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**The Consequences of Appointment Policies for Court  
Legitimacy in Benin:  
A Network Analysis Approach**

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# The Consequences of Appointment Policies for Court Legitimacy in Benin: A Network Analysis Approach

## Abstract

The paper seeks to explain how courts in new and vulnerable democracies acquire legitimacy and thus become credible actors able to facilitate or even foster the consolidation of democracy. It analyses the case of the Constitutional Court of Benin (CCB), demonstrating that governmental appointment policies have had an important impact on the court's legitimacy. This West African country is considered to have been continuously democratic since 1991, and the court was established by consensus during the transition. The findings suggest that perceptions of fair representation on the bench matter more for credibility than professional qualifications and the quality of adjudication. And contrary to the widespread narrative that African politics is basically shaped by ethnicity, short-term political affiliations appear to matter more than communalistic representation. Network analysis using original social data on the major politicians and all 25 CCB judges since the court's creation in 1993 provides the evidence for this argument. The paper ultimately argues that the appointment-policy-driven delegitimisation of an established and largely credible political arbiter can put democratic consolidation at risk. Ruling elites therefore play a major role in maintaining or eroding this consolidation.

Keywords: Judicial politics, constitutional courts, networks, legitimacy, Benin

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## 1 Introduction

Democratic institutions aim to provide a reasonable framework for solving political conflicts without resort to violence or excessive repression.<sup>1</sup> Thus, one of the major missions of a democratic polity is to provide functioning dispute-settlement bodies, such as formal courts of justice. Beyond administering justice among citizens, courts arbitrate between citizens and the state as well as among state organs. In recent decades, this function has made courts, and es-

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1 I am very grateful to Johanna Schäfer-Kehnert for excellent research assistance. The data for this article has been collected within the framework of a research project funded by a Leibniz Competition grant. Earlier versions of this paper were discussed at the Point Sud workshop "African Courts" in Niamey (December 2014), the ANU workshop "Judicial Networks" in Canberra (March 2015), the ECPR General Conference in Montréal (August 2015), and with my former colleagues at GIGA Hamburg. I wish to thank all commentators, in particular Mariana Llanos and Maria Popova.

pecially the highest courts of a country, central political actors (Hirschl 2008; Shapiro 1981). More specifically, courts have become political activists in the context of emerging democracies (Angell, Schjolden, and Sieder 2005; Bill Chavez 2004; Dressel 2012; Helmke and Rios-Figueroa 2011; Kapiszewski et al. 2013; VonDoepp 2006) as well as in liberalising authoritarian regimes (Ginsburg and Moustafa 2008; Hilbink 2007). That said, courts are not necessarily one-sided champions of liberty (Ellett 2013; Popova 2012; Trochev 2008). This raises the following question: what makes courts into credible arbiters of political disputes able to facilitate or even foster the consolidation of young democracies?

One of the most important resources with which courts can build their ability to settle conflict authoritatively is public support (Caldeira 1986; Gibler and Randazzo 2011: 698; Gibson, Caldeira, and Baird 1998; Helmke and Rosenbluth 2009; Vanberg 2000). Support creates legitimacy. I assume that, all else being equal, a high degree of legitimacy on the part of the highest courts creates favourable conditions for the consolidation of democracy. This implies that agency that jeopardises the crucial arbiters' legitimacy potentially puts democratic consolidation at risk. However, even in established democracies beyond the United States, public support for the judiciary has rarely been studied in detail (Hönnige 2011: 352). Thus, the study of court legitimacy in young democracies contributes to a more general debate from an under-explored angle. Many of the younger democracies have emerged in the less developed parts of the world, such as sub-Saharan Africa. The societies of these countries have often been characterised as communalistic, in contrast to Western individualism. Ethnic clientelism in politics has been considered one of the major features of communalist societies. It has also been assumed that fair ethnic representation on a court's bench matters for the legitimacy of the body. Therefore, the paper seeks to include the group affiliations as well as the personal and political ties of constitutional judges in its social network analysis of their structural relationships.

Benin serves as a case study for within-case comparisons (George and Bennett 2005). The country is a young democracy, and it has a constitutional court that is widely recognised for its positive impact on the democratic development of the country. However, the legitimacy of the court has declined over time. I have the original data required to explore the effects and mechanisms that relate (or do not relate) political agency to court legitimacy and, ultimately, democratic consolidation. Using comprehensive biographical data on major politicians and all 25 constitutional judges, original interviews, and newspaper analyses, the paper demonstrates that a change in the presidential appointment policy for the Constitutional Court of Benin (CCB) has contributed to putting Benin's democratic consolidation at risk. The data shows that the judicial appointment policies have affected the legitimacy of the court via representation balance or biases on the bench. Since the court plays an important role in democratic consolidation, a decline in the legitimacy of this body directly affects the consolidation process. This has serious implications with regard to the responsibility of ap-

pointers to key political dispute-settlement bodies beyond Benin and beyond constitutional courts.

The paper proceeds as follows: First, it outlines and deepens the debate on the role of constitutional courts in democratic consolidation, demonstrating the central importance of legitimacy for the courts' democratic capacities. Second, it establishes the theoretical link between the representation of social and political groups on the bench and the legitimacy of courts. Third, it undertakes an empirical analysis of the case of Benin, thereby providing the empirical evidence. This empirical section introduces the case-specific legal environment as well as the social network methodology and data. Fourth, it discusses the findings, comparing them to the theory. And finally, it draws some more general conclusions on the role of appointment policies in democratic consolidation.

## 2 The Independence and Legitimacy of Constitutional Courts

Why and under what conditions are courts, and particularly constitutional courts, accepted as credible arbiters that impose authoritative decisions in politically salient cases? The classical condition for judicial legitimacy is that courts are independent (Gibler and Randazzo 2011; C. M. Larkins 1996). However, if independence makes the court "a mutually acceptable third-party adjudicator" (Russell 2001: 9), and if, at the same time, scholars use Shapiro's definition of independence – that is, a situation in which a neutral third party impartially resolves conflict – the argument risks becoming circular. This is why independence is a tricky theoretical term and it is often more helpful to operate with key components, such as the courts' neutrality and their structural insulation from other political actors.

Insulation has been characterised as "a healthy degree of autonomy" (Ríos-Figueroa 2011: 28). Yet, what "healthy" means remains a context-sensitive issue. The idea of neutrality is different from insulation as it refers more to a fair equidistance of the court to all relevant actors,<sup>2</sup> whereas insulation refers to the institutionalised protection of the court from the interference of others. The question of why power holders would grant the court formal autonomy has been discussed widely (Finkel 2007; Ginsburg 2003; Ramseyer 1994; Stroh and Heyl 2015), as well as how neutrality or its opposite motivate judges to act as credible arbiters or to refrain from doing so (Helmke 2003; Helmke and Staton 2011; Hilbink 2009). But what are the precise mechanisms that maintain the court's legitimacy over time, after institutional decisions have been taken and given that courts do not act in a blatantly partisan manner?

