

STRATEGIES OF REPRESSION

Judicial and Extrajudicial Methods of Autocratic Survival

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I. INTRODUCTION

WHEN autocrats turn to courts, these moves are often heralded as signs of democratic opening. Although judges tend to face significant constraints in autocratic regimes, rule-of-law proponents contend that every case brought before a judge opens new avenues to hold power accountable. This optimism is rooted in the long-held view that the judiciary is a potential safeguard against dictatorship, a double-edged sword that can serve the interests of authority and also advance the rights of the powerless.¹

But optimism must be tempered when courts become sites of political repression. In recent years, governments in Cambodia, Egypt, Iran, Turkey, and Zambia have used courts to undercut political rivals and silence democratic dissent.² These cases have not enhanced the rule of law, but instead have facilitated democratic backsliding under the guise of due process.³ Rather than challenge power, courts may reinforce autocratic control.

Despite this trend, courts remain an understudied institution of state

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¹North and Weingast 1989; Poe and Tate 1994; La Porta et al. 2004; Moustafa 2007; Elkins, Ginsburg, and Melton 2009; Keith, Tate, and Poe 2009; Powell and Staton 2009; Ellett 2013; Hill and Jones 2014; Ritter and Conrad 2016.

²Sadek 2011; Mfula 2017; Khalidi 2017; *Voice of America* 2017; *Radio Free Asia* 2016.

³Bermeo 2016 defines democratic backsliding as the state-led debilitation or elimination of political institutions sustaining an existing democracy.

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repression. In fact, conventional definitions of repression are almost exclusively extrajudicial, defined as the use of coercive state authority to threaten or intimidate.⁴ Repression research has largely focused on the restriction, arrest, detention, torture, and even murder of political challengers—tactics considered to be routine features of arbitrary rule.⁵

Scholarship on autocratic judiciaries challenges the assumption that courts are neutral actors in repressive regimes. As these works show, empowering courts is not the same as protecting legal rights; courts can enable rather than constrain autocrats, and they also serve vital coordinating, signaling, and information-gathering functions that stabilize autocratic power over time.⁶ Although this research draws attention to the autocratic functions of law and order, the findings tend to be disconnected from broader repression research, an oversight that has limited the development of theories to explain how and why courts are used as instruments of political repression.⁷

Considering the range of repression tools at an autocrat's disposal, under what circumstances do they turn to courts? I argue that courts become instrumental when rulers confront challengers from within the regime. Unlike regime outsiders who pose a common external threat for insiders to repress, internal rivals present a more complex target. To deal with the latter type of challenger, the ruler needs to first mobilize insiders behind the idea that he is legitimate and his rivals are not. Generating this belief can help turn insiders against one of their own and makes it easier for the ruler to punish disobedience within the regime.

Courts are an ideal forum to propagate narratives of incumbent strength and challenger weakness. Specifically, they provide a stage for rulers to prosecute their challengers for crimes against the regime. From the initial accusation to the final verdict, the criminal trial constitutes a ritual (defined as a formal, routinized, public ceremony) that establishes a shared set of beliefs and rules.⁸ When authority has been challenged by an internal rival, this ritual can help to rally members of the regime around the idea that the ruler is still in charge.

The notion of trial as ritual has important implications for understanding the role courts play in autocratic survival. As Malcom Feeley observes, when the “courtroom encounter [is] a ritual,” courts are no longer deliberative bodies, nor are judges assessors of facts or law.⁹

⁴ Goldstein 1978.

⁵ Gurr 1988; Moore 2000; Davenport 2007; Cingranelli and Richards 2014; Hill and Jones 2014.

⁶ Helmke 2002; Pereira 2005; Moustafa 2007; Solomon 2007; Massoud 2013.

⁷ Cross 1999; Escribà-Folch 2013; Hill and Jones 2014.

⁸ Chwe 2001.

⁹ Feeley 1979, 11.

Truth is largely irrelevant here; what matters instead is that a trial legitimizes the incumbent's claims to power and delegitimizes those of his challengers.

The fact that judicial processes bring insider conflict into the open is significant. In particular, while a trial broadcasts the existence of rivals within the regime, it carefully controls how threats to power are interpreted. Using the language of the law, democratic dissent is framed as a crime and political rivals are cast as threats to national security. By generating these stark, categorical definitions of right and wrong, a judicial strategy structures conflict in a way that makes it more easily contained.

I evaluate these arguments by turning to sub-Saharan Africa in the postcolonial period, a context that offers an ideal testing ground for patterns of state repression in autocratic regimes. Across this region, countries with shared colonizers inherited similar institutions of governance at independence. Many of the autocratic trends of independence regimes were actually a direct continuation of colonial-era practices, especially with regard to the use of law and courts.¹⁰ But as these regimes transitioned from multiparty rule to one-party dictatorship, emerging autocrats varied in the extent to which they confronted outsider and insider threats. Examining these cases thus provides a way to test the relationship between threats to power and strategies of repression while controlling for broader geopolitical factors and institutional legacies.

To better understand strategies of autocratic survival in postcolonial Africa, I generated fine-grained measures of 2,563 individual threats that arose between 1957 and 1994 in seven African countries. This data was collected from a variety of government and newspaper archives containing records of state repression in postcolonial Africa. Using logit regression, my findings reveal a striking pattern that is robust to the inclusion of several controls: extrajudicial repression was more likely to be used against outsiders and judicial repression was more likely to be used against insiders. I also find that actors who went to trial had different long-run outcomes than actors who did not. I discuss the implications of these trends in relation to broader findings on threat rankings and repression strategies.

A case study of Kenya fleshes out the logic behind these findings. When Kenya achieved independence in 1963, President Jomo Kenyatta led an uneasy coalition of disparate factions and was ultimately unable to prevent the defection of major party leaders, including his own vice president. Failure to manage these tensions within the ruling party led

¹⁰ Mamdani 1996; Chanock 1985; Joireman 2001.

to a different approach in subsequent conflicts. When outsider rivals posed a credible threat to power, Kenyatta effectively mobilized members of the ruling party and military into waging an extrajudicial campaign against this common enemy. Using their monopoly over the state, insiders effectively united to repress outsiders. But when insider support was tested less than a decade after independence, Kenyatta chose to prosecute his challengers for treason. The routinized process of trial and punishment provided stability amidst the ongoing crisis of leadership and enabled Kenyatta to reunite members of the regime behind his rule and against his rivals. By using the courts when the regime was threatened from within, Kenyatta was able to maintain control.

This study provides new insight into the role courts play in autocratic survival. As autocrats struggle to establish their authority, we typically expect courts to have greater leeway to hold rulers accountable.¹¹ But it is precisely during moments of uncertainty when courts can become pivotal institutions of autocratic control; they specifically provide a space for rulers to reclaim supremacy over their challengers and deter future threats from emerging. Importantly, rulers achieve these outcomes without resorting to physical violence against their rivals, relying instead on the ritual of a trial to validate their claims. The process thus becomes the punishment.¹²

In this article, I first examine different threats to autocratic survival and how they affect subsequent strategies of repression. Second, I develop a theory to explain why rulers turn to the courts and how these institutions resolve political conflict and stabilize autocratic regimes. Third, I test the observable implications derived from the theory. Fourth, I use a within-country case study to highlight potential mechanisms driving the observed trends. I conclude by discussing additional questions stemming from this research.

II. AUTOCRATIC CONSOLIDATION, REPRESSIVE STRATEGIES, AND THE COURTS

Political repression is an inherent feature of autocratic rule. But strategies of repression vary widely between extrajudicial and judicial extremes, ranging from summary detention and execution to routinized prosecution in court. To understand these broader patterns, it is useful to consider the different types of political challenges autocratic rulers face from outside and inside the regime. Different challengers pose

¹¹ Ginsburg 2002.

