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THE EFFECTS OF POLITICAL ATTACKS ON INDEPENDENT HIGH COURTS IN
GLOBAL CASES OF DEMOCRATIC BACKSLIDING AFTER THE COLD WAR

by

MIRANDA STINSON

Under the Direction of Robert Howard, PhD

ABSTRACT

This paper seeks to understand the connection between political attacks on independent judiciaries and democracy scores. This study analyzed 2700 observations of democratic countries from 1980 to 2015 to test and potentially to identify if political attacks on independent judiciaries decrease high court independence thus resulting in a decrease of democracy scores. This paper found evidence to support that political attacks on courts do negatively impact democracy scores and that there have been more political attacks on courts after 2000 than before 2000.

INDEX WORDS: Democratic backsliding, Court studies, Independent judiciaries, Political attacks, Legitimacy, Constitutional retrogression, Authoritarian reversion

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MIRANDA STINSON

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

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Miranda Lynn Stinson
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December 2020

DEDICATION

This paper is dedicated to my husband, Juan Sanchez, for without him I would not be here today. To my parents, I would like to thank you for all your sacrifices you made along the way, they did not go unnoticed. Lastly, thank you to Umniah, Sawson, Dell, and Carissa, I cannot help but express and acknowledge how important you all were to me throughout my entire journey.

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1 INTRODUCTION

Modern constitutional democracies are struggling to survive in the face of populism and authoritarianism. However, it was not always that way. Research revered constitutional democracies and the abilities their institutions had to uphold the rights and liberties of the civilians that supported them. One such institution is the independent judiciary or the high court. Research suggests that independent judiciaries play a pivotal role in protecting constitutional democracies (Gibler and Randazzo 2011). It has been demonstrated that older, more established courts in wealthy democracies protect the country from reverting into an authoritarian regime by Gibler and Randazzo. Current research provides us with several examples of high courts in constitutional democracies ruling to preserve democracies, thus supporting the theory that independent judiciaries do help thwart democratic backsliding (Ginsburg 2018). However, recent literature contests this by suggesting that the impact of independent judiciaries may not be as strong as Gibler and Randazzo originally found. Other court scholars are finding examples of high courts' inability to prevent democratic backsliding (Blauberger and Kelemen 2017; Kovacs and Scheppele 2018; McCoy et. al 2018). Numerous findings suggest that global democracy rates are declining more rapidly than in the previous century (Chafetz and Pozen 2018; Huq and Ginsburg 2018; McCoy et. al 2018). Not only is democracy experiencing a downward shift, but the type of democratic backsliding has evolved as well. No longer is the global community witnessing aggressive military coups and obvious election tampering to overthrow a democracy like it did during the Cold War. Instead, there has been a rise in the degradation of political norms like attacking democratic institutions (Bermeo 2016; Huq and Ginsburg 2018). Throughout this paper, I will be expanding on the findings of Gibler and Randazzo by demonstrating what has changed since their study has concluded and how these

changes might be affecting the relationship between courts and democracies now. One disparity I am attempting to address is the effectiveness of courts in preventing democratic backsliding after the Cold War in the face of political attacks. It is to my belief that political attacks on the courts make them less effective in preventing democratic backsliding.

1.1 Theoretical Foundation

1.1.1 *Democratic Backsliding*

For the sake of this paper, I will be defining democratic backsliding as the systematic breakdown of democratic norms, structures, and institutions in order to consolidate power to one branch, regime, political group, or person in a government. In their article on how independent judiciaries protect countries from democratic backsliding, Gibler and Randazzo tested their sample from 1960 to 2000 meaning that a majority of the democratic backsliding during this time took place during the Cold War. The ways in which democracies decay have changed from the Cold War to the present day. During the Cold War, the usurpation of power was often done through acts of aggression such as coups d'états and obvious election fraud whereas now the power is consolidated by a country's leader through the manipulation of laws and institutions (Bermeo 2016). To better explain this, I will be referring to these differences as **authoritarian reversion** and **constitutional retrogression** (Huq and Ginsburg 2018). **Authoritarian reversion** is the more rapid decline of democracy through coup or state of emergency. This type of backsliding was typically seen during and before the Cold War and often used violence and intimidation either by the public, military, or the head of state in order to achieve consolidated power in the executive (Huq and Ginsburg 2018). **Constitutional retrogression** is the slow decay of fair elections, liberal rights, and administrative rule of law, the consolidation of power, and changes in social, political, and constitutional norms (Huq and Ginsburg 2018). This type of

backsliding leads to a change in democratic structure by a slow process of giving the executive more power over a longer period of time thus making it harder to identify in its initial stages (Huq and Ginsburg 2018, pg 92-94; McCoy et. al, 2018; Chafetz and Pozen, 2018). Other indicators of constitutional retrogression include the consolidation of power through amending the constitution, bypassing the system of checks and balances by court-packing or undermining/ignoring legislation, consolidating power in the executive, controlling and attacking press freedoms, and influencing elections (Bermeo 2016).

Since Gibler and Randazzo's article on independent judiciaries and democratic backsliding that was published in 2011, global democracy has been in an overall decline. Their sample was collected from 1960 to 2000, where more countries were becoming more democratic than not. According to Milan Svobik and further reiterated by Tom Ginsburg in "Democratic Backsliding and the Rule of Law" more countries are becoming less democratic than countries are actually becoming democratic since 2006. Prior to 2008, 61% of the democratic collapses were by a military coup, 30% by incumbent takeover, 7% by civil war, and 2% by revolution. Since 2008, incumbent takeovers have surpassed military coups (Ginsburg 2018, pg 352). Nancy Bermeo further echoes these sentiments by describing the overall decline from coups d'états and obvious election fraud during the Cold War to more subtle forms of backsliding. These "subtle" forms were being instigated by the very same institutions (executive and legislative/parliamentary) meant to uphold democracy since the end of the Cold War (Bermeo 2016).

