

Self-Granting Immunity: When Do Politicians Grant Themselves Judicial Immunity?

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Abstract

Judicial immunity for elected politicians has substantial implications on democracy and its resilience. However, no systematic research has been conducted to explain why some countries offer broader immunity while others provide narrower. In this paper, I offer a game-theoretical model to explain the cross-national variation in judicial immunity. The model focuses on the constitutional negotiation process between authoritarian successors and pro-democrats at the time of democratization. I show how the political landscape post-democratization shapes ruling elites' incentives to extend or shrink constitutional immunity for politicians. To test my theoretical claims, I assemble data on constitutional provisions of judicial immunity for politicians in countries that have been democratized since 1975. As expected, I find suggestive evidence that intense political competition leads to broader immunity for legislators, but conditional on sufficiently low potential costs of political prosecutions. This paper enhances our understanding of the role of judicial institutions in promoting democratic accountability.

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In July 2024, the Supreme Court of the United States ruled on substantial immunity for U.S. presidents from criminal prosecution: “Under our constitutional structure of separated powers, the nature of presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority.”¹ While the majority defended their ruling based on the principle of separation of powers, others criticized the decision to grant former presidents criminal immunity as creating “a kind of king not answerable to the law.”² This ruling certainly weakened the federal case against former President Trump for intervening in the last U.S. presidential election.³

The legal system of limiting judicial proceedings against elected politicians has been paid attention to, in other democratic cases. In February 2023, South Korean prosecutors sought an arrest warrant for Lee Jae-myung, the leader of the main opposition Democratic Party and a former Democratic presidential candidate. In the closely contested 2022 presidential election, Lee narrowly lost to President Yoon Suk-yeol, a former prosecutor general, by a margin of 0.7%. Following the election, prosecutors alleged that Lee engaged in bribery related to development projects of Seongnam City. The South Korean parliament reviewed the prosecution’s request to waive Lee’s immunity from arrest, but the motion to arrest Lee fell short of the required majority. The Democratic Party denounced the prosecution, labeling it as an “unprecedented act of violence to incapacitate the opposition party and eliminate the president’s political enemy.”⁴

Judicial immunity for lawmakers was originally intended to protect the people’s representatives from interference by the monarch. It remains in place to this day in various forms:

¹ *Trump v. United States*, No. 23-939, 23 U.S. 939 (2023).

² See <https://www.nytimes.com/2024/07/01/us/politics/supreme-court-trump-immunity.html>.

³ See <https://www.nytimes.com/2024/07/01/us/politics/supreme-court-immunity-trump-jan-6.html>.

⁴ See <https://www.reuters.com/world/asia-pacific/south-korean-prosecutors-seek-arrest-opposition-leader-graft-probe-2023-02-16/>.

the constitutions of almost all countries provide protections for legislators, including immunity from legal proceedings for speech made in the legislature.⁵ Some countries also extend immunity to former legislators, the chief executive or ministers, or even from criminal prosecutions. While immunity allows politicians to function independently of external forces, incumbent politicians often attempt to modify immunity provisions to avoid accountability for their own corruption or to undermine political opposition. For example, former Chilean dictator Pinochet’s position as “senator for life” immunized him from prosecution until his death in 2006. More recently, Turkey’s parliament in 2016 voted to lift its members’ immunity from prosecution in a politically motivated move to undermine President Erdogan’s opposition, the pro-Kurdish People’s Democratic Party.⁶

Despite its ubiquity and political importance, research about judicial immunity for politicians remains surprisingly scarce. There have been several attempts to document politician immunity across different jurisdictions, but they primarily focus on immunity provisions for members of parliament in European countries (Ameller, 1993; Geesteranus, 1996; Iovene, 2017; Wigley, 2003).⁷ One exceptional study by Reddy, Schularick and Skreta (2020) went to great lengths to collect data about immunity enjoyed by heads of government, ministers, and legislators in 90 democratic countries. Using a systematic measurement of immunity, they explored the cross-national variation in immunity provisions and its association with corruption. However, to the best of my knowledge, no research has addressed why some countries offer broader immunity and others narrower or no immunity.

In this paper, I present a game-theoretical model that explains the determinants of cross-

⁵For example, Cuba is an exception where the rule of legislative immunity does not exist.

⁶For Chilean case, *see* <https://www.nbcnews.com/news/latino/chileans-vote-new-constitution-leaving-behind-relic-pinochet-s-brutal-n1244591>, and for Turkish case, *see* <https://www.reuters.com/article/us-turkey-politics-immunity-idUSKCN0YB0VC>.

⁷Some works seek to collect information about immunity beyond parliaments in European countries. For example, Alzubi (2020) and van der Hulst (2000) document immunity systems outside of Europe. And, Hoppe (2011) and Vrushni (2018) gather immunity provisions for the chief executive and ministers as well.

national variation in judicial immunity for politicians. My focus is on constitutional negotiations regarding judicial immunity for politicians during democratization. This theoretical scope is chosen because constitutions generally remain highly impactful for a long time due to the large winning coalition required (Elster, 1995). Additionally, post-democratization periods typically involve significant constitutional reforms, offering a unique opportunity to examine how emerging democracies establish judicial norms and protections (Finkel, 2008).

In the model, I suppose that there are two players, an authoritarian successor party and a pro-democratic party, negotiating over two different types of immunity: (1) immunity for the legislative branch and (2) immunity for the executive branch. The authoritarian successor party is assumed to be the incumbent setting the agenda for constitutional reform, while the pro-democratic party acts as a veto player. Additionally, I assume that the incumbent and opposition parties have immunity for the executive and legislative branches, respectively. Through the model, I explore how political factors at the time of democratization, such as the likelihood of winning post-democratization elections and the potential costs of being prosecuted, incentivize ruling elites to demand different sets of immunity protections. Particularly, this model shows that intense political competition leads to broader immunity protections for legislative members – but only under the condition of sufficiently low potential costs of being prosecuted.

To test my theoretical claims, I assembled original data on constitutional provisions of judicial immunity for politicians in countries that have been democratized since 1975. Relying on the Comparative Constitutions Project, I examine constitutional immunity provisions afforded to legislators, chief executives, and ministers in post-democratization constitutions. Building on the work of Reddy, Schularick and Skreta (2020), I hand-coded the critical differences in constitutional immunity provisions across jurisdictions based on the following criteria: (1) the scope of *non-accountability*, (2) the scope of *inviolability*, (3) the procedure to

authorize immunity lift, and (4) the duration of the immunity. Based on these original data, I employed principal component analysis (PCA) to create indices that describe the quality of immunity protections for the legislative and executive branches. The cross-sectional analysis using these immunity indices provides supporting evidence for my theoretical claims. Specifically, I find the conditional effects of political competition on the quality of legislative immunity.

This paper has three primary contributions to the literature: foremost, it provides the first systematic explanation as to why some countries offer broader immunity to politicians than others, emphasizing the dynamics of political competition post-democratization. Although politician immunity has recently received global attention, research on this legal system is surprisingly scarce. Reddy, Schularick and Skreta (2020) made significant efforts to document cross-national variation in the immunity system and examine its effects on political corruption, but there has been no systematic research on what causes this important variation. By developing a game-theoretical model of constitutional negotiations over judicial immunity, I enrich our understanding of the emergence and evolution of judicial institutions in democratic countries.

Second, this research further refines the theory of political insurance by proposing the concept of “contingent political insurance.” Previous literature has primarily addressed the potential scenario in which incumbent politicians lose the next elections (see Ginsburg, 2003; Finkel, 2008). Scholars have argued that the possibility of being out of office leads incumbent politicians to seek political insurance, such as adopting judicial review and enhancing judicial independence. However, such judicial reforms do not cover risks if they succeed in winning elections. In contrast, immunity provisions for the chief executive and ministers would apply if the politicians successfully retain office – contingent upon the absence of coverage from other political insurances. Given that, this paper contributes to the literature by

investigating how incumbent politicians seek to mitigate risks both when losing and winning elections.

Lastly, this research contributes to the discussion on the survival of authoritarian elites in post-democratization contexts. When autocratic parties transition to democracy, some manage to endure and even regain power (Loxton, 2015). Scholars have suggested that inherited resources, policy success during the authoritarian period, and institutions that disadvantage new democratic parties play key roles in the continued success of authoritarian successors (Loxton, 2015; Miller, 2021; Albertus and Menaldo, 2014). Notably, Albertus and Menaldo (2018) show that when authoritarian elites design constitutions that persist post-democratization and serve their own interests, the institutions aid their electoral success in democratic systems. Expanding on this idea, I investigate the conditions under which authoritarian elites secure institutional protections against legal challenges, which can help them reclaim and retain power. This study further explores the strategies used by authoritarian successors to establish and maintain their influence within new democratic frameworks.

History of Immunity Provisions

Immunity provisions for politicians in historic legal systems fall into two main categories: *non-accountability* for votes cast and opinions expressed in the performance of their duties and, as regards all other acts, *inviolability*, prohibiting detention or criminal proceedings without the authorization of the legislature of which they are members. Each immunity has a different historical origin.

The first modern notion that political representatives should be legally protected in the exercise of their duties originated in England. In 1397, within the British Parliament, Sir Thomas Haxey presented a petition criticizing the extravagant behaviors of King Richard

II. Offended by Haxey's challenge, the incensed monarch orchestrated a treason conviction and sentenced the parliamentarian to death. The House of Commons pressured the king into revoking the sentence and pardoning Haxey, but the incident raised concerns about parliamentarians' right to discuss and deliberate independently without interference from the Crown. This principle of freedom of speech was reaffirmed in Article 9 of the 1689 Bill of Rights, which exempted members of Parliament from accountability for speech uttered in Parliament (van der Hulst, 2000, p.63).

In contrast to the British's approaches to holding politicians accountable in criminal matters, the concept of limiting criminal liability for legislators emerged during the French Revolution (Reddy, Schularick and Skreta, 2020, p.536). The power struggle between revolutionaries and the *Ancien Régime* persisted for over two decades following the 1789 Revolution. Despite the revolutionary armies' successes, the French judiciary remained under the nobility's influence. Fearing that the notorious *lettres de cachet* could be used as a legal basis for arrest, Honoré de Mirabeau declared the inviolability of the National Assembly on June 23, 1789. As a result, the 1791 Constitution's Title III, Chapter 1 provisions went beyond English freedom-of-speech protections, guaranteeing protection for members of the Assembly against arrest and indictment without the Assembly's authorization. This broader scope of immunity in France reflected the prevailing fear of executive power (van der Hulst, 2000, p.79)

The two models, British and French, began to evolve as they spread across the world. The majority of Commonwealth countries, influenced by British colonial governments, have followed the British tradition by focusing on the non-accountability of legislators. The French model, which focused on inviolability, diffused throughout the remainder of the representative democracies (Wigley, 2003). In the modern world, this has resulted in diverse immunity systems across different jurisdictions.

