

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

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Abstract: *Public support is central to the emergence of judicial power. Conventional wisdom holds that citizen commitment to democracy and the rule of law sustains this support. An implication is that such commitments should protect courts from partisan backlash following contentious rulings. But this remains largely untested. The Kenyan Supreme Court's historic 2017 elections rulings provide an unusual opportunity to test this expectation. After annulling the incumbent president's victory, the Court upheld his controversial repeat-election win. With data from a national panel survey—conducted before and after the repeat election—we find important partisan-based withdrawals/increases in judicial-power support. There is no evidence that democratic principles attenuated partisan backlash; some were associated with its amplification. However, partisan losers maintain moderately high support despite backlash. Results advance debates about public support for judicial power and provide new evidence about public reactions to assertions of judicial authority in new democracies and electoral autocratic regimes.*

Verification Materials: The data and materials required to verify the computational reproducibility of the results, procedures, and analyses in this article are available on the *American Journal of Political Science* Dataverse within the Harvard Dataverse Network, at: <http://dx.doi.org/10.7910/DVN/OENR84>.

On September 1, 2017, Kenya's Supreme Court annulled the August presidential election, in which incumbent Uhuru Kenyatta defeated Raila Odinga. The Court—the first in Africa to overturn an incumbent's victory—ruled that procedural flaws invalidated the results and called for a repeat election within 60 days. The decision was heralded as a major victory for the rule of law and democracy in Kenya, a hybrid electoral autocratic regime with a history of

executive dominance over the judiciary (Chege 2018; Mutua 2001; Okubasu 2017).

The Kenyan case illustrates a critical challenge faced by courts around the world, especially where they have less experience asserting their power. Courts can play a key role in defending democracy and the rule of law (Gibson and Caldeira 2003; Gibson, Caldeira, and Baird 1998). But rulings on contentious issues risk backlash, which can undermine the public support upon which

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their power largely depends. Indeed, after the September ruling, the Kenyan Supreme Court faced attacks by the president's allies, protests, and death threats. Opposition leaders and supporters condemned the Court's certification of the repeat election. Such responses are not unique to Kenya, as judicial rulings in older democracies can also induce backlash (Bartels and Johnston 2020; Christenson and Glick 2015; Nicholson and Hansford 2014). Yet the Kenyan Supreme Court's role in 2017 was critical given democracy's tenuous state and its precedent in a context where judiciaries are often subservient to executives (Ellett 2013; VonDoepp and Ellett 2011).

This important case presents an opportunity to examine the pivotal role that the mass public plays in the development of *judicial power*—a court's independence and ability to achieve compliance with its rulings (Carubba 2009; Friedman 2009; Gibson, Caldeira, and Baird 1998; Staton 2010; Vanberg 2005; Widner 2001). Public support is vital because when citizens forego partisan advantage and hold accountable politicians who attack courts, they can serve as *guardians of judicial power* (Friedman 2009; Vanberg 2001). On the other hand, evidence in the American context suggests that partisan and policy disagreement with judicial rulings diminishes public support for judicial power, implying that citizens perceive courts as vehicles for attaining partisan advantage (e.g., Bartels and Johnston 2020; Christenson and Glick 2015; Nicholson and Hansford 2014). This dynamic can incentivize elites to attack or curb courts in response to uncongenial outcomes, which ultimately *constrains* judicial power (e.g., Clark 2011; Helmke 2002). Citizen reactions to assertions of judicial authority in new democracies and hybrid regimes are thus key to the development of judicial power in such contexts.

Conventional wisdom holds that commitment to *democratic principles*—fundamental beliefs in support of core tenets of democracy and the rule of law—builds public support for high courts and facilitates their *legitimacy*, or rightful authority to render rulings for the nation (Caldeira and Gibson 1992; Gibson 2007; Gibson, Caldeira, and Spence 2003b; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009; Tyler and Rasinski 1991). This account also contends that while partisanship may influence “specific support” (approval of decisions), it should have minimal effects on “diffuse support,” including judicial power (Gibson and Nelson 2014; see, though, Bartels and Kramon 2020; Clark and Kastellec 2015; Nicholson and Hansford 2014). Democratic commitments, moreover, are thought to protect courts from backlash in response to contentious rulings. Gibson, Caldeira, and Spence (2003b, 553) argue, for example, that “even an enormously controversial decision

like *Bush v. Gore* has little if any influence on institutional loyalty.” The Kenyan Supreme Court's rulings provide an opportunity to test whether such principles can in fact shield courts from partisan backlash. Can citizen subscription to democratic principles attenuate partisan backlash against judicial rulings in new democracies and hybrid regimes with limited histories of robust judicial power?

While principles-based models emerge from studies of older democracies, there is good reason to expect that they may apply in semi-democracies and competitive authoritarian regimes. Public opinion data (described below) show that in Africa, support for democracy, rule of law, and the judiciary is widespread—similar to levels in Europe and North America. Given popular fatigue with corruption and overcentralized executive power, judiciaries are widely viewed as critical to constraining executives and bolstering the rule of law. In Kenya, support is strong among incumbent and opposition supporters, suggesting that these values transcend partisanship.

Empirical support for principles-based models comes mainly from analyses in which commitments to principles are correlated with support for an independent judiciary (Baird 2001; Gibson 2007; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009; Tyler and Rasinski 1991). In addition to endogeneity concerns, such analyses are not well suited for a more critical test: whether principles protect judicial-power support in response to controversial rulings.

Moreover, in contrast to conventional accounts, we note theoretical reasons why principles may fail to attenuate partisan reactions, or even *amplify* them. First, partisanship may prevail over principled commitments after contentious rulings, especially when decisions affect electoral outcomes and partisan polarization is high (e.g., Bartels and Johnston 2020). Second, commitments to principles are often associated with greater political knowledge and education. As the politically knowledgeable often care more about partisan outcomes (Huddy, Mason, and Aarøe 2015; Johnston, Lavine, and Federico 2017) or are better able to provide a post hoc rationalization for support of their preferred position (Taber and Lodge 2006), they may have the strongest partisan reactions. Third, aspects of the regime context could lead to stronger partisan responses among those with democratic commitments. Finally, stated commitments to principles may be unstable and influenced by the same underlying partisan forces that shape beliefs about judicial power.

The Kenyan case is well suited for studying how partisan interests and democratic principles interact in

response to high-stakes judicial rulings. The integrity of national elections is a central location in the battle to advance democracy in hybrid regimes. By one estimate, more than half of all elections held globally since 1990 fail to meet the minimum standard of free and fair elections (Bishop and Hoeffler 2016). In Africa, where multiparty elections are now common, judiciaries have only recently begun to assert independence. As courts begin to play a central role in arbitrating electoral disputes—posing risks given rulings’ impacts on power holders (VonDoepp 2009; VonDoepp and Ellett 2011)—public support (or its absence) will be critical.

We analyze data from an original two-wave national panel survey administered during Kenya’s election crisis. Wave 1 was fielded after the August election’s annulment but *before* the October election. Wave 2 was fielded in June–July 2018, after the Court upheld Kenyatta’s October victory. Crucially, the partisan “winners” and “losers” from the Court’s two rulings are different. The panel design allows us to test not only whether principles correlate with higher support for the Court, but more fundamentally whether they constrain partisan-based swings in response to the second ruling.¹ We are also able to examine whether principles that are generally treated as stable dispositions in the literature do in fact hold steady during moments of political stress, unlike nearly all prior research that relies on cross-sectional data and therefore must make the strong (and untested) assumption that principles are unaffected by salient rulings.

Importantly, even the most ardent defender of principles-based models would concede that partisan interests may have some effect on public reactions after a ruling that invalidates a national election. Thus, we do not expect that principles will fully inoculate the Kenyan Supreme Court from partisan opprobrium. Rather, we examine whether principles attenuate partisan reactions, particularly with regard to more diffuse measures of support.