¹² Feeley 1979.

different threats to autocratic survival, which can have implications for how rulers choose to repress.

OUTSIDER AND INSIDER THREATS

Outsider threats have been broadly defined to include not only typical civilians, but also the organized opposition.¹³ Although civilians are more peripheral to power than opposition leaders, both groups have been characterized as “distant threats” to the political elite.¹⁴ But even distant threats can pose a significant challenge to autocratic survival. This is especially true of opposition parties—groups that are actively mobilized against the incumbent regime.

Such threats were a prime concern in postcolonial Africa, where many opposition parties posed a credible challenge to autocratic consolidation during the early years of independence. In Sierra Leone, for example, the opposition All People’s Congress steadily gained electoral ground against the ruling Sierra Leone People’s Party during the first decade of self-rule, eventually defeating it in the 1967 general election. Similarly in Ghana, the opposition posed a more sizable threat to the ruling Conventional People’s Party when several smaller groups mobilized under the United Party banner in 1957. In the ensuing years, United Party leaders undermined national support for the ruling party, even stoking talk of secessionism in various outlying regions. Secessionist fears were also prominent in Uganda, where demands for regional autonomy in the subnational kingdom of Buganda led to the creation of two rival partisan groups, the Kabaka Yekka, organized around the traditional monarchy, and the Democratic Party, which espoused national unity. In each of these cases, opposition outsiders posed a direct threat to the autocratic regime and in some instances defeated the incumbent at the polls. Such threats draw a clear distinction between members of the existing order and those who are organized against it.

Even when the opposition is formally restricted or banned from participating in elections, outsider groups can still pose an existential threat to incumbents. In fact, opposition leaders who are denied the legal right to mobilize will often resort to more extreme measures of rebellion. Such was the case in Malawi in 1965, when an opposition leader based in exile staged an armed insurrection against the one-party dictatorship of the Malawi Congress Party. Insurgent violence also threatened neighboring Zambia in the late 1960s and early 1970s, when the ruling

¹³ Gandhi and Przeworski 2006; Svobik 2009; Askoy, Carter, and Wright 2015.

¹⁴ Roessler 2011.

party repeatedly accused the opposition African National Congress of recruiting military assistance from rebel fighters based in Angola. Similarly, in Zanzibar interparty conflict escalated into a full-scale revolution in 1964 when the opposition Afro-Shirazi and Umma parties successfully overthrew the ruling Zanzibar Nationalist Party. In the years leading up to this coup, both opposition parties had become increasingly frustrated by their underrepresentation in parliament; only a week prior to the revolution, Umma had been declared an illegal organization by the state. These examples show how even outsider groups can become a serious concern to autocratic survival, threatening not only individual rulers, but also the broader ruling elite.

Whereas outsider threats are externally mobilized against a regime, insider threats emerge from within the regime itself. Specifically, insider threats come from members of the ruling elite or the agents who operate on their behalf, including government ministers, military officers, and other political authorities.¹⁵ Because these actors are normally responsible for coordinating and executing central commands, they can use their knowledge of the inner workings of power to undermine a regime from within.¹⁶ Such an undertaking is known as an allies' rebellion or a palace coup, wherein the incumbent is deposed by members of his own ruling circle.¹⁷

By virtue of their elite status, insiders pose a more divisive threat than outsiders. A palace coup may preserve or enhance the position of insiders, depending on their allegiance to the ousted incumbent: if insiders are loyal to the ruler, their fate is linked with his; if they are internally mobilized against him, they are invested in his downfall. The emergence of insider threats can thus reveal important divisions or factions within the regime.

Consider, for example, the insider revolts of Swaziland in the early 1980s, wherein both the prime minister and the queen were deposed in quick succession while the Swazi monarchy never lost its central command.¹⁸ Likewise, in Ghana when General Ignatius Acheampong was ousted as leader of the Supreme Military Council in 1978, he was replaced by Deputy General Fred Akuffo, his second-in-command, while other members of the military junta either retained their original positions or were promoted. Furthermore, when Akuffo himself was ousted by another military coup a year later, the new leadership chose

¹⁵ Bueno de Mesquita et al. 2005; Askoy, Carter, and Wright 2015; Greitens 2016.

¹⁶ Roessler 2011.

¹⁷ Svulik 2012.

¹⁸ Matsebula 1976.

to reappoint many prominent officials from the previous regime, including several civilian politicians in charge of important government portfolios.¹⁹ As these cases show, internal threats to the ruler do not necessarily represent threats to all; certain insiders may directly benefit from the ruler's downfall.

REPRESSING OUTSIDER AND INSIDER THREATS

To illustrate the differences between outsider and insider threats more concretely, consider how autocrats respond when their authority is challenged by members of either group. One possible response is violent repression ranging from indefinite detention to summary execution.²⁰ Regimes may also employ more persuasive tactics against political opponents, including harassment, extortion, and blackmail.²¹ These extrajudicial acts are designed not only to punish their immediate targets, but also to coerce others from pursuing similar behaviors in the future.²²

Although leaders often claim credit for acts of intimidation, no autocrat executes repression on his own; violence requires the cooperation of agents who are willing and able to coordinate it on the leader's behalf.²³ Autocratic lieutenants are the ones ultimately responsible for jailing political opponents, intimidating the families and associates of known dissidents, slandering the opposition in the media, enacting legislation that limits the right of outsiders to organize, taxing or confiscating private property, and generally undermining the ability of regime rivals to challenge the incumbent.²⁴ Indeed, violent repression is a massive operation conducted across a variety of government agencies and the key task for any ruler is to ensure that the agents of repression are actually united against the designated targets, and not the ruler himself.²⁵

While much attention has been devoted to understanding how rulers secure the compliance of coercive agents, that external enemies are often easier to repress than internal rivals has received considerably less emphasis. In particular, outsiders are a convenient focal point for insider coordination—a common enemy to rally against and to repress.²⁶ Examples of anti-outsider mobilization are replete in postcolonial Africa,

¹⁹ McGowan 2003.

²⁰ Poe and Tate 1994; Cingranelli and Richards 2014.

²¹ Schatz 2009; Schedler 2010.

²² Gurr 1988; Moore 2000; Cingranelli and Richards 2014; Davenport 2007; Pierskalla 2009; Svoblik 2009; Albertus and Menaldo 2012; Hill and Jones 2014; Ritter 2014; Sullivan 2016.

²³ Bueno de Mesquita et al. 2005; Bellin 2005; Myerson 2008; Slater 2010; Greitens 2016.

²⁴ Levitsky and Way 2002; Slater and Fenner 2011; Stern and Hassid 2012.

²⁵ Bueno de Mesquita et al. 2005; Svoblik 2009; Hassan 2017.

²⁶ Slater 2010.

where many opposition parties were designated “terrorist groups” that allegedly threatened the safety and security of the nation state. Such logic was used to detain opposition “subversives” in Ghana under both the civilian dictatorship of Nkrumah and the military juntas that followed. Fears of mass rebellion were also used to unite insiders against outsiders in Malawi, where thousands of opponents to the Banda regime were labeled political criminals and subsequently tortured, exiled, or detained indefinitely without trial. Even in less overtly oppressive regimes, such as the one-party government of Kenneth Kaunda in Zambia or the socialist government of Julius Nyerere in Tanzania, thousands of opposition actors were disappeared under the guise of national security.

But violent repression can be considerably more difficult to coordinate against insider threats because members of the ruling elite may be divided over the actual threat posed by the challenger: some insiders believe their fate is tied to the incumbent, whereas others potentially stand to benefit from the incumbent’s ouster. Complicating matters further, insiders are more likely to conceal their true loyalties under situations of heightened uncertainty, such as when the incumbent’s grip on power appears weakened but not fully compromised.²⁷ This uncertainty can lead to potentially destabilizing strategies of repression, where incumbents with incomplete information resort to indiscriminate violence against members of their own regime. Such violence risks exacerbating divisions within the leadership and can prompt internal backlash against the incumbent. At worst, it can provoke a palace coup, the very outcome the incumbent is attempting to avoid. It can thus be incredibly difficult for incumbents to identify and contain insurrection within their own ranks.

