

Judging Presidential Elections Around the World: An Overview

Víctor A. Hernández-Huerta

ABSTRACT

While electoral management bodies have received an increasing amount of scholarly consideration recently, less attention has been paid to the institutions in charge of imparting electoral justice. These institutions are an integral column of the system of electoral integrity and the final check for achieving credible elections. This article offers an updated and systematic description of the institutions of electoral justice in all the presidential democracies around the world (19 countries in the Americas, eight in Africa and four in Asia), based on an analysis of the accumulated total of 966 years of electoral legislation. I have traced the evolution of the institutions adjudicating election disputes from the time of the constitutional change immediately prior to the first democratic election in each of these presidential democracies following the start of the third wave of democracy in 1974. Contrary to the idea that specialized electoral courts are better suited than supreme courts for resolving election disputes, I have found that supreme or administrative courts are slightly more independent than specialized electoral courts, although this is not to deny the advantages that electoral courts may have in terms of expertise. I have also found an upward trend in the global average level of electoral autonomy since the late 1970s. Finally, since the late twentieth century, a whole wave of Latin American countries have adopted specialized electoral courts to handle election disputes, while most presidential democracies in Asia and Africa have relegated this task to their supreme courts.

AU1 ▶ Keywords:

INTRODUCTION

THE RESOLUTION OF THE 2000 PRESIDENTIAL election in the United States raised questions about the institutional legitimacy and impartiality with which the U.S. Supreme Court resolves elec-

toral disputes (Gibson et al. 2003). After a divided ruling in the *Bush v. Gore* case, Justice Stevens asserted: “One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year’s presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law” (531 U.S. 98, 2000). Adjudicating contested election results is always problematic. Regardless of the identity of the authority that is ruling on disputed election results, discontent with the result will likely arise. While electoral management bodies are beginning to receive more scholarly consideration (Birch 2011; López-Pintor 2000; Pastor 1999), less attention has been paid to institutions in charge of imparting electoral justice. These institutions are an integral

Víctor A. Hernández-Huerta is a postdoctoral researcher in the Department of Political Science at the Universidad de los Andes in Bogotá, Colombia. Dr. Hernández-Huerta is grateful for helpful feedback from Scott Mainwaring, Juan Carlos Rodríguez-Raga, Craig Johnson and one anonymous reviewer. He also thanks Chonghyun Choi for his help coding South Korea. This work was supported by a Dissertation Completion Fellowship of the Graduate School of the University of Notre Dame and by the Center for U.S.-Mexican Studies of the University of California, San Diego.

column of the system of electoral integrity and the final check for achieving credible elections.

International organizations have made an effort to develop standards for improving the mechanisms for resolving election disputes. However, these efforts typically presume that one system is better than another—usually favoring resolution by courts or specialized electoral courts over legislatures or ad hoc commissions. This process “occurs without much comparative assessment of the relative impartiality and neutrality of the several alternative institutional structures” (Huefner 2010: 538). Therefore, it is essential to identify the institutions in charge of resolving post-electoral disputes and to assess how autonomous they are from political actors, especially from elected officials.

Research has shown that when the U.S. Senate or House of Representatives resolves contested elections, there is a partisan bias in favor of the political party that holds a majority in those legislative bodies (Jenkins 2004, 2005). This raises concerns about the impartiality of political bodies when adjudicating conflicts in which political parties are participants in the conflict and the judge of the matter at the same time (Lehoucq 2002). However, the problem of biased institutions is not exclusive to assemblies; courts can be considered political actors as well. The U.S. Supreme Court is not just a legal institution; it is a political one as well (Dahl 1957). Experience shows that even when solving the same case with the same law, courts can actually reach different conclusions. For example, the Supreme Court of Florida ordered a recount of votes in some counties, added some votes in favor of Gore, and extended the period for conducting the recount, but the U.S. Supreme Court reversed this decision, stopped the recount, and gave the victory to Bush nonetheless.

Because of the crucial influence that institutions adjudicating election disputes can have on the behavior of losing political parties and the stability of democracy, I offer a detailed description of such institutions in this article, which offers an updated and systematic account of the institutions of electoral justice in presidential democracies around the world. Nevertheless, I do not attempt to advance an explanation here of why different institutional arrangements are chosen for solving election disputes. Furthermore, determining whether these institutions of electoral justice have an impact on the strategies followed by losing parties and candidates, or on the behavior of the authorities adjudicating election dis-

putes, goes beyond the limits of this article. Nonetheless, offering a detailed account of these institutions and identifying their main similitudes and differences in terms of institutional design is a first step towards finding answers to other research questions.

