Political competition and de facto judicial independence in non-democracies

BRAD EPPERLY

University of South Carolina, USA

Abstract. This article investigates the role of political competition in explaining de facto judicial independence in non-democratic regimes. It argues that the electoral, political insurance explanation popular in the study of courts in democracies also offers explanatory power in the autocratic context, despite popular wisdom otherwise: due to the relatively greater risks of losing power in non-democracies, electoral competition is highly salient when present. This is examined via hierarchical and fixed effects models that show competition strongly associated with increased levels of independence. This relationship is robust to alternative model and data specification, and has strong out-of-sample predictive accuracy.

Keywords: courts; judicial independence; authoritarianism; electoral competition

Introduction

Since the end of the Cold War and the collapse of the Soviet Union, the rule of law has received significant attention from policy makers, scholars and nongovernmental organisations around the world, all promoting it as a means of economic and political development in democracies and autocracies alike (Haggard et al. 2008). At its beginning, this 'rule of law revival' was characterised by triumphalism, later giving way to recognition of the fact that promoting good governance as a panacea was, in itself, not a solution, and that understanding how states achieve the rule of law lagged commitment to the ideal (Carothers 1998, 2010). More recently, however, there is a renewed focus on unpacking and better understanding the foundational components of the rule of law, as each may be constructed differently. The first and foremost of these foundational components is judicial independence (Ríos-Figueroa & Staton 2012). While judicial independence has been the object of much study in emerging democracies around the globe, systematic cross-national examination in the non-democratic context has been minimal (Helmke & Rosenbluth 2009).

At first glance, we might expect little to no variation in the amount of de facto judicial independence across non-democratic polities. According to this view, while constitutional rules regarding the judiciary certainly vary (Ginsburg & Versteeg 2013), the question of behavioural, de facto independence is irrelevant as autocrats should not be expected to allow even moderately independent institutions able to check their political manoeuvers and policy goals. And, indeed, it is not until recently that the role of the judicial branch outside of the universe of consolidated democratic states garnered much attention.

Much like other facets of authoritarian politics, however, those studying courts are recognising it is increasingly untenable to assume domestic institutions are simply pawns of the executive, and increasingly aware that significant and puzzling variation exists among non-democracies cross-sectionally and within given autocratic regimes over time. Despite this, research to date focuses primarily on variation in the judiciary's de facto independence

during regime transition (Helmke 2005), either during the final years of autocratic rule or the first years of unstable, emerging democracy (VonDoepp 2009). What little work there is examining variation in behavioural independence in non-democratic regimes over time ignores the role of electoral competition, undeterred by the fact that competition looms large in the literature on judicial independence in democratic regimes (Ginsburg & Moustafa 2008). As such, our understanding of the phenomenon in non-democracies is underdeveloped, as is our understanding across regime types.

This article contributes to both the study of judicial independence and the rule of law in three ways. First, it offers a new explanation for de facto independence in non-democracies, advancing the proposition that electoral competition, when present, should incentivise incumbents to respect courts more than they would otherwise. Second, it provides one of the first cross-national empirical studies of independence in the non-democratic context, reinforcing some existing explanations of independence in democracies while calling into question the generalisability of inferences drawn from single-country case studies. Third, it integrates the study of courts across the democracy/dictatorship divide, exploring the scope conditions of the strategic electoral account of judicial independence and suggesting new avenues for synthetic research.

I proceed as follows. First, I sketch the three ways the relationship between electoral competition and de facto independence is discussed in the literature, and why these are incomplete, arguing that competition is vital to understanding independence in non-democracies. This is followed by a presentation of issues of data and measurement. I then test the main hypothesis of the article, finding that competition is critical in explaining independence. After that I address model predictions across specific quantities of interest, highlight robustness and model fit, and present two empirical implications of the argument. A discussion of broader implications concludes.

Competition, independence and non-democracy

Although considered the dominant explanation for variation in de facto independence in democracies (VonDoepp & Ellet 2011), the role of electoral competition is marginal in research on courts in non-democracies (Popova 2010). Most commonly, those studying judiciaries in non-democracies assume competition plays no role in explaining levels of behavioural independence, even if it thought relevant in explaining whether constitutions formally grant review powers to the judiciary (Ginsburg & Versteeg 2013).[1] In the introduction to their edited volume on courts in autocracies, Ginsburg and Moustafa (2008: 28) assert that 'the electoral logic of judicialization in democracies clearly does not apply in authoritarian settings', though they do not develop the argument. More often, the idea that competition is irrelevant in non-democracies is expressed implicitly. Ramseyer (1994) does not address how regime type might matter, even in the context of Imperial Japan, and Ginsburg's (2003) focus on competition after authoritarian collapse implicitly assumes competition prior to this point isn't relevant. Similarly, Moustafa (2007, 2008) argues that a number of factors allowed Egyptian courts more independence after reforms initiated by Anwar Sadat in the late 1970s, including the need to effectively monitor the bureaucracy as envisioned by McCubbins and Schwartz (1984). Despite the shift from one-party rule in Egypt, competition is not considered as a possible explanation.

The second approach to the role of competition in non-democracies focuses on transitions from authoritarian rule. In case studies of Mexico, scholars argue that as the electoral dominance of the *Partido Revolucionario Institucional* waned in the 1990s, the degree of independence experienced by the judiciary increased (Finkel 2005; Ríos-Figueroa 2007; Magaloni 2008). A similar account is offered to explain variation in independence in Argentina: as incumbents' dominance waned, judicial 'defection' increased (Helmke 2002, 2005). Here, the contention is that when elites are fragmented and a transition to democracy a *fait accompli*, the incentive structures are such that political actors who would otherwise prefer to keep power centralised devolve some of it to the judiciary (or judicial actors expecting diminished chances of punishment defect and rule against incumbents). Here, the account is forwarded not in contexts of consolidated or new democracies but instead states emerging from authoritarianism: non-democracies not undergoing transition to democracy are not considered.

The third approach focuses not on non-democracies *per se*, but on those states many conceive of as falling somewhere between democracy and non-democracy.[2] Such states have many names, including 'new', 'electoral' or 'emerging' democracies (Lindberg 2009). Both VonDoepp's (2009) analysis of three Southern African states and Popova's (2010) work on Russia and Ukraine restrict analysis to these states (the time period examined by Popova predating Putin's authoritarian re-entrenchment). Each argues that given the nature of the political environment, competition can impede rather than further judicial independence.[3] Like in the political insurance explanation developed in democracies, VanDoepp and Popova focus on the risks and benefits of independent or non-independent courts, suggesting that benefits accruing to incumbents by limiting judicial independence outweigh the risks. While both stress that their analyses are limited to emerging or electoral democracies and fail to explain independence in cases of 'full-blown authoritarianism' (Popova 2012: 42), one could potentially extend their logics to a wider variety of non-democratic contexts. If this is the case, we should expect the exact opposite empirical relationship from the one I hypothesise, instead seeing an inverse correlation between competition and independence.

Like many scholars, but unlike those crafting typologies of autocracy (e.g., Collier & Levitsky 1997; Levitsky & Way 2002; Schedler 2006), I focus on non-democracies broadly and dichotomously, categorised as states without leaders popularly chosen in elections contested by more than one party that have also experienced alternation in power.[4] While typological approaches to autocracy have much to recommend them, they use the issue of electoral contestation as a key means to differentiate forms of autocracy. As such, if one is interested in exploring how variation in competition affects outcomes in autocracies, then analysing an autocratic subtype in practice means at best minimising variation and at worst selecting on the independent variable. The key hypothesis of this article is that *throughout* non-democracies, competition should be associated with more independent judiciaries.

