth functioning of this theory. This is the focus of Chapter Three: Loosening the Reins of Obligation. In the chapter, I concentrate on why voters and elites are less willing to enforce obligations to democratic norms. Three major trends – weak democratic and ideological commitments on the part of voters, polarization, and frail party structures – greatly interfere with the proper execution of norm accountability. The result is that elites no longer have the power to enforce political red lines and even when they do, they are less willing to use that power. Citizens, on the other hand, are likely to use partisanship as the chief factor in voting decisions, thus abdicating their power to punish those who offend norms at the ballot box.

Putting this theory into application, Chapter Four: Appropriating Democracy explores specifically how politicians have used a form of norm warfare to advance themselves in a gridlocked political world. Norms add a needed plush to establish forbearance between the loosely defined separate branch powers, a norm which Levitsky and Ziblatt focus heavily on. With voters and elites less willing to enforce norm obligations, this padding has receded. In its place, politicians have thrown norms aside to instead use their maximum legal authority to advance their own interest, even when doing so violates long-held conventions. Given that this is unprecedented action, politicians must explain to each other and to the public why their norm violations are warranted. To do so, the norm offender explains that her

---

27 Levitsky and Ziblatt, How Democracies Die.
norm violation is a needed response to right a constitutional or democratic offense made by the other party. This folds norm violations into the fray of politics, expediting their erosion through a tit-for-tat escalation.

In addition to governing norm decline, another major subgroup of norms that have receded are those of decorum and comity between elites. To exemplify this problem, Chapter Five: Elite Complicity and Electoral Victory: The Ascension of Donald Trump highlights the ways in which Donald Trump’s victory occurred largely through the failure of elites and voters to enforce norms as described in the norm accountability theory. Trump has justified his bombastic defiance of norms of civility by defending his actions as needed for reform, framing his behavior as breaking through “political correctness.” Beyond norms of civility, Trump’s continued success has illuminated how the breakdown of the proper functioning of norm accountability erodes the strength of political red lines, which has subsequently produced an unstable federal government both in process and policy.

In the final chapter, Chapter Six: Conclusion, I envision a new form of politics that materializes in the absence of healthy democratic norms. Such a world fits less in line with the democratic vision of the Founding Fathers, more closely resembling that of Carl Schmitt. I then ruminate on the erroneous perception that Donald Trump’s rise and breaking of norms was a preordained destiny due to the ongoing forces at play. While his path was certainly cleared by a favorable environment, by looking at France’s 2017 presidential election, we see that the reason we are left with Donald Trump and weakened conventions in this country is due to the decisions of political elites and voters. We are to blame. I conclude by contending that perhaps Donald
Trump may spur a renaissance of democracy from a citizenry that had previously taken such a form of government for granted. As part of this, elites and voters must profoundly reconsider their role in upholding democracy in this country.

In one of the darkest hours of history in the United States, President Abraham Lincoln set out from Washington to Gettysburg, Pennsylvania to dedicate a national cemetery on the battlefield on which over 28,000 Union soldiers had died four months earlier.28 Lincoln, in one of the greatest orations in American history, told the crowd “we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.”29 The crisis facing American democracy now is not fought through guns and soldiers but through the perversion of politics and process. Since I began writing this thesis, the churning of the news cycle and scandals have only redoubled my belief in the core tenets of my theory and history as laid out in this thesis. This may provide me with a sense of gratification, but the more dominating emotion I feel is a deep anguish. The bucking of the trend described in this thesis is paramount to ensuring the stable longevity of the American experiment.

CHAPTER TWO
NORM ACCOUNTABILITY THEORY

In the midst of the Great Depression, Franklin Delano Roosevelt and a united Democratic Congress entered office with a domestic policy program set on dramatically expanding the scope of the federal government. Roosevelt took swift and unprecedented action, “closing all the nation’s banks, devaluing the currency, taking the country off the gold standard, canceling the gold clauses in public and private contracts, and dictating the price of gold over his breakfast tray.”*30 Part of Roosevelt’s bold vision included the enactment of a host of expansive legislation such as the National Industrial Recovery Act (NIRA) and the Agricultural Adjustment Act (AAA) in the first one hundred days of the administration.31

These actions drastically increased the scope of the federal government, especially that of the executive branch. With full Democratic control of the White House and Congress, Roosevelt met his most powerful opponent, hell-bent on limiting the broad authority being handed to him, across the block from the Capitol: The Supreme Court. The Court had struck down New Deal legislation in 1933 and 1934. This wave of anti-New Deal cases reached a peak in 1936 when the Court declared the NIRA, the AAA, and nine other New Deal measures unconstitutional on the grounds that they delegated legislative powers to the executive.32

---

32 McKenna, Franklin Roosevelt and the Great Constitutional War: The Court-Packing Crisis of 1937, xviii.
Frustrated at the obstruction from the bench, FDR unveiled a plan on February 5, 1937 to enlarge the size of the Supreme Court to fifteen, ensuring that he would have pro-New Deal majorities. The president was widely popular at the time. In the 1936 presidential election, Roosevelt won 523 of the 531 electoral votes. Yet, as a February 15, 1937 *Life* magazine story noted, the court-packing plan had shaken the country like few other issues in recent memory.\(^{33}\) Writing about the events decades later, Marian McKenna wrote that “No less amazing than the boldness of the proposal itself was the manner in which the electorate rose up in wrathful protest against what it believed to be President Roosevelt’s effort to ‘pack’ the Court to validate his New Deal.”\(^{34}\) The Federal Judiciary Center wrote that “Roosevelt lost a great deal of political support for having proposed it.”\(^{35}\) The electorate’s protest was accompanied by bipartisan elite condemnation. Fellow Democrat Edward Cox called the plan “the most terrible threat to constitutional government that has ever arisen in the entire history of the country.” Wyoming Senator Joseph O’Mahoney, a close ally of the president, decried the plan as smelling like “Machiavelli.” Facing elite and voter pushback, as well as a pivot in Supreme Court towards embracing certain New Deal plans, Roosevelt let his court-packing scheme die in the Senate.\(^{36}\) In this situation, the

---

\(^{33}\) “The President Asks for Power to Increase the Size of the Supreme Court,” *Time Magazine*, February 15, 1937, https://books.google.com/books?id=WFEEAAAMBAJ\&printsec=frontcover\&source=gbs_ge_summary_r\&cad=0#v=onepage\&q\&f=false.

\(^{34}\) McKenna, *Franklin Roosevelt and the Great Constitutional War: The Court-Packing Crisis of 1937*, xi.


public and other politicians viewed Roosevelt’s plan as an affront to democracy and saw it as their duty to defend America from it.

What was surprising about this political revolt against FDR was that his plan to pack the Supreme Court with New Deal loyalists was wholly legal. The Constitution does not explicitly state the appropriate number of judges that ought to serve. Indeed, in earlier eras in American political history, changing the size of the bench was not outside the bounds of politics. Between 1800 and 1869, the Court changed sizes seven times – all for political reasons. The final adjustment occurred following the election of Ulysses Grant in 1868 when Congress restored the number of justices to nine.37

After Congress returned the size of the court to nine judges under Grant, the high court’s bench reached a stable equilibrium at that number. As presidents and congresses passed, attempts to change the size of the court as a political ploy fell out of style.38 However, with precedent and legal authority on his side, why did FDR’s plan generate such uniform and bipartisan opposition? The reason comes from the fact that by 1937, the norm of a nine-judge Supreme Court had set firmly in the minds of elites. To violate this norm, by either lowering or increasing the number of sitting justices, was seen as not a typical presidential action. Rather, it was viewed as a cataclysmic affront to the rule of law itself. In a February 7, 1937 article, Editorialist William Allen White referred to the action as an “elaborate stage play to flatter the people by a simulation of frankness while denying Americans their democratic rights.

and discussions by suave avoidance - these are not the traits of a democratic leader.”

Roosevelt’s plan threatened the core tenets of democracy. In the end, although FDR
maintained the constitutional right for his action, the political whiplash muted the
possibility of him executing this legal authority to expand the size of the bench.

An alternative timeline could be easily imagined. Elites could have given in to
Roosevelt’s plan, believing that the urgency of the Great Depression required drastic
measures. Voters, who in three years’ time would vote FDR into an unprecedented
third term in office, could have acquiesced to Roosevelt’s argument that packing the
size of the court was needed to execute the nation’s interests. Instead, with the tide of
public opinion and elites against him (along with a suspiciously-timed switch in the
legal orthodoxy of the court to permit certain New Deal programs), the president
folded to the outcry. Voters and elites had beaten Roosevelt in the battle over the size
of the Supreme Court.

This chapter attempts to create a theoretical model to account for the impact
of elites and voters in enforcing and “repealing” democratic norms. First, I discuss
how norms complement formal institutions with the goal of promoting stable
government by instituting a predictable set of informal rules. Second, I lay out a
model of *norm accountability*: the way that politicians are held accountable to norms
and inversely how they can bypass them. In this model, elites serve as the first line of
defense for the norm in question, imposing political red lines to deter politicians from
breaking norms. Voters serve as the final arbiter in determining the strength of a

---

39 William Allen White, “President Flouts Orderly Processes, Editor Warns,” *The Milwaukee
norm. If they make a norm offender lose election, this reinforces the authority of the norm to operate as a binding rule on politicians. If the norm offender is voted into office, this serves as a mandate that in turns sanctions future breaking of the convention in question.

**Formal Institutions and Informal Norms**

Before considering how a norm is upheld, it is first useful to explain the purpose of norms and their relationship with formal institutions of government. As I argue, strength and stability in a democracy require not solely strong democratic institutions such as free elections and an independent judiciary. These formal provisions must be matched with a set of political axioms, which we call democratic norms, that promote stability and predictable outcomes within democratic systems. Julia Azari and Jennifer Smith consider the relationship between formal institutions and informal norms as falling in three main categories: norms either complete, parallel, or coordinate formal institutions.40 Steven Levitsky and Daniel Ziblatt in their recent book, *How Democracies Die*, identified two fundamental norms needed for a healthy democracy: forbearance and mutual toleration.41 To broaden these differing definitions, as a whole I argue that conventions regulate the action of politicians, establishing a system of informal checks on the power of politicians. Norms do not change the legal fabric of formal institutions. Instead, they restrict the ability of officials to carry out certain actions legally afforded to them. By doing so,

they established commonly-understood rules of the proper scope of action within formal institutions. This system thus creates a healthy system for stable government as norms prevent elites from using the full extent of the power at their disposal to conduct destabilizing or democracy-endangering moves. The example of Roosevelt’s court-packing plan violated the existing norms of legitimate presidential action. While the president, with the blessing of the Congress, has the legal right to change the size of the court, packing the court for the purpose of advancing an agenda violates the spirit of independent courts, which in turn violates the spirit of democracy. In this situation, the power of the norm of the nine-justice court limited the possible avenues of action that FDR could use to advance his New Deal plan.

The defeat of Roosevelt’s court-packing plan sent a strong warning signal to future presidents that court-packing is off the table of permissible presidential action. No president since Roosevelt has attempted to change the size of the court. Presidents and the Supreme Court continue to disagree, at times vehemently, over decisions handed down. Famously during the 2010 State of the Union Address, President Obama warned that the newly-issued Citizens United decision would “open the floodgates for special interests – including foreign corporations – to spend without limit in our elections.” Justice Alito murmured under his breath “not true.” Yet Obama prefaced his remarks by giving “all due deference to separation of powers.” Obama used the State of Union to call for Congress to craft bipartisan legislation or constitutional amendments to rectify the wrongs done in the Citizens United decision,

43 Ibid.
not to promote a plan to increase the size of the court to change case law. The
decision not to pursue the latter path comes as a testament to the staying power of the
nine-justice norm. The wide political backlash that FDR’s failure incurred has
deterred such action ever since.

While norms hold strong purpose within every democracy, they take on a
distinct purpose in the United States. Formal institutions of American government,
which informal norms regulate, are characterized by their loosely defined powers and
separation of powers. Separation of powers establishing checked and balanced power
came from the philosophy of James Madison as documented in *Federalist No. 51’s*
famous quote that “ambition must be made to counteract ambition.” The competition
of ambition in America has set the stage for a variety of inter- and intra-branch
showdowns over political control. Norms in this situation coordinate the division of
government between the branches to minimize the frequency and scope of conflict.

Showdowns are further intensified by the great genius and the curse of the
Constitution: its vast vagueness. What exact power is the Senate owed over the
president through Article II, Section 2’s clause that the President “shall nominate, and
*by and with the Advice and Consent of the Senate*, shall appoint Ambassadors, other
public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of
the United States”?44 Returning to the example of FDR and the Supreme Court, the
president and Congress working in tandem could effectively dissolve the federal
judiciary by vastly reducing the number of judges or could massively expand it to
stuff the courts with loyalists. All of these powers are completely legal and

constitutional. Solely conventions in these scenarios hold back political actors from exercising their full legal authority, which could lead to disastrous and spiraling consequences counterproductive to healthy democracy. Norms of forbearance, comity, and bipartisanship make politicians forfeit some rights of possible political avenues that they could take in the name of maintaining democracy. For instance, an unbridled president flexing vast pardon power could effectively mute the power of the judiciary. The only restraining force in this situation is democratic norms. No matter the historic strength of the United States Constitution, only a “thin tissue of convention,” according to legal scholars Aziz Huq and Tom Ginsburg, prevents a president from becoming a dictator.45

Democratic norms also operate in spaces that are void of many formal institutions. Among these include the way that politicians interact with each other and their public conduct. American political theorists have long understood that a diversity of opinions is a natural part of a democratic society. Writing in Federalist No. 10, James Madison said, “As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed.”46 Stemming from that fact, the United States, therefore, necessitates multiple parties, as these organizations serve as the vehicle for amassing and transmitting public opinions into government. We may cry as elections are lost, but we do not see the other party as a fundamental, treasonous threat to the nation. Nor does a political party – especially one that

45 Levitsky and Ziblatt, How Democracies Die, 100.
controls all branches of power – seek to destroy or silence opposing views through government coercion or fear.

Formal political institutions in the United States have almost wholly focused on ensuring freedom to speak. In the U.S. Constitution, Article I, Section 6 “privileged” representatives and senators from facing “Arrests during their Attendance” in Congress. As Yale scholar Akhil Amar writes, “Without the privilege, a single private civil litigant, perhaps by design, might undo the voters’ verdict by keeping their man off the floor,” thus protecting the ability of elites to disagree in legislative discussion without fearing arrest. However, the most famous constitutional design in promoting the free airing of debate is the First Amendment, which importantly prevents Congress from passing any law “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Inspired by Enlightenment thought of freedom from government action, these institutions generally expand the scope of speech. Due to safeguards such as the privileging of members of Congress and the First Amendment, formal institutions have little latitude for defining acceptable speech.

In this situation, norms provide the supplement to establish certain lines as to what a politician ought not to say. Democratic norms such as comity and goodwill work to establish notions of a loyal opposition and prevent the questioning of the legitimacy of political rivals. This helps ensure that a democracy does not move into a

49 U.S. Const., Amendment 1.
“tyranny of the majority” and that political routes may still be used to reconcile differences instead of escalating into conflict such as civil war. Speech cannot be stifled formally, but conventions set common standards of acceptable rhetoric.

The United States at multiple times has experienced a breakdown in these democratic norms of comity, which have led to disastrous consequences. The first of these came directly after the birth of the United States. The new political parties that emerged during and after the Constitutional ratification debate viewed one another as fundamental threats to the young nation. Steven Levitsky and Daniel Ziblatt write, “The Federalists saw themselves as the embodiment of the Constitution; in their view, one could not oppose the Federalists without opposing the entire American project.” Federalists viewed the newly-formed Republican Party “as traitors, even suspecting them of harboring loyalties to Revolutionary France – with which the United States was nearly at war.”

The second major occurrence happened during over the most politically-divisive issue not settled by the Constitution: slavery. Tense political discussion, laden with moralistic claims, led to a breakdown again in debate and mutual tolerance between those with differing views. The result of this breakdown was the death of 620,000 men, roughly 2% of the population, in a four-year-long civil war.

The success of the American experiment is, in large part, a testament to the success of American democratic norms. The peaceful “Revolution of 1800” was the

50 Levitsky and Ziblatt, How Democracies Die, 103.
first transfer of presidential power between parties, an event Thomas Jefferson later called a triumph for mutual toleration. Recounting the moment in a letter to Judge Spencer Roane, Jefferson wrote the “Revolution of 1800 (…) was as real a revolution in the principles of our government as that of [17]76. was in it’s form; not effected indeed by the sword, as that, but by the rational and peaceable instrument of reform, the suffrage of the people.”53 Another major triumph for the development of democratic norms for the young nation came when George Washington stepped down from the presidency in 1796 after two terms in office – proving that he was the man who would not be king.54 King George III, astonished at the news of Washington stepping down, called the Virginian “the greatest character of the age.”55 While at this point the president was not beholden to any legal term limits, Washington’s decision to not run for a third term set a strong democratic precedent that would greatly control the strength that one person could yield over the nation. The force of Washington’s action instituted a two-term presidency norm that would be followed religiously for close to a century and a half.56 This is simply one example of many demonstrating how American norms have kept stability in the United States. Strong norms have led to strong democratic political institutions, and vice versa. The symbiosis of the two has allowed the Constitution to continue to serve us as a guiding document for over

two centuries and has, with a few exceptions, maintained political stability within the nation.

**The Consequences of the Informality of Norms**

Most enforcement of state institutions come through the means of the traditional law enforcement apparatus, including police, courts, and jail. This means that obligations to formal written laws are enforced through government coercion, as carried out by these criminal justice institutions. A violation of these provisions could lead to fines or jail time. Challenges to legislation or political maneuvers on constitutional grounds are settled by the Supreme Court. In both of these situations, the enforcement of obligations to formal political institutions – laws, regulations, and the Constitution – is carried out through the apparatus of state punishment and government compulsion.

The informal character of norms, however, do not allow them to fall under the umbrella of formal government courts. There can be no courtroom adjudication or litigation regarding whether an official did or did not follow a convention. Therefore, it is important to ask in these situations why a politician would throw away some of their legal rights to act in order to follow democratic norms? How are people compelled to follow these informal obligations? Gretchen Helmke and Steven Levitsky define norms as “socially shared rules, usually unwritten, communicated, and enforced outside of officially sanctioned channels.”

---

conventions, the needed non-official channel for enforcement comes through political coercion. To violate a democratic norm would lead an actor to incur political punishment. Deterrence operates in formal settings that leads people not to break laws based on the fear of government punishment. The same concept exists in the realm of norms, where people do not violate democratic conventions based on the fear of political punishment.

Such a system is beholden to certain downsides. First, when norms are healthy – collectively adhered to and upheld – they are invisible. Jonny Anomaly and Geoffrey Brennan call the “emergence and internalization of norms” an “invisible process[]” that when interacting with society operate as “invisible hands.”

We forget conventions exist because they are simply “the way things are.” People generally stick to the status quo, and it is considered taboo to deviate too far away from that stable equilibrium. It is only when a norm is bent or broken that we become aware of these conventions and how important they are. This dynamic sets the conditions for a democracy to take important political norms for granted until it is too late; that is, until they are broken and unhealthy.

