

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 actors (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 officeholder 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 re-election chances. When voters are strongly disposed towards his policy views, the politician goes further and secures prior authority for his office. The officeholder 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.

Existing Literatures

This paper speaks to a wide range of theoretical and empirical 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 2017), 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 Loeper 2016; Buisseret and Bernhardt 2016). Unlike any of these previous works, 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 and establishes that incumbents, far from tying their opponents' hands, may want to free them.

A few papers recognize that incumbents can dynamically manipulate voters' assessments of policies (see Glazer and Lohmann 1999; Hodler et al. 2010; Callander and Raiha 2017). 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.¹ 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.

Lastly, this paper offers a new rationale for the president's exercise of unilateral powers, a topic about which a great deal has been written of late (see, e.g., Howell 2003, 2005; Bolton and Thrower 2016; Chiou and Rothenberg 2017; Rottinghaus and Maier 2007). The existing literature focuses nearly exclusively on the immediate policy benefits to be gained from executive orders and other kinds of unilateral directives.² Concerns about authority and its electoral consequences, such as they are, reside in the background of this scholarship. This paper moves them to the foreground. By unilaterally intervening into a policy domain, we show, executives do not merely alter policy in ways that a legislature, left to its own devices, would not support. These interventions also have the potential to generate new legal authority to support still more interventions into a policy domain. The fact that this new authority changes the electorate's evaluation of the incumbent and (potentially) his challenger yields strategic considerations for which the existing literature on unilateral powers offers no account.

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

¹Other 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 2017). 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).

²But see a nascent literature on public opinion and unilateral powers (Reeves and Rogowski 2015, 2016; Christenson and Kriner 2017). These papers examine the willingness of different citizens to support the president's efforts to pass a policy agenda through non-legislative means. They have less to say about the specific ways in which public opposition alters presidential behavior; and they do not speak at all to issues of authority acquisition.

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 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

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)).

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 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

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 .

Politicians are both policy and office-motivated. A politician obtains a policy payoff $\lambda > 0$ ($-\lambda$) when his (his opponent’s) preferred policy is implemented. In what follows, we refer to λ as the *level of polarization*. In addition, when in office, a politician receives a benefit normalized to 1 (without loss of generality).

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.

Each period, the officeholder 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 officeholder always obtains de jure authority when it pays the cost c . All our core results hold, however, when the politician, even after having paid c , faces some positive probability of failing to acquire de jure authority. 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} , and $i_t = 1, -1$ corresponds to the ideological orientation of the politician's intervention. For ease of interpretation, we assume that politician L 's ideal policy is $i^L = -1$ and politician R 's is $i^R = 1$.

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 (but does not preclude intervention in the future) and imposes a cost $k > 0$ on the politician. Absent an intervention ($i_t = 0$), the officeholder 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 officeholder. We capture de jure authority in period $t \in \{1, 2\}$ by the state variable d_t which takes value 1 when the officeholder 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 (we consider the case when $d_0 = 1$ in the Extensions section). Because it also tends to be broad, de jure authority further enables an officeholder 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 the previous section, 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 officeholder 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).⁷ 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 de facto authority over \mathcal{P} : $i_0 = 0 = \tau_0$.

In all other cases, when the officeholder has neither de jure nor de facto authority, the probability of a successful court challenge following intervention is q . In particular, since R does not possess de jure or de facto authority over \mathcal{P} at the beginning of period 1, 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.

Recalling that $i^L = -1$ and $i^R = 1$, the utility of politician $J \in \{L, R\}$ in period $t \in \{1, 2\}$ can be expressed as:

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

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 positive values denoting a conservative bias.

⁷Observe that the model easily extends to the case when the officeholder 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.

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 $\left[-\frac{1}{2\psi}, \frac{1}{2\psi}\right]$.⁸ The valence 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:

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

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 the valence shock (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.

Observe that a politician can neither commit to intervene at a particular policy nor to relinquish in period 2 authority acquired in period 1. Further, we suppose that the voter observes whether politician R has acquired de jure authority over \mathcal{P} (a_1). This assumption

⁸Imposing 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.

proves important for our main findings.⁹ 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 officeholder in period t can always revert to $i_t = 0$ at no cost.

