Foreign Aid and Judicial Independence

Joseph Wright*

Simone Dietrich†

Molly Ariotti‡

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Abstract

In the past two decades, donor governments increasingly embrace judicial independence as an important component of advancing democracy. We develop and test an argument that links foreign aid to judicial independence through the mechanism of incumbent-led democracy promotion. Because judicial independence improves the investment environment necessary for sustained economic growth, both donors and recipient governments generally have an interest in using aid resources to improve judicial independence. Thus foreign aid should increase judicial independence. During election periods, however, when judicial independence can influence the distribution of power in the recipient country, incumbents are more likely to find aid investments in an independent judiciary politically costly. Therefore, during election periods in recipient countries, donor and recipient interests are less likely to align and the relationship between aid and judicial independence should weaken. We employ an instrumental variable model to test this argument with a global sample of aid-eligible countries.

*Associate Professor, Pennsylvania State University. Email: `josephgwright@gmail.com`. The authors thank the AidData Research Consortium for funding research for this project. All errors remain our own.

†Assistant Professor, University of Missouri. Email: `dietrich.simone@gmail.com`.

‡Ph.D. Student, Pennsylvania State University.

Introduction

The literature on the effects of foreign aid has received considerable attention among academics and policy-makers. While some evidence exists that links aggregate foreign aid flows to democratic progress (Goldsmith, 2001; Dunning, 2004; Wright, 2009; Heckelman, 2010; Bermeo, 2011), other work suggests that aid is similar to a resource curse, where "windfall" income in the form of foreign aid hinders development by supporting the survival of nonrepresentative institutions (Moss, Pettersson and van de Walle, 2006; Djankov, Montalvo and Reynal-Querol, 2008; Morrison, 2009; Bueno de Mesquita and Smith, 2009).[1] Foreign aid is heterogeneous, however,[2] which has prompted scholars to disagregate aid into distinct sectors and delivery mechanisms to investigate external influence on democratic change. This work demonstrates that donors are selective when allocating foreign aid across different sectors and types (Dietrich, 2013, Forthcoming) and that they carefully choose among different strategies to shape democratic change (Dietrich and Wright, 2015).

Even within the individual category of democracy and governance aid, which has served as focal point for students of external promotion (Carothers, 2007; Bush, 2015), donors link aid with different outcomes and deliver the assistance using different mechanisms. For instance, donors can promote democracy via bottom-up pressure, by financing civil society groups and opposition (Finkel et al., 2008). They can also pursue incumbent-led democracy promotion tactics whereby donor governments collaborate with the incumbent government in efforts to strengthen the capacity of state institutions.[3] Dietrich and Wright (2015) show that incumbent-led democracy promotion is the most common strategy among donors across time.[4] This particular strategy dovetails with donor efforts to promote development as it focuses on the build-up of indigenous state capacity. Funding of civil society and opposition, on the other hand, is more infrequent. It can work against development objectives in the short-term if the bottom-up pressure causes political instability.[5]

In this paper, we develop and test an argument that links foreign aid to judicial independence through the mechanism of incumbent-led democracy promotion. Over time, donor governments have increasingly embraced judicial independence as an important pillar for advancing democracy. Some have even argued that the establishment of the "rule of law", including judicial independence, is necessary before democratic deepening can occur (Carothers, 2007). Donor governments typically promote judicial independence in two ways: they can require recipient governments to engage in judicial reform through conditions attached to economic aid. Alternatively, they can directly invest

[1] Bermeo (2015) shows that the findings for a negative relationship between aid and democracy in two of these studies, Morrison (2009) and Bueno de Mesquita and Smith (2009), is not present during the post- Cold War period. The replication data for a third study, Djankov, Montalvo and Reynal-Querol (2008) is evidently not available (Bermeo, 2015, footnote 31).

[2] Indeed, research finds considerable evidence that examining aid in the aggregate masks important variation in recipient compliance (Dietrich, 2011).

[3] Examples of governance aid include activities related to anti-corruption, transparency, and judicial independence.

[4] Though the study focuses on Africa, the general pattern of democracy promotion strategies holds across regions.

[5] See Bader and Faust (2014) for review of the literature.

in judicial reform by designing specific aid projects that guide the recipient public sector in their implementation. In both cases, donors rely on cooperation by local authorities in recipient countries.

Among students of economic development, judicial independence is thought of as a sine qua non for the enforcement of property rights and contracts (Haggard and Tiede, 2011) as well as for lowering transaction costs associated with captial investment (Williamson, 1985). Over time evidence has accumulated documenting a systematic positive link between judicial independence and economic growth (Feld and Voigt, 2003; Henisz, 2000). From this growth perspective, it is easy to see how incumbents in recipient countries can benefit from institutionalizing judical review. And although donors and incumbent governments may disagree over the motives that drive the promotion of judicial independence –whether they originate in theories of democratic change or economic growth – we posit that donor and incubment goals largely align in favor of judicial independence.

We expect this alignment between donors and incumbents to hold across democracies and autocracies[6] but we expect it to weaken during election times, when independent courts can directly influence election outcomes.[7] The conditional nature of our argument suggests that foreign aid should increase judicial independence unless judicial review becomes politically costly. As costs of judicial independence increase, which we argue occurs when incumbents stand for re-election, we expect incumbents to withdraw their support from externally funded judicial reform activities, or increase control over the judiciary branch to maintain their position of power. This incentive should sharpen when elections are more closely contested.

This study contributes to our understanding of democracy promotion in two ways. First, it presents a new framework that accounts for heterogeneity among donor governments' democracy promotion stratgies and electoral dynamics in aid-receving countries. Second, it establishes that judicial independence is not only an important area through which donors can influence the democratic process abroad. It also posits that the electoral cycle shapes incumbent governments' incentives to use aid resources to implement judicial review. The results directly reinforce a line of work that focuses on the testing of the various causal mechanisms through which donors promote democracy abroad.

Foreign Aid and Judicial Independence

The role of foreign aid in developing the judiciary branch has received only little attention. The traditional focus of democracy promotion efforts has been elections. For example, Brown (2011) argues that a concert of donors working in countries as diverse as Rwanda, Kenya, and Malawi

[6]Carothers (2007); Zakaria (2003) claim that autocrats should not have incentives to submit their unchecked authority to potential interference from an independent judiciary.

[7]See Helmke (2002) and Gloppen et al. (2010) for evidence of the existance of electoral business cycles for judicial independence.

uniformly emphasized multiparty elections. Crawford (2001) notes that joint donor efforts were crucial for leveraging multiparty elections in Africa, where the majority of transitions of the Third Wave took place. Over the last decade, however, scholars and policy-makers have come to acknowledge the limitations of this narrow focus. Carothers (1998, 4), among others, advocates a shift in attention and resources towards the promotion of the rule of law. He defines the rule of law "as a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation" (Carothers 1998, 4).[8]

Many democracy scholars acknowledge the importance of the rule of law for democratic stability and consolidation (Elster and Slagstad, 1993; Linz and Stepan, 1996; Maravall and Przeworski, 2003; Baylies and Szeftel, 1997; O'Donnell, 1998). Some have explored the extent to which independent and impartial judiciaries influence the balance of power within governments, finding, for example, that independent courts decrease the chances of democratic backsliding (Gibler and Randazzo, 2011) and reduce instability (Esarey and Sarkari, 2010).[9] Judicial independence entails both autonomy from other political actors, particularly the executive, as well as the expectation that court ruling are enforced by other actors in the state. It can arise from the duration of the judicial appointment or executive control over judicial administration (Russell, 2001). The degree of independence may be associated with the size of the budget (Domingo, 2000), judges' discipline (Hanssen, 1999), and the power of judicial review (Ginsburg, 2003; Hammergreen, 2007).[10]

Beyond its influence on democratic consolidation, judicial independence shapes the prospects for economic growth.[11] Many scholars in the institutionalist tradition concur that courts help secure property and contract enforcement. By increasing judicial independence, governments reduce the risk that governments expropriate private property, which in turn enhances the government's credibility vis-a-vis investors. This increase in credibility leads to greater investment and economic development (Williamson, 1985; North, 1990; Acemoglu, Johnson and James, 2001; La Porta, Lopez-de Silanes and Pop-Eleches, 2004). Alternatively, judicial independence influences economic growth through the mechanism of institutional checks. Henisz (2000) argues that independent courts serve as a veto player in the policy-making process, and finds that a higher number of veto

[8] It is worth noting that many international and regional efforts exist that detail requirements for independent judiciaries, including international treaty law in human rights (e.g. ICCPR, ICJ, HRC).

[9] The significance of judicial independence for democratic change may be understated, however. As Upham (2006) notes in his critique of the "rule of law orthodoxy" U.S. judges are appointed by politicians or are elected, and "overwhelmingly follow their political preferences when the opportunity presents itself (Upham 2006, 85; cited in Haggard and Tiede (2011)).

[10] Other concepts of judicial reform include judicial capacity, fair trial, and efficient functioning of the courts.

[11] See Haggard and Tiede (2011) for an excellent review of the literature.

players leads to higher levels of economic growth. Finally, judicial independence imposes checks on corruption insofar as it secures equal treatment and procedural fairness in interactions betweeen public and private actors (Haber et al. 2003). Checks on corruption also directly increase the capacity of state institutions to to ensure long-time economic growth (Haggard and Tiede, 2011). A growing number of scholars have found evidence that governments across different regime types, including democracies and autocracies have incentives to establish independent judiciaries (Tate, 1993; Whittington, 2003; Ginsburg, 2003; Hirschl, 2004; Wright, 2009; VonDoepp, 2009; Yadav and Mukherjee, 2014). These incentives are derived largely from the economic prospects associated with judicial independence.

The literatures on judicial independence, democracy, and economic growth provide policymakers in both donor and recipient governments with an incentive to promote judicial reform. In the donor community, representatives recognize the importance of judicial independence, or the rule of law, more generally. As Lord Paddy Ashdown claimed in October of 2002 shortly after taking up the post of UN High Representative for Bosnia and Hercegovina: "In Bosnia, we thought that democracy was the highest priority and we measured it by the number of elections we could organize. In hindsight, we should have put the establishment of rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts. We should do well to reflect on this as we formulate our plans for Afghanistan, and, perhaps, Iraq."[12]

Inspite of this awareness, little systematic evidence exists about the conditions under which donor efforts are successful in promoting judicial independence. Drawing on case studies, some speculate that a need to satisfy external observers may influence the relationship between the judiciary and other branches towards greater levels of independence (Tate, 1993; VonDoepp, 2009), while others claim more explicitly that states receiving foreign aid are more likely to be responsive to external pressure to promote judicial independence (Hirschl, 2004; Bill Chavez, 2008). Skeptics, on the other hand, argue more generally that external democracy-promotion may only play a supporting role in the instances where domestic actors are already acquiescent (Bratton and van de Walle, 1997; Carothers, 2007), which is an argument that could apply to judicial reform.

