

The Politician's Province

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Abstract

Politicians, especially executives, regularly seek to project their influence into new policy domains. In some instances, they do so only after having secured the requisite statutory authority; in others, they intervene without prior authorization, hoping that their actions henceforth serve as precedent for future policy involvement. To investigate the conditions under which politicians pursue one strategy versus another, we study a stylized model of authority acquisition that recognizes the electoral pressures under which executives operate. We show that politicians seek authority that is both more secure and broader in scope as the public support for their policy position increases even if—indeed, precisely because—their opponent stands to benefit from this authority, if elected to office. Far from tying their opponents' hands, as a number of literatures suggests, incumbents have electoral incentives to liberate them.

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Elected politicians, particularly elected executives, seek power at nearly every turn. So doing, these executives spend a good deal of effort looking for ways to sharpen and strengthen their established influence over existing public policies. Through vetoes, proposal-making, unilateral directives, and public appeals, executives revisit policy domains in which their predecessors made marks of their own. But that is not all. Executives also attempt to extend the reach of their influence into new policy domains. Over the last several decades, dozens of mayors of major U.S. cities have taken over primary responsibility for running school systems (Wong and Shen 2003). U.S. governors have steadily expanded their influence over state budgetary processes (Kousser and Phillips 2012). And the nation's presidents now intervene in policy arenas that previously were the exclusive purview of Congress, state governments, or private action (Howell 2013).

How did this happen? In the United States at least, much of the answer concerns matters that have little to do with executives themselves. With the steady growth of government in the aftermath of the Progressive Era, then two world wars to follow, the reach of executives into new policy domains came rather naturally. Meanwhile, legislatures at all levels of government, for political reasons of their own, have freely and independently ceded tremendous responsibilities, and with them tremendous authority, to executives.

New authority, however, has not merely been bestowed upon executives. Independently, executives have actively sought to expand the scope of their authority, and with it, their governing province. How have they done so? As a general matter, two options present themselves. They can implore others (typically inhabiting a legislature) to confer the requisite authority, as France's President Nicolas Sarkozy did in 2008 when he asked Parliament to grant him the power to nominate the head of public service broadcasting. Alternatively, executives can simply claim authority for themselves, as U.S. President George W. Bush did in his first term in office when unilaterally creating a new status of enemy combatant for prisoners captured in Afghanistan. Both options present costs and challenges. In the former, executives must devote time and resources to bargain with a collective decision-making body. In the latter, executives face the imminent possibility that their actions will be formally repudiated by a court.

Under what conditions might executives seek prior authorization—what we shall henceforth refer to as “de jure” authority—before intervening into a new policy domain? When

will they intervene straight away, with the hopes that other political actors will stand aside so that “de facto” authority may follow? And when will executives appear content to work within established governing parameters?

In this paper, we study a stylized model of authority acquisition that simultaneously recognizes the electoral pressures under which executives operate and the dynamic linkages between policy interventions and authority acquisition. The model characterizes the strategic conditions under which an executive will seek de jure versus de facto authority, while accounting for the judicial and electoral constraints under which they operate, the costs of soliciting assistance from another branch of government, and the precedential value of authority not merely for an incumbent politician but also his successors.

In the model, an incumbent politician (‘he’) must decide whether to stay out of a policy domain, acquire de jure authority for his office before intervening, or intervene without authorization with the hope that de facto authority will subsequently materialize. The choice the politician makes, we further stipulate, has consequences not only for the policy at hand, but also for the future authority under which either he (if re-elected) or his successor (if not) subsequently governs. Acquiring de jure authority guarantees that any officeholder has the ability to intervene in the newly acquired policy domain, and to do so however he chooses. De facto authority, by contrast, merely protects a politician from a court challenge to policy choices for which there is past precedent. While de jure authority tends to be broad, de facto authority is always narrow.

The voter (‘she’) has policy preferences that may differ in orientation and intensity from politicians. As the voter leans towards an incumbent’s preferred policy, the office-holder pursues unauthorized intervention rather than inaction. By doing so, the politician links the availability of subsequent authority needed for future action to his own electoral fortunes, and thereby increases his reelection chances. When voters are strongly disposed towards his policy views, the politician goes further and secures prior authority for his office. The office-holder thereby ensures that his challenger, if elected, has the authority needed to advance decidedly unpopular policies, which has salutary electoral benefits for the incumbent politician. Far from tying his opponent’s hands, then, the incumbent opts to set them free.

Our paper proceeds as follows. In the next section, we discuss how our model fits within a host of institutional and formal literatures. Section 2 elaborates on our distinction between

de jure and de facto authority acquisition. In Sections 3 and 4, we describe and analyze the model. In Section 5, we extend the model to include multiple elections. Section 6 summarizes our findings and discusses some of their empirical implications. All proofs are collected in an Online Appendix.¹

1 Existing Literatures

This paper speaks to a wide range of theoretical literatures. For starters, it intersects with the formal literature on electoral accountability. Like our own, many papers in this literature (e.g., Canes-Wrone et al. 2001; Ashworth and Bueno de Mesquita 2006, 2008) examine how an incumbent politician chooses actions that are explicitly intended to influence voters' electoral decisions. Unlike our setting, however, these papers focus on policy choices intended to manipulate voters' beliefs about a politician's competence, rather than authority investments intended to inform voters' expectations about future policy actions. Scholars in this literature, moreover, routinely model policy choices across independent periods, with only voters' beliefs establishing a dynamic linkage between periods. In contrast, our set-up involves homogeneous politicians who are able to manipulate the longer-term scope of their (and their successors') authority.

