ORIGINAL ARTICLE

Lawyers and politicians: The impact of organized legal professions on institutional reforms

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Abstract Organized legal professions often play a central role in successful institutional development. The paper's model examines how legal professions affect institutional reform. Professional review of reform proposals solves a politician's informational problem in a way that makes democracy, political stability, and professional power substitutes. The model's applicability is examined by showing that its predictions track the fortunes of lawyers in the USSR and early transition and are consistent with events in 1688 in England and 1789 in France, indicating why these two revolutions had different consequences. The model suggests why and when civil law and common law systems differ.

1 The rule of law, organized legal professions, and development

One of the most significant developments in recent decades in economics has been the rediscovery of the central role of the rule of law in economic development (La Porta, Lopez-de-Silanes, Shleifer, & Vishny, 1998; North, 1990; Rodrik, Subramanian, & Trebbi, 2004). Despite this, economists have not been so eager to embrace lawyers, and even less so the organized legal professions (Datta & Nugent, 1986; Murphy, Shleifer, & Vishny, 1991; Posner, 1995). Yet, according to one authoritative legal historian "...the history of the legal profession is an important part of the

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history of the law...." (Plucknett, 1983: 332). Lawyers are central in the construction of the rule of law, and in every developed country a strong, organized legal profession exerts considerable influence.

The theory presented here suggests that the organized legal professions can play an important role in institutional development. We show how the intervention of that profession in the reform process can improve the quality of institutions. We use the theory to predict how the role of the legal profession varies with levels of democracy and political stability. To assess our model, we compare its predictions to the core facts of some prominent case studies, the Glorious Revolution in England, the French Revolution and Napoleon, the USSR and post-socialist transition, and the differences between the common and civil law systems.

Our conclusion is that, alongside the usual perspective that focuses on rent-seeking interest groups (see e.g. Drazen, 2000; Mueller, 1989; Stigler, 1971), the organized legal profession should also be viewed as providing a central ingredient in a society's institutional structure. This conclusion is consistent with broad historical evidence. Those countries adhering most strongly to the rule of law and with the highest quality legal rules (La Porta et al., 1998) have had notoriously powerful legal professions (Burrage, 1997; Halliday & Karpik, 1997a: 16), while in many former colonies and in transition countries, where law has played a much less significant role, organized legal professions have been virtually irrelevant (Johnson, 1973; Waters, 2004).

Our model focuses on the process of designing and implementing institutional reforms. In that process, the government faces the competing demands of different interest groups, who have more information about the effects of proposed reforms than politicians do. The reform proposal process is subject to adverse selection. The involvement of the organized legal profession in the reform-deliberation process can provide a screening mechanism that fosters an increase in the quality of proposed and adopted reforms. The prestige, status, and independence of the organized legal profession adds political legitimacy and credibility to the politician's decision to involve the profession when faced by powerful interest groups pressing for reforms.

The politician is interested in both the quality of institutional reforms and contributions from interest groups. Then, the politician is more likely to use the organized profession when democracy is stronger. But since the involvement of the organized legal profession in the reform-deliberation process inevitably leads to the delay of reforms, the politician's decision to involve the profession also depends on the likelihood of government turnover. Democracy and stability become substitutes.

Once a professional group has acquired political power, the politician also has to consider the political costs of challenging the group's status. The power of the profession can change the politician's decision on whether to engage the profession in the reform process, but only in the middle ranges of democracy. Then, professional power substitutes for weak democracy, an observation consistent with events during England's Glorious Revolution.

We argue that a politician will involve the organized legal profession more often in common law than in civil law countries, as legal professions are naturally more powerful in the former. This involvement leads on average to superior institutions in common law countries, but also slows implementation of reforms: our model reconciles the views of La Porta et al. (1998) and Rajan and Zingales (2003).

The argument proceeds by integrating the model with related facts from history and from studies of legal professions. Sect. 2 examines the defining characteristics of

organized legal professions. Sect. 3 builds upon these facts in formulating the core assumptions. Sect. 4 develops predictions for the case of a politically powerless profession, identifying the circumstances under which the profession contributes to the improvement of institutional reforms. We show that these predictions align well with events in the Soviet Union and in the transition from autocracy. Sect. 5 examines a profession with political power, showing that professional power and democracy are substitutes. The predictions are consistent with the differing developments in England in 1688 and France in 1789, and the consequences of these developments. Lastly, we use the model to interpret the relationship between legal origins and institutional development. Sect. 6 concludes.

2 The nature of organized legal professions

In this section, we summarize those facts that motivate the key assumptions of our model. We examine the nature of organized legal professions, the special status they play in reviewing reform proposals, their effect on the reform process, and the circumstances under which organized professions accumulate unusual amounts of power.

When occupations use specialized knowledge, practitioners have a comparative advantage in certifying expertise. If the occupation becomes organized as a profession, the profession itself does the certification, which often translates into permission to practice (see e.g. Burrage and Torstendahl, 1990; Burrage, Jarausch, & Siegrist, 1990). The strongest organized professions become self-regulating monopolies, administering the use of the specialized body of knowledge through a single set of policies, rules, and standards.[1] Formalization of self-regulation confers quasi-governmental status.

With the organized profession deemed to have monopoly expertise, its members are usually accorded special status in reform processes. Already in the 1300's, legal professionals advised the English king on statutes (Rose, 1998) and dominated a commission on legal reforms (Plucknett, 1983: xix 335). This special role in reform processes might be formalized, but the profession's participation need not necessarily involve officially appointing the monopoly professional association to some formal body.[2] The crucial issue is that the politician facilitates a process in which the independent profession widens debate about reforms outside the limited circles of the government and the most-affected interest groups. Whatever the nature of the process, the expertise, status, and prestige of the organized profession affords political legitimacy and credibility to the politician's decision to open up the political process when confronted by interest groups pressing for quick reforms.

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[1] "[There] can be no doubt that the profession's knowledge about the intricacies of professional practice, the official and unofficial procedures, and the opportunities for manoeuvre and circumvention that these provide, is rarely rivaled. This is an immense source of power since it means that any attempt to change or control professional behavior by instituting new rules and procedures has to be negotiated with residential procedural experts, the practitioners who will actually implement the change." (Burrage et al., 1990: 210).

[2] The British Commonwealth legal systems seem to have gone farthest in the process of formalizing legal profession's role by setting up Law Reform Commissions, dominated by professional lawyers and charged with reviewing all aspects of legal reform. See e.g. the Manitoba Law Reform Commission (2003). Governments, however, can also consult with prominent sub-groups or use independent, universally respected, members of the profession. The role of the American Law Institute in the US provides an example.

Among the consequences of professional review, one that is universally agreed upon is a slowing of the reform process. The 26-year, lawyer-dominated, gestation period of the first German civil code (Zimmerman, 1996: 6) stands in contrast to the 6 months in which the Weimar politicians drafted Germany's first democratic constitution. While Napoleon's constitution of 1799 was created and ratified in 2 months, it took 4 years for a commission of old-regime legal practitioners to craft his civil code (David & de Vries, 1958: 13). Examples from more recent times are the 8 years for new bankruptcy laws in the US and the UK and the 6 years for new civil procedure codes in France and Japan, each process beginning with lengthy deliberations by commissions of professionals appointed by politicians (Carruthers & Halliday, 2000; Cadiet, 1999: 315; Hasebe, 1999: 237). At the very least then, one may assume that the involvement of the organized legal profession slows the pace of reform.

The power of the organized legal profession varies greatly across countries and over time. There might be no profession capable of self-organization, as in China after the cultural revolution (Pei, 2001: 181–182). Once an organized profession exists, its status, particularly its relationship with government, can take on many different hues. In some cases the state creates a profession and gives it formal status; in others, custom or political struggle are more relevant. Thus, the profession might be coterminous with a government department, as in early nineteenth century Prussia (Kocka, 1990; Rueschemeyer, 1997; Siegrist, 1990), or it might be a ''little commonwealth'' or ''lesser government'' as in the middle ages in England, even though the autonomy of the profession was never formalized (Halliday & Karpik, 1997b: 354; Burrage, 1989: 356).

The first strong legal profession emerged in the twelfth century in England (Brand, 1992). The autonomous Inns of Court acquired monopoly control over education and admission to legal practice, their independence and power gradually becoming an element of the unwritten constitution. By the 1680s, when the crown attempted to challenge the power of the profession, the result was the ''the triumph of the Common Law and lawyers over the King, who had tried to put Prerogative above the law'' (Trevelyan, 1967: 71). This cemented the power of a legal profession, which subsequently has never been subject to serious challenge.

The French legal profession was much more the creation of the state as was the German legal profession (Karpik, 1988; Rueschemeyer, 1997). Both countries saw many vicissitudes in the power of their respective professions. Under Louis XIV, the most autocratic of monarchs, the organized legal profession rose to prominence. Its status fell during the eighteenth century, vanished in the revolution, and then revived under Napoleon. The German profession rose to a high level of prestige by the beginning of the twentieth century, but within 1 year of ascending to power, Hitler had abolished the German lawyers association (Jarausch, 1990: 118).

