

# Courts and Conflict: Examining the Causal Mechanisms of Independent Judiciaries and Domestic Conflict\*

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## Abstract

Can adopting judicial independence reduce the likelihood of experiencing domestic conflict? This paper develops a game theoretic model that shows that authoritarian leaders can allow judicial independence to learn about the resolve of an aggrieved group within society. This in turn allows the regime to determine what level of concessions will satisfy the groups demands and thereby prevent mobilization against the state. As the difference between the level of concessions required to satisfy groups of different levels of resolve grows, authoritarian regimes become more likely to allow independent judicial decision making. Additionally, the more important the issue is to the regime, the less likely they are to allow independent decision making. These findings have important implications both for understanding variation in judicial independence and the likelihood of civil unrest and are subsequently modeled empirically using propensity score models to estimate the effect of the adoption of independent judiciaries on domestic conflict.

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## Introduction

In March 2009 the Supreme Administrative Council in Egypt overturned a government policy dating back to 1995, which forced Egyptians to identify themselves on national identification cards as belonging to Islam, Christianity, or Judaism. ID cards would not be issued to anyone who refused to identify as one of the three approved religions. Members of the Baha'i faith filed a lawsuit against the Mubarak government arguing that the policy caused discrimination and effectively made them "non-citizens" (Whitaker, 2006). Without a national identification card individuals were unable to legally work, study beyond secondary school, vote, operate a bank account, obtain a driver's license, buy or sell property, collect pensions, or travel outside of Egypt (Whitaker, 2009).

The Mubarak government was a party to the case from the initial decision, which ruled in favor of the Baha'i through first appeal decided in favor of the regime. However it declined to participate in the final appeal, in which the SAC overturned the lower court's decision and decided in favor of the Baha'i. Soon after the court's decision the Egyptian Ministry of the Interior issued a decree specifying that Egyptians could obtain government documents without declaring a particular religion (Bahai International Community, 2009). This poses an interesting puzzle about why the Egyptian regime would allow the court to overturn a policy they instituted just 15 years earlier and readily implement the decision of the court?

Egypt is not alone in abiding by court rulings that overturn their policies, while still remaining authoritarian. In their study of judicial independence and democratic backsliding Gibler and Randazzo find that while the majority of independent judiciaries are in fact found in democratic states, 142 independent judiciaries are found in non-democracies (Gibler and Randazzo, 2011). Gibler and Randazzo argue that judicial independence and democracy are distinct concepts and while of the 1,420 independent judiciaries in their study covering 1960-2000, 1,278 are found in democracies, of the democracies in their study nearly 40% did not have independent judiciaries (Gibler and Randazzo, 2011). Indicating that there is substantial variation in institutional structures in democracies as well and non-democracies. They aptly note, "Regimes can provide all the requisite conditions for democracy without an independent judiciary, and *an independent judiciary does not beget a liberal government*" (emphasis added)(Gibler and Randazzo, 2011).

This project seeks to unpack the relationship between independent judiciaries and authoritarian regimes, and present a unified theory that explains when autocrats have incentives to create and empower independent courts and when they have incentives to restrict the ability of the courts to overturn their most preferred policies. This work builds on existing literature on judicial institutions in authoritarian regimes and argues that in addition to the benefits of legitimacy and protected property rights autocrats can learn how resolved aggrieved groups are in society by allowing some independent judicial decision making.

To develop this argument I analyze a game-theoretic model in which a government, some aggrieved group, and a court all interact. The results show that leaders of authoritarian regimes can use independent courts to learn how resolved aggrieved groups are, and in turn this information allows the regime to offer policy concessions that satisfy the groups demands, alleviating the group's threat to mobilize against the regime. To learn how resolved groups are, they need to file suits against the regime, and in order to do so they must believe the court hearing their case will be at least nominally independent. That is, they need to believe their case will get a fair hearing in front of the court, as such the court needs to rule against the regime at least some of the time. The macro-implications of the theoretical model are then modeled empirically using observational data.

The article proceeds as follows. First, I review current explanations for creating judiciaries and identify critical shortcomings. Next, I present our model. Then I discuss the logic of granting the court partial independence and the effect this has on subsequent interactions between the government and the aggrieved group. I conclude with a discussion of the implications and illustrative examples.

## **1 Scholarship on Courts in Authoritarian Regimes**

It has been well documented that independent courts provide significant benefits in democratic political systems. They have been attributed to protecting minority rights (Dahl, 1957), providing regime legitimacy (Hirschl, 2004), protecting preferred government policies (Landes and Posner, 1975; Rogers, 2001), ensuring a place for political parties once they are out of power (Finkel, 2005, 2008; Ginsburg, 2003), and ensuring executive agencies do not veer from legislative intent (McCubbins and Schwartz, 1984).

There is considerably less written on the benefits they provide in authoritarian states

and when states will opt to use them. As the Comparative Constitutions Project and the United States Institute of Peace note, “in some countries the courts actually do seem to have acted in an independent manner and have overturned laws that the autocrats in their wisdom enacted. Some of these these courts seemed genuinely to annoy the executives who had caused them to be created”. They ask surprisingly, “what explains the executive’s willingness to create courts that had the power to rebel?”

One of the most common answers to why autocrats create and use courts has been to create and ensure the protection of property rights to regulate commerce and attract investment. As Weingast (1995) wisely notes, any state strong enough to ensure property rights is strong enough to intrude on them. Therefore, governments must be able to credibly commit to the protection of property rights, and one way to do this has been the establishment of courts. “By establishing a neutral institution to monitor and punish violations of property rights, the state can make credible its promise to keep its hands off (Root and May, 2008). Similarly, Mustafa argues when writing about judicialization in Egypt,

“the consolidation of unbridled power resulted in a severe case of capital flight depriving the economy of a tremendous amount of Egyptian and foreign private investment... Judicial institutions were rehabilitated in an effort to attract investment, to provide the regime with new tools to monitor and discipline the state’s own bureaucratic machinery, and to shape a new legitimizing ideology around the “rule of law”” (Moustafa, 2008).

Establishing and adhering to the rule of law was not just an Egyptian strategy, but one adopted by Singapore as well. Then Prime Minister Lee Kuan Yew cited rule of law as the foundation of the impressive economic growth Singapore experienced after independence from Malaysia. This was echoed by the then-Chief Justice of Singapore,

“Singapore is a nation which is based wholly on the Rule of Law. It is clear and practical laws and the effective observance and enforcement of these laws which provide the foundation for our economic and social development. It is the certainty which an environment based on the Rule of Law guarantees which gives our people, as well as many [multinational

corporations] and other foreign investors, the confidence to invest in our physical, industrial as well as social infrastructure” (Silverstein, 2008).

It is not just Singaporean elites who laud the rule of law as the key to economic growth and property rights. The 2013-2014 Global Competitiveness Report from the World Economic Forum ranks Singapore first for the efficiency of legal framework in settling disputes, transparency of government policymaking, and public trust in politicians. Singapore also ranks second in the world for the protection of property rights, for intellectual property protections, and for strength of investor protection (World Economic Forum, 2013-2014). Clearly international investors and monitoring groups, as well as Singaporean citizens view the courts, property protections, and the regulatory environment favorably as well.

A second explanation for the creation and use of courts, mainly security courts, in authoritarian states has been to curtail or eliminate support of the opposition and unify support for the regime (Pereira, 2008). By declaring members of the opposition as subversive, treasonous, or terrorists, regimes can attempt to turn public opinion away from opposition groups and towards the regime, while eliminating their competition and still maintaining a commitment to rule of law. As Pereira notes the close collaboration between military officers and judges in Brazil and Chile, Portugal and Spain, the regimes were able to move sensitive political questions into military tribunals with judges that were unlikely to rule too often (if ever) in favor of defendants.

In addition to creating specialized security courts to weaken or eliminate support for the opposition authoritarian regimes can opt to create administrative law courts, to reduce monitoring costs of their own bureaucrats. Facing a significant principal-agent problem dictatorships need low cost, effective ways to monitor their agents and often have fewer tools at their disposal than their democratic counterparts. By creating and publicizing administrative law that regulates the actions of bureaucratic agents, authoritarian regimes can shift monitoring costs on to citizens. The public then serves as a “fire alarm” to warn the regime about wayward bureaucrats through filing a claim against a government official (Ginsburg, 2008). When other tools of monitoring become more costly or less effective, “judicially supervised administrative procedures” become an attractive option due in large part because

the fundamental structure of courts facilitates the upward channeling of information to the regime, the costs of which are paid for by the litigants (Ginsburg, 2008).

