

# Judicial Independence and Development<sup>1</sup>

## Evidence from Pakistan

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<sup>1</sup>Resubmitted to Review of Economic Studies

# Motivation

- President appoints judges to the superior courts
  - For instance in Bangladesh, Singapore, South Africa, Brazil, Nigeria, India ...
- This seems in contradiction to the “separation of powers” (Montesquieu, 1748)
- The “continuance in office” or the institution of life-time appointment (Madison, Hamilton, and Jay, 1788)

# Research Question

- To what extent does Presidential appointment of judges impact judicial decision-making and development?
  - What are the mechanisms?

# The Context

- A 2010 change in the judicial selection procedure in Pakistan
- From the President selecting the judges to the selection of judges by a Judicial Commission (consisting of peer judges):
  - Only the appointment procedure changed
  - The procedure to remove the judges same
- Should the State itself appoint the judges or delegate the power of appointment to the Judiciary? (Montesquieu, 1748)

# Preview of Main Results

- Selection reform reduces rulings in favor of the government
- Decision quality improves
- Mechanisms:
  - Lower political activity prior to appointment
  - No evidence for peer or incentive effects
  - Favorable rulings in government land expropriation cases fall
- Selection reform *prevents* land expropriation worth 0.14% of GDP or USD 390 million every year

# Related Literature

- **Selection of public officials**

- Selection of politicians (Besley, 2005; Guerriero, 2011; Hessami, 2018)
- Judge selection focus on selection via elections versus governor appointments (Lim, 2013)
- Link judge selection with racial bias (Alesina and La Ferrara, 2014)

- **Bureaucracies in developing countries**

- Bureaucratic performance in developing countries (Acemoglu et al., 2020; Bandiera et al., 2020; Callen et al., 2020).
- Patronage in bureaucracies (Xu, 2018; Jiang, 2018; Colonelli et al., 2020)

# Contributions

- The key contributions of this paper are
  - ① Judge Selection via Presidential appointment versus judge peers
  - ② Link judicial selection with Judicial Independence and Rule of Law
  - ③ Study judicial independence in the context of a developing country
- What are the conditions for the establishment of Rule of Law in society? (North and Weingast, 1989; Acemoglu and Robinson, 2019)
- How a change in selection procedure of judges may be able to promote Rule of Law

# Roadmap

- 1 Data
- 2 Empirical Methodology
- 3 Results
- 4 Mechanisms
- 5 Conclusions
- 6 Appendix: Robustness Checks

1 Data

2 Empirical Methodology

3 Results

4 Mechanisms

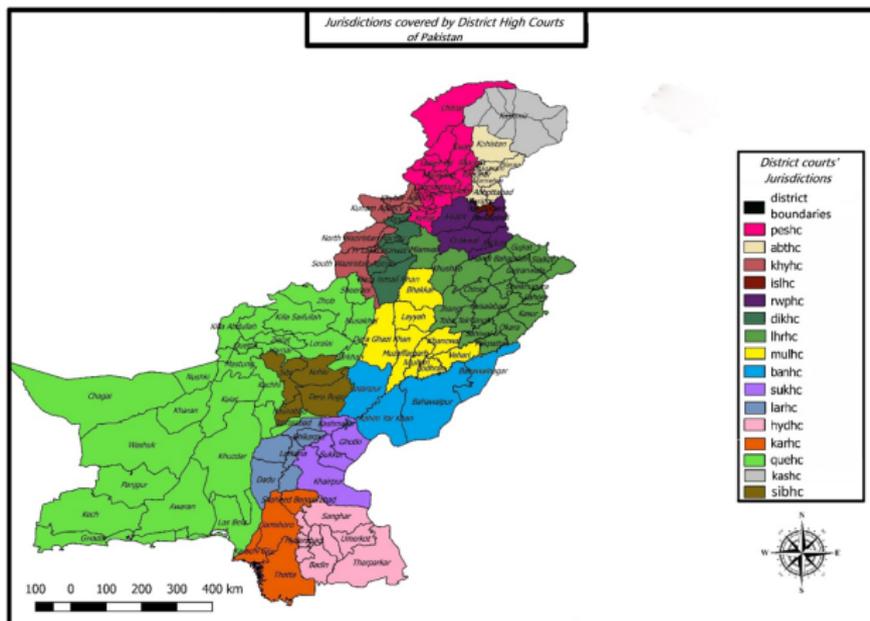
# The Data

- Judgments texts
- Judicial administrative data
- Annual reports submitted to Ministry of Justice
- Bar associations records
- Census records