Immunity Provisions in Modern Era

In the contemporary world, the two models of the immunity regime have evolved in diverse systems across different jurisdictions. In this section, I describe how constitutional immunity provisions in the modern era differ across countries that have democratized since 1975. I restricted my data collection to countries that underwent democratization post-1975. To determine democratization, I relied on the revised combined polity score from the Polity5 project, which is tailored to aid the usage of the polity regime measure in time-series analyses. Countries that recorded the measure under 6 in the preceding year and equal to or exceeding 6 in the subsequent year were classified as democratized. According to the Polity score, there have been 62 countries that experienced democratization during the specified period.

To examine constitutional provisions, I used the Constitute platform developed by the Comparative Constitutions Project (CCP).⁸ Using this resource, I analyzed immunity provisions afforded to legislators, chief executives, and ministers in post-democratization constitutions - those established or amended immediately after democratization. In cases where a post-democratization constitution was not available, I instead opted for the closest constitution after the democratization event among the available ones. Refer to the Appendix for years of democratization of each country and the establishment and amendment of each constitution.

I focus primarily on written constitutions, even though I recognize that some countries without explicit constitutional immunity provisions often rely on case law or statutes to establish politician immunity rules (Reddy, Schularick and Skreta, 2020; van der Hulst, 2000). Immunity rules not anchored in written constitutions tend to be more changeable. This is because the coalition size required for amending them is usually smaller than that needed for constitutional revisions. Consequently, if achieving a consensus for a constitu-

⁸<https://www.constituteproject.org>

tional amendment seems improbable, incumbent politicians might favor legislative avenues to secure immunity. Such legislative attempts can, however, be easily overturned.⁹ Hence, my research concentrates on the more stable immunity regimes founded on constitutions, as these exert a longer-term influence on the politics post-democratization.

Building on the work of Reddy, Schularick and Skreta (2020), I coded the critical differences in constitutional immunity provisions across jurisdictions based on the following criteria: (1) the scope of *non-accountability*, (2) the scope of *inviolability*, (3) the procedure to authorize immunity lift, and (4) the duration of the immunity. Notably, immunity provisions differ in terms of their potential to be lifted. Some protections are irrevocable, while others can be waived with authorization. *Non-accountability* refers to immunity types that cannot be revoked: politicians are shielded from accountability for certain actions and behaviors. In contrast, *inviolability* refers to immunity types that can be revoked: specific protections require authorization to be violable.

Scope: The extent of immunity provisions also varies. In most jurisdictions, *non-accountability* covers politicians' voting and speeches within the legislature. Jurisdictions with extensive immunity may extend these protections to include common crimes unrelated to official duties. Even if *non-accountability* does not extend to criminal proceedings, many countries provide *inviolability* to politicians, imposing procedural barriers against detention, or prosecution that require authorization to be lifted.

Authorization: Some immunity provisions can be lifted with legislative authorization, which might require either a simple majority or a supermajority in the legislative body. In jurisdictions with weaker immunity protections, authorization to lift immunity can sometimes come from outside the legislature, such as the executive branch or an appellate court. For

⁹For instance, Silvio Berlusconi, embroiled in bribery and sex scandals, introduced legislation granting the Prime Minister immunity from prosecution upon his election in April 2008. Though the bill swiftly passed Parliament and received presidential assent, Italy's highest court annulled the immunity law in October 2009. See <https://www.nytimes.com/2009/10/08/world/europe/08italy.html>

	Africa (19)		America (18)		Asia (12)		Europe (12)	
	Leg.	Exe.	Leg.	Exe.	Leg.	Exe.	Leg.	Exe.
Vote and Speech	0.74	0.53	0.94	0.33	0.75	0.50	0.83	0.67
Common Crime	0.11	0.47	0.06	0.17	0.17	0.50	0.08	0.50
Judicial Proceedings	0.05	0.37	0.17	0.22	0.25	0.50	0.17	0.42
Detention	0.74	0.47	0.78	0.56	0.50	0.58	0.92	0.67
Prosecution	0.42	0.63	0.33	0.50	0.25	0.58	0.58	0.58
Simple Majority	0.47	0.00	0.33	0.00	0.33	0.08	0.92	0.08
Super Majority	0.05	0.26	0.05	0.28	0.00	0.00	0.00	0.33
Two Legislatures	.	0.05	.	0.05	.	0.00	.	0.00
Outside Legislature	0.05	0.00	0.22	0.11	0.00	0.08	0.00	0.08
After Term	0.00	0.16	0.00	0.11	0.00	0.00	0.17	0.08

Note that (.) indicates the number of countries in the region. Leg. and Exe. represent immunity provisions for legislators and chief executives, respectively.

Table 1: Constitutional Immunity Provisions across Regions

chief executives or ministers, immunity can be lifted in a similar manner, but in bicameral legislatures, assent from both legislative houses is sometimes required to authorize criminal proceedings.

Duration: In most countries, immunity expires at the end of a politician’s term. However, some jurisdictions continue to provide immunity even after the term has ended. Based on these criteria, I analyzed constitutional immunity provisions in 62 countries that have democratized since 1975. Detailed questions for each criterion can be found in the Appendix.

Table 1 exhibits descriptive statistics of constitutional immunity provisions across different regions. Each value indicates the regional average of a dichotomous code that signifies whether the country regulates the specific immunity provision in its constitution. In each region the left column represents immunity provisions for legislators, whereas the right column represents immunity provisions for chief executives.

Across different regions, the most common type of constitutional immunity is legislative *non-accountability* for vote and speech in the legislature. The *inviolability* against detention follows closely. One exception is Europe, where detention immunity is more common than

legislative immunity for vote and speech. A simple majority is enough to lift legislative *inviolability* in most countries. However, the requirement to lift chief executive *inviolability* tends to be heavier across countries. Additionally, the authorization from outside of the legislature and immunity duration extending to after term are the least common forms of constitutional immunity provisions.

In terms of the scope of immunity, chief executives have stronger immunity against criminal proceedings, like *non-accountability* for common crime and *inviolability* against detention and prosecution, than legislators across different regions. Yet, American countries provide the weakest protection to chief executives. Additionally, countries in Europe and America offer higher-quality immunity protections to their legislators than African and Asian countries do.

Politician Immunity as a Double-Edged Sword

Existing studies focused on examining the political consequences of immunity provisions for politicians (Hoppe, 2011; Reddy, Schularick and Skreta, 2020; Wigley, 2003, 2009). On the one hand, scholars recognize the necessity of politician immunity to protect democratic procedures, particularly in new democracies. Instead of *non-accountability*, Wigley (2003) argues that *inviolability*, which requires the consent of legislators to legally question them, can adequately protect and promote democratic procedures in a government. Furthermore, he contended there was a need for criminal immunity for elected representatives in 2009 Turkey, which was undergoing democratization (Wigley, 2009). He argued that immunity from criminal proceedings would protect the representatives to act on behalf of the people until the authoritarian influence over the judiciary faded. The subsequent elimination of criminal immunity in Erdogan's dictatorship ironically seems to support the claim that

broader immunity is required to consolidate democracies.

On the other hand, some scholars pay attention to the association between immunity and corruption. For instance, Hoppe (2011) indicates the potential that criminal immunity may lead to prevalent corruption, since it means the absence of the threat of punishment for politicians. As is the case in Portugal, he argues that criminal proceedings for political corruption should be excluded from *inviolability*. Reddy, Schularick and Skreta (2020) also claim that shielding politicians from criminal prosecution is a cause of corruption, particularly in mature democracies with independent judicial systems. Through empirical analysis of data from 90 democracies, they find that the association of broader immunity with greater corruption is likely causal. In a nutshell, these studies show that immunity is a double-edged sword for democratic governance. Although immunity protects representatives from politically motivated prosecution, it simultaneously opens the opportunity for their unlawful activities. Existing research contributes to our understanding of how immunity provisions shape the functioning of political systems, but there remains a need for further research on political incentives to shape immunity systems.

Judicial Reform as Political Insurance

Immunity is a double-edged sword for both incumbents and opponents. While it can limit incumbent politicians' ability to check their opposition, it may also hinder opposition parties from holding incumbents accountable for unlawful activities. Despite the political costs of politician immunity, it is broadly enforced in many countries. To offer theoretical claims about these costly choices, I draw upon the well-established literature on judicial empowerment.

Judicial empowerment, also a risky decision for incumbent politicians as it can constrain

their authority, has been explained by the “insurance theory” (Ginsburg, 2003; Finkel, 2008; Hirschl, 2004). This theory suggests that ruling elites, when uncertain about their future political standing, could seek to reduce the risks associated with election loss by empowering the judiciary. This is because an independent judiciary, for instance, can prevent changes to the rules of the game that might undermine the possibility of returning to power in future elections. Based on the theory of political insurance, Ginsburg (2003) accounts for the emergence of constitutional courts and judicial review in new democracies. In addition, Finkel (2008) underscores the role of intense political competition in the successful implementation of Mexico’s constitutional reform in the 1990s.

Several scholars have explored the potential to apply this electoral mechanism even in authoritarian settings (Barros, 2002; Epperly, 2017; Ginsburg and Moustafa, 2008). The logic of political insurance supposes the fragmentation of political interests within a governing regime; the presence of multiple competing groups in the regime facilitates the empowerment of the judicial systems. To mitigate fragmentation within ruling coalitions, Ginsburg and Moustafa (2008) argue that even authoritarian regimes have incentives to empower judicial systems and institutionalize their rules. Pinochet’s Chile serves as a notable example: the 1980 Chilean Constitution and the 1981 Tribunal Constitucional functioned as mechanisms fostering cohesion among competing factions within the Chilean dictatorship, particularly balancing diverse military interests (Barros, 2002). Moreover, political fragmentation can protect judicial autonomy by limiting the incumbents’ ability to interfere in judicial decision-making (Leiras, Tuñón and Giraudy, 2015).

Regardless of whether the competition is in elections or between factions, previous work consistently demonstrates the influence of political competition on judicial empowerment. Given this, one can seek to apply the insurance theory to judicial immunity: intensive political competition leads to broader immunity provisions. However, there are nuanced

differences between judicial empowerment and immunity. While judicial empowerment aims to strengthen the independence and capability of the judiciary, immunity regimes function in the opposite manner – allowing elected politicians to remain independent of the judicial system. Thus, those who are currently in the incumbent position can benefit from broadening executive immunity. And, this reform can ultimately undermine the balance of power by making it almost impossible to hold the incumbent accountable. In contrast, when the judiciary is already dependent on incumbent politicians, widening legislative immunity can enhance the balance of power by ensuring legislators not to be targeted by political prosecutions. Considering these differences, incumbent politicians might strategically calculate and decide whether to widen or narrow immunity and, if so, whose immunity they change.

Recent work on judicial empowerment exhibits its conditional relationship with political competition, especially in developing democracies (Aydın, 2013; Popova, 2010). Scholars argue that intense competition in developing democracies can exacerbate court dependency and judicial politicization. This is because prevalent corruption and weak institutions in these democracies often prompt incumbent politicians to prioritize short-term benefits by interfering in judicial decisions, rather than pursuing long-term benefits through enhancing judicial independence. An empirical analysis of Russia and Ukraine in the early 2000s supports these claims, demonstrating lower judicial independence in Ukraine, the more competitive of the two regimes (Popova, 2010). Further supporting this perspective, a broader cross-national analysis of 97 democratic countries by Aydın (2013) indicates that political competition can indeed erode judicial independence in developing democracies. In a nutshell, these studies show that the costs and benefits of judicial reforms are context-dependent.

