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Contentious Politics in the Courthouse: Law as a Tool for Resisting Authoritarian States in the Middle East

Steven D. Schaaf

Under what conditions will individuals mobilize law to resist states that operate above the law? In authoritarian countries, particularly in the Middle East, law is a weapon the state wields for social control, centralizing power, and legitimation. Authoritarian legal codes are overwhelmingly more deferential to state authority than protective of citizens' rights. Nevertheless, people throughout the Arab world deploy law to contest a broad array of state abuses: land expropriations, unlawful arrests, denials of jobs and welfare, and so on. Using detailed interviews in Jordan and Palestine, I outline a theory of law as a tool for resisting authoritarian state actors. Integrating qualitative insights with survey experiments fielded in Egypt and Jordan, I test this theory and show that aggrieved individuals mobilize law when they expect courts are powerful and attainable allies in contentious politics. My results further demonstrate that judicial independence does not uniformly increase authoritarian publics' willingness to access courts.

Authoritarian political systems are characterized by an absence of electoral accountability for public officials (Geddes et al. 2014; Przeworski 1991). But the inability to hold state actors accountable through democratic elections does not mean that authoritarian publics acquiesce to state abuse. When authoritarian states cause individuals injury—through violence, arrest, expropriating land, depriving citizenship, or denying jobs and welfare—many avenues of resistance and contestation exist outside the electoral arena. This paper examines law as a tool for resistance under authoritarianism, asking: under what conditions will individuals use litigation to pursue grievances against authoritarian state actors?

Much research on resistance to authoritarian states focuses on large-scale instances of political violence (Petersen 2001) and

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Please direct all correspondence to Steven D. Schaaf, Department of Political Science, George Washington University, Washington, DC;e-mail: stevenschaaf@gwu.edu.

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popular mobilization (Bunce and Wolchik 2011; Kuran 1991; Schock 2005). But political contention in authoritarian societies is not limited to mass protest in the streets or armed rebellion on the battlefield. Every day, aggrieved individuals and groups throughout the world confront authoritarian states in the courthouse. In China, there are approximately 100,000 lawsuits against state actors each year (Ginsburg 2008: 68), Russia 500,000 (Solomon 2004: 554), and Egypt 100,000 (Rosberg 1995: 193). The judiciary's role as a venue for contentious politics should draw our attention to the capacity for authoritarian publics to hold state actors accountable by exploiting the state's own rules, institutions, and organizing principles (O'Brien and Li 2006).

At the same time, the mobilization of law and courts against authoritarian states remains an especially puzzling phenomenon. Authoritarian legal codes tend to be more deferential to state prerogatives than protective of citizens' rights. Moreover, authoritarian officials regularly operate above the law or disregard the rule of law entirely (O'Donnell 2004). Upon first glance, litigating the authoritarian state appears a strange and ill-advised method of contention.

There are good reasons for skepticism on the utility of law and courts in authoritarian systems. Judicial politics research in diverse cases shows that legal institutions are often weapons that autocrats wield to promote their own interests: social control (Shapiro 1981), legitimation (Rajah 2012), elite coordination (Barros 2002), and centralization (Brown 1997). Of course, enforcing top-down control is not all that law does in authoritarian societies. Scholarship on legal mobilization from the bottom-up has done much to reveal the other side of the coin by identifying how authoritarian publics can use law and courts as "sites of political contestations" (Chua 2019: 364) and "instruments not merely of oppression, but also of resistance" (Meierhenrich 2008: 129).

In this project, I follow the bottom-up approach by analyzing how law is used by the ruled rather than the rulers. More specifically, I explore when "resistance by means of law" (Merry 1995) is viewed as a viable method of grievance pursuit, even in restrictive political environments. My aim is to build upon research that shows authoritarian publics are not simply passive subjects of law, but also agents and consumers of it—ones who often harbor nuanced views on whether, and when, to deploy law in their efforts to resist state power (Hendley 2015).

While law can be a powerful tool for rulers and political elites seeking to enforce social control and legitimate their authority, law's effectiveness in this regard essentially requires it to be a double-edged sword, one that is also—in some circumstances—capable of being wielded by the ruled (Moustafa 2003: 895).

As Thompson observed nearly half a century ago: "If law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony" (1975: 263). In this sense, analyzing law as a tool for resistance is not simply a matter of identifying a new "weapon of the weak" (Scott 1985). It is, rather, an exercise in exploring when and how the weak (i.e., private individuals) can appropriate the weapons of the strong (i.e., the authoritarian state) to pursue their grievances against state actors.

To explain when citizens use litigation to challenge authoritarian states, I investigate the availability of courts as allies in contentious politics. My inquiry bridges scholarship on legal mobilization and political opportunity by assessing how the judiciary's positioning as an "elite ally" affects the dynamics of legal contention in authoritarian societies (McAdam et al. 1996; Tarrow 1998). Leveraging survey experiments fielded through YouGov in Egypt and Jordan (n = 1,519) and detailed interviews in Jordan and Palestine (n = 84), I argue that expectations on the strength of courts as allies against the state condition the use of law in contentious politics.[1] I further contend that judicial independence does not uniformly increase public willingness to utilize courts against state actors. Some citizens—namely, those who support authoritarian governments—have a much lower demand for judiciaries that are independent from political elites.

The evidence that I derive from Egypt, Jordan and Palestine is integrated within a mixed methods approach through the format of asymmetric case studies; different types of data are provided by each case pairing. Jordan and Palestine are used when presenting data from interviews and the archival analysis of lawsuits against state actors, while Jordan and Egypt are paired in the statistical analysis of my experimental results. Such case asymmetry is driven by practical methodological challenges: (1) the risks for social scientists conducting interview or archival fieldwork in Egypt given the current political environment; and (2) logistical barriers to fielding nationally representative survey experiments in the West Bank.

This study offers four main contributions to research on law, legal institutions, and contentious politics in authoritarian societies. First, it provides a valuable empirical assessment of the factors that motivate individuals to access the judiciary in authoritarian environments. Even when courts are independent, they will fail to effectively constrain authoritarian officials if people do not file lawsuits against state violations. Because "a court is

[1] Preanalysis plan for survey experiments registered through Evidence in Governance and Politics (EGAP), November 2017 (ID No. 20171211AA).

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only useful if parties are willing to bring cases to it" (Ginsburg 2007: 51), sociolegal scholarship has much to gain from persistently investigating the "the everyday role of law" (Hendley 2017: 231) in authoritarian systems—whether, when, and why authoritarian publics adopt legal tactics and judicialize their disputes against the state.

Second, this project identifies conditions under which scholars ought to incorporate litigation into theories on the repertoires of contention that individuals formulate when pursuing grievances against authoritarian state actors (McAdam et al. 2001; Tilly and Sidney 2015). I find that institutional attributes play an important role, as citizens consider both judicial assertiveness and independence when deciding to pursue legal contention against public officials.

Third, my results increase knowledge on when and how judicial independence matters to different audiences in authoritarian societies (Kureshi 2020). While some individuals view independent courts as allies in contentious politics, I find that others do not perceive independent courts as being any more useful than politically co-opted ones.

Fourth, and finally, this study provides a methodological contribution to research on law and society in authoritarian environments. While survey experiments are common in scholarship on American courts (Bartels and Johnston 2013; Gibson 2009), my study breaks new ground by being the first to incorporate such experiments into cross-national work on legal contention and access to justice under authoritarianism.[2] Experimental methods are powerful tools that are likely to be particularly useful in bottom-up inquiries asking how authoritarian publics perceive, experience, and deploy legal institutions in their lives. Of course, experimental designs are not one-size-fits-all tools, but rather specialized ones that prove handy in some cases though clunky in others. Experiments enable scholars to tap into new sources of data and make strong causal claims, but this is precisely because the experimental setting is an abstraction from the real world in which researchers have more control over the data-generating process. Obtaining precise estimates of causality often requires taking a step back from the messiness of reality, but embracing some of that messiness can itself be quite instructive. For this reason, I supplement my experimental design with qualitative evidence collected through interviews in Jordan and Palestine.[3]

[2] Landry (2008) uses nonexperimental surveys to analyze Chinese courts. Bartels and Kramon (2020) use nonexperimental surveys to study African courts. Whiting (2017) uses a "quasi experiment" of legal legitimation in China.

These interviews were conducted between July 2017–August 2017 in Palestine and August 2017–December 2018 in Jordan. Interviewees included judges, lawyers, legal activists, litigants, and nonlitigants (i.e., individuals who alleged injury by state decisions, but did not file lawsuits). Participants from each group were contacted in four primary ways: (1) in-person, through regular personal attendance at administrative court hearings;[4] (2) by phone or email using public information from bar associations, legal advocacy organizations, and state judicial councils; (3) by combing local newspapers for information on recent legal disputes and controversial policy decisions, which likely produced aggrieved parties even if those parties did not litigate; and (4) through snowball sampling referrals provided by previous interviewees and existing contacts.[5]

Egypt, Jordan, and Palestine offer three considerable advantages for theorizing legal contention under authoritarianism. First, because Jordan and Palestine drew heavily from Egypt's model of administrative justice, all three have courts with a common scope of jurisdiction over state actors. This facilitates cross-national comparison, as the range of claims that individuals can raise against the state is similar. Second, public confidence in judicial efficacy differs for each case, reducing concerns that individuals' observed willingness to litigate the state is driven by the overall quality of domestic courts.[6] Third, variation in regime-type between military-personalist (Egypt), monarchy (Jordan), and civilian-personalist (Palestine) allows an exploration of legal contention in diverse authoritarian contexts (Geddes et al. 2014). Each case has a similar administrative legal system, but they diverge in the nature of the authoritarian system. This divergence is useful in assessing the generalizability of my theory in different authoritarian environments.