These facts suggest that the profession's role and power varies across legal systems (Abel, 1995). In a typical civil law country, the organized profession is a creature of the state (Huyse, 1995: 182; Rokumoto, 1995: 128–129). Civil law professions are weaker, divided into sub-groups, and exert less influence on the judiciary. In a common law countries, unified professions usually won their independence using their technical expertise in a system of justice relying on decentralized courts and law (Burrage, 1989; Weisbrot 1988). Historically, they have been largely autonomous from the state (Halliday & Karpik, 1997b: 5, 354–355).

Lastly, it is important to emphasize that while there are many examples of autocrats who oppose independent professions, this is not always the case. The Paris

Order of Barristers flourished under Louis XIV; Napoleon reestablished it after its demise during the revolution. Lawyer groups had some, highly constrained, independence in Soviet times (Krause, 1991), while the transition did not automatically translate into increased status. Indeed, the reverse was the case in some post-Soviet republics (Waters, 2004).

3 A model of legal profession in the reform process

The model uses the phrasing of interest group politics in a democracy, but it could be recast to apply to autocracies. We use the terminology of competing politicians, interest groups, campaign contributions, and elections, but we could also have referred to an autocrat facing factions, receiving tribute, and deliberating on the possibility of being usurped.

3.1 The structure of reform programs

A fundamental institutional reform is under consideration. Reversal in the medium-term is impossible, and at most one reform program can be enacted. Politicians and interest groups compare reform programs to the status quo. Those directly affected fall into two interest groups, α and β, which can devote contributions to influence the government's decision. Reform j is completely characterized by $B_{\alpha j}$ and $B_{\beta j}$, the benefits to α and β from implementation. Thus, the aggregate welfare from a specific reform is the sum of payoffs to the two interest groups:

Assumption A1: Social welfare from implementing reform j is $B_{\alpha j} + B_{\beta j}$.[3]

Reform programs comprise combinations of individual reforms. If reforms are classified according to whether α or β wins or loses and whether the sum of payoffs is positive or negative, there are six possible reform types. (Fig. 1 portrays these six, the line TT separating those with positive aggregate payoff from those with negative payoff.) Hence, all relevant reform programs comprise from one to six reforms, at most one from each type.[4]

The impetus for reform comes from interest groups submitting programs. Hence, reform 6, which is Pareto inferior to the status quo, can be dropped from the analysis because neither α nor β submits it. Given the assumptions below, Pareto-improving reform 1 is always submitted and adopted. Since its presence or absence does not alter the model's qualitative predictions, reform 1 can also be omitted. The payoff structure of the remaining four reform types is shown in Table 1.

Observe that reforms 4 and 5 play the same role for β as 2 and 3 do for α.[5] The structure of payoffs captures a fundamental aspect of institutional reform:

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[3] Note that political contributions are pure transfers and do not appear in aggregate welfare. This way of accounting for social welfare is consistent with Shleifer and Vishny (1994), Persson and Tabellini (2000, Chapter 7), Persson (1998), and Grossman and Helpman (2001, Chapters 7 and 8).

[4] Two reforms of type j combined are equal to one reform of type j.

[5] An example of reform 2 (4) might be a change in corporate law that makes financial markets less efficient, aiding dominant owners by reducing protections for minority shareholders. Reform 3 (5) could be an improvement in contract law that facilitates the use of collateral, aiding new businesses, but reducing entry barriers that protect existing firms. Both measures could belong in an omnibus finance-oriented institutional reform program, underscoring the relevance of the model to situations where packages of related reforms are combined into one program.
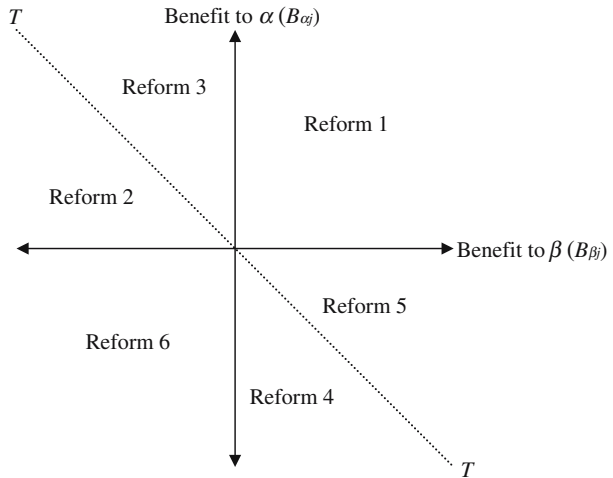
Fig. 1 The set of reforms

Table 1 The structure of reform programs

	Interest group α	Interest group β	Aggregate
Reform 2	$B_{\alpha 2} > 0$	$B_{\beta 2} < 0$	$B_{\alpha 2} + B_{\beta 2} < 0$
Reform 3	$B_{\alpha 3} > 0$	$B_{\beta 3} < 0$	$B_{\alpha 3} + B_{\beta 3} > 0$
Reform 4	$B_{\alpha 4} < 0$	$B_{\beta 4} > 0$	$B_{\alpha 4} + B_{\beta 4} < 0$
Reform 5	$B_{\alpha 5} < 0$	$B_{\beta 5} > 0$	$B_{\alpha 5} + B_{\beta 5} > 0$

rent-seeking interest groups favor reform programs with several sub-components, some contributing to general welfare and some reducing general welfare. The central problem of institutional reform is to foster adoption of the efficiency-enhancing components and reduce the likelihood of implementing purely rent-seeking redistributions. We therefore introduce two assumptions that keep this problem at the center of consideration.

Assume that the two reforms proposed by a single interest group have the same scale, in that they involve the same amount of redistribution:

Assumption A2. $B_{\beta 2} = B_{\beta 3}; B_{\alpha 4} = B_{\alpha 5}$.

Since interest group contributions to politicians will be related to reform size, A2 matches our assumptions on those contributions, to be discussed in subsection 3.2. Assume also that the interest groups are on balance, rent-seeking groups, in that their most favored programs reduce general welfare:

Assumption A3. $(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3}) < 0; (B_{\alpha 4} + B_{\beta 4}) + (B_{\alpha 5} + B_{\beta 5}) < 0$.[6]

A3 maintains the focus on the central problem of institutional reform by ensuring that the politician must blunt the interest-group's rent-seeking propensities in order to enact beneficial institutional reforms. It is a strong assumption in the sense that the particular results presented below are dependent upon it. However, all A3 aims to capture is the readily acceptable notion that interest groups find it easier to develop pure rent-seeking reforms than aggregate welfare improving reforms. Thus,

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[6] To further justify A3, observe that if it does not hold, $B_{\alpha 3}$ and $B_{\beta 5}$ can be infinite.

A3 can be expected to hold for the typical institutional reform process, even if not for all such processes. Moreover, if A3 did not hold, many of the qualitative features of our results, such as the use of the profession as a screening mechanism, would still pertain.

3.2 Interest groups, politicians, society

There are two rival politicians, A and B. The one forming the government has the power to implement reforms. The interest groups submit reform programs. The government accepts a reform proposal only if the interest group pays a contribution. Given A2, the contribution does not vary across reforms: Ψ_{ik} is the payment when the government of politician k accepts a submission of a single reform from interest group i.[7] The politician is at an informational disadvantage and cannot recognize reform types when they are submitted. However, politicians do understand the model and recognize which interest group lobbies.

Given the structure of payoffs, α and β are in opposition. Hence, it is natural to view enactment of reforms 2 or 3 as inconsistent with enactment of 4 or 5.[8] One politician cannot help both groups. We build this formally into the model's structure by assuming that each interest group is aligned with a different politician:[9]

Assumption A4: For all j such that $B_{\alpha j} > 0$, $\Psi_{\alpha A} < B_{\alpha j} < \Psi_{\alpha B}$.
      For all j such that $B_{\beta j} > 0$, $\Psi_{\beta B} < B_{\beta j} < \Psi_{\beta A}$.

These assumptions match the politics of longer-term institutional reform, where visions compete and ideologies restrict the actions of politicians. Then, interest groups oppose each other and align with political ideologies. Hence, politicians could not credibly solicit support from all groups. The resultant structure of lobbying (α lobbies only A and β only B) is consistent with empirical work on campaign contributions, which shows alignment between the objectives of donors and politicians (Poole & Roomer, 1985; Poole, Romer, & Rosenthal, 1987). This structure is also consistent with empirical work that shows that contributions influence politician's decisions (Stratmann, 1991, 1995, 2002).

Politician k's payoff from accepting the proposal of reform j from group i and implementing it is a weighted average of social welfare and lobbying income:

Assumption A5: The politician's payoff from j is $\lambda(B_{\alpha j} + B_{\beta j}) + (1 - \lambda)\Psi_{ik}$, $\lambda \in (0,1)$.

This form of the objective function is consistent with the political economy literature on campaign contributions (see Persson & Tabellini (2000, Chapter 7), Persson (1998) and Grossman and Helpman (2001, Chapters 7 and 8)). λ is common knowledge. λ increases with either the politician's benevolence or with improvements in democracy that force the politician to pay greater attention to general

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[7] If interest group α wants to submit both reforms 2 and 3 to A, for example, it must pay $2\Psi_{\alpha A}$.

