Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding

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We test the efficacy of judicial independence in preventing regime reversals toward authoritarianism. Using a dataset of judicial constraints across 163 different countries from 1960 to 2000, we find that established independent judiciaries prevent regime changes toward authoritarianism across all types of states. Established courts are also capable of thwarting regime collapses in nondemocracies. These results provide some of the first large-n evidence confirming the ability of the judiciary to maintain regime stability. Unfortunately, however, the beneficial effects of court systems seem to take time to develop. The evidence indicates that newly formed courts are positively associated with regime collapses in both democracies and nondemocracies.

Conventional wisdom asserts that strong and independent judicial systems provide positive benefits to democracy. For example, in 2004 a bitter dispute over the Ukrainian presidential election was resolved peacefully by intervention from the Ukrainian Supreme Court. Initially, the pro-Russian candidate, Viktor Yanukovych, claimed victory amid cries of election fraud by the citizens of Ukraine and international election observers. Fearing potentially violent protests, the Ukrainian Supreme Court annulled the election results and ordered a new election, which was eventually won by the pro-Western candidate, Viktor Yushchenko. In addition to helping ensure peaceful transitions of power, independent judicial systems assist in maintaining the rule of law and protecting individual rights within democracies.

Yet, despite the normative importance of an independent judiciary, scholars have had problems operationalizing judicial independence. For example, the use of judicial review to annul attempts at increasing executive authority implies deterrence failure by the court, even though the decisions may have encouraged judicial checks against the centralization of power. Further, when a strong judiciary is correlated with decentralization of political power, there has often been no way of determining whether the court, the legislature, or other interests within society are responsible for checking executive power and moves toward authoritarianism. Thus, despite the rich theoretical tradition arguing that independent courts lead to more democratic governments, little empirical evidence exists to support the argument.

Our article addresses the question of whether independent judiciaries can help bolster democratic regimes and prevent them from backsliding toward authoritarianism. We rely on a dataset of judicial constraints that spans 163 countries across 41 years (1960–2000) and employ multivariate models that control for wealth, regime history, and the political and military crises associated with regime reversals. Consistent with the theoretical literature, we find that established independent judiciaries prevent regime changes toward authoritarianism across all types of states. Established courts are also capable of thwarting regime collapses in nondemocracies. Our results for newly formed courts are quite different, however. The evidence indicates that states with newly independent judiciaries are more likely to suffer regime collapses. We discuss the implications of these variegated effects toward the end of the article.

The article proceeds as follows. First, we briefly outline the literature on judicial independence and legitimacy

and its possible effects on regime stability. Next we discuss several theories of regime change and the role of the judiciary in preventing these changes. Our research design discusses the operationalization of the principle variables from the judicial independence and regime transition literatures. We then describe the results of our multivariate analyses on judicial constraints and regime change and their implications for the comparative literature on judiciaries. Finally, our results section is divided into two parts, beginning with an analysis of possible endogeneity between the judicial independence and regime stability measures, and ending with a description of our analyses of the judicial-constraints data.

Defining Judicial Independence and Measuring Its Effects

Debate persists over the role of the judiciary within democratic and nearly democratic regimes. Here we argue that three basic positions have emerged from the literature: courts are reflective of ruling interests; courts provide a mild, consultative check on executive and legislative power; and courts are an often necessary institution in democracies that wish to protect minority rights. What is clear from these various positions is that the power and authority of the court is weakest at inception—only time and possibly strategic decision making can build judicial legitimacy within the regime.

Do Independent Courts Matter for Democracy?

The literature on judicial independence and democratic development is not clear about the precise role courts play within democratic and newly democratic regimes. Some scholars maintain that courts are reflective of majoritarian interests (see Dahl 1957). Others argue that courts provide a mild, consultative check on executive and legislative power (see Stone Sweet 2000). And, some scholars claim that the judiciary is a necessary institution for democracies that wish to protect minority rights (Larkins 1996). The highest level of consensus in the literature concerns the role of time and legitimacy; new judiciaries are unlikely to be powerful and represent a check on other interests within society.

Judicial independence exists when a neutral third party impartially resolves conflict (Shapiro 1981). Implicit in this definition is the assumption of insulation from other political actors (Fiss 1993–94). However, independent judiciaries require more than institutional protections from political encroachments. Numerous examples exist where lifetime appointment, guarantees against salary reduction, and other formal protections against political influence have been manipulated and even ignored (Epstein, Knight, and Shvetsova 2001; Helmke 2002). Often, the incursions against the judiciary are cleverly disguised. For example, President Valasco of El Salvador maneuvered around constitutional guarantees of tenure by changing the retirement age of justices (Dakolias 1995–96). In other cases merely threatening an action can be enough to intimidate judges (Solomon 2005), such as President Roosevelt's 'Court-Packing Plan' in the 1930s that induced the U.S. Supreme Court to begin upholding his New Deal legislation.

Of course, influences on the judiciary need not be punitive. Some governments, such as several Japanese administrations, use review boards to reward friendly judges with promotions and desirable postings (Ramseyer and Rasmusen 2005). In other cases, such as President Menem in Argentina, unfriendly judges are coaxed from lifetime tenure with the promise of more prestigious posts (Verbitsky 1993, cited in Larkins 1998). Indeed, the generally low pay in most judiciaries often forces talented lawyers to seek posts in the executive and legislative branches or the private sector, further undercutting the strength and independence of the court (Dakolias 1995–96).