The second downside is that norms require a broad collective buy-in to function. When norms are healthy, all actors are deterred from violating norms out of fear of the potential political consequences. In this situation, the norm holds the strength of rule. The rule, in turn, creates stability through establishing “mutually understood” universal confines or expectations when faced with a similar set of

---

circumstances. This equilibrium may be thrown off by defections from a few bad actors. In order to understand when and why that occurs, we must first turn to understanding how the political coercion to follow norms functions.

**A New Model**

To understand the success and failure of democratic norms, we must first study the method by which the aforementioned political punishment and coercion occurs. Because norms are unwritten and cannot be enforced through the same mechanisms as formal legislation, we must develop a new model to consider the process by which norms are upheld and allowed to falter. This new conceptual framework holds that the strength (or weakness) of norms is determined through the actions and decisions of political elites and voters who solidify, enforce, and alter norms. Because norms themselves do not hold the formal authority needed to be legally enforceable, enforcement agents for norms are not police, nor courts of law. Political elites and voters, instead, serve that role, with the latter holding the final adjudicating authority. Enforcement is the vehicle for maintaining stable collective adherence to a norm. Informal conventions hold their power from a collective belief that violation will result in political consequences. However, if that belief declines through actors violating the norm without suffering consequences, the norm loses its enforcement power. The political red line becomes a red line no longer. The judgment and enforcement process come through two different sources: first, from political

---

elites who usually enforce compliance in the first place through the threat of political reprimand. Second, in the case that elites falter or their objections are ignored by the norm violator, voters hold the final decision-making role for a norm’s power through their decision to vote for a norm violator.

Political elites usually act as the first wall of defense in upholding and requiring obedience to norms. In this theory, the main generalization of those who constitute the “political elites” are those who enjoy enough political power to be able to garner sway when making decisions. These are individuals or organizations that can impact decisions of politicians based on their judgments. These officials take a variety of forms. The most textbook definition of elites comes in the form of elected representatives themselves.60 Second, party organizations and leadership, responsible for managing the multi-billion-dollar organizations that are American political parties, hold sway in making political decisions.61 Kathleen Bawn, Marty Cohen, David Karol, Seth Masket, Hans Noel and John Zaller’s 2012 article, “A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics,” importantly incorporate organized interest groups and activists as key decision-makers in politics.62 For expediency, they will be lumped in as a group of “elites”

throughout this thesis as a juxtaposition to voters, who utilize a distinctly different set of actions to inflict political retribution.

The role of elites in upholding norms is their ability to set and enforce political red lines. This comes from elites setting the boundaries of acceptable political behavior – the red lines. Norms and conventions would be these political red lines, meaning that crossing them would prompt political retaliation by elites to the norm violator. To enforce the political red line simply means that when actors violate the boundaries of behavior – violating democratic norms – they are punished for their behavior. The common knowledge that these red lines are implemented, and those crossing them are punished, acts as political coercion to deter actors from breaking conventions.

The ways in which elite-level political retaliation manifest is based on the position of the elite and the length the elite is willing to go to punish the norm offender. Representatives may withhold votes from a norm violator’s proposed legislation. Further, members of Congress may corral against an official in a variety of votes, including censuring (as with what happened with Joseph McCarthy for “abuse of a Senate committee”),\(^6^3\) appointing oversight mechanisms such as special investigators, or even voting for impeachment. Congressional party leadership may refuse to place norm offenders on powerful committees or promote them to positions of party leadership. Party officials and interest groups may impact a norm-violating candidate by hindering that candidate’s campaign either by withholding funding,

refusing to endorse the candidate, or even openly condemning norm breaker. In one of the most basic moves, elites of all flavors may use the bully pulpit stemming from their institutional position to condemn a politician for violating a norm.

The second and final juror for determining possible punishment for norm violators – which also determines the strength of the norm in question – are the voters themselves. Citizen action to show dismay at norm violations by elected officials take a variety of forms. These include going to town halls, calling the offices of local representatives, attending protests, and donating to political opponents. The essence of all these different forms of citizen political retaliation comes back to a fear on the part of elected officials of being voted out of office. If political coercion comes through political retaliation, then losing an election is the highest form of retaliation possible. The voters’ decision of whether or not to vote into office a candidate with a record of violating a norm will impact how she, or other elected officials, perceive that norm in the future. If an elected official can win despite violating a norm, then she and others will believe that it is permissible to break the norm in future scenarios. This changes the political calculus put into whether a norm should be violated. The knowledge that violating a norm does not innately lead to electoral defeat changes an elected official’s calculus of whether or not to violate a norm. If violating a norm is politically advantageous for other reasons, such as stopping the passage of legislation you oppose, then seeing candidates that have previously defied that same norm subsequently win elections informs you that violating the norm may be in your best interest.
This dynamic of basing the strength of a norm based on the electoral outcome of those who have previously defied it acts very similarly to a mandate. A mandate occurs when a winning candidate (or party) comes into office thinking her victory affirms a certain policy proposal. Therefore, that policy has the public approval and ought to be enacted. Robert Dahl, in his essay “Myth of the Presidential Mandate,” Dahl showcases vice president-elect George H.W. Bush’s speech after the returns came in showing Reagan had won the 1980 presidential election as a quintessential invocation of a mandate. Bush explained that Reagan’s victory was “not simply a mandate for a change but a mandate for peace and freedom; a mandate for prosperity for all Americans regardless of race, sex, or creed; a mandate for leadership that is both strong and compassionate,” among a litany of other mandates. After looking into the polling and voting evidence behind the core premise of the mandate, which is a “plurality (or a majority) of voters prefer the policies of the winner and wish the winner to pursue those policies,” Dahl concludes that policy mandates do not actually exist. The lack of a strong connection between who a voter chooses in an election and their approval of that candidate’s core policy proposals illuminates “how empty the claims to a presidential mandate have been in recent elections.” In Stanley Keller’s book Interpreting Election, the political scientist concludes from research conducted on the 1964 and 1972 landslide elections, which were considered mandates at the time, that “Johnson’s and Nixon’s specific claims of meaningful mandates do

---

65 Ibid, 362.
66 Ibid, 363.
not stand up well when confronted by evidence.”67 Among the policies which these presidents said they had won clear mandates on through their victory, Kelley finds that “none of these policies was cited by more than 21% of respondents as a reason to like Johnson, Nixon, or their parties.”68 Further, with elections often won by margins of less than five percentage points (Reagan won the 1980 election with 50.9 percent of the popular vote), it is highly unreliable to extrapolate bold principles from them. Nonetheless, politicians still invoke mandates. For instance, following George Bush’s reelection in 2004, the president explained that his election represented a mandate to enact a partial privatization of Social Security. But such an idea always polled terribly and never gained much traction.69

Beyond policies, elections can also be interpreted as a form of character mandate. Observers can determine from an election success (or failure) that a person’s rhetoric or demeanor was found acceptable (or unacceptable) to voters. If part of that behavior included violating norms, then the electoral outcome may be portrayed as a mandate towards whether or not the norm holds weight. In the case that a candidate who violated a norm wins, the potential mandate that the previously-violated norm is weak may lead elected officials to throw this convention aside by saying “the voters don’t care.” Since the establishment of norms requires collective buy-in to set stable rules, the electoral success of a previous norm disrupter can lead to defections from the rule. The crux of the decision to follow norms relies on

68 Ibid, 139-140.
impression. If politicians get the impression that a norm is weak – that someone can violate the rule without facing elite or electoral defeat – then they may take more liberty in deciding whether or not to follow the norm. They may feel less obligated to hold back from exercising their full legal authority that was previously outside the bounds of acceptable political action. At the least, current and future politicians may get the impression that the candidate’s victory signals a lesser authority for that norm.

The roles of elite and voter in deciding norms are complexly interrelated. Whether or not a voter decides to vote for a norm violator depends heavily on whether the candidate has been endorsed by party leadership. Conversely, an elite may continue to support a candidate after he has violated many norms if the candidate is still polling well among voters. Voters follow party cues, and vice versa. Voters and elites have different ways through which to enforce norms – voters through election; elites through political and party apparatuses. But their decision on whether or not to punish a norm defector often acts as a dynamic process in which voters and elites pay attention to each other to see how the other will react, which in turn will affect their own decision.

**Norm Adjustment**

In this section, I expand upon work by Robert Axelrod,\(^{70}\) David Pozen,\(^{71}\) and Julia Azari and Jennifer Smith\(^{72}\) to fully develop a theoretical frame to consider what

---


happens when both elites and voters permit a norm to be violated. When such a situation occurs, the norm adjusts, a process in which elites and voters must foresee what the new convention is and its strength to be enforced in the future by elites and voters. This happens through two different routes. The first option is what I call recalibration. As humans and politicians try to adapt to the changing times, they must recalibrate their understanding of the norm – to understand what the new normal is. Does the norm still hold the strength of a rule? Or has it been beaten down enough that it does not require buy-in? If the latter option is true, the previous norm – the previous normal – goes from being the rule of the game to being written off as a part of politics of a bygone era. This may take the form of a new equilibrium being set: there is still a rule of the game in a particular area, just the specifics have changed. However, with the knowledge that the norm can be broken, the new norm equilibrium becomes inherently less stable as actors feel less of an obligation to abide by the needed collective adherence. In this new climate, they become more confident violating the norm or attempting to nudge the equilibrium towards a new place. With that, the positive effects of stability and predictable outcomes that norms are intended to create instead become less stable and less predictable.

A second option is formalization. If a norm is deemed so important to democratic government that it must be kept, then government must formalize the norm; that is, convert informal rule into formal rule through either passing legislation or a constitutional amendment. This then moves the rule from being enforced through political coercion to enforcement by government coercion, thus ensuring that the rule will be enforced regardless of whether politicians or voters decide to honor it or not.
Robert Axelrod explains that the three major benefits of formalizing a norm are that 1) “it supplements private enforcement mechanisms with the strength of the state;” 2) “the law also has a substantial power of its own, quite apart from whether it is or can be enforced,” the power of respect; and 3) “the third advantage of the law is clarity.”73 A famous example of the formalization process working successfully and providing the benefits Axelrod describes occurred following FDR’s decision to run for a third-term. Dating back to George Washington’s decision to step down after two terms in 1796, the convention of not running for a third term had enshrined itself as a strong political norm. Breaking from tradition, Franklin Roosevelt ran for a third term in 1940.74 Political coercion by voters and elites were not effective enough to stop the president from using his legal authority to run for a third term. Formalizing term limits through an amendment entered the political dialogue in 1944, as FDR sought his fourth term, when Republican presidential candidate Thomas Dewey said that “four terms, or 16 years, is the most dangerous threat to our freedom ever proposed.”75 Solely two years after FDR’s death in 1945, federal and state governments agreed with Dewey’s warning and began the formalization process to ensure that FDR would be the only president to serve for over two terms. Congress proposed the Twenty-Second Amendment to formally establish the term limits for a president. Ratification took a swift four years. Because the norm was deemed vital to

74 Thom Fain, “Why do we have the 22nd Amendment, which limits presidents to two terms?,” Providence Journal, December 1, 2016.
the stability of American democracy, the two-term limit convention was formalized into constitutional law.

**Conclusion**

In this chapter, I have laid out a new model through which to consider democratic norms. Democratic norms operate as a form of constraining power in order to establish stability through instituting predictable outcomes. Unlike formal rules, which are enforced through government coercion, norms are enforced through political coercion. This accountability comes through a combination of voter and elite action to ensure that politicians stay beholden to their obligations of democratic norms. In this process, which I call the norm accountability theory, norms are upheld by voters (through their decision whether or not to vote for a candidate that has previously defied norms) and through elites (who may politically sanction an actor that has violated a norm). If both these players fail to uphold the norm, then the convention adjusts, during which the norm will either be recalibrated in strength and specifics or formalized through statute or constitutional amendment.

Now that we have established this framework for considering how norms work, we must now turn to the question of why American norms are presently in a state of flux. Democratic norms – the foundation for healthy and stable democracy in the United States – have felt the weight of seismic forces descending onto American politics. Polarization, the weakening of political parties, and an undemocratic public have contributed greatly in setting the stage for an atrophy of these democratic obligations. Overall, the reason that norms in the United States have weakened in
recent years is due to the breakdown of the effective functioning of the norm accountability theory. Both elites and voters have abdicated their role, by and large. In the next chapter, I will detail certain major reasons why elites and voters have forgone their obligations to impose accountability to democratic norms.
CHAPTER THREE
LOOSENING THE REINS OF OBLIGATION

“Propositions stated in universal terms are rarely assumed by men of common sense to imply universality in practice; to the frequent dismay of logicians, a common tendency of mankind – and not least of Americans – is to qualify universals in application while leaving them intact in rhetoric.” – Robert Dahl

Americans are proud democrats. 86% of Americans believe that representative democracy is the best way to govern a society. But our allegiance to democracy, especially to American democracy, reaches the high-water mark in the abstract. The same survey that saw broad faith in representative democracy found that only half of Americans trusted the national government to do what is right for the country, and less than half are pleased with the way democracy works in the United States. As a nation, we stay firmly committed to democracy, yet more than half of us see our own democracy as failing.

In the last chapter, I constructed a model whereby both citizens and elites can hold their politicians accountable to democratic norms. The proper functioning of this theory keeps democratic norms healthy. The inverse also holds true. When the elites and voters fail to properly execute their role in norm accountability, norms falter. Understanding why the norm accountability theory is failing, and thus why American democratic conventions are weakening, is the inquiry of the present chapter. I survey how certain major trends of modern politics have limited the ability of elites and voters to enforce existing norms. This exploration will begin by considering a basic

78 Ibid.
question: how good are voters in being the guardians of democratic government?

While Americans may buy into democratic principles in the abstract, in practice, feelings are often much more undemocratic. Building upon the unreliably democratic public, I consider how unsound support for democratic conventions is exacerbated by polarization. Devout partisanship outweighs other factors in a voter’s calculation at the ballot box, such as punishing a norm offender. Switching to elites, I will consider the ways in which the weakening of parties opened the gates for antidemocratic candidates to enter mainstream politics. As Julia Azari argues, “Voters do not have to listen to elite signals. Elites do not have to listen to each other’s signals.”79 If citizens and politicians do not have to follow the cues of party elites, then it is almost impossible for these elites to establish political red lines to enforce norms. Weakened voter and elite strength in upholding norms leave a dangerous combination. The main result is a marked drop in the strength that political coercion has in forcing politicians to abide by the rules of the game.

**The Anti-Democratic Voter**

First, we begin by considering how voters have faltered in playing their part in enforcing political red lines. Elections in the model of norm accountability I drew out in Chapter 2 serve as either a condemning or endorsing agent – if you move to condemn (the candidate loses election), the norm becomes stronger; endorse (candidate wins election) and the norm turns weaker. For voters to play their part in

---

this model, then, they must vote in good small-d democrats and punish bad democrats. A natural question to arise in light of this function is: how democratic are American citizens themselves? How much can we trust voters in guarding the institutions and values that come with our democratic government?

To both of these questions, the public largely does not provide comforting results. Various studies have found that Americans generally care (or are impartial) about democratic norms in the abstract but not in practice. After polling voters and public officers on their feelings towards democratic norms, political scientist Herbert McClosky concluded that:

If American ideology is defined as that cluster of axioms, values and beliefs which have given form and substance to American democracy and the Constitution, the political influential manifest by comparison with ordinary voters a more developed sense of ideology and a firmer grasp of its essentials. This is evidenced in their stronger approval of democratic ideas, their greater tolerance and regard for proper procedures and citizen rights, their superior understanding and acceptance of the ‘rules of the game,’ and their more affirmative attitudes toward the political system in general. The electorate displays a substantial measure of unity chiefly in its support of freedom in the abstract; on most other features of democratic belief and practice it is sharply divided.80

In another study, political scientists John Hibbing and Elizabeth Theiss-Morse found that American voters overestimate consensus. The consequence of this perception, the authors write, is that “If 80 percent of the people are in agreement, there is no need for debate and compromise. People would see democratic procedures as unnecessary and maybe even counterproductive because conflict is unnecessary and counterproductive.”81 Civil debate and compromise, two fundamental conventions of

a multi-party democracy, are viewed by many not as providing stability but instead as being counterproductive. This vision allows undemocratic candidates that decry the other party, defy norms of decorum, or promote other non-democratic principles through a reform banner to gain traction among voters who believe that some key democratic foundations are in fact detrimental to good government.

**The Shaky Democrat in Polarized Times**

The 1988 song by *Alabama*, “Song of the South,” tells the tale of a poor Southern family during the Great Depression. The father of the family is a New Deal Southern Democrat; “*Daddy was a veteran, a southern democrat / They oughta get a rich man to vote like that.*” That type of Democrat has largely been relegated to the history book. The heyday of Southern conservative Democrats that *Alabama* describes – alongside their antithetical Northern liberal Republicans – has ended. In the modern polarized America, conservatism has become synonymous with the GOP and liberalism with Democrats. Both Democratic voters and representatives are becoming more liberal; the inverse holds true for Republicans.83

Polarizing ideological divisions affect every branch of government. The degree of ideological separation between Republicans and Democrats in Congress is the highest recorded in the past century.84 Alongside this interparty strife, intraparty

---

solidarity has risen: party unity on roll call votes has increased considerably in the House and the Senate in recent years.\textsuperscript{85} Supreme Court justices are more divided along party lines in major cases now than at any other time in contemporary history.\textsuperscript{86} Nor are divisions contained to Washington. In many states, Democrats and Republicans are more polarized along ideological lines than their federal counterparts.\textsuperscript{87} Polarization in the federal government and throughout state capitols is paralleled by the polarization of our social fabric of the citizenry. The shadow of partisan polarization lurches itself into our social identity,\textsuperscript{88} the composition of our neighborhoods,\textsuperscript{89} and even the television shows we watch.\textsuperscript{90} The lackluster support of democracy in action exposed the cracks in the ability of voters to effectively sanction norm offenders. But these cracks widen to gaping fractures through ubiquitous polarization.

In norm accountability theory, we must focus heavily on the impact of elections in either helping or hurting norms. The success of voters in upholding norms is judged primarily through the electoral outcomes of candidates that have previously disobeyed norms. Polarization has significantly impacted the way in which voting decisions are made. As David Schlozman and Sam Rosenfeld point out, “Our

\textsuperscript{88} Leonie Huddy and Alexa Bankert, “Political Partisanship as a Social Identity,” \textit{Oxford Research Encyclopedia of Politics}.
\textsuperscript{89} Bill Bishop, \textit{The Big Sort: Why the Clustering of Like-Minded America is Tearing Us Apart} (Boston: Mariner Books, 2009).
polarized age is unquestionably also an era of partisan revival.”\textsuperscript{91} Party identification predicts voting behavior more accurately now than at any other time in polling history.\textsuperscript{92} Recent elections have recorded the highest levels of straight-ticket voting since the American National Electoral Studies began polling party identification in 1952.\textsuperscript{93} In 2012, 91 percent of partisan identifiers or leaners voted for their party’s nominated candidate.\textsuperscript{94} In the modern moment, party identification and voting choices are virtually synonymous.

