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Economic Approaches to the Separation of Powers

**Contribution prepared for the
“Cambridge Handbook on Separation of Powers”**

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Abstract: This chapter surveys economic perspectives on the separation of powers, revealing how contemporary research in political economics and the economic analysis of law conceptualize and assess institutional checks on government authority. Emphasizing principal-agent theory, it unpacks how constitutional structures—ranging from presidentialism and bicameralism to federalism—help align the interests of political agents with those of citizens and mitigate moral hazard. The analysis extends to the judiciary’s role as a credible commitment device, highlighting empirical evidence on the economic significance of judicial independence. Moving beyond the traditional tripartite model, the chapter explores the rationale and effects of delegating authority to independent agencies and so-called fourth branch agencies such as audit offices and anti-corruption commissions. The chapter concludes by addressing the resilience of separation-of-powers systems in the face of democratic erosion and the idea of militant constitutionalism. It argues that the economic approach offers helpful tools for understanding both the potential and limitations of institutional design in promoting accountable, stable, and adaptive governance, while underscoring the need for further research into how separation of powers can be fortified against contemporary authoritarian threats.

Keywords: Political economy; judicial independence; independent agencies; fourth branch agencies; militant constitutionalism.

1. Introduction

Economics studies human decision-making under constraints. Modern economics has expanded the analysis from decisions of economic actors to include those of politicians, but also of judges and many others. At the same time, the constraints taken into consideration are no longer limited to physical resources, but include man-made constraints, such as laws. Economists refer to these man-made constraints as institutions, which are defined as rules enforced through the threat of sanctions. The separation of powers can, thus, be understood as a particular set of institutions that are meant to constrain political representatives in their decisions. The economic analysis of the separation of powers is interested in how the institutions that aim to separate political powers shape the decisions of political actors subject to these institutions. This helps in understanding why the separation of powers is created, who may benefit from it, and what is required for it to be effective.

In this chapter, we summarize selected research ranging from the traditional (horizontal) separation of powers to more recent discussions revolving around the introduction of so-called fourth branch agencies. Section 2 discusses the incentives created by the separation of powers through the lens of principal-agent-theory, a prominent framework of analysis for delegated power throughout the social sciences. Section 3 describes a different perspective on the separation of powers. The separation of powers may also benefit those who are constrained by it by allowing them to credibly commit to future actions. In Section 4, we discuss how extensions to the traditional separation of powers by introducing independent agencies or so-called fourth branch agencies differ in their rationale from how and why powers were traditionally separated. Section 5 concludes and suggests ideas for future research.

2. Separation of powers as a solution to principal agent problems

A major challenge in constitutional design is to align the interests of politicians (the agents) with those of the citizens (the principal). Principal-agent theory studies institutional solutions that allow for a delegation of power or competences from a principal to an agent by making sure that the agent acts in the interest of the principal, although the principal is not capable of perfectly monitoring the agent's actions. The fact that in the absence of (perfect) monitoring the agent may use the delegated power to further his or her own interest rather than that of the principal is called a moral hazard problem. Setting the principal-agent-relationship between citizens and politicians up efficiently is complicated by the fact that many of the standard-solutions of mechanism design, such as performance-based pay, are hardly applicable in this context. Elections are one instrument that is commonly used to discipline politicians. In their absence, the threat of revolution can sometimes serve as an alternative mechanism to control moral hazard.¹ Not only do different solutions to the principal-agent-problem have their unique drawbacks – elections, for example, threaten the interests of minorities² – they are also not capable of fully aligning the interests of citizens and politicians. Thus, constitutional designers typically rely on a mix of instruments and design principles. The separation of powers is one of the organizational principles in constitutional design that can improve the accountability of public officials to their citizens. To serve this function, the separation of powers must be accompanied by a self-enforcing system of checks and balances that entails a conflict of interests between the branches of government (e.g., the executive and the legislature) and where policymaking requires a joint agreement between those bodies.³ In combination with elections,

¹ D. Acemoglu and J. A. Robinson, 'A theory of political transitions' (2001) 91(4) *American Economic Review* 938-963.

² E. Maskin and J. Tirole, 'The politician and the judge: Accountability in government' (2004) 94(4) *American Economic Review* 1034-1054.

³ T. Persson, G. Roland, and G. Tabellini, 'Separation of powers and political accountability' (1997) 112(4) *Quarterly Journal of Economics* 1163-1202.

this organizational scheme works best when responsibilities are clearly defined such that voters know whom to blame for a transgression or failure.