The fate of President Idi Amin of Uganda illustrates the potential consequences of using arbitrary violence against insiders. Amin was a military strongman, notorious for the brutal and violent persecution of political dissent. Although figures remain widely disputed, hundreds of thousands of civilians, intellectuals, politicians, and military officials were tortured, disappeared, or publicly murdered after he usurped power in 1971.²⁸ But by the late 1970s, Amin’s violent strategies began to show signs of wear. In 1977, he alienated what little remained of his ruling coalition when two prominent ministers and an archbishop were killed in a suspicious car crash, prompting several other government officials to defect or to flee into exile. A year later, Vice President General

²⁷ Svoblik 2009; Roessler 2011.

²⁸ International Commission of Jurists 1977; Amnesty International 1985.

Mustafa Adrisi was injured in another suspicious car crash, prompting a military mutiny against Amin.²⁹ This 1978 uprising led to military factionalism between troops that were loyal to Amin and those that were loyal to Adrisi—fighting that spilled over into neighboring Tanzania and set the stage for the ensuing Uganda-Tanzania war and eventually to Amin's violent ouster. Indeed, by viciously attacking those closest to him, Amin arguably paved the way for his own downfall.

REPRESSION RECONSIDERED

Unlike outsider repression, which is relatively straightforward to mobilize, insider repression can be considerably more complicated and, as noted above, may even destabilize the regime from within. When a regime is composed of factions with varying loyalties, arbitrary violence risks exacerbating existing divisions and provoking further dissent against the ruler. This suggests that if the ruler wants to punish insider rebellion, he requires a strategy that allows him to both reestablish authority and prevent other insiders from mobilizing against him.

Repression research has largely overlooked the role that courts play in punishing political rivals. In these works, courts are often characterized as the antithesis of arbitrary rule,³⁰ designed to safeguard the rights of the accused and to prevent acts of unrestrained violence by the state.³¹ But these conceptions of judicial power are deeply rooted in the democratic experience in which judges are primarily evaluated by their ability and capacity to make decisions without undue interference.³²

Separate scholarship on authoritarian judiciaries has shown that courts can also be used to sideline democratic dissent,³³ to legitimize unconstitutional rule,³⁴ and to stabilize autocratic control.³⁵ Much of this work centers on the puzzle of judicial independence: why autocrats allow judges to operate independently over limited jurisdictions.³⁶ Several scholars offer answers that are rooted in the pathologies of authoritarian governance. For example, Rachel Stern and Kevin O'Brien argue that Chinese courts help to ameliorate the lack of transparency within the state by demonstrating which political behaviors are tolerated or suppressed. Judicial processes thus signal the "limits of the

²⁹ Roberts 2014.

³⁰ Hill and Jones 2014.

³¹ Cross 1999; Elkins, Ginsburg, and Melton 2009; Keith, Tate, and Poe 2009; Powell and Staton 2009; Carey 2010.

³² North and Weingast 1989; Carothers 1998; La Porta et al. 2004; O'Donnell 2004.

³³ Solomon 1996; Pereira 2005.

³⁴ Cheesman 2011.

³⁵ Moustafa 2007.

³⁶ Solomon 2007.

permissible,” which encourages self-policing or censorship of dissent before it occurs.³⁷ Courts can also be used to legitimize corporal punishment, as Jothie Rajah observes in Singapore and Anthony Pereira finds in Brazil, where judicial processes provide an “urbane” alternative to more heavy-handed acts of repression.³⁸ Overall, these works show that law and courts are not necessarily panaceas for political conflict and authoritarianism, but are instead instrumental parts of state violence.³⁹

Although studies of authoritarian judiciaries provide valuable insight into the logic of judicial processes in nondemocracies, the findings remain disconnected from research on repression. Furthermore, among scholars who do focus on courts in authoritarian regimes, judicial empowerment is often characterized as a double-edged sword—serving the interests of authority, but also holding it accountable.⁴⁰ The pervasiveness of this logic reveals that courts are still frequently seen as an institutional alternative to state violence, rather than as part of the broader toolkit for repression. What has been missing is a general theory of repression that addresses who is subjected to judicial procedures and why.

A JUDICIAL STRATEGY OF REPRESSION

I argue that courts provide a valuable forum both to punish individual challengers and to deter future coordination against the ruler. These mutually reinforcing outcomes are achieved through a trial, defined here as a formal, ritualized routine that generates common knowledge regarding the rules of political order. Establishing such rules or laws is vital for regulating insider conflict and maintaining autocratic survival. I refer to this process—wherein laws and courts are used to repress political rivals—as a judicial strategy of repression.

When we think of a trial, we tend to think of a formal process of adjudication that decides guilt or innocence in a particular cause. But a trial can also be used to resolve internal conflicts over power. Such is a political trial, famously defined by Otto Kirchheimer as an attempt to maintain the status quo while “evicting” a rival from the political scene.⁴¹ This definition presents courts as only one of many political battlefields, including parliament, the bureaucracy, the media, the church, workplaces, and schools.⁴² Barbara Falk similarly defines political trials as “wars carried out by legal means,” drawing parallels between

³⁷ Stern and O'Brien 2011, 178.

³⁸ Rajah 2011; Pereira 2005.

³⁹ Massoud 2013.

⁴⁰ Ellett 2013; Moustafa 2014.

⁴¹ Kirchheimer 1961, 46.

⁴² Kirchheimer 1961, 4.

the ideological trials of the Cold War era and those from the post-9/11 War on Terror.⁴³ Eric Posner adopts a more issue-specific definition that includes both the partisan trials of political opponents and the more “public-spirited trials of public threats.”⁴⁴

Some scholars draw a distinction between political trials and show trials. The former may adhere to the rule of law, while the latter are “so over determined by politics that they can hardly be considered trials at all.”⁴⁵ The outcome of a show trial is often prearranged, as was the case in Nazi Germany, the Soviet Union, and many Soviet satellites, where the climax of a trial was typically the well-rehearsed courtroom confession.⁴⁶ While it is easy to dismiss such performances as state propaganda, so doing potentially overlooks how regimes carefully construct and project their authority. Indeed, that trials are conducted in the first place—especially in the aftermath of a leadership crisis—suggests that there is an important message that the regime wishes to convey.

Furthermore, many so-called show trials only received this label with the passage of time. During the Red Scare hysteria of the Cold War, many established democracies convened “anti-Semitic, anti-foreign, and anti-Communist” trials that were deemed just and proper by contemporary democratic leaders and legal experts.⁴⁷ Even during the infamous Moscow show trials of the 1930s, “prominent diplomats and seasoned journalists (as well as the ‘true believers’ in the various communist parties and sympathetic movements in the West) believed that the [trials] were legitimate, or at a minimum, felt that there was so much smoke that there had to be at least some fire.”⁴⁸ The line between political and show trials is thus fuzzy at best, and in either case, a court is being used as a forum of repression.

If a court is the battlefield, then a trial is the specific plan of attack. The most serious battle plan is the treason trial. Treason refers to a broad range of political behaviors that are considered disloyal to the sovereign,⁴⁹ where the “essence of the offence lies in the preparation of the endeavor to overthrow the government or to alter the law or the policies of the government.”⁵⁰ A treason charge thus “tears down the wall” between acts of political dissent and crimes against the state.⁵¹

⁴³ Falk 2008, 4.

⁴⁴ Posner 2005, 107.

⁴⁵ Falk 2008, 3.

⁴⁶ Hayward 1966; Posner 2005.

⁴⁷ Christenson 1983, 550.