Authoritarian regimes may create or empower courts to carry out the specific purposes described above, but one additional benefit courts may bestow on the regime is increased legitimacy both domestically and internationally. Ginsburg (2008) states, “authoritarian rulers may also attempt to make up for their questionable legitimacy by preserving judicial institutions that give the image, if not full effect, of constraints on authoritarian rule”. Judicial reforms were used to build domestic legal legitimacy for rulers in Egypt and China and elsewhere around the world. Yet, the desire for legitimacy is not solely a domestic concern, the target of legitimacy might be international. In Japan the development of formal legal institutions was used to signal to the West that it was “a member of the club of modernity” rather than for the protection of rights or social ordering (Ginsburg and Moustafa, 2008). Similarly Hirschl notes that by “adopting a constitutional catalogue of rights and establishing judicial review may serve as a means to demonstrate a willingness to accept the required legal standards for joining supranational economic regimes” or being accepted as a legitimate members of these economic organizations (Hirschl, 2004). In order for the regime to actually be seen as legitimate or respecting the establishment of the rule of law, the courts must have some degree of autonomy from the regime, and must actually rule against the regime and have the ruling stand, at least some of the time.

However, authoritarian regimes run substantial risks by allowing even nominal judicial independence. Carruba (2009) establishes that governments create judicial institutions and once created these courts, in their “infancy”, rule in ways consistent with the purpose for which the government first established the court. However, as the court develops the trust of the public and as the public sees the government comply with the rulings of the court they can expand interpretation of the beyond original purpose (Carrubba, 2009). What this implies is that in the early years of a court’s “life” judicial review and court independence will not be a significant threat to the regime, however as the public begins to back the court and see its rulings as legitimate, courts become more likely (or at least more able) to rule against the regime and have the public view those decisions as legitimate. More succinctly, judicial review can grow over time as long as the public supports the court. Therefore, even if an

authoritarian regime only intends to extend limited autonomy to the court, the endogenous nature of judicial review can extend that autonomy far beyond the original intent, and pose a threat to the power of the ruling regime.

Independent courts pose threats to the regime beyond extending their autonomy more than originally intended, particularly by creating a space for opposition challenges to the regime and a channel for mobilization. Judicial reforms, the expansion of judicial review or the creation of an independent court can be a double-edged sword for the regime; on one hand it allows the regime to build legitimacy, reap the benefits of the court systems, and defray costs by shifting them to the litigants. On the other hand however, they create an avenue for the mobilization of activist groups to challenge the regime and call attention to human rights violations, arbitrary use of government power, and corruption and abuse in the system.

Turning again to Egypt, when the Sadat regime established the Supreme Constitutional Court the intended function was to strengthen administrative procedures, increase accountability and regularity of bureaucratic decisions in the hopes of pursuing the international business community. A rather unintended consequence of establishing and strengthening the SCC was the court's willingness to challenge the regime and the institutional opening it gave activists to challenge the executive in new ways. For example, the Center for Human Rights Legal Aid became the preeminent human rights organization in Egypt. Not content to simply document human rights abuses by the Egyptian regime the organization filed 500 cases against the government in its first full year of operation and by 1997 had filed over 1,600 cases Moustafa (2008). Other organizations quickly came to life, adopting a similar strategy of CHRLA, including The Center for Women's Legal Aid, the Land Center for Human Rights, the Human Rights Center for the Assistance of Prisoners, as well as the Wafd Party's Committee for Legal Aid (Moustafa, 2008). As the former director of the CHRLA explained, "in Egypt where you have a relatively independent judiciary the only way to promote reform is to have legal battles all the time. It's the only way that we can act as a force for change" (Moustafa, 2008). Not only did the court become one option for activists to mobilize for human rights protections, it became the primary and most effective way to do so.

Ultimately autocrats create courts if they extend the power or life of the regime. Whether it is to create conditions that foster economic growth and investment, distance the regime from fallout of controversial policies, or to establish domestic or international legitimacy courts have been used in authoritarian regimes to preserve or enhance the power and stability of the regime. However, these explanations would seem to predict that many, if not all authoritarian states would have the same incentives to create independent courts. Yet, what we see is some, but certainly not all, authoritarian states choose to allow independent decision making, and do so only at certain times, under certain conditions. Therefore, what is needed, and what this project provides is an alternative explanation of independent judicial decision making that explains not only the conditions that make independent judiciaries attractive for authoritarian leaders, but also the conditions that make restricting or limiting the court attractive as well.

Additionally, while the previous explanations discussed above often focus on protecting the regime or bolstering the regime from elite or international level consequences, courts can also protect the regime from other groups within society that have grievances against the government. In the formal models presented in the subsequent chapters the regime is concerned not with consequences from elite members of society, but rather with how dissatisfied groups within the population are. As is evident by recent events in Egypt, Tunisia, Syria, Libya, Bahrain, and Ukraine regimes should be very concerned about how dissatisfied groups not affiliated with the regime are with its policies. I argue that along with the benefits of protecting property rights and gaining legitimacy courts can also provide valuable information to the regime about how willing these groups are to challenge the status quo, information that is often costly to the regime to otherwise obtain.

## **2 The Model**

There are three actors in the game, the government of an authoritarian regime (G), an aggrieved group within society (A), and the highest civilian court (C). G moves first and selects a level of punishment the court will be forced to suffer if it rules against G. This level of  $p$  will be set endogenously within the model. A will have to decide whether to file a claim against G and pursue legal action, or not to file a claim. If they do not file a claim, G offers concessions ( $x$ ) to A, which A can accept or reject and the game ends. If A does



file a claim against G, then C decides the case based on the legal arguments and the level of independence. After the ruling G offers concessions ( $x$ ) to A, which A can accept (a) or reject (r), after which the game ends (note,  $x$  is the value to G,  $1 - x$  is the value to A).

There is incomplete information over the type of group and the strength of the legal case. Groups can be highly resolved ( $\overline{V}_A$ ) or less resolved ( $\underline{V}_A$ ), which G does not know, although A knows its own type. G has an initial belief that ( $V_A = \underline{V}_A$ ) with probability  $\phi$  and that ( $V_A = \overline{V}_A$ ) with probability  $1 - \phi$ . A can have a strong legal case ( $\overline{l}_A$ ) or a weak legal case ( $\underline{l}_A$ ) although neither G nor A know what type of case A has. There is no uncertainty surrounding G's legal case ( $V_G$ ). The legal reasoning ( $l_A$ ) is weak with probability ( $q$ ) and strong with probability ( $1 - q$ ).

A also suffers costs  $c$  for legal proceedings and costs  $K_A$  if they reject an offer of concessions. G also suffers costs  $K_G$  if A rejects the offer. When A rejects the offer they then engage in some anti-system behavior. There are no assumptions about what this behavior looks like exactly, but can range from a discussion of organizing a movement to leading a protest against the state. It simply indicates a willingness to engage in action outside of the political system. Both G and A receive benefit  $\beta$  for having their preferred policy implemented. This should be thought of as the benefit they get for getting their way, not as a benefit bestowed on them by the court. G can receive a benefit if they restrict the court and A does not file a claim, thus insulating their preferred policy. A and G can also receive  $\beta$  for having the court decide in their favor, even though this is not a benefit that the court specifically sets. Finally, G receives  $y$  and A receives  $1 - y$  if the concession deal is rejected.

The model has a separating perfect Bayesian Equilibrium, which is solved for by backward induction and is followed by an incentive compatibility check.

## 2.1 The Court's Decision

C decides for G iff  $l_G \geq l_A - p$  and decides for A iff  $l_A - p \geq l_G$ . That is the Court rules in favor of the government if the legal case for G is greater than the legal case for A and the punishment that the court receives for ruling against the government. The Court rules in favor of A if the legal case for A and the punishment the Court suffers is larger than the legal case for the government. The Court simply decides based on the legal facts of both G and A, and the punishment they will have to suffer if they rule against the government.

## 2.2 Group's Decision to Accept or Reject G's Offer

The group accepts G's offer of  $x$  concessions if the value they have for the benefit they get for accepting the deal after winning the case, less the costs of legal proceedings is greater than the value they have for the benefit they receive from rejecting the offer after winning the court case minus the costs of legal proceedings and the costs of rejecting and subsequently mobilizing. More succinctly, A weighs the deal G is offering against the value they get from rejecting and engaging in anti-system behavior, less the costs of doing so.

$$V_A(1 - x + \beta) - c \geq V_A(1 - y + \beta) - c - K_A \quad (1)$$

which yields,

$$x \leq y + \frac{K_A}{V_A}. \quad (2)$$

Thus, A will accept G's offer if the concessions are less than or equal to the benefit they get from rejecting and the cost to the group of mobilizing conditioned on how much they value the issue.

