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The Political Economy of Judicial Independence Under Authoritarianism

A dissertation submitted in partial satisfaction of the requirements for the degree
Doctor of Philosophy

in

Political Science

by

Nicholas Angelo Cruz

Committee in charge:

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2023

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Dedication

To Gloria Denise

Contents

List of Tables

List of Figures

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**The Political Economy of Judicial Independence Under
Authoritarianism
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Doctor of Philosophy in Political Science
University of California, Merced
Abstract**

This dissertation consists of three distinct articles that address how the degree of judicial independence allowed in authoritarian regimes is influenced by (1) international economic pressures, (2) political competition among elites, and (3) mass mobilization.

In the first chapter, I examine the role that international economic pressures play in autocratic regimes' decision to establish an independent judiciary. Autocrats face conflicting incentives when deciding the level of independence they will grant to the judiciary. On one hand, a constrained judiciary can serve as another instrument of authoritarian rule. On the other hand, and independent judiciary can serve as a credible commitment device to protect property rights. I argue that the presence of abundant natural resources, specifically fossil fuels, provides the regime with an income source that does not require such a credible commitment, and therefore reduces the incentive to allow an independent judiciary, giving the autocrat more leeway to keep the judiciary constrained. Using cross-national data, I show that an abundance of fossil fuels in autocracies is associated with a less independent judiciary. I show that this association between fossil fuels and judicial independence is specific to autocracies, not democracies. Additionally, I explore whether the abundance of fossil fuels leads to either formal and/or informal attacks on judicial independence, and I find evidence of both.

In the second chapter, I investigate the relationship between elite-level political competition and judicial independence in autocracies. A popular theory for judicial independence, insurance theory, posits that the presence of political competition causes incumbent political leaders to insulate their judiciaries from manipulation, to deny opposition the ability to politicize the courts in the event they take power. However, a number of studies conflict with insurance theory on empirical and theoretical grounds, raising questions of when and why we can expect insurance theory to offer explanatory power for autocracies. I argue that insurance theory can indeed hold in autocracies, but only in autocracies where the risk of a coup d'état is low. In contexts where incumbents have reason to fear coup attempts, insurance theory loses explanatory power, and we observe the reverse relationship between political competition and judicial independence. To empirically test my argument, I use cross-national data on judicial independence, electoral competition, and coup risk. My results show that the presence of competition within the political system is indeed associated with more judicial independence, but the presence of a credible coup threat is associated with less judicial independence. This analysis offers a novel explanation as to why insurance theory fails to explain some autocratic contexts.

In the third chapter, I analyze the ways in which the presence of different types of mass-based opposition influence how autocratic regimes structure their judiciaries. There has been a growing interest in explaining the emergence of judicial independence in autocracies. However, much of the existing literature has explained the emergence of judicial independence as a function of elite-based opposition threats and international pressures, and lacks an analysis of the influence of mass-based opposition. I argue that autocratic regimes are indeed influenced by mass-based opposition threats when deciding whether to establish judicial independence, but the direction of that influence depends critically on the nature of that opposition. When mass-based opposition is violent and/or unorganized, a decrease in judicial independence is expected, and an increase otherwise. I run a series of OLS, panel, and logistic regressions on cross-national data on all anti-regime mass opposition movements in autocracies from 1950 to 2010. I find that mass-based opposition movements are less likely to be associated with judicial independence when they are more violent and/or more organized. This evidence suggests that, when autocratic regimes are deciding whether to establish judicial independence, they are responsive to mass-based opposition threats.

This dissertation addresses an understudied and poorly understood topic, judicial systems under authoritarian regimes. Specifically, this dissertation explores the peculiar phenomena of why some autocratic regimes actually appear to respect judicial independence in ways that are not necessarily dissimilar to democratic regimes. Consistent with existing literature, I show that theories of, and related to, judicial independence in democratic contexts can have some explanatory power in non-democracies. However, I contribute to the existing literature by identifying the specific characteristics present in many authoritarian that produce outcomes that run counter to the predictions of existing theories.

Chapter 1

The Resource Curse of Judicial Independence in Autocracies

Abstract

Autocrats face conflicting incentives when deciding the level of independence they will grant to the judiciary. On one hand, a constrained judiciary can serve as another instrument of authoritarian rule. On the other hand, and independent judiciary can serve as a credible commitment device to protect property rights. I argue that the presence of abundant natural resources, specifically fossil fuels, provides the regime with an income source that does not require such a credible commitment, and therefore reduces the incentive to allow an independent judiciary, giving the autocrat more leeway to keep the judiciary constrained. Using cross-national data, I show that an abundance of fossil fuels in autocracies is associated with a less independent judiciary. I show that this association between fossil fuels and judicial independence is specific to autocracies, not democracies. Additionally, I explore whether the abundance of fossil fuels leads to either formal and/or informal attacks on judicial independence, and I find evidence of both.

Although it may seem intuitive that autocratic rulers would prefer to keep their courts tightly under their control, this is not necessarily what is observed. While a tightly controlled judiciary can be an effective tool of autocratic rule, under certain contexts an independent judiciary may actually be more beneficial to the autocrat. The literature on authoritarian judiciaries has identified a myriad of ways in which autocrats can use courts to their advantage, and has provided rich qualitative evidence in support. However, the extent to which these findings generalize to other contexts is unclear. Many of these functions appear to be mutually exclusive, requiring either an independent or constrained judiciary. There is considerable variation in judicial independence in autocracies, and it is still yet to be explained why some regimes seem to prefer the benefits of an independent judiciary over those of a constrained judiciary and vice versa.

One core function of an independent judiciary is as a credible commitment device. By accepting a constraint on arbitrary rule, the autocrat is in effect signaling that property rights are safe, thereby facilitating private investment. Moustafa (2003) shows how the Egyptian government had relaxed control over the courts with the explicit intention of attracting foreign investment, who were previously reluctant to invest due to expropriation concerns. However, it is has yet to be explored why other autocratic governments, most of whom would presumably also likely want to attract foreign investment, do not also follow this strategy. Building on the literature on the so-called "resource curse," I address this question by arguing that access to natural resource wealth, specifically fossil fuels, can generate revenue for the autocrat that can substitute for tax revenue from an economy fueled by private investment, which then disincentivizes judicial independence. Being able to accrue non-tax revenue directly from a nationalized petroleum industry effectively removes the autocrat's economic obligation to use independent courts as a credible commitment device, which allows the incentives for a more constrained court to dominate the autocrat's policy toward the judiciary. In short, when the autocrat has a reliable source of non-tax revenue, the autocrat is much less concerned about frightening investors, and is therefore more likely to abuse the courts.

To test my argument, I empirically examine the extent to which resource endowment predicts judicial independence. As a measure of judicial independence, I rely on a latent measure of *de facto* judicial independence constructed by Linzer and Staton (2015), which uses Bayesian Item Response Theory. As a measure of resource endowment, I use proven oil reserves, which are plausibly exogenous. I run several panel regressions, using country and year fixed effects, and, consistent with my argument, I find that authoritarian countries that are rich in oil tend to have less independent judiciaries. This finding is robust to alternative model specifications and measures of resource endowment, including the incorporation of oil price shocks. I also run similar models for democratic countries, and I find that the relationship found in authoritarian countries does not seem to generalize to democratic countries, which is consistent with my theory. Additionally, I explore whether the reduction in judicial independence as a result of resource abundance occurs via informal or formal attacks on the courts, and I find evidence for a mixture of both.

The literature on judicial institutions primarily consists of qualitative evidence and case studies of specific judiciaries in specific contexts, yet a cursory glance at cross-country variation of judicial independence reveals that the explanations offered by the literature do not necessarily generalize to other contexts. This paper contributes to the literature on judicial institutions by exploring and identifying the conditions under which conventional explanations of judicial independence do and do not hold. This paper also contributes to the literature by being one of only a small handful cross-national empirical studies on the topic. Also worth noting is that this paper places special emphasis on the conflicting incentives faced by autocrats when deciding whether to allow an independent judiciary, which I argue is the appropriate paradigm through which judiciaries in autocratic contexts should be viewed.

1.1 Judicial Independence in Autocracies

Judiciaries in autocratic contexts are a largely understudied topic in the authoritarian institutions literature. The current literature on this topic tends to consist of qualitative or theoretical analyses, and/or case studies. Nevertheless, qualitative evidence has identified several core functions that judiciaries can perform to the benefit of autocratic rule. Moustafa (2014) summarizes these core functions of judiciaries in autocratic contexts, discussed in more detail in Ginsburg and Moustafa (2008) (see also Solomon, 2015). Scholars have argued that autocratic regimes can use the judiciary to facilitate the exercise of state power (Morrison, 2007; Shadmehr, Boleslavsky and Ginsburg, 2019), constrain opposition groups (Rajah, 2012), monitor bureaucrats (Shapiro, 1981; Peerenboom, 2002; Verner, 1984; Magaloni, 2008), foster elite-level cohesion (Barros, 2002; Shen-Bayh, 2018), bolster regime legitimacy (Driscoll and Nelson, 2018; Del Carmen, 1973; Pereira, 1998), serve as insurance for power loss (Randazzo, Gibler and Reid, 2016; Epperly, 2013; Hirschl, 2004), and serve as economic infrastructure (Kennedy and Stiglitz, 2013; Morrison, 2007).

However, when attempting to combine all of these theories of the functions of authoritarian judiciaries into a comprehensive understanding of this institution, numerous inconsistencies are revealed. Several of these functions appear to be in conflict with others. For example, and most obviously, the establishment of an independent judiciary to serve as a neutral third party to arbitrate disputes is in conflict with the usage of a judiciary as an instrument of rule. The former function of courts is best facilitated by allowing the courts a sufficient degree of independence, which necessarily precludes the latter. As another example, using courts to constrain opposition groups requires a sufficient degree of control over the courts, whereas using independent courts as insurance for loss of power is obviously ruled out.[1]

In short, most functions that judiciaries can serve for autocratic regimes require either a more or less independent judiciary; they cannot all coexist simultaneously. What necessarily follows from this is that these functions identified by the literature only apply to certain contexts. Autocrats are not always incentivized to, for example,

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[1]See Chapters 2 and 3 for a discussion of these other functions of judiciaries in autocracies.

allow independent courts as a credible commitment to protect property rights. What the literature has so far left largely unaddressed is the conditions under which existing theories of independent judiciaries hold, and the conditions under which they do not.

A small handful of recent studies have examined some contextual factors that might incentivize or disincentivize an autocratic regime to allow an independent judiciary. Epperly (2017) applies the insurance theory of judicial independence (Ramseyer, 1994) to non-democratic contexts, finding cross-national evidence that electoral competition in non-democracies incentivizes incumbent regimes to empower the judiciary. Courts are minoritarian institutions, and by granting them autonomy, an incumbent thus ensures that their potential successor will not rule unconstrained, an outcome especially valuable to an incumbent when the opposition is hostile to them and/or their interests. Randazzo, Gibler and Reid (2016), looking not just at autocracies, criticizes insurance theory, arguing that the development of judicial independence is related to a set of contextual constraints faced by ruling elites, which includes the level of political composition, but also includes the potential for social competition within the state, and regime type.

The aforementioned studies offer much needed contributions to a full understanding of the decision-making calculus authoritarian regimes engage in when deciding their policy towards the courts. Nevertheless, there are still some areas that have not yet been sufficiently addressed. Regarding economic incentives specifically, the qualitative analysis of the Egyptian case by Moustafa (2003) provides useful insight into how autocrats might treat their courts. Moustafa shows that Egyptian government, which had a history of expropriating wealth, had to establish an independent judiciary as a credible commitment device, in order to signal to investors that they would not be expropriated. However, whether the case of Egypt generalizes to the rest of the autocratic world remains an open question. Autocrats in other contexts may not face the same incentives, or to the same degree. Given the significant variation in judicial independence among autocracies, it needs to be explained why other autocratic regimes seem to be choosing not to employ the same strategy as the Egyptian government.

There is a wide literature examining how autocrats create or shape institutions in response to economic incentives. It has been argued extensively that autocratic regimes create institutions with the ability to constrain themselves, using them as credible commitment devices, usually with the goal of credibly committing to protecting property rights (Weingast, 1993; Olson, 1993; Weingast, 1995). In short, autocratic regimes willingly subject themselves to accountability mechanisms to facilitate a functioning market economy. However, autocrats are not always incentivized to do so. A highly related literature on the so-called resource curse has argued that regimes are less incentivized to secure property rights when the regime has access to revenue from natural resources, thereby making the regime less likely to democratize (Ross, 1999; Snyder and Bhavnani, 2005; Boschini, Pettersson and Roine, 2007; Greene, 2010; Ross, 2013, 2015).

The literature has arrived at a consensus that autocratic regimes must subject themselves to an accountability mechanism of some kind in order facilitate economic

growth. However, exactly how regimes choose to constrain themselves for this purpose is not always clear. Studies examining democratization, including those on the resource curse, tend not to examine any specific institutions, but instead rely on composite measures of democratization that capture features of the entire state apparatus. For example, Haber and Menaldo (2011), who dispute the empirical validity of the resource curse theory, rely on the Combined Polity 2 score, from the POLITY IV data set, as a measure of democratization. Tsui (2010) uses a different empirical approach and finds evidence in favor of the resource curse theory, but also relies on a POLITY IV measure of democracy. Wright, Frantz and Geddes (2015) use their own popular measures of autocracy (Geddes, Wright and Frantz, 2014), but this binary indicator does not examine the structures of specific institutions. Rather, it focuses on how a government came to hold power. Aslaksen (2010), who finds evidence in support of the resource curse theory, uses the Freedom House measure of democracy, which suffers from the same limitations.

Using broad measures of democracy precludes an examination of which specific institutions an autocrat is creating and/or empowering to serve as a credible commitment device. Substantial evidence exists that autocrats with access to resource wealth are less likely to democratize, but because most studies use these broad measures, we do not know how specific institutions, especially the judiciary, are affected by resource endowments. A direct implication of conventional theories of the resource curse is that resource-poor autocrats must democratize in order to develop a functioning market economy, but this is seemingly contradicted by the existence of resource-poor autocratic countries that have so far resisted democratization. Indeed, studies critical of the resource curse theory, including Haber and Menaldo (2011) and Wright, Frantz and Geddes (2015), find evidence that variation in resource endowments are not related to democratization. In order to adjudicate competing theories of how resource endowments affect institutions, it is necessary to examine specific institutions that may serve as a credible commitment device, rather than looking at broad measures of democracy. The present study addresses this problem by examining the judiciary specifically, and its level of independence.

In sum, there are several puzzles in the literature on autocratic politics and political economy that this paper addresses. First, most of the functions of autocratic judiciaries appear to require conflicting levels of judicial independence, and the conditions under which an autocratic regime allows an independent judiciary are not yet fully understood. Some studies have identified the tension (Popova, 2010), but few have examined it empirically using cross-national data, which the present study does. Second, studies on the resource curse in the political economy literature have not offered evidence on how specific institutions within autocratic governments are affected by resource endowments, and, while it remains theoretically plausible that resource-poor regimes must employ some constraining mechanism to credibly commit to protecting property rights, it remains unclear exactly how this occurs in practice. This paper addresses this problem by identifying a specific institution that is affected by resource abundance.

1.1.1 The Trade-off of Judicial Independence

Central to my theoretical argument is a tension between countervailing incentives faced by an autocrat regarding its policy towards the judiciary. The autocrat, who I assume prefers first and foremost to retain office and second to realize their policy agendas, face threats to their power from a variety of sources. Judiciaries can provide a variety of functions that assist the regime in maintaining order, which I discuss in more detail below. However, the effectiveness, and often times the very existence of these functions is conditional on the level of judicial independence. Both independent and constrained judiciaries offer sets of mutually exclusive benefits, forcing the regime to face a trade-off.

The first and most obvious benefit of a constrained judiciary to a regime is the usage of courts as an instrument of rule. Court rulings are a form of policy, and therefore courts can be used as a tool to implement policy. This is especially useful to autocratic regimes because regimes can strategically delegate controversial policy decisions to the courts, which effectively redirects public backlash away from the regime. For example, Moustafa (2007) shows that Egypt's authoritarian government used the courts to overturn popular socialist policies from the Nasser era. Using the courts in this way allows autocratic regimes to cloak their arbitrary rule in rhetoric claiming that they were simply respecting the rule of law.

Because independent judiciaries often rule against regime interests, one major benefit of a constrained judiciary is that the regime's policy agenda is less threatened. Indeed, when Egypt granted their courts autonomy, an immediate consequence was that opposition groups began using the courts to attack some regime policies Moustafa (2007). The less independent the courts are, the more able the regime is to pursue its policy agenda uncontested.

Authoritarian regimes can use courts as an instrument of repression. Pereira (2008) shows that the military dictatorships of Brazil and Chile in the latter half of the 20th century used their courts to repress opposition groups. Similarly, governments in Cambodia, Egypt, Iran, Turkey, and Zambia (Asia, 2016; Sadek, 2011; Mfula, 2017; Khalidi, 2017) have used courts to undercut political rivals and silence dissent. Shen-Bayh (2018), in a study of authoritarian governments in sub-Saharan Africa, finds that courts are especially effective at punishing political elites who challenge the regime.

An important functions of an independent judiciary, which is also the focus of this paper, is its ability to allow the regime to credibly commit to protecting property rights. A broad literature on political economy has argued that governing institutions serve as a tool to credibly commit to protecting property rights, thus facilitating economic growth (Acemoglu, Johnson and Robinson, 2005; Gehlbach and Keefer, 2012; Wright, 2008; Wilson and Wright, 2017). Qualitative evidence suggests that the institution of the judiciary can serve as this tool, and in fact appears to be exceptionally well suited for that purpose Moustafa (2003, 2007); Kennedy and Stiglitz (2013). By empowering a judiciary with the ability to limit arbitrary rule, the regime is tying its own hands. In effect, the regime is constraining itself from arbitrarily

expropriating property, which signals to investors that their assets are safe in the country, thereby attracting investment and facilitating economic growth.

It is worth noting here that the distinction between a credible commitment and a not-so-credible commitment to protect property is not a binary. The effectiveness of an autocrat signaling a credible commitment is a matter of degree. The more the autocrat respects the autonomy of the court, the more credible the commitment is. Conversely, when the autocrat is frequently manipulating the court, either through formal or informal means, it signals to observers that the court is vulnerable, even if the autocrat is manipulating the courts on issues not directly related to property rights. If the regime can arbitrarily manipulate and/or ignore the courts on other issues without consequence, then they certainly have the ability to do the same on issues related to property rights, if and when it suits the regime interests. Several authoritarian regimes have been known to allow their judiciary to constrain the regime's ability to expropriate property, but restrict the courts' ability to challenge the regime on other policy areas, such as civil rights and liberties (see Wang, 2015). I argue that this represents a middle-tier of judicial independence. Such a policy towards the courts is certainly a more credible commitment to protect property rights than allowing courts virtually no autonomy, but is still a less credible commitment than a fully autonomous court. In short, the greater the extent to which a regime allows judicial independence, the more credible the commitment to protect property rights is, which in turn attracts investment and facilitates economic growth.

Judicial independence allows courts to serve as a more effective monitoring tool. Shapiro (1981) argues that courts are a "fire alarm" monitoring tool. Citizens who are dissatisfied with regime policy and/or bureaucratic performance can raise lawsuits in courts. It is these lawsuits that provide the regime with information on the effectiveness of regime policy and the performance of bureaucrats. Courts can therefore be an effective tool to mitigate the principal-agent problem inherent to any government (Peerenboom, 2002; Verner, 1984). However, how well courts perform this function is conditional on the level of judicial independence. If the courts are widely known to be nothing more than agents of the regime, then citizens will have little reason to turn to the courts for help when they are in disputes with the regime. Citizens must anticipate that the courts can grant them at least some concessions, and this can only occur if the regime respects the autonomy of courts and complies with rulings. The greater the degree of judicial independence a regime allows, the more effective of a monitoring tool the courts become.

Judiciaries tend to enjoy a much higher degree of diffuse legitimacy, relative to other institutions (Driscoll and Nelson, 2018). In the Philippines, after Marcos seized power, he specifically emphasized to the public his plan to preserve the judiciary, even if in practice he did not actually preserve its autonomy (Del Carmen, 1973). The presence of a judiciary, even if not fully autonomous, does lend at least some of its legitimacy to the regime itself. A constraint on arbitrary rule, or at least the veneer of a constraint, can enhance the regime's legitimacy. While even less independent courts might still lend at least some legitimacy to the regime, I argue that the degree to which a judiciary boosts the regime's legitimacy is a function of

the independence of the judiciary. If the regime consistently manipulates, overrides, and ignores the courts, this undermines the legitimacy of the regime.

Independent courts can be an effective tool for arbitrating intra-elite conflicts. According to co-optation theory, authoritarian regimes create institutions, especially legislatures, to serve as regime-approved playing fields for elites to push for their political agendas in a regime-approved manner Gandhi and Przeworski (2007); Gandhi (2008); Malesky and Schuler (2010). Judiciaries in authoritarian governments serve a similar role. Barros (2002) argues that the 1980 Chilean constitutional tribunal was intended to arbitrate between the four branches of the Chilean military.

As discussed above, independent judiciaries have the potential to constrain the autocrats, which is counter to their immediate interests. However, in some cases, an independent judiciary can protect an autocrat's interests in the long run. According to the insurance theory of authoritarian judiciaries, incumbents who fear losing power choose to empower their judiciary so that their successor will be less likely to use the courts against the incumbent (Randazzo, Gibler and Reid, 2016; Moustafa, 2003; Epperly, 2013; Hirschl, 2004). Indeed, empirical evidence suggests that the presence of electoral competition in non-democracies is associated with increased levels of judicial independence (Epperly, 2017).

