

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. When debates center on which office is best equipped to address a policy problem, we find, politicians intervene without prior legislative authorization. When debates turn to the ideological orientation of office-holders' actions, by contrast, politicians who enjoy popular support secure prior authority for their 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. In some instances, they venture into areas that previously had been inhabited only by other branches or levels of government; in other instances, executives enter into spaces that previously were not considered the subject of any legitimate government action. In all, though, executives refuse to accept their lot as given, opting instead to scrutinize the political landscape for opportunities to expand the scope of their authority—that is, their governing province.

How can elected executives expand their province? 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 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.¹ The choice the politician makes, we further stipulate, has consequences not only for the policy at hand, but also for his future electoral prospects and the 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.

We investigate the conditions under which a politician seeks *de facto* and *de jure* authority in two political contexts. The first features debates about the identity of the politician who is best equipped to take action. Here, the issue at stake is whether a politician should act, and not the specific action he should take. So being, it broadly characterizes disputes over such matters as local versus federal control of schools or the merits of allowing the president or Congress to formulate foreign policy. A voter's decision, in this context, is based on *institutional efficiency concerns*—that is, her assessment of the merits of investing authority over a policy domain in one political office rather than another. The second context is more familiar, as it involves disputes over the particular policy intervention that a politician ought to take. In education, then, the debate might center on whether school accountability measures should be strengthened or weakened; and in foreign policy, the relevant choice may come down to whether sanctions or war are the better policy response to some perceived crisis. In either case, a voter's decision is based on *policy preferences*—that is, her views about the efficacy of one policy rather than another, regardless of the politician responsible for setting it.

When the electorate's decision is dominated by institutional efficiency concerns, we find that when politicians intervene, they do so without prior authorization. The politician thereby links the availability of subsequent authority needed for future action to his own

¹Throughout the paper, we use the pronoun 'he' to refer to a politician and 'she' to a voter.

electoral fortunes. When debates turn to the politician’s choice of policy, however, unauthorized intervention is not always optimal. Indeed, when voters are favorably disposed towards his policy views, the politician secures prior authority for his office. The politician thereby ensures that his challenger, if elected, has the authority needed to advance relatively 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 Section 3, we describe and analyze the model. In Section 4, we extend the model to include multiple elections. Section 5 concludes. All proofs are collected in an Online Appendix.²

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 and evaluates how politicians manipulate the longer-term scope of their authority.

In this sense, our paper is in closer conversation with a growing body of scholarship that recognizes that incumbents can dynamically manipulate voters’ assessments of policies (see, e.g., Glazer and Lohmann 1999; Hodler et al. 2010; Callander and Raiha 2014; Montagnes and Bektemirov 2016). The most relevant work within this tradition is Milesi-Ferretti (1995a, 1995b), which identify circumstances under which incumbent politicians may support policy

²Available at <http://stephanewolton.com/about/research/>.

flexibility in currency or debt management that enables political opponents, if elected, to subsequently pursue divergent policies.³ Our paper diverges from this literature by incorporating the underlying authority that politicians need to make policy choices. Whereas this previous literature focuses on the objects of government action, our paper evaluates their prior justification.

A substantial body of research appearing under the banner of the “new institutionalism” 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), 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, to acquire authority. So doing, our model yields starkly different conclusions. In particular, it identifies conditions under which executives will want to empower their challengers who, if elected, would pursue a different policy agenda.

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 bestows 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

³Other 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).

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 of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.”⁴

An executive’s second option is to manufacture authority by intervening without prior legal authorization in a new policy domain. Executives then may 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.⁵

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.”⁶ 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;

⁴ *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.

⁵Our 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.

⁶ *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)).

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 its limitations. For starters, it is fraught with uncertainty. Whereas a formal authorization by Congress reliably yields 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.”⁷

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 : $e \in \{0, 1\}$, where $e = 1$ denotes re-electing politician R .

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 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

⁷2015 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.

acquire de jure authority.⁸ 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 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 equals 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 $d_t = 1$.

In two ways, de facto authority differs from de jure authority. 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

⁸Further, 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 .

