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Ousted from the Bench? Judicial Departures in Consolidating Democracies

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Accountability and Participation

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Judicial Departures in Consolidating Democracies

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Alexander Stroh, and Cordula Tibi Weber

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Ousted from the Bench?
Judicial Departures in Consolidating Democracies[1]

Abstract

This paper deals with judicial departures in consolidating democracies. It investigates to what extent and under what conditions judges in those contexts are not able to decide on their departures themselves but are rather forced to leave due to pressure from the elected branches. We undertook a cross-regional study of individual judicial departures in six consolidating democracies with elected presidents, three of them located in Latin America (Argentina, Chile, and Paraguay) and three in sub-Saharan Africa (Benin, Madagascar, and Senegal). We developed a unique data set containing information on 143 high-court judges in office since democratisation. We classified judicial departures as due and undue, and using a survival model we estimated the impact of institutional, political, personal, and contextual factors. The results indicate that undue judicial departures occur regardless of the region, but are most probable under the rule of politically powerful executives, and where there are lower levels of democracy and development.

Keywords: judicial politics, constitutional court, supreme court, judge, Latin America, Francophone Africa, democratisation, separation of powers

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Article Outline

1 Introduction

In many parts of the world, courts have increasingly been endowed with constitutional powers so that they can decide on sensitive cases (Ginsburg and Versteeg 2014). This empowerment of the courts has often been accompanied by provisions for judicial insulation – that is, provisions seeking to enhance courts' ability to decide the cases in accordance with legal considerations and without undue regard to the views of other government actors. Just 25 years ago, constitutions rarely included rules intended to insulate the tenures and salaries of judges and to limit the roles of the executive and legislative branches in the selection and removal of judges (Melton and Ginsburg 2014). Today, not only in established democracies but also in almost all newly democratising (or re-democratising) states, constitutions generally include

provisions for judicial stability – for example, rules protecting judicial tenure or prohibiting the arbitrary removal of judges (Institute for Democracy and Electoral Assistance 2014). This paper deals with judicial stability, a widely acknowledged aspect of judicial independence and a key principle in the maintenance of the rule of law.

Despite their importance, the way that constitutional stipulations regarding judicial tenure operate in the real world has not been subject to much systematic investigation. Certainly, in established democracies the actual variations do not contradict the rules in a fundamental way. Judicial tenures are secured and judges are not removed by external actors for political reasons. If variations from the formal rules occur, they are normally due to voluntary resignations. The specialised literature, mostly based on studies of the US supreme and lower courts, aims to assess to what extent these voluntary decisions to leave the bench are based on either personal motivations (illness, age, retirement benefits) or strategic motivations – that is, judges timing their own retirements in order to advance their own partisan or policy preferences by allowing the president to name a like-minded judge (Spriggs and Wahllbeck 1995; Zorn and Van Winkle 2000). Evidence in support of strategic considerations is somewhat mixed for the US courts, and it seems to also be so for courts in other countries, as the incipient body of comparative literature shows (Kerby and Banfield 2014; Massie, Randazzo, and Songer 2014).

In consolidating democracies, both the professional lifespan of judges and the reasons behind judicial departures often deviate considerably from the formal rules. The evidence shows, for instance, that Latin American judges serve for consistently shorter periods of time than the duration of their formal terms (Basabe-Serrano and Polga-Hecimovich 2013; Leiras, Tuñón, and Giraudy 2015). In Africa there are cases of judges staying longer than the time that the formal rules stipulate (as in Madagascar, as discussed below). The de facto alteration of the formal rules protecting judicial stability is often regarded as a divide between established and consolidating democracies (Aydın 2013). The main difference is that in the latter judges are not able to decide on their departure themselves but are rather forced to leave due to pressure from the elected branches, which face or fear constraining court decisions. In such contexts, research questions that enquire about the conditions under which judges are forced to leave are more relevant than research examining the rationale for voluntary resignations.

Concerns about judicial independence have helped advance research on judicial tenures in many countries of the world. De facto measures of judicial independence, based mostly on expert opinions, generally include items assessing judicial stability (Ríos-Figueroa and Staton 2014; Voigt, Gutmann, and Feld 2014). However, research that considers judges as units of analysis requires detailed country knowledge and remains scarce. In these pages we study individual judicial departures in six consolidating democracies with elected presidents, three of them located in Latin America (Argentina, Chile, and Paraguay) and three in sub-Saharan Africa (Benin, Madagascar, and Senegal). We concentrate on the judges from the highest

court with judicial review powers (four constitutional courts and two supreme courts), and we classify their departures as *due* and *undue.* We thus maintain that judicial departures may occur beyond the directives of the formal rules and under political pressure. We define undue departures as those resulting from political pressure.[1] We are aware that classifying judicial departures in this way is difficult because it necessitates deep contextual knowledge. To do so, we have relied on our country expertise, which is based on recurrent fieldwork, archival research, and expert interviews. We have ultimately developed a unique data set containing information on 143 high-court judges in office in the selected democracies since democratisation, of whom 106 had left the bench as of December 2014. To our knowledge, this is the first study with original and systematic data on high-court judicial departures in African democracies. Some pioneering country (Basabe-Serrano and Polga-Hecimovich 2013) and comparative analyses (Perez-Liñan and Castagnola 2009; Perez-Liñan and Castagnola 2016) have built on databases on individual judges to assess judicial departures in Latin America. However, our study is the first to approach judicial departures in Latin America from a cross-regional perspective.

We are interested in understanding the conditions under which judges are more likely to leave their positions inappropriately. In other words, we seek to explain when political pressure is used to oust judges from the bench by estimating the impact of various factors often highlighted by the literature, including the power relations among the elected branches (unified or divided government), the institutional protection of the relevant court's independence, and the overall political context (level of democracy and development). We also consider other under-researched factors, such as the individual characteristics of the judges, the moments in the political cycle when political attacks take place, and the way – collectively or individually – in which they are carried out. Since we have deliberately drawn our cases from two world regions that differ considerably in terms of their socio-economic features, one of our main findings, that undue departures are a relatively frequent phenomenon irrespective of the regional setting, comes as a surprise. However, our results also confirm some of the findings of the existing literature. Courts in consolidating democracies face more political constraints than institutional constraints, and the judges' personal characteristics play a smaller role in such settings. In effect, undue departures are most likely to occur under the rule of politically strong presidents, as well as when the level of democracy decreases. The sole personal trait that slightly increases the likelihood of leaving the bench in an untimely manner is serving as a court's president, a feature that points to the enhanced role of individuals in less consolidated contexts. Regarding institutional factors, the factor that has the strongest influence on judicial departures is actually the changing of the constitutional framework. Interestingly, constitutional reforms more often provoke due departures than undue departures.

1 In a similar vein, Leiras et al. (2015) distinguish between natural and political exits in their analysis of judicial departures at the subnational level in Argentina.

The following section presents the theoretical argument and relevant hypotheses. Section 3 provides background information on the case selection strategy. Section 4 deals with the construction of the dependent variable, and Section 5 describes the independent variables. In Section 6 we present the statistical model and the main results. Section 7 concludes by summarising the contribution of this cross-regional study on judicial departures in consolidating democracies.

2 Theory

Under what conditions are judges more likely to leave the bench inappropriately? The literature points out that attacks from the elected branches are the main threat. In Latin America, the decision regarding a judicial resignation has often been in the hands of the president rather than those of the judge (Perez-Liñan and Castagnola 2009). All over the region, the elected powers have used a range of mechanisms to threaten individual judges (impeachments, forced resignations) or the entire institution (packing schemes, dissolution) (Helmke 2010). In Ecuador, changes in the legislative coalitions have triggered dismissals from the courts (Basabe-Serrano and Polga-Hecimovich 2013). Similar events have also been observed in consolidating democracies elsewhere. In Malawi, the parliament accused three judges of incompetence and misbehaviour after they rendered a ban on demonstrations challenging the president's bid for a third term unconstitutional; they were subsequently impeached (Gloppen et al. 2010, 103). In Hungary, the initially assertive Constitutional Court was curbed massively as a result of constitutional changes to its formal powers and court packing after the Fidesz party won a two-thirds majority in parliament (Bánkuti, Halmai, and Scheppele 2012). Recent events in Turkey confirm how widespread the observed phenomenon is.