1.1.2 Judicial Independence and Economic Development

Regimes all exist in different social, political, and/or economic contexts. Different regimes might find each of these functions of either an independent or constrained judiciary as more or less useful depending on the context. Access to valuable natural resources, I argue, is a crucial contextual factor that affects the usefulness of a particular function of the judiciary. Recall that independent judiciaries can serve as a tool by which regimes credibly commit to protecting property rights, which facilitates investment and thus economic growth. Regimes require revenue to function, and a developed market economy provides a source of revenue via taxes. Therefore, regimes that are seeking to develop their economy are incentivized to establish an independent judiciary.

However, an abundance of natural resources can provide the regime with an alternative source of revenue that can substitute for revenue from taxes (Sokoloff and Engerman, 2000; Huntington, 1993; Ross, 1999, 2001). If a regime can accrue revenue from a source that does not require an independent judiciary, then the incentive to establish such a court system is considerably diminished. The value to the autocrat of that function is much lower when resources are abundant.

Autocrats, when possible, prefer to substitute revenue from resources for revenue from taxes simply because collecting revenue from taxes can potentially create pressures for accountability. According to the rentier effect, abundant oil revenues allow autocrats to reduce taxes and increase patronage and public goods, thereby reducing democratic pressures (Ross, 2001). Higher taxes tend to create demands for accountability from those from whom the taxes were collected. Conversely, non-tax revenue provides the autocrat with revenue that does not create these pressures (Ross, 2004;

Brautigam, Fjeldstad and Moore, 2008). Oil-rich autocrats may also use oil revenues to invest in repression (Ross, 2001). In short, oil revenues provide autocrats with the means to pursue their policy agenda while warding off pressures for accountability, whereas oil-poor autocrats are relatively more vulnerable to these pressures. For this reason, autocrats, who prefer to retain office and realize their policy agenda, will choose to substitute oil revenue for tax revenue, precisely because oil revenue allows the regime to pursue its policy agenda while reducing pressures that inhibit the pursuit of that policy agenda.

Autocrats without access to oil, on the other hand, have no choice but to accrue revenue via taxation. In order to maximize revenue derived from taxation, autocrats must facilitate a functioning market economy so that there is sufficient economic activity to tax. As discussed above, a credible commitment to protecting property rights is crucial for attracting investment. Without such a commitment, potential investors will choose to locate their capital elsewhere. For this reason, oil-poor autocrats will be forced to impose a constraint on themselves to assure investors that they will not be expropriated.

Empowering the judiciary to limit arbitrary rule is an effective credible commitment to protect property rights. Oil-poor autocrats, who are relatively more reliant on revenue from taxes, are incentivized to empower their judiciary to attract capital and facilitate economic growth. Conversely, oil-rich autocrats, who have access to non-tax revenue, are less dependent on tax revenue, and therefore do not need to attract capital as much as oil-poor autocrats. For this reason, oil-rich autocrats have much less of an incentive to empower their judiciary. In other words, oil revenue is less politically costly than tax revenue, and an autocrat with access the former will rationally choose to substitute it for the latter. Otherwise, the autocrat would unnecessarily imposing limits on their rule for revenue that they could gain without those limits. This constitutes the main hypothesis of this paper.

Hypothesis 1: *The greater access an autocrat has to natural resource rents, the less likely that autocrat is to allow an independent judiciary.*

In short, because oil rents offer an alternative source of revenue that does not require an independent judiciary, increased access to oil rents effectively frees the autocrat from a fiscal obligation to preserve judicial independence, which should in turn lead to a tightening of the leash on the courts. Autocrats do value a constrained judiciary, which minimizes limits to their rule, but the need to develop a functioning market economy to accrue tax revenue forces autocrats to reluctantly allow an independent judiciary. Alternatively, access to oil rents alleviates the need to allow and independent judiciary, thereby giving the regime more leeway to tighten control over the courts so as to protect its policy interests.

It is worth emphasizing that protection of property rights, and the credibility to protect them, should best be conceptualized as a continuous variable. Formal protections do not guarantee actual protection, as autocrats can and do violate existing statutes. The credibility of the commitment to protect property rights, from the

perspective of investors, can be understood as the probability of expropriation. Any infringement of judicial independence increases that probability. Conceptualizing the credible commitment in this way allows us to understand cases where there is a partially independent judiciary and a partially developed market economy.

1.2 Research Design

1.2.1 Data

Judicial independence, the main dependent variable, can be understood in two distinct conceptualizations. The first, *de jure* judicial independence, refers to whether the letter of the law in a country ensures an independent and autonomous judicial branch. The second, *de facto* judicial independence, refers to the degree to which the regime respects judicial independence in practice, regardless of what the law says. Because authoritarian regimes are able to, and often do, simply ignore *de jure* judicial independence (Keith, 2011; Taylor, 2014), *de jure* judicial independence does not capture the full extent of the relationship between the regime and the judiciary. For this reason, I choose to focus on *de facto* judicial independence.[2]

As a measure of *de facto* judicial independence, I utilize a latent measure using Bayesian Item Response Theory constructed by Linzer and Staton (2015). This model uses a handful of indicators closely related to *de facto* judicial independence to generate a latent measure of *de facto* judicial independence for each country-year. These indicators include constraints on executive power, the ratio of non-currency money to the total money supply, several measures using expert opinion on judicial independence, and a few various measures of judicial independence.

I argue that this measure is the most appropriate for a cross-national study of judicial independence for two reasons. First, the secretive nature of authoritarian governments inhibits the collection of data on more direct measures of the inner workings of their courts. Second, authoritarian governments do not necessarily undermine their courts in identical ways, so more direct measures of the features of the courts will likely fail to capture the full extent of judicial independence. Using a latent measure of judicial independence allows me to avoid overlooking specific mechanisms by which autocrats undermine courts that are not captured by more direct measures. Nevertheless, I do include supplementary models that examine several specific mechanisms by which judicial independence may be altered.

While Linzer and Staton's latent judicial independence measure extends from the 1940s to the present, I choose to limit my analysis to the period from 1980 to the present, for two reasons. First, this latent measure is unreliable before 1980 due to missing data. Data for the components of the IRT model are unavailable for all but two components for observations prior to 1980. Second, it appears that the

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[2]Melton and Ginsburg (2014) compares *de jure* and *de facto* measures of judicial independence, finding very little correlation between them, suggesting that the extent to which judicial independence is formally protected by the law does not reflect to the actual degree of judicial independence.

(a) LJI in autocracies   (b) LJI in democracies
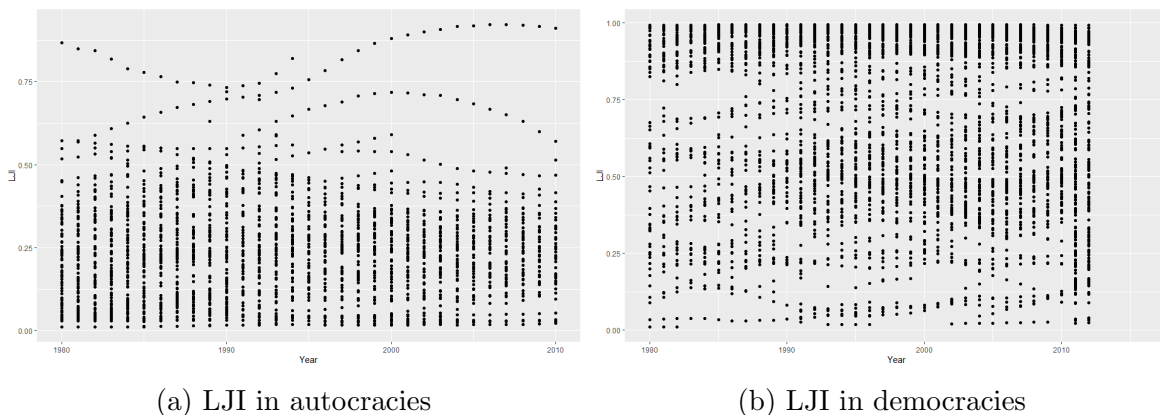
Figure 1.1: Latent Judicial Indepedence Scatterplots

This figure plots data points for latent judicial independence. The plot on the left is limited to autocracies, while the plot on the right is limited to autocracies.

so-called resource curse only exists after 1980 because of a wave of nationalizations of oil production in the 1970s (Ross, 2013). Prior to this wave of nationalization, states had little access to resources.

To give a sense of what the variation in judicial independence looks like, figure 1.1 presents simple scatterplots of country-year units and their corresponding level of latent judicial independence. I separated the data into two groups, democracies and autocracies, as defined by the GWF (Geddes, Wright and Frantz, 2014) data. As a cursory glance at these scatterplots reveals, there exists significant variation in judicial independence. Unsurprisingly, judicial independence in authoritarian countries typically occupies the lower end of the scale, whereas there is a noticeably greater frequency of higher levels of judicial independence in more democratic countries. Nevertheless, regarding authoritarian countries specifically, there is still significant variation in that lower end, and there is a non-negligible number of cases in the upper half of the range, suggesting that there are authoritarian governments that allow a high degree of judicial independence, comparable to that of democracies.

The latent measure constructed by Linzer and Staton ranges from 0 to 1, with 0 representing a low level of *de facto* judicial independence, and 1 representing a high level of *de facto* judicial independence. To make the results easier to interpret, I standardized the variable to have a mean of zero and a standard deviation of one. The main results are estimated using the standardized version of this variable.

As a measure of access to resource rents, I use proven oil reserves, which are plausibly exogenous. I use data borrowed from Haber and Menaldo (2011). I choose to focus my analysis on oil, as opposed to other types of resources, such as minerals, for several reasons. First, because oil is a source of energy, it is a critically important natural resource for the day-to-day functionality of any nation (Tsui, 2010). Second, oil is globally traded, providing an opportunity to examine the effects of exogenous price shocks. Third, reserves and production for other types of resources, such

as minerals, are far more likely to be endogenous to contextual economic and/or political factors. I restrict my analysis to oil reserves, not oil production, because the production of oil is more likely to be endogenous to economic and/or political factors, which may bias the results. Additionally, I use data on world oil prices, borrowed from BP's website (`www.bp.com`).

I also control for a number of additional covariates that might affect judicial independence. A high level of economic development in a country should be related to a high level of complexity in the economy, which might be related to the demand for property rights protection among business interests. On the other hand, a low level of economic development might reflect weak infrastructure and/or lack of resources, which should affect the effectiveness of courts. To control for the level of economic development, I include logged per capita GDP, a proxy for economic development, as a covariate in my regression models.

The occurrence of armed conflict, either an international war or an internal civil war, is known to be related to executive overreach, which often manifests as over-riding the courts. In times of conflict, courts are under increased pressure to defer to the executive branch, which threatens judicial independence (Reinhardt, 2006). To control for the effect of conflict on judicial independence, I include a dummy variable indicating whether the country experienced an armed conflict in the given year, either internal or international.

Epperly (2017) argues that electoral competition in non-democracies is causally related to judicial independence. Independent courts are a minoritarian institution, making them an attractive insurance policy for autocrats who anticipate future loss of power. To control for the positive effect of electoral competition on judicial independence, I borrow Epperly's measure of electoral competition and include it as a covariate in my models.

Work by Moustafa (2007) and Ginsburg and Moustafa (2008) suggests that authoritarian regimes can use independent judiciaries to monitor state agents, such as bureaucrats. To account for the effect of large bureaucracies on judicial independence, I include as a covariate the government share of the GDP.

Other variables that may potentially affect judicial independence, such as the origin of the legal tradition, are captured by the country level fixed effects.

1.2.2 Model

The main regression models estimated are of the following specifications. Equation (1) is the main panel regression. The dependent variable is (*de facto*) judicial independence, and the main independent variable is access to oil resources. The matrix X_{it} contains all covariates. To take advantage of the panel nature of the data, both country α_i and year γ_t fixed effects are included. Because oil reserves are plausibly exogenous, I argue that this empirical approach is well suited for estimating the causal effect of oil reserves on *de facto* judicial independence.

$$LJI_{it} = \beta_1 * OIL_{it} + \beta_X * X_{it} + \alpha_i + \gamma_t + \epsilon_{it} \tag{1.1}$$

Equation (2) is the same as (1), except I multiply the log of oil reserves in each country-year by the global market price of oil in that year. This allows me to take advantage of exogenous price shocks to oil, which provides additional causal leverage. The main independent variable of this model should be interpreted as the global market value of oil reserves in each country-year.

$$LJI_{it} = \beta_1 * [OIL_{it} * MarketPrice_{it}] + \beta_X * X_{it} + \alpha_i + \gamma_t + \epsilon_{it} \qquad (1.2)$$

To examine whether additional factors known to shape judicial independence affect the relationship between judicial independence and oil, I include the interaction between judicial independence and electoral competition in equations (3) and (4).

$$LJI_{it} = \beta_1 * OIL_{it} + \beta_2 * ElecComp_{it} + \beta_3 * [OIL_{it} * ElecComp_{it}] + \beta_X * X_{it} + \alpha_i + \gamma_t + \epsilon_{it} \qquad (1.3)$$

$$\begin{aligned} LJI_{it} = &\beta_1 * [OIL_{it} * MarketPrice_{it}] + \beta_2 * ElecComp_{it} + \\ &\beta_3 * [(OIL_{it} * MarketPrice_{it}) * ElecComp_{it}] + \\ &\beta_X * X_{it} + \alpha_i + \gamma_t + \epsilon_{it} \end{aligned} \qquad (1.4)$$

1.3   Results

1.3.1   Main Results

Table 1.1 presents the main results for the panel regressions, using country and year fixed effects. Each of these models is estimated with a data set of authoritarian countries only, as defined by Geddes, Wright and Frantz (2014). The dependent variable for all models is latent judicial independence, standardized to have a mean of zero and standard deviation of one. Standard errors, included in parentheses, are robust and clustered by country. Consistent with my hypothesis, oil reserves are significantly associated with a lower degree of judicial independence. Columns (1) and (2) use logged oil reserves as a key independent variable, finding a negative relationship with judicial independence. Columns (3) and (4) use logged oil reserves, multiplied by the market price of oil that year in 2018 US dollars, as the key independent variable, finding the same result, suggesting that exogenous shocks to the global market price of oil can lead to a decrease in judicial independence in authoritarian countries with oil reserves.

As an alternative measure of access to resources, columns (5) and (6) use the proportion of government revenues derived from resource rents as the key independent variable. This variable, borrowed from Haber and Menaldo (2011), measures the proportion of government revenue derived from resource wealth. Also consistent with my hypothesis, these models report a negative and significant association between resource reliance and judicial independence, indicating that governments

that collect a greater proportion of their revenue from resource rents tend to exert a tighter control over their judiciaries. These models offer strong support for my theory, showing that access to oil revenue, a plausibly exogenous variable, exerts a statistically significant negative effect on judicial independence.

Following research on a popular explanation for judicial indepencence, Insurance Theory (Ramseyer, 1994; Ginsburg, 2003; Gibler and Randazzo, 2011), I also include interaction terms between the main independent variable in Insurance Theory, political competition, and my primary independent variable, resource wealth, for exploratory purposes.[3] Model 2 contains an interaction between logged oil reserves and political competition. Model 4 contains an interaction between logged oil reserves, multiplied by the global market price of oil, and political compeition. Lastly, Model 6 contains an interaction between fiscal reliance on oil and political competition. All three of these models report a statistically significant coefficient. Models 2 and 4 report positive interaction effects, suggesting that the presence of political competition can actually undermine and/or reverse the negative relationship between oil wealth and judicial independence. Conversely, however, model 6 reports a negative coefficient, suggesting that political competition can exacerbate the negative relationship between fiscal reliance on oil and judicial independence. The difference in direction between the interaction effects in models 2 and 4 versus 6 likely is due to the distinction between possessing oil reserves and fiscally relying on oil. That is, a regime possessing significant oil reserves is not the same thing as relying on the sale of that oil on the global market for collecting significant revenue. Nevertheless, this result would be of interest to future research on this topic.

1.3.2   Comparing Regime Types

To demonstrate that this relationship between oil reserves and judicial independence is specific to autocratic contexts, I re-estimated panel regressions with different samples. Table 1.2 presents these additional panel regressions. Column (1) uses the full data set, democracies and autocracies alike, and still finds a negative and significant relationship between logged oil reserves and judicial independence. For ease of comparison, I included the same model from Table 1.1 Column (1), reproduced here as Column (2). This model of course contains autocracies only, as defined by GWF data, and finds a negative and significant relationship between logged oil reserves and judicial independence. Column (3), however, restricts the data to democracies only, as defined by the GWF data, and the significant relationship between logged oil reserves and judicial independence disappears. It is only when autocratic countries are included in the sample that the significant relationship between oil reserves and judicial independence emerges. The results of these models suggest that the significant relationship is driven by authoritarian countries, and that the effect of oil on judicial independence is particularly strong in authoritarian contexts.

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[3]See Chapter 2 of this dissertation for an extended discussion of Insurance Theory.

Table 1.1: Resource Wealth and JI Panel Regressions

	Dependent variable: Latent Judicial Independence					
	(1)	(2)	(3)	(4)	(5)	(6)
Log Oil Reserves	**−0.02*****	**−0.03*****				
	(0.004)	(0.003)				
Log (Oil Reserves x Market Price)			**−0.04*****	**−0.05*****		
			(0.002)	(0.003)		
Government Reliance					**−0.004*****	**−0.001***
					(0.001)	(0.001)
Political Competition	1.31***	1.35***	1.20***	1.07***	1.36***	2.45***
	(0.07)	(0.07)	(0.07)	(0.09)	(0.04)	(0.15)
Bureaucracy Size	−0.10	−0.11	−0.06	−0.06	0.01	0.19
	(0.11)	(0.12)	(0.11)	(0.12)	(0.21)	(0.12)
Armed Conflict	−0.12***	−0.13***	−0.09***	−0.09***	−0.09*	−0.08*
	(0.02)	(0.02)	(0.02)	(0.02)	(0.04)	(0.03)
Log GDP Per Capita	0.17***	0.17***	0.22***	0.22***	0.12***	0.12***
	(0.007)	(0.007)	(0.007)	(0.007)	(0.01)	(0.02)
Log Oil Res. x Poli. Comp.		**0.11*****				
		(0.01)				
Log (Oil Res. x Market Price) x Poli. Comp.				**0.08*****		
				(0.01)		
Gov. Reliance x Poli. Comp.						**−0.02*****
						(0.002)
Observations	1694	1694	1694	1694	290	290
R_2	0.32	0.33	0.36	0.36	0.46	0.51
Adjusted R_2	0.31	0.32	0.34	0.35	0.40	0.44

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents panel regressions, testing my main hypothesis. Country and year fixed effects are included for all models. Models 1 and 2 regress logged oil reserves against judicial independence, with model 2 including an interaction term with political competition. Models 3 and 4 are nearly identical, but logged oil reserves are multiplied by the market price of oil that year. Lastly, Models 5 and 6 regress the proportion of government revenue derived from oil against judicial independence, with model 6 including an interaction term with political competition. Country and year fixed effects are included in all models, and standard errors are clustered by country.

Figure 1.2: Resource Wealth and JI Regressions Coefficient Plot

This figure plots the coefficients for panel regressions that estimate the relationship between resource abundance or reliance, and judicial independence.