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).⁹ As a result, $q_t = 0$ when $d_t = 0$ only if $i_t = i_{t-1} \neq 0$ (the same policy intervention occurred in both periods) and $\tau_{t-1} = 0$ (in the aftermath of the initial unauthorized intervention, there was no successful court challenge). Because we are interested in the expansion of a politician's province, assume that $i_0 = 0 = \tau_0$.

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 $i_0 = 0$ and $d_0 = 0$, $q_1 = q$ unless $i_1 = 0$ or $a_1 = 1$. 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 wants a politician who acts in ways that conform to her interests. The voter's payoff is characterized by three parameters. First, $\gamma \in [-1, 1]$ captures the voter's efficiency concerns. For all sorts of reasons—experimentation, flexibility, accountability, uniformity of policies, etc.—some policies may be better left to one political office rather than another. For example, the voter may prefer school boards to be in charge

⁹Observe 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.

of school policy rather than mayors (Wong et al 2007), governors to have control over state budget rather than legislatures (Kousser and Phillips 2012), or Congress to decide foreign policy rather than the president (Fisher 2004; Posner and Vermeule 2007). Our parameter γ thus captures the idea that the identity of the politician who sets policy has (unmodeled) downstream consequences that are important to the electorate. High value of γ indicates that (from the voter's perspective) intervention in \mathcal{P} by the officeholder is relatively efficient and therefore benefits her. The second parameter $\eta \in [-1, 1]$ characterizes the voter's policy preferences, with the higher value 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 $\left[-\frac{1}{2\psi}, \frac{1}{2\psi}\right]$.¹⁰ The valence shock captures all electorally relevant information about R that is orthogonal to the decision 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:

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

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 a_1, i_1, τ_1 and her payoff. She chooses whether to re-elect politician R : $e \in \{0, 1\}$

¹⁰Imposing 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 equilibrium behaviors as long as the difference between the valence shocks is continuously distributed over some subset of the real line.

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 de jure authority over \mathcal{P} —that is, she observes a_1 . This assumption proves important for our main findings.¹¹ 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 each period is implicitly no intervention. This is without loss of generality since the office-holder has complete control over 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
e	Voter's electoral decision
τ_t	Successful court challenge
q_t	Probability of a successful court challenge in t
γ	Efficiency concerns of the voter
η	Policy preferences of the voter
ψ	Salience of intervention in \mathcal{P} for the voter

¹¹When 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).

3.1 Authority Acquisition When a Voter's Decisions Are Based on her Efficiency Concerns

We begin by considering a policy domain in which debate centers on the optimal political office to perform certain tasks and not the policy orientation of the tasks themselves. To maintain our focus on the effect of efficiency (γ), throughout this subsection we assume $\eta = 0$ so that policy preferences play no role in the voter's electoral decision. We discuss the role of the voter's policy preferences in the next subsection, where we also describe how our results change when the voter cares about both efficiency and policy considerations.

The model distinguishes between the impact of short-term policies (the effect of a politician's intervention in \mathcal{P} varies 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 $1/2$. If politician R acquires de jure authority in period 1, he also intervenes in \mathcal{P} that same period. Moreover, whoever is elected in period 2, whether politician R or L , also intervenes in \mathcal{P} in period 2. Here again, we find that 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.

To summarize, politician R 's reelection probability is $1/2$ after no intervention ($i_1 = 0$), after de jure authority acquisition ($a_1 = 1, i_1 = 1$), and after an unauthorized intervention ($a_1 = 0, i_1 = 1$) followed by a successful court challenge ($\tau_1 = 1$). Following an unauthorized intervention at his preferred policy and no successful court challenge, politician R 's reelection probability is $(\frac{1}{2} + \psi\gamma)$. In this last case, politician R 's reelection probability depends on the voter's second-period payoff from intervention in \mathcal{P} : γ . As the voter values intervention more (larger γ), the rewards from intervening without authorization also increase. Observe further that due to our assumption on salience ($\psi < 1/4$), politician R is never certain to win or lose the election after intervention in \mathcal{P} .

Notice that politician R 's electoral prospects are exactly the same regardless of whether he acquires de jure authority or he simply abstains from intervening in \mathcal{P} . Because de jure authority allows his opponent to intervene at his preferred policy if elected (which entails a loss of $-\lambda$ for politician R), R 's second period expected payoff is simply $\frac{B}{2}$. Consequently, politician R never invests in costly de jure authority acquisition because it confers no electoral benefit (as his reelection probability remains $1/2$) and no second period policy gain (because both office-holders intervene at their preferred policy).