The separation of powers can address the moral hazard problem in representative democracy, i.e., the problem that politicians follow their own interest and often do not comply with the rules under which they are supposed to operate. In the following, we discuss a series of design choices in setting up an effective separation of powers and the evidence on how they affect political and economic outcomes.

The first design choice concerns the form of government. Presidential systems are often claimed to be characterized by a higher degree of separation of powers than parliamentary systems. The main difference between these systems being that presidents do not depend on the support of the legislature to keep their political office, whereas heads of the executive in parliamentary systems do. Persson et al., therefore, predict parliamentary systems to exhibit a larger public sector and more corruption than in presidential ones.⁴ Robinson and Torvik have challenged the underlying assumption that presidential systems generally enjoy a greater separation of powers.⁵ Persson and Tabellini showed some systematic differences between countries governed by presidential and parliamentary systems: presidential systems have less government spending, a smaller welfare state, and less public sector corruption.⁶ A replication study by Blume et al., however, shows that these results are not robust to reasonable variations, such as additional data and alternative institutional indicators.⁷ McManus and Ozkan even demonstrate that presidential systems perform poorer with respect to a range of macroeconomic performance

⁴ T. Persson, G. Roland, and G. Tabellini, 'Separation of powers and political accountability' (1997) 112(4) *Quarterly Journal of Economics* 1163-1202. T. Persson, G. Roland, and G. Tabellini, 'Comparative politics and public finance' (2000) 108(6) *Journal of Political Economy* 1121-1161.

⁵ J. A. Robinson and R. Torvik, 'Endogenous presidentialism' (2016) 14(4) *Journal of the European Economic Association* 907-942.

⁶ T. Persson and G. Tabellini, *The Economic Effects of Constitutions* (MIT Press, 2003). T. Persson and G. Tabellini, 'Constitutional rules and fiscal policy outcomes' (2004) 94(1) *American Economic Review* 25-45.

⁷ L. Blume, J. Müller, S. Voigt, and C. Wolf, 'The economic effects of constitutions: Replicating—and extending—Persson and Tabellini' (2009) 139(1-2) *Public Choice* 197-225.

indicators.⁸ Also, regarding the relationship between form of government and corruption, other studies have found parliamentary systems to do better.⁹ Finally, Voigt argues that presidents might be less constrained by constitutional rules than prime ministers.¹⁰ Gutmann et al. show that this is, indeed, a persistent stylized fact over time.¹¹

Whereas presidentialism increases the separation of powers by separating executive and legislature, bicameralism increases the separation of powers by dividing the legislature into different houses. Buchanan and Tullock predict that bicameral systems can reduce external costs, while increasing decision costs less than would be the necessary in a unicameral system.¹² Bradbury and Crain argue that, on the one hand, spending on redistribution should be lower (minorities being protected against expropriation) and, on the other, spending on productivity-enhancing public goods should be higher than in unicameral legislatures.¹³ Levmore argues that bicameralism should curb corruption.¹⁴ Bradbury and Crain provide evidence that higher levels of bicameralism in US states reduce government expenditures.¹⁵ Also Plümper and Martin show that bicameralism is linked to lower government spending.¹⁶ Testa, however, finds no evidence that bicameralism is in general associated with lower corruption levels.¹⁷

In terms of the vertical separation of powers, federalism is clearly the most important design choice for constitution-makers. Federalism is related to bicameralism in that all federal nation-

⁸ R. McManus and F. G. Ozkan, 'Who does better for the economy? Presidents versus parliamentary democracies' (2018) 176(3-4) *Public Choice* 361-387.

⁹ J. Gerring and S. C. Thacker, 'Political institutions and corruption: The role of unitarism and parliamentarism' (2004) 34(2) *British Journal of Political Science* 295-330. D. Lederman, N. V. Loayza, and R. R. Soares, 'Accountability and corruption: Political institutions matter' (2005) 17(1) *Economics and Politics* 1-35.

¹⁰ S. Voigt, *Constitutional Economics: A Primer* (Cambridge University Press, 2020).

¹¹ J. Gutmann, Jerg, K. Metelska-Szaniawska, and S. Voigt, Stefan, 'The comparative constitutional compliance database' (2024) 19(1) *Review of International Organizations* 95-115.

¹² J. M. Buchanan and G. Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (University of Michigan Press, 1962).

¹³ J. C. Bradbury and W. M. Crain, 'Bicameral legislatures and fiscal policy' (2002) 68(3) *Southern Economic Journal* 646-659.