This paper proceeds as follows. The "Appropriating Law as a Tool for Resistance" section conceptualizes law as a unique tool for resistance against authoritarian state actors. Drawing on interviews from nearly two years of fieldwork in Jordan and Palestine, the "Theorizing the Logic of Lawful Resistance" section outlines my theory of how public expectations on the utility of courts as

[3] The sample includes twenty-nine interviewees from Palestine and fifty-five interviewees from Jordan.

[4] Administrative courts are those exercising jurisdiction over state actors and state decisions.

[5] Snowballing was particularly helpful in recruiting litigants (by reaching out through their lawyers) and nonlitigants, who were the most difficult group to identify and contact independently.

[6] Thirty-four percent of Egyptians positively evaluate judicial efficacy, compared to 50% of Palestinians and 75% of Jordanians (Arab Barometer Wave III Survey, 2015).

elite allies condition legal contention under authoritarianism. I detail my experimental design in the "Testing the Logic of Lawful Resistance: An Experimental Approach" section, and the "Results from an Empirical Analysis of Lawful Resistance" section assess my findings as well as the limitations of my study. The "Discussion and Conclusion" section discusses these results and concludes by considering their importance for future work on the intersection of law, politics, and society under authoritarianism.

1. Appropriating Law as a Tool for Resistance

The concept of resistance incorporates any act of individuals that is "intended to either mitigate or deny claims (for example, rents, taxes, prestige)" made on them by the state or "to advance claims (for example, work, land, charity, respect)" vis-a-vis the state (Scott 1985: 290). People deploy law as a tool for resistance when they resort to litigation in contesting injuries or violations committed by state actors.[7] For convenience, I refer to the use of law against authoritarian states as an exercise of lawful resistance.[8] This is a subtype of the broader concept of "rightful resistance," which O'Brien (1996) defines as "the innovative use of laws, policies, and other officially promoted values to defy 'disloyal' political and economic elites." As with rightful resisters, individuals who use litigation to challenge state actors mitigate the risks of repression by simultaneously legitimizing the legal order of the regime when articulating their claims, and further, accepting the state judiciary as a neutral arbiter of justice (Brown 1995).

I characterize individuals who deploy lawful resistance against the authoritarian state as *appropriating* law as a weapon in their conflicts with state actors. This is because in authoritarian systems, law and courts commonly present themselves as tools for promoting state consolidation and regime durability (Albertus and Menaldo 2012; Barros 2002; Brown 1997; Ginsburg and Moustafa 2008), whether directly by regulating sociopolitical life or indirectly by helping autocrats perform administrative oversight (Rosberg 1995), court foreign investors (Moustafa 2007a), promote markets (Gallagher 2017), and legitimate their rule (Rajah 2012). As Tamir Moustafa observes, "the principal and most apparent function of law and courts in authoritarian regimes

[7] Liu and Halliday (2011), Stern (2013), and Chua (2014) also use Scott's framework to analyze legal contention.

[8] Of course, many lawsuits against the state (regardless of regime type) are frivolous. The concept of lawful resistance excludes such baseless claims by requiring litigation to contest injuries/violations/abuses.

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is the efficient and disciplined exercise of state power" (Moustafa 2014: 283).

Law is certainly a mechanism of social control and a conduit of state power (Shapiro 1981). But where there is power, there is also resistance (Foucault 1976; Scott 1985). Richard Abel highlights this interrelationship between legal power and resistance in the context of apartheid South Africa, finding that precisely "because the regime used legal institutions to construct and administer apartheid, it was vulnerable to legal contestation" (1995: 3).[9] In the case of Sudan, Mark Massoud similarly illustrates how legal toolkits are simultaneously used by "political actors seeking to consolidate their authority and those seeking to challenge or disrupt that rule" (2013: 10). Across a variety of authoritarian systems, sociolegal scholars have found that legal institutions can sometimes operate as domains for intense political struggles (Halliday et al. 2007). In many contexts, legal institutions can even provide meaningful—though limited—opportunities for the ruled to "fight for their rights by means of law" (Thompson 1975: 261) and serve as a "valuable sword and shield" for the subjects of authoritarian rule (Meierhenrich 2018: 34).

Previous work investigating the dual role of law in authoritarian societies has proven insightful and productive. This body of scholarship alerts us to the extent that law can simultaneously be channeled to exercise state power from the top-down, and also to contest that power from the bottom-up. Nevertheless, a wealth of questions remain: Who chooses to resist authoritarian states by means of law, who does—and does not—pursue lawful resistance, when and why? My study grapples with these questions by analyzing variation in authoritarian publics' willingness to deploy law and courts in contentious politics.

Accessing legal institutions can be quite costly for aggrieved individuals. While the financial and time costs of legal action can be prohibitive in any political system,[10] authoritarian publics often face the added fear of state backlash following litigation against officials.[11] A Jordanian civic association, for instance, refrained from litigating a dispute with the Ministry of Social Development for fear it would retaliate by freezing their

[9] Meierhenrich (2008) also explores law as a tool for both exerting and constraining power in his analysis of the South African "dual state."

[10] Interview with Palestinian judge (R.1) and legal activist (R.3), August 20, 2017 and July 18, 2017.

[11] Interview with Jordanian lawyer (R.32), October 18, 2017.

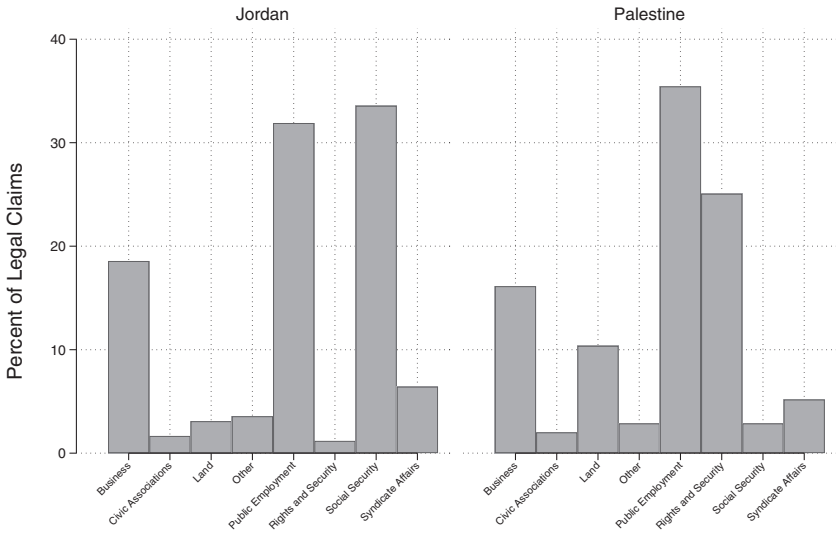

Figure 1. The Issues of Legal Contention in 2011.

funding.[12] And one Palestinian judge recounted a story where a public employee dropped litigation following threats of retribution:

> They [the administration] threatened this litigant… pressuring them to drop the claim. The person was afraid of losing their job or being transferred to a city far from their family.[13]

The costs of litigating authoritarian states can be high indeed. But many Arab citizens continue to select legal contention as a strategy for resisting state violations. What are the types of grievances that individuals pursue through lawful resistance, and how do they map on to those commonly articulated in resistance through collective action? Figure 1 uses an original data set of Jordanian and Palestinian judicial decisions to display the issues at stake for all legal claims initiated against state actors in 2011, the initial stage of the Arab Spring when demonstrations throughout the Middle East and North Africa (MENA) were proliferating. While the Arab Spring protests emphasized themes of "bread, freedom, and social justice" (*aish*, *horria*, *adala ijtimaiya*), the bulk of legal contention during this period revolved around factors intimately related to individual livelihood—access to jobs, business opportunities, land, and welfare.

Litigation over political rights was common in Palestine, but this hardly resembles the grand demands for democracy

[12] Interview with Jordanian nonlitigant (R.34), October 25, 2017.

[13] Interview with Palestinian judge (R.9), July 25, 2017.

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articulated by Arab Spring protesters. The majority of such claims were filed by Palestinians detained without charge by administrative actors (governors, the ministry of interior, intelligence agents), who sought only to compel the state to release them from custody.

As Figure 1 suggests, much of the lawful resistance that unfolds in authoritarian systems is about ordinary people trying to solve ordinary—but sometimes extraordinary—problems involving public officials. Some of these problems may relate to elite interests or regime stability, but most do not. In practice, law is primarily used as a tool for resisting authoritarian *states* rather than authoritarian *regimes*.[14] Policy change not regime change, and state actors not rulers and their cliques, tend to be the most common targets of lawful resistance.