An unauthorized interventions, however, can profitably increase politician R 's electoral chances, particularly when the voter prefers a policy intervention in \mathcal{P} (γ is relatively high).

There exists a threshold $\gamma_1^*(R)$ such that R intervenes without prior authorization at his preferred policy 1 whenever the voter perceives intervention in \mathcal{P} as sufficiency efficient: $\gamma \geq \gamma_1^*(R)$. When the voter does not approve a policy intervention in \mathcal{P} ($\gamma < \gamma_1^*(R)$), R never intervenes at his preferred policy since the electoral cost is too high. However, he may under certain conditions choose to intervene at his opponent's preferred policy for negative γ . If not overturned by the court in such a situation, R in period 2 will not act (since he cannot implement his preferred policy) whereas L will. Unauthorized intervention by L at his preferred policy, in this instance, dramatically increases R 's electoral chances because it maximizes the risk of harmful policy swings (from no intervention to intervention) if the voter elects politician L . Consequently, there exists a threshold $\gamma_{-1}^*(R)$ such that, for electoral reasons, R intervenes without authorization at -1 if $\gamma < \gamma_{-1}^*(R)$. When γ takes an intermediate value, the electoral loss from unauthorized intervention at his preferred policy is too high, while the electoral gain from an unauthorized intervention at L 's preferred policy is too low, and so politician R prefers no intervention to any type of unauthorized intervention. The results are summarized in Proposition 1.

Proposition 1. *Politician R chooses $a_1 = 0$ for all $\gamma \in [-1, 1]$. Furthermore, there exist unique $\gamma_1^*(R), \gamma_{-1}^*(R) \in [-1, 1] \times [-1, \min\{\gamma_1^*(R), 0\}]$ such that politician R chooses $i_1 = -1$ if and only if $\gamma < \gamma_{-1}^*(R)$, $i_1 = 0$ if and only if $\gamma \in [\gamma_{-1}^*(R), \gamma_1^*(R))$, and $i_1 = 1$ if and only if $\gamma \geq \gamma_1^*(R)$.*

Proposition 1 underscores the central importance of electoral considerations for politician R 's strategic decision about whether to intervene in \mathcal{P} . When the public looks favorably on an intervention (that is, γ is relatively high), politician R intervenes without authorization at his preferred policy. Such first-period action, in this instance, has the effect of maximizing the risk of harmful policy swings (from intervention to no intervention) if the voter elects politician L . It is only by reelecting political R , after all, that the voter can be sure that an intervention is likely to occur in period 2 following an unauthorized intervention in period 1.¹²

¹²Notice, moreover, that even though the risk of a court challenge implies that politician R 's first-period expected payoff is always negative, the threshold $\gamma_1^*(R)$ is not necessarily greater than 0. When the risk of a court challenge is moderate ($q < 3/5$), the politician will intervene without authorization at his preferred policy even if the voter would prefer no intervention and it reduces R 's electoral chances (i.e., $\gamma_1^*(R) < 0$) compared to no intervention because doing so increases the expected value of holding office due to the possibility of inheriting de facto authority in period 2.

When the voter strongly opposes a policy intervention ($\gamma < 0$ and large in absolute terms), R may also choose to maximize the risk of harmful policy swings (in this instance, from no intervention to intervention) if the voter elects his opponent by intervening without authorization at L 's preferred policy. Only by re-electing R , after all, can the voter guard against a harmful intervention in period 2 since he maintains the status quo of no intervention while L intervenes at his preferred policy -1 , over which he has de facto authority. Though possible this particular equilibrium outcome, however, is unlikely. Because an intervention at L 's preferred policy imposes a loss $-\lambda$ on the incumbent in the first period and increases the risk of policy loss in the second period, it occurs in equilibrium only if the benefit from office B is much larger than the policy payoff, as stipulated in the next corollary.