# Sample Description

- We randomly sample 7500 cases from 1986-2016
- This is about 0.2% of population of cases decided in this period
- About 500 judges deciding these cases (85% are appointed by the President)
- 16 district high courts (covers all of Pakistan, see next slide)

# Jurisdictions Covered by the District High Courts



# How to Measure Judicial Independence?

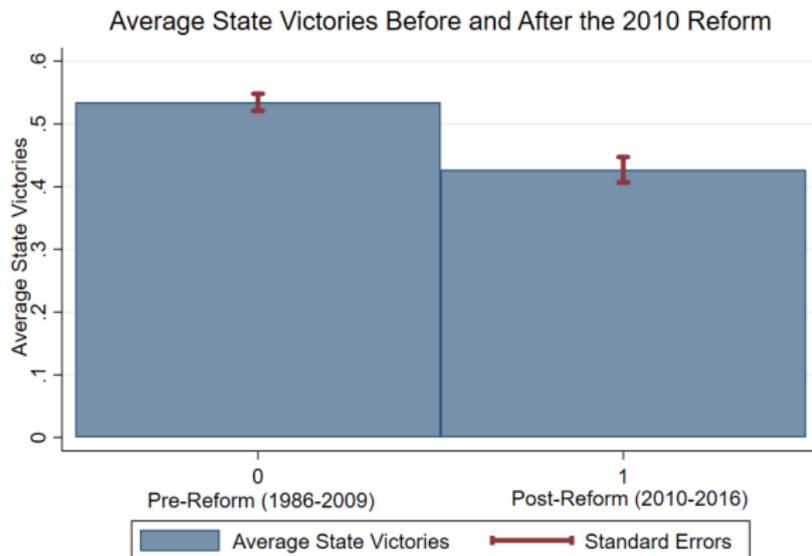
- Citizen vs The State
- The key outcome variable is State Victories which takes the value of 1 if State Wins and 0 if State loses
- This is case level proxy for judicial independence
- State victory variable is measured in two ways:
  - We ask a law firm to code state victories as 1 and state defeats as 0 in cases involving the State
  - Cross check result with “case against state is dismissed/accepted”

## A Tale of Two Data Points

- Case # 1: “President may, in the larger public interest may perform all legislative measures which are in accordance with, or could have been made under the Constitution, including the power to amend it. . . **The petition is dismissed.**” (The State vs Tikka Khan, 2005)
- Case # 2: “The fortune amassed is indeed huge and no plausible explanation has been advanced in that regard. Honoré de Balzac may be right after all, when he had said that behind every great fortune for which one is at a loss to account there is a crime. . . **The petition is accepted.** . .

The Election Commission of Pakistan shall issue a notification disqualifying Mian Muhammad Nawaz Sharif from being a member of the Parliament with immediate effect, after which he shall cease to be the Prime Minister of Pakistan” (The State vs Siraj-ul-Haq, 2017)

# Selection Reform and Average State Victories



# Identification Challenge - I

- Many simultaneous changes are occurring around the reform year of 2010
  - For instance, a transition from military to democratic rule in 2008 or a movement by lawyers in 2007 for a more independent judiciary
  - The global fall in State Wins following the reform might be explained by these changes
- To address this we focus on the staggered implementation of the reform:
  - New judicial appointments are staggered across space-time due to limited vacancies in the respective districts in a given year
  - Previous judges had to retire for the new judges under the new selection procedure to be sworn in
  - For instance by 2016, district high court of Peshawar had 90% judges selected by the judicial commission but Sukkur high court had 40%

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# Empirical Methodology

$$Y_{cjdbt} = \theta + \alpha \frac{\text{Judge Appointed Judges in 2010}}{\text{Total Judges}}_{db} \times \text{Post 2010}_t + \beta_{db} + \gamma_t + \delta_c + \mathbf{W}'_{cdt} \psi + \epsilon_{cjdbt} \quad (1)$$

