



The paradox of judicial reforms in Latin America

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Abstract

Conventional wisdom indicates that certain institutional reforms strengthen the judiciary, while others curb its authority. However, even court-empowering reforms can undermine judicial independence. Reforms often create new vacancies by prompting the resignation of sitting judges or expanding the size of the court. Judicial turnover thus creates opportunities for the reforming parties to appoint loyal judges. We document that court-empowering reforms produce judicial turnover by analyzing the retirement patterns of about 4000 justices who served in Latin American Supreme Courts and constitutional tribunals between 1900 and 2021.

Keywords Institutions · Latin america · Judicial independence · Constitutional courts · Constitutional reforms

1 Introduction

Can institutional reforms promote judicial independence? This article argues that both court-empowering and court-curbng reforms can destabilize the judiciary by affecting the composition of the high courts. While some features of constitutional design—including life terms, supermajority requirements to impeach judges, and *erga omnes* judicial review—arguably empower the high courts, other reforms (e.g., court packing or restrictions to jurisdiction) are explicitly intended to tame the judiciary. The literature on judicial politics has conventionally assumed that politicians undermine independent judges through court-curbng legislation (Leonard 2016; Clark 2010) but have overlooked unintended effects of court-empowering reforms on judicial tenure.

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We show that, against the expectations of many well-meaning reformers, even court-empowering reforms may destabilize the judiciary. Institutional reforms often undermine courts because, irrespective of their stated goals, constitutional amendments and replacements offer a window of opportunity to reorganize the composition of the judiciary. For example, in 1963 the Dominican Republic adopted a court-empowering reform as part of a broader transformation intended to overcome the legacies of the Trujillo era. Yet, political leaders also recognized the need to revamp the judiciary, and a transitory clause established that judicial tenure would be protected by law, “after the National Assembly conducts a purge of the current judges” (Dominican Republic National Constitution of 1963, Second Transitory clause).

In Latin America, the length of justices’ tenure has been consistently shortened by constitutional changes. In some cases, justices have short tenures by design. For example, until 2001, Honduran justices served for four years, concurrent with the presidential term. But most episodes of judicial turnover result instead from institutional weakness. Consider the Argentine case: Even though the constitution grants Supreme Court justices life tenure, a majority of justices were forced out of office in 1947, 1955, 1958, 1966, 1973, 1976, and 1983 (Castagnola 2018).

Formal rules about judicial tenure are undermined by noncompliance and also by institutional instability (Brinks et al. 2020). Political leaders refuse to comply with rules about tenure when they employ pressures and informal incentives to force individual resignations from the bench. They profit from institutional instability when they alter constitutional norms to restructure the courts. Thus, it is worth noting that legal reforms can effectively undermine the judiciary even when they are not explicitly crafted as court-curbing reforms.

In fact, politicians have stronger incentives to capture high courts precisely when courts are powerful (Helmke and Staton 2011). Greater powers of judicial review make courts politically relevant; a constitutionally fixed number of seats prevents court packing and encourages purging as an alternative, and appointment procedures controlled by the president and Congress make purges profitable for those actors. Partisan encroachment on Latin American judiciaries has occurred through mass purges or gradual removals.

We explore the microfoundations of this counterintuitive principle. The first section presents comparative historical evidence on the evolution of constitutional norms regulating the judiciary in the Western Hemisphere. Reforms are classified as court empowering or court curbing. The second section introduces the theoretical microfoundations of institutional reforms and their consequences for judicial tenure. The third section assesses the impact of institutional reforms using data on the turnover of high-court justices in 19 countries over the course of nine decades. In the last section we discuss the main findings and theoretical implications.

2 The evolution of constitutional rules in the Americas

Constitutions in Latin America have been less enduring than in other regions (Negretto 2012; Elkins et al. 2009). For example, between 1789 and 2001, the average lifespan of a constitution was 76.6 years in western Europe but 16.5 years in Latin America (Negretto

2012).¹ Constitutional amendments have also been recurring in the region, occurring on average every 3 years during a constitution's lifespan. Latin American constitutions have changed not only in response to regime transitions, but also due to shifts in partisan politics and political incentives (Elkins et al. 2009; Negretto 2012). In this section we analyze the historical evolution of constitutional rules regarding the judiciary in Latin America between 1900 and 2021.² We trace all changes that have affected the functioning of high courts in the region and classify them according to their capacity to empower or curb courts.

Court-empowering norms are those that codify explicit powers of judicial review, a constitutionally fixed size for the courts, life terms for justices, financial autonomy, appointment procedures involving multiple actors, and constitutional protections for judicial tenure (Ríos-Figueroa and Navia 2005; Ginsburg 2003; Keith 2002; Feld and Voigt 2003; La Porta et al. 2004; Mueller 1996, 1999; Landes and Posner 1975; Ríos-Figueroa 2011; Clark 1975; Lara-Borges et al. 2012; Epstein et al. 2002; Kahn 1993). Reforms intended to adopt court-empowering norms are celebrated by voters and international donors because they purportedly aim to strengthen the autonomy of the judiciary and its independence.

Alternatively court-curbing reforms are intended to restrain the powers of the judiciary (Clark 2010; Leonard 2016; Rosenn 1987) or pack the courts with loyalists (Nelson 1988; Leuchtenburg 1966, 1995).³ Court-curbing reforms are highly controversial because they target the authority and the autonomy of the courts (Brinks and Blass 2018).

