Bending but not Breaking: Rule of Law Tensions and Regime Survival*

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Abstract

Independent judges are thought to promote regime survival by allowing perceived violations of rules limiting arbitrary power to be challenged in a fair setting. Empirical evidence generally supports this claim. Yet by asking judges to hold leaders accountable, systems of constitutional review can create political tensions. Judicial institutions are sometimes attacked, judges sometimes impeached, and judicial orders are sometimes ignored. These processes can undermine independence in a variety of ways. We argue that if independent courts are to encourage regime stability, they must do so by managing these conflictual political contexts. Political contexts in which judges believe that overt political attacks are probable are unlikely to support an important role of judicial independence in regime maintenance; however, judges can contribute to regime stability even in contexts in which their decisions are sometimes ignored. Non-compliance with judicial orders need not be a problem for a robust political system. Indeed, to impact regime stability, judges must be willing to risk being ignored. We evaluate empirical implications of this argument in a study of democratic and autocratic regime survival.

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Perceptions that political leaders have violated fundamental limits on their authority are common sources of political instability (Boix and Svolik 2013, Diamond, Linz and Lipset 1995, Linz and Stepan 1996, Linz 1978, O’Donnell and Schmitter 1986). Managing beliefs about the extent to which leaders are constrained thus represents a critical governance challenge. Scholars have long suggested that independent judiciaries might be an important piece of the solution to this challenge.\footnote{By independent judiciaries, we mean judiciaries whose decisions largely reflect judges’ sincere evaluation of the records before them (Kornhauser 2002)} On one account, independent judges are core parts of the institutional infrastructure that produce credible commitments to regime rules, notably promises to respect private property rights (e.g. North, Summerhill and Weingast 2000, Voigt, Gutmann and Feld 2015). A related, but distinct line of thought, is that independent courts offer a kind of “insurance policy” to political coalitions that expect to lose power (Ginsburg 2003, Finkel 2008). Fearful that new leaders might unravel a regime’s rules, outgoing leaders supply institutional arrangements that constrain themselves, as well as future governments. Whatever the mechanism, by supplying potential victims of state overreach with an effective avenue of redress, independent judges help stabilize regimes. Empirical evidence supports this claim, finding that independent judiciaries promote regime survival and prevent democratic backsliding (Gibler and Randazzo 2011, Reenock, Staton and Radean 2013).

Despite this sanguine view of independent courts, additional facts are somewhat unsettling. Peak courts broadly understood to be independent of sitting governments have been central players in the collapse of democratic regimes. Notably, conflicts between the Supreme Court of Chile and Salvador Allende in 1973 and between the Supreme Court of Honduras and Manuel Zelaya in 2009 created legal grounds that coup-plotters would use to rationalize their actions (Ruhl 2010, Valenzuela 1978). In addition, courts seeking to constrain leaders are often the target of institutional attacks (Helmke 2010, Pérez-Liñán and Castagnola 2009). Indeed, in 2007, Bolivia’s Constitutional Tribunal was rendered inquorate as a consequence of politically motivated impeachments and resignations in the context of major conflict between the judiciary and President Evo Morales (Castagnola and Pérez-Liñán 2011).

Scholars also recognize that judicial orders are not self-enforcing, a challenge that is particularly pressing when the target of an order is the state itself (Becker and Feeley 1973, Birkby 1966).
Others have suggested that in order to avoid conflict and non-compliance, judges often engage in politically deferential patterns of decision making that can undermine their independence, at least in particularly salient cases (e.g., Bill Chávez and Weingast 2011, Rodríguez-Raga 2011, Carrubba, Gabel and Hankla 2008). Summarizing the critical challenge constitutional judges confront, USAID’s Office of Democracy and Governance writes:

In several countries, governments have refused to comply with decisions of the constitutional court (e.g., Slovakia and Belarus) and substantially reduced the court’s power (e.g., Kazakhstan and Russia). This illustrates the dilemma constitutional courts often face: Should they make the legally correct decision and face the prospect of non-compliance and attacks on their own powers, or should they make a decision that avoids controversy, protects them, and possibly enables them to have an impact in subsequent cases? Bold moves by constitutional courts can be instrumental in building democracy and respect for the courts themselves. However, the local political environment will determine the ability of the courts to exercise independent authority in these high stakes situations (Democracy and Governance 2002).

Critically, although there are many examples of non-compliance in settings not characterized by high levels of the rule of law, (for other examples, see Ginsburg and Moustafa 2008) courts are not always obeyed in rule of law states (Vanberg 2005, Carrubba, Gabel and Hankla 2008). The Constitutional Bench of Costa Rica’s Supreme Court confronts a variety of compliance challenges in its amparo jurisdiction (Staton, Gauri and Cullell 2015). The Netanyahu government’s pattern of evading High Court and administrative court decisions across a very wide set of issue areas is particularly notorious (for Civil Rights in Israel N.d.).

These facts raise questions about the mechanism linking independent courts to regime survival. If judges attempting to hold leaders accountable are often the target of institutional conflicts and if court orders can be ignored even in states with seemingly significant commitments to the rule of law, why would independent judges render regime rules credible? Similarly, if politically savvy judges avoid conflict precisely when they are needed, it is unclear what kind of insurance is being purchased. In this paper, we ask how a court that is subject to political pressures might nevertheless enhance regime survival. We make several arguments. Our primary claim is that independent courts
can strengthen regimes in three ways: (1) by incentivizing leaders to less frequently take actions that are likely to raise questions about whether regime rules have been broken, (2) by helping parties manage communication problems about the nature of policy choices in light of regime rules, and (3) by ultimately translating potential conflict in political society into inter-institutional conflict. Importantly, though, independent courts cannot fully resolve political instability. Judicial independence is not a panacea, especially when what we mean by independence is autonomy from a sitting government.

We also argue that the mechanism by which independent courts lower the probability of regime conflict depends on there being consequences for leaders if they ignore a judicial order. Where leaders are not particularly concerned with the consequences of conflict with the judiciary, independent courts will not materially influence the underlying process that stabilizes regimes. Further, political contexts in which judges are commonly threatened by institutional attacks undermine incentives for judicial independence, and by doing this, eliminate the judiciary’s role in promoting regime stability. Thus, a judge’s perceived consequences of inter-institutional conflict cannot be too significant.

Finally, we argue that non-compliance with judicial orders can be part of a robust political system. Clearly, there are well-understood normative rationales for expecting leaders to comply with judicial orders. And broad disrespect for judicial authority could have negative consequences for a wide array of economic and political activities. That said, non-compliance can also also be part of a process by which leaders communicate about their resolve and the seriousness of the policy problems they confront. And this kind of communication can strengthen regimes. For this mechanism to work, judges themselves must be willing to accept that their decisions will sometimes be ignored. Judges must be willing to exercise “judgment,” even if their power is questioned. The bottom line is that whereas institutional battles over the judiciary are likely to be destabilizing, simple non-compliance need not be.

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2It may be that courts in such contexts are actually problematic for regime survival. We do not focus on that possibility here, though it is a profitable avenue of research (for a discussion of this kind of dynamic, see Helmke 2010).
We divide the remainder of the paper as follows. We first develop a theoretical model of the regime rule management and consider how the additional of a minimally independent court might influence the propensity for conflict among leaders and those upon whose support they depend. We highlight both normative and empirical implications of using courts as solutions to regime maintenance. We then consider several empirical analyses that the theoretical exercise suggest. We focus primarily on the problem of democratic regime survival; however, we also consider the extent to which our model might shed light on authoritarian survival. Importantly, the judiciary appears to be a critical element of regime survival in both contexts, though only in democracy do independent judges seem to play the role we suggest. We conclude with a discussion of institutional design, which draws on our theoretical and empirical findings.

Modeling the Management of Regime Rules

An essential problem in the management of regime rules involves addressing potential miscommunication between leaders, coalition partners and possibly political opponents about the validity of actions taken in light of the regime’s constraints. This problem is complicated by indeterminacies in natural language and the basic human inability to foresee all future contingencies, which imply that even those rules that are formalized in foundational documents are subject to differing interpretations.

Many rules are context dependent. Economic crises, domestic disturbances, budget shortfalls, or war may require a leader to pursue extraordinary actions, which might not be ordinarily tolerated. Consider the Peruvian constitutional crisis of the early 1990s. After nearly a decade of attempting to bring to heel elements of the Shining Path and the Tupac Amarú Revolutionary Movement (MRTA), newly elected Peruvian President Alberto Fujimori sought to enhance his powers via emergency power legislation. By the President’s account, “his emergency measures were needed both to battle terrorism and to restructure the state and economy. He required an iron hand to

3Of course, some constitutional arrangements typically anticipate this problem, calibrating the state powers so as to properly meet economic crises, natural disasters or security threats (Gross 2011); however, even when present, these “states of exception” are themselves open to interpretation.
reform the judiciary and break the gridlock created by the opposition in Congress” (Cameron 1998, pp.127). Suspicious that President Fujimori’s plea for greater authority to fight domestic terrorism was in actuality a raw power grab, Congress resisted. It altered the legislation to “subordinate the executive to the rule of law, assert congressional supremacy over law-making, and require the executive to justify its use of emergency powers” (Cameron 1998, pp.127). Soon after, Fujimori, in conjunction with the intelligence community and the military, initiated his autogulpe.

Informational asymmetries between governors and the governed make this problem particularly vexing. Leaders often have more precise information about the possibility for implementing policy initiatives. Of course, this creates incentives for dissembling when leaders wish to pursue different policies; and, those incentives raise questions about the truthfulness of particular claims among skeptics. The Israeli Interior Ministry’s rationale for failing to comply with High Court decisions on a variety of policies dealing with the separation barrier, treatment of migrant workers and educational equality between the Arab and Jewish populations highlighted practical difficulties, relied on appeals about impracticalities. Specifically, the ministry claimed that delays in changing their policies were due to the extreme complexity of these cases, some of which entail significant budget expense, some which have implications for third parties, some of which require the establishment of new procedures and various complex administrative actions. Because of their complexity, these court rulings require an extended period during which they can be implemented (for Civil Rights in Israel N.d.).

