

The Puzzle of Purges:

A New Theory of Judicial Manipulation with Evidence from Latin America*

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Abstract

This paper extends the logic of offensive strikes to develop a new strategic theory of judicial manipulation. In contrast to standard insulation accounts, I argue that irregular transfers of power lead politicians to violate judicial independence, not shore it up. The paper examines nine hypotheses related to the theory using a novel dataset on judicial crises across eighteen Latin American countries between 1985 and 2008. Following the first strike logic, I show that variation in judicial crises is systematically related to the president's risk of instability and to the costs he bears for launching such attacks, as captured by presidential powers, timing within the presidential term, the history of past presidential instability, confidence in the judiciary, and the age of the president's party. Along the way, I rule out alternative hypotheses related to divided government and tit-for-tat norms. The conclusion explores the broader implications of my argument for institutional instability, judicial independence, and judicial decision-making.

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It's not [judicial] instability, it's instability of the country; we are a part of the country, that's it.

- Vice-President of the Ecuadorian Supreme Court*

Weak governments, strong courts. This is the conventional wisdom that runs through most of the rational choice literature on institutions. Consider the separation-of-powers theory. According to this account, judges are in the strongest position and able to exercise the most independence whenever there is a split between the executive and legislative branches (Ferejohn and Weingast 1992; Spiller and Gely 1992; Epstein and Knight 1998). Insulation accounts, in turn, contend that only when presidents are losing power will they be inclined to imbue courts with independence in order to tie the hands of their successors (Ramseyer and Rosenbluth 1993; Ramseyer 1994; Ramseyer and Rasmusen 1997; Ginsburg 2002; Finkel 2008). In a different vein, delegation accounts argue that judicial independence emerges out of the government's failure either to forge credible commitments (Landes and Posner 1975; North and Weingast 1989), effectively monitor bureaucrats (McCubbins and Schwartz 1984), or shoulder blame for unpopular policies (Graber 1993; Salzberger 1993; Holmes 1996; Wittington 1999). In contrast, this paper takes a different view, arguing instead that weak governments often beget weak courts.

Drawing on the first strike logic developed by scholars of international relations, this paper provides a new theory of judicial manipulation. I begin with the observation that in institutionally unstable environments politicians are often uncertain about whether or not they will be able to complete their terms in office. In these contexts, I explore the idea that leaders may decide to capture courts rather than insulate them. This can occur in one of two ways. Either politicians are imminently under the threat of removal and attack courts as a last ditch effort to

* Author interview with José Vicente Troya in Quito, Ecuador, July 2008.

cling to power. Or, politicians believe that they are likely to be at risk in the future and that seizing control over the judiciary sooner rather than later helps to avert this threat. The first motivation is analogous to a preemptive strike, the latter corresponds to a preventive strike (Levy 1987; Reiter 1995). In both instances politicians play an offensive strategy, seeking to assert control over one of the key institutions that can potentially tilt the playing field either in their favor, or in their opponents'.

To examine this argument, I focus on contemporary Latin America, a region infamous for both presidential and judicial instability. Since the third wave of democratic transitions began, nearly twenty Latin American leaders have been forced out of office early. The list ranges from presidents elected in the 1980s, like Bolivia's Hernán Siles Zuazo and Argentina's Raúl Alfonsín, who found their mandates cut short in the midst of major economic crises, to the seemingly textbook impeachments carried out against Presidents Fernando Collor de Melo in Brazil and Carlos Andrés Pérez in Venezuela during the 1990s, to the more recent and controversial ousters of other democratically-elected leaders such as Gonzalo Sánchez de Lozada in Bolivia in 2003, Lucio Gutiérrez in Ecuador in 2005, Manuel Zelaya in Honduras in 2009, and Fernando Lugo in Paraguay in 2012.

Likewise, during the same period scores of judges on high courts throughout Central and South America have been sacked or had their benches stacked - often repeatedly. Carlos Menem's packing of the Argentine Supreme Court during the early 1990s quickly comes to mind. As do the multiple attempts by his opponents to "reverse the damage," which eventually succeeded under Nestor Kirchner a decade later. The longstanding control exercised over Ecuador's Supreme Court by the Partido Social Cristiano (PSC), led for years by León Febres Cordero, ultimately fed into Lucio Gutiérrez's spectacularly ill-fated effort to re-make the courts

in 2005. In Bolivia, Evo Morales' repeated recent attempts to purge the judiciary resulted in the wholly untenable situation in which only a single justice, Silvia Salame Farjat, sat on the Constitutional Tribunal between 2007 and 2009. Similarly egregious attacks on national high courts have been carried out in Peru, Venezuela, Paraguay, and Nicaragua.

Such bouts of institutional instability have not been lost on scholars of the region. In his seminal essay, "Delegative Democracy," Guillermo O'Donnell drew our attention both to the unwillingness of Latin American presidents to countenance independent courts and to the vicissitudes of presidential fortunes (1994). The subsequent literature, however, has tended to develop these ideas along two separate parallel tracks. One emphasizes the psychological or cultural factors leading presidents to weaken horizontal accountability (O'Donnell 1998; Larkins 1998; Mainwaring and Welna 2003). The other focuses on examining the sources of presidential instability (Carey 2003; Hinojosa and Pérez-Liñán 2003; Pérez-Liñán 2007; Valenzuela 2004; Lehoucq 2008; Mainwaring and Pérez-Liñán 2005; Hochstetler 2006; Negretto 2006; Hochstetler and Edwards 2009; Kim and Bahry 2009; Llanos and Marsteintredet 2010). This paper bridges these two literatures by supplying the strategic micro-foundations that link presidential instability to judicial instability.

The rest of the paper unfolds as follows. The first section develops the main theoretical argument in juxtaposition with the standard insulation account and derives a series of testable hypotheses. The second part of the paper introduces the *Inter-Branch Crises in Latin America* (ICLA) dataset and uses it to assess empirically the connections between presidential instability and judicial instability. Following the first strike logic, I show that variation in judicial crises is systematically related to the president's risk of instability and to the costs he bears for launching such attacks, as captured by presidential powers, timing within the presidential term, the history

of past presidential instability, confidence in the judiciary, and the age of the president's party. Along the way, I rule out alternative hypotheses related to divided government and tit-for-tat norms. The conclusion explores the broader implications of my argument for institutional instability, judicial independence, and judicial decision-making.

A Theoretical Framework of Judicial Manipulation

To sketch out my theory of judicial manipulation, I begin by discussing how it departs from the conventional insulation account. Starting with Ramseyer's familiar depiction of judicial independence as a repeated prisoner's dilemma (1994), the literature has largely focused on the cooperative equilibrium in which politicians are able to coordinate on judicial independence (Ramseyer and Rosenbluth 1993; Ramseyer 1994; Ramseyer and Rasmusen 1997; Ginsburg 2002; Finkel 2008).¹ Such cooperation is made possible whenever parties expect to alternate indefinitely in office with one another. Put differently, parties are compelled to opt for independent courts whenever they both expect to lose office to the opposition and expect that at some point in the future the opposition will lose to them. The first condition provides the motivation for politicians to seek insurance; the second condition provides the basis for the outgoing party to expect that the incoming party will likewise refrain from manipulating the courts.

However, as Ramseyer himself acknowledges (1994: 742), even if these scope conditions are in place, politicians may still choose to keep courts dependent. Theoretically, of course, we know that any equilibrium can be sustained in the repeated prisoner's dilemma framework. Empirically, there is certainly no shortage of examples in which politicians alternate in power, but routinely manipulate their courts. From early nineteenth century America to present day

¹ See Helmke and Rosenbluth (2009) for a review of this literature.

Latin America, there are numerous instances in which politicians compete in elections, but nonetheless purge and pack the courts as soon as they win office.

Second, in contemporary Latin America, as in other parts of the developing world, democracies may be stable, but democratically elected politicians are not. Struck by this new combination of governmental instability and regime stability, a growing number of scholars have sought to explain the onset of presidential crises in the absence of traditional military coups (e.g. Valenzuela 2004; Hochstetler 2006; Pérez-Liñán 2007). In Helmke (forthcoming), I begin with the familiar premise that Latin American presidents enjoy two types of powers: *de jure* powers, such as the president's formal institutional powers specified by the Constitution, and *de facto* powers, such as the president's level of partisan support in Congress (cf. Mainwaring and Shugart 1997). Using a series of bargaining models due to Powell (1999), I show theoretically and empirically that the risk of presidential instability is heightened whenever a president's formal constitutional powers outstrip her partisan powers. Simply put, the effect of minority government on presidential crises is conditioned by the overarching distribution of institutional powers between the executive and the legislature. In contexts where the gap between these two types of powers is wide, politician's time horizons will be relatively limited. Thus, contrary to standard insulation accounts, leaders facing this type of political uncertainty are arguably unable to focus their energies on limiting their successors through institutional design, instead they spend their time in office merely trying to survive.

Third, and relatedly, whereas existing insulation accounts treat political uncertainty as a purely exogenous parameter, this paper begins with the novel premise that such uncertainty may be partly endogenous to who controls the courts. After all, the more that politics in the region becomes judicialized, the more leeway the courts have to help shape the president's fate.

