Essays on (In)dependence of Judiciary

by

Nona Karalashvili

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Supervisor: Prof. Peter Grajzl

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Abstract

I analyze choice made over dependent and independent judiciary emerged through interactions of the judiciary and other branches of the government. Prevailing judicial institution is modeled from two different standpoints. In Part I, the government decides whether to give up power over justice. I explore deviations of governmentally chosen institutional arrangement from the efficient one. In case the government is able to fully align preferences of judges to its own, the dependent judiciary is chosen more frequently than it is socially efficient. However, constraint on actions of the government places its choice closer to the efficient institutional arrangement. In contrast, Part II explicitly allows the judiciary to either surrender or keep its independence, depending on which arrangement offers higher gains. Judicial independence is shown to be more likely to be observed under separated executive and legislature than under their unification. The theoretical results of the models are supported by existing empirical evidence and illustrative case studies.

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Preface

An independent judiciary is one that is not subject to the influence of any other actor(s) - be it the government or private litigants; independent judges are the sole authors of their own decisions (Kornhauser 2002). Such an isolation from ever-changing political or interest-group preferences increases the predictability of courts, thereby enhancing the value of the judiciary. Increase of certainty in court decisions occurs because predictions of judicial behavior can be based on relevant materials that are available to everyone (Landes and Posner 1975). More importantly, an independent judiciary provides credible commitment of the government to abide by the established set of rules allowing protection of property rights from arbitrary alteration by the sovereign, which in its turn increases expected returns from investment hence boosting incentive to invest. Therefore, the independence of justice, by enabling the government to credibly commit to private rights and exchange, constitutes an essential condition for growth of the economy (North and Weingast 1989).

Explanations of sources of judicial independence differ. Landes and Posner (1975) explore increase of rent that the government can extract from interest groups as a result of granting independence to the judiciary. Ramseyer (1994) and Hanssen (2004) argue that an independent justice enhances influence of incumbents on policy after the loss of the office. McNollgast (2006) examine the relation of the higher court judges with lower court ones modeling formation of judicial doctrine and discuss government interference to modify aspects of this relation for the purpose of affecting judicial principles. None of these authors consider the choice of institutional arrangement made by the government possessing different degree of power. Glaeser and Shleifer (2002) explored this but focused on the efficiency view of the judicial arrangement, which is not necessarily attainable. Padovano, Sgarra and Fiorino (2003) introduced the judiciary in the model of Persson, Roland and Tabellini (1997) but examined the accountability of the government treating

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the type of the courts already determined.

This thesis analyzes interactions between the judiciary and other branches of the government focusing on the choices made over dependent or independent judiciary under various types of the government. I build the study on works of Glaeser and Shleifer (2002), Persson, Roland and Tabellini (1997) and Padovano, Sgarra and Fiorino (2003). Key questions stimulating my research are the following. Is independence of judiciary from the government always a desirable establishment? When is an independent judiciary more likely to be observed?

The importance of the judicial independence and with it protection of property rights is commonly agreed among economists. Mahoney (2001), La Porta et al. (2004), Feld and Voight (2003) provide empirical support for the idea that judicial independence is decisive for the development of financial markets and economic growth. Klerman and Mahoney (2005) document that the notion of judicial independence had an effect not only on the reliability of the government debt, but on the private economy in general. Furthermore, several influential papers document how arrangement of the judiciary affects the decisions of the judges. Bohn and Inman (1996) check whether selection of the judges influences enforcement of constitutional restrictions on deficit finance; Hanssen (1999) verifies that judges are more willing to consider public utility disputes if are independent; Langer (2002) shows that conduct of supreme courts depends on the difficulty of passing constitutional amendments, the mechanism that is often used by the legislature in response to undesirable rulings of judges. Importantly, as Ramseyer and Rasmusen (1997) observe, politicians always prefer to pretend that the judiciary is independent; therefore any control exerted on the judges is necessarily indirect. Consequently, to understand observed variation in judicial independence among countries and in time, consideration of the power along with the incentives of the government to influence the judiciary is necessary.

I examine the choice of institutional arrangement from two different standpoints. In

part I, I model the sovereign who decides whether to give up power over the courts. This part is an extension of the model developed by Glaeser and Shleifer (2002). Since the supervision of the justice entails wide opportunities of using power for personal gains, the sovereign will be willing to give up control only if alternative institutional arrangement offers at least the same level of benefit. However, if the government is constrained in perfectly aligning the decisions of dependent judges to its own, it becomes more inclined to give up influence on the judiciary altogether. Such a limit on the actions of the sovereign places its choice over the institutions closer to an efficient arrangement. The model helps to shed light on the historical development of institutions of law enforcement in England and France in the 12th and 13th centuries as well as after the Revolutions in these countries.

In part II of my thesis, I develop a model that explicitly allows the judiciary to decide its type according to gains offered by each arrangement. My analysis is based on works of Persson et al. (1997) and Padovano et al. (2003). Through the interaction of the judiciary with the united or separated executive and legislature, the type of the judiciary naturally emerges. While independence entails prestige, reputation, and deference to the judges, the judiciary will choose to pander to the interests of the legislature and the executive provided that they in response offer to the judiciary enough gains to outweigh those stemming from independence. However, the ability of the executive and the legislature to subvert justice depends on their hold on power. The conclusions drawn from the model provide alternative explanation of the pattern explored by Landes and Posner (1975), Ramseyer (1994), Hanssen (2004) and McNollgast (2006).

Overall, the thesis belongs to the stream of works in comparative institutional economics and law and economics. Methodologically, to support my theoretical arguments, I rely on existing empirical evidence on causes of independence of the judiciary, as well as on illustrative case studies.

Part I

Judicial (In)dependence and Vulnerability of Adjudicators

1. Introduction

The power over law enforcement offers wide opportunities of using it for personal gains to the holders of the power. In case the losers from such an arrangement are dispersed, or are simply weaker, it is natural to expect that the stronger party will impose a preferred mechanism on others, possibly resulting in an inferior institutional arrangement. Two key questions are explored in this part. Is the institutions of judiciary designed by the government efficient? What are the incentives shaping government's choices over judicial institutions?

Klerman and Mahoney (2007) discuss the efficiency of law enforcement in the history of England and France. The authors show that prevailing institutions are not necessarily devised in a way desired by the public. In their earlier work, Klerman and Mahoney (2005) explored the effect of change of institutional arrangement of judiciary on economic development by identifying reaction of the financial market to endorsement of statutes guaranteeing independence to judges. The same historical period was thoroughly described by North and Weingast (1989), who analyzed events leading to the Glorious Revolution as well as consequences of it. The model developed in this part of the thesis can be used to shed light on these historical facts about England and France.

I use the model developed by Glaeser and Shleifer (2002) as a benchmark efficient outcome. The setup, which follows that of the above mentioned work with different interpretation, is described in section 1. In the next section, I compare the efficiency result with the consequence of decision of the government made according to own preferences,

thereby exploring possible distortions associated with the choice over the alternative forms of justice made by the sovereign whose valuation does not necessarily reflect those of the public. Afterwards, in the same section, I introduce the constraint on actions of the government, allowing it to control judiciary only to a limited extent. I examine the effect of such constraint on the choice of the government of the form of adjudication. Section 2 also contains application of the model to some transition countries and to the historical development of law enforcement mechanisms in England and France. A short discussion of the U.S. constitution follows.

2. The Model

2.1. Violations of Law

Following Glaeser and Shleifer (2002), the focus is on the violation of the law made by any member of the society, private agents or the government itself. The severity of violation is captured by the parameter D. The utility of the public derived from punishing the violator is normalized to be equal to D. These benefits may incorporate gains from stopping the violation, deterring the same or more severe breach, satisfaction that victims and others might experience at seeing the guilty suffer. It is reduced by the social cost of punishment to represent net benefit. The society prefers punishment of the infringer whenever $D > 0$. Therefore, the expected value of D is positive.

The government might have different preferences over the sentencing of the violators. The degree of the desire of the sovereign to punish the violator is measured by R. If the defiance to the law imperils the stance of the government, the sovereign might want to punish even in cases when in fact a violation has not taken place from the point of view of the public. In this circumstance R is positive. If the sovereign itself is a violator, or the infringement is made by the supporters of the government, the punishment is not desired.

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In such cases R is negative. For simplicity, the expected value of R is assumed to be zero. The government might also care about the public preferences, as it is the case in perfect democracy. To capture this possibility, the utility of the government is assumed to take the form $D + \theta R$, where $\theta > 0$ represents the degree of alignment of preferences of the sovereign and the public. In case of perfect match θ will be close to 0, but it increases as the government becomes less constrained in pursuing own aims. Following Glaeser and Shleifer (2002), these two aspects of the violation are assumed to be independently distributed with smooth cumulative distribution functions $F(D)$ and $G(R)$ and finite variances.

As Glaeser and Shleifer (2002), to compare efficiency under different arrangements of the law enforcement I also use "social welfare", defined as the weighted average of the utilities of the government and the public, with the weight of the government to be λ and that of the society to be $1 - \lambda$. Consequently, total social surplus from each conviction will amount to $D + \lambda \theta R$.

2.2. Independent vs. Dependent Judiciary

The preferences of an independent and dependent judiciary over the punishment of the violation differ, but they have one common feature. Both independent as well as dependent courts are subject to pressures from private litigants. Following Glaeser and Shleifer (2002), for simplicity I assume that the private pressure exerted on independent and dependent judiciary is exactly the same.

