New Evidence for a Positive Relationship Between *De Facto* Judicial Independence and State Respect for Empowerment Rights

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Abstract

Does increased judicial independence lead to increased state respect for empowerment rights? Initial research on this topic has suggested an affirmative answer. Advances in measurement, however, call into question our understanding of the effects of judicial independence. In this paper, we re-examine the effect of *de facto* judicial independence on state respect for empowerment rights, making use of new measures and modeling approaches. Our analysis reveals a positive association between the two concepts that is robust to a different measures, model specifications, and estimation strategies. We also examine two potential mechanisms through which this effect could occur, concluding that the effect of *de facto* judicial independence is conditioned by the presence of *de jure* protections of organizational rights.

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Introduction

A major function of courts is to limit governmental power. Courts can constrain governmental exercise of power by nullifying or limiting governmental actions that violate constitutional or international laws. For example, the power of judicial review enables a constitutional court to nullify a duly approved law that oversteps the bounds of power allocated to the legislature by the constitution. The importance of courts extends beyond the ability of a constitutional court to invalidate legislation. Courts can also constrain government power in other arenas, ensuring that governments respect the rights of their citizens.

Of course, not all courts are equally powerful; a court's ability to be efficacious depends on its independence. Lacking the ability to implement their own decisions, courts are dependent upon the willingness of other political actors to follow their decisions in order for their decisions on paper to become binding law in practice. With this in mind, scholars have typically differentiated between courts that are independent by institutional design (*de jure* independence) and those that are independent in practice (*de facto* independence) (Keith, 2012; Linzer and Staton, 2015).

Studies suggest that higher levels of both types of judicial independence, *de facto* and *de jure*, are associated with increased state respect for physical integrity rights (Abouharb, Moyer and Schmidt, 2013; Crabtree and Fariss, 2015; Lupu, 2013). Physical integrity rights encompass the rights to be protected from extrajudicial murder, forced disappearance, torture, and political imprisonment (Goldstein, 1978; Poe and Tate, 1994*a*). Beyond physical integrity rights, empowerment rights represent another set of obligations which governments must respect (Richards, Gelleny and Sacko, 2001). Empowerment rights include the right to electoral self-determination, the right to domestic movement, the right to foreign movement, the right to religious freedom, the right to freedom of speech, and the right to assembly and association (Cingranelli, Richards and Clay, 2015). While physical integrity rights are undoubtedly important, these rights are also vital. They affect citizens' fundamental relationship with their government: the ability of citizens to criticize the government, the ability

to live their lives according to their own belief systems, and their ability to seek refuge from repressive governmental actions. Some research suggests that independent courts also affect citizens' empowerment rights, with countries that have independent courts more likely to respect those rights (Keith, 2012).

Recently, however, advances in measurement have called into question our understanding of the effects of judicial independence. Traditional measures of *de facto* judicial independence, drawn (directly and indirectly) from reports issued by the U.S. Department of State, have indicated that courts worldwide have generally become *less* independent over the past three decades. In contrast, most measures suggest that *de jure* independence continues to increase. This has caused some to claim that there is a "growing gap between practice and promise" (Keith, 2012, 155). A new measure of judicial independence (Linzer and Staton, 2015), one that better captures the underlying latent construct (Crabtree and Fariss, 2015), suggests that this perceived gap might not exist. Indeed, the trend over the past three decades has been one toward *more de facto* judicial independence.

The discovery that courts worldwide have become more, rather than less, independent over time calls into question the received wisdom about the relationship between judicial independence and human rights. Indeed, if the more valid measure of judicial independence were used, then perhaps the relationship between judicial independence and respect for empowerment rights may dissipate or—more worryingly—lead to the opposite conclusion: that more independent courts do a *worse* job of protecting citizens' rights. If we hope to understand the consequences of independent courts, we need to make sure that we have accurately estimated the actual relationship between judicial independence and rights protections. In a time when citizens' abilities to exercise their empowerment rights to publicize government abuses, seek refuge from abusive governments, and to exercise their ability to practice their religion without interference from government intrusion makes news almost daily, ascertaining the correct relationship between judicial independence and empowerment rights has both important scientific and policy implications.

In this paper, we re-examine the effect of *de facto* judicial independence on state respect for empowerment rights, making use of this new measure for *de facto* judicial independence (Linzer and Staton, 2015). In our empirical analysis, we find that independent courts exert a strong positive effect on state respect for empowerment rights. We obtain this result both when we use an aggregate index of empowerment rights and when we use disaggregated measures of individual rights. This result is robust to a range of other measures, modeling approaches, and specifications. We also examine two potential mechanisms through which this effect could occur. While we find no evidence that the effect of *de facto* judicial independence is conditioned by the degree to which countries allow free media, as theories related to audience costs or the threat of litigation might suggest, we find suggestive evidence that the effect of *de facto* judicial independence is conditioned by the presence of *de jure* rights protections, as Chilton and Versteeg (2016) would suggest. Taken together, our findings underscore the important role that courts can play in moderating empowerment rights abuses and highlight the importance of recent efforts to empower judiciaries in countries with histories of human rights abuse.

Independent Courts and Rights Protections

Do independent courts safeguard human rights? The literature has been primarily concerned with the ability of independent courts to safeguard one type of human right: physical integrity rights. Increased independence enables a court to take a stand against a repressive regime because the court can do so with only minimal risk of effective reprisal by the regime. As Keith (2012) writes, "the legal institutions associated with democratic systems... can potentially provide the public and other political actors with the tools and venues by which they can hold the regime accountable should it fail to keep its formal commitments" (169). Courts are unlikely to take these actions if doing so will result in existential consequences for the court or jeopardize the continued tenure or welfare of the judges who sit on that court. As such, increased judicial independence—the circumstances under which the regime

is limited in its ability to punish a court for an anti-regime ruling—should be associated with stronger respect for physical integrity rights.

Aside from the direct actions of courts, the litigation process by which courts operate provides a mechanism to publicize violations of human rights, thereby providing an indirect mechanism through which independent courts may lead to more respect for human rights. According to this theory, the litigation surrounding these decisions may have powerful negative reputational and resource costs for the regime, providing an indirect mechanism through which independent courts are associated with more respect for rights; because regimes that would otherwise repress their citizens are fearful of these costs, they respect rights in order to limit their exposure to harmful litigation (Powell and Staton, 2009*a*; Keith, 2012). As such, the presence of an independent court serves as a reminder that the threat of harmful litigation is always present so long as that independent court is available to hear that litigation.

Prior studies have primarily analyzed the extent to which *de jure* judicial independence is associated with violations of physical integrity rights. While the empirical evidence presented in older studies is mixed, recent research suggests a strong positive correlation between *de jure* judicial independence and state respect for physical integrity rights (Cross, 1999; Keith, Tate and Poe, 2009; Keith, 2012; Powell and Staton, 2009*b*; Lupu, 2013).[1]

More recently, scholars have begun to examine the effect of *de facto* judicial independence on human rights abuses. Because *de jure* judicial independence measures only formal promises of independence, rather than the extent to which courts are independent in practice, one concern is that *de jure* judicial independence might overestimate the extent to which a court, in practice, is independent. In her impressive study on the subject, Keith (2012) presents persuasive evidence that independent courts constrain political repression. Using newer measures of both state respect for human rights and *de facto* judicial independence, Crabtree and Fariss (2015) provide additional evidence that independent courts can protect

[1]Keith (2012) provides a detailed review of this literature.

individuals from violent human rights abuses.

But does increased judicial independence also protect other human rights, such as empowerment rights? In contrast to physical integrity rights, which provide the individual with protection against physical harm, empowerment rights "provide the individual with control over the course of his or her own life and, in particular, control over the state." (Richards, 2003, 29). It seems reasonable that if increased *de facto* judicial independence is correlated with increased state respect for physical integrity rights, it might also be correlated with increased state respect for empowerment rights.

The intuition that an empowered judiciary might check executive encroachments on these rights has wide appeal among international organizations. (Keith, 2012). The United Nations, for instance, has passed standards that promoted judicial independence with the intent of encouraging improved respect for civil rights (Keith, 2002). Similarly, Freedom House often cites decreased judicial independence as one of the important causes of lower levels of civil rights protections (House, 2015).

Case studies lend support to this intuition. For example, Egypt underwent a series of legal reforms in the 1970s that resulted in the establishment of the Supreme Constitutional Court, among other changes. This independent court often overturned laws that sought to limit civil rights (Moustafa, 2014). The opposite occurred in Mexico under the Institutional Revolutionary Party (PRI), where the regime used its extensive control of the judicial system to limit the free exercise of civil rights throughout the regime's rule (Magaloni, 2008).

Yet, despite both the general belief and compelling anecdotal evidence that these variables are related, there have been few attempts at creating general theories that illuminate the mechanisms by which the judiciary might improve empowerment rights (Peretti, 2002). We think that there are many possible reasons why increased judicial independence may be associated with increased respect for empowerment rights. We outline two here – a visibility story and a protection story – though we acknowledge that other mechanisms might exist. First, an independent court might increase the domestic and international visibility of rights

abuses. One way they can do this is by allowing cases to proceed that could be damaging to the regime. Another way is by ruling against the regime, which could validate in the public eye pre-existing claims made by the opposition about government repression. In either case, the court's actions provide increased visibility, particularly in countries with free and independent media organizations, which could increase the likelihood that a regime will suffer adverse consequence for violating rights.[2]

Second, many empowerment rights relate to the ability of citizens to dissent or protest against the regime without reprisal. Of course, courts that are not independent are, by definition, closely under the control of the ruling regime and should therefore be less likely to issue rulings that empower citizens to speak out or otherwise express dissent against the regime. Independent courts, on the other hand, should be more likely to issue rulings that protect the ability of citizens to dissent. This explanation leads to the same expectation: increased judicial independence should lead to an increased respect for empowerment rights.

As we explain below, if judicial independence and respect for empowerment rights are linked through the protection of dissent, judicial independence should have the greatest effect when it is necessary for the protection of dissent. As Chilton and Versteeg (2016) have argued, organizational rights are self-reinforcing, suggesting that these rights enable the creation of institutions that can help to protect those rights, even when they involve dissent against the government. Individual rights, on the other hand, are not self-reinforcing and should be more likely to require independent judicial intervention in order for their respect. Hence, if the protection story is accurate, independent courts would result in greater respect for individual rights regardless of whether a *de jure* constitutional provision is in place

[2]Of course, as Epp (1998) notes, mere visibility of a rights violation is not necessarily enough for those rights to be protected. Instead, Epp shows that the presence of a support structure for legal mobilization can be important for rights to be respected by regimes. While there can be no doubt that such a support structure—including lawyers, interest groups, and appropriate funding for litigation—is important for violations of rights to be litigated, we suggest that visibility of those violations is a theoretical prerequisite: in the absence of information about rights violations, such a support structure would be unlikely to form and acquire the resources necessary to be successful. As a result, the presence of a support structure is posttreatment to the visibility of rights violations and we are, thus, statistically unable to include it in our empirical analyses without risk of bias.

to protect those rights but judicial independence will be associated to a lesser degree with the protection of organizational rights in the presence of a *de jure* constitutional provision. Put simply, the fact that organizational rights are self-reinforcing means that judicial independence is not as necessary for their respect as it is for regimes to respect individual rights.