Table 1.2: Resource Wealth and JI by Regime Types

	Dependent variable: Latent Judicial Independence		
	Full Sample	Autocracies Only	Democracies Only
	(1)	(2)	(3)
Log Oil Reserves	-0.02***	-0.02***	-0.01
	(0.003)	(0.004)	(0.004)
Political Competition	2.121***	1.313***	1.526***
	(0.09)	(0.07)	(0.09)
Bureaucracy Size	-0.29**	-0.10	-0.45***
	(0.10)	(0.11)	(0.10)
Armed Conflict	-0.09***	-0.12***	-0.002
	(0.02)	(0.02)	(0.02)
Log GDP Per Capita	0.39***	0.17***	0.48***
	(0.01)	(0.007)	(0.01)
Observations	3468	1694	1774
R_2	0.70	0.32	0.65
Adjusted R_2	0.70	0.31	0.64

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents additional panel regressions, exploring whether the results of model 1 in Table 1.1 are unique to autocracies. Models 1, 2, and 3 all regress logged oil reserves against judicial independence. Model 1 is estimated on the full data set, whereas models 2 and 3 are estimated using data sets subset to autocracies only, or democracies only, respectively. Country and year fixed effects are included in all models, and standard errors are clustered by country.
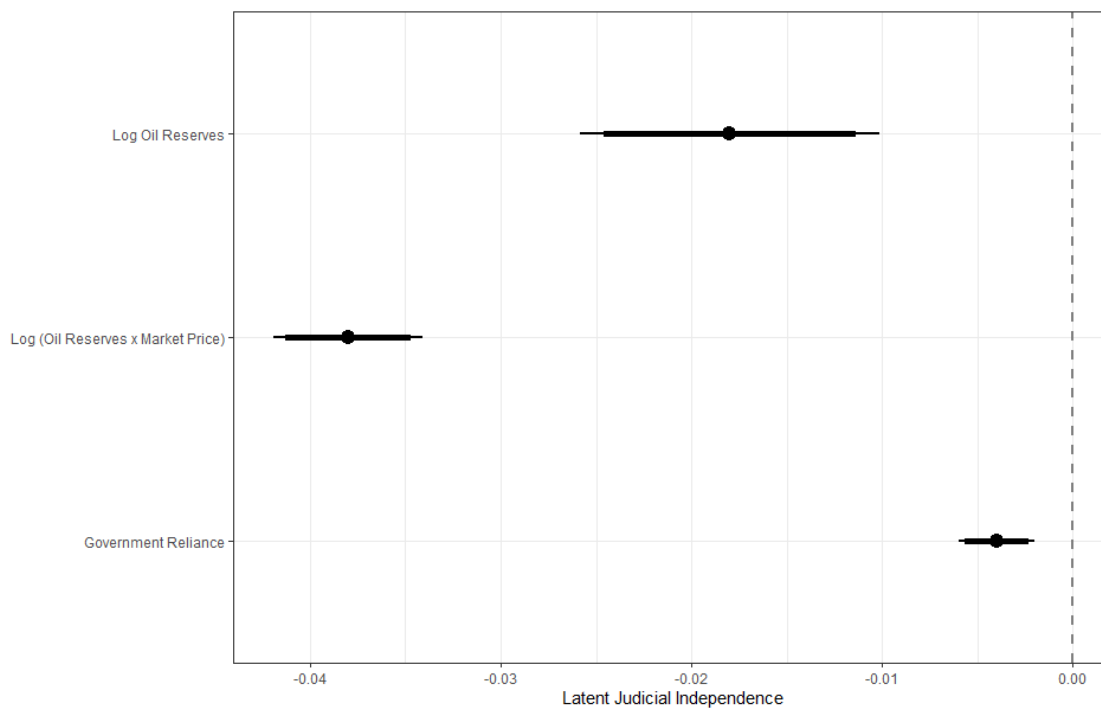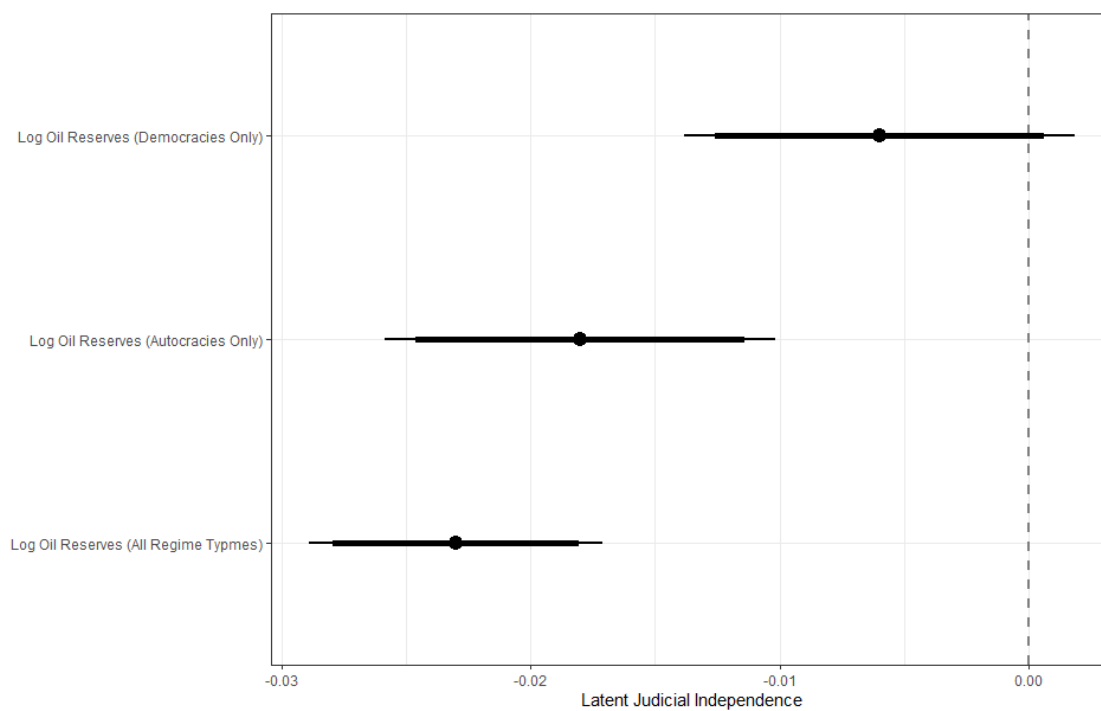
Figure 1.3: Regime Type Comparison Coefficient Plot

This figure plots the coefficients for panel regression models that estimate the relationship between resource abundance and judicial independence. The data was stratefied by regime type. The first model is limited only to democracies, while the second model is limited only to autocracies. The third model includes all regime types.

1.3.3 Formal and Informal Infringements on Judicial Independence

The above analysis provides evidence consistent with my hypothesis, that the presence of abundant oil reserves incentivizes incumbent autocrats to restrict judicial independence. However, given the complicated nature of judicial independence, the above evidence does not tell us exactly how judicial independence is affected by the presence of natural resources. This section explores possible mechanisms, which I categorize into two classes. The first consists of formal, structural alterations to the judiciary itself. This includes, but is not limited to, alterations in tenure, appointment procedures, and budget. The second consists of more informal changes. This includes public attacks on the courts, dismissal of judges, variation in compliance, among others. These mechanisms both represent ways in which the autocrat can incentivize or coerce the courts into being more subservient, the difference is whether it is subtle or overt.

To assess whether the autocrat formally restricts courts when resources are abundant, I examine the relationship between resource abundance and structural reforms to the judiciary. The first variable, *Formal Independence*, is an index for formal judicial independence borrowed from Keith (2011). This index consists of the following seven indicators, whether judges are guaranteed terms, judges' decisions are not subject to revision, judges have exclusive authority to make their own decisions, courts have jurisdiction over all legal matters, courts have fiscal autonomy, courts are housed in a separate branch from the executive and legislative powers, and judges are selected based on merit. The second and third indicators are borrowed from the VDEM data set (Coppedge and Wilson, 2017). The second indicator, *Constitutional Review*, measures the presence of judicial review, i.e. whether the judiciary has the legal authority to invalidate government policies on the grounds that they violate a constitutional provision. The third indicator, *Court Packing*, measures the frequency and severity of politically motivated court packing.

Using these three indicators as dependent variables, I estimate a series of panel regressions, with country and year fixed effects, identical in structure to the main models. For each one dependent variable, I estimate two models, each with a different independent variable. The first is the log of the country's proven oil reserves that year, and the second is the log of the country's proven oil reserves multiplied by its world market price that year.

Table 1.3 presents the results for these models. Columns (1) and (2) estimate the relationship between oil reserves and formal judicial independence. The coefficients for both models are negative and significant, indicating that countries with an abundance of oil typically have a lower level of formal judicial independence. Columns (3) and (4) estimate the relationship between oil reserves and whether or not the judiciary has the power of constitutional review. The coefficients for both models are negative and significant, indicating that countries with an abundance of oil are less likely to have judiciaries with the power of constitutional review. Finally, columns (5) and (6) estimate the relationship between oil reserves and politically motivated

Table 1.3: Mechanisms of Judicial Reform

| | Dependent variable: | | | | | |
| | Formal Independence | | Constitutional Review | | Court Packing | |
	(1)	(2)	(3)	(4)	(5)	(6)
Log Oil Reserves	**−0.02*****		**−0.05*****		**0.01*****	
	(0.004)		(0.006)		(0.003)	
Log (Oil Reserves x Market Price)		**−0.02*****		**−0.05*****		0.0003
		(0.005)		(0.008)		(0.005)
Political Competition	0.43***	0.46***	2.34***	2.42***	1.02***	0.94***
	(0.12)	(0.11)	(0.14)	(0.14)	(0.11)	(0.11)
Bureaucracy Size	0.21	0.18	−0.67	−0.75*	0.76***	0.798***
	(0.16)	(0.17)	(0.36)	(0.38)	(0.18)	(0.18)
Armed Conflict	−0.26***	−0.28***	−0.07	−0.11	−0.50***	−0.48***
	(0.04)	(0.04)	(0.07)	(0.06)	(0.04)	(0.04)
Log GDP Per Capita	0.16***	0.14***	0.14***	0.09***	0.25***	0.28***
	(0.02)	(0.02)	(0.02)	(0.02)	(0.03)	(0.04)
Observations	1662	1662	1695	1695	1695	1695
R_2	0.10	0.09	0.15	0.14	0.14	0.14
Adjusted R_2	0.08	0.07	0.14	.13	0.12	0.12

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents additional panel regressions, examining the mechanisms by which judicial independence can be promoted. Models 1 and 2 regress logged oil reserves, and logged oil reserves multiplied by oil market price, against formal judicial independence. Models 3 and 4 regress the same regressors against an indicator measuring whether the high court possesses the power of constitutional review. Models 5 and 6 regress the same regressors against an indicator of whether politically-motivated court packing occurred. Country and year fixed effects are included in all models, and standard errors are clustered by country.

court packing. The coefficient for only one model, column (5), is positive and significant, suggesting that countries with an abundance of oil are more likely to experience politically motivated court packing. This evidence suggests that the abundance of oil reserves is indeed associated with reduction of judicial independence via formal means.

To assess whether judicial independence is informally violated by the autocrat, I examine the relationship between resource abundance and extralegal attacks on the courts. I borrow several indicators from the VDEM data set (Coppedge and Wilson, 2017). The first indicator, *Violate Constitution*, captures the extent to which members of the executive branch implement policy that is in contradiction with the country's constitution. The second indicator, *Purge Judges*, captures the frequency and volume at which judges are dismissed from the court for arbitrary, political reasons. This measure does not include judges removed for non-arbitrary reasons, such as corruption. The third indicator, *Public Attack*, captures the frequency at which the executive publicly attacked the judiciary's integrity in public. This includes claims that the judiciary is incompetent, politically motivated, and/or corrupt. The fourth and final indicator, *Compliance*, captures the extent to which the government complies with decisions of the high court with which it disagrees.

Using these four indicators as dependent variables, I estimate a series of panel regressions, with country and year fixed effects, identical in structure to the main models. For each one dependent variable, I estimate two models, each with a different independent variable. The first is the log of the country's proven oil reserves that year, and the second is the log of the country's proven oil reserves multiplied by its world market price that year. Standard errors are robust and clustered by country.

Table 1.4 displays the results for these models. Columns (1) and (2) estimate the relationship between oil reserves and the extent to which the executive branch subverts or ignores the institutional constraints placed on it by the constitution. The coefficients are positive and significant for both models, indicating that countries with an abundance of oil resources are more likely to experience violations of the constitution by the executive branch. Columns (3) and (4) estimate the relationship between oil reserves and the frequency and volume of judges being arbitrarily purged. The coefficients are positive and significant for both models, indicating that countries with an abundance of oil reserves are more likely to experience politically motivated dismissal of judges. Columns (5) and (6) estimate the relationship between oil reserves and the frequency of public attacks on the judiciary by the executive. The coefficients are positive and significant for one out of the two models, suggesting that countries with an abundance of oil reserves are more likely to experience public attacks on the judiciary by the executive. Finally, columns (7) and (8) estimate the relationship between oil reserves and the frequency at which the government complies with court rulings. The coefficients are negative and significant, indicating that countries with an abundance of oil reserves are more likely to experience instances of the government refusing to comply with court rulings. Taken together, these results provide evidence that executives in countries high in oil wealth are more likely to disrespect judicial independence using informal, extralegal means.

Table 1.4: Mechanisms of Judicial Manipulation

	Dependent variable:							
	Violate Constitution		Purge Judges		Public Attacks		Compliance	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Log Oil Reserves	**0.03*****		**0.06*****		**0.01*****		**−0.06*****	
	(0.008)		(0.004)		(0.004)		(0.006)	
Log (Oil Reserves x Market Price)		**0.03*****		**0.06*****		−0.002		**−0.05*****
		(0.008)		(0.005)		(0.004)		(0.006)
Political Competition	−1.04***	−1.10***	−0.82***	−0.91***	−0.10	−0.18	2.13***	2.25***
	(0.19)	(0.18)	(0.11)	(0.11)	(0.13)	(0.12)	(0.19)	(0.18)
Bureaucracy Size	−0.61	−0.56	−1.06***	−0.97***	−0.84***	−0.80***	0.38	0.29
	(0.40)	(0.42)	(0.14)	(0.14)	(0.16)	(0.16)	(0.36)	(0.38)
Armed Conflict	0.24***	0.26***	0.63***	0.67***	0.52***	0.54***	−0.44***	−0.49***
	(0.05)	(0.06)	(0.05)	(0.06)	(0.05)	(0.05)	(0.06)	(0.05)
Log GDP Per Capita	−0.20***	−0.17***	−0.30***	−0.24***	−0.29***	−0.25***	0.17***	0.11***
	(0.04)	(0.03)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)
Observations	1695	1695	1695	1695	1695	1695	1695	1695
R_2	0.08	0.08	0.18	0.17	0.12	0.12	0.18	0.16
Adjusted R_2	0.06	0.06	0.17	0.15	0.10	0.10	0.16	0.15

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents additional panel regressions, examining the mechanisms by which judicial independence can be attacked. All models use logged oil reserves, and logged oil reserves multiplied by oil market price. In models 1 and 2, the dependent variable is an indicator for the extent to which the regime violates the constitution. In models 3 and 4, the dependent variable is whether the regime purged judges in a given year. In models 5 and 6, the dependent variable is whether the regime publicly attacked the judiciary and/or questioned its legitimacy. In models 7 and 8, the dependent variable is the extent to which the regime complies with court decisions. Country and year fixed effects are included in all models, and standard errors are clustered by country.

1.4 Discussion and Conclusion

Judiciaries in authoritarian governments are a relatively understudied topic. What small scholarship does exist has qualitatively identified a myriad of functions a judiciary can perform for the benefit of the autocrat, but the contradictory nature of these possible functions has received little attention. This chapter takes steps toward filling this gap in the literature by exploring how varying economic contexts affect the incentives faced by autocrats when deciding how much autonomy they will allow their courts. Independent judiciaries can serve as a tool to credibly commitment to protecting property rights, especially useful to autocrats who need to attract private investment. However, the extent to which this relationship generalizes around the world has not yet been studied. This paper contributes to this literature by providing evidence that autocrats with access to oil reserves are less likely to allow an independent judiciary. The presence of oil resources provide the autocrat with a source of non-tax revenue, which can substitute from tax revenue, but at a lower political cost. Therefore, autocrats with access to oil reserves have less need for an independent judiciary, and are less likely to allow one.

This chapter shows that cross-national data on judicial independence and oil reserves is consistent with this theory. When country and year fixed effects are controlled for, oil reserves, which are plausibly exogenous, are negatively correlated with judicial independence. Additionally, multiplying oil reserves by their global market value, to take advantage of exogenous price shocks, also produces a negative result. These results are evidence that there is indeed a resource curse on judicial

independence. More oil tends to lead to a lesser degree of judicial independence. In other words, it is not always the case that autocratic regimes will empower their courts to facilitate a functioning market economy. In this context, the presence of oil wealth alleviates that need, and autocratic regimes are therefore no longer incentivized to allow an independent judiciary.

Because the "true" level of de facto judicial independence is quite difficult to observe directly, it is therefore difficult to ascertain the exact mechanism by which oil reduces judicial independence, or even if the same mechanism is at play in different contexts. Nevertheless, this paper does provide some insight into the specific ways in which judicial independence is threatened in the presence of abundant oil reserves. The abundance of oil reserves is associated with both formal and informal restrictions to judicial independence. Oil wealth appears to incentivize both reductions in the courts' legal authority as well as extrajudicial attacks on the courts.

The theory explored by this paper challenges the notion that authoritarian regimes must necessarily democratize themselves to credibly commit to protecting property rights. Instead, autocrats may establish such a credible commitment simply by empowering the judiciary, which does not require the liberalization of core regime institutions. Resource-poor autocrats do not necessarily need to democratize in order to attract capital; a sufficiently independent judiciary will accomplish that goal with less political cost. Of course, this is not to say that resource-poor autocrats never have an incentive to democratize, nor that there is necessarily an inverse relationship between independent judiciaries and legislatures and/or free elections, for these may arise concurrently for other reasons. Rather, I emphasize that independent judiciaries are a key tool for autocrats to attract capital that does not necessarily require democratization.

The literature on authoritarian politics has so far largely neglected studying the judiciary as a tool of authoritarian control. This chapter contributes to a growing literature that emphasizes the importance of the judiciary to authoritarian politics. While some work has qualitatively explored judiciaries in specific countries, there still does not exist a comprehensive understanding of how judiciaries fit into authoritarian politics. Future work should consider how judiciaries can be leveraged by autocrats to serve their interests, and the conditions that incentivize differing approaches. Additionally, what theories that already exist are in need of empirical cross-national tests, as we still do not yet know the extent to which they generalize outside of the specific countries they were formulated around.

Future work should also explore better ways to measure judicial independence. While the measure employed by this paper is sufficient for purposes of this project, it should be noted that such a broad measure cannot be used to identify the specifics of the relationship between the courts and other institutions.

Chapter 2

The Diverging Effects of Elite Threats on Judicial Independence in Non-Democracies

Abstract

A popular theory for judicial independence, insurance theory, posits that the presence of political competition causes incumbent political leaders to insulate their judiciaries from manipulation, to deny opposition the ability to politicize the courts in the event they take power. However, a number of studies conflict with insurance theory on empirical and theoretical grounds, raising questions of when and why we can expect insurance theory to offer explanatory power for autocracies. I argue that insurance theory can indeed hold in autocracies, but only in autocracies where the risk of a coup d'état is low. In contexts where incumbents have reason to fear coup attempts, insurance theory loses explanatory power, and we observe the reverse relationship between political competition and judicial independence. To empirically test my argument, I use cross-national data on judicial independence, electoral competition, and coup risk. My results show that the presence of competition within the political system is indeed associated with more judicial independence, but the presence of a credible coup threat is associated with less judicial independence. This analysis offers a novel explanation as to why insurance theory fails to explain some autocratic contexts.

A central question of authoritarian politics asks why a rational leader would choose to create institutions with the power to constrain their ability to rule arbitrarily. One subset of this literature studies this question with regards to courts. Why would an authoritarian regime establish independent courts, when those courts will be an obstacle to arbitrary rule? A popular answer to that question is the insurance theory (Ramseyer, 1994; Ginsburg, 2003; Gibler and Randazzo, 2011), which posits that politically vulnerable incumbents strategically insulate courts from politicization, to prevent the courts from becoming a tool to be wielded by opposition. Incumbents rationally sacrifice their control over the courts in the present day, to deny future opposition governments the ability to use courts to impose their own agenda, or even to repress former incumbents (Epperly, 2013). Simply put, insurance theory predicts that when incumbents face high levels of political competition, they will empower their judiciaries in response.

While the argument is intuitive and does have some empirical support, there is nevertheless some conflicting evidence. Popova (2010) and VonDoepp and Ellett (2011) show that, in some cases, political competition appears to lead to less judicial independence, not more.[1] Instead of empowering the judiciary as insurance against a future government under hostile control, it appears that incumbents can be incentivized to maintain a tight grip over the judiciary for use as a political weapon against challengers. In short, because controlled courts can be an effective way to combat opposition, political competition can inhibit the establishment of judicial independence. This is consistent with the conclusions of Aydin (2013), who argues that insurance theory can only function in consolidated democracies, because the non-democratic context amplifies the benefits of a tightly controlled judiciary. However, this is in contradiction with cross-national evidence across all autocracies, showing a positive and significant association between political competition and judicial independence (Epperly, 2017). Why does it appear that some autocracies exhibit the relationship predicted by the insurance theory, while others do not?

What the literature on judicial independence is missing, I argue, is a consideration of ways in which transitions of power actually occur, or at least threaten to occur, in autocracies. Insurance theory relies on two implicit assumptions. First, it assumes that political competition is limited to the electoral arena, leading to the argument that incumbents insulate judiciaries to prevent newly-elected opposition governments from politicizing courts. Second, it assumes that judicial independence is persistent, and will not be reversed by new governments. Insurance is only valuable so long as it is expected to pay out when it is needed. Controlled courts are a useful tool to use against opposition, and so incumbents can only justify sacrificing this tool if they can reasonably expect that the next government will not immediately undermine judicial independence and politicize the courts against them. The problem, however, is that threats to autocratic rule are not limited to opposition parties competing in elections. While elections are common in autocracies today,

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[1]The specific cases discussed by both Popova (2010) and VonDoepp and Ellett (2011) are democracies, but their theoretical logic can apply to any regime type.

coups still do occur and are a real threat. Indeed, mitigating the threat of coups is at the core of much of autocratic institutional design (Boix and Svolik, 2013). This poses a problem for insurance theory because it calls into question the persistence of judicial independence. Coups are necessarily destabilizing events, and new governments in the aftermath of successful coups tend to consolidate power (Sudduth, 2017), which often entails purging institutions of individuals loyal to the old regime, or even restructuring the institutions themselves. Judicial independence cannot be useful insurance if it is unlikely to persist. For this reason, it makes little sense to for incumbents to sacrifice their control of the courts in the short term, in exchange for long term protection that is unlikely to materialize.

In this chapter, I examine the impact of coup risks on the emergence of judicial independence in autocracies. As insurance theory predicts, fear of electoral defeat can encourage incumbents to insulate the judiciary from politicization. This effectively denies future opposition governments the ability to wield the courts as a policy-making tool and/or instrument of repression. However, in autocracies that are prone to coups, judicial independence, I argue, is less likely to persist, and thus fails to function as useful insurance. In other words, because the threat of a coup undermines the ability of judicial independence to function as insurance, we cannot expect political competition in coup-prone autocracies to lead to the emergence of judicial independence. Instead, because controlled courts are useful for policy making and repression, we should expect politically threatened incumbents in coup-prone autocracies to restrict judicial independence, not expand it.

I present evidence that is consistent with my theoretical argument, using cross national data on judicial independence, electoral competition, and coup risk. I estimate a series of OLS, panel, and logistic regressions, showing that the presence of political competition within the political system is indeed associated with more judicial independence, but a heightened risk of a coup d'état is associated with less judicial independence. In country-years where there is a heightened risk of a coup, I observe a lower level of judicial independence, consistent with my theoretical argument that incumbents react in a manner opposite to the prediction of the insurance theory when the political threat they face is of an unconstitutional nature. Furthermore, I find evidence that the coup risk inhibits the relationship between electoral competition and judicial independence.