There will be two types of offers then that G will consider  $\bar{x} \equiv y + \frac{K_A}{V_A}$  and  $\underline{x} \equiv y + \frac{K_A}{V_A}$ , where  $\bar{x} < \underline{x}$ . The highly resolved group will only accept  $\underline{x}$ , and the less resolved group will accept either  $\bar{x}$  or  $\underline{x}$ . Intuitively, the highly resolved group will only accept offers where G's share is low,  $\underline{x}$ , meaning that the share to the group is larger. Whereas less resolved groups will accept concessions where G's share is larger,  $\bar{x}$  and their own share is smaller, but would obviously also accept concession where G's share is smaller as well. G prefers not to make large concessions, but also does not want groups engaging in anti-system behavior. Yet, there is uncertainty about what type of group A is, so G must weigh offering smaller concessions to A, which may be rejected, or larger concessions that will surely be accepted, but risk giving large concession to a less resolved group that would have accepted the smaller concessions.

To determine the what offer G makes to A the value the government has for making large concessions ( $\underline{x}$ ) is set greater than or equal to the expected value to the government for making small concessions ( $\bar{x}$ ).

$$V_G(\underline{x}) \geq \phi(V_G\bar{x}) + (1 - \phi)(V_Gy - K_G) \quad (3)$$

which yields<sup>1</sup>,

$$\phi \leq \frac{V_G \frac{K_A}{V_A} + K_G}{V_G \frac{K_A}{V_A} + K_G} \equiv \hat{\phi} \quad (4)$$

Therefore, if  $\phi$  is less than this threshold  $\hat{\phi}$ , then the government will set  $x = \underline{x}$ , a level that is accepted by both the highly resolved group and the less resolved group. If  $\phi$  is greater than  $\hat{\phi}$  then they will set  $x = \bar{x}$  a value that is only accepted by the less resolved group. This threshold is the same whether we consider when A files and Court decides for G, when A files and C decides for G, and when A does not file.

### 2.3 Group's Decision to File

There are three sets of cases that determine whether A will file a claim against the government or not that comes from C's decision rule.

#### Case 1:

In this set of cases  $p$  is sufficiently small so that any group will file a case regardless of the strength of the legal case. Formally,  $\underline{l}_A - l_G > p$ . Since  $p$  is sufficiently small, or C has been granted sufficient independence, A will file regardless of type since the level of  $p$  is known to all actors. Therefore, this case would only occur if G selects a very small level of  $p$  (or large amount of independence), which G will not do in equilibrium because they would not learn anything about the type of group they are facing. That is, if  $p$  is too low, we will not see separating by type.

#### Case 3:

In this set of cases  $p$  is sufficiently large so that even the best legal case for the group is not large enough to satisfy the severe punishment the Court faces,  $\bar{l}_A - l_G \leq p$ . That is, the government sets the Court's punishment so high that even when the best possible legal case supports the group, the Court still would not decide in favor of the group. Again, this is known by all actors, so it will not occur in equilibrium because the group knows  $p$  is so large, that they will never file, even if they have a strong case against the regime.

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<sup>1</sup>Calculations for all equations can be found in the appendix.

**Case 2:**

The only set of cases where the government can learn the type of group they are facing is when  $l_A - l_G \leq p < \bar{l}_A - l_G$ . That is the difference in the weak legal case for the group and the legal case for G is less than the punishment the Court faces, which is less than the difference between the strong legal case for the group and the legal case for the government. Here, groups with weak legal cases will not file claims, but groups with strong legal cases would (potentially) file claims. It is only within this class of cases, when judicial independence is not too high and not too low, that separation by type can occur.

Yet, within Case 2 filing by A will not always occur and we again have three subset of cases.

The generic filing rule is established by calculating the expected utility of filing to the utility of not filing.

$$q(1 - V_A(1 - x - b) + (1 - q)(1 - x + \beta) - c) \geq V_A(1 - x) \quad (5)$$

which simplifies to

$$V_A \geq \frac{c}{\beta(1 - q)}. \quad (6)$$

This result tells us that in order for the group to file the value they have for the issue needs to be larger than the costs they suffered for engaging in legal proceedings conditioned by the benefit they receive for their preferred policy weighted by the likelihood they have a strong legal case.

This again produces three subset of potential cases:

**Case 2.1:**  $\underline{V}_A > \frac{c}{\beta(1-q)}$ 

In this subset of cases, even the less resolved group has incentives to file claims.  $G$  will not allow semi-independence and will restrict the court because even  $\underline{V}_A$  (the less resolved group) would have incentive to file suit. Therefore  $G$  doesn't learn anything about what type of group it is facing, so it will not allow independence.

**Case 2.3:**  $\bar{V}_A \leq \frac{c}{\beta(1-q)}$

In this subset of cases neither type will file, not even  $\bar{V}_A$  because the value they have for the issue is less than the costs they suffer for legal proceedings conditioned on the benefit they receive, weighted by the likelihood they have a strong legal case. More succinctly the costs, benefits, and likelihood of winning is less than the resolve for even the most committed group.

**Case 2.2:**  $\underline{V}_A \leq \frac{c}{\beta(1-q)} < \bar{V}_A$

This is the only class of cases where G can learn anything about the group. The costs, benefits, and likelihood of winning are such that the less resolved type will not file, however the more resolved group will file. The highly resolved group has a higher value for the issue in dispute than the less resolved type,  $\underline{V}_A \leq \bar{V}_A$ , therefore we get separation between the two types. The more committed type,  $\bar{V}_A$ , will file a claim against the government when this level of independence is set, but  $\underline{V}_A$  will not.

In order to confirm this is a separating perfect Bayesian equilibrium it is necessary to check incentive compatibility. That is, that neither type has incentive to act like the other type.

To show the less resolved group does not have incentives to behave off the equilibrium path the payoff of not filing a claim (as expected in equilibrium) is set greater than or equal the expected value of filing a claim (not expected in equilibrium).

$$\underline{V}_A(1 - \bar{x}) \geq q(\underline{V}_A(1 - \underline{x}) - c) + (1 - q)(\underline{V}_A(1 - \underline{x} + \beta) - c) \quad (7)$$

which yields:

$$c \geq K_A(1 - \frac{\underline{V}_A}{\bar{V}_A}) + \underline{V}_A\beta(1 - q) \equiv \underline{c}. \quad (8)$$

Therefore, the less resolved group will not file as long as the costs of legal proceedings are equal to or larger than the costs than the value they have for winning in court and they likelihood they have the best legal case possible ( $l_A = \bar{l}_A$ ) and the costs they suffer by mobilizing conditioned by the difference in resolve between the high type and the low type.

Similarly to determine if the highly resolved group has incentive to behave off the equilibrium path the payoff of not filing a claim against G (not expected in equilibrium) is set

less than or equal to the payoff for filing a claim against G, as expected in equilibrium.

$$\overline{V}_A(1 - y) - K_A \leq q(\overline{V}_A(1 - \underline{x}) - c) + (1 - q)(\overline{V}_A(1 - \underline{x} + \beta) - c) \quad (9)$$

which yields:

$$c \leq \overline{V}_A\beta(1 - q) \equiv \hat{c} \quad (10)$$

Therefore, if the costs of filing a claim are less than the benefit the highly resolved type receives from winning the case, conditioned by the probability that they have the best possible legal case ( $l_A = \overline{l}_A$ ) then the high resolved type will behave as expected and does not have an incentive to behave off the equilibrium path or mimic the behavior of the lower resolved type.

