

Legislative Coalitions and Judicial Turnover: The Case of Ecuador's Constitutional Court (1999-2007)¹

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This paper explains judicial turnover in Ecuador's Constitutional Court. Using an original dataset of judges' ideological preferences, political party ideological preferences, and both legislative and judicial coalitions from 1999 to 2007, we show that an increase in ideological distance between judges and congressional deputies increases the probability of judicial removal. We test this through short analytic narratives of Constitutional Court instability in four periods of turnover, and quantitatively through rare events logistic regression. According to our empirical evidence, congressional deputies turn over judges because judges vote sincerely, independent of changes in legislative coalitions.

Key words: Judicial politics, legislative-judicial relations, Ecuador, judicial turnover, legislative and judicial coalitions.

Since Ecuador's Constitutional Court was officially established in June 1999, no court has survived a full 48-month term. In fact, there have been four different courts in less than eight years, with the average justice serving just less than 20 months in office. This is a reflection of the institutional instability and short time horizons that plagues contemporary Ecuadorian politics, where executive-legislative coalitions tend to endure less than a year, and where no elected president in the last ten years has been able to complete his full term in office. While a considerable amount of literature attempts to explain executive-legislative relations and government survival (Pachano, 2005; Freidenberg, 2008; Mejía Acosta, 2009), the survival of the judiciary and constitutional court remain largely overlooked.

To cover that gap this paper explains what causes judicial removal in Ecuador's Constitutional Court (*Tribunal Constitucional*, or TC). This is a research question that has remained largely untouched not only in the literature on Ecuador's judiciary but also

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in Latin American studies, which have often focused on its lack of independence. Given that in Ecuador Constitutional Court judges vote according their political preferences despite sanctions (Basabe-Serrano, 2009), we use a logistic regression model to show that ideology and time matter in determining judicial survival. Paradoxically, the highly volatile political environment and institutional design to select judges are beneficial to judicial behavior because it provides judges with greater incentives to vote sincerely rather than strategically. While Basabe-Serrano (2009) finds that TC judges vote sincerely as a *result* of complex mechanism of selection -*judges without robes*-, we argue that sincere voting is one of the *causes* of these unstable tenures.

The first section consists of the theoretical background for the paper, including the nature of relationship between legislative and judicial branches. The next part describes the creation and functioning of Ecuador's Constitutional Court, with a focus on corresponding executive and legislative instability. The third section presents our data and model, and the fourth interprets and discusses the results. The fifth section concludes and offers some guidelines to future agenda of research.

1. Theoretical Considerations.

Judicial independence is a relative rather than absolute concept. All judiciaries are to some extent independent and to some extent subservient, and thus cannot simply be dichotomously labeled "independent" or "not independent". Even more independent judiciaries must take external factors, like political considerations, into account (Hall, 1992). Nor is independence consistent through all levels of the judiciary. In most modern courts, lower court judges are expected to defer to the decisions of higher courts for predictability and uniformity (Eckhoff, 1965; Hall, 1992). The doctrine of *stare decisis* requires that courts follow legal precedence, which further bounds the decision-making of individual judges (Brenner and Stier, 1996). Taking these caveats into account, Rosenn defines judicial independence as, "the degree to which judges actually decide cases in accordance with their own determinations of the evidence, free from coercion, blandishments, interferences, or threats of governmental authorities or private citizens" (Rosenn, 1987: 7).

On the other hand, Iaryczower, Spiller, and Tommasi (2002) conceive of judicial independence to be the extent to which justices can reflect their preferences in their decisions without facing retaliation measures by congress or the president. For us, both concepts lead to say that a judge has more independence to decide cases when she votes according her own political, ideological or cultural preferences. By contrast, when political actors or environment factors can influence judicial decision-making, it is possible to argue that vote is strategic or sophisticated (Epstein and Knight, 1998). In terms of game theory, this is the case of interdependent games.

Much of Latin America is characterized by governments with strong executives and weak, non-independent judiciaries, in which the former wields control over the latter (Helmke, 2005; Levitsky and Murillo, 2005). There are numerous examples of this over

the past half century. The Dominican dictator, Trujillo, supposedly held undated letters from every member of the Supreme Court, and filled in the date when displeased with a decision (Wiarda, 1970). Stroessner exerted similar control of the Paraguayan courts over the course of his thirty-five year dictatorship (Lewis, 1980). Some assessments have listed Costa Rica as the only Latin American country with a truly independent judiciary; the next closest were eight countries (Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Peru, and Venezuela) considered to have semi-independent judiciaries subject to executive interference (Stein, Tommasi et al. 2006).

Under semi -or non- independent conditions, it may be in the judges' rational interest to vote strategically in order to avoid punishment from the executive or legislature. This argument was developed by Hall (1992), who shows that state supreme court justices in the U.S. vote strategically in order to minimize electoral opposition. In order to appease their constituencies, justices who have views contrary to those held by voters and the court majority, and who face competitive electoral conditions, will vote with the court majority rather than cast unpopular dissenting votes on politically volatile issues. Different forms of this exist elsewhere. Building on judicial decision-making models in the U.S., Helmke (2002; 2005a) uses the Argentine Supreme Court to develop a micro-level account of judicial decision-making in contexts where judges face institutional insecurity. Against conventional wisdom, she argues that under certain conditions the lack of judicial independence motivates judges to "strategically defect" *against* the government, once it begins losing power, in order to survive.

The strategic voting argument is contested by Castagnola (2007), who uses data from the Argentine Supreme Court between 1935 and 1998 to show that the effect of voting behavior on justices' stability is not as significant as argued by others (Helmke, 2002; Iaryczower, Spiller et. al. 2002). In addition to this main finding, Castagnola also contests the hypothesis that the strength of the president plays a role in determining justices' fates. Basabe-Serrano (2008; 2009; 2009a) comes to a similar conclusion in his analysis of judicial voting in Ecuador's Constitutional Court. Using Segal and Cover's (1989) and Segal and Spaeth's (1996) attitudinal model of U.S. Supreme Court justices, Basabe-Serrano shows that despite carrying out their roles in the context of constant job insecurity, Ecuadorian Constitutional Court judges make decisions based on their ideological preferences *because* their election involves a plurality of actors and arenas of decision.