An interesting exception in the current of polarization, however, is that party loyalty does not translate to consistent ideological uniformity for voters in the same way that intraparty unity translates into ideological consistency among elites.\textsuperscript{95} The majority of Americans, including a large number of partisans and those who lean towards a party, do not abide by their defined ideological sorting (conservative or liberal) to nearly the same degree as their representatives. Rather, only 21% of voters hold consistent ideological views, although this number is rising.\textsuperscript{96} Similar to the unreliable support of democracy, many citizens do not maintain consistent ideological views when brought in practice.

\begin{thebibliography}{96}
  \bibitem{schlozman} Daniel Schlozman and Sam Rosenfeld, “The Hollow Parties,” (awaiting publishing), 1.
  \bibitem{ibid} Ibid, 1.
  \bibitem{ibid2} Ibid, 14.
  \bibitem{klein} Ezra Klein, “For elites, politics is driven by ideology. For voters, it’s not,” \textit{Vox}, November 9, 2017.
\end{thebibliography}
Among voters, the dramatic rise of party loyalty manifests in a particularly malignant way for democratic government: negative partisanship. Alan Abramowitz and Steven Webster define this concept as:

Negative partisanship develops when the partisan identities of voters are strongly related to other salient social and political characteristics. When this happens, supporters of each party perceive supporters of the opposing party as very different from themselves in terms of their social characteristics and fundamental values. As a result, voters tend to hold very negative opinions of the opposing party’s leaders and supporters, prefer not to associate with those who support the opposing party and are less likely to consider voting for candidates from the opposing party.97

Negative partisanship makes party identification a central part of a voter’s social identity. A major component of this social identity is a growing mutual contempt many Democrats and Republicans feel towards the opposing party. In 1994, a tightly contested election year that did not include much amicable partisan sentiment, “a majority of Republicans had unfavorable impressions of the Democratic Party, but just 17% had very unfavorable opinions.”98 By 2014, highly negative views by Republicans towards Democrats had more than doubled, up to 43% (Democrats experienced a similar, though slightly smaller, jump from 16% to 38% over the same timeframe).99 Researchers have recently found that Democrats and Republicans “avoid dating one another, desire not to live near one another and disapprove of the idea that their offspring would marry someone outside their party.”100 Acrimony and

99 Ibid, 11.
100 Eitan Hersh, “How Many Republicans Marry Democrats?,” FiveThirtyEight, June 28, 2016; “Political Polarization in the American Public: How Increasing Ideological Uniformity
distrust between the two parties make it hard to uphold the democratic need to understand the opposing party as a loyal opposition. There is no room for democratic norms of mutual toleration when those who would be tolerated are seen as the enemy.

These currents greatly increase the threat of a norm offender being able to bypass sanction from voters. For norm accountability to function properly, voters must be able to see past party affiliation to judge a candidate’s previous compliance with democratic conventions. This requires more of a holistic approach to choosing a candidate than simple straight-ticket voting. Republican voters must be willing to vote against a Republican candidate if the candidate has shown herself willing to violate important democratic conventions, same with Democrats. Yet in a polarized age, the consequences of not voting for party may be too large of a tradeoff for many voters to make. Norm offenders can sidestep concerns by partisans about their history or threats of norm violations based on the desire of voters to vote for their party banner. This allows potential norm offenders to know that they may be able to reap the benefits of violating norms (reclaiming rights and possible power) without facing political retaliation at the voting booth that would deter such action.

This trend is only further expedited when polarization is conflated with the non-reliably democratic or ideological voter, which set the stage for the ascension of a norm disrupter. In making decisions at the voting booth, we have seen that holding democratic or ideological purity is not the overriding concern. Therefore, potentially

---

successful candidates do not necessarily have to be fully beholden to ideological or
democratic values. From this emerges a pathway for an insurgent norm-breaking
candidate to gain traction in a run for office. Such a candidate may be irreverent to
conventions of acceptable political behavior or party elite ideological orthodoxy.
Republican Representative Thomas Massie from Kentucky, after observing the 2016
Iowa Caucuses, struck a similar theory:

I went to Iowa twice and came back with [Ron Paul]. I was with him at
every event for the last three days in Iowa. From what I observed, not
just in Iowa but also in Kentucky, up close with individuals, was that
the people that voted for me in Kentucky, and the people who had
voted for [Ron] Paul in Iowa several years before, were now voting for
Trump. In fact, the people that voted for Rand in a primary in
Kentucky were preferring Trump. All this time, I thought they were
voting for libertarian Republicans. But after some soul searching I
realized when they voted for Rand and Ron and me in these primaries,
they weren’t voting for libertarian ideas—they were voting for the
craziest son of a bitch in the race. And Donald Trump won best in
class, as we had up until he came along.101

In this political environment, insurgency and norm-breaking may be incentivized by
certain voters, not punished.

After reviewing the current performance of voters in their job of norm
accountability, we are left with a bleak picture. The job of voters in protecting
democratic conventions is left muddled. Often, the result is that instead of inflicting
political punishment on those politicians that break norms – the task that norm
accountability theory imposes – people generally either do not care enough about
democratic principles in practice or are willing to stomach concerns of undemocratic
behavior in the name of partisanship. Electoral victory for these candidates leads to a

behavioral mandate. Over time, this lowers the political coercion put onto politicians that deters them from breaking red lines since they know that voters will not uniformly condemn norm violators at the ballot box.

**The Door’s Unlocked**

The grim actuality of the unreliable voters described above puts more of the onus onto elites to protect norms. Put squarely: in modern politics, if a norm breaker makes it onto the ballot, there is a large chance she may win. Therefore, voters cannot be fully entrusted to secure democratic norms themselves. Elites, organizations, and political parties must step in to enforce norms in response.

A large burden of this responsibility is given to the leadership of the two major American political parties. Political parties play two main roles in representative government: nominating candidates for office and coordinating governance among serving elected officials. It is through these two valves of party power – nominations and coordinating governance – that elites are able to exert power to sanction or deter norm violators. Through doing this, parties may be imagined as gatekeepers of democracy. Gatekeeping in the United States takes on quite a different form that in most other Western nations. In most democracies, citizens vote for parties, not for individual candidates. In this system, parties craft a central “party list” of potential representatives.102 Being on this list is the only way for a person to reach office. For this reason, party leaders alone decide the

---

composition of representatives bearing the party name. In the United States, candidates, rather than parties, are voted upon in elections. Instead of voting for the Democratic or Republican parties on election day, you vote for a specific person. This difference in voting systems will prove to be a huge impediment in gatekeeping in America.

The record proves that without proper instruments to ensure some form of gatekeeping in a democracy, norm-breaking insurgents rise. After the conclusion of World War I, the German government drafted a new constitution in Weimar, seeking refuge from the street fighting in Berlin. By all accounts, the new Weimar Constitution was a triumph of democracy. Historian William Shirer wrote that the Weimar Constitution was “on paper, the most liberal and democratic document of its kind the twentieth century had ever seen (…) full of ingenious and admirable devices which seemed to guarantee the working of an almost flawless democracy.”

However, a fatal flaw emerged in the new constitution that would lay the groundwork for the bloodiest war in human history. Under the proportional voting system, any party that received over 60,000 voters was guaranteed representation in the Reichstag. Through this loophole, extremist groups, including a young organization of nationalists and former army veterans known as the National Socialists, entered mainstream politics.

The United States has long had its own mechanisms gate-keep. Under the system, political parties had great sway. Nominations were a centralized process

---

104 Ibid, 56.
whereby party insiders handpicked nominees. By doing this, parties could essentially shut out any candidate attempting to seek office – a power they often used in order to stop norm breakers from entering government. Consider the example of Ford Motor Company founder Henry Ford. Ford was an extremist norm-shattering insurgent. He decried bankers, Jews, and Bolsheviks, publishing articles through his *Dearborn Independent* claiming that Jewish bankers were conspiring against the United States. He developed a reciprocal admiration with the emerging Nazi Party.¹⁰⁵ Heinrich Himmler called Ford “one of our most valuable, important, and witty fighters.”¹⁰⁶ Despite popular support for Ford running for president, political parties locked him out. The only way to get to the ticket was through party leaders. The parties refused to let him in and, knowing that he had no path to the White House, Ford never ran.¹⁰⁷

This power to control ranks changed considerably after the McGovern-Fraser reforms, instituted in response to the tumultuous 1968 Democratic Convention, in which party officials chose Vice President Hubert Humphrey as the nominee in secret, backroom deliberations despite the fact that he did not win a single primary.¹⁰⁸ Using a philosophy of “the cures for the ills of democracy is more democracy,” the reforms changed the balance of power in nominations away from party insiders and to voters, tying delegate votes in the conventions to the result of primary elections and limiting the ability of party leaders to handpick delegates.¹⁰⁹ This considerably

¹⁰⁵ Levitsky and Ziblatt, *How Democracies Die*, 43.
¹⁰⁷ Levitsky and Ziblatt, *How Democracies Die*, 43.
limited the formal ability of parties to control gate-keep, severely weakening the power of American political parties. Candidates do not need a loyal relationship with or an endorsement by a party to run for office under its banner. Instead of having to be placed on the “party list,” in the American system all a person has to do in order to be a party’s candidate for office is simply win a primary election. This has made parties progressively more porous, to borrow Elaine Kamarck’s terminology: unable to control their composition, which leads to a slew of other effects.\textsuperscript{110} In the absence of party power, insurgent norm breakers can bypass parties, effectively circumventing the role of elites in the process of norm accountability.

Even after the McGovern-Fraser reforms took the majority of formal power away from the party in the nominating process, party regulars were able to successfully serve a less salient role in gatekeeping until the late 2000s through what \textit{The Party Decides} terms the “invisible primary,” in which interest groups and party elites rally support around one candidate before the primaries begin.\textsuperscript{111} While \textit{The Party Decides} viewed the effects of McGovern-Fraser as leading only to a recalculation of party elite power, Nelson Polsby, in his 1983 book \textit{The Consequences of Party Reform}, warned that the McGovern-Fraser reforms opened the door for factional insurgents not supported by party regulars to win “by appealing to a minority faction or even merely personal following, exciting them to high turnout for primaries and especially caucuses, winning with a possibly modest plurality of the

\textsuperscript{111} Cohen et. al, \textit{The Party Decides: Presidential Nominations Before and After Reform}.
vote.”112 Although The Party Decides helps explain presidential nominations before 2008, after the 2008 and 2016 nomination cycles, the Party Decides authors conceded that Polsby’s warning held up better in the current political climate.113

Polsby’s caution heavily echoes the fatal flaw of the Weimar Constitution. The frontlines of the civil war in between factions of an American political party are often primary battles. With little party control, insurgency campaigns challenging nominations can sidestep the power of parties to gate-keep. In Weimar, the Constitution provided no safeguards to exclude dangerous politicians and those irreverent to democratic conventions from the Reichstag. Weimar’s gatekeeping depended solely on trusting voters to be good democrats in their vote selections. American government has now headed in this direction. Parties have been neutered of any ability to formally gate-keep. Now, we as well have to put our trust fully in the hands of voters. Parties are no longer our gatekeepers of democracy.

**Empowered Insurgents**

The decline of the power of parties to act as gatekeepers severely hampers their ability to exert enough political coercion to enforce red lines. McGovern-Fraser pushed aside the formal authority of parties in determining nominees yet parties still retain the second responsibility of coordinating governing. Therefore, gatekeeping is not the only way that parties can prevent or punish norm violators. In this other area

---


of functions, however, parties are still weak and insurgents are incentivized. This comes as insurgents, both in campaigns and in office, have become more empowered to act independent of the party due to the rise of independent political fundraising organizations and the decline of party legitimacy and trust.

In the 2010 Republican primaries, Tea Party Republicans won seven Senate races, multiple governor races, and dozens of congressional elections.\(^{114}\) With their primary victories, many occurring in deeply red districts, the new Tea Party members – wielding far-right ideology and obstructionist tendencies – changed the composition of the GOP. As swing seats dwindle, the threat of being “primaried” is a more practical concern for many members of Congress than the threat of losing in a general election.\(^ {115}\) In a survey of elections from 1970 to 2010, Robert Boatright concluded:

> If one is concerned primarily with the past decade or so, the predominance of ideological challenges is unmistakable. There are not a large number of ideological challenges, but they are the plurality winner among my categories. More than half of current House incumbents have been in office for ten years or less, and their tenure has been marked by a steady increase in the number of ideological challenges, so perhaps it is more natural for them to worry more about being primaried than it would be for longer-serving representatives.\(^ {116}\)

Boatright’s research finds that the increase in ideological primary challenges results largely from the fact that in recent years “ideological primary challengers have done far better than other types of challengers at raising money.”\(^ {117}\) Ideological interest groups such as MoveOn.org or Club for Growth see low-salience and low-turnout primaries, especially for the House of Representatives, as a good bang for their

---


\(^{115}\) Kamarack, “Increasing Turnout in Congressional Primaries,” 6-7.


\(^{117}\) Ibid, 103.
In addition, the implementation of the federal McCain-Feingold campaign finance reforms, which limited “soft money” donations to parties, bolstered the ability of independent political organizations to be a trusted vehicle in providing a steady and large stream of funding for “ideologically-pure” candidates. In the post-McCain-Feingold and *Citizens United* political world heavily saturated with cash, parties have “lost out in the contemporary money race,” writes Alan Greenblatt. In their place, ideological organizations, such as MoveOn, Indivisible, Tea Party Patriots, and Club for Growth, take on certain powers previously reserved for party elite and political leadership, such as determining who to support by doling out funding. These organizations, many heavily ideological and unhappy with party leadership, chip away at party power through independent funding streams and engaged activists ready to donate and vote in primaries.

When insurgent candidates backed by these organizations win elections, they are less beholden to party leadership. Freshmen congressional representatives and senators can go to outside organizations for support and funding instead of the RNC or DNC. Insurgent candidates and representatives feel confident defying party leadership by knowing 1) that they can go directly to their base for the high turnout need to win a nomination; 2) they can rely on outside funding streams; and 3) that in a general election most partisans will overcome reservations for a specific candidate

---

in the name of voting for the party.\textsuperscript{121} The battlefield of the Republican Civil War has come through primary fights between RNC-backed mainstream Republicans and Club for Growth- and Tea Party-backed insurgents

Lastly, parties find themselves in a crisis of legitimacy. Parties appear nowhere in the Constitution. They are private institutions whose power to make and enforce decisions requires the trust of voters in their legitimacy to make a judgment. For parties to enforce norms onto politicians, the public and elected officials must give enough trust to the party leadership in order to accept their rulings. But increasingly, people do not trust political parties. More broadly, Americans do not trust their institutions anymore – and this is especially acute for political ones.

According to Gallup data, the average of trust in 14 major American social, economic, and political institutions is at only 34 percent.\textsuperscript{122} In 2016, only 9\% of Americans said they trusted Congress.\textsuperscript{123} American political parties have followed suit. Both the Democratic and Republican Party have experienced a steady decline of trust. Over the past twenty-three years of Gallup polling on this topic, both parties have seen their trust fall by around thirteen points (See: Figure 3.1).\textsuperscript{124} What is striking is that when compared with other American institutions, trust in the two biggest political parties in the United States is declining at a faster rate than the


\textsuperscript{124} Ibid.
average trust for other institutions (slope for average institution trust = -0.424).

Variation does exist in perceptions between the parties. The average decline in trust for the Republican Party (slope = -0.682) is slightly steeper than the average decline for the Democratic Party (slope = -0.616). This trend is not America-specific. Parties around the Western world have seen their legitimacy fall in recent years.

In modern examples, voters push back against attempts of what they see as interference of the formal party in politics. Consider, for instance, the case of superdelegates in the 2016 Democratic Party primaries. Superdelegates are elected officials, such as governors and members of Congress, along with party officials, such as state party chairs, that have automatic voting power at conventions.

Although Hillary Clinton won the majority of votes in the Democratic primary (and thus a majority of delegates), the Sanders campaign ignited a prolonged furor at the notion that insider, non-elected party officials have any role in the nominating process. The resonance of this argument with Sanders voters was that the parties have no room to interfere in the execution of nominating contests. In another example of party disapproval, even though the number of swing voters is decreasing, the amount of people refusing to identify with either of the political parties has steadily increased. Politicians, activists, and voters on both sides of the aisle increasingly use the term “establishment” as a political epithet, implicitly seeing experience and entrenchment in party structures as a negative for good government. In all of these cases, the political lexicon and environment have shifted in ways that decrease the trust and legitimacy of party organizations and political leadership to effectively use their powers to filter candidates to keep insurgents and extremists from entering the mainstream.

The effect is that an attempt by elites to tow a political red line may be highly unpopular among voters. The former keepers of stable government and norms – political parties and leadership – have seen a decline in power. New flocks are appearing on the ballot and showing up in Washington without the blessing of the party. Defiant to a weakened party, they are not deterred enough by the possible

---

political retaliation that the party could dole out for violating the established rules of the game. Without a substantial level of political coercion holding them back, insurgents may change these rules as they see fit and move politics into directions that would have previously been off limits.

**Conclusion**

Returning to our model of norm accountability, upholding norms requires political elites to be able to properly reprimand norm violators in order to deter actors from future actions against these conventions. The second part of this theory requires voters to vote against a norm violator in elections. Weak parties and high partisanship greatly interfere with this enforcement mechanism.\textsuperscript{131} Insurgent candidates and elected officials can bypass party leaders, opting instead to go directly to the voters. Since party officials do not hold the same nominating power as before, they cannot tow a political red line when deciding who will compose the party. If a norm-defying candidate reaches the general election, even if she only won a small plurality of the vote from an engaged ideological faction, more often than not partisans – who themselves hold shaky democratic and ideological views – will overcome reservations about the candidate in order to vote the party line.

As this cycle happens over the course of multiple elections throughout different years, norms undergo long-term degradation. The voters’ decision as to whether or not to vote a candidate into office with a record of violating a norm will impact how she, or other elected officials, perceive that norm in the future. If an

\textsuperscript{131} Julia Azari, “Weak parties and strong partisanship are a bad combination.”
elected official can win despite violating a norm, then she and others will believe that it is permissible to break the norm. Parties, on the other hand, cannot stop insurgent, norm-violating challengers. Rather, the current climate and weak power of parties incentivize such insurgent candidates. This changes the political calculus put into whether a norm should be violated. Since norms are informal, the decision to follow them or not is based on political coercion: the fear of political retaliation. Knowledge that violating a norm does not innately lead to electoral defeat changes an elected official’s calculus of whether or not to violate a norm. If violating a norm is politically advantageous for other reasons, such as stopping the passage of legislation you oppose, then seeing candidates that have previously defied that same norm win elections and not suffer punishment informs you that violating the norm may be in your best interest.

