

Executive Absolutism: The Dynamics of Authority Acquisition in a System of Separated Powers

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ABSTRACT

We study a dynamic model in which a politician (most commonly an executive) makes authority claims that are subject to a hard constraint (administered, typically, by a court). At any period, the court is free to rule against the executive and thereby permanently halt her efforts to acquire more power. Because it appropriately cares about the executive's ability to address real-world disruptions, however, the court is always willing to affirm more authority. Neither robust electoral competition nor alternative characterizations of judicial decision-making fundamentally alters this state of affairs. Moreover, we show modest authority claims in one period yield opportunities for more substantial claims in the next. The result is an often persistent accumulation of executive authority and a degradation of judicial checks on presidential power.

Keywords: Presidency; judiciary; separation of powers; executive authority

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Politicians generally, and executive officeholders in particular, regularly assert authority that neither a constitution nor prior statute expressly recognizes. Rather than wait on Congress, for example, Donald Trump simply averred that he justifiably retained authority over immigration policy, trade, deregulation, international diplomacy, and plenty of other policy domains (Milkis and Jacobs, 2017). And in this regard, at least, he was hardly exceptional. Trump's immediate predecessors rather brashly asserted new authority to grant conditional state waivers over federal statutes, fabricate new tools of executive policymaking, reinterpret the meanings of laws, and expand their reach into all manner of policy domains (Howell, 2013).

In the aftermath of these interventions, the adjoining branches of government have the right to step in and offer a corrective — and occasionally they do, amending or rejecting an executive's unilateral directive. Other times, though, Congress and the courts assume a very different posture. They may support a unilateral directive by writing its contents into law, appropriating the necessary funds to implement it, or denying a complainant's claims (Howell, 2003, chapters 5 and 6). More significantly still, the adjoining branches may affirm the general right of the executive officeholder to intervene into a policy domain, thereby remaking both a political office and the legal landscape in which it functions.

When adjudicating disputes over presidential actions involving executive agreements, war powers, recess appointments, pardons, executive privilege, travel bans, and a wide range of other issues, the courts not only have looked to past practice for guidance; they have inferred political authority on the basis of such practice (Bradley and Morrison, 2013; Levinson and Pildes, 2006; Levinson, 2005). So doing, the judiciary manufactures new authority upon which future executive officeholders can act. Authority, in this sense, grows first by initiative and then by recognition. And what previously might have been viewed as “rule-breaking” (Shepsle, 2017), now becomes standard practice.

To clarify the politics of authority acquisition, we study a dynamic model in which a politician claims authority subject to the hard constraint of an adjoining branch of government, which we henceforth recognize as a court. In each period of the baseline model, the politician has the opportunity to expand the scope of her authority over a unit interval, where zero indicates no authority over the matter in question, one indicates full authority, and interior values indicate intermediate levels of authority. Should the court affirm the claim, then the politician's authority expands up to the point of the claim, and all future courts are obligated to uphold claims within the affirmed domain. Should the court reject the claim, however, the politician's authority collapses to its previous maximum, and all future expansionary claims are rejected.

While the politician wishes to expand her authority over the full interval, the court, strictly as a matter of constitutional interpretation, would prefer that the politician have something less. What the court formally sanctions,

however, is a function of both its constitutional preferences, which are constant across all periods, and exogenous shocks, which are realized each period of play, and which stylistically represent current circumstances (the state of the economy, international conflict, natural disasters). Depending upon the size of a contemporaneous shock, the court may tolerate smaller or larger claims of authority. Additionally, the court worries about a decision in one period disabling the politician from responding in the future to disruptive events or unforeseen contingencies. Consequently, both present values of these shocks and expectations about their future realizations cause the court to qualify its constitutional preferences over authority.

To expand her authority beyond the court's nominal constitutional preference, the politician exploits the court's concerns about present and future flexibility to respond to these random disturbances. So doing, she persistently grows her authority, even when the realized shock is quite unfavorable to any extension of authority.

The model also reveals several features of the evolution of authority acquisition. In every period, if the politician is patient enough, there exists an equilibrium in which the politician expands her authority as far as the court will permit. And consistent with a literature on wartime jurisprudence (Epstein *et al.*, 2005; Howell and Ahmed, 2014), larger exogenous shocks induce the court to affirm larger claims of authority. Interestingly, though, smaller acquisitions of authority in one period portend larger acquisitions in the next. In some instances, moreover, these dynamics enable one politician with significantly less authority to overtake another politician, yielding a demonstrable "reversal of fortunes."

Lastly, the model reveals a weakness within a separation of powers system in constraining executives. Precisely because a court rejection is damaging to an executive's present and future authority, courts are inclined not to stand in her way. The ability to administer a significant punishment — a big club behind the door, so to speak — actually discourages the court from opposing ever-expanding authority.

Overall, this paper makes two contributions. First, it specifies the precise conditions that support the expansion of executive authority. And second, it clarifies the dynamics of authority acquisition: the pace at which it proceeds and the trajectory of its growth. Our main results are robust to several changes in our baseline model: a less stringent judicial rule, the possibility for the judiciary to revise precedents, a world with a lower need for executive authority, and the inclusion of political competition. Further, in a setting without judicial precedent we show that the court can slow down the growth of executive authority, but it cannot permanently block it. Again and again, we see a judiciary weighing future concerns against present needs as it struggles to limit the accretion of executive authority. By distilling essential features of presidential–judicial relations, the baseline model and its

extensions expose enduring democratic vulnerabilities in a system of separated powers.

Literature Review

Our paper speaks to a large body of theoretical work recognizing that political manipulation by an officeholder today affects what a successor can do tomorrow. A host of papers investigates the efforts of politicians to restrict the actions of their replacements, either by increasing debt (Alesina and Tabellini, 1990; Milesi-Ferretti, 1995a, 1995b; Persson and Svensson, 1989), over-privatizing (Montagnes and Bektemirov, 2018), or constraining the information available to them (Callander and Hummel, 2014). From a technical standpoint, our model also is related to theories of dynamic decision-making with an endogenous status quo that is situated in a changing environment. In some such works, the future is uncertain because the identity of the proposer can change (e.g., Baron and Bowen, 2015; Bowen *et al.*, 2014; Buisseret and Bernhardt, 2016; Kalandrakis, 2004; Nunnari, 2021). In others, which are more closely connected to our models, the identities of the proposer and pivotal actors are fixed, but the environment in which decisions are made varies (e.g., Callander and Martin, 2017; Dziuda and Loeper, 2016, 2018).

With respect to these theoretical literatures, the main innovation of our paper concerns the consequences of rejecting a proposal. Whereas rejection only has short-term consequences in other set-ups, in ours, it limits the possibility of revising the policy domain in all future periods. This strong formal power of a veto player is the cause of its weakness in practice. Even when the environment is unfavorable to the decision-maker, we show, the proposer can always advance her agenda.

Our paper also innovates from a substantive perspective. None of the works mentioned above expressly recognizes, much less parameterizes, a notion of political “authority.” That a politician has a legal right to intervene into a policy space, instead, is either assumed or treated as irrelevant. A substantial body of work, of course, investigates the issue of delegation. Numerous scholars have studied the conditions under which one branch of government (typically a legislature) will delegate authority to another (typically an executive). Its willingness to do so, this work shows, crucially depends upon the levels of ideological convergence, the complexity of the policy domain, and the independent costs of lawmaking (see, e.g., Bendor and Meirowitz, 2004; Epstein and O’Halloran, 1999; Huber and Shipan, 2002). Foster (2022) complements this literature by identifying conditions under which Congress willingly delegates authority to the president to protect itself against interest groups’ attacks. In a nice reversal of perspective, Gailmard (2021) shows how colonial assemblies in imperial America grabbed power from their ruling governors by exploiting the

governors' dependence on the British crown for survival. All these works share a common perspective: They put a legislature firmly in the driver's seat.¹ These models do not so much as recognize even the possibility that politicians within an executive branch might unilaterally claim new authority for themselves.

In this regard, our paper is in closer conversation with Svulik (2009) and Howell and Wolton (2018), and a burgeoning literature on democratic backsliding. Like us, Svulik (2009) is interested in the growth of a leader's power. Unlike us, he focuses on authority acquisition in autocracy, not democracy. As such, his leader faces the threat of a coup by the regime selectorate, whereas our officeholder is constrained by the court. Further, Svulik imposes exogenously fixed incremental jumps in power, whereas we allow the officeholder to choose a continuous amount of new authority. The two works also differ in their treatment of what information is available to the leader and other political actors when they take an action.

Howell and Wolton (2018) examine the conditions under which a politician will either request new authority or claim it outright. In important respects, however, our paper differs from theirs. First, we consider how authority is built over time rather than instantly. Second, we take a more fine-grained approach to authority that allows the officeholder to claim more or less authority, rather than only a fixed amount. Finally, we consider a setting in which a strategic judiciary functions as a constraint, and in which a well-defined notion of "precedent" governs the judiciary's behavior — features, both, that are entirely missing from Howell and Wolton's model.

Recent scholarship has started paying close attention to a perceived decline in democratic norms. In some papers, democratic backsliding takes the form of a weakening of electoral institutions, sometimes with voters' implicit support (Gratton and Lee, 2020; Helmke *et al.*, forthcoming; Luo and Przeworski, forthcoming). In others, would-be autocrats exploit polarization (Graham and Svulik, 2019; Nalepa *et al.*, 2019), voters' behavioral biases (Grillo and Prato, forthcoming), or the electorate's lack of democratic values (Besley and Persson, 2019) in order to remove checks on their power.² In all, the focus is on the electorate's limited ability to constrain executive ambitions. Our paper offers a complementary, and more troubling, account—complementary because we focus on judicial constraints on the executive; and troubling, because we establish that executive absolutism may derive not from an electorate's failings, but from the very design of a system of separated powers.

¹There is also a large literature in economics studying how a principal can optimally delegate to a subordinate (e.g., Alonso and Matouschek, 2008). Here again, the principal has full decision power (Kartik *et al.*, 2017, being an exception).

²Other scholarship published before the populist wave of 2016 paints a less gloomy picture. For example, Lagunoff (2001) shows how tolerance can decrease over time as the state becomes more able to monitor deviant behavior. Vigorous electoral competition, however, provides a corrective and leads to a tolerant society.