The reason for this behavior is twofold. On one hand, it is due to the intensity of bargaining during nomination and candidate-selection process. According to constitutional rules, candidates come from six different institutional arenas (the president, the Supreme Court, chambers of production, mayors and prefects, and the national syndicates, in addition the congress itself), each one -except the executive- composed by many actors. As consequence of this, actors have to make mutual concessions, so the possibility of candidates aligned to any specific actor decreases. On the other hand, it is also linked with the intensity of bargaining with the legislature in order to get a coalition to appointment TC's judges. Given that the Ecuadorian Congress is extremely fragmented (Pachano, 2007), the designation requires mutual concessions between political parties, so appointments do not depend on any specific party. In sum, the link

between judges and a particular political or social actor is less direct when many actors and arenas of decision enter into the process (Basabe-Serrano, 2009: 31).

Unlike the previous authors, Basabe-Serrano argues that the short temporal nature of justices' terms -from a *de jure* 48 months to a *de facto* 5 to 46 months- does not influence the nature of the vote, but the specific goal that justices seek to satisfy. This means that Ecuadorian judges accept their benches fully conscious of the real possibility (if not expectation) that their tenure on the TC will be short. They consequently assume their positions looking to advance their professional trajectory, through maintaining contacts and policy positions with contacts that will later be the justices' clients, colleagues, and sources of work. Thus, justices' reputations are the best source of capital they possess, and so resolving cases based on their ideological preferences is the best way to contribute to their sedimentation and maintain professional standing within their circle of influence⁴.

Nevertheless, this explanation does not account for the *source* of judicial turnover nor does it consider the possible effects of subsequent interchanges between the executive and legislature over survival of judges. In this point, Mejía Acosta (2009) shows that Ecuador's executive -who has never enjoyed a legislative majority since the return to democracy in 1978- as been able to overcome conditions of executive-legislative deadlock through public or clandestine agreements -*ghost coalitions*- in which legislative support is exchanged for pork, patronage, or other concessions. Following this, Mejía Acosta and Polga-Hecimovich (2009) argue that since 1996, institutional changes have caused greater instability in these coalitions in Ecuador, resulting in a "coalition cycle" in which devaluating coalition currencies and fixed executive time horizons accelerate the negotiation and erosion of coalitions.

However, it is necessary to know what kind of changes in legislative coalitions or agreements between executive and legislature involve effects over stability of TC. In fact, not all coalitions are created equal. As shown in Table 1, the Social Christian Party (PSC) held the most seats at any given time between 1992 and 2006, and as a result, their coalitions with the governments of Jamil Mahuad (from 1998 to 1999, not listed in Table No 1), Gustavo Noboa, and Lucio Gutiérrez, were all stronger and more enduring than the some of the more ephemereal multi-party coalitions forged in 2000 and 2001 by Gustavo Noboa. Whereas the principle coalitions often lasted a year or more, subsequent agreements decreased in both duration and power. So, while the volatile political

⁴ Basabe-Serrano (2009) creates a typology of judges in which he plots judicial autonomy respect to legislature against institutional stability. The resulting types include: 1) "public policy makers", or autonomous judges in contexts of institutional stability who vote sincerely, such as supreme courts in the U.S., Chile, Uruguay, and Colombia. The goal of this type of judge is making judicial politics; 2) "functional judges", or non-autonomous judges in contexts of institutional stability, who vote strategically and are characteristic of non-democratic regimes. The goal is getting other positions within or outside judicial branch; 3) "opportunistic judges", who carry out their jobs with little legislative autonomy and high instability, like in Argentina (until Menem's periods), Venezuela, or Mexico. In this case the vote is strategic and the judicial goal is maintains in the charge; and 4) "judges without robes", who are autonomous from legislature but instable institutionally. In this type are include Ecuadorian judges that we are analyzing.

conditions and shifting majorities of Ecuador's legislature imply that although the indifference curves of the judges overlap with a proportion of the legislature, they do not necessarily overlap with every given majority, it is also clear that some legislative majorities are more powerful than others. Here, we trace the removal of TC judges between 1999 and 2007 and the coincidence of these episodes of instability with legislative and executive instability.

Table No 1: Party in office, party more represented in legislative and coalitions (1998 - 2007)

Year election	Party in office and ideological position *	% of seats	Party more represented in legislative	% of seats	Coalition composition (type)**
1998	Jamil Mahuad. DP (center-right)	28.83	DP	28.83	
1999	Jamil Mahuad. DP (center-right)				-DP-ID-PCK (Ghost). -DP-PRE (Ghost)
2000	Gustavo Noboa DP (center-right)				-None/ -DP-UDC-PSC (<i>Super aplanadora</i> , Public). -DP-ID (Ghost). -DP-ID-Pachakutik (Ghost). -DP-MIN-PSC-PCE-PS-FA (Ghost)
2001	Gustavo Noboa DP (center-right)				-DP-MIN-PRE-ID-MPD-Pachakutik-CFP-NP (Ghost)
2002	Gustavo Noboa DP (center-right)				-None
2003	Lucio Gutiérrez PSP-PCK*** (populist and left)	23	PSC	24.00	-PSP-MPD-Pachakutik (Electoral, Public). -PSP-PSC-ID (Ghost)
2004	Lucio Gutiérrez PSP (populist)				-PSP-PSC-ID (Ghost). -PSP-PRE-PRIAN (<i>Pichicorte</i> , Ghost)
2005	Alfredo Palacio (independent)				-PSP-PRE-PRIAN (<i>Pichicorte</i> , Ghost) / -None
2006	Rafael Correa Alianza País (left)	0	PRIAN	28.00	-PSP-ID (Ghost)
2007	Rafael Correa Alianza País (left)				-None

* Ideological position of parties was taken of Mejía Acosta (2004). Explanations of party acronyms are in Appendix No I.

** Government party in bold. Information of this column was taken of Mejía Acosta and Polga-Hecimovich (2009)

*** Here we considering basically the initial coalition between PSP, PCK and other left-social movements. The political party of president Gutiérrez (PSP) obtained only 2% of legislative seats.

