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A MASTER OF TWO SERVANTS: THE EFFECT OF SEPARATION OF POWERS ON PUBLIC ACCOUNTABILITY AND SOCIAL WELFARE

Abstract:

While history is abundant with authoritarian rulers who reluctantly delegated governance powers to other institutions, the intriguing question is why would democratic powerful rulers delegate powers voluntarily to (probably) contrarian institutions, and tolerate activism that impedes the implementation of their elections commitments. Based on Fiorina (1982) blame-deflection hypothesis, which postulates that politicians use the separation of powers principle as a shield against public criticism and accountability, I develop a principal-agent model that addresses Stephenson (2003) criticism and show that in subgame-perfect stationary equilibrium the principal is usually manipulated. I extend the model to embed memory, learning, and objective judiciary and show that the equilibria are preserved but social welfare is lower.

Keywords:

Constitution, Separation of Powers, Collusion, Asymmetric Information

JEL Classification: D71, D72, P16

> *And the LORD God called unto Adam, and said unto him, Where art thou? And he said, I heard thy voice in the garden, and I was afraid, because I was naked; and I hid myself. And he said, Who told thee that thou wast naked? Hast thou eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the man said, The woman whom thou gavest to be with me, she gave me of the tree, and I did eat.*
>
> (Genesis 3, 9-12, King James Version)

1. INTRODUCTION

The classical rationale of *Separation of Powers* and *Checks and Balances* – avoiding tyranny – is common among jurists[1], political scientists and political economists (Maskin & Tirole, 2004) although, from a political economy point of view, it makes no sense. History proved time and again that neither glorious liberal constitution nor judicial supervision deter powerful determined governments or guarantee human rights. For example, article XVI of the French Declaration of the Rights of Man and of the Citizen states: "*Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution*". Nevertheless, neither the Declaration nor the two liberal Constitutions adopted in 1789 and 1793 prevented Robespierre's Reign of Terror. The same applies to many other progressive constitutions adopted by ruthless dictators and democracies alike. For example, the glorious soviet constitution adopted by Stalin or the Iraqi liberal constitution adopted by Saddam Hussein did not really avoid tyranny or protect human rights. In the United States, on the other hand, President Lincoln loudly ignored Chief Justice Roger B. Taney's verdict against his decree to suspend "the privilege of the writ of *habeas corpus*"[2], and the same Chief Justice Taney issued the famous Dred Scott verdict[3]. In August 2009, a former deputy to the Israeli Attorney General, Yehudit Karp, reported 10 High Court[4] verdicts loudly ignored by the government[5], the most famous among them is the ruling to let Iqrit and Biram residents return to their homes[6]. These and other numerous historical examples illustrate Stephenson's (2003) conclusion that formal constitutional protections are no guarantee to democracy, human rights

[1] Recently, Israeli Supreme Court Justice Eliyahu Matza argued that without judicial supervision the majority would suppress even the basic human rights of minorities. (Radio interview, Kan Bet, 29.4.2018).

[2] Ex parte Merryman, 17 F. Cas. 144 (C.C.D. Md. 1861) (No. 9487).

3 Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857). Dred Scott (1799-1865) was an African-American slave who sued his master for freedom because he and his family lived four years in Illinois and the Wisconsin Territory, where slavery was illegal. The U.S. Supreme Court majority, led by Justice Taney, ruled that black people are inferior and thus cannot claim American citizenship or have *locus standi* in American courts, and that setting Scott free would "improperly deprive Scott's owner of his legal property".

[4] The High Court, established by the British government, merged with the Israeli Supreme Court after the establishment of Israel in 1948. Henceforth I use the terms *High Court* and *Supreme Court* interchangeably.

[5] *Globes* (גלובס), September 4, 2010.

[6] On November 1948, the Israeli Army expelled the Christians inhabitants of two Galilee villages, Iqrit and Biram, promising that they would return as the war is over. On July 1951, the Supreme Court ruled that they are entitled to return to their homes (Bagatz 64/51, Daud ET. Al. v. Minister of Defense ET. Al. PD 5, 1117), but the martial government ignored the verdict. The villagers appealed again several times, but the government still banns them from returning to their lands although the martial law on Israeli Arab settlements was abolished in 1966.

or independent courts. On the contrary, powerful rulers never faced substantial difficulties to align the judiciary in accordance with their will[7], illustrating that what really matters is not *separation* of powers but the *balance* of powers, (Schwarz, 2019).

While history is abundant with authoritarian rulers who reluctantly delegated powers to other institutions[8], the intriguing question is why would democratic powerful rulers delegate powers *voluntarily* and tolerate activism of other institutions that impedes the fulfillment of their election commitments. Scholars from different disciplines suggested a variety of answers to this puzzle (see section 2). In this article I focus on Fiorina's (1982) *blame-deflection hypothesis*, which postulates that elected politicians use the separation principle to avoid accountability and divert public criticism and grievances to unelected (and thus non-accountable) officials.

I develop a stylized dynamic principal-agent model. The principal employs one agent (the incumbent), while another agent, (the challenger), seeks to replace the incumbent agent and take his job. The incumbent agent delegates a limited veto power over his decisions to an external advisor who may have different preferences than the principal. The incumbent agent can overcome the advisor's veto by exerting a certain effort but non-compliance is risky, because a principal who trusts the advisor may dismiss a non-compliant agent. On the other hand, if the advisor recommends a non-optimal action according to the principal's preferences, the incumbent agent may exert efforts to convince the principal that the advisor is trustworthy, while the challenger exerts efforts to convince the principal that both the advisor and the incumbent agent are unfaithful. Each period the advisor sets his optimal advisory, the agents are engaged in a contest over the principal's confidence and the winner conquers the position for the subsequent period. In the basic model subgame-perfect stationary equilibrium, the incumbent agent manipulates the principal every period, divert accountability to the advisor (who the principal cannot dismiss), and reappointed constantly. I further extend the model and show that: (a) If the principal has memory and learns from past periods' experience, a manipulation cycle is created; (b) If the advisor is honest and objective, the equilibria are unchanged but social welfare is worsened.

Stephenson (2003) criticized the blame-deflection hypothesis, arguing that it is unlikely

[7] The famous examples are, of course, Nazi Germany and the Soviet Union, but appointing Justices committed to the government ideology is common in democratic countries as well. In 1910, for example, King Edward VII (and after his death King George V) threatened to appoint liberal Lords to overcome the conservative majority in the House of Lords that consistently blocked the government fiscal policy.

[8] A prominent example is the signing of the *Magna Carta Libertatum* on June 15, 1215 by King John (Lackland), who actually capitulated to explicit rebellion threats by his Barons. The King preferred to delegate some power to other institutions to avoid a revolt that would probably end in his beheading (like King Charles I, King Louis XVI of France and Robespierre few years later).

that the public is sophisticated enough to observe that courts rather than the government take the important policy decisions, but not sophisticated enough to realize that the judiciary depends on the executive to enforce its rulings, and the executive can simply ignore, manipulate or discipline the judiciary. While Stephenson recognizes that "independent judiciary, secured by some other mechanism, might be useful to politicians who want to avoid blame", he insists that "this cannot constitute a primary explanation for why judicial independence exists unless one is willing to make dubious assumptions about the rationality of political constituents". Stephenson also rejected the claim that the public punishes politicians that defy the courts even when the verdicts are against the public opinion.