⁴⁸ Falk 2008, 65.

⁴⁹ Christenson 1983.

⁵⁰ Twumasi 1985, 410.

⁵¹ Kirchheimer 196, 62.

The objective of a treason trial is to unite members of the regime against the challenger being tried, which ultimately enables the ruler to punish internal rivals without risking greater backlash from within the regime. A treason trial achieves these goals by adhering to a predictable, routinized sequence. First, the state brings formal charges against the challenger, usually followed by the challenger's arrest and detention. Second, the challenger is presented in court, where the prosecution delivers its case before the judge. Last, the judge delivers a verdict and sentence, thus concluding the trial.

Treason trials are performed by challengers, prosecutors, and judges, with each actor playing a symbolic role in court: the challenger is the manifestation of real or imagined threats within the regime; the prosecutor represents the interests of the regime and outlines the alleged conspiracy committed against the incumbent; and the judge upholds the rules of political order as established by the incumbent, which most often entails ruling against the interests of the challenger. In other words, whereas the challenger represents a threat to the existing order, the prosecutor and judge are defenders of the status quo.

In many cases, treason proceedings are not designed to elucidate truth or to demonstrate proof of wrongdoing, but rather to rally insiders against an internal rival. This is why, regardless of the actual facts of the case, a trial builds a simple narrative with a clearly defined beginning, middle, and end—the challenger rebelled, the challenger failed, the challenger is punished. A judicial strategy of repression thus brings insider conflict into the open in a tightly controlled fashion. In fact, by structuring the narrative as a predictable plot with a tidy resolution, a trial can make the defeat of the challenger seem like a predetermined outcome in which the incumbent will always emerge victorious over his foes. Judicial procedures can thus superimpose the semblance of order onto the messy reality of political conflict.

The language of the law can help to cement this narrative in clear, categorical terms. Although challengers may be implicated in specific crimes against the state, the actual charges levied against them in court tend to be relatively generic. Treason is a catch-all term for acts of disloyalty against the ruler; the charge itself does not lend nuance to the actual substance of a given case, nor does it explain why the challengers on trial acted as they did. Instead, such language provides a strict definition of right and wrong that is applicable to a wide range of political behaviors, reducing the complexities of internal rivalries to more simple categories of criminality. The language of the law can thus limit the range of possible interpretations that may be derived from a given

conflict, which in turn can help deter insiders from believing that the challenger on trial has legitimate grievances against the incumbent.

To ensure that other insiders receive this message, a trial may be publicized through government press releases or other media as the case unfolds. A court is sometimes open to the general public so that anyone can witness its proceedings firsthand. Indeed, compared to the often summary and secretive nature of extrajudicial violence, a judicial process is a relatively open affair.

The power of the judicial process is not that all actors receive the same message, but rather that each actor believes everyone else receives the same message. An individual's beliefs are stronger when they are shared by others,⁵² and when a trial is widely broadcast it increases the likelihood that more people assimilate shared information. The public ceremony of a trial can thus create general agreement on common knowledge, perpetuating a master fiction or an imagined future that underpins political order.⁵³ In a treason trial, the master fiction is that the ruler is the only legitimate authority and no challenger can defeat him.

From beginning to end, the institutionalized process of information-sharing through a trial constitutes a ritual—a ceremonial function designed to establish a shared set of beliefs and rules.⁵⁴ A ritual specifically invokes formal, routinized, and public demonstrations to promote coordination around a common idea or goal. As Michael Chwe observes, rituals are a valuable means of “shoring up” the rules of political behavior when “social strains and tensions . . . have begun to impair seriously the orderly functioning of group life.”⁵⁵ These functions are especially useful in the aftermath of insider conflict, when the ruler's authority has been directly undermined.

The ceremony of a treason trial serves as a reminder to all who bear witness that the incumbent will emerge victorious over his challengers. This idea, if widely shared, can deter future coordination against the ruler and can reinforce authority within the regime. As Michael Polanyi observes, “If in a group of men each believes that all the others will obey the commands of a person claiming to be their common superior . . . all are forced to obey by the mere supposition of the others' continued obedience.”⁵⁶ Publicizing the proceedings of the court can also generate a self-fulfilling prophecy whereby insiders are more likely to support

⁵² Scott 1990; Chwe 2001.

⁵³ Geertz 1973; Cover 1986, 1604.

⁵⁴ Chwe 2001.

⁵⁵ Chwe 2001, 27.

⁵⁶ Polanyi 1958, 224.

the status quo if they believe others also support it. The impression of power thus contributes to actual power.⁵⁷

The emphasis of a judicial strategy is the trial itself and the ideas contained therein, which are summarized by the final verdict. The rallying effect may be achieved before the end of the trial, and whatever punishment befalls the challenger is secondary to what happens in court. This means that the insider on trial may ultimately be pardoned or perhaps even readmitted into the regime. In fact, allowing insiders to return to their former posts can be advantageous for autocratic regimes in the long run. These actors have been formally prosecuted; they have experienced firsthand the consequences of disloyalty and are more likely to be submissive in future.

SUMMARY AND OBSERVABLE IMPLICATIONS

The argument above suggests that different challengers pose different threats to autocratic survival, which can affect subsequent strategies of repression. The key criterion is whether members of the regime are effectively united against the challenger. Because outsiders pose a broad threat to the regime, they are a common enemy to rally against. Because insiders pose a more uneven threat to autocratic survival, they are a more difficult target for conventional repression. In these latter cases, a judicial strategy provides a way to unite members of the regime behind the incumbent and against the challenger, which enables the incumbent to punish the challenger on trial while deterring future insider threats.

This logic produces the following testable implications. The first is that strategies of repression differ by challenger type.

—H1. Outsiders are more likely to receive extrajudicial repression and insiders are more likely to receive judicial repression.

The second is that trials can rally insiders behind the ruler in the aftermath of intraregime conflict. A judicial strategy of repression thus reinforces incumbent authority and helps to ensure autocratic survival.

—H2. Trials rally intraregime support for the ruler.

III. EMPIRICAL ANALYSIS

RESEARCH DESIGN

I test these hypotheses in sub-Saharan Africa during the postcolonial period. Because governance varied across European colonizers, I focus

⁵⁷ Scott 1990.

on former British territories, which enables me to evaluate how political threats—not colonial inheritances—shaped repression strategies. To draw meaningful comparisons within this subset, I include countries in East, West, and Southwest Africa that faced similar trajectories to self-rule after the Second World War. This excludes South Africa, Zimbabwe, and Namibia, countries that underwent violent, protracted battles for independence that lasted until the 1980s and 1990s. I also exclude Botswana, but for the opposite reason: the postcolonial government emerged as one of the most stable multiparty democracies on the African continent. Controlling for legal legacies, I further restrict my analysis to regimes that streamlined the legal system under the English common law. This excludes nonsecular governments that chose to formalize Sharia law in the national constitution, such as The Gambia, Sudan, and Somalia. Nigeria is also omitted due to the particular nature of insider-outsider conflict that defined its postindependence period, including issues of federalism and national representation that led to civil war. The final sample includes Ghana, Kenya, Malawi, Sierra Leone, Tanzania, Uganda, and Zambia between 1957, the earliest year of independence in the sample, and 1994, the approximate end date of one-party rule.

DETERMINING THREATS TO AUTOCRATIC SURVIVAL

Information on insider-outsider threats can be uncovered by examining coup plots, defined as instances of conspired but unsuccessful regime overthrow.⁵⁸ Focusing on these events is analytically productive for two reasons. First, coup plots are often publicized events, receiving extensive coverage in both the local and foreign press. Second, regardless of whether a plot occurs in a civilian dictatorship or a military junta, the underlying premise of the conspiracy is the same: a challenger has connived to subvert the incumbent and accordingly, poses a threat to autocratic survival. In these ways coup plots provide a baseline for comparing political threats across different contexts.

