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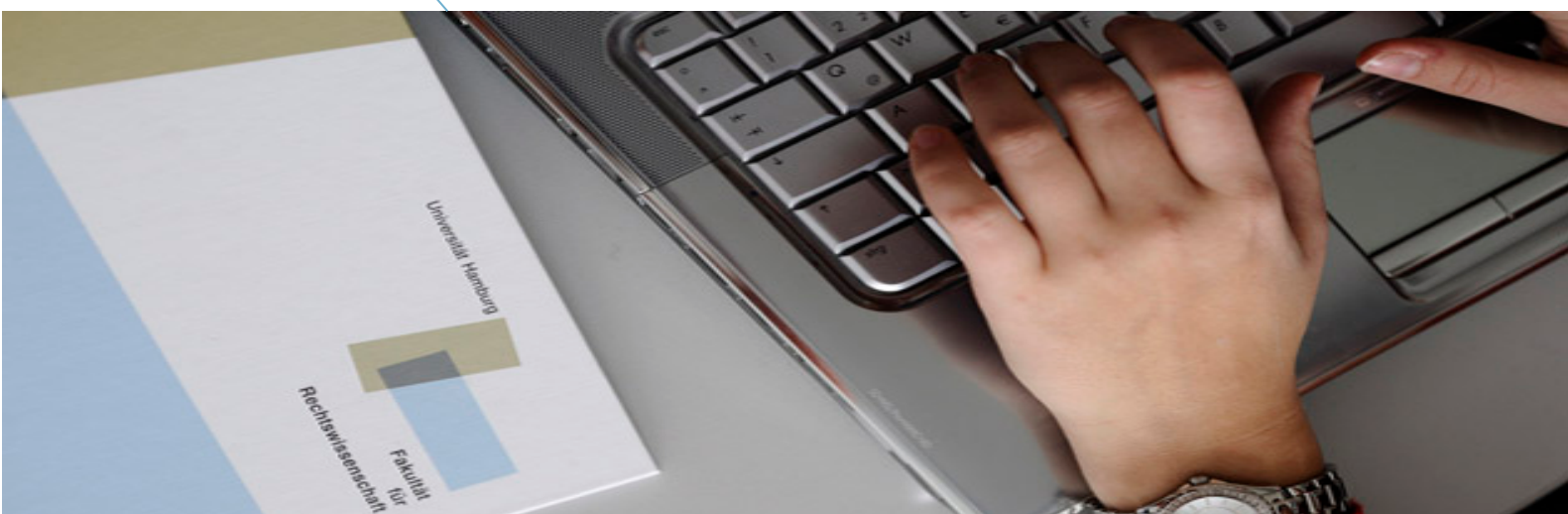
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This Time is Different? - On the Use of Emergency Measures During the Corona Pandemic

Christian Bjørnskov and Stefan Voigt*

Abstract: The COVID-19 pandemic has not only caused thousands to die and millions to lose their jobs, it has also prompted more governments to simultaneously to declare a state of emergency than ever before. States of emergency usually imply the extension of executive powers that diminishes the powers of other branches of government, as well as to the civil liberties of individuals. Here, we analyze whether the use of emergency provisions during the COVID-19 pandemic is an exception, and find that this is not the case. In fact, some measures point at long-term dangers to the rule of law and democracy.

Key Words: COVID-19; constitutional emergency provisions, state of emergency.

JEL Codes: K40, Z13

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1. Introduction

By May 10, 2020, 99 governments, equal to almost precisely half of all sovereign governments, had declared a state of emergency (SOE) due to COVID-19.¹ The Italian government was the first to declare a SOE on January 31, 2020 and many other governments followed suit during March 2020. Such a wave of SOE declarations is completely novel. Between 1985 and 2014, the governments of at least 137 countries declared a state of emergency at least once (Bjørnskov and Voigt 2018a). But compared to the current wave, this number appears rather negligible. As virtually all countries were affected by the SARS-CoV-2 virus at approximately the same time, governments were all fighting the virus, and their responses can be easily compared.

