

The Legacies of Judicial Instability in Latin America¹

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Abstract

Students of institutions have identified a pattern of “serial replacement,” distinctive of Latin American countries in which institutional change has become frequent as well as radical. Patterns of serial replacement underlie well-known “traps” of de-institutionalization: military coups beget more coups, democratic breakdowns make breakdowns more likely, constitutional replacements encourage the adoption of new constitutions, inter-branch conflicts feed further conflicts, and so on. In this paper we develop a theory of serial replacement and apply it to explain cycles of judicial instability in 18 Latin American countries. Using a novel dataset covering more than 3,000 Supreme Court and Constitutional Tribunal justices between 1900 and 2010, we show that political attempts to reshuffle Supreme Courts and Constitutional Tribunals encourage new attempts to reshuffle the high courts in later

years, creating a sequential pattern of judicial instability.

Keywords

Theory of Serial replacement –
Judicial instability – Latin America

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Why do some societies experience traumatic events repeatedly, while others never undergo such incidents? How can the literature on serial events illuminate the study of judicial politics? We argue that political purges of Supreme Courts and Constitutional Tribunals follow a recursive pattern already described by students of other phenomena in political science. The reshuffle of a high court can be a costly endeavor, provoking strong legal and political responses against the rulers attempting it. However, purges have become a common practice in certain countries, with serious consequences for democracy over the long run (Pérez-Liñán and Mainwaring 2013). We analyze the factors that account for such cycles of judicial instability.

Scholars in several fields have documented political processes following a recursive pattern. The literature in International Relations has identified enduring rivalries that yield recurrent interstate militarized disputes (Gartzke and Simon 1999; Gochman and Maoz 1984; Goertz and Diehl 1993) as well as intermittent civil wars within the same country (Collier and Sambanis 2002; Mattes and Savun 2010; Walter 2004). In Comparative Politics, scholars have analyzed why some countries experience repeated military coups (Hiroi and Omori 2013; Lehoucq and Pérez-Liñán 2014; Londregan and Poole 1990), regime breakdowns (Przeworski 2009; Przeworski et al. 2000), or institutional changes (Levitsky and Murillo 2013; Negretto 2012). And in American Politics, academics have studied the recurrent adoption of obscenity legislation at the state level (Jones and Branton 2006).

Even though there is scant research addressing the recurrence of purges in high courts (Basabe-Serrano and Polga-Hecimovich 2013; Helmke 2005; Helmke and Staton 2011), the literature in other fields can contribute to develop a theoretical framework to study this phenomenon. Judicial instability in developing countries has been long acknowledged, but only in recent years scholars have started to study its causes (Basabe-Serrano and Polga-Hecimovich 2013; Castagnola 2012; Lara Borges, Castagnola, and Pérez-Liñán 2012; Leiras et al. 2011; Pérez-Liñán and Castagnola 2009).

In the first section of this paper we introduce the concept of serial events and show that this category can be applied fruitfully to the study of judicial reshuffles. The second section discusses two mechanisms typically invoked to account for recursive events and extends their logic to the study of judicial instability. We operationalize these mechanisms and test their impact using a sample of high court justices in 18 Latin American countries between 1900 and 2010 in section three. The conclusions underscore that historical legacies pose a heavy burden for legal institutions, but also explain why legacies are not inescapable.

Serial Events and Judicial Turnover

We define serial events as recurrent contests to reallocate power among political actors, which produce cyclical disruptions of the status-quo. In line with this definition, Goertz and Diehl (1993) operationalize enduring rivalries by looking at three features of international disputes: competitiveness, duration (time), and spatial consistency. According to Goertz and Diehl, recurrent

disputes reveal that actors are engaged in a competition over a scarce good. Whether the good is tangible (e.g., land) or intangible (religious dominance), the struggle has distributive implications for the power resources of all parties involved. This feature is common to other manifestations of serial events. The literature on “coup traps” has underscored the implications of repeated military rebellions for domestic actors struggling to control the political regime (Londregan and Poole 1990), while the literature on serial institutional replacement has emphasized the distributive consequences of new constitutional designs for political parties seeking to control the government (Negretto 2013).

Temporal persistence is central to the definition of serial events because redistributive struggles manifest themselves recursively. Persistence, however, evades a unanimous operationalization. Students of militarized disputes have argued that conflicts should recur for more than few years to claim a rivalry qualifies as “enduring” (Goertz and Diehl 1993). Adding to the complexity of this issue, the recurrence of serial events implies that manifest struggles are intermittent, while the latent conditions that give them an identity are persistent.

The requirement of spatial consistency often transcends its geographic connotation to refer to the identity of players. In international affairs, it typically refers to the stability of state dyads engaged in recurrent conflict (Gochman and Maoz 1984). For students of domestic affairs, an extended interpretation of this principle implies the persistence of actors involved in civil war (Mattes and Savun 2010), or of institutions involved in inter-branch conflict (Helmke 2010).