A caveat to this discussion of competition and autocracy should be noted: the theoretical argument and empirical focus developed here is limited to electoral competition. While such might be nearly identical to political competition in consolidated democratic regimes, in autocracies electoral competition is just one facet of the broader category of political competition. In autocracies the latter can take other forms, including inter-service competition (Barros 2002) or the particularities of what Svolik (2012) calls the problem of authoritarian power-sharing. It is likely these other forms of competition should affect the

independence of the judiciary, and further research into how is undoubtedly vital (see, e.g., Díaz-Asensio 2012), both intrinsically and to better understand any substitution effects it might have with electoral causes.[5]

The reason why competition should be associated with independence in the non-democratic context is that, fundamentally, the electoral logic of strategic accounts of judicial independence is about the risks of no longer being in power and expectations about the probability of losing power. This is true across various strands of strategic models in democratic contexts, from those focusing on how balances of power during constitution-drafting affect structures (Ginsburg 2003; Stroh & Heyl 2015) to those assessing how variation in levels of electoral competition over time map onto de facto independence (Ramseyer 1994; Aydin 2013).[6] When opposition political groups present credible electoral threats, rational politicians in power will establish or maintain independent judiciaries because they are an effective and inexpensive minoritarian institution.[7,8]

There is nothing in this logic exclusive to democracies.[9] Political leaders in autocracies face similar expected utility calculations, the product of the risks of losing office and the probability that such an event might occur. Obviously, under a more 'traditional' non-democratic situation, when the level of competition is minimal and risks of losing power electorally low, the expectation is weak courts lacking independence. When competition does exist, however, and opposition parties are able to offer credible alternatives, the expectation of losing office is similarly higher. The focus here is, like with political insurance explanations in the democratic context, on the benefits courts can provide to incumbents who fear the risks associated with losing office. If courts provide such, then the empirical implication is that electoral competition in autocracies – the rise of which is well documented by Roessler and Howard (2009) – should be associated with more judicial independence.[10]

The question that naturally follows is whether autocratic rulers ever fear losing power as a result of electoral defeat. The answer is undoubtedly yes, as Levitsky and Way explain in their thorough examination of non-democracies with significant electoral competition: incumbents cannot rest easy in such circumstances, as '[g]overnment officials fear a possible opposition victory (and must work hard to thwart it), and opposition leaders believe they have at least some chance of victory. In competitive authoritarian regimes, incumbents are forced to sweat' (Levitsky & Way 2010: 12). And as Schedler (2006) illustrates, this unease can extend to more hegemonic variants of electoral authoritarianism (Brownlee 2009). The 'Colour Revolutions' in the postcommunist world are striking examples of autocrats losing power as a result of elections (Way 2008).[11] That the perception among autocrats that electoral risk is real is also demonstrated by the careful attention they pay to elections in neighbouring autocracies (Myagkov et al. 2005). Even when riddled with fraud and abuse, elections in non-democracies can have serious consequences, with competition affecting the expected utility calculus of those in power.

If the possibility of losing office is real and often carefully considered by those in power, the next issue is the other half of the calculation: are the risks of losing office also significant? At least two reasons exist for why losing office is a substantial risk for autocrats, potentially leading to more independent courts as a means of minimising the risks of losing office. The first of these is the increased stakes of holding and losing office in non-democracies. If the stakes of being out of office are significantly higher in non-democracies, the utility of independent courts may be even greater than in democracies despite the lower probability

of losing office. A key function of independent courts is protection of private property rights (Feld & Voigt 2003; La Porta et al. 2004; Haggard et al. 2008), the security of which are much more tentative in non-democratic contexts (Moustafa 2007). Because control of political power in autocracies means control of economic resources to a degree far surpassing democracies (Tullock 1986), losing power means insecure control over economic resources acquired while in office (Levin & Satarov 2000). Also increasing the stakes are the administrative resources commonly employed by autocrats to increase their security in office (Tucker 2007). These increase the risks because in instances when the opposition gains power electorally in autocracies it often means the continuation of autocracy and the use of these resources to further ensure those formerly in office are unable to regain power (Levitsky & Way 2010).

Beyond risks to private property and access to power, independent judiciaries can affect the personal security of political leaders as well. Recent work forwards a number of arguments as to why an independent judiciary should provide greater protection towards the personal security of executives after leaving office, and shows that independent courts are associated with better post-tenure outcomes across the democracy/dictatorship divide (Epperly 2013). Both democrats and autocrats in states with more independent courts are less likely to face punishment after leaving office, be it in the form of imprisonment, exile or execution.

The second reason relates to uncertainty, which is critical to strategic electoral explanations because it affects the probability of and risks associated with losing office (VonDoepp & Ellet 2011). Electorally competitive non-democracies are polities that, due to the nature of public support for parties and lack of trust, exhibit higher levels of uncertainty than consolidated democracies (Popova 2010). Compounding this is the fact that in non-democracies, competition signals a greater degree of uncertainty than in democracies. Because of the inhibited nature of electoral competition, uncertainty exists around how credible the opposition truly is at any given level of electoral success: it is unclear whether an opposition gaining 20 per cent of the vote signals an opposition commanding the support of only one out of every five voters. This is not only due to problems like outright fraud (the distorting effects of which an autocrat could theoretically ascertain), but also due to the distorted electoral arena found even in non-democracies with electoral competition (Schedler 2006; Levitsky & Way 2010). As a result, an autocrat's ability to determine the true amount of support for the opposition – and potential performance in the next election – is inhibited, increasing the uncertainty around the possible results of electoral competition.

The logic of popular strategic explanations of judicial independence in democratic contexts – be they focused on the structural powers of the judiciary (Ginsburg 2003; Stroh & Heyl 2015) or its de facto power (Ramseyer 1994; Aydin 2013) – argues that independence is a function of the risks of losing office and the probability of such an outcome. There is no reason to think such logic is constrained to democracies.[12] In non-democracies, the risks of losing office are significant, and typically much higher than in democracies. And as the literature on competitive authoritarian regimes makes clear, autocrats in electorally competitive systems routinely fear losing power as a result of, and at times do lose, elections. Compounding this, uncertainty surrounding electoral competition is higher in the non-democratic context. These facts lead me to the hypothesis advanced above, with the empirical prediction that competition should be associated with higher levels of de facto

judicial independence in the non-democracies of the world, both across states and within states over time.[13]

Data and measurement

Before testing the hypothesis that independence should be associated with competition I need to first discuss how these two critical concepts are measured, as well as how one determines a state is a non-democracy. Unfortunately, many of the commonly used measures of democracy include as part of their classification scheme whether a country has an independent judiciary, blurring the two and committing the all-too common sin of equating institutions of democracy with institutions of the rule of law (Levi & Epperly 2010).

In classifying country-years as non-democratic, I primarily rely on the popular measure of democracy and dictatorship advanced by Cheibub et al. (2010), which thankfully does not suffer from this problem.[14] Extending the earlier classification scheme presented by Przeworski et al. (2000), they classify countries democratic when meeting all four of the following criteria. First, the chief executive is popularly elected, or chosen by a body itself popularly elected. Second, the legislature is popularly elected. Third, more than one party competes in elections. Fourth, alternation in power occurs, and the rules under which it occurs are the same as those that brought incumbents to power. The Cheibub et al. (2010) measure therefore presents a basic conceptualisation of democracy, in which institutions enabling popular contestation of power exist, and those institutions produce actual alternation in power (Przeworski et al. 2000).[15]

Judicial independence

Ríos-Figueroa and Staton (2012) provide an overview of existing measures of de jure and de facto judicial independence, suggesting that the empirical literature on judicial independence is moving in the right direction as significant agreement exists across many measures. They do caution, however, that many indicators suffer from missing data, either cross-sectionally for specific types of countries or due to significant temporal limitations. Building on these insights, Linzer and Staton (2015) present a new measure of de facto judicial independence specifically taking into account the agreement among the existing indicators as well as the patterns of missing data.