Reinhart and Rogoff (2009) entitled their book on centuries of financial crisis management, *This Time Is Different*, showing that things weren't so different after all, and history does seem to repeat itself. In this study, we ask a similar question: If hundreds of thousands die and millions lose their jobs, shouldn't one assume that governments call a SOE because they want to save lives? Although emergency provisions have been misused time and again in the past, shouldn't one expect that this time really is different?

Calling a state of emergency typically implies a shift in the balance of powers toward the executive to the detriment of the other government branches, but also to the

¹ After May 10, no more COVID-19 related states of emergency have been recorded. Indeed, the last nation to call a state of emergency owing to the corona pandemic was Japan on April 7. We cap the period we are looking at in early May so not as to deal with the end of emergencies that came about in a few countries for very different reasons. Most pertinently, the El Salvadorian Supreme Court revoked the government's continuation of its SOE as it would include unconstitutional transfers of specific powers to the executive.

detriment of citizens who enjoy fewer civil liberties. Sometimes, elections are postponed, parliaments are shut down, and if the courts are prevented from hearing cases, a judicial review of emergency measures applied by government is often close to impossible.

In this paper, we first inquire into the factors that provoked governments to declare a SOE. If declarations were clearly driven by the desire to save lives, things would be different. If, on the other hand, emergency declarations were motivated by political economy factors, things would not be so different after all. And indeed, we find that things are not so different. We then ask how governments have used the extra powers that they enjoy after declaring a state of emergency. As of today, it would probably be premature to make a definite judgment regarding the effectiveness of measures such as lockdowns, quarantine, social distancing, tracing and so on.² Yet, one policy measure lends itself to judgment, namely how governments have behaved towards the media. This is why we ask to what degree media freedom has been upheld even after a SOE has been declared. We find that the protection of journalists – and free expression more generally – does not seem to be high on the agenda of many governments.

The rest of the paper is structured as follows: In Section 2, we briefly review the evidence on both the determinants of calling a SOE, as well as their effects. Section 3 spells out a number of hypotheses regarding the current pandemic as a possible cause

² Although first studies are, of course, already available.

for declaring a SOE. In Section 4, we describe our data and the estimation approach, and Section 5 contains the estimates. Section 6 concludes.

2. Governments' Dismal Record Regarding Emergency Declarations

Today, 9 out of 10 constitutions contain constitutionalized emergency provisions (Bjørnskov and Voigt 2018a). In the following, we refer to them as emergency constitutions for simplicity although they are, of course, not a document different from a country's constitution. These provisions have been invoked quite frequently: between 1985 and 2014, at least 137 countries reported at least one state of emergency declared on the level of the nation state.

To be able to ascertain the factors determining the employment of these provisions, we constructed an Index of Emergency Powers (INEP). The INEP consists of a Cost INEP and a Benefit INEP. The former measures how difficult it is to call a SOE by counting the number of players that need to agree, as well as the potential causes that can be quoted for a declaration. The latter, in turn, takes into account whether the executive has the right to dissolve parliament, to derogate from certain basic rights, to expropriate people from their property, and to censor the media. All these competences can be interpreted as benefits from the point of view of the executive.

How and in what sense do emergency constitutions impact on a government's decision to declare a state of emergency? Comparing countries with and without an emergency constitution, Bjørnskov and Voigt (2018b) find that countries not having an emergency constitution are significantly more likely to declare a state of emergency than those having one. This is, hence, a first indication that constitutional constraints matter. Inquiring into the differences between emergency constitutions, Bjørnskov and

Voigt (2018b) find that the less difficult it is for governments to declare a SOE based on the Cost INEP, the more likely governments are to do so.

What about the effects after having declared a state of emergency? Due to the very different characteristics of the events, it seems to make sense to distinguish between natural disasters on the one hand and political turmoil on the other. The rationale for declaring a SOE after natural disasters appears to be consistent with textbook public economics (cf. Barr, 2004). On the one hand, disasters such as earthquakes and volcanic eruptions are non-forecastable and, thus not insurable and, thus arguably require some form of government insurance and support. On the other hand, epidemics are classic examples of situations with immediate negative externalities in the form of contagion, which may need some form of rapid government action to contain or slow its spread. Calling a SOE can, therefore, be objectively necessary in order to effectively counter such negative externalities and related issues such as capacity problems in the health care system.