#### 2.4 Government's Decision to Allow Independence

Finally, I determine whether G restricts the court or allows independent judicial decision making. The government must decide between setting  $p$  so high that even an A with the strongest legal case will not file a claim, and allowing judicial independence. When G restricts the court, they offer large concessions ( $\underline{x}$ ), which means they do not risk having the deal rejected, and no anti-system is possible.

$$V_G(\underline{x} + \beta) \geq \phi(V_G(\bar{x} + \beta)) + (1 - \phi)((q(V_G(\underline{x} + \beta)))(1 - q)(V_G\underline{x})) \quad (11)$$

which yields

$$\phi \leq \frac{\beta(1 - q)}{\bar{x} - \underline{x} + \beta(1 - q)} \equiv \underline{R} \quad (12)$$

Therefore if  $\phi$  is less than the threshold  $\underline{R}$ , G prefers to restrict the court. If the prior belief that the group is less resolved is less than the benefit of the policy weighted by the likelihood of winning, and conditioned by the differences in policy concessions that would satisfy both groups then the regime will prefer to restrict the court. That is, G will prefer to restrict the court if what they risk by losing, and the differences in concession they have to offer A is greater than the prior belief that the group is less resolved. Alternatively, G will prefer to grant independence in the initial probability that A is less resolved is larger than the threshold  $\underline{R}$ .

As the benefit ( $\beta$ ) to G increases it is more likely that G will want to restrict the Court so they minimize the risk to their preferred policy. That is as the threshold is higher, there are more possible values of  $\phi$  that will fall below the threshold. Additionally, as the benefit to G decreases, it becomes more likely that G will want to grant some independence to the Court as there are fewer values of  $\phi$  that will fall below the threshold and they are more willing to risk their preferred policy position. The same holds for the likelihood that A has a strong legal case. As that probability ( $1 - q$ ) increases, as it becomes more likely that A would win the case, G becomes more likely to restrict the Court's independence. As this probability decreases, as it becomes less likely A would win the case, G becomes more likely to allow independence.

As the difference between the large and small concessions grows, however, G becomes more likely allow judicial independence. Intuitively, as the larger the concessions are that would satisfy the highly resolved type grows, relative to the small concessions that would satisfy the less resolved type, G would like to be certain they are dealing with the highly resolved type in order to offer high concessions, rather than risk offering them to a less resolved group that would have been satisfied with a smaller offer.

Next, G's decision between setting  $p$  so high that even the group with a strong legal case will not file is set greater than or equal to the value of granting some level of judicial independence. When G restricts the court, they offer small concessions ( $\bar{x}$ ), which means they risk having the offer rejected and A engages in some anti-system behavior.

$$\phi(V_G(\bar{x} + \beta)) + (1 - \phi)(V_G(y + \beta) - K_G) \geq \tag{13}$$

$$\phi(V_G(\bar{x} + \beta)) + (1 - \phi)((q(V_G(\underline{x} + \beta)) + (1 - q)(V_G\underline{x})) \tag{14}$$

$$\phi \geq 1 \tag{15}$$

This tells us that if G were absolutely certain that A was the less resolved type, G would be strictly indifferent between limiting the court's independence to the point that it would never rule in favor of A even if they have a strong legal case, and limiting it just enough

that it would only rule in favor of A often enough for A to file if A was high in resolve. If G knew that A was low in resolve, these two outcomes would look identical because either way A is not going to file. But, as long as there is any doubt about whether A is low in resolve, conditional on the prior belief that A is likely enough to be low in resolve that G would gamble if G didn't acquire new information, G absolutely never wants to restrict the court's independence. That is G would rather risk losing a court case than it would risk having a highly resolved group reject the low offer of small concessions and mobilize.

### **3 Discussion and Implications**

This chapter has shown that under certain conditions authoritarian governments prefer allowing independent judicial decision making in order to gain information about the resolve of an aggrieved group to restricting the independence of the court. A number of interesting and surprising implications can be derived from the model.

Literature on the establishment of constitutional courts often posits that opposition groups and minorities have incentives to use the court to reverse legislative defeat or to secure policy preferences, a process that then empowers the judiciary and leads to the deepening of basic rights (Holland, 1991; Stone-Sweet, 2000; Ginsburg, 2003; Belge, 2006). However, the literature generally treats all groups the same; that is any opposition group that wants to reverse regime policies will have incentives to do so. Additionally, they show that judicial review is an endogenous process, and once it has been established it is more likely to be solidified and become entrenched.

The model shows that more attention needs to be paid to understanding the types of groups that will file claims against the government. It has been established that only highly resolved groups will file claims, and only when they have strong legal cases. It is this separation, that only highly resolved groups will file, that makes it worthwhile for the government to allow independent decision making. That is, it is because we get separation by type, and that the government cares about what type of group it is facing, that there is any incentive to create an independent court.

It has also been argued that judicial independence is an endogenous process, and that the process of judicial review and the overturning of government policies empowers the judiciary. However, as the model has shown when independence is controlled by the government it can



be implemented or restricted on a case by case basis (or an issue by issue basis). This finding challenges the accepted assumption that judicial independence in one case leads to more independence in future cases. While some may argue this should not be considered actual independence or that the government could choose not to implement the decision of the court, I argue the regime does have incentive to abide by the decision. Even if the government loses the court case it still prefers to allow the independent decision making if the difference in concessions it has to make are high enough (or if the issue at stake is less important to the regime). Additionally, if the regime failed to abide by the decision, or implement the policies of the court this would be known to future groups, who would recognize the lack of credibility in the government's actions and would decline to participate in future court proceedings or commit to accepting the concessions.

This leads to another implication to be drawn from the model, that judicial independence should vary *within* judicial systems, in addition to across systems as has been widely established. Because the regime can allow or restrict independence, and this calculus is dependent in part on the value of the issue at stake, we expect more independence when the regime cares less about the issue, and less independence when the regime cares more about the issue. If the regime's preferences over issues are consistent then we should see the same independence in all cases over similar issues, that is in issues that G cares more about, like national security, will not be subjected to judicial independence. Issues of lesser importance, say allowing a religious identification section to be left blank on a national ID card, will be decided by independent judiciaries. Therefore in the long run judicial independence will vary based on the issue and how important that issue is to the regime.

Finally, the most compelling implication that we draw from the model, particularly in light of the uprisings in the Middle East and Europe, is the effect of independent judicial decision making on the likelihood of conflict. When deciding to allow judicial independence or restrict the court and offer concessions that both groups would accept we would never see conflict when the issue in the case is of low or moderate importance to the regime. Because the naive offer would be accepted by both highly resolved and less resolved groups, restricting the court would never lead to conflict. By allowing the court to decide independently the government learns what type of group they are facing; to which they can offer the appropriate

level of concessions that the group they are facing would accept. That is, if they learn they are facing a highly resolved group then they will offer concessions that give the group a larger share. If they are facing a less resolved group the government will offer concessions that give the group a smaller share. Each group will accept the concessions they are offered, eliminating the risk of conflict.

If the government is deciding between restricting the court and offering concessions that are accepted by the less resolved group, but not by the highly resolved group and allowing judicial independence, the government risks conflict. However, I have shown that the regime prefers allowing judicial independence unless it is absolutely certain the group it is facing is the less resolved type. If the government knows, with certainty, that it is facing a less resolved group it will not allow judicial independent decision making, it will offer concessions that gives the group a smaller share, and that offer will be accepted by the less resolved group, eliminating the risk of conflict. If it is unsure about what type it is facing, it will allow judicial independence where it will learn what type it is facing, offer concessions that are accepted by that type of group, and again we will not expect to see conflict. Therefore, we do not ever expect to see conflict in equilibrium.

## **4 Conclusion**

This section began by asking, why some authoritarian regimes allow independent judicial decision making, and under what conditions do they have incentives do to so. To that end I developed and analyzed a model in which the government weighs setting a level of judicial independence where only highly resolved groups will file claims against the regime and restricting the court so no groups will file. Regimes will allow independent judicial decision making when they are uncertain about what types of groups they are facing. By allowing some judicial independence the regime can learn how committed to challenging the status quo different groups are, allowing the regime to make policy concessions that are sure to be accepted by the type of group, eliminating the groups' incentives to engage in anti-system behavior.

The model produces several important insights concerning the decision's of aggrieved groups to address their grievances with the regime either through the court system or by engaging in anti-system behavior. Only highly resolved groups will file claims against an

authoritarian regime, only when they have a strong legal case, and only when they believe there is at least partial judicial independence. This finding challenges the expectation that as long as courts are believed to be independent any group that has grievances with the regime should have an incentive to challenge the regime in court. Groups are concerned not just with challenging the regime, but also consider their likelihood of winning and the costs that are associated with the legal system when deciding how to address their grievances.

Finally, one of the most interesting and relevant insights that can be drawn from this model is when the regime is concerned with limiting anti-system actions; be it protests, mobilization, or any other behavior groups could engage in, by allowing independent judiciaries to reveal how committed these groups are, they can offer policy concessions that would satisfy even the most resolved groups. Therefore, regimes could practically eliminate behavior it dislikes simply by learning how resolved the group is and subsequently offering the appropriate policy changes as long as it's willing to offer concessions and create a partially independent court.