Was this true? Were the conditions such that these policies could not be amended or was the Interior Ministry simply refusing to do what it surely could have? Disagreements over these kinds of claims are the kinds of the disagreements that commonly lead to regime breakdown in some contexts. Of course, it is unclear that they have significantly raised the probability of regime collapse in Israel. The problems associated with interpreting a leader’s claim inhere nonetheless.

What role for independent courts?

How might judicial review exercised by an independent court influence this problem? One possibility is that the review process reveals special information to judges about the true nature of the political
conflict they resolve. Judges might then consider revealing what they learn to uncertain parties. As long as judges are incentivized to truthfully reveal what they learn judicial review might solve the underlying communication problem. Carrubba’s (2005) model of review assumes such a role for a court. Though a useful assumption in some contexts, when the state itself is arguing that political conditions warrant particular actions, yet others are unsure about the factual basis of these claims, we believe that it is useful relax this assumption. It is unclear how a judge might glean from a legal record the true motivations of leader, at least in a way that would not be simultaneously revealed to the other parties to the litigation. Thus, we will want to model a process in which, if information is revealed through litigation, the court does not have special access to it.

The literature on authoritarian institutions suggests that even this simple informational story might be enough. Svolik (2008) and Boix and Svolik (2013) suggest that even authoritarian institutions can be a key component of managing coalitions when leaders are better informed than their supporters. By requiring distinct leaders to deliberate and discuss their policy views and understandings of the facts, legislative processes reveal hidden information. Whether or not all information is revealed, it is safe to assume, the argument goes, that legislative processes at least reduce uncertainty.

It is no doubt common to assume that litigation, generally speaking, reveals information about the case facts and parties’ motivations (Bull and Watson 2004, Clark and Kastellec 2013). So, perhaps all that is necessary is to assume that some information will be revealed about a leader’s motives. The difficulty with this assumption is that regime misunderstandings follow from beliefs that some kinds of leaders have incentives to dissemble. And if that is true, it is unclear why a litigation process that involves a party believed to be less than truthful would necessarily convince another party that what has been presented or said or recorded is in fact true. This is especially true in so far as we are talking about the state itself, and so rules regarding perjury would have to be enforced on itself. This lack of trust is exactly what causes the problem of managing regime understandings and what we are trying to solve. Assuming that courts simply provide this information does not answer why and how they might do it.
Model

We will consider a model that deals with a fundamental challenge of managing a regime compromise, which reflects key elements of Stephenson and Fox’s (2011) model of pandering. Consider a political regime that consists of a leader, endowed with governing power, and a supporter on whom the leader depends. We assume that the leader and the follower have come to some understanding about regime rules, which may include promises to limit terms of office, procedures for changing rules, policy limits or promises to divide regime surplus in particular ways. The players know that the political context in which they operate sometimes requires the leader to take actions that temporarily violate prior agreements. That is, in order to maintain the spirit of a regime compromise, leaders are sometimes called upon to take extraordinary actions, which in normal times would surely constitute a violation of regime rules. Indeed, if the political context does not warrant extraordinary policy measures, such measures may be used to shift the balance of power in the favor of the leader. Critically, the supporter cannot necessarily know that a leader who is taking an extraordinary action is doing so appropriately or in a power grab.

We first consider several properties of this regime in the absence of a court. We will then introduce a court and consider the possible differences that it makes. We will assume that the

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4 The leader here may be thought of as a governing party or coalition in a either a democratic or autocratic context. The supporter may be conceptualized as whatever set of individuals on whom the leader depends for continued leadership. This may be thought of as a party, a group of individuals or the leader’s “winning coalition.” The key point is that the leader has immediate and formal control over the instruments of governance.

5 An alternative formulation, which is essentially identical conceptually to what we analyze is that the supporter is merely worried about whether the leader’s action is a power grab or not. We can eliminate the possibility that some contexts require extraordinary actions, and instead assume that some extraordinary actions are essentially meaningless with respect to the supporter’s concerns with the balance of power. That is, we do not require the model to consider a scenario in which the leader and the supporter want the extraordinary action to be taken in order to generate the insights our model produces. The supporter can be indifferent between the extraordinary action and the normal action when the leader is not attempting to change the balance of power.
court in question is minimally autonomous, in the sense that it’s sincere view of the leader’s claim, given all of the information it possesses, can be distinct from the leader’s view itself. Critically, we will not assume that judicial orders are self-enforcing. Targets of orders can ignore a judge’s command.

**Baseline Model: Timing and Information**

Following the setup in Stephenson and Fox (2011) we begin by assuming that a political context can be understood by the players to be “normal” or “extraordinary,” as can be the policies leaders adopt and the responses to those policies by followers. Specifically, let \( X = \{n, x\} \) denote the set of possible descriptions of political contexts or actions taken by the leader or supporter. We denote a political context \( \omega \in X \). We assume that a political context is drawn from a Bernoulli distribution over \( X \), which is known commonly to the players. We let \( \pi \) reflect the probability of an extraordinary context. We assume further that the leader observes \( \omega \) and then proposes a policy response, \( p \in X \), where \( p = x \) reflects an extraordinary policy that might violate regime rules and \( p = n \) reflects a policy that is clearly understood not to violate these rules. Given this information structure, the leader may be conceived of as one of two types, \( t \in X \), and we will refer to the leaders as the extraordinary and normal types. Observing \( p \), the supporter responds to the policy, choosing an \( r \in X \). We assume that \( r = x \) induces a costly conflict of uncertain outcome with the leader whereas \( r = n \) results in continued support of the leader per the regime rules. A mixed strategy for the leader, \( \sigma_l \), assigns a probability distribution over \( X \) for each state, where \( \sigma_l(\omega) \) indicates \( \Pr(p = x|\omega) \). Similarly, a mixed strategy for the supporter, \( \sigma_s \), assigns a probability distribution over \( X \) for each policy she observes, and where \( \sigma_s(p) \) indicates \( \Pr(r = x|p) \).

**Preferences**

The game deals with how to ensure that policy responses match circumstances while also minimizing conflict. To focus on that problem, we normalize the value of the regime agreement to 1. A failure to respond to an extraordinary political context reduces the value of the regime to both players. We scale the regime value by \( \gamma \in (0,1) \) in the event that the \( \omega = x \neq p \). We assume that conflicts, should they emerge, are resolved probabilistically. Specifically, if \( r = x \), the leader receives \( v \), where \( v \sim \text{Be}(\alpha, \beta) \). In the event that \( \omega = r = x \neq p \), the leader and supporter receive \( \gamma v \) and \( \gamma(1 - v) \),
respectively. Finally, should \( \omega = n = r \neq p \), and the normal leader has unnecessarily taken the extraordinary policy, we assume that the value of the regime to the leader (supporter) increases (decreases) by \( k > 1 \). This implies the following payoff function for the leader:

\[
\begin{align*}
    u_l &= \begin{cases} 
        1 & \text{if } \omega = p \& r = n \\
        1 + k & \text{if } \omega = n = r \neq p \\
        \gamma & \text{if } \omega = x \neq p = r \\
        v & \text{if } r = x \& \text{ not } \omega = x \neq p \\
        \gamma v & \text{if } \omega = r = x \neq p.
    \end{cases}
\end{align*}
\]

Likewise, the payoff function for the supporter is given by

\[
\begin{align*}
    u_s &= \begin{cases} 
        1 & \text{if } \omega = p \& r = n \\
        1 - k & \text{if } \omega = n = r \neq p \\
        \gamma & \text{if } \omega = x \neq p = r \\
        1 - v & \text{if } r = x \& \text{ not } \omega = x \neq p \\
        \gamma(1 - v) & \text{if } \omega = r = x \neq p.
    \end{cases}
\end{align*}
\]

**Analysis**

Our solution concept is Perfect Bayesian equilibrium. We assume that beliefs are derived via passive conjectures at information sets that are not reached. There are two types of equilibria in the model, two of which involve the leader adopting the same policy independent of the political circumstances, and one in which the types partially separate from each other.

We begin by considering the possibility for a complete revelation of the political circumstances. First note that the supporter will react normally to the normal policy, no matter her beliefs. Independently of the political context, an extraordinary response to a normal policy only wastes resources since the leader has not attempted to shift the balance of power. In the worst case scenario, where the state warrants an extraordinary action but the leader acts normally (i.e., \( \omega = x \neq p \)), the supporter would only compound the problem (i.e., \( \gamma(1 - \mathbb{E}(v)) < \gamma \)).

The key question for the supporter is how to respond to an extraordinary policy. Suppose that the leader chooses a policy that is matched perfectly to the state \( p = \omega \). If this were true, the supporter would infer the leader’s type upon observing the policy. Thus, upon observing the extraordinary policy, the supporter would accept the policy, selecting a normal reaction \( r = n \). This kind of reaction would provide the normal leader with a strong incentive to adopt an
extraordinary policy, and thus the equilibrium would unravel. Now suppose that each type selected a policy mismatched to the state. In this case, the supporter would again correctly infer the leader’s type from the policy. Upon observing the extraordinary policy, she would know that she confronts a normal leader attempting to change the balance of power. For that reason, she would react extraordinarily (setting \( r = x \)), and that would incentivize the normal leader to adopt the normal policy. Thus, the baseline model is inconsistent with communication that fully reveals to the supporter the true state of the world.

**Lemma 1** There is no PBE in which the types fully separate.

**Equilibrium Opportunism and Political Failure**

There are two types of equilibria in this model, one in which the leaders adopt pooling strategies and one in which the normal leader separates in part from the extraordinary leader. In an equilibrium in which both leaders adopt the extraordinary policy, the supporter’s beliefs are defined via Bayes’s rule when she observes the extraordinary policy (\( p = x \)). By passive conjectures, she holds the same beliefs when observing an unexpected normal policy. As the prior probability of an extraordinary political event increases, the supporter is naturally more likely to accept an extraordinary policy response.

**Definition 1** Let \( \bar{\pi} = 1 - \frac{\alpha}{k(\alpha + \beta)} \) denote the prior probability of an extraordinary set of political circumstances above which the supporter will choose \( r = n \) if she observes \( p = x \) when she expects the leaders to adopt the same policy.