The equilibrium concept used in this paper is Subgame Perfect Nash Equilibrium, a definition of which can be found in Online Appendix B. In the baseline model, we assume that institutions exhibit status quo bias, such that the cost of acquiring de jure authority is greater than the per-period policy benefit— $c > \lambda$ —and the expected cost of a successful court challenge is greater than the benefit of intervention— $(1 - q)\lambda - qk < 0$. We relax these assumptions in the Extensions section.

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	Level of polarization
c	Cost of acquiring de jure authority
k	Cost of a successful court challenge
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	Outcome of court challenge
q_t	Probability of a successful court challenge in t
η	Voter’s policy preferences
ψ	Salience of intervention in \mathcal{P} for the voter

⁹When 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 observes 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 2017).

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 re-election 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 ($q > \frac{\lambda}{\lambda+k}$). 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 re-elected 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 officeholder 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 intervenes 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 intervenes 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 officeholder'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 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 re-election 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 successful court challenge;
3. $(\frac{1}{2} + \psi 2\eta)$ after de jure authority acquisition ($a_1 = 1$).

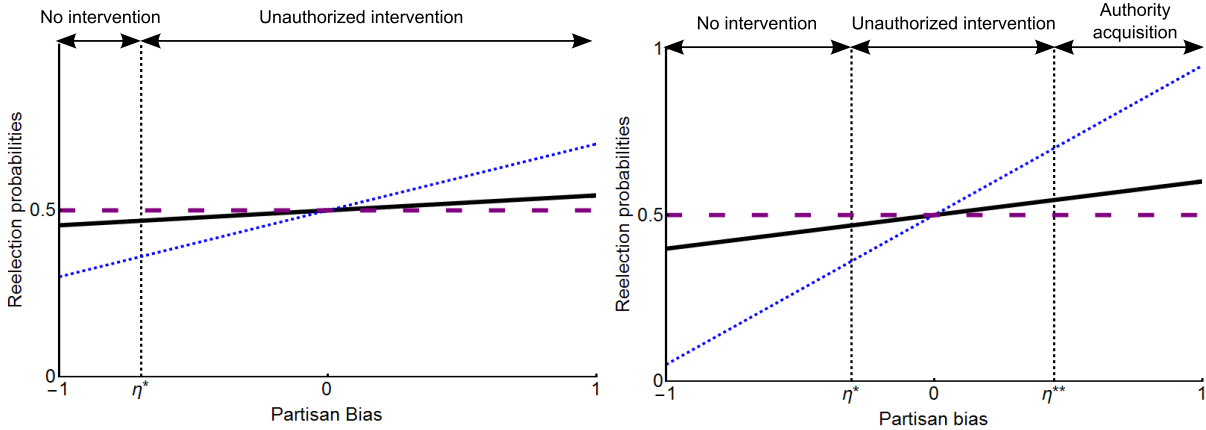
Three observations follow from Lemma 1. First, whenever the voter is aligned with R ($\eta > 0$), de jure authority acquisition maximizes the incumbent's electoral chances. Second, due to our assumption on salience ($\psi < 1/4$), politician R is never certain to win or lose the election after either 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 a successful court challenge is relatively low ($q < \frac{3\lambda/2}{3\lambda/2+k}$), 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 re-election probabilities after authorized and unauthorized intervention). Therefore, politician R faces a high risk that his opponent wins the election and implements 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 as a function of the voter’s policy preferences (as denoted on the x-axis) and salience (distinguished by the left and right panels). For both intermediate 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 ($q = 0.55 < \frac{3\lambda/2}{3\lambda/2+k}$ under the parametrization) 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 (right panel), 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.



(a) Low salience

(b) High salience

Figure 1: Probability of re-election

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

The following proposition summarizes these basic relationships:

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— $\eta^* \in [-1, 1]$ —such that politician R chooses inaction ($i_1 = 0$) if and only if the electorate is 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— $\eta^{**} \in (0, 1)$ —such that politician R acquires de jure authority ($a_1 = 1$) if and only if the electorate is sufficiently conservative ($\eta \geq \eta^{**}$). On the interval $[-1, \eta^{**})$, politician R 's behavior is as described in point 1.*

To summarize, our theory predicts that officeholders generally intervene into policy domains without legal authority when the electorate's policy preferences are only partially aligned with the officeholder's.¹⁰ In turn, when the electorate strongly supports the incumbent's policy, the latter 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)

¹⁰One 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 such action (Liptak and Shear, 2016; Ehrenfreund, 2014).