The presence of a strategic and forward-looking judiciary also connects our work to the formal literature on court behavior. As in Gennaioli and Shleifer (2008), Fox and Stephenson (2011, 2014), Almendares and Le Bihan (2015), Gailmard and Patty (2017), among others, court decisions, anticipated or issued, impose constraints on other political actors. As in Baker and Mezzetti (2012), Fox and Vanberg (2013), Beim (2017), Clark and Kastellec (2013), and Clark (2016), the court makes decisions while uncertain of their long-term consequences. With some important exceptions, including Fox and Vanberg (2015) and Beim *et al.* (2017), the literature assumes that cases exogenously arise before the courts. In contrast, we suppose that the cases brought before the court are the result of a strategic decision by a rational actor.³ We further build upon this literature by investigating the acquisition of authority by executives in the shadow of judicial constraint.

We set to one side the constraining weight of a legislature on executive authority (cf. Chiou and Rothenberg, 2017; Howell, 2003) or of party and public opinion (cf. Christenson and Kriner, 2019; Levinson and Pildes, 2006). Our intention, instead, is to home in on the capacity of the courts, as a final line of defense, to limit executive authority when neither Congress, traditional parties, nor the public seem up to the job. Our findings offer little by way of reassurance.

The Baseline Model

Our baseline model consists of a dynamic game with two players: a politician P , which we interchangeably refer to as politician, executive, or officeholder; and a strategic court C . In each period, denoted by t , P claims authority over a policy domain. To keep the model manageable, the authority claimed by P is assumed to be unidimensional, and is represented at time t by $a_t \in [0, 1]$ (in Online Appendix C.2, we extend the model to multiple dimensions). We assume that authority is finite in recognition of the limits (e.g., institutional capacity constraints, overarching principles) on what an officeholder can do. Authority facilitates (un-modeled) actions that advance the officeholder's (again un-modeled) agenda. As such, in our baseline model, P always benefits from more authority.

Authority is governed by precedent, by which we mean the prior rulings of the court C . At the outset of period t , the court's prior rulings have partitioned the authority space $[0, 1]$ into three subsets: a permissible set \mathcal{R}_t , which consists

³In the context of lower and upper court relationships, Carrubba and Zorn (2010), Carrubba and Clark (2012), Clark and Carrubba (2012), Beim *et al.* (2014), and Hübert (2019) consider how a lower court may strategically issue a judgment to avoid being overturned by an upper court. These papers generally consider a one-shot game and cannot explain the evolution of jurisprudence over time.

of the authority acquired by prior court rulings; an impermissible set \mathcal{W}_t , also determined by prior court rulings, which limits the office-holder's authority; and the remainder $[0, 1] \setminus (\mathcal{R}_t \cup \mathcal{W}_t)$, which represents authority that remains up for grabs and thus constitutes the court's discretion set.

After observing the officeholder's authority claim a_t , the court decides whether to uphold ($d_t = 0$) or reject ($d_t = 1$) P 's claim. The court's decision affects both the outcome of period t and the dynamic of precedents. We discuss each in turn.

The court's decision affects the scope of P 's authority, which we denote $y_t(d_t)$. We assume that if the court upholds the politician's claim in period t , then P exercises the full scope of authority, a_t . If the court rejects the politician's claim, then we impose that P exercises the maximum of previously permissible authority. Hence, the authority acquired in period t assumes the following form:

$$y_t(d_t) = \begin{cases} a_t & \text{if court upholds } (d_t = 0) \\ \max \mathcal{R}_t & \text{if court rejects } (d_t = 1) \end{cases}$$

The court's decision is constrained by past precedent on executive authority. Consistent with the broad contours of judicial history, we assume that claims permitted in the past cannot be rescinded, and claims rejected in the past cannot be reconsidered (below, we show that this assumption is inconsequential for the dynamics of authority acquisition). Thus, if in period t P stays within the bounds of acquired authority, the court has no choice but to uphold: $d_t = 0$ if $a_t \in \mathcal{R}_t$. In turn, if the politician claims authority that has already been refused to her, the court must reject the officeholder's action: $d_t = 1$ if $a_t \in \mathcal{W}_t$. The court is free to evaluate the claim of new authority only if it belongs to C 's discretion set: $a_t \in [0, 1] \setminus (\mathcal{R}_t \cup \mathcal{W}_t)$.

A court ruling also introduces dynamic changes to the precedents governing authority. At the beginning of the game, we assume that the court has discretion over almost the whole set: $\mathcal{R}_1 = \{0\}$ and $\mathcal{W}_1 = \emptyset$. For any authority claim a_t in the court's discretion set ($a_t \in [0, 1] \setminus (\mathcal{R}_t \cup \mathcal{W}_t)$), if C upholds a_t ($d_t = 0$), then the permissible range of authority in period $t + 1$ becomes $\mathcal{R}_{t+1} = [0, a_t]$, and the impermissible range is unaffected. If, on the other hand, C rejects the authority claim, then the permissible range remains unchanged, $\mathcal{R}_{t+1} = \mathcal{R}_t$, and the impermissible range expands to $\mathcal{W}_{t+1} = [0, 1] \setminus \mathcal{R}_t$.

With one important caveat, our characterization of precedent evolution follows the literature (e.g., Baker and Mezzetti, 2012). As in previous papers, if a_t is upheld, then P accumulates executive authority. In our baseline model, however, overreach, as determined by the court, has severe consequences. If C determines that P has "gone too far" and rejects a claim for enhanced authority, then parameters for authority are fixed permanently at the level previously acquired. While we relax this assumption in the section "Robustness

Checks and Extensions” below, it proves useful to establish a baseline in which an adverse court ruling has lasting and deleterious consequences for political authority.

Payoffs are discounted by β . To allow for comparative statics on the discount rate without modifying other model parameters, we suppose that $0 < \beta < \bar{\beta}$, with $\bar{\beta} < 1$. Recalling that y_t is the authority acquired in period t , we further assume that the politician’s payoff satisfies $U_P(y_t) = v(y_t)$. Lastly, we assume $v(\cdot)$ is continuously differentiable and its derivative satisfies $0 < v'(y) < \infty$ for all $y \in [0, 1]$.⁴

In contrast, the judiciary may favor restrictions on executive authority for constitutional reasons. As such, we assume that everything else equal, the optimal amount of authority from C ’s perspective is $\kappa^C \in [0, 1]$. The court’s evaluation of P ’s authority, however, is also affected by the overall context. In certain circumstances — say, during war, a natural disaster, or a deep economic slump — the court may be prepared to grant legitimacy to greater exercises of authority by politicians.⁵ We capture this with a random state variable, θ_t , which is drawn i.i.d. each period according to the pdf $f(\cdot)$, and which is continuous over the interval $[-\bar{\theta}, \bar{\theta}]$, with associated CDF $F(\cdot)$. Higher θ implies an environment more favorable to authority claims, and lower values suggest an environment less amenable to such. In particular, we suppose that there exist exceptional circumstances in which interventions by P are recognized as being valuable to the court and, by extension, an un-modeled public. We, therefore, assume that $\bar{\theta}$ is large and, in particular, $\bar{\theta} > \frac{1}{1-\beta}$. This assumption facilitates the analysis and simplifies the characterization of equilibrium outcomes (we discuss in depth the role of this assumption in Section “Robustness Checks and Extensions”). We do not require that extreme events are common. Indeed, it is enough that there exists an extremely small probability that θ is large (in formal terms, we only require that $F(1/(1-\beta)) < 1 - \epsilon$, with ϵ strictly positive, but potentially arbitrarily small). Given our interpretation of the state θ_t , we assume that θ_t is observed by all players at the beginning of period t . Future circumstances $(\theta_{t+1}, \theta_{t+2}, \dots)$ can only be predicted using the common prior CDF $F(\cdot)$.

⁴Politicians may want authority for either instrumental or intrinsic reasons, but we will have nothing to say about the distinctive implications of one motivation or another. Instead, we simply assume that politicians want more of it, for as Bueno de Mesquita and Smith (2012, p. xviii) remind us, politics, at its very heart, “is about getting and keeping power.”

⁵Examples include the extraordinary authority recognized by the Supreme Court in allowing the internment of Japanese citizens during World War II (*Korematsu v. United States*, 323 U.S. 214 (1944)) or in permitting state legislatures during the Great Depression to annul debt contracts and restrict property foreclosures by allowing repayment moratoriums (*Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934)).

For ease of exposition, we assume that only the court's per-period payoff is affected by the state of the world.⁶ Further, to provide some characterization of equilibrium strategies, we assume that C 's utility takes the form of a quadratic loss function: $U_C(y_t) = -(y_t - (\kappa^C + \theta_t))^2$, $(\kappa^C + \theta_t)$ the adjustment C makes to what it regards as "ideal" depending on the nature of the times.

The game proceeds as follow. Each period,

0. The state, θ_t , is drawn by Nature and observed by both P and C . The current permissible (\mathcal{R}_t) and impermissible (\mathcal{W}_t) sets are known by P and C as well.
1. Politician P chooses an authority claim $a_t \in [0, 1]$.
2. Court C chooses whether to uphold or reject: $d_t \in \{0, 1\}$.
3. The authority employed is $y_t(d_t) = d_t \max \mathcal{R}_t + (1 - d_t)a_t$, and the permissible and impermissible sets are amended to \mathcal{R}_{t+1} and \mathcal{W}_{t+1} , if required.
4. The period t payoffs are realized and the game moves to period $t + 1$.

To reduce the number of equilibria, we follow the literature on dynamic games and use Markov Perfect Equilibrium as our equilibrium concept. In our set-up, the state variables are the realization of the shock and the permissible and impermissible sets. Hence, when certain \mathcal{R} and \mathcal{W} are reached and a certain θ is realized, the court and the politician only condition their strategies on future plays (anticipating future possible realizations of the shocks), but do not take into account how they got to this point (the history of play). In addition, we restrict attention to pure strategy equilibria. Note that for the politician's problem to be well defined, the court always upholds the office-holder's authority claim when indifferent.

Analysis: Authority in the Limit

To establish what authority is acquired in the limit, we must first state a set of preliminary results. First, given our assumed construction of precedents, the set of permissible authority claims always takes the form of an interval. In addition, P can always lay claim to the authority she previously acquired without any risk ($d_t = 0$ for all $a_t \in \mathcal{R}_t$), whereas, whenever C has rejected P , then $\mathcal{W}_t \neq \{\emptyset\}$ and $\mathcal{R}_t \cup \mathcal{W}_t = [0, 1]$, so the officeholder always chooses $a_t = \max \mathcal{R}_t$. Hence, the only relevant information for both the court and

⁶All our results would hold if θ also figured into the executive's utility function, provided that the executive always prefers more authority to less.

politician is the maximum of the permissible set and the minimum of the impermissible set.

