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Under Pressure: Judicial Reform in Africa

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Abstract
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As the last countries transition from imperialism to independence, questions regarding the determinants of effective governance become increasingly paramount. As the last region to undergo reform, Africa is comprised of nations that were able to create stable institutions, as well as nations whose governments fail to protect their citizens. The main distinction between states that are able to achieve stability and those that do not is the creation of a successful code of law. With the creation of a successful code of law, mechanisms to adjudicate and enforce these laws become increasingly important. This establishes the need for a strong and independent judiciary. When are ruling elites willing to reform these judiciaries?

This work seeks to answer the question of when domestic and international pressures raise the costs of not changing policy beyond the benefit of the status quo for rulers. To answer this question constitutional changes, domestic political pressure, international political pressure, and international economic pressure in Africa from 1990 to 2012 are all examined to see what changes correlate to changing levels of judicial independence. There is also a discussion regarding how regime type may determine changes in the independence of these judiciaries.

This thesis argues that, without looking at specific nation circumstances, the constitutional changes correlate to increases in amounts of judicial independence. Domestic pressure only correlates to judicial independence changes in its most extreme form. Different types of international pressure find different results, many of which change in their effect on judicial independence after different numbers of years have elapsed. Democracy appears to always lead to positive changes in judicial independence.

While this work does not find the reasons or definite causality for any of its variables, it begins the important discussion regarding what pressures may lead to reform and how to create more stable nations.

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Table of Contents

Introduction.....	pg. 1
Research Question.....	pg. 1
Literature Review	
<i>Defining Good Governance</i>	pg. 1
<i>Why Effective Governance Matters</i>	pg. 2
<i>Effective Governance Determinants</i>	pg. 5
<i>Why Constitutions Matter</i>	pg. 8
<i>Judicial Independence as a Measure of Stability</i>	pg. 9
Theoretical Framework	pg. 14
Statement of Hypotheses.....	pg. 15
Data and Methods.....	pg. 18
Operationalization of variables.....	pg. 19
Analysis and GEE Models.....	pg. 26
Findings and Results.....	pg. 37
Conclusion.....	pg. 40
Implications for Future Research.....	pg. 40
Works Cited.....	pg. 43
Appendix.....	pg. 46

Figures and Tables

Table 1: Estimation Results Regression of Constitutional Judicial Independence.....	pg. 28
Table 2: Estimation Results Regression of Domestic Pressure with Types of Pressure.....	pg. 30
Table 3: Estimation Results Regression of International Pressure.....	pg. 33
Graph A1: Bivariate analysis of Judicial Independence and Polity.....	pg. 46
Table A1: Estimation Results Regression of Domestic Pressure.....	pg. 48
Table A2: Estimation Results Regression of Polity.....	pg. 50

As colonialism ended in 1960, policymakers, scholars, and experts assumed that newly independent nations would develop governments similar to western states, with strong bureaucracies capable of meeting the needs of their populations. Despite similar economic and security needs across borders, nations varied greatly in their success implementing new governments. As the last region to undergo colonialism, Africa is comprised of countries still undergoing transition to effective governance. Some states were able to build moderately stable governments and institutions. Many others however fell to ruin after histories of imperialism and forced dependency. In a few cases, states failed altogether. This more recent transition toward independence for many African countries makes the region interesting to examine regarding the rule of law and when it is effective.

The main distinction between states with and without effective governance comes from the creation and implementation of a successful rule of law. One factor of an effective rule of law is a strong, independent judiciary. The answers to the puzzle regarding when states are willing to undertake judicial reform remains elusive. This paper examines one potential answer to this puzzle. To begin answering this question it is useful to define good governance, to examine the consequences that occur when good governance is lacking, and to consider what factors are associated with good governance.

Defining Good Governance

The distinction between good, or effective, and ineffectual governance is important. A state is defined as an entity with a “monopoly on the legitimate use of force” (Weber, 1919; Tilly, 1985), whose purpose is to protect the individual rights of citizens, regulate economic development and dispersion, and maintain legitimate institutions (Jabareen, 2012; Ottaway,

2002; Rotberg 2003). When states fail to perform these functions they face problems with human rights violations, poverty, group grievances and marginalization, civil conflict, and a lack of legitimacy. The state's levels of these variables determine the level of government ineffectiveness. The Fund for Peace created an index that assesses states on their effectiveness regarding these functions. If a state fails to perform and protect citizens from all of these abuses, it is categorized as failed (Fund for Peace, Fragile States Index). Past research found that the most effective way to prevent these problems is through accountability.

Why Effective Governance Matters

Effective judicial systems, and by extension governments, are important because of their impact on those they govern and on the international community. The importance of legal reforms, as opposed to other forms of aid and welfare institutions, is the comprehensive aid legal reforms provide to reduce individual suffering, hold leaders accountable, and provide mechanisms for enforcement (Grant and Keohane, 2005, 36). An effective system of law provides for state legitimacy (Grant and Keohane, 2005, 35). The importance of creating an effective judicial system and code of law is highlighted by the problems that develop when these systems do not exist.

In the most extreme forms of ineffective governance, governments either collapsed or could not protect citizens from domestic and international threats, ending up as failed states. At times these governments became threats to their own people. A 1992 article by Gerald Helman and Stephen Ratner is often cited as the first article to define the term "failed nation-state" as "utterly incapable of sustaining itself as a member of the international community" (Helman and Ratner, 3, 1992).

Without an effective legal structure, people suffer. This suffering can occur in a variety of ways. Effective codes of law can help prevent human rights repression (Poe, Tate, and Keith, 2009; Rose-Ackerman, 2004). A lack of accountability, and a lack of representation, creates a divide between the ruling elites and the population as a whole. This divide allows for the adoption of policies that do not represent the interests of the people, rather the tiny fraction of the population that holds power (Collier 2009). When there is no effective legal structure, civil war can be more likely. Under civil war conditions, instability becomes a cause of starvation, economic failure, and death “As national human security rates fall, the probability of failure rises. Not every civil conflict precipitates failure, but each offers a warning sign” (Rotberg, 2003, 25). Civil war demonstrates the problems of ineffective government in extreme cases. The suffering that individuals go through from a lack of effective governance and judicial systems shows the importance of understanding what causes judicial reform.

“Almost by definition, weak and vulnerable states have dysfunctional legal systems that provide poor protections for individual rights and property interests. When elites in such states negotiate over the shape of the state that will emerge from chaotic background conditions, they ought to take law reform seriously” (Rose-Ackerman, 2004, 209). The law must therefore codify citizens’ own calls for protection. Leaders will sense threat to their power and repress their citizens by eliminating legal protection, leading to an unending spiral of instability. “When challenges to the status quo take place, authorities generally employ some form of repressive action to counter or eliminate the behavioral threat; in short, there appears to be a ‘Law of Coercive Responsiveness’” (Davenport, 2007, 7). It is important to examine what legal reforms are important indicators of high performance. This allows for a higher need to incentivize leaders towards these reforms in particular.

Another causality of a complete lack of, or development of, an ineffective judicial system is the division of power between elites and the rest of the population. Change in these nations is a product of the decisions of each state's ruling elite (Helman and Ratner, 1992; Poe, Tate, and Keith, 1999; and Ottaway, 2003). There is an incentive to create policies that benefit those who rule. These policies, however, lead to ineffectual nations where citizens do not support those in charge.

The problems that derive from ineffective judicial systems are not solely domestic. Countries that lack successful governments impact other nations. There are security problems, and displaced individuals became refugees leading to migrations and problems for surrounding countries that face influxes of foreigners. Other countries are impacted economically through a decreased opportunity for trade. Multinational corporations (MNCs) are affected when countries lack judicial systems. The lack of support and confidence from the international community leads to a decrease in foreign direct investment and trade as well. There is no doubt that uncertainty regarding expropriation and political risk affect investment and hence growth (Lensink and Morrissey, 2000, 35). Humanitarian disasters become international problems when other countries debate whose responsibility it is to end these conflicts. The UN is often looked to for aid when conflict grows.

