

Rethinking Judicial Independence in Democracy and Autocracy

by

Moohyung Cho

Department of Political Science
Duke University

Date: _____

Approved:

Georg Vanberg, Advisor

Edmund Malesky

Melanie Manion

Jack Knight

Dissertation submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy in the Department of Political Science
in the Graduate School of Duke University
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ABSTRACT

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Abstract

Building independent courts is a commitment by political leaders that they are willing to tie their hands, restrain their (often arbitrary) power, and respect judicial decisions even if the courts rule against them. But if political leaders are rational, why do they persist in their respectful behavior towards independent courts even when such courts may prove adverse to themselves? In other words, how can judicial independence be credibly maintained without being eroded by political leaders? In this dissertation, I seek to answer this important but underexplored question in comparative judicial politics by examining the political and economic conditions necessary to maintain judicial independence in autocracies and democracies.

In Chapter 2, I build a theory regarding the methods by which autocrats credibly still maintain judicial independence, given the lack of formal institutions capable of constraining their ever-present chance of renegeing. I develop a causal mechanism by which a regime's economic reliance on foreign direct investment (FDI) and autocrats' concern about their reputation interact to create strong and ongoing incentives to maintain judicial independence as a property rights assurance for foreign investors. Using panel data covering a large sample of authoritarian countries during the post-Cold War period, I find quantitative evidence of my theoretical expectation in Chapter 3, and demonstrate that a regime's past reliance on FDI is positively and significantly associated with the current level of judicial independence. My empirical analysis further indicates that the theorized effect is restricted to the economic di-

mension of judicial independence, in both the medium term and the long term, and that the effect is also contingent on the type of authoritarian regime that is present in the country.

In Chapter 4, I present a modified version of the so-called insurance theory and claim that the impact of political competition on judicial independence in democracies fits a slight modification I suggest to this theory. Adopting insights from party politics literature, I argue that, beyond mere electoral closeness, the presence of “robust” political competition is conducive to generating the incumbent’s credible perceptions of threats of the loss of his power and thus this form of competition is more relevant for anchoring the logic of the insurance theory. To illustrate the significance of robust political competition and the conditions thereof, I conduct a qualitative case study of South Korea and the Philippines, which differ in the level of judicial independence despite their similar degree of electoral closeness after democratization. Drawing on each country’s political history, descriptive data, and the specific episodes of judicial independence in both countries, I find that the existence of robust political competition, backed by an institutionalized party system and a stable set of robust actors, has allowed South Korea to develop judicial independence consistent with the insurance logic. By contrast, the absence of robust political competition in the Philippines, which is attributable to a fluidic and clientelistic party system with a lack of robust opposition, has discouraged incumbents from taking advantage of judicial independence as a form of political insurance for themselves.

사랑하고 존경하는 어머니께 바칩니다.

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List of Abbreviations

ASP	Authoritarian Successor Party
BITs	Bilateral Investment Treaties
CGV	Cheibub, Gandhi, and Vreeland (2010)
CIM	Contract Intensive Money
DJP	Democratic Justice Party
DLP	Democratic Liberal Party
DPI	Database of Political Institutions
ENP	Effective Number of Parties
FDI	Foreign Direct Investment
GAD	Grand Alliance for Democracy
GDP	Gross Domestic Product
GNP	Grand National Party
GWF	Geddes, Wright, and Frantz (2014)
ICRG	International Country Risk Guide
IPE	International Political Economy
JRC	Judicial Reform Committee
KBL	Kilusang Bagong Lipuman
LDP	Laban ng Demokratikong Pilipino
NPC	Nationalist People's Coalition
OLS	Ordinary Least Squares

PCJR	Presidential Committee on Judicial Reform
PDP	Peace Democratic Party
PMP	Pwersa ng Masang Pilipino
PR	Proportional Representation
PSI	Party System Institutionalization
RDP	Reunification Democratic Party
SOEs	State-Owned Enterprises
SWS	Social Weathers Survey
UNCTAD	United Nations Conference on Trading and Development
UP	Uri Party
USAID	United States Agency for International Development

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Introduction

1.1 Motivating Puzzle

Political scientists and legal scholars have long investigated both normative and strategic reasons why countries are committed to establishing independent courts and the consequences of such institution-building. However, the nature of independent courts can constitute a fundamental puzzle, the solution to which appears counterintuitive at first glance. Building independent courts is an indication that political leaders are willing to “tie their hands,” restrain their arbitrary power, and respect judicial decisions even if the courts rule against them. If political leaders are rational and reasonably self-preserving, why do they voluntarily respect independent courts that can render decisions adverse to themselves and their political futures?

This puzzle raises an important but much less-frequently studied question on judicial independence: After independent courts are created, how can judicial independence be credibly maintained over time without being eroded by political leaders? The *maintenance* of judicial independence is conceptually different from the creation of independent courts and thus should be considered a separate issue. Establishing

independent courts is achieved by political actors' decisions at a particular moment, whereas maintaining judicial independence is a continuous process that requires ongoing efforts by founders and their successors. Since there is a temporal difference between these two, building independent courts does not guarantee that judicial independence is consistently maintained. As Vanberg (2015, 69) suggests:

[D]emonstrating that instituting an independent, powerful court is viewed as desirable by a decisive coalition at a particular point in time (most obviously at the constitution-writing stage) does not explain the continuing influence of such a court in day-to-day politics. The interests and coalitions that are influential at the constitution-writing stage may not be the same as those that dominate the subsequent political process under the constitution (...). More importantly, even if a coalition at the founding moment favors the creation of a court, this does not imply that the same coalition is willing to comply with adverse decisions and to maintain the authority of the court on an ongoing basis, once the founding moment passes. Institutional preferences are not necessarily temporally consistent.

Once established, independent courts begin to impose actual constraints on the executive's power and decisions. If political leaders no longer want to tolerate the increase in judicial power that begins to challenge their rule, they may be tempted to undermine the judicial independence they themselves may have established. Such renegeing on the part of political leaders can be effectively deterred if a country has proper institutional devices and a combined political, economic, and social environment (a) that creates the ongoing benefits which induce them to stick to independent courts and (b) that can punish their opportunistic behavior by rendering such behavior more costly. When these conditions are absent, political leaders are more likely to fall into the (repeated) practice of undermining independent courts, and judicial

independence cannot be sustained. The maintenance of judicial independence thus requires either of two circumstances. The first of these is that political leaders must be sufficiently confident that the benefits of having independent courts outweigh the costs thereof. In other words, the net benefit of having independent courts is always positive. The second circumstance is that the binding mechanisms which serve as a powerful counter to political leaders' renegeing are present and increase the costs of undermining judicial independence. Even if political leaders find independent courts not always advantageous to them, they may still prefer to tolerate and maintain judicial independence to eroding it if the punishment for undermining independent courts makes the costs of the latter bigger than those of the former.¹

What then facilitates these circumstances? To be specific, under what conditions do the benefits of maintaining independent courts and the costs of undermining them increase? Which factors can impose strong and binding constraints on political leaders which in turn induce them to respect judicial independence without being tempted to undermine it? If formal political institutions do not fully play this role, what are the alternatives which prevent political leaders from renegeing on judicial independence? Which situations affect the cost-benefit calculation of political leaders regarding independent courts and make a continuing commitment to judicial independence their best response? I seek to explore these questions in my dissertation.

¹ This reasoning echoes Vanberg (2008)'s account of the maintenance of judicial independence. Using a simple formula, he assumes three parameters: B_i (the benefit that political actor i perceives from the continued independence of the judiciary), C_i (the cost that independent judiciary impose on political actors), and D_i (the costs that an actor must incur to discipline the court). Vanberg illustrates that judicial independence can be maintained in either of the two conditions: (a) $B_i - C_i \geq 0$ (which indicates that the net benefit of maintaining independent courts is positive) and (b) $B_i - C_i < 0$ and $D_i \geq C_i - B_i$ (which suggests that the net benefit of judicial independence is negative, but the political price of undermining judicial independence (D_i) outweigh the net cost of tolerating an independent judiciary ($C_i - B_i$)) (Vanberg, 2008, 103-105).

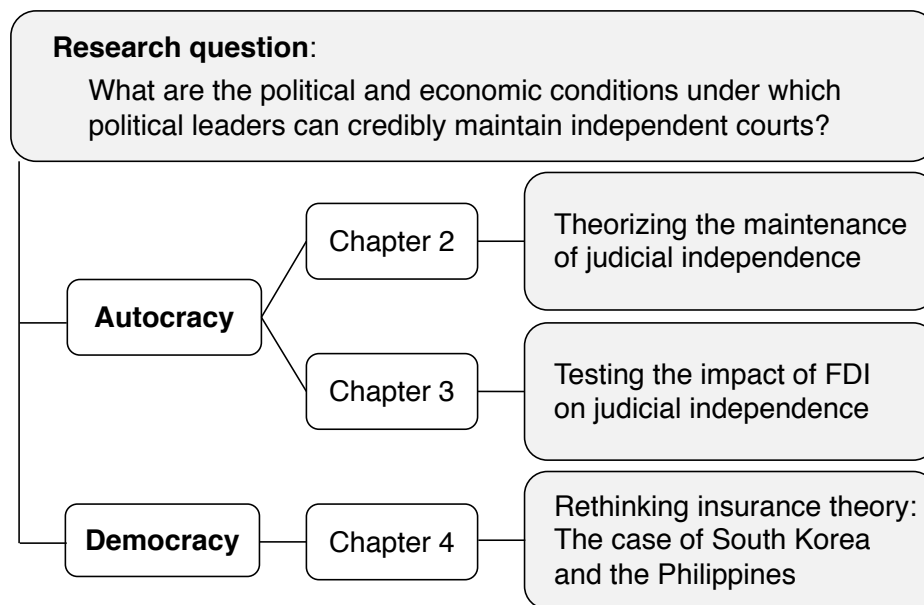


FIGURE 1.1: The structure of the dissertation

1.2 Outline of the Dissertation

I examine the issue of the maintenance of judicial independence in the context of democracy and autocracy. The three principal chapters of my dissertation correspond to my theoretical, empirical, and case-specific discussions of the subject and share a research question: What are the political and economic conditions under which political leaders can credibly maintain independent courts? Figure 1.1 illustrates the structure of my dissertation.

Although an increasing number of authoritarian countries have developed and continue to maintain reasonably independent courts, there are currently no systematic theories in the literature which explain this phenomenon in autocratic settings. In Chapter 2, I seek to fill this gap by building a theory on the maintenance of judicial independence in authoritarian regimes. I first introduce the theoretical background of my discussion by reviewing seminal research by North and Weingast (1989), as well as Olson (1993), who view democratic institutions (specifically independent courts)

as a “credible commitment” to property rights protection and economic development. To apply this logic to the authoritarian context, I decompose it into two parts; I then suggest a conceptual distinction between the primary commitment problem (whether autocrats materialize their commitment to property rights protection by establishing independent courts) and the secondary commitment problem (whether autocrats maintain independent courts without renegeing on their initial commitment). I claim that autocrats find it much harder to solve the secondary commitment problem since the lack or weakness of the formal rules of democracies (e.g., institutional checks and electoral accountability) hardly constrains their arbitrary power and potential opportunism.

To examine how authoritarian regimes can overcome the secondary commitment problem in the absence of its “institutional” solutions, I suggest two interrelated factors in which may render autocrats’ commitment to judicial independence more credible: a regime’s economic reliance on foreign direct investment (FDI) and autocrats’ concern about their reputation. As authoritarian regimes frequently rely on FDI, autocrats have good reasons to build a reputation of protecting property rights to attract foreign investors, and the creation and maintenance of independent courts is one way to do so. Once this task is successful and the regime receives more FDI, a self-reinforcing logic makes more difficult for autocrats the prospect of renegeing on their commitment to judicial independence. As their reputation becomes more valuable as it solidifies, autocrats have stronger reasons not to undermine independent courts because damaging an established reputation is more costly. In addition, an FDI-reliant regime is more likely to be constrained by foreign investors’ “punishment,” e.g., such investors’ threats to leave for a better business environment or to withdraw their investment when autocrats undermine independent courts. I incorporate these two factors into a decision-theoretic framework, which illustrates how the regime’s reliance on FDI and autocrats’ reputational concern interact to make

the continuing respect for judicial independence an equilibrium behavior.

In Chapter 3, I empirically test my theory developed in Chapter 2 by conducting a time-series, cross-section analysis with panel data on 52 authoritarian countries between 1991 and 2010. One of my central hypotheses is that: The level of judicial independence is greater in authoritarian countries where FDI represents a significant portion of their national economy. My baseline result lends quantitative support to my theoretical expectation: A regime's past reliance on FDI is positively and significantly associated with its current level of judicial independence.

Extensions from my baseline analysis further suggest that the theorized effect appears under specific scope conditions. First, I find that FDI has a significant impact on the economic dimension of judicial independence, but not necessarily on the political dimension.² This finding suggests that FDI can be a strong driver for judicial independence in the economic sense, but such economic force does not necessarily spill over into the political realm. Second, I find that FDI has a medium-term effect and a long-term effect on judicial independence. Given the nature of FDI as a long-term, large-scale investment, this finding implies that it takes time for FDI to settle into the host country and create binding conditions that may constrain autocrats. Third, I find that the effect of FDI on judicial independence is contingent on regime types: it is significant in party-based regimes and military dictatorships, but not in monarchies and personalist regimes. This finding indicates that regimes equipped with more organizational bodies and a high level of institutionalization furnish more favorable conditions, under which FDI is conducive to the development of judicial independence.

Departing from the authoritarian world, in Chapter 4, I examine the maintenance of judicial independence in democracies. In this Chapter, I critically revisit

² This finding confirms the “compartmentalized” nature of judicial independence in authoritarian regimes, as discussed in Chapter 2.

the so-called “insurance theory,” the argument of which is that the incumbent who anticipates alternating in power under conditions of intense political competition is willing to maintain judicial independence to diminish the cost of being out of power. I first review the existing empirical works on insurance theory and find that their practice of using the closeness of election (proxy) sometimes fails to accurately capture the core of insurance logic (construct), namely, whether the incumbent perceives credible threats of replacement from his oppositions through political competition. To better pinpoint this, I employ the concept of *robust political competition* (Grzymała-Busse, 2007) and focus on two observations regarding the presence of robust political competition in democracies. The first of these concerns the facilitation by a highly institutionalized party system of robust political competition through stabilization of the actors and patterns of interparty competition; the second observation relates to the survival of an authoritarian successor party in democracies transitioned from dictatorship which can be compatible with robust political competition if it reinvents itself and becomes one of the viable democratic actors in political competition.³ I argue that close political competition prompts the incumbent to take advantage of judicial independence as insurance only when such competition is robust enough to enable opposition parties to pose credible threats of removal.

I qualitatively examine my theoretical argument through a comparative case study of South Korea and the Philippines after their democratization in the late 1980s. Despite their similarities in political history, institutional characteristics, and the degree of electoral closeness, South Korea and the Philippines have exhibited a stark difference in the development of judicial independence after democratization. I find that South Korea has developed robust political competition, evidenced by a greater level of party system institutionalization (i.e., the stability of interparty

³ However, this statement does not suggest that having a reinvented authoritarian successor party is sufficient to create robust political competition. See Chapter 4 for the detailed discussion.

competition) and the strong presence of a reinvented authoritarian successor party. In the Philippines, by contrast, political competition has occurred among many new democrats with a nearly complete disappearance of former authoritarians, but this competition was hardly stable due to a highly fluid and clientelistic party system. Two specific stories in South Korea (judicial reform under President Roh Moo-hyun in the mid-2000s) and the Philippines (President Benigno Aquino III's impeachment of Chief Justice of the Supreme Court) illustrate how the presence or absence of robust political competition is associated with the (under)development of judicial independence.

1.3 Contributions of the Dissertation

My dissertation is located in the overlapping area of the Venn diagram of various subfields within comparative politics. As illustrated in Figure 1.2, my dissertation makes several original contributions at the intersections of each subfield.

First, Chapter 2 contains a theoretical contribution (located at the intersection between comparative judicial politics and authoritarian politics) which develops a causal mechanism of the maintenance of judicial independence in authoritarian regimes. In the literature of comparative judicial politics, a growing body of studies has examined law and courts purely in the authoritarian context (Solomon, 2007; Ginsburg and Moustafa, 2008; Moustafa, 2014; Ríos-Figueroa and Aguilar, 2018) and identified autocrats' strategic motivations for establishing judicial independence (Moustafa, 2007; Magaloni, 2008; Peerenboom, 2009; Epperly, 2017, 2019; Sievert, 2018). However, whether and how autocrats' commitment to judicial independence can be credibly maintained has been largely undertheorized in the literature. In this regard, my research in Chapter 2 contains some of the earliest theories concerning the maintenance of judicial independence in authoritarian settings. Developing

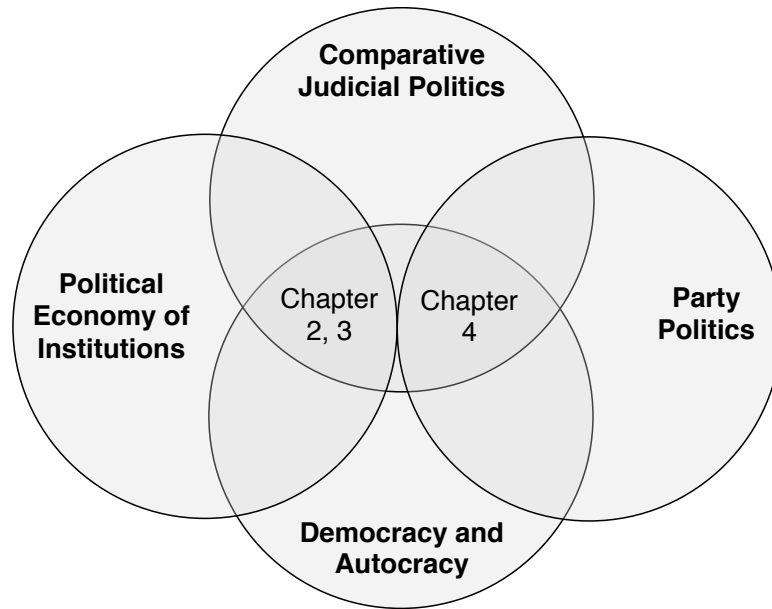


FIGURE 1.2: Contributions of this Dissertation

theories on law and courts in autocracies is also necessary to enrich the studies on authoritarian politics in that courts have been much less explored in the literature on authoritarian institutions, compared to a large body of existing work on authoritarian legislatures, elections, and parties.

Second, in Chapters 2 and 3, I combine the insights from comparative judicial politics and the political economy of institutions, and suggest an important but underexplored perspective from which to investigate the nexus between judicial independence and FDI. The widely-known argument in political economy is that independent courts (and democratic institutions more broadly) create a stable and favorable environment which is necessary to attract foreign investment because these courts give investors a greater certainty and predictability that the state will not confiscate their assets (Jensen, 2003; Li and Resnick, 2003; La Porta et al., 2004; Daude and Stein, 2007; Bénassy-Quéré et al., 2007). While recognizing this conventional view, I suggest looking at the other side of the same coin: As long as forward-looking auto-

crats anticipate that independent courts are necessary to keep and attract FDI, the presence of FDI may amplify their incentives to maintain judicial independence. In this regard, FDI is not merely an outcome coming from independent courts. I argue instead that once achieved, FDI can be the cause of maintaining the judiciary consistently independent. This approach has been recently developed in the authoritarian context as a “demand-side” theory of the rule of law (Wang, 2015; Gans-Morse, 2017), which highlights the role of foreign investors as well as multinational firms in creating pressures to reform and improve legal institutions in the host country.

Third, my focus on treating FDI as a cause speaks to the emerging literature on the political and institutional effect of FDI in authoritarian regimes. Beyond the search for the conditions under which autocracies can better attract FDI (Moon, 2015; Bastiaens, 2016), recent studies have found that FDI stabilizes the regime by reducing the likelihood of a coup by ruling elites (Bak and Moon, 2016; Tomashevskiy, 2017), which in turn reduces the prospect for democratic transitions (Escribà-Folch, 2017), and improves the quality of institutions and local governance (Dang, 2013; Long et al., 2015; Wang, 2015). My analysis in Chapters 2 and 3 contributes to this body of literature by emphasizing the role of FDI in developing judicial institutions in authoritarian regimes by constraining autocrats’ opportunistic behavior.

Fourth, in Chapter 4, I contribute to a more fruitful discussion of judicial independence in democracies by adopting valuable insights from the studies on party politics. Despite their interest in interparty competition as a catalyst for judicial independence, most studies on insurance theory have looked at only one aspect of interparty competition: closeness (i.e., how neck-and-neck it is between parties). However, their exclusive focus on this quantitative criterion often misses other crucial qualitative aspects of interparty competition that may affect the logic of insurance theory, e.g., who and how many main actors are, how strong parties are, how institutional environment structures interparty competition, and how stable and regular

the competition is. Chapter 4 incorporates these elements into my modified argument of insurance theory because they are crucial to determine oppositions' ability to pose credible threats and the incumbent's sensitivity to these threats. Scholars studying party politics have long developed this line of research, and by adopting their theoretical insights, my analysis in Chapter 4 contributes to a richer discussion of political competition and judicial independence in democracies.

2

Theorizing the Maintenance of Judicial Independence in Authoritarian Regimes

2.1 Introduction

2.1.1 Judicial Independence in Authoritarian Regimes: Overview

Does judicial independence exist in authoritarian regimes? The answer to this question has long been predominantly “no” among scholars as well as ordinary people, which is primarily because of our conventional understanding that judicial independence is hardly compatible with authoritarian politics. In many autocracies, courts are arguably weak and subservient, legitimizing the regime’s arbitrary rule. Indeed, autocrats have strong powers and numerous tools to manipulate the courts on their own. For example, they frequently pack the courts with judges who are loyal to the regime, intervene judicial decision-making process, and overturn rulings when they are against the regime’s interest. Furthermore, autocrats often “weaponize” courts, as a repressive state apparatus, to sideline and punish oppositions, thereby strengthening their rule “by” law (Ginsburg and Moustafa, 2008). These observations have

created a long-standing skepticism that judicial independence is purely a democratic ideal, and it is impenetrable to authoritarian contexts.

However, real-world observation suggests that a growing number of autocracies are committed to undertaking constitutional and judicial reforms, establishing a new court system, and maintaining efficient legal institutions, all of which aim at granting more independence to the judiciary. Figure 2.1 shows the presence of a reasonable level of judicial independence in authoritarian regimes and its development over the past decades. The top panel in Figure 2.1 is a histogram of the level of judicial independence in authoritarian regimes between 1960 and 2010, which shows the existence and a large variation of judicial independence among authoritarian regimes. The bottom panel illustrates the level of judicial independence in authoritarian regimes, which has grown over the years. We can see a clear upward trend of judicial independence in authoritarian regimes, especially during the third wave of democratization (Huntington, 1991) starting in the mid-1970s. During this period, the number of authoritarian countries began to decrease, but the level of judicial independence in the authoritarian world increased. The number of authoritarian countries continued to decrease after the end of the Cold War, and post-Cold War authoritarian countries have still maintained a reasonable level of judicial independence. These findings indicate that judicial independence, albeit mostly to only a small degree in general, does exist in and varies with authoritarian countries.

These observations have prompted scholars in comparative judicial politics to challenge the view that judicial independence is a *sine qua non* exclusive to democracy. Not only have they examined judicial independence and the rule of law outside democracies (Solomon, 2007; Ginsburg and Moustafa, 2008) or across political regimes (Helmke and Rosenbluth, 2009), but they also have coined the term such as the “authoritarian rule of law” (Rajah, 2012; Wang, 2015) or “authoritarian constitutionalism” (Tushnet, 2014).

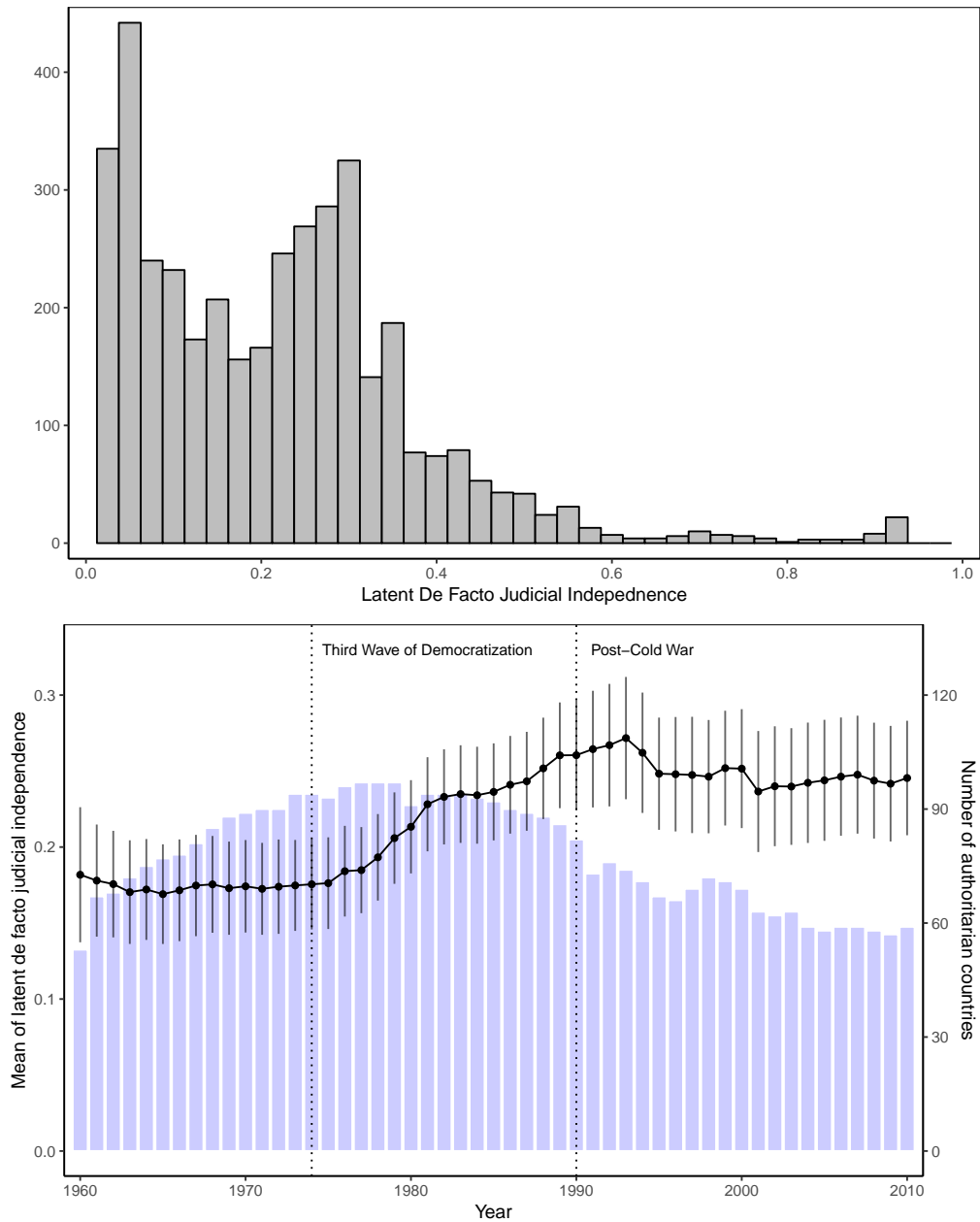


FIGURE 2.1: Judicial independence in authoritarian regimes, 1960-2010: Authoritarian regimes are identified based on Autocratic Regime Data by Geddes et al. (2014). Latent *de facto* judicial independence by Linzer and Staton (2015) is used ($N=3,951$). The top panel is a histogram indicating the level of judicial independence in the entire sample of authoritarian regimes. In the bottom panel, dots and error bars indicate the mean value of judicial independence and its 95% confidence interval in authoritarian regimes over time. Blue bars depict the number of authoritarian regimes in each year identified by Geddes et al. (2014).

Departing from the conventional view that independent courts serve adversely to authoritarian rule, scholars also identify autocrats' strategic incentives to pursue judicial independence for various political, economic, and social reasons. For example, as illustrated by studies in China (Peerenboom, 2002) and autocratic Mexico during the 1990s (Magaloni, 2008), authoritarian leaders take advantage of independent courts to enforce political order and monitor subnational politicians and local officials. Under a politically competitive environment, autocrats who may fear the potential loss of their power often regard independent courts as political insurance to protect themselves against uncertain and risky post-tenure fate (Epperly, 2017). Autocrats also build independent courts as "economic infrastructure" (Moustafa, 2014, 285) to attract greater investment and achieve economic development (Moustafa, 2007; Silverstein, 2008). Lastly, independent courts may be useful in autocracies in that they diminish the risk of intrastate conflict by allowing autocrats to gather information about opposition groups and their grievances to be used for bargaining (Sievert, 2018). Rejecting a simple view that courts are merely a window-dressing in authoritarian regimes¹, scholars are increasingly interested in theorizing the causes, roles, and consequences of law and courts in authoritarian regimes (Moustafa, 2014; Ríos-Figueroa and Aguilar, 2018).

Judicial independence has many "faces" with multiple dimensions (Bodnaruk, 2016). For example, courts are independent in the political realm by acting as an institutional veto player against the government (Tsebelis, 2002). Judges under independent courts are empowered to say "no" to political leaders, thereby constraining their arbitrary power and blocking unlawful acts. Judicial independence also has an economic dimension. Independent courts often serve as an institutional shield to protect individual property rights and a neutral arbitrator of economic disputes, which

¹ It is now widely recognized among scholars that autocrats adopt nominally democratic institutions not simply for window-dressing but for consolidating their rule. See Brancati (2014) for further discussion.

prevents an arbitrary confiscation by the state (North and Weingast, 1989; Olson, 1993). Judicial independence has a social implication as well in that independent courts are expected to safeguard individual rights and civil liberties against political leaders' possible attempts to undermine them (Keith, 2002).

One of the central features of judicial independence in authoritarian regimes is that it tends to be compartmentalized. Specifically, judicial independence is relatively easier to develop and more likely to be achieved in the economic dimension, defined as the capability of the judiciary to protect individual property rights against arbitrary expropriation by the state. While the nature of authoritarian politics often poses a challenge to the development of judicial independence in the political or social realms, autocrats' economic concerns often cause them to initiate their pursuit of judicial independence. The desire for economic development is almost universal for political leaders, and autocrats are not an exception. Economic growth allows them to garner public support for their regime and to extract resources from the society they rule (Olson, 1993) to support their power base, both of which activities contribute to the survival of their regime (Geddes, 1999; Wright and Escribà-Folch, 2012). As a result, protecting property rights (and ultimately achieving economic development) through independent courts is the most important, if not the only, form of judicial independence in authoritarian regimes. Such reasoning is also in line with the claim that the rule of law in authoritarian regimes is often thin or narrow in a developmental context (McCarthy and Un, 2017), as accurately noted by Wang (2015, 18):

[A]uthoritarian rulers have no interest in implementing the rule of law in its full scale, which involves both fairness and efficiency. The rule of law that exists in some authoritarian regimes is a partial form of the rule of law. ... On the one hand, they must respect the rule of law to make a credible commitment to investors whose assets are urgently needed;

on the other hand, a strong judiciary might open new avenues for political activists to challenge the state. The solution to this dilemma is for authoritarian rulers to implement a partial form of the rule of law; they sequence the legal reforms in such that judicial fairness is usually respected in the economic realm but not in the political realm.

Figure 2.2 suggests further evidence of the compartmentalized nature of judicial independence in authoritarian regimes. In the left panel, two components of judicial independence are drawn from the World Justice Project’s Rule of Law Index 2019: (a) “government powers limited by the judiciary,” (which represents the political side of judicial independence; x -axis), and (b) “no expropriation of property rights,” (which corresponds to the economic side of judicial independence; y -axis). Each dot indicates authoritarian countries, and we can see that most of those countries are located above the red 45-degree line. This finding suggests that the economic aspect of judicial independence is better scored than its political aspect among authoritarian countries. A boxplot in the right panel shows the distribution of the differences between the scores of the two aspects of judicial independence in each country (in other words, the value of $y - x$ in the left panel). The boxplot demonstrates that the difference between these two values of judicial independence is higher in autocracies than in democracies, which means that judicial independence tends to be selectively developed in autocracies, with an economic aspect more prominent.

2.1.2 Puzzle: Maintenance of Judicial Independence in Authoritarian Regimes

A puzzle less investigated in the literature is the steps after the decision to build judicial independence: whether and how authoritarian leaders are able to maintain their initial commitment to judicial independence without renegeing. While existing studies offer compelling explanations of why autocrats are willing to establish in-

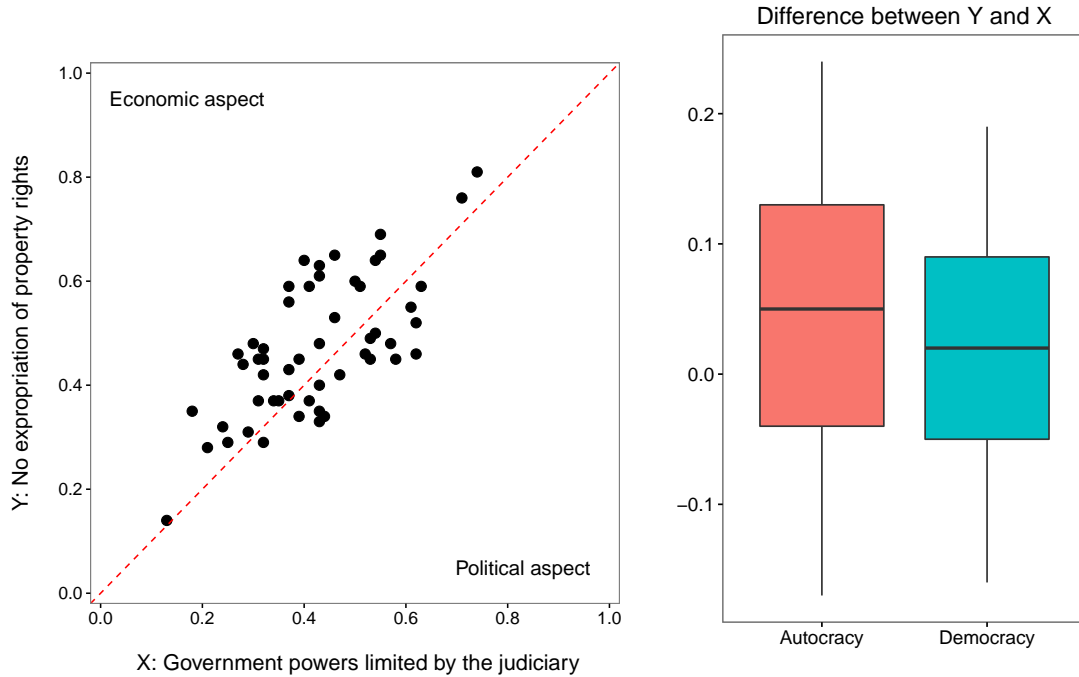


FIGURE 2.2: The compartmentalized nature of judicial independence in authoritarian regimes: Data are drawn from the World Justice Project’s Rule of Law Index 2019. Democracy and autocracy are identified by Polity IV score.

dependent courts, they rarely explore the mechanism by which they can maintain once-established judicial independence.

Such little scholarly effort is in part because maintaining judicial independence is a tough test in authoritarian regimes and thus rarely occurs. By their nature, independent courts tie the hands of autocrats and thus are at odds with the regime’s arbitrary rule. This may be one of the reasons why undermining judicial independence is often understood as the first step to accelerate more authoritarian moves by autocrats. Whenever they find it necessary to strengthen their grip on power, courts tend to be their major target. Indeed, autocrats own ever-present chances to erode judicial independence by taking a series of measures to make the judiciary on their side (e.g., by overturning the court’s rulings, arresting the judges, or manipulating and even disbanding the court). In doing so, they can justify any further authori-

tarian acts (e.g., repression, change in the “rules of the game”) “behind a veneer of legality” (Levitsky and Ziblatt, 2018, 83).

More importantly, the difficulty in the maintenance of judicial independence comes from the inherent nature of authoritarian regimes, i.e., the absence (or weakness) of institutional actors who can monitor and punish autocrats’ potential opportunism. Unlike democracy, formal institutions in authoritarian regimes hardly check and balance against the executive. Formal rules created by autocrats “constrain the ruled, not the ruler,” and are also arbitrary because they are easily altered by changes in autocrats’ preferences and circumstances (Manion, 2015, 13). Consequently, as long as autocrats know that the deviation from their original decision to act more democratically is neither checked nor sanctioned, their initial momentum in favor of judicial independence is hard to sustain over time. In other words, “promises made at one point by the dictator ... may be broken later, when they become inconvenient” (Svolik, 2012, 14).²

In authoritarian regimes, therefore, a real challenge to promoting judicial independence lies not in the stage of establishing it but in the stage of maintaining it. Even if autocrats choose to grant judicial independence, as long as formal rules and institutions do not strongly constrain their opportunism, their commitment often lacks the credibility essential to its maintenance. Thus, in the authoritarian context, more appropriate research questions should be: Given the lack of institutional devices capable of constraining autocrats, how then can they credibly maintain ju-

² For example, the high court in Malaysia enjoyed a relatively high level of independence until the mid-1980. As more independent and active judiciary increasingly made rulings against the regime’s interest, Mahathir bin Mohamad expressed his contempt for the court’s such action and delivered his warning during the interview with *Time Magazine* in November 1986. He remarked that “if we find out that a Court always throws us out on its own interpretation, if it interprets contrary to why we made the law, we will have to find a way of producing a law that will have to be interpreted according to our wish.” (cited from Lee 2017, 81) Two years later, Mahathir suspended and eventually removed the Lord President of the Supreme Court, and this constitutional crisis seriously undermined judicial independence in Malaysia.

dicial independence without being tempted to undermine it? Which (f)actors play a binding role in deterring autocrats from renegeing on their initial commitment to judicial independence? More straightforwardly: What makes autocrats' commitment to judicial independence credible?

In this chapter, I build a theory on the maintenance of judicial independence in authoritarian regimes by exploring the conditions under which autocrats' commitment to judicial independence can be more credible. In Section 2.2, I lay out the theoretical background of my argument, namely the viewpoint established by North and Weingast (1989) and Olson (1993), who regard democratic political institutions (and independent courts in particular) as a "credible commitment" to economic development. To apply this logic to authoritarian contexts, I then decompose this perspective into two parts and suggest a conceptual distinction between the primary commitment problem and the secondary commitment problem in Section 2.3. By making this distinction, I argue that while autocrats are able to overcome the primary commitment problem just as democratic leaders do, they face tougher challenges in solving the secondary commitment problem. This is mainly because authoritarian regimes often lack institutional checks and electoral accountability, both of which effectively sanction political leaders' opportunism and thus aid the appearance of the credibility of their behavior in democracy.

