# Citizens' Commitment to Judicial Independence A Discrete Choice Experiment in Nine European Countries

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Abstract. How do citizens perceive nondemocratic reforms of the judiciary? In backsliding democracies, governments often introduce court-curbing reforms that limit judicial independence for executive gains. Citizens can choose to protest these reforms, thereby strengthening democratic resilience, or lend support to a government who they identify with but whose reforms erode democratic norms. We conducted discrete choice experiments in nine European countries to examine this trade-off and elicit citizens' reactions to nondemocratic reform proposals. Our findings show that respondents in all countries demonstrate a credible commitment to the democratic norm of an independent judiciary. However, the cross-country comparison reveals that increasing polarization and potential distrust in courts will subject the norm to a stress test. The implications of these findings extend beyond individual countries and highlight the need to address polarization and foster trust in courts to ensure the enduring strength and resilience of democratic governance.

**Keywords.** democratic backsliding • judicial independence • trust in courts • public opinion • survey experiment

Words: 9,846 (using Monterey Language Services; excl. title page, bibliography, and appendix)

We would like to express our gratitude to Michael Bechtel, David Grundmanns, Silje Hermansen, Oliver Rittmann, Viktoriia Semenova, and Georg Vanberg for their valuable comments on a previous version of the manuscript. We are also thankful to Marie-Lou Sohnius for her excellent research assistance. Furthermore, we thank the German Research Foundation (DFG) and the Collaborative Research Center 884 of the University of Mannheim for their generous funding that enabled us to field this cross-national experiment. The research reported in this article was approved by the Ethics Committee of the University of Mannheim.

# 1. Introduction

How do citizens perceive nondemocratic reforms of the judiciary? Governing elites in backsliding democracies often engage in institutional manipulation, using established democratic procedures to legitimize their behavior. Vivid examples include nondemocratic reform proposals that limit judicial independence for executive gains, as seen in Poland, Hungary, Turkey, and Israel (e.g., Bermeo, 2016, 10-13). Indeed, democratic backsliding frequently involves attacking judicial independence first.

Various examples show that citizens increasingly protest such nondemocratic reforms<sup>1</sup>. This is despite the fact that an electoral majority initially empowered the governing parties proposing the reforms (see online appendix A for a discussion of developments in Poland). Therefore, while we observe governments becoming empowered despite their inclination for democratic backsliding, citizens also become mobilized to defend democratic norms. Studying citizens' attitudes towards nondemocratic reforms helps to better understand the potential resilience of a democratic system. We conceptualize democratic resilience of citizens as their commitment to democratic norms and values resisting attempts to erode democratic accountability. If supporters of a government do not support court-curbing reforms that empower their preferred government, then the democratic system is more resilient than if the citizens were to support the reforms.

To assess this argument we provide a litmus test for the resilience of a democratic system to backsliding using identical discrete choice experiments (Louviere, Hensher and Swait, 2000; Louviere, Flynn and Carson, 2010) in nine countries. A total of 11, 352

<sup>&</sup>lt;sup>1</sup> Der Spiegel International. 2012. "Destroying Democracy: Hungarians Protest Controversial New Constitution." https://www.spiegel.de/international/europe/destroying-democracy-hungarians-protest-controversial-new-constitution-a-806933.html; last accessed 06/04/2020. BBC World News. 2018. "Poland protests: Thousands rally against court changes." https://www.bbc.com/news/world-europe-44979353; last accessed 06/04/2020. CNN Edition. 2023. "'Historic' strikes leave Israel at standstill with crowds in streets to protest judicial reform." https://edition.cnn.com/2023/03/27/middleeast/israel-judicial-overhaul-legislation-intl/index.html; last accessed 03/28/2023.

respondents provide 68, 112 choices between two hypothetical reform packages for their respective highest national courts, which have constitutional review powers. The reform packages consist of three components: (1) The reform's content, (2) the actors proposing the reform, and (3) the court's response to the reform. All values for each component are completely independently randomized. We derive the reform content from the literature on judicial independence. While we establish one neutral reform as a baseline, all other reforms limit independence.

Our study expands existing research (e.g. Bartels and Johnston, 2020; Clark and Kastellec, 2015; Mazepus and Toshkov, 2022; Svolik, 2020) in three significant ways. Firstly, our experimental design goes beyond the usual evaluation of citizens' attitudes based on specific political decisions or predefined vignettes. Instead, respondents explicitly assess potential institutional reforms of the judiciary. Secondly, our rigorous experimental design untangles the micro-level trade-off citizens face between supporting the democratic norm of an independent judiciary and accepting limits on judicial independence. Thirdly, we extend our analysis beyond a single country by employing the same experimental design across nine countries (eight EU member states and the United Kingdom). These countries have distinct legal and political systems while sharing a comparable European culture. Consequently, our most-different system design (Przeworski and Teune, 1970) enhances the likelihood of identifying generalizable choice patterns among European citizens independent of a specific institutional context.

Our findings consistently show a certain level of citizens' commitment to judicial independence. Citizens prefer the neutral reform over any reform limiting independence. Even supporters of current governments tend to reject court-curbing reforms that would empower their preferred government. Furthermore, citizens are more likely to reject reforms criticized by the court. Thus, they show some non-trivial level of resilience and pass the litmus test. Our regression analyses of cross-country data reveal two key findings. Firstly, the likelihood of government supporters rejecting attempts to limit judicial independence systematically varies with the degree of polarization in a country. Secondly, the extent to which government supporters are influenced by the court's response to a reform depends on the level of trust in the court. These findings have significant implications for the literature on the civic culture (e.g. Easton, 1965; Almond and Verba, 1963), and the literature on democratic governance and accountability (e.g. Bovens and Schillemans, 2020), which we summarize in the conclusion.

# 2. Judicial independence and the public

We assess judicial independence as a democratic norm citizens can choose to support contributing to democratic resilience. Therefore, we outline current research on judicial independence and link this research to citizens' support of it.

The definition of judicial independence is debated (Linzer and Staton, 2015, 225), but a common distinction exists between de jure and de facto independence (Feld and Voigt, 2003; Melton and Ginsburg, 2014; Rios-Figueroa and Staton, 2012; Linzer and Staton, 2015; Voigt, Gutmann and Feld, 2015).<sup>2</sup> De jure independence involves formalized rules protecting the judiciary from political influence, while de facto independence refers to the adherence to judicial decisions (Rios-Figueroa and Staton 2012, 106-107; Voigt, Gutmann and Feld 2015). Thus, judicial independence is significant for the rule of law, which necessitates a separation of powers, including an independent judiciary.

Scholars have developed functional approaches to understand judicial independence, including identifying the "components of judicial independence" (Melton and Ginsburg, 2014, 195). These components include attributes like judicial tenure, which are characterized by features such as term limits or lifetime appointments (Domingo 2000, 712-715; Melton and Ginsburg 2014, 195-196; Hayo and Voigt 2014, 164). Various

<sup>&</sup>lt;sup>2</sup> This discussion is based upon Engst 2021, 5

characteristics are often combined in indices to measure judicial independence at the country level (e.g. Feld and Voigt, 2003; Hayo and Voigt, 2014; Linzer and Staton, 2015).

Research has shown that an independent judiciary contributes to regime stability in democracies (Gibler and Randazzo, 2011; Epperly, 2013). However, there is limited understanding of how judicial independence develops initially (Randazzo, Gibler and Reid, 2016, 583). According to the insurance theory, the political majority accepts an independent judiciary to limit political action, knowing that it will also constrain a political adversary when majorities shift (Landes and Posner, 1975; Ramseyer, 1994; Stephenson, 2003; Ginsburg, 2003; Ginsburg and Versteeg, 2014; Vanberg, 2015). Judicial independence is thus a strategic choice made by political actors. The theory applies preliminary to established democracies (see Epperly, 2018), but discussions on judicial independence also extend to nondemocratic regimes (Popova, 2010; Epperly, 2017). Randazzo, Gibler and Reid (2016), for instance, demonstrate that the strength of judicial independence is conditional on regime type, political competition, and societal trust (see also Aydin, 2013). Furthermore, Gutmann and Voigt (2020) found a negative correlation between de jure and de facto independence in European countries. This suggests that societies with high levels of generalized trust and individualism maintain de facto independence without necessarily requiring high levels of de jure independence.

All these studies share the commonality of discussing measures and effects of judicial independence at a macro-level, predominantly focusing on the judicial-political dimension from an institutional perspective. Additionally, scholarly work often assumes that public support, once activated, favors the judiciary (e.g. Vanberg, 2001, 2005; Staton, 2010). This perspective implies that an independent judiciary is always in the public interest. The established findings, indicating citizens' support for judicial legitimacy and high levels of trust in the judiciary, further reinforce this perspective (Caldeira and Gibson, 1995; Gibson, Caldeira and Baird, 1998; Gibson and Nelson, 2014).

We aim to extend the existing literature by examining citizens' attitudes towards

reforms that undermines judicial independence. Specifically, for citizens' attitudes we take into consideration circumstances in which a preferred government proposes such reforms. In such cases, citizen may prioritize their support for the preferred government over upholding judicial independence (Stephenson, 2004; Mazepus and Toshkov, 2022). They may follow their partisan biases instead of supporting the independence of courts (e.g. Nicholson and Hansford, 2014; Clark and Kastellec, 2015; Bartels and Johnston, 2020; Bartels and Kramon, 2020). In the latter case, citizens hold attitudes that erode democratic accountability and harm democratic resilience.

In the next section, we will outline realistic political reform packages derived from the judicial independence literature. These packages will enable us to analyze the tradeoffs citizens encounter when choosing between strengthening democratic resilience by favoring judicial independence or eroding democratic accountability by favoring their preferred political actor.

# 3. Political reforms of the judiciary

Citizens do not encounter specific reform proposals regarding the judiciary in a political vacuum. In reality, reform proposals come pre-packaged. Citizens might evaluate the same content of a reform proposal differently depending on who proposed it or how the court reacts. To understand how citizens perceive specific proposals, we design reform packages comprising three essential components: (1) the substantive content of the reform, (2) the proposing actor, and (3) the court's reaction to the proposal.