Source: Freidenderg, 2006.

Authors' elaboration.

2. The Constitutional Court and Political Instability (1999-2007.)

Between the establishment of the TC in 1999 and 2007, Ecuador had five different presidents and at least twelve distinct legislative coalitions. During this same time frame the TC was completely turned over four different times. A brief history of the creation and functioning of the TC, along with corresponding executive and legislative developments, should show how judicial survival is not a random event, but is directly tied to executive turnover and the formation of new government coalitions.

Ecuador's Constitutional Court (hereafter TC) was unofficially created in June 1997, when the first judges took possession, although no law existed that regulated the court's functioning until the adoption of the 1998 constitution. Following the creation of constitutional courts in other South American countries, article 198 of Ecuador's 1998 constitution established the TC as an institution of constitutional control over legislative and executive actions, separate from the judiciary, and composed of nine magistrates⁵. It was established for the express purpose of judicial review -reviewing the constitutionality of laws, decrees, orders, statutes, rules, and resolutions passed in the legislature, decreed by the executive, or issued by any other state institution- and upholding constitutionally-guaranteed rights. The TC has more policy-making power, as well as greater capacity in changing the legal status quo than the Ecuadorian Supreme Court. Without a doubt, its inclusion in the policy-making arena makes it a political veto player, upon which change or maintenance of the status quo depends on a simple majority vote (Basabe-Serrano, Pachano and Mejía Acosta, 2009).

As established in the constitution, the TC list is voted on by Congress, who chooses: two judges from two lists of three submitted by the president; two non-deputies picked by the congress itself; two from two lists of three submitted by the Supreme Court (and non-Supreme court members); one from a list of three submitted by provincial and municipal councils; one from a list of three submitted by the Chamber of Production, and; one from a list of three submitted by the Central Syndicates and the Indigenous and Peasant Organization (1998: Article 275). This group is supposed to hold power for four years, although, in practice, this has never occurred.

Much like the Ecuadorian Executive since 1996, no TC or individual judge has managed to complete the constitutionally stipulated 48-month term (See Appendix II for a complete list of TC judges, their duration, and who nominated each). On four distinct occasions (March 2003, November 2004, April 2005, and April 2007), the entire court was unconstitutionally restructured by the legislature. This involved the removal of nearly all judges, *although some individual judges managed to survive*. It is impossible to attribute the constant restructuring of the TC to any one institutional actor in particular (Basabe-Serrano, 2009), for as we briefly describe below, each of the episodes of removal involved different legislative or executive actors. Instead, we argue that it is a change in coalition configuration -and particularly, a change in the median legislator- that results in judicial turnover.

⁵ This replaced the Court of Constitutional Guarantees (*Tribunal de Garantías Constitucionales*, TGC) in the middle of 1997.

a) March 2003: The Febres Cordero-Gutiérrez agreement.

Ecuador's first Constitutional Court was supposed to endure to from June 1999 to June 2003, but judges were removed in March of 2003. This was due, in part, to the electoral coalition formed by the government of Lucio Gutiérrez with León Febres Cordero and his Social Christian Party (PSC). The process of turnover began on January 9, 2003, less than a week before President Gutiérrez's inauguration, when the legislature designated two new judges to represent it on the TC. A simple majority of 54 legislators, made up of deputies from the PSC, ID, DP, and PRIAN, then declared that the current nine justices had then served a complete term.⁶

This not only opened up the path for a total restructuring of the court, but also constituted the first political defeat of the incoming government, Gutiérrez's PSP and the indigenous party, Pachakutik, who had not participated in the vote.⁷ This signal from the "mobile majority" in the legislature to the new PSP-Pachakutik government was met with negotiation. On March 19, Gutiérrez had a private meeting in the coastal city of Guayaquil with PSC leader Febres Cordero, and shortly thereafter, the mobile majority - minus the left-of-center ID and populist PRE, but now including the PSP and Pachakutik-designated the other seven TC judges.⁸ Shortly thereafter, Pachakutik formally pulled out of the governing coalition, and the PSC stepped in. Despite the unconstitutionality of the legislative decision adopted, none of the judges resisted, nor did they present any legal demands against the government. Furthermore, two of the judges, René de la Torre and Oswaldo Cevallos, continued on for a second term.

b) November 2004: The Gutiérrez-Bucaram agreement and its effects on the TC.

By mid-2004, the government's coalition with the PSC had deteriorated, and amidst embezzlement and corruption charges by the PSP and PSC, they parted ways.⁹ By November, the PSC had formed an opposition alliance with the ID and Pachakutik in order to seek revenge against Gutiérrez by calling for his impeachment on the ground of corruption (PSC) and jeopardizing state security (Pachakutik and the ID). The congressional opposition lacked the two-thirds majority required to dismiss the president, but the government nevertheless tried to form a legislative shield with the support of exiled ex-President Bucaram's PRE and Álvaro Noboa's PRIAN parties.¹⁰ Immediately

⁶ Diario El Comercio, February 2, 2003.

⁷ Editorial from Diario El Comercio, January 29, 2003.

⁸ Diario El Universo, March 21, 2003.

⁹ PSP Deputy Renán Borbúa, the president's cousin, publicly stated on April 13 that, "[PSC Deputy, Xavier] Neira is behind all petroleum contracts, Pacifictel and Andinatel [telecommunications]" and accused the PSC hierarchy of belonging to a "dark circle" controlling contract disbursements. Febres Cordero's PSC responded with charges of "trafficking in influences" against Borbúa in the Constitutional Tribunal. (2004). Borbúa armó la grande. Diario Hoy, April 14, 2004.

¹⁰ The opposition formed by PSC (25), ID (15), Pachakutik (7) and MPD (3) still lacked 15 more votes to censor the president. (2004). Inicio de juicio a Presidente Gutiérrez, cuestión de horas. Diario Hoy, November 4, 2005.

after this vote, PRE Deputy, María Augusta Rivas, received the president's support to "restructure" a range of judicial branches, including the TC.

