

Can Principles Protect High Courts from Partisan Backlash? Public Reactions to the Kenyan Supreme Court's Role in the 2017 Election Crisis

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September 20, 2019

Abstract

Conventional wisdom argues that commitment to principles sustains public support for judicial power, while conflicting arguments exist for partisan and policy effects. A critical, but untested, implication is that principles should protect courts from partisan backlash against judicial rulings that generate clear partisan winners and losers. The Kenyan Supreme Court's historic rulings surrounding the 2017 elections provide a unique opportunity to put principles to the test. After annulling the incumbent president's election victory, the Court subsequently upheld his controversial win in the repeat election. With data from a two-round national panel survey—conducted before and after the repeat election—we find strong evidence of partisan responses to the Supreme Court and its ruling and no evidence that principles protect the Court from partisan backlash. These results advance debates about the relative roles of principles versus partisan politics in shaping support for judicial power, with implications for institutional legitimacy.

Word Count: 11,979

The mass public plays a pivotal role in the development of *judicial power*—a high court’s ability to maximize independence and compliance (*anonymous citation*; Carrubba 2009; Clark 2011; Friedman 2009; Gibson, Caldeira, and Baird 1998; Staton 2010; Stephenson 2004; Vanberg 2005, 2015; Widner 2001). When citizens forego partisan political advantage in response to uncongenial rulings and threaten to punish politicians who attack courts because of disliked rulings, they can serve as *guardians of judicial power* (e.g., Vanberg 2015). Yet if the public views courts as instrumental vehicles for attaining desired outcomes, elites can be incentivized to attack courts, which can ultimately *constrain* judicial power (e.g., Clark 2011; Helmke 2002; Rosenberg 1992; Staton 2010; Vanberg 2005). These divergent paths highlight the importance of explaining the drivers of public support for judicial power, particularly for less well-established courts in transitioning, formerly autocratic regimes with strong executives.

Conventional wisdom argues that citizen commitment to democratic and legal *principles*—fundamental tenets and values that serve as foundations of political beliefs—builds public support for high courts and facilitates their legitimacy, or “rightful authority” to render declarative rulings (e.g., Gibson 2007; Gibson, Caldeira, and Spence 2003; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009; Tyler 2006b; Tyler and Rasinski 1991). However, empirical support for this model comes solely from analyses in which commitments to principles—particularly support for the rule of law, democracy, and procedural fairness—are shown to correlate with support for an active and independent judiciary (Baird 2001; Gibson 2007; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009; Tyler and Rasinski 1991). Moreover, while partisan and policy preferences may strongly influence “specific support” (i.e., approval) for a court’s policies or rulings, they are said to exhibit small to null effects on more “diffuse” forms of support, such as support for judicial power (see Gibson and Nelson 2014).

Based on these findings, some have gone so far as to conclude that principles protect high courts from short-term partisan backlash to their rulings even in landmark rulings that have clear partisan winners and losers. Gibson, Caldeira, and Spence (2003b, 553), for example, argue that because values undergird popular support for high courts, “even an enormously controversial decision like *Bush v. Gore* has little if any influence on institutional loyalty.” At the same time, these authors lament that research—including their own—often relies on cross-sectional data that is not well suited for studying how people update their views in response to controversial rulings. While recent work has challenged conventional wisdom showing partisan or policy-based updating in response to landmark rulings using dynamic panel data (Christenson and Glick 2015, 2019; Woodson 2018; Zilis 2018), research has yet to convincingly demonstrate that principles do indeed shield high courts from partisan backlash against major rulings. Moreover, extant research is confined to the U.S., leaving questions about how citizens in newer democracies—with younger courts—respond to landmark rulings. While principles may correlate with support for judicial power in normal times, *can they also protect high courts from partisan backlash against rulings that generate clear partisan winners and losers?*

We confront this question by analyzing public reactions to the Kenyan Supreme Court’s historic invalidation of the August 2017 presidential election (the first ruling of its kind in Africa) and subsequent endorsement of the incumbent’s victory in the controversial repeat election held two months later. In response to an appeal brought by opposition leaders, the Supreme Court declared that irregularities in the administration of the August election (where incumbent president Uhuru Kenyatta defeated opposition leader Raila Odinga) violated Kenya’s Constitution and called for a new election within 60 days. Odinga, however, protested the second election, and Kenyatta went on to win with an overwhelming majority (98%). The Supreme

Court then validated the second election. Crucial for our inquiry, the partisan “winners” and “losers” from each ruling are different, presenting a unique opportunity to put principles to the test in the wake of high-stakes judicial rulings with clear partisan implications.

To theorize the role of principles, we elaborate a model—expanding on conventional literature—in which principles act as durable commitments to basic values that bolster support for judicial power and sustain it in the face of short-term political events. We then outline a competing model in which principles take a back seat to partisan interests. In weak form, principles fail to attenuate partisan backlash because partisan interests dominate. In strong form, principles are unstable and endogenous outcomes that are driven, in part, by the same underlying partisan forces that drive attitudes about judicial power. In highlighting the inter-connections between partisan interests and stated principles, the strong form represents a significant challenge to conventional wisdom (see *anonymous citation*).

To test these competing views, we analyze data from an original two-wave national panel survey conducted in Kenya. We fielded the first wave after the Supreme Court’s September ruling that annulled the August election but *before* the repeat election in October. The second wave was conducted in June-July 2018, several months after the Supreme Court upheld Kenyatta’s victory in the second election. Our analysis focuses on *change* in support for judicial power as partisan groups switch from being winners to losers (and vice versa) in order to assess the effects of principles versus partisan interests. We expect that partisan interests will affect Kenyans’ attitudes toward judicial power in reaction to the Court’s rulings. Our critical test focuses on whether principles attenuate the extent of these partisan swings.

While the literature suggests that principles, as the “unmoved movers” of attitudes toward judicial power, ought to be stable, our theory suggests that they may be affected by the same

partisan forces that shape support for judicial power. A virtue of our research design is that we can test whether principles remain stable over time. We show that principles less directly related to the Court’s rulings—especially support for democracy and to a lesser extent support for the rule of law—prove to be relatively stable and free from partisan influence across survey waves, while others more directly related to the Court’s rulings (perceptions of procedural fairness) are less stable and more clearly affected by partisan interests. Our tests, therefore, privilege those measures that are more plausibly treated as stable reflections of core value attachments.

We present two central sets of results. First, we provide evidence of substantively important partisan-based change in support for judicial power over time in response to the Supreme Court’s rulings. This is a significant finding given the literature’s emphasis on *apolitical* drivers of more diffuse forms of court support (e.g., judicial power) and debates about the existence of partisan and policy effects. Following the annulment of the August election, Odinga supporters (“winners”) were substantially more supportive of judicial power than Kenyatta supporters (“losers”). After the Court’s decision to uphold the second election, support substantially declined among Odinga supporters (losers) and increased among Kenyatta supporters (winners). Second, results from our most critical tests provide *no evidence* that principles attenuate these partisan-based changes. One principle (support for the rule of law) actually *amplifies* partisan swings, which we suggest is consistent with our argument that the same underlying partisan forces change both stated principles and support for judicial power.

These conclusions are tempered by the finding that partisan losers actually maintain moderately positive *levels* of support for judicial power and that these levels are correlated with stated principles, in line with existing literature. Thus, while principles do not attenuate short-term partisan swings, they may help build capital over time such that partisan backlash does not

result in dangerously low levels of support for judicial power. However, “moderately positive” levels of support for judicial power imply non-trivially high levels of support for *court-curbing* and *defiance*. A string of controversial decisions that repeatedly disfavors one partisan group could deplete a high court’s capital. Our conclusion further elaborates on the implications of a politicized foundation to support for judicial power. In short, whether a high court acts sincerely and receives court-curbing attacks from politicians or whether it strategically alters its decision-making to preempt such threats, this politicized foundation poses a *constraint* on judicial power.

This article makes several contributions. First, it is the first to advance a critical test of whether principles are capable of attenuating short-term partisan backlash in the aftermath of politically contentious rulings, as implied in the literature. We argue that the protective power of principles is best assessed when principles come into conflict with partisan interests and through the use of panel data that tracks changes in public attitudes over time. Further, existing literature too often proceeds as if principles and partisanship are independent and rarely employs research designs that can account for the inter-connections between them. We advance the literature by theorizing these linkages and demonstrating empirically that principles should not necessarily be treated as independent of the partisan forces posited to influence support for judicial power.

Second, this research advances debates about the relative roles of principles versus partisan politics in shaping support for judicial power. We show that partisan reactions can influence diffuse forms of court support (judicial power) in line with recent challenges to conventional wisdom from the U.S. context (e.g., Christenson and Glick 2015, 2019). Regarding principles, while we find that they do not protect the Court against short-term partisan backlash, we show that they are associated with higher support for judicial power in cross-sectional analysis. While these results may initially seem contradictory, even those who are strongly

committed to democratic norms may find that during periods of intense partisan conflict, political passions may exert a stronger effect on attitudes than value commitments. Thus, we do not claim that principles are irrelevant, but that their protective power has been overstated.

Third, this article extends the judicial politics literature to an emerging democracy context, studying the impact of one of the most important court decisions in Africa's recent history. Nearly all of the literature on public attitudes towards judicial power focuses on long-standing democracies. Scholars know less about whether the lessons drawn from these settings hold in cases, like Kenya, where democracy is newer, judiciaries have only begun to assert their authority after long periods of subservience to executives, and where citizens may have good reason to doubt whether judiciaries can serve as independent actors in national affairs. Thus, while it is well understood that courts play an indispensable role in deepening democracy, little is known about how citizens in emerging democracies react to judicial intervention (see, though, Kerr and Wahman N.d.). Our results advance knowledge in this important area, highlighting the potential dangers courts face when asserting power in politically important cases as well as courts' ability to maintain public support in the face of backlash against their decisions.

Finally, our study has important implications for our understanding of high court legitimacy. If power is granted or withheld on the basis of partisan or policy disagreement, a high court's authority is far from "rightful." Politicized judicial power is a detriment to legitimacy because it suggests that the winners today who grant power to a court will withhold that power next year if they lose. On the other hand, a citizenry that repeatedly ascribes power to a high court *despite* disagreeing with its policies helps that court build legitimacy in the long term. In this sense, legitimacy in the public mind—via the "guardian" mechanism—helps high courts establish and maintain independence and power in the political system.

JUDICIAL INVALIDATION OF A PRESIDENTIAL ELECTION

Allegations of election malpractice routinely accompany elections in Africa; judicial interventions do not (see Kerr and Wahman N.d.).¹ For this reason, the Kenyan Supreme Court's invalidation of the 2017 presidential election was widely viewed as an important precedent both for Kenya and Africa more broadly (Chege 2018; Mutua 2001; Okubasu 2017). The Court's assertiveness was in many ways the culmination of a series of political events that followed from Kenya's transition to multi-party politics in the early 1990s, after several decades of single-party rule following independence. Despite this transition, the executive continued to enjoy significant power over other government branches and state institutions, including the judiciary, with many referring to the executive as an "Imperial Presidency" (Kiai 2008). Since the transition to multiparty elections, the party system has been fluid and ethnic divisions have played a central role in structuring political competition (Bedasso 2017; Ndegwa 1997). Political coalitions, generally multi-ethnic in composition, tend to configure ahead of each election period. For this reason, we use the term *ethno-partisanship*.

Kenyan elections have routinely been marred by allegations of electoral fraud and instances of electoral violence (Gibson and Long 2009; Mueller 2011). The events surrounding the December 2007 elections provide the most notable example. In that election, Mwai Kibaki, the incumbent and an ethnic Kikuyu, faced Raila Odinga, the leader of the main opposition coalition and an ethnic Luo. After Kibaki was hastily sworn in as president, suspicions of electoral fraud led to an outbreak of inter-communal violence across the country. The violence

¹ Kerr and Wahman (N.d.) find that judicial rulings against the incumbent party in parliamentary election disputes in Zambia influenced perceptions of the legitimacy of elections but had no effect on trust in courts.

lasted several months, resulting in thousands of deaths and the internal displacement of hundreds of thousands of Kenyans (Gibson and Long 2009; Kasara 2017).

The election crisis and violence of 2007/08 jumpstarted constitutional reforms in Kenya, culminating in the adoption of a new constitution in 2010.² A key component of the constitutional reform was changes to the judiciary aimed at increasing the political independence and authority of courts. The 2010 constitution established a Judicial Service Commission, which among other things is tasked with vetting and proposing to the President potential nominees for judicial appointments. The new constitution also gave the Supreme Court the sole authority to rule on petitions related to presidential elections.

Following the August 8, 2017 elections, in which the incumbent President Kenyatta was declared the winner over Odinga (54%-45%), the Supreme Court of Kenya was called upon to exercise this authority. On September 1, the Court, in an historic and surprising 4-2 ruling, annulled the results of the presidential election. Siding with the opposition's long list of alleged irregularities, the Court's ruling represents the first time in Kenyan history that the judicial branch ruled against the executive in a case of major importance and the first time in Africa that a high court invalidated an electoral victory by an incumbent (Chege 2018). As the judiciary has been limited in its ability to constrain presidential power in much of Africa (Mutua 2001; Prempeh 2008), the ruling is significant, with potential long-term implications for judicial power and the rule of law across the continent (Mutua 2001; Okubasu 2017).

The annulment was significant in another critical way. According to the Court, the Kenyan Constitution stipulates that procedural irregularities are sufficient *on their own* to serve

² The need for constitutional reform had long been on the agenda in Kenyan politics. In 2005, a proposed new constitution failed to pass the national referendum needed for it to be adopted. Kibaki, president at the time, had supported the adoption of that constitution, while Odinga and his allies opposed it.

as grounds for annulment, even if plaintiffs cannot demonstrate that the irregularities affected the election outcome.³ The decision thus hinged on the view that the Independent Elections and Boundaries Commission (IEBC), the agency charged with administering the election, had failed to ensure that results were transmitted from polling stations and aggregated into a final tally in a transparent and verifiable way. Notably, the decision did not offer a judgment on whether these failures affected the results announced by the IEBC.

The Court ordered the IEBC to hold a new election within 60 days, and the second election was subsequently held on October 26, 2017. Odinga chose to boycott the election, claiming that reforms necessary to guard against election fraud had not been adopted by the IEBC. With Odinga out of the race, Kenyatta won 98% of the vote. This time, the Court rejected petitions arguing that the repeat election had again run afoul of constitutional mandates. The Court unanimously ruled to uphold the election on November 20 and President Kenyatta officially won reelection. Figure 1 presents the timeline of key events as well as the sequence of our data collection that we refer to later.

[Figure 1 about here]

PUBLIC SUPPORT FOR JUDICIAL POWER: POLITICS VERSUS PRINCIPLES

This historic sequence of events provides a unique opportunity to address a question of theoretical and substantive importance: can principles protect high courts against partisan backlash toward controversial rulings? This section develops competing models that highlight partisan influences, the role of principled attachments, and the inter-relations between the two.