# 3.1. Which reform is proposed?

Scholars discussing judicial independence highlight various attributes of independence (e.g. Melton and Ginsburg, 2014; Hayo and Voigt, 2014; Feld and Voigt, 2003; Linzer and Staton, 2015). Hence, we utilize commonly referenced attributes to describe the substantive content as the initial component of the reform packages. Subsequently, we present three reform proposals that limit judicial independence, and a fourth proposal that does not limit independence.

First, appointment procedures are pivotal in determining the political influence on the composition of the bench (Domingo, 2000, 708). To ensure fair treatment of citizens in court, it is important to minimize the influence of individual political actors on judicial appointments (Feld and Voigt 2003, 501-502; Melton and Ginsburg 2014, 196). Hence, the first reform entails a judicial selection process primarily controlled by the government.

1. *The reform involves that* ... the [Government] can name half of the judges that serve on the [Court].<sup>3</sup>

This reform proposal limits judicial independence by allowing the government to appoint half of the bench. Consequently, the remaining judges will always require the support of at least one judge selected by the government in order to secure a majority vote. Thus, by packing the court with loyal judges, the government significantly enhances its ability to shield its policies from unfavorable judicial decisions. Citizens asked to vote on the reform face the dilemma of either supporting the government or safeguarding judicial independence.

The hypothetical proposal aligns with real-life examples of judicial reforms in Israel and Turkey. In Israel, discussions are underway regarding changes to the committee responsible for selecting supreme court judges, favoring government influence (Gold, 2023). In Turkey, a 2017 reform granted the president the power to appoint twelve out of fifteen judges to the constitutional court (Dewan, 2017).

Second, judges on the Supreme Courts of the United States and the United Kingdom are safeguarded from political pressures through life tenure (Ferejohn, 1998, 356-357).

<sup>&</sup>lt;sup>3</sup> Items where translated in the respondent's language and the parts in squared brackets were modified to match country-specifics; e.g. the government in Germany is the *Bundesregierung* and the court is the *Bundesverfassungsgericht*.

Similarly, judges with non-renewable terms and term limits are insulated from external influences as they do not rely on external actors to advance their careers (Melton and Ginsburg, 2014, 195-196). Additionally, judges who serve longer terms than the selecting actors maintain a level of independence, even if they require reelection (Rios-Figueroa, 2011). Thus, the second reform proposes the implementation of frequent legislative re-confirmation of judges.

2. *The reform involves that* ... every third year all judges that serve on the [Court] have to be confirmed by the [Parliament]. Judges not confirmed have to leave the court within a month.

This proposal restricts judicial independence in two ways. First, judges become dependent on the legislature, limiting their autonomy as they must respond to those who confirm them. Second, the requirement of a legislative vote every three years can hinder judges in completing their work, particularly considering the lengthy proceedings at highest courts. Moreover, it is possible for the same legislator to repeatedly evaluate the same judges over a three-year period. Nevertheless, some citizens may perceive the re-confirmation of judges by an elected legislature as democratic. However, citizens faced with the decision to vote on the reform must weigh the choice between supporting frequent political interference with the judiciary or preserving judicial independence. Although, this proposal may obscure the trade-off, it aligns with the literature on judicial independence. Scholars highlight less obvious measures that limit de facto judicial independence, such as constraints on judicial income or budgetary limitations (Linzer and Staton 2015, 225, Voigt, Gutmann and Feld 2015, 201, Domingo 2000, 715-716). These measures include reducing judicial salaries (Hayo and Voigt, 2014, 164), limiting the number of clerks, restricting the court's access to modern technology, or reducing the size of the library (Voigt, Gutmann and Feld, 2015, 201).

This hypothetical proposal shares similarities with the judicial reform in Poland in 2019. The Polish governing party, PiS, introduced disciplinary chambers that granted

the Ministry of Justice (not the parliament), the authority to penalize judges by reducing their salaries or terminating their positions.<sup>4</sup> Following a ruling by the European Court of Justice, the Polish government announced its plan to abolish the chambers in 2021.<sup>5</sup>

Third, the design of judicial review in a country influences judicial independence (Hayo and Voigt, 2014, 164-165). Specifically, courts cannot implement decisions themselves but rely on political action (Hamilton 1788, Federalist No. 78). Therefore, the de facto independence of the judiciary depends on the recognition of judicial power and the acceptance of judicial decision-making (Rios-Figueroa and Staton 2012, 107; Linzer and Staton 2015, 225). Accordingly, the third reform proposal grants the legislature the authority to evade judicial decisions.

3. *The reform involves that* ... the [Parliament] can override a court decision if 75 percent of its members agree.

The qualified majority requirement may create the perception of a democratic reform. However, in any democratic system, the legislature possesses the authority to enact laws. Consequently, the legislative majority can always pass legislation to circumvent a judicial decision (Engst, 2021, Ch.2). Thus, the proposal reveals an implicit constraint on judicial independence. When citizens vote on the reform, they must consider whether to support the explicit empowerment of political actors to bypass judicial decisions or protect judicial independence. A public vote on this reform enables the political branches to seek legitimacy for legislative actions that undermine judicial independence.

This hypothetical proposal aligns with a recent reform proposed in Israel, where the parliament would gain the authority to pass laws that were previously invalidated by the supreme court (Gold, 2023).

<sup>&</sup>lt;sup>4</sup> BBC News. 2019. "Poland lower house approves controversial judges law." https://www.bbc.com/news/world-europe-50874320; last access: 05/24/2023.

<sup>&</sup>lt;sup>5</sup> Deutsche Welle. 2021. "Poland tells EU it is closing disciplinary chamber." https://www.dw.com/en/poland-notifies-eu-it-is-closing-disciplinary-chamber-for-judges/a-58886329; last access: 05/24/2023.

Finally, we require a neutral reform proposal that serves as a benchmark for assessing a respondent's proclivity to accept reforms that limit judicial independence. The neutral proposal should not impose any limitations on independence. To achieve this we leverage the fact that highest courts are commonly overwhelmed by their case-load. Thus, the fourth reform introduces an increase in administrative staff for the court.

4. *The reform involves that* ... the [Court] receives more administrative staff to better handle the increased caseload.

This reform addresses less apparent aspects of judicial independence. It has been mentioned that the manipulation of judicial salaries and budgetary constraints can limit independence (Hayo and Voigt, 2014; Linzer and Staton, 2015; Voigt, Gutmann and Feld, 2015). However, the reform is phrased positively, emphasizing the benefits of increased staff for the court. It implies that the court receives a higher budget rather than facing budget cuts. Consequently, the reform enables courts to operate more efficiently, thereby strengthening their independence. Citizens asked to vote on this reform encounter no trade-off that would limit judicial independence.

The four reform proposals are derived from the judicial independence literature and are supported by real-world examples. Considering the content of the four proposals, we expect the following:

*Hypothesis on the proposal content:* Given the choice between two proposals, citizens who show a nontrivial commitment to democratic resilience will prefer the neutral reform proposal over proposals that limit independence.

# 3.2. Who proposes the reform?

We posit that respondents' preferences for a reform proposal are endogenous and can be influenced by the political actor proposing the reform. Existing evidence, particularly regarding the US Supreme Court, suggests that citizens' opposition to court-curbing proposals varies depending on the political actor associated with the proposal (Nicholson and Hansford, 2014; Clark and Kastellec, 2015; Bartels and Johnston, 2020; Driscoll and Nelson, 2023). To untangle the trade-off between strengthening democratic resilience or partisan preferences, we introduce the proposing actor as a second component in our reform packages.

In each country, we randomly allow five actors to propose political reforms of the judiciary. First, members of the party with the most parliamentary seats in the lower quartile of the country's Comparative Manifesto Project Scores (CMP, Volkens et al. 2019). This party is positioned on the left. Second, members of the party with the most parliamentary seats in the upper quartile of the country's CMP Scores, representing the right. Third, members of the party with the most parliamentary seats between the lower and upper quartile of the country's CMP Scores. This is the largest moderate party. Fourth, the countries national government.

Our fifth actor is a non-political entity. Research (e.g., Bertsou, 2021) has shown that citizens often favor the involvement of non-partisan experts in government decision-making. This is believed to ensure efficient and effective governance, even though holding such experts accountable may pose challenges. We operationalize this non-political actor as "a non-partisan committee of legal experts."

#### 3.3. How does the court react?

Although courts lack the authority to enforce decisions, prior research demonstrates that courts can employ strategies to mobilize public opinion and enhance their influence relative to the political branches (Vanberg, 2001, 2015; Clark, 2010; Staton, 2010; Sternberg, 2019; Meyer, 2020). Therefore, we include the court's response to a proposed reform as a third component in our reform packages. Respondents may consider the court's statement as a signal when evaluating different reform packages. We randomly assign one of the following three court responses:

- 1. *The judges on the [Court] say that the reform ...* potentially threatens the court's ability to work independently.
- 2. *The judges on the [Court] say that the reform ...* threatens the court's ability to work independently.
- 3. *The judges on the [Court] say that the reform ...* definitely threatens the court's ability to work independently and to decide cases in a fair and just manner.

Considering the three reactions by the court, we expect the following:

*Hypothesis on judicial response:* Given the choice between two proposals, citizens who show a nontrivial commitment to democratic resilience will prefer reforms considered less harmful by the court over reforms considered more harmful.

After introducing all the components and attributes of the hypothetical reform packages, we will now outline our experimental design.

# 4. A discrete choice experiment across nine countries

How do citizens perceive judicial independence in order to show some democratic resilience? One approach to examining judicial independence at the individual level is to directly ask whether citizens would support or oppose it. For our approach this is not necessary. Indeed, many citizens have not previously considered such matters. In expressing their preferences when directly ask, respondents are prone to seeking any available information or heuristic to formulate a survey response. Furthermore, social desirability may influence their answers. Respondents may dwell on widely shared democratic norms to justify their perceptions of the judiciary.