The main contribution this chapter offers to the literature is an explanation for why the prevalence of elections and electoral competition in autocracies does not necessarily lead to the emergence of judicial independence, despite insurance theory's prediction that it should. I emphasize the real threat of coups in autocracies, and how it can transform the strategic environment for incumbents in such a way that the logic of insurance theory may no longer apply. This chapter also clarifies a crucial assumption that must hold in order for the insurance theory to work. This chapter demonstrates what happens when the assumption is violated, which can explain why some studies find evidence contradicting the insurance theory. The insurance theory holds when we can assume that the level of judicial independence set by the incumbent will persist after their tenure. More broadly speaking, this chapter

suggests that the rise of political competition to an authoritarian regime may not necessarily lead to a liberalization of judicial institutions, but can instead lead to the exact opposite.

2.1 When Political Competition Does and Does Not Lead to Judicial Independence

Arguably the dominant explanation for the emergence of judicial independence, insurance theory posits that judicial independence is the consequence of electorally insecure incumbents hedging their bets (Ramseyer, 1994; Ginsburg, 2003; Randazzo, Gibler and Reid, 2016; Epperly, 2017; Hirschl, 2004). Building off of Landes and Posner (1975), who argued that judiciaries reduce uncertainty and prevent legislative coalitions from reneging on agreements, Ramseyer (1994) argued that judicial independence emerges as a consequence of political competition. According to this reasoning, incumbent governments that perceive heightened risks of losing power to the opposition will strategically empower the judiciary, in order to prevent successors from using courts to attack their interests, or even repress them after their tenure. Indeed, Shen-Bayh (2018) shows that judiciaries are especially effective tools for repressing elite opposition. Normally, a subservient judiciary is an invaluable tool for incumbents to shape policy. However, the prospect of a judiciary subservient to hostile political forces is dangerous enough that incumbents are willing to their sacrifice control over courts to prevent it from occurring. Simply put, politically vulnerable incumbents will forego their control over courts in the present in order to deny the opposition that control in the future. The main empirical expectation is that we should see higher levels of political competition correlate with higher levels of judicial independence.

Insurance theory was initially intended to explain the emergence of judicial independence democratic contexts. Since then, it has been extended to explain judicial independence across all regime types, including autocracies, which in many cases appear to have independent judiciaries not too dissimilar from democracies (Finkel, 2008; Ginsburg and Versteeg, 2014; Leiras, Tuñón and Giraudy, 2015). Epperly (2017) uses cross-national data to show a positive association between political competition and judicial independence in non-democracies, suggesting that insurance theory does have explanatory power in non-democratic contexts. Going further, Epperly (2019) suggests that insurance theory is actually more relevant in autocracies. The reasoning here is that the ability of independent judiciaries to provide insurance for incumbents is especially salient to autocrats, because incumbent autocratic rulers have much more to lose from a political defeat, compared to their democratic counterparts.

Supporting evidence notwithstanding, the literature on insurance theory suffers from an overarching problem. The generalizability and explanatory power of this theory relies, crucially, on an assumption about the *persistence* of judicial indepen-

dence. In order for judicial independence to be effective insurance for incumbents against the possibility of losing office, judicial independence must remain in place after their tenure. If a transition of power occurs, and judicial independence is subsequently violated by the new administration, then judicial independence failed to act as insurance. Relatedly, while there is evidence that judicial independence is typically effective at protecting incumbents post-tenure, there are exceptions. Epperly (2019), in an examination of judiciaries and the post-tenure punishment of defeated incumbents, uses cross-national data to show a defeated incumbent in a country with an independent judiciary is less likely to be punished after leaving office. This association holds in both democracies and autocracies, but with the notable exception of incumbents in autocracies who left office via irregular means (e.g. a coup).

While this evidence does show that judicial independence can indeed function as insurance across regime types, it only applies to democracies and autocracies in which electoral competition is robust and stable. The problem, however, is that elections in autocracies are not always meaningfully competitive, and in many cases do not even exist in the first place (Gandhi and Lust-Okar, 2009; Knutsen, Nygård and Wig, 2017). Furthermore, autocratic governments are particularly prone to falling via extra-institutional means, i.e. coups. In order for an independent judiciary to be reliable insurance for the incumbent, there must be an expectation that the current level of judicial independence will persist after the transition of power occurs. Insurance is only useful insofar as it actually pays out when it is needed. However, when regime opponents successfully oust incumbents via a coup, circumventing the institutional process, it is doubtful that institutions will be a reliable insurance policy. In short, judicial independence can only insure incumbents as long as their successors do not dismantle it immediately after coming to power.

The possibility of a coup is problematic for insurance theory because independent judiciaries do come with drawbacks, some of which are directly related to electoral competition. In some contexts, across regime types, it appears that political competition has led to *less* judicial independence, not more. Popova (2010) shows that political competition in Russia and Ukraine led incumbents to restrict judicial independence. Focusing on electoral democracies, it is argued that political competition magnifies the benefits of subservient judiciaries to the incumbent, and therefore that political competition exerts downward pressure on judicial independence. VonDoepp and Ellett (2011) find an identical relationship in several new democracies in Africa. The explanation here is that incumbents facing threats to their power might sometimes have more of an incentive to manipulate the courts, because a subservient judiciary can be a useful political weapon for suppressing opposition. Aydin (2013) echoes this point, arguing that a politicized judiciary, lacking independence, is a useful tool for incumbents to use against encroaching opposition threats. She argues that judicial independence should be *negatively* associated with judicial independence in all regimes except for consolidated democracies.[2] Lastly, Randazzo, Gibler and Reid

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[2]While the studies cited here are not restricted to non-democracies per se, their theoretical insight is applicable to judicial independence in non-democracies, for the same reasons insurance

(2016) argues that mixed evidence for insurance theory can be explained by variation in regime type and social competition, such as ethnic fractionalization. They argue that political competition does not lead to judicial independence in autocracies, because independent judiciaries are less useful to incumbents in autocracies. In short, incumbents choosing to restrict judicial independence, rather than promoting it, can be a politically advantageous response to growing opposition threats, which runs contrary to the predictions of insurance theory. On one hand, judicial independence can be used by incumbents as insurance in case they lose power. On the other hand, a tightly controlled judiciary can be used as a political weapon to prevent losing power in the first place. This raises questions about when and why the incentive to allow judicial independence prevails over the incentive to restrict it.

The diverging cases of Mexico in the 1990s and present-day Russia provide illustrative examples of this theoretical and empirical problem. The Partido Revolucionario Institucional (PRI) had control of Mexico starting in 1929. However, as the 20th century drew to a close, the PRI's grip over the country waned. By the 1970s, the Partido Acción Nacional (PAN) had gained strength, through support of businessmen frustrated with economic crises. In 1989, a left-wing faction within the PRI splintered off and formed its own party. It was clear that the PRI's dominance over Mexican politics was likely to end, as the largest opposition party was gaining considerable strength, threatening to defeat the PRI in the electoral arena. This eventually did occur in 2000, when the PRI's candidate for president was defeated at the ballot box. In the context of a growing electoral threat, Ernesto Zedillo, the last PRI president of that era, introduced a judicial reform package in 1994, which drastically increased the independence of the Mexican judiciary. Zedillo's decision to loosen control of the courts in the face of an increased opposition threat is cited as an example of insurance theory in action (Finkel, 2005, 2008).

Russia followed a different path in the early 1990s. Throughout the year of 1992, one year after the fall of the Soviet Union, newly elected Russian President Boris Yeltsin was faced with intensifying political opposition, which blamed the 1992 economic crisis on his economic reform package, implemented earlier that year. In late 1992, the Russian Parliament refused to confirm Yegor Gaidar, supported by Yeltsin, as prime minister, due to his role in the controversial economic reform package. In 1993, Parliament voted to weaken the power of Yeltsin, and then nearly voting to impeach him. This conflict between Yeltsin and his opposition, known as the 1993 Constitutional Crisis, reached its peak when Yeltsin ordered the dissolution of Parliament, and then ordered the military to storm Parliament two weeks later. The Constitutional Court of the Russian Federation had repeatedly condemned Yeltsin's actions throughout the crisis, but was dissolved by Yeltsin in the autumn of 1993. As (Randazzo, Gibler and Reid, 2016) point out, this case poses a challenge to insurance theory, as the presence of political competition did not lead to an independent

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theory is applicable, and perhaps even more plausibly so in this case. If an encroaching opposition threat can sometimes incentivize incumbents in democracies to use courts as political tools, there is little reason to doubt that many autocratic incumbents would not also do the same.

judiciary in Russia.

The contrast between Mexico and Russia in the 1990s illustrate a problem with the conventional explanation for judicial independence, insurance theory. Zedillo in Mexico exemplified insurance theory, responding to increased political competition by strengthening judicial independence. In Mexico, while some degree of political violence certainly exists, Zedillo's opposition primarily challenged him through the country's electoral system, and did successfully defeat his party in that arena. Zedillo correctly assumed that the opposition takeover would not endanger the continuity of the existing judiciary, which would retain its independence after his tenure and check the power of the new executive. For that reason, sacrificing his control over the courts made sense. However, Yeltsin's opposition was not so contained within the Russian electoral system. Despite also facing powerful political competition, Yeltsin did not strengthen judicial independence, but repeatedly disregarded it. Yeltsin ignored the Constitutional Court's declarations that his actions were unconstitutional, refused to recognize a number of the Court's decisions, and eventually dissolved the Court entirely. What makes the case of Russia different from Mexico, I argue, is the nature of the threat environment faced by either incumbent. In 1991, during the fall of the Soviet Union and the prelude to the 1993 Constitutional Crisis, high-ranking military and civilian officials within the Communist Party attempted a coup against Soviet President Mikhail Gorbachev and newly elected Russian President Boris Yeltsin. The coup attempt had failed to capture Yeltsin, and subsequently collapsed, but nevertheless was clearly indicative of a threat environment of heightened instability. In the constitutional crisis, the very legitimacy of the institutions themselves was at stake. In such an unstable and coup-prone threat environment, Yeltsin could not count on an independent judiciary to protect him after his tenure in office. In contrast, Mexico had not experienced a coup since 1920, nearly a decade before the PRI was founded.

What the literature on judicial independence as insurance is missing, I argue, is that it fails to take into account variation in the likelihood that this insurance actually pays out. When incumbents are evaluating the usefulness of judicial independence as insurance, they must consider not only the likelihood that they will need insurance, but also the likelihood that the insurance will still be there when it is needed. So far, the existing literature emphasizes the conditions under which incumbents need insurance, while not addressing the conditions under which insurance can actually work. An institution can only function as insurance if that institution persists beyond the tenure of the incumbent, not altered in any way that could compromise its ability to provide insurance. Insurance theory relies on this critical assumption. The problem, however, is that there are scenarios where this assumption does not hold. Political institutions do change, and in times of crisis they can change rapidly. Literature on coups is enlightening in this regard. While institutions in non-democracies are intended to prevent coups from occurring (Boix and Svolik, 2013; Woo and Conrad, 2019), coups nevertheless still occur (Svolik, 2012), and many of these coups are motivated by a desire to overthrow not just incumbent leaders, but the political institutions themselves (Kim and Sudduth, 2021). In the

immediate aftermath of a successful coup, new post-coup regimes have both an opportunity and incentive to consolidate power, and tend to do so (Sudduth, 2017). This is consistent with evidence, mentioned above, that judicial independence fails to protect incumbents who lose office in coups (Epperly, 2019).

Like previous literature, I argue that incumbents allow or restrict judicial independence as a strategic decision, which is shaped by their perceptions of their threat environment. Judicial systems, either controlled or independent, each provide a set of useful functions for authoritarian rule. On one hand, controlled judicial systems can be used by incumbents as both a policy-making tool and an instrument of repression against political opposition. On the other hand, establishing judicial independence can deny a future opposition government those powers. Establishing judicial independence is necessarily costly for incumbents, because it necessitates sacrificing the courts as a tool for policy-making and/or repression. Therefore, whether judicial independence is politically advantageous to incumbents is determined by their threat environment. However, unlike previous literature, I emphasize how the threat of a coup drastically changes the incentives faced by incumbents regarding the courts, so much so that the presence of such a threat can negate the logic of insurance theory. This, in turn, can explain why incumbents who face powerful electoral competition choose to restrict judicial independence, contrary to the prediction of insurance theory. In coup-prone contexts, where the continuity of the institutions themselves is at risk, it is doubtful that institutional protections will be useful insurance for incumbents. If incumbents have sufficient reason to suspect that a move towards judicial independence will subsequently be reversed by the next regime's attempts to consolidate power, then judicial independence cannot be relied upon as insurance. Insurance of any kind is an investment, and it makes little sense to invest into an institution that is at high risk of losing its ability to offer a return on that investment.

Elite political opposition can challenge incumbents through two general pathways.[3] Opposition can either seek to unseat incumbents via institutional means, i.e. electorally, or via extra-institutional means, i.e. a coup. Crucially, the former type of opposition threat does not necessarily threaten the political institutions themselves, whereas the latter does. These two types of opposition threats are not mutually exclusive, and so incumbents may face both simultaneously. Embattled autocrats may find themselves challenged by opposition parties in the legislature, while also facing a coup threat by military leaders. Incumbents, who I assume prefer to minimize both policy losses and attacks to their person and interests, must determine which level of judicial independence to set. This decision is made in anticipation of not just the likelihood of being removed by office, but also the mechanism by which they will be removed.

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[3]See Chapter 3 for discussion of mass-based opposition.

2.1.1 Electoral Competition

When incumbents are faced with primarily institutional (electoral) threats, and are likely to lose power in this manner, judicial independent provides a useful defense for disempowered incumbents, as the conventional insurance logic suggests. While a controlled judicial system can be used by incumbents to implement policy and repress opponents, it can also be used by opposition governments for those same purposes. Critically, incumbents losing power electorally is unlikely to threaten or destabilize political institutions, the judiciary included. The level of judicial independence that is determined by incumbents before they lose power is unlikely to be violated after they lose power, and will thus constrain the rule of the new opposition-controlled regime. For these reasons, when incumbents anticipate losing power electorally, expanding judicial independence is their likely response. This relationship between electoral competition and judicial independence is the conventional logic of insurance theory, and thus constitutes the first hypothesis.

Hypothesis 1: *Electoral competition is positively associated with judicial independence.*

2.1.2 Coup Threats

Conversely, when incumbents are faced with extra-institutional (coup) threats, and are likely to lose power in this manner, judicial independence does *not* provide a useful defense for disempowered incumbents. Judicial independence as insurance is intended to protect former incumbents by imposing a barrier that prevents new regimes from politicizing the judiciaries. However, independent judiciaries can only protect former incumbents in this way if they are to remain independent after incumbents' tenures, which is unlikely to be the case in the event of a successful coup. For this reason judicial independence cannot function as insurance after a coup, and therefore incumbents have little incentive to sacrifice their control over the courts to establish it. Instead, incumbents are incentivized to retain their control over the courts, and to use them against the opposition, in order to prevent loss of power. In short, the possibility of a successful coup undermines the ability of independent judiciaries to function as insurance, and therefore incumbents are more likely to respond to coup threats by reducing judicial independence. This constitutes my second hypothesis.

Hypothesis 2: *Coup risk is negatively associated with judicial independence.*

Lastly, and most importantly, electoral competition and coup threats are not mutually exclusive, and incumbents can be challenged with both simultaneously. However, incumbents cannot choose to establish judicial independence to address the former, while simultaneously keeping courts controlled to deal with the latter. In these circumstances where both threats exist concurrently, I argue that the coup

threat will dominate incumbents' decision-making calculus. Because judicial independence is not likely to survive a successful coup attempt, the likelihood of a coup *negates* the usefulness of judicial independence as insurance. Even if incumbents expect to be unseated by electoral competition in the near future, there is still little incentive to establish judicial independence when it will likely be undone in the wake of a coup. For this reason, when incumbents anticipate a high likelihood of a coup, they are much less likely to establish judicial independence, regardless of the level of electoral competition. This constitutes this paper's final hypothesis.

Hypothesis 3: *When incumbents face coup threats, the association between electoral competition and judicial independence weakens.*

In sum, my core argument is that judicial independence is unlikely to emerge in non-democracies where coups are likely to occur, regardless of the whether there is electoral competition. The logic of insurance theory only holds in autocracies when the political competition seeks to take power in a constitutional manner, without threatening the continuity of the political system itself. Judicial independence can only function as insurance if incumbents can reasonably expect that judicial independence will persist after their tenure ends. If competition is concentrated within the political system, then incumbents can reasonably expect that judicial independence will in fact be stable. It is only under these conditions that judicial independence can function as reliable insurance. However, in conditions where coups are likely, incumbents cannot make this assumption. Here, it is uncertain whether judicial independence will persist. For this reason, incumbents are no longer incentivized to maintain an independent judiciary. Instead, incumbents are incentivized to make use of the benefits of a controlled judiciary, which can be used not only to advance policy interests, but also repress opponents, a function that is especially useful when the opposition threat is greater. Most importantly, when the threat of a coup and electoral competition exist simultaneously, the former dominates incumbents' decision-making calculus, because the former negates the usefulness of judicial independence as insurance against the latter. Coup threats not only encourage inhibiting judicial independence, they also negate the incentive that electoral competition provides to do otherwise. My main expectation is judicial independence is unlikely to emerge in conditions where coups are likely, regardless of the competitiveness of elections.

2.2 Data and Methods

To test my hypotheses, I rely on a number of cross-national data sets. As a measure of judicial independence, my main dependent variable, I utilize a latent measure using Bayesian Item Response Theory constructed by Linzer and Staton (2015). Conceptually, I am seeking to measure the extent to which judiciaries are independent in practice, which does not necessarily correspond to formal, legal protections for judicial independence (Ríos-Figueroa and Staton, 2012; Melton and Ginsburg,

2014). However, this quantity is not directly observable, so I therefore rely on Linzer and Staton's latent measure. This model uses a handful of indicators closely related to *de facto* judicial independence to generate a latent measure of *de facto* judicial independence for each country-year. These indicators include constraints on executive power, the ratio of non-currency money to the total money supply, several measures using expert opinion on judicial independence, and various measures of formal judicial independence.

As a measure of institutional political competition, my first independent variable, I rely on the POLCON data set Henisz (2002, 2017), which provides an index that measures political competition as the number of actors within a political system with independent veto power, the extent to which the legislature is in party alignment with the executive, and general fragmentation in the legislature. This measure is able to capture the extent to which the executive faces a powerful opposition arising from within political institutions, without directly capturing threats from outside the political system. This data set encompasses all regime types, ranging from the year 1800 to 2016. However, because data for observations in the 20th century and beyond are somewhat more reliable, for purposes of this project I restrict my analysis only to autocracies in the 20th century to the present.

As a measure of coup threat, my second independent variable, I borrow data from Sudduth (2017). Coup threat is defined here as the likelihood of a coup attempt occurring. However, because the true likelihood is not directly observable, Sudduth instead estimates a latent measure of coup risk, using indicators intended to capture the willingness and ability of the military to orchestrate a coup (Powell, 2014; Bell and Sudduth, 2017). Sudduth constructs a latent measure of coup risk, constructed using indicators for economic performance, regime type, and the number of years since the most recent coup. Countries that are experiencing poor economic performance, are military regimes, and/or have previously experienced coups in the recent past, are more likely to experience another coup. Notably, my theory does not necessarily require that the military be responsible for, nor an active participant in, a coup attempt. However, even a coup attempt orchestrated by civilian opposition relies to some degree on the military's degree of support for the regime. When the military is opposed to the incumbent, or is at least divided in its support, then a coup attempt by civilian plotters is more likely to succeed.

I also include several covariates to control for additional factors that might affect judicial independence. Some evidence suggests that authoritarian regimes can use independent judiciaries as a tool to monitor state agents, to mitigate the principle-agent problem inherent to bureaucracies (Moustafa, 2007; Ginsburg and Moustafa, 2008). To account for the effect of large bureaucracies on judicial independence, I control for the portion of each countries' GDP that corresponds to government spending, which I use as a proxy for bureaucracy size. The occurrence of military conflict has been known to be related to executive overreach, which often manifests as the executive overriding the judiciary. During such international military conflicts, courts are faced with pressure to defer to the executive branch, which may indicate a threat to judicial independence (Reinhardt, 2006). To control for this phenomenon,

I include a binary indicator which accounts for whether each country was involved in a military conflict with another country during that year. Lastly, given that one core function of courts is to adjudicate economic disputes, it stands to reason that a larger and highly complex economy, corresponding with an increased demand for property rights protection, might create pressure on the government to allow a more independent judiciary. To control for the level of economic development, I include logged GDP per capita as a covariate in my models.