Bjørnskov and Voigt (2020a) report an unexpected result when analyzing natural disasters: Controlling for different disaster types (namely biological, geophysical, hydrological, and climatological) and the intensity of the disasters (by controlling for the number of people affected), they find that the higher the Benefit INEP, the higher the number of people killed as a consequences of a natural disaster. Also, the easier it is to call a SOE, the larger the negative effects on human rights. This seems to indicate that executives do not use the extra powers conferred on them during SOE to save lives but, rather, to their own advantage.

In their analysis of political turmoil, Bjørnskov and Voigt (2020b) inquired into the effects of SOE declared subsequent to terrorist incidents. Once a SOE is declared, it generally leads to substantially higher repression levels by government. Yet, their main finding is that countries under a SOE are more, rather than less, likely to suffer from additional terror attacks, shedding doubts on the effectiveness of SOEs.³ Despite being fundamentally different from natural disasters, SOEs declared during political turmoil appear equally counterproductive.

In sum, it seems fair to be rather skeptical regarding the overall evidence regarding governments' decision to declare a SOE. The decision to declare is decisively influenced by cost-benefit considerations of a government's own utility, which may not reflect that of its citizens (cf. Buchanan and Tullock 1962). When that is the case, governments typically do not resolve market failures and externalities, but actively impose negative externalities on the citizens as their welfare is not adequately internalized in the government's utility function (Uslaner and Davis, 1975). It seems well justified to be at least as skeptical regarding how governments use their extra powers after having declared a SOE. More, rather than fewer, people die following a natural disaster and more, rather than fewer, terrorist incidents are observed after government responses to terrorist activities. In both types of disasters, SOE declarations are connected with substantially more government repression. This rather dismal record leads us to ask whether this time, i.e. with regard to COVID-19, is different.

³ Bjørnskov and Voigt (2020b) focus on a sample consisting of countries with Western-style, formally democratic constitutions. However, their main findings remain virtually unchanged in a sample of predominantly Northern African and Middle Eastern Muslim societies (idem, 2019).

3. Hypotheses

In essence, we are running a horse race: If this time is different, then we would expect the state of public health with regard to COVID-19 to be the main determinant for declaring a SOE. If, alternatively, executives are trying to maximize their utility from governing, the two components of the INEP might be better at predicting the declaration of a SOE.

In the literature on the determinants of calling SOEs, executive decrees have played no role so far. We propose to change that here based on the conjecture that governments having at their disposal far-reaching executive decree powers have fewer reasons to resort to SOEs, *ceteris paribus*. Carey and Shugart (1998, p. 9) define decree power as “the authority of the executive to establish law in lieu of action by the assembly.” Power-maximizing executives that have been granted far-reaching decree powers by their country’s constitutions might, therefore, consider decrees and SOEs as substitutes. We conjecture that executives enjoying far-reaching decree powers will, indeed, be less likely to call a SOE.

We propose to control for two aspects, namely: the quality of political institutions and the level of economic development. The quality of political institutions can be ascertained in a variety of ways. The distinction between democratic and autocratic forms of government seems to be crucial in this regard. Assuming that democratic governments strive to be re-elected and that SOEs are unpopular, we would expect democratic governments to be less likely to declare a SOE.⁴ Yet, autocratic

⁴ In previous research (Bjørnskov and Voigt 2020b), we found that c.p., governments are less likely to declare a SOE subsequent to a terrorist attack in an election year.

governments are likely to be less constrained by their formal constitutions as well as by their actual environment. This would imply that democratic governments have more incentives to declare a SOE. Assuming that SOE declarations are unpopular leads to another conjecture: if a country enjoys a high degree of press freedom, the government is more likely to be criticized in the media following the declaration of a SOE. We, hence, expect countries with higher levels of press freedom to experience SOEs less frequently.