We then can think of P 's strategy as a mapping from the present environment (θ), the maximum of the permissible set, and the minimum of the impermissible set (denoting this value 1 if $\mathcal{W}_t = \{\emptyset\}$) into an authority claim: $a_t : [-\bar{\theta}, \bar{\theta}] \times [0, 1] \times [0, 1] \rightarrow [0, 1]$. Likewise, C 's strategy maps the state, the authority claim, the maximum of \mathcal{R}_t , and the minimum of \mathcal{W}_t to a ruling: $d_t : [-\bar{\theta}, \bar{\theta}] \times [0, 1] \times [0, 1] \times [0, 1] \rightarrow \{0, 1\}$. We note that, because we focus on Markov Perfect Equilibrium, the time subscript is superfluous to define the court and executive strategies. We nonetheless keep the time subscripts in order to highlight the period-specific strategic choices of the political actors. Recall that by assumption, if $\max \mathcal{R}_t = \min \mathcal{W}_t = a$, then $a_t(\theta_t, a, a) = a$ for all θ_t . As a result, in all that follows, we consider the cases when the politician has not yet obtained all authority (hence $\max \mathcal{R}_t = a \in [0, 1)$) and when the court has not rejected any politician's claim ($\mathcal{W}_t = \{\emptyset\}$).

With this in mind, Lemma 1 below highlights that there exist two states of affairs. When the state θ_t is below a threshold denoted $\hat{\theta}(a)$, the court acts as a day-to-day constraint on executive power (i.e., limits the scope of her authority). Hence, each period, there is a strictly positive probability that P is forced to restrict her authority claim if she wants to avoid having the claim rejected by the court. In turn, when θ_t is above the threshold $\hat{\theta}(a)$, the court is willing to accept any authority claim even if it anticipates that, if granted, the executive will always exert full authority in the future.

Lemma 1. *Define $\max \mathcal{R}_t = a$ and denote $\hat{\theta}(a) \equiv \frac{\frac{1+a}{2} - \kappa^C}{1-\beta}$. In any equilibrium, the court rejects a full authority claim, $d_t(\theta_t, 1, a, 1) = 1$, if and only if $\theta_t < \hat{\theta}(a)$.*

Proof. The proof of this and all subsequent technical results can be found in the Online Appendix.

Anticipating the court's strategy, the politician always chooses a new claim that is upheld by the court. After all, if she were to go too far, her claim would be rejected, she would be stuck with current precedents, and she would be stripped of all future opportunities to expand her authority. This overreaching strategy is always dominated by waiting for more favorable circumstances ($\theta \geq \hat{\theta}(a)$) and obtaining full authority over the domain. Each period, the executive makes either no authority claim or an admissible claim — i.e., one that the court upholds. Thus, in any equilibrium, the court never punishes the politician, and the growth of executive authority only comes to a halt when it has been utterly exhausted. In the limit, *in any equilibrium*, the officeholder gains full authority over the policy domain.

Proposition 1. *In any equilibrium, $\lim_{t \rightarrow \infty} \mathcal{R}_t = [0, 1]$ with probability 1.*

Proposition 1 should not be over-interpreted, but rather seen as a sanity check. Given the assumptions of the model, especially the existence of circumstances that are very favorable to the executive (even if improbable) and the cost of being rejected, any other result would represent a surprising failure of rationality. In a later section, we discuss the robustness of this finding to alternative assumptions. In the meantime, we look at a different problem: the dynamics of authority acquisition, where, as we will see in the next section, more interesting patterns emerge.

Analysis: Dynamics of Authority Acquisition

Our two first results highlight a contrast. In the long run, the court, under our assumptions, is powerless to block the extension of authority. On a day-to-day basis (or maybe rather year-to-year), the court seems to act as a constraint. But how much of a constraint is it? The next proposition shows that it is a relatively weak one. In all possible circumstances ($\theta_t \in [-\bar{\theta}, \bar{\theta}]$) there exists a set of new authority claims ($a_t \in [0, 1] \setminus (\mathcal{R}_t \cup \mathcal{W}_t)$) that a court will not reject.

Proposition 2. *In any equilibrium, for all $\theta_t \in [-\bar{\theta}, \bar{\theta}]$, there exists $\bar{a}(\theta_t, a) > a$ such that C upholds P 's authority claim a_t , $d_t(\theta_t, a_t, a, 1) = 0$, if $a_t \in [a, \bar{a}(\theta_t, a)]$, where $a = \max \mathcal{R}_t$.*

Proposition 2 has important substantive implications. In our baseline model, in which we have set to one side the constraining role of the legislature, parties, electoral competition, and public opinion, C is the only bulwark against executive absolutism. And in principle, it would appear up to the task. With the power to set new precedents, after all, the court can put a permanent end to the extension of executive authority. In any equilibrium, however, the court's practical ability to restrain the politician is limited, for the politician can always make authority claims that the court would approve, *even when* the circumstances are quite unfavorable ($\theta_t = -\bar{\theta}$).

Why is the executive always able to expand her authority, should she so choose? Here is the key intuition. Each time it must make a decision (i.e., $a_t \notin \mathcal{R}_t$), the court is faced with a binary choice: either recognize the legitimacy of P 's encroachment or reject it and force the executive to be stuck with the previously granted authority level forever. This generates a trade-off for the court between present and future payoffs. On the one hand, when the state of the world is unfavorable to the executive (θ_t is low), the court may be tempted to reject the authority claim whenever it induces a payoff loss for the court today compared to the existing permissible actions. For a new authority claim a_t only slightly greater than the current maximum permitted authority $\max \mathcal{R}_t$, however, the court's present payoff loss is arbitrarily close to 0. Yet, if it rejects the new authority claim, the court loses all future chances for the

executive's authority to adapt to special circumstances (high θ). Given that there exist states such that the court values full authority by the executive ($\bar{\theta}$ is large by assumption), the future cost of impeding flexibility by rejecting a new authority claim is always bounded away from zero (which is guaranteed by $\bar{\theta} > \frac{1}{1-\beta}$). Hence, there always exists a sufficiently small new authority claim for which the present cost from upholding it is dominated by the future loss from rejecting it, leading the court to sanction the increase in executive authority. Importantly, it is the court's forward-looking perspective, even as it anticipates future authority claims by P , that allows executive authority to grow in every period, no matter the circumstances. As a result, each period, the executive can break out beyond what was previously allowed, sometimes by a little, sometimes by a lot, but always successfully.

There exist multiple equilibrium paths in this dynamic game. Proposition 2 (as well as Proposition 1) describes characteristics common to all of them. To be able to say more about the dynamics of authority growth over time, however, we must select a specific equilibrium. We focus on one in which P relies upon an intuitive strategy: she claims as much authority as the court will allow each period — i.e., the amount that leaves the court indifferent between upholding and rejecting her action. We label this equilibrium, in which executive authority strictly increases each period, the “maximally admissible” equilibrium. As the next lemma shows, this strategy is indeed an equilibrium whenever the politician does not value the future too heavily.

Lemma 2. *There exists $\hat{\beta} \in (0, \bar{\beta}]$ such that if $\beta \leq \hat{\beta}$, then an equilibrium exists in which, each period, P either claims full authority ($a = 1$) or chooses a new level of authority that leaves the court indifferent between upholding and rejecting it.*

In such an equilibrium, the politician always maximizes her present payoff by pushing her authority as far as she can each period. The court observing P 's behavior today and anticipating her action tomorrow then uses a very simple strategy: it upholds if the claim is below a certain threshold and rejects otherwise. This tolerance threshold, which we denote $\bar{a}(\theta_t, a)$, is a function of the upper bound on the set of already permissible claims, $\max \mathcal{R}_t = a$, and the current circumstances θ_t . The next lemma characterizes some properties of the court's tolerance threshold, and, thus, P 's authority claim each period.

Lemma 3. *The court's tolerance threshold $\bar{a}(\theta_t, a)$ satisfies:*

- (i) $\bar{a}(\theta_t, a) = 1$ if and only if $\theta_t \geq \hat{\theta}(a) \equiv \frac{\frac{1+a}{2} - \kappa^C}{1-\beta}$;
- (ii) for all $\theta_t < \hat{\theta}(a)$, $\bar{a}(\theta_t, a)$ is strictly increasing with θ_t ;
- (iii) for all θ_t , the distance between $\bar{a}(\theta_t, a)$ and a is decreasing with a .

The first point is simply the contra-positive of Lemma 1. Each period, there exist states under which the court tolerates full authority acquisition due to the inefficiency loss induced by constraining P , ever more, to the prior authority level. Rather intuitively, the second point indicates that the politician's ability to claim more authority is increasing in the favorability of state circumstances.

The third point highlights that past authority acquisition can reduce the gains in authority acquisition. To understand this result, let us return to the court's trade-off between present loss when upholding an expansive authority claim and the cost from losing future flexibility when rejecting the claim. When the politician has already acquired a relatively large scope of authority, the court's concern about its future flexibility is reduced since P already can do a great deal with her current authority. Hence, a large stock of existing authority makes the court less lenient regarding contemporary claims for even more. The difference between what the politician already has and what the court will tolerate (and hence, under this equilibrium, what the politician will claim) reliably decreases as the politician secures ever more authority.

In combination, points (ii) and (iii) of Lemma 3 have substantive consequences for the dynamics of authority acquisition. There is no clear correlation between past authority acquisitions and future ones. A politician who starts period t with a lot of room for action (a large $\max \mathcal{R}_t$) may end up in period $t + 1$ with less authority than an office-holder who started with a smaller permissible set.

Proposition 3. *Take any two possible sets of permissible authority claims \mathcal{R}_t^l and \mathcal{R}_t^h satisfying $\max \mathcal{R}_t^l = a^l < \max \mathcal{R}_t^h = a^h$. There exists $\theta^\dagger(a^l, a^h) < \hat{\theta}(a^l)$ such that if $\theta_t \in (\theta^\dagger(a^l, a^h), \hat{\theta}(a^h))$, then $\max \mathcal{R}_{t+1}^l > \max \mathcal{R}_{t+1}^h$.*

This result again follows from the court becoming less tolerant of an executive's ambitions when she already has acquired substantial authority. The complement is also true. Indeed, precisely because past limitations of authority portend future advancements, a politician may experience a "reversal of fortune," allowing her to overcome the levels of authority she would have acquired had the court previously adopted a more accommodating posture. Past limitations, in this sense, have the potential to hasten the onset of executive absolutism.⁷

⁷The risk of a reversal of fortune explains why the existence of the maximally feasible equilibrium is not guaranteed for all discount factors (though, note that Lemma 2 only states a sufficient condition). It also raises the possibility that this equilibrium is not the payoff-maximizing equilibrium for the politician. Unfortunately, comparing the executive's welfare across equilibria proves impossible because payoffs depend on future expected claims of authority, which themselves are a function of the realization of future states of the world. Hence, future payoffs are equilibrium-specific, and there is no easy way to define the optimal strategies for the politician (or the court for that matter) in ways that facilitate welfare calculations.