[8] The assumption of direct conflict is common in the analysis of the effect of interest groups on policy. See e.g. Grossman and Helpman (2001, Sect. 4.2.2, 8.4, and 9.3), Drazen (2000, Sect. 3.7, 13.5), and Mueller (1989: 108, 230, 245, 247, 279, and 453).

[9] A4 is formulated in strong terms to simplify the exposition. It is sufficient, not necessary. Its key implication is that the lobbying equilibrium within any time period results in only one of the following: (i) no lobbying or (ii) lobbying for 2 or 3 or both or (iii) lobbying for 4 or 5 or both. This implication is very innocuous given that α and β are in opposition (i.e., reforms 2 and 3 have the opposite effects of reforms 4 and 5).

welfare. If all politicians have equal degrees of benevolence, λ becomes a measure of democracy. Under dictatorship λ is closer to 0 and Ψ_{ik} reflects the tribute the dictator extracts from subjects.

3.3 Politicians and the organized legal profession

Politicians must decide whether to open up the reform process to broad debate. To do so, the use of the organized legal profession provides a natural mechanism, because of the profession's expertise, status, and prestige. Hence, the politician gains political legitimacy and credibility by using the organized profession in the process of reviewing reforms. Before interest groups submit proposals, the government decides whether such review is to be standard.

By opening up the reform process to debate by involving an organized profession that values due process and openness, the review delays the passage of reform programs. As Sect. 2 argues, this is a universally acknowledged product of involving the profession. Of course, mechanisms other than insertion of the profession can lead to delay. But since the interest group aligned with the incumbent politician is damaged by the delay, it is especially important that political legitimacy and credibility surround the decision to use a reform-review process. Given the organized legal profession's prestige and status, its involvement is a key delay-generating mechanism available to the politician.

Apart from delay, there are two other ingredients that the profession might insert into the review process, one adding to social welfare and one reducing it. The positive is that the profession might provide technical information, improving institutional quality. The negative is rent-seeking, the profession distorting reforms in its own interest. There is considerable debate on the importance of these two phenomena, especially their relative importance. We cannot resolve that debate here, and it is not important to do so. Our objective is to show that there are large consequences that result from the one effect on the reform process that is intrinsic in the involvement of the organized profession, delay. A fuller analysis would seek to understand the interaction of all three effects, delay, rent-seeking, and expertise.

The consequence of delay is that a particular government might run out of time before being able to implement a submitted reform program. The incumbent might lose an election and be replaced by the other politician. Then the interest groups have to incur lobbying costs again if they still want their reforms to be considered for implementation.

3.4 The timeline

There is a single reform process beginning when one politician, say A, takes the reins of power. The model covers two sub-periods, A's initial incumbency and the following time interval when either A or B forms the government. The decision on whether to use professional review is made at the beginning of A's incumbency and holds for the whole reform process. The irreversibility of this decision within the time-frame of the model reflects the view that once a single reform process has begun, it would be difficult for a politician to change that process.

Let $p \in (0,1)$ be the known, exogenous probability that A stays in power in the second period. p measures political stability. Our assumptions on p exactly match those in Persson and Tabellini's (2000, Sect. 13.3) analysis of political instability.
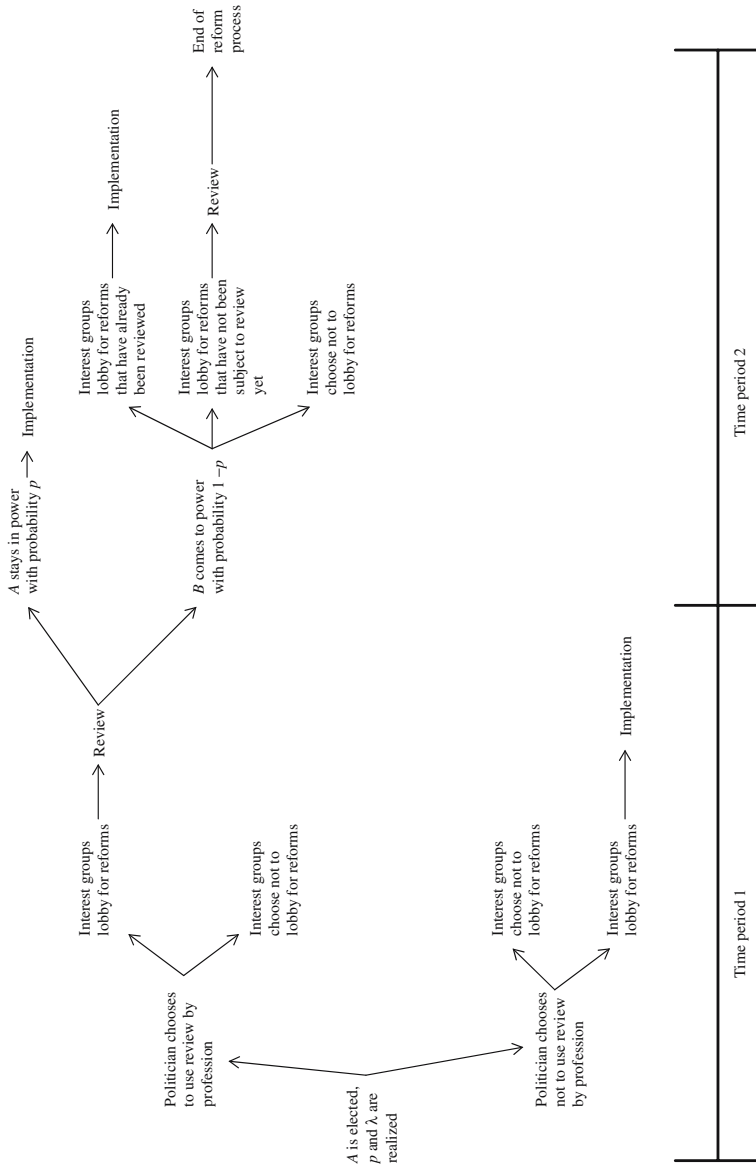
Fig. 2 The timeline

Values close to 0 correspond to chaotic, often revolutionary, environments. Hence, p is not an indicator of democracy: a p close to 0 could occur under either democracy or autocracy.

In both periods, each interest group decides whether or not to submit a proposal without knowing what the other is doing. The government then decides whether to accept the proposals. If it does, it receives the interest-group contribution. If there is no professional review the measure passes immediately. If there is review, the measure is debated until the second period. Then, if A remains in office, the reforms submitted in period 1 are implemented. If B takes over, each interest group decides again whether to submit a proposal. If the reforms submitted in period 2 are the ones that already passed through professional review in period 1, they are implemented. If the reforms submitted in period 2 differ from the ones submitted in period 1, they are delayed beyond the end of this reform process.[10] Figure 2 summarizes the timeline.

4 When do politicians use powerless legal professions?

We begin with the simpler case, when a profession exists, but the politician suffers no special cost in ignoring it. Sect. 5 introduces the political power of the profession.

Reform 3 is desirable for politician A for any $\lambda \in (0,1)$. Reform 2 is undesirable for A if $\lambda(B_{\alpha 2} + B_{\beta 2}) + (1 - \lambda)\Psi_{\alpha A} < 0$, or, equivalently, if $\lambda > \underline{\lambda}$, where $0 < \underline{\lambda} = \Psi_{\alpha A}/[|B_{\alpha 2} + B_{\beta 2}| + \Psi_{\alpha A}] < 1$. $\underline{\lambda}$ is therefore the lowest level of λ at which the politician's consideration of the general welfare has any effect: for $\lambda < \underline{\lambda}$, A would knowingly accept aggregate-welfare-reducing reform 2. When $\lambda > \underline{\lambda}$, A has an informational problem. If there is no screening mechanism, A either approves all reforms or none. A approves all reforms if and only if

$$[\lambda(B_{\alpha 2} + B_{\beta 2}) + (1 - \lambda)\Psi_{\alpha A}] + [\lambda(B_{\alpha 3} + B_{\beta 3}) + (1 - \lambda)\Psi_{\alpha A}] > 0, \tag{1}$$

or, equivalently, if $\lambda < \bar{\lambda}$ where $\underline{\lambda} < \bar{\lambda} = \Psi_{\alpha A}/\{\Psi_{\alpha A} + \frac{1}{2}[|B_{\alpha 2} + B_{\beta 2}| - (B_{\alpha 3} + B_{\beta 3})]\} < 1$.[11] $\bar{\lambda}$ is therefore the lowest value at which the general welfare dominates A's decisions.

In sum, when $\lambda < \underline{\lambda}$, A likes reform 2, accepts all reforms, and does not face an informational problem. When $\underline{\lambda} < \lambda < \bar{\lambda}$, A accepts all submitted reform programs (unless a program is known to comprise 2 only), but faces an adverse selection problem. When $\lambda > \bar{\lambda}$, A rejects all submitted reform programs (unless a program is known to comprise 3 only), but still faces an informational problem.[12]

The model's basic parameters are p and λ, the levels of stability and democracy. Figure 3 summarizes the analysis as it proceeds, depicting how the model's equilibria vary with (p, λ).