The most important distinction between the independent and dependent courts is that a dependent judiciary can be convinced by the government to exactly follow their preferences while the independent justice is well isolated from the influence of the politics. Such a contrast in behavior is observed by comparing the judges whose career is subject to manipulation by government with those who enjoy life tenure and strong insulation from politics. As Ramseyer and Rasmusen (1997) empirically show, by controlling the posts of

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judges that vary in geography, judicial hierarchy and prestige and are subject to change in every three years, the Japanese Secretariat induces courts to follow political orthodoxy. In much the same way, frequently elected judges are highly responsive to populist views (Besley and Payne 2003). On the contrary, as Berkowitz, Bonneau and Cley (2006) show, in states where the courts are independent, minority rights are defended more rigorously. Independent judges are also much more likely to uphold the laws that the government wants to enact (Hanssen 2004). All these allows to treat the dependent judiciary as the one whose decisions can be altered according to the preferences of the sovereign, but not so for the independent justice.

Independent Judiciary

Following the work of Glaeser and Shleifer (2002) on independent juries, I assume that the preferences of an independent judiciary over the punishment are close to those of the public. This can be justified by the broad literature exploring the behavior of judges. As Baum (1997) argues, independence allows judges to make "correct" decisions consistent with the constitution, building their reputation for competence. Posner (1995) suggests that judges derive satisfaction from "voting" for the cases in much the same way as ordinary people do from voting in elections; additionally, as the votes of the judges are mostly decisive and important for many people, it is also the source of power for judges. Consequently, for reinforcing the power and reputation stemming from their decisions, judges make a deliberate choice of whom to vote for based on established standards of the justice, which results in decisions that are expected by the public. This is further reinforced by empirical connection between the quality of the judiciary and its independence found by Berkowitz and Cley (2006). They measure the quality of the courts based on evaluation by experienced attorneys along separate dimensions like impartiality, competence of judges, predictability, and fairness of juries. As they find, independence of the judiciary is strongly associated

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with higher valuation of courts by attorneys. This signifies higher alignment of preferences of attorneys with those of judges when the later are independent.

While preferences of independent courts closely reflect those of the public, isolation from the government deprives the judiciary of financial power as well as capacity to resist intimidation from private appellants. As a consequence, judges become more vulnerable to the pressures exerted by private litigants[1]. To capture this pattern, the utility of the independent judiciary is assumed to take form $\beta D - A$, where β measures the degree to which the independent judges care about delivering justice relatively to abiding to the pressures put on them from the litigants.

The central parameter of the model, A represents the ability of the private litigants to change the decisions of the independent judiciary according to their own desires. It incorporates the power of private violators to credibly threaten to physically damage the judges or the capacity to pay sufficient bribes for specific verdicts. A increases with inequality in society, as well as the general level of violence, since in the former case powerful private parties have resources for subverting the justice, while in the later case physical pressure is easier to exert on the courts. As long as the independent judiciary isolates itself from the influence of the private litigants, A will be very low. A will be high in case there is a lack of guarantees to the judges, or salary and retirement benefits are low, or private violators are influential. As the reservation utility is assumed to be zero, the independent judge will prefer conviction if $D > \frac{A}{\beta}$.

Taking into account that $E(R) = 0$, social welfare achieved under the independent judiciary will be

$$\int_{D > A/\beta} D f(D) d(D)$$

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[1]Landes and Posner (1975) argue that the same mechanisms that insulate the independent judiciary from political influence also assure the difficulty of its subversion to the private interests. However, examples of capture of the politically independent judiciary by private litigants (especially during the time between the Civil war and the Progressive Era in the U.S., Glaeser and Shleifer 2003) still allow treating independent judiciary more vulnerable to private interest groups.

Intuitively, the social welfare under the independent justice is decreasing in A. This relationship reflects the fact that adjudication by the independent judges will be closely aligned to the preferences of the public when pressures from private litigants put on the courts are low. For higher values of the parameter A, the gap between the opinions of the society and the judiciary increases. The opposite relation holds for β. As long as the judges are strongly committed to making "correct" decisions rather than being subverted by the litigants, verdicts will reflect the desire of the public. Therefore increase in β will boost the social welfare.

Dependent Judiciary

The dependent judiciary, because of the sheer fact that it is not isolated from politics and is vulnerable to its power, cares about the desires of the government. Notwithstanding this, preferences of the subservient courts and the sovereign might not be perfectly aligned. Following Glaeser and Shleifer (2002), the utility of the dependent judges is assumed to take the form $\beta_J(D+\theta_J R)-A$. Different parameters from that of the independent judiciary reflect the fact that dependent judges change behavior according to the preferences of the sovereign. However, the alliance with the government makes them more isolated from the pressures of the private litigants through the guarantees provided by the sovereign. For perfect alignment of decisions of the dependent judiciary to its own, the government needs to reward and punish judges accordingly. Such an incentive scheme can take various forms. The government might simply bribe the judiciary as was supposedly the case for Berlusconi (*The Economist*, August 14th, 2003), or use physical reprisal as was the case in Russia where after a judge convicted an executive, her husband was murdered, and the executive was quickly released afterwards (Glaeser and Shleifer, 2002). The ruling party might condition future career of judges on compliance of their decisions to the preferences of the legislature as was the case in Japan under the Liberal Democratic Party (Ramseyer

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and Rasmusen 1997); the executive could refuse to enforce judicial decrees (Vanberg 2001); the legislature could alter the courts' jurisdiction (Landes and Posner 1975); alternatively the government might simply fire the disobedient judge (the case of Chief Justices Coke (1616-17) and Crew (1627), North and Weingast 1989). For instance, In 1879, the French government dismissed or forced the resignation of thirty-eight administrative judges who were deemed insufficiently loyal to the government (Brown and Bell, 1998). Theoretically, incentivization of the dependent judges by the sovereign takes a form of a transfer from the government to the judiciary of an amount $A + \beta_J(\theta - \theta_J)$ which is exactly enough to perfectly align their preferences over the punishment of the violator. Consequently, the conviction will occur whenever the sovereign would like it to occur, specifically whenever $D + \theta R > 0$. The social welfare under the dependent judiciary will amount to:

$$\int_D \int_{R > -\frac{D}{\theta}} (D + \lambda \theta R) f(D) g(R) d(D) d(R)$$

As a benchmark case, I use the efficient way of law enforcement. Comparison of the social welfare under two different regimes, one of which is decreasing in A while the other is independent of it, shows the following.

RESULT (Glaeser and Shleifer 2002): **There exists a threshold level $A^*_{ef} > 0$ for which the social welfare is the same for either arrangement. For $A < A^*_{ef}$ the independent judiciary yields higher social welfare, while for $A > A^*_{ef}$ the social welfare is higher under dependent judiciary.**

Therefore, for a lower level of pressure put on the judiciary by the private litigants, the independent justice brings higher welfare, while for a higher degree of influence of private interests on the judges the dependent justice is more efficient. Efficiency result is depicted on the Figure 1 by indicating the threshold value A^*_{ef} on the horizontal line which denotes level of private pressure put on the judiciary.

3. Sovereign's Choice of Dependent vs. Independent Judiciary

Established institutional arrangement of the law enforcement is not necessarily efficient. In most cases the strong party gets to choose the prevailing mechanism of adjudication. It is natural that the government always prefers a dependent judiciary since control of justice secures the lowest possible divergence of ruling from the preferences of the sovereign. Examples of the sovereign opposing the independence of the judiciary abound. As Glaeser and Shleifer (2002) document, in response to the increasing independence of justice, the Tudors created Star Chamber, the court that was directly subordinate to the monarchy, and started to punish juries whose decisions they disliked. Similarly, James II removed twelve judges over four years primarily because they did not allow him to apply the law to specific cases or against specific individuals (Klerman and Mahoney 2005). In the more recent past, President Franklin Roosevelt, after realizing that he would not be allowed to implement desired policy of New Deal decided to influence the judiciary through diluting their prestige by increasing the size and packing the Supreme Court with judges whose ideology mirrored that of his own (Ramseyer 1994).

Since the power over justice offers so much opportunities to the government, the sovereign will be willing to give up the control over the judiciary only if the gains from alternative system of adjudication outweigh the costs of losing influence on the decisions of the courts. However, in case the government is limited in perfectly controlling the decisions of the dependent judges, gains accrued to it from the dependent judiciary is reduced. In case of such limit on the actions of the government, it is referred as a weak government, while absent the constraint, it is identified as a strong government. To account for possible difference in choices over the dependent and independent judiciary made by strong and weak government, I consider them separately. For modeling choice over two types of judiciary, I will compare the gains from alternative institutional arrangements first for the strong, than for weak government and analyze which offers a higher value to the decision-maker.

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3.1. Strong Government

The utility of the sovereign derived from independent judiciary consists of three distinct parts. One is the utility from all convictions. This is different from one under dependent judiciary because here the convictions are made according to the valuation of an independent judge, while in the case of controlled justice the adjudication is directed by the preferences of the government. The second part is disutility stemming from the cases when independent judge does not want to convict the violator whom the sovereign would like to punish. Such infringers might be the enemies of the government, members of the opposition party, a journalist against the sovereign, or private agent defending own property from expropriation by the government. As North and Weingast (1989) state, the Crown jailed people without charge or for lengthy periods prior to trial and required excessive payment for their release. The third part captures the disutility of the government derived from punishing the ally of the sovereign. An independent judge might well repel the law that the government wants to pass, as in the case of President Roosevelt above; deter property diversion by the government, or simply convict the member of the government or the friend of the politician. All these certainly reduce the benefit of independent judiciary to the government.

Before making the choice between the arrangements of justice, the sovereign compares the utilities under alternative forms of adjudication. Such comparison of gains to the sovereign gives rise to the following.

RESULT I-1: There exists a value $A_S^* > 0$ for which the sovereign derives the same utility from either type of the judiciary. For $A < A_S^*$ the government will choose independent judiciary, and for $A > A_S^*$ the sovereign will not give up the power over control of justice. Most importantly, $A_S^* < A_{ef}^*$. Furthermore, the gap between the efficient outcome and the choice of the sovereign is increasing in θ and in vari-

ance of R. A_S^* and A_{ef}^* rise in β with the same rate.

PROOF IN APPENDIX I-1.