The difficulties of establishing judicial independence have led some to argue that courts only reflect elite interests. Tsebelis (2002), for example, argues that courts almost never constitute a separate veto player within a polity. Judicial-selection procedures in most countries practically guarantee that courts will fail to provide new constraints on the policymaking process. Only when other political actors take extreme positions or when a new issue, not related to judicial selection, comes before the court can the judiciary pose an effective veto. This is why judicial independence does not necessarily lead to higher rates of judicial annulment (Burbank, Friedman, and Goldberg 2002). This is also why institutionalization of the courts matters as newly independent courts will tend to reflect executive and/or legislative policy preferences on most issues (Epstein, Knight, and Shvetsova 2001). Nevertheless, the attention other political actors devote to the courts suggests that judicial institutions can matter. Yeltsin was concerned enough with the Russian constitutional court to dismiss it entirely, as was Argentina's military regime in 1976 and its democratic regime in 1983. These rulers understand that even courts lacking judicial independence can provide increased legitimacy for the dominant position of other political actors (Larkins 1998).

The weak version of judicial independence argues a selection effect. Courts matter by providing constraints on the crafting of legislation. Stone Sweet (2000, see also Shapiro and Stone 1994), for example, notes that parliaments in Europe increasingly alter their behavior to conform to court rulings, sometimes by asking the judiciary for input before passing law. Because judicial influence places limits on the preferences of parliamentary actors, parliaments often govern as the courts desire so that law reflects judicial interests even in the absence of judicial intervention. Difficulties arise in testing this argument since scholars must deduce prior preferences from what is likely to be strategic political behavior. What is clear, however, is that judicial preferences affect the content of legislation even if no annulments are observed.

The stronger version of judicial independence argues that courts can play a central role in guaranteeing democratic stability. The judiciary is responsible for interpreting the constitution, for protecting minority rights, and often with securing other procedures associated with liberal government (Larkins 1996). More generally, courts are responsible for maintaining the rule of law (O'Connor 2003, 2008), and this guarantee serves as the last step toward ensuring the establishment of consolidated democracy (Linz and Stepan 1996). Absent judicial protection, citizens lose their ability to monitor and check the ruling regime with speech, press, and public demonstration. Consequently, the judiciary ensures that political leaders do not act in complete disregard for statutory and constitutional law.

Given the various theoretical positions regarding judicial independence and democracy, it seems apparent that scholars should conceptualize judicial independence as a continuum rather than discrete categories. Viewing independence in this manner allows courts to vary across the continuum according to issue and circumstance. For example, during times of war even the independent judiciaries in established democracies are more likely to support the executive (Epstein et al. 2005). Additionally, conceptualizing judicial independence as a continuum helps explain why autocratic regimes tolerate occasional checks by the courts—allowing modest moves toward judicial independence over less salient issues increases public support for later judicial rulings that reinforce autocratic authority. The small legitimacy gains of a less independent court seemingly outweigh the costs of developing a new judicial system and maintaining executive power against the threat of growing judicial checks within the regime (Carrubba 2009). Thus, measuring judicial independence along this continuum requires one to examine whether the court will act against the political branches in salient cases. We argue that a vital test of judicial independence involves whether the courts will

provide a constitutional bulwark against regime change. As we argue in the remainder of this section, a court's ability to do this tends to grow over time.

How Courts Build Legitimacy

Courts build legitimacy through a series of decisions that the other political actors tolerate (Caldeira 1987). Courts try to avoid losing their legitimacy through unpopular (Durr, Martin, and Wolbrecht 2000) or inconsistent decisions. This is why many scholars observe that courts tend to support public opinion (Barnum 1985; Marshall 1989; Mishler and Sheehan 1993, 1996) and argue that courts are often strategic in choosing their cases and deciding outcomes (Epstein, Knight, and Shvetsova 2001).

This process of building legitimacy and strengthening the political power of the court has several interesting implications for new and dependent courts. New courts tend to focus on reinforcing constitutional areas over which there is substantial political agreement while leaving contested issues for another day. Unfortunately, constitutional questions often need resolution during the early years of a new regime, which means other branches of government may initially move to resolve issues that might be better suited for the judiciary (Epstein, Knight, and Shvetsova 2001).

Even for constitutional questions, judges must rely on other actors to enforce their decisions since the judiciary lacks the power of the sword and purse. The help a court requires for its decision to be implemented varies inversely with its legitimacy (Franklin and Kosaki 1989); the more political support a court has, the more costly a challenge to its rulings becomes (Eskridge 1991). Over time, courts may establish diffuse support within the state as other actors acknowledge the importance of the institution even as it makes unpopular decisions.

Should judiciaries succeed in creating broad popular support and establish their independence, the court can serve as a powerful political force within the regime. This explains why autocratic regimes often preempt the threat of court-led embarrassments and restrict the judiciary's ability to hear unfriendly cases. Although courts under authoritarian regimes tend to consist of impartial judges, courts in autocracies also tend to possess narrow legal authority (Larkins 1998). For example, the Franco regime in Spain had a separate court to handle politically sensitive cases (Toharia 1974).

Judiciaries that lack political independence have strong incentives to protect the interests in power and exercise whatever authority they have only at the margins. Dependent courts therefore regularly seek cases over which ruling elites have little concern in order to distance their branch from the executive. Or justices will make

rulings to curry favor with those likely to gain power (Helmke 2002). Either way, to maintain the legitimacy of the court, justices must pay attention to the prevailing economic conditions within the state, the concentration of executive power, the identity of litigants, and the constitutional ramifications of their decisions before ruling against elite interests (Bumin, Randazzo, and Walker 2009; Gibson, Caldeira, and Baird 1998; Herron and Randazzo 2003). Assumed, then, is a highly strategic court that develops its legitimacy and independence over time.