In this sense, our paper is in closer conversation with the “new institutionalism,” which explores the efforts of politicians to lock in their policy preferences into an agency long after these politicians have left office (McNollGast 1987, 1989; Moe 1987a, 1987b). Likewise, a host of formal papers predict that officeholders prefer to restrict the actions of their replacements, either by increasing debt (Persson and Svensson 1989; Alesina and Tabellini 1990), over-privatizing (Montagnes and Bektemirov 2016), constraining the information available to them (Callander and Hummel 2014), strategically manipulating the status quo in “divide the dollar” settings (e.g., Kalandris 2004; Baron and Bowen 2015; Nunnari 2016), or legislative policy-making (e.g., Bowen et al. 2014; Dziuda and Leeper 2015; Buisseret and Bernhardt 2016). Unlike any of this previous work, however, our model recognizes the influence of endogenous elections on a politician's optimal decision about whether, and how,

¹Available at <http://stephanewolton.com/about/research/>.

to acquire authority. So doing, our model yields starkly different conclusions and establishes that incumbents, far from tying their opponents' hands, may want to free them.

A few works recognize that incumbents can dynamically manipulate voters' assessments of policies (see Glazer and Lohmann 1999; Hodler et al. 2010; Callander and Raiha 2014). The most relevant work within this tradition is Milesi-Ferretti (1995a, 1995b), which identifies circumstances under which incumbent politicians may support policy flexibility in currency or debt management that enables political opponents, if elected, to subsequently pursue divergent policies.² In two ways, our paper complements this literature. First, we study the underlying authority that politicians need to make policy choices, whereas this previous literature focuses on the objects of government action. Second, we allow for richer strategic considerations by assuming that politicians can gain partial control of a policy domain or avoid intervention all together without empowering their opponents.

2 Authority Granted and Authority Manufactured

To secure authority over a policy domain, executives can embark on one of two strategies. First, and most obviously, they can request that another branch of government, typically a legislature, formally bestow such authority. In this instance, one branch of government confers authority that it independently retains—usually, but not exclusively, by way of the constitution. So doing, executives acquire “de jure” authority. Obtaining de jure authority typically requires time and resources, and therefore presents both direct and opportunity costs. Nonetheless, there are clear upsides to acquiring de jure authority, as it insulates executives from subsequent court challenges to a relatively wide variety of actions that a politician might take. As U.S. Supreme Court Justice Robert H. Jackson wrote in his famous concurring opinion to *Youngstown v. Sawyer*, a formal authorization to intervene into a policy space “would be supported by the strongest of presumptions and the widest latitude

²Other contributions in the economic literature study how politicians choose economic policies in ways that are intended to manipulate voters' concerns about inflation (Aghion and Bolton 1990), redistribution (Martimort 2001), or economic interests (Besley and Coate 1998; Biais and Perrotti 2002; Prato 2016). Other work demonstrates that incumbents who face an unfavorable situation tend to make changes difficult by restricting resources available to their challengers (Milesi-Ferretti and Spolaore 1994).

of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.”³

Alternatively, an executive can try to manufacture authority by intervening without prior legal authorization in a new policy domain. So doing, an executive can avoid the bargaining costs associated with acquiring de jure authority. Moreover, this strategy can lead to a new state of affairs in which subsequent officeholders, by virtue of established precedent, inherit the “de facto” authority they need to take action of their own. The production of de facto authority has much in common with Shepsle’s (2017) notion of “breaking rules” in order to refashion a political game to one’s subsequent advantage.⁴

There are ample examples of U.S. federal courts endowing executives, particularly presidents, with de facto authority on the basis of what Justice Felix Frankfurter called the “gloss” of constitutional legitimacy born of “a systematic, unbroken, executive practice.”⁵ When adjudicating disputes over presidential actions involving executive agreements, war powers, recess appointments, pardons, executive privilege, and a wide range of other issues, the courts not only have looked to past practice for guidance; they have inferred constitutional legitimacy on the basis of such practice (Bradley and Morrison 2012, 2013; Levinson 2005; Levinson and Pildes 2006). Historical precedence, as such, can generate de facto authority for subsequent executives that it itself lacked.

The generation of de facto authority, however, is not without limitations. For starters, it is fraught with uncertainty. Whereas a formal authorization by Congress reliably yields

³ *Youngstown Sheet & Tube Co. v. Sawyer*, 72 U.S. 863 (1952), p 871. To be sure, delegations of authority may themselves be subject to judicial scrutiny. The courts, after all, have intermittently overturned attempted transfers of authority on the grounds that they grossly distort original constitutional arrangements (see, e.g., *Clinton v. City of New York*, 524 U.S. 417 (1998)). In the main, however, the Supreme Court has granted considerable latitude to Congress as it delegates authority to the executive branch.

⁴Our distinction between de jure and de facto authority, you will notice, differs in important ways from the distinction between formal and real authority in organizational economics (Aghion and Tirole 1997). What distinguishes de jure and de facto authority is not the willingness of an adjoining branch of government or the larger public to recognize them, but instead the method by which they are acquired. Both de jure and de facto authority constitute real authority over a policy domain, but only de jure authority can be assimilated to formal authority over a policy domain, in the sense that authority is granted (and consequently can be retracted) by the legislative branch, and the policymaker is fully inoculated from (rather than partially protected against) a court challenge.