Together, these explanations lead us to the following hypothesis:

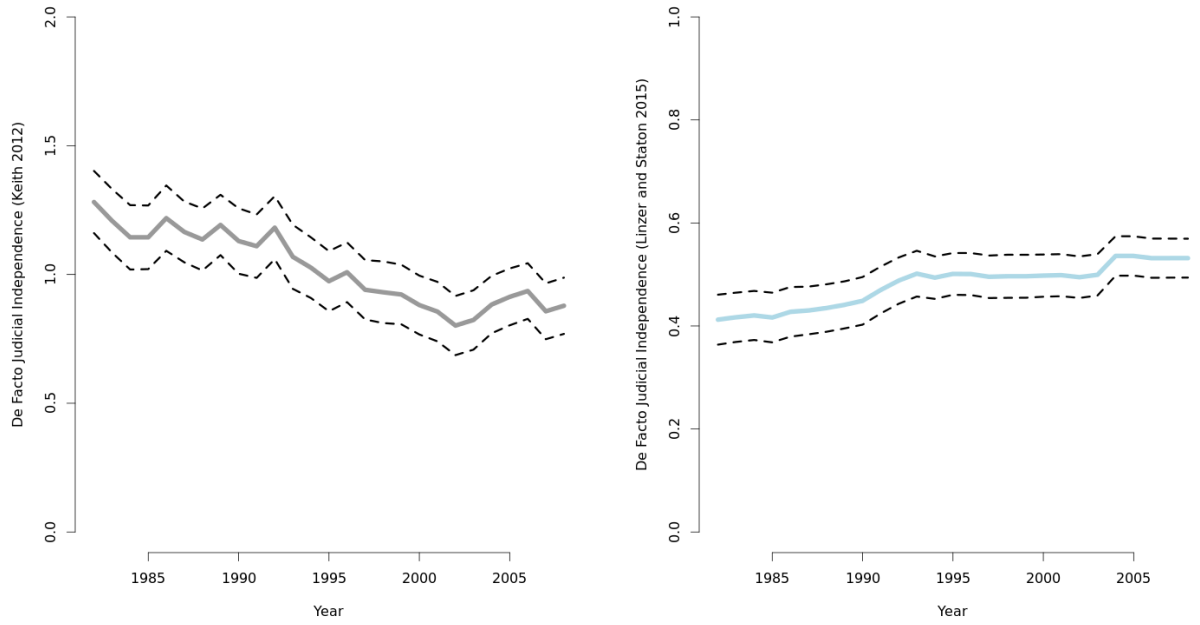
> ***De Facto* Judicial Independence Hypothesis**: Increased judicial independence is positively correlated with increased state respect for human rights.

We are not the first to posit a connection between empowerment rights and judicial independence. Recent research, most notably Keith (2012), provides empirical support for this expectation. A potential limitation of this line of research, however, is that it relies on measures of *de facto* judicial independence that are indirectly or directly based on State Department reports. This is problematic because those reports are probably biased in favor of U.S. trade partners and military allies, among others (Crabtree and Fariss, 2015; Fariss, 2014; Keith, 2012). As a result, the measure might not accurately capture changes in judicial independence over time and across countries. If this is true, systematic measurement error might be influencing empirical findings and, as a consequence, the inferences scholars make.

The release of a new latent measure of *de facto* judicial independence (Linzer and Staton, 2015) allows us to see if this is true. This measure draws on multiple sources in addition to the State Department reports and paints a different picture of judicial independence over time. While measures that use State Department information, such as Cingranelli, Richards and Clay (2015) or Keith (2012) indicators, show that judicial independence is decreasing, the Linzer and Staton (2015) measure shows that judicial independence is increasing. Figure 1 illustrates this relationship. In Panel (a) it plots the trimmed country-year means for the Keith (2012) measure across the years 1980–2008. These values approximately represent the extent of judicial independence across the model for a given year. Panel (b) plots the trimmed country-year means from the Linzer and Staton (2015) measure. Higher values

for both measures are associated with higher levels of *de facto* judicial independence. By comparing the patterns of these values across panels, we see that the two measures capture different dynamics over time.[3] This underscores the potential limits of State Department-based measures. It also suggests that results from models that use a measure primarily based on State Department reports might not hold when that measure is replaced with the improved Linzer and Staton (2015) measure.

Figure 1: Mean Values of *De Facto* Judicial Independence Over Time (1982-2008)



Note: Figure 1 plots the trimmed mean country-year values for the Keith (2012) and Linzer and Staton (2015) measures over time. The Keith (2012) measure lacks values for 2 observations from our sample so the data come from 3473 country-year observations from 1982 to 2008. Higher values for both measures are associated with higher levels of *de facto* judicial independence. The thick solid lines represent the country-year trimmed means. To minimize the influence of outliers, we truncate 10% of the data at both ends of the distribution. The general trend remains the same if we use untruncated country-year means. The dashed black lines represent 90% confidence intervals of the trimmed mean. Panel (a) presents the trimmed mean country-years values of the Keith (2012) measure over time. Panel (b) presents the trimmed mean country-year values of the Linzer and Staton (2015) measure over time. The trimmed means are correlated at -0.688.

[3]In Appendix C, we present a plot of the year-by-year correlation coefficients between these measures. It further shows that the measures capture different constructs over time.

Model and Results

In line with previous studies (Richards, Gelleny and Sacko, 2001; Keith, 2012), we measure the extent to which states respect empowerment rights with the CIRI Empowerment Index. This is an additive index that captures the extent to which states respect seven different but related rights: freedom of foreign movement, freedom of domestic movement, freedom of speech, freedom of assembly and association, workers' rights, freedom of religion, and electoral self-determination (Richards, Gelleny and Sacko, 2001). The degree to which states violate these seven rights is measured on a $0-2$ scale, with lower values associated with higher levels of violation. The index then ranges from 0, which indicates that a state does not respect any of these rights, to 14, which indicates that a state fully respects all of these rights.

To reexamine the relationship between judicial independence and respect for empowerment rights, we draw upon a "standard" model specification in the human rights literature (Poe and Tate, 1994*b*; Keith, 2002; Keith, Tate and Poe, 2009; Keith, 2012). This model specification includes a lagged dependent variable along with independent variables that capture between-state and over-time differences in regime type, socioeconomic conditions, human rights treaty ratification, and domestic and international threats (Keith, 2012, 68).[4] The virtue of this model specification is its widespread usage and the large amount of work that justifies the theoretical concepts included in the model, allowing us both to draw clear comparisons with prior findings and to be confident in the quality of the model specification. Table 1 presents descriptions and descriptive statistics for the measures in this model.[5]

Leveraging the availability of new measures for key theoretical concepts, we make one key addition to this model and one slight modification. To test our hypothesis that independent courts are associated with improved state respect for empowerment rights, we add a lagged

[4]For a review of this model and its tremendous influence in the quantitative human rights literature see Richards, Webb and Clay (2015).

[5]Unless otherwise noted, the data come from Abouharb, Moyer and Schmidt (2013) and Richards, Webb and Clay (2015). We thank them again for sharing their data.

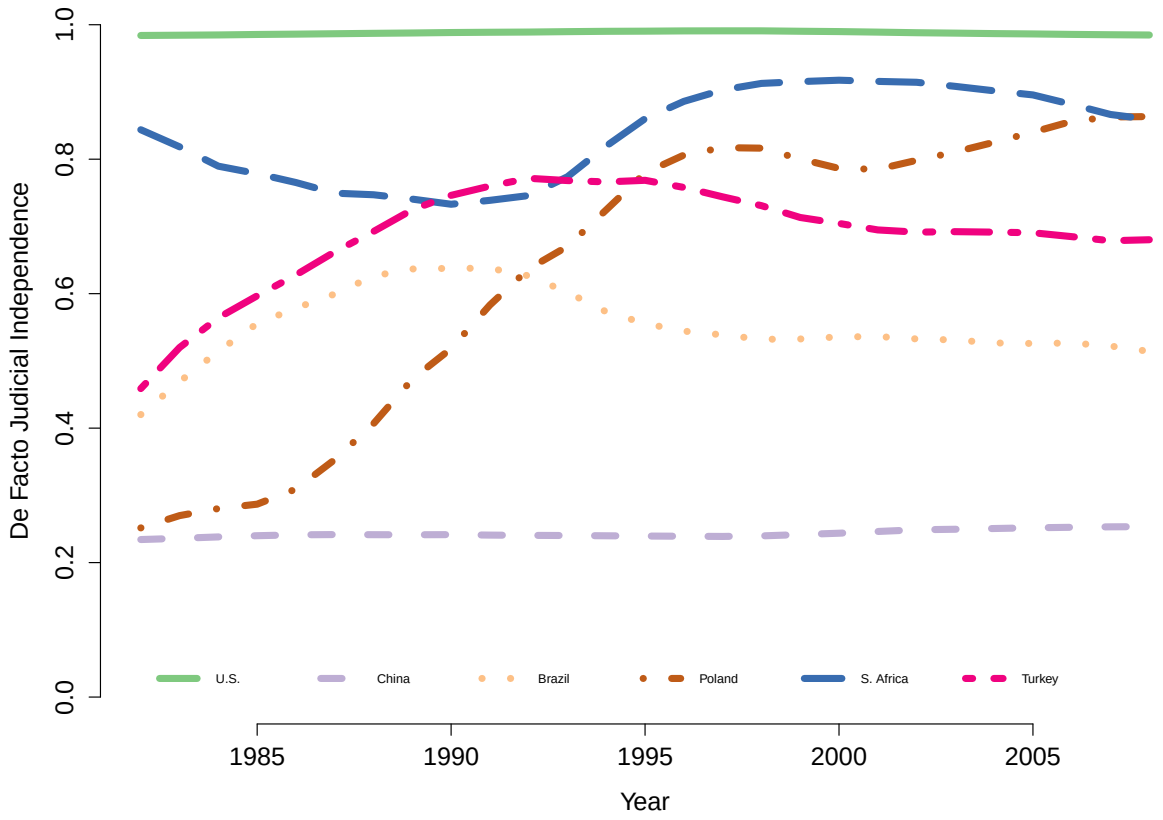
latent variable measure of *de facto* judicial independence (Linzer and Staton, 2015).[6] The variable is bound between $0-1$ and ranges from $0.012-0.995$ in our data. The measure varies within countries over time. For example, *de facto* judicial independence score for Venezuela varies between $0.335 - 0.590$, while the score for France varies between $0.635 - 0.787$. The measure also captures cross-country changes in *de facto* judicial independence over time. *De facto* judicial independence scores vary between $0.012 - 0.993$ in 1982 and between $0.018 - 0.994$ in 2008. The mean value for this measure is 0.446 in 1982 but increases to 0.532 by 2008.[7]

To make this abstract measure a bit more concrete, we briefly examine temporal trends in *de facto* judicial independence across six countries - the United States, China, Brazil, Poland, South Africa, and Turkey. Figure 2 plots the values of the Linzer and Staton (2015) measure for these countries from 1982-2008. Unsurprisingly, the United States exhibits a high-level of *de facto* judicial independence throughout this period. The trend for most advanced democracies looks similar to this. China, on the other hand, exhibits a low-level of *de facto* judicial independence that has increased marginally with time. This is in line with real-world developments in China, where the government made the rule of law an important domestic policy in the late 1960s (Peerenboom, 2002). The patterns of *de facto* judicial independence are similar for Brazil and Turkey, mapping on to each regime's period of reform throughout the 1980s and early 1990s and marking the slow and steady accumulation of executive power since then (Ballard, 1999; Coman, 2014). In the data for Poland we can see the continued devolution of executive power to other political institutions that began while the country was still a member of the Warsaw Pact and has continued after its accession to the European Union (Magalhaes, 1999). Finally, the pattern for South Africa closely mirrors the decline in *de facto* judicial independence during the last years of the National Party's reign and the increase that came after the African National Congress came to power (Carothers, 1998).

