Institutional Determinants of Human Rights Violations Across Political Regimes

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Abstract

This thesis provides a theoretically driven investigation with empirical evidence on the contexts in which judicial and political institutions promote human rights. In the first chapter I argue that judicial independence is not enough for courts to protect human rights. I found the empirical evidence supports my hypothesis, both judicial independence and judicial enforcement are necessary for courts to have a positive impact on human rights. The second chapter offers a deeper look at how courts function in autocracies. I argue that even with the best judicial institutions, courts in autocracies will not perform as well as in democracies to protect human rights. The dictator designs independent courts and enforces the decisions, to attract foreign investment (mainly), and not to limit his own capacity to repress. I found the empirical evidence to be broadly supportive of my hypotheses. Whereas judicial constraints in democracies promote the respect of all the types human rights surveyed (expect for extrajudicial killings because of the ceiling effect), in autocracies judicial constraints promote only private property rights (and unexpectedly reduces the number of extrajudicial killings). In the third chapter I revisited the impact of political institutions in autocracies on physical integrity rights. In the literature there seems to be contradictory claims of what that impact would be, based on divergent interpretation of why political institutions emerge in autocracies in the first place. I found that after correctly specifying the model estimation, political institutions are not significantly correlated with worse physical integrity rights. Furthermore, the evidence shows that political liberalization (the positive change towards more political institutions) is not significantly correlated with either physical integrity rights, or civil and political rights.

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1 Introduction

On the night of September 26, 2014, 9 people were killed, 27 wounded, and 43 students were disappeared in the city of Iguala, Mexico. More than 100 students from the Raúl Isidro Burgos Rural Teachers College of Ayotzinapa, had commandeered five buses, and were planning on using them to join the 2nd of October demonstrations in Mexico City, commemorating the 1968 Tlatelolco massacre (*BBC News*, 2014). A coordinated action by the local police stopped the five buses almost simultaneously in two different exits of Iguala. In collusion with criminal organisations, and with numerous other branches of the Mexican security apparatus either participating in or witnessing the events (including state and federal police and the military), the local police arrested 43 students, loaded them in the box of pick-up trucks, and disappeared them, only the bodies of two of those students have been identified (*Forensic Architecture*, 2017).

The events of September 26 can be viewed as part of a long development of the 'Law of coercive responsiveness'. The students of the Rural Teachers College of Ayotzinapa had been protesting repression, and being repressed in response, in a vicious cycle at least since the 1970's. In a way, the 1968 Tlatelolco massacre was the starting point of this kind of left-wing anti-system activism, but the massacre was itself the tragic conclusion of its own cycle of protest and repression (McGahan, 2014).

Back in the summer of 1968, the CNH (National strike council) had been organizing demonstrations uniting students and workers to demand greater political and civil rights and an end to the PRI's authoritarian rule. The 2nd of October 1968, just weeks before the inauguration of the Olympic games in Mexico

City, the CNH organized a demonstration at the Plaza de las Tres Culturas in Tlatelolco that gathered more than 10'000 participants (*The Economist*, 2008).

While the army was patrolling and surrounding the event, a special and secret battalion, Olympia, had positioned snipers in several buildings overlooking the plaza. At a signal of a flare the snipers opened fire on the crowd, hitting students and soldiers alike. The soldiers thought they were being attacked by the students and proceeded to lock down the plaza and disband the demonstration. In the commotion, hundreds of students and passers-by were shot and killed, thousands were arrested and stripped down in nearby buildings. The leaders of the CNH movement were detained by Olympia battalion members, and illegally detained at a military base for weeks (*NPR.org*, 2008).

The similarities between the 2014 and the 1968 massacres end with the responses to each event. Back in 1968 Mexico was under a single party regime with no free press. The official version of the incident blamed agitators amongst the students that supposedly first opened fire on the army, the press largely repeated that version, and there were no real opposition parties to pressure for an independent investigation. It would take more that 30 years for an official investigation to recognize the role (and existence) of the Olympia battalion (Markarian, 2004: 27).

In contrast, some members of the press were already in contact with the group of students from Ayotzinapa before the events were even over. The PGR (Office of the General Prosecutor) arrested 22 local police officers on September 28. Initially, it looked like the new institutions of democratic Mexico were working to uncover the truth and bring justice to the victims, even if they had failed to

prevent the mass disappearance in the first place. The Mayor of Iguala was pressured to resign by his own party and later went into hiding to avoid police questioning. After weeks of protests (at the state, national, and international levels) the Governor of Guerrero resigned as well. There was immense public pressure on the General Prosecutor Murillo Karam to find the missing students. But it was increasingly clear that the official investigation was favouring a version of events that put all responsibility on local authorities and criminals, and that took for granted that the students were already dead (*The Guardian*, 2014). The official line of investigation remained unchanged even after heavy criticism from international experts, and the resignation of Murillo Karam on February 27, 2015 (*El Informador*, 2015; Tuckman, 2015).

The investigation was so botched that in June 2018 a federal tribunal declared it virtually null and ordered the creation of an independent truth commission (*Animal Político*, 2018a). The PGR responded it would not comply with the judicial order, claiming "judicial impossibly", and arguing that in Mexico only the public prosecutor can investigate crimes (*Animal Político*, 2018b).

The complexities, similarities and differences of the two cases of gross human rights violations raise at least three questions. Why has an independent judiciary been unable to push for justice? Back in 1968, no one expected a submissive judiciary to stand up to the executive and military powers and press for an independent investigation. But in 2018, the efforts of the courts to create an autonomous truth commission are still ineffective. Clearly, judicial independence is not enough, but what is missing?

Would an effective judiciary really have constrained the preparators of the Tlatelolco massacre? It's hard to imagine that the judiciary will perform the same functions in democracies and autocracies, even if judicial independence and enforcement are respected. To what extent can judicial constraints really limit power in a single party regime?

Finally, current scholarship suggests that the presence of political institutions in autocracies increases the likelihood of repression. But the 1968 massacre happened in part because the PRI had no leftist recognized political party to negotiate with. The political reforms that came after 1968 and permitted the formation of the PRD (the largest leftist opposition party) also came with a reduction in repression. Is the Mexican case an outlier, or is there something wrong in the current scholarship?

These specific questions raised by the particular case of Mexico can be generalized as follows: Why is judicial independence not enough to protect human rights? Can judicial constraints limit human rights violations in autocracies? Does the presence political institutions increase repression in autocracies?

Before setting about answering those questions, it's a good place to take a step back and quickly review what we know about the determinants of human rights violations. Empirically, human rights violations are the norm. State's violations of individual rights are as old as states themselves, and even in light of recent improvements (Fariss, 2014a), human rights violation are committed in virtually every country every year. Normatively, human rights should be respected, the

wide variety of competing justifications for human rights attests to this (Freeman, 2011).

Conflict (both internal and external) is a clear determinant of human rights violations (Poe and Tate, 1994). Socio-economic factors in general are also understood as determinants of violations: population size, poverty, economic inequality, and ethnic fractionalization, for instance (Landman and Larizza, 2009). Starting with the broad concept of liberal democracy, and then looking at more specific institutional arrangements (Bueno De Mesquita et al., 2005; Davenport, 2007a): free and fair election, division of power, and political competiveness, are all viewed as determinants of human rights respect.

I am particularly interested in political institutional determinants of human rights respect. It's all very well to know that population size increases human rights violations, but what are we to do about it? Make smaller countries? Political institutions are important because they are malleable human creations, instruments designed with a purpose, and often with an impact. Institutions can change behaviour, and institutions can be reformed (North, 1990).

That is why it's not enough to say that liberal democracy promotes human rights respect. It would be better to know which specific set of political institutions best respect human rights, in order to promote those institutions. Davenport and Armstrong (2004) examination of the threshold effect of liberal democracy on human rights first explored this logic. Only once: "a particular combination of democratic components exists and a threshold has been passed, [...] is repression likely to be diminished in its use." (Davenport and Armstrong, 2004: 542)

Bueno de Mesquita and his colleagues (2005) moved the research further by deconstructing the Polity IV index of political regime into its constitutive sub-indices, and testing which component had an effect on human rights. They found political competitiveness and accountability to be the most important factors in promoting human rights respect. Davenport (2007a) theorized two different mechanisms usually present in liberal democracies that explain the protection of human rights: voice and veto. Political actors rarely commit or tolerate human rights violations when they can lose an election or when other political actors can constrain them.

There is a circularity problem for some of the determinants of human rights violations. In particular, it is difficult to estimate the effects of the 'Law of coercive responsiveness'. When we suspect that protests can cause repression, but that some protests are a response to previous repression, how do you disentangle the relationship? Ritter and Conrad (2016) propose to use rainfall as an instrumental variable. The logic goes that rain will impact the size of a protest event, but not the magnitude of the repression. Using data from African provinces and U.S. states they find that dissent fails to have a significant effect on responsive repression in states that engage in preventive repression.

So far there is a lack of emphasis in the academic literature on two fronts: judicial institutions, and autocracies. Linda Camp Keith's *Political Repression* addresses the first lacunae. By developing her own measure of judicial independence Keith can, for the first time, present evidence that courts do matter in the protection of human rights. But her book left me with a pressing question: was judicial independence enough? This developed into two more concrete questions. First, could judicial independence have an effect on human rights even

when the enforcement of the decisions was not guaranteed? And secondly, could courts, even under the best of conditions, promote human rights in autocracies?

Jenifer Gandhi's *Political Institutions under Dictatorship* addresses the second lacunae. In her book she shows that, against received ideas, political institutions do matter in autocracies. In particular, they have a positive impact on the protection of civil and political rights. Gandhi argues that in order for the dictator to co-opt the opposition into joining the political system, he will have to grant them concessions, in the form of better civil and political rights. Gandhi does not think that these concessions can include an improvement in physical integrity rights, but also she does not test this last hypothesis. I set about exploring this as my third question in my dissertation: what is the impact of political institutions in autocracies on physical integrity rights?

By now I have used a number of concepts that might need a precise definition. By human rights I will be generally referring to physical integrity rights, civil and political rights, as well as private property rights. By no means do I intend to conceptually limit human rights to these categories, but these are the types of rights that interest me the most in this investigation. Physical integrity rights usually group torture, extrajudicial killings, forced disappearances, and political imprisonment together, although the measure used in chapter 2 and 3 only capture torture and extrajudicial killings. Civil and political rights often put together freedom of expression, assembly and association, freedom of speech, and freedom of religion, the measure in chapter 3 only captures freedom of expression. Private property rights are usually not included in empirical studies

of determinants of human rights violations, it refers to the right to acquire, possess, inherit, and sell private property, including land.

The differences between judicial independence, judicial enforcement, and judicial constraints are more complex and are fully developed in chapters 2 and 3. It should suffice to say here that I understand judicial independence as autonomy, or non-interference by other actors in the decision-making process of judges. Judicial enforcement is the effective executive application of the sentence (whether it was reached independently or not), and judicial constraints are the conditions under which both judicial independence and enforcement are guaranteed.

I find Svolik's conceptualization of political regimes elegant and more compelling than previous attempts. The key difference between democracy and autocracy being the respect of rules to access power, and the renunciation of violence as a tool of political competition. I use Svolik's measure of political regime in chapter 3. In chapter 4, in order to closely reproduce previous findings, I use Geddes Wright and Frantz (Geddes et al., 2013) dataset of autocracies.

I focus on judicial institutions and particularly on their role under autocracies because it has been understudied. There are two flawed intuitions that might explain the lack of studies. The first is that it might be obvious that judicial independence will promote human rights, the second that there are no independent judiciaries in autocracies.

The Ayotzinapa case is an example of judicial independence's inability to promote human rights respect, but a more systematic example can be found in international tribunals and organizations. The effectiveness of human rights

international courts is not (only) a function of their independence, but of the will of political actors to enforce those decisions.

On the second intuition, the data simply disproves the assumption that judicial independence is incompatible with authoritarianism. What remains to be explored is what role those judicial institutions have, and what impact they might have in constraining dictators.

I take the general view that in studying political institutions, context matters. Political institutions are sometimes like little gears, that need other gears around them to work properly. I argue that judicial independence and judicial enforcement are fundamental gears in the judicial protection of human rights. If one of them is missing or is broken, the other won't work properly either.

Other times seemingly identical gears don't produce the same outcomes. I argue that judicial constraints (the combo of judicial independence and enforcement) work differently in democratic and autocratic regimes. It is as if the little gears are spinning in a completely different machine. In democratic contexts, the gears of judicial constraints produce a better respect of human rights. In autocratic contexts, those same gears promote some individual rights (private property rights), but not others (physical integrity rights, and civil and political rights).

The origin of the gears is also important. It is one thing to view political institutions in autocracies as arenas to include the opposition in the system, and quite another as Machiavellian tricks to draw the opponents out in the open to better repress them. I argue that there are (at least) two distinct theories regarding the origin of political institutions in autocracies and its impact on

physical integrity rights. The two theories allow the formulation of two distinct set of empirically testable hypotheses.

In the first chapter of this thesis, I explore the role of judicial independence and judicial enforcement in protecting human rights. The concepts are not only theoretically distinct from each other, there is also a surprising number of cases where one is present without the other. I argue that the first step for the judiciary to have an impact on human rights, decisions must be enforced. Only then can judicial independence have a positive impact on human rights. I use the novel V-Dem dataset to measure both judicial independence and enforcement, and find that human rights are better protected only when both dimensions are present. This is an important finding for human rights advocates, because the onus is usually put in promoting judicial independence. It might prove more challenging to improve judicial enforcement, as it remains unclear if the same strategies work to promote both aspects of judicial constraints.

Chapter two of this thesis looks at the role of judicial constraints in autocracies. Historically, courts became the guardians of individual rights in democracies. Nowadays, there is a fair number of autocracies that have implemented judicial constraints: are they also designed to protect human rights? I argue that dictators that accept judicial constraints do so for economic reasons, and will try to respect judicial independence but continue to rule thru repression. Using the V-Dem dataset to measure private property, physical integrity, and civil and political rights, I find that judicial constraints promote all these dimensions of human rights in democracies. In autocracies, judicial constraints only promote private property rights, and to a lesser extent reduce extrajudicial killings.

Champions of human rights should take note, promoting judicial constraints in autocracies might be a good in itself, but it will probably won't improve human rights in the short term. We should be vigilant to the strategies dictators deploy to eat their cake and have it too.

In chapter 3 I take a second look at the impact of political institutions on human rights in autocracies. In the current literature there is an implicit contradiction that calls for a re-examination of the empirical evidence. I argue that there are least two theories in the literature that put forward competing testable hypothesis of how political institutions impact human rights. Jennifer Ghandi argues that political institutions in autocracies will promote civil and political rights as the result of concessions won by the opposition, but physical integrity rights won't be better protected. Erica Frantz and Andrea Kendall-Taylor argue that political institutions in autocracies will increase respect of civil and political rights, but decrease respect of physical integrity rights. Their Machiavellian theory posits that the dictator opens up the regime to draw the opposition out of their hiding, and after identifying them, proceeds to neutralize them. Using the same data from previous studies, I find that the statistical significance of political institutions on physical integrity rights is driven by a spurious suppression effect. Political institutions in autocracies do promote civil and political rights, but have no discernible effect on physical integrity rights. Scholars should be attentive at their model specification, in particular at the dangers of including "control" variables that create unintended mediation models, and via spurious suppression effects over-estimate the significance of the variable of interest.

I make three specific contributions to the literature on the determinants of human rights violation. First, I disentangle the role of judicial institutions in the promotion of human rights, showing that judicial enforcement is necessary for judicial independence to have an effect on physical integrity rights. Secondly, I problematize the role of the judiciary as a guarantor of rights in autocracies, and provide evidence that only private property rights are protected by judicial constraints in authoritarian regimes. Thirdly, I revisit the theory and evidence that supports the claim that political institutions in autocracies are detrimental for physical integrity rights, and find that that after proper model specification, the effect is not significant.

Overall this thesis makes a theoretical contribution to the field of comparative politics by helping us understand under which conditions judicial and political institutions will promote human rights. This research would not have been possible without the new V-Dem dataset, and the generosity of various scholars in sharing their datasets and replication files. We can now study judicial and political institutions with an unprecedented level of detail. The theoretical arguments and methodological approach developed in this thesis can prove useful to other scholars in the study of different institutions in different contexts. This research can also be useful for human rights advocates to better design their campaigns and aid delivery strategies. In the long run, I hope I have made a positive (if small) contribution to the promotion of human rights globally.

2 Judicial Institutions and Human Rights

New evidence of the conditional effect of judicial independence on enforcement

2.1 Abstract

Although judicial independence and judicial enforcement have been conceptually distinguished, their joint impact on human rights respect has not been properly addressed. I argue that judicial independence (autonomy) is mainly the context within which judicial enforcement (influence) improves human rights. I use the novel V-Dem dataset and perform interactive effects analysis to test for a difference of marginal effects of judicial enforcement on human rights depending on the level of judicial independence. The V-Dem dataset has a number of advantages over previous measures, including a clear distinction between judicial independence and enforcement, and coverage of over 170 countries from 1900 to 2012. Results show that in the absence of judicial independence, judicial enforcement has no effect on physical integrity rights; and that at increasing levels of judicial independence, the impact of judicial enforcement on physical integrity rights increases.

2.2 Introduction

> Soldiers picked up 15-year-old Maina Sunuwar on the morning of February 17, 2004 from her home in Kharelthok VDC-6 in Kavre District. When her friends and relatives went to the Lamidanda barracks the following day and demanded her release, the army denied having arrested her. After weeks of intensive campaigning, in April 2004, the army told Maina's mother Devi that her daughter had been killed. (Human Rights Watch, 2009: 29)

Maina Sunuwar became a victim of the civil war in Nepal (1996-2006) apparently because her mother, Devi Sunwar, had witnessed another extrajudicial killing two days earlier, and was brave enough to give testimony to journalists and human rights workers (Human Rights Watch, 2004). Sunuwar joined the estimated 19,000 casualties of the conflict; hers is listed as case 31 (out of 62 highlighted cases) in the Human Rights Watch 2009 report on impunity in Nepal. Sunuwar's story sheds light on the Nepalese army's record of human rights violations, as well as on the role of the judiciary in perpetuating impunity.

> Under pressure from the international community, the army prosecuted three of the perpetrators in a military court. A court martial in 2005 found that Sunuwar had died in army custody and convicted the three officers of torture and murder, but only sentenced the three perpetrators to six months' imprisonment for minor offenses, and promptly released them on grounds that they had already served the six months while confined to army barracks during the period of investigation. (Human Rights Watch, 2017)

The civil war officially ended with the Comprehensive Peace Accord signed on 21 November 2006. In 2007, the Ministry of Peace and Reconstruction proposed to establish a Truth and Reconciliation Commission. Sunuwar's story continues:

> Maina's body was exhumed from inside the Panchkal Army Barracks in March 2007. The Supreme Court later responded to petitions by Maina's family by ordering the Kavre DPO to initiate investigations. On February 3, 2008, the public prosecutor charged the three soldiers identified in the internal army proceedings (Bobi Khatri, Sunil Prasad Adhikari, and Amit Pun), and a fourth one identified by witnesses, Niranjan Basnet, with the illegal detention, torture, and the murder of Maina Sunuwar.(Human Rights Watch, 2009: 30)

Finally, on 16 April 2017, the Kavre district court sentenced the three army officers to life imprisonment for the murder of Sunuwar, 13 years after she had been abducted from her home. As many human rights activists have pointed out, the sentence now needs to be enforced, which is a significant challenge. For Biraj Patnaik, director of Amnesty International's South Asia regional office:

> The Kavre district court has done its job, reaffirming the independence of the judiciary from political and military pressure, and holding perpetrators of serious crimes committed during the conflict to account. Now the authorities must do their job by breaking with the practice of successive past governments that ignore and undermine the courts' decisions. We expect the government to promptly implement this week's ruling. (Human Rights Watch, 2017)

Does judicial independence improve human rights? An increasing amount of empirical evidence gives a positive answer to this question. In Sunuwar's case, we can see the importance of judicial independence in the difference between the sentence of the martial court and that of the district court. We can also appreciate that judicial independence is not enough: the sentence still needs to be enforced, something that unfortunately cannot be taken for granted. In previous works, scholars have focused only on *de jure* or *de facto* autonomy, assuming implicitly that independent rulings would be satisfactorily enforced. What is the role of judicial independence and enforcement in promoting human rights?

In the present article, I argue that judicial enforcement should be seen as the closer link between courts and human rights protection, and that the main impact of judicial independence on human rights is as the context of judicial enforcement. If courts' decisions have a positive impact, I expect it would be under conditions of both judicial enforcement and independence. Countries that engage in one but not the other will be making little headway in improving human rights.

This study makes three contributions to the human rights literature. First, it disentangles how judicial independence and judicial enforcement impact human rights. Second, the paper argues for the use of the novel V-Dem project dataset index of physical integrity rights over previous measures. Third, the paper presents statistical evidence on the interaction effect of judicial independence and enforcement on human rights.

2.3   Judicial independence and human rights

Although the determinants of human rights violations are well studied, the emphasis on judicial independence has emerged only recently (Keith, 2002). A country's political regime is one of the most important factors in terms of human rights protection. The liberal tradition, stretching back to John Locke in the sixteenth century, has long argued that power must be restricted if individual rights are to be secured. Starting from the first statistical examinations (Mitchell and McCormick, 1988), liberal democracies have proved to be better at protecting human rights. Since then, academics have moved towards explaining democratic repression in more detail (Bueno De Mesquita et al., 2005; Davenport, 2007a; Davenport and Armstrong, 2004), neglecting considerations of various human rights violations in other regimes.

Alexis De Tocqueville noted in the nineteenth century that an independent judiciary is "one of the most powerful barriers erected against the tyranny of political assemblies" (Tocqueville, 2003). But judicial independence was not incorporated explicitly in any of the empirical studies previously mentioned. It was either assumed to go hand in hand with liberal democracy, or simply ignored in the more detailed examinations.

The first empirical studies of the impact of judicial independence on human rights came in the form of *de jure* provisions (Keith, 2002; Keith et al., 2009). According to Keith, Tate, and Poe, an independent judiciary:

> should be able to withstand incursions upon rights because (1) the court's power and fiscal well-being are protected, (2) the courts have some ability to review the actions of other agencies of government, and (3) the judge's jobs are constitutionally protected (Keith et al., 2009: 649)

On the other hand, Powell and Staton argue that when a claim is raised against the State what matters is judicial effectiveness: "This means that the judiciary is willing and capable of imposing penalties for rights violations" (Powell and Staton, 2009: 154). Unfortunately, the authors rely on indirect measures of judicial effectiveness to test their hypothesis, and are more interested in estimating the joint probability of adopting the Convention against Torture and the practice of torture.

Linda Camp Keith has more rigorously tested the statistical empirical relationship between *de facto* judicial independence and human rights protection (Keith 2012). She created a trichotomous measure of judicial independence based on the Department of State's annual human rights reports. The onus in the reports

is on "executive influence or interference" as well as "corruption", and the measure reflects this (Keith, 2012: 154). According to Keith:

> Not only may the regime incur in a loss of resources, but such litigation also introduces potential reputational costs. Thus, the increased potential cost of repression may affect the regime's cost/benefit calculation in its decision to employ coercive force against its citizens [...] These expectations lead us to predict that higher levels of judicial independence will be associated with lower levels of state repression (Keith, 2012, pp. 169–170) (Keith, 2012: 169–170).

First Keith examines the determinants of *de facto* judicial independence. She finds that *de jure* provisions have an inconsistent and minimal effect on the levels of *de facto* judicial independence (Keith, 2012: 167). Electoral conditions, resource capabilities and political constraints have a more robust and important effect, and the effect of *de jure* provisions seem to be dependent on the presence of checks on the executive and political competitiveness (Keith, 2012: 167–168).

In a further work, Aydin proposes that political competition has a positive impact on judicial independence only in consolidated democracies. In less consolidated democracies, political competition actually has a negative effect on judicial independence (Aydın, 2013).

Keith finds evidence that *de* facto judicial independence is significantly correlated with physical integrity rights as well as with civil and political rights, while controlling by political regime, civil and international war, and other socioeconomic factors (Keith, 2012: 174).

But does judicial independence alone increase the cost of repression, or is judicial enforcement also needed? I will argue that both concepts are theoretically distinct, but because attacks on the independence of the courts and refusing to

enforce court's rulings tend to produce similar outcomes, they are often amalgamated as one in the literature (see Linzer and Staton, 2015).

A short comparison between the cases of Mexico and Zimbabwe attacks on their judiciary might prove useful.

2.4 Judicial enforcement and human rights

When Mexican President Lázaro Cárdenas started his mandate (1934-1940) by implementing a land reform, it was immediately opposed by the Supreme Court. Similarly, President Mugabe's land reform in Zimbabwe in 2000 was resisted by the Supreme Court. Both presidents were consolidating their power via reforms, and "parchment barriers" were unlikely to stop them. Cárdenas's response came swiftly: he changed the Constitution to dissolve the Supreme Court, appointed sympathetic justices, and reduced their life appointments to six-year terms (in line with presidential mandates). President Cárdenas managed this impressive power-grab because his party had a super-majority in the federal Congress and control of state assemblies. During the hegemony of the PRI (Partido Revolucionario Institucional, the Supreme Court was effectively an office of the President (for more on the Mexican case see Magaloni, 2008).

Initially, Mugabe simply ignored the ruling of the courts, including the Supreme Court in April 2000. The Zimbabwean Supreme Court had a strong reputation for independence, and had previously limited executive power. President Mugabe first failed to comply with judicial decisions and then slowly eroded the independence of the Supreme Court by intimidating justices and replacing them with government supporters. Justices Ishmael Chatikobo and

Ahmed Ebrahim resigned in succession after their rulings were ignored by the government in 2001 and 2002 respectively (for more on the Zimbabwean case see Widner and Scher, 2008).

The Mexican and the Zimbabwean cases illustrate two paths to the same outcome. Either by breaching judicial independence or by ignoring the rulings of independent courts, the government can do away with meaningful judicial constraints and potentially infringe on human rights unchecked by the judicial branch.

The concept of judicial independence is not necessarily an "essentially contested concept"; however, much like human rights, it has different dimensions. The first conceptual cut can be made between *de facto* and *de jure* judicial independence. The latter refers to laws and constitutional clauses designed to protect courts from undue pressure – in short, to guarantee *de facto* judicial independence.

The actual behavior of judges is what interests me in my investigation of human rights violations; here another conceptual cut can be made, between independence and enforcement. Julio Rios-Figueroa (2015: 197) puts forward that in addition to: "a judge […] does not respond to undue pressures to resolve cases in a particular way" [autonomy], *de facto* judicial independence also requires that: "the decisions are enforced in practice [influence]". Rios-Figueroa uses autonomy and influence as constitutive elements of *de facto* judicial independence. Although I agree with the conceptual disaggregation, the choice of the terms is problematic. Most studies and empirical datasets in the field use *only* the dimension autonomy to define judicial independence (see Keith, 2012).

In this paper, I follow the main literature and continue to use judicial independence as autonomy *only*, and use the term enforcement for what Rios-Figueroa would call influence.

Simplifying the measures of judicial independence and enforcement into dichotomous variables, we arrive at four conceptual categories (see Table 2.1).

Table 2.1 Extreme cross-categories of judicial institutions.

Judicial Enforcement

		Absent	Present
Judicial Independence	Absent	Arbitrary Rule (North Korea, Myanmar, Syria, DRC)	Rule by Law (Mexico, Spain)
	Present	Law without Rule (Libya, Laos)	Rule of Law (Singapore, Bhutan, Western democracies)

In the ideal-type category of Arbitrary Rule, judicial institutions are probably irrelevant. On the one hand, in the absence of independence the regime can simply tell the judges what outcome it wants in any specific case, on the other hand it can later change its mind and enforce or not that ruling.

In countries of Law without Rule, judicial independence is present, but enforcement is absent. The judges are free to deliberate and autonomously reach a verdict, the enforcement is unfortunately up to the regime, and depending on the case it may or not respect the court's decision.

A more complex case is that of Rule by Law. When the judicial decisions are regularly enforced, it becomes more important for the regime to control the

process through which judges reach their verdicts. In countries with Rule by Law, the regime uses the judicial process to actively influence its citizens.

Finally, the ideal-type category of Rule of Law refers to the combination of both judicial independence and enforcement. The regime cannot control or influence the decision-making process of the judges, nor can it arbitrarily select which rulings it wants to enforce.

In parentheses in Table 2.1 I include regimes that most closely illustrate the ideal-type categories, but they are no perfect matches.

I follow the previous literature (particularly Keith, 2012; and Powell and Staton, 2009) and argue that judicial institutions can decrease human rights violations by increasing the cost of repression. But critically, I put forward that those costs are only imposed under conditions of Rule of Law.

Let's review the steps in the procedural path of the judicial process to human rights respect:

1. A human rights violation triggers a judicial process.
2. The judge has the tools to review the violation.
3. The judge has the preference to uphold the law, and rules for the victim.
4. The decision is enforced.

For courts to have a positive impact on human rights, all of these steps must be fulfilled. If at any point the chain breaks, we won't see the expected outcome. *De facto* judicial independence is critical in stage 3, when the judge is formulating her

ruling. In stage 4, when the ruling has been decided, what matters then is the level of judicial enforcement.

At this point I assume that the judge has both a case (step 1) and the legal tools (step 2) to make a ruling (what Ríos-Figueroa, 2015 calls the "power" of judicial institutions) . Insulation strategies can make access to the courts more difficult: if a case can't make it to a judge, the levels of independence or enforcement won't matter much.

In regimes under the Rule of Law, the judicial process imposes costs on the use of repression. Exactly on whom those costs will fall is not entirely clear from this model. Unlike the effect of free and fair elections, where the costs of repression are clearly political and imposed on elected officials, the judicial costs of repression could affect the agents of repression or the leaders. Depending on the severity of the violation, the law, and the judge, the costs could be imposed on low level security officials, all the way up the bureaucratic and political ladder. In some extreme cases, the president or military leader might be put on trial. Lack of judicial independence or enforcement will substantially reduce the likelihood and magnitude of those costs.

Returning to Maina Sunuwar's story may be illustrative. The judicial process was triggered by intense international pressure, which already reveals that access to justice is an assumption that is not always met. While the first trial in the court martial reviewed the violation and found the accused guilty, the sentence was extremely lenient. This can be explained by the military court's lack of real judicial independence. Specialized courts tend to protect their members and rule against outsiders (Aguilar Fernandez and Ríos-Figueroa, 2014) . Only when the Sunuwar case was brought to a civil court by a civil prosecutor was the

requirement of judicial independence met and a much more fitting sentence decided upon. To see justice done, however, the decision needs to be enforced, which at the moment remains unclear.

In countries under Rule by Law, the enforcement of judicial rulings is unlikely to impose costs on the use of repression. The regime will try to protect the agents that committed the repressive acts and tell the judge to be lenient or rule against the victims. Lack of judicial independence will derail the judicial process, and repression will not decrease.

Under conditions of Law without Rule, the judges are more likely to rule for the victims, given judicial independence. There might be reputational costs incurred when a court rules that the state committed a human rights violation, but without enforcement of those rulings, the costs on repression will be substantially lower. I argue the reputational costs alone will not decrease the use of repression.

Obviously, the logics of Rule by Law and Law without Rule combine in the case of Arbitrary Rule to ensure that judicial institutions are extremely unlikely to impose costs on the use of repression. The regime can freely decide what decisions it wants the judges to reach and can later decide to enforce them or not. The regime would be schizophrenic if it allowed and enforced judicial decisions that impose costs on itself.

At this point I can put forward the following:

Hypothesis: Judicial enforcement will improve human rights only when judicial independence is also respected.

This implies that the effect of judicial enforcement on human rights, in the absence of judicial independence, will be null. The effect of judicial independence without enforcement is more complicated.

It can be argued that non-enforced independent decisions can still be important by themselves – as focal points and rallying cries of the opposition and activists, for example. Nevertheless, the anticipation of non-enforcement also produces a form of strategic self-constraint by otherwise independent judges (Staton, 2010). I would expect, then, that the effect of judicial independence without enforcement on human rights will also be null.

These extreme cases on the independent variable help me formulate the expected values of the dependent variable, *ceteris paribus* (see Table 2.2).

Table 2.2 Expected effect of judicial institutions on human rights record.

Judicial Enforcement

		Absent	Present
Judicial	Absent	Null	Null
Independence	Present	Null	Positive

My Hypothesis suggests that any movement towards full Rule of Law will improve human rights (diagonally from Arbitrary Rule, horizontally from Law Without Rule, and vertically from Rule by Law).

My contribution to the literature is not only that judicial enforcement matters, but that the effect of judicial independence on human rights is conditional on the levels of enforcement.

There is a link between judicial independence and judicial enforcement, but as I have shown the concepts are theoretically distinct, and their operationalization leads to distinct empirical cases. Some regimes display one without the other for long periods of time. For enforcement without independence (Rule by Law), Mexico during the PRI dictatorship (1930-2000) and Spain under Franco (1930-1980) are good examples. For independence without enforcement, we can look to Libya (1950-2010) and Laos (1900-2012).

The illustrative cases give us some preliminary empirical evidence. With data from the V-Dem project (Coppedge et al., 2015b), Figures 2.1 and 2.2 show the levels of judicial independence and enforcement (for the high court), and the associated levels of physical integrity rights, for the four countries in question on a continuous scale from 0 to 1.

Both Mexico and Spain had troubling human rights records despite enforcing most of the decisions of their respective higher courts. In part, this can be explained by the fact that the courts were under heavy political influence for most of the twentieth century. The authoritarian governments simply complied with decisions they had previously pressured the judges into, with no visible improvement for human rights. Aguilar and Rios-Figueroa even argue that in the cases of Mexico and Spain, the regime used the judicial system, through special courts, to repress the opposition (Aguilar Fernandez and Ríos-Figueroa, 2014, p. 2)

Figure 2.1 Judicial institutions and human rights over time in Rule by Law countries.
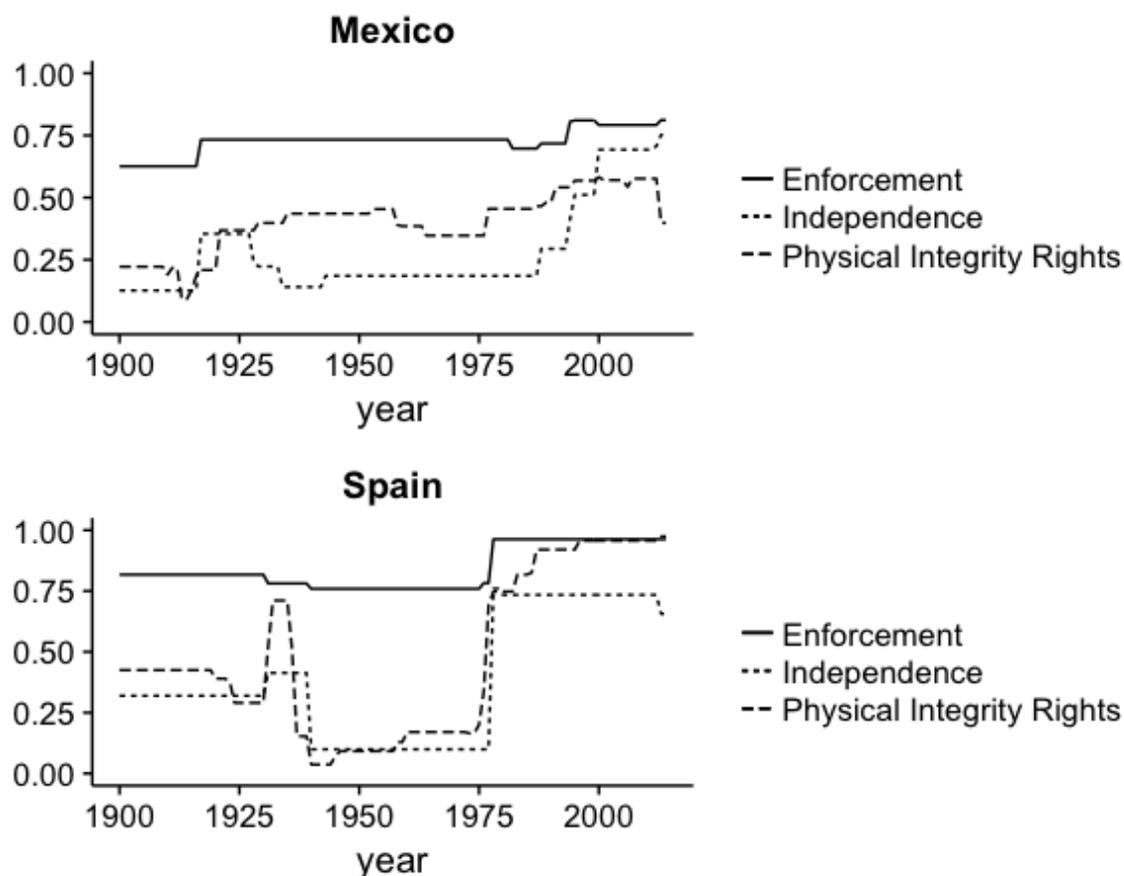
Mexico

Spain

Source: V-Dem

In the cases of Mexico and Spain, the increase of judicial independence in a context of high judicial enforcement is associated with an improvement of physical integrity rights (see Figure 2.1). It must be noted that in both countries, that improvement happened simultaneously with their transition to democracy. In these situations, because of the confounding effect of political regime, it is not immediately clear the extent to which the movements from Rule by Law to Rule of Law had an independent effect on the improvement of human rights.