Independent Judiciaries and Democratic Backsliding

Thus far we have discussed the role of the judiciary without regard to the process of regime reversion. In this section we more carefully match judicial power to several common theories of political instability. As we describe below, many theories of regime reversion make the assumption that times of crisis will lead to increased calls for the expansion of executive power, to better control the uncertain political environment within the state. This consolidation of power in the hands of the executive can lead to the erosion of democratic principles and should be checked by an independent judiciary that guarantees the protection of individual rights. For other theories, the role of the judiciary is simply an outgrowth of other factors, such as wealth or democratic history, and thus the effects of the courts are spurious to state-development paths. In this section we discuss the implications of each set of theories on the likely effects of judicial independence. Though scholars recognize the importance of the judiciary in theory, no empirical test has assessed the ability of courts to protect against regime reversal.[1]

Wealth, History, and Democratic Survival

One of the strongest predictors of democratic survival seems to be wealth (Lipset 1959, 75). Przeworski and various coauthors (Przeworski et al. 1996; Przeworski and Limongi 1997; Przeworski et al. 2000) argue that wealth provides the antidote to all types of antidemocratic reversions. According to their research, democratic transitions occur for myriad reasons that are often unrelated to economic development. Nevertheless, high levels of state wealth (usually measured by GDP) provide strong societal protections against reversions from democracy. A strong middle class makes autocratic repression more difficult

(Moore 1966; Reuschemeyer, Stephens, and Stephens 1992), and more generally, an increase in the number of powerful actors within society is more likely to bring about a competitive, democratic equilibrium (Olson 1992). Though the role of wealth in establishing democracy has been questioned (Boix 2002; Boix and Stokes 2003; Epstein et al. 2006), no one seems to doubt that wealth prevents reversions from democracy.

The mechanisms by which wealth maintains democratic stability leave room only for instrumental influence from an independent judiciary. For example, the ability of Lipset's (1959) middle class or Moore's (1966) bourgeoisie to demand political power would also presuppose a judiciary that guarantees property and other individual rights. In this case, power within society rests with these new interests, not an institution. Thus, any political leverage the court has becomes completely endogenous to public support, and absent public support, an independent judiciary becomes meaningless. Empirically, this logic suggests a spurious relationship as controls for wealth will render the effects of independent judiciaries statistically insignificant in any study involving a representative sample of cases. This argument provides a baseline hypothesis with which to test the effects of judicial independence.

H0: The effects of an independent judiciary are spurious to other factors such as wealth and the age of a democracy.

External Threats, Economic Crises, and Regime Reversals

Though wealth is associated with democratic survival and provides a structural factor influencing regime change, few variables have been consistently identified as direct causes of regime collapse. This lack of knowledge results partly from the rarity of regime reversion cases. Further, it is difficult to empirically disentangle the effects of structural conditions such as wealth and history from the more immediate concerns of economic and political crises. In fact, the Przeworski et al. (2000) argument explicitly recognizes that the conditions which directly cause transitions (to or from democracy) may be random. Nevertheless, most transition scholarship focuses on the role of specific crises in hastening regime reversions.

Military crises are often associated with rejections of democratic principles (Desch 1996; Gibler 2012; Thompson 1996). Though the causal mechanisms are not completely uniform across theories, the majority of these second-image-reversed arguments assume that conflict changes the distribution of power within the state (Rasler and Thompson 2004). The modal path toward reversions to authoritarianism follows several

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[1] One exception to this is the recent work of Reenock, Staton, and Radean (2010), though their work focuses on the ability of independent judicial systems to provide order and stability within a regime.

well-documented responses to external threat. First, the executive seeks increased political power to efficiently deal with potential threats (Rasler 1986). This move is backed by a public that seeks security and defense of national pride (Mansfield and Snyder 2003). Increased nationalism and increased power for the executive mean that dissent will be quashed as an intolerant majority moves against the opposition (Gurr 1998). Institutionally, a strong military is created to deal with the threat, and this military becomes a significant force within society (Lasswell 1997). Finally, power is institutionalized within an executive that now has a strong military to enforce its position within the polity (Gibler 2010).

Building on the connection between wealth and democratic survival, many scholars have argued that economic crises can also lead to increased concentrations of power within the executive. O'Donnell's (1973) work provided one of the first of these arguments. Concentrating on Brazil and Argentina, O'Donnell argued that the wealth initially created by import substitution industrialization did not translate initially into strong regimes capable of withstanding economic downturns. When economic crises crippled the governments, powerful elite interests established authoritarian regimes to facilitate the painful economic measures necessary for the protection of property and economic recovery (see also Crowther 1986; Im 1987). Meanwhile, Gasiorowski (1995) provides substantial empirical support for the argument that democratic breakdown follows economic recessions (see Kaufman 1976; Skidmore 1977; Wallerstein 1980).

The economic crisis model has also been incorporated into the foreign policy literature by the diversionary use of force theory. According to this theory, during difficult economic times, leaders may provoke low-level conflicts to distract the public from failures in leadership. Successful involvement in foreign conflicts then creates a rally effect that salvages their electoral future (DeRouen 2000). Although the model has received only modest empirical support when predicting the use of force internationally (Gelpi 1997; Levy 1989; and more recently, Oneal and Tir 2006), each theory explicitly assumes at least a partial breakdown of democracy during economic crises as the executive seeks increased political power. Note, too, the implicit assumption that public support follows the use of force; this is consistent with the external threat argument above.

Role of Judiciary

Both crisis models outlined above rely on a common mechanism that leads to democratic reversion: crisis affects the domestic bargaining power of various actors, this

advantages the executive vis-à-vis other domestic actors, and eventually, power is concentrated in the executive as democratic principles are eroded. The causal mechanism in both scenarios relies on the opportunity given the executive by each type of crisis, as this opportunity, when coupled with popular backing, allows the executive to supersede the constitution in favor of expediency.

An independent judiciary can affect this process in two ways. First, established judiciaries are likely to deter executives from using the crisis as an opportunity to gain power. An executive during crisis will likely not risk additional political decisions that question their authority. While this weak form of judicial independence creates few judicial annulments, the court does buttress the political power of other societal and governmental interests against executive incursions. The strong form of judicial independence manifests when the executive is overtly checked with annulments as the court favors minority rights and participatory democracy. In either case, the executive is constrained by the court and democracy maintains. Both forms of judicial independence lead to our central hypothesis:

H1: Established independent judiciaries decrease the likelihood of regime reversions toward authoritarian governmental systems.