In the search for alternative mechanisms which act to bind autocrats to pursue their commitment without renegeing, I develop a causal mechanism by which autocrats are constrained and credibly maintain their initial commitment to judicial independence without renegeing. In Section 2.4, I argue that a regime's economic reliance on FDI and autocrats' concern about their reputation jointly create strong and continuous incentives for autocrats to respect judicial independence as a property rights assurance to foreign investors. Not only do autocrats pursue judicial independence in anticipation of attracting future FDI necessary for economic development,

but they also refrain from the act of undermining judicial independence which may bring foreign investors' potential sanction. At the same time, the regime's reputation of protecting property rights via independent courts is self-reinforcing to make their defection from judicial independence more costly over time. Building a decision-theoretic framework of my theoretical argument, I elaborate how autocrats' reputational concern and their relationship vis-à-vis foreign investors interact to make their continuing maintenance of, instead of renegeing on, judicial independence as an equilibrium behavior. Section 2.5 concludes.

2.2 Theoretical Background

In their path-breaking works in the early 1990s, North, Weingast, and Olson established a solid theoretical ground on the significance of political institutions in economic development. Highlighting the role of institutions as a credible commitment by political leaders, they examined which institutional features are conducive to economic development (North and Weingast, 1989; North, 1990; Olson, 1993, 2000).

Economic development requires stable and long-term investment from people and firms. In order to develop their national economy through higher investment, political leaders must convince potential investors that their property and assets will be protected permanently against the confiscation not only by others but also by the state. For this reason, political leaders promise not to expropriate individual property rights as part of building safe investment climates for the investors. The problem is that people find it hard to believe the leaders' promise as genuine without a firm behavioral commitment. Mere words do not guarantee anything. People are suspicious that the leaders may withdraw their initial commitment and return to their previous confiscatory behavior at any time by using their power and authority. In

this sense, binding mechanisms to constrain political leaders are necessary to convert their words into actual behaviors. This “commitment problem” poses a critical question to political leaders: How can they prove the authenticity of their promise?

According to North, institutions, defined as “humanly devised constraints that structure political, economic, and social interaction” (North, 1991, 97), place restrictions on the state, thus allowing the government to credibly commit to upholding property rights and protecting people’s welfare. In their pioneering analysis on the role of institutions as a device of credible commitment, North and Weingast (1989) documented specific institutional elements that brought about economic growth in England during the period of the Glorious Revolution in the seventeenth century. North’s summary of their research details the establishment of democratic institutions that effectively constrained potential expropriation by political leaders and thus contributed to economic development:

The revolutionaries had sought to solve the problem of the Crown’s exercise of arbitrary and confiscatory power. Parliamentary supremacy, central (parliamentary) control in financial matters, curtailment of royal prerogative powers, independence of the judiciary (at least from the Crown), and the supremacy of the common law courts were established. A major consequence was an increased security of property rights. The most striking immediate consequence was the rapid development of the capital market (North, 1990, 139).

Consistent with North and Weingast, Olson also argued that institutions in stable democracies provide the security of property rights and contract enforcement, which is vital for economic development.

... the conditions that are needed to have the individual rights needed

for maximum economic development are exactly the same conditions that are needed to have a lasting democracy. . . . the same court system, independent judiciary, and respect for law and individual rights that are needed for a lasting democracy are also required for security of property and contract rights. As the foregoing reasoning suggests, the only societies where individual rights to property and contract are confidently expected to last across generations are the securely democratic societies (Olson, 1993, 572).

In brief, North, Weingast, and Olson established a scholarly foundation in the area of political economy that (a) upholding property rights against state predation is indispensable for economic development, and (b) democratic institutions can achieve this goal by allowing the government to make a credible commitment to restraining its confiscatory behavior. Specifically, independent courts, as an enforcer of property rights, constitute the core institutional element of a credible commitment to economic development. Thus, building democratic legal institutions assures economic actors that political leaders tie their own hands and constrain themselves by creating binding institutions to ensure that they do not arbitrarily expropriate individual property rights.

2.3 Decomposing Commitment Problem in Authoritarian Regimes

Is the account of “judicial independence as a credible commitment,” established by North, Weingast, and Olson, equally applicable to authoritarian regimes? Their logic consists of two separable parts that are often combined as one in democracy. The first of these is that political leaders build institutions that potentially constrain their behavior to materialize their promise to protect property rights. The second is that the act of institution-building is thought to be consistently credible and thus engen-

ders the intended effect of property rights protection and economic development. In democratic countries, these two parts closely interact with each other because once political leaders achieve the former, the nature of democratic politics helps to accomplish the latter by generating the credibility of their behavior. By contrast, each step of such claims is more likely to be questioned in authoritarian regimes.

To better understand the applicability of this viewpoint to authoritarian regimes, two distinct questions that correspond to each piece of the argument are needed. The first question is: Are autocrats willing to tie their hands with binding institutions for the goal of property rights protection? This question is concerned about whether autocrats would adopt better legal institutions to respect property rights despite the constraints on (and the potential erosion of) their arbitrary power. If the answer to the first question is “yes,” a tougher question naturally follows: Are autocrats able to continue their momentum in institution-building by maintaining the credibility of their behavior? Those two questions constitute the dual aspects of the commitment problem in authoritarian regimes, which I term the problems of “primary” and “secondary” commitment, as illustrated in Figure 2.3.

2.3.1 Primary Commitment Problem

Although the nexus between binding institutions and economic development has been examined mostly in a democratic context, scholars in authoritarian politics have increasingly studied the role of authoritarian institutions as a commitment device for economic growth. For example, Wright (2008) argued that autocrats are motivated to create more binding legislatures as an indication to domestic investors of credible constraints on their expropriation of property rights. He found that the presence of such authoritarian legislatures has a positive impact on economic growth and domestic investment (Wright, 2008; Wilson and Wright, 2017). Gehlbach and Keefer

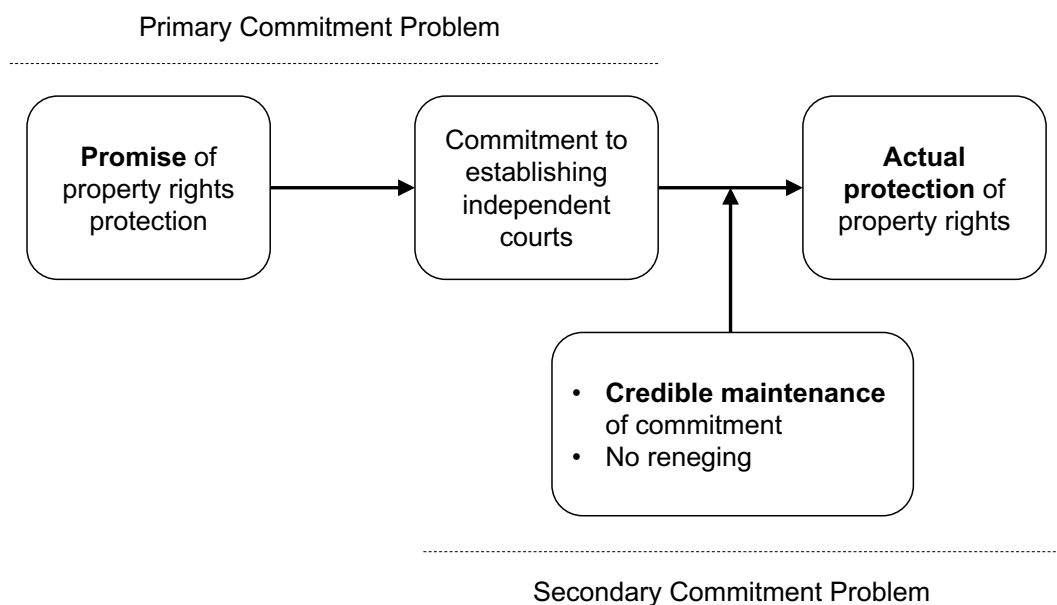


FIGURE 2.3: Two types of commitment problem

(2012) developed a similar argument by examining the role of political parties in authoritarian regimes. They posited that the ruling party institutionalizes the organizational capability of collective action by regime supporters and allows them to defend themselves against the regime’s acts of expropriation, thereby encouraging their investment. In her literature review in the functions of authoritarian institutions, Brancati (2014) identified credible commitment as one of the reasons why authoritarian leaders adopt nominally democratic institutions.

Consistent with the insights described above, existing works on the law and courts in authoritarian regimes also regard judicial institutions as “credible commitments in the economic sphere” (Ginsburg and Moustafa, 2008, 8). Autocrats are increasingly inclined to commit to the adoption of independent courts in order to convince other economic actors of their will to protect property rights and to achieve economic development. Real-world observations of authoritarian countries have demonstrated that many judicial reforms to make legal institutions more efficient and predictable

often stem from autocrats' desire to transition to a functional market economy and facilitate a competitive investment environment. For example, Singapore is widely recognized as an authoritarian country with efficient legal institutions (Schwab and Sala-i Martín, 2016), and the goals of those institutions are “to attract foreign capital and to maintain the confidence of foreign investors who are essential to Singapore’s prosperity and economic growth” (Silverstein, 2008, 77). The Supreme Constitutional Court of Egypt³ was established in 1979 under the dictatorship of Anwar Sadat to remedy economic pathologies that had plagued the country for previous decades and to attract domestic and foreign investment (Moustafa 2007). More recently, China’s bold initiatives in pursuit of establishing judicial independence and the rule of law have been closely linked to economic development (Peerenboom, 2009; Wang, 2015). In short, it becomes more likely that autocrats, who view judicial institutions as “a means of promoting economic development” (Peerenboom, 2002, 60), decide to “empower courts to assure ... that there are institutional protections of property rights” (Moustafa, 2007, 58).

The above arguments and real-world cases suggest that autocrats are willing to solve what I call the primary commitment problem. Here I define the primary commitment problem as how autocrats can assure domestic and foreign economic actors that the regime is committed to achieving economic development by not expropriating property rights. Promising judicial independence is a good way to solve this primary commitment problem because independent courts are a signal from authoritarian leaders that they will respect the individual property and try to create a more business-friendly environment for business people, investors, and firms. If autocrats are aware of the positive economic benefits that judicial independence can bring, they

³ Since its establishment, the Supreme Constitutional Court had been one of the most autonomous governmental institutions in Egypt. It was also regarded as a notable example of independent courts in authoritarian regimes for nearly two decades until Hosni Mubarak severely undermined its independence in the late-1990s (Moustafa, 2007).

will anticipate that independent courts will invigorate the business environment and bring greater investment in later periods. Consequently, autocrats are induced to allow a reasonable degree of judicial independence in the economic realm to reap such benefits. The rise of economic liberalization and the diffusion of the rule of law around the globe foster this trend, encouraging autocrats to grant more autonomy to the courts as their indication of following the “global standard” in the economic sphere (Root and May, 2008; Moustafa, 2014).

Further, courts are a more suitable institutional venue to resolve economic matters than are other political institutions such as the legislature and political parties. Economic disputes are often “small scale” between specific individuals/firms about a particular business issue or between individuals/firms and a government over the matter of confiscation and regulation. The nature of such economic disputes requires a proper institutional venue for resolving them, which should be accessible by individuals and be devoted to hearing individual claims. Courts can meet these requirements much better than other institutions because individuals can readily access the courts to address a specific dispute and file their claim. In this regard, authoritarian leaders may have incentives to improve the courts to better deal with economic matters that other institutions might find difficult to address.

To summarize, just as in democratic countries, there is a growing consensus in authoritarian regimes that binding institutions (and independent courts in particular) capable of constraining the leaders’ confiscatory behavior are necessary to accomplish economic development. If autocrats were eager to show their willingness to respect property rights and to pursue economic growth, they would consider the empowerment of the judiciary by granting more independence. Of course, the decision to establish independent courts is not without political and economic costs⁴, but au-

⁴ There might be three possible types of costs for judicial independence in autocracy: (a) actual costs to establish more jurisdictions to deal with economic matters and to reform the judiciary more

ocrats may proactively commit to judicial independence if its anticipated economic benefits outweigh the costs. In this way, autocrats are increasingly able to deal with the primary commitment problem.

2.3.2 Secondary Commitment Problem

Even if autocrats find judicial independence as an appropriate option to ensure their commitment to the protection of property rights, mere commitment to building institutions does not automatically lead to the actual effect of economic development. As noted by North and Weingast (1989, 803), “for economic growth to occur the sovereign or government must not merely establish the relevant set of rights, but must make a credible commitment to them.” This statement captures what I call the secondary commitment problem, which I define as how autocrats can maintain judicial independence by making their commitment credible.

The distinction between the primary commitment problem and the secondary commitment problem can be understood from various angles. First, this distinction represents the difference between the establishment and maintenance of judicial independence. Although those two are separate issues both conceptually and empirically (Vanberg, 2008), existing studies in judicial independence often offer explanations that either conflate them or focus heavily on the former (Hirschl 2004). Second, the distinction also captures the difference between the intention and effect of judicial independence. The primary commitment problem addresses the question of “why” political leaders want to promote judicial independence, while the secondary commitment problem concerns whether and “how” judicial independence can generate effects as intended once it is established. This separation is necessary, since an inten-

independently, (b) economic costs to prevent the autocrats from expropriating individual properties under the independent judiciary, and (c) political costs for the independent courts to constrain the autocrats’ arbitrary rule (a spillover effect from the economic realm to the political realm).

tion does not automatically engender the expected outcomes but does so only when the commitment to judicial independence is consistently credible. Third, the distinction illuminates the difference between democracy and autocracy. As discussed previously, the solution to the primary commitment problem has become increasingly similar between democratic and authoritarian leaders, even if there remain differences as to whether each type of leader can solve the secondary commitment problem, and, if so, differences in the mechanisms they use to solve the problem. In this regard, we must pay more attention to the secondary commitment problem and identify features specific to authoritarian regimes in the discussion of judicial independence.

The secondary commitment problem is more severe and difficult to solve in authoritarian regimes primarily because autocrats are not bound by strong rules. As Olson straightforwardly stated, “the promise of an autocrat is not enforceable by an independent judiciary or any other independent source of power, because autocratic power by definition implies that there cannot be any judges or other sources of power in the society that the autocrat cannot overrule” (Olson, 1993, 571). To reiterate, the rules created by autocrats “constrain the ruled, not the ruler” (Manion, 2015, 13).

Democratic countries are less likely to suffer from this problem since they have various institutional mechanisms to keep the commitment by political leaders consistently credible. According to Jensen (2003), democratic institutions have two distinct characteristics to increase credibility: (a) numerous institutional veto points to make policy reversal difficult (Cox and McCubbins, 2001; Tsebelis, 2002), and (b) the potential for the electoral backlash to hold political leaders accountable for their actions (Przeworski et al., 1999). In other words, political leaders in the democratic system often find it difficult to renege on their initial commitment not only because such attempts are often blocked by other institutions but also because the public can

observe and punish unaccountable leaders electorally. This “credibility-enhancing nature” (Jensen, 2003, 612) of democratic institutions increases the costs to political leaders of wavering from their initial promise and thus forces them to stick to their commitment credibly over the long term.

Those two mechanisms are absent or very weak at best in authoritarian regimes. Although most authoritarian institutions are “nominally democratic” in forms, these institutions are not only too weak to constrain autocrats but are also easily manipulated by them. As a result, extant formal institutions in authoritarian regimes hardly function as checks and balances, or institutional veto points, capable of constraining autocrats to abide by the rules. In addition, although many autocrats are electorally contested in competitive authoritarian regimes (Levitsky and Way, 2010), they are hardly defeated due to the “uneven playing field” that they themselves create thus feel less necessity to be accountable for their actions to the public. Electoral backlash rarely takes place in authoritarian regimes, and even if it occurs autocrats have various tools to suppress or mitigate it. In short, there are almost no “institutional” solutions to the secondary commitment problem in authoritarian regimes.

Under the absence of those constraints, autocrats may easily withdraw their initial promise. Even though the positive economic benefits that independent courts may bring are attractive to autocrats, these benefits alone may not be sufficient to deter their potential opportunism. They may return to the expropriation of individual property rights that previously yielded them a direct gain and to restore their arbitrary power by making the judiciary subservient. In these cases, autocrats fail to overcome the secondary commitment problem, and their initial goal to achieve economic development through judicial independence is undermined.

This does not imply that all autocrats are completely unable to overcome the secondary commitment problem and to maintain judicial independence. Both theoretically and empirically, it is possible that authoritarian regimes keep the courts

independent in the economic sense so that autocrats can consistently respect property rights under the legal framework. However, if independent courts are to have a lasting effect on a regime, two things must logically precede their existence. The first of these is that autocrats must accept or tolerate the constraints which independent courts impose, and they must not renege on their initial commitment to building judicial independence. The second is that some factors functionally equivalent to institutional veto points and electoral accountability in democracy must be created to force autocrats to maintain their commitment to judicial independence credibly. Thus, the secondary commitment problem raises the following questions: If autocrats were able to maintain their commitment to judicial independence for economic reasons, what could make it credible? Formal institutions are not easily able to constrain autocrats. The public lacks the capability to effectively sanction their opportunism. Who can perform these functions in authoritarian regimes?

2.4 Theory

To answer these questions, I build a theoretical argument concerning the factors which render authoritarian leaders' commitment to judicial independence credible. I develop a causal mechanism by which the regime's economic reliance on FDI and the autocrats' concern about reputation interact to constrain them to maintain their commitment to judicial independence without renegeing. My theoretical claim is summarized as follows:

- The growing significance of FDI in the economies of authoritarian countries prompts autocrats to create a favorable reputation of their regime for protecting property rights in order to attract foreign investors. The creation and maintenance of independent courts is one way to do so.

- A high reliance on FDI in the authoritarian host country increases the leverage of foreign investors vis-à-vis the regime. This allows them to be in a better position to push to the host government their preferences and demands for independent courts, which are expected to serve as a credible institutional safeguard for their investment assets and a reliable mechanism of dispute resolution. As the regime relies more on FDI, autocrats may have greater needs to accommodate foreign investors' claims and demands.
- Foreign investors also have a punishment mechanism to prevent autocrats from renegeing on the commitment to judicial independence. When seeing autocrats renege and return to expropriation, foreign investors may threaten the regime that they will leave for a better investment environment or withdraw investment. As the regime relies more on FDI, autocrats are more constrained by foreign investors' potential sanction, thereby more likely to refrain from renegeing on judicial independence.
- Autocrats are also constrained by their concern about the reputation they have cultivated while developing judicial independence. The self-reinforcing nature of reputation encourages autocrats to stick to their commitment because, as a good reputation solidifies and becomes valuable, it becomes more costly to damage the established reputation by renegeing on judicial independence.
- Therefore, if the regime relies on FDI, autocrats are more likely to maintain judicial independence because (a) the benefits of doing so are greater (i.e., FDI attraction and economic development), (b) the costs of not doing so are also greater (i.e., foreign investors' sanctions followed by autocrats' renegeing), and (c) their reputational concern creates self-reinforcing needs to keep doing so.

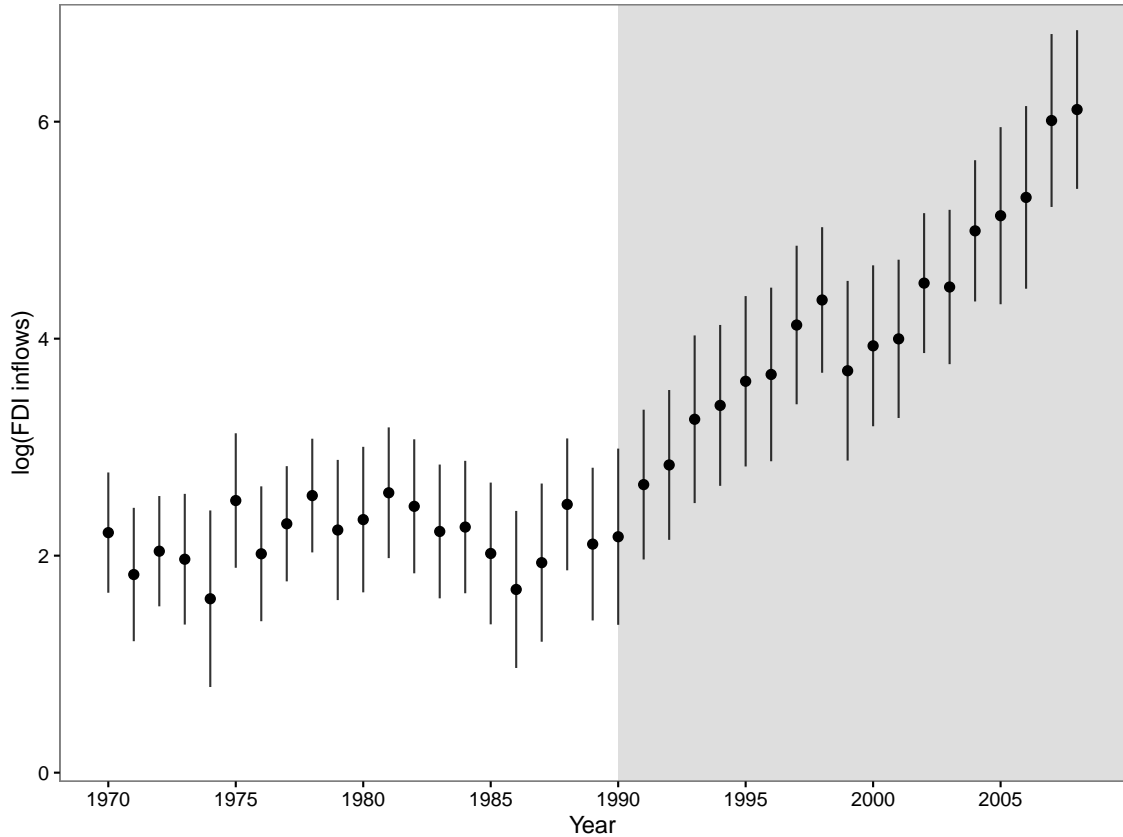


FIGURE 2.4: The average amount of FDI inflows in authoritarian countries: Dots and error bars indicate the mean value of the logged FDI inflows and its 95% confidence interval in authoritarian countries over time. Data are drawn from Moon (2015).

2.4.1 How FDI Induces Autocrats' Credible Commitment to Judicial Independence

In recent decades, worldwide economic liberalization and globalization have brought about remarkable growth of FDI across the world, including authoritarian regimes. As illustrated in Figure 2.4, the average amount of FDI inflows in authoritarian countries marks a rapid increase after the end of the Cold War. Other recent studies also report that average FDI inflows to authoritarian countries skyrocketed after the end of the Cold War, from \$348 million in 1991 to \$2,950 million in 2005 (Tomashvskiy, 2017, 409), and the global share of FDI inflows to authoritarian countries also increased from 16% to 23% in the past two decades (Bastiaens, 2016, 140). The

growing significance of FDI in the economies of authoritarian countries has pushed autocrats to create a better investment environment to attract FDI and advance their national economy.

The rise of FDI in the global economy also makes autocrats more responsive to foreign investors' preferences and claims. Foreign investors want to conduct their business in a safer and more reliable environment. Independent courts and neutral legal institutions are among the most important institutional prerequisites to creating such an environment because these institutional settings are expected to secure property rights and investment assets of foreign investors. For this reason, foreign investors tend to have a strong preference for judicial independence, and they often consider judicial strength and the rule of law in the host country as significant factors in making their investment decisions (Biglaiser and Staats, 2010; Staats and Biglaiser, 2012).

In addition, the preference for foreign investors in neutral legal institutions comes from their relative lack of other available host country devices to resolve business-related disputes. Compared to their domestic counterparts whose negotiations may be facilitated by the opportunity for informal agreements or social bonds, foreign investors and multinational enterprises are less likely to be connected by informal ties to the state that they can use to conduct their business (Wank, 1999; Wang, 2015). As a result, foreign investors tend to have access to a more formal (and limited) set of bargaining tactics (Post, 2014). The absence or limited availability of informal mechanisms for dispute resolution often leads foreign investors to rely on the impartial formal rules of dispute resolution, such as litigation through independent courts.

When the regime relies heavily on FDI, the bargaining power of foreign investors vis-à-vis the regime increases (Ali et al., 2011; Ganiou Mijiyawa, 2014), allowing them to be in a better position to demand the authoritarian host government to

take consistent actions to improve and maintain independent courts. Insofar as the regime recognizes the significance of FDI to boost the national economy, autocrats are more incentivized to accommodate foreign investors' demands and to create and maintain independent courts. However, this only explains a positive inducement: why the regime's reliance on FDI induces autocrats to maintain judicial independence. On the one hand, autocrats may commit to judicial independence for good reasons: they can be better off by gaining economic benefits from FDI attraction. On the other hand, they may commit to judicial independence because undermining independent courts incurs significant costs and thus makes them worse off. To fully understand autocrats' credible maintenance of judicial independence, therefore, the other side of the inducement should also be considered, namely, why the regime's economic reliance on FDI prevents autocrats from renegeing on their initial commitment to judicial independence.

Foreign investors (especially those already present in the authoritarian host country) have a sanctioning mechanism to punish autocrats' potential renegeing on judicial independence. If foreign investors see autocrats relapse and return to expropriating individual properties, they can "coerce policy-makers by threatening to leave for more hospitable investment environments" or even withdraw their investment (Olarreaga, 1999; Malesky, 2009, 61). When the authoritarian host country relies heavily on FDI, the costs of autocrats' renegeing on judicial independence also increase because such action may bring about foreign investors' punishment that affects the national economy more severely. Foreign investors can impose binding constraints to the regime by exercising sanction because, as actors external to the regime, they are relatively more independent of autocrats and thus less likely to be bound by domestic politics. Under authoritarian control, domestic players are often too repressed to claim their voices or are readily captured by the regime, which makes them less capable of binding autocrats effectively. By contrast, foreign investors may have a potential for

constraining the regime and even inducing institutional change/development in the host country since they, by their nature, operate at a distance and with some degree of relative freedom from authoritarian powers. This reasoning is consistent with the claim that regards foreign investors “not [as] passive bystanders in the institutional reform process” in the host country but instead as “a dynamic force in the forefront of the push for change and an agent for such reform” (Hewko, 2002, 72).

2.4.2 Reputation as a Mediating Factor

The effect of FDI on judicial independence is facilitated by an informal factor that autocrats often care about: reputation. Both FDI and judicial independence are closely related to a country’s reputation because foreign investors make investment decisions based on their judgments of the reputation of the host country, e.g., how safe the country is to invest in and how likely their investment assets are to be protected by the state. Thus, in order to attract FDI, autocrats have good reasons to build and develop a favorable reputation and to convince foreign investors that they respect property rights under an independent courts system.

Despite the common myth that authoritarian leaders are “strong” by maximizing their power, scholars point out that authoritarian regimes are inherently fragile due to their weak legitimacy (Nathan, 2003). They argue that relying solely on repression is insufficient to enable autocrats to stay in power (Gandhi and Przeworski, 2007; Svobik, 2012) because such a repressive strategy often undermines the regime’s legitimacy and erodes the support from masses. For their political survival, autocrats therefore must build the legitimacy of their regime to justify their rule and garner support from the public. Building independent judicial institutions can be useful for this purpose because they “give the image, if not the full effect, of constraints on arbitrary rule,” thereby allowing authoritarian leaders “to make up their question-

able legitimacy” (Ginsburg and Moustafa, 2008, 5). This implies that autocrats must exhibit some signs of restraining the full exercise of their arbitrary power by abiding by binding institutions.

Such a legitimacy-building effort by building judicial institutions also indicates autocrats’ desire to create a good and favorable reputation. By promoting judicial independence, they may attempt to cultivate two related types of reputation. One is their regime’s reputation for respecting property rights via independent courts. This reputation may allow autocrats to better appeal to international audiences (e.g., foreign investors, international organizations, and donors) because it represents the external image of their regime (thus potentially replacing their own reputation as a primary factor in foreign investors’ decision to provide economic support). The other is the autocrats’ personal reputation that they observe the rules and their promises, which may foster an image of trustworthiness to domestic audiences. Developing both types of reputation benefits autocrats because a good reputation aids economic development, garners support from the public, and ultimately ensures the survival of their regime. In this regard, autocrats have basic incentives to cultivate a good reputation to sustain their rule.

The key question is how reputation binds autocrats to maintain their commitment without reneging. In other words, we need to identify how their reputational concern helps to resolve the secondary commitment problem by making their commitment credible. Manion (2015) develops a compelling argument regarding the ways by which reputation pushes autocrats to keep abiding by the rules they establish. According to Manion, autocrats face ongoing chances to renege or obey the rules after they initially introduce them. Their reneging on the rules, whether to change or break them, undermines the coordination of other players with respect to those rules and thus violates the credibility of those rules. Such a violation is highly visible to other players, thus further eroding the autocrats’ reputation as rule-abiding players. In

this way, renegeing can not only hinder the rules' persistence but also damage the reputation of the autocrats and their regimes. On the other hand, observing the rules can build a reputation of a rule-abiding nature for the autocrats, and over time, this reputation affects the beliefs of other relevant players, creating institutions with their own "stickiness" (Manion, 2015, 14-15). Manion's account of reputation offers a valuable insight to understand why autocrats persistently follow the rules they initially create and how such rules can be maintained despite their potential chances to renege.

Once established, reputation becomes one of the regime's valuable "assets." As a result, when achieving a favorable reputation, autocrats may find that maintaining it puts them in a better position since doing so promotes the legitimacy of their rule and subsequently the popular support for them and their regime. More importantly, an established reputation is self-reinforcing with increasing its values: the more it becomes consolidated, the more valuable it is. As a result, as reputation is solidified, autocrats find it more costly to damage it since they would lose more values created by the reputation than they would gain benefits from their actions. Therefore, rather than risk damaging a well-established reputation and thereby causing greater political and economic costs and public backlash, autocrats may prefer to stick to the reputation of respecting the rules they have established. In this way, autocrats who are willing to build their reputation are more likely to make their commitment sustainable and trustworthy.

A consolidated reputation contributes to the maintenance of judicial independence in two ways. First, it regulates the relationship between autocrats and judges and grants more autonomy to the latter. As the value of reputation for autocrats' compliance with judicial rulings increases, judges come to believe that autocrats are less willing to engage in the behavior to harm that reputation, namely to undermine the judiciary. With this increased certainty, judges are better able to make neutral

and more independent decisions without being pressured or punished by the regime due to such decisions.⁵ Insofar as autocrats want to refrain from sullyng their reputation, their best response is to continue to respect for the court’s rulings even if such decisions are adverse to them. In this regard, the solidified reputation leads to the development of judicial independence by constraining autocrats on the one hand and also by empowering judges on the other hand.

Second, the established reputation also makes autocrats to “resist” the incidences that may prompt them to undermine judicial independence. Once building their initial commitment, autocrats may have little incentives to change it during normal time. However, when crises or exogenous shocks abruptly shake the status quo and pose a challenge to the regime, autocrats are easily tempted to strengthen their grip on power by undermining institutional checks. For example, political unrest, economic downturn, and social upheaval often offer the circumstances for autocrats to renege on their promise of judicial independence in many authoritarian regimes. However, if autocrats have benefited largely from the well-established reputation for complying with the judiciary, even serious crises or shocks may not easily make them fall into renegeing. Since renegeing is a costly behavior, autocrats have to weigh between its benefits and the costs of harming their reputation. If the magnitude of crises is only small or medium, autocrats can handle and overcome them without eroding their reputation for respecting the judiciary. More severe crises may trigger autocrats’ renegeing, but if the reputation is solid and highly valuable, they may prefer to hold that reputation because the benefits from renegeing are not as big as the value of reputation. In this regard, the stronger the reputation for judicial independence is, the more likely autocrats are to “endure” more serious crises which potentially lead to their renegeing. In this way, the established reputation makes the autocrats’

⁵ This claim is consistent with a widely-known claim that judges are strategic actors (e.g., Epstein and Knight 1997) and their strategic behaviors in the court are contingent on their relationship with the executive (e.g., Helmke 2002).

incentives to maintain judicial independence stronger despite their potential chances to renege under crises.

2.4.3 FDI, Reputation, and Judicial Independence: Decision-Theoretic Explanation

I have identified two interrelated motivations of why autocrats are willing to credibly maintain judicial independence. The first of these is that the regime's heavy reliance on FDI creates constant needs for autocrats to respond to foreign investors' preference and demands by maintaining judicial independence. The second is that autocrats are unwilling to sully their favorable reputation by renegeing on their initial commitment to judicial independence. These two factors are not separate in that if FDI is a significant economic asset to their national economy, autocrats are more likely to be committed to developing a good reputation in order to satisfy and attract foreign investors.

To understand how those two factors interact and result in the continuing maintenance of judicial independence, I bring and modify an analytic framework by Kreps (1990), who offers a game-theoretic explanation of the role of reputation in making the trust-honor relationship between firms self-enforcing in corporate culture. Kreps builds a simple game where a player (B) chooses whether to honor or abuse his partner (A)'s trust. He assumes that B has a reputation built up from past encounters with A and that A considers that reputation when deciding whether to trust B . A key implication of this game is that B 's behavior and resultant payoffs in later stages are determined by his action and outcomes in the previous stages. Kreps' explanation below is equally applicable to my argument when equating B with autocrats and A with foreign investors.

B carries a reputation from past behavior. For simplicity, we will suppose that B begins with an unsullied reputation, and B 's reputation is

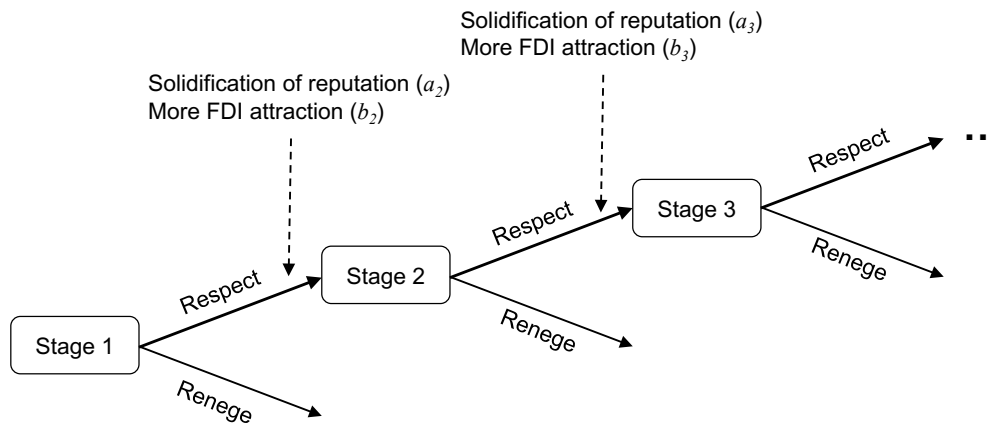
irrevocably sullied if ever B abuses trust. Any A will trust B if B has an unsullied reputation, and A will refuse to trust B if B 's reputation is sullied. Then B will always honor trust, and all A s will (in sequence) put their trust in B . This is just like the self-enforcing agreement ... we see that only B must be enduring, as long as B 's opportunities in later rounds can be tied to behavior in earlier rounds (Kreps, 1990, 106).

This framework also combines Manion (2015)'s discussion of the role of reputation in ensuring autocrats' credible commitment described earlier. Although not formalizing her argument, Manion accurately points out several elements that can be incorporated into Kreps' framework such as (a) the autocrats' ongoing chances to observe or break the rules, (b) the visibility of their violation of the rules by other players⁶, and (c) the positive (negative) effects of respecting (renegeing on) the rules on the reputation. Adding Manion's insights on authoritarian context to Kreps' conceptual framework, I set up a decision tree with multiple stages in which autocrats choose whether to continue their respect for or renege on judicial independence, as illustrated in Figure 2.5.⁷

Here I assume the initial level of judicial independence which provides the regime with some positive values of reputation and corresponding economic benefits from FDI (denoted as a_1 and b_1 respectively). Once autocrats set up judicial independence, foreign investors want autocrats to respect judicial independence because doing so is consistent with their business interests. Autocrats may have every chance to un-

⁶ This is also addressed by Kreps (1990, 107), saying that "it is critical ... that the A s are able to observe B 's past actions and that they condition their behavior on B 's actions. If either condition is not met, then B 's incentive to honor trust in any particular round disappears and, therefore, so does the incentive of the A s to give trust."

⁷ It illustrates a decision-theoretic argument since I am mainly interested in the behavioral choice of a single player (autocrats) regarding whether to maintain judicial independence or renege on it. I consider the behaviors of foreign investors and their interaction with autocrats a part of my analytical framework, but I do not formulate it as a game-theoretic setting because the payoffs of foreign investors are not my interest.



Value of reputation	a_1	$a_1 + a_2$	$a_1 + a_2 + a_3$
FDI (and constraints from foreign investors)	b_1	$b_1 + b_2$	$b_1 + b_2 + b_3$

FIGURE 2.5: Theoretical framework

dermine judicial independence in each stage, but such renegeing may be visible not just to domestic audiences (including foreign investors present in-country) but also to international actors such as prospective foreign investors and multinational corporations. This implies that foreign investors are able to discern whether autocrats have breached the rules they established.

Autocrats' renegeing on their initial commitment to judicial independence damages their reputation as a rule-abiding player and the regime's reputation of property rights protection via independent courts. Although autocrats' defection from judicial independence may give them a direct gain by expropriating individual properties, it also damages the regime's reputation, and deteriorating reputation further leads to sanctions by foreign investors such as the curtailment or cessation of FDI. By contrast, the respect for judicial independence allows autocrats to have a greater chance to attract FDI by enjoying a favorable recognition from foreign investors. Such a good reputation of the regime encourages the entrance of more foreign investors, meaning

that autocrats may face greater constraints imposed by foreign investors in later periods. Autocrats, as rational actors, will choose to respect judicial independence if the expected utility of doing so is greater than that of renegeing.

As the regime relies heavily on FDI, it becomes more likely that the respect for judicial independence is their dominant strategy in each stage. If FDI constitutes a significant portion of the regime's national economy and foreign investors thus have strong bargaining power vis-à-vis the regime, autocrats may want to avoid non-cooperation with or retaliation from foreign investors because the reduction of FDI-generated revenues will undermine their power base and potentially jeopardize their survival. By contrast, as the regime gains substantial benefits from FDI and forward-looking autocrats anticipate that those benefits come from judicial independence, they are consistently incentivized to respect judicial independence because any political actions of renegeing will be disadvantageous for the regime.

Then how does my theoretical framework explain the continuous maintenance of judicial independence as an equilibrium behavior for autocrats? The biggest takeaway from Figure 2.5 is that it becomes more costly for autocrats to renege on judicial independence as they move through the stages, mainly because autocrats' respect for judicial independence in one stage increases the payoffs in the next stage. For example, if autocrats choose to respect in stage 1, they can improve their reputation and welcome more FDI, and those benefits (a_2 and b_2 respectively) are added as the payoffs to the next stage. In stage 2, autocrats face the same situation as the previous stage, but renegeing in this stage is a more costly endeavor because they would lose the value of reputation ($a_1 + a_2$) and FDI ($b_1 + b_2$) which are greater than those in stage 1.⁸ The same process continues in the later stages.