After a period of negotiation and legislative bargaining among the legislators of the new PSP-PRIAN-PRE majority, the TC judges were unconstitutionally removed from their positions on November 25, and a new group of nine judges were designated to take their place. Like the previous case of removal, the judges did not formally contest their exit, and they left office peacefully. Once again, two judges from the previous court, René de la Torre (for a second time) and Milton Burbano, survived. In March 2004, the similarly restructured Supreme Court of Justice rescinded corruption charges against the PRE's Bucaram, leading to his return from exile in Panama and contributing to the popular protest against Gutiérrez.

c) April 2005: The fall of Gutiérrez and constitutional limbo.

The constitutional violations and Bucaram's return angered a broad social segment including urban middle-class protesters (*forajidos*) in Quito, who rejected Gutiérrez' authoritarian style. In the context of widespread protests, the Armed Forces Joint Command publicly declared its withdrawal of support for the president. A legislative session was convened by opposition parties on April 20, and the legislature voted 60-0 (with two abstentions) to declare Gutiérrez guilty of "abandonment of office". Vice President Alfredo Palacio was named president.

The new majority, made up of the PSC and ID (as President Palacio was an Independent), approved a resolution on April 26 that declared the new TC judges unconstitutional after only five months in office. In a similar fashion to the two previous cases of removal, the fallen judges did not offer great resistance to this declaration or question the constitutionality of the removal. However, at this time, the legislature decided to hold a merit-based public contest to name the next Supreme Court justices. This complex ad hoc procedure designed by the congress was not finalized until November 2005, and the submitted TC *ternas* were not discussed until February 22, 2006, when the new judges were finally chosen.

d) April 2007: The arrival of Correa and his impact on TC stability.

Rafael Correa was elected president of Ecuador on November 26, 2006, after defeating banana tycoon and PRIAN party leader, Álvaro Noboa. Correa assumed office in January with an anti-party and anti-establishment discourse, and although he carried not a single congressional deputy in the congress, the high level of public support for him allowed him to pursue his agenda of a National Constituent Assembly¹¹. Circumventing the legislature, on March 1, Correa was able to get the Supreme Electoral Tribunal (TSE) to convoke a plebiscite towards the purpose of convoking a constituent assembly. In the following days, the legislative majority of the PSP, PRIAN, PSC, and UDC (before DP) asked the TC to rule on the constitutionality of the TSE's decision. At the same time, they

¹¹ A more detailed description of the Correa's government is in Machado-Puertas (2007; 2008) and Basabe-Serrano (2009b)

also decided to remove the TSE's head judge, Jorge Acosta, and impeach the four judges who had sided with Acosta in favor of the president.

The TSE responded by removing the 57 deputies who had questioned their decision. On April 23, the TC tried to reinstate 51 of the 57 deputies who had been thrown out of office by the TSE, arguing through a petition that it had been illegal to remove them in the first place. Before the reinstated congressmen had the chance to enter back into the congress, the assembly voted to fire all nine TC judges for *their* "unconstitutional actions." As in the previous cases, the justices took leave of their positions without resistance upon hearing of the legislative resolution, while the ex-President of the court, Santiago Velásquez, only permitted himself to say that he and his colleagues would meet to determine if they would bring the matter before the Organization of American States (OAS).¹²

These sketches show that Ecuadorian TC judges do not enjoy much security in their benches, and that changes in the judiciary are often correlated with changes in the executive or the executive's governing coalition. Nonetheless, they do not provide a systematic account of the cause of judicial turnover. Yet, because judicial turnover seems to coincide with changes in the executive or executive coalition, it follows from these sketches that: a) judges are voting sincerely and not strategically (and are being penalized for it), and b) judicial turnover seems to be driven, in part, by ideological differences between the court and the governing legislative coalition. Simply put, we believe that the ideological distance between the judges and the ideological preference of the legislative majority is one of the primary factors explaining judicial turnover and judicial survival in Ecuador. We hypothesize the following:

H₁: As the ideological distance between a Constitutional Court median judge and the median legislator of the legislative coalition shrinks, the longer that judge will remain in office.

and,

H₂: As the ideological distance between a Constitutional Court median judge and the median legislator of the legislative coalition grows, the shorter that judge will remain in office.

Nonetheless, as we will explain later, the volatility of the coalitions and mobile majorities make it hard, if not impossible, for the judges to vote strategically, because they are unable to anticipate towards whom to direct their vote.

¹² Diario El Comercio, April 26, 2007.

3. Data and Methods.

In order to model judicial exit, we use logistic regression and rare events logistic regression in which our unit of analysis is the status of each TC judge (30 overall) for each month of their term until the month of exit (N=772). This unit of analysis is appropriate for a number of reasons. To begin with, coding by a larger unit of time, like year, would be a clumsy approximation of the reality of Ecuador's shifting legislative coalitions and the circumstances that caused the removal, while monthly coding is able to incorporate less dramatic shifts in the mobile majorities that did not affect judicial stability. Furthermore, coding by month increases the number of observations by 12 times.

Our dependent variable is "judicial exit", which is coded as 0 if the judge was in office for a given month, and coded 1 if the judge was removed in that month. Our principle independent variable is the distance between the ideological preference of a given judge and the ideological preference of the median legislator in the government coalition during that month. Our other independent variables are: 1) months the judge has been in office, since Helmke (2002) argues that judicial survival is more tenuous as time passes. We expect that as time passes, judges' tenures will be more insecure; 2) the approval rating of the president, since public approval or disapproval may drive executive behavior towards other institutions, including the judiciary. We expect that as executive approval rating falls, judicial stability will also decrease, because presidents may look towards new legislative coalitions to ensure governability, and; 3) affinity with the PSC, which participated in many of the negotiations over judicial removals, and whose leader, ex-President León Febres Cordero, was known as the "owner of the country" for his control over state political and economic institutions¹³. We expect that judges who hold an affinity -if not affiliation- with the PSC will last longer than other judges, holding all other factors constant.

To determine the ideological preference of the median legislator of the coalition party, we first establish the party composition of the governing coalition. In the Ecuadorian context, a coalition is defined as a public or clandestine agreement between the executive and party leaders or other legislators in which legislative support is exchanged for pork, patronage, or other concessions. The composition of these coalitions is taken primarily from Mejía Acosta and Polga-Hecimovich (2009), who argue that presidential crises in Ecuador are linked to and accelerated by the rapid erosion of legislative coalitions, especially in the post-1996 period. They use interviews with Ecuadorian political leaders, primary and secondary source materials, and variables such as bill success rate and party switching rates to fix the establishment and erosion of coalitions between 1979 and 2006 to the month.