We present three main results. First, we document meaningful partisan-based changes in support for judicial power in response to the Court’s rulings. Second, we find no evidence that principles or other non-policy influences like education and political knowledge

attenuate these changes. To the contrary, one principle—rule-of-law support—correlates with an amplification of partisan swings. Political knowledge and education also amplify partisan swings. Finally, these conclusions are tempered by the finding that partisan losers maintain moderately positive levels of support for judicial power despite backlash.

This article makes several contributions. First, it advances a critical test of whether principles attenuate partisan backlash following contentious rulings. Second, we show that partisan reactions can influence diffuse forms of court support, which is significant given the literature’s emphasis on apolitical drivers of diffuse support and debates about the existence of partisan effects. The results complement research showing that citizens often privilege partisan interests over the protection of democratic and rule-of-law institutions (Graham and Svolik 2020; Svolik 2020). They also suggest that a high court’s legitimacy is politicized—at least to an extent—as support for judicial power itself is partly instrumental. Third, the article studies public reactions to one of the most important judicial decisions in Africa’s recent history. Little is known about how citizens in new democracies and competitive autocracies react to judicial interventions. Given courts’ increasing role in adjudicating election disputes and these cases’ centrality in battles surrounding democratization, such an analysis is critical to understanding the development of judicial power and democratic consolidation in such contexts.

Judicial Invalidation of a Presidential Election

Allegations of election malpractice routinely accompany elections in Africa; judicial interventions do not (see Kerr and Wahman 2021).² Yet election-related conflicts in many of the continent’s new democracies and electoral autocracies are increasingly being staged in the judicial arena. Notably, in Malawi, the Supreme Court recently followed the precedent set by the Kenyan Supreme Court, invalidating the incumbent’s 2019 election victory, leading to his defeat in the repeat election (Dionne and Dulani 2020).

In Kenya, elections have been marred by claims of electoral fraud and electoral violence since the transition to multiparty competition in the early 1990s (Gibson and

¹Section A of the supporting information (SI A, p. 1) presents preregistered hypotheses. We preregistered to test hypotheses (Hypotheses 1–4) with wave 1 cross-sectional data. As the panel data permit a better design, we focus on those. Conclusions are similar with wave 1 data (SI F, pp. 11–12). We also registered survey experiment hypotheses (Hypotheses 5–7). Results are consistent with findings presented here—a procedural fairness prime did not attenuate partisan backlash (SI I, pp. 24–26). We do not present them because manipulation checks suggest that treatments did not alter perceptions as intended.

²Kerr and Wahman (2021) find that judicial rulings against the incumbent in parliamentary election disputes in Zambia influenced elections legitimacy but had no effect on trust in courts.

Long 2009). Prior to 2017, however, the Court either demurred when opposition leaders challenged election results or was not consulted because opposition leaders saw no use in filing complaints with a judiciary viewed as beholden to the executive. Though Kenya had made significant strides toward a more democratic political system since 1990, the presidency has continued to enjoy substantial power over other government institutions, including the judiciary (Kiai 2008).

Kenya is thus generally conceptualized as an electoral autocracy or a hybrid regime.³ Multiparty elections are competitive, and the media and civil society are active and relatively independent. Yet the incumbent enjoys substantial advantages, electoral irregularities are common, and the protection of civil liberties and the rule of law is highly variable.

The Court's assertiveness in 2017 can be traced to election crises and related constitutional changes in the prior decade. Kenya's 2007 election provided a key impetus for reform. In that race, the electoral commission certified the incumbent's victory despite concerns about electoral fraud, sparking intercommunal violence that resulted in thousands of deaths and mass internal displacement (Kenya National Commission on Human Rights 2008). This crisis jump-started processes that led to a new constitution's adoption in 2010, which included reforms designed to increase judicial independence and authority. The constitution established the Judicial Service Commission, which vets and proposes to the president potential nominees for judicial appointments, thereby reducing direct presidential control over the judiciary via the appointment process. The constitution also gave the Supreme Court the sole authority to rule on petitions related to presidential elections.

Following the August 2017 elections, the Supreme Court was called upon to exercise this authority. On September 1, the Court, in a historic 4–2 ruling, annulled the results of the election. Siding with the opposition's list of alleged irregularities, the Court ordered the electoral commission to hold a new election within 60 days. However, the main opposition leader, Odinga, chose to boycott the repeat election, claiming that the electoral commission had failed to adopt reforms necessary to guard against fraud. With Odinga's supporters largely abstaining from participating, Kenyatta won 98% of the vote in the October repeat. This time, the Court rejected petitions arguing that the election had again run afoul of constitutional mandates. The Court unanimously upheld the results, certifying President Kenyatta's reelection.

³Varieties of Democracy (V-Dem) codes Kenya as an electoral autocracy, except from 2014 to 2015 when it was coded as an electoral democracy.

Public Support for Judicial Power: Politics versus Principles

These events present an unusual opportunity to examine whether democratic principles protect high courts against partisan backlash. Our outcome of interest is *public support for judicial power*. Staton (2010, 9) defines *judicial power* as a court's ability to "cause by its actions the outcome that it prefers." Judicial power is exerted when court decisions are made without external political interference or punishment (independence) and obeyed by politicians and the mass public (compliance). Given the implementation problem—courts lack formal enforcement mechanisms—public support for this *de facto* form of judicial power is critical.

This conceptualization resembles "diffuse support" and "institutional legitimacy" (see, generally, Gibson and Nelson 2014; Levi, Sacks, and Tyler 2009). Whereas past work implies that support for judicial power maps directly onto legitimacy, the former does not necessarily imply the latter. If *legitimacy* is defined as "rightful authority" to render rulings for the polity and a belief that an institution is "appropriate, proper, and just" (Tyler 2006a, 375), high support for judicial power does not necessarily imply greater legitimacy (Bartels and Johnston 2020; Bartels and Kramon 2020). High support for judicial power could reflect legitimacy. Or, if support is strongly rooted in partisan agreement, it could indicate high approval of recent rulings, and such support could diminish in the future following uncongenial rulings. In the latter case, the process by which judicial power is achieved is antithetical to legitimacy and instead instrumental. Legitimacy, as "rightful authority," means that judicial power is an end in itself and its support is not dependent on partisan gain or loss. It is therefore beneficial to conceptually distinguish between "support for judicial power" and "legitimacy," as the former may be partly instrumental. However, *changes* in support for judicial power have implications for legitimacy: Where legitimacy is high, we expect support for judicial power to be high *and* partisan fluctuations in response to rulings to be minimal.

Partisan Politics

Outcome-based models (or "policy-based models") posit that partisan or policy disagreement with a high court's rulings will have deleterious consequences for support for judicial power and, ultimately, legitimacy (Bartels and Johnston 2013, 2020; Christenson and Glick 2015; Clark and Kastellec 2015; Nicholson and Hansford 2014; Zilis 2021). In these models, individuals view high

courts politically; they judge courts partly on the basis of whether they deliver congenial partisan outcomes. People express their disapproval with judicial policies by seeking to diminish the very power by which the court rendered its ruling. This framework challenges arguments that whereas partisan and policy considerations may strongly influence *specific* support (approval of decisions), their effects on more *diffuse* types of evaluations (including judicial power) should be minimal (à la Easton 1965; see Gibson and Nelson 2014).

If this model holds, Odinga supporters should be more supportive of the Court than Kenyatta supporters after the September ruling. After the November ruling, Odinga supporters should punish the Court, whereas Kenyatta supporters should reward it. Although our panel design allows us to examine reactions to both rulings, we focus primarily on *changes* in support for judicial power in response to the Court's second ruling, where we have greater analytic leverage.