³ The decision is in Presidential Petition No. 1 of 2017 (<http://kenyalaw.org/caselaw/cases/view/140716/>).

We begin by defining our outcome of interest: *support for judicial power*. We adopt Staton’s (2010, 9) definition of judicial power as a court’s ability to “cause by its actions the outcome that it prefers.” Judicial power is exerted when a high court’s decisions are: (1) made without external political constraint (judicial independence)⁴ and (2) obeyed by elected officials and the mass public (compliance). Given histories of executive dominance and the omnipresent implementation problem (courts do not have formal enforcement mechanisms), it is important to analyze public support for this de facto form of judicial power and how the public responded to the Supreme Court’s historic exercise of power.

This conceptualization bears some resemblance to measures of “diffuse support” or “institutional legitimacy,” which are often treated synonymously (see generally Gibson and Nelson 2014; Levi, Sacks, and Tyler 2009). However, we break with past work that directly maps the types of measures we analyze onto “legitimacy” per se (Bartels and Johnston 2013; Christenson and Glick 2015; Gibson and Nelson 2014, 2015). We do not equate support for judicial power with legitimacy for the following reason. If legitimacy is defined as *rightful authority* to render rulings for the polity and a belief that an institution is “appropriate, proper, and just” (Tyler 2006a, 375), then efforts to equate judicial power with legitimacy are plagued by observational equivalence. If support for judicial power is strongly rooted in partisan or policy disagreement, then someone who opposes judicial power today in the face of an uncongenial ruling would grant support next year in the face of a congenial ruling. Even though the person is now supportive of judicial power, the process by which it was achieved is antithetical to the notion of legitimacy. Support is only high because of agreement with a ruling, not because that person ascribes rightful authority per se to the court based on institutional integrity as an end. Disagreement-based flips mean that support for

⁴ At the decision-making stage, power and independence are synonymous (Cameron 2002; Staton 2010). A court makes a ruling that reflects its sincere preferences—external political forces do not constrain that process.

judicial power cannot necessarily serve as a reliable proxy for legitimacy because such support could be instrumental—a means to the end of attaining partisan gains. Legitimacy, as “rightful authority,” means that institutional integrity is an end in itself and not dependent on partisan gain or loss.⁵ Nonetheless, our work still has strong implications for legitimacy. Support for judicial power that is strongly rooted in partisan foundations represents a detriment to legitimacy, while support rooted in principles and *not* partisan political advantage is a boon to the long-term development of legitimacy.

Ethno-Partisan Politics

Given the salience of ethnic and partisan divisions in Kenyan electoral politics (Bedasso 2017; Kasara 2017; Ndegwa 1997), we expect Kenyatta and Odinga supporters to respond very differently to the Supreme Court’s rulings on the electoral crisis. This expectation is derived from *outcome-based models* (or “policy-based models”), which posit that an individual’s *policy or partisan disagreement* with a high court’s policies and/or rulings will have deleterious consequences for support for judicial power and legitimacy (Bartels and Johnston 2013; Christenson and Glick 2015; Clark and Kastellec 2015; Nicholson and Hansford 2014; *anonymous citation*). According to this model, this occurs because individuals view a high court as an instrumental vehicle for attaining congenial policy outcomes; a court is viewed as political instead of strictly legalistic. People express their disapproval with judicial policies by seeking to diminish the very power by which that court rendered the ruling in the first place. This line of work presents a challenge to conventional wisdom arguing that while partisan and policy

⁵ This is analogous to Gibson’s (2015) quip, “legitimacy is for losers” (see also Gibson, Caldeira, and Spence 2002, 2005; Gibson, Lodge, and Woodson 2014) That is, it is often more crucial for courts to legitimize rulings among those who disagree (“losers”). This group allows for critical tests of legitimation because of the associated “objection precondition.”

considerations may strongly influence “specific support” (approval of judicial rulings), their effects on more “diffuse” types of evaluations (including judicial power and ultimately legitimacy) should be small to non-existent (a la Easton 1965; see Gibson and Nelson 2014 for an overview).

Applying this theoretical logic to a political controversy such as that in Kenya, the “winners” from the Court’s ruling should grant more power to the Court than the “losers.” This model suggests that a high court’s power is politicized in the public based on policy outcomes. It can also serve as a constraint on the court’s actual power because a court that fears its rulings will not be complied with will tailor rulings to suit the political will (e.g., Clark 2011; Helmke 2002; Rosenberg 1992; Staton 2010; Vanberg 2005).

The Supreme Court’s two rulings in different directions give us unique theoretical leverage on the effect of partisan disagreement on support for judicial power. As summarized in Figure 1, the “winners” after the first Supreme Court ruling annulling President Kenyatta’s victory are Odinga supporters, while the losers are Kenyatta supporters. Importantly, the “switch” in the Supreme Court’s second ruling, now *endorsing* Kenyatta’s victory in the second election, changes winner/loser status among partisan supporters. Therefore, if the partisan story holds generally, Odinga supporters should emerge from the September ruling as more supportive of the Court than Kenyatta supporters, and after the November ruling, we should see Odinga supporters punish the Court, while Kenyatta supporters should reward the Court.

Ethno-Partisan Politics Hypothesis: Odinga supporters, who move from winners to losers after the November Court ruling, will punish the Supreme Court (support for judicial power will decrease), while Kenyatta supporters, who move from losers to winners, will reward the Court (support will increase).

Principles

Kenya's 2017 election crisis also affords a unique opportunity to put citizens' stated commitments to principles to a stringent test. For many, the Supreme Court's decisions put these principles in conflict with their ethno-partisan ties. This conflict allows for critical tests of *process-based models* of institutional support, rooted in procedural justice theory (e.g., Levi, Sacks, and Tyler 2009; Sunshine and Tyler 2003; Tyler 1994, 2006b; Tyler and Rasinski 1991) and "positivity theory" (Gibson and Caldeira 2009; Gibson, Caldeira, and Spence 2003). These models posit that citizens view courts as distinct and less politicized than executives and legislatures. The domain of high courts is legal and constitutional principles and rule-of-law maintenance. Courts are said to be viewed as the "engines of constitutionalism"—they enforce limits on political power in a *supra-political* manner. Over time, a high court builds capital with the public as a result of subscription to these principles, which are fundamental, apolitical tenets that structure attitudes and beliefs. These arguments have generated a deep conventional wisdom concerning the drivers of support for high courts.

We focus on three well-known principles that should serve as mechanisms for protecting a high court's institutional integrity and power: (1) support for the rule of law, (2), support for democratic values, and (3) perceptions of procedural fairness. The more one values democracy and the rule of law, the more one should support robust judicial power that can serve as a check on political power—and in Africa, a check on the potential for executive dominance in particular (Prempeh 2008). The third facet (procedural fairness) is rooted in procedural justice theory (e.g., Levi, Sacks, and Tyler 2009; Tyler 1994, 2006b, 2006a; Tyler and Rasinski 1991) and is deeply ingrained in the literature. The logic is that people support a high court when they believe that it makes decisions in a fair and impartial manner as opposed to a politicized, biased, or corrupt

manner. We note that procedural fairness contains a slightly different quality than support for the rule of law and democracy. Whereas the latter entail core subscription to fundamental values, procedural fairness is typically treated more as a “perception.” On the other hand, procedural fairness falls into a broader category of apolitical factors that are theorized to protect courts from backlash.

This theoretical perspective suggests that pre-existing commitments to principles should attenuate the extent to which Kenyans punish or reward the Supreme Court based on ethno-partisanship vis-à-vis the second Court ruling. If principles protect against ethno-partisan backlash against Court, we would expect highly-principled Odinga supporters, who move from winners to losers, to punish the Court less harshly than their weakly-principled counterparts. Higher values of these principles should attenuate—or even block altogether—ethno-partisan punishment. If highly-principled Odinga supporters *do* punish the Court, principles are not effective at attenuating partisan-driven punishment when put to a crucial partisan test. In other words, citizens choose ethno-partisan advantage over adherence to these principles. If principles serve this attenuation function, there are positive implications for courts effectively building legitimacy in the long term because it suggests that citizens ascribe rightful authority to courts as an end itself.

For Kenyatta supporters with high principles, if principles block partisan-driven assessments, these individuals should have no additional incentive to reward the Court. Any boost in support would be due to the congenial ruling they receive in November. Principles should attenuate a rewarding of the Court rooted purely in ethno-partisanship.

Principles-Based Attenuation Hypothesis: Principles inoculate against partisan-driven change in support for judicial power. The more principled one is, the lower the effect of ethno-partisan identity in punishing or rewarding the Court.

Are Principles Independent of Ethno-Partisan Interests?

Thus far, we have followed the existing literature in treating principles as independent of partisan interests, as a driver of support for judicial power, and a protector against partisan backlash (e.g., Gibson 2007; Gibson, Caldeira, and Spence 2003; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009). We note, however, that controversial political rulings may lead citizens to update stated principles themselves as a function of ethno-partisan predispositions (e.g., Badas 2016; *anonymous citation*). For example, because people may form perceptions of judicial process in a biased manner, they may view the justices' decision-making process as more fair-minded and impartial when they agree with the ruling than when they disagree (Badas 2016). Citizens may also express higher support for democracy and the rule of law after a significant partisan victory. From this perspective, principles are not "unmoved movers" of support for judicial power; instead, they reflect the same political forces that generate backlash against judicial power. If people update their stated principles in light of political events and ethno-partisan forces, principles may be rendered incapable of protecting high courts against partisan backlash. An implication is that people use these principles as *post-hoc rationalizations* to justify their attitudes about judicial power (*anonymous citation*).

This alternative perspective contradicts extant theoretical perspectives about the effects of process-based principles, like democratic values and procedural justice (e.g., Gibson and Nelson 2014, 2015; Levi, Sacks, and Tyler 2009; Tyler and Rasinski 1991) and suggests that any cross-sectional correlations with court support we observe may be spurious.

DATA AND MEASUREMENT

We analyze data from a two-wave national panel survey we conducted with Kantar TNS, an international survey research firm that has operated in Kenya for over 30 years and has

extensive experience implementing household and telephone surveys on social and political topics. Figure 1 describes the timeline of the panel survey in relation to key events in the 2017 election. The first wave included 2,468 respondents interviewed in their homes in October 17-24, 2017, during the period between the Supreme Court’s annulment of the August 8 election and the repeat election on October 26.⁶ The second wave, conducted seven to eight months later, re-interviewed 1,297 first-wave respondents (53%) through a mix of phone and household-based interviews.⁷ In the panel analysis, we exclude 204 respondents due to mismatches on gender or age (>five years difference) across survey waves or quality control concerns. After these exclusions, we are left with a sample of 1,127 respondents in the panel.

Table 1 provides measurement details for all variables analyzed below. Online Appendix A includes additional detail on question wording and response frequencies, and presents descriptive statistics for key variables.

Dependent Variables: Support for Judicial Power

We measure citizens’ support for judicial power at two levels: (1) the general institutional level and (2) the “domain-specific” level focusing on the Supreme Court’s role in election-related decisions. Each of these measures is as an index based on a series of related questions. *Institutional judicial power* measures general support for the Court as an independent institution that is able to reach and implement rulings without interference. It is based on agreement with the six questions

⁶ The sample was allocated across counties according to population size. Sampling points within counties were selected randomly using census enumeration areas, and household were selected using a random-walk procedure. Respondents were randomly selected from all adults (18+) home at the time of the household visit.

⁷ The survey firm first attempted to reach all respondents by phone (completing 485 phone-based interviews between June 12-27, 2018). The firm then attempted to reach those who were unreachable by phone in their homes (completing 812 in-person interviews between July 10-30, 2018). Survey procedures were identical for phone-based and in-person interviews. A small number of sampling points were excluded from the household portion of wave two because of security concerns to which the TNS alerted us.

shown in Table 1. The measure is similar to “diffuse support” measures commonly used in the literature (e.g., Caldeira and Gibson 1992; Gibson, Caldeira, and Spence 2003a) in that it captures support for more fundamental aspects of a high court’s power and functions relative to “specific support,” which captures approval of outcomes. Our measure maps onto our conceptualization of judicial power more congruently than many diffuse support measures, which often conflate support for judicial power (or opposition to court-curbing), politicization, and sometimes trust.⁸

Domain-specific judicial power measures attitudes specific to the Court’s decision to invalidate President Kenyatta’s victory in the August 2017 presidential election (both waves 1 and 2) and to certify President Kenyatta’s victory in the October 2017 election (wave 2). It is based on four items listed in Table 1. In wave 1, we measure domain-specific support for the Court’s September ruling. In wave 2, we measure support for the Court’s November ruling and *retroactive support* for the September ruling.⁹ For each wave, we create summative scales for each measure based on the relevant items and recode the scale to range from 0 to 1, where higher values reflect more support for judicial power.¹⁰ Our change measures are the wave 2 value minus the wave 1 value. Online Appendix A presents the distributions for the individual sub-items that make up each index. We note that this measure is similar to “policy acceptance” or “policy legitimacy” measures

⁸ We note that scholars who use diffuse support concept frequently equate it with “legitimacy” (see Gibson and Nelson 2014) which we distinguish in our conceptualization and theory section (see also Anonymous citation).

⁹ Question batteries for each ruling are randomly presented, which controls for potential order effects and allows us to test whether respondents’ answers to the same questions vary depending on whether they are primed to consider the September versus the November ruling. The question prompt for the September ruling was: “Now we are going to read a few statements about the Supreme Court’s recent decision to annul the results of the last election.” November ruling: “Now we are going to read a few statements about the Supreme Court’s decision on November 20 to uphold the results of the October election in which the IEBC declared Uhuru Kenyatta to be the winner.” For each, we then prompt, “We would like to know whether you strongly disagree, disagree, neither agree nor disagree, agree, or strongly agree with them.”

¹⁰ Factor analyses show that the items load on one “judicial power” dimension. For both survey waves, the eigenvalue for the second dimension is well less than one. There is some evidence that items 4 and 6 load onto a second dimension related to the finality of the Court’s rulings, but results analyzing those items separately generate similar inferences on the whole.

used in the literature (e.g., Mondak 1994; Nicholson and Hansford 2014), which tap a more fundamental acceptance of ruling's authority and finality than mere approval.