[6] We lag the measure to address possible concerns over simultaneity (M.Wooldridge, 2010).

[7] Appendix B presents a plot of the mean country-year values of the *de facto* judicial independence measure over time.

Figure 2: De Facto Judicial Indepence Levels Over Time



Note: Figure 2 plots the values of the (Linzer and Staton, 2015) measure for six countries from 1982-2008. The measure is plotted for the United States, China, Brazil, Poland, South Africa, and Turkey. See text for more information about the data.

This variable improves upon previous measures in several ways. First, it addresses the fact that *de facto* judicial independence is an unobservable construct that can only be measured with some uncertainty. This is important because coders cannot be certain of the exact level of *de facto* judicial independence for one country-year relative to another. Second, previous measures of *de facto* judicial independence are typically based on only one data source (Cingranelli, Richards and Clay, 2015; Keith, 2012). Linzer and Staton (2015), in contrast, use a measurement model that incorporates data from twelve separate observable indicators (i.e. manifest variables) that are theoretically related to *de facto* judicial independence. This ensures that the estimates for the latent variable are not strongly biased by any one data source (Linzer and Staton, 2015). Third, the Linzer and Staton (2015) measure is continuous, while other measures are ordinal and typically bound between $0 - 2$ (Cingranelli, Richards and Clay, 2015; Keith, 2012). The advantage of a continuous measure is that it allows us to estimate the effect of small changes, rather than large shifts, in *de facto* judicial independence. This is important if we believe that judicial independence changes slowly from year to year and are interested in how these changes influence state respect for empowerment rights.

In addition to including a measure of *de facto* judicial independence in the model, we also make a minor modification to the standard specification. Specifically, we replace the measure of democracy perhaps most frequently used in models of state respect for human rights, Polity IV (Marshall, Jaggers and Gurr, 2010), with the Democracy-Dictatorship measure (Cheibub, Gandhi and Vreeland, 2010), a binary regime-type indicator that is coded based on whether free and contested election elections occur. We replace the Polity measure classifies regimes partly based on their respect for human rights (Hill Jr. and Jones, 2014*a*; Hill Jr, 2014). The concern here is that using this measure might cause us to partially control for our outcome variable (Crabtree and Fariss, 2015).[8]

[8]An alternative approach would be to replace the Polity measure with the the Unified Democracy Scores (UDS) measure (Melton, Meserve and Pemstein, 2011). One reason is because there continues to be debate over which manifest variable of democracy best captures the underlying construct (Melton, Meserve and Pemstein, 2011). As a result, we do not necessarily have strong reasons to prefer one manifest indicator over another. It might be better then to use a latent measure, such as UDS, that draws upon multiple measures and averages over the potential biases of any one indicator. A second reason is because many published

Given that our dependent variable is ordered, we test our hypothesis using an ordered logit model. The full model specification is shown in Eq. (1).

$$\begin{aligned}\text{Empowerment Rights Index} \approx \beta_0 \;&+\; \beta_1 \text{Empowerment Rights Index (lagged)} \\ &+\; \beta_2 \textit{De Facto} \text{ Judicial Independence (lagged)} \\ &+\; \beta_3 \text{Democracy} + \beta_4 \text{Military Regime} + \beta_5 \text{Monarchy} \\ &+\; \beta_6 \text{GDP Per Capita (logged)} + \beta_7 \text{GDP Growth (logged)} \\ &+\; \beta_8 \text{Population (logged)} + \beta_9 \text{Population Density (logged)} \\ &+\; \beta_9 \text{ICCPR Ratification} + \beta_{10} \text{Interstate Conflict Intensity} \\ &+\; \beta_{11} \text{Civil War Intensity} \qquad (1)\end{aligned}$$

We estimate this model using panel data for 173 countries from 1982-2008. Our data are clustered with multiple observations nested in each country. This means that we need to account for the fact that our observations are not necessarily independent of each other (M.Wooldridge, 2010). To do this, we estimate a multilevel regression model that includes country-level random effects (Gelman and Hill, 2007; Raudenbush and Bryk, 2002). We use a multilevel model because this approach has a number of advantages over other methods that are often used to analyze panel data, such as OLS with fixed effects or panel-corrected standard errors. These advantages include increased efficiency and more accurate standard errors (Shor et al., 2007). Our results, however, are robust to more traditional means of analyzing panel data, such as using OLS with classic and robust standard errors and including year-level random effects.[9]

We also need to account for uncertainty in the point estimates of the *de facto* judicial independence measure. Latent variables, such as this one, provide both a point estimate for

empirical findings are not robust to the inclusion of alternative measures of democracy (Elkins, 2000; Casper and Tufis, 2003). This might be the case because some indicators possess countervailing biases. If that is true, then we should perhaps prefer a measure that incorporates data from multiple indicators. While we present results with the Democracy-Dictatorship measure, our results are robust to using other alternative indicators of regime type, including the Unified Democracy Scores measure (Cheibub, Gandhi and Vreeland, 2010), the Polity measure (Keith, 2012; Keith, Tate and Poe, 2009), and the Autocratic Regimes measure (Geddes, Wright and Frantz, 2014*a*). We present the results of these models in Appendix A.

[9]We cannot estimate a model with country-level fixed effects because the regime type indicators included in our model do not vary within some countries in our dataset.

Table 1: Variable Descriptions and Descriptive Statistics

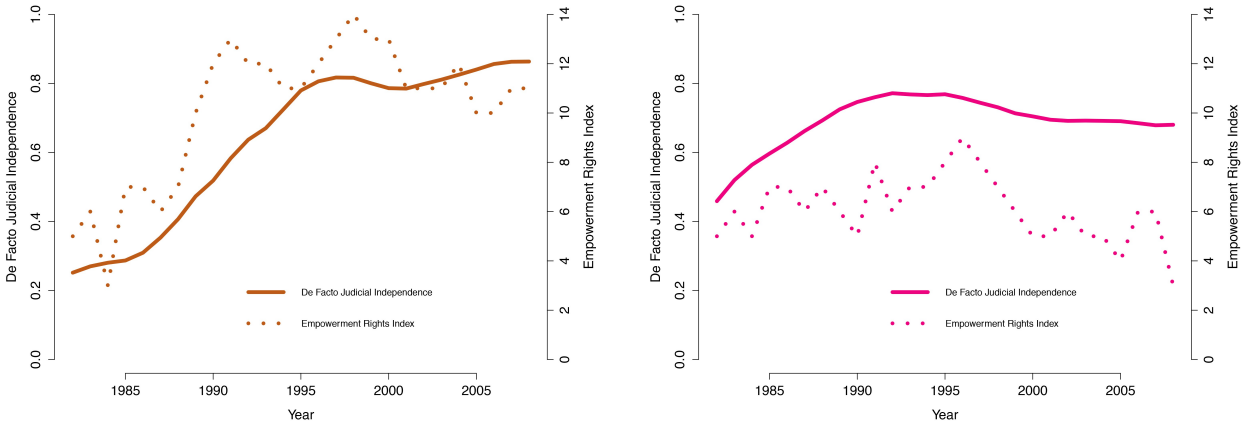
Variable	Description	Mean	Range	N
Empowerment Rights Index	CIRI measure of state respect for empowerment rights	8.653	$0 - 14$	3475
Empowerment Rights Index (lagged)	CIRI measure of state respect for empowerment rights (lagged)	8.694	$0 - 14$	3475
De Facto Judicial Independence (lagged)	Latent variable measure of *de facto* judicial independence	0.511	$0.012 - 0.995$	3475
Democracy	Binary indicator for democracies	0.535	$0 - 1$	3475
Military Regime	Binary indicator for military regimes	0.184	$0 - 1$	3475
Monarchy	Binary indicator for monarchies	0.059	$0 - 1$	3475
GDP Per Capita (logged)	Real GDP per capita in US$	8.461	$4.913 - 11.920$	3475
GDP Growth (logged)	Change in GDP per capita in US$	1.022	$0.352 - 1.887$	3475
Population (logged)	Mid-year country population	8.992	$3.004 - 14.090$	3475
Population Density (logged)	Population size divided by country area in miles	4.463	$-4.058 - 7.920$	3475
ICCPR Ratification	Measure of treaty ratification	1.555	$0 - 2$	3475
Interstate Conflict Intensity	Ordinal measure of international conflict	0.014	$0 - 2$	3475
Civil War Intensity	Ordinal measure of interstate conflict	0.176	$0 - 2$	3475

Note: Descriptive statistics calculated based on the 3475 country-year observations in our sample.

each observation, which is the mean value of the posterior distribution, and a measure of uncertainty for these estimates, which is the standard deviation of the posterior distribution. We include this information in our model by following the recommendations of Schnakenberg and Fariss (2014) and Crabtree and Fariss (2015). Specifically, we duplicate our dataset 1,000 times and then assign a random draw from the posterior distribution of the latent variable to each country-year observation. We then use this new value as the measure. We perform this procedure for the Linzer and Staton (2015) measure. After that, we estimate a set of 1,000 random-effects models, saving and combining the results across the the multiple sets of data to create one set of coefficient and standard error estimates. This procedure is substantively important because it allows us to to relax the assumption that theoretically important variables are measured perfectly and without error (Mislevy, 1991; Schnakenberg and Fariss, 2014). Rubin (1987) developed the equation used to combine the estimates from each of the 1,000 models Rubin (1987). Crabtree and Fariss (2015), Mislevy (1991), and Schnakenberg and Fariss (2014) show how this approach should be used in relation to latent variable models.

According to the *De Facto Judicial Independence Hypothesis*, increased court independence should correlate with increased state respect for empowerment rights. Before we take our model to the data, we first check if the relationship between these measures exists in a some of the cases discussed above. Figure 3 presents the over-time relationship between *de facto* judicial independence and empowerment rights for two countries. Panel (a) plots this relationship for Poland and Panel (b) plots this relationship for Turkey. The solid line represents a country's *de facto* judicial independence score and the dotted line represents a country's value on the Empowerment Rights Index. We can see here that in both countries periods of increased judicial independence roughly correspond with increases in state respect for empowerment rights and that decreases in judicial independence also roughly correspond with decreases in state respect for empowerment rights. These patterns fit well with the recent history of both Poland and Turkey (Coman, 2014; Magalhaes, 1999).