Partisan Politics Hypothesis: For Odinga supporters, who move from winners to losers after the November court ruling, support for judicial power will decrease; for Kenyatta supporters, who move from losers to winners, support will increase.⁴

Democratic Principles

The standard view is that commitments to democratic principles are more important than partisan interests in shaping diffuse forms of court support. This claim is rooted in procedural justice theory (e.g., Levi, Sacks, and Tyler 2009; Tyler 2006b; Tyler and Rasinski 1991) and models emphasizing apolitical factors such as support for democracy and the rule of law (Gibson and Caldeira 2009; Gibson, Caldeira, and Spence 2003). These models posit that citizens view courts as distinct and less politicized than executives and legislatures. High courts are viewed as “engines of constitutionalism” that enforce limits on political power in a *supra-political* manner. High courts build capital as they come to be seen as fair, impartial, and apolitical arbiters and defenders of democracy's core institutions. These views act as fundamental, apolitical tenets that structure attitudes and beliefs.

We focus theoretically on three well-known principles, or apolitical factors, that should serve as mechanisms for protecting support for a high court's institu-

tional power: support for the rule of law, support for democracy, and perceptions of procedural fairness. The more one supports democracy and the rule of law, the more one should support judicial power that can serve as a check on political abuse—and in Africa, a check on the potential for executive dominance (Prempeh 2008). The third is rooted in procedural justice theory (e.g., Levi, Sacks, and Tyler 2009; Tyler 2006a, 2006b; Tyler and Rasinski 1991), which claims that people support a high court when they believe that it makes decisions in a fair and impartial manner.⁵

Should we expect principles-based models, which stem from scholarship on the world's older democracies, to apply to new democracies or hybrid regimes such as Kenya? There is good reason to think that they may. Given higher levels of corruption, citizens are acutely aware of how the weakness of government institutions facilitates abuse of power by government officials. In Africa, politics has often centered around personalized forms of contestation, and executives have until recently faced few institutional constraints on their power (Jackson and Rosberg 1984). Central to the democratic reforms that began in the early 1990s was an effort to bolster the institutions that enforce the rule of law, driven by popular demands for greater accountability (Bratton and van de Walle 1997). A substantial body of public opinion data shows that across Africa, support for independent judiciaries, the rule of law, and democracy more broadly is on par with levels in older democracies. World Values Surveys data show that support for democracy in four African countries—Ghana, Nigeria, Rwanda, and Zimbabwe—is equal to or exceeds support in the United States and Germany.⁶ Likewise, Afrobarometer surveys conducted in 34 African countries show that an overwhelming majority both in Kenya and beyond support judicial power at a rate rivaling or exceeding such support in the United States.⁷ In Kenya,

⁵Procedural fairness is more of a perception than support for the rule of law and democracy. But procedural fairness falls into a category of *apolitical* factors that are theorized to enhance court support.

⁶World Values Surveys (Qv130) asked whether “having a democratic political system” is seen as a good way of governing the country. Round 6 surveys (2010–14) show the proportion who viewed democracy as a “good” or “very good” system was as follows: Ghana (96%), Nigeria (92%), Rwanda (82%), Zimbabwe (97%), United States (80%), Germany (94%).

⁷Afrobarometer Round 6 surveys (2014–16) show that 68% agree that “the president must always obey the laws and the courts, even if he thinks they are wrong” and 72% agree that “the courts have the right to make decisions that people always have to abide by” (N = 53,935). See SI E, Figure E.2 (p. 8), for data in Africa and Kenya since 2003. Support in the United States, measured by a February

⁴These correspond with preregistered Hypotheses 2A and 2B (SI A, p. 1).

moreover, the data show moderately high levels of trust in national courts among *both* opposition and incumbent supporters, a surprising finding given the history of judicial subservience to the executive (see Bartels and Kramon 2020).⁸

The principles-based perspective suggests that commitments to democratic principles should enhance support for judicial power and that principles should attenuate the extent to which Kenyans punish or reward the Supreme Court based on partisan attachments. By this logic, those who were dismayed by the Court's rulings during the 2017 election crisis may retain support for judicial power because they value the Court's role in advancing the rule of law and democracy more generally and believe the Court arrives at major decisions by following proper legal principles. If so, we would expect that highly principled Odinga supporters, who move from winners to losers, will punish the Court less harshly than their weakly principled counterparts. Higher values of these principles should attenuate partisan punishment. Likewise, for Kenyatta supporters, principles should attenuate partisan-based rewards for the Court in response to congenial rulings. As a result, we should observe less positive movement among Kenyatta supporters with high support for democratic principles relative to their low-support counterparts in response to the Court's ruling to uphold the repeat election.

Principles-Based Attenuation Hypothesis: As support for democratic principles increases, the effect of partisan identity on punishing or rewarding the Court will decrease.⁹

Why Principles Might Fail to Attenuate Partisan Swings

While the principles-based attenuation hypothesis extends standard expectations, we highlight theoretical reasons that democratic principles may fail to protect courts from backlash or appear to amplify partisan-based swings. First, partisan interests may dominate principled

attachments even among those who proclaim support for the rule of law and democracy. This may be the case especially where partisan polarization is high and few cross-cutting identities temper partisan divisions (Graham and Svoblik 2020).

Second, principles may correlate with other characteristics that amplify partisan-based reactions.¹⁰ Stated commitments to democratic principles are often associated with higher levels of education, political knowledge, and engagement in Africa and beyond (e.g., Finkel 2003; Mattes and Bratton 2007).¹¹ These may make those highly supportive of principles more likely to increase or withdraw support for judicial power in response to (dis)avored outcomes. More engaged citizens tend to be more invested in partisan outcomes (Johnston, Lavine, and Federico 2017), more emotionally reactive to prospects of partisan gains or losses (Huddy, Mason, and Aarøe 2015), and more likely to view their political opposition as threatening (Graham and Svoblik 2020).¹² These characteristics also facilitate motivated reasoning, whereby citizens rationalize a withdrawal of support for judicial power by, for example, developing (post hoc) arguments for why a court ruling was unjust or legally invalid (Taber and Lodge 2006).

Third, the regime context may condition the role of democratic principles, knowledge, and engagement (Staton 2010). In electoral autocracies, courts can have strong incentives to act strategically to maintain support and protect against elite attacks (Ellett 2013; VonDoepp and Ellett 2011). Therefore, whereas positivity theory posits that knowledge and engagement build support for courts, in this context those with knowledge of courts' strategic behavior may recoil due to perceptions of politicization (Staton 2010). In Kenya, the Court's surprising assertion of authority when invalidating Kenyatta's election victory is likely to have been read as a strong signal of de facto independence, especially among opposition supporters. We expect this would lead Odinga supporters who value democracy and the rule of law to experience particularly large increases in judicial-power support now that they perceive the Court as more independent. However, it is those very same Odinga supporters whose knowledge could lead them to recoil most following the Court's second decision—validating an election that the opposition boycotted—given perceptions of strategic decision making or that the Court failed in this case to advance democracy.

2020 YouGov poll, shows 76% support for a similar president item (during the end of the Trump presidency) and 53.5% support for the second item. Moreover, "diffuse support" levels in the United States (Bartels and Johnston 2020, ch. 3) are quite similar to this study's analogous measures in Kenya.