Rather than triggering those processes, our approach is to infer their attitudes towards judicial independence from the choices they make when choosing between various reform packages. We randomly vary the substantive content of reforms, the proposing actor, and the court's reaction. To achieve this, we employ a discrete choice experiment (Louviere, Hensher and Swait, 2000), which enables us to estimate the causal effects of many treatment components simultaneously.<sup>6</sup> Discrete choice experiments are commonly used in marketing or applied economics to analyze how buyers make trade-offs between attributes of different products (Green, Krieger and Wind, 2001). Unlike conjoint analysis, discrete choice experiments are grounded in random utility theory rather than conjoint measurement theory (Louviere, Flynn and Carson, 2010).

To infer citizens' preferences regarding judicial independence, we let respondents choose explicitly between pairs of randomly generated reform packages. To facilitate a meaningful interpretation we estimate *average marginal effects* (AMEs) as quantities of interest for our discrete-choice experiments. The random assignment of attributes in each reform package enables us to identify the AME of an attribute as the average difference in probability of choosing a reform package when changing it from the respective component's reference category to the attribute value.

For example, from the observed choices between different reform packages we can infer to what degree respondents oppose a court-curbing measure even when it is proposed by a preferred political party, and whether this opposition remains consistent regardless of the court's reaction. In summary, rather than directly asking about judicial independence, our measurement strategy allows for a more controlled and rigorous way to understand the extent to which individuals care about judicial independence and the inherent trade-offs involved when choosing between different reform packages.

**Case selection** Our study design incorporates a comparative aspect. We conducted an online survey experiment simultaneously across nine countries and their particular highest courts with review powers: France, Germany, Hungary, Italy, the Netherlands, Poland, Spain, Sweden and the United Kingdom. Respondents were asked to choose

<sup>&</sup>lt;sup>6</sup> Online appendix C offers technical details regarding the online survey.

Table 1: Compor	lents, attributes and country-s	pecifics of the randomly	generated reform packages
Component 1	Proposal (P)	The reform involves that	
Attribute P1 Attribute P2 Attribute P3 Attribute P3	the [Government] can name half of the ji every third year all judges that serve on have to leave the court within a month. the [Parliament] can override a court dec the [Court] receives more administrative	idges that serve on the [Court]. the [Court] have to be confirmed by ision if 75 percent of its members ag staff to better handle the increased o	the [Parliament]. Judges not confirmed gree.
Component 2	Actor (A)	Reform proposed by	
Attribute A1 Attribute A2 Attribute A3 Attribute A4 Attribute A5	members of the [Largest party on the lef members of the [Largest party on the rig members of the [Largest moderate party the [Government]. a non-partisan committee of legal expert	hti. 	
Component 3	Court's Reaction (R)	The judges on the [Court] say the	at the reform
Attribute R1 Attribute R2 Attribute R3	potentially threatens the court's ability to threatens the court's ability to work inde definitely threatens the court's ability to	v work independently. pendently. work independently and to decide c	ases in a fair and just manner.
	France	Germany	Hungary
Government Court Parliament Largest party on the left Largest moderate party Largest party on the right	Gouvernement de la République française Conseil Constitutionnel Assemblée Nationale PS REM LR	Bundesregierung Bundesregierung Bundestag Die LINKE CDU/CSU AfD	Magyarország Kormánya Magyarország Kormánybírósága Országgyűlés MSZP Jobbik Magyarországért Mozgalom Fidesz – Magyar Polgári Szövetség
	Italy	Netherlands	Poland
Government Court Parliament Largest party on the left Largest moderate party Largest party on the right	Governo della Repubblica Italiana Corte Costituzionale Camera dei Deputati PD M5S FI	Nederlands kabinet Hoge Raad Tweede Kamer SP VVD PVV	Rada Ministrów Rzeczypospolitej Polskiej Trybunał Konstytucyjny Sejm PO PiS PSL
	Spain	Sweden	United Kingdom
Government Court Parliament Largest party on the left Largest moderate party Largest party on the right	Gobierno de España Tribunal Constitucional Congreso de los Diputados En Comú Podem PSOE PP	Konungariket Sveriges regering Högsta domstolen Sveriges Riksdag V SAP C	British Government Supreme Court House of the Commons Labour Party SNP Conservative Party
Note: Party abbreviations w	ere also spelt out in brackets to ease the cogr	itive burden for respondents.	

#### Figure 1: Setup of the discrete choice experiment as seen by respondents

The [Court] is the only court in [Country], which o	can evaluate and reject laws. Rejected laws ca	nnot be applied anymore.								
Let's assume for the moment that the following two reforms to change the [Court] are proposed. The table below outlines what a reform involves, who proposed a reform and how the [Court] responds to each reform. Please read the descriptions of the two reforms carefully and choose the reform you personally prefer more. There are no wrong choices but only your sole personal choice matters.										
	Reform 1	Reform 2								
The reform involves that	the [Parliament] can override a court decision if 75 percent of its members agree.	the [National Government] can name half of the judges that serve on the [Court].								
Reform proposed by	members of [Party 1]	the [National Government].								
The judges on the [Court] say that the reform …	threatens the court's ability to work independently.	definitely threatens the court's ability to work independently and to decide cases in a fair and just manner.								
	If you had to choose between Reform 1 an	d Reform 2, which one of the two would you prefer?								
	Reform 1	Reform 2								
	0	o								

six times between two reforms packages randomly composed of the attributes and country-specific insertions summarized in table 1.

The case-selection strategy employs a most-different system design (Przeworski and Teune, 1970), encompassing various institutional characteristics to examine the generalizability of the findings across different countries. One may consider the possibility that a respondent's institutional frame of reference and knowledge can potentially affect the choices made. Table 2 summarizes differences in the frame of reference across countries; e.g. in some countries political actors dominate judicial selection (see France, Germany, Poland etc.) while in others non-political actors shape the judicial selection (see Netherlands, Sweden, and the United Kingdom). We further discuss the cross-country difference in online appendix B and account for them in the comparative analyses.

**Implementation** In our implementation, respondents were presented with a screen similar to the one shown in figure 1. They were asked to choose between two fully randomized reform packages, consisting of three components (proposals  $\times$  actors  $\times$ 

		The party party contract contraction	
Country	France (Const. Court)	Germany (Const. Court)	Hungary (Const. Court)
Judicial appointment	<ul> <li>3 judges, president of republic, with leg. committees approval, &gt; <sup>5</sup>/<sub>5</sub> majority</li> <li>3 judges, president of national assembly</li> <li>3 judges, president of senate</li> <li>ex officio, former presidents of republic</li> </ul>	· 8 judges, first leg. chamber, $\frac{2}{3}$ majority · 8 judges, second leg. chamber, $\frac{2}{3}$ majority	<ul> <li>15 judges, nominated by leg. committee</li> <li>Elected by leg., <sup>2</sup>/<sub>3</sub> majority</li> </ul>
Source	Art. 56 I - II, Art. 13 V Const.	Art. 94 Const.; §6 Act on Court	State - Art. 24 VIII Const.; §7 Act on Court
	<ul> <li>9 years, non-renewable</li> <li>10 title tenure, former presidents of republic</li> </ul>		
Source	Art. 561 - Il Const.	§4 I - III Act on Court	§6 Ib & III Act on Court
Knowledge	48% of 1,118 respondents	48% of 1,074 respondents	53% of 1,122 respondents
Country	Italy (Const. Court)	Netherlands (Supreme Court)	Poland (Const. Court)
Judicial appointment	<ul> <li>5 judges, president of republic</li> <li>5 judges, joint leg. seating, <sup>3</sup>/<sub>3</sub> majority</li> <li>5 judges, supreme courts</li> </ul>	<ul> <li>Max. 53 judges on the supreme court</li> <li>Court and prosecutor general suggest 6 candidates to first leg. chamber who selects 3 nominees</li> <li>Government selects judge, named on royal decree</li> </ul>	· 15 judges, first leg. chamber, absolute majority
Source	Art. 135 I Const.	Art. 117 I, Art. 1181 Const.; Art 72 I Judicial Organization Act. Art. 21, Art. 5c VI Judicial Officers Act	Art. 17 I-II Act on Court.
Tenure		· · · · · · · · · · · · · · · · · · ·	· 9 years, non-renewable
Source	Art. 135 II Const.	Art. 117 II Const.; Art. 46h III Judicial Officers Act	Art: 17 II Act on Court.
	26% of 1,170 respondents	21% of 1,190 respondents	
Country	Spain (Const. Court)	Sweden (Supreme Court)	United Kingdom (Supreme Court)
Judicial appointment	<ul> <li>4 judges, first leg. chamber, <sup>3</sup>/<sub>5</sub> majority</li> <li>4 judges, second leg. chamber, <sup>3</sup>/<sub>5</sub> majority</li> <li>2 judges, government</li> <li>2 judges, General Council of Judiciary, <sup>3</sup>/<sub>5</sub> majority</li> </ul>	<ul> <li>16 judges, legally qualified candidates apply</li> <li>Non-political board vets and proposes nominees</li> <li>Government selects judge</li> </ul>	<ul> <li>12 judges, Lord Chancellor with Selection Committee suggests candidates</li> <li>Prime minister recommends judge to Her Majesty</li> </ul>
Source	Section 159 I Const.; Art. 16 I-II Act on Court	Ch. 11 Art. 1, Art. 6 Const.; Ch. 3 Sect. 4 1, Ch. 4 Sect. 1A Code of Judicial Procedures; Sect. 3-11 Law on Appt. of Ordinary Judges; Zamboni 2019, Fn. 58	Art. 26 Const. Reform Act 2005
Tenure	· 9 years, non-renewable (once >3 years on bench)	· · · · · · · · · · · · · · · · · · ·	· life tenure, age limit 70 years
Source	Art. 16 III-IV Act on Court	Ch. 11 Art. 7 Const.; Zamboni 2019, 680	Art. 33, Art. 35 III Const. Reform Act 2005; Art. 26 IV Judicial Pension and Retirement Act 1993
Knowledge	37% of 1,147 respondents	24% of 1,318 respondents	32% of 2,186 respondents
<i>Note:</i> 'Knowledg appendix K we s	ge' refers to the correct answer to the question: " <i>Do you</i> show that knowledge about the court does not substantive	happen to know the name of the current chief justice of the ICC ely influence our findings.	ourt]? If you are not sure, please make a guess." In online

Table 2: Institutional context in the nine European countries under consideration (October 2020)

reactions). This allows to generate  $(4 \times 5 \times 3 =)$  60 different reform packages. The order of the components on the screen was randomized across respondents to eliminate order effects, but then fixed across all six screens for each respondent to reduce cognitive burden. Across our nine country studies, a total of 11,352 respondents viewed 136,224 different reform packages and made 68,112 choices. The observed choice outcomes, whether respondents choose 'Reform 1' or 'Reform 2', is the dependent variable for our analyses. We estimate conditional (fixed-effects) logit models, with a set of covariates consisting of ([4 - 1] + [5 - 1] + [3 - 1] =) 9 indicator variables for each attribute of the three components as well as country fixed-effects. One attribute per component has to be set as the reference category.<sup>7</sup> We present the estimated raw coefficients for the pooled data in table C in the online appendix.<sup>8</sup>

In the next section, we will present the choices made by respondents, considering their ideological position in relation to the government's position. This empirical analysis seeks to answer the question of whether respondents prioritize safeguarding judicial independence over the reform interests of their preferred government.