Independent judiciaries are frequently considered to be the foundation of rule of law within a state, a virtual pre-requisite to liberal democracy. However, as the models presented here have shown, caution is needed when assuming that a state possessing an independent court is (or will become) more liberal or democratic. The very use of these institutions in an authoritarian setting can limit or overturn policies of the regime, but can also be very beneficial to solidifying its rule. Even if the regime loses its case to an aggrieved group, it is often the winner by being able to easily pacify groups that were willing to openly challenge the regime.

## **5 Independent Courts and Civil Conflict**

According to the theoretical model by adopting at least a partially independent court a regime can reduce its likelihood of experiencing civil conflict with an aggrieved group by offering policy concessions to satisfy the group's demands. Therefore, what we can expect to observe is few states with independent courts experiencing civil conflict.

*H<sub>1</sub> : Judicial independence is associated with a reduction in the likelihood of civil conflict.*

In addition to being informed by the theoretical model this expectation is supported by various studies regarding judicial independence and dissent, protests and human rights protections. Increased protections of human rights and respect for physical integrity rights are found to be positively associated with empowered judiciaries (Keith, 2002; Keith, Tate and Poe, 2009; Powell and Staton, 2009) and constraints on the executive (Bueno de Mesquita et al., 2005; Davenport, 2007). Additionally literature on international law and respect for human rights finds that international human rights treaties can create mobilization opportunities for citizens and that these laws matter most where domestic groups “have the motive and the means to demand the protection of their rights”, most likely in court (Simmons, 2009). Interestingly Conrad and Ritter (2013) find that international human rights treaties have a small, but positive and effect on rights protections when they are secure in office. They find that secure leaders who are obligated under international human rights treaties will repress less when facing mobilized challenges to their rule in order to avoid potential court costs (Conrad and Ritter, 2013).

## 5.1 Expectations and Variables

To model the relationship between civil conflict and judicial independence I gather data from a number of sources.

The dependent variable, *Conflict* is developed from the UCDP/Prio Armed Conflict Dataset (Gleditsch et al., 2002). Armed conflict is defined as “a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths” (Gleditsch et al., 2002). Since the model concerns only those states experiencing civil conflict, only conflicts defined as those that occur between the government of a state and an internal opposition group, with or without intervention from other states, are included.<sup>2</sup> Therefore, a conflict is coded as '1' if 25 battle related deaths occur, and the conflict is considered to be an internal or internationalized internal armed conflict in a given year.

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<sup>2</sup>UCDP/Prio classifies conflict as extrasystemic armed conflict, interstate armed conflict, internal armed conflict (without intervention), and internationalized internal armed conflict (with intervention from a outside state). The models presented here include both internal and internationalized internal conflict so as to include as broad of a sample as possible. The models have been estimated with, and without internationalized internal conflict, and the results remain the same.

The key independent variable *Judicial Independence* is a *de facto* concept of judicial independence developed by Linzer and Staton. The latent measure they develop (LJI) is based on the idea that a judge is only independent in so far as her decisions reflect her legal evaluation and that those decisions are respected by government officials who disagree with them (Linzer and Staton, 2012). While many other measures of judicial independence exist, the latent measure is the most appropriate because it most closely matches the conceptualization of independence presented in the theoretical model. The formal model treats judicial independence as the degree to which a judge bases her decision on the legal arguments presented in the case, and the extent to which she will be punished by the regime if she issues a decision regime officials disagree with. While there is some element of difference between the conceptualization of independence presented in the formal model and Linzer and Staton's Latent Judicial Independence estimates, they both imply a behavioral measure, such that as a judge's independence increases, judicial independence will increase as well (Linzer and Staton, 2012).

For the propensity score models a binary measure of judicial independence is required. As the theory predicts, even partially independent courts, or those that are independent in some areas and not in others, should reduce the likelihood of conflict. Courts are considered to be independent or partially independent if they have an LJI estimate of greater than 0.5. Under this classification from 1960 to 2009, of the 7,937 country-years available, 2,891 are independent, whereas 5,046 are not.<sup>3</sup>Therefore, roughly 37% of the country-years are considered to possess independent courts. Compared to other common measures of judicial independence this is a relatively conservative classification. For example, the CIRI measure of judicial independence classifies courts as independent, partially independent, or not independent at all (Cingranelli, Richards and Clay, 2013). Of the 5,054 country-years available in this data CIRI classifies 1,160 country-years as not independent, 1,848 as partially independent, and 2,046 as independent, for a total of 74% as partially or fully independent.

A number of control and confounding variables are necessary to model the relationship between judicial independence and civil conflict. One of the best predictors of civil conflict in

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<sup>3</sup>The LJI measure ranges from .0162 to .9894 and has a mean of .44.

a given year is whether the state experienced a civil conflict in the previous year. Therefore, *Previous Conflict* is armed conflict lagged by one year. Additionally, the severity or intensity of the previous conflict may affect the likelihood of conflict, therefore a measure of battle deaths related to the conflict in the previous year is appropriate. However, estimating the number of battles deaths may be a complicated and difficult process. Two separate estimates from the UCDP Battle Related Deaths Dataset are provided; *Battle Deaths (Low)* consists of the aggregated low estimates of all the battle-related incidents during the year, whereas *Battle Deaths (High)* consists of the aggregated high estimates of battle-related incidents during the year as well as incidents where there is some uncertainty about what parties have been involved (*UCDP Batt-Related Deaths Dataset*, 2013). These measures are then averaged to get a general estimate of the total battle deaths in a given year of conflict.

Finally, measures for regime type and economic development are needed as well. As the regime type, or the level of democracy in a state, increases the less likely the state is to experience civil conflict. The *Regime Type* measure comes from the PolityIV dataset and is the combined Polity2 measure, ranging from -10 (most autocratic) to 10 (most democratic) (Marshall and Jaggers, 2002). Finally, economic development is expected to negatively affect the likelihood of civil conflict, so a measure of *GDP/capita* from the World Bank is also included (The World Bank, 2014).

## 5.2 Results

The results of the estimated logistic regression of whether a state experiences civil conflict are reported in Figure 1. The data examined here are 6,171 country years from 1961-2009<sup>4</sup>.

[Figure 1 about here]

Recall that the primary expectation is that increases in judicial independence would be associated with decreases in the onset of civil conflict. However, in the logistic regression model judicial independence does not have a significant relationship with the onset of civil conflict. As expected *GDP* has a negative, and statistically significant relationship with civil

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<sup>4</sup>Statistical significance is represented with \* ( $p < 0.10$ , two-tailed), \*\* ( $p < 0.05$ , two-tailed), and \*\*\* ( $p < 0.001$ , two-tailed) and standard errors are reported in parentheses.

conflict, while *Previous Conflict* has a positive and significant relationship, also as expected. Battle-related deaths is also not a significant predictor of civil conflict, nor is regime type.

Estimating the effect of judicial independence on the likelihood of conflict using logistic regression poses a number of problems. First, the predictors of civil conflict (or rather the predictors of a state *not* experiencing civil conflict) are also likely predictors of judicial independence. Second, in order to isolate the effect of judicial independence on civil conflict it is important to compare the effects of having an independent court to the effects of not having an independent court, among states that are equally likely to adopt an independent court. Therefore, in order to address these two problems, propensity score models are needed.

### 5.3 Propensity Score Models

To truly understand the effect of judicial independence on civil conflict and to understand if there are indeed causal effects of adopting an independent court counterfactual analysis is required. What we truly want to know is if a state experiences civil conflict with an independent court and in the absence of an independent court. Estimating this effect would be relatively uncomplicated, if it could be conducted in an unconstrained research environment. All it would require would be conducting an experiment where states with the same regime type, economic development, history of conflict and severity of the previous conflict were randomly assigned to treatment, having an independent court, or to control, no independent court, and observing whether they experience civil conflict. Unfortunately, executing an experiment like this is probably entirely impossible. The use of observational data further complicates the ability understand this effect given that the assignment of treatment is rarely, if ever, random or independent.