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 leans strongly conservative (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^{**} .

Corollary 1. *The threshold η^**

1. *increases with the probability of a successful court challenge (q);*
2. *decreases with the level of polarization (λ);*
3. *increases with the salience of intervention in \mathcal{P} (ψ) if $q < \frac{\frac{3}{2}\lambda}{\frac{3}{2}\lambda+k}$ 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).

An increase in the level of polarization (λ), meanwhile, is associated with greater incentive to intervene without authorization (η^* decreases). For R , there is only a (potential) judicial cost of unauthorized intervention at his preferred policy. Whether his intervention is sanctioned or overturned, his opponent does not intervene in \mathcal{P} in period 2. Hence, R enjoys all the policy benefit of trying to acquire de facto authority, but no policy cost.

The effect of an increase in the salience of intervention in \mathcal{P} (ψ) is less straightforward and depends on the probability of a successful court challenge (q). To understand this result, recall that for relatively low q (i.e., $q < \frac{3\lambda/2}{3\lambda/2+k}$), the threshold η^* is negative and politician R intervenes without authorization even if doing so reduces his electoral chances. Because an increase in salience augments the electoral cost associated with unauthorized intervention, this strategy becomes less attractive (η^* increases). By contrast, when the risk of a successful

court challenge is relatively high ($q > \frac{3\lambda/2}{3\lambda/2+k}$), R intervenes without authorization only if it is beneficial electorally ($\eta^* > 0$). The electoral gain is magnified by the salience so that higher ψ makes an unauthorized intervention more attractive (η^* decreases).

Corollary 2. *The threshold η^{**}*

1. *decreases with the probability of a successful court challenge (q);*
2. *decreases with the level of polarization (λ);*
3. *decreases with the salience of intervention in \mathcal{P} (ψ);*
4. *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). 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.

Politician R also has greater incentive to acquire de jure authority when the level of polarization increases (λ). At first, this result may seem surprising, given that R 's action empowers his opponent L . Recall, however, that politician R chooses de jure acquisition only if the electorate strongly favors his policy position. Thus, in period 2, it is more likely than not that R is in office and implements his preferred policy. In expectation, therefore, the first- and second-period policy benefits are greater than the cost and higher λ decreases η^{**} . Moreover, because R only intervenes with authorization when it improves his electoral chances and salience magnifies this electoral benefit, η^{**} is also decreasing with ψ .

Finally, de jure authority acquisition is more likely when c is low, which may occur, for instance, during periods of unified government.¹¹ When c is high, as might occur during periods of divided government, politician R rarely pays the bargaining cost to legally increase his province. Indeed, the politician prefers unauthorized intervention even when public opinion is very favorable (η very large).¹²

¹¹As such, we should also expect de jure acquisition by the executive to occur most frequently in countries with strong whips and majorities aligned with the executive. Consistent with the model's predictions, in France, where the legislative elections generally rubber stamp the result of the presidential elections, the national parliament recently granted power to the government to reform the labour market laws by decrees despite the relative unpopularity of the changes (Reuters, 2017; Ouest France, 2017). Similarly, in the context of Brexit, the British government is attempting, with some success, to obtain the right to incorporate European laws into British laws with little oversight by the parliament (Thompson and Pickard, 2017).

¹²Our 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

Extensions

In this section, we study three variations of our baseline model. First, we show that our main results on authority acquisition are robust to the introduction of a third period and second election. Second, we relax the assumption that institutions exhibit a status quo bias. Third, we allow for the possibility that politician R relinquishes de jure authority over \mathcal{P} .

Three periods and two elections

In this subsection, we extend the baseline model to include three periods and two elections. The order of play is similar to the one described in the Model section, except that at the end of period 2, the voter decides whether to re-elect 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 randomly chosen candidate 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 a successful court challenge, then his successor in any subsequent period can make the same policy intervention with all the protections that de facto authority offers (for more details, see Online Appendix C.1).

