Constrained Presidential Power in Africa? Legislative Independence and Executive Rule-Making in Kenya, 1963-2013

APPENDIX

This appendix has two sections. Section A provides a justification of the identification strategy in this article, and additional results – including a number of robustness and sensitivity checks using different regression approaches and model specifications. Section B provides an overview of alternative explanations to the findings in the paper, as well as a brief qualitative overview of the nature and outcomes of changes in executive-legislative relations in Kenya.

Appendix A

Summary Statistics

In Table A1 I present the summary statistics of the key variables in this paper. In Table A2 I show the cross-correlation (pairwise) of the same variables. The main dependent variable, the number of legal notices ranges from a minimum of 133 to a maximum of 568 (see also Figure A1). The Moi Years (periods of legislative weakness) cover 48 percent of the period under study. The autocratic period covers 58 percent of the period under study. Over the period under study Kenya held 10 general elections that produced 10 different parliaments.

I collected the data on legal notices from the publications of the *Kenya Gazette*, the official publication of the government directives and announcements in Kenya, during my dissertation fieldwork (2013-14). I subsequently updated the data during multiple research trips to Nairobi. The *Kenya Gazette* is published by the Government Printer in Nairobi. The data are raw annual counts of the number of Legal Notices, without disaggregation into the

specific kinds of regulation or Cabinet Ministries.[1]

Table A1: Summary Statistics

Variable	Mean	Std. Dev.	Min.	Max.	N
Legal Notices	288.571	121.751	133	568	49
Bills Introduced	26.136	16.05	10	97	44
Bills Passed (Acts)	19.542	11.72	7	65	48
Bills/Acts	0.728	0.191	0.281	1	42
Moi Years	0.48	0.505	0	1	50
Autocracy	0.58	0.499	0	1	50
Single Party	0.46	0.503	0	1	50
Election Year	0.2	0.404	0	1	50
Govt. Spending (% of GDP)	14.787	1.254	12.12	17.9	50
Inflation	10.708	7.976	1.6	46	50
New Private Cos.	5687.16	7960.362	410	30400	50
New Public Cos.	38.64	38.065	0	200	50
Business Names (total)	219847.98	200097.11	23361	742176	50
Foreign Cos. (total)	1561.4	774.774	636	3678	50
Cabinet Size	26.82	7.142	17	44	50

Notes: Data on legal notices are from publications of the *Kenya Gazette*. Data on bills and bills passed are from issues of the *Votes and Proceedings* publications of the National Assembly. Economic data and data on registration of firms are from the annual Statistical Abstracts published by the Kenya National Bureau of Statistics. Cabinet data are from official records of the National Assembly and Europa (1971-2008) publications of *African South of the Sahara*.

Figure A1: Histogram of Legal Notices
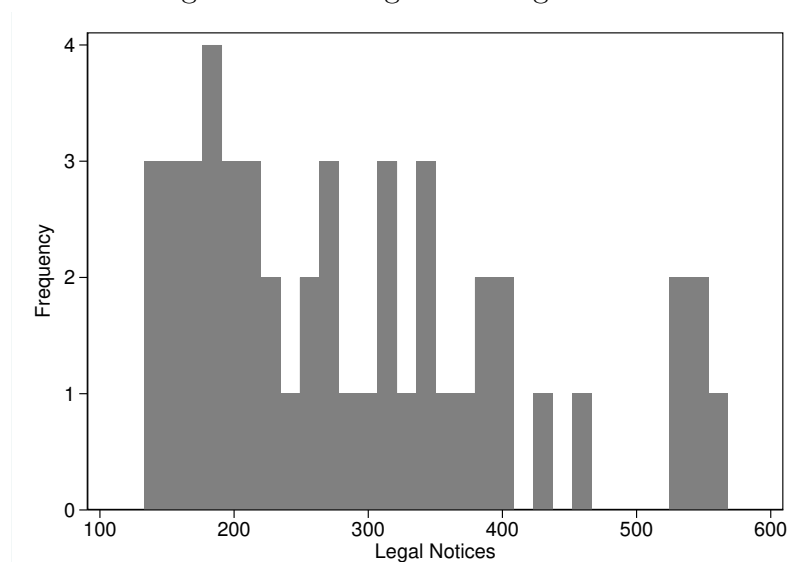
Histogram of legal notices with 30 bins specified.