Linzer and Staton's (2015: 13) measure 'makes use of the general agreement among the indicators, yet addresses concerns resulting from measurement error and missing data'. Recognising that simply aggregating different measures is problematic for many reasons, they build on existing item response models more commonly used in the study of legislatures and ideal-point estimation (Martin & Quinn 2002; Clinton et al. 2004). Their measure is based on a hetereoskedastic graded response model developed for time-series cross-sectional data, and uses eight of the common measures of de facto judicial independence analysed by Ríos-Figueroa and Staton (2012).[16] The measure directly models the time dependence involved in the concept, and takes into account missing data concerns in the individual indicators, using the agreement found among them where they do overlap to more effectively estimate de facto independence when coverage is limited to fewer measures.

Electoral competition

The measure of electoral competition employed here is drawn from Henisz's (2000, 2002) work on political constraints on the executive (excluding, obviously, any constraints imposed by the judiciary), which accurately captures the level of electoral competition in a system.[17] The measure is a 0–1 index determined by the number of executive and legislative veto points, the degree of legislative party alignment with the executive, and overall legislative fragmentation. When homogeneous opposition parties hold a large amount of legislative seats (i.e., when significant electoral competition exists) an executive is highly constrained. Contrastingly, an executive is unconstrained (0 on the index) when a legislature is completely aligned with the executive (i.e., when there exists no electoral competition). Importantly, the measure takes into account fractionalisation in the legislature, which is important for the logic of the strategic model of judicial independence: multiple small opposition groups are not as credible an electoral threat as a single opposition group with the same percentage of seats, and stable governments of one party are not as threatened as weak coalitions (Tate & Vallinder 1995; Smithey & Ishiyama 2002; Ginsburg & Versteeg 2013).

Other covariates

A number of other potentially relevant covariates are included. First is the level of economic development, which might affect the demand for independent courts. As levels of development and thus complexity of the economy increases, both large and small business interests might demand increased property rights protection and regularity of contract enforcement, which is a vital function of independent courts (Haggard et al. 2008). Additionally, states at lower levels of development may not have the necessary resources and infrastructure for effective, let alone independent, courts. Per capita GDP (gross domestic product) data (logged) is taken from Gleditsch (2002).

Second is the origin of the legal system: a common law heritage has been asserted to be an important indicator for a variety of institutional outcomes, including judicial independence (Glaeser & Shleifer 2002; La Porta et al. 2004). Despite significant criticism, the authors forwarding this 'legal origins' theory have been successful at setting the terms of an ongoing debate.[18] As such, I include a dichotomous variable denoting whether a country experienced British common law.

The third is a year trend, not only because one conducting panel analyses should be wary of the role of secular trends, but also because many argue the judiciary's role expanded in the late twentieth century and accordingly independence increased (Tate & Vallinder 1995). While these scholars primarily focus on the democratic world, such norms might spill over to non-democratic contexts.

Fourth, conflict may lead to executive overreach *vis-á-vis* the judiciary, which conventional wisdom suggests is the case (Reinhardt 2006).[19] Conflict is measured as any incidence of major or minor armed international, internal or internationalised internal conflict according to the Uppsala/Peace Research Institute of Oslo (PRIO) dataset (Gleditsch et al. 2002).

Drawing on the growing discussion of autocratic judicial empowerment found most notably in work on Egypt by Moustafa (2007, 2008), I include three covariates suggested

to affect independence in non-democracies. The argument here is that autocrats desire independent judiciaries to monitor state agents, bolster legitimacy and make credible commitments to property rights to encourage foreign investment. I include covariates for government share of GDP, the number of years the executive has been in office and the level of foreign direct investment (FDI) as a percentage of per capita national income. These are drawn from the Penn World Tables, Database of Political Institutions and World Development Indicators (Heston et al. 2009; Beck et al. 2001; World Bank 2012). Covariates are lagged one year to prevent simultaneity bias, except years in office, which is lagged two as the Database of Political Institutions codes country years using the start rather than the end of the year.

Analysis

This section presents the results of hierarchical linear and fixed effects models. Hierarchical models are partially pooled, with random intercepts for country, while fixed effects models include country fixed effects. Table 1 presents the results of six models of judicial independence in non-democracies. Models 1 and 2 are hierarchical and fixed effects models including all covariates, fit to 1,731 observations. Models 3–6 are fit to a larger number of observations by omitting the substantively and statistically unimportant covariates. Models 3 and 4 (hierarchical and fixed effects models) omit covariates that model averaging (itself presented in the Online Appendix) suggest are unimportant, whereas models 5 and 6 omit years in office to analyse data going back to 1960 (the years in office covariate is only available from the late 1970s).

Results show preliminary support for my central hypothesis that electoral competition is highly associated with increased judicial independence in non-democracies: competition is significant at the $p < 0.001$ level in all hierarchical and fixed effects specifications, and is included in all models suggested by model averaging (see the Online Appendix). Similarly, the positive associations between economic development as well as common law heritage and independence are robust across model specification and data analysed. Little support is found for other factors: while the temporal trend is statistically significant in most specifications, the predicted effects are effectively zero. Conflict is estimated to have a statistically insignificant zero effect.

There is little support to be found here for arguments developed in the study of Egypt. In no model is FDI or government share of GDP statistically significant. While years in office is statistically significant, its substantive effects are effective zero, suggesting that while possibly relevant in the Egyptian case, the tenure of the autocrat in question has no consistent relationship with the level of de facto independence generally.[20]

Models 3 and 4 include only covariates that model averaging suggests improve fit. Beyond removing covariates that worsen model fit, restricting analysis to these covariates via model averaging means significantly more data is analysed. Models 5 and 6 further exclude years in office, which is unavailable until 1976, whereas the covariates for competition, GDP and legal heritage are available from 1960 onwards (when the Linzer and Staton measure of judicial independence begins).

Results across the different sets of observations are consistent: coefficients for competition are effectively identical in models 1–4, and its effect is only increased in

Table 1. Fixed and random effects models of judicial independence. Six models of judicial independence in non-democracies around the world. Models 1, 3 and 5 are hierarchical linear models with varying intercepts by country; models 2, 4 and 6 are linear models with country fixed effects

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Intercept	0.24*** (0.02)	0.17*** (0.01)	0.23*** (0.01)	0.10*** (0.01)	0.14*** (0.01)	0.21*** (0.01)
Electoral competition	0.13*** (0.01)	0.12*** (0.01)	0.14*** (0.01)	0.13*** (0.01)	0.20*** (0.01)	0.20*** (0.01)
Log (GDP/capita)	0.03** (0.01)	0.02** (0.01)	0.03*** (0.00)	0.03*** (0.00)	0.03*** (0.00)	0.04*** (0.01)
Common law heritage	0.11*** (0.03)	0.21*** (0.02)	0.15*** (0.03)	0.27*** (0.02)	0.22* (0.02)	0.16* (0.03)
Year	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)	0.00 (0.00)	0.00 (0.00)
Years in office	−0.00* (0.00)	−0.00* (0.00)	−0.00*** (0.00)	−0.00*** (0.00)		
Government share of GDP	−0.00 (0.00)	−0.00 (0.00)				
Foreign direct investment	−0.05 (0.05)	−0.06 (0.05)				
Conflict	0.00 (0.00)	0.00 (0.00)				
Random effect: country	0.02 (0.14)		0.02 (0.14)		0.02 (0.01)	
Random effect: residual	0.00 (0.06)		0.00 (0.06)		0.00 (0.06)	
AICc	−4426.12	−4769.32	−6736.38	−7183.97	−10190.52	−1069775
N	1,731	1,731	2,518	2,518	3,933	3,933

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

models 5 and 6. When comparing the hierarchical versus fixed effects models on the same data, results are highly similar, with coefficients effectively unchanged for competition, slightly different for GDP, and moderately so for common law heritage.