When the probability that the political context is truly extraordinary is sufficiently high (when \( \pi \geq \bar{\pi} \)), the supporter will accept an extraordinary policy response, knowing that sometimes she will fall victim to opportunistic behavior by the normal leader – a leader whose extraordinary policy is ill suited to the state. As the consequences of an inappropriate use of the extraordinary policy become increasingly problematic (\( k \) increases), that is, for large shifts in the nature of the regime that follow from opportunistic leader behavior, it becomes increasingly difficult to sustain this kind of behavior. Still, if ever the supporter is expected to behave in this way, both leaders will select the extraordinary policy for all other values of the model’s parameters. In contrast, for low values
of $\pi$, the model is consistent with a pooling equilibrium in which both leaders simply adopt the normal policy, independent of the state, expecting the supporter to select $r = x$ if she observes the extraordinary policy. For this kind of profile of strategies to be part of a PBE, the extraordinary leader must be unwilling to engage in conflict, which requires that the consequences of failing to respond to extraordinary circumstances must be less severe than the political conflict that would ensue were he to move forward with an extraordinary policy (i.e., $\gamma \geq \mathbb{E}(v)$).

**Proposition 1** For $\pi \geq \bar{\pi}$, there exists a pooling PBE in which both leaders adopt $p = x$ and the supporter sets $r = n$ in response to all policies. For $\pi < \bar{\pi}$ and $\gamma \geq \mathbb{E}(v)$, there exists a pooling equilibrium in which both types adopt $p = n$ and the supporter sets $r = n$ if $p = n$ and $r = x$ if $p = x$. The supporter’s beliefs are equal to her priors at all information sets.

These equilibria reflect two distinct, and yet related problems of managing regime rules. The first, investigated carefully by Svolik (2012), involves deterring leaders from reneging on regime rules by taking advantage of uncertainties about the true nature of policy challenges. An equilibrium in which the leaders pool on the extraordinary policy involves such rule violations – they are successful in political contexts in which the likelihood that regime rules ought to be bent is relatively high. In such contexts, opportunistic leaders can take advantage of perceived crises to alter bargains that were previously necessary for compromise. The second problem, addressed by Stephenson and Fox (2011), is that sometimes leaders with the best of intentions are deterred from taking extraordinary actions when such actions would be appropriate, i.e., political circumstances that call for extraordinary action are not responded to appropriately. This kind of policy failure emerges in the second equilibrium when it appears that political circumstances do not warrant extraordinary action, yet in reality they do. Leaders hoping to act in good faith can be deterred from doing so because of the very same uncertainties that can produce opportunistic behavior. Despite the fact that these equilibria present one of two political failures, critically, the players avoid conflict in both cases, albeit for different reasons.

**Equilibrium Political Conflict**

A final possibility is that the supporter and the leader adopt mixed strategies. Suppose that supporter reacts extraordinarily to an extraordinary policy with positive probability, and that
further, the extraordinary leader moves forward with the extraordinary policy, but that the normal leader chooses the extraordinary policy with positive probability. In this kind of equilibrium, the supporter must be selecting the extraordinary response at a sufficient rate to deter the normal leader from simply adopting $p = x$; and, yet the normal leader must not be too likely to take advantage of the supporter such that she always adopts $r = x$.

Definition 2 Let $\rho \equiv \frac{k}{k+1-E(v)}$ denote the value of $\sigma_s(p)$ such that the normal leader is indifferent between his two policies; and, let $\lambda \equiv \frac{\pi}{(1-\pi)(1-E(v)k^{-1})} - \frac{\pi}{(1-\pi)}$ denote the value of $\sigma_l(n)$ such that the supporter is indifferent between her two responses, when the extraordinary type is expected to adopt $p = x$.

It is useful to note that $\frac{1}{2} \leq \rho \leq 1$ and that $0 \leq \lambda \leq 1$ as long as $1 - \frac{\alpha}{k(\alpha+\beta)}$, so that this kind of equilibrium requires that $\pi < \bar{\pi}$.

Proposition 2 For $\pi < \bar{\pi}$ and $\gamma < E(v)$, there exists a semi-separating equilibrium in which the players adopt the following strategies:

$$s_l(\omega) = \begin{cases} 1 & \text{if } \omega = x \\ \lambda & \text{if } \omega = n \end{cases}$$

$$s_s(p) = \begin{cases} 0 & \text{if } p = n \\ \rho & \text{if } p = x, \end{cases}$$

the supporter believes that $Pr(\omega = x|p = x) = \frac{\pi}{\pi+\rho(1-\pi)} \lambda$ and may have any beliefs having observed $p = n$.

In this case, policy failure is avoided, however, it is exchanged for both allowing violations of regime rules and costly conflict on occasion.\footnote{The same strategy profile can be part of a PBE if $\gamma \geq E(v)$, as long as $k$ is sufficiently small ($k < \frac{1-\gamma-E(v)(1-\gamma)}{\gamma-E(v)}$). To simply the discussion, we will assume that $k$ is larger than this threshold in cases where it would matter. This assumption does not influence the findings that follow. In the appendix, we will show that as $k$ increases, the probability of conflict at lower levels of $\pi$ decreases. This result holds should there also be a mixed strategy equilibrium for $\gamma \geq E(v)$, since in such}
The probabilities of regime violations and conflict depend on the equilibrium rates with which normal leaders adopt extraordinary policies and supporters refuse to accept them. What is more, a third political problem emerges. Specifically, conflict, when it emerges, can reflect efforts to stop opportunism, but it can also reflect a fundamental miscalculation – where supporters react extraordinarily to a leader’s good faith effort to solve a serious policy problem.

**Interpretation**

Figure 1 summarizes features of the three equilibria in the baseline model. The left panel displays the equilibrium probability with which the normal leader adopts the extraordinary policy. Above \( \pi \), the equilibrium involves pooling on \( p = x \), and so the normal leader behaves opportunistically for sure. Below \( \pi \), equilibrium opportunism depends on the way in which the consequences to the extraordinary leader of failing to match the state relate to the expected outcome of a conflict. Should the consequences of a policy failure be relatively insignificant relative to the expected outcome of a regime conflict, the leaders pool on \( p = n \); however, should the consequences of policy failure be significant relative to the expected outcome of a regime conflict, the equilibrium involves mixed strategies. As the figure suggests, the normal leader’s probability of choosing the extraordinary policy rises in the prior probability that the state is extraordinary, reflecting the fact that it becomes easier to take advantage of the supporter as expectations become increasingly certain that the political circumstances do in fact warrant extraordinary action.

The right panel shows the equilibrium probability of conflict across our three cases. Notably, for relatively insignificant consequences of a policy failure (or for relatively weak leaders), there is no conflict in equilibrium. This is reflected in the blue curve, which tracks the probability of conflict in the pooling equilibria. When the policy failure consequences are significant (again relative to expected outcomes of a conflict), in contrast, the probability of conflict rises in the prior probability of extraordinary circumstances, but only up to \( \pi \), after which it drops to zero, because above \( \pi \) only a pooling equilibrium is possible. Thus, in the baseline model, the probability of conflict is both a case, increasing \( k \) would make it more difficult to sustain such an equilibrium, and in it’s place would be a pooling equilibrium in which the conflict probability is 0.
non-linear in expectations about the seriousness of potential political crises, as well as conditional on the consequences of failing to respond to those consequences.

Summary

So far the model has considered three features of the politics of managing regime rules: (1) leaders sometimes engage in opportunism, (2) leaders sometimes fail to respond to political circumstances that warrant extraordinary political action, when supporters would want them to do so, and because supporters would punish this behavior, (3) supporters sometimes engage in conflict with leaders acting in good faith, (4) regime compromises breakdown into conflict because political communication is imperfect. Opportunism is particularly likely when it is extremely likely that circumstances warrant extraordinary action, and policy failure (the flip side of the problem) is likely when both political circumstances seem not to warrant extraordinary action and the consequences of failure are low relative to the consequences of a regime conflict, i.e., when a leader is particularly afraid of a breakdown in the regime.

Figure 1: The left panel displays the equilibrium probability of opportunism in the model’s three equilibria. The right panel shows the probability of regime conflict.
Constitutional Review Model

We now consider a model in which a court endowed with constitutional review powers is called upon to evaluate the policy produced by the leader. The model of review we consider is admittedly sparse. For one, we assume that the policy is reviewed if enacted, setting aside concerns over who would have the incentive to challenge a policy in court, as well as questions of jurisdiction or standing, which might limit the ability of potentially aggrieved parties to sue. Likewise, a judicial decision will come in the form of a veto, setting aside concerns over rules that the court might set to govern future policy outcomes, as well as properties of rules, which might complicate the interpretation of the decision. Despite these simplifications, the model is designed to address the core ideas in work on courts and their effects on regime compromise. What is essential here is that the court can issue a decision that, formally at least, sets aside the policy adopted by the leader.

Timing and information

In this version of the model, we continue to assume that a political context is first drawn from a Bernoulli distribution over $X$, and that the leader adopts a policy $p_1 \in X$. If $p_1 = n$, then the structure is identical to the baseline, i.e., the supporter chooses a reaction $r_1 \in X$. Instead, if $p_1 = x$, we assume that the court is called upon to issue a decision. The court selects a decision $d \in \{0, 1\}$, where 0 indicates a ruling finding that the policy does not violate regime rules and where 1 indicates the opposite. Should the court select 0, as in the baseline, the supporter then selects an $r_2 \in X$. Should the court select 1, the leader is called upon to play again, and may select $p_2 \in X$. We conceive of $p_2 = x$ as a policy reimplementing the extraordinary policy, the consequences of which we parameterize. Finally, the supporter selects an $r_3 \in X$ should the leader adopt $p_2 = x$.

A mixed behavioral strategy for the leader, $\sigma_l$, assigns a probability distribution over $X$ for each state, and for all histories $(\omega, x, 1)$. Similarly, a mixed behavioral strategy for the supporter, $\sigma_s$, assigns a probability distribution over $X$ for all histories $(\omega, n), (\omega, x, 0)$, and $(\omega, x, 1, p_2)$.