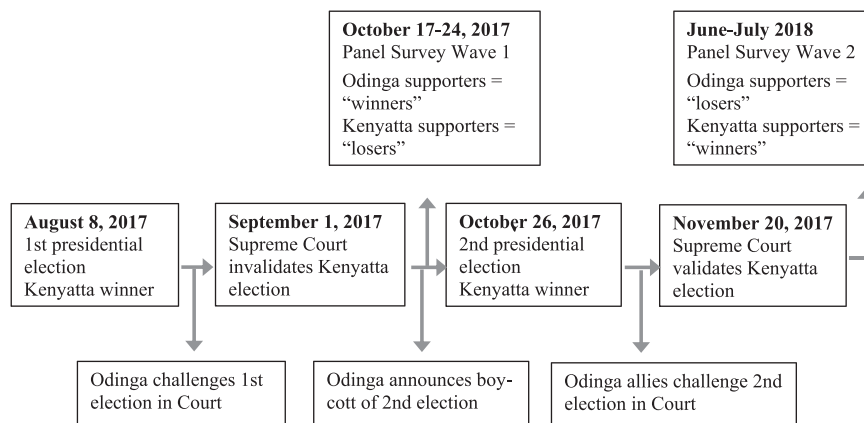
⁸SI Figure E.3 (p. 9) shows a minimal partisan gap in trust in Kenya's courts. Across five national surveys conducted between 2003 and 2016, the mean difference in trust is 0.30 on a 4-point scale.

⁹This corresponds with preregistered Hypothesis 3 (SI A, p. 1).

¹⁰This corresponds with preregistered Hypothesis 4 (SI A, p. 1).

¹¹On Latin America, see Zechmeister and Lupu (2019).

¹²In our data, political engagement is much higher among "strong supporters" of Kenyatta or Odinga.

FIGURE 1 Timeline of Events and Panel Survey

Note: Figure displays the timing of our survey waves relative to the presidential elections and Supreme Court rulings.

Finally, existing literature treats principles as independent of partisan orientations (e.g., Gibson 2007; Gibson, Caldeira, and Spence 2003a, 2003b; Gibson and Nelson 2015; Levi, Sacks, and Tyler 2009). However, political rulings may lead citizens to update stated principles as a function of partisan predispositions (Badas 2016; Bartels and Johnston 2020). For example, because people may form perceptions of the judicial process in a biased manner, they may view justices' decision-making process as more fair and impartial when they agree with the ruling (Badas 2016; Bartels and Johnston 2020). Citizens may also express higher support for democracy and the rule of law after a significant partisan victory. Here, principles are not "unmoved movers" of judicial-power support; rather, they reflect, in part, underlying partisan and policy orientations. Thus, partisan-based swings could be larger among those who evince stronger support for principles, but only because of this endogeneity.

Research Design, Data, and Measurement

We analyze data from a two-wave national panel survey conducted with Kantar TNS, an international survey firm that has worked in Kenya for over 30 years and has extensive experience implementing surveys on social and political topics. Figure 1 displays the timeline. The first wave included 2,468 respondents interviewed in their homes on October 17–24, 2017, during the period between the Supreme Court's annulment of the Au-

gust election and the repeat election on October 26.¹³ The second wave, conducted 7 to 8 months later and after the Court had upheld the repeat election, reinterviewed 1,297 first-wave respondents (53%) through a mix of phone- and household-based interviews.¹⁴ In the panel analysis, we exclude 204 respondents due to mismatches on gender or age (>5 years of difference) across survey waves or quality control concerns. After these exclusions, we have a sample of 1,127 respondents in the panel. SI J (pp. 27–29) illustrates that panel attrition was not strongly correlated with key variables. SI Table J.2 (p. 29) shows that the main results are robust when we use inverse probability weighting to account for differential probabilities of attrition.

Our research design has several virtues that advance the literature. First, we go beyond cross-sectional correlations and test whether stated principles impact changes in support for judicial power following a politically important ruling. The design relates to a small group of panel studies analyzing change across judicial rulings (e.g., Bartels and Johnston 2020; Christenson and Glick 2015, 2019; Zilis 2021), but our focus

¹³The sample was allocated across counties according to population size. Sampling points within counties were selected randomly using census enumeration areas, and households were selected using a random-walk procedure. Respondents were randomly selected from all adults (18+) home at the time of the household visit.

¹⁴The firm first attempted to reach all respondents by phone (485 phone-based interviews June 12–27, 2018). They then attempted to reach those who were unreachable by phone in their homes (812 in-person interviews July 10–30, 2018). Survey procedures were identical for phone-based and in-person interviews. A small number of sampling points were excluded from the household portion because of security concerns.

on testing whether principles condition partisan-based changes is distinct. Second, we can test for partisan influences on stated principles. The latter does, however, create a practical challenge for our efforts to “put principles to the test” as factors that attenuate partisan-based shifts. A key step in the analysis is therefore to examine whether measures of principled attachments are stable during Kenya’s election crisis. Because of the potential endogeneity of principles, we also examine whether two related factors—education and political knowledge—attenuate partisan-based swings. While these factors are distinct from principles, they are correlated with them and are not subject to short-term fluctuations in response to judicial rulings.¹⁵ In sum, our panel design generates a novel empirical contribution.

The next sections detail our measurement and analytical approaches. Table 1 provides measurement details for all variables. SI B–D (pp. 2–5) provide additional details and descriptive statistics.

Dependent Variables: Support for Judicial Power

Our dependent variable is support for judicial power. We include two variants: judicial power in a general institutional sense and judicial power over elections. *Support for judicial power at the general institutional level* is an index based on six survey items in Table 1. The items capture the two core conceptual elements of support for judicial power: *judicial independence* (freedom from external politics) and *compliance* with rulings. This measure is similar to “diffuse support” measures commonly used in the literature (e.g., Caldeira and Gibson 1992; Gibson, Caldeira, and Spence 2003a) in that it captures support for more fundamental aspects of a high court’s power and functions rather than “specific support,” which captures approval of outcomes.¹⁶ For each wave, we create a summative scale and recode the scale to range from 0 to 1. Higher values indicate greater support.¹⁷

Cronbach’s alpha for this variable is lower than expected: $\alpha = 0.58$ and $= 0.45$ in waves 1 and 2,

¹⁵SI C.3 (p. 4) shows that education and knowledge are positively correlated with support for democracy and the rule of law.

¹⁶Recall that scholars who use the diffuse support concept frequently equate it with “legitimacy,” which we distinguish in our conceptualization.

¹⁷Factor analyses show that the items load on one “judicial power” dimension. For both survey waves, the eigenvalue for the second dimension is well less than 1. There is some evidence that items 4 and 6 load onto a second dimension related to the finality of the Court’s rulings, but results analyzing those items separately generate similar inferences on the whole.

respectively (the standard is 0.70). Two robustness checks allay scale reliability concerns. Item-by-item analyses show generally similar results compared to those based on the indices (SI H.1, pp. 14–21). We also created a “count” dependent variable adding up the total number of items for which respondents expressed somewhat strong or strong support. Those results (SI H.2, p. 22) resemble results using the indices.

The second dependent variable is *support for judicial power over elections*. Measuring this aspect of support is important, as judicial intervention in elections has become a more prominent issue across Africa (Kerr and Wahman 2021). Our measure averages two items listed in Table 1. This measure is distinct from “specific support” in that it does not measure agreement with the Supreme Court’s ruling per se but is about the Court’s ability to preside over elections. Moreover, the issue of elections is not a narrow policy area—it is central to a democratic regime.¹⁸

Our analysis focuses on changes in support for judicial power across the two survey waves, defined as the wave 2 value minus the wave 1 value. SI B (p. 2) presents the distributions for the individual subitems.

To validate that our judicial power measures capture a more “diffuse” type of support, we compare them to a “specific support” item measuring agreement with the Supreme Court’s rulings in September and November.¹⁹ We expect partisan responses to be larger for specific support compared to support for judicial power since the former is more centrally related to policy agreement and approval, which should activate partisan considerations to a greater degree than diffuse support items (Gibson and Nelson 2014). Such evidence would be consistent with respondents differentiating between these concepts and with our support for judicial power measures capturing a more diffuse form of support.