The model presented below addresses this criticism. Indeed, the incumbent agent who delegates some veto power to the advisor can ignore his advisory, but contrary to Stephenson's claim, this is costly and probably risky[9]. The collusion between the incumbent agent and the advisor is *implicit* and evolves in a *non-cooperative* game equilibrium with no bargaining. In stationary equilibrium, the incumbent agent and the advisor manage to manipulate the principal and divert him from his favorite policy due to incomplete and asymmetrically distributed information, not his limited sophistication.

The analogy is straightforward. Elected politicians create a misrepresentation of *separation of powers, checks and balances,* etc., which as Stephenson correctly noted they could bypass when they want to, with certain costs and risks. The politicians cooperate with the "independent" judiciary as long as deviation from their elections commitments cost them less than striking the judiciary's rulings down. The *separation of powers* and *checks and balances* façade enables them to avoid accountability and divert public criticism from them to unelected and non-accountable officials who they use as scapegoats or lightning rod (in return for some rent). Indeed, in equilibrium the constituent naively adopts two false beliefs: (a) that the incumbent politicians and the unelected officials are faithful; (b) that the unelected officials' activism is the last democratic bastion against the elected politicians' "anti-democratic plots" (i.e., the fulfillment of elections promises). As explained above, this result does not stem from partial sophistication, but from partial and asymmetric information. The constituent is manipulated to attribute a probability greater than $\frac{1}{2}$ to the executive and judiciary faithfulness,

[9] The common denominator of all ignored verdicts mentioned above is that the government could assess that the public is strongly against them. President Lincoln took no political risk when he ignored Justice Taney ruling regarding the writ of *habeas corpus* for suspects in treason during the American Civil War. Similarly, the Israeli government took no political risk by ignoring the High Court ruling regarding the rights of the Galilee villagers, whose lands were given in the meantime to the surrounding *Kibbutzim*, and the same applies to all other cases enlisted in Karp report (see footnote 6). On the contrary, respecting those verdicts involved severe political risks. For further discussion on the costs and risks associated with fulfilment of political pre-election commitments see for example Gustafsson (2019), and references there.

and to believe that even if one governmental branch is unfaithful, the *separation of powers* principle ad the system of *checks and balances* work for the public interests.

The remainder of the article organized as follows: the subsequent section briefly surveys related literature. Section 3 presents the basic model and section 4 presents two extensions. One extension assumes memory and learning from experience, and the other assumes an honest and objective advisor. I show that the equilibria of the basic model are unchanged, but social welfare may worsen. Section 5 summarizes and discusses the results.

2. RELATED LITERATURE

The modern *separation of powers* principle is rooted in the writings of philosophers from The Renaissance and The Age of Enlightenment, e.g., Montesquieu (1977), Lock (1988), Calvin (1961), Kant (1971) Madison (1788) and others, but its origin trace back to ancient eras[10]. The classical rationale of this principle is normative, to create a competition in a monopolistic environment (Brennan & Hamlin, 1994), and avoid tyranny by dividing the power among several agencies and creating a system of checks and balances[11]. Thus, early studies of separation of powers and delegation, e.g., Persson, Roland, & Tabellini (1997), focused on the examination of constitutional provisions and institutional rules and actually begged the question (Stephenson, 2003). As Voigt and Salzberger (2002) noted, "rational legislators will only be ready to transfer competence if the costs connected with delegation are outweighed by the corresponding benefits", raising the positivist question, why powerful rulers would delegate powers to competitive or even contrarian institutions.

Researchers suggested a variety of rationalizations for the delegation puzzle[12]. Landes and Posner (1975) argued that delegation enhances political commitments' credibility. Fiorina (1982) claimed that the main motivation for delegation is blame-deflection, but in a later paper, (Fiorina, 1986), emphasized the efficiency consideration under uncertainty "given the complexity associated with modern governance" and argued that the main motivation is the politicians' seek to reduce risk and uncertainty regarding optimal policy[13]. Rogers (2001) argued that the legislature faces two sources of uncertainty, one regarding the preferences of

[10] See Aristotle's discussion of *mixed constitution* in *Politics* (IV.11.1295b4–6). In the Roman Republic, the governance power was divided between the Senate, the Consuls and the Assemblies (Polybius, *Histories, book 6, 11-13*). According to the Talmudic Law, the Sanhedrin functioned as a legislature and judiciary, while the King functioned as executive, and his executive discretion (e.g., declaration of war) was subject to the Sanhedrin approval (Mishnah, Sanhedrin Ch. 2 §2). The *mixed government* notion was raised again by John Calvin (1961).

[11] This reasoning repeats in the writings of Calvin (1961), Kant (1971) and other philosophers.

[12] For comprehensive surveys, see Aranson et Al. (1982), Bendor et Al. (2001) and Voigt and Salzberger (2002), Stephenson (2003) and more.

[13] Actually, Jethro mentioned this rationale concerning ancient governance as well (Exodus, 18, 13-26). See also Moe (1990), Stephenson (2003) and more.

the judiciary and the other regarding the state of the world and consequently the true outcome of a proposed legislation. Following Frankfurter (1924) and other law scholars, Rogers claimed that courts have an informational advantage over legislatures regarding the actual consequences of an enacted statute because legislators base on predictions while judges review laws post-factum. Thus, judicial veto coincides with politicians' interest "even when that judiciary is wholly policy-motivated". In fact, the post-factum judicial overruling of legislations is seldom, because usually, unpleasant interest groups appeal to the Supreme Court right after the enactment of a law, before its consequences are really known. Nevertheless, the main problem associated with Rogers' argumentation is its reliance on three critical assumptions: (a) The judicial review always coincides with the politicians' interests; (b) The judiciary always holds an informational advantage over the executive (even *post-factum*); (c) The executive is less competent to reexamine realized consequences of legislation than the judiciary. All three assumptions seem ad-hoc and definitely debatable[14].

Based on their observation that separation of powers in the political realm is *vertical* rather than *horizontal*, Brenan and Hamlin (1994) concluded: "the separation of powers holds the prospect of exploiting citizens more fully rather than offering any protection from exploiting government". Put differently, although the exercise of constitutional review by an independent and active judiciary is perceived commonly as contrary to the interest of incumbent politicians, they would support judicial review to overcome those obstructions and disrupt the status quo (Whittington, 2005)[15]. On the other hand, Laffont & Meleu (2001) argued that the *separation of powers* and *checks and balances* reduce corruption and the price of collusion-proofness, and added that the value of this institutional design is higher in developing countries and so is its implementation costs. However, they did not explain why politicians would be interested in this mechanism.

Early attempts to analyze the interaction between executives, legislature and judiciaries used the classical principal-agent model framework (Bendor, Glazer, & Hammond, 2001). Most of this literature, however, analyzed the pros and cons of *separation of powers* and *checks and balances*, taking their existence for granted. For example, Persson et al. (1997), applied the principal-agent framework to examine whether the separation principle works or not, why

[14] Rogers provided three reasons why courts are more informed than legislatures even post-factum, which I find unconvincing. However, my sever objection to this explanation is normative. Rogers quotes distinguished law scholars who supports his assertion that "policy making requires that legislatures and courts make empirical judgments regarding whether the law will achieve (or has achieved) its intended end at acceptable costs". Nevertheless, I simply cannot accept the radical activist notion that courts would void a democratically enacted law not because it explicitly contradicts the constitution but because the judges think it did not achieve its declared goals. To my nonprofessional legal opinion, such political considerations are legitimate for legislatures only.