If conducting a randomized experiment to learn about the causal effect of judicial independence on conflict is not an option for researchers, how can we estimate the effect? Fortunately the potential outcomes framework advanced by Neyman (1935) and Rubin (1973, 1974) as well as Rosenbaum (2010) provide a roadmap for understanding causal effects using observational data. The idea behind this framework is that for every unit, in the case of this project every country-year from 1960-2009, there is an outcome variable  $Y$  with two poten-

tial outcomes, whether there was conflict  $Y_i = 1$  or no conflict  $Y_i = 0$  in that country year<sup>5</sup>. Every outcome (conflict or no conflict) however is observed after treatment has occurred. Treatment, here an independent court is denoted  $T_i = 1$  and control, no independent court by  $T_i = 0$ .

Following the lead of Rosenbaum, Rubin, and Boyd et al. (2010) I then define the effect for each country-year as the “difference between the two potential outcomes” (Boyd, Epstein and Martin, 2010). The differences for each observation are then averaged to produce an average treatment effect.

$$\tau_i = Y_i(T_i = 1) - Y_i(T_i = 0) \tag{16}$$

However, because observational data is used, we can never observe both of the potential outcomes, we only see what happens after treatment or control, not what could also have happened. That is we only observe the factual, not the counterfactual (Boyd, Epstein and Martin, 2010).

Another problem, in addition to only observing one potential outcome after treatment or control, is that the framework presented above assumes that treatment and control are independently or randomly assigned. However in this case we know that the adoption of independent courts is not random, and that the variables that affect the outcome also may affect the likelihood of receiving treatment. Overcoming this problem is fortunately, not nearly as impossible as conducting an experiment. By estimating a propensity score, or the conditional probability of assignment to treatment given the observed covariates we can then estimate the effect of treatment on the outcome for observations with similar or matched propensity scores (Rosenbaum, 2010).

The first step is to estimate the likelihood of treatment, in this case judicial independence, based on the confounders, regime type, economic development, and the existence and severity of previous conflict. The results from the estimated logistic regression are found in Figure 2<sup>6</sup>.

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<sup>5</sup>For an excellent description of the use of the Neyman-Rubin model in political science, please see Boyd, Epstein, and Martin (2010)

<sup>6</sup>Statistical significance is represented with \* ( $p < 0.10$ , two-tailed), \*\* ( $p < 0.05$ , two-tailed), and



[Figure 2 about here]

As we can see *Regime Type*, *GDP*, and *Previous Conflict* have a positive and statistically significant relationship with *Judicial Independence*, indicating that regime type, economic development, and the existence of previous conflict are likely confounders in estimating the effect of judicial independence on civil conflict, but also that the previous logisitic regression model specification was inaccurate. The results indicate that as GDP per capita increases, the likelihood of having an independent court increases. Similarly, and as expected, as the degree of democracy increases, a states is more likely to have adopted an independent court. Finally, if a state experienced a conflict in the previous year, it is more likely to have adopted an independent court in the given year.

After estimating the effect of the confounders on the treatment, predicted probabilities are generated. These predicted probabilities are then used to generate the propensity score, the conditional probability of adopting an independent court, given the confounders. The propensity score is generated by the following equation:

$$Propensity = (1/(1 + 2.71828^{(-1 * xb)})) \quad (17)$$

The propensity score is then used to narrow the range of observations that will be included in the final estimation. By including only observations with similar propensity scores it ensures that only those states with the same propensity, or the same likelihood of adopting an independent court are included in the analysis. To be sure, it is necessary to ensure states that are treated and those that are not treated are included in the analysis. The results of the logistic regression of whether a state experiences conflict are reported in Figure 3 <sup>7</sup>.

[Figure 3 about here]

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\*\*\*( $p < 0.001$ , two-tailed) and standard errors are reported in parentheses.

<sup>7</sup>Statistical significance is represented with \* ( $p < 0.10$ , two-tailed), \*\*( $p < 0.05$ , two-tailed), and \*\*\*( $p < 0.001$ , two-tailed) and standard errors are reported in parentheses.

Of the 333 country-years with propensity scores within the range of 0.40 to 0.60, 124 states received treatment, while 209 did not. Receiving treatment has a negative and statistically significant effect on the likelihood of conflict, as expected. To interpret the size of the effect, the predicted probabilities are plotted in Figure 4.

[Figure 4 about here]

As we can see from the plot the effect of adopting an independent court is significant. States with a propensity score for adopting an independent court between .4 and .6 that do not have an independent court have a likelihood of civil conflict of .13, compared with states that do adopt an independent court that have a likelihood of civil conflict of less than .01. Substantively, for states that are equally likely to adopt an independent court, actually doing so reduces their likelihood of conflict by approximately 10 percentage points.

#### 5.4 Discussion

The results from an analysis of the effect of adopting an independent court on the likelihood of civil conflict is generally that when states adopt an independent court they can reduce their likelihood of civil conflict. When appropriately adjusting for potential confounders and examining only those states with similar propensities for adopting independent courts, adopting an independent court reduces the likelihood of conflict by more than 10 percentage points.

It is important to note however, that these models and subsequently the effects they highlight are subject to the assumption that no other potential confounders or unobservable confounders have been omitted from the analysis. If there are significant unobserved confounders excluded from the analysis, this would bias the results of the estimates of the likelihood of receiving treatment and subsequently the propensity scores generated from those estimates, and ultimately lead us to compare cases in the final model that might not ought to be compared. Therefore, while these results are notable and significant it is worth mentioning that potential unmeasured or unobserved confounders could significantly affect the inferences that can be drawn from these models.

Another important caveat is needed. Missing data, on the measures for GDP per capita and regime type, poses a significant question to the results presented above. Furthermore

it is expected that the data is not missing at random. Of the 7,937 observations for which there are estimates of judicial independence, 1,019 are missing values of GDP per capita, 778 are missing values of regime type from Polity, and 141 are missing values for both measures. While missing data alone poses enough problems for the interpretation of the results, the country-years that are missing values for GDP per capita and regime type are likely not random. When GDP per capita is missing the average polity score is -4.9, meaning that on average most of the missing data is in authoritarian or non-democratic regimes. The problem is worse when considering the missing values on the outcome and treatment variables. Of the 1,019 missing country-years for GDP per capita, 177 are country years that experience conflict of which 172 do not possess an independent court. Dropping these country-years from the analysis hinders the ability to draw causal inferences about the effect of judicial independence on experiencing civil conflict.

Additionally the theoretical models imply that adopting an independent court should reduce anti-system behavior. This prediction varies substantively from the relationship modeled above. While protesting and other anti-system behavior is certainly linked and related to armed conflict within the state, there is a vast degree of difference about the willingness to organize and protest and the willingness to take up arms against the regime. A more appropriate model would be to examine the effect of adopting an independent court on the likelihood of protest or dissent, rather than armed conflict.

Conclusion This project began with asking the question, why would the Egyptian government allow its policy on regulating national identification cards to be overturned by the court? Given that Egypt is not alone in allowing independent judicial decision making, why do autocrats allow judicial independence in some cases, but restrict the court's autonomy in others? I present an argument, theoretically and empirically, that authoritarian regimes use independent courts to learn how resolved aggrieved groups are in society and in turn use this information to determine what level of policy concessions will satisfy the groups demands and forestall domestic conflict.

This research joins a growing number of studies examining how institutions that are typically associated with liberal democracies are created and used in authoritarian regimes. Rather than using the courts to settle disputes, check the power of other government

branches, or protect and promote individual rights vis-a-vis the regime, autocrats grant judiciaries sufficient autonomy in order to extend their own power. These studies lend considerable weight to the proposition that authoritarian institutions, even those that look remarkably similar to those found in democracies, should be studied in their own right, and that the functions and purposes they serve are vastly different than their democratic counterparts.

The models presented above show that under certain conditions, mainly when an aggrieved group in society is highly resolved for change, the court is sufficiently independent, and the regime does not care too much about the issue in the case, the regime will be more likely to prefer to allowing the court to decide a case independently, rather than restrict it to ensure policy protection. These models yielded a number of interesting implications for the study of court systems, authoritarian institutions, and their impact on domestic conflict. First, if the regime is willing to risk policy loss in the court in order to learn how resolved the opposition groups are, they can effectively reduce their likelihood of anti-system behavior and civil conflict. This is a substantial finding in its own right, however it does not allow us to draw conclusions about the likelihood of conflict when the regime is not willing to risk losing in court, but also wants to know how resolved the aggrieved groups are. What lies outside of the model is what is likely to happen when the group and regime are in conflict over an issue that is highly important to both the group and a regime that is not willing to risk losing in court. It is certainly plausible the regime would opt for some other mechanism, such as broad surveillance, repression, or monitoring that would allow them to attempt to control dissent without giving up their preferred policy. It is also plausible the regime would allow these issues to be adjudicated in specialized security courts where there is little risk to the preferred policy but a rhetorical commitment to rule of law can be maintained.