We contribute to this debate by presenting an argument that differentiates between the mechanisms of democracy promotion (*conditionality* via economic aid and *direct investment* via democracy and governance aid) and political institutions in the aid-receiving country, with a particular focus on the election cycle in aid-receiving countries. We specify when aid contributes to judicial independence and in doing so explain why donor efforts have fallen short of strengthening the judiciary abroad during election times.

[12]Cited in Reenock, Staton, Radean, 2010, 1.

Donor tactics, recipient politics, and the promotion of judicial independence

Judicial independence is important for both democratic stability and improvement of the investment climate or corruption control – both necessary to strengthen and sustain economic growth. The respective literatures provide systematic evidence thereof, which serves as a basis for donor and recipient government policy preferences. We posit that both donor and recipient governments recognize the benefits of judicial independence and seek its promotion.

Indeed, since the mid-1990s, the donor community has moved beyond its narrow focus on election day to champion the promotion of good goverance, which includes judicial reform. It has done so in two ways: First, donor governments have expanded their use of governance-related conditionalities attached to economic aid in scope and depth. In 2000, Kapur and Webb (2000, 4) present initial analyses on new trends in IMF conditionality, noting that the burden of governance-related conditionality on borrowers, including judicial reform, "has grown significantly. The average number of criteria for a sample of 25 countries having a program with the IMF in 1999, with programs initiated between 1997 and 1999, is 26. This compares to about six in the 1970s and ten in the 1980s." Today IMF lending is infused with governance-related conditions, as are economic aid packages of other multilateral and bilateral donors.

Through *conditionality*, donor governments aim to extract reform concession from incumbents. Of these conditions, many prescribe specific reforms in the rule of law sector but they do not spell out details as to how governments should go about pursuing these reforms. The conditionality mechanism is therefore *diffuse* as recipient governments can choose among various policy strategies that entail political reform.[13] Even within the area of judicial reform, as Dallara (2014) notes, international donors do not necessarily share the same priorities. In her research on judicial reform in South-Eastern Europe, she shows that the United States has tended to push for judicial independence across time while the European Union focused on strengthening judicial capacity.

At the same time, donor governments have increased their budgets for specific governance activities, in general, as captured through "democracy and governance aid," and for judicial reform activities, specifically. We claim that specific investment in governance represents a different strategy of democracy promotion, which differs from the conditionality-strategy in two ways: first democracy and governance aid represents only a fraction of the total aid budget, while conditionality is associated with economic assistance in general. Second, democracy and governance is earmarked for the promotion of specific judicial reform activities, while conditionality prescribes

[13] Further, attaching political conditions to aid agreements presumably admits the fact that donor and recipient interests may not be aligned in areas covered by the political conditions. This situtation creates two avenues for this strategy of fostering reform to fail. First, the donor may lack the incentive to withhold economic aid even in the face of evidence that the recipient government has not. As important, the recipient government may have better information about their reform effort than donors. This information advantage for the recipient government gives rise to monitoring problems that may hinder reform progress.

reforms but does not specify the implementation of the reforms.

Across the world international donors have spent hundreds of millions of dollars on direct investment in democracy and governance activities. Over time an increasing proportion of foreign aid has been directed at judicial reform. Donor governments' judicial reform activities in Jordan serve as a case in point: like in many other countries, Jordan's judiciary was not guaranteed independence through the Constitution. In 2001, the adoption of legislation referred to as the "Law on the Independence of the Judiciary" or "Indepdence Law" suggested some progress by declaring that judges were independent "except as specified by this law." However, the law was limiting insofar as it established a Judicial Council that had the power to appoint and dismiss judges, thus restricting the judiciary's independence (Burgis, 2007). Over the course of the next ten years, national efforts such as the "Royal Committee for Judicial Upgrade"[14] aimed to further improve the judiciary branch by institutionalizing "independence of the legal system" and by enhancing "the efficiency of the judicial inspection methodology as well as develop the institutional capacity of the Judicdial Council."[15] In 2013, this effort resulted in an amendment to the judicial independence law that now allows the judiciary to operate without political interference.

Examples of donor investment in Jordan's judicial reforms include the European Union's 1.1 million Euro initiative, entitled "Technical Assistance for Institutional Strengthening of the Ministry of Justice," which trained judges, clerks and legal professionals, alongside efforts to build modern legal case management systems.[16] USAID's "Rule of Law Programme (MASAQ)" in Jordan supports judicial indepdence through similar activities. The World Bank also contributed to donor efforts to foster judicial independence by conducting training programs to upgrade Jordanian judges' capabilites as well as the skills of prosecutors in Amman. The "Jordan Legal and Judicial Reform Learning Program" focused on analyzing and discussing strategies to secure private property and oversee administrative agencies.[17]

All three projects are examples of *targeted investments* in the strengthening of judicial independence. They are part of democracy and governance assistance. In addition, they were were supported by and conducted in collaboration with the Jordanian Ministry of Justice and the Ministry of Planning and International Cooperation. As such, these programs were incorporated into a multi-year government-led judical reform strategy. According to Burgis (2007) and independent news sources, the Jordanian government's motive for promoting an indepdent judiciary was economic. Indeed, King Hussein made this rationale explicit when he suggested that judical independence would "help translate the countrys reform plans into facts on the ground, including economic reform and efforts to increase the countrys economic competitiveness."[18] When the 2013 amendment to the constitutional laws was passed, the King praised it, suggesting that the amendment

[14]See `http://jordantimes.com/eu-jordan-partnership-strengthens-institutional-reform`. Access 3/25/15.
[15]See `http://jordantimes.com/king-supports-judicial-development-strategy`. Access 3/25/15.
[16]See `http://jordantimes.com/eu-jordan-partnership-strengthens-institutional-reform`. Access 3/25/15.
[17]See `http://web.worldbank.org/WBSITE/EXTERNAL/WBI/WBIPROGRAMS/PSGLP`. Access 3/25/2015.
[18]See `http://jordantimes.com/king-supports-judicial-development-strategy`. Access 3/25/15.

would further "reduce investors' fears regarding the judiciary's independence." These anecdotes of donor involvement in Jordan indicate that recipient governments recognize the economic benefits of judicial reform.

While anecdotal, the Jordanian case suggests that the recipient government recognizes the economic benefit of judicial independence, resulting in alignment of donor and government preferences in favor of implementing judicial reform projects. This discusion generates two related hypotheses.

- **Hypothesis 1: Economic economic aid and democracy and governance aid increases judicial independence**.
- **Hypothesis 2: The positive effects should be stronger for *targeted* democracy and governance aid than for *diffuse* economic aid**.

We extend our argument by introducing an important contextual factor, *elections*, that we argue conditions the relationship between foreign aid and judicial independence. So far, our discussion has focused on the economic gains associated with judicial independence, which we expect the recipient government to recognize and pursue. Yet, this discussion masks concerns of recipient governments have about the potential *political costs* of judicial reform. Importantly, judicial indepdence not only promotes economic growth, but also helps secure freedom of expression for political opponents and strengthens checks on the abuse of power by incumbents. Progress in strengthening judicial independence may therefore be particularly threatening during times when an incumbent government's position of power is more uncertain, as it would be during times of election.

Before and around election day, the judiciary can influence election outcomes in multiple ways. During election campaigns, pro-incumbent courts can punish opposition and political mobilization by, for example, subduing the press, upholding jail sentences for opposition leaders, or condoning unfair electoral rules. After election day, the judiciary can turn a blind-eye to election fraud or allegations of election-related political violence. In contrast, an independent judiciary can prevent incumbents from punishing electoral opponents during campaigns and promote democratic accountability after an election by settling vote-counting disputes or fraud allegations fairly. Courts can therefore directly influence the balance of political power in the aid-receiving country.

While political economists have long recognized governments' motivations regarding the timing of economic-policy activity (e.g. Golden and Poterba 1980, Price 1998) we argue that electoral motivations influence the incumbents timing for promoting judicial reform, in general, but also for implementing externally funded governance projects, specifically. Because the lionshare of externally-funded governance projects are implemented in cooperation with the relevant Ministries in the recipient country, the incumbent government has direct influence in the implementation process and can exert control.

Anecdotal evidence for this behavior can be found across countries. In Zambia we find evidence for the existence of incumbent-initiatied electioneering of the judiciary branch. Since 1991 Zambia

has conducted regular multiparty elections. Its Constitution formally establishes that the judiciary be independent from the executive, but judicial independence has not always been the norm. Instead, throughout the 1990s the general perception of the judiciary was one which "had sold itself to the executive" through personal relationships and financial interdependence (Shezongo-Macmillan, 2013, 8). Over time, donor governments have sought to strengthen government accountability and judicial independence in particular through conditions attached to aid and through specific democracy and governance projects. In a country report for Zambia, USAID cites effective, accountable and transparent government as the "foundation for democracy, growth and prosperity" (USAID:Zambia, 2011, 18).

In the lead up to the 1996 elections the Zambian government not only renegged on commitments to implementing donor sponsored judicial reform activities (Rakner, 1999; Baylies and Szeftel, 1997), the executive also actively attempted to restructure the judiciary so as to weaken its position relative to the executive. These manipulations included legislation introduced in March 1996 that gave the executive more control over salaries in the judicial sector, as well as greater control over other perquisites enjoyed by judicial actors; there was also a push from the government to change the constitution in order to limit the court's authority and increase the president's ability to remove High and Supreme Court justices (VonDoepp, 2009; Baylies and Szeftel, 1997).