The apparent banality of many legal claims against authoritarian states does not mean the issues underlying them are politically irrelevant. Quotidian disputes over land, welfare, employment, and licensing have tremendous effects on individuals' capacities for subsistence, and are thus important in their own right (Bayat 2010). Moreover, history indicates that policy issues which may initially appear mundane—subsidizing bread, invoking eminent domain, curtailing the public employment safety-net, even confiscating a fruit vendor's cart—can quickly transform into focal points for intense social and political struggles (Bayat 2015).

People who use law as a tool for resisting authoritarian states are rarely striving to upend the political system or remove regime elites. They are, rather, attempting to take the legal rules that underpin the authoritarian order and redeploy them against state actors who threaten their livelihoods (Stern 2013). While authoritarian legal codes both establish and protect the authority of nondemocratic political systems, they can still be utilized to contest how state actors exercise that authority over the public in practice.

Before proceeding to theorize the dynamics of lawful resistance under authoritarian rule, it is important to first tackle a difficult conceptual question: Is it appropriate for sociolegal scholars to view the use of litigation against state actors as an instance of

[14] The "state" is an organization that claims "control over territories and people" (Skocpol 1985: 9) based upon the monopolization of the authority to legitimately use violence (Weber 1978). Resisting a "state actor," thus, entails asserting claims against any public organization or official operating on the basis of that authority. By contrast, a "regime" more broadly indicates sets of "formal and informal rules and procedures for selecting leaders and policies" in a polity (Geddes 1999: 116). Sometimes the term "regime" more conventionally refers to individual leaders or a small leadership group (Geddes et al. 2014: 314). Resisting a "regime," therefore, entails asserting claims that challenge the structure of a political system or the leadership of that system. For a comprehensive distinction of "states" and "regimes," *see* Brown et al. (N.d.).

"contentious politics?" Given the conceptual framework of lawful resistance offered above, readers will likely be unsurprised that my answer to this question is "yes." But perhaps it would be more accurate to respond by saying, with reference to hallmarks of the contentious politics literature, "yes and no"—and to note that the conceptual murkiness implied in this more modest answer should itself draw our attention.

Beginning with the "no," Tilly and Tarrow (2015: 10) define *contentious politics* (the namesake of their book) as the convergence of "contention, collective action, and politics," and many lawsuits against state actors admittedly do not involve collective action—particularly in the MENA where class action claims are rare. But for the "yes," it is very clear that lawful resistance complies with the way that Tilly and Tarrow conceptualize both halves of the term "contentious politics:" *contention* is defined as "making claims that bear on someone else's interests… [ranging] from timid requests to strident demands" (2015: 7–8), while *politics* is defined as interaction "with agents of governments, either dealing with them directly or engaging in activities bearing on governmental rights, regulations and interests" (2015: 8). Thus, the concept of lawful resistance plainly conforms with the requirements for both "contentious" and "political" activity by capturing individuals' use of law to make claims against state agents. But strangely, it does not fall within the umbrella definition of "contentious politics," which appears to read in an added feature of collective action—likely to the great frustration of those who hold regard for a strict conceptual ladder of abstraction and connotative precision (Sartori 1970).

Perhaps collective action is often the most interesting form of contentious politics for social scientists, due to its greater visibility or disruptiveness in social and political life. But contentious politics can also be practiced by individuals, sometimes supported behind the scenes by advocacy networks and sometimes acting alone: Mohamed Bouazizi's self-immolation in front of a Tunisian town hall, Franklin Brito's hunger strike contesting a land dispute with the Venezuelan government, Rosa Parks' refusal to give up her bus seat to a white passenger, Henry David Thoreau's refusal to pay taxes that funded the Mexican-American war, or a single Chinese citizen blocking a line of tanks leaving Tiananmen Square. Litigation represents just one of many ways that, even in the absence of organized collective action, individuals can engage in contentious politics by asserting claims against state agents or contesting state violations of their rights.

While lawful resistance is contentious, we should be careful to avoid assuming that it is necessarily disruptive. Lawful resisters pursue their grievances by working through formal legal

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institutions, and whether that act is disruptive varies tremendously. By accepting state legal institutions as arbiters, lawful resistance has the potential to reify the system of rule that those institutions regulate and uphold (Meierhenrich 2008). In this way, legal institutions can indeed be quite useful for authoritarian regimes—by absorbing disputes that might otherwise manifest in less controlled settings, or alternatively, by creating thin forms of rule of law that legitimate the political order (Pereira 1998). But even the degree of this usefulness varies, both across cases and over time.

Depending on how it is used, law can be just as frustrating to autocrats as it is helpful. Litigation against state violations can publicly expose state abuse, create focal points for political movements demanding reform (Kapiszewski et al. 2013: 10), mobilize transnational activism networks around local rights issues (Keck and Sikkink 1998), and in rare instances even play a supportive role in precipitating regime change (Ginsburg 2013; Trochev 2013). The benefits that law and courts provide authoritarian regimes can be abundant, but reaping those benefits has a cost (Moustafa 2007a). Even a skilled wielder of a double-edged sword can sometimes get cut. And not all autocrats are equally skilled swordsmen.

Authoritarian legal institutions sometimes serve as useful "release vales for pressure that builds in civil society and spaces for anger to dissipate" (Massoud 2013: 9). But this is only effective if individuals have some amount of trust in, and desire to utilize, those institutions (Thompson 1975). For the release valve to work, it must actually provide an amount of release—and this suggests that lawful resistance is not always a lost cause. In the 2011 data on Jordanian and Palestinian lawsuits against state actors presented above in Figure 1, aggrieved citizens prevailed over the state 23% of the time.[15] In other words, lawful resistance generated legal victories for roughly a quarter of citizens who alleged that state agents violated their rights.

The possibility of prevailing in litigation against state actors reveals a viable—though sometimes narrow—path for contentious politics in the courthouse. The task of the following sections is to explain when aggrieved individuals choose to pursue this path and incorporate lawful resistance into their repertoires of contention against authoritarian state actors. When and why do

[15] This percentage pools Jordanian and Palestinian verdicts. When disaggregating the two, Jordanian litigants prevailed over state actors 29% of the time, and Palestinian litigants 15% of the time. The rate of successful claims increases to 43% (Jordan) and 32% (Palestine) when we exclude lawsuits that judges dismissed on procedural grounds and consider only claims that reached a final verdict.

authoritarian publics make the perplexing decision to challenge state actors by appealing to formal legal rules and judicial bodies—structures that most people living under authoritarianism should expect to be rigged against them and in favor of the state?

2. Theorizing the Logic of Lawful Resistance

To explain when individuals deploy lawful resistance against authoritarian states, I first extend the concept of *legal opportunity structures* (LOS) that is beginning to gain traction in legal mobilization research (Evans Case and Givens 2010; Hilson 2002; Vanhala 2012). Most LOS studies define LOS as the institutional factors affecting access to justice in a jurisdiction, which incorporate: (1) costs of litigation; (2) available "legal stock," or bodies of law and precedent; and (3) rules on standing and justiciability (Vanhala 2018: 384). Drawing from research on political opportunity structures, I expand the concept of LOS to include a subjective component: public expectations on whether the judiciary serves as an elite ally, adversary, or neutral arbiter in contentious politics (Andersen 2006; McAdam et al. 1996; Tarrow 1998). In what follows, I strictly theorize this subjective component of legal opportunity and eschew the institutional facets for three reasons.

First, we can be reasonably confident *ex ante* that as the costs of litigation increase, the likelihood of legal contention falls. Second, knowledge of "legal stock," standing and justiciability is rare among the general population. These institutional factors are more relevant for lawyers deciding whether to take a case than for aggrieved individuals considering the incorporation of lawful resistance into repertoires of contention. One Palestinian litigant articulated the difficulty in understanding intricacies of law and judicial procedure thusly:

> I follow my case in court. But I'm not a lawyer and I don't know much about law. The judge takes the file and says something, then the lawyer answers something. I don't know what the question they're talking about is exactly.[16]

Third, while institutional elements of LOS certainly matter, scholars must be careful to avoid reducing the judiciary to the institutions and rules guiding its operation. The judiciary is itself a political actor, one with meaningful agency in resolving disputes between citizens and public officials. Individuals do not strictly evaluate legal opportunity by assessing the content of law; they

[16] Interview with Palestinian litigant (R.26), August 16, 2017.

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also consider whether courts are favorable or hostile actors in disputes against the state. For example, one Jordanian interviewee explained avoiding litigation in a tax dispute because they viewed the judiciary as unsympathetic to citizens:

> Courts will take the tax department's word as truth. Judges won't believe us, the taxpayers.[17]

I argue that people deploy lawful resistance when they expect the judiciary is a viable and influential ally in conflicts with state actors (McAdam et al. 1996: 55), and further, that such expectations are informed by individuals' awareness of judicial assertiveness and judicial independence—though sometimes in surprising ways. Two key questions resonate with people assessing whether the courts are useful allies in contentious politics. First, are courts powerful enough to stand up to state actors? Second, are judges even willing to align themselves with citizens against the state? The first question implicates *judicial assertiveness*—the extent that courts "challenge powerful actors through their rulings" (Kureshi 2020: 1). The second question is a bit murkier, folding in views on: (1) whether the judiciary is independent; and (2) how judges might uniquely support different types of private and public actors.