[Table 1 about here]

The Cronbach's alpha for both indices is lower than expected (the standard is about .70). For *institutional judicial power* alpha = .58 and =.45 in waves 1 and 2 respectively. For *domain-specific judicial power*, Cronbach's alphas are again lower than expected (for the September ruling, alpha=.65 for wave 1 and .53 for wave 2; for the wave 2 November ruling, alpha=.53). These lower than normal alphas suggest elevated levels of random measurement error. Such concerns are assuaged by two considerations. First, in regression models the consequences of random error in the dependent variable mean higher standard errors (but not bias), which works against findings of statistical significance. Including additional control variables, such as education and political knowledge (described below), that explain additional variation in the dependent variable can mitigate the consequences of random error-based inflation of standard errors. Second, two robustness checks appease concerns about scale error. Item-by-item analyses show generally similar patterns of results compared to those based on the indices; some of these results are reported in our results section and the Online Appendix (E and G). We also created an alternative "count" dependent variable adding up the total number of items for which respondents expressed somewhat strong or strong support for judicial power. Those results, which are included in Online Appendix H, generally resemble results using the indices.

Independent Variables: Ethno-Partisan Attachments and Principles

Our measure of ethno-partisan attachments is based on a wave 1 survey item that asked respondents which candidate they *supported or voted for* in the August 8, 2017 election. Using this item allows us to code respondents who may not have voted but still have a preference for one of

the presidential candidates. We code subjects as *Kenyatta supporters* or *Odinga supporters* (descriptive statistics are included in Online Appendix D). Nearly all respondents expressed support for one of the two major candidates, with the exception of 253 out of the 2,468 wave 1 respondents (10%). In wave 1, of the two-candidate vote, 56 percent supported Kenyatta while 43 percent supported Odinga. This maps closely to the officially reported results of the August election, in which Kenyatta received just over 54 percent of the vote, Odinga received almost 45 percent, and minor party candidates jointly received less than 1 percent.

Our analysis employs measures of three principles that prior literature has shown to be associated with increased support for judicial power (e.g., Baird 2001; Caldeira and Gibson 1992; Gibson 2007; Gibson, Caldeira, and Spence 2003; Levi, Sacks, and Tyler 2009; Tyler 1994). To ensure that our results will be comparable to those in existing research, we rely on standard survey items that are similar or identical to those employed in earlier works. Questions are shown in Table 1. First, *support for the rule of law* is based on two items that are adapted from questions routinely used in Afrobarometer surveys. We average the items together and recode the scale to range from 0 to 1 (higher values reflect higher support for rule of law).¹¹ Second, *support for democracy* is based on a single item that is also frequently used in Afrobarometer surveys to measure support for democracy relative to alternative forms of government. Third, to measure *perceptions of procedural fairness*, we asked respondents to evaluate how fair and impartial versus politically motivated the Kenyan Supreme Court is, using four survey items. The first two items use 5-point response scales, while the last two use 3-point scales. For each wave, we first recode

¹¹ For both waves 1 and 2, the correlation between the two items was only .15, but using our scale is ideal given the similarity of the items and the increased content validity by including both instead of just one.

each item from 0 to 1 and then we create a summative scale recoded to range from 0 to 1 (higher values reflect higher perceived fairness).¹² Factor analysis confirms one underlying dimension.

While overall levels on each principle measure are moderately high (mean values indicate that a greater share of respondents support each principle than oppose it), we also observe considerable variation on each measure (distributions for the individual items are in Online Appendix B). For example, in wave 1 while a majority (61%) agree that democracy is “preferable to all other forms of government,” 39% of respondents do not share this view. On support for rule of law, the mean in wave 1 (.57 on a scale that from 0 to 1) indicates moderately strong support. At the same time, 46% of wave 1 respondents believe that “in some cases the government should be able to ignore the rule of law in order to solve important social or economic problems” and 28% believe that “it is not necessary to obey the laws of a government that I did not vote for.” Finally, on perceptions of procedural fairness, the wave 1 mean (.67 on a scale that ranges from 0 to 1) again shows relatively widespread support for the view that the Court reaches decisions in a fair and impartial manner. Yet, we also observe skepticism. For example, on one of the four items that makes up this index, 46% of wave 1 respondents believe that the Court’s decisions are at least sometimes politically motivated. While it is beyond the scope of this paper to explain why some Kenyans hold stronger value commitments and perceptions of procedural fairness, the range of variation observed here facilitates our key tests of how principles affect support for the Court.

While the literature uniformly takes these or similar measures of principles to be valid, two considerations related to validity are important. First, we note that social desirability bias could elevate support for these principles if respondents believe that the prevailing social norm is

¹² As with the dependent variables, Cronbach’s alphas for each wave are lower than expected: wave 1 $\alpha=.56$, wave 2 $\alpha=.50$.

to uphold democratic values and beliefs. Concerns about this issue, however, are tempered by the observation just noted that many respondents in our survey did not hesitate to express their support for non-democratic principles or to offer negative assessments of the Court’s procedures. Second, as noted, these measures are typically treated as indicators of stable value attachments or beliefs that change little if at all over time. Gibson (2007, 516), for example, argues that in the U.S. case, support for judicial authority is highly stable over time “since values themselves change only slowly.” Our approach, however, suggests that this assumption merits greater scrutiny. As noted, the same partisan forces that drive public reactions to controversial rulings may alter popular support for democracy and the rule of law, as well as perceptions of whether the high court operates in a fair and impartial manner. Thus, rather than assuming that respondents’ stated value commitment are independent of partisan interests, in subsequent sections we exploit the panel structure of our data to interrogate each measure before conducting our key test of the principles-attenuation hypothesis. Our findings, which indicate varying degrees of partisan influence, are important in their own right, suggesting that prior literature has overlooked important concerns regarding how measures of principles are commonly understood.

METHODS

Our analysis seeks to understand how ethno-partisan orientations, principles, and the interaction between the two influences support for judicial power.¹³ We present results first using a graphical approach and second using a regression-based framework. The goal of the graphical

¹³ The first wave of the panel survey included an experimental component designed to probe the potential mechanisms through which partisan interests and principles affect support for judicial power. The experimental design was pre-registered on the EGAP design registry). Although results are consistent with the findings presented here—that principles did not attenuate partisan backlash and reward—we are cautious about interpreting and presenting them because our manipulation checks suggest that the experimental treatments did not alter perceptions in the ways intended. Details of the treatments and results are provided in Online Appendix C.

approach is to present basic trends across the two survey waves and to examine how partisan orientations affect these trends. We use regression models to test our key hypotheses more formally. These serve to confirm whether the partisan effects observed in the graphical analysis are significant and robust to relevant controls, and to test whether principles affect support for judicial power. We estimate two regression specifications, which we refer to as “panel models” and “change models” based on whether the dependent variable is a measure of support for judicial power in each wave (panel models) or the change in support over time (change models).

These specifications allow us to test a range of hypotheses. The panel models test: (1) whether support for judicial power differs across partisan groups in each survey wave, (2) whether the size of the partisan gap changes over time, (3) whether partisan orientations predict change over time, (4) whether principles are associated with support for judicial power, and (5) whether principles predict change over time. The change models provide a second test of whether partisan interests and/or principles are related to changes over time. Finally, we estimate interactive versions of the change models that provide our most stringent test of the principles attenuation hypothesis by examining whether principles constrain partisan-based rewards and punishments across survey waves.

In panel models, the unit of analysis is the survey-respondent, meaning that the sample includes wave 1 and wave 2 observations for each respondent. Panel models take the following form:

$$Y_{it} = \alpha + \beta_1 OdingaSupp_{i[W1]} + \beta_2 Wave2_t * OdingaSupp_{i[W1]} + \beta_3 Wave2_t + \beta_4 Principles_{i[W1]} + \theta X_{i[W1]} + \varepsilon_{it}$$

where the dependent variable is a measure of support for judicial power—general or domain-specific—described above for individual i in survey wave t . $OdingaSupp_{i[W1]}$ and $Wave2$ are indicator variables for ethno-partisan orientations (measured in wave 1) and survey wave respectively. The interaction term, $Wave2 * OdingaSupp$, is included to test whether the partisan

gap in support is different in wave 2 relative to wave 1. $Principles_{i[w1]}$ includes individual measures of our three principles (measured in wave 1): support for the rule of law, support for democracy, and perceptions of procedural fairness. $X_{i[w1]}$ is a vector of control variables, measured in wave 1, that could be correlated with partisanship, principles, and attitudes about the Supreme Court. These include: male/female, urban/rural, age, education, household asset ownership, a household poverty index, and political knowledge. In the panel models, we cluster standard errors by respondent.

Change models are specified as follows:

$$\Delta Y_i = \alpha + \beta_1 OdingaSupp_{i[w1]} + \beta_2 Principles_{i[w1]} + \theta X_{i[w1]} + \varepsilon_i$$

where the dependent variable is the change in support for judicial power—general or domain-specific—in wave 2 minus wave 1, as described above. Other variables are specified as in the panel models. The interactive change model includes an interaction term, $OdingaSupp * Principles$, to test the principles attenuation hypothesis.

RESULTS

Graphical Analysis of Support for Judicial Power

Graphical analysis of overall trends and partisan-based changes is presented in Figure 2, which reports raw means of support for both institutional (left panel) and domain-specific (right panel) judicial power in the aggregate and for Odinga and Kenyatta supporters.¹⁴ The wave 1 results show a substantial ethno-partisan divide in support for judicial power after the Supreme Court’s September invalidation of Kenyatta’s election victory, with Odinga supporters exhibiting greater support for both institutional and domain-specific power than Kenyatta supporters. The

¹⁴ In Online Appendix E we present the same information for each of the individual sub-items that make up the indices. The patterns for each item are similar.

partisan gap in support for institutional power is .12 (on a 0 to 1 scale), which is equal to about .65 standard deviations. For domain-specific power, the divide is larger: about 0.16, which represents a difference of about 0.77 standard deviations. Although we cannot rule out the possibility that these divisions existed *before* the Supreme Court invalidated the August election, the partisan gap is in line with expectations given the “winners” and “losers” of the September decision, and it is reasonable to conclude that they are driven to some extent by reactions to the Court’s invalidation of the election.

[Figure 2 about here]

Turning to change over time, Figure 2 shows that average change on both measures of support for judicial power is minimal from wave 1 to wave 2. However, this trend masks important changes evinced by Kenyatta and Odinga supporters that correspond to expectations about partisan responses to the Court’s actions.¹⁵ The left panel shows that mean levels of support for institutional power decrease substantially among Odinga supporters (who move from winners in wave 1 to losers in wave 2), while they improve modestly among Kenyatta supporters.

The right panel, which presents trends in support for domain-specific judicial power, shows support for the September ruling in wave 1, support for the September ruling measured in wave 2 (retroactive evaluations of the September invalidation), and for the November ruling in wave 2. Again, we observe the two partisan groups moving in different directions. Odinga supporters become substantially less supportive of domain-specific power in response to the November ruling, and Kenyatta supporters become substantially more supportive. The results also show that citizens updated their evaluations of the *September ruling* in the aftermath of the

¹⁵ See Christenson and Glick (2015, 2019) for an analogous dynamic in the U.S. context.

November ruling. Odinga supporters, who emerge as losers in wave 2, retroactively ascribe less acceptance to the Court's September ruling, while Kenyatta supporters, emerging as winners in wave 2, are retrospectively more accepting of the same September ruling they were less supportive of in wave 1. These results suggest that the ultimate outcome of the sequence of events affected not only how respondents viewed the November ruling but also led individuals to update their views of the prior (September) ruling.

These results support our ethno-partisan politics hypothesis, with significant theoretical implications for important debates about whether partisan and policy considerations influence more diffuse types of support for high courts. We also note that Odinga supporters punished the Supreme Court more than Kenyatta supporters rewarded it, which is consistent with Christenson and Glick's (2019) finding of "negativity bias" in the U.S. context.

It is also noteworthy that *levels* of support for judicial power—both institutional and domain-specific—remain moderately positive in the wake of both rulings, even among those whose ethno-partisan interests are negatively affected by each ruling. Aggregate levels of support range from .58 to .65 across both outcome measures and survey waves. Among Kenyatta supporters, support for judicial power remains moderate in wave 1 on both measures (.53 and .57) despite the Court having recently annulled the election of their preferred candidate. And among Odinga partisans, support in Wave 2 remains above .60 on both measures despite the Court having certified Kenyatta's election in the second election.

Regression Analysis: Basic Results

Table 2 presents the main findings from the panel and change models. In support of the ethno-partisan politics hypothesis, both specifications confirm that the associations between ethno-partisan orientations and support for judicial power are significant and robust to the

inclusion of relevant controls.¹⁶ Panel models (columns 4-6) show that Odinga supporters are more favorable than Kenyatta supporters toward judicial power in wave 1; the gap narrows in wave 2 (as shown by the coefficient on the interaction term, *OdingaSupp*Wave2*). Support among Kenyatta partisans increases from wave 1 to 2, and the partisan gap is no longer significant in wave 2. The change models (columns 1-3) provide additional confirmation that ethno-partisan attachments affect the direction of change across waves.

[Table 2 about here]

Table 2 offers mixed evidence regarding whether and how principles affect support for judicial power. The panel models show that the three principles measure are correlated with greater support for judicial power, in line with findings in prior literature. However, because stated principles may be driven in part by the same ethno-partisan influences that affect support for the judiciary, the findings in the panel models should be treated with caution. In the change models, there is mixed evidence overall, with null or modest effects on rule of law and democratic values and consistent negative effects on procedural fairness (those with more positive assessments of procedural fairness in wave 1 are more likely to move in a negative direction across surveys). Again, however, we hesitate to attribute these differential effects to principles since, as noted, stated principles measured in wave 1 may in part reflect partisan interests. In sum, while the results suggest that principles are related to levels of support for judicial power, the results are weak and inconclusive on whether and how principles affect changes in support over time.

¹⁶ Online Appendix G shows the same results for each index sub-item individually.

Putting Principles to the Test

These results set the stage for our key tests. Do highly principled individuals remain committed to their support for judicial power even when they shift from being “winners” to “losers” on ethno-partisan grounds? As discussed, previous research suggests that commitments to the rule of law, democracy in general, and tenets such as procedural fairness are positively correlated with support for high courts, precisely as we observe in the panel models in Table 2. These results, however, provide a weak test by showing that principles are associated with levels of support for judicial power. A stronger test, as we have argued, asks whether stated principles can attenuate partisan-based changes in the context of high-profile rulings like the ones we examine here that generate clear winners and losers in partisan terms. That is, such principles should attenuate the ethno-partisan change we documented in the previous section. For this test, we estimate change models that include an interaction between partisan orientations and stated principles measured in wave 1.

