Bolivia: The Rise (and Fall) of Judicial Review[1]

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The Bolivian case illustrates the possibility of creating of an activist judiciary through institutional design, but it also illustrates the political limits of institutional experiments in the late twentieth century. Bolivia is for this reason encouraging and humbling, an example of institutional transformation as well as one of historical persistence. In this paper we analyze the main institutions of the Bolivian judiciary from a historical perspective, emphasizing the decisive transformations of the last decade.

In the first section we discuss the trajectory of the Bolivian Supreme Court, its constitutional powers and the incentives confronted by its members. A historical analysis of the Court suggests that until 1995 Bolivia evolved towards a decentralized model of judicial review, but justices had limited incentives to become activists or political arbiters. Instability of judicial tenure became acute as a consequence of political turmoil between 1930 and 1982, and the evidence suggests that some of the informal practices observed at the beginning of the twenty-first century (in particular, the delay in filling open vacancies in high courts) were already exercised one hundred years ago.

As we show in section two, the creation of the Constitutional Tribunal in 1998 inaugurated a centralized model of judicial review. The Constitutional Tribunal increasingly asserted its power until 2006 when it disintegrated under the threat of impeachment. Just as in the case of the Supreme Court,

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members of the Tribunal were in principle appointed for ten years, but the average tenure in office in both cases was less than four years.

In the third section we discuss the structure of the lower courts, emphasizing the excessive workload (particularly in civil courts), and the risk of politicization at all levels of the judiciary (about 17 percent of the lower level judges declared being victims of political pressures in 2002-03). We then explore citizen perceptions of the legal system. Survey data collected in 2004 indicates that most Bolivians do not expect the judiciary to protect their rights. This problem is more visible among citizens who fear crime, those who distrust institutions in general, and those who live in judicial districts marked by politicization of the courts and case overloads. In the last section we discuss the events that led to the unraveling of the model of judicial review adopted in 1998. The conclusions emphasize the theoretical implications of the Bolivian case: we propose a typology of informal practices used to manipulate the composition of high courts, and explore the ways in which public perceptions of the judiciary's political bias may affect perceptions of its capacity to protect individual rights.

The Supreme Court

Until the conformation of the Bolivian Constitutional Tribunal in 1998, the Bolivian Supreme Court formally exercised the power of judicial review. However, the Court did not embrace an activist role for the protection of individual rights or an arbitration role for the resolution of intra-elite disputes. The political turmoil of the twentieth century (marked by the demise of the Liberal era, the 1952 revolution, a period of military rule, and the return to democracy in 1982) created considerable uncertainty in judicial tenure.

The power of judicial review was established for the first time in the 1861 Constitution and it was consolidated by the 1878 Charter (Asbun 2003; Rivera Santiváñez 1999; Fernández Segado 2002).[2] The 1878 Constitution empowered the Supreme Court to determine the constitutionality of laws, decrees, and other forms of regulation (article 111, inc. 2). To some extent, this principle was inspired by the U.S. case, but its implementation presented some important differences. As in the classic diffuse model of judicial review, rulings in Bolivia operated *inter partes* (i.e., affecting only the parties to the process) (Montaño P. 1998). However, the Bolivian Supreme Court was the only body responsible for declaring the unconstitutionality of legislation, as in a centralized model of judicial review. Yet Bolivian justices, operating in the continental tradition, were not bound to follow established precedent (Asbun 2003; Rivera Santiváñez 1999). Because of these differences some authors have argued that the original Bolivian model of judicial review could be classified as an atypical diffuse one (Asbun 2003). Institutional design restricted judicial activism to the highest court, and moderated the potential impact of adversarial decisions both across space (through the *inter partes* principle) and over time (due to the absence of binding precedent).

The civil war of 1899 led to the downfall of the Conservative Party (including the Supreme Court justices) and the ascent of the Liberals to power. As a result of the war, which marked the emergence of the tin economy, the president and Congress moved to La Paz, but the Supreme Court symbolically stayed in the capital city of Sucre (in the district of Chuquisaca). The Liberal era allowed for an expansion of the administrative capacity of the judiciary, including the construction of the judicial palace in La Paz in 1912-13, the territorial re-organization of lower courts in 1914 (discussed below), and an expansion in the number of courts (Castro Rodríguez 1987).

[2] Earlier constitutions (Bolivia had a total of ten in the nineteenth century) had established that the Supreme Court could assess the soundness (*inteligencia*) of the laws and present the case to the Executive, which in turn could request Congress to revise the legislation (Fernández Segado 2002; Rivera Santiváñez 1999).

The Bolivian model of judicial review ultimately evolved towards a more decentralized pattern when the constitution incorporated the *habeas corpus*, the writ of amparo, and the writ for annulment (*recurso de nulidad*) between 1931 and 1938, empowering the lower courts (Fernández Segado 2002, 1998).

Informal Incentives

A series of informal practices limited the incentives of Bolivian justices to develop activist or arbiter roles during the twentieth century. Even though the Constitution fixed the size of the Supreme Court in order to prevent "packing" schemes, vacancies were often left unfilled in the absence of partisan agreements. Similarly, although the law provided for extended terms in office, justices stayed in the Court for short periods. The Court was reshuffled more than twenty times during the twentieth century. Unfilled vacancies, high judicial turnover, and reshuffles undermined the incentives of Bolivian justices to exercise their power autonomously.

Court Packing vs. Open Seats. Before 2009, Bolivian Constitutions specified the number of sitting justices in the Supreme Court in order to minimize the risk of "packing". During the twentieth century, the number of sitting justices expanded only twice: in 1938, from 7 to 10, and in 1967, from 10 to 12.[3] This tradition ended in 2009, when the new Constitution established that the number of justices would be determined by law (article 182). This rule could undermine the independence of the judiciary, because presidents with strong partisan powers will be capable of expanding (or contracting) the size of the Court, thus altering its composition.