# 5. Results

In this section, we analyze the data of our discrete-choice experiment by estimating conditional (fixed-effects) logit models to predict the probability of a respondent choosing a specific reform package based on the attributes that describe its components. In the first subsection, we present a pooled analysis considering all respondent choices and comparing the AMEs of all attributes from table 1 relative to their respective reference categories.

<sup>&</sup>lt;sup>7</sup> We choose the following reference categories: attribute A5 'Expert Committee' (actor), attribute P4 'More administrative staff' (proposal), attribute R1 'Potentially threatens Court' (reaction), and Germany (country fixed-effects).

<sup>&</sup>lt;sup>8</sup> We also provide the estimated raw coefficients of a country-by-country analysis in table D in the online appendix.

In the second subsection, we estimate the same model for the subsample of government supporters. We argue that this provides a harder test of whether public support for an independent judiciary in Europe is robust enough to deter nondemocratic behavior aimed at limiting independence by governments and parliamentary majorities.

In the third subsection, we utilize our comparative design and shift the analytical focus to the country level. We demonstrate, through the use of robust regressions, that important country-level characteristics, such as the degree of polarization and the level of trust in the court, are associated with the size of the AMEs for the subset of government supporters after estimating the AMEs in a country-by-country analysis.

#### 5.1. Judicial independence not at stake?

In this section, we present the analysis based on all respondents across nine countries. Figure 2 displays the AMEs for each attribute and their respective 95% confidence intervals, while also including the three baseline categories as a reference.<sup>9</sup>

First, let us examine the role of the proposer of a reform. Across all respondents in this diverse set of countries, we find that respondents are most likely to support reforms of the judiciary if proposed by a non-partisan expert committee. The government (most often a governing coalition of several parties) is the next preferred proposer. Even the same reform package would be about 7 percentage points less preferred on average when proposed by the government rather than an expert committee. It seems that respondents most clearly reject reform proposals independent of its particular content or the reaction of the court if such a proposal is supposedly driven by partisan motifs. Thus, proposals seem to be more preferred the less partisan the proposer is.

Second, when looking at the actual reform content figure 2 shows that a neutral reform, which aims to increase the number of administrative staff, is most preferred.

<sup>&</sup>lt;sup>9</sup> While estimated, country fixed-effects are not shown here. We document the respective graphs of a country-by-country analysis in the appendix in in Figure C.



Figure 2: Effects of Reform Proposer, Reform Content and the Court's Reaction across nine countries

Change in Pr(Choosing Reform Proposal) relative to resepctive baseline category

*Note:* The plot depicts estimated AMEs (and their 95% confidence intervals) of Reform Proposer, Reform Content and the Court's Reaction across nine countries.

Two of the reforms that involve the parliament – either to grant them the right to reconfirm judges or to override a court's decision – seem to be on average most popular court-curbing measures across all countries. Granting the legislature the power to regularly reconfirm judges seems to be only about 3 percentage points less preferable on average than the neutral reform while allowing legislative overrides of a court's decision is already almost 7 percentage points less preferred on average than the neutral reform. Again, these results hold independent of who proposes the particular reforms. However, the proposal that the government can appoint half of the judges serving on the court is considered the least preferred among all court-curbing measures. Interestingly, some citizens either do not comprehend that reforms involving the legislature also limit judicial independence, or they accept such limitations once an elected parliament can be held accountable.

These findings suggest that, on average, citizens have passed the resilience test that we have set up and show some commitment to judicial independence. On average, they prefer the neutral reform more than any of the proposals limiting judicial independence. Given those results we see the danger that a given government can use its legislative majority to conceal nondemocratic action. While the opposition may voice concerns in parliament, the legislative majority can ultimately pass proposals aimed at limiting judicial independence that are more acceptable on average than when the government is doing it without relying on their majority in parliament. Passing proposals that are not easily comprehensible, with the assistance of democratically elected representatives, it can become challenging for citizens to uncover nondemocratic action.

Third, figure 2 provides a clear result when examining the impact of a court's reaction to proposed judicial reform measures. The court's response matters for how much the public prefers a reform package. The negative effect of choosing a reform proposal is highest when the court states that the proposal *definitely* threatens the independence of the court, and it is smallest when the court merely states that the reform *potentially* threatens its independence. This pattern would be in line with a preference for judicial independence, at least as long as citizens trust the court and perceive the judiciary as independent. If they do not trust the court, the signals of a court expressing concerns about limitations on judicial independence might not work.

In the next section, we will set up a resilience test and evaluate the extent to which respondents close to the government are inclined to support nondemocratic reforms of their team.

#### 5.2. Judicial independence (not) at stake!

The preceding section shows that judicial reform proposals are mostly favored when they do not compromise the court's independence and proposed by non-partisan experts. Political actors proposing reforms are widely depreciated — no matter what the reform actually entails.

Current research suggests (e.g., Carey et al., 2022; Fossati, Muhtadi and Warburton, 2021; Graham and Svolik, 2020; Saikkonen and Christensen, 2023) that citizens support illiberal policies rather than punish their own partisan leaders for proposing them when citizen expect some political (partisan) benefits from these policies. How do we determine then if support for judicial independence is sufficiently strong to prevent citizens from sacrificing it for partisan concerns? We argue that it has to hurt to be credible and derive two implications for a resilience test. Citizens pass our resilience test and show some credible commitment to judicial independence when, first, rejecting court-curbing proposals is costly to a respondent and, second, when the signal a court sends matters.

First, citizens who do not support the government are inclined to oppose courtcurbing measures that grant additional power to the government. Their reasons for doing so may be based on valuing judicial independence or simply to prevent political opponents from gaining additional authority. For citizens who do not support the government merely rejecting a proposal that empowers the government is not costly. Hence, it does not necessarily indicate a credible commitment to the norm of judicial independence. However, for government supporters, rejecting a courtcurbing proposal that would empower their preferred (partisan) government is costly. We therefore focus here on the subset of government supporters four our resilience test. If the estimated effect of the court-curbing reform ("Government appoints half of the judges") is both significant and negative in comparison to the neural reform ("More administrative staff"), i.e. the baseline category, government supporters show on average some resilience. Such a preference demonstrates a credible commitment to judicial independence as even government supporters, on average, reject judicial reforms that would otherwise enhance the influence of their preferred government.



Figure 3: Effects of reform proposals and court's reaction for government supporters



*Note:* The plot depicts estimated difference in predicted probability (and their 95% confidence intervals) of a reform proposal and the court's reaction to such proposals for the subsample of government supporters compared to its respective baseline categories.

Second, given that highest courts might constrain the government's agenda in a system of checks and balances, government supporters who pass our resilience test and show some credible commitment to judicial independence should also be less likely to choose a reform heavily criticized by the court. In contrast, if government supporters behave solely as partisans, they would not be concerned with the court's statement that a reform threatens judicial independence. We test this implication by estimating the effects regarding the court's reaction to a given proposal, once again focusing on government supporters: If the estimate of the verbally most drastic court response ("definitely threatens") is both significant and negative compared to the most moderate response ("potentially threatens"), then this is evidence that government supporters passed our resilience test and show some credible commitment to judicial independence.

Figure 3 summarizes the relevant AMEs to test both implications for our resilience test, using the same model specification as before. For each country, we subset the data to *government supporters*, referring to respondents who position themselves close to the government, i.e., respondents in the lower tertile of the distribution of perceived absolute distances between the respondents own placement and where they place their respective government on the same ideological scale.

To evaluate the first implication, we consider the estimated effects for the content of reforms. We can replicate the main result for the critically relevant subgroup of government supporters from the previous section.<sup>10</sup> We find a negative AME indicating that government supporters are on average less likely to prefer a courtcurbing proposal ("Government appoints half of the judges") than the neural reform ("More administrative staff"). In sum, supporters of the government systematically reject judicial reforms that would empower their preferred government instead of a more neutral one. The have thus passed our resilience test.

To evaluate the second implication, we examine the estimated effects regarding the courts' response to reforms among government supporters. We find that the more drastically the court points out that a given proposal poses a threat to judicial independence, the less the government's supporters systematically favour a particular reform proposal. Specifically, when the courts assert that a specific reform "definitely threatens" their independence, government supporters are statistically less likely to support such a reform. They show some nontrivial form of resilience that consistent with the behavior expected from citizens who value judicial independence.

In sum, citizens of the countries in our sample successfully pass our resilience test. They show some credible level of support for judicial independence necessary to deter nondemocratic behavior by elected governments and parliamentary majorities.<sup>11</sup> In the

<sup>&</sup>lt;sup>10</sup> We report the estimated raw coefficients in table E of the online appendix. We also present there the respective AMEs in figure D when we evaluate the experiment in each country separately.

<sup>&</sup>lt;sup>11</sup> When evaluating both implications, the magnitude of both respective estimated AMEs at the country level seem to be valid measures of judicial independence. In Appendix L we show that our estimated

following section, we will examine whether the estimated effects vary meaningfully with characteristics that describe a society's political culture, its degree of polarization, and its trust in the highest court as institution.