¹⁴ S. Levmore, 'Bicameralism: When are two decisions better than one?' (1992) 12(2) *International Review of Law and Economics* 145-162.

¹⁵ J. C. Bradbury and W. M. Crain, 'Bicameral legislatures and fiscal policy' (2002) 68(3) *Southern Economic Journal* 646-659.

¹⁶ T. Plümper and C. W. Martin, 'Democracy, government spending, and economic growth: A political-economic explanation of the Barro-effect' (2003) 117(1) *Public Choice* 27-50.

¹⁷ C. Testa, 'Bicameralism and corruption' (2010) 54(2) *European Economic Review* 181-198.

states have a second chamber of parliament in which the subnational political actors are represented.¹⁸ But since bicameral systems exist also without federalism, the two design choices should still be considered individually. With federalism, we refer to a constitutional-level trait that is different from post-constitutional fiscal decentralization. It divides decision-making powers between a central and some regional governments such that each of them is able to make final decisions in some areas.¹⁹ While the theoretical consequences of federalism are largely ambiguous,²⁰ there are some clear empirical patterns. Rodden shows that total government expenditure is lower in countries in which local and state governments have the competence to set the tax base.²¹ Feld et al. find that more intense tax competition leads to lower public revenue.²² The effect of federalism on corruption, in contrast, is still unclear.²³ With respect to governments' compliance with the constitution, Kantorowicz and Voigt find no difference between states with a unitary or federal structure.²⁴

3. Separation of powers as a commitment device

Aside from mitigating principal-agent problems to favor the pursuit of the interests of citizens, the separation of powers can also benefit politicians by improving their ability to make credible promises. Legislation can be thought of as containing promises on how the government will or will not act. If the executive can renege on these promises at a later date and get away with it,

¹⁸ However, clear the empirical pattern is, bicameralism is not a technical requirement for federal systems. Belgium, for example, has significantly weakened its bicameralism in a 2014 reform.

¹⁹ W. Riker, 'Federalism' in F. I. Greenstein and N. W. Polsby (eds.), *Handbook of Political Science*, (Addison Wesley, 1975), vol. 5, pp. 93-172.

²⁰ See, e.g., S. Voigt, *Constitutional Economics: A Primer* (Cambridge University Press, 2020) for a discussion.

²¹ J. Rodden, 'Reviving Leviathan: Fiscal federalism and the growth of government' (2003) 57(4) *International Organization* 695-729.

²² L. P. Feld, G. Kirchgässner, and C. A. Schaltegger, 'Decentralized taxation and the size of government: Evidence from Swiss state and local governments' (2010) 77(1) *Southern Economic Journal* 27-48.

²³ D. Treisman, 'The causes of corruption: A cross-national study' (2000) 76(3) *Journal of Public Economics* 399-457. D. Treisman, 'What have we learned about the causes of corruption from ten years of cross-national empirical research?' (2007) 10(1) *Annual Review of Political Science* 211-244. T. Persson and G. Tabellini, *The Economic Effects of Constitutions* (MIT Press, 2003).

²⁴ J. Kantorowicz and S. Voigt, Stefan, 'Assessing the impact of federalism on constitutional compliance' (2025) *Constitutional Political Economy*.

these promises are likely to be perceived as cheap talk rather than as binding commitments. Politicians need to be able to make such binding promises, if they have time-inconsistent preferences, i.e., if their long run interests differ from their short-run interests. In the short run, politicians may be tempted to expropriate private property or to pursue an expansionary monetary policy. In the long run, however, politicians are often better off if they are committed to not giving in to these temptations. This is where the third branch of government, the judiciary, may play a crucial role. While courts deal with the enforcement of private contracts and the internalization of externalities between private actors, they also fulfill important political functions. Basic models of the separation of powers such as that by Persson et al. tend to ignore the judiciary, as two branches of government are generally enough to demonstrate how the principal-agent problem between citizens and politicians can be mitigated.²⁵ Padovano et al. introduce a model with all three branches of government.²⁶ They find that only an independent judiciary improves accountability, while an accommodating judiciary does not.