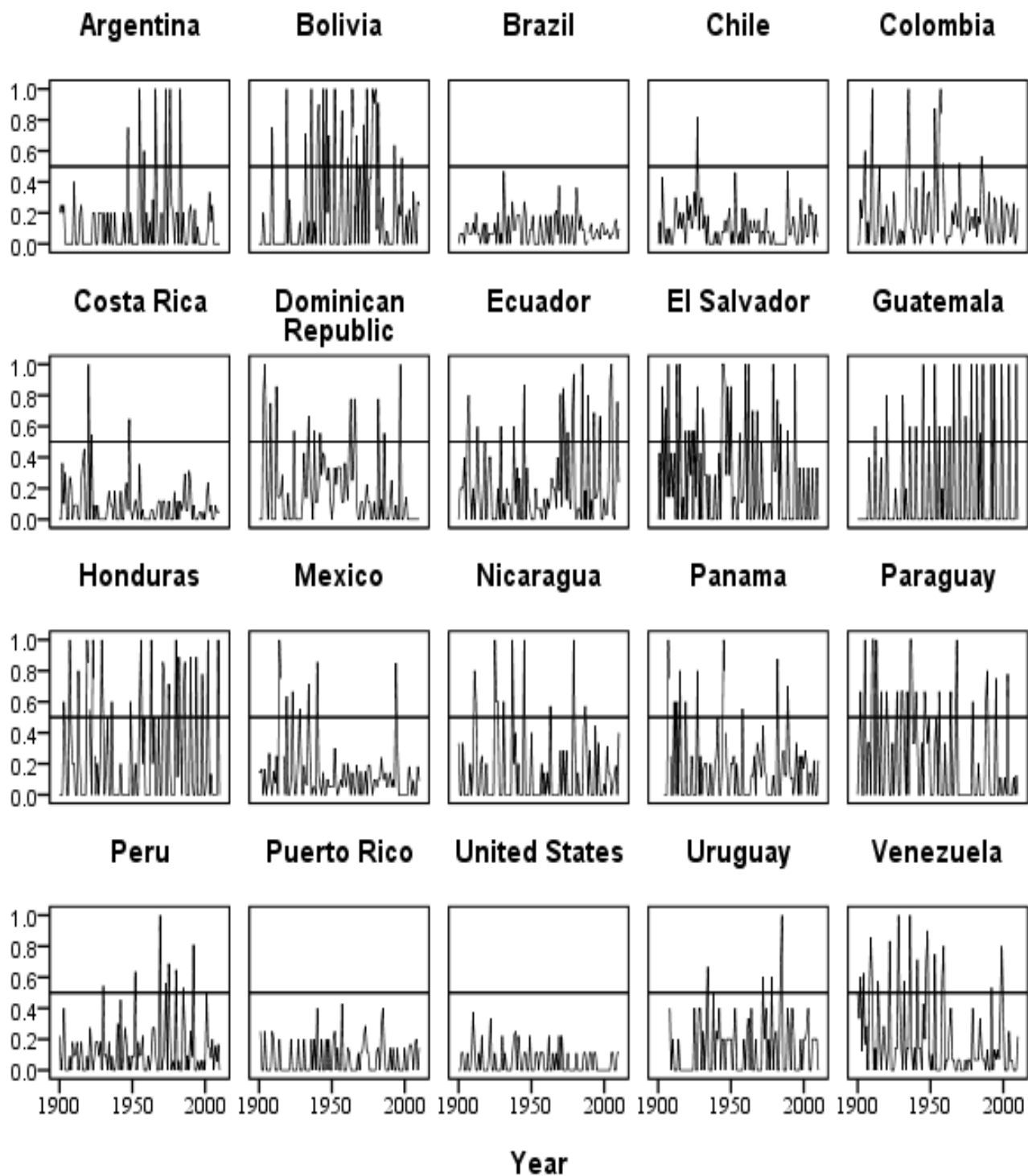
Implicit in most discussions of serial events is the assumption that these episodes are disruptive of a normatively desirable status-quo (e.g., peace, democratic stability, legal integrity). Normative considerations suggest that militarized interstate disputes, civil wars, military coups, inter-branch confrontations, or constitutional replacements are not intended to recur. By contrast, regular contests to reallocate power through institutionalized elections are considered normal politics and thus beyond this conceptualization. The recurrence of scheduled institutional events denotes that those events are part of the existing status-quo, and not a disruption of it. In these cases, the desirable status-quo is itself dynamic.

In this study we focus on recurrent judicial turnover, a particular type of serial event that affects the stability of judges in office. Repeated turnover undermines the autonomy of the judiciary and the legitimacy of legal institutions (Castagnola and Perez-Liñán 2011; Helmke 2005; Helmke and Staton 2011). Occasional reshuffles of the Supreme Court or Constitutional Tribunal may be necessary to replace judges tainted by corruption or linked to an authoritarian regime, and the reorganization of high courts is not uncommon during democratic transitions (Domingo 2000). However, a history of serial turnover indicates that the high courts in a country are repeatedly subject to political attacks. A pattern of serial turnover is arguably sufficient to thwart judicial independence, for every major political realignment is likely to trigger a new reconstitution of the judicial hierarchy.

Persistent reshuffles of high courts meet the defining features of serial events. The cyclical disruption of the institutional order is marked by multiple purges of the Supreme Court or Constitutional Tribunal. These purges reveal an ongoing battle among partisan players to secure political dominance over the judiciary. Political competition involves a tangible good, the seats in the high courts, with the outcome of each contest producing a redistribution of the power to exercise judicial review and influence legal outcomes in the lower courts.