In Laos and Libya, judicial independence alone does not seem to restrain systematic human rights violations (see Figure 2.2). The low levels of judicial enforcement indicate that even if the high courts were to rule to redress human rights abuses, the decision would in general be unenforced by the government. In

Laos this historical situation can be explained in part by the low levels of state capacity and by the long-standing armed conflict that had ravaged the country (Stuart-Fox, 1986).

Figure 2.2 Judicial institutions and human rights over time in Law without Rule countries.
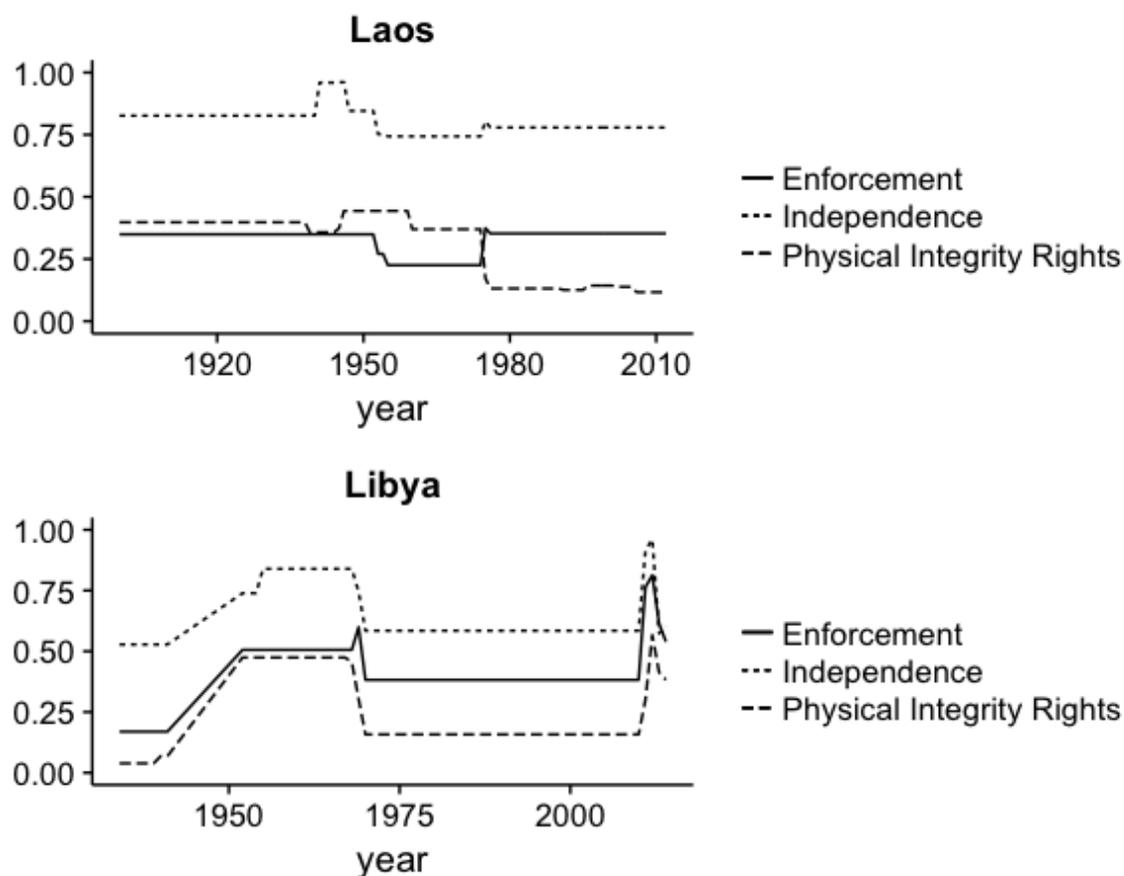
Source: V-Dem.

Laos remained in the category of Law without Rule from 1900 to 2012, despite some tremendous political changes (from colony to protectorate, to monarchy, to civil war, to finally a communist regime, see Stuart-Fox, 1986). Libya was also in the category of Law without Rule for much of its independent history, but with the Arab Spring it moved to a regime of Rule of Law in 2011. This last change, however, came with an armed conflict and a regime change, so that the independent impact remains indeterminate.

Finally, Figure 2.3 illustrates the case of Zimbabwe, with a clear period of Law without Rule in the 1960s and 1970s associated with a deterioration in physical integrity rights. In 2000, there is again a decrease in judicial enforcement associated with a deterioration of physical integrity rights, but this time judicial independence is also under attack.

Figure 2.3 Judicial institutions and human rights over time in Zimbabwe.
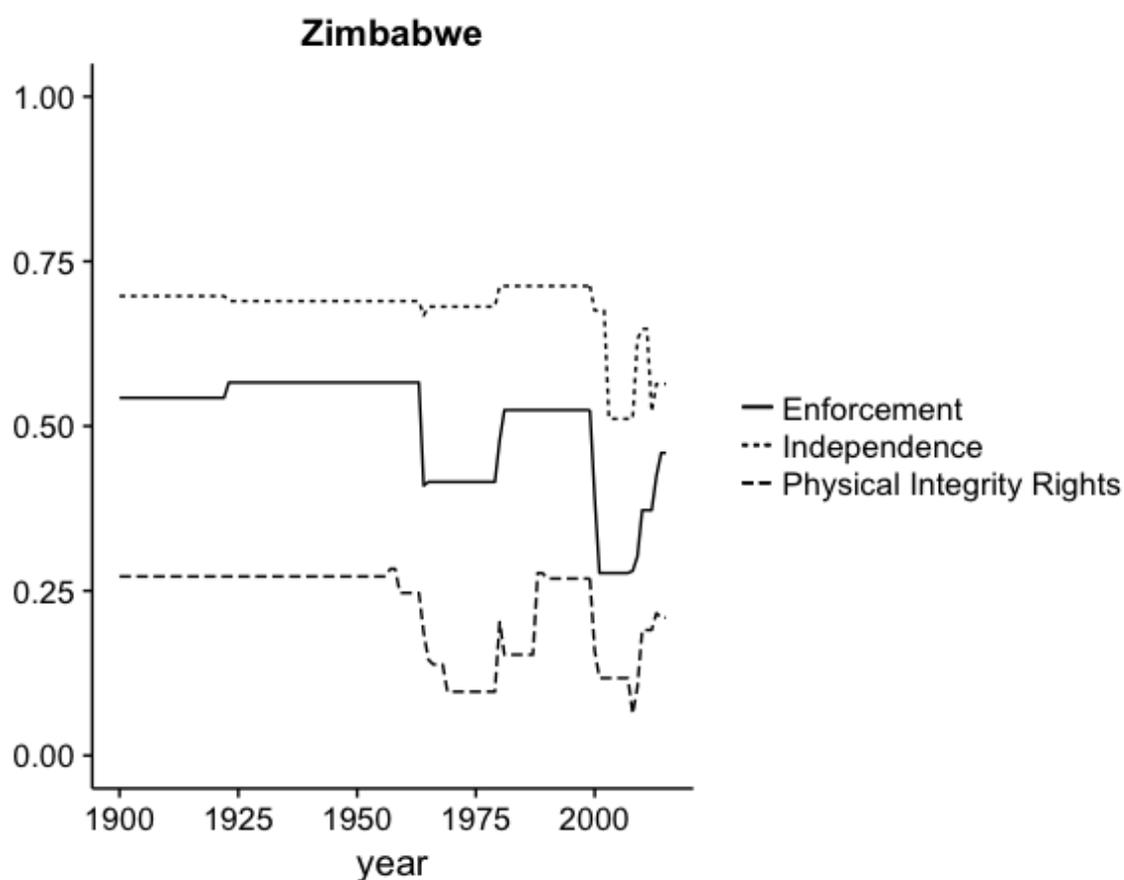
Source: V-Dem.

Overall, these illustrative cases show two things, namely, that there seems to be some preliminary evidence in support of the hypothesis, but that this association could be explained by a confounding variable (political regime or conflict). A more rigorous empirical statistical examination is in order. First, I want to survey the options available to measure physical integrity right.

2.5 Data

<u>Dependent variable</u>

Traditional measures of human rights violations (PTS and CIRI) have relied on country-year reports by the US State Department or Amnesty International (Cigranelli and Richards, 2008; Gibney et al., 2015). Coding teams then translate these narrative reports into numeric indicators, and, regardless of methodology and robustness at the coding stage, any bias at the source will be translated in the measurement. Most quantitative studies of human rights have used measures based on these reports, sometimes addressing specific country-bias, but generally assuming that measurement error is independent of the observations.

Fariss (2014b) focuses on physical integrity rights to assess the changing standard of accountability of the Human Rights reports produced by the State Department, the main source of the CIRI indicators. It is suspected that what counts as a human rights violation (especially torture) might have changed over time for the people that produce the reports. For instance, the reports per country are much longer now than in the 1980s, and the apparent lack of improvement over time globally using the CIRI indicators is puzzling. Fariss uses event-based indicators, in addition to standard-based ones, to re-estimate the latent physical integrity rights measure and account for a possible change in the standard of accountability. According to his new dynamic measure (it's dynamic in comparison to the constant standard assumption of his previous latent model, see Schnakenberg and Fariss, 2014) there has been a marked improvement in the last three decades, especially for torture. That improvement in practice had been masked in the reports because the standard of accountability had simultaneously increased. Or,

to put it another way, physical integrity rights were much worse in the past, but the standards were also lower.

Fariss points to a fundamental flaw in using annual country reports for time-series analysis: we have no guarantee that the reports will have the same standard each year. Assessing the changing standard of accountability is challenging, and Fariss's proposal remains only an estimation of how things probably were.

The V-Dem project uses a new source of information: for each one of its variables it asks an expert in the subfield and the country/region to retrospectively score the country from 2014 back to 1900. Expert surveys can of course introduce a more direct form of bias, particularly in the human rights and judicial independence fields. For instance, Singapore scores significantly better for judicial independence in the business surveys than in the State Department reports. To address coder bias, the V-Dem project has a rigorous selection process. From an initial pool of 18,000 potential country experts, it selects 2,500 according to five criteria: expertise in the country and survey, connection to the country, seriousness of purpose, impartiality, and diversity (Coppedge 2015a, 18). For each country V-Dem has at least 12 country experts, with a target of 5 coders for each country/year/indicator. In a first step to account for uncertainty, in addition to a score, experts are also asked to give a level of confidence for their ratings (Coppedge 2015a, 22). In the measurement model the diversity of answers by experts is incorporated by an item response theory (IRT) model that uses each answer as an item for a latent variable (Coppedge 2015a, 30). This technique should account for scale inconsistency across coders.

The new measures from the V-Dem project should not have a changing accountability problem because each of the experts making an assessment today does so with a shared methodology. Any discrepancies between experts are translated as uncertainty around the point estimate by the IRT model. Figure 2.4 shows the global averages, by year, of three different measures of physical integrity rights. First, in black, is the latent measure by Schnakenberg and Fariss (2014) that uses the CIRI indicators of torture, killings, disappearances, and political imprisonments as observable items. Like the CIRI additive index of physical integrity rights, this first latent measure shows no significant improvement from 1980 to 2010. Next, in grey, comes Fariss's (2014) dynamic latent measures that account for the changing standard of accountability in the reports. There is a clear improvement of physical integrity rights starting in 1980. Finally, in light grey, is the physical integrity rights index from V-Dem (based on measures of torture and killings). That disappearances and political imprisonment were not included in this index may explain why it scores relatively better than the other measures. Regardless, we can see the same trend starting in 1980 and improving faster than the Fariss dynamic latent measure.

Figure 2.4 Three measures of physical integrity rights over time.

Global Average per Year
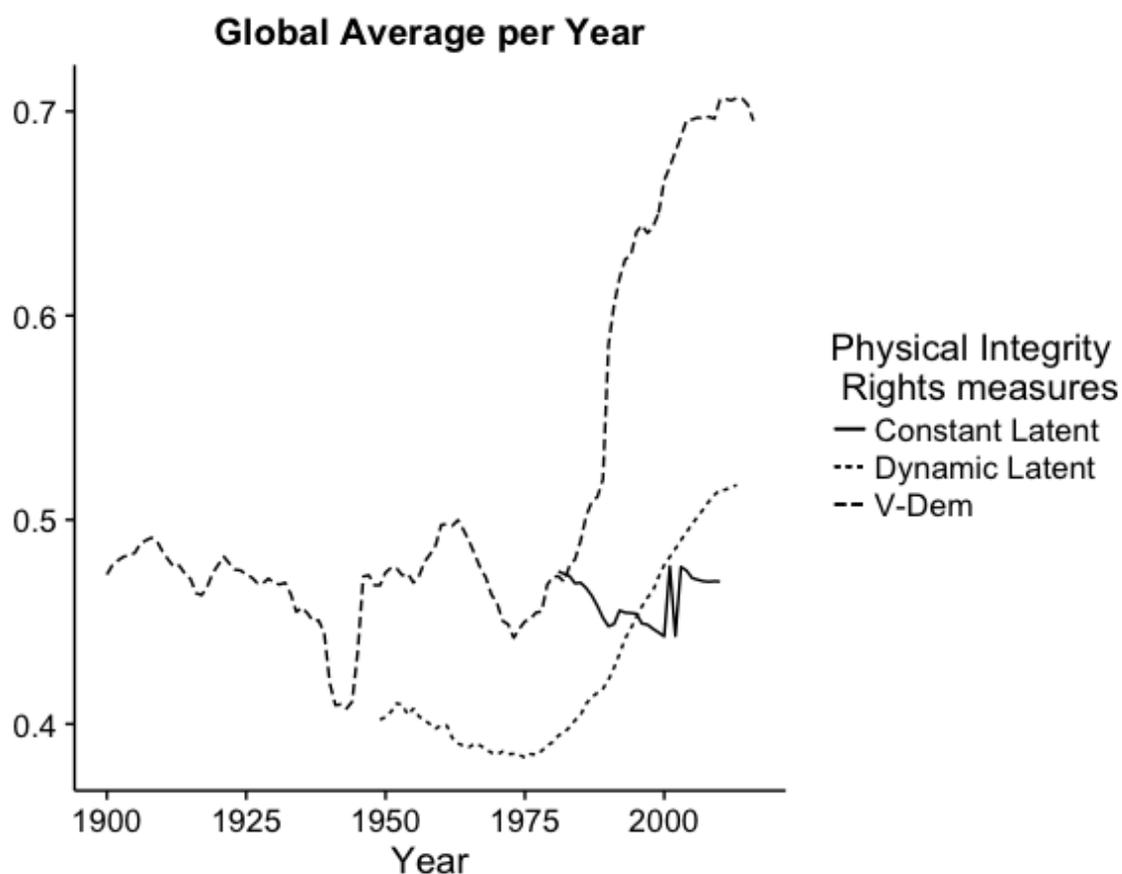
Sources: Constant Latent from Schnakenberg & Fariss 2014, Dynamic Latent from Fariss 2014, and V-Dem Index from Coppedge et al. 2015.

In this analysis I use the V-Dem index of physical integrity rights, a measure of torture and killings built upon a Bayesian factor analysis model. The V-Dem variables have some obvious limitations, including fewer countries covered, fewer physical integrity rights coded, and the challenge of inter-coder reliability. However, I believe these limitations are compensated for by the increase in time coverage, by a standard that is constant over time, and by aspects of the IRT model's design that address inter-coder reliability.

The V-Dem project asks for the torture variable if there is freedom from torture, and the coders can answer in an ordinal scale from 0 to 4 (0: Not respected by public authorities. Torture is practiced systematically and is incited

and approved by the leaders of government; 1: Weakly respected by public authorities. Torture is practiced frequently but is often not incited or approved by top leaders of government. At the same time, leaders of government are not actively working to prevent it; 2: Somewhat. Torture is practiced occasionally but is typically not approved by top leaders of government; 3: Mostly respected by public authorities. Torture is practiced in a few isolated cases but is not incited or approved by top government leaders; 4: Fully respected by public authorities. Torture is non-existent. See Coppedge et al., 2015a: 211). For extrajudicial-killings, V-Dem follows the same logic and coding rules (Coppedge et al., 2015a: 211).

Explanatory variables

To my knowledge no previous measure has explicitly differentiated between judicial enforcement and judicial independence (see Ríos-Figueroa and Staton, 2014) . Existing research has either relied on proxies of judicial enforcement (e.g. Political Risk Service measures), or combined both independence and enforcement in the same index (see the latent variable by Linzer and Staton, 2015). The V-Dem project asks for judicial independence:

> When the high court in the judicial system is ruling in cases that are salient to the government, how often would you say that it makes decisions that merely reflect government wishes regardless of its sincere view of the legal record? (Coppedge et al., 2015a: 197).

It also asks for judicial compliance:

How often would you say the government complies with important decisions of the high court with which it disagrees? (Coppedge et al., 2015a: 198).

V-Dem uses the term judicial compliance for what I prefer to call judicial enforcement, I decided not to use the term compliance because it might not be clear who is complying with whom (the government or the judiciary). To reiterate, I use the two V-Dem variables to measure judicial independence (autonomy of the courts), and judicial enforcement (the decisions of the courts are enforced).

The V-Dem variables are very precise, note that they refer specifically to the relationship between the courts and the government (there is a different variable in the dataset for judicial corruption, that focuses on individuals and businesses). Also, the questions mention "salient decisions", and "decisions with which the government disagrees", potentially restricting the scope to human rights cases.

For my purposes, these are the best measurements available, but there is still some noise in them. For instance, the variables are not restricted to human rights issues, so it's impossible to tell if a lack of judicial independence necessarily means to the government is routinely telling the judges how to rule in human rights cases, or if these infringements happen in a different category of law. The best measure would actually distinguish levels of judicial independence and enforcement by type and characteristics of the case.

A glance at the scatterplot in Figure 2.5, on judicial independence and judicial enforcement, gives us an idea of the empirical association between the two. Here I use the original scale of the measures, where coders are asked to answer the previous questions from 0 to 4 (0: Always; 1: Usually; 2: About half of the time; 3: Seldom; 4: Never. See Coppedge et al., 2015a: 197-198). With a

correlation of 0.60 and a covariance of 0.04, there is definitely a positive relationship between judicial independence and judicial enforcement. But there is still sufficient variation so that we find several observations in the upper right corner and lower left corner of the graph.

Figure 2.5 Scatterplot with fitted line of judicial enforcement over judicial independence.

Judicial Institutions
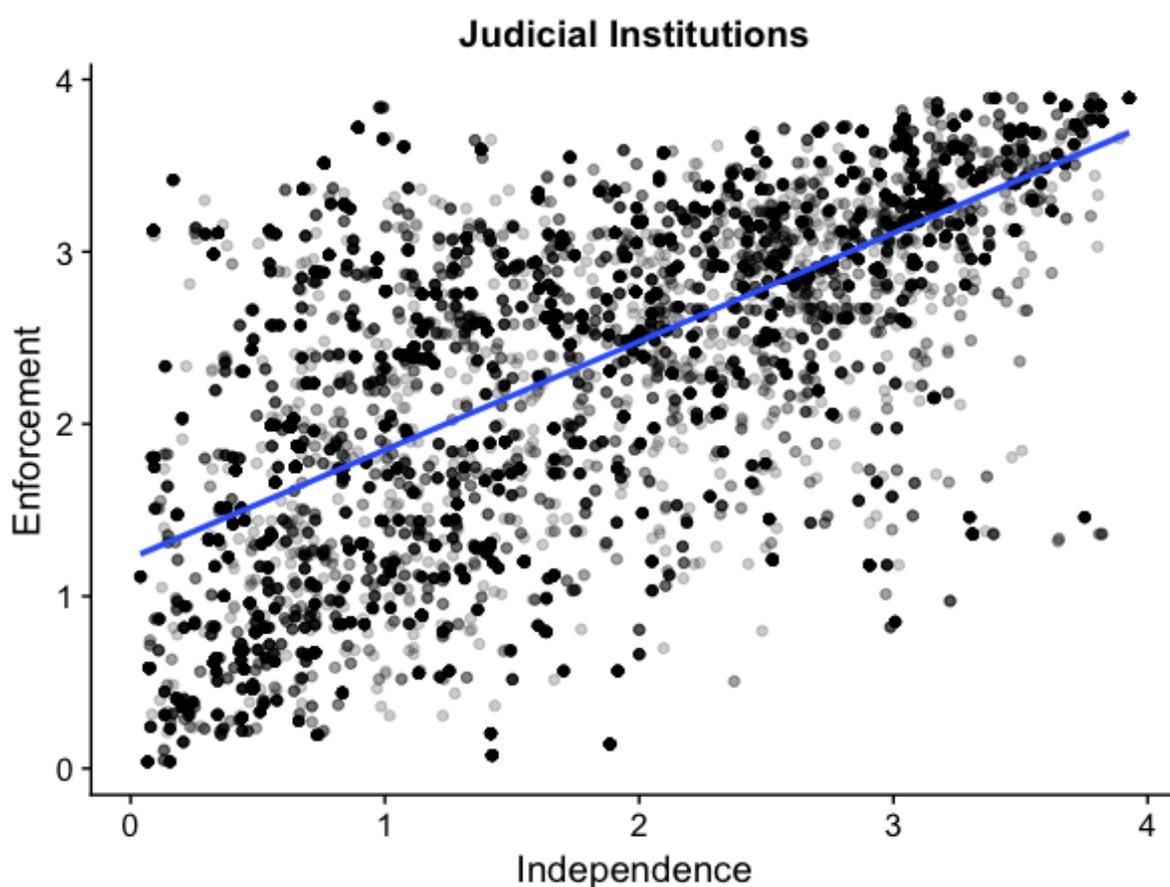
With our dependent and explanatory variables selected, we can have a first look at the association between them. Remember that we are interested not only in the effect of judicial enforcement on human rights, but also in how the judicial independence context shapes that effect. Using V-Dem's ordered version of the

judicial institutions measures (five levels in increasing order), and the continuous version of V-Dem's variable of physical integrity rights rescaled from 0 to 1 (at greater values greater respect) the next scatterplot (Figure 2.6) places physical integrity rights over judicial enforcement by level of judicial independence. Looking only at the fitted lines, there seems to be some preliminary evidence in favour of our Hypothesis. At low levels of judicial independence (from 0 to 2), increasing judicial enforcement has little effect on physical integrity rights. At higher levels of judicial enforcement (levels 3 and 4), the relationship is much stronger.

Figure 2.6 Scatterplot with fitted lines of judicial enforcement over physical integrity rights at different levels of judicial independence.

The Judiciary and Human Rights
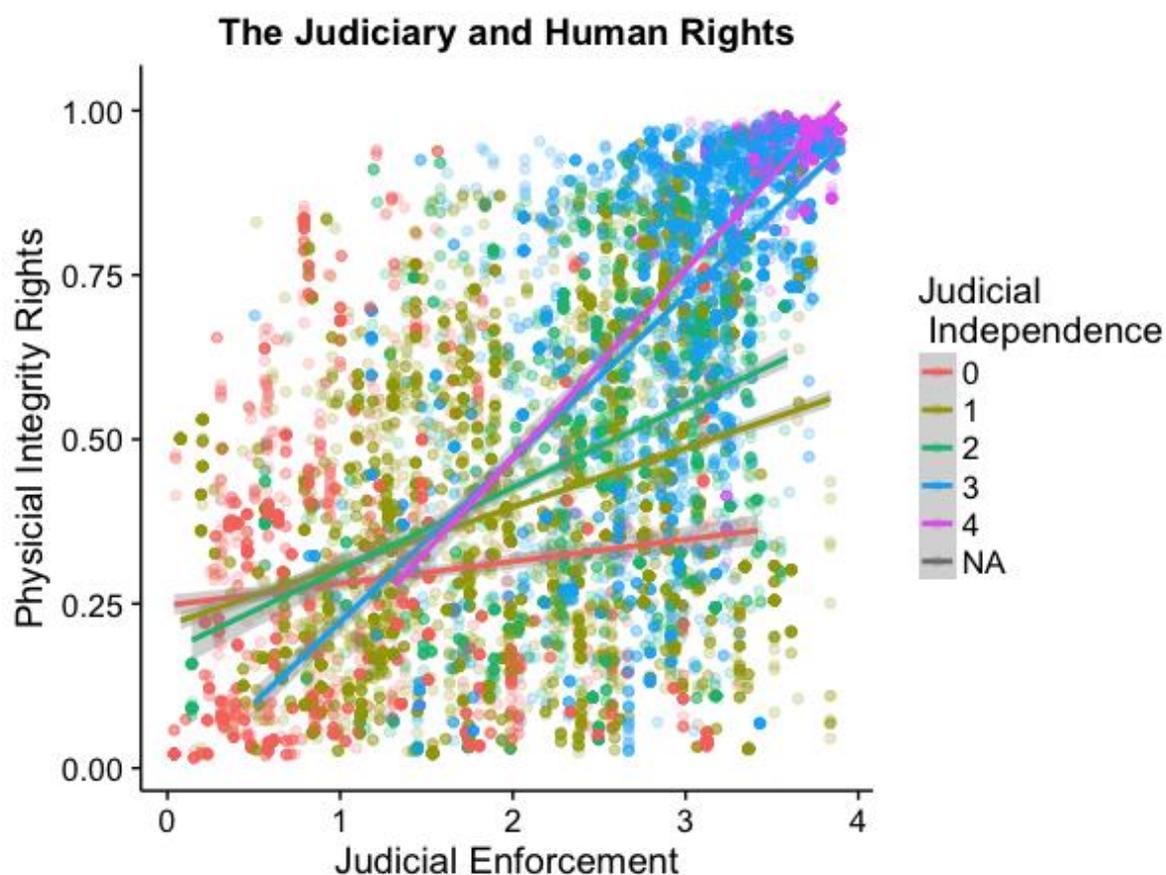
Control variables

Other factors impact human rights, which can probably cause issues of omitted variable bias as well as selection bias, we need to include relevant control variables. The first studies in the literature hypothesized and found a lineal negative relation between democracy and repression (Hibbs, 1973; Ziegenhagen, 1986) and then between democracy and human rights violations (Davenport, 1999; Mitchell and McCormick, 1988; Poe and Tate, 1994; Zanger, 2000). As part of a second stage of studies, scholars explored the possibility of a quadratic relationship between political regime and human rights protection (Fein, 1995; King, 1998; Reagan and Henderson, 2002). They hypothesized that ambiguous regimes (between autocracies and democracies) caused more repression, leading to the catchphrase: "more murder in the middle". A third stage of academic study looked into a threshold relationship (Bueno De Mesquita et al., 2005; Davenport and Armstrong, 2004). In this model, the positive effects of democratic institutions on human rights protection are expected to occur only past a certain point. Only when the system of institutions starts to work as a whole, and the cost of repression becomes too high, does the political regime have an impact on human rights protection. Bueno de Mesquita and his colleagues recognized the issue of democracy's multidimensionality (Bueno De Mesquita et al., 2005). They deconstructed the regime into several institutions in order to isolate the effects of each one over the protection of human rights. They conclude that:

> First, political participation at the level of multiparty competition appears more significant than other dimensions in reducing human rights abuses. Second, improvements in a state's level of democracy short of full democracy do not promote greater respect for integrity rights. Only those states with the highest levels of democracy, not simply those conventionally defined as democratic, are

correlated with better human rights practices. Third, accountability appears to be the critical feature that makes full-fledged democracies respect human rights; limited accountability generally retards improvement in human rights. (Bueno De Mesquita et al., 2005: 439)

In the "Standard Model", Keith (2012) summarizes the usual suspects of human rights violations. These control variables include measures of: regime type, conflict, economic development, population size, and colonial experience. More democratic and liberal institutions, as well as higher income per capita are usually corelated with better human rights practices; conflict (from international war to riots), rapid economic development, bigger populations, and a history of past colonialism are usually correlated with worse human rights practices,

To take advantage of the large size of the sample coverage of the V-Dem measures used for the dependent and explanatory variables, I use three V-Dem measures of political regime attributes. Measures of military regime and leftist regimes severely constrain the time coverage, but are not particularly interesting (see Table A in the Appendix). Together with colonial experience I exclude them from the main models because they do not substantively change the results. Tables A and B in the Appendix summarize the properties of the variables.

2.6   Analysis and results

Working with a time-series cross-sectional dataset requires specific methods of estimation. There will most likely be problems of serial correlation (the error term being correlated from one time period to the next) and heteroskedasticity (variation in the variance across units). Both problems would lead to biased parametric estimators. Introducing a 1-year lagged dependent variable on the

right hand side of the equation makes theoretical sense (past levels of violation are explained in part by present levels of violations) and addresses the problem of serial correlation. Robust standard errors to heteroskedasticity are estimated using White's method across countries. The equation we are estimating is formally:

$$HumanRights_{i,t}$$

$$= HumanRights_{i,t-1} + Injud_{i,t} + Comp_{i,t} + Injud_{i,t} * Comp_{i,t}$$

$$+ Controls_{i,t} + \alpha_{i,t}$$

Where *Injud* is the continuous measure of judicial independence, *Comp* the continuous measure of judicial enforcement, and alpha the unobservable time-invariant country effect[1]. The unit of analysis is country-year, denoted by the subscripts *i* and *t* in the equation. Because the dependent variable is continuous, we can simply use an OLS model.

Most of the variables in the V-Dem project are mean estimates with an uncertainty that can be recovered. Schnakenberg and Fariss (2014) recommend using this uncertainty in statistical inference models following the same procedure as with multiply imputed missing data. First, the standard deviation of the point estimates is used to create a number of "simulated" datasets. Statistical estimations are then performed using the "imputed" datasets. Finally the estimates are combined using the Rubin (1987) formulas.

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[1] The unobserved time-invariant country effect (such as culture and history) cannot be estimated, but can be eliminated by demeaning the variables using the within transformation of the fixed effects model.

I present the results of the OLS regression output, with diagrams instead of the traditional tables (I include those in the Appendix in Table C). For each model I represent with a point the coefficient estimates of all variables in the regression (excluding the intercept and the lagged variable); the thick and thin lines represent 90% and 95% confidence intervals respectively. After the third model I also include the linear combination of the interaction coefficient and judicial enforcement, which is the effect of judicial enforcement when independence is fully respected. The interpretation of the coefficients is rather straightforward for the political institutions variables, because all of them, along with the dependent variables, are on a 0 to 1 continuous scale.

To restate the theoretical expectations: better political institutions (Legislative Constraints, Free and Fair Elections, Free Association) should increase respect for physical integrity rights; on the other hand, conflict (domestic and international) should decrease respect. In theory, more population will have a negative effect, and economic development and growth a positive effect, but we can expect from previous empirical results that the effects will be very small.

My initial hypothesis states that judicial institutions work together: the interaction term is expected to be positive, whereas both judicial independence and enforcement independent coefficients should be null. Furthermore, the linear combination of the interaction term and judicial enforcement should be positive.

Coefficient results

Figures 2.7, 2.8, and 2.9 put side by side three nested models with physical integrity rights as the dependent variable. Most of the independent variables in the models behave according to the previous literature. Judicial Independence,

Legislative Constraints, Free Association, Free and Fair Elections, as well as Economic Development have all positive and significantly different from zero coefficients. Domestic Conflict and the Logged Population size have negative and significantly different from zero coefficients. Economic Growth and International conflict have both coefficients undistinguishable from zero.

Figure 2.7 Model 1
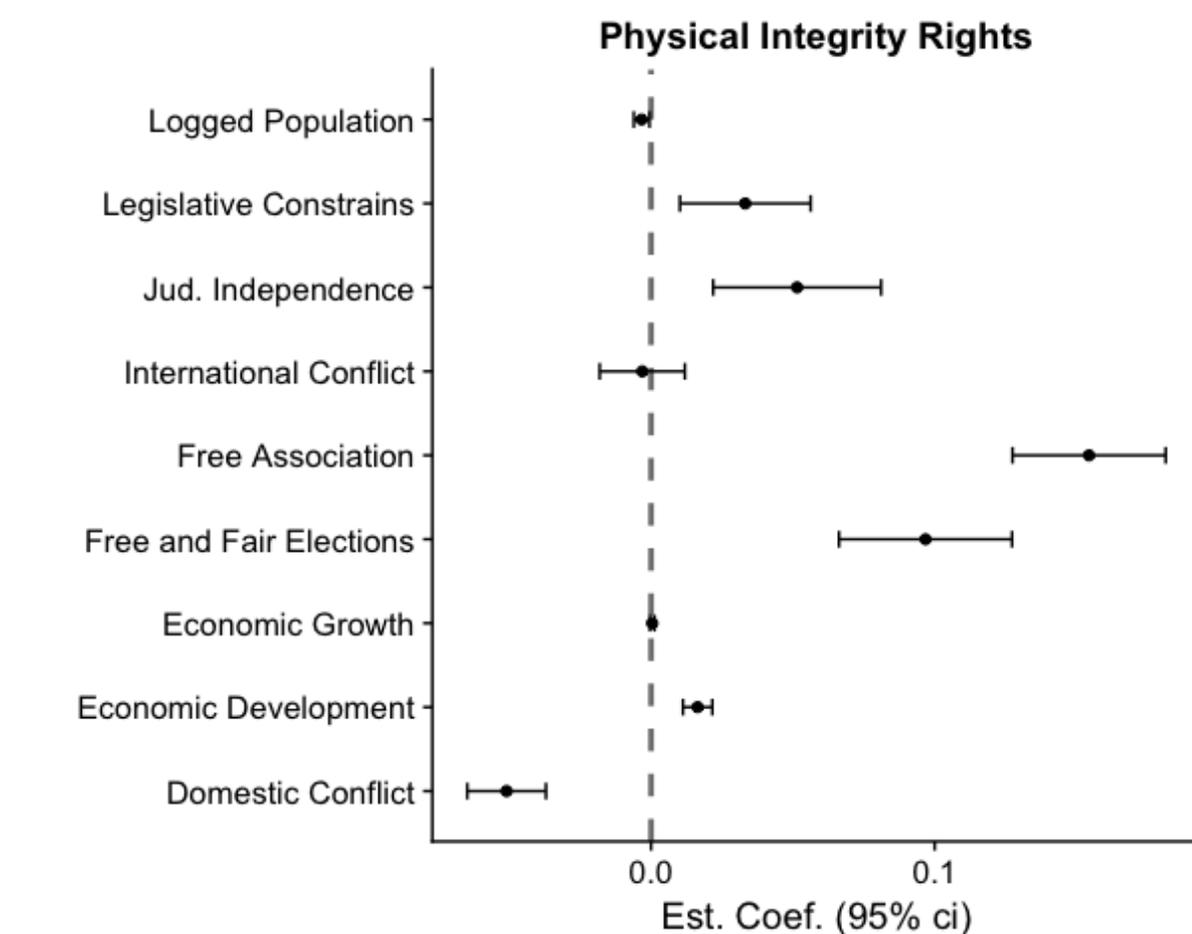
Estimated OLS model results for Physical Integrity Rights

In the second model both judicial independence and judicial enforcement have similar positive and significant coefficients. This could lead to the premature conclusion that judicial enforcement is significantly correlated with physical

integrity rights, even when controlling by judicial independence (i.e. at any level of judicial independence).