Whether deciding to lift a politician's immunity in the face of corruption charges, prosecuting key members of the political opposition, or weighing in on the president's ability to stand for reelection, courts set the stage for presidents to succeed or fail in their efforts to cling to power. What is more, in many Latin American countries the constitution allows the judiciary to play a direct role in presidential impeachments (Pérez-Liñán 2007). This is particularly true in unicameral systems, in which supreme courts conduct the president's trial following authorization from Congress.

Former Venezuelan President Carlos Andrés Pérez provides a perfect case in point. One day after the Supreme Court's approval of the Attorney General's accusation of Pérez for mismanaging state funds, the Senate unanimously voted to strip the president of immunity and suspend him from office (Lalander 2010: 138). Or, consider the role that the Paraguayan Supreme Court played in helping congress to oust President Cubas in 1999. Shortly after coming to office, the president issued a decree freeing his political mentor, General Lino Oviedo, from prison, where Oviedo was serving a term for his attempt to lead a coup against the previous government. In response, the Supreme Court struck down the decree and ordered that Oviedo be sent back to prison. The president's blatant refusal to then comply with the Supreme Court order led Congress to launch its first attempt to impeach Cubas. Although ultimately it took the assassination of vice president Luis Maria Argana, and Cubas' alleged involvement in it, to succeed in removing the president from office, the Court clearly played a vital role in exacerbating the conflict between the executive and legislative branch to the point where the president's own survival was at stake.

Putting these observations together leads to the opposite pattern of institutional behavior from that captured by conventional wisdom. Whereas insulation theories hold that political

uncertainty promotes judicial independence, here I claim just the opposite. In environments where politicians are frequently at risk of being removed from office early, and courts, in part, shape these prospects, the likelihood that the cooperative equilibrium leading to judicial independence obtains will be substantially reduced. Rather, rapid irregular alternations of power force politicians to adopt a warlike mentality. Instead of creating institutions, they destroy them.

In turn, two possible types of judicial crises stem from this common mechanism: preemptive strikes and preventive strikes. Preemptive judicial attacks are waged by presidents who are under imminent threat; preventive judicial strikes occur whenever the threat is palpable, but more distal. The differences between former President Lucio Gutiérrez's attack on the Ecuadorian courts and Bolivian President Evo Morales' assault on his judiciary help illuminate this distinction. Perhaps nowhere in Latin America has the president's manipulation of the judiciary in order to cling to power been clearer than it was under Gutiérrez. During his short-lived minority government (2003-2005), the president blatantly used the court as a bargaining chip with his allies. After threats to impeach the president began to mount, Gutiérrez made a fatal last ditch *quid pro quo* deal with the opposition to pack the court in exchange for the opposition dropping impeachment charges against the president. Given the immediacy of the threat to his presidency, Gutiérrez's tactical move against the court most closely resembles a preemptive strike.

By contrast, Morales' decision to target Bolivia's highest courts was not made under an imminent threat of attack against his administration, but at least partly reflected his concern that future conditions may prove less favorable. Morales had swept to power with an unprecedented 53.7% of the vote and enjoyed majority support in the lower house as soon as he took office. That said, there were plenty of reasons for Morales to still worry that his grip on power might

prove short-lived. After all, the previous two presidents had been ousted in the wake of massive protests. Meanwhile, the country had become even more polarized under Morales' new government, and the courts were quickly being drawn into the larger political conflict between the president and his opposition. As Castagnola and Pérez-Liñán (2011) describe, almost immediately after Morales took office, the government began pressuring justices on both the Supreme Court and the Constitutional Tribunal to tender their resignations. Not least of all, gutting the judiciary eliminated a powerful tool that the opposition could have used to derail both the government's efforts to control the Constituent Assembly and to avert a disaster with the recall referendum. In this sense, the Bolivian story most closely resembles the preventive war logic.

More generally, assuming the underlying bargaining model of presidential crises is correct, then either the same conditions outlined above (the gap between presidential powers and partisan powers) – or the anticipation of those conditions (the expected gap between presidential powers and partisan powers) - should lead to judicial insecurity. In other words, if most assaults on the judiciary follow the Gutiérrez pattern (i.e. preemptive), then the same combination of minority governments and strong formal presidential powers that puts presidents immediately at risk should also increase the likelihood of judicial crises. By contrast, if the Morales pattern (i.e. preventive) tends to drive most judicial crises, then institutionally powerful presidents will aim to target courts while they are still in the majority. If crises are instead driven by a mix of these motives, then *de jure* powers will help to predict judicial crises, but *de facto* powers will not. Finally, notice that if the standard separation-of-powers account is right then we would expect *de facto* powers (i.e. divided government) to matter but not *de jure* powers. This leads to the following four hypotheses:

H1a – Preemptive strategy: The likelihood of a presidential attack on the courts increases with the president’s constitutional powers, but only if the president lacks majority control over Congress.

H1b – Preventive strategy: The likelihood of a presidential attack on the courts increases with the president’s constitutional powers, but only if the president has majority control over Congress.

H1c – Mixed offensive strategy: The likelihood of a presidential attack on the courts increases with the president’s constitutional powers, regardless of whether the president is in the minority or the majority.

H1d – Separation of powers: The likelihood of a presidential attack on the courts decreases whenever presidents are in the minority, regardless of their constitutional powers.

The second hypothesis reflects the intuition that timing matters. After all, the very logic of acting preventively dictates that the president attempts to gain control over the courts as soon as he or she can. And, unless presidential crises are confined to the end of presidential term², then preemptive strikes should not cluster at the end of the administration either. Overall, judicial crises should thus be less likely to occur at the end of the president’s term. Stated as a testable hypothesis:

H2 - Timing: The more time that has elapsed during a president’s term in office, the lower the likelihood of presidential attacks on the courts will be.

Another set of testable implications revolves around the president’s subjective beliefs about the risk of a presidential crisis. While such beliefs are always difficult to assess systematically, we can imagine that the following conditions might conspire to convince presidents that they are especially likely to be vulnerable in the future. One factor surely contributing to such beliefs is whether previous administrations in a given country have been targeted by the legislature. Another factor is how dramatically the president expects his partisan powers to decline over time. Here, the president’s recent predecessors’ experience offers a good

² Using the *ICLA* dataset, we find no correlation between the onset of a presidential crisis and how long the president has been in office.

guide. In contexts where the president's predecessors have been tossed out of office early or have rapidly lost partisan support, presidents should be more sensitive to the risk of removal. This suggests two additional hypotheses:

H3 – Previous Attacks: A history of previous attacks on presidents in a given country increases the likelihood that the current president will launch a judicial crisis.

H4 – Partisan History: A history of presidents losing partisan power over the course of their term in a given country increases the likelihood that the current president will launch a judicial crisis.

An additional cluster of hypotheses deals with the potential costs presidents face for attacking courts. If such attacks are part of a larger strategy to mitigate the risk of presidential removal, then we should expect that presidents will be sensitive to public support in two distinct ways. First, to the extent that public support for courts varies across countries and over time, it should be easier for presidents to target courts that already lack legitimacy. Second, politicians who do launch a judicial attack should not pay a penalty in terms of their own legitimacy. Indeed, if the foregoing logic is correct, then judicial attacks should tend to help presidents not hurt them. Yet, whether or not this is the case remains to be seen. For instance, whereas Fujimori's popularity skyrocketed in the months following the autogolpe, Gutiérrez's actions against the Ecuadorian Supreme Court triggered a massive outpouring of opposition and ultimately led to his demise. While not all leaders who attack courts can be expected to earn a Fujimorian boost, clearly, if presidents go after courts in order to retain their posts, then cases like Gutiérrez should be more exceptional than not.

Hence, we get the following hypotheses:

H5: All else equal, the likelihood of a presidential attack on the courts increases as public support for the courts decreases.

H6: All else equal, public support for presidents should not be negatively affected by whether or not a president has launched a judicial attack.

The last set of testable implications deals with the existing composition of the courts. On the one hand, assuming that the main mechanism driving judicial attacks hews to the logic of preventive war, it should be the case that presidents are more threatened by judges appointed by their adversaries and thus more motivated to remove them. On the other hand, we might imagine that presidents whose predecessors stacked the court will simply be that much more motivated to repeat the process when they come to power, regardless of whether they themselves are at risk of removal. Think of this as a kind of tit-for-tat norm. Absent systematic data on judicial appointments, we can consider the following proxy measures for composition: the age of the president's party and whether the president's predecessor launched a successful attack on the judiciary.

With respect to parties, we might imagine that presidents from newer and less established parties are less likely to face judges who are sympathetic for the simple reason that their party likely has had less of an opportunity to shape the composition of the existing court. Thus,

H7: All else equal, the likelihood of a presidential attack on the courts increases as the age of the president's party decreases.

H8: All else equal, a history of previous presidential attacks against the court increases the likelihood of the current president attacking the court.

Coding and Selection Rules: Presidential and Judicial Crises in Latin America

To explore these hypotheses, I draw on the *ICLA* dataset, which I constructed. The dataset spans across 18 Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela) over a period of 24 years (1985-2008), and includes information about institutional crises across all three main branches of the

government. To capture these sorts of high stakes events systematically, I employ the following selection rules:

- Conflicts must involve at least two of the three main branches of the government (executive, legislative, high courts).
- The survival or majority composition of the targeted branch must be at stake.
- Crises can include both successful and unsuccessful attacks/threats that meet the above criteria.
- Sustained attempts to remove multiple members of the targeted branch are coded as a single crisis.
- Attempts to alter the composition of a multi-member branch must affect multiple members.
- Countries enter the dataset when they become democracies.