Figure 3: De Facto Judicial Independence and Empowerment Rights Index Levels Over Time (Poland and Turkey)



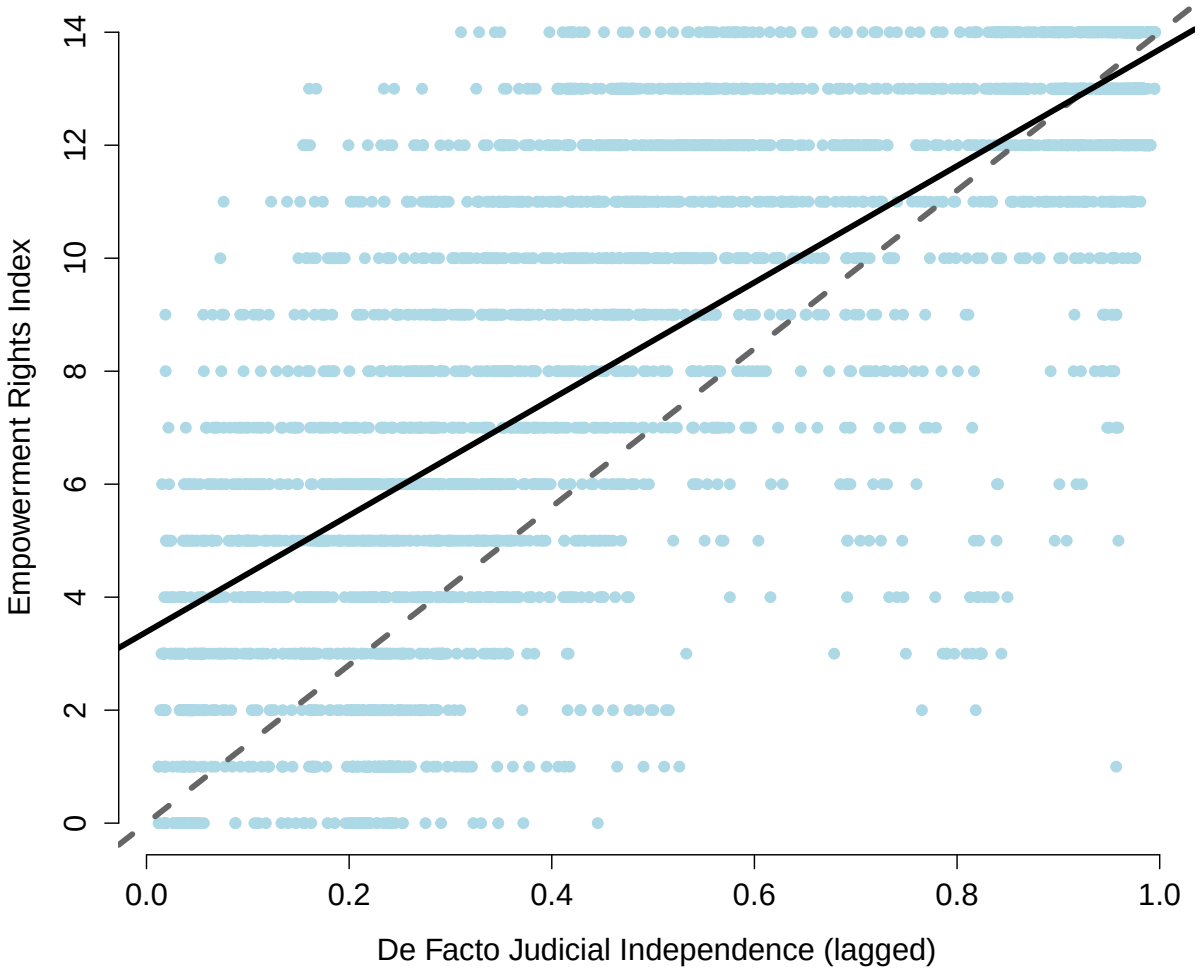
Note: Figure 3 presents the over-time relationship between *de facto* judicial independence and empowerment rights for two countries. Panel (a) plots this relationship for Poland and Panel (b) plots this relationship for Turkey. See text for more information about the model and data.

We then look to see if there is a general trend in the bivariate relationship across a broader range of countries. Figure 4 presents a bivariate plot of *de facto* judicial independence and state respect for empowerment rights. The dashed grey 45-degree line represents where we would expect the points to fall if there was a perfect linear relationship between the two variables. The black line represents the estimated slope from a bivariate regression.[10] This line suggests a positive relationship between *de facto* judicial independence and state respect for empowerment rights.

Of course, both judicial independence and respect for empowerment rights are plausibly related to many other confounding factors. For example, factors such as whether or not a country faces an interstate threat or whether it is ruled by an authoritarian regime are likely related to changes in both state respect for empowerment rights and *de facto* judicial independence. In order to address possible confounders and to place this relationship in context, we estimate the model shown in Eq. (1). The results of this model are presented in Figure 5 and Table 3. As predicted, the model shows that state respect for human rights is

[10]In this model, the p-value for *de facto* judicial independence is ≈ 0.000.

Figure 4: Bivariate Plot of State Respect for Empowerment Rights and *De Facto* Judicial Independence Across Countries (1982-2008)



Note: Figure 4 presents a bivariate plot of *de facto* judicial independence and state respect for empowerment rights. The dashed grey 45-degree line represents where we would expect the points to fall if there was a perfect linear relationship between the two variables. The black line represents the estimated slope from a bivariate regression. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. See text for more information about the model and data.

significantly higher in states with independent courts. This is indicated by the positive and statistically significant coefficient on *De Facto Judicial Independence*. The effect of increased judicial independence is also substantively large. Controlling for the other factors in our model, if a country were to experience a change in *de facto* judicial independence from 0.2 to 0.8, the approximate difference between modern-day China and the modern-day United States, its ordered log-odds of experiencing a higher level of state respect for empowerment rights would increase by about 1.733. This effect is more than *twice* the estimated effect of an autocratic regime becoming a democracy (0.883). These results strongly suggest that increased judicial independence can have a meaningful effect on individuals' empowerment rights.

Table 2: CIRI Component Descriptions and Descriptive Statistics

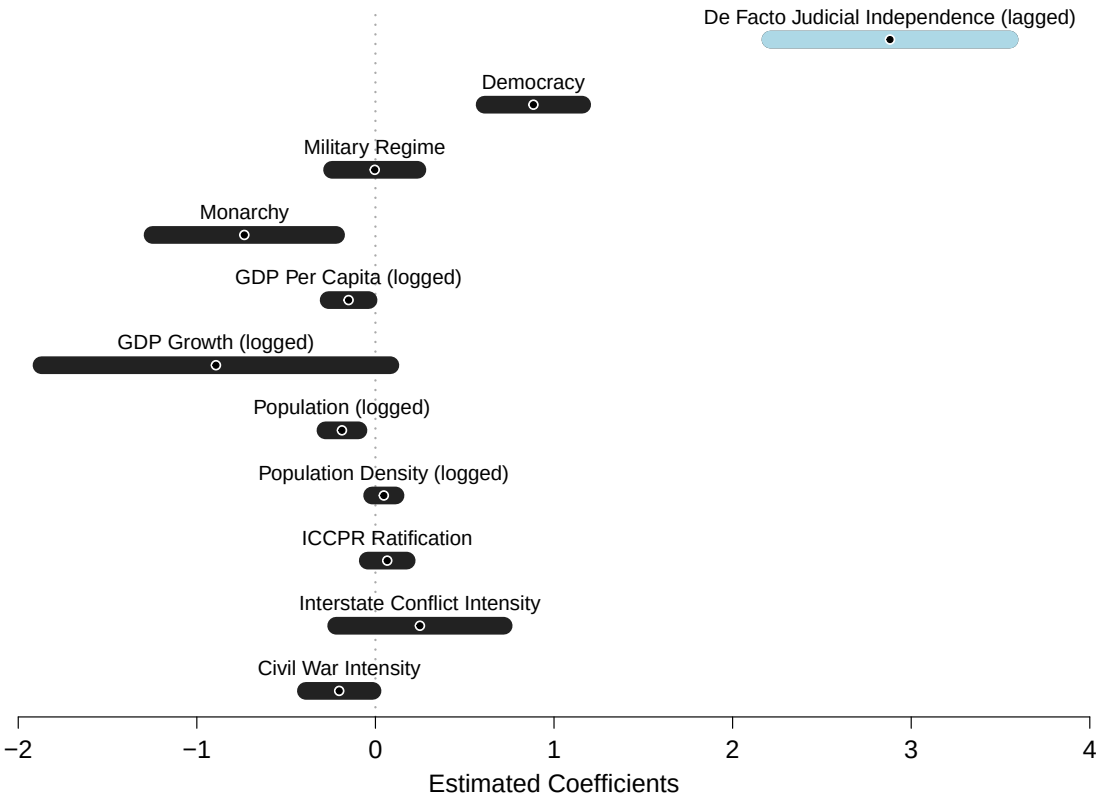
Variable	Description	Mean	Range	N
Freedom of Foreign Movement	Indicates citizens' freedom to leave and return to their country.	1.425	$0-2$	3475
Freedom of Domestic Movement	Indicates citizens' freedom to travel within their own country.	1.489	$0-2$	3475
Freedom of Speech	Indicates the extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets.	1.049	$0-2$	3475
Freedom of Assembly and Association	Indicates the extent to which the freedoms of assembly and association are subject to actual governmental limitations or restrictions.	1.165	$0-2$	3475
Worker's Rights	Indicates the extent to which workers enjoy internationally recognized rights at work.	1.010	$0-2$	3475
Freedom of Religion	Indicates the extent to which the freedom of citizens to exercise and practice their religious beliefs is subject to actual government restrictions.	1.325	$0-2$	3475
Electoral Self-Determination	Indicates to what extent citizens enjoy freedom of political choice and the legal right and ability in practice to change the laws and officials that govern them through free and fair elections.	1.190	$0-2$	3475

Note: All definitions taken directly from the Cingranelli, Richards and Clay (2015) codebook. Descriptive statistics calculated based on the 3475 country-year observations in our sample.

Additional Empirical Implications

Recall that our hypothesis is that increased *de facto* judicial independence is positively correlated with increased state respect for empowerment rights. One empirical implication of this is that *de facto* judicial independence should positively correlate with the Empowerment Index. As just discussed, we find evidence for this in the results of our first model. Another empirical implication of this hypothesis is that *de facto* judicial independence should positively correlate with the several measures that comprise the Empowerment Index. We

Figure 5: State Respect for Empowerment Rights Across Countries (1982-2008)



Note: Figure 5 plots the estimated coeffiecients and 95% confidence intervals from Model 1. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. The dependent variable is *Empowerment Rights Index*. See text for more information about the model and data.

estimate seven additional models, replacing the Empowerment Rights Index variable that we use as the dependent variable in Model 1 with one of the Cingranelli, Richards and Clay (2015) indicators that comprise the index. This allows us to see if the relationship is driven by a particularly strong relationship between *de facto* judicial independence and one or more of the individual rights in the index measure. It is also easier to interpret changes in the component measures than it is to interpret changes in the Empowerment Rights Index. As a reminder, the individual indicators, described in Table 2, are coded from $0-2$, with higher values associated with increased state respect for empowerment rights.

Similar to the Empowerment Rights Index, the individual measures are ordered, so we estimate ordered logit models with country-level random effects. Since these models also include the latent *de facto* judicial independent variable, we estimate 1,000 of these models, and then save and combine the results of the models as described above. To ease model estimation, we set the threshold parameters to be equidistant.