Partisanship

We measure partisanship with a wave 1 survey item that asked respondents which candidate they *supported or voted for* in the August election. This allows us to code

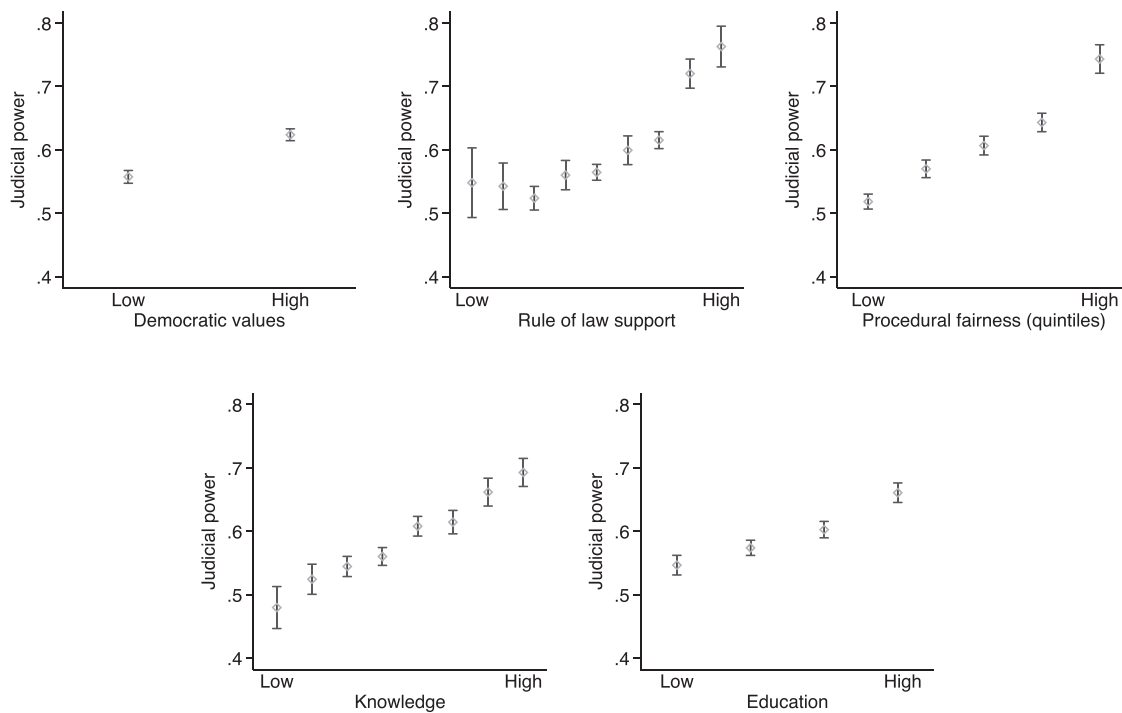
¹⁸Our prespecified index of support for judicial power over elections included two additional items that we now believe more accurately capture acceptance of the specific rulings, rather than support for judicial power over elections generally. We remove these items so that our index is better aligned with the concept we seek to measure. Main results are the same as with the prespecified index (SI G, p. 13).

¹⁹“Do you agree or disagree with the Court’s recent ruling to [wave 1] invalidate the August 8 election / [wave 2] uphold the October 26 election?”

TABLE 1 Variable and Measurement Information

Variable	Measurement Information
Support for General Judicial Power*	(1) The Supreme Court should be made less independent from the other branches of government and the public. (2) In a democratic system like ours, the law should be changed so that the Supreme Court has less power to make important decisions for the country. (3) If the Supreme Court keeps on making controversial decisions, it might be better to do away with the Supreme Court altogether. (4) Citizens in Kenya should always accept Supreme Court rulings, even when they disagree with them. (5) Since the president was elected to lead the country, the president should not have to follow Supreme Court rulings that he does not agree with. (6) The Supreme Court of Kenya should have the final word in determining whether government actions or laws violate the Constitution. Five-point agree–disagree response scales.
Support for Judicial Power over Elections	(1) The Supreme Court should have the final say on whether the previous election was consistent or inconsistent with the Constitution. (2) The ability of the Supreme Court to decide election disputes should be eliminated. Five-point agree–disagree response scales.
Partisanship	1 = Odinga supporter, 0 = Kenyatta supporter (based on self-reported vote from the August election).
Support for Democracy	Based on item that asks which statement is closer to respondent's view. 1 = democracy is preferable to all other forms of government, 0 otherwise.
Support for the Rule of Law*	(1) In some cases, the government should be able to ignore the law in order to solve important social or economic problems. (2) It is not necessary to obey the laws of a government that I did not vote for. Five-point agree–disagree response scales.
Procedural Fairness*	(1) The Supreme Court fairly considers the views of all sides to an issue before making its decisions. (2) The Supreme Court assembles and accurately understands all relevant facts and evidence on both sides of the issue before making a decision. Five-point agree–disagree response scales. (3) Which of the following statements best captures your understanding of what influences Supreme Court judges' decisions: (a) legal and constitutional principles, (b) the judges' own personal opinions, or (c) both principles and opinions. (4) Which statement best captures your understanding of how the Supreme Court makes its decisions: (a) its decisions are politically motivated, (b) its decisions are decided in a fair and impartial manner, or (c) its decisions are sometimes politically motivated and sometimes fair and impartial.
Political Knowledge*	Asked knowledge of (1) identity of deputy president, (2) county governor, (3) in what neighboring country the Kenyan Defense Force currently has troops, (4) number of presidential terms, (5) number of parliamentary constituencies, (6) chief justice of Supreme Court prior to 2016, and (7) identity of attorney general.
Education	0 = no primary, 0.33 = primary, 0.67 = secondary, 1 = postsecondary.
Demographics	Gender (1 = female, 0 = male), rural (1 = rural, 0 = urban), age (in years, recoded to range from 0 to 1), Asset Ownership Index, Poverty Index.

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

FIGURE 2 Support for Judicial Power by Principles (Measured at Wave 1)

Note: Figures show mean support for general judicial power across the ranges of principles, knowledge, and education variables (measured at Wave 1), with 95% confidence intervals.

respondents who may not have voted but still have a partisan preference. We code subjects as *Kenyatta supporters* or *Odinga supporters*; 56% supported Kenyatta and 43% supported Odinga, corresponding to the official results of the August election.

Democratic Principles, Knowledge, and Education

We employ measures of three democratic principles that prior literature has shown to be associated with support for judicial power. To ensure comparability with existing research, we use items that are similar or identical to those used in earlier works. Measures are included in Table 1. *Support for the rule of law* is based on two items that are adapted from Afrobarometer surveys. We average the items together and recode the scale to range from 0 to 1 (higher values reflect greater rule-of-law support).²⁰ *Support for democracy* is based on a single item also used in Afrobarometer surveys to measure support for democracy relative to alternative forms of government. To mea-

sure *perceptions of procedural fairness*, we asked respondents to evaluate how fair and impartial versus politically motivated the Kenyan Supreme Court is, using four survey items. The first two items use 5-point response scales, while the last two use 3-point scales. For each wave, we first recode each item from 0 to 1 and then create a summative scale (higher values reflect higher perceived fairness).²¹ Factor analysis confirms one underlying dimension.

The knowledge items (Table 1) capture objective knowledge of Kenya's political system and key political actors. We observe a uniform distribution across the range of possible correct response rates. We created a scale based on the number of correct answers (recoded to range from 0 to 1). Education is based on a standard measure of attainment.²²

Although overall levels on each democratic principles measure are moderately high, there is variation (SI C, pp. 3–4). In wave 1, while a majority (61%) agree that democracy is “preferable to all other forms of gov-

²⁰For waves 1 and 2, the correlation between the two items was only 0.15, but using our scale is ideal given the similarity of the items and the increased content validity by including both.

²¹Cronbach's alphas for each wave are lower than expected: wave 1 alpha = 0.56, wave 2 alpha = 0.50.