Exploring when judicial reform occurs and when it is effective leads to certain inherent assumptions. It seems necessary to assume that leaders are purposive and rational. By stating that leaders are purposive, the research assumes that the ruling elite will choose the option that most fulfills their own self-interest. In many cases, this means that leaders will choose a path that allows them to maintain power (Davenport, 2007; Rotberg, 2003; Jabareen, 2012). The assumption that leaders are rational means that they weigh the costs and benefits of different

decisions and choose the best response, or the one that will bring them the highest utility. Based on these assumptions, one can conclude that leaders are inclined to choose the option that maximizes their goals without creating further risk. Specifically, this means that leaders are inclined to choose the option that will enable them to remain in power without having to give up anything significant (Bratton and Van de Walle, 1992).

Effective Governance Determinants

Most of the research done in this area looks at what inhibits performance and what institutions would create effective governance. The major gap in the study of state performance is what drives the decision to change the status quo. What conditions would cause leaders to undertake reform generally? As a factor of this decision it becomes important to ask what conditions lead to leaders' willingness to reform the judiciary in particular. From the research on what causes state governance ineffectiveness, the idea that state performance can be measured and how it is affected by different independent variables can be examined. What causes this change in legal framework and what is detrimental to this shift leads to the positing of different theories.

The factors that constitute good governance can be measured in numerous ways. Policies that reflect successful incentives for leaders to reform need to be identified. This will better enable citizens to fight for changes that have demonstrated outcomes. Studying the rule of law and measures of judicial independence enables comparisons between reform and the outcomes of reform and the governments that fail to enact changes in policy. A judicial system has three distinct functions or roles. "The sections of constitutions that are most relevant to protecting citizens against serious repression fall into three general categories: protections of individual

freedoms and rights, promotion of judicial independence, and regulations of arbitrary rule during states of emergency” (Poe, Tate, and Keith, 2009, 649; Bratton and Van de Walle, 1992).

The first of these categories is that there must be a constitution that enumerates the rights citizens are guaranteed (Rose-Ackerman, 2003; Poe, Tate, and Keith 1999 and 2009; and Englebert and Tull, 2008). An identifiable code of law sets standards that courts can act upon. These laws open up a mechanism to discuss human rights protections and foster a form of legitimacy for the government. “The U.N. Commission on Human Rights holds that clearly defining limitations on constitutional rights promises is better than leaving the question of acceptable restrictions open to interpretation” (Poe, Tate, and Keith, 2009, 649). Since human rights violations result in a loss of effective governance, reforms that protect these rights are important in developing stable governments. “Pursuing better human rights through constitutional law making may offer potential for improvement in respect for human rights that would be difficult to accomplish through attempting to affect other, less manipulable factors” (Poe, Tate, and Keith, 2009, 658). Human rights policies are not the only area of legal reform that governments could implement. Legislative economic reforms also allow for increases in stability (Collier, 2009; Rose-Ackerman, 2004). A lack of property rights is also a predominant problem in weak states that constitutional policy can correct. “Vaguely defined rights invite disputes over ownership that at best will discourage investment and at worst will produce violent and destructive clashes” (Rose-Ackerman, 2003, 190). While there are numerous areas of law that could potentially create a more effective government, arguably the most important deal with the rights of individuals, protection from oppression, and property laws to encourage a stable economic environment.

Another factor of a stable government is an independent judiciary or adjudication system where grievances can be voiced. By calling for legal reform in the judiciary, repression decreases when the ratification and compliance with anti-repression laws is linked (Powell and Staton, 2009). There is also an argument that different forms of judicial institutions can be explored on a case-by-case basis in weak states. “The various mixtures of accountability and independence represented by the court systems in the industrialized world have produced a range of options that newly established states can consider in the light of their own needs and experiences” (Rose-Ackerman, 2004, 205). By creating an independent adjudication system, regardless of its structure, stability will change (Rose-Ackerman, 2004; Powell and Staton, 2009). This provides important support for incentivizing leaders to create this system.

There must be effective enforcement of the laws. In some failed states, the state itself acts as an inhibitor of freedom rather than a protection of individual rights (Mani, 1999; Rotberg, 2003). In most failed states, regimes prey on their own constituents. “Driven by ethnic or other intercommunal hostility, or by the governing elite's insecurities, they victimize their own citizens or some subset of the whole that is regarded as hostile” (Rotberg, 2003, 6). The police force can act as a method of repression. If the police force is ineffective and acts as a threat itself, then the distrust in the government grows and the legal system disintegrates (Mani, 1999; Rose-Ackerman, 2003). By turning the police force into a legitimate body that the people can trust, the state will become more stable and it will become possible to use the law as a mechanism of protection rather than threat. “The way in which the police discharge their duty will determine in good measure the stability of peace, as it will impact on the confidence of the public both in the quality of the peace and in the commitment of their government to respecting it” (Mani, 1999, 10). The police force can be tied to an effective judiciary, which will enable a successful

enforcement mechanism. Whether the police force upholds the substantive criminal law policies and the designed legal process will have the most telling effect on its legitimacy in the eyes of citizens (Rose-Ackerman, 2003). If the police force is successful in this endeavor, stability will increase; therefore leaders should be encouraged to enact a stable force.

The enumeration, adjudication, and enforcement of laws represent the factors of effective governance. Through these functions, the judicial system becomes a paramount institution in shaping the government's power. The citizens may use this institution to better understand and influence their government to better reflect their goals and to better protect their enumerated rights. The benefits of obtaining a better government may cause citizens to push for changes.

Why Constitutions Matter

Many studies have examined whether constitutions and the formalization of rules matters in increasing the efficacy of governments. While formalizing rules does not guarantee stability, and stability may be achieved through other methods, constitutions allow individuals to know their options and their limits. Constitutions have the power to constrain political actors and provide options to actors that may lack other methods (Carey, 2000; Ginsburg, 2005). In terms of state stability, when rulers define their powers in formalized rules the possibility that these limits will constrain executive power increases. Furthermore, the formalizing of governmental power allows citizens to understand that they have rights, and channels to ensure that these rights are respected.

Constitutions provide order by stabilizing political problems. "By constraining choices to be made at a later time, constitutions can help to resolve current political problems and thereby facilitate stable political order in the future" (Ginsburg, 2005, 710). The idea that constitutions effectively stabilize governing institutions is broken down into two aspects. The first idea is that

constitutions resolve current political dilemmas. Studies focus on the idea that constitutions increase coordination by focusing agreements and providing mechanisms for credible information. “Both Ordeshook (1992) and Weingast (1997) develop models suggesting that constitutions can contribute to the establishment and maintenance of political order by coordinating expectations among political actors about the limits of state authority and about the likely actions other actors will take when new dimensions of conflict present themselves” (Carey, 2000, 749). This coordination allows for better information sharing. Constitutions allow for political communication, with political actors forming mutual expectations about outcomes (Carey, 2000). The second reason that constitutions may lead to stability deals with the potential to enable order in the future.

The historical impacts and study of constitutions has developed over the last half-century. This includes additional study into how international law influences domestic constitutions. New democracies are particularly concerned with how international legal commitments will impact and influence their constitutions (Ginsburg, 2005). Implications of these studies indicate that international law may further constrain domestic actors. While these policies may be ignored on an international level, they may lock in domestic policies. This may in turn increase stability following the belief that the expansion of the rule of law leads to more effective governance.

Judicial Independence as a Measure of Stability

If effective governance is defined in terms of stability, stability needs to be measured as a goal of expanding the rule of law. Judicial reform provides a mechanism for measuring stability. Asking when rulers are willing to implement judicial reform requires the assumption the judicial reform is beneficial. While various forms of judicial reform are possible, judicial independence provides the clearest link to a stable government.

While numerous factors lead to stability, an independent judiciary creates a method holding individuals and the government accountable for transgressions, and ensuring that legal policies enacted, assuming that the laws are judicious. “Modern institutional research suggests that independent judiciaries, which constrain arbitrary state power, ensure that state promises to respect individual rights are perceived credible. In turn, credibility breeds efficient investment, state solvency, growth and development” (Ríos-Figueroa and Staton, 2012, 1). Individuals can bring their cases to independent judiciaries when they feel that their rights have been obstructed without fearing further prosecution. The difference between stable and unstable states is that a rule of law is enforceable. The courts provide a clear mechanism for protecting these rights. While other judicial reforms are important, the independence of the judiciary provides a level of protection not just from other people, but also from other parts of government. This separation constrains the executive. Answering the broader question on why states govern effectively involves first understanding when do states implement judicial reform and when does judicial reform lead to actual judicial independence.