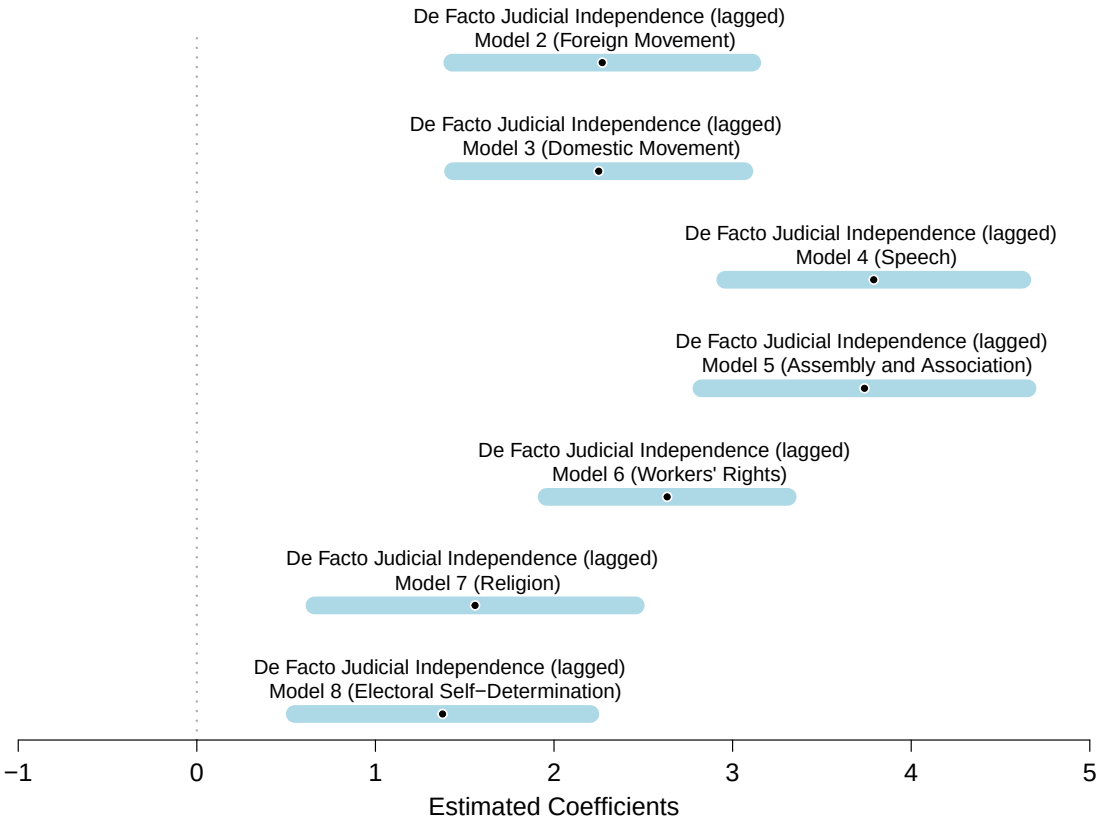
Figure 6 and Table 4 display the results of these models. Both present ordered log-odds for the variables in our model. Figure 6 plots 95% confidence intervals around the estimated coefficients while Table 4 presents estimated coefficients and standard errors. If *de facto* judicial independence is positively correlated with state respect for empowerment rights, we would expect the ordered log-odds for *de facto* judicial independence to be positive and statistically significant.

Figure 6 shows that this is the case across *all* models. Indeed, the size of the estimated effect is substantial, indicating that a full one-unit change in *de facto* judicial independence is associated with a dramatic increase in the log-odds that a state respects individual empowerment rights. For example, a change in *de facto* judicial independence from the 25% percentile (0.249) to the 75% percentile (0.831) is associated with a 2.274 increase in the log-odds of a country fully respects free speech rights. In other words, a change in *de facto* judicial independence from the level of the Philippines in 1984 to the level of Italy in 2003 is associated with a substantial increase in the probability that a country fully respects free

speech rights, like the Netherlands or Papua New Guinea did in 2008.

Table 4 highlights the relative importance of this relationship. In each model, the estimated coefficient for *de facto* judicial independence is much larger than the estimated coefficient for any other independent variable. This indicates that an independent judiciary is one of the most important correlates of improved state respect for individual empowerment rights.

Figure 6: State Respect for Individual Empowerment Rights Across Countries (1982-2008)



Note: Figure 6 plots the estimated log odds ratios and 95% confidence intervals for *de facto* judicial independence from Models 2–8. The text above each plotted line indicates the model that the estimate corresponds to and the dependent variable used in that model. The gray dotted line is drawn at 0. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. See text for more information about the model and data.

Table 3: State Respect for Empowerment Rights Across Countries (1982-2008)

	Model 1
Empowerment Rights Index (lagged)	0.954***
	(0.026)
De Facto Judicial Independence (lagged)	2.899***
	(0.340)
Democracy	0.883***
	(0.137)
Military Regime	-0.003
	(0.122)
Monarchy	-0.734***
	(0.262)
GDP Per Capita (logged)	-0.152***
	(0.056)
GDP Growth (logged)	-0.892†
	(0.490)
Population (logged)	-0.188***
	(0.046)
Population Density (logged)	0.047
	(0.033)
ICCPR Ratification	0.0659
	(0.055)
Interstate Conflict Intensity	0.250
	(0.239)
Civil War Intensity	-0.203**
	(0.095)
N	3475

Note: † $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. The dependent variable is *Empowerment Rights Index*. Threshold parameters not presented. See text for more information about the model and data.

Robustness Checks

We conduct several additional analyses to see if our results are robust. First, we replace the dependent variable with a latent variable measure of empowerment rights (Schnakenberg and Fariss, 2013). By using the latent variable, we can relax the assumption that state respect for empowerment rights has been measured precisely (Schnakenberg and Fariss, 2013). Second, we account for the extent to which states protect empowerment rights in their constitutions (Keith, 2012). Since constitutional protections of these rights could increase both *de facto*

Table 4: State Respect for Individual Empowerment Rights Across Countries (1982-2008)

	Model 2 Foreign Movement	Model 3 Domestic Movement	Model 4 Speech	Model 5 Assembly and Association	Model 6 Worker's Rights	Model 7 Religion	Model 8 Electoral Self-Determination
Dependent Variable (lagged)	3.297***	3.213***	1.690***	2.313***	2.211***	1.558***	1.376***
	(0.109)	(0.107)	(0.090)	(0.099)	(0.086)	(0.080)	(0.091)
De Facto Judicial Independence (lagged)	2.270***	2.250***	3.790***	3.738***	2.634***	3.109***	4.003***
	(0.429)	(0.416)	(0.424)	(0.466)	(0.344)	(0.459)	(0.422)
Democracy	0.876***	0.642***	1.020***	0.822***	0.346**	0.357†	1.285***
	(0.184)	(0.178)	(0.183)	(0.184)	(0.155)	(0.194)	(0.170)
Military Regime	0.244	0.191	-0.099	0.109	0.186	-0.253	-0.342**
	(0.171)	(0.156)	(0.168)	(0.169)	(0.145)	(0.173)	(0.157)
Monarchy	-0.857**	-0.270	-0.755**	-0.911**	-0.465	-0.545	-2.304***
	(0.352)	(0.320)	(0.374)	(0.390)	(0.310)	(0.423)	(0.402)
GDP Per Capita (logged)	-0.048	0.051	-0.185**	-0.115	-0.134**	-0.415***	-0.072
	(0.075)	(0.070)	(0.0823)	(0.084)	(0.066)	(0.093)	(0.077)
GDP Growth (logged)	0.399	-1.027	-0.887	1.227	-1.959***	-1.339**	0.101
	(0.725)	(0.750)	(0.675)	(0.723)	(0.630)	(0.678)	(0.653)
Population (logged)	-0.233***	-0.155**	-0.175**	-0.232***	-0.176***	-0.319***	-0.050
	(0.065)	(0.064)	(0.070)	(0.074)	(0.054)	(0.084)	(0.065)
Population Density (logged)	0.055	0.055	0.023	0.029	0.081†	-0.052	0.050
	(0.047)	(0.045)	(0.050)	(0.052)	(0.038)	(0.059)	(0.048)
ICCPR Ratification	0.025	0.073	-0.082	0.226***	0.101	0.130	0.223***
	(0.076)	(0.075)	(0.076)	(0.080)	(0.068)	(0.079)	(0.074)
Interstate Conflict Intensity	0.411	0.498	0.362	0.026	-0.194	-0.318	-0.039
	(0.323)	(0.334)	(0.349)	(0.402)	(0.356)	(0.387)	(0.315)
Civil War Intensity	-0.370***	-0.313***	-0.183	-0.076	-0.013	-0.017	-0.166
	(0.122)	(0.120)	(0.124)	(0.126)	(0.112)	(0.124)	(0.118)
N	3475	3475	3475	3475	3475	3475	3475

Note: † $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. The dependent variable is the named component of the *Empowerment Rights Index*. Threshold parameters not presented. See text for more information about the model and data.

judicial independence and state respect for empowerment rights, one may be concerned that the omission of the presence of constitutional provisions could confound the analysis. Third, we investigate whether our findings are determined by the cases we include in our data. Continuing to use the (Schnakenberg and Fariss, 2013) measure, we employ k-fold cross validation to guard against such overfitting (Efron and Gong, 1983; Hill Jr and Jones, 2014*b*; Ward, Greenhill and Bakke, 2010). Fourth, we check whether our findings are dependent on parametric assumptions. In order to account for non-linearities, interactions, and other functional form possibilities, we specify a series of random forest models (Hill Jr. and Jones, 2013; Jones and Linder, 2015). Appendices D–G contain a detailed description of these additional checks as well the results of these analyses. Taken together, they show that our findings are robust to using different measures, different model specifications, and different modeling strategies.

Mechanisms

While the primary goal of this paper is to provide new evidence for a positive relationship between independent courts and state respect empowerment rights, one might be interested in the empirical evidence for or against the two mechanisms we posed as theoretical linkages between these concepts.[11] First, we posited a *visibility mechanism* — that independent courts might increase the domestic and international visibility of rights abuses (either on their own or through the threat of litigation), thereby increasing the possibility that a regime will be sanctioned for bad behavior. If this is the case, we might expect that the effect of an independent court system is conditional upon the extent of media freedom within a country. The intuition is that while the courts can draw attention to the cases that appear before them and the verdicts that they render, the media can dramatically increase this visibility (Staton, 2010). Indeed, in many societies, the media play a vital role in educating the public

[11] We acknowledge, however, that there are likely other mechanisms that might also account for this relationship.

and international observers about domestic judicial events.

We test this argument by modifying the models presented in Table 4 to include both CIRI's free speech measure and a new variable that interacts this measure with *de facto* judicial independence.[12] If the visibility mechanism is driving the results, we would expect the interaction term to be positive and statistically significant. This would mean that the positive effect of *de facto* judicial independence on individual empowerment rights increases in freer media environments.

Table 5 display the results of these models. In most of the models, the interaction term is not statistically significant. In many, the sign of the term is not even in the expected direction, suggesting that any conditional relationship that might exist operates to attenuate the effect of independent courts on the protection of empowerment rights. There is little evidence then that the media and courts interact to increase the visibility of empowerment rights abuses and thereby safeguard these important individual freedoms.

A second way that independent courts might increase state respect for empowerment rights is a *protection mechanism* — by safeguarding individuals who exercise those rights. Many empowerment rights, in practice, provide citizens with protections to dissent against the government. Courts that are not independent are, by definition, closely linked to the ruling regime; this dependence should make these courts less likely to take a stand that empowers citizens to publicly exercise their dissent against the government. Whatever the determinants of *de facto* judicial independence are, and there is much work yet to be done on this topic, it is true that independent courts are, also by definition, able to oppose the executive (Linzer and Staton, 2015). This means that they can counter regime actions and allow citizen expression of dissent against the government, if they wish. This logic also applies to repressive policies, like censorship, that the regime may wish to impose. If a court is not independent, then it is unlikely to check the regime's attempt to impose the repressive

[12] We do not not estimate a model that includes these modifications and has the free speech measure as the dependent variable, since that would require us to put the same variable on both sides of the equation.