After analyzing an accumulated sum of 966 years of electoral legislation in the 31 presidential democracies around the world, I found an upward trend in the global average level of electoral autonomy since the late 1970s. Over time, presidential democracies have abandoned the classic model of electoral governance in which the parties themselves certify election results in congress and transfer the prerogative of resolving election disputes to the judicial branch or to specialized electoral courts. Supreme courts or administrative courts are slightly more independent than specialized electoral courts, although this difference can be overcome through the professionalization and the level of specialized expertise of the latter. Despite the fact that 21% of the results of presidential elections among democratic countries are rejected by runner-up parties (Hernández 2015), only 67.72% of their constitutions (measured by country-year) include a rule on how to proceed in the event of a contested election. This situation leaves the door open to further institutional conflict.

The article is structured as follows. First, I identify the authorities in charge of adjudicating election disputes in presidential democracies: 1) legislatures, 2) supreme/administrative courts, and 3) specialized electoral courts. Second, I briefly discuss the characteristics that these institutions should have in order to fairly and effectively resolve an election dispute, the most relevant characteristic being autonomy from political parties. Third, I develop an original index of *de jure* autonomy of such institutions based on the evolution of each country’s constitutional history and electoral legislation. This subsection offers some examples of legal systems for resolving election disputes to illustrate the high level of detail used in the legal and historical analyses on which the index is based. Finally, I offer some findings regarding the nature and consequences of these institutions of electoral justice.

INSTITUTIONS OF ELECTORAL JUSTICE

Elections are at the core of the democratic process. Nevertheless, elections are vulnerable to errors, fraud, or perceptions thereof, because they involve

massive mobilization and coordination of citizens, and because of their divisive nature and technical complexity. Having independent and efficient institutions to handle these troublesome situations becomes crucial for attaining people's trust in elections.

There is no such thing as a flawless election (Birch 2011; Norris 2014; Schedler 2002, 2013). The main causes of election failures are fraud—a deliberate attempt to distort election results—and mistake (Heufner 2007). When elections fail to meet international standards of electoral integrity—as established in conventions, treaties, and protocols—citizens are expected to perceive electoral flaws, and protest or litigate to expose and resolve these irregularities (Norris 2014). In democracies, elections usually “go wrong” when random mistakes and inaccuracies systematically affect the electoral outcomes because of narrow margins of victory (Mozaffar and Schedler 2002). When the margins of victory are large, the public does not pay attention to the deficiencies that may exist, but close margins of victory can function as a magnifying glass that highlights electoral imperfections.¹ Close margins of victory in themselves are expected to trigger litigation: “The first law of electoral law [...] holds that it is not the seriousness of the breach of electoral process, but the closeness of the contest that gives rise to litigation” (Orr and Williams 2001: 92).

Since elections “are almost always infected with errors” (Mozaffar and Schedler 2002), and also stained with intentional electoral malpractices, there is a whole menu of legal approaches available to remedy election failures (Issacharoff 2007; Heufner 2007).² These remedies should serve not only to correct problems in the elections, but also as a mechanism to keep political parties and electoral authorities accountable for their actions. Accountability serves to make public actions and decisions transparent and, more importantly, to punish cases of misconduct (Schedler 1999; Moreno, Crisp, and Shugart 2003). This last element is very important in the electoral arena. Since elections are repetitive exercises, parties and authorities should be deterred from repeatedly engaging in cases of electoral malpractice. But who is actually in charge of applying these remedies?

Over time, democracies have developed different methods for resolving post-electoral disputes. This has proved to be a daunting task. The legitimacy of representative democracy rests in part on having fair elections, but since no election is exempt from

irregularities, it is necessary to be able to count on institutional methods to solve disagreements. That is the role of electoral governance: providing procedural certainty to the uncertainty of democratic elections (Mozaffar and Schedler 2002). There are different levels of electoral governance: (1) making the rules of the electoral process, (2) organizing the elections, and (3) adjudicating rules—certifying election results and resolving disputes. In this last pillar of electoral governance, the authorities that are generally entrusted with the work of resolving disputed elections in presidential democracies are the legislature, the ordinary courts, and specialized electoral courts.³

The legislature

In some countries, given the political nature of post-electoral conflicts, contested elections are resolved by a political body, generally the legislature. Some scholars argue that political bodies are better suited than courts to deal with political conflicts and, therefore, in many countries the legislature evaluates the validity of elections (Lisk 2008). This was the model followed by most Latin American countries before their democratic periods. Once these countries became democratic, however, the legislatures stopped resolving election

¹There is evidence that before the 2000 presidential election in the United States, the parties developed a new electoral strategy of increased pre-electoral litigation in battleground states—states where the margin was expected to be close and that also have a large number of electoral votes—on issues such as the inclusion of candidate/party or initiative on the ballot, absentee ballots, registration requirements, ballot design, voting machine technology, and recount procedures (Smith and Shortell 2007).