The empirical model presented above also sheds light on the dynamic relationship between courts and conflict. Adopting an independent court leads to a reduction in the likelihood of civil war onset by approximately ten percentage points indicating that these institutions can in fact help autocrats avoid costly conflicts with aggrieved groups. There are of course a few important limitations, primarily given the extensive missing data on measures of economic development. Dropping these observations from the analysis hinders the ability

to draw strong inferences about the causal relationship between judicial independence and civil conflict. While the results should not be dismissed because of the missing data, it is impossible to know how the results would change, if at all, in the event the data was not missing.

Studies of judicial independence tend to focus on the benefits they provide in advanced, liberal democracies. This study contributes to a growing body of literature that examines how independent, or partially independent courts, are used in authoritarian regimes. The models presented here demonstrate that authoritarian leaders have incentives for allowing independent judicial decision making when they are uncertain about the resolve of aggrieved groups in society. If regimes are concerned about groups engaging in anti-system behavior or mobilizing against the regime, they can allow an independent court to learn how resolved the group is, and then offer policy concessions that satisfy the groups demands. If the group knows the court is independent, they are highly resolved, and they believe they have a strong legal case, they will file a claim against the regime. Independent judiciaries are frequently considered to be the foundation of rule of law and synonymous with liberal democracy. Yet, this study indicates that this type of opening in the judicial arena should be viewed with caution in authoritarian regimes. By allowing a degree of judicial independence regime leaders gain valuable information and stability while giving up nominal authority. Therefore, scholars and policy-makers should not assume that because a state adopts an independent court it is or will become more liberal or democratic. The very use of judicial institutions can overturn policies of the regime, but they can also be critical in solidifying and extending its rule.

## 6 Appendix

### Group's Decision: Accept or Reject

Generically,  $A$  accepts  $G$ 's offer of  $x$  if and only if

$$EU_A(\text{accept}) \geq EU_A(\text{reject}),$$

$$V_A(1 - x + \beta) - c \geq V_A(1 - y + \beta) - c - K_A \quad (18)$$

which is equivalent to,

$$V_A - V_A x + V_A \beta - c \geq V_A - V_A y + V_A \beta - c - K_a \quad (19)$$

and yields,

$$x \leq y + \frac{K_A}{V_A}. \quad (20)$$

The precise value of  $V_A$  and the  $x$  that is accepted depends on  $A$ 's type. When  $V_A = \underline{V}_A$ ,  $A$  accepts iff  $x \geq \bar{x}$  where

$$\bar{x} \leq y + \frac{K_A}{\underline{V}_A}. \quad (21)$$

When  $V_A = \overline{V}_A$ ,  $A$  accepts iff  $x \geq \underline{x}$  where

$$\underline{x} \leq y + \frac{K_A}{\overline{V}_A}. \quad (22)$$

Since,  $\underline{V}_A < \overline{V}_A$  then  $\bar{x} < \underline{x}$ . Highly resolved groups ( $\overline{V}_A$ ) will only accept  $\underline{x}$  and less resolved groups ( $\underline{V}_A$ ) would accept  $\bar{x}$  or  $\underline{x}$ .

Now we turn to the offer that  $G$  makes, either  $\underline{x}$  or  $\bar{x}$ .

$G$  offers large concessions ( $\underline{x}$ ) iff  $EU_G(\underline{x}) \geq EU_G(\bar{x})$ , or

$$V_G(\underline{x}) \geq \phi(V_G \bar{x}) + (1 - \phi)(V_G y - K_G) \quad (23)$$

which is equivalent to,

$$V_G(y + \frac{K_A}{\bar{V}_A}) \geq \phi V_G \bar{x} + V_G y - K_G - \phi(V_G y + K_G) \quad (24)$$

also equivalent to

$$V_G \frac{K_A}{\bar{V}_A} + K_G \geq \phi(V_G(y + \frac{K_A}{\bar{V}_A}) - K_G - \phi(V_G y + K_G)). \quad (25)$$

This simplifies to

$$V_G \frac{K_A}{\bar{V}_A} + K_G \geq \phi V_G y + \phi \frac{K_A}{\bar{V}_A} - \phi V_G y - \phi K_G \quad (26)$$

and can be written as

$$\phi \leq \frac{V_G \frac{K_A}{\bar{V}_A} + K_G}{V_G \frac{K_A}{\bar{V}_A} + K_G} \equiv \hat{\phi}. \quad (27)$$

$G$  offers concessions that it know will be accepted by either group ( $\underline{x}$ ) iff  $\phi \leq \hat{\phi}$ , where  $\phi$  is the initial belief held by  $G$  that  $A$  is less resolved.

## 6.1 Group's Decision to File

Next we determine whether  $A$  files a claim against  $G$  where three sets of cases exist.

**Case 1:**  $\underline{l}_A - l_G > p$ .

In this set of cases  $p$  is sufficiently small so that any group will file a case regardless of the strength of the legal case. Formally,  $\underline{l}_A - l_G > p$ . Since  $p$  is sufficiently small, or  $C$  has been granted sufficient independence,  $A$  will file regardless of type since the level of  $p$  is known to all actors. Therefore, this case would only occur if  $G$  selects a very small level of  $p$  (or large amount of independence), which  $G$  will not do in equilibrium because they would not learn anything about the type of group they are facing. That is, if  $p$  is too low, we will not see separating by type.

**Case 3:**  $\bar{l}_A - l_G \leq p$ .

In this set of cases  $p$  is sufficiently large so that even the best legal case for the group is not large enough to satisfy the severe punishment the Court faces,  $\bar{l}_A - l_G \leq p$ . That is, the government sets the Court's punishment so high that even when the best possible legal

case supports the group, the Court still would not decide in favor of the group. Again, this is known by all actors, so it will not occur in equilibrium because the group knows  $p$  is so large, that they will never file, even if they have a strong case against the regime.

**Case 2:**  $\underline{l}_A - l_G \leq p < \bar{l}_A - l_G$

The only set of cases where the government can learn the type of group they are facing is when  $\underline{l}_A - l_G \leq p < \bar{l}_A - l_G$ . That is the difference in the weak legal case for the group and the legal case for G is less than the punishment the Court faces, which is less than the difference between the strong legal case for the group and the legal case for the government. Here, groups with weak legal cases will not file claims, but groups with strong legal cases would (potentially) file claims. it is only within this class of cases, when judicial independence is not too high and not too low, that separation by type can occur.

Generically  $A$ 's will file a claim iff  $EU_A(\text{file}) \geq EU_A(\text{not file})$ , or

$$q(1 - V_A(1 - x - b) + (1 - q)(1 - x + \beta) - c) \geq V_A(1 - x) \quad (28)$$

which is equivalent to

$$qV_A - qV_Ax - qc + V_A - V_Ax + V_A\beta - c - qVA + qV_Ax - qV_A\beta + qc \geq V_A - V_Ax. \quad (29)$$

This can be simplified to

$$V_A\beta - c - qV_A\beta \geq 0 \quad (30)$$

Which can be rewritten as

$$V_A(\beta - q\beta) \geq c \quad (31)$$

and leaves us with

$$V_A \geq \frac{c}{\beta(1 - q)} \quad (32)$$

Again we have three subsets of cases:

**Case 2.1:**  $\underline{V}_A > \frac{c}{\beta(1 - q)}$

In this subset of cases, even the less resolved group has incentives to file claims.  $G$  will not allow semi-independence and will restrict the court because even  $\underline{V}_A$  (the less resolved group)



would have incentive to file suit. Therefore  $G$  doesn't learn anything about what type of group it is facing, so it will not allow independence.

**Case 2.3:**  $\overline{V}_A \leq \frac{c}{\beta(1-q)}$  In this subset of cases neither type will file, not even  $\overline{V}_A$  because the value they have for the issue is less than the costs they suffer for legal proceedings conditioned on the benefit they receive, weighted by the likelihood they have a strong legal case. More succinctly the costs, benefits, and likelihood of winning is less than the resolve for even the most committed group.

**Case 2.2:**  $\underline{V}_A \leq \frac{c}{\beta(1-q)} < \overline{V}_A$  This is the only class of cases where  $G$  can learn anything about the group. The costs, benefits, and likelihood of winning are such that the less resolved type will not file, however the more resolved group will file. The highly resolved group has a higher value for the issue in dispute than the less resolved type,  $\underline{V}_A \leq \overline{V}_A$ , therefore we get separation between the two types. The more committed type,  $\overline{V}_A$ , will file a claim against the government when this level of independence is set, but  $\underline{V}_A$  will not.