# 5.3. Modelling variation in estimated effects across countries

Using a comparable experimental design and identical baseline reform package in all nine countries, we can systematically examine variation in estimated effects across countries. In this section, we shift from an individual-level analysis to a country-level analysis.

The encouraging news from our findings is that citizens across the countries in our study show some resilience to backsliding. Even government supporters, the group of citizens that have to make the most costly decisions as they do not follow their partisan instincts, demonstrate a certain level of commitment to judicial independence. They are more likely to prefer a neutral reform over a proposal that would weaken the court's independence even though such a proposal would strengthen their favored government. Additionally, we observe that the degree to which government supporters reject specific court-curbing proposals differs among countries. Previous studies (e.g., Bartels and Johnston, 2020; Levitsky and Ziblatt, 2018; Svolik, 2019) suggest that different levels of resilience are associated with varying degrees of polarization across countries. Therefore, we test if we can identify such a pattern across the countries in our study.

Polarization is a concept that does not directly travel to parliamentary democracies, which is the majority of countries in our sample.<sup>12</sup> In parliamentary democracies, the opposition serves as an ideological alternative to the government. Nevertheless, when government and opposition are perceived as very distant, the country is more polarized

AMEs predict the perceived level of independence of the national justice systems among the general public, using a different data source, the Eurobarometer. Moreover, in online appendix K, we demonstrate that we do not identify substantive differences between respondents who posses knowledge about the court and those who do not.

<sup>&</sup>lt;sup>12</sup> France is a semi-presidential republic, but by definition we find a strong parliament in a semipresidential system.





*Note:* The plot depicts the estimated AMEs for the reform proposal that the 'Government appoints half of the judges' for the subsample of government supporters in each country against the *degree of polarization* adjusted for institutional differences. The plot includes partial regression lines based on a linear fit from robust regressions (using a Huber-M-estimator) to account for outliers and possibly high leverage points. The robust regressions are estimated on 100 replicated datasets that vary because of estimation uncertainty in the adjusted AMEs. The thick line represents the expected values based on a robust regression using the point estimates of the adjusted AMEs per country as dependent variable for the subsample of government supporters.

compared to countries where government and opposition are seen as indistinguishable. This affects the ideological disagreement between respondents and the government. We anticipate that in more polarized political cultures, there will be greater variation in perceived ideological distances, while in cases where the opposition lacks a distinct ideological platform, there will be less variation. Thus, a country's *degree of polarization* is at least correlated with the variance or, as we measure it, the standard deviation of the distribution of respondents' perceived absolute ideological distance from the government.

Our comparative design presents an additional challenge. While the probability of respondents rejecting court-curbing proposals may be associated with the degree of polarization, some of the variance maybe attributed to differences in respondents' frame of reference when evaluating specific court-curbing proposals. One relevant institutional characteristic that could originate from the frame of reference is whether the government is already involved in selecting judges for the highest court. Table 2 shows that three countries (France, Italy, and Spain) have explicit government involvement in selecting judges, while the remaining six countries do not. Government supporters in the former countries might be *a priori* less inclined to reject the proposal that the 'Government appoints half of the judges.' Therefore, we adjust for institutional differences that could lead respondents to evaluate the very same court-curbing proposal differently because of a different frame of reference. We partial out the institutional effects from both, the estimated AMEs for the subsample of government supporters per country<sup>13</sup> as well as the *degree of polarization* per country using a dummy variable taking a value of '1' for countries in which the government selects judges and '0' otherwise.<sup>14</sup>

Does the support for the court-curbing proposal, as analyzed earlier, exhibit an association with the degree of polarization across countries, even after adjusting for institutional differences? Figure 4 summarizes our analyses and demonstrates that aggregated individual behavior aligns with key characteristics of varying political cultures. We observe that the more the perceived distance to the government among citizens varies — i.e., the more polarized a country is — the more likely government supporters are to choose the nondemocratic proposal over the neutral reform, as indicated by the corresponding AME. The estimated slope of the thick robust regression line in figure 4 is 0.15 (with standard error of 0.02), suggesting that, on average, government supporters in countries with less polarized political cultures (e.g. Germany, the Netherlands, or Sweden) show higher levels of rejection towards court-curbing

<sup>&</sup>lt;sup>13</sup> We report the respective AMEs in the appendix in figure D.

<sup>&</sup>lt;sup>14</sup> Partialling-out institutional effects is equivalent to running a linear regression of the estimated country-specific AMEs on the degree of polarization while "controlling for" the dummy variables representing institutional differences across the nine cases. We report the respective regression results in table F.

proposals compared to countries with more polarized societies (e.g., Hungary and Poland). This analysis accounts for outliers and down-weights high leverage points.<sup>15</sup> The thinner robust regressions lines represent the analysis of 100 replicated datasets, which account for estimation uncertainty in the AMEs.<sup>16</sup> These findings seem consistent with existing literature (e.g. Svolik, 2020; Bermeo, 2016, 15), indicating that the degree of polarization in society affects the varying levels of democratic backsliding observed across countries.

The second observation from the previous section highlighted the impact of trust in courts on the effectiveness of courts communicating their opinion on judicial reforms. The courts' reactions matter in all countries, albeit to varying degree. Figure 5 demonstrates the association between the level of public trust in courts and the estimated magnitude of the AMEs for the court's response across the nine countries. To measure the average level of trust in the highest court, we employ the standard 'trust-in-institution' item for highest courts on a 11-point scale.

Figure 5 illustrates that the strength of the effect when a court's responds that a reform "definitely threatens" judicial independence, is associated with the average level of trust in courts. As expected, we find that a higher level of trust in the highest court enhance the effectiveness of the court's response. The estimated slope of the thick robust regression line is -0.02 (with a standard error of 0.007). This suggests that, on average, respondents in countries with higher levels of trust in their courts (e.g. Germany, the Netherlands, or Sweden) reject reform proposal at higher rates, when the court responds in most severe language. Accounting for outliers and down-weighting high leverage points, an increase of one unit in a country's mean level of trust on

<sup>&</sup>lt;sup>15</sup> The robust regression results in table F in the online appendix are very similar when we do not control for institutional differences in that manner. Additionally, we find that differentiating between countries with or without a supreme court, as a way to account for diverse legal traditions, does not yield significant differences.

<sup>&</sup>lt;sup>16</sup> We generated these replicated datasets by randomly drawing 100 replicates for each country's estimated AMEs from a normal distribution, with a mean representing the point estimate of the respective AME and a standard deviation representing the estimated standard error. We report those AMEs in the appendix in figure D.



Figure 5: Strength of a Court's Reaction across Countries by level of trust in courts

*Note:* The plot depicts the estimated AME for the court's response that a reform proposal 'definitely threatens independence' for the subsample of government supporters against the reported mean level of trust in the respective highest court per country. The plot includes a linear fit from a robust regression (using a Huber-M-estimator) to account for outliers and possibly high leverage points. The robust regressions are estimated on 100 replicated data-sets that vary because of estimation uncertainty in the AMEs. The thick line represents the expected values based on a robust regression using the point estimates of the AMEs per country as dependent variable for the subsample of government supporters.

the 11-point scale is, on average, associated with a 2-percentage-point increase in the estimated rejection rate. In contrast, countries experiencing democratic backsliding, such as Hungary and Poland, show lower rejection rates. Notably, established European democracies such as Spain and France, which have relatively lower levels of trust in their courts, also show lower rejection rates.

Overall, the results support our expectation that the public's level of trust in courts is an important factor that affects the response by government supporters to a given reform proposal identified as threatening by courts. Further comparative research is needed to determine whether trust levels also influence a court's strategy in response to threats to judicial independence. It is important to note that the associations shown in Figures 4 and 5 do not imply causality, and the limited number of countries restricts our ability to account for all potential confounding factors. Nevertheless, the patterns offer meaningful insights into macro-level characteristics — e.g., the degree of polarization and the level of trust in courts — which contribute to existing research on democratic backsliding. Thus, the findings shed light on the conditions that make nondemocratic judicial reforms more or less likely to succeed.

# 6. Conclusion

How do citizens perceive nondemocratic reforms of the judiciary? Citizens who reject nondemocratic reform porposals of highest courts and commit to the norm of an independent judiciary strengthen the resilience of a democratic system. By examining whether citizens are willing to compromise the democratic norm of an independent judiciary, we provide a litmus test for democratic resilience. Specifically, if supporters of a government do not support court-curbing reforms that empower their preferred government, the democratic system is more resilient than if citizens were to support such reforms. To assess this argument, we conducted discrete choice experiments in nine European countries.

Our results indicate that respondents in all countries demonstrate some commitment to the democratic norm of an independent judiciary. Citizens prefer on average the neutral reform proposal over nondemocratic ones. The findings further suggest that it becomes more challenging for respondents to identify court-curbing measures (Nalepa, Vanberg and Chiopris, 2019) once such a reform grants more power to an elected legislature. For a more rigorous litmus test of democratic resilience, we closely examined the subset of government supporters in our surveys. It is particularly costly to them to reject a court-curbing reform that would empower their preferred government. But even they tend to reject the court-curbing reforms and most prefer the neutral reform proposal.

While those findings provide encouraging news regarding public support for judicial independence and their level of democratic resilience, our cross-country analysis suggests caution. In highly polarized societies, which are known to be more prone to democratic backsliding (e.g., Bartels and Johnston, 2020; Levitsky and Ziblatt, 2018; Svolik, 2019), reforms aimed at limiting judicial independence are less strongly rejected compared to less polarized societies. Additionally, in societies where trust in the highest courts is low, citizens take into account courts' reactions to attacks on judicial independence to a lesser extent than in societies where such trust is high.

These findings have several important implications not only for the literature on comparative judicial politics but also for the literature on civic culture, and the literature on democratic governance and accountability. Overall, citizens seem to safeguard judicial independence, which implies strong diffuse support for the judiciary. Diffuse support refers to support "independent of the effects of daily outputs" (Easton, 1965, 273), suggesting that highest courts have established a solid position in the system of checks and balances. Moreover, when focusing on government supporters and examining general patterns of behavior across countries, we find stable "patterns of orientation" (Almond and Verba, 1963, 15) towards the democratic norm of an independent judiciary. Our findings may not imply that a government will immediately face punishment for attempts to curb the court. However, they do suggest that governments will not easily get away with court-curbing in the long run.