[15] See also Gillman (2002), Hirschl (2008a), (2008b) and more.

is the threat of losing elections not sufficient to discipline an omnipotent executive or legislature and how should the separation of powers be designed. The authors pay special attention to achieving accountability through elections and separation of powers asserting, "This goal is shared widely by voters". Maskin and Tirole (2004) also claimed that the delegation enhances public officials' accountability. Unfortunately, none of these authors explained why powerful politicians would also be interested in enhancing accountability[16].

A variant of this argument raised by Laffont and Martimort (1999) who argued that separation of powers may serve incumbent politicians as a device against regulatory capture. This may explain the politicians' interest to impose a separation of powers on regulators, but not on themselves. The same applies to politicians' tolerance of judicial activism. Mishra and Anant (2006), for example, suggested that activism of one governmental branch result from inefficient functioning of other branches. The more efficient agency step into the functional sphere of the failing institution and extend its field of activities spontaneously. They show that in certain circumstances activism can raise social welfare, but usually not in developing countries. This kind of explanation is also unsatisfactory. It is very unlikely that only legislatures and executives are vulnerable to inefficiency, corruption, and nepotism, but never the judiciary[17]. The authors' description of the judicial activism development process in India resembles the process that took place in Israel, which was far from spontaneous[18].

As mentioned above, Stephenson (2003) rejected the blame-deflection hypothesis, arguing that the public knows that the executive and the legislature can easily ignore a judicial ruling. Instead, Stephenson (2004) suggested that that the courts' ability to issue controversial verdicts against other branches of government stems from public support, and provided conditions under which the public will force politicians to concede power to the judiciary. These assumptions seem not less ad-hoc than those criticized by Stephenson, and in particular, his assumption that ignoring a judicial verdict is costless. Stephenson also argued that independent

[16] See also Dewatripont and Tirole (1999), Laffont (2000) and more.

[17] Several Israeli journalist investigations revealed that nepotism in the highest level of the judiciary is incomparable to any other branch of the public sector. See for example, Azriel: "The Plea is Rejected, Regards to Mom" (Ha'aretz, October 10, 2005, Hebrew), Hovel: "Israel's Potential New Judges Include Candidates for Nepotism" (Ha'aretz, August 20, 2014). See also Friedman (2016) and Levitsky (2017).

[18] In both countries the court first allowed selected few cases of Public Interest Litigations (PIL) by various individuals and organizations to be heard to address certain issues highly in the public agenda and in the center of social consensus. Then, the Supreme Court has enlarged its reach and jurisdiction by both re-interpreting the constitution to expend the scope and content of various fundamental rights, and by moderating the requirement of *locus standi* for access to judicial remedies and redress. In recent years, the courts have used PIL for a much larger set of issues involving the environment, the practice of municipal corporations, protection of ancient monuments, fees and admission rules in educational institutions, rent control, allotment of goods and licenses, selection of Judges, the functioning of politicians and political parties among others. The authors added: "in many such instances, courts have sought to prescribe model of law and public policy outcomes. This can be viewed as a clear instance of judicial activism".

judicial review allows parties to minimize the risk associated with political competition, and in particular provides insurance against policy reversal by a future government. I am less acquainted with the political and judicial histories of other countries, but the relatively short history of my native country, Israel, debunks this hypothesis. Israeli Supreme Court manifested extraordinary virtuosic quibbling skills to justify any verdict tailored exactly according to the current political agenda of the judges even without any valid reference in the law on the one hand[19], and extreme formalism when judicial activism worked against the judges' political agenda, on the other hand[20]. Thus, insurance against policy reversals cannot explain Israeli politicians' tolerance of such radical, politically biased and inconsistent judicial activism[21].

Delegation of powers for blame-deflection relates, of course, to scapegoating, but in a different meaning. Usually, scapegoating refers to victimizing innocent individuals or groups and blaming them for failures and misconduct of others in order to escape accountability. For example, demagogues use to scapegoat real or imaginary entities like political rivals, minorities, the *deep state* or external enemies for all troubles, and in particular for consequences of their own decisions. Firms use to scapegoat their managers for losses or financial scandals caused by collectively accepted decisions; principals scapegoat their subordinates, etc. The common denominator of these examples is that the scapegoat is innocent and sacrificed against involuntarily in order to atone other peoples' sins[22]. Nevertheless, voluntary self-incrimination, sacrifice, and martyrdom are not exceptional phenomena. Jewish history, for example, is abundant of martyrs who voluntarily confessed for crimes they did not commit in order to save their communities from pogroms or deportations[23]. The scapegoating analyzed below, however, is different. I show that while a vulnerable agent delegates powers

[19] See for example Posner (2007), Bork (2010) and Friedman (2016). For a response, see Medina (2007).

[20] For example, although Chief Justice Dorit Beinisch was appointed to the Supreme Court by an interim government on December 25, 1995, she opposed Justice minister Daniel Friedman's initiative to appoint new Justices to the Court, claiming that an interim government is unauthorized to do so. The Supreme Court rejected appeals against the hasty negotiations with the Palestinians carried out by the interim government of Ehud Barak few days before general elections (in which he lost), but banned Benjamin Netanyahu's interim government from appointing a new General Commissioner for the police. The systematic judicial inconsistency of the Supreme Court due to its heavy left-wing political bias was probably a major factor in the dramatic decline in the Israeli public confidence in the judiciary. In 2019, only 18% of the public trusted the judiciary, the lowest rate since 2001 (Vigoda-Gadot, Mizrahi, & Cohen, 2019).

[21] Stephenson presented empirical evidence that indicates "a strong correlation between stable political competition and judicial independence, which is predicted by the political competitiveness theory but not by most other extant explanations of judicial independence". However, one must keep in mind that correlation cannot indicate the direction of causation, and the stability of the political competition is consistent with the predictions of the model analyzed below as well.

[22] On scapegoating, see for example Segendorff (2000), Winter (2001), Bilewicz & Krzeminski (2010), Gangloff, Connelly, & Shook (2016), Fratzscher et. Al. (2015), Miguel (2005) and more.

[23] From the endless list of examples, I chose the case of my Great grandfather, Rabbi Shlomo (Salamon) Schwarz, the main defendant in the Tiszaeszlár blood libel (1882), who voluntarily confessed for slaughtering a young girl for ritual purposes hoping to save the other 15 innocent defendants and his community. At the end of a long and stormy trial, he and all other defendants were totally acquitted, based on the testimonies of the Hungarian pathologists who conducted the autopsy of the girl's corpse lastly found in the river, and testified that she threw herself to the river and was not slaughtered at all.

to an invulnerable agent in order to use him as a lightning rod and avoid accountability, the invulnerable agent equilibrium strategy is to cooperate. In the extended version of the model, this process causes a continuous decline of the principal's trust in the incumbent agent that leads finally to his dismissal, the appointment of the challenger agent and a start of a new manipulation cycle. This process reminds Breton and Breton (1969) heuristic analysis of the factors that shape the "demand" and "supply" of social movements. Their basic idea is that individuals hold a *weltanschauung* (worldview, philosophy or ideology) about their situation and the factors responsible for it. When the gap between their perceptions and reality is "too big", they seek for a social change, and the demand creates a matching supply in the form of social entrepreneurs who use scapegoating to sell their ideological merchandise.