When exploring the conditions that enhance elected representatives' ability to meddle with the judiciary, the literature points, first, to powerful executives. While executive power is constitutionally defined, a variety of political, institutional, and contextual factors may curtail or enhance its ability to operate in practice. In effect, a pre-eminence of the executive power in the constitutional design indicates its centrality within the political system. It could then be argued that constitutionally powerful presidents may find it easier to distort rules and remove judges prematurely, or better, that judges face more risks when they act in contexts where there is a great imbalance of power. However, many judicial politics studies propose that what matters for judicial independence is the political power presidents have. The argument is that political competition protects judicial autonomy, either through fragmentation or, as we shall see later, turnover. Fragmentation refers to the parliamentary status of presidents. Power is fragmented when the president does not have a majority in the legislative branch, a situation that is not unusual in multiparty presidential systems. Fragmented power reduces the ability of incumbents to interfere in judicial decision-making because the dispersion of power makes it more difficult to obtain legislative support for political deci-

sions that seek to curtail the autonomy of courts, such as those regarding judges' dismissal (Bill Chavez 2004; Iaryczower, Spiller, and Tommasi 2002; Ríos-Figueroa 2007). In line with competition theory, we expect to find less interference with judicial tenures and fewer undue judicial removals when the distribution of political power is diffuse or fragmented than when a single party holds a high concentration of votes and a legislative majority. A politically powerful president is thus more threatening to the stability of judges' terms. Two hypotheses can be drawn regarding the institutional and political impacts of presidential power on judges' tenure:

H1: The more strongly the president's power is embedded in the constitution, the more likely undue judicial departures are.

H2: Majority rule increases the likelihood of undue judicial departures.

Do institutions protect judicial mandates? Presidential power can be counterbalanced with constitutional arrangements for judicial independence. Constitutions define the extent to which interventions on the part of the elected branches are allowed. They vary considerably in terms of the rules for judicial insulation, most of which revolve around the idea of protecting the judiciary from the unilateral action of a single actor and of avoiding the alteration of clauses by single ordinary majorities (Brinks and Blass 2011; Feld and Voigt 2003; Ginsburg 2003; Ríos-Figueroa 2011; Stroh and Heyl 2015; Voigt, Gutmann, and Feld 2014). There are two types of rules that have a potentially high impact on judicial stability. The first are the rules for judicial appointments, which establish the extent to which power holders participate in refilling judicial vacancies, and the second are the rules for judicial tenure. It is generally argued that the more actors involved in the judicial appointment process, the more judicial insulation is achieved; the same is true if appointment decisions are left to a judicial council (ibid, among others). Judicial appointments also vary according to their cooperative (the agreement of different institutions is necessary) or non-cooperative (every institution appoints a "portion" of the court) nature (Ríos-Figueroa 2011). From the perspective of the appointer, we assume that the incentives to provoke or accelerate a judicial departure will be lower if there will be no subsequent opportunity to influence judicial succession.

Regarding judicial tenures, constitutional models typically contain life limits (death defines the judge's date of departure), age limits (judges leave when they reach a mandatory retirement age), or term limits (judges leave when they reach the end of a fixed-term appointment) (for instance, Opeskin 2015). In theory, the first two models are stronger protectors of judicial independence than term limits, which make judges more accountable to their appointers (Melton and Ginsburg 2014).[2] In practice, the effects may be quite the opposite. Constitutional rules that grant life terms or long terms in office to court members may induce power holders to violate the rules because they restrict the frequency of opportunities

2 Only those fixed-term systems where judges are appointed for terms longer than those of their appointers are said to strengthen judicial accountability without neglecting judicial independence (Ríos-Figueroa 2011).

to nominate replacements. Also, when terms are longer, the costs of waiting may be higher than the costs of breaching the rules. In fact, historical evidence from Latin America shows that long, indefinite mandates encourage greater judicial instability (Lara Borges, Castagnola, and Perez-Liñan 2012: 31, 33).

Certainly, there are other institutions besides those related to judicial tenure and appointment that may also shape political incentives to interfere with the courts. Some authors point to court size or adjustments to court size (Perez-Liñan and Castagnola 2016: 399). We could assume, for instance, that large courts discourage undue interventions because changing the preferences of such courts through individual dismissals should be more difficult. We explore the implications of court size in the empirical sections. For the moment, we formulate two hypotheses connected to the constitutional rules for judicial appointment and tenure:

H3: The smaller the number of actors involved in the appointment process, the more likely undue judicial departures are.

H4: Long judicial terms increase the probability of undue departures.

Are certain moments more risky than others? Some recent works point out that rather than the content or type of institutions, it is processes of institutional change that increase the likelihood of political meddling with the judiciary. Judicial independence appears to be particularly at risk in countries with a propensity to engage in "serial" constitutional replacement (Levitsky and Murillo 2013). Perez-Liñan and Castagnola (2016) argue that the alteration of institutional arrangements undermines judicial stability because, irrespective of their stated goals, constitutional amendments and replacements offer a window of opportunity for reorganising the composition of the judiciary. From this perspective, the accent is placed not on an institutional feature in particular, but on the process of constitutional change. The assumption is that constitutional reforms provide an opportunity to interfere with the judiciary even when the content of these reforms is intended to empower judges and protect their autonomy.

H5: Constitutional reforms increase the likelihood of undue judicial departures.

In addition to pointing out the risks involved in constitutional reform processes, the literature has noted that, for different reasons, election periods are additional moments of uncertainty that can impact judicial stability. Some authors assert that the possibility of turnover weakens the incentive to constrain judges (Finkel 2008; Ginsburg 2003; Leiras, Tuñón, and Giraudy 2015). If ruling parties know that they may become the opposition at some point in time, having a court that rules against incumbents may be a sort of political asset or insurance, which means that invasive actions are less likely. On the other hand, as presidential elections approach, both power holders and judges begin to display a range of strategic actions (Helmke 2005), which makes the actual impact of electoral competition on judicial stability more difficult to assess. An upcoming election may actually increase the will of power

holders to dismiss judges if they fear possible judicial prosecution after the end of their mandate or if these judges hold the power to certify election results. The period after elections may similarly increase the likelihood of dismissal for judges with old loyalties. Perez-Liñan and Castagnola (2009) have shown that new appointments to Latin American supreme courts are more likely at the beginning of presidential terms. The literature dealing with judicial retirements has found evidence that departures are connected to presidential elections (Kerby and Banfield 2014; Zorn and Van Winkle 2000). We thus propose the following hypothesis:

H6: Undue judicial departures increase during presidential election periods.

Are some judges more at risk than others? Judges can act strategically to protect themselves from dismissal (Helmke 2005) by avoiding, for instance, ruling against incumbents supported by large majorities. If strategic action always prevailed, judicial instability would never occur. However, judges not only follow strategic concerns but also decide according to the law and their own values (Segal and Spaeth 1993; Segal and Spaeth 2002). Thus, their rulings sometimes contradict the will of the majority and put them at risk. One way to explore if some judges are more at risk of dismissal than others is to pay attention to their profiles and assess their proximity to the political sphere. Political proximity could make judges a more likely target of interference. Some judges have clear political ties, as they may be close to the ruling party or to the opposition. Some may even have held high-ranking political offices before being appointed to the bench. Such judges are much more likely to render political decisions that in turn provoke heavy reactions from political actors, particularly if their policy preferences are far removed from those of the incumbents. In contrast, judges who do not have political ties should render decisions that are influenced not by political factors but by professional considerations. In addition, it could be argued that judges who hold leading positions within the courts are more at risk than others. In consolidating democracies, chief justices often play an important role in establishing the power of a court, as Widner has shown in her study of the Tanzanian chief justice Nyalali (Widner 2001). Furthermore, the authority of court presidents has been identified as a channel for interference with a court (Russell 2001: 20). Accordingly, we assume that controlling or removing court presidents is particularly attractive for power holders in order for them to gain leverage over the court as a whole. These arguments concerning individual or personal features have inspired the following two hypotheses:

H7: The more political a judge's background is, the higher the probability of his or her undue departure.