Both fair equidistance and a healthy degree of autonomy are by no means easy to assess in a systematic manner. Yet the idea of neutrality leads our attention away from structures and towards perceptions that – as this paper, in the Weberian tradition, argues – define the

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2 The understanding of neutrality as the position of a party that does not meddle in the affairs of others and takes no position is genuinely inapplicable to the judiciary.

legitimacy of the court. Ultimately, it is perceptions that determine whether or not equidistance is fair or not and, therefore, determine whether actors grant or deny the court legitimacy. In other words, the structural profile that public opinion considers to represent sufficient insulation and neutrality determines the level of legitimacy. Brinks alludes to this, echoing Shapiro's point, and states that "if courts are to be credible dispute resolvers, they must at least *appear* to be neutral" (Brinks 2011: 129 emphasis added). Russel (2001: 9) points to the importance of perceptions by arguing that courts must be "acceptable" to the relevant actors. Thus, what we should be interested in is the extent to which the perceptions rely on objective structures.

Seminal contributions have argued that public support is required to provide constitutional review bodies with the authority to decide independently (Caldeira 1986: 1209; Helmke and Rosenbluth 2009; Staton 2006; Vanberg 2000). The radical argument would read that elected political litigants are likely to accept defeat if the court enjoys widespread public support which could turn into electoral punishment (Vanberg 2000: 333). This argument implies that elections are competitive (Helmke and Rosenbluth 2009) and that democratic ballots are expected to be respected; in other words, that democracy is consolidated (Ramseyer 1994: 740). Provided that individuals take individual decisions, the relevant public is the entire electorate. Brinks and Russel tend to focus on the political litigants' perception of the court. By taking their point to the extreme, one could argue that broad public support is irrelevant if all litigants respect the court as a legitimate arbiter.

Without further exploring the two logically consistent but polar-opposite proposals, I argue that real-world cases need a mix of both types of support to sustain a process of democratic consolidation. The relevant segments of both the political actors and the broader public need to support the key political dispute-settlement body, unless the politics of the country are completely conflict-free. The latter scenario is (a) hardly in line with real-world experiences anywhere, (b) fits even less with the standard picture of political dynamics that most young democracies today experience, and (c) would generally make dispute-settlement bodies useless. Thus, by and large, public support equals the widespread perception among the informed elites and opinion makers that the court is a legitimate dispute-settlement body. This legitimacy turns courts into credible arbiters and thus facilitators of democratic consolidation.

### 3 The Relevance of Court Legitimacy

Larkins (1996) has argued that independent constitutional review is conducive to regime consolidation because it, by definition, stabilises constitutionalism. Taking the worldwide rise of constitutional litigation into account (Tate and Vallinder 1997), other scholars have supported the view that constitutional review and constitutional courts can play a significant role in processes of democratic consolidation (Epstein, Shvetsova, and Knight 2001: 155; Horowitz 2006: 127; Nohlen and Mena 2009). Gibler and Randazzo have empirically con-

firmed “that established independent judiciaries prevent regime changes toward authoritarianism across all types of states” (2011: 696).

The analytical challenge is that independence and legitimacy are highly interdependent (Larkins 1998). There is no “Y follows X” but rather “X and Y grow interdependently over time,” to borrow Gibler and Randazzo’s (2011: 699) phrase on the specific relationship between independence and legitimacy. Even worse for the chances of finding linear and unidirectional causal relationships, judicial independence has also been found to be reliant on democratic consolidation (Ramseyer 1994: 740). A careful analysis of the developments over time is thus necessary.

If democratic consolidation is understood as the process by which the expectation that the democratic regime will continue to exist increases, many of the third-wave democracies appear not to have attained a fair level of consolidation. Given the economic challenges, the extensive presidential powers, and the ungovernable militaries that many of these young democracies exhibit, in part or entirely (see Cheibub 2007; Linz and Valenzuela 1994; Przeworski et al. 2000), it is reasonable to assume that democrats cannot “relax” (DiPalma 1990: 141), because democracy might not be safely established as “the only game in town” (Linz and Stepan 1996: 16). In other words, these new democratic regimes are not reasonably secure from breakdown or erosion (Schedler 1998; 2001).

Nevertheless, a good number of third-wave democracies have already survived for two or three decades. This retrospective observation does not make them consolidated, as Schedler has rightly pointed out: consolidation is about expectations of continuity and not about the observation of past stability. “Any judgment on democratic consolidation in a given country must thus rest on both factual evidence and causal arguments” (Schedler 2001: 68). Consequently, in countries that face poor economic performance, strong presidents, and difficult-to-control armies, democracy must be sustained by other factors. Cases such as Benin suggest that constitutional courts are one such possible factor.

#### **4 Network Representation as a Source of or Threat to Legitimacy**

Why are courts able to act as credible arbiters that support democratic consolidation? The previous section has outlined the potential relevance of legitimate constitutional review bodies. But how exactly is legitimacy built and sustained? The dominant public support approach focuses on the content and quality of adjudication (Caldeira 1986; Staton 2006; Vanberg 2000). This paper argues that the focus on decisions underestimates representation as a source of legitimacy. Why should actors perceive the court as generating legitimate decisions? One possibility is indeed that the observer evaluates and likes the decisions that the court takes. This will not be the case for each and every decision but rather a few crucial decisions which stand out because of their meta-political importance or because the observer is directly affected. At the same time, studies of courts in consolidated democracies have found

that judges tend to act politically according to their ideological position. Ideology is usually approximated by party membership or the party affiliation of the appointer (Baum 1992; Brouard 2009; Hönnige 2009; Segal et al. 1995). This suggests that benches that are perceived to be politically biased due to the appointment policy will hardly produce the image of neutrality. In other words, political representation shapes legitimacy. If this is true, actors involved in the selection of judges simply need to appoint a balanced court in order to create a legitimate arbiter. Germany is an excellent example for how informal appointment policies foster the constitutional court's legitimacy via the balanced representation of political camps (Hönnige 2009: 967).

However, many of the unconsolidated third-wave democracies are less rooted in well-structured ideological competition. Instead, personal and group relations appear to play a major role. Recent studies have described the importance of networks in non-Western courts. They highlight the effects of loyalty to networks (Ingram 2012; Sanchez Urribarri 2012) and the use of networks for the judges' personal ends (Trochev and Ellett 2014). This turns balanced representation on the bench into a much more complex endeavour. The issue gains even more relevance if we assume that many young democracies tend to build on more communalistic and less individualistic societies.<sup>3</sup> Referring to Africa, Mazrui has explained how communalism would translate into the political sphere. He states that "Africans have responded more to sociocultural ideologies than to socioeconomic ideologies" (2001: 98). In his language, socio-economic ideologies represent the classic political cleavages between class and economic interest that have so heavily shaped political competition in Western democracies whereas the so-called sociocultural ideologies focus on identity, ethnicity, kinship, and religious communities. Mazrui takes for granted that the "preference for kinship solidarity as against theoretical ideology has manifested itself behaviorally in many African elections" (2001: 101) and claims that communalistic points of reference strongly affect trust and perceptions of fairness (2001: 115). This means that perceptions about the fair representation of, for example, ethnic groups in a particular body may easily facilitate legitimacy production while the quality of the body's work and decisions is largely ignored.