To illustrate the incidence of serial reshuffles in the Western Hemisphere, Figure 1 depicts the proportion of Supreme Court judges leaving the post in any given year between 1900 and 2010 in eighteen Latin American countries (we also include the United States and Puerto Rico for reference). A majority of the justices never left the Supreme Court simultaneously in the United States, Puerto Rico, or Brazil. Reshuffles took place only once in Chile, three times in Costa Rica, and five times in Uruguay. By contrast, they occurred 26 times in El Salvador, 23 times in Honduras, Guatemala, and Paraguay, and 22 times in Bolivia. While the probability of a Supreme Court Justice leaving office in a typical year was about 6 percent in the United States, 7 percent in Puerto Rico, and 9 percent in Brazil and Costa Rica, it reached 24 percent in Bolivia, El Salvador, and Honduras. Therefore, the expected tenure for a justice is twelve years on average in Costa Rica but barely four years in Bolivia.

Figure 1. Supreme Courts: Exit Rates per Year, 1900-2010



Accounting for Serial Events

Explanations of serial events invoke two alternative logics: they assert the presence of steady factors that create a high (but static) probability of disruptive events, or they postulate the presence of an increasing-return process by which the risk of disruptive events rises (dynamically) with the frequency of past events (Page 2006). This theoretical distinction is akin to the difference between frailty and conditional gap time models in event-history analysis (Box-Steffensmeier and Jones 2004). The two explanations are not incompatible and they often coexist in the literature, but they have different policy implications. In the first case, disruptive events are expected to recur until the underlying risk factors are suppressed, while in the second case the likelihood of disruptive events is expected to rise until a termination mechanism breaks the cumulative trap.

Latent Conditions

The notion of “enduring rivalries” in international affairs constitutes a classic example of the first group of explanations (Gartzke and Simon 1999). Scholars typically argue that, as far as the conditions that originated the first militarized dispute remain unchanged, war is likely to recur (Goertz and Diehl 1993). For example, if the preferences of international actors and their power relations remain the same, rational players will return to the same equilibrium behavior. Structuralist scholars similarly argue that if system structures do not change, the same outcomes are likely to re-appear over time (Deutsch and Singer 1964). Explaining the recurrence of civil wars, Walter claims that “civilians are not going to transform themselves from shopkeepers back into soldiers unless the conditions that exist *at any given point in time* encourage this transformation” (Walter 2004: 374, italics in original).

Within the Comparative Politics literature, Levitsky and Murillo (2013) focus on recurrent (and radical) institutional change in Latin America. The authors claim that institutions born weak are unlikely to endure. Institutional weakness results from high uncertainty about the distribution of power at the time of institutional adoption, as well as from a disjuncture between the goals of legislators and those of *de facto* power holders. Such initial conditions, in turn, are fostered by latent factors such as frequent regime instability, electoral volatility, and social inequality, and partially compensated by circumstances that allow for selective enforcement and reduce the risk of institutional displacement.

Acemoglu and Robinson (2006) similarly explain recurrent coups in unconsolidated democracies as the result of a cycle in which elites concede democracy when revolution is likely and overthrow democracy when a coup becomes viable. When the cost of revolting is low for the poor, elites agree to democratize the system and redistribute income. Yet, when exogenous factors reduce the cost of a coup, elites overthrow the regime and reestablish income inequality. Democratization returns when exogenous conditions reduce, once again, the cost of revolution for the excluded; but anticipating another coup, the median voter redistributes income promptly, re-igniting the cycle (Acemoglu and Robinson 2006, 242-243). In this account, serial events are driven by a latent

condition (inequality) that makes redistribution costly for elites, combined with random exogenous shifts in the cost of revolutions and coups.

Legacies and Increasing Risk

The second group of explanations emphasizes a dynamic understanding of recurrent events in which the risk of failure is conditional on a previous history. Under this interpretation, the baseline hazard rate is not the same for all events. The assumption underpinning this approach is that events are dependent from one another, meaning that previous episodes have a significant role in explaining the occurrence of future ones and, therefore, that cases with a prior history of disruptive struggles are more likely to experience the same event again (Box-Steffensmeier and Jones 2004; Box-Steffensmeier and Zorn 2002; Hiroi and Omori 2013).

An example of this perspective is offered by Hensel (1994; 1995), for whom countries with a longer history of interstate conflict are more likely to experience new confrontations. Studies concerned with the so-called “coup trap” provide another instance of this type of research. The literature has claimed that societies with a past history of violent seizures of power are more likely to experience military coups (Londregan and Poole 1990; Putnam 1967) and that the frequency of democratic breakdowns in the past helps explain the likelihood of regime instability in the future (Przeworski 2009).

Given these two perspectives, the end of recurrent events can be explained either by a transformation of the existing situation underpinning the conflict, or by an episode that breaks the connection of future events with the past. For example, Walter (2004) notes that, according to the literature on civil war, conflicts involving strong identities or extreme objectives are more likely to recur, but long or expensive wars, as well as those that produce a decisive military victory, are less likely to trigger a sequel (Gurr 2000; Kaufmann 1996; Rothchild and Groth 1995; Wagner 1994). Explanations for the end of cyclical armed conflicts are often cast in terms of solutions to underlying commitment problems and information asymmetries (Hartzell and Hoddie 2003; Mattes and Savun 2010). Similarly, in Acemoglu and Robinson’s (2006) account of unconsolidated democracies, the cycle of political instability is hard to break because elites cannot commit to respect democracy, and the median voter cannot credibly commit to moderate redistribution. The literature on military coups has argued that the establishment of free elections plays a critical role in accounting for the end of recurrent political instability, because greater political competition reduces incentives to destabilize the new regime for the losing side of the previous coup (Lehoucq and Pérez-Liñán 2014).