⁸ The increasing value of a in later stages captures the self-reinforcing nature of reputation. The increasing value of b in later stages indicates the greater magnitude of constraints imposed by FDI and foreign investors. They may not increase linearly. The marginal impact of additional increase in these values might be smaller as stages proceed (i.e., $a_1 > a_2 > a_3$ and $b_1 > b_2 > b_3$), but this

Of course, autocrats may choose to undermine judicial independence if the benefits from returning to expropriation are sufficiently larger than those from having a better reputation and attracting more FDI. But since the critical point at which any gains of expropriation are larger than the value of reputation and FDI becomes higher over time⁹, autocrats find more difficult the choice to reverse their path once they have respected judicial independence in a previous stage. As a result, the continuous respect for judicial independence becomes an equilibrium strategy for autocrats, and in this way, judicial independence can be credibly maintained over the long term.

2.5 Conclusion

In this chapter, I have built a causal mechanism by which autocrats' commitment to judicial independence can be credibly maintained. The conceptual and theoretical discussion throughout this chapter highlights the role of FDI and foreign investors in imposing binding constraints on autocrats' opportunism to renege on judicial independence. Moreover, autocrats' commitment to the maintenance of judicial independence is reinforced by their incentives to build (and not to damage) a good reputation for their regime in order to attract more FDI and satisfy foreign investors.

A significant contribution in this chapter is to develop a credibility-inducing mechanism by identifying the sources of and the route to enhancing the credibility of autocrats' commitment. The lack of institutional devices to check and sanction autocrats' opportunism is arguably a tough challenge for autocrats to maintain their commitment to judicial independence credibly, but this does not necessarily mean that they always remain unrestrained. Instead, I claim that some alternative factors – economic forces and reputational concern – can be a suitable vehicle for tying the

does not undermine my argument here.

⁹ This assumes that the direct gain of expropriation by renegeing on judicial independence does not increase over time. I do not find any theoretical speculation or actual cases against this assumption.

hands of autocrats and ensuring credibility in their commitment. Furthermore, at least in the context of judicial institutions, such constraints might be more effective and binding when they come “from without” and from the economic domain, as autocrats are relatively in a better position to exercise tight control over domestic actors in the political and social sphere.

3

Testing the Effect of FDI on Judicial Independence in Authoritarian Regimes

In the previous chapter, I built my theory by developing a causal mechanism through which the regime's economic reliance on FDI is conducive to autocrats' continuing maintenance of judicial independence. In this chapter, I test my theoretical expectation quantitatively by using time-series, cross-sectional data on a large sample of authoritarian countries, which is, to my knowledge, among the first cross-national work to test the effect of FDI on judicial independence in authoritarian regimes.

I first review a small body of existing studies which have empirically examined the political and institutional effect of FDI in Section 3.1. Next, I lay out my research design in Section 3.2 by introducing the data and methods to be used in my quantitative analysis. In Sections 3.3 and 3.4, I present my empirical results. My baseline result in Section 3.3 lends support to my theoretical expectation: A regime's past reliance on FDI has a positive and significant effect on its current level of judicial independence. In Section 3.4, I conduct a series of extensions of the baseline anal-

ysis to identify more specific scope conditions for the theorized effect. The results of the extended analyses suggest that the theorized effect (a) is restricted to the economic dimension of judicial independence, (b) occurs not immediately but on a medium-/long-term basis, and (c) is contingent on the type of authoritarian regime. In Section 3.5, I conclude and offer several implications derived from my analysis. Supplementary information of my empirical analysis is included as an appendix in Section 3.6.

3.1 Related Literature: Empirical Studies on the Institutional Effect of FDI

In the previous decade, an emerging body of empirical studies in political science and economics has analyzed the effect of FDI on property rights protection (or, more broadly, institutional quality). Table 3.1 presents an overview of the selected statistical analyses in this camp and summarizes their research design and findings. Not all of these works are directly relevant to my focus on judicial independence in authoritarian regimes, but they are useful for picturing the current state of the literature regarding the subject of my interest.

Malesky (2009) was among the early researchers performing cross-national work identifying the effect of FDI on institutional reform. Focusing on 27 transition states in Eastern Europe and post-Communist countries, he found that a country's annual change in FDI stock as a percentage of GDP had a significant effect on its progress on economic reform. A theoretical implication of his research is valuable to my work because he highlighted the role of foreign investors as potential agents of initiating economic reform in the host country. However, a dependent variable in his analysis (the development of economic reform policies) does not include the element of

property rights protection (as the economic dimension of judicial independence).¹ Using the development of property rights institutions as a dependent variable, two studies – Ali et al. (2011) and Ganiou Mijiyawa (2014) – report mixed empirical findings on the effect of FDI on property rights protection, based on their analysis of a large sample of developing countries. Ali et al. (2011) found a positive and significant impact of FDI inflows as a percentage of GDP on property rights. By contrast, Ganiou Mijiyawa (2014) demonstrated that the independent effect of FDI inflows on property rights is null or even negative. He argued instead that the interactive effect of FDI conditioned on the level of constraints on the executive (e.g., the presence of checks-and-balances institutions) is positive and significant with respect to the reform of property rights institutions. All of these works selected a sample of countries based on the economic criterion (“developing” or “transitioning” countries, including both democracies and autocracies), which is different from my approach of looking only at authoritarian regimes.

A few empirical single-country case studies of Vietnam and China (authoritarian countries with fast-growing economies) examine the effect of FDI on institutional quality at a subnational level. In his analysis of 60 provinces in Vietnam, Dang (2013) found that institutional quality in a given province correlates positively and significantly with its average disbursed FDI per capita. Based on the firm-level survey of Chinese domestic firms, Long et al. (2015) found that in cities with a higher level of FDI, firms not only suffer less from tax and fee burdens but also express greater confidence in the local legal system and the protection of their properties and contracts. Their research is consistent with Wang (2015), which focused particularly

¹ Malesky (2009) used a country’s EBRD (European Bank for Reconstruction and Development) ranking as a proxy for the development of reform policies based on the eight elements of economic reforms. They include price liberalization, foreign exchange and trade liberalization, privatization of small state-owned enterprises (SOEs), privatization of large SOEs, enterprise reform/corporate governance, competition policy, bank reform, and reform of nonbank financial institutions (Malesky, 2009, 62).

on local courts in Chinese provinces. His quantitative analysis showed that provinces with higher FDI inflows from foreign countries are likely to invest more in their courts in terms of absolute scales (court funding per capita) and relative scales (court funding as a percentage of the overall government budget). He also found that citizens in those FDI-reliant provinces tend to have a more favorable perception of their local courts as clean and transparent. Although dependent variables for these studies (e.g., institutional quality, confidence in the legal system, judicial budget, and perceived corruption in the courts) are only loosely related to judicial independence, the core claim of these studies is consistent with my theoretical expectation. In this chapter, I seek to extend this claim to the broader context of the authoritarian world.

To my knowledge, Epperly (2017) is the only large-N empirical work based solely on authoritarian countries to regard FDI as a potential predictor of judicial independence. He included the level of FDI inflows as a percentage of per capita national income as one of the covariates in his analysis² and did not find any significant effect of FDI on judicial independence. My empirical analysis in this chapter follows Epperly (2017)'s cross-national approach by using a large sample of authoritarian countries, but I advance his work by bringing FDI to the forefront of my analysis and exploring various aspects of its effect on judicial independence in authoritarian regimes.

² As Epperly (2017) was primarily interested in testing the effect of electoral competition on judicial independence in non-democracies, FDI was not a key independent variable in his analysis.

Table 3.1: Overview of the selected empirical works on the institutional effect of FDI

Research	Sample	All autocracies?	Independent variable	Dependent variable	Related to JI?	Is FDI significant?
Malesky (2009)	27 transition states (in Eastern Europe and post-Soviet countries), 1991-2004	No	Annual change in FDI stock as a percentage of GDP	Index of economic reform policy (EBRD)	No	Yes
Ali et al. (2011)	70 developing countries, 1981-2005	No	FDI inflows/GDP	The combined index of Law and Order and Investment Profile (Political Risk Services Group)	Yes (economic)	Yes
Ganiou Mijiyawa (2014)	80 developing countries, 1970-2005	No	FDI inflows/GDP (5-year average)	Property rights index (Fraser Institute)	Yes (economic)	No
Dang (2013)	Vietnam (60 provinces), 2007	Yes	Average disbursed FDI per capita in 2006-2007	Provincial Competitiveness Index 2007	No	Yes
Long et al. (2015)	China (9,000+ firms, 116 cities)	Yes	Foreign share of total industrial asset at the FDI level	Tax and fees, Rule of law (confidence in local courts, property rights and contract protection) (World Bank Survey)	No	Yes
Wang (2015)	China (31 provinces), 1995-2006	Yes	(FDI+foreign loans)/GDP	Judicial corruption; Court funding (a) per capita, and (b) as a percentage of overall government budget	No	Yes
Epperly (2017)	Authoritarian countries, 1960-2009	Yes	FDI as a percentage of per capita national income	De facto judicial independence (Linzer and Staton, 2015)	Yes (political)	No

3.2 Research Design

3.2.1 Data

To examine the impact of FDI on the level of judicial independence in authoritarian regimes, I created a time-series, cross-sectional dataset of authoritarian regimes by using Autocratic Regime Data (Geddes et al. 2014, hereafter GWF).³ The unit of my analysis is the authoritarian country-year, with 52 authoritarian countries and years ranging from 1991 to 2010 depending on the data availability. I focus on the first two decades of the post-Cold War period for three reasons. First, the virtue of judicial independence and the rule of law has expanded around the globe since the end of the Cold War, which imposes greater external pressure on authoritarian regimes to adopt improved legal institutions and more independent courts in order to gain international recognition (Law and Versteeg, 2014). Second, as discussed in the previous chapter, the growing integration of the world economy during the post-Cold War period has led to a remarkable increase of FDI in authoritarian regimes (Moon, 2015; Tomashevskiy, 2017). This changing economic condition provides foreign investors with more opportunities to exercise their influence in the authoritarian host countries. The third reason is more practical; the availability of data is severely limited before the 1990s, especially in authoritarian regimes. Examining the recent decades allows me to construct a more complete dataset for my analysis rather than leaving it with many missing values.

My data included authoritarian regimes which lasted more than ten years without experiencing any “democratic” interruption during their authoritarian rule.⁴ I also

³ I also compared the GWF dataset with the Democracy and Dictatorship dataset by Cheibub et al. (2010, hereafter CGV). Despite a considerable similarity between these two datasets, I used the GWF dataset because it applies a stricter coding rule to identify authoritarian regimes. Specifically, the GWF dataset excludes a number of countries coded as a dictatorship in the CGV dataset if they are small, not independent, foreign-occupied, warlord, and provisional (Geddes et al., 2014).

⁴ For example, the Central African Republic, which was under a military dictatorship until 1993,

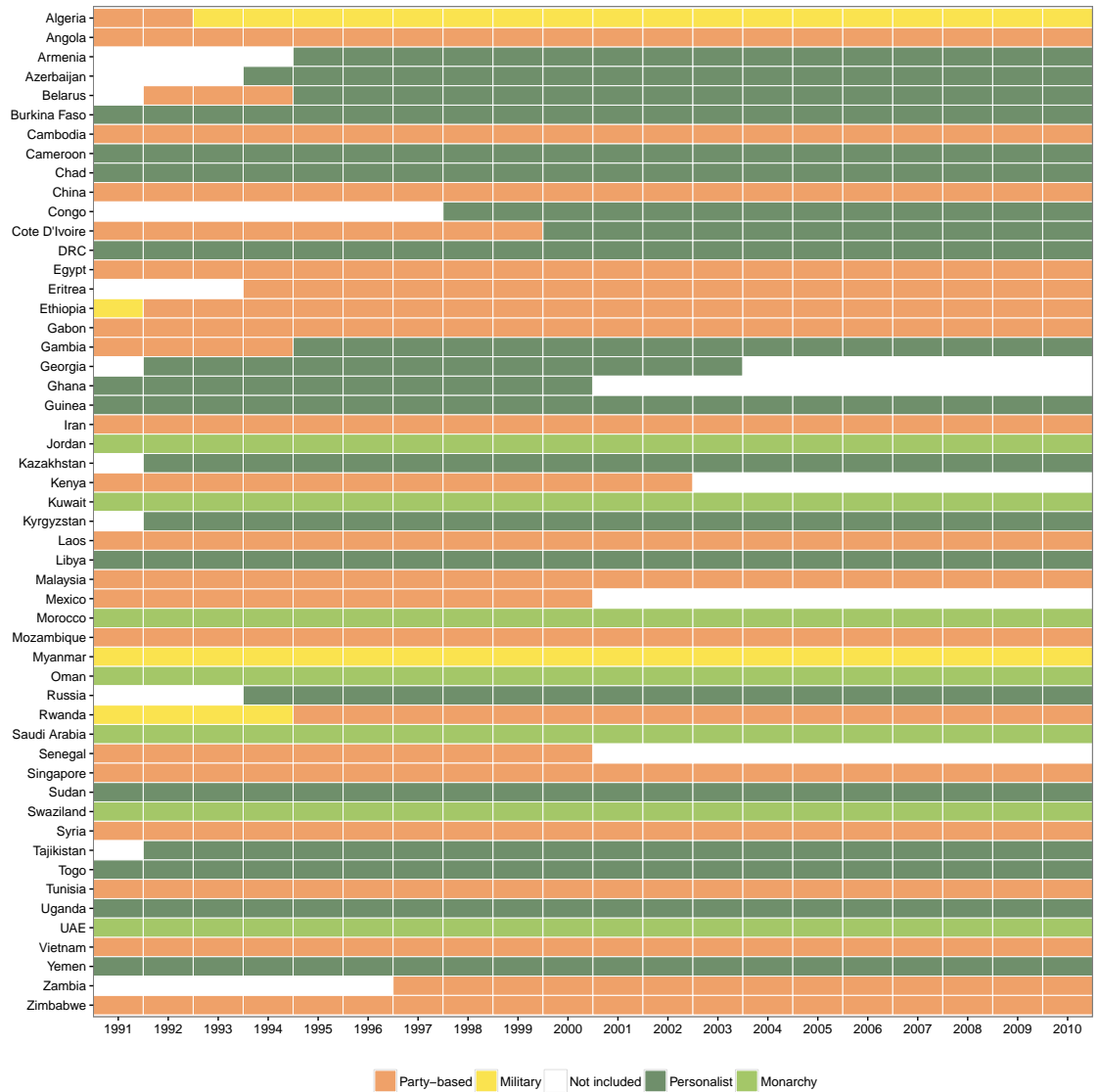


FIGURE 3.1: Full list of authoritarian countries and their regime types in my data

excluded Botswana and Namibia, both of which are coded as autocracy by the GWF but such classification is at odds with other measures of democracy (e.g., Polity IV

elected a new president Ange-Félix Patassé through democratic elections in 1993, and he was reelected in 1999 under free election. However, the country's democratic period was ended by a military coup in 2003, and the country became a personalistic regime. Since GWF did not code the Central African Republic as an autocracy during Patassé administration, I excluded the country from my data because there was a democratic interruption of its authoritarian rule between 1993 and 2003.

and Freedom House).⁵ Figure 3.1 illustrates the full list of authoritarian countries in my sample. It also specifies the four subtypes of authoritarian regimes classified by GWF for those countries in a given year: monarchy, military, personalist, and party-based regime. Party-based regimes and personalist regimes comprise the majority of authoritarian country-years in my data (41.1% and 39.9% respectively), and there are two long-lasting military dictatorships (Algeria and Myanmar) and six monarchies in the Middle East and Africa.

3.2.2 Dependent Variable

For my dependent variable, I need a measure of judicial independence that captures its “economic” side: the legal protection of property rights against state expropriation. However, it is challenging to construct a direct measure of judicial independence for my analysis because most existing indicators do not focus exclusively on its economic aspect. Instead, a majority of the judicial independence measures mainly highlights its political aspect, i.e., whether courts are free from political influences and external pressures such that the judges’ “decisions greatly constrain the choices of other actors” (Linzer and Staton, 2015, 225). Admittedly, judicial independence in the political realm certainly has an economic implication in that the government is unable to interfere in the role of the courts in protecting property rights if the courts are independent. Nevertheless, there is still a possibility that most of the existing measures might not be able to capture fully and directly the economic aspect of judicial independence that I examine here.

In my analysis, I use Contract Intensive Money (CIM) (Clague et al., 1999) as

⁵ The GWF and the CGV datasets code both Botswana and Namibia as dictatorships between 1991 and 2010. However, Botswana’s Polity IV score has been always higher than six (a threshold for democracy) for this period, and Namibia’s Polity IV score has remained six since 1990. Also, Freedom House classifies both countries as “free” since 1990. For this reason, I dropped Botswana and Namibia and focused only on the countries classified by all existing measures and datasets as dictatorships. My results are robust to the addition of Botswana and Namibia.

a proxy to measure the economic dimension of judicial independence. The CIM is defined as “the ratio of non-currency money to the total money supply, or $(M_2 - C)/M_2$, where M_2 is a broad definition of the money supply and C is currency held outside banks” (Clague et al., 1999, 188). Clague and his colleagues claim that “where citizens believe that there is sufficient third-party enforcement, they are more likely to allow other parties to hold their money in exchange for some compensation, and CIM is correspondingly higher” (Clague et al., 1999, 188). In other words, greater CIM values indicate that individuals are more likely to save their assets in banks, based on their “belief that property rights institutions constitute credible constraints on state predation” (Ríos-Figueroa and Staton, 2014, 110).

Admittedly, CIM is not a perfect measure of judicial independence because it is a proxy indicator derived purely from economic components without explicitly addressing the judiciary. Moreover, although the judiciary is arguably “one salient element of a state’s cluster of property rights institutions” (Ríos-Figueroa and Staton, 2014, 110-111), it may be the case that large CIM values may come from routes other than the judiciary. However, the CIM is a proper measure for my dependent variable because it conceptualizes the level of legal protection of property rights, thus is more directly related to the economic side of judicial independence than other existing measures.⁶ I obtained the CIM dataset from the World Economics and Politics Dataverse (Graham et al., 2018; Graham and Tucker, 2019); I logit-transformed the variable since it is a proportion variable with values between zero and one. Figure 3.2 presents the change of the logit-transformed CIM in all authoritarian countries in my data.

⁶ Moreover, the CIM is an “objective” measure calculated based on the values of M_2 and C , and its nature differs from most of the existing indicators of judicial independence which are subject to potential bias coming from expert surveys or arbitrary scoring (Moon, 2015).

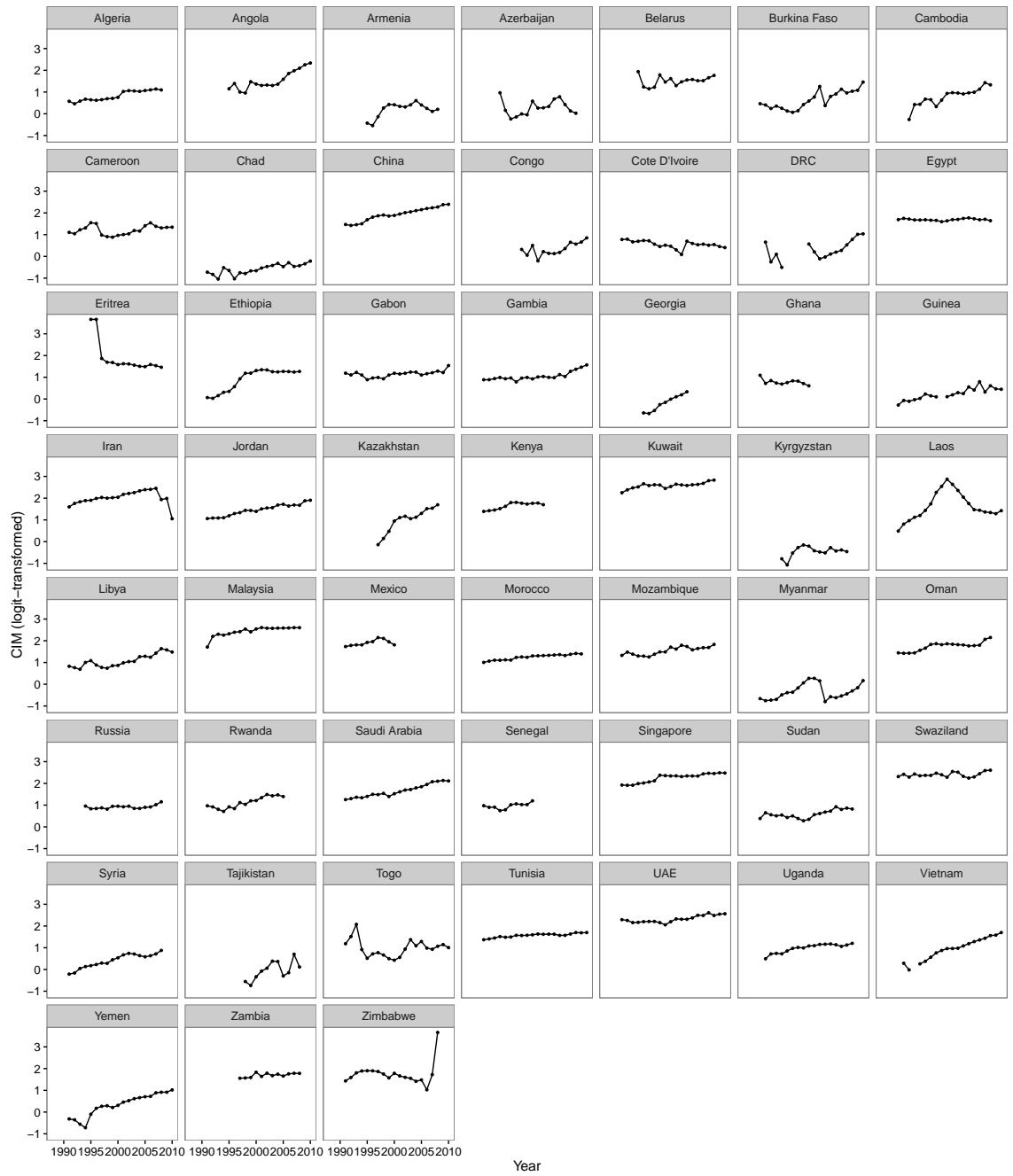


FIGURE 3.2: The value of the logit-transformed CIM in all authoritarian countries in my data

3.2.3 Independent and Control Variables

My principle independent variable is the regime’s reliance on FDI, measured as an inward FDI stock as a percentage of GDP (hereafter FDI stock/GDP). I make two theoretical justifications for choosing this measure. First, I prefer FDI *as a percentage of GDP* to the aggregated amounts because it captures the “relative importance of FDI to a country’s national economy” (Li, 2009b, 174), which is consistent with my theoretical argument.⁷ Second, FDI *stock* is a better measure for my analysis than FDI inflows since the former indicates the cumulative amount of FDI or total stake of foreign investors in the host country, whereas the latter captures “only single-year surges and not relative changes in existing bargaining power [of foreign investors]” (Malesky, 2009, 85).⁸ This reasoning is also consistent with Ali et al. (2011), saying that:

FDI stocks measure the total stake of foreign investors, whereas flows only measure an increase in that stake and may capture investors who have not invested previously in the country at all. As such, FDI flows could be more of a response to improvements of property rights protection, while the quality of property rights protection has been influenced by the current stock of FDI (Ali et al., 2011, 298).

Given that I am investigating whether the presence of FDI leads to autocrats’

⁷ In addition to this theoretical reason, there is an econometric reason not to use the aggregated amounts of FDI in my analysis. Given that both FDI aggregates and CIM are behavioral indicators that capture the credibility of property rights protection, it might be the case that FDI aggregates are highly correlated with the measure of my dependent variable. However, there is no reason to expect the CIM to be correlated with FDI as a percentage of GDP since the latter captures a country’s reliance on FDI.

⁸ According to the definition provided by the OECD, FDI inflows “record the value of cross-border transactions related to direct investment during a given period of time, usually a quarter or a year” (<https://data.oecd.org/fdi/fdi-flows.htm>), and FDI stocks measure “the total level of direct investment at a given point in time, usually the end of a quarter or of a year” (<https://data.oecd.org/fdi/fdi-stocks.htm>). In other words, the former captures year-by-year attraction of FDI (and thus may have a large fluctuation), whereas the latter measures the cumulative amount of FDI.

credible commitment to judicial independence, FDI stock is a more appropriate measure to assess its impact on the quality of property rights protection.⁹ I obtained the time-series, cross-sectional data of FDI stock/GDP from the online database of the United Nations Conference on Trading and Development (UNCTAD).

I included several covariates that may affect the economic aspect of judicial independence. First, wealthy countries are more likely to have sufficient resources and infrastructures to build and maintain an effective legal system (Epperly, 2017) and induce business interests to demand better protection for property rights (Haggard et al., 2008). Also, rapidly growing economies may have greater needs for property rights protection to boost their momentum of economic growth. For these reasons, I control for GDP per capita and GDP growth. Second, domestic investment, as well as FDI, may encourage autocrats' better protection of property rights, and thus I add a gross fixed capital formation as a percentage of GDP as a measure of domestic investment.

Third, autocrats tend to have a longer time horizon when their regimes are long-lasting, making them more willing to engage in long-term projects rather than myopic behavior (Li, 2009a). As a result, stable authoritarian regimes often provide better conditions for long-term institutional development such as the promotion of judicial independence. In this regard, I include the duration of the regime coded in GWF dataset.

Lastly, the potential effect of "resource curse" is controlled. According to the resource curse argument, when countries benefit considerably from natural resource endowment, political leaders have little incentives to develop democratic institutions that require greater accountability or representation (Ross, 2001, 2015; Gandhi and

⁹ See also Kerner (2014) for the conceptual discussion of FDI and potential issues when using it in political science research. My use of FDI stock instead of flows is consistent with his remark that FDI stock data "often provide a better conceptual fit to political science theory and particularly well suited to answering questions about FDI's influence on politics" (840).

Przeworski, 2007).¹⁰ Although this argument has not been extensively examined in previous work on judicial institutions, its logic implies that political leaders may not need independent courts for economic purposes when natural resources sufficiently fuel their national economy (Crabtree and Nelson, 2017). Based on this reasoning, I add oil rents and total natural resources rents as a percentage of GDP.

All independent and control variables are log-transformed based on the guidelines below.

- Since some values of FDI stock/GDP are between zero and one, I used $\ln(1 + \text{FDI stock/GDP})$ to make all values non-negative.
- Some values of GDP growth are negative, making it impossible to take the log. Following Moon (2015), I transformed the variable in the following way: if GDP growth is greater than zero, then use $\ln(1 + \text{GDP growth})$; otherwise, use $-\ln(1 - \text{GDP growth})$. In doing so, I can transform the variable without losing negative values.
- Some countries do not rely on oil rents, and thus the value of oil rents is zero. Since it is impossible to take the log in this case, I used $\ln(1 + \text{Oil Rents})$ to make all values non-negative.
- Since some values of natural resources are between zero and one, I used $\ln(1 + \text{Natural Resources})$ to make all values non-negative.

To avoid simultaneity bias and endogeneity, I treat all my independent and control variables in two ways: (a) to lag all those variables by three years, and (b) to take

¹⁰ In his seminal article, Ross (2001) suggests three distinct mechanisms through which oils (and natural resources more broadly) hinder democracy. He argues that resource-rich countries are closely associated with authoritarianism because political leaders take advantage of those resources (a) to avoid public pressures for accountability by setting up lower tax rates (rentier effect), (b) to foster internal security by spending more on repression devices such as military (repression effect), and (c) to discourage social and cultural changes that produce democratic government (modernization effect).

Table 3.2: Descriptive statistics

	Mean	SD	Min	Max	<i>N</i>
CIM	1.136	0.828	-1.071	3.664	878
<i>Panel A. Three-year Lag</i>					
FDI stock/GDP	2.551	1.120	0.000	5.459	915
GDP per capita	6.900	1.354	4.546	10.730	901
GDP growth	1.289	1.443	-3.937	3.590	903
Domestic investment	2.932	0.454	0.693	4.090	827
Regime duration	2.759	1.187	0.000	5.587	965
Oil rents	1.275	1.414	0.000	4.150	900
Natural resources	2.209	1.047	0.000	4.167	904
<i>Panel B. Three-year Moving Average</i>					
FDI stock/GDP	2.648	1.061	0.126	5.506	915
GDP per capita	6.959	1.363	4.692	10.780	903
GDP growth	1.432	1.158	-3.461	3.389	903
Domestic investment	2.959	0.400	0.939	3.925	820
Regime duration	2.857	1.085	0.000	5.591	965
Oil rents	1.308	1.427	0.000	4.094	904
Natural resources	2.248	1.039	0.000	4.112	911

their three-year moving average in order to smooth out short-term fluctuations.¹¹ Using three-year lag and moving average is also in line with my theoretical reasoning that the regime's reliance on FDI in the past – either three years ago or for the previous three years – affects the level of judicial independence in the present. Table 3.2. presents descriptive statistics for my analysis.

¹¹ A three-year moving average at year t is calculated by $\frac{1}{3} \sum_{i=1}^3 X_{t-i}$ where X is all the independent and control variables. For example, the three-year moving average of FDI stock/GDP in 1995 is the average of FDI stock/GDP in 1992, 1993, and 1994.

3.2.4 Estimation Strategy

I use an OLS model with country fixed effects to estimate the impact of the regime's reliance on FDI on judicial independence in authoritarian regimes.¹² The model is specified as:

$$Y_{it} = \alpha + \beta(\text{FDI Stock/GDP})_{i,t-3} + \gamma\mathbf{X}_{i,t-3} + \eta_i + \varepsilon_{it}$$

where Y_{it} represents the value of logit-transformed CIM in country i at year t , $(\text{FDI Stock/GDP})_{i,t-3}$ represents the value of FDI stock as a percentage of GDP in country i at year $t - 3$, $\mathbf{X}_{i,t-3}$ is a vector of covariates, and η_i is country fixed effects. I used a robustness standard error clustered at each country to address autocorrelation and heteroscedasticity in the panel data.

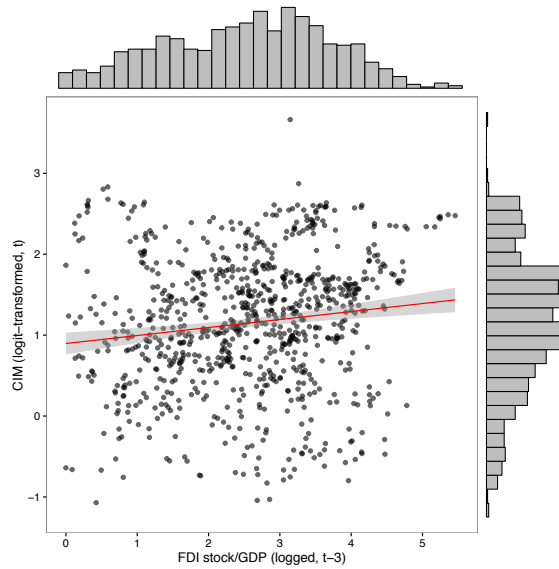
3.3 Baseline Results

I first present some descriptive evidence as an overview of the relationship between my key variables. Figure 3.3 is the scatterplot to illustrate the relationship between FDI stock/GDP and CIM in my data. Although the country fixed effects model is the most appropriate for my analysis, even the pooled OLS-based result suggests positive, albeit weak, correlation between two variables. Decomposing Figure 3.3, I create country-by-country scatterplots in Figures 3.4 and 3.5, which support the positive bivariate relationship in most authoritarian countries in my data.

The baseline results (Tables 3.3 and 3.4) support my hypothesis that the regime's past reliance on FDI is positively associated with the current level of judicial in-

¹² My use of fixed effects model is warranted by the results of F-test and Hausman test, which suggest that fixed effects model is preferable to pooled OLS and random effects model. In addition, I failed to reject a null hypothesis that there are no time fixed effects, thus I use only country fixed effects for my estimation.

(a) Three-year lag



(b) Three-year moving average

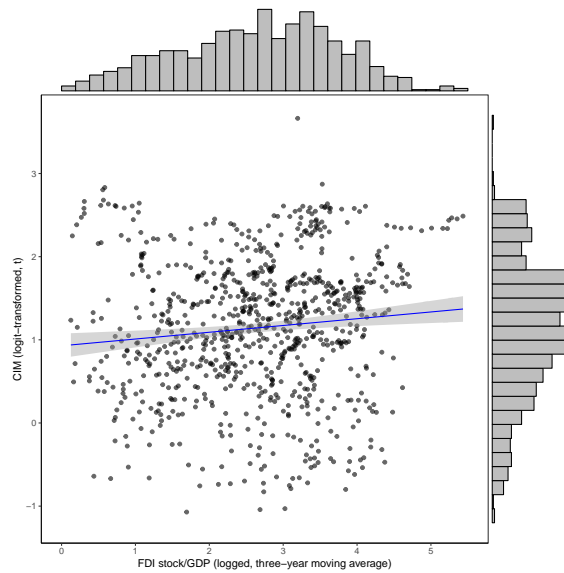


FIGURE 3.3: Scatterplot of the relationship between FDI reliance and judicial independence in the entire sample: Each dot represents authoritarian country-years. Bivariate regression lines and 95% confidence intervals are presented. The coefficient of $(\text{FDI stock/GDP})_{t-3}$ in panel (a) is statistically significant at $p < 0.001$, and the coefficient of $(\text{FDI stock/GDP})_{\text{MovingAverage}}$ in panel (b) is statistically significant at $p < 0.01$.

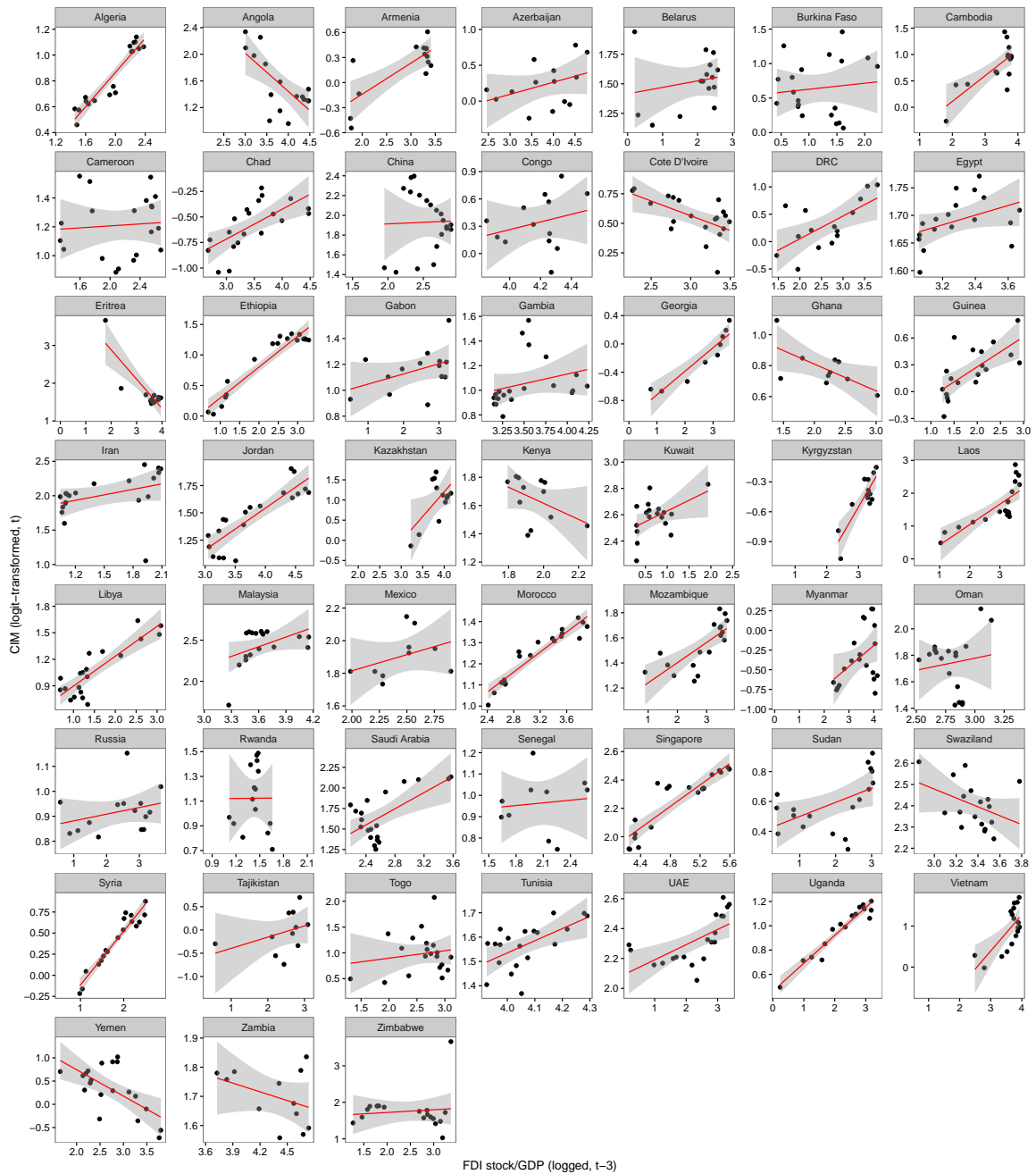


FIGURE 3.4: Country-by-country scatterplots of the relationship between FDI reliance (three-year lag) and judicial independence: Each dot represents year. x -axis is FDI stock/GDP with three-year lag. Linear regression line and 95% confidence interval are presented.