In other words, the communalist argument suggests that balanced representation within the entity's social network needs to be considered in order to explain the legitimacy of any political dispute-settlement body. Actors may waive the costly evaluation of decisions and simply support the court because they feel fairly represented. This perception of fair representation helps people to *believe* that the representatives will take "good" decisions and is not based on an evaluation of the decision quality but rather the opposite: belief replaces verification. One does not need to agree with the communalist arguments to acknowledge that great importance is attached to this view in many parts of the world. It is thus important for theory development to include a broader range of network affiliations than only political positions.

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3 This argument is well developed for Africa (Gyekye 2000; Wiredu 2001), the region this paper draws its empirical evidence from, but has also been applied to the entire "non-Western" world (Chabal 2012: 186–197).

If representation shapes legitimacy, we should be able to empirically observe the following: Appointment policies that impact the composition of the court will have a great influence on the perceptions of and, thus, the legitimacy of the court. More precisely, if appointments incite doubts about fair representation on the bench, legitimacy should decline. Moreover, if communalist arguments are correct, the representation of sociocultural groups should have a greater impact than political representation on perceptions of fairness. Ultimately, if the court is a crucial political dispute-settlement body, a decline in the court's legitimacy translates into a risk for the advancement of democratic consolidation. Appointment policies cannot be blamed for jeopardising democratic consolidation unless the relevant socio-biographic data correlates with the observed level of legitimacy.

## 5 The Case of Benin

Checking the argument's plausibility with regard to appointment policies, court legitimacy and democratic consolidation requires detailed data on individual judges and on perceptions of legitimacy. This kind of data is rarely available for unconsolidated democracies in world regions such as sub-Saharan Africa. The Republic of Benin is one of the African third-wave democracies with widespread economic poverty, a strong presidential system, and difficult civil-military relations. Communalism is frequently cited as an important factor shaping politics there. Despite these unfavourable conditions, the country has seen sustained democratic politics for more than two decades. It has seen three presidential turnovers following democratic elections. Nicéphore Soglo became the first post-transition president in 1991. Mathieu Kérékou, the former military dictator, reassumed office through elections in 1996 and ruled for 10 years on a democratic basis. Most recently, Thomas Boni Yayi replaced Kérékou after winning the 2006 presidential elections. He was re-elected in 2011. Benin is therefore a "deviant case" in terms of general democracy research. One element which is frequently cited to explain Benin's relative democratic success is the constitutional court. The case exhibits initial evidence of both the court as an important actor in the democratic consolidation process (Aïvo 2006; Banégas 2003: 236–240; Gisselquist 2008: 805–806; Magnusson and Clark 2005; Rotman 2004; Seely 2009) and variance in the level of legitimacy over time with a recent decline (Puddington 2014: 89; Stroh 2013). Benin is thus a good initial test case to disprove the above argument because a failure here would imply that finding support for the argument in cases where the literature does not feature eclectic and anecdotal evidence on the court's importance will be unlikely.

### 5.1 *Legal Framework*

The Constitution of the Republic of Benin of 11 December 1991 prescribes in its Title V that the Constitutional Court of Benin (CCB) is organised as one chamber of seven judges.<sup>4</sup> They are all appointed at the same point in time for a five-year term. Sitting judges may be reappointed once. If a judge leaves the bench, the successor is appointed for the remainder of this term and may also be reappointed only once. Judges cannot be removed before the end of a term. The parliament's executive committee (Bureau de l'Assemblée Nationale, BAN) appoints four judges, and the president of the republic appoints three. Both parties are obliged to choose a magistrate from an ordinary court, an experienced jurist, and a personality of great professional esteem. The BAN must select an additional magistrate. The seven judges elect the president and vice president of the court themselves. The first CCB members took up their assignment in 1993. Since then, five terms have started. They have involved the appointment of 25 individual judges to 35 theoretically available full-term positions. The CCB holds considerable judicial review powers, including abstract and concrete review, at certain times before the promulgation of a law and any time after the promulgation. All citizens have direct access to the court and may complain about the unconstitutionality of laws and acts. Additionally, the CCB wields important powers in the electoral process, including the supervision of national elections, the adjudication of electoral disputes, and the promulgation of the final results. Without doubt, it is among the most powerful courts in Africa if not worldwide.

### 5.2 *Data and Methodology*

This paper makes use of several original data sources. It uses interview and newspaper data to assess perceptions about the court's legitimacy. The expert interviews were mainly conducted in September 2012. The newspaper archives of two major dailies have been systematically searched for reporting on the constitutional court.<sup>5</sup> To answer the central question of whether appointment policies determine the legitimacy of the court, a new data set on major political actors<sup>6</sup> and all 25 constitutional judges has been compiled. It covers the entire period since the creation of the CCB in 1993.<sup>7</sup> The data includes socio-biographic information which helps us to visualise and analyse the structure of the judges' social and political ties.

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4 The constitutional judges inherited the official title "councillor" (conseiller) from French legal tradition. This text uses the term "judge."

5 In Benin, the private newspaper market is very volatile. Therefore, the first paper chosen for archival research was the state-run daily *La Nation*, which covers the entire period. The private outlet *Le Matinal* was chosen for its relatively long period of coverage (since 1998) and comparably good professional reputation. It did, however, support President Yayi's first presidential campaign (Gnanih 2008). Therefore, selected reporting from the well-respected daily *Adjinakou* was added to cover the fourth and fifth rounds of appointment (in 2008 and 2013, respectively).

6 The major political actors are the presidents of the republic and of parliament as well as the leaders of the opposition.

7 Large-scale surveys covering the same period of interest are unavailable.

Social network analysis (SNA) provides excellent tools for evaluating the data.<sup>8</sup> The representation of groups on the bench can easily be translated into judges' membership in a network structure. Network theory formalises actors as a set of nodes ( $\mathcal{N}$ ) which are connected by a set of lines ( $\mathcal{L}$ ). The judges ( $\mathcal{J}$ ) and the relevant politicians ( $\mathcal{P}$ ) form subsets of actors. Groups that may indirectly link judges and politicians form a third subset of collective actors or "clubs" ( $\mathcal{C}$ ), including regional ( $\mathcal{T}$ ), ethnic ( $\mathcal{E}$ ), and religious ( $\mathcal{R}$ ) communities, as well as political parties ( $\mathcal{A}$ ). The major partition in the data is between social club affiliations ( $x \in \mathcal{T}, \mathcal{E}, \mathcal{R}$ ) and political connections, including personal promotions or appointments that signal political loyalty.<sup>9</sup> In formal terms, the network ( $\mathcal{G}$ ) is composed as follows:<sup>10</sup>

$$\mathcal{G} = \{\mathcal{N}, \mathcal{L}\}; \text{ where } \mathcal{N} = \{\mathcal{J}, \mathcal{P}, \mathcal{C}\} \text{ and } \mathcal{C} = \{\mathcal{T}, \mathcal{E}, \mathcal{R}, \mathcal{A}\}$$

Some of the lines are directed (e.g. "A appointed B to political office"), whereas others are undirected (e.g. "A is a member of religious group R"). Spring-embedded sociograms provide interpretable visualisations (Dekker 2005). For example, disconnected components and large distances to selected actors would point to a representation bias. Compact sociograms showing many ties between all sorts of actors in similar proximity to the court members represent greater inclusion and would point to fair representation.