Similarly, different political factors can affect the strategic calculations of judicial immunity reforms: whether to broaden or narrow immunity and, if so, whose immunity to adjust. For instance, incumbent politicians might be reluctant to broaden legislative immu-

nity, which their political opponents could use. Yet, competitive elections incentivize them to reform immunity as political insurance against potential loss. This incentive can become stronger with higher potential costs of prosecution. In the next section, therefore, I build a game-theoretical model to explore these calculations surrounding immunity reforms.

A Theory of Self-Granted Immunity

I design a bargaining game between an authoritarian successor party, denoted as $i = A$, and a pro-democratic party, denoted as $i = D$, at the time of democratization. Both parties negotiate constitutional provisions on judicial immunity for politicians (including the chief executive, ministers, and legislators). I suppose that the authoritarian successor party sets the agenda for the reform, while the opposition party retains the power to veto the incumbent's proposal.

To simplify the model, I propose that there are two different types of immunity: (1) immunity for the executive branch (the chief executive and ministers), represented as q_E , and (2) immunity for the legislators, represented as q_L . I assume that the party in the incumbent position benefits from executive immunity, q_E . In addition, if not in power, the members of the opposition party have legislative immunity q_L . At the time of constitutional reform, the authoritarian successor party can propose the scopes of immunity within the range of $(q_E, q_L) \in [0, 1]^2$. If the pro-democratic party vetoes the proposal, the final constitutional provisions of immunity will be $(q_E, q_L) = (0, \underline{q}_L)$. The value of $\underline{q}_L > 0$ represents *non-accountability* for vote and speech of legislators, a practice observed in almost all countries.

The payoffs for Party A consist of policy concerns and potential prosecution, represented

by:

$$V_A(q_E, q_L) = \begin{cases} -(x_A - x_A)^2 - (1 - q_E)\beta, & \text{if Party } A \text{ is incumbent,} \\ -(x_D - x_A)^2 - (1 - q_L)\beta, & \text{otherwise,} \end{cases}$$

where x_i represents the preferred policy set of the party i , and $\beta \in [0, 1]$ denotes the degree to which the judiciary is independent of authoritarian elites, i.e., the members of the authoritarian successor party. The first component illustrates the difference between the policy implemented by the incumbent party and the policy preferred by Party A , while the second component signifies the potential costs of being prosecuted by the independent judiciary. Following the formalization by Reddy, Schularick and Skreta (2020), I assume that the higher the quality of immunity, the less likely they are to bear the costs of being sued. Conversely, the payoffs for Party D are:

$$V_D(q_E, q_L) = \begin{cases} -(x_D - x_D)^2 - (1 - q_E)(1 - \beta), & \text{if Party } D \text{ is incumbent,} \\ -(x_A - x_D)^2 - (1 - q_L)(1 - \beta), & \text{otherwise.} \end{cases}$$

It's worth noting that the Party D 's potential cost of being prosecuted is the function of $1 - \beta$, which measures the influence that authoritarian elites wield over the judicial system.

The game unfolds over two time periods. At $t = 1$, the incumbent authoritarian successor party negotiates constitutional immunity provisions with the pro-democratic party. After realizing the parties' payoffs in the first period, democracy may collapse at $t = 2$. I assume the risk of democratic breakdown as a probability of $(1 - q_L)q_E$, a joint probability representing the situation where Party D loses legal protection from politically-motivated prosecution, while Party A retains executive immunity. If democracy collapses, the authoritarian successor party is guaranteed to remain in power. If democracy is maintained, an election takes place to determine the incumbent government. The authoritarian successor

party is assumed to win the election with probability p and lose with probability $1 - p$. I assume the probability p is given and fixed. After the election, the payoffs for the second term are realized.

The design of this model fully captures the implications found within the existing literature, acknowledging that immunity provisions serve as a double-edged sword. On the one hand, broader legislative immunity could increase the likelihood of democratic consolidation. But, it also diminishes the chances of holding authoritarian elites accountable for their corruption, even in the event of a power shift following post-constitutional elections. On the other hand, while wider executive immunity can offer institutional safeguards for authoritarian elites against legal proceedings, it simultaneously deprives them of the ability to undermine their opposition should they lose power.

Theoretical Implications

I solve this game using the solution concept of subgame perfect Nash equilibrium (SPNE) and derive hypotheses for empirical testing. Given these settings, the expected utility of Party A is:

$$EU_A(q_E, q_L) = V_A(I) + \delta [rV_A(I) + (1 - r) \{pV_A(I) + (1 - p)V_A(O)\}],$$

where $\delta \in (0, 1)$ is a discount factor, $r \equiv q_E(1 - q_L)$ refers to the possibility of democratic breakdown, and $V_A(I)$ and $V_A(O)$ are the payoffs for Party A in the incumbent and opposition, respectively. Substituting and simplifying:

$$EU_A(q_E, q_L) = -(1 - q_E)\beta [1 + \delta p + \delta r(1 - p)] - \delta(1 - p)(1 - r) [d^2 + (1 - q_L)\beta],$$

where $d \equiv |x_A - x_D|$ denotes the difference in preferred policy between Party A and D . The expected utility of Party D is:

$$EU_D(q_E, q_L) = V_D(O) + \delta [rV_D(O) + (1-r) \{pV_D(O) + (1-p)V_D(I)\}].$$

Substituting and simplifying:

$$EU_D(q_E, q_L) = -[d^2 + (1 - q_L)(1 - \beta)] [1 + \delta p + \delta r(1 - p)] - \delta(1 - p)(1 - r)(1 - q_E)(1 - \beta).$$

Using backward induction, party D accepts the A 's proposal of (q_E, q_L) if and only if:

$$EU_D(q_E, q_L) \geq EU_D(0, \underline{q}_L).$$

Let's denote the final constitutional provisions by:

$$(q_E^\dagger, q_L^\dagger) = \begin{cases} (q_E, q_L) & \text{if } EU_D(q_E, q_L) \geq EU_D(0, \underline{q}_L), \\ (0, \underline{q}_L) & \text{otherwise.} \end{cases}$$

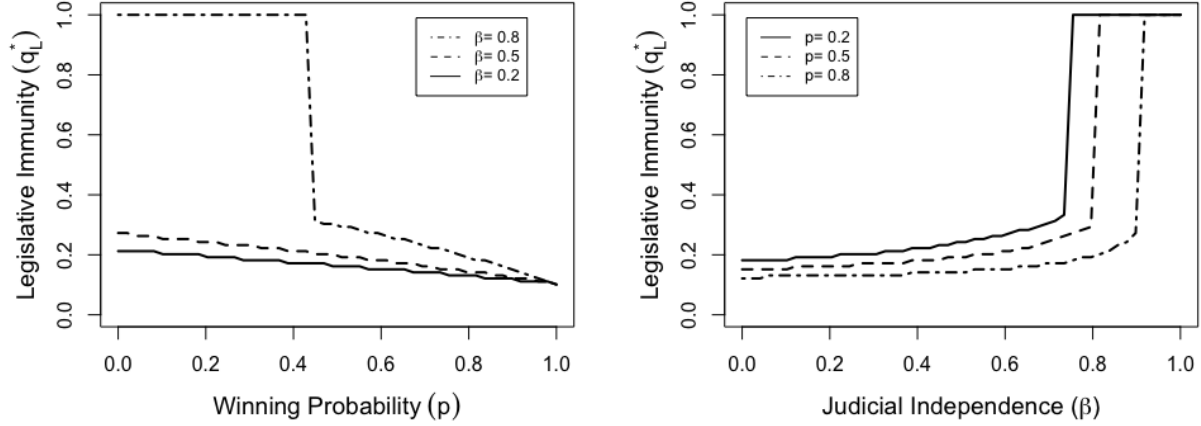
Then, Party A solves the following maximization problem:

$$\max_{(q_E, q_L)} EU_A(q_E^\dagger, q_L^\dagger),$$

which is

$$\max_{(q_E, q_L)} -(1 - q_E^\dagger)\beta [1 + \delta p + \delta r^\dagger(1 - p)] - \delta(1 - p)(1 - r^\dagger) [d^2 + (1 - q_L^\dagger)\beta].$$

Given the mathematical complexity of deriving optimal immunity provisions in equilib-



(a) Relationship with Winning Probability

(b) Relationship with Judicial Independence

Figure 1: Legislative Immunity in Equilibrium. Parameter Values: $d = 0.5$, $\underline{q}_L = 0.1$, and $\delta = 0.8$.

rium, I used an alternative approach. Using R, I first defined the utility function for each actor and created a set of potential immunity proposals, (q_E, q_L) , by generating and combining 100 observations within the range of 0 to 1. Subsequently, by comparing D 's utility of vetoing and so having $(0, \underline{q}_L)$ with D 's utility of accepting each proposal, I determined whether D would veto or accept each proposal. Then, among the proposals of $(q_E^\dagger, q_L^\dagger)$, I sought out the one that maximized A 's utility. This calculation was conducted repeatedly, each time altering parameter values such as p , β , d , δ , and $\underline{q}_L$, to enable comparative statistics.

In this section, I concentrate on the influence of my primary theoretical variables, i.e., winning probability (inverted political competition) and judicial independence (from authoritarian elites), on immunity provisions. In Figure 1, I illustrate the resulting relationships between these variables and legislative immunity provisions. The left panel (Figure 1a) depicts how legislative immunity provisions in equilibrium would shift in response to changes in winning probability, p , of Party A , while the right panel (Figure 1b) indicates how legislative

immunity provisions would change across different values of judicial independence, β .

Three primary implications for legislative immunity provisions are noteworthy: first, the results show that the optimal level of legislative immunity consistently exceeds $\underline{q}_L$, the immunity level only with legislative *non-accountability*, across all cases. This is due to the potential for D 's veto, which results in the final immunity provisions as $(0, \underline{q}_L)$. To avoid this scenario where the executive has no immunity, Party A must propose an offer to Party D that confers greater utility than what D gets when exercising a veto.