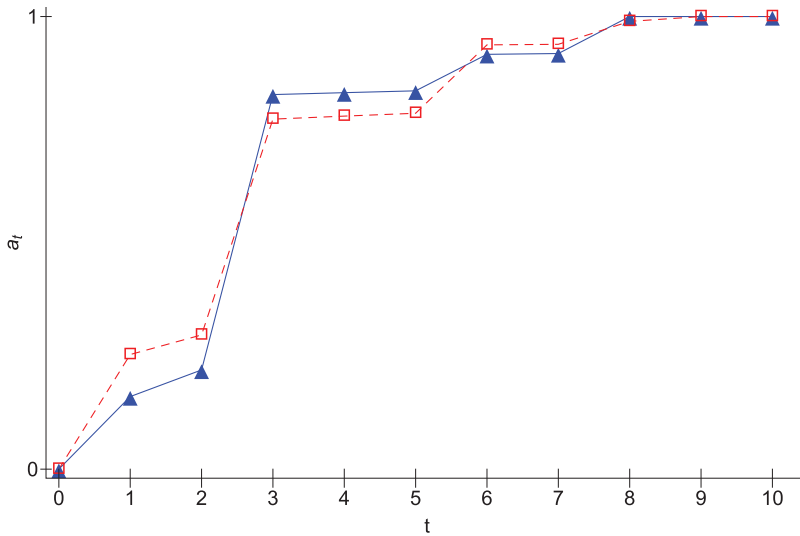


Figure 1: Dynamics of authority acquisition.

The dotted red line with squares represents the dynamics of authority acquisition under the sequence of shocks $\{\theta_t^\square\}_{t=1}^{10}$. The plain blue line with triangles represents the dynamics of authority acquisition under the sequence of shocks $\{\theta_t^\triangle\}_{t=1}^{10}$. Parameter values: $\beta = 0.9$, $\bar{\theta} = 13$, $F(\theta) = \frac{\theta}{26}$, $\kappa^C = 0$, $\theta_1^\square = -2 > -5 = \theta_1^\triangle$, $\theta_t^\square = \theta_t^\triangle = \theta_t$ for $t > 1$, with $\theta_2 = -10$, $\theta_3 = 5$, $\theta_4 = -2$, $\theta_5 = -2$, $\theta_6 = 8.5$, $\theta_7 = 0$, $\theta_8 = 9.6$, $\theta_9 = 11$, $\theta_{10} = 10$.

To see how these dynamics function, consider Figure 1. Here, we track the authority acquired by two executives over 10 periods. The two executives, square and triangle, face a common realization of θ in every period except the first. In period 1, the square executive benefits from more favorable circumstances than the triangle executive and therefore is able to acquire more authority. Notice, though, that this initial advantage is not permanent. In period 3, the common realization of θ allows the triangle executive to acquire enough authority to surpass that of the square executive. Additional reversals of fortune appear in periods 6 and 8. We also see how different realizations of θ can produce relatively small or large jumps in authority. And illustrating Proposition 2, both executives acquire more authority in every period until each, illustrating Proposition 1, acquires full authority.⁸

More generally, does gaining more authority today routinely impede the acquisition of future authority, as stipulated in Proposition 3? The complexity of the formal analysis prevents us from reaching definitive conclusions, and so

⁸Though difficult to observe, the slopes of both curves are slightly positive between periods 3 and 5, 6 and 7, and 8 and 9.

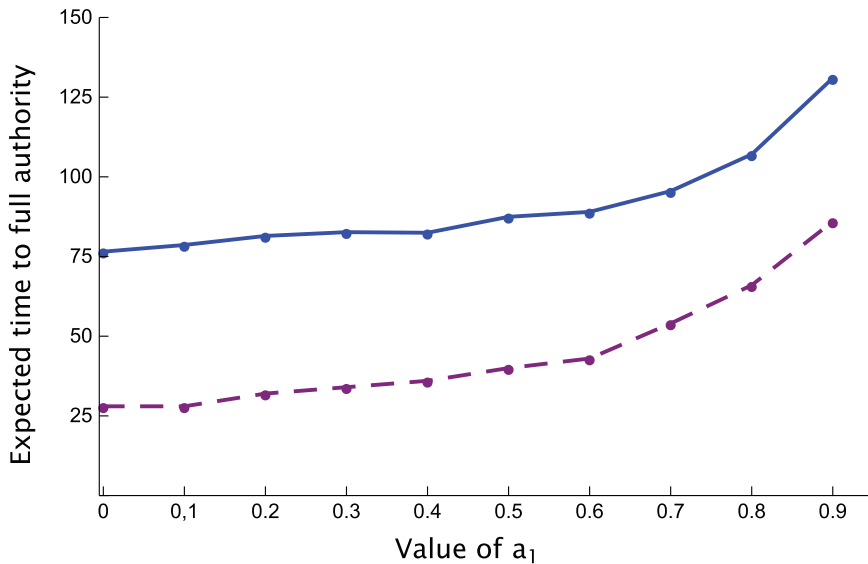


Figure 2: Time to full authority as a function of authority acquired in period 1 (a_1).

The figure is obtained from 5,000 simulations of paths of authority acquisition (over 800 periods). The blue plain line is the average time to full authority acquisition. The dashed purple line is the median time to full authority acquisition. Parameter values: $\beta = 0.9$, $\bar{\theta} = 13.5$, θ distributed according to a truncated normal with variance 4 over the interval $[-\bar{\theta}, \bar{\theta}]$, $\kappa^C = 0$.

we proceed via simulation.⁹ In Figure 2, we plot the expected time (plain blue line) and the median time (dashed purple line) to full authority as a function of the authority acquired in period 1, with 0 serving as a reference point. This figure is based on 5,000 simulations over 800 periods with $\kappa^C = 0$, $\beta = 0.9$ and θ_t drawn from a truncated normal distribution over the interval $[-13.5, 13.5]$. We observe an increasing relationship, which becomes especially pronounced for high values of a_1 . This positive correlation arises, we conjecture, due to the reduced chances of obtaining full authority in period 2. As we noted above, the executive can propose $a_2 = 1$ and get away with it only if circumstances are sufficiently dire: $\theta_2 \geq \hat{\theta}(a_1)$. The threshold for securing full authority is decreasing in a_1 ; and hence, high level of authority in the present impairs full authority acquisition in the future. Having more authority today, therefore, delays the acquisition of full authority in the future.

The maximally admissible equilibrium is also useful to study how uncertainty about circumstances, defined in term of mean preserving spread, affects

⁹The expected time to full authority as a function of a_1 is given by the formula: $1 \times (1 - \hat{\theta}(a_1)) + 2 \times \hat{\theta}(a_1) E_{\theta_2}((1 - \hat{\theta}(a_2(\theta_2, a_1)) | \theta_2 < \hat{\theta}(a_1))) + 3 \times E_{\theta_2}(E_{\theta_3}((1 - \hat{\theta}(a_3(\theta_3, a_2)) | \theta_3 < \hat{\theta}(a_2)) | \theta_2 < \hat{\theta}(a_1))) + \dots$

authority acquisition. Quite intuitively, the greater the chances of extreme circumstances, the more attuned the court becomes to the costs of permanently constraining the politician. The executive, for her part, takes advantage of this heightened demand for flexibility in order to acquire greater authority each period for herself.¹⁰

Proposition 4. *Take two symmetric CDFs of the state of the world θ , F_A and F_B , such that F_B is a mean-preserving spread of F_A . Denote $\bar{a}_A(\theta, a)$ and $\bar{a}_B(\theta, a)$ the tolerance thresholds under distributions F_A and F_B , respectively. For all $a \in [0, 1)$ and all $\theta \in [0, \hat{\theta}(a))$, $\bar{a}_B(\theta, a) \geq \bar{a}_A(\theta, a)$.*

Our model thus indicates that we should observe a greater push for authority in environments that are more volatile (among presidential systems, think of Latin American regimes) than in those that are relatively stable (e.g., the United States, at least until recently).

We cannot determine clear comparative statics on players' patience, as characterized by the discount factor β . As the court becomes more patient, it puts more weight on the need for flexibility. This tends to make the court more lenient, as we have just seen. But greater patience also means that the court cares more about the cost of future extensions of executive authority, which reduces the court's incentive to permit further authority acquisition. Depending on circumstances (the state of the world, but also the stock of authority already acquired), one or the other force can dominate, and the tolerance threshold can either increase or decrease with β .

Overall, the analysis of the dynamics of authority acquisition reveals two interesting patterns. On a general note, the executive is able to exploit the court's demand for (future) flexibility to increase her authority each period, no matter the circumstances. And when she chooses to do so, that is in the maximally admissible equilibrium, authority acquisition exhibits period by period variation. A politician who starts a period with the largest stock of authority does not necessarily end up with the highest permissible set. Reversals of fortune may occur. In the next section, we complement the study of the maximally admissible equilibrium by contrasting the executive's choices in our baseline model with her authority claims and acquisitions in a world without precedent.

¹⁰Notice that to state the result formally, we impose that the distribution of states is symmetric (a sufficient, but not necessary assumption). This assumption disciplines the mean preserving spread, as it guarantees that increased risk of a very low state (θ_t negative) does not dominate the risk of a very high state in the court's decision. The assumption of symmetry really plays a role in the proof of the proposition when the court may uphold a full authority claim for negative states (i.e., $\theta(a) < 0$, which can happen if $\kappa^C > 1/2$). Alternatively, we could assume $\kappa^C < 1/2$ and do away with the symmetry assumption.

Precedents vs State-Dependent Decisions

Our baseline model takes a strong view of precedents. A court cannot revise authority previously granted and, once it rejects an authority claim, intervention in the domain is forever precluded. We have seen that this formal “big stick” actually weakens the court and allows the executive to claim at least some new authority each period. It thus seems natural to contrast our results with another, equally strong, perspective on the judiciary: a world with state-dependent decisions, in which the court’s ruling is conditional on the realization of θ . Note that this world is basically akin to a world without precedent (since decision in one state has no spillover effect on decisions in other states).