The nondemocratic reforms in Hungary, beginning around 2011 (Grabenwarter et al., 2011), and in Poland, around 2017 (Barrett et al., 2017), illustrate that attacks on judicial independence are not new to European democracies. However, the reforms may increase awareness for the consequences of court-curbing among democratic citizens elsewhere. The intensifying protests 2023 in Israel, which lead Prime Minister

Netanyahu to delay his judicial reform (Picheta, 2023), further encourage research on how citizens may become aware of the effects of limits to judicial independence. Our findings suggest that, at the very least, once European citizens become aware of the implications of reforms that limit judicial independence, they are more likely to stand with the judiciary.

Moreover, our findings have implications for understanding the transformation process of the current democratic system of governance. We can observe a tendency where elected officials increasingly delegate power to non-elected actors of so-called *non-majoritarian institutions* (Bovens and Schillemans, 2020) in order to shape public policy. Regulatory bodies, central banks, and, in the context we focus on here, highest courts serve as prime examples. Our results demonstrate that the public may even defend the independence of institutions that are not directly accountable to them. Further research is needed to explore the conditions under which this occurs despite the lack of accountability.

Finally, our results imply that we need to take into account the context to a greater extent when studying citizens' adherence to democratic norms. In highly polarized societies and in those where courts are less trusted, democratic resilience is likely to be lower as partisan support may outweigh support for democratic norms. In this regard, the inclusion of a variety of countries in our study allows us to contextualize established findings on the growing polarization in the American society. At first glance, democratic norms appear relatively stable in the democracies we assessed. However, upon closer examination, increasing polarization and potential distrust in courts will subject democratic norms to a stress test.

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# Online Appendix

Citizens' Commitment to Judicial Independence A Discrete Choice Experiment in Nine European Countries

# Table of Contents

A.	Electoral support and judicial reform in Poland	Ι
B.	Respondents' frames of reference	II
C.	Comparative survey design	III
D.	Comparison of unweighted and weighted data	IV
E.	Country-by-Country Results	VI
F.	Baseline estimation results	VIII
G.	Country-by-Country baseline estimation results	IX
H.	Sub-sample Analysis: Government Supporters	XI
I.	Country-by-Country Results for Government Supporters	XII
J.	Robust regression results of macro analysis	XIV
K.	Does knowledge about the court matter?	XVI
L.	Validation	XVIII
	References	XXI

#### A. Electoral support and judicial reform in Poland



Figure A: Approval ratings of the governing PiS which introduced judicial reforms in Poland and the European response to such reforms

Poland serves as a suitable empirical example, illustrating the trade-off discussed in this study. The solid line in figure A depicts the approval ratings of the Polish governing Party PiS over time, focusing on the electoral period between 2015 to 2019.<sup>1</sup> Despite the PiS's efforts to curtail judicial independence, the approval show an overall increasing trend. The examples highlighted in the figure (indicated by labels connected by the dashed lines) shed light on specific judicial reforms. The fact that the European Union took legal measures (indicated by labels connected by the dotted lines) to counteract these reforms further demonstrates the severity of the situation. The European activities suggest that citizens were, at the very least, made

Own illustration with data from https://www.politico.eu/europe-poll–of–polls/poland/ and information by Reuters. 2018. "Chronology: Poland clashes with EU over judicial reforms, rule of law." Kellermann. 2020. "Justizreform in Polen." Deutschlandfunk.

<sup>&</sup>lt;sup>1</sup> The gray section of the solid line represents the approval ratings since the first Covid-19 case in Poland. We exclude this period from our considerations due to the unknown effects of the outbreak on governmental approval. However the approval ratings are included for the sake of completeness.

aware of the judicial reforms and their potential impact on judicial independence. Additionally, Polish citizens protested against the reforms by taking to the streets. In other words, there were Polish citizens who opposed the political reforms limiting judicial independence, while others continued to support the governing majority responsible for implementing such reforms.

#### B. Respondents' frames of reference

Respondents from the various countries maybe influenced by different frames of reference when assessing reform packages. The first proposal (P1, in table 1 in the article) grants the government explicit power in selecting judges. In France, Italy, and Spain, the government can explicitly select up to one-third of the judges (see table 2 in the article). However, in Germany, Hungary, and Poland, the legislature selects all judges. The government is involved only implicitly through its legislative majority. Lastly, in the Netherlands, Sweden, and the United Kingdom, non-partisan actors dominate the selection process. In these countries, the government may select judges only from pre-determined lists. For instance, in Sweden qualified candidates apply to a non-political board, which then proposes nominees to the government (see table 2 in the article). Thus, across countries respondents are exposed to different frames of reference when evaluating the proposal of the government having the authority to appoint half of the judges.

The second proposal (P2, table 1 in the article) does not imply a different frame of reference. Although the term length of judges differs across countries, ranging from nine years in the constitutional courts of France, Italy, Poland, and Spain to life-tenure with age limits in the supreme courts of the Netherlands, Sweden, and the United Kingdom, none of the countries permit re-election (refer to Table 2 in the article). Thus, nowhere are procedures in place that resemble our hypothetical reform that the legislature reconfirms judges.

The reform proposal P3 (table 1 in the article), entails granting the legislature formal authority to evade judicial decisions. To the best of our knowledge, no such formal rights exist in any of the countries under consideration in this study. It has been acknowledge that implicitly, the legislature can always pass bills to circumvent the judiciary (Engst, 2021, Ch.2). However, this characteristic is an inherent aspect of legislative power and is not subject to cross-country variation. Consequently, respondents encounter a similar frame of reference on this dimension.

It is worth noting that the highest courts in the Netherlands, Sweden, and the

United Kingdom adhere to the Anglo-American supreme court model, while the remaining countries follow the Austrian-German tradition of constitutional review (see e.g. Epstein, Knight and Shvetsova 2001, 120-123, Kelsen 1942). The outlined features (see table 2 in the article) highlight differences and similarities among the courts across their legal traditions. We account for the different frames of reference respondents may employ when comparing the results across countries.

Finally, the row on "knowledge" in table 2 in the article indicates the share of respondents who correctly identify the chief justice of a court. We can plausibly assume that a court's societal salience — which we cannot measure directly — influences the public's knowledge regarding that court — which we can measure. Indeed, we observe that 53% and 70% of the respondents correctly identify the chief justices in Hungary and Poland, both countries where the courts are widely discussed in the public sphere. In contrast, only about 21% are able to identify the Dutch chief justice, which is less surprising considering that the court's power to settle constitutional matters is limited (Art. 120 Dutch Constitution). One could argue that a court's salience, measured by the public's knowledge about the court as a proxy, affects how people evaluate reform packages of the judiciary. However, in online appendix K we demonstrate that knowledge about the court does not substantively influence our findings.

#### C. Comparative survey design

The discrete choice experiment was administered as part of an online survey on political institutions and parties in nine European countries from February, 2<sup>nd</sup> to March 4<sup>th</sup>, 2020 (with some variation among countries). Respondents were informed about who designed the survey, the content and the aim of the survey on the introductory screen. Moreover, they were informed that they could refuse to answer individual questions or fully abort the survey at any time. Finally, it was made clear that responses are stored anonymously and kept completely confidential. Personal identifiable information was never exchanged between the survey company and the researchers. Each survey was about 20 minutes long and to rule out effects of the survey's length the discrete choice experiment was randomly positioned either at the first or second part of the survey. About 2000 respondents per country were recruited by the hired survey company based on predefined quotas composed of a country's gender and age distribution adopted from the 2019 European Election Study (Schmitt et al., 2020) and Gallup International.

In tables A and B we examine the extent to which the realized samples in each country accurately represent the respective population. Specifically, we compare those quotas to the realized proportions in the country-specific samples illustrating that the deviations from the quotas in the realized samples are neglectable.

Category	(	Germany	y	1	Hungary	7	Unit	ed King	dom		France			Italy	
	Proportion	Quota	Difference	Proportion	Quota	Difference	Proportion	Quota	Difference	Proportion	Quota	Difference	Proportion	Quota	Difference
Female	51.21	51.09	0.12	51.96	52.99	-1.03	50.27	51.15	-0.88	53.80	52.39	1.40	53.58	51.88	1.69
Male	48.78	48.91	-0.14	48.03	47.02	1.01	49.72	48.84	0.87	46.19	47.59	-1.41	46.41	48.09	-1.69
18-24	9.77	9.12	0.65	9.18	9.60	-0.43	10.70	10.96	-0.26	11.10	10.20	0.89	7.94	8.19	-0.26
25-39	23.37	22.75	0.62	25.13	24.18	0.95	25.06	25.49	-0.43	23.45	23.25	0.20	19.74	20.63	-0.90
40-54	26.90	25.56	1.34	28.34	26.91	1.43	25.38	25.33	0.04	24.17	25.37	-1.20	29.82	28.29	1.53
55-64	14.80	17.00	-2.20	16.48	16.33	0.14	14.95	15.07	-0.12	15.21	16.00	-0.80	16.75	15.94	0.81
65+	25.13	25.58	-0.45	20.85	22.96	-2.12	23.87	23.13	0.73	26.05	25.15	0.89	25.72	26.91	-1.20

Table A: Country-specific quotas and deviations (I)

Country specific quotas are based on information from European Elections Study 2019 and Gallup International. Proportion represents the realized quotas per category in our samples

Netherlands Poland Sweden Category Spain Proportion Quota Difference Proportion Quota Difference Proportion Quota Difference Proportion Difference Ouota Female 52 13 51 49 0.63 50.55 50.76 -0.21 53 41 52 24 116 49.84 50.13 -0.30 47.86 49.44 49.24 0.20 46.58 47.74 -1.17 50.15 49.88 0.27 Male 48.50-0.6418-24 8.10 8.22 -0.13 11.65 10.81 0.83 10.73 9.51 1.22 8.58 10.43 -1.86 25-39 22.84 23.35 -0.51 22.47 23.09 -0.62 29.10 28.24 0.85 25.30 25.31 -0.02 25.99 40-54 29.58 0.58 24.86 -0.93 24.77 30.16 -1.1423.24 24.1626.06 1.29 55-64 15.51 15.44 0.06 18.34 16.61 1.73 16.06 17.18 -1.12 16.48 14.39 2.08 25.09 23.38 -0.82 20.85 23 55 65+ 23.36 -0.03 22.66 23 47 20.88 -0.04 -1.54

Table B: Country-specific quotas and deviations (II)

Country specific quotas are based on information from European Elections Study 2019 and Gallup International. Proportion represents the realized quotas per category in our samples.