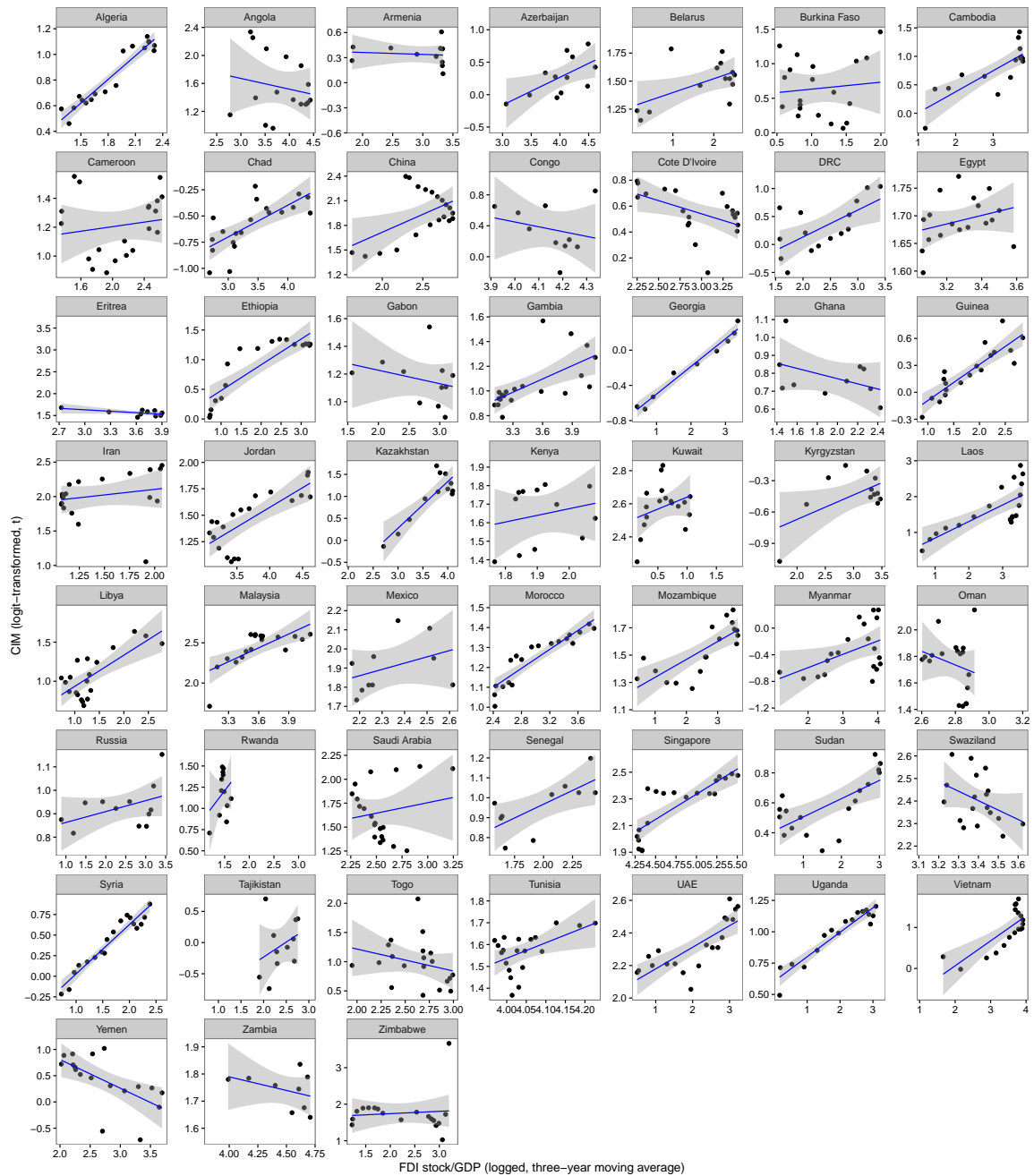


FIGURE 3.5: Country-by-country scatterplots of the relationship between FDI reliance (three-year moving average) and judicial independence: Each dot represents year. x -axis is a three-year moving average of FDI stock/GDP. Linear regression line and 95% confidence interval are presented.

dependence in authoritarian regimes. FDI stock/GDP is positive and statistically significant at $p < 0.01$, and this finding is consistent under different specifications, i.e., using variables of three-year lag (Table 3.3) or a three-year moving average (Table 3.4). As expected, economic development is a strong predictor for judicial independence, but even after controlling for GDP per capita, the significance of FDI stock/GDP does not disappear. I also find a significant effect of the regime's duration, which suggests that the level of judicial independence tends to rise as autocrats stay longer in office.

Interestingly, I do not find any significant effect of domestic investment on judicial independence. As discussed previously, this may be due not only to the fact that domestic investors are relatively more easily captured by the regime but also because they may have fewer incentives to call for the legal protection of their property rights if they get access to clientelistic or informal ties which facilitate their business. This null effect suggests that if investment imposes binding constraints to autocrats' commitment to judicial independence, such constraints come from without (FDI) not from within (domestic investment).¹³ Lastly, my results do not support the resource curse argument. Both oil rents and natural resources are not statistically significant, indicating that resource dependence does not necessarily have corrosive effects on judicial independence in authoritarian regimes.

The substantive effect of FDI stock/GDP on judicial independence is shown in Figure 3.6. In the left panel, I perform a simulation with 10,000 draws from model (4) in Table 3.3 and generate the expected value of judicial independence upon the varying level of FDI stock/GDP while holding all other covariates constant at their mean values. In the right panel, I pick two specific values of FDI stock/GDP and

¹³ This finding extends Wang (2015)'s argument based on China to a cross-national context. He argued that those Chinese provinces with a large number of foreign investors have a less corrupt judicial system and better enforcement of the rule of law, whereas local officials are less likely to advance judicial fairness when they rely on domestic private enterprises and state-owned enterprises.

Table 3.3: Full baseline results with using three-year lag

	(1)	(2)	(3)	(4)	(5)	(6)
FDI stock/GDP	0.193*** (0.030)	0.118*** (0.030)	0.098*** (0.032)	0.100*** (0.032)	0.094*** (0.032)	
GDP per capita		0.311*** (0.061)	0.293*** (0.058)	0.304*** (0.060)	0.310*** (0.058)	0.308*** (0.060)
GDP growth		0.019* (0.011)	0.015 (0.012)	0.014 (0.011)	0.013 (0.011)	0.014 (0.012)
Domestic investment		-0.001 (0.065)	-0.025 (0.057)	-0.033 (0.059)	-0.035 (0.059)	-0.026 (0.062)
Regime duration			0.085*** (0.028)	0.086*** (0.028)	0.090*** (0.027)	0.086*** (0.029)
Oil rents				-0.033 (0.060)	-0.028 (0.055)	-0.024 (0.060)
Natural resources				0.070 (0.080)	0.061 (0.070)	0.062 (0.081)
$\sqrt{\text{FDI stock/GDP}}$						0.227*** (0.084)
Observations	845	739	739	735	768	735
Number of countries	52	49	49	49	51	49
Country fixed effects	✓	✓	✓	✓	✓	✓
Botswana and Namibia					✓	
Adjusted R ²	0.171	0.241	0.250	0.253	0.267	0.260

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

indicate their corresponding level of judicial independence. It suggests that as FDI stock/GDP increases from the first quantile (5.6%) to the third quantile (30.2%), the value of logit-transformed CIM increases approximately 20.6%.

Table 3.4: Full baseline results with using a three-year moving average

	(1)	(2)	(3)	(4)	(5)	(6)
FDI stock/GDP	0.236*** (0.036)	0.124*** (0.035)	0.106*** (0.036)	0.108*** (0.038)	0.103*** (0.037)	
GDP per capita		0.335*** (0.065)	0.313*** (0.062)	0.315*** (0.061)	0.322*** (0.060)	0.319*** (0.061)
GDP growth		0.025 (0.018)	0.019 (0.019)	0.018 (0.018)	0.018 (0.019)	0.019 (0.019)
Domestic investment		-0.003 (0.075)	-0.029 (0.066)	-0.030 (0.072)	-0.034 (0.072)	-0.026 (0.076)
Regime duration			0.081*** (0.031)	0.083*** (0.031)	0.087*** (0.030)	0.083*** (0.032)
Oil rents				-0.024 (0.057)	-0.030 (0.052)	-0.020 (0.057)
Natural resources				0.027 (0.084)	0.035 (0.075)	0.025 (0.086)
$\sqrt{\text{FDI stock/GDP}}$						0.273*** (0.100)
Observations	843	728	728	724	757	724
Number of countries	52	49	49	49	51	49
Country fixed effects	✓	✓	✓	✓	✓	✓
Botswana and Namibia					✓	
Adjusted R ²	0.193	0.265	0.280	0.279	0.282	0.275

Note:

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

3.4 Extensions of my Baseline Analysis

Baseline results strongly support my theoretical expectation that the regime's past reliance on FDI increases the current level of judicial independence in authoritarian regimes. In this section, I extend my baseline analysis by addressing three issues related to measurement, specification, and sample. These extensions are useful for specifying scope conditions for my theorized effect of FDI on judicial independence.

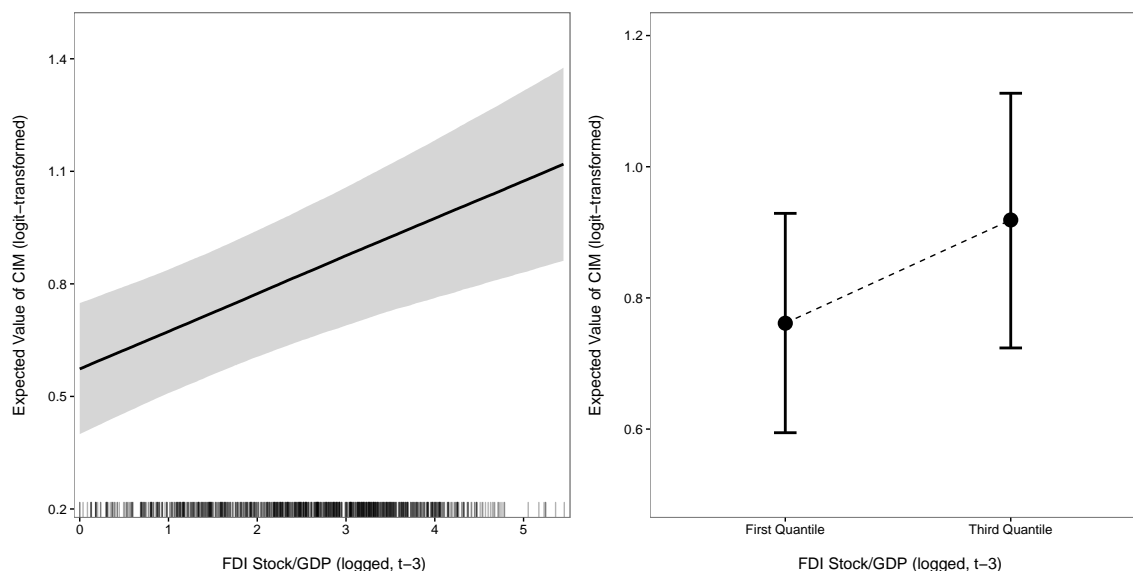


FIGURE 3.6: Simulation of the expected effects of FDI stock/GDP on judicial independence: 95% confidence intervals are presented as a shaded grey area (left) and error bars (right).

3.4.1 *Alternative Measures of Judicial Independence*

The first issue is the possibility that my results are driven by my chosen measure of judicial independence. Judicial independence is not directly observable, which has posed serious empirical challenges for scholars attempting to construct valid cross-national measures. Despite the presence of numerous measures of judicial independence, they are not always highly correlated with each other since they capture different aspects or are based on different theoretical rationales of judicial independence.¹⁴

As discussed earlier, it is difficult to find a proper, alternative measure to my original measure of judicial independence (CIM) that captures its economic aspect. Here I use the Political Risk Rating from the International Country Risk Guide (hereafter ICRG) data as the closest alternative to the CIM. The ICRG is widely

¹⁴ See Ríos-Figueroa and Staton (2014) and Linzer and Staton (2015) for their excellent reviews of existing measures of judicial independence and the conceptual, theoretical, and practical challenges to developing them.

understood as one of the indicators of judicial independence in the literature (Ríos-Figueroa and Staton, 2014; Linzer and Staton, 2015), and it has been employed in several empirical studies to capture the institutional protection of property rights (Acemoglu et al., 2001; Li and Resnick, 2003; Moon, 2015). I take two particular political risk components from the ICRG: (a) an “investment profile” component (using a 12-point scale) which assesses factors that affect the risk to investment such as expropriation and contract viability; (b) a “law and order” component (6-point scale) which evaluates the strength and impartiality of the legal system and popular observance of the law (Howell, 2011). I use the combined score of both components (18 points as a maximum) as an alternative measure of the CIM.¹⁵

The results I obtained using ICRG as a dependent variable are shown in Table 3.5: the combined score of the two components in panel A and only the score of investment profile component in panel B.¹⁶ The ICRG’s coverage of fewer authoritarian countries than CIM reduces the sample size, but the results show the significant effect of FDI stock/GDP on judicial independence in both panels under different specifications, although models with three-year lag variables are weakly significant. This result confirms my finding that reliance on FDI promotes the better protection of property rights in authoritarian regimes.

As described earlier, the compartmentalized nature of judicial independence in authoritarian regimes suggests that autocrats may strengthen the independence of courts for economic reasons but not necessarily for political and social reasons (Wang, 2015; McCarthy and Un, 2017). If this observation is true, I would expect not to see the theorized effect when using the measures of judicial independence that do not

¹⁵ Consistent with the observation by Moon (2015), I find a moderately high correlation ($r = 0.49$) between the CIM and the ICRG.

¹⁶ Only the coefficient of FDI stock/GDP is presented in Table 3.5. See Table 3.8 in Section 3.6 for the full regression results including covariates. Findings in Table 3.8 are consistent with the baseline results, and I additionally find a positive and significant effect of GDP growth on judicial independence.

Table 3.5: Regression results with using alternative measures of judicial independence

	Three-year lag		Three-year moving average	
	(1)	(2)	(3)	(4)
<i>Panel A. ICRG (investment profile + law and order)</i>				
FDI stock/GDP	1.152*** (0.267)	0.658* (0.356)	1.400*** (0.277)	0.705** (0.337)
Observations	756	652	755	641
Number of countries	40	40	40	40
Country fixed effects	✓	✓	✓	✓
Covariates		✓		✓
Adjusted R ²	0.138	0.211	0.166	0.279
<i>Panel B. ICRG (investment profile only)</i>				
FDI stock/GDP	0.969*** (0.225)	0.521* (0.293)	1.175*** (0.231)	0.551** (0.260)
Observations	756	652	755	641
Number of countries	40	40	40	40
Country fixed effects	✓	✓	✓	✓
Covariates		✓		✓
Adjusted R ²	0.124	0.223	0.149	0.302
<i>Panel C. Latent de facto judicial independence</i>				
FDI stock/GDP	0.071 (0.050)	0.020 (0.053)	0.093 (0.059)	0.007 (0.066)
Observations	915	794	914	782
Number of countries	52	49	52	49
Country fixed effects	✓	✓	✓	✓
Covariates		✓		✓
Adjusted R ²	0.029	0.132	0.039	0.172
Note:	* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$			

specify its economic dimension. To test this argument, I re-ran the models using Linzer and Staton (2015)'s measure of latent *de facto* judicial independence.¹⁷ Panel C in Table 3.5 shows that the coefficient of FDI stock/GDP is not statistically significant under this measure. This result suggests that the effect of FDI on judicial independence does not extend beyond its economic dimension. In other words, the regime's reliance on FDI may constrain autocrats to pursue judicial independence by securing property rights, but this does not necessarily mean that such an effect spills over into the political and social spheres of judicial independence (Moustafa, 2014). Various dimensions of judicial independence are often separate in the authoritarian context and courts can be independent to achieve economic development but at the same time subservient to exercise political controls.¹⁸

3.4.2 *Different Lags*

My second concern is that my choice of three-year lag might be arbitrary. On the one hand, I used it for an econometric reason to avoid simultaneity bias and endogeneity, based on the reasoning that judicial independence in the current year cannot cause the regime's reliance on FDI three years ago. However, there is also a theoretical reason underlying the choice of a three-year lag. I assume that the regime's reliance on FDI may not generate its effect on judicial independence immediately (e.g., within

¹⁷ Linzer and Staton (2015) constructed the measure of judicial independence as a latent concept by scaling eight existing measures of independence. Among these measures are CIM and ICRG, but the measures other than the CIM are more relevant to the political and social aspects of judicial independence, and Linzer and Staton used only the "law and order" component of the ICRG in their models. For this reason, I assume that their measure of judicial independence is closer to capturing its political and social dimensions.

¹⁸ Singapore is one of the prominent examples in this case. As Rajah (2012, 23) notes, Singapore has a bifurcated legal system in that "it matches the law of the liberal West in the commercial arena while repressing civil and political individual rights." The recent Rule of Law Index 2019 from the World Justice Project also reports that Singapore, compared to countries with similar income level, is ranked very high in "Order and Security" (1/38) and "Regulatory Enforcement" (3/38) but low in "Open Government" (24/38) and "Fundamental Rights" (28/38) (The World Justice Project, 2019, 132).

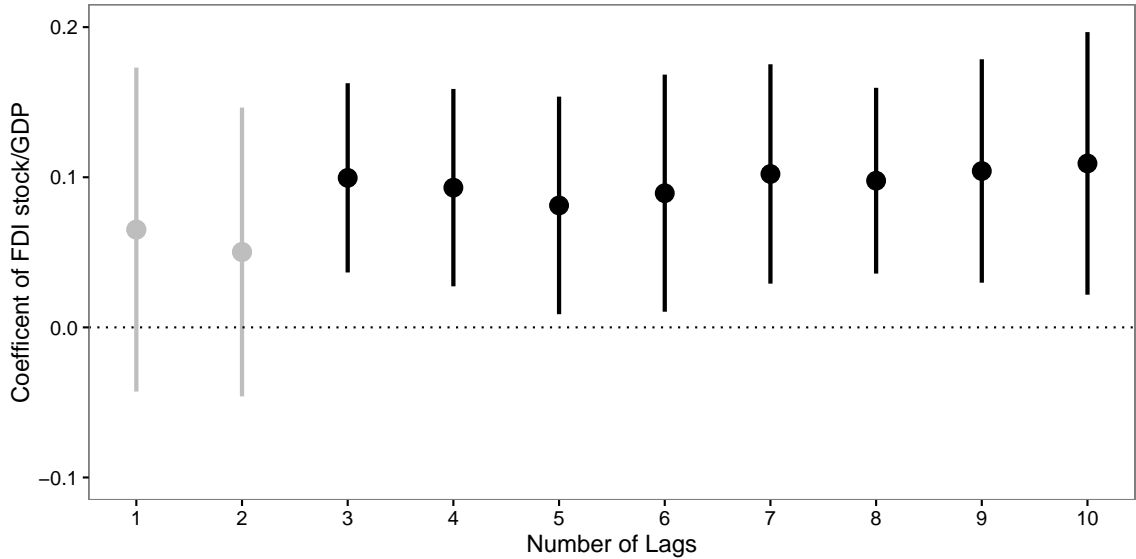


FIGURE 3.7: The medium- and long-term effect of FDI stock/GDP on judicial independence: All independent and control variables are lagged with different number of years. All covariates are included in the regression. Coefficients of FDI stock/GDP and their 95% confidence intervals are presented. Non-significant results are colored in grey.

the following year). Given its nature as a long-term and large-scale investment, it takes time for FDI to settle in the host country and shape binding conditions which may constrain autocrats. This assumption raises the question of whether the effect of FDI reliance on judicial independence occurs immediately or relatively medium- or long-term.

To explore this question, I lagged all independent and control variables by the different number of years from one year ($t - 1$) to ten years ($t - 10$) and re-ran the baseline model (model (4) in Table 3.3). Figure 3.7 depicts the coefficients of FDI stock/GDP in ten separate models with different lags and demonstrates that the theorized effect (significance of FDI stock/GDP) does not appear immediately but only when the lag is more than two years.¹⁹ This confirms my theoretical expectation about the medium- and long-term effect of FDI reliance on judicial independence.

¹⁹ See Figure 3.9 and Table 3.9 in Section 3.6 for the full regression results with covariates.

3.4.3 Different Regime Types

In my baseline analysis, I did not consider the different kinds of authoritarian regimes, thus the last issue I must address is whether my results are specific to regime types. Authoritarian regimes are not identical: They have differences in terms of decision-making procedures, the selection and succession of leaders, and their methods for responding to society and their opposition (Geddes, 1999, 121). Given that these differences largely account for the variations in political and economic outcomes in authoritarian regimes (Cheibub et al., 2010, 83), it may be reasonable to expect the theorized effect to be heterogeneous across political regimes.

A group of scholars has found such regime-specific differences while examining the nexus between authoritarian institutions and property rights protection. Wright (2008) argued that autocrats' incentive to create binding legislatures to constrain their power is determined by the regime's dependence on domestic investment and natural resources. He found that military regimes and single-party regimes, which are dependent more on domestic investment but less on natural resources, tend to have binding legislatures as an indication to investors of credible constraints on the expropriation of property rights. By contrast, personalist regimes and monarchies rely largely on "unearned" income such as natural resources, thereby making their legislatures non-binding to split or weaken oppositions. This finding is substantiated by his later work (Wilson and Wright, 2017) indicating that the effect of authoritarian legislatures on diminishing expropriation risk is prominent only in non-personalist regimes. Gehlbach and Keefer (2012) posited that authoritarian ruling parties institutionalize the organizational capability of collective action by regime supporters to defend themselves against state expropriation. Their argument addressed another mechanism through which party-based regimes are better able to constrain the regime's confiscatory behavior. In sum, these scholars claim that binding insti-

Table 3.6: Comparison of the means of each variable by regime types

	Party-based/military	Personalist/monarchy	Difference
CIM_t	1.379 (0.736)	0.933 (0.849)	0.446*
FDI stock/GDP $_{t-3}$	2.703 (1.151)	2.418 (1.080)	0.285*
GDP per capita $_{t-3}$	6.769 (1.274)	7.016 (1.410)	-0.247*
GDP growth $_{t-3}$	1.424 (1.338)	1.168 (1.525)	0.256*
Domestic investment $_{t-3}$	3.048 (0.433)	2.847 (0.452)	0.201*
Regime duration $_{t-3}$	3.012 (0.923)	2.549 (1.321)	0.463*
Oil rents $_{t-3}$	1.202 (1.309)	1.345 (1.494)	-0.143
Natural resources $_{t-3}$	2.214 (0.877)	2.212 (1.170)	0.002

Note: The mean and standard deviation (in parenthesis) of each variable are presented. “Difference” is the mean of each variable in party-based and military regimes minus that in personalist regimes and monarchies. Statistical significance (at $p < 0.01$) from two sample t -test is marked with an asterisk.

tutions to constrain the regime’s expropriation of property rights are more likely to exist in party-based (and military) regimes and less likely in personalist regimes (and monarchies).

I am also able to test this argument, although it is derived mostly from the observation of authoritarian legislatures, because courts are another important institution capable of constraining autocrats’ confiscatory behavior. Following the distinction made by Wright (2008), I divide my data into two groups: (a) party-based regimes and military regimes and (b) personalist regimes and monarchies. Table 3.6 shows a comparison of the mean values of the variables used in my analysis between the two groups of authoritarian regimes. The comparison shows that party-based regimes and military regimes have a larger average CIM value, meaning that those regimes better protect property rights with legal institutions than personalist regimes and monarchies. Table 3.6 also lends partial support for Wright (2008)’s observation, as I find that party-based regimes and military regimes rely more on investment (both foreign and domestic), while no significant difference exists between the two groups in terms of resource dependence.

Table 3.7: Regression results by regime types

	Three-year lag		Three-year moving average	
	(1)	(2)	(3)	(4)
<i>Panel A. Party-based and military regimes</i>				
FDI stock/GDP	0.226*** (0.049)	0.113** (0.045)	0.302*** (0.053)	0.118** (0.056)
Observations	384	312	379	304
Number of countries	24	21	21	21
Country fixed effects	✓	✓	✓	✓
Covariates		✓		✓
Adjusted R ²	0.226	0.294	0.275	0.294
<i>Panel B. Personalist regimes and monarchies</i>				
FDI stock/GDP	0.164*** (0.032)	0.079 (0.049)	0.186*** (0.040)	0.078 (0.065)
Observations	457	419	460	416
Number of countries	29	29	29	29
Country fixed effects	✓	✓	✓	✓
Covariates		✓		✓
Adjusted R ²	0.127	0.250	0.136	0.276
Note:	* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$			

If the characteristics of these two groups are quite distinct from each other, can we also find a differential effect of FDI reliance for judicial independence? To answer this question, I re-ran my baseline regression by using two subsets of my original data. My results (Table 3.7) show that my theorized effect exists in party-based regimes and military regimes (panel A) but not in personalist regimes and monarchies (panel B),²⁰ which confirms the argument by Wright and the other scholars in the context of judicial independence: Party-based regimes and military dictatorships do better in protecting property rights via independent courts and their performance is associated with their reliance on FDI.

²⁰ Only the coefficient of FDI stock/GDP is presented in Table 3.7. See Table 3.10 in Section 3.6 for the full regression results with including covariates.

Why does the reliance on FDI not serve as binding constraints to autocrats in personalist regimes and monarchies? One compelling explanation is derived from recent work by Wright and Zhu (2018) which highlighted rent-seeking incentives by foreign investors in personalist regimes. Fixed asset investment, which entails substantial initial capital and high sunk costs, often deters the entrance of potential rivals into the market, and the limited market competition offers more opportunities for foreign investors to extract monopoly rents from the host country. Wright and Zhu argued that the rent-seeking activities by fixed asset investors are often facilitated in personalist regimes due to the lack of institutional constraints and the prevalence of family control of economic sectors. Their analysis can be connected to my examination of why autocrats are less likely to be constrained by FDI in personalist regimes. If fixed asset investors engage in and obtain benefits from rent-seeking, they no longer constrain autocrats effectively because they may prefer to “bribe or collude with host governments to guarantee privileged access and strike exclusive deals” (Wright and Zhu, 2018, 344). Further, the immobility of fixed assets renders the exercising of sanctions (e.g., withdrawal of their investment) against state predation by foreign investors more difficult, thus weakening autocrats’ incentives to develop and maintain judicial independence. I therefore speculate that the null effect of FDI reliance on judicial independence in personalist regimes may come from the presence of large fixed asset investment and foreign investors’ preference for rent-seeking and collusion with the regime.²¹

²¹ I stop short of testing this argument empirically due to the limited availability of panel data on sectoral FDI in authoritarian regimes. Although Wright and Zhu (2018) collected such data, their data (obtained from the UNCTAD) contain only a small number of authoritarian countries with large numbers of missing values. For this reason, instead of examining the sector-specific effect of FDI on judicial independence, I merely suggest a theoretical claim that the effect of FDI reliance on judicial independence may be contingent on the sectoral composition of FDI and the heterogeneous motivations of foreign investors in the host country. In Chapter 5, I revisit this issue as one of the agendas for future research.

3.5 Conclusion

In this chapter, I analyzed the effect of FDI on judicial independence in authoritarian regimes. I hypothesized that the level of judicial independence is higher in authoritarian countries where FDI represents a significant portion of their national economy. Using a cross-national statistical analysis, I found a medium-/long-term effect of the regime's past reliance on FDI on the current level of judicial independence in authoritarian countries. Extensions of my baseline analysis add nuance to my findings, showing that the theorized effect is prominent (a) only on the economic dimension of judicial independence and (b) mostly in party-based regimes and military dictatorships rather than personalist regimes and monarchies.

My empirical analysis in this chapter demonstrates the significance of FDI in promoting judicial independence in authoritarian regimes. At the same time, it also suggests that the effect of FDI does not always guide the development of judicial independence in autocracies. The medium- and long-term impact of FDI indicates that it may not provide an immediate blessing for the improvement of judicial institutions in authoritarian regimes. In other words, it takes time and effort for conditions to mature enough to enjoy the fruits of FDI before advancing judicial independence. Moreover, political/institutional arrangements and economic conditions in specific regime types may incite foreign investors' rent-seeking motivations, undermine their leverage vis-à-vis the regime, and diminish FDI's effectiveness as a binding constraint. Lastly, considering the compartmentalized nature of judicial independence in autocracies, it may be an overstretch to argue that economic factors, including FDI, promote the other dimensions of judicial independence. Therefore, my analysis in this chapter suggests a "cautious optimism" about the institutional effect of FDI on judicial independence in authoritarian regimes.

3.6 Appendix

In this section, I present supporting information of my empirical analysis, including full regression tables and coefficient plots.

3.6.1 Alternative Measures of Judicial Independence

Figure 3.8 illustrates a bivariate correlation between four measures of judicial independence used in the analysis: CIM, ICRG (“investment profile” and “law and order”), ICRG (“investment profile” only), and Linzer and Staton (2015)’s latent *de facto* judicial independence (LJI; logit-transformed). I find moderately high correlations between the CIM and alternative measures of judicial independence.

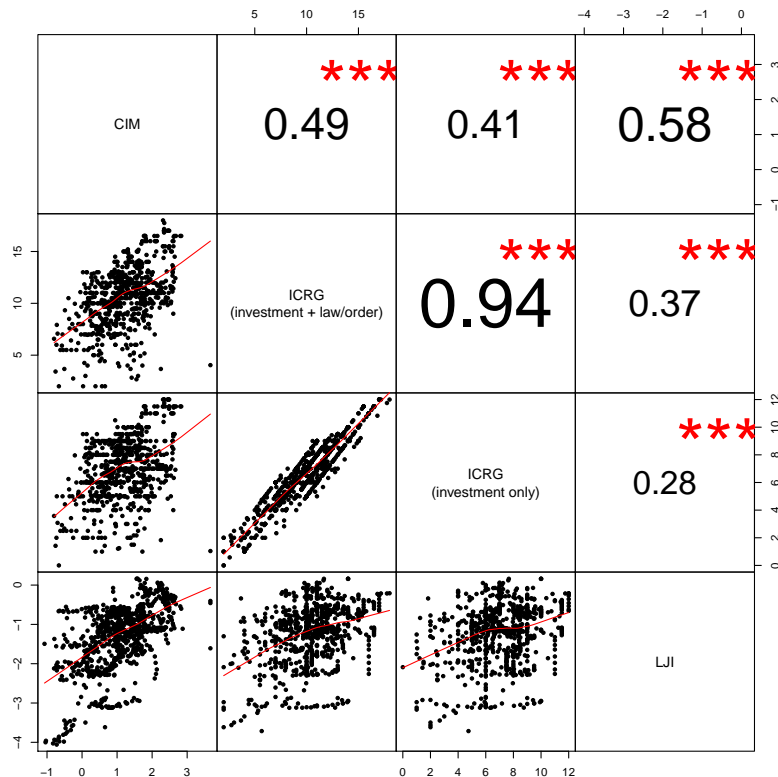


FIGURE 3.8: Correlation plot between four measures of judicial independence

Table 3.8 is the full results of Table 3.5. Models (1)-(4) present the full results of baseline regression (including covariates) with replacing the original dependent variable (CIM) with ICRG (panels A and B in Table 3.5). Consistent with the baseline results, I find significant effects of FDI stock/GDP, GDP per capita, and regime duration. Results also show the significance of GDP growth. In Models (5) and (6), I re-ran the baseline models by using Linzer and Staton (2015)'s latent *de facto* judicial independence (which mainly capture its political aspects) as a dependent variable. As indicated in panel C in Table 3.5, the coefficient of FDI stock/GDP is not statistically significant.

Table 3.8: Full regression results with using alternative measures of judicial independence

Dependent Variable:	ICRG		ICRG		Latent Judicial Independence (Linzer and Staton 2015)	
	Investment Profile + Law and Order		Investment Profile Only		(5)	(6)
	(1)	(2)	(3)	(4)	(5)	(6)
FDI stock/GDP	0.658* (0.356)	0.705** (0.337)	0.521* (0.293)	0.551** (0.260)	0.020 (0.053)	0.007 (0.066)
GDP per capita	0.967*** (0.373)	1.206*** (0.321)	0.862*** (0.287)	1.156*** (0.268)	-0.027 (0.057)	0.008 (0.052)
GDP growth	0.217** (0.106)	0.531*** (0.169)	0.195** (0.098)	0.457*** (0.141)	0.037** (0.019)	0.079** (0.034)
Domestic investment	0.178 (0.606)	0.196 (0.661)	0.146 (0.458)	0.199 (0.483)	0.189*** (0.065)	0.262*** (0.084)
Regime duration	0.611*** (0.225)	0.532** (0.239)	0.681*** (0.196)	0.608*** (0.207)	-0.029 (0.038)	-0.062 (0.048)
Oil rents	-0.206 (0.553)	0.245 (0.655)	0.201 (0.452)	0.795 (0.628)	-0.020 (0.070)	-0.000 (0.062)
Natural resources	0.333 (0.519)	-0.380 (0.471)	-0.093 (0.423)	-0.737 (0.462)	0.141 (0.098)	0.072 (0.098)
Observations	652	641	652	641	794	782
Number of countries	40	40	40	40	49	49
Country fixed effects	✓	✓	✓	✓	✓	✓
Adjusted R ²	0.211	0.279	0.223	0.302	0.132	0.172

Note: Dependent variable used in the baseline model (CIM) is replaced by two components of Political Risk Rating by the ICRG in Models (1)-(4) and Linzer and Staton (2015)'s latent *de facto* judicial independence (logit-transformed for my analysis) in Models (5)-(6). All variables are lagged by three years in Models (1), (3), and (5), whereas they are three-year moving average in Models (2), (4), and (6).
* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

3.6.2 Different Lags

Figure 3.9 is the coefficient plots to represent the extension of baseline analysis by taking the different lags for all independent and control variables. Table 3.9 presents a regression table equivalent to Figure 3.9. The column “3 years” in Table 3.9 is the same as the baseline result (Model (4) in Table 3.3). The value of adjusted R^2 (and F -statistic) decreases as the lag is longer, but the significance of FDI stock/GDP holds consistently after the three-year lag.

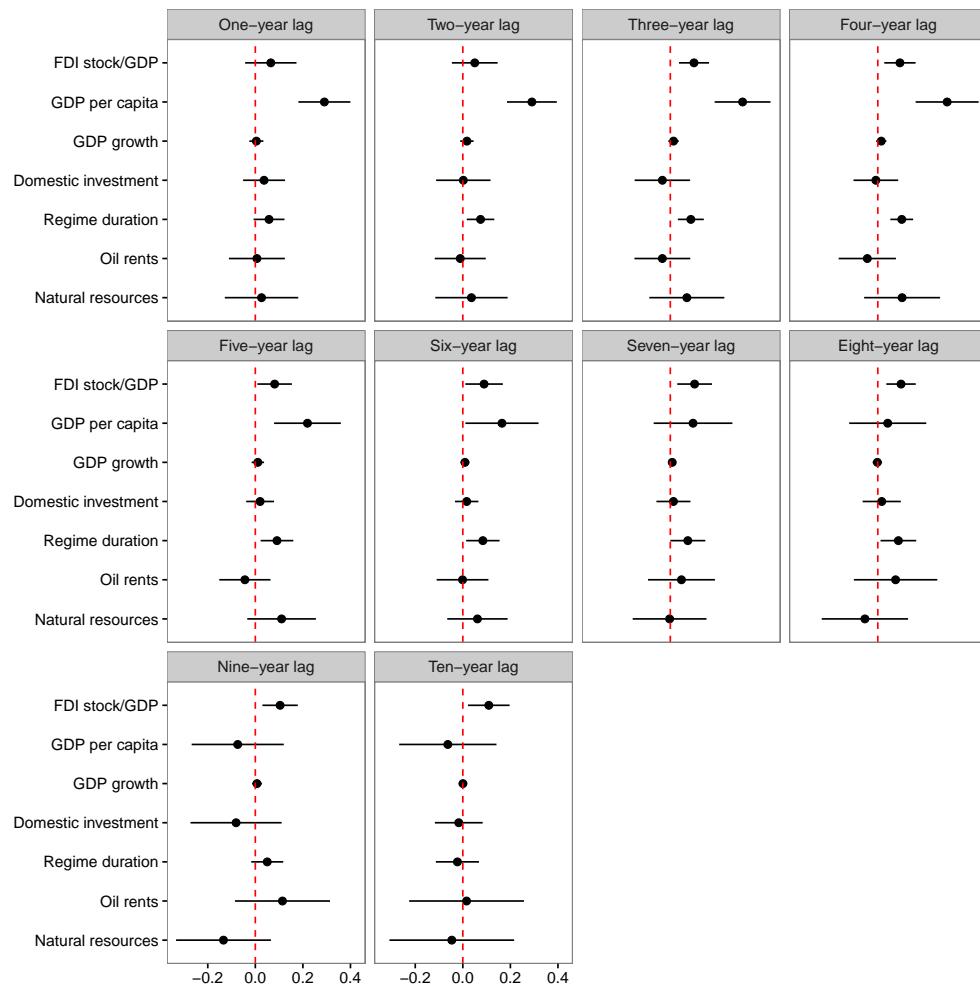


FIGURE 3.9: Coefficient plot with different lags: The third cell (labeled as “Three-year lag”) is the same as baseline result. Coefficients and 95% confidence intervals are presented.

Table 3.9: Full regression results with different lags

Lag	1 year	2 years	3 years	4 years	5 years
FDI stock/GDP	0.065 (0.055)	0.050 (0.049)	0.100*** (0.032)	0.093*** (0.034)	0.081** (0.037)
GDP per capita	0.290*** (0.056)	0.290*** (0.053)	0.304*** (0.060)	0.291*** (0.068)	0.219*** (0.072)
GDP growth	0.004 (0.015)	0.017 (0.014)	0.014 (0.011)	0.015 (0.011)	0.011 (0.013)
Domestic investment	0.037 (0.045)	0.002 (0.058)	-0.033 (0.059)	-0.008 (0.048)	0.020 (0.030)
Regime duration	0.058* (0.033)	0.075** (0.030)	0.086*** (0.028)	0.101*** (0.024)	0.091*** (0.035)
Oil rents	0.007 (0.060)	-0.011 (0.055)	-0.033 (0.060)	-0.044 (0.061)	-0.044 (0.055)
Natural resources	0.026 (0.079)	0.036 (0.078)	0.070 (0.080)	0.102 (0.081)	0.110 (0.074)
Observations	764	750	735	691	643
Adjusted R ²	0.221	0.211	0.267	0.254	0.171

Lag	6 years	7 years	8 years	9 years	10 years
FDI stock/GDP	0.089** (0.040)	0.102*** (0.037)	0.098*** (0.032)	0.104*** (0.038)	0.109** (0.045)
GDP per capita	0.165** (0.078)	0.096 (0.084)	0.042 (0.083)	-0.074 (0.099)	-0.063 (0.104)
GDP growth	0.009 (0.009)	0.008 (0.007)	-0.002 (0.010)	0.007 (0.011)	0.001 (0.009)
Domestic investment	0.016 (0.025)	0.013 (0.036)	0.017 (0.041)	-0.081 (0.098)	-0.017 (0.051)
Regime duration	0.084** (0.036)	0.074* (0.038)	0.087** (0.038)	0.050 (0.034)	-0.023 (0.046)
Oil rents	-0.001 (0.056)	0.047 (0.072)	0.075 (0.089)	0.114 (0.102)	0.016 (0.123)
Natural resources	0.061 (0.065)	-0.003 (0.079)	-0.054 (0.093)	-0.134 (0.102)	-0.046 (0.134)
Observations	596	547	499	451	404
Adjusted R ²	0.151	0.132	0.120	0.092	0.047

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

3.6.3 Different Regime Types

Figure 3.10 illustrates the bivariate correlation between FDI stock/GDP (three-year lag) and logit-transformed CIM in party-based and military regimes (panel (a)) and in personalist regimes and monarchies (panel (b)). Table 3.10 presents the full regression results by regime types with including covariates, demonstrating that the coefficient of FDI stock/GDP is significant only in party-based and military regimes.