⁵ *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 610-11 (1952). See also the Court’s recognition that “[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions” regulating the boundaries of executive and legislative authority (The Pocket Veto Case, 279 U.S. 655, 689 (1929)); or the Court’s admission that a past historical practice “on the part of the executive department, acquiesced in by the legislative department, ... is entitled to great regard in determining the true construction of a constitutional provision the phraseology of which is in any respect of doubtful meaning” (*State v. South Norwalk*, 77 Conn. 257, 264 (1904)).

de jure authority, an unauthorized action today offers the mere possibility that de facto authority will emerge tomorrow. In the aftermath of an executive’s attempt to unilaterally expand his province, the courts may undo the specific action taken and short-circuit the subsequent transmission of de facto authority. Moreover, while de jure authority provides a general grant of authority to intervene into a policy domain, de facto authority, once acquired, merely provides legal protections for the specific actions taken by previous politicians since, as the judiciary insisted in a recent case, “the Court is not bound by past practices (...) when determining the legality of the new one.”⁶

3 The Model

We study a three-player game with one representative voter (V) and two politicians L and R . The game has two periods ($t \in \{1, 2\}$), and there is no discounting between periods. Without loss of generality, we say that politician R is the incumbent at the beginning of period 1. At the end of the first period, the voter decides whether to re-elect politician R or replace him with his challenger, politician L .

When in office, the politician receives a benefit $B > 0$ and makes two policy relevant decisions. First, he chooses whether to acquire de jure authority over a policy domain \mathcal{P} : $a_t \in \{0, 1\}$, where $a_t = 1$ denotes the acquisition of de jure authority and entails a cost $c > 0$ on the associated politician. This cost reflects the time and effort needed to to secure de jure authority. To simplify the exposition, we assume that the office-holder always obtains de jure authority when it pays the cost c . All of our core results hold, however, when the politician, even after having paid c , faces some positive probability of failing to acquire de jure authority.⁷ Second, the politician decides whether and how to intervene in \mathcal{P} : $i_t \in \{-1, 0, 1\}$. The action $i_t = 0$ corresponds to no intervention in policy domain \mathcal{P} (without loss of generality, the status quo policy each period), and $i_t = 1, -1$ corresponds to the ideological orientation of the politician’s intervention. For ease of interpretation, we

⁶2015 U.S. Dist. LEXIS 18551 (S.D. Tex. Feb. 16, 2015), 101. Similarly, in *National Labor Relations Board v. Noel Canning*, 134 U.S. 2550 (2014), the Supreme Court read very little legal authority into past presidents’ intra-session recess appointments. There are, however, examples, e.g. *Dames & Moore v. Regan* (453 U.S. 654 (1981)), of the judiciary recognizing broad de facto authority born of a legislature’s persistent silence in the face of repeated unauthorized action on the part of an executive.

⁷Further, increasing the probability that the office-holder fails to acquire de jure authority is mathematically equivalent to increasing the cost c . To avoid multiplying parameters, we simply assume that acquiring de jure authority is always certain and perform comparative statics on c .

assume that politician L prefers policy $i = -1$, whereas politician R prefers policy $i = 1$. The politician receives a per-period payoff λ when his preferred policy is implemented and $-\lambda$ when his opponent's preferred policy is implemented. We further assume that the cost of authority acquisition c is greater than the per-period benefit of implementing his preferred policy: $c > \lambda$.

When he intervenes in \mathcal{P} , the politician faces the possibility of a successful court challenge, which is captured by the random variable $\tau_t \in \{0, 1\}$, where $\tau_t = 1$ denotes a reversal. Let q_t denote the probability of a successful court challenge in period $t \in \{1, 2\}$ ($Pr(\tau_t = 1) = q_t$). A successful court challenge annuls an intervention and imposes a cost on the politician, which, to reduce the number of parameters, is assumed to equal λ . Absent an intervention ($i_t = 0$), the office-holder does not face any risk of a successful court challenge, and hence $q_t = 0$.

A key assumption in our framework is that the probability of a successful court challenge (q_t) depends on the de jure and de facto authority of the office-holder. We capture de jure authority in period $t \in \{1, 2\}$ by the state variable d_t which takes value 1 when the office-holder has de jure authority over \mathcal{P} and 0 otherwise. De jure authority is persistent over time: if $d_{t-1} = 1$, then $d_t = 1$ as well. Thus, the officeholder has de jure authority over \mathcal{P} ($d_t = 1$) whenever he invests in its acquisition ($a_t = 1$) or he inherits it ($d_{t-1} = 1$) in the aftermath of a previous investment. Given our interest in extensions of a politician's province, we normalize d_0 to 0. Because it also tends to be broad, de jure authority further enables an office-holder to intervene in \mathcal{P} however he chooses without fear of a successful court challenge. As a result, $q_t = 0$ for all $i_t \in \{-1, 1\}$ whenever $d_t = 1$.