3. THE MODEL

3.1. Setting and Notation

Consider a recursive two-stage multi-period principal-agent game. The principal employs one agent (the incumbent), denoted I, committed to implement a certain policy preferred by the principal. An unemployed agent (the challenger), denoted C, seeks to replace the incumbent agent and take his job. For simplicity assume that all players are risk-neutral[24] and that both agents are indifferent regarding policy and interested only in the job wage, w[25]. However, the implementation of the principal's favorite policy incurs the incumbent agent a fixed cost of h. In order to save this cost, the incumbent agent delegates a limited veto power to an external advisor denoted A. The advisor may have different preferences than the principal regarding policy. Nevertheless, a *conservative* advisor recommends the principal's favorite policy faithfully, while an *activist* advisor may abuse his credibility to divert the incumbent agent's actions towards his own favorite policy.

Upon receiving the advisor's recommendation, the incumbent agent has to decide whether to comply and implement an alternative policy that the principal may evaluate as second best (at most) or to ignore. Each decision is risky, because if the principal trusts the advisor, he may dismiss a non-compliant agent and vice-versa. Anyway, the challenger agent exerts x_C in efforts to persuade the principal that the incumbent agent is unfaithful and it would be better

[24] Under risk-aversion the model is solvable for exponential utility functions only (Cornes & Hartley, 2003), thus the effect of risk-aversion on contestants' behavior is generally ambiguous. See for example, Hilmann and Katz (1984), Hilmann and Samet (1987), Van Long & Vousde (1987), Skaperdas and Gan (1995), Konrad & Schlesinger (1997), Corenes and Hartley (2003), (2010), Van Long (2013), and Eső & WhiteSource (2004). Nevertheless, although the main motivation for the risk-neutrality assumption is to ensure solvability of the model, I believe that this assumption is fairly realistic in political environments, and plausible under our primal assumptions that agents are indifferent regarding policy.

[25] Alternatively, assume that *w* includes the payoff of the agent from implementing his preferred policy.

for him, therefore, to replace the incumbent agent by the challenger. The incumbent agent exerts x_I to convince the principal that the opposite is true. The winning probability of agent $i \in \{I,C\}$ in this *confidence contest* is given by a Tullock (1980) Contest Success Function (CSF) $p_i(x_I, x_c)$, that satisfies $\partial p_i / \partial x_i > 0$ and $\partial p_i / \partial x_j < 0$, $i, j \in \{I,C\}$, $(i \neq j)$. p_i may be interpreted as a measure of agent i's manipulation skill or as the principal's Support Function in agent i (Tversky & Koehler, 1994). The principal reappoints his incumbent agent if his supports function exceeds the challenger's support function, and vice versa. Formally, define $\Delta p_t = p_{t,I} - p_{t,C}$ as the measure for the principal's relative satisfaction from his incumbent agent, and assume that the principal's *appointment rule* for period $t+1$, AR, is,

$$AR = \begin{cases} I & \Delta p_t \geq 0 \\ C & \Delta p_t < 0 \end{cases} \tag{1}$$

Let r_t denote the distance (in absolute values)[26] between the principal's favorite policy and the policy recommended by the advisor. A conservative advisor recommends a policy satisfying $r_t = 0$ while an activist advisor recommends $r_t > 0$. Naturally, the advisor's utility is a concave function of r_t. However, the advisor's utility is also affected by the principal's satisfaction measure, Δp_t. Thus, for simplicity, assume that the advisor's utility function is

$$\pi_{t,A} = \Delta p_t r_t , \tag{2}$$

which is, indeed, concave with respect to r_t.

The Contest Success Functions, $p_{t,I}$ and $p_{t,C}$ are given by

$$p_{t,I} = \frac{\mu_t x_{t,I}}{\mu_t x_{t,I} + x_{t,C}} \text{ and } p_{t,C} = \frac{x_{t,C}}{\mu_t x_{t,I} + x_{t,C}}, \tag{3}$$

where μ_t is the principal's period t *trust coefficient* in his incumbent agent. For simplicity, assume

$$\mu_{t,I} = \frac{1}{1+\beta r_t}, \ (\beta > 0). \tag{4}$$

Namely, as the advisor is more activist (r_t is higher) the principal feels that "something's wrong", and this feeling affects $p_{t,I}$ and $p_{t,C}$ accordingly. Obviously, since by our assumptions both agents are indifferent regarding policy, being manipulative and saving the fixed cost h is a dominant strategy for the incumbent agent, implying that the contemporary expected payoff

[26] That is, we do not distinguish between "leftist" or "rightist" bias of the advisor.

of the incumbent agent at period t is,

(5) $$\pi_{t,I} = p_{t,I} w - x_{t,I}.$$

A victory of the challenger agent in the confidence contest means that the principal insists on his favorite policy and does not trust the advisor anymore, implying that the winning challenger will have to exert h in order to implement the principal's favorite policy (at least at his first period in office). The challenger agent's contemporary expected payoff at period t is therefore,

(6) $$\pi_{t,C} = p_{t,C}(w-h) - x_{t,C}.$$

3.2. The Course of the Game

The game is recursive multi-periodical and played ad-infinitum. Each period consists of two stages. At the first stage of period t, the advisor sets his optimal r_t and recommends the corresponding policy. At the second staequation reference goes herege, the agents are engaged in a contest over the principal's confidence, and the winner is appointed for period $t+1$ according to the principal's appointment rule (AR).

Naturally, we focus our attention on stationary equilibria, thus we omit period subscripts. We compute the stationary equilibrium using the standard backward induction technique. That is, first we analyze the second stage equilibrium levels of x_I^* and x_C^*, given r^* set by the advisor in the first stage[27]. Then we go back to the first stage and calculate the optimal advisor's r^* given the anticipated equilibrium levels of x_I^* and x_C^*.

3.2.1. The Second Stage Equilibrium

Given r^* set by the advisor in the first stage, differentiating (5) and (6) with respect to x_I and x_C, respectively, yields the first-order conditions,

(7)
$$\frac{\partial \pi_I}{\partial x_I} = \frac{\left(\beta r^* + 1\right) w x_C - \left[\left(\beta r^* + 1\right) x_C + x_I\right]^2}{\left[\left(\beta r^* + 1\right) x_C + x_I\right]^2} = 0$$
$$\frac{\partial \pi_C}{\partial x_C} = \frac{\left(\beta r^* + 1\right)\left(w - h\right) x_I - \left[\left(\beta r + 1\right) x_C + x_I\right]^2}{\left[\left(\beta r^* + 1\right) x_C + x_I\right]^2} = 0.$$

Solving (7) simultaneously for x_I and x_C yields,

[27] The possible existence of infinite number of equilibrium strategies is common in infinitely repeated games (Fudenberg & Tirole, 1991). However, strategy profiles other than those discussed in this article would be more complex for the parties to implement and yield lower payoffs. Thus, restricting attention to these strategies, although not theoretically required, is reasonable given the purposes of the analysis.

$$x_I^* = \frac{\left(\beta r^* + 1\right)\left(w-h\right)w^2}{\left[\beta r^*\left(w-h\right)+2w-h\right]^2} \quad \text{and} \quad x_C^* = \frac{\left(\beta r^* + 1\right)\left(w-h\right)^2 w}{\left[\beta r^*\left(w-h\right)+2w-h\right]^2}. \tag{8}$$