Motivation for Reform

The three methods that will lead to effective governance are regime change, constitutional reform, and an effective judiciary. In order to examine this idea, when constitutional reform indicates change and when that change legitimately provides for a judiciary that can perform its supposed function need to both be examined. Some literature focuses solely on the degree of official legal reform (Rose-Ackerman, 2003), however this does not fully answer when reforms are effective. The creation of an independent judiciary will remedy these issues by providing adjudication and enforcement mechanisms. An effective judicial system has a role in law creation and implementation. By setting precedent, the courts determine how laws

will be carried out and the policy agendas represent what the country is most concerned with (Zemans, 1983). It is through the judicial system that laws are defined. The court also plays a role through adjudication. The decisions that courts make decide how established laws will be applied and how the laws fare applied in individual scenarios. Another role of a judicial system is enforcement. “In the process, private citizens become active agents of the growth of the law; instead of a passive object of the state, the citizen is the demander of rights and status” (Zemans 1983, 695). Based on the significance of effective judicial systems, understanding the conditions under which these systems are created is extremely important.

It is logical to assume that judicial reform would lead to a better human rights record because judicial systems enable accountability. “Judiciaries that enforce limits on the state, render governmental promises to respect assets credible, lower the stakes of holding power and thus induce order” (Staton, Reenock, and Radean, 2010, 2). Acting as a third governmental body, a judiciary provides the mechanisms for human rights protection.

Domestic and International Pressures

Elites are most likely to undertake reform when they are pressured to do so. Therefore, the independent variables in this study will be the amount and various types of pressure put on the ruling elites of weak states. Specifically, this pressure can be divided into political and economic pressure. Further division allows for analysis of international political pressure, domestic political pressure, international economic pressure, and domestic economic pressure.

The pressure changes the cost and benefits of legal reforms to leaders by creating a sense of possibly losing power. Literature surrounding legal reform examines various possible causes of change. There are some theories that factions or subsets of leadership within the nations will bring about legal reform when their interests are threatened (Rose-Ackerman, 2004). While this

may create various types of legal reform, it cannot in the end create stability within a state. Following Weber's and Tilly's argument that a state exists when there is a monopoly of legitimate force (Weber, 1919; Tilly, 1985), different factions controlling different areas of the law will lead to a weak national government. There is also an argument for pressure motivated economic reform. While economic aid to fragile and failing states has been beneficial at fostering some reform, it is inevitably flawed (Englebert and Tull, 2008; Collier, 2009). Donors have transitioned their aid from state actors to non-state actors and back again, leading to fierce competition within sectors of the economy of a state (Englebert and Tull, 2008). Also, there is often a disconnect between donations and implementation of conditionality. "As a result, there is little correlation between the allocation of aid and the quality of economic management and governance" (Englebert and Tull, 2008, 115). Pressure from domestic and international sources, however, has been featured in various studies and lends to a possible cause of legal reform.

Many argue that domestic pressure is the deciding factor in state reconstruction. Creating a stable state must come from a group that wants change. "In most cases, the international community has little choice but to take a back seat approach and let domestic groups take the lead in restoring the collapsed state or in destroying it completely" (Ottaway, 2002, 1021). Past research has focused on the use of protest as an independent variable. Michael Bratton and Nicolas Van de Walle quantitatively studied the effect of domestic pressure in the form of protest created legal reform based off of newspaper articles from spring of 1990 (Bratton and Van de Walle, 1992). They found that although attempts to transition to democracy and create accountable institutions in Africa was often ineffectual, "opposition groups did prompt protest and reform, and in so doing put new issues on the political agenda in Africa" (Bratton and Van

de Walle, 1992, 440). Whether this still holds, and if an amount of international pressure strengthens or diminishes the effect will be interesting to research.

The other form of pressure the ruling elites may face comes from international sources. International pressure can be split two ways. The pressure can derive from other international states acting unilaterally, or pressure can originate from international bodies such as the United Nations (UN) or international nongovernmental organizations (INGOs). In the international playing field accountability and jurisdiction becomes harder to determine. “It follows that power-wielders may be held accountable to standards of conduct articulated in transnational civil society, even though there is no applicable international law and even though their power does not derive from authority delegated to them” (Grant and Keohane, 2005, 35). Pressure from other countries and pressure from the international community must be examined thoroughly to see what is sufficient to create change as well as together to view the total spectrum of legal reform the results from this pressure.

UN policy is usually examined in fragile states in terms of peace operations or sanctions to penalize repressive regimes. The UN has numerous routes through which they can pressure and therefore influence leaders. One of the most important times for the UN to pressure leaders to create change is during the post-conflict rebuilding process. “The post-conflict agenda justifies exogenous intervention in failed states or ‘trouble regions’ in order to help the nations and their states be ‘safe,’ ‘stable,’ ‘democratic,’ and ‘free’” (Jabareen, 2012, 113). However, there is substantial debate regarding the effectiveness of UN missions. If the UN mission puts pressure on rulers but does not address the weakness in states, they may not be effective enough. “The capacity and mandates of current UN peacekeeping operations cannot sufficiently address the massive problems present in state collapse” (Langford, 2002, 67). The question becomes whether

pairing this international pressure with the domestic pressure will help. Also, if the problem with increasing stability comes from the causes of weakness, UN pressure could still cause legal reform. The judicial reform may not be able to achieve its full potential, however, UN pressure may still incentivize leaders.

INGOs also play a role in providing pressure for the ruling elite in failed states. Predominately, the literature that focuses on INGOs and their relationship to failed states comes from a human rights standpoint. Arguably this is due to the fact that human rights violations are the driving force for many international organizations in general (Poe, Tate, and Keith, 1999, 2009; Rose-Ackerman, 2004, Murdie and Bahsin, 2010). INGOs have been examined in past research in their ability to influence domestic actors themselves, and act as transnational advocacy networks (TANs). TANs work in cases when the domestic actor cannot put pressure on the leader directly (Keck and Sikkink, 1999). The international organization will provide methods, funding, and information to both the government and the people to facilitate an exchange of information and pressure. Past research has demonstrated that different types of human rights INGO activity have an influence on the amount of violent and nonviolent protests that occur domestically (Murdie and Bahsin, 2010). When acting as transnational advocacy networks, INGOs have been found to act as forces for cultural and political negotiation (Keck and Sikkink, 1999, 99). All of these methods are proven indicators of pressure on the ruling elites of nations, so it will be interesting to examine whether these domestic and international pressure leads to clear reform.

When Pressure Leads to Reform

This literature demonstrates a gap in the discussion of states with ineffective governance. The question becomes whether the pressure identified as a factor of failed states plays a role in

changing the judicial framework of these states. Poe, Tate, and Keith found support for the hypothesis that when judicial independence is formally written into the constitution, a country's personal integrity score, or human rights record, is improved. Based on this it is reasonable to hypothesize that when countries include judicial independence in their constitutions they are more likely to reform their judiciaries and in doing so, make them more independent.

Hypothesis 1: If a country modifies its constitution to formally include judicial independence, then judicial independence in practice is more likely to positively change

In examining the way pressure correlates to judicial independence various hypotheses can be posited regarding the nature of this relationship. The most plausible hypothesis seems to be that a curvilinear relationship exists between pressure on the ruling elite and judicial reform. This means that judicial reform is more likely in a state where the ruling elite face no pressure. However, as pressure builds, the ruling elite senses threat and refuses to create a more effective judicial framework. Once a threshold of pressure is reached, however, judicial reform outweighs the cost of potential power loss (or worse, death), and rulers become more likely to change policy and create a more effective legal system.

Hypothesis 2: There is a curvilinear relationship between domestic pressure and judicial independence.

2A: High levels of domestic pressure would lead to increasing levels of judicial independence.

2B: Medium levels of domestic pressure correlate with no change judicial independence.

2C: Low levels of domestic pressure would lead to a medium amount of judicial independence.