Figure 2.8 Model 2
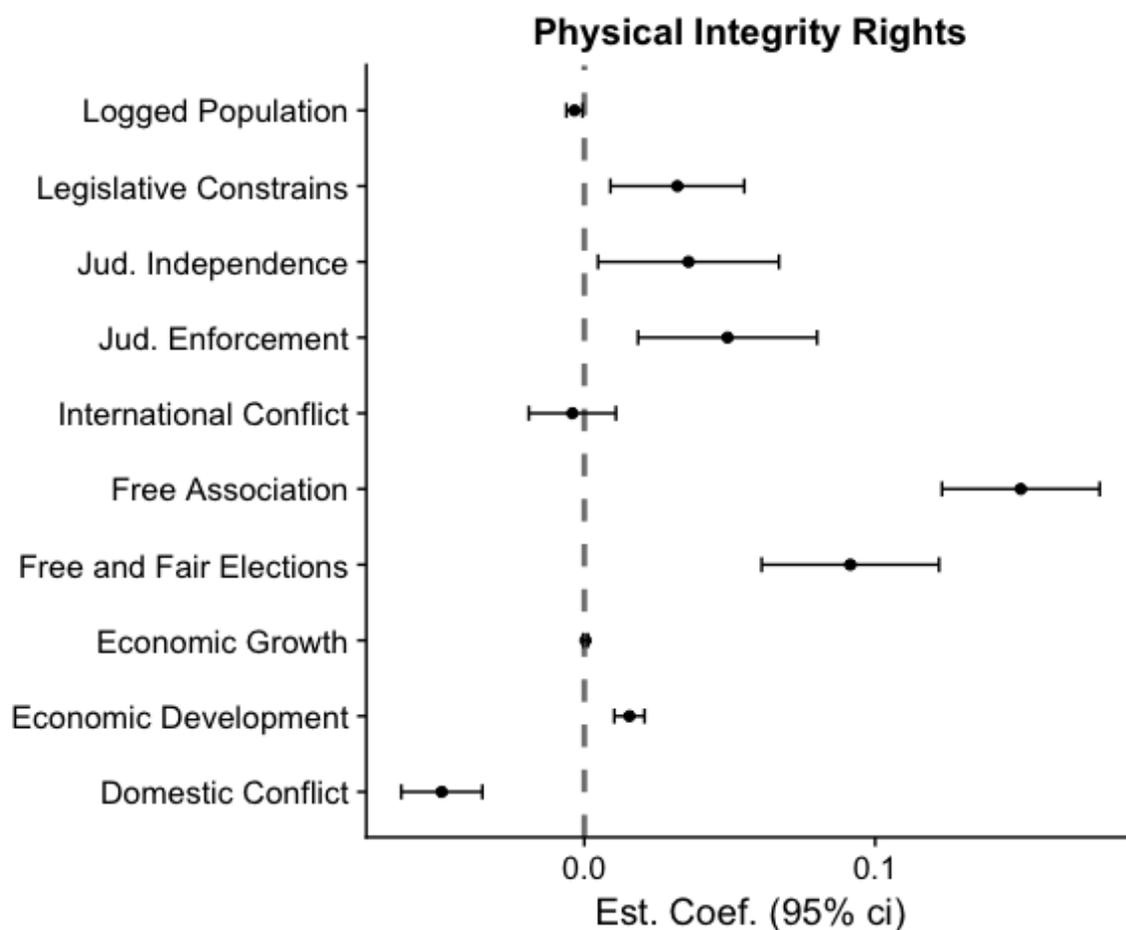
Estimated OLS model results for Physical Integrity Rights

My hypothesis tells us we should look at the effect of enforcement at different levels of independence. This is what the third model does by including an interaction term. In the third model, the coefficient of judicial enforcement is actually the correlation with the dependent variable when judicial independence is null – a relationship that is, in the third model, indistinguishable from zero. The coefficient simply means that at null levels of judicial independence, increasing enforcement will have no effect on physical integrity rights.

Figure 2.9 Model 3

Physical Integrity Rights
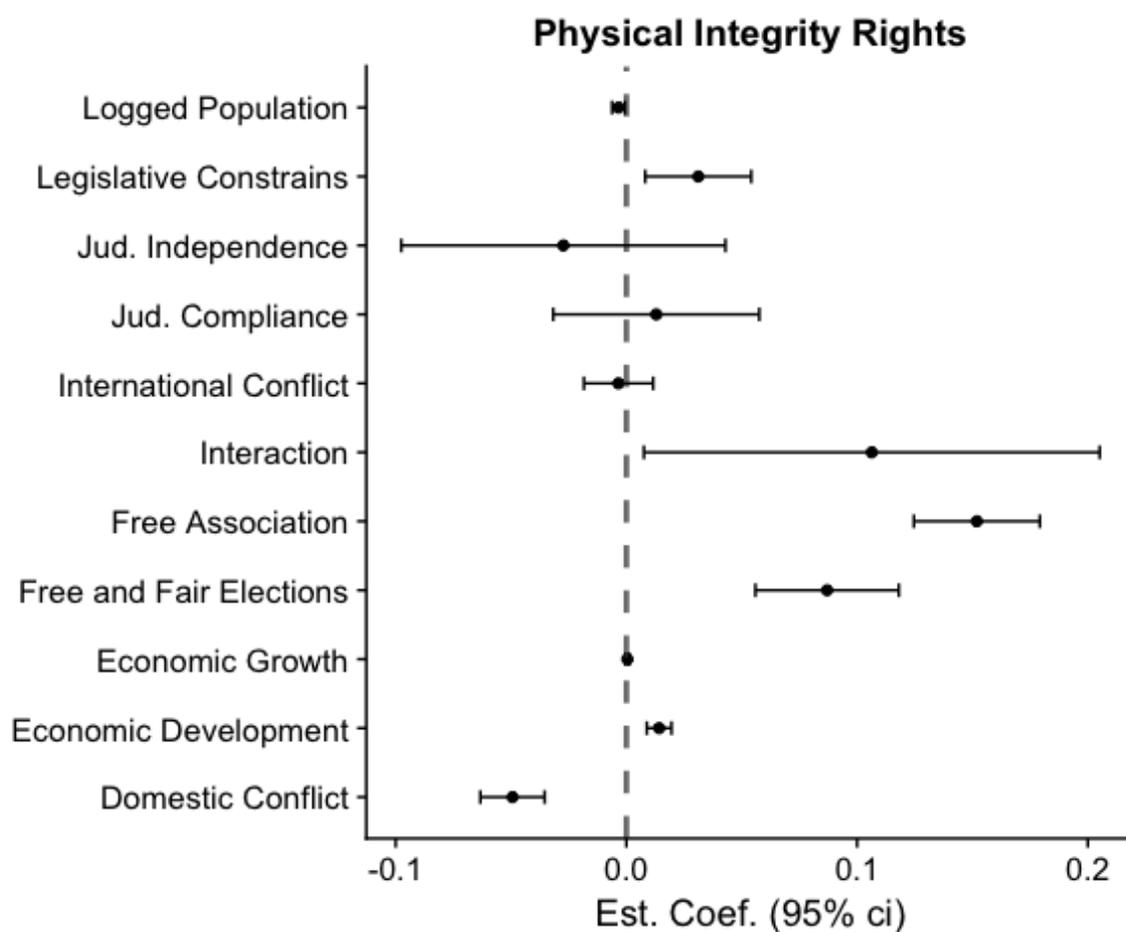
Estimated OLS model results for Physical Integrity Rights

Only when we also increase judicial independence does the coefficient of judicial enforcement become significantly positive (as captured by the positive interaction coefficient). At full judicial independence, a judicial enforcement increase from 0 to 1 has an effect of between a 5% and 10% (with a confidence level of 95%) increase on physical integrity rights (see Figure 2.10).

Figure 2.10 Conditional Lineal Combinations
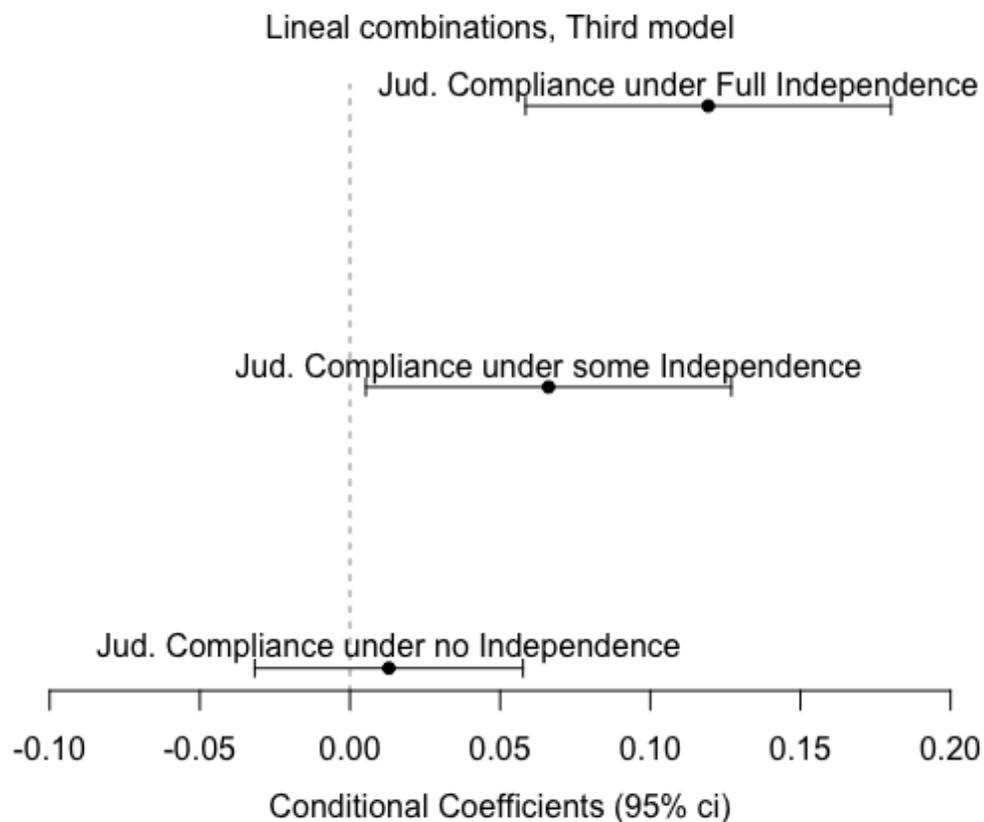
Robustness checks

OLS is only the best unbiased linear estimator under certain conditions, and a number of challenges can arise, particularly: heteroskedasticity, multicollinearity, autocorrelation, residuals not being normally distributed, and unobserved time-invariant unit effect.

The coefficients I present are already estimated with robust standard errors to account for heteroskedasticity. There is some problematic multicollinearity between the political institutions variables but not with the judicial ones. I performed a Durbin-Watson test for autocorrelation in the error terms, and found none when including the lagged variable. I also tested the assumption that the residuals are normally distributed. To account for the

unobserved time-invariant country effect, I performed random and fixed-effects models, with no substantial differences in the results. Including time as an independent variable (to test for time-fixed effects), the Cold War period, Military regime, and Leftist regime are insubstantial for the variable of interest (see Tables D and E in the Appendix).

Model comparison traditionally relies on R-squared or other measures of in-sample fit, usually favouring overfitting models to the observed data. Following Hill and Jones (2014) I use k-fold cross validation to compare how well each model can predict out of sample observations. Using 10 folds to divide the data in training and test data, we then still have to perform 1000 regressions to account for the uncertainty of the latent variables, resulting in computing 10,000 regressions per model (using leave-one-out cross validation would push this number to close to 7,000,000). The results in Figure 2.11 compare the proportional reduction in the mean square error (MSE) against an initial model with only the dependent lagged variable as a predictor (following Crabtree and Fariss, 2015). Although the biggest reduction in MSE comes from including the control variables, our full interactive model still predicts better than a model with all the variables without the interaction.

Figure 2.11 K-fold cross validation, using 10 folds.
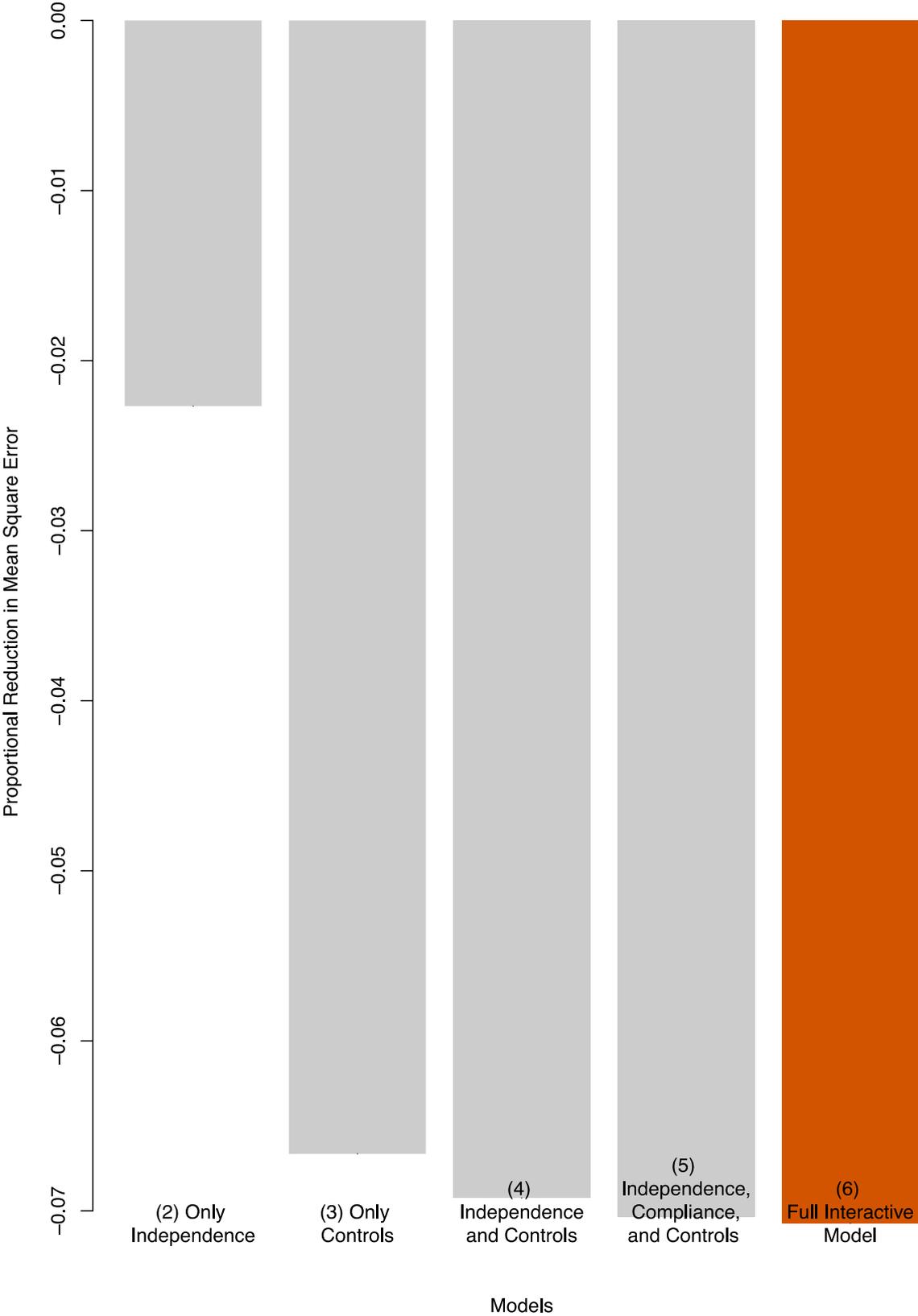
<u>Expected values</u>

Analysis of coefficient estimates only tells us how correlated each independent variable is to the dependent variable; it is more interesting to assess the aggregate impact of the explanatory variable at different levels.

To better represent the interaction effect, I produced a graph of expected values over judicial enforcement at different levels of judicial independence (see Figure 2.12). The expected values were calculated at the mean of the continuous control variables and at 0 for the dichotomous variables (international and conflict variables). The square, circle, and lozenge in Figure 2.12 represent the expected values of human rights at 1, 0.5, and 0 levels of judicial independence respectively. The red brackets represent the confidence interval at 95% level.

I first simulated each coefficient by picking 1000 estimates from a multivariate random normal distribution with parameters of the mean equal to the coefficient, and the standard deviation equal to the variance-covariance matrix. I then multiplied the simulated coefficients with the set values of interest and extracted the confidence interval (this is similar to what the clarify package does in STATA). I repeated this procedure for each of the 1000 regressions performed previously, and then took the average results.

Figure 2.12 Expected values of human rights over judicial enforcement at different levels of judicial independence, with 95% confidence intervals.

OLS Third Model
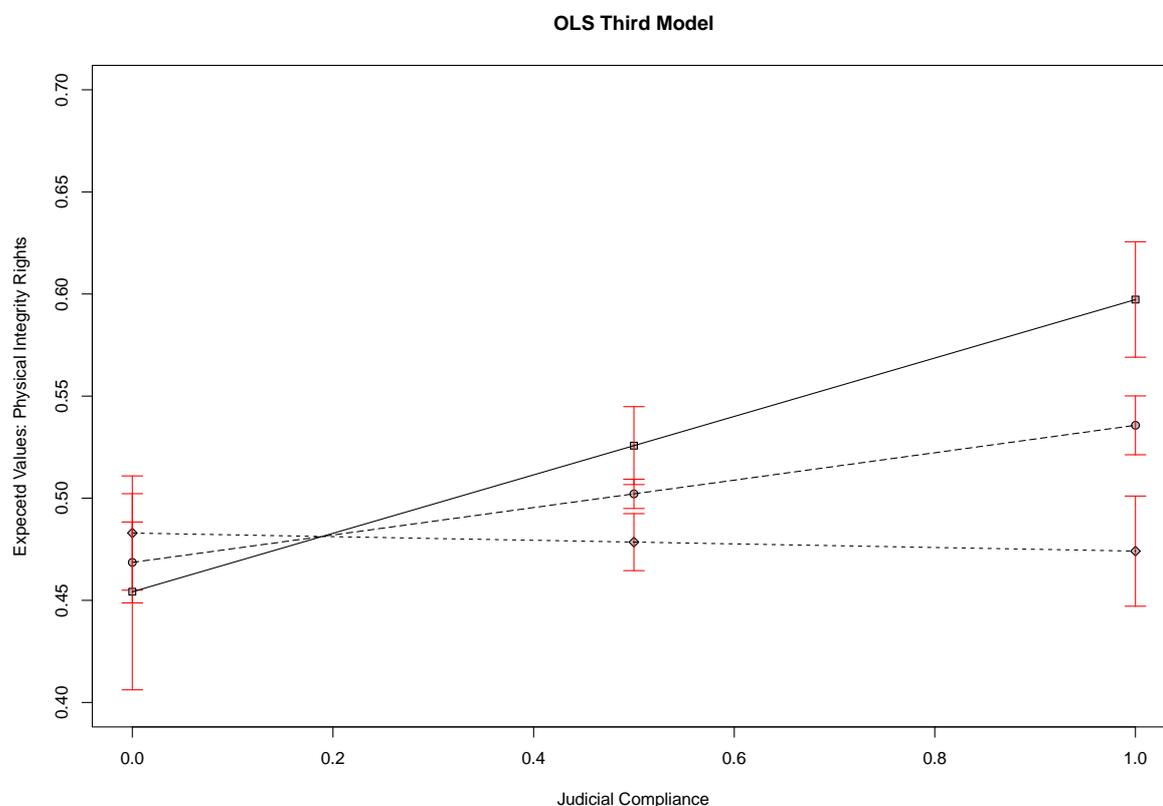
(the square, circle, and lozenge represent the levels of judicial independence at 1, 0.5, and 0 respectively)

The expected values of physical integrity rights are in line with our original hypothesis. At low levels of judicial enforcement there is no significant difference between expected values of physical integrity rights: around 0.47. If we increase enforcement but hold judicial independence constant at zero, there is no change in the expected values of physical integrity rights. Only if we also increase judicial independence does judicial enforcement significantly start to improve physical integrity rights. At full judicial independence, the difference of null and full judicial enforcement represents an almost 10% increase in respect of physical integrity rights.

We can say with some confidence that in countries with Rule by Law (like Spain and Mexico), an improvement of judicial independence will be associated with an increase in physical integrity rights respect. Conversely, in countries with Law Without Rule (Libya and Laos), an improvement of judicial enforcement will be associated with an increase in physical integrity rights respect. On the other hand, in countries under Arbitrary Rule (North Korea and Myanmar), an improvement in either judicial independence or judicial enforcement alone will not be associated with an increase in physical integrity rights respect.

Whereas previous scholarship limited its implications to the promotion of judicial independence, these results point at the importance of judicial enforcement as well. Promoting judicial independence is not enough if we want to see a positive change for human rights, judicial enforcement is indispensable for courts to have an impact.

2.7 Implications and Conclusion

In this paper I developed and tested an interactive model of physical integrity rights violations that accounts for the conceptual difference between judicial independence and enforcement. The role of judicial independence in human rights protection should be seen mainly as the context within which these decisions can be implemented. I argue that judicial enforcement will have a positive impact on physical integrity rights only when judicial independence is respected. The paper found the empirical evidence to support this hypothesis. The findings are robust to various model specifications introduced in the Appendix.

This paper informs the human rights literature as it disentangles the link between judicial institutions and physical integrity rights. NGOs and governments

that champion judicial independence as a tool for human rights respect should also be attentive to judicial enforcement. In an indirect way, the paper also informs the delivery of international aid for donors sympathetic to human rights. Judicial independence is usually the focus of IGOs like the Word Bank, but without promotion in judicial enforcement as well, the benefits for human rights might not materialize.

Unfortunately, pursuing judicial independence and judicial enforcement might require two different paths and strategies, and are not necessarily complementary. As the country cases indicate, while political reform may be enough to attain judicial independence, judicial enforcement may require more profound state building efforts. This paper showed the importance of judicial independence and enforcement for human rights, but did not explore in turn the conditions that are conductive to a Rule of Law regime.

Finally, given that the scope of this paper was a global sample of countries, its conclusions remain general. It is very likely that in some contexts – across regimes and groups, for example – these conclusions do not hold. Some scholars consider courts to be fundamentally different across political regimes, and doubt that judges, even in the best conditions, are able to place any real constraints on dictators (Ríos-Figueroa, 2015; Schedler, 2013). Similarly, courts – even in liberal democracies – tend to ignore human rights abuses concerning minority groups, particularly indigenous groups (Samson and Cassell, 2013). I leave these shortcomings for future research.

3 Human Rights and the Courts under Autocracies

Can judges constrain dictatorial repression?

3.1 Abstract

There's convincing evidence that judicial constraints matter for promoting human rights. But should we expect judges to protect individual rights in autocracies and democracies in the same fashion? I argue that judicial constraints in authoritarian regimes will only have a limited impact in protecting human rights. Specifically, I theorize that independent and strong courts in autocracies will promote private property rights, but will not defend physical integrity rights or civil rights. I assess this claim using a cross-sectional time-series dataset for 170 countries from 1900 to 2014, with measures of human rights, judicial constraints, political regime, and a set of control variables related to conflict, economic development and population size. I find partial empirical support for my hypotheses. The evidence suggests that judicial constraints in democracies are positively correlated with all categories of human rights except extrajudicial killings. In autocracies, judicial constraints are positively correlated with private property rights and extrajudicial killings, but there is no evidence of an effect on torture and freedom of expression.

3.2 Introduction

In Singapore in December 1988, four dissidents were arrested and detained, accused of plotting to undermine the government. The Supreme Court reviewed the case, which was known as the Chng Suan Tze case, and determined that the government had not followed the procedures of due process set out in the Internal Security Act. What followed was almost Kafkaesque:

> The court ordered the prisoners released. And the government complied, driving the prisoners through the gates of Whitley Road jail, and down the street where the prisoners got out of the car. But another car pulled up immediately, the prisoners were arrested again, and returned to prison. But unlike the first time, the government now followed the statuary procedure with precision, securing the formal authority that was required (Silverstein, 2008: 80).

Business surveys report that Singapore has one of the world's most independent and impartial judicial systems. This good reputation certainly benefits the economy, but also entails unexpected costs in the form of political limits to the regime. Courts enjoy a high degree of protection because the rule of law is central to Singapore's strategy to attract multinationals. In response, the People's Action Party (PAP) has developed repressive tactics against its political opponents that nevertheless remain under the "rule of law". The Chng Suan Tze case is one illustrative example of how the PAP "legally" represses the opposition.

Human rights scholars have long argued that liberal democracy is the best political regime for human rights protection (Henderson, 1991; Mitchell and McCormick, 1988; Poe et al., 1999; Poe and Tate, 1994). Most of the literature has treated autocracies as a residual complement of anything that is not a liberal democracy. The case of Singapore shows that non-democracies are not all alike,

and that some kind of rule of law is possible in autocracies. Is Singapore an outlier? It is, after all, a rather unusual country. We know surprisingly little about the relationship between judicial independence and human rights, and almost nothing about that relationship in the specific context of autocracies. Case studies have shown that judicial independence and the rule of law are at least possible in autocracies (Ginsburg and Moustafa, 2008b). From statistical examination judicial independence seems to be significantly correlated with human rights protections (Keith, 2012). But can courts have a meaningful impact on human rights in authoritarian regimes?

I argue that judicial constraints in authoritarian regimes will have only a limited impact in protecting human rights. Specifically, I expect that independent and strong courts in autocracies will promote private property rights, but will not defend physical integrity rights or civil rights. I assess this claim using a cross-sectional time-series dataset for 170 countries between 1900 and 2014, with measures of human rights, judicial constraints, political regime, and a set of control variables related to conflict, economic development, and population size. I find partial empirical support for my hypothesis.

3.3   Courts and Rights

Today, scholars assume that given certain conditions, courts will protect individual rights. Linda Camp Keith (2012) calls those conditions judicial independence, Powell and Staton (2009) call them judicial effectiveness, in the previous chapter I argued we should look instead at judicial constraints (the presence of both judicial independence and judicial enforcement).

But are courts supposed to protect human rights in the first place, is that their original function? To better understand how courts can limit abuses of power by the State, it's useful to make a small detour through the origins of liberalism to put the role of courts into perspective.

In the liberal tradition

Neutrality is at the core of judicial institutions and their role in conflict resolution (Shapiro, 1981). In liberal political theory, judges play a fundamental role not of social control, but of rights protection. For John Locke, the judge is the essential third party that can impartially decide in a controversy over the rights of two individuals.

> Consider what civil society is for. It is set up to avoid and remedy the drawbacks of the state of nature that inevitably follow from every man's being judge in his own case, by setting up a known authority to which every member of that society can appeal when he has been harmed or is involved in a dispute—an authority that everyone in the society *ought* to obey. (Locke, 1988: 90)

I want to draw attention to the use of the term *ought* by Locke in the previous passage. In a departure from Thomas Hobbes, Locke recognizes the distance between morality and rationality. The individual *ought* to obey the impartial judge, but without a coercive force backing the judge, she probably won't.

In Immanuel Kant's Doctrine of Right, the judge simply adjudicates individual property rights based on natural law. Courts are important, but it is recognized they have very little power to enforce their decisions, and it is assumed they cannot stop the State from violating individual rights. Judges are not expected to protect human rights.

> The juridical state (der rechtliche Zustand or Rechtsstaat) is the *relationship among human beings* which contains the conditions solely under which everyone can enjoy his rights. (Kant, 1999: 41)

Notice this time the emphasis on *relationship among human beings*. Kant is thinking about interpersonal rights adjudication, not about the juridical State somehow self-restraining.

With the progressive codification and legalization of individual rights, the question becomes more and more pressing: who should protect individual rights from State abuse? The Federalists miss the point entirely – first, because they advocate not including an explicit Bill of Rights in the Constitution:

> "*We, the people* of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government. (Hamilton et al., 2008: 84)

And second, because they designed the Supreme Court for an entirely different role: arbitration of the federal pact (Hamilton et al., 2008: 80). It is the Supreme Court that takes upon itself the task to protect individual rights, as enshrined in the Amendments, against violations from all State and government authorities.

The Supreme Court basically invented the instrument of constitutional judicial review in the *Marbury* case of 1802. Although the recently established Constitution had established a hierarchy of norms and placed itself as "the supreme law of the land", it did not contemplate how eventual conflicts about constitutional interpretation should be resolved.

Thomas Jefferson, for example, believed that it was up to State assemblies to limit infringements by the Federal Government to the Constitution and the Bill of Rights. In *Marbury*, the Court strategically denied the plaintiff his request, and agreed with Madison in declaring the Judiciary Act unconstitutional. Madison opposed judicial review on principle, but he accepted the Court's judgment favouring him, thus recognizing the newly self-granted functions of the Court (Clinton, 1994). The expression "*Marbury* moment" in other national contexts refers to similar strategic decisions by which the Supreme Court establishes judicial review with the passive assent of the executive (Ginsburg and Moustafa, 2008b).

In his travel to the United States, De Tocqueville notes that an independent judiciary is "one of the most powerful barriers erected against the tyranny of political assemblies" (Tocqueville, 2003). Today, we might take for granted that one of the fundamental roles of courts is to protect individual rights, and that strong, independent judges will promote human rights (Keith 2012).

But even today, after more than 200 years of tradition, the US Supreme Court is very careful in its decision-making. The Court strategically balances its own policy preferences against those of the executive and the legislative, while keeping a watchful eye over public opinion (Clark, 2011).

I wanted to point out that even in the liberal tradition, the role of courts as guarantors of individual rights is a rather recent development. That role evolved in a specific historical context, and is deeply linked with the emergence of modern liberal democracies.

As Svolik (2012) points out, even nominally democratic institutions can have very different functions in autocracies. We should now carefully review what roles courts play in autocracies.

In authoritarian regimes

The essential role of courts in autocracies is not necessarily very different from its role in liberal democracies; some functions may overlap. The specific functions of independent judiciaries in authoritarian regimes can be listed in five categories (Ginsburg and Moustafa, 2008b):

1. *Social control*. Courts can be used to limit the power of the elected opposition and enforce the will of the Supreme Leader. In Turkey, military secularists use it against political Islamists. In Iran, the Ayatollah used it against reformers (Shambayati, 2008). Social control is the prime function of courts, and it becomes especially evident in occupation contexts (Shapiro, 1981). This is true in democratic contexts as well as in dictatorships. The role of courts is to apply the law of the sovereign.

2. *Legitimation*. Respect for courts and the rule of law as ideology or political discourse. Democracies are more closely related to this discourse, but some dictators can choose to leave the courts intact during their coup. In Chile, Pinochet said he was restoring the rule of law, and thus had to respect the judicial system to remain credible (Hilbink, 2008).

3. *Controlling administrative agents and maintaining elite cohesion*. In democracies, elections and a free press signal and punish corruption. Dictators have a harder time controlling their bureaucracies because they do not have reliable information. Courts function as "fire alarms" that citizens have to activate

in order for leaders to receive complaints of local corruption (putting the cost on the individual, but making it cheaper for the regime) (Ginsburg, 2008). In Mexico, the instrument of *amparo* protected individuals against unconstitutional acts of authority, but the measure did not have general effect until a reform in 2012. The *amparo* was used to signal corruption to the higher ranks, not to protect the population (Magaloni, 2008).

In the same fashion, courts can arbitrate between different groups of the ruling coalition to maintain cohesion. When it's too costly or risky for the leader to personally address a conflict in the ranks, the court can function as an "impartial" arbiter of the regime. In Chile, the 1980 Constitution can be understood as a balance between the judicial power – a neutral arbiter in the form of the new *Tribunal Constitucional* (Ginsburg and Moustafa, 2008b: 8) – and the four branches of the military. In Mexico, the 1994 judicial reform is best explained by the need of an impartial arbiter between governors who were no longer loyal to the President and his dominant party (Magaloni, 2008).

4. *Creating credible commitment in the economic sphere* is probably the single most important reason for respecting or creating an independent judicial power. Courts help to diminish transaction costs (North et al., 1990), thus promoting economic development in general. For autocratic regimes, this can prove essential for investment opportunities, financial credibility, debt repayment, and administrative control (Root and May, 2008).

5. *Delegation of controversial reforms.* In Egypt, the rulings of the Supreme Constitutional Court enabled the regime to overturn socialist-oriented economic policies, avoiding the political cost of direct reform (Moustafa, 2009). Even in democratic settings, leaders can choose to avoid political reform by favoring

judicial activism and labelling it "apolitical." When the Federal Congress and the White House were on the same page in terms of combating racial segregation in the United States, they referred controversial activism to the Supreme Court (Clark, 2011).

This is not to say that judicial independence has the same functions in democracies and autocracies. Svolik (2012) argues that nominally democratic institutions have fundamentally different roles in autocracies. He shows how political parties in competitive autocracies help the ruling coalition keep the dictator in check, thus stabilizing the regime (Svolik, 2012: 4). In a similar logic, courts do not fulfil the same functions across political regimes. Supreme Courts in democracies are often the final arbiters of political competition and constitutional power sharing. But in autocracies, there is no "higher authority" (Schedler, 2013). Aguilar and Rios-Figueroa take Svolik's argument one step further, proposing that:

> judicial institutions can contribute to solve the problem of authoritarian control by monitoring actual and potential political opponents, as well as by repressing them through special jurisdictions. We also sustain that they can contribute to solve the problem of authoritarian power-sharing by making credible the commitments made by the authoritarian leader to the members of his ruling coalition, either by awarding them with the privilege of special jurisdictions to deal with their own affairs (e.g. military, labor, or ecclesiastical), or by guaranteeing the (relative) neutrality of certain (judicial) institutions to solve intra-elite conflicts. (Aguilar and Rios-Figueroa 2014, 2-3)

In this line of reasoning courts are limited by design to undertaking specific tasks. Aguilar and Rios-Figueroa also claim that the concept of independence itself must be different for judges under democracy and under autocracy. The most one can

aspire to under autocracy is neutrality and reach, not real independence. The dictator will allow neutral (unbiased) judges to resolve disputes in specific issues with a limited reach to undo its power. This is similar to what Locke had to say about the rule of law under absolute monarchy:

> In absolute monarchies, as well in other governments in the world, the subjects can appeal to the law and have judges to decide disputes and restrain violence among the subjects. […] There is really no more to it than what any man who loves his own power, profit, or greatness will naturally to do to prevent fights among animals that labour and drudge purely for his pleasure and advantage, and so are taken care of not out of any love the master has for them but out love for himself and for the profit they bring him. If we ask 'What security, what fence, do we have to protect us from the violence and oppression of this absolute ruler?', the very question is found to be almost intolerable. (Locke, 1988: 93)

Courts may be impartial between two subjects, but the monarch is above the law, and no degree of judicial independence will constrain him to respect individual rights.