Historical sources reflect a mixed record of court-empowering and court-curbing reforms in Latin America. Our analysis focuses on constitutional changes rather than all normative changes affecting the judiciary. Even though many reforms have taken place through the organic laws of the countries (such as changes in the number of sitting justices in Argentina), we are not able to collect systematic data on the historical evolution of these national laws.

Tenure. Only a quarter of the constitutions in the region have granted justices life tenure.⁴ Most justices in the region serve for fixed terms in office, with or without the possibility of reappointment. Supreme Court justices have served in office between 2 and 18 years when reappointment is allowed (the average renewable term is 6 years), and between 6 and 15 years when they are limited to a single constitutional term (the average single term is 10 years). Constitutional-tribunal justices served between 2 and 8 years (5 on average) with reappointment, and between 6 and 12 years (9 on average) without reappointment. Longer terms reduce dependence on political patrons and arguably promote the stability and independence of the high courts. In 1925, the average constitutional term in office for justices without life tenure was 5 years; by 2015, the average term had increased to 8 years.

¹ Since independence, Latin American countries had enacted on average 10.7 constitutions, but some countries exceeded that number, like Venezuela with 26 constitutions, Ecuador with 19, Bolivia with 16, and El Salvador with 15. Other countries have experienced few replacements, such as Argentina and Panama with 4 constitutions each (Negretto 2012).

² We do not capture symbolic reforms such as changes in the court name, but rather substantive changes in the functioning of courts that can have an impact on the independence of the judiciary.

³ In this article we focus on formal court-curbing constitutional reforms.

⁴ We code as *life tenure* systems of tenure during "good behavior" as well as those in which justices are required to retire at an advanced age (usually 70 or 75). Retirement ages can be manipulated, but the main distinction in Latin American high courts has been between appointments for fixed terms and appointments until retirement.

Figure 1 displays the timing of court-empowering reforms promoting longer terms (i.e., granting life tenure or extending terms) and of court-curbing reforms reducing the length of tenure (removing life tenure or shortening judicial terms, displayed as negative values). During the time frame of this study, 53% of the reforms restrained the tenure of the justices while 47% empowered them. Reforms promoting longer terms were usually isolated events in single countries, whereas reforms reducing judicial terms often coincided in more than one country in the same year. During the last wave of military regimes (roughly between 1965 and 1985), court-curbing reforms dominated; since the return of democracy in 1990, judicial tenure was almost equally promoted and restrained across the region. Although the average term in office has increased over time, a considerable number of reforms have reduced the duration of terms for high-court justices, indicating that reformers have pursued diverse political objectives.

In contexts of institutional weakness, the implications of life-tenure reforms for judicial instability can be surprisingly ambiguous. Life tenure is intended to reduce turnover in the high courts, yielding more stable and independent judiciaries. Yet, in historical contexts in which presidents control informal power resources, the prospect of facing opposition justices indefinitely creates greater incentives for presidents to remove them using para-constitutional means (Helmke and Staton 2011). Life tenure increases the risk of attacks against the judiciary because the inherited composition of the court does not have an expiration date.

Judicial review. Although the US Supreme Court asserted its powers of judicial review in *Marbury v. Madison* (1803), using precedent to overcome the US Constitution's silence on the issue, most Latin American constitutions have explicitly acknowledged the role of courts in assessing the constitutional standing of legislative and executive acts. The top panel of Fig. 2 shows that about 40% of Latin American constitutions admitted some form of judicial review already in the early twentieth century. By 1925, over half of them did. The number grew consistently until the mid-1980s, when almost 90% of the high courts in the region—including Supreme Courts presiding over diffuse review, Supreme Court cham-