Corollary 1. *The equilibrium threshold $\gamma_{-1}^*(R)$ satisfies $\gamma_{-1}^*(R) > -1$ if and only if $\frac{B}{\lambda} > \frac{1}{2\psi} \frac{3-q}{1-q} - 1$.*

Our set-up also allows us to evaluate how other factors interact with the politician's electoral incentive to acquire de facto authority. These comparative statics are summarized in the following corollary:

Corollary 2. *The equilibrium threshold $\gamma_1^*(R)$ has the following properties:*

- (i) $\gamma_1^*(R)$ increases with the probability of successful court challenge (q);
- (ii) $\gamma_1^*(R)$ 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, $\gamma_1^*(L)$ increases).¹³ 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 intervention at all ($\gamma_1^*(R) = 1$ for q large, but strictly less than 1). The cost of acquiring de jure authority (c), meanwhile, has no effect on the politician's first-period actions, since R always prefers no intervention to an authorized intervention.

Finally, our theory shows that 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

¹³For reasons of space, we focus exclusively on $\gamma_1^*(R)$ in the text. The reasoning can be straightforwardly extended to $\gamma_{-1}^*(R)$, as we do in the Supplemental Appendix.

importance of electoral consideration in R 's first-period decision. When intervention in \mathcal{P} is electorally beneficial ($\gamma_1^*(R) > 0 \Leftrightarrow q > 3/5$), greater benefit from office increases R 's incentive to intervene without authorization ($\gamma_1^*(R)$ decreases). Conversely, if unauthorized intervention is costly electorally ($\gamma_1^*(R) < 0 \Leftrightarrow q < 3/5$), a higher value of B reduces R 's willingness to intervene without authorization ($\gamma_1^*(R)$ increases). A similar reasoning holds for the salience of an intervention in \mathcal{P} (ψ).¹⁴

3.2 Authority Acquisition When a Voter's Decisions Are Based on her Policy Preferences

We now consider a policy domain in which the voter selects a candidate on the basis of her policy preferences. To simplify the exposition, we thus assume that $\gamma = 0$. As previously discussed, the relevant question for the voter in this instance is not whether a local politician or a national one is better suited to intervene in a policy domain. Rather, the key question centrally involves what kind of policy is optimal, whoever the politician that makes it may be.

As before, the voter bases her electoral choice on her second-period anticipated payoff with politicians L and R in office. This payoff depends on the policy she anticipates the officeholder will choose in period 2, which, in turn, depends upon the officeholder's scope of authority. Three scenarios, therefore, require our attention. First, whenever politician R does not intervene in \mathcal{P} or has his unauthorized intervention in \mathcal{P} overturned by a court in period 1, no politician inherits authority over \mathcal{P} or a particular policy in period 2. Under such conditions, the risk of another successful court challenge ($q > 1/2$) and the cost of acquiring de jure authority ($c > \lambda$) dissuade the politician, regardless of who is elected, from intervening in \mathcal{P} in period 2. The voter thus bases her electoral choice on the valence shock, which gives politician R a reelection probability of $1/2$.

Second, when politician R intervenes without authorization at his preferred policy in period 1 and no successful court challenge ensues, in period 2 politician R , if reelected, gains de facto authority over his preferred policy action in \mathcal{P} and thereby is inoculated against a court challenge. If the voter elects politician L , however, politician L does not inherit

¹⁴Notice 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 4), we show that the comparative statics is the same as for B .

any authority that allows her to take her most preferred action in \mathcal{P} without fear of a successful court challenge. The voter, therefore, anticipates that only politician R under this scenario will intervene in \mathcal{P} in period 2. As such, she weighs the difference in policy payoffs (intervention at politician R 's ideal policy versus no-intervention) when deciding whether to reelect politician R . Unlike a policy domain where efficiency concerns dominate policy preferences, 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 $i_1 = 1$.

Third, 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.

As a consequence, politician R 's reelection probability is: $1/2$ after either no intervention ($i_1 = 0$) or after an unauthorized intervention ($a_1 = 0, i_1 = 1$) and a successful court challenge ($\tau_1 = 1$); $(\frac{1}{2} + \psi\eta)$ after an unauthorized intervention and no successful court challenge; and $(\frac{1}{2} + \psi 2\eta)$ after de jure authority acquisition.