H8: The risk of undue departure is greater for court presidents.

Finally, some authors have highlighted the limited applicability of existing theories meant to explain judicial departures in consolidating democracies. We have already mentioned the in-

stability of formal rules, which could arguably diminish the explanatory strength of institutional features. There is also concern regarding the applicability of the political competition theory. Aydın (2013) argues that a long-term view on the part of political leaders, as suggested by the insurance argument, is not realistic for developing democracies. In effect, it is not certain whether political competition protects courts or makes them more vulnerable. The latter could particularly be the case in systems where democratic values and processes are not institutionalised; where the government is not punished or monitored; and where corruption, weak party systems, and high electoral volatility prevail. Therefore, the set of incentives that political competition creates for politicians varies considerably according to the broader context (Popova 2012). When courts are endowed with the power to decide on sensitive cases, incumbents have incentives to exert control over court composition. Likewise, in contexts with a low level of institutionalisation, judges are more at risk of dismissal. These concerns can be framed within more general assessments that highlight the existence of greater tenure vulnerability where legal institutions are weaker (Aydın 2013; Helmke 2005; Perez-Liñan and Castagnola 2009; Perez-Liñan and Castagnola 2016). Therefore, we need to add control variables for the level of development and the state of the democratic regime. Our study contributes to this debate by closely exploring the extent of undue actions in countries of the Global South according to their different performance along those lines.

3 Case Selection: A Cross-Regional Approach

Due to the depth of information needed to apply the theoretical framework, we determined that a comparative cross-regional research design with a limited number of country cases was the appropriate choice (Basedau and Köllner 2007). We selected three countries each from two world regions which share the experience of third-wave democratisation as well as strong presidential regimes, but which differ considerably with regard to the overall level of socio-economic development: Francophone Africa (Benin, Madagascar, Senegal) and South America (Argentina, Chile, Paraguay).[3] We deliberately selected the cases such that the spe-

3 The small-N design permits us to remain sensitive to context and to collect a uniquely dense data set on individual judges; at the same time, the cross-regional perspective considerably enhances the reliability of our concepts and the scope of our propositions (Sil 2009). The universe of cases was constituted by all countries in the two regions that were at least rated "defective democracies" in the Bertelsmann Transformation Index (BTI 2014) and "electoral democracies" in the Freedom House report (2008–2010) (Freedom House 2015). In making our selection, we sought to include those with some relevant contextual homogeneity. Latin America is relatively homogenous in terms of colonial and independence history, and we maintained this homogeneity in Africa by selecting only former French colonies that gained independence in 1960. However, within these regional samples, there is variance in the sub-scores for judicial independence estimated by the same analysts. We thus selected pairs demonstrating one of three performance levels, respectively, according to the BTI and FH sub-scores: Benin/Chile (high), Argentina/Senegal (medium), and Madagascar/Paraguay (low). This country ranking has remained largely constant in both indexes in recent years.

cific level of democratisation and the age of the ruling democratic regime vary among them, with Madagascar representing the lower end in terms of the two aspects and Chile being seen as the strongest democracy (though the oldest is Argentina). Consequently, we account for socio-economic development and democratic experience when testing our hypotheses.[4] Although some renowned works have compared courts in these two regions (Gloppen, Gargarella, and Skaar 2004; Gloppen et al. 2010), most of the comparative research on judicial politics has been limited to a particular regional setting.[5] All six judicial systems have a Roman law background, although the Argentine system is in practice a mixed system (Helmke 2005: 176).

Benin, Chile, Madagascar, and Senegal each have a constitutional court, while in Argentina it is the Supreme Court and in Paraguay a three-member chamber of the Supreme Court that deal with constitutional matters. Despite these institutional differences, the courts in each of these countries have been granted considerable powers, thus making them a potential target for power holders (Gloppen et al. 2010). Because the courts are empowered to revise or reverse political decisions, they become political actors that the elected branches may want to control or interfere with (Domingo 2004; Helmke and Staton 2011: 325–326; Lara Borges, Castagnola, and Perez-Liñan 2012: 163; VonDoepp and Ellett 2011: 10).

4 Due And Undue Departures: The Dependent Variable

To study judicial departures empirically, we begin with a comparison of the constitutionally granted terms of office and the actual time that judges spend on the bench. The constitutions of Argentina (1994) and Paraguay (1992) provide for age-limited tenures, although in both cases the provision has been the subject of legal controversy.[6]

4 Data from the Human Development Index illustrates the cross-regional divide in terms of socio-economic development: Chile and Argentina are classified as countries with a very high level of human development; Paraguay's development level is classified as medium; and the development of the three African countries, with small variations among them, is classified as low (UNDP 2015). In addition, Chile and Argentina are the only two countries of the sample with elements of democratic institutionalisation that date back to the nineteenth century and with a longer tradition of constitutional review.

5 Comparative work on Africa includes Ellett (2013) and VonDoepp (2009); on Latin America, Helmke and Ríos-Figueroa (2011); and on Asia, Ginsburg (2003).

6 In Argentina the constitutional reform of 1994 set a limit of 75 years of age, after which the judge needs confirmation to stay in office. The constitutionality of this clause was challenged by a judge appointed before 1994, and the Supreme Court supported this challenge. Only two judges have resigned upon turning 75. In Paraguay, the constitution refers to the length of judges' terms in two passages. Article 252 says that judges are appointed for five-year terms and are only irremovable after two successive reappointments, while Article 261 declares that Supreme Court justices may serve irremovably until the age of 75. In practice, Supreme Court judges have been treated like ordinary judges: since 1999 the Senate has decided on the renewal of their mandates. All the judges concerned (except one) have presented complaints of unconstitutionality, and the Supreme Court itself has rendered these decisions unconstitutional.

The remaining four constitutions operate with fixed terms of different lengths. Chilean constitutional court judges hold nine-year terms; judges in Madagascar were initially supposed to be appointed for six-year terms (1992–1998) and then for seven years. In Senegal they are appointed for six years and in Benin for five years. Benin and Madagascar have allowed reappointments since 1998, and Chile and Senegal allow reappointments for those judges who have completed the term of another judge who left the bench prematurely. From a theoretical perspective, Benin is the country in the sample with the most accountable system of judicial tenure because the judicial terms are as long as the presidential terms and judges can be re-elected.

In reality, the judges' time in office may deviate, to a greater or lesser extent, from the tenure rules. We collected information on all 143 constitutional and supreme court judges who have served in the current democratic period; 106 of these had left the bench by the end of 2014.[7] Based on the official records, we observe that approximately half of the Latin American sample (26 out of 50 judges) left through resignation and 10 per cent through impeachment (five judges). What is noteworthy about the African cases is that, although all three countries apply fixed terms, only 50 per cent of the departures (28 out of 56 judges) corresponded with this rule. Madagascar stands out, as 19 judges had their terms abrogated politically during the period under study.[8] This initial assessment indicates that a large proportion of the judges did not leave the bench at the time expected based on the constitutional tenure rules. Given this, and given the fact that research on the field of judicial independence often points to undue political interference, we need more investigation on the actual causes of individual judicial departures.

With this purpose in mind, we developed a strategy to distinguish due from undue departures. We undertook two steps to identify undue departures within the overall group of departures (see Table 1): First, we subdivided all departures into due and *potentially* undue departures. We considered the following situations to be due or ordinary causes of departure: (a) natural death, (b) the reaching of mandatory retirement age, or (c) the end of the

7 The inauguration of the democratic regime, the creation of a new constitutional court by the new regime, or the granting of constitutional review powers to the existing supreme court represent the point of departure in our data set. As a result, we include those judges who have served since 1984 in Argentina, 1990 in Chile, 1995 in Paraguay, 1993 in Benin, 1992 in Madagascar, and 1992 in Senegal. Our observations only include the democratic years in Madagascar (until 2008). In 2014 Madagascar was again classified as an electoral democracy and returned to the political rights score that it held before the crisis.