[1]The data are also available online here: http://www.kenyalaw.org/

Table A2: Pairwise Cross-Correlation Table

Variables	Legal Notice	Moi	Autocracy	Elec. Year	Govt. Spending	Inflation	Acts	Trend
Legal Notice	1.000							
Moi Years	0.372	1.000						
	(0.009)							
Autocracy	0.238	0.006	1.000					
	(0.100)	(0.964)						
Elec. Year	0.386	0.120	0.020	1.000				
	(0.006)	(0.406)	(0.889)					
Govt. Spending	0.210	0.268	0.443	0.119	1.000			
	(0.148)	(0.060)	(0.001)	(0.410)				
Inflation	0.206	0.345	-0.013	-0.022	0.305	1.000		
	(0.155)	(0.014)	(0.929)	(0.882)	(0.031)			
Acts	0.002	-0.415	0.229	-0.151	-0.339	-0.301	1.000	
	(0.991)	(0.003)	(0.117)	(0.305)	(0.018)	(0.038)		
Trend	-0.160	0.133	-0.855	0.066	-0.430	0.128	-0.275	1.000
	(0.273)	(0.357)	(0.000)	(0.650)	(0.002)	(0.377)	(0.058)	

The pairwise correlations between the outcome variable (Legal Notices) and main dependent variable (Moi Years) corroborate the finds in the regression analyses.

As such, the data include both what I call "legitimate" uses of executive rule-making authority – such as to facilitate normal regulatory processes, as well as instances of "strategic" use of the same for specifically political, distributive, and partisan reasons. Since it is virtually impossible to draw a line between "legitimate" and "strategic" use of executive rule-making powers, I collapse both categories together. Thus the regression estimates present counts of total incidences of rule-making; and are an indication of when Kenyan presidents use their rule-making authority above and beyond what might be predicted by "normal" demands of legislation or the state of the economy. I treat the data as emanating from a unitary executive branch – i.e. the office of the president. This is a reasonable assumption. Kenyan Cabinet Ministers serve at the pleasure of the president, and so can only issue legal notices either with the express permission of the president, or in anticipation of presidential approval.

Additional Results

In Table A3 I show the same results from column 4 of Table 1 but with the standard errors clustered by parliament (10 clusters), decade (5 clusters), and president (3 clusters) in columns 1-3, respectively. In Table A4-A7 I show that the results in this article are robust to model specification, including poisson and OLS regression models.

Following the OLS regression, I also run a regression specification-error test (RESET) and, as demonstrated by the insignificant p-values, the model passes the test. While this is not a definite confirmation of the veracity of my model specification, it is confirmation that the model is adequate according to the RESET diagnostic. Finally, I conduct a test for omitted variable biases and fail to find support for omitted variable biases in my model specifications. These findings reinforce confidence in the results shown in this article.

Ramsey RESET Test

I also conducted a Ramsey RESET test to determine whether the model in column 4 Table A5 would be improved substantively by an omitted variable. The null hypothesis of the test is that the model has no omitted variables. Below are the results.

$$F(3, 35) = 0.83$$

$$\text{Prob} > F = 0.4888$$

I fail to reject the null hypothesis that the model has no omitted variables. Note that this is not confirmation that what I have is the best model possible, rather it is a test to determine whether the model would be substantially improved by the addition of extra independent variables.

Link Test

Finally, I conducted a link test to evaluate whether the main model would be improved by a transformation of the outcome variable. First, I run the regressions shown in Table A8.

Table A3: Regression Estimates With Clustered Standard Errors

DV: Legal Notices	(1)	(2)	(3)
Moi Years	0.380*	0.380**	0.380***
	(0.157)	(0.142)	(0.0515)
Autocracy	-0.243	-0.243***	-0.243
	(0.380)	(0.0640)	(0.269)
Election Year	0.439***	0.439***	0.439***
	(0.114)	(0.113)	(0.0810)
Acts (Bills Passed)	0.00761	0.00761***	0.00761
	(0.00606)	(0.00176)	(0.00823)
Cabinet Size	0.0192	0.0192	0.0192
	(0.0106)	(0.0109)	(0.0192)
Govt. Spending	0.0227	0.0227	0.0227
	(0.0680)	(0.0625)	(0.130)
Inflation	0.00560	0.00560	0.00560
	(0.00858)	(0.00639)	(0.00583)
Trend	-0.0210*	-0.0210*	-0.0210***
	(0.0107)	(0.00828)	(0.00623)
Constant	4.992***	4.992***	4.992*
	(1.177)	(1.005)	(2.220)
Cluster	Parliament	Decade	President
N	47	47	47