The fixed number of members was partly the result of a distinctive Bolivian tradition: territorial representation in the Court. The 1839 constitution established that the Court should be integrated with

[3] In December 1955, President Victor Paz created a Social Chamber with five additional members (Decree-Law No. 4281), but this initiative only lasted one year.

justices from the different departments (Castro Rodríguez 1987, 137). This rule was formally eliminated in 1861, but it remained as one of the unwritten guidelines for the selection of justices well into the late twentieth century.

Even though Bolivian law dictated the size of the Supreme Court, Congress often failed to fill open vacancies. As an extreme case, President Mariano Melgarejo (1864-1871) was notorious for delaying the payment of judicial salaries, achieving in the end the resignation of all Supreme Court members except for the chief justice--who remained in office as the last standout for judicial independence (Castro Rodríguez 1987). Our analysis indicates that between 1900 and 2008, the Court operated with an incomplete membership for about 53 percent of the time.[4] This problem was particularly acute at the beginning of the twentieth century (the Court operated with four or five members until 1918) and towards the end of the century (the number of justices fluctuated after 1988). Generally, unfilled vacancies in the Supreme Court were associated with deadlocks in Congress. As we discuss later in the paper, this problem became crucial in the period 2003-2009.

Tenure. In most Latin American countries justices are appointed for fixed terms rather than for life. Bolivia is no exception. Between 1880 and 2009, justices were appointed for 10 years, but the recent constitutional reform shortened the term to 6 years. Initially there were no term limits: between 1880 and 1995, immediate reelection was allowed. The 1994 reform established that reelection was possible only after 10 years out of office. The 2009 charter banned reelection altogether.

Given the length of the constitutional terms before 2009, we would expect the average tenure in the Court to last for 10 or more years. However, our data tells a very different story. Based on historical records from the Supreme Court between 1900 and 2008, the average justice served in office for 3.6 years, and the median justice completed only two years on the bench. In other terms: only 8

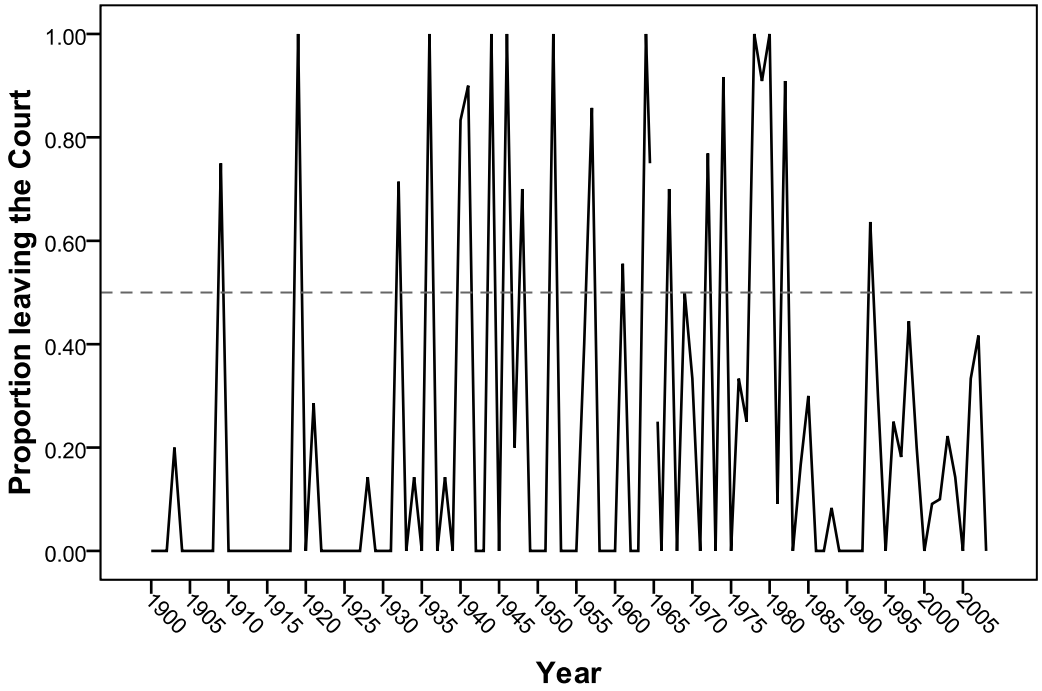
[4] We used secondary sources to reconstruct the composition of the Bolivian Supreme Court from 1900 to 2008 (Castro Rodríguez 1989; Unidad Bibliográfica del Supremo Tribunal de Justicia de Bolivia 2009).

percent of all justices finished their full terms. The high instability of justices in office reveals that Constitutional design was not the main explanation for judicial turnover; other factors drove the timing of replacements. In Bolivia, as in other Latin American countries, judicial tenure was often not respected (Chávez 2004; Helmke 2005; Iaryczower et al. 2002; Magaloni and Sanchez 2006; Peréz-Liñan and Castagnola 2009; Ríos-Figueroa 2007; Scribner 2004).

Figure 1 shows the proportion of sitting justices leaving the Bolivian Supreme Court in any given year. Between 1900 and 2008, the Supreme Court was reshuffled 22 times, an average of one reshuffle every five years. [5] The Court was reshuffled in 1909 (a normal consequence of the constitutional design requiring non-staggered renewal every ten years), in 1919 (in the normal schedule, although the composition of the Court was partially altered in 1921 as a result of the Republican revolt of 1920), in 1932 (following the normal constitutional procedure, albeit with some delay due to the military coup in 1930), in 1936 (as a result of the coup that brought Col. David Toro to power), in 1940 (following President Busch's suicide in 1939), in 1941 (after President Peñaranda took office), in 1944 (after a coup was followed by a Constitutional Assembly), in 1946 (when mobs killed President Villarroel and the head of the superior court of La Paz took office as interim president), in 1948 (after the election of President Hertzog marked the return to constitutional government), in 1952 (as the MNR came to power in the Revolution), in 1957 (when congressional elections in 1956 marked the end of the interim Court) , in 1961 (when Congress passed a surprising bill to "reorganize" the judiciary), and in 1964 (when Gen. Barrientos overthrew Paz Estenssoro).

[5] Operationally, we define as a reshuffle any situation in which 50 percent or more of the justices are replaced in the same year.