The basis for this hypothesis comes from a multitude of curvilinear findings on similar topics as well as examples within states that have undergone judicial reform. Charles Tilly argued that protests are more likely to occur when threat or opportunity is imminent but when neither occurs, protest is less likely. This creates a curvilinear relationship between protest and opportunity (Tilly, 1978; Gurr, 1968). Davenport argues that there is a curvilinear relationship between democracy and repression (Davenport, 2007). He states that countries transitioning to democratic governments repress citizens more than those who are not democratic until a threshold is reached. After the threshold in level of democracy is reached, the more democratic the nation is, the less likely the government is to repress citizens (Davenport, 2007). All of these theories lend to the hypothesis that a curvilinear relationship may also exist between pressure on elites and judicial reform. Opportunity and democratic reform both provide methods for the creation of judicial independence. Different pressures may cause governments to react in different ways. If governments feel threatened, based on Tilly and Davenport's findings, it seems plausible to assume they will restrict the power and independence of their judicial systems. Once this pressure increases beyond a threshold, rulers will change policies out of fear for their lives or of losing their power. When pressure ceases to exist, leaders adopt reforms that they deem relevant to their interest.

Another theory based on the literature would be that international pressures also change the behavior of a ruler (Poe, Tate, and Keith, 1999, 2009; Rose-Ackerman, 2004, Murdie and Bahsin, 2010, Keck and Sikkink, 1999). From this it is possible to argue that international pressures could create more judicial independence. However, there is also literature that supports the argument that during wartime, rulers clamp down on their constituents (Poe, Tate, and Keith,

2009; Bratton and Van de Walle, 1992). As war becomes a paramount concern for rulers, they are less inclined to grant more liberty domestically.

Hypothesis 3: Higher levels of international pressure are associated with increasing levels of judicial independence.

Hypothesis 4: A country's involvement in an international war will correlate to declining levels of judicial independence.

There is also the idea that regime change plays a large role in levels of judicial independence. This a change in the level of democracy in a country, which would then lead to changes in judicial independence. The more democratic a country becomes, the more judicial independence that country develops as well. "Independent judiciaries enhance the durability of democratic regimes on average and they reduce the likelihood and intensity of domestic political conflict" (Staton, Reenock, and Radean, 2010, 23). This is based on studies that demonstrate democracies are correlated to higher measures of judicial independence (Howard and Carey, 2004; Staton, Reenock, and Radean, 2010; Helmke and Rosenbluth, 2009). "Judicial independence is an important, if not absolutely necessary, condition for the development of political and civil liberties" (Howard and Carey, 290, 2004). The correlation between judicial independence and democracy appears to have a great deal of support¹.

Hypothesis 5: If a country becomes more democratic, judicial independence will increase.

This hypothesis deals with the idea that democracy and judicial independence are correlated. This correlation seems fairly intuitive, however it is interesting to test if factors that define a nation as democratic correlate to increases in judicial independence. If elections define

¹ Bivariate analysis performed already demonstrates a relationship between regime type and judicial independence. This graph can be found in the Appendix under Part 1.

² After creating these variables a second method of quantifying the amount of domestic pressure a

democracy, does this alone correlate to more independence in the judiciary? According to studies, it is plausible to argue that democracy has an important effect on a nations judiciary (Davenport 2007, Grant and Keohane, 2005). All of these hypotheses can be tested empirically using various data sources.

Data and Methods

The most effective way to test the hypotheses would be to perform a quantitative study in order to view the relationship and control for the multitude of possible influences on legal reform. By performing a quantitative study it will be possible to test a large variety of variables over a long time span. While this inherently restricts the amount of detail about each case, by using a large number of variables, this flaw can be minimized. Furthermore, a quantitative study will allow for a study of many more countries than case studies or interviews would. Since judicial reform occurs on a national level, it follows logically that my variables are defined and analyzed in terms of national characteristics. For both models, the unit of analysis would be countries over years. Both constitutional reform and judicial independence occur at a national level.

The optimal population to test these hypotheses would be one that includes cases with demonstrable success as well as ones that have been unable to implement reform. Since the initial question deals with incentivizing rulers of failed states to reform, states classified as failed or failing are important to include. Furthermore, since legal reform is most difficult in these states, including them in the population allows for the test to occur where the hypothesis is least likely to be confirmed. The failed states index from the Fund for Peace provides a ranking of states based on Conflict Assessment System Tool (CAST) methodology. This measures nations' effectiveness at protecting their citizens from human rights violations, economic instability, civil

conflict, and illegitimate institutions. This ranking includes twelve social, economic, political and military indicators that provide face validity for the rankings. The methodology was peer reviewed by independent scholars providing a level of reliability to the index. The index concludes that the five most fragile states, and many of the other “unstable” states, are in Africa. Furthermore, there is variation with some of the other states in Africa at more stable levels (Fund For Peace, Fragile States Index). From this categorization, African nations appear to be good populations on which to test the hypotheses.

Measuring Judicial Independence

In order to measure judicial independence, I turn to the latent judicial independence scores developed by Linzer and Staton (2012), which are available for 200 countries from 1948 to 2012. These scores reflect de facto judicial independence, i.e. independent judging in practice, as opposed to de jure independence, i.e., the existence of formal institutions that allegedly provide incentives to behave independently (Staton and Linzer, 2012, 4). This is extremely relevant in the distinction between when legal reform occurs and when it works. The creation of institutions would provide a measure of when judicial reform occurs, however de facto measures provide information regarding the effectiveness of reform in practice.

Judicial independence is a latent concept. It is not possible to directly observe the true underlying rationale for particular judicial decisions. Instead, we can use what is observable to infer what we cannot see. Linzer and Staton attempt to infer latent judicial independence using a statistical measurement model fit to eight indicators of the concept that have been used in the extant literature. Many of these indicators were developed by teams of researchers attempting to measure judicial independence using newspaper reports or summaries from the U.S. Department of State's human rights reports. Others leverage information, like estimates of the "constraints"

on an executive that are plausibly related to an independent judiciary. The goal of Linzer and Staton's model is to extract from these sources common information about judicial independence, accounting for the fact that judicial independence trends over time (this year's independence is probably related to last year's value), is bounded in sensible ways (you can only be so independent as to be yourself) and is measured by each team with error. The result of the model is a summary score, which lies between 0 and 1, and reflects estimates of latent judicial independence. A score of 1 indicates a fully independent judiciary, whereas a score of 0 reflects a judiciary that is entirely dependent on a sitting government. Since the hypotheses used here deal with how variables correlate to changing levels of judicial independence, I calculated a change variable, reflecting changes in Linzer and Staton's score from year t to $t+1$ (*Change in Judicial Independence*).

Measuring Constitutional Reform

The first hypothesis argues that the formalizing of judicial independence is correlated with increased actual judicial independence. This requires the operationalization of formal inscription of judicial independence in constitutions, as an independent variable. The comparing constitutions project by Zachary Elkins, Tom Ginsburg, and James Melton created a database that measures constitution creation and reform of 192 countries from 1789 to 2012. From this model, different variables for forms of constitutionally delegated judicial independence are obtained. The first variable (*Judicial Independence*) examines whether “the constitution contains an explicit declaration regarding the independence of central judicial organ(s)”. The second variable used from their data (*Judicial Precedent*) looks at whether the constitution “stipulates that courts have to take into account decisions of higher courts”. The third variable (*Judicial Finality*) is whether “judicial decisions by the highest ordinary court (are) final”. The last

variable used (*Highest Court Opinion*) is if “the constitution provides for judicial opinions of the Highest Ordinary Court” (Elkins, Ginsburg, Melton, Comparing Constitutions Project). Using their data from 1990 to 2011 in all of the countries in Africa, these variables can be tested to see their correlation to real judicial independence (based on Staton and Linzer’s measure). The main weakness of this dataset is that the coders admit that the English translations may not be perfect representations of the constitutions’ ideas. It may be beneficial to check this data against other databases on constitutional reform. This dataset, however, is extremely comprehensive covering 1,162 constitutions over an extremely long time frame. These constitutions are coded for any and every event that causes reform so there is validity. From this measure, it will be possible to identify when reform occurs and exactly what is being altered when these four constitutional changes occur.

Measuring Domestic Pressure

The second hypothesis, that domestic pressure and judicial independence have a curvilinear relationship, implies that domestic pressure must be measured. Domestic pressure can be operationalized as protests and violent interactions, whether civil war or insurgency (Davenport, 2007). The occurrence of protests and riots are empirically measurable. Domestic pressure in Africa has been examined thoroughly by the Robert S. Strauss Center in order to create a Social Conflict Analysis Database or SCAD. SCAD includes measures of protests, riots, strikes, conflict between communities, and government violence against civilians. The data is a cross-sectional study, covering all African countries, and a time-series measure covering 1990-2013. According to the codebook, the data includes a categorical measure of the type of event that occurred with 10 options. There is a categorical measure of 1 to 10 of whether the event escalated during its time frame. There is a categorical measure of whether the government

intervened and repressed participants. There are also categorical measures of type of location (urban, rural, etc.) and the issue area that was the source of tension. This creates a valid measure of domestic protest and violence.