Table 5: Testing the Visibility Mechanism

	Model 9 Foreign Movement	Model 10 Domestic Movement	Model 11 Assembly and Association	Model 12 Worker's Rights	Model 13 Religion	Model 14 Electoral Self-Determination
Dependent Variable (lagged)	3.274***	3.071***	2.304***	2.157***	1.553***	1.379***
	(0.116)	(0.131)	(0.100)	(0.086)	(0.080)	(0.085)
De Facto Judicial Independence (lagged)	1.722***	1.816***	2.829***	2.085***	2.371***	3.009***
	(0.582)	(0.423)	(0.582)	(0.475)	(0.561)	(0.500)
Speech	0.436**	0.009	0.704***	0.798*** 0.404**	1.031***	
	(0.184)	(0.183)	(0.172)	(0.155)	(0.166)	(0.153)
De Facto Judicial Independence (lagged) X Speech	0.058	0.224	0.094	-0.080	0.230†	-0.034
	(0.170)	(0.262)	(0.148)	(0.143)	(0.124)	(0.143)
Democracy	0.740***	0.543***	0.636***	0.112	0.220	1.044***
	(0.197)	(0.175)	(0.178)	(0.160)	(0.193)	(0.151)
Military Regime	0.236	0.221	0.134	0.231	-0.220	-0.269†
	(0.171)	(0.149)	(0.163)	(0.150)	(0.171)	(0.149)
Monarchy	-0.774**	-0.133	-0.738**	-0.323**	-0.438	-2.131***
	(0.350)	(0.297)	(0.347)	(0.319)	(0.407)	(0.369)
GDP Per Capita (logged)	-0.040	0.052	-0.080	-0.116†	-0.403***	-0.037
	(0.079)	(0.065)	(0.075)	(0.069)	(0.090)	(0.065)
GDP Growth (logged)	0.520	-1.000	1.343†	-1.987***	-1.244†	0.280
	(0.779)	(0.748)	(0.699)	(0.647)	(0.681)	(0.604)
Population (logged)	-0.221***	-0.136**	-0.203***	-0.160***	-0.296***	-0.021
	(0.069)	(0.062)	(0.066)	(0.056)	(0.080)	(0.054)
Population Density (logged)	0.053	0.049	0.028	0.083**	-0.050	0.052
	(0.050)	(0.042)	(0.045)	(0.040)	(0.056)	(0.039)
ICCPR Ratification	0.026	0.067	0.254***	0.112	0.128	0.251***
	(0.076)	(0.072)	(0.077)	(0.069)	(0.079)	(0.065)
Interstate Conflict Intensity	0.389	0.498	0.015	-0.142	-0.318	-0.066
	(0.327)	(0.328)	(0.391)	(0.365)	(0.377)	(0.308)
Civil War Intensity	-0.349	-0.281**	-0.047	0.034	-0.000	-0.105
	(0.363)	(0.125)	(0.331)	(0.267)	(0.307)	(0.292)
N	3475	3475	3475	3475	3475	3475

Note: † $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. The dependent variable is the named component of the *Empowerment Rights Index*. Threshold parameters not presented. See text for more information about the model and data.

policy. On the other hand, if a government imposes a repressive policy in a country with an independent court, the court can halt the policy, thereby respecting empowerment rights.

The extent to which judicial independence might improve empowerment rights, however, should vary across the types of rights and according to whether the constitution safeguards those rights. According to Chilton and Versteeg (2016), *de jure* provisions that provide for organizational rights (e.g., workers' rights, and the rights to form political parties), increase *de facto* rights protection because they encourage the creation of independent organizations that have both the incentive and capacity to safeguard this class of rights. As a result, these rights are self-reinforcing. Since organizations are less likely to form around the protection of individual rights, *de jure* protections of these rights are not necessarily as effective.

This story, taken together with the protection mechanism that we outline above, suggests that there might be a conditional relationship between *de jure* rights protections and *de facto* judicial independence for some rights. The intuition here is that it might be less important that courts can provide safe legal harbor to those who exercise certain rights, if the exercise of those rights is also protected by independent organizations. If this is so, then the positive effect of *de facto* judicial independence on organizational rights should be lower when the constitution protects those rights. This is because while the courts can help protect these rights, it is not as necessary that they do so. It is less clear what our theoretical expectations should in regards to individual rights. It might be that the positive effect of *de facto* judicial independence on individual rights should be higher when the constitution protects those rights, or it might be only that the positive effect should not be lower.

We test these expectations by again modifying the models presented in Table 4. This time we include a binary indicator for whether the empowerment right that the model focuses on is protected by the constitution as well as a term that interacts this indicator with *de facto* judicial independence. Table 6 describes the measures of constitutional protection, presents descriptive statistics, and provides the correspondences between these measures and the CIRI component measures. If our protection story is right, we should expect that the coefficient

for *de facto* judicial independence will be statistically significant and positive but that the coefficient for the interaction term will be negative in models where the outcome measure is one of the organizational rights.

Table 6: Constitutional Protection Indicators, Descriptive Statistics, and CIRI Correspondences

Variable	Description	Mean	Range	N	Correspondence
Freedom of Movement	Binary variable that captures whether a country protects the freedom of movement in its constitution.	0.794	$0-1$	3475	Freedom of Foreign Movement and Freedom of Domestic Movement
Expression or Free Press	Binary variable that captures whether a country has either a right to expression or a right to free press in its constitution.	0.932	$0-1$	3475	Freedom of Speech
Assembly or Associaion	Binary variable that captures whether a country has either a right to assembly or a right to association in its constitution.	0.915	$0-1$	3475	Freedom of Assembly and Association
Unionize or Strike	Binary variable that captures whether a country has either a right to unionize or a right to strike in its constitution.	0.717	$0-1$	3475	Workers' Rights
Religion	Binary variable that captures whether a country guarantees the freedom of religion in its constitution.	0.942	$0-1$	3475	Freedom of Religion
Political Participation	Binary variable that captures whether a country has a right to form political parties in the constitution.	0.572	$0-1$	3475	Electoral Self-Determination

Note: All definitions taken directly from the Chilton and Versteeg (2016) codebook. Descriptive statistics calculated based on the 3475 country-year observations in our sample.

Borrowing from Chilton and Versteeg (2016), we consider organizational rights to include electoral self-determination (because this right incorporates the right to create and support political parties), workers' rights (because this set of rights includes the right to unionize), and the right to assemble. Also in line with Chilton and Versteeg (2016), we consider individual rights to include the rights to religious expression, freedom of speech, and foreign and domestic movement.

Table 7 displays the results of these models. They largely support our protection story. The primary evidence for this mechanism can be found in the results from the *Electoral Self-Determination* and *Workers' Rights* models. In both of these models, the estimated coefficient for *de facto* judicial independence and the binary rights indicator are positive, as we would expect.[13] Crucially, however, the interaction terms are negative and statistically significant. This suggests that the marginal effect of *de facto* judicial independence decreases when constitutions protect organizational rights. The same pattern is not evident

[13]Indeed, the coefficient for *de facto* judicial independence is statistically significant and positive across all models. This shows that independent courts have a positive effect on state respect for empowerment rights even in the absence of formal constitutional protections of these rights.

for individual rights, however, as the interaction term is positive across this set of models. It is also statistically insignificant ($p > 0.05$), with the exception of the *Foreign Movement* model. These results provide suggestive evidence for our protection story.

Discussion

A growing empirical literature suggests that independent courts can increase state respect for empowerment rights. Unfortunately, measurement issues prevent scholars from assessing the validity of past results. In this paper, we have used a new measure to re-examine this relationship. We find strong evidence that *de facto* judicial independence is positively correlated with empowerment rights. This empirical finding is robust to a wide-range of measures, model specifications, and estimators.

These results have important policy implications. Many of the specific rights included under the broader umbrella of empowerment rights have been the subject of intense scholarly interest in recent years, with scholars investigating the extent to which regimes engage in censorship (repression of freedom of speech) (Cain, 2013; Charles Crabtree and Kern, 2015; Gehlbach and Sonin, 2014; Howard, 2010; Kalathil and Boas, 2010; King et al., 2013; King, Pan and Roberts, 2014; Lorentzen, 2014; Shadmehr and Bernhardt, 2015), violations of voting rights (Gandhi, 2008; Gandhi and Lust-Okar, 2009; Levitsky and Way, 2002; Przeworski, Stokes and Manin, 1999; Stokes et al., 2013; Alvarez, Hall and Hyde, 2009; Beaulieu and Hyde, 2009; Beber and Scacco, 2012; Simpser, 2008), limitations on the ability to worship freely (Toft, Philpott and Shah, 2011; Vala and O'Brien, 2007), and the freedom to assemble for political or non-political purposes (Davenport, 2014; Earl, Soule and McCarthy, 2003; King et al., 2013; Shadmehr and Bernhardt, 2011). Our results suggest that one of the strongest mechanisms to limit political repression comes through the judiciary. By empowering independent courts, states can limit the extent to which their citizens' rights are curtailed.

Table 7: Testing the Protection Mechanism

	Model 15 Foreign Movement	Model 16 Domestic Movement	Model 17 Speech	Model 18 Assembly and Association	Model 19 Worker's Rights	Model 20 Religion	Model 21 Electoral Self-Determination
Dependent Variable (lagged)	3.281***	3.213***	1.684***	2.290***	1.459***	1.558***	1.328***
	(0.110)	(0.108)	(0.090)	(0.100)	(0.112)	(0.105)	(0.093)
De Facto Judicial Independence (lagged)	1.860***	2.115***	3.439***	3.446***	4.552***	2.585**	4.750***
	(0.565)	(0.586)	(0.839)	(0.862)	(0.733)	(1.203)	(0.483)
Constitutional Protection	-0.046***	-0.180	0.223	0.648	1.300**	1.357**	1.029***
	(0.264)	(0.261)	(0.368)	(0.465)	(0.375)	(0.611)	(0.251)
De Facto Judicial Independence (lagged) X Constitutional Protection	0.607***	0.169	0.367†	0.364†	-1.364***	0.354	-1.032***
	(0.178)	(0.235)	(0.217)	(0.196)	(0.214)	(0.336)	(0.175)
Democracy	0.854***	0.664***	1.018***	0.805***	0.615**	0.692**	1.151***
	(0.185)	(0.181)	(0.183)	(0.184)	(0.239)	(0.272)	(0.174)
Military Regime	0.269	0.192	-0.063	0.121	0.382	-0.098	-0.297†
	(0.171)	(0.156)	(0.167)	(0.170)	(0.208)	(0.227)	(0.157)
Monarchy	-0.861**	-0.251	-0.694†	-0.857**	-1.226**	-0.677	-2.386
	(0.351)	(0.322)	(0.376)	(0.391)	(0.512)	(0.499)	(0.408)
GDP Per Capita (logged)	-0.029	0.049	-0.177**	-0.092	-0.049	-0.348***	-0.017
	(0.075)	(0.071)	(0.082)	(0.084)	(0.110)	(0.116)	(0.078)
GDP Growth (logged)	0.344	-1.008	-0.909	1.145	-1.368†	-1.240	-0.047
	(0.707)	(0.752)	(0.675)	(0.723)	(0.816)	(0.836)	(0.651)
Population (logged)	-0.225***	-0.155**	-0.171**	-0.218***	-0.309***	-0.240**	-0.045
	(0.064)	(0.065)	(0.071)	(0.074)	(0.096)	(0.099)	(0.065)
Population Density (logged)	0.050	0.054	0.015	0.012	0.059†	-0.104	0.052
	(0.046)	(0.045)	(0.051)	(0.052)	(0.066)	(0.071)	(0.048)
ICCPR Ratification	0.013	0.089	-0.097	0.193**	0.263**	0.113	0.128†
	(0.078)	(0.077)	(0.077)	(0.081)	(0.105)	(0.103)	(0.077)
Interstate Conflict Intensity	0.406	0.495	0.363	0.019	-0.299	-0.318	-0.053
	(0.330)	(0.333)	(0.349)	(0.402)	(0.450)	(0.411)	(0.313)
Civil War Intensity	-0.362	-0.310***	-0.066	-0.076	-0.150	-0.185	-0.212
	(0.519)	(0.570)	(0.761)	(0.805)	(0.648)	(1.138)	(0.465)
N	3475	3475	3475	3475	3475	3475	3475

Note: † $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008. The dependent variable is the named component of the *Empowerment Rights Index*. Threshold parameters not presented. See text for more information about the model and data.