Figure 1: Reshuffles of the Bolivian Supreme Court, 1900 - 2008



The Court was also reshuffled in 1967 (after the adoption of the new constitution), in 1969 (when Gen. Ovando's coup replaced some justices), in 1972 (following Banzer's coup in 1971), in 1974 (when Banzer turned to stricter military rule), in 1978 (when Gen. Padilla Arancibia declared the need to create a "prestigious" judiciary), in 1979 (as Congress replaced the "prestigious" interim Court), in 1980 (following a new coup by Gen. Luis García Meza), in 1982 (with the return to democracy), and in 1993 (when justices elected in 1982 finished their terms, followed by the impeachment of Justices Poppe and Oblitas in 1994). Reshuffles were more frequent between 1930 and 1982, indicating that they were often (albeit not always) related to broader patterns of political instability.

Appointment. In Bolivia, as in other Latin American countries, the executive does not formally participate in the appointment of Supreme Court justices. Between 1878 and 1995, the Senate nominated *ternas* (lists of three candidates) for the bench, and the Chamber of Deputies selected, by an absolute majority of votes, a justice among them. With the 1995 constitutional reform, the mechanism

and the actors in the appointment process changed. The newly created Judicial Council became responsible for nominating a list of candidates, while Congress selected—in joint session and by two thirds of the votes—the new justices. The Judicial Council was formed by the chief justice and by four other members elected by Congress (using the same procedure) for ten-year terms.[6]

The constitutional reform of 2009 adopted significant innovations for the selection of justices. The new Constitution established that justices of the Supreme Court will be democratically elected in an open contest (article 183). No such mechanism has been implemented in Latin America since Nicaragua and Honduras eliminated similar constitutional articles in the early twentieth century. The so-called "Control Administrativo Disciplinario de Justicia" is in charge of elaborating the list of candidates for the public election; the members of this body will also be democratically elected from a list of candidates chosen by civil society (article 195).

The Constitutional Tribunal

The system of diffuse judicial review ended between 1995 and 1998 with the creation of the Constitutional Tribunal (CT). The new *concentrated* form of judicial review introduced three significant changes. First, the Constitutional Tribunal had stronger powers to assess legislation, administrative acts, and inter-branch conflicts (Law 1836).[7] Second, the decisions of the *magistrados* were not limited to the parties in the process, as in the diffuse system, but they prevailed *erga omnes.* Third, the CT had both preventive

[6] In the late twentieth century, several Latin American countries created judicial councils with the goal of de-politicizing the appointment of justices. El Salvador was the first Latin American country to incorporate a Council as part of the appointment mechanism, but this experience lasted for a short period (from 1940 to 1944). Decades later, several countries adopted this institution as part of the normal procedure for the nomination of justices (Peru in 1979, Guatemala in 1985, Colombia in 1991, Paraguay in 1992 and Venezuela in 1999), and others reserved it for the nomination of lower judges.

[7] For a detailed analysis of the powers of the Bolivian Constitutional Tribunal, see Rivera Santiváñez (1999) and Fernández Sesgado (1998, 2002).

and corrective powers of judicial review,[8] whereas previously the Supreme Court had none of those capacities since it was not possible to annul a law that a judge found to be unconstitutional (Asbun 2003).[9]

Even though the CT was included in the 1995 Constitution, it was not until 1998-99 that it started to work. The design of the new institution was resisted by the Supreme Court but enthusiastically supported by Bolivian legal experts.[10] The initial proposal located the new tribunal outside of the judicial branch (Law 1473, article 121), but the Supreme Court strongly opposed the idea of transferring the power of judicial review to an independent body. According to Chief Justice Edgar Oblitas Fernández judicial review was one of the basic functions of the Supreme Court, and taking it away would undermine the nature of the institution (Fernández Segado 1998). In a public document, the Court openly asserted that the creation of the CT would undermine the independence of the judiciary since judicial functions would be divided in two different bodies. As Fernández Segado (1998, 2002) states, those reactions reflected the unwillingness of justices to give away their power. In the end, the CT was created as an independent body within the judiciary (Law 1836), a design that some authors considered problematic because the most important feature of this institution presumably was its complete independence from other branches of government (Fernández Segado 1998; Rivera Santiváñez 1999; Asbun 2003).

The creation of the Constitutional Tribunal encouraged a surge of legal activity and a new profile for the judiciary.[11] Between January of 1999 and February of 2009, the CT received 19,250 cases and ruled in 15,787 (82 percent) of them. Most of those cases were reviews of *amparo* decisions issued by Superior District Courts (58 percent) and of *habeas corpus* decisions issued by lower courts (27 percent). The activity

[8] In institutional terms, preventive and corrective powers are two forms of "reactive" powers. Preventive power allows the courts to preclude the approval of a law, decree, or resolution *ex-ante*. Corrective power enables courts to reverse policy outcomes to the previous status quo after the new law, decree, or resolution has been approved.

[9] For a comparative analysis of constitutional adjudication in Latin America see Navia and Ríos Figueroa (2005).

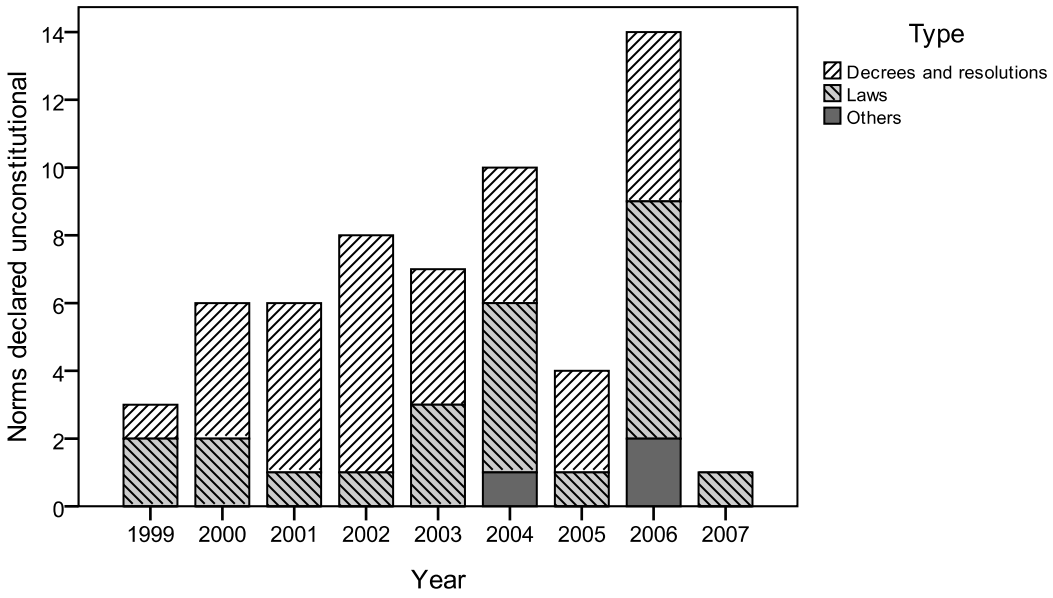
[10] Arguments against and in favor of the creation of the CT can be found in Fernández Segado (1998, 2002).