Both domestic opposition and donor governments expressed concerns about President Chiluba's efforts to undermine judicial independence. In light of domestic pressure from the Law Association of Zambia, the leading newspaper, and donor governments condemning the proposed reforms, Chiluba's government withdrew some of the judicial reform proposals (Mubambe, 12 May 1998; VonDoepp, 2009). However, the government continued its efforts to influence the judiciary, this time through more "direct approaches," such as the individual targeting of judges both with rewards and threats, to attempt to influence court outcomes (VonDoepp, 2009). Representing a post-election stance of the donor community, Katherine Marshall, then director of the Southern African department of the World Bank, pointed to specific institutional reforms and the need for Zambia to "build strong institutions, laws, systems and processes that will support civil society rather than threaten it, with a particular imperative on an open constitutional review based on widespread popular consensus; the need to pursue civil service reform that will ensure the efficient provision of public services and guarantee full accountability of all public servants; and the need to root out and prosecute corruption."[19]

We expect the implementation of judicial reform projects to be slowed down by the government's fear about its survival.[20] We should not only see regular cycles of electoral-calendar timing in aid project implementation but also in our outcomes measure of judicial indepdence. If elections are close, the incumbent's incentive to "electioneer" judicial reform and donor-funded judicial reform

[19]Cited in Baylies and Szeftel (1997,124).

[20]In some cases, judges in higher courts may introduce obstacles to judicial reform to maintain status quo and preserve their privileges (Dallara, 2014).

projects sharpens. We therefore posit a conditional hypothesis.

- **Hypothesis 3: The positive effects of economic aid and DG aid should be are weaker (stronger) during election (non-election) periods.**

Finally during election years, we expect the relationship between foreign aid and judicial independence to be attenuated by whether the elections are hotly contested or incumbent-dominated. In the later case, elections do not represent as much of a threat to incumbents as in the case of close elections.

Data

The sample period, from 1991-2010, corresponds to the first two decades after the end of the Cold War. During these two decades, donors became more likely to attach political conditions to aid projects and became more selective in distributing aid resources – both among different countries as well as among different types of recipients within countries (Crawford, 2001; Dietrich, 2013). This is also the aid era in which donors continually increased democracy and governance aid; during the Cold War period, in contrast, donors rarely provided direct democracy assistance. The sample includes all aid-eligible countries with populations over 1 million (in 2009).[21]

Judicial independence data The dependent variable is the mean level of de facto judicial independence constructed from a latent model that combines existing data on judicial independence (Linzer and Staton, 2012).[22] This measure of judicial independence is behavioral and not institutional; it attempts to capture de facto independence that requires both judicial *autonomy* – the ability to reach a judicial decision without political inteference – and judicial *power* – the expectation that judicial decisions with be enforced by the sitting government (Rios-Figueroa and Staton, 2014, 107). Because this measure is bounded by 0 and 1, we logit transform the original variable to use in a model with a linear link function.

[21]The population threshold means the sample excludes micro-states: Bhutan, Brunei Darussalam, Cape Verde, Comoros, Cyprus, Djibouti, Equatorial Guinea, Fiji, Grenada, Guyana, Maldives, Qatar, Samoa, Sao Tome and Principe, Seychelles, Suriname, Tonga, Andorra, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, East Timor, Jamaica, Kiribati, Malta, Marshall Islands, Micronesia, Nauru, Palau, Papua New Guinea, San Marino, Solomon Islands, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Tuvalu, and Vanuatu. See Geddes, Wright and Frantz (2014).

[22]Linzer and Staton (2012) use eight variables to scale latent judicial independence. These variables include measures from constitutions (Keith, 2012), U.S. State Department country reports (Howard and Carey, 2004); CIRI, (Cingranelli and Richards, 2010), the Polity IV project (Marshall, Gurr and Jaggers, 2010), national economic data on contract intensive money (Clague et al., 1999; Johnson, Souva and Smith, 2013), expert surveys (Feld and Voigt, 2003), and staff coding from the Political Risk Services (Group, 2013). In all results reported below we use the mean level of the scaled measure; in future we will test models that incorporate the uncertainty of the scaled measure.

Aid data We use foreign aid commitment data from AidData 2.1.[23] We aggregate aid commitments at the recipient-country-year level and distinguish between economic aid and democracy aid sectors. Economic aid subsumes several sectors, including social, economic infrastructure and services, domestic production, environment, commodity aid, debt relief, budget support, and emergency relief.[24] Democracy assistance has different purposes and distinct delivery modalities. For instance, democracy and governance aid (DGA) includes projects that directly target policy planning in areas such as fiscal and monetary policy, institutional capacity building, and structural reform. DGA also finances tax assessment procedures, legal and judicial development, and constitutional development. Donors use DGA to support government administration by helping finance civil service reform and government infrastructure. In addition to financing governance-related activities, DGA also flows to non-state development actors including civil society groups and political parties to support community participation, strengthen political accountability, and development. However, as Dietrich and Wright (2015) show, the bulk of DGA flows to incumbent governments and only a small fraction directly funds non-state actors.

Donors also earmark specific programs to invest in judicial reform in recipient countries. These programs include projects focused on legal training and education, institutional strengthening of legal and judicial systems, as well as constitutional development.[25] Traditionally, aid in this sector is subsumed under the broader category of *democracy aid*. For the purposes of modeling exogenous aid flows using an instrumental variables approach (see below), we continue to group judicial aid within the category of *democracy aid* because the excluded variable we use does not predict small categories of assistance, such as judicial aid programs, very well. However, in naive models that use observed aid flows as explanatory variables, we separate judicial aid from other types of democracy and governance assistance.

We leverage this disaggregated project-level information to construct measures of aid flows directed at different sectors. We measure aid as the logged value of the lagged three-year moving average of aid per capita.[26] The time series for smaller categories of aid, such as democracy assistance, show large variation from year to year, so a moving average smooths these trends to better capture inflows over the prior period.

The left panel of Figure 1 plots the global time trend in aid committments and judicial independence, showing the yearly average of per capita aid committments (log, lagged 3-year moving average, constant dollar) and the mean level of judicial independence (current year, scaled). Each of these data series trends upwards over time. Thus throughout the analysis, we model the time trend

[23] Data downloaded from `http://aiddata.org/aiddata-research-releases` on 2.27.15.

[24] This measure includes programs in the following sectors: infrastructure, production, multi-sector, budget support, commodity, debt relief, disaster relief, donor administration costs, and other unallocated. This measure of economic aid excludes: democracy and governance aid, conflict resolution programs, grants to NGOs, and refugee assistance provided to donor countries.

[25] We classify judicial aid as all projects with sector code 15130 in the AidData Sector Coding Scheme.

[26] Aid is: $ln((A_{t-1} + A_{t-2} + A_{t-3})/3)$ where A is constant dollar aid commitments per capita. We use population data from the Penn World Tables series to calculate an aid per capita measure.

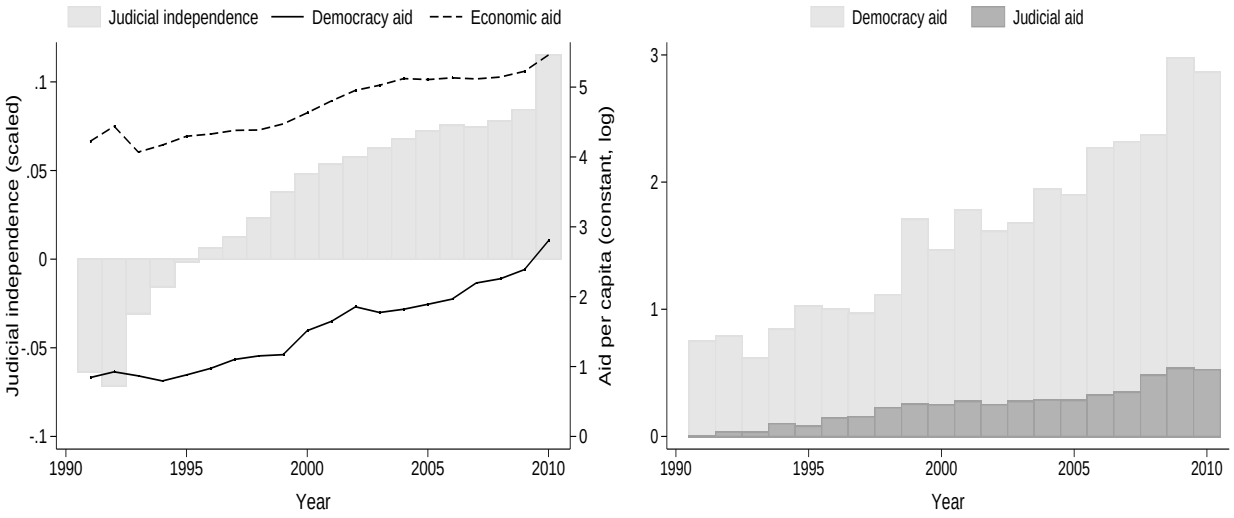

Figure 1: Foreign aid and judicial independence, 1991-2010.

using year fixed-effects.[27] The right panel shows democracy aid commitments as well the share of funds in this sector that are specifically allocated to judical reform. While both are increasing over time, judicial aid remains a small fraction of total democracy assistance in every year.

Election data We utilize election data from the National Elections across Democracy and Autocracy (NELDA) dataset (Hyde and Marinov, 2012). Because our theory posits that incumbent leaders are less likely to use aid to foster judicial independence during election periods, we use questions from NELDA to isolate election periods where the incumbent contested the election: the office of the incumbent leader must be contested in the election (nelda 20) and either the incumbent leader (nelda 21) or the chosen successor (nelda 22) must be on the ballot.[28] Because incumbents have an incentive to interfere with the election process both prior to (manipulating the campaign) and after an election (manipulating the outcome), our main measure of *election period* is a binary indicator for an incumbent-contested election year ($t = 0$), the prior year ($t = -1$) or the subsequent year ($t = +1$).[29]

[27] In Appendix D, we show that various approaches to modeling the time trend in the data series yield similiar results: linear time trend, non-linear time trend, decade dummy, and no calendar time variables.

[28] Of the 652 election years in aid-eligible countries (1991-2010), 52 percent were incumbent-contested elections. Of the 340 incumbent-contested elections, 96 percent were multiparty elections, defined as more than one party being legal (nelda 4).

[29] While theoretically appropriate, this measure of the time period covered by an election is nonetheless operationally arbitrary; thus in robustness tests, we show the results hold when we code election period as any one of the following: ($t = 0$); ($t = 0, +1$); ($t = -1, 0$); ($t = 0, +1, +2$); ($t = -2, -1, 0$); and ($t = -2, -1, 0, +1, +2$).