Of course, some litigants care less about receiving favorable verdicts in court and instead use litigation to attract public attention to political causes, which may succeed even if litigation fails (Moustafa 2018). While lawful resistance can be strategically used to complement nonjudicial methods of contention, this tactic is most prevalent among political parties, activists, and movements with broader reform agendas. For most (but not all) lawful resisters, the issues at stake are highly individualized and directly affect their livelihoods. In such cases, people care deeply about factors suggesting hope of prevailing in court. I now proceed to theorize two such factors.

2.1 Judicial Assertiveness: Are Courts Powerful Resistance Allies?

Judicial assertiveness manifests when courts issue verdicts that challenge the exercise of state power and find "government action, inaction, or policy" to be partially or completely unlawful (Kapiszewski 2011: 475). Of course, an *assertive* court may not necessarily be an *authoritative* court, as "authoritativeness" refers more specifically to the extent that state actors comply with judicial decisions when they lose (Kapiszewski and Taylor 2008: 750). But as

[17] Interview with Jordanian nonlitigant (R.38), November 11, 2017.

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Lisa Hilbink notes in her analysis of positive judicial independence,[18] "courts cannot be powerful (under any definition of the term) unless judges are willing and able to assert themselves" (2012: 588).

As recent work differentiating judicial independence and empowerment illustrates, even *de jure* guarantees of autonomy regularly fail to translate into *de facto* exercises of judicial power (Melton and Ginsburg 2014). This distinction between judicial autonomy and power was succinctly articulated by a Jordanian lawyer, who explained: "On paper, the administrative courts are independent. But in practice, this is not the case."[19]

Differences between what is guaranteed on paper and what is done in practice are not lost on ordinary people, who often will not litigate unless provided "concrete evidence of law's usefulness" (Hendley 1999: 92). Judicial assertiveness—the exertion of judicial influence against powerful actors—provides this sort of evidence. It signals to aggrieved individuals that courts can be strong and useful allies, who are prepared to wield their authority to challenge public officials. Moreover, judicial assertiveness is often a costly signal, one that is made more credible precisely because state retaliation against assertive judiciaries is a persistent threat in authoritarian systems. These signals matter, as people tend to abjure lawful resistance when they perceive courts as powerless against the state. For instance, one Palestinian respondent explained avoiding litigation thusly:

> We could go through the legal path, but it is the Palestinian Authority that we are up against. Even if they are proven to have violated the terms of our agreement in court, nothing is going to happen. The courts cannot implement such a verdict.[20]

In his analysis of law in the West Bank, Tobias Kelly (2006) similarly finds that perceptions of Palestinian courts as weak and ineffective reduces public willingness to pursue litigation. And in Egypt, Tamir Moustafa has observed that judicial assertiveness can facilitate legal contention by signaling that litigation is a useful tactic. During the 1990s, these signals were primarily received by

[18] Hilbink explicitly uses "positive judicial independence" synonymously with "judicial assertiveness."

[19] Interview with Jordanian lawyer (R.30), October 11, 2017.

[20] Interview with Palestinian non-litigant (R.24), August 29, 2017. The remark suggests a concern that courts might be weak because even when assertive, they may not be authoritative. While my experimental treatments only include assertiveness, I expect that observed treatment effects would be even stronger when combined with additional information on authoritativeness indicating state actors complied with assertive verdicts after they were issued.

Egyptian legal and human rights activists, and they came in multiple forms—an accumulation of constitutional court rulings against state legislation, and sometimes even through individual judges inviting litigation by publishing their legal views in opposition newspapers (Moustafa 2007b: 202).

I expect displays of judicial assertiveness promote lawful resistance by signaling the strength and utility of courts as allies in contentious politics. This yields the following hypothesis:

H1. (The Judicial Assertiveness Hypothesis)—Information on judicial assertiveness increases the likelihood that individuals use law when pursuing grievances against authoritarian state actors.[21]

Support for this hypothesis would suggest that institutions that raise awareness on judicial activity can play an important role in arousing or deterring lawful resistance. People in the Arab world often encounter information on judicial assertiveness in their daily lives—through neighbors, colleagues, media, and civil society organizations. In Jordan media outlets like Al-Ra'i and Petra News, periodically report on judicial rulings involving state actors. And in Palestine, a number of civil society organizations actively promote legal consciousness. The Independent Commission for Human Rights, for instance, widely publicized a 2012 High Court verdict overturning a state decision to terminate public teachers sympathetic to Hamas.[22] Another Palestinian advocacy organization, the Center for the Independence of the Judiciary, raises legal consciousness by publishing judicial verdicts and conducting legal clinics throughout the West Bank.[23] If information on judicial assertiveness induces aggrieved individuals to pursue lawful resistance, this would suggest that organized efforts to raise—or inhibit—legal consciousness can have important repercussions on the dynamics of contention under authoritarianism (Gallagher 2006).

2.2 Judicial Allegiances: Are Courts Willing Resistance Allies?

When are judges willing to ally with citizens resisting state violations? Usually, scholars approach this question in terms of judicial independence—whether judges possess autonomy from regime interference (Moustafa 2007a). But individuals do not evaluate the allegiance of judges solely by the absence of cooptation or control. They also care about the presence of judicial

[21] H1 aligns with effects posited in EGAP preanalysis plan.

[22] Interview with Palestinian legal activist (R.11), July 30, 2017.

[23] Interview with Palestinian legal activist (R.2), July 16, 2017.

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sympathies toward different types of people and different categories of state actors (Welch et al. 1988). For instance, one interviewee avoided litigation against Jordan's Minister of Transportation because:

> The judiciary sides with the rich. If you are poor, judges don't care about you. The rich person wins in court not because he has money, but because he is respected.[24]

Another participant refrained from litigating a dispute with the Jordanian Ministry of Justice because:

> The ministry's Secretary General knows the judges better. Judges take him more seriously… If you think of cases dealing with the Ministry of Justice, Judicial Council or other bodies closely related to judges… the court will always rule in favor of such bodies.[25]

In the first instance, the respondent perceived themselves as outside of sympathetic class of litigants, who could more successfully appeal to judges for support. As this view suggests, individuals have disparate levels of confidence in their own ability to cultivate judges as elite allies, which can vary according to social status (Brinks 2007), ethnicity (Overby et al. 2005), gender (Songer and Crews-Meyer 2000), interpersonal networks (VonDoepp and Ellett 2011), or ideology (Durr et al. 2000; Hilbink 2007). In the second instance, the respondent identified a subset of public officials with whom judges were unwilling to ally against, namely, state actors incorporated within society's "legal complex" (Halliday et al. 2007).

Prior work in American judicial politics suggests that individuals perceive courts as more willing to ally with some types of private and public actors than others (Songer and Sheehan 1992). Going a step farther, I contend that this perception interacts with how people view the judiciary as an institution. When considering their ability to win the support of judges against state actors, aggrieved individuals implicitly ask themselves: "Is the judiciary favorable to people like me?" This question has two components: (1) the person's own identity; and (2) a determination on whether the judiciary is an actor that favors or disfavors people with that identity. To assess this dynamic empirically, I examine how individuals' political identities (pro-government vs. anti-government) interact with distinct judicial structures (independent vs. politically co-opted).

[24] Interview with Jordanian nonlitigant (R.46), May 7, 2018.

[25] Interview with Jordanian nonlitigant (R.67), September 18, 2018.

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I posit that people who support authoritarian governments are more likely to prefer litigating in judiciaries that lack independence from those governments. When autocrats subordinate or penetrate state institutions, the effects often extend beyond securing loyalty or deference to regime elites. Political co-optation, more broadly, creates institutional spaces—and empowers administrators—that are prone to selectively benefit government supporters and hinder opponents. As Jamal (2007) observes in her analysis of Palestinian civil society, pro-government groups commonly expect more favorable outcomes from patently non-democratic institutions.

When evaluating judicial allegiances, pro-government citizens are disposed to: (1) view progovernment judges as a "friend-of-a-friend," with shared views and interests; and (2) believe political control of the courts produces a judiciary that is sympathetic to them and responsive to their claims. Compared to anti-government citizens who recognize independent courts as amenable allies, pro-government citizens perceive more affinity with politically co-opted courts. This generates the second hypothesis:

H2. (The Judicial Independence Hypothesis)—Individuals who oppose the government are more likely to use law against authoritarian state actors when they perceive the judiciary as independent, while individuals who support the government are less likely to do so when they perceive the judiciary as independent.[26]

This hypothesis may seem strange when applied to legal contention against state actors. But it is less so when we recall that the bulk of lawful resistance under authoritarianism is individualized against specific state agencies and officials, not the government or regime as a whole (Brown 1995). One Jordanian litigant made this distinction explicit:

> The government invested in us as employees… But people pressured the Tax Director to hire relatives, so he violated the law and transferred experienced employees… Parliament gave us a letter recommending our employment be reinstated, but the

[26] H2 diverges from the effect posited in my EGAP preanalysis plan. When I registered this design, I anticipated pro-government citizens believe verdicts by independent courts are more likely to be implemented/enforced. Through an additional year of fieldwork, I learned that citizens do not calculate so far into the future—rarely considering the downstream enforceability of decisions. Expectations on receiving a favorable verdict matter more than concerns over what happens afterward. Interviewing citizens/judges/lawyers and observing court sessions led me to update theory in light of new evidence on the judicial process as it is experienced by different actors.

