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Author(s): Sánchez-Cuenca, Ignacio

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INSTITUTIONAL COMMITMENTS AND DEMOCRACY

Ignacio Sánchez-Cuenca

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Ignacio Sánchez-Cuenca is Doctor Member of the Instituto Juan March and Assistant Professor at the Department of Sociology in the Universidad de Salamanca.

Introduction*

The idea of commitment is extremely elusive. It comes from ordinary language, but economists and political scientists have employed it with disparate aims and for very different reasons. I try to spell out what is common to the most frequent uses of the term. Roughly, commitments entail some kind of manipulation of one's set of alternatives. Individuals resort to commitments to transform the unfavorable conditions in which they are placed. The point is to change the parameters of the adverse situation by means of a manipulation of one's available options. This manipulation typically acquires the form of either restricting one's discretion or self-imposing costs that modify the consequences of one's choices. A detailed examination of the nature of commitments is presented in section 1.

Commitments play a pervasive role in politics. Politicians use them to improve their relative position with regard to other politicians, or with regard to citizens. I focus on institutional commitments, those affecting the kind of decisions that can be made and the individuals who are entitled to make certain decisions. Politicians may enact rules to make certain courses of action impossible, or they may delegate authority to agencies with a structure of incentives convenient for them. Institutional commitments generate some interesting puzzles that I deal with in section 2. There are three curious trade-offs: (i) the more credible the commitment, the less feasible it is; (ii) the more you need a commitment, the less useful it is to solve your problem; and (iii) in commitments by delegation, the more credible the delegation to the agent, the more likely it will be used against the principal.

Once the theoretical framework about commitments is more or less clear, I proceed in the second half of the article to apply this framework to democracy. In section 3 I try to ascertain to what extent the structure of democracy rests on some commitment technology. It has been

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suggested several times not only that constitutions are commitments, but also that judicial review and representation are. I accept the case for constitutions, though in a very restricted way. Constitutions are commitments to rules, but constitutional rules, insofar as they define the rules of the game, do not commit us in any intelligible sense. As to representation, I claim that at best it is a functional (unintended) commitment against the instability of collective decision-making. Finally, I reject the arguments that judicial review could be a commitment.

But institutional commitments are not only present in the basic structure of democracy. They play a role in normal politics. As a case in point, I refer in section 4 to neoliberal attempts to insulate economic policy decisions from the democratic contest. I use two examples: the constitutional amendment for a balanced budget and the independence of central banks. In both cases, I provide some reasons why the technical justifications for these commitments are flawed and why, moreover, they impoverish democracy.

A criterium seems to emerge from this discussion: we have to distinguish carefully between those institutional commitments that make possible the functioning of democracy, and those that use the machinery of democracy to shield some outcomes from the reach of the decision-making process. While the first ones are easily justified, the second ones are hard to swallow.

1. The nature of commitments.

You can commit someone to do something. This is a transitive commitment. You can commit yourself to do something. This is a reflexive commitment. In both cases, you try to make sure that something that would not happen without the commitment is going to happen. Look at this text:

In a parliamentary system, the prevailing government's monopoly on public authority --its power to make law at will-- undermines the making of durable deals. There are two kinds of commitment

problems at work here. First, the party can arrive at an agreement with supporting groups about aspects of bureaucratic structure, but its supreme authority allows it to turn around tomorrow and renege on the agreement. Second, it cannot commit future governments to the structure it agrees to today, because they will have the supreme authority to destroy whatever is agreed to. (Moe 1990: 243)

The first commitment problem is reflexive. The party must find a way to convince its supporters that it is going to stick to a certain agreement. The second commitment problem is transitive. The current government cannot force future governments to respect current agreements.

Some reflexive commitments have transitive consequences. Often, you commit yourself in order to commit others. The mix of reflexivity and transitivity is a matter of degree. We will see later cases where reflexivity has only a residual role. A purely transitive commitment coincides with the sheer exercise of power. A purely reflexive commitment is an exercise in self-government or self-management. To avoid unnecessary confusions, I will use the term "commitment" only for reflexive commitments, either with or without transitive consequences.

In the loosest sense, *a commitment is a manipulation of your set of alternatives enabling you to get an outcome that in the absence of the commitment you could not achieve. Here manipulation means strictly two things: either you restrict your set of alternatives or you impose costs on some of these alternatives.*

Commitments are devices used to improve your condition. In an individual context, you commit yourself to get over temptations. When commitments are made in strategic contexts, two things can occur. First, commitments may enhance efficiency. They may produce a Pareto improvement. The commitment allows individuals to surmount the traps of rationality, where individuals acting rationally end up in a suboptimal equilibrium. Second, commitments may improve the condition of their authors at the expense of others. This is not efficiency, but distribution.

Though the following list of four elements does not pretend to be exhaustive, I think it covers most significant cases to which commitments are applied:

(i) *Against preference shifts.* You commit to overcome problems of akrasia or weakness of will (Elster 1984 and 1985). You are not fully rational and you believe that when the temptation comes, you will fall into it. You are concerned about a future change of preferences. To avoid the temptation, you transform the temptation into something either unavailable or extremely costly. You have to place the temptation beyond reach. Due to the manipulation of your set of alternatives, you are better off.

(ii) *Against incentives to renege.* Commitments are used to solve the generic problem of credibility. Sometimes, your promises, threats, plans, etc. are not credible. More technically, they are not time consistent, subgame perfect, or incentive compatible. A promises B at t that if B does something in A 's favor at $t=1$, then A will reciprocate at $t=2$. B does not believe A 's promise: at $t=2$, A does have a clear incentive to renege on his promise. One possible solution to this trap is reputation. Another one is commitment. If A manipulates his set of alternatives so that he cannot but fulfill the promise at $t=2$, then B will believe that A is going to do his part. You force yourself to do something that in the absence of the commitment you would have incentives not to do.

Here, the use of commitments has consequences for efficiency and distribution. On the one hand, commitments can be used to make possible gains from trade. Thanks to commitments, contracts and property rights are respected, so everyone is better off. The sovereign or the state must convince citizens that despite its power to breach contracts and raise taxes at will, it is not going to use this power (North and Weingast 1989; Shepsle 1991; Greif, Milgrom and Weingast 1994).

On the other hand, commitments may increase your bargaining power in negotiations: if you are able to convince the other that you are not going to deviate from some course of action, the other faces an ultimatum, a take-it-or-leave-it threat (Schelling 1960). Your threat becomes credible and you gain a greater share of the cake than otherwise.

(iii) *Against the incentive not to cooperate.* In collective action contexts, commitments can avoid the free-rider problem. All want a public good, but each has an incentive not to

cooperate in its provision. If all willingly give up their discretion in favor of a centralized agent who makes decisions for all, the freedom of choice of each is restricted, but all are better off.

(iv) *Against instability*. If decisions made can be easily overridden, if equilibria are not robust, if there are too many equilibria, if there is none, some outcomes desired by an individual (or many of them) will not be attainable. Commitment technology may help to achieve them.

Again, we can distinguish between efficiency and distribution. For efficiency reasons, it is obvious that some degree of stability is needed for long-term planning, in the same sense we have just seen in case (ii). Now the source of change is not a self-interested incentive to renege, but the instability proper of collective decision-making. As Madison said in this regard, "what prudent merchant will hazard his fortunes in any branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed?" (*Federalist Papers*, LXII)

For distributive reasons, politicians, for example, will try to make certain outcomes irreversible, so that when they are replaced their influence remains (Moe 1990). Here we come close to the limits of commitments: *A* commits to *X* even if *X* is the best choice for *A*. *A* makes the commitment to force *B*, *C*..., to do *X* because they have incentives to do something different from *X*. There is a manipulation of alternatives because *A* cannot but do *X*. It does not matter whether *A* wants to do *X* or not. After the commitment, either it is impossible not to do *X*, or it is very costly. Due to the manipulation of options, *A* obtains an outcome (*X* for several periods instead of *X* only for the period where *A* is in office) that without commitment would not have been possible.

Generally speaking, commitments either transform some outcomes into equilibria, or select one equilibrium from a set of them, or make some equilibrium more robust. It changes the nature of the game. A promise is not subgame perfect. A promise with commitment is. Universal cooperation is not an equilibrium. Universal cooperation backed by a commitment is. In coordination games there are many equilibria. A commitment selects one equilibrium by making very difficult to move from this particular equilibrium to any other one.

This approach to commitments has some consequences. First, it shows that Elster's (1996:1) definition of commitments in terms of rationality over time is too narrow. Cases (iii) and (iv) are not strictly speaking a matter of time. In collective action dilemmas the suboptimality comes from the divergence between what is optimal for all and what is optimal for each, while temporal dilemmas are a matter of divergence between *ex ante* and *ex post* incentives. Second, it rejects the possibility of what Shepsle (1991: 247) calls "motivational commitments", that is, plans where all individuals have incentives not to deviate from them. If the plan is optimal, there is no need to manipulate your alternatives. It is pointless to do it if not necessary. But then there is no commitment.