Examining the constraining capacity of principles, however, requires first exploring the nature of survey-based measures commonly used to probe principles, including here. While the literature typically treats such measures as reflections of stable, enduring value commitments, these measures may in part reflect short-term partisan interests related to whether a high court has recently produced congenial rulings. Our assumption is that if survey-based measures do reflect durable value commitments, they should be unrelated to partisan interests. Figure 3, which shows the relationship between ethno-partisanship and each of the three principles in wave 1, suggests that support for the rule of law and democracy are relatively independent of partisan interests, while perceptions of procedural fairness differ significantly across partisan groups in ways that could reflect the partisan implications of the Court’s decision to annul the

August 8 election (which, to recall, benefited Odinga supporters and harmed Kenyatta supporters). These concerns are confirmed by the analysis in Figure 4, which plots change measures (wave 2 minus wave 1) of each principle regressed on our ethno-partisanship measure and demographic controls (full model results are presented in Online Appendix F). On procedural fairness, we find strong evidence of an ethno-partisan effect: Odinga supporters significantly decrease their assessments of the Court’s procedural fairness, while Kenyatta supporters increase. Support for rule of law and democracy, however, appear to be less affected by ethno-partisanship. While we do observe a difference on rule of law that is statistically significant, the effect is quite small. On support for democracy, we find that both Odinga and Kenyatta supporters become less enthusiastic over time, but the relative changes do not follow a partisan-based pattern.

Based on the exploration in Figures 3 and 4, we conclude that procedural fairness is not sufficiently independent of partisan interest for the tests we seek to execute. We therefore rely only on support for rule of law and democracy, which appear to be less obviously affected by partisan orientations, though we note the need for caution on the rule of law measure given the small partisan differences.

[Figure 3 and 4 about here]

Table 3 presents change models in which we interact our measure of ethno-partisan interests (*Odinga supporter*) with support for rule of law and democracy measured in wave 1. We include both interaction terms in the same model, but results are similar if we include each in separate models. If principles attenuate partisan-based changes in support for judicial power, we would expect coefficients on the interaction terms to be positive, indicating that Odinga supporters with stronger stated value commitments in wave 1 “punished” the Court less when it

ruled against their preferred candidate in certifying the results of the second election. We would also expect the coefficients on support for rule of law and democracy to be negative, indicating that Kenyatta supporters with stronger value commitments would reward the Court less than those with weaker commitments.

[Table 3 about here]

We fail to find support for the principles attenuation hypothesis. Column 1 presents the results for support for institutional judicial power. Contrary to expectations, the ethno-partisan by rule-of-law interaction is actually *negative* and statistically significant. In addition, support for democracy fails to moderate ethno-partisan response. Thus, principles do not constrain the extent to which ethno-partisanship predicts change in support for judicial power. In the case of rule of law, they may even be associated with larger ethno-partisan-based changes. Column 2 presents analogous results for the domain-specific judicial power of the retrospective variety (changes in views of September ruling). Again, support for the rule of law appears to *amplify* rather than attenuate ethno-partisan divisions in change in support for judicial power. Finally, column 3 shows insignificant interactions with respect to change in the domain-specific power from the September to November ruling.

To illustrate these results more substantively, Figure 5 presents changes among Kenyatta and Odinga supporters across the range of rule of law rule of law support. Regarding institutional power, the change among Kenyatta supporters is positive but small (and not statistically distinguishable from 0), regardless of rule of law values. Among Odinga supporters, however, as commitment to rule of law increases, backlash against judicial power *increases*. In the case of rule of law, principles appear to magnify backlash instead of protecting against it. The same holds for retrospective evaluations of domain-specific judicial power related to the September

ruling: increases in rule of law are associated with increased levels of backlash among Odinga supporters and actually increased levels of reward among Kenyatta supporters. This same effect does not occur for domain-specific power comparing the November and September rulings.

[Figure 5 about here]

In sum, we find no evidence that principles attenuate or constrain the extent to which partisan (dis)agreement with Supreme Court's decisions drives change over time in support for judicial power. In some cases, higher stated principles may actually be associated with a larger impact of decision dis(agreement) on fluctuations in attitudes about judicial power. These results provide no support for the principles-based attenuation hypothesis, which we argue is a critical test of values/principles-based models of public support for judicial power. However, as we argue above, the patterns are consistent with a model in which stated commitments to principles on the one hand, and support for judicial power on the other, are jointly produced by the same set of partisan political forces and dynamics.¹⁷ Specifically, it may be that stronger Odinga supporters are more likely to express their support for democratic value and the rule of law, and to hold positive assessments of the Court's September ruling in the wave 1 survey. These respondents, by dint of the strength of their support for Odinga, will be most inclined to punish the Court after its subsequent decision to uphold the second election. Moreover, it may be the case that in times of intense political contestation, even those for whom principles remain stable may find that political passions outweigh the influence of value commitments.

¹⁷ In a separate correlational analysis, we found that Odinga supporters who decreased the most on rule of law (after the November ruling) were the most likely to punish the Court; those who did not change on rule of law also punished the Court. This association is consistent with the notion that the same partisan forces jointly alter both stated principles (namely, rule of law) and support for judicial power.

CONCLUSION

Conventional wisdom holds that principles, including rule-of-law support, democratic values, and perceptions of procedural justice, serve to enhance support for judicial power and ultimately legitimacy. We subject this important theoretical perspective to a set of critical tests centered on several theoretically and empirically important questions: Do principles attenuate partisan divisions and partisan-based changes in attitudes toward judicial power? Can values and perceptions of procedural justice inoculate high courts against backlash from partisan groups that disagree with high profile and politically consequential rulings?

We address these questions with a unique two-wave panel survey and a research design that leverages the Kenyan Supreme Court's historic and high-profile decisions during the country's 2017 election crisis. This design allows us to subject the principles-based model to tests that are more rigorous and stringent than analyses that rely on cross-sectional survey data, as is the case in most of the literature. In addition, it allows us to examine public reactions to judicial decisions of substantive and historic importance.

Consistent with outcome-based models, we find evidence of strong partisan divisions and partisan-based changes in support for judicial power. Further, although "higher principles" are correlated with higher support for judicial power in a cross-sectional snapshot taken at one point in time, we find no evidence that these principles attenuate or guard against partisan-based change and partisan backlash. By contrast, it is actually the Odinga supporters with the highest scores on rule of law support who appear to punish the Court the most following the November decision to uphold Kenyatta's victory.

What might explain this counter-intuitive, at least from the principles-based perspective, set of results? We suggest that one potential explanation is that beliefs about principles and

values on the one hand, and attitudes about judicial power on the other, are to some extent jointly driven by the same political forces. Consistent with this, we find that partisanship predicts change in perceptions of the Court’s procedural fairness and even more general attitudes about the importance of the rule of law. In short, principles-based assessments appear to also be shaped by outcome-based and partisan considerations, at least to an extent.

Although these findings may be discouraging, overall levels of support for judicial power in Kenya remained moderate to moderately high throughout the crisis. Thus, while we observe partisan backlash (and reward), we show that the Kenyan Supreme Court was able to assert its authority in a politically contentious case and come through the crisis with overall levels of support relatively intact. We suggest that this may be because there was a sufficient reservoir of pre-crisis support for judicial power in the country, such that partisan backlash did not lower overall support to dangerously low levels. On the other hand, the flipside of “moderate” levels of judicial power is also “moderate” levels of support for court-curbing and noncompliance, which a high court should be quite discouraged by. Moreover, the robust ethno-partisan basis to judicial power we observe implies that the high court’s reservoir of capital could be further depleted in the face of a string of decisions that consistently disfavor one side or another.

More generally, these dynamics highlight the risks a high court faces when there is a politicized foundation to judicial power. It can act sincerely and independently and risk public backlash, lack of implementation, or court-curbing—all of which will eventually represent constraints on judicial power (e.g., Clark 2011; Helmke 2002). Or it can strategically preempt such threats by, e.g., generating a mix of outcomes congenial to both sides of the political divide, which ensures that any attacks from losers will be transitory—those losers become assuaged by a pleasing decision a month or two later. This high court banks on a moderately positive, *stable*

support for judicial power in the aggregate rooted in partisan offsets in response to mixed outcomes. We see one empirical implication of this process: the negative effects from partisan losers are largely offset by the boost in support among partisan winners, which produces overall stability (Christenson and Glick 2015, 2019; *anonymous citation*). Once again, though, this strategic recoiling on the part of high courts—rooted in a politicized foundation to judicial power—represents a constraint on judicial power (*anonymous citation*).

On first glance, it may appear that these results have most direct relevance to contexts with contentious partisan (or ethnic) politics, relatively young judicial institutions that lack a deep reservoir of legitimacy, and potentially weak democratic norms—conditions that may prevail in many emerging-democracy contexts around the world. However, there is also evidence from countries with older democracies and judicial institutions, including the United States, that support for the Supreme Court is more politicized than one might expect (e.g., Bartels and Johnston 2013; Christenson and Glick 2015, 2019; Clark and Kestel 2015; Nicholson and Hansford 2014; Zilis 2018; but see Gibson and Nelson 2015), which suggests that the results may reflect an even more general challenge faced by courts seeking to assert authority.

What do these findings imply for judicial legitimacy in new democracies and hybrid regimes such as Kenya? Given the expanding role of the judiciary in adjudicating political disputes in Africa and elsewhere around the world, this question is of vital and increasing importance. First, the results suggest that there is, at least to an extent, a political foundation to public attitudes about and support for judicial power. As we emphasize above, partisan foundations suggest a legitimacy deficit: if high courts possess “rightful” authority to make decisions, support for judicial power should not be so highly conditional on the receipt of congenial or uncongenial rulings. Perhaps more importantly, and in contrast with the

expectations of the conventional wisdom, our findings highlight that rule-of-law support, democratic values, and procedural justice are unlikely to be sufficient to protect young courts from political backlash resulting from partisan disagreement with politically consequential judicial decisions. The absence of a “principles-based inoculation” highlights the political challenges and trade-offs faced by judiciaries seeking to establish power and build legitimacy in countries such as Kenya: enhancing judicial power requires that courts assert themselves in politically charged disputes, but such assertions can produce backlash, even among those in society most likely to be allies with the judiciary.

REFERENCES

- Badas, Alex. 2016. "The Public's Motivated Response to Supreme Court Decision-Making." *Justice System Journal* 37(4): 318–30.
- Baird, Vanessa A. 2001. "Building Institutional Legitimacy: The Role of Procedural Justice." *Political Research Quarterly* 54(2): 333–54.
- Bartels, Brandon L., and Christopher D. Johnston. 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." *American Journal of Political Science* 57(1): 184–99.
- Bedasso, Biniam E. 2017. "For Richer, for Poorer: Why Ethnicity Often Trumps Economic Cleavages in Kenya." *Review of African Political Economy* 44(151): 10–29.
- Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36(3): 635–64.
- Cameron, Charles M. 2002. "Judicial Independence: How Can You Tell It When You See It?" In *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, eds. Stephen B. Burbank and Barry Friedman. Thousand Oaks, CA: Sage Publications.
- Carrubba, Clifford J. 2009. "A Model of the Endogenous Development of Judicial Institutions in Federal and International Systems." *Journal of Politics* 71(1): 55–69.
- Chege, Michael. 2018. "Kenya's Electoral Misfire." *Journal of Democracy* 29(2): 158–72.
- Christenson, Dino P., and David M. Glick. 2015. "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy." *American Journal of Political Science* 59(2): 403–18.
- Christenson, Dino P., and David M. Glick. 2019. "Reassessing the Supreme Court: How Decisions and Negativity Bias Affect Legitimacy." *Political Research Quarterly* 72(3): 637–652.
- Clark, Tom S. 2011. *The Limits of Judicial Independence*. New York, NY: Cambridge University Press.
- Clark, Tom S., and Jonathan P. Kastellec. 2015. "Source Cues and Public Support for the Supreme Court." *American Politics Research* 43(3): 504–35.
- Easton, David. 1965. *A Systems Analysis of Political Life*. New York, NY: John Wiley.
- Friedman, Barry. 2009. *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution*. New York, NY: Farrar, Straus and Giroux.

- Gibson, Clark C., and James D. Long. 2009. "The Presidential and Parliamentary Elections in Kenya, December 2007." *Electoral Studies* 28(3): 497–502.
- Gibson, James L. 2007. "The Legitimacy of the U.S. Supreme Court in a Polarized Polity." *Journal of Empirical Legal Studies* 4(3): 507–38.
- . 2015. "Legitimacy Is for Losers: The Interconnections of Institutional Legitimacy, Performance Evaluations, and the Symbols of Judicial Authority." In *Motivating Cooperation and Compliance with Authority: The Role of Institutional Trust*, eds. Brian H Bornstein and Alan J Tomkins.
- Gibson, James L., and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press.
- Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92(2): 343–58.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2002. "The Role of Theory in Experimental Design: Experiments Without Randomization." *Political Analysis* 10(4): 362–75.
- . 2003a. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47(2): 354–67.
- . 2003b. "The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33(4): 535–56.
- . 2005. "Why Do People Accept Public Policies They Oppose? Testing Legitimacy Theory with a Survey-Based Experiment." *Political Research Quarterly* 58(2): 187–201.
- Gibson, James L., Milton Lodge, and Benjamin Woodson. 2014. "Losing, but Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority." *Law & Society Review* 48(4): 837–66.
- Gibson, James L., and Michael J. Nelson. 2014. "The Legitimacy of the US Supreme Court: Conventional Wisdoms and Recent Challenges Thereto." *Annual Review of Law and Social Science* 10(1): 201–19.
- . 2015. "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59(1): 162–74.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court–Executive Relations in Argentina Under Dictatorship and Democracy." *American Political Science Review* 96(2): 291–303.
- Kasara, Kimuli. 2017. "Does Local Ethnic Segregation Lead to Violence?: Evidence from Kenya." *Quarterly Journal of Political Science* 11(4): 441–70.

- Kerr, Nicholas, and Michael Wahman. N.d. "Electoral Rulings and Public Trust in African Courts and Elections." *Comparative Politics* (Forthcoming).
- Kiai, Maina. 2008. "The Crisis in Kenya." *Journal of Democracy* 19(3): 162–68.
- Levi, Margaret, Audrey Sacks, and Tom Tyler. 2009. "Conceptualizing Legitimacy, Measuring Legitimizing Beliefs." *American Behavioral Scientist* 53(3): 354–75.
- Mondak, Jeffery J. 1994. "Policy Legitimacy and the Supreme Court: The Sources and Contexts of Legitimation." *Political Research Quarterly* 47(3): 675–92.
- Mueller, Susanne D. 2011. "Dying to Win: Elections, Political Violence, and Institutional Decay in Kenya." *Journal of Contemporary African Studies* 29(1): 99–117.
- Mutua, Makau. 2001. "Justice Under Siege: The Rule of Law and Judicial Subservience in Kenya." *Human Rights Quarterly* 23(1): 96–118.
- Ndegwa, Stephen N. 1997. "Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics." *American Political Science Review* 91(3): 599–616.
- Nicholson, Stephen P., and Thomas G. Hansford. 2014. "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions." *American Journal of Political Science* 58(3): 620–36.
- Okubasu, Duncan. 2017. "Lessons for Sub-Saharan Africa from Kenya on Electoral Reforms: The Role and Limitations of the Law." *Election Law Journal: Rules, Politics, and Policy* 16(2): 306–15.
- Prempeh, H. Kwasi. 2008. "Presidents Untamed: Progress and Retreat in Africa." *Journal of Democracy* 19(2): 109–23.
- Rosenberg, Gerald N. 1992. "Judicial Independence and the Reality of Political Power." *The Review of Politics* 54(03): 369–98.
- Staton, Jeffrey K. 2010. *Judicial Power and Strategic Communication in Mexico*. New York, NY: Cambridge University Press.
- Stephenson, Matthew C. 2004. "Court of Public Opinion: Government Accountability and Judicial Independence." *Journal of Law, Economics, & Organization* 20(2): 379–99.
- Sunshine, Jason, and Tom R. Tyler. 2003. "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing." *Law & Society Review* 37(3): 513–48.
- Tyler, Tom R. 1994. "Governing amid Diversity: The Effect of Fair Decisionmaking Procedures on the Legitimacy of Government." *Law & Society Review* 28(4): 809–32.
- . 2006a. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57(1): 375–400.