Again, the expected effect of controlling for the level of economic development is not entirely clear: during the current pandemic, many governments have resorted to lockdowns, shutdowns, quarantine and the like. For people in poor countries without a full-blown welfare state, such measures can easily spell disaster. This would let us expect that poorer countries are less likely to declare a SOE. However, one may also argue that people in richer societies are more able to avoid risks of contagion that are endemic to poorer societies, and thus may not have a need for government-mandated lockdowns, etc.

4. Data and Estimation Approach

The central variable of this study is whether and when countries declared a SOE. We coded this variable ourselves based on international news reports where we require at least two independent sources in order to code the onset of a SOE. Figure 1 documents the cumulative number of countries that had declared a SOE between January 31, 2020, and April 10, 2020.

<< Figure 1 around here >>

Next, we obtained events against journalists from the Eurozine/Index database, which is updated daily. The database covers a number of events against journalists, of which we only include the detention or arrest of journalists, journalists being prevented from reporting, new legislation that restricts media freedom and government U-turn on media policy (signals that government may with some probability no longer tolerate critical media), restrictions on social media, and crackdowns on so-called fake news. We supplement these data with a full confirmation of these events and our own media search for similar events since February 1, 2020. The number of reported events against journalists is depicted in Figure 2, in which we distinguish between democracies and autocracies.

<< Figure 2 around here >>

We supplemented these data with information on a number of features. To code the power of governments to resort to executive decrees without having to declare a SOE, we created a new indicator, constitutionalized decree powers. It is based on a number of variables provided by the Comparative Constitutions Project (Elkins et al. 2009). It is coded such that the indicator can take on values between 0 and 2 with higher values indicating more government powers.⁵ A score of 0 means that no political actor has decree power while a score of 2 means that both the head of state and the head of government separately have full decree powers not constrained by parliament.

With respect to institutional and economic data, we employ the dichotomous democracy indicator from Bjørnskov and Rode (2020), the rule of law indicator from

⁵ Details regarding the components of the new indicator and its construction are contained in the appendix.

the Worldwide Governance Indicators (World Bank, 2020), the Reporters Without Borders (2020; RSF) index of violations of press freedom, the logarithm to real GDP per capita and population size from CIA (2020).

Finally, data on the number of people diagnosed with COVID-19, and the number of deaths associated with COVID-19 are from Our World In Data (Roser, Ritchie, Ortiz-Ospina and Hasell, 2020), which is also updated on a daily basis. Our health data covers January 1st through May 10th, and we use the logarithm to the days since January 1st, the logarithm to the official number of infected, and a dichotomous indicator capturing whether any infected were observed on or before a given date.

In both estimates, we employ a random effects logit estimator as both outcome variables are dichotomous. With SOE as the dependent variable, countries drop out of the sample once they have declared a SOE. While we only find 132 events against journalists, which may be considered a small number relative to the total number of observations, we do not believe it is sufficiently small to warrant the use of a rare events estimator or some form of rare events correction. Given that this type of correction might be needed, our estimators are likely to be conservative. Our unit of observation are country days.

5. Results

In this section, we first analyze the factors that lead governments to declare a SOE before turning to the question of whether declaring a SOE has any effects on the number of recorded events against journalists.

5.1. Factors Leading Governments to Declare

As described above, the general question is whether the declaration of a SOE is primarily driven by the state of public health with regard to COVID-19, or, alternatively, by the political attractiveness of calling a SOE. With regard to the state of public health, Table 1 shows that the (log) number of people affected make the declaration of a SOE more likely, but that neither the number of days passed since the first person infected was identified nor the question whether anybody was infected are significant determinants. We proxy the quality of the political system by the levels of democracy, the rule of law, and press freedom. It turns out that countries enjoying a high level of the rule of law as well as a high level of press freedom are less likely to declare a SOE, whereas neither the level of democracy nor the level of economic development are significant predictors for declaring a SOE.