How do authority claims look with state-dependent decisions? The game then collapses to a bargaining game with the court as veto and the executive as agenda-setter. In each state, the court’s ideal point is $\theta + \kappa^C$, the executive’s is one, and the status quo can be understood to be zero. The executive makes a take-it-or-leave-it offer to the court that leaves the court indifferent between accepting or rejecting the offer. With quadratic preferences, the court would accept any state-dependent claim satisfying $a(\theta) \leq 2\theta + \kappa^C$. When the right-hand side is lower than zero, then the court rejects all positive authority claims and the executive sticks with the status quo. When $2\theta + \kappa^C \geq 1$, the judiciary accepts all claims and the executive proposes $a(\theta) = 1$. In between these two bounds, the claim is interior and equals $2\theta + \kappa^C$. This reasoning is summarized in the following remark.

Remark 1. *If the court can condition its ruling on the state of the world, the state-dependent authority claim satisfies: $a(\theta) = \max\{0, \min\{2\theta + \kappa^C, 1\}\}$.*

State-dependent decisions do not preclude the growth of executive authority. In many states, the executive claims more authority (all those for which $\theta \geq -\frac{\kappa^C}{2}$). Further, for a large set of circumstances, the executive will have full authority over the domain (for all $\theta \geq \frac{1-\kappa^C}{2}$). State-dependent rulings, as such, do not reliably guard against executive growth.

Further, we can contrast the distribution of the period 1 claim in our baseline notion of precedent with the claim given in a state-dependent decision (i.e., when $\mathcal{R}_1 = \{0\}$). To do so, we focus on the maximally admissible equilibrium discussed above and we illustrate this comparison in Figure 3 (with formal results available upon request). There, the solid line represents the claim in the maximally admissible equilibrium as a function of θ . The dashed line, in turn, graphs the state-dependent claim. Obviously, in circumstances relatively unfavorable to the politician, the authority claim is smaller in the case with state-dependent authority since the court can refuse any growth of executive authority. For low states, the solid line is above the dashed line, but the

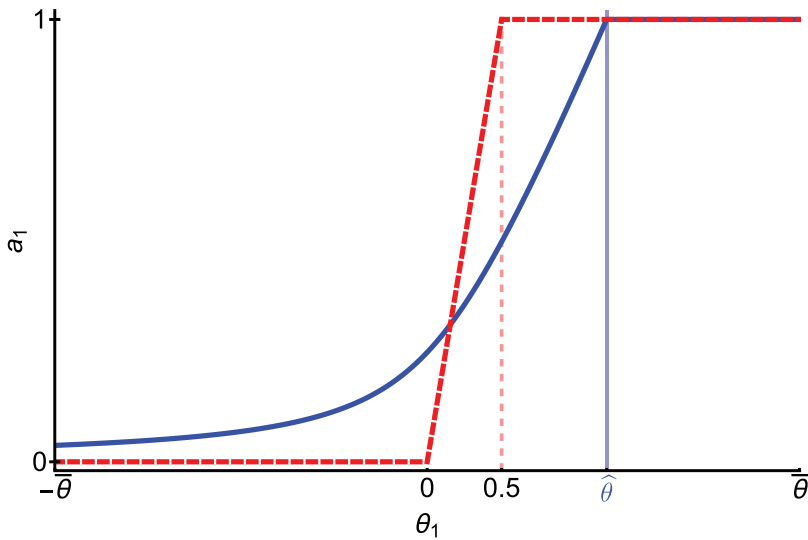


Figure 3: First-period claim.

The dotted red line represents the first-period claim as a function of the shock θ_1 for state-dependent decisions. The plain blue line represents the first-period claim in the maximally feasible equilibrium. Parameter values: $\beta = 0.585$, $\bar{\theta} = 2.5$, $F(\theta) = \frac{\theta}{5}$, $\kappa^C = 0$.

difference is not especially large. For very favorable circumstances ($\theta \geq \hat{\theta}(0)$), the executive claims full authority in period 1 with or without precedents. For intermediate states, the pattern is reversed: we observe more encroachment with state-dependent authority (the dashed line is above the solid line). The logic is rather obvious. Expecting that authority will subsequently grow with precedent, the court becomes more stringent in its evaluation of present claims. Expectations about future expansion, as such, reduce the court's tolerance for present authority acquisition.

The comparison between a world with precedents and a world with state-contingent decisions yields two lessons. First, because the executive remains the agenda-setter, state-dependent decisions do not resuscitate the court as a robust check on executive authority. As a consequence, the cost of allowing precedents for the court, while positive, is limited. Absent precedent, the court cannot impose its preferred level of authority for given circumstances on the executive. Rather, it is limited (for all purposes) between getting its payoff from the status quo and its payoff from full authority. Hence, if one believes that precedents provide benefits in the form of predictable judicial decisions, the (relatively limited) cost for the court may not be a strong enough argument to abandon precedents. Second, while precedents allow in the long run the executive to claim full authority over the domain, in the short run,

they can dampen the expansion of executive authority in the present. For intermediate shocks, the court is concerned about leaving too much discretion in future periods when it prefers little discretion. Hence, the court becomes less conciliatory when dynamics concerns are present than in the static model. The court cannot stop acquisition of authority, but its long-term concerns may slow it down, which may fortify the separation of powers.

Robustness Checks and Extensions

Our baseline set-up makes four contestable assumptions. First, we provide the court with a strong formal stick (rejection shuts down all future extension of authority), which turns out to be the cause of its weakness in practice. Second, we assume that judges have no opportunity to revise past rulings, invoking a strong notion of precedent. Third, judges need not worry about turnover in the executive office. And fourth, we suppose that circumstances can be sufficiently dire that the court will be willing to accept full authority claims, no matter the stock that the executive has already secured. In this section, we re-evaluate the dynamics and limits of authority acquisition when each of these assumptions is relaxed.¹¹

An Alternative Judicial Rule

Recall that in the baseline model, when the court rejects an authority claim, the discretion set collapses ($\mathcal{R}_t \cup \mathcal{W}_t = [0, 1]$), and future authority extension becomes impossible — $\max \mathcal{R}_t$ is the best the executive can do in perpetuity. Suppose, instead, that if the court rejects an authority claim $a' > \max \mathcal{R}_t$, then the impermissible set only extends up to the claim recently struck down: $\mathcal{W}_t = (a', 1]$.¹² We still assume the authority recovered this period is the maximum of the permissible set (i.e., $y_t(d_t) = a_t$ if the court upholds the claim a_t , and $\max \mathcal{R}_t$ if the court rejects it).

This seemingly benign assumption change generates a string of complexities to the analysis. In the baseline model, the rejection rule allows us to straightforwardly compute the court's and executive's payoffs in the aftermath of a rejection. We then can compare the expected payoff from rejecting the authority claim to the expected payoff from permitting it, which allows us to determine both the limit outcomes of all equilibria and the behavior in the maximally admissible equilibrium. In this extension, we are no longer able

¹¹In Online Appendix C, we also investigate how the dynamics of authority acquisition change when the court can sometimes issue temporary stays (Online Appendix C.1), when authority is multidimensional (Online Appendix C.2), and when the court experiences turnover (Online Appendix C.3).

¹²We assume that $a' \notin \mathcal{W}_t$ so that the executive's problem remains well-behaved.

to do so. Here, once the court rejects an authority claim a' , a “new” game starts between the judiciary and the executive, where authority is bounded to a' rather than 1. The payoffs from rejecting an authority claim, therefore, are undetermined, as they depend on the strategies subsequently played by both actors. Absent a well-defined outside option, it becomes harder to characterize the equilibrium behaviors of the judiciary and the executive.

Despite these difficulties, our next result shows that the behavior of the court under the more permissive rejection rule resembles its choice under the more stringent one. In every period, for every precedent, the court is willing to accept a full authority claim whenever circumstances require it (for a high enough value of θ). Further, in all states of the world, there exist some new authority claim that the judiciary upholds. As such, Proposition 5 indicates that, once more, the judiciary remains a weak constraint on the executive.

Proposition 5. *Suppose $\max \mathcal{R}_t = a \in [0, 1)$ and $\min \mathcal{W}_t = a^R \in (a, 1]$. Then in any equilibrium:*

- (i) *There exists a unique $\hat{\theta}^{\mathcal{L}}(a, a^R)$ such that for all $\theta_t \geq \hat{\theta}^{\mathcal{L}}(a, a^R)$, the court upholds any authority claim in the discretion set: for all $a' \in [a, a^R]$, $d(\theta_t, a', a, a^R) = 0$.*
- (ii) *For all θ_t , there exists $\bar{a}(\theta, a, a^R) \in (a, a^R]$ such that the court upholds the executive’s authority claim a_t , that is $d(\theta_t, a_t, a, a^R) = 0$, if $a_t \in [a, \bar{a}(\theta, a, a^R)]$.*

The change in the rejection rules (from stringent in the baseline model to permissive in this extension) does not substantially alter the judiciary’s behavior. First, there exist circumstances under which the court allows a claim of full authority even though it induces a cost in the future. Note that this implies that the gain from greater flexibility upon rejecting is limited. Indeed, if the court rejects $a_t = 1$, this does not change future interactions since the executive’s authority can never exceed 1. Yet, the expectations of future encroachment make this greater flexibility of limited interest to the court, who is willing to accept a full authority claim when circumstances are dire (i.e., when θ_t is sufficiently high).

A consequence of the proposition’s first result is that the court does not want to constrain the executive so much that any adaptation becomes impossible. As we have already discussed, the executive can then, if she wishes, exploit the judiciary’s demand for flexibility to secure still more authority. In short, the court in every situation is willing to let authority grow, sometimes by a little, sometimes by a lot.

Can we say anything about the limit of executive authority, as we did in the baseline model? Unfortunately no, at least not definitively. We cannot rule out the possibility that an executive will constrain herself — i.e., she will choose

some authority claim that is rejected — in the hopes of converging faster to a new, albeit lower, limit. Even if such equilibria exist, however, they are likely to be fragile. As long as the executive is sufficiently impatient or sufficiently patient, after all, we can be sure that she will eventually acquire full authority, again as in the baseline model. To see this, note that when the office-holder's discount factor is low, she cares less about the future and therefore always chooses to maximize her per-period authority. Consequently, the executive always chooses an authority extension as high as the tolerance threshold permits, and no claim is ever rejected in equilibrium. In the limit, then, full authority is granted to the office-holder, almost despite herself. In turn, if the executive is very patient, she puts significant weight on the maximum authority she can claim in the limit. Since anything below full authority provides a lower payoff than total control over the domain in the long run, the politician prefers to be prudent in the short run in order to eventually realize these long-term gains.