8 Abrogation refers to cases in which terms end in discordance with tenure and removal rules. We consider them generally undue removals because they involve arbitrariness of process. In Madagascar, a transitional agreement was signed in October 1991 that prescribed a high constitutional court for the transition period and the appointment procedure for its 11 judges. These judges were appointed in 1991/1992, and they remained on the bench until President Ratsiraka initiated the appointment of new constitutional judges 10 years later in 2001, even though the transition period officially ended with the introduction of the new constitution in 1992 and the first free and fair elections in 1993. The 1992 constitution furthermore stipulated a single term of six years for constitutional judges.

maximum legal time in office. In contrast, we classified as *potentially* undue all departures resulting from (a) impeachment, (b) resignation, (c) unnatural death, (d) non-reappointment or non-renewal of a term, or (e) abrogation. Second, all extraordinary departures within the latter category were carefully checked through archival work with major press outlets and consultation with national experts. We also searched our interview data for largely consistent if not unanimous references to the judge being ousted. For example, we considered the departure to be due if the judge was impeached because of misconduct, such as the abuse of authority or corruption. However, where there was evidence that the impeachment served to oust a judge whose adjudication displeased the political branches, we considered the departure to be undue. If the judge resigned, we investigated the reason why. A poor state of health was viewed as indicating due exit; political threats were viewed as indicating undue departure.

Table 1. Assessing Judicial Departures

Timing / Causes	Ordinary	Extraordinary	Assessment method	Category
Ordinary	Life tenure (death) Mandatory retirement age Fixed term ends	Natural death	*immediate categorization*	DUE
Extraordinary	Not reappointed	Impeachment Resignation Unnatural death Abrogation	*qualitative examination of every individual departure*	UNDUE

Of a total of 106 departures, we identified 41 undue situations. This means that almost two out of every five judges were ousted from the bench – a remarkable proportion. Table 2 reports on the frequency of due and undue exits across the six countries under study. It shows that we found undue departures in all countries, but that Madagascar stands out.

Table 2. Overview of Judicial Departures from Transition until 2014

	Due exits	*Undue exits*	*Total*
Argentina	8	8	16
Benin	14	4	18
Chile	21	1	22
Madagascar	2	19	21
Paraguay	4	8	12
Senegal	16	1	17
Total exits	65	41	106

Note: Madagascar is covered until 2008 only. Three of the Malagasy judges served on the bench twice; thus, we have recorded two departures for each of these judges.

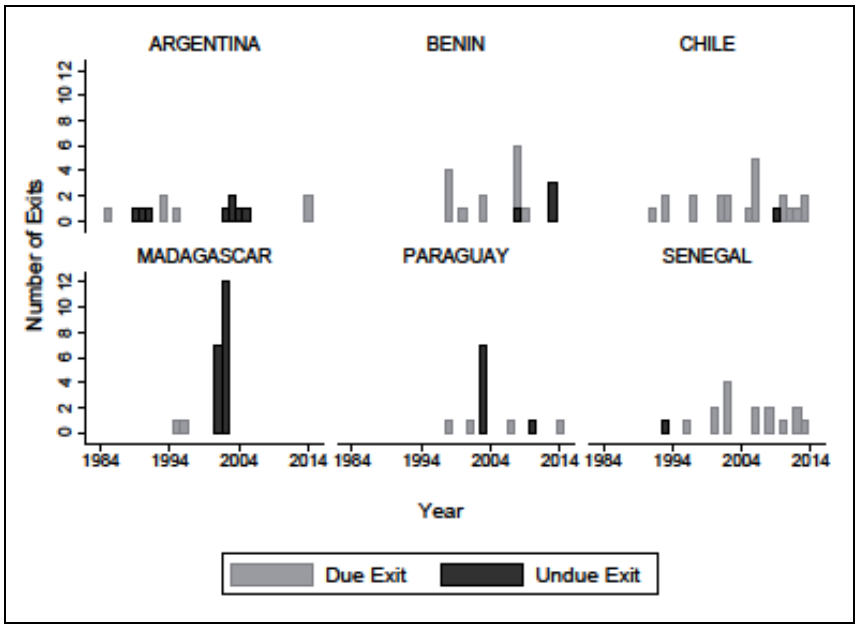
In fact, in Madagascar the judicial tenure rules have never been rigorously applied. Three judges even left their office in an undue manner twice. In 2001, President Ratsiraka ousted the entire bench and appointed new constitutional judges only three weeks before the presidential elections. We consider the 2001 departures to be undue because constitutional judges also serve as electoral judges, which supports the narrative that the judges were ousted because of political interests. However, the story is more complex than that. First, the ousted judges' terms were already expired (see footnote 9). Second, after the presidential election of 2002 was violently contested, the Malagasy Supreme Court ruled the 2001 replacement of the judges illegal and called back six of the nine previous constitutional judges. Third, newly elected president Ravalomanana replaced three of the six returnees after his inauguration. As the latter three departures were not based on any constitutional rule and were closely related to political ruptures, they are also coded as undue.

The Madagascan story highlights another finding: undue departures are unequally distributed across time. Figure 1 shows that Madagascar and Paraguay in particular underwent episodes of multiple undue departures; coincidentally, these occurred during the same period, in 2002 and 2003. In Paraguay, this was related to the so-called *"pulverización"* of the Supreme Court, when President Nicanor Duarte Frutos – shortly after his election in 2003 – together with the Paraguayan Congress, threatened to oust six judges via impeachment. As a consequence, four judges resigned and two were actually impeached. In Benin, President Boni Yayi did not reappoint three constitutional judges for political and personal reasons in 2013. Strikingly, Boni Yayi had himself appointed all three judges five years earlier. In the case of Argentina, judicial instability has prevailed as an informal institution since the 1940s (Helmke 2005). For the period under study we do not find notable synchronous peaks, but judicial departures are lumped together around the early 1990s and the year 2004. Episodes of court packing and constitutional reform frame the first cluster, whereas the exits in 2004 occurred after threats of impeachment related to the inauguration of President Kirchner (2003–2007).[9] In Chile, the only undue exit was caused by a non-reappointment for political reasons. In

9 Indeed, there were judicial resignations in protest of the law that changed the number of Supreme Court judges from five to nine in 1990. We have classified these resignations as undue because of the arbitrary changes promoted by the executive in the institutional setting. In contrast, there were three voluntary (due in our terminology) resignations around the 1994 constitutional reform. They were outlined in the bipartisan agreement that preceded the reform and aimed to address the politicisation that had occurred four years previously. The nine-judge Supreme Court continued to be questioned, though, and it was even the target of popular attacks (together with the other state institutions) during the serious socio-economic crisis that occurred in 2001. The two presidents who ruled after the crisis attempted to dismantle this court. The first (Eduardo Duhalde) sought a massive impeachment, a strategy that failed but led to one resignation based on the argument of "moral fatigue." The second (Néstor Kirchner) initiated targeted impeachment processes that led to three resignations and two impeachments. There were nine departures between 2001 and 2014, of which only four were due to ordinary causes (two resignations, two deaths). The other five took place as a result of political pressure. Paradoxically, the court that came out of these political moves at the start of this century involved prestigious judges and managed to regain its legitimacy.

Senegal, the only undue departure was caused by murder. Although it has never been determined whether the killing of the vice president of the Constitutional Council, Babacar Sèye, was politically motivated, there is a persistent narrative affirming it (Coulibaly, Abdou Latif 2006).

Figure 1. Due and Undue Departures per Country and across Time



This introductory descriptive analysis of the dependent variable confirms that undue departures are important in our sample of countries. However, we need advanced statistical analyses to explain the scatter of due and undue departures shown in Figure 1. Therefore, we have compiled an original data set using judge-quarters as the unit of analysis. This means that the individual judges constitute the units for which time-series data is collected for quarterly periods. We opted for quarters instead of years in order to systematically take into account the important sequence of some of the above events. For example, year-based data would not indicate that Paraguay's cluster of departures in 2003 occurred after President Frutos's election. Another example is the case of Madagascar, where two waves of judicial departures took place before and after a change of government in 2002. Judge-quarters allow us to precisely capture the effect of some of our independent variables, for which a detailed sequencing of events matters, without excessively increasing the number of observations, which would have been the case if we had opted for the monthly or even the date format. In spite of this, we have run models with a year-based data set in our robustness tests, which confirmed our results at lower significance levels.