- Subscripts c, j, d, b and t indexes cases, judges, district, benches and years, respectively
- Y represents State Wins at the case level
- $\beta_{db}$ ,  $\gamma_t$  and  $\delta_c$  are district-by-bench, year and case-type fixed effects, respectively
- $\mathbf{W}$  is a vector of case and district controls
- Clustering is done at the district-by-bench level (similar results for district level or before-after reform clustering)
- $\alpha$  is the DiD estimator for the impact of selection reform on State Wins

## Identification Challenge - II

- $\alpha$ , however, still does not give us the causal effect of selection reform on State Wins
- This is because ...
  - “Politicians use frequent reassignments (transfers) across posts of varying importance to control bureaucrats.” (Mani & Iyer, 2012, p. 723)
  - $\text{Corr}(\text{Appointment Effect} \times \text{error}) \neq 0$

# The Identification Strategy

## A Pictorial Illustration

<b>District 1</b>		<b>District 2</b>		<b>T = 0</b>
<b>Judge A</b>	<b>Judge B</b>	<b>Judge C</b>	<b>Judge D</b>	
				
<b>Judge A</b>	<b>Judge B</b>	<b>Judge C</b>	<b>Judge E</b>	<b>T = 1</b>
				

## DID-IV: The First and Second Stage

First Stage:

$$\begin{aligned} & \frac{\text{Judge Appointed Judges in 2010}}{\text{Total Judges}}_{db} \text{X Post 2010}_t = \\ \theta + \pi & \frac{\text{Mandatory Retirements in 2010}}{\text{Total Judges}}_{db} \text{X Post 2010}_t \\ & + \mathbf{W}'_{cdt} \psi + \beta_{db} + \gamma_t + \delta_c + \epsilon_{cjdbt} \end{aligned} \quad (2)$$

Second Stage:

$$\begin{aligned} Y_{cjdbt} = \theta + \kappa & \left( \frac{\widehat{\text{Judge Appointed Judges in 2010}}}{\text{Total Judges}}_{db} \text{X Post 2010}_t \right) \\ & + \mathbf{W}'_{cdt} \psi + \beta_{db} + \gamma_t + \delta_c + \epsilon_{dbt} \end{aligned} \quad (3)$$

- Instrument fraction of judges appointed by judges in 2010 by the fraction of judges reaching their mandatory retirement age of 62 in 2010

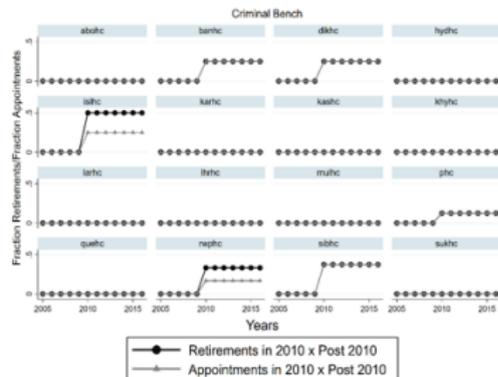
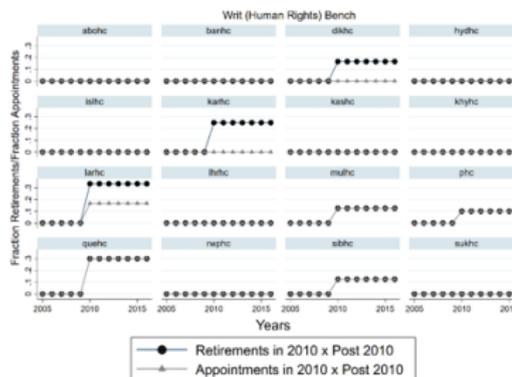
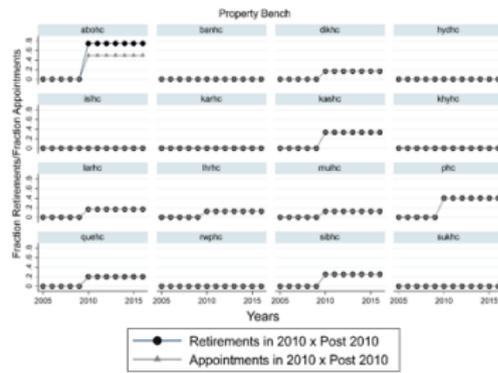
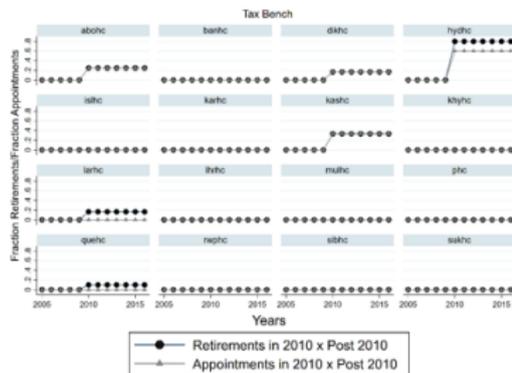
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# Instrument Relevance?