(a) Party-based and military regimes (b) Personalist regimes and monarchies

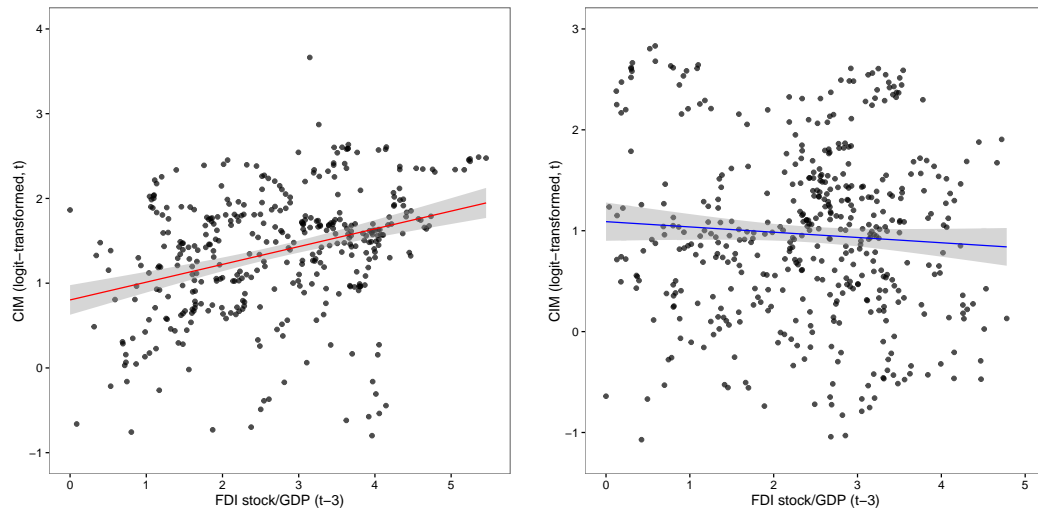


FIGURE 3.10: Scatterplots of the bivariate relationship between FDI reliance and judicial independence in two separate subsamples: Linear regression lines and 95% confidence intervals are presented. The equation of bivariate linear regression in the panel (a) is $CIM_t = 0.802 + 0.210(FDI\ stock/GDP)_{t-3}$, and the coefficient of $(FDI\ stock/GDP)_{t-3}$ is statistically significant at $p < 0.001$. The equation of bivariate linear regression in the panel (b) is $CIM_t = 1.090 - 0.052(FDI\ stock/GDP)_{t-3}$ and the coefficient of $(FDI\ stock/GDP)_{t-3}$ is not statistically significant.

Table 3.10: Full regression results by regime types

	Party-based and military regimes		Personalist regimes and monarchies	
	(1)	(2)	(3)	(4)
FDI stock/GDP	0.113** (0.045)	0.118** (0.056)	0.079 (0.049)	0.078 (0.065)
GDP per capita	0.308*** (0.091)	0.313*** (0.093)	0.300*** (0.089)	0.329*** (0.093)
GDP growth	0.018 (0.013)	0.028 (0.023)	0.016 (0.015)	0.022 (0.027)
Domestic investment	-0.115 (0.109)	-0.152 (0.133)	0.023 (0.057)	0.065 (0.078)
Regime duration	0.043 (0.038)	0.047 (0.051)	0.098* (0.054)	0.079 (0.059)
Oil rents	-0.005 (0.159)	0.040 (0.216)	-0.043 (0.072)	-0.037 (0.064)
Natural resources	0.066 (0.155)	0.010 (0.188)	0.067 (0.095)	0.015 (0.091)
Observations	312	304	419	416
Number of countries	21	21	29	29
Country fixed effects	✓	✓	✓	✓
Adjusted R ²	0.294	0.294	0.250	0.276

Note: All variables are lagged by three years in Models (1) and (3), whereas they are three-year moving average in Models (2) and (4).
 * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

Rethinking Insurance Theory in Democracies: The Case of South Korea and the Philippines

One of the most well-established theoretical accounts of judicial independence in the literature on comparative judicial politics is that a high level of political competition provides an incumbent with greater incentives to establish and maintain judicial independence. According to this viewpoint widely known as “insurance theory,” the incumbent, who fears the loss of power under intense political competition, seeks judicial independence as an *ex post* protection to secure his interests after leaving office. (Landes and Posner, 1975; Ramseyer, 1994; Ginsburg, 2003; Stephenson, 2003; Hirschl, 2004; Finkel, 2008). In other words, the incumbent may take advantage of judicial independence as a tool of political insulation based on the belief that independent courts tie the hands of future political leaders and will prevent them from jeopardizing his interests afterward. Insurance theory has been useful to explain the development of judicial independence in democracies where electoral competition occurs in a regular and ongoing basis.

On the empirical side, most studies on insurance theory have focused on the

closeness of elections as a proxy of the incumbent’s credible threat of losing power (the main driver for judicial independence as insurance). Although such an approach has theoretical and empirical merits, it fails to address two important problems less examined by existing research. The first of these is a measurement issue concerning whether a particular measure is a valid indicator which captures a construct accurately: In some circumstances, depending on political and institutional configurations, electoral closeness may not be fully converted into the incumbent’s credible threats of losing power. The second is drawn from empirical observations: In the real-world, some countries are more likely to promote judicial independence following the insurance logic than others despite their similar degree of electoral closeness. To address these two puzzles requires us to rethink our conventional understanding of insurance theory. Specifically, we need to explore additional characteristics of political competition beyond its closeness, which are more conducive to generating the incumbent’s credible threats of replacement posed by the opposition.

In this chapter, I develop a new approach to understanding the nexus between political competition and judicial independence in democracies. I start with a literature review on insurance theory in Section 4.1, which shows that previous studies have commonly used the closeness of election as a primary independent variable despite their different empirical findings. In Section 4.2, I first explore circumstances in which electoral closeness at face value does not entirely translate into the incumbent’s credible threats of replacement. I then introduce the concept of robust political competition (Grzymała-Busse, 2007) that speaks better to the core assumption of insurance theory. Robust political competition requires more than electoral closeness, and I focus on two possible circumstances under which robust political competition may appear in democracies: (a) a highly institutionalized party system stabilizes electoral competition, and (b) an authoritarian successor party reinvents itself as a group of democrats and becomes one of the viable actors in democratic

contestation. In doing so, I build a modified and expanded argument of insurance theory in democracies: Robust political competition creates the incumbent's credible threats of losing power and incentivizes him to advance judicial independence as political insurance.

I apply my theoretical claim to the cases of South Korea and the Philippines. These two Asian countries share similarities in political history, institutional characteristics, and the degree of electoral closeness, but they have exhibited a stark difference in the development of judicial independence after democratization (Section 4.3). I find in Section 4.4 that South Korea has been better at developing robust political competition than the Philippines. Elite-led democratization in South Korea allowed the authoritarian successor party to survive and successfully reinvent itself, thereby making it one of the viable actors in democratic contestation. Moreover, political competition has been backed by a highly institutionalized party system: A stable set of parties with distinct party platforms has regularly interacted and minimized the shift of voters' electoral preference. In the Philippines, bottom-up democratization to overthrow authoritarians has shaped political competition into a contestation among a large number of newly emerged democratic parties, but a highly fluid and clientelistic party system makes competition between these democrats much less robust. In Section 4.5, I examine how the different nature of political competition in South Korea and the Philippines leads to the (under)development of judicial independence by looking at two specific examples: judicial reform under the Roh Moo-hyun administration in South Korea in the mid-2000s and the impeachment of the Supreme Court Chief Justice Renato Corona in the Philippines in the early 2010s. The former shows how the incumbent, competing with and pressured by a robust opposition party, accelerated his strong push for judicial independence. In contrast, the latter indicates how the absence of robust political competition under a weakly institutionalized party system assisted the incumbent's action to undermine

judicial independence. Lastly, Section 4.6 concludes and suggests the implications of my analysis.

4.1 Related Literature

Existing studies on insurance theory have investigated the relationship between political competition and judicial independence in two distinct ways. On the one hand, Hirschl (2004) posits that judicial empowerment takes place when departing hegemons seek to extend their influence after a prospective electoral loss. According to this “hegemonic preservation” thesis, as the incumbent perceives considerable threats of losing power in near future, he is more inclined to create independent courts as a way to “freeze” his interests so that an incoming opposition cannot manipulate it on her own. In this regard, the incumbent establishes more independent courts when he perceives a high chance of electoral defeat.

On the other hand, a group of scholars argue that close political competition encourages the incumbent to maintain judicial independence as insurance against his uncertain future. Based on the assumption of an ongoing relationship of alternating power between the incumbent and the opposition, scholars in this camp claim that intense political competition increases the incumbent’s uncertainty of securing his office. In the face of such higher uncertainty, he seeks to respect judicial independence, hoping that independent courts protect his interests after a potential electoral defeat. As long as tight political competition results in high electoral uncertainty, a new incumbent (previously the opposition) would also respect the existing judicial independence for the same reasons as his predecessor. This iterative process allows judicial independence to be maintained despite changes in political leadership.¹ De-

¹ Stephenson (2003) employs a repeated game framework to formalizes the dynamics of insurance theory. See also Vanberg (2015, 173-175) for his review and elaboration of Stephenson’s model.

spite the different approaches between these two groups of scholars, they both share a core intuition: the incumbent who will lose power either permanently or alternately through elections pursues judicial independence to secure himself *ex post* after being out of office.

Due to its theoretical assumption of power alternation through elections, insurance theory has been examined mostly in democracies where free, fair, and contested elections are institutionally present.² There are a large number of single or cross-national case studies demonstrating the broad applicability of insurance theory. For example, Ramseyer (1994) attributes the relative dependence of the Japanese judiciary to the decades of electoral dominance by the Liberal Democratic Party. Ginsburg (2003) analyzes the rise of judicial review in new democracies in East Asia, arguing that the establishment of a strong constitutional court in South Korea in 1988 can be explained by the presence of a competitive political system and the incumbent's high electoral uncertainty in the 1987 presidential election. In contrast, political domination by a single party (Kuomintang) in Taiwan was associated with its absence of a strong judiciary. Similarly, Magalhães (2003) finds that the adoption of a strong and independent constitutional court was followed by democratization in Spain and Portugal (which had a reasonably competitive political system), but not in Greece (which was dominated by a single party). Observing the experiences of judicial reform in Argentina, Peru, and Mexico in the 1990s, Finkel (2008) posits that the ruling party in these countries was more engaged in enacting judicial reform as its political power waned and its reelection prospect declined.

Recent studies empirically test the effect of electoral competition on judicial independence. On the one hand, insurance theory is quantitatively confirmed to a large

² This may imply that the electoral logic of insurance theory is unable to be applied to “closed” autocracies where there are no elections and competitive authoritarian regimes where elections are nominally competitive but hardly lead to power alternation (Levitsky and Way, 2010). But Epperly (2017, 2019) argues that the logic of insurance theory is equally applicable to autocracies because autocrats perceive a huge risk of losing power due to their unstable post-tenure fate.

extent. For example, Randazzo et al. (2016) discovered a consistently positive effect of political competition on judicial independence across all regime types. Similarly, Ginsburg and Versteeg (2014) find that electoral competition best explains the adoption of constitutional review (as an element of *de jure* judicial independence) in all types of political regimes. On the other hand, Aydın (2013) makes a nuanced claim that insurance theory does not work in the context of emerging democracies. She finds that the marginal effect of political competition on judicial independence is positive only in advanced democracies and significantly negative in emerging democracies.³

Aydın (2013)'s argument is consistent with a group of studies that challenge and modify insurance theory by highlighting a negative effect of political competition on judicial independence. According to this standpoint, a fear of losing power intensified by tight political competition pushes the incumbent to use any available tools to secure office, including the manipulation of the judiciary. The prospect of electoral defeat makes the incumbent more myopic, which makes immediate short-term benefits from subservient courts during their stay in office outweigh the potential long-term gains from independent courts while out of office. In their subnational analysis on Mexican states, Rebolledo and Rosenbluth (2009) find this tendency and suggest a curvilinear, inverted-U (not linear) relationship between political competition and judicial independence. Moreover, the incumbent's incentives to manipulate the court for his political survival may be accelerated when he finds it not costly to pressure the judiciary. This is apparent in many weak democracies where the ruling party can easily access the mechanisms to undermine the judiciary inherited from the previous authoritarian rule (Popova, 2010, 1208), or such an attempt may not lead to significant public backlash (Aydın, 2013, 114-115). As a result, intense electoral competition can be an obstacle to independent courts because it changes the

³ Replicating Aydın (2013)'s cross-national analysis, Epperly (2018) found that the effect of political competition on judicial independence turns out to be positive even in developing democracies when electoral authoritarian countries (originally coded as democracies by Aydın) are excluded.

incumbent's cost-benefit analysis on judicial independence, leading to his preference for more subservient courts. Table 4.1 summarizes the selected empirical works to test the insurance theory in democracies.

Table 4.1: Selected empirical studies to test insurance theory

Research	Sample	Measure of electoral competition	Finding
Rebolledo and Rosenbluth (2009)	32 states in Mexico	Percentage difference between the winner of the gubernatorial election and the runner-up in the second to last election	Inverted-U
Popova (2010, 2012)	Subnational Ukraine and Russia	Binary variable, 1 (single-mandate districts where the difference of vote share between the winner and the runner-up is less than 10%)	Negative
Aydin (2013)	97 democratic countries, 2000-2008	Difference between the percentage of seats of the winning party and the percentage of seats of the runner-up in the legislature	Positive in advanced democracies; negative in developing democracies
Ginsburg and Versteeg (2014)	204 countries, 1781-2011	Difference between the proportion of seats held by the first and second largest parties in the lower house of the legislature	Positive
Leiras et al. (2014)	Subnational Argentina	Binary variable, 1 (at least one party turnover in any of the previous two elections in each province)	Positive (conditional on high expectation on turnover)
Randazzo et al. (2016)	145 countries, 1960-2000	Percentage of votes gained by all smaller parties in parliamentary and/or presidential elections (Vanhanen 2011)	Positive
Epperly (2018)	81 democratic countries, 2000-2008	Difference between the percentage of seats of the winning party and the percentage of seats of the runner-up in the legislature	Positive

4.2 Theory

4.2.1 *Beyond Electoral Closeness: Robust Political Competition*

The divergent findings in existing studies on insurance theory may come from their different focus on countries/regions, time, and empirical specifications. But to date, the literature on insurance theory commonly use a simple proxy – the closeness of elections (e.g., the margin of vote share between the winner and the runner-up in elections, or the difference between the proportion of legislative seats by the largest and the second-largest parties) – as a measure of how likely it is that a current officeholder believes that he is going to lose power. This raises an important measurement question: whether electoral closeness is a valid indicator for the construct, namely the incumbent’s credible threats of losing power.

Electoral closeness is admittedly a good proxy in some circumstances, but not always. Depending on political contexts and institutional framework, there are many other circumstances in which electoral closeness is not fully converted into credible fear/risks of removal. For example, under the proportional representation (PR) system where multiple parties exist in the parliament and need to build a coalition to govern, the closeness of election *per se* may tell us little about credible threats of losing power. Instead, in such a system, a party’s ability to negotiate with other parties to build a winning coalition may be more significant than winning the election. Moreover, when the party system is extremely fragmented, and opposition parties cannot readily build a coalition to replace a government, ostensibly intense electoral competition among a large number of parties may not generate coherent threats to the ruling party (Leiras et al., 2014). There are also circumstances in which electoral closeness does not amplify the insurance logic because the incumbent’s loss as a result of losing power is expected to be small. For example, when the incumbent

and his ruling party have a deep-rooted connection to informal networks that safely preserve their interests (even after losing office), electoral closeness hardly magnifies the incumbent's fear of removal (Kitschelt and Wilkinson, 2007). Besides, if there is little distinction between competing parties in terms of ideological stance and policy positions, the ruling party has fewer incentives to buy insurance since the potential loss it seeks to insure against is not significant.

All these circumstances suggest that the closeness of electoral competition may not always speak to the incumbent's credible fear and risks of losing power. According to the insurance theory, the absence of credible threats of replacement (despite the presence of electoral closeness) does not motivate the incumbent to take institutional actions to tie his (and his successor's) hands by establishing and maintaining independent courts. If electoral closeness does not fully capture the core assumption of insurance theory, we need a different proxy of electoral competition that speaks more directly to credible threats of replacement. To this end, I borrow insights from the literature on party politics and suggest the concept of "robust" political competition. Robust political competition emphasizes the presence (and capabilities) of opposition parties that "offer a clear, plausible, and critical governing alternative that threatens the governing coalition with replacement" (Grzymała-Busse, 2007, 1).

According to Grzymała-Busse (2007, 11-13), robust political competition has three characteristics. First, oppositions should be clearly identifiable. The clarity of competition requires that political actors contesting in the electoral arena are identified easily, and thus clearly know who their main competitors are. Second, oppositions should be plausible to be potential governing parties. They should have a reasonable number of seats and sufficient public support, be able to create and enter coalitions, and not be excluded in the political stage. Third, oppositions should be vociferous critics who monitor and criticize the ruling party. If these conditions are satisfied, opposition parties can be an actor which pose viable and credible threats

to the governing party through replacement. Grzymała-Busse argues that, under the presence of robust political competition, the ruling party is more likely to moderate its exploitative behavior and develop formal institutions of oversight, as quoted explicitly below:

To constrain exploitation, competition had to threaten the parties in power with replacement. It had to present a credible alternative both coalition partners and the electorate without acting as a threat to the system of competition itself. The more vigorous the opposition, the more likely it was to lead the governing parties to moderate their rent-seeking, anticipate an exit from office by building formal constraints ... (Grzymała-Busse, 2007, 10)

It should be noted that electoral closeness is a necessary but not sufficient condition for robust political competition. On the one hand, robust political competition needs close electoral contestation: Oppositions can credibly threaten the ruling party when they are electorally strong with a large number of votes and legislative seats. On the other hand, as described earlier, electoral closeness does not always guarantee the presence of credible threats of losing power, the prerequisite for robust political competition. Robust political competition is thus a specific kind of political competition, which requires more than electoral closeness.

4.2.2 Conditions for Robust Political Competition

What then can make political competition robust? Given that robust political competition needs both a favorable environment and robust actors, I focus on two circumstances in which political competition can be robust in democracies. The first, which applies to all kinds of democracies, is that a highly institutionalized party

system stabilizes electoral competition.⁴ The other, which applies in particular to democracies that emerge out of dictatorship, is that an authoritarian successor party (hereafter ASP) – a party that exists in democracy but has authoritarian origins (Loxton, 2015) – reinvents itself as democrats and becomes one of the viable actors in democratic contestation.

Party System Institutionalization

Party system institutionalization (PSI) creates a better environment for robust political competition in that it improves the quality of competition by making interparty competition occur in a regular and stable manner. Scholars studying party politics have long investigated the conceptualization of PSI and attempted to identify its core features.⁵ Here I use the definition of PSI drawn from the recent work by Mainwaring and his colleagues, who define an institutionalized party system as “one in which a stable set of parties interacts regularly in stable ways” (Mainwaring et al., 2018, 19).⁶ By definition, PSI entails both past stability and actor’s sense of future predictability: A highly institutionalized party system under which a set of parties is making stable and regular interactions allows political actors to shape clear and stable expectations about other actors. Put differently, PSI constitutes “a condition

⁴ It is generally assumed in the literature and observed in real-world politics that emerging democracies have a lower level of institutionalized party system than advanced democracies (Mainwaring and Torcal, 2006). Nevertheless, the claim that an institutionalized party system is conducive to robust competition equally applies to both kinds of democracies.

⁵ See Casal Bértoa (2018) for his extensive literature review on the “three waves” of the study of party system institutionalization.

⁶ This definition revises the widely used conceptualization of PSI made earlier by Mainwaring and Scully (1995). In their pioneering work, Mainwaring and Scully suggest four dimensions of PSI: (a) stability in patterns of interparty competition, (b) strong party roots in society, (c) the legitimacy of parties as the vehicles of representation, and (d) solid party organizations. Despite the comprehensiveness of this conceptualization, Mainwaring et al. (2018) suggest a revised and more parsimonious definition of PSI by focusing only on the first dimension. They claim that the stability of interparty competition is inherently the characteristic of PSI, whereas the other three dimensions are underpinnings that facilitate PSI but are not its defining features (Mainwaring et al., 2018, 23-25).

in which the political parties exhibit structured interactions; where expectations, orientations, and behaviors can be premised on the idea that these practices will continue in multiple future rounds of competition” (Riedl, 2014, 25). In general, an institutionalized party system has three major characteristics:

1. Stable main parties: The main parties are stable and they constitute key contenders in every election. The sudden emergence of new parties and their unexpected electoral victory may be indicative of a low level of institutionalization since political actors find it difficult to anticipate which parties will appear and compete in the next election.
2. Low electoral volatility: The vote shares of parties from one election to the next are reasonably stable.
3. Programmatic party linkages: Party linkages to voters are relatively stable with programmatic or ideological linkages more prominent.

Each element of PSI corresponds to the three characteristics of robust political competition described above. For example, when a stable set of parties regularly competes in elections and maintains a reasonably stable electoral support over time, each party is better able to identify its contenders easily and to be perceived as a plausible power that potentially will replace the government. In addition, when parties have distinct party platforms that represent their specific ideological stance and policy position, they can be clearly visible, create stable coalitions if they share similar ideological/policy positions, and criticize and monitor each other if their viewpoints diverge. In short, the qualifications of oppositions that robust political competition requires are more likely to be achieved by political parties competing under a highly institutionalized party system.

Not only does PSI facilitates the conditions for robust political competition, but it also relates to the core assumption of insurance theory by serving as an important mediating factor to determine whether or not electoral closeness amplifies the credible threats and the actual risks of losing power. PSI enables political actors to “develop expectations and behaviors based on the premise that the fundamental contours and rules of party competition prevail in the foreseeable future” (Mainwaring, 2018, 4). In a highly institutionalized party system, therefore, political actors are in a better position to build a shared understanding that their legitimate contestation will/should repeatedly occur only through elections. When both the incumbent and oppositions regard electoral competition as “the most legitimate route to power” (Loxton, 2015, 166), they are more likely to attach great importance to their electoral results. In other words, as an institutionalized party system makes electoral competition “the only game in town” to achieve power, payoffs associated with electoral competition increase: Both the rewards of electoral victory and the risks of electoral defeat become higher. Conversely, the incumbent’s risks as a result of an electoral loss might be small if he has routes other than an electoral victory to secure his power. This case often appears in countries with a less institutionalized party system where parties/politicians gain benefits from clientelistic ties. If such informal networks protect the incumbent safely even after his removal from office, he may have little incentives to build formal and institutional insurance, such as independent courts.⁷

Figure 4.1 illustrates the ideal types of political competition based on the two criteria: electoral closeness (rows) and party system institutionalization (columns). If political competition is neither close nor stable (the bottom-right cell), it can

⁷ In his observation on the development of judicial independence in Paraguay, Basabe-Serrano (2015) finds that rampant “judicial clientelism,” which produces informal ties that mutually benefit politicians and judges, has deepened the subordination of judges to politicians. The presence of judicial clientelism severely undermines judicial independence not only because it hampers the court’s ability to make neutral rulings but also because politicians may not want to change the status quo by granting more autonomy to the judiciary.

Party system institutionalization

		<i>High</i>	<i>Low</i>
Electoral closeness	<i>High</i>	Robust competition	Competitive but unstable competition
	<i>Low</i>	Stable but hegemonic competition	Weak competition

FIGURE 4.1: The types of political competition

be called a weak competition. The top-right cell indicates the case that political competition is intense but unstable, which is commonly found in many emerging democracies. In contrast, the bottom-left cell represents the case that the party system is highly institutionalized to ensure stable political competition but power alternation rarely occurs through elections.⁸ The top-left cell indicates that close electoral competition occurs in stable ways under an institutionalized party system, and robust political competition is expected to appear in this setting.

Democratization and the Emergence of Robust Opposition

In emerging democracies, how democratization unfolds often creates critical initial conditions that shape the dynamics of political competition. It establishes new rules of the game and determines the main actors of political contestation. Since democratization does not occur in the same ways, it creates variations in how political competition looks like and how it operates.

⁸ This type of competition appears in both democracies and autocracies: for example, a democratic Japan where the Liberal Democratic Party has governed for many decades and single-party autocracies with a “hegemonic party” system (Magaloni, 2006) such as Mexico’s PRI (Institutional Revolutionary Party) and Singapore’s PAP (People’s Action Party).

One way to characterize political competition in emerging democracies is whether former authoritarians survive even after democratization and an ASP becomes one of the key political actors in democratic competition. In some new democracies, especially where a bottom-up revolution of the masses results in democratization, authoritarians are overthrown and completely removed from the political arena. As a result, an authoritarian ruling party may disappear, or, even if it survives, its political influence declines significantly. In the absence or weakness of authoritarians, political competition is typically characterized as one between multiple new democrats. However, not all authoritarians vanish dramatically. In other emerging democracies, they exit office after democratization but their successors (the ASP) still stay in the political arena. This case often, if not always, appears when authoritarian ruling elites initiate democratization: they propose political liberalization, adopt democratic rules of the game (i.e., free, fair, and contested elections), and manage the pace and process of democratization. As long as this type of democratization allows the ASP to have a reasonable level of political power, they may have a chance to co-exist and compete with their democratic counterparts.

One potential strength that makes an ASP a viable political actor in democracy is that it already owns party brands, territorial organizations, finance, and know-how inherited from the authoritarian past. Although the authoritarian rule has ended, such party infrastructure can still be used to make the ASP operate and even thrive in democracy (Loxton, 2015, 160-164). Considering that brand-new parties must initially invest substantial time and effort to build their organizations, the presence of party infrastructure gives the ASP a comparative advantage. However, the ASP may find it much less attractive to rely on the “menu of manipulation” (Schedler, 2002) during the previous authoritarian rule because undemocratic party labels and practices are not very useful in democracy. Thus, to better survive in democracy, the ASP often “reinvents” itself by adapting to the new realities and finds new ways

Does authoritarian ruling/successor party...

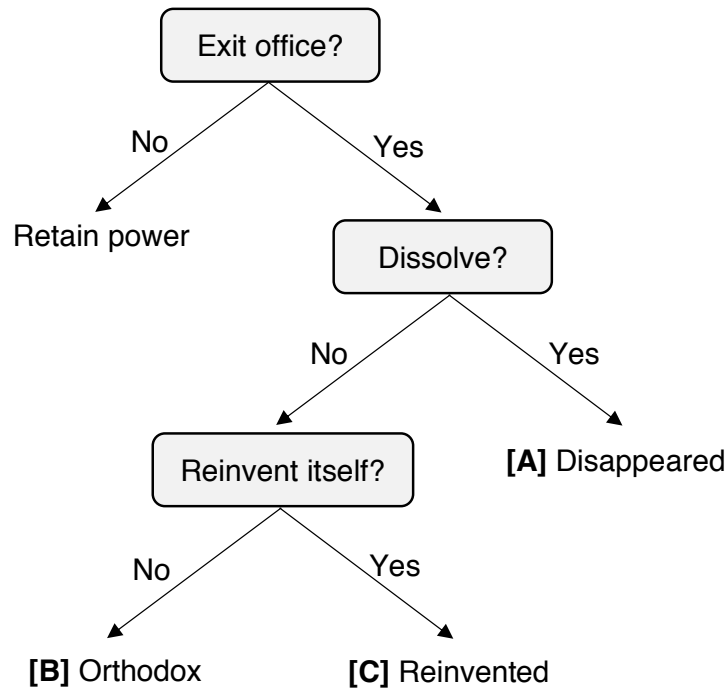


FIGURE 4.2: Dynamics of democratization and the emergence of reinvented ASP as a part of robust political competition in emerging democracies: The author modified the framework by Grzymała-Busse (2019, 2020).

of gaining electoral support. For example, it seeks to moderate itself and dilute its authoritarian characteristics by changing its name, embracing democratic figures, adopting pro-democracy policies, and re-identifying itself as a democratic group.

Figure 4.2 illustrates this reasoning. Advancing the idea from Grzymała-Busse (2019, 2020), I argue that when an ASP takes advantage of the benefits of authoritarian inheritances (party infrastructure and organization) and diminishes the harms of authoritarian baggage (the history of undemocratic political/institutional preference), it has a better chance to stand as a viable political actor in a democratic competition (outcome [C]). But not all ASPs have such resources and willingness: their party infrastructure may be significantly weakened after democratization, and they may resist reinvention and instead remain as orthodox authoritarians (outcome

[B]). In that case, I expect that the ASP hardly becomes a part of a robust competition under democracy.⁹

Here comes an important caveat. My argument suggests that a reinvented ASP can be one of the actors in robust political competition in emerging democracies. In other words, if the ASP transforms and adapts to democracy, its presence can be compatible with robust political competition. However, it does not mean that the presence of the ASP creates the more advantageous conditions necessary to develop robust political competition than its absence. In other words, outcome [C] in Figure 4.2 is not necessarily superior to outcome [A] as to the development of robust political competition. Robust political competition is possible without assuming the ASP when democratic parties vigorously compete and act as a robust opposition to each other. In this regard, the absence or presence of the ASP *per se* does not determine whether or not there is robust political competition.

4.2.3 Synthesis: Modifying and Expanding Insurance Theory

Figure 4.3 illustrates my theoretical framework, which modifies and expands the current discussion of insurance theory. To reiterate, existing studies on insurance theory (a grey-shaded box in Figure 4.3) focus empirically on the relationship between electoral closeness and judicial independence. Although these studies may assume in theory that the incumbent's credible threats of losing power results in promoting judicial independence as insurance, I posit that in some circumstances, electoral closeness is hardly a valid proxy of the incumbent's credible threats of losing power and the ability of oppositions to cause this. I seek to address this limitation by modifying and expanding the original insurance theory. I first suggest that, for political competition to generate credible threats of losing power, it should be robust as well

⁹ I revisit this issue in Chapter 5 as one of the future research agendas.

as close. I then highlight two elements that may lead to the emergence of robust political competition: (a) a highly institutionalized party system, and (b) the presence of reinvented authoritarians as one of the main actors in democratic competition. My modified version of the insurance theory suggests that these two elements create enabling conditions under which the insurance logic works as theorized: They render political competition more robust, thereby creating the credible threats of losing power perceived by the incumbent.

My modified version of insurance theory has both theoretical and empirical implications. It allows us to investigate a puzzling observation that often appears in democracies but has not been adequately addressed in previous studies: Why is the insurance logic of judicial independence more prominent in some democracies than others although they exhibit similar levels of electoral competitiveness? Explaining this variation requires considering the qualitative aspect of political competition, and the presence/absence of robust political competition may provide a compelling answer to this question. Thus, to better understand the dynamics of insurance theory, we need to examine electoral competition beyond its closeness/intensity, e.g., which kinds of competition generate credible threats of replacement (Grzymała-Busse, 2007, 20) and which qualifications are required for such competition.

My argument also implies the interactive effect of electoral closeness and conditions for robust political competition on judicial independence. Although electoral closeness alone may have a direct impact on judicial independence (as operationalized by existing studies on insurance theory), my theoretical framework suggests that such effect may be contingent upon the presence of a reinvented ASP and/or the level of PSI. In other words, the explanatory power of the conventional insurance theory might be stronger in places where the reinvented ASP exists and competes reasonably well, and where an institutionalized party system stabilizes electoral competition.

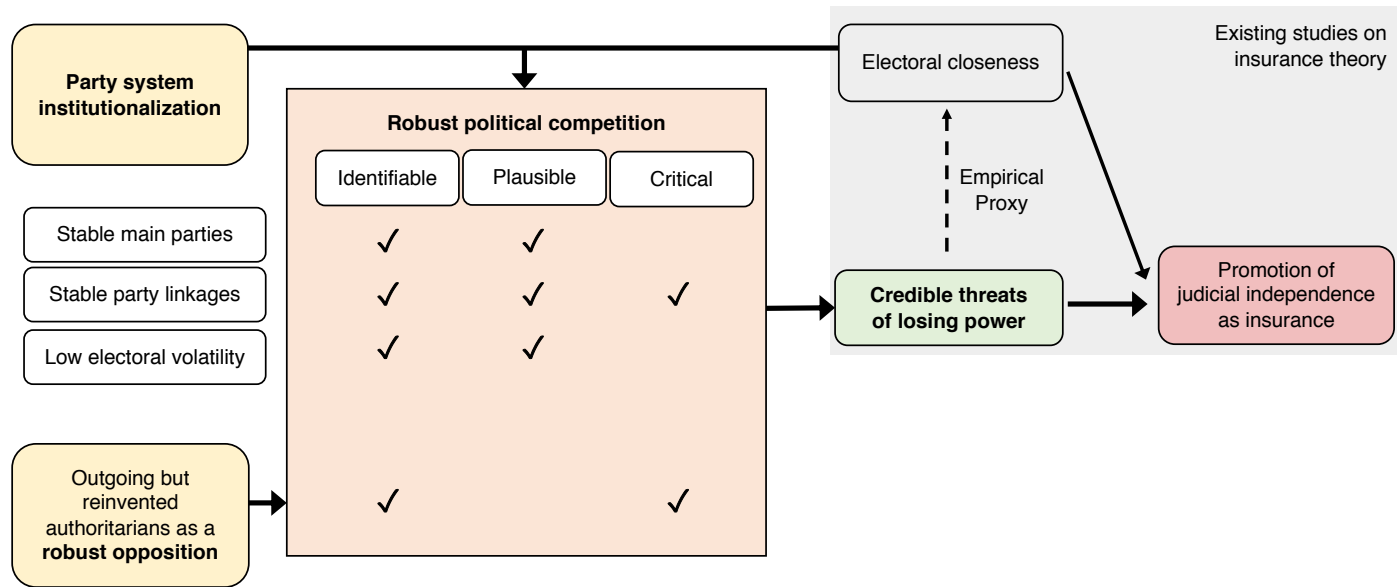


FIGURE 4.3: Theoretical framework: A modified argument of insurance theory

4.3 Case Selection: South Korea and the Philippines

In the remaining sections, I examine my theoretical claim through a comparative case study of South Korea and the Philippines. South Korea and the Philippines provide a compelling case for comparison to examine how robust political competition and the conditions thereof are a more crucial factor in the development of judicial independence than electoral closeness. South Korea and the Philippines are comparable cases because of a number of similarities between two countries' political history: Both countries underwent democratization in almost the same period (South Korea in 1987 and the Philippines in 1986) which terminated decades of dictatorship by Park Chung-hee and Chun Doo-hwan in South Korea, and Ferdinand Marcos in the Philippines. In the wake of democratic transition, they established new democratic constitutions and undertook extensive judicial reforms, resulting in the rise of (*de jure*) judicial independence. South Korea and the Philippines also share a wide array of institutional similarities after democratization in terms of governmental form (presidential system and unitary government), electoral rules, and a multiparty system.

Despite these similarities, the development of judicial independence in democratic South Korea and the Philippines has taken a different path. Figure 4.4 illustrates the level of judicial independence in two countries after democratization using its various measures: latent *de facto* judicial independence (Linzer and Staton, 2015), “high court independence” and “compliance with high court” variables from the V-Dem dataset (Coppedge et al., 2019), and a “judicial independence” variable in the World Economic Forum’s Global Competitiveness Report. Figure 4.4 shows that both South Korea and the Philippines welcomed an initial upshot of judicial independence immediately after democratization in the late 1980s. Since then, however, South Korea has enjoyed a relatively higher level of judicial independence than the

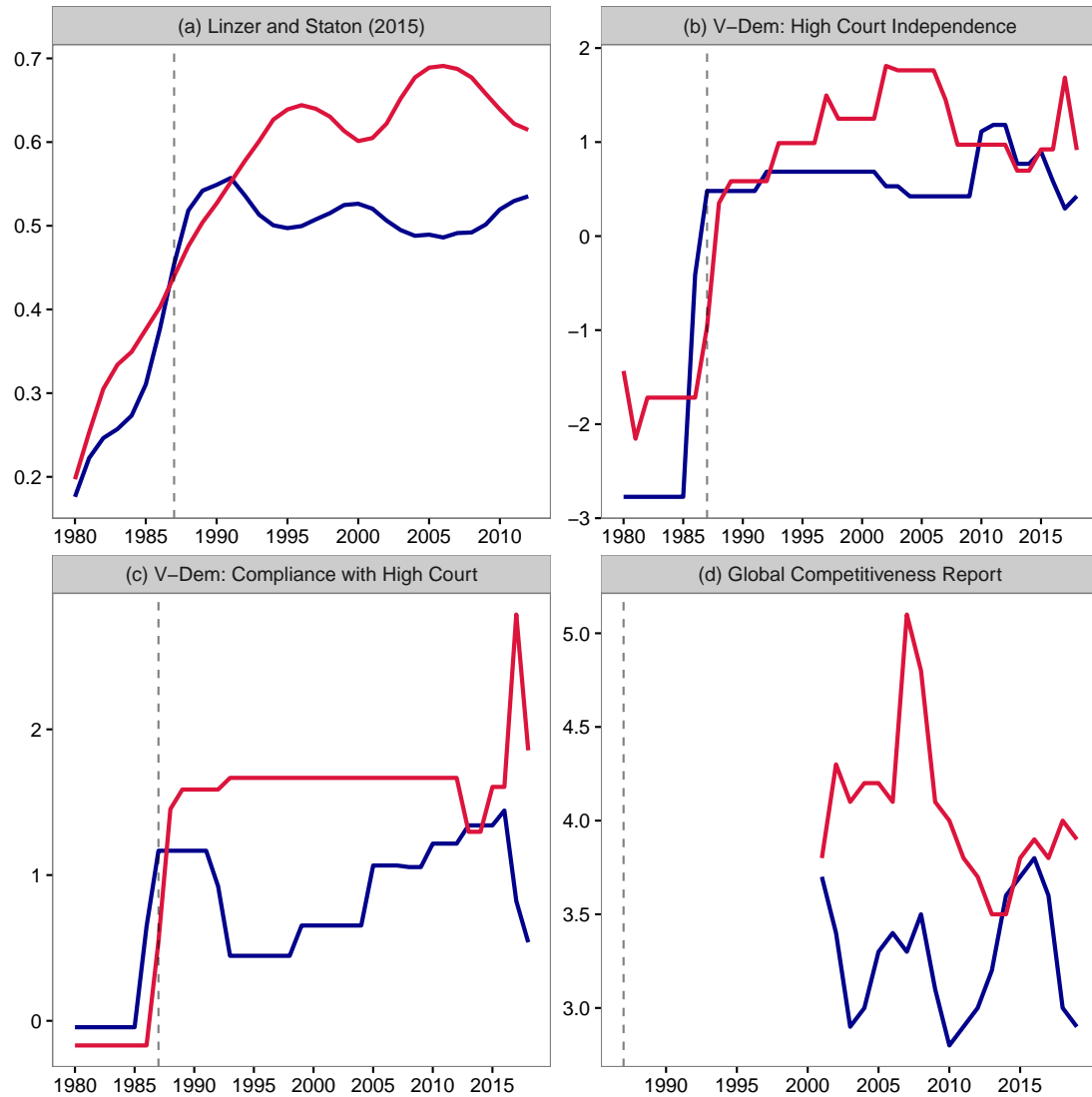


FIGURE 4.4: Judicial independence in South Korea (red) and the Philippines (blue) since democratization: A dotted line indicates the year 1987, the first year when both South Korea and the Philippines entered democracy.