As parties can no longer execute the role of gatekeeping democracy, the number of insurgents can be expected to rise. With parties unable to enforce democratic norms, more norm-defying candidates will face elections. Voters with shaky track records in holding democratic values in practical situations cannot be reliably trusted. On top of that, partisanship will likely lead voters to vote for party over person. With weak enforcement by party leadership or during elections, norms will lose their enforceability. All that remains for a norm to be destroyed is an impetus for officials to want to reclaim their rights and powers they had previously forfeited by following the norm. Overcoming gridlock serves as that source of political need. As gridlock grows more endemic and process becomes politicized,
loosely-enforced norms get thrown into the political fold. This will be discussed in the next chapter.
CHAPTER FOUR
APPROPRIATING DEMOCRACY

“There are dangers in the Senate,” James Madison wrote in his Notes of Debates in the Federal Convention of 1787, “is to consist in its proceedings with more coolness, with more system and with more wisdom, than the popular branch.”132 Based on a deliberative ideal, the Senate sought to be a counterweight to the more sporadic and temperamental House of Representatives. The American Senate is a unique body for a variety of reasons, none more so than its distinctive quality of permitting unlimited debate, something not found in any other legislative body in the world.133 As part of maintaining stability in such a chamber, a complex web of norms shapes the day-to-day functioning. The format and procedure of floor debate, which amendments will be introduced by the different parties, and the weight given to rulings of the Parliamentarian are all rules constructed through informal conventions.134

Despite this history, norm erosion has borne its brunt on the chamber. This has primarily come through the filibuster. Adopted in 1917, Rule XXII – commonly known as the cloture rule (for closure of debate) – attempted to formalize the process for ending debate in the Senate. Under the current format, Rule XXII requires that a cloture petition be approved by three-fifths of the Senate membership in order for cloture to be invoked. If this happens, then debate will end after a set period and bring

the cloture question (a bill, nomination, or amendment) to a vote. When a filibuster occurs, senators force a cloture vote by prolonging debate or using other procedural tools. By moving the bar for passing legislation from a simple majority to a three-fifths vote, filibustering (thereby requiring cloture) provides strategic advantages for the minority party and is a useful mechanism for blocking legislation.

For this exact reason, the filibuster has become a key mechanism by minority members seeking to obstruct the governing of the majority. The amount of action on cloture motions has soared in recent Congresses (See: Figure 4.1). This increased and sustained use of the filibuster represented a “basic change,” according to former Senate Majority Leader Robert Byrd. The norm of using cloture petitions recalibrated: “Senators began to assume that the other party would fully exploit its procedural options and prepared to do the same,” wrote Steven Smith in *The Senate Syndrome*. Elites accepted the recalibrated norm and were prepared to violate more norms themselves in response. In one of his first interviews after becoming the Senate Republican floor leader, Minority Leader Mitch McConnell told CNN’s Wolf Blitzer, “You know that every measure, virtually every measure with any degree of controversy about it in the United States Senate requires 60 votes. That’s ordinary procedure, not the unusual.” Voters, on the other hand, rolled over. Smith found that “The minority party suffers no measurable disadvantage at election time by its

---

135 Heitshusen, “The Legislative Process on the Senate Floor: An Introduction.”
138 Ibid, 250.
use of the filibuster on prominent legislation beyond what it might on policy grounds.”

Both parties were ready to play norm hardball.

Figure 4.1 - Senate Action on Cloture Motions by Congresses

The described context was ripe for a tit-for-tat escalation of norm violations. The eruption occurred on November 21, 2013, when Democratic Majority Leader Harry Reid invoked the “nuclear option.” By Obama’s second term, the president, Senate Majority Leader, and liberal groups became increasingly frustrated by the increased Republican obstructionism in Congress, which included filibustering presidential nominees and legislation. On October 31, matters heightened when Republicans successfully opposed cloture on the nomination of Melvin Watt to lead the Federal Housing Finance Agency. Later that same day, Republicans again defeated cloture on a nominee to the U.S. Court of Appeals for the District of Columbia Circuit. The events led Reid to warn, “I hope my Republican colleagues will reconsider their continued run of unprecedented obstructionism. Something has

to change, and I hope we can make the changes necessary through cooperation."  

But by this point, appeals for bipartisanship fell on deaf ears.

Matters worsened through November. After cloture motions failed on three different nominations in the span of three weeks, more Democratic Senators joined in on Reid’s call for change. Finally, Reid went to the floor of the Senate to do what no senator had done before: rewrite the rules of cloture without a three-fifths majority – what is known as reform-by-ruling. Reid began by stating his point of order: “I raise a point of order that the vote on cloture under rule XXII for all nominations other than the Supreme Court of the United States is by majority vote.” Patrick Leahy (D-VT), the president pro tempore, followed the advice of the Senate Parliamentarian by ruling, “Under the rules, the point of order is not sustained.” Reid then appealed the ruling to the full Senate, after which the president pro tempore posed the question for the Senate, “Shall the decision of the Chair stand as the judgment of the Senate?” By a 48-52 vote, the Senate chose not to sustain the ruling of the chair, thereby adopting Reid’s new precedent as the new working rule of the chamber.

Through Reid’s reform-by-ruling, the majority leader reasserted certain legal powers to govern the chamber that had previously been relinquished in the name of democratic convention. Never before had the Senate majority leader used the reform-by-ruling process to change cloture rules. In rhetoric, Democrats defended their actions by claiming that they were a warranted and needed response to constitutional

---

143 Congressional Record, November 21, 2013, S8417-4178.
and democratic norm violations by Republicans. Senator Tom Udall (D-NM), likely echoing sentiment for the majority of senators, argued after the nuclear option vote that: “It is hard to argue that the majority is not respecting the traditions of the Senate when the minority is using this body purely for political gain.”144 He continued, saying:

Changing the rules with a simple majority is not about exercising power, but is instead about restoring balance. There is a fine line between respecting minority rights and yielding to minority rule. When we cross that line, as I believe we have many times in recent years, the majority is within its rights to restore the balance. This is not tyranny by the majority, but merely holding the minority accountable if it crosses that line and makes the Senate a dysfunctional body. I would expect the same if my party was in the minority and we were abusing the rules.145

For Democrats, invoking the nuclear option represented a necessitated response to right a democratic norm injustice by the opposing political party. Among the public, a November 27, 2013 YouGov poll found that while slightly more people disapproved than approved of Harry Reid’s move, the number of respondents expressing disapproval only stood at 35%.146 Most of the public simply did not know or did not care about the “Nuclear Option.”

The precedent of Reid’s actions recalibrated conventions of the filibuster. The nuclear option upped the ante, as Democratic leadership showed themselves willing to break Senate conventions in pursuit of advancing their agenda. Four years later, Democrats, now in the minority, filibustered Neil Gorsuch’s nomination to the Supreme Court in retaliation for Republicans blocking Merrick Garland’s nomination.

144 Congressional Record, November 21, 2013, S8436.
145 Ibid.
In response, Republicans made a filibuster move of their own. Using Reid’s strategy of reform-by-ruling, Republicans made invoking cloture on Supreme Court nominations subject to only a simple majority vote.\textsuperscript{147} By this round of tit-for-tat, however, voters had become weary. A Quinnipiac University survey found a 67 to 25 percent margin opposed to invoking the nuclear option in order to seat Gorsuch.\textsuperscript{148} The escalation of norm breaking quickly changed the equilibrium of Senate action. For now, this has created a new shaky status quo in which the majority of policy legislation is still eligible to Rule XXII cloture procedures, but now both sides know that the other is willing to use their legal authority to change that if in the majority.

The case of the nuclear option raises a question that animates this chapter: how has gridlock interacted with a general breakdown in holding politicians accountable to norms? In this chapter, I seek to understand how overcoming gridlock has provided the incentive for actors to disobey previous political red lines. I will argue that endemic gridlock has compelled actors to use atypical legislative paths to advance their political agenda, which requires throwing away norms. Breaking these norms are usually justified to the public and to other elite as a needed response to a constitutional or democratic violation done by the opposition. The result, I argue, is that decisions are made less on the basis of democratic norms and political coercion. Instead, actors use a legalistic model authorizing the use of all legally-sanctioned avenues to self-advance. This leads to a general tit-for-tat escalation that precipitates shakier policy and less stable government.

**Gridlock**

Gridlock is endemic to the United States. Drawing upon their personal experience with the British government and inspired by the philosophy of writers such as Montesquieu, the American Founding Fathers crafted a constitution that dispersed powers of governing.\(^{149}\) Accumulation of all powers of government into a single body or individual, according to Framers such as James Madison, “may justly be pronounced the very definition of tyranny.”\(^{150}\) Creating different branches that all have mechanisms to regulate the power of each other fulfills Madison’s famous goal that “Ambition must be made to counteract ambition.”\(^{151}\) Multiple veto points and separation of powers frustrates the ability for government to quickly or easily pass legislation. Seeing this new reality, Federalist Alexander Hamilton bemoaned the structural deadlock built into the new document.\(^{152}\) A century later, Woodrow Wilson levied similar complaints of the system the Founding Father created.\(^{153}\) Despite the remarkable number of veto points, even passive observers can observe the astounding variance in productivity throughout different Congresses. These “[p]eriods of lawmaking prowess,” Sarah Binder notes, “are the exception, rather than the norm.

When they occur, we give them enduring political labels, like the New Deal and the Great Society.”¹⁵⁴

The modern period of lawmaking idleness will perhaps one day receive its own enduring political label. Until that time, the dispersal of powers in the Constitution combined with polarization yield gridlock. The frequency of gridlock over the most salient political issues in the 1990s was double that of fifty years earlier.¹⁵⁵ While there are still variations in productivity throughout contemporary Congresses, gridlock, in total, is on a steady climb upwards. No Congress has come close to matching the historic productivity of the Great Society Congresses. Inter-chamber and inter-branch conflict, even in periods of unified government, have slowed the progress of substantive policy action in Washington to a halt.¹⁵⁶ The first year of the two most recent sessions of a Congress in periods of unified government (115th Congress in 2017-2018 and 111th in 2009-2010) have seen fewer pieces of legislation enacted than in periods of divided governments a decade earlier.¹⁵⁷ Former Senate Majority Leader Bob Dole once said, “If you’re against something, you’d better hope there’s a little gridlock.”¹⁵⁸ Contemporary political forces have rendered politics a bellicose game that has transformed Dole’s “little gridlock” to ubiquitous gridlock.

¹⁵⁵ Ibid, 2.
¹⁵⁷ Ibid.
¹⁵⁸ Binder, “Going Nowhere: A Gridlocked Congress.”
**Norms and Gridlock**

In a multi-branch democracy, norms are fundamental in organizing and regulating branches. They facilitate inter- and intra-branch relations, encouraging cooperation and coordination between branches. These goals are important, given that enacting durable policy in the United States requires sharing of power and responsibility among different actors scattered throughout the branches. Again, in this scenario, we see the limitation of formal statutes to establish working government. While separation of powers allows “ambition to check ambition,” vagueness of provisions provides the space for actors to impede on basic functioning abilities of other branches. For instance, the Senate, using their Article 2, Section 2 “Advice and Consent” powers, could refuse to staff the heads of all federal agencies. The president could refuse to implement the rulings of the Supreme Court. These antagonisms are generally considered unproductive to well-functioning government and therefore are usually foregone. As a result, the drive to increase stability and form a coherent set of predictable outcomes when working between branches leads politicians to relinquish the right to undertake power-grabbing moves. This new system of permissible behavior by actors among the different branches forms the basis of democratic norms of governing. Through these informal conventions, governmental actors know what to expect from other branches and can make decisions based on that knowledge. With these shared understandings, democratic norms produce a stable government that can coordinate in order to produce effective outcomes.

Gridlock changes the calculus as to whether politicians ought to fulfill their obligations to these conventions. Modern history has seen the advent of new forms of
political posturing and maneuvering. The search for non-normative paths forward often includes violations of established conventions of behavior and process. Legal scholar David Pozen understands this method of behavior as a form of political self-help, one in which “Aggrieved officials cease to follow ordinary norms of cooperation and constraint.”159 Politicians are willing to forgo norms and established informal processes in order to push their agenda through a paralyzed political system. The general philosophy of this new strategy is to let the ends justify the means: for politicians to bypass conventions on the path to satisfy their immediate political goals. In this quest, politicians may use what Constitutional Law Professor Mark Tushnet calls “constitutional hardball.”160 Hardball is “directed at settled processes for adopting public policy.” Actors engage in constitutional hardball when “they try to displace settled processes with ones that would make it easier for them to put in place new institutional arrangements they favor.”161 Through this mechanism, norms are forsworn in the name of immediate political goals.

While the victory for the self-interested politician comes in the short-term, the long-term ramifications include the withering away of conventional processes. As both parties play the game over extended periods of time, norms wither away through a tit-for-tat escalation. If a president refuses to follow established ethical conventions, the Congress may respond by imposing ethics oversights and restrictions that are unprecedentedly strict or invasive. The president, in response, may retaliate by announcing an executive action that attempts to undercut these congressional

161 Ibid, 533.
oversights. In this situation, one violation leads to another and both sides are guilty of offenses.

In a gridlocked and polarized state, trading norms for immediate political gains becomes incentivized. When the relationships between officials that norms are intended to establish instead break down, bypassing these norms of inter-branch cooperation becomes more attractive. In an era of profound ideological polarization, both reaching a compromise and selling a moderate package to voters, where it may seem that a politician sold out his ideological principles, becomes harder. The Bipartisan Senate Gang of Eight immigration bill, for instance, was crafted through longstanding norms of compromise between majority and minority parties. While the bill made it out of the Senate, the Republican-controlled House, more ideologically conservative than ever, refused to consider the bill. There was no room for compromise and deliberation in the House for the bipartisan Senate bill.

Violations of these governing norms in an age of gridlock take on a variety of forms: for the majority party, this may include blowing past any minority opposition in order to advance an agenda. For the minority, this goal is reversed: to obstruct the governing party’s agenda. If either the majority or minority party achieves their goals through violating these norms, then the “let the ends justify the means” political philosophy is fulfilled.

---

164 Ibid.
“We Can’t Wait” and Justifications of Governing Norm Violations

Newton’s famous third law states that “For every action, there is an equal and opposite reaction.”165 Under the Obama presidency, every (congressional) inaction led to an equal and opposite reaction (by the president). After losing his House majority during the 2010 midterms, President Obama found his agenda stalled by what he viewed as an obstructionist Republican Congress.166 With over a year left in his first term, Obama embarked on a new strategy of bypassing Congress in order to achieve key policy goals. After congressional Republicans blocked Obama’s $447 billion jobs plan, Obama issued a new pledge: “We can’t wait.”167 As part of this new policy initiative, Obama issued executive actions, memoranda, and proclamations on issues where Congress did not act, such as immigration, college tuition, and housing.168

First, we should consider why “We Can’t Wait” constituted a governing norm violation. In advancing his agenda without using Congress, the president moved to advance his own political interest over the wills of the legislature. Through executive decisions, the president played hardball with the amount of policy enactments that he could achieve through unilateral executive action. Obama built this executive

167 David Jackson, “Obama’s new slogan: ‘We can’t wait’,” USA Today, October 24, 2011.
authority based off of precedents set by previous presidents. In 2001, now-Supreme Court Justice Elena Kagan wrote in the *Harvard Law Review* a defense of President Bill Clinton’s use of executive action. “Faced for most of his time in office with a hostile Congress but eager to show progress on domestic issues, Clinton and his White House staff turned to the bureaucracy to achieve, to the extent it could, the full panoply of his domestic policy goals,” Kagan wrote.169 George W. Bush worked off of Clinton’s example to claim “prerogative power,” defined by Andrew Rudalevige as the philosophy that “a president could act even when Congress didn’t want him to.”170 Each one of these presidents progressively nudged the limits of acceptable executive action out more to build an even higher authority for himself. Obama was no exception. Darla Cameron of the *Washington Post* found that “From his first day in office through the end of November [of his final year in office], Obama has issued 242 more executive actions than Bush did for his entire presidency.”171 By working off of examples set by previous presidents, Obama further changed the relationship between the executive and legislative branches, recalibrating the previous conventions of separation of powers between the branches by creating an even more powerful legislating executive.

To account for the potential punishment voters and elite could inflict on President Obama’s decision to forgo existing governing conventions, it is useful to examine the rhetorical tools and arguments President Obama used to sell his “We Can’t Wait” campaign. President Obama attempted to justify his norm violation

---

171 Ibid.
(exercising broad lawmaking authority) as a response to another norm violation by the opposing political party. In a November speech in Las Vegas as part of the “We Can’t Wait” campaign, President Obama explained his rationale: “So I’m here to say to all of you -- and to say to the people of Nevada and the people of Las Vegas -- we can’t wait for an increasingly dysfunctional Congress to do its job. Where they won’t act, I will.” The President argued that “we can’t wait for Congress to help our families and our economy,” so he would take matters into his own hands to help the American people: “Until they act, until they do what they need to do, we’re going to act on our own.”\textsuperscript{172}

In this statement, and in the “We Can’t Wait” messaging, the president was not issuing a policy critique against Congress. Instead, Obama lobbed claims of constitutional wrongdoing. The Congress was not fulfilling its constitutional duty of legislating. This impelled the president to right Congress’s wrong by using broad executive action. University of Chicago Law Professor Eric Posner made this argument more clearly in a 2014 \textit{New Republic} article: “If Congress cannot pass any laws because of gridlock then it has violated its obligations under the Constitution, and accordingly the president has the right to use his enforcement powers to implement policies that serve the public interest.”\textsuperscript{173} Through this strategic rhetoric, the president morally justified his decision to bypass the Congress, which permits, if not calls for, Obama’s action.

The “We Can’t Wait” justifications provide a quintessential encapsulation of how governing norms are justified. Justifications come from two interconnected components: moralizing on constitutional or democratic grounds, then imposing a partisan twist. Usually, this comes through explaining that someone else – to whom she is responding – is either failing their constitutional duty or not abiding by democratic conventions. Therefore, the new round of norm breaking is a needed corrective to an earlier norm violation. Pozen captures this dynamic well in writing “actions were meant to be preservative, not usurpative, in nature.”\(^{174}\) Obama’s executive actions were required of him in order to faithfully execute his democratic duties. House Republicans were violating time-honored conventions of conduct between the legislative and executive branches. These provide the moral explanation that the actor executing the norm violation is himself the champion of stable democracy. He is solely reacting to a grave injustice to democracy emanating from another actor.

Second, norm violators put their actions into the partisan fold in order for them to be justified to elites and partisans through party cues. Obama consistently stated that he was forced to act “because we can’t wait for Congressional Republicans to act.”\(^{175}\) Republicans were the villains in this situation. The action of Democrats was solely the required response. Engulfing norms into the partisan fry puts an easy spin on the situation, especially in light of concepts of polarization, namely negative

polarization. By asserting norms into the larger context of party acrimony, politicians can expect that cues of partisanship will lead individuals to accept the argument that violations were a needed response to constitutional or democratic infringements by the opposing party. Regarding policy, many partisans, especially elites, sympathize with the violation as it advances the political interests of the party. Congressional Democrats had the hands of their policy agenda tied by an unresponsive Republican Congressional delegation. Unable to pass a jobs bill, Democrats and liberals relied on Obama’s executive actions in order to advance their policy missions. While the devil may have been in the process, here again, the ends justified the means.

Obama’s “We Can’t Wait” campaigning allowed him to successfully bypass the structures of norm accountability. Republicans officials voiced opposition, but their rhetoric meant little to a president responding to what he saw as norm violations on the GOP side. Democrats did not make any statements against Obama’s campaign, likely agreeing with the end goals of the initiative. Among the public, the president’s job approval did slide throughout the end of 2011. Nonetheless, in the following year, Obama cruised to reelection. While these actions may have been viewed as benign by the public or Democratic elites, they represented the next stage in a tit-for-tat escalation of the breaking of conventions. “We Can’t Wait” further

---

escalated the changing of the process and convention that each party was willing to use in order to advance their political self-interest.