Covariates In the main models reported below, we condition on a number of potential confounders.[30] Three covariates capture recipient country characteristics that influence the legal structure in recipient countries and the prospects of receiving aid: an indicator variable for *common law* legal tradition and measures of the shares of the population that is *Muslim* and *Christian*.[31] Countries with a common law tradition are more likely to have been British colonies while civil law tradition is more likely in former French colonies (CITE); and religious adherence may influence both donor selectivity and judicial development (Koch et al., 2009). We also condition on two distinct measures of democracy to ensure that we our estimating the influence of aid on judicial independence and not simply picking up the effect of aid on other aspects of democracy. We therefore include a binary indicator of *democracy* from Geddes, Wright and Frantz (2014) and a measure of *media freedom* from Whitten-Woodring and Van Belle (2014). To ensure that we are not conflating judicial independence with institutional development, we control for constitutional duration, obtained from Melton and Ginsburg (2014). Finally, more economically developed countries and states with the capacity control large populations are less likely to receive aid but more likely to have well-developed socio-political institutions, including judicial independence. Thus we condition on *GDP pc* (log) and *population* size (log), both from Heston et al. (2012). These structural features of recipient countries are included in almost all empirical models of aid effectiveness.

We view this set of covariates as potential confounders and therefore include them in the reported empirical models. That said, to the extent that some of these covariates may be caused by judicial independence – media freedom or constitutional duration for example – they may also be viewed as post-treatment outcomes. To ensure that the model specification with respect to covariate selection is not driving our reported results, we test specifications without these covariates, with the exception of structural covariates (population and GDP pc).

Estimation

Donors may select aid commitments based on observed judicial independence in the recipient country. For example, donors that want to foster economic growth may select recipient countries where the institutional environment for promoting investment is strongest. Even if donors, perhaps for ideological reasons, are commited to sending aid to a recipient country with a poor investment climate – allocating more aid to former colonies for example – donors may still by-pass the government in the recipient country and instead fund non-state actors (Dietrich, 2013). One factor that donors can observe to inform aid allocation decisions is judicial independence. We therefore include a lagged measure of judicial indepdence in the recipient country. Because the aid variable is a 3-year lagged moving average, the judicial independence lag included as a covariate is lagged

[30] See Hayo and Voigt (2007) and Melton and Ginsburg (2014) for a discussion of standard empirical models of judicial independence.

[31] We obtained these three variables from the replication materials for Melton and Ginsburg (2014).

four years.[32]

We therefore begin with a linear model with region- and year-fixed effects as well as the lagged dependent variable:

$$JI_{i,t} = \alpha_0 + \beta_1 JI_{i,t-4} + \beta_2 Aid_{i,t-1:t-3} + \beta_{\mathbf{3}} \mathbf{X_{i,t-1}} + \eta_t + \zeta_i + \varepsilon_{i,t} \tag{1}$$

where $JI_{i,t}$ is judicial independence, $Aid_{i,t-1:t-3}$ is the lagged 3-year moving average of aid, $X_{i,t-1}$ is a set of covariates, η_t are year fixed effects, ζ_i are region fixed effects, and $\varepsilon_{i,t}$ is the error term. This specification attempts to account for potential confounders, including prior observed judicial independence, and uses a lagged moving average of the treatment variable to address simultaneity bias and reverse causation.

However, this approach may still produce a biased estimate of β_2 if donors select recipients based on unobserved factors that contribute to judicial independence. The estimate for aid would be biased upwards if, for example, donors give more economic assistance to recipient governments where they expect past improvements in good governance – including judicial independence – to continue apace. Rewarding countries "moving in the right direction" with more aid would result in an upwardly biased estimate for aid in equation (1). Similarly, if democracy aid intended to help facilitate a fair multiparty election only flows to recipient countries where donors expect improvements in judicial independence, then the estimate of aid would be upwardly biased.

Alternatively, the aid estimate would be biased downwards if aid flows to countries with a poor institutional environment. For example, donors might be more likely to fund democracy promotion activities, such as party development and election administration, in countries with weak courts that are unlikely to develop judicial independence. Donors, for instance, largely funded the 2006 election in the Democratic Republic of Congo (DRC), which in the decade prior to this elections had the seventh-lowest level of judicial independence in the world.[33]

To provide some evidence for conjectures about how judicial independence may influence aid allocation, we tested a series of empirical models that examine the determinants of different categories of aid allocation (reported in Appendix B). In these models we use lagged judicial independence as an explanatory variable and find that judicial independence is not correlated with democracy aid and negatively correlated with judical aid. However, lagged judicial independence is *positively* correlated with economic aid. These "placebo" tests suggest that while democracy aid allocation is unrelated to observed judicial independence, economic aid is. That is, donors may select countries with higher observed judicial independence to receive more economic assistance, which would be consistent with the proposition that donors seek better institutional environments for allocating

[32]This choice does not materially influence the reported results. In the appendix, we show that the main result is remains if we drop the lagged dependent variable or if we use the 3-year lag instead. Because the aid series moves slowly over time (i.e. a lagged 3-year MA), we cannot employ a shorter lag on the dependent variable.

[33]See *Elections in the Democratic Republic of Congo in 2006* (N.d.) on aid donors' role in funding the 2006 election.

large-scale economic assistance. If this is true, then an *a prior* expectation is that a naive estimate of the effect of economic aid on judicial independence is upwardly biased.

Modeling exogenous aid flows To address endogeneity concerns, we develop an instrument for use in a two-stage linear model. The excluded variable in the instrument set is constructed from a feature of the donor economy that is plausibly exogenous to judicial independence in recipient countries: the donor country unemployment rate, from the WDI (2010). To construct the excluded variable, we weight the donor characteristic Z (unemployment) by the distance between donor and recipient country. We then sum across all donors for each recipient in each year.[34] Because donors vary by recipient and donor characteristics change over time, the excluded variable varies across both time and recipient country. While it is impossible to establish statistical exogeneity, we begin by assuming that the domestic unemployment rate shapes budgetary decisions in donor countries, including the allocation of aid, but does not directly influence judicial independence in recipient countries.[35]

In the reported results that follow, we first estimate a one-stage linear model (1). Next we report the results of a two-stage instrumental variables model (2), where $Z_{i,t-2:t-4}$ is the excluded variable in the "first stage":

$$\begin{aligned} JI_{i,t} &= \alpha_0 + JI_{i,t-4} + \widehat{Aid_{i,t-1:t-3}} + X_{i,t-1} + \eta_t + \zeta_i + \varepsilon^1_{i,t} \\ Aid_{i,t-1:t-3} &= \alpha_0 + JI_{i,t-4} + Z_{i,t-2:t-4} + X_{i,t} + \eta_t + \zeta_i + \varepsilon^2_{i,t} \end{aligned} \tag{2}$$

In these models, the set of covariates includes the following: *GDP pc* (log), *Population* (log), *Democracy*, *Media freedom*, *Common law*, *Muslim*, *Christian*, *Constitutional duration*, and *Election*.

To test whether the relationship between aid and judicial independence changes during election periods, we report results from a model that includes an interaction term: *Aid* × *Election*. This interaction term contains information from the endogenous variable, *Aid*, and therefore needs to be treated as such, with a second excluded variable to identify the two equation model. When we test the interaction term in the two-stage model we therefore also include the interaction between *Election* and *Z* as a second excluded variable. This requires two "first-stage equations", one for each endogenous variable.

Excluded variable partial correlation with endogenous treatment variable The first two columns if Table 1 shows the estimates from the "first-stage" regressions for *Democracy aid* and *Economic aid*, respectively. In each case, *Unemployment* is strongly and negatively correlated with

[34] See Appendix C for more information on the excluded variable.

[35] In the next iteration of this paper, we will probe the exclusion restriction by testing the association between the excluded instruments and alternative channels of influence; as well as by relaxing this exclusion restriction and treating the excluded variable as "plausibly exogenous" (Conley, Hansen and Rossi, 2012).

	All observations		Electoral Period		Non-electoral period	
Aid type	Democracy	Economic	Democracy	Economic	Democracy	Economic
Unemployment	-2.552**	-4.161**	-3.050**	-3.404**	-2.351**	-4.448**
	(0.39)	(0.40)	(0.53)	(0.46)	(0.44)	(0.40)
Election period	-0.024	0.146*				
	(0.07)	(0.06)				
Const. duration	-0.014	0.074	0.016	0.005	-0.004	0.104+
	(0.05)	(0.05)	(0.06)	(0.05)	(0.06)	(0.06)
Common law	0.034	-0.311*	-0.078	-0.337+	0.077	-0.284*
	(0.14)	(0.12)	(0.17)	(0.17)	(0.15)	(0.12)
% Muslim	0.292	0.551+	0.231	0.641	0.340	0.542*
	(0.25)	(0.28)	(0.38)	(0.45)	(0.25)	(0.26)
% Christian	0.428+	0.698*	0.370	0.863*	0.546*	0.595*
	(0.24)	(0.28)	(0.36)	(0.43)	(0.23)	(0.26)
Democracy$_{t-1}$	0.088	-0.050	0.129	0.003	0.077	-0.062
	(0.12)	(0.12)	(0.15)	(0.15)	(0.14)	(0.11)
Media freedom $_{t-1}$	-0.186**	-0.159*	-0.133+	-0.066	-0.196*	-0.226**
	(0.07)	(0.06)	(0.08)	(0.08)	(0.08)	(0.07)
GDP pc$_{t-1}$	-0.232**	-0.142	-0.345**	-0.012	-0.203**	-0.188+
	(0.07)	(0.10)	(0.09)	(0.12)	(0.08)	(0.10)
Population$_{t-1}$	-0.261**	-0.282**	-0.248**	-0.261**	-0.262**	-0.309**
	(0.04)	(0.05)	(0.05)	(0.06)	(0.05)	(0.04)
Judicial indep.$_{t-4}$	-0.014	0.145*	-0.052	0.097	0.022	0.168**
	(0.06)	(0.06)	(0.07)	(0.08)	(0.07)	(0.06)
Constant	8.501**	12.290**	9.245**	10.240**	8.199**	13.453**
	(0.92)	(1.03)	(1.03)	(1.45)	(1.10)	(1.08)
R^2	0.48	0.52	0.48	0.38	0.51	0.60
N $\times$ T	2237	2237	938	938	1299	1299
F-statistic (Z)	41.9	107.4	33.2	53.9	28.3	124.0

Table 1: First-stage regressions

aid. The F-statistics for this excluded variable are reported in the last row; they are well above the convention of 10 ().[36] The next four columns test the first stage equations on sub-samples of the data: the group of observations coded as being within the *electoral period* and those in the *non-electoral period*. In all four cases, the excluded variable is negatively correlated with aid and the F-statistics are large enough to indicate strong instruments in theoretically relevant sub-samples of the data. If we think of the excluded variable as "encouragement" to treatment, we find that this encouragement takes place during both electoral and non-electorial periods in the recipient country.