> Finance Minister refused. The Minister has the same mentality as the Tax Director, they are oppressors.[27]

While conducting fieldwork in Jordan and Palestine, I often heard people who opposed the government, or viewed themselves as politically marginalized, lament the absence of judicial independence:

> (A) We are hesitant to use the judiciary… We don't trust the Palestinian Constitutional Court because it is composed of pro-Fatah judges… with no reputation for independence.[28]
> (B) We can't just file a case against a minister. Judges only implement law in favor of people who have *wasta* (social capital).[29]

But to be up front, no interview participant explicitly expressed the converse—that their support for the government and preference for a nonindependent judiciary went hand-in-hand.[30] Nevertheless, it is easy to see why pro-government citizens might be unconcerned, even satisfied, with political control over the courts. For instance, Jordanians who highly support the monarchy have good reason for an affinity toward politically co-opted courts. As one judge explained to me:

> In Jordan, the King is the source of judicial authority… Symbolically, the judiciary derives its power from the King.[31]

Jordanians who oppose the monarchy—expecting it to act against their interests—have more to fear in litigating the state before a judiciary that lacks independence from the king than those supportive of the royal family. Baked into this example, of course, is a meaningful distinction between Jordan's "ruler" (the king) and its "government." These entities are often less distinguishable outside monarchic regimes—a source of variation across authoritarian systems that I return to in the empirics.

Support for H2 would challenge the conventional wisdom in comparative legal studies by indicating judicial independence does not uniformly increase public desire to access courts. While much research on judicial politics assumes independent judiciaries are more likely to constrain state actors (Hayo and

[27] Interview with Jordanian litigant (R.74), October 15, 2018.

[28] Interview with Palestinian legal activist (R.11), July 30, 2017.

[29] Interview with Jordanian nonlitigant (R.35), November 1, 2017.

[30] People holding this view are unlikely to vocalize it in an interview.

[31] Interview with Jordanian judge (R.72), October 1, 2018. While the respondent emphasized royal authority over courts as *symbolic*, many citizens fail to distinguish between symbolic and direct authority.

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Voigt 2007), no study has yet investigated the extent that people living in authoritarian countries share this assumption.

3. Testing the Logic of Lawful Resistance: An Experimental Approach

To test how *judicial assertiveness* (H1) and *judicial allegiances* (H2) affect lawful resistance, I turn to survey experiments fielded through YouGov in Egypt and Jordan during December 2017. Survey experiments provide three considerable advantages for my analysis. First, experimental designs enable researchers to identify causal effects that are internally valid, as randomization mitigates bias from external confounding or omitted variables (Druckman et al. 2006). Because decisions to pursue lawful resistance can implicate many factors, some harder to observe than others, the experimental approach is uniquely useful in isolating the effect of judicial assertiveness. Second, exposing respondents to experimental manipulations before measuring the dependent variable eliminates issues of reverse causality. This increases confidence that judicial assertiveness is a factor that drives respondents' willingness to litigate state actors *ex ante*, rather than a rationalization for legal contention that is formulated *post hoc*. Third, embedding an experiment in nationally-representative surveys allows me to generalize farther beyond the population that I was able to interview in-person (Gibson 2009). What interviews offer through detailed and context rich information, survey experiments complement through causal precision and breadth.

To deploy this experiment, 1,012 Egyptian respondents and 507 Jordanian respondents (n = 1519) were recruited to participate in the study through YouGov's MENA survey panel.[32] Because these surveys were fielded online, it is possible that my sample systematically differs from segments of each country's population that lack internet access. For this reason, I include demographic controls for *age*, *gender*, *employment*, *income*, and *urban/rural*. Respondents also had the option to choose the survey language (Arabic/English). As a precaution against the possibility that treatments are more-or-less salient in either language, I also control for the *language* selected. Demographic information and balance tests about the sample are displayed in Supporting Information Appendix A.

To test H1, I randomly assigned respondents to one of three treatment conditions in the form of a yes/no question:[33]

[32] Full survey text displayed in Supporting Information Appendix D.

[33] Respondents' answers ("Yes"/"No") were irrelevant to the treatment. What matters is the priming in each question, varying the court's verdict.

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> **T0: Neutral-Control (*n* = 507)**—"Are you aware that the Egyptian/Jordanian Administrative Court recently issued an important ruling in a case *involving the government*, relating to one of the government's new policies?"
> **T1: Judicial Assertiveness (*n* = 504)**—"Are you aware that the Egyptian/Jordanian Administrative Court recently issued an important ruling *against the government*, saying that one of the government's new policies was illegal?"
> **T2: Judicial Deference (*n* = 508)**—"Are you aware that the Egyptian/Jordanian Administrative Court recently issued an important ruling *in favor of the government*, saying that one of the government's new policies was legal?"

Next, I assessed whether respondents were properly treated using a factual manipulation check that asked how the court ruled in the question they just read (Kane and Barabas 2019).[34] Subsequently, all respondents were prompted with an identical vignette where a state official invoked eminent domain on their property:[35]

> As a part of a new development program, the Governor ordered the demolition of several residential buildings. You learn that your home is one of the properties that is scheduled for demolition.
> The Prime Minister had no opinion on the Governor's demolition plan, and he said nothing about the plan. The Governor began to implement the demolition plan. A local official told you that you must vacate your home.[36]

The outcome of interest asked how participants would respond to the demolition plan. Each respondent reported whether they would "speak to a lawyer about challenging the demolition plan in court" on a five-point agreement scale—ranging from "Strongly Agree" to "Strongly Disagree." The emphasis on "speaking to a lawyer" is deliberate, as this framing provides a more plausible operationalization of how the logic of lawful resistance works in the real world. Citizens initially inclined to pursue lawful resistance may ultimately be deterred from doing so after consulting

[34] The manipulation check was multiple choice. Respondents assigned the judicial assertiveness treatment passed by answering "the court ruled against the government." Those assigned to judicial deference passed by answering "the court ruled in favor of the government." Those in the control passed by answering "the question did not say."

[35] I selected eminent domain for the vignette because land/property disputes are especially likely to resonate with a broad spectrum of the population. Issues like public employment, by contrast, are less meaningful to many citizens (e.g., unemployed/private sector).

[36] Information on the Prime Minister's opinion was used as a treatment in separate survey experiments. This experiment held the PM's reaction constant at "had no opinion."

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an attorney, resulting from new information on: lawyers' fees, court fees, the content of law and judicial procedures (Vanhala 2018). To avoid such confounding factors, I distinguish between respondents' *desire* to litigate the state (exhibited by consulting an attorney) and the subsequent step of filing litigation in practice. My dependent variable maps onto the essential catalyst for lawful resistance, capturing aggrieved citizens' willingness to pursue legal contention.

To test H2, I collected information on *government support* and perceptions of *judicial independence*. These questions were not part of the experimental manipulation, meaning the inferences they produce are observational and not causal. Finally, I control for respondents' perceptions on the *power of central* versus *local state actors*, accounting for the possibility that some see more utility in resolving grievances through local institutions.

My experimental design is tailored to assess the conditions under which Egyptian/Jordanian citizens are willing to deploy law against state actors. Of course, prior research indicates that scholars should not unquestioningly assume that survey experiments are externally valid in the real world (Barabas and Jerit 2010). While support from interview evidence increases confidence in external validity, continued research on the dynamics of lawful resistance outside of the experimental setting will prove fruitful.

To contextualize the results presented in the following section, it is useful to first describe circumstances in Egypt and Jordan that might have affected how respondents perceived legal institutions at the time my survey was fielded in December 2017. After all, participants do not enter the experimental setting as blank slates, and the way individuals process treatments may be affected by priors produced by events unfolding around them (Evers et al. 2019).

In Egypt, this experiment was conducted during the late stage of a politically salient legal battle contesting President al-Sisi's decision to transfer the Tiran and Sanafir Islands to Saudi Arabia. In January 2017, the Supreme Administrative Court (SAC) issued an exceptionally assertive verdict, holding the island transfer was an unlawful abrogation of Egyptian sovereignty. This verdict was subsequently ignored by the Egyptian parliament and suspended by the Supreme Constitutional Court in June 2017. The administrative court attempted to exert its influence, but failed to achieve a tangible result. Because the limits of judicial assertiveness were plainly on display at the time, Egypt provides a hard test for hypothesis one; finding a positive effect for the *judicial assertiveness* treatment in Egypt would, thus, offer strong support in favor of rejecting the null.