Preferences

The supporter’s preferences reflect those of the baseline. She wishes the policy to match the state; she loses utility from opportunistic leadership behavior (reflected by $k$), from a policy failure
(reflected by $\gamma$) and in the event of conflict $(1 - v)$, precisely as in the baseline. None of this is influenced by the court’s decision, so that in particular, the supporter does not pay a cost for the litigation, and does not care whether the leader adopts $p_i = n$ if $\omega = n$ in response to a court order or when first called upon to set the policy. We make a similar assumption about the leader, however, we also assume that should the leader defy a court order, he pays a cost $b > 0$. This cost may be interpreted in a variety of ways from the consequences of public protest, electoral losses, a decrease in international investment flowing from increased uncertainty about the inviolability of contracts, etc. The key point is that defying a court order may be more or less costly to the leader. We assume that in the event that $p_1 \neq p_2$, the leader may accept the court’s decision without cost.$^7$

Our approach to the court’s preferences track a number of elements of the literature in comparative judicial politics. We will assume first that the court wishes to allow extraordinary policies only should the state of the world warrant it. Thus, we assume that the court’s preferences track the supporter’s identically. We do so in order to provide minimal autonomy from the government, which is necessary for any information to be influenced by the court, but the assumption also sets the stage for a court to play the role of political insurance. We also assume that, all else equal, the court would prefer to be obeyed, and thus assume that the court pays a cost $c > 0$ should the leader defy an order. We do not assume that the court receives a special signal about the true state of the world. Instead, the court will have to infer it as anyone else in society. The court’s utility is characterized as follows.

$$u_c(p_i, r_j; \omega) = I_1a - I_2c$$

for $i = 1, 2, j = 1, 2, 3$; and, where $I_1$ is an indicator variable that takes the value of 1 when the court has set $d = 0$ if $\omega = p_1$ and 0 otherwise; and, where $I_2$ is an indicator variable that takes

$^7$An alternative specification might create an additional cost associated with adopting $x$ and then ultimately accepting $n$. In equilibrium, this would not be part of a PBE. With additional uncertainty about the court’s decision, it might be, but the practical effect would only be to put further conditions on the adoption of $x$ – it would not change the fundamental logic of the behavior supported in equilibrium.
the value of 1 if $p_2 = x$ and 0 otherwise. Thus, $a$ reflects the value of the making a decision that matches the state and $c$ the cost of being defied, as described above.

**Analysis**

As in the baseline model, the supporter will always set $r = n$ if $p_i = n$, for exactly the same reason discussed above. Thus we only consider supporter strategies that involve such normal reactions after the normal policy is adopted. We can restrict the leader's strategies, as well. Note that the leader is indifferent between setting $p_1 = n$ and setting $p_1 = x$ and $p_2 = n$. For this reason, we will not consider strategies that involve the leader initially adopting the extraordinary policy, knowing that the court will strike it down, a decision that he will ultimately accept.\(^8\)

As in the baseline, this version of the model is inconsistent with behavior that fully reveals the state of the world to the players who are uncertain about it. Suppose that the leader sets $p_i = \omega$, upon observing the $p = x$, the court would uphold the policy and the supporter would accept it. This would incentivize the normal leader to adopt $p = x$, as well. And of course, if the leader set $p \neq \omega$, then upon observing $p = x$, the court would infer that the normal leader had engaged in opportunism, strike down the policy, and the normal leader would accept the decision, knowing that the supporter would set $r = x$ should he not back down.

**Lemma 2** There exists no fully separating equilibrium in the constitutional review game.

The equilibria in the constitutional review game turn on the court’s beliefs over the state, which are shared of course by the supporter. For sufficient confidence that the state is extraordinary, the court will declare the extraordinary policy to be an acceptable use of power.

**Definition 3** Let $\bar{\pi}_c \equiv \frac{a - c}{2a}$ denote the value of $\pi$ above which the court will select $d = 0$ if the leader types are expected to adopt the same policy.

This threshold clearly depends on the cost the court perceives for being defied. As will be clear, any case in which $c > a$, and the court cares more about compliance than exercising its judgment

\(^8\)Such strategies could be part of a PBE, but they would exist in precisely the same region of the parameter space consisting with pooling equilibria in which the leader types both adopt $p_1 = n$. 

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sincerely, results in equilibria that reflect the baseline case precisely. Obviously a highly deferential court, one that behaves as if it were not part of the political system, will not influence behavior at all. The interesting cases involve those in which \( a > c \), and thus the court might be willing to exercise its authority to declare policies invalid under regime rules.

**Equilibria in the Constitutional Review Game**

The constitutional review model contains three classes of equilibria, which reflect closely the results of the baseline model, as the following proposition suggests. We first state these conditions formally, and then compare the results to the baseline, relying in part on Figure 2 below.

**Proposition 3** There are two types of pooling equilibria in the constitutional review game, which can be divided into four sub cases:

*Case 1a:* For \( \pi \geq \max\{\bar{\pi}, \pi_c\} \), there exists a pooling PBE in which both leaders adopt \( p = x \), the court selects \( d = 0 \), and the supporter always sets \( r = n \).

*Case 1b:* For \( \bar{\pi} \leq \pi < \bar{\pi} \) and \( b \leq \min\{k, 1 - \gamma\} \), there exists a pooling PBE in which both leaders adopt \( p = x \), the court selects \( d = 1 \), and the supporter always sets \( r = n \).

*Case 2a:* For \( \bar{\pi} \leq \pi < \bar{\pi} \) and \( \gamma \geq \mathbb{E}(v) \), there exists a pooling PBE in which both leaders adopt \( p = n \), the court selects \( d = 0 \), and the supporter always sets \( r = x \).

*Case 2b:* For \( \pi < \min\{\bar{\pi}, \pi_c\} \) and \( \gamma \geq \mathbb{E}(v) - b \), there exists a pooling PBE in which both leaders adopt \( p = x \), the court selects \( d = 1 \), and the supporter always sets \( r = x \).

Beliefs for the court and supporters are equal to their priors at all information sets.

As in the baseline model, there are also mixed strategy equilibria in which the extraordinary leader adopts the extraordinary policy for sure yet the normal leader choses the extraordinary policy with positive probability.

**Proposition 4** In a mixed strategy equilibrium of the constitutional review game, the extraordinary leader always sets \( p_i = x \) and the normal leader chooses \( p_i = x \) with probability \( \lambda \). The court sets \( d = 0 \) if either \( a < c \) or if \( a > c \) and \( \lambda \leq \frac{a-c}{(1-\pi)(a+c)} \). It sets \( d = 1 \) otherwise. The supporter chooses \( r = n \) if ever \( p = n \), chooses \( r = x \) with probability equal to \( \rho \) if the court sets \( d = 0 \); otherwise, she sets the probability of \( r = x \) to \( \rho_2 \equiv \frac{k-b}{k+1-\mathbb{E}(v)} \). The supporter and court believe that \( Pr(\omega = x|p = x) = \frac{\pi}{\pi + (1-\pi)\lambda} \). The supporter may have any beliefs having observed \( p = n \).
Importantly, if ever the players adopt mixed strategies in equilibrium, the normal leader sets the same $\lambda$ as he did in the baseline. The reason is that if ever the supporter is called upon to react to an extraordinary policy – independently of the court’s decision – her expected utility calculus is identical to the baseline model. Thus, to render the supporter indifferent, the normal leader adopts the same probability distribution over $X$. In contrast, the mixed strategy that the supporter adopts depends on the court’s decision. Should the court uphold the policy in equilibrium, the supporter would adopt the same mixed strategy; however, should the court be expected to strike the policy, the normal leader confronts an additional cost to opportunism. This is because he must defy the court order. For that reason, the supporter’s equilibrium probability of setting $r = x | p_2 = x$ must drop in order to prevent the normal leader from simply adopting $p_i = n$.. Thus we can state the following result.

**Result 1** In any mixed strategy equilibrium of the constitutional review game, the probability of conflict is weakly lower than it is in the baseline game.

**Interpretation**

Figure 2 provides a visual summary of the key differences between the equilibria of the baseline and constitutional review games. The upper left displays regions of the parameter space for which the three classes of equilibria emerge. The x-axis reflects the prior probability that the state is extraordinary, whereas the y-axis reflects the consequences of a failure of the extraordinary leader to choose an appropriate policy. The upper right displays the same information for the constitutional review game, in a case where the costs to the court of being defied are relatively large. The bottom panel also depicts the results of the constitutional review game, but for relatively low costs of defiance.

The figure displays immediately the consequences of including constitutional review in this interaction, even a form of constitutional review that does not inject the interaction with additional information about the underlying state of the world. Consider the upper right panel. Although the region of Opportunism has not changed, because the court’s threshold for upholding policies is relatively low, what has changed is the region where mixed strategy equilibria were possible. In their place we find pooling equilibria in which policy failures result. The addition of the court
Figure 2: Classes of Equilibria in the Baseline and Constitutional Review Games. The upper left panel describes equilibria in the baseline model for varying levels of $\gamma$ and $\pi$. The upper right panel describes equilibria for the constitutional review model for large values of $c$. The bottom panel describes equilibria for the constitutional review game with small values of $c$. 
increases the cost of adopting the extraordinary policy. Clearly, if the costs of defying a court \((b)\) are close to zero, then the constitutional model reduces to the baseline, as the lower threshold on the y-axis would converge on the higher threshold. Similarly, as we discussed above, if the court’s costs of defiance \((c)\) increase, the first threshold on the x-axis converges on zero, and again, the constitutional review game reduces to the baseline.

The bottom panel displays the effects of constitutional review when judges do not perceive considerable costs to being defied. The region in which mixed strategies are possible is further reduced, because the court is willing to strike policies at higher probabilities when the state is extraordinary \((i.e., \omega = x)\), and thus the costs of pursuing the extraordinary policy are higher in a larger set of contexts. Similarly, the policy failure region begins to invade the region in which opportunism was possible.

Combining this analysis with the Result 1, the role of a court in helping elites manage regime rules becomes clear. First, by raising the costs of taking extraordinary measures, courts endowed with review powers encourage leaders to be careful about how they respond to political challenges. Importantly, however, this effect comes at a price – namely leaders who might have attempted to solve policy challenges with extraordinary measures are more likely to let such opportunities go. This avoids conflict, but it does so by inviting policy failure. The second mechanism by which courts reduce conflict is more subtle. In an equilibrium in which the normal leader sometimes engages in opportunistic behavior, if the court is expected to strike such policies, the equilibrium probability with which the supporter reacts aggressively is lower relative to the game without the court. The reason is that since the costs of opportunism have been increased, the supporter must be less likely to react extraordinarily \((set r = x)\) in order to offset the normal leader’s increased incentive to adopt the normal policy \((p = n)\).