5 Independent Variables

We operationalised the eight hypotheses above with the help of 12 variables that can be clustered into institutional and political variables as well as the personal characteristics of the judges. They were supplemented with two control variables. If not stated otherwise in the text, the variables were coded by us. The institutional variables include, first, *presidential power*, the constitutional strength of executives using Doyle and Elgie's (2014) yearly presidential power index. The scores range from zero to one. This variable relates to H1, where we propose that strong presidents will be more likely to use their power to control judicial departures; therefore, we expect to find more undue departures with higher scores.

In H3 we propose that rules for judicial appointment and tenure may constrain the power of presidents. We expect that a higher number of appointers reduces the probability of undue departures. Thus, the second institutional variable, *number of appointers*, reports the total number of relevant actors that participate in the filling of the entire bench, regardless how many actors are needed to appoint any individual judge.[10] Collective actors such as a chamber of parliament are counted as one.

The length of the judicial term could also impact the likelihood of undue departures (see H4). We therefore tested a dummy variable for fixed terms, which did a good job of capturing the difference between fixed and age-based tenures in principle but hid variations in the actual length of the fixed terms, which run from five to nine years in our sample countries. Our models then used a fine-grained operationalisation of the duration of a judge's term. We measured the institutionally defined maximum time that each judge was expected to remain in office in a respective quarter. That is, a judge with a fixed five-year term who was eligible to be reappointed once would be expected to remain a maximum of 10 years – or 40 quarters – in office. After two years in office, the value in this third institutional variable, *remaining time in office*, would thus be 32 quarters.[11]

The fourth institutional variable measures the occurrence of constitutional reforms involving the judiciary – that is, those with an impact on the appointment, tenure, and removal rules of the court as well as on the number of judges serving within a court.[12] The dichotomous variable *constitutional reform* is coded positive if such a reform was passed within one year before or after the respective quarter in order to capture the window of opportunity for

10 In systems where appointment is cooperative, such as those in Argentina and Paraguay, more than one actor appoints a judge (the president and the Senate, for example). Non-cooperative systems of appointment prevail in the other countries of study. Only in Senegal does the president alone appoint all five judges.

11 If an upper age limit for mandatory retirement applies, the age of the judge is subtracted from the upper age limit to receive the expected maximum remaining time. For life tenure, we defined 100 years as the expected maximum age for retirement or death. Fixed renewable terms without restrictions on the number of consecutive reappointments are treated as life tenures. Since we expect the thirtieth additional remaining year in office to be less important than the fifth or the seventh, we use the natural log of the quarters counted.

12 We have excluded minor constitutional amendments to court competencies as well as constitutional reforms that have created constitutional courts.

renewing the bench that such reforms create. We expect to have a higher number of undue departures when constitutional reforms take place (see H5).

Finally, the more judges who sit on the bench, the less influence an individual departure may have on the overall court composition. Thus, we add a final institutional variable that measures the court size. Realities in the field suggested that two versions of this measure should be tested. *Court size* hence reports the number of judges in the court according to the legal regulations (the constitution or the respective court law), while *court size_2* indicates the actual number of judges sitting on the bench at a given point in time. Deviations occur due to vacancies at the court. We treat these variables in different models.

The second cluster comprises political variables that operationalise the political conditions which make power holders more likely to challenge judicial stability, as described in H2 and H6. In line with H2, *presidential majority in parliament* assesses the legislative power of presidents. It is a dummy variable that takes the value of one in periods with a unified government – that is, when there is a presidential majority in all the relevant houses of parliament.[13] The variable's basic design is taken from the Dataset on Political Institutions (Keefer 2012); see "Allhouse", but the coding has been checked and partly adapted due to gaps and errors in the original data set. We consider the ruling coalition, not just the presidential party, to be the crucial entity. We also consider major coalition breakdowns and do not interpolate the post-electoral situation over the entire electoral period. We assume a positive effect on undue departures because the ruling coalition can more easily stretch its legal powers – for instance, by initiating an impeachment procedure.

For its part, H6 suggests that chronological proximity to presidential elections enhances the risk of undue departures. Presidents just taking office may have incentives to get rid of judges loyal to their predecessors, whereas presidents potentially on their way out may fear disloyal judges who might prosecute them after retirement. If constitutional courts also function as electoral tribunals, as is the case in many African countries, the incentives to oust judges further increase. We capture this with the variable *change of president*, which codes a presidential change in the respective quarter and three quarters earlier. To cross-check alternative approaches to timing, we also considered the duration in office of the acting government (*government's time in office*) and of the acting president (*president's time in office*), assuming that a president can be re-elected for more than one term. The two measures allow for a more precise test of whether undue action is generally more likely shortly after the government or the president has been elected, as they get rid of judges with old loyalties, or after they have been in office for a long time, when the end of mandate is approaching and the incumbent fears future judicial prosecution, as explained in Section 2.

The last political variable refers to the descriptive observation that the dependent variable had a significant number of exits that accumulated at a certain point in time. To control

13 This includes the lower chambers in all six cases as well as the senates (upper houses) in the Latin American cases. The appointed African senates are controlled by the executives and therefore not taken into consideration.

for this, we introduce the variable *number of judicial departures*, which simply counts how many other judges left the court within the respective quarter and the three quarters before. We assume that the likelihood of undue departures is higher when other judges have also left the court shortly before.

The personal characteristics cluster includes three variables. Two of them refer to H7, which proposes that less political exposure on the part of an individual judge lowers his or her risk of undue departure. The variable *judge without partisan identity* is a dummy variable for judges who were close to neither the government nor the opposition at the moment of appointment. The variable *previous political experience* reports whether the individual appointee had previously held important political positions – for instance, as a member of government or parliament. A third dummy variable, *court president*, indicates whether the judge was president of the court in the respective quarter. This refers to H8, which expects a higher probability of undue departures for court presidents.

Additionally, we include traditional control variables that account for the country's socio-economic characteristics and level of democratisation, two variables that have shaped the case selection and should therefore be checked. *GDP p.c. (ln)* refers to the natural log of the gross domestic product per capita. The variable is taken from the World Development Indicators (World Bank 2015). We also include a distinct variable on the level of democracy. We have chosen Freedom House's score of political rights (*political rights*) because this measure excludes judicial independence and therefore precludes autocorrelations (Freedom House 2015).[14] Table 3 summarises the independent variables with the expected sign.

Table 3. Independent Variables – Expected Results

Variable	*Expected sign undue*	*Variable level*
Institutional Variables		
Presidential powers	+	Country
Number of appointers	-	Country
Remaining time in office	+	Judge
Constitutional reform	+	Country
Court size	-	Country
Political Variables		
Presidential majority in parliament	+	Country
Change of president	+	Country
Government's time in office	+	Country
President's time in office	+	Country
Number of departures	+	Country
Personal Characteristics		
Judge without partisan identity	-	Judge
Previous political experience	+	Judge
Court president	+	Judge

14 A high score for political rights indicates a poor political rights record.

6 Model, Data, and Results

We are dealing with a dichotomous dependent variable – that is, with two types of judicial departures, *due* and *undue* – and we have determined that competing risks models best enable us to study the hazard rate of each exit separately. This type of survival model allows us to examine the effect of one explanatory variable on each departure separately from its effect on the other type of departure. With some adjustments, multinomial logit models can be used for survival analysis and can incorporate the key characteristics of competing risk models. Therefore, for our analysis we rely on a multinomial logit model for which each type of exit is calculated by the following hazard probability:

$$\Pr(y_i = d \mid x_i) = \lambda_{\mathrm{id}} = \frac{\exp \beta_d x_i}{\sum_k^K \exp \beta_k \, x_i} \, ,$$

in which y denotes the outcome variable for the event d in country i. K is the set of all three possible events (no departure [i.e. still in office], due departure, and undue departure), and x stands for the vector of covariates (for a detailed discussion, see Box-Steffensmeier and Jones [2004]).