Recent publications suggest that courts have been able to prevent a constitutional usurpation of power by the head of state and have been successful in doing so. Yet, other research indicates that courts have not been successful in their attempts to check the executive of their state when they are overstepping. As I mentioned earlier, this is the gap in recent literature

that needs to be addressed in order to understand how courts play a role in preventing the fall of democracy when faced with constitutional retrogression.

First, I will begin by addressing an article that provides examples of courts in recent years that are protecting the country's constitution and democratic values and how they are doing so. This will help demonstrate one side the aforementioned gap in the literature that indicates the success of the courts in protecting democracy after the Cold War. In this article by Tom Ginsburg (2018), "The Jurisprudence of Anti-Erosion," Ginsburg highlights certain modalities of democratic backsliding and the court's role in each of them. Courts are protecting the constitution by turning to the doctrine known as "unconstitutional constitutional amendments" (pg. 352) which allows judges to speak against those in power and favor the "democratic will" (pg. 357). More courts are showing a willingness to strike down extending term limits by citing that they are incompatible with democracy, all according to Ginsburg. Courts, in the cases discussed below, have increased their own defense mechanisms to protect their independence in the surge of democratic backsliding by not allowing certain members they deem to be unfit from being seated (pg. 352). Examples of courts in protecting the constitution were also provided by Ginsburg to include the removal of President Jacob Zuma by the South African Constitutional Court, the refusal to seat incoming members by the PiS when the Polish Prime Minister attempted to pack the courts in 2015, and the refusal from the Colombian Constitutional Court to allow President Alvaro Uribe a third term (Ginsburg 2018). This demonstrates the abilities of independent judiciaries to protect democratic norms and values when faced with an executive trying to gain power. However, there is also literature indicating that courts are not successful in protecting democratic norms and values after the Cold War.

Some academic studies note the inability of independent judiciaries to fully prevent constitutional change in favor of giving the executive more power. One reason for this could be the significance of changing constitutional norms. In one study, by McCoy et. al, of four constitutional democracies: Turkey, Venezuela, Hungary, and the United States, it was found that constitutional change was successful in three out of the four countries in order to consolidate power for the executive. It was not successful in the United States but it is significant that the USA witnessed a violation of social-political norms in order to tamper with the Supreme Court nomination of Former President Obama thus allowing President Trump to pick the next Supreme Court nomination (McCoy et. al, 2018). In fact, the degradation of social-political norms and constitutional norms alone may be significant enough cause for the power of the court to change in preventing democratic backsliding. According to Chafetz and Polen, constitutional norms (which are not written in the constitution but traditionally followed and accepted) are not necessarily destroyed but can be decomposed. Constitutional norms can be, “- dynamically interpreted and applied in ways that are held out as compliant but end up limiting their capacity to constrain the conduct of government officials,” (Chafetz and Pozen, 2018). Applying this interpretation of changing norms to the power that most independent judiciaries have in protecting their constitutional democracies, it would be reasonable that a court cannot prevent the change in constitutional norms if other branches chose to interpret them differently being that they are not concrete and written down.

There is conflicting evidence on the effectiveness of courts in preventing backsliding this maybe because there are little courts can do to enforce their rulings. Recent articles that have focused on democratic backsliding in the European Union find that if a head-of-state is determined enough, there is little a court can do to prevent backsliding according to Blauburger

and Kelemen (2017). They further explain that even if existing safeguards in the European Union were updated and expanded like maximizing the infringement proceedings brought to the ECJ by the European Commission or private parties bringing forth litigation against national governments in EU courts in order to enforce and protect the rights, there would still be limitations to the courts' abilities. Even if necessary updates and enforcement measures were put in place in the EU to prevent democratic backsliding, courts would not be fully capable of protecting the constitution if a head of state is determined enough leading the independence of these courts to be compromised (Blauberger and Kelemen 2017). This finding is supported by examples of two countries (Hungary and Poland) in the European Union that are experiencing democratic backsliding and have attempts made by the courts to protect their democracy that has ultimately been thwarted by what Blauberger and Kelemen would consider a determined enough executive. These case studies on Hungary and Poland find that their judiciaries have taken a considerable toll in the face of democratic backsliding, as demonstrated by in an article by Kovacs and Scheppele. Hungary, for example, had ratified its constitution after the 2010 election to essentially eliminate all checks on the executive from the other branches. Hungary also increased the high court's workload and increased the number of sitting judges from 11 to 15 to basically neutralize any opposing views from the judges. The courts fought back until the executive nullified all the case laws from 1990-2011 so the court could not rely on previously existing decisions. Poland's courts faced turmoil with its new government starting with allowing the legislature to pick new judges before courts have an open position. When the courts retaliated by attempting to rule the past elections unfair, President Duda refused to publish their decisions and swore in five new judges. The intervention of the European Commission made little to no difference in these cases when they tried to intervene (Kovacs and Scheppele 2018). Both

examples from Hungary and Poland provide evidence to support the claims made by Blauberger and Kelemen (2017) that there is little an independent judiciary can do to prevent democratic backsliding if the executive is determined enough.

1.1.2 The Role of Courts as a Democratic Institution

Two key elements relate back to the effectiveness of courts in protecting democratic values. These two key elements are independence and legitimacy. Independence and legitimacy were stressed by Gibler and Randazzo as two important components of effective constitutional courts (Gibler and Randazzo 2011). Legitimacy in high courts is established through a multitude of contributing factors as found by Gibson, Caldeira, and Baird (1998). According to them, institutional legitimacy of independent judiciaries matters because without it, “-courts find it difficult to serve as effective and consequential partners in governance,” (pg. 343). High courts gain their legitimacy through public support, in which a majority of the public is typically satisfied with the decisions of their high courts. These courts are often salient, and sheer awareness and specific support of these courts foster diffuse support (Gibson et al 1998). Independence in court literature is better summarized by Linzer and Staton (2012). They summarize the differing views of independence into two concepts: autonomy and power. Autonomy (pg. 225) is the ability of the judges to make decisions that are uninfluenced and based on their interpretation of the law. Power (pg. 225) is the ability of the judiciary and the judges have in constraining the decisions of other political actors (Linzer and Staton 2012). I will continue to discuss the literature surrounding the importance of independence and the legitimacy of judiciaries when it comes to maintaining functioning democracies.