Although coup plots provide a useful benchmark for analysis, there are potential biases in reporting. Because plots are often announced before they become actual events, the veracity of these allegations may only be as good as the regime's word.⁵⁹ The timing of these conspiracies may also correspond to broader political or economic crises, which suggests that the announcement of such plots may be intended to distract

⁵⁸ McGowan 2003.

⁵⁹ McGowan 2003.

from other ongoing problems of governance.⁶⁰ Despite these concerns, the key aspect of a reported plot is not whether the coup attempt was actually due to occur, but who is being implicated, because whoever is targeted as an enemy of the state is subsequently treated as such. In other words, while the plot itself may be a fake, the repression is real. A reported plot is thus a window into the insecurities of autocratic rulers and reveals who poses a perceived threat to autocratic survival.⁶¹

DATA

While coup plots are relatively visible events, reliable data on repression is notoriously elusive, especially in autocratic contexts. In the African case, if regimes kept official records on how alleged conspirators were repressed, they did not often release the information to the public. This is especially true for actors who were summarily detained or disappeared. Even African countries that published annual law reports omitted treason cases from the official record.⁶²

To account for gaps in reporting, I turned to archives maintained by the British government regarding postcolonial African political development. The British Foreign and Commonwealth Office kept meticulous, systematic records on the internal politics of former British colonies, including intelligence reports, security briefings, private correspondences with African officials, local African newspaper accounts, and other political ephemera of the period. Many of these documents remained classified for up to fifty years after their creation and were only made available to the general public in the past decade.⁶³ The bulk of my research was conducted at the British National Archives, the British Library, and the Senate House Library Archives at University College of London. Supplemental information was obtained from the foreign press records of the ProQuest Historical Newspapers Archive. From these different sources, I compiled more than two thousand British documents and five thousand newspaper reports to build a database of insider-outsider threats and how they were repressed in postcolonial African regimes.⁶⁴ I coded specific coup conspiracies, the individuals

⁶⁰ Powell and Thyne 2011. Also, Keeschull 1994 notes that plots could be “deliberately contrived nonsense, put forward to serve the regime’s purpose of initiating emergency rule, suppressing a particular group, or justifying other actions sought by the regime” (p. 568).

⁶¹ Mitchell, Morrison, and Paden 1972; Keeschull 1994.

⁶² Law reports were published annually for most of the former British colonies, but typically included only a sample set of illustrative, politically nonsensitive cases.

⁶³ Certain records for this project were obtained through Freedom of Information Access requests.

⁶⁴ To be included in the analysis, each accused individual had to be documented by at least two sources.

implicated in these conspiracies, and the method of repression deployed against them. In total, 2,563 ruling party, military, and opposition challengers were identified from these records.

Relying on British or foreign archives comes with a major caveat—focus may differ across African countries, often according to the level of foreign investment or expatriate presence that was maintained after decolonization. Additionally, foreign interest in extrajudicial repression notably shifted over time because in the immediate postcolonial period, summary detentions without trial were not considered extraordinary events. After all, the British pioneered these tactics against their African colonial subjects. But in later decades, nongovernmental organizations and humanitarian watchdogs like Amnesty International began to champion the cause of African political prisoners and to raise their international profile, which also increased the attention the British paid to these subjects, as reflected in the government archives. The analysis below includes country and year indicators to correct for potential imbalances in coverage across space and time.

OPERATIONALIZING KEY VARIABLES

The main independent variable is *challenger type*, coded as insider or outsider. In the African case, insiders include ruling party officials and members of the military—vital pillars of support in the one-party dictatorships and military juntas of the postcolonial period.⁶⁵ By contrast, outsiders are members of opposition groups that sought control of the national government. In classifying members of the ruling party and opposition, it is important to note that the early years of independence were defined by the merger, dissolution, or consolidation of different party organizations.⁶⁶ This means that some opposition parties were founded by defectors from the ruling party, whereas others had always operated as peripheral groups. I account for these factors in the analysis.

The main dependent variable is *repression*, equal to 1 if the accused went to trial, and 0 otherwise. In this coding, I consider any type of punishment that does not take place in court—civilian or military—to be extrajudicial. A range of extrajudicial tactics is thus collapsed into the “other” category. Figure 1 illustrates the extent to which tactics such as detention, deportation, and execution were used in postcolonial Africa. The findings reveal that the vast majority of challengers in the data set were either put on trial or detained; deportations and executions were

⁶⁵ Decalo 1989; Young 2012.

⁶⁶ Riedl 2014.

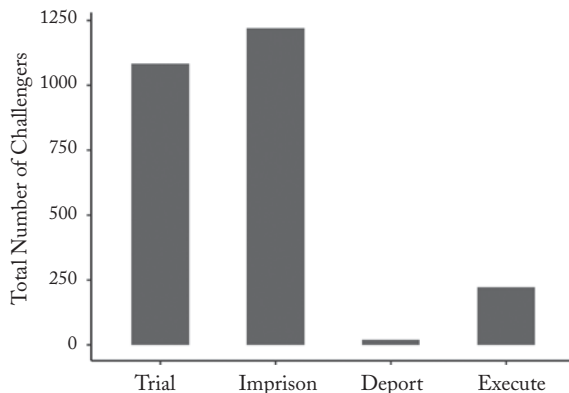


FIGURE 1
REPRESSION TACTICS, INDEPENDENCE–1994

much less frequent. For the following analysis, it is thus reasonable to conceive of the dependent variable as trial or summary detention.

In these cases, trials were conducted in either common law or military courts. Military courts are often assumed to be more arbitrary than their civilian counterparts because the main decision-making authority is a military officer, not a civilian judge.⁶⁷ But in postcolonial Africa, military justice was not entirely divorced from the civilian system. Even when military courts fell beyond common law jurisdiction, civilian judges were often required to participate in tribunal proceedings. For example, the Ghana Armed Forces Act 1962 stipulates that court martials include a presidentially appointed Judge Advocate General to advise on any question of law or procedure. These rulings could be appealed to a Court Martial Appeal Court, comprising judges of the Superior Court of Judicature and any other common law professionals appointed by the Chief Justice. Uganda had similar measures in place to provide judicial oversight over military tribunal decisions, as detailed in the Economic Crimes Tribunal Decree 1975, which states that a military “tribunal shall have a legal advisor who shall be a Magistrate Grade I or other legal practitioner, of not less than two years’ standing, appointed by the Chief Justice after consultation with the Attorney-General.”

Furthermore, the logic of a judicial strategy remains unchanged in

⁶⁷ Bienen 1985; Tate and Haynie 1993; Geddes 2004; Pereira 2005; Moustafa 2007; Singh 2014.

military forums. As in a treason trial in a civilian court, the objective of a court martial is to reinforce hierarchy and to maintain discipline within the broader organization.⁶⁸ This aim is a feature of military courts in autocratic and democratic regimes alike. As US General William Westmoreland observed, “Military justice should aid in preserving the authority of military commanders . . . and if we can rehabilitate an errant soldier and return him for duty, we have preserved a valuable asset.”⁶⁹ In other words, the ultimate goal is not necessarily to destroy the challenger on trial, but to reestablish his or her loyalty to authority. This is the essence of a judicial strategy of repression.

IV. EMPIRICAL ANALYSIS

BIVARIATE RELATIONSHIPS

Is there evidence to support the claim that the type of challenger a ruler faces affects the strategy of repression used against that challenger? Figure 2 shows the total number of insiders and outsiders who were implicated in coup plots and subsequently repressed by the state from independence to 1994. The results illustrate that repression strategies do appear to differ between challenger types: the vast majority of insiders were formally prosecuted, whereas most outsiders were not put on trial. These descriptive findings lend credibility to the hypothesis that insiders are more likely than outsiders to face a judicial strategy.