²²We do not include measures of political engagement (campaign rally attendance or having worked for a campaign), as these may be related to partisan attachments.

ernment,” 39% of respondents do not share this view. On support for rule of law, the mean in wave 1 (0.57 on a scale that ranges from 0 to 1) indicates moderately strong support. Yet 46% of wave 1 respondents believe that “in some cases the government should be able to ignore the rule of law in order to solve important social or economic problems,” and 28% believe that “it is not necessary to obey the laws of a government that I did not vote for.”

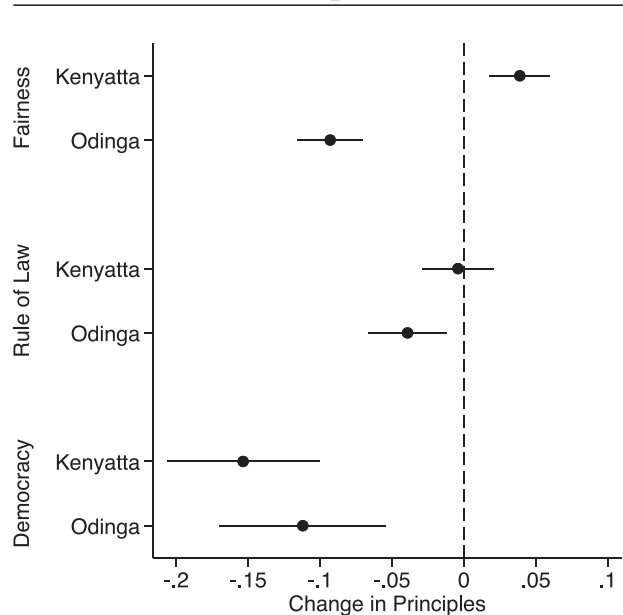
Consistent with past research, the measures of principles, knowledge, and education are positively associated with support for judicial power. Figure 2 shows these relationships using the data from wave 1. Similar results obtain when we examine the wave 2 data and judicial power over elections. These positive associations remain in regression models that control for other factors. Typically, such associations are treated as evidence that principles undergird support for high courts. However, a stronger test—offered below—requires that we examine whether those who purport to hold stronger principled commitments stand by the court when their partisan interests are challenged.

Are Democratic Principles Independent from Partisan Interests?

The measures of principles are typically treated as indicators of stable value attachments that change little over time. Gibson (2007, 516), for example, argues that in the U.S. case, support for judicial authority is highly stable “since values themselves change only slowly.” However, the same partisan forces that drive public reactions to rulings may alter popular support for democracy and the rule of law, as well as perceptions of procedural fairness. Of course, our baseline measures of principles, obtained in the weeks following the Court’s decision to annul the August election, may reflect partisan reactions to the decision. Yet, even measures taken long before major rulings may not be fully independent of partisan influence since they may in part reflect the accumulated residue of partisan reactions to court rulings (and other events) from years past.

Afrobarometer data collected in Kenya in 2016 show that prior to the 2017 election, partisan preferences were unrelated to support for democracy or the rule of law (SI E, pp. 6–10). Our panel data, however, suggest that partisanship likely did affect stated principles as the election crisis unfolded and in response to the Court’s rulings, particularly with regard to perceptions of procedural fairness and to a lesser extent on support for democracy and the rule of law. Figure E.2 (SI E, p. 8) presents the relationship between partisanship and each principle measured at wave 1, fielded after the Court’s invalidation

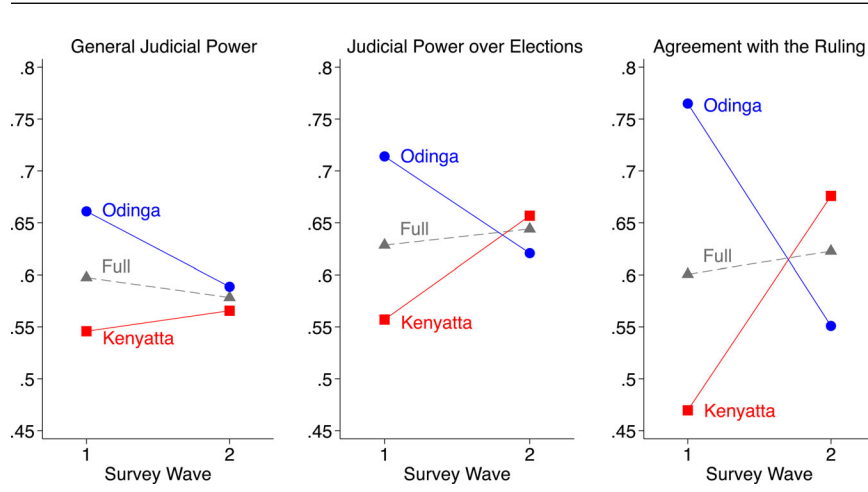
FIGURE 3 Are Principles Stable? Average Change across Survey Waves by Partisan Group



Note: Figure shows average change (wave 2 minus wave 1), along with 95% confidence intervals, in democratic principles among Kenyatta and Odinga supporters.

of the first election. While Odinga supporters are slightly more supportive of the rule of law and democracy, the differences are relatively minor. On perceptions of procedural fairness, however, Odinga supporters are substantially more positive, which likely reflects the influence of the Court’s decision. On knowledge and education, we observe no evidence of a partisan difference in wave 1.

Figure 3, which plots *changes* in stated principles across panel waves, allows for a more direct test of whether partisanship affected stated principles. On procedural fairness, we find a strong partisan effect: Odinga supporters significantly decrease their assessments of procedural fairness following the second ruling (to uphold Kenyatta’s victory in the repeat election), whereas Kenyatta supporters increase. Support for rule of law and democracy appear to be less affected by partisan orientations. Odinga supporters do become slightly less supportive of the rule of law, suggesting some partisan impact, but Kenyatta supporters are unmoved. On support for democracy, both Kenyatta and Odinga supporters become less supportive across survey waves, but there is no partisan effect. Based on this exploration, we conclude that procedural fairness is not sufficiently independent of partisan interests for our central test of whether principles can constrain partisan backlash. We therefore rely only on support for rule of law and democracy,

FIGURE 4 Support for Judicial Power by Partisanship and Survey Wave

Note: Figures present mean of the general power, election power, and agreement measures in each survey wave in the full sample (triangle) and by Odinga (circles) and Kenyatta (squares) supporters.

along with education and political knowledge—two variables far less likely to have been impacted by the Court’s rulings.

Estimation and Results

Our analysis seeks to understand how partisan orientations affected support for judicial power across the survey waves, and whether principles constrain the magnitude of partisan swings. We estimate regression models that examine how support for judicial power changes from wave 1 to wave 2. Given the timing of survey waves, we have the greatest leverage on the effects of the Court’s second ruling that certified Kenyatta’s victory in the repeat elections—a decision that in partisan terms benefited Kenyatta’s supporters and hurt Odinga’s.²³ After observing that changes in support for judicial power bear the clear imprint of political leanings, we use interaction models to test whether democratic principles, education, and knowledge attenuate the extent of these partisan swings.

Our regression models take the following form:

$$\begin{aligned} \Delta Y_i = & \alpha + \beta_1 OdingaSupp_{i[W1]} + \beta_2 Principles_{i[W1]} \\ & + \beta_3 OdingaSupp_{i[W1]} * Principles_{i[W1]} \\ & + \theta X_{i[W1]} + \varepsilon_i, \end{aligned}$$

where the dependent variable is the change in support for judicial power in wave 2 minus wave 1, specified either in a broad sense or in relation to elections. $OdingaSupp_{i[W1]}$ is an indicator variable for partisanship (measured in

wave 1). $Principles_{i[W1]}$ includes individual wave 1 measures of principles, along with education and political knowledge. To test the attenuation hypothesis, we interact the partisanship measure with support for democracy, support for the rule of law, political knowledge, and education. $X_{i[W1]}$ is a vector of control variables, measured in wave 1: male/female, urban/rural, age, household assets, and household poverty.