Philippines for most years.

The difference in the level of judicial independence between South Korea and the Philippines can be explained by several factors, but one notable finding, particularly related to the purpose of this chapter, is that electoral closeness may not be a decisive factor. Several indicators of electoral closeness/competitiveness offer little evidence of

the significant differences between the two countries. For example, a “competitiveness of participation” variable (PARCOMP) in Polity IV dataset measures both South Korea and the Philippines as a score of four (out of five) after democratization.¹⁰ Similarly, the World Bank’s Database of Political Institutions (DPI) rate both countries as the highest score (seven) of legislative electoral competitiveness in all years after democratization.¹¹ In addition to these ordinal indicators, the continuous measures of electoral closeness also suggest only little difference between the two countries. According to the Measures of Democracy dataset by Vanhanen (2016), the mean values of competition¹² in South Korea and the Philippines between 1988 and 2014 are 58.33 and 60.44, respectively, and this difference is not statistically significant ($p = 0.21$). According to the V-Dem data, the mean values of the percentage difference in the seat share by the largest and the second-largest parties in lower chamber elections¹³ between 1988 and 2015 are 17.3 in South Korea and 20.67 in the Philippines, and the difference is also statistically insignificant at a conventional level ($p = 0.07$). As these quantitative measures of electoral competition report similar results for South Korea and the Philippines, we need to examine the aspects of political competition other than its closeness, which may potentially explain the difference in judicial independence between these two countries.

¹⁰ The PARCOMP variable indicates “the extent to which alternative preferences for policy and leadership can be pursued in the political arena,” which is coded on a five-category scale: 1=repressed, 2=suppressed, 3=factional, 4=transitional, and 5=competitive.

¹¹ In the DPI, legislative electoral competitiveness is measured as a seven-level variable: 1=no legislature, 2=unelected legislature, 3=elected, one candidate, 4=one party, multiple candidates, 5=multiple parties are legal, but only one party won seats, 6=multiple parties did win seats, but the largest party received more than 75% of the seats, and 7=largest party received less than 75% of the seats.

¹² Vanhanen (2016) measures a “competition” variable as the share of votes that opposition parties gain in parliamentary or/and presidential election. It is measured by subtracting the percentage of votes won by the largest party from 100 (thus, the greater the value, the stronger the opposition).

¹³ It is calculated by the difference between `v2ellostsl` (lower chamber election seat share won by largest party) and `v2ellostss` (lower chamber election seat share won by second largest party) variables in the V-Dem dataset. Its lower value indicates a more competitive legislative election.

4.4 The Presence and Absence of Robust Political Competition in South Korea and the Philippines

Given that electoral closeness is not a decisive factor that accounts for the differences in the level of judicial independence in South Korea and the Philippines, I examine whether there has been robust political competition in these countries since democratization. Since both countries achieved democracy out of a dictatorship, I first describe how democratization shaped the initial environment of political competition and affected the survival and reinvention of an ASP. I then examine whether an institutionalized party system has been present to stabilize interparty competition.

4.4.1 Democratization and an ASP as a Robust Opposition

The different pathways of democratization in South Korea and the Philippines shaped distinct initial and path-dependent conditions for political competition and affected the fate of former authoritarians and an ASP. In South Korea, outgoing authoritarians initially proposed democratic agendas, and democratization was produced by joint action by an authoritarian government and democratic oppositions. This allowed former authoritarians to remain one of the major political actors in democratic South Korea. The ASP also reinvented itself successfully by embracing democrats, developing its established party brands and platforms, and identifying itself as conservatives. The ASP's impressive electoral performance, which earned several victories in presidential and legislative elections, strongly suggests their significant role as a robust opposition. By contrast, democratization in the Philippines occurred as a bottom-up revolution that radically overthrew authoritarians, and an outburst of new democrats replaced them. Where the vast number of democratic parties compete and cooperate, the ASP in the Philippines, although not officially dissolved, was politically marginalized, electorally ill-performed, and thereby hardly acts as a

robust opposition.¹⁴

South Korea

A notable feature of democratization in South Korea is that it was the authoritarian ruling elites who initially proposed and carried out extensive democratic agendas. Since early 1986, democratic activists, who censured the illegitimacy and undemocratic rule by military dictator Chun Doo-hwan, strongly demanded constitutional amendment for the sake of direct elections. The legislature also organized the Special Committee for Constitutional Revision and began to discuss proper ways of revising the constitution. The mounting social and political movement for direct elections increased Chun's perceived insecurity of his authoritarian rule. In April 1987, he finally announced that he would refuse constitutional amendment, suspended all political discussion related to this matter, and would devolve the regime after his term to his successor, Roh Tae-woo (the chairman of the Democratic Justice Party, DJP). His announcement, which was utterly against the people's desire for constitutional amendment and direct elections, ignited a massive public demonstration calling for democracy. More than a million Korean citizens protested for democratization, and Chun was eventually surrendered by this enormous democratic pressure, letting Roh make a special declaration that included several democratic elements. Beyond (or contrary to) Chun's expectation, Roh was more democratically committed than his predecessor. His official statement reflected the demands by citizens by promising constitutional revision, free and fair presidential election, and the enhancement of civil rights, all of which represented a credible sign that South Korea was exiting its dictatorship and entering the early stage of democracy. Though heavily influenced by the public will, its authoritarian ruling elites suggested democratic agendas first,

¹⁴ According to Huntington (1991)'s terminology, democratization in South Korea and the Philippines is characterized as transplacement (the combined actions of government and opposition groups) and replacement (the breakdown/collapse of authoritarian regimes), respectively.

and they were not completely removed by the process of democratization.

One piece of evidence for this is that the former authoritarians were engaged and played roles in establishing a democratic constitution. The Special Committee for Constitutional Revision resumed its work of drafting the new constitution, and it comprised eight members with four senior lawmakers each from the DJP (authoritarian ruling party) and the Reunification Democratic Party (RDP; the newly created democratic opposition). Each party resolved disagreement on several important issues by compromise, and the resultant constitution reflected the interests of both authoritarian ruling elites and democratic oppositions quite evenly (Saxer, 2002).¹⁵

Another strong evidence showing that former authoritarians did not lose their influence after democratization was their victory in the founding election. The presidential election in December 1987 (the first direct election in democratic South Korea) was a very close match between three candidates: Roh Tae-woo (the DJP), Kim Young-sam (the RDP), and Kim Dae-jung (the Peace Democratic Party (PDP), which split from the RDP before the election). Although the contestation was considered disadvantageous to Roh, who competed against two rising democrats, factionalism among democratic party leaders brought him a surprising electoral victory. During the presidential campaign, it was widely suggested within the democratic camps that two Kims should unite to make a single candidate to defeat Roh. However, two Kims, who were confident of winning even under three-candidate competition, failed to reach an agreement. Separate candidacies in democratic fronts split the opposition votes, helping Roh to win the presidency. Roh's victory was never an indication of authoritarian backsliding in South Korea, but the electoral defeat of new demo-

¹⁵ For example, the DJP and the RDP debated on the length of the presidency. While the former proposed six years with no reelection, the latter suggested four years with reelection. The final outcome (five years with no reelection) represented the compromise between these two proposals. The DJP was able to implement their original proposal for a voting age (over 20 years old) in the constitution, but it also made concessions by accepting the RDP's proposal for the right to audit state affairs.

cratic oppositions in the founding election allowed former authoritarians to maintain political influences in democracy (Kim, 2011).¹⁶

After the founding election, the DJP and its successor parties have exercised more lasting impacts on shaping interparty competition in South Korea. This was possible thanks to their efforts to reinvent and reidentify themselves as conservatives, allowing them to position themselves as one of the robust political actors in democratic competition. First, former authoritarians sought to moderate their image by embracing democrats. In January 1990, the DJP initiated a merger with two opposition parties: the RDP and the New Democratic Republic Party (a minor conservative party that was then the fourth-largest party in the legislature). What surprised many Korean people was the DJP's merger with the RDP, one of the *democratic* opposition parties. Kim Young-sam, who once competed with Roh in the 1987 presidential election, became a "strange bedfellow" with his previous rival.¹⁷ This merger resulted in the emergence of a much larger ruling party, the Democratic Liberal Party (DLP), but it has implications beyond the expansion of party size. While embracing democratic oppositions, the DJP built a power-sharing scheme that allowed the leaders of the two absorbed parties sequentially to run for the presidency. This three-party merger was an indication of self-reinvention by former authoritarians because the DLP was able to identify itself as "a co-owner of the movement for democratic reform," and "a political force for the future rather than simply a legacy of the authoritarian past" (Cheng and Huang, 2018, 99). The DLP accelerated its efforts to dilute its

¹⁶ However, democratic oppositions gained sufficient power to check the DJP-led executive by forming a legislative majority in the congressional election in April 1988. While the DJP attained 34.0% of national votes and 125 seats, three opposition parties (the RDP, the PDP, and the New Democratic Republic Party) made up 58.9% of the votes and 164 seats. Although the DJP was the largest party in the legislature, its power could be constrained by the majority of democratic oppositions.

¹⁷ Facing the criticism about the collusion with former authoritarians, Kim advocated that his decision was "to enter the tiger's den for catching a tiger," i.e., to make political changes that terminate the legacy of authoritarian/military rule within the DLP.

authoritarian colors as Kim Young-sam took the party leadership (as the first-ever civilian leader) and distanced the party farther from its authoritarian and military past (Slater and Wong, 2018, 305).

On the other hand, the ASP in South Korea¹⁸ has been able to appeal to voters thanks to their distinctive party brands inherited from their predecessors. They have developed favorable party brands based on two specific policy areas where past authoritarian regimes were especially successful: economic development and national security. A history of remarkable economic growth during the dictatorship prompted the ASP to take credit for this economic success and to shape their image to suggest that they possess experience with and expertise in economic development. Authoritarians also demonstrated strong records of managing national security during their rule by coping with threats from North Korea and strengthening a military alliance with the United States. The ASP set up their party brand characterized by a hawkish attitude towards North Korea and by emphasizing the build-up of defense capabilities. Distinctive party platforms formulated with these two policy areas are still attractive after authoritarianism ended. Whenever the Korean economy is in a recession or the national security is in danger, the ASP's party brands have strongly appealed to the public. Since the ASP preempted the issues of economic development and national security, people readily associate it with its expertise on these issues.

A reinvented ASP equipped with well-established party brands has been one of the dominant political actors in South Korean politics. As illustrated in Figure 4.5, the ASP (colored in red) has always been a powerful competitor in electoral competition. They took the largest number of seats in several congressional elections; even though they did not achieve a majority of seats, they still gained the presidency in

¹⁸ The ASP in South Korea has frequently changed its names but consistently maintained its conservative, right-wing political ideology. The names of the authoritarian successor parties include DLP (January 1990-December 1995), New Korea Party (December 1995-November 1997), Grand National Party (November 1997-February 2012), Saenuri Party (February 2012-February 2017), Liberty Korea Party (February 2017-February 2020), and United Future Party (February 2020-).

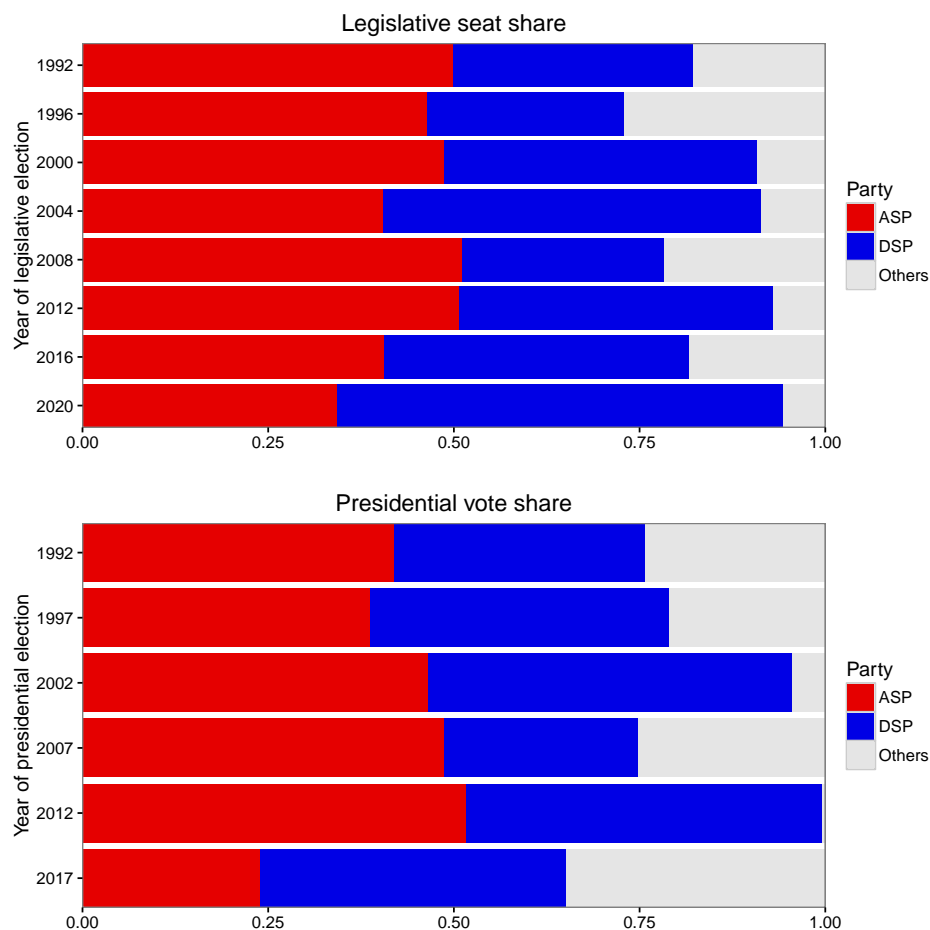


FIGURE 4.5: The results of legislative and presidential elections in South Korea after democratization: ASP and DSP stand for authoritarian successor parties and democratic successor parties, respectively. Source: National Election Commission of South Korea, Electoral Statistics System (available online at: <http://info.nec.go.kr/>).

2007 and 2012 after a decade of political recession. The strong presence of the ASP also makes political competition in South Korea characterized as what Grzymała-Busse (2001) calls “regime divide”: an ideology-based, two-party race between former authoritarians and democrats. As I will discuss below, the dynamics of democratization and the resultant presence of strong ASP have stabilized the pattern as well as the principal players in the electoral competition in South Korea, resulting in a high level of PSI.

The Philippines

The Philippines has a very different story of democratization. In the 1986 presidential election, personalist leader Ferdinand Marcos narrowly defeated his rival candidate, Corazon Aquino, and obtained another chance to extend his rule. However, reports appeared documenting that his victory was possible due to illegal manipulations of the electoral process and result. Marcos's electoral fraud and refusal to resign inflamed the Filipino people, who had already been annoyed by rampant corruption during his rule, to the point that they staged a massive democratic uprising against him, the so-called "People Power Revolution." This bottom-up revolution was successful, resulting in the nullification of the presidential election and the Marcos's resignation from the presidency. As Marcos was ostracized and removed from politics, Aquino acceded to the presidency in March 1986 with substantial support from the masses. Unlike South Korea, where authoritarians initiated the transition to democracy and thereby remained in the post-autocratic political environment, Marcos and most of his allies were immediately overthrown by a democratic movement led by Filipino citizens.

Right after taking office, Aquino abolished the martial law constitution which had been promulgated during the Marcos era and began to frame a new democratic constitution. A Constitutional Commission was organized in September 1986, comprising 48 members, all appointed by Aquino herself. The Commission represented the value of democratic inclusion because its members comprised a wide variety of social groups, ranging from justices and lawyers to farmers and workers (Fernando and Quisumbing-Fernando, 1992). This diverse body of representatives participated equally in the constitution-making process and drafted the new constitution. By contrast, there was not a place for former authoritarians in the process of writing the new constitution in the Philippines.

The radical replacement of authoritarians with democrats also appeared dramatically in the electoral arena. In the 1987 congressional election (the first free election in the Philippines after democratization), democrats achieved an overwhelming victory in both chambers of the congress. LABAN (People’s Power) coalition – a pro-Aquino democratic alliance composed of six different parties – earned the majority both in the Senate (22 seats out of 24) and the House (104 seats out of 200). The huge electoral success of democrats stood in stark contrast to the demise of the former authoritarian ruling party, Kilusang Bagong Lipuman (KBL; New Society Movement). While the Marcos-led KBL enjoyed 110 seats in the House before democratization, it earned only 11 seats in the 1987 House election. The KBL joined a pro-Marcos opposition coalition (Grand Alliance for Democracy; GAD), and the GAD gained 17 seats in the House and only two seats in the Senate. The KBL completely lost its presence in the following congressional elections. The KBL’s number of legislative seats decreased to three (1992), one (1995), and eventually zero since 1998. Imelda Marcos (a former first lady) ran for the presidency as a KBL candidate in the 1992 presidential election, but she ranked fifth place with 10.3% of the popular votes. The KBL has not produced any presidential candidates since then. Although the KBL is not officially dissolved and still puts up candidates in elections, it is no longer a viable opposition party in Filipino politics.

As the authoritarian ruling party (the KBL) almost disappeared from the political scene, interparty competition in the Philippines has been between a large number of democratic parties, most of which were established after democratization.¹⁹ Figure 4.6 shows that multiple principal parties (in addition to a much larger number of small parties categorized as “Others”) have divided legislative seats and presidential

¹⁹ Exceptions are the Nacionalista (founded in 1907), the Liberal Party (founded in 1946), and the KBL (founded in 1978). Unlike the KBL, which exhibited poor electoral performance after democratization, both the Nacionalista and the Liberal Party have gained sizable legislative seats and presidential votes in democratic elections.

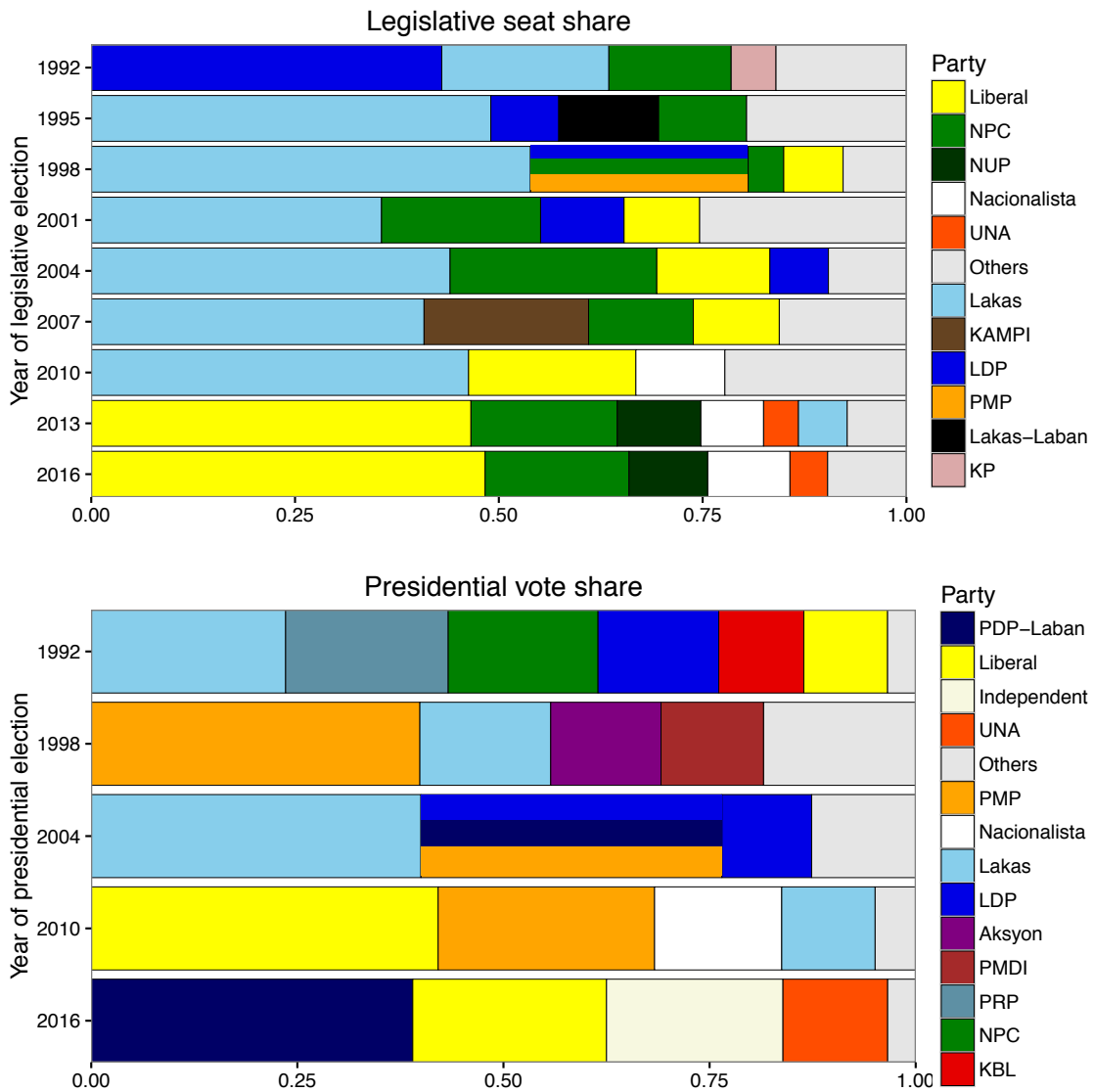


FIGURE 4.6: The results of legislative (the House of Representatives) and presidential elections in the Philippines after democratization: In the 1998 congressional election, the LDP, a faction of the NPC, and the PMP formed a coalition party named the LAMMP. In the 2004 presidential election, a faction of LDP, PDP-Laban, and PMP formed a coalition party named the KNP. In the top figure, parties which gained more than 3% of seat share in the House of Representatives are colored, and all other parties are classified as “Others.” In the bottom figure, parties which gained more than 10% of popular votes in the presidential elections are colored, and all other parties are classified as “Others.” Source: Teehankee (2002); Commission on Elections (available online at: <https://www.comelec.gov.ph/>)

votes. The Lakas has been the largest party in many legislative terms and won the presidential elections in 1992 (Fidel Ramos) and 2004 (Gloria Macapagal Arroyo). Other parties that have been viable contenders in most elections include: the LDP (the main party to support Aquino after democratization), the Liberal Party (the second-oldest party with the ideology of liberalism), the NPC (a conservative party with a center-right ideology), and the PMP (a populist party that elected Joseph Estrada as a president in 1998).

Arising from the nature of multiparty competition, one notable feature of democratic competition in the Philippines is a frequent coalition-building among parties. The Lakas's dominant position was often benefited by building coalitions with smaller parties, the composition of which had often changed. Also, as specified in Figure 4.6, some parties and their factions created new coalition parties to run for election, and they were dissolved after the election. In this sense, electoral competition in the Philippines after democratization is characterized as an extreme fragmentation with a large number of parties and candidates²⁰ who often form a coalition to achieve electoral victory (Teehankee, 2002).

To summarize, democratization in South Korea occurred as a hybrid of old and new political orders instead of an complete discontinuity from the past. However, during the process of democratic transition, the ASP in South Korea reinvented itself, and developed its party brands and distinctive ideological position to better appeal to democratic voters. As a result, the ASP has been one of the most significant political forces of political competition in democratic South Korea. On the other hand, the Philippines' democratization resulted in a rapid disappearance of authoritarians and the (re)emergence of numerous democratic parties. The former authoritarian ruling party no longer acts as a dominant political player, and politi-

²⁰ The most representative example of such a fragmented multiparty competition is the 1992 presidential election in which Fidel Ramos (a candidate from the Lakas) won with only 23.58% of popular votes, and five other candidates gained more than 10% of the vote.

cal competition is shaped by many democratic parties that compete and cooperate. As mentioned in the previous section, this observation does not mean that political competition in the Philippines is not robust only due to the absence of a robust ASP. Competition between democratic parties can be robust when they compete in a stable and institutionalized setting and act as strong opposition to each other. In the next section, I address whether this is the case by examining how PSI relates to the presence/absence of robust political competition in South Korea and the Philippines.

4.4.2 Party System Institutionalization

A remarkable difference between South Korea and the Philippines is found in the degree of institutionalization in their party systems, as illustrated in Figure 4.7. Panel (a) shows that South Korea has maintained a relatively high PSI after its initial rise after democratization, whereas it is consistently low in the Philippines. Panel (b) compares the level of PSI in East and Southeast Asian countries, showing that South Korea and the Philippines are ranked the highest and the lowest, respectively, among their Asian neighbors. This finding evaluates PSI only at the aggregate level; I look at three specific elements of PSI (stable main parties, low electoral volatility, and programmatic party linkages) and examine how they relate to the presence/absence of robust political competition in South Korea and the Philippines.

Stable Main Parties

The proposition of stable main parties consists of two related elements that determine the nature of interparty competition: (a) how many parties are viable political actors in the electoral arena, and (b) how well these main parties constitute a stable set of actors over multiple elections. Although the former indicates the level of party system fragmentation, the latter speaks more straightforwardly to the stability of electoral

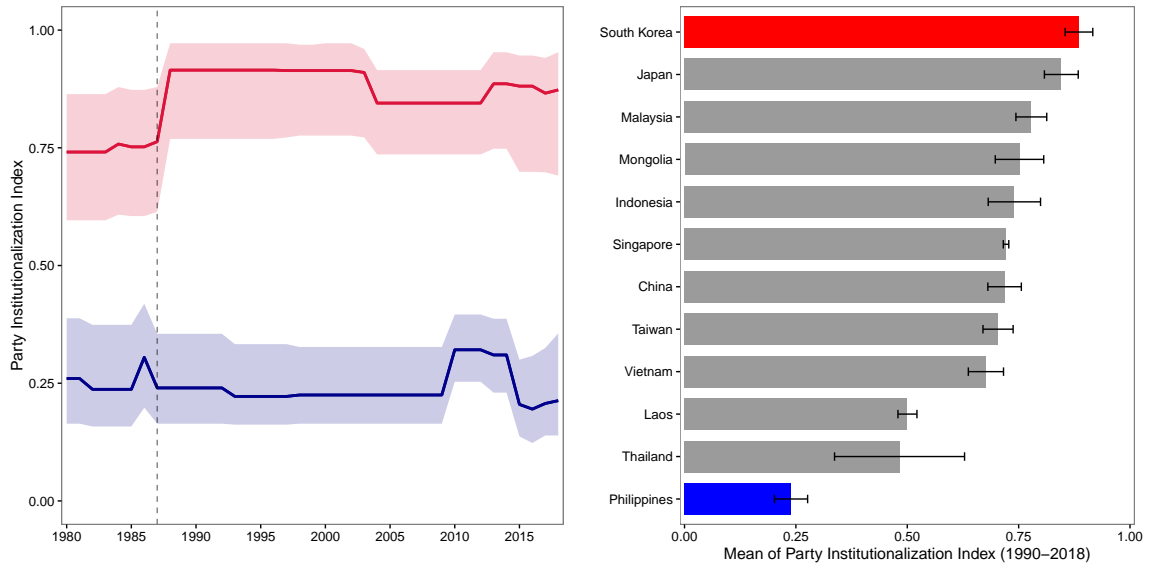


FIGURE 4.7: Party system institutionalization in Asia: The left panel illustrates the level of party system institutionalization in South Korea (red) and the Philippines (blue) since 1980. A dotted line indicates the year 1987, the first year when both South Korea and the Philippines entered democracy. The right panel shows the mean value of party system institutionalization between 1990 and 2018 in twelve countries in East and Southeast Asia. “Party institutionalization index” variable (v2xps_party) from the V-Dem Dataset v9 is used. See Coppedge et al. (2019) for the coding rule for this variable.

competition. Here I examine these two elements by comparing the effective number of parties (ENP) (Laakso and Taagepera, 1979) in South Korea and the Philippines. Two aspects of the ENP are particularly relevant in this analysis. First, the value of the ENP captures how many parties are viable to compete in elections. The higher the value is, the more fragmented is the party system because vote share and political power are divided by a large number of parties. Second, the standard deviation of the ENP over elections captures the inter-temporal stability of main parties. A smaller standard deviation indicates little changes in the ENP between elections, which in turn suggests that the party system has a stable set of main parties. By contrast, a large standard deviation implies that the number of principal parties fluctuates

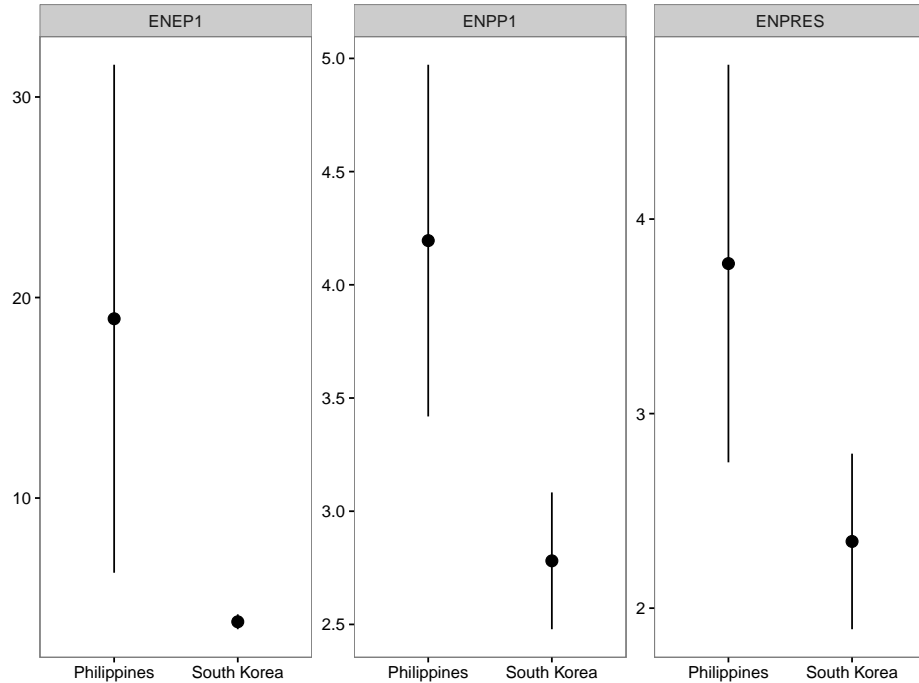


FIGURE 4.8: Effective number of parties in South Korea and the Philippines after democratization: ENEP1 and ENPP1 indicate the effective number of electoral parties and parliamentary (legislative) parties, respectively, once the ‘other’ category has been corrected by using the least component method of bounds suggested by Taagepera (1997). ENPRES indicates the effective number of presidential candidates. See Bormann and Golder (2013) for their coding rules of these variables. The mean and 95% confidence interval are presented.

election-by-election, which constitutes evidence of an unstable set of main parties.²¹

Using the Democratic Electoral Systems dataset (Bormann and Golder, 2013), I plot in Figure 4.8 the means (dots) and standard deviations (error bars) of the ENP in legislative and presidential elections in South Korea as well as the Philippines. Two main findings are noteworthy. First, the greater mean value of the ENP in the Philippines indicates its more fragmented party system. The mean values of the ef-

²¹ One may claim that a fragmented party system (measured by a high number of the ENP) is not necessarily responsible for a lower level of party system institutionalization. This claim is valid in multiparty, advanced democracies in Western Europe where a large number of parties is highly institutionalized and represents diverse ideologies, policies, or interests. This concern is mitigated here by considering the standard deviation of the ENP. In these advanced democracies, the value of ENP is high, but its standard deviation is low.

fective number of legislative parties (ENPP1) are 2.78 in South Korea and 4.20 in the Philippines, and this difference is statistically significant ($p = 0.006$). Similarly, the mean values of the effective number of presidential candidates (ENPRES) are higher in the Philippines (3.77) than in South Korea (2.34), and the difference between these two values is also statistically significant ($p = 0.04$). Second, the greater standard deviation of the ENP in the Philippines suggests that the country has a more unstable set of principal parties between elections. This finding is revealed dramatically in the effective number of electoral parties (ENEP1), showing that the mean (18.94) and standard deviation (19.39) are extremely high in the Philippines. By contrast, the values of the ENP has fluctuated much less in South Korea, implying that electoral competition occurs among a relatively more stable set of parties. In sum, these findings suggest that political competition in the Philippines, compared to that in South Korea, has taken place under a fragmented and unstable party system.

Electoral Volatility

Electoral volatility measures the aggregate turnover from one party to others, from one election to the next (Pedersen, 1979; Roberts and Wibbels, 1999; Tavits, 2005). It thus indicates the fluidity of the party system as well as the degree to which competitive political regimes develop regular and stable patterns of interparty competition (Mainwaring and Zoco, 2007). If voters are volatile enough to change their preference at every election, parties find it difficult to attract their support consistently, and interparty competition is far from regular and stable. Not only does electoral volatility reflect the changes in voters' electoral preferences, but it also accounts for the changes in the elite and party level. For example, electoral volatility rises when parties are often divided or merged and politicians frequently switch their party affiliation.

Table 4.2 presents electoral volatility in South Korea and the Philippines reported

Table 4.2: Electoral volatility in South Korea and the Philippines

Panel A. Mainwaring et al. (2017, 626)				
	Elections included	Mean total volatility	Mean within-system volatility	Mean extra-system volatility
South Korea	1988-2004	36.6	9.9	26.7
Philippines	1987-1998	44.8	27.1	17.8

Panel B. Hicken and Kuhonta (2015, 12)				
	Elections included	Volatility: 1st and 2nd elections	Volatility: last election	Average volatility
South Korea	1988-2012	41.9	35.2	36.5
Philippines	1992-2013	57.0	42.9	38.3

Note: In panel A, within-system volatility means “vote transfers among established parties,” and it “reflects change among established parties.” By contrast, extra-system volatility indicates “vote transfers to new contenders,” which captures “changing membership of the system and reflects dissatisfaction with all of the old parties.” (Mainwaring et al., 2017, 624)

by recent works by Mainwaring et al. (2017) as well as by Hicken and Kuhonta (2015). It demonstrates that both South Korea and the Philippines have a high degree of electoral volatility.²² Admittedly, such high electoral volatility reflects the realities of party politics in both countries where party splits, mergers, and name changes occur frequently. However, particularly in such political context, electoral volatility should be interpreted with care as it tends to be inflated when one regards the mergers, splits, and name changes as the creation of an entirely “new” party.²³

²² According to the global dataset constructed by Mainwaring et al. (2017), electoral volatility in both countries is the highest among their neighboring Asian countries and ranked 16th and 10th highest, respectively, out of 67 countries.

²³ For example, imagine a hypothetical case that party A changes its name to A' but maintains everything else. Voters who supported party A in the previous election may vote for party A' in the next election because parties A and A' are substantively the same. Although these voters do not change their electoral preference, electoral volatility increases in this setting because the formula of calculating it regards party A' as a new party different from party A.

This issue often arises when examining electoral volatility in South Korea, where these party changes have not undermined a profound continuity of party ideology, policy position, and core supporters. Most splits and mergers in South Korea resulted mostly from conflict over party nominations for elections, not from fundamental policy/ideological disagreements (Park, 2010). Party politics in South Korea has a clear line of contestation that distinguishes between conservatives and liberals/progressives, and it has been very rare for politicians to cross this line by shifting from one to the other. For these reasons, frequent party mergers and splits in Korean politics have hardly caused actual significant shifts in policy/ideology positions of both politicians and voters throughout elections (Hellmann, 2014, 60).²⁴ This aspect is explained partly by mean within-system volatility in Panel A, Table 4.3, which measures vote transfers among established parties. South Korea has a relatively much lower value in this volatility.²⁵ This suggests that vote transfers among established parties only rarely occur and that established parties are good at securing their supporters without losing them to their rival parties.

By contrast, the high electoral volatility and the fluidity of the party system in the Philippines are attributable not only to party splits and mergers but also to politicians' frequent party switches. It has been widely observed in the Philippine politics that legislators readily abandon their party to join the president's party shortly after every election. For example, the LDP, which served as Aquino's main support party in the legislature during the early years of democratization, became

²⁴ My argument thus disagrees with the earlier works by Croissant and Völkel (2012) and Wong (2014), which claim that South Korea has one of the least institutionalized party systems in Asia with a high level of electoral volatility. Ostensibly high electoral volatility in South Korea does not necessarily indicate its low level of PSI because the methodology of calculating electoral volatility does not accurately capture the political reality in South Korea, where frequent party mergers and splits hardly lead to the changes in an ideological shift among voters and politicians.

²⁵ Similarly, Powell and Tucker (2014) introduce "type B volatility," which occurs when voters switch their votes between existing parties. Consistent with Mainwaring et al. (2017), Powell and Tucker report very low value of type B volatility in South Korea (3.17 on average between 1987 and 2015).

the largest party in the House as a result of the 1992 congressional election. But on the same day the LDP candidate was defeated by Fidel Ramos (a candidate from the Lakas), which led to a series of defections by the LDP legislators after the election. Three-quarters of the LDP legislators (64 out of 86) left the party within three years and most of them joined the Lakas. The 1995 congressional election revealed the reversed status of the Lakas and the LDP: the former became the largest party in the House by earning 100 seats, while the latter gained only 17 seats. However, the Lakas experienced a decline in the House after its candidate failed to win the 1998 presidential election. The victory of Joseph Estrada prompted legislators to join his party (the PMP) during his presidency (Eaton, 2002, 95-96). This practice of party switch towards the president's party, which Kasuya (2009) terms as "presidential bandwagon," has repeatedly occurred throughout elections in the Philippines, and produces dramatic changes in the number of seats that parties gain in each legislative term (as illustrated in Figure 4.6) as well as a high degree of electoral volatility from one election to the next.