Selected numerical measures complement the visual interpretations. This paper uses three standard indicators. First, group centrality measures how diverse access to the court – that is, to the group of judges – has been over time. In other words, this measure reports the share of all other nodes that can reach at least one of the nodes in the group of judges in one or two steps (Everett and Borgatti 2005). Decreasing values would point to an increasing share of actors at greater distance from the court. Greater distance is usually interpreted as less access or influence (Freeman, Borgatti, and White 1991: 141). Average geodesic distances, second, and minimum-cut measures, third, provide more precise information on how well the major politicians, their respective political camps, and, if required, other relevant actors

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8 SNA has a long tradition in research on electoral participation (Campbell 2013), mainly based on the Columbia School view that milieus determine how citizens vote (Lazarsfeld, Berelson, and Gaudet 1968). With regard to national politics, SNA has been used to research such diverse fields as policy management (Larson et al. 2013), lobbyism (Carpenter, Esterling, and Lazer 2004), terrorism (Krebs 2002), authoritarian leadership (Ishiyama 2014) and clientelism (Szwarcberg 2012) at different levels of methodological sophistication. Walther (2014) provides one of the rare applications of SNA techniques to an African context. He evaluates cross-border trade. Using network terminology in a more descriptive way, Sharan (2013) has recently characterised Afghanistan as a "network state." He demonstrates that entire politics can be undermined by informal network structures. Trochev and Ellett (2014) have transferred the terminology to judicial networks in post-transition regimes, without applying formal SNA. Fowler et al. (2007) use SNA to identify the importance of precedents at the Supreme Court of the United States. They argue that the centrality of a node which represents a specific precedent indicates the decision's legal importance.

9 Promotions or appointments to political posts represent direct ties between elements of the subsets  $\mathcal{J}$  and  $\mathcal{P}$ . Common tertiary education (shared discipline, time, and place of university education) is one additional personal tie among entities of the same subset.

10 The notation follows Wasserman and Faust (1994).

connect with the judges. The political camps include presidential supporters and the opposition. Directed geodesic distances ( $d_{ij}$ ) describe the shortest path between two individuals. The smaller this value is, the closer the one actor is to the other. We assume that closeness means accessibility. We further assume that a politician's potential influence on the court is greater the closer he or she  $p \in \mathcal{P}$  is to as many judges as possible. Therefore, we need to consider the number of judges with whom the politician  $p$  connects. The number of reachable judges ( $r$ ) varies between zero and the count of judges of the  $t$ 'th court ( $|\mathcal{J}_t|$ ). To follow the intuitive rule of "the more the merrier," the general measure  $\pi$  of  $p$ 's proximity to court  $\mathcal{J}_t$  is ultimately defined as the number of judges a key politician can reach divided by her or his average geodesic distance to these reachable judges:

$$\pi_t(p) = \frac{r}{\frac{\sum d(p, j_i)}{r}} = \frac{r^2}{\sum d(p, j_i)}; \text{ with } p \in \mathcal{P}_t \text{ and } r = |\{j_1, \dots, j_r\} \subseteq \mathcal{J}_t|$$

This is the adequate level of aggregation since the outcome of interest is the legitimacy of the court as a collective actor. The maximum size of  $\pi$  equals  $r$ . The average distance to the court for a politician who is completely disconnected from any judge is defined as infinite, which brings the minimum size of  $\pi$  to zero:

$$\min(\pi) = \frac{r^2}{\sum d} = \frac{0}{\infty} = 0; \text{ where } r = 0 \text{ and } d := \text{infinite}$$

While the shortest path and average proximity tell us about closeness, the number of paths between a non-court actor and a judge tells us about the capacity of this relationship. This capacity can also be read as the strength of the connection because the maximum flow of information from node A to B – that is, the capacity of the connection – equals the minimum number of ties that must be cut to disconnect the same two actors (Ford and Fulkerson 1956; Freeman, Borgatti, and White 1991). Therefore, the strength of a connection is measured with the minimum-cut indicator  $\lambda$ . For example, if one politician commands exactly one short path to access a judge, the capacity of this close relationship is more limited ( $\lambda=1$ ) than the relationship of one politician who commands many paths of access at variable distance to the same judge ( $\lambda>1$ ). Thus, the average strength of politician  $p$ 's connection to the  $t$ 'th court can be formally written as follows:

$$\lambda_t(p) = \frac{\sum \lambda(p, j_i)}{|\mathcal{J}_t|}; \text{ with } p \in \mathcal{P}_t \text{ and } |\mathcal{J}_t| = 7, \text{ because } \mathcal{J}_t = \{j_1, \dots, j_7\} \text{ for any } t$$

The higher the value of the average minimum cut between a politician and the court is, the stronger the actor's access to the bench should be. To relate this back to the general hypothesis that appointment policies shape the legitimacy of the court, the following observations ought to be expected: Courts that are expected to enjoy less legitimacy should produce more unbalanced sociograms and less equally distributed closeness and minimum-cut measures across the group of key politicians than courts that are perceived as more legitimate. On an aggregated level, biases between the presidential camp and the opposition should show particu-

larly important effects. Provided that a bias occurs, we should also be able to identify which parts of the network contribute most to the biases that correlate with the level of legitimacy.

### 5.3 Perceptions of Legitimacy

The newspaper data needs to be interpreted with caution. On the one hand, journalists have often avoided in-depth analyses of the composition and work of the court. Newspapers quote important decisions in full but rarely comment on them. On the other hand, Benin's press outlets tend to accept tabloid journalism, thus opening up space for perceptions, speculations, and even allegations based on limited evidence. One reason for this is that quality journalism is more expensive and the market is narrow. An analysis of the state-run media outlet and one major private outlet, however, reflects a general increase in suspicion about the court's intentions.<sup>11</sup>

The one major critic of the first court (1993–1998) was then president Soglo. He first delayed the creation of the court by two years and then complained about the bench being “overly marked by their affiliation to political parties” (*La Nation*),<sup>12</sup> certainly alluding to the opposition. Soglo's take on the court, however, did not deter the state-run daily *La Nation* from concluding that with the “solemn institution of the Constitutional Court our country [Benin] is taking an important and decisive step towards the consolidation of our young democracy.”<sup>13</sup> The second court (1998–2003), appointed after President Kérékou was elected in 1996, underwent a less celebrated start. An administrative mistake led to the annulment of court president Elisabeth Pognon's reappointment. The private daily *Le Matinal* characterised Pognon's case as a “political decision” and even a “complot” against the popular and highly esteemed first president of the court.<sup>14</sup> *La Nation* expressed concerns about the second court more indirectly by praising the first court's merits, and with the comparison implicit in its statement that the first court “appeared to be more open to critique, and thus more democratic.”<sup>15</sup> Additionally, both newspapers published the view that Conceptia Ouinsou, who was nominated to replace Pognon and became the president of the second and third courts, was both a political barrier for the well-respected law professor Théodore Holo – a member of Soglo's leading opposition party at the time – and an excellent legal scholar.<sup>16</sup> Later, Ouinsou and her court were appreciated for their work. Upon the inauguration of the second court, *Le Matinal* wrote that the CCB's political counterbalance was “appreciated by more

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11 All newspaper quotations translated from French by the author.