To take into account the longer time horizon, we extend our notion of institutional status quo bias to this setting by assuming $q > \frac{3\lambda/2}{3\lambda/2+k}$ and $c > \frac{3}{2}\lambda$. These assumptions also simplify the exposition by guaranteeing that politician R acquires authority in period 2 only if the electorate is sufficiently conservative ($\eta^* > 0$), which, in turn, implies that politician L has no incentive to acquire authority in period 2 when the electoral leans to the right ($\eta \geq 0$).¹³

Our next proposition establishes under which conditions politician R acquires de jure authority in period 1 when he has incentive to acquire authority in period 2 in the three-

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.).

¹³These conditions limit the number of possible subgames in period 2 which, without restriction, would amount to 64. We conjecture that our results hold when these conditions are relaxed, but leave a formal proof to future research.

period game (more formally, $a_1 = 1$ whenever $\eta \geq \eta^{**}$). The first point of Proposition 2 highlights that, when the electorate leans conservative, politician R never intervenes at L 's preferred policy if the level of polarization is sufficiently high. A large λ guarantees that the expected policy cost of implementing policy -1 is greater than the electoral benefit of reducing L 's electoral appeal.

Point 2 of Proposition 2 shows that de jure authority acquisition in period 1 dominates no intervention when the electorate is sufficiently conservative ($\eta \geq \eta^{**}$). Electoral incentives again explain why politician R prefers unauthorized intervention to no intervention whenever the former would be his preferred action in period 2. 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.

The third point of Proposition 2 finds that politician R also prefers authority acquisition to an unauthorized intervention at 1 whenever the risk of a successful court challenge is relatively high ($q \geq \frac{2\lambda}{2\lambda+k}$, a sufficient condition). Like authority acquisition, an unauthorized intervention, if successful, improves R 's electoral chances. The condition on q guarantees that attempts to generate de facto authority are sufficiently likely to fail for politician R to acquire authority and enjoy the electoral gain associated with this strategy.

Proposition 2. *Suppose $\eta^{**} < 1$. In a three-period game with two elections,*

1. *There exists $\alpha < 36/55$ such that if $\lambda \geq \alpha$, then for all $\eta \geq 0$, politician R never intervenes at his opponent L 's preferred policy in period 1.*
2. *For all $\eta \geq \eta^{**}$, politician R prefers authority acquisition to no intervention in period 1.*
3. *If $q \geq \frac{2\lambda}{2\lambda+k}$, for all $\eta \geq \eta^{**}$, politician R also prefers authority acquisition to unauthorized intervention at 1 in period 1.*

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.

Pro-Intervention Institutions

Given the analytical complications and small substantive gains of introducing a third period and second election, we return to a two-period game. The baseline model, you will recall, supposes that institutions exhibit a status quo bias, such that the present benefits of an unauthorized intervention or authority acquisition are always lower than their respective costs (i.e., $\lambda < c$ and $\lambda < \frac{q}{1-q}k$). In this subsection, we relax these assumptions. Depending on whether institutions encourage the acquisition of authority (that is, $c < \lambda < \frac{q}{1-q}k$) or encourage unauthorized interventions (that is, $\frac{q}{1-q}k < \lambda < c$), very different results follow, which are summarized in the following proposition.

Proposition 3. *When relaxing the status quo bias assumption,*

1. *If $c < \lambda < \frac{q}{1-q}k$, politician R acquires de jure authority ($a_1 = 1$) for all $\eta \in [-1, 1]$.*
2. *If $\frac{q}{1-q}k < \lambda < c$, then there exist unique thresholds $\hat{\eta}^* \in [-1, 0)$ and $\hat{\eta}^{**} \in (0, 1]$ such that politician R does not intervene ($i_1 = 0$) if the electorate is relatively liberal ($\eta \leq \hat{\eta}^*$), intervenes without authorization at his preferred policy ($a_1 = 0, i_1 = 1$) if the electorate is moderate ($\eta \in (\hat{\eta}^*, \hat{\eta}^{**})$), and acquires de jure authority ($a_1 = 1$) if the electorate is relatively conservative ($\eta \geq \hat{\eta}^{**}$).*

When the officeholder has incentives to acquire de jure authority in period 2, politician R always acquires de jure authority in period 1. The voter correctly anticipates that any officeholder intervenes at his preferred policy in period 2 even if he has no authority over it (since he then chooses $a_2 = 1$). Hence, whatever his first-period action, politician R 's re-election probability is $(\frac{1}{2} + \psi 2\eta)$ (see Lemma 1). R then simply chooses the policy that maximizes his per-period payoff, which, under the assumption, is authority acquisition.