A crucial part from the above result is that the threshold value below which the sovereign grants independence to the judiciary is lower than efficient. This means that for a range of values of A between A_S^* and A_{ef}^*, the independent judiciary is an efficient arrangement, but the government is not willing to give up control. This is illustrated in Figure 1, above the horizontal line which is related to the strong government. Increase of the gap between the efficient outcome and the choice of the sovereign with θ indicates that closer alignment of the preferences of the government to that of the public reduces the distortion arising from the choice. While an increase of the gap with the variance of R suggests that the more sovereign wants to apply the law individually to its supporters or opposers, the less likely it will choose an independent adjudication. These two thresholds depend on β in the same fashion; therefore the gap can not be manipulated by different commitment of independent judges to delivering justice. The next section presents illustrative case studies supporting the result of observing dependent judiciary while independent justice would lead to higher welfare.

Figure 1: Choice over Independent or Dependent Judiciary vs. Efficient Outcome

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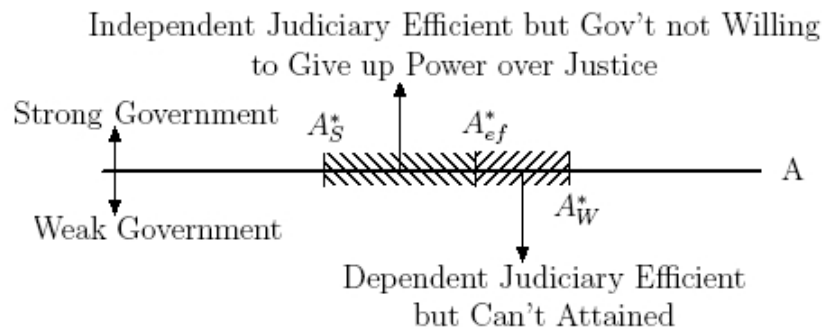
Evidence from Georgia, Azerbaijan and Russia

As Figure 1 illustrates, for some range of level of private pressure put on the judges, the government overly manipulates the justice, whereas higher welfare would be attained if the sovereign let the judges decide independently. The result is highly intuitive in the light of prevalent explicit or implicit influence of the government on justice yielding inefficient institutional arrangements, especially in countries where the strength of the ruling party allows them to be sole decision-makers on the mechanism of law enforcement. For example, Georgia's judiciary is frequently accused of making politically motivated decisions. In 2005 the ruling party launched the court reorganization scheme resulting in dismissal of a large group of judges who then argued that the whole scheme was an excuse to get rid of undesirable judges. Many others voluntarily retired from the bench when tempted by the attractive package of social benefits offered by the ruling party. The widespread drive to replace veteran judges with a younger generation fully mirroring the preferences of the government followed. Furthermore, Supreme Court Chair, a close friend of the president, has frequently been suspected of pressing judges to please the Prosecutors' Office. All these occurred despite the fact, that the government was fully aware that an unreliable justice damages Georgia's prospects for foreign investments (Eurasia Daily Monitor, April 26, 2006).

Formally, the parameter A is low for Georgia as a result of absence of influential private parties. This places the country on the interval where the independent justice would attain higher welfare, but the lack of opposition allows the government to decide on judicial institution according to own valuation yielding suboptimal outcome. Similarly, in Azerbaijan, the president dominates the executive, legislative, and judicial branches of government. Dependence of the judiciary on the executive power is achieved not only through presidential appointments, but also strengthened via informal institutions such as patronage networks. The judicial system there is acknowledged to be widely corrupt and inefficient

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(Bertelsmann Stiftung 2006).

Russian examples of suppression of the judiciary are ample. While the Minister of Communications and Information Technologies, a close friend of President Vladimir Putin, remains invincible despite multiple breaches, it is widely accepted opinion that new accusations against Mikhail Khodorkovsky and Platon Lebedev are driven by Putin's hostility against the former oligarch. As former Supreme Court judge Tamara Morshchakova argues the judicial independence is non-existent, since any official can dictate any decision in any case (Eurasia Daily Monitor, January 15, 2007). Although A is much higher in Russia than in other transition countries, distortion associated with governmental control of verdicts outweighs those from private intimidation. Therefore, Russia also belongs to the interval below A_{ef} where independent justice is more efficient, but apparently it is not attained as the government is the sole decision-maker over the prevailing institutions.

Interpreted broadly, one can expect that if the sovereign was completely unhindered in choosing the method of law enforcement, the outcome would most likely be the dependent justice even though independence of the judiciary itself has advantages for the government. There have been various ways for forcing the government to choose independent judiciary explored in the literature. Landes and Posner (1975) used rent-seeking incentives of the government, McCubbins and Schwartz (1984) claimed that independence of the judiciary enhances ability of the government to monitor actions of bureaucrats, Ramseyer (1994) argued importance of elections in creating independence of the judiciary. Yet another reason might be the weakness of government in making the dependent judges perfectly follow their preferences. This is exactly the channel explored in the next section.

3.2. Weak Government

My previous analysis was based on an assumption that the government can easily incentivize the dependent justice without additional cost to itself or to the society. In reality,

governments are constrained in raising funds for either outright bribery of judges, or simple transfers towards the judiciary, or in making promises about retirement benefits. It might also be the case that even if the judiciary is dependent, direct manipulation of career opportunities of judges is politically costly. This creates the need of indirect means of influencing the justice, but such methods can not be applied to cases involving public attention, that are usually more valuable for the government to control. As a result of such costs of influence, the sovereign might be unable to fully align the preferences of the dependent judges to its own. This reduces the benefit of controlling the justice to the government since the perfect subservience of the judges is no more possible. Consequently, such a constraint on the ability of incentivization of the justice might cause the sovereign to give up power over the judiciary altogether.

To see how an introduction of limited power of the government changes the outcome, consider that the total amount of resources spent by the government to incentivize dependent judges is constrained to be less than K; K captures the stand of the monetary authorities in granting resources to the government, or maximum political costs that the sovereign can incur by influencing decisions made by the dependent judge, as well as alternative cost of funds. The government will spend its limited resources on cases that are of high importance to it and judges would not convict unless forced to by the sovereign. This means that the sovereign will be able to force the courts to convict the violators only for $R > \bar{R}$ and dissuade from conviction for $R < -\tilde{R}$. In other cases, the sovereign does not have enough resources to change the opinion of judges, consequently the outcome preferred by the judge obtains. Parameters $\bar{R} > 0$ and $\tilde{R} > 0$ represent strictness of the constraint put on the actions of the government. For small K, that is for low ability of the government in influencing the decisions of the judges both $\bar{R}$ and $\tilde{R}$ will be high, meaning that judges will be able to decide in more cases.

Again, before making the decision about the form of adjudication, the constrained

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government compares the utility derived from each arrangement. Such a comparison of gains under the dependent and independent judiciary accrued to the government yields the following.

RESULT I-2: **Threshold value A^* for which constrained government is indifferent between the dependent and independent judiciary decreases in K. For sufficiently low K, $A^* > A^*_{ef}$.**

PROOF IN APPENDIX I-2.

A constraint put on the government in being able to control every decision of the judge induces it to grant independence to the judiciary more frequently bringing its choice over the mechanism of law enforcement closer to the efficient arrangement. Moreover, as it is depicted in Figure 1 below the horizontal line, if the government is too much constrained the threshold value A^*_W above which the government will control the justice increases beyond A^*_{ef}. This means that for the range of values of A between the two thresholds dependent justice is efficient but weakness of the government forces it to give up power to the independent judiciary, which is inferior because of presence of high private pressures exerted on the judges. The next two sections depict how this result can help to shed light on institutional arrangement developed in England and France in the Middle Ages, as well as after Revolutions. The creation of the U.S. Constitution is also analyzed.

Application to 12th and 13th Century England and France

According to the second part of the result, in case if the private litigants are rich and able to strongly influence the decisions of the judiciary, the government-controlled justice would protect the rights of the members of the society much better than an independent-one, but weak government can not attain such an efficient arrangement. This can be easily squared with the facts about historical development of the types of adjudication in

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England and France provided by Klerman and Mahoney (2007). As the authors argue, the rich and strong English king introduced "common law" applicable to the entire kingdom, in contrast to varied customs applied by local courts. The king accomplished this by using highly centralized royal judiciary immune from local influence. Such control of justice was an efficient arrangement since this reform was decisive in replacing feudal relationships with the modern property rights subsequently indicating that the property rights was not the product of the power but rather of the law.

The opposite happened in France. A much poorer and weaker French king was unable either to unite justice or to control it and employed decentralized form of adjudication. This resulted in much weaker protection of property than in England since the peasants were exposed to the justice subordinated to the local barons. Moreover, as the bureaucracy of the judiciary was much bigger in France offering potential of excessive revenue, for fundrising the king sold the offices. In this way, judgeship became associated with property which further reduced the influence of the king over the verdicts. Therefore, French justice was more isolated from the crown than the English one, but was highly controlled by the local magnates making the property much less protected than in England.

In the framework of the model, both England and France experienced a high level of private pressures exerted on the judiciary, leading to high A for both. This placed both countries on the interval where dependent judiciary is efficient arrangement of law enforcement. The powerful English king, facing low constrains on controlling the judges, attained an efficient form of adjudication by achieving centralization of the justice. On the contrary, the French king, who faced strict constraint on making much bigger number of the judges to follow his preferences, that is lower K, was forced to decentralize the justice subverting the judiciary to landlords which resulted in essentially inefficient institutional outcome. As a result, the English enjoyed better protection of property rights since the choice and ability of the sovereign to control the judiciary coincided with an efficient one.

Meanwhile in France, independence of the justice from the sovereign led to abuse of the power over courts by locals.

English and French Revolutions, U.S. Constitution

However, following the first part of the result I-2 presented above, not too excessive constraint put on the actions of the government induces it to grant independence to the judiciary more frequently placing its choice over the mechanism of law enforcement closer to the efficient arrangement. This source of appearance of judicial independence can help to explain institutional development of England after the Glorious Revolution. Success of the revolution was certainly not obvious, especially in the light of several failed experiments with alternative institutions. However, the new allocation of powers between the King and the Parliament brought by the Revolution can be used to apply the model to shed light on further development of events.