Programmatic Party Linkages

The proposition of programmatic party linkages is a party-level characteristic frequently used to determine the degree of PSI. When political parties have distinct platforms and are connected to voters programmatically and ideologically, constituents tend to respond to a party's positions on national policies, general party programs, and visions for society (Coppedge et al., 2019). By contrast, clientelistic parties, which lack strong ideological platforms or party labels, rely heavily on material inducements and patronage (Kitschelt, 2000; Kitschelt and Wilkinson, 2007). As such inducements provide only short-term and temporary incentives to voters and politicians, the clientelistic party system tends to be associated with greater electoral

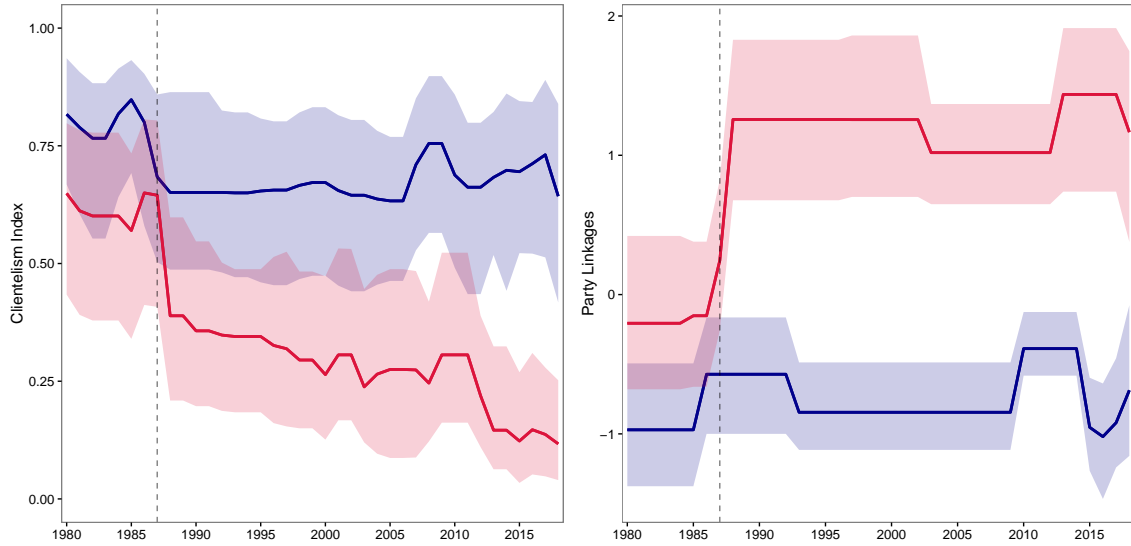


FIGURE 4.9: Clientelism in South Korea and the Philippines after democratization: Each panel illustrates clientelism index (`v2xnp_client`) and party linkages (`v2psprlnks`) in South Korea (red) and the Philippines (blue) since 1980. A dotted line indicates the year 1987, the first year when both South Korea and the Philippines entered democracy. Both variables are drawn from the V-Dem Dataset v9. See Coppedge et al. (2019) for the coding rule for these variables.

volatility and a lower level of institutionalization (Hicken, 2011).

In Figure 4.9, I compare the levels of clientelism and party linkages in South Korea and the Philippines since the 1980s, as obtained from the V-Dem dataset. Democratization resulted in a sharp decrease of clientelism and a rapid increase in party linkages in both countries. However, South Korea has consistently continued to decrease the clientelistic efforts and developed more programmatic party linkages, while the Philippines has always maintained a high level of clientelism and a low level of party linkages.

A clientelistic party system is one of the distinctive political characteristics in many Southeast Asian countries (Tomsa and Ufen, 2013), and it constitutes an especially chronic problem plaguing the Philippine politics. Clientelism was first implanted by American colonialism during the early 20th century, and it endures de-

spite the blessing of democratization. As discussed above, democratization brought a “labyrinthine” multiparty system (Ufen, 2008, 334) with an explosion of new parties; instead of developing programmatic linkages, they anchored on “clientelistic, parochial, and personal inducements rather than on issues, ideologies, and party platforms” (Teehankee, 2012, 288). Clientelistic parties in the Philippines have produced many democratic deficits, e.g., numerous party splits and mergers, ad hoc coalitions, short-lived dominant parties, and rent-seeking. Under the party system with high fragmentation, weak ideological labels, and strong aspiration for office-seeking, the stability of interparty competition is seriously challenged in the Philippines since parties may create any combination of short-term electoral alliances to form a majority. Although competition among numerous political parties makes it look competitive, a weakly institutionalized party system does not make it robust.

By contrast, political competition in South Korea has been mainly dominated by a smaller number (usually two) major parties with distinct party platforms and strong ideological linkages to constituents. As examined in the previous subsection, this is partly thanks to an ASP that has inherited and developed its unique party platforms. While this ASP identifies itself as right-wing conservatives and emphasizes its competence in economic growth as well as national security, democratic successor parties frame themselves as liberals/progressives by constructing their party platform in opposition to the ASP, emphasizing redistribution, economic welfare, and peace-building with North Korea. Both authoritarian and democratic successor parties have frequently engaged in party splits, mergers, and name changes, but these changes have hardly undermined their distinctively different ideological stances, policy positions, and core supporters. As major parties are competing with each other with their own agendas over time, it is more likely that one party regards the other as a credible political rival, allowing South Korea to have a better chance of developing robust political competition.

In sum, my examination of all three elements of PSI strongly suggests that South Korea has a more institutionalized party system and a better environment for robust political competition than the Philippines. In South Korea, a stable set of parties with distinct party platforms has regularly interacted and minimized the shift of voters' electoral preference. The Philippines has more viable players of contestation than South Korea, but interparty competition is neither stable nor robust because of a highly volatile and clientelistic party system.

4.5 Judicial Independence in South Korea and the Philippines: Two Tales

4.5.1 South Korea: Judicial Reform under Roh Moo-hyun Administration

The Roh Moo-hyun (February 2003-February 2008) administration may constitute a good case for examining insurance theory in the context of South Korea for several reasons. First, this was when the Roh government's extensive efforts towards judicial reform bore fruit and led to the improvement of judicial independence in South Korea. Although the history of judicial reform in democratic South Korea can be traced back to the mid-1990s, judicial reform under the Roh administration is regarded as one of the most significant steps in the development of the judicial system in South Korea (Shin, 2008). Second, Roh's commitment to judicial reform was conducted in the political environment in which the president and the ruling party competed fiercely against a robust opposition party. When translating the judicial reform bills to legislation, the Roh administration was often challenged by the Grand National Party (GNP; the ASP) which less favored the idea of a large-scale judicial reform. In addition, the GNP's growing presence in the National Assembly and the next presidential race caused Roh to worry about the possibility that power alternation might undermine his efforts at judicial reform.

Roh, a former labor lawyer and human rights activist, emphasized judicial reform as one of the central issues in his campaign pledges (Ginsburg, 2004, 12-13). As a number of human rights lawyers joined his government, the Roh administration had great interest in judicial reform from the start (Cho, 2008, 273). His commitment to judicial reform gained a decisive momentum a few months after his inauguration when internal conflicts within the judiciary appeared. A group of young justices were highly critical of the Supreme Court's practice of recommending justices based solely on rank. They argued that such practice made the judiciary more hierarchical and conservative, thereby undermining the independence of judges. As the Supreme Court Chief Justice ignored such voices and stuck to the practice for appointing a successor of an outgoing Supreme Court justice, complaints exploded collectively within the judiciary. A group of justices expressed their strong opposition by tendering their resignations, and hundreds of judges released a statement to censure the ossified culture of the judiciary (Choi, 2015, 213). This incident, the so-called "The Fourth Judicial Crisis," also brought about strong dissents from the public against a hierarchical and bureaucratized judiciary. As the increased criticisms inside and outside the judiciary severely undermined its legitimacy, the Chief Justice decided to cope with the crisis by joining the president's strong drive for judicial reform (Lee, 2007, 44).

In August 2003, President Roh met Chief Justice Choi Jong-young and they agreed upon the joint undertaking of judicial reform. Two months later, the Roh government established the Judicial Reform Committee (JRC) under the auspices of the Supreme Court, whose mission was "to improve the judicial system, enhance democratic legitimacy, provide easy access to justice and fairness, strengthen human rights, and produce better trained legal professionals" (Yoon, 2010, 128). After a year of discussion, the JRC submitted its recommendations for judicial reform at the end of 2004. The JRC also suggested the establishment of an additional governmental

body to implement its recommendations. Consequently, the Presidential Committee on Judicial Reform (PCJR) was created within the executive in January 2005 to execute the JRC's recommendations in the form of legislative bills and other measures. In this regard, the Roh administration, unlike previous governments, adopted a two-step mechanism to effect judicial reform. After the JRC and the Supreme Court devised the basic direction and the specific agendas (step 1), the PCJR and the executive implemented the JRC's specific recommendations (step 2). This mechanism also indicated that judicial reform took place in the context of mutual cooperation between the executive and the judiciary (PCJR, 2006, 335-336).

Judicial reform efforts by the JRC and the PCJR led to several major accomplishments never achieved by previous governments. Among many, two achievements are particularly noteworthy in terms of judicial independence.²⁶ First, the Roh government, which called itself “the Participatory Government,” reflected the value of civil participation in the legal process by introducing the practice of lay participation in criminal procedure (jury trials). Lay participation was justified on the grounds that it would “strengthen the democratic legitimacy of the judiciary, enhance public trust in the judiciary, and reflect diverse values in the trial” (PCJR 2006: 173). The PCJR drafted a bill for a Law on Lay Participation in Criminal Trials and submitted it to the National Assembly in May 2005. The bill finally passed in April 2007 after years of congressional discussion. The introduction of lay participation was evaluated as a significant step towards the democratization of the judicial system by allowing Koreans to “take part in criminal justice as active decision-makers, not just as passive beneficiaries or onlookers” (Cho, 2008, 285).

²⁶ Although not related directly to judicial independence, one of the most remarkable achievements of the Roh government's judicial reform was the establishment of a new scheme of legal education by introducing the graduate-level law school system. The PCJR drafted a bill (the Act on the Establishment and Management of Professional Law School) and submitted it to the National Assembly in October 2005. The bill passed in July 2007. See Ahn (2006), Miyazawa et al. (2008), and Kwon (2013) for a detailed discussion of South Korea's legal education reform.

Second, the Roh government sought to increase the diversity and professionalism of judges by adopting a unified plan for judicial appointments. Previously, judges were selected from recent graduates of the Judicial Research and Training Institute. However, there had been criticisms about this practice because the judgment of complicated cases was thought to require not merely a mechanical application/interpretation of legal provisions but also various social and legal experiences (Chang, 2019, 65). Addressing this concern, the Roh administration permitted the appointment of judges from lawyers with five or more years of experience as practicing lawyers or equivalent roles. As a result, starting in 2006, the Supreme Court gradually increased the number of appointments among practicing lawyers with years of experience as legal professionals (Kim 2013: 159-160).²⁷ The PCJR described the rationale behind the unified plan for judicial appointments as follows:

As judges with abundant social experiences proceed with a trial, it is possible to conduct a trial that reflects the universal social value, conforms to the sound legal sentiment of society, and is trusted by people. As the concept of judicial promotion disappears, it (the unified plan for judicial appointments) can prevent the bureaucratization of judges and further consolidate the independence and democratization of judicial power (PCJR 2006: 156).

Although major progress in the development of judicial independence was achieved under Roh's administration, the political environment in which he carried out judicial reform was tough on the executive. Throughout his presidency, Roh had consistently faced significant pressure and challenges from the opposition party (the GNP). From the start, Roh had an uneasy relationship with the GNP (which was composed of

²⁷ After the process of piecemeal implementation starting in 2006, the full implementation of the unified plan for judicial appointments was realized in 2013 as a result of the revision of the Court Organization Act in 2011 (Chang, 2019, 64).

right-wing conservatives). As a left-wing progressive, Roh overtly opposed the values championed by the GNP, and his radical political stance as well as his unconventional characteristics often annoyed conservatives. For instance, Roh said that he might carry out a policy of anti-Americanism, and his attitude towards the United States, combined with his previous career as a human rights lawyer and a political dissident, was seen by conservatives as a grave danger to South Korea's national security and political order (Fukuyama et al., 2005, 110). It was thus natural for the GNP to openly oppose Roh. The GNP was the largest party in the National Assembly at the beginning of Roh's presidency, thus his reform agendas were often blocked due to the lack of a legislative majority.

The confrontation between the GNP and the president exploded when the GNP-led National Assembly impeached Roh in March 2004 (the first time in Korean political history a sitting President was impeached), alleging that his remark asking people to vote for his party violated the electoral law and the constitution. However, the impeachment led to two consequences which eventually benefited Roh. In the 2004 legislative election held a month after his impeachment, voters who were highly critical of it punished the GNP by massively supporting the president's party (the Uri Party, UP), making it a narrow legislative majority (152 seats out of 299). Although Roh's presidency was temporarily suspended at that time, his party gained a significant political momentum, which they used to dominate the legislature. More importantly, in May 2004, the Constitutional Court dismissed the impeachment bill by ruling that Roh's unlawful act was not sufficient to prove his outright violation of the constitutional order (see Lee 2005 for detail). As a result, the Constitutional Court reinstated Roh's presidency and the political environment became more favorable to Roh than it had been prior to his impeachment.

This change did not last long. The UP's number of legislative seats gradually decreased as several UP lawmakers lost their positions due to their violation of the

electoral law during the legislative election. It took only six months after the election until the UP lost its majority status in January 2005. The GNP filled these vacant seats in the National Assembly by winning a series of by-elections in 2005 and 2006. As the UP failed to gain any single seat from these by-elections, the difference in seat share between the UP and the GNP had narrowed from 30 (152 vs. 122) in June 2004 to 12 (139 vs. 127) in December 2006. Starting in 2007 (the last year of Roh's presidency), there were several credible signals of potential power alternation to the GNP. The approval ratings of Roh and the UP were low, and many UP legislators left the party and created a new party. A race for the next presidential election began in early 2007, and two powerful politicians – Lee Myung-bak and Park Geun-hye – tightly matched in the GNP presidential primary and gained nationwide attention. These changes indicated that interparty competition between the UP and the GNP was to become increasingly intense, giving the GNP a greater chance to stand as a strong opposition during Roh's presidency and to be the ruling party after Roh.

This environment of interparty competition affected the fate and consequences of judicial reform efforts during the legislation stage. The PCJR submitted 25 bills of judicial reform to the National Assembly, but only six were legislated before the end of its two-year operation (PCJR 2006: 335). Before its dissolution in November 2006, the PCJR announced a resolution calling for the swift legislation of the judicial reform bills by the National Assembly.²⁸ Although the GNP did not entirely oppose the goals and principles of judicial reform under the Roh administration, the GNP lawmakers were not as active as those in the UP to legislate the judicial reform bills. Since the UP was not able to pass these bills on its own, it needed reasonable support from (and careful deliberation with) the GNP. However, this was not easy

²⁸ Soohoon An, "The PCJR Urged the National Assembly to Expedite the Judicial Reform Bills [*Sagaechuwi, sabeopgaehyeokbeoban josokcheori chokgu*]." *Yonhap News*. November 20, 2006. (available online at <https://www.yna.co.kr/view/MYH20061120001400355?section=search>; last accessed June 21, 2020).

because the GNP took advantage of its increased leverage vis-à-vis the UP by tying the passage of judicial reform bills (specifically the law school bill) to an unrelated bill on private school reforms that it wanted to pass (Kwon, 2013, 12). Many of the judicial reform bills were still pending until the last legislative session of Roh's presidential term, and Roh and the UP regarded the GNP's strategy as an attempt to nullify the government's efforts at judicial reform.

Roh released a televised statement on June 27, 2007, criticizing the GNP for playing partisan politics and urging the National Assembly to open its provisional session in July to pass the bills. His outright pressure on the opposition party and the National Assembly was controversial but effective. After months of legislative gridlock, the UP and the GNP finally reached a political compromise and passed the law school bill in July 2007. Although the UP yielded concessions to the GNP, including the passage of the bill on private school reforms, Roh was able to see the realization of several, if not all, elements of judicial reform by the end of his presidential term. In retrospect, this result represented a precommitment by Roh in that even after power alternation to the GNP and Lee Myung-bak, most of the judicial reform legislations and pending bills during Roh's presidency continued to be implemented or discussed without abolition.

To summarize, the Roh administration's strong push for judicial reform was not simply a product of his political vision but also motivated by his credible concern that the presence of strong oppositions might nullify or even reverse his accomplishments. Roh could foster this perception under the environment in which a stable set of major parties (the UP and the GNP) constituted robust political competition during his presidency. Thus, this case serves as an example illustrating my modified claim of insurance theory: how robust political competition generates the incumbent's credible threats from the opposition and thereby prompts him to take actions to advance judicial independence.

4.5.2 The Philippines: The Impeachment of Chief Justice Corona

The impeachment of Supreme Court Chief Justice Renato Corona in May 2012 is an illustrative case for understanding judicial independence in the Philippines for several reasons. First, it marks the first time in the Philippine history that the executive and legislative branches removed the individual occupying the highest position of the judiciary. Second, the rise and fall of Chief Justice Corona demonstrate how incumbent presidents undermine judicial independence in different ways. Although Corona was promoted to the position of Chief Justice via court-packing by an outgoing President Gloria Macapagal Arroyo, his impeachment was in part politically motivated by the incoming President Benigno Aquino III, who had a strained relationship with the Arroyo-friendly Supreme Court. Third, related to the focus in this chapter, low party system institutionalization and unstable nature of political competition were conducive to the massive legislative support for Aquino's initiative to remove Corona.

The Arroyo government emerged unexpectedly after President Joseph Estrada (June 1998-January 2001) was impeached for engaging in grand corruption. Distancing herself from the Estrada administration (in which she had served as vice president), Arroyo promised to build a more transparent and clean government. However, her nine-year presidency (January 2001-June 2010) was notorious for political instability and corruption. The Arroyo administration generated many corruption scandals, was suspected of committing electoral frauds in the 2004 presidential election (in which she won again by a slim margin), faced people's uprisings and military coups, and declared a state of emergency to repress these opposing voices (Escresa and Garoupa, 2012, 15). The Arroyo administration was also widely criticized for its abuse of democratic institutions (Hutchcroft, 2008), and judicial independence was severely eroded during her period. After the retirement of Chief Justice Hilario

Davide Jr., who implemented the Action Program for Judicial Reform and was respected as an independent justice, Arroyo accelerated her move to fill the Supreme Court with people within her circle of influence. These justices exhibited strong allegiance to their appointer and favored Arroyo and her allies in several corruption and impropriety cases. At the end of her term, all fifteen Supreme Court justices were Arroyo's appointees.

As the end of her term approached, there were credible signals that indicated Arroyo's imminent loss of power. Her popularity was extremely low²⁹, and a candidate from the ruling party was far from impressive during the 2010 presidential election race. Instead, a Liberal Party candidate, Benigno Aquino III (a son of former president Corazon Aquino), attained nationwide support and won the presidential election. Under the great likelihood of her losing power, Arroyo carried out the so-called "midnight appointment" and appointed her people to major government agencies. The climax of the midnight appointment occurred in the judiciary. A few days after the presidential election and one month before the expiration of her term, Arroyo appointed Corona to the Supreme Court's Chief Justice. This decision created political and legal controversy since the constitution prohibits any presidential appointments during the period from sixty days before the election to the end of an individual's presidential term. However, the Arroyo-friendly Supreme Court confirmed the legality of her midnight appointments on the grounds that the constitutional ban on presidential appointments did not apply to the judiciary.³⁰ This action was regarded as the culmination of Arroyo's yearlong efforts at court-packing.

Incoming president Aquino was determined to eliminate corruption and politi-

²⁹ The Social Weathers Station (SWS) quarterly surveys reported that net satisfaction ratings of President Arroyo had consistently been negative since 2005 and extremely low in the last three years of her presidency: -33 (2008), -35 (2009), and -35 (2010). According to the SWS, she was the least popular president in the Philippines after democratization.

³⁰ *de Castro v. Judicial and Bar Council and President Gloria Macapagal-Arroyo*, G.R. No. 191002, April 20, 2010.

cal mismanagement accumulated during the Arroyo presidency, but the Corona-led Supreme Court often blocked his ambitious reform plans. For example, Aquino's Executive Order No. 1 to create the Truth Committee was declared unconstitutional by the Supreme Court. The Truth Committee was designed to investigate reported cases of graft and corruption (especially under Arroyo) and the Supreme Court judged that the establishment of the Committee might violate the equal protection clause of the constitution.³¹ The Supreme Court also dismissed Aquino's Executive Order No. 2 which requested the withdrawal of midnight appointment, and it issued a temporary restraining order on the government's travel ban against Arroyo, thus nullifying it.³² The Supreme Court's rejection of a series of anti-Arroyo reform agendas by the Aquino government intensified the conflict between the executive and the judiciary.

On December 5, 2011, Aquino attended the National Criminal Justice Summit and openly criticized Corona and the Supreme Court for being subservient to and politically biased in favor of former President Arroyo. The president's public criticism of the Chief Justice prompted legislators from the Liberal Party to discuss the idea of and to make plans to impeach Corona. The process was swift. Only a week after the Summit, the pro-Aquino ruling coalition proposed the impeachment complaint, accusing Corona (a) of being partial to Arroyo in cases related to her administration and (b) of refusing to disclose his assets (particularly foreign deposits) to the public as required by the constitution. The impeachment complaint quickly passed with no deliberation in the House, earning 188 signatories (which exceeded the required one-third of the then 285 House members) and was transmitted to the Senate. After five months of review and deliberation, the Senate confirmed the complaint with 20 "yea" votes (out of 24) and officially declared the impeachment of Corona in May 2012. Aquino replaced Corona with Associate Justice Maria Lourdes Sereno (appointed by

³¹ *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

³² *Gloria Macapagal-Arroyo v. de Lima et al.*, G.R. No. 199034, November 15, 2011.

Aquino himself) and promoted her to the Chief Justiceship.

One puzzle, related to the focus in this chapter, is why Arroyo's party (the Lakas-Kampi) did not or could not make a significant effort to block the impeachment complaint against Corona, despite its electoral victory in the 2010 congressional election. In this election, the Lakas-Kampi had become the largest party in the House of Representatives with 106 seats (36.93%), while the Liberal Party gained only 47 seats (16.43%). In the Philippines, presidential and congressional elections are held concurrently. The 2010 elections resulted in the Liberal Party taking the executive, while the Lakas-Kampi became the largest party in the legislature. If the Lakas-Kampi was the largest party in the House, why did it fail to block the impeachment attempt by the Liberal Party?

The answer comes from the Philippines' low level of party system institutionalization and the fluid nature of its party system. As discussed earlier, party labels are almost non-existent in the Philippines, thus hardly bind politicians to remain with any one party. Instead, the enormous clientelistic perks obtained by members of the president's party always cause self-interested politicians to defect from their original party and join the president's party. This pattern of party-switching also appeared after the 2010 congressional election. As it was apparent that the Liberal Party was the president's party, many of the Lakas-Kampi legislators left the party and joined the Liberal Party. It took only months after the election that party with the most seats in the House reverted to the Liberal Party (with 80 seats), while the Lakas-Kampi shrank significantly to 48 seats. The pro-Aquino coalition was even bigger and reached a supermajority of 251 seats (out of 285) in the House (Quimpo, 2012, 536). Under this environment in which the Liberal Party and the Aquino-aligned coalition were preponderant in the legislature, it was not surprising that the House materialized the president's initiative for removing Corona by quickly passing the impeachment complaint. This political context was created in the context of the less

institutionalized Filipino party system: the lack of party platforms, greater electoral volatility, party-switching, and unstable or short-lived coalitions.

The impeachment of Corona produced mixed evaluations. On the one hand, it gained overwhelming support from the Philippine people who had been frustrated by the Arroyo administration for many years (Deinla, 2014, 149). According to the SWS quarterly surveys, the net satisfaction ratings of the Supreme Court were +13 right before Corona's impeachment but rose significantly to +35 after the impeachment.³³ Aquino also legitimized the impeachment in his interview by saying that "it is [a] very big symbol to the judiciary, especially to those who have adopted the position that we are the law as opposed to we are the interpreters of the law. That phase is over" (Vitug, 2012). Despite its intention and positive outcome, however, the impeachment of Chief Justice Corona is not without its critics (e.g., Arriola and Mandocdoc 2011). From the perspective of the separation of powers, Corona's impeachment was an example of the infringement of judicial independence in that the executive and legislative branches plotted a joint "coup" to overthrow the leader of the judiciary and thereby threatened its autonomy (Batalla et al., 2018, 130). The goal of Aquino's action was arguably to restore judicial independence, but, ironically, the means used to accomplish this goal was, by its nature, to undermine it.

In sum, the story underlying the rise and fall of Chief Justice Corona tells us a different story from what we would expect of the conventional insurance theory. At the end of her term, outgoing president Arroyo appointed Corona to the Chief Justice as a way of packing the court. Although her action might be regarded as a form of insurance intended to protect herself after being removed from office, this type of insurance did not promote judicial independence. Aquino's actions taken

³³ Social Weathers Station. "Fourth Quarter 2019 Social Weather Survey: Net Satisfaction "Good" for Vice-President Robredo, "Very Good" for Senate President Sotto, "Good" for Speaker Cayetano, and "Moderate" for Chief Justice Peralta." March 3, 2020. (available online at <https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20200303014335>; last accessed June 14, 2020.)

to eliminate obstacles (created by the Arroyo-biased Supreme Court) to his reform were, ironically, another indication of the infringement of judicial independence as their result was the removal of the head of the judiciary. During this process, a weakly institutionalized party system created a new environment of interparty competition entirely different from the election results, allowing the legislature to create massive support for Aquino's initiative for impeaching Corona.

A critical takeaway from this case is that, although the Philippine party system looks like a multiparty system, in reality, it "resembles a single-party system for the duration of a president's administration" (Eaton, 2002, 95). In this environment, where politicians easily change their party affiliation and rush to the president's party after elections, political power is always highly concentrated in the ruling party, and interparty competition has little substantive meanings even if different parties appear competitive at the ballot box. This tendency also marginalizes opposition parties and makes it difficult for them to pose credible threats to the incumbent, thereby inhibiting robust political competition. The case of Corona impeachment demonstrates that the absence of robust political competition under a fluid and weakly institutionalized party system may exacerbate the incumbent's tendency to undermine judicial independence by making him unconstrained by credible threats from his opposition.

4.6 Conclusion

In this chapter, I present a modified view of insurance theory to provide a richer understanding of the development of judicial independence in democracies. I argue that focusing mainly on the closeness of electoral contestation in existing studies often fails to pinpoint the core assumption of the insurance theory: whether the incumbent perceives credible threats of replacement from his opposition via political

competition. Instead, I claim that intense political competition promotes judicial independence when it is robust in enabling opposition parties to pose credible threats to the incumbent party. My theoretical claim is especially useful in explaining the variations in the development of judicial independence in post-authoritarian South Korea and the Philippines. Given that similar electoral closeness in both countries (as measured by existing datasets) does not fully account for the difference in the level of judicial independence, I determine whether each country has viable actors and the correct institutional environment for robust political competition and how the presence or absence of such competition leads to the (under)development of judicial independence.

My research offers four important implications for the study of judicial independence in democracies. First, most importantly, my analysis emphasizes that the *quality* of political competition is as essential as the competitiveness itself for promoting judicial independence. The argument I have developed and tested in this chapter is a stronger and more nuanced claim of the insurance theory: Judicial independence can be advanced in democracies when competitive elections occur between robust actors and under well-designed institutional settings. Some democracies find it more challenging to build such environments than others. The case of the Philippines demonstrates that seemingly competitive elections without the support of an institutionalized party system do not result in the creation of opposition parties capable of credibly threatening the ruling party nor do they create inducements for the incumbent politicians to commit to long-term institutional development. In this regard, a practical implication drawn from my results is that one of the major institutional prerequisites for judicial independence is the creation of a well-institutionalized party system which ensures that political competition can be stable and robust, which in turn creates incentives for the incumbent to take advantage of judicial independence as political insurance.

Second, my research suggests that scholars studying judicial independence should pay more attention to how democratization shapes the dynamics of political competition. Democratization is a “critical juncture” in many emerging democracies and has lasting effects on their political and institutional development.³⁴ My case study has shown that the different paths of democratization shaped different initial conditions for political competition in South Korea and the Philippines. Although previous studies on insurance theory assume political competition as a given and examine its impact on judicial independence, my analysis implies that democratization plays a significant role in shaping the dynamics of political competition and in determining in part whether such competition can be robust. Democratization thus needs to be considered when examining a causal relationship between political competition and judicial independence.

Third, findings from my case study present different stories from the argument in existing studies that authoritarian inheritances can be detrimental to judicial independence (Rebolledo and Rosenbluth, 2009; Popova, 2010; Aydın, 2013). In South Korea, the ASP, which has continued to be strong after democratization, has not affected adversely the development of judicial independence. Instead, the presence of this ASP has produced a stable and robust political competition, which has shaped better conditions for the insurance logic to work. By contrast, the nearly complete eradication of authoritarians in the Philippines has not always brought the desired consequences. Bottom-up democratization resulted in the explosion of a multitude of new democratic parties but, under a weakly institutionalized party system, this situation has created an even more unstable political competition, which weakens political incentives for promoting judicial independence. In this regard, my findings

³⁴ In this regard, this article also illuminates insights from historical institutionalism (Pierson, 2000; Thelen, 1999) that highlights the significance of initial conditions in institutional change and development. By focusing on the stickiness of past institutional legacies, historical institutionalism is also useful to understand the case of the Philippines, where deep-rooted clientelism has severely hampered the development of robust political competition.

from the South Korean case share the idea expressed in a group of emerging studies which argue that a reinvented ASP furthers robust political competition (Grzymała-Busse, 2020) and democratic stability (Slater and Wong, 2018).

Lastly, theoretical expectations and implications drawn from this chapter can be further examined beyond my qualitative, small-N case study. My study entailed empirical hypotheses about the interactive effect of electoral closeness and conditions for robust political competition on judicial independence. For example, researchers may quantitatively test whether the positive effect of electoral closeness on judicial independence is increasing as the level of party system institutionalization rises, or they can test whether the impact of electoral closeness on judicial independence is more prominent in democracies where reinvented authoritarians are present and politically powerful. To my knowledge, no prior studies have included these variables for robust political competition as an independent variable (or even a control variable) in their quantitative analysis. Empirical tests of these hypotheses, which should be agendas for future research, will increase the generalizability of my theoretical claim and make original contributions to the literature on judicial independence.

Conclusion

In the previous chapters, I examined the maintenance of judicial independence in authoritarian regimes and democracies by exploring the political and economic conditions under which political leaders credibly maintain their initial commitment to judicial independence. In this chapter, I summarize my principal findings (Section 5.1) and suggest some broad implications and significance of my findings (Section 5.2). Lastly, in Section 5.3, I introduce several avenues of future research that can be developed from my work in this dissertation, which I expect to make additional contributions to the research on judicial independence.

5.1 Summary of Findings

Challenging the conventional understanding that non-democracies do not have independent courts, a growing number of authoritarian countries has embraced judicial independence, creating courts with some autonomy that may constrain autocratic rules. But judicial independence is often developed selectively in authoritarian regimes. Autocrats tend to favor judicial independence because of its economic ad-

vantages: Independent courts provide institutional safeguard of property rights and thus play significant roles in promoting economic development. Beyond the earlier scholarly interest in why autocrats build independent courts as their commitment to economic development, I have theorized and empirically tested how they credibly maintain the commitment despite the apparent challenges, namely, the lack of institutional devices capable of constraining autocrats.

Given that no systematic theories have been established in the literature to account for this puzzle, I have developed a theory on the maintenance of judicial independence in autocracies in Chapter 2. My theory highlights an interaction between a regime's economic reliance on FDI and autocrats' concern about their reputation, which creates strong and continuing incentives to respect judicial independence as a property rights assurance to foreign investors. I have claimed that, where FDI represents a significant portion of their national economy, autocrats who have once respected judicial independence find it more difficult to reverse their path afterward. Once autocrats have cultivated a reputation of having an FDI-friendly institutional environment and advertised this as one of the regime's valuable assets, they find more costly any efforts to sully their established reputation and thus have good reasons not to undermine independent courts. Furthermore, autocrats' renegeing on judicial independence and the resultant erosion of their reputation diminish the regime's prospect of attracting future FDI and bring about "sanctions" by current foreign investors, both of which adversely affect an FDI-reliant economy. I have therefore hypothesized that, when the national economy relies heavily on FDI, autocrats are more likely to maintain independent courts because their potential renegeing on judicial independence is deterred effectively by their economic and reputational concerns.

In Chapter 3, I have found quantitative evidence of my theoretical expectation through my time-series, cross-section analysis of a large sample of authoritarian countries during the post-Cold War period. My baseline results indicate a positive and

significant effect of a regime's past reliance on FDI (measured as FDI stock as a percentage of GDP) on the current level of judicial independence. Extensions of my baseline analysis further suggest some qualifications of this theorized effect. First, my analysis confirms the compartmentalized nature of judicial independence in that the significant impact of FDI is restricted to the economic dimension of judicial independence and does not spill over into its political aspect. Second, the theorized effect appears not immediately but in the medium-/long-term, implying that FDI requires time to generate positive effects on judicial independence in authoritarian regimes. Third, my analysis demonstrates the regime type conditional nature of the theorized effect. The FDI's significance in judicial independence is prominent in party-based regimes and military regimes, but not necessarily in personalist regimes and monarchies. Overall, my empirical analysis implies a cautious optimism about the institutional effect of FDI in authoritarian regimes. Although I find evidence that FDI can create a force to encourage authoritarian regimes to improve judicial independence consistently, this effect may not lead to the full-scale development of judicial independence, and its realization also requires autocrats' patience and specific political and institutional arrangements.

Unlike the absence of theoretical accounts of the maintenance of judicial independence in the authoritarian context, there is a relatively well-established theory used to explain how judicial independence is maintained in democracies. In Chapter 4, I have modified and expanded insurance theory to determine the previously unexplored dynamics between political competition and judicial independence. Borrowing insights from the literature on party politics, I have argued that what operates the insurance mechanism (the incumbent's credible threats of losing power posed by his opposition) comes from robust political competition. Thus, to better understand insurance theory, more scholarly attention should be given not merely to electoral closeness (as most existing studies have done) but also to the conditions for robust

political competition. I have applied my argument to the cases of South Korea and the Philippines after democratization. Drawing from political history, descriptive data, and specific episodes of judicial independence in both countries, I have shown that South Korea has a favorable political environment for the development of judicial independence, thanks to the existence of robust political competition backed by a well-institutionalized party system and a stable set of robust actors. By contrast, the Philippines' difficulty in promoting judicial independence is partly attributable to the lack of robust political competition. A weakly institutionalized party system inhibits the creation of robust political competition, thereby undermining opposition parties' ability to pose credible threats to the ruling party and discouraging the incumbent from pursuing judicial independence as political insurance.

5.2 Implications and Significance of Findings

I have examined the maintenance of judicial independence under the different political contexts of autocracies (Chapters 2 and 3) and democracies (Chapter 4). Despite their different focus on specific political regimes, all three main chapters offer several implications for the study of judicial independence as well as a substantively significant implication for the development of judicial independence in autocracies and democracies.

Most importantly, in my dissertation I emphasize credibility as essential for the maintenance of judicial independence. This concept has appeared repeatedly in the three principal chapters. I argued in Chapters 2 and 3 that the regime's economic reliance on FDI and its autocrats' reputational concern are crucial in producing a consistently credible commitment to judicial independence. I determined in Chapter 4 that robust political competition creates the incumbent's credible threats of losing power, thereby incentivizing him to advance judicial independence as political

insurance. Although these two bodies of studies contain a different focus on the credibility of “what” and the methods by which credibility can be achieved, they share the idea that credibility is an important “engine” which drives political leaders to take actions that ensure the maintenance of judicial independence. Without credibility, their commitment to judicial independence is fragile and difficult to maintain. This might be more apparent in autocracies where credibility-inducing mechanisms (including formal rules) are much fewer than democracies. Unless factors other than institutional checks guarantee the credibility of autocrats’ behavior, they may easily fall into renegeing and undermining once-established judicial independence. Similarly, if the political competition is too weak or under-institutionalized to serve as a proper venue to create credible threats of power alternation, the incumbent, even if he is matched tightly with his oppositions, might be less inclined to consider independent courts as political insurance. Thus, the question of how to maintain judicial independence is inseparable from how to create an environment that generates and increases credibility in political leaders’ commitment.

My findings in this dissertation also suggest the significance of a highly institutionalized political system in creating more favorable conditions for judicial independence. My empirical analysis in Chapter 3 shows that single-party regimes and military regimes (considered to be more institutionalized due to the presence of party and military organizations as a governing body) have a greater level of judicial independence than personalist regimes and monarchies (governed by personalist cliques or kin networks). I also found that only the former group of regimes has favorable conditions under which FDI exercises a significant effect on judicial independence. The case study in Chapter 4 offers similar insights. A greater degree of party system institutionalization in South Korea explains why it has been more successful than the Philippines in promoting judicial independence in a way consistent with insurance theory. My findings also illuminate the importance of looking at the variations

within, not between, each regime type (democracy or autocracy). It is generally true that democracies perform better at developing and maintaining judicial independence than autocracies, but this is not what I wished to examine. Instead, I have observed that some democracies/autocracies are better able to advance judicial independence than others and searched for factors that account for this difference. How well a political system in tandem with a party system is institutionalized can be one of the significant factors determining the development of judicial independence.

More broadly, my findings in this dissertation suggest clues as to which political and economic settings can effectively bind political leaders and make them govern in a more accountable fashion. A theoretical account in Chapter 2 and my empirical findings in Chapter 3 advance our understanding of how a globalized economy creates an external push for authoritarian governments to create and maintain independent courts as a way of restraining their arbitrary power and implementing policies for the protection of property rights. My argument and the case study in Chapter 4 demonstrate how a better quality of political competition in democracies engenders politicians' continuing respect for judicial independence for strategic reasons. Notwithstanding their desire to use independent courts as a device for economic development, judicial independence is still challenging to achieve and sometimes politically unwelcome in many authoritarian regimes. Some emerging democracies have difficulty converting political competition into the force of developing independent courts despite the blessing of "free, fair, and contested elections" provided by democratization. In this dissertation, I have offered compelling explanations of why these countries suffer from such problems and how they can resolve them.

My findings in this dissertation also have a real-world significance which may prove helpful to practitioners and policymakers. The central puzzle to which I have referred is a part of a larger question that entails important policy-related implications: How can countries improve their political institutions to achieve better gover-

nance? Binding institutions are deemed crucial for ensuring political accountability and economic development. Prompted by the significance of these goals, international organizations such as the World Bank and the USAID (United States Agency for International Development) have invested substantial funds in a number of their judicial reform programs and have assisted developing countries in promoting a well-functioning judicial system. To reap the intended effects from these programs, their top-down approach to “implanting” judicial reform needs to be complemented by a country’s internal motivation to embrace it. My findings in this dissertation imply that emphasis should be put not only on the judicial system itself but also on the creation of a proper political and economic environment that induces political leaders to commit proactively to developing and maintaining sound judicial institutions.

5.3 Future Research Agendas

The theoretical claims as well as empirical and case study findings I have presented in this dissertation provide rich opportunities for further elaboration and testing by future researchers. Here I suggest three agendas for such future studies.