Substantive significance

Assessing the substantive importance of competition is the next step. Figure 1 plots expected values of de facto independence for all models in Table 1, with electoral competition varying and other covariates at mean values. Part (a) graphs expected values for the hierarchical models and part (b) for fixed effects models. In each sub-figure black lines shows point estimates of the probability of independence, demonstrating the expected increase in independence as competition increases. Furthermore, 95 per cent confidence intervals are plotted in transparent grey.

Comparing parts (a) and (b) of Figure 1, competition's effects (the slopes of the various lines) are similar across models. Looking at part (a) it is clear that regardless of the data used, expected values of judicial independence are highly similar across models. This is illustrated not only by the solid, dashed and dotted black lines showing the means, but also by the overlapping confidence intervals (plotted with transparency, darker gray regions where intervals from models overlap). The slopes of the lines in part (b) are similar when compared with one another, as well as when compared to those in part (a). Differences lie in estimation of intercepts, rather than effect of competition.

Figure 1 illustrates the important substantive effect of competition on expected values of de facto independence across model specification and data. Moving from the lowest
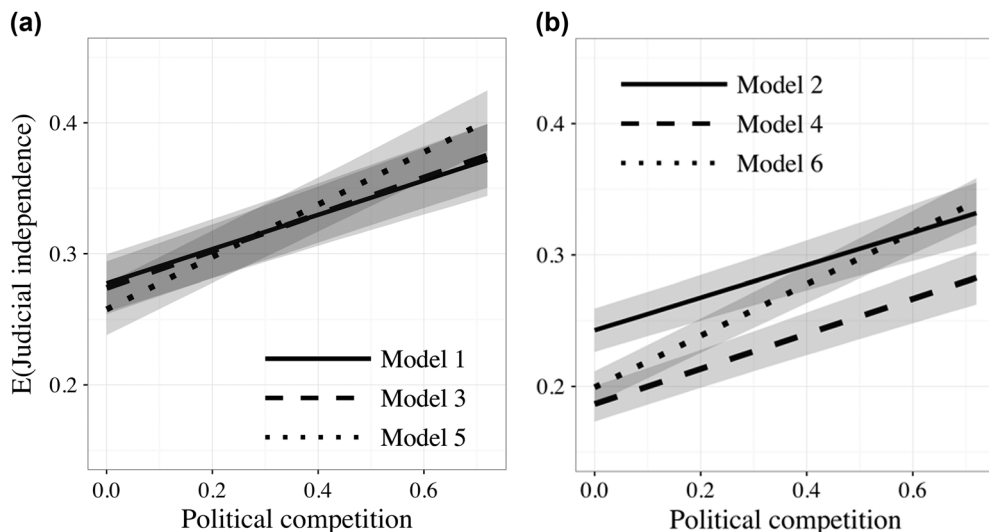

Figure 1. Expected effects of competition. Parts (a) and (b) illustrate the expected value of judicial independence when political competition varies and other covariates are held constant at mean values. Part (a) shows results of three hierarchical models, part (b) shows fixed effects specifications. Black lines show the mean across 10,000 draws from models with all covariates. Shaded grey areas are 95 per cent confidence intervals.

to highest observed levels of competition is associated with an increase in judicial independence from below the mean level to above the third quartile. To make this concrete, such a difference is approximate to the independence of the Chilean Court at its lowest point under Pinochet compared to the period of strategic defection described by Helmke (2002).

Model fit and robustness

Results presented in Table 1 and Figure 1 show high levels of model fit and are robust to alternative specifications. An overview of tests of fit and robustness are provided here, with full details in the supplemental information. First, cross-validation is used to assess model fit: data are randomly partitioned into training and test sets, and model estimates from the training test are used to predict values in the test set. Plots of predicted versus actual values across models show minimal increases in root mean square error for those models fit to 'out of sample' test data. Second, to determine whether some aspect of classification drives results, I use an alternative measure of democracy as well as exclude the most closed of autocracies from the analysis. Third, it might be that the average level of competition in recent years rather than the immediate prior year that matters, the logic being that incumbents consider the general level of electoral competition they have faced recently. In the Online Appendix I present models with competition averaged over the preceding half decade. Fourth, analyses on subsets of data, partitioned by decade (1960–1970, 1970–1980, etc.), are similar: in every instance, electoral competition is positive and statistically significant at the $p < 0.001$ level. Finally, results are robust to multiple imputation, which is conducted because missingness in the data used may not be random. These tests bolster the results of Table 1, providing more evidence for the importance of competition in explaining variation in de facto judicial independence in non-democracies.

Stable non-democracies

One issue not addressed by the above tests is the possibility that results are driven by non-democracies undergoing protracted transitions. In other words, results may be either a function of judges engaging in 'strategic defection' against incumbents who have begun to lose power (Helmke 2002) or a result of decisions by incumbents in the process of losing power (Finkel 2005). These alternative explanations suggest that only when transition has begun will competition be expected to incentivise those in power to establish judicial independence as a political insurance policy, and that results presented above are driven by such instances. The difference between these arguments and my own is that I argue competition, when present, should incentivise actors even under conditions of 'stable' authoritarianism (regimes that successful remain in power for long periods of time, regardless of levels of electoral competition), and not only after seeing that the writing is already on the wall and they reached the end of their rule.[21]

It should be noted that this is not necessarily a story of regime *weakness*, in which either weak regimes create independent courts or lack of control over the judiciary is part of what it means for a regime to be weak. This is because of the fact that in democracy or non-democracy, elections are not the equivalent of regime weakness; as Levitsky and Way (2002, 2010) and other contemporary typologists of autocracy like Lindberg (2009) elucidate,

elections are the norm in autocracy and not a signal of weakness. Furthermore, even contexts of not insignificant opposition representation in the literature should be viewed as a sign of regime weakness *per se*; as Roessler and Howard (2009) discuss, moderate amounts of electoral competition in fact defines one of the most studied forms of authoritarian regime and does not presage democratisation. Rather, it is a question of contexts in which regime breakdown is occurring, and such breakdown need not be a result of electoral competition.[22]

If competition, as previous work suggests, is salient only when autocratic regimes are breaking down, then excluding the twilight years of autocratic tenure from analyses should significantly change the results: competition would no longer be strongly associated with independence as the independence measure would pick up significantly different patterns of judicial behaviour. If, on the other hand, competition affects independence even in times of autocratic 'stability', then the empirical results of models excluding the years before a regime transition should look similar to those presented in Table 1.

Table 2 presents the results of six models replicating models 1 and 2 while removing years preceding a democratic transition from the analysis. Models subscripted 2 remove two years immediately preceding a regime transition. A two-year exception is the baseline as it was number of years prior to regime change employed by Helmke (2002) in her influential analysis of judicial defection. She argues this is the earliest possible time before transition that justices could plausibly foresee change. However, since beyond Argentina transition may be more protracted, I include models removing observations four and seven years prior to a regime transition, offering a more robust test of my argument. These are subscripted 4 and 7, respectively.