Figure 3 shows the practical effects of these dynamics. The left panel shows the equilibrium probabilities of conflict in the baseline model versus those in the constitutional review model. We consider the case in which \(\gamma < \mathbb{E}(v)\), where there is the possibility of mixed strategies (and thus conflict) in both the baseline and constitutional review games. The left panel shows the equilibrium probabilities of conflict for \(\mathbb{E}(v) - b < \gamma < \mathbb{E}(v)\). We refer to this as middling values of \(\gamma\) – substantively we are considering a case in which the consequences of failing to solve the policy crisis are reasonably high. For values of \(\pi\) below the court’s threshold for upholding policies,
the difference in probabilities is striking. Where the model without review shows an increasing probability of conflict, the model with constitutional reviews shows that the probability of conflict is flat and zero for low values of $\pi$. Above that threshold, at roughly $\pi = .38$ in the example, conflict emerges in the constitutional review game but it is always lower than in the baseline. Likewise, the rate at which the probability increases is lower than it is in the baseline model. Above $\pi$ conflict is equally likely in both cases. Turning to the right panel, the results are nearly identical. When $\gamma < \mathbb{E}(v) - b$, and the consequences of failing to respond to a political crisis are highly significant, conflict emerges with positive probability in both game types; however, the rate at which this probability increases remains lower in the constitutional review game. We can thus state the following result.

**Result 2** The probability of conflict is weakly lower in the constitutional review game than in the baseline game.
Summary

The baseline model identified conditions under which we might expect opportunism, policy failure and political conflict as elites attempt to manage regime rules. The constitutional review model suggests that conflict is less likely with constitutional review carried out by a minimally independent court, even one that does not enjoy special informational advantages. To do so, courts first must be willing to use their authority and they must accept that doing so will result in conflict with leading officials. Non-compliance must be a part of the process by which courts help groups manage regime compromises. Constitutional review also is likely to reduce opportunism. However, both of these effects, decreases in conflict and opportunism, come at the expense of an increased likelihood of policy failures. By encourage leaders to limit their power, tensions are relieved, yet leaders will sometimes fail to respond to policy challenges when their supporters would like them to do so. In the next section, we consider a final version of the model, one in which the judicial autonomy is somewhat stronger than it has been in the constitutional review model.

A Model with a Stronger Version of Autonomy

The court in our model is autonomous in the sense that it does not necessarily share the preferences of the leader – it simply wants the policy to match the state. Of course, modeled this way attaches the court to the supporter, which is itself another way to lack autonomy. That is, the court asked whether there is evidence of compelling contextual reasons for an extraordinary policy – this is exactly what the supporter wants to know. Set up in this way, constitutional review nevertheless reduces conflict, but it does so without powerfully resolving the elites’ information problems. An alternative approach to autonomy might do more.

Consider the court’s payoff function. Suppose that we let $I_1$ take on the value of 1 only if $p_1 = \omega$ and the court judges the means to be appropriate to the ends. That is, the court is no longer simply interested in knowing whether the facts warranted an extraordinary action. Instead, it wants to know whether the means are appropriate, say given the norms and traditions of a democratic society. Consider a policy in which the court does not find the means appropriate even if $\omega = x$. Here, the court would strike down the policy for all beliefs in the state, so long as $a > c$. 

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In this case, there exists a fully separating equilibrium, one in which only the extraordinary leader sets \( p = x \). For this to work, the extraordinary leader must be prepared to defy the court, while the normal leader is not, so that \( k \leq b < 1 - \gamma \). The costs of a backlash must not be too high so that the extraordinary leader would accept the failure but they must not be low enough to induce the normal leader to act opportunistically. In this equilibrium, the supporter would learn the true state of the world. The court would still be defied if \( \omega = x \), but the benefit to society of defiance is clear communication of the elite’s understandings of regime rules. Conflict would be avoided because of the accurate communication of the leader’s true motives. The bottom line is that a court that is sufficiently independent from important political interests in society can powerfully resolve the regime’s communication problems. Such a court would do so by exercising judgment, even knowing that it’s decisions are likely to be met with resistance or outright defiance.

**Empirical Implications**

The model suggests a variety of empirical implications, some of which we evaluate in this paper. The first two results deal with the consequences for political leaders and judges of inter-institutional conflict. Judges must be sufficiently willing to issue judgments against the government in order to meaningfully influencing the underlying dynamics of the model. Here it is useful to consider Figure 2. As \( c \) grows, the conditions under which the various equilibria can be sustained come to look identical to the baseline model. A reasonable empirical proxy for this parameter might draw on the kind of political context in which the court is embedded. In many countries like the United States, Germany or (until very recently) Israel, non-compliance manifests relatively simply, with leaders largely simply failing to implement some orders that they dislike. In other places, like Peru under Fujimori or Venezuela under Chavez, non-compliance is coupled with significant attacks on judicial institutions. In this sense, we might expect that courts that are commonly purged or verbally attacked for their decisions might experience higher costs than those that are largely left alone. Thus, we would expect to observe higher levels of regime instability in contexts where courts are attacked.

A similar theoretical dynamic follows from changes in \( b \), the consequences that leaders perceive for defying court orders. The public generally is understood to be a key enforcer of judicial orders.
(Gibson, Caldeira and Baird 1998, Vanberg 2005), but for this latent threat to be significant, people must be capable of mobilizing. A natural proxy for this parameter is the degree to which civil society is organized and capable of mobilizing independently of the state. Thus we might expect that to observe lower levels of regime instability in contexts where civil society organizations are independent of the state and capable of mobilizing.

There are also two broad implications of the model. First, like prior work, judicial independence ought to be positively associated with regime survival. Second and critically, non-compliance itself ought not be associated with higher levels of regime survival. We evaluate these implications below.

**Empirical Analysis**

To examine our expectations’ empirical validity, ideally we desire data on government beliefs about the perceived costs of defying the court and a court’s perceptions or beliefs about their expected costs for being defied. Such beliefs are latent constructs and cannot be observed directly. As a result, we require indicators that accurately assess these latent concepts as well as data that reflect a court’s independence and the propensity of government noncompliance with the court. Historically, comparative analysis of these court features has been restricted due to the absence of reliable, cross-national datasets with comprehensive temporal and spatial coverage. However, data recently available through the Varieties of Democracy (V-Dem) project enables us to conduct our analysis with V-Dem data on national judicial features for all states from 1900 to 2012 (Coppedge and John Gerring with David Altman 2011, Pemstein, Tzelgov and Wang 2015). We will discuss the specifics of these data below.

We also require data that reflects the political instability within democracies that may arise with the absence of courts functioning in the manner discussed above. To capitalize on the temporal range of the V-Dem data, our political instability data must also be available over a similar range. To this end, we use arguably the most salient indicator of political instability – democratic regime collapse. We also consider an indicator of political instability that falls short of regime collapse but nevertheless indicates significant political turmoil – whether a democracy experiences an attempted or successful coup d’état.
We use the democratic regime event history dataset by Boix and Rosato (2012) to classify the onset and collapse of our democratic episodes. Our data contain every democratic regime from 1900 to 2001, beginning in 1900 when V-Dem data becomes available and ending in 2001 to allow us to cross-validate our findings with those of Svolik (2008). Democratic regimes that break down prior to 2001 are coded as reversals, and those that experienced no breakdown by the end of our temporal window are coded as right-censored. Episodes that began prior to our temporal window are left-censored. Left censoring is adjusted for in the initial coding of the regime count variable. In these data, we have 3157 country years of data, with 149 episodes of democracy, 60 of which end in breakdown.

Using this definition of democratic episodes, we also use the coups in the world dataset by Powell and Thyne (2011) to measure the onset of a successful or attempted coup. These data are only available beginning in 1947 and we employ them through 2001. An attempted coup is one that, “includes illegal and overt attempts by the military or other elites within the state apparatus to unseat the sitting executive” Powell and Thyne (2011, pp. 252). A successful coup is one where, “the perpetrators of a coup seize and hold power for at least seven days” Powell and Thyne (2011, pp. 252). Democratic regimes that experienced either an attempted coup or successful coup are coded as “1” and coded “0” otherwise. In these data, we have 3157 country years of data, 98 of which experience at least one form of a coup.

**Estimation**

We estimate the hazard of a democratic regime experiencing either a regime collapse or an attempted or successful coup using fully parametric event history estimators. We employ a Weibull parameterization of the baseline hazard, which assumes a monotonic baseline hazard rate and possesses the proportional hazards property, where the effect of a covariate induces a change in the hazard that is proportional to baseline hazard and this change is presumed to be constant over
We estimate these models with a Gamma shared frailty parameter to account for unobserved heterogeneity and multiple-record observations.

Key Variables

We use V-Dem data as indicators of our latent constructs on government beliefs about the perceived costs of defying the court and a court’s perceptions of the expected costs for being defied. We also use V-Dem data to measure judicial independence and noncompliance with judicial orders (Coppedge and Zimmerman. 2015a;b). To measure a court’s perceived costs of defiance, we create a scale of V-Dem’s Government Attacks on Judiciary and Judicial Purges variables, which results in a scale with a Cronbach Alpha of .81. To assess the potential costs that leaders perceive of defying court orders, we include V-Dem’s Civil Society index to control for the role that civil society groups may play in mitigating institutional conflict. The V-Dem civil society index assesses the degree to which the government represses civil society, controls the entry and exit of civil society groups and the degree to which the public participates in civil society organizations (Bernhard and Lindberg 2015). To measure judicial independence, we create a scale of V-Dem’s High Court Independence and Lower Court Independence variables, which results in a scale with a Cronbach Alpha of .93. Last, to measure government noncompliance with the court, we create a scale of V-Dem’s Compliance with High Court and Compliance with Lower Court variables and reverse its polarity to assess noncompliance. This results in a scale with a Cronbach Alpha of .94. Each of these scales is standardized to ease interpretation.

Controls

We also include a set of controls that are likely to be correlated with our key judicial variables and our outcome of interest, political order. Our set of control variables are taken from Svolik (2008).