In Hypothesis 2, we modify slightly the argument regarding the effects of an independent judiciary by including a time restriction. As the literature suggests, only established independent judiciaries are likely to have an ability to counter executive or legislative influences. Since most studies view new judiciaries as reflections of elite interests, we are agnostic about the effects of new courts:

H2: New independent judiciaries will have no effect on the likelihood of regime reversions toward authoritarian governmental systems.

Research Design

Judicial independence has been operationalized using formal tenure and pay guarantees (Klerman and Mahoney 2005); the existence of a constitutional court (Alivizatos 1995); the rigidity of the constitution and authority of judicial review (Lijphart 1999); and the willingness (Cooter and Ginsburg 1996) or probability (Alivizatos 1995; Herron and Randazzo 2003) of judicial annulment. Yet each of these definitions poses problems for empirical testing. Formal protections of the judiciary have been manipulated and even ignored (Epstein, Knight, and

Shvetsova 2001). Prior consultations between the judiciary and other branches are missed with annulments as are strategic decisions by the executive to avoid unwanted judicial reactions against the power of the executive (Herron and Randazzo 2003; Larkins 1996).

In this study, we avoid these operational problems by relying on a dataset of judicial checks developed by Henisz (2002). Henisz identifies a state as having an independent judiciary when the executive-constraints component of its Polity IV score is 3 or greater (Marshall and Jaggers 2002), and its Law and Order value from the International Country Risk Guide (ICRG) is greater than 3. The constraints portion of the indicator defines the ability of the executive to impose policies as severely limited by other domestic actors. The "law and order" component affirms that these constraints on the executive are judicially imposed. The data cover 163 states from 1960 to 2000, which provides a sample of more than 5,500 observations for most states in Polity IV.[2]

There are several advantages to using these data for testing the effects of judicial independence. First, there is substantial separation between the data collection effort and the testing procedure when focusing on judicial independence. The judicial constraints data were collected largely to test the veto player argument developed by Tsebelis (2002; see also Henisz and Zelner 2006). Judicial veto players are a small portion of that particular research program, and our review of the literature leads us to believe this is the first use of the judicial constraints data for testing hypotheses related to democratic survivability. Thus, our empirical models should be well insulated from criticisms of tautology that remain common in the democratic consolidation literature. A second advantage of the dataset is that the two-part measure relies on common agreement between two established datasets (Polity IV and the ICRG), both of which have been in wide use

for some time. Finally, both of these datasets rely on qualitative assessments of domestic conditions for each case; thus, we are also somewhat insulated from the problems of revealed preferences among strategic behavior within the regime. All in all, we believe that the Henisz (2002) data provide one of the best measurements of judicial independence, though the temporal domain is limited to 1960 to present.

We differentiate established judiciaries from new judiciaries with a simple count of the age (in years) of the court since its inception. For the analyses in the following sections, an established independent judiciary is any court that meets the definition of independence for more than three consecutive years. New courts are those that have been independent for one to three years. While the three-year count is arbitrary, we conducted additional robustness checks using two-, four-, and five-year counts with no substantive changes in the empirical results. We therefore keep our initial operationalization of this measure for the analyses that follow.

We also include in our analyses a dummy variable for the presence of an independent legislature. This measure, also from Henisz (2002, 26), identifies countries in which a legislature has a lower legislative chamber. The ordinal variable identifies legislatures as (1) ineffective, (2) partially effective, or (3) effective, dependent upon the level of autonomy held by the legislature, typically related to "authority in regard to taxation and disbursement, and the power to override executive vetoes of legislation." Executive constraints are often of two kinds in most developing democracies, legislative and judicial. By including this measure, we further ensure that the constraints we identify with our measure of judicial independence are indeed constrained to judicial constraints only.[3]

Two Dependent Variables—Negative Regime Change and Regime Collapse

We use two dependent variables to test the effects of independent judiciaries within the state, both of which are drawn from the Polity IV (Marshall and Jaggers 2002) dataset. First, we examine any negative changes in overall regime score (autocracy/democracy). Normally, the combined score ranges from -10 to $+10$. However, since we are using the Henisz data, which rely on the executive constraints composite of Polity IV data, our scale omits executive constraints, and thus ranges from -7 to $+6$. Consequently, states that are considered democracies on this adjusted scale range from 3 to 6 (instead of 6 to 10

[2] The executive constraints portion of the Polity IV data ranges in value from 1 (unlimited authority for executive) to 7 (executive parity or subordination), with the highest value reserved for regimes that have "accountability groups" with "effective authority equal to or greater than the executive in most areas of activity" (Marshall and Jaggers 2002, 32). Henisz examines all country-year cases of 3 or greater on this scale because that value corresponds to at least "slight to moderate limitation on executive authority." In practice, this means that the executive is constrained by the legislature, a political party, the military, or an independent judiciary. Among these possibilities, Henisz identifies the cases of judicially based constraints by relying on the "law and order" component of the ICRG dataset. This dataset identifies "law" and "order" as separate measures, each with a value rating that ranges from 0 to 3 (combined, the component ranges 0 to 6). The law measure identifies the "strength and impartiality of the legal system," while the order measure "is an assessment of popular observance of the law." To score at least a combined 3 of 6 on this component, the country-year would have to possess an independent judiciary according to Henisz (2002).