First, I will address how independent judiciaries can serve to protect democracy through the process of judicial review. Daniel Sutter (1997) argues that judicial review can mitigate the

problems that surround enforcing constitutional constraints. These problems include identifying and preventing violations of the constitution, enforcing constraints, and facilitating collective action against those that violate the constitution (Sutter 1997). His argument provides evidence of the effectiveness of courts in protecting the constitution and their role as an institution in protecting democracy. Further research from Reenock, Staton, and Radean (2013) provide evidence that judicial institutions are paramount in assuring democratic survival through their ability to monitor and coordinate democratic compromise in stable developed countries. Moreover, independent judiciaries serve as a check on the other branches of government. The ability to exercise checks and balances among political elites and government branches is essential to democracy because it enforces constitutional constraints and keeps one branch from abusing its powers (Holcombe 2018). Courts as an institution serve as an integral part of this system of checks and balances which facilitates the democratic process. These examples provide evidence to support the importance of independent judiciaries in protecting democratic norms and values in developed countries. While it is important to understand how independent judiciaries protect democracy, for the purpose of this study, it is also important to address how the loss of their independence can negatively impact their ability to protect democracy.

Independence allows courts to exercise checks and balances without interference from the other branches. The system of separation of powers and maintaining checks and balances help constrain the power of the elites, as Michael Touchton found when studying the stability of democracies in Latin American countries. Maintaining checks and balances between branches further helps stabilize democratic values and norms (Touchton 2016). However, the system of upholding the separation of powers can be compromised upon political attacks on the judiciaries. Courts are vital at the beginning of a populist regime because they can help protect democratic

values. These values and norms are often subject to attack under a populist regime because populists, unlike a democratic regime, often seek to dismantle the system that got them elected in order to stay in power (Prendergast 2019). Political attacks on the judiciary weaken their independence because they weaken the legitimacy of the courts to the public. The legitimacy of courts is weakened when the public starts to lack confidence in courts after there have been attacks by a political candidate or leader (Bright 1997). The American Bar Association published an article stressing how political attacks on the courts negatively impact the legitimacy of the courts which then can threaten judicial independence then leads to a threatened system of the separation of powers between branches (Keeva 1997). After extensive research, I argue that attacking the judicial branch of a government would hinder the abilities of the courts from protecting democratic constitutional norms and values because their legitimacy would be compromised in the public's opinion which then threatens their independence. Attacking courts weakens their independence thus making it more difficult for them to protect the constitution in times of political turmoil or in a populist regime as mentioned above. For this reason, in my thesis, I will seek to understand how political attacks on the judiciary affect democratic erosion. I predict that an increase in attacks on the independent judiciaries from the executive or other branches will lead to democratic erosion. If there is evidence to support my theory, we will observe more government and political attacks on the courts after the year 2000 than before it. Furthermore, if my theory has significant evidence, we will also observe a difference in the effect that court attacks have on the democratic scores of a country before and after the year 2000 than before it.

To summarize, Gibler and Randazzo found independent judiciaries to be effective in preventing democratic backsliding using a sample from 1960-2000. As I have discussed, there

was less democratic backsliding occurring at the time and a majority of it was through authoritarian reversion. Democratic backsliding has evolved to constitutional retrogression meaning physical acts of aggression from an authoritarian regime like coups are less prevalent while political attacks and the degradation of institutions have become more prevalent. This paper serves to address how effective the courts are in protecting democratic values and norms since the year 2000 in the face of political attacks.

1.2 Expected Results

Do political attacks on independent judiciaries weaken courts' abilities to protect democratic values and norms? Gibler and Randazzo's (2011) research finds evidence to support the overall effectiveness of independent judiciaries in protecting constitutional democracies from reversion. Despite their findings, there is not enough evidence to support that this would still hold true if tested on a more recent sample set and with some adjustments in order to fine tune the study.

The key differences from their sample set and one that were to start in 2000 is the obvious change in style of democratic backsliding as previously discussed. Elected officials are seemingly no longer resorting to coups to thwart their adversaries, thus indicating their manipulation of democratic norms. This is hard to identify in the beginning of a regime change because democratic norms largely involve compromise. Independent judiciaries, much like other branches, will have slower reactions to usurpation of power during constitutional retrogression due to its subtly and slow-moving process, as I have also previously discussed.

During times of constitutional retrogression, the degradation political norms is crucial to the next step, the weakening of democratic institutions. Since the use-of-force is rarely being

seen during democratic transitions in the 2000s, it has become quite imperative that degrading political norms is often used as a tactic to allow the head-of-state to then weaken the other democratic institutions in order to usurp more power for their self. This moves in a sort of linear progression of events, often very slow at first and difficult to recognize.

How does all of this apply to independent judiciaries? They are a democratic institution that heavily rely on independence and legitimacy in order to function properly in a constitutional democracy. Attacking their legitimacy and independence can effectively be done by disregarding political norms. This includes tactics such as court packing, public political attacks on the judiciary, judicial reform, and lack of compliance with court rulings. These tactics go against established political norms thus leading to weakening the institution of the courts as a democratic safeguard. Weakening a democratic institution will ultimately lead to a loss in democracy as the head of state usurps more power.

Independent judiciaries are vital institutions in protecting democratic values and norms in democratic countries. However, courts' legitimacy and independence can be threatened upon political attacks; these attacks will result in the weakening of courts as an institution thus resulting in a greater loss in democratic values.