3.4 Judicial Constraints

The domestic peace literature argues that political institutions can constrain the use of repression by State actors. In the same way that democratic elections and legislative constraints on the executive can be used as tools to hold the State accountable, judicial institutions can limit the use of repression.

> The judicial branch, after all, is the institution normally charged with the enforcement of the constitution, rights, and other democratic procedures in constitutional *democracies*. Ideally, through the application of judicial or constitutional review, judges can not only mediate conflicts between political actors but also prevent the arbitrary exercise of government power (Larkins, 1996: 606)

Unlike other democratic institutions, the courts can impose very direct measures on the misuse of power. Judges can order political prisoners to be released, can strike down legislation that limits freedom of expression, and can impose economic reparations for the victims, to name a few options. Courts can immediately intervene in a human rights violation to stop it and revert it, and they can also impose dissuasive costs on the State to prevent future violations. Judges can convict and imprison human rights violators in criminal cases, but can also impose financial reparations for the victims and demand a public apology by a State official. In short, courts can raise the cost of repression and influence the calculations behind the regime's decision to make use of repression.

For courts to constrain the State's use of repression, however, at least two conditions are necessary: independence and enforcement. As I have argued previously, both judicial independence and judicial enforcement are needed simultaneously to increase the cost of repression. When the courts rule in favor of the victim of a human rights violation, and the decision is enforced, it imposes reputational, political, and economic costs on the State. The increase in the cost of repression will likely decrease human rights violations by the State. I call judicial constraints the institutional combination of both high judicial independence and high judicial enforcement.

Keith (2012) brings the cases of Chile under Pinochet (following Hilbink 2007) and postcolonial African states (here following Prempeh 1999) to formulate a null hypothesis, namely, that judicial independence will have no consistent effect on human rights. An authoritarian culture can lead judges to promote executive supremacy over individual rights. Indeed, the theoretical mechanism of judicial constraint's impact on human rights presupposes a

democratic context. Keith does not explicitly test whether democracy is a necessary condition for judicial independence to be meaningful, but the implicit supposition is that if courts can limit abuse of power, it's more likely to happen in democracies.

My contribution to the scholarship is to recognize that the broad positive effect of judicial constraints on human rights is probably limited to democracies. No previous studies have directly addressed the political regime context in which courts operate to promote human rights.

In autocracies, it is unlikely that courts will play the same role in protecting human rights as democracies. Institutions in autocracies are not truly constraints, but rather equilibria (Boulianne Lagacé and Gandhi, 2015, p. 285) . Dictators design their institutions to solve certain specific problems. If these institutions overstep their original purpose, the dictator can reform or simply dismiss them (for the case of Egypt see Moustafa, 2009).

Dictators will respect the independence of the judiciary and enforce its decisions, as long as the courts don't challenge the survival of the regime. In autocracies, the judiciary is sometimes designed to impose constraints and help solve important commitment problems. Judicial institutions in autocracies are not necessarily mere "window dressings" (Schedler, 2013), and can have an impact in several dimensions.

In particular, we have seen that one of roles of courts in autocracies is to allow the regime to make credible commitments in the economic sphere. Increasing judicial independence and enforcement can promote economic growth (Feld and Voigt, 2003). One of the mechanisms through which judicial constraints

can increase economic activity is via the protection of private property rights (Goldsmith, 1995; Leblang, 1996). The relationship between judicial independence, respect for private property rights, and economic growth, has become one of the cannons of the World Bank in the last decades (World Bank, 1997; World Bank Group, 2017). More importantly, the effect is in theory not restricted to democracies.

In an autocracy, the dictator can potentially dismiss institutions that have become a burden. But some types of autocracies are likely to invest in and accept this limited form of judicial constraint, because they gain more by promoting investment over consumption than by stealing private property outright (Bueno de Mesquita et al., 2003). This is why political (and judicial) institutions under dictatorship should be regarded as equilibria and not as constraints. As long as the benefits of investment are higher than the costs of respecting private property rights, the dictator will respect judicial independence and judicial enforcement.

Independent judges in autocracies will impose costs on the State violating private property rights, and thus decrease the arbitrary dispossession of private property. But it is important to bear in mind that the behaviour of the judges is in line with the objectives of the regime. The dictator needs this judicial "constraint" to promote investment. Therefore, I put forward the following hypothesis:

H1: Judicial Constraints will protect Private Property Rights, in Autocracies and Democracies alike.

Although this might follow what is now orthodoxy in the World Bank, it has not yet been tested empirically.

On the other hand, the dictator is unlikely to accept judicial constraints placed on his ability to repress and remain in power. Repression and control are essential tools for the survival of autocratic regimes (Escribà-Folch, 2013) .

Most authoritarian regimes need to use the most extreme forms of physical violence to remain in power. Even when the use of extra-judicial killings and torture are uncommon, the regime needs to make their potential use a credible threat. Dictators can also make use of less violent methods of repression: for instance, political arrests and civil and political controls. By restricting freedom of speech, the authoritarian regime can make political coordination against the dictator very costly or almost impossible (Frantz and Kendall-Taylor, 2014).

The challenge for dictators that want credible judicial constraints on property rights but not on the use of repression is to decouple the judicial economic sphere from the political one (Moustafa, 2009). In autocracies, judicial institutions are not designed to impose costs on the use of repression. Dictators that respect judicial independence and judicial enforcement manage to avoid the judicial costs of using repression. Going back to the steps in the procedural path of the judicial process, there are at least three strategies that dictators can use: insulation, legalization, and complicity.

The dictator can selectively insulate the judges by making access to justice more difficult in political cases than in economic ones. For instance, a prosecutor (that is not necessarily independent from the executive) may be required to present criminal charges against State agents (Ríos-Figueroa, 2015) . The dictator can also simply design various parallel judicial systems and in step 3 respect the independence of judges in economic courts while also systematically pressuring

judges of courts that oversee political and security cases (see the case of Egypt: Moustafa, 2009).

The authoritarian regime can also intervene to blatantly change what is legal. By controlling the executive and the legislative branch, the dictator can tailor a legal system of economic safeguards but heavy civil and political restrictions. The State can then "legally" repress, and the courts won't have the tools to censor that behaviour (see the case of Singapore: Silverstein, 2008).

Finally, the regime can select and promote judges with a similar ideology and ensure that they rule for the State even without undue pressure. Judges that see themselves as part of the regime are likely to align their rulings with the objectives of the regime. Complicit judges are still independent, but will only constrain the State in the economic sphere, and will not impose costs on the use of repression (see the case of Chile: Hilbink, 2008).

In autocracies, judges are unlikely to rule against the State in sensitive cases, because their decision would probably not be enforced and they would otherwise be removed. The equilibrium is that of seemingly judicial independence and judicial enforcement, but without rulings that limit the use of repression. Judicial independence and judicial enforcement will probably have no impact in physical integrity rights and freedom of speech. Therefore, I put forward the following hypothesis:

H2: Judicial Constraints will protect Physical Integrity Rights only in Democracies.

H3: Judicial Constraints will protect Freedom of Speech only in Democracies.

Note that although this is line with both Larkins and Keith's intuition, it has never been empirically tested.

3.5   Illustrative cases

There are several ways in which authoritarian regimes can commit to respecting accessible, independent, and strong courts, while avoiding problematic human rights rulings. The government very rarely interferes with judges, and enforces most of the decisions, but in turn the judges very rarely rule against the government in important political cases. This is probably the highest degree of "independence" with enforcement that we can expect to see in autocracies: limited judicial constraints, or "Rechtsstaat". This balancing act is usually made possible by the use of the three strategies mentioned above, namely, legalization, complicity, and insulation.

At this point I want to come back to real word autocracies cases to illustrate how dictators manage the balancing act of respecting judicial constraints and private property rights, but continuing to use repression and control tools.

<u>Singapore</u>

Singapore provides an example of how courts can still be limited in their impact, even under conditions of judicial access, independence, and enforcement.

The legalization of repression is obvious in the Singaporean case. When the dictator controls the legislative branch, she can simply change the rules to legalize some forms of political repression and control. For example, the PAP's response to the judicial review of a "national security case" was to change the law and the

Constitution in Parliament. With 80 out of 81 seats, it passed the required reforms to effectively limit appeals under the Internal Security Act.

Freedom of expression and assembly are restricted in a legal way to avoid a clash with the courts. This is done through strict libel legislation, an archaic imprint regulation, and limits on freedom of assembly.

A common tactic of political repression is to bankrupt the opposition. Because Singapore has very strict libel laws, ministers can sue in civil court for defamation. This happens in cases that would be seen as the exercise of free political expression in most liberal democracies. MPs are disqualified from office if they go bankrupt or are fined more than S$2000. Using this combination of rules, opposition MPs Jeyaretnam, Wong Hong Toy, Tang Lian Hong, and Chee Soon Juan have been kept out of office repeatedly since the 1980s (Silverstein, 2008: 94).

Singapore is an example of a *Reechstat* without a liberal substance, a rule of law without civil and political rights (Silverstein, 2008). The PAP-dominated House passes legislation that limits the expression of political discontent, and thus reaffirms its dominance in the electoral process. The courts simply follow a very legalistic interpretation of the law that limits individual rights, but the PAP does not directly control the judicial system (Thio 2006).

There is of course only so much repression that can be justified under the rule of law. Most of the human rights abuses Singapore commits are restrictions of civil and political rights, and there are very few cases of physical integrity violations. It might be possible to vote in draconian laws on freedom of expression and association, but no modern legal system can justify extrajudicial killings and

disappearances, because these are acts that by their very nature remain outside the law.

Figure 3.1 Human rights over time in Singapore.
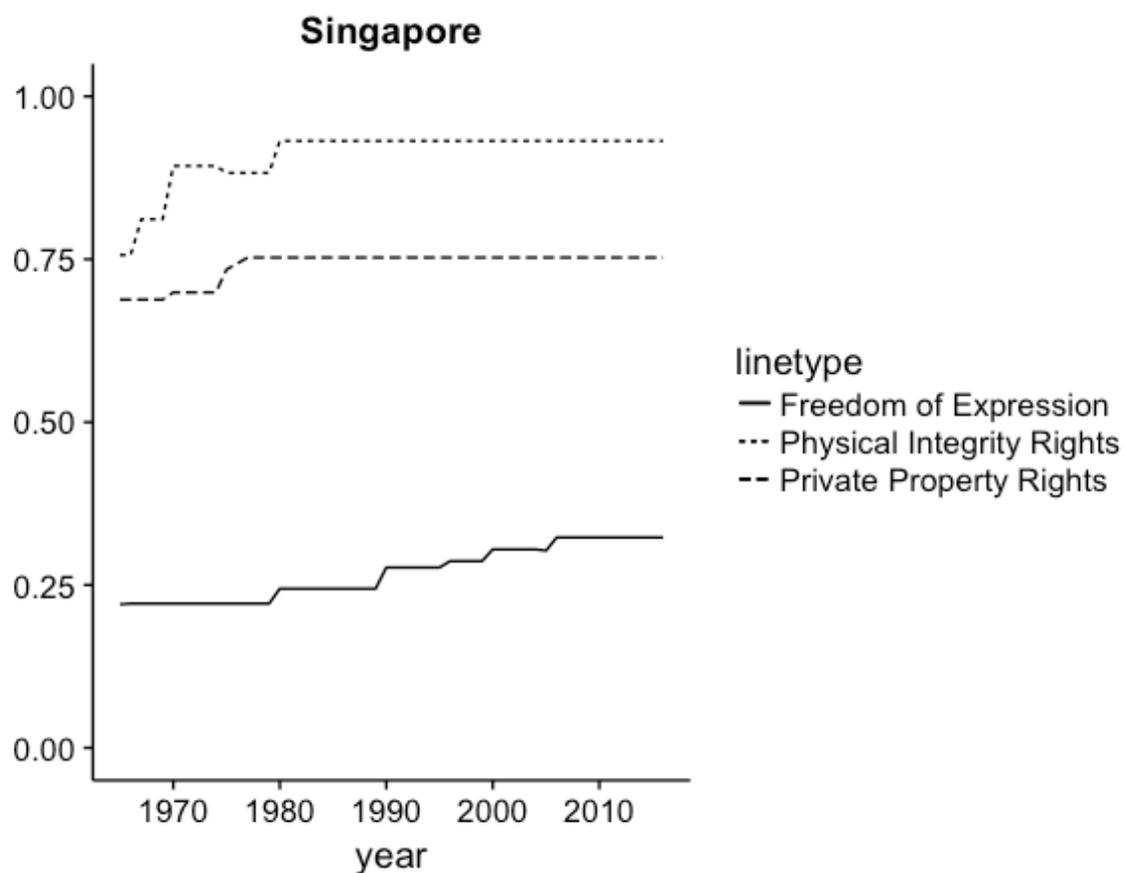
Source: V-Dem.

The timeline of Singapore using V-Dem measures (Figure 3.1) reveals a stable pattern of respect for private property rights and physical integrity rights, but strict restrictions on freedom of expression.

Chile

In Chile, Pinochet cited restoring the rule of law as a justification for his military coup in 1973; he thus had to respect the judicial system to remain credible

(Hilbink, 2008). The judicial system essentially survived the coup, in part because many judges (in particular the Justices of the Supreme Court) were already conservatives and close to the military.

During Pinochet's military dictatorship, the judges were mostly complicit with the regime's gross human violations. When family members of disappeared political activists went to court to demand their release, it was typical for the judge to simply ask the police or the DINA (Dirección de Inteligencia Nacional) if they indeed had him in custody, to which case the authorities would respond negatively, and the judge would dismiss the case (Hilbink, 2007).

The judicial system played another more proactive role in the regime. It effectively protected private property rights and helped the regime attract foreign investment (Hilbink, 2008).

Figure 3.2 Human rights over time in Chile.

Chile

The timeline of Chile clearly shows the catastrophic impact of the military dictatorship on physical integrity rights and freedom of expression (Figure 3.2). For over two decades, the judicial system, regardless of its independence, did very little to protect those rights. On the other hand, private property rights actually improved after the coup of 1973. Chile under Pinochet is a clear case that supports my hypotheses.

<u>Mexico</u>

Insulation is another complex case, because it can easily be perceived as an indirect attack on judicial independence. Designing and granting special judicial systems to members of the ruling coalition is one way to respect judicial independence and simultaneously to reduce the probability that a judge will rule against the State in a human rights case (Aguilar Fernandez and Ríos-Figueroa, 2014) (Aguilar Fernandez and Ríos-Figueroa, 2014). In a similar logic, the State can fragment the judicial system, creating special security courts that are under the supervision of the executive, while leaving the independence of other courts intact (Ginsburg and Moustafa, 2008a; Schedler, 2013).

For a period of time, the Mexican Supreme Court exhibited high levels of judicial independence and enforcement, but was not very active in the promotion of human rights. After the 1994 constitutional judicial reform, the Supreme Court enjoyed greater independence than before, but the legal instrument of *amparo* was not reformed until 2013. Access to the Supreme Court was very limited, and the Justices decided to focus on political arbitration between the governing elites rather than to hear cases of human rights violations.

Figure 3.3 Human rights over time in Mexico.

Mexico

linetype
— Freedom of Expression
··· Physical Integrity Rights
-- Private Property Rights
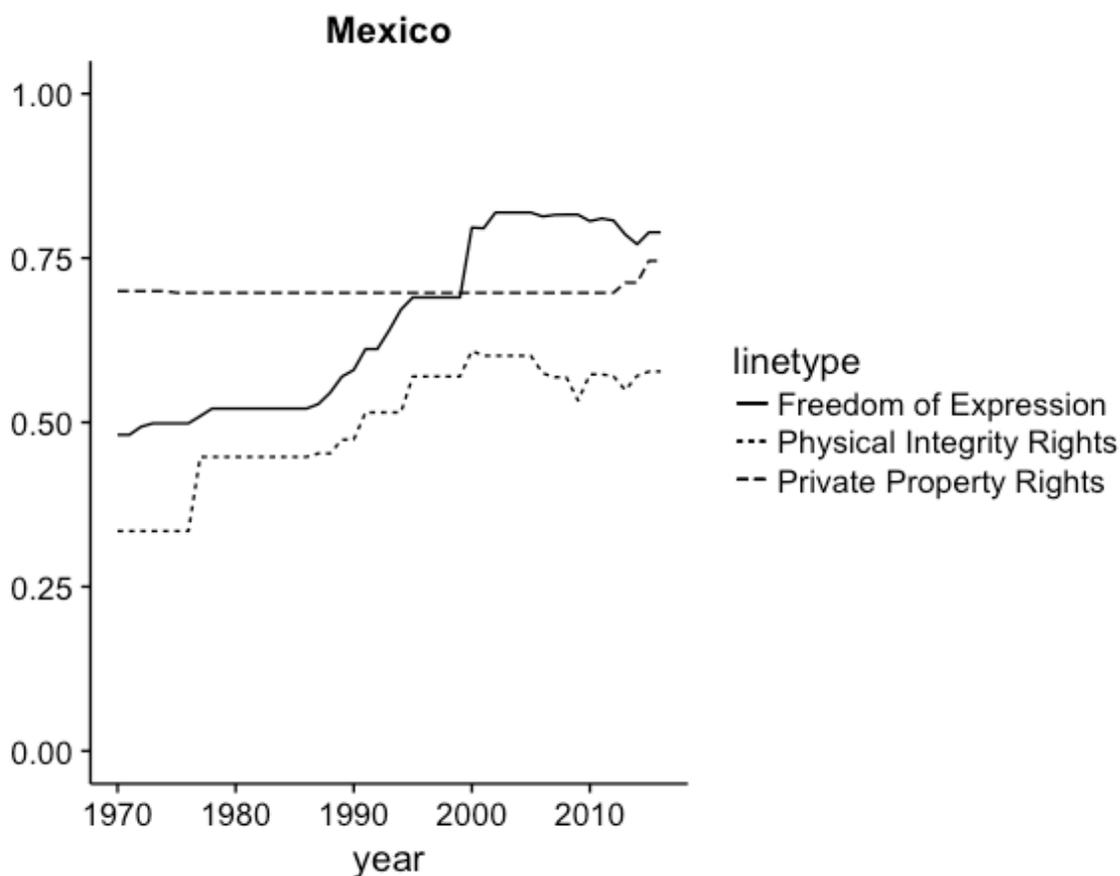
The timeline of Mexico since 1970 reveals a constant high level of respect for private property rights, and an increase in the respect of freedom of expression and physical integrity rights (Figure 3.3). The positive trend in human rights seems to be associated more with the liberalization of the regime than judicial reforms. The big increase in respect for freedom of expression and physical integrity rights happened before 1994. The second advance in respect for freedom of expression is closer to the presidential election of 2000 than to the 2003 reform to *amparo*.

3.6   Data

The sample of the data used for the analysis is very similar to the one presented in the previous chapter. Most of the variables are from the V-Dem project, surveying 170 countries from 1900 to 2014. Again I refer to the Appendix (Tables A and B) and the V-Dem codebook for more information on the variables and methodologies (Coppedge et al., 2015a).

Judicial Constraints

No existing direct measure matches our concept of judicial constraints, but we can use the judicial independence and judicial enforcement (termed judicial compliance by V-Dem) variables in the V-Dem dataset to construct an index. We should be careful about how we aggregate the components into the index. A simple additive rule would give the same weight to each component, and completely miss the interaction relationship. A simple multiplicative rule would be an improvement but it is also not without its own shortcomings.

To my knowledge, no previous measure has explicitly differentiated between judicial enforcement and judicial independence (see Ríos-Figueroa and Staton, 2014). Existing research has either relied on proxies of judicial enforcement (e.g. Political Risk Service measures) or combined different dimensions in the same index (see the latent variable by Linzer and Staton, 2015). The V-Dem project asks for judicial independence:

> When the high court in the judicial system is ruling in cases that are salient to the government, how often would you say that it makes decisions that merely reflect government wishes regardless of its sincere view of the legal record? (Coppedge et al., 2015a: 197).

And for judicial enforcement (compliance):

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How often would you say the government complies with important decisions of the high court with which it disagrees? (Coppedge et al., 2015a: 198).

Figures 3.4 and 3.5 show the distribution of judicial enforcement and independence by regime type (see next subsection for my conceptualization). It is interesting to note that although democracies have a better record in terms of respect for judicial enforcement and independence, autocracies have a wider variation.

Figure 3.4 Histogram of Judicial Independence by regime type.
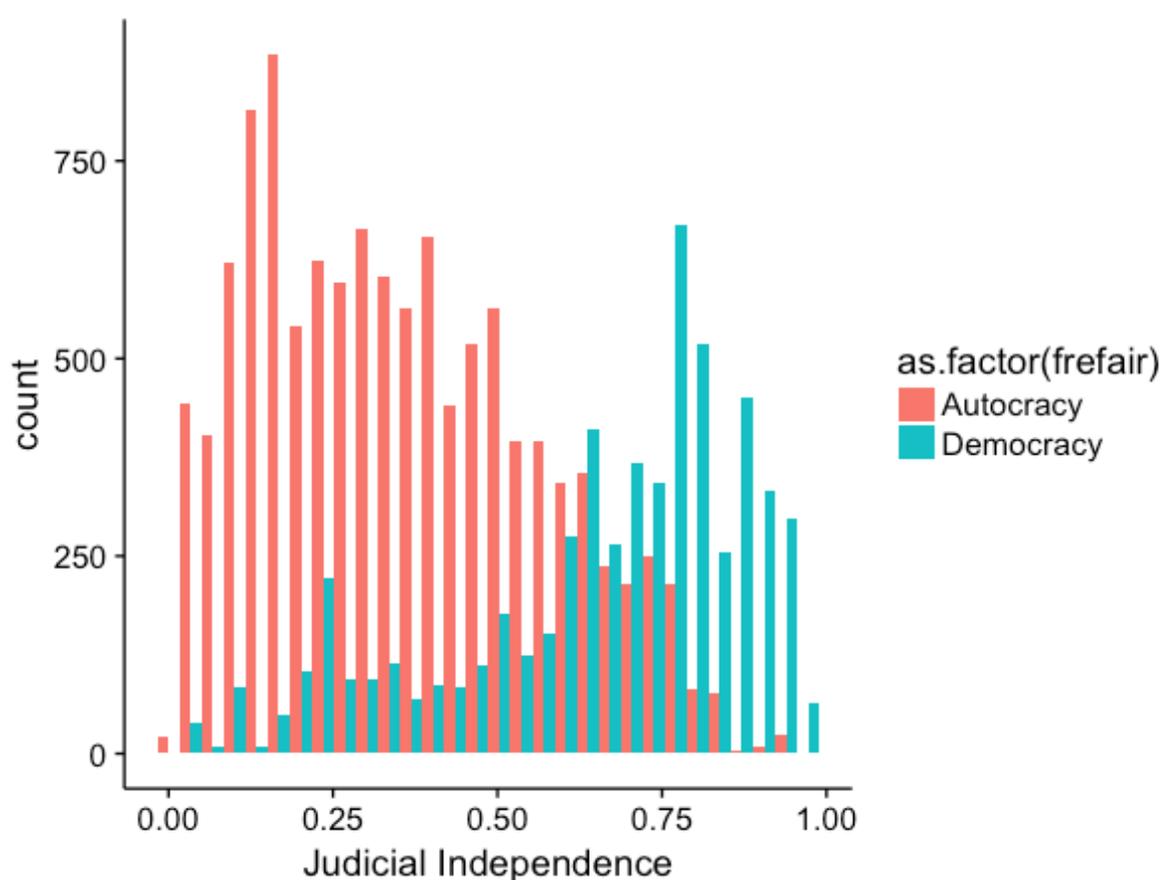
Source: V-Dem.

Figure 3.5 Histogram of Judicial Enforcement by regime type.
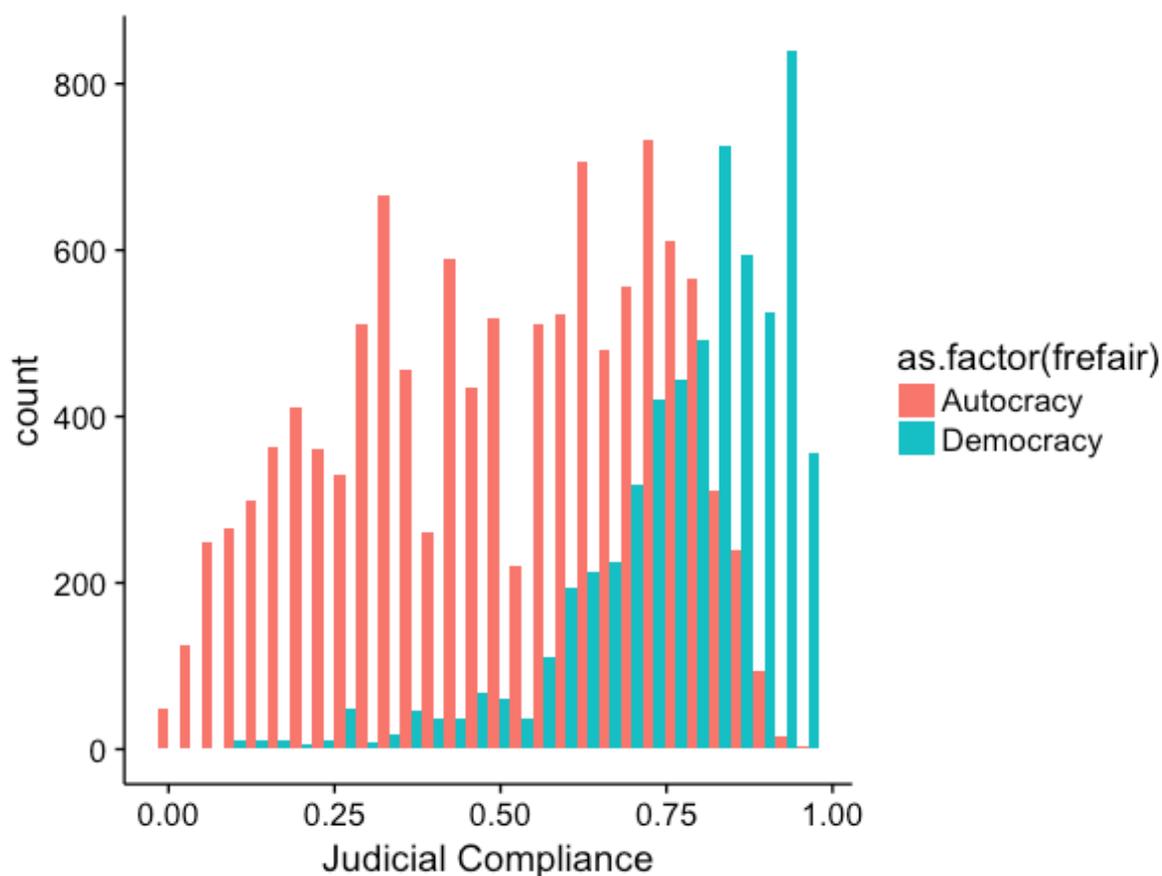
Figure 3.6 shows the distribution of the level of judicial constraints by regime type. For simplicity, I constructed the index so as to have a range from zero to one. In contrast with Figures 3.4 and 3.5, in Figure 3.6 democracies have a uniform distribution, while autocracies have a marked skewedness. This suggests that it is actually very rare for autocracies to simultaneously respect both judicial enforcement and independence.

Figure 3.6 Histogram of Judicial Constraints by regime type.
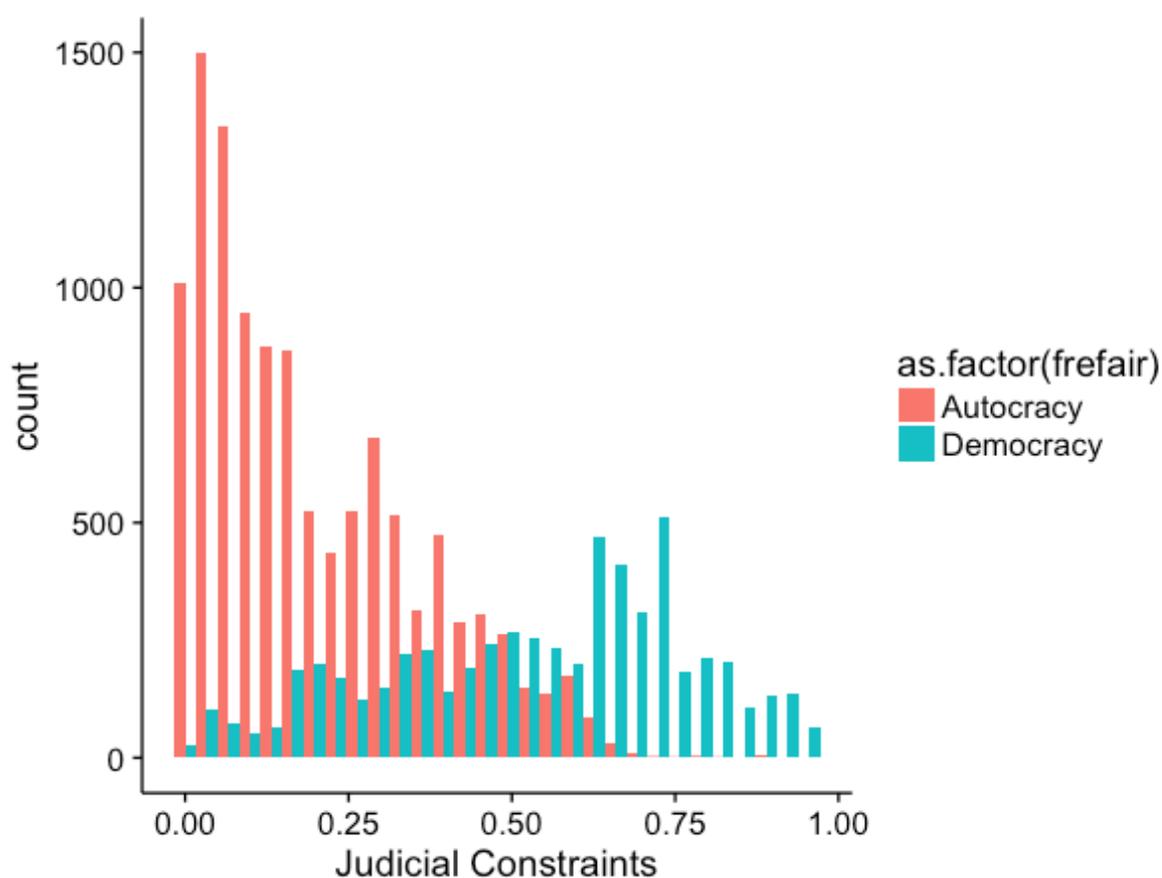
Political Regime

My second variable of interest is political regime. I argued earlier that the effect of judicial constraints on human rights is contingent on the type of political regime. I chose to use Svolik's concept of political regime over previous alternatives (Marshall et al., 2016; Cheibub et al., 2010) because it clearly defines autocracies on their own terms, and not as a residual category of non-democracies. Svolik (2012) provides a straightforward rule to distinguish democracies from autocracies, following Przeworski et al. (2000):

> an independent country that fails to satisfy at least one of the two criteria for democracy: 1) free and competitive legislative elections and 2) an

executive that is elected either directly in free and competitive elections or indirectly by a legislature in parliamentary systems (Svolik, 2012: 22).

However, in departure from Przeworski, Svolik writes:

I do not require that the incumbent and the opposition alternate in power before a country is considered (Svolik, 2012: 24).

Free and competitive elections are certainly necessary for a regime to qualify as democratic, but for many this may be insufficient. What makes a democracy is certainly a thorny issue, but the conceptual distinction from autocracy might be simpler. Svolik views autocracies as regimes where the rules only matter when backed by the threat of force: "the absence of an independent authority that would enforce mutual agreements and the ever-present potential for violence – imply a sharp divergence between authoritarian and democratic politics" (Svolik, 2012: 23). The lack of free and competitive elections simply reflects that whoever is in power has the means to fight for it.

Svolik's own variable is dichotomous, but as the V-Dem Free and Fair Election index reminds us, elections can actually be more or less free and fair. In my analysis, I use the V-Dem continuous index for Free and Fair Elections, and use the 0.5 cutoff point for simplicity in various graphs and as a robustness check in the statistical appendix.

Human Rights

Traditional measures of human rights violations (PTS and CIRI) have relied on country-year reports by the US State Department or Amnesty International (Cigranelli and Richards, 2008; Gibney et al., 2015). Coding teams then translate

these narrative reports into numeric indicators, and regardless of the methodology and robustness at the coding stage, if the source has any bias it will be translated in the measurement. Most quantitative studies of human rights have used measures based on these reports, sometimes addressing specific country-bias, but generally assuming that measurement error is independent of the observations.

Fariss (2014b) focuses on physical integrity rights to assess the changing standard of accountability of the Human Rights reports produced by the State Department, the main source of the CIRI indicators. There are concerns that what counts as a human rights violation (especially torture) might have changed over time for the people that produce the reports. For instance, the reports per country are much longer now than in the 1980s, and the apparent lack of improvement over time globally using the CIRI indicators is puzzling. Fariss uses event-based indicators in addition to standard-based ones to re-estimate the latent physical integrity rights measure and account for a possible change in the standard of accountability. According to his new dynamic measure (it's dynamic in comparison to the constant standard assumption of his previous latent model, see Schnakenberg and Fariss, 2014) (it's dynamic in comparison to the constant standard assumption of his previous latent model, see Schnakenberg and Fariss, 2014), there has been a marked improvement in the last three decades, especially for torture. That improvement in practice had been masked in the reports because simultaneously the standard of accountability increased. Or, to put it another way, physical integrity rights were much worse in the past, but the standards were also lower.

Fariss points to a fundamental flaw in using yearly-produced country reports for time-series analysis: we have no guarantee that the reports will have

the same standard every year. Assessing the changing standard of accountability is challenging, and Fariss's proposal remains an estimation of how things probably were.

The V-Dem project uses a new source of information: for each one of its variables it asks an expert in the subfield and the country/region to retrospectively score the country from 2014 back to 1900. Expert surveys can of course introduce a more direct form of bias, particularly in the human rights and judicial independence fields. For instance, Singapore scores significantly better for judicial independence in the business surveys than in the State Department reports. To address coder bias the V-Dem project has a rigorous selection process. From an initial pool of 18,000 potential country experts, it selects 2,500 according to five criteria: expertise in the country and survey, connection to the country, seriousness of purpose, impartiality, and diversity (Coppedge 2015a, 18). For each country V-Dem has at least 12 country experts, with a target of 5 coders for each country/year/indicator. In a first step to account for uncertainty, in addition to a score, experts are also asked to give a level of confidence for their ratings (Coppedge 2015a, 22). In the measurement model, the diversity of answers by experts is incorporated by an item response theory (IRT) model that uses each answer as an item for a latent variable (Coppedge 2015a, 30). This technique should account for scale inconsistency across coders.

The new measures from the V-Dem project should not have a changing accountability problem because each expert is making an assessment today with a shared methodology. Any discrepancies between experts are translated as uncertainty around the point estimate by the IRT model.