[11] Domingo (2006) has shown that the emergence of the CT and the Ombudsman strengthened the protection of individual rights, although the CT did not openly embrace progressive or pro-poor judicial activism.

of the Tribunal increased from 475 decisions in 1999 to 2,357 in 2004, and declined afterwards (by 2008, the TC was virtually paralyzed for reasons that we discuss below, issuing only 109 decisions).[12]

Judicial activism also expanded progressively: in 1999, the Tribunal declared three norms unconstitutional (two specific articles in the laws of telecommunications and judicial organization, and a resolution issued by the governor of La Paz). In 2006, the Tribunal declared unconstitutional segments of seven laws, five executive orders, and two administrative regulations. Figure 2 illustrates the expansion of judicial activism between 1999 and 2006, and its collapse afterwards. The figure suggests that during this period, the Constitutional Tribunal was increasingly willing to limit the power of other political actors, and that it often did so in order to protect individual rights.

Figure 2: Number of Norms Declared Unconstitutional by the CT, 1999-2008



Source: Data from http://www.tribunalconstitucional.gov.bo/

[12] Data collected from http://www.tribunalconstitucional.gov.bo/ [February of 2009]

The Tribunal created in 1995 had five members selected by two thirds of the votes in a joint session of Congress . *Magistrados* were appointed for 10 years without the possibility of immediate reelection (article 119 II, III and V). Our historical data reveal that although justices were appointed for ten years, the average tenure in the CT was just 3.6 years. In fact, no justice completed a full decade in office (the longest serving justice was Elizabeth Iñiquez de Salinas during 1998-2007). This finding indicates a duration pattern similar to the one observed in the Supreme Court. As in the case of the Court, formal rules cannot explain why justices stepped off the bench. Evidently other factors influenced the timing of exits.

The 2009 Constitution modified the basic features and the structure of the Constitutional Tribunal. The charter does not establish the number of sitting justices, and members of the Tribunal will be democratically elected for a six-year term without reelection (articles 199 and 201). Table 1 compares the size, term length, and appointment procedures for the Constitutional Tribunal and the Supreme Court in different historical periods.

Table 1: Constitutional Design of the Bolivian High Courts, 1900-2009

	Supreme Court			Constitutional Tribunal		
Constitution	**Members**	**Term**	**Appointment**	**Members**	**Term**	**Appointment**
1878 (1880)	7	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1938	10	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1945	10	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1947	10	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1961	10	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1967	12	10 years, reelection allowed	Nominated by the Senate; appointed by Deputies			
1995	12	10 years, reelection allowed after one term	Nominated by Judicial Council; appointed by Congress (joint session, with 2/3 of votes)	5	10 years, reelection allowed after one term	Appointed by Congress (joint session, with 2/3 of the votes)*
2009	Determined by law	6 years without reelection	Democratic election	Determined by law	6 years without reelection	Democratic election

* Law 1836 (1998) established that the Ministry of Justice, the law schools from public and private universities, and the bar associations (*colegios de abogados*) could submit nominations to Congress (article 14). It also required Congress to appoint five alternate justices to the Constitutional Tribunal to replace the principals in case of absence.

The Lower Courts

The current model for territorial organization of the Bolivian courts was originally adopted in 1914. The country is divided in judicial districts corresponding to the country's nine departments (La Paz, Santa Cruz, Cochabamba, Oruro, Chuquisaca, Potosí, Tarija, Beni, and Pando). Each district is overseen by a Superior District Court (SDC), currently integrated by 5 to 20 *vocales* who constitute the highest appellate body in the department. Lower courts are in turn structured into provincial courts (*juzgados de partido*) and municipal-level courts (*juzgados de instrucción*).

A unitary country, Bolivia has a single judicial hierarchy. The district of La Paz is the largest district, with about 24 percent of all courts, followed by Cochabamba (16 percent), Santa Cruz (15 percent), and Potosí (11 percent). The number of lower-level courts tends to reflect the overall distribution of the Bolivian population, although the department of Santa Cruz is underrepresented in the allocation of judicial resources (it concentrates about 25 percent of the Bolivian population, but only 15 percent of the judges).

Table 2 presents the distribution of Bolivian lower courts in 2003, by legal area and type of court. More than two thirds of the lower-level judges served at the time in Criminal courts and the rest dealt with other matters (Civil and Commercial law, Family, Juvenile, Labor and Social Security, Administrative, and Agrarian issues). In Table 2, courts in non-criminal legal areas have been added together in order to simplify the presentation.