Furthermore, when the level of judicial independence is relatively low (e.g., $\beta = 0.2$ and 0.5), the level of legislative immunity steadily decreases with A 's winning probability. This means that the value authoritarian elites place on legislative immunity diminishes as their chances of losing the post-constitutional election decrease. In other words, when faced with a highly competitive election, Party A has a greater incentive to expand legislative immunity as a form of political insurance against losing power. Moreover, an independent judiciary implies a greater potential for corruption prosecution against authoritarian elites. Therefore, the extent to which legislative immunity is favored in competitive elections increases along with the level of judicial independence. In a nutshell,

Hypothesis 1 *More intense political competition in post-democratization leads to broader immunity provisions for legislators.*

However, with a sufficiently high level of judicial independence (Figure 1b), the optimal level of legislative immunity provisions escalates to a corner solution of $q_L^* = 1$ if political competition surpasses a certain critical point. Typically, authoritarian elites do not favor high levels of legislative immunity, which decreases their chances of maintaining power by promoting democratic consolidation. However, under an independent judiciary, Party A might paradoxically advocate for the highest level of legislative immunity. Facing a significant risk of prosecution, authoritarian elites should be expected to value the institutional

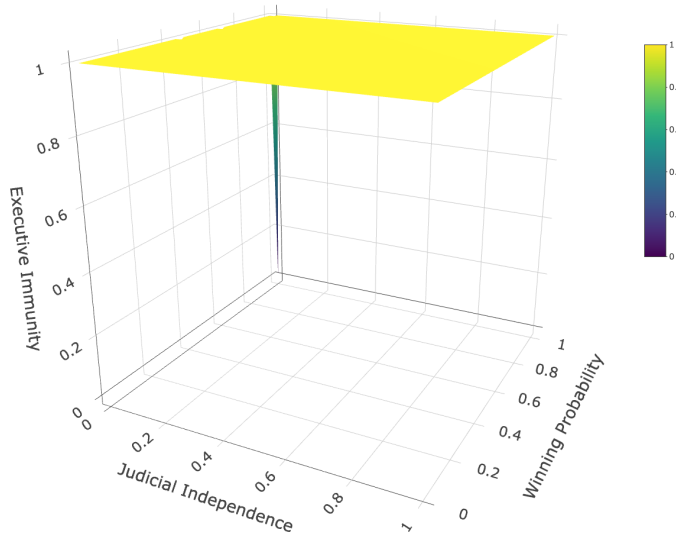


Figure 2: Executive Immunity in Equilibrium. Parameter Values: $d = 0.5$, $\underline{q}_L = 0.1$, and $\delta = 0.8$.

safeguards against potential loss in elections more than the ability to retain office. Consequently, they may pursue the highest level of legislative immunity to minimize the risks of corruption prosecution, even if it means fostering democratic consolidation.

Hypothesis 2 *If the judiciary is sufficiently independent of authoritarian elites, political competition does not affect the level of legislative immunity provisions.*

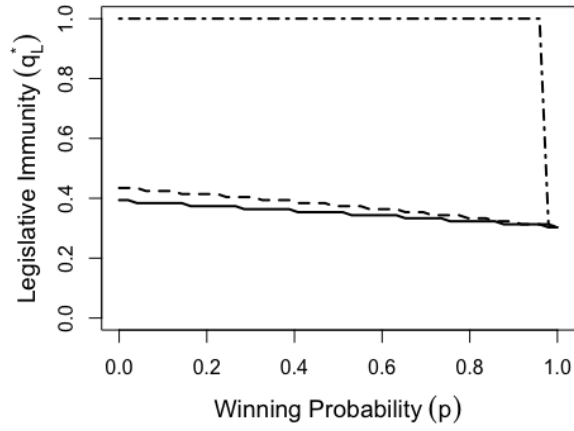
In Figure 2, I present the relationships between winning probability, judicial independence, and executive immunity provisions. The calculated results show us that neither political competition nor judicial independence predicts the level of executive immunity provisions. Regardless of the degree of political competition or judicial independence, executive immunity invariably reaches a corner solution of $q_E^* = 1$. This occurs because Party *A* consistently prefers the highest level of executive immunity provisions, which maximizes their chances of democratic backsliding and simultaneously minimizes their risks of corruption prosecution when retaining office. Through negotiation, advocates for democracy receive

a certain level of legislative immunity, albeit at the cost of granting maximum executive immunity to authoritarian elites. However, there is a single theoretical exception to this: when Party A is certain to win the post-constitutional election and completely controls the judiciary, namely $p = 1$ and $\beta = 0$, the party becomes indifferent to any level of executive immunity.

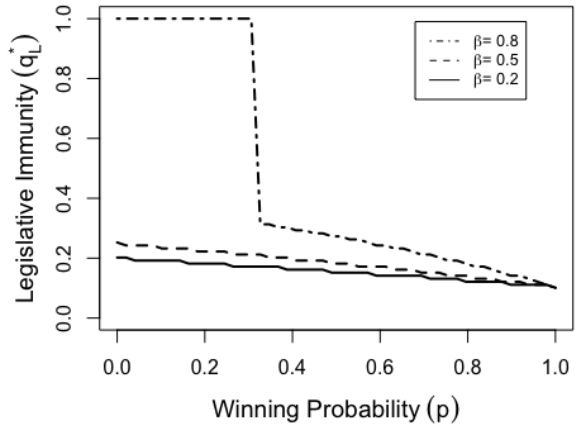
Hypothesis 3 *Neither political competition nor judicial independence predicts the level of executive immunity provisions.*

It shows that incumbent politicians seek insurance against every single risk if possible. Legislative immunity is only reliable when they lose the incumbent position. However, even with a small chance, prosecution for their corruption can occur while they are holding the position, indicating the absence of coverage from legislative immunity. Therefore, even if authoritarian elites significantly control the judiciary, they may pursue insurance against the small possibility of corruption prosecution by extending executive immunity to the maximum degree. Considering that the insurance theory has mainly addressed the scenario where incumbent politicians lose elections and fail to retain office, executive immunity can serve as “contingent” political insurance for the scenario where they win elections and succeed in retaining office.

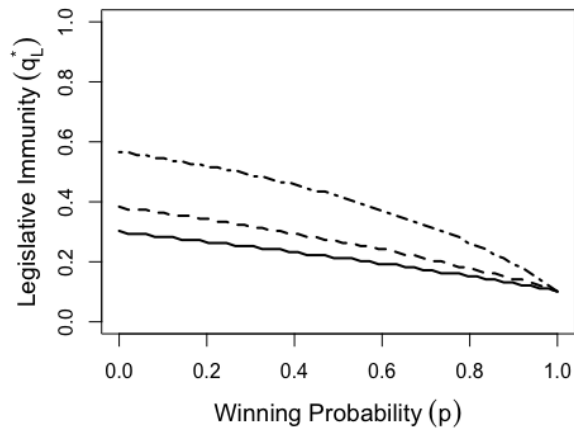
Additionally, I explored how other parameters may affect the relationships between political competition and legislative immunity provisions (Figure 3). In Figure 3a, I illustrate the optimal level of legislative immunity provisions when overvaluing the immunity provision of legislative *non-accountability*, i.e., $\underline{q}_L = 0.3$. This indicates that Party D has gained more leverage in the negotiation, which results in an increased level of legislative immunity provisions across all cases. Furthermore, in the case of $\beta = 0.8$, the threshold of political competition that results in the highest level of legislative immunity is lowered. This is because the increased level of legislative immunity decreases Party A ’s chances to retain office



(a) Parameter Values: $d = 0.5$, $\underline{q}_L = 0.3$, and $\delta = 0.8$.



(b) Parameter Values: $d = 0.5$, $\underline{q}_L = 0.1$, and $\delta = 0.6$



(c) Parameter Values: $d = 0.7$, $\underline{q}_L = 0.1$, and $\delta = 0.8$

Figure 3: Equilibrium Legislative Immunity in Different Scenarios

(recall that $1 - (1 - p)q_L^*(1 - q_E^*)$). Therefore, authoritarian elites should be expected to seek institutional safeguards even at relatively lower levels of political competition.

In Figure 3b, I portray the scenario where both actors devalue future utility, i.e., $\delta = 0.6$. With this decreased discounting factor, the value of legislative immunity as political insurance for authoritarian elites in the future event of losing the post-constitutional election decreases. Therefore, we can observe that the slope indicating the decrease in the optimal level of legislative immunity with A 's winning probability has become less steep.

Finally, in Figure 3c, I depict the scenario in which the policy distance between two parties widens, i.e., $d = 0.7$. In this instance, the value of being the incumbent increases. As a result, authoritarian elites may choose not to pursue the highest level of legislative immunity at the risk of democratic consolidation, even if they face a high likelihood of prosecution by an independent judiciary. Consequently, we do not observe a discontinuous, rapid increase in legislative immunity provisions, even when the judiciary is highly independent, $\beta = 0.8$. Note that executive immunity provisions in equilibrium remain at the highest level across all scenarios.

Constitutional Immunity Indices

To test my theoretical claims, I constructed immunity indices using principal component analysis (PCA) applied to the original immunity dataset for democratized countries since 1975. Since immunity regimes are not latent outcomes of individual provisions but rather represent an aggregated system of provisions, the PCA is more suitable for deriving these indices than factor analysis. I began by standardizing the dummy variables associated with constitutional immunity provisions and then executed the PCA on these standardized variables. Opting for the first principal component — which captures the majority of the variance

in the data — I employed the loadings from this component to compute immunity scores for every country. These scores were then rescaled to a range between 0 and 1. This methodology enabled me to formulate distinct immunity indices for the legislative branch, the chief executive, the entire executive branch (which encompasses immunity provisions for both the chief executive and ministers), and the opposition (comprising immunity provisions for legislators and the judiciary). For the details in the PCA, refer to the Appendix. I focus on the legislative and chief executive immunity indices in the main analysis.

In Figure C.1, I display the immunity indices for each country. The y -axis lists the countries, while the x -axis demonstrates the index values. Lighter bars represent the level of immunity provisions for the legislators, whereas darker bars indicate immunity provisions for the chief executive. A noticeable trend is that chief executive immunity index is more likely to lean toward either extreme (s.d. = 0.39) than legislative immunity (s.d. = 0.24). For instance, countries like Argentina and Spain lack specific constitutional provisions of immunity for their chief executives. In contrast, countries such as Croatia and Niger provide their chief executives with the utmost protection against legal proceedings. This observed pattern may potentially support my theoretical implications: negotiations surrounding chief executive immunity can be challenging to finalize, but when successful, they often result in the highest level of protection.

Data and Methods

I measure *Political Competition* by using the vote percentage of the most substantial opposition party in the first legislative election following democratization. This measure comes from the Database of Political Institutions (DPI).¹⁰ A greater vote share of the largest op-

¹⁰See <https://datacatalog.worldbank.org/search/dataset/0039819/Database-of-Political-Institutions>