As explained above, we opted for judge-quarters instead of judge-years as the unit of analysis to ensure the correct sequencing of events and that the period of analysis begins when the highest court began or resumed work after democratisation. The estimation only includes those quarters in which a country was ruled by a democratically elected government, up until end of 2014. Only the Madagascan data ends in 2008, due to the interruption of the democratic process there. Countries enter the data set at different points in time according to their democratic transition, most in the 1990s, except for Argentina, which democratised at the end of 1983. The different starting points should not create problems with the estimations due to the choice of a survival model. In any case, we ran control models for the time span between 1995 and 2008, for which the data set covers all six countries, and the results primarily remained the same. The results are presented in the Robustness Checks 1 table in the appendix, in column 3+4, entitled "same start- and end-year specification."

To account for temporal dependence, the estimations incorporate cubic polynomials of the respective judge's variable time in office (Carter and Signorino [2010]). Standard multinomial logit models assume that the likelihood of a judge's exit is always the same for each point in time. However, in our estimation it seems more likely that a judge will leave the bench the longer he or she has remained in office. By including the time variables, we can control for this.

Our estimation sample consists of 4,064 observations for 143 judges. Of these observations, 1,627 are from the African countries and 2,437 are from the Latin American countries. We have created a regional dummy variable to control for the variation across the two world regions. To account for the differences at the country level, our robustness checks rerun the estimations six times, each time excluding one of the six countries.

Table 4. Estimation Results for Undue Departures

	Undue exit	Undue exit	Undue exit
	(1)	(2)	(3)
Institutional Variables			
Presidential powers	-0.849	-0.929	-1.035
	[1.683]	[1.623]	[1.681]
Number of appointers	-1.414***	-1.696***	-1.439***
	[0.397]	[0.377]	[0.412]
Remaining time in office	-0.128	-0.198*	-0.151
	[0.189]	[0.110]	[0.200]
Constitutional reform	-13.230***	-13.384***	-13.072***
	[0.586]	[0.584]	[0.585]
Court size	0.548***		0.571***
	[0.060]		[0.073]
Court size_2		0.622*	
		[0.330]	
Political Variables			
Presidential majority in parliament	1.539***	1.708***	1.613***
	[0.443]	[0.419]	[0.508]
Change of president	-0.365	-0.498	
	[0.468]	[0.505]	
Government's time in office	0.044*	0.039	
	[0.025]	[0.027]	
President's time in office			0.049*
			[0.026]
Number of judicial departures	0.884***	0.924***	0.875***
	[0.073]	[0.063]	[0.084]
Personal Characteristics			
Judge without partisan identity	0.461	0.514	0.423
	[0.942]	[0.914]	[0.961]
Previous political experience	-0.028	-0.005	0.012
	[0.541]	[0.532]	[0.534]
Court president	0.712*	0.747*	0.682
	[0.425]	[0.417]	[0.416]
Controls			
GDP p.c. (ln)	-1.684*	-1.710*	-1.660*
	[1.005]	[0.944]	[0.957]
Political rights (Freedom House)	-1.366***	-1.394***	-1.376***
	[0.523]	[0.524]	[0.510]
Constant	0.786	1.398	0.617
	[8.394]	[8.283]	[8.097]
Log likelihood	-312.432	-308.784	-314.727
Observations	4064	4064	4064
No. of judges	143	143	143
No. of undue exits	41	41	41

Notes: Standard errors in brackets. Multinomial survival model with the type of exit as the dependent variable. For better readability, the coefficients for Latin America – time, time2, and time3 – are omitted in this table. Only the results for undue exits are provided here. Please consult the appendix for the due results.
* p<0.10; ** p<0.05; *** p<0.01

Table 4 shows the estimation results with the standard errors clustered at the country level. The coefficients of the multinomial logit are interpreted in the same way as the logit ones, where a positive significant coefficient indicates a higher likelihood of the respective event and a negative coefficient a lower likelihood. The baseline category in our analysis is that the judge is still in office. We thus estimate the likelihood of both a due and an undue departure in accordance with that baseline category. Here we report on and analyse the results for undue departures (the results for due departures are presented as an extended version of Table 4 in the appendix, together with the descriptive statistics).

To discuss the results in the following we make reference to the hypotheses presented in Section 2. The coefficients for the political variables showed the strongest effects on undue judicial departures, and we found some evidence of the influence of institutional variables. The individual variables did not have much influence in our sample. First, we looked at the constitutional and political power of the president. We could not find support for H1, as the coefficient for *presidential powers* was not significant and did not show the expected sign. Thus, our data did not confirm the initial assumption regarding the constitutional power of presidents, instead showing that what matters for political departures is presidents' political power, as presented in H2. *Presidential majority in parliament* behaved according to our expectations, with high significance in all models: undue departures are more likely in situations where there is a concentration, rather than a fragmentation, of power.

Among the formal rules that are meant to protect judges from undue removal, the coefficient for *number of appointers* obtained the same sign and significance for both due and undue departures (see appendix), which precludes us from drawing specific conclusions for the effect on undue departures in particular (H3). Instead, we can argue generally that the greater the number of actors involved in the appointment process, the less likely both due and undue departures are. The coefficient for *remaining time in office* did not show significance, so we do not find that long judicial terms increased the probability of undue departures (H4) in our sample.

Are judges more at risk of being ousted in some moments than in others? The coefficient for *constitutional reform* shows that changes in the institutional setting are more meaningful for judicial departures than the institutional features we account for. In effect, constitutional reforms are a highly significant explanation for judicial departures in general. This supports the hypothesis that constitutional reforms are a moment not only in which norms are redefined, but also in which the personnel on the highest court is changed. However, contrary to our expectations in H5, our results show that the risk of undue exits is significantly and very robustly reduced whereas due departures increase. Constitutional reforms can be taken as a grey zone because they certainly provide an opportunity to replace judges, but these judges' departure cannot necessarily be regarded as undue. Thus, our analysis refines the current knowledge, showing how those in charge of reforming constitutions – the elected powers – involve themselves in pushing concurrent changes in judicial personnel, which are, however,

correct and justified by the constitutional reform itself. Are judges more at risk of being ousted around presidential elections? The coefficients for *government's time in office* and *president's time in office* showed some level of significance in two of the models, whereas the coefficient for *change of president* was not significant. This finding supports H6, which states that undue judicial departures increase around elections. To be more specific, it indicates that presidents who are more advanced in their terms are more likely to oust judges whom they dislike relative to presidents who have just taken office.

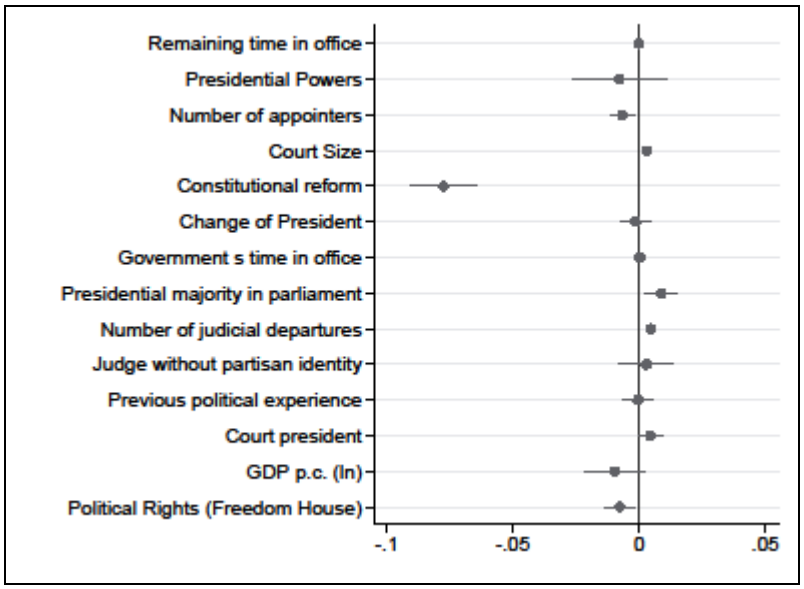
The coefficient for *number of judicial departures* shows the expected sign and is highly significant. Thus, within our sample, the probability of a judge leaving the bench inappropriately is higher when other judges also leave. These cascades of exits resemble massive political attacks, which the theory has already shown to be most probable when power is politically concentrated. This variable improves our knowledge of the political actions of power holders: we see that politically powerful executives will target the whole bench and not just isolated judges. The effectiveness of their actions are, however, called into question somewhat by the behaviour of the variable *court size*, the coefficient of which is significant in all models (and, to a lesser extent, *court size_2* as well). This variable has a different sign from the one we expected, because we regarded the ousting of individual judges from a large court as politically ineffective. It appears that presidents do not take court size into account when seeking to influence the composition of the bench.