Cycles of Judicial Instability

Both perspectives are potentially relevant to explain recurrent judicial turnover. The first perspective suggests that contexts of political turmoil—e.g., unstable regimes or short-lived constitutions—will intermittently empower politicians to take extraordinary actions and facilitate the reshuffling of high courts. The reason why politicians, and especially executives, want to craft a

friendly court is straightforward: justices are powerful veto players with capacity to undermine the government's policy agenda, and thus enhance or diminish the power of an administration (Helmke and Staton 2011). Unfriendly justices can reverse policies or alter the distribution of partisan power within formal institutions. In contexts of institutional turmoil, where politicians' horizons are short and extraordinary actions are granted, leaders will often take advantage of the situation to craft loyal courts.

Not surprisingly, some of the countries with the highest rates of judicial turnover in Figure 1 also have complex histories of political and institutional turmoil. Between 1900 and 2006, Bolivia experienced 19 coups and Honduras experienced 13 coups, while Costa Rica and Uruguay experienced two coups each in this period (Lehoucq and Pérez-Liñán 2014). During the twentieth century, Ecuador had nine different constitutions, Honduras had eight, and El Salvador had seven, while Chile had three (Negretto 2013).

Notice that according to this perspective, repeated instances of judicial turnover are simply a manifestation of the recursive nature of institutional shocks such as regime changes or constitutional replacements. Thus, we hypothesize that

H1. Contexts of recurrent institutional instability account for patterns of serial judicial turnover.

The second perspective, by contrast, suggests that prior experiences of judicial instability are likely to encourage new episodes in the future. Following the logic outlined in other fields, we argue that countries will fall in a judicial instability trap, with the probability of reshuffles increasing after previous purges of the high courts. Judicial reshuffles erode the legitimacy of legal institutions, facilitating subsequent attacks, and politicize the bench, creating stronger incentives for additional takeovers in the future (Helmke 2005; Pérez-Liñán 2011). Scholars have demonstrated that the independence of the judiciary is not always the most preferred outcome in developing countries because politicians have short-term horizons and manipulation of the judiciary becomes a resource to retain power (Aydın 2013; Popova 2012). Partisan loyalties have proven to be a relevant explanatory variable to account for judicial turnover in Latin American countries (Pérez-Liñán and Castagnola 2009). Therefore, governments confronting a judiciary packed by prior incumbents will have strong incentives to restructure the courts during their early years in office. This perspective can be linked to the idea of positive feedback in theories of path dependence and regime legacies (Pérez-Liñán and Mainwaring 2013; Pierson 2000), since every purge of the court ends up reinforcing an increasing risk of further purges.

H2. A legacy of past judicial instability accounts for recurrent patterns of judicial turnover.

Evidence

We explore those arguments using a dataset covering more than 3,000 Supreme Court and Constitutional Tribunal justices in 18 Latin American countries between 1900 and 2010. Each observation in the dataset represents a

judge-year ($N = 25,367$). The analysis relies on a discrete-time survival model that estimates the risk of any judge leaving office in a given year as a function of contemporary political turmoil and legacies of past judicial instability, plus a battery of controls discussed below.

Latent Conditions for Turmoil

If repeated instances of judicial turnover are just a reflection of recurrent political turmoil, controlling for contemporaneous critical events should suffice to account for judicial instability. We employ four indicators of latent turmoil, capturing the occurrence of democratic transitions, democratic breakdowns, constitutional replacements, and constitutional amendments affecting the judiciary in any given year. Presumably, regime change should have greater potential to disturb the courts than formal constitutional change, and full constitutional replacements should have greater potential to upset the judiciary than mere constitutional amendments.

Measuring Legacies

Legacies of judicial instability are hard to operationalize. Studies of discrete events, such as militarized interstate disputes, civil wars, or military coups, typically assess legacies by counting the cumulative number of episodes over a given period (e.g., the past two decades), or by measuring the number of years elapsed since the last event. An equivalent strategy for judicial turnover would require the identification of court-level events, such as reshuffles (i.e., the replacement of a majority of justices in a single episode). However, recent experiences in Latin America suggest that counting the number of reshuffles or the time elapsed since the last reshuffle may not suffice to assess judicial instability. Governments in Argentina and Bolivia, for example, placed pressures on the high courts to induce the retirement of justices, without reshuffling the courts abruptly in any single year. The result was considerable turnover, but retirements were spread over several years rather than concentrated in a single episode.

To account for this possibility, we measure legacies of instability by taking the average yearly risk of judges leaving office over a past period. Using this measure, for example, a score of 0.5 could indicate that all court members were replaced in a given year and new judges retained their posts the following year, or that half of the court retired every year. Because we are interested in assessing the consequences of legacies over the long run, we compare the effects of this indicator over the past decade, the past two decades, and the past four decades.

Preliminary tests indicated no geometric decline in the effects of past instability on future turnover, thus we do not weight episodes of instability in recent years more than those that took place in the distant past. The formula for the measure of legacies confronted by court i in year t is simply $L_{it} = \frac{1}{H} \sum_{h=1}^H \frac{E_{it-h}}{N_{it-h}}$, where E represents the number of exits from the court in any given year, N is the size of the court (which may vary over time), and H is the length of the history

(10, 20, or 40 years). The scores for the index range between 0 and .58 (for 10 years) or .49 (for 20 and 40 years).