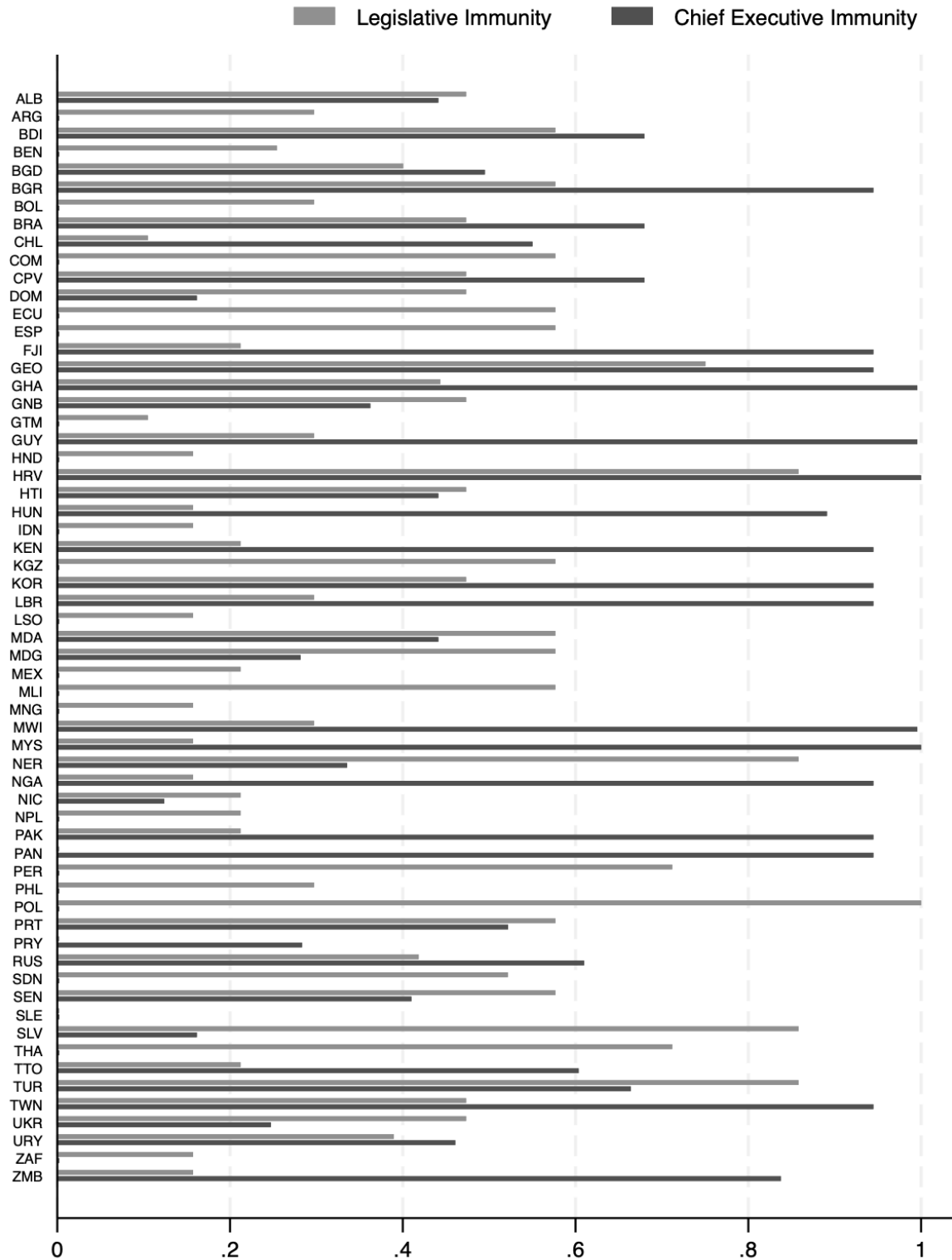


Figure 4: Legislative Immunity and Chief Executive Immunity Indices for Countries Underwent Democratization Since 1975

position party should lead the ruling elites to anticipate an intensely competitive election post-democratization. As an alternative measure, I also use the difference in the vote shares between the largest opposition party and the government party. A higher value of this metric similarly suggests a more competitive election faced by the ruling party. I focus solely on the vote percentage of the largest opposition party because a multitude of smaller parties doesn't typically pose as credible a challenge to the incumbents as a single, more substantial entity.

The *Judicial Independence* variable is sourced from the CIRI Human Rights Dataset.¹¹ This categorical measurement, with values ranging from 0 to 2, represents the degree to which the judiciary operates independently from other branches of power, like the executive or the military. A lower value denotes less independence. I expect both political competition and judicial independence to have positive effects on legislative immunity provisions, but not on executive immunity provisions.

In my analysis, I employ an interaction between the variables of political competition and judicial independence. According to my theoretical claims, judicial independence acts as a moderating factor in the relationship between political competition and immunity provisions. Specifically, I hypothesize that the impact of political competition on legislative immunity provisions will be significant and positive only when judicial independence is comparatively low. Conversely, in cases of high judicial independence, I expect that political competition will have no significant effect on the extent of legislative immunity provisions. It is noteworthy that I do not expect to find a relationship between these variables or their interaction and executive immunity provisions.

I control for potentially confounding factors in the regression. First, I control for colonial origins sourced from the Authoritarian Regimes Dataset. This categorical variable indicates

¹¹ See <http://www.humanrightsdata.com/>

the former Western colonial ruler of the country. I expect that colonial history has shaped the political landscape and constitutional formation following democratization. Second, I include the political corruption index obtained from the Varieties of Democracy (V-Dem) project. This variable ranges from 0 (less corrupt) to 1 (more corrupt). My expectation is that in states with higher corruption levels, political competition may be less vigorous, and politicians with substantial corruption are more inclined to seek immunity provisions.

To further account for unique national contexts, I also include control variables representing country-specific characteristics: presidential system, wealth (logged GDP per capita), and population (logged). The variables of GDP per capita and population are sourced from the World Bank, World Development Indicators. All of these time-variant control variables reflect their values of each country at the time of democratization. To test my theoretical claims, I conduct a cross-sectional regression analysis. Refer to the Appendix for the summary statistics.

It is important to consider the following empirical evidence as suggestive due to certain limitations. Firstly, some data on constitutional immunity provisions may not capture the post-constitutional periods accurately, as available constitutions through the CCP are limited. While I collected the closest available constitutions to the democratization period, there remains the possibility that immunity provisions were reformed between these periods. Secondly, the main regression analysis includes only half of the observations from the sample. This limitation arises from the low coverage of the political competition variable. The sample size further, to the point of being unable to provide meaningful results, decreases when restricted to countries where authoritarian successor parties have been active since democratization. Thirdly, while using electoral outcomes from post-democratization elections as a proxy for measuring expected political competition is feasible, it is not a perfect measure. Politicians base their strategies on expected competition to enhance their prospects, with

electoral outcomes reflecting the consequences of these strategic interactions. Despite these limitations, this evidence helps us strengthen our understanding of judicial immunity for politicians.

Main Regression Results

	Immunity Index			
	Legislative		Chief Executive	
	(1)	(2)	(3)	(4)
Opposition Strength	.015** (.006)		-.001 (.011)	
Opposition Strength × Judicial Independence	-.013** (.006)		.004 (.011)	
Vote Difference		.006* (.003)		.002 (.006)
Vote Difference × Judicial Independence		-.004 (.003)		-.003 (.005)
Judicial Independence	.242 (.170)	-.161 (.108)	-.194 (.321)	-.169 (.195)
Corruption	-.572** (.247)	-.492* (.257)	-.562 (.468)	-.792 (.463)
Presidential System	.014 (.128)	-.018 (.141)	.404 (.243)	.419 (.254)
GDP per Capita (logged)	-.023 (.050)	-.023 (.054)	.051 (.094)	.061 (.097)
Population (logged)	.016 (.032)	.012 (.032)	-.031 (.060)	-.009 (.058)
Colonial History	✓	✓	✓	✓
Constant	.489 (.561)	.973* (.542)	.950 (1.060)	.707 (.975)
Number Obs.	30	30	30	30
R ²	.638	.599	.547	.544

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 2: Main Regression Results

In Table 2, I present the estimates of the relationship between political competition and immunity provisions, conditional on judicial independence. Models 1 and 2 explore the

legislative immunity index, while Models 3 and 4 focus on the chief executive immunity index as the dependent variable. Models 1 and 3 serve as baseline models using opposition strength as the measure for political competition, while Models 2 and 4 provide a robustness check by using the difference in vote shares between the largest opposition party and the government party as the measure. The results underscore the role of political competition in shaping immunity regimes after democratization and generally support my hypotheses 1 to 3.

Both variables for political competition exhibit statistically significant and positive effects on the legislative immunity index (for vote difference at the 90% confidence level), but not on the chief executive immunity index. These results suggest that immunity provisions for legislators are likely to be stronger when the ruling party faces intense political competition, contending with a more substantial opposition party. Conversely, the political landscape post-democratization does not significantly shape immunity provisions for the chief executive. In a nutshell, these results provide supporting evidence for my hypotheses 1 and 3.

Furthermore, the interaction terms of political competition with the judicial independence variable are estimated to be negative and statistically significant for the legislative immunity index. Therefore, with a sufficiently independent judiciary, political competition may not impact the strength of legislative immunity either. To further investigate hypothesis 2, I post-estimated how the marginal effects of political competition change along with the level of judicial independence.

In Figure 5, I demonstrate the marginal effects of political competition on legislative immunity provisions, based on the results of Model 1. When the judiciary is classified as “not independent” in the CIRI Human Rights dataset, political competition significantly affects the strength of immunity provisions for legislators within the country. Specifically, a one-percentage-point increase in votes for the largest opposition party leads to an increase of

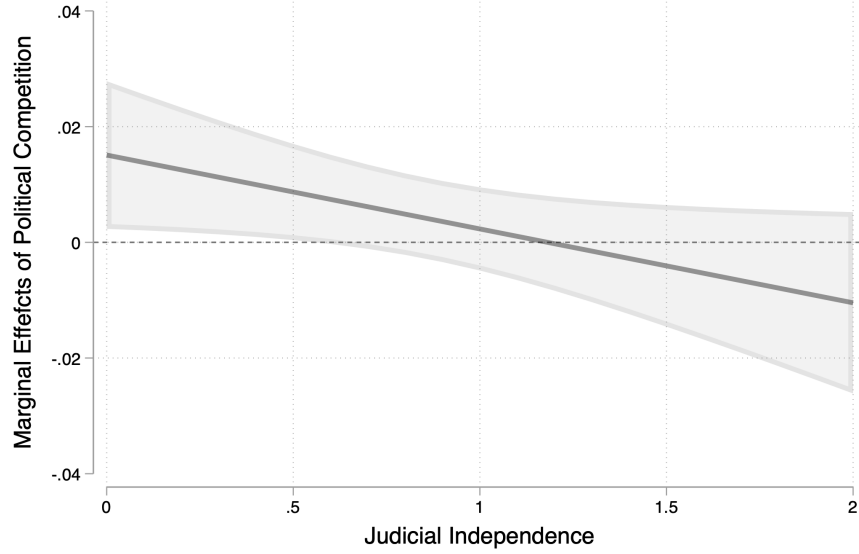


Figure 5: The Marginal Effects of Political Competition on Legislative Immunity Provisions with 95% Confidence Intervals (Model 1, Table 2)

0.015 in the legislative immunity index of a country with a dependent judiciary. These results indicate that ruling elites have an incentive to pursue legislative immunity when they have more chances of losing the post-constitutional election. However, if the judiciary is either “partially independent” or “generally independent,” an increase in political competition does not significantly alter the strength of legislative immunity provisions, supporting my hypothesis 2.

The corruption variable shows significant and negative effects on the legislative immunity index, but its impact on the chief executive immunity index is statistically insignificant. This pattern implies that in countries where corruption is rampant, ruling elites may choose to provide weaker immunity protections to legislators. Such a decision might be strategically aimed at facilitating politically motivated prosecutions to undermine opposition forces. Conversely, presidential systems are associated with providing stronger immunity protection to the chief executive. The rationale for more robust immunity for the president may lie in the stability of tenure inherent in presidential systems. These systems typically ensure a

stable term for the president, who is usually elected for a fixed period and is not subject to legislative votes of confidence. Therefore, stronger immunity provisions may be needed to preserve this stability by shielding the president from legal actions that could disrupt their term. Additionally, countries with a history of British colonial rule tend to have weaker legislative immunity provisions, whereas those that experienced Spanish colonialism often extend weaker immunity protections to the chief executive.