- . 2006b. *Why People Obey the Law*. Princeton, NJ: Princeton University Press.
- Tyler, Tom R., and Kenneth Rasinski. 1991. "Procedural Justice, Institutional Legitimacy, and the Acceptance of Unpopular U.S. Supreme Court Decisions: A Reply to Gibson." *Law & Society Review* 25(3): 621–30.
- Vanberg, Georg. 2005. *The Politics of Constitutional Review in Germany*. New York, NY: Cambridge University Press.
- . 2015. "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* 18(1): 167–85.
- van de Walle, Nicolas. 2003. "Presidentialism and Clientelism in Africa's Emerging Party Systems." *Journal of Modern African Studies* 41(2): 297–321.
- Widner, Jennifer. 2001. *Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa*. New York, NY: W. W. Norton.
- Woodson, Benjamin. 2018. "The Dynamics of Legitimacy Change for the U.S. Supreme Court." *Justice System Journal* 39(1): 75–94.
- Zilis, Michael A. 2018. "Minority Groups and Judicial Legitimacy: Group Affect and the Incentives for Judicial Responsiveness." *Political Research Quarterly* 71(2): 270–83.

Tables and Figures

Table 1: Variable and Measurement Information from Kenya Survey

Variable	Measurement Information
Support for Judicial Power – Institutional*	(1) The Supreme Court should be made less independent from the other branches of government and the public. (2) In a democratic system like ours, the law should be changed so that the Supreme Court has less power to make important decisions for the country. (3) If the Supreme Court keeps on making controversial decisions, it might be better to do away with the Supreme Court altogether. (4) Citizens in Kenya should always accept Supreme Court rulings, even when they disagree with them. (5) Since the president was elected to lead the country, the president should not have to follow Supreme Court rulings that he does not agree with. (6) The Supreme Court of Kenya should have the final word in determining whether government actions or laws violate the Constitution. Five-point agree-disagree response scales.
Support for Judicial Power – Domain-Specific*	(1) The Supreme Court’s ruling should be overturned. (2) The Supreme Court should have the final say on whether the previous election was consistent or inconsistent with the Constitution. (3) The President should have ignored the Supreme Court’s ruling on the election. (4) The ability of the Supreme Court to decide election disputes should be eliminated. Five-point agree-disagree response scales.
Ethno-Partisanship	1=Odinga Supporter, 0=Kenyatta Supporter (based on self-reported vote from the August election)
Support for Democracy	Based on item which asks which statement is closer to respondent’s view. 1= Democracy is preferable to all other forms of government, 0=otherwise.
Support for the Rule of Law*	(1) In some cases, the government should be able to ignore the law in order to solve important social or economic problems and (2) It is not necessary to obey the laws of a government that I did not vote for. Five-point agree-disagree response scales.
Procedural Fairness*	(1) The Supreme Court fairly considers the views of all sides to an issue before making its decisions. (2) The Supreme Court assembles and accurately understands all relevant facts and evidence on both sides of the issue before making a decision. Five-point agree-disagree response scales. (3) Which of the following statements best captures your understanding of what influences Supreme Court judges’ decisions: a) Legal and constitutional principles; b) The judges’ own personal opinions; or c) Both principles and opinions. (4) Which statement best captures your understanding of how the Supreme Court makes its decisions: a) Its decisions are politically motivated; b) Its decisions are decided in a fair and impartial manner; or c) Its decisions are sometimes politically motivated and sometimes fair and impartial.
Political Knowledge*	Asked knowledge of: (1) identity of deputy president, (2) county governor, (3) , (4) presidential terms, (5) number of parliamentary constituencies, (6) Chief Justice of Supreme Court, and (7) identity of Attorney General.
Demographics	Education (0=no primary, .33=primary, .67=secondary, 1=post-secondary); Gender (1=female, 0=male); Rural (=1, 0=urban), Age (in years, recoded to range from 0 to 1), Asset Ownership, Poverty Index

* Summative scales were created based on the survey items. All scales recoded to range from 0-1. See text for additional details. Respondents were also shown a visual card displaying the response options, which they could point to during the survey. Within each question battery, question order was randomized for each participant.

Table 2: Partisan Backlash? Change and Panel Models

	(1)	(2)	(3)	(4)	(5)	(6)
	Change	Change	Change	Panel	Panel	Panel
	Institutional	Domain Specific	Domain Specific	Institutional	Domain Specific	Domain Specific
			Sept - Nov			Sept - Nov
Odinga Supporter	-0.06** (0.01)	-0.08** (0.02)	-0.16** (0.02)	0.09** (0.01)	0.12** (0.01)	0.13** (0.01)
Odinga Supporter x Wave 2				-0.09** (0.01)	-0.11** (0.02)	-0.21** (0.02)
Wave 2				0.02* (0.01)	0.05** (0.01)	0.07** (0.01)
Rule of law support W1	-0.05 (0.03)	-0.03 (0.03)	-0.01 (0.03)	0.11** (0.02)	0.09** (0.02)	0.10** (0.02)
Democratic values W1	-0.00 (0.01)	-0.04* (0.02)	-0.01 (0.02)	0.02* (0.01)	0.01 (0.01)	0.03** (0.01)
Procedural fairness W1	-0.13** (0.03)	-0.19** (0.04)	-0.23** (0.04)	0.16** (0.02)	0.19** (0.02)	0.17** (0.02)
Education	0.01 (0.02)	0.03 (0.03)	0.00 (0.03)	0.09** (0.01)	0.09** (0.02)	0.07** (0.02)
Gender (female=1)	-0.02 (0.01)	0.03 (0.02)	0.02 (0.02)	-0.05** (0.01)	-0.04** (0.01)	-0.05** (0.01)
Rural	-0.03* (0.01)	-0.01 (0.02)	0.00 (0.02)	-0.00 (0.01)	-0.01 (0.01)	-0.01 (0.01)
Age	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)
Asset Ownership	-0.01 (0.04)	0.02 (0.04)	0.06 (0.05)	0.04 (0.02)	0.01 (0.03)	0.03 (0.03)
Poverty Index	-0.00 (0.01)	-0.01 (0.01)	-0.01 (0.01)	0.00 (0.01)	-0.01 (0.01)	-0.01 (0.01)
Constant	0.19** (0.04)	0.20** (0.05)	0.20** (0.05)	0.34** (0.03)	0.42** (0.03)	0.40** (0.03)
Observations	991	995	995	1,989	1,993	1,993
R-squared	0.08	0.09	0.18	0.22	0.19	0.19

Standard errors in parentheses

** p<0.01, * p<0.05

Unit of analysis in rows 1-3 is respondent. Unit of analysis in rows 4-6 is respondent-survey wave. DV in rows 1-3 is change (Wave 2 minus Wave 1). Standard errors in rows 4-6 are clustered by respondent.

Table 3: Principles-Based Attenuation? Results from Change Models

VARIABLES	(1) Institutional	(2) Domain Specific Sept.	(3) Domain Specific Sept.-Nov.
Odinga Supporter	-0.03 (0.03)	-0.04 (0.04)	-0.21** (0.04)
Odinga Supporter x Rule of Law Support W1	-0.10 (0.05)	-0.14* (0.07)	-0.01 (0.07)
Odinga Supporter x Democratic Values W1	0.00 (0.03)	0.02 (0.03)	0.02 (0.03)
Rule of law support W1	-0.00 (0.04)	0.04 (0.05)	-0.01 (0.05)
Democratic values W1	-0.00 (0.02)	-0.05* (0.02)	-0.02 (0.02)
Constant	0.08 (0.04)	0.05 (0.05)	0.06 (0.05)
Observations	994	998	998
R-squared	0.07	0.07	0.15

Standard errors in parentheses

** p<0.01, * p<0.05

All models also include controls for education, gender, rural, age, asset ownership, and poverty. Unit of analysis is respondent. DV is change (Wave 2 minus Wave 1)

Figure 1: Timeline of Events and Panel Survey

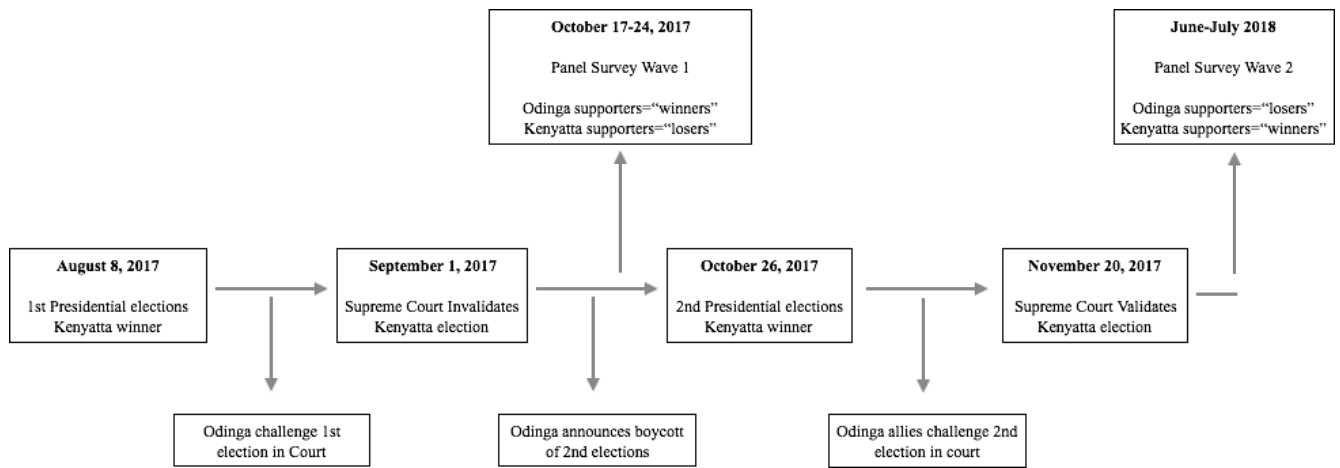
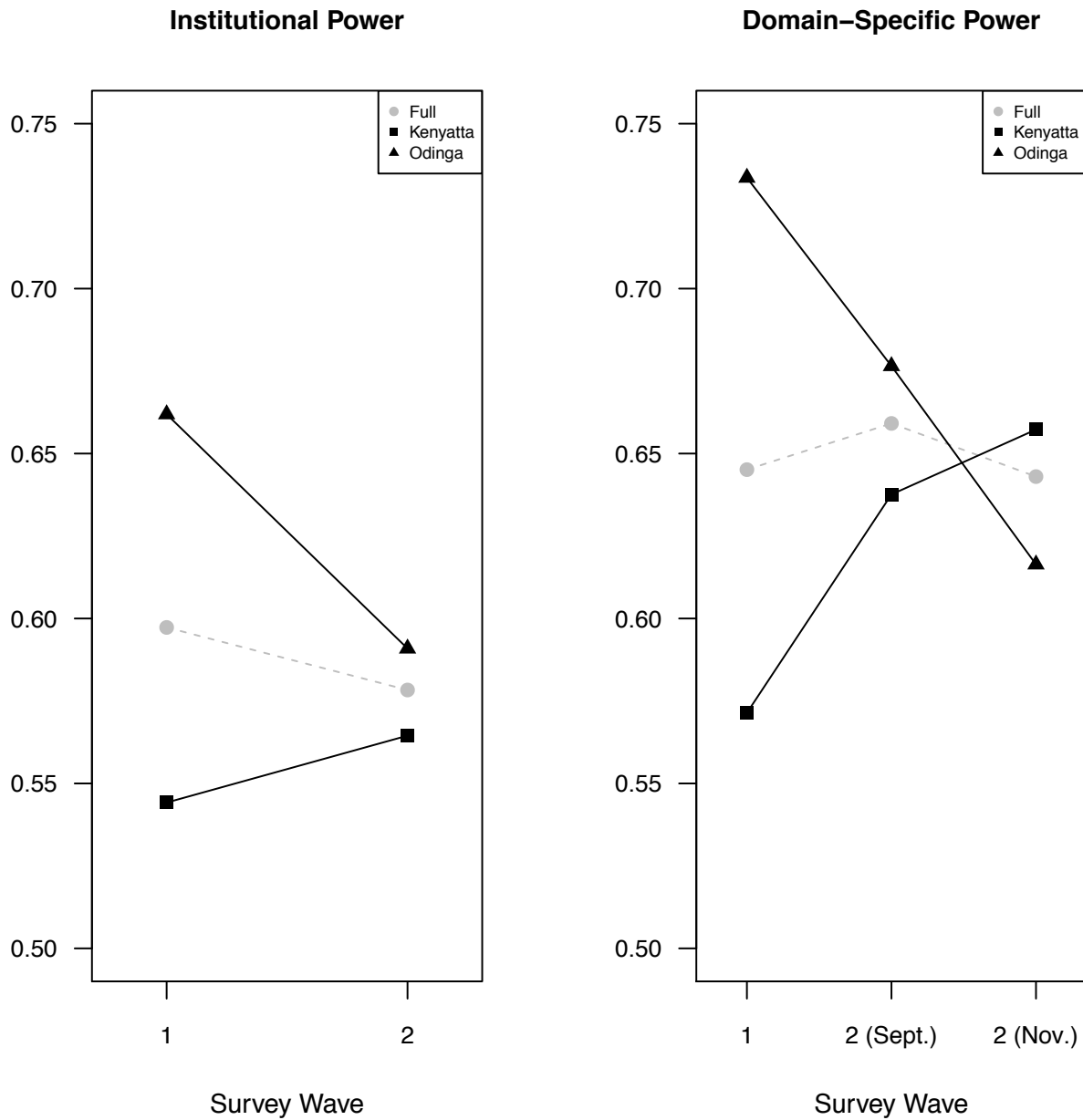


Figure 2: Main Dependent Variables by Partisanship and Survey Wave



Figures present the mean of the institutional and decision power measures in each survey wave in the full sample (grey) and by Odinga (triangles) and Kenyatta (squares) supporters.