Partisan Swings in Support for Judicial Power

We first examine partisan swings in support for judicial power. Figure 4 reports mean support for both general judicial power and judicial power over elections. For comparison, it also displays results for agreement with each of the rulings. In wave 1, we observe a substantial partisan divide in support for general judicial power after the Court’s invalidation of Kenyatta’s election victory, with Odinga supporters exhibiting greater support for judicial power than Kenyatta supporters. The partisan gap is 0.12, or about 0.65 standard deviations. That gap is larger for support for judicial power over elections and even larger for agreement with the election ruling. That the gap is largest for decision agreement validates that our measures of support for judicial power are tapping diffuse support for the Court as opposed to mere

²³There is a time lag following the second ruling and wave 2, raising the possibility that other rulings or factors could drive change between waves. However, 79.6% of panel respondents could not recall news about any other rulings during the period between surveys.

TABLE 2 Models Explaining Change in Support for Judicial Power

	(1) General	(2) General	(3) General	(4) General	(5) General	(6) Elections	(7) Elections	(8) Elections	(9) Elections	(10) Elections
Odinga Supporter	-0.09** (0.01)	-0.03 (0.03)	-0.08** (0.02)	-0.05 (0.03)	-0.06* (0.02)	-0.19** (0.02)	-0.18** (0.05)	-0.18** (0.03)	-0.18** (0.05)	-0.16** (0.04)
Odinga Supporter \times Rule of Law Support W1		-0.10* (0.05)					-0.02 (0.08)			
Odinga Supporter \times Democratic Values W1			-0.01 (0.03)					-0.01 (0.04)		
Odinga Supporter \times Knowledge W1				-0.07 (0.05)					-0.01 (0.07)	
Odinga Supporter \times Education					-0.06 (0.04)					-0.04 (0.06)
Rule of Law Support W1	-0.05* (0.03)	-0.00 (0.04)	-0.05 (0.03)	-0.05 (0.03)	-0.05 (0.03)	-0.00 (0.04)	0.00 (0.06)	-0.00 (0.04)	-0.00 (0.04)	-0.00 (0.04)
Democratic Values W1	-0.01 (0.01)	-0.00 (0.01)	-0.00 (0.02)	-0.00 (0.01)	-0.00 (0.01)	-0.04* (0.02)	-0.04* (0.02)	-0.04 (0.03)	-0.04* (0.02)	-0.04* (0.02)
Knowledge	0.02 (0.03)	0.02 (0.03)	0.02 (0.03)	0.06 (0.04)	0.02 (0.03)	0.01 (0.05)	0.01 (0.05)	0.01 (0.05)	0.02 (0.06)	0.01 (0.05)
Education	0.00 (0.02)	0.00 (0.02)	0.00 (0.02)	0.00 (0.02)	0.03 (0.03)	0.02 (0.04)	0.02 (0.04)	0.03 (0.04)	0.02 (0.04)	0.04 (0.04)
Constant	0.10* (0.04)	0.07 (0.04)	0.10* (0.04)	0.08* (0.04)	0.09* (0.04)	0.09 (0.06)	0.09 (0.06)	0.09 (0.06)	0.09 (0.06)	0.08 (0.06)
Observations	994	994	994	994	994	996	996	996	996	996
R-squared	0.06	0.07	0.06	0.06	0.07	0.10	0.10	0.10	0.10	0.10

Note: OLS models of change (wave 2 – wave 1) in support for general judicial power (General) and judicial power over elections (Elections) are displayed. Models include controls for age, male/female, residence in rural area, household assets, and poverty. Standard errors are in parentheses.

**p < .01,

*p < .05.

approval of the rulings. Although we cannot rule out that these partisan divisions in the wave 1 data existed *before* the Supreme Court invalidated the August election, Afrobarometer data from multiple surveys conducted in Kenya between 2003 and 2016 show that opposition voters typically exhibit lower trust in Kenya's courts (SI Figure E.3, p. 9). Therefore, the wave 1 partisan gap is plausibly driven by the Court's ruling. If anything, we would expect Odinga supporters to hold less favorable views of the Court prior to the August ruling due to its failure to address prior opposition complaints regarding electoral irregularities.

Figure 4 shows clear partisan swings across survey waves in reaction to the Court's second ruling.²⁴ Support decreases substantially among Odinga supporters, whereas it improves modestly among Kenyatta supporters. Those changes are even larger when it comes to support for judicial power over elections. The results suggest that partisan punishment and reward are directed more at judicial power over elections than at the Court more generally. That Odinga supporters punished the Court more than Kenyatta supporters rewarded it is consistent with Christenson and Glick's (2019) finding of negativity bias in the United States. Moreover, partisan changes in decision agreement are the most substantial, which again validates that our measures of judicial power are tapping a more diffuse element of Court support than mere agreement.

It is noteworthy that *levels* of support for judicial power remain moderately positive following both rulings, even among partisan "losers." Kenyatta supporters' support for general judicial power remains moderate in wave 1 (0.53) despite the Court's having recently annulled the election of their preferred candidate. Odinga partisans' support in wave 2 remains above 0.60 despite the Court's having certified Kenyatta's election in the second election. We observe similar trends among Odinga supporters in support for judicial power over elections, though among Kenyatta supporters this support increases more drastically and eclipses Odinga support in wave 2.

Table 2 presents regression-based estimates. Models 1 (general) and 6 (elections) provide support for the partisan politics hypothesis, confirming that the associations between partisan changes in support for judicial power across survey waves are significant and robust to the inclusion of controls.

Testing the Principles-Based Attenuation Hypotheses

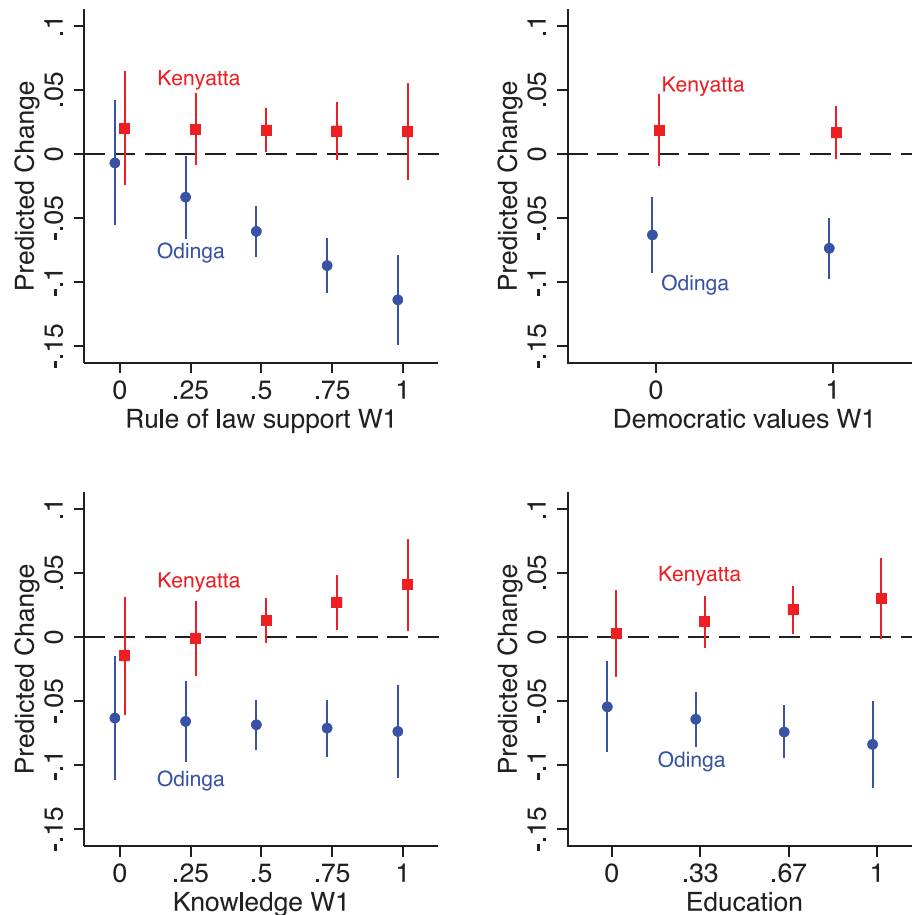
Table 2 also presents the interaction models. If principles attenuate partisan-based changes in support for judicial power, the coefficients on the interaction terms will be positive, indicating that Odinga supporters with stronger stated value commitments in wave 1 punished the Court less when it ruled against their preferred candidate in certifying the results of the second election, relative to Odinga supporters with weaker stated value commitments. Likewise, we would expect the constituent coefficient terms on support for rule of law, support for democracy, political knowledge, and education to be negative, indicating that Kenyatta supporters with stronger value commitments reward the Court less than those with weaker commitments.