The data's primary weakness is that it only codes Africa; however this is not a problem for this study. The other weakness of the dataset is that it codes stories found on Lexis-Nexis therefore it is biased towards events that received press coverage. While this leads to a problem with the data, it would not be possible to obtain data on events that have not received media attention. The data is extremely strong in the quantity of events it has coded and the number of options for each question in codes. By providing 10 different types of conflict, the distinctions between types of protest or riot can be very specific. From this dataset, the events between 1990 and 2011 were used. From the detailed analysis of the types of riots and protests that occurred, a dummy variable was created if a nonviolent protest, violent protest, or rebel violence occurred in a country in a given year. This variable was then lagged for one year, two years, and three years. These variables provided a way to examine low, medium, and high levels of pressure based on the nature of the protests and riots that occurred. A nonviolent protest arguably provides a much smaller amount of pressure on rulers than rebel violence would. From this it was possible to test the correlation between different types of domestic pressure and changes in judicial independence in the following years.²

² After creating these variables a second method of quantifying the amount of domestic pressure a country faces was used. Three new dummy variables were created that coded for low, medium, and high pressure. This test was never significant. It is included as a reference in the Appendix under Part 2. If a country faced up to three nonviolent protests in a year, low pressure was coded. If a country faced four to ten nonviolent protests and/or one to five violent protests, medium pressure was coded. If more than ten nonviolent protests or more than five violent protests occurred then the country was coded for high pressure. If any rebel violence occurred, the country was coded as being under high pressure, because any rebel violence would mean that a subsection of a nation's population was willing to organize for change in a dangerous and drastic way.

Measuring International Pressure

International pressure is defined as other states' actions and responses from the international community. Measures of pressure by other nations include foreign policy statements, sanctions, and restrictions on aid and trade. International responses are measured through INGO statements, press coverage, and UN actions (Grant and Keohane, 2005, 39-40).

Pressure from other countries can be measured through data on aid restriction and changes in foreign direct investment (FDI). FDIs provide a measure of legitimacy because countries only invest in governments that they feel are stable. By providing less, or decreasing, aid, countries signal that they are concerned about the policies of that country (Lensink and Morrissey, 2000). This therefore provides a mechanism of pressure on the ruler to change policies. The quality of governance dataset includes a measure of net inflows of FDI as a percentage of GDP. This measure is an aggregate of the international monetary fund, International Financial Statistics and Balance of Payments databases, and World Bank, Global Development Finance. This variable was then used to create a variable that measures the change in FDI inflows each year (*Change in FDI*) for every African country from 1990 to 2011. Similarly a change in the amount of aid a country receives was calculated. The OECD provided a measure of official development assistance (ODA). From this, the variable that codes the amount of aid per capita in U.S. dollars was used to create a variable for the change in aid going to each country in Africa each year from 1990 to 2011 (*Change in Aid per Capita*). Both changes in FDI and changes in aid were lagged one, two, and three years, to see the long-term effects that they could have on judicial independence.

Pressure from the international community was measured as international wars, INGO reports, and peacekeeping efforts. Data on the involvement of a country in an international war

used the UCDP/PRIO armed conflict dataset, which codes all armed conflict from 1946 to 2013. From this data a dummy variable was created to code for the presence of an international war that included any African country during the time period 1990 to 2011. This was then lagged for one, two, and three years based on the assumption that international war's effect on judicial independence is not immediate. Another form of international pressure can come from INGO reports. Specifically, this looks at human rights organizations that publish reports shaming countries for repression. This variable was obtained from Amanda Murdie and David Davis' dataset that records the shaming events of more than 400 human rights organizations toward governments. From this data was pulled for African countries during 1990 to 2011 and lagged one, two, and three years. Another potential source of international pressure comes from the international community deploying peacekeepers. Data on peacekeeping presence came from Mark Mullenbach's data on Third-Party Peacekeeping in Intrastate Disputes. This codes peacekeeping data from 1946 to 2014. From this dataset variables for the length of the peacekeeping missions, whether there was a "formal ceasefire agreement prior to the deployment of peacekeeping personnel" (*Peacekeeping Ceasefire*), whether the parties signed "a formal peace agreement (beyond a ceasefire agreement) prior to the deployment of peacekeeping personnel" (*Peacekeeping Peace Agreement*), and whether the parties signed a "formal peace agreement/treaty (or did the parties fulfill the terms of a previously signed peace agreement) during the deployment of peacekeeping personnel" (*Peacekeeping Treaty*) were all used for African countries from 1990 to 2011. These variables were all lagged one, two, and three years to see their effect on judicial independence following their occurrence.

Measuring Regime Type

The fifth hypothesis, that the more democratic a country is, the more judicial independence it has, requires a code for regime type. This was obtained from the Freedom House's Polity score. The variable for a country's polity score (*Polity*) codes countries on a scale from zero (least democratic) to ten (full democracy). A fourth variable was taken from the Center for Systematic Peace's Polity IV project that codes for the number of years since the last substantive change in authority (*Polity Durability*).

Control Variables

Many other variables could potentially cause constitutional reform. There are a variety of variables that must be controlled for because they could potentially lead to a spurious relationship between pressure and constitutional change. These variables include ethnic heterogeneity (*Ethnic Heterogeneity*), population size (*Population*), GDP per Capita (*GDP per Capita*), and a country's level of respect for human rights (*Physical Integrity Score*). Controlling for ethnic heterogeneity is important because governments may act differently if the population has large ethnic or racial divides. A ruler may also act differently depending on a nation's human rights record.

Methods

Since a number of variables are hypothesized to influence judicial independence simultaneously, multivariate regression was employed. The basic structure of the data is a time-series cross-sectional. The regression type used here is population-averaged panel-data model by using generalized estimating equations. In this general estimating equation model, Gaussian is specified because the dependent variable (change in latent judicial independence) has a normal

distribution. Ar1 is used to control for temporal autocorrelation. The model also has robust standard errors included in order to control for heteroscedasticity.

Analysis

Each of the hypotheses was tested with a regression that had a fit population-averaged panel-data model using generalized estimating equations. The models are run using fixed effects. This controls for the differenced across countries in the study. The model results are depicted in the tables below. These tables are set up so that each column represents a different lag. The correlation coefficients are stated in rows corresponding to the independent variable they represent. Underneath each coefficient, the z-score is put in parentheses. The z-score acts as a test of significance for every variable. If the z-score is greater than two, the null hypothesis that the pattern of correlation is random can be rejected on the basis that the data falls within two standard deviations away from the mean. At the bottom of the table the number of observations, countries, and average amount of observations per country are listed for each lag. A pseudo R^2 is also included. R^2 represents the percent of variance explained by the model or the fraction of variance of the errors that is less than the variance of the dependent variable.

The first hypothesis stated that if judicial independence is formally written in the country's constitution, then judicial independence is more likely. By running a regression, it is possible to examine how constitutional inclusions of judicial independence and judicial powers correlate to practiced judicial independence. This is done by using the variable calculated for the annual change in Staton and Linzer's judicial independence variable (*Change in Judicial Independence*) as the dependent variable. The independent variables used were the variable that codes for the existence of any constitutional change (*Constitutional Change*), the measure of judicial independence (*Judicial Independence*), judicial precedent (*Judicial Precedent*), the

finality of the highest ordinary court (*Judicial Finality*), and the constitutional allowance for judicial opinions in the highest ordinary court (*Highest Court Opinion*) from Elkins, Ginsburg and Melton.