To test my hypotheses, I run a series of OLS, panel, and logistic regressions. In each model, the unit of analysis is the country-year. Equation (1) represents my OLS regressions, with judicial independence as the dependent variable, and electoral competition and coup risk as independent variables. All other covariates are contained within the matrix X_{it}.

$$JI_{i,t} = \beta_1 * POLCON_{i,t} + \beta_2 * COUP_{i,t} + \beta_X * X_{i,t} + \alpha_i + \gamma_t + \epsilon_{i,t} \tag{2.1}$$

Equation (2) represents my panel regressions, which differ from the OLS regressions only in their inclusion of country α_i and year γ_t fixed effects.

$$JI_{i,t} = \beta_1 * POLCON_{i,t} + \beta_2 * COUP_{i,t} + \beta_X * X_{i,t} + \alpha_i + \gamma_t + \eta_i + \theta_t + \epsilon_{i,t} \tag{2.2}$$

Lastly, Equation (3) represents my logistic regressions, with my dependent variable converted to a binary indicator of whether a decrease of judicial independence occurred in a given country-year unit. I also estimate variants of all three equations that include a term capturing the interaction between electoral competition and coup risk. The inclusion of interaction terms allows a test of Hypothesis 3, which predicts that the relationship between institutional competition and judicial independence is weakened by the presence of a coup threat. Theoretically, I expect that a strong interaction between institutional competition and coup threats, with the latter significantly diminishing the effect of the former on judicial independence.

$$logit[(Decrease/Increase\,in\,JI)]_{i,t} = \beta_1 * POLCON_{i,t} + \beta_2 * COUP_{i,t} + \\ \beta_X * X_{i,t} + \alpha_i + \gamma_t + \epsilon_{i,t} \tag{2.3}$$

2.3 Results

2.3.1 Main Results

Table 2.1 presents a series of OLS and panel regressions, with the latter containing country and year fixed effects, on all autocracies from 1948 to 2010. All models report regressions estimating the relationship between judicial independence and coup risk, as well as electoral competition, in the expected directions. Models 1 to 4 esti-

mate pooled OLS models, while 5 to 8 estimate panel regressions. Model 1 contains only coup risk as a main independent variable, and reports a negative and statistically significant relationship between coup risk and judicial independence, consistent with my second hypothesis. In country-year units where the likelihood of a coup occurring is higher, we observe a level judicial independence that is .27 standard deviations lower, consistent with the expectation that incumbents prefer a lower level of judicial independence when the threat of violent overthrow is high. This model is contrasted with that of model 2, which reports a positive and significant relationship between its key independent variable, electoral competition, and judicial independence. Electoral competition is associated with a level of judicial independence that is .48 standard deviations higher. This finding is consistent with my first two hypotheses. In country-year units with higher level of electoral competition, we observe a higher level of judicial independence, consistent with the expectation that incumbents will prefer a higher level of judicial independence when the threat of electoral defeat is high. Models 5 and 6 are identical to 1 and 2, except that they include country and year fixed effects. The results are largely unchanged.

Models 3 and 4 estimates the effects of both coup risk and electoral competition on judicial independence, reporting nearly identical results to models 1 and 2. Model 4 also includes the interaction between coup attempts and institutional competition, and reports a negative and statistically significant relationship with formal judicial independence. The inclusion of country and year fixed effects in models 7 and 8 once again produces nearly identical results. This is consistent with Hypothesis 3, which predicts that the relationship between institutional competition and formal judicial independence varies when there is a coup threat. Substantively, the negative direction of this coefficient suggests that the effect of electoral competition on judicial independence is significantly lessened when there is a coup threat, precisely what is predicted by my third hypothesis. Substantively, while electoral competition otherwise predicts an increase in judicial independence by a magnitude of .50 standard deviations, coup risk reduces the magnitude of that relationship by .16 standard deviations. In short, electoral competition does predict judicial independence, but significantly less so in coup-prone contexts.

To further illustrate my test of Hypothesis 3, I re-estimated model 2 in Table 2.1 after stratifying my data by the level of coup risk. After standardizing the coup risk variable, I split the data set into two subsets, with one containing only country-year units with a corresponding level of coup risk that is above the mean, and the other containing all other country-units. Then, I regressed electoral competition against judicial independence in both subsets. Figure 2.1 graphically illustrates the results of this analysis. The relationship between electoral competition and judicial independence is much weaker when coup risk is higher. The accompanying coefficient here is nearly half the magnitude of the coefficient representing the same relationship under conditions of low coup risk. Using a quick test to compare regression coefficients between models, provided by Clogg, Petkova and Haritou (1995), the coefficient of 0.50 in panel (a) of Figure 2.1 is in fact statistically different from the coefficient of 0.27 in panel (b) of Figure 2.1, significant at an α of 0.01. Notably, in panel (b), which

Table 2.1: Political Competition and JI OLS and Panel Regressions

	Dependent variable: Judicial Independence							
	Pooled OLS				Fixed Effects			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Coup Risk	−0.27***		−0.22***	−0.32***	−0.25***		−0.21***	−0.31***
	(0.01)		(0.01)	(0.02)	(0.01)		(0.01)	(0.02)
Electoral Competition		0.48***	0.42***	0.48***		0.50***	0.44***	0.50***
		(0.02)	(0.02)	(0.03)		(0.04)	(0.03)	(0.04)
Bureaucracy Size	0.08	0.28***	0.23***	0.28***	0.05	0.21***	0.17***	0.23***
	(0.07)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.05)	(0.05)
International Conflict	0.04	0.11**	0.05	0.05	0.04	0.10**	0.04	0.03
	(0.06)	(0.04)	(0.05)	(0.04)	(0.04)	(0.03)	(0.03)	(0.03)
Logged GDP Per Capita	0.08***	0.12***	0.07***	0.06***	0.08***	0.12***	0.07***	0.07***
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
Coup Risk * Elect. Comp.				−0.15***				−0.16***
				(0.03)				(0.02)
Observations	2652	3010	2643	2643	2652	3010	2643	2643
R_2	0.17	0.31	0.38	0.40	0.16	0.31	0.37	0.39
Adjusted R_2	0.17	0.31	0.40	0.39	0.14	0.30	0.36	0.38

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents OLS and panel regressions, testing Hypotheses 1 and 2. Models 1-4 are pooled OLS, while 5-8 are panel regressions with country and year fixed effects. The first independent variable, *Coup Risk*, indicates estimated risk of a coup occurring in a given year. The second independent variable, *Electoral Competition*, measures the extent to which the executive's political party faces competition within the country's political institutions. Country and year fixed effects are included for all models, and standard errors are clustered by country.

is limited to country-year units where coup risk is high, the confidence interval for the relationship between electoral competition and judicial independence never fully crosses zero. This evidence strongly suggests that the positive relationship between electoral competition and judicial independence effectively disappears when the risk of a coup is high, consisten with my expectations.

While the evidence provided thus far provides support for all three of my hypotheses, the evidence for Hypothesis 3 is worth discussing in more detail. The interaction terms in models 4 and 8 of Table 2.1 generate coefficients that are in the expected direction, but it is noteworthy that the magnitude is not sufficient to negate the relationship between electoral competition and judicial independence. In other words, while the presence of a high coup risk does indeed weaken the relationship between electoral competition and judicial independence, the relationship does not disappear entirely. This finding is replicated in Figure 2.1. The relationship between electoral competition and judicial independence is much weaker in coup-prone contexts. The magnitude of the relationship is nearly halved, while the confidence interval is much larger. However, this relationship still reaches statistical significance, even in when coup risk is high. Nevertheless, while it appears that electoral competition still predicts judicial independence in any context, the relationship is significantly weaker when coup risk is high, which is still moderately consistent with Hypothesis 3.

For a further test this paper's main empirical prediction, I ran a series of logistic regressions. I transformed my dependent variable, judicial independence, to a binary indicator of whether a decrease (increase) in judicial independence occurred in a
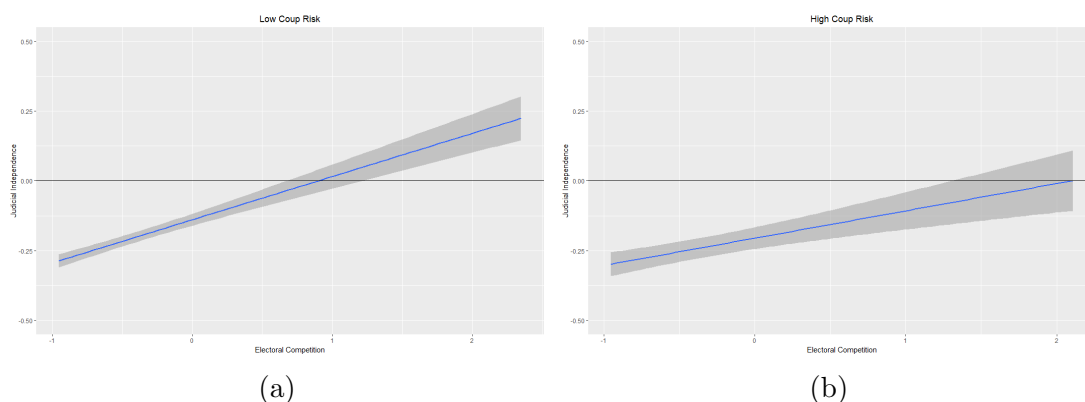
(a)   (b)

Figure 2.1: Electoral Competition and Judicial Independence OLS Under High/Low Coup Risk

This figure plots the relationship between electoral competition and judicial independence, but with the data stratified by the level of coup risk. On the left, the data is limited to country-year units with a corresponding level of coup-risk that is below the global mean. On the right, the data is limited to country-year units with a corresponding level of coup-risk that is above the global mean.

given country-year unit. This test estimates the probability of a decrease (increase) of judicial independence as a function of electoral competition and coup risk. Table 2.2 presents the results of this test. For models 1 to 4, the dependent variable is a binary indicator for decreases in judicial independence, and for models 5 to 8, the dependent variable is a binary indicator for increases.[4]

Consistent with Hypothesis 2, the higher levels of coup risk are associated with a higher (lower) probability of a decrease (increase) in judicial independence. Compared to country-years with a lower level of coup risk, those with a high coup risk are approximately 26% more (less) likely to experience a decrease (increase) in judicial independence. Conversely, in models 1, 2, and 3, as well as their counterparts 5, 6, and 7, the coefficient for electoral competition fails to achieve statistical significance. Electoral competition does not appear to predict changes judicial independence. This is inconsistent with Hypothesis 1 and the conventional logic for insurance theory, which suggests that judicial independence emerges in response to electoral competition. Most interestingly, the inclusion of an interaction effect between coup risk and electoral competition in models 4 and 8 causes the coefficient for coup risk to lose its significance, while simultaneously producing a significant coefficient for electoral competition. However, the coefficient for electoral competition in these models has a sign that is opposite to what is expected. Here, electoral competition appears to be associated with a higher (lower) likelihood of a decrease (increase) in judicial independence. It is possible that this result could be driven by multicollinearity, as the variance inflation factor for coup risk and its interaction with electoral competi-

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[4]Functionally, the last four models are nearly identical to the first, but they are nevertheless included for ease of interpretation.

Table 2.2: Political Competition and JI Logistic Regressions

| | Dependent variable: | | | | | | | |
| | JI Decrease | | | | JI Increase | | | |
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Coup Risk	**0.26*****		**0.27*****	0.08	**−0.26*****		**−0.27*****	−0.07
	(0.07)		(0.07)	(0.10)	(0.07)		(0.07)	(0.10)
Electoral Competition		0.05	0.08	**0.19***		−0.03	−0.06	**−0.17***
		(0.07)	(0.07)	(0.08)		(0.07)	(0.07)	(0.08)
Bureaucracy Size	1.07***	1.37***	1.09***	1.18***	−1.05**	−1.34***	−1.06**	−1.15***
	(0.32)	(0.31)	(0.32)	(0.33)	(0.32)	(0.31)	(0.32)	(0.33)
International Conflict	0.41*	0.29	0.41*	0.41*	−0.42**	−0.29*	−0.42**	−0.42**
	(0.16)	(0.15)	(0.16)	(0.16)	(0.16)	(0.15)	(0.16)	(0.16)
Logged GDP Per Capita	−0.17***	−0.26***	−0.18***	−0.18***	0.20***	0.28***	0.20***	0.20***
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
Coup Risk * Elect. Comp.				**−0.29****				**0.29****
				(0.11)				(0.11)
Constant	0.54	1.37***	0.59	0.63	−0.76	−1.57***	−0.79	−0.84
	(0.42)	(0.38)	(0.43)	(0.43)	(0.42)	(0.38)	(0.43)	(0.43)
Observations	2652	3010	2643	2643	2652	3010	2643	2643
Log Likelihood	−1712.61	1943.13	−1711.31	−1707.30	-1722.29	-1953.75	-1721.31	-1717.17
AIC	3435.22	3896.25	3434.62	3428.59	3454.58	3917.50	3454.62	3448.33

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents a series of panel logistic regressions, providing an additional test of Hypotheses 1 and 2. For models 1-4, the dependent variable is binary indicator for decreases in judicial independence. For models 5-8, the dependent variable is a binary indicator for increases. The first independent variable, *Coup Risk*, indicates estimated risk of a coup occurring in a given year. The second independent variable, *Electoral Competition*, measures the extent to which the executive's political party faces competition within the country's political institutions. Country and year fixed effects are included for all models, and standard errors are clustered by country.

tion is 2.5 and 2.7, respectively, double that of all other variables in the model. In relation to this peculiar result, the coefficient for the interaction between coup risk and judicial independence appears to be more in line with expectations. When predicting the probability of a decrease in judicial independence, the coefficient of the interaction term is negative and significant, suggesting that the positive association between electoral competition and judicial independence is significantly weakened by the presence of a high coup risk. It is also noteworthy that the magnitude of the coefficient of the interaction term is much larger than the coefficient electoral competition alone, with the former predicting a decrease of 0.29% probability of decreasing judicial independence, and the latter predicting an increase of 0.19%.

To illustrate this finding, I re-estimated Model 2 in Table 2.2 after stratifying the data along high and low coup risk. Here, the cutoff point was set at the mean of coup risk. That is, the first model was estimated with data limited only to country-year units with a corresponding level of coup risk that is below the mean, and the second model was estimated with all other units. Figure 2.2 presents a logistic density graph, which plots the expected probability of an increase in judicial independence, for each country-year unit, as a function of electoral competition and covariates. When coup risk is low, the expected mean probability of an increase in judicial independence is approximately 0.65%. Conversely, when coup risk is high, the mean probability shrinks to 0.58%. Computing a difference of means test indicates that these two
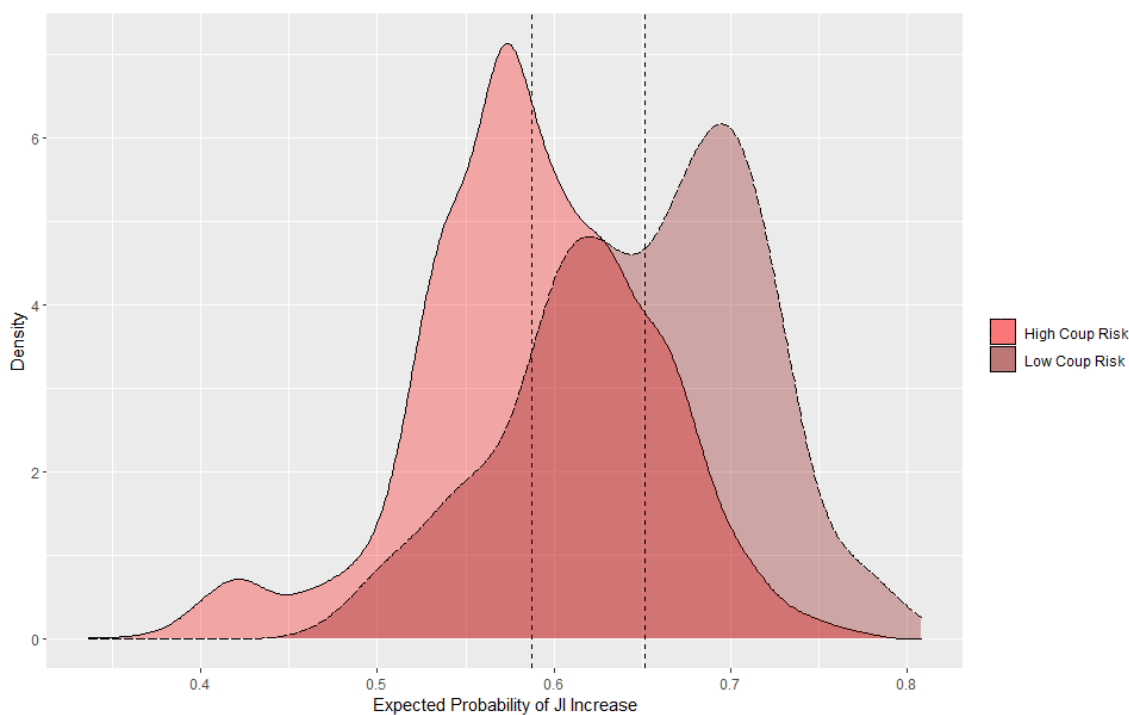
Figure 2.2: Electoral Competition and Judicial Independence Logit Under High/Low Coup Risk

This figure displays two overlayed logistic density plots for the probability of any increase of judicial independence occuring. The data was stratified by coup risk. The darker red plot is a logistic density plot using estimated using data that was limited only to the country-year units with a corresponding level of coup risk that was below the global mean, while the lighter red plot was estimated using data with coup risk levels above the global mean.

probability distributions are statistically different, satisfying an α of 0.01. However, this result is not robust to moving the cutoff point beyond 0.5 standard deviations above the mean.

Regarding the covariates, all coefficients for OLS and panel regression models in Table 2.1 have the expected signs. Bureaucracy size, international conflict, and GDP per capita all positively predict judicial independence, consistent with expectations. However, coefficients for logistic regression models in Table 2.2 are not entirely unsurprising. Specifically, bureaucracy size appears to positively predict a higher probability of decreases in judicial independence. While a more thorough analysis of the relationships between bureaucratic capacity and judicial independence are beyond the scope of this paper, it is possible that countries in which bureaucratic capacity is weak have little need to use courts to regulate them, whereas a growth in capacity makes bureaucracies more salient to autocratic governments, thus making it prudent to control them vis-à-vis the courts. This surprising result notwithstanding, other covariates in Table 2.2 have expected signs. International conflict and GDP

Table 2.3: Mechanisms of Judicial Change

	Dependent variable:							
	Formal Reform		Judicial Purges		Court Packing		Compliance	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Coup Risk	−0.16***		0.20***		0.21***		−0.33***	
	(0.03)		(0.03)		(0.04)		(0.03)	
Electoral Competition		0.20***		−0.39***		−0.13***		0.51***
		(0.03)		(0.02)		(0.04)		(0.04)
Bureaucracy Size	1.27***	0.91***	0.72***	0.57***	1.27***	1.04***	0.80***	0.54**
	(0.15)	(0.12)	(0.13)	(0.12)	(0.13)	(0.11)	(0.22)	(0.18)
International Conflict	−0.56***	−0.43***	−0.62***	−0.45***	−0.34***	−0.16*	−0.22**	−0.09
	(0.09)	(0.09)	(0.07)	(0.08)	(0.08)	(0.07)	(0.08)	(0.07)
Logged GDP Per Capita	−0.05**	−0.06***	0.19***	0.22***	0.14***	0.18***	0.17***	0.20***
	(0.02)	(0.01)	(0.02)	(0.02)	(0.02)	(0.02)	(0.01)	(0.01)
Observations	2652	3010	2652	3010	2652	3010	2652	3010
R_2	0.04	0.03	0.04	0.07	0.05	0.03	0.07	0.08
Adjusted R_2	0.02	0.01	0.02	0.06	0.04	0.02	0.05	0.07

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents additional panel regressions, examining possible mechanisms by which judicial independence can be changed in response to elite opposition threats. Models 1, 3, 5, and 7 regress coup risk against variables measuring formal changes to judicial independence, purges of judges, court packing, and the extent to which the regime complies with court decisions, respectively. Models 2, 4, 6, and 8 regress electoral competition against the same dependent variables. Country and year fixed effects are included for all models, and standard errors are clustered by country.

per capita both predict reductions in judicial independence.

2.3.2 Types of Restrictions on Judicial Independence

While the analyses above provide general evidence that judicial independence is responsive to both electoral competition and coup risk, in conflicting directions, these analyses rely on a latent measure of judicial independence, and thus preclude an analysis of the specific ways in which judicial independence can be expanded or curtailed. As discussed by Linzer and Staton (2015) in the paper accompanying their data set, judicial independence can be conceptualized as *de jure* and *de facto* independence, with the former referring specifically to formal protections of judicial independence that are codified into law, and the latter referring to judicial independence being respected in practice. However, *de jure* and *de facto* are not necessarily strongly correlated with each other. In some cases, governments may openly violate existing formal protections for judicial independence, leading to a curtailing of judicial independence in practice, without any formal changes made (Taylor, 2014). Nevertheless, *de jure* independence is not entirely useless, and can be constraining in some cases. According to Melton and Ginsburg (2014), the only de jure measures that meaningfully enhance judicial independence are rules governing the selection and removal of justices.

Table 2.3 explores the mechanisms by which judicia independence might be reshaped by autocratic regimes in the face of a high coup risk and/or electoral com-

petition. Four mechanisms are considered. The variables used are formal reform, judicial purges, court packing, and compliance, all borrowed from the V-Dem data set (Coppedge and Wilson, 2017).[5] Models 1 and 2 estimate the relationship between coup risk and electoral competition, respectively, and the likelihood of formal pro-indpendence reform to the judiciary. Consistent with expectations, high coup risk is negatively associated with the likelihood of formal independence being expanded, while electoral competition is positively associated. Models 3 and 4 estimate the relationship between coup risk and electoral competition, respectively, and the likelihood of judges being purged from the judiciary. Consistent with my expectations, high coup risk is positively associated with a greater likelihood of judges being purged form the judiciary, while electoral competition is negatively associated. Models 5 and 6 estimate the relationship between coup risk and electoral competition, respectively, and the likelihood of politically-motivated court-packing occurring. Consistent with my expectations, high coup risk is positively associated with the likelihood of court-packing, while electoral competition is negatively associated. Lastly, models 7 and 8 estimate the relationship between coup risk and electoral competition, respectively, and the extent to which the regime complies with court decisions. Also consistent with my expectations, high coup risk is negatively associated with compliance, while electoral competition is positively associated.

All the models in table 2.3 supplement my main argument by showing that the specific ways in which autocratic regimes respond to elite political threats vis-à-vis the judiciary. These results suggest that both *de jure* and *de facto* changes to judicial independence occur in response to elite political threats. Incumbent regimes seem to respond to a high coup risk by reducing the level of formal judicial independence, while also attacking the judiciary in more informal ways, like refusing to comply with court decisions. Conversely, incumbent regimes appear to respond electoral competition by increasing the level of formal judicial independence, while also refraining from attacking the judiciary in in formal ways.