Results of models presented in Table 2 are clear: electoral competition is associated with increased levels of independence even when years preceding regime transitions are excluded. This empirical implication of my argument clearly diverges from previous work examining courts in transitioning autocracies, and provides significant evidence that results presented in this article are not driven by either judges strategically defecting against autocrats losing power or merely the result of autocrats strengthening judicial independence as they leave office. This echoes the insights of scholars of democratisation like Lindberg (2009), who note that autocratic regimes often institute competitive (to varying degrees) elections well before any democratisation occurs, as well as Roessler and Howard (2009), who find that in many autocracies elections are not harbingers of future openness.

Exploring another empirical implication

If autocrats are – as I advocate here – empowering courts because courts can actually provide some insurance function, then an obvious further empirical implication of my argument is that independent courts should be associated with positive outcomes for leaders after leaving office. While research exists showing judicial independence decreases the probability of punishment after leaving office (Epperly 2013), it fails to ascertain whether competition might be driving the empowerment, and treats all leaders the same regardless of how they leave office. If the autocratic insurance framework forwarded here is correct, a more nuanced relationship should be observed. Specifically, the form in which a leader leaves office should be highly relevant. Insurance policies do not hold for all autocrats. It is precisely those leaving

Table 2. Removing years preceding transitions. Six models of de facto judicial independence, excepting years immediately preceding regime transitions. Models are specified as similarly named models (1 and 2) in Table 1, with subscripts denoting the number of years before a regime transition not included in the data

	Model 1_2	Model 1_4	Model 1_7	Model 2_2	Model 2_4	Model 2_7
Intercept	0.23*** (0.02)	0.22*** (0.02)	0.21*** (0.02)	0.18*** (0.01)	0.18*** (0.01)	0.18*** (0.01)
Electoral competition	0.15*** (0.01)	0.17*** (0.01)	0.17*** (0.02)	0.14*** (0.01)	0.16*** (0.01)	0.16*** (0.02)
Log (GDP/capita)	0.02*** (0.01)	0.02** (0.01)	0.01* (0.01)	0.02* (0.01)	0.01 (0.01)	0.00 (0.01)
Common law heritage	0.12*** (0.03)	0.13*** (0.03)	0.14*** (0.03)	0.20*** (0.02)	0.20*** (0.02)	0.20*** (0.02)
Year	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)
Years in office	−0.00** (0.00)	−0.00*** (0.00)	−0.00*** (0.00)	−0.00** (0.00)	−0.00** (0.00)	−0.00** (0.00)
Government share of GDP	−0.00 (0.00)	−0.00 (0.00)	−0.00 (0.00)	−0.00 (0.00)	−0.00 (0.00)	−0.00 (0.00)
Foreign direct investment	−0.06 (0.06)	−0.08 (0.06)	−0.05 (0.07)	−0.07 (0.06)	−0.10 (0.06)	−0.06 (0.07)
Conflict	0.00 (0.00)	0.01 (0.00)	0.01** (0.00)	0.00 (0.00)	0.01 (0.00)	0.01** (0.00)
Random effect: country	0.02 (0.14)	0.02 (0.14)	0.02 (0.14)			
Random effect: residual	0.00 (0.06)	0.00 (0.06)	0.00 (0.06)			
ACCc	−4288.90	−4064.37	−3710.92	−4321.45	−4384.76	−4009.97
N	1,626	1,626	1,533	1,533	1,402	1,402

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

office via normal means like electoral defeat or regular replacement that benefit from independent judiciaries; those removed via coup or extra-legal force should more likely face non-institutionalised, extra-judicial punishment. In other words, when threats to power come from legal and institutionalised electoral competition, a stronger legal and institutionalised minoritarian institution such as an independent judiciary should offer insurance. In instances where threats to power are extra-legal, extra-legal punishment should be far more likely and judicial independence should have no consistent relationship with whether a former leader is punished after leaving office.

This implication can be tested using data from the Archigos dataset on leadership. Using leaders as observations, the Archigos data code whether leaders were punished after leaving office and the manner in which a leader exited office – most crucially whether exit was by regular or irregular means.[23] In the Archigos data, regular exit means voluntary retirement, term limits or defeat in elections; irregular exit violates established rules and is 'overwhelmingly the result of the threat or use of force as exemplified in coups, revolts and assassinations' (Goemans et al. 2006: 4).

The implication here is simple: if the insurance framework is relevant in non-democratic contexts, it should be leaders who exit by regular means who benefit from the insurance provided by courts, while leaders exiting office irregularly should see no consistent benefit. If leaders leave office via an institutionalised transfer process, an empowered court remains a player in politics. On the other hand, if a regime is toppled by coup or revolution, the insurance provision should be far less robust if not irrelevant: groups competing electorally in autocracies are operating under the (typically unfair or unfairly applied) rules of the game, whereas coup plotters and revolutionaries are by definition subverting those rules and rejecting the game (obviously, in the case of assassination any insurance function becomes wholly irrelevant). Put another way: autocrats who leave office via elections should look similar to democrats, who overwhelmingly leave office through regularised means, and there should be a consistent relationship between independence and post-tenure fate. Conversely, the potential irrelevance of a judiciary in circumstances of extra-legal regime change means no systematic relationship between independence and post-tenure fate should be observed. It is, of course, entirely possible that those exiting via irregular means feared leaving via regular means and thus increased judicial independence; eventually losing power to a coup does not mean an autocrat never faced electoral competition, after all.[24] That such is possible should further weigh against the empirical implication as it would strengthen the connection between independence and irregular exit, making it appear more like regular exit. This raises a further barrier to confirmation and further confidence in the results if a relationship is found.

Table 3 presents results of four logistic regression models of leaders' fates after leaving office. Each examines the relationship between judicial independence and the probability of being unpunished through a different set of observations. Model 1e is a reference point, pooling autocrats and democrats and those exiting office via regular and irregular means. Models 2e and 3e look at regular exit for democrats and autocrats, and model 4e autocrats with irregular exits. The results of these models illustrate that the empirical prediction of the autocratic insurance argument holds: autocrats exiting office via regular means look shockingly similar to democrats, whereas autocrats exiting via irregular means do not. In both models 2e and 3e, there is a consistent and positive relationship between higher levels

Table 3. Testing an empirical implication of the argument. Four logistic regression models of the probability of being unpunished after leaving office. Models test the empirical implication of whether autocrats leaving office via regular means benefit from independent judiciaries when compared to those who leave office via irregular means

	Model 1e Dem. & Autoc. Reg./Irr. exit	Model 2e Democrats Regular	Model 3e Autocrats Regular	Model 4e Autocrats Irregular
Intercept	0.68*** (0.15)	2.78*** (0.23)	2.60*** (0.42)	−1.38*** (0.33)
Judicial independence	2.61*** (0.55)	2.61† (1.36)	2.83† (1.70)	−0.20 (1.23)
Log (GDP/capita)	0.31** (0.11)	0.37 (0.34)	−0.09 (0.26)	0.10 (0.19)
Democracy	1.50*** (0.23)			
AICc	819.17	176.80	123.23	236.92
N	1,024	589	176	232

Note: ***$p < 0.001$; **$p < 0.01$; *$p < 0.05$; †$p < 0.1$.

of independence and being unpunished after exiting, with the coefficient for independence almost identical across the democracy/dictatorship divide.

While this effect is significant at only the attenuated p < 0.1 level of statistical significance (likely due to the small number of observations), it should be noted that the point here is not to ascertain the strongest of relationships, but rather to see whether the relationship looks similar for democrats and autocrats exiting office via regular means. These models demonstrate this is the case as clearly as they demonstrate that the effect of judicial independence for autocrats exiting office via irregular means (model 4e) looks vastly different than it does for autocrats exiting via regular means, where the effect of independence is indistinguishable between democracies and autocracies, further bolstering the theoretical argument and empirical analyses presented above.