Figure 3: Principles at Wave 1, by Partisanship

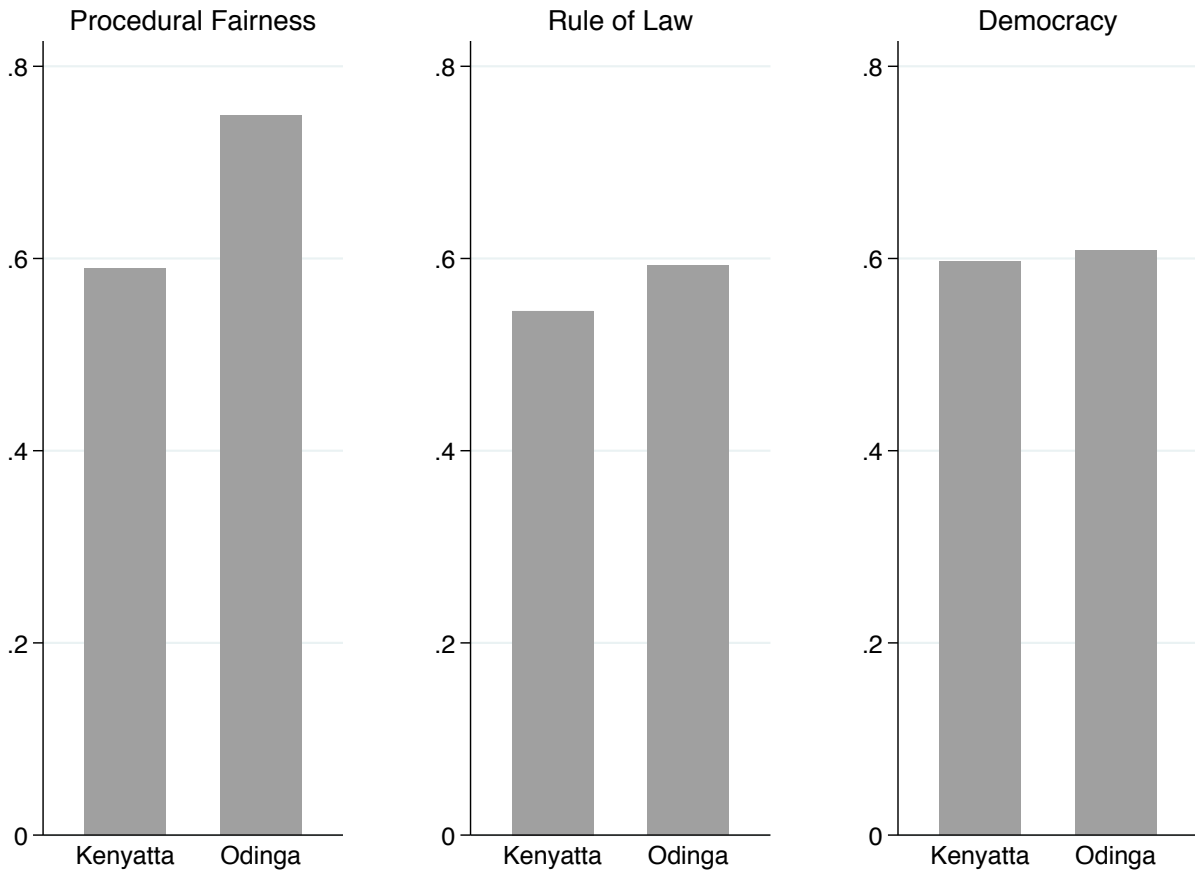
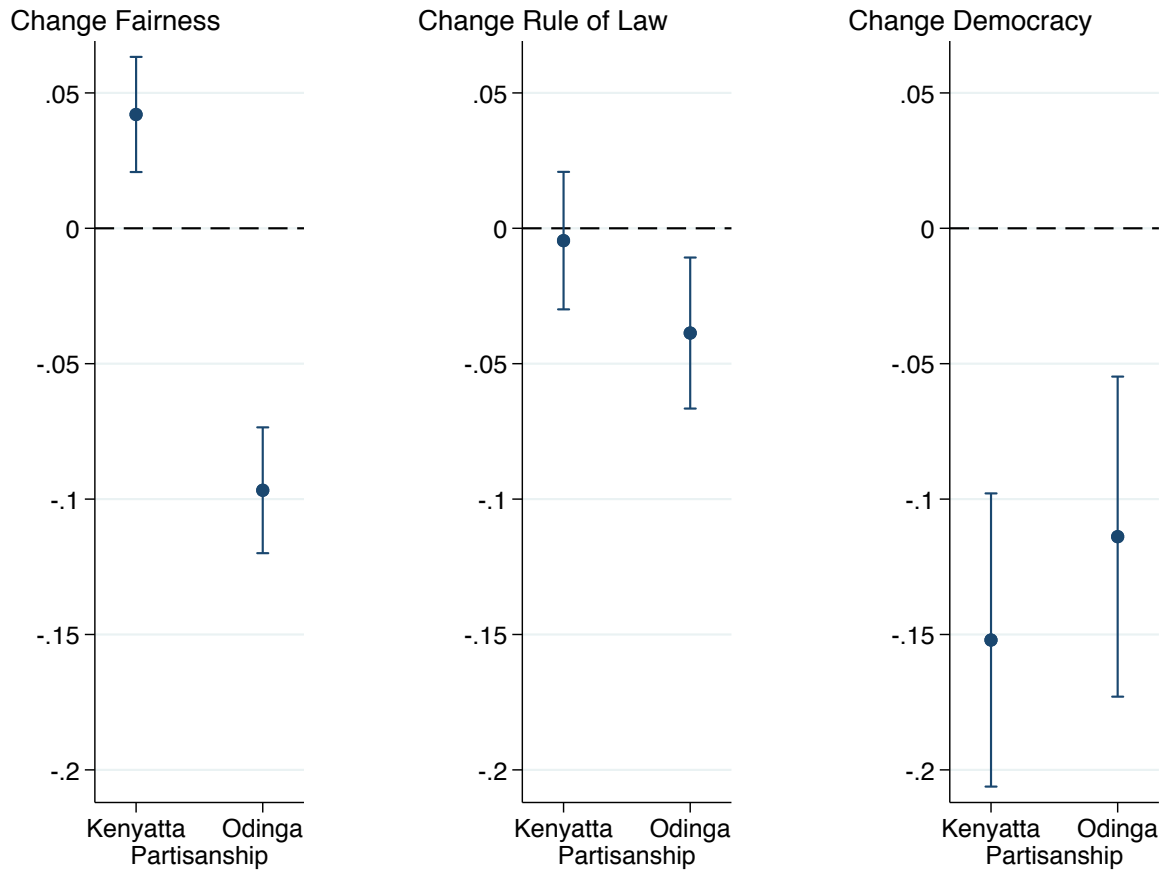


Figure presents the mean of each measure of principles by partisanship at wave 1.

Figure 4: Are Principles Stable? Predicted values from change models.



Figures present predicted values from the models in Appendix F.

Figure 5: Principles-Based Attenuation? Predicted Values from Change Models

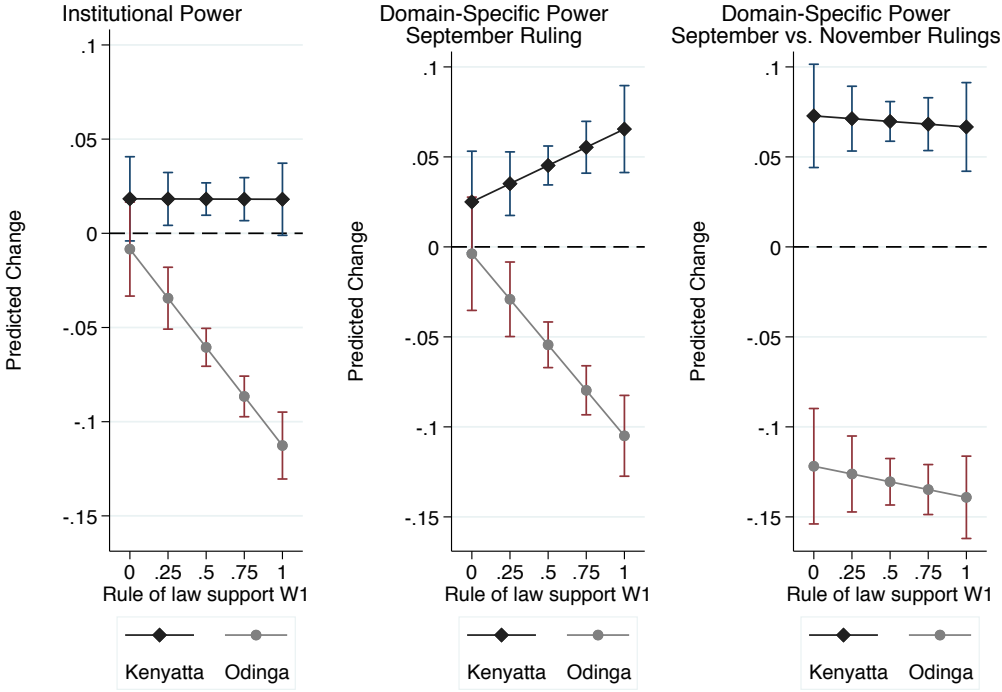


Figure presents predicted values from the models in Table 3. Figure focuses on rule of law support and change among Odinga and Kenya supporters.

Online Appendix for “Can Principles Protect High Courts from Partisan Backlash? Public Reactions to the Kenyan Supreme Court’s Role in the 2017 Election Crisis”

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A Court Survey Items and Response Distributions

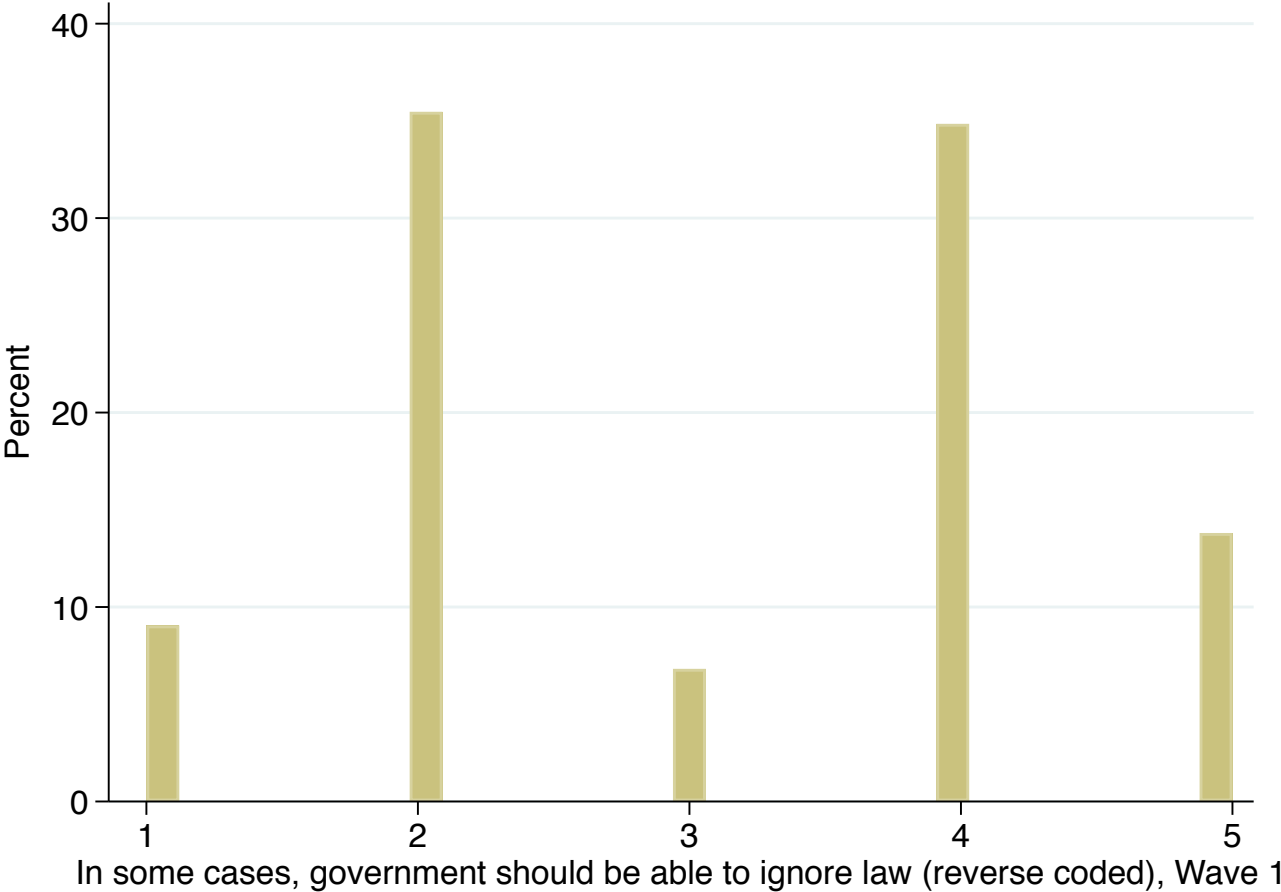
Table A.1: Judicial Power Items and Wave 1 Response Distributions

	Strongly Disagree	Disagree	Neither	Agree	Strongly Agree
<i>Institutional</i>					
The Supreme Court should be made less independent from the other branches of government and the public.	11%	33%	7%	35%	11%
In a democratic system like ours, the law should be changed so that the Supreme Court has less power to make important decisions for the country.	20%	36%	7%	27%	2%
If the Supreme Court keeps on making controversial decisions, it might be better to do away with the Supreme Court altogether.	21%	37%	6%	26%	7%
Citizens in Kenya should always accept Supreme Court rulings, even when they disagree with them.	6%	22%	6%	46%	18%
Since the president was elected to lead the country, the president should not have to follow Supreme Court rulings that he does not agree with.	20%	42%	6%	22%	7%
The Supreme Court of Kenya should have the final word in determining whether government actions or laws violate the Constitution.	4%	18%	6%	48%	21%
<i>Domain Specific</i>					
The Supreme Court's ruling should be overturned.	21%	45%	5%	21%	6%
The Supreme Court should have the final say on whether the previous election was consistent or inconsistent with the Constitution.	4%	19%	7%	49%	18%
The President should have ignored the Supreme Court's ruling on the election.	24%	50%	5%	15%	4%
The ability of the Supreme Court to decide election disputes should be eliminated.	20%	41%	5%	25%	7%