Finally, we find little support for the influence of individual judges' characteristics. Only court presidents are slightly more threatened with undue interference than their peers. The control variables *GDP per capita* and *political rights* show the expected negative effects on undue departures; the effect of political rights is more significant. Thus, it is under less democratic conditions that politicians are more likely to oust judges unduly. Interestingly, the direction of the effect, but not its significance, persists for due departures (as can be seen in the appendix), which indicates a more general effect. Richer and more established democracies usually exhibit institutional stability, particularly at the level of the highest judicial bench, as we showed at the beginning of this paper. Similarly, constitutions are less exposed to frequent reforms in those contexts, which, as a consequence, makes it less likely that due changes on the bench will occur. We assume that this is the explanation for the robust, negative sign obtained with Freedom House's measure of political rights.

Figure 2 further highlights the significant linkage between several variables and undue exits and also illustrates the direction as well as the size of the respective effect. The plot can be read such that all factors on the left side of zero reduce the likelihood of undue exit, whereas those on the right side increase it. Please note that this holds only for those coefficients for which dots and lines do not touch the zero line. We can see that constitutional reforms exert the largest individual effect on the occurrence of judges being ousted – or more precisely, in this specific case, on the suppression of undue departures. Although the other effects look comparatively smaller, this is not unusual in a rare event analysis that reports the

increased probability of an undue departure in any quarter out of more than 4,000 observations. The right side illustrates the importance of the legislative power of presidents, the fact that departures occur in close chronological proximity to each other, and the fact that court presidents are more exposed than other judges.

Figure 2. Average Marginal Effects



Note: Average marginal effects for the main explanatory variables using the model specifications from column 1 in Table 4

Finally, we performed a number of robustness tests: we based our analysis on yearly data; we limited the sample to those quarters in which our data covers all six countries (1995–2008); and we reran the main specification six times, excluding a different sample country each time. Our essential results remain basically unchanged and are presented in the appendix. We also ran an estimation with country-fixed effects, though we were aware that this estimation might lead to inconsistent coefficients. The results primarily provide support for our finding.

7 Conclusions

This is the first study comparing the fate of higher court judges in six third-wave democracies in Africa and Latin America. African judges in particular have rarely been studied, and although the literature on Latin American judiciaries is richer, we have learned that studies on judicial departures in this world region are also in the incipient phase. We were especially interested in the informal aspects of a formal action: the ending of a high judge's tenure. This study's distinction between and measurement of due versus undue departures from the bench has highlighted the numerical relevance of undue actions by power holders intended

to oust judicial reviewers due to their lawmaking and political behaviour. Our qualitative assessment of every individual exit that looked suspiciously undue was based on fieldwork and cooperation with local scholars, and showed that the reasons for judicial departures go beyond what is reported in official language.

The survival analysis of an original set of aggregated data on all individual judges in the sample countries has shown that institutional and political features are the most significant conditions increasing the risk of undue departures. Interestingly, it is not the individual characteristics of a judge that power holders target. Interference is instead meant to tilt the balance of the court as a whole; it is more likely when presidents are well into their terms than when they have just taken office. The greatest commonality among the cases, which is strongly and robustly supported by our statistical analysis, points to power concentration as the major catalyst of politicians' ousting of unwanted judges. More precisely, the data confirms that safe government majorities in parliament motivate political actors to take the risk of undue interference in the judiciary in accordance with the fragmentation theory. Not surprisingly, this is paralleled by a higher risk of a judge being ousted if democratic rights are less stable. However, it appears that there is a general preference for appropriate behaviour. Formal presidential powers and episodes of relevant constitutional reform boost due departures, whereas undue departures are notably decreased in times of constitutional change.

Finally, the unconventional mix of Latin American and African cases has shown that regional images of institutional and socio-economic progress contribute to the general explanation of undue exits, but not necessarily along regional lines. Even a glance at the descriptive statistics shows that Benin and Senegal have seen far fewer constitutional judges ousted than Argentina and Paraguay. Again, the highly significant effect of enhanced democratic rights on the reduction of undue departures underscores the fact that political advances in sub-Saharan Africa need to be taken as seriously as economic development.

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Appendix

Descriptive Statistics

	mean	*sd*	*min*	*max*
Presidential powers	0.529	0.215	0.245	0.843
Number of appointers	2.739	1.045	1	4
Remaining time in office	3.239	1.589	-2.303	5.429
Constitutional reform	0.059	0.236	0	1
Court size	7.905	1.554	5	10
Presidential majority in parliament	0.503	0.500	0	1
Change of president	0.188	0.391	0	1
Government's time in office	14.311	13.505	0	76
President's time in office	14.311	13.505	0	76
Number of judicial departures	0.790	1.777	0	19
Judge without partisan identity	0.462	0.499	0	1
Previous political experience	0.170	0.376	0	1
Court president	0.131	0.337	0	1
Latin America	0.600	0.490	0	1
GDP p.c. (ln)	7.540	1.333	5.435	9.662
Political rights (Freedom House)	2.340	0.884	1	4
time	19.810	18.763	0	123
time2	744.406	1714.781	0	15129
time3	43977.035	175794.167	0	1860867

n=4064 for all variables

Modes of Departure per Region

	Africa	*Latin America*	*Total*
End of the formal term (incl. mandatory retirement age)	**28**	**15**	**43**
Death	**4**	**4**	**8**
Resignation	**5**	**26**	**31**
Impeachment	**0**	**5**	**5**
Abrogation	**19**	**0**	**19**
Total	56	50	106

Estimation Results for Undue Departures Extended

	Undue exit (1)	*Due exit (1)*	*Undue exit (2)*	*Due exit (2)*	*Undue exit (3)*	*Due exit (3)*
Institutional Variables						
Presidential powers	-0.849	3.895***	-0.929	4.414***	-1.035	3.794***
	[1.683]	[0.686]	[1.623]	[0.825]	[1.681]	[0.843]
Number of appointers	-1.414***	-2.293***	-1.696***	-2.656***	-1.439***	-2.231***
	[0.397]	[0.501]	[0.377]	[0.466]	[0.412]	[0.506]
Remaining time in office	-0.128	-0.878***	-0.198*	-0.960***	-0.151	-0.885***
	[0.189]	[0.166]	[0.110]	[0.113]	[0.200]	[0.167]
Constitutional reform	-13.230***	0.721***	-13.384***	0.709***	-13.072***	0.750***
	[0.586]	[0.106]	[0.584]	[0.111]	[0.585]	[0.129]
Court size	0.548***	0.207			0.571***	0.171
	[0.060]	[0.241]			[0.073]	[0.220]
Court size_2			0.622*	0.461		
			[0.330]	[0.315]		
Political Variables						
Presidential majority in parliament	1.539***	0.097	1.708***	0.061	1.613***	0.161
	[0.443]	[0.562]	[0.419]	[0.581]	[0.508]	[0.548]
Change of president	-0.365	-1.023*	-0.498	-1.125**		
	[0.468]	[0.533]	[0.505]	[0.495]		
Government's time in office	0.044*	-0.016	0.039	-0.018		
	[0.025]	[0.017]	[0.027]	[0.017]		
President's time in office					0.049*	-0.002
					[0.026]	[0.018]
Number of judicial departures	0.884***	0.593***	0.924***	0.596***	0.875***	0.575***
	[0.073]	[0.203]	[0.063]	[0.166]	[0.084]	[0.218]