For a commitment to work it must itself be credible. Depending on the technology used to commit, individuals will or will not believe that promises will be kept, that universal cooperation will take place... If individuals are not convinced that preference reversals, incentives to renege, incentives not to cooperate, and sources of undesired change are eliminated, commitments will not be credible.

The mechanisms that render commitments credible are the two ways in which you can manipulate your set of alternatives (Ellsberg 1975[1959]: 357; Schelling 1966: 43; Elster 1984: 103-104): either you restrict your set of choices by eliminating certain feasible choices, or you self-impose costs in case you deviate from the action you commit to. Following Ellsberg, you can either destroy rows or columns of a payoff matrix, or burn utilities from the payoffs corresponding to the strategy you want to avoid. The first mechanism restricts your discretionality or freedom of choice. The second one does not: it simply transforms the nature of the alternatives you face.¹

A couple of illustrations are in order here. First, restriction of alternatives. If wonderful sweets are before your eyes, you fear to eat all of them compulsively. You know you have problems with your weight and with your will. Consequently, you refuse an invitation to a party to avoid the temptation. You commit yourself by preventing physically certain possibilities.

¹ This means that commitments cannot be defined only in terms of reducing discretion, as Shepsle (1991) does. I owe this point to Adam Przeworski.

Hernan Cortés sank his boats to make credible before his subordinates that there was no way out. Cortés was committing others and himself by blocking physically one alternative, withdrawal. He had to resort to such an extreme measure because there was no institutional technology which could have forced his men not to contemplate withdrawal. His threats and commands were not enough. He changed the nature of the game not only for them, but also for himself. It might seem that this manipulation was costless for Cortés: after all, he was committing to his most preferred alternative, to fight against Aztecs. But the manipulation was indeed risky. It would have been safer to have a way out had things gotten worse.

Self-imposition of costs occurs for example when you link the course of action you want to carry out to your reputation: the costs of not sticking to your plan increase and therefore your commitment gains credibility. You promise something before other people, so that if you do not fulfill your promise you lose your face. A more straightforward example: individual *A* wants to lose weight. But *A* has a weak will. He signs a paper authorizing his boss to reduce *A*'s wage by 5% for each extra kilo he gains each month. The boss will be happy to exercise this authority. Now, not keeping the diet will be a much more expensive activity than before. *A*, probably, will refrain from overeating.

2. Institutional commitments.

The manipulation of your set of alternatives can be institutional. If a commitment is made with institutional technology, I will refer to it as an institutional commitment. Institutional technology is that of making rules. Some people use rules to commit themselves and to commit others, although rules, most of the time, are not related at all to commitments.

To understand how institutional commitments work, some distinctions are necessary. First and foremost, it is extremely important to be aware of the difference between committing oneself to a rule and being committed to do what the rule says. Individuals who have the power to make binding rules make a rule. They can commit themselves not to change the rule. But at

the same time the rule they have made may commit themselves or others to do certain things independent of the act of changing or respecting the rule. Some artificial but simple examples may be helpful.

A government with fanatical religious views is elected. This government considers that stores should not open on Sundays. It passes a law with the prohibition. Those who open on Sundays will be arrested by the police. The government wants to commit itself to the rule. It wants to make it highly costly to change the law. One way of doing that is to transform the rule into a constitutional amendment. To become part of the constitution, the law needs, say, a 2/3 majority in the legislature and a popular referendum. The government overcomes these two obstacles. Once the law is in the constitution, it is very difficult to change it. The government has committed to the rule. The motivation should be clear: it wants stability in the distributive sense (case iv). It has committed itself not to change the rule, even if the rule is the most preferred alternative, because committing itself forces others as well. The rule will more likely survive with future governments. Without the constitutional protection there is no guarantee that the next government does not change the law.

Suppose now another elected government. This government amends again the constitution to include a new article establishing that the government cannot subsidize public enterprises. The government wants to eliminate the soft-budget constraints faced by these enterprises. On the one hand, it commits itself to the rule, just as in the previous paragraph. But here *committing not to change the rule means that the government is committing itself not to do other things*, namely to subsidize public firms. The rule commits the government. Whereas the prohibition of opening on Sundays does not by itself transform the set of alternatives of the government, the prohibition to subsidize public enterprises does. The rule prohibiting stores from opening on Sundays commits others and only others. It is a sheer exercise of authority. The rule prohibiting the subsidies commits the very government that is making the rule. The commitment is motivated by the lack of credibility of the government's threats that it is not going to take charge of the losses of the firms (case ii). In both cases, the government has manipulated its set of options to make a change of the rule very difficult. But with regard to what the rule

establishes, only in the second case can it be said that the government has made a commitment beyond the commitment not to change the rule.

To solve problems (i)-(iv) of the last section, some rules used in commitments establish schemes of delegation. For instance, the government passes a law whereby decision-making capacity is transferred to some body or agency more or less independent of the government. The government relinquishes its power to rule on certain issues. The typical example is central bank independence (see section 4.2). Although delegation is the consequence of a rule, I will talk of commitments by rule and commitments by delegation. I want to keep them separate because delegation raises some problems of its own (problems which I analyze with some detail in section 2.3). Suffice it to say for the moment that not any delegation counts as a commitment (just as not any rule is a commitment). To be a commitment, the act of delegating has to transform the set of alternatives to solve one of the problems (i)-(iv). If I delegate some legal problem I have to a lawyer, I am not making a commitment. But if I delegate because of akrasia, incentives to renege, incentives to free-ride, or instability, we may want to consider the possibility of a commitment.

One common characteristic of all institutional commitments is that they are never fully credible. Precisely because rules are not physical or causal devices, rules can always be overridden. Institutional technology is soft. In the last instance, it depends on the expectations of individuals. No matter how tight the rules are, if people believe that rules do not hold, rules do not hold (Searle 1995). To put it another way: there is nothing external to a polity (Elster 1989: 196). Article 79 of the German Basic Law establishes that certain articles of fundamental importance cannot be changed at all.² It could be interpreted as an absolute commitment, an irreversible move. But though article 79 says that some articles are not modifiable, the very article 79 can be amended. Therefore, a way out remains. And, more importantly, the constitution may become void if enough people decide so.

² Article V of the American Constitution prohibits the amendment of the equal Senate representation that corresponds to states. The same holds for two clauses in the Ninth Section of Article I. But this second prohibition extended only till 1808.

In the remainder of this section I deal with some interesting puzzles of institutional commitments. Three propositions can be advanced:

Proposition 1. The more credible a commitment, the less likely it will be made.

Proposition 2: The more you need to make a commitment, the less likely that the commitment will solve your problem.

Proposition 3: In commitments by delegation, the more autonomy the principal confers to the agent, the more credible the commitment, but the more likely that the agent will exploit the power delegated to him against the principal.

I explain and qualify these propositions next.

2.1. The trade-off between credibility and commitment capabilities.

Here we have the problem of how rules are approved (Spiller 1995; Levy and Spiller 1996). A commitment is credible when everyone expects that the person who makes it cannot renege on it. But it happens that the conditions that make it difficult to renege are the same conditions that make it difficult to commit. Thus, the more credible a commitment is, the more unlikely that the commitment can be made. At the limit, it could be said that an institutional commitment is fully credible when it cannot be approved. On the other hand, the easier it is to make the commitment, the easier it is to renege and therefore the less credible.

An example of a non credible commitment is the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as the Gramm-Rudman-Hollings Act). The goal was to achieve a balanced budget by 1991. That year, nonetheless, the deficit ran to \$265 billion. The mechanism approved was that if expenses were greater than incomes, automatic cuts would be applied. However, (i) some crucial programs were exempted from the cuts, (ii) cuts were envisaged only for huge deviations from targets, not for any deviation, (iii) congressmen were able to change deficit cut schedules (as they actually did in 1987), and (iv) there were the kind of accounting tricks always present when the budget is at stake (Kiewiet and McCubbins 1991:

84). But apart from all these inconsistencies, the key factor for the lack of credibility was that Congress could repeal the law just as it had passed it. The law, in fact, was repealed in 1990.

The very conditions that make credible a commitment are the conditions that make it unlikely that the commitment is made. As Spiller (1995: 72) says, "while very detailed regulatory legislation provides substantial commitment to private investors, the conditions for that to be the case (legislative fragmentation, weak executive) are the same that would make it difficult for such legislation to be introduced in the first place." If it was introduced, it is because there was a strong executive and a non-fragmented legislature, but then detailed legislation is not credible: it can be easily changed.

Nonetheless, there are ways to escape from this trade-off. We can think of conditions under which the credibility of the commitment is somehow detached from its origin.