The judiciary, however, is different from executive and legislatures in that it is not put in charge of taking its own political decisions, but it is supposed to monitor rule compliance by the other branches of government.²⁷ It is, thus, not only another actor to be involved in the separation of powers, but the judiciary lends itself specifically as a self-commitment device of the other branches of government. On the one hand, powerful states are tempted to ignore rules that protect the interests of minorities, political opponents, or even of citizens in general. If they, for example, do not respect property rights, citizens have no incentive to invest in physical or human capital in the first place. As a result, the economy, which is also the source of the politicians' income, will perform poorly. An independent judiciary can make politicians'

²⁵ T. Persson, G. Roland, and G. Tabellini, 'Separation of powers and political accountability' (1997) 112(4) *Quarterly Journal of Economics* 1163-1202.

²⁶ F. Padovano, G. Sgarra, and N. Fiorino, 'Judicial branch, checks and balances and political accountability' (2003) 14(1) *Constitutional Political Economy* 47-70.

²⁷ See, e.g., M. Chemin, 'Can judiciaries constrain executive power? Evidence from judicial reforms' (2021) 199 *Journal of Public Economics* 104428. G. Lambais and H. Sigstad, 'Judicial subversion: The effects of political power on court outcomes' (2023) 217 *Journal of Public Economics* 104788.

promises, such as that to respect property rights, credible, thereby mitigating the adverse consequences of their time-inconsistent preferences. On the other hand, an independent judiciary can also harm the economy by extending the lifespan of deals between politicians and special interests.²⁸

Empirical evidence, however, shows that countries with de facto independent judiciaries enjoy higher growth rates, which is not true if judges are only independent on paper.²⁹ Moreover, constitutional (de jure) property rights promises are only associated with higher growth rates if there is a de facto independent judiciary.³⁰ Judges are not the only actors in the judiciary needed to hold politicians accountable. Empirical evidence suggests that prosecutorial independence is also required to curb political corruption.³¹

4. Extending the separation of powers beyond the traditional trias

a. Introductory remarks

Economists typically use models, which assume that politicians – like everyone else – try to maximize their own utility. Increasing their power is usually considered to contribute to the utility of politicians. The observation that politicians delegate powers to actors beyond the traditional trias of executive, legislature, and judiciary, therefore, calls for an explanation. If delegating or sharing power can, for example, safeguard politicians' popularity, it may be entirely rational.

²⁸ W. M. Landes and R. A. Posner, 'The independent judiciary in an interest-group perspective' (1975) 18(3) *Journal of Law and Economics* 875-901.

²⁹ L. P. Feld and S. Voigt, 'Economic growth and judicial independence: Cross-country evidence using a new set of indicators' (2003) 19(3) *European Journal of Political Economy* 497-527. S. Voigt, J. Gutmann, and L. P. Feld, 'Economic growth and judicial independence, a dozen years on: Cross-country evidence using an updated set of indicators' (2015) 38 *European Journal of Political Economy* 197-211.

³⁰ S. Voigt and J. Gutmann, 'Turning cheap talk into economic growth: On the relationship between property rights and judicial independence' (2013) 41(1) *Journal of Comparative Economics* 66-73.

³¹ J. Gutmann and S. Voigt, 'The independence of prosecutors and government accountability' (2019) 27(1) *Supreme Court Economic Review* 1-19. A. van Aaken, L. P. Feld, and S. Voigt, 'Do independent prosecutors deter political corruption? An empirical evaluation across seventy-eight countries' (2010) 12(1) *American Law and Economics Review* 204-244.

In principle, government powers can be delegated to national agencies (e.g., monetary policy to a central bank) or to international bodies. Regarding international bodies, delegation to the European Union as a supranational entity is a unique approach, which is why this entry does not deal with it in more detail.³² In Section 3, we already deal with judicial independence as one means of government to increase its own credibility. The literature has discussed other benefits that the delegation of powers from the traditional trias to other bodies may have. One of these arguments concerns delegation to shift responsibility: some policy decisions have to be taken although they are unpopular and, hence, endanger the government's re-election. Shifting responsibility – and thus blame – to an unelected body may offer a solution to this conundrum.

Governments who are concerned about losing the next election and seeing their policies reversed may decide to delegate powers to unelected bodies that are independent from the ruling government. But more mundane effects—for example, that delegation reduces the workload of politicians—have also been discussed. Voigt and Salzberger outline eleven arguments that have been discussed in the literature.³³ Moreover, they discuss under what conditions politicians are more likely to delegate powers to national bodies and under what conditions they are more likely to delegate to international bodies. We deal with the effects of both types of delegation in the following subsections.

b. Separation of powers with independent agencies

In recent decades, traditional government functions have been increasingly delegated to specialized independent agencies. Monetary policy decisions, for example, have been delegated to central banks with varying levels of independence. To improve the monitoring of the government, organizations such as supreme audit organizations have also been strengthened.