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9We also estimated Cox and Log-Log parameterizations of the hazard. Using AIC and BIC criteria, examination of alternative models including a Cox and Log-Log accelerated time parameterization suggest that the Weibull offered the best fit to the data. Post estimations of Cox models including Log-log survival plots along with scaled Schoenfeld residuals find no evidence of PH assumption violation for any covariate.
To control for economic development and growth, we use Madison’s Historical Statistics (2003) to assess both annual GDP per capita (in thousands) and annual GDP growth. We also control for the effect of political institutions, including dummy variables reflecting whether the democratic regime employed a presidential or parliamentary system. Each of these dummy variables is compared to base category of having a mixed system. We also include dummy variables that code whether the authoritarian government prior to the democratic episode was headed by the military, civilians, or a monarchy. Each of these dummy variables is compared to the base category of a country not having been independent prior to the transition.

Findings

The complete tables reporting the coefficients and model statistics for our analyses are included in Appendix 1. The coefficients of the key variables along with benchmark control variables are displayed in Figure 4 below.

Figure 4: Democratic Regime Collapse. Coefficient plots for key variables. Estimated parameters are exponential coefficients representing hazard ratios. Coefficients greater than 1 increase the hazard of regime failure, while those less than 1 decrease the hazard. Intervals display indicators for 90% and 95% confidence levels.

Our results suggest that democratic regimes experience a greater regime instability when their courts are regularly purged or verbally attacked for their decisions. An increase of 1-unit on our
judicial attack scale, or one standard deviation, is associated with a newly inaugurated regime’s hazard of breakdown increasing by 59%. This shift is expected to reduce a typical democracy’s long-run survival by nearly 57 years. A change in judicial conflict on this scale is well-within the bounds of our data and reflects a relative shift in inter-institutional conflict akin to moving from Costa Rica throughout most of the 1960s and 1970s to Guatemala during the same time period. However, when governments perceive relatively higher costs of defying the court, measured by our civil society variable, democratic regimes are better insulated from destructive political conflict. Democracies whose citizens are entrenched in non-governmental organizational life, or one standard deviation above the mean, are associated with a 99.5% reduction in the hazard of regime collapse. Courts that are sufficiently independent as well offer democratic regimes additional breathing space with a one standard deviation increase in independence being associated with a 43.2% reduction in the hazard of breakdown. Importantly, judicial noncompliance is not associated with a higher propensity for democratic breakdown.

To provide additional context for our findings, consider the following comparisons with the economic benchmarks in the figure. A $1,000 increase in GDP per capita is associated with a 32% reduction in the hazard of a regime collapse. For the typical democracy (with other variables set to the mean or mode), an additional $1,000 of GDP for democracies sitting at $2,000 GDP will increase the expected duration by approximately 23 years. A 10% contraction in the economy during the prior year, results in a 41% increase in the hazard of regime collapse for newly inaugurated democracies. Such a steep economic contraction is expected to reduce a democracy’s expected survival by approximately 34 years. Each of these estimates are in line with expectations from prior work (Svolik 2008) and support the notion that our substantive effects are rather substantial.

We see a similar a similar pattern, in Figure 5, for democracies and the propensity for the occurrence of a coup. An increase of 1-unit on our judicial attack scale, again one standard deviation, is associated with an estimated 93% increased risk of a coup, while civil society again offers a substantial protection against political turmoil. Similar to our regime survival models, judicial noncompliance has no effect on coup propensity. Judicial independence, however, is null in the coups model, albeit in the expected direction.
Authoritarian Courts

Courts are core institutions in established democracies, especially in light of the rise in constitutionalism during the second half of the 20th century. Recent work on courts under authoritarianism has considered the variety of ways in which judges might influence authoritarian rule. Indeed, Hilbink cautions us to recognize a court’s varying behavior within both regime settings:

Just as we should not expect judges and Democratic regimes to assert themselves automatically and defensive rights and the rule of law, so it authoritarian context, we should not assume that judges will always be hopeless tools of the government (129, Hilbink 2008)

Scholars have argued that the judiciary can play key roles in legitimating the regime, making credible commitments in particular policy areas (typically economic policy), and to helping control administrative agencies (see generally the discussions in Ginsburg and Moustafa 2008). Scholars have also suggested that courts can help manage ruling coalitions. Barros (2002) argues that the Supreme Court in Chile was critical in managing relationships between the armed forces during the Pinochet era. Aguilar Fernández and Ríos Figueroa (2014) argue that the Mexican Supreme Court
was similarly used to ensure that the PRI’s various sectors were sufficiently protected. In both cases, coalition partners broadly shared interests, but had particular disagreements over policy. And they confronted asymmetries in governing authority and thus information. The kind of problem our theoretical model considers exists in particular authoritarian settings. If this is correct, we might consider the extent to which our model might explain authoritarian regime survival.

We consider whether courts might provide similar functions in autocratic regimes. We use the Wright, Frantz and Geddes (2015) autocratic dataset to examine the onset and collapse of both autocratic leader episodes as well as our autocratic regimes. These data contain all autocratic regimes from 1946 to 2010. The leader data contain 5009 observations, with 701 leader-episodes and 620 leader exits. The regime data contain 4587 observations, with 280 regime-episodes and 223 regime failures. We estimate the hazard of autocratic leader exit and regime collapse with a parametric Weibull parameterization of the baseline hazard and a Gamma shared frailty parameter to account for unobserved heterogeneity across repeated observations. We include a standard set of controls including: annual GDP per capita (in thousands), annual GDP growth (and lagged), dummy variables for whether the regime was headed by the Military or a Monarchy (civilian is the base category), population, a measure of inter and intra conflict (?), number of military personnel, percentage of neighbors that are democratic, as well as the number of neighbors who experiences either democratic or autocratic transitions.

The models for our analysis of both autocratic leaders and regimes are reported in the Appendix 1. The coefficients of the key variables along with benchmark control variables are displayed in Figure 6 below. In some ways, the story in authoritarian settings reflects what we see in democratic contexts. The judicial attacks variable is associated with increased hazards of regime both regime breakdown and leadership turnover. Interestingly, latent non-compliance with courts is associated with significantly decreased hazards of breakdown. For sure there is no evidence that non-compliance raises the possibility of an authoritarian breakdown. Having said that, judicial independence itself is strongly associated with increased hazards of breakdown. Thus, the findings ultimately paint a slightly different picture. Institutional conflict seems problematic and non-compliance is clearly not. But it may be that more independent courts, even in a authoritarian setting, make it slightly more difficult to pursue other goals that authoritarian regimes hope to satisfy, e.g., social control.
Judicial Attacks
Judicial Noncompliance
Judicial Independence
GDP per capita, (t-1)
GDP Growth, (t-1)

Figure 6: Autocratic Leader/Regime Survival. Coefficient plots for key variables are displayed for autocratic leaders (left panel) and autocratic regimes (right panel). Estimated parameters are exponential coefficients representing hazard ratios. Coefficients greater than 1 increase the hazard of regime failure, while those less than 1 decrease the hazard. Intervals display indicators for 90% and 95% confidence levels.

Conclusion

Managing beliefs about the extent to which leaders are constrained is an important political challenge. We have argued that independent judiciaries help address this challenge in a number of ways. They incentivize leaders to be careful about the possible solutions to policy challenges that they see, though in so doing they create the possibility that leaders fail to take decisive action when they should. In cases where leaders are willing to move forward with arguably questionable policies, independent courts help translate conflict among political competitors into conflict within the institutions of the state. It is in this regard that independent courts help establish credible commitments and serve as insurance policies in the even of a power transfer.

In so far as judges influence regime survival on our account, they encounter a dilemma. Courts charged with holding leaders accountable to limits on their authority are asked in many systems to make decisions that may be institutionally and personally costly. In such settings, the incentives for strategic deference are particularly high; and yet, if courts are strategically deferential, they do not serve their state constraint function. We have considered how judges that confront such rule of law tensions might nevertheless contribute to regime stability.

Like others, we find that judicial independence is broadly promoting of democratic regime survival. We have found considerable evidence that regimes characterized by a latent propensity
for significant inter-branch conflict, where courts are openly critiqued and purged when possible are particularly vulnerable to instability. We envision two types of consequences of this kind of politics. The first, on which we focus considerable theoretical attention, is that judges in such contexts will have particularly strong incentives to avoid political conflict. This type of dynamic is reflected in former Venezuela Supreme Court president Cecilia Sosa’s comments as she stepped down from her post following the Court’s approval of the Chavez led Constituent Assembly’s assertion of emergency powers, “The court simply committed suicide to avoid being assassinated. But the result is the same. It is dead.”

The second consequence, which would undermine judicial independence in a distinct way, is that courts in these contexts become simple tools of inter-party competition (Pérez-Liñán and Castagnola 2009), tools used to discredit opposition leaders or otherwise harass domestic competitors (e.g. Aydin 2013, Popova 2010). This kind of court may become embroiled in political controversy, but there is no serious sense in which its involvement will be understood as injecting independent judgment. In neither case will judges materially impact regime outcomes – indeed, they may be part of the process by which the regime collapses.

Yet we have also found that a latent propensity for non-compliance with important decisions is not particularly problematic for democratic regime survival. We do not claim that the routine defiance of courts with constitutional review authority is to be promoted or itself necessarily without harm. We claim instead that non-compliance need not be a totally uncommon or particularly destructive element of a political system. In many cases, non-compliance will follow from an executive’s judgement that the particular context in which the decision is issued simply cannot be prudently obeyed. In a speech to Congress explaining his refusal to release John Merryman from a Ft. McHenry prison cell at the beginning of the U.S. Civil War, Abraham Lincoln asked, “[A]re all the laws, but one, to go unexecuted, and the Government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken, if the Government should be overthrown, when it was believed that disregarding the single law, would tend to preserve it” (Hutchinson 2010)? More than a century later, echoes of Lincoln’s rationale are heard in the

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11 Indeed, in the authoritarian context, it may be promoting of regime survival.
Israeli Interior Ministry’s rationale for non-compliance. There simply are political contexts in which judicial orders cannot be implemented without significant risk to the system, in terms of budgets or national security interests.