REGRESSION ANALYSIS

Moving beyond the simple bivariate results, I turn to a set of logistic regressions to control for other potential explanatory variables that capture both regime and country characteristics. I model the relationship between challenger type and repression strategy as a logit transformed linear probability model with a binomial error distribution. The unit of analysis is an individual challenger and the main outcome of interest is how he or she was repressed. The results are reported in log-odds units; predicted probabilities are shown in the figures below. To account for differences in repression strategies across space and time, I include country and year controls. I also include a control for regime type, dichotomized as civilian or military. Table 1 reports the main results from the logistic regression. Column 1 shows the baseline regression of going

⁶⁸ Geddes 2004.

⁶⁹ Westmoreland 1971, 6.

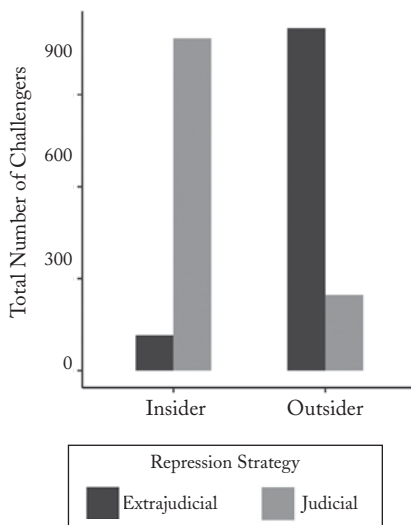


FIGURE 2

REPRESSION STRATEGY BY CHALLENGER TYPE, INDEPENDENCE–1994

to trial conditional on challenger type, column 2 controls for military regimes, and column 3 includes additional controls for country and year trends.

In each column of Table 1, insiders have a positive logit coefficient and outsiders have a negative logit coefficient. Both estimates are statistically significant at the 0.01 level and are robust to the inclusion of country, year, and regime controls. Figure 3 illustrates predicted probabilities for the baseline estimates reported in Table 1, where the bands represent 95 percent confidence intervals. As the figure shows, the probability of going to trial is over 90 percent for insiders and only 18 percent for outsiders. These results corroborate the first hypothesis that insiders are more likely to go to trial than outsiders.

DISAGGREGATED CODING

In the previous analysis, insiders include ruling party and military officials, whereas outsiders include members of opposition groups. Do the main results still hold when challengers are differentiated along these dimensions?

Table 2 reports the results from the logistic regression of repression strategy on challenger type where challengers are disaggregated by their ruling party, military, or opposition status. With the exception of how challengers are coded, columns 1–3 in Table 2 are specified in the same

TABLE 1
 LOGIT REGRESSION OF REPRESSION ON CHALLENGER TYPE:
 INSIDERS AND OUTSIDERS

	<i>Dependent Variable</i>		
	<i>(1)</i>	<i>Trial</i> <i>(2)</i>	<i>(3)</i>
Insider	2.243*** (0.098)	2.616*** (0.112)	3.812*** (0.373)
Outsider	-3.752*** (0.121)	-3.702*** (0.126)	-3.110*** (0.255)
Military regime		-1.509*** (0.140)	0.773 (0.815)
Country control	no	no	yes
Year control	no	no	yes
Observations	2563	2563	2563

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$; standard errors in parentheses

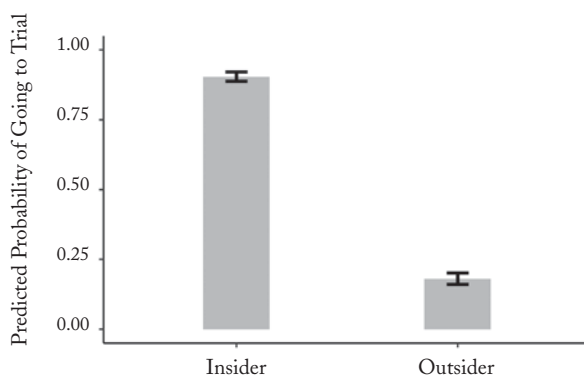


FIGURE 3
 PREDICTED PROBABILITY OF GOING TO TRIAL IN AFRICA,
 INDEPENDENCE-1994: INSIDERS AND OUTSIDERS

way as columns 1-3 in Table 1. The findings in Table 2 remain statistically significant and in the same direction as in the main results. In each estimated model, ruling party and military challengers have positive logit coefficients, whereas opposition challengers have negative logit coefficients. Figure 4 shows the predicted probabilities derived from these estimates. Military challengers have the highest predicted probability of going to trial, nearly 100 percent, providing evidence that judicial strategies were strongly preferred within African militaries; ruling

TABLE 2
 LOGIT REGRESSION OF REPRESSION ON CHALLENGER TYPE: PARTY,
 MILITARY, OPPOSITION

	<i>Dependent Variable</i>		
	(1)	<i>Trial</i> (2)	(3)
Ruling party	0.544*** (0.183)	0.544*** (0.183)	2.781*** (0.435)
Military	2.147*** (0.222)	2.752*** (0.238)	1.443*** (0.343)
Opposition	-2.053*** (0.196)	-1.570*** (0.199)	-2.066*** (0.347)
Military regime		-1.889*** (0.164)	0.584 (0.784)
Country control	no	no	yes
Year control	no	no	yes
Observations	2563	2563	2563

*p < 0.1; **p < 0.05; ***p < 0.01; standard errors in parentheses

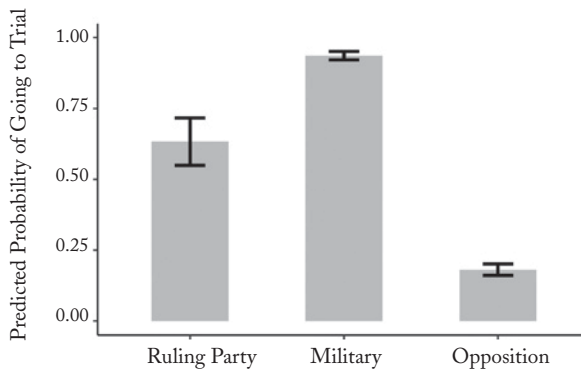


FIGURE 4
 PREDICTED PROBABILITY OF GOING TO TRIAL IN AFRICA,
 INDEPENDENCE-1994: PARTY, MILITARY, OPPOSITION

party challengers had the second highest probability, approximately 60 percent; and opposition challengers had the lowest probability, less than 25 percent.

I also evaluate whether different types of outsiders faced different repression strategies. I specifically disaggregate outsiders by whether they were ruling party defectors or nondefectors (a defector had switched

TABLE 3
 LOGIT OF REPRESSION ON CHALLENGER TYPE: OUTSIDER DEFECTORS

	<i>Dependent Variable</i>		
	<i>(1)</i>	<i>Trial</i> <i>(2)</i>	<i>(3)</i>
Ruling party	0.544*** (0.183)	0.544*** (0.183)	2.348*** (0.464)
Military	2.147*** (0.222)	2.819*** (0.240)	1.806*** (0.357)
Nondefector	-2.011*** (0.199)	-1.364*** (0.202)	-1.069*** (0.395)
Defector	-2.269*** (0.258)	-2.269*** (0.258)	-3.282*** (0.435)
Military regime		-2.021*** (0.163)	0.246 (0.767)
Country control	no	no	yes
Year control	no	no	yes
Observations	2563	2563	2563

* $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$; standard errors in parentheses.

parties, whereas a nondefector had always been a member of the opposition). Table 3 reports the results from the logistic regression of repression strategy on ruling party, military, and ruling party defector and nondefector where the columns are specified in the same way as columns 1–3 in tables 1 and 2. The log-odds that defectors or nondefectors go to trial is negative and significant at the 0.01 level, and remain significant with the inclusion of military regime, country, and year controls. In other words, both types of outsiders are less likely to go to trial.