Suppose that a rule can be approved by simple majority but has to be changed or repealed by a supermajority. The commitment to the rule is credible and it is easily made. The greater the difference between the costs of approval and the costs of modification, the more credibility and the easier to make the commitment. Admittedly, not many laws are passed by this procedure. However, there is a crucial exception: constitutions. Constitutions can be approved by simple majority, while amendments usually require a cumbersome procedure much more demanding than a simple majority. A rule is credible if it is approved by simple majority but has to be changed by a two thirds majority. Credibility comes from the fact that transaction costs for changing the rule are greater than for the approval.

Moreover, keeping constant the procedure, some commitments can have extra credibility due to the circumstances under which they are made. Suppose for example that the procedure is that of a 2/3 majority for approval and change, and that the country is experiencing a moment of extraordinary politics (a sharp economic crisis, the recovery from a war, an enormous political scandal, transition from dictatorship...) It may well happen that the exceptional conditions make it relatively easy to get the two thirds, whereas in periods of normal politics it is much more difficult. In such a case, we would say that the commitment made has more credibility than that derived from the supermajority itself. As long as the original conditions under which the

commitment is approved are different from the conditions under which the commitment is working, credibility is attained³. What I am saying is that the difference does not have to be procedural, as in the previous paragraph, but can also be related to the likelihood of making coalitions and reaching agreements. Of course, this only holds if the original conditions are conducive to supermajorities or wide agreements. As I show in 3.2, sometimes the exceptional circumstances of constitution-making go against credibility.

2.2. *Good and bad commitments*

Credible commitments may sometimes exacerbate some of the very problems they are supposed to solve. As Przeworski has shown, advocates of commitment technologies for the sake of efficiency do not take into account the process by which commitments are made. Referring to those neoliberal arguments about the necessity of insulating the state from pressures in order to pursue optimal policies, he says that "the same forces that push the state to suboptimal discretionary interventions also push the state to a suboptimal commitment" (Przeworski 1996:9-11; Przeworski and Limongi 1993: 66; Przeworski 1996: 9-11). He uses the story of Ulysses to make his point more vivid: Ulysses' commitment is good because he has not heard yet the songs of the Sirens. But real governments are not in this position: they have already listened to the songs of the Sirens and they will make a bad commitment, a commitment to keep listening to these bewitching songs, not to avoid them.

³ In countries with credible commitments that reduce the discretion of the executive and the legislative, "reform may have to await some shock to the political system" (Spiller 1996: 5). Spiller's reference to a shock points to the importance of exogenous changes for the curbing of commitments.

Suppose a new government is elected in a European country. It commits not to give more subsidies to a public enterprise (mining, for instance) with huge losses. Society can be better off using the money of subsidies in more productive ways. The government makes the commitment credible tying its hands to, say, the European Union. The rules of competence in the single market forbid these kinds of subsidies. This is a good commitment. It enhances social welfare. Now suppose that the government does not initially commit. Miners and their unions suspect that the government has plans for industrial restructuring. They react strongly, creating a violent conflict. The only way in which the government can neutralize the conflict is promising new subsidies to miners. But miners do not believe the government, which has the capacity to renege. Therefore, the government has to commit to subsidies in the next years. This is a bad commitment. We do not have to think of very complicated stories. A government is losing popularity. The main private TV station of the country presses the government for a commitment that restricts or deters the entrance of new competitors. In exchange, the TV station offers the government favorable treatment and special prices for political ads in the next electoral campaign. This is a bad commitment for society. A good commitment would have been to ban the involvement of TV stations in electoral campaigns. But why would the government make the good commitment once it has heard the attractive songs of the TV station?

In a sense, what we have here is a new trade-off. It seems that in the moment where you really need a commitment, the commitment is not going to solve the problem. The commitment enhances social welfare before the Sirens start singing, but not once they have started. Then, you use the commitment to yield to the pressures. The more intense the pressures the government receives, the less likely that the government will make an optimal commitment from the social point of view. This trade-off is particularly troublesome given that in the real world politicians are rarely in the Ulysses situation.

But is this problem so common? That is, is it true that most commitments are the result of pressures, of the songs of Sirens? And, even if it is true, is it necessarily the case that under such circumstances only bad commitments follow? Elster (1996:127) has answered this argument pointing out that in many cases the reason why an individual is led to a suboptimal outcome is not related to pressures or, more generally, to temptations of any kind: a politician worried about

the general welfare of society could still face incentives to renege on his promises. On the other hand, the structure of the process that leads to bad commitments shows that the 'badness' comes from a wrong timing. But it is not evident why the government cannot prevent that.

There are cases where it is quite clear that the issue of bad commitments is not a problem. In contexts of collective action, where each has an incentive to defect, each is better off if all commit not to defect. If they have commitment capabilities, they will make a credible commitment, a commitment where Przeworski's argument does not apply in an obvious way. Now the incentives to defect do not lead people to make bad commitments.

And precisely because you have heard the Sirens in the past you may learn how to avoid them. In their study of commitments in 17th century England, North and Weingast (1989: 807) tell the story of a sovereign who has the power to raise funds arbitrarily. Due to the indefinite nature of the relationship between the sovereign and the subjects, there are incentives for the sovereign to get involved in a pattern of cooperation in the long-term. Cooperation means here self-restraint on his part. However, the sovereign knows that in case of a war, that is, in case of extreme necessity, he will have clear incentives to renege and to raise funds in order to meet fiscal needs. In times of war he will value the short-term over the long-term. He has experienced this in the past. The sovereign dislikes the consequences of discount rate shifts. Therefore, in times of peace he commits himself not to raise funds in times of war. This is a good commitment in spite of the fact that he has already heard the Sirens in the past.

2.3. *The trade-off between credibility and control in delegation*

Commitment by delegation has some unique problems that are worth examining. Most forms of delegation are not commitments. A principal or a set of principals can delegate a task to an agent or a set of agents due to the gains that are obtained in terms of specialization, expertise, division of labor, time-saving, etc. Delegation works as a commitment when the principal cannot achieve some outcome because of cases (i)-(iv): the principal delegates to an

agent because the agent *has different preferences or a different structure of incentives*. The agent does what the principal would have wished to do by himself. If the agent can do it, it is because he does not have the same preferences or incentives as the principal.

In commitments by delegation, the agent must be given some autonomy or power. The tricky point is that if the principal tries to control the agent very tightly, then the principal will force the agent to do what the principal would have done anyway given his incentives. Suppose that principal *P* has a plan *X* but due to the structure of incentives *X* is time inconsistent and *P* does *Y*. The same incentives that move *P* to do *Y* rather than *X* would move *P* to order the agent *A* to do *Y* if *P* has absolute control over *A*. Unless *A* achieves some degree of independence from *P*, *P*'s delegation to *A* is not credible. Therefore, in commitments by delegation it is necessary to give some power to *A*, so that when *P*'s incentive to deviate comes, *P* is refrained from doing it because the power to deviate is now in *A*'s hands.

If the agent gets some power, then he can do things the principal does not approve of. We have what Kiewiet and McCubbins (1991: 26) call "the Madison problem", to wit, that the agent exploits the conferred powers against the principal. Suppose that a group of people, the principals, create a state, the agent, in order to solve the problems of enforcing contracts and property rights. Then, "a state with sufficient coercive power to do these things also has the power to withhold protection or confiscate private wealth, undermining the foundations of the market economy" (Greif, Milgrom and Weingast 1994: 746). Therefore, a commitment by delegation is credible when the agent gains some autonomy, but the more autonomy the agent has, the easier it is for the agent to exploit his autonomy against the principal. In other words, the more credibility, the less accountability. What is needed is an optimal combination of autonomy and control.

It follows from the previous argument that commitment by delegation entails some kind of abdication of power.⁴ But we do not have to assume that the principal loses all control over

⁴ Kiewiet and McCubbins (1991: 59 and 80) deny the possibility of abdication. For them, delegation does not imply commitment. They show convincingly that there is no abdication when Congress delegates decisions to the Appropriations Committee: the Committee is fully controlled by parties in Congress and Congress is not tied by its resolutions. Therefore, delegation cannot be interpreted as commitment here. However, their case against commitment in the case of delegation from the

the agent. The analysis of certain episodes in American trade policy are illustrative. Some have interpreted the approval by Congress of the Reciprocal Trade Agreements Act of 1934 (RTAA) as an act of full abdication. The story runs as follows: after the unfortunate Smoot-Hawley Tariff Act of 1930, Congress relinquished its constitutional power on trade policy in favor of the President. For Congress, "no longer did it give priority to protecting American industry. Instead, its members would give priority to protecting themselves: from the direct, one-sided pressure from producer interests that had led them to make bad trade law. They would channel that pressure elsewhere, pushing product-specific trade decisions out of the committees of Congress and off the House and Senate floors to other governmental institutions" (Destler 1995: 14). This statement is not accurate. First, the RTAA was not a decision made by the whole Congress. What really happened is that Democrats outvoted Republicans in order to confer extensive autonomy to a Democrat President (274 to 111 in the House and 57 to 33 in the Senate). Second, Congress' abdication had clear limits: the President could not lower tariffs more than 50% and the authority he got was for three years, after which Congress had to renew the authority. Moreover, the President had to give due notice of his plans to reach trade agreements with other countries, so that any affected party could make his interests heard.