The picture changes somewhat when an unauthorized intervention is the per-period optimal strategy. If the officeholder lacks de jure and de facto authority over his preferred policy in period 2, there is always a possibility that a successful court challenge negates an unauthorized intervention. Hence, when the electorate leans to the right ($\eta > 0$), authority

acquisition in period 1 maximizes the risk of a harmful policy swing in period 2. When the electorate is sufficiently conservative ($\eta \geq \widehat{\eta}^{**}$), therefore, politician R has an electoral incentive to acquire de jure authority.

Compared to the baseline model with a status quo bias, institutions that encourage the authority acquisition generate more interventions (strictly more, unless $\eta^* = -1$) in period 1. Interestingly, though, this result does not carry over to institutions that encourage unauthorized interventions. To see why, observe first that whenever the cost of a successful court challenge is relatively low, politician R intervenes without authorization when it is electorally damaging to do so ($\eta^* < 0$ and $\widehat{\eta}^* < 0$). When institutions exhibit a status quo bias, this has little consequence, since L never intervenes at his preferred policy in period 2. When institutions encourage unauthorized interventions, however, L acts without legal authority in period 2. Losing the election, as a result, becomes more costly to R , which can reduce R 's incentive to intervene in period 1.

Corollary 3. *Suppose $\lambda < c$. There exists \underline{k}, \bar{k} satisfying $\underline{k} < \frac{1-q}{q}\lambda < \bar{k}$ such that politician R is less likely to intervene at his preferred policy when the cost of a successful court challenge is \underline{k} compared to \bar{k} .*

Relinquishing authority

In this subsection, we show that officeholders sometimes have electoral incentives to relinquish de jure authority over a policy domain. To do so, we return to our baseline model with status quo bias (i.e., $c > \lambda$ and $qk > (1-q)\lambda$), but we now suppose that in period 1, politician R has de jure authority over \mathcal{P} (formally $d_0 = 1$). We also augment an officeholder's action space by assuming that in period $t \in \{1, 2\}$, in addition to acquiring de jure authority, the officeholder can also decide to relinquish it: $a_t \in \{\emptyset, 0, 1\}$, where $a_t = \emptyset$ indicates the abandonment of authority at cost $r \geq 0$. The officeholder still can decide to intervene at a particular policy: $i_t \in \{-1, 0, 1\}$. For simplicity, we assume that if the officeholder relinquishes authority in period t , he cannot intervene without authorization in \mathcal{P} within the same period.

If the officeholder has de jure authority in period 2, he intervenes at his preferred policy, just like in the baseline model. In this case, R 's re-election probability remains $(\frac{1}{2} + \psi 2\eta)$. Relinquishing de jure authority, however, yields a re-election probability of $1/2$. As a result,

when the electorate is strongly *opposed* to him, and when the salience of an intervention is sufficiently high, politician R has electoral reasons to abandon authority.

Proposition 4. *Suppose R has authority over \mathcal{P} at the beginning of period 1 ($d_0 = 0$). There exists a unique threshold $\psi^0(r) > 0$ such that*

1. *If salience is relatively low ($\psi \leq \psi^0(r)$), politician R never relinquishes authority over \mathcal{P} .*
2. *If salience is relatively high ($\psi > \psi^0(r)$), there exists a unique threshold $\eta^r \in (-1, 0)$ such that politician R relinquishes authority over \mathcal{P} if and only if the electorate is sufficiently liberal ($\eta \leq \eta^r$).*

If we interpret privatization as a form of authority abandonment, some interesting comparisons follow between the conclusions of our model and those of Montagnes and Bektemirov’s (2017). In both cases, privatization occurs when the officeholder’s re-election chances are low. They do so, however, for very different reasons. For Montagnes and Bektemirov (2017), the proximate interest involves the benefit of public firms. In ours, by contrast, the officeholder is principally concerned with re-election.¹⁴

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.