As North and Weingast (1989) document, first attempt of the Parliament in curbing the actions of the King ended with abolition of Star Chamber, a powerful court closely controlled by the King's council. Yet this was not the end of turmoil; the Parliament managed to curtail arbitrary behavior of the King only after 1688 Revolution. As North and Weingast (1989) argue, one of the main features of the Revolution was placing Parliament as the direct check on the Crown as well as the central controller of financial matters. Furthermore, they note, that after using up almost all independent sources of revenue, the King, at that time, had very limited ability to raise funds circumventing the Parliament. Formally, all these circumstances reduced K, the amount of resources the King could afford to spend for changing the decisions of judges in his favor, thereby increasing $\bar{R}$ and $\tilde{R}$. This diminished the value of controlling justice altogether. Consequently, such a decrease of gains from subverted courts to the Crown made it easier for the Parliament to force the King to agree on granting independence to the judiciary despite his further

efforts to oppose this change. As Klerman and Mahoney (2007) document, after deleting the security of tenure of judges from the Bills of Rights, William III rejected or blocked by his Parliamentary allies two similar statutes in 1692. However, guarantee of independence of the judiciary finally received royal assent after including in the Act of Settlement in 1701 (Klerman and Mahoney 2007).

The sequence of events of the French Revolution was initially the same. Unbounded spending by the king resulted in growing political opposition. However, things developed very differently there. By that time the procedures of purchasing the judgeship and privileges associated with it were regularized, membership of the *parlement* was form of property subject to various additional payments to the king. Consequently, fiscal and political reform would remove the benefit that judges enjoyed from purchased office. This placed the judiciary on the political side of the king who was also opposing the change. Furthermore, the French justice, largely captured by local barons as a consequence of venality, itself became associated with the fiscal irresponsibility, thereby putting the reduction of the power and independence of the judges among the goals of the revolution. Facing almost no opposition to controlling the justice, meaning wide ability to intervene in decisions of judges - high K, dependent justice promised higher gains to the ruler. Therefore, the new and powerful emperor, Napoleon, eliminated power of judges in making law by enacting his Code. Napoleon imposed such a tight supervision of courts that judges were initially forbidden even to interpret law (Klerman and Mahoney 2007).

Circumscribing the power of the sovereign over the finances, reducing K available to the Kind, helped the members of the English Parliament to successfully solicit independence of the judiciary, while the strength of the French emperor alongside public hostility to locally captured justice facilitated the choice of dependent judiciary. Restraint put on the government as a source of an independent justice is stressed by Hayek (1960) who, for successful allocation of powers between separate branches of government, refers to the

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American Constitution as the Constitution of Liberty. As Hayek (1960) notes, the act of 1767 of English Parliament that ascribed to it an unlimited power over law creation, generated movement of colonists to secure their rights. The need for a written and unifying constitution, together with interests of each state to preserve control over the policy produced notion of federalism which has proven to be one of the most efficient ways of restraining the government. Careful separation of powers along with the built-in mechanisms to ensure conflict of interests of different branches of the government embedded in the American Constitution deprived each of the branches and levels of government of the ability to coordinate and surpass any other. This arrangement, once again, meant decrease of K - resources available to any branch of the government for controlling the decisions of judges, thereby reducing the gains from dependent judiciary. Thus, divided and consequently weakened government facilitated independence of the judiciary as was depicted by the model above.

4. Conclusions

In this part, I have examined prevailing judicial institutions in situations where the government decides over alternative forms of law enforcement. As was intuitively expected, strong government would rather select justice beholden to it since obedient judiciary allows the government to pursue political objectives. However, the limit put on the actions of the government reduces the benefit from control of judges, making an independent judiciary more attractive to the government. This result highlights the importance of constraining government as means of soliciting governmental consent on judicial independence.

Part II

Judicial (In)dependence and the Structure of the Government

1. Introduction

Independence offers prestige, reputation, power, deference and other sources of gratification to the judges. However, if they can extract more gains from the other branch(es) of the government in response of being obedient to their preferences, the judges might agree to forgo independence. Depending on the strength of the legislature and the executive, dependent or independent judiciary emerges, leading to different economic outcomes. However, the ability of other branches of the government to influence the decision of justice about its type depends on their hold on power. The key questions addressed here are: Is the judiciary always a desirable institution? Is independence of the judiciary equally likely to emerge under coordinated or separated executive and legislature?

Scholars have proposed various explanations of granting independence to the judiciary by other branches of the government. Landes and Posner (1975) suggested that increase of durability of the law, attained under independent judges, allows the government to extract higher rents from interest groups. McCubbins and Schwartz (1984) argued that by increase of number of activities by the executive, the congress needs decentralized, less active mechanism of oversight that is allowing independent judges to decide on transgression by the executives. Ramseyer (1994) and Hanssen (2004) emphasize importance of elections. As authors argue, although independent judiciary reduces politician's control over law creation while being in power, it ensures low possibility of overturning their policy by successor politicians. The role of separation of the executive and the legislature in granting independence to the judiciary, that was not formalized before, is explored in this part of

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the thesis.

I draw on the models developed by Persson et al. (1997) and Padovano et al. (2003). The executive, the legislature, the judiciary and the citizens are introduced in the next section describing the setup of the model. Interaction of the judiciary with other branches of the government, that can be either unified or divided, is analyzed in subsequent parts of the next section, each showing outcomes of different types of law enforcement. Section 3 discusses the likelihood of observing independent judiciary under different governmental environments and, by analyzing comparative statics, suggests possible causes of judicial (in)dependence.

2. The Model

2.1. Voters, Executive, Legislature and Judiciary

Following Persson et al. (1997), a large number of identical voters have infinite horizon and jointly maximize expected value of stream of each-period utility:

$$E \sum_{t=0}^{\infty} \delta^t u(c_t)$$

where δ is the discount factor assumed to be constant over time and the same for every player in the model; $u(\cdot)$ is a utility function that like every other utility function in the model is assumed to be concave and monotonically increasing. c_t represents each-period consumption of the public good delivered by the government, which is defined as: $c_t = \theta_t(1 - x_t - l_t)$, where θ_t is the parameter that captures the productivity of the government in converting the resources of the budget into the public goods. For simplicity, θ_t is assumed to be non-negative, identically distributed serially uncorrelated variable that is known to every player.

The variables x_t and l_t represent the resources that are lawfully or fraudulently appropriated respectively by the executive and the legislature at the expense of the voters. They are the resources diverted from public to private use by bureaucrates. As Persson et al. (1997) interpret, these can be certain types of expenditures in the state budget, like public infrastructure projects, or government procurement, that allow more appropriation while the voters have other preferences over the composition of the budget. Alternatively, they may represent a level of some reform that alters the behavioral regularities in society in a way to allow higher diversion by the government; these can be, for instance, new license regulations; setting up or closing down some bureaus controlled by different branches of government. Broadly, x_t and l_t embody the divergence of preferences of the public and the government over the implemented policy. Ability of the executive and the legislature to pursue aims different from those of the public stems from the power delegated to them by voters between the elections. However, the bureaucrats face the constraint on the amount of diverted resources, since in each period maximum amount that can be appropriated is $x_t + l_t \leq 1$.

The executive maximizes the expected utility:

$$E \sum_{t=0}^{\infty} \delta^t v(x_t)$$

The simplifying assumption of infinite horizon of the executive can be justified by observing that although they are in power for a finite period of time, in the last period they face the choice between excessively diverting resources but then be equally or even more severely diverted by successors while being out of office. Threat of retaliation, or use of the same methods by winner of elections from the opposition, forces bureaucrats to consider future repercussions while choosing x_t (Ramseyer 1994).

The legislature, without loss of generality, is assumed to have the same utility function

as the executive:

$$E \sum_{t=0}^{\infty} \delta^t v(l_t)$$

Following Padovano et al. (2003), the judiciary can be either dependent and pander the preferences of other branches of the government approving the appropriation of resources by them enjoying its own share - denoted by j_t, or independent and decide according to own valuation, deriving utility from prospects offered by the independence. The judiciary maximizes the expected utility:

$$E \sum_{t=0}^{\infty} \delta^t g(j_t)$$

For simplicity, there is no asymmetry of information between the judiciary and other branches of the government, meaning that all of them observe the amount of resources diverted by each branch of the government unlike the voters, who can observe only the total amount of diversion without knowledge of the share of each branch, and therefore can not punish them separately.

As was already mentioned, in this model, the type of the judiciary emerges from its interaction with other branches of the government. The judiciary chooses whether to be independent or not depending on which arrangement brings it higher utility. However, the sources of satisfaction for the judges are different for each type. Employing the same argument as in the previous part justifying the alignment of preferences of the judges with those of the public, an independent judiciary derives maximum possible level of utility, denoted by g(J), from exposing the other branches of the government to the rule of law. Formally, this means that an independent judiciary does not allow the executive or the legislature to divert any level of resources. Alternatively, other branches of the government can convince the judiciary to cater their interests by increasing its utility above its maximum possible under independent arrangement through offering share of diverted resources in response. In such a circumstance the judiciary chooses to be dependent and tolerate infringements

made by the executive and the legislature deriving utility solely from its share of diverted resources. However, the ability of the branches of the government to offer enough resources to the judiciary in response to being subservient depends on whether the executive and the legislature are coordinated or separated; therefore I analyze different governmental environments separately. First, I consider the emerged type of the judiciary and subsequent economic outcomes under the unified executive and the legislature, and afterwards I will analyze the effect of separation of executive and legislature.