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table A4: Poisson Regression Estimates

DV: Legal Notices	(1)	(2)	(3)	(4)	(5)	(6)
Moi Years	0.304**	0.266**	0.352***	0.396***	0.359***	0.400***
	(0.105)	(0.102)	(0.0997)	(0.0948)	(0.101)	(0.0974)
Regime Type	0.196	0.193	0.171	-0.335	0.0731	-0.315
	(0.119)	(0.108)	(0.111)	(0.278)	(0.109)	(0.177)
Election Year		0.315**	0.378***	0.409***	0.383***	0.367***
		(0.113)	(0.114)	(0.109)	(0.112)	(0.109)
Acts (Bills Passed)			0.00769*	0.00902*	0.00991**	0.00647
			(0.00323)	(0.00438)	(0.00368)	(0.00393)
Cabinet Size				0.0225*		0.0242*
				(0.0102)		(0.0121)
Govt. Spending				0.0463		0.0845
				(0.0571)		(0.0732)
Inflation				0.00485		0.00670
				(0.0113)		(0.0104)
Trend				-0.0224*		-0.0170***
				(0.00887)		(0.00483)
Constant	5.389***	5.337***	5.148***	4.622***	5.168***	3.855**
	(0.0962)	(0.0827)	(0.0963)	(1.009)	(0.109)	(1.284)
N	49	49	47	47	47	47

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Notes: OLS regression coefficients with robust standard errors in parentheses. The indicator variable for regime type is *Autocracy* in columns 1-4, and *Single Party* in columns 4-6. These results are substantively similar to those in Table 1.

Table A5: Regime Type and Presidential Rule-Making

DV: Legal Notice	(1)	(2)
Moi Years	0.713***	0.765***
	(0.0371)	(0.181)
Autocracy	-0.0508*	-0.108
	(0.0257)	(0.189)
Moi Years x Autocracy	0.772***	0.755**
	(0.0554)	(0.245)
Election Year	0.349***	0.389***
	(0.0193)	(0.102)
Cabinet Size	0.0253***	0.0218
	(0.00205)	(0.0118)
Govt. Spending		0.00396
		(0.0505)
Inflation		0.00490
		(0.0124)
Acts (Bills Passed)		0.00859*
		(0.00431)
Constant	4.342***	4.162***
	(0.0777)	(0.959)
N	49	47

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Notes: Poisson regression coefficients with robust standard errors in parentheses. The indicator variable for regime type is *Autocracy*. It is clear that the results in this table are substantively similar to those in Table 2.

Table A6: OLS Regression Estimates

DV: Legal Notices	(1)	(2)	(3)	(4)	(5)	(6)
Moi Years	0.254*	0.215	0.288*	0.334**	0.295*	0.337**
	(0.112)	(0.108)	(0.111)	(0.110)	(0.111)	(0.110)
Regime Type	0.237*	0.236*	0.210	-0.208	0.0984	-0.238
	(0.113)	(0.102)	(0.110)	(0.336)	(0.111)	(0.201)
Election Year		0.364**	0.415**	0.457***	0.424***	0.429**
		(0.116)	(0.121)	(0.124)	(0.119)	(0.126)
Acts (Bills Passed)			0.00691	0.00697	0.00983*	0.00524
			(0.00368)	(0.00497)	(0.00438)	(0.00441)
Cabinet Size				0.0179		0.0202
				(0.0104)		(0.0115)
Govt. Spending				0.0252		0.0555
				(0.0589)		(0.0717)
Inflation				0.00128		0.00360
				(0.0150)		(0.0142)
Trend				-0.0191		-0.0169**
				(0.0102)		(0.00499)
Constant	5.322***	5.267***	5.108***	4.943***	5.122***	4.378**
	(0.0872)	(0.0734)	(0.0927)	(1.020)	(0.112)	(1.235)
N	49	49	47	47	47	47

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Notes: OLS regression coefficients with robust standard errors in parentheses. The indicator variable for regime type is *Autocracy* in columns 1-4, and *Single Party* in columns 4-6. These results are substantively similar to those in Table 1.