¹⁴An important limitation of this analysis, of course, is that decisions about authority acquisition and abandonment are treated separately. Future research would do well to join these decisions in a multi-period model to study the conditions under which authority stabilizes over time.

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.

By highlighting 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 theory also 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.

Our theory makes a variety of additional predictions that warrant empirical investigation: executives, we show, should be more likely to unilaterally intervene into new policy domains during their first term in office rather than their second term; as the judiciary appears more likely to overturn the president, unilateral presidential interventions should decline; and po-

larization should correlate positively with unilateral activity. This last prediction has received some attention—and empirical support—within the literature on unilateral powers (Chiou and Rothenberg 2017). Our work, however, suggests heterogeneous effects that existing theories do not anticipate. Previous studies equate polarization with heightened legislative gridlock, when Congress is unlikely to either enact the president’s legislative agenda or overturn a unilateral directive issued in its place. The impetus for action, under the standard account, exclusively arises from congressional debility. Our theoretical explanation, by contrast, highlights the intervening relevance of voters’ policy preferences. Presidents manipulate the production of de facto authority during periods of heightened partisan conflicts only if the electorate is relatively supportive of their policy positions.

To investigate these issues in accordance with our model, however, scholars cannot simply import the available measures of unilateral activity (as in, e.g., Chiou and Rothenberg 2017, pp. 63-93). As we have seen, presidents do not use these powers only to advance policy objectives today. They also employ these powers to alter their subsequent legal authority. Rather than use standard counts of executive orders issued over time, therefore, empirical scholars need to assess the ways in which unilateral directives intermittently draw upon pre-existing authority and produce new legal justifications for future actions.

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A Proofs for the baseline model

Throughout the proofs, we make use of the following notation. $V_t^J(a_t, i_t; d_{t-1}, i_{t-1}, \tau_{t-1}, K)$ is the expected payoff (continuation value) of player $J \in \{L, R, V\}$ at the beginning of period t when $K \in \{L, R\}$ is in office and inherits de jure authority $d_{t-1} \in \{0, 1\}$, following the previous period action. Because the second-period de facto authority depends on politician R 's first-period action, we also introduce the function $q_2(i_2; d_2, i_1, \tau_1)$, which is equal to 0 when: (i) $d_2 = 1$ (politician has de jure authority), (ii) $i_2 = 0$ (there is no intervention), or (iii) $i_2 = i_1 \neq 0$ and $\tau_1 = 0$ (politician has de facto authority over i_2). In all other cases, the function $q(\cdot)$ is equal to q .

Proof of Lemma 1

Before proving the Lemma, we state and prove two preliminary results.

Lemma A.1. *In any equilibrium, in period 2, politicians L and R (if in office) intervene at their preferred policy (respectively, $i_2 = -1$ and $i_2 = 1$) if and only if the probability of a successful court challenge is null (i.e., a_1 , a_2 , i_1 , and τ are such that $q_2(1; d_2, i_1, \tau_1) = 0$), and prefers no intervention ($i_2 = 0$) otherwise.*

Proof. We prove the result for politician R only (the result for L follows from a similar reasoning). Intervention at L 's preferred policy is always dominated by intervention at R 's. No intervention ($i_2 = 0$) guarantees no court challenge and thus a policy payoff of 0. If $q_2(1; \cdot) = q$, due to the status quo bias in institutions, R always gets a negative expected second-period payoff if he intervenes at his preferred policy ($(1 - q)\lambda - qk < 0$ after unauthorized intervention, $\lambda - c < 0$ after authority acquisition). If $q_2(-1; \cdot) = 0$, then R gets a second-period payoff of $\lambda > 0$ by intervening without the risk of a successful court challenge. □

Lemma A.2. *In any equilibrium, there is no de jure authority acquisition in period 2 ($a_2 = 0$).*

Proof. The proof for the case when the officeholder does not have de jure authority over \mathcal{P} ($d_1 = 0$) follows from Lemma A.1. If the officeholder has already de jure authority over \mathcal{P} ($d_1 = 1$), then $a_2 = 0$ since authority acquisition only adds a cost. \square