¹³ When former presidente León Febres Cordero died, historian Enrique Ayala Mora said to BBC Mundo: "Se lo calificaba así porque procedía como tal, porque aunque ya no fuera presidente de la república, gobernaba desde su casa, disponía y había mucha gente, tanto en el sector público como en el privado, que le obedecía como si efectivamente fuera el dueño del país." News publicated by BBCMundo.com, December, 16, 2008.

Using the coalition composition, we then label the ideological preference point of each party, and count the number of legislators in each party to arrive at the median legislator. This may be problematic because it conflates individuals' interests with party interests. As Kiewiet and McCubbins point out, "given the fundamental difficulties involved in aggregating individual preferences, modeling a collectivity as if it were a single entity with stable goals requires considerable justification" (Kiewiet and McCubbins 1991: 39). Ideally, we would use Poole and Rosenthal's (1991) probabilistic spatial voting model, utilizing congressional roll call votes to determine each individual legislator's ideal preference point in along a one-dimensional left-right scale or as a point in a two-dimensional space.

Unfortunately, since its inception in 1979, Ecuador's National Congress has not taken roll call votes. While this facilitates the formation of legislative ghost coalition - legislators can vote with the government on certain issues in exchange for pork or other incentives, and then later deny the vote- it frustrates modeling of those legislators preference points (Mejía Acosta, 2009). However, assigning individual deputies their own party's ideological scores is theoretically justifiable on the ground that coalitions are nearly always negotiated with party leaders and not rank-and-file legislators. Furthermore, because Mejía Acosta (1999) has demonstrated that deputies are loyal their parties, "*cambios de camiseta*" are not common in the Ecuadorian Congress.

Given this, we use Freidenberg (2006), who fixes the ideological position of relevant political parties in Ecuador for each electoral period between 1996 and 2006 (1996-1998, 1998-2002, and 2002-2006) through three waves of surveys of congressional deputies (1996, 1998, and 2003), as well as Alcántara (2009), who uses the same surveys and methodology to fix the position of President Correa's *Nuevo País* (NP) Party. In the surveys, legislators are asked to assign an ideological preference point of one to ten, with one being the farthest left and ten being the farthest right, to themselves, to their party, and to all other parties. For the purposes of coalition-building, we are concerned with the latter measure, or the ideological preference point of each party as *perceived* by all other parties (see Appendix III for a summary of these results).

After fixing the government's coalition from month to month between 1999 and 2007 and establishing the median legislator of the coalition (and his or her ideological preference point), our last step is to model TC judges' individual policy preferences. We will use an attitudinal model, commonly used in the field of judicial politics to determine ideal preference points on a left-right scale (Segal and Cover 1989; Segal, Cameron et al. 1992). An initial way to measure this would be via to TC judges' votes on cases of unconstitutionality of laws passed by the executive or the National Congress, of which there are over 300 observable cases between 1999 and 2007 (Basabe-Serrano, 2009; 2009a). However, there would be no way to tell if votes were sincere or strategic. This would violate conditional independence, and lead to potential problems of endogeneity, as the values of the explanatory variable would come from the values of the dependent variable, instead of serving as a cause (King, Keohane and Verba, 1994).

To overcome this, Basabe-Serrano (2009; 2009a) uses an experimental design to fix judicial preference points based on survey information from lawyers, academics,

political actors, judicial actors, social organization representatives, and social voices in four of Ecuador's major population centers (Guayaquil, Quito, Cuenca, and Loja). In order to construct as highly a representative sample as possible, he conducts 110 surveys from the previously mentioned actors and regions, in different fields, and self-identified as lying on a broad ideological scale, but all aware of the proceedings of the TC magistrates (Basabe-Serrano 2008: 165). All of these factors decrease from the likelihood of systematic sampling error. In total the dataset includes all 30 TC judges between 1999 and 2007.

Among other things, the survey asks key questions related to economic and labor issues: to award a score of 1 (extreme left) to 10 (extreme right) for the magistrate's position on 1) state intervention in the economic system, and 2) the level of labor flexibilization that the country should pursue. A range of control variables is also included.¹⁴ A left-leaning judge, for example, would be labeled as being in favor of state intervention in the economy and against labor flexibilization, whereas a right-leaning judge would be expected to believe the opposite.

With these 1 to 10 scores, Basabe-Serrano then uses Segal and Cover's (1989) attitudinal model of: $ideological\ score = (left - right) / (left + center + right)$. What results is a score anywhere from +1.0 to -1.0, where a score of +1.0 indicates the farthest left, a score of 0 is center, and -1.0 is the farthest right. This score is then standardized along a 1-10 scale to provide a comparable measure to the scores fixed by Freidenberg and Alcántara for parties. This variable -ideological distance between each judge and the median legislator of the government coalition in a given month- has a range of .02 to 7.42 (on a ten point scale), and the mean value is 2.11.

The second independent variable, months in office, is simply a value for how many months a justice has served at any given time. Its value ranges from a minimum of 4 to a maximum of 70, and (despite supposedly fixed terms of 48 months) the average judge lasted just under 20 months (19.68) in the court before being removed. The third independent variable, presidential approval rating, is an ordinal variable from -100 (0% approval and 100% disapproval) to 100 (100% approval and 0% disapproval), which ranges from -72 to 60¹⁵. The last independent variable, PSC affinity, is a dummy variable taken from Basabe-Serrano (2009), which lists party affinities for each justice based on surveys. Thirty-nine percent of the judges in a given month (201 out of 772 observations) held an affinity -if not an affiliation- with the PSC. The values for the independent variables are summarized in Table No 2.

¹⁴ See Basabe-Serrano (2009; 2009a) for a complete list of survey questions and control variables.

¹⁵ As of the writing of this paper, we had not yet found the presidential approval ratings from January 2004 to January 2006, so we are withholding this variable from our analysis. Nonetheless, we hope to include this variable in subsequent versions of this paper.