2.3.3 Post-Coup Governments and Judicial Independence

The above analysis does rest on the assumption that successful coups do in fact lead to infringements on judicial independence. Indeed, literature on the aftermath of coups does point to a pattern of instability and attempts to consolidate power, which suggests that judicial independence would also not be safe in such a context (Sudduth, 2017; Easton and Siverson, 2018). However, as an addendum to this paper's main analysis, I provide a more direct test of this assumption. I estimate a series of panel regressions, with judicial independence as the dependent variable. As my main independent variable, instead of latent coup risk, I use a binary indicator of whether a successful coup occurred in the last 1, 3, or 5 years. Country and year fixed effects are included. Figure 2.3 plots the coefficients of the resulting models.

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[5]In the original data set, both the 'judicial purges' and 'court packing' are coded such that high values indicate the absence of purges or packing, while low values indicate a higer frequency of purges or packing. For ease of interpretation, I reverse-coded these variables in my own models.
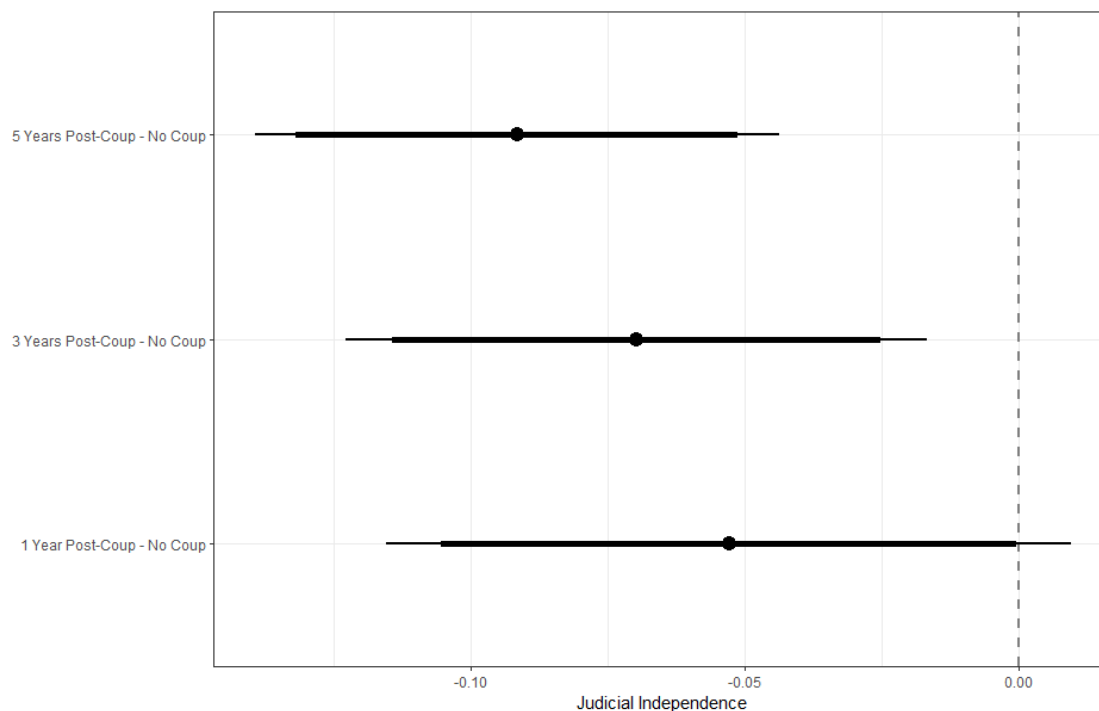
Figure 2.3: Judicial Independence in Post-Coup Governments

This figure plots the coefficients for panel regression models that estimate the relationship between the recent occurrence of coups and subsequent levels of judicial independence. The same panel regression was estimated three times, with each model differing only in where the cut-off point for 'recent' coups was set, at 1 year, 3 years, and 5 years. Both country and year fixed effects were included, and standard errors were clustered by country.

As expected, country-year units in which a successful coup occurred, do in fact experience a lower level of judicial independence. Coefficients are negative and significant at $\alpha = 0.05$. However, the magnitude of the effect is most pronounced a when the Post-Coup variable is set to include country-years that experienced coups within the last 5 years, compared to 3 and 1 years. The most likely cause of this result is the fact that the impact of coups on judicial independence does persist longer than just one year. For this reason, limiting an operationalization of Post-Coup to only one year would leave a considerable number of country-year units that are in fact still experiencing the aftermath of a coup, but are considered not to be. This would inevitably bias the estimated effects towards zero. Nevertheless, a significant relationship still appears, offering strong evidence that post-coup governments tend to not respect judicial independence.

2.4   Discussion and Conclusion

This article argues that insurance theory can apply to autocracies, but only if a certain condition is met. The political competition must be seeking to take power by constitutional means, working squarely within the confines of the existing political system. In this context, we can expect incumbents to politically insulate their judiciaries by allowing them a significant degree of independence. That way, in the event opposition does take power, it will be much more difficult for opposition to utilize judiciaries as a policy-making tool and/or instrument of repression. The incumbent correctly assumes that any level of judicial independence set today will persist after their tenure ends. However, this all changes when the risk of a coup is high. When incumbents anticipate political opposition seeking to unseat them through unconstitutional means (i.e. a coup), the relationship hypothesized by the insurance theory weakens. When opposition takes power through a coup, the incumbent cannot expect that the current level of judicial independence will persist after this takeover, rendering it useless as an insurance policy. In such cases, we observe a less independent judiciary to be associated with the threat of violent overthrow.

The evidence presented here is largely consistent with this theoretical argument. Political competition within the political system, i.e electoral competition, is indeed associated with heightened judicial independence in autocracies, consistent with the predictions of insurance theory. However, coup risk produces the opposite relationship. The presence of coup risk is associated with decreased judicial independence. Furthermore, the interaction between electoral competition and coup risk is also significant, indicating that the relationship between electoral competition and judicial independence weakens in the presence of coup threats. In short, political competition might lead to judicial independence in normal circumstances, but in contexts that are prone to coups, we should instead expect incumbents to react to growing opposition by restricting judicial independence instead.

Nevertheless, further questions are raised that are beyond the scope of this project, but should be addressed by future research. This project does treats the judiciary itself as mostly inert, yet in practice justices and judges do have agency and are strategic. For example, related literature suggests that judges tend to be more assertive when the threat of retaliation and/or non-compliance is low (Carrubba and Zorn, 2010; Rodriguez-Raga, 2011). Following this reasoning, another likely fruitful avenue of research is to investigate whether the presence of political competition, in the form of electoral or coup threats, differently affects the assertiveness of the courts, which in turn could affect the decision-calculus of the regime. It is also worth considering whether existing levels of judicial independence, or perhaps other characteristics/behavior of judiciaries, can in any way influence the strategies used by political opposition to incumbents. An opposition group choosing whether to challenge the regime through legitimate or illegitimate methods is necessarily a strategic decision, and this study immediately raises the question of whether current levels of judicial independence influence this strategic decision, and if so, how. Lastly, given that judiciaries are not the only policy-making institution, further research should

also address why and how judiciaries become salient to incumbents and/or opposition as tools for policy making or repression in the first place. There is much left to study on the complex interactions between judiciaries and other institutions in autocracies.

Chapter 3

Judicial Independence and Public Dissent in Autocracies

Abstract

There has been a growing interest in explaining the emergence of judicial independence in autocracies. However, much of the existing literature has explained the emergence of judicial independence as a function of elite-based opposition threats and international pressures, and lacks an analysis of the influence of mass-based opposition. I argue that autocratic regimes are indeed influenced by mass-based opposition threats when deciding whether to establish judicial independence, but the direction of that influence depends critically on the nature of that opposition. When mass-based opposition is violent and/or unorganized, a decrease in judicial independence is expected, and an increase otherwise. I run a series of OLS, panel, and logistic regressions on cross-national data on all anti-regime mass opposition movements in autocracies from 1950 to 2010. I find that mass-based opposition movements are less likely to be associated with judicial independence when they are more violent and/or more organized. This evidence suggests that, when autocratic regimes are deciding whether to establish judicial independence, they are responsive to mass-based opposition threats.

In the last several decades, a broad consensus has developed around the tendency for autocratic regimes to design political institutions to manage opposition threats. More recently, work on judicial institutions in autocracies has argued that autocracies can sometimes be motivated to establish independent judiciaries with the ability to check executive power. These independent courts benefit incumbent autocrats by mitigating the risk of losing office to the opposition (Ramseyer, 1994; Ginsburg, 2003; Epperly, 2019), creating a credible commitment device that facilitates economic development (Moustafa, 2007; Kennedy and Stiglitz, 2013), and/or satisfying international pressures to protect human rights (Keith, 2011).

The explanations for judicial independence in autocracies that have been offered so far tend to focus on elite-level and/or international-level influences. However, autocrats face threats not just from these sources, but also from the masses as well (Svolik, 2012). In dealing with such mass-based opposition threats, regimes frequently deploy repression (Davenport, 2007, 2015; Ritter, 2014; Chenoweth, Perkoski and Kang, 2017). Courts are often an important instrument of repression wielded by autocrats against opposition, as courts are the arena in which criminal charges are levied against dissidents. Indeed, when international organizations seek to reduce the frequency of human rights abuses by regimes, expanding judicial independence is often a primary demand (Keith, 2011). Despite the clear involvement of judiciaries in autocrats' efforts to contain mass-opposition threats, there has not yet been an examination of the relationship between mass-based opposition threats and judicial independence. If the emergence of judicial independence is a function of the threat environment faced by autocrats, then what role does mass-based opposition play?

This article argues that mass-based opposition threats do in fact shape autocrats' decision to establish judicial independence. Building off of Sievert (2018), I argue that independent courts can serve as co-optation devices, which effectively absorb mass-based discontent into the autocrats' political system. This necessarily comes at the cost of sacrificing some capacity to engage in repression. However, mass-based opposition varies along a number of attributes that may impact the effectiveness of regimes' strategies for containing and managing them. Specifically, I focus on two attributes: the degree to which mass-based opposition is violent, and the degree to which it is organized. I argue that these characteristics determine how effective independent judiciaries are at managing them, and in turn influence the likelihood that autocrats will adopt judicial independence. I argue that autocrats are likely to adopt judicial independence in response to mass-based opposition threats, but only when that opposition is primarily non-violent and/or disorganized. Conversely, when that opposition is primarily violent and/or organized, the opposite relationship should emerge.

I run a series of OLS, panel, and logistic regressions on a several cross-national panel data sets on both mass-based anti-regime opposition movements and judicial independence. I find evidence that is largely consistent with my findings. When incumbent autocrats are faced with mass-based opposition that is non-violent and disorganized, they are significantly more likely to expand the level of judicial independence. Conversely, when incumbent autocrats are faced with mass-based opposition

that is violent and organized, they are significantly more likely to restrict the level of judicial independence.

This article contributes an examination of relationship between mass-based opposition and judicial independence, which has been largely absent from the literature thus far. I show that elite-level opposition threats and international pressures are not the only factors that influence the emergence of judicial independence in autocracies. My evidence suggests that the presence of mass-based opposition is also an important factor influencing autocrats' decision to establish judicial independence. Furthermore, my evidence suggests that autocrats are strategic when responding to mass-based opposition threats. Judicial independence can backfire for autocrats, and they are thus much less likely to adopt it in the presence of opposition that is well-suited to taking advantage of it.

3.1 When Can Judicial Independence Help Autocrats Manage Popular Threats?

Judicial independence, defined as the ability of courts to issue rulings in accordance with their own preferences, that are constraining on other political actors, is a phenomenon that is not limited to democratic governments. Autocratic governments may be less likely to exhibit judicial independence, but they nevertheless do so at significant rates. The existence of judicial independence within autocratic governments appears counter-intuitive, as one would expect autocratic governments to prefer their judicial systems to remain tightly under their control. Indeed, many autocratic governments do this, precisely because controlled judiciaries offer useful functions for autocratic governments.[1] Because court rulings are a form of policy, courts can be used to implement policy. This is especially useful to autocrats because they can strategically delegate controversial policy decisions to the courts, which effectively redirects public backlash away from the regime. For example, Moustafa (2007) shows that Egypt's authoritarian government used the courts to overturn popular socialist policies from the Nasser era. Using the courts in this way allows autocrat to cloak their arbitrary rule in rhetoric claiming that they are simply respecting the rule of law. Courts can also be an effective instrument of repression. Pereira (2008) shows that the military dictatorships of Brazil and Chile in the latter half of the 20th century used their courts to repress opposition groups. Shen-Bayh (2018), in a study of authoritarian governments in sub-Saharan Africa, finds that courts are especially effective at punishing political elites who challenge the regime. Autocratic regimes have much to gain from keeping their courts under their control.

However, despite the obvious benefits to authoritarian rule that controlled judiciaries can offer to autocratic governments, many nevertheless choose to loosen their control over their courts, granting them a significant degree of judicial independence

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[1]Moustafa (2014) provides an overview of the core functions judiciaries serve in autocracies, discussed in more detail by Ginsburg and Moustafa (2008) (see also Solomon (2015)).

that in many cases resembles that of some democracies. Recent literature within comparative politics has so far provided a number of explanations for variation in judicial independence in both democracies and autocracies, with some generalizing to both. Arguably the most prevalent explanation for judicial independence across regime types is insurance theory (Ramseyer, 1994; Ginsburg, 2003; Hirschl, 2004; Finkel, 2005, 2008; Gibler and Randazzo, 2011), which posits that electorally vulnerable incumbents establish judicial independence to insulate courts from politicization, which is intended to prevent the courts from being wielded by opposition.[2] Additionally, given that autocratic governments often rely on credible commitment devices to facilitate functioning market economies (Acemoglu, Johnson and Robinson, 2005; Wright, 2008; Gehlbach and Keefer, 2012; Wilson and Wright, 2017), there is some evidence that judiciaries can provide a similar function (Moustafa, 2003, 2007; Kennedy and Stiglitz, 2013). In short, autocrats face a trade-off between controlled or independent judiciaries, and can be motivated to choose the latter when its benefits to authoritarian rule outweigh the opportunity cost of foregoing it.

While existing literature does offer compelling explanations for why some autocratic governments choose judicial independence, the bulk of this literature has so far sought to explain judicial independence as a function of elite-level and/or international pressures. Incumbents who fear electoral defeat may choose to establish judicial independence to prevent post-tenure punishment of incumbents (Epperly, 2013), or perhaps to facilitate economic growth and attract foreign direct investment (Moustafa, 2003). But, autocratic governments face existential threats not just from elites, but also from the mass public (Svolik, 2012), and we do not yet understand the relationship between mass-based opposition and judicial independence.

Regimes frequently engage in repression to coerce compliance (Davenport, 2007, 2015; Ritter, 2014; Chenoweth, Perkoski and Kang, 2017), and courts have been identified as a major part of autocratic governments' efforts to repress opposition from any source (Pereira, 2008; Keith, 2011; Aguilar, 2013; Shen-Bayh, 2018). However, while courts may play an important role in facilitating repression, independent courts can serve to inhibit repression (Keith, 2011; Hu and Conrad, 2020). Autocratic regimes choosing to establish judicial independence necessarily imposes constraints on their ability engage in arbitrary rule, which includes repression. In short, because judicial independence may impede the ability of autocratic regimes to engage in repression, it is plausible that autocratic regimes may prefer to restrict judicial independence, in anticipation of growing threats from below.

Extant literature on repression, while not tackling this question directly, does seem to imply that judicial independence is unlikely to emerge in autocracies threatened with mass-based opposition. Conversely, some literature on judicial independence may suggest a conflicting prediction. Judicial independence is certainly costly in that allows regime policy interests to be challenged. For example, Moustafa (2003) discusses the context surrounding judicial reform in Egypt, where the government

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[2]Insurance theory was originally intended to explain judicial independence in democracies, but recent work by Epperly (2017, 2019) has generalized this theory to autocracies as well.

chose to grant more independence to the judiciary for economic reasons, but this reform consequently led to opposition groups challenging policy in the newly independent courts and making significant inroads.

However, mass-based opposition groups successfully seeking redress via the courts may not necessarily be the worst outcome for autocratic regimes. While autocratic regimes oftentimes do rely on repression to enforce their social orders, they also employ co-optation as a strategy. Sievert (2018) argues that allowing courts some degree of independence can in fact facilitate authoritarian rule by absorbing public discontent into courts. Independent courts attract regime opponents, who bring their grievances and seek redress. Providing an institutional channel for mass-based opposition to seek concessions can effectively co-opt them by containing dissent within the political system, thus preventing outright rebellion. Furthermore, courts generate information for regimes about their opposition, which is especially beneficial for authoritarian rule, as the absence of free and fair elections necessarily impedes their ability to assess the performance of policy and/or subordinates. Sievert's argument that judicial independence can effectively co-opt mass-based opposition is compelling, but it nevertheless raises questions that are so far unanswered. This analysis treats judicial independence as an independent variable, showing that judicial independence does appear to reduce the probability of a civil war occurring. However, it does not address the question of why judicial independence emerges. Additionally, literature on dissent shows that mass-based anti-regime opposition varies considerably along multiple dimensions, which raises the possibility that judicial independence may not always be regimes' best response to mass-based opposition threats.

To summarize, we know that the autocrat's decision to establish (or not to establish) judicial independence is a strategic decision, and many autocrats do indeed opt for more judicial independence. An independent judiciary necessarily costs the regime some institutional control, but the political advantages of judicial independence can sometimes outweigh those costs. However, existing literature tends focus on elite-level and international influences on judicial independence. So far, we lack a direct examination of how variation in pressures from mass-based opposition can influence judicial independence in autocracies. It is not clear how the emergence of judicial independence in autocracies is shaped by variation in public opposition. Existing theories, while not tackling this question directly, seem to imply conflicting predictions. On one hand, because judicial independence can inhibit capacity for repression, we may expect autocratic regimes to avoid allowing judicial independence when faced with mass-based opposition. On the other hand, because judicial independence may be an effective co-opting tool, we instead might expect autocratic regimes to establish judicial independence when faced with this opposition.

To contribute to this literature, I argue that mass-based opposition to autocratic regimes does in fact influence the regimes' decision to establish/restrict judicial independence. Critically, however, the direction of that relationship depends on the nature of that opposition. That is, whether an autocrat chooses to use judicial independence in the presence of mass-based opposition depends on the *type* of op-

position. Autocratic regimes prefer to impose their policy preferences, for which remaining in office is a necessary condition. Autocratic regimes prefer to use the most effective strategy at their disposal to deter and manage opposition threats. But, autocratic regimes are strategic, and are willing to sacrifice some degree of policy control in exchange for their continued existence. All else equal, I assume autocratic regimes prefer controlled judiciaries, because independent judiciaries inhibit incumbent autocratic regimes' ability to impose their policy preferences. However, because judicial independence can sometimes be used as a tool to manage opposition threats, autocratic regimes can be compelled to relax their control over the courts, because possessing limited policy control is preferable to being removed from office and losing all control.

Conversely, I assume mass-based opposition movements seek to move regime policy closer to their own preferences, but ideally to remove the incumbent autocratic regime, as the regime is the primary obstacle preventing mass-based opposition movements to realize their own policy preferences. In practice, there are mass-based movements that are opposed to the regime, but have specific goals that are potentially orthogonal to regime-change per se. However, because my theory is addressing the ways in which autocratic regimes respond to opposition threats vis-à-vis the judiciary, I restrict my analysis to mass-based opposition movements that seek regime change, as these are the movements that are expected to provoke the hypothesized reaction from regimes.

While mass-based opposition groups are defined here by their goal of regime change, they vary considerably in structure and strategy. Specifically, I distinguish between anti-regime opposition along two dimensions. The first is the extent to which *violence* is employed as a primary tactic, and the second is the degree of *organization* of the opposition. Of course, mass-based opposition groups can be defined by a much wider array of possible attributes. However, again, because my theory is addressing the ways in which autocratic regimes respond to opposition threats vis-à-vis the judiciary, I restrict my analysis to those attributes that would most impact the interactions between these opposition threats and the judiciary.

Establishing judicial independence as a co-optation strategy is more effective at managing some types of mass opposition than others, relative to a strategy of judicial control and repression. For that reason, an autocrat establishing judicial independence in the presence of mass-based opposition groups may not always produce the same results. In anticipation of this, whether or not autocratic regimes choose to establish judicial independence depends on how effective they believe it will be at managing mass opposition threats, and this effectiveness varies with the type of mass-based opposition. In short, I argue that judicial independence is influenced by the presence of mass-based opposition, but whether regimes choose to promote or restrict judicial independence depends on the characteristics of the that opposition.

3.1.1 Violent vs. Nonviolent Dissent

The first dimension along which mass-based opposition movements vary is the usage of violence. I define *violence* as the degree to which an opposition movement relies on use of physical force as its primary method of resistance.[3] Violent mass-based opposition groups are those groups that employ physical force to accomplish their goals. Violent tactics can range from insurgency, bombings, assassination attempts, and threats of violence made against government officials. Conversely, nonviolent opposition does not employ tactics that cause direct, physical harm to representatives of the state and its supporters. Instead, nonviolent opposition typically employs tactics such as protests, strikes, walkouts, boycotts, and other forms of public demonstration.