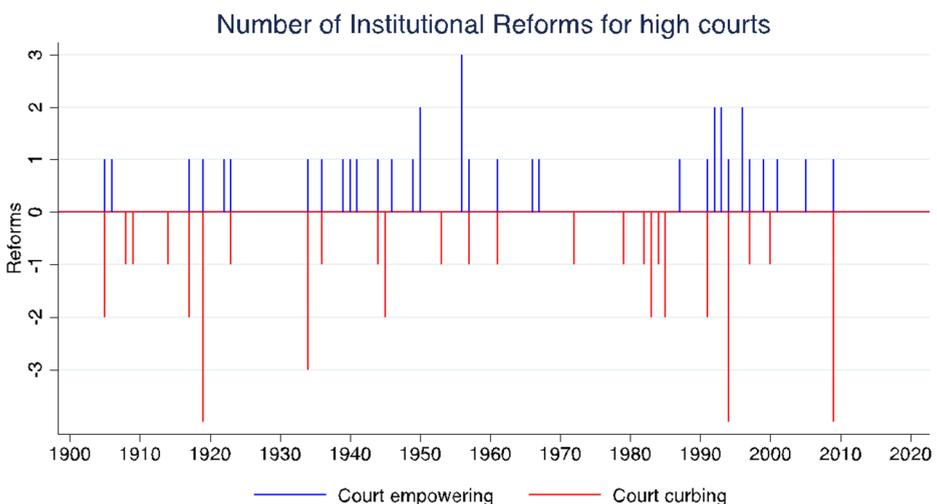


Fig. 1 Reforms affecting terms in office

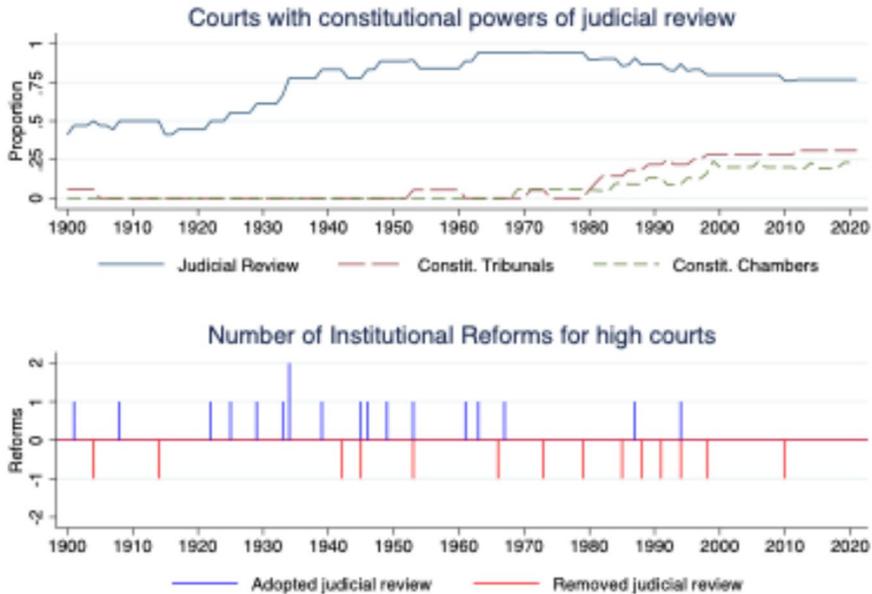


Fig. 2 Reforms affecting judicial review. *Note:* In court-empowering reforms, high courts gain powers of judicial review, and in court-curbing ones they lose powers of judicial review according to the constitution.

bers presiding over concentrated review, and constitutional tribunals—were constitutionally empowered to exercise judicial review.

The bottom panel of Fig. 2 shows that most constitutional reforms dealing with this issue in the first half of the twentieth century granted Supreme Courts new powers of judicial review (i.e., they were court empowering). The pattern changed toward the end of the century, simply because several Supreme Courts lost their powers in favor of separate constitutional tribunals. By the mid-1980s, two patterns of institutional reform were already taking shape. First, some countries created constitutional tribunals separated from the highest court of cassation. By 2015, seven countries in the region (Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, and Peru) had separate constitutional tribunals in the Kelsenian tradition, and one (Brazil) had converted its old Supreme Court (the Supremo Tribunal Federal) into a constitutional court. Second, several countries created distinct constitutional chambers within their enlarged Supreme Courts. This strategy—intended to provide some form of centralized review without undermining the Supreme Court—began with Cuba’s 1940 constitution but remained dormant after the revolution until the Colombian Supreme Court created a constitutional chamber in 1969. By 2015, five countries in the region (Costa Rica, Honduras, El Salvador, Paraguay, and Venezuela) had adopted this model.

Constitutional authority to exercise judicial review makes justices natural targets of political disputes. Tsebelis (2002) notes that courts become powerful veto players when they have authority over constitutional adjudication and when it is difficult for legislators to

overrule their interpretation. Ginsburg and Versteeg (2013) find that constitutional review is adopted as a form of political insurance. Yet, La Porta et al. (2004) and Lara Borges et al. (2012) argue that constitutional judges are more vulnerable to political manipulation than other members of the judiciary. If the power of judicial review is concentrated in a small number of judges, it is likely that those judges will become the target of purges when they rule against the president or Congress.

Fixed size. The creation of chambers devoted to constitutional law contributed to a secular expansion in the size of Supreme Courts. Such changes reflected an increasing separation of legal areas, which required the creation of specialized chambers (civil, criminal, constitutional) mimicking the organization of the much larger supreme tribunals in continental Europe. However, the expansion of Supreme Courts also reflected successful court-packing operations, by which legislative majorities gained control of constitutional interpretation appointing new, loyal justices. The top panel of Fig. 3 documents a slow but steady increase in the number of Supreme Court seats. The typical court had 7.5 justices in 1900, about 10 in 1950, and 16 by 2015. Where judicial review was removed from the jurisdiction of the highest court of appeals, the new constitutional tribunals were smaller (about 8 seats on average).

The size of the court affects political incentives to remove justices because the relative weight of any individual judge defying the ruling party decreases as the number of judges in the court increases (Feld and Voigt 2003). Politicians can therefore dilute the power of unfriendly judges by expanding the size of the court. However, “packing” the courts is costlier where constitutions establish a fixed number of seats, because rulers must reform the constitution in order to enlarge the body—a task that often requires supermajorities (Ríos-Figueroa 2011). Historically, about 45% of the courts in the region enjoyed a con-