Table 2: Lower-Level Judges in Bolivia: District, Level, and Type of Court, 2003

District	SDC	Partido		Instrucción		Total
	Vocales	Criminal	Others	Criminal	Others	
La Paz	20	66	42	45	18	171
(%)		(38.6)	(24.6)	(26.3)	(10.5)	(100.0)
Santa Cruz	15	45	24	38	2	109
(%)		(41.3)	(22.0)	(34.9)	(1.8)	(100.0)
Cochabamba	13	45	26	31	17	119
(%)		(37.8)	(21.8)	(26.1)	(14.3)	100.0
Oruro	10	21	12	15	7	55
(%)		(38.2)	(21.8)	(27.3)	(12.7)	100.0
Chuquisaca	10	21	11	22	7	61
(%)		(34.4)	(18.0)	(36.1)	(11.5)	100.0
Potosí	8	33	14	26	6	79
(%)		(41.8)	(17.7)	(32.9)	(7.6)	100.0
Pando	10	8	5	5	3	21
(%)		(38.1)	(23.8)	(23.8)	(14.3)	100.0
Tarija	7	27	10	14	8	59
(%)		(45.8)	(16.9)	(23.7)	(13.6)	100.0
Beni	5	21	10	14	3	48
(%)		(43.8)	(20.8)	(29.2)	(6.3)	100.0
Total		287	154	210	71	722
(% nationwide)		(39.8)	(21.3)	(29.1)	(9.8)	100.0

Note: The count of *partido* judges included sentence judges (*jueces de sentencia*) in criminal courts, the professional judges in criminal tribunals (*jueces técnicos*), the *jueces de ejecución penal* in the criminal area, and the remaining judges in drug-related courts (*jueces de sustancias controladas*). The count of *instrucción* judges included "jueces cautelares" in the criminal area. Judges of the National Agrarian Tribunal were not included in the Table.

Source: Based on data provided by the Judicial Council and USAID.

In 2004, the Latin American Public Opinion Project (LAPOP) conducted a nation-wide representative survey of judges and district attorneys in the country (Ames et al. 2004).[13] The results of the survey allow us to assess the workload of lower courts and the degree to which judges are exposed to political pressures.

[13] Of those judicial operators interviewed, 21% belonged to the district of La Paz, 19% to Santa Cruz, 16% to Cochabamba, 7% to Oruro, 8% to Chuquisaca, 9% to Potosí, 3% to Pando, 8% to Tarija, 7% to Beni, and the remainder had national jurisdiction. Of the courts covered in the survey, 66 percent were located in the district capitals and 34 percent were located in the provinces. The sample covered 406 judges in lower courts, or 56 percent of the total population. (We have excluded district attorneys from the analysis.)

The data suggests that lower courts are typically overloaded, but demands are not evenly distributed across districts or legal areas. The average judge interviewed for the study handled 342 cases, but the average judge dealing with civil and commercial law handled 991 cases. Caseload also varied across districts: the *median* civil court handled 1700 cases in Oruro, 1100 in Cochabamba, 916 in Chuquisaca, 900 in La Paz, 550 in Tarija, 440 in Santa Cruz, 216 in Beni, 200 in Pando, and 150 in Potosí. A vast majority of the judges declared that the number of rulings issued per year was considerably below the number of new cases entering the court every year.

The survey also asked judges: "Over the course of the past 12 months, have you ever been contacted by any politician or public official trying to influence your decision in a case?" About 17 percent of the judges in the sample declared suffering political pressures. Again, there was considerable variance across judicial districts. In Chuquisaca (which hosts the national high courts), only 6 percent of the judges declared being victims of political pressures. In Potosí, almost 30 percent did.

Our analysis of the data did not indicate any systematic pattern behind political pressures: judges in criminal courts are no more likely to be pressured than judges in civil courts; judges with prior political experience are no more likely to be contacted than judges who climbed through the ranks of the judicial system; judges with progressive ambitions are no more likely to be pressured than judges with static ambitions, and judges who claim to ignore legislators' opinions in their rulings are no more likely to be contacted than those who claim to respect them. In sum, it seems that the nature of the actors involved in particular legal cases or the profile of local politicians, more than the nature of the judges or the court, may explain the risk of political pressures. As we argue in the following section, political pressures not only affect the courts' autonomy to control other political actors; they also undermine their capacity to protect individual rights.

Citizens and the Protection of Rights

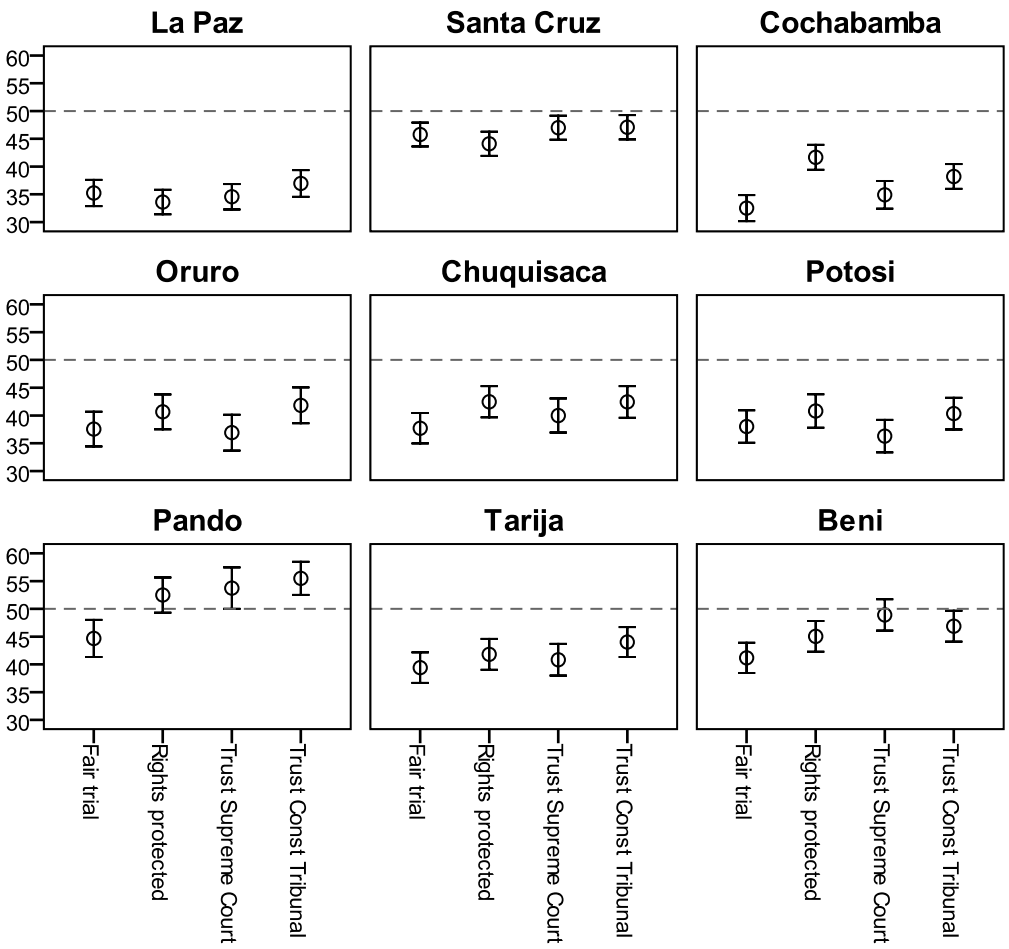
The Supreme Court, the Constitutional Tribunal, and the lower courts are institutions created with the ultimate goal of protecting citizen rights. But to what extent are Bolivian citizens confident that the judiciary will protect *them*? In previous sections we analyzed the performance of judicial institutions from the perspective of the courts. In this section we examine the performance of the judiciary based on the perceptions of Bolivian citizens.