The RTAA is a clear example of partial abdication. The President gained some autonomy or power he did not previously have, but Congress limited that autonomy. Partisanship led to stress in each case the more convenient aspect of the partial abdication. For Democrats, Congress kept control in the last instance. Mr.Cullen (D, NY) said in the House: "the average schoolboy knows that if we do give him [the President] the power, we always can take it away" (*Congressional Record*, 1934, p.5274). For Republicans, the RTAA meant just the opposite. Mr.Treadway (R, MA) warned: "the remarks I am about to make will be extremely critical of the

legislative to the executive branch is much weaker. To reject the abdication hypothesis they use the odd argument that there is no abdication if the delegation is in the self-interest of the principal (p.184). But the point is precisely that sometimes your interests are better served through partial abdication.

principle involved of having Congress abdicate its control of the taxation system of the country" (*Congressional Record*, 1934, p.5262). Neither of them was right. The Democrat neglected the fact that the President, at least for some time, was given a degree of real autonomy, while the Republican overlooked the crucial control that Congress retained over the executive.

American trade policy from the RTAA to the present can be analyzed in terms of the tightening and loosening of the controls that the legislative imposed on the executive. After the war there was an increase in protectionism. The President's negotiating mandates tended to be shortened in time and scope. The trend was reversed with the 1962 Trade Expansion Act, where a new delegation method that increased the discretion of the executive in tariff bargaining was passed. Due to the growing importance of non-tariff barriers, the 1974 Trade Act created the Fast-Track Authority.⁵ The problem of non-tariff barriers is that it is almost impossible to establish *ex ante* a negotiating mandate. Substantive controls gave way to procedural ones. Thus, the Congress established an *ex post* control on any trade agreement signed by the President, an up-or-down vote without amendments. But since that was clearly insufficient, the President had also to be authorized to enter into negotiations and during them was closely assisted by the Congress and by affected interest groups.

The lesson that can be drawn from this example is that abdication, accompanied by the proper controls, can be a way to further the interests of the majority in Congress. What we see in trade policy is neither congressional nor presidential dominance, but rather partial forms of delegation where the executive gets some real autonomy or independence, even if, needless to say, this autonomy is constrained by several mechanisms imposed by Congress (O'Halloran 1994; Lohman and O'Halloran 1994). Thanks to this delegation, the President can do what Congress cannot do due to the incentives to defect proper of a collective action dilemma (motivation [iii] for commitments). The Congress does not get its ideal point, but what the President gets in international negotiations using his constrained autonomy is better than what Congress would

⁵ See Sim 1989 for a full description.

have obtained by itself (O'Halloran 1994: 35). A commitment by delegation allows Congress to achieve at least its second-best.

3. Democracy

Existing democracies are based on the institution of representation. Citizens delegate the decision-making power to politicians. From time to time, the people have the chance to confirm or replace their representatives through elections. If the people consider that current representatives have not done their job properly and that other politicians will do it better (whatever “better” means here), they will vote for the latter. Representation is possible thanks to a complex system of constitutive and regulative rules that define the conditions and boundaries under which representation works. This system is normally a written constitution. In a typical way, it establishes what kind of representatives are possible, how they can make decisions, what kind of decisions they can make, how long their terms are, what rules they are subject to, and so on and so forth. When representatives try to amend the very rules that make representation possible, some cumbersome procedures are contemplated. Constitutions are stable, among other things, because the costs of amending or replacing them are usually very high (Hardin 1989). This is one of the main mechanisms that allow citizens to delegate decision-making power to politicians. Citizens know that politicians cannot easily abuse their decision-making power by changing the rules in their favor. But this is not enough. A constitution is not effective if politicians have latitude in interpreting its meaning. Hence, some kind of judicial review is needed.

Representation and constitutions are institutions based on some commitment technology representation through delegation, constitutions through rules. Judicial review is an essential mechanism to make these commitments credible.

3.1. *Representation.*

Can representation be understood as a commitment? Do we get a clearer view of how representation works if we introduce commitments? First of all, it is important to bear in mind Elster's (1996:1-2) distinction between intentional and functional commitments. Intentional commitments are those made in order to avoid some of the four problems I enumerated in section 1 (akrasia, lack of credibility of promises and threats, incentives not to cooperate, instability). Functional commitments are in our context institutional devices which exist because of reasons unrelated to commitment problems but that happen to work as a commitment in an unintended way. Let us see an example taken from Ferejohn (1990: 11-12) that already introduces us to the topic of representation:

I speculate that, on balance, the fact that citizens use heuristics to economize on the acquisition and handling of information may very well increase their ability to discipline or control officials. Precisely because citizens care so little about politics, political evaluations and attachments are relatively stable and slow to shift. Thus, competitors for office are induced to regard them as external 'facts' about their environment and not really subject to intentional manipulation. In a sense, citizens are able to act 'as if' they have precommitted to a reward scheme.

Ferejohn shows the functional nature of the commitment by using the 'as if' clause. People do not economize the acquisition of information with the aim of committing themselves to a fixed evaluation rule of policy record. But it happens that the economizing has this effect and thus induces accountability.

In principle, citizens delegate to politicians for reasons of efficiency. If the people had to make all decisions, there would be gigantic transaction costs. Moreover, representation produces gains of specialization and division of labor. Representatives devote all of their time to political issues, relieving voters of the heavy duty of getting involved in politics. Voters can use that free time for their particular concerns. Representatives will get acquainted with the internal functioning of politics and will make decisions in a more efficient way. Delegation here is not a commitment (not even a functional one), since the representative is supposed to do what his

constituency would have done by itself. For instance, farmers organize around an agricultural party and vote for this party: there are enough people to send two representatives to the national parliament. The task of these representatives is clear: they must defend the narrow, homogenous interests of their constituency. Farmers will be able to specify with some detail what their interests are and what concrete policies the party should defend. If their representatives do not do the job in a satisfactory way, farmers will make changes in the party or will vote for another party.

However, representation rarely works as in the previous example. Think of the president of a huge republic. The president represents the whole country. What interest is he representing? Does he represent in the same sense as the representatives of farmers? Behind the president there is now an enormous number of different, conflicting interests. And, moreover, while in the case of the agricultural party the personality of representatives is of minor importance, in the case of the president it is essential. People do not only want a person that follows a mandate. This person must be able to react to unforeseen events without much hesitation; he may even be supposed to make tough, unpopular decisions under exceptional circumstances. In fact, voters tend to punish politicians who seek desperately votes or re-election (Fearon 1997).

In most cases, representation entails that politicians have autonomy relative to voters. Intended or not, this is a consequence of the mechanism of representation. Let me just enumerate several reasons why representatives are not bound by the wishes of voters (see Przeworski and Stokes 1996). First, representatives have private information that they can use strategically to free themselves from the electoral platform. Second, representatives have to respond to unexpected exogenous shocks. Electoral platforms cannot be detailed contracts that cover all possible contingencies. Third, representatives can resort to some resistances in order to justify deviation from what they were supposed to do. For example, they can refer to the institutional system (division of powers, checks and balances), which makes it difficult to modify the status quo; or to international pressures and constraints that limit the range of feasible policies. Fourth, as I have just said, voters vote both for electoral platforms and for a type of candidate. And fifth, the more heterogenous the interests of the principals, the more leeway the agent has.

Due to the autonomy intrinsic to the scheme of representation, representatives are not bound to do what their constituencies would have done by themselves. This fact is sometimes formally recognized. As article 38(1) of the German Basic Law says, deputies of the Bundestag "shall be representatives of the whole people, not bound by orders and instructions, and shall be subject only to their conscience."⁶

Once we accept that politicians have some degree of autonomy, we can ask to what extent this form of delegation can be assimilated to commitments by delegation. In a commitment by delegation the principal selects an agent to achieve an outcome that would have been unfeasible in the absence of the delegation because of incentives to deviate from plans. Can the partial autonomy given to representatives be understood in terms of a commitment? Note that an affirmative answer does not require the presumption that this autonomy was conferred on purpose. It may be a by-product, a side effect.

Representation may be a commitment at least in two closely related senses: as a device against "collective akrasia" (case [i]) and as a device against instability and inconsistency (case [iv]). The first possibility was examined by the Federalists. The people allowed representatives to act on their behalf because they feared to act under the effects of momentary passions or of demagoguery. Hence, what representatives do is not the same as what the people would have done by themselves. Madison's filter theory (*Federalist Papers*, X) is the most quoted passage in this context. The effect of representation is

⁶ Lipjhart (1968: 158) considers Dutch democracy as "the acme of representative democracy" because of the autonomy and lack of responsiveness of Dutch political leaders. This is an approach to representation quite different from the original idea of the representative as an agent that has to do exactly what the principals tell him. The difference is so sharp that some authors talk of two traditions of representation (Preuss 1993: 86).

to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.