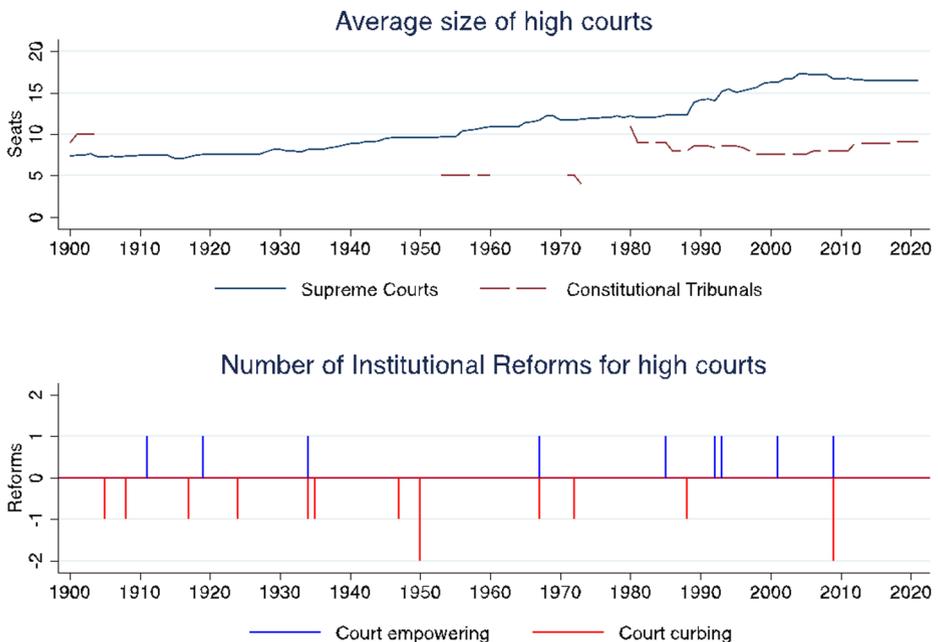


Fig. 3 Reforms affecting the size of high courts

stitutionally fixed number of seats, although this percentage has fluctuated over time. The number of court-empowering reforms adopting a fixed size (9), presented in bottom panel of Fig. 3, has been smaller than the number of court-curbing reforms eliminating this rule (14). This suggests that reformers often sought opportunities to enlarge the courts. At the same time, Lara Borges et al. (2012) argue that constitutions that impose a fixed size for the court will encourage political purges because politicians are able to craft a friendly court only by replacing sitting judges.

Appointment procedures. Expanding the number of seats (packing) or forcing the exit of incumbent judges (purging) is useful only to the extent that the politicians concocting the operation can control the appointment of new justices. Figure 4 shows that Congress has played a central role in the appointment of justices for 85% of the high courts in the region, and this constitutional pattern has not varied much over time. Executives have played a role in nomination for about half of the courts. However, while some constitutions grant legislative majorities *unilateral* power to nominate and appoint justices, constitutional designs always place presidents at the center of *cooperative* procedures that require collaboration of two or more bodies (e.g., the American Constitution establishes that justices are nominated by the president and confirmed by the Senate). The 1990s saw the emergence of judicial councils as a central actor in cooperative procedures. By 2015, 10 courts involved judicial councils in the nomination of justices.

The 1980s also witnessed the emergence of *representative* procedures, which allocate seat quotas among multiple appointing authorities. For instance, one-third of the justices may be appointed by the president, another third by Congress, and another third by the Supreme Court. This type of mechanism is expected to widen the pool of candidates, con-

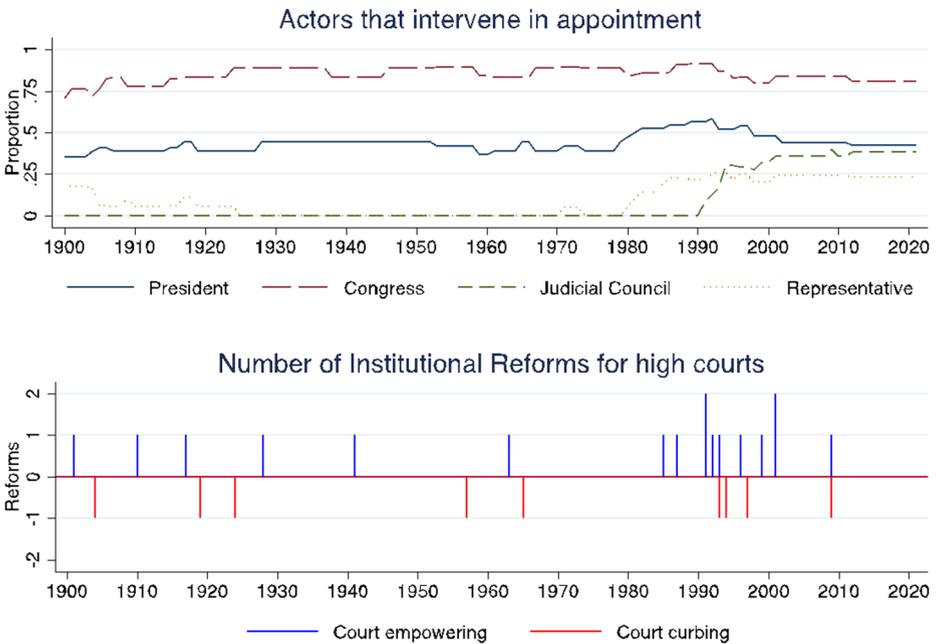


Fig. 4 Reforms affecting the appointment of justices. *Note:* Court-empowering reforms “multilateralize” the appointment procedure, while court-curbing ones concentrate appointments in fewer hands.

trary to cooperative procedures, which tend to produce mainstream justices (Ríos-Figueroa 2011). The main disadvantage is that appointing authorities can select partisan candidates when no other institution participates in the vetting process, creating a system of quotas and mutually assured politicization (Ginsburg 2003). By 2015, six courts in the region employed this method of appointment.

Besides the most common appointment procedures illustrated by Fig. 4, other models have coexisted in the region. A few constitutions charged incumbent justices with the nomination of their peers; in Ecuador and Colombia, this procedure was called cooptation. Some scholars, including Mueller (1999) and Feld and Voigt (2003), favor this model, arguing that the judiciary has clear incentives to select judges in a competitive and nonpoliticized manner. Popular elections have been a very rare procedure for the selection of justices at the national level, although Bolivia adopted (nominally) nonpartisan elections in 2011 and Mexico did so in 2025.

Even though the literature discusses appointment procedures extensively, there is no consensus on the best mechanism for achieving judicial independence (Feld and Voigt 2003; Ginsburg 2003; Lara-Borges et al. 2012; Mueller 1999; 1996; Kahn 1993). Good appointment mechanisms are expected to insulate judges from short-term political pressures on the one hand and from countermajoritarian proclivities on the other (Ginsburg 2003).