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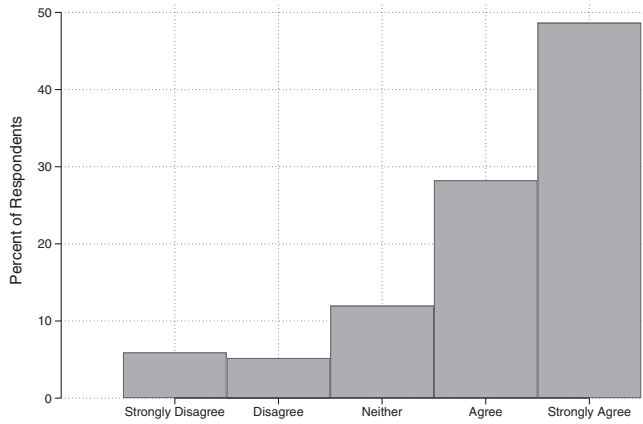

Figure 2. Willingness to Engage in Lawful Resistance.

Jordan reconfigured its administrative judiciary in 2014, and it followed the Egyptian model by creating an appellate SAC with final authority over lawsuits contesting state decisions. Between 2014 and 2017, the Jordanian SAC's jurisprudence grew much more pro-state than that of its predecessor, though this trend has not become politically salient and is noticed primarily by lawyers and activist judges.[37] In Egypt, however, President al-Sisi has made more overt moves to subdue the judiciary and undermine judicial independence, and his efforts have attracted public notice. Respondents attuned to these events will likely report lower overall perceptions of judicial independence. Yet, hypothesis two expects that such lower perceptions of independence will only deter those who oppose the government from pursuing litigation.

4. Results from an Empirical Analysis of Lawful Resistance

Figure 2 illustrates respondents' overall dispositions to litigate authoritarian state actors—without conditioning on treatment or controls. The distribution shows that the majority of Egyptians and Jordanians are open to pursuing lawful resistance against the state.

This section assesses how information on *judicial assertiveness* and views on *judicial allegiances* affect public willingness to mobilize law against the authoritarian state. If information on assertiveness signals that courts are powerful allies in conflicts with state

[37] Interview with Jordanian judge (R.51) and lawyer (R.80), May 14, 2018 and November 3, 2018.

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actors (H1), the *judicial assertiveness* treatment should exert a positive effect on respondents' dispositions to utilize law. And if *judicial allegiances* condition expectations on whether the courts are willing to ally with citizens against the state (H2), we should find anti-government respondents are more likely—but pro-government respondents less likely—to use law when they view the judiciary as independent.

In models analyzing the judicial assertiveness and deference treatments, I interact treatment assignment with success/failure of the factual manipulation check in the survey. This interaction is necessary because failure of the manipulation check indicates respondents were not properly treated, generally due to lack of attentiveness when reading the prompt (Oppenheimer et al. 2009).[38] Estimated treatment effects in survey experiments are most valid for the sample of respondents who successfully receive treatment (compliers), but less reliable among respondents who are not properly treated (noncompliers). As prior work on experiments suggests, I find heterogeneous treatment effects between compliers and noncompliers (Kane and Barabas 2019). Models interacting treatment assignment with manipulation check success/failure reduce concerns that observed coefficients are biased due to either: (1) distorting estimated treatment effects by aggregating compliers and noncompliers; or (2) restricting the sample by dropping respondents who failed the manipulation check (Aronow et al. 2019).[39]

4.1 Judicial Assertiveness and Lawful Resistance

Table 1 presents regression results analyzing lawful resistance in Egypt and Jordan. Model 1 shows the effect of *judicial assertiveness* relative to the *neutral-control*, while Model 2 shows the effect of *judicial assertiveness* relative to *judicial deference*. In assessing Hypothesis One, the relevant quantity in Table 1 is the sum of the interaction term (*Judicial Assertiveness* × *Manip. Pass*) plus the constituent term (*Judicial Assertiveness*), which isolates the effect of judicial assertiveness among respondents who were successfully treated (compliers). The constituent term on its own, by contrast, represents the effect strictly for respondents who failed to exhibit proper receipt of treatment (noncompliers).

As anticipated by H1, Model 1 indicates that individuals are more likely to mobilize law against authoritarian state actors when

[38] Forty-one percent of respondents (n = 626) failed the manipulation check, while 59% passed (n = 893).

[39] Results robust to dropping respondents who failed the manipulation check (Table B3 in Supporting Information Appendix B).

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Table 1. Base Models Estimating Lawful Resistance

	Model 1 (Assertiveness Vs Neutral)	Model 2 (Assertiveness Vs Deference)
Judicial Assertiveness × Manip. Pass	0.45*	0.39*
	(0.16)	(0.14)
Judicial Assertiveness	−0.23	−0.24*
	(0.14)	(0.10)
Manip. Pass	0.05	0.15
	(0.13)	(0.10)
Judicial Independence	0.12*	0.09*
	(0.03)	(0.03)
Government Support	−0.08*	−0.07*
	(0.03)	(0.03)
Central State Stronger	0.22*	0.14*
	(0.04)	(0.04)
Monthly Household Income		
Less than $533	−0.11	−0.00
	(0.09)	(0.09)
$533 to $1065	−0.09	0.10
	(0.12)	(0.11)
$1066 to $2132	−0.05	−0.06
	(0.15)	(0.17)
$2133 to $3999	0.05	−0.13
	(0.22)	(0.23)
$4000 to $7999	−0.07	0.07
	(0.25)	(0.29)
$8000 or More	0.08	0.26
	(0.24)	(0.21)
Jordan	0.06	0.04
	(0.08)	(0.08)
Constant	2.03*	2.04*
	(0.28)	(0.29)
Observations	1011	1012
R^2	0.12	0.087

Note: Model includes undisplayed controls for *age*, *gender*, *employment*, *urban/rural*, and *survey language* (Table B1 in Supporting Information Appendix B). Model includes fixed effects for country (Egypt/Jordan). Results are robust to no controls (Table B2 in Supporting Information Appendix B). Base category for *income* is "Don't Know/Can't Say" (see Supporting Information Appendix C). Robust se values in parentheses.
*$p < 0.05$.

they are informed of previous instances of judicial assertiveness. The results from Model 1 further show that positive views of judicial independence and the relative power of central state actors increase willingness to pursue lawful resistance, while support for the government decreases it.[40] Surprisingly, respondents' propensity to litigate the state appears unrelated to monthly household income, though I expect this is because the dependent variable specifically measures respondents' *willingness* to litigate the state and consult a lawyer.[41] Income likely plays a larger role in

[40] Respondents who support the government may be less litigious because they view state decisions as more legitimate, or alternatively, expect other methods of dispute resolution are more accessible to them.

[41] Supporting Information Appendix C assesses the effect of income in more detail, using both narrower and wider specifications of the income bracket. Treatment effects are stable under each specification (Table C).

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following through on that initial willingness, once individuals are better informed on the cost of legal and court fees as well as the likelihood of receiving pro bono representation—which legal advocacy organizations in the MENA sometimes provide for cases that raise human rights claims, but more rarely in others.

Figure 3 displays the marginal effect of the *judicial assertiveness* treatment relative to the *neutral-control* separately for Egypt and Jordan. Information on judicial assertiveness increases respondents' willingness to litigate the state by 0.21 points on the five-point agreement scale. This effect is substantial. When compared to *judicial independence*—the variable which garners most attention in authoritarian courts research (Helmke and Rosenbluth 2009)—the effect of *judicial assertiveness* is equivalent to the difference between respondents "disagreeing" and "agreeing" that the judiciary is independent from the executive.

These results lend support to H1, that judicial assertiveness increases citizens' willingness to engage in lawful resistance by signaling that courts are powerful allies in conflicts with authoritarian officials. Of course, this finding is subject to three important limitations. First, the coefficient for judicial assertiveness is negative for respondents who failed the factual manipulation check (noncompliers), raising a possibility of bias from unobserved factors conditioning attentiveness to the survey or receipt of treatment. The inclusion of demographic controls reduces—but does not eliminate—this concern.

Second, Figure 3 shows that the effect of *judicial assertiveness* on lawful resistance is most apparent in Egypt. Compared to the *neutral-control*, the assertiveness treatment narrowly fails to attain significance in the Jordanian sample alone. Because the effect size

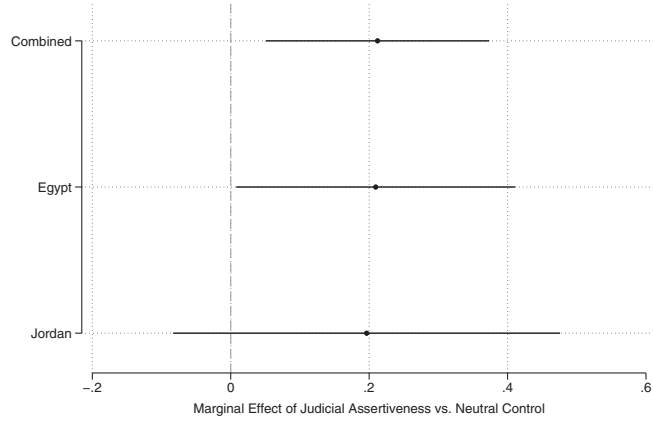

Figure 3. Judicial Assertiveness and Lawful Resistance in Egypt and Jordan.