<< Table 1 around here >>

According to the results reported in Table 1, the difficulty of declaring a SOE as measured by the Cost INEP is not a predictor for the recent wave of declarations. The additional powers that accrue to government once it has declared a SOE as indicated by the Benefit INEP are, however, highly significant. The interaction term in Column 2 even suggests that the effect of additional powers may be slightly stronger in democracies. As hypothesized above, the political attractiveness of gaining substantial discretionary power is, thus, not limited to autocratic governments. The last column of Table 1 refers to democracies only. By and large, democratic governments are driven by the same factors as autocratic ones. If anything, the amount of additional benefits a government enjoys once it has declared a SOE may play a more important role in democracies in comparison to autocracies.

Beyond the variables included in Table 1, we also asked if the generalized level of trust is associated with SOE declarations. It turns out that high trust democracies are significantly less likely to declare a SOE, but this result might be entirely driven by the Scandinavian countries. We did not include trust in the main models because the data are available for significantly fewer countries than those included in Table 1. We also asked whether extensive decree powers can be used by a government as an alternative to declaring a SOE. Governments – no matter whether democratic or autocratic – were significantly more likely to declare a SOE if decree powers were low and the benefits from declaring high than when decree powers were high and the benefits from declaring low. We summarize these findings in Table 2, where we show the probability that democracies (autocracies in parentheses) have declared a SOE, given that they are above or below the median of emergency powers and decree power.

<< Table 2 around here >>

Taken together, these results are perfectly in line with previous findings: governments – no matter whether democratic or autocratic – are more likely to declare a SOE if this conveys more benefits to them and allows them to increase their competences to the detriment of both the other branches of government as well as citizens at large. In that sense, things have not been different this time. However, declaring a SOE does not automatically entail negative consequences for citizens. Therefore, we ask how governments have used their additional powers during the pandemic. We refrain from analyzing and evaluating the consequences of short-term measures such as quarantine, lockdown, or efforts to track and trace individuals, as it is impossible to assess the total consequences of such measures before the virus has run its full course. Rather, we are

interested in trends that might very well have effects outlasting the current pandemic by, for example, changing policies and de facto institutions.

5.2. Effects on Media Freedom

It has been argued that emergency constitutions have had very long-term consequences, e.g., that the constitutionalized emergency provisions of 19th century Latin American countries made the populist and militarist governments of the 20th century possible (Loveman 1993). Media freedom, which often suffers during and after emergencies, has been shown to make government action more transparent and accountable (Dreze & Sen 1990). It is also a necessary condition for a pluralist democracy as competing policy measures can be weighed and discussed widely only if the media is free to report on these. However, as noted by a number of studies, these mechanisms also imply that many governments and politicians are reluctant to respect media freedom and are interested in using emergency powers to curtail them (Bjørnskov & Voigt 2020c).

As a consequence of the pandemic, a number of countries have passed legislation making the spreading of “fake news” a criminal offense although leaving the definition of “fake” an open question. We therefore ask whether there is a significant association between events against journalists and SOEs. “Events against journalists” can include: new legislation to restrict media freedom, detention or arrest of journalists, journalists not allowed to report, and crackdown on “fake news”. We collected data from newspapers and media reports on these sorts of events. Between February 1, 2020 and May 10, 2020, we find 132 such events. Table 3 shows that fewer such events are expected in democracies, but are more likely in the early stages of the pandemic (as measured by the number of days since December 31, 2019) and in countries with

higher numbers of infected people. Importantly, a government that has declared a SOE is more likely to stage such events than governments that have not declared. And again, emergency provisions allocating more benefits to the executive under a SOE are more likely to draw on measures curtailing media freedom.

<< Table 3 around here >>

It remains a possibility that passing fresh legislation curtailing media freedom is a precondition for observing events against journalists. Table 4 counts the number of events against journalists taking into account whether any such legislation has been passed (both before and after possible events). According to the numbers reported in the table, it seems fairly irrelevant whether a country first introduced new legislation or not. Finally, a specific result is worth mentioning: when we only look at one particular category among the events against journalists, namely journalists arrested, and how often autocracies resort to such behavior, we find that 16% of those autocracies whose emergency provisions convey few benefits to the government have arrested journalists, compared to 52% of those autocracies conveying many benefits ($p < .01$). Clearly, the contents of emergency constitutions does seem to matter also in autocracies, while we find no clear differences among democracies. Note that the likelihood of arrests in democracies and autocracies with few emergency benefits does not differ significantly.