In my analysis, I use the V-Dem indexes of physical integrity rights (measures of torture and killings built upon a Bayesian factor analysis model), freedom of expression, and private property rights. I also conducted robustness checks with the Fariss dynamic (Fariss 2014) and constant (Schnakenberg and Fariss 2014) latent measures.

Figures 3.7 and 3.8 show the distribution of respect of Physical Integrity Rights and Private Property Rights by regime type. Again, the record is markedly better in democracies, but the distribution for autocracies is surprisingly uniform.

Figure 3.7 Density distribution of Physical Integrity Rights by regime type.
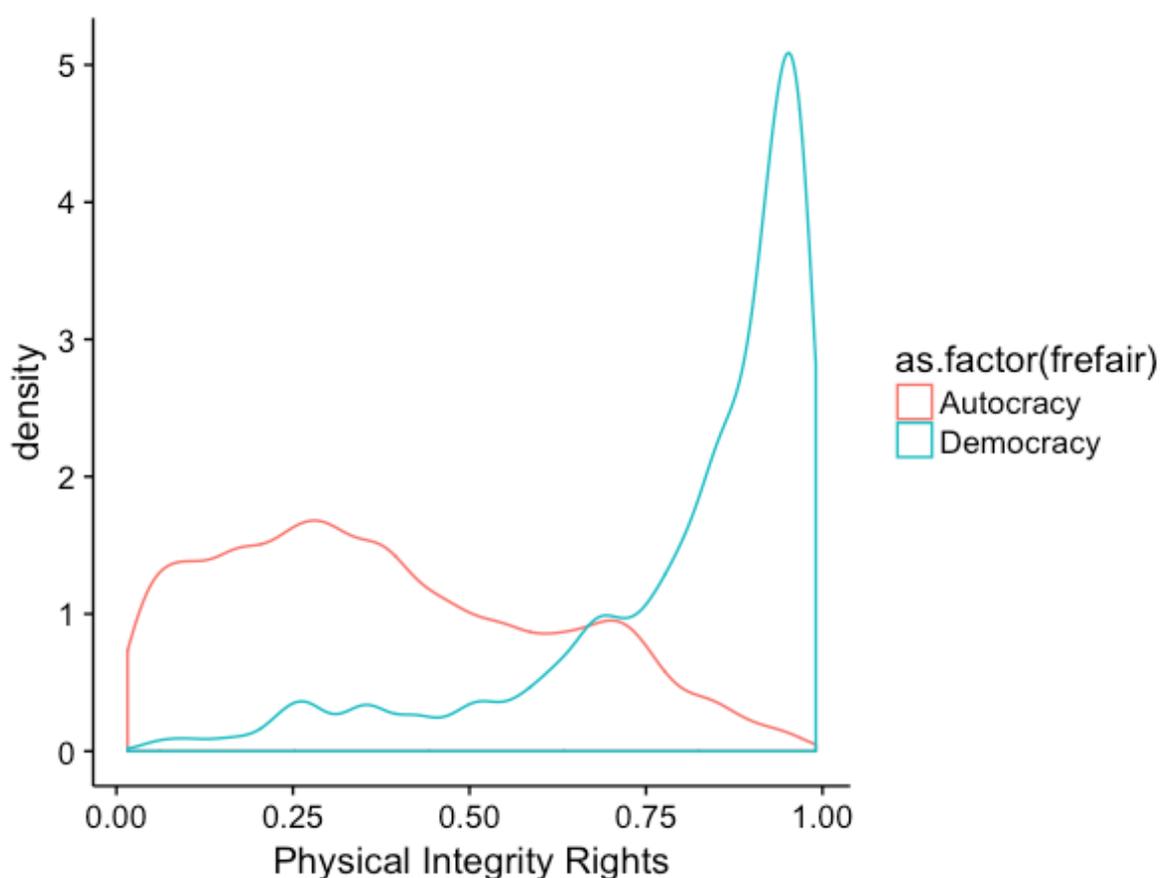
Source: V-Dem.

Figure 3.8 Density distribution of Private Property Rights by regime type.
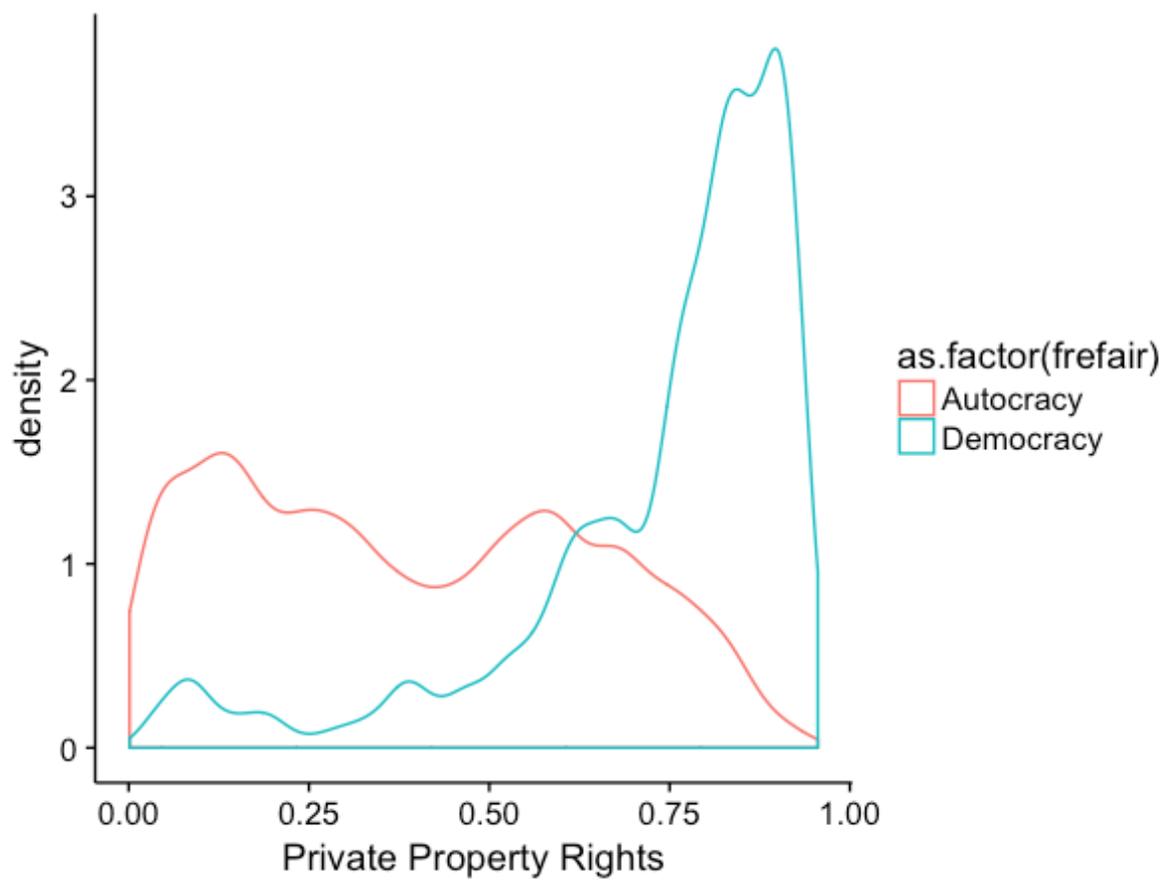
In Figure 3.9, the distribution of respect of Freedom of Expression is much more marked along type of regime.

Figure 3.9 Density distribution Freedom of Expression by regime type.
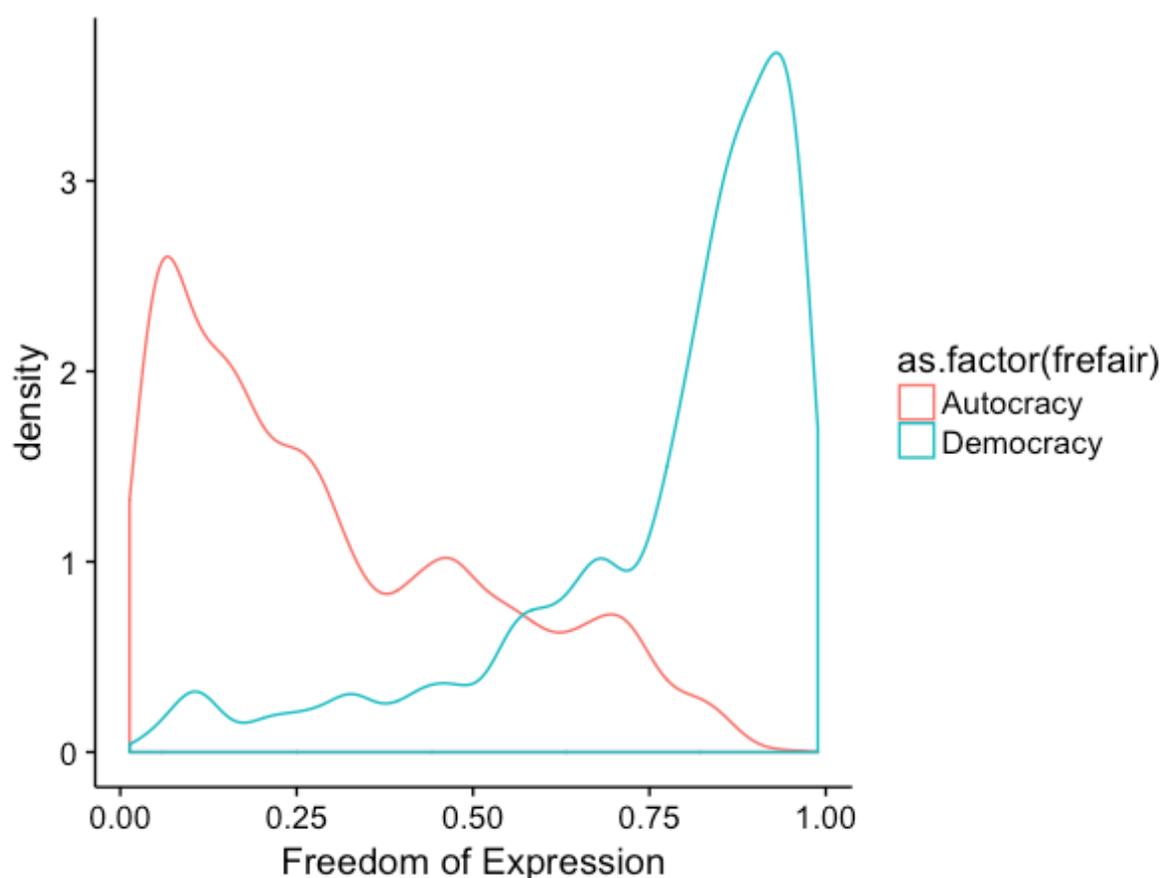
Source: V-Dem.

<u>Control Variables</u>

To conduct a proper statistical test, we need to include relevant control variables. The first studies in the literature hypothesized and found a lineal negative relation between democracy and repression (Hibbs, 1973; Ziegenhagen, 1986) and then between democracy and human rights violations (Davenport, 1999; Mitchell and McCormick, 1988; Poe and Tate, 1994; Zanger, 2000). In a second stage, scholars explored the possibility of a quadratic relationship between political regime and human rights protection (Fein, 1995; King, 1998; Reagan and Henderson, 2002). They hypothesized that ambiguous regimes, those falling somewhere between autocracies and democracies, caused more repression, leading to the catchphrase:

"more murder in the middle". In a third stage academics looked into a threshold relationship (Bueno De Mesquita et al., 2005; Davenport and Armstrong, 2004). In this model, the positive effects of democratic institutions on human rights protection are expected to occur only past a certain point. Only when the system of institutions starts to work as a whole and the costs of repressions become too high does the political regime have an impact on human rights protection. Bueno de Mesquita and his colleagues recognized the issue of the multidimensionality of democracy (Bueno De Mesquita et al., 2005). They deconstructed the regime into several institutions in order to isolate the effects of each one over the protection of human rights. They conclude that:

> First, political participation at the level of multiparty competition appears more significant than other dimensions in reducing human rights abuses. Second, improvements in a state's level of democracy short of full democracy do not promote greater respect for integrity rights. Only those states with the highest levels of democracy, not simply those conventionally defined as democratic, are correlated with better human rights practices. Third, accountability appears to be the critical feature that makes full-fledged democracies respect human rights; limited accountability generally retards improvement in human rights. (Bueno De Mesquita et al., 2005: 439)

In the "Standard Model", Keith (2012) summarizes the usual suspects of human rights violations. These control variables include measures of: regime type, conflict, economic development, population size, and colonial experience. To take advantage of the large size of the sample coverage of the V-Dem measures used for the dependent and explanatory variables, I use three V-Dem measures of political regime attributes. Measures of military regime and leftist regimes severely constrain the time coverage, but are not particularly interesting (see

Table A in the Appendix). Together with colonial experience I exclude them from

the main models because they do not change the results substantively. Tables A

and B in the Appendix summarize the properties of the variables.

Data Visualization

With data on our independent, dependent, and contextual variables, we can have

a first look at the relationship between them. Figures 3.10, 3.11, and 3.13 show

more or less the same trends. It seems as though all categories of human rights

are positively correlated with Judicial Constraints. Differences across regimes

are more about the starting point (the intercept) than the slopes of the

regression lines.

Figure 3.10 Scatterplot with fitted lines (OLS) of Judicial Constraints over Physical Integrity Rights by regime type.

The Judiciary, Physical Integrity Rights, and Political Regime
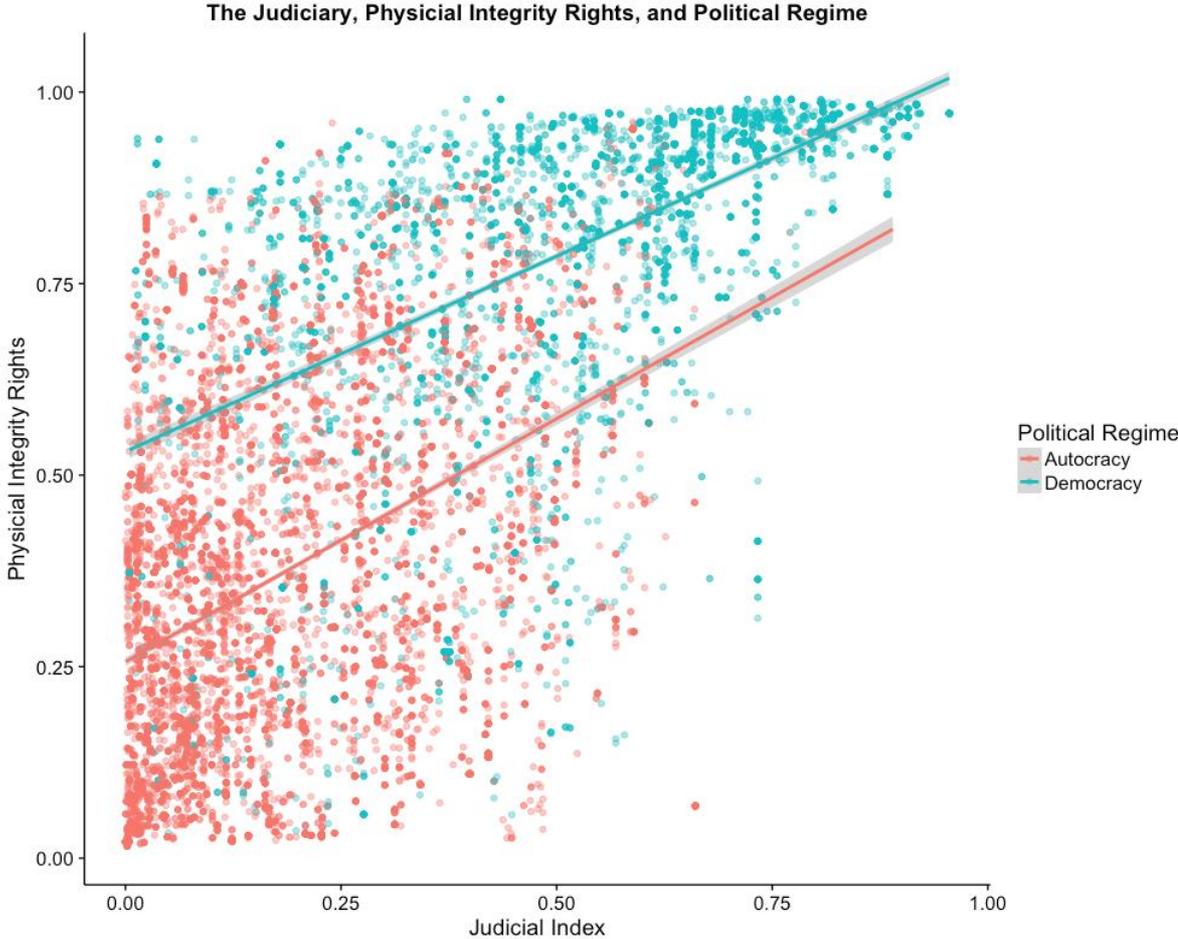
Source: V-Dem.

Figure 3.11 Scatterplot with fitted lines (OLS) of Judicial Constraints over Freedom of Expression by regime type.

The Judiciary, Freedom of Expression, and Political Regime

Figure 3.12 Scatterplot with fitted lines (OLS) of Judicial Constraints over Private Property Rights by regime type.

The Judiciary, Private Property Rights, and Political Regime

Of course, this is a first approximation, a rough look at the data. A more careful analysis is conducted in the next section.

3.7 Analysis and Results

Working with a time-series cross-sectional dataset entails the likelihood of problems of serial correlation (the error term being correlated from one time period to the next) and heteroskedasticity (unequal variances across units), both of which would lead to biased standard errors. I use a 1-year lead as the dependent variable on the left-hand side of the equation and introduce the dependent variable in the current year as a control, to allow for past levels of violation that are explained in part by present levels of violations, and to address potential problem of serial correlation. Robust standard errors to heteroskedasticity are estimated using White's method across countries. The equation we are estimating is formally:

$$
\begin{aligned}
HumanRights_{i,t+1} \\
= HumanRights_{i,t} + JudCon_{i,t} + Elections_{i,t} + JudCon_{i,t}*Elections_{i,t} \\
+ Controls_{i,t} + \alpha_{i,t}
\end{aligned}
$$

Where $JudCon$ is the continuous measure of judicial constraints, $Elections$ the continuous measure of free and fair elections, and alpha the unobservable time-invariant country effect[2]. The unit of analysis is country-year, denoted by the subscripts i and t in the equation. Because the dependent variable is continuous, we can simply estimate the model by OLS.

---

[2] The unobserved time-invariant country effect (such as culture and history) cannot be estimated, but can be eliminated by demeaning the variables using the within transformation of the fixed effects model.

Most of the variables in the V-Dem project are mean estimates with an uncertainty that can be recovered. Schnakenberg and Fariss (2014) recommend using this uncertainty in statistical inference models following the same procedure as with multiply imputed missing data. First, the standard deviation of the point estimates is used to create a number of "simulated" datasets. Statistical estimations are then performed using the "imputed" datasets. Finally the estimates are combined using the Rubin (1987) formulas.

I present the results of the OLS regression output with diagrams instead of the traditional tables (for those refer to the Appendix, Tables F and G). For each model I represent with a point the coefficient estimates of all variables in the regression (excluding the intercept and the lagged variable). The lines represent the 95% confidence intervals. The interpretation of the coefficients is rather straightforward for the political institutions variables, because all of them, along with the dependent variables, are on a 0 to 1 continuous scale.

To restate the theoretical expectations: better political institutions (Legislative Constraints, Free and Fair Elections, Free Political Association) should increase respect for human rights; conflict, on the other hand (domestic and international), should decrease respect. In theory, more population will have a negative effect, and economic development and growth a positive effect, but we can expect from previous empirical results that the effects will be very small.

My hypotheses state that the impact of judicial constraints will change across political regimes and between specific human rights. I posit that private property rights will be protected by judicial constraints in both democracies and autocracies. Thus, I expect that the coefficient of judicial constraints will be

positive and statistically significant, and that the coefficient of the interaction term will be indistinguishable from zero. In the case of physical integrity rights and freedom of expression, I posit that judicial constraints will promote them only in democracies. I expect that the coefficients will be indistinguishable from zero, but that the interaction term will be positive and statistically significant.

Coefficients Results

Figure 3.13 13 Estimated OLS model results for Private Property Rights.
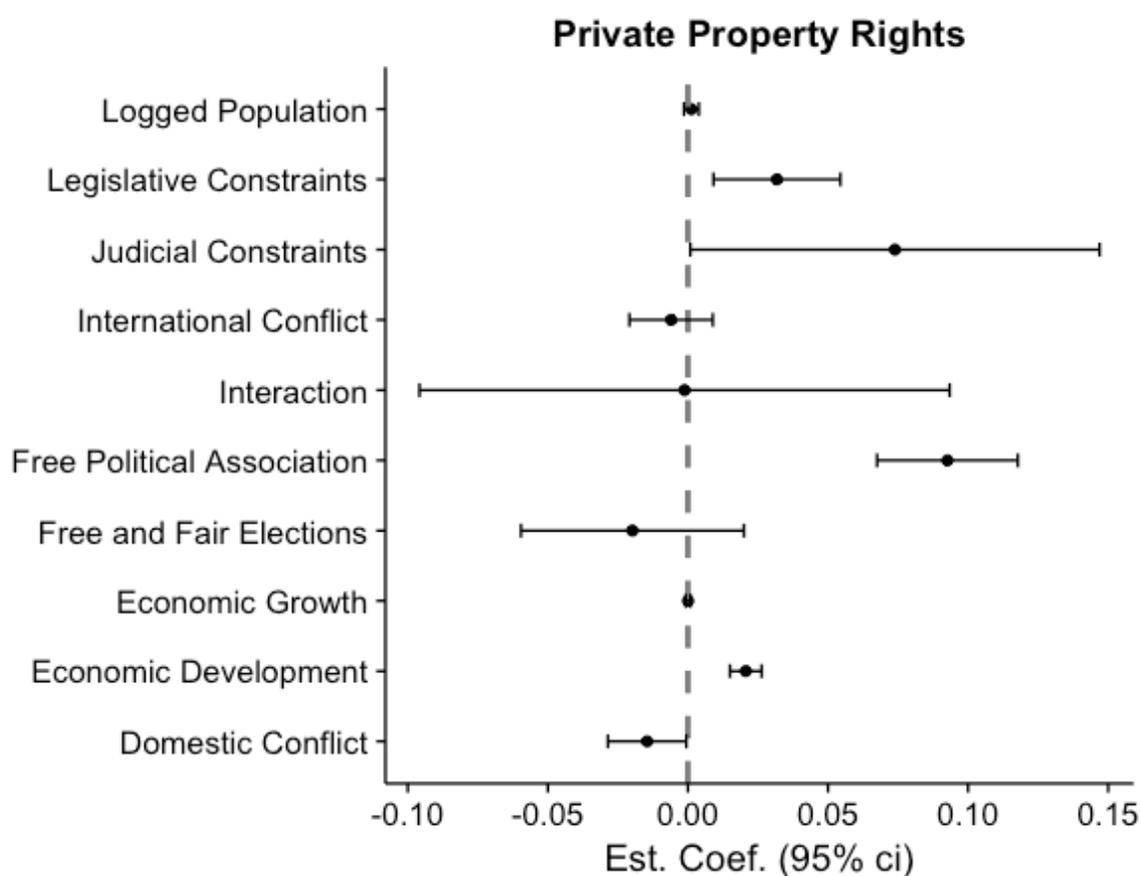
In Figure 3.13, the Judicial Constraints coefficient is positive and the effect statistically significant at 95% level of confidence. The interaction term coefficient (for Free and Fair Elections and Judicial Constraints) is indistinguishable from zero. The evidence supports my hypothesis for private property rights. The effect

of judicial constraints on private property rights is positive and similar across political regimes. Interestingly, the Free and Fair Elections coefficient is not statistically significant in this model.

Figure 3.14 Estimated OLS model results for Freedom of Expression.
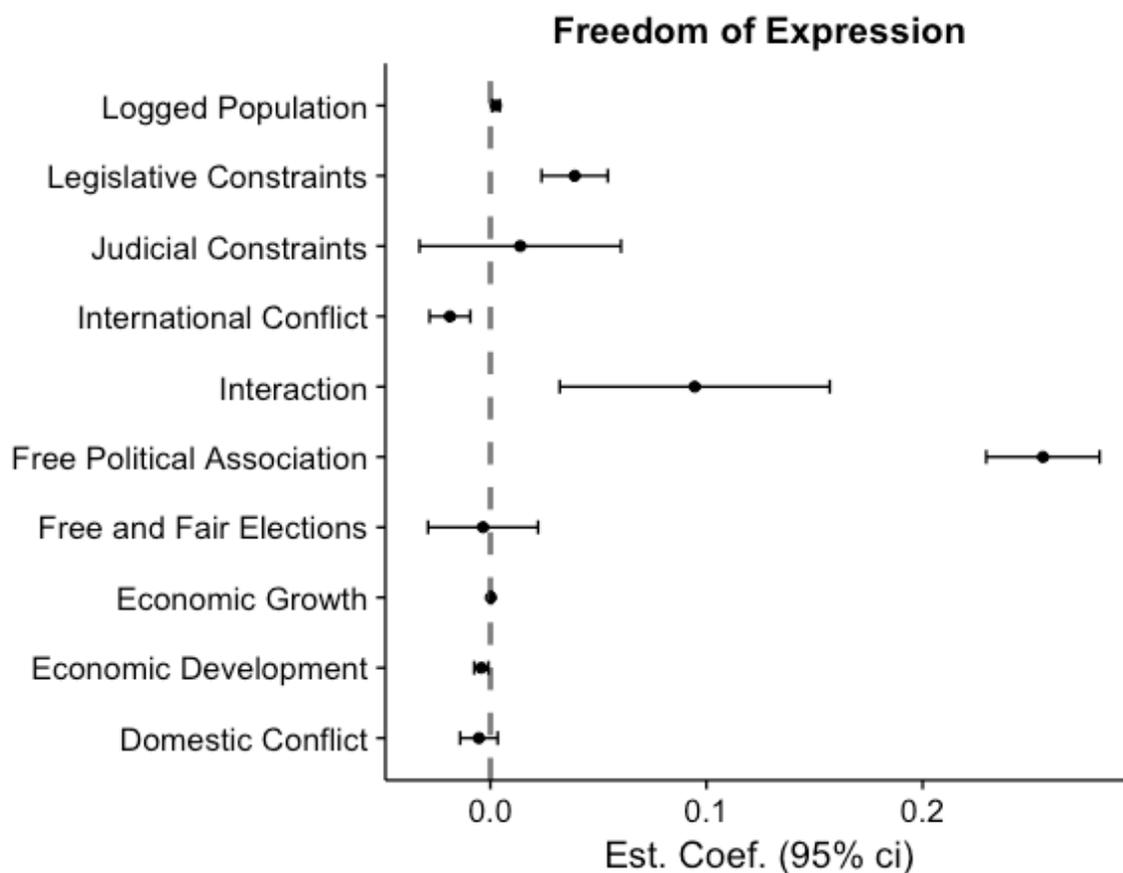
In Figure 3.14, the Judicial Constraints coefficient is indistinguishable from zero. The interaction term coefficient is positive and the effect statistically significant at 95% level of confidence. The evidence supports my hypothesis for freedom of expression. The effect of judicial constraints on freedom of expression is positive only in democratic regimes. Again, the Free and Fair Elections coefficient is not statistically significant.

Figure 3.15 Estimated OLS model results for Physical Integrity Rights.
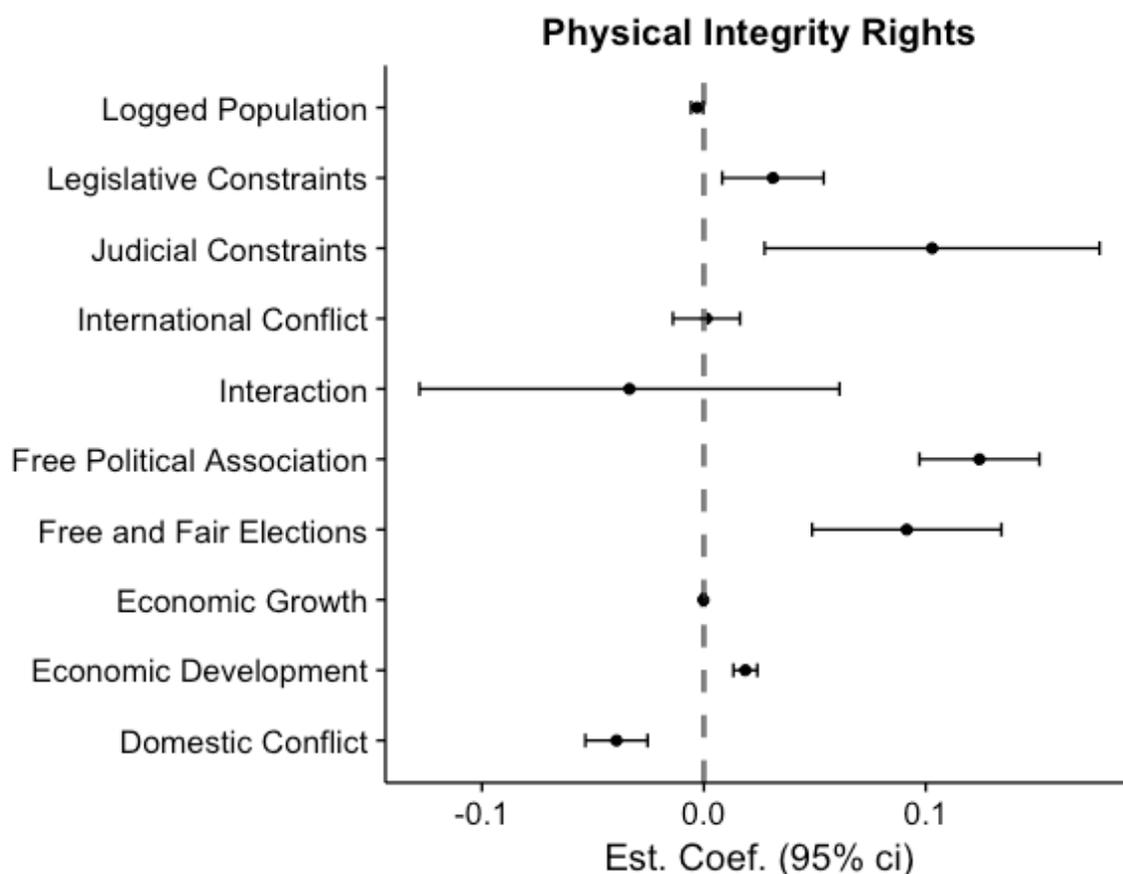
In Figure 3.15, the Judicial Constraints coefficient is positive and the effect statistically significant at 95% level of confidence. The interaction term coefficient is indistinguishable from zero. The evidence does not support my hypothesis for physical integrity rights. It would seem the effect of judicial constraints on physical integrity rights is positive and similar across political regimes. The rest of the control variables have the expected coefficients.

These results are robust to using alternative dependent variables with the Fariss dynamic (Fariss 2014) and constant (Schnakenberg and Fariss 2014) latent measures (see Table H in the Appendix).

Marginal Conditional Effects

To better appreciate the interaction effect that regime type has on the impact of Judicial Constraints on the categories of human rights, I present marginal conditional effects graphs.

Figure 3.16 Interaction effect of Judicial Constraints and Free and Fair Elections for Private Property Rights.
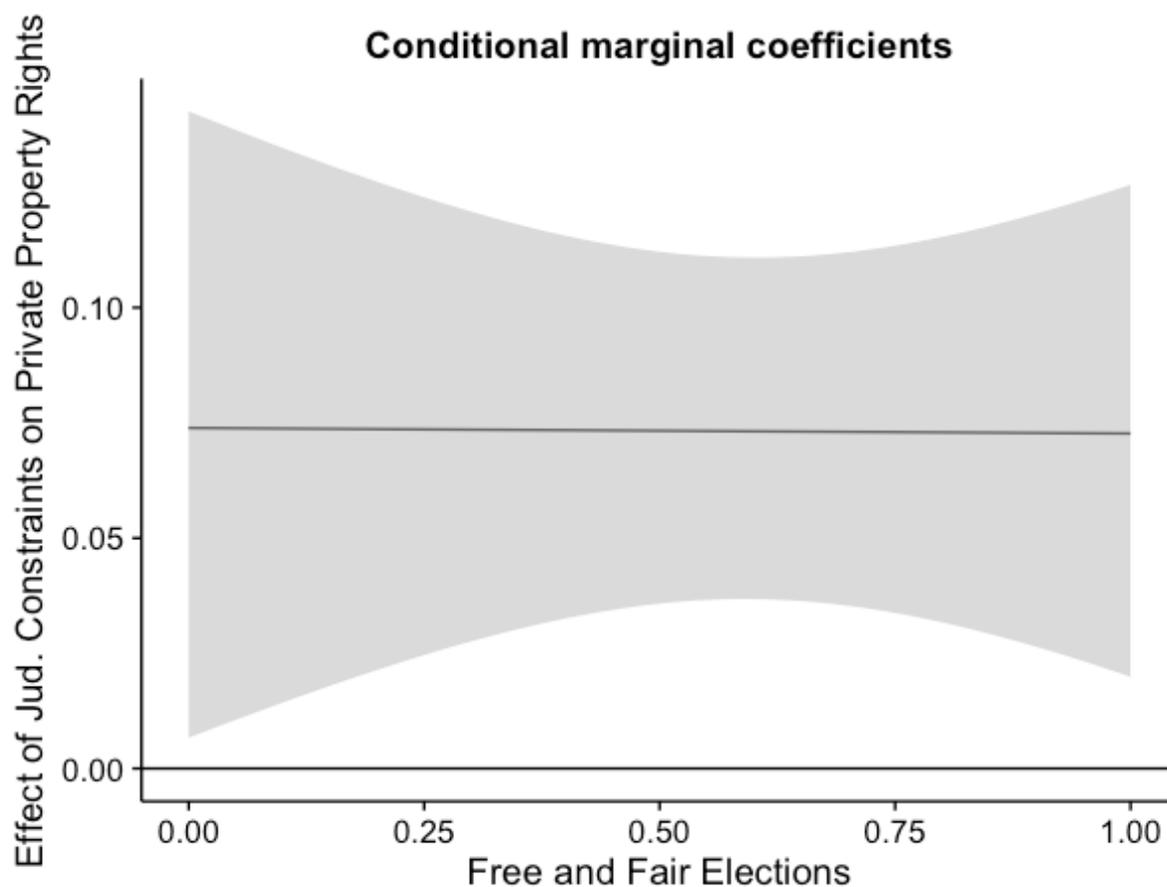
In Figure 3.16, as the Free and Fair Elections continuous variable increases, the coefficient of Judicial Constraints remains the same and the effect statistically significant at 95% level of confidence.