Though I anticipated that judicial independence would exert positive effects on legislative immunity provisions, the results do not provide supporting evidence. Model 1 yields positive but insignificant estimates for judicial independence, whereas Model 2 gives an insignificant negative effect of judicial independence on legislative immunity provisions. These unexpected results might be attributed to potential inaccuracies in the statistical modeling of a non-linear relationship of judicial independence with parliamentary immunity. According to my theoretical model, judicial independence is expected to have a dramatic effect on the strength of legislative immunity only if its level surpasses a certain critical point. Moreover, this critical point can vary depending on factors such as the importance of incumbent positions or the weight attached to the immunity of non-legislative accountability. If the statistical analysis contained a sufficient number of observations to control for these factors, the results might have been more consistent with expectations.

To address the insignificant results of judicial independence, I recoded this variable as dichotomous – assigning a value of 0 if the judiciary is either “not independent” or “partially independent,” and 1 only if the judiciary is “generally independent.” Table 3 presents the results of regressing the legislative immunity index on the dichotomous variable of judicial independence. While the estimates are largely consistent with main regression results, the coefficient for judicial independence achieves statistical significance at 90% confidence level in Model 1. In addition, its effect size is substantial compared to the effect of opposition strength

	Legislative	
	(1)	(2)
Opposition Strength	.010**	
	(.004)	
Opposition Strength × Judicial Independence	-.027*	
	(.013)	
Vote Difference		.005**
		(.002)
Vote Difference × Judicial Independence		-.009**
		(.004)
Judicial Independence	.621*	-.276
	(.353)	(.169)
Corruption	-.439*	-.420*
	(.231)	(.224)
Presidential System	.022	-.024
	(.128)	(.128)
GDP per Capita (logged)	-.009	-.025
	(.053)	(.052)
Population (logged)	-.003	.002
	(.032)	(.031)
Colonial History	✓	✓
Constant	.656	.984*
	(.539)	(.516)
Number Obs.	30	30
R ²	.616	.630

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 3: Regression with Dichotomous Variable of Judicial Independence

variable. This supports my theoretical argument that judicial independence has a dramatic effect on legislative immunity only if its level surpasses a critical point. Note that Model 2, which uses vote difference as a measure of political competition, still produces a negative but insignificant effect of judicial independence on legislative immunity. The marginal effects of political competition on legislative immunity can be found in the Appendix.

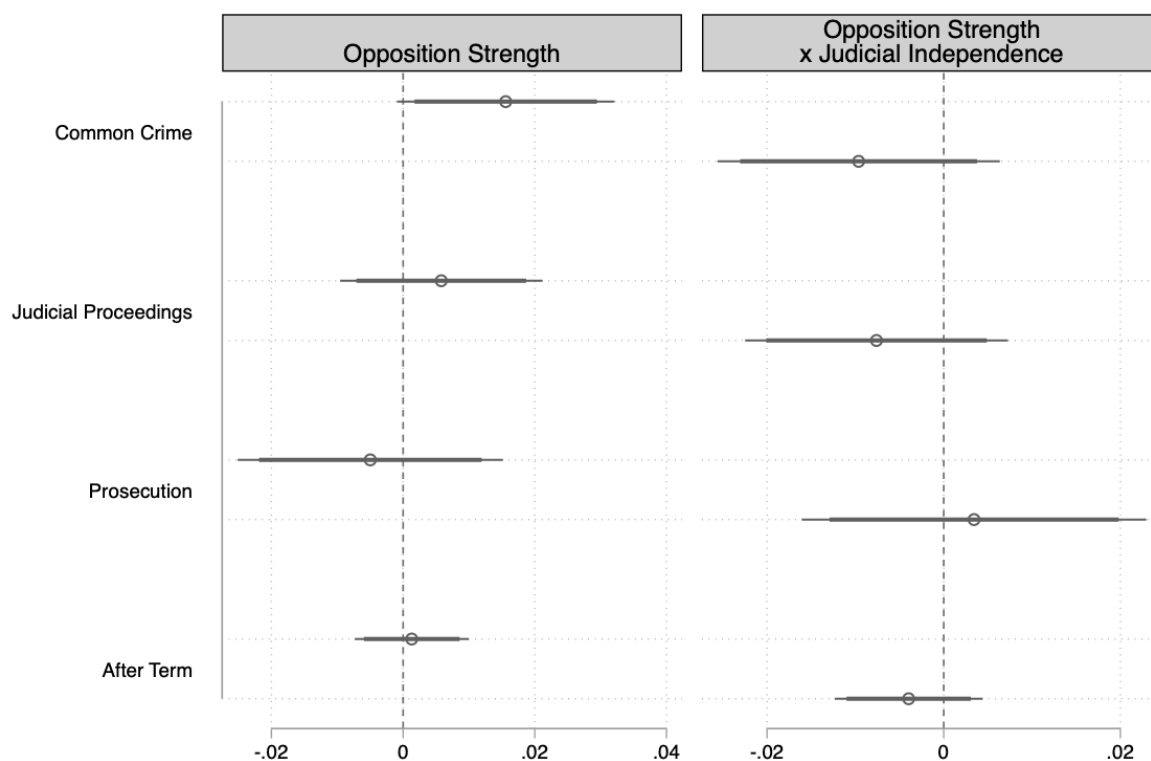


Figure 6: Coefficient Estimates for Individual Legislative Immunity Provisions

Individual Immunity Provisions

Let's turn the attention to individual immunity provisions. In Figure 6, I present coefficient estimates of opposition strength and its interaction with judicial independence on individual immunity provisions. The models include identical control variables as the main regression model, but use dummy variables of each immunity provision as dependent variables rather than the legislative immunity index. Additionally, I employed seeming unrelated regressions across different linear probability models. The SUR is used since decisions on each immunity provisions are likely dependent on each other. The entire regression results are reported in the Appendix.

As outlined in Figure 6, immunity provisions included in the models are (1) *non-accountability* for common crime, (2) *non-accountability* for general judicial proceedings, (3) *inviolability*

against prosecution, and (4) extended duration after term in office. These immunity provisions are selected because they are expected to have substantial impacts on politicians' accountability. The left panel draws the coefficient estimates of opposition strength, while the right panel represents those of the interaction between opposition strength and judicial independence. The thin and thick lines indicate 95% and 90% confidence intervals, respectively.

As each provision represents strong immunity for legislators, I expect that the estimates of opposition strength will be statistically significant and positive, while those of the interaction term will be negative, regardless of their significance. Generally, compared to the main regression using the immunity index, the results become less significant. However, it is noteworthy that the variable of opposition strength has a significant and positive effect on legislative immunity for common crimes (at the 90% confidence level), which makes it unable to hold legislators accountable for crimes committed outside of their official duties. This result supports theoretical implication that, when facing intense political competition, authoritarian elites seek to extend legislative immunity even to common crimes as a form of political insurance against potential electoral loss.

As expected, political competition positively influences, while its interaction with judicial independence negatively affects, the likelihood of having immunity provisions for both *non-accountability* in judicial proceedings and the extension of immunity beyond the term in office, although these results are statistically insignificant. The findings suggest that intense political competition drives ruling elites to seek institutional protections against criminal proceedings after leaving office, but the specific provisions of these safeguards may vary. Additionally, the coefficient estimates for *inviolability* against prosecution are unexpectedly negative. This could be because, among immunity provisions against criminal proceedings, *inviolability* is one of the weakest, so ruling elites might offer this provision to opposition

legislators as a concession if they anticipate winning the next elections.

Conclusions

The immunity regime that grants politicians exemption from legal proceedings can substantially influence democracy and its resilience. For instance, a broader immunity for legislators might promote democratic consolidation by helping them to function independently of external influences but also could end up with the prevalence of corruption within the regime. Despite the importance of politician immunity, it is striking that there has been no research systematically explaining why some countries offer broader immunity and others narrower or no immunity.

To the best of my knowledge, this research is the first to develop a theoretical model explaining the determinants of the cross-national variation in politician immunity provisions. Building on the well-established literature on judicial reforms, I explore how political climates shape the motives of political elites when deciding to expand or curtail immunity provisions. I argue that heightened political competition results in broader immunity for legislators. This is because ruling elites desire institutional safeguards to buffer against the potential defeat in post-constitutional elections. However, I also claim that this relationship hinges on relatively lower levels of judicial independence. In scenarios where the judiciary maintains a robust degree of independence, political elites tend to favor the most comprehensive legislative immunity, regardless of the intensity of political competition.

To test my theoretical claims, I collected original data on constitutional immunity provisions of 62 countries underwent democratization since 1975. I focused on written constitutions that specify immunity for politicians (e.g., legislators, chief executives, and ministers) against legal proceedings. To compare immunity provisions across countries, I systematically

coded each country’s constitutional immunity stipulations based on 30 questions grouped into four overarching categories: (1) the scope of *non-accountability*, (2) the scope of *inviolability*, (3) the authorization process, and (4) the duration. Using principal component analysis, I derived the indices indicating the quality of constitutional immunity provisions for elected politicians in the country. From the analysis of this novel dataset, I find supporting evidence for my theoretical claims: intense political competition positively correlates with the legislative immunity index, conditional on low judicial independence.

However, this research has several limitations. First, the empirical analysis is constrained by its sample size. The coverage of the main independent variable, political competition, leads to a reduction of about half the observations in the analysis. When further limiting the sample to countries where authoritarian successor parties operated post-democratization, the sample becomes too small to produce statistically meaningful results. Second, the data for my dependent variables also covers a limited time frame and set of countries. With the current dataset, it is not possible to track how immunity regimes evolved before and after democratization and during the post-democratization period. Last but not least, both theoretically and empirically, I assume that judicial independence from authoritarian elites is given and fixed. However, a substantial body of literature demonstrates that institutional designs promoting judicial independence are also strategic choices made by ruling elites as a means of political insurance against potential institutional loss.

There is significant potential for future research to collect more comprehensive data both longitudinally and latitudinally. It could mitigate the empirical constraints imposed by the current sample size. Particularly, including a longer time frame would allow researchers to track how immunity regimes evolve over time and to analyze time-series dynamics of immunity system and political accountability. Furthermore, future research could explore how these immunity regimes vary within authoritarian countries. The dynamics in such

countries might differ substantially from democratic ones, offering contrasting perspectives and deepening our understanding of politician immunity on a broader scale.