Violent and nonviolent opposition movements tend to provoke different responses from the state. Violent opposition is so frequently and invariably followed by campaign of repression from the state that this relationship has been called "The Law of Responsive Repression" (Davenport, 2007, 2015). When mass-based opposition seeks to overthrow a regime by force, the regime has little choice but to respond with its own force. Indeed, even the potential threat of violent opposition can prompt regimes to deploy preventative repression (Ritter and Conrad, 2016). Another major reason why repression is so frequently used against violent opposition movements is because it is more easily justified by the regime, and is thus less likely to backfire (Chenoweth, Stephan and Stephan, 2011; Chenoweth, Perkoski and Kang, 2017). In short, when regimes are facing threats of violent opposition, repression is their best response.

Regimes' capacity to repress is related to their judiciaries, particularly to the degree of judicial independence. Independent courts can effectively inhibit regimes' capacity to repress. In fact, international efforts to protect human rights tend to specifically insist that judicial independence must be established, in order to constrain regime's ability to repress (Keith, 2011; Hu and Conrad, 2020). This necessarily creates a trade-off for regimes. They cannot maximize their capacity to repress via the courts while simultaneously utilizing judicial independence as a co-opting tool. As such, a regime will rationally choose to establish judicial independence so long as the mass-based opposition in question is one that judicial independence is best suited to manage. However, violent opposition is not a type of opposition that judicial independence can manage, and is instead a type of opposition that can only be dealt with via repression. For this reason, when this mass-based opposition is in fact primarily violent, regimes are less likely to establish judicial independence, as it can constrain regimes' efforts to repress this violent opposition.

Conversely, non-violent opposition is more politically costly to repress. Repressing nonviolent opposition is much more likely to spark further outrage, thus exacer-

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[3]There is some conceptual difficulty in classifying opposition movements as either violent and nonviolent, as many movements may employ both sets of tactics simultaneously. Nevertheless, it is still theoretically useful to distinguish between opposition movements that are *primarily* violent and primarily nonviolent.

bating regimes' opposition threat. Regimes are strategic when deciding whether to engage in repression, and will only repress when it is the most effective strategy available. Of course, repression is not the only tool available for regimes to use to manage mass-based opposition threats. Judicial independence as a means of co-optation is one such tool, and is more effective at managing non-violent mass opposition threats, precisely because, unlike using repression against non-violent opposition, it does not backfire by generating further outrage.

In such scenarios where mass-based opposition is nonviolent, regimes are more likely to establish judicial independence. Because repression is less likely to successfully disperse non-violent opposition, and is a less effective strategy, regimes are thus less likely to employ it, and are instead incentivized to employ a co-opting tool to contain this opposition into an arena where they can be more easily managed. Here, it makes more sense for regimes to sacrifice repressive capacity by establishing judicial independence. When faced with a trade-off between maximizing repressive capacity and establishing independent courts, and the effectiveness of the former is significantly lessened, regimes are more likely to choose the latter. In short, regimes are more likely to establish judicial independence when their mass-based opposition threats are primarily non-violent, and less likely to establish judicial independence otherwise. This leads to this paper's first hypothesis.

Hypothesis 1a: *When anti-regime opposition is primarily of a violent nature, incumbent autocrats will set a lower level of judicial independence.*

Hypothesis 1b: *When anti-regime opposition is primarily of a non-violent nature, incumbent autocrats will set a higher level of judicial independence.*

In short, the relationship between mass-based anti-regime opposition and judicial independence is conditional on the extent to which this opposition is primarily violent in nature. Opposition that is primarily violent is best dealt with by a repressive approach, which is best accomplished in the absence of judicial independence. Thus, violent opposition is negatively associated with judicial independence.

3.1.2   Organized vs. Disorganized Dissent

The second dimension along which mass-based opposition movements vary is the level of organization. I define *organization* as the degree of internal cohesion within anti-regime mass-based opposition movements. An organized opposition movement is a sufficiently large group of individuals who share a commitment to an pursuing the dismantling of an autocratic regime, and whose members are unified in both their chosen strategy of resistance, as well as their policy preferences. Hierarchical command structures are not required, but can be present. Conversely, a disorganized opposition movement is also a sufficiently large group of individuals who share a commitment to an pursuing the dismantling of an autocratic regime, but differ from organized movements in that members are in significant disagreement with

each other on strategy and/or policy preferences. In disorganized opposition groups, factionalization occurs, with each faction opposing the other along strategic or ideological grounds. For example, two factions may share a commitment to depose and replace an autocratic regime, yet fundamentally disagree on what should follow the defeat of the incumbent regime, should they succeed. In short, organized opposition movements are defined by their lack of intra-group competition and conflict, whereas disorganized opposition movements are plagued by rigid factionalism and/or open conflict.

Organized opposition groups are a more significant political threat to the regime than disorganized opposition. Well-organized opposition groups can more effectively coordinate campaigns of resistance against regimes, including violent tactics such as insurgency, bombings, assassination attempts, threats of violence against officials and others, as well as nonviolent tactics such as protests, strikes, walkouts, boycotts, and, notably, challenging regime policy in their court systems. Regardless of which tactic(s) anti-regime opposition groups choose to employ, having a high degree of internal cohesion and cooperation will make these groups more effective. Otherwise, when opposition groups are poorly organized, or even in conflict with one another, they have, by definition, failed to fully overcome the collective action problems associated with meaningfully challenging regimes.

For regimes, establishing judicial independence necessarily entails sacrificing some degree of policy control. Independent courts, by definition, will issue rulings more in accordance with their own preferences, which may contradict the preferences of regimes. For this reason, regimes prefer, all else equal, to keep their judiciaries under their control to minimize policy loss. However, the extent to which policy loss actually occurs in such scenarios depends on the ability and effectiveness of the opposition at challenging regime policy through the courts. Challenges to regime policy are brought to the courts by challengers, and must be won in court. When mass-based opposition is weak, then establishing judicial independence is relatively less risky to regimes, and can in fact provide benefits to authoritarian rule. Due to autocratic regimes' inherent lack of accountability mechanisms, information on the performance, efficacy, and popularity of regime policy can be difficult for regimes to acquire. The potential for remedying grievances that independent courts offer to the aggrieved citizens can encourage them to bring such grievances to the courts, thus providing regimes with a signaling mechanism that alerts them when regime policy and/or institutions is under-performing and unpopular.

Independent courts can aid authoritarian rule by serving as la co-optation tool and information source, but only when mass-based opposition lacks the capacity to take advantage of these independent courts. The more organized the opposition is, the more effective they will be at extracting policy concessions from the regime via independent courts, and the less useful judicial independence as a co-opting tool will therefore be to regimes. For example, as Moustafa (2003) details, Egypt expanded the independence of its Supreme Constitutional Court in response to economic pressures, but a group of civil society organizations, including opposition parties, human rights organizations, and legal professional organizations, identified this expansion

of judicial independence as an opportunity to attack regime policy. Furthermore, this opposition had substantially weakened the regime by successfully challenging national election laws that were advantageous to the regime. In the case of Egypt, it appears that establishing judicial independence may offer some benefits to authoritarian rule, yet simultaneously introduces a vulnerability that can be exploited by opposition groups. While Moustafa's work may not be addressing the same topic as the present study, nor does it examine contexts outside of Egypt, it is nevertheless illustrative.

More organized mass-based opposition groups are better able to take advantage of independent courts. For this reason, attempting to co-opt more organized opposition is more costly, in terms of policy loss, to regimes. Regimes prefer to keep opposition groups' contained within institutional arenas where they are limited in their ability to advance their interests. However, when opposition groups have become more organized, such that they are frequently able to take advantage of independent courts to successfully challenge regime policy, and perhaps even use these challenges as spectacles to mobilize and grow the opposition movement, then they have, in effect, broken containment. In this scenario, independent courts have ceased to be an asset to regimes in their goal of managing opposition threats. Instead, when opposition is organized, independent courts become a liability, as they can be used by the opposition to extract policy concessions, as well as mobilize further. For this reason, I expect a negative relationship between the organization of mass-based opposition and the likelihood of establishing judicial independence. This leads to this paper's second hypothesis.

Hypothesis 2a: *When anti-regime opposition is organized, incumbent autocrats will set a lower level of judicial independence.*

Hypothesis 2b: *When anti-regime opposition is disorganized, incumbent autocrats will set a higher level of judicial independence.*

In short, the relationship between mass-based anti-regime opposition and judicial independence is conditional on the extent to which this opposition is heavily organized. Opposition that is cohesive and coordinated are best able to take advantage of an independent judiciary to challenge regimes' policy interests. In such scenarios where this opposition is better able to utilize independent courts for their own benefit, independent courts become a liability to regimes, as the degree of policy loss incurred by regimes increases. Conversely, when opposition is fragmented, it is less effective at using independent courts in this way, and thus independent courts are no longer a vulnerability for regimes. For this reason, the level of organization of mass-based opposition is negatively associated with judicial independence.

3.2 Data and Methods

To test my hypotheses, I rely on a number of cross-national data sets. As a measure of judicial independence, my main dependent variable, I utilize a latent measure using Bayesian Item Response Theory constructed by Linzer and Staton (2015). This model uses a handful of indicators closely related to *de facto* judicial independence to generate a latent measure of *de facto* judicial independence for each country-year. These indicators include constraints on executive power, the ratio of non-currency money to the total money supply, several measures using expert opinion on judicial independence, and a few various measures of formal judicial independence.

For my main independent variables, I rely on variables from the NAVCO 2.0 dataset (Chenoweth and Lewis, 2013), which documents anti-regime mass opposition campaigns. For my first independent variable, used for testing Hypothesis 1, I borrow NAVCO's indicator of violence in anti-regime campaigns. Specifically, this variable is a binary, with a value of 0 indicating that an anti-regime campaign in that country-year unit was primarily non-violent, and a value of 1 indicating that the campaign was primarily violent.[4] For my second independent variable, used for testing Hypothesis 2, I borrow NAVCO's indicator on internal cohesion within anti-regime campaigns. This variable is ordinal, ranging from 0 to 3. A value of 0 indicates the presence of active, violent competition between subgroups within an anti-regime campaign in that country-year unit. A value of 1 indicates the presence of active verbal, but non-violent competition between subgroups. A value of 2 indicates the presence of cooperation, but with some moderate disunity along ideological or policy disagreements. Lastly, a value of 3 indicates that an anti-regime campaign was seemingly united in that country-year unit.[5]

I also include several covariates to control for additional factors that might affect judicial independence. Some evidence suggests that authoritarian regimes can use independent judiciaries as a tool to monitor state agents, to mitigate the principle-agent problem inherent to bureaucracies (Moustafa, 2007; Ginsburg and Moustafa, 2008). To account for the effect of large bureaucracies on judicial independence, I control for the portion of each countries' GDP that corresponds to government spending, which I use as a proxy for bureaucracy size. The occurrence of military conflict has been known to be related to executive overreach, which often manifests as the executive overriding the judiciary. During such military conflicts, courts are faced with pressure to defer to the executive branch, which may indicate a threat to judicial independence (Reinhardt, 2006). To control for this phenomenon, I include a binary indicator which accounts for whether each country was involved in a military conflict during that year. Lastly, given that one core function of courts is to adjudicate economic disputes, it stands to reason that a larger and highly complex economy,

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[4]It is likely the case that many campaigns employed a mix of both violent and non-violent methods. Nevertheless, it is still useful necessary to categorize campaigns as either *mostly* violent or *mostly* non-violent.

[5]In the original NAVCO dataset, these variables were coded in reverse. For this paper, I recoded the variables to assist with the interpretation of the results.

corresponding with an increased demand for property rights protection, might create pressure on the government to allow a more independent judiciary. To control for the level of economic development, I include logged GDP per capita as a covariate in my models.

To test my hypotheses, I run a series of OLS, panel, and logistic regressions. In each model, the unit of analysis is the country-year. Equation (1) represents my OLS regressions. The dependent variable is the change Δ in judicial independence, that is, the difference between the level of judicial independence in time t and in time $t-1$. The independent variables are the level of mass opposition violence and the level of mass opposition organization. All other covariates are contained within the matrix X_{it}.

$$\Delta JI_{i,t} = \beta_1 * VIOL_{i,t} + \beta_2 * ORG_{i,t} + \beta_X * X_{i,t} + \alpha_i + \gamma_t + \epsilon_{i,t} \qquad (3.1)$$

Equation (2) represents my panel regressions, which differ from the OLS regressions only in their inclusion of country α_i and year γ_t fixed effects.

$$\Delta JI_{i,t} = \beta_1 * VIOL_{i,t} + \beta_2 * ORG_{i,t} + \beta_X * X_{i,t} + \alpha_i + \gamma_t + \eta_i + \theta_t + \epsilon_{i,t} \qquad (3.2)$$

Lastly, Equation (3) represents my logistic regressions, with my dependent variable converted to a binary indicator of whether an increase of judicial independence occurred in a given country-year unit. In this model, any increase in judicial independence is coded as 1, and the lack of an increase or the occurrence of a decrease are coded as 0.

$$logit[(Increase in JI)]_{i,t} = \beta_1 * VIOL_{i,t} + \beta_2 * ORG_{i,t} + \beta_X * X_{i,t} + \alpha_i + \gamma_t + \epsilon_{i,t} \quad (3.3)$$

3.3   Results

3.3.1   Main Results

Table 3.1 presents a series of OLS and panel regressions, with the latter containing country and year fixed effects, on all autocracies from 1948 to 2010. This includes regimes that experienced mass opposition campaigns in a given year, and regimes that did not. All models report regressions estimating the relationship between judicial independence and mass opposition violence and organization. Models 1 to 4 estimate pooled OLS models, while 5 to 8 estimate panel regressions. For all models in Table 3.1 , the dependent variable is the change in judicial independence. The raw values for judicial independence were standardized, such that the variable reports the number of standard deviations from the mean level of judicial independence. Thus, in all models in Table 3.1, the dependent variable indicates the difference between (standardized) judicial independence in time t and in time $t-1$. Consistent

Table 3.1: Mass Opposition and JI OLS and Panel Regressions

	Dependent variable: Change in Judicial Independence							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Mass Opposition Violence	−0.048***		−0.051***	−0.065***	−0.051***		−0.053***	−0.066***
	(0.009)		(0.011)	(0.013)	(0.010)		(0.012)	(0.016)
Mass Opposition Organization		0.001	−0.003	−0.005		0.003	−0.002	−0.004
		(0.003)	(0.003)	(0.003)		(0.002)	(0.003)	(0.003)
Bureaucracy Size	−0.075	−0.104*	−0.071	−0.070	−0.083	−0.117*	−0.080	−0.079
	(0.043)	(0.043)	(0.044)	(0.044)	(0.049)	(0.047)	(0.050)	(0.049)
International Conflict	0.009	0.002	0.010	0.010	0.012	0.004	0.013	0.013*
	(0.007)	(0.007)	(0.007)	(0.007)	(0.007)	(0.009)	(0.007)	(0.007)
Logged GDP Per Capita	0.017***	0.027***	0.017**	0.016**	0.014**	0.024***	0.013*	0.013*
	(0.005)	(0.005)	(0.005)	(0.005)	(0.005)	(0.006)	(0.006)	(0.005)
M.O. Violence * M.O. Organization				−0.007*				−0.001
				(0.004)				(0.003)
Observations	614	608	608	608	614	608	608	608
R_2	0.1052	0.06871	0.1087	0.1133	0.10085	0.061372	0.10338	0.10732
Adjusted R_2	0.09934	0.06253	0.1013	0.1045	0.013996	-0.030284	0.01404	0.016598

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents OLS and panel regressions, providing tests for Hypotheses 1 and 2. Models 1-4 are pooled OLS, while 5-8 are panel regressions with country and year fixed effects. The dependent variable is changes in judicial independence in each country-year unit. The first independent variable, *Mass Opposition Violence*, indicates whether a violent (as opposed to non-violent) anti-regime movement took place in that country-year unit. The second independent variable, *Mass Opposition Organization*, measures the extent to which anti-regime movement(s) were internally cohesive in that country-year unit. Country and year fixed effects are included for all models, and standard errors are clustered by country.

with Hypothesis 1, all models with mass opposition violence as an independent variable report a significant association with a reduction in judicial independence. Specifically, in country-year units that experience violent mass opposition, judicial independence is expected to be reduced by approximately 5% to 6% of a standard deviation from the mean. This result is virtually unchanged with the inclusion of country and year fixed effects. This suggests that autocratic regimes do respond to violent mass opposition by restricting the level of judicial independence, and provides support for my first hypothesis.

Unlike the models discussed above, models that include mass opposition organization all fail to report any significant association with changes in judicial independence. This is problematic, as it is inconsistent with the predictions of Hypothesis 2. One plausible explanation is that this particular estimate for the independent variable is somewhat too conservative, and biases the results towards the null. Specifically, my independent variable, as well as the entire NAVCO dataset, is limited to active anti-regime campaigns that occurred in that given country-year. It is likely that smaller-scale anti-regime activity occurs more frequently, but is not included in this data set because it is difficult to detect or is insignificant. Interestingly, the interaction term between mass opposition violence and organization is significant in model 4, which could suggest that the negative association between violence and judicial independence moves further in a negative direction when that violent opposition is also highly disorganized, or vice versa.

For a more direct analysis of my hypotheses, I also estimate a series of logistic regressions on all autocracies from 1948 to 2010, where the dependent variable is transformed into a binary indicator. For models 1 through 4, the dependent variable equals 1 if an increase of judicial independence occurred in a given country-year unit,

Table 3.2: Mass Opposition and JI Logistic Regressions

| | *Dependent variable:* | | | | | | | |
| | *JI Increase* | | | | *JI Decrease* | | | |
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Mass Opposition Violence	**−0.280****		**−0.311****	**−0.287***	**0.264****		**0.300****	**0.273***
	(0.102)		(0.108)	(0.119)	(0.102)		(0.108)	(0.119)
Mass Opposition Organization		−0.170	**−0.236***	**−0.222***		**0.189***	**0.253****	**0.237***
		(0.092)	(0.095)	(0.101)		(0.092)	(0.096)	(0.101)
Bureaucracy Size	−2.087**	−2.312**	−1.876**	−1.875**	2.082**	2.258**	1.838*	1.836*
	(0.711)	(0.716)	(0.726)	(0.727)	(0.712)	(0.715)	(0.726)	(0.727)
International Conflict	−0.147	−0.166	−0.071	−0.069	0.145	0.156	0.064	0.062
	(0.220)	(0.230)	(0.227)	(0.228)	(0.220)	(0.231)	(0.228)	(0.229)
Logged GDP Per Capita	0.564***	0.682***	0.545***	0.542***	−0.557***	−0.668***	−0.535***	−0.531***
	(0.113)	(0.109)	(0.116)	(0.116)	(0.113)	(0.109)	(0.116)	(0.116)
M.O. Violence * M.O. Organization				−0.056				0.063
				(0.128)				(0.128)
Constant	−3.514***	−4.407***	−3.416***	−3.403***	3.426***	4.268***	3.305***	3.291***
	(0.865)	(0.834)	(0.882)	(0.883)	(0.866)	(0.833)	(0.882)	(0.883)
Observations	614	608	608	608	614	608	608	608
Log Likelihood	-383.9554	-381.1681	-376.6801	-376.5761	-382.9416	-379.4105	-375.262	-375.1308
AIC	777.91	772.34	765.36	767.15	775.88	768.82	762.52	764.26

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents a series of panel logistic regressions, providing an additional test of Hypotheses 1 and 2, as well as 3 and 4. For models 1-4, the dependent variable is binary indicator for increases in judicial independence. For models 5-8, the dependent variable is a binary indicator for decreases. The first independent variable, *Mass Opposition Violence*, indicates whether a violent (as opposed to non-violent) anti-regime movement took place in that country-year unit. The second independent variable, *Mass Opposition Organization*, measures the extent to which anti-regime movement(s) were internally cohesive in that country-year unit. Country and year fixed effects are included for all models, and standard errors are clustered by country.

and 0 if there was a decrease or no change. For models 5 through 8, the dependent variable equals 1 if a decrease in judicial independence occurred, and 0 if there was an increase or no change. Consistent with Hypothesis 1, the presence of violent mass opposition campaigns is significantly associated with a increase in the likelihood of an increase in judicial independence. Specifically, a 1 unit increase in the level of mass opposition violence is associated with a reduction of about 30% in the likelihood of judicial independence being increased, and a 30% higher likelihood of judicial independence being restricted. Conversely, lower levels of mass opposition violence is associated with a lower likelihood of judicial independence being expanded, and a greater likelihood of it being restricted. This result remains consistent across various model specifications, and offers strong support for Hypothesis 1.

With respect to Hypothesis 2, the evidence in Table 3.2 is also consistent with my expectation. Increases in judicial independence are more likely to occur when mass opposition is disorganized. Substantively, in country-year units where mass opposition experienced less internal conflict between subgroups, there is an associated 25% reduction in the likelihood of judicial independence being expanded, and a nearly equivalent increase in the likelihood of judicial independence being restricted. This result is somewhat less robust than the evidence for Hypothesis 1, as one model failed to report a statistically significant coefficient for increases in judicial independence. However, all other specifications were statistically significant.

To illustrate my findings in Table 3.2, I've produced logistic density plots for models 1 and 6 in Figures 3.1 and 3.2, respectively. Figure 3.1 depicts the distribution of the predicted probabilities of increases in judicial independence, which was

constructed by using model 1 in Table 3.2 to generate predicted probabilities for each data point in my data set. However, to facilitate comparison between low and high levels of my independent variable, mass opposition violence, I produce two separate lines. The dark red line shows the probability distribution for increases in judicial independence for country-year units with levels of mass opposition violence higher than the mean, and the bright red line shows the same distribution, but for country-year units with levels of mass opposition violence lower than the mean. As the graph shows, country-year units with lower levels of mass opposition violence tend to have a much higher probability of experiencing an increase in judicial independence, with the mean probability moving from 0.562 to 0.793.