Table No 2: Summary of independent variables

	Minimum	Maximum	Mean
Ideological Distance	0.02	7.42	2.11
Months on Court	4	70	19.68
Presidential Approval Rating (Net)	-74	60	7.2
Party affiliation (PSC)	-	-	-

Authors' elaboration.

4. Results.

Despite higher rates in Ecuador, a judge being removed from the TC is still a rare event. Of 772 judge-months observed, 740 (95.85%) of them were “no exit”, while only 32 (4.15%) were “exit”. To overcome this debility, we ran rare events logistic regression to complement the basic logistic regression; the results of the relogit are strikingly similar to those of the first estimation. Due to a lack of presidential approval rating values, we ran the logit and relogit models without it, and then added it as a variable for a third model. The results of all three of these models are shown in Table 3.

Table 3: Results for logistic and rare event logistic regression models

Model	1 (logit)	P> z 	2 (relogit)	P> z 	2 (relogit)	P> z
Ideological Distance	.26 (.11)	.014	.26 (.11)	.032	.44 (.15)	0.002
Months in Office	.02 (.01)	.039	.02 (.01)	.048	.05 (.02)	0.002
PSC affiliation	.48 (.41)	.240	.48 (.41)	.290	.24 (.63)	0.709
Approval Rating (1999-2004)	--	--	--	--	.07 (.02)	0.000
Constant	-4.45 (.54)	.000	-4.39 (.54)	.000	-7.97 (.84)	0.000
N	772		772		547	
Pseudo R ²	.033		--		--	

Authors' elaboration.

As the table shows, our model's estimates were consistent with our theoretical expectations. Ideological distance between the judge and the median legislator of the governing coalition is significant in all of the models, and the sign is in the hypothesized direction (the greater the ideological distance, the higher the probability of judicial exit). Using rare events logistic regression (model 2) instead of a basic logistic regression (model 1) decreases the significance from .014 to .032, but it remains fairly consistent. Furthermore, the introduction of the approval rating variable (model 3) kicks the significance back to .002. Not surprisingly, the number of months in office is also a significant estimator -with a correct sign- in all of the models. This is a logical conclusion, since more time in office should imply a greater the probability of being removed.

However, there is no reason that this should be a linear. In addition to the possibility of a linear relationship between time as a TC judge and probability of being removed from office, we also tested to see if there was a curvilinear relationship in which probability of being removed increased with time up to a certain point, and then began to regress. In order to do this, we added a squared and cubed value of the month variable; however, these variables' coefficients were not significant. Briefly, the time variable follows a similar pattern from model to model as ideological distance, as it becomes slightly less significance from model 1 to model 2, and then increases in model 3 when executive popularity is controlled for.

The most surprising result -perhaps due to the lack of data- was the result of the presidential approval variable. This variable was only used in model 3. This was not surprising for its significance as much as the difference in sign. Instead of decreasing presidential popularity leading to increasing probabilities of judicial removal, the sign is positive, indicating that the more popular the president becomes the more likely the court is to experience turnover. Although these results should be taken cautiously due to the lack of complete data, one possible explanation is that an empowered president feels less constrained by institutions of accountability, and is thus more willing to intervene in the courts in order to foment a coalition. Lastly, contrary to our expectation, our PSC affinity dummy variable was not significant in any of the models, which means that it behooves no judge to align him or herself ideologically to the largest party in order to increase their chance at survival.

Using the minimum value, mean value, and maximum values of our two principal independent variables -ideological distance and time on the court- we calculated the predicted probabilities of judicial exit. As Table 4 shows, the chance of judicial removal increases when controlling for ideological distance as well as month, both when the presidential approval rating variable is included and excluded. When both ideological distance and month are fixed at the minimum value of the data set, the chance of judicial removal is only .07% (Model 2) and .09% (Model 3). However, as both ideological distance and tenure increase to the maximum values in the data set, the predicted probability of removal increases to an astounding 33.87% (Model 2) or 38.30% (Model 3).

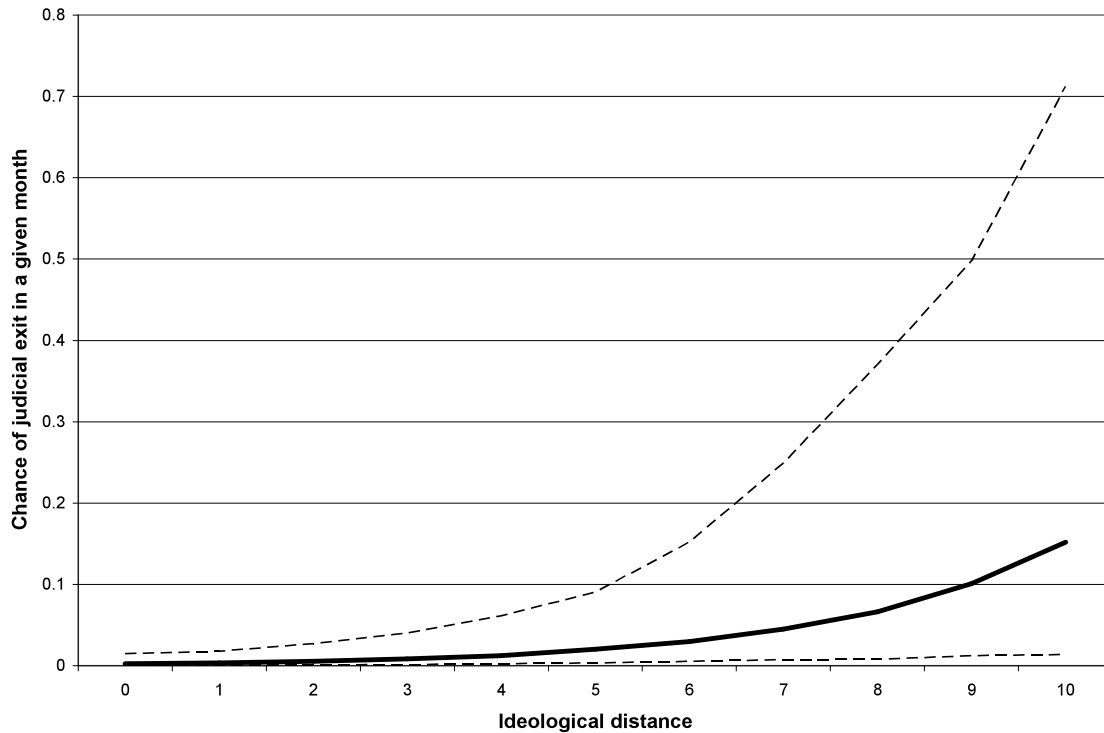
Table 4: Predicted Probabilities for models 2 and 3