2.2. Unified Government

The executive and the legislature is referred as unified if the interests of these branches are perfectly aligned either because they are formally united, like in a pure presidential system, or as a result of implicit or explicit collusion between formally separated branches. One reason for considering all these kinds of different institutional arrangements of government under one heading is that as Persson et al. (1997) find, the results of the model are similar across them. As they show, checks and balances when only one party has veto power does not change the outcome. The other justification is the decisiveness of proper checks and balances in changing the behavior of government. Examples of formally separated but actually coordinated executive and legislature that act as the only branch abound. According to the constitution of Georgia the president, who is the head of executive branch, is supposed to be constrained by the parliament, but as is usually the case, the overwhelming majority of the parliament is the party of the president, which makes the parliament completely aligned with the executive branch.

Throughout this section, I will refer to the only actual branch of the government other than the judiciary as the executive. The timing of the game follows that of Persson et al. (1997) by adding the decision of the judiciary. At the beginning of each period t, the voters decide on the voting rule, which takes the form of the threshold level of public

goods c_t^* delivered by the executive below which the voters refuse to reelect the government. Knowing the voting rule, the executive then implements the policy by choosing x_t.[2] As mentioned above, the policy can comprise different sorts of activities accomplished by the executive, like design of expenditures in the state budget, or some reform of the economy. Next the judiciary decides whether to agree with the policy or to overturn it. And lastly, the voters, after observing c_t, decide according to the voting rule whether to vote for or against the executive. As in Persson et al. (1997), for simplicity I assume that if the executive is thrown out of office it can not come back in power again.

To solve the model, first I consider the incentives and actions of each player. In the benchmark case with no judiciary, analyzed by Persson et al. (1997), if the executive does not care about the preservation of office, it will divert all resources each time, knowing that will be thrown out of power afterwards. This leaves voters with no public goods, which is the worst possible outcome for them. Therefore, to incentivize the executive to value retention of the office, voters have to allow some positive degree of appropriation and still reelect in the next period. In such a case, the executive faces a choice between diverting everything in one period and be voted-out or diverting lower amount and be allowed to do the same in the subsequent periods.

However, when the judiciary is in place, the executive has the following options: (a) divert nothing and stay in power, (b) persuade the judiciary to allow to appropriate as much as possible and be thrown out of office, (c) convince the judiciary to allow to divert enough but stay in power, (d) divert everything and be thrown out of office. As the last option does not provide anything to the judiciary, it will decide independently, since subjecting other branches to the rule of law brings it higher utility in this circumstance. As in Padovano et al. (2003), as a result of symmetric information, an independent judiciary is able to get back diverted resources, therefore option (d) leaves executive with neither

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[2]This embodies total appropriation of executive and legislature if they are formally but not effectively separated, therefore amount of l_t is not considered separately here.

resources nor the office, consequently it will never be chosen. The least preferred option for the executive is (a) which offers zero level of utility in each period. Thus, the executive will try to obtain either (b) or (c), both of which entail influencing the judiciary to bear diversion.

For convincing the judiciary to cater to interests of the executive and allow either maximum or lower level of appropriation, the executive has to offer some share of resources to it. However, the executive will propose only the smallest amount possible for subverting the justice, which means that it will make the utility of the judiciary only slightly higher than its possible attainable utility under independence, provided that the later is not so high that offering enough resources is affordable to the executive. Since the utility that the judiciary can attain under independence is the same regardless of the option the executive chooses, the judiciary will be offered the same amount of resources in both cases; specifically the amount slightly higher than J. Furthermore, voters would like the executive to take the option (c) rather than (b) as it leaves them higher level of the public good. For incentivizing the executive to do so, voters will increase the threshold value of consumption in their voting rule such that executive will be slightly better off by appropriating lower amount and retaining the office rather than diverting as much as possible and losing the power.

As long as the executive has to share the resources diverted to the judiciary for making it dependent and tolerating the infringement, it will have less incentive to divert than in case of no obligation of a split. But burden of payment to the judiciary for being subservient is partially put on the voters. Therefore, the following happens.

RESULT II-1: In equilibrium with dependent judiciary, total resources diverted is v^{-1}
$((1-\delta)v(1-J)) + J$, which is more than under the regime with no judiciary. However, in equilibrium with independent judiciary, no diversion is allowed.

PROOF IN APPENDIX II-1.

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The resources diverted by the executive will be smaller than in the benchmark case where the judiciary is absent, but as the judges are also paid for becoming dependent, total resources diverted is still higher than in the benchmark case. In other words, if the judiciary is convinced and therefore is dependent, voters are worse off than in the case when there is no judiciary to be bribed.

This result suggests that whenever the judiciary that is established to improve protection of property rights and reduce the bribery and diversion of resources by the government instead uses its abilities to squeeze the rents from other branches of the government, it aggravates the very same problems it was designed to alleviate worsening wellbeing of the voters. This conclusion can be easily squared with the intuitive result that if the institution does not cure the problem it is designed to, but rather exacerbates, it itself becomes the deadweight that further restrains the development of the economy.

However, in case the utility of the judiciary while being independent is so high that subversion of justice is unaffordable for the executive, the court acts independently. As preferences of the independent judges mirror those of the public, the judiciary while being independent will drive diverted resources down to zero as in Padovano et al. (2003).

Since the separation of powers between the executive and the legislature curbs their ability to pursue own aims at the expense of the voters, it is expected that such checks and balances between the two branches of the government will also affect the power of the executive and the legislature to subvert the justice. The effect of separation of the executive and the legislature on the type of judiciary emerged and resulting economic outcomes are analyzed in the next section.

2.3. Separation of Executive and Legislature

Following Persson et al. (1997), powers are effectively separated between the executive and the legislative branches of the government if there is a conflict of interests between them,

ruling out collusion, and consent of both is needed for the implementation of the policy. Thus, each of them possesses the veto power over the policy. The sequence of events is the following. At the beginning of each period t the voters choose the voting rule; next, knowing the rule, the executive suggests the total amount of appropriation by the government b_t satisfying the constraint $b_t \leq 1$. This can be the size of the state budget as well as the agenda of policies that allow different levels of appropriation of resources together by the executive and the legislature. The Parliament can not make amendments to the proposed policy, but must either accept or reject it. If the legislature rejects the proposal, they both get previously determined level of resources x^s and l^s. Following Persson et al. (1997), this level represents the outcome that is defined in the constitution to emerge in case of disagreement between the branches of the government, which are usually lower than those proposed. If the Parliament accepts the proposal, it suggest the allocation of the agreed amount of diverted resources b_t between itself and the executive. This stage of the policy making might be design of reform agenda made by the legislature in such a way to allocate diverted resources between the branches, by allocating tasks to different agencies of the government. The executive either accepts or rejects the suggested split of appropriated resources. In the later case the outcome (x^s, l^s) obtains. Next, the judiciary decides whether to agree or overturn the actions of other branches of the government. Finally, at the end of the period, after observing the level of public goods supplied by the government, the voters decide according to the voting rule whether to reelect the executive and the legislature or not.

As Persson et al. (1997) point out, the central issue in proper separation of powers is that decisions of different level of the policy involve the agreement of both bodies so that the bargaining power over each decision is placed over different bodies. This aligns the interests of a weaker party in the negotiations with the interests of the voters creating pressures in favor of voters. Specifically, in the second stage of policy process, while proposing the

allocation of diverted resources, the Parliament has an incentive to suggest the smallest possible share of appropriated resources to the executive, leaving the legislative highest possible resources from the already agreed amount. Knowing this, the executive, which is the weak party in the second stage, but the agenda-setter in the first stage of policy process, has incentive to propose smallest possible total size of diversion of resources that makes the legislature agree.

The third party in the policy process, the judiciary decides about its type in the same way as in the previous section with modification that takes into account that now two branches have to transfer the amount needed for the judiciary to become dependent. To separate the effect of sheer existence of the judiciary from that of increasing difficulty of collusion[3], I assume that the executive and the legislature transfer the same function of their share of diverted resources, so that the judiciary gets slightly higher utility from being dependent than its possible utility under independence provided that amount of resources sufficient for subverting justice is not prohibitively high.

Now each of the branches of the government faces the same set of options as one branch faced in the previous section but here the highest possible diversion of resources by each branch of the government is the outcome (x^s, l^s). This occurs since on the second stage, regardless the already agreed amount b_t, maximum that the legislature will be willing to offer to the executive will be x^s. This incentivizes the executive to propose at most $b^s = x^s + l^s$ amount of appropriation in the first stage yielding an outcome (x^s, l^s) to be maximum possible for each branch. The voters benefit by checks and balances and set the voting rule so that the executive and the legislature choose to appropriate small amount in response of being reelected rather than grabbing the whole (x^s, l^s) only once. Outcomes of dependent and independent judiciary can be described as follows.

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[3]Taking into account the increased difficulty of collusion under separated powers further strengthens the result derived from the model.

RESULT II-2: In equilibrium with dependent judiciary, the executive proposes $b^L = x^L + l^L$, the legislature proposes (x^L, l^L), and both proposals are accepted. Voters reappoint executive and legislature if and only if $c \geq \theta(1 - x^L - l^L)$ and are better off than under unified executive and legislature. Total resources diverted is still higher than under the regime with no judiciary. However, in equilibrium with independent judiciary, no resources are appropriated.

PROOF IN APPENDIX II-2.

As was the case under unified executive and legislature, need of sharing of the resources appropriated for private use with the judiciary for the purpose of permitting the diversion reduces the incentive of diversion for each of the branch. But since they also pay to the justice, overall diversion of the resources is again higher than in the case of the absence of the judiciary. Therefore, the result is the same as in the previous section: establishment of the judiciary that can be convinced to allow infringements increases the amount of total appropriated resources, even though it decreases diversion by the executive and the legislature. Importantly, positive effect of separation of powers on voters derived by Persson et al. (1997) remains after introducing the judiciary. This means that the separation of powers between the executive and the legislature still yields higher level of consumption of public goods than their unification even under the subverted justice.