The first two rules specify which actors and actions matter. Because I am ultimately interested in explaining the emergence of inter-branch crises, not their particular resolution, the third rule clarifies that inter-branch crises are determined by institutional actors' threats and actions, not by any particular outcome. Thus, I include all attempts by one branch to remove another that fail as well as those that succeed. The fourth and fifth rules clarify how individual crises are counted. Although certainly other selection rules could reasonably be developed, here my goal is to devise and implement consistently a protocol that transforms what are often highly complex episodes into discrete observations. Finally, the last rule specifies that the country must be a democracy.

To construct the *ICLA* dataset, I began by drawing on the *Latin American Weekly Reports* (multiple years), a news publication that offers weekly coverage of political events across the region. Using the selection rules described above, a team of research assistants from the University of Rochester and I read through each and every Latin American Weekly Report

published between 1985 and 2008 to identify all presidential, legislative, and judicial crises. To transform these qualitative accounts into quantitative data, I then grouped all articles related to each crisis and created individual case histories containing a variety of information, such as which administration was in power, the start date of the crisis, which branch initiated the conflict and which branch was targeted, the specific type of threat involved, and the outcome of the crisis. My coding for each crisis was then checked using a variety of other primary country-specific sources, including Spanish language national newspapers, interviews with political actors and country experts, as well as numerous relevant secondary sources.

The total number of observations in the dataset is 1,888. The unit of analysis is the ordered inter-branch dyad for each administration-year. Because my ultimate aim is to explain why crises emerge or not, the dataset also contains all “non-cases” for each unit of analysis in which an inter-branch crisis did not occur. The ordered inter-branch dyad simply refers to the following four main Aggressor-Target combinations: 1) executive-legislature, 2) legislature-executive, 3) executive-court, 4) legislature-court.³ In this paper, the terms presidential crisis and judicial crisis refer to the second and third dyads, respectively.

Patterns of Institutional Instability

Between 1985 and 2008, there were a total of 34 presidential crises and 27 judicial crises for 472 administration-years.⁴ Thus, legislatures sought to get rid of presidents around 7% of the

³ Although theoretically there are six possible dyads (i.e. court-executive and court-legislature), here I do not treat the court as an independent aggressor. Since Hamilton, scholars have rightly treated the court as the least dangerous branch. Not only does the court lack both the purse and the sword, but it does not possess any means to initiate attacks against the other two branches. Even among the most powerful constitutional courts in Latin America, the ability to bring suits against the other branches always requires an outside party (Ríos-Figueroa 2011). Certainly, once the case is in the court, the justices’ decisions can profoundly affect the institutional survival of either branch. For this very reason, I argue that the court is an especially attractive institution to control, and hence an important target for the other two branches.

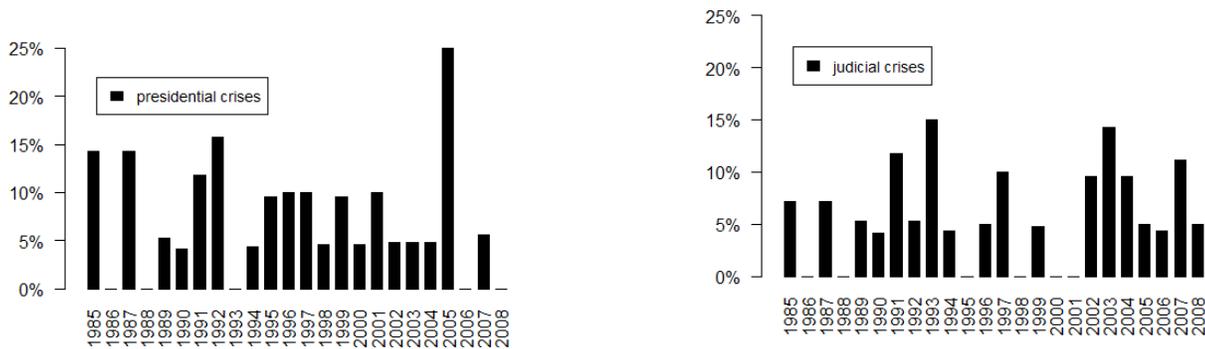
⁴ For presidential crises, this includes the fifteen episodes from 1985 to 2008 in which presidents were successfully removed from office early, as well as nineteen instances in which presidents faced a threat of removal, but managed to remain in office. Among judicial crises, twenty attacks were successful and seven were not.

time and presidents waged attacks against their courts about 6% of the time. Unfortunately, there are no identical data for other parts of the world, so whether or not Latin America is particularly prone to these types of institutional instability we cannot say.

In keeping with O'Donnell's skepticism that Latin America's democracies would consolidate over time (1999:175-194), we see that the incidence of institutional instability has not markedly declined over the last two and half decades. Consider presidential crises. Notwithstanding the spike in 2005, the five-year average rate has been relatively steady over the last twenty five years, ranging from about 7% in the late 1980s and early 1990s, up to approximately 9% during the late 1990s, down to 6% in the first five years of the new millennium, and around 8% in the period between 2005-2008 (See Figure 1(a)).⁵ There has been somewhat more temporal variation among judicial crises, but, again no evidence of consolidation. Presidential attacks on courts have varied between 4% in the late 1980s, jumping to 8% in the early 1990s, returning to 4% in the late 1990s, and rising to 6% after 2000. (See Figure 1(b)).⁶

⁵ There were 5 attacks out of 79 administration-years between 1985 and 1989, 7 attacks out of 103 administration-years between 1990 and 1994, 9 attacks out of 104 administration-years between 1995 and 1999, 6 attacks out of 105 administration-years between 2000 and 2004, and 6 attacks out 81 administration-years between 2005 and 2008.

⁶ There were 3 attacks out of 79 administration-years between 1985 and 1989, 8 attacks out of 103 administration-years between 1990 and 1994, 4 attacks out of 104 administration-years between 1995 and 1999, and 12 attacks out of 186 administration-years between 2000 and 2008.

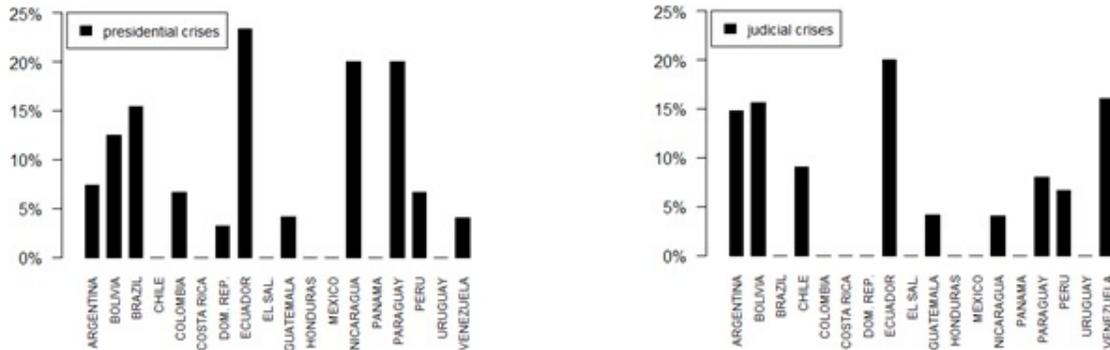


Figures 1a and 1b: Presidential and Judicial Crises by Year

If institutional crises have been spread out relatively evenly over the last three decades, cross-sectional comparisons reveal far more systematic variation. Although few countries in the region have entirely escaped institutional instability, Figures 2(a) and 2(b) demonstrate that the distribution of inter-branch crises across the region has been quite uneven. Using the administration-year ordered dyad as the baseline, Ecuador stands out as a kind of regional basket case with presidential and judicial crises occurring more than 20% of the time (7 presidential crises and 6 judicial crises out of 30 administration-years respectively). Presidential crises have occurred over 10% of the time in Bolivia, Brazil, Nicaragua, and Paraguay, less than 10% of the time in Argentina, Colombia, Dominican Republic, Guatemala, Peru, and Venezuela; whereas Chile, Costa Rica, El Salvador, Honduras, Mexico and Uruguay have had none at all.⁷ Meanwhile, Argentina, Bolivia and Venezuela have suffered the most judicial crises (more than

⁷ Although a handful of the more troubled Central American democracies (e.g. Honduras, El Salvador, and Guatemala) are not among the high scorers, the overall picture of inter-branch strife thus generally mirrors the scholarly consensus about variation in the quality of democracy across the region. Of course, given that the more egregious instances of institutional instability are often factored in to such rankings, it would only be surprising if quality was not at least loosely associated with crises.

10% of the time). Crises have occurred more than 5% of the time in Chile, Paraguay and Peru, and only slight less frequently in Guatemala and Nicaragua.