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[10] This assumption closes the model without an infinite horizon. It is equivalent to focusing on a single reform process that must take place within a certain time window, which is a common feature of the circumstances surrounding institutional reforms.

[11] Observe that $\lambda < \bar{\lambda}$ implies that *any* politician in power accepts any reform program, submitted by α or by β. A might in principle (but not in equilibrium) receive reforms submitted by β in period 1. If A accepts any reform submitted by α, then A accepts any reform submitted from β, since β's lobbying fee is higher and 4 and 5 are symmetric to 2 and 3.

[12] The adverse selection structure of the model thus resonates with Dewatripont and Maskin (1995) and Qian (1994), which focus on credit and soft budgets, respectively.
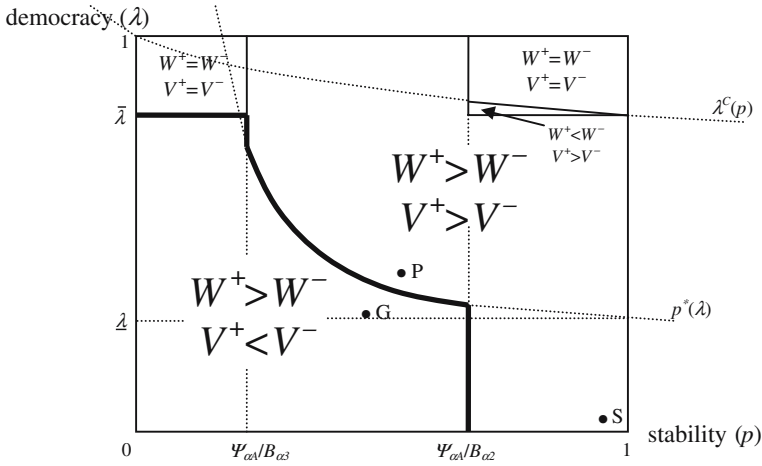
Notes:

1. W^+ = aggregate welfare with professional review

2. W^- = aggregate welfare without professional review

3. V^+ = politician's welfare with professional review

4. V^- = politician's welfare without professional review

5. ▬▬▬ Boundary between use of profession and non-use

7. S = The Soviet Union before Gorbachev

8. G = Georgia during early transition

9. P = Poland during early transition

Fig. 3 The politician's welfare and aggregate welfare with and without a powerless legal profession

4.1 Base line equilibria: when the legal profession does not exist

First consider equilibria in a baseline case, when an organized profession does not exist. Without the profession, with A in power, and with $\lambda < \bar{\lambda}$, β never lobbies, while α lobbies immediately for reforms 2 and 3 and A implements them both in the first period, ending the reform process. When $\lambda > \bar{\lambda}$ neither α nor β lobby for reforms because A rejects all proposals.[13] Denote social welfare relative to the status quo when there is no profession as W^-. Hence,

$$W^- = (B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3}) < 0 \quad \text{when } \lambda < \bar{\lambda}$$
$$= 0 \quad \text{when } \lambda > \bar{\lambda}. \qquad (2)$$

Similarly, let V^- be politician A's payoff relative to the status quo when there is no profession:

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[13] Given that at most one reform program is implemented and the symmetry between α and A and β and B, nothing will occur in the second period, whoever is in power.

$$V^- = \lambda[(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3})] + (1 - \lambda)2\Psi_{\alpha A} > 0 \quad \text{when } \lambda < \bar{\lambda}$$
$$= 0 \qquad\qquad\qquad\qquad\qquad\qquad\qquad \text{when } \lambda > \bar{\lambda}. \qquad (3)$$

Hence, $\lambda < \bar{\lambda}$ provides the more interesting case, since the politician would then want to implement the proposed reform program, which would reduce aggregate economic welfare. In the case of $\lambda > \bar{\lambda}$, there is no such conflict between politician and society.

4.2 The legal profession's impact when the politician's self-interest matters

When $\lambda < \bar{\lambda}$, A is faced with an informational problem and approves all submitted reforms, the standard adverse selection scenario. Then, the equilibrium of the reform-lobbying game between α and β is specified by the following (proofs of all propositions are in the Appendix):

Proposition 1 *Assume that $\lambda < \bar{\lambda}$, A is in power, and there is professional review. α never lobbies for reforms 4 and 5. In period 1, α lobbies for 3 if and only if $p \geq \Psi_{\alpha A}/B_{\alpha 3}$ and also for 2 if and only if $p \geq \Psi_{\alpha A}/B_{\alpha 2}$. In period 2, α does not lobby for any reform regardless of which politician is in power. Interest group β never lobbies for reforms.*

Let W^+ be social welfare with professional review. Proposition 2 immediately follows:

Proposition 2 *When $\lambda < \bar{\lambda}$, then:*

$$W^+ = \begin{cases} 0 & \text{when } p < \Psi_{\alpha A}/B_{\alpha 3}, \\ p(B_{\alpha 3} + B_{\beta 3}) & \text{when } \Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2}, \\ p(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) & \text{when } p \geq \Psi_{\alpha A}/B_{\alpha 2} \end{cases}$$

$W^+ > W^-$ *for all p: aggregate welfare is always higher with the profession than without it.*

The reason why the profession is advantageous to society varies with levels of stability. If p is low, professional review dissuades α from lobbying because A's survival is too uncertain to repay lobbying costs. If p is high, review and delay reduce the probability of implementation of a welfare-reducing reform program (2 and 3). For mid-range p's, the profession solves society's informational problem: α lobbies only for reform 3. Therefore, the use of professional review makes its strongest contribution in this mid-range, suggesting patterns of variation across countries in the value-added from an organized profession.

The contribution of the profession identified in Proposition 2 is only a potential one, contingent on whether the politician decides to implement reform-review. When $\lambda < \bar{\lambda}$, it would not be surprising to find situations where the politician's objectives conflict with those of the general population. Denote the politician's payoff with professional review as V^+. The following proposition examines how the difference between V^+ and V^- varies with p and λ:

Proposition 3 *Assume $\lambda < \bar{\lambda}$.*

Let $p^*(\lambda) \equiv 1 + [\lambda(B_{\alpha 2} + B_{\beta 2}) + (1 - \lambda)\Psi_{\alpha A}]/[\lambda(B_{\alpha 3} + B_{\beta 3})]$.

1. *With professional review, the politician's welfare is given by:*

$$V^+ = \begin{cases} 0 & \text{if } p < \Psi_{\alpha A}/B_{\alpha 3} \\ \lambda p(B_{\alpha 3} + B_{\beta 3}) + (1-\lambda)\Psi_{\alpha A} & \text{if } \Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2} \\ \lambda p(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + (1-\lambda)2\Psi_{\alpha A} & \text{if } p \geq \Psi_{\alpha A}/B_{\alpha 2} \end{cases}$$

2. *The politician's gain or loss from professional review has the following properties:*

$$\begin{array}{ll} V^+ < V^- & \text{if } p < \Psi_{\alpha A}/B_{\alpha 3} \\ V^+ < V^- & \text{if } \Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2} \text{ and } p < p^*(\lambda) \\ V^+ > V^- & \text{if } \Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2} \text{ and } p > p^*(\lambda) \\ V^+ > V^- & \text{if } p \geq \Psi_{\alpha A}/B_{\alpha 2} \end{array}$$

3. *The line $p^*(\lambda)$ in Fig. 3 is downward sloping, convex to the origin, intersects $p = \Psi_{\alpha A}/B_{\alpha 3}$ below $\bar{\lambda}$, and intersects $p = \Psi_{\alpha A}/B_{\alpha 2}$ above $\underline{\lambda}$.*

Proposition 3 establishes that the decision to use the profession is related to (p, λ) in a straightforward way. Before discussing this relationship, we find the remaining equilibria of the model by examining outcomes when $\lambda > \bar{\lambda}$.

4.3 The legal profession's impact when the politician's aims coincide with society's

With professional review and $\lambda > \bar{\lambda}$, if $p < \Psi_{\alpha A}/B_{\alpha 3}$, α does not lobby because the probability of A's keeping power is not high enough to repay lobbying costs.[14] Therefore, if $p < \Psi_{\alpha A}/B_{\alpha 3}, W^+ = V^+ = 0(= W^- = V^-)$. When $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$, lobbying for only reform 3 is beneficial for α, while lobbying for 2 and 3 is not. Since A knows α's incentives and reform 3 is desirable for A, it is approved. Therefore, when $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$, $W^+ = p(B_{\alpha 3} + B_{\beta 3}) > W^- = 0$ and $V^+ = \lambda p(B_{\alpha 3} + B_{\beta 3}) + (1-\lambda)\Psi_{\alpha A} > V^- = 0$.