Representation was necessary to filter the harmful consequences of mass decisions. Federalists insisted much on this point. Hamilton, in paper VI, asked rhetorically: "Has it not, on the contrary, invariably be found that momentary passions, and immediate interests, have a more active and imperious control over human conduct than general or remote considerations of policy, utility, or justice?"

Madison dug deeper than others. He was aware of the importance of the process that leads to commitments (Proposition 2). If representatives are tightly controlled by the people, then the same passions and transient interests that affect the people will be transmitted to their delegates, the representatives. The collective akrasia will reproduce itself in the representative assembly, producing a bad commitment. Behind this generic language, Madison was thinking of those occasions where popular bodies in the states had acted in favor of debtors and against creditors, not even respecting what the courts ruled. Whether the cancelling of debts was an instance of collective akrasia is irrelevant here. What is interesting is that Madison conceived the existence of the Senate (at that time not elected by the people, but by the legislatures of the states) as an institutional check against what he took to be bad commitments by the House of Representatives (*Federalist Papers*, LXIII). The short term of representatives in the House, and the close connection to their constituencies, made this body a less reliable solution to collective akrasia than the Senate.

The second possible interpretation does not suppose any fault in the rationality of the people. Now, representation is a commitment because thanks to the autonomy of politicians some stability and consistency is achieved. If there were no representation, if all decisions were made by the people through voting mechanisms, outcomes would be much more uncertain. There could be important inconsistencies between long-run plans and day-to-day decisions. There could be disturbing volatility, reversals of decisions, unpredictable outcomes, and a long list of similar

shortcomings. All these unwelcome consequences would be the effect not of irrationality, but of the difficulties in making decisions by the aggregation of preferences through votes.

If representation is a (functional) commitment against instability, then we should be able to observe the trade-off between autonomy and control proper of commitments by delegation (Proposition 3). Actually, the debates about accountability in representative democracy reflect the importance of Proposition 3. In democracy, the more autonomy is given to politicians, the more likely that politicians will do what they want, regardless of the voters' wishes. The more control, the more accountability, but the less credible the commitment against instability and consistency. Were it not for this trade-off between accountability and stability, people would have incentives to introduce much tighter controls over representatives to induce them to act in the interests of the former.

For some, the ideal is to reduce as much as possible the influence of popular preferences in the decision-making process. Hamilton said that "we ought to go as far in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life or at least during good behavior. Let the Executive also be for life." (Madison 1987: 136). Likewise, Hayek (1978) proposed a new institutional system where representatives would enjoy long terms (15 years) and where each generation would vote only once in life (at the age of 40). These kinds of proposals put almost all the weight on stability. A less philosophical manifestation of this trend is the so-called 'delegative democracy' of some Latin American countries (O'Donnell 1994), where it is assumed that the winner of the presidential contest can do whatever he thinks good for society, without being constrained by other powers or by his electoral platform. In all these cases, citizens' control has a mere residual role. Here, we are close to full abdication. It is as if the American Congress would have given the President full authority to make trade policy indefinitely. But just as the Congress partially abdicates in favor of the President, keeping ultimate mechanisms of control, in most democracies a balance is sought between autonomy and control. The main difference between the two cases is that the idea of total control (no delegation) is impossible in a representative democracy. Hence the functional nature of the commitment.

Some dream that new technologies will reduce transaction costs enough to make direct democracy possible. If these dreams came true, there would be no room for a functional commitment. We would have to choose between direct and representative democracy. Were the choice for the second one, representation would be an intentional commitment - a commitment to avoid the pitfalls of instability (see McLean 1989). But as long as direct democracy is not feasible, the commitment implicit in representation has to be taken as a functional one. Representation cannot work without autonomy for the agent. Due to this autonomy, representatives do not decide what the people would have decided by themselves. As a consequence, some degree of stability is achieved. That people are aware of the trade-off between stability and control is evident from the discussions on how to make compatible in an optimal manner the benefits of the functional commitment and the dangers of politicians' non-accountability to citizens.

3.2. *Constitutions.*

It is indeed tempting to understand constitutions as commitments by rules (see Elster 1996: Ch.II). The polity commits itself to play the political game according to certain rules. The commitment is credible because the costs of amending the constitution are very high, whereas the constitution was passed by simple majority or was adopted in extraordinary times (see section 1.1). Here I am talking therefore of a commitment to the rules included in the constitution, a commitment embodied in the clauses that establishes the procedures for modifying the constitution. But apart from the commitment not to change the constitution, can we say that constitutional rules commit someone in some sense? I proceed first to analyze the commitment to the rules and then I present a couple of arguments on why we should resist in general the attempts to understand the rules of the political game as commitments.

For the sake of this theoretical discussion, I entertain a quite idealized view of the constitution: it is democratic and it contains (i) the rules that define who is entitled to do what in the political realm, (ii) the rules that define the procedures for making decisions, and (iii) a set

of inviolable basic rights. There is a commitment to all these rules because it is relatively simple to ratify the constitution, while its amendment requires a costly process (special and concurrent majorities, referenda, delaying mechanisms...) Is that enough to guarantee the credibility of the commitment? I mean, is the fact that a constitution is difficult to change enough to generate the generalized expectation that politics is going to function according to the rules included in the constitution?

Often, the times of crisis in which constitutions are elaborated and ratified do not bring extra credibility, but just the opposite. This is a quite complex issue because Propositions 1 and 2 may apply here in perverse ways. In his analysis of constitution making in Eastern Europe, Holmes (1996) stresses two difficulties which, expressed in the language of commitments, can be so put: first, in times of rapid change constitutions will be easily made (there will be few constraints on constitution making), but they are unlikely to be credible, since the flux of changes creates incentives for politicians to renege on their institutional commitments (Proposition 1); second, the short-term horizon induced by instability leads politicians to use constitutional reforms as distributive weapons in their struggle for power. Bad commitments follow (Proposition 2). Politicians do commit from within the political battle. Holmes' (1996:60) argument can be read as if he were saying that bad commitments reinforce the lack of credibility of constitutions: "Why would anyone treat myopic political bargains made under turbulent circumstances as beyond the reach of renegotiation?". Hence, there is a feedback between Propositions 1 and 2.⁷

Let us suppose that the commitment to the rules of the constitution is credible. Why is it necessary to make such a commitment? Does it not impose a straitjacket on democracy?

⁷ Elster (1993: 274) says something similar: "Either the constitution is supposed to last indefinitely, in which case future generations will be saddled with a system designed for the period of transition, or the constitution is supposed to be merely transitory, in which case it will not have its intended beneficial effects on private long-term planning."

Democracy is about people making decisions on how public affairs should be conducted. Constitutions severely restrict the kind of decisions that the people can make. How can constitutionalism and democracy be reconciled? This is an old issue, attacked many times from many different angles.

To answer these questions we have to examine more carefully the kinds of rules we are committing to in the idealized version of the constitution. The key point here is that constitutions are in an essential way sets of constitutive rules that *enable* the political game to be played (Holmes 1988). Constitutive rules have the generic form 'X counts as Y in a certain context' (Searle 1995: 28). Examples: "someone who gets the majority of votes in the presidential elections counts as the President"; "a decision approved in the legislature according to certain procedure counts as a statute"; "freedom of speech counts as a basic right's; etc. All these are constitutive rules. From the point of view of their "constitutiveness", some of them are more basic than others. For example, statutes cannot exist (they are not conceivable) apart from the procedures that define what counts as statutes (except for the limiting and intriguing case of natural law). But in our constitution statutes, beyond being approved according to some pre-established procedure, face a substantive constraint: they are valid if, and only if, they do not violate basic rights. While we cannot think of a statute without some procedure that defines what a statute is, it is conceivable to think of statutes which do not respect basic rights. The constitutive rule that puts conditions on the substantive validity of statutes is nonetheless necessary to constitute spheres of personal liberty and autonomy. It is not my purpose to enter into a detailed discussion of the different kinds of constitutive rules that coexist in the constitution. I just want to stress that, generally speaking, constitutive rules are not constraining, but enabling. No one feels that his liberty is curtailed because he has to follow the rules of chess in order to play chess, or the rules of grammar in order to speak English.

In so far as constitutive rules enable or make possible democracy, the rules included in the constitution cannot be charged with violations of democracy.⁸ Let me quote Holmes (1988:231) at this point:

⁸ Leaving aside the vexed debate on the role and meaning of basic rights in a democracy.