As discussed in Section 2, de facto authority generally differs from de jure authority in two ways. First, whereas the transmission of de jure authority tends to be reliable, de facto authority is more precarious. As a result, the office-holder acquires de facto authority over policy $i \neq 0$ only if a previously unauthorized intervention at i avoids a successful court challenge. Second, whereas de jure authority supports a wide range of choices within a policy domain, de facto authority tends to be narrower in scope. Hence, de facto authority allows a politician in period t to safely enact only the policy that was previously implemented in period $t-1$, when the unauthorized intervention occurred (i.e., either policy -1 or 1 , but not

both).⁸ As a result, the probability of a court challenge in period t is null ($q_t = 0$) absent authority over \mathcal{P} ($d_t = 0$) only if: (a) the same policy intervention occurs in both periods ($i_t = i_{t-1} \neq 0$); and (b), in the aftermath of the initial unauthorized intervention, there was no successful court challenge ($\tau_{t-1} = 0$). Because we are interested in the expansion of a politician's province, we assume that at the beginning of the game, R has no authority over \mathcal{P} : $i_0 = 0 = \tau_0$.

In all other cases, when the office-holder has neither de jure nor de facto authority, the probability of a successful court challenge following intervention is q , assumed to be strictly greater than $1/2$. In particular, since R does not possess de jure or de facto authority over \mathcal{P} , he faces a probability q of a successful court challenge ($q_1 = q$) unless he does not intervene in \mathcal{P} ($i_1 = 0$) or acquires de jure authority over the domain ($a_1 = 1$). From the outset, we emphasize that all the results carry through when we relax the assumption that acquisition of de jure authority or de facto authority fully inoculates the elected politician against a court challenge. Indeed, our core results only require that a successful court challenge is *more* likely when the elected politician intervenes in \mathcal{P} without these types of authority.

Denote $\lambda^R = \lambda = -\lambda^L$. The utility of politician $J \in \{L, R\}$ in period $t \in \{1, 2\}$ can be expressed as:

$$U_J(a_t, i_t; \tau_t) = \begin{cases} B + (1 - \tau_t)i_t\lambda^J - \tau_t\lambda - ca_t & \text{if in office} \\ (1 - \tau_t)i_t\lambda^J & \text{if not in office} \end{cases} \quad (1)$$

Let us now turn to the voter, who must decide at the end of period 1 whether to keep R or replace him with L . The voter's payoff depends on two parameters. The parameter $\eta \in [-1, 1]$ characterizes the voter's policy preferences, with the positive values denoting a conservative bias. In addition to the payoff from the politician's intervention (or non-intervention) in \mathcal{P} in each period t , the voter receives valence shocks ϵ_t^L and ϵ_t^R . To simplify the exposition, we assume that $\epsilon_2^L = 0$ and ϵ_2^R is drawn from a uniform distribution on $\left[-\frac{1}{2\psi}, \frac{1}{2\psi}\right]$.⁹ The valence

⁸Observe that the model extends easily to the case when the office-holder can write a narrow statute authorizing intervention only on a specific policy (-1 or 1 rather than both). The choice between a narrow statute or unauthorized intervention then is driven by simple comparison of the costs of these two strategies, not by strategic considerations.

⁹Imposing a uniform distribution is standard (e.g. Persson and Tabellini, 2002) and yields little loss of generality. Still, all our key results hold when the valence shock affecting politician R is normally distributed. Additionally, and as the proofs show, the assumption that $\epsilon_2^L = 0$ has no implication for the politician's

shock captures all electorally relevant information about R that is orthogonal to the decision about whether to intervene in a new policy domain. The parameter ψ reflects the salience of an intervention in \mathcal{P} . A low value of ψ implies that the stochastic valence shock can assume large values, in which case an intervention in \mathcal{P} has (ex-ante) only a relatively small effect on the voter's electoral decision. For ease of exposition, we further impose $\psi < 1/4$.

The voter's utility function in each period $t \in \{1, 2\}$, therefore, assumes the following form:

$$U_v(t) = (1 - \tau_t)\eta i_t + \epsilon_t^J, \quad J \in \{L, R\} \quad (2)$$

The game, meanwhile, proceeds as follows:

1. Period 1

- i. Politician R decides whether to acquire de jure authority $a_1 \in \{0, 1\}$;
- ii. Politician R decides whether and how to intervene: $i_1 \in \{-1, 0, 1\}$;
- iii. A successful court challenge occurs ($\tau_1 = 1$) with probability q_1 ;
- iv. Voter receives valence shocks (ϵ_2^R), observes R 's possible authority acquisition (a_1), intervention (i_1), and whether a successful court challenge occurred (τ_1). She chooses whether to re-elect politician R ;

2. Period 2

- i.-iii. Same as period 1 (with politician L or R in office);
- iv. Payoffs are realized and the game ends.

Notice that the voter observes whether politician R has acquired de jure authority over \mathcal{P} (a_1). This assumption proves important for our main findings.¹⁰ Our main results, however, do not require that the voter observes a successful court challenge, which itself occurs before the election. Observe further that the status quo policy in each period is implicitly no intervention. This is without loss of generality since the office-holder has complete control over

equilibrium behaviors as long as the difference between the valence shocks is continuously distributed over some subset of the real line.

¹⁰When this assumption is relaxed, much depends on the voter's anticipation of the incumbent's actions and multiple equilibria arise (one of them being the equilibrium we describe below). For a variety of reasons, we think the assumption that the voter observe a_1 is warranted. When information regarding de jure authority is verifiable and non falsifiable, others have shown, a rational voter can be expected to learn it during a campaign between an incumbent politician and a challenger (Milgrom and Roberts 1986; Anderson and McLaren 2012; Wolton 2016).

policy choices. However, his scope of authority in period 2, and thus the cost of intervening, is endogenous to politician R 's decisions in period 1.