We also offered some suggestive evidence on two potential mechanisms that might underlie the relationship between *de facto* judicial independence and protection of empowerment rights. We found no evidence for a visibility mechanism, which suggested that independent courts increase the visibility of rights abuses and therefore open up regimes who do not respect those rights to sanctions. However, we found evidence for a protection mechanism: in line with the predictions of Chilton and Versteeg (2016), *de facto* judicial independence is positively associated with the protection of empowerment rights, but the substantive importance of independent courts is lessened in the presence of constitutional provisions that create self-reinforcing organizational rights.

Taken together, our results suggest that domestic institution, such as independent courts and constitutional provisions that protect organizational rights, can play an important role in moderating state respect for empowerment rights. Thus, those wishing to improve the state of empowerment rights in a country might be better served seeking to strengthen domestic institutions within a country than through other means, such as by reducing conflict or improving the national economy. This should be good news. While it is difficult to influence the development and behavior of domestic institutions, it is often far easier than trying to shape international forces.

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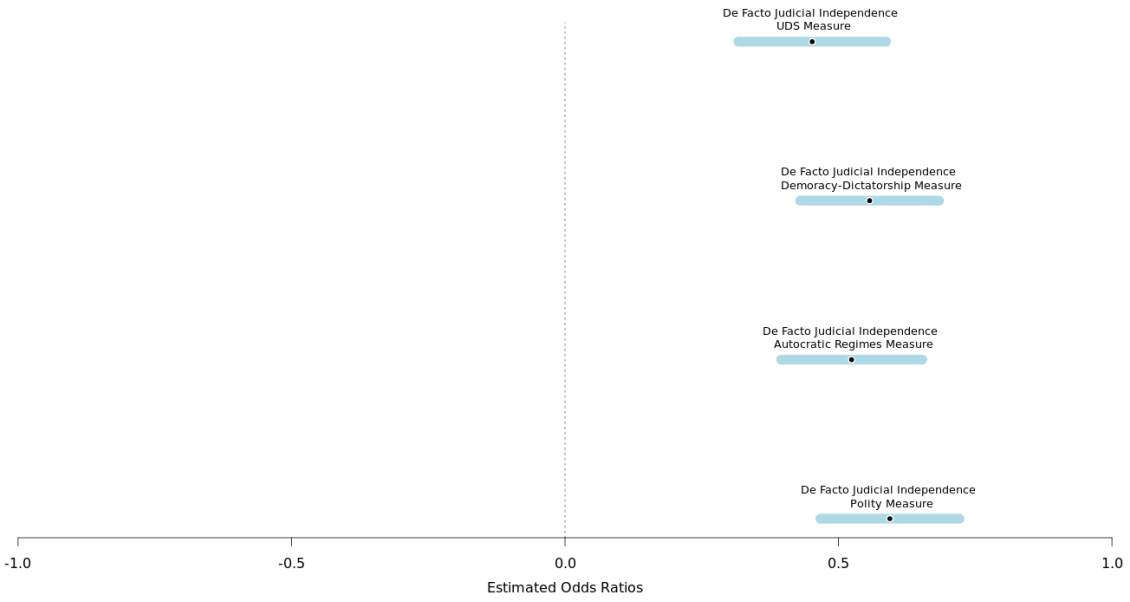
Appendix A

Figure 7 presents the estimated odds ratios and 95% confidence intervals for the *de facto* judicial independence measure across four different models. The baseline model is Model 1 from Appendix A. The other models are the same except they include different measures of democracy - the Democracy-Dictatorship (Cheibub, Gandhi and Vreeland, 2010) measure, the Autocratic Regimes (Geddes, Wright and Frantz, 2014*b*) measure, and the Polity measure. The name of the democracy measure used appears above each plotted line. Across these models, *de facto* judicial independence is statistically and substantively significant. Indeed, the estimated magnitude of the relationship is similar across the models.

Figure 7: State Respect for Empowerment Rights Across Countries (1982-2008)

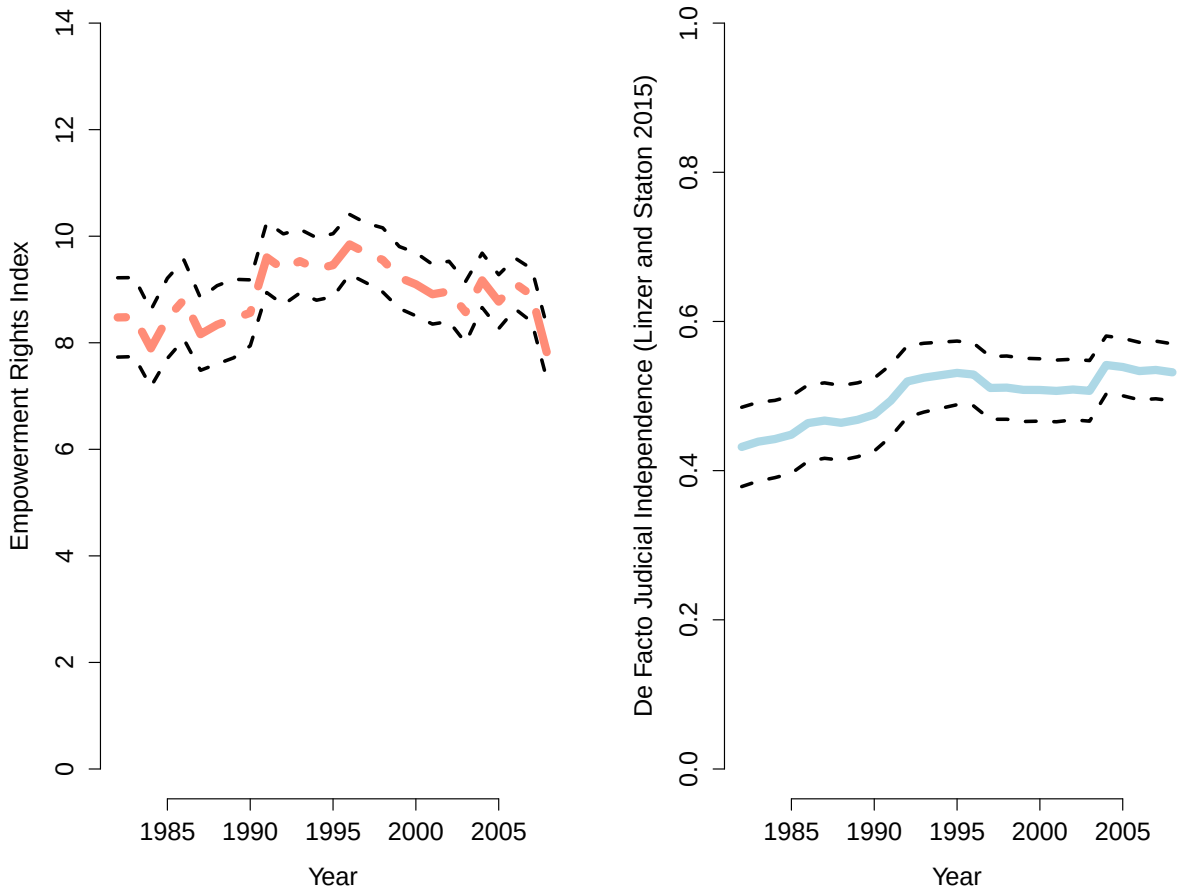


Note: Figure 7 plots the estimated odds ratios and 95% confidence intervals for the *de facto* judicial independence measure across four different models. The baseline model is Model 1 from Appendix A. The other models are the same except they include different measures of democracy - the Democracy-Dictatorship (Cheibub, Gandhi and Vreeland, 2010) measure, the Autocratic Regimes (Geddes, Wright and Frantz, 2014*b*) measure, and the Polity measure. The name of the democracy measure used appears above each plotted line. Data come from 3792 country-year observations from 1982 to 2008. The dependent variable is *Empowerment Rights Index*. See text for more information about the model and data.

Appendix B

Figure 8 plots the mean country-year values of our dependent variable and primary independent variable over time. Panel (a) presents the mean country-years values of the Empowerment Rights Index measure over time. Panel (b) presents the mean country-year values of the *de facto* judicial independence measure over time. While judicial independence appears to be increasing over time for the countries in our sample, state respect for empowerment rights does not.

Figure 8: Mean Values of the State Respect for Empowerment Rights and *De Facto* Judicial Independence Measures Over Time (1982-2008)

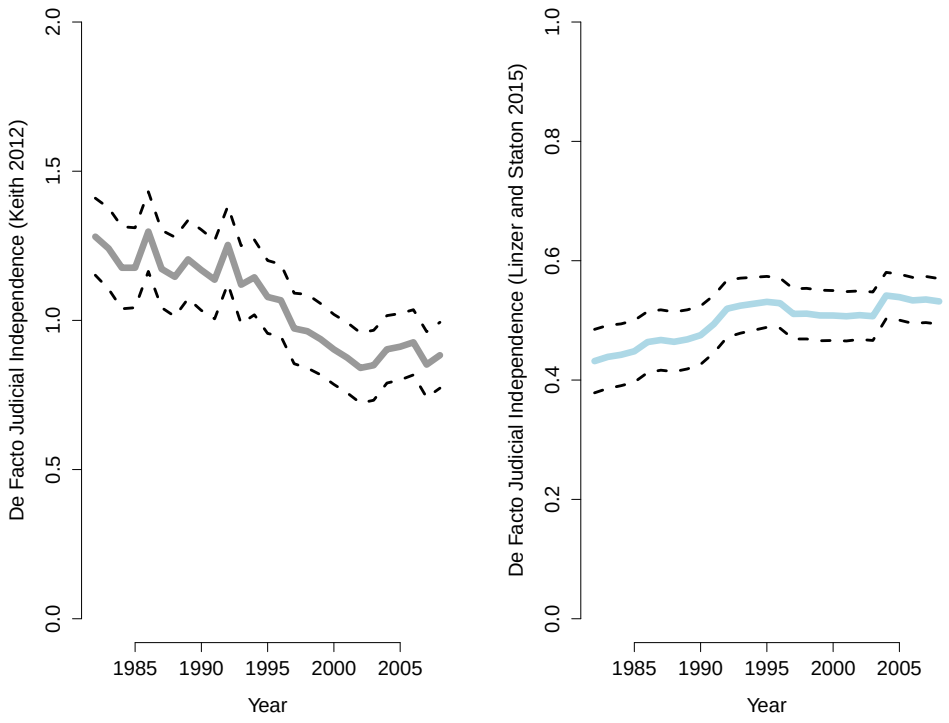


Note: Figure 8 plots the trimmed mean country-year values of our dependent variable and primary independent variable over time. The thick solid lines represent the country-year trimmed means. We truncate 10% of the data at both ends of the distribution. The dashed black lines represent 90% confidence intervals of the trimmed mean. Panel (a) presents the trimmed mean country-years values of the Empowerment Rights Index measure over time. Panel (b) presents the trimmed mean country-year values of the *de facto* judicial independence measure over time. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008.

Appendix C

Figure 9 plots the correlation coefficient between the Keith (2012) and Linzer and Staton (2015) measures for our sample over time. This shows further evidence that the two measures are capturing different underlying concepts over time. This figure also helps explain the divergent patterns in Figure 1. Figure 1 shows that the trimmed country-year mean of the Keith (2012) measure has decreased over time, while the trimmed country-year mean of the Linzer and Staton (2015) measure has increased over time. Figure 9 shows that the two measures have become increasingly correlated over time, suggesting that they are increasingly measuring similar constructs. One possible explanation for the facts presented in Figure 1 and Figure 9 is that the Keith (2012) measure over-reported the occurrence of *de facto* judicial independence in the past compared to the Linzer and Staton (2015) measure.