Table 1: Estimation Results Regression of Constitutional Judicial Independence

Change in Judicial Independence	Coefficient
<i>Constitutional Change</i>	0.0030*** (2.91)
<i>Judicial Independence</i>	0.0036 (1.04)
<i>Judicial Precedent</i>	0.0000 (0.60)
<i>Judicial Finality</i>	0.0000 (1.45)
<i>Highest Court Opinion</i>	-0.0000 (-0.68)
<i>International War</i>	-0.0038*** (-4.87)
<i>Ethnic Heterogeneity</i>	-0.2164** (-2.05)
<i>Polity</i>	0.0029* (1.84)
<i>Population</i>	-7.55e-10** (-2.84)
<i>GDP per Capita</i>	-4.88e-07 (-1.31)
<i>_cons</i>	0.0741** (2.26)
Number of observations	674
Number of countries	42
Avg number of observations per country	16
Pseudo R ²	0.2325

As shown in table 1, based on this regression, any change in the constitution correlates with a positive and significant change in the country's judicial independence. Since judicial independence is measured from 0 to 1, substantial changes in actual judicial independence correspond to decimal changes in the variable. Furthermore, because the z score is larger than two, the null hypothesis that the pattern of correlation is random can be rejected on the basis that the data falls within two standard deviations away from the mean. Therefore, there is significance to this finding. None of the other variables have significant correlations to changes in judicial independence. This is interesting because it means that the inclusion of an explicit declaration of judicial independence has no significant correlation to changes in actual judicial independence.

The second hypothesis argues that there is a curvilinear relationship between domestic pressure, in terms of protests and riots, and a country's judicial independence. The change in judicial independence based on Staton and Linzer's measure was the dependent variable (*Change in Judicial Independence*). This hypothesis was tested looking at the different forms of protest and riot. The same dependent variable for judicial independence was used in this model. Running a second regression using the dummy variables for nonviolent protest, violent protest, and rebel violence as the independent variables would allow for a second measure of domestic pressures correlation to change in judicial independence (*Nonviolent Protest, Violent Protest, Rebel Violence*). These variables were lagged for one year, two years, and three years.

Table 2: Estimation Results Regression of Domestic Pressure with Types of Pressure

Change in Judicial Independence	Coefficient (t-1)	Coefficient (t-2)	Coefficient (t-3)
<i>Nonviolent Protest (t-1)</i>	0.0001 (1.07)	0.0001 (1.00)	0.0001 (1.12)
<i>Nonviolent Protest (t-2)</i>		-0.0001 (-1.23)	-0.0001 (-0.83)
<i>Nonviolent Protest (t-3)</i>			-0.0001 (-1.28)
<i>Violent Protest (t-1)</i>	-0.0001 (-0.37)	-0.0001 (-0.26)	-0.0003 (-1.16)
<i>Violent Protest (t-2)</i>		0.0000 (0.08)	-0.0002 (-0.59)
<i>Violent Protest (t-3)</i>			-0.0001 (-0.39)
<i>Rebel Violence (t-1)</i>	-0.0002 (-0.82)	-0.0001 (-0.30)	-0.0001 (-0.41)
<i>Rebel Violence (t-2)</i>		0.0001 (0.76)	0.0003** (2.48)
<i>Rebel Violence (t-3)</i>			0.0004*** (3.12)
<i>Ethnic Heterogeneity</i>	-0.1350 (-1.31)	-0.1570 (-1.35)	-0.1735* (-1.80)
<i>Polity</i>	0.0045*** (5.27)	0.0049*** (5.96)	0.0046*** (5.19)
<i>Population</i>	-2.92e-10 (-0.86)	-3.11e-10 (-0.81)	-4.11e-10 (-1.22)
<i>GDP per Capita</i>	-1.31e-06 (-1.37)	-1.50e-06 (-1.32)	-1.48e-06 (-1.34)

<i>_cons</i>	0.0306 (0.72)	0.0363 (0.75)	0.0478 (1.18)
Number of observations	1030	982	934
Number of countries	50	50	50
Avg number of observations per country	20.6	19.6	18.7
Pseudo R ²	0.0043	0.0076	0.0134

As table 2 depicts, neither nonviolent nor violent protest had a significant affect on change in judicial independence. One, two, and three year lags on violent protest all had a negative correlation to change in judicial independence. Rebel violence had a positive and insignificant correlation to judicial independence changes after two and three years once a three-year lag was included. This is demonstrated by a z-score larger than two. Attacks by rebels led to more reform. The government facing immediate threat saw the cost of not reforming to be too high. As rebel violence in a country occurs, three years later judicial independence increases in a significant way. Once again, polity has a positive significant correlation to judicial independence. If rebel violence exists in a country, that form of domestic pressure may incentivize real changes by the ruling elite toward a more independent judiciary. This was not possible to see in the more general variables used in the first regression for this hypothesis.

The third hypothesis tested argues that there is a linear relationship between international pressure, in terms of changes in aid and FDI (*Change in Aid per Capita* and *Change in FDI*), INGO reports shaming human rights practices (*Human Right Organization Reports*), and peacekeeping presence (*Peacekeeping Ceasefire*, *Peacekeeping Peace Agreement*, and *Peacekeeping treaty*), and the number of years a regime has maintained control, and a country's

judicial independence. The change in judicial independence based on Staton and Linzer's measure was the dependent variable (*Change in Judicial Independence*). All of the independent variables were lagged one, two, and three years to account for the time it would take for pressure to change the ruling elite's practices. Hypothesis four argues that taking part in an international war correlates to a decrease in judicial independence. International war is the independent variable (*International War*).

Table 3: Estimation Results Regression of International Pressure

Change in Judicial Independence	Coefficient (t-1)	Coefficient (t-2)	Coefficient (t-3)
<i>Change in FDI (t-1)</i>	-2.41e-06 (-0.25)	6.88e-07 (0.05)	0.00001 (0.69)
<i>Change in FDI (t-2)</i>		-3.69e-06 (-0.21)	0.00002 (0.72)
<i>Change in FDI (t-3)</i>			0.00002* (1.68)
<i>Change in Aid per Capita (t-1)</i>	3.60e-07* (1.83)	4.60e-07** (2.13)	-3.42e-07** (-2.04)
<i>Change in Aid per Capita (t-2)</i>		4.73e-07*** (3.80)	-6.06e-07*** (-2.85)
<i>Change in Aid per Capita (t-3)</i>			-1.65e-06*** (-2.86)
<i>International War (t-1)</i>	-0.0072*** (-3.46)	-0.0085** (-2.51)	-0.0069** (-2.50)
<i>International War (t-2)</i>		-0.0019 (-0.60)	-0.0003 (0.08)
<i>International War (t-3)</i>			0.0119 (1.07)
<i>Human Right Organization Reports (t-1)</i>	0.0001 (0.67)	0.0001 (0.83)	-0.00002 (-0.28)
<i>Human Right Organization Reports (t-2)</i>		0.0001 (1.41)	0.0001 (0.81)
<i>Human Right Organization Reports (t-3)</i>			0.00003 (0.27)
<i>Peacekeeping Ceasefire (t-1)</i>	-0.0071*	-0.0085**	-0.0106***

	(-1.78)	(-2.14)	(-2.56)
<i>Peacekeeping Ceasefire (t-2)</i>		-0.0035 (-1.17)	-0.0045 (-1.45)
<i>Peacekeeping Ceasefire (t-3)</i>			0.0014 (0.48)
<i>Peacekeeping Peace Agreement (t-1)</i>	0.0011 (0.29)	0.0011 (0.31)	0.0024 (0.74)
<i>Peacekeeping Peace Agreement (t-2)</i>		0.0024 (0.76)	0.0042 (1.23)
<i>Peacekeeping Peace Agreement (t-3)</i>			0.0081 (1.52)
<i>Peacekeeping Treaty (t-1)</i>	0.0107* (1.66)	0.0117* (1.84)	0.0117* (1.92)
<i>Peacekeeping Treaty (t-2)</i>		0.0090* (1.82)	0.0092* (1.76)
<i>Peacekeeping Treaty (t-3)</i>			-0.0047* (-1.66)
<i>Polity Durability (t-1)</i>	0.0001 (1.33)	0.0002 (1.44)	0.0001 (1.22)
<i>Polity Durability (t-2)</i>		0.0001 (1.42)	0.0002* (1.85)
<i>Polity Durability (t-3)</i>			5.85e-06 (0.08)
<i>Ethnic Heterogeneity</i>	-0.0997 (-0.84)	-0.0866 (-0.83)	-0.1236* (-1.65)
<i>Polity</i>	0.0043*** (4.53)	0.0042*** (4.00)	0.0048*** (4.06)