Most studies concentrate on the number of actors involved in the process and the required majorities. Ríos-Figueroa (2011, 2006) claims that professional appointments and cooperative procedures guarantee a minimum degree of judicial independence, contrary to those mechanisms in which a single organ controls the selection procedure. Brinks and Blass (2018) similarly claim that appointment mechanisms provide a good indicator of *ex ante* judicial autonomy. Their historical analysis of constitutional designs in the region reveals a positive trend toward a more plural nomination process, meaning that appointments require greater consensus among several actors. In line with this claim, the bottom panel of Fig. 4 shows that most constitutional reforms over the past century (17) sought to “multilateralize” the appointment process, while only a few (9) sought to concentrate the power of appointment in fewer hands.

This section has documented an extensive pattern of constitutional reforms affecting the judiciary over the past century. Figure 5 displays an aggregate count of reforms per year: Court-curbing and court-empowering reforms have occurred with similar frequency. However, the consequences of such reforms for judicial instability are not self-evident. In the following section, we explain why positive reforms empowering the judiciary may encourage an aggressive takeover of the courts, while hostile reforms weakening the courts may remove political incentives to undermine the judiciary.

3 Reforms as opportunity: court-curbing versus court-empowering strategies

The previous section suggested that episodes of constitutional change, irrespective of their content, can create a window of opportunity for judicial purges (see also Pérez-Liñán and Castagnola (2016)). Legal reformers—whether pursuing constitutional replacements or amendments—have both the incentives and the capacity to restructure high courts due to the inherent uncertainty surrounding the outcomes of newly designed institutions (Shvetsova

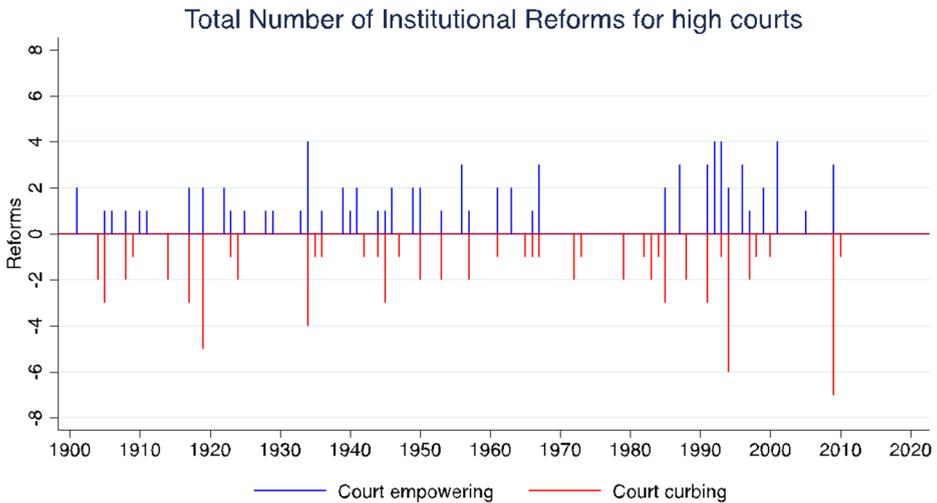


Fig. 5 Annual frequency of court-curbing and court-empowering reforms. *Note:* The total number of reforms reflects the sum of values from Figs. 1, 2 and 3, and 4.

2003). Given that politicians cannot fully anticipate (*ex ante*) the effects of new constitutional rules, they seek to secure *ex post* control over their interpretation by aligning the judiciary with their vision. This dynamic occurs regardless of whether reform is led by a single party or by multiparty negotiations. When a single party drives constitutional reform, it often uses its legislative majority to pack the high courts, ensuring favorable interpretations of the newly enacted charter (Negretto 2013; Pozas-Loyo and Ríos-Figueroa 2010). In cases of negotiated constitutional change, the composition of the Supreme Court or constitutional tribunal frequently becomes a central element of the agreement since these bodies are responsible for interpreting the new constitution and overseeing the legality of government actions.

To understand the microfoundations of judicial reforms, we build on the work of Brinks, Levitsky, and Murillo, who identify the choices confronted by political actors in contexts of institutional weakness: “Actors who oppose a particular institution have three options: (1) comply at cost S , (2) avoid compliance and face the cost of a violation (V), or (3) change the institution at cost C to achieve a new S ” (2020, 24).

In the context of our problem, legislative majorities confront *four* choices: (1) comply with the rulings of the sitting court at cost S_1 ; (2) purge the court overtly (e.g., through impeachment) and face a political cost V (assume that the ensuing cost of compliance after the purge is $S_2=0$); (3) change the institution through *court-curbing* reforms at cost C_3 to achieve a low cost of compliance S_3 ; or (4) change the institution through *court-empowering* reforms at cost C_4 and achieve a new S_4 . It follows that politicians will choose to attack the court when $V < S_1$, engage in court curbing rather than brutal purges when $(C_3 + S_3) < V$, and engage in court-empowering reforms over court-curbing ones when $(C_4 + S_4) < (C_3 + S_3)$.

Assuming that a strategy of legal reform dominates over sheer attacks, the choice among reform strategies is far from obvious. Court-empowering reforms generally carry lower political costs than court-curbing ones ($C_4 < C_3$) but presumably impose greater costs of

compliance in the future ($S_4 > S_3$). To understand this trade-off, we unpack the relative costs and benefits of the reform strategies below.