For $p \geq \Psi_{\alpha A}/B_{\alpha 2}$, A approves α's submission if $\lambda p(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + (1-\lambda)2\Psi_{\alpha A} > 0$, or equivalently, if $\lambda < \lambda^C(p)$, where $\lambda^C(p) = \Psi_{\alpha A}/\{\Psi_{\alpha A} + \frac{1}{2}p[|B_{\alpha 2} + B_{\beta 2}| - (B_{\alpha 3} + B_{\beta 3})]\}$. $\lambda^C(p)$ is strictly decreasing and convex in p with $\lambda^C(0) = 1, \lambda^C(1) = \bar{\lambda}$. Therefore, for $p \geq \Psi_{\alpha A}/B_{\alpha 2}$ and $\lambda > \lambda^C(p)$, A rejects all submitted reform programs and consequently α does not lobby for any which implies $W^+ = V^+ = 0(= W^- = V^-)$. For $p \geq \Psi_{\alpha A}/B_{\alpha 2}$ and $\lambda < \lambda^C(p)$, however, α lobbies for the reform program consisting of reforms 2 and 3, and A approves it, meaning that $V^+ > V^- = 0$ and $W^+ = p(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) < W^- = 0$.

4.4 Summarizing the results

Figure 3 summarizes the central results and is used to motivate the applications of the model in the ensuing subsections. The profession, if used, promotes the general welfare for all $\lambda < \bar{\lambda}$, and only detracts from general welfare in a small part of the region where $\lambda > \bar{\lambda}$. But it is only used if it is to the politician's

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[14] We omit stating a modified version of Proposition 1 for brevity only. As in equilibria with $\lambda < \bar{\lambda}$, β never lobbies for reforms.

advantage ($V^+ \geq V^-$). At high levels of either democracy or stability, the politician invokes professional review. As either democracy or stability fall from their highest levels, they become substitutes. At many levels of democracy, the profession is used only if political stability is high enough. This trade-off between democracy and stability occurs precisely because professional review provides a screening mechanism.

4.5 Legal professions under autocracy and transitions to democracy

The predictions of our model are consistent with the role of lawyers groups under Soviet rule and in the transition. While the communist revolution destroyed the pre-revolutionary Russian legal profession (Shelley, 1991: 65–66), the return of stability under Stalin was accompanied by a recognition that lawyers would play a role (Waters, 2004: 41). Elements of the legal profession had a degree of independence not observed elsewhere in the Soviet system (Shapiro, 1961). Stalin allowed the *advokatura* (defense lawyers) to form a ''British barrister-style set of *collegia* or lawyers' self-controlled practice groups, self-funding and attached to each major court....private, petit bourgeois ''mini-guilds'' within the state structure'' (Krause, 1991: 16–18). The *advokatura* provided a rare example of a profession that was formally outside all administrative structures and, within narrow limits, self-governing (Huskey, 1982).

The Soviet legal profession did affect reforms in the manner depicted in our model. One well-documented case is that of the reform of criminal law and criminal legal-procedure during destalinization (McCain, 1982). Then, legal scholars and practitioners were invited to debate the many proposals that surfaced after the Communist Party announced that new legal codes would be adopted. This resulted in exactly the process of delay envisaged in our model, a 2-year ''elaborate ritual of consultation with legal specialists'' (McCain, 1982: 6), during which lawyers played important roles in the process of drafting and re-drafting the proposed codes. ''Because the political leadership needed the technical skills of lawyers in producing new criminal and procedural statutes, the drafting process was designed to involve Soviet jurists, and in many instances they predominated on the legislative committees'' (McCain, 1982: 19–20).

The special role played by sub-groups of the legal profession continued throughout the Soviet period, including involvement of the *advokatura* itself in the lengthy review of drafts of the 1979 Law on the *Advokatura* (Huskey, 1982: 204). Of course, the role of the legal profession in Soviet society was minor even compared with its role in medieval England. But the existence of any professional influence in a totalitarian state is surprising without our prediction that an unchallenged dictator can find professions useful. The Soviet Union before Gorbachev could be placed at point S in Figure 3.

The role of the legal professions was enhanced under Gorbachev, with lawyer groups influencing the development of criminal law, playing a central role in legislative drafting, and gaining further tools of self-regulation (Jordan, 1998). The Union of Advocates of the USSR was established in early 1989, the first independent union to be formed since 1917 (Jordan, 1998: 770). Because the early Gorbachev years were a time when democracy rose faster than instability, this is consistent with the model's predictions.

In contrast, in early transition the continued rise of democracy was accompanied by large increases in political instability. In Russia in the 1990s, the power of the *advokatura* declined (Jordan, 1998). Thus, in the instability of the early Yeltsin

years, the rise in democracy was not sufficient to encourage politicians to maintain the role of that part of the legal profession that had been most independent under Soviet rule.[15]

Developments were even more stark in the new states, such as Georgia, where instability dominated. Legal groups lost power and lawyering became a free for all. Politicians paid little attention to the profession. Scientists and literary figures, not legal experts, dominated the process of drafting a constitution (Waters, 2004: 57-8). This pattern of events is consistent with our model's predictions. While the Soviet regime found some use for the legal profession, the higher levels of democracy of the early 1990s did not translate into greater use of the profession, because they were more than countered by increases in political instability. Early transition in Georgia, and perhaps even in Russia, is at G in Fig. 3.

In Poland, where higher levels of democracy were quickly attained and instability declined, the legal profession was prominent. Law professors and legal professionals were regularly appointed to task forces charged with drafting new laws (Gostynski & Garfield, 1993). The use of recognized legal experts to review proposed laws delayed economic reforms (Rich, 1997). The higher levels of both stability and democracy would place Poland at point P in Fig. 3.

5 When do politicians use legal professions that have political power?

Organized professions are sometimes politically powerful. They often use that power to demand involvement when reforms are under consideration. This is a form of rent-seeking, converting power into further status and prestige. Thus, when the profession has political power, the politician bears significant political costs when deciding not to allow the profession to participate. These extra costs are higher at higher levels of democracy because autocrats have more freedom to quash dissent. Thus, assume that the political costs of removing the profession from its advisory role are $c\lambda(c > 0)$, with c quantifying the political strength of the profession.

The politician would like to keep the profession in its advisory role if, at the prevailing $(p,\lambda), V^- - V^+ \leq c\lambda$ and would like to remove the profession when $V^- - V^+ > c\lambda$. For a given (p,c), define $\lambda^T(p,c)$ as the least value in [0,1] such that for all $\lambda > \lambda^T(p,c)$, the politician keeps the profession. Then, since $V^- - V^+$ is non-increasing in λ at any given p, the politician removes the profession if $0 < \lambda < \lambda^T(p,c)$. The following proposition establishes that a unique $\lambda^T(p,c)$ exists for each (p,c) and characterizes the effect of p on λ^T:

Proposition 4 *For a given $c \geq 0$,*

(i) $\lambda^T(p,c)$ *is a function with points of discontinuity at $p = \Psi_{\alpha A}/B_{\alpha 2}$ and at $p = \Psi_{\alpha A}/B_{\alpha 3}$.*

(ii) $\lambda^T(p,c)$ *is constant for all $p \in (0, \Psi_{\alpha A}/B_{\alpha 3})$ and attains its maximum in that interval.*

(iii) $\lambda^T(p,c)$ *is decreasing and convex in p for $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$.*

(iv) $\lambda^T(p,c) = 0$ *for $p \geq \Psi_{\alpha A}/B_{\alpha 2}$.*

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[15] As is typical of civil law countries, the legal profession in Russia is divided into separate groups. Some elements of the legal profession did attain higher status under Yeltsin, for example judges in the *arbitrazh* courts.

Fig. 4 Professional political power, democracy, and stability.
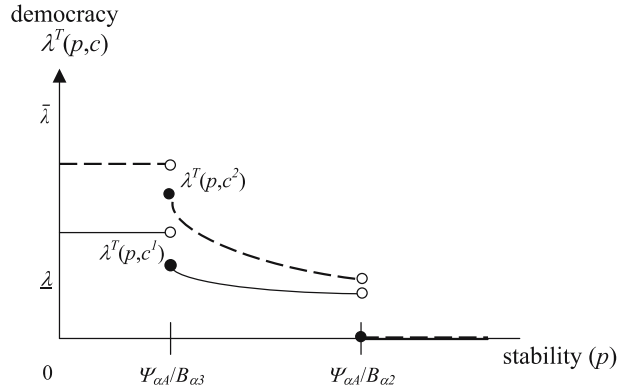
Notes: 1. $c^1 > c^2 \geq 0$; 2. $\lambda^T(p,0)$ lies along the solid line in Fig. 3

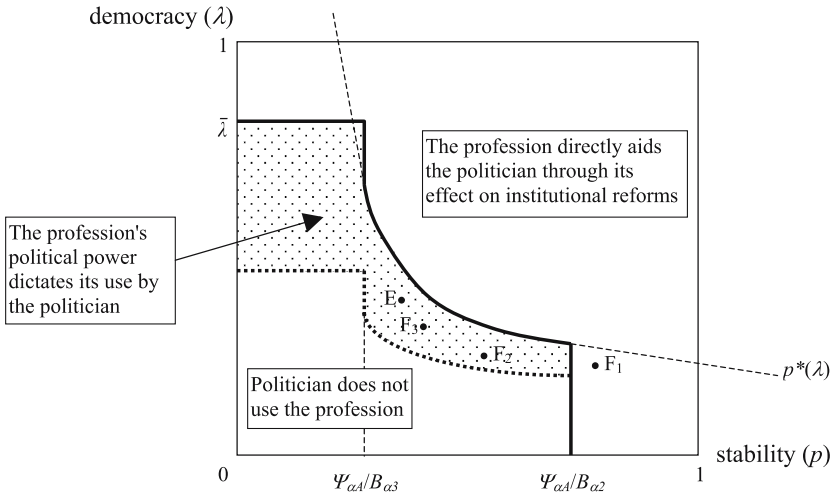The next proposition, summarized in Fig. 4, shows how changes in the strength of the profession, c, affect outcomes:

Proposition 5 If $c^1 > c^2 \geq 0$, then

(i) For $p < \Psi_{\alpha A}/B_{\alpha 2}, \lambda^T(p,c^2) > \lambda^T(p,c^1) > 0$.
    For $p < \Psi_{\alpha A}/B_{\alpha 3}, \lambda^T(p,c^2) - \lambda^T(p,c^1) > 0$ *does not vary with* p.
    For $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2}), \lambda^T(p,c^2) - \lambda^T(p,c^1) > 0$ *is decreasing in* p.
(ii) For $p \geq \Psi_{\alpha A}/B_{\alpha 2}, \lambda^T(p,c^2) = \lambda^T(p,c^1) = 0$.