Moreover, measures were implemented to ensure the quality of the data. This included the identification of speeders who quickly rushed through the survey, identifying straight-liners who constantly choose the same answer category, and incorporating an open-ended question to evaluate the presence of mindless responses.

# D. Comparison of unweighted and weighted data

In figure B, we replicated our analysis of the unweighted data presented in the article using weighted data. The construction of weights is based on state-of-the-art methodology known as the raking procedure (Deming and Stephan, 1940). This procedure involves iteratively matching the weighted marginal distributions of a sample to the known population margins, such as a country's gender and age distribution. Esteemed comparative survey instruments, including the European Social Survey (European Social Survey, 2014) and the American National Election Studies (Debell and Krosnick, 2009), employ the same procedure. As illustrated in figure B, the results are essentially the same regardless of whether we use the weighted or the unweighted data. Therefore, we opt for the parsimonious approach and use the unweighted data throughout our analysis.



V

# E. Country-by-Country Results

In this section, we present the analysis of our baseline model across all respondents in each of the nine countries. Figure C displays the estimated size of the AMEs and their respective 95% confidence intervals per country, while also including the three baseline categories as a reference. Remarkably similar patterns are observed within all three components of the reform packages across all countries. First, let us examine the role of the proposer of a reform. In this diverse set of countries, we find that respondents are most likely to support reforms of the judiciary if proposed by a non-partisan expert committee. The government is always the next preferred proposer. The strongest effect we observe is in Hungary, where citizens, on average, are about 15 percentage points more likely to favor the same reform if it is proposed by an expert committee (the baseline category) compared to the government. Parties are seen as the least preferred proposers of judicial reforms. The common pattern, to have reforms proposed by non-partisan actors, might suggest a preference for a judiciary that is independent of partisan views and can serve as a neutral referee.





Second, when looking at the actual reform content we find with the exception of France and Hungary that the neutral reform, which aims to increase the number of administrative staff, is most preferred (or as in Italy and Poland at least not systematically less preferred). Two of the reforms we designed that involve the parliament – either to grant them the right to reconfirm judges or to override a court's decision – seem to be most popular court-curbing measures among respondents in all countries. In our samples from France and Hungary, the idea of granting parliament the power to regularly reconfirm judges is even systematically more popular than the neutral reform. It seems that involving the parliament, rather than the government (despite the government likely having a secure majority in parliament), in granting power to curb the court seems slightly more acceptable. Granting the legislature the power to regularly reconfirm judges seems to be more acceptable than to allow legislative overrides of a court's decision – although the difference is not systematic in most countries. However, across all countries, the proposal that the government can appoint half of the judges serving on the court is considered the least preferred among all court-curbing measures. These findings mirror the findings of the pooled analysis. On average, citizens pass our litmus test of democratic resilience. They show some commitment to judicial independence. Almost everywhere they prefer the neutral reform not systematically less than any of the proposals limiting judicial independence.

Third, we observe common patterns when examining the impact of a court's reaction to proposed judicial reform measures as well. The court's response matters in all countries, although some attributes are not systematically different from one another. The negative effect of choosing a reform proposal is highest when the court states that the proposal *definitely* threatens the independence of the court, and it is smallest when the court merely states that the reform *potentially* threatens its independence. This pattern would be in line with a preference for judicial independence, as long as citizens trust the court and perceive the judiciary as independent. For instance, respondents do not significantly account for different statements by the French *Conseil Constitutionnel* and the Spanish *Tribunal Constitucional*. In our surveys, we also find comparatively low levels of public trust in those courts, which is consistent with previous research on the French (Hönnige, 2007; Sternberg, 2019) and Spanish Courts (Garoupa and Magalhães, 2020, p.274). Therefore, citizens committed to judicial independence may not consider deeply the signals of a court expressing concerns about limitations on judicial independence, when they consider the court as less trustworthy.

# F. Baseline estimation results

In table C below we present the estimated raw coefficients of the conditional logit model using country fixed effects based on the pooled unweighted data. These coefficients serve as the basis for calculating average marginal effects, which we present as quantities of interest in figure 2 in the main body of the text. Moreover, table C provides an overview over the number of observed choices of all respondents across the nine countries.

	Coef.	Std.Err.
Reform proposed by		
Largest party on the left	-0.69***	0.02
Largest moderate party	-0.68***	0.02
Largest party on the right	-0.76***	0.02
Government	-0.32***	0.02
Reform content		
Govt. appoints half of the judges	-0.58***	0.02
Parliament reconfirms judges	-0.13***	0.02
Parliament can override court	-0.28***	0.02
Reaction Court		
Threatens Court	-0.14***	0.01
Definitely threatens Court	-0.28***	0.01
Countries		
Hungary	-0.03	0.03
UK	-0.05***	0.02
France	-0.07**	0.03
Italy	-0.05*	0.03
Spain	-0.06**	0.03
Netherlands	-0.08***	0.03
Poland	-0.06*	0.03
Sweden	-0.08***	0.03
Observations	136224	
Log-Likelihood	-44907	
No. of choices	68112	
No. of Respondents	11352	

#### Table C: Conditional Logit Results across nine Countries

Baseline categories omitted; \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01.

# G. Country-by-Country baseline estimation results

In addition to the raw model estimates of the pooled data in appendix F, we present the estimated raw coefficients of the same conditional logit model but estimated within each of our nine country samples, using unweighted data in table D below.

(1)         (2)         (3)         (4)         (5)         (6)         (7)         (8)         (9)	Germany Hungary UK France Italy Spain Netherlands Poland Sweden	ef. Std.Err. Coef. Std.Err.		$56^{***}$ 0.06 $-0.77^{***}$ 0.06 $-0.59^{***}$ 0.04 $-0.61^{***}$ 0.06 $-0.61^{***}$ 0.06 $-0.98^{***}$ 0.07 $-0.90^{***}$ 0.06 $-0.38^{***}$ 0.06 $-0.96^{***}$ 0.06	$49^{***}$ 0.07 $-0.71^{***}$ 0.06 $-0.84^{***}$ 0.05 $-0.63^{***}$ 0.06 $-0.48^{***}$ 0.06 $-0.74^{***}$ 0.06 $-0.82^{***}$ 0.06 $-0.69^{***}$ 0.06 $-0.69^{***}$ 0.06	$34^{***}$ 0.08 -0.93^{***} 0.07 -0.56 <sup>***</sup> 0.04 -0.52 <sup>***</sup> 0.06 -0.67 <sup>***</sup> 0.06 -0.95 <sup>***</sup> 0.07 -0.99 <sup>***</sup> 0.07 -0.43 <sup>***</sup> 0.06 -0.87 <sup>***</sup> 0.06	$20^{***}$ 0.06 $-0.62^{***}$ 0.06 $-0.20^{***}$ 0.04 $-0.27^{***}$ 0.06 $-0.22^{***}$ 0.06 $-0.49^{***}$ 0.06 $-0.31^{***}$ 0.06 $-0.37^{***}$ 0.05		$16^{***}$ 0.07 $-0.42^{***}$ 0.06 $-0.58^{***}$ 0.04 $-0.52^{***}$ 0.06 $-0.25^{***}$ 0.06 $-0.85^{***}$ 0.06 $-0.50^{***}$ 0.06 $-0.28^{***}$ 0.05 $-0.82^{***}$ 0.06	$63^{***}$ 0.06 0.11* 0.06 -0.15^{***} 0.04 0.17^{***} 0.06 0.08 0.06 -0.12^{**} 0.06 -0.26 <sup>***</sup> 0.06 -0.02 0.06 -0.39^{***} 0.06	88*** 0.07 0.08 0.06 -0.26*** 0.04 0.09 0.06 -0.07 0.06 -0.45*** 0.06 -0.33*** 0.06 -0.19*** 0.06 -0.68*** 0.06		$17^{***}$ 0.05 -0.05 0.04 -0.24^{***} 0.03 -0.06 0.04 -0.14^{***} 0.04 -0.04 0.04 -0.21^{***} 0.04 -0.14^{***} 0.04 -0.15^{***} 0.04	$45^{***}$ 0.05 $-0.19^{***}$ 0.05 $-0.47^{***}$ 0.03 $-0.10^{**}$ 0.05 $-0.15^{***}$ 0.04 $-0.06$ 0.05 $-0.37^{***}$ 0.05 $-0.27^{***}$ 0.05 $-0.40^{***}$ 0.04	88 13464 26232 13416 14040 13764 13080 13524 15816	25 -4427 -8577 -4446 -4725 -4403 -4237 -4566 -5046	44 6732 13116 6708 7020 6882 6540 6762 7908	74         1122         2186         1118         1170         1147         1090         1127         1318	
(2)	Hungary U	Coef. Std.Err. Coef.		-0.77*** 0.06 -0.59**	-0.71*** 0.06 -0.84**	-0.93*** 0.07 -0.56**	-0.62*** 0.06 -0.20**		-0.42*** 0.06 -0.58**	0.11* 0.06 -0.15**	0.08 0.06 -0.26**		-0.05 0.04 -0.24**	-0.19*** 0.05 -0.47**	13464 26232	-4427 -8577	6732 13116	1122 2186	
(1)	Germany	Coef. Std.Err.		-0.56*** 0.06	-0.49*** 0.07	-1.34*** 0.08	-0.20*** 0.06		$-1.16^{***}$ 0.07	-0.63*** 0.06	-0.88*** 0.07		-0.17*** 0.05	s -0.45*** 0.05	12888	-3925	6444	1074	
			Reform proposed by	Largest party on the left	Largest moderate party	Largest party on the right	Government	Reform content	Govt appoints half of the judges	Parliament reconfirms judges	Parliament can override court	REACTION COURT	Threatens independence	Definitely threatens independence	Observations	Log-Likelihood	No. of choices	No. of Respondents	

# Table D: Conditional Logit Results for nine Countries

# H. Sub-sample Analysis: Government Supporters

In table E, we replicate the baseline models for the subset of government supporters; i.e., respondents who position themselves close to the government. We use these raw estimated coefficients to calculate the average marginal effects, which we present in figure 2.