12 Léon Brathier, “Nicéphore Soglo décidé à installer les autres institutions de contre-pouvoir,” *La Nation* (Cotonou), 7 June 1993.

13 Akutéti Assevi, “Pour que le Bénin ne tourne pas en rond,” *La Nation*, 8 June 1993.

14 Charles Toko, “Mme Pognon victime d'un complot,” *Le Matinal* (Cotonou), 27 May 1998; Agapit Napoléon, “En suspens. Coup de force,” *Le Matinal*, 2 June 1998.

15 Roman-Phillipe Assogba, “Une alternance quand même,” *La Nation*, 28 May 1998.

16 *La Nation*, “Mme Pognon se retire du jeu,” 5 June 1998; Charles Toko, “La Cour constitutionnelle enfin au complet,” *Le Matinal*, 6 June 1998.

than 90 per cent of the Beninese people."<sup>17</sup> Contested presidential elections in 2001 incited temporary debates about the role of the court but did not ultimately reduce the CCB's positive reputation.<sup>18</sup>

The third court, also appointed during President Kérékou's time in office, attracted little attention from the two newspapers. This can be read as a sign of the continuity and normality of a well-established institutional counterbalance to the elected branches. The tone changed significantly after the fourth court was appointed in 2008, approximately two years after President Yayi's election. In an obviously concerted act, the executive and legislative branches announced their selection of judges exceptionally early and, immediately, gave birth to extensive suspicion about their partisanship. None of the judges from the former court were reappointed, even though two of them – considered to be close to the opposition – had only served one term. *La Nation* stated straightforwardly that the new "seven sages have political affiliations which move them close to the FCBE [Forces Cauris pour un Bénin Emergent, President Yayi's political grouping]," and that the suspicion concerning the choice of judges was "early but legitimate."<sup>19</sup> *Le Matinal*, which had supported President Yayi's campaign and presidency, avoided reporting on this suspicion, but other papers quickly coined names such as "Yayi's Court," "Power-Holders' Sounding Board," "The Court of Miracles," or "The Court of All Dangers."<sup>20</sup> Consequently, when the fifth court (2013–2018) was appointed, the newspaper *Adjinakou* underlined the great challenge this new court would face – namely, "to sanitize the public image of an institution in which many Beninese had lost faith."<sup>21</sup> However, there is little evidence that the fifth CCB has been able to significantly restore the court's positive reputation. The fact that President Yayi refused reappointment to all three judges whom he had selected five years earlier – including court president Robert Dossou – generated new suspicion about the president's intentions.

Confusingly, Dossou had been at the centre of critiques of the fourth court because he was regarded as Yayi's close ally and fervid supporter. However, towards the end of his term the court issued a decision (DCC 11-067) that complicated Yayi's constitutional reform project. Since little was publicly known about the three newcomers to the fifth court, questions were raised about whether Yayi had tactically selected weak judges to minimise resistance

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17 Hippolyte Djiwan, "L'enracinement de la démocratie," *Le Matinal*, 8 June 1998.

18 An administrative error led to the proclamation of incorrect (because partial) results for the first round. As a consequence, runner-up Soglo intensified his allegation of fraud against then president Kérékou and started attacking the CCB (Amouzouvi 2000). Radio France Internationale (RFI) quoted Soglo as calling the second constitutional court the "Court of Miracles" (Jean-Luc Aplogan, "Nicéphore Soglo, le retour," *RFI* (Paris), 5 March 2003). This terminology reappeared years later in reference to the fourth court.

19 Edgard Couao-Zotti, "Suspicion et réalité," *La Nation*, 5 March 2008.

20 Summarised by Yaovi Maoussi, "Renouvellement de la Cour constitutionnelle," *Le Matinal*, 31 May 2013.

21 Edgar Gnimavo, "Cour constitutionnelle: Holo favori pour remplacer Me Dossou," *Adjinakou* (Porto Novo), 31 May 2013.

from the court.<sup>22</sup> Additionally, the new court president, Théodore Holo, was now increasingly depicted as a close friend of President Yayi.<sup>23</sup> Perceptions of the fifth court have since remained ambivalent, as Holo was also a member of the fourth court and therefore signed the same decision that conjecturally led to Dossou's non-reappointment. In sum, the major press outlets very clearly shared a generally positive perception of the CCB over its first three terms. Substantial journalistic challenges to the court's legitimacy only started with the fourth round of appointments. This change in tone continues to impact the fifth court.

Original data from 22 interviews<sup>24</sup> widely support the decline in the CCB's legitimacy over time. Almost all relevant interviews praise the first court, with only one deviant statement qualifying the first term as being perceived as too close to the then opposition.<sup>25</sup> Sixteen interviewees explicitly agreed with the observation that – rightly or wrongly – the fourth court's legitimacy suffered from strong suspicions of political bias. Most experts who commented on the origins of this perception quoted the view that President Yayi had unilaterally imposed “his” seven candidates. A former BAN member explained the incident: “It's the government itself that took care of sending the four names [of those to be appointed constitutional judges by parliament] to the National Assembly, which didn't take any further action” (Interview, September 2012, translated from French by the author). Although another former member of the assembly leadership independently confirmed this course of action,<sup>26</sup> not all interviewees shared the criminative reading of Yayi's appointment policy. But no expert rejected the argument that the perception of this incident has damaged the court's reputation in an unparalleled manner. Nevertheless, the interview partners did partially nuance the sharp shift between the third and fourth court. Six interviews pointed to a political bias on the part of the third court in favour of the presidential camp, with only one voice defending its balance.<sup>27</sup> A limited number of interview partners also pointed out the beginning of some political bias in the CCB's second term. In light of these legitimacy perceptions, we can ex-

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22 See Abdourhamane Touré, “Après avoir écarté Robert Dossou pour réviser la constitution, Yayi Boni paase à la vitesse supérieure,” *Le Matinal*, 14 June 2013, and Edgar Gnimavo, “Résistance à la révision de la Constitution,” *Adjinakou*, 12 July 2013.

23 Edgar Gnimavo, “Révision de la Constitution: un grand test pour le Pr Holo,” *Adjinakou*, 14 June 2013; Abdourhamane Touré, “Après avoir écarté Robert Dossou pour réviser la constitution, Yayi Boni paase à la vitesse supérieure,” *Le Matinal*, 14 June 2013; Moïse Dossoumou, “Holo et Yayi: l'amour parfait!,” *Fraternité* (Cotonou), 24 June 2014; Marcel Zoumènou, “Le jeu clair-sombre de Théodore Holo,” *La Nouvelle Tribune* (Cotonou), 3 July 2014.