Figures 4, 5 highlight the interactions between stability, democracy, and professional power. At high levels of stability, professional power does not change the politician's decisions (and consequently aggregate welfare): the profession is used even by autocrats facing a weak profession. As levels of stability decrease, democracy becomes more important: λ affects political decisions and there is a widening of the interval of λ in which professional power makes a difference. This result appears clearly in Fig. 5, which is Fig. 3 modified to show the set of (p, λ) for which professional political power makes a difference. In the shaded area in Fig. 5, professional power increases the level of social welfare by forcing the politician to keep an institution, professional review, that improves institutional reforms for society as a whole. When the strength of the profession is higher, the level of democracy at which the politician chooses the socially optimal outcome is lower. The strength of the profession substitutes for weak democracy.

5.1 England and France: 1688 and 1789

We examine whether our theory receives any validation when matched against the contrasting events of 1688 in England and 1789 in France. The French legal profession rose to high status under Louis XIV (1643–1715), under conditions of great stability. This continued even into the more turbulent times of Louis XV (1715–1774), perhaps because the legal profession had gained status and power. The Order of Barristers was characterized by the regime as "a sort of absolutely independent little republic at the heart of the state" (Bell, 1994: 67). Consequently, barristers played key roles in public debate (Bell, 1997: 74–78), in the way envisaged in our model. To illustrate using Fig. 5, France might lie at F_1 under Louis XIV, where the

democracy (λ)

The profession directly aids the politician through its effect on institutional reforms

The profession's political power dictates its use by the politician

E•

F₃•

Politician does not use the profession

•F₂

• F₁

$p^*(\lambda)$

stability (p)

0

$\Psi_{\alpha A}/B_{\alpha 3}$

$\Psi_{\alpha A}/B_{\alpha 2}$

1

⋯⋯⋯Boundary between use of profession and non-use when political power (c) is positive.

──── Boundary between use of profession and non-use when political power (c) is zero. (This line is the same one as in Figure 3.)

F_1 = France under Louis XIV, Napoleon ($c=0$ and ──── is pertinent).

F_2 = ⎰ France early in the reign of Louis XV ($c>0$ and ⋯⋯⋯ is pertinent).

⎱ France late in the reign of Louis XV ($c=0$ and ──── is pertinent).

F_3 = France soon after the revolution ($c=0$ and ──── is pertinent).

E = England under James II ($c>0$ and ⋯⋯⋯ is pertinent).

Fig. 5 Political power and the use of the legal profession

unchallenged autocrat uses a powerless profession, and at point F_2 under Louis XV: a rise in instability alters the monarch's view of the profession but not the outcome, since the profession has acquired political power.

Matters changed when lawyers developed larger political ambitions, some demanding a greater role in the legislative process. This divisive move reduced the cohesion of the legal profession (Bell, 1997: 83). Louis XV responded by attacking it and taking away its monopoly and disciplinary powers. France in the later years of Louis XV can still be viewed as lying at F_2 in Fig. 5, but with the profession losing political power, the solid upper line is now relevant: the monarch could do what was too costly before, ignore the profession.

When 1789 came, the Order of Barristers had no authority (Bell, 1997: 90–95). A year later, the National Assembly formally abolished the Order and the French legal profession virtually vanished (Burrage, 1989: 330). Consistent with our model, this brief period of greater democracy did not result in increased use of the legal profession: politicians were neither forced to use a politically weak profession nor saw advantage in it in a time of great instability (e.g., point F_3 in Fig. 5). With a return to stability under Napoleon, even after a decline in democracy, the profession was used again (e.g., back to point F_1). Napoleon appointed pre-revolutionary judges and

practitioners to the commission that drafted his civil code. He re-established the Order in 1810. But he instituted a very different legal profession than before. In contrast to earlier times, Napoleon's legal profession was his own creation and remained under strict state control (Bell, 1994: 214–215, 1997: 99; Karpik, 1999: 120).

The English legal profession had substantial power already in the middle ages and asserted itself more strongly than ever in the early 1600's. The Puritan revolutionaries who were able to remove a king's head were unwilling to go as far as pressing for popular legal reforms over the objections of the legal establishment (Burrage, 1989: 356). Later, in the 1680's, the legal profession was prominent in the struggle against the crown that has been characterized as a civil war fought with law rather than the sword (Landon, 1970: 100–101). Notably, the crown faced a shortage of lawyers willing to fight its battles, the attorney general and the solicitor general both refusing to implement royal measures that would have flouted common-law precedent (Landon, 1970: 191).

In 1688, in the trial of the Seven Bishops, which is often taken to signify the beginning of the Glorious Revolution, the issue was whether the royal prerogative could negate the legal profession's interpretation of the common law (Landon, 1970, Chapter 6). Consistent with our model, changes in a major element of the institutional framework were being reviewed in an arena in which the organized profession was the central player. It is important to realize that this was a choice that the King made at the time: he had every reason to remove the legal profession from its role and have the issue debated in another arena, but was unwilling to pay the political cost of by-passing the legal system. In sum, England in the years preceding the Glorious Revolution could be thought of as being at E in Fig. 5.

Of course, the King's battle with the legal profession was only one element of many contributing to the final outcome. But he did not succeed in weakening or even dividing the legal profession: the Glorious Revolution entailed the triumph of common-law lawyers and their interpretation of the law (Landon, 1970: 248). In the construction of the post-revolution settlement, lawyers played a fundamental role, and this role was unquestioned by all political actors. As in our model, the legal profession was central in the reform debate because the process of reform had to accommodate the power of the organized profession.

There could not be a greater contrast between the fate of the English legal profession in 1688 and that of the French profession in 1789. The English profession had been in existence for four centuries and the removal of its autonomous institutions and practices would have come at great political cost to the King. The French profession weakened itself during the eighteenth century and was easily removed by a monarch who no longer regarded it as useful. The English legal profession played a major role in the post-1688 settlement, improving institutional reforms. The French profession was abolished a year after the Bastille fell and played no role in institutional development until an autocrat brought stability. The pattern of these events is entirely consistent with the predictions of our model.

5.2 The legal professions under civil and common law

We now show that our theory has leverage in interpreting one important area of debate in the current literature, that concerning the relationship between institutional quality and the origin of a country's legal system (La Porta et al., 1998). Although there is substantial evidence that legal origin affects institutional quality

(Djankov, Glaeser, La Porta, Lopez-de-Silanes, & Shleifer, 2003), there is still uncertainty about the precise mechanisms that make legal origin matter (La Porta, Lopez-de-Silanes, Pop-Eleches, & Shleifer, 2004; Beck, Demirguc-Kunt, & Levine, 2003). La Porta et al. (1998) and La Porta et al. (2004) suggest two complementary reasons: both the quality of legal rules and the strength of judicial checks and balances vary across legal systems. Rajan and Zingales (2003) challenge the evidence on quality of legal rules, showing that common-law countries had lower levels of financial development in the beginning of the twentieth century. They propose an alternative reason for the varying properties of different legal systems: private interests are more likely to see their agenda enacted in civil law countries because laws emanate from the center rather than evolving through legal process. New policies are enacted more quickly in those countries, sometimes leading to better outcomes, sometimes worse, depending on the configuration of interest groups.

By introducing a different causal mechanism, our model suggests a reconciliation of La Porta et al. (1998) and Rajan and Zingales (2003). A strong, independent legal profession coevolved with the common law system, exactly because decentralized and autonomous legal institutions are intrinsic in that system. In contrast, state-sponsored, state-controlled professions are consistent with a civil law system.[16] Since the use of the profession improves the quality of institutional reforms and since the strength of the profession can be critical in determining its use by the politician, our model predicts that common law countries tend to have better legal rules than civil law countries, consistently with La Porta et al. (1998). Moreover, as delay is intrinsic in the use of the profession, reform will be quicker on average in civil law countries, with the government responding faster to interest groups, exactly as in Rajan and Zingales (2003). The reconciliation of these two different approaches on legal origin suggests validation of the picture presented by our model.