Inserting x_I^* and x_C^* back into (3) yields,

$$p_I^* = \frac{w}{\beta r^*\left(w-h\right)+2w-h} \quad \text{and} \quad p_C^* = \frac{\left(\beta r^* + 1\right)\left(w-h\right)}{\beta r^*\left(w-h\right)+2w-h}, \tag{9}$$

implying that,

$$\Delta p^* = \frac{h-\beta r^*\left(w-h\right)}{\beta r^*\left(w-h\right)+2w-h}. \tag{10}$$

3.2.2. The First Stage Equilibrium

Going back to the first stage and inserting (10) in (2) yields,

$$\pi_A = \left[\frac{h-\beta r\left(w-h\right)}{\beta r\left(w-h\right)+2w-h}\right] r \tag{11}$$

Notice that by (11) and our assumptions, for $r \geq 0$

$$\pi_A \geq 0 \Leftrightarrow r^* \leq \bar{r} = \frac{1}{\beta}\left(\frac{h}{w-h}\right). \tag{12}$$

Namely, the optimal r^* is bounded by $\bar{r}$. Differentiating (11) with respect to r yields,

$$\frac{\partial \pi_A}{\partial r} = \frac{\left(2w-h\right)\left[h-2\beta r\left(w-h\right)\right]-\left[\beta r\left(w-h\right)\right]^2}{\left[\beta r\left(w-h\right)+2w-h\right]^2}. \tag{13}$$

Solving (13) for r yields[28],

$$r^* = \frac{\sqrt{2w\left(2w-h\right)}-\left(2w-h\right)}{\beta\left(w-h\right)}. \tag{14}$$

It follows that the stationary equilibrium payoffs are,

$$\begin{aligned}
\pi_I^* &= \frac{w^2-2\left(2w-h\right)}{2\left(2w-h\right)}, \\
\pi_C^* &= \frac{\left[\sqrt{2w\left(2w-h\right)}-2\left(2w-h\right)\right]\left(w-\sqrt{2w\left(2w-h\right)}\right)\left(w-h\right)}{\left(2w-h\right)\sqrt{8w\left(2w-h\right)}}, \\
\pi_A^* &= \frac{h\left[2w-\sqrt{2w(2w-h)}\right]-\left(2w-\sqrt{2w(2w-h)}\right)^2}{\beta\left(w-h\right)\sqrt{2w(2w-h)}} = \Delta p^* r^*.
\end{aligned} \tag{15}$$

[28] The second derivative of (11) is $\frac{\partial^2 \pi_A}{\partial r^2} = \frac{-4\beta w(w-h)(2w-h)}{[\beta r(w-h+2w-h)]^3} < 0$, implying that r^*, indeed, maximizes π_A.

Proposition 1:

In stationary equilibrium, the principal is manipulated by the incumbent agent I.

Proposition 1 implies that in stationary equilibrium the advisor chooses r^* such that $\Delta p^* > 0$ to ensure that the incumbent compliant agent succeeds in manipulating the principal and is reappointed to the subsequent period.

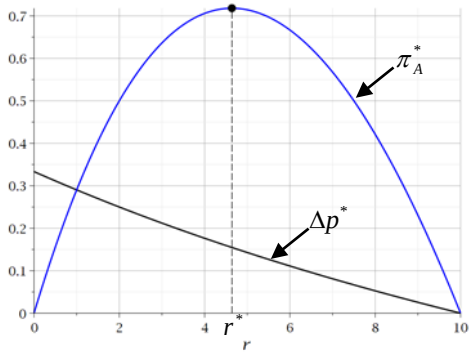
Proof:

By (12) $\pi_A \geq 0 \Leftrightarrow r^* \leq \bar{r}$. Subtracting $\bar{r}$ from (14) yields,

(16) $$r^* - \bar{r} = \frac{\sqrt{2w(2w-h)} - 2w}{\beta(w-h)} < 0. \blacksquare$$

Figure 1 presents the simulations of Δp^* and π_A^* as functions of r^* and illustrates that at r^* (where π_A^* reaches it's maximum) $\Delta p^* > 0$, implying that in a stationary equilibrium the incumbent manipulative agent is reappointed[29]. The important point here is that in this equilibrium there is no explicit collusion between any agent and the advisor. The stationary manipulative equilibrium stems mainly from the incumbent agent incentive to comply with the manipulative advisor and the informational asymmetry structure of the game.

Figure 1



3.3. Comparative Statics

In this subsection, we apply simple comparative statics exercises. First, we analyze the effect of the agent wage (w) on loyalty and the principal's scrutiny ability.

Proposition 2:

If w *is large enough, raising wages reduces agents' loyalty but enhances the principal's scrutiny ability.*

Proof:

Differentiating (8) with respect to w yields,

[29] All simulations presented in this article are calibrated for $\beta = 0.1$ and $w = 10$.

$$\frac{\partial x_I^*}{\partial w}=\frac{w(\beta r+1)\left[2h^2(\beta r+1)+(\beta r+2)w^2-3h(\beta r+1)w\right]}{\left[\beta r(w-h)+2w-h\right]^3}$$
(17)
$$\frac{\partial x_C^*}{\partial w}=\frac{(w-h)(\beta r+1)\left[h^2(\beta r+1)-(2\beta r+1)wh+w^2(\beta r+2)\right]}{\left[\beta r(w-h)+2w-h\right]^3}$$

The signs of the derivatives in (17) are indeterminate. Nevertheless, it can be verified that

$$\lim_{w\to\infty}\frac{\partial x_I^*}{\partial w}=\lim_{w\to\infty}\frac{\partial x_C^*}{\partial w}=\frac{\beta r+1}{(\beta r+2)^2}>0 \quad (18)$$

implying that if w is large enough, raising wages reduces loyalty. On the other hand, differentiating (9) with respect to w yields,

$$\frac{\partial p_I^*}{\partial w}=\frac{-h(\beta r+1)}{\left[r(w-h)\beta+2w-h\right]^2}<0 \text{ and } \frac{\partial p_C^*}{\partial w}=\frac{h(\beta r+1)}{\left[r(w-h)\beta+2w-h\right]^2}>0\,. \blacksquare \quad (19)$$

Proposition 2 contradicts common wisdom and probably stems from our risk-neutrality assumption[30]. In a similar vein, we analyze the effect of the advisor's strategy (r) on loyalty and the principal's scrutiny.

Proposition 3:

The advisor's strategy, r, reduces loyalty but enhances the principal's scrutiny ability.

Proof:

Differentiating (8) with respect to r yields,

$$\frac{\partial x_I^*}{\partial r}=\frac{-\beta^2w^2(w-h)^2(r^*-\bar{r})}{\left[\beta r^*(w-h)+2w-h\right]^3} \text{ and } \frac{\partial x_C^*}{\partial r}=\frac{-\beta^2w(w-h)^3(r^*-\bar{r})}{\left[\beta r^*(w-h)+2w-h\right]^3}\,. \quad (20)$$

Obviously, since $r^*-\bar{r}<0$ both derivatives are positive. On the other hand, differentiating (9) with respect to r yields,

$$\frac{\partial p_I^*}{\partial r}=\frac{-\beta w(w-h)}{\left[\beta r(w-h)+2w-h\right]^2}<0 \text{ and } \frac{\partial p_C^*}{\partial r}=\frac{\beta w(w-h)}{\left[\beta r(w-h)+2w-h\right]^2}>0\,. \blacksquare \quad (21)$$

4. EXTENSIONS OF THE BASIC MODEL

4.1. Learning and Memory

Suppose that the principal has memory and modifies his beliefs according to his experience from previous periods. The most simple way to embed the principal's experience and learning in this model is to assume that observing $r_t^*>0$, the principle trust coefficient in his incumbent agent decreases over time. Namely,

[30] Unfortunately, the effect of risk-aversion on contestants' behavior is ambiguous. See footnote 24.