Revising Precedents

In this subsection, we assume that at the beginning of each period, Nature sometimes provides an occasion for the judiciary to start anew. For simplicity, we assume that the probability that the court sets a new precedent is $\lambda \in (0, 1)$ (the baseline model is a special case with $\lambda = 0$). As we do not have clear empirical guidance as to what the court can or cannot do, we assume as well that the court can pick any upper bound of the permissible set in the unit interval. That is, if given the chance to intervene in period t , the court chooses $a^* \in [0, 1]$ so that $\mathcal{R}_{t+1} = [0, a^*]$ and $\mathcal{W}_{t+1} = \emptyset$. This implies that the court can now transform previously permissible claims into claims over which it has discretion. The court also evaluates new claims into the policy domains even if it shut down the possibility of any further authority acquisition in a previous period.¹³ When it decides on a new precedent, the court takes into account its present as well as future payoffs while understanding the equilibrium of the whole game. That is, the court's choice a^* is its dynamic best response to the game played. Since the court's choice depends on the period t state of the world when it makes a decision, we denote the court's precedent decision $a^*(\theta_t)$ in what follows.

In this amended set-up, the notion of authority in the limit has little meaning since there is always the possibility of a restart. We, therefore, focus on the dynamics of authority acquisition. Our first result states that Proposition 2 is virtually unchanged when the court can revise precedents.

¹³The assumption that this occurs automatically is without loss of generality since the court never puts constraints on itself.

Proposition 6. *In any equilibrium, for all $\theta_t \in [-\bar{\theta}, \bar{\theta}]$, there exists $\bar{a}(\theta_t, a) > a$ such that C upholds P 's authority claim a_t , $d_t(\theta_t, a_t, a, 1) = 0$, if $a_t \in [a, \bar{a}_t(\theta_t, a)]$, where $a = \max \mathcal{R}_t$.*

From the court's perspective, the game proceeds along two paths: the normal path where the executive makes authority claims and the path where the court can revise precedent, with Nature determining which path the court is on at the beginning of each period. On the normal path, the court still values flexibility. Even though the risk of being stuck at an ineffective precedent when circumstances are dire (θ_t very large) is lower thanks to the possibility of revising precedent, some risk is always present in the mind of the court when confronted with an authority claim. Just like in the baseline model, the executive, if she so chooses, can exploit this demand for flexibility to extend her authority each period.

What happens when the court has the opportunity to revise precedents? To answer this question, we need to compute the court's present and future anticipated payoffs for each decision, which depends on the equilibrium played. We again focus on the maximally admissible equilibrium and assume that conditions for existence are satisfied. We also add a condition on the shape of the CDF and pdf of the state of the world: $\frac{1}{2(1-\beta(1-\lambda))}f(\theta) \leq 2F(\theta)$. To understand this condition, recall that when more authority is granted, the court potentially suffers a cost today, but it also implies that it is less likely to grant full authority tomorrow (for a maximum of the permissible set equal to a , upholding full authority requires $\theta_t \geq \hat{\theta}(a)$, with $\hat{\theta}(a)$ strictly decreasing with a). The condition guarantees that tomorrow's marginal benefit of greater authority today is decreasing in a_t since the additional reduction in the likelihood of granting full authority next period (captured by $\frac{1}{2(1-\beta(1-\lambda))}f(\theta)$, with $\hat{\theta}'(a_t) = \frac{1}{2(1-\beta(1-\lambda))}$ in this amended setting) does not compensate for the marginal additional cost of having greater authority in states less than $\hat{\theta}(a_t)$ (captured by $2F(\theta)$). Since the cost of greater authority today is concave (due to the quadratic loss function), the condition is sufficient for the court's maximization problem to be well behaved when it has a chance to revise precedents.

With this in mind, the next proposition shows that the court always picks a permissible set smaller than what the executive would like (proof available upon request), but it does not always revise precedents downward when given a chance to redefine the set of permissible claims.

Proposition 7. *Suppose $\frac{1}{2(1-\beta(1-\lambda))}f(\theta) \leq 2F(\theta)$ for all $\theta \in [-\bar{\theta}, \bar{\theta}]$. Then, in the maximally admissible equilibrium, for all $\max \mathcal{R}_t = a \in [0, 1)$, there exists $\underline{\theta}(a) \in [-\bar{\theta}, \bar{\theta}]$ such that when given the chance, the court's novel precedent $a^*(\theta_t)$ satisfies $a^*(\theta_t) > a$ for all $\theta_t > \underline{\theta}(a)$.*

We are not able to determine how the possibility of the court revising precedent affects the dynamics of authority acquisition on the normal path, when the executive makes new authority claims. The probability λ of choosing a new precedent has the same effect as reducing the discount factor β since the risk of being stuck with a bad precedent in future periods is now lower. As we noted above, smaller β has an ambiguous effect on the court's incentives — increased willingness to accept full authority, less demand for flexibility — making it difficult to determine its overall effect on authority acquisition.

Political Turnover and Executive Authority

We now allow for the possibility that the incumbent executive loses office, in which case the authority she acquires today may be used against her tomorrow by an opposing successor. More specifically, we assume that at the beginning of each period, before θ_t is realized, Nature determines the identity of the officeholder, which can be either P_l or P_r . Once a politician is in power in period t , there is a probability π that she remains in office next period. This probability captures in reduced form an office-holder's incumbency advantage (if $\pi \geq 1/2$) or disadvantage (if $\pi < 1/2$).

When politician $J \in \{P_l, P_r\}$ holds authority, her utility from having deployed authority y_t remains $v(y_t)$, as in the baseline model. When her opponent $-J$ is in office, however, J 's utility from authority y_t being used is $-v(y_t)$. That is, for $J \in \{P_l, P_r\}$,

$$U_J(y_t) = \begin{cases} v(y_t) & \text{if } J \text{ is in office,} \\ -v(y_t) & \text{otherwise.} \end{cases}$$

The rest of the model remains unchanged.

With or without political turnover, the court's problem remains the same as in the baseline model. The court cannot impose a hard constraint on the executive since it always wants to give itself some flexibility to deal with exceptional future circumstances. Very much like in the baseline model, authority would grow each period if the office-holder chooses so. Hence, any constraint on authority can only come from changes in equilibrium behavior induced by (expected) fluctuations in personnel. Our next result establishes that as long as the incumbency disadvantage is not too high (i.e., π is not too low), then the unique outcome of the game is executive absolutism, much like Proposition 1.

Proposition 8. *There exists $\underline{\pi} < 1/2$ such that if the probability the incumbent remains in power satisfies $\pi > \underline{\pi}$, then any equilibrium satisfies $\lim_{t \rightarrow \infty} \mathcal{R}_t = [0, 1]$ with probability 1.*

Our revised framework predicts that electoral competition *may* generate restraints on authority acquisition, but only if there is a strong enough incumbency *dis*advantage. Only then, after all, is the incumbent sufficiently afraid to leave her opponent unchecked in the next period and, thus, acts so that legal bounds are placed on authority. She does so by seeking a sufficiently large grant of authority that will provoke the court to reject it. In the U.S. setting where the incumbency advantage is well documented (see, e.g., Fowler, 2016), the likelihood of electoral competition curtailing authority acquisition hovers right around zero.

What happens when incumbents are disadvantaged (π is well below $1/2$), a situation faced by many incumbents in developing countries according to recent papers (e.g., Klačnja *et al.*, 2017)? Is authority acquisition always interrupted then? The answer, it happens, is no. While we cannot guarantee that full authority is always grabbed in the limit, we can assert that no matter the authority stock already acquired, there is a strictly positive probability that an executive claims and is granted more authority. We summarize this last result of this subsection in the form of a remark

Remark 2. *For any $\pi < \underline{\pi}$, in any equilibrium, if $\mathcal{R}_t = [0, a] \subset [0, 1]$, then $\max \mathcal{R}_{t+1} > a$ with strictly positive probability.*

Authority Acquisition in a Calm World

The baseline model and previous comparisons highlight the role of the court's demand for flexibility in a potentially turbulent world, one wherein $\bar{\theta} > \frac{1}{1-\beta}$. Whatever the level of authority already acquired by the executive, we found, there always exist circumstances in which the court is willing to uphold a full authority claim ($a_t = 1$). We now investigate the dynamics of authority acquisition in a calm world, such that $\bar{\theta} < \frac{1}{1-\beta}$. This robustness check is essential as it allows us to understand the role of the court's extreme demand for flexibility in generating executive absolutism (Proposition 1) and the dynamics of authority acquisition (Proposition 2) described above.

Recalling that the court becomes less lenient as the permissible set increases, we now consider two different situations. In the first, the permissible set \mathcal{R}_t is such that the court is willing to uphold a full authority claim for some states of the world. In the second, the permissible set is so large that the court is never willing to grant full authority. Formally, it is useful to introduce $a^f = 2((1-\beta)\bar{\theta} + \kappa^C) - 1$. The first case then corresponds to $\max \mathcal{R}_t = a < a^f$ so $\bar{\theta} > \frac{1+a-\kappa^C}{2(1-\beta)} = \hat{\theta}(a)$. The second situation arises when $\max \mathcal{R}_t \geq a^f$ so that $\bar{\theta} \leq \hat{\theta}(a)$ and the office-holder no longer has the opportunity to obtain full authority over the policy domain. In some cases, the court never upholds a full authority claim, even if the permissible set is restricted to its original status

quo $\{0\}$ (formally, $a^f < 0$). To more fully characterize the dynamics involved, however, in what follows we focus on the case when $a^f > 0$.

When $\max \mathcal{R}_t < a^f$, the court demand for flexibility is high. The court is very much afraid to reject a claim and permanently shut down authority acquisition because there exist circumstances such that it would be willing to grant full authority. Very much as before, the executive, if she so chooses, can expand her authority each period. That is, we obtain:

Proposition 9. *For all $\max \mathcal{R}_t = a < a^f$, in any equilibrium, for all $\theta_t \in [-\bar{\theta}, \bar{\theta}]$, there exists $\bar{a}(\theta_t, a) > a$ such that C upholds P 's authority claim a_t , $d_t(\theta_t, a_t, a, 1) = 0$, if $a_t \in [a, \bar{a}_t(\theta_t, a)]$.*

An immediate consequence of Proposition 9 is that the size of the permissible set grows at least up to $[0, a^f]$. Authority acquisition, however, does not have to stop at a^f . The court may no longer uphold a full authority claim, but this does not imply that the court rejects all claims. Indeed, when the state is sufficiently high and the permissible set sufficiently small, the court is willing to uphold some new authority claims over maintaining the status quo, and P is then able to grow her authority. When the upper bound of the permissible set is relatively high, the future cost from more authority granted to P always dominates the present gains from the court's perspective. The court then prefers the status quo to any new claim even in the highest possible state $\bar{\theta}$, and authority acquisition halts.