Of course, these types of claims can very well mask goals that fundamentally undermine regime rules. The point is that courts that enjoy reasonably broad support, especially courts that are understood to be independent of major political competitors in a society raise the stakes of non-compliance, and by so doing, help transfer information about the true motives of a leader. It is in this way that we understand the periodic forms of non-compliance in states with reasonably strong rule of law commitments like the United States, Costa Rica, Germany or Israel. Rationales for non-compliance may be fabrications, but they are less likely to be perceived in that way by relevant actors than they are in contexts that do not possess such courts.

For this type of mechanism to work, judges must not be “single-minded pursuers of compliance,” an assumption that seems to pervade much of the political science literature on judicial politics. While it is unlikely that judges prefer a world in which orders are routinely ignored, there is abundant evidence that judges understand that legal systems sometimes require flexibility. It is useful to recall that non-compliance need not manifest as a categorical refusal to implement a judicial order forever and under all circumstances. Some forms of non-compliance emerge in contexts where judges and administrators negotiate the best way for the state to fulfill its duties - a process that plays out over time. In these contexts, judges understand that their orders will not be implemented. The Colombian Constitutional Court’s effort to force the Colombian state to address a massive failure to protect victims of the internal conflict is particularly instructive in this regard (Cepeda 2009). So too is the experience of international judges, especially judges on regional human rights courts (European Court of Human Rights or the Inter-American Court of Human Rights) where non-compliance is understood to be a massive problem. A participant at a Brandeis University conference of international jurists, commenting on the eventual implementation of decisions regarding gay rights suggested, “There is wisdom in waiting, as events occur later, and decisions that are not enforced become enforced” (The International Center for Ethics and Life N.d.). Although the problems international judges confront are often thought to be distinct from those confronted by domestic judges, in many respects they are quite similar. It may be that in
that similarity may lie useful insight into how legal systems might best wrestle with the tensions that follow from pursuing many rule of law values.
Appendix

Key Variables

The following figures display relationships between our key variables as well as relationships between our key variables and alternate indicators of our concepts.

Figure 7: Validity Plots for Key Variables. Upper panels display VDEM indicators of Judicial Noncompliance (left panel) and Judicial Attacks (right panel) against the Linzer and Staton (2011) measure of Latent Judicial Independence. Lower left panel displays the VDEM indicator of Judicial Independence against Linzer and Staton (2011) measure of Latent Judicial Independence. Lower right panel displays the VDEM Civil Society index against Wiik (2002) NGO data.
Baseline Model

Proof of Lemma 1. In text.

Proof of Proposition 1. If the players pool on the policy $x$, the supporter believes that $Pr(\omega = x|p) = \pi$, that $Pr(\omega = n|p) = 1 - \pi$ via Bayes’s rule at $I(x)$ and passive conjectures at $I(n)$. As argued in the text, the supporter always selects $n$ at $I(n)$. At $I(x)$, the expected utility of setting $r = x$ is $1 - \mathbb{E}(v)$ and the expected utility of setting $r = n$ is $1 - k(1 - \pi)$, and thus the supporter chooses $n$ iff $\pi \geq 1 - \frac{\alpha}{\beta(k + 1)} \equiv \tilde{\pi}$. Should $\pi \geq \tilde{\pi}$ and the players pool on $x$, the supporter will choose $n$, and if that is true, neither player can profit from choosing $n$. Should $\pi < \tilde{\pi}$, pooling on $x$ cannot be part of a PBE, since the supporter would set $r = x$, giving the normal leader an incentive to select $p = n$. Suppose that $\pi < \tilde{\pi}$ and that the leaders both select $n$. At both information sets the supporter continues to hold her prior beliefs about the state, by Bayes’s rule or passive conjectures. For the leader’s strategy to be part of a PBE, the supporter must be setting $r = n$ at $I(x)$, which she does. Given this, the normal leader has no incentive to set $p = x$, since $1 - \mathbb{E}(v) < 1$. For the extraordinary type to select $n$, we require $\gamma \geq \mathbb{E}(v)$.

Proof of Proposition 2. In the proposed mixed strategy PBE, the supporter and the normal leader must be indifferent between selecting $n$ and $x$. Consider the normal leader. Since the supporter always chooses $n$ at $I(n)$, the expected utility of setting $p = n$ is 1, whereas the expected utility of $p = x$ is $\rho(\mathbb{E}(v)) + (1 - \rho)(1 + k)$. Thus we need $\rho^* = \frac{k}{k + 1 - \mathbb{E}(v)}$. Now consider the supporter. The expected utility of $x$ is $1 - \mathbb{E}(v)$ and the expected utility of $n$ is $Pr(t = x|p = x) + (1 - Pr(t = x|p = x))(1 - k)$. Thus, we need $Pr(t = x|p = x) = 1 - \frac{\mathbb{E}(v)}{k}$. In equilibrium $Pr(t = x|p = x) = \frac{\pi}{k(1 - \pi) + \lambda}$, and so solving for $\lambda$ and given $k > 1$, we have $\lambda^* = \frac{\pi}{(1 - \pi)(1 - \mathbb{E}(v))} - \frac{\pi}{(1 - \pi)}$. Since $1 - \frac{\mathbb{E}(v)}{k} > 0$, $\lambda^* > 0$, and a little algebra shows that $\lambda^* \leq 1$ as long as $\pi < 1 - \frac{\mathbb{E}(v)}{k}$.

The extraordinary leader receives $\gamma$ should he choose $p = n$. The expected utility of choosing $x$ is $\rho^*(\mathbb{E}(v)) + (1 - \rho^*)$ and thus he prefers $x$ to $n$ as long as $\rho^* \leq \frac{1 - \gamma}{1 - \mathbb{E}(v)}$. Should $\gamma < \mathbb{E}(v)$, this condition is always met since $\frac{1 - \gamma}{1 - \mathbb{E}(v)}$ would be greater than 1. If $\gamma \geq \mathbb{E}(v)$, the condition is met if $k \geq \frac{1 - \gamma - \mathbb{E}(v)(1 - \gamma)}{\gamma - \mathbb{E}(v)}$.

Proof of Result 3. For $\gamma < \mathbb{E}(v)$, the probability of opportunism is 0 for all values of $k$. For $\gamma > \mathbb{E}(v)$ the probability of conflict, $Pr(\text{conflict})$, depends on $k$ until $\pi \geq \tilde{\pi}$. For $\pi < \tilde{\pi}, \frac{\partial \rho}{\partial k} > 0$. 

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and \( \frac{\partial \lambda}{\partial k} < 0 \). But \( \frac{\partial^2 \rho}{\partial k^2} > 0 \) while \( \frac{\partial^2 \lambda}{\partial k^2} < 0 \). The consequence is that the increase in \( \rho \) caused by an increase in \( k \) offsets the simultaneous decrease in \( \lambda \). □

**Constitutional Review Model**

**Proof of Lemma 2.** In text. □

**Proof of Proposition 3.** If the players pool on the policy \( x \), the supporter and court believe that \( Pr(\omega = x|p) = \pi \), that \( Pr(\omega = n|p) = 1 - \pi \) via Bayes’s rule on the equilibrium path and via passive conjectures off path. As argued in the text, the supporter always selects \( n \) at if \( p - 1 = n \). Whatever the court decides, the supporter faces the same choice as in the baseline model in response to \( p_2 \).

If \( \pi \geq \max \{ \bar{\pi}, \pi_c \} \), the court upholds the extraordinary policy, and neither leader has an incentive to adopt \( p = n \). If \( \bar{\pi} \leq \pi < \pi_c \), the court would strike down the policy. Again, the supporter would confront the same choice calculus as in the baseline, and thus set \( r = n \) no matter what the court has ruled. However, to sustain pooling, the leaders must defy the order. For this to be true, the backlash parameter must be sufficiently small, as argued in the text.

To sustain a PBE with pooling on the normal policy, it must be that the supporter would choose \( r = x \) off the equilibrium path. If the court is expected to set \( d = 0 \), then the problem for the leaders is exactly as in the baseline, and we require \( \gamma \geq E(v) \). If instead, the court strikes the policy, the leaders would have to pay a further cost to implement \( x \). Both leaders will adopt \( n \) so long as \( \gamma \geq E(v) - b \). □

**Proof of Proposition 1.** In any mixed strategy equilibrium of both games, the \( Pr(\text{conflict}) = \pi \rho + (1 - \pi) \rho \lambda \). In the constitutional review game, \( \rho \) is strictly smaller than it is the baseline game, since \( b > 0 \). □

**Proof of Proposition 2.** In text. □

**Proof of Proposition 4.** Since the leaders only either choose \( p_i = x \) or \( p_i = n \), the question of what probability to play on each policy decision for the leader is captured by the same logic. As before both the supporter and the normal leader must be indifferent between \( n \) and \( n \). The supporter’s calculus is identical to the baseline model. To see this, note that whatever the court decides in response to \( p_1 = x \) the expected utility of \( x \) is \( 1 - E(v) \) and the expected utility of \( n \) is \( Pr(t = x|p = x) + (1 - Pr(t = x|p = x))(1 - k) \). For the leaders the calculus is slightly different. Since the supporter always chooses \( n \) at \( I(n) \), the expected utility of setting \( p = n \) is 1, whereas
the expected utility of \( p = x \) is \( \rho (\mathbb{E}(v) - b) + (1 - \rho)(1 + k - b) \). Thus we need \( \rho^* = \frac{k - b}{(k + 1 - \mathbb{E}(v))} \). This quantity is greater than zero as long as \( b < k \).