(22) $$\tilde{\mu}_I(t)=\frac{1}{t(1+\beta r)},\ (\beta>0).$$

Proposition 4:

The principal is manipulated in T periods in a cycle of $T+1$ periods.

Proof:

Solving the contemporary problem of period t for the agents yields,

(23) $$\tilde{x}_I^*(t)=\frac{(\beta r+1)(w-h)tw^2}{\left[t(\beta r+1)(w-h)+w\right]^2},\ \tilde{x}_C^*(t)=\frac{(\beta r+1)(w-h)^2tw}{\left[t(\beta r+1)(w-h)+w\right]^2},$$

implying that

(24) $$\Delta\tilde{p}(t)=\frac{w-t(\beta r+1)(w-h)}{w+t(\beta r+1)(w-h)}.$$

Going back to the first stage and inserting (24) into (2) yields,

(25) $$\tilde{\pi}_A(t)=\left[\frac{w-t(\beta r+1)(w-h)}{w+t(\beta r+1)(w-h)}\right]r.$$

implying that the maximal value of $\tilde{r}(t)$ is,

(26) $$\bar{\tilde{r}}(t)=\frac{w-(w-h)t}{\beta t(w-h)}.$$

Solving the advisor's first-stage optimization problem yields

(27) $$\tilde{r}^*(t)=\frac{\sqrt{2w\left[(t+1)w-ht\right]}-(w-h)t-w}{\beta t(w-h)}$$

From (27) we obtain,

(28) $$\frac{\partial\tilde{r}^*(t)}{\partial t}=\frac{\left(\sqrt{2w\left[(t+1)w-ht\right]}-(t+2)w+ht\right)w}{\beta t^2(w-h)\sqrt{2w\left[(t+1)w-ht\right]}}<0$$

implying that there exists a T satisfying $\tilde{r}^*(T)=0$. Solving (27) for T yields,

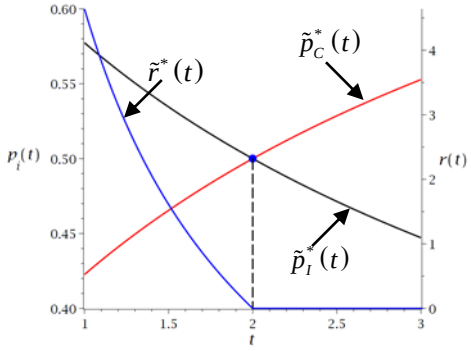
(29) $$T=\frac{w}{w-h}$$

At the beginning of every period t $(t<T)$, the advisor sets his optimal $\tilde{r}^*(t)$ which declines with t. At period T, $\tilde{r}^*(T)=\Delta\tilde{p}(T)=0$, implying that at period T the winning probabilities of both agents equal $\frac{1}{2}$. Nevertheless, by (1), the incumbent agent still wins the confidence contest at period T and loses at period $T+1$, when the challenger agent is appointed. By our assumptions, the winning challenger must exert h at $T+1$, thus

$\tilde{r}^*(T+1)=0$ and the new incumbent (former challenger) wins again. Since at period $T+2$ the principal fully trusts his agent, the advisor may resume his activist advisory scheme and the process regains until period $2T$, when the winning probabilities of the two agents are equalized again, and so on and so forth. Consequently, there is only one period in a cycle of $T+1$ periods in which the principal is not manipulated. ■

Figure 2 presents simulations of $\tilde{p}_I^*(t)$, $\tilde{p}_C^*(t)$ and $\tilde{r}^*(t)$ demonstrating these results.

Figure 2



4.2. Lobbying on the Advisory

Suppose that the judiciary decisions are always politically neutral and unbiased. Honest activist judges would never abuse their power to impose their personal political views and beliefs on the public. They intervene in political decisions if and only if there are truly convinced that their intervention, indeed, enhances social welfare. Activist judges would discuss political petitions that conservative judges reject due to lack of *locus standi*. Nevertheless, they are still objective and arbitrate professionally between adversary litigants who claim to represent the "true" public interest. In this subsection, I demonstrate that the qualitative results of the basic model hold even under such divine judges.

Suppose that the advisor is neutral regarding policy. The advisor forms his opinion about the "optimal" policy objectively, based on evidence received from lobbyists representing interest groups. Each lobbyist exerts resources to convince the advisor to recommend his favorite policy[31], implying that the advisory is actually auctioned through an all-pay-auction[32].

Consider a set $M=\{1,..,m\}$ of risk-neutral lobbyists, competing in an all-pay-auction over the advisory. As before, denote the distance between the principal's and lobbyist j's favorite

[31] For example, suppose that the principal's optimal policy is to drive through a free highway, and the lobbyists are owners of toll roads who exert resources in order to convince the advisor to recommend their own toll road.

[32] At this point, we assume that the advisor is perfectly neutral, and the lobbying expenditures are not transferred to him (e.g., litigation costs etc.). Modeling litigations as contests or all-pay-auctions is common in the literature (Schwarz, 2012). Bellow we relax this assumption and analyze social welfare under the assumption that the advisor seeks to maximize his revenues.

policies by r_j, and suppose that r_j is the lobbyist's benefit from applying his favorite policy. Since by (12) $r_j^* \le \bar{r} = \frac{1}{\beta}\left(\frac{h}{w-h}\right)$, assume that r_j is uniformly distributed over $[0,\bar{r}]$[33]. If lobbyist $j \in M$ wins, the advisor recommends r_j. Denote the lobbying investment of lobbyist $j \in M$ by b_j and the profile of the bid by $\mathbf{b} = \{b_j\}_{j=1}^m$. Following the literature, we concentrate on symmetric pure-strategy equilibrium.

4.2.1. The Course of the Game

As in the basic model, the game is a recursive two-stage multi-period game. The difference is in the advisor's *modus operandi*. At the first stage of each period, every lobbyist $j \in M$ sets his optimal r_j^* and submit his corresponding bid, $b_j\left(r_j^*\right)$ in a sealed-bid first-price advisory all-pay-auction, and the advisor recommends the favorite policy of the winner[34]. As in the basic model, in the second stage, the incumbent and the challenger agents are engaged in a contest over the principal's confidence whose appointment rule is given by (1), implying that the payoff functions of the incumbent and the challenger agents are given by (5) and (6), respectively. Here again, we apply the standard backward induction technique, and since we focus on stationary equilibria we omit period subscripts.

The second stage

The second stage of this game is identical to the second stage of the basic model. Namely, given the first stage winning r_j^*, each agent set his optimal $x_i^*\left(r_j^*\right)$, $i \in \{I,C\}$. Thus, the equilibrium levels of $x_I^*\left(r_j^*\right)$ and $x_C^*\left(r_j^*\right)$ are given by (8), and the derived equilibrium winning probabilities, p_I^* and p_C^*, given by (9).

The First Stage

Going back to the first stage given the anticipated values of x_I^* and x_C^*, the expected *prior* payoff of lobbyist $j \in M$ from winning the first-stage advisory auction is,

$$\pi_j = \Pr\left(b_j = \max \mathbf{b}\right)\left(\Delta p r_j - b_j\right) \tag{30}$$

where $\Pr\left(b_j = \max \mathbf{b}\right)$ is the winning probability of lobbyist $j \in M$ in this all-pay-auction.