[3] We thank an anonymous reviewer for leading us to this control for the analyses.

on the Polity scale). The second dependent variable is based on the first. Since the literature on regime reversion depends heavily on crisis mechanisms and regime collapses, we also include analyses of large-magnitude regime changes, which we define as negative changes of 4 points or more.[4] Both of these dependent variables are dichotomous and measure only the presence of any negative change or a large-magnitude regime change.[5]

There are 39 cases of negative regime changes of 4 or more points. Some of these cases are concentrated in certain states; for example, both Peru and Thailand have each experienced these major regime reversals three times in their histories (for Peru: 1962, 1968, and 1992; for Thailand: 1971, 1976, and 1991). Seven other countries have experienced major regime reversals two times in their recent history, while the remaining cases were isolated in 19 different countries. Small regime reversals of 1 or more are of course more numerous and are also quite dispersed. Of the 85 cases of small reversals, only Ecuador and Turkey have had four minor reversals—the maximum number of changes observed in the data—while five countries have had three or more reversals, 11 countries have had two years of reversals, and 36 countries have had isolated years in which the regime experienced a negative change. In other words, both of our dependent variables measure events that are not uncommon and have affected many different counties across the world.

Structural Predictors of Regime Survival

We identify the structural conditions for democratic survival using three separate variables. First, we include the log of per capita GDP to measure average wealth in each state-year. Second, we measure the age of each democracy in the sample, adjusted to recognize the true age of democ-

racies (1800 to present) for those states left-censored by our 1960 start year. For nondemocracies this count is set at zero. Finally, we include a dichotomous variable for those states that have experienced democratic reversions from 1801 to 2001 on the modified Polity IV scale. We define a democratic reversion as movement from 3 through 7 during the previous year to −7 through 3 for the year of coding; once positive, the variable remains positive for all future years in the sample.

Predictors of Regime Crisis

We predict regime crisis with three independent variables. First, we identify economic crises as any negative GDP changes greater than 3% and code these cases using a dummy variable.[6] Second, political crises are operationalized using the rivalry data from Thompson (2001). We include only those rivalries that principally concern control of homeland territories by neighboring states (Gibler 2010). We also capture substantial indirect threats to the state by using the highest level of state militarization among bordering states. We define militarization as the ratio of military personnel to total population as described in the Correlates of War Composite Index of National Capabilities dataset (Singer, Bremer, and Stuckey 1972).[7]

Where Are Independent Judiciaries Found?

Our theoretical argument focuses on the ability of independent judiciaries to thwart regime backsliding, especially during times of crisis. Before turning to direct tests of this relationship, however, we first examine the types of states that are likely to develop independent judiciaries. We do this for two reasons. First, we wish to detail the substantial variation in the types of regimes (democratic and nondemocratic) that have developed independent judiciaries. This variation is important because it demonstrates that our measures of judicial independence and democracy are not synonymous.

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[4] The large-magnitude, regime-change variable presents an especially difficult test for confirmation of our theory since there are many high-profile cases of regime collapse that have occurred in the presence of strong judicial checks. Chile in 1973 provides one notorious example. As Baros argues, Chile had a "functionally independent judiciary that never experienced the political dismissal of justices that accompanied [other] regime crises" (2008, 160). Nevertheless, General Augusto Pinochet was successful with a military coup in September 1973, overturning "one of Latin America's most democratic regimes" (Hilbink 2008, 102; see also Hilbrink 2007). These large-magnitude regime changes and democratic reversals are not uncommon, but the question remains whether, on average, judiciaries are always so ineffectual.

[5] Note that we do not examine positive regime changes in the following analyses. As should be clear from our literature review and theoretical argument, judicial independence is a constraint on executive power and does not necessarily lead to increases in democratic principles. In fact, protections of minority rights, which most of the literature assumes to be the purview of the judiciary, are antimajoritarian by definition.

[6] The results for judicial constraints do not change if we include a measure of the actual amount of GDP change.

[7] We of course realize that these measures do not exhaust the types of political crises that may confront a regime. We focus here on several types of crisis that have wide theoretical support within the literature on regime reversal. Future research should investigate the effects of judicial independence on regime maintenance in the wake of crises caused by other event types, such as terrorism, monetary collapse, etc.

The second rationale is related to the first. As we discussed in the literature review, judicial independence as a concept is prone to criticisms of endogeneity when the dependent variable is related to democracy, democratic transitions, or other regime-related questions. Therefore, we also use this section to examine the effects of both our dependent variable and our predictors of reversion on the likelihood of judicial independence within a country. Establishing that regime reversions do not cause changes in judicial institutions should add convincing evidence that endogeneity is not a concern for our models of interest.

Variation in Judicial Independence across States in the International System

The majority of independent judiciaries can be found within democratic states in our sample of international system members between 1960 and 2000. Of the 1,420 independent judiciaries in the sample, 1,278 are in states labeled democratic by our regime measure. This suggests a strong relationship between regime type and judicial independence, but there is still substantial variation across regimes. For example, among the 142 nondemocratic cases, the Polity IV score is minimally related to the presence of judicial independence. Indeed, though the overall correlation between our modified Polity IV score and the independent judiciary measure is .659, among nondemocracies this correlation dips to .226.[8]

Additional institutional variation across regimes is evident when we examine democracies only. For example, in our sample of cases, almost 40% of the democracies (784 of 2,062 democratic state-years) did *not* have independent judiciaries. These figures hint at substantial variation in the institutional structures of democracies within the sample. More importantly for our purposes, the distribution of cases reinforces the argument that democracy and judicial independence are distinct concepts, especially as they are measured here. Regimes can provide all the requisite conditions for democracy without an independent judiciary, and an independent judiciary does not necessarily beget a liberal government.[9]

Predicting Judicial Independence

The above summary statistics describe well the overlap between judicial independence and democratic government. The next step in our analyses determines the temporal ordering of the two variables. Here we wish to examine whether polity changes lead to the formation of independent judiciaries; in other words, we have to first assess the level of endogeneity between the dependent variable and our primary variable of interest. We take advantage of these analyses of potential endogeneity to also examine the relationship between the presence of independent judiciaries and our predictors of regime reversion.