# Instrument Independence?

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Constitutional Case	Criminal Case	No. Pages	CJ on Case	No. Lawyers on Case	No. Judges on Case	Population	Population Density	Agriculture Production	Night Lights
Retirements in 2010 X Post 2010	0.0251 (0.0824)	-0.0673 (0.103)	-1.421 (0.988)	-0.047* (0.025)	0.647 (0.492)	0.157 (0.157)	-1329735 (793,338)	-909.5 (599.0)	-1256030 (1130347)	0.505 (0.850)
Bench Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Controls	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Observations	7,439	7,439	7,439	7,439	7,439	7,439	7,439	7,439	7,439	7,439
R-squared	0.382	0.222	0.254	0.027	0.064	0.081	0.950	0.954	0.707	0.768
Mean of dependent variable	0.722	0.279	8.887	0.065	4.042	1.815	3562527	2065.558	465266	8.113

## Results

	(1)	(2)	(3)	(4)	(5)
<i>State Wins</i>					
Retirements in 2010 X Post 2010	-0.149* [0.0887]	-0.202*** [0.0740]			
Retirements in 2009 X Post 2010			0.0619 [0.0639]		
Retirements in 2008 X Post 2010				0.0680 [0.169]	
Retirements in 2007 X Post 2010					0.0275 [0.118]
District-Bench and Year FE	Yes	Yes	Yes	Yes	Yes
Case and District Controls	No	Yes	Yes	Yes	Yes
Observations	7,439	7,439	7,439	7,439	7,439
R-squared	0.055	0.064	0.063	0.063	0.063
Mean of dependent variable	0.50	0.50	0.50	0.50	0.50

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# Mechanisms

- ① What kind of cases are driving the results? **Yes, selection reform reduces land expropriation by the State**
- ② Is there an improvement in the quality of judicial decisions? **Yes, selection reform reduces case delay and increases decisions on evidence of the case**
- ③ What kind of judges are driving the results? **Patronage judges who hold political office prior to their appointments**
- ④ Extent to which the reform prevents land expropriations by the State? **Selection reform prevents land expropriation worth 0.14% of GDP or USD 390 million every year**

# Conclusion - I

Justice Khan - Appointed by President



Justice Mirza - Appointed by Judges



## Conclusion - II

- “... The Election Commission of Pakistan shall issue a notification disqualifying Mian Muhammad Nawaz Sharif from being a member of the Parliament with immediate effect, after which he shall cease to be the Prime Minister of Pakistan”

(The State vs Siraj-ul-Haq, 2017)

- 5/5 judges were selected under the new selection procedure

# Headline from May 2018

PAKISTAN

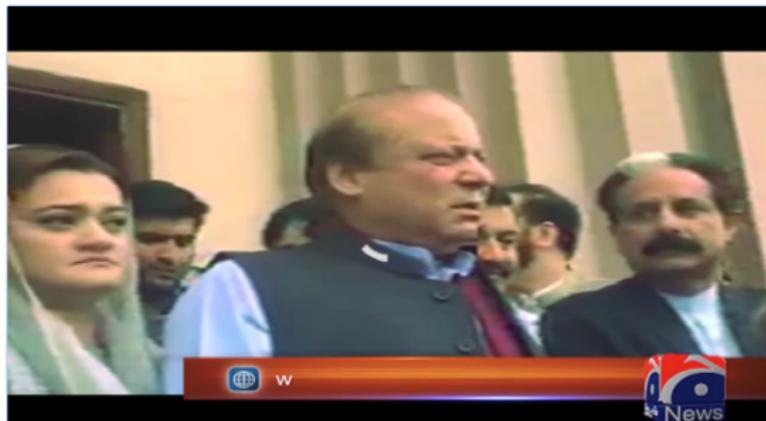
Monday May 07 2018



GEO NEWS



## Will change process to appoint judges if re-elected: Nawaz



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