²The repertoire of possible remedial options after an election has taken place includes conducting recounts, adjusting the vote tallies, and ordering a new election.

³There are two other alternatives for resolving election disputes, but these options are the exception and have not been used in any presidential democracies in the period I analyze here. The first option is a mixed model in which courts and congress share the responsibility for resolving election disputes. The case of Germany is one example of this system. There, the legislative branch adjudicates the results of the election, but political parties and candidates can appeal the decision to the Constitutional Court (Kommers 2012). The second alternative is to create an ad hoc commission to resolve the election dispute. This was the case in the disputed presidential election of 1876 in the United States, when an ad hoc commission created by Congress and comprised of five representatives, five senators, and five Supreme Court justices resolved the dispute (Vidal 1976).

disputes and specialized electoral courts were adopted for this purpose instead. The last Latin American presidential systems in which legislatures were used to resolve election disputes were Guatemala (until 1985), Paraguay (until 1992), and Argentina (until 1994).

This model, which originated in England in the seventeenth century, is the oldest system of election dispute resolution. As the resolution of disputes regarding election returns became another manifestation of conflict between the Crown and the Commons in an increasingly competitive environment, it was necessary to decide in favor of supporters either of the King's authority or of the Parliament's authority. The Norfolk election dispute of 1586 and the Buckinghamshire dispute of 1604 "played a pivotal role in awakening the Commons to the dangers inherent in allowing the Privy Council unrestricted supervision of electoral activities" (Ward 1974: 10). In 1604, King James I authorized the Commons to have a "Court of Record." This allowed the Parliament to resolve disputes over elections. "The recognized ability of the Commons to scrutinize their returns increased considerably its ability to control its own membership" (Ward 1974: 316).

Among presidential democracies, the resolution of election disputes by the legislature was first adopted in the Constitution of the United States in 1787: "Each House shall be the judge of the elections, returns and qualifications of its own members" (U.S. Constitution Art. 1. Sec. 3. Cl. 1.). "Shortly after the First Congress convened in 1798, the House appointed a standing committee—the Committee on Elections—to devise a procedure for investigating contested election cases" (Jenkins 2004: 113). Most Latin American countries later on adopted the same method for solving post-election disputes. For instance, with the adoption of the presidential system in 1824, Mexico entrusted the legislature with the responsibility to adjudicate disputes over the election of members of Congress (Berruecos 2003).

The biggest disadvantage of this model is the potential for unfair or biased resolutions, especially if a single political party has a majority in the legislature. Being simultaneously a party to the conflict and the judge could be detrimental to impartiality. Scholars have shown that in resolving post-electoral disputes, the House and the Senate show a partisan bias in favor of the party with a majority in the committees adjudicating the cases

(Jenkins 2004 and 2005).⁴ Scholars have also argued that because of their own natural workloads and lack of expertise in electoral issues, the House and the Senate may take a long time to reach a decision. The U.S. Congress has sometimes decided to remove members whose elections were flawed, but only after said members had already served for two or three years.

Ordinary courts

All presidential democracies in Africa and Asia delegate the task of resolving post-electoral disputes to regular courts. In the Americas, the United States, Venezuela, and Argentina delegate this task to the Supreme Court, while in Colombia the *Consejo de Estado* (an administrative court) has this power. Courts represent a good alternative for adjudicating electoral controversies because of their expertise in resolving conflicts and because of their theoretical impartiality. Judges are expected to make decisions by evaluating the merits of a case and interpreting the plain text of judicial precedents, the law, and the constitution (Segal and Spaeth 2002). Nevertheless, this model of dispute resolution is not exempt from the judges' personal or political biases.

There are several reasons why judges can have a partisan bias. First, in line with the attitudinal model of party identification, judges may have a preference for one political party, just as other voters do. Even if judges conscientiously make an effort to be impartial when making their rulings, party identification can act as a filter through which they interpret political events (Lewis-Beck et al. 2011). A second reason for possible partisan bias is that judges will likely have preferences in line with the coalition that has appointed them (Dahl 1979; Segal and Spaeth 2002).⁵ A third factor that

⁴Mexico is another example of biased resolutions made by the congress. The self-certification process became a crucial element of the Institutional Revolutionary Party's (PRI's) hegemony. As a majority party in Congress, the PRI was able to confirm the results of flawed elections (Berruecos 2003).