Figures 2a and 2b: Presidential and Judicial Crises by Country

Figures 2(a) and 2(b) further suggest that presidential crises and judicial crises tend to go hand in hand. This is certainly the case in countries that have suffered multiple crises, such as Argentina, Bolivia, Ecuador, Guatemala, Nicaragua, Paraguay, Peru, and Venezuela. Figure 3, which regresses the total number of judicial crises instigated by presidents on the total number of presidential crises, likewise shows a clear positive relationship. Moving from the country-level to the administration-level, basic bivariate statistical analysis reveals that the odds of a president who does not suffer a crisis attacking the judiciary are around 12%, while the odds that a president who does suffer a crisis will target their court rises to 39%.

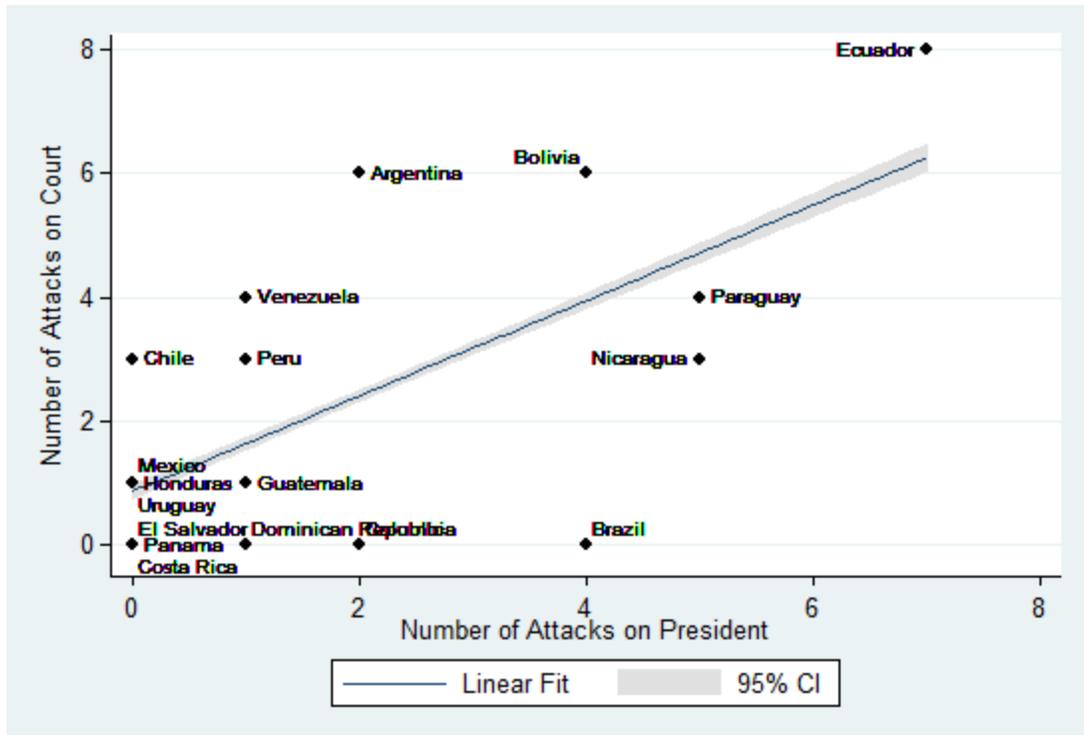


Figure 3: Bivariate Relationship between Presidential and Judicial Crises

Yet, there are several reasons not to make too much of the correlation between the actual number of presidential crises and judicial crises⁸. As Figure 3 and Table 1 (see below) show, there are still plenty of cases in which one type of attack occurs without the other.

⁸ Given the theoretical argument, a statistical model that uses presidential crises to predict judicial crises potentially introduces endogeneity: if the theory is correct and presidents are attacking courts in part as a survival strategy then judicial crises may also affect the likelihood of a presidential crisis.

	<u>Judicial Crisis</u>	<u>No Judicial Crisis</u>
<u>Presidential Crisis</u>	Alfonsín 1987/1989^a Bolaños 2004/2004;2005 Bucaram 1996/1997 Cordero 1985/1987 Duarte 2003/2005 Durán-Ballén 1994/1995 Fujimori 1991/1991 Gutiérrez 2004;2005/2005 Paz Zamora 1990/1991 Pérez 1992/1992 Serrano 1993/1993 Wasmosy 1993/1996	Alemán 1997 Balaguer 1994 Betancur 1985 Borja 1990;1992 Cardoso 1999 Chamorro 1995 Collor 1992 Cubas 1998 de la Rúa 2001 Fujimori 2000 González 2001;2002 Lula 2005 Mahuad 1999 Mesa 2005 Ortega 2007 Samper 1996 Sánchez de Lozada 2003 Sarney 1987 Siles 1985
<u>No Presidential Crisis</u>	Aylwin 1991 Chávez 1999 Chávez 2002; 2003 Correa 2007 Duhalde 2002 Frei 1997 Fujimori 1997 Menem 1989 Morales 2006;2007;2008 N Kirchner 2003 Sánchez de Lozada 1993	

Table 1: Presidential Crises and Judicial Crises

^a Date of judicial crisis/date of presidential crises. Bold indicates that attack succeeded.

In the upper-right hand corner, there are fully 21 cases in which a president suffered a crisis, but did not go after his court. Here, it could well be that the courts were largely already under the president's control—in the Dominican Republic president Balaguer had been in power for twelve years prior to his fall, and remaking the court would have done nothing to save him. A similar explanation likely applies to Fujimori in 2000. Or, it could be that the president did clash with the court, but lacked either the time or capacity to launch a full scale attack—Raúl Cubas's row with the Paraguayan Supreme Court over its decision to block Oviedo's release from prison comes to mind. Conversely, in the lower-left hand corner, there are 10 cases in which presidents attacked their courts, but were not themselves attacked. Such cases, of course, may turn out to be entirely consistent with the preventive strike logic outlined above, as these judicial attacks may have helped to avert a presidential crisis. The bottom line is that the theoretical framework developed in this paper demands that we move beyond basic correlations among presidential crises and judicial crises toward an estimation strategy that considers how the risk that presidents face affects their propensity to manipulate their courts.

Estimating the Effects of Presidential Risk on Judicial Crises

Like most concepts in social science, risk is not directly observable. Here, building on Helmke (forthcoming), I operationalize it using multiple proxy measures. Specifically, I have shown elsewhere that the probability of a presidential crisis increases with the amount of executive powers granted to minority presidents.⁹ Here, I employ a dummy variable, *Minority President*, which indicates whether or not the president's party lacks the majority of seats in the

⁹ This relationship holds across multiple measures of both formal presidential powers and minority government (see Helmke, forthcoming).

lower chamber of Congress.¹⁰ In fully 61% of all observations, presidents were in the minority (See Table 2 for the means and ranges for all variables).

<u>Variable</u>	<u># of Observations</u>	<u>Mean</u>	<u>Range</u>
<i>Judicial Crisis</i>	472	0.06	0 - 1
<i>Minority President</i>	472	0.61	0 - 1
<i>Power</i>	472	24.9	18 - 33
<i>Term</i>	472	3.05	1 - 7
<i>Past Removals</i>	472	0.99	0 - 7
<i>Seat Change</i>	396	-5.48	-49.9 - 37.2
<i>Judicial Confidence</i>	228	91.86	0 - 178
<i>Presidential Confidence Lead</i>	227	-44.14	-159 - 67
<i>Party Age</i>	457	55.68	0 - 169
<i>Predecessor Purge</i>	472	0.21	0 - 1

Table 2: Descriptive Statistics

To capture presidential power, I draw on Aleman and Tsebelis's measures (2005), which update Shugart and Carey (1992), and yield the most comprehensive available cross-national measure of the president's formal constitution powers.¹¹ The variable ranges from a low score of

¹⁰ Using a dichotomous variable allows me to capture the fact that the threat to the president is largely discontinuous. In other words, under most institutional rules, the difference between a president who has 49% of the seats and one that has 51% is far greater than the difference between a president who controls 20% versus 25% of the seats. To calculate the president's minority status in the lower house, I gathered electoral data for each administration country year from the following sources: The 2006 Database of Political Institutions World Bank dataset, Georgetown University's Center for Latin American Studies' Political Database of the Americas (PDBA), Binghamton University's Center on Democratic Performance's Election Results Archive (ERA), Psephos Election Archive, and various Wikipedia country-election pages. Data from McDonald and Ruhl (1989) were used to fill in missing information for the following administrations: Ortega (Nicaragua, first administration); Sanguinetti (Uruguay); Cordova (Honduras); and Siles Zuazo (Bolivia).

¹¹ Altogether, they consider 12 separate factors pertaining to the institutional authority of presidents in 18 Latin American countries. Such factors include presidential control over financial legislation, the ability of presidents to

18 for Mexico, a country widely considered to have one of the weakest constitutional presidencies (cf. Weldon 1997), to a high score of 33 for Ecuador, a country commonly viewed as having one of the strongest constitutional presidencies in Latin America (cf. Mainwaring and Shugart 1997). The interaction term, *Minority* \times *Power*, takes on the value of the president's formal constitutional powers for minority presidents and zero otherwise.

To capture the effect of timing on the likelihood of a judicial crisis, I construct the variable *Term*. This variable is calculated using the current year for each observation minus the year that the administration started. I then add a 1 to all observations so that the first year of an administration equals one. This variable ranges between 1 and 7 with a mean of 3.05.

