

ABSTRACT

THE PARADOX OF OMNIPOTENCE: COURTS, CONSTITUTIONS, AND COMMITMENTS

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Sovereigns, like individuals, must sometimes make commitments that limit their own freedom of action in order to accomplish their goals. Social scientists have observed that constitutional arrangements can, by restricting a sovereign's power, enable the sovereign to make such commitments. This paper advances several claims about the commitment problems that sovereigns face. First, constitutions do not necessarily solve such problems but can instead aggravate them, by entrenching inalienable governmental powers and immunities. Second, sovereigns and other actors face two distinct varieties of commitment problems – *undercommitment* and *overcommitment* – between which they must steer: an actor that can bind itself has surmounted the problem of undercommitment but must then face the risk of hobbling itself to an unforeseen or undesirable extent, or overcommitting itself. Third, courts are well positioned to navigate a course between these matching perils and to optimize the extent of the sovereign's commitments, even in the face of constitutional barriers to commitment by the sovereign. In performing these functions, however, courts risk damage to the basis of their own power – namely, their reputation for rendering fair and efficacious judgments.