Table E: Conditional Logit Results of Government Supporters across nine Countrie
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	Coef.	Std.Err.
Reform proposed by		
Largest party on the left	-0.70***	0.03
Largest moderate party	-0.48***	0.03
Largest party on the right	-0.64***	0.03
Government	-0.09***	0.03
Reform content		
Govt. appoints half of the judges	-0.39***	0.03
Parliament reconfirms judges	-0.05*	0.03
Parliament can override court	-0.18***	0.03
Reaction Court		
Threatens Court	-0.11***	0.02
Definitely threatens Court	-0.20***	0.03
Countries		
Hungary	-0.03	0.05
UK	-0.07**	0.03
France	-0.08	0.05
Italy	-0.05	0.05
Spain	-0.03	0.04
Netherlands	-0.13***	0.05
Poland	-0.11**	0.05
Sweden	-0.10*	0.05
Observations	45708	
Log-Likelihood	-15229	
No. of choices	22854	
No. of Respondents	3809	

Baseline categories omitted; \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01.

#### I. Country-by-Country Results for Government Supporters

In all but one country, we find that government supporters are on average more likely to reject a proposal that would strengthen their preferred government by allowing it to appoint half of the judges serving on the court rather than the neutral reform that aims at increasing the number of administrative staff. In Poland, we observe no systematic difference between both reforms. In sum, supporters of the government in all countries except Poland systematically reject judicial reforms that would empower their preferred government.

In Hungary, Italy, Poland, and Spain, we find that government supporters do not systematically change in their behavior as the court employs more drastic language to indicate a threat to judicial independence, as shown by the confidence intervals that include the zero reference line. However, for the remaining five countries, we observe results consistent with the behavior expected from citizens who value judicial



Figure D: Effects of reform proposals and court's reaction for government supporters

Note: The plot depicts estimated effects (and their 95% confidence intervals) of two reform proposals and the court's reaction to such proposals for the subsample of government supporters.

independence. When the courts assert that a specific reform "definitely threatens" their independence, government supporters in France, Germany, the Netherlands, Sweden, and the United Kingdom are statistically less likely to support such a reform.

Hence, with the exception of Poland there appears to be a credible level of support for judicial independence necessary to deter nondemocratic behavior by elected governments and parliamentary majorities.

We also use those coefficients as dependent variables for the country-level analysis presented in figures 4 and 5.

#### J. Robust regression results of macro analysis

Table F presents the estimated coefficients from four differently specified regression models, which were employed to show whether the degree to which supporters of the government reject court curbing proposals is associated with the degree of polarization in our sample of nine countries. In Model (1) we run a bivariate robust regression to account for outliers and possibly high leverage points given the low number of countries. The results indicate that, as expected, the degree of polarization in those societies is in fact positively associated with strength of the preferences among government supporters to chose the court-curbing proposal that the 'Government appoints half of the judges' over the neutral proposal that would *not* limit judicial independence. Thus, at least in our sample of countries we find that the more polarized a society is the stronger the tendency of a government supporter to prefer a proposal that limits judicial independence if their preferred government benefits from it.

- r				
	(1)	(2)	(3)	(4)
Degree of Polarization	0.14***	0.15**	0.15***	0.15***
	(0.02)	(0.05)	(0.02)	(0.02)
Supreme Court (=1)		0.03		0.00
-		(0.03)		(0.02)
Govt. selects judges (=1)		. ,	$-0.05^{*}$	-0.05
			(0.02)	(0.03)
Constant	$-0.46^{***}$	$-0.50^{***}$	$-0.48^{***}$	$-0.49^{***}$
	(0.06)	(0.13)	(0.06)	(0.06)

Table F: Robust Regression Results predicting preference for court-curbing as a function of polarization and institutional characteristics across countries

N = 9; \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01.

Moreover, we hypothesized that a portion of this variance can be attributed to different frames of reference respondents employ when evaluating such a proposal. These different frames of references likely emerge because of institutional differences between countries. We adjust for two institutional differences. First, we consider whether a country uses a supreme court instead of a constitutional court. Second, we examine whether the appointment rules stipulate that the government actively selects judges to the highest court.

In Model (2) we adjust for the fact that respondents in countries with a supreme court, as opposed to a constitutional court (see table 2), may possess a different frame of reference. However, this characteristic seems not to be systematically related to the

estimated size of the AMEs. The same inference can be drawn from Model (4) as well. In contrast, Model (2) provides evidence that in a country where the appointments rules are such that the government actively selects judges to the highest court, government supporters seem on average to be .05 percentage points more likely to prefer court-curbing measures that limit judicial independence over the baseline category of the neutral reform in our discrete choice experiment. In the main body of the text we work with Model (3) in order to adjust for institutional settings that potentially make a significant difference to respondents' choices and visualize the results in figure 4.

#### K. Does knowledge about the court matter?

In general, individual-specific characteristics should not have a significant impact due to randomization. However, we examine whether respondents who possess knowledge about their highest court exhibit different behavior compared to other respondents.

We included the following item to assess respondents' knowledge about the court. We asked the following: "Do you happen to know the name of the current chief justice of the [Court]? If you are not sure, please make a guess." We presented the respondents with three answers whose order were randomized. One was the (country specific) name of the chief justice while the other two options have been the respective name of each country's member of the *International Olympic Committee* (IOC), and the respective name of the country's ambassador to the US. In a few cases where these members were to prominent – e.g. HRH Princess Anne as member of the IOC in the UK – we selected a countries representative to the European Union. From this item we created a knowledge indicator scoring '1' if respondents identified the respective chief justice correctly and '0' otherwise.

We compared the estimation results among two subgroups, those who correctly identified the chief justice (estimates in light-grey) and those who did not (estimates in dark-grey) in figure E. Specifically, we present the estimated AMEs for the substantively most interesting reform proposals and the subsequent reactions of the court across both sub-samples. From  $18 (= 2 \times 9)$  comparisons across the 9 countries we cannot find statistically different estimates in 14 of them. The four exceptions to this rule, where the estimates across the two sub-samples differ, are the estimated AME of the reform content in Hungary and the AMEs of the reaction of the court in Germany, Italy, and United Kingdom. In all those exceptions we find that knowledgeable respondents evaluate the respective component more negatively than the respective baseline. However, in no single case do those estimates lead to a different substantive conclusion. We, therefore, conclude that substantive knowledge about the court does not lead to substantively different results.



#### L. Validation

Table G presents the results of a validation. We use the estimated AMEs at the country level to predict the perceived level of independence of the national justice systems among the general public using a different data source, the Flash Eurobarometer 483, that was fielded (between 7 and 11 January 2020) after our survey experiments. From this data (using post-stratification weights) we generate per country the percentage of respondents who stated that the independence of courts and judges in their country is 'very good' or 'fairly good'. We use these perceptions of judicial independence to see whether the size of the two estimated AMEs per country (among government supporters) we used previously is associated with it.

We run a robust regressions to account for outliers and possibly high leverage points given the low number of countries.

goverment supporters across count	ries	ited AIVIES III	i the sample (	51
	(1)	(2)	(3)	(4)
Reform def. threatens ind. (AME)	$-5.34^{***}$ (1.23)			$-4.82^{***}$ (0.48)
Govt appoints half of judges (AME)		-1.22 (1.16)		
Govt appoints half of judges (AME, adj)			$-2.06^{*}$ (0.98)	$-1.54^{**}$ $(0.50)$
Constant	$0.37^{***}$ (0.08)	$0.47^{***}$ (0.11)	0.58 <sup>***</sup> (0.06)	0.39 <sup>***</sup> (0.03)

Table G: Robust Regression Results predicting perceived Judicial Independence in the Eurobarometer data as a function of the estimated AMEs in the sample of goverment supporters across countries

N = 9; \* p < 0.10; \*\* p < 0.05; \*\*\* p < 0.01.

In model (1) we use as sole covariate the estimated AME per country among government supporters to chose a proposal even if the court responds that such a reform will "definitely threaten" judicial independence instead of choosing a neutral reform. The results indicate that the larger the magnitude of this AME across countries the less independent that judiciary is perceived.

In model (2) and (3) we use as a sole covariate the estimated AME per country among government supporters to chose the court-curbing proposal that the 'Government appoints half of the judges' over the neutral proposal that would *not* limit judicial independence. In model 2 we use the raw values while in model (3) we adjust them for the institutional context. The results indicate for both covariate versions that the larger the magnitude of this AME the less independent the judiciary is perceived in

Figure F: Validation 1: The magnitude of the estimated AMEs of the court-curbing proposal per country is associated with their citizens' average perception of Judicial Independence



that country. Interestingly, the relationship is significant only for the adjusted version where we account for the different institutional context.

Finally, the results of model (4) with two covariates indicate that the magnitude of both AMEs in our data systematically predict the perceived level of independence of the respective national justice systems among the general public in completely different data source, the Eurobarometer following our data collection. This indicates that in countries where on average respondents are more likely to chose the court-curbing proposal over a neutral one and, respectively, the more likely chose a proposal despite the fact that the courts warns that such a proposal will threaten judicial independence, the less likely do citizens perceive their national judicial system as independent.

Moreover, figures F and G show that our estimated AMEs are associated with the average perception of judicial independence in the countries included in our study.

Figure G: Validation 2: The magnitude of the estimated AMEs of the the court's warning about a given proposal per country is associated with their citizens' average perception of Judicial Independence



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