³² But see T. Delreux and J. Adriaensen 'Principal-agent analysis and the European Union' in *Oxford Research Encyclopedia of Politics*, retrieved: January 6, 2025.

³³ S. Voigt and E. M. Salzberger, 'Choosing not to choose: When politicians choose to delegate powers' (2002) 55(2) *Kyklos* 289-310.

This general trend has been labelled the new separation of powers³⁴ and serves, among other things, to increase the number of independent decision-makers. The two main functions of independent agencies discussed in the literature are the mitigation of the principal-agent problems between citizens and politicians and the commitment against time-inconsistent preferences. This literature is interested in a wide range of agencies, most of which have not been studied systematically with respect to their economic effects. Central banks constitute an exception. Bodea and Hicks, for example, show that legally independent central banks promote price stability only in democracies.³⁵

c. Separation of powers with fourth branch agencies

Over the last couple of decades, a number of scholars have proposed to move beyond the traditional separation of powers with three branches of government, complemented more recently by some specialized agencies. These scholars argue in favor of thinking about a whole new branch that is composed of watchdog agencies that monitor the other branches of government and make information on their performance public. Such agencies have been referred to as part of an “integrity branch”,³⁶ a “guarantor branch”,³⁷ or simply a “new fourth branch”.³⁸ The most frequently named agencies are electoral commissions, human rights commissions, auditors general, and anti-corruption commissions. Whereas independent regulatory agencies define rules for specific markets and monitor market participants, fourth branch agencies serve to make the promises contained in the constitution more credible and by monitoring government behavior they make government more accountable. In other words, the former ensure accountability of market participants to the government, while the latter make

³⁴ B. Ackerman, ‘The new separation of powers’ (2000) 113(3) *Harvard Law Review* 633-729.

³⁵ C. Bodea and R. Hicks, Raymond, ‘Price stability and central bank independence: Discipline, credibility, and democratic institutions’ (2015) 69(1) *International Organization* 35-61. See also J. de Haan and S. C. W. Eijffinger, ‘The politics of central bank independence’ in R. D. Congleton, B. Grofman, and S. Voigt (eds.), *Oxford Handbook of Public Choice*, (Oxford University Press, 2019), vol 2, pp. 499-519.

³⁶ B. Ackerman, ‘The new separation of powers’ (2000) 113(3) *Harvard Law Review* 633-729.

³⁷ T. Khaitan, ‘Guarantor institutions’ (2021) 16(S1) *Asian Journal of Comparative Law* S40-S59.

³⁸ M. Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (Cambridge University Press, 2021).

politicians accountable to the people. Gutmann and Voigt evaluate empirically if constitutionalized fourth branch agencies enhance governments' compliance with the constitution.³⁹ They find positive effects, but not everywhere or for all agencies. Fourth branch agencies appear to be effective primarily in high-income countries and democracies, although the UN has been proposing their entrenchment in developing countries' constitutions.

5. Conclusion and outlook

This chapter provides an overview of key theoretical and empirical research on how different constitutional design choices affect the separation of powers and, thus, the principal agent problem between citizens and politicians. The economic literature on the separation of powers has mainly focused on getting the institutional trade-offs right on average. A key question that deserves more research and has gained attention due to the success of authoritarian political movements in many liberal democracies in recent years is how to set the separation of powers up against would-be autocrats and parties who are willing to use all their political capital to get rid of constraints on their political power. Gutmann and Voigt discuss this challenge under the label militant constitutionalism, of which a resilient separation of powers is a key element.⁴⁰ Levitsky and Ziblatt propose a more general framework to think through the question when majorities should rule and when their powers should be limited.⁴¹ They conclude that some counter-majoritarian institutions that are part of the separation of powers are democracy-subverting, because they may prevent electoral majorities from winning power and they can block legislative majorities from regular lawmaking. These discussions about how to sustain liberal democracy have started an important conversation, but much more work is needed to

³⁹ J. Gutmann and S. Voigt, 'Fourth Branch Agencies: A Silver Bullet for Making Government Accountable?' (2025).

⁴⁰ J. Gutmann and S. Voigt, 'Militant constitutionalism: A promising concept to make constitutional backsliding less likely?' (2023) 195(3) *Public Choice* 377-404.

⁴¹ S. Levitsky and D. Ziblatt, 'When should the majority rule?' (2025) 36(1) *Journal of Democracy* 5-20.

identify which institutional designs are most likely to foster institutional resilience and at what cost.