**Slim Majorities and More Recalculation of Incentives**

Although President Obama issued his “We Can’t Wait” initiative after the 2010 midterms, he would probably have been better served politically if he had started his first term with this philosophy. The president was able to pass major pieces of legislation in his first two years in office, but after major Democratic defeats in the 2010 midterms, this largely came to a halt. Democrats losing control of the unified government they had before the 2010 midterms should have been predictable given the historical record. Since 1980, American national elections have become extremely competitive. Republicans and Democrats have roughly evenly split the amount of time spent controlling the presidency. The Senate majority has shifted hands seven times. The House majority switched three times during that period, with both parties holding majority control for nine Congresses. In this “50-50 nation,” as dubbed by AEI’s John Fortier, both parties “can generally count on receiving between 47 and 53 percent of all the votes cast in congressional elections any given year.”

This has not always been the case. As Frances Lee describes in her 2016 book *Insecure Majorities*, Democrats were the nation’s perpetual majority party for the middle of the 20th Century. Her research finds that “Democrats maintained majority

---

control of both the House and the Senate for nearly a half century between 1933 and 1981, interrupted only by two brief Republican interludes (...) The Democrats controlled the presidency two-thirds of the time during this period.”

A veteran House staffer during the 1960s and 1970s that Lee interviewed as part of her research summarizes the general comity and bipartisanship of Congress at the time: “The era of maximum [bipartisan] cooperation was when Democrats had an overwhelming majority. Under those circumstances, they could afford to give amendments to Republicans.”

In 1951, Samuel Lubell coined the concept of a political solar system, with a Sun Party (the majority party, which drives the agenda) and the Moon Party (the minority). In such a universe, Lubell wrote, “it is within the majority party that the issues of any particular period are fought out; while the minority party shines in reflected radiance of the heat thus generated.”

During that era, the Democrats were the perpetual sun; Republicans the perpetual moon. Now, in a scene reminiscent of Star Wars, two suns duke it out to determine which one will rise in the east each morning.

Slim majorities impact the decisions to violate norms in a variety of ways. Namely, time in the majority is more limited now than ever. Knowing that majority power switches relatively frequently in the contemporary environment creates a pressure on the majority party to pass as much of a policy agenda as possible in the shortest amount of time. In order to accomplish this task, majority party leaders and the president may attempt to push legislation through Congress using any means

182 Lee, Insecure Majorities: Congress and the Perpetual Campaign, 1.
183 Ibid, 70.
available, even if doing so breaks previous conventions of legislative process. Inversely, the minority is in a position where it is politically expedient to use all possible tools to obstruct the agenda of a party that has a high chance of being out of power after the next congressional elections. This has given rise to what Barbara Sinclair termed “unorthodox lawmaking,” whereby each party uses all legal authority possible to pass a policy agenda, even when doing so leaves the conventional lawmaking process a relic.\^185 Party leaders reassert previously-restricted legal authority to push forward policy goals. The main casualty of this new mindset is democratic conventions of governing, enacted originally in part to prevent such conduct.

**Effects of Governing Norm Erosion on Policy and Governance**

Perhaps the best estimation of the framework of competing powers between branches came through an opinion in a 1954 Supreme Court case, *Youngstown Sheet and Tube Co. v. Sawyer*. In the case, the president and Congress were at explicit odds over whether the president could seize steel plants during a wartime emergency. Despite penning a concurring opinion, Justice Robert H. Jackson authored the most memorable part of the Court’s decision. Writing that the Constitution enjoins “upon its branches separateness but interdependence, autonomy but reciprocity,” Jackson lays out three different circumstances of congressional-presidential power sharing. At the top rung of authority, when “the President acts pursuant to an express or implied

authorization of Congress,” it can be said that “his authority is at its maximum.” In these situations, “and in these only, may he be said (...) to personify the federal sovereignty.” In the next rung down, “When the President acts in the absence of either a congressional grant or denial of authority,” he operates in a legal “zone of twilight.” The judge agrees that “congressional inertia, indifference, or quiescence may sometimes, at least as a practical matter, enable, if not invite, measure on independent presidential responsibility.” In the final rung, “the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.” When the courts are faced with this scenario, Jackson believes, “Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”

In our gridlocked governance ensnared by mutual norm violations and claims thereof, presidential action has increasingly depended on the second and third rung of Constitutional authority. For the modern president, inaction leads to discretion. The “zone of twilight” increases through congressional infighting and obstruction. Throughout each consecutive recent president, the lines of digestible executive action have continued to enlarge. Obama inherited strong precedents of executive authority from his predecessor, George Bush. In response to either congressional inertia or disapproval – either could be argued – of the DREAM Act, the president rolled out key components of the bill through executive action (what would be later known as

---

The consequences of this new equilibrium of presidential policy action were discovered seven years later, when the White House returned to Republican control. On September 5, 2017, Attorney General Jeff Sessions announced that he would be formally rescinding DACA at a later date, which by that point was granting temporary work permits to over 800,000 undocumented individuals. He echoed a Justice Jackson-esque point on separation of powers: “In other words, the executive branch, through DACA, deliberately sought to achieve what the legislative branch specifically refused to authorize on multiple occasions.”

This example highlights a key consequence of governing norm decline: by reclaiming rights to use atypical routes of passing legislation, policy and process become more erratic. Using the executive as the main source of legislating leads to inherently shakier policy, as large amounts of policy – even ones with wide-reaching dependent constituencies – can be discarded within days of the start of a new administration. In comparison, pieces of legislation require the enactment of another law for repeal to occur. Barack Obama signed nineteen executive actions during within the first month of his presidency that revoked Bush Administration orders. The Trump Administration has continued to increase the panoply of legal rights afforded to him to pass policies. Andrew Rudalevige described this process as a

---

189 Ibid.
means to an end: “If Trump wants to do something, his lawyers will find a way to tell him it’s legal to do it.”191 This new executive authority and revamped equilibrium of checks and balances formed from a decline of conventions have brought a more unstable system of government than that sketched out in the Constitution. For that reason, the decline in democratic norms surrounding governing fundamentally transforms the formal institutions on which American democracy lies.

**Inability to Formalize**

An important byproduct of gridlock is the inability to formalize broken norms. Returning to the framework for what happens after a norm violation laid out in Chapter 2, a norm may be either formalized or recalibrated in the wake of a norm violation. To formalize requires either a constitutional amendment or legislation to codify norms into streamlined legally-enforceable text. Gridlock and polarization make it highly unlikely that any proposal can overcome the Constitution’s Article V threshold necessary to convert a norm into a codified constitutional rule.192 Even formalization that solely requires legislation often does not come to fruition due to the multiple veto points. Further, actors may not have much incentive to collaborate in the bipartisanship that separate branches and the 60-vote Senate require. Because norm violations are put into a moral and partisan context, voting to formalize a norm violated by a member of your own party may be seen as a vote against your party. A

---

192 Amending the Constitution requires a two-thirds majority vote by both houses of Congress followed by approval by three-fourths of states either through legislative enactment or state ratifying conventions (U.S. Const., Art. V).
Republican congressman would have a hard time selling a vote to place ethical
oversights onto the president to his constituents when the president is also from the
GOP. In the contemporary era, there is no hope that breaking an informal convention
will prompt its transformation into formal rule.

With formalization unachievable, norm violations lead to recalibration. Yet
constant recalibration has its own downsides. Namely, a norm that can solely be
recalibrated is both less powerful and more susceptible to further violation. A norm
does not have the same amount of leverage after a politician demonstrates that this
norm can be violated – especially if doing so does not lead to political consequences.
This may lead another actor in the future to move the precedent further, thus forcing
another recalibration. This tit-for-tat escalation, especially when partisan in nature,
sets up a scenario for constant norm bellicose. The exchanged allegations of “you did
it first,” without the release valve that formalization could hold, establish a political
context ripe for norm posturing and hardball. This does not take place over the course
of a single action. Large-scale recalibration of democratic conventions may happen
over the course of years, in many different violations and responses seemingly
without end. This pushes the bounds of what is deemed acceptable behavior further
and further along, diminishing existing governing norms in the meantime.

Dawn of a New Political Culture

From these motives and justifications, voters and political actors find
themselves in a new political culture. Rampant norm violations have become a
normalized part of government. They have developed their own lexicon and standard
rubric for justification and response. Lawmakers enter office with a greater political toolkit, working off of past precedents. Writing in 2002, Phillip Cooper summarizes this eloquently in writing:

As new presidents come to the White House, their administrations learn from their predecessors’ actions just how these tools of presidential power can be used. Indeed, in recent decades, each administration seems to find new devices and new ways of using them to achieve policy goals, including goals they know they are unlikely to accomplish if they call upon Congress for help.\(^{193}\)

In this new culture, politicians find themselves both as the aggressors and the defenders of norm misconduct. Senate Democrats, for instance, scheduled so-called pro forma sessions to prevent George Bush from installing recess appointments.\(^{194}\)

Seven years later when Democrats found themselves in the White House and the Republicans in the Senate majority, the Democratic president, Barack Obama, utilized recess appointments to the National Labor Relations Board after confirmations to the agency were being held down by Senate Republicans. In the case NLRB v. Noel Canning, Solicitor General Don Verrilli (representing Obama) argued the opposite of Senate Democrats’ 2007 position. Responding to Justice Samuel Alito’s comment that “You are making a very, very aggressive argument in favor of executive power now and it has nothing whatsoever to do with whether the Senate is in session or not. You’re just saying when the Senate acts, in your view, irresponsibly and refuses to confirm nominations, then the President must be able to fill those – fill those positions,” the Solicitor General answered “Well, I do – I think this – I think the

\(^{193}\) Phillip Cooper, *By Order of the President* (Lawrence: University Press of Kansas, 2014), 1.

recess power may now act as a safety valve given that intransigence, and that is actually quite consistent. In the dance of politics, Democrats were ready to throw away their recent positions in order to advance their political goals.

In this process, the ball of what is seen as acceptable continues to advance more and more. Instead of formalization, norms can only be recalculated. Over time, this process becomes dynamic. In this chapter, we have studied how polarization and gridlock have emboldened elites that they are at liberty to violate norms. The justifications for their actions are wrapped in moralism: asserting agency over the norm violations as a necessity for countering the realities of modern politics. This comes primarily through announcing a breaking of convention as a response to norm violations from the opposition. The effects of these justifications are that norms are moralized to be acceptable and are folded into partisanship. We have also observed in this chapter how voters have increasingly followed party and elite cues in accepting norm violations. People can only deal with new situations for a limited amount of time before viewing them as the new normal. As these dynamics happen over time, the breaking of conventions become an accepted part of politics-as-usual, which further emboldens elites and normalizes violations of conventions in the eyes of voters.

Finally, this new political zeitgeist changes the criteria that political elites draw upon in making decisions from what is politically acceptable to what is legally acceptable. Armed with the knowledge that norm-breaking will be accepted by partisans and faced with norm violations from the other side, elites have minimized

the role that political considerations play in making decisions as to whether or not to violate norms. Instead of making these decisions based on a political basis – for instance, what are normal conventions of separation of powers or legislating – actors use all possible legal avenues for political advancement. As we have repeatedly seen, because the United States has a vague constitution, the full extent of legal authority is quite broad and up for interpretation. While the organization of branch relations was once dictated wholly by norms, which set up what was deemed politically acceptable, the breakdown of these norms has moved actors to use flexible and broad legal authority to advance themselves. Facing criticism in 2010 for not passing immigration legislation from advocacy groups, President Barack Obama defended himself by saying “I am president, I am not king. I can’t do these things just by myself. We have a system of government that requires the Congress to work with the executive branch to make it happen. I’m committed to making it happen, but I’ve gotta have some partners to do it.”\footnote{“Interview With Eddie ‘Piolin’ Sotelo on Univision Radio Network’s ‘Piolin pr la Manana – October 25, 2010’,” The American Presidency Project, University of California, Santa Barbara, accessed March 10, 2018.} But two years later, following the failure of the DREAM Act, President Obama changed his opinion and drew upon his full legal authority over immigration to use expansive executive power to implement immigration programs, most notably Deferred Action for Childhood Arrivals (DACA).\footnote{“Remarks by the President on Immigration,” The White House, Obama Archive, June 15, 2012, https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration.} What changed in President Obama’s mind was that, when faced with a combative GOP, he would be compelled to act under the full extent of his legal authority. Political considerations that would have previously led him to say that he cannot institute major immigration
changes because he is “not a king” no longer held in an environment with gridlock, obstructionism, and rampant bipartisan norm breaking. Political conventions aside, the president was ready to use his full legal scope because “We Can’t Wait.” In this system, the ends justify the means.
CHAPTER FIVE
ELITE COMPLICITY AND ELECTORAL VICTORY: THE ASCENSION OF DONALD TRUMP

On October 24, 2017, close to a year after Donald Trump’s upset presidential victory, Arizona Republican Senator Jeff Flake took to the Senate floor to offer a blistering rebuke of the president as part of a speech announcing his retirement. Enraged at the “coarseness of our leadership,” and “the compromise of our moral authority, and by ‘our,’ I mean all of our complicity in this alarming and dangerous state of affairs,” Flake engaged directly with Donald Trump:

In this century, a new phrase has entered the language to describe the accommodation of a new and undesirable order, that phrase being the new normal. That we must never adjust to the present coarseness of our national dialogue with the tone set at the top. We must never regard as normal the regular and casual undermining of our democratic norms and ideals. We must never meekly accept the daily sundering of our country. The personal attacks, the threats against principles, freedoms, and institutions, and the flagrant disregard for truth and decency, the reckless provocations, most often for the pettiest and most personal reasons, reasons having nothing whatsoever to do with the fortunes of the people that we have been elected to serve.198

Flake joined a growing chorus of politicians and political observers from across the political spectrum that have come to the conclusion that Donald Trump represents a unique and serious threat to our democracy and our democratic norms. Former Acting Attorney General Sally Yates, an Obama appointee, said at an event that she was worried by Trump’s “relentless attack on democratic institutions and norms, and the impact that that can have on our country not just during the term of a Trump

198 Congressional Record, October 24, 2017, S6735.
presidency, but in the years to come as well.” Thomas Edsall wrote that “President Trump has single-handedly done more to undermine the basic tenets of American democracy than any foreign agent or foreign propaganda campaign could.” Former George Bush Speechwriter Michael Gerson wrote in a 2018 Washington Post piece that “Loyalty to Trump now consists of defending the indefensible. His advocates are becoming desensitized to moral corruption. They are losing the ability to believe in anything, even in their own courage.” The day after Trump’s Inauguration, conservative commentator Peter Wehner penned an op-ed stating “Donald Trump is a transgressive personality. He thrives on creating disorder, in violating rules, in provoking outrage. (...) He is unlikely to be contained by norms and customs, or even by laws and the Constitution. For Mr. Trump, nothing is sacred.” While cross-party attacks are commonplace now in American politics, lobbying claims of cataclysmic threat to one of the same party stripe is not regular politics. Among both the liberal and conservative commentators, objections to the current president are not housed solely in policy concerns. Their denunciation is much larger and points to a much graver threat. The criticisms stem from a belief that Donald Trump constitutes an existential threat to the stability and future of the United States that goes beyond that posed by any politician of recent memory.

The present chapter seeks to study the uniqueness of Donald Trump in the landscape of norms and why he has, according to this vocal cohort, ushered in a crisis of democracy. I begin with a brief history of the beginning stages of the Trump candidacy to illuminate how, from the offset, the Trump campaign’s message was predicated on his unconventional approach to politics. A large part of this came through disrupting and not being beholden to long-standing democratic conventions of rhetoric and decorum. The justifications Trump gave for this action was that such behavior, what I call “telling it like it is,” was required to bring about the needed reforms Trump promised. I look into the reasons why elites and voters failed to make Trump pay the political price for failing to abide by democratic norms. Through his unconventional behavior, speech, and style of governing, Trump has expedited the ongoing shift in decision-making away from a political calculus towards one where actors execute the maximum legal authority possible in order to advance themselves. This comes with a slew of negative consequences for stable government.

**The Trump Campaign Begins**

Donald Trump’s flirtation with a possible presidential run dates back to 1988. A decade later, in 1999, Trump launched a brief presidential run for the nomination of the Reform Party – a third-party founded and popularized by fellow magnate Ross Perot.203 The developer and former host of “The Celebrity Apprentice” gained prominence in Republican circles over the course of Barack Obama’s first term in office for being a sharp, and often gaudy, critic of the Democratic president. More

---

infamously, Trump made inroads with far-right conservative groups by fomenting the Obama “Birther” conspiracy theory.\textsuperscript{204} By the time of the 2012 Republican presidential primaries, an exploratory poll of the field found Trump sitting in second place solely behind the eventual nominee, Mitt Romney.\textsuperscript{205} A cycle later, Trump was ready to fully jump into the Republican race.

Trump’s campaign launch was a huge departure from the typically-restrained campaign announcement. Over the course of a wide-ranging speech announcing his candidacy on June 15, 2015, Trump sketched a crude and dark picture of an America losing on many fronts, using language not seen on the presidential stage in decades. Berating Barack Obama, China, and ISIS, among other subjects, Trump made headlines for saying “when Mexico sends its people, they’re not sending their best. (…) They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.” The conclusion of Trump’s address, in what would be a foray into his eventual campaign message, was “The American Dream is dead. But if I win, I will bring it back bigger and better and stronger than ever before.”\textsuperscript{206} Such candid language is out of the ordinary in mainstream politics, let alone in a typically-restrained campaign announcement. By comparison, Jeb Bush, in his more prototypical campaign launch, promised “We will take command of our future once again in this country. We will lift our sights again, make opportunity common

\textsuperscript{204} Gregory Krieg, “14 of Trump's most outrageous 'birther' claims -- half from after 2011,” \textit{CNN}, September 16, 2016.
Trump was using a new, unconventional way to broadcast his message. Throughout the campaign, Trump would brand each of his challengers with unflattering nicknames. Hillary Clinton was “Crooked Hillary.” There was “Low-Energy Jeb,” “Lyin’ Ted,” and “Little Marco.” Jack Goldsmith wrote in *The Atlantic* that “Trump’s taunts exceeded the bounds of campaign decorum but generated attention and helped distinguish him from the stale, conventional elite wisdom reflected by other candidates in both parties.” Trump’s norm-breaking approach was not a byproduct of Trump. Rather, it was the central component of his campaign. From the offset and throughout, this campaign would define itself on the grounds of breaking conventions of politics and political behavior.

Such a strategy had not been seen by in a presidential race by a candidate of one of the two major parties in decades. Likely for this reason, Trump’s campaign was initially laughed off. Surely Trump’s campaign message was not a winning strategy. DNC National Press Secretary Holly Shulman satirically responded that “Today, Donald Trump became the second major Republican candidate to announce for president in two days. He adds some much-needed seriousness that has previously been lacking from the GOP field, and we look forward to hearing more about his ideas for the nation.” Shulman likely believed, as did many, that Trump’s outspoken speech would hurt the GOP and thus boost Democratic fortunes in the

---

209 Goldsmith, “Will Donald Trump Destroy the Presidency?.”
upcoming general election. Implicit in this belief was a trust that the power of
democratic conventions would stop Trump. A candidate as bombastic to democratic
values of civility as Trump was could never win out in a primary election, let alone in
November’s general election. Echoing this sentiment, Harry Enten of *FiveThirtyEight*
wrote that Donald Trump’s unpopularity and convention-breaking language of sheer
id made it that “Trump has a better chance of cameoing in another ‘Home Alone’
movie with Macaulay Culkin” – a reference to the 1992 movie *Home Alone 2* in
which Trump makes a cameo – “than winning the Republican nomination.”