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and direction are similar—and the Jordan results are significant at the 90% confidence level—the discrepancy in treatment effects is most likely produced by differences in sample size between the Egypt and Jordan surveys. Of course, the nature of the authoritarian system could play a role in conditioning the way that individuals interpret and respond to displays of judicial assertiveness—with Jordan being a fairly stable monarchy and Egypt being a military-personalist regime that has experienced significant instances of political upheaval in recent years. But overall, Figure 3 suggests that despite these political differences, the effect of judicial assertiveness on lawful resistance is comparable in each country both in its magnitude and direction.

Third, Model 2 reveals that the effect of *assertiveness* relative to *deference* is attenuated, amounting to 0.14 points in the combined Egypt/Jordan sample. And Figure 4 shows that while the marginal effect of *judicial assertiveness* versus *deference* is in the direction anticipated by H1, it does not attain conventional levels of statistical significance in either country. Respondents treated with *judicial deference* are just as willing to pursue lawful resistance as those assigned the *neutral-control* (see Table B4 in Supporting Information Appendix B), indicating that the deference treatment does not induce individuals to view the judiciary as a weaker ally. Before treatment assignment, respondents likely share the prior that courts are deferential to state actors[42]—positively updating this prior when provided conflicting information on *judicial assertiveness* but maintaining it when primed with *deference* or the *neutral-control*. Even so, there is no compelling reason to expect,

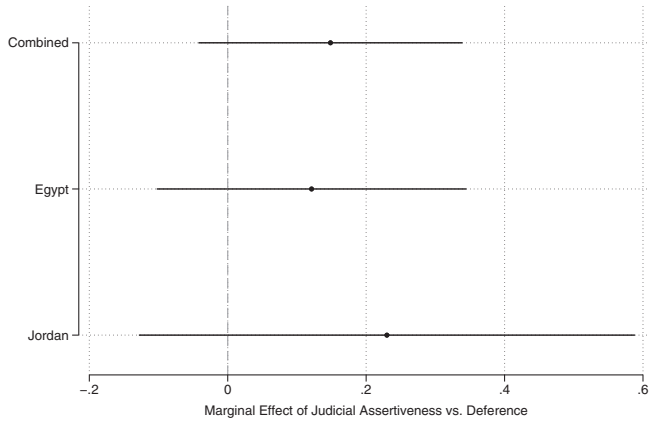

Figure 4. Judicial Assertiveness Versus Judicial Deference.

[42] Interview with Palestinian judge (R.7, July 23, 2017) and Jordanian lawyer (R.40, November 14, 2017).

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ex ante, that the judicial assertiveness treatment should grow less pronounced when judicial deference (as opposed to the neutral-control) is used as the baseline.

These limitations reduce the degree of certainty associated with the inferences I derive from my results. Experimental evidence of a positive relationship between judicial assertiveness and lawful resistance is present (H1), but the confidence attached to that evidence is mixed. My interviews with Jordanians harmed by state decisions suggest there is theoretical and empirical merit to a greater acceptance of such statistical uncertainty (Gelman 2016). Variation in treatment effects across observations in my sample maps onto variation in extent that judicial assertiveness matters—often in conjunction with other factors[43]—in real world decisions to litigate the state. In some cases, expectations on the strength/weakness of courts as elite allies exhibit a clear-cut effect:

> If I raised a lawsuit, I would have lost it in the end… It won't improve anything. There isn't anyone who can stand up to the government.[44]

But in other circumstances, awareness of judicial assertiveness emerges as a pertinent factor—though one with a less pronounced independent causal effect:

> My friend told me they won a similar case against the administration two years ago… Hearing this gave me more motivation to file a legal claim. But even if I did not hear of that case, I still would have gone to court.[45]

Expectations on whether the judiciary is a capable of constraining the authoritarian state matter more to some and less to others. This context helps appreciate the uncertainty attached to the *judicial assertiveness* results displayed in Figure 3. While judicial assertiveness signals that courts are likely more useful as allies in conflicts against state actors, these signals can vary in strength as can individuals' receptivity to them.

4.2 Judicial Allegiances and Lawful Resistance

As Figure 5 illustrates, most Egyptians and Jordanians view their courts as institutions with moderate-to-high levels of

[43] Such factors may include litigation being viewed as a last/only resort (Interview with Jordanian litigant R.31, October 14, 2017), or symbolic concern with achieving one's rights even against the odds (Interview with Palestinian litigant R.6, July 18, 2017).

[44] Interview with Jordanian nonlitigant (R.54), July 21, 2018.

[45] Interview with Jordanian litigant (R.84), December 13, 2018.

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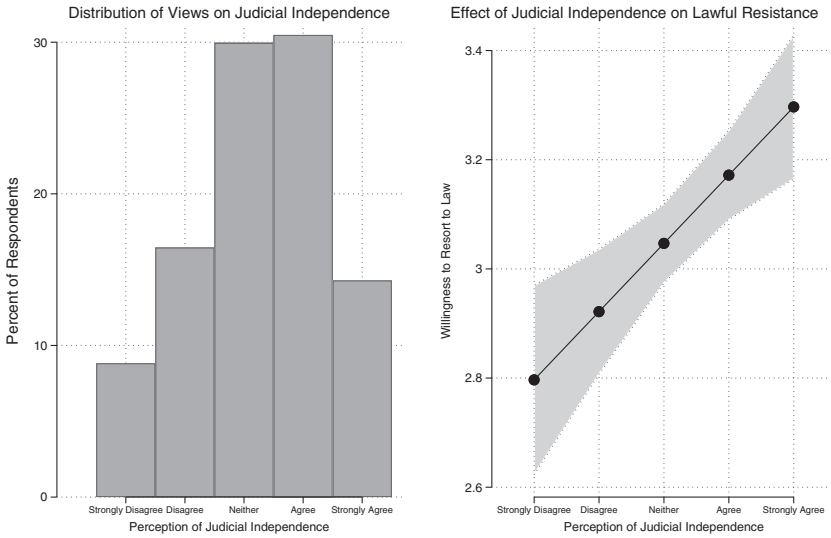

Figure 5. Judicial Independence and Lawful Resistance.

independence, and—in aggregate—perceived judicial independence increases the propensity to mobilize law against the state.

H2 posits that while anti-government citizens view independent courts as viable allies against authoritarian state actors, pro-government citizens are less attracted to independent judiciaries. To test this hypothesis, I examine how the interaction between government support and judicial independence affects respondents' willingness to pursue lawful resistance.

Table 2 displays the regression results.[46] In support of H2, the base coefficient for *judicial independence* shows that individuals who oppose the government are more willing to pursue lawful resistance when they perceive the judiciary as independent. By comparison, the interaction term indicates that people who support the government are significantly less likely to pursue lawful resistance when they view the judiciary as independent.

Substantively, the results in Table 2 indicate that demand for judicial dependence in an authoritarian society is most heavily concentrated in the political opposition, which views independent courts as more amenable allies in contentious politics. Anti-government citizens welcome judicial independence enthusiastically, but pro-government citizens do not. While pro-government respondents have a lower overall preference for independent judiciaries than anti-government respondents, Model 3 provides

[46] Model 3 includes fixed-effects for treatment assignment to account for potential posttreatment confounding.

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Table 2. Interaction of Government Support and Judicial Independence

Model 3	*b*	se
Judicial Independence	0.20*	(0.04)
Government Support	0.07	(0.09)
Judicial Independence × Government Support	−0.09*	(0.03)
Judicial Assertiveness	−0.02	(0.07)
Judicial Deference	0.01	(0.07)
Central State Stronger	0.20*	(0.03)
Age	0.00	(0.00)
Male	−0.26*	(0.06)
Employment Status		
Employed—Private Sector	0.16	(0.13)
Employed—Public Sector	0.15	(0.14)
Other	0.02	(0.14)
Retired	0.05	(0.24)
Student	0.09	(0.14)
Unemployed	−0.05	(0.14)
Monthly Household Income		
Less than $533	−0.02	(0.08)
$533 to $1065	0.00	(0.10)
$1066 to $2132	0.13	(0.13)
$2133 to $3999	0.03	(0.19)
$4000 to $7999	0.04	(0.28)
$8000 or More	0.14	(0.17)
Urban	0.03	(0.06)
Arabic	0.45*	(0.12)
Jordan	−0.02	(0.07)
Constant	1.82*	(0.24)
Observations	1519	
R^2	0.08	

Note: Government support collapsed to a three-point scale ("Oppose"/ "Support"/"Neither"). Results robust to modeling government support on a five-point scale; se values are in parentheses.
*$p < 0.05$.

only slight—but not substantively significant—evidence that pro-government respondents grow *even more* opposed to litigation as judicial independence increases. More modestly, it appears that pro-government citizens view judicial independence with moderate aversion or general indifference, rather than outright hostility.