Results

First we examine how democracy aid influences judicial independence; the left panel of Figure 2 reports the results from four models. The top estimate for each explanatory variable listed along the vertical axis shows the result from a naive OLS model with no interaction term. The estimate for *Democracy aid* is positive and statistically different from zero. This suggests that, on average across all time periods in the sample, democracy aid is positively associated judicial independence. The only other variables for which the estimates are statistically significant are *Muslim %* (negative) and *Democracy* (positive).

The second estimate for each explanatory variable is from a two-stage model. The 2SLS estimate for *Democracy aid* is slightly larger (0.067) than the OLS estimate (0.040) and still statistically different from zero. If we believe the excluded instrument is exogenous, we can interpret the larger 2SLS estimate as indicating a small downward bias in the naive estimate – perhaps the result of donors selecting democracy assistance recipients based on perceived need for such aid when the institutional environment is perceived to be weak or especially in need of external support.

The bottom set of estimates is from a two-stage model with the interaction term (*Aid* × *Election*). Here the estimate for *Democracy aid* reflects the effect of aid on judicial independence **when there is no incumbent-contested election**. This estimate is large and statistically different from zero (β=0.102, se= 0.035). The estimate for the interaction term is negative and significant, indicating democracy aid is less likely to be associated with judicial independence during election periods. Finally, the estimate for the linear combination of $\beta_{DemocracyAid}$ and $\beta_{Aid \times Election}$ (not reported in the Figure) is roughly zero (β=0.006, se= 0.035). This suggests that the positive statistical association between democracy aid and judicial independence is non-existent during election periods.

The right panel of Figure 2 shows the results from a similar set of models that examine the link between economic aid and judicial independence. In general, the same pattern emerges, but the

[36] In the results Figures, we omit reporting and discussing instrument strength; in all tests here and the Appendix, the Kleibergen-Paap rk Wald F statistic is greater than 10 as well as greater than the (model-specific) Stock-Yogo weak ID test critical values (10% maximal IV size).

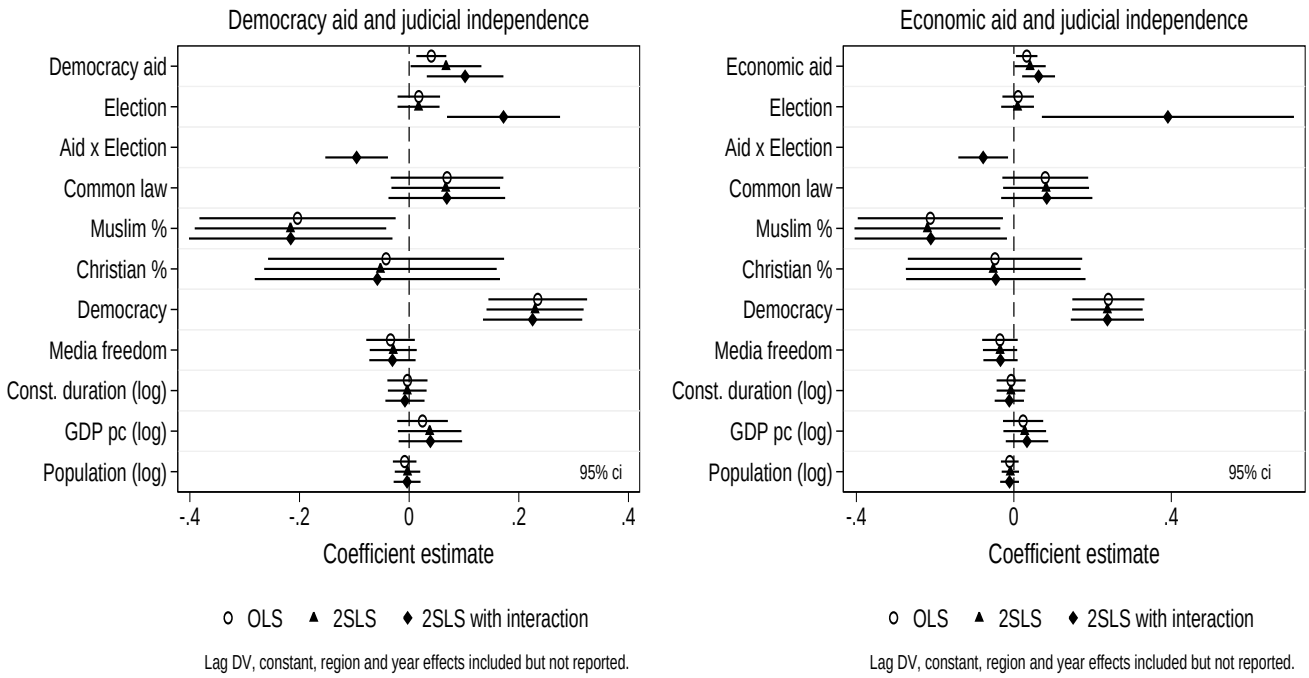

Figure 2: Foreign aid and judicial independence.

estimates for *Economic aid* are smaller.

To show the substantive effects of the results from the 2SLS models with the interaction term, Figure 3 depicts the marginal effect of a change in aid from the 25th percentile of the distribution to the 75th percentile – both during election periods and in non-electoral periods. The left panel indicates that an increase in democracy aid is associated with a 22 percent increase in judicial independence in non-electoral periods. During election periods, however, the aid effect drops to roughly zero. The right panel shows the same pattern for economic aid, but with much smaller substantive effects. An increase in economic aid is associated with a 9 percent increase in judicial independence during non-electoral periods, again dropping to roughly zero during election periods.

Addressing collinearity in categories of aid

To this point, we have shown that both democracy aid and economic aid increase judicial independence but that this positive effect is limited to non-electoral periods. Democray aid and economic assistance, however, are strongly correlated. This is potentially problematic in a two-stage framework where we use the same excluded variable (Z=*Unemployment*) for each type of aid. Thus, the exogenous effect of aid that the excluded variable identifies could simply be proxying for one type of aid and not the other. To probe this possibilty, we explore three approaches.

The first is to simply treat the 'other' type of aid as an exogenous explanatory variable in the

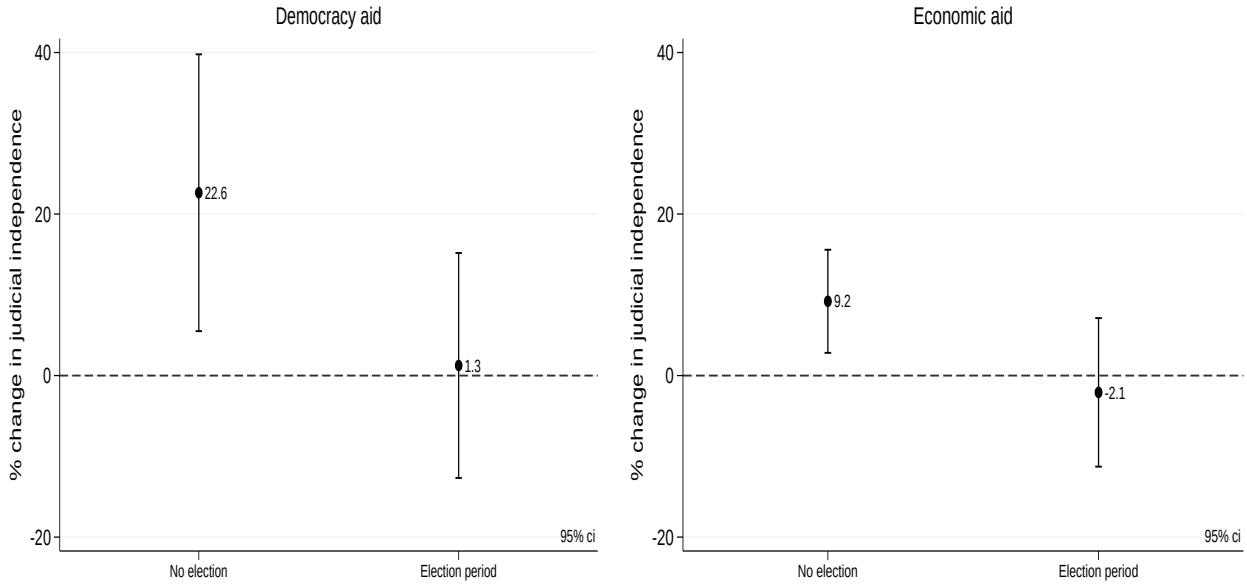

Figure 3: Substantive relationship between aid and judicial independence

Endogenous aid variable	Aid variable treated as 'exogenous'	β	SE	F-statistic
Democracy	None	0.067	(0.032)	41.9
Democracy	Economic	0.064	(0.140)	5.1
Economic	None	0.041	(0.020)	107.4
Economic	Democracy	0.024	(0.030)	59.1

Table 2: Treating the 'other' type of aid as exogenous

respective two-stage models. In practice, this means adding, for example, *Economic aid* to the list of covariates treated as exogenous in the model for *Democracy aid*:

$$\begin{aligned} JI_{i,t} &= \alpha_0 + JI_{i,t-4} + \widehat{DemAid_{i,t-1:t-3}} + EconAid_{i,t-1:t-3} + X_{i,t-1} + \eta_t + \zeta_i + \varepsilon^1_{i,t} \\ DemAid_{i,t-1:t-3} &= \alpha_0 + JI_{i,t-4} + Z_{i,t-2:t-4} + EconAid_{i,t-1:t-3} + X_{i,t} + \eta_t + \zeta_i + \varepsilon^2_{i,t} \end{aligned} \tag{3}$$

The benefit of this strategy is that we can treat the 'other' category of aid as a "blocker" to isolate the effect of the type of aid we treat as endogenous. The downside to this approach, however, is that including the other category of aid is likely to reduce the explanatory power of the excluded variable in the "first-stage". In practice this should inflate the errors for the estimate of endogenous aid in the "second-stage".