It is meaningless to speak about popular government apart from some sort of legal framework which enables the electorate to have a coherent will. For this reason, democratic citizens require cooperation from regime-founding forefathers. Formulated somewhat facetiously: without tying their own hands, the people will have no hands.

However, from the statement that some set of constitutive rules is essential for some activity does not follow that this particular set of rules should be change-resistant. What distinguishes constitutions from other kinds of law-making is that constitutions have this enormous resistance to change. The appearance of a lack of fit between democracy and constitutionalism stems from the fact that the very rules that constitute democracy are very difficult to change in a democratic way. Since there is not a unique set of possible rules, why should not the choice of these rules be an issue permanently subject to the evolving preferences of citizens and their representatives?

We have to be aware of a crucial difference between constitutions on the one hand and games or languages on the other. When we refer to the latter, we do not need commitments. The constitutive rules of a game or a language are a self-enforcing equilibrium. There are no incentives to deviate from them. But in the case of the constitution we need a commitment. The reason is clear: games or languages do not have distributive consequences, whereas constitutions certainly do. Therefore, the particular rules that are chosen “to play” democracy matter. Not everyone will have the same chances of pursuing successfully his interests. If amendments of the constitution were free in terms of transaction costs, there would always be incentives to introduce amendments. Some coalition of citizens or politicians would be better off with a constitution more congenial to their interests.

The only way to avoid the inherent instability that would be produced if it were costless to change the set of constitutive rules that make democracy possible is to commit to a particular set of constitutive rules, a particular constitution. Constitutions, viewed from this perspective, are commitments against the perils of instability as specified in case (iv) of section 1. If politics were the game of choosing the rules of the game, there would be no game. Too much instability would follow. If we want to play the game of 'normal politics', the game played under the rules

of the constitution, and not the game of 'extraordinary politics' (the game of which constitutional rules should be adopted), we have to commit to some constitution.

Through all the argument I have been talking loosely of 'we' committing to the rules of the constitution. But once we have seen that constitutive rules have distributive consequences, I should be more careful. It is clear that the constitution is not necessarily a commitment made by 'the people'. In the founding moment the constitution can be approved by simple majority. And the succeeding generations, who did not have much voice, are bound by this original decision. The idea of "tacit consent" is of no help here (Hardin 1989: 101). If the people do not break with the existing political system, this cannot be taken as a sign that the people agree with the contents of the constitution. People's consent may be simply a consequence of the costs of modifying or replacing the constitution. Moreover, their participation in the process of constitution-making tends to be limited at best. Ratification of what the constitutional convention has done does not usually go beyond a yes/no vote.

It seems then that the commitment is made by the framers and by those who ratify the constitution, that is, some representatives and some people. Do they commit themselves and others to do anything apart from not changing the constitution? The answer is obviously affirmative if the constitution includes articles determining concrete outcomes, like the prohibition of stores opening on Sundays. This is not a constitutive rule by any means. Plainly, some group has managed to use the constitutional structure to protect a particular outcome. If we limit ourselves to the idealized conception of the constitution I offered at the start (a set of constitutive rules on the articulation of authority plus a set of basic rights), the question becomes much more puzzling. In a sense, the question cannot be settled by a sharp criterium, for the answer depends after all on how much we want to stretch the concept of commitment. Nonetheless, here there are a couple of tentative suggestions.

First, it is not easy to assimilate general constitutive rules to commitments. Does the rule establishing that a polity is a presidential or a parliamentary regime "commit" anyone in any normal sense of the word? Obviously, this is a basic rule of the game. We do not say when we play chess that chess rules commit us to move the king in a certain way. It does not affect our set

of alternatives, since the alternatives are “constituted” by the rule. This does not entail that self-interested motivations are entirely absent. Maybe some of the framers press for a presidential system because they have the secret aspiration, and some good chances, of becoming president of the republic being constituted. But even so, can we say that the choice of the rules of the game manipulates the set of alternatives in either of the two specified ways, a restriction or a self-imposition of costs? How can the creation of the game be considered a commitment?

Yet, we must recognize that though a highly general constitutive rule in isolation maybe does not resemble at all a commitment, a set of combined rules of the game might induce some desired outcomes and not others. Let us forget for a moment the uncertainty that surrounds any institutional design enterprise. Assuming that we can foresee the consequences of the interaction of all rules of the game, does it make sense to talk of commitments beyond the commitment not to change all these rules? Constitutive rules are often justified by its consequences. For all his insistence on collective akrasia in the *Federalist Papers*, in the Philadelphia Convention Madison rather thought that the Senate was the answer to this question: "An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. [...] How is this danger to be guarded against on republican principles?" (Madison 1987: 194)

Even if the American constitution is understood as a system favoring creditors over debtors, some kind of proprietors over some others and so on (Beard 1986[1913]: Ch.VI), is it a commitment? We may know that a system of checks and balances with several veto players produces policy stability in normal politics (Tsebelis 1995). What is the gain of saying that the system of checks and balances 'commits' us to policy stability? Is it not more natural to say simply that framers adopted the system of checks and balances because this system generates policy stability, which was a way of protecting creditors, and that the people involved in the ratification process committed themselves and others to the system of checks and balances?

In my view, it is sensible to interpret constitutional provisions not as commitments, but as rules aimed at avoiding any of the four conditions (i-iv) under which commitments may

become necessary. We choose constitutive rules to avoid the problems of collective action, of credibility, of collective akrasia, or of instability. When these rules fail and we are trapped in some of these problems, then we use commitments. But a good (an ideal) constitution should make commitments dispensable. Division of powers, checks and balances, the rule of law, and so on, are not commitments strictly speaking: they do not manipulate our set of alternatives. However, we adopt these constitutive rules to prevent problems (i-iv) that in normal politics (when the nature of the political game is not at stake) can be solved through commitments.

This may seem a convoluted reasoning: when problems i-iv are prevented *ex ante*, we have constitutional rules; when we suffer problems i-iv, we solve them *ex post* through commitments. But this is not so unreasonable. Let us take again the example of American trade policy (see section 2.3). Had the Constitution established that trade policy corresponds to the President and not to the Congress, would we have said that this was a commitment? I think that the answer is negative, even if it had been true that the Constitution chose the President and not the Congress to avoid future collective action problems. However, if the Constitution gives authority to Congress, Congress faces a collective action problem, and Congress delegates authority to the President, then Congress is making a commitment: it is manipulating its set of alternatives to achieve a more liberal trade policy that would not be possible had Congress itself made the agreement with other countries.

If this distinction still sounds ad hoc, I would be happy to name constitutional rules “preventive commitments”, “second-order commitments” or anything similar. The point of making the distinction is that otherwise the scope of commitments turns out to cover almost all institutional politics. I have proposed an already generous definition of commitments. If we weaken it any further, it loses all its grip. Since it is at least contentious that constitutional rules manipulate our alternatives, I prefer not to understand them as full commitments. In the founding moment we have to choose some rules of the game. The fact that these rules have distributive consequences means that the resulting constitution will be the outcome of a bargaining process. But from here it does not follow that the chosen rules of the game commit us, except in the trivial sense in which we say that since it is costly to change these rules, we are committed to play this particular game and not others.

3.3. *Judicial review.*

The commitment to a constitution is not credible if there is a wide margin of discretion with which to understand the contents of the rules of the political game. Constitutions are not detailed contracts. They cannot cover all contingencies. If the players do not agree whether in a concrete case the rules are being followed or not, rules become useless: they do not fix expectations. The recent case of Ecuador, where the ambiguity of the constitution led during a couple of days to the grotesque situation of three persons (the original President of the Republic, the Vicepresident, and the President of Congress) claiming to be the constitutional President of Ecuador, is an extreme but instructive example. Ambiguity is an invitation for the powerful to exploit the powerless. The typical situations are the misuse of power by the state against citizens, by the majority against the minority, by one branch of government against another. Individual rights, or territorial disputes in federal systems, are the stuff of a good deal of constitutional interpretation.

There must be a way to decide what counts as the right interpretation of the rules. Judicial review is a countermajoritarian procedure whereby judges, non-accountable in terms of votes, make these kinds of decisions. Judges have, so to speak, the monopoly of interpretation.

Judicial review is sometimes justified as if it were itself a commitment against collective akrasia (case i). According to one of Hamilton's arguments in his defense of judicial review, the independence of judges was necessary to isolate them from the effects of both citizens and representatives' transient passions and ill humors (*Federalist Papers*, LXXVIII). In more recent times Freeman has adopted a very similar point of view. He explicitly says that "judicial review is a kind of rational and shared precommitment among free and equal sovereign citizens at the level of constitutional choice. By the exercise of their rights of equal participation they agree to a safeguard that prevents them, in the future exercise of their equal political rights, from later

changing their minds and deviating from their agreement and commitment to a just constitution" (Freeman 1990-91: 353). The people, in a lucid moment, foresee that they may fall into the temptation. Consequently, they establish a procedure to nullify akratic decisions. Thanks to judicial review, the people stick to the constitution.