24 These interviews included conversations with eight national expert observers, seven politicians who had participated at least once in appointment decisions, and seven actors from the court.

25 Interview with a constitutional judge, *Cotonou*, September 2012.

26 Interview with a second former BAN member, *Cotonou*, September 2012.

27 Most of these interviewees were expert observers. However, one politician who was involved in the 2003 appointments stated that the presidential camp swept away opposition proposals at that time. The defending voice came from within the court.

pect to observe a trend towards less inclusive and more biased court structures over time, with a considerable leap between the third and fourth courts.

#### 5.4 Comparative Network Representation Analysis

The visual analysis of those sociograms that include all societal and political ties does not tell a story of significant change. Since the set of ties was kept constant over time, the sociograms are directly comparable. At first glance, access to the judges is not manifestly imbalanced. The more recent networks include some more actors because of the appearance of new major politicians while the “old guard” has not (yet) left the scene.<sup>28</sup> For this reason, the networks appear to become denser over time. However, group centrality measures do not substantiate this visual impression. Variance in the judges’ collective centrality is limited. More connections to the court within a denser network should result in higher centrality measures for the group of judges. Yet only the data for court three, appointed in 2003, report group centrality values that positively stand out to some degree from all other courts (see Table 1).

**Table 1. Group Centrality Measures for the Group of Judges**

CCB term	Appointment date	Group centrality in degree (1-step reach)	Group centrality in degree (2-steps reach)	Remarks
1st	June 1993	0.517	0.655	
2nd (a)	June 1998	0.529	0.735	
2nd (b)	July 2000	0.529	0.735	One late judge replaced.
3rd	June 2003	0.639	0.889	
4th (a)	June 2008	0.459	0.676	
4th (b)	June 2009	0.486	0.730	One late judge replaced.
5th	June 2013	0.474	0.684	

*Note:* Group centrality equals the share of all nodes that do not belong to the group that are reachable from any of the group nodes in  $k$  steps (Everett and Borgatti 2005).

However, the graphs change enormously in shape as soon as communalist ties are excluded ( $\mathcal{G}=\{\mathcal{N},\mathcal{L}\}$  with  $\mathcal{N}=\{\mathcal{J},\mathcal{P},\mathcal{A}\}$ ). While the societal networks show more or less constantly balanced structures, the reduced political networks show a clear trend towards the marginalisation and even exclusion of a number of major politicians. The sociograms selected for Figure 1 represent the second and the fifth court, because the interview and press analysis showed a relative (though not complete) consensus about the levels of inclusiveness and imbalance in these periods. The difference between the societal and the political networks is striking. The graphs including communalistic ties show apparently inclusive structures that do not emphasise important biases or the marginalisation of key politicians (black squares) regarding

<sup>28</sup> The number of elements in  $\mathcal{P}$  increases from four to seven over the court terms.

their access to the judges (white squares). A central societal node is R1, which represents the Roman Catholic denomination.<sup>29</sup>

In contrast, the political networks exhibit a sharp difference between the CCB's second and fifth terms. The second court shows a balanced distribution of key political actors and judges. All four major politicians were directly connected to three judges.<sup>30</sup> The former included members of the presidential camp – namely, President Mathieu Kérékou and the head of parliament, Bruno Amoussou – as well as former president Nicéphore Soglo and former prime minister and head of parliament Adrien Houngbédji, who were then leading members of the opposition. The appointment policy at the time averted political biases. Politicians in opposition to Soglo reappointed judges J17 and J79, who were originally appointed by Soglo and who had political ties with the former president. Moreover, opposition members in the executive committee of the second National Assembly (ties from Renaissance du Bénin [RB] and Union pour le développement et la solidarité nationale [UDS] to BAN2)<sup>31</sup> negotiated parliamentary appointments of two more new judges with political ties to Soglo's camp (J10 and J40). Compared to the consensual appointment policy for the second court, President Yayi's appointment policy has clearly marginalised, and in the fifth term even excluded, the entire opposition. The graph for court five shows two components: the core network including all judges and the "opposition component" including the remaining members of the party alliance Union fait la Nation (UN). Soglo and his party RB had left the UN well before the appointment period. Although Soglo joined the presidential camp, there are no signs that he was able to influence Yayi's appointment policy. Soglo's ties to judges J49 and J68 as well as to President Yayi himself built on old relations, whereas Yayi and the presidential camp's head of parliament Mathurin Nago has maintained the more recent and multiple ties to the same judges. (Line thickness in the graphs illustrates the number of ties between two nodes.) The graph for the fourth term (not reported) shows politicians Kolawolé Idji and Bruno Amoussou as marginalised nodes, only lightly connected to the core network

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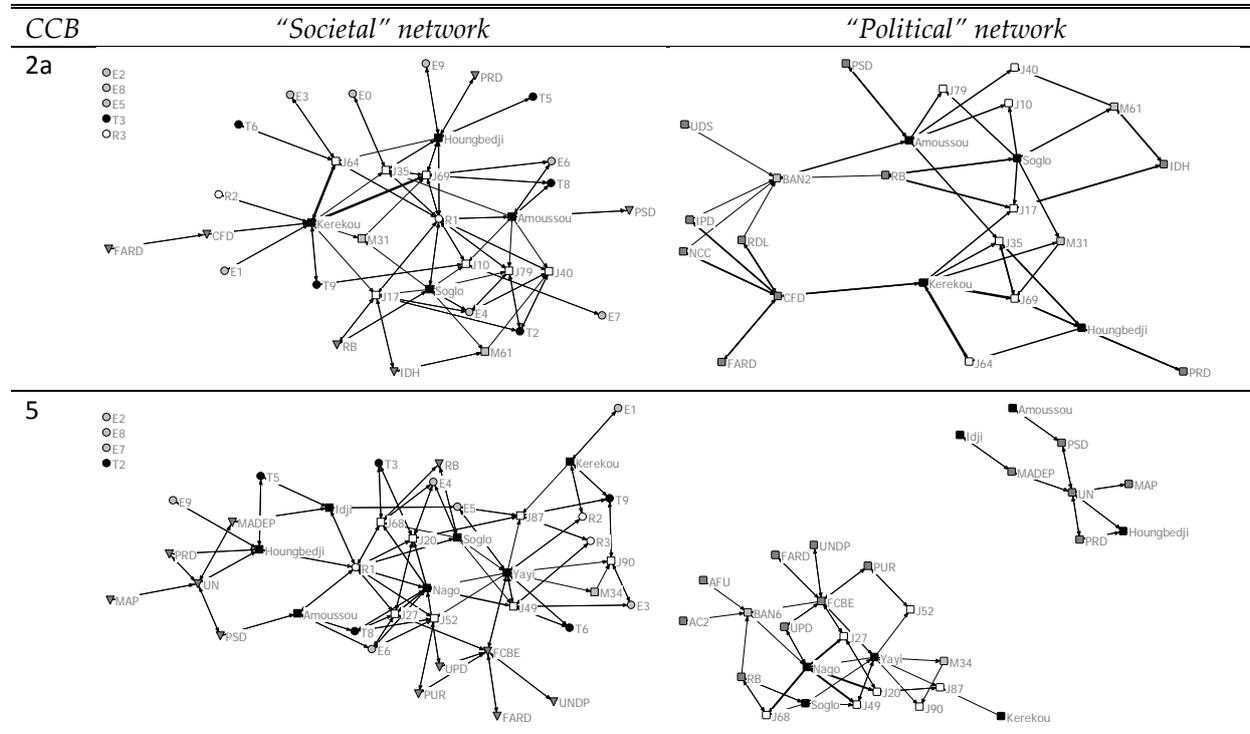
29 The argument of this paper is not interested in the exclusion or inclusion of specific groups. The question of regional, ethnic, or religious balance is a very delicate issue in Benin. Therefore, I decided to allocate random codes to the groups and the judges. An unrelated list of the societal groups that were systematically included is available from the author. Only politicians and political groups are systematically identified. Without this information, it would be impossible for readers to retrace the political biases. The Catholic node is, exceptionally, identified because this would be easy for country experts to guess.