Conclusion

This article makes three important contributions to our understanding of judicial independence. First and foremost, it offers a broader explanation for de facto judicial independence in non-democracies of the world. While the presence of electoral competition has been considered important in the context of democratic polities, and related to constitutional assurances of judicial review in autocratic polities, scholars examining courts in both democracies and autocracies have asserted that the nature of autocracy makes competition irrelevant for de facto independence (Ginsburg & Moustafa 2008). I theorise and show, however, that if the electoral logic makes sense under democratic rule, it should also – when present – affect autocratic decisions about creating and strengthening institutions protecting political minorities. This argument finds support not only in my analysis, but in recent analyses showing that judicial independence is associated with better post-tenure outcomes for leaders in autocracies and democracies – analyses further developed as an empirical implication.

As important, this article integrates a key explanation for autocratic judicial independence with theories of independence in democracies as well as broader conceptualisations about the importance of understanding diversity within the wide array of autocratic states. Competition is shown to produce more independence in courts across the democratic world. More broadly, competition has been shown to have positive effects on economic and political outcomes across regime type (Gryzmala-Busse 2007; Frye 2010), with scholars explicitly recognising that the mechanisms by which it operates can be salient under a variety of institutional arrangements. The insights of this article allow us to better grasp another way in which competition has systematic outcomes across regime type. Additionally, I demonstrate that the strong association between competition and independence holds even ignoring years immediately preceding regime transitions. This empirical finding offers robust support for the theory proposed here, and is distinctly different than the empirical predictions one would make drawing upon existing work focusing on moments of regime collapse and transition.

This article makes these two key contributions by way of a third, presenting a first cross-national empirical analysis of the relationship between competition and de facto independence specifically in non-democracies. While a handful of studies have examined the question of judicial independence in non-democracies through case studies, to date

none has examined the question in a broad, let alone exhaustive, collection of non-democratic states. Many of these case studies are of great value, especially as explorations of potential scope limits of various arguments (e.g., Magaloni 2008), or as presentations of competing explanations for judicial independence in autocracies (e.g., Moustafa 2007). This article contributes not only by offering a new explanation for independence across non-democracies, but also by doing so via a systematic analysis of thousands of non-democratic country-years over a 40-year time span, with results highly robust to alternative specifications.

To the degree that analyses here fail to find support for existing explanations drawn from studies of individual countries, these results underscore the need for further theoretical and empirical research into the conditions in which these various explanations offer analytical traction. One obvious avenue for further research is the potential for competition or existing explanations to have effects conditional on the form of autocratic rule; such an approach would need, however, to grapple with the fact that many typologies of autocracy use competition as a means of classification, either explicitly or otherwise.

All of this is not to say that we should expect to see judicial independence flourishing in the autocracies of the world: significant electoral competition is uncommon – though not rare – in non-democracies. Rather, we should expect that in non-democracies with more open electoral systems judiciaries freer from undue political influence, and that in those autocracies opening up spaces for electoral competition there should be a subsequent increase in the power and autonomy of the judiciary. As such, electoral competition should be seen as doubly important for those promoting the rule of law around the globe. First, because we already know that credible competition induces greater accountability on those holding the reins of power by way of incentivising opposition parties to expose corruption and abuse (Gryzmala-Busse 2007). Second, because this competition also produces more independent courts that are themselves able to provide a check on state leaders as well as empower individuals and groups to demand for more and more robust protections for rights and freedoms.

Acknowledgements

Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's web-site:

Figure 2. Cross validation of Models 5 and 6.
Figure 3. Predicted independence by non-democratic regime type.
Table 4. Freedom House Political Rights classification of democracy.
Table 5. Excluding fullest autocracies.
Table 6. Model averaging.

Table 7. Five year averages of electoral competition.
Table 8. Electoral competition and judicial independence by decade.
Table 9. Models using multiple imputation data.

Notes

1. Melton and Ginsburg (2014) suggest that mere parchment barriers such as those examined by Ginsburg and Versteeg (2013) fail to predict strong de facto independence.
2. An interesting new perspective is offered by Randazzo et al. (2016), who draw on 'selectorate' ideas in international relations research to argue that the size of the leader's winning coalition conditions the effects of competition. They find that both Polity scores – the size of winning coalition (*w/s*) measure – and the interaction of the two are associated with increased independence. Clark and Stone (2008), Kennedy (2009) and Gallagher and Hanson (2015) argue, however, that *w/s* does not capture the underlying concept of size of the winning coalition. An additional problem arises with using Polity scores to measure regime type as the most important driver of Polity scores is executive constraints (Gleditsch & Ward 1997), which explicitly measures de facto judicial independence (Rios-Figueroa & Staton 2012).
3. While Popova's strategic pressure theory differs in a few key ways from VanDoepp's framework, it shares logics, producing similar empirical predictions.
4. This is the Przeworski et al. (2000) and Cheibub et al. (2010) classification of democracy (discussed later), focused critically on the question of alternation in power.
5. For an examination of the interaction between diffusion and electoral explanations, see Stroh and Heyl (2015).
6. Distinctions between de jure/structural and behavioural/de facto explanations often break down in practice. For example, when discussing the relative strength of the Korean Constitutional Court, Ginsburg (2003) uses the continued high levels of electoral competition to explain the Court's power, despite having relatively weak formal guarantees, including the brief renewable terms Ginsburg (2003) and Melton and Ginsburg (2014) argue are inimical to high levels of de facto independence.
7. This is, of course, a probabilistic argument, even if typically framed in more deterministic terms: in instances of high competition, political actors should be more likely to establish independent courts or maintain existing independence.
8. In the comparative literature, discussion of majoritarian/minoritarian institutions is most often in reference to partisan actors. This contrasts with the subset of literature on American courts, going back to Dahl (1957), viewing the Supreme Court as a reflection of majoritarian preferences in the sense of public views on policy matters.
9. Or, for that matter, exclusive to judicial independence. Berliner and Erlich (2015) argue that electoral competition explains sub-national implementation of federally mandated transparency laws in Mexico using a similar logic.
10. One concern for all arguments about the relationship between electoral competition and judicial independence is reverse causality: that independent courts foster electoral competition rather than the reverse. While such problems plague the study of political institutions, there are two mitigating factors for the argument presented and analyses conducted. First, simply, all case studies of the matter demonstrate that the causal sequence runs from competition to independence (Helmke 2002; Ginsburg 2003; Finkel 2005; Magaloni 2008), and systematic studies of the sources of competitiveness in autocratic regimes ignore the judiciary (Schedler 2009). Furthermore, when courts in non-democracies possess some independence, they typically shy away from ruling on electoral matters. In the cases examined by Popova (2012), Russian courts rarely ruled against the government on electoral matters (whereas Ukrainian courts almost never did), and Moraski (2009) suggests judicial independence is indeterminate in explaining when courts become involved in electoral disputes in autocracies. The second mitigating factor is methodological. In a subsequent section I drop various years immediately preceding regime transitions and show that courts are not asserting themselves simply at the end of a regime. Additionally, in the supplemental information I average competition over the half-decade preceding the

country-year in question. While these two attempts to address the issue are not conclusive, they are attempts to recognise the potential issue and mitigate it as best as possible.

11. In fact, the Soviet Union itself provides similar examples of how competition can bring down even the most powerful-seeming regimes, as it was in many ways the opening of the electoral space to those not hand-picked by the party that led to many of the constituent Republics being controlled by anti-Union forces (Lieven 1994).