Note that when politician R either abstains from intervening in \mathcal{P} or intervenes without authorization in period 1, his reelection probability is the same for the two types of policy domains that we consider (after appropriate parameter substitutions). In both cases, after all, politician L does not intervene in \mathcal{P} in period 2 if elected. Consequently, politician R prefers no intervention to an unauthorized intervention whenever the popularity of his preferred policy is relatively low: $\eta \leq \eta^*$; and otherwise, he prefers an unauthorized intervention to no intervention.

Politician R 's assessment of de jure acquisition, however, dramatically improves in a policy domain dominated by policy preferences. Recall that in the domain characterized by debates over the efficiency of intervention in \mathcal{P} , it was never optimal for a politician in either period to pay the cost of acquiring de jure authority. Not so here. When the electorate holds a favorable view of his preferred policy ($\eta > 0$), authority acquisition maximizes R 's reelection probability. However, acquiring de jure authority also comes at a cost c and a payoff loss

when his challenger is elected, since politician L can implement his preferred policy in period 2. Consequently, politician R optimally acquires de jure authority only when the electoral reward of doing so, which itself critically depends on the salience of policy intervention in \mathcal{P} , is sufficiently high.

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 electorate 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 relatively 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.

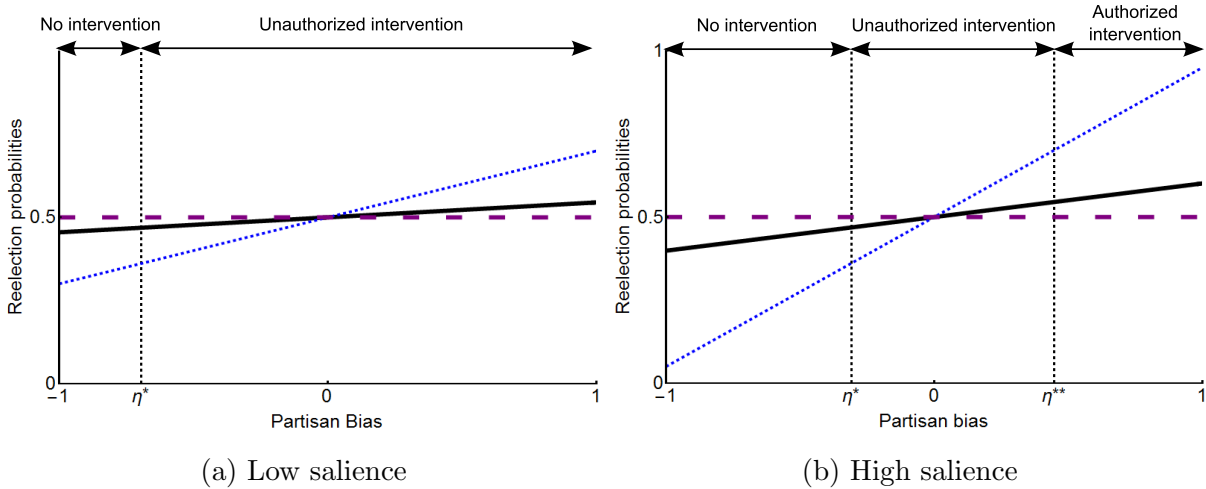


Figure 1: Probability of reelection

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 2. *There exists $\underline{\psi}(c) > 0$ such that*

1. *If $\psi \leq \underline{\psi}(c)$, politician R chooses $a_1 = 0$ for all $\eta \in [-1, 1]$. Furthermore, there exists a unique $\eta^* \in [-1, 1]$ such that politician R chooses $i_1 = 0$ if and only if $\eta \leq \eta^*$ and $i_1 = 1$ otherwise.*
2. *If $\psi > \underline{\psi}(c)$, there exists a unique $\eta^{**} \in (0, 1)$ such that politician R chooses $a_1 = 1$ if and only if $\eta \geq \eta^{**}$. On the interval $[-1, \eta^{**})$, politician R 's behavior is as described in point 1.*

Unlike in the first policy domain, politician R in period 1 now acquires de jure authority despite the cost of doing so ($c > \lambda$); and even though this investment has the effect of empowering his challenger, who in period 2 can advance his preferred policy without paying any cost or harboring any fear of a successful court challenge. 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.