Figure 5 shows the predicted probabilities for the logit regressions reported in Table 3. The probability of going to trial is approximately 19 percent for nondefectors and 15 percent for defectors, and the difference between them is statistically insignificant. This suggests that irrespective of whether opposition challengers once belonged to the ruling party, they are effectively treated as outsiders once they have defected. That ruling party defectors are unlikely to go to trial is also consistent with theoretical expectations. If a judicial strategy of repression is designed to enforce autocratic discipline, it is largely wasted on ruling party defectors—actors who have effectively demonstrated their disloyalty to the regime twice: first by defecting from the ruling party, then by attempting to overthrow it. Current allegiances rather than prior loyalties thus appear to be a stronger determinant of how challengers are subsequently repressed.

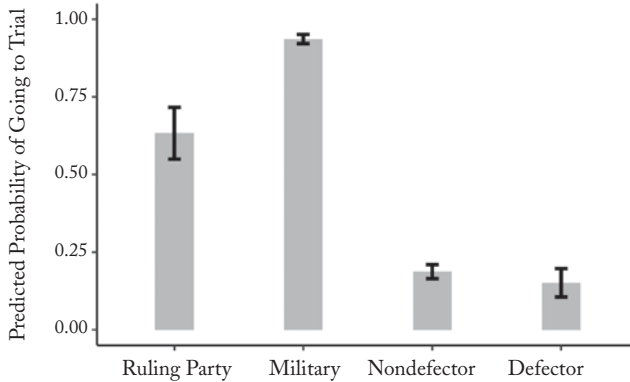


FIGURE 5
PREDICTED PROBABILITIES: OUTSIDER DEFECTORS

LONG-RUN OUTCOMES

To evaluate the long-run outcomes of different repression strategies, Figure 6 reveals the final fate of challengers who were repressed judicially or extrajudicially from independence to 1994. Most challengers were imprisoned or granted clemency by the state. Clemency here refers to commutations and pardons, both of which were issued by authority of the head of state. A commutation typically entailed replacing an execution order with a prison sentence, whereas a pardon meant forgiveness for past crimes and an early release from custody.

Figure 6 suggests that judicial and extrajudicial strategies of repression led to different consequences for the accused. Of the challengers in the sample who went to trial, 956 were imprisoned and 686 had their sentences commuted or pardoned by the president. Of the challengers in the sample who never went to trial, 1151 were imprisoned and only 79 were granted clemency.

These findings, especially observations in the extrajudicial category, should be interpreted with caution. In particular, the summary and often secretive nature of extrajudicial tactics suggests that the number of detainees in the sample is likely underreported. The more intriguing finding is in regard to commutations and pardons. Approximately 7 percent of challengers who were detained without trial were subsequently granted clemency. This is in contrast to the more than 70 percent of challengers who went to court. In other words, the data suggest that challengers were ten times more likely to have their punishment

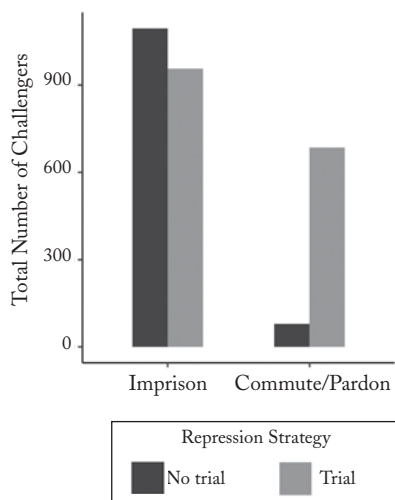


FIGURE 6
LONG-RUN OUTCOMES, INDEPENDENCE-1994

reduced by the president if they were first subjected to a trial. Challengers who were formally prosecuted may have thus been effectively neutralized by their experience in court: they no longer posed a viable threat to autocratic survival.

As evidence of this point, consider the aftermath of a 1964 treason trial under President Kwame Nkrumah in Ghana. The case centered on a failed plot to kill Nkrumah, allegedly masterminded by several high-ranking members of his cabinet. Attempted assassination of the president was a crime punishable by death, and Nkrumah was so determined to secure convictions against his rivals that he had the case tried twice under two different chief justices. But soon after the guilty verdicts were delivered, Nkrumah commuted all the death sentences to time in prison.⁷⁰ A similar pattern emerged in Sierra Leone following the failed coup against President Siaka Stevens. When the case finally came to the Supreme Court in 1970, Brigadier David Lansana and several others were found guilty of treason and sentenced to death. A year later, however, Stevens pardoned and released six of the condemned men, including Lansana.⁷¹ These cases are typical of postcolonial Africa, where in an apparent about-face presidents often granted

⁷⁰ *Observer* 1964a.

⁷¹ Cartwright and Cox 1972.

clemency to challengers found guilty of treason. Rather than reverse the decisions of the court, these outcomes reveal that the key component of a judicial strategy of repression is the trial, not the penalty that follows. Or, in Feeley's words, the process is the punishment.⁷²

V. CASE STUDY ILLUSTRATION OF THE THEORY

To evaluate the second hypothesis—whether trials promote intraregime support for autocratic rulers—this section provides a detailed case study of postcolonial Kenya under Kenyatta. In line with theoretical expectations, opposition outsiders presented a common enemy for Kenyatta and other insiders to mobilize against; the opposition was thus an ideal target for extrajudicial strategies. But threats from ruling party and military officials presented a more complex challenge. To confront such rivals, Kenyatta turned to the courts and used a treason trial to ritualize punishment and rally members of the regime behind his rule. A judicial strategy thus helped Kenyatta reclaim his authority in the wake of an intraregime crisis.

OUTSIDER THREATS

In the early years of independence, Kenyan national politics were defined by a rivalry between two opposing camps: the ruling Kenyan African National Union (KANU) and the opposition Kenya People's Union (KPU). The KPU was founded by Oginga Odinga, Kenyatta's former vice president, and many of its early members were former KANU rank-and-file, which meant that the main opposition party was largely composed of ruling party defectors.

KANU was quick to draw a distinction between current members of the regime and those who had defected. On April 28, 1966, only a few weeks after the KPU's founding, the KANU-dominated parliament passed a constitutional amendment requiring all ministers who had defected to contest their seats in a "little general election." The message was clear. If ministers were going to resign from the ruling party, they had to seek a new electoral mandate under a different party banner.⁷³

KANU exploited its monopoly in the legislature, bureaucracy, and security forces to repress the KPU and to prevent it from becoming a viable party.⁷⁴ The logic behind these moves was articulated in Kenyatta's 1968 treatise, "Toward a One Party State." He writes, "Did we have to create leaders of the opposition, maintain them from public funds, and

⁷² Feeley 1979.

⁷³ Hornsby 2012.

⁷⁴ Mueller 1984.

tolerate their insatiable desire for agitation merely because they wanted to oppose for ‘opposition’s sake?’ Certainly not . . . instead of being constructive from within, [the opposition] prefers to be destructive from without.”⁷⁵

By casting the opposition as a threat to national unity, KANU was able to justify a variety of coercive tactics under the Preservation of Public Security Act of 1966, which granted the state vast powers to detain dissenters without trial, control freedom of movement, impose curfews, and censor the press.⁷⁶ Over the next three years, the KANU-controlled police detained several KPU officials and supporters without charges, especially during the lead-up to local government elections.⁷⁷

The decisive blow to the KPU came in October 1969 at a campaign rally that both Odinga and Kenyatta attended. After hostile words were exchanged, a violent clash ensued between KPU and KANU supporters and several dozen participants were killed. Over the next few days, Odinga and leading members of the KPU were arrested and the KPU was banned as a subversive organization deemed “dangerous to the good government of the Republic of Kenya.”⁷⁸

INSIDER THREATS

Whereas opposition outsiders were a relatively straightforward target for repression, rivals from within the ruling organization proved to be a more complex challenge. Such was the case in May 1971, when Kenyatta accused members of his own regime, including officials from the ruling party and military, of conspiring to overthrow the government. Most of the alleged conspirators came from politically underrepresented ethnic groups that had recently come into conflict with Kenyatta and his Kikuyu coethnics. For example, coconspirator Gideon Mutiso, a minister of parliament and a Kamba, had repeatedly accused Kenyatta of playing ethnic favoritism,⁷⁹ whereas army lieutenant Joseph Daniel Owino, a Luo, claimed he was driven to “hunger” and disloyalty by tribalism.⁸⁰ One of the highest ranking officials implicated in the plot was Major General Joseph Ndolo, Chief of Defense Staff and a Kamba.⁸¹

In response to internal dissent, Kenyatta took his challengers to

⁷⁵ TNA 1967–68, FCO 31/209.