Our model also identifies when legal origin matters most, with predictions consistent with current empirical findings. At middling levels of democracy, when the politician's decision depends on the political cost of removing the profession from its advisory role, common-law politicians are more likely to use the legal profession to act as a filtering device, with a resultant increase in the quality of institutional reforms. At low levels of democracy, neither common nor civil law countries adopt professional review (unless stability is very high). When the level of democracy is high, both common and civil law countries use the profession.[17] This is consistent with the recurring empirical observation that France itself and German-legal-origin countries, all of which are relatively advanced, do not suffer as much from the disadvantages of the civil-law system as other civil-law countries (Beck et al., 2003).

Berkowitz, Pistor, and Richard (2003) have challenged the importance of legal origin, arguing that the crucial issue is whether legal transplantation was receptive or unreceptive. A key aspect of receptive transplantation is whether a country's own organizations and citizens deliberate on the consequences of adopting a

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[16] The difference between the profession's political power in common and civil law countries has been widely recognized in the sociological literature (Abel, 1995: 3; Burrage et al., 1990: 219–220; Cleaves, 1987: 10; Collins, 1990: 16; Halliday & Karpik, 1997, b: 5, 354–355; Siegrist, 1990: 181–182).

[17] Our conclusion that common and civil law systems converge at highest levels of democracy is therefore in accordance with Glaeser and Shleifer's (2002) analysis of circumstances under which the decisions made under bright line rules, predominantly characteristic of civil codes, and independent juries overlap.

foreign legal system. Unreceptive transplantation occurs when the legal profession is so underdeveloped that laws are implemented without considering their contents (Berkowitz et al., 2003: 180). Hence, transplants are more likely to be receptive when an organized legal profession undertakes review of reform proposals. This is consistent with our approach, but our model adds an extra element, showing why receptive transplants are more likely to occur in common law countries, where organized legal professions are more powerful. Hence, our approach shows why results on legal origin are less strong when form of transplantation is included in the same analysis (Berkowitz et al., 2003): mode of transplantation partially reflects legal origin.[18]

6 Concluding remarks

We have proposed that the organized legal profession can be viewed as contributing to society's institutional structure. Our model shows that the legal profession materially affects the quality of institutional development because of the constraints that it sets on the nature of the reform process. We argue that this view is consistent with broad historical evidence taken from some prominent case studies. Our thesis, although confined here to a rather specific model of a single organized profession, points to a broader area of inquiry. Our argument suggests that it would be fruitful for economists to study the effects of other formal, but non-governmental, structures, in order to understand the productiveness of the decentralization of elements of a society's institutional structure.

Lastly, in the model and the discussion, we have chosen not to mention judicial checks and balances as an element of professional activities. However, there are obvious similarities between the review of proposed legislation against a set of legal standards promulgated by an organized profession and review of the implementation of legislation by judges administering a body of law. Given these similarities, one obvious extension of our approach would be an examination of the processes of judicial checks and balances, which La Porta et al. (2004) have shown to be of substantial importance.

Appendix Proofs of Propositions

Proposition 1   When $\lambda < \bar{\lambda}$ the politician accepts all reform proposals. Consider reform $j \in \{2,3\}$. β will never want to lobby for $j \in \{2,3\}$, since $B_{\beta j} < 0$ for $j \in \{2,3\}$. There

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[18] Glaeser and Shleifer (2002) argue that transplantation might be particularly unsuccessful for civil law systems because of their reliance on bright-line rules, which need to be modified for a different setting. Given that the organized legal profession will be important in such modification, the two views are complementary.

are four possible sub-games at the beginning of period 2, depending on whether α chose to lobby for reform $j\in\{2,3\}$ in period 1 or not and whether A or B is in power in period 2.

1. If α lobbied for $j\in\{2,3\}$ in period 1 and A is in power in period 2, then the payoff to α when it lobbies for reform $j\in\{2,3\}$ in period 2 is $B_{\alpha j} - \Psi_{\alpha A}$ and $B_{\alpha j}$ when it does not lobby. Therefore, α does not lobby.
2. If α lobbied for $j\in\{2,3\}$ in period 1 and B is in power in period 2, then the payoff to α when it lobbies for reform $j\in\{2,3\}$ in period 2 is $B_{\alpha j} - \Psi_{\alpha B} < 0$ and 0 when it does not lobby. Therefore, α does not lobby.
3. If α did not lobby for $j\in\{2,3\}$ in period 1 and politician A is in power in period 2, then the payoff to α when it lobbies for reform $j\in\{2,3\}$ in period 2 is $- \Psi_{\alpha A} < 0$ and 0 when it does not lobby. Therefore, α does not lobby.
4. If α did not lobby for $j\in\{2,3\}$ in period 1 and politician B is in power in period 2, then the payoff to interest group α when it lobbies for reform $j\in\{2,3\}$ in period 2 is $- \Psi_{\alpha B} < 0$ and 0 when it does not lobby. Therefore, α does not lobby.

If α chooses to lobby for $j\in\{2,3\}$ in period 1, its payoff is $pB_{\alpha j} - \Psi_{\alpha A}$. If α chooses not to lobby for $j\in\{2,3\}$ in period 1, its payoff is 0. Therefore, α chooses to lobby for $j\in\{2,3\}$ in period 1 if and only if $p \geq \Psi_{\alpha A}/B_{\alpha j}$. Consider now reform $j\in\{4,5\}$. α will never lobby for $j\in\{4,5\}$, since $B_{\alpha j} < 0$ for $j\in\{4,5\}$. There are four possible sub-games at the beginning of period 2, depending on whether β chose to lobby for $j\in\{4,5\}$ in period 1 or not and whether politician A or politician B is in power in period 2.

1. If β lobbied for $j\in\{4,5\}$ in period 1 and A is in power in period 2, then the payoff to β when it lobbies for $j\in\{4,5\}$ in period 2 is $B_{\beta j} - \Psi_{\beta A} < 0$ and $B_{\beta j}$ when it does not lobby. Therefore, β does not lobby.
2. If β lobbied for $j\in\{4,5\}$ in period 1 and B is in power in period 2, then the payoff to β when it lobbies for $j\in\{4,5\}$ in period 2 is $B_{\beta j} - \Psi_{\beta B} > 0$ and 0 when it does not lobby. Therefore, β lobbies.
3. If β did not lobby for $j\in\{4,5\}$ in period 1 and B is in power in period 2, then the payoff to β when it lobbies for $j\in\{4,5\}$ in period 2 is $- \Psi_{\beta B} < 0$ and 0 when it does not lobby. Therefore, β does not lobby.
4. If β did not lobby for $j\in\{4,5\}$ in period 1 and politician A is in power in period 2, then the payoff to β when it lobbies for $j\in\{4,5\}$ in period 2 is $- \Psi_{\beta A} < 0$ and 0 when it does not lobby. Therefore, β does not lobby.

If β chooses to lobby for $j\in\{4,5\}$ in period 1, its payoff is $pB_{\beta j} + (1 - p)(B_{\beta j} - \Psi_{\beta B}) - \Psi_{\beta A} < 0$. If β chooses not to lobby for $j\in\{4,5\}$ in period 1, its payoff is 0. Therefore, β chooses not to lobby for reform $j\in\{4,5\}$ in period 1.

Proposition 2 If $p < \Psi_{\alpha A}/B_{\alpha 3}$, α chooses not to lobby, so $W^+ = 0 > W^-$. If $\Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2}$, α lobbies for reform 3, so $W^+ = p(B_{\alpha 3} + B_{\beta 3}) > W^-$. If $p \geq \Psi_{\alpha A}/B_{\alpha 2}$, α lobbies for reforms 2 and 3, so $W^+ = p(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) > W^-$.

Proposition 3 If $p < \Psi_{\alpha A}/B_{\alpha 3}$, α chooses not to lobby in period 1, so $V^+ = 0 < V^-$. If $p \geq \Psi_{\alpha A}/B_{\alpha 2}$, α lobbies for 2 and 3 in period 1, so

$$V^+ = \lambda p(B_{\alpha 2} + B_{\beta}2 + B_{\alpha 3} + B_{\beta 3}) + (1 - \lambda)2\Psi_{\alpha A} > V^-.$$

If $\Psi_{\alpha A}/B_{\alpha 3} \leq p < \Psi_{\alpha A}/B_{\alpha 2}$, α lobbies for 3 in period 1, so $V^+ = (B_{\alpha 3} + B_{\beta 3}) + \Psi_{\alpha A}$. Then,

$$V^+ >(<)V^- \Leftrightarrow p>(<)p^*(\lambda) \equiv 1 + [\lambda(B_{\alpha 2} + B_{\beta 2}) + (1 - \lambda)\Psi_{\alpha A}]/[\lambda(B_{\alpha 3} + B_{\beta 3})].$$

The following is useful for the purposes of constructing a diagram to examine the trade-offs between λ and p. Observe that $p^*(\lambda)<(>)1$ if and only if $\lambda>(<)\underline{\lambda}$. It can be easily shown that $\partial p^*(\lambda)/\partial\lambda<0$ and $\partial^2 p^*(\lambda)/\partial\lambda^2>0$. Define

$$\lambda_L = \Psi_{\alpha A}/[(\Psi_{\alpha A}/B_{\alpha 2} - 1)(B_{\alpha 3} + B_{\beta 3}) + |B_{\alpha 2} + B_{\beta 2}| + \Psi_{\alpha A}] \text{ and}$$
$$\lambda_H = \Psi_{\alpha A}/[(\Psi_{\alpha A}/B_{\alpha 3} - 1)(B_{\alpha 3} + B_{\beta 3}) + |B_{\alpha 2} + B_{\beta 2}| + \Psi_{\alpha A}].$$

Then $\underline{\lambda}<\lambda_L<\lambda_H<\bar{\lambda}, p^*(\lambda_H) = \Psi_{\alpha A}/B_{\alpha 3}$ and $p^*(\lambda_L) = \Psi_{\alpha A}/B_{\alpha 2}$.