Court curbing. Court-curbing reforms require greater political capital and impose higher political costs than court-empowering reforms; however, they are more effective in creating a loyal court. This is why court curbing remains popular among leaders, particularly in contexts where the opposition is unable to retaliate. Independent justices may depart from the bench, either due to requirements introduced by the reform or as a form of protest against political interference in the judiciary. While some reforms, such as reducing the court's jurisdiction or increasing the number of sitting justices, do not require the departure of justices, they signal politicians' intentions to exert control. In Argentina, following the enlargement of the Supreme Court from five to nine justices in 1990, Justice Bacque resigned in protest against the anticipated manipulation of the court.

Even the mere discussion of court-curbing reforms can lead to vacancies in the court. Proposals often work as a credible threat: A court-curbing bill initiated by the legislative majority may be sufficient to align the behavior of strategic justices with the ruling party, even if the reform is ultimately never adopted (Clark 2010). It may also be sufficient to prompt the departure of principled judges, who resign in opposition to the potential manipulation of institutional rules.

Court curbing, while effective in reshuffling courts, has three important limitations compared to court-empowering strategies. First, attacks on the courts' jurisdiction became increasingly difficult to justify in the late twentieth century, as modern constitutions codified judicial review and judicial power expanded worldwide (Tate and Vallinder 1995). Second, implementing court-curbing reforms against prestigious judiciaries yields exceptionally high political costs. For this reason, court-curbing bills are often initiated in but rarely passed by the US Congress. Third, even though strategic justices may adjust their behavior to deflect the government's threat in the short run (Clark 2010), the capacity of those threats to tame the courts is limited over the long run because judges can behave sincerely once the ruling party has lost popular support (Helmke 2002).

Court empowering. Court-empowering reforms are typically accepted by a broad range of stakeholders, as they are commonly associated with strengthening judicial independence and promoting the rule of law. At first glance, it may seem counterintuitive that politicians seeking to exert influence over the judiciary would support reforms that grant judges greater authority and autonomy, given that such changes increase the costs of compliance in the postreform environment ($S_4 > S_3$). However, this logic holds only *ceteris paribus*—that is, assuming the same judges remain in office under the newly empowered court. If the reform process triggers judicial turnover and the reformers can control the appointment of new judges, the preferences of the reconstituted, more powerful court will likely align with those of the reforming coalition. The judicial turnover resulting from court-empowering reforms helps explain the solution to the trade-off outlined above. Court-empowering reforms carry lower political costs than court-curbing ones ($C_4 < C_3$), but if the resulting court composition is similar under both types of reforms ($S_4 = S_3$), politicians will be more likely to favor court-empowering reforms as their preferred strategy.

The effectiveness of court-empowering reforms as a strategy for controlling the judiciary depends largely on the politicians' assumption that reforms will facilitate a successful renewal of the bench. The case of the Dominican Republic, introduced in the opening paragraphs, illustrates this assumption. The 1963 constitution introduced court-empower-

ing measures by establishing judicial review (Article 139) and multilateralizing judicial appointments (Article 101). The reform was implemented under President Juan Bosch, the first democratically elected leader after three decades of authoritarian rule. Bosch sought to dismantle the Trujillista order through sweeping reforms. As part of these changes, the 1963 constitution included a transitory clause (No. 2) stipulating that judicial tenure would be protected by law, but only after the National Assembly had conducted a purge of the sitting judges. In April 1963, Bosch appointed an entirely new bench, but their tenure proved short-lived. In September, a military coup deposed the president and removed the justices he had appointed. Bosch employed court-empowering reforms to renew the court, but he could not anticipate that the newly empowered judiciary would not ultimately serve his vision of the law.

The argument outlined in this section therefore depends on the empirical claim that constitutional reforms create judicial turnover—that is, they can be leveraged as functional substitutes for overt judicial purges. In the rest of the article, we test this claim. Our main hypothesis is that *judicial turnover results not only from reforms that restrain the courts, but also from reforms that empower them.*

4 Empirical evidence

We test our hypothesis with data from 3994 justices serving in 18 Supreme Courts and nine constitutional tribunals from 18 Latin American countries between 1900 and 2021.⁵ Our analysis relies on discrete-time event-history analysis. Justices enter the sample in the year they are appointed to the high court, and drop from the sample when they leave office ($N=29,526$ justice-years). The dependent variable takes the value of 1 in the year when they leave office and 0 in all previous years. Thus, the event-history estimator models the risk of individual exits from high courts in any given year. The analysis assumes individual frailties—that is, unobserved conditions like personal health that make some individuals more likely to quit than others (Box-Steffensmeier and Jones 2004, Chap. 5). Our models include four sets of explanatory variables: institutional reforms, institutional features, political context variables, and personal characteristics.

Court-empowering versus court-curbing reforms. To test our main hypothesis, we compare the effect of court-curbing and court-empowering reforms on the stability of judges in office. Our expectation is that judges will be more likely to leave office not only when court-curbing reforms take place, but also when court-empowering reforms are adopted. We use two alternative strategies to capture institutional reforms. The first set of measures comprises two dummy variables that reflect whether a court-empowering or a court-curbing reform affected a court in any given year (the reference category is no reform). The second set of measures, employed in the last model in Table 1, capture the depth of the reform by counting how many of the five areas discussed above—tenure (life terms or term lengths), judicial review, the size of the court, and appointment procedures—experienced court-curb-

⁵ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Paraguay, Uruguay, the United States, and Venezuela. We use *Supreme Court* to refer to the highest court of cassation and *constitutional tribunal* to refer to any separate constitutional court. For analytic purposes, we treat Brazil's STF after 1988 and Venezuela's former Corte Federal as constitutional tribunals.