Table 2 shows the results of this exercise. The first column lists the aid variable treated as endogenous, while the second column lists the aid variable treated as exogenous. Thus the first row reports the result of the earlier model (without the interaction term) that treats *Democracy aid* as endogenous and omits *Economic aid* from the covariate list. The second row reports the result from a model that still treats treats *Democracy aid* as endogenous but (incorrectly) includes *Economic aid* as an exogenous covariate. As the results indicate, adding *Economic aid* as a "blocker" does not change the coefficient estimate for *Democracy aid* but it inflates the standard error estimate. The coefficent estimate is no longer statistically different from zero. This suggests that while the excluded variable predicts both types of aid, the partial correlation with just *Democracy aid* is weaker. That said, the estimate of interest is almost the same after adding *Economic aid*, suggesting that democracy aid is positively related to judicial independence. The bottom two rows report results from similar tests for economic aid. Adding *Democracy aid* as a blocker again inflates the standard error estimate but also decreases the coefficient estimate by nearly half (from 0.041 to 0.024).

This exercise suggests that omitting the 'other' category of aid makes for more efficient estimates for the endogenous variable of interest by increasing the explanatory power of the excluded variable in the "first-stage". However, at least for the analysis of democracy aid, omitting *Economic aid* does not bias the estimate of interest.

A second approach is to treat both categories of aid as endogenous. This requires adding a second excluded variable to identify a set of equations with two endogenous variables. One possibility is to tranform the initial excluded variable by, for example, using Z and $ln(Z)$ as excluded variables. In a 2SLS model with two endogenous types of aid and two excluded variables, we find that the estimate for *Democracy aid* is slightly larger than that reported in the 2SLS model in the left panel of Figure 2 (0.079 vs. 0.067). The estimates for *Economic aid*, however, falls to zero (-0.008) from 0.041.

A third strategy is to drop the two-stage framework and simply put both aid variables in the same single-equation model. To mitigate bias from unobserved unit heteregeniety we pursue this approach with a model that includes country- and year-fixed effects; all other covariates remain the same (save dropping region-fixed effects, % Muslim, % Christian, and Common law – all of which only vary cross-sectionally). The left panel of Figure 4 shows the results when we introduce *Democracy aid* and *Economic aid* into the same specification. The top estimate is from a specification without interactions; and coefficient estimates for both types of aid are positive but only the estimate for *Democracy aid* is statistically different from zero. The second set of estimates in the left panel are from a specification with interaction terms for both types of aid. As before, the estimate for *Democracy Aid* $\times$ *Election* is negative and statistically significant, suggesting that the positive effect of democracy aid is isolated to non-electoral periods. The estimate for *Economic Aid* $\times$ *Election* is positive – the opposite of the expected direction.

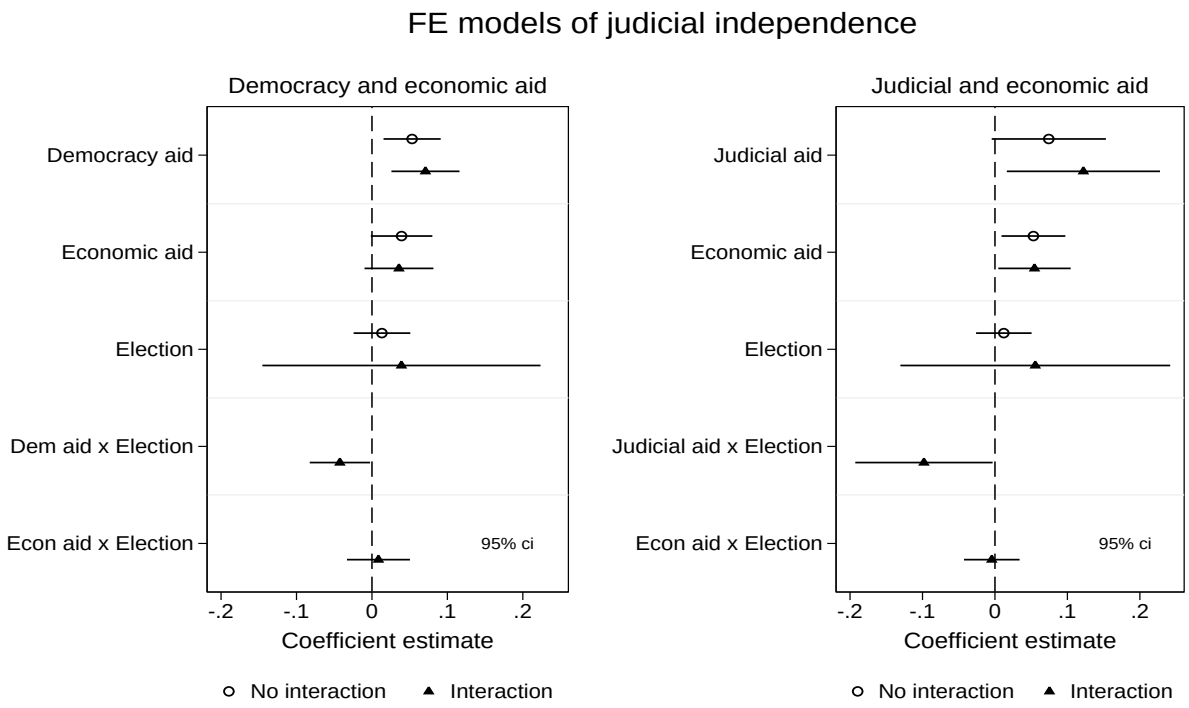

Figure 4: Fixed effects models with both types of aid

The right panel of Figure 4 repeats the same fixed-effects approach but substitutes judicial aid for democracy aid. To this point we have included judicial aid as part of the larger category of democracy aid. This was necessary when using the two-stage approach because the excluded variable is not designed to predict very small categories of foreign aid. In the single-equation model, however, we do not have this restriction. The estimates for *Judicial aid* in the right panel mirror the pattern in the left panel of *Democracy aid*. Again, the estimate for *Economic Aid* $\times$ *Election* is the opposite of the expected direction.

Together, these three excercises provide some evidence that collinearity with democracy aid may be driving the positive association between economic aid and judicial independence. We find little evidence of the converse, however. This suggests that although the results in Figure 2 indicate both democracy assistance and economic aid improve judicial independence, the finding for economic aid may simply be an artifact of the data. We interpret this evidence to suggest that democracy aid increases judicial independence, except during election periods.

Close elections

We posit that because donor and recipient interests generally align in using aid to improve judicial independence, there should be a positive relationship, on average, between the two. During election periods, however, these interests are less likely to align because the incumbent government in the recipient country has an incentive to control the courts – and thus decrease judicial independence – in an effort to win the election. Therefore, any positive influence of aid should decrease during election periods.

This logic, however, should be stronger when the incumbent contests a close election, which is often not the case. Indeed, we find that in roughly one-third of the incumbent-contested elections in our sample, the opposition receive less than a third of the votes. This may occur, for example, because the main opposition parties, which are legal, boycott the vote in anticipation of poor electoral administration that advantages the incumbent, as occurred in Mali in 1997 (Bratton, 1998, 60). In other instances, incumbent-dominated elections may similarly result from electoral malpractice even though the main opposition participates (e.g. Nigeria 2007, see Bratton (2008). And still other incumbent-dominated elections are clearly non-democratic contests, even if they are technically multiparty contests. Elections in, for example, Belarus (2001 and 2006), Kyrgyzstan and Yemen, fit this description.

To code the concept of a *close* election, we use information from two variables in the Database of Political Institutions: `Oppvote` and `Percent1` (Beck et al., 2001). The former measures the share of legislative votes won by the opposition in first-round legislative elections; the second measures the share of votes won by the government candidate in a direct executive election. If the opposition wins more than one-third of the vote in a legislative contest or the incumbent party candidate wins less than two-thirds of the first-round vote in an executive election, we code the election

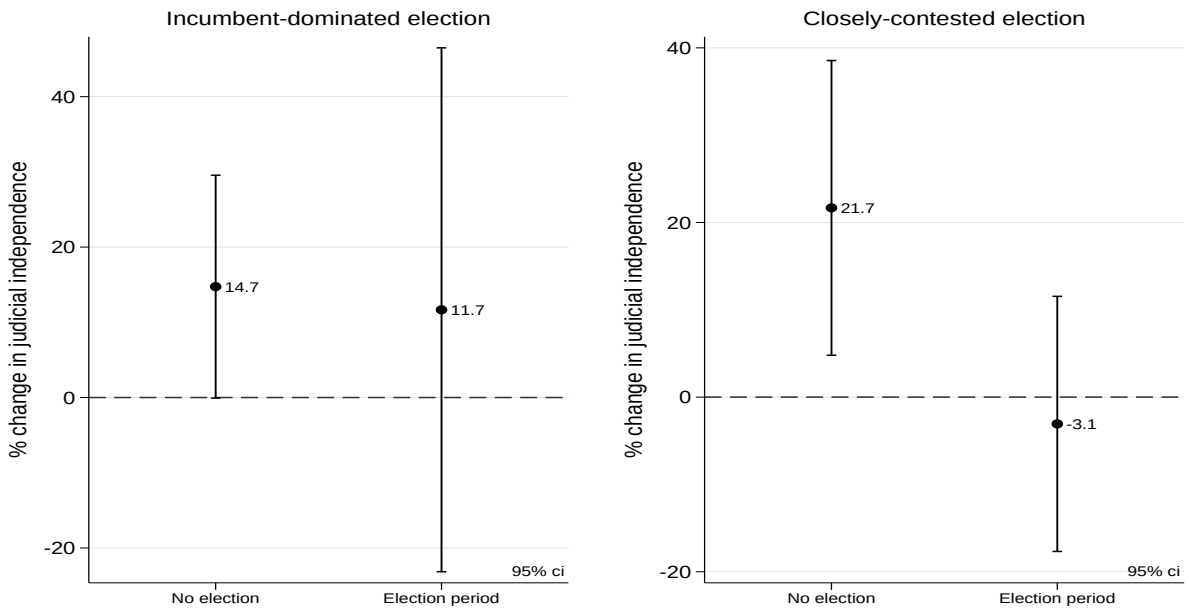

Figure 5: Incumbent-dominated and closely-contested elections

year (as well as the prior and subsequent years) as *closely-contested* election periods. All other incumbent-contested electoral periods are coded as *incumbent-dominated* election periods.[37] Of the 323 election years in the sample, 112 – or roughly 35% – are coded as incumbent-dominated.

To test the proposition that the positive contribution of aid to judicial independence decreases during close elections, we divide the group of election periods into two sub-groups: *incumbent-dominated* and *closely-contested* election periods. First, we estimate the model in equation (2) but use our measure of *incumbent-dominated* electoral period (and the interaction with *Aid*) instead of the measure that groups all election periods together. This means we are comparing the effect of aid on judicial independence during incumbent-dominated electoral periods to the effect in both non-electoral periods and closely-contested election periods, grouped together.