We now use Lemmas A.1 and A.2 to formally prove Lemma 1

Point 1. By Lemma A.1, both R and L if in office in period 2 do not intervene in equilibrium ($i_2(J) = 0$, $J \in \{L, R\}$) absent de jure or de facto authority over \mathcal{P} whether it is due to no-intervention in \mathcal{P} ($i_1 = 0$) or unauthorized intervention reversed by a successful court challenge ($i_1 \neq 0$ and $\tau_1 = 1$). Hence, R is reelected with probability $1/2$ in these cases.

Point 2. If R intervenes without prior authorization in period 1 ($a_1 = 0$ and $i_1 = 1$) and there is no successful court challenge ($\tau_1 = 0$), if in office in period 2, R intervenes at his preferred policy ($i_2(R) = 1$), whereas L prefers no intervention ($i_2(L) = 0$). The voter then reelects R if and only if: $\eta + \epsilon_2^R \geq 0$. Hence, R is reelected with probability $(\frac{1}{2} + \psi\eta)$. If R chooses $i_1 = -1$ and there is no successful court challenge, if in office in period 2, R chooses $i_2(R) = 0$ and L chooses $i_2(L) = -1$. R 's reelection probability is again $(\frac{1}{2} + \psi\eta)$.

Point 3. After authority acquisition ($a_1 = 1, i_1 = 1$), the voter's expected utility from electing politician R (politician L) is: $\eta + \epsilon_2^R (-\eta)$ since any officeholder intervenes at his preferred policy in period 2, since he has de jure authority over \mathcal{P} . Politician R 's reelection probability is then: $(\frac{1}{2} + \psi 2\eta)$. \square

Proof of Proposition 1

By Lemma 1, R always prefers $a_1 = 0$ and $i_1 = 1$ to $a_1 = 0$ and $i_1 = -1$ since his reelection probability is the same and his expected policy payoff is greater.

Using Lemmas A.1 and 1, politician R 's expected utility following no intervention is:

$$V_1^R(0, 0; 0, 0, 0, R) = 1 + \frac{1}{2} \tag{3}$$

When politician R chooses his preferred policy without prior authorization ($a_1 = 0$, $i_1 = 1$), his expected utility is:

$$V_1^R(0, 1; 0, 0, 0, R) = 1 + q \left(-k + \frac{1}{2} \right) + (1 - q) \left(\lambda + \left(\frac{1}{2} + \psi\eta \right) (1 + \lambda) \right) \quad (4)$$

In case of a successful court challenge (probability q), he suffers a loss k , and is reelected with probability $1/2$. If there is no successful court challenge, politician R gets a payoff λ , is reelected with probability $(\frac{1}{2} + \psi\eta)$ and intervenes in \mathcal{P} in period 2.

Since $V_1^R(0, 1; 0, 0, 0, R) - V_1^R(0, 0; 0, 0, 0, R)$ is strictly increasing in η , politician R prefers unauthorized intervention at 1 over no intervention if and only if:

$$\left(\frac{1}{2} + \psi\eta \right) (1 + \lambda) \geq \frac{1}{2} + \frac{q}{1 - q}k - \lambda \Leftrightarrow \eta \geq \frac{1}{\psi} \frac{\frac{q}{1 - q}k - \frac{3}{2}\lambda}{\lambda + 1} \equiv \eta_1^0(R) \quad (5)$$

When $q < \frac{\frac{3}{2}\lambda}{\frac{3}{2}\lambda + k}$, $\eta_1^0(R) > -1$ if and only if

$$\lambda < \frac{\frac{q}{1 - q}k + \psi}{\frac{3}{2} - \psi} \quad (6)$$

In turn, when $q > \frac{\frac{3}{2}\lambda}{\frac{3}{2}\lambda + k}$, $\eta_1^0(R) < 1$ if and only if:

$$\lambda > \frac{\frac{q}{1 - q}k - \psi}{\frac{3}{2} + \psi} \quad (7)$$

Denote $\eta^* = \min\{\max\{-1, \eta_1^0(R)\}, 1\}$.