Table 1 Survival models for reforms

	1	2	3	
Court-empowering	0.542***	(5.79)	0.469*** (4.65)	0.264*** (4.12)
Court-curbng	0.974***	(11.32)	0.927*** (10.03)	0.562*** (10.21)
<i>Institutional rules</i>				
Life tenure		-0.575***	(-9.36)	-0.566*** (-9.20)
Judicial review		-0.133**	(-2.89)	-0.119* (-2.57)
Constitutional tribunal		0.524***	(5.91)	0.534*** (6.00)
Size of the court (legal)		0.001*	(2.57)	0.001* (2.44)
Fixed number of justices		0.312***	(7.08)	0.314*** (7.12)
Size increases		1.187***	(13.19)	1.200*** (13.36)
Appointment: president		-0.316***	(-6.63)	-0.325*** (-6.80)
Appointment: Congress		-0.410***	(-6.93)	-0.414*** (-6.98)
Appointment: judicial council		-0.383***	(-5.45)	-0.389*** (-5.53)
Multiple actors in nomination		0.232**	(2.92)	0.224** (2.80)
<i>Political variables</i>				
New administration		0.341***	(6.01)	0.330*** (5.81)
New ruling party		0.000	(0.01)	0.001 (0.13)
Military takeover		0.650***	(7.72)	0.648*** (7.71)
Electoral democracy index		-0.012***	(-11.90)	-0.012*** (-12.06)
<i>Justices' characteristics</i>				
Appointed under current president		-0.635***	(-9.76)	-0.632*** (-9.69)
Appointed by current ruling party		-0.164**	(-2.84)	-0.168** (-2.91)
Duration (years)		0.168***	(7.97)	0.167*** (7.89)
Duration ²		-0.009***	(-5.51)	-0.009*** (-5.44)
Duration ³		0.000***	(4.55)	0.000*** (4.50)
Constant	-1.866**	(-107.36)	-1.470*** (-12.10)	-1.448*** (-11.91)
Insig2u	-12.95*	(-2.17)	-1.765*** (-5.76)	-1.740*** (-5.79)
Judges	3994		3984	3984
N	29,526		29,371	29,371

t-statistics in parentheses: * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

ing or court-empowering reforms in any given year. Results are consistent irrespective of the measure used.

Institutional features. The previous discussion suggests that constitutional features affecting tenure, judicial review, court size, and appointment procedures also influence politicians' incentives to purge the courts, and thus operate as potential confounders of the effects of institutional reforms. We use 10 predictors to capture institutional design features. These variables (most of them dichotomous) capture whether justices have life tenure, whether the constitution grants the court powers of judicial review, whether the justice is a member of a constitutional tribunal (the reference category is the Supreme Court), the size of the court (measured as the number of seats), whether the constitution sets a fixed size for the court, whether the number of seats was expanded in any given year (measured as the percentage of new seats added to the court), and the actors involved in the appointment process (measured as dichotomous indicators for the president, Congress, the judicial council, or multiple actors in a representative procedure).

Political context. We incorporate a set of potential confounders that capture changes in the political context, accounting for judicial purges as well as institutional instability.

The first two predictors capture the arrival of a new administration or a new ruling party over the past 24 months. The other two variables capture the establishment of military rule over the past 24 months, and the level of electoral democracy (according to the Varieties of Democracy index).

Justices' characteristics. Finally, the model also includes information about personal characteristics of the justices that proxy their political alignments as well as their age. Some scholars argue that justices retire strategically to allow co-partisan presidents to nominate their successors (Ward 2003; Hagle 1993; Calabresi and Lindgren 2005). We thus incorporate two dummy variables capturing whether justices were nominated by the incumbent president (which presumably reduces the risk of exit) or by the incumbent party (which presumably creates incentives for strategic retirement). However, studies on Latin American courts indicate that, in the context of purges (i.e., *involuntary* retirement), judicial turnover is likely to increase when justices face a ruling party different from the one that appointed them (Pérez-Liñán and Castagnola 2016; Castagnola 2018; Pérez-Liñán and Castagnola 2009). Unfortunately, historical sources do not contain dates of birth for all judges in our extensive sample, but we created a variable that counts the number of years served in the court as a proxy for aging.⁶ To allow for nonlinear effects, we use a cubic transformation of time (Carter and Signorino 2010).

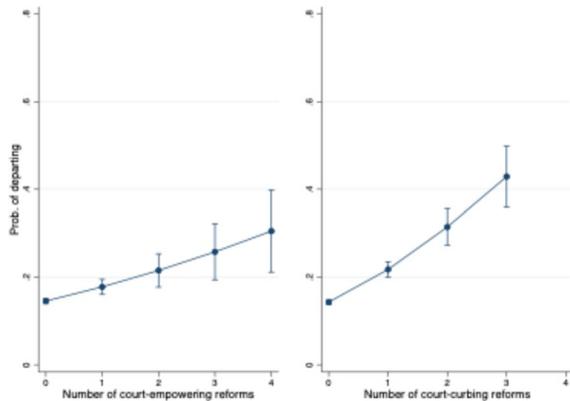
Table 1 presents the results of the survival models using two measurement strategies for capturing court-curbing and court-empowering reforms. In the first two models (Models 1 and 2) we include two dummy variables that reflect whether either type of reform affected the court in any given year, while in the last model (Model 3) we include two count variables that reflect the total number of court-curbing or court-empowering reforms in a given year. The table includes alternative models to assess the robustness of our main explanatory variables under different specifications. Models that selectively controlled only for institutional rules or political variables generated equivalent results.