Figure 3.17 Interaction effect of Judicial Constraints and Free and Fair Elections for Freedom of Expression.
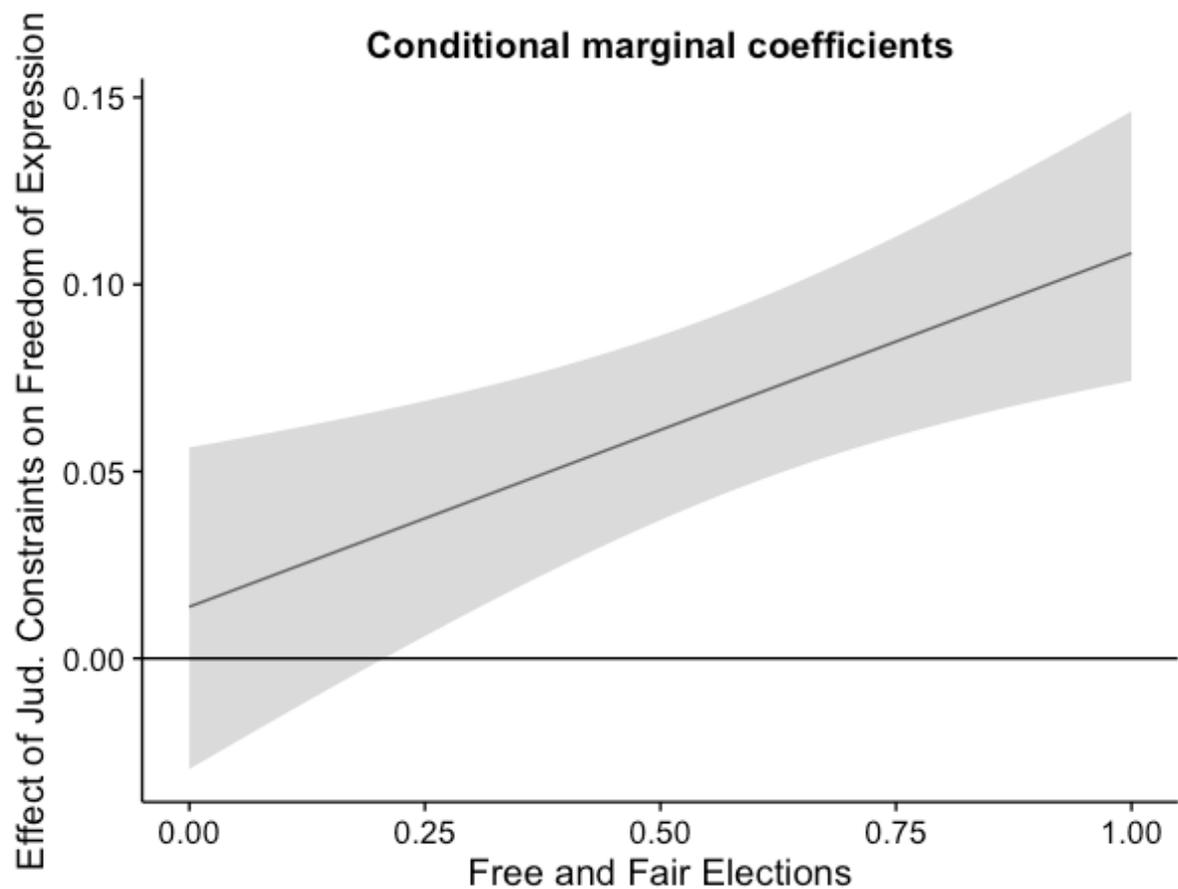
In Figure 3.17, as the Free and Fair Elections continuous variable increases, the coefficient of Judicial Constraints increases and the effect becomes statistically significant at 95% level of confidence.

Figure 3.18 Interaction effect of Judicial Constraints and Free and Fair Elections for Physical Integrity Rights.
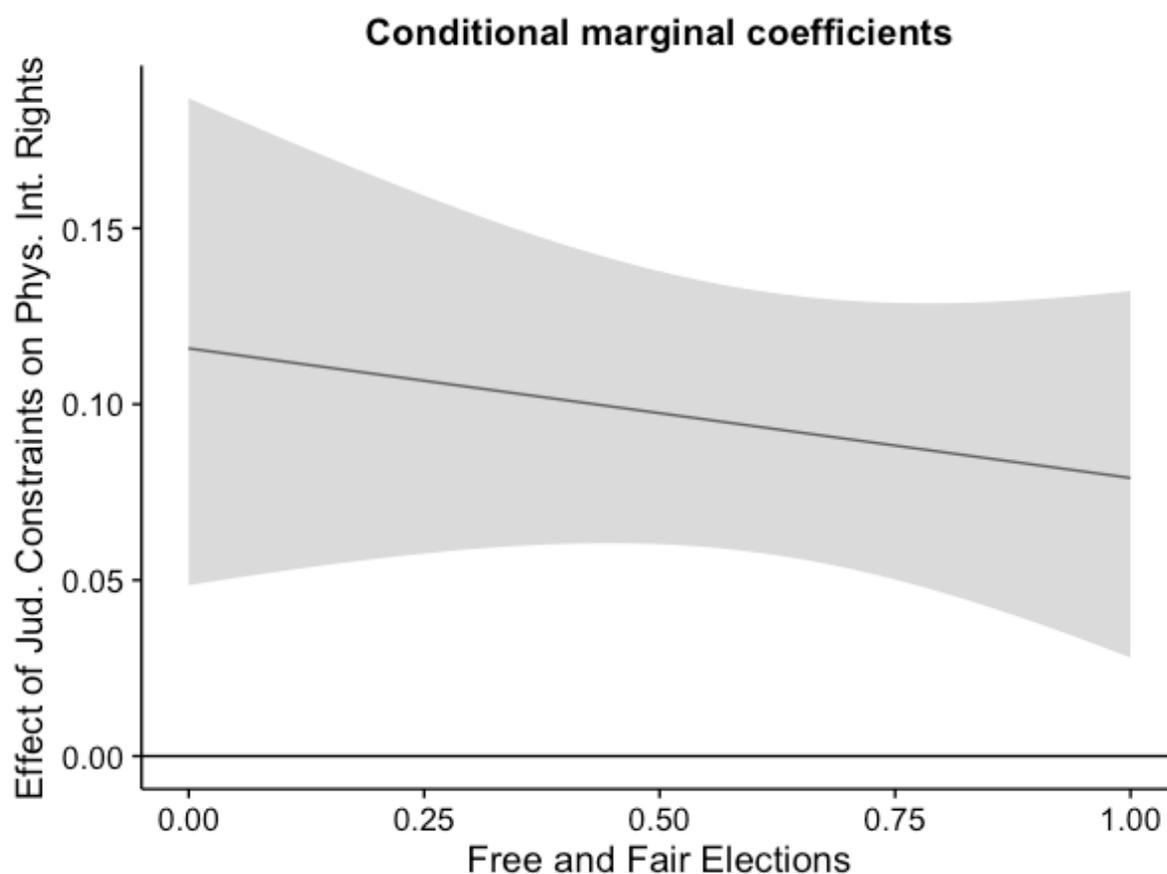
In Figure 3.18, as the Free and Fair Elections continuous variable increases, the coefficient of Judicial Constraints decreases and the effect continues to be statistically significant at 95% level of confidence.

Closer Look at Physical Integrity Rights

Is it possible that judicial constraints actually limit physical integrity rights violations in both autocracies and democracies, and at broadly the same magnitude? A closer look at the constitutive terms of the physical integrity rights index is in order. I perform the same tests done with Physical Integrity Rights index, with the measures of Torture and extrajudicial Killings from the V-Dem dataset.

Figure 3.19 Estimated OLS model results for Torture.
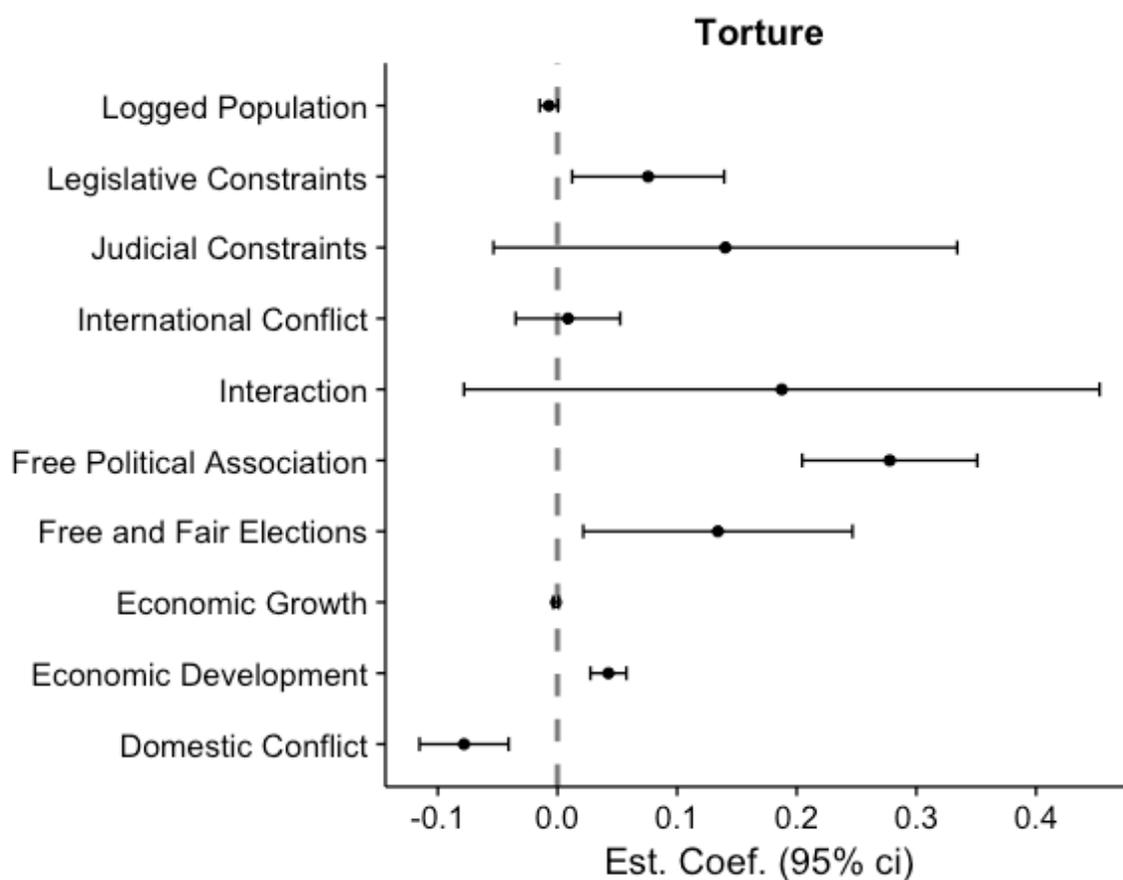
In Figure 3.19, the Judicial Constraints coefficient is indistinguishable from zero. The interaction term coefficient is positive but the effect not statistically significant at 95% level of confidence. The rest of the control variables have the expected coefficients. The lineal combination of Judicial Constraints and the interaction term coefficients is positive and the effect statistically significant at 95% level of confidence. The evidence supports my hypothesis for the use of torture.

Figure 3.20 Interaction effect of Judicial Constraints and Free and Fair Elections for Torture.
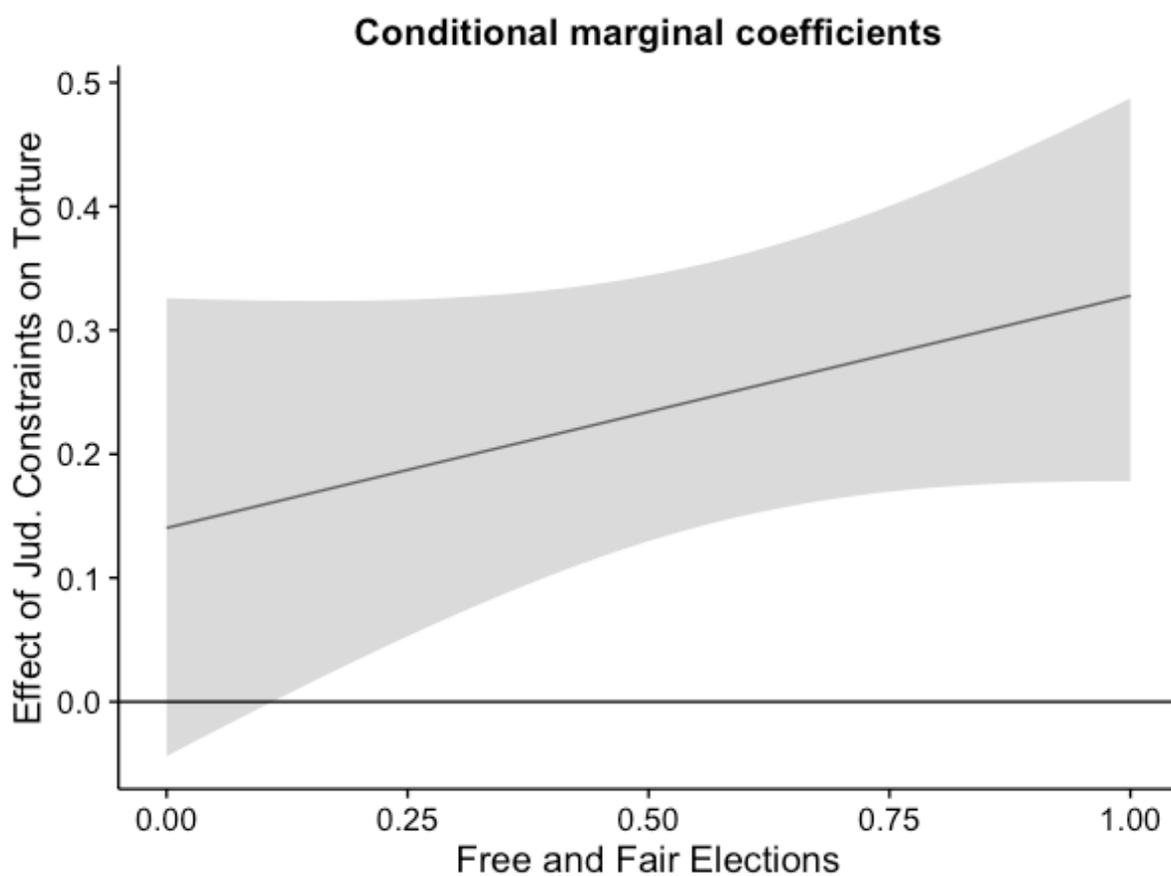
In Figure 3.20, as the Free and Fair Elections continuous variable increases, the coefficient of Judicial Constraints increases and the effect becomes statistically significant.

Figure 3.21 Estimated OLS model results for Extrajudicial Killings.


Killings
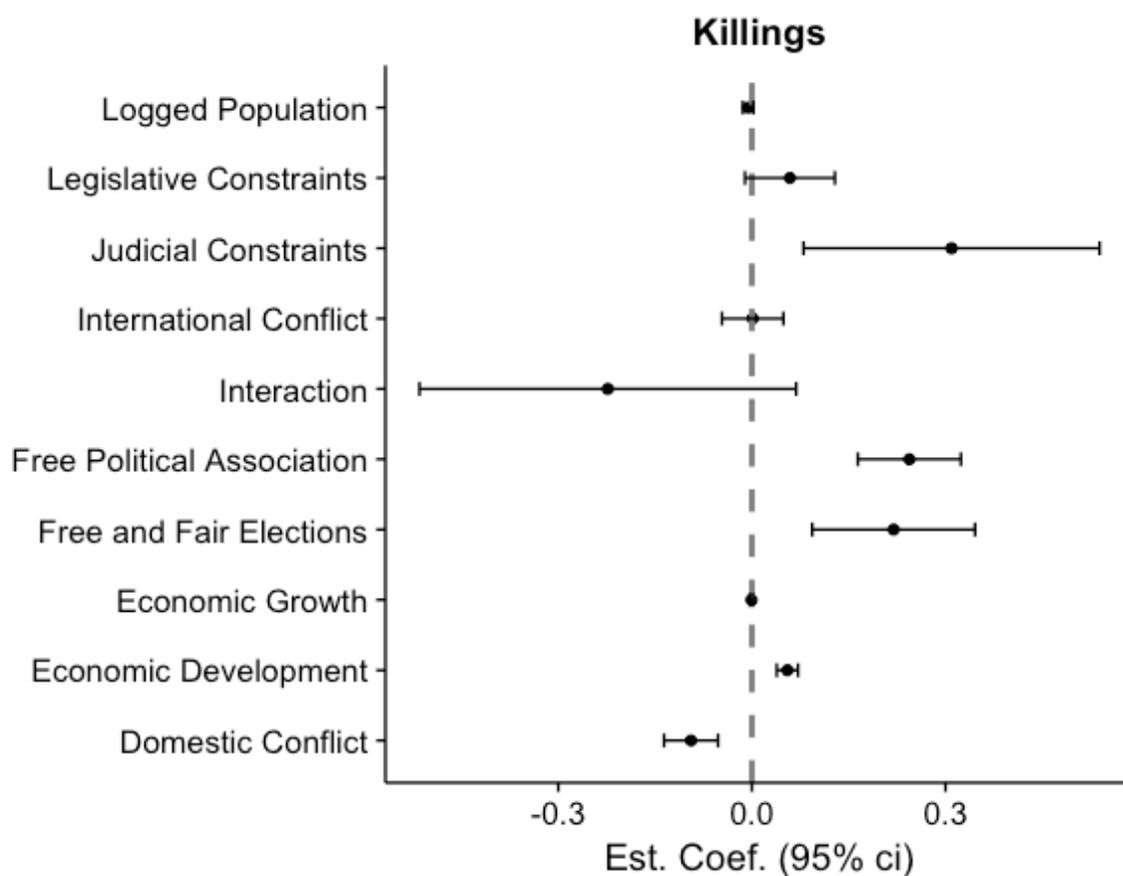
In Figure 3.21, the Judicial Constraints coefficient is positive and the effect statistically significant at 95% level of confidence. The interaction term coefficient is negative and indistinguishable from zero. The evidence does not support my hypothesis for extrajudicial killings. The rest of the control variables have the expected coefficients.

Figure 3.22 Interaction effect of Judicial Constraints and Free and Fair Elections for Extrajudicial Killings.

Conditional marginal coefficients
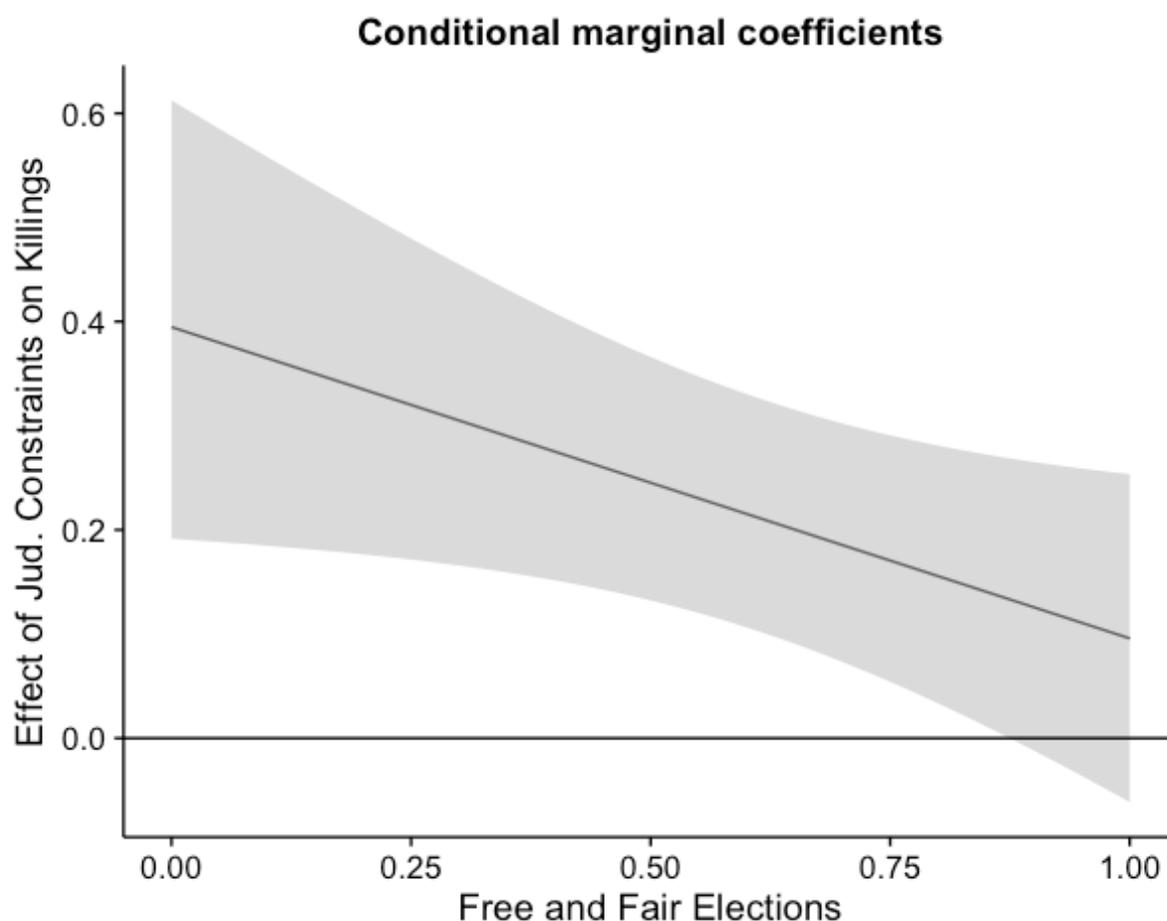
In Figure 3.22, as the Free and Fair Elections continuous variable increases, the coefficient of Judicial Constraints decreases and the effect loses its statistical significance at 95% level of confidence. This is the most unexpected result. It suggests that judicial systems are capable of constraining authoritarian states' use of extrajudicial killings (at a high magnitude), but somehow do not constrain democracies' use of extrajudicial killings.

Here, it might be useful to look at expected values of extrajudicial killings. I first simulated each coefficient by picking 1000 estimates from a multivariate random normal distribution with parameters of the mean equal to the coefficient, and the standard deviation equal to the variance-covariance matrix. I then

multiplied the simulated coefficients with the set values of interest and extracted the confidence interval (this is similar to what the clarify package does in STATA). I repeated this procedure for each of the 1000 regressions performed previously, and then took the average results.

The expected values are calculated at the mean of the continuous control variables, and at 0 for the dichotomous variables (international and conflict variables). The square, circle, and lozenge in Figure 3.23 represent the expected values of extrajudicial killings at 1, 0.5, and 0 levels of Judicial Constraints index respectively. The red brackets represent the confidence interval at 95% level.

Figure 3.23 Expected values of Extrajudicial Killings over Free and Fair Elections at different levels of Judicial Constraints.
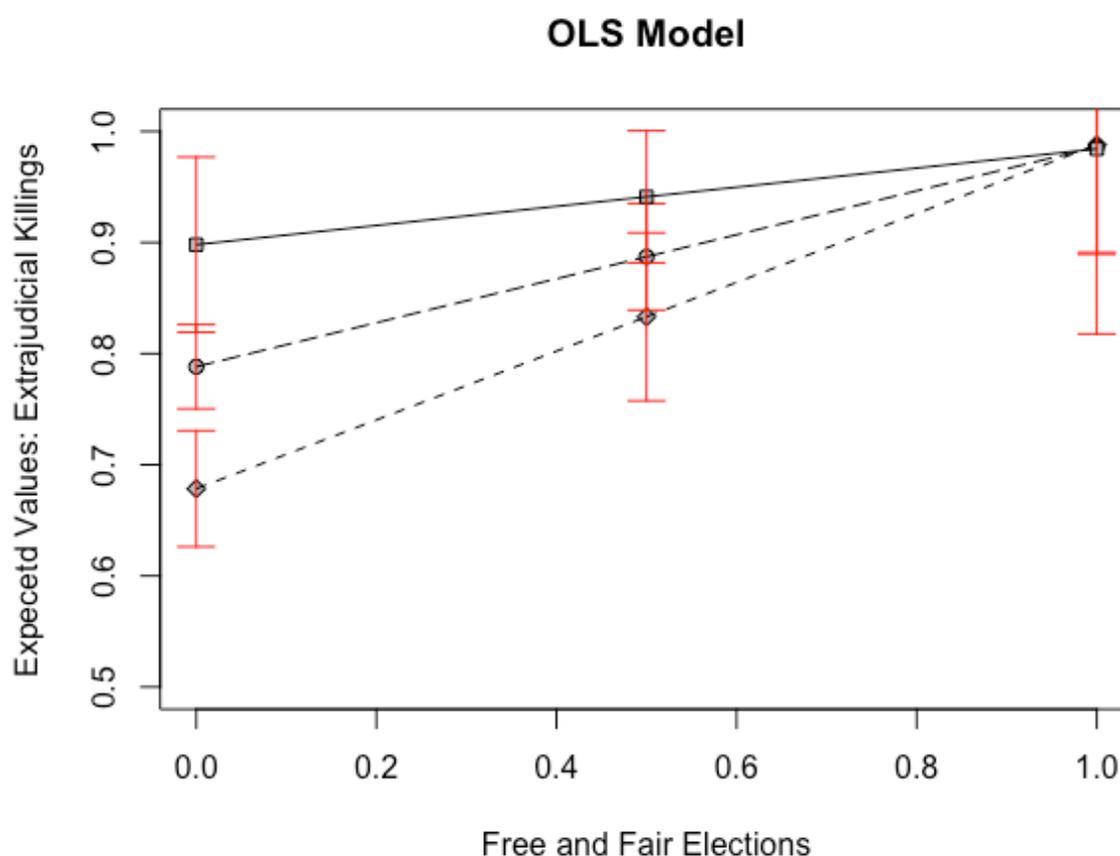
95% confidence intervals (the square, circle, and lozenge represent the levels of Judicial Constraints at 1, 0.5, and 0 respectively)

In Figure 3.23, what should now become clear is that at high levels of Free and Fair Elections, Judicial Constraints do not postitively impact the levels of extrajudicial killings because those levels are already close to the upper limit. At the set values of the control variables, the occurance of extrajudiical killings in democracies is so rare that increasing Judicial Constraints has no significant effect. The lack of impact is explained by a ceiling effect.

On the other hand, there is room for improvement in autocracies (at the same values of the control variables). For instance, at a value of 0 for Free and Fair Elections, the index of Extrajudicial Killings can improve from around 0.7 to 0.9, if we move from no to full Judicial Constraints.

3.8   Implications and Conclusion

Judicial constraints are important for the protection of human rights, but this is the case more in democracies than in autocracies.

Irrespective of regime type, increased judicial constraints have a positive and significant impact on the safeguarding of private property rights, in a magnitude higher than the effect of legislative constraints, and similar to the effect of free and fair elections or free political association (see Figure 13). Autocracies can thus substitute the role of democratic institutions with increased judicial constraints to guarantee private property rights and attract investment.

The illustrative cases of Singapore, Chile, and Mexico, rather than being outliers, are representative of a broader category of autocratic regimes. It must be noted that judicial constraints are one of the few things that dictators can improve to promote private property rights. When Robert Mugabe started to attack and

compromise judicial independence in Zimbabwe in the year 2000, there were no institutions left that could continue to protect private property rights, and the domestic economic situation quickly deteriorated.

The singular importance of judicial constraints in autocracies could lead us to believe that judges would take advantage of their position to promote not only private property rights, but also civil and political, and physical integrity rights. This was actually part of the story in the democratization of Taiwan, but other than that, in most autocracies where judicial constraints are in place, judges do not advocate for human rights protections in general.

I theorized that dictators have a number of strategies to keep independent judges from ruling against the regime in politically sensitive cases. Legalization, complicity, and insulation are non-exclusive strategies that dictators can pursue to place judicial constraints on private property rights, but not on civil and political, or physical integrity rights.

The evidence shows support for my hypotheses, but with an important caveat. In democracies, judicial constraints work as they should, promoting private property rights, freedom of expression, and freedom from torture (see Figures 16, 17, and 20). That judicial constraints do not have a significant effect on reducing extra-judicial killings in democracies can be explained by a ceiling effect: the average level of extra-judicial killings in democracies is already so low that there is no space to improve any further (see Figures 22 and 23).

In autocracies, increased judicial constraints are not associated with a better record of freedom of speech or freedom from torture (see Figures 17 and 20). As I expected, dictators seem to mould judicial constraints into equilibria, and prevent judicial institutions from becoming actual constraints. Surprisingly, this

is not the case for extra-judicial killings. The evidence suggests that in autocracies, judicial constraints do have a positive effect in decreasing the number of extra-judicial killings – admittedly one of the worst types of human rights violations (see Figure 22 and 23). Why this is the case is still a puzzle to me.

It might be the case that investors are spooked by extrajudicial killings, but not by other types of human rights violations. If that is true, dictators would let the courts constrain them in their use of extrajudicial killings for the same reasons judicial constraints protect private property rights. Although violence in general is a clear determinant of domestic and foreign investment, I am not aware of evidence that extrajudicial killings by the state also decreases investment.

Champions of judicial independence and judicial constraints should take note of these findings. Previous scholarship had argued that judicial independence was always good for human rights, I show that is not the case. Promoting and investing in judicial independence is a noble endeavour, but its impact on human rights is dependent on regime type. The full benefits of judicial constraints only come in democracies. This poses an important challenge of sequencing for human rights advocates. Should efforts to improve judicial constraints in autocracies be pursued? Is this still the right thing to do, even when we know it's highly likely that only private property rights will benefit from increased judicial constraints, and that the economic gains will boost the regime's survival odds? Initial efforts to promote democratization, and investment in judicial constraints only after a successful transition, may make more sense for human rights activists.

4 Political Institutions and Human Rights in Autocracies

Does co-optation lead to more repression?

4.1 Abstract

In this chapter I revisit the impact of political institutions in autocracies on physical integrity rights. In the current literature there seems to be contradictory claims of what that impact would be, based on divergent interpretation of why political institutions emerge in autocracies in the first place. Using the same data as previous studies, I find that after correctly specifying the model estimation, political institutions are not significantly correlated with worse physical integrity rights. I argue that the estimates reported previously are the result of an unintended suppression effect being modelled. Furthermore, the evidence shows that political liberalization (the positive change towards more political institutions) is not significantly correlated with either physical integrity rights, or civil and political rights.

4.2   Introduction

On March 28, 1968, several students in Rio de Janeiro marched against the rise in prices of meals at the university restaurant. The Military Police responded by dispersing the protesters. Some of the students took refuge in the Dungeon restaurant; after a tense stand-off, the police decided to break-in. During the raid, the commander of the MP troops shot and killed Edson Luís de Lima Souto with a point-blank shot to his chest. The assassination of Edson Luís was a critical point in Brazil's political developments.

Preparing to hand back power to civilian rule in 1966, General and President Humberto Castello Branco liberalized the political system to allow two political parties, ARENA (supporting the status quo) and MBD (the legal opposition), to compete in the upcoming elections. By 1967 Brazil had a new General as President, Costa e Silva, and a somewhat functional Congress with an opposition. The new President eased restrictions on labour and political activities. The opposition to the regime became more vocal and open (Skidmore, 1990).

The killing of Edson Luís started a cycle of protest and repression, also known as the Law of coercive responsiveness (Davenport, 2007a). The repression against the students only emboldened the opposition to launch strikes in the major cities in the summer of 1968 (Dávila, 2013). This culminated in the March of the Hundred Thousand in Rio de Janeiro in June 1968. The Junta responded by decreeing Institutional Act 5 in December 13, 1968, which shut down Congress, suspended *habeas corpus*, and laid the way to a harsher National Security Law. Repression was swift and unrestricted.

Why did the military regime liberalize the political system if they were unwilling to tolerate opposition and protests against them? Edson Luís died not only as a direct result of violent repression, but also in part because of the political reforms that made him think that protesting could be tolerated or effective. What is the logic of political co-optation in autocracies and its impact on different forms of control and repression? Specifically, does co-optation in autocracies lead to more repression?

In this paper, I revisit two types of theories that can broadly be summarized as follows: dictators liberalize and change their control and repression strategies because they need to (response theories); or dictators liberalize and change their control and repression strategies because they want to (Machiavellian theory). I formulate two distinct testable sets of hypotheses and review the empirical evidence supporting each.

The response theories (Gandhi, 2008; Vreeland, 2008; Conrad, 2014) suggest that institutional co-optation should decrease the control of empowerment rights, and increase the repression of physical integrity rights. The logic of response theories is static. The strategy of control and repression is supposed to be constant (*ceteris paribus*) and only changes across regimes. The decrease in control of empowerment rights is seen as a concession of the dictator to the opposition, and the increase in repression of physical integrity rights a response to hold on to power in a more competitive environment. A regime with co-optation institutions should (year after year) have a better record of empowerment rights and a worse record of physical integrity rights than a regime without co-optation institutions.

The Machiavellian theory (Frantz and Kendall-Taylor, 2014) suggests that institutional co-optation *liberalization* should decrease the control of empowerment rights, and increase the repression of physical integrity rights. The logic of the Machiavellian theory is dynamic. The decrease in control of empowerment rights is seen as a ruse of the dictator to draw out the opposition, and the increase in repression of physical integrity rights as the next step in the dictator's plan to get rid of the opposition. But this strategy is necessarily short lived because it depends on the opposition taking the bait and becoming more public. Once it's become clear it's a ploy, what remains of the opposition should go back into hiding. A regime that liberalizes co-optation institutions should (in the short run) have a better record of empowerment rights and a worse record of physical integrity rights.

Using the same database from previous studies, but with an important change in model specification, I find no empirical support for either set of hypotheses. The only robust finding is that institutional co-optation decreases the control of empowerment rights, but there is no significant change in repression of physical integrity rights (consistent with Gandhi, 2008).

4.3   Literature Review

The traditional study of human rights focused on political institutions in democracies. There are a few works that made specific arguments about human rights across autocracies.

Fein (1995) hypothesizes that ambiguous regimes (between autocracies and democracies) are more repressive. She finds that there is no simple lineal relationship between the level of democracy and the respect of human rights.

Using the Gastil index of Democracy she concludes that the worst perpetrators of human rights abuses are not "un-free" countries, but "partially-free" ones.

"Un-free" authoritarian or traditional societies are expected to be less respectful of physical integrity rights than liberal democracies. Nevertheless, because of the stability of the system, violations are less extreme than in "partially-free" countries:

> Some argue [she is referring to Ted Gurr amongst others] that by opening up the possibility of greater class and group conflict, the expansion of democracy actually increases the motives for repression among elites and parties fearing a populist victory. Divided elites, inequality, and violent challengers threatening the legitimacy of the current social order impel the governing elite to resort to repression or state terror. (Fein, 1995: 173)

Davenport (2007b) explores the possibility of a "tyrannical peace" (in contrast to his previous studies on the domestic democratic peace Davenport, 1999; Davenport and Armstrong, 2004; Davenport, 2007a). He uses Barbara Geddes' typologies and dataset on autocracies to hypothesize and test that single-party regimes are less repressive than other forms of autocracies. In short, he argues that single-party regimes are unique in that they can influence the public through non-violent means:

> Although one might question the degree to which single-parties do or do not facilitate the expression of grievances and promote an alternative mechanism of socio-political control, it is clear that, compared with personalist systems, they do provide some venue within which discussion/aspirations/activism can take place – in a sense, it may be the only 'show in town', but at least there is a show. This 'channeling' is essential because without it political authorities are not provided with a non-coercive means of influence, and repression would be expected. (Davenport, 2007b: 490)

There is a marked difference between Fein's "more murder in the middle" argument and Davenport's "tyrannical peace". The incipient debate already points to two diametrical opposite perspectives on the role of political institutions in autocracies.

Afterwards, there is a marked change in the level of detail and specialization in the study of autocracies. For instance, instead of relying only on typologies, more and more scholars start to study the variation in political institutions across autocracies.

Gandhi (2008) and Svolik (2012) seem to agree that, whatever their role, political institutions under dictatorship only emerge in "contested" regimes. The more concentrated power is, the lesser the probability that political institutions will emerge or have any meaningful function.