<i>Population</i>	-2.41e-10 (-0.60)	-3.16e-10 (-0.92)	-3.03e-10 (1.47)
<i>GDP per Capita</i>	-1.67e-06 (-1.36)	-1.81e-06 (-1.51)	-1.65e-06 (-1.45)
<i>_cons</i>	0.0175 (0.36)	0.0145 (0.34)	0.0215 (0.81)
Number of observations	842	797	763
Number of countries	45	45	46
Avg number of observations per country	18.7	17.7	16.6
Pseudo R ²	0.0871	0.1033	0.1300

As demonstrated in table 3, many of these variables have significant correlations to changes in judicial independence. When foreign direct investment increases, judicial independence increases three years later. This correlation appears to be weak, but it is significant due to a z-score larger than two. When foreign aid increases, judicial independence appears to increase one and two years later. Once a three-year lag is included, however, aid correlates to a decrease in changes in judicial independence for one, two, and three years after the change in aid occurs. When both a one-year lag and two-year lag are tested, both variables are significant. When the change in aid lagged three years is included, both the variable for a two-year lag and three-year lag are significant and negative. This inverse correlation means that when other nations give out aid to the nations tested, their judicial independence appears to decrease in the following years. Human rights shaming reports appear to never have a significant correlation to changes in judicial independence.

When a formal ceasefire agreement occurs prior to the deployment of peacekeepers, a one-year lag is correlated negatively to changes in judicial independence, regardless of the amount of lags included in the model. At no other time is this formal ceasefire significant. When a formal peace agreement (beyond a ceasefire) exists before peacekeepers are deployed, the correlation to judicial independence is always positive. This correlation is never significant. When a peace agreement or treaty is signed during the peacekeeping mission, or if the terms decided prior to the mission are fulfilled, there is a significant and positive correlation with a one and two-year lag regardless of the amount of lags in the model. When a three-year lag is included, the agreement or term fulfillment is negatively correlated to changes in judicial independence. This correlation is significant at the ninetieth percentile.

International war is negatively and significantly correlated to changes in judicial independence after one year. This means that one year after a nation is involved in an international war, judicial independence decreases. After two and three years, this relationship is no longer significant. Polity is positively and significantly correlated to judicial independence for each regression.

The fifth hypothesis stated that there is a linear relationship between democracy and a country's judicial independence. The change in judicial independence based on Staton and Linzer's measure was the dependent variable (Change in Judicial Independence). The independent variable was the country's polity score from freedom house and its regime durability. This was tested in as in all of the previous models³. In every model polity maintained a significant and positive correlation to change in judicial independence.

Findings and Results

³ A regression was run solely on regime type using a measure of polity. In the regression, the polity score came from freedom house (*FH Polity*). This table can be found in the Appendix under Part 3.

Based on these regressions, interesting conclusions can be drawn regarding the five hypotheses. The first hypothesis stated that if the constitution includes an explicit declaration of judicial independence, then actual judicial independence is more likely. The study did not find support for this idea. When judicial independence is coded into the constitution there is an insignificant effect on actual judicial independence. This insignificant finding is extremely surprising. However, there may be explanations for this relationship. Nations may include declarations of judicial independence with no intention to give the judiciary actual independence. This may be done to appear freer to other nations. This may also be done to give the courts more legitimacy so that citizens think that they are free, while the decisions do not change in reality, support the ruling elites position. Rulers may include judicial independence when they feel norms to do so have been set. When citizens attempt to use these courts, the independence may be restricted to demonstrate that any deviation from the rulers' ideas will not be tolerated. Most likely, the constitution includes judicial independence when it is reformed, however, once leaders take power the cost of granting actual independence for the judiciary goes up.

It is important to note that the variable for any constitutional change is both significant and positive. This seems to have a great deal of face validity. As the constitution is altered, the country appears to be changing to better represent its citizens. Therefore, as the constitution is amended it seems logical that judicial independence increases as well. Also, as laws become more defined, it follows logically that the court will have more power to decide cases without the influence of the ruling elite. This does lend some support to the idea that constitutional provisions and changes more generally correlate to more independent judiciaries. However the original hypothesis that constitutional inclusion of judicial independence correlates to actual judicial independence is not supported.

The second hypothesis that a curvilinear relationship exists between domestic pressure and judicial independence was not supported by this study. This would entail high pressure correlating to the largest positive change in judicial independence. Low pressure would cause minimal to no change. Medium amounts of pressure would cause no change, or a negative change in the amount of judicial independence within a country. None of the levels of domestic pressure had significant correlations to changes in judicial independence. There was a significant and positive relationship between rebel violence and judicial independence with a three-year lag after two and three years. This means that three years after rebel violence occurs, judicial independence does increase. It is not possible to explicitly state that rebel violence is the cause of immediate increases in judicial independence, however there are some factors that support that rebel violence does cause some change in judicial independence. The two variables are correlated and there is a temporal order, rebel violence occurs three years prior to the change. It is impossible based on this test to rule out alternative explanations.

For the third hypothesis, there is some support that international pressure leads to increases in judicial reform. As foreign direct investments increase, judicial independence increases as well. This is likely to be the result of a third variable causing both. If a country becomes more stable, other countries and international corporations are more likely to invest in that country. Also increases in stability lead to more independent judiciaries. For most of the other variables, the hypothesis does not follow. As aid increases, a country's judicial independence increases at first, and then decreases. This may be due to original stipulations regarding the aid but later the money leads to increases in power of the ruling elite. As more money goes into the country, rulers become more powerful. Therefore, judicial decisions are more likely to be influenced by the rulers either out of fear or in order to receive part of the aid.

Human rights shaming had an insignificant effect. This is not surprising given that other studies have shown that this is not usually a significant result. However, there is face validity to the argument that human rights shaming may influence leaders. Also, when a formal ceasefire agreement is made prior to the deployment of peacekeeping personnel, or when a treaty is signed during the deployment of peacekeepers (or a previous one is fulfilled), judicial independence decreases after three years. When a treaty is signed, judicial independence levels increase after one and two years before this decrease. This may be due to the increased amount of outside forces. Leaders may feel threatened or the courts themselves may feel as though their hands are tied by these agreements.

The fourth hypothesis does appear to be supported by the data. If a country is involved in an international war, judicial independence does appear to decrease in the year following the country's involvement. This has face validity. When countries feel threatened, they tend to clamp down and repress citizens. It makes sense that the ruling elites would reduce the independence of the judiciary when they fear for their power.

The idea that the more democratic a country is, the more judicial independence it has is also supported in in this study. When the polity score was tested, there was a positive and significant relationship to judicial independence. Furthermore, in every other model, polity was tested and came out positive and significant. This has extremely important implications. From this data, it can be hypothesized that a nation's regime type is an extremely important determinate of its judiciaries' independence. It seems logical to argue that increased political participation leads to judicial independence. It is not evident that simply becoming more democratic will lead to a decrease in the ruling elites' influence on other branches; however, this study seems to support that this is a possibility.

Does pressuring the ruling elite work?

Based on these studies, it would appear that pressuring the ruling elite has a very small correlation to changes in the judicial independence of a country. For most of the variables, the correlation was insignificant. Furthermore, many forms of pressure on the ruling elite led to further restrictions on judicial independence, as demonstrated by the negative correlation coefficients.

While rebel violence after three years and changes in foreign direct investment can be associated with positive changes in judicial independence, to claim that either variable brings about more independent judiciaries would be premature and likely false. This leads to a surprising finding about protests, riots, and shaming, which can occur with the intention of changing a country or ruling elites' behavior. Based on this study these do not significantly change the judicial power of nations courts. These findings represent a mere start on a whole body of literature that must be explored further. It would be extremely interesting to examine in future studies whether these actions affect other aspects of a country's stability.

The more valid results of the study show that changes to the constitution and regime type are correlated to changes in judicial independence. This is interesting because it demonstrates support for the idea that judicial independence derives from changing a country's leadership or leadership structure. It leads to further questions about whether changing a nations regime and/or constitution is necessary for increasing judicial independence, or if it just sufficient.