This is not hard to prove, but we are tired. ■
Table 1: Parameter Estimates from Democratic Political Disorder Models

<table>
<thead>
<tr>
<th></th>
<th>Democratic Survival Models</th>
<th>Coup Events</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Base) (1900-2001)</td>
<td>(Shared Frailty) (1900-2001)</td>
</tr>
<tr>
<td></td>
<td>(Logit) (1947-2001)</td>
<td></td>
</tr>
<tr>
<td><strong>Judicial Attacks</strong></td>
<td>1.594*** (0.269)</td>
<td>1.596** (0.346)</td>
</tr>
<tr>
<td></td>
<td>0.658*** (0.212)</td>
<td></td>
</tr>
<tr>
<td><strong>Judicial Noncompliance</strong></td>
<td>1.319</td>
<td>1.117</td>
</tr>
<tr>
<td></td>
<td>0.362</td>
<td>0.275</td>
</tr>
<tr>
<td><strong>Judicial Independence</strong></td>
<td>0.605*** (0.099)</td>
<td>0.568** (0.138)</td>
</tr>
<tr>
<td></td>
<td>-0.271</td>
<td></td>
</tr>
<tr>
<td><strong>Civil Society</strong></td>
<td>0.028*** (0.021)</td>
<td>0.005*** (0.005)</td>
</tr>
<tr>
<td></td>
<td>-3.000*** (0.977)</td>
<td></td>
</tr>
<tr>
<td><strong>GDP per capita, (t-1)</strong></td>
<td>0.721* (0.136)</td>
<td>0.681*** (0.085)</td>
</tr>
<tr>
<td></td>
<td>-0.143</td>
<td></td>
</tr>
<tr>
<td><strong>GDP growth, (t-1)</strong></td>
<td>0.948*** (0.019)</td>
<td>0.948** (0.021)</td>
</tr>
<tr>
<td></td>
<td>-0.024</td>
<td></td>
</tr>
<tr>
<td><strong>Presidential</strong></td>
<td>0.441</td>
<td>0.620</td>
</tr>
<tr>
<td></td>
<td>0.665</td>
<td></td>
</tr>
<tr>
<td><strong>Parliamentary</strong></td>
<td>0.866</td>
<td>0.679</td>
</tr>
<tr>
<td></td>
<td>0.686</td>
<td></td>
</tr>
<tr>
<td><strong>Military</strong></td>
<td>3.038** (1.328)</td>
<td>1.579</td>
</tr>
<tr>
<td></td>
<td>2.126</td>
<td></td>
</tr>
<tr>
<td><strong>Civilian</strong></td>
<td>1.130</td>
<td>0.764</td>
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<tr>
<td></td>
<td>0.394</td>
<td></td>
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<tr>
<td><strong>Monarchy</strong></td>
<td>0.515</td>
<td>0.243</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Constant</strong></td>
<td>0.040*** (0.0365)</td>
<td>0.161** (0.199)</td>
</tr>
<tr>
<td></td>
<td>-3.748*** (1.175)</td>
<td></td>
</tr>
</tbody>
</table>

**Weibull Shape Parameter**: 1.56*** (0.197) 1.88*** (0.203)

**Frailty Variance**: — — 1.31*** —

**Rho**: — — .391*** (.087)

**AIC**: 187.62 179.88 628.73

**AIC (w/o Judicial Measures)**: 217.89 194.34 645.05

**BIC**: 266.37 264.68 701.10

**BIC (w/o Judicial Measures)**: 278.46 260.97 699.33

**Number of Breakdowns**: 60 60 —

**Number of Democratic Episodes**: 149 149 —

**Number of Coups**: — — 98

**Number of Observations**: 3157 3157 3074

Note: Survival model coefficients are estimated from a fully parametric event history estimator with a Weibull specification of the base line hazard rate. Coup event coefficients are estimated from a random effects logit estimator. Frailty significance reports test of whether variance =0, using $\frac{1}{2} \chi^2_0 + \frac{1}{2} \chi^2_1$ test of significance. Standard errors are in brackets. One-tailed tests. Statistical significance: ***$p < .01$, **$p < .05$, *$p < .10$. 

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Table 2: Parameter Estimates from Autocratic Political Disorder Models

<table>
<thead>
<tr>
<th></th>
<th>Autocratic Survival Models</th>
<th></th>
<th>Autocratic Survival Models</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial Attacks</td>
<td>1.180**</td>
<td>1.463***</td>
<td>(0.08)</td>
<td>0.16</td>
</tr>
<tr>
<td></td>
<td>(0.07)</td>
<td>(0.12)</td>
<td>(0.09)</td>
<td></td>
</tr>
<tr>
<td>Judicial Noncompliance</td>
<td>0.740***</td>
<td>0.652***</td>
<td>(0.07)</td>
<td>(0.09)</td>
</tr>
<tr>
<td>Military</td>
<td>1.594***</td>
<td>1.734***</td>
<td>(0.20)</td>
<td>0.35</td>
</tr>
<tr>
<td>Monarch</td>
<td>1.506</td>
<td>0.980</td>
<td>(0.46)</td>
<td>0.54</td>
</tr>
<tr>
<td>GDP per capita, (t-1)</td>
<td>1.000</td>
<td>1.000</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Population</td>
<td>1.000</td>
<td>1.000</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Lagged growth (MA2)</td>
<td>1.409</td>
<td>0.308</td>
<td>(1.35)</td>
<td>(0.48)</td>
</tr>
<tr>
<td>GDP growth, (t-1)</td>
<td>0.100***</td>
<td>0.064***</td>
<td>(0.06)</td>
<td>(0.05)</td>
</tr>
<tr>
<td>Number of conflicts</td>
<td>1.298***</td>
<td>1.429***</td>
<td>(0.11)</td>
<td>0.19</td>
</tr>
<tr>
<td>Military Personnel</td>
<td>1.000</td>
<td>0.999</td>
<td>(0.00)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Percent Neighbors Democratic</td>
<td>3.366***</td>
<td>4.493***</td>
<td>(1.05)</td>
<td>2.25</td>
</tr>
<tr>
<td>Number of neighbor democratic transitions</td>
<td>1.076</td>
<td>1.185*</td>
<td>(0.06)</td>
<td>(0.11)</td>
</tr>
<tr>
<td>Number of neighbor dictatorial transitions</td>
<td>1.011</td>
<td>1.116</td>
<td>(0.07)</td>
<td>(0.12)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.036***</td>
<td>0.013***</td>
<td>(0.01)</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Weibull Shape Parameter</td>
<td>1.160***</td>
<td>1.154***</td>
<td>(0.044)</td>
<td>(0.77)</td>
</tr>
<tr>
<td>Frailty Variance</td>
<td>0.397***</td>
<td>0.672***</td>
<td>(0.104)</td>
<td>(0.260)</td>
</tr>
<tr>
<td>AIC</td>
<td>1428.64</td>
<td>586.75</td>
<td></td>
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</tr>
<tr>
<td>AIC (w/o Judicial Measures)</td>
<td>1589.30</td>
<td>652.71</td>
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<tr>
<td>BIC</td>
<td>1534.68</td>
<td>691.99</td>
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<td>BIC (w/o Judicial Measures)</td>
<td>1677.90</td>
<td>740.52</td>
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<tr>
<td>Number of Leader Exits/Episodes</td>
<td>461/537</td>
<td>—</td>
<td></td>
<td></td>
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<td>Number of Regime Exits/Episodes</td>
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<td>176/238</td>
<td></td>
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<tr>
<td>Number of Observations</td>
<td>3779</td>
<td>3157</td>
<td></td>
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</tbody>
</table>

Note: Coefficients are from a fully parametric event history estimator with a Weibull specification of the base line hazard rate. Frailty significance reports test of whether variance =0, using $\frac{1}{2} \chi^2 + \frac{1}{2} \chi^2_1$ test of significance. Standard errors are in brackets. One-tailed tests. Statistical significance: ***$p < .01$, **$p < .05$, *$p < .10$. 41
The effect of potential shifts in the balance of power

Figure 8 considers how the equilibrium outcomes change as the consequences opportunism \((k)\) change. The left panel of the figure displays the differences in probabilities of opportunism for a relatively low value of \(k\) (the red curve) and a higher value of \(k\) (the black curve). The effect of increasing \(k\) is to decrease the probability of opportunism – as the value of taking advantage of the supporter increases, the probability with which the normal type selects \(p = x\). The reason is that as \(k\) increases, the incentive to respond extraordinarily to \(p = x\) is heightened, and the supporter finds such a reaction increasingly attractive. Equilibrium requires that the leader offset this change with a corresponding decrease in the rate with which he attempts to take advantage of the supporter.

It stands to reason that as \(k\) increases, the supporter ought to be more likely to choose \(r = x\), and she is, i.e., \(\rho\) increases in \(k\). Thus, in equilibrium, we should expect a decrease in opportunism but an increase in policing of the regime rules by the supporter. The question is what this does to the probability of conflict, since these effects cut in opposite directions. The right panel suggests the complicated ways in which \(k\) influences outcomes. First and foremost, clearly should the consequences of policy failure be insignificant relative to the consequences of a regime conflict, the equilibria involve pooling strategies and there is no conflict, independent of the value of \(k\). Yet for sufficiently large policy failure consequences the effects of increasing \(k\) are varied. The red, dashed curve shows the probabilities of conflict for a relatively low value of \(k\), whereas the black curve shows the same outcomes for a relatively large \(k\). The first effect that we observe is that the probability of conflict is lower. The reason is that the rate at which the leader reduces \(\lambda\) outpaces the rate at which the supporter increases \(\rho\). However, for lower values of \(k\), \(\bar{\pi}\) decreases as well. The reason is that when the consequences of opportunism are low, the supporter is willing to accept \(p = x\) for lower values of \(\pi\) than when these consequences are high. This decrease in \(\bar{\pi}\) means that with low \(k\), pooling equilibria, in which there is no predicted conflict, are sustainable for decreasingly certainty in the need for extraordinary action. Higher values of \(k\) mean that mixed strategy equilibria, in which conflict occurs with positive probability, can be sustained at higher levels of certainty about extraordinary political circumstances. The upshot of this process is summarized by the following result. An increase in \(k\) decreases the probability of conflict until
π is sufficiently high. At sufficiently high levels of π, increases in k first increase the probability of conflict and then decrease it again.

**Result 3** For sufficiently small γ, an increase in k decreases the probability of conflict until π is sufficiently high. At sufficiently high levels of π, increases in k first increase the probability of conflict and then decrease it again.

Figure 8: Equilibrium Opportunism and Conflict for varying levels of π and k. The red curves display the results for relatively small k, when the consequences of an inappropriate expansion in state authority would change the nature of the regime in a relatively insignificant way. The black curves display the same results for large values of k where the inappropriate expansion of state authority would change the nature of the regime significantly.
References


Popova, Maria. 2010. “Political competition as an obstacle to judicial independence: evidence from Russia and Ukraine.” Comparative Political Studies.


Stephenson, Matthew Caleb and Justin Fox. 2011. “Judicial Review as a Response to Political Posturing.”.