The third and fourth independent variables seek to capture the president's beliefs about the probability of a presidential crisis. The first measure, *Past Removals*, builds on the supposition that individuals may not simply form assessments based on objective laws of probability. Rather, following recent advances in behavioral economics, individuals are often subject to severe biases (Rabin 1998). Pioneering work by Kahneman, Slovic and Tversky (1982) posits a "law of small numbers," such that individuals tend to over-infer probabilities from short sequences of events (cited in Rabin 1998). If this is true, then past attacks against previous leaders in a given country should influence a current leader's assessment of being attacked. Here, *Past Removals* is a basic count variable that records the number of times that previous presidents in a given country have been threatened with removal, or removed early from office for each administration. The variable ranges from 0 to 7, with a mean of just 0.99.

In a similar vein, *Seat Change* focuses specifically on whether previous leaders in a given country have tended to gain or lose seat shares in congress during their term in office. Assuming

compel attention to urgent bills and unilaterally call special sessions of Congress, various veto-related and decree procedures, as well as the ability of the president to shape policy through referenda.

the sitting president enjoys majority support in Congress, this helps to capture her beliefs that she will wind up as a minority president. To construct the variable, I calculate the percentage of lower house seats lost or gained by the president's party for each previous administration and then create an annual rolling sum of the average previous changes for each administration. Although the range is quite broad, presidents tend to lose seats in office.

The next set of testable implications revolves around the costs faced by presidents who target courts. In line with an important literature in comparative judicial politics (see e.g. Vanberg 2001; Staton 2010), presidents should be more reluctant to tamper with courts that enjoy popular support. This expectation suggests that presidents at risk may face an important trade-off. If the court is seen as legitimate, then attacking it may end up hurting, rather than helping the president. If, however, the court is not popular and the president bears no personal cost in terms of public support, the trade-off disappears. Here, I draw on public opinion data available from the *Latinobarometro* between 1995 and 2008, to construct the following measures: *Judicial Confidence* is a lagged measure based on citizen responses to questions about how much confidence they have in their judiciary. *Presidential Confidence Lead* is based on survey responses to the questions about confidence in the executive in the year following a judicial attack.¹²

The last two independent variables serve as proxies for the composition of the judiciary. I use a count variable, *Party Age*, to capture the age of the president's party.¹³ As stated above, the assumption underlying this proxy measure is that presidents from newer parties will be less

¹² I generate average confidence scores for the judiciary by multiplying the percentage of respondents in each category and then adding them together as follows: "a lot"*2 + "some"*1 + "a little"*-1 + "none"*-2. I then transformed the data into positive integers by adding 149, which allowed me to plot the results (see below). Presidential confidence scores are constructed the same way without the linear transformation.

¹³ To address the concern that the effect of party age on composition may not be monotonic (i.e. a party that is 100 years old may not be more likely to have appointed judges than a party that is 99 years old), I constructed a dummy variable, which codes parties that are 5 years or older as 1, and 0 otherwise. The results reported below do not change in any meaningful way.

likely to have a sympathetic court when they enter office. The dummy variable *Predecessor Purge* is coded as '1' for administrations in which the immediate predecessor successfully revamped the court, and '0' otherwise.

Results

Starting with the first cluster of hypotheses, recall that presidents are imminently at risk whenever there is a gap between their *de jure* powers and their *de facto* powers. Thus, if judicial crises are driven solely by the preemptive logic (H1a), we should expect the interaction term, *MinPres*Power*, in Model 1 to be positive and significant.¹⁴ If either the preventive logic (H1b) dominates, or presidents are driven by a mix of preemptive and preventive motives (H1c), then only the constituent term, *Power*, should be positive and significant. Finally, if divided government (H1d) is to blame, then only the coefficient for *Minority President* will be positive and significant. Here, we are able to rule out the first and last hypotheses. Crises, in other words, are neither exclusively preemptive, nor entirely accounted for by the composition of the government. To further distinguish between H1b and H1c, I then plot the predicted probabilities for both minority and majority governments. In line with the mixed offensive strategy hypothesis, Figure 4 clearly shows that both types of governments are more likely to attack their courts the more constitutional powers the president has. Among minority leaders, the probability of a judicial crisis climbs from roughly 2% when presidents are at their weakest constitutionally to 16% when they are at their strongest. The changes in probabilities are only slightly muted among majority presidents.

¹⁴ With the exception of Model 6, which is a standard OLS regression model, all other models are estimated using rare events logit with standard errors clustered by country as opposed to country fixed effects. Clustering standard errors allows the error terms to be correlated within each country thus capturing the correlation among observations within each country. Note that, for Model 1, an alternative strategy would be to estimate a two stage model in which we use the predicted probabilities from the core statistical model of presidential crises to predict judicial crises. If we also include a variable for presidential powers in the second stage, then we will be able to better distinguish between the effects of presidential powers qua risk versus some other unidentified effect of presidential power.

	<u>Model 1</u>	<u>Model 2</u>	<u>Model 3</u>	<u>Model 4</u>	<u>Model 5</u>	<u>Model 6</u>	<u>Model 7</u>	<u>Model 8</u>	<u>Model 9</u>
<i>Min. Pres.</i>	-0.74 (2.34)								0.87 (2.33)
<i>Power</i>	0.13* (0.07)								0.13* (0.07)
<i>MinPres*Power</i>	0.03 (0.08)								-0.05 (0.09)
<i>Term</i>		-0.45*** (0.10)				5.19** (1.62)			-0.36*** (0.10)
<i>Past Removals</i>			0.39*** (0.09)						0.26* (0.16)
<i>Seat Change</i>				-0.02 (0.02)					
<i>Judicial Conf.</i>					-0.02* (0.01)				
<i>Judicial Crisis</i>						26.96 (24.49)			
<i>Presidential Confidence_current GDP</i>						0.42*** (0.07)			
<i>Growth</i>						0.00 (0.00)			
<i>Inflation</i>						3.23** (1.13)			
<i>Party Age</i>							0.47 (0.28)		
<i>Predecessor Purge</i>							-0.02* (0.01)		-0.01* (0.008)
<i>Constant</i>	-6.22*** (2.04)	-1.68*** (0.41)	-3.40*** (0.35)	-3.00*** (0.35)	-1.22* (0.66)	-60*** (7.19)	-2.19*** (0.47)	0.31 (0.47)	0.09 (0.45)
<i># of Obs.</i>	472	472	472	472	228	188	457	472	457

Table 3: Estimating Causes and Consequences of Judicial Crises*

* In this model, the dependent variable is *Presidential Confidence Lead*; * $p \leq 0.1$, ** $p \leq 0.05$, *** $p \leq 0.01$

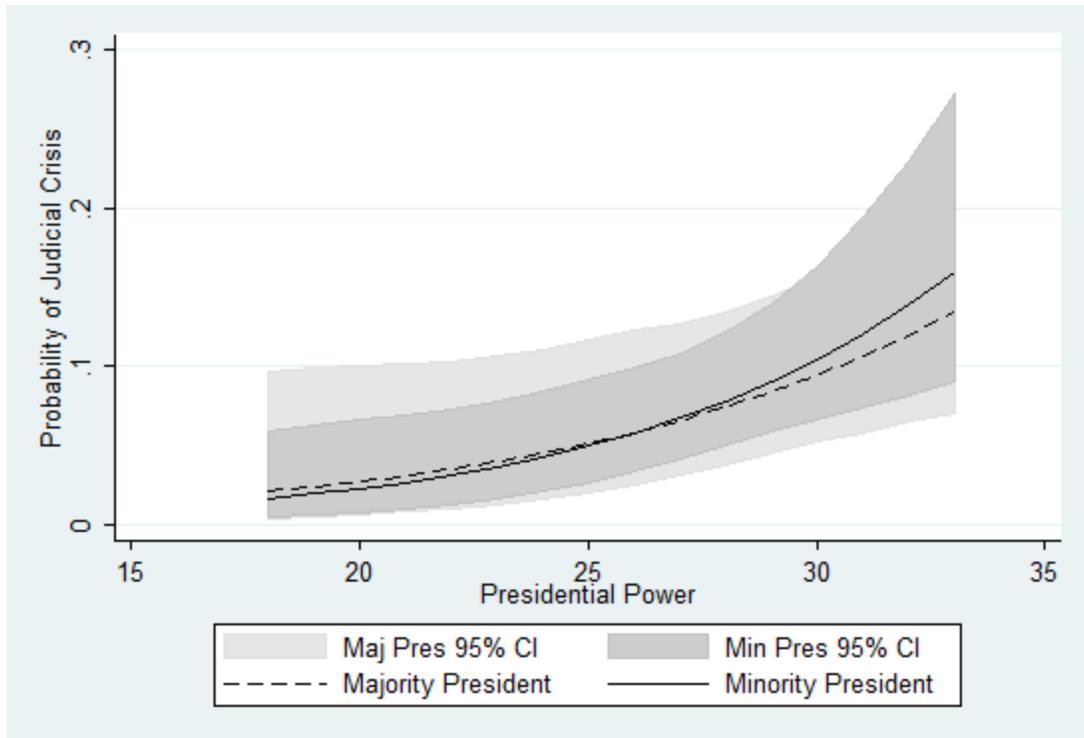


Figure 4: The effect of presidential powers for minority & majority governments on judicial crises

Turning to the timing hypothesis (H2), Model 2 supports our expectation that the likelihood of a judicial crisis diminishes over the course of the administration. Substantively, Figure 5 shows that the probability of a judicial crisis falls from 11% during an administration's first year down to less than 2.5% during its final years. This temporal pattern of attacks therefore provides a mirror image to the standard insulation account, whereby politicians reform courts at the end of their terms in order to tie the hands of incoming governments (Ginsburg 2002; Finkel 2008).