The equilibrium concept used in this paper is Subgame Perfect Nash Equilibrium, a definition of which can be found in Online Appendix A. As we now turn to the analysis, Table 1 provides a point of reference by summarizing the model's main parameters as well as choice and state variables.

Table 1: Main Variables and Parameters

Variables	Definition
λ^J	Ideal policy of politician J
a_t	De jure authority acquisition in t
i_t	Politician's (non)intervention in \mathcal{P} in t
d_t	De jure authority
τ_t	Successful court challenge
q_t	Probability of a successful court challenge in t
η	Policy preferences of the voter
ψ	Salience of intervention in \mathcal{P} for the voter

4 Analysis

The model distinguishes between the impact of short-term policies (a politician decides whether to intervene into a policy domain each period) and long-term status (the scope of a politician's authority). This distinction proves crucial, as the second-period politician's authority (whether de facto or de jure) informs his second-period policy action and, consequently, the voter's expected utility. Politician R therefore can augment his probability of reelection by optimally choosing whether (and how) to acquire authority over \mathcal{P} .

To see this, consider each of the possible scenarios that can result from politician R 's behavior in the first period. We begin with the one under which the politician neither acquires de jure authority nor intervenes in \mathcal{P} . When politician R does not intervene in \mathcal{P} in period 1, no authority is inherited in period 2. As a result, neither politician intervenes in \mathcal{P} in period 2, for it is too costly to acquire de jure authority ($c > \lambda$) and too risky to intervene without authorization because of the possibility of a successful court challenge

($q > 1/2$). The voter therefore receives the same expected policy payoff by electing politician R as politician L , so she bases her electoral decision only on the valence shock, and politician R is reelected with probability $1/2$.

Things become a little more involved, though, when politician R intervenes without authority in \mathcal{P} ($a_1 = 0$ and $i_1 \neq 0$), for in this scenario, much depends on the subsequent behavior of the court. If the court repudiates politician R , then the intervention in period 1 is undone and the possibility that de facto authority might emerge in period 2 is negated. As a result, given our assumptions about the relevant parameter values, whoever holds office in period 2 chooses not to intervene \mathcal{P} . The voter thus reelects politician R with probability $1/2$.

When politician R intervenes without authorization and does not face a successful court challenge, de facto authority is transmitted to whoever assumes office in the next period. De facto authority, however, only protects the office-holder if he chooses the exact same policy as R in the first period. As a result, following an unauthorized intervention at 1 that is not overturned by the court, only politician R will intervene in period 2. Should politician L be elected, he would not intervene in period 2 since L suffers a loss from implementing R 's preferred policy and finds it too risky to intervene without authorization at his preferred policy. Likewise, following an unauthorized intervention at -1 that is not overturned by the court, only L will intervene at the same policy in period 2. In her electoral decision, the voter then weighs the differential probabilities of intervention in \mathcal{P} times her expected gain from such an intervention.

Finally, when politician R acquires de jure authority in period 1, both politician R and politician L intervene in \mathcal{P} (without risk of being reversed) in period 2. As the voter's payoff depends primarily on the ideological orientation of the office-holder's intervention, the voter weighs the difference in policy payoffs (R 's preferred policy versus L 's preferred policy) in her electoral decision, recognizing that both will take action in period 2.

From the reasoning above, we obtain the following Lemma.

Lemma 1. *At the end of period 1, politician R 's reelection probability is:*

1. $1/2$ after no intervention ($i_1 = 0$) and after unauthorized intervention ($a_1 = 0$, $i_1 \neq 0$) followed by a successful court challenge ($\tau_1 = 1$);
2. $(\frac{1}{2} + \psi\eta)$ after unauthorized intervention ($i_1 \neq 0$) and no court challenge;

3. $(\frac{1}{2} + \psi 2\eta)$ after de jure authority acquisition ($a_1 = 1$).

Three observations follow from Lemma 1. First, whenever the voter is aligned with R ($\eta > 0$), de jure authority acquisition maximizes the incumbent's electoral chances. Second, due to our assumption on salience ($\psi < 1/4$), politician R is never certain to win or lose the election after either an authorized or unauthorized intervention in \mathcal{P} . Third, it is never optimal for politician R to make an unauthorized intervention at L 's preferred policy. The only rationale for doing so, after all, is to improve his electoral prospects when the voter strongly supports R 's preferred policy. But then, obviously, R is better off intervening without authorization at $i_1 = 1$.

R 's strategic choices are thus between maintaining the status quo ($i_1 = 0$), unauthorized or authorized intervention at his preferred policy. In equilibrium, each of these strategies maps onto different levels of public support. When the voter strongly opposes his preferred policy, that is η is below some threshold η^* , politician R opts to stick with the status quo. In this instance, the potential benefits of any acquisition of authority do not outweigh the risk and cost of a court challenge. As the voter holds a more favorable view of R 's preferred policy (η increases), however, the electoral chances of R following an intervention increase. Importantly, an unauthorized intervention need not be electorally beneficial for R to prefer unauthorized intervention to inaction (i.e., η^* need not be positive). Indeed, whenever the risk of successful court challenge is low ($q < 3/5$ under our assumption), R may try to acquire de facto authority even if it hurts his electoral chances because of the option value to intervene at his preferred policy in period 2.