Figure 9: Correlation between the Keith (2012) and Linzer and Staton (2015) Measures Over Time



Note: Figure 9 plots the correlation coefficient between the Cingranelli, Richards and Clay (2015) and Linzer and Staton (2015) measures over time. Data come from 3475 country-year observations that span 173 countries from 1982 to 2008.

Appendix D

In this section, we replace the dependent variable with a latent variable measure of empowerment rights (Schnakenberg and Fariss, 2013). One possible concern with the CIRI measure is that CIRI guidelines provide coders with some degree of discretion, which could result in the miscategorization of some state estimates for some country-years. By using the latent variable, we can relax the assumption that state respect for empowerment rights has been measured precisely (Schnakenberg and Fariss, 2013). Indeed, just as with the Linzer and Staton (2015) measure, the Schnakenberg and Fariss (2013) latent variable provides us with a means to directly account for uncertainty in measurement.[14]

Table 8 presents the results of our model with the Schnakenberg and Fariss (2013) Empowerment Rights Index as the outcome measure. Since the Schnakenberg and Fariss (2013) measure is continuous, we estimated an ordinary least squares model with country-level random effects. The table reports estimated coefficients and standard errors for the variables in our model. As in Table 3, *de facto* judicial independence is statistically signficant and substantively important.

[14] Appendix D contains a plot of the mean country-year values of the Empowerment Rights Index measure over time.

Table 8: State Respect for Empowerment Rights Across Countries (1982-2008)

	Model 22
Empowerment Rights Index (lagged)	0.660^{***}
	(0.020)
De Facto Judicial Independence (lagged)	0.452^{***}
	(0.069)
Democracy	0.124^{***}
	(0.019)
Military Regime	-0.005
	(0.024)
Monarchy	-0.143^{**}
	(0.055)
GDP Per Capita (logged)	-0.025^{**}
	(0.013)
GDP Growth (logged)	-0.098
	(0.097)
Population (logged)	-0.036^{***}
	(0.011)
Population Density (logged)	0.007
	(0.008)
ICCPR Ratification	0.002
	(0.011)
Interstate Conflict Intensity	0.016
	(0.047)
Civil War Intensity	-0.022
	(0.018)
Constant	0.398^{**}
	(0.156)
N	3797

Note: † $p < 0.10$; $** p < 0.05$; $*** p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 3797 country-year observations from 1982 to 2008. The dependent variable is *Empowerment Rights Index*. See text for more information about the model and data.

Appendix E

Table 9 presents the results of our model with the Keith (2012) 'four freedoms' variable. This measure accounts for the extent to which states protect several empowerment rights in their constitutions (Keith, 2012). Specifically, it measures the degree to which states protect the freedoms of speech, association, assembly, and religion. The idea here is that constitutional protections of these rights could increase both *de facto* judicial independence and state respect for empowerment rights. As in Table 3, *de facto* judicial independence is statistically significant significant and substantively important.

Table 9: State Respect for Empowerment Rights Across Countries (1982-2008) - With 'Four Freedoms' Measure

	Model 23
Empowerment Rights Index (lagged)	0.618***
	(0.034)
De Facto Judicial Independence (lagged)	0.426***
	(0.099)
Four Freedoms	0.019***
	(0.007)
Democracy	0.165***
	(0.028)
Military Regime	0.003
	(0.033)
Monarchy	−0.180**
	(0.073)
GDP Per Capita (logged)	0.002
	(0.018)
GDP Growth (logged)	−0.036
	(0.140)
Population (logged)	−0.043***
	(0.015)
Population Density (logged)	0.009
	(0.010)
ICCPR Ratification	0.023
	(0.016)
Interstate Conflict Intensity	0.001
	(0.059)
Civil War Intensity	−0.024
	(0.023)
Constant	0.143
	(0.217)
N	1910

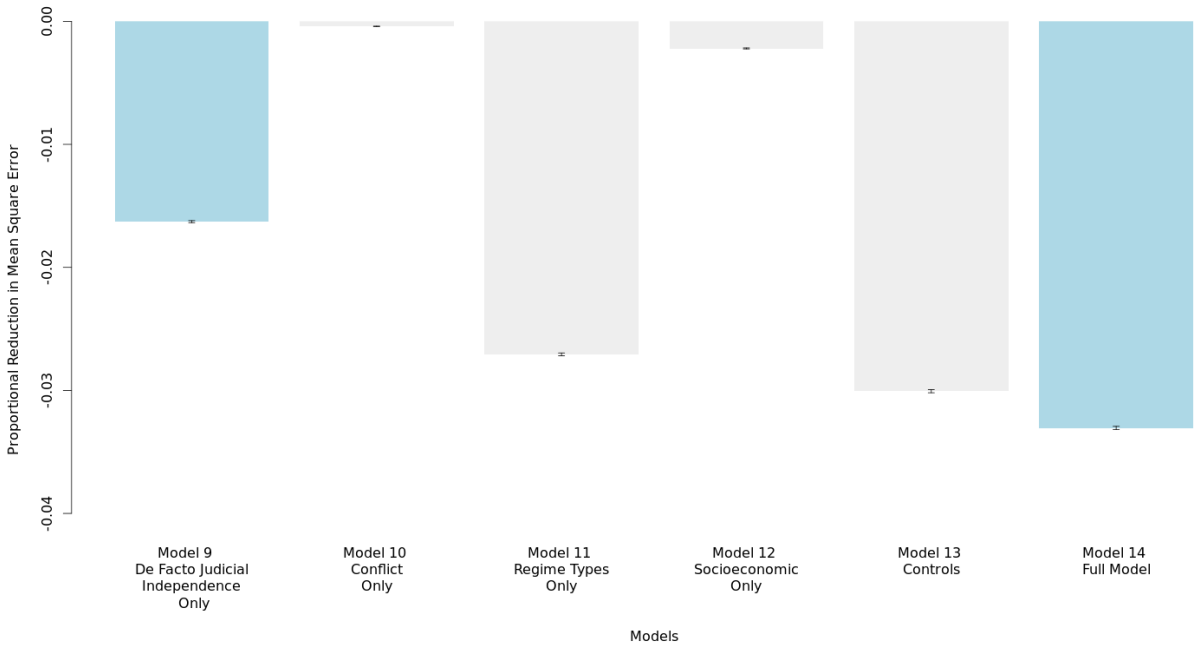
Note: † $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$ (two-tailed). Standard errors are shown in parentheses. Data come from 1910 country-year observations from 1982 to 1996. The dependent variable is *Empowerment Rights Index*. See text for more information about the model and data.

Appendix F

We investigate whether our findings are determined by the cases we include in our data. Continuing to use the (Schnakenberg and Fariss, 2013) measure, we employ k-fold cross validation to guard against such overfitting (Efron and Gong, 1983; Hill Jr and Jones, 2014*b*; Ward, Greenhill and Bakke, 2010). We conduct 1,000 simulations. Within each, we randomly partition our data into a training set and nine test sets (k= 10) and then estimate a series of linear models with the empowerment index as the dependent variable. The baseline model includes only the lagged dependent variable on the right-hand side, while the other models contain either one or more independent variables. Figure 10 presents the results of the 10-fold cross validation. It plots the average percent reduction in mean square error of various model specifications compared to the model with just the lagged dependent variable. This shows the additional predictive power of individual variables or combinations of variables.

The figure illustrates that adding *de facto* judicial independence to the model dramatically improves its predictive ability. The amount of error reduced by including *de facto* judicial independence is roughly the same as the amount of error reduced by including the three indicators of regime type (i.e. the Democracy, Military Regime, and Monarchy variables). More importantly, the amount of error reduced by including *de facto* judicial independence in the model is greater than the error reduced by including variables related to conflict onset (i.e. Interstate Conflict Intensity and Civil War Intensity) or socioeconomic differences (GDP Per Capita (logged), GDP Growth (logged), Population (logged), Population Density (logged)) in the model.

Figure 10: Cross-Validation Results



Note: Figure 10 plots the average percent reduction in mean square error of each model compared to the baseline model, which includes only the lagged dependent variable. This illustrates the additional predictive power of individual variables and combinations of variables. The black lines bracketing the end of each column represent 95% confidence intervals. See text for additional details.

Appendix G

Third, we check whether our findings are dependent on parametric assumptions, such as that the relationship between *de facto* judicial independence and state respect for human rights is linear or even smooth. In order to account for non-linearities, interactions, and other functional form possibilities, we specify a series of random forest models (Hill Jr. and Jones, 2013; Jones and Linder, 2015). In each model, we use the independent variables from our regression model to predict state respect for one of the empowerment rights measures used in Models 2–8. Since these models contain latent variable measures, we estimate 1,000 random forest models, saving and combining the goodness-of-fit statistics provided by these models as described above. Table 10 presents the results. Each cell in the table contains the mean permutation importance value for an independent variable as calculated from the results of the 1,000 random forest models. This value captures the mean decrease in classification accuracy caused by permuting the values of an independent variable. The intuition is that if an independent variable is not an important predictor, then randomly changing the values of that variable will not decrease prediction accuracy. So, variables that have higher importance values then are stronger predictors. Across all models, the importance values for *de facto judicial independence* are relatively high. In fact, the random forest results suggest that the lagged *de facto* judicial independence measure is consistently an important predictor of state respect for empowerment rights.

Table 10: State Respect for Empowerment Rights Across Countries (1982-2008) - Random Forest Results

	Model 24 Empowerment Rights	Model 25 Foreign Movement	Model 26 Domestic Movement	Model 27 Speech	Model 28 Assembly and Association	Model 29 Worker's Rights	Model 30 Religion	Model 31 Electoral Self-Determination
Dependent Variable (lagged)	1.027	0.257	0.218	0.133	0.223	0.190	0.172	0.106
De Facto Judicial Independence (lagged)	0.130	0.061	0.061	0.086	0.078	0.079	0.075	0.089
Democracy	0.239	0.108	0.076	0.102	0.134	0.084	0.086	0.178
Military Regime	0.014	0.016	0.010	0.011	0.007	0.014	0.011	0.009
Monarchy	0.010	0.013	0.006	0.005	0.007	0.006	0.011	0.018
GDP Per Capita (logged)	0.071	0.051	0.041	0.054	0.043	0.060	0.057	0.049
GDP Growth (logged)	0.004	0.002	0.003	0.008	0.004	0.008	0.007	0.006
Population (logged)	0.037	0.047	0.034	0.039	0.037	0.037	0.067	0.032
Population Density (logged)	0.035	0.042	0.038	0.036	0.036	0.043	0.055	0.031
ICCPR Ratification	0.013	0.018	0.014	0.012	0.015	0.024	0.017	0.017
Interstate Conflict Intensity	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Civil War Intensity	0.006	0.010	0.010	0.009	0.009	0.006	0.009	0.004
N	3792	3792	3792	3792	3792	3792	3792	3792

Note: Cells for each variable contain the mean permutation importance value from a series of 1,000 random forest models. The random forests were estimated on a data set that include 3792 country-year observations from 1982 to 2008. The dependent variable for each model is *Empowerment Rights Index*. Each random forest model corresponds to a multilevel model presented in Table 3 or Table 4. Model 24 corresponds to Model 2, Model 25 to Model 3, Model 26 to Model 4, Model 27 to Model 5, Model 28 to Model 6, Model 29 to Model 7, and Model 30 to Model 8. See text for more information about these models and data.