Corollary 3 summarizes the other main comparative statics in the model:

Corollary 3. *The threshold η^* has the same comparative statics as $\gamma_1^*(R)$ (see 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.¹⁵ 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. Our 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).¹⁶

Our analyses above establish that the incumbent’s equilibrium authority acquisition is markedly different when the voter cares about an intervention’s efficiency (Proposition 1) compared to its policy orientation (Proposition 2). How do our results change when both types of concerns enter the voter’s payoff (i.e., $\gamma \neq 0$ and $\eta \neq 0$)? Like in Section 3.1, the efficiency of an intervention in \mathcal{P} (γ) affects politician R ’s reelection chances only if he ties intervention in period 2 to his electoral fortunes; that is, only if R intervenes in \mathcal{P} without authorization. If the voter is favorable to an intervention ($\gamma > 0$), his electoral fortunes following unauthorized intervention improves and politician R has greater incentives to choose such a strategy: η^* and η^{**} , defined in Proposition 2, respectively weakly decreases and increases with γ . However, the reverse holds true when the voter find the politician’s

¹⁵A similar comparative static holds for λ (see Corollary 5 in the Supplemental Appendix).

¹⁶Further, the use of executive orders has had electoral consequences since “[t]he administrations regulatory legacy has become an issue in the campaign to replace Mr. Obama” (ibid.).

office to be ill-equipped to intervene in \mathcal{P} ($\gamma < 0$), and acquisition of de jure authority becomes relatively more attractive (η^{**} weakly decreases with γ). As such, under some circumstances, when intervention is inefficient, it becomes more likely in periods 1 (since there is no court challenge after de jure acquisition) and 2 (when all office-holders intervene).

4 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.¹⁷

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 relatively opposed to intervention (i.e., $\gamma_1^*(R) > 0$ and $\eta^* > 0$). We also assume, as we did before, that the cost of acquiring de jure authority satisfies: $c > \lambda$. We again evaluate the politician's electoral incentives to acquire different kinds of authority when the voter bases her electoral decision on efficiency concerns and policy preferences.

¹⁷For more details and proofs, see Supplemental Appendix C.

4.1 Efficiency Concerns

As we did in the two-period model, we again find that de jure authority acquisition has no effect on a politician's reelection probability. Because it allows all office-holders to intervene at their preferred policy, acquisition of de jure authority is also associated with no payoff gain for the incumbent politician R . Consequently, politician R never pays the cost (c) to acquire de jure authority. The relevant decision for the politician, then, is whether to intervene without authorization or not intervene at all.

Assuming that the benefit from holding office (B) is not too large compared to the payoff from policy intervention (λ), politician R has no incentive to intervene without authorization at his opponent's preferred policy since the increased probability of winning office and enjoying the benefit that goes with it does not compensate for the policy loss of intervening at -1 and of L having de facto authority to intervene at his preferred policy in period 2. Furthermore, when the cost of acquiring de jure authority is relatively high, waiting until period 2 to intervene without authorization is never an optimal choice for politician R . Whenever the popularity of intervention is high enough so that politician R if in office in period 2 would intervene at policy 1 even without authorization ($\gamma \geq \gamma_1^*(R)$), politician R intervenes without authorization in period 1.

Politician R has clear payoff incentives to intervene in period 1 rather than wait until periods 2 or 3 when the voter favors intervention ($\gamma \geq \gamma_1^*(R)$). An unauthorized intervention in period 1 increases the value of holding office.¹⁸ It also minimizes the risk that only politician L intervenes at his preferred policy in period 3. Indeed, following no intervention in period 1, the voter anticipates that both politicians L and R will intervene without authorization in period 2,¹⁹ which implies a high risk that only politician L will inherit the de facto authority to intervene at his preferred policy in period 3. Politician R also has electoral incentives to intervene early. Indeed, when an intervention is not overturned, the voter can either guarantee an intervention in period 2 by reelecting R or face an uncertain intervention by electing L , who would not inherit de facto authority to intervene at his preferred policy. Given the high risk of a successful court challenge, on average, the voter prefers the certain

¹⁸By intervening without authority in period 1, politician R , if sanctioned by the court and reelected, receives positive policy payoffs in periods 1, 2, and 3 instead of just periods 2 and 3, as would occur if he delays intervention until period 2.