Alternative Explanations

Many other conditions may explain the departure of justices from the Supreme Court or Constitutional Tribunal, including the completion of their terms, ageing, short-term political considerations, and general country conditions—which may be directly observable or not (Hagle 1993; Hall 2001; Maitra and Smyth 2005; Ward 2003). We control for several institutional, partisan, and contextual explanations. Our institutional controls include a dichotomous indicator for judges who belong to constitutional tribunals (as opposed to supreme courts), another one to capture the last year of a judge's term in courts without life tenure,² and the size of the court. Partisan controls include dummies for a new administration coming to office over the past 24 months, a new ruling party coming to office in the same period, whether a judge was appointed during the current administration, and whether the judge was appointed during a government of the same party. National-level conditions are reflected by levels of democracy, measured through the Polity IV score, per capita income (measured in constant 2005 US dollars), and the yearly growth rate of per capita GDP.³ In addition, all models include country dummies to account for unobservables.

Biographic data is not available for most Latin American justices in the early twentieth century, so we include a cubic transformation of the time in office for each justice to reflect changes in the hazard rate related to age, health, and experience in the post (Carter and Signorino 2010). We supplement this strategy in one of the models by including a frailty parameter that allows the baseline hazard to vary randomly across judges.

Table 1 presents the results of several discrete-time survival models including only the measures of latent political turmoil and the control variables. Our baseline Model 1.1, presented for initial reference, includes dummy variables for each country, to account for unobservable factors, an indicator for judges who belong to constitutional tribunals (as opposed to supreme courts), and a cubic transformation of the time in office. Entries are odds ratios, with values greater than one reflecting an increase in the risk of leaving the court and values lower than one reflecting a decline in the hazard rate.

The results in 1.1 indicate that members of constitutional tribunals confront a greater risk of departure than other justices. Models 1.3 and 1.4 also show that this difference cannot be explained simply by differences in the length

² In most cases judges can be reappointed, thus the end of the term does not guarantee an exit from the court

³ The Polity score ranges from -10, for institutionalized autocracies, to 10, for institutionalized democracies (Gurr, Jagers, and Moore 1990). Information on per capita income was obtained from the World Development Indicators for 1961-2010, and imputed retrospectively using growth rates for earlier years. Growth rates were obtained from several sources, including Bergés, FitzGerald, and Thorp (2007); Heston, Summers, and Aten (2006); Maddison (2003).

of their respective terms, suggesting that constitutional judges are more likely to be subject to political pressures.

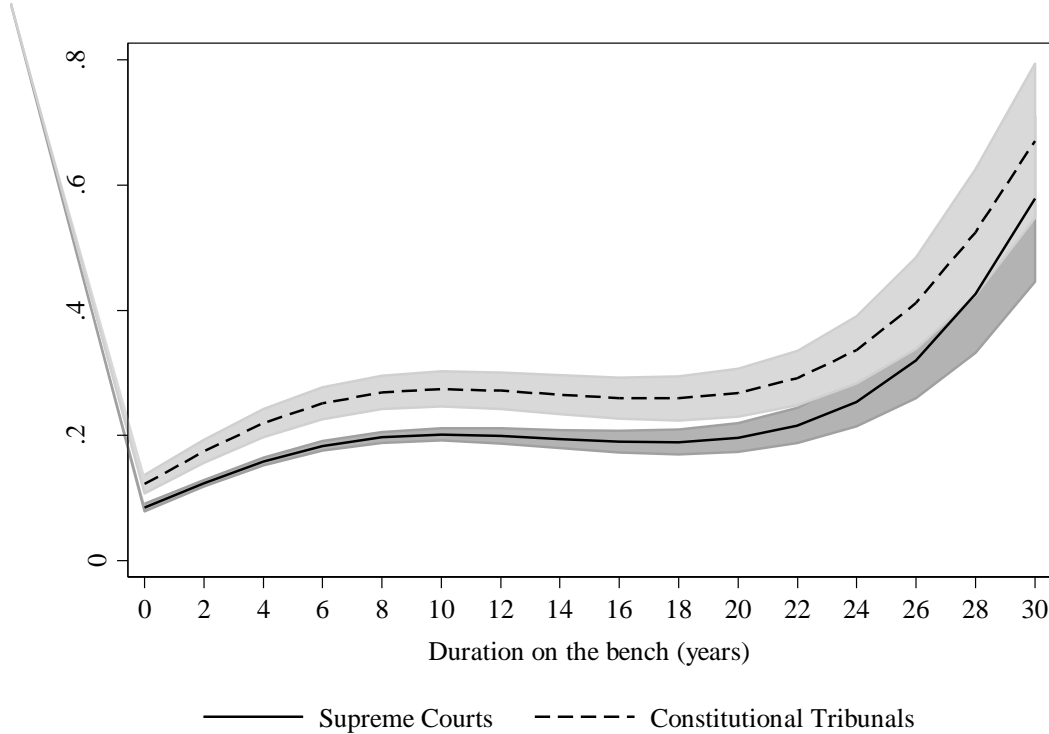
Table 1. Discrete-Time Models of Judicial Turnover