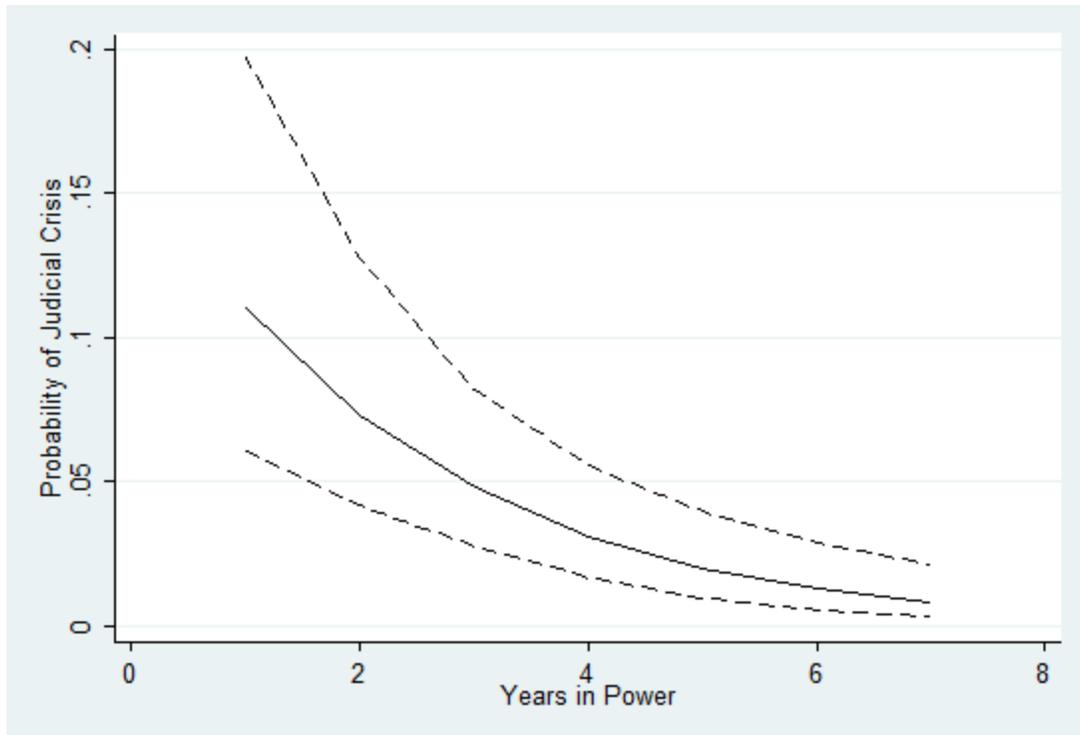


Figure 5: The effect of timing on judicial crises

Turning to the third and fourth hypotheses, which seek to examine the effects of the president's beliefs about risk, I assess how past presidential instability and past partisan instability affect the onset of judicial crises. Specifically, I regress judicial crises on both the history of attacks on previous presidents in a given country and on the history of seat share loss for previous presidents for each administration.¹⁵ Both coefficients are in the expected direction, but only the coefficient for history of attacks achieves statistical significance (Model 3 and Model 4). One plausible explanation for the discrepancy between these two results is that in the second measure only one of the contributing conditions changed, whereas in the first measure, presidential instability actually occurred. Indeed, of all the factors considered here, previous

¹⁵ To deal with possible serial autocorrelation within each administration (e.g., a government packs the court at time t and thus is less likely to re-pack it in $t+1$) I re-ran the full model (Model 9) with administration clustered standard errors. The significance of the *Past Removals* variable declined slightly, but all of the other results remained essentially unchanged. An additional step would be to run censored models for any of the models using independent variables that are left censored (*Past Removals*, *Seat Change*, and *Predecessor Purge*).

instability appears to have the largest single impact on judicial crises. In Figure 6 the probabilities jump from less than 5% for administrations with no history of previous attacks to over 30% for administrations with a history of multiple previous attacks.

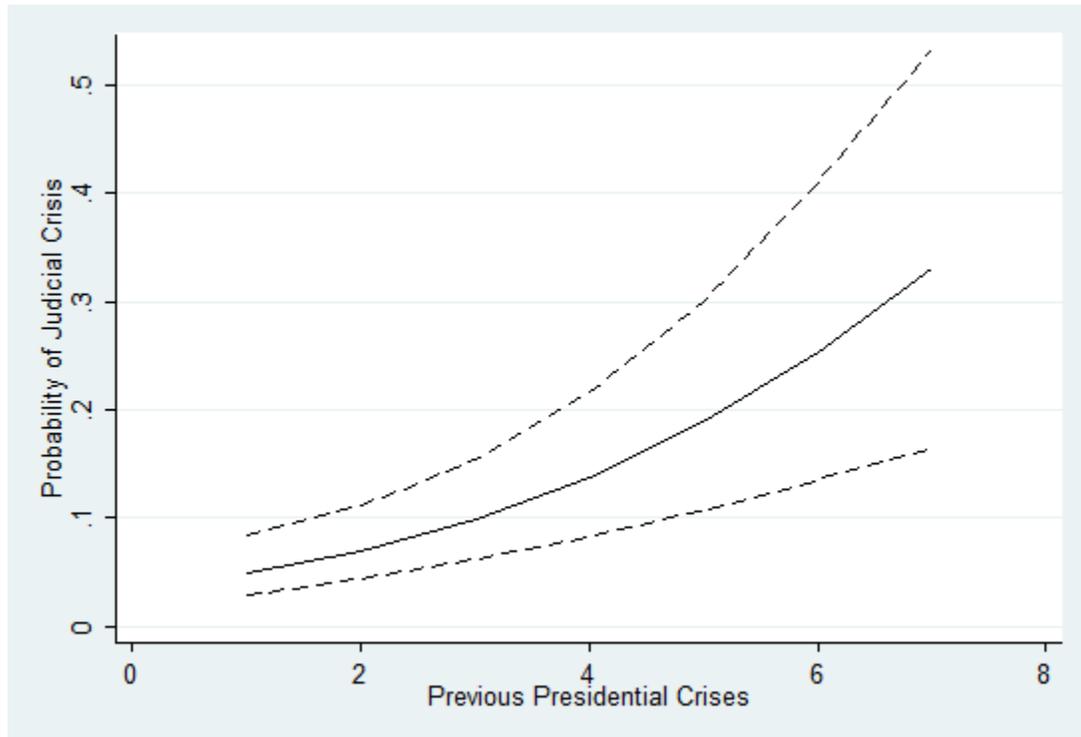


Figure 6: The effect of previous presidential crises on judicial crises

In line with our theory, the next two hypotheses lead us to expect that if presidents are concerned with mitigating their own risk of removal, then they should be less likely to attack courts that enjoy public support and more likely to go after courts that do not (H5). Likewise, if targeting the courts is meant to be a strategy for ensuring their longevity, then confidence in the president should not fall precipitously after he or she goes after the courts (H6). Both of these hypotheses find support in the data. In Model 5 the coefficient for the lagged variable, *Judicial Confidence*, is negative and significant. Substantively, Figure 7 shows that the probability of a judicial crisis declines from over 20% at the lowest levels of trust to less than 1% at the highest levels of trust. Meanwhile, Model 6 shows that there are no systematic negative consequences

for presidents who target their courts: Ecuador's Gutiérrez is thus the exception rather than the rule.