In order to address this issue, we employed data from LAPOP's 2004 public opinion survey. The study interviewed 3073 citizens in the nine departments. Respondents were asked to rank, in a scale from 1 to 7, their views on the following questions: (1) To what extent do you think that courts in Bolivia guarantee a fair trial? (2) To what extent do you think that the basic rights of citizens are protected by the Bolivian political system? (3) To what extent do you trust the Supreme Court? (4) To what extent do you trust the Constitutional Tribunal? We re-scaled all items to range between 0 (no confidence) and 100 (high confidence in the protection of rights), and created an index measuring overall perceptions of judicial protection by computing the mean of the four variables.[14] The results suggest that the confidence of Bolivian citizens in the judiciary is quite limited, regardless of the reforms of the 1990s (Domingo 2006). The index has a mean of 40, and two thirds of Bolivians presented scores of 50 or less.

Confidence in the judiciary also displayed considerable variance across the country. Figure 3 presents the average score for each individual component and the 95 percent confidence intervals for respondents in the nine judicial districts. The highest aggregate scores correspond to Pando (51), Santa Cruz (46), and Beni (45), followed by Chuquisaca (41), Tarija (41), Potosí (39), Oruro (39), Cochabamba (36), and La Paz (35).

[14] Cronbach's reliability score is 0.75, indicating an acceptable level of internal consistency. An alternative index constructed using factor analysis generated equivalent results.

Figure 3: Citizen Confidence in the Protection of Rights in Nine Judicial Districts



Why is it that some citizens believe that judges protect their individual rights while others do not? At least four hypotheses come to mind. First, it is possible that individuals who are exposed to crime or citizen insecurity will distrust the ability of the legal system to protect them. The survey asked: "To what extent do you feel safe walking alone at night in your neighborhood?" We employed the range of responses (1-very secure, 2–more or less secure, 3-somewhat secure, 4–very insecure) as a crude index measuring fear of crime. Second, political attitudes may lead some individuals to criticize or support political institutions in general. The LAPOP survey asked respondents to place themselves in a

ten-point, left-right ideological scale. We also employed trust in the president, ranging between 1 (not at all) and 7 (a lot) to capture favorable orientations towards the government. Third, respondents could develop positive attitudes towards the judiciary if they have more resources to interact with the courts, or negative attitudes if they are discriminated by state institutions. Our statistical analysis includes one variable reflecting the number of years of formal education completed by respondents, and two dummies indicating if respondents were male and if they self-identified as indigenous. Fourth, it is possible that—as Figure 3 suggests—citizens living in different judicial districts will experience and perceive the legal system differently. We included eight dummy variables representing the judicial districts (with La Paz as the reference category).

Table 3 presents two statistical models predicting citizen trust in the judiciary. The first column displays the coefficients (and standard errors) of an OLS regression including district fixed effects. The results indicate that individuals who fear crime are less likely to trust the courts to protect their rights, although this effect may be substantively small: if a very secure person becomes very insecure, confidence in the judiciary may fall by about 3.6 points in the 100-point scale. Voters on the right and those who have faith in the president are more likely to support the judiciary. The expected difference between a citizen who did not trust the president "at all" and another one who trusted him "very much" was considerable (about 24 points). Respondents with more education and males were surprisingly *less* likely to display confidence in the legal system, but those effects were not significant at the .05 level. Similarly, ethnicity had no clear impact on attitudes towards the judiciary (the inclusion of a dummy variable for self-identified whites did not alter the results).

Table 3: Models of Citizen Confidence in the Judiciary

	OLS		FEVD	
Fear of crime	-1.20	***	-1.20	***
	(0.35)		(0.35)	
Ideology (left-right)	0.96	***	0.96	***
	(0.17)		(0.17)	
Support for the president	4.06	***	4.06	***
	(0.22)		(0.22)	
Education (years)	-0.12		-0.12	
	(0.08)		(0.08)	
Gender (male)	-1.26	*	-1.26	*
	(0.70)		(0.70)	
Indigenous	0.88		0.88	
	(1.00)		(0.99)	
Santa Cruz	11.19	***		
	(1.34)			
Cochabamba	0.36			
	(1.29)			
Oruro	4.60	***		
	(1.50)			
Chuquisaca	3.48	**		
	(1.36)			
Potosi	2.88	**		
	(1.42)			
Pando	11.88	***		
	(1.48)			
Tarija	4.58	***		
	(1.44)			
Beni	7.97	***		
	(1.45)			
Political pressures (risk in district)			-17.28	***
			(5.57)	
Median caseload in civil courts			-0.01	***
			(0.00)	
η (residual fixed effects)			1.00	***
			(0.10)	
Constant	18.70	***	30.48	***
	(2.08)		(2.18)	
Adjusted R^2	.188		.187	
N	2498		2498	

Note: Dependent variable is index of judicial protection of rights.
* Significant at .1 level; ** .05 level; *** .01 level (two-tailed)

After controlling for those factors, the regional patterns depicted in Figure 3 still remain visible. Every judicial district with the exception of Cochabamba has better scores than La Paz. The analysis of unit effects suggests the presence of three clusters: Pando and Santa Cruz with the highest scores; Beni, Oruro, Tarija, Chuquisaca, and Potosí in the middle; and Cochabamba and La Paz at the bottom.