Hypothesis

H1: An increase in attacks on independent judiciaries from the head of state or other branches of government will result in lower democratic scores.

H2: Attacks on the judiciary are more prevalent in a time of constitutional retrogression than in a time of authoritarian reversion.

I expect to find that political attacks weaken the institution of independent courts thus leading to a decrease in the empirical value of judicial independence, this will then lead to a decrease in democratic values.

2 EMPIRICAL DESIGN

In order to study if an increase in attacks on independent judiciaries will result in a decrease in democracy scores, I will be conducting a multivariate OLS regression and a cross tabular analysis from 1980 to 2015 on all the high-ranking democratic countries. Before I move forward, I will explain two important aspects to the entirety of my design. One aspect is the time frame that I am testing my data in. The other is the type of democracies that I am observing.

I am observing my data from 1980 to 2015 for a few reasons. I am seeking to draw a comparison between democratic backsliding in the Cold War and democratic backsliding after the Cold War. As I have previously discussed, democratic backsliding in the Cold War often used more aggressive measures which is why Huq and Ginsburg (2018) refer to it as authoritarian reversion. Whereas democratic backsliding after the Cold War (also known as constitutional retrogression) does not use these same aggressive measures (Huq and Ginsburg 2018). For the sake of this study, it is important to include observations ranging from a part of the Cold War era (the 1980s) and observations after the Cold War (the 2000s). This way I can account for both authoritarian reversion and constitutional retrogression.

Furthermore, I am only observing democratic countries. I will be excluding anything that is coded as a hybrid regime, autocratic state, or failed democracy. This study is mostly concerned with the preliminary symptoms and warning signs of democratic backsliding. This implies that a country must be a complete democracy or coded as a high-level democracy in order for it to start exhibiting signs of backsliding. Once a country is no longer coded as a democracy, it can be presumed that it has already been experiencing symptoms related to backsliding for a while. I am seeking to understand the initial decline not the continued decent into autocracy.

2.1 Tests

2.1.1 Data Sources

I will be collecting my data from a variety of sources. Primarily, I will be using V-Dem's 2019 data set and the Latent Judicial Independence scores (LJI) from Linzer and Staton (2015). For my dependent variable, I will use the Polity "Institutionalized democracy" score provided by V-Dem to measure the democracy scores of my observed countries from 1980 to 2015. Polity considers democratic regimes to be scored from 6 points to 10 points on their democratic scale, so I will only be observing countries from 1980 to 2015 that are assigned a 6 or higher. I will use the Polity scores for two reasons: Gibler and Randazzo used Polity scores to assess democratic scores, and I am trying to keep my study similar to theirs since their paper on the court's role in democratic survival largely inspired the topic of this paper, and I am expanding upon the foundation of their paper. Also, Polity measures democracy in three ways that are favorable to this study. The three ways they assess democracy are,

"Democracy is conceived as three essential, interdependent elements. One is the presence of institutions and procedures through which citizens can express effective preferences about alternative policies and leaders. Second is the existence of institutionalized constraints on the exercise of power by the executive. The third is the guarantee of civil liberties to all citizens in their daily lives and in acts of political participation (pg. 319)," (Coppedge et. al 2019).

The second element of how Polity assesses democracy is crucial to this study since I am looking at the effectiveness of the courts on checking the powers of the executive.

To understand how independent courts protect democracy, I will be using the Latent Judicial Independence (LJI) scores for my high court independence measurements due to its widely accepted accuracy in measuring judicial independence since its publication in 2012. It has since been updated to encompass judicial independence scores for countries up to 2015. This is

primarily why my observations end in 2015 instead of 2018 or 2019. I decided not to use the high court independence score provided by V-Dem upon the recommendation of Dr. Staton, who clarified that it does not follow the LJI formula of measurement (Linzer and Staton 2012; 2015).

My variables accounting for political attacks on the judiciary will include the following from V-Dem: “court-packing,” “government attacks on judiciary,” “judicial reform,” and “compliance with high court” to measure the effect of the attacks on the courts and on democratic erosion. These variables were chosen specifically for this study since there have been reported cases of each one in countries that are possibly experiencing backsliding as I previously discussed in this paper. “Court-packing” is assessed by V-Dem as how many judges are added to the judiciary and whether it was for political reasons. “Government attacks on judiciary” measures the frequency of government attacks on the integrity of the courts. “Judicial reform” measures if the judiciary’s powers were changed by an institution in a way that alters their abilities to exercise their formal powers or access to the judiciary. “Compliance with high court” measures how often the government complies with important high court decisions (Coppedge et al 2019).

To account for any possible other influences that might lead to democratic backsliding, I will be including the following control variables: gross nation income (GNI), recession or economic collapse, and armed conflict. Including GNI as a measurement of wealth is important due to the collective findings that show that wealthy countries are less likely to see democratic deterioration (Gibler and Randazzo 2012; Lipset 1959, 75; Przeworski et al. 2000). I will be integrating my data for this variable from the World Bank’s database which tracks every country’s GNI per year (World Bank, 2020). I will be considering a variable for economic breakdowns and recessions. It is believed that situations of economic recessions tend to be

followed by a series of democratic backsliding (Gibler and Randazzo 2012). This will be measured by a decrease in the country's GDP growth per year. I will only be including countries that are experiencing a decline in GDP (or negative growth) of 3% or more in one year. For this, I will be using the World Bank database as well (World Bank 2020). I will also be including two variables that encompass militaristic threats because situations of militaristic threats have been found to contribute to a usurpation of power by the executive in order to address militaristic threats (Rasler 1986; Mansfield and Snyder 2003; Gibler and Randazzo 2012). I will be using V-Dem's variables for international and internal armed conflicts to assess whether or not the countries participated in or experienced armed conflicts that would then make them more susceptible to democratic erosion (Coppedge et. al 2019).