B Distribution of Measures of Principles

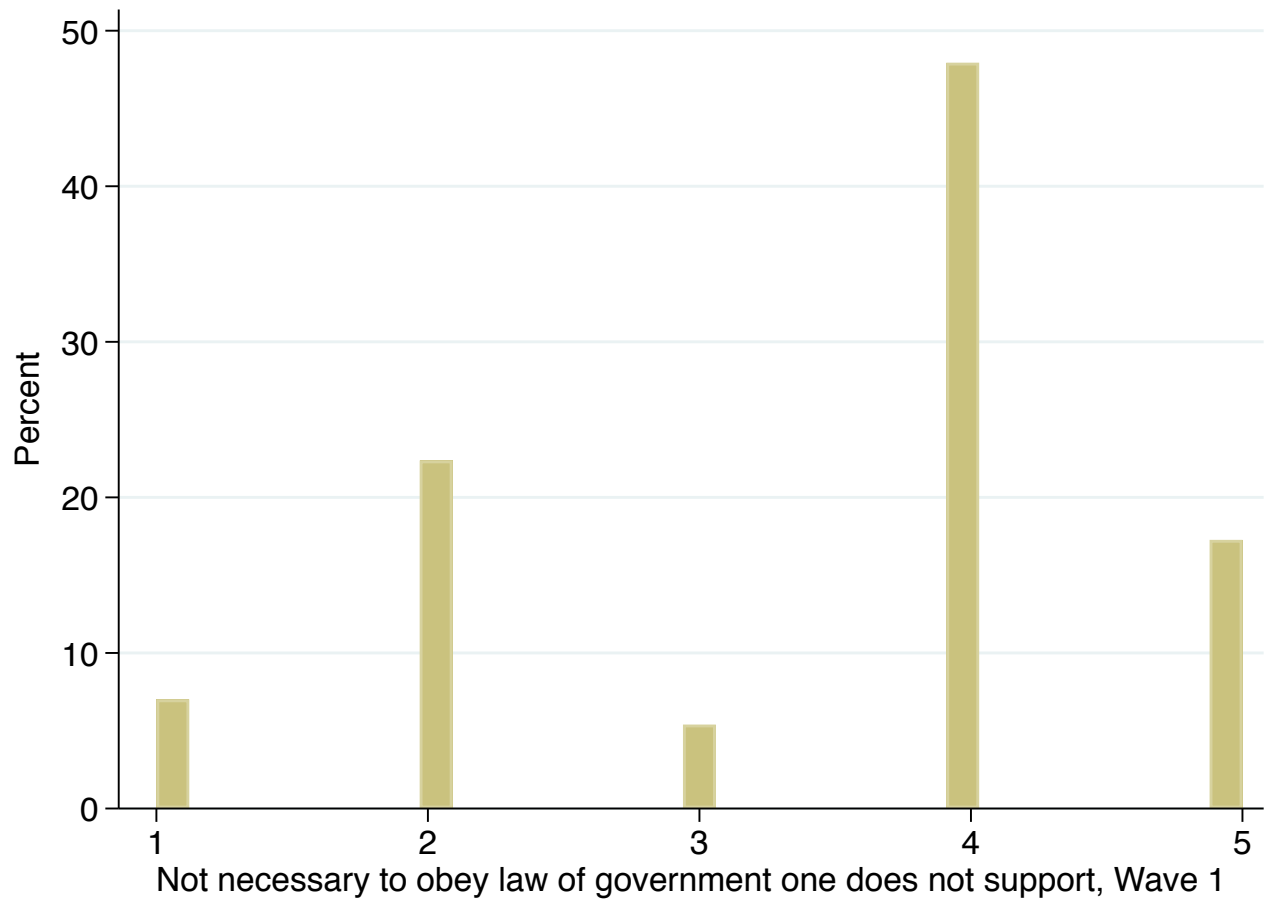
B.1 Distribution of the Two Rule of Law Index Sub-Items

Figure B.1: Attitudes about whether in some cases the government should be able to ignore the law



Figures presents Wave 1 distribution, recoded so that higher values indicate greater support for the rule of law.

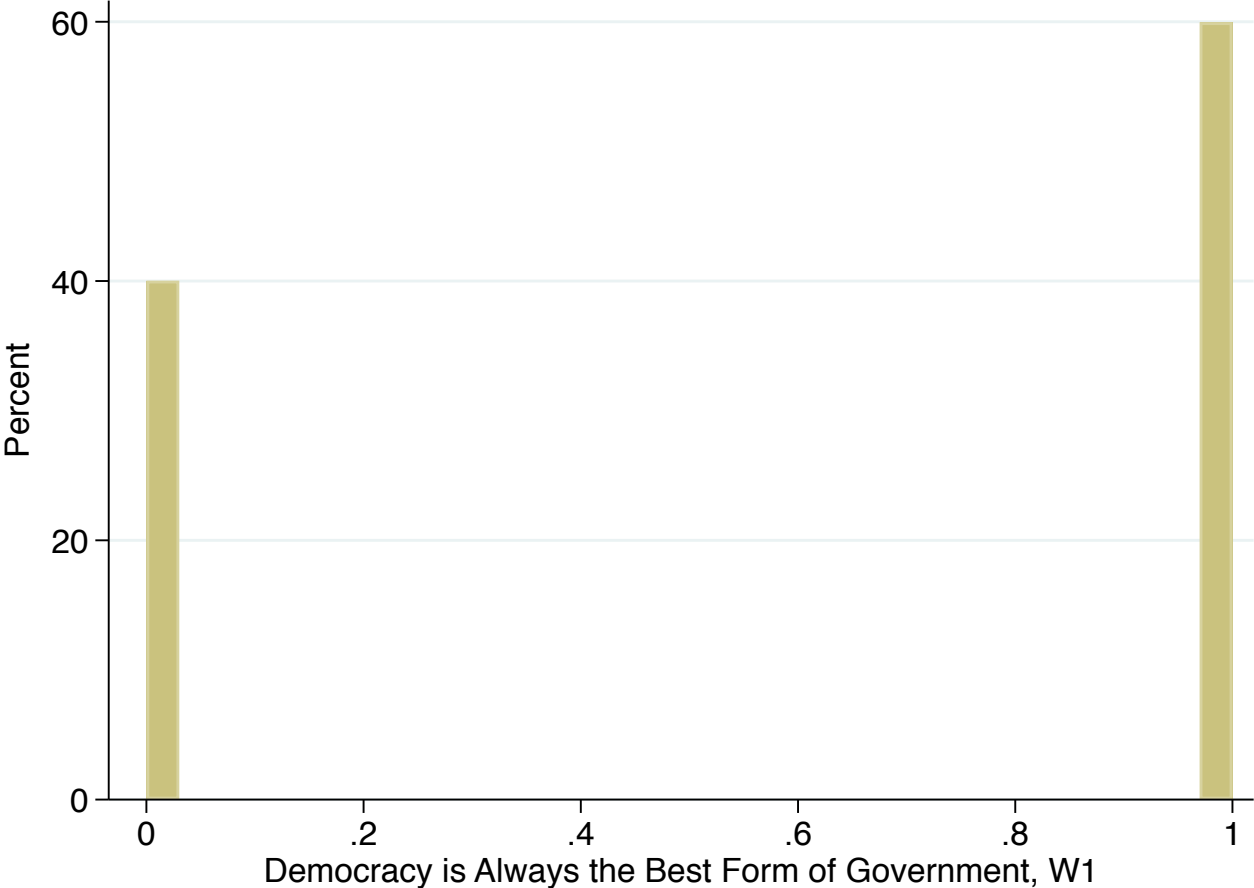
Figure B.2: Attitudes about whether is is necessary to obey the laws of a government one does not support



Figures presents Wave 1 distribution, recoded so that higher values indicate greater support for the rule of law.

B.2 Distribution of Support for Democracy

Figure B.3: Proportion of Wave 1 Respondents Who Report that Democracy is Always the Most Preferable For of Government.



Figures presents Wave 1 distribution.

C Survey Experiment

The first wave of the panel study included a survey experiment designed to provide additional evidence on whether partisan interests and/or perceptions related to procedural fairness affect support for judicial power. We implemented a 3x2 factorial design in which respondents were randomly assigned to receive a message about the first ruling from a partisan actor, President Uhuru Kenyatta (elite endorsement, elite opposition, or control). This was crossed with a message that emphasized the procedural fairness of the ruling (fairness prompt or control). Sample sizes for each experimental condition are shown in Table C.1, and the text of the treatment is shown in Table C.2. A manipulation check (Table C.3) shows that the treatments failed to alter beliefs or perceptions in the desired way, likely because the first wave of the survey was implemented at a time when awareness of the crisis was exceptionally high and citizens' views of the crisis were well solidified. As a result, we fail to observe any consistent treatment effects (Table C.4). The analysis in the main body of the article therefore focuses on the observational data.

Table C.1: Experimental Conditions and Sample Sizes

	Control	Elite Endorsement	Elite Opposition	Total
Procedural Fairness	360	333	381	1,074
Control	690	333	362	1,385
Total	1,050	666	743	2,459

Table C.2: Treatments

Intro: As you are probably aware, on Sept. 1, 2017, the Supreme Court of Kenya invalidated the results of the presidential election that was held on August 8, 2017.

Elite Endorsement: Following the decision, President Uhuru Kenyatta and his allies have urged Kenyans to respect the Court decision. In a statement, he declared that “it is important for us as Kenyans to be respecters of the rule of law.” He went on to express his respect for the decision, even though he disagrees with the ruling. In the statement, Kenyatta said: “I personally disagree with the ruling that has been made . . . but I respect it as much as I disagree with it. I respect it . . . That is the nature of democracy.”

Elite Opposition: President Uhuru Kenyatta and his allies have voiced their disagreement with the Court decision. They have also questioned whether the Court should have the right to annul the election results. Referring to the judges as “crooks,” Kenyatta has said that, “The Supreme Court sat and decided that they are the ones with a bigger power than the 15 million Kenyans who woke up, queued in lines, and voted for their preferred presidential candidate. As a Supreme Court, they cannot annul the wishes of the people.” Deputy Vice President William Ruto has expressed similar concerns. Calling the Court ruling a “coup,” he has argued that “It is not the Supreme Court that is supreme. It is the Kenyan people that are.”

Note:

Procedural Fairness Prime: News analysts and legal experts in Kenya and other countries have praised the Supreme Court’s ruling for its fairness and impartiality. The constitution gives the Supreme Court exclusive authority to determine whether elections have been conducted properly. Based on its evaluation of the facts and evidence, a majority of the Court’s judges ruled in favor of the opposition’s claim that the presidential election held on August 8 violated the constitution because of irregularities in how the IEBC administered the election. However, the court also ruled against other opposition claims. It found no evidence that the president’s campaign illegally used public funds. Thus, although the Court ruled in favor of the opposition’s petition, parts of the decision were quite fair to both sides. According to one news source, this demonstrates that everyone in Kenya is “equal before the law regardless of social standing and privilege.” Other news outlets praised the Supreme Court by saying that it was “one of the most independent, just and incorruptible courts” in Africa and that it had “fulfilled its mandate in an impartial manner.”

All subjects in the elite opposition prime were debriefed following the survey and provided the with information from the elite endorsement prime.

Table C.3: Manipulation Check

VARIABLES	(1) General Procedural Fairness	(2) Decision Procedural Fairness	(3) Kenyatta Agreement
Fairness Prime	0.05 (0.03)	0.02 (0.04)	-0.02 (0.05)
Kenyatta Endorsement Prime	0.03 (0.04)	0.02 (0.05)	0.07 (0.06)
Kenyatta Opposition Prime	0.03 (0.04)	0.01 (0.05)	0.03 (0.06)
Odinga Supporter	0.65*** (0.04)	0.89*** (0.04)	-0.56*** (0.05)
Minor Candidate Supporter	0.43** (0.22)	0.63** (0.25)	0.02 (0.31)
z1educ4	0.19*** (0.06)	0.28*** (0.07)	-0.15* (0.09)
Gender (female=1)	-0.04 (0.03)	-0.10** (0.04)	0.06 (0.05)
Rural	-0.02 (0.04)	0.07* (0.04)	-0.04 (0.05)
Age	0.01*** (0.00)	0.00** (0.00)	0.00 (0.00)
Asset Ownership	-0.32*** (0.10)	-0.14 (0.11)	-0.47*** (0.14)
Poverty Index	-0.07** (0.03)	-0.10*** (0.03)	-0.04 (0.04)
Constant	3.35*** (0.10)	2.93*** (0.12)	3.34*** (0.14)
Observations	2,207	2,093	2,160
R-squared	0.15	0.19	0.07

Standard errors in parentheses

*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

All models also include controls for education, gender, rural, age, asset ownership, and poverty.

Table C.4: Main Experimental Results

VARIABLES	(1)	(2)	(3)	(4)
	Institutional	Decision	Institutional	Decision
Fairness Prime	0.01 (0.01)	0.01 (0.01)	0.01 (0.01)	0.00 (0.01)
Kenyatta supporter x Fairness Prime			0.01 (0.01)	0.01 (0.02)
Kenyatta Opposition Prime	-0.00 (0.01)	0.00 (0.01)	0.02 (0.01)	0.01 (0.01)
Kenyatta supporter x Elite Opposition			-0.04** (0.02)	-0.01 (0.02)
Kenyatta Endorsement Prime	-0.00 (0.01)	0.01 (0.01)	0.00 (0.01)	0.01 (0.02)
Kenyatta supporter x Elite Endorsement			-0.01 (0.02)	0.01 (0.02)
Kenyatta Supporter	-0.11*** (0.01)	-0.16*** (0.01)	-0.10*** (0.01)	-0.16*** (0.01)
Minor Candidate Supporter = o,		-	-	-
Constant	0.61*** (0.02)	0.73*** (0.02)	0.61*** (0.02)	0.73*** (0.03)
Observations	2,184	2,203	2,184	2,203
R-squared	0.17	0.19	0.17	0.19

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

All models also include controls for education, gender, rural, age, asset ownership, and poverty.