Table A7: Regime Type and Executive Rule Making

DV: Legal Notices	(1)	(2)
Moi Years	0.567**	0.623**
	(0.192)	(0.187)
Autocracy	0.0119	-0.0131
	(0.155)	(0.227)
Moi Years x Autocracy	0.624*	0.612*
	(0.291)	(0.257)
Election Year	0.407**	0.439***
	(0.124)	(0.115)
Cabinet Size	0.0189	0.0168
	(0.0109)	(0.0120)
Govt. Spending		-0.00865
		(0.0533)
Inflation		0.00121
		(0.0152)
Acts (Bills Passed)		0.00651
		(0.00505)
Constant	4.528***	4.560***
	(0.400)	(1.010)
N	49	47

Standard errors in parentheses
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Notes: OLS regression coefficients with robust standard errors in parentheses. These results are substantively similar to those in Table 2.

These are basically the same regressions as in Table A6 but without the log of the dependent variable. The findings in Table A8 are substantively similar to the main findings in the Table 1 and in Tables A3-A7. Next, I run the link test to determine whether a transformation of the outcome variable is needed to improve the model. I show the results in Table A9. The insignificance of the statistics in Table A9 show that there is not need to transform the outcome variable in order to improve the performance of the model.

In summary, there is remarkable consistency in the relationship between the outcome variable *Legal Notice* and the various independent variables across model specifications and regression approaches. This consistency adds credence to the main claims made in this paper: that the level of legislative strength conditions the incidence of unilateral executive action in Kenya as measured by the number of legal notices issued each year. In the next section, I provide a justification for my identification strategy.

Identification Strategy

To identify the impact legislative independence on executive rule-making, I exploit two quasi-exogenous changes in the nature of executive-legislative relations in Kenya. The first change is the death of Jomo Kenyatta on August 22, 1978. The second in December 1991 with KANU's acceptance of the end of single party rule, which enabled the holding of the first multiparty election under Moi in December 1992. The first change led to a diminution of legislative independence and stature in Kenya. The second change to the empowerment of the Kenyan legislature.[2]

Kenyatta died in his sleep an old man, aged 1989. But even then, the timing of his death came as a surprise to most, not least Kenya's leading politicians who at the time were in the

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[2]See Opalo, K. Ochieng'. 2014. "The Long Road to Institutionalization: The Kenyan Legislature and the 2013 Elections," *Journal of Eastern African Studies,* Vol. 8, No. 1 pp. 63-77

Table A8: Link Test on the Main OLS Model

	(1) legalnotice	(2) legalnotice	(3) legalnotice	(4) legalnotice
moi	87.95*	77.02*	97.77**	107.4**
	(33.39)	(32.10)	(32.35)	(31.28)
autocracy	55.36	55.02	48.96	-86.59
	(32.99)	(30.08)	(32.18)	(96.83)
electionyear		102.3*	118.9**	133.1**
		(38.75)	(40.79)	(41.78)
acts			1.912*	2.163
			(0.933)	(1.398)
cabinetsize				6.218*
				(2.886)
govtspending				8.364
				(16.03)
inflation				2.070
				(4.111)
trend				-6.127*
				(2.970)
_cons	214.5***	199.0***	154.2***	66.30
	(23.87)	(20.26)	(23.29)	(286.6)
N	49	49	47	47

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

OLS regression estimates with robust standard errors in parentheses.
These results largely conform to the findings in Table A6.

Table A9: Link Test on the Main OLS Model

Legal Notice	Coef.	Std. Err.	t	P>|t|	Lower	Upper
_hat	.8092034	1.082742	0.75	0.459	-1.372919	2.991326
_hatsq	.0003148	.0017601	0.18	0.859	-.0032325	.0038622
Constant	26.96444	160.6475	0.17	0.867	-296.7994	350.7283

Link test statistics on the OLS model in column 4 Table A8 but with the outcome variable not logged. The statistical insignificance of these statistics is evidence that there is no discernible need to transform the outcome variable.

midst of a bitter succession battle.[3] And under the Kenyan constitution at the time, he was to be succeeded by his deputy, Daniel arap Moi.