12. Or, in the case of autocracies, constrained solely to constitutional statements of judicial review (Ginsburg & Versteeg 2013).

13. One can envision this relationship in one of two ways. First, one could expect a more mechanistic/deterministic relationship, such that changes in electoral fortunes translate directly into increases or decreases in de facto independence. Second, one could conceptualise the relationship in a looser and more probabilistic sense, such that those contexts both within and across autocracies where competition is higher have increased likelihoods of elevated levels of de facto independence when compared to less competitive times or places.

14. And, as noted above, unlike many typological approaches to autocracy, it does not use competition as a classification tool.

15. The Online Appendix contains robustness to alternative classifications and subsets of non-democracy.

16. The eight indicators include ordinal measures developed by Howard and Carey (2004), Tate and Keith (2009) and Cingranelli and Richards (2010); the measure developed by Marshall et al. (2003); interval measures of Clague et al. (1999) and Feld and Voigt (2003); and the measure published by Political Risk Services and the Fraser Institute (see Ríos-Figueroa & Staton 2012).

17. Although in some work Henisz models constraints imposed by an independent judiciary, the measure I use makes no reference to the judiciary.

18. See, e.g., the 2009(6) dedicated issue of the *BYU Law Review*.

19. For a critical take on this in the American context, however, see Clark (2006).

20. The precise nature of Moustafa's (2007, 2008) argument is unclear. Although he argues that new autocrats might empower courts as a means of distancing themselves from previous leaders, he also suggests that longer-serving autocrats might do so when other policies have failed. The case of Anwar Sadat highlights this. Rather than enshrining a (somewhat) autonomous high court immediately after assuming power after Gamal Nasser's death, he did so nearly a decade later.

21. Thus, my argument in some sense subsumes these arguments forwarded for contexts of regime transition and change: competition is the driving force, and while it may be driving decisions made by judges (Helmke) and leaders (Finkel, though see Magaloni 2008), its effects should not be restricted to moments of transition.

22. A caveat relates to the fact that identifying regime breakdown ex ante is difficult, which is why here it is 'identified' ex post by removing years before regime transitions. It is still possible that *unsuccessful* transitions in which executive control unravels (but not completely) can also lead to more independent courts. While the robustness of the results in Table 2 suggests such should not reverse the inferences presented here, the effects of unsuccessful regime transitions in autocratic states deserve further examination.

23. These data also account for whether a leader died of natural causes while in office or was deposed by another state. As these two methods of exiting office are unrelated to the process being studied here, they are ignored.

24. I thank an anonymous reviewer for raising this concern.

References

Aydin, A. (2013). Judicial independence across democratic regimes: Understanding the varying impact of political competition. *Law and Society Review* 47(1): 105–134.

Barros, R. (2002). *Constitutionalism and dictatorship: Pinochet, the Junta and the 1980 constitution*. New York: Cambridge University Press.

Beck, T. et al. (2001). New Tools and New Tests in Comparative Political Economy: The Database of Political Institutions. World Bank Working Paper. Washington, DC: World Bank.

Berliner, D. & Erlich, A. (2015). Competing for transparency: Political competition and institutional reform in Mexican states. *American Political Science Review* 109(1): 110–128.

Brownlee, J. (2009). Harbinger of democracy: Competitive elections before the end of authortiarianism. In S. Lindberg (ed.), *Democratization by elections*. Baltimore, MD: Johns Hopkins University Press.

Carothers, T. (1998). The rule of law revival. *Foreign Affairs* 77(2): 95–106.

Carothers, T. (2010). Rule of law temptations. In J.J. Heckman, R.L. Nelson & L. Cabatingan (eds), *Global perspectives on the rule of law*. New York: Routledge.

Cheibub, J.A., Gandhi, J. & Vreeland, J.R. (2010). Democracy and dictatorship revisited. *Public Choice* 143(1): 67–101.

Cingranelli, D.L. & Richards, D.L. (2010). The Cingranelli Richards (CIRI) Human Rights Database Coding Manual. Available online at: http://ciri.binghamton.edu/documentation.asp

Clague, C. et al. (1999). Contract-intensive money: Contract enforcement, property rights and economic performance. *Journal of Economic Growth* 4(2): 185–211.

Clark, T.S. (2006). Judicial decision-making during wartime. *Journal of Empirical Legal Studies* 3(3): 397–419.

Clark, K. & Stone, R. (2008). Democracy and the logic of political survival. *American Political Science Review* 102(3): 387–392.

Clinton J. D., Jackman, S. & Rivers, D. (2004). The statistical analysis of legislative behavior: A unified approach. *American Political Science Review* 98(2): 355–370.

Collier, D. & Levitsky, S. (1997). Democracy with adjectives: Conceptual innovation in comparative research. *World Politics* 49(3): 430–451.

Dahl, R.A. (1957). Decision-making in a democracy: The Supreme Court as a national policy-maker. *Journal of Public Law* 6: 279–295.

Díaz-Asensio, J. A.M. (2012). ¿Por qúe los Autócratos Limitan Judicialmente su Poder? Un Análisis Comparado del Establecimiento de Altos Tribunales en Regímenes Autoritarios. *Revista de Estudios Politicos* 158: 41–74.

Epperly, B. (2013). The provision of insurance? Judicial independence and the post-tenure fate of leaders. *Journal of Law and Courts* 1(2): 247–278.

Feld, L.P. & Voigt, S. (2003). Economic growth and judicial independence: Cross country evidence using a new set of indicators. *European Journal of Political Economy* 19(3): 497–527.

Finkel, J. (2005). Judicial reform as insurance policy: Mexico in the 1990s. *Latin American Politics and Society* 47(1): 87–113.

Frye, T. (2010). *Building states and markets after communism: The perils of polarized democracy*. New York: Cambridge University Press.

Gallagher, M.E. & Hanson, J.K. (2015). Power tool or dull blade? Selectorate theory for autocracies. *Annual Review of Political Science* 18: 367–385.

Ginsburg, T. (2003). *Judicial review in new democracies: Constitutional courts in Asian cases*. New York: Cambridge University Press.

Ginsburg, T. & Moustafa, T. (2008). *Rule by law: The politics of courts in authoritarian regimes*. New York: Cambridge University Press.

Ginsburg, T. & Versteeg, M. (2014). Why do countries adopt constitutional review? *Journal of Law, Economics and Organization* 30(3): 587–622.

Glaeser, E.L. & Shleifer, A. (2002). Legal origins. *Quarterly Journal of Economics* 117(4): 1193–1229.

Gleditsch, K.S. (2002). Expanded trade and GDP data. *Journal of Conflict Resolution* 46(5): 712–724.

Gleditsch, K.S. & Ward, M.D. (1997). Double take: A Reexamination of democracy and autocracy in modern polities. *Journal of Conflict Resolution* 41(3): 361–383.

Gleditsch, K.S. et al. (2002). Armed conflict 1946–2001: A new dataset. *Journal of Peace Research* 39(5): 615–637.

Goemans, H., Gleditsch, K.S. & Chiozza, G. (2006). Archigos: A Dataset of Leaders 1875–2004, Data Codebook. Available online at: www.rochester.edu/college/faculty/hgoemans/data.htm

Gryzmala-Busse, A. (2007). *Rebuilding Leviathan: Party competition and state exploitation in post-communist democracies*. New York: Cambridge University Press.

Haggard, S., MacIntyre, A. & Tiede, L. (2008). The rule of law and economic development. *Annual Review of Political Science* 11: 205–234.