In sum, existence of the judiciary that can be convinced to be dependent increases total recourses diverted in both, under the unified or separated executive and legislature. In case the utility of the judiciary while being independent is high enough, it becomes impossible to convince the justice to cater the interests of the executive and the legislature. Consequently, independent judiciary will drive diverted resources down to zero as in Padovano et al. (2003). As a result, the independent judiciary brings the highest level of consumption of the public goods under any arrangement of the executive and the legislature, while in case of corrupt justice, the proper separation of executive and legislature increases the benefits

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to the voters.

3. Judicial Independence under Separated vs. Unified Government

As the total amount of the resources appropriated together by the executive and the legislature in the case of their proper separation is lower than that under their unification, the ability of the executive and the legislature to offer enough resources to the judiciary for making it dependent is reduced. Consequently, the likelihood of observing subverted judiciary under separated executive and legislature is lower than in case of the strong unified branches of the government[4]. This is summarized in:

RESULT II-3: **There exists the range of $J > 0$ for which independence of the judiciary is maintained under separated executive and legislature but subservient court is obtained under unified executive and legislature.**

PROOF IN APPENDIX II-3.

Figure 2 illustrates this result. As the level of appropriated resources by the executive and the legislature differs depending on relationship between the two, their ability to make the judiciary deferential is also different. In case of the separated executive and the legislature, even if they offer the whole appropriated resources to the judiciary, it still attains higher utility from being independent, and therefore is impossible to subvert. On the contrary, under united executive and legislature, they can afford to offer enough resources to the judiciary enjoying the rest and the justice is dependent.

Intuitively, if the judiciary derives higher utility from being independent than from receiving the maximum possible diverted resources (which is equal to 1), the judiciary is impossible to convince to become dependent under any arrangement of other branches of

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[4]This is further reinforced by the fact that proper separation of the executive and the legislature increases difficulty of collusion between the two for the purpose of subverting the justice.

Figure 2: Subvertibility of Judiciary
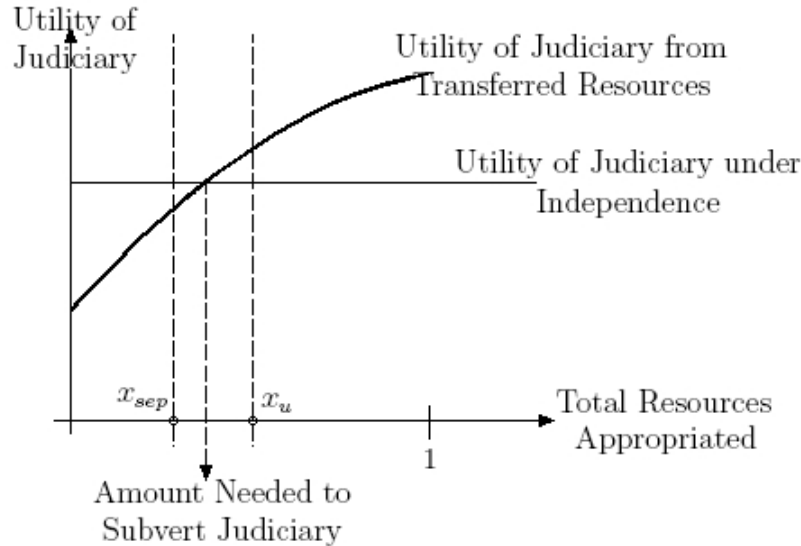
the government. Such a result holds because even if they offer the whole pie, the judiciary still prefers to act independently. This in its turn means that neither the executive nor the legislature will be allowed to divert anything under both governmental environments. In contrast, if the utility of the courts under independence is very low, both arrangements of other branches of the government will facilitate the dependent judiciary, since even under separated powers, the government will be able to subvert the justice. If the level of utility of the judiciary derived under being independent is moderate, it will be subverted only if offered high share of appropriated resources. But such amount is not affordable to the separated executive and the legislature (this is the case illustrated in Figure 2). Consequently, for medium size of utility of the courts under independence, the judiciary is convertible for the unified government but not so for the proper separation of executive and legislature.

The effect of separation of executive and legislature on increase of protection of independence of the justice and with it guarantee of property rights is stressed by Hayek

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(1960). As he argues, the most important channel through which conflicting interests of different branches of government ensures reduction of transgression by them, is that for certain kinds of coercion joint and coordinated powers or the employment of several means are needed; and if these are allocated to separate branches, none of them are able to exert it. For the executive and the legislature to be able to subvert justice, combination of their forces are needed first to attain enough power and resources and then to use it for convincing the judiciary.

Comparative Statics: Causes of (In)dependence of Judiciary

The model can incorporate different arguments that scholars have used to explain the creation of independence of the judiciary. Figure 3 provides an illustration of these. Any factors that shift the maximum possible utility of an independent judiciary down or voting rule left render dependent justice more likely outcome. A strong enough decrease of level of utility of courts under independence may make judiciary easy to subvert. This happens through a decrease in the amount of resources needed for separated or united executive and legislature to convince the judiciary to pander their interests. Therefore, if the amount needed for this purpose was prohibitively high before lowering the level of utility attained by the judiciary under independence, it may become affordable afterwards, making judges subservient to other branches of the government.

The level of utility of courts under independence can also be interpreted more broadly. The power of the executive and the legislature is not necessarily their holding of the resources, but also the opinion about their abilities to decrease the utility of disobedient judges. From this perspective, utility of the courts under independence can also represent the beliefs of the judiciary about attaining prestige, deference and other wishes discussed above while being independent. For example, belief that the government will be able to successfully evade judicial decisions reduces possible attainable utility of the courts under

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Figure 3: Comparative Statics
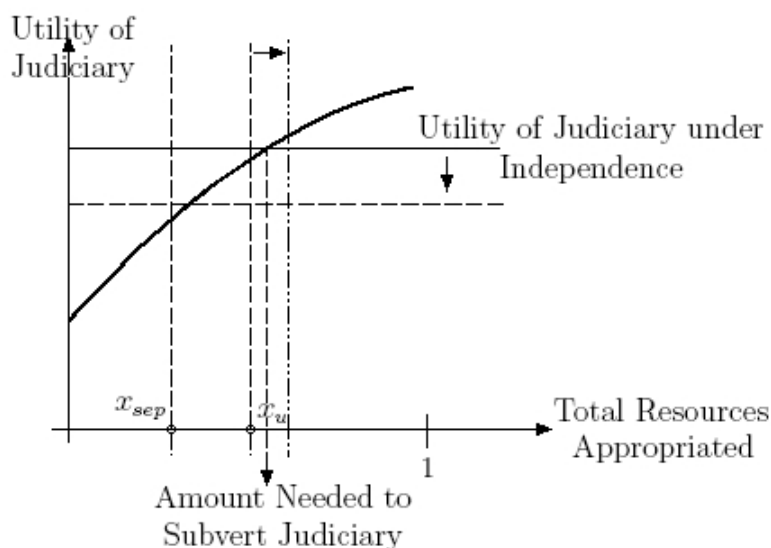
independence (Vanberg 2001). The same results by the idea that constitutional guarantee to the judges will not be followed in reality. All these lead to the shift of the horizontal line down as indicated on Figure 3. Through such a decrease of possible utility of judiciary under independence, these beliefs make the courts easier to convince since the amount of necessary resources needed for this purpose is reduced. Thus, the actions of the government that undermine beliefs of the judiciary about their status causes dependent judiciary to be more likely. This result parallels the observation made by Langer (2002) that frequent amendments of constitution changes the behavior of judges, making them more inclined to follow the preferences of the government.

Increase in utility of courts under independence is beneficial for the judiciary regardless of whether it remains independent or not since doing so increases its utility in both cases. Therefore, there is no distortion of incentives of the judiciary to strategically reduce its standing for rent-seeking purposes. On the other hand, the same reasons induce the executive and the legislature to prefer lower possible utility of the courts under independence.

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Examples of implicit or explicit actions of the government that stipulate lower expectation of the judiciary about its standing abound. In 1990, Federal Judge Harold Baer Jr. disregarded significant evidence arguing that the police did not have reasonable suspicion to search the suspect. President Bill Clinton, who appointed the judge, asked him to resign unless he reversed the decision. The Senator called for impeachment of the judge although judges can only be impeached for crimes, not for bad opinions. The judge soon ruled in favor of government on the motion of reconsideration. However, he was later identified as an impeachment target (Time, April 22, 1996).

The conclusion that an independent judiciary is more likely to be observed in a case when powers are well separated corresponds to the discussion by McNollgast (2006), even though the model developed here is very different. Their argument of "waxing and waning" of the judiciary is that under divided government one chamber is highly likely to protect the judiciary by vetoing others' actions that overturn courts decisions. Ramseyer (1994) explains the same association of independence of the judiciary with weak political hold of ruling party by arguing that independence is likely to be granted by the government that faces strong political competition and is not sure of being a winner in elections. As he claims, although an independent court decreases the power of the incumbent over the policy implemented while being in the office, it increases their influence while being out of office since the independence of the judiciary guarantees that successors will be far less able to overturn their rulings. This argument was formalized and empirically tested by Hanssen (2004), who showed that higher probability of winning the elections and lower difference in political platforms between the parties in power indeed renders lower likelihood of observing independent judiciary.

In the comparative statics framework developed above, low political competition forces voters to reelect the government even if they do not completely agree with the policies implemented, thus decreasing the threshold level of public good consumption in their voting

rule. As a result, the vertical line, which indicates the level of amount of resources that voters allow incumbents to appropriate for incentivizing them to value retention of the office, shifts to the left as shown in the Figure 3. This translates into more leeway of the executive and the legislature which they use for implementing desired policies. Consequently, they gain more resources which makes more likely that the branches of the government will be able to subvert the justice.