The second model in Table 3 explores two possible reasons for the variance observed across districts. We employed two district-level variables discussed in the previous section (the proportion of judges in the district who suffered political pressures, and the caseload in the median civil court) to model citizen perceptions in different departments. Our intuition is that experiences with courts at the local level may affect the perception of the judiciary as a national institution: politicized local courts may erode the overall credibility of the legal system, and overburdened courts may erode perceptions of judicial effectiveness.

In order to address this issue, we employed a fixed-effects vector decomposition (FEVD) model (Plümper and Troeger 2007). FEVD is a three-stage estimator. The first stage produced the fixed effects model presented in the first column. The second stage employed the estimates for fixed effects (based on the dummies) as the dependent variable and used the two district-level variables to predict those district effects. This analysis decomposed the initial estimates of fixed effects into a systematic component (a predicted value for the nine cases) and an unexplained component (a residual). In the third stage, displayed in Table 3, our index of protection of rights was regressed against the individual-level variables, the two district-level variables, and the residuals from the second stage equation (representing the unexplained component of the district effects).

The results in the second column of Table 3 indicate that the politicization of lower courts, as well as case overloads, may significantly affect the public image of the judiciary. Given the observed range of the variables, the effects may be modest (if 17 percent of the judges in the district suffer

political pressures, the overall perception of the judiciary may decline by about 3 points), but these results reinforce the idea that concrete local conditions may in part drive the image of national institutions. The overall predictive capacity of the model is quite limited, indicating that citizen attitudes towards the judiciary require further investigation.

The Demise of Judicial Review

The combination of weak public support for the judiciary, legislative deadlocks preventing the appointment of Supreme Court Justices, and fledgling activism on the part of the Constitutional Tribunal created an explosive mix that led to the downfall of the model of judicial review inaugurated in 1998 between 2006 and 2009. In just three years, the Constitutional Tribunal lost all of its members until only Justice Silvia Salame Farjat remained in office.

In September of 2003, social protests erupted when President Gonzalo Sánchez de Lozada announced a plan to export natural gas through Chile. Roadblocks set by the demonstrators created food and gasoline shortages in La Paz, and by early October the press reported that 82% of the population disapproved of the president's policies (Seminario 2003). An attempt by the government to break the roadblocks produced several deaths, accelerating the downfall of the administration. When Vice-President Carlos Mesa announced his opposition to the president on national television, chances of a political recovery vanished. Sánchez de Lozada resigned from office on October 17, and Mesa became the next president of the country.

At the time Mesa took office, the Supreme Court operated with only 7 of the 12 justices. Justice Salazar Soriano had died in office in 1999, Justice Hassenteufel had resigned in May of 2001 due to health reasons, Justice Arancibia López had retired in January of 2002, Justice Reynolds Eguía had resigned in January of 2003 (when other members of the Court declared that his close friend Justice Tovar Gützlaff, head of the Criminal Chamber, was incompetent for the job), and Justice Tovar Gützlaff

himself, not surprisingly, had resigned shortly after. In the context of political paralysis that marked the years 2000-2003 (popular protests against neoliberal policies escalated since early 2000, President Banzer resigned in mid-2001 after being diagnosed with cancer, and President Sánchez de Lozada was unable to muster support for his policies), Congress was unable to craft the supermajorities required to appoint new justices.[15] Just to make things worse, in April of 2004 Justice Kenny Prieto retired from the bench in protest because the Court had appointed Eduardo Rodríguez Veltzé as Chief Justice, by-passing Kenny Prieto in the order of seniority. With only six members, the Supreme Court was now deprived of a quorum.

In spite of multiple pleas by the remaining Court members, Congress was unable to reach a consensus for the appointment of additional justices. Arguing that Congress was about to begin its recess, President Carlos Mesa appointed 6 interim justices by decree on July 30, 2004 (Decree 27650). However, the decree was challenged by members of Congress. In November, the Constitutional Tribunal dismissed the temporary appointments as unconstitutional and gave interim justices 60 days to leave the bench. Mesa asked the Tribunal to reconsider the decision, but the Tribunal rejected the appeal on legal grounds. The President denounced the members of the Constitutional Tribunal, but bar associations (the *Colegio Nacional de Abogados de Bolivia* and the *Colegio de Abogados de Chusquisaca*) supported the Tribunal's position. After long negotiations, Congress finally appointed 6 new justices by mid-December. The opposition denounced political manipulation in the new designations.

President Mesa confronted strong manifestations demanding the re-nationalization of the gas industry. In March of 2005 he offered his resignation, but Congress did not accept it. Social protests escalated in the following months, and in June Mesa presented his resignation again. Surprisingly, Congress accepted his offer this time, but the ongoing popular mobilization also forced the resignation

[15] Congress was, however, able to appoint four *magistrados* to the Constitutional Tribunal in October of 2003.

of the Speakers of the House and the Senate. According to the Constitution, the next in the line of succession was the head of the Supreme Court. On June 6, Chief Justice Eduardo Rodríguez Veltzé took office as a caretaker.

In December of 2005, Evo Morales won the presidential election, becoming the first Aymara president of Bolivia. As soon as Morales took office, justices in the Supreme Court and the Constitutional Tribunal began to depart. Rodríguez Veltzé resigned from the Supreme Court in February of 2006. Rumors in the pro-government media suggested President Morales had induced his resignation by threatening an investigation of alleged corruption during his short administration.[16] In March, Justice Villafuerte left the Supreme Court presumably due to the poor health of his wife. In April, Justice Rocha Orozco resigned in response to a reduction of 32 percent in the salaries of justices, and in May, Justice Ruiz Pérez stepped off as a result of health problems. By the end of May 2006, the Supreme Court had 8 members and the specter of legal paralysis had returned. The government interpreted this situation as a political boycott, fearing that any trial against former President Sánchez de Lozada (exiled to the United States) would be obstructed due to a lack of quorum.