	1.1		1.2		1.3		1.4	
	Estimate	(s.e.)	Estimate	(s.e.)	Estimate	(s.e.)	Estimate	(s.e.)
Duration (years)	1.29**	(0.02)	1.33**	(0.02)	1.11**	(0.03)	1.15**	(0.03)
Duration ²	0.98**	(0.00)	0.98**	(0.00)	0.99**	(0.00)	0.99**	(0.00)
Duration ³	1.00**	(0.00)	1.00**	(0.00)	1.00**	(0.00)	1.00**	(0.00)
Constitutional Tribunal	1.52**	(0.11)	1.65**	(0.12)	2.43**	(0.22)	2.50**	(0.25)
Country effects	Yes		yes		yes		Yes	
Latent Conditions								
Democratic transition			2.46**	(0.22)	1.90**	(0.17)	1.97**	(0.19)
Democratic breakdown			3.29**	(0.32)	2.32**	(0.23)	2.42**	(0.25)
Const. replacement			2.63**	(0.19)	2.43**	(0.18)	2.47**	(0.19)
Const. amendment			2.12**	(0.16)	2.12**	(0.17)	2.15**	(0.18)
Controls								
End of term					2.99**	(0.20)	3.06**	(0.21)
Size of the court					1.03**	(0.00)	1.03**	(0.01)
New administration					1.33**	(0.08)	1.33**	(0.08)
New ruling party					1.15*	(0.07)	1.15*	(0.07)
Appointed by administration					0.54**	(0.04)	0.53**	(0.04)
Appointed by ruling party					0.86**	(0.05)	0.83**	(0.05)
Polity score					0.96**	(0.00)	0.95**	(0.00)
Per capita GDP					0.92**	(0.02)	0.91**	(0.02)
Growth GDP					1.00	(0.00)	1.00	(0.01)
Constant	0.10**	(0.01)	0.07**	(0.01)	0.10**	(0.01)	0.10**	(0.01)
Number of observations	25,367		25,362		25,362		25,362	

Note: Entries are odds ratios (standard errors). Country parameters (in all models) and frailty variance parameters (in Model 1.4) are omitted to save space. * $p < .05$ ** $p < .01$

Moreover, time in office is an important proxy for the incentives to retire. To illustrate this point, Figure 2 depicts the expected risk of exit for members of Supreme Courts and Constitutional Tribunals as time goes by. The probability of departure stabilizes between 20 and 27 percent for any individual after seven years on the job, but it rises dramatically after two decades (the two types of courts become indistinguishable at this stage). After three decades in office, a Supreme Court justice is expected to retire within 21 months.

Figure 2. Expected Risk of Exit for Judges in Supreme Courts and Constitutional Tribunals



Note: based on Model 1.1. Values reflect prediction for the average justice, holding country effects fixed for each observation. (Bands are 95% confidence intervals).

Model 1.2 incorporates the measures of latent political turmoil, showing effects that are consistent with our theoretical expectations. Democratic transitions and breakdowns, as well as constitutional replacements and even the adoption of constitutional amendments that affect the judiciary, undermine the stability of high courts. The size of the effects is slightly reduced when we incorporate additional controls in Model 1.3, but the direction and significance of the coefficients remains unaltered. Holding all other variables at their observed values, the average judge in the sample experienced an increase of 10 percent in the risk of exit after a democratic breakdown or the adoption of a new constitution, 8 percent with the adoption of a constitutional amendment,⁴¹ and 7 percent after a democratic transition.

⁴ In all simulations we employ the observed-value approach, fixing predictors (except for the variable under analysis) to their observed values for each observation, obtaining the expected probability of exit for all cases, and averaging all probabilities across the sample to produce a point estimate. The simulations fix the variable under analysis at different values and compare repeated sample means to assess the effects of the predictor. This procedure creates a more cautious assessment of marginal effects, as log-odds are converted to probabilities before averaging, and because predicted probabilities are always contained within a realistic range determined by the other conditions (Hanmer and Kalkan 2013).

Column 1.4 presents the results of a frailty estimator which allows for variance in the baseline hazard for each justice. Irrespective of the approach, the estimates for all predictors are highly consistent. The end of the term, not surprisingly, considerably expands the likelihood of a departure from office. So does the arrival of a new administration to power and the arrival of a new ruling party. By contrast, judges are more likely to stay in office if they have been nominated by the incumbent administration or by its party. Justices also enjoy greater stability in more democratic regimes and in more developed countries.

Table 2 adds alternative measures of historical legacies to the specification of Model 1.2. In 2.1 we include the average probability of turnover experienced by the court over the past decade, in 2.2, the probability of turnover over the past two decades, and in 2.3, the probability over the past four decades. In all cases, the effects of legacies are large and significant, reflecting a sizeable increase in the risk of judicial instability as a result of a previous history of reshuffles. The size of the coefficient seems to peak after two decades, thus we keep the second indicator in model 2.4, including all controls. The estimates mimic the results in models 1.3 and 1.4, except that the coefficient for per capita income is not significant.