[33] Both the risk-neutrality and the uniform distribution assumptions are common in the literature on auctions since Vickery (1961). These assumptions have the advantage of making the exposition simple and easily applicable to an experimental setting (Asker, 2000).

[34] In case of two or more equal highest bids, the winner is chosen randomly.

Under our assumption of uniform distribution of r_j, $\Pr\left(b_j = \max \mathbf{b}\right) = r_j^{m-1}$. We solve the optimization problem of lobbyist $j \in M$ using the indirect method prevailing in the literature[35]. By the envelope theorem, if b_j is the maximization variable and r_j is a varied parameter, differentiating (30) with respect to r_j yields $\pi_j' = \Delta p r_j^{m-1}$, thus,

$$\pi_j = \int_0^{r_i} \Delta p r_j^{m-1} dr_j \,. \tag{31}$$

From (30) and (31) we obtain,

$$b_j^* = \left(\frac{m-1}{m}\right) \Delta p r_j^* \,. \tag{32}$$

Lemma 1:

In stationary equilibrium $\forall j \in M \; r_j^* = r^*$ *given in (14).*

Lemma 1 states that the optimal policy of any winner lobbyist $j \in M$ is independent of his private evaluation, and equals the optimal policy of advisor in the basic model.

Proof:

From the winning lobbyist's point of view, the bid paid in the advisory auction is a sunk-cost and from now on, his payoff depends on the victory of the incumbent agent in the second-stage confidence contest. Hence, the *posterior* payoff function of the winning lobbyist is

$$\pi_j = \Delta p r_j^*, \tag{33}$$

which is identical to the basic model advisor's payoff function (2), implying that the optimal r_j^* of the winning lobbyist is given by (14). ■

Proposition 5:

The stationary equilibria of this model are identical with those of the basic and extended models.

Proposition 5 states that the pick of the winning lobbyist through judicial litigation contest does not affect the stationary equilibria of the basic and the extended model with memory and learning. Consequently, the dynamic paths of r^*, x_I^* and x_C^*, respectively, are unchanged.

Proof:

Stems from Lemma 1 and the proofs of Proposition 1 and Proposition 4, respectively. ■

[35] See Krishna (2009) Ch. 2.

4.2.2. Social Welfare

To analyze the effect of an activist advisor on welfare we distinguish between perfectly and partially neutral advisors. A perfectly neutral advisor has no preferences on policies and receives nothing from the lobbying expenditures. A partially neutral advisor has no preferences regarding policy but receives lobbying transfers. This does not imply necessarily that the activist advisor is corrupt, as lobbying transfers are not necessarily bribes, and may take the form of prestige, power etc. Thus, the activist advisor seeks to maximize his lobbying revenues, implying that the winning probability of a lobbyist in the advisory contest increases monotonically with his lobbying expenditure. We will see in this subsection that although by Proposition 5 the differences between this version of the model and the version analyzed above seem semantic, they affect social welfare.

A narrow definition of social welfare takes into account the principal's welfare only. A wider view would include also the welfare of the advisor, the agents, and the lobbyists. However, since $r_j^* = r^* \ \forall j \in M$, the principal's and the agents' welfare is identical in all models. The difference may stem from lobbying expenditures and the advisor's welfare.

The classification of lobbying expenditures as social waste is controversial[36]. However, if lobbying expenditures are perceived as social waste, then objective activist advisory lowers social welfare unequivocally. If lobbying expenditures are not social waste, then the question is how the lobbying contest affects the advisor's welfare compared with the above models. As shown below, although the objective advisor performs worse in terms of social welfare, the advisor would prefer it, and this may explain why activist judges prefer it too.

Proposition 6:

The partially neutral advisor's equilibrium payoff is higher than the uninvolved advisor's payoff.

Proof:

Inserting (14) and (9) into (32) yields,

$$b_j^* = \Delta p^* r^* \left(\frac{m-1}{m} \right), \tag{34}$$

implying that the expected total lobbying expenditures in the advisory auction are,

$$E_A = \sum_{j=1}^{m} \int_0^{\bar{r}} b_j^* r_j^{m-1} dr_j = \frac{h(m-1)\left(2w - \sqrt{2w(2w-h)}\right)\left[\sqrt{2w(2w-h)} - (2w-h)\right]}{\beta^2 (w-h)^2 \sqrt{2w(2w-h)}}. \tag{35}$$

[36] See Tullock (1967), Nitzan (1994), Che and Gale (1998), Tullock (2001), Epstein & Nitzan (2007) and more.

Combining(10), (12) and (14) with (35) implies

(36) $$E_A = \Delta p^* r^* \bar{r}\left(m-1\right).$$

From (36) and (15) we obtain,

(37) $$E_A - \pi_A^* = \Delta p^* r^* \left[\bar{r}\left(m-1\right)-1\right] > 0,\ \forall m > 1\,.\ \blacksquare$$

By (35) E_A increases linearly in m, $\left(\lim_{m\to\infty} E_A = \infty\right)$, thus the advisor is incentivized to drive m up as possible. This prediction is compatible with the tendency of activist judiciaries to increase the number of potential petitioners, for example by stretching the *locus standi* to its legal limit and beyond and in fact, almost soliciting appeals and petitions. Another prediction that stems from Proposition 6 is that activist judiciaries would prefer that petitions against the constitutionality of legislation brought in front of "professional" rather than Constitutional courts. Constitutional Courts are political bodies consist of judges who benefit directly from the implementation of their favorite policies, while "professional" courts are allegedly "objective" and neutral.

5. SUMMARY AND DISCUSSION

In this article, I analyzed the delegation puzzle; voluntary concession of some governance power by powerful politicians in favor of competing or even contrarian governmental agencies, knowingly that they might use the delegated power to hamper the politicians' ability to fulfill their political commitments. Based on Fiorina's (1982) *blame-deflection hypothesis*, I argue that elected vulnerable and accountable Machiavellian politicians use a façade of *separation of powers* and *checks and balances* to divert public criticism and avoid accountability, while the invulnerable officials serve as their lightning rod in return for some rent.

I developed a stylized two-stage multi-period recursive principal-agent model, with one principal and two agents. One agent, the incumbent, employed by the principal, while the other, the challenger, seeks to replace the incumbent agent and take his job. The incumbent agent delegates a limited veto power to an external independent advisor who can be either conservative or activist, but can ignore his veto when he deems it appropriate. Each decision of the incumbent agent, however, involves risk and costs. Ignoring the advisor's recommendation incurs the incumbent agent a fixed cost, but it is also risky because if the principal trusts the advisor he would dismiss a non-compliant agent. On the other hand, a compliant agent also faces a similar dismissal risk if the principal does not trust the advisor. In the first stage of each period, the advisor sets his optimal advisory, and in the second stage, the agents are engaged in a contest on the principal's confidence, given the advisor's recommendations. I showed that in a stationary subgame perfect equilibrium of the basic

model, the incumbent agent manipulates the principal and consequently reappointed recursively. I then extended the model in two directions. First, I showed that if the principal has memory and learns from previous periods' experience, a manipulation cycle is created. Second, I showed that if the activist advisor sells his advisory in an all-pay-auction (as I modeled judicial litigation) the qualitative results are unchanged. However, the advisor's welfare is higher while social welfare is lower[37].