We fail to find support for the principles-attenuation hypothesis. Contrary to the expectations of this hypothesis, the partisan by rule-of-law interaction is actually *negative* and statistically significant (column 2). In addition, support for democracy fails to moderate partisan response (column 3). Thus, there is no evidence that principles constrained the extent to which partisanship predicts change in support for general judicial power. In the case of rule of law, they were associated with larger partisan-based changes. We also find no evidence that knowledge or education—factors unlikely to be influenced by the Court's rulings—attenuate partisan swings on support for general judicial power. The interactions with knowledge and education are negative though not significant (columns 4 and 5). Models 7–10 show no evidence of an attenuation effect regarding support for judicial power over elections.²⁵

To illustrate these results, Figure 5 presents predicted changes among Kenyatta and Odinga supporters generated from the models in columns 2–5 (general power). The change among Kenyatta supporters is positive but small (and not statistically significant) regardless of rule-of-law values. Among Odinga supporters, however, as commitment to rule of law increases, backlash against judicial power *increases*. For knowledge and engagement, the patterns are more symmetric. Highly knowledgeable and educated Kenyatta supporters reward the Court following the second ruling, whereas highly educated Odinga supporters reduce support for

²⁴Christenson and Glick (2015, 2019) illustrate an analogous dynamic in the United States.

²⁵Results do not change when we include all four interactions simultaneously.

FIGURE 5 Predicted Change in Support for General Judicial Power by Principles, Knowledge, and Education

Note: Figure presents predicted values (change in support for general judicial power) from the models in columns 2–5 in Table 2.

judicial power (support is level for Odinga supporters across knowledge). By contrast, we observe minimal punishment or reward among the less knowledgeable and educated. For judicial power over elections, we observe neither substantial attenuation nor amplification (SI Figure K.1, p. 30).

To assess robustness, we run the models in Table 2 using the subitems that make up the indices (SI H.1, pp. 14–21). Trends are stronger for some items, but the overall results are not driven by any particular subitem. Second, we analyze the alternative count measure (described above), and the results are robust (SI H.2, p. 22). Third, we analyze percentage change across waves as the dependent variable, which accounts for differences in wave 1 levels (SI H.3, p. 23). Finally, we use inverse probability weights to account for differential attrition probabilities (SI J, pp. 27–29).

Conclusion

Conventional wisdom holds that democratic principles enhance support for judicial power. We subject this perspective to critical tests that leverage the Kenyan Supreme Court's historic decisions during the country's 2017 elections. We find significant partisan-based changes in support for judicial power. Further, we find no evidence that principles attenuate partisan backlash. Rather, it is the Odinga supporters with the highest scores on rule-of-law support who punish the Court most following the November decision to uphold Kenyatta's victory. We offer several theoretical reasons for this amplification of partisan-based reactions.

Although these findings may be discouraging, levels of support for judicial power remained moderate to moderately high throughout the crisis. Despite partisan

backlash, the Kenyan Supreme Court was able to assert its authority in politically contentious cases and emerge with overall levels of support relatively intact. This may be because there was a sufficient reservoir of pre-crisis support for judicial power, such that backlash did not lower overall support to dangerously low levels. On the other hand, the flip side of “moderate” levels of support is “moderate” levels of support for court curbing and non-compliance, which is more discouraging from a court’s perspective. Moreover, a partisan basis to judicial power implies that the high court’s reservoir could be further depleted in the face of a string of decisions that consistently disfavor one side.

These dynamics highlight the factors a high court must consider when there is a politicized foundation to judicial power. It can act sincerely and independently and risk public backlash, lack of implementation, or court curbing—all of which will eventually represent constraints on judicial power (e.g., Clark 2011; Helmke 2002). Or it can strategically preempt such threats by, for example, generating a mix of outcomes congenial to both sides of a political divide, which ensures that any attacks from losers will be transitory. A high court banks on moderately positive, stable support for judicial power in the aggregate rooted in partisan offsets in response to mixed outcomes. We see one empirical implication of this process: The negative effects from partisan losers are largely offset by the boost in support among partisan winners, which produces overall stability (Bartels and Johnston 2020; Christenson and Glick 2015, 2019). Once again, though, this strategic recoiling—rooted in a politicized foundation to judicial power—represents a constraint on judicial power (Bartels and Johnston 2020).

At first glance, it may appear that these results are most relevant to contexts with contentious partisan politics, relatively young judicial institutions, and potentially weak democratic norms—conditions that may prevail in many new democracies and electoral autocracies. However, support for high courts is also fairly politicized in older democracies, including the United States (e.g., Bartels and Johnston 2013, 2020; Christenson and Glick 2015, 2019; Clark and Kestellec 2015; Nicholson and Hansford 2014; Zilis 2021; but see Gibson and Nelson 2015), which suggests that the results may reflect more general challenges faced by courts. In addition, our analysis focuses on a highly salient case that impacted an election outcome: a case with clear partisan stakes. Future research is required to evaluate whether the results generalize to other kinds of court decisions. Though we note that in terms of the development of judicial power and

courts’ role in democratic development, election-related cases present key events.

What do these findings imply for judicial legitimacy in new democracies and hybrid regimes? Given the expanding role of the judiciary in adjudicating political disputes, these questions are of increasing importance. That the Kenyan Supreme Court maintained moderately high levels of support throughout the crisis despite backlash suggests that courts can assert authority in disputes related to elections and come through relatively unscathed. This suggests a role for the public in bolstering courts’ role in democratic consolidation processes. On the other hand, the results suggest that there is, at least to an extent, a political foundation to public support for judicial power. Partisan foundations imply a legitimacy deficit: if high courts possess “rightful” authority, support for judicial power should not be conditional on the content of rulings. And the absence of “principles-based inoculation” highlights the trade-offs faced by high courts: Enhancing judicial power requires that courts assert themselves, but such assertions can produce backlash, even among those in society most likely to be allies with the judiciary.

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Supporting Information

Additional supporting information may be found online in the Supporting Information section at the end of the article.

- Appendix A:** Complete List of Pre-Specified Hypotheses
- Appendix B:** Distributions for Individual Items in the Judicial Power Indices
- Appendix C:** Principles Measures
- Appendix D:** Descriptive Statistics
- Appendix E:** Principles and Partisanship
- Appendix F:** Wave 1 Cross-Sectional Tests of Pre-Specified Non-Experimental Hypotheses
- Appendix G:** Main Results with Pre-Specified Judicial Power over Elections Variable
- Appendix H:** Robustness Checks
- Appendix I:** Survey Experiment
- Appendix J:** Attrition
- Appendix K:** Replication of Figure 5 with Judicial Power over Elections Dependent Variable