Next I check for incentive compatibility. Less resolved groups will behave as expected iff  $EU_A(\text{not file}) \geq EU_A(\text{file})$ , or

$$\underline{V}_A(1 - \bar{x}) \geq q(\underline{V}_A(1 - \underline{x}) - c) + (1 - q)(\underline{V}_A(1 - \underline{x} + \beta) - c) \quad (33)$$

Which is equivalent to

$$\underline{V}_A - \underline{V}_A \bar{x} \geq q\underline{V}_A - q\underline{V}_A \underline{x} - qc + \underline{V}_A - \underline{V}_A \underline{x} + \underline{V}_A \beta - c - q\underline{V}_A + q\underline{V}_A \underline{x} - q\underline{V}_A \beta + qc \quad (34)$$

This can be simplified to

$$\underline{V}_A - \underline{V}_A \bar{x} \geq \underline{V}_A - \underline{V}_A \underline{x} + \underline{V}_A \beta - q\underline{V}_A \beta - c. \quad (35)$$

Then we substitute for  $\underline{x}$  and  $\bar{x}$

$$-\underline{V}_A \left( y + \frac{K_A}{\underline{V}_A} \right) \geq -\underline{V}_A \left( y + \frac{K_A}{\underline{V}_A} \right) + \underline{V}_A \beta (1 - q) - c \quad (36)$$

Which simplifies to

$$-\underline{V}_A \frac{K_A}{\underline{V}_A} \geq -\underline{V}_A \frac{K_A}{\underline{V}_A} + \underline{V}_A \beta(1 - q) - c \quad (37)$$

and reduces to

$$-K_A \geq -\underline{V}_A \frac{K_A}{\underline{V}_A} + \underline{V}_A \beta(1 - q) \quad (38)$$

and finally can be rewritten as

$$c \geq K_A \left(1 - \frac{\underline{V}_A}{\underline{V}_A}\right) + \underline{V}_A \beta(1 - q) \equiv \underline{c}. \quad (39)$$

We check incentive compatibility for the highly resolved group as well where they file iff  $EU_A(\text{not file}) \leq EU_A(\text{file})$ , or

$$\overline{V}_A(1 - y) - K_A \leq q(\overline{V}_A(1 - \underline{x}) - c) + (1 - q)(\overline{V}_A(1 - \underline{x} + \beta) - c) \quad (40)$$

Which is equivalent to

$$\overline{V}_A(1 - y) - K_A \leq q\overline{V}_A - v\overline{V}_A\underline{x} - qc + \overline{V}_A - \quad (41)$$

$$\overline{V}_A\underline{x} + \overline{V}_A\beta - c - q\overline{V}_A + a\overline{V}_A\underline{x} - q\overline{V}_A\beta + qc. \quad (42)$$

This can be reduced to

$$\overline{V}_A(1 - y) - K_A \leq \overline{V}_A - \overline{V}_A\underline{x} + \overline{V}_A\beta - q\overline{V}_A\beta - c. \quad (43)$$

Substituting in  $\underline{x}$  and  $\overline{x}$

$$-\overline{V}_A y - K_A + c \leq -\overline{V}_A \left(y + \frac{K_A}{\overline{V}_A}\right) + \overline{V}_A \beta(1 - q) \quad (44)$$

can be rewritten as

$$-\overline{V}_A y - K_A + c \leq -\overline{V}_A y + \overline{V}_A \frac{K_A}{\overline{V}_A} + \overline{V}_A \beta(1 - q). \quad (45)$$

Which finally gives us

$$c \leq \overline{V}_A \beta(1 - q) \equiv \hat{c} \quad (46)$$

Next we determine whether  $G$  restricts the court (sets  $p$  so high that no group files) or allows independence to ensure separation by type, when  $\phi < \hat{\phi}$ .  $G$  restricts the court and sets  $x = \underline{x}$  iff  $EU_G(\text{restricts}) \geq EU_G(\text{allowsindependence})$ , or

$$V_G(\underline{x} + \beta) \geq \phi(V_G(\bar{x} + \beta)) + (1 - \phi)((q(V_G(\underline{x} + \beta)))(1 - q)(V_G\underline{x})) \quad (47)$$

Which can be rewritten as

$$V_G\underline{x} + V_G\beta \geq \phi V_G\bar{x} + \phi V_G\beta + qV_G\underline{x} + \quad (48)$$

$$qV_G\beta + V_G\underline{x} - qV_G\underline{x} - \phi qV_G\underline{x} - \phi qV_G\beta - \phi V_G\underline{x} + \phi qV_G\underline{x} \quad (49)$$

and can be simplified to

$$\underline{x} + \beta \geq \phi\bar{x} + \phi\beta + q\beta + \underline{x} - \phi q\beta - \phi\underline{x}. \quad (50)$$

Which can be reduced to

$$\beta \geq \phi(\bar{x} - \underline{x} + \beta(1 - q)) + q\beta \quad (51)$$

and further simplified to

$$\beta(1 - q) \geq \phi(\bar{x} - \underline{x} + \beta(1 - q)) \quad (52)$$

and finally expressed as

$$\phi \leq \frac{\beta(1 - q)}{\bar{x} - \underline{x} + \beta(1 - q)} \equiv \underline{R} \quad (53)$$

Finally, we determine whether  $G$  restricts the court (sets  $p$  so high that no group files) or allows independence to ensure separation by type, when  $\phi > \hat{\phi}$ .

$G$  sets  $x = \bar{x}$  iff  $EU_G(\text{restricts}) \geq EU_G(\text{allowsindependence})$

$$\phi(V_G(\bar{x} + \beta)) + (1 - \phi)(V_G(y + \beta) - K_G) \geq \quad (54)$$

$$\phi(V_G(\bar{x} + \beta)) + (1 - \phi)((q(V_G(\underline{x} + \beta)) + (1 - q)(V_G\bar{x})) \quad (55)$$

Which is equivalent to

$$V_G y + V_G \beta - K_G - \phi V_G y - \phi V_G \beta + \phi K_G \geq \quad (56)$$

$$qV_G \bar{x} + qV_G \beta + V_G \bar{x} - qV_G \bar{x} - \phi qV_G \bar{x} - \phi qV_G \beta - \phi V_G \bar{x} + \phi qV_G \bar{x} \quad (57)$$

and can be simplified to

$$V_G y + V_G \beta - K_G - \phi V_G y - \phi V_G \beta + \phi K_G \geq qV_G \beta + V_G \bar{x} - \phi qV_G \beta - \phi V_G \bar{x}. \quad (58)$$

Can further be rewritten as

$$y + \beta - \frac{K_G}{V_G} - \phi y - \phi \beta + \frac{\phi K_G}{V_G} \geq q\beta + \bar{x} - \phi q\beta - \phi \bar{x} \quad (59)$$

Which reduces to

$$\phi(q\beta + \bar{x} - y - \beta + \frac{K_G}{V_G}) \geq q\beta + \bar{x} - y - \beta + \frac{K_G}{V_G} \quad (60)$$

and can be rewritten as

$$\phi \geq \frac{q\beta + \bar{x} - y - \beta + \frac{K_G}{V_G}}{q\beta + \bar{x} - y - \beta + \frac{K_G}{V_G}}. \quad (61)$$

Which is equivalent to

$$\phi \geq 1 \quad (62)$$

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Figure 1: Logistic Regression Results for Conflict.

Judicial Independence	.146 (.40)
GDP per capita	-.00005*** (0.00)
Regime Type	-.008 (.01)
Previous Conflict	4.698*** (0.12)
Battle Deaths	.0000 (0.00)
Constant	-3.18*** (0.16)
Log Likelihood	-1237.4287
Observations	6171

Figure 2: Logistic regression results for estimating the likelihood of treatment based on confounders.

GDP per Capita	.00001*** (0.00)
Regime Type	.561*** (.02)
Previous Conflict	.361** (0.14)
Battle Deaths (Low)	-.000 (0.00)
Constant	-3.983*** (0.16)
Log Likelihood	-1386.5033
Observations	6171

Figure 3: Logistic regression results for the effect of the treatment on conflict.

<b>Treatment</b>	-.699** (0.31)
<b>Constant</b>	-1.210*** (0.16)
Log Likelihood	-160.3074
Observations	333

Figure 4: Predicted Probability of Conflict