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[3]The BBC noted that "in public appearances yesterday, Mr Kenyatta, 89, appeared to be in good health so news of his death has come as a shock to most Kenyans. See "Kenya's Founding Father Dies," *British Broadcasting Corporation*, available here: http://news.bbc.co.uk/onthisday/hi/dates/stories/august/22/newsid_2500000/2500553.stm

But for the preceding three years, a powerful faction in Kenyatta's kitchen cabinet had mounted a spirited attempt to deny Moi automatic succession to the presidency. Known as the "Change the Constitution Movement," beginning on September 22, 1976 this group organized rallies and publicly called for an amendment of Section 6 of the constitution which guaranteed automatic succession of the president by his deputy in case of incapacitation or death.[4] This faction was formed primarily by those from Kiambi District (Kenyatta's home district), with their leader being none other than Njoroge Mungai, a Minister and a relative of Kenyatta. Although ultimately defeated by Moi's deft exploitation of factional conflicts within Kenyatta's co-ethnic base, *ex ante* it was not obvious that the "Change the Constitution" would lose. Only a year earlier they had forced a cancellation of the national party (KANU) elections when they realized that Kenyatta's favored candidates would lose.[5]

The manner in which Moi defeated the "Change the Constitution" faction exposed him politically. In need of power brokers around Kenyatta, he had banded together with Charles Njonjo and Mwaki Kibaki, the Attorney General and Finance Minister, respectively. Njonjo was critical in silencing the anti-Moi camp in KANU through credible threats of prosecution. Kibaki represented the faction of Kikuyu politicians "north of River Chania" (in particular, the districts of Murang'a and Nyeri) that felt left out of the Kiambu Kikuyu "family" around Kenyatta.[6] Njonjo's power and ambition created the impression that Moi's government was temporary.[7] Mbiuyu Koinange, another Kikuyu Minister, termed Moi's rule as a "passing cloud" that would soon give way to a return to Kikuyu dominance of Kenya's politics and

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[4]See Tarmakin, M. 1979. "From Kenyatta to Moi: The Anatomy of a Peaceful Transition of Power," *Africa Today*, Vol. 26, No. pp. 21-37

[5]Khapoya, Vincent B. 1979. "The Politics of Succession in Africa: Kenya after Kenyatta," *Africa Today*, Vol. 26, No. 3 pp. 7-20

[6]See Ajulu, Rok. 2002. "Politicized Ethnicity, Competitive Politics and Conflict in Kenya: A Historical Perspective," *African Studies,* Vol. 61, No. 2, pp. 251-268

[7]Under Kenyatta's presidency a faction of Kiambu Kikuyu had vowed never to let the presidency go north of River Chania. This effectively locked out Nyeri Kikuyu from the inner circle of trusted advisers around president Kenyatta.

economics.[8] Moi only managed to quiet these concerns four years later following the coup attempt of August 1982, the snap election of 1983, and the ouster of Charles Njonjo from KANU and parliament and forced retirement in 1983.

Moi was forced to accept multiparty politics in late 1991, following by the first multiparty legislative elections under his rule in late 1992. This was largely due a combination of domestic protests[9] and donor pressure.[10] Having just orchestrated a sham election in 1988 (before which he had abolished the secret ballot for party primaries), Moi seemed confident enough in his grip on power to fire key cabinet ministers that had shown signs of political independence. What he did not expect was that these ministers would then openly defy him and, building on the worldwide momentum occasioned by the collapse of the Soviet Union, fire up popular protests against Moi's rule. But while Moi lost the fight to retain single party rule, he was reelected in 1992 and 1997, in no small part because of the inability of the opposition to mount a united opposition.

In sum, the change from Kenyatta to Moi in 1978 enables me to compare legislative constraints on executive action under autocracy, while varying the degree of legislative autonomy. The change from from single party rule to multiparty politics in 1992 enables me to compare legislative constraints on executive action under autocracy and democracy, while holding the identity of the president constant.