References

- Albertus, Michael and Victor Menaldo. 2014. “Dealing with Dictators: Negotiated Democratization and the Fate of Outgoing Autocrats.” *International Studies Quarterly* 58(3):550–565.
- Albertus, Michael and Victor Menaldo. 2018. *Authoritarianism and the Elite Origins of Democracy*. Cambridge University Press.
- Alzubi, Jehan K Samarah. 2020. “Parliamentary Immunity among Arab Constitutions.” *Journal of Politics and Law* 13(2):269.
- Ameller, Michel. 1993. “Human Rights and Parliamentary Immunities.” *Parliament: Guardian of Human Rights*, Geneva .
- Aydın, Aylin. 2013. “Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition.” *Law & Society Review* 47(1):105–134.
- Barros, Robert. 2002. *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution*. Cambridge University Press.
- Elster, Jon. 1995. “Forces and Mechanisms in the Constitution-Making Process.” *Duke Law Journal* 45(2):364–396.
- Epperly, Brad. 2017. “Political Competition and de Facto Judicial Independence in Non-Democracies.” *European Journal of Political Research* 56(2):279–300.
- Finkel, Jodi S. 2008. *Judicial Reform as Political Insurance*. University of Notre Dame Press.
- Geesteranus, G. W. M. 1996. On the Regime of Parliamentary Immunity. Technical Report CDL-INF (96) 7 European Commission for Democracy through Law.
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge University Press.
- Ginsburg, Tom and Tamir Moustafa, eds. 2008. *Rule by Law: The Politics of Courts in*

- Authoritarian Regimes*. Cambridge University Press.
- Hirschl, Ran. 2004. "The Political Origins of the New Constitutionalism." *Indiana Journal of Global Legal Studies* 11(1):71–108.
- Hoppe, Tilman. 2011. "Public Corruption: Limiting Criminal Immunity of Legislative, Executive and Judicial Officials in Europe." *ICL Journal* 5(4):538–549.
- Iovene, Federica. 2017. A Comparative Analysis of National Provisions Granting Immunity to Politicians. In *Criminal Liability of Political Decision-Makers: A Comparative Perspective*, ed. Frank Zimmermann. Cham: Springer International Publishing pp. 293–301.
- Leiras, Marcelo, Guadalupe Tuñón and Agustina Giraudy. 2015. "Who Wants an Independent Court? Political Competition and Supreme Court Autonomy in the Argentine Provinces (1984–2008)." *The Journal of Politics* 77(1):175–187.
- Loxton, James. 2015. "Authoritarian Successor Parties." *Journal of Democracy* 26(3):157–170.
- Miller, Michael K. 2021. "Don't Call It a Comeback: Autocratic Ruling Parties After Democratization." *British Journal of Political Science* 51(2):559–583.
- Popova, Maria. 2010. "Political Competition as an Obstacle to Judicial Independence: Evidence From Russia and Ukraine." *Comparative Political Studies* 43(10):1202–1229.
- Reddy, Karthik, Moritz Schularick and Vasiliki Skreta. 2020. "Immunity." *International Economic Review* 61(2):531–564.
- van der Hulst, Marc. 2000. *The Parliamentary Mandate: A Global Comparative Study*. Inter-Parliamentary Union.
- Vrushi, Knowledge. 2018. Immunity Provisions for Ministers and Members of Parliament. Text/html Transparency International.
- Wigley, Simon. 2003. "Parliamentary Immunity: Protecting Democracy or Protecting Corruption?" *Journal of Political Philosophy* 11(1):23–40.

Wigley, Simon. 2009. "Parliamentary Immunity in Democratizing Countries: The Case of Turkey." *Human Rights Quarterly* 31(3):567–591.

Supplementary Material

For online publication only.

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A Coding Guide

A.1 Coding Coverage

ISO	Country	Democratization	Establishment	Amendment
ALB	Albania	2002	1998	2008
ARG	Argentina	1983	1853	1994
BDI	Burundi	2005	2005	2005
BEN	Benin	1991	1990	1990
BGD	Bangladesh	1991	1972	2011
BGR	Bulgaria	1990	1991	2007
BOL	Bolivia	1982	2009	2009
BRA	Brazil	1985	1988	2005
CHL	Chile	1989	1980	2012
COM	Comoros	2004	2001	2009
CPV	Cape Verde	1991	1980	1992
DOM	Dominican Republic	1996	2010	2010
ECU	Ecuador	1979	2008	2008
ESP	Spain	1978	1978	2011
FJI	Fiji	2004	2013	2013
GEO	Georgia	2004	1995	2004
GHA	Ghana	2001	1992	1996
GNB	Guinea Bissau	2005	1984	1996
GTM	Guatemala	1996	1985	1993
GUY	Guyana	1992	1980	2016

Continued on next page

ISO	Country	Democratization	Establishment	Amendment
HND	Honduras	1989	1982	2013
HRV	Croatia	2000	1991	2001
HTI	Haiti	1994	1987	2012
HUN	Hungary	1990	2011	2016
IDN	Indonesia	1999	1945	2002
KEN	Kenya	2002	2010	2010
KGZ	Kyrgyzstan	2011	2010	2016
KOR	Korea	1988	1948	1987
LBR	Liberia	2006	1986	1986
LSO	Lesotho	1998	1993	1998
MDA	Moldova	1994	1994	2006
MDG	Madagascar	1992	2010	2010
MEX	Mexico	1997	1917	2007
MLI	Mali	2005	1992	1992
MNG	Mongolia	1992	1992	2001
MWI	Malawi	2004	1994	1999
MYS	Malaysia	2008	1957	2007
NER	Niger	2011	2010	2010
NGA	Nigeria	1979	1999	2012
NIC	Nicaragua	1990	1987	2005
NPL	Nepal	2006	2006	2010
PAN	Panama	1989	1972	2004
PER	Peru	2001	1993	2009

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ISO	Country	Democratization	Establishment	Amendment
PHL	Philippines	1987	1987	1987
POL	Poland	1991	1997	1997
PRT	Portugal	1976	1976	2005
PRY	Paraguay	1992	1992	2011
ROU	Romania	1996	1991	2003
RUS	Russia	2000	1993	2008
SDN	Sudan	1986	2019	2019
SEN	Senegal	2000	2001	2009
SLE	Sierra Leone	2007	1991	2008
SLV	El Salvador	1984	1983	2003
THA	Thailand	2011	2007	2007
TTO	Trinidad and Tobago	1981	1976	2007
TUR	Turkey	1983	1982	2002
TWN	Taiwan	1992	1947	2005
UKR	Ukraine	1994	1996	2004
URY	Uruguay	1985	1985	2004
ZAF	South Africa	1992	1996	2012
ZMB	Zambia	2008	1991	2009

Table A.1: Years of Democratization, Constitutional Establishment, and Constitutional Amendment

A.2 Components of the Immunity Index

Category	Question
Legislative Immunity	
<i>Non-accountability</i>	Do immunity provisions protect a legislator from liability for votes cast or speeches related to official duties?
	Do immunity provisions protect a legislator from liability for the commission of common crimes unrelated to official duties?
	Do immunity provisions protect a legislator from judicial proceedings or substantially impede core investigative activities?
<i>Inviolability</i>	Is there a procedural impediment that restricts the detention of a legislator on criminal charges?
	Is there a procedural impediment that restricts the prosecution of a legislator on criminal charges?
Authorization	Is the assent of a simple majority of legislators in a legislative house necessary to authorize the procedure of a legislator?
	Is the assent of a supermajority of legislators in a legislative house necessary to authorize the procedure of a legislator?
	Does the assent to authorize the procedure of a legislator come from other than the legislature?
Duration	Do immunity provisions continue to protect a legislator after their term in office expires?
Chief Immunity	
<i>Continued on next page</i>	

Category	Question
<i>Non-accountability</i>	Do immunity provisions protect a chief executive from liability for votes cast or speeches related to official duties?
	Do immunity provisions protect a chief executive from liability for the commission of common crimes unrelated to official duties?
	Do immunity provisions protect a chief executive from judicial proceedings or substantially impede core investigative activities?
<i>Inviolability</i>	Is there a procedural impediment that restricts the detention of a chief executive on criminal charges?
	Is there a procedural impediment that restricts the prosecution of a chief executive on criminal charges?
Authorization	Is the assent of a simple majority of legislators in one legislative house necessary to authorize the procedure of a chief executive?
	Is the assent of a supermajority of legislators in one legislative house necessary to authorize the procedure of a chief executive?
	Is the assent of legislators in two legislative houses necessary to authorize the procedure of a chief executive?
	Does the assent to authorize the procedure of a chief executive come from other than the legislature?
Duration	Do immunity provisions continue to protect a chief executive after their term in office expires?
Minister Immunity	
<i>Non-accountability</i>	Do immunity provisions protect a minister from liability for votes cast or speeches related to official duties?

Continued on next page

Category	Question
<i>Inviolability</i>	Do immunity provisions protect a minister from liability for the commission of common crimes unrelated to official duties?
	Do immunity provisions protect a minister from judicial proceedings or substantially impede core investigative activities?
	Is there a procedural impediment that restricts the detention of a minister on criminal charges?
	Is there a procedural impediment that restricts the prosecution of a minister on criminal charges?
Authorization	Is the assent of a simple majority of legislators in one legislative house necessary to authorize the procedure of a minister?
	Is the assent of a supermajority of legislators in one legislative house necessary to authorize the procedure of a minister?
	Is the assent of legislators in two legislative houses necessary to authorize the procedure of a minister?
	Does the assent to authorize the procedure of a minister come from other than the legislature?
Duration	Do immunity provisions continue to protect a minister after their term in office expires?
Judicial Immunity	Does any constitutional provision granting immunity to the judiciary exist?

Table A.2: Questions for Examining Cross-national Differences in Constitutional Immunity Provisions

B Principal Component Analysis

Dim.	Legislative			Chief Executive		
	Eigenvalue	Var.	Cum. Var.	Eigenvalue	Var.	Cum. Var.
1	3.46	38.77	38.77	4.32	44.42	44.42
2	2.40	26.89	65.66	2.13	21.91	66.34
3	1.35	15.14	80.80	1.46	14.96	81.29
4	0.73	8.14	88.94	0.93	9.54	90.84
5	0.50	5.61	94.55	0.42	4.29	95.13
6	0.26	2.93	97.48	0.25	2.57	97.70
7	0.13	1.50	98.98	0.18	1.88	99.58
8	0.09	1.02	100.00	0.03	0.34	99.93
9	.	.	.	0.00	0.07	100.00

Table B.3: Eigenvalues, Variance, and Cumulative Variance Explained

Principal component analysis (PCA) is a statistical technique used to reduce the dimensionality of a dataset while retaining most of the variation present in the data. This study uses the PCA to measure the quality of constitutional immunity for politicians across countries. The dataset consists of binary variables representing whether a country has specific immunity protections for politicians. I conducted the PCA on this dataset to identify the principal components that explain the maximum variance in the data. The analysis was performed using the following steps: (1) each variable was standardized to have a mean of 0 and a standard deviation of 1. (2) Components were extracted based on the eigenvalues and the cumulative variance explained. The PCA was conducted separately for the parliamentary immunity and chief executive immunity.