For still larger values of η , the politicians continues to seek authority of some kind. Whether it is de facto or de jure authority, however, crucially depends upon the salience of a policy intervention in \mathcal{P} . When salience (ψ) is low, the voter does not assign to her electoral decision much value to an intervention in \mathcal{P} , and the electoral gain from de jure authority acquisition is low (compare $(\frac{1}{2} + \psi 2\eta)$ and $(\frac{1}{2} + \psi\eta)$, the respective reelection probabilities after authorized and unauthorized intervention). Therefore, politician R faces a high risk of his opponent winning the election and implementing his preferred policy and so has little incentive to pay the cost (c) to intervene in \mathcal{P} . When the salience of an intervention in \mathcal{P} is high (ψ is large), there is a strong electoral gain from choosing de jure authority acquisition whenever policy 1 is sufficiently popular—that is, above a threshold η^{**} . Because the elec-

torate strongly favors politician R , the risk of politician L winning the election and imposing his preferred policy is low. Consequently, for electoral reasons alone, politician R has reason to pay the high cost of authority acquisition.

Figure 1 displays the politician's optimal actions given varying levels of popularity (as denoted on the x-axis) and salience (distinguished by the left and right panels). For both intermediary and high salience, politician R chooses to intervene without authorization even when his preferred policy is somewhat unpopular, which reduces the incumbent's electoral chances ($\eta^* < 0$). This occurs because, as previously recognized, the benefit to a reelected politician from a period 2 intervention outweighs the relatively low risk ($q = 0.55 < 3/5$) of a first-period successful court challenge and low electoral cost. When the salience of intervention in \mathcal{P} is low (left panel), the difference in reelection probabilities following authorized and unauthorized interventions is small. Consequently, politician R never chooses to acquire de jure authority. When salience is high, an intervention has a strong effect on politician R 's reelection chances, and as a result his calculus changes. When policy 1 is very popular ($\eta > \eta^{**}$), the electoral gain associated with authorized intervention compared to unauthorized intervention is sufficiently large to convince politician R to acquire de jure authority.

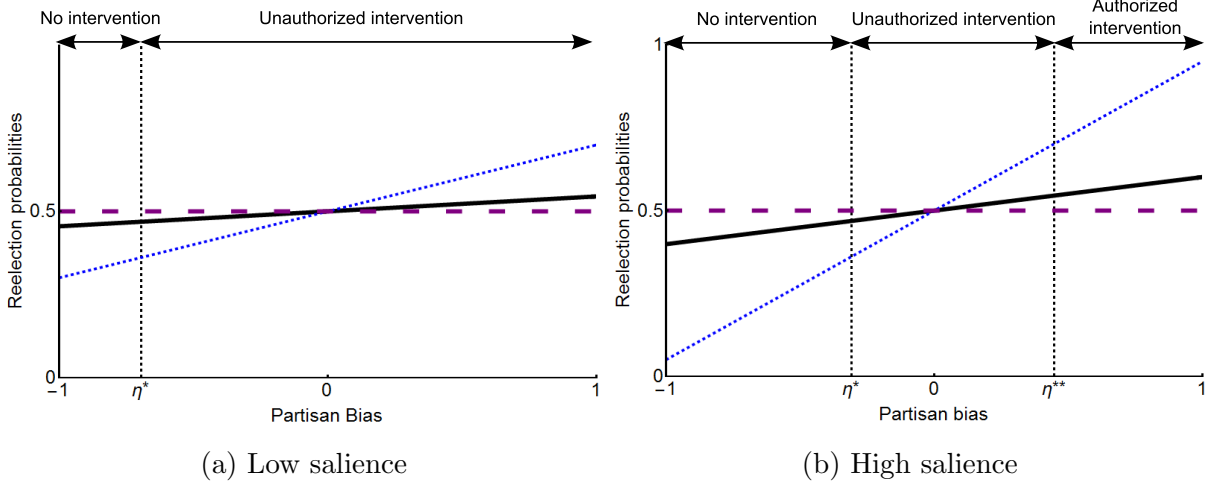


Figure 1: Probability of reelection

Purple dashed line corresponds to no intervention, blue dotted line to authorized intervention, and plain black line to unauthorized intervention. (Parameter values: $q = 0.55$, $\lambda = 1$, $B = 3$, $c = 2\lambda$, $\psi = 0.1$ in Figure 1a and $\psi = 0.225$ in Figure 1b).

These basic relationships can be summarized by the following proposition:

Proposition 1. *There exists a unique threshold $\underline{\psi}(c) > 0$ such that*

1. *If salience is relatively low ($\psi \leq \underline{\psi}(c)$), politician R never acquires de jure authority ($a_1 = 0$ for all $\eta \in [-1, 1]$). Furthermore, there exists a unique threshold of voter's policy preference— $\eta^* \in [-1, 1]$ —such that politician R chooses inaction ($i_1 = 0$) if and only if the electorate's policy preferences are relatively liberal ($\eta \leq \eta^*$) and unauthorized intervention at his preferred policy ($i_1 = 1$) otherwise.*
2. *If salience is relatively high ($\psi > \underline{\psi}(c)$), there exists a unique threshold of voter's policy preference— $\eta^{**} \in (0, 1)$ —such that politician R acquires de jure authority ($a_1 = 1$) if and only if the electorate's policy preferences are sufficiently conservative ($\eta \geq \eta^{**}$). On the interval $[-1, \eta^{**})$, politician R 's behavior is as described in point 1.*

To summarize, our theory thus predicts that office-holders generally intervene into policy domains without legal authority when public support is moderate. One example of such action is Obama's executive order offering temporary legal status to millions of illegal immigrants (an order later blocked by the courts), issued at a time when there was only moderate public support for the action (Liptak and Shear, 2016; Ehrenfreund, 2014).