Table 2. Legacies of Judicial Instability

	2.1		2.2		2.3		2.4	
	Estimate	(s.e.)	Estimate	(s.e.)	Estimate	(s.e.)	Estimate	(s.e.)
Duration (years)	1.38**	(0.03)	1.38**	(0.03)	1.39**	(0.03)	1.16**	(0.03)
Duration ²	0.98**	(0.00)	0.98**	(0.00)	0.98**	(0.00)	0.99**	(0.00)
Duration ³	1.00**	(0.00)	1.00**	(0.00)	1.00**	(0.00)	1.00**	(0.00)
Constitutional Tribunal	1.48**	(0.11)	1.45**	(0.11)	1.44**	(0.11)	2.01**	(0.21)
Country effects	yes		yes		yes		yes	
Latent Conditions								
Democratic transition	2.41**	(0.22)	2.67**	(0.25)	2.79**	(0.29)	2.11**	(0.21)
Democratic breakdown	3.52**	(0.34)	3.95**	(0.40)	4.33**	(0.48)	2.73**	(0.29)
Const. replacement	2.42**	(0.19)	2.45**	(0.19)	2.34**	(0.20)	2.31**	(0.19)
Const. amendment	2.14**	(0.17)	2.09**	(0.17)	2.16**	(0.18)	2.09**	(0.17)
Legacies								
Turnover, past decade	8.06**	(1.89)						
Turnover, past 2 decades			14.40**	(4.39)			10.46**	(3.33)
Turnover, past 4 decades					9.62**	(3.79)		
Controls								
End of term							2.80**	(0.20)
Size of the court							1.02**	(0.01)
New administration							1.37**	(0.09)
New ruling party							1.19*	(0.08)
Appointed by administration							0.55**	(0.04)
Appointed by ruling party							0.84**	(0.05)
Polity score							0.95**	(0.00)
Per capita GDP							1.01	(0.02)
Growth GDP							1.00	(0.01)
Constant	0.04**	(0.00)	0.03**	(0.00)	0.04**	(0.01)	0.05**	(0.01)
Number of observations	23,813		22,362		19,193		22,362	

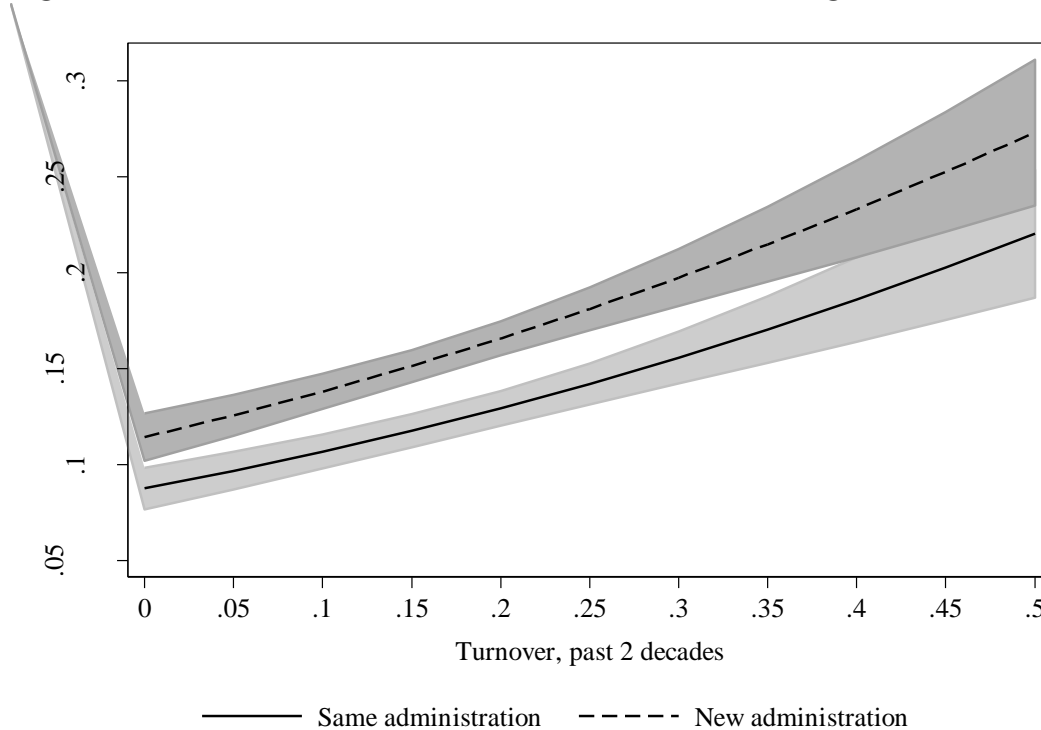
Note: Entries are odds ratios (standard errors). Country parameters are omitted to save space.

* $p < .05$ ** $p < .01$

To provide a realistic assessment of the very large hazard ratios depicted for historical legacies in Table 2, Figure 3 presents the expected probability of turnover for judges after a new administration takes office. Values are computed for different legacies; for example, a score of .25 indicates that a quarter of the court has left office, on average, every year over the past two decades (or that the court was sacked every four years), while a value of .50 reflects that half of the court was displaced, on average, every year (or that the court was reshuffled every two years). Figure 3 suggests that changes in the executive branch may affect the judiciary, but a prior history of reshuffles makes a considerable

difference. In a country with strong legacies of instability, the arrival of a new president to office is expected to displace about a quarter of the Court, but judicial turnover is also likely to ensue throughout the administration.

Figure 3. Effects of a New Administration, Controlling for Different Legacies



Note: based on Model 2.4. Values reflect prediction for the average justice in the sample, holding other variables at their observed values. (Bands are 95% confidence intervals).