<< Table 4 around here >>

6. Conclusions and Outlook

Summing up, it seems safe to conclude that this time is not different. As under previous natural disasters, democratic and autocratic governments alike have

behaved like power-maximizers during the corona pandemic. We find that the discretionary power they gain during emergencies is the main determinant of whether they declared a state of emergency, while the severity of the epidemic is irrelevant. We also observe that the same governments are likely to misuse these powers against journalists and the media. The danger, as under previous disasters, is that some of the measures now implemented are likely to outlast the current pandemic and weaken the rule of law and democracies for many years to come. In fact, in many countries the ultimate victim of the corona virus may be the separation of powers and freedom of expression.

Figure 1. Emergency declarations

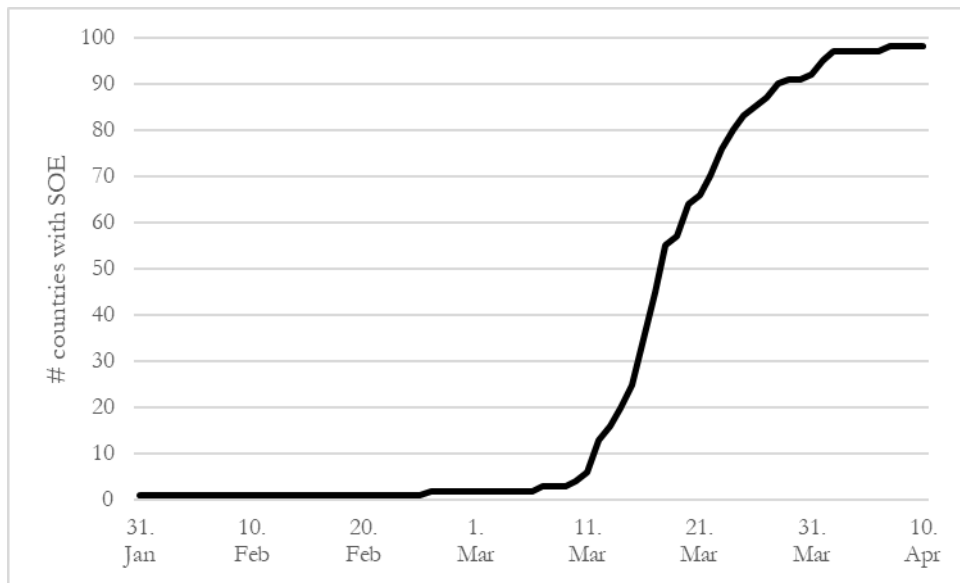


Figure 2: Repressive events against journalists and media

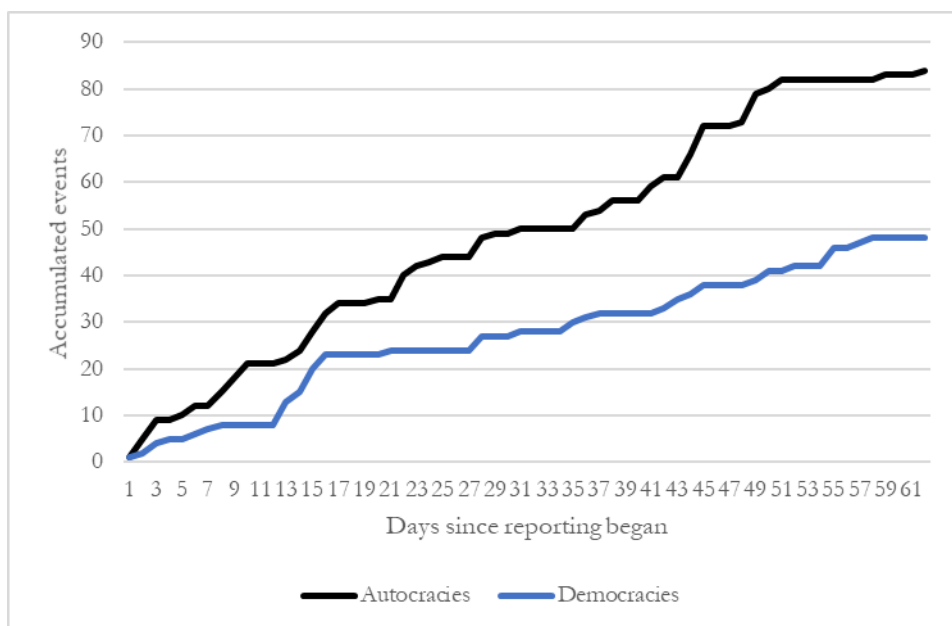


Table 1: Determinants for Declaring a SOE

	1	2	3
Democracy	-.472 (1.023)	-8.890* (3.833)	-
Rule of law	-4.255** (.888)	-4.368** (.917)	-5.126** (1.335)
RSF press freedom	-.283** (.059)	-.298** (.063)	-.181* (.086)
Log GDP per capita	.249 (.554)	-.001 (.595)	1.178 (.931)
Log population size	-.621 (.319)	-.704* (.349)	-1.109** (.419)
Log days since start	.229 (1.041)	.307 (1.100)	.172 (1.157)
Log infected	1.080** (.232)	1.142** (.243)	1.396** (.301)
Any infected	1.806* (.871)	1.723 (.886)	1.427 (1.124)
Cost INEP	3.206 (3.280)	-8.673 (5.632)	6.517 (3.764)
Benefit INEP	8.325** (1.828)	7.731** (2.427)	10.484** (2.674)
Cost at Democracy		7.547 (34.106)	
Benefit at Democracy		9.968** (2.628)	