In turn, when his policy preferences are strongly supported by the electorate, the incumbent in period 1 may acquire de jure authority despite the cost of doing so ($c > \lambda$) and even though this investment has the effect of empowering his (unpopular) challenger, who in period 2 can advance his preferred policy without paying any cost or harboring any fear of a successful court challenge. President Obama again offers a useful illustration of this strategy when he legislatively expanded the Federal Food and Drug Administration's authority to regulate tobacco products (Pulizzi 2009) with strong public support on the issue (e.g., Campaign for Tobacco-Free Kids, 2008).¹¹ Indeed, it is precisely because de jure authority strengthens the hand of his challenger that politician R has electoral incentives to pay its cost and incur its associated risk. By acquiring de jure authority, politician R maximizes the risk of harmful policy swings for the voter if politician L is elected and consequently minimizes the risk politician L actually wins the election. When the voter holds a strong right-wing bias (η is large), therefore, politician R strategically frees his challenger's hands rather than binds them.

The next two corollaries summarize the main comparative statics on the two equilibrium thresholds η^* and η^{**} :

¹¹While the regulation of tobacco may not seem inherently an ideological issue, tobacco firms have long been reliable contributors to the Republican party (Fritsch 1995; Center for Responsive Politics).

Corollary 1. *The equilibrium threshold η^* has the following properties:*

- (i) η^* increases with the probability of successful court challenge (q);
- (ii) η^* increases with the benefit from holding office (B), and the salience of intervention in \mathcal{P} (ψ) if and only if $q < 3/5$, and decreases otherwise.

Unsurprisingly, an increase in the risk of a successful court challenge (q) always reduces R 's incentive to intervene without authorization at his preferred policy (that is, η^* increases). Our model thus predicts that a politician will refrain from unauthorized intervention when he faces court that is likely to overturn him, either because of its (unmodeled) constitutional or ideological commitments. Strong opposition by the court may even lead to no unauthorized intervention ($\eta^* = 1$ for q large, but strictly less than 1).

In turn, the impact of a politician's benefit from holding-office (B) on his decision to acquire authority varies according to q . A greater B magnifies the importance of electoral considerations in R 's first-period decision. When intervention in \mathcal{P} is electorally beneficial ($\eta^* > 0 \Leftrightarrow q > 3/5$), greater benefit from office increases R 's incentive to intervene without authorization (η^* decreases). Conversely, if unauthorized intervention is costly electorally ($\eta^* < 0 \Leftrightarrow q < 3/5$), a higher value of B reduces R 's willingness to intervene without authorization (η^* increases). A similar reasoning holds for the salience of an intervention in \mathcal{P} (ψ).¹²

Corollary 2. *The threshold η^{**} decreases with the probability of a successful court challenge (q), the benefit from office (B), and the salience of intervention in \mathcal{P} (ψ), and increases with the cost of acquiring de jure authority (c).*

The acquisition of de jure authority is more likely (η^{**} decreases) when q is large (as unauthorized intervention is more risky) and when either B or ψ is large (since each magnifies the electoral benefit of authorized intervention). As such, our theory predicts that when courts are relatively opposed to the incumbent's intervention (for either political or constitutional reasons), politician R may seek prior authorization for his intervention. In turn, when the benefit from office B is relatively large, an authorized intervention becomes more likely.¹³

¹²Notice that the comparative statics with respect to λ is difficult to interpret as λ captures the gain/loss from intervention as well as the cost of a court challenge. Nonetheless, in the Supplemental Appendix (Corollary B.1), we show that the comparative statics is the reverse than for B .

¹³A similar comparative static holds for λ (see Corollary B.2 in the Supplemental Appendix).

Finally, de jure authority acquisition is more likely when c is low, which may occur, for instance, during periods of unified government. When c is high, as might occur during periods of divided government, politician R will rarely pay the bargaining cost to legally increase his province. Indeed, the politician prefers unauthorized intervention even when public opinion (η) is very favorable.¹⁴

5 Three-period game with multiple elections

Thus far, our analysis has focused on a two-period game that affords only one opportunity for a politician to make an unauthorized intervention that has the potential to generate de facto authority. In this section, we extend the baseline model to include three periods and two elections and show that our main conclusions hold for a large set of parameter values. The order of play is similar to the one described in section 3, except that at the end of period 2, the voter decides whether to reelect the incumbent politician or to replace him; and at the end of period 3, the game ends. To simplify the analysis, we assume that if politician R is replaced by his challenger at the end of period 1, politician R cannot run for office at the end of period 2. Under this scenario, at the end of period 2 the voter chooses between the elected politician and a random individual chosen from politician R 's party.

The transmission of authority proceeds much as before. We again assume that if a politician acquires de jure authority in period t , then he (and his successor) inherits that authority in all subsequent periods ($d_t = 1$ if $d_{t-1} = 1$ or $a_t = 1$). Likewise, if a politician's unauthorized intervention in period t is not subject to court challenge, then his successor in any subsequent period can make the same policy intervention with all the protections that de facto authority offers.¹⁵

To simplify the exposition, we assume throughout that $q > 3/5$, which guarantees that the politician in office in period 2 prefers no intervention to an unauthorized intervention at his preferred policy whenever the voter is positively disposed to the Republican (i.e., $\eta^* > 0$). We further assume that the cost of acquiring de jure authority satisfies $c > \frac{3}{2}\lambda$,

¹⁴Our model thus provides one possible rationale for the switch from legal authority acquisition to the prolific use of executive orders by the Obama administration following the change of congressional majorities in 2010 (Appelbaum and Shear, 2016). Further, and again consistent with the model, Obama's use of executive orders has had electoral consequences since "[t]he administration's regulatory legacy has become an issue in the campaign to replace Mr. Obama" (ibid.).