2.1.2 Testing the Data

To understand how attacks on the judiciary are more prevalent in a time of constitutional retrogression than in a time of authoritarian reversion, I will be performing a cross-tabular analysis. I will be examining the attacks on the judiciary using the variables listed above for independent judiciary from before and after the year 2000. I will be analyzing this by democracy scores. This will help me assess the amount of attacks on the courts before and after 2000 and to identify if the amount of attacks has increased or decreased since 2000. This is important to my study because evidence shows that the style in which democracies backslide has since changed from acts of aggression (authoritarian reversion) to the systematic dismantling of democratic norms and values (constitutional retrogression). The change from authoritarian reversion to constitutional retrogression occurred after the end of the Cold War and was most notably different by 2000 which is why the observations will be separated at 2000 instead of another year (Huq and Ginsburg 2018). It will also help me identify if the attacks on the courts affect the

democracy scores in the democratic countries being observed. My cross-tab analysis will look like the following for example, “For countries with a democracy score of 8, there were X number of attacks in the years up to 2000 and Y number of attacks on the courts after the year 2000. For countries with a democracy score of 7, there were X number of attacks before the year 2000 and Y number of attacks after the year 2000.” From there, I can identify how the number of attacks on the judiciary correlates to the democracy scores in the democratic countries pre and post 2000. I expect to see more attacks in countries after 2000 than before 2000.

In order to test whether government attacks on the judiciary contribute to weakened judicial independence thus leading to a decrease in democracy score, I will be performing an OLS regression while lagging my dependent variable behind two years to see if the applied effect actually resulted in a change of democracy score. I will be measuring how attacks on the courts affect democracy scores pre and post 2000. I will be doing so in order to examine the difference in the effect that the court attacks have on judicial independence and the possible change of democracy scores. I expect that there will be a greater number of attacks on the courts in the post-2000 sample and that the attacks will have a greater effect on the change of democracy scores. I anticipate this, again, because we are witnessing constitutional retrogression instead of authoritarian reversion after the year 2000. I do not anticipate that there will be a significant correlation between attacks on the judiciary and democratic scores in the pre-2000 sample because the type of democratic backsliding during this time period typically involves acts of aggression.

In my regression, I will include the following independent variables in order to understand how they affect my regression. The independent variables that I will be including are variables that have long been understood to affect the survival of democracy. These variables can

influence the fluctuation of democracy scores. First, for judicial independence, I will be using the Linzer-Staton measurement for judicial independence because it provides the most complete measurement of independence (Linzer and Staton 2012; 2015). I will also lag the independent judiciary score, but by one year instead of two. This will make sure the effect of the political attacks on the judiciaries is accounted for before running the regression. Next, I will include my variables for government attacks on courts followed by my control variables.

When I run my regression I expect to find that countries with greater attacks on their judiciaries will have lower democracy scores than countries with little to no attacks on their judiciaries. I expect to see these findings because there is strong evidence to support that independent judiciaries help prevent democratic backsliding but can be subject to attacks from the government, thus weakening their independence and their ability to prevent erosion. This study has its limitations, however. Attacking democratic institutions is not the only symptom of democratic backsliding. Often, degrading social norms, restricting civil rights in minority groups, and tampering with the freedom of the press are a few examples of other occurrences witnessed during democratic backsliding. Attacking independent judiciaries may exacerbate the erosion of democracy but it certainly is not the only cause, and democracies can certainly decay even without attacking courts. This study just serves to identify the relationship between attacks on the courts and democratic erosion.

3 RESULTS

The results of the tests prove to be promising, however there are significant limitations and points of departure that need to be discussed. These aforementioned points mostly revolve around the sources that I compiled my data from, and my own error in data collection, testing, and interpretation. I will explain more in my findings sections.

3.1 Findings

3.1.1 *Fitting the Data*

Along with discussing my results, I will discuss the number of regressions performed on my data and why, any other tests that I may have performed in the interim, the variables and observations that were excluded and why, and any other necessary information that pertains to the results of this study. Before I discuss my results, I will detail the data compilation process in order to make clear what is missing from my dataset.

After compiling my data and entering it into the same spreadsheet, the first thing I was tasked with was filling in or removing blank observations from my dataset. Most of the blank observations were for my recession variable and my GNI variable. My recession variable consisted of every country's GDP and I had obtained the data from the World Bank database. I had planned to only include observations that displayed a loss of GDP that was 3% or greater each year. However, this meant I would likely have to exclude all other observations that were greater than -2.9%, which would result in much of that variable consisting of blank observations. Due to my inexperience and the programs that I was running, I could not run a regression with a variable that contains blank observations. I turned the GDP variable into a dummy GDP variable. In this study, a country that did not experience a recession resulting in a loss of 3% or more of

their GDP in a year received a '0' for no recession. All countries that experienced a loss of 3% or greater of their GDP in a year were coded '1' for yes.

There were fewer blank or missing inputs for a country's GNI, so I resulted to removing the entire observation (country, year, dependent variable, independent variables and constants) for that missing observation. This was also due in part to not necessarily having the full skill set to run the regressions with missing variables. An estimated total of 10 to 20 single observations were removed due to missing GNI inputs, and one entire country was also removed. It occurred to me during this process that the World Bank does not publish any data or acknowledge the existence of Taiwan (it does however recognize and provide separate datasets for Hong Kong as a separate entity from China). All other sources had data on Taiwan except the World Bank, so I did not have a GDP or GNI to list for it. Removing Taiwan removed roughly 20 observations from my dataset. This does not appear to affect my data because there was little no fluctuation with Taiwan's democracy score or independent court score. Also, my complete dataset contains 2700 observations after removing any with missing inputs, so due to the large scale of my study, I did not see that removing some observations would result in significant change in my analysis.

Furthermore, the two variables for armed conflict (internal and international) provided by V-Dem were not complete. To resolve this, I referenced the codebook provided by V-Dem to discover that countries that received a '0' for "no conflict" could also receive a '0' for "no known conflict". All countries with a missing input for those two variables are now coded '0' for "no conflict" or "no known conflict".