Figure 3.2 is identical in form, but plots the predicted probability of decreases in judicial independence, and was constructed using model 6 in Table 3.2. Again, to facilitate comparison between low and high levels of my independent variable, mass opposition organization, I produce two separate lines. The dark red line shows the probability distribution for decreases in judicial independence for country-year units with levels of mass opposition organization higher than the mean, and the bright red line shows the same distribution, but for country-year units with levels of mass opposition violence lower than the mean. As the graph shows, country-year units with higher levels of mass opposition organization tend to have a higher probability of experiencing a decrease in judicial independence, with the mean probability moving from 0.314 to 0.418.

3.3.2 Judicial Independence and Repression

A core assumption of this paper's theory is that there is a trade-off between judicial independence and repression. Specifically, the presence of judicial independence reduces and/or constrains regimes' ability to engage in repression, and therefore repression is less likely to occur when judicial independence is high. As supplementary evidence, I test this assumption here.

I run another series of panel regressions, estimating the relationships between judicial independence and various indicators of repression. I once again rely on the same latent measure of judicial independence used in the above analyses, but this time it is used as an independent variable. For dependent variables, I borrow four indicators from the V-Dem data set (Coppedge and Wilson, 2017), which are as follows. For my first dependent variable, I borrow their political civil liberties indicator. This index is estimated through a Bayesian factor analysis, using the indicators for media censorship, harassment of journalists, freedom of academic and cultural expression, constrains on opposition parties, and the repression of civil society organizations. This indicator covers a wide variety of types of repression. For the next three indicators, I use more specific measures. For my second dependent variable, I borrow their measure for freedom of academic and cultural expression, which indicates the extent to which criticisms of the government is met with repression. For my third dependent variable, I borrow their measure of state violence, which indicates the extent to which the state engages in political killings and/or torture. Lastly, for my
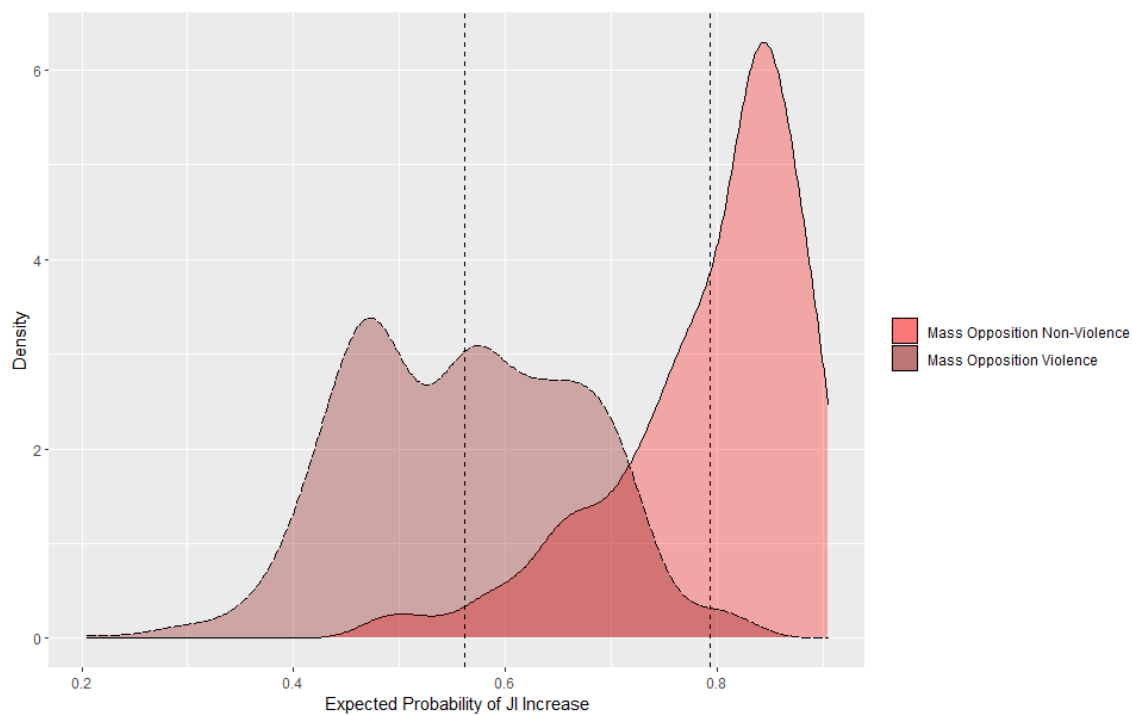
Figure 3.1: Mass Opposition Violence and the Expected Probability of JI Increase

This figure displays a logistic density plot for model 1 in Table 3.2. The X-axis is the expected probability that judicial independence will be increased in a given country year. The light red plot is limited to only country-year units that experienced a level of mass opposition violence that is below the mean, while the dark red plot is limited to only country-year units that experienced a level of mass opposition violence that is above the mean.
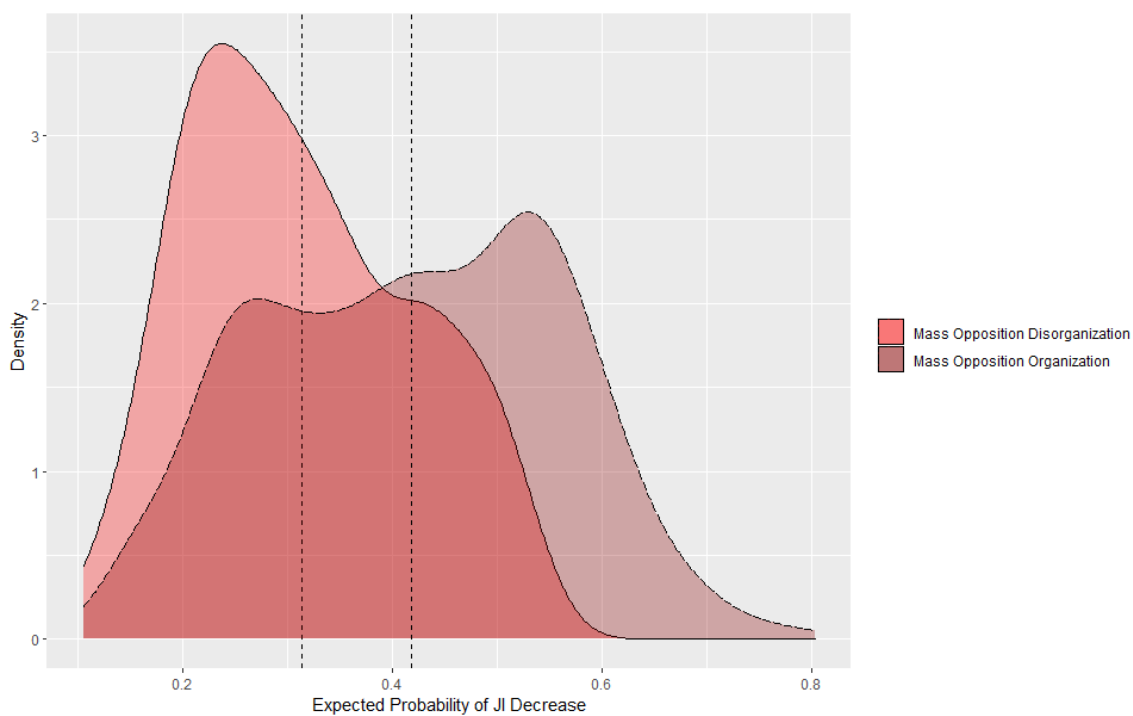
Figure 3.2: Mass Opposition Organization and the Expected Probability of JI Decrease

This figure displays a logistic density plot for model 1 in Table 3.2. The X-axis is the expected probability that judicial independence will be decreased in a given country year. The light red plot is limited to only country-year units that experienced a level of mass opposition organization that is below the mean, while the dark red plot is limited to only country-year units that experienced a level of mass opposition organization that is above the mean.
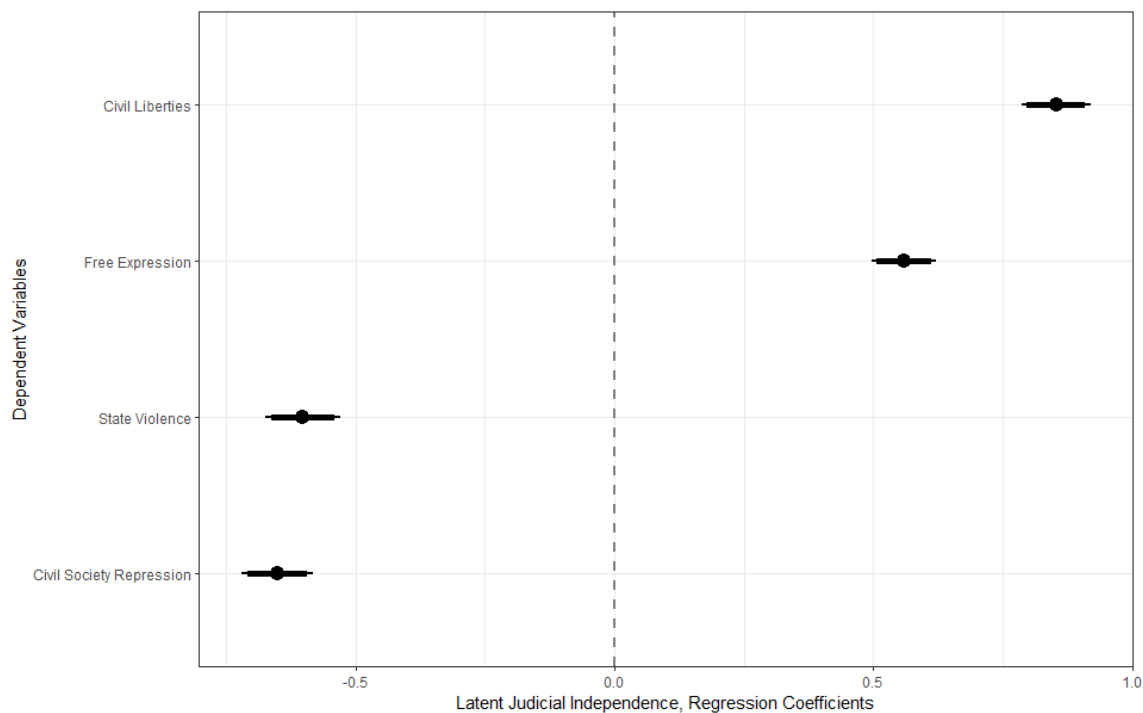
Figure 3.3: Judicial Independence and Repression Outcomes

This figure plots coefficients for panel regression models that estimate the relationship between judicial independence and various measures of repression. Country and year fixed effects are included for all models, and standard errors are clustered by country.

fourth dependent variable, I borrow their measure for civil society repression, which indicates the extent to which civil society organizations are able to operate freely without being sanctioned and/or repressed by the state.[6]

I estimate a series of panel regressions, with judicial independence as the independent variable, and each of these four indicators of repression as the dependent variable for each model. Figure 3.3 plots the coefficients for each of these panel regression models. Country and year fixed effects are included, and standard errors are clustered by country. The results are entirely consistent with expectations. Judicial independence is associated with greater general protection for civil liberties, greater protection for free expression, and less state violence and repression of civil society organizations. This supplementary analysis provides support for a core assumption of my primary analysis, that judicial independence is necessarily a barrier to repression for regimes, and establishing the former impedes capacity for the latter.

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[6]In the original V-Dem data set, the state violence and civil society repression variables are coded such that higher values indicate freedom from violence/repression, and lower values indicate lack of freedom from violence/repression. For ease of interpretation, I reverse-coded these variables.

Table 3.3: Mechanisms of Judicial Control

| | Dependent variable: | | | | | | | | | |
| | Reform | | Purges | | Public Attacks | | Packing | | Compliance | |
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
M.O. Violence	−0.19***		−0.18***		−0.10*		−0.30***		−0.22***	
	(0.05)		(0.05)		(0.05)		(0.05)		(0.05)	
M.O. Organization		0.19***		−0.14**		0.10*		0.04		0.09
		(0.05)		(0.05)		(0.04)		(0.05)		(0.05)
Bureaucracy Size	1.50***	0.92*	0.61	0.44	0.06	−0.35	1.19**	0.68	−1.10**	−1.74***
	(0.43)	(0.44)	(0.41)	(0.41)	(0.36)	(0.37)	(0.42)	(0.44)	(0.40)	(0.41)
International Conflict	0.25	0.16	−0.25*	−0.29*	0.19	0.15	0.37**	0.26	0.27*	0.19
	(0.14)	(0.13)	(0.13)	(0.13)	(0.11)	(0.11)	(0.13)	(0.14)	(0.13)	(0.13)
Logged GDP Per Capita	−0.01	0.11	0.08	0.18**	0.17**	0.24***	−0.17**	−0.01	0.44***	0.58***
	(0.07)	(0.06)	(0.06)	(0.06)	(0.06)	(0.05)	(0.07)	(0.06)	(0.06)	(0.06)
Observations	623	617	623	617	623	617	623	617	623	617
R^2	0.05	0.05	0.05	0.04	0.04	0.05	0.07	0.01	0.17	0.16
Adjusted R^2	−0.04	−0.04	−0.05	−0.05	−0.05	−0.05	−0.02	−0.08	0.09	0.08

Note: *p<0.05; **p<0.01; ***p<0.001

This table presents a series of panel logistic regressions, providing supplemental tests of my hypotheses. Models 1, 3, 5, 7, and 9 regress mass opposition violence against variables measuring formal changes in judicial independence, purges of judges, public attacks by the regime, court packing, and the extent to which the regime complies with court decisions, respectively. Models 2, 4, 6, 8, and 10 regress mass opposition organization against the same dependent variables. Country and year fixed effects are included for all models, and standard errors are clustered by country.

3.3.3 Mechanisms of Judicial Control

The above analysis provides evidence that regimes are indeed responsive to the presence mass-based opposition movements when determining whether to establish judicial independence. However, while the latent measure of judicial independence used in the above analysis does provide useful evidence of broad trends of variation in judicial independence, it does not provide detailed information on the specific ways in which judicial independence is shaped in the presence of mass-based opposition. In other words, the above analysis does not show exactly what strategies regimes use to either expand or restrict judicial independence. To examine this more closely, I estimate another series of panel regressions, where I regress my main independent variables, mass opposition violence and organization, against several indicators of distinct forms that the exertion of control over the judiciary may take. These variables, discussed in more detail below, were extracted from the Varieties of Democracy data set (Coppedge and Wilson, 2017). The results of these panel regressions are displayed in Table 3.3. Both country and year fixed effects are included, and standard errors are clustered by country.

Models 1 and 2 estimate the relationship between the level of violence and organization in mass opposition movements, and the likelihood of formal reforms to the judiciary, respectively. Specifically, this dependent variable is ordinal, with three values. A value of 2 indicates that the judiciary was reformed in such a way that it's independence was increased. A value of 1 indicates that there was no change to judicial independence. Lastly, a value of 0 indicates that the judiciary was reformed in such a way that it's independence was decreased. Model 1 reports a statistically significant negative relationship between mass opposition violence and judicial reform. This suggests that the presence of violent mass opposition movements tend

to be associated with a loss of judicial independence, consistent with my expectations. Conversely, Model 2 reports the reverse relationship, but still statistically significant. The presence of organized mass opposition movements appears to be associated with a gain of judicial independence. Interestingly, this is inconsistent with my expectations which are that highly organized mass opposition is more likely to induce reductions of judicial independence.

Models 3 and 4 estimate the relationship between the level of violence and organization in mass opposition movements, and the likelihood of judicial purges occurring, respectively. This dependent variable indicates the extent to which justices and/or judges are safe from being arbitrarily removed from their posts for political purposes. Higher values of this variable indicate that judges were not removed from their posts, whereas lower values indicate that large-scale political purges of judges occurred. Consistent with my expectations, both models report the same result, a statistically significant negative relationship. High degrees of both violence and organization of mass opposition movements seem to both coincide with infringements on judicial independence, in the form of judicial purges.

Models 5 and 6 estimate the relationship between the level of violence and organization in mass opposition movements, and the extent to which the judiciary is safe from public attacks by the government, respectively. These public attacks include government officials questioning the legitimacy of court decisions, and/or claiming that the court is corrupt or incompetent. Model 5 reports a negative and statistically significant relationship, indicating the presence of violent mass opposition movements is associated with a greater frequency of the government publicly attacking the judiciary. This is consistent with my expectation that regimes will respond to violent opposition movements by reducing independence. However, model 6 reports a positive and statistically significant relationship, indicating that the presence of organized mass opposition movements is associated with a lower frequency of government attacks on the judiciary. This is inconsistent with my expectations. It appears that regimes respond to organized mass opposition by refraining from attacking the judiciary.

Models 7 and 8 estimate the relationship between the level of violence and organization in mass opposition movements, and the extent to which the judiciary is safe from court-packing, respectively. Lower values of this dependent variable indicate that there was a large, politically-motivated increase in judgeships across the entire judiciary. Higher values indicate that there was no change in the size of the judiciary, or that the change was not politically motivated. Model 7 reports a negative and statistically significant relationship, indicating that the presence of violent mass opposition movements is associated with a greater likelihood of court-packing. However, model 8 does not report a statistically significant relationship. Apparently, the presence of organized mass opposition movements does not seem to coincide with changes in the size of the judiciary.

Lastly, models 9 and 10 estimate the relationship between the level of violence and organization in mass opposition movements, and the extent to which the government complies with court decisions. Low values of this dependent variable indicate

that the government rarely complies with court rulings, whereas high values indicate that the government always complies with court rulings. Model 9 reports a negative and statistically significant relationship between violent mass opposition movements, suggesting that the presence of such movements appears to coincide with the government being less likely to comply with court decisions. Conversely, model 10 does not report a statistically significant relationship, suggesting that organized mass opposition movements are not associated with increases or reductions in the tendency of governments to comply with court decisions.

While each of these model pairs may not individually explain how authoritarian governments respond to mass opposition movements vis-à-vis the judiciary, when taken together along with this paper's main results, they present a clearer image of this relationship. Authoritarian governments do respond to mass opposition movements by via the judiciary, but the specifics of that relationship does vary depending on characteristics of these movements. When faced with violent mass opposition movements, authoritarian regimes take actions that reduce, or infringe upon, the independence of the judiciary. These actions include formal reforms, removing judges from their posts, making public statements that question the legitimacy of the court, packing the court with additional judgeships, and refusing to comply with court decisions. Conversely, more organized mass opposition movements seem to induce a different response from regimes. With the exception of judicial purges, the efforts to reduce judicial independence, used in response to violent opposition, are virtually absent from responses to organized opposition. Instead, regimes' responses to organized opposition tend to include some actions to expand judicial independence, such as enacting institutional reforms that expand judicial independence, as well as refraining from publicly attacking the courts.

While these results are mostly consistent with my expectations, there is the unexpected association between organized mass opposition movements and both judicial reform and public attacks. Theoretically, I expect both highly violent and/or organized mass opposition groups, compared to non-violent and/or disorganized groups, to induce regime responses in the form of reductions of judicial independence. This is reflected in models 3 and 4, which report that regimes respond to violent and organized movements by infringing on judicial independence by purging judges from their posts.

Violent opposition is an existential threat to regimes, who have little choice to anything but repress. As such, any institutional impediment to repression, such as an independent judiciary, must be dismantled or circumvented. In this scenario, it is prudent to for regimes to reduce the capacity of courts to issue rulings that challenge the regime and embolden the opposition.

3.4   Discussion and Conclusion

Like previous literature on the emergence of judicial independence, this article argues that incumbent autocrats decide whether to establish judicial independence as

a function of their threat environment. Independent judiciaries can be useful tools to protect incumbent autocrats, but they come at the cost of sacrificing their control. However, unlike previous literature, I emphasize the role of mass-based opposition, whereas existing literature has emphasized elite-based threats and international pressures. I argue that incumbent autocrats, when deciding whether to establish judicial independence, are influenced by mass-based opposition. Independent judiciaries have the potential to serve as co-optation devices against mass-based dissent, but come at the cost of sacrificing some capacity to engage in repression. However, the relative effectiveness of independent judiciaries at serving the interests of autocrats varies depending on key characteristics of mass-based opposition. When this opposition is primarily violent and/or highly organized, judicial independence becomes less useful as an instrument to manage it. As such, I predict that increases in judicial independence are more likely to occur when this opposition is non-violent and disorganized, and less likely to occur when it this opposition is violent and organized.

Using cross-national data on mass-based anti-regime opposition in autocracies, as well as judicial independence, I find evidence that is largely consistent with my expectations. I find that the presence of violent mass-based opposition negatively predicts increases in judicial independence, and positively predicts decreases. Conversely, I find that the presence of organized mass-based opposition negatively predicts increases in judicial independence, and positively predicts decreases. Taken together, this evidence suggests that autocratic regimes do take mass-based opposition into consideration when deciding whether to establish judicial independence.

One potential limitation to this article lies in the difficulty in identifying the dividing line between elite-based and mass-based opposition groups. Indeed, it is rare for even the most elitist political party to not at least attempt to win some public support, which is one source of leverage against the incumbent regime. Conversely, mass-based opposition movements will often be supported by elite-based opposition groups. Of course, distinguishing between elite-based and mass-based opposition groups is both necessary and useful to understanding the functionality of authoritarian institutions. But, nevertheless, neither of these types of opposition exist in a vacuum, and there will inevitably be some interplay between the two. How interactions between mass-based and elite-based opposition movements can influence regimes' strategy regarding their judicial systems is likely a fruitful avenue of future study.

Beyond this article, future research should pay closer attention to the role courts and judiciaries play in mediating the relationship between autocratic regimes and their citizens. managing opposition threats from both elites and the masses lies at the core of institutional design in autocracies. While the cross-national evidence in this article provides useful information on cross-national trends, more fine-grain analyses would be especially insightful on just how court systems in autocracies help autocrats deal with mass-based opposition threats. The literature should consider ways in which autocratic institutions can co-opt mass-based opposition, not just elite-based.

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