The next proposition establishes the highest claim a politician can make as a function of her previously acquired authority. It shows that as long as $\max \mathcal{R}_t = a$ satisfies $a < (1 - \beta)\bar{\theta} + \kappa^C = a^M$, there remains room for authority to grow.

Proposition 10. *For all $a \geq a^f$, there exists a unique $a^{max}(a)$ such that, in any equilibrium, $\lim_{t \rightarrow \infty} \max \mathcal{R}_t \leq a^{max}(a)$, with $a^{max}(a) = \max\{a, 2(1 - \beta)\bar{\theta} + 2\kappa^C - a\}$.*

Unfortunately, without knowing more about the properties of the equilibrium, we cannot fully characterize the dynamics of authority acquisition when the condition of Proposition 10 is satisfied (i.e., $a \geq a^f$). We can, however, describe the dynamics a bit more in the maximally admissible equilibrium, which again exists for low enough values of the discount factor. In this equilibrium, the court anticipates that, in the future, it will always receive its expected payoff from the status quo. Hence, whenever the state is relatively unfavorable to the incumbent, formally $\theta_t \leq \frac{a - \kappa^C}{1 - \beta}$, the court will reject any claim as the future cost dominates any present benefit from change. Under these circumstances, the authority expansion will pause before restarting when higher states arise. As a result, we should expect two phases in authority expansion. In the first phase, authority growth will proceed rapidly and every period; in the second

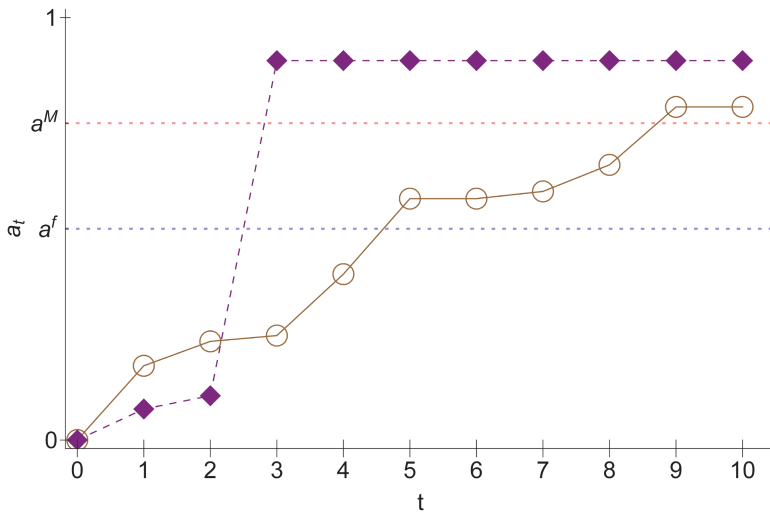


Figure 4: Authority growth in a calm world.

The dotted purple line with diamonds represents the dynamics of authority acquisition under the sequence of shocks $\{\theta_t^\diamond\}_{t=1}^{10}$. The plain brown line with circle represents the dynamics of authority acquisition under the sequence of shocks $\{\theta_t^\circ\}_{t=1}^{10}$. Parameter values: $\beta = 0.9$, $\bar{\theta} = 7.5$, $F(\theta) = \frac{\theta}{15}$, $\kappa^C = 0$, $\bar{\theta}_t^\circ = \{0, 1, -0.5, 3, 4.8, 3, 5.8, 6.2, 7.2, 7.5\}$, $\bar{\theta}_t^\diamond = \{-2, -3, 5, 3, 4.8, 3, 5.8, 6.2, 7.2, 7.5\}$.

phase, once a large stock of authority has already been acquired, authority acquisition will proceed slowly and will pause before eventually stopping (if the upper bound of the permissible set is above $a^M = (1 - \beta)\bar{\theta} + \kappa^C$).

Figure 4 illustrates these dynamics. Consider the circle executive. For the first four periods, the states of the world are relatively small and the authority grows at a slow pace, remaining below a^f and, thus, leaving the possibility for full authority acquisition in the future. In period 5, a relatively large shock pushes the maximum of the permissible set above a^f : full authority acquisition is no longer possible. Yet, authority still grows, albeit not each period (e.g., the permissible set remains unchanged in period 6 relative to period 5), until a very large shock in period 9 pushes the maximum of the permissible set above a^M and no further growth is possible. The trajectory of the diamond executive looks quite different. Her authority increases very slowly in the first two periods until a relatively high state of the world in period 3 pushes the maximum of the permissible set above a^M . From then on, no matter the shock, authority remains unchanged as the court now rejects any further claim. Despite their contrasting pathways, you'll notice, neither executive ever secures full authority in this calm world.

Conclusion

Our model pits the authority aspirations of an executive politician against the restraints of judicial review. Both players in the model, the politician and the court, have preferences over authority. The politician's is unbounded, the better to prosecute her policy agenda, to feel efficacious, to leave a legacy, or to accomplish whatever else may motivate her; all these objectives are monotonic in authority. The court, by contrast, is motivated by jurisprudential considerations, today and into the future. These constitutional principles, however, are adjusted each period to reflect the period-specific nature of the times. The court, therefore, seeks to balance what seems optimal today in terms of its principles, its concerns about the present situation, and its assessment of future contextual circumstances. And this is the opening exploited strategically by the politician. The court's need to balance present payoffs against the need for flexibility in light of future possibilities enables the politician to push the authority envelope until all that is available is eventually acquired.

Notice that this finding is recovered from an austere and rather idealized setting. Plenty of scholars have recognized numerous institutional weaknesses associated with the judiciary: lack of enforcement powers, informational asymmetries, political vulnerabilities, and so forth (Bickel, 1955; Rosenberg, 1992). The court in our model does not suffer any of these liabilities; and yet, still, it struggled to impede the politician's claims for more authority.

This does not mean that the court has no effect. Unless circumstances are very favorable (Lemma 1), a politician will be unable to claim full authority right away. Further, while authority may expand each period (Proposition 2), the growth will be slow whenever the state of affairs does not require decisive executive intervention (Lemma 3). We further uncover that precedents, the key institution behind the continuous growth of executive authority, may slow down authority extension at least in the short run (as illustrated in Figure 3).

In our baseline model, whether it happens in one go or many, the final outcome is always the same: in the limit, the executive acquires authority over the full policy domain (Proposition 1). While this conclusion relies on our assumption that judicial rejection closes off all avenues for future extension of authority, the dynamics we uncover appear widespread. We recover comparable findings when the consequences of judicial decision are less potent (Proposition 5). A calm world only implies weak limits on the scope of authority acquired (Proposition 9). Revising precedents are short-term fixes which never permanently stop authority acquisition (Proposition 6), and the same holds true for temporary stays on authority claims (Online Appendix C.1).

Are the problems we identify specific to the relationship between an executive and judiciary? Or do they apply more generally to dynamic policy-making processes that include a larger class of veto players? We believe the scope of

our model to be limited to the courts as constraints on the executive. The key force behind the constant acquisition of authority, even when circumstances are extremely unfavorable to the politician, lies in the consequences of overturning an authority claim. Overturning an executive precludes authority extension in the future (fully in the baseline model, partially in our set-up with an alternative judicial rule) and limits the adaptation of executive power to future crises. The blunt power of judicial precedent handcuffs the court, but not other types of veto players. In a model with a legislative veto and an executive proposer, rejection of a proposal does not formally bind the veto player to a subsequent course of action. As a result, when the situation is detrimental to the proposer, the status quo remains in place, at least for a while.¹⁴ Thus we see how the institutional strength of the court, in particular, ultimately is its undoing.

For the executive to falter in his quest to acquire full authority, or something close to it, one of two conditions must hold: in the baseline model, the politician must want something less than full authority; or in the expanded model with electoral competition, at least one of the politicians must want less than full authority because of her electoral disadvantage (Proposition 8) and act in ways that provoke a judicial rejection, which henceforth constrains the future authority claims of both politicians.

In American politics, neither condition seems likely to hold. Elected officials often benefit from a large incumbency advantage, making them electorally safe rather than fearful of replacements. Presidents do not practice moderation, or what Levitsky and Ziblatt (2018) call “forbearance,” far from it. Nearly all research on the American presidency since Neustadt’s seminal work (Neustadt, 1960) has noted that presidents seek authority at every turn to meet the extraordinary expectations that the public places upon them. Indeed, those presidents who reveal only a modest appetite for power (think James Buchanan, William Howard Taft, or Herbert Hoover) are routinely excoriated for their failed tenures in office. To be president, at its very core, is to want, seek, nurture, and preserve power (Howell, 2013). Individual moderation, moreover, runs counter to the very premise of the founders’ constitutional project. The founders certainly lauded modesty, virtue, and the like, but they did not count upon them to protect their fledgling democratic experiment — “if men were angels” and all that. To their core, the founders were realists. They took as given the nature of men (and to be clear, politically, they only had men in mind); and in men they recognized extraordinary appetites for power. It is for precisely this reason that the founders put their faith in external checks

¹⁴For example, in Callander and Martin (2017), the proposer exploits policy decay to advance her agenda, but would have to pause if the quality of the status quo were to temporarily improve.

on presidential power; that they looked to an independently elected Congress and a judiciary filled with lifetime appointees to frustrate and delimit the president's claims of authority. Our model highlights that the latter is unlikely to be up for the job.

This leaves Congress, the branch judged most dangerous by the Founders, as a possible bulwark against executive absolutism. Congress is not plagued by the same institutional issue as the judiciary, but it faces its own problems. As a collective decision-body, Congress confronts all sorts of well-documented coordination problems, transaction costs, parochial tendencies, and veto points that impede its ability to check presidential power. Whether Congress can be up to the task is an avenue for future research. The findings of this paper, though, serve as an additional cautionary note: while others have argued that democratic backsliding occurs through institutional changes by would-be authoritarian leaders (e.g., Grillo and Prato, forthcoming; Luo and Przeworski, forthcoming), our work reveals that it can happen almost by stealth. Democratic institutions as currently constituted can give way to authoritarian ones in the presence of real-world disruptions and without corruption or force. Our paper puts a dent in the almost religious faith that separation of powers, all by itself, guards against executive absolutism. This faith, we believe, may ultimately prove misplaced.