Table 1 provides the estimates of four logistic regression models that model the presence of an independent judiciary in the state-year. The independent variables are lagged one year from the observed state-year. So, for example, a Polity change in 1968 will be included in analyses of judicial institutions in 1969.

In the first model, listed in column 1, we find that the only statistically significant predictors of an independent judiciary are the logged value of (lagged) GDP, the count variable for the age of the democracy, and the level of militarization in neighboring states. It would seem that wealthier states that have been democratic for some time are more likely to have independent judiciaries. This is especially true for states that do not have highly militarized neighbors. Importantly for our later analyses, regime shifts are not correlated with the presence of an independent judiciary. Though positive, the relationship is meaningless at conventional levels of significance ($p = .20$).

The second model shifts the regime variable to consider only those cases of negative polity changes, which will be one of our two primary variables of interest in the next section. The results in the second column largely mirror the results of the first model. Wealthier states and older democracies are again more likely to have independent judiciaries. Also once again, negative polity changes have no statistically significant effect ($p = .13$) for determining the presence of an independent judiciary.

The final two models, columns 3 and 4, include the effects of negative regime changes of great magnitude (decreases of 4 or more on the Polity scale). In Model 3 these changes are modeled without the smaller Polity-scale changes. In Model 4 both variables are considered jointly. As with the first two models, we find in Models 3 and 4 that the only consistent predictors of independent judiciaries are state wealth and the age of democracy. Negative polity changes have no statistically significant effect.

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[8] Since our temporal domain begins in 1960, we also confirmed these relative distributions using only those states that did not initially have an independent judiciary in 1960. The correlation between judicial independence and Polity IV score for this restricted sample drops to .434 for all regime types and remains at .226 for nondemocracies.

[9] For example, consider the small state of Singapore. The country ranks as an autocratic regime according to the modified Polity IV score (it receives a −1). Yet, the judiciary is highly independent and the political branches of government consistently refer to the strength of the rule of law. As Silverstein acknowledges, "Singapore forces us to recognize the error so many Western politicians, pun-

dits, and academics make in conflating liberal democracy—and its maximization of individual liberty—with the rule of law" (2008, 74).

TABLE 1 **Predictors of Independent Judiciaries, 1960–2000**
[Logit Regression Models with Standard Errors in Parentheses.]

Cases Included: Dependent Variable:	All States in the International System, 1960–2000 Presence of Independent Judiciary in the State-Year			
Regime Effects				
Presence of Regime Change on Polity IV scale	0.065 (0.049)			
Any negative change on Polity IV scale		−0.987 (0.642)		−0.981 (0.813)
Negative change on Polity IV scale larger than 4 points			−0.991 (1.092)	−0.022 (1.413)
Economic Variables				
Wealth (log of GDP)	1.495*** (0.249)	1.487*** (0.247)	1.492*** (0.247)	1.487*** (0.247)
Economic Crisis ($<-3\%$ GDP change)	0.172 (0.258)	0.172 (0.257)	0.168 (0.257)	0.172 (0.257)
Democratic History Variables				
Age of Democracy (logged)	0.056*** (0.015)	0.056*** (0.015)	0.056*** (0.015)	0.056*** (0.015)
Past Democratic Reversions Present	0.136 (0.493)	0.120 (0.493)	0.119 (0.496)	0.120 (0.494)
International Threat Variables				
Presence of Territorial Rivalry	−0.796 (0.600)	−0.796 (0.604)	−0.804 (0.603)	−0.796 (0.604)
Highest level of militarization among neighbors	−0.664* (0.408)	−0.651 (0.406)	−0.647 (0.406)	−0.651 (0.407)
Constant	−16.644*** (2.941)	−16.479*** (2.894)	−16.514*** (2.899)	−16.478*** (2.896)
Number of cases	2,741	2,782	2,782	2,782
LR chi-square	81.07***	85.24***	80.35***	85.36***
Pseudo R-square	0.480	0.482	0.481	0.482

***$p < 0.01$; **$p < 0.05$; *$p < 0.10$.

These results confirm our expectation that judicial independence is a concept distinct from democracy. Some democratic governments choose to institutionalize judicial independence. Some do not. Moreover, the presence of regime changes does not have any consistent effect on the likelihood of developing independent judicial institutions. Of course, the question of our study remains: are the states that adopt independent judiciaries less likely to suffer reversions toward autocracy?

Independent Judiciaries and Democratic Reversions, 1960–2000

Our central hypothesis expects independent judiciaries to provide important institutional mechanisms that prevent backsliding from democracy. To test this hypothesis we

estimate a set of logistic regressions on two dependent variables. The first measures the presence of negative change in the modified Polity score in a given year and the second limits these negative changes to larger-magnitude declines (4 points or more). Additionally, we estimate both sets of models on a restricted sample that includes democracies only. The results are listed in Table 2.

Model 1 represents a baseline model of reversion that includes only the common predictors of regime backsliding. As seen in Table 2, wealthier countries are less likely to suffer reversions according to this model; however, states that have had previous reversions are more likely to revert again. The baseline results also suggest that the common predictors of political instability—regime youth, economic crises, and external threat—have no effect in the model. Given the broad theoretical support for these concepts in the literature on democratic

TABLE 2 Independent Judiciaries and Regime Reversions, 1960–2000
[Logit Regression Models with Standard Errors in Parentheses.]