Ramseyer (1994) also suggests an alternative explanation for the difference in judicial arrangement between the U.S. and Japan. He indicates that American and Japanese voters do not differ in their "taste" for independent court, as people in both nations have the same reaction on encroachment of the government to the rights of the judiciary. However, the Japanese might have stronger preferences towards policy, effective implementation of which needs government controlled judiciary. In the framework of this model, this means that the valuation by the Japanese voters of the decisions of judges is lower than that of politics, implying that the Japanese judiciary can enjoy lower level of prestige, popularity and deference, and subsequently lower utility from being independent. This causes a decrease of utility attainable by courts under independence, again shifting the horizontal line downwards as is shown in the Figure 3. Lower utility of the Japanese judiciary under independence reduces the affordability of convincing it to cater interests of the government. As a consequence, the independence of the judiciary is less likely to be observed in Japan than in the U.S..

4. Conclusions

In Part II, I have analyzed the independence of the judiciary in different governmental environments. Separation of the executive and the legislature, built-in in almost all constitutions of the world following that of the U.S., was shown to be one of the channels through which the government is forced to grant independence to the judiciary notwith-

standing their strong desire not to do so. However, for separation of the executive and the legislature to have an effect, guaranteeing it through a constitution is not enough. True conflict of interests along with the obligation of achieving agreement is necessary. As Ramseyer (1994) notes, provision of independence to the judges in almost all constitutions, together with the fact that true independence of the judiciary is rarely observed, indicates that judicial independence is unrelated to the text of constitution, but rather to some other forces. Ramseyer (1994) suggests elections as a main reason of granting independence. This part of the thesis has stressed separation of executive and legislature as an alternative explanation of observing judicial independence. Consequently, independence of the judiciary appears to be a by-product of struggle rather than a result of deliberate aim as was argued by Hayek (1960).

Postscript

Although two different models developed in this thesis introduced the structure of the government as an important issue for explaining judicial institutions, some of the puzzles about the judiciary remain to be resolved. One of the puzzles, raised by Ramseyer (1994), is predominant difference in independence of the judiciary and other governmental bureaucracies. While the model of Part II addressed this by building on law creation as an inherent feature of the judiciary, the first model could also be applicable to other agencies predicting independence of some bureaucracies - the outcome which is almost never observed. The other unexplored facet of the judiciary is the feedback effect of judicial independence on the structure and power of the government. Nevertheless, implications drawn from the models presented here are realistic and consistent with previous empirical observations.

The next step in this research would be to identify exact distinctions between the judiciary and other bureaucratic agencies, and model the political processes that lead to a reversed effect of the judicial independence on other branches of the government.

APPENDIX I

PROOF OF RESULT I-1

The benchmark threshold value A_{ef}^* obtained by Glaeser and Shleifer (2002) solves:

$$\int_{D>A_{ef}^*/\beta} Df(D)dD = \int_D \int_{R>-D/\theta}(D+\lambda\theta R)f(D)g(R)dDdR \qquad (1)$$

The utility of the sovereign under the dependent justice is:

$$\int_D \int_{R>-D/\theta}(D+\theta R)f(D)g(R)dDdR$$

The utility of the government under the independent courts is the sum of the following terms:

(i) Utility derived from all convictions: $\int_{D>A/\beta}\int_R(D+\theta R)f(D)g(R)dDdR$. This already incorporates dissatisfaction from convicting the supporter of the government. Using $E(R)=0$, it simplifies to:

$$\int_{D>A/\beta} Df(D)dD$$

(ii) Disutility from not convicting the violators that the government would like to punish:

$$-\int_{D<A/\beta}\int_{R>-D/\theta}(D+\theta R)f(D)g(R)dDdR$$

Threshold value A_S^* which makes the sovereign indifferent between the two systems can be solved from equalizing the utility derived under the dependent justice with that under independent courts. This yields the following equation:

$$\int_{D>A_S^*/\beta} Df(D)dD = \int_{D<A_S^*/\beta}\int_{R>-D/\theta}(D+\theta R)f(D)g(R)dDdR+$$

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$$+ \int_D \int_{R>-D/\theta} (D + \theta R) f(D) g(R) dD dR \qquad (2)$$

Notice that in condition (2), the left-hand side is the same expression as in the equation (1) but evaluated for different value of A. It is decreasing with A. Also notice, that the second term on the right-hand side is the case where λ is taken to be its maximum possible value 1. Therefore, the second term will be higher than the right-hand side in the equation (1). Furthermore, the first term on the right-hand side of condition (2) is positive because $E(R|R > -D/\theta) > 0$. Thus, the right-hand side of the equation (2) is higher than the right-hand side of the equation (1). Consequently, for the condition to hold the following needs to hold:

$$\int_{D>A_S^*/\beta} D f(D) dD > \int_{D>A_{ef}^*/\beta} D f(D) dD$$

As this integral is decreasing in A we have $A_S^* < A_{ef}^*$. This relationship holds notwithstanding the fact that the first term on the right-hand side of equation (2) depends on A. The reason is that it is positive making the right-hand side higher than in the benchmark case.

The gap between the two threshold values A_S^* and A_{ef}^* depends on the magnitude of the following:

$$\int_{D<A/\beta} \int_{R>-D/\theta} (D + \theta R) f(D) g(R) dD dR +$$
$$+ (1-\lambda)\theta \int_D \int_{R>-D/\theta} R f(D) g(R) dD dR$$

The derivative of the first term with respect to θ is:

$$- \int_{D<A/\beta} D g\left(-\frac{D}{\theta}\right) \frac{D}{\theta^2} f(D) d(D) + \int_{D<A/\beta} \int_{R>-D/\theta} R f(D) g(R) dD dR +$$

$$+ \theta \int_{D<A/\beta} -\frac{D}{\theta} f(D) g\left(-\frac{D}{\theta}\right) \left(-\frac{D}{\theta^2}\right) dD$$

which simplifies to:

$$\int_{D<A/\beta} \int_{R>-D/\theta} R f(D) g(R) dD dR$$

which is positive since $E(R|R > -D/\theta) > 0$.

The derivative of the second term with respect to θ is:

$$(1-\lambda) \int_D \int_{R>-D/\theta} R f(D) g(R) dD dR + (1-\lambda)\theta \int_D -\frac{D}{\theta} f(D) g\left(-\frac{D}{\theta}\right)\left(-\frac{D}{\theta^2}\right) dD$$

which is also positive. Consequently: $\dfrac{\partial gap}{\partial \theta} > 0$. The gap is also bigger the wider is interval of R because integrals of positive functions will be taken on a bigger interval.

Differentiating the condition (2) gives:

$$-\frac{A}{\beta} f\left(\frac{A}{\beta}\right) \frac{1}{\beta} dA_S^* + \left(-\frac{A}{\beta}\right) f\left(\frac{A}{\beta}\right)\left(-\frac{A}{\beta^2}\right) d\beta - \int_{R>-D/\theta}\left(\frac{A}{\beta} + \theta R\right) f\left(\frac{A}{\beta}\right) g(R)\left(-\frac{A}{\beta^2}\right) dR d\beta -$$

$$- \int_{R>-D/\theta}\left(\frac{A}{\beta} + \theta R\right) f\left(\frac{A}{\beta}\right) g(R)\left(\frac{1}{\beta}\right) dR dA_S^* = 0$$

Rearranging terms gives:

$$\left(1 + \frac{\beta}{A}\left(\int_{R>-D/\theta}\left(\frac{A}{\beta} + \theta R\right) g(R) dR\right)\right) dA_S^* =$$

$$= \left(\frac{A}{\beta} + \int_{R>-D/\theta}\left(\frac{A}{\beta} + \theta R\right) g(R) dR\right) d\beta$$

Therefore:

$$\frac{\partial A_S^*}{\beta} = \frac{A}{\beta} > 0$$

This is the same as the $\frac{\partial A_{ef}^*}{\beta}$, meaning that distortion is independent of β. ∎

PROOF OF RESULT I-2

The resources needed for the transfers to the dependent courts is limited by K. Therefore, constraint is:

$$\int_R (A + \beta_j(\theta - \theta_j))g(R)dR \leq K$$

The sovereign will use its limited resources in cases when the judge would not convict otherwise. Moreover, it will first use resources in cases that are of high importance. Therefore, the sovereign will be able to force convictions in cases when $R > \bar{R}$. Where $\bar{R} > 0$ represents the strictness of the constraint (In cases when $R < -\tilde{R}$, the sovereign will dissuade the judge from convicting). The dependent judge convicts without the influence of the government if $D > A/\beta_j - \theta_j R$, otherwise the government needs to use the resources to change decision. Here again, the utility of the constrained government under the dependent justice will consist of two parts:

(i) Utility derived from all convictions (it already incorporates disutility from convicting the supporter of the government):

$$\int_{D>A/\beta_j-\theta_j R} \int_{R>-\tilde{R}} (D + \theta R)f(D)g(R)dDdR$$

(ii) Disutility from not being able to force convictions (negative):

$$\int_{D<A/\beta_j-\theta_j R} \int_{R<\bar{R}} (D + \theta R)f(D)g(R)dDdR$$

When the constraint is very lax, that is $\bar{R} = -D/\theta$, than the government is again able to perfectly align the decisions to its own, therefore the judges never get to choose, thus the utility will become $\int_D \int_{R>-D/\theta} (D + \theta R)f(D)g(R)dDdR$. But as the constraint is getting stricter ($\bar{R}$, and $\tilde{R}$ increase), the utility of the government from dependent judiciary decreases.