**Justifications for Breaking Norms of Decency and Decorum**

Trump understood that his behavior was not traditional in politics. In
defending his action, Trump provided the moral justification for breaking norms of
decency and decorum by saying they were necessary to the reform government so
badly needed. To “Make America Great Again,” Trump believed that he would have
to cut through all the “political correctness” holding the nation back. In the first
Republican debate, Trump drew applause by explaining away Megyn Kelly’s
question on controversial comments that he made in the past by stating that “I think
the big problem this country has is being politically correct. I’ve been challenged by
so many people and I don’t, frankly, have time for total political correctness. And to
be honest with you, this country doesn’t have time, either.”

---

211 Harry Enten, “Why Donald Trump Isn’t A Real Candidate, In One Chart,”

correctness (in this case, following conventional ethical standards of speech for presidential candidates) was incompatible with reform. This excuse would become commonplace: throughout the campaign and in office, needing to cut through political correctness – needing to “tell it like it is” – became the main justification Trump used as a crutch to dismiss concerns over his behavior.

This justification fits in with a larger premise onto which Trump predicated his campaign: the anger people felt towards conventional politics. The feeling that Trump was attempting to tap into, resentment towards the people in Washington, has empirical backing. As of December 2017, only 18% of the public trusts the Federal Government always or most of the time.\textsuperscript{213} Elizabeth Theiss-Morse and John R. Hibbing attribute this decline to public dismay over perceptions of process. They argue “Dissatisfaction with the key institution of representative democracy, for the most part, is based less on the public’s belief that the people are smarter or more informed than elected officials than it is on the sense that elected officials are in office for themselves.”\textsuperscript{214} Americans are mad at the status quo of politics and see the need not just for a change in policy but for reforms to political processes.

Trump consistently drew upon the “tell it like it is” justification to push the bounds of acceptable rhetoric and policy. At a rally in South Carolina in December 2015, Trump called for a “total and complete shutdown of Muslims entering the United States.” He told the roaring crowd that his proposed Muslim ban was “very,


very salient, very important and probably not politically correct.” In another case, Trump attacked the ethnicity of a federal judge who presided over a lawsuit against Trump University. Trump told the Wall Street Journal that the judge, U.S. District Judge Gonzalo Curiel, had an “absolute conflict of interest” in presiding over the case given Curiel is “of Mexican heritage.” Defending his statement later that week on CBS’s Face The Nation, Trump told host John Dickerson that his allegation of bias “has nothing to do with anything except common sense. We have to stop being so politically correct in this country. And we need a little more common sense, John.”

Just as how railing against a broken process holds weight with voters, Trump’s sentiment on political correctness, at least in philosophy, rang true for many Americans. A 2016 Pew Research Center survey on “political correctness” found that a majority of Americans think many people are offended too easily. The public bought into the premise on which Trump justified his behavior. What was unique about Trump was how far he was willing to use that justification to push boundaries of acceptable political conduct.

Therefore, we see that just as breaking norms of governance come with democratic and constitutional moral justifications, the main justification for violating

---

219 Hannah Fingerhut, “In ‘political correctness’ debate, most Americans think too many people are easily offended,” Pew Research Center, July 20, 2016.
norms of decency is the need to “tell it like it is.” Trump’s promise to “drain the swamp” necessitated a combative method of political communications towards elites in power. The link between decency norm violations and the pursuit of reform is clear. Citizens feel angered at the political process and seek reformist candidates to change the situation. People are willing to tolerate – or indeed are looking for – a candidate willing to “tell it like it is,” to break through all the political correctness, to shake things up in Washington. A search for reformism in politics breeds insurgency through an attempt to find politicians willing to go against an unpopular status quo, an umbrella term under which political red lines exist. Politicians like Trump can captivate voter anger at government when violating norms. In many ways, their reformist identity is personified in their decisions to violate norms, which breaks the “politics as usual” in Washington. What made Trump special in all of this, just like the décor in his Fifth Avenue skyscraper headquarters, was his willingness to go extravagantly above the rest.

**Trump Breaks Through the Republican Field**

Immediately following Trump’s entry into the campaign, the New Yorker gained steam within the crowded field of seventeen declared Republican presidential candidates. A month after announcing his bid, Donald Trump was the frontrunner in the Republican primaries, according to a July Economist/YouGov poll.\(^{220}\) Now moving deeper into the campaign, Trump showed no sign of slowing down his blunt

---

style of speech. Throughout campaign rallies, Trump encouraged violence, and repeatedly called for the imprisonment of his opponent. Political correctness remained a villain as well. “We cannot afford to be so politically correct anymore,” Trump said at the Republican Convention, eliciting huge cheers. Trump’s crassness, armed with a ready-made justification, had cemented into a central tenet of his campaign, pushing the boundaries of political acceptability.

Trump was able to evade punishment from party elites and voters for a variety of reasons, including media coverage and his ability to self-finance. In terms of the strength of party and political elite coercion, however, one of the most important factors was the oversaturated field running in a Republican primary that already featured little room for formal party intervention. As discussed in Chapter 2, primary battles by the time of Trump’s campaign had already become porous. In the days before the McGovern-Fraser reforms, which transformed presidential nominations from party elites handpicking to primary contests determining the nominee, a candidate that so openly waived off democratic conventions could be effectively stopped by party elites. This is what barred norm breakers such as Henry Ford in the early-20th Century from entering politics. By controlling who served as the eventual party nominees, elites could – and did – reprimand norm violators by preventing them from seriously entering a presidential race.

---

Beyond McGovern-Fraser, the power of elite and voter reprimand against Trump was further strained by the fact that, unlike the Democratic field which featured only three major candidates, the seventeen Republican candidates running diluted the anti-Trump vote. The huge field made it difficult for voters and party officials to coalesce behind a single candidate to serve as a rebuff to Trump. With seventeen people running, the vote for a mainstream candidate could be cut between a variety of politicians. This resulted in Trump being able to find an initial path to victory through relatively small pluralities. In comparison to the past four Republican primary contests not featuring a sitting president, Trump fared equally as well in first contests (Iowa, New Hampshire, South Carolina) compared to other eventual nominees. However, in Super Tuesday elections (the first date on which many states concurrently hold their primaries), Trump’s benchmarks were ten percentage points lower than the eventual nominee in previous cycles (See: Figure 5.1).225 Within a crowded field, Trump secured victory in the earlier primaries – crucial for setting the stage for the rest of the primary contests – through a smaller percentage of votes than previous eventual nominees. We do not know what the results would have looked like in a ranked-choice voting system in which voters could list their second choice. But in the McGovern-Fraser era with little direct elite control, Trump’s ability to win victories through smaller percentages in a crowded field allowed him to bypass potential retribution if voters and party officials were able to coordinate behind a single mainstream candidate.

225 Results are drawn from the U.S. Election Atlas (https://uselectionatlas.org). Note that the contents in Super Tuesday do change over time, but throughout elections they do play a major part in shaping the media narrative of the primary.
As a counterfactual, consider George Wallace’s foray into presidential politics. Wallace entered the Democratic presidential primaries during the 1964 contest. However, going against the sitting president, Lyndon B. Johnson, who still had broad support from the party establishment, the result of the primary contests were a bygone conclusion and garnered little media attention. For what attention there was, it focused on Wallace’s rhetoric and anti-democratic behavior. In his book on the 1964 campaign, reporter Theodore White called Wallace a “narrow-minded, grotesquely provincial man.” Being shut out of the presidential party nomination process by elites, Wallace took his message directly to voters in the next presidential contest by running as an independent. The outspoken segregationist governor from Alabama believed that there was not a “dime’s worth of difference” between the Democratic and Republican Party. He saw his campaign as a vehicle for a third party

---

227 Ibid, 235.
insurgent revolt against a crooked Washington. The federal government, Wallace believed, was a behemoth of “pointy-headed intellectuals” expanding the powers of the federal government through the courts and bureaucracy. The rhetoric of Wallace’s campaign was radical in the lens of moderate standards of mid-20th Century campaigning. He once said at a rally that “You elect me the President (…) and if a group of anarchists lay down in front of my automobile, it’s gonna be the last one they ever gonna want to lay down in front of!” The political climate at the time was ripe for reformism. Between Civil Rights Movement and the assassination of Martin Luther King Jr., the riots at the Democratic National Convention, and the intensification of the war in Vietnam, Wallace rode a heated American public recently exposed to massive social and political controversies. Even in a favorable environment, Wallace only gained headway in the Deep South. He encountered similar results in the 1972 presidential primaries, where he ran for the Democratic nomination again. This case serves a successful example of norm accountability. In 1964, the Democratic Party locked him out. In both the 1968 and 1972 elections, the voters took the lead in punishing Wallace. Both voters and elites played their roles in controlling Wallace’s possible ascension.

With Donald Trump, however, forces of partisanship and Trump’s justifications won out. At times, Republican elites would break with Donald Trump following a particularly heinous offense. After a 2005 tape of Trump boasting about sexually assaulting women emerged, a large cohort of Republican leadership and representatives issued statements castigating Trump. The fallout from the *Access Hollywood* tapes included one of the only times – if not the only time – Trump issued a formal apology for his actions.\(^\text{232}\) Most times, norm-breaking acts of brash behavior by Trump were met with silence from Republicans, especially GOP Leadership. After Trump lashed out at the Muslim parents of a soldier who died in combat that spoke at the Democratic National Convention, neither Paul Ryan, Mitch McConnell, nor Mike Pence released statements.\(^\text{233}\)

Even in the cases where Republicans spoke out against Trump, retaliation often only came in the form of a single press statement or tweet, not through more substantive action such as groups pulling funding or endorsements that would have led to long-term damage to Trump’s electoral chances. The large majority of Republicans who decried Trump for his *Access Hollywood* tapes maintained their endorsements of the candidate. For those who either pulled their endorsements or refused to endorse Trump in the first place, they were sure to *not* endorse his opponent, Hillary Clinton. Former primary opponent Ted Cruz initially refused to endorse Trump, telling the crowd at the Republican National Convention to “vote your conscience.” Over time, with Trump’s election outlooks rising, Cruz ditched his

\(^{232}\) Rachel Wellford, “Here’s the list of GOP responses to Trump’s vulgar comments about groping women,” *PBS*, October 7, 2016.

moral stand to formally endorse Trump.\textsuperscript{234} An effective elite-level punishment to Trump’s norm violations in his campaign would have included stronger and more prolonged denouncement for incendiary and convention-defying rhetoric. Special interest or Republican Party PACs could have pulled funding from Trump’s campaign. In a forceful and meaningful action, groups and Republican officials could have gone past official party identification to endorse Hillary Clinton as a way to hamper Trump’s electoral chances. Through doing this, Republicans would have indicated that Trump needs to be defeated. Republicans would have towed a political red line of behavioral or rhetorical standards for politicians regardless of party affiliation. Instead, Republicans, especially party leadership, succumbed to forces of partisanship and stomached their concerns over Trump’s conduct.

In the general election, voters did the opposite of imposing a political punishment on Trump for his behavior. Instead of being trounced, which would have reinforced the power of democratic norms to the public and officials, Trump pulled off an upset victory. Partisanship survived the election largely undisturbed. Exit polls found that Republicans held loyal to Trump, with 89% of self-described Republicans voting for their candidate.\textsuperscript{235} While twenty percent of those that voted for Trump held unfavorable impressions of him, his behavior could be tolerated.\textsuperscript{236} His ability to win over so-called “Obama-Trump voters” echoed his justification for his norm breakage: that reform was needed and that him breaking conventions of political discourse was


\textsuperscript{236} Ibid.
a necessary step in that process. Reformism and deep partisanship won out over concerns of Trump treatment of conventions.

Among both elites and voters, any sort of punishment that could have been done to sanction Donald Trump’s behavioral convention breaking in the campaign was inadequate. Republican elites did not have enough power to control nominations and were not forceful enough in the general election to sanction the candidate for breaking conventions. Among voters, Trump’s primary and general election victories effectively mandated his behavior. Instead of him facing electoral defeat for his action, he was rewarded for his behavior, even if voters were reluctant to vote for him because of it, as it led him to the highest office in the land. For this reason, we should not be surprised that such temperament continued into office.

**The “Pivot” and Governing**

After the primary ended, after his first speech to a joint session of Congress, after appointing a new chief of staff and countless times in between, the media played up a narrative that Trump would one day finally

---

“pivot.” The philosophy of the pivot was that at some moment, Trump would stop his antics, stop his disparagements, and step in line with former presidents – a moment in which Trump “suddenly and permanently grows into the job,” as defined by Ezra Klein. The notion of the “pivot” represented a belief that Trump’s norm-breaking behavior could not possibly ensue as Trump progressed up the political ladder. The promise of the pivot rationalized Trump’s behavior within the framework of an American democracy still beholden to a stable set of democratic norms; that even after Trump advanced through the primaries and the general election, norms would still win out. As Trump continued to rise in political prominence, the nature of his successive positions would catch up to him and force him to change his behavior to be “presidential,” which connotes a series of norms that comes with the office of the president that include civility, restraint, and prudence. The power of norms would eventually fold Donald Trump into being a customary politician. More than anything, the pivot expressed a naïve belief, even if unspoken, on the part of political elites and citizens that norm accountability would spring into action at some point.

But, the pivot never materialized. Norms violations on the campaign trail turned into norm violations in office. In the months after his victory, a newly-embolden Trump with the force of a stunning upset win at his back continued to plow through norms once seen as holding the force of law. This, again, should not have been unexpected as noted in the original norm accountability theory. To win an election after breaking norms serves as a mandate for behavior previously deemed unacceptable. Now president, Trump breaking the restraints of norms occurred

242 Ezra Klein, “There is no Trump pivot, and there never will be,” Vox, September 22, 2017.
through a variety of channels and in multiple jurisdictions as Trump was no longer simply campaigning. For instance, the president is not required to divest himself from personal businesses to avoid conflicts of interest, but presidents of the past have duly followed this convention. Even Jimmy Carter put his peanut farm into a blind trust to ensure that no conflicts of interest would emerge. Trump, on the other hand, put the reigns of his business empire into the hands of his sons, while maintaining the right to directly extract profits from this trust.

Beyond simply divestment, Trump’s treatment of norms exposed the weakness of many of the mechanisms of ethical oversight in the United States. The Office of Government Ethics (OGE), for instance, relies upon and has received voluntary compliance from all recent presidential administrations. Trump, in classic form, disregarded these conventions. OGE Head Walter Shaub stepped down within months of Trump taking office, frustrated by the irreverence the administration was paying towards complying with agency guidelines. Shaub later told Ryan Lizza of the New Yorker, “To have OGE criticize you would have been a career-ender in the olden days—now it’s just lost in the noise.” Here, as in many other examples, Trump broke from the restrained position of previous presidents to reassert his maximum legal rights. Following OGE recommendations were based on political coercion, not legal. Trump simply did not give as much weight to the former set of concerns. Addressing the concept of the pivot directly, Trump said on the campaign

---

244 Nyhan, “Norms Matter.”
246 Ibid.
Breaking conventions became the essence of Trump being Trump. There would not be, and according to Trump’s logic could never be, a pivot.

**Republican Complicity and James Comey**

Trump’s continued disregard for norms forced the political world to recalibrate what democratic conventions still held true, to understand where in the sand political red lines were now drawn, or if they even still existed at all. Put another way, the president’s actions recalibrated what was deemed politically acceptable conduct. Encouraged by seeing his actions go unpunished, the president did not stop violating norms, and over time, this action became normalized to the political world. When White House Press Secretary Sean Spicer, in his first statement to the media, lectured reporters with a demonstrably false statement that Trump’s inauguration was the “largest audience to ever witness an inauguration,” did that constitute a breaking of convention? The answer is surely yes; the *Washington Post*’s Fact Checker called the moment “an appalling performance by the new press secretary.” But by this point, the country had already normalized the notion that the Trump team would tell blatant lies. While the media fuzzed about the issue, and the comments headlined

---

the Sunday political shows of the week. Donald Trump lying was not something novel. Americans were accustomed to Trump’s disinterest in providing truthful statements. In Trump’s brave new world, the rules of the game had changed dramatically.

What is perhaps most striking about the Trump presidency is not the action of Trump – a close and serious read of Trump’s campaign would have forewarned his erratic behavior. Rather, it is that Congressional Republicans have rolled over in complicity at the feet of Trump. The deference that Republicans gave to Trump’s volatility during his campaign continued, by-and-large, as he moved into the Oval Office. Elite Republicans’ logic for not taking a more confrontational approach towards the president’s anti-democratic behavior was the same as their logic in the campaign. Ted Cruz supposedly only wound up endorsing Trump after the candidate released a list of conservative jurists he would draw upon for appointing judgeships when in office. While Congressional Republicans may detest Trump’s action and treatment of democratic norms, he is a needed vehicle to enacting tax cuts, appointing conservative Supreme Court justices, and repealing the Affordable Care Act.

Toleration of unconventional conduct, which many would voice opposition to in

---


251 Everett, Glueck, and Nussbaum, “How Cruz got from ‘vote your conscience’ to ‘vote for Trump’.”
private or in leaks to the press, was justified by the reality that Trump acted as a requisite instrument for passing a conservative policy agenda.

Nowhere was Republican complicity to Trump’s anti-democratic behavior on more quintessential display than after one of Trump’s biggest norm violations yet: firing FBI Director James Comey. On May 9, 2017, President Donald Trump fired the embattled FBI Director, who had previously faced criticism for his actions from both the left and the right. Director Comey, addressing FBI employees in Los Angeles at the time, learned of his own dismissal through cable television.252 Appointed to a single term of up to ten years, the Director of the Federal Bureau of Investigation has conventionally been regarded as a non-partisan office, bypassing the maelstrom that sweeps out cabinet heads in other agencies with each new presidential administration.253 Only once before had a president fired an FBI Director, which happened when Bill Clinton fired Director William Sessions after Sessions refused to step down amid ethics violations.254 Initially, Trump stated that Comey’s firing occurred under the guidance of Deputy Attorney General Rod Rosenstein.255 Two days later, however, in an interview with Lester Holt of NBC News, Trump admitted that he fired Comey because of the Bureau’s ongoing investigation into possible

---

Russian meddling in the 2016 election, which he described as a “made up story (...) an excuse by the Democrats for having lost an election.”

The firing was immediately met with condemnation from virtually all Democrats and even some Republicans. Senator Ben Sasse, a Republican from Nebraska, remarked that “timing of this firing is very troubling.” Republican Representative Barbara Comstock said in a statement “I can’t defend or explain tonight’s actions or timing of the firing of FBI Director James Comey. The FBI investigation into the Russian impact on the 2016 election must continue.” Many Democrats specifically called for the creation of an independent investigator that the president would not have the authority to fire to lead the inquiry into possible Russian interference. The only House Republican in the immediate term who went that far was Carlos Curbelo, who said that firing reiterates “the need for Congress to establish a Select Committee with full investigatory powers to thoroughly examine this matter.” Congress appointing an independent investigator or establishing a select committee would have served to formalize the forbearance norm that prevents Trump from firing the head of an active investigating team into him by formally removing his authority to do so. Throughout all of this, importantly, Republican Leadership stayed silent and weathered the storm in the hopes that the news cycle would pass.