These findings align with interview evidence from the Palestinian case, highlighting the tendency for anti-government citizens to view independent judges as favorable allies—and independent judiciaries as institutional safe-havens:[47]

> We couldn't go to the streets… The government wants to prevail through force. There could be loss of life and martyrs… We determined the better route was the judiciary, because we had great confidence the courts would deliver justice fairly.[48]

The results in Model 3, more broadly, demonstrate that judicial independence does not have a homogeneous effect on public

[47] While Palestine's judiciary lacks much independence, some individuals view it as independent nonetheless.

[48] Interview with Palestinian litigant (R.15), July 31, 2017.

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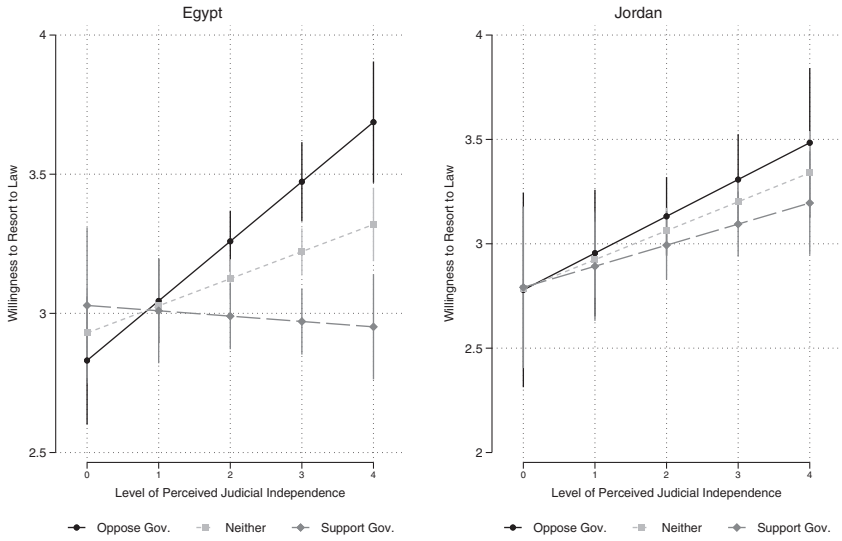

Figure 6. Judicial Independence and Government Support by Country.

willingness to utilize courts in lawful resistance. Anti-government citizens strongly prefer legal contention in independent judiciaries, while pro government citizens have more of a take-it-or-leave-it mentality. Figure 6 expands upon this finding, suggesting the relation between government support and judicial independence can vary in distinct types of authoritarian regimes.

While Egyptians heavily condition their willingness to utilize independent courts on government support, Jordanians do not. This result is intriguing, and likely reflects the disparate nature of executive authority in presidential and monarchic regimes. The *judicial independence* question in my survey was framed to examine whether respondents' viewed courts as independent from the *executive*. And Egypt and Jordan differ markedly in the extent to which executives and governments are distinguishable.

In Egypt, there is a high degree of overlap between the chief executive (President Abdel Fattah al-Sisi) and the government. Jordan's king (Abdullah II), by contrast, distances himself from the government so that he can scapegoat the parliament or cabinet whenever public opinion lashes against policy failings (Ryan 2018). While the terms "government" and "executive" have a similar underlying meaning for Egyptian respondents, this is not true for the Jordanian sample. It is generally appropriate to refer to a "Sisi government" in Egypt, but referring to an "Abudllah government" would be anathema in Jordan. Thus, it is likely that Jordanians' willingness to utilize independent courts is mediated by their support for "the monarchy"—the top source of

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executive authority—not just "the government." The disparate trends for Egypt and Jordan in Figure 6 are striking and suggest fruitful avenues for future research on how the logic of lawful resistance varies in distinct subtypes of authoritarianism (Geddes et al. 2014). Perhaps authoritarian publics do not simply care about *whether* the judiciary is independent but also *from whom* it is independent, which in various configurations of authoritarian rule could range from a president, king, prime minister, ruling junta, dominant party, religious establishment, or elite oligarchs.

5. Discussion and Conclusion

These results underscore the importance of *judicial assertiveness* and *judicial allegiances* as determinants of lawful resistance under authoritarianism. First, respondents informed of past instances of judicial assertiveness were more willing to deploy legal contention against state actors (H1). This finding indicates that expectations on the power of the judiciary as an elite ally condition the use law as a tool for resisting state abuse. Illustrating the effect of judicial assertiveness in practice, one Palestinian litigant summarized how information on court verdicts affected their willingness to litigate the Palestinian Authority:

> We did not file a case for two years, because of the sensitivity of our issue. I mean, the President is involved… In the end, we filed a lawsuit after hearing of lawyers who won a couple cases against the Prime Minister's Office.[49]

Second, anti-government respondents were more likely to engage in lawful resistance when they perceived the judiciary as independent, whereas pro-government respondents were comparatively less likely to pursue grievances in independent courts (H2). This shows that support for judicial independence is unevenly spread throughout authoritarian societies, and further, that authoritarian publics do not uniformly view independent courts as amenable allies in contentious politics. Future research would produce important insights by exploring whether other individual-level attributes similarly condition lawful resistance in authoritarian settings. For instance, an Iraqi resident in Jordan expressed their belief that nationality affects judges' propensity to ally with people challenging the state:

[49] Interview with Palestinian litigant (R.18), August 2, 2017.

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> If I say one thing and the administration says the opposite, the court will trust them and distrust me. Why? Because I'm not the son of a Jordanian.

My analysis on lawful resistance in the MENA offers four key insights for scholarship on the intersection of law, politics, and society. First, it develops a greater understanding of variation in access to justice and legal contention under authoritarianism. While prior work shows that authoritarian publics sometimes use legal institutions as spaces to "turn the state's own institutions on itself" (Moustafa 2007b: 43), my theory of lawful resistance lends itself well to delving deeper and asking: Who deploys legal institutions against the authoritarian state, when, and why? In this project, I begin answering these questions by analyzing perceptions of judicial assertiveness and judicial allegiances, though other factors likely play a role and warrant further investigation—state repressiveness, judicial authoritativeness, patronage networks, class, nationality, or grievance type.

Second, this study challenges the notion that authoritarian publics are categorically more willing to utilize independent courts. The bottom-up desire for judicial independence is most widespread among individuals who oppose or distrust political elites, while those who support authoritarian governments fall between a cautious skepticism and marked indifference in their evaluations of judicial independence. Sociolegal scholarship generally assumes that independent judiciaries are more favorable to litigants challenging state agents, but authoritarian publics do not always share this assumption.

Third, my use of survey experiments to analyze lawful resistance makes a methodological contribution to the study of law and courts in authoritarian regimes. Experimental designs are likely to prove quite useful in bottom-up studies investigating how individuals perceive, interact with, and deploy legal institutions in social and political life. Public perceptions of legal institutions are simultaneously affected by many different factors, which can be difficult to disentangle in observational work. Experiments offer an effective approach for isolating key variables of interest and making precise causal inferences about their effects on the dynamics of legal contention.

Finally, my results highlight productive ways for integrating sociolegal scholarship in democratic and authoritarian contexts. While I show that authoritarian publics do not uniformly value judicial independence, it is likely that this variation exists in democratic societies as well. After all, political fights over court packing, state efforts to avoid or subdue judicial authority, and the politicization justice are not unfamiliar in democracies—even if

they tend to be rarer or less successful. This raises the question: which segments of a democratic public are most supportive, and most averse, to judicial independence? When judicial independence is under attack in a democracy, who supports the attack, who ambivalently tolerates it, and who opposes it? When investigating these questions, we may be surprised to find that conclusions derived from democratic and authoritarian contexts are not all that different.

Moreover, while scholarship in democratic contexts has shown that judiciaries with broad public support are more capable of assertiveness (Staton 2004), my findings suggest utility in continued research that reverses the question and examines how displays of judicial assertiveness affect public attitudes and behavior. For instance, when judges on the European Court of Human Rights rule against their own governments—which appointed them and wield influence over their careers (Voeten 2008)—do domestic audiences take notice of these relatively costly signals of assertiveness? And if so, does it increase their perceptions of the ECHR as a useful ally in human rights promotion? If anything, democratic publics have greater access to information on judicial assertiveness than their authoritarian counterparts—due to lower restrictions on media and civil society. It is possible that more frequent exposure to judicial assertiveness dilutes its effect, making it a weaker signal of judicial power. But the opposite is also plausible; an accumulation of assertive verdicts could be mutually reinforcing.

While my findings on public willingness to pursue lawful resistance are derived from authoritarian states in the MENA (Egypt, Jordan, Palestine), the insights produced will likely prove useful outside of the Middle East. Courts with jurisdiction over state actors have emerged in authoritarian systems throughout the world; they are neither unique to democracies nor Arab countries. And authoritarian publics use these courts to contest the exercise of state power, though to varying degrees and in different ways. My results suggest that we have much to learn from continued investigations of when and how citizens use legal institutions to challenge state violations, hold state actors accountable to law, and protect themselves and their livelihoods from state abuse.

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Steven D. Schaaf *is a Doctoral Candidate in political science at the George Washington University. His research focuses on mechanisms of legal and political accountability in authoritarian regimes, with an emphasis on law and courts in the Middle East.*

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