In Table B.3, I demonstrated the eigenvalues and the variance explained by each principal component. The left columns indicate the dataset of parliamentary immunity, whereas the right columns represent the dataset of chief executive immunity. The top three principal components record the eigenvalues greater than 1 for both datasets. The first principal component explains 38.77% of the total variance for parliamentary immunity and 44.22%

	Legislative			Chief Executive		
	Com. 1	Com. 2	Com. 3	Com. 1	Com. 2	Com. 3
Vote and Speech	0.13	0.41	0.22	0.36	-0.06	0.23
Common Crime	0.32	-0.39	0.03	0.54	0.05	-0.02
Judicial Proceedings	0.32	-0.42	0.06	0.47	0.11	0.02
Detention	0.23	0.45	0.20	0.36	0.03	0.05
Prosecution	0.33	0.07	0.24	0.40	-0.28	0.05
Simple Majority	0.56	0.33	-0.09	-0.15	0.54	0.08
Super Majority	-0.21	-0.27	0.71	-0.10	-0.64	0.19
Two Legislatures	.	.	.	-0.18	-0.27	0.43
Outside Legislature	-0.47	0.25	-0.26	0.06	-0.10	-0.73
After Term	0.20	-0.24	-0.52	0.07	0.35	0.42

Table B.4: Component Loadings for Each Immunity Variable

for chief executive immunity. The first three components together explain 80.80% and 81.29% of the total variance in the dataset of parliamentary immunity and chief executive immunity, respectively.

I demonstrated the loadings of each variable on the first three principal components in Table B.4. Higher absolute values indicate a stronger relationship between the variable and the component. These loadings help interpret the principal components in terms of the original variables.

Notably, the first principal component effectively summarizes the quality of constitutional immunity provisions for both parliamentary members and the chief executive. The loading values are greater for the prosecution impediment than for the impediment of detention. This reflects that impeding prosecution is more essential in the immunity quality than impeding detention for politicians. For parliamentary immunity, the variable indicating whether the authorization comes from outside legislatures has negative loadings, whereas it has positive loadings for the chief executive. This suggests that the quality of parliamentary (chief executive) immunity decreases (increases) when its members cannot (himself or herself can) determine whether to lift their immunity or not. Lastly, among the variables of immunity

scopes, the immunity extended to common crimes has the highest loadings for both legislators and the chief executive, indicating that this variable is a significant factor in determining the quality of immunity protections.

To conclude, the PCA results indicate that the quality of constitutional immunity provisions for politicians can be effectively captured by the first principal component. The component explains the majority of the variance in the data and provides insights into the different dimensions of immunity protections across countries. Therefore, I constructed immunity indices using the first principal component.

C Descriptive Statistics

C.1 Summary Statistics for the Main Regression

Variable	Mean	Std. Dev.	Min.	Max.	Obs.
Legislative Immunity	0.39	0.23	0	0.86	30
Chief Executive Immunity	0.47	0.4	0	1	30
Opposition Strength	26.45	11.65	1.28	51.35	30
Vote Difference	-18.8	25.86	-62.7	31.07	30
Judicial Independence	0.97	0.67	0	2	30
Corruption	0.61	0.23	0.05	0.91	30
GDP per Capita (logged)	7	1.11	5.02	9.02	30
Population (logged)	16	1.52	13.52	19.17	30
Colonial History	3.2	2.52	0	8	30

Table C.5: Summary Statistics for Main Regression Results (Table 2)

C.2 Opposition and Executive Immunity Indices

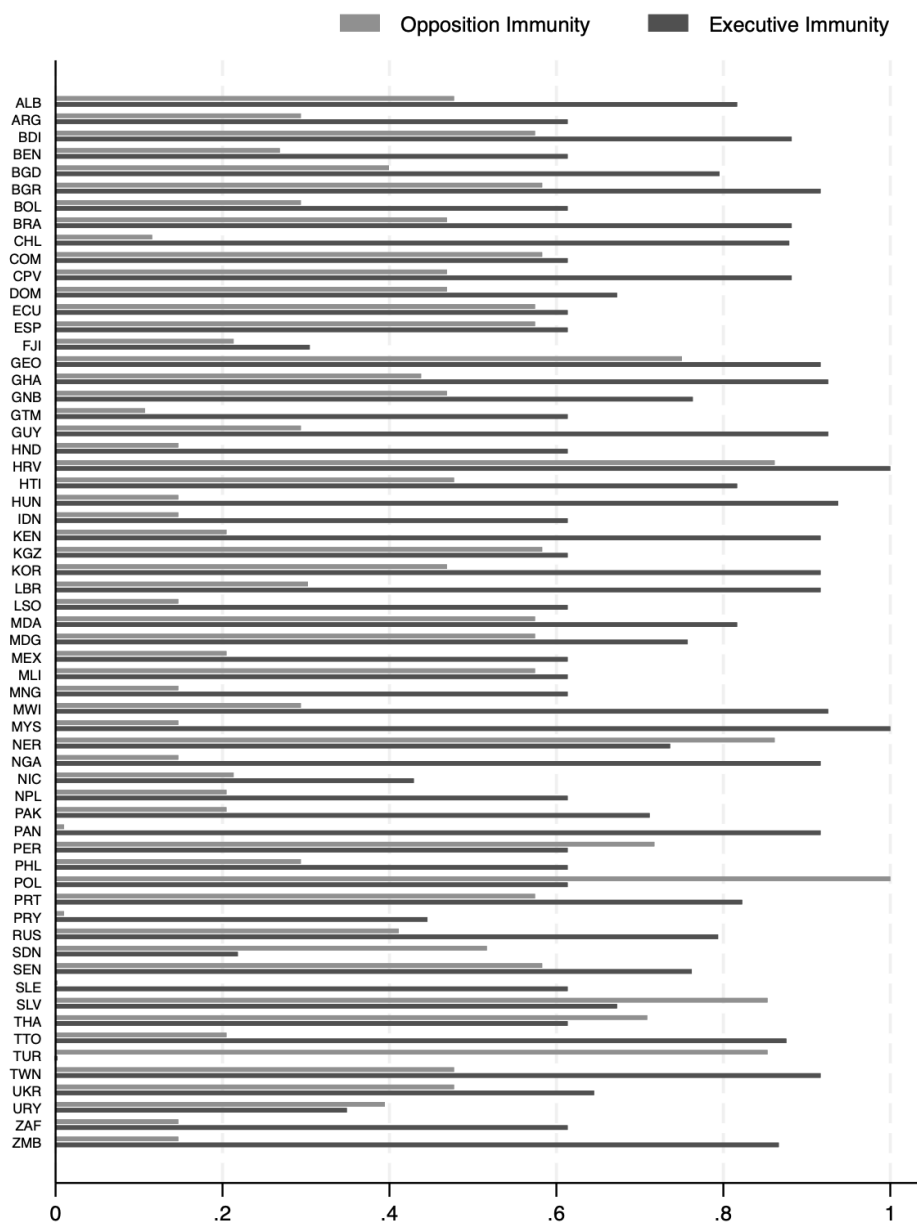


Figure C.1: Opposition Immunity and Executive Immunity Indices for Countries Underwent Democratization Since 1975

D Regression Analyses

D.1 Marginal Effects Plot for Dichotomous Judicial Independence

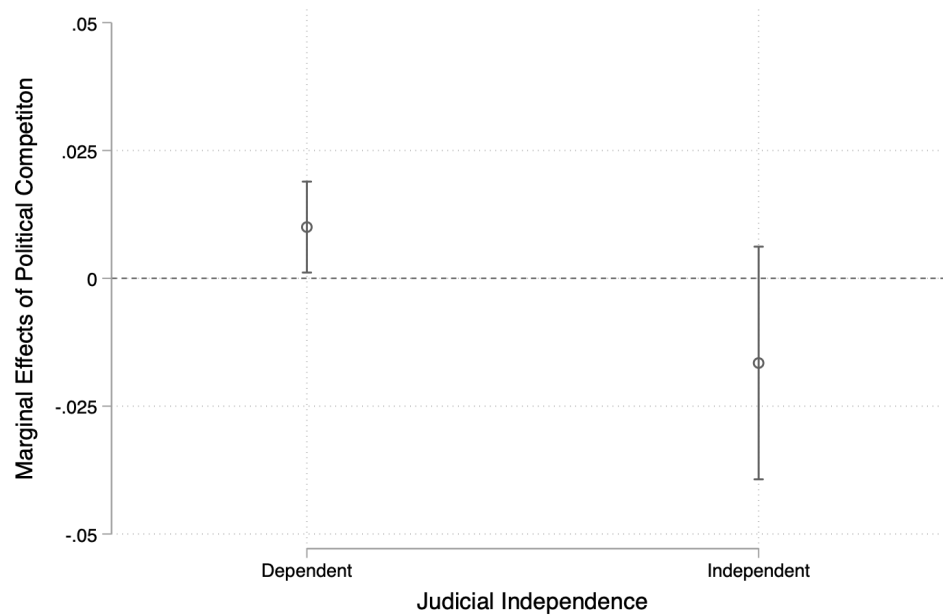


Figure D.2: Marginal Effects of Political Competition on Legislative Immunity, Conditional on Dichotomous Judicial Independence with 95% Confidence Intervals (Drawn from Model (1), Table 3)

D.2 SUR Results for Individual Immunity Provisions

	Individual Immunity Provisions			
	(1)	(2)	(3)	(4)
Opposition Strength	.016*	.006	-.005	.001
	(.008)	(.008)	(.010)	(.004)
Opposition Strength × Judicial Independence	-.010	-.008	.003	-.004
	(.008)	(.008)	(.010)	(.004)
Judicial Independence	.169	.022	-.055	-.016
	(.238)	(.221)	(.290)	(.125)
Corruption	-.339	-1.409***	-.256	-.617***
	(.346)	(.322)	(.423)	(.182)
Presidential System	-.152	.002	-.108	.170*
	(.180)	(.167)	(.219)	(.094)
GDP per Capita (logged)	-.083	-.072	-.021	-.012
	(.070)	(.065)	(.085)	(.037)
Population (logged)	.024	.007	-.023	.002
	(.044)	(.041)	(.054)	(.023)
Colonial History	✓	✓	✓	✓
Constant	.361	1.552**	1.144	.518
	(.784)	(.730)	(.957)	(.411)
Number Obs.	30	30	30	30
R ²	.213	.558	.498	.395

Dependent variables for Models 1 through 4 are as follows: *non-accountability* for common crime, *non-accountability* for judicial proceedings, *inviolability* against detention, and extended immunity after term. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table D.6: SUR Results for Individual Immunity Provisions (Figure 6)

D.3 Regression Results for Opposition and Executive Immunity

	Immunity Index			
	Opposition (1)	(2)	Executive (3)	(4)
Opposition Strength	.015** (.006)		.007 (.005)	
Opposition Strength × Judicial Independence	-.012* (.006)		-.008 (.005)	
Vote Difference		.006* (.003)		.004* (.002)
Vote Difference × Judicial Independence		-.004 (.003)		-.006*** (.002)
Judicial Independence	.234 (.171)	-.155 (.108)	.139 (.151)	-.230*** (.077)
Corruption	-.562** (.249)	-.484* (.257)	-.220 (.220)	-.308 (.184)
Presidential System	.016 (.129)	-.017 (.141)	-.040 (.114)	-.022 (.101)
GDP per Capita (logged)	-.023 (.050)	-.024 (.054)	-.008 (.045)	.011 (.038)
Population (logged)	.013 (.032)	.010 (.032)	.044 (.028)	.048* (.023)
Colonial History	✓	✓	✓	✓
Constant	.527 (.563)	1.001* (.542)	.243 (.499)	.390 (.387)
Number Obs.	30	30	30	30
R ²	.639	.603	.566	.691

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table D.7: Regression Results Using Different Immunity Indices