It is difficult to accept Freeman's thesis. First, because if we take seriously what I said at the end of section 3.2, that constitutional rules are not commitments insofar as they do not manipulate our set of alternatives, then judicial review is not a commitment, but part of the rules of the game. Maybe this particular rule was introduced in order to avoid the problems of akrasia Freeman refers to, but this is not enough to talk of a commitment. But let us suppose nonetheless that it is a commitment. Then, the idea that the people (across space and time) are a unitary actor seems problematic to say the least. Likewise, there is not much basis to assert that judicial review aims at overcoming akrasia. Freeman does not spell out examples of collective weakness of will. In fact, as Waldron (1994) has forcefully argued against Freeman, in most cases the Supreme Court acts not to remedy the feebleness of the people, but to settle deep disagreements in society. These disagreements stem from irreconcilable political, moral and religious values. They are not sudden outbursts triggered by politicians with no qualms.

Rather than understanding judicial review as a commitment, it is wiser and safer to assume that judicial review is an institutional mechanism that makes credible the (functional) commitment of representation and the commitment to the rules of the constitution. In fact, Hamilton's main justification of judicial review runs in terms of limited government. Thanks to the capacity of judges to declare laws void, citizens expect that when they delegate authority to representatives, representatives are going at least to respect the limits imposed by the constitution. In this sense, judicial review is an essential piece in the organization of the rule of law. In Hamilton's own words, "the courts were designed to be an intermediate body between the people and the legislature in order, among other things, to keep the latter within the limits assigned to their authority" (*Federalist Papers*, LXXVIII). American colonies before the revolution asked for judicial review procedures that would limit the discretionality and arbitrariness of England (Agresto 1984: 42-45). Given the ambiguity of the rules, judicial review is a mechanism to cope with the moral hazard problem of the agent (the authority). Judicial

review is not a commitment, just as division of power or checks and balances are not commitments, but the rules of the game. We commit to these rules through the constitution, but this is a different story.

Ackerman (1991:261-265) has offered an extremely interesting reconstruction of judicial review along these lines. Democracy is a system of dual sovereignty.⁹ During normal politics representatives rule. During extraordinary politics, the people rule. Extraordinary or constitutional episodes occur very rarely. Some special conditions have to be met: a wide consensus, a high degree of participation and mobilization, a continued support for the proposed change, massive deliberation... If the constitutional momentum succeeds, it will be reflected in formal amendments, or in new interpretations of the original document, or even in new practices that are not contemplated in the constitution. Judicial review is an activity by which judges safeguard the achievements of the last higher-law-making cycle against possible deviations in times of normal politics. Judges preserve the constitutional legacy of the people. Without judicial review, citizens would not have incentives to get involved in constitutional transformation. The transformation could be dismantled by politician in times of normal politics (1991:9).

As long as judicial review helps to bring about the rule of law, it can be seen as an economizing device. Freeman (1990-91: 354) has argued, with reasons independent from those of akrasia, that the people would not accept majority rule if it could be used by representatives to pass laws contrary to basic rights. The risk taken by citizens would be too great. In Buchanan and Tullock's terms, the external costs of majority rule would be unbearable. Supermajorities would then be required. But this would increase decision-making costs. A way of avoiding this

⁹ Curiously, Hampton (1994) has provided an argument on the rule of law based on something very similar to Ackerman's dualism. Her distinction between rules and meta-rules parallels Ackerman's distinction between normal and extraordinary politics. Likewise, her idea that democracy institutionalizes "revolutionary" or "constitutive" moments resembles Ackerman's idea of dual sovereignty.

trade-off between external and decision-making costs is judicial review. Decisions are made by majority, but if they violate citizens' rights, judges can nullify them. Basic rights are guaranteed and the efficiency of decision-making is not impaired.

As in the case of the constitution, a tension between judicial review and democracy can be observed. The discussion about the democratic pedigree of judicial review revolves basically around two issues, the role of majority rule in democracy and the nature of law interpretation. I cannot enter the debate here: it is not a matter of whether certain kinds of decisions cannot be made or are very costly to make, but whether non-accountable judges should have certain decision-making power.

4. Commitments in normal politics: the case of economic policy.

I have argued that the functional commitment (by delegation) of representation and the intentional commitment (by rule) of the constitution, both of them backed by judicial review (or by some other institutional mechanism with similar consequences), are to a certain extent necessary conditions for democracy to function smoothly. Once the rules of the game are settled, however, we witness all kinds of commitments that affect the alternatives of politicians and voters. Particularly in the last two decades or so we have seen a growing trend toward the insulation or removal of economic policy from the democratic contest. It is claimed that politicians should not have the power to make certain important economic decisions because they are subject to short-term electoral considerations. Two instruments are proposed: to delegate decisions to agencies free of social pressures, and to enact rules that limit the discretionality of politicians. The ideological origins of this trend could be rooted in the diagnosis made by the Trilateral Commission in the mid-1970s about the crisis of governance. As Huntington (1975:113-115) said, the source of evils was "an excess of democracy" (1975:113-115).

I want to analyze more closely two conspicuous manifestations of this trend: the attempt to establish constitutional rules banning fiscal deficits and the delegation of monetary policy to

an independent central bank. The constitutional prohibition of deficits prevents the government from implementing policies aimed at stimulating demand and investment. An independent central bank like the Bundesbank has some capacity to neutralize and reverse economic policies which increase inflation or threaten currency stability. The breakdown of German government coalitions in 1966 and 1982, which led to the fall of Chancellors Erhard and Schmidt respectively, was provoked by the Bundesbank's measures. The misfortune of Erhard was precipitated by Blessing, a former Nazi and then President of the Bundesbank, who induced in 1966 an economic recession that tripled unemployment. Blessing declared that in that year he had to use "brute force to put things in order" (quoted in Marsh 1992: 161).

Why should politicians not have the power to make these decisions? As we shall see in a moment, some of the technical reasons for the commitment are extremely weak, and when they are more convincing, like the case of monetary policy, the consequences of the commitment are not well understood. More importantly, it is not clear at all whether there is a democratic justification for these kinds of commitments.

4.1. A constitutional requirement of a balanced budget.

In section 3.2 I have presented an idealized view of the constitution. The constitution included procedural rules, the regulation of authority and a set of basic rights. My thesis was that a commitment to this set of rules does not clash with democracy because it provides the stability required for democracy to work. However, real constitutions are often the shelter for many other things. People use the commitment technology of the constitution to insulate their particular interests from the reach of normal politics. The attempt to introduce a balanced budget amendment in the American Constitution is a paradigmatic example.

The first attempt to introduce the clause was made in 1982: though the 2/3 required by Article V were met in the Senate, in the House of Representatives it failed by 47 votes (votes in favor were 56%). Since then, there have been several other failures. The most recent try was in

1995, with a Congress dominated by Republicans, but again the amendment failed by 37 votes in the House (see Gimpel 1996: Ch.4). In the amendment only two exceptions are contemplated: a declaration of war and a decision by 3/5 in each House for a specific excess. In comparison, in the European Union the main requirement of the convergence plan for achieving the monetary union is a public deficit below 3%. Germany has been pushing other member countries to approve the so-called Stability Pact whereby once the euro is introduced, governments cannot incur deficits over 3%; if they do, automatic sanctions will be applied up to a maximum of 0.5% of GNP. Yet in December 1996 ministers agreed that these sanctions would not be automatic, but a political decision, making the threat much less credible.

The attempt to constitutionalize a balanced budget can be criticized on several grounds. First, by no means is it a constitutive rule. It is not enabling in any sense of this word. On the contrary, it restricts arbitrarily the range of decisions that politicians can make in economic policy. It forbids a particular outcome unrelated to the rules of the game. Why should then such a concrete measure be part of the core of the constitution? The deficit restriction, obviously, favors those who oppose almost any economic role of the state. The aim is to tie the hands of the group of people who believe that some amount of deficit can be harmless or even necessary to stimulate the economy. The amendment of the constitution would settle the issue for some long time, so that citizens could not decide what sort of economic policy they prefer. A crucial, non-constitutive, aspect of ordinary politics would be put beyond the realm of democratic decision.