---

Despite certain Republicans coming out against Trump, nowhere close to a majority – and none of the leadership – call for substantive action following Comey’s dismissal. Just as Trump’s norm-breaking jumped from the campaign into office, so did the pattern of weak or simply non-existent Republican responses.

While the Justice Department appointed Robert S. Mueller III as the special counsel to oversee the case, the president still can use legal means to fire Mueller through directing the Deputy Attorney General to do so; an action Trump has hinted an interest in doing multiple times. The president’s threats of firing Mueller have led to outcry from some Republicans, but here again, the Republican-majority Congress has not used its power to formalize protections for the special counsel in the case. They are still relying on the strength of conventions – and the deterrence that the political consequences of such a firing would bring – to protect Mueller.

Even so, Comey’s firing constituted the largest single drop in Trump’s presidential approval rating since taking office. Only twenty-nine percent of respondents to an NBC/Wall Street Journal Poll approved of the move. While the drop did not cause a presidential-ruining public downturn, Trump’s violations of these norms drew strong voter condemnation. Perhaps for this reason Mueller’s investigation has been able to survive. The voter disapproval of Comey’s firing

---

informed the president that committing a similar maneuver in the future would expose himself to significant political damage, thus strengthening the convention to not fire the special counsel. The public approval drop, then, is a successful example of a voter castigation. The action of the voters has allowed Mueller to live on in a shaky medium, as the president feels obligated through political coercion to keep the special counsel. The long-term strength of the voter rebuke in preserving this norm will be judged based on whether the Mueller investigation will be allowed to continue to the finish. If this does not occur, then voters and elites did not do enough to deter the president. Political coercion was not enough, so the president deferred to using his maximum legal authority.

The Comey example also presents an interesting portrait of the modern role of media elite punishment towards norm-breaking behavior. Under the accountability theory, media elite can play a crucial role in ensuring that a norm-breaker is held accountable to the public through the decisions made on the amount of coverage and the spin given to a norm-breaking event. After analyzing media coverage of the Comey firing and its aftermath, we find that ideological-driven media has thrown a wrench in the proper execution of the media’s role within norm accountability. Looking at the coverage of Comey’s firing from the date of his firing (March 9) through the end of March from two liberal sources, *The New York Times* and *The Rachel Maddow Show*, and two conservative sources, *Breitbart* and *Hannity*, we find a polarized depiction of events. From the moment that reports emerged that president had fired the FBI Director, the news media segmented between liberal and

---

265 A larger discussion of the methodology of this research may be found in the Appendix.
conservative spins. Liberal sources (*The New York Times* and *The Rachel Maddow Show*) devoted a considerable amount of attention to almost all aspects of James Comey’s firing and its aftermath. News from liberal outlets consistently framed the Comey firing through the lens of the Russia investigation. Conservative sources (*Breitbart* and *Hannity*) initially dedicated a large amount of coverage to James Comey’s firing. However, as developments emerged that painted Donald Trump negatively such as the appointment of the special counsel or the publishing of a *New York Times* story detailing President Trump’s meeting with Russian officials in the Oval Office shortly after Comey’s firing, coverage fizzled out. When conservative sources described James Comey’s firing, the primary focus was a belief that the scandal and its coverage constituted a conspiracy against the president (*See: Figure 5.2*).

Further, and quite troubling, an almost complete political homogeneity existed throughout all four outlets. Over 90% of *Times* opinion pieces depicted the President and his firing in a negative light. Over 90% of *Breitbart* pieces characterized the president and his firing positively. Neither *The Rachel Maddow Show* nor *Hannity* presented a dissenting voice. When combined with differences in subject matter and partisan sorting into “echo chambers,” the results point to a conclusion that opposing partisans were presented with wildly differing accounts and perspectives of the Comey firing. Unless individuals consumed a variety of sources along the political spectrum, the conflicting views virtually never directly engaged with each other.
This study points to further hardships in considering elite- and voter-driven norm punishment. Namely, what is considered a norm violation to some – in the case of Comey, to liberal outlets – is not considered to be so by the other side. In this type of political environment, the information disseminating out obfuscates the decision as to whether or not to punish an actor. Just as news media polarizes over policy issues, it polarizes over perceptions of norms. This is only another way in which norms have folded into the usual polarized partisan fray. Polarized media coverage may have helped to ensure that Comey’s firing did not bring about the same level of uproar as extreme convention violations in the past, such as the Nixon’s Saturday Night Massacre, did, despite the constant comparisons on the left between the two.266

Retiring Republicans and Democrats Take an Active Response

Beyond Democrats, those who have been the most willing to openly inflict elite-retribution on Donald Trump’s norm violations have been a collection of Republican Congressional representatives who are either retiring or reaching the end of their careers. Jeff Flake, Bob Corker, Trey Gowdy, to name a few, have all become forthcoming in decrying Trump for his norm violations, usually through using the bully pulpit stemming from their positions. Leading the charge in this group is John McCain, one of Trump’s most vocal opponents within his party since Trump entered the presidential race. McCain and Trump scuffled throughout the 2016 campaign, most notably when the Republican nominee criticized McCain’s service in the Vietnam War, saying “He’s not a war hero. He’s a war hero because he was captured. I like people that weren’t captured.” After Comey’s firing, McCain was quick to call on Congress to establish a select committee to investigate Russian interference.

The fact that the grand majority of the Republican politicians coming out strongest against Trump will likely not face reelection poses a difficult situation for voter-driven efforts to punish Trump. The unwillingness of the majority of these politicians run for reelection on a platform of holding Trump accountable for his

norm violations – a message on which many Democrats are centering their campaigns around – kills the potential of an intra-GOP voter rebuke to Trump. Given that the president will not personally be on the ballot again until 2020 and that there are few Republicans running on an anti-Trump message, voter rebuke will have to come through voting for Democrats in the midterms, which requires the hard task of cutting through the stiff layer of partisanship. As we saw during the presidential campaign, voting in favor of norms may come second to voting in favor of party.

Democrats, on the other hand, are in a precarious situation. Trump’s victory has made Democrats feel a general panic, a sense that, as Ross Baker of Rutgers University writes, “they are under a very heavy obligation to defend the norms and the institutions.” Seeing Republican complicity and a norm-breaking president, many Democrats believe that they are defending a nation on the verge of sinking into authoritarianism. This fear, however, has led to awkward questions arising over what the proper scope of the “Resistance” is. Should Democrats use every possible tool legally available to them in their fight against Trump? To do so would require Democrats to throw out some conventions themselves, which certain members are ready to do. Some Democrats have questioned the mental state of the president, violating the long-standing “Goldwater Rule” that forbids disputing the mental stability of the president. Representative Zoe Lofgren, a California Democrat, asked in a press release, “Does the President suffer from early stage dementia? Has the stress of office aggravated a mental illness crippling impulse control? Has emotional disorder so impaired the President that he is unable to discharge his duties? Is the

---

President mentally and emotionally stable?” Twenty-seven mental health professionals penned *The Dangerous Case of Donald Trump* in which they argue in separate essays that Trump displays “unbridled and extreme present hedonism,” “delusional disorder,” and “pathological narcissism,” along with a host of other problems. Trump’s cabinet appointments have received more “no” votes than any other president in history. Democrats have shut down the government once, and have threatened to do so multiple other times. With Democratic voters in shock, and Trump being the most unpopular president among the opposition party in the history of polling by far, the Democratic strategy has been effectively endorsed by the base.

From this emerges a paradoxical situation: in attempting to defend norms, Democrats have violated democratic conventions themselves. Negative partisanship, causing deep acrimony between the parties, along with the history of Trump’s anti-democratic behavior have made Democrats believe that they are responsible for protecting democracy as we know it in the United States. If that is the frame that opposition to Trump is set as, then there are no bounds to the upper limit of action that may be used to stop him. Trump’s erraticism led to questioning of his mental

health; the firing of the FBI Director led to calls for impeachment;\textsuperscript{275} vile attacks led to vile attacks. The conflict between Trump and Democrats pits a match that results in a tit-for-tat norm-breaking escalation that will most certainly continue into the future. The reconfigured conventions of interbranch governing powers and decorum left in this wake of this scuffle will not be fully realized until after President Trump leaves office.

**Conclusion**

The emergence of Donald Trump exposed in vivid detail just how weak American democratic norms, and the structure to enforce them, had become. Trump was able to bypass both elite and voter sanction in order to rise to the highest level of government. His ability to hijack an open Republican field, then ascend to the general election displayed how ineffective party structures are in stopping insurgencies such as Trump. His banter that violates conventions of acceptable political speech is defended through focusing on how breaking the “political correctness,” which his language and behavior represent, is needed to pass the reform voters are clamoring for. In the campaign and in office, he has faced little opposition from the Republican Party, save some public rebuttals by individual legislators. Through this, Trump has continued to push the political boundaries further and further.

Now, the insulation that conventions played in producing stable government has been displaced. A president with no regard for the rules of the game has made

\textsuperscript{275} Saba Hamedy, “Blumenthal: Comey firing ‘may well produce impeachment proceedings’,” CNN, May 11, 2017.
U.S. policymaking a rollercoaster ride. Within the first days after the inauguration, the president instituted a travel ban against seven majority-Muslim countries without going through long-held norms of how executive action is carried out. Little consultation and discussion occurred between the White House and Cabinet agencies, leading to crises in airports and border crossings as Customs and Border Protection officials struggled to interpret the order. Erraticism in behavior has led to erraticism in policy. Trump, more than anyone else, has spearheaded the charge in overcoming the political coercion to follow norms in order to campaign and govern using all rights available. When conventions meant to create stable government are pushed aside, a more chaotic government emerges.

Trump’s mentality towards norms is best summarized by his Senior Advisor Kellyanne Conway’s response to a question from CNN’s Jake Tapper on then President-elect Trump’s false statement that millions of fraudulent votes were the reason that Hillary Clinton won the popular vote. Asked in light of Trump’s lie to define presidential behavior, Senior Advisor to the President Kellyanne Conway responded: “well, he’s the president-elect so that’s presidential behavior.”

President Trump throughout his time in political life has blown through countless norms uninjured, setting precedents that breaking conventions do not lead to certain political reprisal. This leads to a constant recalibration over what is considered acceptable – or normal – political behavior. The new normal is accepted, even if

---

reluctantly. New levels of political mud racking are brushed off, even if such behavior would have certainly meant political death in the past. It is hard to imagine George Bush or Barack Obama being elected president if they had participated in the behavior that Trump based his campaign upon. Having to comprehend and accept the new reality, we are forced to ask, what even are the rules of the game at this point?
CHAPTER SIX
CONCLUSION

German political theorist Carl Schmitt, whose lifetime spanned the creation of the Weimar Republic and its downfall, famously penned in *The Concept of the Political*, “the specific political distinction to which political actions and motives can be reduced is that between friend and enemy.”²⁷⁸ Politics contains two factions in primordial conflict. A world in which there is no friend-enemy distinction, or one without the possibility of warfare as a final resolution of the conflict this distinction may provoke, is “hence a world without politics.”²⁷⁹ War “is neither the aim nor the purpose nor even the very content of politics” but the very possibility of war “determines in a characteristic way human action and thinking and thereby creates a specifically political behavior.”²⁸⁰ Liberal democracy, which Schmitt believes fails to properly register his key distinction between friend and enemy, faces a heightened risk of either withering away, falling victim to internal strife, or caving in to outside enemies.²⁸¹

A natural offshoot of Schmitt’s vision of politics is that any option potentially available to overcome the enemy should be used. Just years after Schmitt’s publishing of *The Concept of the Political*, the National Socialist Party in Germany began to rise utilizing a message decrying such “enemies of the people.”²⁸² The Nazis used a quirk

²⁷⁹ Ibid, 35.
²⁸⁰ Ibid, 34.
in the Weimar Constitution previously discussed, which wholly limited the ability of
the state to gate-keep against undemocratic insurgents, to enter mainstream German
politics through the Reichstag.\(^{283}\) Economic, social, and political turbulence
throughout the beginning years of the Weimar Republican wore down the democratic
conventions and processes designed to ensure stability in a country that badly needed
it. The eventual *Machtergreifung* – the 1933 Nazi “capture of power” – came as the
Nazis took advantage of the opening the degradation of these democratic systems
brought. Nazis “ruthlessly seized the opportunities that the blocking of normal
parliamentary procedure and the erosion of alternatives since 1930 had provided,”
historians Benjamin Ziemann and Claus-Christian W. Szejnmann remarked.\(^ {284}\)
Adhering to such an ideology that promoted the notion of enemies of the state
existing, it is not too surprising that Carl Schmitt would up being a strong supporter
of the Nazis. He would become known as the “crown jurist of the Third Reich.”\(^ {285}\)
His conceptual basis for politics as a friend-enemy distinction led him to defend
Hitler’s political killings\(^ {286}\) and destruction of Jewish life.\(^ {287}\) The path towards power
for the Nazis came paved through the erosion of conventions and processes. The
Nazis were able to take advantage of a state with no gatekeepers and push the bounds

\(^{283}\) Shirer, *The Rise and Fall of the Third Reich*, 56.
\(^{284}\) Benjamin Ziemann and Claus-Christian W. Szejnmann, “‘Machtergreifung’. The Nazi
\(^{285}\) Benjamin Balint, “The Nazi Jurist,” *Claremont Review of Books* 15, no. 3 (Summer
2015).
\(^{287}\) Ibid; Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall. Eine Biographie* (Munich: C.H.
Beck).
of acceptable conduct within a democracy until the Weimar Republic became extinct in favor of the Third Reich.\textsuperscript{288}

The example of the Nazis rise to power is admittedly the dystopian outcome for a system in which democratic norms and conventions break down. As of the writing of this thesis, the United States had not yet seen its own \textit{Machtergreifung}. Even so, American democracy with weakened conventions expands the battlefield and potential weapons available for use in waging political war. Conventions and normal ways for officiating government can be tossed aside with little regard in order to advance politically. When norms are healthy, political conflict could be confined to a simple skirmish – lower-level natural differences emerging from contrasting views of policies and ideals. Political red lines restrain actors from using the full panoply of possible legal actions. Potentially dangerous or destabilizing behavior was circumscribed from accepted political conduct – a ban enforced through political coercion. As norms become unhealthy, politicians from both side feel more empowered to use all available resources to advance your friends (your party) and break down your enemy (the opposing party). Conventions are viewed solely as obstacles that stand in the way of achieving that goal. With parties and voters ready to play war, the red lines disappear.

The erosion of democratic conventions occurs throughout a variety of jurisdictions, takes on many forms, and is justified to the public by elected officials using different arguments. What unites all of these seemingly-disparate occurrences is a reclaiming of certain rights previously given up in the name of democracy. The

\textsuperscript{288} William Shirer, \textit{The Rise and Fall of the Third Reich}. 
previous restraint enforced by political coercion is coercive no longer. Once
defections in one part of the web of democratic conventions begin, the entire edifices
chips away little by little. This is what connects the withering away of norms of
governance discussed in Chapter 4: Appropriating Democracy with the atrophy of
norms of mutual respect and decorum described in Chapter 5: Elite Complicity and
Electoral Victory: The Ascension of Donald Trump. In both of these cases, politicians
reclaimed a set of rights previously set aside as part of the erection of stable
democratic conventions. In governance, elected officials in the majority and minority
take advantage of previously unused and atypical methods of process – such as
changes to the Senate’s advise and consent powers and the scope of presidential
executive action. In decorum, politicians have moved from restrained rhetoric and at
least public-facing comity to assert previously unacceptable forms of behavior and
speech.

Norm erosion does not always come in the form of partisan conflict either. As
noted, the degradation of conventions in one arena leads to the domino effect of
conventions withering away in others. One recent example of this is the unusually
high number of ethics scandals plaguing Trump’s cabinet, which have already led to
the dismissal of Health and Human Services Secretary Tom Price289 and Veterans
Affairs Secretary David Shulkin.290 Trump’s Environmental Protection Agency
Secretary Scott Pruitt has been bogged down in repeated ethics controversies for,

289 Juliet Eilperin, Amy Goldstein, and John Wagner, “HHS Secretary Tom Price resigns
amid criticism for taking charter flights at taxpayer expense,” The Washington Post,
September 29, 2017.
290 Nicholas Fandos and Maggie Habberman, “Veterans Affairs Secretary Is Latest to Go as
among other things, using taxpayer dollars to hire a 20-person security detail\(^{291}\) and fly first-class travel,\(^{292}\) as well as renting a condo for far below market value from the wife of an energy lobbyist.\(^{293}\) While many of the scandalous actions of these cabinet secretaries are legally permissible, such as using taxpayer dollars for prodigal and possibly unnecessary securities, they often greatly overextend the customary privileges of the offices. Fearing the political fallout of these actions, Trump’s Chief of Staff John Kelly has reportedly been urging cabinet officials “to think about what they can do legally and then take two steps back.”\(^{294}\) However, working in the cabinet of President Trump, a man who has broken countless ethical conventions without facing much punishment, these secretaries have seen a precedent for corruption and self-gain go unpunished. With this frame of reference, ethical conventions which have bound previous secretaries may seem less important to abide by in this cabinet.

**The French Counterfactual**

As we consider the ramifications of the state of modern democratic conventions in the United States, especially under the presidency of Donald Trump, we should consider the path not taken. Trump’s success and the ineffectiveness of democratic conventions in stopping him or other erratic behavior throughout government cannot be seen as a preordained destiny. While conditions made his


ascent into presidential politics possible, that does not mean his victory was inevitable. A different set of decisions could have been made that would have led to a forceful retort of the norm offender. To illuminate what this scenario would have looked like, we can simply look at the counterexample which occurred during the French presidential elections just months after Trump’s victory.