The Constitutional Tribunal also showed centrifugal tendencies, but the presence of *suplentes* (alternate justices appointed by Congress) moderated this problem (Law 1836, art. 14). *Magistrados* Baldivieso and Roca Aguilera had already left the Constitutional Tribunal for personal reasons in January and April of 2005. In January of 2006, Rivera Santiváñez also resigned, tired of public criticism against his positions. This was followed in March by the resignation of Durán Ribera. In November, *Magistrado* Tredinnick Abasto quit the Tribunal and was appointed Ambassador to Brazil. By the end of 2006, the Constitutional Tribunal operated with two principals (Iñiquez de Salinas and Rojas Alvarez) and three alternates justices (Arias Romano, Salame Farjat, and Raña Arana).

[16] See https://prod.sucre.indymedia.org/es/2006/02/26403.shtml

In December of 2006, Congress began its annual recess, once again unable to appoint new justices to the Supreme Court. President Morales signed a decree to fill the four vacancies in the Court with interim members (Decree 28993). This strategy resembled the one followed by President Mesa in 2003, but this time Congress was already in official recess. The Constitutional Tribunal resolved that the decree was constitutional, accepting the appointments as valid for 90 days (Justice Salame Farjat was the only one voting to overturn the decree).

President Morales questioned the 90-day limit for his appointees, since he found it contradictory. In mid-May, the President and interim Justice Villaroel introduced a request for the Tribunal to amend the decision, but the Tribunal dismissed the plea. In response, in May of 2007 President Morales asked Congress to initiate impeachment proceedings against the *Magistrados* (except from Salame Farjat, who paradoxically had not participated in the decision because she had considered the decree unconstitutional in the first place).

The charge against the Constitutional Tribunal divided the professional associations and brought Congress back to the forefront of the conflict. Government officials denounced corruption and politicization in the judiciary, and requested the resignation of all members of the Supreme Court and the Constitutional Tribunal. Supreme Court Justice González Ossio resigned in May of 2007, and in July of 2007, Congress finally appointed four justices to the Supreme Court (making Justice Tarquino Mujica the first Aymara to join the Court). By 2009, when the new constitution was approved, 11 justices served in the Supreme Court and one vacancy remained unfilled.

In October of 2007 the Senate acquitted the members of the Constitutional Tribunal and they were restored to office, but the damage was done. Shortly after, Justices Elizabeth Iñiquez de Salinas and Martha Rojas Alvarez resigned to the Tribunal in protest for the political persecution and the lack of independence of the judiciary. In December Justice Wálter Raña Arana resigned for the same reasons, depriving the Tribunal of the majority required to make decisions. By the end of 2007, the Constitutional

Tribunal had only two alternate justices in office: Silvia Salame Farjat and Artemio Arias Romano. In March 2008, Arias Romano resigned in response to the manipulation of the judiciary—the Constitutional Tribunal had been reduced to a single member. During the rest of 2008, Congress remained unable to appoint new *Magistrados* until the constitutional referendum of January 2009 imposed a new design for the Judiciary.

Conclusions

The analysis of the Bolivian case suggests that we need to develop a more complex typology of informal institutional practices that work to alter the composition of Supreme Courts and Constitutional Tribunals. At least two variables ought to be considered in order to understand the political crafting of high courts: (a) the ability of politicians (in particular, the president) to force the resignation of incumbent justices, and (b) the capacity of politicians (president and Congress) to appoint new members to the courts. The first variable reflects the informal power of political leaders to induce the exit of justices through moral suasion, political bargaining, collateral payoffs, or mere coercion. The second variable reflects the capacity of political institutions to produce new appointments—which can be delayed or blocked by the lack of political incentives to select candidates from the available pool of jurists, or (more often) by the presence of multiple veto players with inconsistent preferences participating in the appointment process.

The incidence of the first condition alone (i.e., removals without appointments) produces the *dismantling* of the courts. An accelerated process of dismantling determined the downfall of the Constitutional Tribunal in 2006-2009. By contrast, the combination of the informal capacities of removal *and* appointment triggers the *reshuffling* of the courts. This pattern is characterized by the exit of a majority of justices and their replacement by politically palatable ones. We identified 22 instances of reshuffling in the Bolivian Supreme Court between 1900 and 2008. A few of those episodes were driven

by the formal institutional design (the fixed, ten-year terms allowed for the concurrent renewal of all judges in certain circumstances), but in most cases they were the result of extraordinary forms of political instability. Finally, the presence of the second condition alone (appointments without removals) creates the possibility of *packing*, or the expansion court size in order to gain a friendly majority without the need of expelling incumbent justices. Packing was prevented in Bolivia by the presence of a fixed number of justices in the constitution, unless extraordinary circumstances allowed for constitutional change or a full reshuffle.

A second lesson of the Bolivian case is that there may be multiple linkages among the *levels* and the *functions* of the judiciary. Our analysis of citizen views regarding the role of the judiciary in protecting individual rights suggests that the performance of lower courts at the local level (both in terms of independence and effectiveness) may affect the overall perceptions of the judiciary as a diffuse institution at the national level. For a vast majority of citizens, the judiciary is represented by civil and family courts more than by the Constitutional Tribunal.

At the same time, the roles of judges as mediators of political conflict and as guardians of individual rights may be closely intertwined, at least in the public mind. Citizens who experience the politicization of local courts may consider judges unable to serve as balanced mediators of conflict, and also suspect that those judges will serve powerful interests instead of protecting their basic rights. In this context, they may conclude that courts should be captured by the political forces that best represent *them*, because this may be the only way to protect their interests. Although the Constitution of 2009 demands future members of the Supreme Court and the Constitutional Tribunal to be non-partisan (art. 183) the adoption of universal suffrage as the selection mechanism for justices seems to codify this corollary, immersing high courts openly into the dynamics of partisan competition.

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