Cases Included: Dependent Variable:	All States All Reversions	All States All Reversions	All States Large Reversions	All States Large Reversions	Democracies Only All Reversions	Democracies Only All Reversions	Democracies Only Large Reversions	Democracies Only Large Reversions
Presence of Independent Judiciary								
Established		−1.883***		−2.092*		−1.277**		−1.329
		(0.630)		(1.159)		(0.616)		(1.112)
Newly Formed		0.575		1.380**		0.706		1.484**
		(0.459)		(0.634)		(0.487)		(0.672)
Presence of Independent Legislature		−0.194		−1.465***		−3.772***		−4.896***
		(0.247)		(0.444)		(0.452)		(0.566)
Economic Variables								
Wealth (log of GDP)	−0.316**	−0.158	−0.815***	−0.402	−1.058***	−0.424*	−1.462***	−0.618*
	(0.137)	(0.145)	(0.236)	(0.257)	(0.197)	(0.237)	(0.291)	(0.369)
Economic Crisis (<−3% GDP change)	−0.047	−0.057	−0.319	−0.396	0.320	0.426	−0.021	0.067
	(0.233)	(0.233)	(0.355)	(0.361)	(0.302)	(0.349)	(0.390)	(0.529)
Democratic History Variables								
Age of Democracy (logged)	−0.008	0.005	−0.013	0.004	−0.018	−0.006	−0.041*	−0.013
	(0.007)	(0.008)	(0.013)	(0.011)	(0.012)	(0.011)	(0.024)	(0.020)
Past Democratic Reversions Present	0.520**	0.467*	0.323	0.272	0.343	0.223	0.360	0.398
	(0.229)	(0.230)	(0.363)	(0.364)	(0.342)	(0.378)	(0.463)	(0.565)
International Threat Variables								
Presence of Territorial Rivalry	0.358	0.353	0.524	0.378	0.733**	0.670*	0.798**	0.722
	(0.243)	(0.243)	(0.350)	(0.358)	(0.316)	(0.371)	(0.400)	(0.547)
Highest level of militarization among neighbors	0.165	0.068	1.210***	1.138***	0.703**	0.317	1.330***	1.157***
	(0.246)	(0.254)	(0.357)	(0.375)	(0.304)	(0.351)	(0.382)	(0.501)
Constant	−0.782	−2.223	7.147***	4.372*	7.958***	4.584*	13.427***	9.518**
	(1.557)	(1.631)	(2.594)	(2.679)	(2.190)	(2.565)	(3.042)	(3.867)
Number of cases	3,882	3,882	2,832	2,832	1,883	1,883	1,883	1,883
LR chi-square	27.29***	42.65***	41.75***	62.34***	81.60***	162.37***	79.75***	179.17***
Pseudo R-square	0.033	0.052	0.101	0.151	0.169	0.336	0.240	0.539

Note: "All Reversions" is defined as any negative change in the modified Polity IV scale; "Large Reversions" include only changes equal to or less than −4 on the modified Polity IV scale. ***p < 0.01; **p < 0.05; *p < 0.10.

reversions, we estimated additional bivariate models for each independent variable.[10] Only the age of democracy and external threats were related to negative Polity changes. Further investigation suggested that the addition of the GDP variable made both of these variables statistically insignificant in the multivariate analysis.

The second model adds our two independent variables of interest and the control for legislature-derived constraints to the baseline model. The variable for established independent judiciaries (institutions that have existed for three or more years) is associated with a substantial decrease in the number of negative political changes. Both legislatures and new judiciaries have no effect in this model. There is only one change from the baseline controls of the original model due to the addition of the constraints variables: state wealth no longer encourages stability. Wealth and legislative constraints are highly correlated, but estimating the model with each variable added separately does not change the reported results for the other variables listed in column 2.

[10] The results of these bivariate models are available from the authors.

Thus far we have examined the predictors of all types of backsliding, which include both modest changes and wholesale regime reversions. In Model 3 we estimate a second baseline model that includes only changes in regime type of 4 or more points on the adjusted Polity scale. These are the large-magnitude changes normally associated with regime reversals. This second baseline model largely confirms the difficulty in predicting regime change, as only two variables are statistically significant in the estimates—wealth and external threat (militarization among neighbors). It would seem that high levels of militarization in neighboring states, while not prone to cause minor changes in stability, can cause the large reversals in regime type.

The literature on judicial independence suggests that the age of the institution matters for regime stability, and the results in Model 4 provide confirmation. Though established independent judiciaries are associated with fewer regime reversals of 4 points or more, new judiciaries *increase* the likelihood of these reversals. This occurs even in the presence of a statistically significant (p < 0.01) measure of legislative constraints on the

executive. However, the judicial and legislative checks are seemingly not enough to thwart changes caused by increases in militarization among neighbors. There are at least two rationales explaining why newly created independent judiciaries are positively associated with regime reversals. First, independent judiciaries may be instituted in regimes under threat from antidemocratic forces, as constitution builders and democracy advocates hope to thwart regime reversion. Another possibility is that the institutionalization of an independent judiciary could pose a profound threat to elites; antidemocratic forces are then forced to move to eliminate the institution and reorganize the regime to better protect their interests.

To determine which rationale provides a more accurate portrayal of the link between new judiciaries and large-magnitude reversions, we examined several individual cases. There are 13 cases of regime reversions of 4 or greater on the Polity scale in the dataset. Two of these cases (Albania and Zambia in 1996) occur during the initial three years of an independent judiciary, and a third (Thailand in 1992) occurs in the fourth year. Our reading of the case histories for these observations supports the selection effect argument that the judiciaries were instituted in difficult political environments and did not necessarily provoke backlashes from antidemocratic forces. For example, in Albania, the Supreme Court had begun to establish its independence by providing a check against legislative and executive incursions, most notably by ordering the release of the former communist leader of Albania in July of 1995. Parliamentary elections in 1996 plunged the regime into chaos, however, as all major parties pulled their candidates from the election and accused the ruling Democratic Party of malfeasance. Antigovernment protests and the government responses were not provoked by increased judicial power or judicial rulings, though the independent judiciary had little power in this political environment to stop the sharp antidemocratic reversal. Judicial independence reestablished itself again in 1997 with more rulings limiting the ability of government officials to retaliate against former communist officials.[11]

This case supports the argument that independent judiciaries are sometimes formed in unstable political environments strongly influenced by antidemocratic forces. Indeed, the very success of judicial independence in most regimes may be one explanation as to why regime supporters would want to encourage the development of ju-

dicial institutions during these difficult periods. If this argument is true, then there may be a substantial bias against finding positive regime effects for independent judiciaries among new regimes.