The left panel of Figure 5 shows the results from this model. The estimate on the left, labeled *No election* is for non-electoral periods and closely-contested election periods, grouped together; the coefficient estimate is positive and statistically different from zero. The estimate of the right, labeled *Election period*, is for incumbent-dominated electoral periods. Again the coefficient of interest is positive. Importantly, these two estimates are not statistically or substantively different from each other. This suggests that the main finding for the diminished effect of aid during electoral periods is **not** driven by incumbent-contested elections.

The right panel of Figure 5 shows the results from a model that uses the measure of *closely-*

[37] We use a binary classification instead of a continuous measure because we do not want to test a triple-interaction term in a two-stage least squares model.

contested electoral periods. The estimate of the left, labeled *No election* is for non-electoral periods and incumbent-dominated election periods, grouped together; the coefficient estimate is large, positive and statistically different from zero. The estimate on the right, labeled *Election period*, is for closely-contested electoral periods. This estimate is negative, though not statstically different from zero. Importantly, these two estimates are both substantively and statistically different from each other. This suggests that the main findings for the diminished effect of aid during electoral periods is largely driven by closely-contested elections.[38]

Conclusion

Our findings suggest several insights into the relationship between foreign aid and judicial independence. Both *economic aid* (via conditionality) and *democracy and governance aid* (via direct investment) contribute to greater judicial independence across countries and across time. We argue that the preferences of donor and recipient governments align over the implementation of judicial reform, including projects that promote judicial independence. While donors seek to promote judicial reform to help democratic countries remain stable and consolidate, recipient countries view judicial reform primarily as a prerequisite for promoting economic growth. An independent judiciary contributes to improving a country's investment climate (e.g. North 1990, Acemoglu et al 2001, Henisz 2000) and lowering corruption (e.g. Haber et al 2003). Recipient governments therefore have incentives to implement donor initiatives that improve judicial independence and the quality of their state institutions, more broadly.

We also find that this relationship is conditional on the election cycle in recipient countries: during times of election, the effect of both economic and democracy and governance aid on judicial independence disappears. We argue that recipient incentives to implement judicial reform projects change during times when judicial reform is more costly politically. Specifically, we suggest that this is the case arounds elections, when citizens cast votes to either re-elect the incumbent government or elect a new government. In these times, the future of incumbents is naturally more incertain. Since independent courts can directly influence the political balance during elections by exposing electoral fraud instigated by the executive or condemn the harassement or political opposition or civil society, the incumbent has incentives to slow down the process of strengthening the judiciary as a government branch, independent from executive interference, during these times.

The logic behind the election-cycle finding, we posit, should be stronger when elections are more closely-contested because incumbents who face a real prospect of losing power in an election

[38] In Appendix E, we show that this result get stronger as we lower the threshold for closely-contested elections. For example, if we code *closely-contested* as any election in which the incumbent receives less than 75% or the opposition receives more than 25% of votes, the reported result is stronger. If, however, we code *closely-contested* as any election in which the incumbent receives less than 55% or the opposition receives more than 45% of votes, the reported result is weaker. This suggests that the electoral incentive to restrain judicial independence operates even when the incumbent wins a substantial share of the vote.

have an incentive to stymie investment in judicial independence. As judicial reform becomes more politically costly – a phenomena we measure as closely-contested elections – the interests of the donor and recipient government are less likely to align. We find evidence consistent with this proposition: the effect of elections is strongest when they are closely-contested.

We note that this logic stands at odds with one prevailing theory linking domestic political actors to judicial indepdence. Helmke (2002) argues that politicians who believe they are likely to lose an election have an incentive to promote judicial independence in an effort to constrain the subsequent elected government. Helmke's logic would suggest that close elections should actually yield a strong positive link between aid investments in the judiciary and de facto judicial independence. However, this logic also assumes that the incumbent is fairly certain she will not have power in the next period. Measuring the certainty with which incumbents know they will retain or lose power is incredibly difficult and beyond the scope of current study. But this nonetheless suggests a new avenue for research.

Last, this study contributes to research in democracy promotion that points to the importance of politics in the aid-receiving country. In 1999, Riddell (1999, 333) argued that "if donors wish to make a real difference, they will need to focus more explicitly and more rigorously on issues of power, politics and interest groups, [than] they have tried to do in the past messy and difficult though these things often are." In this paper we show that the electoral cycle in recipient countries matters for the effectiveness of external democracy promotion. Donor governments need to consider the underlying distribution of power when pushing for judicial reform.

Consistent with prior research – e.g. Dietrich and Wright (2015) – we show that incumbent-led democracy promotion is more likely to be successful when recipient governments are not at risk of losing power. Instead, foreign aid may perpetuate a democratic system in which incumbents retain power. In such a system, incumbents can manipulate the timing of the implementation of judicial reform projects to increase their chances of re-election.

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Appendix A: Summary statistics

Table A-1: Summary statistics

Variable	Mean	Std. Dev.	Min.	Max.	N
Judicial indep.	-0.582	1.324	-4.076	3.115	2237
Democracy aid	1.613	1.263	0	6.115	2237
Economic aid	4.82	1.25	0.056	7.803	2237
Lag 4 JI	-0.678	1.337	-4.277	3.115	2237
Common law	0.231	0.421	0	1	2237
Muslim %	0.309	0.372	0	0.991	2237
Christian %	0.482	0.381	0	0.974	2237
Democracy	0.448	0.497	0	1	2237
Media freedom	2.617	0.896	1	4	2237
Election period	0.419	0.494	0	1	2237
Const. duration (log)	2.446	0.99	0	4.522	2237
GDP pc (log)	7.956	1.139	5.081	11.096	2237
Population (log)	16.3	1.373	13.689	21.004	2237
Year	2000.952	5.575	1991	2010	2237

Table A-2: List of 121 countries in the sample

Afghanistan	Guatemala	Nigeria
Albania	Guinea	Oman
Algeria	Guinea Bissau	Pakistan
Angola	Haiti	Panama
Argentina	Honduras	Paraguay
Armenia	Hungary	Peru
Azerbaijan	India	Philippines
Bangladesh	Indonesia	Poland
Belarus	Iran	Romania
Benin	Iraq	Russia
Bolivia	Ivory Coast	Rwanda
Bosnia and Herzegovina	Jordan	Saudi Arabia
Botswana	Kazakhstan	Senegal
Brazil	Kenya	Serbia
Bulgaria	Korea South	Sierra Leone
Burkina Faso	Kuwait	Slovakia
Burundi	Kyrgyzstan	Slovenia
Cambodia	Laos	Somalia
Cameroon	Latvia	South Africa
Cen African Rep	Lebanon	Sri Lanka
Chad	Lesotho	Sudan
Chile	Liberia	Swaziland
China	Libya	Syria
Colombia	Lithuania	Tajikistan
Congo-Brz	Macedonia	Tanzania
Congo/Zaire	Madagascar	Thailand
Costa Rica	Malawi	Togo
Croatia	Malaysia	Tunisia
Cuba	Mali	Turkey
Czech Republic	Mauritania	Turkmenistan
Dominican Rep	Mauritius	UAE
Ecuador	Mexico	Uganda
Egypt	Moldova	Ukraine
El Salvador	Mongolia	Uruguay
Eritrea	Morocco	Uzbekistan
Estonia	Mozambique	Venezuela
Ethiopia	Namibia	Vietnam
Gabon	Nepal	Yemen
Gambia	Nicaragua	Zambia
Georgia	Niger	Zimbabwe
Ghana		

Table A-3: Data Sources

Variable name	Dataset name	Source
Democracy aid	AidData	AidData 2.1
Close election	Database of Political Institutions 1975–2012 (2012 update)	Beck et al. (2001)
Election	National Elections Across Democracy and Autocracy, 1945–2010 (v.3)	Hyde and Marinov (2012)
Common law, Muslim %, Christian %	The Comparative Constitutions Project	Melton and Ginsburg (2014) Elkins, Ginsburg and Melton (2014)
Democracy	Autocratic Breakdown and Regime Transitions, 1946–2010	Geddes, Wright and Frantz (2014)
Media freedom	Global Media Freedom, 1948–2012	Whitten-Woodring and Van Belle (2014)
GDP per capita, population	Penn World Tables, 1950–2010 (v 7.1)	Heston et al. (2012)
Judicial independence	Latent Measure of Judicial Independence, (1948–2012)	Linzer and Staton (2012)

Appendix B: Aid allocation

In this section we conduct a series of "placebo" tests to understand whether observed judicial independence in the prior year is associated with foreign aid allocation to different sectors. The dependent variable is current year aid commitments in log constant dollars; the two explanatory variables are the one-year lag of judicial independence and an binary variable indicating whether an election is scheduled to take place in the recipient countries in one of the next two years. This latter variable models the possibility that donors increase aid, particularly democracy aid, prior to elections.