For Svolik the story starts with the dictator being the "first among equals" of a ruling coalition. But power-sharing is always an imperfect equilibrium under autocracy, because:

> Members of the ruling coalition worry that the dictator could use his position at the helm of the regime to acquire more power and later eliminate them from the ruling coalition (Svolik, 2012: 58).

The fundamental problem of power-sharing is tipped in favour of the dictator in Svolik's model. The dictator has a positive probability to renege on the ruling coalition and concentrate power because information is not perfect, and the coalition faces coordination problems to rebel. To make matters worse, the more power the dictator successfully grabs, the more his appetite grows, increasing the moral hazard of power-sharing (Svolik, 2012: 70).

The ruling coalition needs to address complex problems of information and coordination to credibly deter the dictator's ambition. This is where political institutions come into the picture. Svolik shows empirically that legislatures under authoritarianism are associated with more stable leadership transitions, and that the presence of a single political party positively impacts on the longevity of the regime (Svolik, 2012: 4 and 6). For Svolik this is evidence that political institutions are the design of ruling coalitions seeking to cement the fundamental distribution of power. The narrative of the argument gives agency to the ruling elite that has to overcome commitment, monitoring, and collective-action problems to create a stable contested autocracy: one in which the dictator in turn will not renege because the rest of the ruling coalition can immediately coordinate a rebellion.

On the other hand, Gandhi gives the agency to the dictator. For her, the problem faced is not of "power-sharing", but of "cooperation" or how the dictator manages the political opposition (Gandhi, 2008: 74). Gandhi tells the story of a dictator who has not enough power to govern alone, and thus must make concessions to form a ruling coalition. Political institutions allow for such concessions to be managed in an orderly fashion. Legislatures are "ideal because they allow for an environment of controlled bargaining" and political parties can increase the menu of choice or "contracts" between the opposition and the dictator. Gandhi explains the emergence of political institutions in dictatorships as a function of: the need of cooperation, policy polarization, and strength of potential opposition. Again, it is up to the dictator to offer rent and policy concessions to the opposition to form a ruling coalition; designing political institutions simply eases that task. The more power the dictator already

concentrates, the less likely he will need to make concessions, and subsequently design political institutions.

Under close examination Gandhi and Svolik seem to focus on slightly different aspects of political institutions under autocracy. Svolik's attention is on legislatures and single parties, whereas Gandhi's argument of co-optation makes more sense in the context of multiple parties.

It is still unclear if political institutions play a role in mitigating human rights violations. Jennifer Gandhi shows some evidence in this respect (Gandhi, 2008: 4).

> Due to their extralegal nature, human rights abuses and state terrorism cannot be the object of negotiations between the government and the opposition. [...] In contrast, restrictions on speech, the press, and worker's rights constitute legal pronouncements that are publicly known and applicable to all. As such, we can think of these restrictions, as opposed to the use of political terror, as policies over which the regime and opposition can bargain and, consequently, that are suitable for analysis here. (Gandhi, 2008: 116)

Gandhi does not test her first hypothesis – that institutions in autocracies will have no impact in the protection of physical integrity rights. She focuses on civil liberties and concludes that institutions in autocracies have significant positive effect for freedom of speech and worker's rights, but finds no evidence for freedom of the press (Gandhi, 2008: 123). Gandhi's measure of institutions in autocracies revolves around the presence of legislatures and political parties (Gandhi, 2008: 34). Her argument is that dictators establish institutions to co-opt the opposition and remain in power (Gandhi, 2008: 3).

In contrast to Gandhi, Vreeland (2008) makes a specific argument about the use of torture in autocracies. Along the same lines as Gandhi, he sees the

emergence of multiple political parties as concessions to the opposition, and crucially as evidence of the strength of the opposition. Dictators that face strong legalized political opposition will make use of repression tools like torture more often. For Vreeland, dictators respond to a strong challenger by simultaneously co-opting and giving concessions, and by torturing more.

Conrad (2014) makes a more elaborate argument about opposition political parties and torture in autocracies. She crucially includes in her model the role of an effective judiciary in raising the costs of torturing. But overall, she follows Vreeland in his logic that dictators respond to an increased threat by increasing repression.

> In the absence of an effective domestic judiciary, dictators facing power-sharing opposition engage in more torture than their counterparts who do not share power with the opposition. Because these dictators feel more threatened by their opposition, they provide them with the opportunity to form into legal political parties while simultaneously engaging in torture. (Conrad, 2014: 43)

Frantz and Kendall-Taylor (2014) jump into the debate by embracing both sides, proposing that political institutions in autocracies can promote civil and political rights, but endanger physical integrity rights.

They argue that not all dictators use the same tools of repression, and make an important contribution by testing the effect of co-optation institutions on the repression of empowerment rights and physical integrity rights. Their argument starts by identifying repression of empowerment rights and physical integrity rights as two fundamentally different tools in the dictator's arsenal (Frantz and Kendall-Taylor, 2014: 336). Repression of empowerment rights will have a

broader impact on the general population. Restrictions on freedom of speech and assembly will affect everybody, not just the regime-challengers; it is thus a costly and inefficient tool to remain in power. On the other hand, repression of physical integrity rights is a more precise strategy to target dangerous individuals and remove them from the political competition.

Frantz and Kendall-Taylor argue that a certain type of Machiavellian dictator will offer co-optation institutions to the opposition in order for it to reveal itself and become public. The dictator will not repress empowerment rights and suffer a certain level of public criticism, but he will gain valuable information about his opposition. Once the dictator identifies credible challengers he will surgically target them and remove them via repression of physical integrity rights (Frantz and Kendall-Taylor, 2014: 337).

The paper shows empirical quantitative evidence that the presence of legislative parties in autocracies tends to produce less repression of empowerment rights and more repression of physical integrity rights. I suspect that the causal explanation of this empirical finding is not the one Frantz and Kendall-Taylor put forward (2014: 343).

4.4 Theory

Although Gandhi and Frantz and Kendall-Taylor use similar explanatory variables (co-optation institutions measured by the presence of legislatives parties) and the hypotheses are also similar (co-optation institutions should produce less restrictions of civil rights), the reasoning is not. For Gandhi the improvement in freedom of expression is a real concession won by the opposition in exchange for cooperation. For Frantz and Kendall-Taylor the improvement in empowerment

rights is a ruse of the dictator, and the deterioration of physical integrity rights part of a Machiavellian strategy of repression.

Again, Conrad and Frantz and Kendall-Taylor have similar expectations regarding political parties and physical integrity rights, but the reasoning is very different. For Conrad, the presence of opposition political parties is a reflection of strong dissent, to which the dictator needs to respond with political violence. If the dictator wants to remain in power, more repression in the presence of strong opposition political parties is not an option for the dictator, but rather a response more likely when the costs of torture are not increased by other political institutions (judicial effectiveness). For Frantz and Kendall-Taylor, more repression of physical integrity rights is the objective of the Machiavellian strategy.

The argument put forward by Frantz and Kendall-Taylor is intrinsically about change. More repression of physical integrity rights and less repression of empowerment rights are the consequences of a change of institutions:

> Because institutional co-optation increases dictators' awareness of their opponents, it leads them to *shift* their repressive approach in favor of physical integrity rights violations over empowerment rights restrictions. (Frantz and Kendall-Taylor, 2014: 337)

This is also sustained by the logic of the political opposition:

> These institutions [parties and legislatures] *draw* these individuals [political opposition and the journalists and civil society members who support them] out of the public by *increasing* their incentive to participate within the existing framework rather than in subversive coalitions that are more difficult for the state to monitor. (Frantz and Kendall-Taylor, 2014: 337)

It makes sense to think of how opening the regime might be a strategy of control, but this logic must be short-term. Once the opposition learns that the reforms are only window-dressing it should go back into clandestinity. Why keep playing into the dictator's game?

Following Frantz and Kendall-Taylor, the liberalization of political institutions in autocracies should lead to an immediate but short-lived increase in respect of empowerment rights, associated with a similar increase of violations of physical integrity rights. I believe Frantz and Kendall-Taylor's theoretical argument to be persuasive, but their stated hypotheses do not follow their own reasoning:

Hypothesis 1: Institutional co-optation should decrease the repression of empowerment rights.

Hypothesis 2: Institutional co-optation should increase the repression of physical integrity rights. (Frantz and Kendall-Taylor, 2014: 337)

The formulation above implies that at any given year, a country that has high levels of institutional co-optation – *ceteris paribus* – should have higher levels of repression of physical integrity rights and lower levels of repression of empowerment rights than a country with low levels of institutional co-optation. Instead, I think the formulation should be more precise and restrict itself to only positive changes, in the form of:

Hypothesis 3: Institutional co-optation *liberalization* should decrease repression of empowerment rights in the following years.

Hypothesis 4: Institutional co-optation *liberalization* should increase repression of physical integrity rights in the following years.

Hypotheses 1 and 2 belong to the response theories, as developed by Gandhi and Conrad respectively. The presence of co-optation institutions can lead to concessions to the opposition in the form of more respect of civil and political rights. Similarly, the presence of co-optation institutions might threaten the dictator's hold on power, so the regime responds with more violations of physical integrity rights.

Hypotheses 3 and 4 are Machiavellian in nature. The dictator chooses to liberalize the regime, and it's immediately followed by a change in control and repression tactics. But the strategy of fewer restrictions on empowerment rights and more violations of physical integrity rights is only plausible in the short term, before the opposition goes back into hiding.

4.5 Model specification

Frantz and Kendall-Taylor make two simultaneous hypotheses (summarized in Figure 4.1), and test them in two separate models:

Figure 4.1 Frantz and Kendall-Taylor's simultaneous models
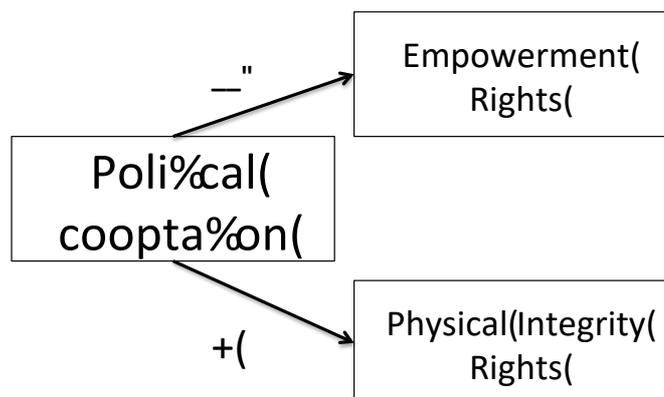
Below, I argue that they make a misspecification error that leads to biased estimators. Frantz and Kendall-Taylor include a number of important control variables in their models: population size, level of development, trade, economic growth, the Cold War period, type of dictatorship, political insatiability, oil wealth, election year, and leader duration (Frantz and Kendall-Taylor, 2014: 338–339). Frantz and Kendall-Taylor justify their inclusion by referencing previous studies that provide evidence that those factors affect the levels of repression.

It has become common practice to include variables that are known to be significantly correlated to the dependent variable from previous studies and call them control variables. But all those variables are not necessarily true confounders (see Figure 4.2). A true confounder in this scenario would probably be the level of economic development, because it explains both cooptation and repression. Election year is a poor candidate as a confounder, it does not explain both cooptation and repression.

It's generally assumed that it's better to err on the side of including more control variables than less, because overfitting is seen as less of a problem than omitted variable bias.

There is one more control variable that Frantz and Kendall-Taylor include: the other category of human rights. There is not much justification for doing this, and it is not a common procedure in the literature. By doing so, I argue that Frantz and Kendall-Taylor unintentionally specify a mediation model.

Although Frantz and Kendall-Taylor do not explicitly discuss it, the inclusion of a type of repression as a "control" in the estimation model of the other type of repression cannot be justified as simple confounder scenario. The only justification they give for this model specification is: "To explore whether reliance on one type of repression influences how cooptation affects reliance on the other, we also include the other type of repression in our specifications." (Frantz and Kendall-Taylor, 2014: 339)

Figure 4.2 Confounding model diagram
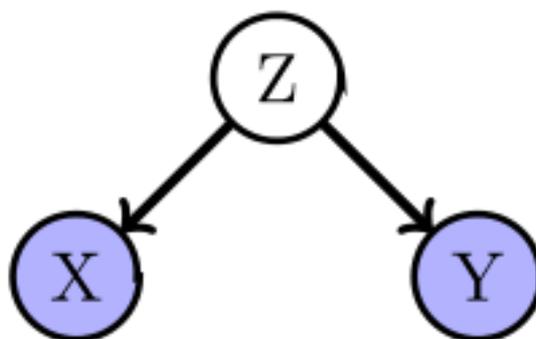
In Figure 4.2, Z is a true confounder that if omitted from the estimation model will lead to biased coefficients, and the overestimation of the effect of X on Y. Frantz

and Kendall-Taylor argue that political co-optation causes a change in both types of repression, not that one type of repression causes both a change in political co-optation and a change in the other type of repression. It would be incorrect to put one type of repression as a confounder in the model of the other type of repression. To be clear, there is no theoretical argument that claims that one type of repression explains the other. Frantz and Kendall-Taylor are inadvertently specifying a mediation model.

Figure 4.3 Mediation model diagram
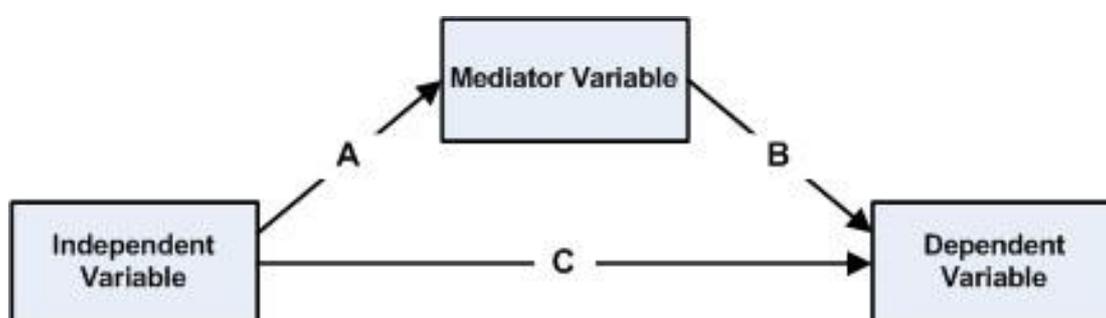
A mediation model is supposed to test the robustness of the direct effect (C in Figure 4.3) of an independent variable on a dependent variable by including a mediator variable that might carry an indirect effect (A + B in Figure 2) (Baron and Kenny, 1986).

If both paths' effects have the same sign (positive or negative), omitting the mediator variable from the estimation model would lead to a similar problem as omitted variable bias. But if the signs are different, this leads to a suppression effect. Excluding the mediator in this case would "suppress" the effect of the independent variable on the dependent variable (MacKinnon et al., 2000).

Going back to the Frantz and Kendall-Taylor paper, in their first model physical integrity rights is the dependent variable, and empowerment rights is included as a control. We know both categories of human rights are positively correlated, but it's incorrect to interpret it in terms of causation. The more likely explanation of the positive correlation is that both categories of rights are associated with the same factors.

Using Figure 4.3, B would be positive, as well as C, and A would be negative. This model must be interpreted carefully: it would tell us that political co-optation has a positive direct effect on physical integrity violations, but a negative indirect effect through empowerment rights (the mediation variable). This makes no theoretical sense: as political co-optation increases, the dictator uses more targeted repression; simultaneously he relaxes empowerment restrictions, which leads to less physical integrity abuses.

The empowerment rights variable should not be included as a control in the physical integrity rights model because it is neither a true confounder nor a mediator (Pearl, 2009: 78–92); the relationship between the two categories of rights is spurious. This is conversely also true for the empowerment rights model: physical integrity rights should not be included as a control.

Including the other type of repression as a control creates a suppression effect that biases the estimation of the effect of cooptation. To be more concise, Frantz and Kendall-Taylor's paper estimates the following formulas:

$$PhysIntRights_{t+1}$$
$$= PhysIntRights_t + Cooptation_t + Controls_t$$
$$+ EmpowermentRights_t$$

and:

$$EmpowermentRights_{t+1}$$

$$= EmpowermentRights_t + Cooptation_t + Controls_t$$

$$+ PhysIntRights_t$$

I argue that empowerment rights should be dropped as a control variable in the first formula, and physical integrity rights should be dropped as a control variable in the second formula.

4.6 Data

I choose to remain as close as possible to Frantz and Kendall-Taylor's original article to show the importance of the change in model specification. Consequently, I use the exact same data they used in their analysis, which the authors kindly shared with me.

Physical integrity rights is captured by the CIRI index, and empowerment rights by Freedom House's civil liberties score. Co-optation is created from Cheibub, Gandhi and Vreeland's (2010) dataset, and ranges from 0 to 3. As per Frantz and Kendall- Taylor, the measure of political institutional cooptation follows a simple additive rule, the presence of each of the following political institutions is worth one point: legislature, at least one political party, and multiple political parties. The sample is restricted to autocracies following Geddes, Wright and Frantz (2013).

As controls we find the usual suspects from the standard model of human rights (Keith, 2012): population size, level of economic development, trade,

economic growth, Cold War, and civil and interstate war. Following Davenport (2007b), type of dictatorship and number of strikes, riots, and anti-government demonstrations are also included. Additionally, number of past leadership turnover during dictatorship, number of past coups in the country, oil rents per capita, election year, and three polynomials of leader duration, are included as controls.

For more information on the variables see the empirics of the original paper (Frantz and Kendall-Taylor, 2014: 337–339).

In order to test the reformulated versions of the hypotheses, H3 and H4, I need to recode the explanatory variable. Institutional political liberalization captures the positive changes of the original political co-optation variable. For each country-year I check if there was any improvement on the political co-optation variable compared to the previous year and code it yes or no.

In the sample of autocracies (154 regimes) from 1981 to 2004 that Frantz and Kendall-Taylor use, there are only 151 instances of positive change of political institutions. This shouldn't surprise us: institutions are supposed to be stable. But it does show that even if the Machiavellian theory is correct, it will help explain less than 10% of the country-year observations in our sample.

4.7   Results

Political co-optation

Using the same data and statistical models as Frantz and Kendall-Taylor I reproduce their estimation analysis in Figure 4.4 for physical integrity rights. I present the results of the OLS regression output with diagrams instead of the

traditional tables (for those refer to the Appendix, Tables I and J). For each model I represent with a point the coefficient estimates of all variables in the regression (excluding the intercept and the lagged variable). The lines represent the 95% confidence intervals. Unsurprisingly I find the same results as Frantz and Kendall-Taylor report in their paper.

Figure 4.4 OLS on 5 years average of CIRI index.
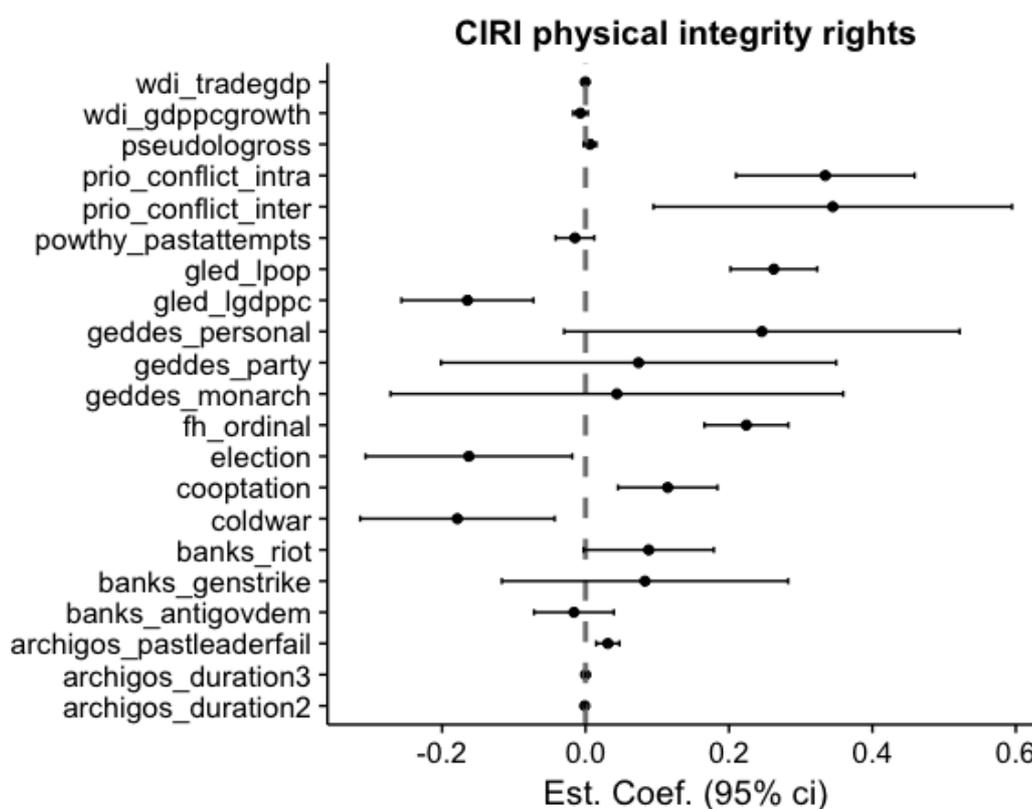
Reproduction of Frantz and Kendall-Taylor's model, lag not reported

What is interesting is that in removing the empowerment rights variable from the statistical model, the correlation between political co-optation and physical integrity rights is no longer statistically significant (contrast co-optation coefficients in Figures 4.4 and 4.5). As I argued before, the inclusion of the empowerment rights variable has an unintended mediating effect on the model.

Figure 4.5 OLS on 5 years average of CIRI index (FH index excluded).

CIRI physical integrity rights
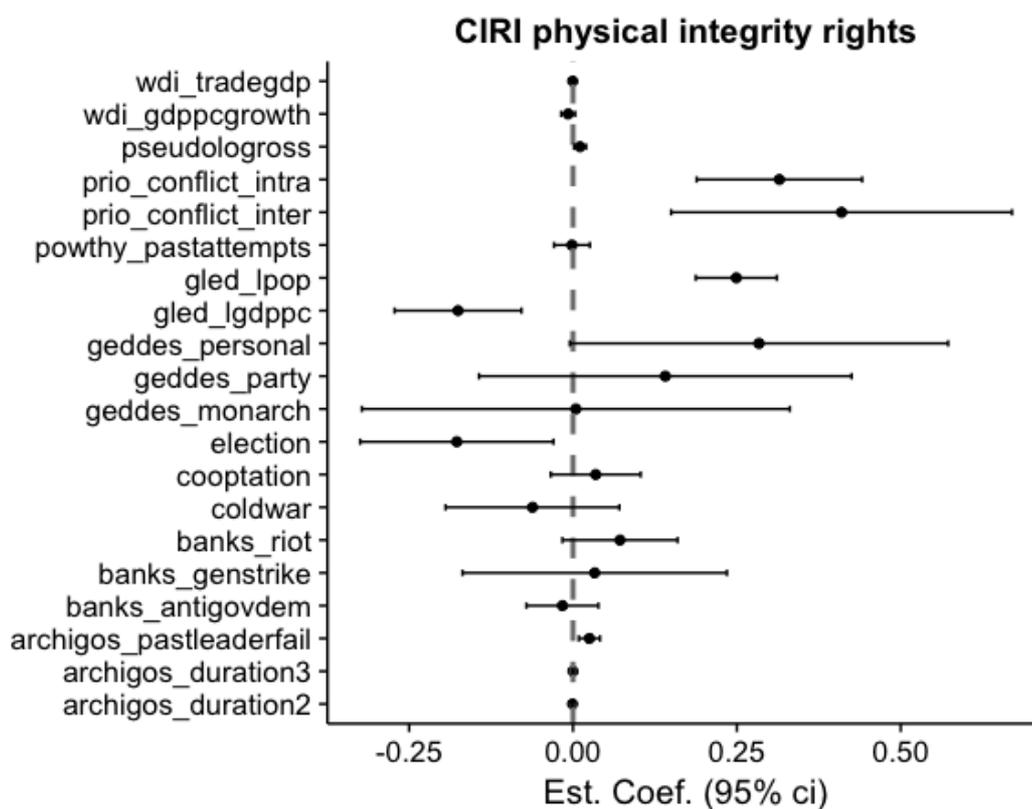
lag not reported

Figure 4.6 shows the coefficient of political co-optation on physical integrity rights when no other controls are included. Surprisingly the coefficient in Figure 4.6 is smaller and closer to zero than the one estimated in Figure 4.4. Usually including more confounders reduces the magnitude and significance of the variable of interest, not the other way around.

Figure 4.6 OLS on 5 years average of CIRI index (only cooptation).

CIRI physical integrity rights
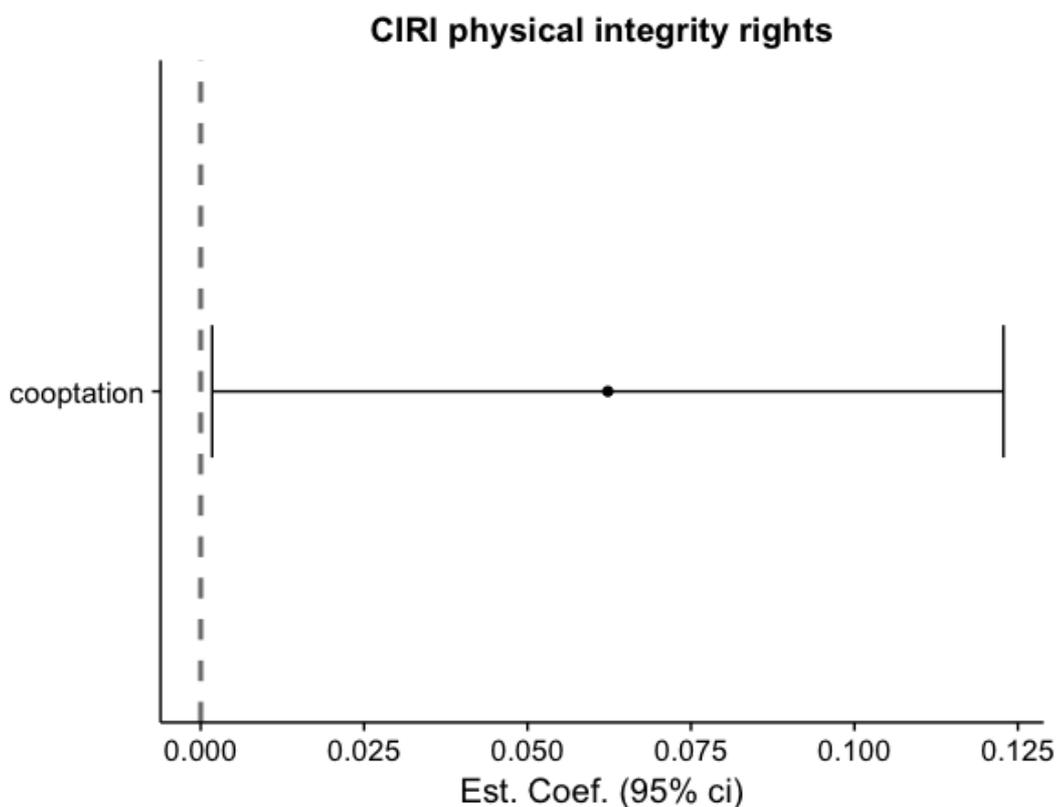
lag not reported

Figure 4.7 shows the effect of including the empowerments rights index as the only control on the coefficient of political co-optation. The political co-optation coefficient increases when we include the spurious confounder. This is where the unintended suppression effect is being modelled. Because there is a positive correlation between political co-optation and physical integrity rights, a negative correlation between political co-optation and empowerment rights, and a positive correlation between the two types of human rights, an unintended suppression effect is being estimated through a positive direct path and a negative indirect one. I think this explains Frantz and Kendall-Taylor's original results.

Figure 4.7 OLS on 5 years average of CIRI index (cooptation and FH index).
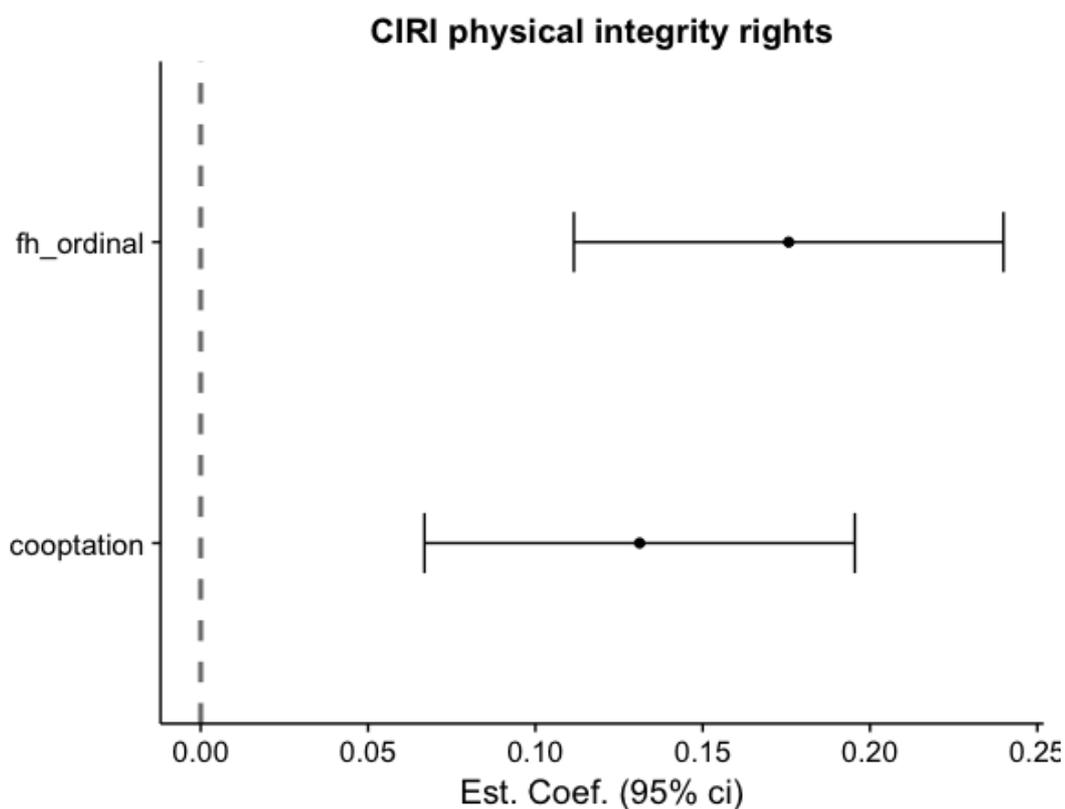
lag not reported

In light of the new results, we can say that the evidence does not support
hypothesis 2, and we cannot safely reject the null hypothesis. Co-optation has no
statistically significant effect on physical integrity rights. This is actually
evidence in favour of Gandhi's claim that the level of institutional political co-
optation does not seem to be associated with more (or less) repression of
physical integrity rights.

Importantly, the results for civil and political rights seem to be robust to
excluding the physical integrity rights variable. Figures 4.8 and 4.9 show that the
co-optation coefficient is negative and significantly different from zero.

Figure 4.8 OLS on 5 years average of FH index.
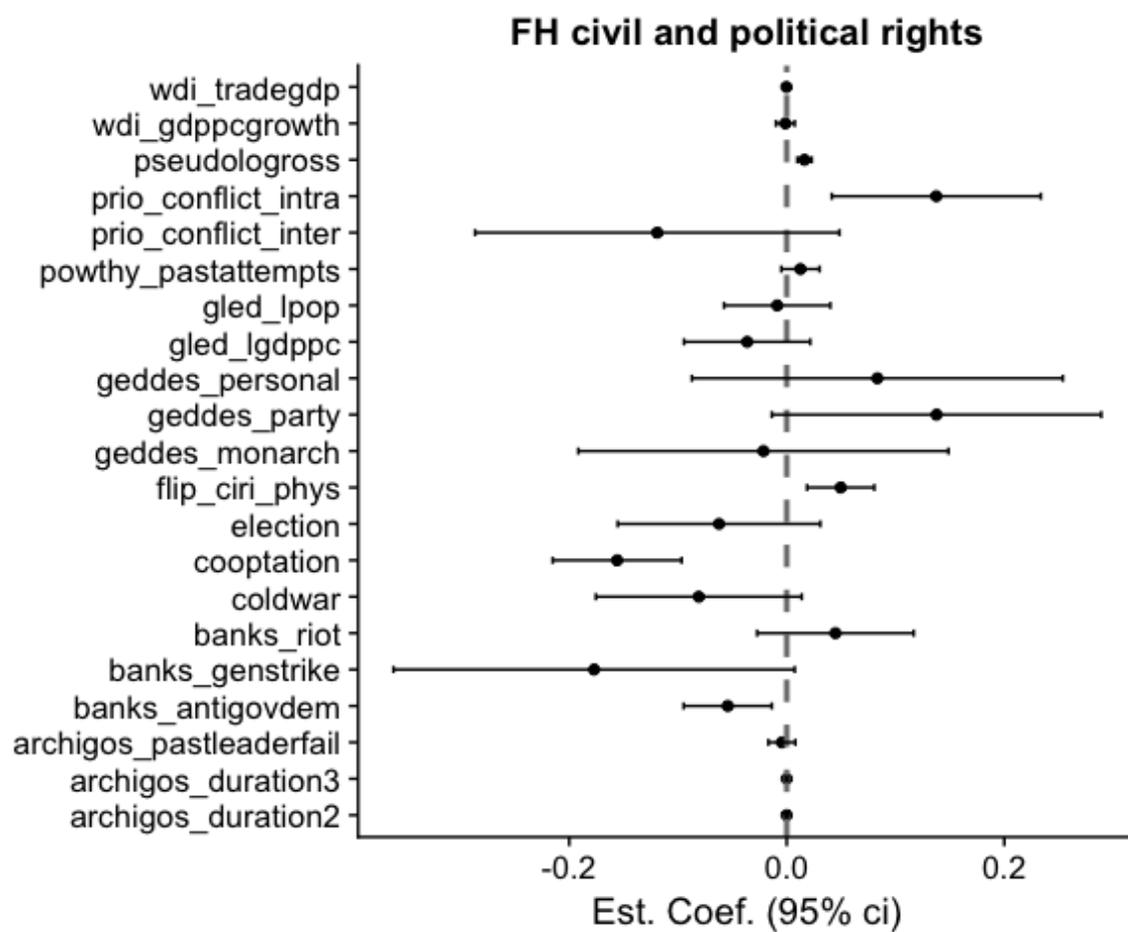
Reproduction of Frantz and Kendall-Taylor's model, lag not reported

Figure 4.9 OLS on 5 years average of FH index (CIRI index excluded).
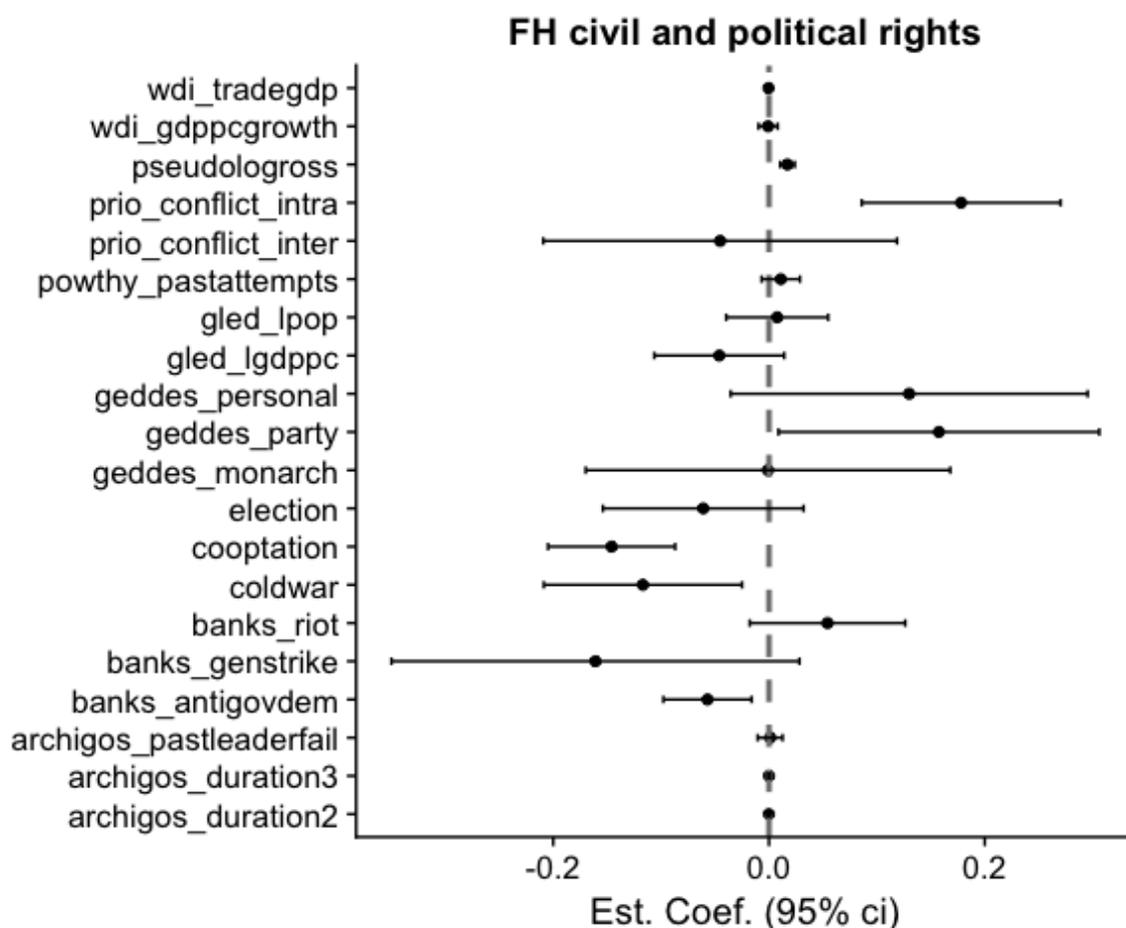
lag not reported

Political liberalization

Even if the evidence does not support hypothesis 2 (that institutional co-optation should increase the repression of physical integrity rights), it might still be the case that hypothesis 4 (institutional co-optation *liberalization* should increase repression of physical integrity rights in the following years) has some empirical support.