Proposition 4 Define $C^m(p,\lambda)$ as the maximum political cost that the politician is willing to incur to remove the profession from its advisory role. If $V^+<V^-$, $C^m(p,\lambda) = V^-(p,\lambda) - V^+(p,\lambda)$ and if $V^+ \geq V^-, C^m(p,\lambda) = 0$. More precisely,

$$C^m(p,\lambda) = \begin{cases} \lambda[(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3})] + (1 - \lambda)2\Psi_{\alpha A}, \\ \qquad \text{when } p<\Psi_{\alpha A}/B_{\alpha 3} \text{ and } \lambda<\bar{\lambda} \\ \lambda[(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3})] - p\lambda(B_{\alpha 3} + B_{\beta 3}) + (1 - \lambda)2\ \Psi_{\alpha A}, \\ \qquad \text{when } p<p^*(\lambda) \text{ and } p\in[\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2}) \\ 0, \qquad \text{elsewhere.} \end{cases}$$

The politician chooses not to use the profession for all values of λ and p such that $C^m(p,\lambda) > c\lambda$. $C^m(p,\lambda)$ has the following properties:

1. When $p < \Psi_{\alpha A}/B_{\alpha 3}$ and $\lambda<\bar{\lambda}$

$$\partial C^m(p, \lambda)/\partial p = 0,$$
$$\partial C^m(p, \lambda)/\partial\lambda = [(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3})] - 2\Psi_{\alpha A}<0$$

2. When $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$ and $p < p^*(\lambda)$,

$$\partial C^m(p, \lambda)/\partial p = \lambda(B_{\alpha 2} + B_{\beta 2})<0,$$
$$\partial C^m(p, \lambda)/\partial\lambda = [(B_{\alpha 2} + B_{\beta 2}) + (B_{\alpha 3} + B_{\beta 3})] - p(B_{\alpha 3} + B_{\beta 3}) - \Psi_{\alpha A}<0,$$
$$\partial^2 C^m(p, \lambda)/\partial\lambda\partial p = -(B_{\alpha 2} + B_{\beta 2})<0.$$

3. Elsewhere, $C^m(p,\lambda) = 0$.
4. Two additional properties that enable us to construct Fig. 6 are:

$$\partial C^m(p, \lambda^0)/\partial\lambda\big|_{p<\Psi_{\alpha A}/B_{\alpha 3}} <\partial C^m(p, \lambda^0)/\partial\lambda\big|_{p=\Psi_{\alpha A}/B_{\alpha 3}} \text{ for all } \lambda^0<\bar{\lambda}$$
$$C^m(p, \lambda^0)\big|_{p<\Psi_{\alpha A}/B_{\alpha 3}} >C^m(p, \lambda^0)\big|_{p\in[\Psi_{\alpha A}/B_{\alpha 3},\Psi_{\alpha A}/B_{\alpha 3})} \text{ and } p<p*(\lambda^0) \text{ for all } \lambda^0<\bar{\lambda}$$
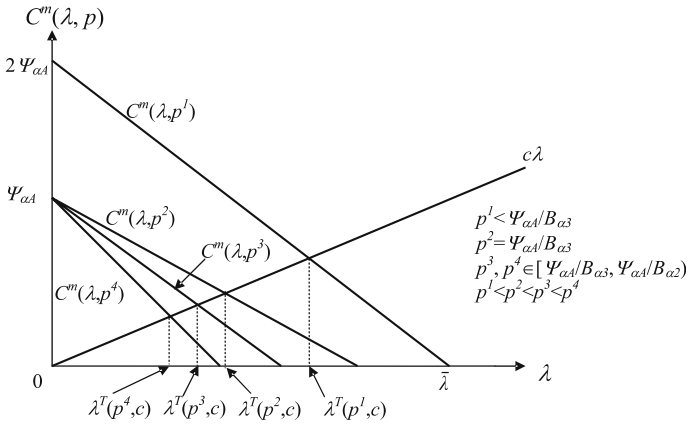
Fig. 6 The political cost of removing the legal profession

The properties of $C^m(p,\lambda)$ summarized above imply then for any pair (p,c), there exists a unique value of $\lambda^T(p,c) > 0$ such that $C^m(p,\lambda^T(p,c)) = c\lambda^T(p,c)$ if $V^+ < V^-$. On the other hand, $C^m(p,\lambda) = 0$ if $V^+ \geq V^-$ and hence $\lambda^T(p,c) = 0$. This proves that $\lambda^T(p,c)$ is a function. To prove that $\lambda^T(p,c)$ is discontinuous at $p = \Psi_{\alpha A}/B_{\alpha 2}$ and at $p = \Psi_{\alpha A}/B_{\alpha 3}$, and points (ii)–(iv), note also the following:

1. When $p < \Psi_{\alpha A}/B_{\alpha 3}$, $\lambda^T(p,c)$ is defined by

$$c\lambda^T(p,c) = \lambda^T(p,c)(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + (1 - \lambda^T(p,c))2\Psi_{\alpha A}, \text{ so that}$$
$$\lambda^T(p,c) = 2\Psi_{\alpha A}/[c - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + 2\Psi_{\alpha A}]. \text{ Then}, \partial\lambda^T(p,c)/\partial p = 0.$$

2. When $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$, $\lambda^T(p,c)$ is defined by

$$c\lambda^T(p,c) = \lambda^T(p,c)(B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) - p\lambda^T(p,c)(B_{\alpha 3} + B_{\beta 3})$$
$$+ (1 - \lambda^T(p,c))\Psi_{\alpha A}, \text{ so that}$$
$$\lambda^T(p,c) = \Psi_{\alpha A}/[c - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + p(B_{\alpha 3} + B_{\beta 3}) + \Psi_{\alpha A}].$$
$$\partial\lambda^T(p,c)/\partial p = -(B_{\alpha 3} + B_{\beta 3})\lambda^T(p,c)/[c - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3})$$
$$+ (B_{\alpha 3} + B_{\beta 3})p + \Psi_{\alpha A}] < 0 \text{ and } \partial^2\lambda^T(p,c)/\partial p^2 > 0.$$

3. When $p \geq \Psi_{\alpha A}/B_{\alpha 3}$, $\lambda^T(p,c) = 0$.
4. $\lambda^T(p,c^0)|_{p<\Psi_{\alpha A}/B_{\alpha 3}} > \lambda^T(p,c^0)|_{p\in[\Psi_{\alpha A}/B_{\alpha 3},\Psi_{\alpha A}/B_{\alpha 2})} > \lambda^T(p,c^0)|_{p\geq\Psi_{\alpha A}/B_{\alpha 2}} = 0$ for all $c^0 > 0$.

Proposition 5 Let $c^1 > c^2 \geq 0$. Define $\Delta^T(p,c^1,c^2) = \lambda^T(p,c^2) - \lambda^T(p,c^1)$.

1. When $p < \Psi_{\alpha A}/B_{\alpha 3}$, $\Delta^T(p,c^1,c^2) = 2\Psi_{\alpha A}/[c^2 - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + 2\Psi_{\alpha A}]$ $- 2\Psi_{\alpha A}/[c^1 - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + 2\Psi_{\alpha A}] > 0$ and $\partial\Delta^T(p,c^1,c^2)/\partial p = 0$.
2. When, $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$.

$$\Delta^T(p, c^1, c^2) = \Psi_{\alpha A}/[c^2 - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + p(B_{\alpha 3} + B_{\beta 3}) + \Psi_{\alpha A}]$$
$$- \Psi_{\alpha A}/[c^1 - (B_{\alpha 2} + B_{\beta 2} + B_{\alpha 3} + B_{\beta 3}) + p(B_{\alpha 3} + B_{\beta 3}) + \Psi_{\alpha A}] > 0$$
$$\text{and } \partial \Delta^T(p, c^1, c^2)/\partial p < 0$$

3. When $p \geq \Psi_{\alpha A}/B_{\alpha 2}$, $\lambda^T(p, c^2) = \lambda^T(p, c^1) = 0$, so $\Delta^T(p, c^1, c^2) = 0$.

Note that when $p < \Psi_{\alpha A}/B_{\alpha 3}$, $\lambda^T(p, 0) = \bar{\lambda}$ and when $p \in [\Psi_{\alpha A}/B_{\alpha 3}, \Psi_{\alpha A}/B_{\alpha 2})$, $\lambda^T(p, 0) = p^{*-1}(\lambda)$.

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