The model addresses Stephenson (2003) criticism on the blame-deflection hypothesis and illustrates how the politicians manage to manipulate their constituents even when their voters know that the alleged *separation of powers* and *checks and balances* are, in essence, fictitious and artificial, as the politicians can strike down any judicial ruling when they want to. The collusion between the allegedly separated governmental branches is *implicit* and evolves with no bargaining in a *non-cooperative* subgame-perfect equilibrium. The manipulated constituent is neither irrational nor unsophisticated or naïve. On the contrary, the constituent probably suspects the executive as well as the legislature, the bureaucracy, and the judiciary. The politicians' ability to manipulate the constituent repeatedly stems from incomplete and asymmetrically distributed information. The so-called *separated* governmental agencies exploit their informational advantage over the constituent within the limits of the constituent's trust and reappointment rule.

The model has several interesting predictions, each requires empirical testing but two of them deserve a brief mentioning. First, if the advisor's welfare in the auctioned advisory model increased with the number of lobbyists, the advisor would encourage bidding. Analogously, activist judiciaries would encourage potential petitioners in order to inflate the petitions' number up to its logistical limit, and even "solicit" petitions. Activist judiciaries would also expand the *locus standi* to its legal limit and beyond, and do everything they can to minimize threshold prices that may deter potential petitioners even if they do not have *locus standi* according to the conservative interpretation of the term. While the Israeli Supreme Court behavior in the last four decades seems to support this hypothesis, a comprehensive empirical test is required[38].

Second, the model predicts a positive correlation between political stability and public confidence in the unelected branches of the government (judiciary, bureaucracy, etc.). This

[37] The comparative statics analyses show that higher wages reduce politicians' loyalty, that the judiciary's effect on loyalty is ambiguous and that both enhance the constituent's scrutiny ability. Apparently, these results critically depend on the risk-neutrality assumption.

[38] On the development of the Israeli judicial activism, see for example Barak (2003) and Friedman (2016). As Chief Justice, Barak blocked several times political initiatives to establish a Constitutional Court in Israel, and even came to the Knesset Committee as a lobbyist in a very exceptional and weird gesture.

prediction requires its own empirical testing which I hope to conduct soon. Nevertheless, a comparison between the Italian and Israeli political systems is instructive. The 67 governments in post-war Italy from 1945 to 2020, compared with the 35 governments Israel had since its establishment in 1948 to 2020, imply that the Israeli political system is much more stable than the Italian is. Apparently, post-war Italian politicians could not hide behind the bureaucracy or the judiciary, because the Italian public trusted none of these governmental branches more than it trusted the executive. No wonder, therefore, the Italian Constitution does not adhere to the separation of powers and checks and balances. Instead, it emphasizes the value of political stability.

Nevertheless, comparisons of governments' turnover rates may be misleading. It is essential to distinguish between genuine political upheavals and purely personal changes in the staffing of ministries. A genuine political upheaval occurs when the ruling power moves from the ruling party to a hitherto opposition party. Replacement of ministers (including the prime minister or even the president) with others while the ruling party continues to reign, does not constitute a real political upheaval. Contrary to the governments' turnover rates, a comparison of the political upheavals in the two countries exhibits similar political patterns. All coalitions in Italy from 1945 to 1981 where dominated by the Christian-Democratic party. Between 1981 and 2020, Italy experienced fifteen political upheavals, along with a continuous decline in public confidence in the judiciary[39]. Similarly, between 1948 and 1977 Israel was ruled by socialist coalitions dominated by the Labor party. The first political upheaval in Israel occurred in 1977, following the electoral victory of the right-wing Likud party headed by Menachem Begin that dominated all coalitions until 1992[40]. However, from 1992 to 2020 Israel experienced six political upheavals. The growing instability process parallels the growing judicial activism manifested by the Israeli Supreme court. During its first four decades, the Israeli High Court rejected out of hand petitions by petitioners without *locus standi*, manifested fair conservatism and restraint and consequently enjoyed the highest public confidence compared to other governmental branches. Chief Justice Aaron Barak's declaration of the *Constitutional Revolution*[41] in 1992 marked the eruption of unrestrained judicial activism.

[39] According to the ERCAS report (2015), the Italian public trust in the courts in 2013 was 12 % (a decline of 15% since 2008), and the public trust in the government at that year was 11% (a decline of 14% since 2008).

[40] Due to the political dead end following the 1984 general elections, the Likud and the Labor parties formed a national unity government, agreeing that both party leaders, Yitzhak Shamir and Shimon Peres, hold the post of the Prime minister for two years each.

[41] The *constitutional revolution* is the name given by Chief Justice Barak to the enactment of two *Basic Laws*: Human Dignity and Liberty and Freedom of Occupation. The first was enacted by a minority of the Knesset members (32 in favor 21 against, out of 120 Knesset members). Nevertheless, Barak interpreted them as having a constitutional status that empowers the Supreme Court as a constitutional court, authorized to void any Knesset law enacted by any majority.

Chief Justice Barak interpreted two *Basic Laws*, especially the Human Dignity and Liberty Act (approved by 32 MK's against 21, out of 120 MK's), as having constitutional status. Consequently, The High Court crowned itself as a Constitutional Court and empowered itself to void any Knesset law enacted by any majority without any legal basis in the law or even clear predetermined criteria[42]. In fact, the single criterion that emerged from its rulings is the unelected judges' private values, beliefs, and worldviews. No wonder that since 1992 the Israeli public trust in the judiciary declined continuously, while the call for limiting its power gained increasing public support[43], and the politicians' *blame deflection* ability decayed.

As mentioned above, the model analyzed in this article is stylized, and the Israeli process described in the previous paragraph highlights one of its limitations. According to the model, the judiciary is expected to restraint its rulings in order to keep the collaborating politician in office. The increasing judicial arrogance and the consequential decline in public confidence and destabilization of the political system seem to contradict the model predictions. However, at least in one case, the political upheaval coincided with the judiciary interest. That happened when Prime Minister Ehud Olmert appointed Daniel Friedman as minister of justice. Friedman, a prominent Israeli professor of law, was known for his severe criticism of the judiciary, led contrarian policies and planned overwhelming reforms.

Nevertheless, these limitations of the stylized model indicate several potential directions for further research. One is the effect of uncertainty about the limits of the principal's confidence, his reappointment rule, and the specification of his support functions. A second potential path refers to the effect of alternative informational structures. The model analyzed above assumed (as usual in the principal-agent literature) that the informational asymmetry refers to agents' actions. However, information asymmetry may refer to a variety of other variables (e.g., costs, benefits, preferences, state of the world, policy results, etc.). Another potential direction for further research is the effect of political culture. The model analyzed above assumed that all political upheavals conducted democratically and only the executive is subject to replacement while unelected officials remain in their positions. Real-world governments, however, are overthrown also through a popular uprising, revolutions, coups and even civil wars, which may replace the judiciary and bureaucracy as well. Actually, new governments in some democratic countries replace the bureaucracy (but not the judiciary) immediately. In others, all governmental agencies are elected (either directly by the constituents or indirectly by the executives and approved by the legislatures). It follows that

[42] It should be emphasized that no section in any Israeli law empowered any court to void a Knesset law.
[43] See footnote 20 for references.

contrary to our simplifying assumptions, there might be some correlation between the preferences of the legislature, the executive and the judiciary, which opens a promising path to further research. I conjecture that these suggested research paths would support some supplemental explanations for the delegation puzzle, but none of them would debunk the blame-deflection hypothesis.

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