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[8]See "Modest but cunning, no one played better political chess than Daniel arap Moi," *Daily Nation*, August 30, 2014. Available here: http://www.nation.co.ke/news/politics/Daniel-arap-Moi-Kanu-Jomo-Kenyatta-Kenya-Presidency/1064-2436030-97gdalz/index.html

[9]See Bratton, Michael and Nicolas van de Walle. 1992. "Popular Protest and Political Reform in Africa," *Comparative Politics*, Vol. 24, No. 4 pp. 419-442

[10]As Brown notes, "The Moi regime legalised (sic) opposition parties in December 1991, in large part because of the donors' suspension of financial assistance." See Brown, Stephen. 2001. "Authoritarian leaders and multiparty elections in Africa: How foreign donors help to keep Kenya's Daniel arap Moi in power," *Third World Quarterly*, Vol. 22, No. 5 pp. 725-739

Appendix B

B1: Assessment of the Demand for Regulations

It is plausible that the rise in the incidence of unilateral executive action under Moi was driven by demand from the economy. For example, new company registrations in new sectors of the economy may have caused the government to issue more regulatory legal notices. However, the graphs in **Figure B1** do not support this claim. The growth in the number of firms was fairly stable under Moi. In fact, rapid increases in the number of firms are noticeable in the Kenyatta and Kibaki years, yet the number of legal notices issued under these presidents is significantly lower than those issued under Moi. The increase in the number of legal notices issued under Moi does not appear to be driven by "demand for regulation" occasioned by an increase in the number of registered firms in Kenya.

Table B1: Cross-Correlation Table

Variables	Legal Notices	Private Co.	Public Co.	Foreign Co.	Biz Names	Cabinet
Legal Notices	1.000					
Private Companies	-0.253	1.000				
	(0.080)					
Public Companies	-0.271	0.601	1.000			
	(0.060)	(0.000)				
Foreign Companies	-0.232	0.890	0.421	1.000		
	(0.109)	(0.000)	(0.002)			
Business Names	-0.275	0.911	0.447	0.991	1.000	
	(0.056)	(0.000)	(0.001)	(0.000)		
Cabinet Size	-0.013	0.672	0.110	0.674	0.655	1.000
	(0.931)	(0.000)	(0.448)	(0.000)	(0.000)	

Notes: This table shows pairwise correlations between the number of legal notices and a number of economic and political variables (recorded annually), with level of significance in parentheses. The variables for private and public companies represent annual increases (registration numbers). The number of foreign companies and business names represent cumulative totals of registrations. The number of cabinet ministers is recorded annually in January.

In Table B1 I show the pairwise correlation table between these variables and the number of legal notices issued each year, and the levels of significance. It is is clear from the table

Figure B1: Assessment of Demand for Regulation
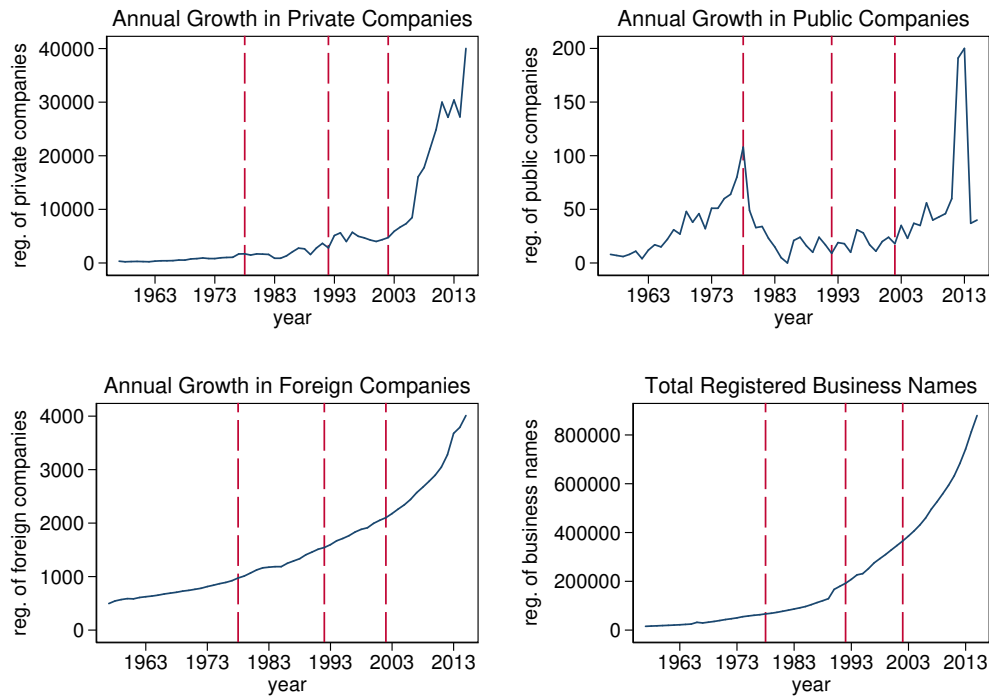
Notes: These data are from the Kenya Statistical Abstract (various issues). The graphs show the annual growth in the number of registered private, public, and foreign companies, as well as the cumulative number of registered business names. Notice that there is no rapid growth in the number of companies during the Moi era. Indeed, the growth in public companies is faster under Kenyatta and Kibaki, but stable under Moi. This suggests that the growth in legal notices issued under Moi was not due to increased demand for regulation coming from the private sector. Vertical lines indicate Kenyatta's death in 1978, the end of single party rule (1992), and Moi's retirement (2002).