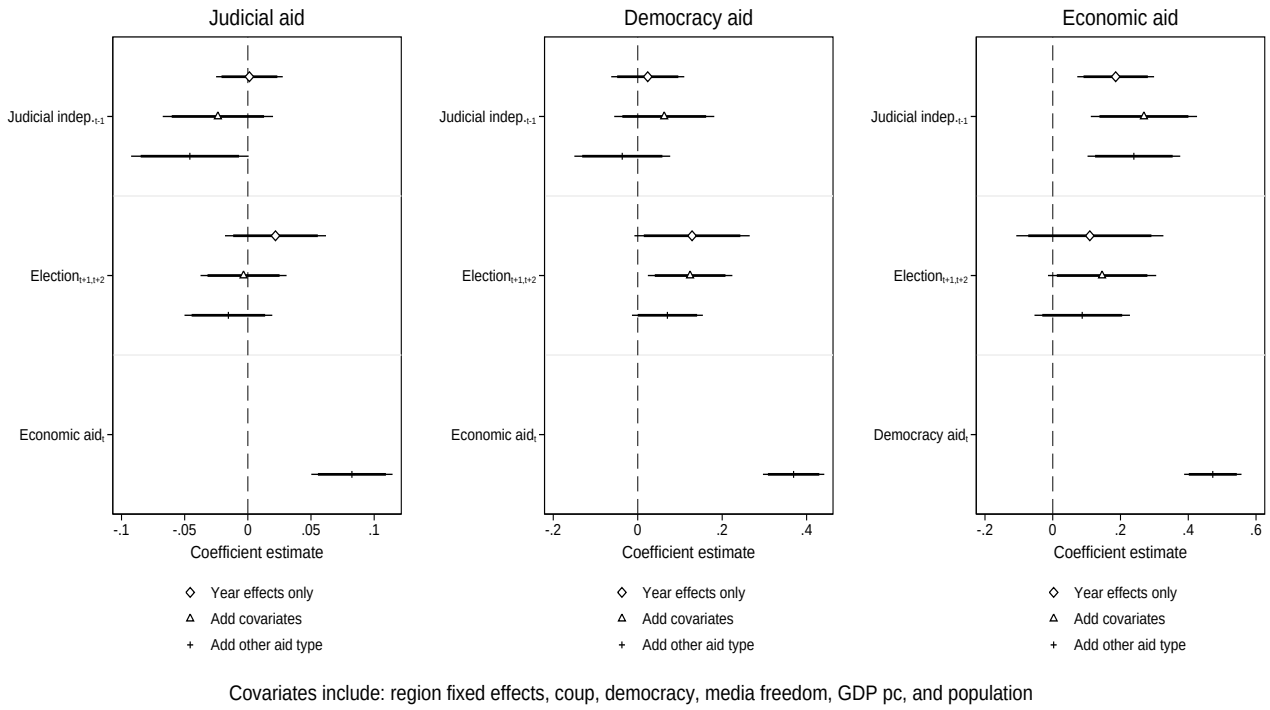

Figure B-1: **Aid allocation.**

Figure B-1 reports the results. We start with a linear model that includes year fixed effects. The top estimate for each covariate in each panel is from this model. Next, we add covariates to the model: coup, democracy, media freedom, GDP pc, population, and region fixed effects. The last estimate is from a model that adds the other type of aid (economic assistance in the models of judicial and democracy aid; and democracy aid in the model of economic assistance). These results suggest that lagged judicial independence is positively correlated with economic aid but not with judical or democracy aid, especially once we account for the collinearity between categories of aid.

In unreported tests of a difference-in-difference model we find a similar pattern: change in lagged judicial independence is not correlated with changes in democracy or judicial aid but it is positively correlated with economic assistance.

Appendix C: Identification strategy

Constructing the excluded variable

To construct the excluded variable, we use a donor characteristic $V_{d,t}$, *Unemployment*, that varies by donor d and year t. For each recipient i and donor d in each year t, we multiply $V_{d,t}$ by the inverted geographic distance in kilometers (denoted by $k_{d,i}$) between donor d and recipient i: $V_{d,t} \times k_{d,i}$. Then we construct the mean value of these to create the excluded variable:

$$Z_{i,t} = \frac{\sum_d (V_{d,t} \times k_{d,i})}{n_d}$$

where n_d is the number of donors per recipient-country-year. We then calculate the lagged three-year moving average of this number (to match the lagged three-year moving average for the endogenous aid variable), log this value, and lag it one year to approximate the idea that the unemployment rate in donor countries influences bugdet commitments in the following year.
For the linear model the resulting specification in an "exactly" identified equation is:

$$\begin{aligned} JI_{i,t} &= \widehat{Aid_{i,t-1:t-3}} + X_{i,t-1} + \eta_t + \zeta_i + \varepsilon^1_{i,t} \\ Aid_{i,t-1:t-3} &= Z_{i,t-2:t-4} + X_{i,t} + \eta_t + \zeta_i + \varepsilon^2_{i,t} \end{aligned}$$

where $Aid_{i,t}$ and $Z_{i,t}$ are three-year lagged moving averages of aid and the instrument, $\widehat{Aid_{i,t}}$ is the predicted value of aid from the first stage, $X_{i,t}$ are control variables, and $\zeta_{i,t}$ are duration polynomials.

The strength of the excluded variable

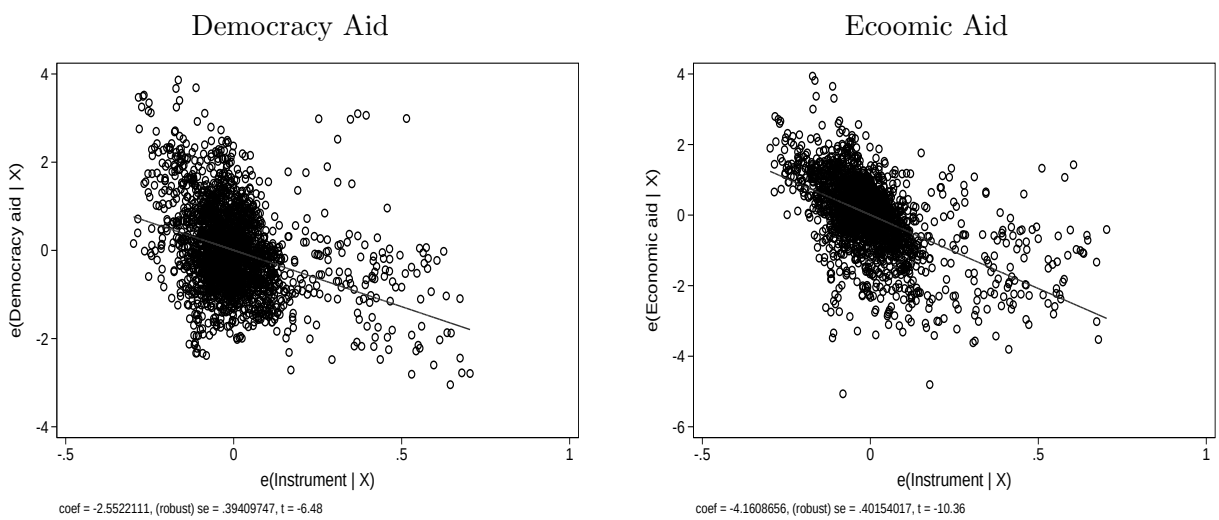

Figure C-1: **Partial correlations for excluded variable and foreign aid.**

Figure C-1 shows the partial correlation between different categories of aid and the excluded variable (*Unemployment*. From these partial correlation plots, we can see that donor unemployment is strongly negatively correlated with both democracy and economic aid.

To probe the assumption that are capturing "exogenous" variation in aid, we need to examine whether these strong partial correlations remain in sub-samples of the data that are theoretically relevant. This is particulary important when using an excluded variable in a two-stage model with an interaction term. For our purposes, we must be sure that the excluded variable is strongly correlated with the endogenous variable both during election periods and in non-election periods.

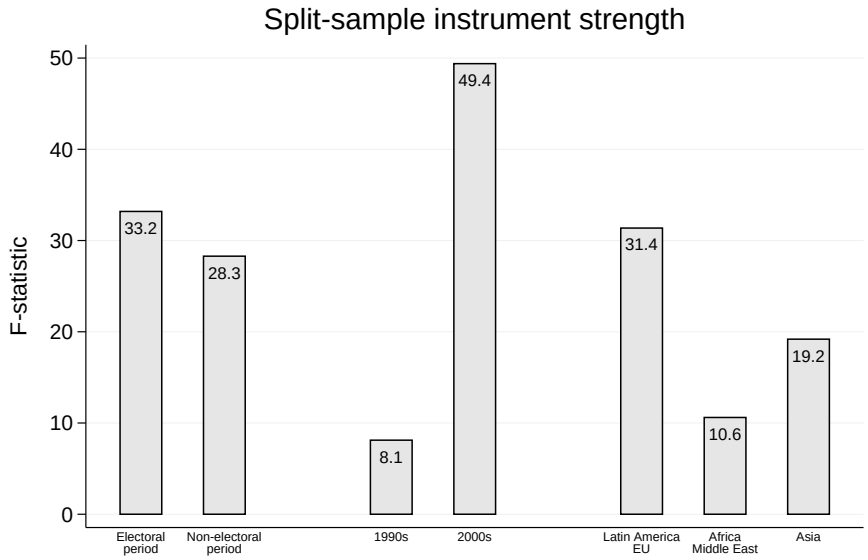

Figure C-2: **F-statistics for split samples.**

Figure C-2 shows the first stage F-statistics from first stage models of democracy aid, when splitting the sample in various ways. Importantly, the F-statistic is well above the convention of 10 for the sample both when there is an election period and there is not one. This figure also shows that the excluded variable is much better at predicting aid in the 2000s than in the 1990s. This is the result of the fact that democracy aid was still a relatively small share of total aid – particularly in the early 1990s. Because the excluded variable is designed to pick up the decision-making process behind budget allocations in donor countries, this variable is not very good at modeling relatively small sectors of foreign aid. Finally, we note that even though there is some variation across geographic region in how well the excluded variable predicts democracy aid, the F-statistic are all above 10 in each geographic sub-sample.

Exploring the exclusion restriction

Appendix D: Robustness tests

Different model specifications

Shorten and lengthen aid lagged moving average

Different definitions of "election period"

Modeling *de jure* judicial independence

Different definitions of "democracy"

Different approaches to modeling calendar time trend

Linear model with country- and year-fixed effects

Appendix E: Close election analysis

The results for close elections reported in the main text code *closely-contested* election as an election in which the incumbent executive gained less the two-thirds of the vote or the opposition won more than one-third of the votes in a legislative contest. This threshold is 33 percent. The first column of the following table lists other plausible thresholds in the first column; the second column lists the number of elections (out of 323) that are coded as incumbent-dominated used the threshold in the first column.

The next two columns show the estimates for the interaction between aid and elections for *incumbent-dominated* elections and *closely-contested* elections, using the threshold in the first column. When these two estimates are stastistically different from each other – as they are for all thresholds up to 40 – this means that main finding for the election-cylce effect is stronger for closely-contested elections than for incumbent-dominated elections.

Cutpoint for *Close* election	Number of incumbent-dominated elections	2SLS estimates: *Aid* × *Election*		FE estimates: *Aid* × *Election*	
		Incumbent-dominated	Closely-contested	Incumbent-dominated	Closely-contested
5	92	.024	-.128	-.018	-.049
10	95	.027	-.129	-.019	-.048
15	101	.047	-.140	-.006	-.054
20	105	.048	-.143	-.008	-.054
25	121	.048	-.149	.001	-.062
30	135	-.005	-.126	-.011	-.057
35	142	-.042	-.105	-.013	-.057
40	158	-.078	-.078	-.026	-.050
45	176	-.070	-.081	-.021	-.059

The last two columns report the respective results for single-equation (naive) model with country fixed effects – again for varying thresholds for coding *closely contested*. We find similar, though slightly weaker, results.