30 Country experts might argue that Albert Tévôèdjre is missing as a key politician for at least the 1990s. He has been left out because he never headed the executive or the assembly, nor was he the runner-up in a presidential race with a substantial parliamentary base that could formally underline opposition leadership. More important for the analysis, however, is the observation that his inclusion would not change the overall picture in a significant way. He was connected to the early networks via his party Notre Cause Commune (NCC) and, later, via his closeness to presidents Kérékou and Yayi. He is currently serving under the latter as the national ombudsman.

31 RB is Soglo's political party, and UDS was one of Soglo's coalition partners at the time.

via Soglo’s older ties. Houngbédji, Yayi’s competitor in the second round of the 2006 presidential election and his major opponent, was already disconnected in 2008.

**Figure 1. Sociograms of the Court’s Second and Fifth Terms**



Note: All sociograms are available from the author. Individual abbreviations are explained in the text. J represents judges and M ministers. E, R, and T represent elements of the above-mentioned clubs  $\mathcal{E}$ ,  $\mathcal{R}$  and  $\mathcal{T}$ .

The numerical measures support the visual interpretations, with the geodesic distances describing the shortest path from one actor to another. For actors who are directly tied to each other, such as Kérékou and judge J17 in the CCB’s second term, the geodesic distance equals one. There is no shorter path. If nodes are indirectly connected, such as Soglo’s link with judge J40 via his earlier cabinet minister M61, the number of ties on the shortest path determines the geodesic distance – that is, two in this example. Sometimes, nodes are not at all connected. This is the case, for example, for Houngbédji and any judge in the court’s fifth term. Formally, the geodesic distance is infinite.

The minimum-cut values indicate how strongly two actors are connected. If one single direct tie connects one politician to one judge, the path is short but not very strong. For example, then president of the National Assembly Amoussou appointed judge J10 but shared no further political ties with this member of the second court. By contrast, to disconnect President Yayi from J27 in the political graph of the fifth court, four ties have to be cut. The geodesic distance between Yayi and J27 is two. The judge is indirectly linked to the president because, before being appointed by assembly president Nago, this person served on the FCBE’s electoral campaign team (Gnanih 2008). The FCBE party alliance organised support for Boni Yayi. However, Yayi is not dependent on this shortest path. He is strongly connected in three

other ways to the same judge (Yayi-Nago-J27, Yayi-J87-J20-J27 and Yayi-J52-PUR-FCBE-J27). In network analytical terms, Yayi's capacity to access J27 ( $\lambda(\text{Yayi}, \text{J27}) = 4$ ) is much greater than Amoussou's capacity to access J10 ( $\lambda(\text{Amou}, \text{J10}) = 1$ ).

The entire data set comprises 189 dyadic connections between the elements of the set of key political actors ( $\mathcal{P}_K \subseteq \mathcal{P}$ ) and the set of judges ( $\mathcal{J}$ ) over five court terms. Calculating proximity ( $\pi$ ) and strength ( $\lambda$ ) measures for each dyad in two alternative sociograms – the societal and the political – results in 756 values. Therefore, Table 2 only reports the average values for key politicians and political camps in the political networks according to the aggregation methods discussed in the data section.<sup>32</sup> The table also reports the attribution of individual politicians to the political camps over time. Remember that the aggregated values follow the intuitive logic that higher values indicate easier access to the court.

Table 2 presents a clear picture. Some actors have always had stronger and closer ties to a larger number of judges than others. However, the distribution of access to the court among the key politicians and, in particular, between the presidential and opposition camps has changed considerably. Access to the two most recent courts was less equally distributed than ever before. The difference in  $\lambda$  between the most and the least strongly connected politician increased from 1.7 points in 1998 to 3.4 points in 2003. The difference in  $\pi$  between the key politician who had the closest ties to the court's bench and the one at the greatest distance increased from 2.2 to 4.9 over the same period. Increasingly, the opposition has been systematically excluded from the court's networks.

The numbers thus confirm the gravity of the change. Not only was access to the court more balanced between the presidential camp and opposition players in earlier years, but the existent connections have on average also grown stronger, though not more proximate.

**Table 2. Political Networks**

	Strength $\lambda$ (Minimum cut)					Proximity $\pi$ (Reachability/Geodesic distance)				
	1st	2nd	3rd	4th	5th	1st	2nd	3rd	4th	5th
<b>CCB term</b>										
<b>Soglo</b>	1.71	1.89	0.57	3.43	2.36	4.45	3.60	2.00	4.08	3.50
<b>Kerekou</b>	1.14	2.46	3.38	(1.00)	(1.00)	2.13	3.06	5.44	(1.96)	(1.58)
<b>Houngbedji</b>	2.71	1.57	0.57	0.00	0.00	4.08	2.04	2.00	0.00	0.00
<b>Amoussou</b>	0.34	1.43	1.71	1.00	0.00	1.48	4.17	3.50	1.26	0.00
<b>Idji</b>			0.86	1.00	0.00			4.17	1.26	0.00
<b>Nago</b>				3.29	2.86				4.08	4.08
<b>Yayi</b>				3.29	2.79				4.90	4.90
<b>Spread</b>	<b>2.4</b>	<b>1.0</b>	<b>2.8</b>	<b>3.4</b>	<b>2.9</b>	<b>3.0</b>	<b>2.1</b>	<b>3.4</b>	<b>4.9</b>	<b>4.9</b>
<b>Presidential camp</b>	1.71	1.95	1.98	3.29	2.67	4.45	3.61	4.37	4.49	4.16
<b>Opposition</b>	1.40	1.73	0.57	1.36	0.00	2.57	2.82	2.00	1.65	0.00
<b>Difference</b>	<b>0.3</b>	<b>0.2</b>	<b>1.4</b>	<b>1.9</b>	<b>2.7</b>	<b>1.9</b>	<b>0.8</b>	<b>2.4</b>	<b>2.8</b>	<b>4.2</b>

Note: Italics indicate affiliation to the opposition. Brackets point to the lack of clear affiliation. Numbers in brackets are included in neither the presidential, nor the opposition averages. For replication data see Figure 1.