References

- Alesina, A. and G. Tabellini. 1990. "A Positive Theory of Fiscal Deficits and Government Debt". *The Review of Economic Studies*. 57(3): 403–14.
- Almendares, N. and P. Le Bihan. 2015. "Increasing Leverage: Judicial Review as a Democracy-Enhancing Institution". *Quarterly Journal of Political Science*. 10(3): 357–90.
- Alonso, R. and N. Matouschek. 2008. "Optimal Delegation". *The Review of Economic Studies*. 75(1): 259–93.
- Baker, S. and C. Mezzetti. 2012. "A Theory of Rational Jurisprudence". *Journal of Political Economy*. 120(3): 513–51.
- Baron, D. P. and T. R. Bowen. 2015. "Dynamic Coalitions". Stanford GSB Typescript: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2206536.
- Beim, D. 2017. "Learning in the Judicial Hierarchy". *The Journal of Politics*. 79(2): 591–604.
- Beim, D., T. S. Clark, and J. W. Patty. 2017. "Why Do Courts Delay?". *Journal of Law and Courts*. 5(2): 199–241.

- Beim, D., A. V. Hirsch, and J. P. Kastellec. 2014. "Whistleblowing and Compliance in the Judicial Hierarchy". *American Journal of Political Science*. 58(4): 904–18.
- Bendor, J. and A. Meirowitz. 2004. "Spatial Models of Delegation". *American Political Science Review*. 98(2): 293–310.
- Besley, T. and T. Persson. 2019. "Democratic Values and Institutions". *American Economic Review: Insights*. 1(1): 59–76.
- Bickel, A. M. 1955. "The Original Understanding and the Segregation Decision". *Harvard Law Review*. 69: 1–65.
- Bowen, T. R., Y. Chen, and H. Eraslan. 2014. "Mandatory versus Discretionary Spending: The Status Quo Effect". *The American Economic Review*. 104(10): 2941–74.
- Bradley, C. A. and T. W. Morrison. 2013. "Presidential Power, Historical Practice, and Legal Constraint". *Columbia Law Review*. 113(4): 1097–161.
- Bueno de Mesquita, B. and A. Smith. 2012. *The Dictator's Handbook: Why Bad Behavior is Almost Always Good Politics*. New York: PublicAffairs.
- Buisseret, P. and D. Bernhardt. 2016. "Dynamics of Policymaking: Stepping Back to Leap Forward, Stepping Forward to Keep Back". *American Journal of Political Science*. 61(4): 820–35.
- Callander, S. and P. Hummel. 2014. "Preemptive Policy Experimentation". *Econometrica*. 82(4): 1509–28.
- Callander, S. and G. J. Martin. 2017. "Dynamic Policymaking with Decay". *American Journal of Political Science*. 61(1): 50–67.
- Carrubba, C. J. and T. S. Clark. 2012. "Rule Creation in a Political Hierarchy". *American Political Science Review*. 106(3): 622–43.
- Carrubba, C. J. and C. Zorn. 2010. "Executive Discretion, Judicial Decision Making, and Separation of Powers in the United States". *The Journal of Politics*. 72(3): 812–24.
- Chiou, F.-Y. and L. Rothenberg. 2017. *The Enigma of Presidential Power: Parties, Policies and Strategic Uses of Unilateral Action*. New York: Cambridge University Press.
- Christenson, D. P. and D. L. Kriner. 2019. "Does Public Opinion Constrain Presidential Unilateralism?". *American Political Science Review*. 113: 1071–77.
- Clark, T. S. 2016. "Scope and Precedent: Judicial Rule-making under Uncertainty". *Journal of Theoretical Politics*. 28(3): 353–84.
- Clark, T. S. and C. J. Carrubba. 2012. "A Theory of Opinion Writing in a Political Hierarchy". *The Journal of Politics*. 74(2): 584–603.
- Clark, T. S. and J. P. Kastellec. 2013. "The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model". *The Journal of Politics*. 75(1): 150–68.
- Dziuda, W. and A. Loeper. 2016. "Dynamic Collective Choice with Endogenous Status Quo". *Journal of Political Economy*. 124(4): 1148–86.

- Dziuda, W. and A. Loeper. 2018. "Dynamic Pivotal Politics". *American Political Science Review*. 112(3): 580–601.
- Epstein, D. and S. O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. New York: Cambridge University Press.
- Epstein, L., D. E. Ho, G. King, and J. A. Segal. 2005. "The Supreme Court during Crisis: How War Affects only Non-War Cases". *NYU Law Review*. 80: 1–116.
- Foster, D. R. 2022. "Anticipating Unilateralism". *The Journal of Politics*. 84(2): 1176–88.
- Fowler, A. 2016. "What Explains Incumbent Success? Disentangling Selection on Party, Selection on Candidate Characteristics, and Office-Holding Benefits". *Quarterly Journal of Political Science*. 11(3): 313–38.
- Fox, J. and M. C. Stephenson. 2011. "Judicial Review as a Response to Political Posturing". *American Political Science Review*. 105(2): 397–414.
- Fox, J. and M. C. Stephenson. 2014. "The Constraining, Liberating, and Informational Effects of Nonbinding Law". *The Journal of Law, Economics, & Organization*. 31(2): 320–46.
- Fox, J. and G. Vanberg. 2013. "Narrow versus Broad Judicial Decisions". *Journal of Theoretical Politics*. 26(3): 355–83.
- Gailmard, S. 2021. "Imperial Governance and the Growth of Legislative Power in America". *American Journal of Political Science*. 65(4): 912–25.
- Gailmard, S. and J. W. Patty. 2017. "Participation, Process and Policy: The Informational value of Politicized Judicial Review". *Journal of Public Policy*. 37(3): 233–60.
- Gennaioli, N. and A. Shleifer. 2008. "Judicial Fact Discretion". *The Journal of Legal Studies*. 37(1): 1–35.
- Graham, M. and M. Svobik. 2019. "Democracy in America? Partisanship, Polarization, and the Robustness of Support for Democracy in the United States". *American Political Science Review*. 114(2): 392–409.
- Gratton, G. and B. E. Lee. 2020. "Liberty, Security, and Accountability: The Rise and Fall of Illiberal Democracies". Working Paper. Available at <http://gratton.org/papers/LibertySecurityAccountability.pdf>.
- Grillo, E. and C. Prato. forthcoming. "Opportunistic Authoritarians, Reference-Dependent Preferences, and Democratic Backsliding". *American Journal of Political Science*.
- Helmke, G., J. Paine, and M. Kroeger. Forthcoming. "Democracy by Deterrence: Norms, Constitutions, and Electoral Tilting". *American Journal of Political Science*.
- Howell, W. G. 2003. *Power without Persuasion: The Politics of Direct Presidential Action*. Princeton, NJ: Princeton University Press.
- Howell, W. G. 2013. *Thinking about the Presidency: The Primacy of Power*. Princeton, NJ: Princeton University Press.

- Howell, W. G. and F. Z. Ahmed. 2014. "Voting for the President: The Supreme Court during War". *The Journal of Law, Economics, & Organization*. 30(1): 39–71.
- Howell, W. G. and S. Wolton. 2018. "The Politician's Province". *Quarterly Journal of Political Science*. 13(2): 119–46.
- Huber, J. D. and C. R. Shipan. 2002. *Deliberate Discretion?: The Institutional Foundations of Bureaucratic Autonomy*. Cambridge University Press.
- Hübert, R. 2019. "Getting Their Way: Bias and Deference to Trial Courts". *American Journal of Political Science*. 63(3): 706–18.
- Kalandrakis, A. 2004. "A Three-Player Dynamic Majoritarian Bargaining Game". *Journal of Economic Theory*. 116(2): 294–14.
- Kartik, N., R. Van Weelden, and S. Wolton. 2017. "Electoral Ambiguity and Political Representation". *American Journal of Political Science*. 61(4): 958–70.
- Lagunoff, R. 2001. "A Theory of Constitutional Standards and Civil Liberty". *The Review of Economic Studies*. 68(1): 109–32.
- Levinson, D. and R. Pildes. 2006. "Separation of Parties, Not Powers". *Harvard Law Review*. 119: 2311–86.
- Levinson, S. 2005. "Constitutional Norms in a State of Permanent Emergency". *Georgia Law Review*. 40: 699–751.
- Levitsky, S. and D. Ziblatt. 2018. *How Democracies Die*. Broadway Books.
- Luo, Z. and A. Przeworski. Forthcoming. "Democracy and Its Vulnerabilities: Dynamics of Democratic Backsliding". *Quarterly Journal of Political Science*.
- Milesi-Ferretti, G. M. 1995a. "The Disadvantage of Tying their Hands: On the Political Economy of Policy Commitments". *The Economic Journal*. 105(443): 1381–402.
- Milesi-Ferretti, G. M. 1995b. "Do Good or Do Well? Public Debt Management in a Two-Party Economy". *Economics & Politics*. 7(1): 59–78.
- Milkis, S. M. and N. Jacobs. 2017. "'I Alone Can Fix It' Donald Trump, the Administrative Presidency, and Hazards of Executive-Centered Partisanship". *The Forum*. 15(3): 583–613.
- Montagnes, P. and B. Bektemirow. 2018. "Political Incentives to Privatize". *The Journal of Politics*. 80(4): 1254–67.
- Nalepa, M., G. Vanberg, and C. Chiopris. 2019. "Authoritarian Backsliding". Working Paper. Available at https://www.monikanalepa.com/paper_june_2019.pdf.
- Neustadt, R. E. 1960. *Presidential Power and the Modern Presidents: The Politics of Leadership*. New York: Wiley.
- Nunnari, S. 2021. "Dynamic Legislative Bargaining with Veto Power: Theory and Experiments". *Games and Economic Behavior*. 126: 186–230.

- Persson, T. and L. E. Svensson. 1989. "Why a Stubborn Conservative Would Run a Deficit: Policy with Time-Inconsistent Preferences". *The Quarterly Journal of Economics*. 104(2): 325–45.
- Rosenberg, G. N. 1992. "Judicial Independence and the Reality of Political Power". *The Review of Politics*. 54(3): 369–98.
- Shepsle, K. A. 2017. *Rule Breaking and Political Imagination*. Chicago: University of Chicago Press.
- Svolik, M. W. 2009. "Power Sharing and Leadership Dynamics in Authoritarian Regimes". *American Journal of Political Science*. 53(2): 477–94.