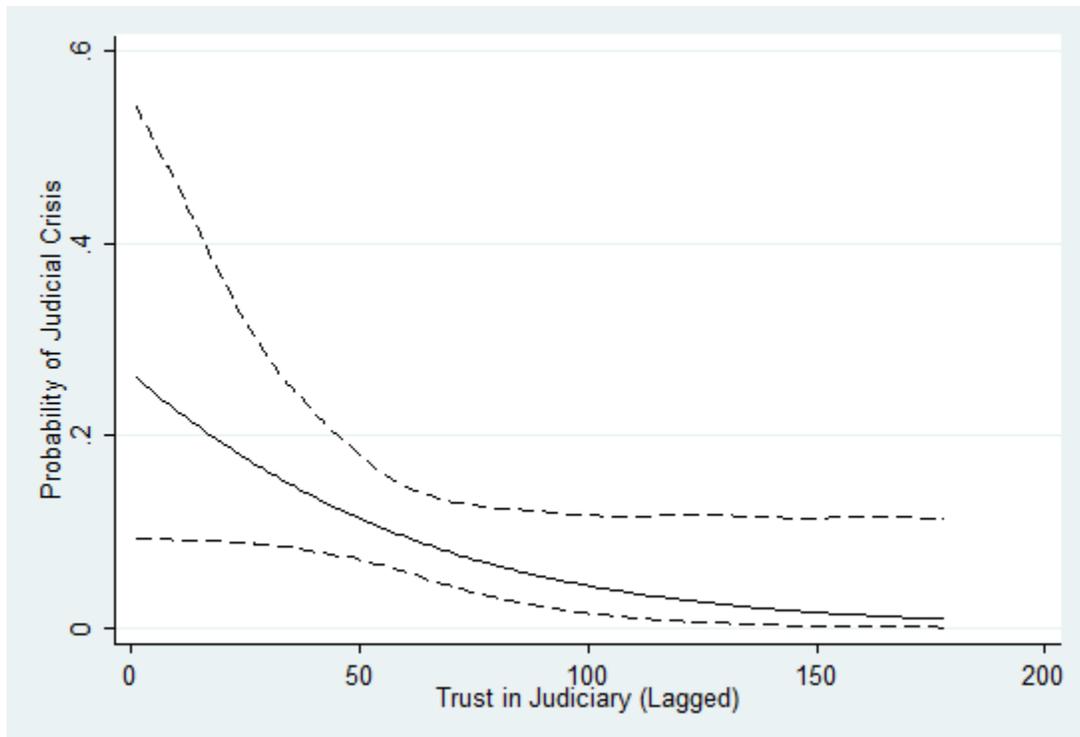


Figure 7: The effect of trust in the judiciary on judicial crises

Finally, Models 7 and 8 examine the effect of the composition of the court on the likelihood of a judicial crisis. In line with H7, the coefficient for the age of the president's party is negative and significant. Substantively, Figure 8 shows that there is a modest decline in the probability of a judicial crisis from roughly 12% among presidents from brand new parties down to 6% at the median party age, falling to less than 1% among presidents from the very oldest parties. Model 8, however, shows no effect of *Predecessor Attacks*. This either cuts against our theory, or suggests that whether or not a president confronts a hostile court is not enough to elicit an attack. Certainly, there is anecdotal evidence that successors justify their actions by citing previous attacks. Just before stacking the Argentine Supreme Court, Carlos Menem, famously

quipped, “Why should I be the only Argentine president not to have my own court?” But the patterns in the data reveal that a tit-for-tat norm alone is insufficient.

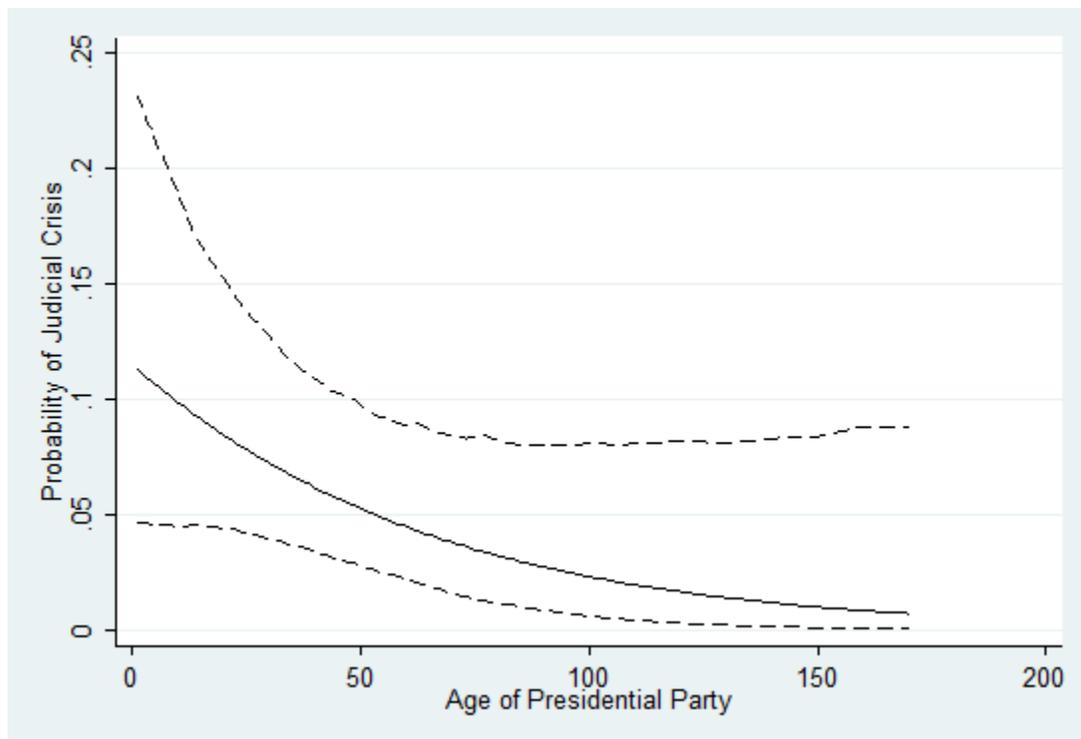


Figure 8: The effect of presidential party age on judicial crises

Certainly in any given case multiple motives may compel presidents to attack their courts, but the fact that most of the testable implications that flow from the theoretical framework developed above are borne out empirically suggests that presidents who are vulnerable to crises themselves often go on the offensive. Of the eight models contained in Table 3, only two of the models did not conform to our expectations. In each and every other case, the variables – either singly or jointly (Model 9) – helped account for variation in judicial crises over time and across countries in Latin America.

Conclusion

This paper makes several contributions. By treating judicial manipulation as an explicit strategic choice, the paper turns one of the most prominent theories of judicial independence on

its head. Namely, I show that under certain conditions political insecurity leads presidents to gut judicial independence, not shore it up. By drawing on the analogies of preemptive and preventive wars, I provide a new logic that connects the risks that Latin American presidents face to their decisions to seize control over their judiciaries. Using an original dataset on institutional instability in Latin America, the empirical evidence generally supports the claim that the president's fear of losing power helps to trigger judicial crises. From establishing a broad correlation between presidential instability and judicial instability, to statistically estimating both the effects of presidential risks and costs on the likelihood of judicial crises, the evidence clearly and consistently shows that presidents under threat of early removal have been more likely to try to capture their courts than presidents who are relatively secure.

More generally, this paper suggests three sets of broader implications. The first is that presidential instability is not necessarily isolated to the executive branch. Rather this paper has shown that even the anticipation of such instability can potentially cascade across institutions and over time. Arguing that institutional crises are inter-connected implicitly cuts against the current tendency to assume that this new form of presidential instability represents a largely positive turn whereby presidentialism is simply being parliamentarized (cf. Pérez-Liñán 2005; Marsteintredet and Berntzen 2008). Rather, the prospect of a presidential crisis can serve as a kind of tripwire that provokes presidents at risk to target their opponents in other institutions.¹⁶ That some proportion of these anticipatory strikes boomerang only adds to the institutional chaos. Former Guatemalan Jorge Serrano desperately tried to preserve his grip on power by shutting down both Congress and the courts. A week later both the president and members of the Supreme Court found themselves out of power; a year later the legislature was shut down yet

¹⁶ In Helmke (forthcoming) I extend this analysis to legislatures, and specifically show how presidential crises are linked to autogolpes and constituent assemblies.

again. Thus the overarching lesson is that today's new form of institutional instability not only leaves presidents vulnerable, but may indirectly weaken other institutions as well. This further suggests a new twist to the familiar portrait of delegative democracies: Latin American presidents violate checks and balances not merely to prove their omnipotence, but rather precisely because they fear becoming impotent down the road.

The second broader point hints at a novel, if disturbing, connection between the so-called "judicialization of politics" and the politicization of the judiciary. Extending Toharia's finding (1974) that sometimes courts are independent precisely because they have no power, here the implication is that as courts gain the ability to exercise more influence and political actors become more likely to litigate their conflicts, the stakes of politicians controlling the court rise accordingly. This has clearly been the case for leaders like Morales and Ortega, who have unabashedly used the courts to prosecute their political enemies, but it also rings true for leaders like Correa and Chávez, who feared that their opponents would do the same. Contra Hamilton (1961[1787]), this implies that expanding a court's jurisdiction and/or increasing judicial tenure may actually yield more political attacks against the judiciary, not fewer, particularly if leaders are themselves at risk. Helmke and Staton (2010) make a similar argument about the countervailing effects of tenure and jurisdiction on the likelihood of inter-branch crises, but they highlight the conflicting imperatives that such institutional protections pose for judges, rather than for politicians.

Finally, the theoretical story developed here also dovetails nicely with the literature on strategic judicial decision-making. Elsewhere, for example, I have argued that institutional instability prompts judges to strategically defect from weak governments in order to curry favor with incoming governments (Helmke 2001; 2005). If this is right, it makes all the more sense for

potentially vulnerable governments to try to manipulate courts when and where they can. This is so for at least two reasons. In the short term, seizing control over the court should help tilt the playing field in favor of the incumbent, thus endogenously lowering the chances that she will be weakened. In the longer term, even if the government does start to lose power, the more the judges are associated with the incumbents, the less plausible strategic defection becomes (Helmke 2005: 54-56). In other words, once judges are viewed as pure cronies, they will have a much harder time convincing the successor government to keep them, thus reducing the attraction of strategic defection and benefitting the incumbents. To explore fully the implications of the first strike logic for judicial behavior, however, we need to develop a new game theoretic model that formally endogenizes the government's fate with respect to the choices judges make. This remains a task for future research.