In Models 5 through 8 we present estimates for the same four models described earlier, but we limit the sample to democratic states only. We impose this restriction to determine whether the results remain consistent for nonauthoritarian states, which may be less prone to backsliding. Overall, the results are similar, with only a few substantial differences from the initial analyses. For example, territorial rivalries now have strong effects predicting large democratic reversals. Once again, however, the other common predictors of reversion have little effect in the democracy-only models of reversion.

More importantly, judicial independence still matters in democracies. The presence of independent judiciaries predicts both large-scale and small-scale reversions from democracy. Model 8 also reports that democracies with relatively new judicial institutions are more likely to suffer major regime changes. This makes sense considering the two cases of reversions described above were in states that were nominally democratic (3 out of 7) in our adjusted Polity scale. The differences between nominal democracy and nondemocracy are rather small for this particular model estimation.

One last difference in the democracy-only sample is worth noting. Territorial rivalries increase the likelihood of small reversions from democracy regardless of whether the democracy has an independent judiciary. Similarly, the level of militarization in contiguous states is only marginally affected by the presence of judiciaries in democracies. Though independent judiciaries prevent negative regime changes in almost every model, their ability to thwart responses to external threats seems limited to nondemocracies (and only for small changes in these states as well).

The eight models of reversion confirm several strong predictors of democratic failure. Wealthier states, for example, are some of the states least likely to witness negative regime changes. As wealth increases, so does regime stability. Second, external threats to the state affect the likelihood of both small and large magnitude reversions. High levels of militarization in neighboring states lead to reversions in most analyses; territorial rivalries have an inconsistent effect that is dependent on the inclusion of the judiciary variables. Third, the predictors commonly associated with democratic backsliding in the literature—the age of a democracy, a history of reversions, and economic crises—were never consistently associated at any meaningful level of statistical significance with our dependent variables measuring backsliding.

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[11] In Zambia, the 1997 coup attempt and subsequent crackdown also had little to do with the judiciary, which had become independent two years prior. Instead, the regime changes also seem to have resulted from political maneuverings that surrounded the 1996 parliamentary elections.

Finally, consistent with our theory, the presence of an independent judiciary tends to mollify the likelihood of reversion in most cases. This finding is especially strong when considering our earlier analyses of the predictors of judicial independence. As we demonstrate in the last section, independent judiciaries are most often found in wealthier countries and countries that do not suffer external threats. Thus, given the inclusion of these variables in our general models of reversion, it would seem that an independent judiciary has a strong additive effect on the regime. Nevertheless, our results also demonstrate that the effects of judicial independence are limited to established judiciaries. Newly independent judiciaries are sometimes created in unstable states and are unable to stop antidemocratic reversals.

Conclusion

We began this article with a review of a judicial independence literature that shared little agreement regarding the effects of the courts on democracy and regime stability. Arguments that courts mostly reflect elite interests (Tsebelis 2002) were buttressed by the many anecdotes suggesting judiciaries open to threat and influence. One of the principle positions supporting the liberal effects of judicial independence rested on the ability of courts to influence the selection of laws and executive actions, potentially deterring challenges to democracy from opportune leaders. Actual annulments of executive actions, the stronger form of independence, came only after much time and a long, strategic establishment of legitimacy by the court.

We examined these general theories of judicial independence using a dataset new to this literature (Henisz 2002). Using 41 years of data (1960–2000) identifying judicial constraints across 163 different countries, we find that the presence of an independent judiciary is consistently associated with regime stability. Specifically, we find that established judiciaries help prevent all types of regime changes toward authoritarianism when all states are included in the analyses. When the sample is limited to democracies only, independent judiciaries still predict fewer negative regime changes, but large-scale changes remain unaffected by the courts. Newly established independent judiciaries are associated with large-scale reversions (magnitude of 4 or more on the Polity IV scale) in both democracies and nondemocracies. Our examination of the data suggested this finding resulted mostly from placement of the courts in difficult political environments, adding additional support to the argument that the power of the court grows over time. Finally, our tests confirm that these results are not spurious to traditional correlates of democracy such as wealth and development history. Nor are independent judiciaries endogenous to polity changes.

Much can still be done to confirm the causal arguments we make regarding regime crises and independent judiciaries. As we investigated the sources of the finding associating new judiciaries with regime collapses, future research should examine the cases supporting the democratic survivability result. We specify two possible logics for regime maintenance. It would be useful to know which is more effectual. We have also considered judicial constraints in the broadest sense. We believe our results would be even stronger were we able to distinguish the types of judicial appointment across our cases. After all, the crisis theories that predict regime change all utilize public support as a conditioning factor in domestic political bargaining. It would seem, then, that justices with lifetime appointments and those otherwise better insulated from popular recriminations would be better able to check executive seizures of power. Finally, our results should provide an important impetus for increased attention to the various intermediate consequences of judicial independence. Our attention has focused on regime stability, but the exercise of judicial review (both abstract and concrete) and the "judicialization of politics" (see Tate and Vallinder 1996) remain understudied within the comparative literature on judicial politics.

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Supporting Information

Additional Supporting Information may be found in the online version of this article:

Appendix Table 1: Distribution of Judicial Indepence across States, 1960-2000

Appendix Table 2: Independent Judiciaries and Regime Reversions, 1960 to 2000[Logit regression models with standard errors in parentheses.]

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