Ideological Distance	Month	Model 2	Model 3
0.02 (minimum)	4 (minimum)	0.07%	0.09%
0.02	19.68 (mean)	0.17%	0.22%
0.02	70 (maximum)	1.92%	2.25%
2.11 (mean)	4	0.18%	0.21%
2.11	19.68	0.42%	0.55%
2.11	70	4.84%	5.55%
7.42 (maximum)	4	1.85%	2.30%
7.42	19.68	4.25%	5.22%
7.42	70	33.87%	38.30%

Authors' elaboration.

Graphically, it is easier to see that ideological distance is a stronger causal factor than time. Figures 1 and 2 display different aspects of the second model. Figure 1 plots the probability of judicial exit as ideological distance changes, while holding all other variables constant. The dashed lines above and below the predicted probability is the 95% confidence interval, so the model estimates that 95% of the cases will fall within this range as the ideological distance between the judge and median legislator changes. When a judge and the median legislator are aligned ideologically and all other variables are held constant, the judge has a less than a .15% chance of falling (when the distance is .02, as the minimum distance in the data set, the probability increases to .17%, as shown in Table No 4). However, as the ideological distance grows to 7.42 -the maximum value in the data set- the probability of judicial exit increases to 4.25%, and if the distance reaches a theoretical maximum of ten, the probability of exit increases past 15%.

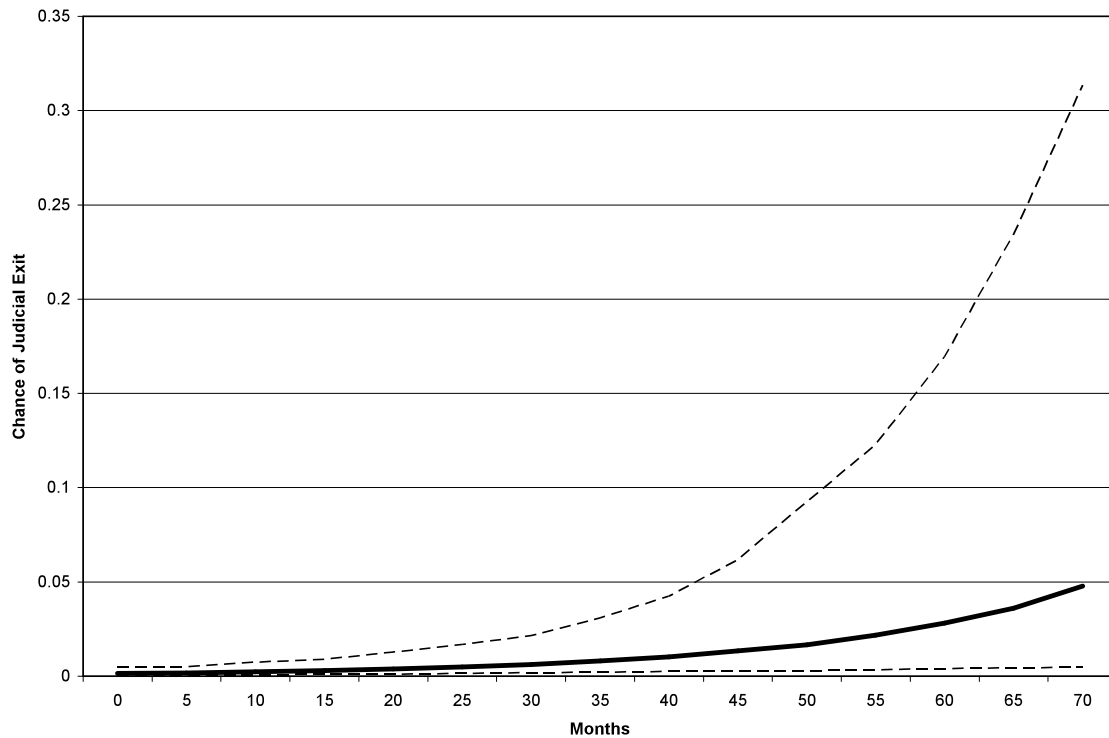
Figure No 1: Graphical display of the impact of ideological distance on judicial survival.



Authors' elaboration.

Time is not as important as ideology. Much like the graphical representation of the effect of ideological distance on judicial survival, Figure 2 shows the evolution of judicial insecurity over time. The dashed lines above and below the predicted probability is the 95% confidence interval, so the model estimates that 95% of the cases will fall within this range as time on the TC increases and all other variables are held constant. The time values range from 0 to 70 (as 70 months is the most time any single judge, René de la Torre, has spent on the court). The predicted probability of judicial exit increases over time from less than 1% to nearly 5% by month 70 when all other factors are held constant. Despite its significance, however, the time variable is a clearly less important causal factor in judicial demise than ideology.

Figure No 2: Graphical display of the impact of time on judicial survival



Authors' elaboration.

5. Conclusions.

This paper has shown that judicial removal in Ecuador's Constitutional Court can be explained by ideological distance between judges and the median legislator of the governing coalition, as well as other factors such as time on the court. Empirically, judicial turnover has occurred roughly after the formation of a new government or a new legislative coalition, which indicates that some aspect of that process was influential in causing the judicial instability. In addition to this, not all judges exited at the same time, invalidating the idea that any given court suffered from a serious defect. Using data on party ideology and individual TC judges' ideology, we showed that as the distance between a judge's ideological preference point and the ideological preference point of the coalition's median member increases, the probability of that judge being removed from office increases from less than one percent to more than fifteen percent.