¹⁹The symmetry guarantees that if R intervenes without authorization at 1, then L intervenes without authorization at -1 .

intervention of a reelected politician R (i.e., R 's reelection probability is greater than $1/2$).²⁰ The electoral incentives to intervene early and without authorization are even stronger when the electorate is only moderately in favor of intervention ($\gamma < \gamma_1^*(R)$), since it is only by reelecting R that the voter can obtain intervention in periods 2 and 3.²¹

Proposition 3. *Suppose $\lambda/B > 1/5$ and $c \geq \max \left\{ \frac{q}{1-q} \lambda, q \left(\psi B + \left(\frac{5}{2} + \psi \right) \lambda \right) \right\}$. Politician R chooses $a_1 = 0$ for all γ . Furthermore, there exists a unique $\gamma_1^{3*}(R) \leq \gamma_1^*(R)$ such that politician R chooses $i_1 = 1$ if and only if $\gamma \geq \gamma_1^{3*}(R)$; and $i_1 = 0$ if and only if $\gamma < \gamma_1^{3*}(R)$.*

The restriction on c in the proposition plays a critical role in the analysis. (The restriction on B , on the other hand, simply limits the number of cases to be considered). When c is relatively low, politician L , if in office in period 2, would choose to acquire de jure authority after an unauthorized intervention by R that is not overturned by the court. For the voter, electing L at the end of period 1 guarantees intervention in all subsequent periods. In contrast, by reelecting R , the voter obtains intervention in period 3 only if the incumbent politician R also wins the election at the end of period 2 (which occurs with probability strictly less than 1). Consequently, at the end of period 1 the voter's expected payoff from electing L is greater than from reelecting R . Politician R 's first-period unauthorized intervention if not overturned by the court is associated with an electoral *disadvantage* for the incumbent. Because intervention is electorally detrimental, R generally prefers no intervention to unauthorized intervention even if the voter finds intervention efficient (i.e., $\gamma > 0$).²²

For certain parameter values, therefore, we observe the negative equivalent of the positive result developed in the two-period model. De jure acquisition is unlikely in a policy domain where the electorate evaluates policy intervention based on the efficiency of intervention in \mathcal{P} . A politician without authority over a domain never chooses this option; and, moreover,

²⁰Electing L , you will notice, can increase the probability of intervention in period 3 (if there is no successful court challenge against L). This effect, however, is second order and dominated by period 2's payoff.

²¹This explains why politician R is willing to intervene without authorization in period 1 when he is not willing to intervene without authorization in period 2. Electoral incentives are reinforced by the increased expected value of holding office: intervening without authorization in period 1 (if not overturned) permits intervention in periods 2 and 3.

²²More specifically, when $c < \max \left\{ \frac{q}{1-q} \lambda, q \left(\psi + \left(\frac{5}{2} + \psi \right) \lambda \right) \right\}$, there exists $\gamma^j(L) < 1$ satisfying $\gamma^j(L) < \gamma_1^*(R)$ such that for all $\gamma > \gamma^j(L)$, if in office in period 2, L chooses authority acquisition following an unauthorized intervention by R at 1 non-overturned by the court. In this situation, in period 1, R then prefers unauthorized intervention over no intervention only if the probability of a court challenge satisfies $q \in [3/5, \bar{q}(B, \lambda)]$, with $3/5 < \bar{q}(B, \lambda) < 0.663$. For $q > \bar{q}(B, \lambda)$, R 's optimal strategy involves no intervention. Details available upon request from the authors.

he is unlikely to intervene at all if doing so risks triggering de jure authority acquisition by his opponent.

4.2 Policy Preferences

When the voter chooses candidates on the basis of her policy preferences, politician R will acquire de jure authority over \mathcal{P} at the first available opportunity in a three-period model. When the electorate's right-wing bias is such that de jure authority acquisition would be his preferred action in period 2 (that is, $\eta \geq \eta^{**}$), politician R acquires de jure authority in period 1 whenever the benefit of intervening in \mathcal{P} (λ) is sufficiently high. Electoral incentives again explain why politician R prefers not to wait. 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.²³

Proposition 4. *Suppose $c \geq \frac{3}{2}\lambda$. There exists $\underline{\alpha} < 36/55$ such that if $\lambda/B > \underline{\alpha}$, there exists $\eta^{3**} \in (0, 1]$ satisfying $\eta^{3**} \leq \eta^{**}$ such that politician R acquires de jure authority over \mathcal{P} in period 1 if and only if $\eta \geq \eta^{3**}$.*

In Propositions 3 and 4, 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.