Future studies must include some account for how regime changes can occur in unstable states, and how constitutions can be made and or reformed. It would be interesting to expand the regions studied with these models. Countries outside of this study were able to successfully transition from unstable to stable. Their inclusion could help support the hypothesis that regime

change is the true determinate of judicial independence changes. Nations in Latin America would be extremely interesting to look at in future studies. Furthermore, expanding the time frame could provide interesting insights. For example, including data for cold war and post-cold war transitions may provide interesting data on each of these hypotheses. It would also be extremely interesting to compare countries that are extremely stable to see if any of the variables that are not significant in this context would become significant.

It would also be interesting to break down each of the independent variables used further. Looking at the different forms of protest, the subject that the countries are protesting, and the contexts under which these protests occur. This can also be done for international pressures. Breaking down the reasons for changes in aid and foreign direct investment, or the context of international wars may also provide insights to why changes, or a lack of changes, occur. It would be extremely beneficial to look at these questions through a qualitative lens as well. Comparing two countries that are similar except one has become stable while one is “fragile” would provide important insight on what pressures may induce change.

Regardless of what future studies find, this study enabled an interesting examination of domestic and international pressures’ effect on one possible element of state stability. An independent judiciary can only lead to further strength in the nation’s government. By finding insignificant results in some of these areas, these analyses provide for the possibility that current assumptions about the effectiveness of protest and shaming may be ill founded. Furthermore it leads to questions about the assumptions of how judicial independence relates to variables studied in the past, like human rights protection and democracy. By supporting the significance of regime type and constitutional change, this study has added to a new area to examine when

discussing judicial independence and to examine its significance as the world continues to face atrocity and civil conflict.

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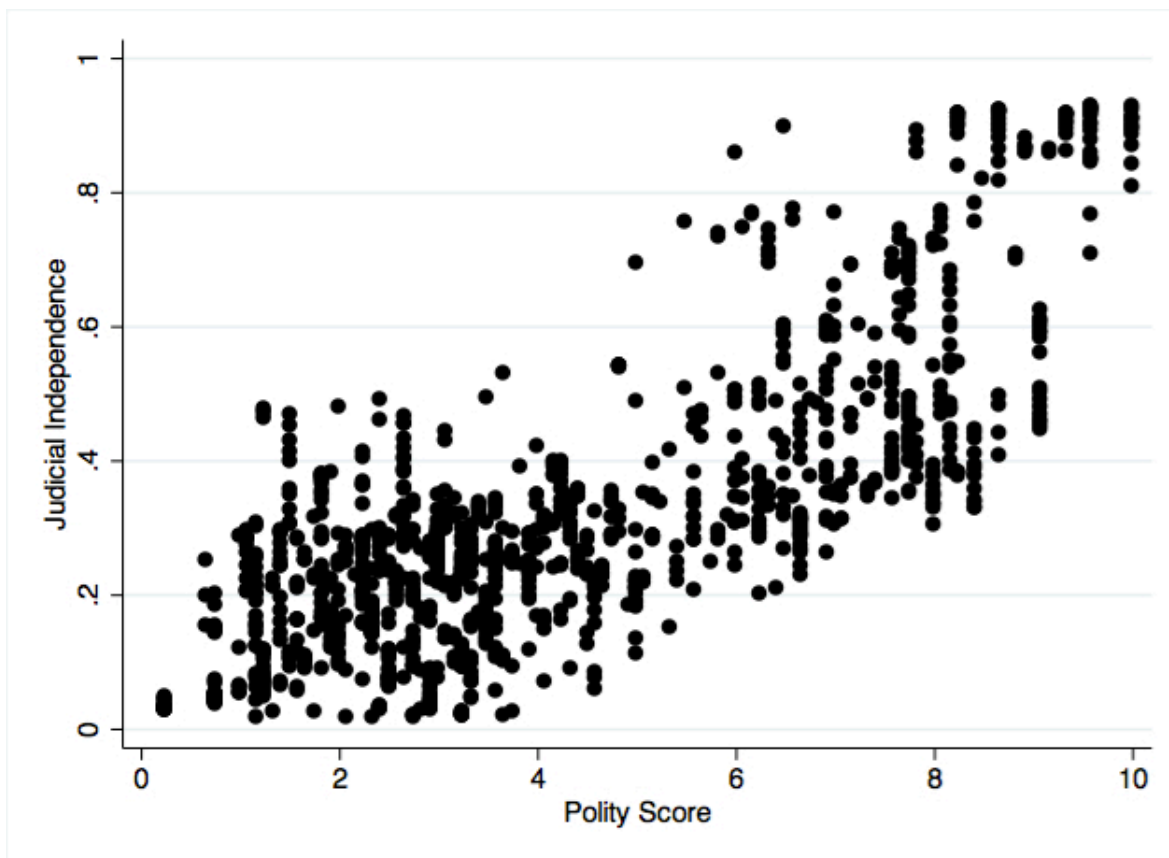
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Appendix

Previous bivariate analysis demonstrated a correlation between polity and latent judicial independence. This influenced the decision to include a variable for polity in each of the models and to include a separate hypothesis regarding the correlation between Freedom House's polity score and judicial independence.

Graph A1: Bivariate analysis of Judicial Independence and Polity



Part 2:

The second hypothesis, that there is a curvilinear relationship between domestic pressure, in terms of protests and riots, and a countries judicial independence, was also tested with dummy variables created for low, medium, and high pressure based on SCAD's estimations of nonviolent and violent protest and rebel violence (Low Pressure, Medium Pressure, High Pressure). These variables were then lagged for one year, two years, and three years. None of the variables created to code for levels of domestic had a significant effect on the change in judicial independence.

Table A1: Estimation Results Regression of Domestic Pressure

Change in Judicial Independence	Coefficient (t-1)	Coefficient (t-2)	Coefficient (t-3)
<i>Low Pressure (t-1)</i>	-0.0004 (-0.38)	-0.0006 (-0.51)	-0.0010 (-0.79)
<i>Low Pressure (t-2)</i>		0.0004 (0.40)	-0.0001 (-0.16)
<i>Low Pressure (t-3)</i>			0.0002 (0.26)
<i>Medium Pressure (t-1)</i>	-1.84e-06 (-0.00)	0.0002 (0.21)	-0.0003 (-0.29)
<i>Medium Pressure (t-2)</i>		0.0003 (0.34)	0.0006 (0.55)
<i>Medium Pressure (t-3)</i>			0.0002 (0.31)
<i>High Pressure (t-1)</i>	-0.0006 (-0.86)	-0.0005 (-0.57)	-0.0011 (-1.13)
<i>High Pressure (t-2)</i>		-0.0001 (-0.13)	0.0002 (0.25)
<i>High Pressure (t-3)</i>			0.0012 (1.60)
<i>Ethnic Heterogeneity</i>	-0.1407 (-1.41)	-0.1556 (-1.46)	-0.1569* (-1.75)
<i>Polity</i>	0.0045*** (5.23)	0.0049*** (5.91)	0.0046*** (5.19)
<i>Population</i>	-2.95e-10 (-0.88)	-3.03e-10 (0.86)	-3.77e-10 (-1.29)
<i>GDP per Capita</i>	-1.32e-06 (-1.37)	-1.51e-06 (-1.32)	-1.49e-06 (-1.35)

<i>_cons</i>	0.0332 (0.82)	0.0360 (0.82)	0.0416 (1.11)
Number of observations	1030	983	936
Number of countries	50	50	50
Avg number of observations per country	20.6	19.7	18.7
Pseudo R ²	0.0024	0.0058	0.0105

Part 3:

The fifth hypothesis stated that there is a linear relationship between democracy and a country's judicial independence. The independent variable was the country's polity score and its regime durability. As shown in the table, both polity measures had positive and significant correlations to changes in judicial independence.

Table A2: Estimation Results Regression of Polity

Change in Judicial Independence	Freedom House
<i>Fh_polity2</i>	0.0035*** (4.89)
<i>Polity Durability (t-1)</i>	0.0000 (0.28)
<i>Polity Durability (t-2)</i>	-0.0000 (-0.37)
<i>Polity Durability (t-3)</i>	0.0001 (1.58)
<i>Ethnic Heterogeneity</i>	-0.0023 (-0.42)
<i>Population</i>	8.21e-11 (1.61)
<i>GDP per Capita</i>	-1.21e-06 (-1.25)
<i>_cons</i>	-0.0104** (-2.06)
Number of observations	931
Number of countries	50
Avg number of observations per country	18.6
Pseudo R ²	0.0342