Lastly, before I ran any tests on my data, I did have to fit the remaining democracy scores to the remaining court independence scores that did not initially "match" when I merged datasets. The two that I merged were the Polity democracy scores provided by V-Dem and the

high court independence scores by Linzer and Staton. Some countries did not match in the initial merge due to different country names. Some countries being observed underwent name changes, like Macedonia and North Macedonia, after the data had already been collected, while other countries were referred to under their common name instead of their internationally recognized name such as, The Congo instead of the Republic of Congo. I resolved this by manually merging the remaining observations into my dataset.

3.1.2 Initial Regression Analysis

My regression analysis rejects my null hypothesis and provide evidence in the contrary. This is demonstrated in Table 1. There is a positive, significant relationship between democracy scores and judicial independence scores in all three models. This means that if high court independence scores were to decrease, we would expect a decrease in democracy in a country's democracy score as well. Across both models, court packing holds a significant and positive influence on democracy scores (I ran Model (3) without government attacks on the high courts to test for interference, more on this later). This supports my theory. This shows that if governments either do not pack their courts or pack their courts when it is not politically motivated but needed to improve judicial functions, democracy scores are expected to increase. This provides evidence to support my theory because court packing is measured 0-3, with 0 meaning there was often strong, politically motivated incidences of court packing and 3 meaning there were either no cases of court packing or positive/needed cases of court packing (not politically motivated).

While court-packing provides evidence to support my theory, compliance with the high court holds a negative and significant impact on democracy scores. This would technically indicate that as governments become less compliant with the high court, democracy scores would increase. This does not support my theory; however, I am not throwing it out entirely, yet. This is

difficult to interpret. There is a chance that in the beginning stages of democratic backsliding, a government will not be compliant with a high court's ruling until after more drastic measures have been taken like court packing. Once the head of state has packed the court with judges that will support their agenda, it could be more likely that the head of state becomes compliant with the courts' rulings again. In the same respect, after a court has been packed, the legislative/parliamentarian branch could shift their compliance with the courts' rulings as well. This relationship is not linear and would need further investigation.

International arms conflict holds a negative, significant relationship to democracy scores while internal arms conflict is positive and significant. The variable for recession is not significant and GNI is significant at 0 for all three models. All three of these variables are important to this study, but in future tests they should be adjusted and possibly sourced from different places. GNI was too large of a number to run in my regression and could possibly be affecting my results. The armed conflict variables should be included but were not as detailed and thorough as I would have liked.

I ran three regressions to understand if there was any interference between two of my independent variables, government attacks and court packing. I was testing to see if these variables were interfering with each other based off the notion that a politician who is trying change a court by packing it would also be verbally attacking in the public eye to justify the court packing. Upon removing court packing from Model 2 in Table 1, the significance of government attacks on the courts did not change and the coefficient slightly increased. After removing government attacks from Model 3 in Table 1, the coefficient for court packing barely changed yet remained significant.

Regression Table

	<i>Dependent variable: inst_democ</i>		
	(1)	(2)	(3)
Court Ind. Scores	4.547*** (4.259 , 4.836)	4.740*** (4.454 , 5.026)	4.521*** (4.249 , 4.793)
Court Packing	0.173*** (0.125 , 0.221)		0.172*** (0.124 , 0.219)
Government Attack	-0.012 (-0.057 , 0.032)	0.011 (-0.034 , 0.055)	
Judicial Reform	0.026 (-0.016 , 0.068)	0.035* (-0.007 , 0.078)	0.024 (-0.017 , 0.066)
Compliance with High Court	-0.157*** (-0.226 , -0.088)	-0.120*** (-0.189 , -0.051)	-0.161*** (-0.229 , -0.093)
International Armed Conflict	-0.496*** (-0.691 , -0.301)	-0.514*** (-0.711 , -0.318)	-0.491*** (-0.685 , -0.297)
Internal Armed Conflict	0.491*** (0.168 , 0.814)	0.443*** (0.118 , 0.769)	0.486*** (0.164 , 0.809)
Recession	0.034 (-0.145 , 0.214)	0.047 (-0.134 , 0.228)	0.035 (-0.145 , 0.214)
Gross National Income	0.000** (0.000 , 0.000)	0.000*** (0.000 , 0.000)	0.000* (-0.000 , 0.000)
Observations	2,700	2,700	2,700
R ²	0.491	0.482	0.491
Adjusted R ²	0.490	0.480	0.490
Residual Std. Error	1.039 (df=2690)	1.048 (df=2691)	1.038 (df=2691)
F Statistic	288.745*** (df=9; 2690)	312.808*** (df=8; 2691)	324.888*** (df=8; 2691)
Note:	* p<0.1; ** p<0.05; *** p<0.01		

Table 1

3.2 Limitations

Before I provide an explanation for my cross tabular analysis, I will discuss that I had an exceedingly difficult time collecting and interpreting the data set that I was sent and downloaded from V-Dem. Therefore, this paper has been edited to include the following from myself,

“I was under the impression that my four “political attacks on courts” variables were coded improperly and did not match the codebook. I had downloaded the wrong dataset for my variables. The information is still correct, but I downloaded a weighted distribution of my dataset instead of the raw dataset. We (myself and my committee) did not discover this until I was quite literally defending this thesis. There was no time available to me to rectify the situation as finding the raw, unweighted data, fitting it to my study and running it again would be too time consuming. The following is how I proceeded about fitting the dataset that I had received to the codebook so I could interpret it according to the codebook. After further discussion with my thesis committee, it appears that this was the best process to take considering I was under the impression that the data was coded improperly. The steps that I did take did not significantly change the results of the original dataset so my interpretation at the end should still stand as correct.”