Politician R 's expected utility from de jure authority acquisition is:

$$\begin{aligned} V_1^R(1, 1; 0, 0, 0, R) &= 1 + \lambda - c + \left(\frac{1}{2} + \psi 2\eta \right) (1 + \lambda) + \left(1 - \left(\frac{1}{2} + \psi 2\eta \right) \right) (-\lambda) \\ &= \frac{3}{2} + \lambda - c + \psi 4\eta\lambda + \psi 2\eta \end{aligned} \quad (8)$$

Politician R must pay a cost c to acquire de jure authority. The officeholder intervenes at his preferred policy in both periods. R is re-elected with probability $(\frac{1}{2} + \psi 2\eta)$ and if not suffers a policy loss λ .

Since $V_1^R(1, 1; 0, 0, 0, R) - V_1^R(0, 0; 0, 0, 0, R)$ is strictly increasing in η , R prefers de jure authority acquisition over no intervention if and only if:

$$2\psi\eta + 4\psi\eta\lambda + \lambda - c \geq 0 \Leftrightarrow \eta \geq \frac{1}{\psi} \frac{c - \lambda}{4\lambda + 2} \equiv \eta_0^{**}(\psi) \quad (9)$$

Notice that under our assumption on c , $\eta_0^{**}(\psi) > 0$. Therefore, R always prefers no intervention to de jure authority acquisition on $[-1, 0]$, allowing us to focus on $[0, 1]$ in what follows. Furthermore, observe that $\eta_0^{**} < 1$ if and only if: $c < \lambda(1 + 4\psi) + 2\psi \equiv \bar{c}_1(\psi)$.

It can be checked that $V_1^R(1, 1; 0, 0, 0, R) - V_1^R(0, 1; 0, 0, 0, R)$ is strictly increasing with η on the interval $(0, 1]$. Therefore, R prefers de jure authority acquisition to an unauthorized intervention at his preferred policy if and only if:

$$\begin{aligned} (1 + q)\psi\eta + (3 + q)\psi\eta\lambda + q(\lambda + k) - \frac{1 - q}{2}\lambda - c &\geq 0 \\ \Leftrightarrow \eta &\geq \frac{1}{\psi} \frac{c - \frac{1}{2}(1 + q)\lambda + (1 - q)\lambda - qk}{(3 + q)\lambda + (1 + q)} \equiv \eta_1^{**}(\psi) \end{aligned} \quad (10)$$

Observe that $\eta_1^{**}(\psi) < 1$ if and only if $c < \frac{1}{2}(1 + q)\lambda + qk - (1 - q)\lambda + \psi((3 + q)\lambda + (1 + q)) \equiv \bar{c}_2(\psi)$. Notice that both $\bar{c}_1(\psi)$ and $\bar{c}_2(\psi)$ strictly increase with ψ and $\bar{c}_1(0) = \lambda < c$. Hence, there exists a unique solution, denoted $\underline{\psi}(c)$, to $\min\{\bar{c}_1(\psi), \bar{c}_2(\psi)\} = c$ such that for all $\psi \leq \underline{\psi}(c)$, politician R never chooses acquisition of de jure authority on the equilibrium path (i.e., $\max\{\eta_0^{**}(\psi), \eta_1^{**}(\psi)\} \geq 1$).¹⁵ To finish the proof, if $\psi > \underline{\psi}(c)$, denote $\eta^{**} = \max\{\eta_0^{**}(\psi), \eta_1^{**}(\psi)\}$. \square

To study the comparative statics, we assume that all parameters are strictly interior; that is, $(1 - q)\lambda - qk < 0$ and $c > \lambda$.

¹⁵Notice that we do not exclude the possibility that $\underline{\psi}(c) \geq 1/4$. In this case, politician R simply never chooses authority acquisition.

Proof of Corollary 1

Suppose Equation 6 and Equation 7 hold (the reasoning extends naturally to cases when they do not). The result follows directly from examination of Equation 5. \square

Proof of Corollary 2

For η^{**} , suppose $\psi > \underline{\psi}(c)$ so η^{**} is interior (the reasoning can be extended to the case $\eta^{**} = 1$). The claim holds from direct examination of Equation 9 and Equation 10. \square