Second, there is no reasonable explanation of why discretionality in budgetary issues produces one of problems (i-iv) that motivate commitments.¹⁰ It is usually said that government's promises to curb the deficit are not credible given electoral constraints (case [ii]), or that collective action problems lead legislators to produce deficits because of logrolling (case [iii]). But the difficulty, to begin with, lies in the very idea that a deficit is something regrettable. If some suboptimality were clear, then we would be justified to move to the optimum through commitment. However, the negative effects of public deficits is a much disputed issue (see Eisner 1989; Heilbroner and Bernstein 1989; Cavanaugh 1996). It is not clear that large deficits

¹⁰ A critical and rigorous discussion by an economist in favor of a constitutional amendment is Gramlich (1995).

correlate with high rates of inflation. Likewise, it is not so easy to detect the crowding out effect: again, there is not a clear correlation between government's borrowing and interest rates. Furthermore, even if we all believe that deficits are to be avoided, it is dubious that a constitutional amendment could dispose of the problem. The concept of "deficit" is extremely fuzzy. Taking into account that a constitutional amendment does not alter the incentives of politicians, we should expect that politicians will take advantage of the multiple loopholes of the deficit to avoid cuts which are costly in electoral terms. The list of accounting tricks is almost unlimited.

It could still be argued that the constitutional amendment is justified on reasons of justice: societies with public deficits incur some sort of inter-generational exploitation. While the current generation benefits from the borrowing necessary to finance the deficit, the debt is going to be paid back by future generations. But not any intergenerational transference is necessarily unfair. And the case for its unfairness rests on the controversial consequences of deficits and it is based on the fantastic assumption that the economy is using its full resources (Eisner 1989: 74). Given the deep disagreements between economists, the certainty with which politicians and most public opinion defend in the US the necessity of a constitutional amendment is really striking.

The constitutionalization of a balanced budget has to be understood as a commitment against instability in the distributive sense (case [iv]). The commitment serves to improve the condition of a particular group. Using the constitution as a device to shield the outcomes of normal politics is an unjustified act that restricts the scope of democracy.

4.2. The independence of central banks.

Unlike budget deficits, now there is no ambiguity in the reasons that recommend making a commitment by delegation. In the absence of commitment technology, government's promises to fight inflation are not credible to the public (case [ii]). Several stories can be told (see Persson and Tabellini 1990). The simplest one does not assume any political conflict of interests between

the government and private individuals: everyone agrees on avoiding inflation. However there are some economic externalities that create an incentive for a government to renege on its promise of zero inflation. The labor market suffers a too low employment level due to the externalities produced by, say, excessive wages. While each private agent does not have incentives to internalize these externalities because his influence on the economy is marginal, the government does have such an incentive. It pays to act in order to shorten the distance between the desired level of employment and the natural level. If the costs of introducing inflation by surprise are less than the welfare benefits of creating some extra employment, the government will introduce surprise inflation. But this means that private agents will not believe the government's promise to avoid inflation. They will incorporate the expected rate of inflation given a reneging government and in the end society will get higher inflation and the same employment level. This story can be complicated. If there are elections and politicians have to seek votes, then new temptations or incentives to renege appear. Electoral concerns aggravate the situation.

The government faces a problem of temporal inconsistency. Its promises against inflation are not credible in the absence of commitment technology.¹¹ The idea is that the introduction of commitments allows society to move from the third-best to the second-best (the first-best is not available insofar as the source of externalities stays). The commitment usually consists of delegating monetary policy to an independent central bank. The government has to choose a governor of the bank with conservative preferences on inflation. If the commitment is to be effective, the governor has to give more weight to inflation than the government. But the governor should not be a fanatic on monetary issues either. Economists calculate the optimal degree of delegation necessary to ensure that the goals of the government are achieved without losing too much flexibility.

There is evidence that the degree of independence of central banks is inversely related to inflation. The rate of turnover of governors is more important than the legal rules that establish the independence (Cukierman et al. 1992). The longer the governor stays in office, the less

¹¹ This is not beyond discussion. There are alternative views on the necessity of commitments for solving the problem of temporal inconsistency; see Minford (1995).

inflation. For many, this fact confirms the suspicion that politicians are not reliable on economic policy. Their concern for votes ruins the economy. The popular belief is that politicians do not stick to their promises because they make myopic policy to gain votes. Accordingly, politicians accountable to citizens should not have much discretion. It is worth quoting a fragment of no less than the German Constitutional Court on the delegation of monetary authority to the future European Central Bank and the corresponding loss of sovereignty:

[This delegation] is acceptable because it takes account of the special characteristics (tested and proven -in scientific terms as well- in the German legal system) that an independent central bank is a better guarantee of the value of the currency (...) than state bodies, which as regards their opportunities and means for action are essentially dependent on the supply and value of the currency, and rely on the short-term consent of political forces.¹²

We should treat these sorts of statements with some skepticism. First, temporal inconsistency may affect the decision maker even if there are no elections. Much more importantly, the evidence in favor of commitments is not so compelling. Hall (1994) has called attention to the fact that the effectiveness of delegation depends on institutional factors that go beyond the independence of the central bank. His point can be summarized as follows: the central bank tightens monetary policy if it considers that wages are pushing inflation up. In a country with a highly centralized wage bargaining system, unions will have incentives to anticipate the response of the central bank to their demands. Hence, the threats of the central bank will be enough to deter unions from inflationary wage settlements. But in a country with decentralized bargaining, private agents do not have incentives to internalize the inflationary externalities. Therefore, threats are not enough. The central bank has to induce high unemployment to convince everyone that inflationary wages cannot be maintained. Now the costs of taming inflation are much higher in terms of unemployment. If this is so, delegation of autonomy should be a matter of deep concern for citizens and politicians. It will be clearly insufficient to say that monetary policy must be insulated from social pressures because representatives are myopic.

¹² *Manfred Brunner and Others v. the European Union Treaty*, p.104 of the English translation, as published in *Common Market Law Reports*, 69, 2 (1994), 57-109.

Monetary stability is not, as Erhard claimed, a basic human right (Marsh 1992: 22). The decision to relinquish sovereignty on these issues should be the consequence of political debates where costs and benefits are clearly assessed. The purely ideological invocation to the necessity of insulating policy is of no value.

Finally, it is important to be aware of the possibility of the central bank acting in undesired ways. Once the central bank achieves autonomy, the people who work there will resist any attempt from government or society to diminish this autonomy. The central bank will use its conferred power to defend itself from external attacks. There may be serious costs associated with that survival strategy. Some people, from the left and from the right, say that this is exactly what is going on with the Bundesbank and the European Monetary Union (EMU) (Connolly 1995; Schmidt 1996). In case the EMU succeeds, the Bundesbank will lose many of its prerogatives. Monetary policy will be decided at the European level, by the new European Central Bank, whose board of directors will be composed by the governors of the member countries' central banks. There, the Bundesbank, no matter how influential its opinions turn out to be, will get one vote. To avoid this loss of power, the Bundesbank would have forced the imposition of the demanding convergence criteria, with the secret intention that not enough countries will be able to comply with them. If the plans for the EMU fail, the Bundesbank will retain its power not only in Germany, but also in the rest of Europe. Taking into account the economic turmoil that the convergence criteria are creating in the EU, it is no wonder that doubts about the Bundesbank's power are heard with growing insistence.

If there is a policy issue where arguments in favor of insulating decision making are overwhelming and especially clear, it is in monetary policy. Nevertheless, when we move from formal models to real examples, doubts can be raised about unforeseen side-effects of the commitment. It is not so clear that with delegation there is a Pareto improvement from the third-best to the second-best. Perhaps there are some advantages insulating the policy, but it must be proved that these advantages are greater than the drawbacks in each case. This cannot be done just pointing out the evils of democratic decision making. Much more is needed. Otherwise, we can still believe that delegation is only a distributive commitment used by conservative governments in monetary issues to tie the hands of future governments (case iv instead of case

ii), or a shelter used by politicians to avoid the electoral costs of carrying out by themselves unpopular economic policies (Marsh 1992: 19).

5. Conclusions.

Since my goal was mainly to clarify concepts, not to advance theses, conclusions are necessarily slim. I have proposed a theoretical framework to understand commitments: what they are, why we use them, when they are credible, what their consequences are... This framework is arbitrary to a great extent. It depends on how much we want to cover with the term “commitment”. But at least the examples of commitments used to build the framework are reasonable: they do not deviate much from what common sense dictates.

Then I have applied commitments to democracy. It has turned out that even if commitments seem to deny the logic of democracy, democracy rests on a structure of commitments. Representation can be understood as a functional commitment against the instability of collective decision-making. In the case of constitutions, some distinctions were necessary, the more important being that of committing to a rule and a rule committing us to do something. Constitutions are commitments in the first sense. Democracy is possible thanks to some set of constitutive rules. To make these rules stable, we have to commit to them. We need some mechanism to make it difficult to change constitutive rules. It is much less clear whether the rules of the game included in the constitution commit us in any sense. I have given some reasons why I think this is not the case. Following these reasons, I have argued that judicial review is not a commitment, but it makes credible the commitments involved in representation and in the constitution.

While commitments that ground democracy are easily justifiable, other kinds of commitments made in normal politics are not so compatible with democracy. I have chosen as examples commitments in economic policy, where it is assumed that any influence coming from

citizens or interest groups pushes policy away from efficiency. But we have found that their technical motivation is dubious and that they restrict the scope of democracy.

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