Discussion and Conclusions

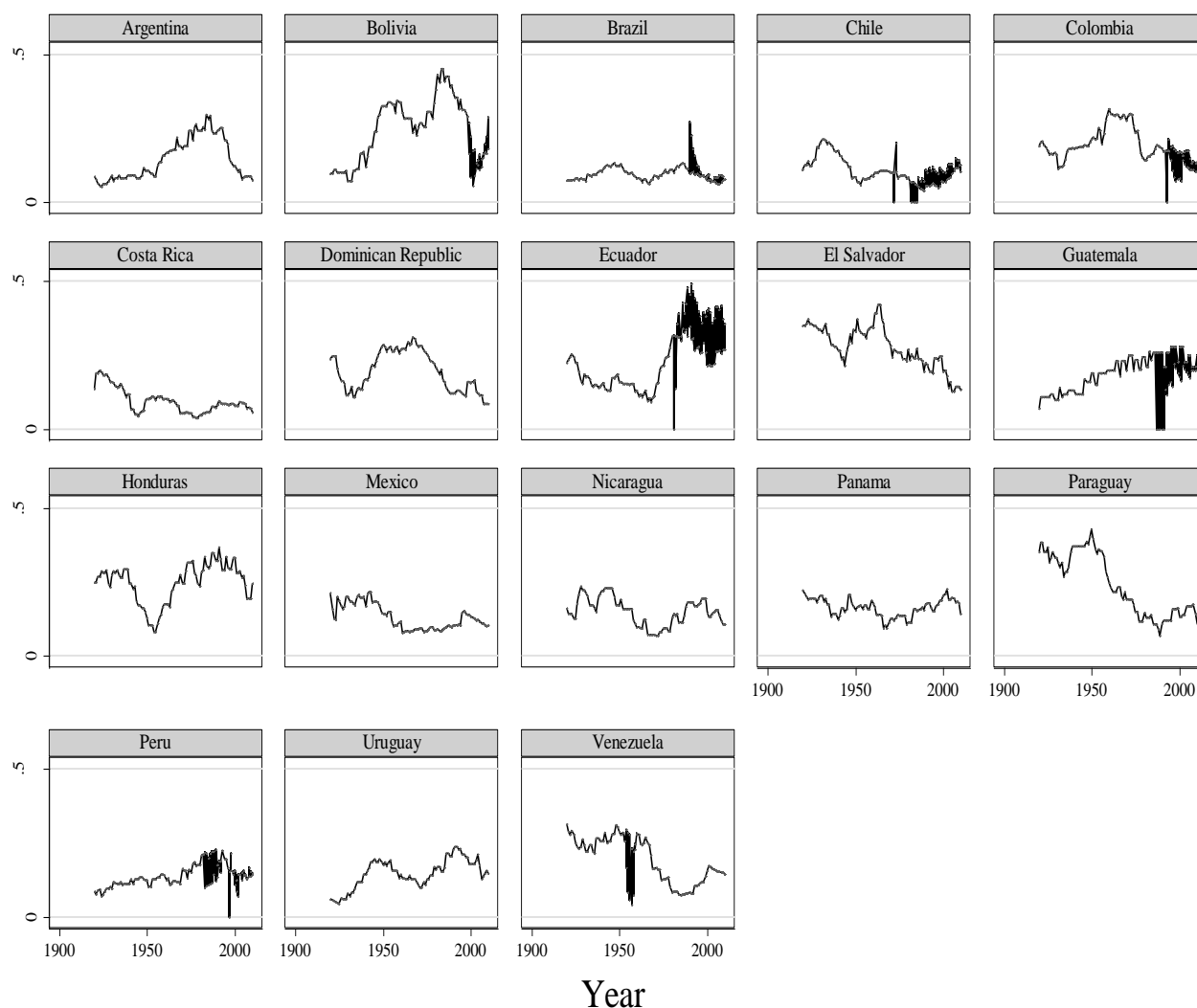
The literature on Comparative Politics and International Relations has identified multiple examples of serial events, recurrent contests intended to produce a redistribution of power in a given territory. Militarized conflicts, civil wars, military coups, and institutional change, among other processes, seem to follow this pattern. We have shown that judicial turnover is also an instance of serial recurrence: the reshuffle of high courts rarely happens in isolation, and countries that engage in this behavior once are likely to repeat it in the future.

Many explanations of serial events remain ambiguous with regard to the underlying mechanisms that produce this recurrence. In some accounts, latent conditions produce a high probability of an event in some cases but not others, and repetition rates are just a manifestation of different underlying Bernoulli processes. In other accounts, recurrence is the product of a self-reinforcing mechanism and different repetition rates result, so to speak, from alternative realizations of the same Polya process.

We have documented that both approaches are useful to understand judicial turnover. Countries with a high risk of regime turmoil or constitutional change will be exposed to high rates of judicial replacements over the long run. Yet, court reshuffles also create a greater risk of new events in the future, for as long as two decades and maybe much longer. The reasons for these enduring legacies may be several: reshuffles undermine the legitimacy of the courts, making easier to concoct new attacks, they create highly partisan bodies, expanding the need for further purges when a new administration comes to office, and they ultimately establish, after several episodes, the informal “right” of all rulers to control the judiciary.

Legacies of judicial instability constitute a serious concern in much of Latin America. But these legacies are not inescapable, precisely because the two logics described above interact. If judicial turnover is subject to contemporaneous exogenous shocks as much as to past legacies, the overall risk confronted by judges will change with the political environment, and legacies may ultimately shift over the long run. Figure 4 plots the values of our twenty-year measure for 18 countries between 1920 and 2010 (black bands reflect the range of legacies confronted by judges in supreme courts and constitutional tribunals, where both institutions exist). The trends show a secular improvement in the historical conditions for judges in Colombia, the Dominican Republic, El Salvador, and Paraguay. There is also some evidence of recent improvements in Argentina. But the legacies of judicial instability remain a heavy burden for high courts in Ecuador, and they offer alarming trends for the future in Bolivia, Honduras, Guatemala, and Venezuela.

Figure 4. Legacies of Judicial Instability in Eighteen Latin American Countries



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Note: Dark bands reflect range for Supreme Court and Constitutional Tribunal.

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Notes