Observations	9665	9665	5896
Countries	158	158	96
Log likelihood	-376.682	-374.939	-258.843
Wald Chi sq.	54.52	56.73	45.92

Note: ** (*) denote significance at $p < .01$ ($p < .05$). Estimates are obtained with a random effects logit estimator and include a constant term.

Table 2: Probability of SOE Declaration Depending on Emergency as well as Decree Powers

		Decree index	
		Low	High
Benefit INEP	Low	0.79 (0.18)	0.41 (0.45)
	High	0.79 (0.57)	0.60 (0.20)

Note: Numbers in parentheses pertain to autocracies.

Table 3: Determinants of Events Against Journalists

	1	2	3
Democracy	-1.635** (.379)	-	-1.721** (.375)
SOE	.405 (.295)	.765 (.546)	1.327 (1.107)
Rule of law	-.140 (.222)	-.307 (.587)	-.259 (.232)
RSF press freedom	-.000 (.014)	.025 (.041)	-.000 (.015)
Log GDP per capita	.227 (.170)	.092 (.506)	.326 (.176)
Log population size	.680** (.105)	.787** (.218)	.726** (.108)
Log days since start	.423 (.423)	.087 (1.474)	.483 (.425)
Log infected	-.032 (.055)	.012 (.146)	-.034 (.055)
Any infected	1.661* (.753)	-	1.665* (.752)
Cost INEP	-.099 (.743)	-3.405 (1.881)	1.641 (1.387)
Benefit INEP	.210 (.553)	.215 (1.253)	-.689 (.652)
Cost with SOE			-4.761* (2.029)
Benefit with SOE			3.277** (1.229)
Observations	11,344	6174	11,344
Countries	162	99	162
Log likelihood	-510.909	-145.349	-505.625
Wald Chi sq.	89.10	46.49	89.21

Note: ** (*) denote significance at $p < .01$ ($p < .05$). Estimates are obtained with a random effects logit estimator and include a constant term.

Table 4. Sequence of events against journalists

De jure changes		De facto changes		
		None	First	Second
De jure changes	None	-	27 (13)	-
	First	8 (1)	-	5 (3)
	Second	-	7 (5)	-

Note: numbers in parentheses refer to democracies.

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