¹⁵For more details and proofs, see Supplemental Appendix C.

which guarantees that acquiring de jure authority in period 2 is too costly absent electoral benefits (and facilitates comparison with the baseline model).

Our next proposition shows that, whenever the benefit of intervening in \mathcal{P} (λ) is sufficiently high, politician R acquires de jure authority over \mathcal{P} at the first available opportunity in a three-period model. Electoral incentives again explain why politician R prefers not to wait and acquires de jure authority in period 1 whenever it would be his preferred action in period 2 (that is the electorate’s right-wing bias satisfies $\eta \geq \eta^{**}$). Since the voter favors politician R ’s preferred policy ($\eta^{**} > 0$), she wants to avoid harmful policy swings. By acquiring authority early, politician R benefits from a high reelection probability in periods 1 and 2, but pays the cost of acquiring authority only once. Note, moreover, that the expected policy loss associated with empowering his opponent is limited since politician L still has little chance of winning the election. Furthermore, if politician R loses the election at the end of period 1, the probability his challenger is replaced at the end of period 2 is very high. Consequently, politician R has strong incentives to acquire de jure authority at the first available opportunity, much like the two-period version of the game.¹⁶

Proposition 2. *If the benefit of intervention is relatively large compared to the benefit from office ($\lambda > \underline{\alpha}B$, with $\underline{\alpha} < 36/55$), there exists a popularity threshold— $\eta^{3**} \in (0, 1]$ satisfying $\eta^{3**} \leq \eta^{**}$ —such that politician R acquires de jure authority over \mathcal{P} in period 1 if and only if his preferred policy is sufficiently popular: $\eta \geq \eta^{3**}$.*

In Proposition 2, we once again see how the electoral consequences of authority acquisition inform the behavior of the incumbent politician. In many circumstances, an officeholder tries to intervene in a new domain at the first opportunity because the electoral benefit of intervening early always dominates future gains of waiting.

¹⁶The condition on λ guarantees that politician R prefers to acquire de jure authority over unauthorized intervention in period 1. Combined with our condition on c ($c < 3\lambda/2$), it limits the number of cases to be considered (which without restriction would amount to 64). In particular, these two conditions guarantee that for all $\eta \geq 0$, politician L , if in office in period 2, prefers no intervention when he does not have authority (de facto or de jure) over his preferred policy and politician R finds it optimal never to intervene at the less popular policy -1 . We conjecture that our results hold when these conditions are relaxed, but leave a formal proof to future research.

6 Conclusion

The scope of any politician’s authority, once constitutionally prescribed, is not fixed ever more. Rather, the province of every politician—and particularly the executive’s—changes over time. In this paper, we identify two ways in which executives expand the scope of their authority: *de jure* and *de facto* authority. *De jure* authority requires costly negotiation with an adjoining branch of government—typically a legislature, paves a way for actions yet to be taken, and provides a general grant of authority to intervene in a policy domain. *De facto* authority looks quite different. Rather than preceding action, *de facto* authority follows it. And rather than insulating the politician from judicial scrutiny, the search for *de facto* authority, at least initially, exposes the politician to clear risks. Being much narrower in scope, *de facto* authority applies only to specific actions that have previously been taken.

When the electorate holds unfavorable view of an incumbent’s preferred policy, the officeholder generally prefers to function within the current scope of his authority. When preferences shift, however, so does the politician’s interest in expanding his province. Unauthorized intervention becomes more attractive; and in politically salient policy domains, the incumbent politician willingly pays the cost of acquiring *de jure* authority even as it empowers his opponents, should they win office. Electoral incentives thus guide the politician’s decision: by maximizing the risk for the voter of harmful policy swings associated with electoral turnover, the incumbent politician shores up his own chances of holding office.

Our theory helps reconcile some observed empirical relationships that would appear at odds with one another. While a number of studies establish a robust relationship between presidents’ capacity to enact legislation and their levels of public support (e.g., Rivers and Rose 1985), no such effect is to be found for executive orders (for reviews, see Howell 2005 and Mayer 2009). Our theory provides a rationale for both empirical observations, at least when it comes to interventions in new policy domains. The kind of *de jure* authority acquisition associated with lawmaking occurs only when the officeholder’s policy preferences are very popular, which is consistent with the first empirical finding. *De facto* authority born of unilateral action, in turn, is generally observed only when the incumbent’s views are moderately popular. Since the model predicts that politicians will not intervene without authorization when their popularity is either extremely high or low, a naive, linear regression to evaluate

the relationship between public support and the use of executive orders is likely to yield null result.

By recognizing the electoral incentives that undergird politicians' efforts to acquire authority, our model distinguishes itself from nearly all prior literature on the topic. It also explains why our core findings differ so starkly. Whereas previous research emphasizes the efforts of politicians to lock in their policy achievements and minimize the discretion of future politicians, our model identifies instances when politicians will want to cultivate authority that allows future politicians, if elected, to freely intervene in a policy domain.

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