Although it does not test Basabe's argument that TC judges vote sincerely, the paper provides some clues that support that idea. On one hand, if the cause of TC instability is ideological distance between deputies and judges, the corollary is that a new

legislative coalition does consider that judicial behavior according to ideological preferences could not be easily altered through pork, corruption or other ways. So, restructuring of TC has less cost of transaction to political actors. On the other hand, complex mechanisms of selection and the volatility of the coalitions in Congress make it hard, if not impossible, for the judges to vote strategically, because they are unable to anticipate towards whom to direct their decisions.

As an extension of the present exploratory investigation, future research must address two key assumptions in this paper: 1) that changes in the Constitutional Court were ideologically-based and not patronage-based, and 2) that TC coalitions are structured by judges with similar ideological preferences. So, if this is true we could reassert that sincere judicial behavior is consistent and far-reaching. One way to address the first question is through interviews with justices and legislators, since it is quantitatively difficult to distinguish between ideological preference and political patronage, which certainly overlap.

In order to address the second question, one option is comparing changes in the executive and the governing coalition with changes in voting blocks in the TC. This strategy may show whether certain cases are more likely to be decided via sincere votes or strategic ones. If a change in legislative coalition causes a change in the judicial voting block, this indicates strategic voting, as argued by Grijalva (PhD Dissertation, Forthcoming), while no change indicates sincere voting, as argued by Basabe-Serrano (2009). Again, an examination of controversial cases of judicial review would be a good qualitative complement to a multinomial logistic regression model that systematically examined monthly voting changes in the courts on economic issues.

APPENDIX I: Party Acronyms.

PSP	Partido Sociedad Patriótica (Patriotic Society Party)
CFP	Concentración de Fuerzas Populares (Concentration of Popular Forces)
DP	Democracia Popular (Popular Democracy)
PSC	Partido Social Cristiano (Social Christian Party)
PRIAN	Partido Renovador Institucional Acción Nacional (Institutional Renewal Party of National Action)
PRE	Partido Roldosista Ecuatoriano (Ecuadorian Roldosist Party)
ID	Izquierda Democrática (Democratic Left)
FRA	Frente Radical Alfarista (Radical Alfarist Front)
MPD	Movimiento Popular Democrático (Popular Democratic Movement)
MUPP	Movimiento de Unidad Plurinacional Pachakutik (Pachakutik Plurinational Unity Movement)

APPENDIX II: Constitutional Court Judges, time in office and nominating body (1999 – 2007.)

Judge	Period	Time in Office	Nominating Body
Marco Morales	June 1999 - March 2003	46 months	National Congress
Hernán Salgado	June 1999 - March 2003	46 months	President Mahuad Chambers of Production
Luis Chacón	June 1999 - March 2003	46 months	President Mahuad
Carlos Helou	June 1999 - March 2003	46 months	Mayors/Prefects
Luis Mantilla	June 1999 - March 2003	46 months	Supreme Court
René de la Torre	June 1999 - March 2003	46 months	Supreme Court
	March 2003 - November 2004	20 months	Supreme Court
	December 2004 - April 2005	4 months	Supreme Court
Guillermo Castro	June 1999 - March 2003	46 months	National Congress
Oswaldo Cevallos	June 1999 - March 2003	46 months	Supreme Court
	March 2003 - November 2004	20 months	National Congress
Hernán Ribadeneira	June 1999 - March 2003	46 months	Central Syndicates
	December 2004 - April 2005	4 months	Supreme Court
	March 2003 - November 2004	20 months	President Gutiérrez
Milton Burbano	December 2004 - April 2005	4 months	President Gutiérrez
	March 2003 - November 2004	20 months	Supreme Court
Miguel Camba	March 2003 - November 2004	20 months	Supreme Court
Jaime Nogales	March 2003 - November 2004	20 months	Mayors/Prefects
Mauro Terán	March 2003 - November 2004	20 months	Central Syndicates Chambers of Production
Luis Rojas	March 2003 - November 2004	20 months	Production
Simón Zavala	March 2003 - November 2004	20 months	President Gutiérrez
Enrique Herreria	March 2003 - November 2004	20 months	National Congress
	December 2004 - April 2005	4 months	National Congress
Carlos Arosemena	December 2004 - April 2005	4 months	National Congress
Estuardo Gualle	December 2004 - April 2005	4 months	President Gutiérrez Chambers of Production
Genaro Eguiguren	December 2004 - April 2005	4 months	Production
Carlos Soria	December 2004 - April 2005	4 months	National Congress
	March 2006 - April 2007	13 months	National Congress
Lenín Rosero	December 2004 - April 2005	4 months	Central Syndicates
	December 2004 - April 2005	4 months	Mayors/Prefects
Victor Sicouret	December 2004 - April 2005	4 months	Mayors/Prefects

Santiago Velásquez	March 2006 - April 2007	13 months	Supreme Court
Tarquino Orellana	March 2006 - April 2007	13 months	Supreme Court
Jorge Alvear	March 2006 - April 2007	13 months	President Palacio
Juan Montalvo	March 2006 - April 2007	13 months	President Palacio
Manuel Viteri	March 2006 - April 2007	13 months	National Congress
José García	March 2006 - April 2007	13 months	Central Syndicates
Enrique Tamariz	March 2006 - April 2007	13 months	Mayors/Prefects Chambers of
Jacinto Loaiza	March 2006 - April 2007	13 months	Production
Average Time in		24.9	
Office		months/justice	

Source: Basabe-Serrano (2009)

APPENDIX III: Mean ideological identification for party as perceived by deputies outside given party (1-10 scale, where one is left and ten is right) and number of deputies in congress (1996-2006).

Party	Ideological Score / Number of deputies in Congress					
	1996-1998		1998-2002		2003-2006	
PSC	9.35	26	8.79	28	9.32	24
DP	5.21	12	7.53	35	7.10	4
PRE	6.50	20	6.50	24	7.48	15
Pachakutik	1.92	8	3.63	9	3.70	5
ID	4.87	5	4.62	17	5.30	13
PRIAN	--	--	--	--	8.90	10
PSP	--	--	--	--	5.40	2

Source: Authors' elaboration, using results from Freidenberg (2006)

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