⁷⁶ Another colonial law known as the Societies Ordinance of 1952 ensured that all political parties and their various branches obtain certificates of registration to be considered lawful organizations. This ordinance empowered the police to arrest and detain KPU officials without the right to trial simply because they lacked formal recognition from the KANU-controlled registrar. See Mueller 1984.

⁷⁷ Hornsby 2012.

⁷⁸ Hornsby 2012.

⁷⁹ *Washington Post* 1971.

⁸⁰ Kareithi 2010.

⁸¹ Decalo 1989.

court. The decision to invoke a judicial strategy of repression puzzled contemporary observers, especially considering the range of extrajudicial tactics that had already been used effectively to silence government critics.⁸² But in this case, Kenyatta needed to ensure that other members of the ruling elite—and not just his Kikuyu coethnics—rallied behind him. Although Kenyatta could have ordered his rivals to be arrested, detained, and even disappeared, doing so might have provoked further dissent among other insiders, which is precisely what happened in 1969 when Tom Mboya, one of the founding members of KANU and a vocal critic of Kenyatta, was publicly assassinated. A low-ranking army engineer was ultimately convicted of that crime, but many believed that the killing was ordered by Kenyatta and orchestrated by Kikuyu tribesmen.⁸³ Rather than defuse elite conflict, Mboya's murder only exacerbated it. Indeed, it was incidents such as this that fueled interethnic animosity within the ruling party and the military and undermined support for Kenyatta's leadership, perhaps contributing to the 1971 plot against him.⁸⁴

In light of these ongoing tensions, in 1971 Kenyatta chose to use the high court to ritualize the repression of insiders. Attorney General Charles Njonjo directed the prosecution, developing a narrative of insider rebellion that made a potentially sizable threat appear small. As such, the message of the trial was not that Kenyatta's authority had been challenged, but that it had been foolishly challenged. For example, in his opening statement, Njonjo explained that the challengers on trial were incompetent criminals ultimately doomed to failure, and their odds of success were "a million to one."⁸⁵ The accused also delivered emotional confessions of guilt in court, begging for Kenyatta's forgiveness "in an almost childlike way."⁸⁶ Such displays reinforced the notion that the conspirators lacked "sufficient belief in the rectitude of [their] cause to defend [their] actions in any way."⁸⁷ Of course, that the accused were denied the right to counsel also meant that they lacked the resources or knowledge to deliver an effective counter narrative.

The KANU regime staged several rallies as the trial unfolded, delivering speeches that asked citizens to reaffirm their loyalty to the party and to pledge support for their president. These ritualistic demonstrations were widely attended: approximately sixty thousand people attended

⁸² TNA 1971, FCO 31/1190.

⁸³ Meisler 1969.

⁸⁴ *Washington Post* 1971.

⁸⁵ TNA 1971, FCO 31/1190.

⁸⁶ TNA 1971, FCO 31/1190.

⁸⁷ TNA 1971, FCO 31/1190.

one such rally on June 27, 1971, where President Kenyatta himself appeared.⁸⁸ Addressing the crowd, Kenyatta stoked animosity against the “traitors” on trial, but also downplayed the threat posed by these actors, remarking that “when the frogs make a noise, they do not prevent the cattle from drinking water.”⁸⁹ Such rallies were powerful, public demonstrations of support for Kenyatta and KANU, and helped to reinforce the narrative being propounded in court. Convictions against the accused were thus foregone conclusions by the time of the final verdict.⁹⁰

Subsequent events suggest that Kenyatta was in a stronger position by the end of the trial. Less than a month after the guilty verdicts were delivered in court, Kenyatta announced plans to postpone local government elections by two years, a decision that received little backlash from KANU backbenchers. This reaction was a stark contrast to their response to Kenyatta’s attempt at a similar move in 1965, when they protested his actions in the streets.⁹¹ And on July 4, 1974, less than ten years after that initial backlash, the KANU Governing Council conference officially declared Kenyatta “life president,”⁹² a position he retained until his death in 1978.

These examples show how Kenyatta effectively used a judicial strategy of repression to maintain control over the Kenyan state. A judicial strategy proved especially valuable when intraregime conflict could not be easily contained through extrajudicial means. Under these circumstances, the courts provided a platform to punish internal rivals and diminish their perceived threat to power. Such a strategy helped to mobilize insiders behind Kenyatta and reinforced his control.

VI. CONCLUSION

This article seeks to explain why a judicial strategy of repression emerges in autocratic regimes. I argue that autocrats turn to courts when they confront threats from within. Unlike external threats, which pose a common enemy for the regime to mobilize against, internal threats present a more complex challenge. In particular, rulers need to rally regime support before they can eliminate internal rivals. Courts are an ideal forum for this task, where the ritual of a trial can generate shared beliefs regarding the rules of political order. By the end of this process,

⁸⁸ TNA 1971, FCO 31/1190.

⁸⁹ TNA 1971, FCO 31/1190.

⁹⁰ TNA 1971, FCO 31/1190.

⁹¹ Hornsby 2012.

⁹² TNA 1971, FCO 31/1190.

the ruler has signaled his ability to vanquish rivals and to maintain authority, while a public narrative has been established against the challenger and his cause. A judicial strategy thus reveals how knowledge is generated in the aftermath of political crises.

I provide evidence for these arguments by turning to the civilian and military regimes of sub-Saharan Africa in the postcolonial period. Statistical analysis reveals that insiders were more likely to receive a judicial strategy and outsiders were more likely to receive an extrajudicial strategy. A case study of Kenya corroborates these trends and further demonstrates how deploying these strategies in a targeted fashion helped to stabilize autocratic power over time.

These findings raise important questions. Although courts can provide powerful reinforcement for autocratic regimes, the success of a judicial strategy may ultimately hinge upon the behavior of judges. In particular, judges must be complicit in the broader repression objectives of the incumbent regime. How do autocrats cultivate compliant courts, and what effects do these decisions have on judicial subservience over time? If judges disobey their political masters, does this create openings to hold power accountable or create autocratic backlash against the judiciary? Beyond civilian and military courts, can a judicial strategy be extended to additional forums? Although outside the scope of this article, these questions are important lines of future inquiry.

In conclusion, it is easy to look at political prosecutions of the modern age as show trials conducted in kangaroo courts. Such thinking allows us to dismiss the legal validity of such procedures and to question the political motives behind them, but in doing so we overlook the value of judicial rituals in fabricating myths about power. Courts do not merely provide legal cover for autocratic behavior, they also generate shared beliefs in legitimate authority. Law is, as Robert Cover writes, the “projection of an imagined future upon reality,”⁹³ and it is through courts that autocrats are able to project this imagined future to a broader audience. This is not a new phenomenon, nor is it limited to the African experience. Indeed, that contemporary autocracies around the world continue to invoke such methods serves as a powerful reminder that strategies of autocratic survival often lie at the intersection of politics and the law.

⁹³ Cover 1986, 1604.

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