Existing for over four decades, the National Front had long lived at the fringes of French politics as an extremist group. Party leader and founder Jean-Marie Le Pen pushed a controversial far-right ideology for his party. Jean-Marie called the Holocaust merely a “detail in the history of World War II,” pronounced that “the races are unequal,” and referred to AIDS victims as a “kind of leper.” In that time, the National Front pushed fanatical xenophobic and anti-Semitic visions, which relegated them largely to the role of a non-mainstream small, though outspoken, party. In 2011, Jean-Marie Le Pen retired as head of the party and handed the reins to the youngest of his three daughters, Marine. Almost immediately with Marine at the helm, the party catapulted into electoral relevancy through her effort to give the party a makeover by purging overt-Nazi factions and taming more controversial aspects of party rhetoric. Marine’s overhaul yielded some demonstrable results. Between 1980 and 2002, over 70 percent of French people considered the National Front a “danger to democracy.” Strengthened by Marine in charge, whose renovated

---

298 Ibid.
300 Ibid.
National Front was publicized during the 2012 French presidential election, the number of respondents who considered the National Front a threat dropped to 47 percent.\textsuperscript{301}

The wave of right-wing populism that had infiltrated the United States was also apparent in France, whose first-round of presidential election was set five months after the American election. With Trump’s victory in the United States alongside the Brexit victory closer to home, this nationalist insurgency was already seeing results. Further, with a string of recent terrorist attacks, including one three days before the first-round of presidential voting,\textsuperscript{302} the country’s ten percent unemployment rate,\textsuperscript{303} as well as both of the two major parties being marred in scandal,\textsuperscript{304} the environment was ripe for an insurgent run by the National Front.\textsuperscript{305} Although Marine Le Pen sought to tame the rhetoric of her father’s party, her party still played the role of the French right-wing nationalists. Nonetheless, her overhauled National Front retained many of the far-right views and speech characteristic of Jean-Marie. Marine cast herself as the final champion of democracy in France, under siege from the “European Soviet Union” on the outside and from the “massive” influx of Muslim immigrants within the borders.\textsuperscript{306}

\begin{footnotes}
\footnotetext{301}{Sam Saeed, “Majority of French believe National Front is a danger to democracy: poll,” \textit{Politico}, March 7, 2017.}
\footnotetext{302}{Krishnadev Calamur, “France’s Latest Terrorist Attack,” \textit{The Atlantic}, April 20, 2017.}
\footnotetext{303}{Sheri Berman, “Defeating Marine Le Pen won’t be enough to save France,” \textit{Vox}, March 6, 2017.}
\footnotetext{304}{Dominique Vidalon and Simon Carraud, “Macron gets presidential poll boost as Fillon crisis deepens,” \textit{Reuters}, March 3, 2017.}
\footnotetext{305}{Pierre Haski, “Scandal, radicals and insurgencies – all bets are off for the French presidency,” \textit{The Guardian}, January 30, 2017.}
\footnotetext{306}{Alduy, “The Devil’s Daughter.”}
\end{footnotes}
In the first round of presidential voting, Marine Le Pen won the most votes a National Front candidate had ever received in the close to half-century history of the party. Le Pen and centrist Emmanuel Macron were slated to be the final two contenders headed for the second-round voting. Like with the United States and Donald Trump, French voters would have to decide in a side-by-side match-up that included a norm-breaking insurgent. Unlike the United States, however, in this crucial moment for French democracy, political leaders from along the political spectrum united in rallying against Marine Le Pen and the National Front she represented. Leader of the Socialist Party Benoît Hamon said there was a difference between a political opponent and, referring to Le Pen, an “enemy of the Republic.” More importantly, the leader of France’s conservative party, François Fillon, decried Le Pen as well in his concession speech after the first-round election: “I assure you: Extremism can bring only misery and division to France. So, there is no option but to vote against the extreme right I will, therefore, vote for Emmanuel Macron.” By going further than simply refusing to associate with Le Pen, the leader of the conservative party overcame parts of his ideology better in line with Le Pen’s vision to say that French democracy requires voting for Le Pen’s defeat. With elites playing their roles in enforcing democratic conventions, voters played theirs as well.

---

308 Ibid.
second round of voting, Emmanuel Marcon crushed Le Pen, winning two-thirds of the vote.311

France faced an analogous type of threat to its political system as we faced in the 2016 presidential election. In the United States, close to half of elites, largely housed in the Republican Party, tolerated the rise of Trump, even if begrudingly. In France, a wide range of elites, even conservative ones, came together to openly insist that the defeat of Le Pen was critical to the survival of democracy in France. American voters either approved of Trump’s behavior or were willing to bear it enough to vote for him in the primaries and general election. The French public decisively punished Le Pen and led Emmanuel Macron to electoral victory. Trump now controls power in Washington; Le Pen does not inhabit the Élysée Palace. This is to say that a set of decisions made by political elites and the American citizenry through the ballot box brought about Donald Trump’s victory and have continued to fuel his ability to wage attack on our conventions. While the political environment made Trump’s rise plausible for the reasons discussed in Chapters 3 and 5, Le Pen’s environment was favorable as well. The latter was still shut down. The power of norm accountability theory comes from the fact that it can either be enforced or not. It is based on the collective input of decisions to determine the strength of norms. The decisions made to oblige compliance to democratic conventions in France were simply stronger than those made in the United States.

The Trumpian Renaissance?

As malleable and social creatures, humans rapidly adapt to changing realities that surround them. In 1993, New York Senator Daniel Patrick Moynihan, a Democrat who also happened to previously serve as a sociologist (which included a three-year tenure at Wesleyan University), wrote in an essay that human societies have a tendency to normalize behavior that was once previously outside the bounds of acceptability. Over time, Moynihan remarked, societies have “been re-defining deviancy so as to exempt much conduct previously stigmatized, and also quietly raising the ‘normal’ level in categories where behavior is now abnormal by any earlier standard.”312 This particularly rings true in the field of democratic norms. When norms are repeatedly violated over the course of time, the corrosion is accepted by the society as the new normal in politics. The result is that the erosion of norms over time may happen through an invisible process whereby, consciously or unconsciously, we learn to rationalize our present. The Senate is a supermajority chamber. Politics are dirty and laden with personal attacks. The president lies and goes unpunished. Part of this gradual tolerance is that the grand majority of the withering down of norms in this situation occur throughout an extended timespan. Norms progressively erode as political officials lean and gently push the limits of their power.

Donald Trump does not afford this moderation. Instead of conducting his norm violations over a gradual period to allow the public to normalize previously

---

unacceptable behavior, Donald Trump breaks norms abruptly and publically. He does not test the limits of politically-acceptable speech; he pushes them as far as he wants. Instead of slowly attempting to undermine officials or processes, Trump blatantly shows his irreverence for such informal barriers that previously held politicians back.

The result is that instead of a reality that changes by a gradual lean on the bounds of conventions over time, Trump’s immediate breaking of such democratic norms has brought about a new awareness of the degradation of democratic conventions. As I noted in the Introduction, this thesis is just one of many pieces of both scholarly work and journalism published since the beginning of Trump’s campaign on the topic of democratic norms. Politicians and activists from both the left and the right have publically stated that society should not give into the process of normalizing Trump’s defiance of norms that Moynihan predicts. As one of these voices, outgoing Republican Arizona Senator Jeff Flake stated: “I don’t think we ought to normalize this kind of behavior.”

Trump has served as a vehicle to begin to reckon with the current state of weakness that our norms stand in. For a large-scale reversal of this concerning trend to occur, the atrophy of norms must be a known fact and cannot be in a state of blissful ignorance any longer.

John Murrin once wrote that “People knew that without the Constitution there would be no America.” The United States is unique compared to many other countries in the world in that as long as there has been a United States, its government has been a democracy. This is, rightly, a cause for celebration. But this also leads to

313 Eli Watkins, “ Flake to GOP: We must say Trump's behavior is ‘not right’,” CNN, October 24, 2017.
an assumption that as long as the United States will continue to exist, it will continue to exist as a democracy. Without a Constitution, there would be no America; without democracy, there would be no America. One of the biggest differences between France, a country where norms won out, and the United States, a country where norms lost, is that France has had periods in its history when democracy did not exist. Between the restoration of the monarchy following the French Revolution and the Vichy Government during the Nazi occupation, non-democratic factions taking hold is part of the relatively recent national memory. Given how many core premises and assumptions of the functioning of democracy in the United States Donald Trump has exposed to be not binding, perhaps Donald Trump will spur a renewed recognition of the fact that the production of good democrats staffing positions of elected office is not an inevitable result of our Constitution. With this fact in mind, the body politic may begin to consider how threats to democracy are real and thus how norms matter – a Trumpian Renaissance of sorts.

**A More Democratic Union**

After exposing the atrophy of democratic norms in the United States, it is time to begin considering how to rebuild. It is a hard task to contemplate what specific actions may be taken to remedy the modern norm decline described in this thesis. There is no coherent set of policies or constitutional amendments that if enacted will, in and of themselves, lead to a full re-strengthening of norms. Conventions are so far-

---

reaching and dynamic that formalizing all the rules that are informally set through norms is simply an impossible legislative task. Second, as discussed with decorum conventions, to transpose informal rules to formal rule in domains of speech or conduct would most likely violate key freedom of expression provisions of the Bill of Rights.

Even so, certain policies can definitely act as a transitional Band-Aid. One particularly useful reform would be moving institutions of ethics oversight in America from voluntary compliance to formal rule. The decimation that Donald Trump has done to the Office of Government Ethics as described in Chapter 5 could have largely been avoided if such conventions of ethical compliance were formalized. While this will not counter all the effects of ethical convention decline, obligation to a basic framework of government ethics accountability would move from compliance due to political coercion to one of legal coercion.

Expanding this out to the entire set of democratic conventions currently in crisis, the first major step that must be done to buck this alarming trend is to foster awareness of the problem. For this reason, my thesis has focused considerable attention to the justifications given by actors when they violate norms. If the public has the tools to recognize the tell-tale rhetoric used to justify breaking norms, then the public can see these actions as what they are. As this thesis has described, actors generally stick to the same script when attempting to explain away their norm breaking. The two general claims are: that violations are a needed remedy to previous democratic or constitutional wrongdoings by the other party and that violations are

---

needed to pursue reform. With this new addition to the toolbox of critical political observation, alongside a potential Trumpian Renaissance in appreciating democratic conventions, the polity can better be informed of what is really happening.

The only long-term solution to fortify our conventions is a basic one: voters and elites have to be good democrats. As amorphous of a remedy as that may be, doing so is the only way to spark the active enforcement of norm accountability. The theoretical model established in this thesis operates through a constant process of decision-making by both elites and the public. For norms to work, elites and voters have to reward good democrats and punish bad democrats. Therefore, the work becomes finding the best method to realize this ideal.

What I propose is that to foster a more democratic public, the United States needs to radically reconsider who is responsible for upholding the Constitution and our democracy. Currently, full deference for considering what is constitutional is given to the courts through judicial review, a legal concept known as “judicial supremacy.” While judicial supremacy has surely led to benefits in maintaining civil rights, one insidious consequence of such a system is that total deference to the courts leads the polity and elected officials to not see upholding democracy as a duty that falls upon them as well. This leads to an idleness on the part of the public and officials in their duty to fight themselves to ensure a strong democratic order. Individual citizens do not believe they are tasked to constantly work to uphold democratic order. That duty is too often relegated to the Supreme Court.

The United States instead must move its popular understanding of democratic obligation away from judicial supremacy and towards a new method of understanding democratic maintenance, one in which the *people* play an active role in enforcement. Such a vision of the interaction between the polity and democracy would roughly translate into a mixture of Larry Kramer’s “popular constitutionalism” and John Finn’s “civic constitutionalism.” Kramer argues for a system in which the citizenry assumes “active and ongoing control over the interpretation and enforcement of constitutional law.” Finn agrees with Kramer’s emphasis on the public. Finn’s civic constitutionalism puts “constitutional authority in political rather than legal terms and assigns a very large measure of responsibility for achieving a constitutional way of life to citizens.” Imagining a constitutional or democratic way of life is particularly relevant when discussing democratic conventions. Beyond simply juridic interpretations of what is legally permissible within the bounds of the text of the Constitution, Finn imagines the citizenry’s role as expansive in the responsibility of maintaining democracy at large:

The civic conception of constitutional maintenance, in contrast, relies heavily on a robust understanding of civic duty and citizenship as well as an ambitious and deeply democratic project of civic education in the principles and commitments central to a constitutional way of life. The Civic Constitution assigns a broader, more expansive purpose to the text than simply subjecting the state to higher law, and consequently it asks more of citizens in realizing that purpose.

---

319 John Finn, *Peopling the Constitution* (Lawrence: University of Kansas Press, 2014).
322 Ibid, 7.
Democracy and the socio-political structure that the Constitution set up are not merely limits in which politics exist. It is a “way of life,” one in which democratic norms shape the healthy and stable existence of such a society. “Realizing that purpose” requires that the people, and their representatives, understand that they are entrusted with an expansive and monumental task. The base democratic conventions and values of our government, such as forbearance and mutual comity, are central to our constitutional way of life. Therefore, threats to democratic norms must be treated as threats to the fabric of our system, not one-off causalities of partisan rancor.

Norm accountability, similar to Finn’s civic constitutionalism, assigns a higher purpose to the citizen body in ensuring the future of democracy in this country. Only by actively recasting the public and their representatives as the soldiers in the ever-existing fight to secure the prolonged existence of the American experiment may we as a nation return to a place in which norms are complied with and political coercion is sufficient. In this situation, obligations will be kept through deterrence. Political red lines will be clear and enforced, conventions will be healthy, and government more stable.

In the cultivation of the task of establishing a more perfect American union, what has been forgotten is the constant tilling that must be done to ensure that the pasture of democracy continues to remain healthy. This requires the citizenry to be active democrats, creating a government firmly committed to the principles of the nation. On the part of our political leaders, this requires maintaining government as a respectable public forum that maintains civility and goodwill between participants. We have long reaped the bounties of the harvest, but it seems that we have spent so
much time inside doing so that we became oblivious to weeds growing in the fields and the plants and fences losing their strength in our farm of democracy. It is now time for us to return collectively – both the public and our officials – to our farm to put in the work needed to cultivate the soil, water the plants, lay new seeds, rebuild the fences, and cut out the weeds. From being inside so long, this will amount to an enormous task that we cannot expect to finish in a day or even a year. But by tilling our plot little by little, the farm will produce harvest once more. Perhaps this is how the political red lines will reappear.
BIBLIOGRAPHY


*Congressional Record*, June 25, 1992, S16216-16317.

*Congressional Record*, November 21, 2013, S8417-4178.

*Congressional Record*, November 21, 2013, S8436.

*Congressional Record*, November 21, 2013, S8436.

*Congressional Record*, October 24, 2017, S6735.


Daniel Schlozman and Sam Rosenfeld, “The Hollow Parties,” (awaiting publishing), 1-25.


David Jackson, “Obama’s new slogan: ‘We can’t wait’,” *USA Today*, October 24, 2011.

Eli Watkins, “ Flake to GOP: We must say Trump's behavior is ‘not right’,” CNN, October 24, 2017.


Ezra Klein, “For elites, politics is driven by ideology. For voters, it’s not.,” Vox, November 9, 2017.

Ezra Klein, “There is no Trump pivot, and there never will be,” Vox, September 22, 2017.


George C. Wallace, Stand Up For America (New York: Doubleday, 1976), 212.


Hannah Fingerhut, “In ‘political correctness’ debate, most Americans think too many people are easily offended,” *Pew Research Center*, July 20, 2016.


John Finn, *Peopling the Constitution* (Lawrence: University of Kansas Press, 2014).


Philippe Schmitter, “Democratization and Political Elites,” European University Institute, accessed March 9, 2018,


Rachel Wellford, “Here’s the list of GOP responses to Trump’s vulgar comments about groping women,” *PBS*, October 7, 2016.


Sarah Kliff, “Senate rules could force GOP to drop key policies in health bill,” *Vox*, March 7, 2017


U.S. Const, Art. II, Sec. 2, Clause 2.

U.S. Const., Amendment 1.

U.S. Const., Art. I, Sec. 6.

U.S. Const., Art. V.


APPENDIX

Methodology Framework for James Comey Media Analysis

I will analyze a mixture of print and cable media. Following the example of Joshua Robison and Kevin Mullinix 2015’s piece, I will start with a content analysis of The New York Times database using ProQuest, searching for all May 2017 articles that mention James Comey. The Times is well-suited for being the liberal print source due to the outlet’s measured liberal bias (Martin & Yurukoglu, 2017) as well its agenda-setting power for other news outlets (Waygner & Gruszczynski, 2017).

For a conservative publication, I will run the same search for Breitbart.com. Breitbart is an online conservative news outlet, famously run by former-White House Chief Strategist Steve Bannon. The website garnered a substantial jump in national prominence within the past five years, especially coinciding with the Donald Trump presidential campaign. The site is ranked #53 in the Alexa rankings of website traffic – the highest of any conservative news source.323

For print sources, I will keep track of each article’s: date of publishing; reported status as an opinion or news piece (only for NYT articles; Breitbart does not officially differentiate articles); subject; tone depicting President Trump; number of words; and argument type. Argument type will not be recorded for NYTimes news articles, given the non-argumental nature of “objective” news articles. Subject and argument types will be collapsed categorical variables to allow me to aggregate articles to see trends (see Fowler et. al, 2012 for a similar example). Further, I will

use a text analysis software through R-Studio package ("tm") to highlight the most frequently used words in articles. I will remove common English words, such as ‘of’, ‘and’, ‘or’, ‘the’, as well as certain words that, if added, would heavily skewed both the clouds such as ‘Trump,’ ‘White House,’ ‘fire,’ ‘Senate,’ ‘House,’ and ‘Comey.’

Tone for print sources will be a harder, but crucial, measure to study. I will break tone up into three categorical variables based on the article’s portrayal of President Trump/Comey’s firing: ‘Negative,’ ‘Impartial,’ and ‘Positive.’ For opinion pieces, this is rather easy. For instance, ‘Negative’ New York Times opinion articles include “Donald Trump is Lying Again, Now About James Comey,” or “Trump’s Firing of Comey Is All About the Russia Inquiry.” ‘Positive’ articles include Breitbart pieces such as “The Amazing Democrat U-Turn on the Firing of James Comey” and “Trump’s Legal Authority to Fire Comey.” However, it is equally important to measure tone within articles categorized as news (non-opinion). Tone is observed by subject matter, portrayal, and how the article depicts certain actors (mainly Donald Trump and James Comey). An example of a ‘negative’ news article “Inside F.B.I., a Darkening Mood and Rising Doubts About an Investigation” ‘Positive’ ones include “FLASHBACK–Comey on Taking FBI Directorship: ‘Dangers in Becoming Untethered to Oversight and Accountability.’” Again, this will be a harder measure (and the necessary subjectivity is a limitation of the paper), but it is inextricable necessary in studying how news is covered.

For cable news, I will search the transcripts of The Rachel Maddow Show and Hannity (the two most-viewed cable news shows, both on at 9pm) for all of May 2017. These sources maintain a broad reach within the American public. These cable
news sources are also advantageous because their use of punditry (talking heads) can produce more partisan perspectives.

Among cable news sources, I will measure date; number of mentions of James Comey; content; argument; guests on each show; and tone. Due to the difficulty in assessing a single subject or argument in a thirty-minute long segment or hour-long cable news program, which may touch on a variety of different subjects when referring to James Comey, I will use a word cloud analysis with a “term matrix analysis” to quantitatively measure the most used terms in every segment in which James Comey is mentioned. I hope this sort of analysis will allow me to see the most covered subject in the aggregate, which will in turn yield the most used arguments.

To calculate aggregate tone within segments on Comey, I will run an NRC sentiment test. The NRC test implements emotional lexicon, as developed by Saif Mohammed of the Canadian National Research Council. He defines emotional lexicon as “a list of words and their associations with eight emotions (anger, fear, anticipation, trust, surprise, sadness, joy, and disgust).”[^324] There are certain limitations to the NRC sentiment test. It is unable to discern narrative structure and how that affects emotional attitudes. However, in total this test is a useful quantitative measure of the emotional character, therefore tone, of segments.

Together, I believe this methodology will allow me to measure frame, tone, subject, time, and focus – all crucial components for a comprehensive analysis of the media coverage for an extended extent.