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The threshold value A^* that makes the constrained sovereign indifferent between the two types of adjudication will solve:

$$\int_{D>A^*/\beta} Df(D)dD = \int_{D<A^*/\beta}\int_{R>-D/\theta}(D+\theta R)f(D)g(R)dDdR+$$

$$+\int_{D>A^*/\beta_j-\theta_j R}\int_{R>-\tilde{R}}(D+\theta R)f(D)g(R)dDdR+\int_{D<A^*/\beta_j-\theta_j R}\int_{R<\bar{R}}(D+\theta R)f(D)g(R)dDdR$$

As was mentioned above the last two terms are below $\int_D\int_{R>-D/\theta}(D+\theta R)f(D)g(R)dDdR$, which makes the right-hand side lower than $\int_{D>A_S^*/\beta}Df(D)dD$ implying that $A^* > A_S^*$. Furthermore, by further tightening the constraint, the right-hand side becomes lower and may fall short of $\int_D\int_{R>-D/\theta}(D+\lambda\theta R)f(D)g(R)dDdR$, meaning that for strict constraint enough, $A^* > A_{ef}^*$. ∎

Appendix II

Proof of Result II-1

The legislature will make the judiciary dependent and refrain from diverting everything today if:

$$v(1-j(1)) \leq \frac{v(x^T - j(x^T))}{1-\delta} \tag{3}$$

such that

$$j(1), j(x^T) \geq J$$

The condition (3) will be satisfied with equality since voters will set minimum possible x^T. Furthermore, the legislative will have to offer the same amount to the judiciary regardless the scenario. This offer will be minimum possible, that is J, taking all this into account

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(3) gives total resources diverted to amount to:

$$x^T = v^{-1}\left((1-\delta)v(1-J)\right) + J$$

$$c = \theta(1 - v^{-1}\left((1-\delta)v(1-J)\right) - J)$$

By concavity of $v(\cdot)$, $v^{-1}\left((1-\delta)v(1)\right) - v^{-1}\left((1-\delta)v(1-J)\right) < J$, which means that total diversion of resources under the regime with no judiciary (equal to $v^{-1}\left((1-\delta)v(1)\right)$ as was shown by Persson et al. (1997)) is lower than that under the dependent judiciary.

For linear utilities this expression simplifies to:

$$x^T = \left((1-\delta)(1-J)\right) + J = (1-\delta) + J\delta$$

$$c = \theta\delta(1-J) < \theta\delta$$

where $\theta\delta$ is the amount appropriated by the executive in the absence of the judiciary derived by Persson et al. (1997). ■

PROOF OF RESULT II-2

The branches will refrain from diverting everything today if:

$$v(x^S - j^x(x)) \leq \frac{v(x^L - j^x(x))}{1-\delta}; \quad v(l^S - j^l(x)) \leq \frac{v(l^L - j^l(x))}{1-\delta} \tag{4}$$

such that

$$j^x(x) + j^l(x) \geq J$$

because of the same reason as before this condition will hold as equality. Denote $j^x(x) \equiv J_x$; and $j^l(x) \equiv J_l$. The branches of the government have to transfer the same minimum amount to the judiciary for making it dependent in any circumstance whether divert today

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or in the long-run. Plugging all these into (4) will give:

$$x^L - J_x = v^{-1}\left((1-\delta)v(x^S - J_x)\right)$$

$$l^L - J_l = v^{-1}\left((1-\delta)v(l^S - J_l)\right)$$

The total diverted resources is: $x^L + l^L$, that is:

$$v^{-1}\left((1-\delta)v(x^S - J_x)\right) + v^{-1}\left((1-\delta)v(l^S - J_l)\right) + J$$

Since $x^S + l^S < 1$, using monotonicity and concavity of $v(\cdot)$ this amount is less than that in the previous case. Therefore, the result of Persson et al. (1997) remains after introducing the judiciary.

By concavity of $v(\cdot)$, $v^{-1}\left((1-\delta)v(x^S)\right) - v^{-1}\left((1-\delta)v(x^S - J_x)\right) < J_x$, and similarly $v^{-1}\left((1-\delta)v(l^S)\right) - v^{-1}\left((1-\delta)v(l^S - J_l)\right) < J_l$, which means that total diversion of resources under the regime with no judiciary (equal to $v^{-1}\left((1-\delta)v(x^S)\right) + v^{-1}\left((1-\delta)v(l^S)\right)$ as was shown by Persson et al. (1997)) is lower than that under the dependent judiciary.

For linear utilities the above expressions simplify to:

$$x^L = (1-\delta)x^S + \delta J_x$$

and

$$l^L = (1-\delta)l^S + \delta J_l$$

Which yields total diverted resources to amount to:

$$x^L + l^L = (1-\delta)(x^S + l^S) + \delta J$$

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Under no-judiciary, the last term (which is positive) would dissapear yielding less diversion of resources in the absence of the judiciary.

Voters will reappoint the government if: $c \geq \theta(1 - x^L - l^L)$, which for linear utility reduces to $c \geq \theta(1 - x^S - l^S - \delta(x^S + l^S + J))$. ∎

PROOF OF RESULT II-3

In case of unified executive and legislature, they will be able to make the judiciary dependent if:

$$j(x^T) \geq J$$

while in case of separated executive and legislature it is possible if $J_x + J_l \geq J$, that is:

$$j(x^L + l^L) \geq J$$

Since $x^T > x^L + l^L$ and $j(\cdot)$ is increasing function we have: $j(x^T) > j(x^L + l^L)$. Therefore we might have the following three cases:

(i)

$$J > j(x^T) > j(x^L + l^L)$$

Here it is impossible for any type of the government to make the judiciary dependent.

(ii)

$$j(x^T) > J > j(x^L + l^L)$$

Here unified executive and legislature will make the judiciary dependent while the separation of executive and legislature will yield independent courts.

(iii)

$$j(x^T) > j(x^L + l^L) > J$$

Here any type of the government will make the judiciary dependent. ∎

References

[1] Anjaparidze, Zaal. 2006. "Critics Press for Improved Judicial Independence in Georgia," *Eurasia Daily Monitor*. April 26.

[2] Baev, Pavel. 2007. "Putin Upholds Non-existent Rule of Law in Russia," *Eurasia Daily Monitor*. January 15.

[3] Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.

[4] Berkowitz, Daniel and Karen Clay. 2006. "The Effect of Judicial Independence on Courts: Evidence from the American States," *Journal of Legal Studies* 35(2): 399-400.

[5] Berkowitz, Daniel; Chris Bonneau and Karen Clay. 2006. "Judicial Independence and Minority Interests". Mimeo, November.

[6] Besley, Tim and Abigail Payne. 2003. "Judicial Accountability and Economic Policy Outcomes: Evidence from Employment Discrimination Charges," London School of Economics working paper, November.

[7] Bohn, Hemming and Robert Inman. 1996. "Balanced Budget Rules and Public Deficits: Evidence from the U.S." National Bureau of Economic Research working paper No. 5533, Cambridge, Mass.

[8] Brown, Neville and John Bell. 1998. *French Administrative Law*. Oxford, Clarendon Press.

[9] Feld, Lars and Stefan Voigt. 2003. "Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators," *European Journal of Political Economy* 19(3): 497-527.

[10] Glaeser, Edward and Andrei Shleifer. 2002. "Legal Origins," *Quarterly Journal of Economics* 117(4): 1193-229.

[11] Glaeser, Edward and Andrei Shleifer. 2003. "The Rise of the Regulatory State," *Journal of Economic Literature* 41(2): 401-425.

[12] Hanssen, Andrew. 1999. "The Effect of Judicial Institutions on Uncertainty and the Rate of Litigation: The Election versus Appointment of State Judges," *Journal of Legal Studies* 28(1): 205-232.

[13] Hanssen, Andrew. 2004. "Is There a Politically Optimal Degree of Judicial independence?" *American Economic Review* 94: 712-729.

[14] Hayek, Friedrich von (1960). *The Constitution of Liberty*. Chicago: The University of Chicago Press.

[15] Klerman, Daniel and Paul Mahoney. 2005. "The Value of Judicial Independence: Evidence from 18th Century England," *American Law and Economics Review* 7(1): 1-27.

[16] Klerman, Daniel and Paul Mahoney. 2007. "Legal Origin?" SSRN working paper.

[17] Kornhauser, Lewis. 2002. "Is Judicial Independence a Useful Concept?" In *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, ed. Stephen Burbank and Barry Friedman. Thousand Oaks, CA: Sage.

[18] Kramer, Michael. 1996. "Cheap Shot at Judges," *Times*. April 22.

[19] La Porta, Rafael, Florencio Lopez-de-Silanes, Cristian Pop-Eleches and Andrei Shleifer. 2004. "Judicial Checks and Balances," *Journal of Political Economy*, 112: 455-70.

[20] Landes, William and Richard Posner. 1997(1975). "Independent Judiciary in an Interest-group perspective". *Journal of Law and Economics* 18(3): 875-901.

[21] Langer, Laura. 2002. *Judicial Review in State Supreme Courts*. State University of New York Press, Albany.

[22] Mahoney, Paul. 2001. "The Common Law and Economic Growth: Hayek Might be Right," *Journal of Legal Studies* 30: 503-25.

[23] McCubbins, Mathew and Thomas Schwartz. 1984. "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science* 28(1): 165-179.

[24] McCubbins, Mathew; Roger Noll and Barry Weingast. Published under McNollgast. 2006. "Conditions for Judicial Independence," *Journal of Contemporary Legal Issues*, available at SSRN.

[25] Padovano, Fabio; Grazia Sgarra and Nadia Fiorino. 2003. "Judicial Branch, Checks and Balances and Political Accountability," *Constitutional Political Economy* 14(1): 47-70.

[26] Persson, Torsten; Gerard Roland and Guido Tabellini. 1997. "Separation of Powers and Political Accountability," *Quarterly Journal of Economics* 112(4): 1163-1202.

[27] Posner, Richard. 1995. *Overcoming Law*. Cambridge, MA: Harvard University Press.

[28] Ramseyer, Mark. 1994. "The Puzzling (In)dependence of Courts: A Comparative Approach," *Journal of Legal Studies* 23(2): 721-47.

[29] Ramseyer, Mark and Eric Rasmusen. 1997. "Judicial Independence in a Civil Law Regime: The Evidence From Japan," *Journal of Law, Economics and Organization*, 13(2): 259-286.

[30] *The Economist.* 2003. "You're Another". August 14.

[31] Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review," *American Journal of Political Science,* 45(2): 346-361.