Helmke, G. (2002). The logic of strategic defection: Court-executive relations in Argentina under dictatorship and democracy. *American Political Science Review* 96(2): 291–303.

Helmke, G. (2005). *Courts under constraints: Judges, generals and presidents in Argentina*. New York: Cambridge University Press.

Helmke, G. & Rosenbluth, F.M. (2009). Regimes and the rule of law: Judicial independence in comparative perspective. *Annual Review of Political Science* 12: 345–366.

Henisz, W.J. (2000). The institutional environment for economic growth. *Economics and Politics* 12(1): 1–31.

Henisz, W.J. (2002). The institutional environment for infrastructure investment. *Industrial and Corporate Change* 11(2): 355–389.

Heston, A., Summers, R. & Aten, B. (2009). Penn World Table Version 6.3. Philadelphia, PA: Center for International Comparisons of Production, Income and Prices, University of Pennsylvania.

Howard, R.M. & Carey, H.F. (2004). Is an independent judiciary necessary for democracy? *Judicature* 87(6): 284–290.

Kennedy, R. (2009). Survival and accountability: An analysis of the empirical support for selectorate theory. *International Studies Quarterly* 53(3): 695–714.

La Porta, R. et al. (2004). Judicial checks and balances. *Journal of Political Economy* 112(2): 445–470.

Levi, M. & Epperly, B. (2010). Principled principals in the founding moments of the rule of law. In J. Heckman, R. Nelson & L. Cabatingan (eds), *Global perspectives on the rule of law*. London: Routledge.

Levin, M. & Satarov, G. (2000). Corruption and institutions in Russia. *European Journal of Political Economy* 16(11): 111–132.

Levitsky, S. & Way, L. (2002). The rise of competitive authoritarianism. *Journal of Democracy* 13(2): 51–65.

Levitsky, S. & Way, L.A. (2010). *Competitive authoritarianism: Hybrid regimes after the Cold War*. New York: Cambridge University Press.

Lieven, A. (1994). *The Baltic revolution: Estonia, Latvia, Lithuania and the path to independence*. New Haven, CT: Yale University Press.

Lindberg, S. (2009). A theory of elections as a mode of transition. In *Democratization by elections*. Baltimore, MD: Johns Hopkins University Press.

Linzer, D. & Staton, J. (2015). A global measure of judicial independence, 1948–2012. *Journal of Law and Courts* 3(2): 223–256.

Magaloni, B. (2008). Enforcing the autocratic political order and the role of courts: The Case of Mexico. In T. Ginsburg & T. Moustafa (eds), *Rule by law: The politics of courts in authoritarian regimes*. New York: Cambridge University Press.

Marshall, M.G., Jaggers, K. & Gurr, T.R. (2003). *Polity IV project: Political regime characteristics and transitions, 1800–2002*. Available online at: www.systemicpeace.org/polity/polity4.htm

Martin, A.D. & Quinn, K.M. (2002). Dynamic ideal point estimation via Markov Chain Monte Carlo for the US Supreme Court, 1953–1999. *Political Analysis* 10: 405–419.

McCubbins, M.D. & Schwartz, T. (1984). Congressional oversight overlooked: Police patrols versus fire alarms. *American Journal of Political Science* 28(1): 165–179.

Melton, J. & Ginsburg, T. (2014). Does de jure independence really matter? A reevaluation of explanations for judicial independence. *Journal of Law and Courts* 2(2): 187–217.

Moraski, B. (2009). Judicial complexity empowering opposition? Critical elections in Armenia and Georgia. In S. Lindberg (ed.), *Democratization by elections*. Baltimore, MD: Johns Hopkins University Press.

Moustafa, T. (2007). *The struggle for constitutional power: Law, politics and economic development in Egypt*. New York: Cambridge University Press.

Moustafa, T. (2008). Law and resistance in authoritarian states: The judicialization of politics in Egypt. In T. Ginsburg & T. Moustafa (eds), *Rule by law: The politics of courts in authoritarian regimes*. New York: Cambridge University Press.

Myagkov, M., Ordeshook, P.C. & Shakin, D. (2005). Fraud or fairytales: Russia and Ukraine's electoral experience. *Post-Soviet Affairs* 21(2): 91–131.

Popova, M. (2010). Political competition as an obstacle to judicial independence: Evidence from Russia and Ukraine. *Comparative Political Studies* 43(10): 1202–1229.

Popova, M. (2012). *Politicized justice in emerging democracies: A study of courts in Russia and Ukraine*. New York: Cambridge University Press.

Przeworski, A. et al. (2000). *Democracy and development: Political institutions and well-being in the world, 1950–1990*. New York: Cambridge University Press.

Ramseyer, J.M. (1994). The puzzling (in)dependence of courts: A comparative approach. *Journal of Legal Studies* 23(2): 721–747.

Randazzo, K., Gibler, D.M. & Reid, R. (2016). Examining the development of judicial independence. *Political Research Quarterly* 69(3): 583–593.

Reinhardt, S. (2006). The judicial role in national security. *Boston University Law Review* 86: 1309–1314.

Ríos-Figueroa, J. (2007). Fragmentation of power and the emergence of an effective judiciary in Mexico, 1994–2002. *Latin American Politics and Society* 49(1): 31–57.

Ríos-Figueroa, J. & Staton, J. (2012). An evaluation of cross-national measures of judicial independence. *Journal of Law, Economics and Organization* 30(1): 104–137.

Roessler, P. & Howard, M. (2009). Post-Cold War political regimes: When do elections matter? In S. Lindberg (ed.), *Democratization by elections*. Baltimore, MD: Johns Hopkins University Press.

Schedler, A. (2006). *Electoral authoritarianism: The dynamics of unfree competition*. Boulder, CO: Lynne Reinner.

Schedler, A. (2009). Sources of competition under electoral authoritarianism. In S. Lindberg (ed.), *Democratization by elections*. Baltimore, MD: Johns Hopkins University Press.

Smithey, S. & Ishiyama, J. (2002). Judicial activism in post-communist politics. *Law and Society Review* 36(4): 719–742.

Stroh, A. & Heyl, C. (2015). Institutional diffusion, strategic insurance and the creation of West African constitutional courts. *Comparative Politics* (47)2: 169–187.

Svolik, M. (2012). *The politics of authoritarian rule*. New York: Cambridge University Press.

Tate, C.N. & Keith, L.C. (2009). Conceptualizing and Operationalizing Judicial Independence Globally. Unpublished manuscript.

Tate, C.N. & Vallinder, T. (1995). *The global expansion of judicial power: The judicialization of politics*. New York: New York University Press.

Tucker, J.A. (2007). Enough! Electoral fraud, collective action problems and postcommunist colored revolutions. *Perspectives on Politics* 5(3): 535–551.

Tullock, G. (1986). Industrial organization and rent seeking in dictatorships. *Journal of Institutional and Theoretical Economics* 142(1): 4–15.

VonDoepp, P. (2009). *Judicial politics in new democracies: Cases from Southern Africa*. Boulder, CO: Lynne Rienner.

VonDoepp, P. & Ellet, R. (2011). Reworking strategic models of executive-judicial relations: Insights from new African democracies. *Comparative Politics* 43(2): 147–165.

Way, L. (2008). The real causes of the color revolution. *Journal of Democracy* 19(3): 55–69.

World Bank (2012). World Bank Development Indicators. Available online at: http://data.worldbank.org/indicator

Address for correspondence: Brad Epperly, Department of Political Science, University of South Carolina, 349 Gambrell Hall, 817 Henderson Street, Columbia, SC 29208, USA. E-mail: epperly@gmail.com