Previously I tested whether the *presence* of political institutions had an effect on human rights, now I want to focus on the effect of a positive *change*, an increase in the number of political institutions, what I call political liberalization.

In Figure 4.10 the same model as Figure 4.5 is estimated, with the only difference being the switch of co-optation for co-optation onset – my liberalization variable. Onset of co-optation is a dichotomous variable that scores 1 if there was a positive improvement in co-optation compared to the previous year, and 0 if not.

The coefficient for co-optation onset is clearly indistinguishable from 0. It seems neither the level of co-optation, nor a liberalization in co-optation has an effect on the level of physical integrity rights score.

Figure 4.10 OLS on 5 years average of CIRI index (cooptation onset).
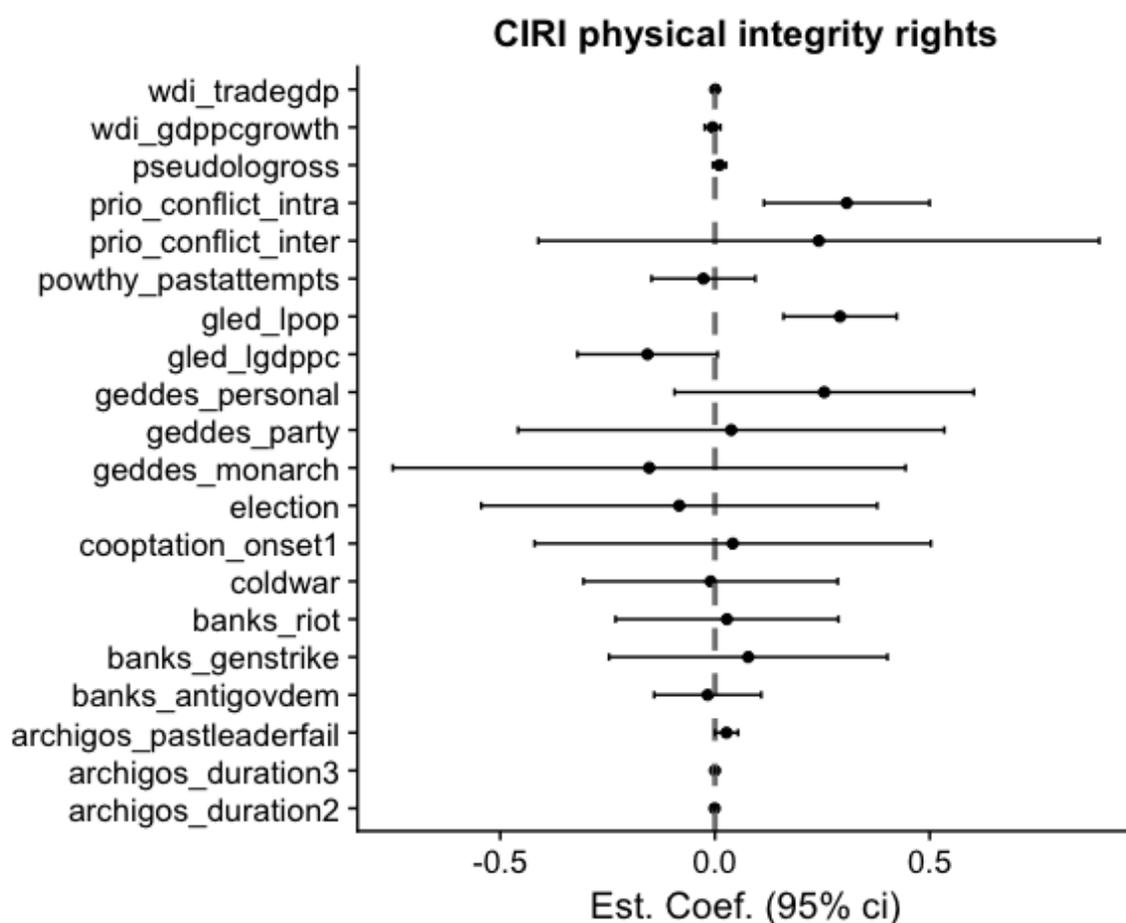
lag not reported

In Figure 4.11 the same model as Figure 4.9 is estimated, with the only difference being the switch of co-optation for co-optation onset, my liberalization variable. This time, the coefficient of onset of co-optation is statistically indistinguishable from zero.

The evidence supports hypothesis 1, but not hypothesis 3. It seems that the level of co-optation has an effect on the level of empowerment rights score, but liberalization in co-optation does not. This suggests that co-optation has a lasting effect on the types of controls on civil and political rights. This is consistent with the response theory that views improvement of empowerment rights as concessions to the opposition, in contrast with the Machiavellian theory, where the bait of greater freedoms should be short-lived.

Figure 4.11 OLS on 5 years average of FH index (cooptation onset).
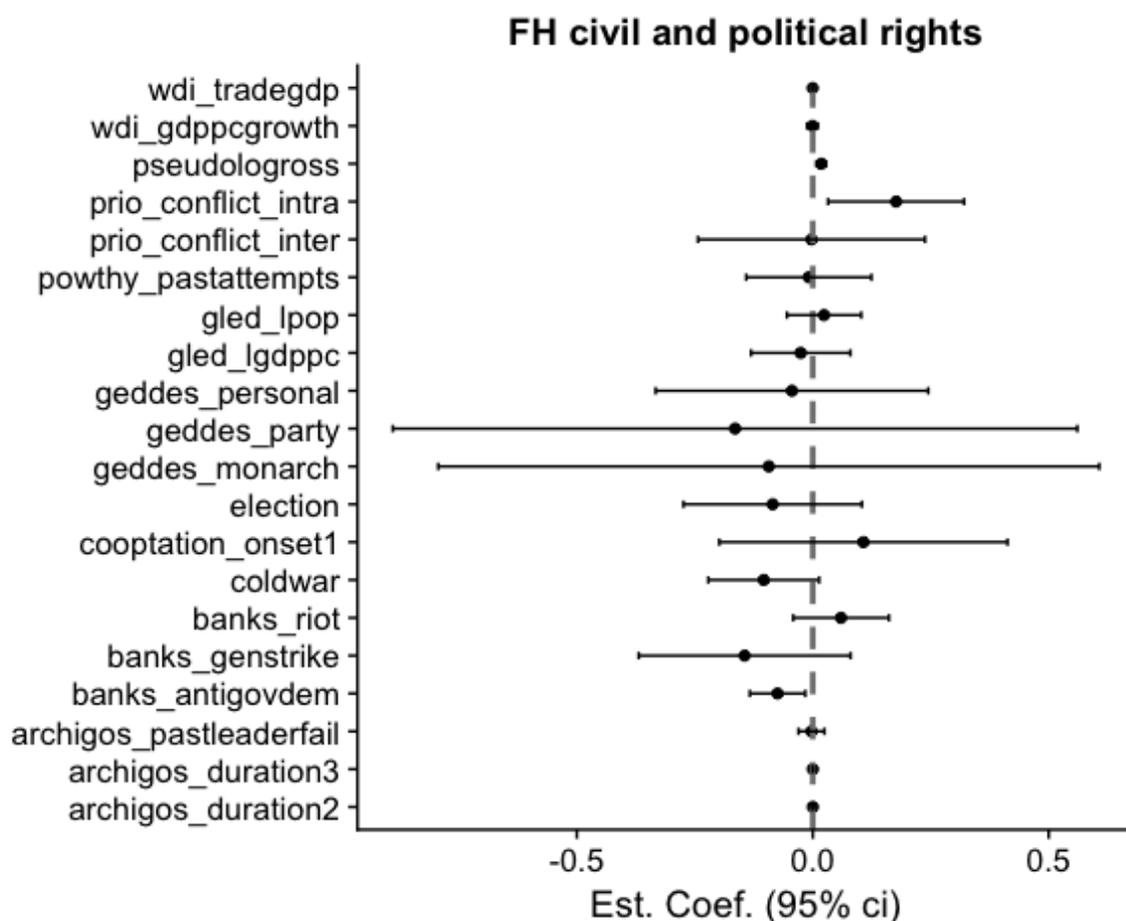
lag not reported

4.8 Discussion and Conclusion

In this paper, I argued that there are two competing explanations for the role of political co-optation in autocracies and its impact on human rights. The response and Machiavellian theories have similar expectations, but are different enough to formulate separate testable hypotheses.

On the one hand, response theories view political co-optation in autocracies as a consequence of the presence of strong political opposition, whereas the Machiavellian theory understands political co-optation fundamentally as a ruse of the dictator to eliminate the opposition. For response

theories, more political co-optation explains better respect for civil rights as a real concession won by the opposition. For Machiavellian theory, the relaxation in control of civil liberties is part of the ruse to draw out the opposition into the public arena.

Regarding physical integrity rights, response theories have two competing expectations. Gandhi thinks more political co-optation would have no effect on the levels of physical integrity rights violations, because unlike civil rights, these are not "negotiable" in legislatures (torture and extrajudicial killings are most likely already illegal). Vreeland and Conrad think that more political co-optation would lead to more repression of physical integrity rights because the dictator faces greater challenges to his survival. The Machiavellian theory also predicts more repression of physical integrity rights, but under its logic, this would only be immediately after the liberalization of the regime.

While both theories make predictions about the impact of political co-optation on empowerment rights and physical integrity rights, I argue that there is no valid reason to include one category of rights as a control variable in the model estimation of the other category of rights. This crucial detail is fundamental in specifying the models. The suppression effect caused by including one category of rights as a control variable in the model of the other category of rights artificially increases the magnitude and significance of the political co-optation coefficient.

The bottom line is that Gandhi seems to have been right all along. The evidence supports the claim that political co-optation in autocracies is associated with a better respect of civil liberties. Physical integrity rights do not seem to be associated with political co-optation; we cannot reject the null-hypothesis. A

frequentist approach can't tell us much more than that. To estimate the likelihood that the effect of political co-optation on physical integrity rights is exactly zero, a Bayesian approach is necessary (I leave that to future research).

The Machiavellian theory does not fare very well in light of the empirical evidence. The positive change in the number of political institutions, political liberalization, does not seem to be associated with either empowerment rights or physical integrity rights. The Brazilian case of 1968 seems to be the exception rather than the rule. Dictators usually don't liberalize the political regime because they are planning to relax civil liberty restrictions in order to draw the opposition out of their hiding to better target and repress them.

In a way it should be encouraging that more political co-optation in autocracies does improve an important dimension of people's lives, civil liberties. The concessions gained by the opposition are real, and fortunately there does not seem to be a backlash effect of increased repression of physical integrity rights.

5 Conclusion

The three substantive chapters of this thesis provided a theoretically driven investigation with empirical evidence of the contexts in which judicial and political institutions promote human rights.

In the first chapter I argued that judicial independence was not enough for courts to start promoting human rights. I made a clear conceptual differentiation between judicial independence and judicial enforcement, and thanks to V-Dem indicators, was able to measure each concept separately. I was able to show that the two concepts are not only conceptually different, but that there is also ample empirical variation between the two. I found the empirical evidence supports my hypothesis, both judicial independence and judicial enforcement are necessary for courts to have a positive impact on human rights.

The second chapter offered a deeper look at how courts function in autocracies. I argued that even with the best judicial institutions, courts in autocracies would not perform as well as in democracies to protect human rights. Institutions in autocracies are better described as equilibria rather than as actual constraints. The dictator designs independent courts and enforces the decisions, to attract foreign investment (mainly), and not to limit his own capacity to repress. I found the empirical evidence to be broadly supportive of my hypotheses. Whereas judicial constraints in democracies promote the respect of all the types human rights surveyed (expect for extrajudicial killings because of the ceiling effect), in autocracies judicial constraints promote only private property rights (and unexpectedly reduces the number of extrajudicial killings).

In the third chapter I revisited the impact of political institutions in autocracies on physical integrity rights. In the literature there seemed to be contradictory claims of what that impact would be, based on divergent interpretation of why political institutions emerge in autocracies in the first place. I found that after correctly specifying the model estimation, political institutions are not significantly correlated with worse physical integrity rights. Furthermore, the evidence shows that political liberalization (the positive change towards more political institutions) is not significantly correlated with either physical integrity rights, or civil and political rights.

This thesis makes an important contribution to the field of comparative human rights studies by explaining how judicial and political institutions promote human rights respect. Institutions matter, but do not work in a vacuum. The assemblage of institutional gears, as well as the broader political context, are fundamental to fully understand how institutions have an impact on behaviour.

Judicial independence matters for human rights, but only when the rulings are enforced as well. This concise take-way has important implications for scholars and activists. When the theory indicates that institutions work in tandem, scholars should be careful to design models that take that into account, in the form of interactions for instance. Activists should also take note that promoting judicial independence without investing in judicial enforcement will have little impact in the short term. If we think institutions work together, we should act accordingly.

Institutions can also have unexpected impacts depending on the broader context they are embedded in. Institutions are often thought of as constraints, but in autocracies it's not clear that is still the case. Judicial constraints in autocracies

promote private property rights, but not freedom from torture or civil and political rights. Nominally liberal institutions in autocracies have different functions and effects.

In this line of reasoning, Frantz and Kendall-Taylor argued that political institutions in autocracies would actually increase physical integrity rights violations. I found no robust empirical evidence to support their claim. I discovered that an unintended suppression effect in their model specification was driving the significance of their estimates. Scholars should take note of the danger of including "control" variables that are not true confounders in their models.

Going back to the initial comparison between the Ayotzinapa case and the Tlatelco massacre we now have some clear answers. On one hand it is evident that what is lacking in terms of judicial institutions in Mexico today is judicial enforcement. Without both judicial independence and enforcement, it is very unlikely that Mexican judges can effectively promote human rights.

On the other hand, judicial constraints would probably not have had an impact back in 1968. Under the single party regime of the PRI, the courts (especially the Supreme Court) were not independent but their rulings were enforced. Had they been independent and judicial constraints been in place, the evidence suggests that the courts would still not have intervened to protect physical integrity rights.

Finally, after reviewing the scholarship and evidence, the lack of multiple parties in 1968 does not imply that levels of repression were lesser than after the political reforms. Institutional co-optation under dictatorships explains in part the levels of freedom of expression, but not the use of repression.

This thesis also makes policy making recommendations for the protection of human rights. Specifically, efforts to improve judicial independence should also be accompanied by strategies to improve judicial enforcement. The promotion of judicial constraints in autocracies should be carefully reviewed, because it might be promoting the interests of the regime, and doing little to improve human rights respect. Political opposition in dictatorships should be supported, the evidence shows that the concessions they can extract from the regime are positive for civil and political rights, and there is no evidence of a backlash in terms of physical integrity rights violations.

There are some important limitations in this thesis that I fully recognise. For instance, in chapter one I try to theorise a more complex model of the judicial process, but I overlook two fundamental aspects: judicial access and prosecutorial independence. It might be entirely possible that some countries exhibit judicial independence and enforcement without judicial access or prosecutorial independence, in which cases it is highly unlikely that the courts can have a meaningful impact on human rights protection.

Similarly, my analysis focuses in human rights records in the general population, without looking at potential differences with minority or marginal groups. Courts in liberal democracies have a habit of disregarding minority rights, and it's not clear that judicial constraints play a role in safeguarding those rights.

In the second chapter of this thesis I compare democracies with autocracies, without looking at the differences within autocracies. It's possible that judicial constraints play different functions in different types of autocracies.

In that same note, in chapter three I follow the literature and distinguish autocratic regimes by level of political institutions, which simply looks at the number of institutions. A better approach might account for the level of political competiveness in the regime.

Some of these limitations can be addressed in future research, but it really depends on data availability. I look forward to these challenges.

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Appendix

Table C Descriptive statistics of variables used in chapters 2 and 3

Variable	N	Mean	St. Dev.	Min	Max	Source
Physical integrity rights	16,360	0.505	0.285	0.010	0.984	V-Dem
Torture	16,360	0.456	0.293	0.008	0.986	V-Dem
Killings	16,360	0.554	0.298	0.010	0.995	V-Dem
Judicial independence	16,356	0.463	0.261	0.011	0.978	V-Dem
Judicial enforcement	16,258	0.603	0.248	0.017	0.981	V-Dem
Association index	15,984	0.470	0.331	0.023	0.966	V-Dem
Free and fair elections	16,162	0.341	0.358	0.000	0.995	V-Dem
Legislative constraints	13,078	0.466	0.302	0.019	0.983	V-Dem
International war	15,821	0.079	0.269	0	1	Clio Infra
Internal war	12,706	0.097	0.295	0	1	Clio Infra
Military regime	5,647	0.213	0.410	0	1	Beck et al.(2001)
Log GDPpC	10,462	7.812	1.023	5.315	10.667	The Maddison-Project(2013)
GDPpc growth	10,257	1.882	6.271	-61.493	86.946	The Maddison-Project(2013)
Log Population size	17,545	15.159	1.852	7.224	21.009	Clio Infra
Leftist regime	3,437	0.560	0.496	0	1	Beck et al.(2001)

Table D Correlation matrix of variables used in chapters 2 and 3

	Judicial independence	Judicial enforcement	Association index	Free and fair elections	Legislative constraints	International war	Internal war	Military regime	Log GDPpC	GDPpc growth	Log Population size	Leftist regime
Judicial independence	1											
Judicial enforcement	0.6	1										
Association index	0.6	0.56	1									
Free and fair elections	0.58	0.54	0.8	1								
Legislative constraints	0.66	0.59	0.79	0.75	1							
International war	-0.02	-0.02	-0.05	-0.04	-0.04	1						
Internal war	-0.12	-0.15	-0.06	-0.08	-0.11	0.07	1					
Military regime	-0.34	-0.35	-0.37	-0.43	-0.35	-0.02	0.11	1				
Log GDPpC	0.44	0.43	0.48	0.6	0.53	-0.03	-0.14	-0.36	1			
GDPpc growth	0.02	0.04	0.02	0.05	0.03	-0.05	-0.09	-0.03	0.08	1		
Log Population size	0.02	-0.07	0.19	0.24	0.09	0.14	0.15	0.06	0.14	0.03	1	
Leftist regime	-0.19	-0.22	-0.35	-0.27	-0.31	0.03	-0.05	0.09	-0.28	-0.06	0.00	1

Table E Chapter 2 regression analysis results

Variable	Model 1				Model 2				Model 3			
	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p
(Intercept)	-0.02568	0.02755	-0.93225	0.351237	-0.03136	0.027646	-1.13431	0.256699	0.000619	0.030984	0.019982	0.984058
Phys. Int. Lag	0.609149	0.013921	43.75758	0	0.606225	0.013998	43.3069	0	0.604822	0.013984	43.25179	0
Jud. Independence	0.051496	0.015106	3.409018	0.000655	0.035807	0.015864	2.257141	0.024027	-0.02733	0.035846	-0.76233	0.445887
Jud. Enforcement					0.049238	0.015701	3.135904	0.00172	0.012947	0.022793	0.568015	0.570041
Interaction									0.106367	0.050398	2.110551	0.034842
Free Association	0.154448	0.013778	11.2098	6.04E-29	0.150074	0.013828	10.85283	3.01E-27	0.15193	0.013935	10.90246	1.76E-27
Free and Fair Elections	0.096776	0.015563	6.218249	5.28E-10	0.09146	0.015554	5.880146	4.27E-09	0.087011	0.015855	5.488069	4.19E-08
Legislative Constrains	0.033217	0.011758	2.824985	0.00474	0.031989	0.011739	2.724918	0.006446	0.031133	0.011726	2.65514	0.007943
International Conflict	-0.0031	0.007659	-0.40431	0.685996	-0.00411	0.007643	-0.53818	0.590465	-0.00341	0.007645	-0.44613	0.655517
Domestic Conflict	-0.05094	0.007081	-7.19398	6.87E-13	-0.04901	0.007111	-6.89191	5.93E-12	-0.04936	0.007109	-6.94327	4.14E-12
Economic Development	0.016425	0.002639	6.223412	5.11E-10	0.01551	0.002646	5.862728	4.74E-09	0.014206	0.00273	5.20357	2E-07
Economic Growth	0.00041	0.00041	1.000852	0.316929	0.000414	0.000409	1.012899	0.311139	0.000425	0.00041	1.03854	0.299051
Logged Population	-0.00332	0.001415	-2.34301	0.019153	-0.00337	0.001415	-2.38432	0.017134	-0.00342	0.001414	-2.41919	0.015577

Table F Chapter 2 regression analysis results with alternative measures

	Model 4 (V-Dem 1980-2010)				Model 5 (Constant 1980-2010)				Model 6 (Dynamic 1950-2010)			
Variable	**Est. Coef.**	**SE**	**t-stat**	**p**	**Est. Coef.**	**SE**	**t-stat**	**p**	**Est. Coef.**	**SE**	**t-stat**	**p**
(Intercept)	-0.00415	0.031623	-0.13113	0.895674	0.613116	0.111791	5.484494	4.2E-08	0.519093	0.114489	4.534018	5.82E-06
Dependent lag	0.606722	0.01383	43.87134	0	0.152851	0.030335	5.038787	4.73E-07	0.062973	0.027194	2.315701	0.020585
Jud. Independence	-0.03402	0.040008	-0.85025	0.395223	-0.10825	0.120818	-0.89596	0.370285	-0.1522	0.117767	-1.29236	0.196248
Jud. Compliance	0.00553	0.025721	0.214987	0.829785	-0.07347	0.087786	-0.83697	0.402622	-0.10695	0.081527	-1.31188	0.189577
Interaction	0.126033	0.057533	2.190632	0.028518	0.359813	0.195509	1.84039	0.065727	0.414643	0.202677	2.045833	0.040787
Free Political Association	0.151845	0.013813	10.99252	7.76E-28	-0.05049	0.030214	-1.67115	0.094709	0.032595	0.029722	1.096649	0.272809
Free and Fair Elections	0.089459	0.015939	5.612644	2.08E-08	0.068329	0.041398	1.650517	0.098854	0.072521	0.040306	1.799261	0.071994
Legislative Constrains	0.029687	0.011809	2.513929	0.011966	0.046415	0.029339	1.582036	0.113658	0.033454	0.029315	1.141216	0.253795
International Conflict	-0.00263	0.007575	-0.34678	0.728766	-0.00976	0.032129	-0.30383	0.761263	-0.04006	0.027904	-1.43556	0.151144
Domestic Conflict	-0.04894	0.007087	-6.90468	5.56E-12	-0.0874	0.019949	-4.38129	1.19E-05	-0.11173	0.01646	-6.7878	1.17E-11
Economic Development	0.014425	0.002687	5.367545	8.29E-08	0.039078	0.00787	4.965442	6.92E-07	0.035933	0.007898	4.549332	5.42E-06
Economic Growth	0.000421	0.000406	1.037687	0.299459	0.000153	0.00129	0.118231	0.905886	0.000102	0.001087	0.093643	0.925394
Logged Population	-0.00321	0.001405	-2.28255	0.022493	-0.03708	0.005046	-7.34854	2.09E-13	-0.02972	0.004812	-6.17742	6.65E-10

Table G Chapter 2 regression analysis results of freedom of expression

Variable	Model 7 (V-Dem Freedom of Expression)			
	Est. Coef.	SE	t-stat	p
(Intercept)	0.004507	0.020007	0.225277	0.821766
Free. Exp. lag	0.643522	0.014097	45.64987	0
Jud. Independence	-0.02553	0.024655	-1.03541	0.300489
Jud. Compliance	-0.00105	0.016131	-0.06526	0.947969
Interaction	0.095923	0.037061	2.588273	0.009653
Free Political Association	0.252718	0.013373	18.89706	6.61E-79
Free and Fair Elections	0.021563	0.009856	2.187716	0.028703
Legislative Constrains	0.040071	0.007811	5.130018	2.93E-07
International Conflict	-0.01905	0.004905	-3.88411	0.000103
Domestic Conflict	-0.00466	0.004427	-1.05333	0.292202
Economic Development	-0.00325	0.001655	-1.96511	0.049416
Economic Growth	0.000215	0.000285	0.755055	0.450225
Logged Population	0.002268	0.000888	2.554237	0.01065

Table H Chapter 3 regression analysis results

Variable	Physical Integrity Rights				Extrajudicial Killings				Torture			
	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p
(Intercept)	-0.04056	0.028097	-1.44371	0.148839	-0.16034	0.084285	-1.90233	0.057144	-0.06541	0.075576	-0.86548	0.386786
Dependent lag	0.632413	0.013824	45.74787	0	0.792045	0.009636	82.20041	0	0.761991	0.010306	73.93556	0
Judicial Constraints	0.10285	0.038501	2.671359	0.007561	0.309408	0.11703	2.643845	0.008204	0.140348	0.09887	1.419528	0.155763
Free and Fair Elections	0.091419	0.021755	4.2022	2.66E-05	0.219622	0.064345	3.413211	0.000643	0.134089	0.057406	2.3358	0.019513
Free Political Association	0.124167	0.013793	9.002181	2.43E-19	0.243999	0.040721	5.991922	2.11E-09	0.277703	0.037317	7.441821	1.04E-13
Legislative Constraints	0.031129	0.011661	2.669405	0.007606	0.058947	0.035531	1.659028	0.097128	0.07582	0.032427	2.338182	0.019389
International Conflict	0.001181	0.007713	0.153142	0.878288	0.001199	0.024296	0.049338	0.960651	0.00878	0.022275	0.39417	0.69346
Domestic Conflict	-0.03937	0.007155	-5.50248	3.8E-08	-0.09428	0.021329	-4.42027	9.92E-06	-0.07802	0.019006	-4.10534	4.06E-05
Economic Development	0.018701	0.00275	6.799596	1.08E-11	0.055031	0.008409	6.544517	6.13E-11	0.042625	0.007675	5.554061	2.83E-08
Economic Growth	-0.0002	0.000404	-0.50625	0.612685	-0.00065	0.001275	-0.50674	0.612343	-0.00117	0.001166	-1.00628	0.314296
Logged Population	-0.00306	0.001411	-2.16553	0.030361	-0.00589	0.004193	-1.40584	0.15979	-0.00718	0.003892	-1.84551	0.06498
Interaction	-0.0335	0.048275	-0.69401	0.487688	-0.22322	0.148913	-1.499	0.133892	0.187507	0.135509	1.383727	0.16646

Table I Chapter 3 regression analysis results (continued)

Variable	Private property Rights				Freedom of Expression			
	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p
(Intercept)	-0.07096	0.028777	-2.46599	0.013673	0.014649	0.017953	0.815959	0.414535
Dependent lag	0.682827	0.011617	58.77841	0	0.640195	0.014168	45.18726	0
Judicial Constraints	0.073896	0.037264	1.983032	0.047379	0.013821	0.02379	0.580966	0.561271
Free and Fair Elections	-0.01978	0.02029	-0.97486	0.329643	-0.00341	0.012992	-0.26217	0.793197
Free Political Association	0.092623	0.012815	7.227572	5.12E-13	0.255675	0.013374	19.11724	1.19E-80
Legislative Constraints	0.031768	0.011558	2.748716	0.005989	0.039012	0.007827	4.984093	6.28E-07
International Conflict	-0.00599	0.007588	-0.78965	0.429742	-0.01873	0.004811	-3.8938	9.91E-05
Domestic Conflict	-0.01455	0.007142	-2.03702	0.041663	-0.00531	0.004441	-1.19614	0.23166
Economic Development	0.020665	0.002887	7.158008	8.51E-13	-0.00418	0.001677	-2.49213	0.012707
Economic Growth	5.8E-05	0.000427	0.135978	0.89184	0.000222	0.000284	0.782415	0.433981
Logged Population	0.001254	0.001355	0.925762	0.354583	0.002539	0.000894	2.841063	0.004502
Interaction	-0.00119	0.048271	-0.02461	0.980367	0.094548	0.031879	2.965858	0.003022

Table J Chapter 3 regression analysis results with alternative measures

Variable	Constant 1980-2010				Dynamic 1950-2010			
	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p
(Intercept)	0.676175	0.099387	6.803474	1.05E-11	0.553933	0.105482	5.251434	1.53E-07
Dependent latent	0.145279	0.030259	4.801158	1.59E-06	0.061423	0.028002	2.193524	0.028282
Judicial Constraints	-0.12924	0.111249	-1.16175	0.245353	-0.16988	0.10254	-1.65677	0.097584
Free and Fair Elections	-0.05616	0.057266	-0.98068	0.326762	-0.06126	0.056625	-1.08188	0.279321
Free Political Association	-0.04121	0.029502	-1.39689	0.162464	0.029084	0.029552	0.984187	0.325036
Legislative Constraints	0.044721	0.028811	1.552209	0.120629	0.027191	0.029434	0.923815	0.355594
International Conflict	-0.01702	0.030939	-0.55024	0.582163	-0.04104	0.027716	-1.48075	0.138691
Domestic Conflict	-0.0897	0.019404	-4.62263	3.81E-06	-0.10634	0.016842	-6.31367	2.79E-10
Economic Development	0.032558	0.007941	4.09984	4.15E-05	0.030219	0.008112	3.725124	0.000196
Economic Growth	0.000306	0.001249	0.24526	0.806258	-8.7E-05	0.001103	-0.07911	0.936946
Logged Population	-0.0364	0.004968	-7.32607	2.47E-13	-0.02863	0.004856	-5.89665	3.77E-09
Interaction	0.494352	0.160532	3.079453	0.002077	0.548571	0.167132	3.282269	0.001032

Table K Chapter 4 regression analysis results

Variable	Model 1				Model 2			
	Est. Coef.	SE	t-stat	p	Est. Coef.	SE	t-stat	p
(Intercept)	1.304292	0.09424	13.84013	1.56E-41	0.327916	0.19622	1.671162	0.094858
flip_ciri_phys	0.665196	0.017677	37.63144	7.9E-231	0.636579	0.019068	33.38458	8.1E-192
cooptation	0.06228	0.030881	2.016786	**0.043862**	0.131171	0.032798	3.999409	**6.6E-05**
fh_ordinal					0.175703	0.032749	5.365147	9.1E-08

Table L Chapter 4 regression analysis results (continued)

Variable	Model 3				Model 4			
	Est. Coef.	**SE**	**t-stat**	**p**	**Est. Coef.**	**SE**	**t-stat**	**p**
(Intercept)	0.959715	0.563758	1.702354	0.088856	-0.35441	0.550866	-0.64336	0.52007
flip_ciri_phys	0.490065	0.024871	19.70427	1.23E-78	0.448693	0.026623	16.85358	2.05E-59
cooptation	0.034686	0.034984	0.991475	**0.321583**	0.114631	0.035376	3.240396	**0.001215**
fh_ordinal					0.224248	0.029864	7.508946	9.2E-14
prio_conflict_intra	0.3149	0.064416	4.888507	1.1E-06	0.334326	0.063529	5.262604	1.58E-07
prio_conflict_inter	0.409762	0.132661	3.088797	0.002039	0.344721	0.127535	2.702957	0.006935
gled_lpop	0.249181	0.03159	7.88798	5.2E-15	0.26257	0.030859	8.508699	3.57E-17
gled_lgdppc	-0.17537	0.049375	-3.55186	0.000392	-0.16467	0.046968	-3.506	0.000466
geddes_personal	0.28377	0.147229	1.927398	0.054082	0.245943	0.140725	1.747679	0.080685
geddes_monarch	0.004367	0.166571	0.026217	0.979087	0.043691	0.161023	0.271332	0.786166
geddes_party	0.140868	0.145033	0.971277	0.331537	0.07392	0.140582	0.525814	0.59908
wdi_tradegdp	-0.00037	0.000978	-0.37784	0.705589	-0.00037	0.000958	-0.38844	0.697736
coldwar	-0.06171	0.067641	-0.9123	0.361727	-0.17869	0.069204	-2.58207	0.009897
wdi_gdppcgrowth	-0.00736	0.005444	-1.35175	0.176621	-0.00707	0.005271	-1.34183	0.179814
archigos_duration2	-0.00071	0.000428	-1.66743	0.095598	-0.00102	0.000427	-2.39038	0.01693

archigos_duration3	1.93E-05	1.22E-05	1.589528	0.112112	2.65E-05	1.23E-05	2.160203	0.030885
archigos_pastleaderfail	0.025098	0.008232	3.04895	0.002329	0.031108	0.008309	3.743706	0.000187
powthy_pastattempts	-0.00162	0.013965	-0.116	0.907663	-0.01475	0.013707	-1.07608	0.282033
pseudologross	0.010753	0.004719	2.278596	0.022804	0.006321	0.004587	1.378015	0.168365
election	-0.17726	0.075251	-2.35565	0.018594	-0.16266	0.073512	-2.21274	0.027037
banks_genstrike	0.033154	0.102904	0.32218	0.747352	0.082902	0.101849	0.813971	0.415766
banks_riot	0.071729	0.044834	1.599874	0.109797	0.088066	0.046333	1.900732	0.057492
banks_antigovdem	-0.01609	0.028015	-0.57445	0.565734	-0.01615	0.02841	-0.56842	0.569815