Personal Characteristics						
Judge without partisan identity	0.461	-0.064	0.514	0.047	0.423	-0.088
	[0.942]	[0.288]	[0.914]	[0.294]	[0.961]	[0.301]
Previous political experience	-0.028	0.448	-0.005	0.448	0.012	0.542
	[0.541]	[0.383]	[0.532]	[0.416]	[0.534]	[0.354]
Court president	0.712*	-0.574	0.747*	-0.529	0.682	-0.586
	[0.425]	[0.576]	[0.417]	[0.645]	[0.416]	[0.594]
Controls						
GDP p.c. (ln)	-1.684*	-0.233	-1.710*	-0.308	-1.660*	-0.306
	[1.005]	[0.405]	[0.944]	[0.461]	[0.957]	[0.386]
Political rights (Freedom House)	-1.366***	-0.448	-1.394***	-0.379	-1.376***	-0.589
	[0.523]	[0.595]	[0.524]	[0.579]	[0.510]	[0.590]
Constant	0.786	-1.319	1.398	-2.014	0.617	-0.721
	[8.394]	[3.271]	[8.283]	[3.424]	[8.097]	[2.928]
Log likelihood	-312.432	-312.432	-308.784	-308.784	-314.727	-314.727
Observations	4064	4064	4064	4064	4064	4064
No. of judges	143	143	143	143	143	143
No. of exits	41	65	41	65	41	65

Notes: Standard errors in brackets and clustered by country. Multinomial survival model with the type of exit as the dependent variable. For better readability, the coefficients for Latin America – time, time2, and time3 – are omitted in this table. The table is the extended version of Table 4 from the paper. Here we provide the results for both undue and due exit alongside each other. The labels refer to the number of undue exits as displayed in Table 4.
* p<0.10; ** p<0.05; *** p<0.01

Robustness Check 1

	Undue exit (year-based specification)	Due exit (year-based specification)	Undue exit (same start- and end-year specification)	Due exit (same start- and end-year specification)
Institutional Variables				
Presidential powers	-1.512	4.586***	2.135	5.546***
	[1.140]	[0.648]	[4.098]	[1.127]
Number of appointers	0.117	-2.081***	-1.750***	-3.227***
	[0.433]	[0.244]	[0.269]	[0.572]
Remaining time in office	0.287	-1.150***	0.031	-1.084***
	[0.232]	[0.146]	[0.100]	[0.140]
Constitutional reform	-13.452***	1.544	-13.938***	0.807**
	[0.752]	[1.013]	[1.373]	[0.394]
Court size	-0.005	0.230***	1.385***	0.527***
	[0.197]	[0.039]	[0.295]	[0.201]
Political Variables				
Presidential majority in parliament	2.053**	0.298	1.075**	0.031
	[0.830]	[0.347]	[0.508]	[0.802]
Change of president	-1.533*	-1.259	-1.117*	-0.928
	[0.897]	[0.989]	[0.646]	[0.578]
Government's time in office	0.099	-0.182*	0.034	-0.01
	[0.140]	[0.106]	[0.038]	[0.020]
Number of judicial departures	0.294***	-0.203	1.000***	0.629***
	[0.110]	[0.192]	[0.070]	[0.182]
Personal Characteristics				
Judge without partisan identity	0.159	0.003	0.71	0.257
	[0.527]	[0.315]	[1.022]	[0.355]
Previous political experience	0.019	0.46	-0.389	0.477
	[0.418]	[0.373]	[0.339]	[0.429]
Court president	0.332	-0.342	1.007**	-0.296
	[0.313]	[0.801]	[0.449]	[0.439]
Controls				
GDP p.c. (ln)	-2.236*	-0.098	-1.853	-0.414
	[1.259]	[0.278]	[1.197]	[0.495]
Political rights (Freedom House)	-0.814*	0.2	-0.87	-0.827
	[0.477]	[0.313]	[0.705]	[0.809]
Constant	11.116	-1.273	-9.212**	-1.345
	[8.757]	[2.026]	[4.137]	[4.102]
Log likelihood	-271.939	-271.939	-228.804	-228.804
Observations	972	972	3365	3365
No. of judges	143	143	131	131
No. of exits	41	64	37	55

Notes: Standard errors in brackets and clustered per country. Multinomial survival model with the type of exit as the dependent variable. For better readability, the coefficients for Latin America – time, time2, and time3 – are omitted in this table. The results refer to the two different robustness tests: year-based and same start- and end-year specification, for which we provide the undue and due results here.
* p<0.10; ** p<0.05; *** p<0.01

Robustness Check 2 (one country left out of the regression)

	(1)	(2)	(3)	(4)	(5)	(6)
Institutional Variables						
Presidential powers	-7.382	0.595	-0.866	0.078	0.265	-1.985
Number of appointers	-4.602*	-1.604***	-1.265**	-1.315*	-1.361***	-1.383***
	[2.714]	[0.545]	[0.534]	[0.767]	[0.434]	[0.294]
Remaining time	-0.141	-0.148	-0.059	0.339	-0.166	-0.034
	[0.160]	[0.236]	[0.176]	[0.272]	[0.128]	[0.130]
Constitutional reform	-13.536***	-13.860***	-13.402***	-13.837***	-15.148***	-14.590***
	[1.673]	[0.631]	[0.812]	[0.737]	[0.615]	[0.629]
Court size	3.654	0.584***	0.505***	0.335**	0.464***	0.559***
	[2.382]	[0.122]	[0.103]	[0.143]	[0.117]	[0.052]
Political Variables						
Presidential majority	2.371*	1.316***	1.467***	1.237***	2.156**	1.586***
	[1.328]	[0.471]	[0.486]	[0.379]	[0.885]	[0.481]
Change of president	-0.403	-0.656	-0.2	0.082	-0.965	-0.531
	[0.699]	[0.516]	[0.473]	[0.582]	[0.958]	[0.520]
Government's time in	0.124*	0.048*	0.049*	0.026	0.018	0.038
	[0.064]	[0.027]	[0.027]	[0.023]	[0.022]	[0.043]
Number of judicial	1.211***	0.885***	0.879***	0.989***	0.790***	0.903***
	[0.342]	[0.094]	[0.078]	[0.101]	[0.044]	[0.091]
Personal Characteristics						
Judge without	-0.281	1.069	0.706	-0.027	0.005	0.729
	[1.318]	[1.177]	[0.989]	[1.047]	[0.980]	[1.016]
Previous political	-0.146	-0.068	-0.033	0.353	-0.16	-0.425
	[0.901]	[0.933]	[0.585]	[0.658]	[0.538]	[0.299]
Court president	0.254	0.808	0.907**	0.552	0.768*	0.938**
	[0.498]	[0.501]	[0.375]	[0.556]	[0.416]	[0.417]
GDP p.c. (ln)	0.445	-2.448***	-1.734	-1.304	-2.212	-1.753*
	[1.219]	[0.922]	[1.133]	[1.241]	[1.662]	[0.988]
Political rights	-1.27	-1.651***	-1.416**	-0.9	-0.654	-1.657***
	[1.061]	[0.519]	[0.605]	[0.754]	[0.772]	[0.417]
Constant	-31.719	5.57	0.372	-2.064	3.555	1.293
	[20.602]	[8.988]	[9.970]	[10.266]	[11.182]	[7.857]
Log likelihood	-225.522	-258.549	-249.801	-260.673	-270.639	-258.093
Observations	3129	3461	3261	3490	3365	3614
No. of judges	122	118	111	119	123	122
No. of undue exits	33	37	40	22	33	40
Country left out	ARG	BEN	CHL	MDG	PGY	SEN

Notes: Standard errors in brackets and clustered per country. Multinomial survival model with the type of exit as the dependent variable. The estimations are based on the main specification and on (1) in Table 4, and in each estimation a different country is omitted. For better readability, the coefficients for Latin America – time, time2, and time3 – are omitted in this table and we report only the results for undue exits The results for due exits are available from the authors upon request.
* p<0.10; ** p<0.05; *** p<0.01

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