<sup>32</sup> Societal network measures are reported in the appendix.

## 6 Discussion

Interview and newspaper evidence has demonstrated that Benin's Constitutional Court has suffered from decreasing public support over time. In particular, the two most recent courts, appointed during Boni Yayi's presidency, attracted more criticism than any court before. The main allegation driving this change in perception was that the court became more biased towards the president. However, critics have often failed to substantiate the allegation. The systematic network analysis now shows, first, that communalistic biases do not coincide with the reported change in perceptions. The same two ethnic groups (E2 and E8), for example, have been disconnected from the court network throughout the court's existence. These two groups happen to be smaller groups from the north of Benin. Given that, first, these two groups have not been represented on the court under southern or northern presidents, that, second, over virtually all of the court's existence four judges with a southern ethnic background have sat on the bench, and that, third, the only exception to the rule  $|\{j: \text{South}(j)\} \cap \mathcal{J}_t| = 4$  occurred in the most criticised fourth court, when five judges represented southern groups, the network data definitely does not support any argument of ethnic favouritism for northern groups under Yayi. Moreover, the representation of major religious confessions has even increased. The "Catholic node" (R1) has sustained its structural centrality in each court. Presidents who have adhered to different religious denominations have not promoted fellow believers. While we know little about how important religious circles are for communication and conciliation among the relevant elites, we can at least derive the finding that the evident imbalance in favour of Catholics on the bench cannot have incited the observed delegitimisation of the court.

In contrast to the communalistic data, the analysis of political networks finds strong support for the argument that appointment policies have had a major impact on the decreasing legitimacy of the court. The visual and numerical interpretation of the fourth and fifth court networks fit straightforwardly with the interview and media perceptions – that is, with the hypothesised level of legitimacy. Opposition politicians have been successively marginalised and disconnected from these courts. We cannot conclude that CCB membership has been structured along ideological party lines analogous to those of the court's counterparts in Germany, France, or the United States. Benin's party system does not provide consistent programmatic or, much less, ideological positions (Elischer 2013: 214–222; Stroh 2014). But political power relations matter. It is not ethno-regional ties but political loyalty structures that shape the legitimacy of the court.

The network data suggests that the strongest policy change took place in 2008 with the appointment of the fourth CCB. This leap in political behaviour, which saw the implementation of a unilateral appointment strategy, correlates with a surge in delegitimisation. Thus, there is little reason to believe that the CCB's decreasing legitimacy was caused merely by the opposition's imagination or propaganda. Instead, there is evidence that deliberate appointment policies under the ruling politicians affected the court's important function as an

actor for democratic consolidation. The effect of the court's delegitimation on democratic consolidation cannot be studied without detailed data. However, new data for Benin from the V-Dem project<sup>33</sup> reports a decline in liberal democracy over recent years. Thus, the overall assessment of the level of democracy does not contradict the argument that appointment policies may affect democratic consolidation if the respective dispute-settlement body plays a key role in the political system.

## 7 Conclusion

This paper started with the observation that many new democracies, particularly in Africa, suffer great vulnerability due to the fact that they do not fulfil the economic and institutional criteria that have been identified as generally conducive to democratic consolidation. Nevertheless, some vulnerable democratic polities have already survived for over 20 years. The existence of largely legitimate dispute-settlement bodies for political conflicts can be read as one effective compensation for the (hitherto) lack of better economic and institutional requisites. Courts with constitutional review power as well as independent electoral commissions, a council of elders, or other innovative bodies can, in principle, act as this kind of key political arbiter.

In the case of Benin, there is significant agreement that the constitutional court has successfully assumed this role. Since there is good reason to believe that the quality of court decisions has a limited impact on the CCB's legitimacy, this paper has argued that fair representation on the bench strongly impacts the court's reputation. The paper has evaluated a range of social and political ties on the part of the judges over time using tools from social network analysis. The empirical results provide initial evidence supporting the claim that objective structures drive perceptions of fair representation, which in turn translate into the level of and changes in legitimacy. While we cannot exclude the possibility that hidden ties and non-observable networks, such as private clubs or secret societies, distort the results to a certain extent, the available data suggests that the communalistic representation of ethnic, regional, or religious groups has not determined the court's legitimacy. Instead, the short-term political affiliations of the judges matter much more. This is surprising given the popularity of communalistic arguments in the broader literature on less developed regions and, in particular, on African politics.

In general, the results from Benin empirically support Kanté's (2008) and Widner's (2001) statements about the importance of nominations and the personal qualities of judges, whereas they challenge VonDoepp's findings from Malawi and Zambia that "appointment powers have been quite ineffective in helping governments realize control over judiciaries" (2005: 291).

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33 Available online: <[v-dem.net/en/data/analysis/CountryGraph/](http://v-dem.net/en/data/analysis/CountryGraph/)> by selecting Benin as the country and the Liberal Democracy Index from the V-Dem indices.

At the least, the deliberate political decisions of Benin's ruling politicians, coordinated between the president and his parliamentary majority, have jeopardised if not intentionally attacked the CCB's good reputation since 2008. This is tantamount to taking control of the court's legitimacy and, therefore, its capacity to promote democratic consolidation through independent arbitration.

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## Appendix

Table A1: Societal Networks

	Strength $\lambda$ (Minimum cut)					Proximity $\pi$ (Reachability/Geodesic distance)				
	1st	2nd	3rd	4th	5th	1st	2nd	3rd	4th	5th
<b>CCB term</b>										
<b>Soglo</b>	4.57	5.00	4.57	6.43	5.57	4.90	4.45	3.50	4.90	4.08
<b>Kerekou</b>	3.00	5.14	5.57	(3.00)	(3.00)	3.77	4.08	5.44	(2.72)	(2.72)
<b>Houngbedji</b>	5.29	3.86	4.57	2.00	4.00	4.90	4.45	3.77	3.06	2.72
<b>Amoussou</b>	2.00	5.00	5.14	4.00	4.00	3.27	4.90	4.90	3.06	2.72
<b>Idji</b>			5.14	4.00	4.00			4.45	3.06	2.72
<b>Nago</b>				6.43	6.00				3.06	3.06
<b>Yayi</b>				6.43	5.29				4.90	4.90
<b>Spread</b>	3.3	1.3	1.0	4.4	3.0	1.6	0.8	1.9	2.2	2.2
<b>Presidential camp</b>	4.57	5.07	5.29	6.43	5.62	4.90	4.49	4.93	3.98	4.02
<b>Opposition</b>	3.43	4.43	4.57	4.11	4.00	3.98	4.45	3.63	3.52	2.72
<b>Difference</b>	1.1	0.6	0.7	2.3	1.6	0.9	0.0	1.3	0.5	1.3

*Note:* Italics indicate affiliation with the opposition. Brackets indicate the lack of clear affiliation. Numbers in brackets are not included in the presidential or the opposition averages. For replication data see Figure 1.

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