References

- Alemán, Eduardo and George Tsebelis. 2005. "Presidents, Parties and Agenda Control in Latin America." Working Paper.
- Carey, John. 2003. Presidentialism and Representative Institutions. *In Constructing Democratic Governance in Latin America*, ed. Jorge Domínguez and Michael Shifter. The Johns Hopkins University Press.
- Castagnola, Andrea, and Aníbal Pérez-Liñán. 2011. "The Rise (and Fall) of Judicial Review." *Courts in Latin America*, ed. Gretchen Helmke and Julio Ríos-Figueroa. New York: Cambridge University Press.
- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: Congressional Quarterly Press.
- Ferejohn, John, and Barry R. Weingast. 1992. "A Positive Theory of Statutory Interpretation," *International Review of Law and Economics* 12: 263–79.
- Finkel, Jodi S. 2008. *Judicial Reform as Political Insurance: Argentina, Peru, and Mexico in the 1990s*. Notre Dame, Indiana: University of Notre Dame.
- Ginsburg, Tom. 2002. "Constitutional Courts in New Democracies: Understanding Variation in East Asia," *Global Jurist Advances* 2(1) Article 4.
- Graber, Mark. 1993. "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7: 875-901.
- Hamilton, Alexander, James Madison and John Jay. 1961[1788]. *The Federalist Papers*. New York: New American Library.
- Helmke, Gretchen. 2002. "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy." *American Political Science Review* 96(2): 291-303.
- Helmke, Gretchen. 2005. *Courts under Constraints: Judges, Generals and Presidents in Argentina*. New York: Cambridge University Press.
- Helmke, Gretchen. Forthcoming. *Institutions on the Edge: Inter-Branch Crises in Latin America*. New York: Cambridge University Press.
- Helmke, Gretchen, and Jeffrey Staton. 2011. "The Puzzling Judicial Politics of Latin America." *Courts in Latin America*: 306-31.
- Hochstetler, Kathryn. 2006. "Rethinking Presidentialism: Challenges and Presidential Falls in South America." *Comparative Politics* 38(4):401–418.

- Hochstetler, Kathryn and Margaret E. Edwards. 2009. "Failed Presidencies: Identifying and Explaining a South American Anomaly." *Journal of Politics in Latin America* 1(2):31–57.
- Hinojosa, Victor and Aníbal Pérez-Liñán. 2003. Presidential Impeachment and the Politics of Survival: The Case of Colombia. In *Checking Executive Power: Presidential Impeachment in Comparative Perspective*, ed. Frances Hagopian and Scott Mainwaring. Westport: Greenwood Press pp. 65–79.
- Holmes, Steven. June 16, 1996. "Majority Rules; But, Will Whites Vote for a Black?" *The New York Times*. p.1.
- Kahneman, Daniel, Paul Slovic and Amos Tversky. 1982. *Judgment Under Uncertainty: Heuristics and Biases*. Cambridge: Cambridge University Press.
- Kim, Youngh Hun and Donna Bahry. 2009. "Interrupted Presidencies in Third Wave Democracies." *Journal of Politics* 70(3):807–822.
- Lalander, Rickard. 2010. "The Impeachment of Carlos Andrés Pérez and the Collapse of Venezuelan Partyarchy." In *Presidential Breakdowns in Latin America: Causes and Outcomes of Executive Instability in Developing Democracies*, ed. Mariana Llanos and Leiv Marsteintredet. New York: Palgrave Macmillan.
- Landes, William M. & Richard A. Posner. 1975. "The Independent Judiciary in an Interest-Group Perspective." *Journal of Law and Economics* 18: 875.
- Larkins, Christopher. 1998. "The Judiciary and Delegative Democracy in Argentina." *Comparative Politics*: 423-442.
- Lehoucq, Fabrice. 2008. "Bolivia's Constitutional Breakdown." *Journal of Democracy* 19(4):110–124.
- Levy, Jack S. 1987. "Declining Power and the Preventive Motivation for War." *World Politics* 40(1): 82-107.
- Llanos, Mariana and Leiv Marsteintredet. 2010. "Conclusions: Presidential Breakdowns Revisited." In *Presidential Breakdowns in Latin America: Causes and Outcomes of Executive Instability in Developing Democracies*, ed. Mariana Llanos and Leiv Marsteintredet. New York: Palgrave Macmillan.
- Mainwaring, Scott, and Christopher Welna, eds. 2003. *Democratic Accountability in Latin America*. Oxford: Oxford University Press.
- Mainwaring, Scott and Aníbal Pérez-Liñán. 2005. "Latin American Democratization Since 1978: Democratic Transitions, Breakdowns and Erosions." In *The Third Wave of*

- Democratization in Latin America: Advances and Setbacks*, ed. Frances Hagopian and Scott Mainwaring. Cambridge: Cambridge University Press pp. 14–59.
- Mainwaring, Scott, and Matthew Soberg Shugart, eds. 1997. *Presidentialism and Democracy in Latin America*. New York: Cambridge University Press.
- Marsteintredet, Leiv and Einar Berntzen. 2008. “Reducing the Perils of Presidentialism in Latin America through Presidential Interruptions.” *Comparative Politics* 41(1):83–101.
- McCubbins, Mathew D. and Thomas Schwartz. 1984. “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms.” *American Journal of Political Science* 28.
- McDonald, Ronald and Mark Ruhl. 1989. *Party Politics and Elections in Latin America*. Boulder: Westview Press.
- Negretto, Gabriel L. 2004. “Government Capacities and Policy Making by Decree in Latin America: The Cases of Brazil and Argentina.” *Comparative Political Studies* 37:531–562.
- North, Douglass and Barry Weingast. 1989. “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England.” in *The Journal of Economic History* 49(4):803-832.
- O’Donnell, Guillermo. 1994. “Delegative Democracy.” *Journal of Democracy* 5(1):55–69.
- O’Donnell, Guillermo. 1998. “Horizontal Accountability in New Democracies.” *Journal of Democracy* 9(3): 112-126.
- O’Donnell, Guillermo. 1999. *Counterpoints: Selected Essays on Authoritarianism and Democratization*. Notre Dame, IN: University of Notre Dame Press.
- Pérez-Liñán, Aníbal. 2003. “Presidential Crises and Political Accountability in Latin America, 1990–1999.” In *What Justice? Whose Justice? Fighting for Fairness in Latin America*, ed. Susan Eckstein and Timothy Wickham- Crowley. Berkeley: University of California Press pp. 98–129.
- Pérez-Liñán, Aníbal. 2005. “Latin American Democratization Since 1978: Democratic Transitions, Breakdowns and Erosions.” In *The Third Wave of Democratization in Latin America: Advances and Setbacks*, ed. Frances Hagopian and Scott Mainwaring. Cambridge: Cambridge University Press pp. 14–59.
- Pérez-Liñán, Aníbal. 2007. *Presidential Impeachment and the New Political Instability in Latin America*. New York, NY: Cambridge University Press.
- Powell, Robert. 1999. *In the Shadow of Power: States and Strategies in International Politics*. New Jersey: Princeton University Press.

- Rabin, Matthew. 1998. "Psychology and Economics." *Journal of Economic Literature* 36(1):11–46.
- Ramseyer and Rosenbluth. 1993. *Japan's Political Marketplace*. Cambridge: Harvard University Press.
- Ramseyer, J. Mark. 1994. "The Puzzling (In)Dependence of Courts: A Comparative Approach." *The Journal of Legal Studies* 23(2): 721-747.
- Ramseyer, J. Mark and Eric Rasmusen. 1997. "Judicial Independence in a Civil Law Regime: The Evidence from Japan." *Journal of Law, Economics, and Organization* 13/2: 259-287.
- Reiter, Dan. 1995. "Exploding the Powder Keg Myth: Preemptive Wars Almost Never Happen." *International Security*: 5-34.
- Salzberger, Eli. 1993. "A Positive Analysis of the Doctrine of Separation of Powers, or: Why Do We Have an Independent Judiciary?" *International Review of Law and Economics* 13: 340-379.
- Spiller, Pablo T. and Rafael Gely. 1992. "A Rational Theory of Supreme Court Statutes with Applications to State Farm and Grove City Cases." *Journal of Law, Economics, and Organization* 6(2):263-300.
- Staton, Jeffrey K. 2010. *Judicial Power and Strategic Communication in Mexico*. New York, NY: Cambridge University Press.
- Toharia, Jose J. 1974. "Judicial Independence in an Authoritarian Regime: the Case of Contemporary Spain." *Law and Society Review* 9(1974): 475.
- Valenzuela, Arturo. 2004. "Latin American Presidencies Interrupted." *Journal of Democracy* 15(4):5–19.
- Vanberg, Georg. 2001. *The Politics of Constitutional Review in Germany* New York, NY: Cambridge University Press.
- Weldon, Jeffrey. 1997. "Political Sources of Presidentialismo in Mexico". In *Presidentialism and Democracy in Latin America*, ed. Scott P. Mainwaring and Matthew S. Shugart. Cambridge: Cambridge University Press pp. 225–259.
- Wittington, Keith. 1999. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Cambridge: Harvard University Press.