D Descriptive Statistics

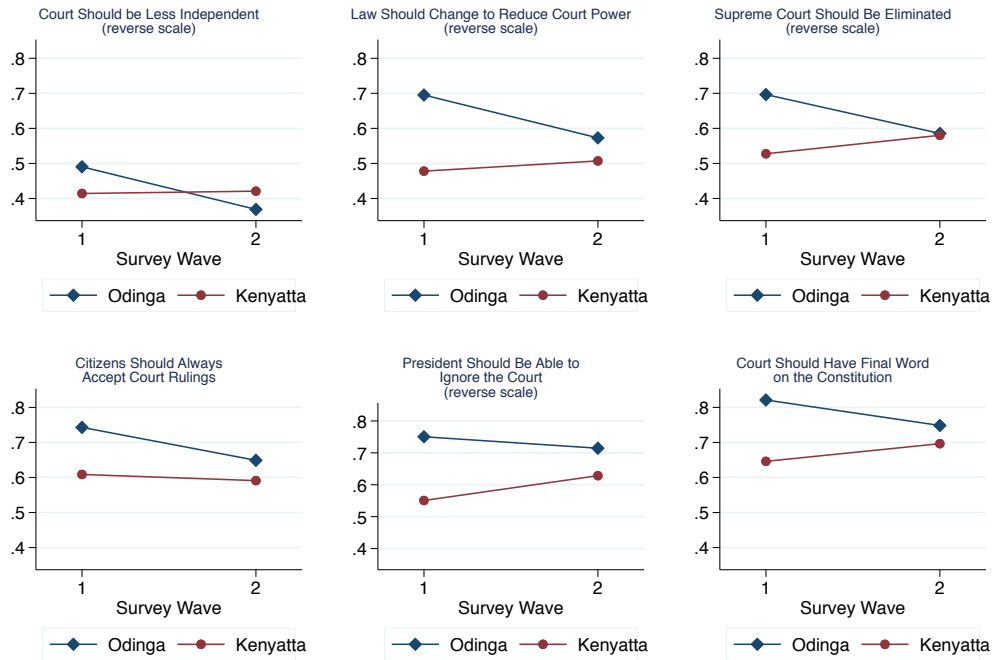
Table D.1: Descriptive Statistics

	Wave1	Wave1Panel	Wave2
InstitutionalPower	.6	.6	.58
DecisionPower	.65	.66	.66
ProceduralFairness	.66	.67	.65
RuleofLawSupport	.57	.57	.55
SupportforDemocracy	.6	.61	.49
KenyattaSupporters	.56	.54	.54
OdingaSupporters	.43	.46	.46

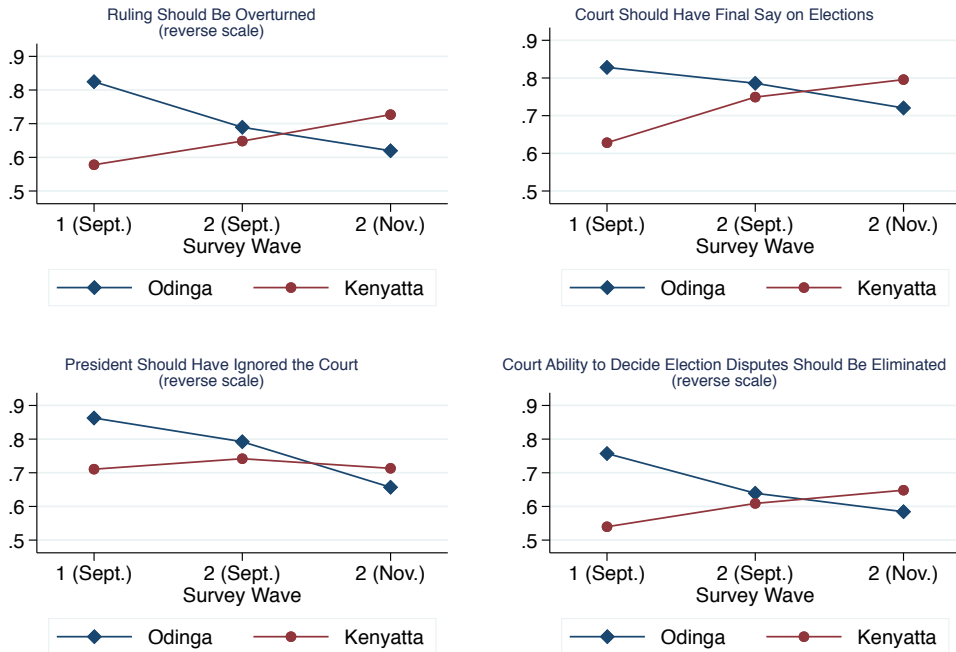
E Item by Item Results

Figure E.1: Item by Item Panel Results Using Binary Outcome Measure

(a) Institutional Power



(b) Decision Power



The main measures in these figures are binary measures that take a value of 1 if the respondent gave an answer supportive of the court (a 4 or a 5), and 0 otherwise. The y-axis captures the proportion of Odinga and Kenyatta supporters that are supportive of court power on each individual survey item and in each survey wave.

F Are Principles Stable? Change Models

Table F.1: Change Models

VARIABLES	(1) Change Fairness	(2) Change Rule of Law	(3) Change Democracy
Odinga Supporter	-0.14** (0.02)	-0.03 (0.02)	0.04 (0.04)
Education	0.04 (0.03)	-0.00 (0.03)	0.00 (0.07)
Gender (female=1)	-0.03* (0.02)	-0.02 (0.02)	-0.02 (0.04)
Rural	0.02 (0.02)	-0.01 (0.02)	-0.07 (0.04)
Age	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
Asset Ownership	-0.06 (0.05)	0.03 (0.05)	-0.25* (0.12)
Poverty Index	0.01 (0.01)	-0.01 (0.02)	-0.00 (0.03)
Constant	0.01 (0.04)	-0.01 (0.05)	0.01 (0.11)
Observations	1,025	1,002	1,033
R-squared	0.07	0.01	0.01

Standard errors in parentheses

** p<0.01, * p<0.05

Unit of analysis is respondent. DV is change in principles (Wave 2 minus Wave 1). These models produce the results presented in Figure 4 of the main body of the paper.

G Robustness: Item by Item Results

Table G.1: Item by Item Change Models, Institutional Power

VARIABLES	(1) Change Item 1	(2) Change Item 2	(3) Change Item 3	(4) Change Item 4	(5) Change Item 5	(6) Change Item 6
Odinga Supporter	-0.07** (0.03)	-0.11*** (0.03)	-0.10*** (0.03)	-0.06** (0.03)	-0.08*** (0.03)	-0.09*** (0.03)
Rule of law support W1	-0.09 (0.06)	-0.04 (0.06)	-0.17*** (0.06)	0.01 (0.06)	-0.00 (0.06)	-0.01 (0.05)
Democratic values W1	-0.02 (0.03)	-0.02 (0.03)	-0.00 (0.03)	0.01 (0.03)	0.01 (0.03)	-0.01 (0.03)
Education	-0.09* (0.05)	0.03 (0.05)	0.06 (0.05)	-0.01 (0.04)	0.06 (0.05)	-0.04 (0.04)
Gender (female=1)	0.02 (0.03)	-0.04 (0.03)	-0.03 (0.03)	-0.01 (0.03)	-0.03 (0.03)	-0.01 (0.03)
Rural	0.00 (0.03)	-0.02 (0.03)	-0.03 (0.03)	-0.01 (0.03)	-0.02 (0.03)	-0.07*** (0.03)
Age	-0.00 (0.00)	0.00 (0.00)	-0.00 (0.00)	-0.00*** (0.00)	-0.00 (0.00)	-0.00 (0.00)
Asset Ownership	-0.04 (0.08)	0.03 (0.08)	-0.11 (0.08)	-0.05 (0.07)	0.01 (0.08)	0.13* (0.07)
Poverty Index	-0.02 (0.02)	-0.02 (0.02)	-0.01 (0.02)	-0.01 (0.02)	0.03 (0.02)	0.03 (0.02)
Constant	0.15* (0.08)	0.07 (0.08)	0.24*** (0.08)	0.13* (0.08)	0.02 (0.08)	0.07 (0.08)
Observations	981	987	984	990	989	990
R-squared	0.02	0.03	0.03	0.02	0.02	0.03

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Unit of analysis is respondent. DV is change in individual component of institutional power index

Table G.2: Item by Item Change Models, Decision Power

VARIABLES	(1) Change Item 1	(2) Change Item 2	(3) Change Item 3	(4) Change Item 4
Odinga Supporter	-0.15*** (0.03)	-0.11*** (0.03)	-0.07*** (0.02)	-0.11*** (0.03)
Rule of law support W1	0.01 (0.06)	-0.02 (0.05)	-0.01 (0.05)	-0.09 (0.06)
Democratic values W1	-0.07** (0.03)	-0.05* (0.03)	-0.03 (0.03)	-0.05* (0.03)
Education	0.00 (0.05)	0.00 (0.04)	0.07* (0.04)	0.03 (0.05)
Gender (female=1)	0.03 (0.03)	-0.00 (0.02)	-0.00 (0.02)	0.08*** (0.03)
Rural	0.00 (0.03)	-0.02 (0.03)	-0.01 (0.02)	0.01 (0.03)
Age	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)	-0.00** (0.00)
Asset Ownership	0.02 (0.08)	0.06 (0.07)	-0.01 (0.07)	0.03 (0.08)
Poverty Index	-0.02 (0.02)	-0.01 (0.02)	0.01 (0.02)	-0.00 (0.02)
Constant	0.10 (0.08)	0.14** (0.07)	-0.00 (0.07)	0.12 (0.08)
Observations	989	983	998	989
R-squared	0.04	0.03	0.01	0.04

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Unit of analysis is respondent. DV is change in individual component of decision power index

Table G.3: Item by Item Panel Models, Institutional Power

VARIABLES	(1) Panel Item 1	(2) Panel Item 2	(3) Panel Item 3	(4) Panel Item 4	(5) Panel Item 5	(6) Panel Item 6
Odinga Supporter	0.04* (0.02)	0.17*** (0.02)	0.13*** (0.02)	0.10*** (0.02)	0.13*** (0.02)	0.13*** (0.02)
Odinga Supporter x Wave 2	-0.09*** (0.03)	-0.12*** (0.03)	-0.11*** (0.03)	-0.06** (0.03)	-0.07*** (0.03)	-0.08*** (0.02)
Wave 2	-0.01 (0.02)	0.01 (0.02)	0.02 (0.02)	-0.01 (0.02)	0.05*** (0.02)	0.03** (0.02)
Rule of law support W1	0.15*** (0.04)	0.22*** (0.03)	0.16*** (0.03)	0.01 (0.04)	0.16*** (0.03)	-0.02 (0.03)
Democratic values W1	0.04** (0.02)	0.02 (0.02)	0.03** (0.02)	0.01 (0.02)	0.02 (0.02)	0.03* (0.01)
Education	0.07** (0.03)	0.16*** (0.03)	0.14*** (0.03)	-0.01 (0.03)	0.11*** (0.03)	0.07*** (0.02)
Gender (female=1)	-0.03* (0.02)	-0.05*** (0.02)	-0.03* (0.02)	-0.10*** (0.02)	-0.03* (0.01)	-0.06*** (0.01)
Rural	0.04** (0.02)	-0.01 (0.02)	-0.03* (0.02)	-0.00 (0.02)	-0.00 (0.02)	-0.01 (0.01)
Age	-0.00*** (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
Asset Ownership	0.05 (0.05)	0.03 (0.04)	0.03 (0.04)	-0.00 (0.05)	0.06 (0.04)	-0.01 (0.04)
Poverty Index	0.01 (0.01)	-0.01 (0.01)	-0.02 (0.01)	-0.01 (0.01)	0.03** (0.01)	0.00 (0.01)
Constant	0.35*** (0.05)	0.31*** (0.05)	0.40*** (0.05)	0.64*** (0.05)	0.34*** (0.05)	0.59*** (0.04)
Observations	1,983	1,989	1,986	1,992	1,991	1,992
R-squared	0.05	0.13	0.08	0.04	0.08	0.05

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Unit of analysis is respondent-survey wave.

Table G.4: Item by Item Panel Models, Decision Power

VARIABLES	(1) Panel Item 1	(2) Panel Item 2	(3) Panel Item 3	(4) Panel Item 4
Odinga Supporter	0.19*** (0.02)	0.15*** (0.02)	0.13*** (0.02)	0.15*** (0.02)
Odinga Supporter x Wave 2	-0.16*** (0.03)	-0.11*** (0.02)	-0.07*** (0.02)	-0.12*** (0.03)
Wave 2	0.05*** (0.02)	0.08*** (0.02)	0.03 (0.02)	0.04** (0.02)
Rule of law support W1	0.10*** (0.03)	0.01 (0.03)	0.12*** (0.03)	0.14*** (0.04)
Democratic values W1	0.02 (0.02)	0.02* (0.01)	0.01 (0.01)	0.03* (0.02)
Education	0.10*** (0.02)	0.07*** (0.02)	0.09*** (0.02)	0.10*** (0.03)
Gender (female=1)	-0.03* (0.01)	-0.05*** (0.01)	-0.06*** (0.01)	-0.04** (0.01)
Rural	-0.02 (0.01)	0.01 (0.01)	-0.02 (0.01)	-0.02 (0.02)
Age	0.00 (0.00)	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)
Asset Ownership	-0.04 (0.04)	-0.05 (0.04)	0.03 (0.04)	0.07 (0.05)
Poverty Index	-0.02** (0.01)	-0.01 (0.01)	-0.00 (0.01)	-0.01 (0.01)
Constant	0.52*** (0.05)	0.61*** (0.04)	0.57*** (0.04)	0.43*** (0.05)
Observations	1,991	1,985	2,000	1,991
R-squared	0.08	0.06	0.09	0.08

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Unit of analysis is respondent-survey wave.

H Robustness: Count Models

Table H.1: Models with Count Models as the Dependent Variable (rescaled to 0-1 scale)

VARIABLES	(1) Change Institutional Count	(2) Change Decision Count	(3) Panel Institutional Count	(4) Panel Decision Count
Odinga Supporter	-0.13*** (0.02)	-0.16*** (0.02)	0.16*** (0.02)	0.20*** (0.02)
Odinga Supporter x Wave 2			-0.13*** (0.02)	-0.16*** (0.02)
Wave 2			0.03** (0.01)	0.07*** (0.02)
Rule of law support W1	-0.03 (0.04)	-0.01 (0.05)	0.16*** (0.02)	0.11*** (0.03)
Democratic values W1	-0.01 (0.02)	-0.07*** (0.02)	0.04*** (0.01)	0.03** (0.01)
Education	0.01 (0.03)	0.02 (0.04)	0.13*** (0.02)	0.13*** (0.02)
Gender (female=1)	-0.02 (0.02)	0.04 (0.02)	-0.07*** (0.01)	-0.06*** (0.01)
Rural	-0.03 (0.02)	-0.02 (0.02)	-0.01 (0.01)	-0.02* (0.01)
Age	-0.00* (0.00)	-0.00 (0.00)	-0.00 (0.00)	0.00 (0.00)
Asset Ownership	-0.04 (0.06)	0.04 (0.07)	0.03 (0.03)	0.01 (0.04)
Poverty Index	-0.01 (0.02)	-0.02 (0.02)	0.00 (0.01)	-0.02* (0.01)
Constant	0.17*** (0.06)	0.14** (0.07)	0.37*** (0.04)	0.54*** (0.04)
Observations	941	967	1,943	1,969
R-squared	0.06	0.06	0.18	0.13

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Unit of analysis is columns 1-2 is the respondent. Unit of analysis in columns 3-4 is respondent-survey wave.