First, future researchers may investigate whether the binding effect of FDI on authoritarian regimes and autocrats’ responsiveness to foreign investors is contingent on the sectoral composition of FDI in the host country. This issue relates to the following question: Does the type of FDI (e.g., fixed vs. mobile assets, primary/secondary/tertiary sectors) affect the ability of foreign investors to constrain autocrats’ opportunism against property rights protection? I theorized in Chapter 2 that foreign investors (who stay in the authoritarian host country) can impose sanctions by threatening to leave the host country or by withdrawing their investment, thereby preventing autocrats from renegeing on judicial independence. However, the nature of FDI as “mobile *ex ante* but relatively illiquid *ex post*” (Jensen, 2003,

594) implies that, once foreign investors invest in the host country, they may find it difficult to remove their investment afterward. If FDI became a sunk cost and foreign investors are not able to withdraw their assets as a response to (or retaliation against) autocrats' renegeing on judicial independence, their punishment could not be effective.¹ In this regard, the removability or mobility of FDI may be crucial in determining whether foreign investors can effectively constrain autocrats' potential renegeing on judicial independence.²

The second agenda of future research concerns whether international mechanisms providing institutional protection for foreign investors substitute for or complement the development of independent domestic courts in authoritarian regimes. A number of studies in international political economy (IPE) have examined the role of international institutions (e.g., bilateral investment treaties (BITs), international arbitration law, and preferential trade agreements) in providing a country with mechanisms for credible commitment to foreign investors (Büthe and Milner, 2008, 2014; Simmons, 2014). Focusing exclusively on authoritarian countries, Fang and Owen (2011) also claim that international institutions offer a mechanism through which autocrats credibly signal their commitment to open economic policies. As international institutions serve a functionally similar role to independent courts (i.e., strong protection of property rights), scholars have been interested in the relationship between the two and

¹ If autocrats anticipate that foreign investors' punishment will be less effective, they may have less incentive to respect judicial independence. However, this case, which applies primarily to FDI assets already in the host country, does not undermine autocrats' forward-looking incentives to maintain judicial independence. If the regime needs to attract future FDI, autocrats still must maintain a good reputation for and an actual implementation of property rights protection via independent courts.

² The empirical examination of this puzzle requires a more comprehensive and complete set of panel data on the sectoral composition of FDI in the authoritarian world. As briefly mentioned in Chapter 3, the most recent effort has been made by Wright and Zhu (2018), who constructed panel data on FDI in authoritarian countries and included its sectoral classifications (e.g., primary, secondary, and tertiary sectors) in the data. Although this may give us more opportunities to test the puzzle described above, Wright and Zhu (2018)'s data are still incomplete due to the modest number of authoritarian countries included and the presence of many missing values.

whether one is superior to the other.

According to Bütthe and Milner (2008), international commitment is more credible than domestic policy choices because “when an international agreement or international organization enshrines its members’ commitment to a certain set of policies, a change in those policies has not only domestic ramifications but also constitute a breach of international commitments, which should make those commitments more costly to break” (Bütthe and Milner, 2008, 744). Similarly, Arias et al. (2018) suggest why autocrats may prefer BITs over domestic institutions to indicate their credible commitment to foreign investors:

Improvements in these institutions from within are fraught with domestic political challenges, and it is easier and simpler to import a set of rules and obligations from abroad that serve a similar, property rights-protecting purpose. A treaty, enforced by third-party tribunals, where firms as well as governments have standing, reduces the incentives to engage in takings (regulatory and otherwise) and makes promises to foreigners to refrain from punitive taxation more credible. Hence, autocratic leaders, eager to consolidate support among their coalition with foreign capital that complements local factors, are relatively more inclined to sign BITs (Arias et al., 2018, 918).

This line of reasoning suggests that international institutions may generate a “substitution effect” for weakening autocrats’ incentives to promote judicial independence. If international mechanisms are already present to protect foreign investors reasonably well, independent courts may be less necessary both to autocrats (who have little incentive to develop institutions playing a similar role at the domestic level) and foreign investors (who may simply rely on international institutions). However, the opposite claim, which regards international institutions as complements to

domestic institutions, is also plausible. When there is an additional layer of institutional constraints in the international domain, autocrats may be further pressured to respect the independence of domestic courts. As long as the presence of international commitment sends a signal to domestic audiences that the government will not expropriate, autocrats may not want to do the opposite (i.e., renege on judicial independence) at the domestic level. In other words, as noted by Ginsburg (2005, 118), “international commitment can be a domestic defense mechanism to insulate the state from local rent-seeking efforts.” These competing claims have been discussed extensively in the IPE literature, but they have not been sufficiently examined and tested in authoritarian settings. Thus, future researchers may study which claim is more relevant to the autocratic context and test whether international institutions aid or undermine judicial independence in authoritarian regimes.

Lastly, my analytical framework, as illustrated in Figure 5.1, suggests that there are additional cases to be studied beyond my two country analysis in Chapter 4. My framework synthesizes my theoretical discussion in Chapter 4 (specifically in Section 4.2.2) and unfolds five possible outcomes of political competition, depending on the answers to the three questions colored in grey. In my case study in Chapter 4, I examined only two of these outcomes. Robust political competition exists in South Korea because the party system is highly institutionalized and because the ASP was successful in reinventing itself and adapting to democracy. By contrast, political competition is not as robust in the Philippines because competition between pure democrats has not occurred under a well-institutionalized party system. I have further demonstrated that the presence or absence of robust political competition is associated with the development of judicial independence in South Korea and the lack thereof in the Philippines.

Future researchers may examine the other (as yet unexplained) cases of political competition in Figure 5.1 and their impact on judicial independence. The first two

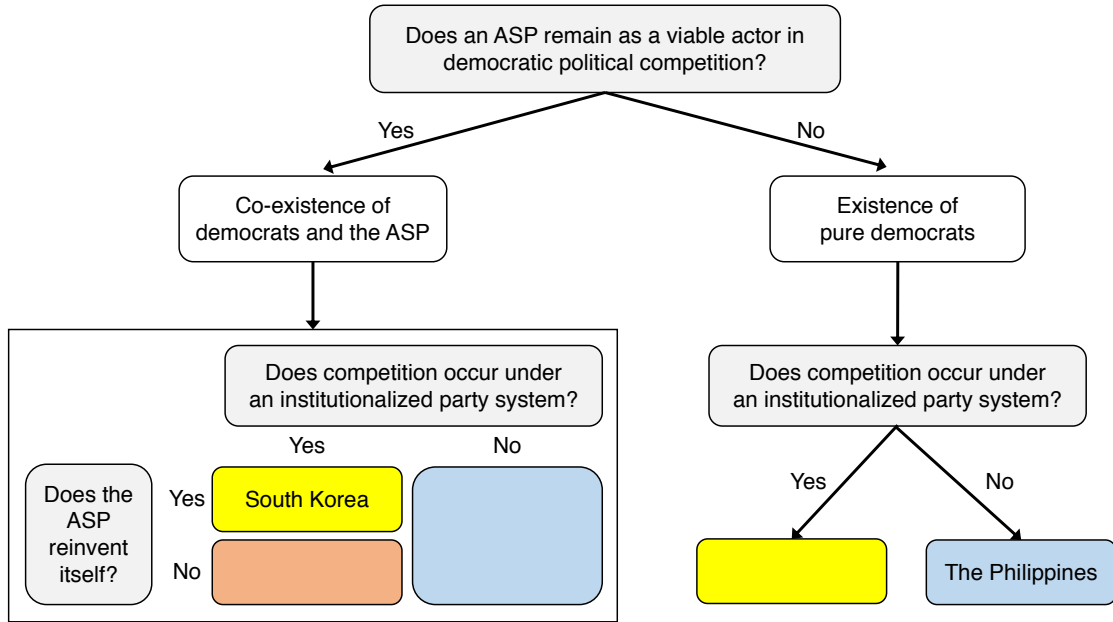


FIGURE 5.1: Analytical framework of the presence or absence of robust political competition

of these cases are relatively straightforward. First, political competition is far from robust when occurring under a weakly institutionalized party system, regardless of whether the ASP is a viable actor in democratic contestation and whether it reinvents itself or not (colored in blue). This case often appears in many unconsolidated democracies, and we may expect little development of judicial independence. Second, robust political competition may appear without the ASP’s strong presence when competition between pure democrats is supported by a well-institutionalized party system (colored in yellow). For this case, my theoretical expectation in Chapter 4 suggests that insurance logic encourages the incumbent to pursue judicial independence.

A more intriguing case to be investigated is indicated by the orange box in Figure 5.1: in this case, a well-institutionalized party system shapes a favorable environment for robust political competition, but democrats compete fiercely with the ASP who still espouses orthodox authoritarian ideals without transforming itself.³ The impact

³ According to the recent survey by Grzymała-Busse (2020), 14% of authoritarian ruling par-

of political competition on judicial independence is theoretically indeterminate because forces for and against judicial independence exist simultaneously. The strong presence of the orthodox ASP is obviously a threat to the consolidation of democracy. As these former authoritarians are powerful and well-organized and have a clear history of anti-democratic institutional preferences, they are more likely to undermine independent courts when returning to power. But, conversely, the presence of the orthodox ASP may intensify the effect of the insurance logic, especially when a democratic incumbent is electorally challenged. In this circumstance, the democratic incumbent may perceive real and grave threats that power alternation leads to the erosion of judicial independence by the ASP, thereby prompting him to take proactive measures to ensure judicial independence as a way of tying the hands of incoming authoritarians. This reasoning raises the question that has been rarely asked in existing studies on judicial independence: whether (and if so, how) judicial independence can be sustained in democracies where robust political competition occurs between democrats and orthodox authoritarians under a well-institutionalized party system. Addressing this question will provide additional theoretical insights and new findings beyond my analysis in Chapter 4 and thus give us a complete picture of the relationship between political competition and judicial independence.

ties have this characteristic. They exited power after democratization but did not abandon their orthodox ideological, programmatic, and symbolic commitments.

Bibliography

- Acemoglu, D., Johnson, S., and Robinson, J. A. (2001), “The Colonial Origins of Comparative Development: An Empirical Investigation,” *American Economic Review*, 91, 1369–1401.
- Ahn, K.-W. (2006), “Law Reform in Korea and the Agenda of Graduate Law School,” *Wisconsin International Law Journal*, 24, 223–242.
- Ali, F., Fiess, N., and MacDonald, R. (2011), “Climbing to the Top? Foreign Direct Investment and Property Rights,” *Economic Inquiry*, 49, 289–302.
- Arias, E., Hollyer, J. R., and Rosendorff, B. P. (2018), “Cooperative Autocracies: Leader Survival, Creditworthiness, and Bilateral Investment Treaties,” *American Journal of Political Science*, 62, 905–921.
- Arriola, S. L. Y. and Mandocdoc, D. K. C. (2011), “Defining the Parameters of Judicial Independence and Accountability in Light of Chief Justice Corona’s Impeachment: An Examination of the Violation of the New Code of Judicial Conduct as a Ground for Betrayal of Public Trust,” *Ateneo Law Journal*, 56, 761–798.
- Aydın, A. (2013), “Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition,” *Law & Society Review*, 47, 105–134.
- Bak, D. and Moon, C. (2016), “Foreign Direct Investment and Authoritarian Stability,” *Comparative Political Studies*, 49, 1998–2037.
- Basabe-Serrano, S. (2015), “Informal Institutions and Judicial Independence in Paraguay, 1954–2011,” *Law & Policy*, 37, 350–378.
- Bastiaens, I. (2016), “The Politics of Foreign Direct Investment in Authoritarian Regimes,” *International Interactions*, 42, 140–171.
- Batalla, E. V. C., Romana, M. S., and Rodrigo, K. (2018), “The Judiciary under Threat,” in *Routledge Handbook of the Contemporary Philippines*, eds. M. R. Thompson and E. V. C. Batalla, pp. 130–143, Routledge.

- Bénassy-Quéré, A., Coupet, M., and Mayer, T. (2007), “Institutional Determinants of Foreign Direct Investment,” *World Economy*, 30, 764–782.
- Biglaiser, G. and Staats, J. L. (2010), “Do Political Institutions Affect Foreign Direct Investment? A Survey of US Corporations in Latin America,” *Political Research Quarterly*, 63, 508–522.
- Bodnaruk, K. (2016), “Multidimensional Judicial Independence: Assessing Variation in Subject Matter Judicial Independence,” Ph.D. thesis, University of Georgia.
- Bormann, N.-C. and Golder, M. (2013), “Democratic Electoral Systems around the World, 1946–2011,” *Electoral Studies*, 32, 360–369.
- Brancati, D. (2014), “Democratic Authoritarianism: Origins and Effects,” *Annual Review of Political Science*, 17, 313–326.
- Büthe, T. and Milner, H. V. (2008), “The Politics of Foreign Direct Investment into Developing Countries: Increasing FDI through International Trade Agreements?” *American Journal of Political Science*, 52, 741–762.
- Büthe, T. and Milner, H. V. (2014), “Foreign Direct Investment and Institutional Diversity in Trade Agreements: Credibility, Commitment, and Economic Flows in the Developing World, 1971–2007,” *World Politics*, 66, 88–122.
- Casal Bértoa, F. (2018), “The Three Waves of Party System Institutionalisation Studies: A Multi-or Uni-Dimensional Concept?” *Political Studies Review*, 16, 60–72.
- Chang, Y.-s. (2019), “Challenges for Successful Settlement of Full-Scale Unification of the Legal Profession [*Jeonmyeonjeong beopjoirwonhwawi seonggongjeogin jeongchageul wihan gwaje*],” *Korea Law Review [Goryeobeopak]*, pp. 61–88.
- Cheibub, J. A., Gandhi, J., and Vreeland, J. R. (2010), “Democracy and Dictatorship Revisited,” *Public Choice*, 143, 67–101.
- Cheng, T. J. and Huang, T.-f. (2018), “Authoritarian Successor Parties in South Korea and Taiwan: Authoritarian Inheritance, Organizational Adaptation, and Issue Management,” in *Life After Dictatorship: Authoritarian Successor Parties Worldwide*, eds. J. Loxton and S. Mainwaring, pp. 84–112, Cambridge University Press.
- Cho, K. (2008), “The Newly Introduced Criminal Jury Trial in Korea: A Historic Step toward ‘Criminal Justice by the People’,” *Australian Journal of Asian Law*, 10, 268–289.

- Choi, S. (2015), “A Critical Analysis on the Judicial Independence in South Korea [*Sabeopgwon dongnibe daehan bipanjeong geomto*],” *Korean Political Science Review [Hangukjeongchihakoebo]*, 49, 205–226.
- Clague, C., Keefer, P., Knack, S., and Olson, M. (1999), “Contract-Intensive Money: Contract Enforcement, Property Rights, and Economic Performance,” *Journal of Economic Growth*, 4, 185–211.
- Coppedge, M. et al. (2019), “V-Dem [Country-Year/Country-Date] Dataset V9,” Varieties of Democracy (V-Dem) Project.
- Cox, G. and McCubbins, M. D. (2001), “The Institutional Determinants of Policy Outcomes,” in *Presidents, Parliaments, and Policy*, eds. S. Haggard and M. D. McCubbins, pp. 21–63, Cambridge University Press.
- Crabtree, C. and Nelson, M. J. (2017), “The Corrosive Effect of Natural Resource Dependence on De Facto Judicial Independence,” *Unpublished Manuscript*.
- Croissant, A. and Völkel, P. (2012), “Party System Types and Party System Institutionalization: Comparing New Democracies in East and Southeast Asia,” *Party Politics*, 18, 235–265.
- Dang, D. A. (2013), “How Foreign Direct Investment Promote Institutional Quality: Evidence from Vietnam,” *Journal of Comparative Economics*, 41, 1054–1072.
- Daude, C. and Stein, E. (2007), “The Quality of Institutions and Foreign Direct Investment,” *Economics & Politics*, 19, 317–344.
- Deinla, I. (2014), “Public Support and Judicial Empowerment of the Philippine Supreme Court,” *Contemporary Southeast Asia*, pp. 128–158.
- Eaton, K. (2002), *Politicians and Economic Reform in New Democracies: Argentina and the Philippines in the 1990s*, Pennsylvania State University Press.
- Epperly, B. (2017), “Political Competition and De Facto Judicial Independence in Non-democracies,” *European Journal of Political Research*, 56, 279–300.
- Epperly, B. (2018), “(Re)examining the Insurance Model of Judicial Independence across Democracies,” *Journal of Law and Courts*, 6, 405–419.
- Epperly, B. (2019), *The Political Foundations of Judicial Independence in Dictatorship and Democracy*, Oxford University Press.
- Epstein, L. and Knight, J. (1997), *The Choices Justices Make*, Sage.
- Escresa, L. and Garoupa, N. (2012), “Judicial Politics in Unstable Democracies: The Case of the Philippine Supreme Court, An Empirical Analysis 1986-2010,” *Asian Journal of Law and Economics*, 3, 1–37.

- Escribà-Folch, A. (2017), “Foreign Direct Investment and the Risk of Regime Transition in Autocracies,” *Democratization*, 24, 61–80.
- Fang, S. and Owen, E. (2011), “International Institutions and Credible Commitment of Non-democracies,” *The Review of International Organizations*, 6, 141–162.
- Fernando, E. M. and Quisumbing-Fernando, E. (1992), “The 1987 Constitution of the Philippines: The Impact of American Constitutionalism Revisited,” in *Constitutional Systems in Late Twentieth-Century Asia*, ed. L. W. Beer, pp. 572–627, University of Washington Press.
- Finkel, J. (2008), *Judicial Reform as Political Insurance*, University of Notre Dame Press.
- Fukuyama, F., Dressel, B., and Chang, B.-S. (2005), “Challenge and Change in East Asia: Facing the Perils of Presidentialism?” *Journal of Democracy*, 16, 102–116.
- Gandhi, J. and Przeworski, A. (2007), “Authoritarian Institutions and the Survival of Autocrats,” *Comparative Political Studies*, 40, 1279–1301.
- Ganiou Mijiyawa, A. (2014), “Reforming Property Rights Institutions in Developing Countries: Can FDI Inflows Help?” *The World Economy*, 37, 410–433.
- Gans-Morse, J. (2017), “Demand for Law and the Security of Property Rights: The Case of Post-Soviet Russia,” *American Political Science Review*, 111, 338–359.
- Geddes, B. (1999), “What Do We Know about Democratization after Twenty Years?” *Annual Review of Political Science*, 2, 115–144.
- Geddes, B., Wright, J., and Frantz, E. (2014), “Autocratic Breakdown and Regime Transitions: A New Data Set,” *Perspectives on Politics*, 12, 313–331.
- Gehlbach, S. and Keefer, P. (2012), “Private Investment and the Institutionalization of Collective Action in Autocracies: Ruling Parties and Legislatures,” *The Journal of Politics*, 74, 621–635.
- Ginsburg, T. (2003), *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, Cambridge University Press.
- Ginsburg, T. (2004), *Legal Reform in Korea*, Routledge.
- Ginsburg, T. (2005), “International Substitutes for Domestic Institutions: Bilateral Investment Treaties and Governance,” *International Review of Law and Economics*, 25, 107–123.
- Ginsburg, T. and Moustafa, T. (2008), *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Cambridge University Press.

- Ginsburg, T. and Versteeg, M. (2014), "Why Do Countries Adopt Constitutional Review?" *The Journal of Law, Economics, & Organization*, 30, 587–622.
- Graham, B., Hicks, R., Milner, H., and Bougher, L. D. (2018), "World Economics and Politics Dataverse," Online at <https://ncgg.princeton.edu/wep/dataverse.html>, last accessed December 4th, 2018.
- Graham, B. A. and Tucker, J. R. (2019), "The International Political Economy Data Resource," *The Review of International Organizations*, 14, 149–161.
- Grzymała-Busse, A. (2001), "Coalition Formation and the Regime Divide in New Democracies: East Central Europe," *Comparative Politics*, pp. 85–104.
- Grzymała-Busse, A. (2007), *Rebuilding Leviathan: Party Competition and State Exploitation in Post-Communist Democracies*, Cambridge University Press.
- Grzymała-Busse, A. (2019), "Hoist on their Own Petards? The Reinvention and Collapse of Authoritarian Successor Parties," *Party Politics*, 25, 569–582.
- Grzymała-Busse, A. (2020), "Consequences of Authoritarian Party Exit and Reinvention for Democratic Competition," *Comparative Political Studies*, (forthcoming).
- Haggard, S., MacIntyre, A., and Tiede, L. (2008), "The Rule of Law and Economic Development," *Annual Review of Political Science*, 11, 205–234.
- Hellmann, O. (2014), "Party System Institutionalization without Parties: Evidence from Korea," *Journal of East Asian Studies*, 14, 53–84.
- Helmke, G. (2002), "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy," *American Political Science Review*, 96, 291–303.
- Helmke, G. and Rosenbluth, F. (2009), "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective," *Annual Review of Political Science*, 12, 345–366.
- Hewko, J. (2002), "Foreign Direct Investment in Transitional Economies: Does the Rule of Law Matter?" *East European Constitutional Review*, 11, 71–79.
- Hicken, A. (2011), "Clientelism," *Annual Review of Political Science*, 14, 289–310.
- Hicken, A. and Kuhonta, E. M. (2015), *Party System Institutionalization in Asia: Democracies, Autocracies, and the Shadows of the Past*, Cambridge University Press.
- Hirschl, R. (2004), *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Harvard University Press.

- Howell, L. D. (2011), "International Country Risk Guide Methodology," East Syracuse, NY: PRS Group.
- Huntington, S. P. (1991), *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press.
- Hutchcroft, P. D. (2008), "The Arroyo Imbroglia in the Philippines," *Journal of Democracy*, 19, 141–155.
- Jensen, N. M. (2003), "Democratic Governance and Multinational Corporations: Political Regimes and Inflows of Foreign Direct Investment," *International Organization*, 57, 587–616.
- Kasuya, Y. (2009), *Presidential Bandwagon: Parties and Party Systems in the Philippines*, Anvil Publishing.
- Keith, L. C. (2002), "Judicial Independence and Human Rights Protection around the World," *Judicature*, 85, 194–200.
- Kerner, A. (2014), "What We Talk about When We Talk about Foreign Direct Investment," *International Studies Quarterly*, 58, 804–815.
- Kim, Y. (2011), *The Politics of Coalition in Korea: Between Institutions and Culture*, Routledge.
- Kitschelt, H. (2000), "Linkages between Citizens and Politicians in Democratic Politics," *Comparative Political Studies*, 33, 845–879.
- Kitschelt, H. and Wilkinson, S. I. (2007), *Patrons, Clients and Policies: Patterns of Democratic Accountability and Political Competition*, Cambridge University Press.
- Kreps, D. M. (1990), "Corporate Culture and Economic Theory," in *Perspectives on Positive Political Economy*, eds. J. E. Alt and K. A. Shepsle, pp. 90–143, Cambridge University Press.
- Kwon, Y. (2013), "Recent Reform in Korean Legal Education," *Journal of Korean Law*, 13, 1–39.
- La Porta, R., Lopez-de Silanes, F., Pop-Eleches, C., and Shleifer, A. (2004), "Judicial Checks and Balances," *Journal of Political Economy*, 112, 445–470.
- Laakso, M. and Taagepera, R. (1979), "Effective Number of Parties: A Measure with Application to West Europe," *Comparative Political Studies*, 12, 3–27.
- Landes, W. M. and Posner, R. A. (1975), "The Independent Judiciary in an Interest-Group Perspective," *The Journal of Law and Economics*, 18, 875–901.

- Law, D. S. and Versteeg, M. (2014), “Constitutional Variation among Strains of Authoritarianism,” in *Constitutions in Authoritarian Regimes*, eds. T. Ginsburg and A. Simpser, pp. 165–196, Cambridge University Press.
- Lee, H. P. (2017), *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press.
- Lee, K.-W. (2007), “The Limit of the Legal Service Suppliers’ Committee: An Analysis and Evaluation of the Korean Judicial Reform in 2003-6 [*Sabeopseobiseu gonggeupjawiwonhoeui hangye: nomuhyeon jeongbuui sabeopgaehyeoge daehan bunseokgwa pyeongga*],” *Public Law Journal [Gongbeopagyeongu]*, 8, 37–66.
- Lee, Y. (2005), “Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective,” *The American Journal of Comparative Law*, 53, 403–432.
- Leiras, M., Tuñón, G., and Giraudy, A. (2014), “Who Wants an Independent Court? Political Competition and Supreme Court Autonomy in the Argentine Provinces (1984–2008),” *The Journal of Politics*, 77, 175–187.
- Levitsky, S. and Way, L. A. (2010), *Competitive Authoritarianism: Hybrid Regimes after the Cold War*, Cambridge University Press.
- Levitsky, S. and Ziblatt, D. (2018), *How Democracies Die*, Crown.
- Li, Q. (2009a), “Democracy, Autocracy, and Expropriation of Foreign Direct Investment,” *Comparative Political Studies*, 42, 1098–1127.
- Li, Q. (2009b), “Outlier, Measurement, and the Democracy-FDI Controversy,” *Quarterly Journal of Political Science*, 4, 167–181.
- Li, Q. and Resnick, A. (2003), “Reversal of Fortunes: Democratic Institutions and Foreign Direct Investment Inflows to Developing Countries,” *International Organization*, 57, 175–211.
- Linzer, D. A. and Staton, J. K. (2015), “A Global Measure of Judicial Independence, 1948–2012,” *Journal of Law and Courts*, 3, 223–256.
- Long, C., Yang, J., and Zhang, J. (2015), “Institutional Impact of Foreign Direct Investment in China,” *World Development*, 66, 31–48.
- Loxton, J. (2015), “Authoritarian Successor Parties,” *Journal of Democracy*, 26, 157–170.
- Magalhães, P. C. (2003), “The Limits to Judicialization: Legislative Politics and Constitutional Review in the Iberian Democracies,” Ph.D. thesis, The Ohio State University.

- Magaloni, B. (2006), *Voting for Autocracy: Hegemonic Party Survival and its Demise in Mexico*, Cambridge University Press Cambridge.
- Magaloni, B. (2008), “Enforcing the Autocratic Political Order and the Role of Courts: The Case of Mexico,” in *Rule by Law: The Politics of Courts in Authoritarian Regimes*, eds. T. Ginsburg and T. Moustafa, pp. 180–206, Cambridge University Press.
- Mainwaring, S. (2018), *Party Systems in Latin America: Institutionalization, Decay, and Collapse*, Cambridge University Press.
- Mainwaring, S. and Scully, T. (1995), *Building Democratic Institutions: Party Systems in Latin America*, Stanford University Press.
- Mainwaring, S. and Torcal, M. (2006), “Party System Institutionalization and Party System Theory after the Third Wave of Democratization,” in *Handbook of Party Politics*, eds. R. S. Katz and W. J. Crotty, pp. 204–227, Sage.
- Mainwaring, S. and Zoco, E. (2007), “Political Sequences and the Stabilization of Interparty Competition: Electoral Volatility in Old and New Democracies,” *Party Politics*, 13, 155–178.
- Mainwaring, S., Gervasoni, C., and Espana-Najera, A. (2017), “Extra-and Within-System Electoral Volatility,” *Party Politics*, 23, 623–635.
- Mainwaring, S., Bizzarro, F., and Petrova, A. (2018), “Party System Institutionalization, Decay, and Collapse,” in *Party Systems in Latin America: Institutionalization, Decay, and Collapse*, ed. S. Mainwaring, pp. 17–35, Cambridge University Press.
- Malesky, E. J. (2009), “Foreign Direct Investors as Agents of Economic Transition: An Instrumental Variables Analysis,” *Quarterly Journal of Political Science*, 4, 59–85.
- Manion, M. (2015), *Information for Autocrats: Representation in Chinese Local Congresses*, Cambridge University Press.
- McCarthy, S. and Un, K. (2017), “The Rule of Law in Illiberal Contexts: Cambodia and Singapore as Exemplars,” in *Politics and Constitutions in Southeast Asia*, eds. M. Bünte and B. Dressel, pp. 315–330, Routledge.
- Miyazawa, S., Chan, K.-W., and Lee, I. (2008), “The Reform of Legal Education in East Asia,” *Annual Review of Law and Social Science*, 4, 333–360.
- Moon, C. (2015), “Foreign Direct Investment, Commitment Institutions, and Time Horizon: How Some Autocrats Do Better than Others,” *International Studies Quarterly*, 59, 344–356.

- Moustafa, T. (2007), *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*, Cambridge University Press.
- Moustafa, T. (2014), "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science*, 10, 281–299.
- Nathan, A. (2003), "Authoritarian Resilience," *Journal of Democracy*, 14, 6–17.
- North, D. C. (1990), *Institutions, Institutional Change and Economic Performance*, Cambridge University Press.
- North, D. C. (1991), "Institutions," *Journal of Economic Perspectives*, 5, 97–112.
- North, D. C. and Weingast, B. R. (1989), "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England," *The Journal of Economic History*, 49, 803–832.
- Olarreaga, M. (1999), "Endogenous Tariffs in the Presence of Foreign Capital," *Journal of Economic Integration*, 14, 606–624.
- Olson, M. (1993), "Dictatorship, Democracy, and Development," *American Political Science Review*, 87, 567–576.
- Olson, M. (2000), *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, Basic Books.
- Park, K. (2010), "Party Mergers and Splits in New Democracies: The Case of South Korea (1987–2007)," *Government and Opposition*, 45, 531–552.
- PCJR (2006), "Reform for the Advancement of Judicial System," A White Paper by the Presidential Committee on Judicial Reform in South Korea.
- Pedersen, M. N. (1979), "The Dynamics of European Party Systems: Changing Patterns of Electoral Volatility," *European Journal of Political Research*, 7, 1–26.
- Peerenboom, R. (2002), *China's Long March toward Rule of Law*, Cambridge University Press.
- Peerenboom, R. (2009), *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, Cambridge University Press.
- Pierson, P. (2000), "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review*, 94, 251–267.
- Popova, M. (2010), "Political Competition as an Obstacle to Judicial Independence: Evidence from Russia and Ukraine," *Comparative Political Studies*, 43, 1202–1229.

- Popova, M. (2012), *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*, Cambridge University Press.
- Post, A. E. (2014), *Foreign and Domestic Investment in Argentina: The Politics of Privatized Infrastructure*, Cambridge University Press.
- Powell, E. N. and Tucker, J. A. (2014), "Revisiting Electoral Volatility in Post-Communist Countries: New Data, New Results and New Approaches," *British Journal of Political Science*, 44, 123–147.
- Przeworski, A., Stokes, S. C., and Manin, B. (1999), *Democracy, Accountability, and Representation*, Cambridge University Press.
- Quimpo, N. G. (2012), "Philippines," in *Countries at the Crossroads 2011: An Analysis of Democratic Governance*, eds. J. Dizard, C. Walker, and V. Tucker, pp. 533–558, Rowman & Littlefield Publishers.
- Rajah, J. (2012), *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore*, Cambridge University Press.
- Ramseyer, J. M. (1994), "The Puzzling (In)dependence of Courts: A Comparative Approach," *The Journal of Legal Studies*, 23, 721–747.
- Randazzo, K. A., Gibler, D. M., and Reid, R. (2016), "Examining the Development of Judicial Independence," *Political Research Quarterly*, 69, 583–593.
- Rebolledo, J. and Rosenbluth, F. M. (2009), "Political Competition and Judicial Integrity: The Case of Mexico," Paper presented at the 2009 American Political Science Association Annual Meeting.
- Riedl, R. B. (2014), *Authoritarian Origins of Democratic Party Systems in Africa*, Cambridge University Press.
- Ríos-Figueroa, J. and Aguilar, P. (2018), "Justice Institutions in Autocracies: A Framework for Analysis," *Democratization*, 25, 1–18.
- Ríos-Figueroa, J. and Staton, J. K. (2014), "An Evaluation of Cross-National Measures of Judicial Independence," *The Journal of Law, Economics, & Organization*, 30, 104–137.
- Roberts, K. M. and Wibbels, E. (1999), "Party Systems and Electoral Volatility in Latin America: A Test of Economic, Institutional, and Structural Explanations," *American Political Science Review*, 93, 575–590.
- Root, H. L. and May, K. (2008), "Judicial Systems and Economic Development," in *Rule by Law: The Politics of Courts in Authoritarian Regimes*, eds. T. Ginsburg and T. Moustafa, pp. 304–14, Cambridge University Press.

- Ross, M. L. (2001), "Does Oil Hinder Democracy?" *World Politics*, 53, 325–361.
- Ross, M. L. (2015), "What Have We Learned about the Resource Curse?" *Annual Review of Political Science*, 18, 239–259.
- Saxer, C. (2002), *From Transition to Power Alternation: Democracy in South Korea, 1987-1997*, Routledge.
- Schedler, A. (2002), "Elections without Democracy: The Menu of Manipulation," *Journal of Democracy*, 13, 36–50.
- Schwab, K. and Sala-i Martín, X. (2016), "The Global Competitiveness Report 2013–2014: Full Data Edition," World Economic Forum.
- Shin, P. (2008), "The Assessment on Judicial Reform in S. Korea [*Hangung sabeopgaehyeokjageobui pyeongga*]," *World Constitutional Law Review [Segyecheon-bebyeongu]*, 14, 229–262.
- Sievert, J. M. (2018), "The Case for Courts: Resolving Information Problems in Authoritarian Regimes," *Journal of Peace Research*, 55, 774–786.
- Silverstein, G. (2008), "Singapore: The Exception that Proves Rules Matter," in *Rule by Law: The Politics of Courts in Authoritarian Regimes*, eds. T. Ginsburg and T. Moustafa, pp. 73–101, Cambridge University Press.
- Simmons, B. A. (2014), "Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment," *World Politics*, 66, 12–46.
- Slater, D. and Wong, D. (2018), "Game for Democracy: Authoritarian Successor Parties in Developmental Asia," in *Life After Dictatorship: Authoritarian Successor Parties Worldwide*, eds. J. Loxton and S. Mainwaring, pp. 572–627, Cambridge University Press.
- Solomon, P. H. (2007), "Courts and Judges in Authoritarian Regimes," *World Politics*, 60, 122–145.
- Staats, J. L. and Biglaiser, G. (2012), "Foreign Direct Investment in Latin America: The Importance of Judicial Strength and Rule of Law," *International Studies Quarterly*, 56, 193–202.
- Stephenson, M. C. (2003), "'When the Devil Turns...': The Political Foundations of Independent Judicial Review," *The Journal of Legal Studies*, 32, 59–89.
- Svolik, M. W. (2012), *The Politics of Authoritarian Rule*, Cambridge University Press.
- Taagepera, R. (1997), "Effective Number of Parties for Incomplete Data," *Electoral Studies*, 16, 145–151.

- Tavits, M. (2005), "The Development of Stable Party Support: Electoral Dynamics in Post-Communist Europe," *American Journal of Political Science*, 49, 283–298.
- Teehankee, J. C. (2002), "Electoral Politics in the Philippines," in *Electoral Politics in Southeast and East Asia*, eds. A. Croissant, G. Bruns, and M. John, pp. 149–202, Friedrich Ebert Stiftung.
- Teehankee, J. C. (2012), "Clientelism and Party Politics in the Philippines," in *Party Politics in Southeast Asia: Clientelism and Electoral Competition in Indonesia, Thailand and the Philippines*, eds. D. Tomsa and A. Ufen, pp. 204–232, Routledge.
- The World Justice Project (2019), "The World Justice Project Rule of Law Index 2019," Online at https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf, last accessed March 11th, 2019.
- Thelen, K. (1999), "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science*, 2, 369–404.
- Tomashevskiy, A. (2017), "Investing in Violence: Foreign Direct Investment and Coups in Authoritarian Regimes," *The Journal of Politics*, 79, 409–423.
- Tomsa, D. and Ufen, A. (2013), *Party Politics in Southeast Asia: Clientelism and Electoral Competition in Indonesia, Thailand and the Philippines*, Routledge.
- Tsebelis, G. (2002), *Veto Players: How Political Institutions Work*, Princeton University Press.
- Tushnet, M. (2014), "Authoritarian Constitutionalism," *Cornell Law Review*, 100, 391–462.
- Ufen, A. (2008), "Political Party and Party System Institutionalization in Southeast Asia: Lessons for Democratic Consolidation in Indonesia, the Philippines and Thailand," *Pacific Review*, 21, 327–350.
- Vanberg, G. (2008), "Establishing and Maintaining Judicial Independence," in *The Oxford Handbook of Law and Politics*, eds. K. E. Whittington et al., pp. 99–118, Oxford University Press.
- Vanberg, G. (2015), "Constitutional Courts in Comparative Perspective: A Theoretical Assessment," *Annual Review of Political Science*, 18, 167–185.
- Vanhanen, T. (2016), "Measures of Democracy 1810-2014," Version 7.0 (2016-05-30). Finnish Social Science Data Archive.
- Vitug, M. D. (2012), *Hour before Dawn: The Fall and Uncertain Rise of the Philippine Supreme Court*, Cleverheads.

- Wang, Y. (2015), *Tying the Autocrat's Hands*, Cambridge University Press.
- Wank, D. L. (1999), *Commodifying Communism: Business, Trust, and Politics in a Chinese City*, Cambridge University Press.
- Wilson, M. C. and Wright, J. (2017), "Autocratic Legislatures and Expropriation Risk," *British Journal of Political Science*, 47, 1–17.
- Wong, J. (2014), "South Korea's Weakly Institutionalized Party System," in *Party System Institutionalization in Asia: Democracies, Autocracies, and the Shadows of the Past*, eds. A. Hicken and E. M. Kuhonta, pp. 260–279, Cambridge University Press.
- Wright, J. (2008), "Do Authoritarian Institutions Constrain? How Legislatures Affect Economic Growth and Investment," *American Journal of Political Science*, 52, 322–343.
- Wright, J. and Escribà-Folch, A. (2012), "Authoritarian Institutions and Regime Survival: Transitions to Democracy and Subsequent Autocracy," *British Journal of Political Science*, 42, 283–309.
- Wright, J. and Zhu, B. (2018), "Monopoly Rents and Foreign Direct Investment in Fixed Assets," *International Studies Quarterly*, 62, 341–356.
- Yoon, D.-K. (2010), *Law and Democracy in South Korea: Democratic Development since 1987*, Institute for Far Eastern Studies, Kyungnam University.

Biography

Moohyung Cho earned his B.A. in Political Science (*summa cum laude*) and M.A. in International Relations at Seoul National University, South Korea. He also holds a M.A. in Political Science and expects to earn his Ph.D. in Political Science at Duke University in September 2020. He was a visiting researcher in the Department of Social Sciences at the Humboldt University of Berlin in summer 2018. Moohyung has received the Fulbright Graduate Study Award (2014-16) from the U.S. Department of State and the Korea-America Education Commission and the Kevin Morrison Pre-doctoral Fellowship (2019-20) from the Department of Political Science at Duke University. His research has been supported by several internal funds from Duke University including the Alona Evans Endowment, the Graduate School Summer Research Fellowship, and the Duke-Humboldt Summer Fellowship. His work has been published in *European Foreign Affairs Review*, Routledge, and Korean journals *Migukak* (American Studies) and *Segyejeongchi* (Journal of World Politics).