The main results in Table 1 align with our argument. Institutional reforms, regardless of their content, increase the probability of justices departing from the bench. The implication is that court-empowering transformations do not necessarily produce more independent judiciaries because they represent moments in which institutional realignments affect the composition of the court. The mere adoption of a reform appears to affect the stability of justices, and the depth of reforms (as measured by the last model) determines the level of risk for justices.

Estimates for our control variables also suggest a few conclusions. Institutional provisions have important effects on judicial turnover. Life-tenure provisions, as well as appointment procedures involving the president, Congress, and the judicial council, show consistent results in reducing the probability of judicial turnover, while provisions fixing the number of justices, and episodes of court packing expanding the number of justices, have the opposite effect. Politics also plays a central role when accounting for judicial instability. Military takeovers and the arrival of a new administration increase the probability of justices departing from the bench. However, as electoral democracy becomes stronger, justices experience longer tenures. As political institutions consolidate, so do judicial stability. Finally, justices'

⁶ The age of justice j in year t equals $a_0 + T$, where a_0 represents the judge's age at the time of appointment and T is the number of years spent in office. We can observe T but not a_0 ; however, we approximate a_0 by estimating a random intercept for each justice. Maitra and Smyth (2005) show that a_0 has no effect on retirements.

Fig. 6 Predicted probability of a justice's departure, by number and type of reforms. *Note:* Predicted probabilities were computed using coefficients from Model 3 in Table 1. Results reports predictive margins with 95% confidence intervals.



personal characteristics offer relevant lessons on the role of partisan politics and ideology within courts. Justices appointed under the current administration or by the ruling party have a lower probability of departing from the bench.

How relevant is the impact of institutional reforms? In order to assess the substantive relevance of the coefficients, we predicted the probability of a justice departing from the bench under different scenarios. Model 3 suggests that, in the absence of any reform, the probability of a justice leaving office in a typical year is about 0.15. If a country experiences a court-empowering reform, the probability of departure increases to 0.21, while if the country experiences a court-curbing reform, the probability increases to 0.28.⁷

Moreover, the depth of the reform matters. Model 3 shows that a greater number of constitutional features affected by the reform increases the likelihood of departures from the bench. Consistent with the other estimates, this model shows that court-curbing reforms tend to increase judicial turnover more than court-empowering ones. We display the predicted risk of departure for the two types of reforms in Fig. 6. In the left panel (court empowering), the probability of judicial turnover is 0.18 if the reform improves one constitutional feature, and 0.26 if it improves three features simultaneously. In the right panel (court curbing), the probability of turnover is 0.22 if the reform undermines one constitutional feature and 0.43 if it undermines three features. This suggests that reformers can pursue an “optimal mix” of reforms (i.e., combine court-empowering and court-curbing reforms) to balance public trust and effectiveness when purging the courts.

5 Discussion and conclusions

Scholars have conventionally accepted the distinction between institutional reforms that empower the judiciary, strengthening the authority and the autonomy of the courts, and institutional reforms that instead curb their power. The former include constitutional amendments that grant judges life tenure or extend their terms, formalize their powers of judicial review, fix the number of justices to prevent packing schemes, and distribute the authority

⁷ Predicted probabilities were computed from Model 3 in Table 1. The rest of the variables were set at their observed values, and predicted probabilities were averaged across the sample.

to appoint justices among multiple political actors. The latter, in contrast, shorten judges' terms, constrain their jurisdiction, allow Congress to manipulate the size of the court, and concentrate the power of appointment in legislative majorities.

Our study shows that this clear-cut distinction can be deceiving. Against the hopes of well-meaning reformers, court-empowering reforms destabilize the judiciary because constitutional reform processes offer a window of opportunity to reorganize the composition of the high courts. Our analysis of 18 Latin American countries between 1900 and 2021 shows that judicial turnover results not only from reforms that formally restrain the courts, but also from reforms that formally strengthen them. While, in a typical year, one in every seven justices is expected to resign a seat in a Supreme Court or constitutional tribunal, one in every five judges will do so in the context of a favorable reform, and one in every four judges will do so in the context of a hostile reform. The differences may not appear stark, but they potentially amount to the politics of replacing one, two, or even three justices on a nine-member constitutional court.

The implication of this finding is that judicial reforms, even well-intentioned ones, can produce undesired effects. Politicians may bundle court-empowering proposals (to gain legitimacy) with court-curbing proposals (to accelerate the replacement of justices), "optimizing" the reform package. In fact, of 54 court-empowering reforms observed in our historical dataset, 19 (35%) also incorporated court-curbing features. This pattern is consistent with the findings of Arana Araya et al. (2021), who find that reforms that bring greater gender diversity to the high courts allow some ruling parties to capture them, and with the work of Pérez-Liñán and Castagnola (2016), who show that constitutional change is a significant cause of judicial instability.

Our conclusion opens two theoretical questions. From a behavioral perspective, future research must examine how strategic politicians balance proposals for court-empowering versus court-curbing reforms. A plausible, testable hypothesis is that court-empowering proposals are less likely when incumbents hold large legislative majorities. If politicians adopt court-empowering measures primarily to legitimize judicial purges, then such proposals should be rarer when incumbents possess strong legislative dominance and have no need to attract opponents into a reform coalition. In addition, future research must establish under what conditions court-empowering reforms fulfill their stated goals, and under what conditions they mask a purge of the judiciary. This is crucial to understand the promise—and the perils—of institutional transformation.

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