The dataset that I received does not match the accompanying codebook. This is how I will adjust it so that it does fit the codebook. For example, the variable representing government compliance with the high court is listed as an ordinal variable that was then changed to an interval variable and assigned the values 0 through 4. 0 represents the least amount of compliance from the government with the high court’s ruling while 4 would represent the most compliance. When cross-referencing my data set, I discovered that this variable now had integers ranging from -1.78 to 2.86 instead. This discrepancy was true for all four variables. Each variable had differing inputs that did not match their expected codes.

Court_P		Gov_Att		Jud_Ref		Comp_HC	
Coded: 0-3		Coded: 0-4		Coded: 0-2		Coded: 0-4	
Mean	0.459	Mean	0.517	Mean	0.491	Mean	1.295
Median	0.757	Median	0.797	Median	0.493	Median	1.3745
Mode	1.458	Mode	1.572	Mode	0.57	Mode	1.601
Range	5.341	Range	7.052	Range	6.703	Range	4.641
Minimum	-3.676	Minimum	-4.432	Minimum	-3.232	Minimum	-1.783
Maximum	1.665	Maximum	2.62	Maximum	3.471	Maximum	2.858
Count	2700	Count	2700	Count	2700	Count	2700

Table 2

Table 2 consists of the summary statistics for each political attack variable. In the table I included what each variable was coded as according to the codebook ('0-2', '0-3', '0-4'). The minimum and maximum values represent what the data appears as in the provided dataset (these are the weighted scores that I received I did not know I received). So, I attempted to remedy this by redownloading the dataset that I was sent by V-Dem. I then identified that the input values for the variables did not change while merging datasets and uploading them into any of my software programs. Next, I consulted the "Methods" handbook also provided by V-Dem, yet I could not seem to locate an answer as to why the data appeared different on the provided spreadsheets versus in the codebook (Coppedge et. al 2020). Lastly, I referenced the working paper on their website, which was cited in the codebook, to identify if this would reveal any explanation (Pemstein et. al 2018). Unfortunately, I could not find a reason or formula to explain these differences (at the time). Due to time restraints, I had to proceed forward with my best interpretation of the given data.

To proceed forward with my test and complete the cross tabular analysis, I skewed the four political attack variables so that the minimum integer would now equal 0. I did this by

adding the absolute value of the minimum number for each variable to every single observation in each variable. This brought all the minimum values to 0 and created new maximum values. I did this so I could better understand the distribution of the given data for the four variables. Until this point, I was unsure if the variables followed the codebook. I am working off of the assumption that the data in the spreadsheet provided was entered in the same linear pattern as the codebook would suggest that it was. Meaning, I am assuming that the lowest value entered in the spreadsheet would have also been the lowest value to be entered in that place but with the proper code from the codebook.

Court_P		Gov_Att		Jud_Ref		Comp_HC	
Mean	4.135	Mean	4.949	Mean	3.723	Mean	3.078
Median	4.433	Median	5.229	Median	3.725	Median	3.1575
Mode	5.134	Mode	6.004	Mode	3.802	Mode	3.384
Range	5.341	Range	7.052	Range	6.703	Range	4.641
Minimum	0	Minimum	0	Minimum	0	Minimum	0
Maximum	5.341	Maximum	7.052	Maximum	6.703	Maximum	4.641
Count	2700	Count	2700	Count	2700	Count	2700

Table 3

I am assuming that 0 implies greater amounts of political attacks and the maximum number for the variable would still mean no political attacks or positive change. I attempt to verify this assumption by identifying which country, at what time had the highest assigned value after I adjusted the data. Three out of the four variables had corresponding country democracy scores and judicial independence scores to confirm that the highest number still implied the most positive outcome. For example, after adjusting the variables, I reordered “Court Packing” from highest (5.341) to lowest (0) and then identified which countries, years, democracy scores, and independent judiciary scores corresponded with a court-packing score of 5.341. The United

States was the country to hold a 5.341 for court-packing. This would appear to be the correct assignment for this value, being that the United States has not added a seat to the Supreme Court since 1869 and certainly has not had incidents of court-packing (Bomboy 2019). I then continued to observe the following countries on the spreadsheet to assure that the outcome appeared to fit to scale. The only variable that did not seem to fit the adjusted scale was “Judicial Reform.” The highest value of 6.703 was assigned to Colombia for one year only. It was sporadically placed with countries that had medium to low democracy scores and judicial independence scores after. However, this does not exclude this variable from the study. “Judicial Reform” is coded as 0-2, with 0 indicating that the judiciary’s arbitrary powers were negatively impacted or reduced by institutional change, 1 meaning there was no change, and 2 meaning there was positive change to enhance their powers. A country does not need to specifically adopt institutional change consistently from year to year, similar to how they do not need to consistently pass the same law every year for it to be implemented. After creating new scales for these variables and confirming that they were properly assigned to the country and year that best suited their value, I feel confident enough to follow through with my cross-tabular analysis.

To run my cross-tabular analysis, I divided up my range of numbers in the scales that I have adjusted for by the range of numbers that were provided by the codebook so I could fit it to the scale provide by V-Dem. For example, if one variable was originally coded to be 0-3, but it appeared in the data as -3 through 3, I would adjust it by adding the absolute value of the minimum number to all the observations. This would provide me with a variable that has integers ranging from 0-6 instead. I would then check to make sure that the highest value (6, in this case) was assigned with a country that had some of the highest democracy scores and judicial independence scores. After this, I divided my scale (0-6) into 3 parts because the V-Dem

codebook indicated that that variable ranged from 0-3, with each number representing a different level of the amount of court attacks. Now what the codebook says is coded as a 0-1, in my dataset will be all observations less than or equal to 2 (ranging 0-2). What the codebook has coded as 1-2, will be between a 2-4 according to my adjusted scale. Lastly, if the codebook has it coded as 2-3, my adjusted scale will account for it being 4-6. This is all the make sure the large values remain large, the small values stay small, and all are assigned to their original meaning in the codebook.