²³The condition on λ guarantees that politician R prefers to acquire de jure authority over unauthorized intervention in period 1. The conditions on c limit the number of cases to be considered (which without restriction would amount to 64). It guarantees 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.

5 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. 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 to an extent that would make nearly all their 19th Century predecessors blush (Howell 2013).

How did this happen? Much of the answer, of course, 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 executive's reach 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. In this paper, we identify two ways in which they do so, and two types of policy domains in which such decisions are made. Politicians can expand their province with either *de jure* or *de facto* authority. Under the former, a politician seeks an adjoining branch of government—typically a legislature—to confer authority originally vested within it. So doing, the politician makes this request before intervening into a new policy domain. *De jure* authority paves a way for actions yet to be taken, yielding legal justifications for politicians to engage in policies that heretofore had been left to others. *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. Lastly, whereas *de jure* authority provides a general grant of authority to intervene in a policy domain, *de facto* authority, being much narrower in scope, applies only to specific actions that have previously been taken. But still, pursuing *de facto* authority has upsides of its own, allowing the politician to avoid the costs of bargaining with a legislature and limiting intervention, at least initially, to a politician's preferred policy.

When the electorate opposes a policy intervention, an elected politician generally prefers to function within the current scope of his authority. Interestingly, though, an incumbent politician may intervene at his opponent’s preferred policy when the benefit of holding office outweighs the associated policy loss, for so doing, he renders the voter fearful of a future policy intervention should she elect his challenger. When preferences shift, however, so does the politician’s interest in expanding his province. If efficiency concerns inform the electorate’s decision, we find, the politician strictly prefers to intervene without formal authority, and he generally does so during his first term in office. As such, our model predicts that presidents will use unilateral directives in less ideological domains such as national security (recall, most recently, Obama’s use of drones to combat terrorism) or purely symbolic issues (such as the 2014 decree giving France’s prime minister the power to veto a foreign takeover of national groups. In domains that feature debates about divergent and politically salient policy choices, by contrast, the politician willingly pays the cost of acquiring *de jure* authority, as Obama did when in 2009 he legislatively expanded the Federal Food and Drug Administration’s authority to regulate tobacco products (Pulizzi 2009).²⁴ In both instances, meanwhile, the *same* underlying incentives 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.

The model’s insights about authority acquisition have obvious corollaries in electoral politics. Candidates routinely emphasize the dire outcomes that will inevitably arise should their opponent win. In the 2016 presidential election, for instance, Hillary Clinton repeatedly insisted that she was all that stood between America and the “apocalypse” of a Donald Trump presidency (Leibovich 2016). Clinton, like so many other candidates, clearly wanted to underscore the stakes involved in the coming election. So doing, though, she was not merely arguing that Trump held policy views that were out of step with the American people. She was arguing that Trump, as president, would be in a position to act upon these views, and that the electorate therefore had better turn out and vote for her.

Our model takes this logic one step further. It posits conditions under which an incumbent will not only highlight what is already possible given existing endowments of authority, but

²⁴While 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). Further, in line with our model’s predictions, the public broadly supports the regulation of tobacco (e.g., Gallup’s Tobacco and Smoking poll).

will augment the available authority for the next individual who assumes office. This strategy does not involve dismantling authority in the aftermath of an election, as the incumbent Republican Party of North Carolina attempted to do in 2016 after losing to the gubernatorial seat to a Democratic challenger (Gabriel 2016). Quite the opposite, it involves *expanding* the authority vested in an office *before* the election in order to dissuade voters from supporting someone whose policy views they oppose.

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.

Our main findings persist in variations of our model that include concerns about both the efficiency and policy orientation of interventions or two elections and a third period. Still more, however, ought to be explored. Future work should examine a richer action space for the politician by allowing him to initiate "large" and "small" interventions into a policy domain; considering instances when politicians might want to renounce authority that they either inherited or previously acquired; characterizing the court and legislature as strategic actors; and recognizing the possibility that time limits might accompany certain kinds of authority provisions. So doing, an even stronger foundation will be laid for understanding the dynamic linkages between political authority, policy actions, and electoral outcomes.

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