that, in fact, there is a negative correlation between the growth in the number of registered firms in Kenya and the amount of regulations issued in the form of Legal Notices. This finding makes sense, if one assumes that easing the regulatory burden makes it easier for entrepreneurs to register firms.

It is also plausible that the increase in the number of legal notices could be occasioned by an increase in the number of cabinet ministries in Kenya. Despite the legal definitional ambiguities, Legal Notices are primarily the province of Cabinet Ministers in Kenya. As such, an increase in the total number of ministers may mechanically increase the number of legal notices issued. In Figure B2 I show the trends in the number of cabinet minister through the

three presidencies of Kenyatta, Moi, and Kibaki. The graph shows that the number of cabinet ministers moderately increased under Moi, and significantly increase under Kibaki. Yet it is the moderate increase in the number of cabinet ministers under Moi that is accompanied by the increase in the number of legal notices issued. The graph in Figure B2 mirror the main findings in the paper. The effect of legislative independence/weakness on executive rule-making is robust to controlling for the number of cabinet ministries in Kenya. Table B1 shows that the size of the cabinet is actually negative pairwise correlated with the number of Legal Notices issued.

Figure B2: Assessment of Supply of Regulation
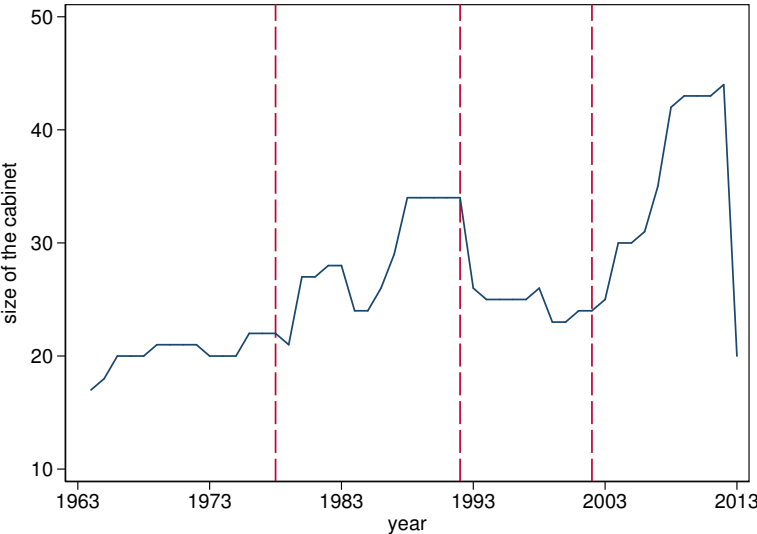
Trends in the number of cabinet ministers each year. The uptick in the number of ministers lags the increase in legal notices under Moi. In addition, the rapid increase in the number of ministers after 2002 under Kibaki is not accompanied by any increase in the number of legal notices issued. Vertical lines indicate Kenyatta's death in 1978, the end of single party rule (1992), and Moi's retirement (2002).