3.3 Cross Tabular Analysis

The results of the cross tabular analysis provide evidence to support my theory. As I predicted, more political attacks are being observed after 2000 than before 2000. These political attacks do not represent the actual number of attacks on the high courts since each variable was an ordinal variable, converted into an interval variable. These values do indicate that more attacks in general are being observed. Before I continue my observation, I will provide a description of how each variable was coded in the V-Dem codebook and how I subsequently chose which value to consider as an attack on the courts and which values were not considered.

<p>Court Packing V-Dem Code: 0-3 Adjusted Code: 0-5.34 -I assessed that attacks stopped with accounts greater than 2 (3.56 adjusted) based the description provided by V-Dem.</p>	<p>“0: There was a massive, politically motivated increase in the number of judgeships across the entire judiciary. 1: There was a limited, politically motivated increase in the number of judgeships on very important courts. 2: There was a limited, politically motivated increase in the number of judgeships. 3: Judgeships were added to the judiciary, but there is no evidence that the increase was politically motivated; or there was no increase.” <p style="text-align: right;">(pg. 155)</p> </p>
<p>Government Attacks V-Dem Code: 0-4 Adjusted Code: 0-7.052 -I assessed that attacks stopped with accounts greater than 3 (5.289</p>	<p>“0: Attacks were carried out on a daily or weekly basis. 1: Attacks were common and carried out in nearly every month of the year. 2: Attacks occurred more than once. 3: There were attacks, but they were rare. 4: There were no attacks on the judiciary’s integrity.”</p>

adjusted) based the description provided by V-Dem.	(pg. 154-155)
Judicial Reform V-Dem Code: 0-2 Adjusted Code: 0-6.703 -I assessed that attacks stopped with accounts greater than 1 (3.352 adjusted) based the description provided by V-Dem.	“0: The judiciary’s ability to control arbitrary power was reduced via institutional reform. 1: There was no change to the judiciary’s ability to control arbitrary power via institutional review. 2: The judiciary’s ability to control arbitrary power was enhanced via institutional reform.” (pg. 153-154)
Compliance with the HC V-Dem Code: 0-4 Adjusted Code: 0-4.61 -I assessed that attacks stopped with accounts greater than 2 (2.23 adjusted) based the description provided by V-Dem.	“0: Never. 1: Seldom. 2: About half of the time. 3: Usually. 4: Always.” (pg. 158-159)

Table 4

(Coppedge et. al 2019)

Now that I have provided the descriptions for each variable and how I determined which value was observed, I will continue with my results. I predicted that there would be greater

Table 5

Democracy Scores	1980-1999	2000-2015
10	598	590
9	271	425
8	285	495
7	292	417
6	344	382
Total	1790	2309

political attacks on the independent judiciaries after 2000 because of Huq and Ginsburg’s (2018) findings that democratic backsliding has changed from authoritarian reversion to constitutional retrogression after the Cold War ended and noticeably by the beginning of the

2000s. Alarming, there is a five-year difference between the two columns, with 1980-1999 having almost 20 years’ worth of data while 2000-2015 has only 15 years’ worth. This means

that even with 5 fewer years, the post-Cold War dataset saw more attacks on judiciaries than the late-Cold War dataset. This could indicate a greater rise in the types of mechanisms that the political leaders and institutions are willing to utilize to usurp power. Also, in this table, it had remained consistent that there are a large number of observations in for countries with a democracy score of 10. Between 1980 and 1999, roughly 33.4% of the political attacks reported happened in level 10 democracies. In the following years, this proportion decreases to 25.5%. Despite the decrease over time, this is still a lot more than I predicted.

Furthermore, of these variables, “Compliance with the High Court” contributed a great deal more to these findings than the other variables. As detailed above, there is a good chance that it needs further investigation on how it affects democracy scores on its own. There is a chance that it is a useful mechanism for political figures to manipulate when trying to gain more power. High courts do not have an enforcement mechanism, so they cannot simply execute their rulings like other branches may be able to. Non-compliance does not involve disrupting the status quo like government attacks, judicial reform, or court packing. In fact, it requires maintaining the status quo.

3.4 Final Interpretation

There is evidence to support my theory in regression analysis that democracy scores and independent judiciary scores maintain a positive and significant relationship. There is also significant evidence to support my theory that greater incidences of politically motivated court packing do decrease democracy scores. Further investigation into the relationship with democracy scores and compliance with the high court are needed.

I did identify that there were more political attacks on independent judiciaries after 2000 than before 2000. This supports my theory and much of the existing literature on the current

change in democratic backsliding from the use of aggressive measures and use of force to the degradation political norms and passing of laws to usurp more power.

4 CONCLUSIONS

Previous literature highlights that in the times of constitutional retrogression, the degradation political norms is the crucial to the next step to the weakening of democratic institutions. This study finds that there has been an increase in the utilization of practices revolving the degradation of norms, particularly pointed at the courts, to weaken them.

These are democratic institutions that heavily rely on independence and legitimacy to function properly in a constitutional democracy. Attacking their legitimacy and independence could effectively be done by disregarding political norms. This includes tactics such as court packing, public political attacks on the judiciary, judicial reform, and noncompliance with court rulings. This study did evidence support my theory and hypothesis that political attacks on the courts lead to weakening their independence scores thus leading to the weakening of democracy scores.

This study found evidence to support that attacking the courts as an institution is becoming more prevalent in democratic countries after the Cold War. This is important both to the study of courts and to the study of democratic survival because we need to understand how and in which ways political leaders and other institutions are seeking to weaken the safeguard to democracy. I would suggest further research, with a better understanding of how the variables are coded and weighted, a multinomial logit model instead of a regression because of how small the range is for the dependent variable, performing a survival model to develop a timeline for countries starting to experience attacks, and a more detailed investigation into what kind of political attacks are accounting for the numbers of attacks on the courts.

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