⁵According to the United States Constitution, Supreme Court justices and federal court of appeals and district court judges are nominated by the president and confirmed by the Senate. Because of this method of appointment, "the Supreme Court follows the preferences of the dominant electoral coalition, not because of deference to its preferences, but because the coalition chooses the Court and they thus have similar preferences" (Segal and Spaeth 2002: 109–110).

may accentuate partisan bias among courts is political ambition. Judges may be using the bench as a stepping-stone. If they want to advance in a career within the judicial system or in the political arena, “one must come to the attention of a politician” (Epstein and Knight 1998: 37). It is commonly believed that the judiciary is independent from the wishes of the legislature, but when the result of a presidential election is at stake, political parties will be more attentive to the behavior of judges. If political parties are going to take the vote of a judge into account in order to reward or punish him in his judicial career, it is most likely to occur when the judge resolves a contested election. Lisk (2008: 1236) argues that “[w]hile the relative political insulation of the courts may be touted as a benefit, it is not necessarily so in the context of election contests, where clear legal guidelines are often lacking and where the political stakes are extraordinarily high.”

This system also has the potential for generating conflict among the branches of government, and in some cases the intervention of courts in political disputes can damage the image of the whole judiciary. That is why the U.S. Supreme Court, for much of its history, refused to take part in political conflicts and electoral issues (Zelden 2010). Similarly, in late nineteenth century Mexico, the Supreme Court of that country established a thesis of non-intervention of the judiciary in electoral disputes (Vallarta’s thesis of non-intervention)⁶ to protect the Court from politicization (Berruecos 2003).

Specialized electoral courts

Following O’Donnell’s concept of horizontal accountability (1998, 1999) and Ackerman’s idea of new separation of powers (2000), some scholars have argued in favor of building autonomous institutions in charge of exercising horizontal controls in elections as a way to ensure fair results (Lehoucq 2002; Mozaffar and Schedler 2002; Pastor 1999; Schedler 1999). The presence of autonomous institutions can contribute favorably to the democratization process and improve the quality of elections (Eisenstadt 1999, 2004; Hartlyn et al. 2008). Most Latin American countries have created bodies that are specialized in electoral matters. The first country to create a specialized electoral court—via secondary legislation—was Uruguay

in 1924, and the first country to constitutionally establish an electoral tribunal was Chile in 1925. This is considered to be a Latin American contribution to institutional design and election law (Orozco-Henríquez 2010). These bodies were granted autonomy from the executive and judicial branches in an effort to insulate them from political pressures. One advantage of this model is that it avoids involving the judicial branch in political conflicts that could unnecessarily damage the reputation and autonomy of the judiciary. However, just as in the case of regular courts, judges in specialized electoral courts are not exempt from political pressures or from having their own biases.

The strongest advantage of this mechanism for resolving election disputes is that specialization in electoral topics helps to develop a type of expertise that regular courts do not have. In the literature on judicial politics it has been argued that judicial specialization serves to advance efficiency (Baum 2011), so this mechanism may also help to accelerate decisions on these matters.

Mapping electoral adjudicating institutions

Based on this typology of institutions adjudicating election disputes, I have built a categorical variable to identify which authority is in charge of resolving post-election disputes and whether this authority changes over time. If specialized electoral courts resolve such disputes, this variable has a value of 2. If regular courts resolve the disputes, the variable has a value of 1. Lastly, if legislatures adjudicate them, the variable has a value of 0. Appendix A shows the coding rules.⁷

I have traced the evolution of the institutions adjudicating election disputes in each of the presidential

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◀ APP A

⁶Mexico’s Supreme Court ruled that political issues were not individual rights, thus excluding them from protection by *amparo* suit. This set the limits of the Court’s jurisdiction for more than a century, until the Constitutional Reform of 1996.

⁷The Comparative Constitutions Project has a variable called OVERSIGHT (Does the constitution provide for an electoral commission or electoral court to oversee the election process?), related to the management and organization of elections. It distinguishes cases in which elections are *conducted* by independent electoral organisms or *conducted* by the executive or the legislature. However, this dataset does not identify the institution in charge of *resolving* election-related disputes, or post-election disputes.

TABLE 1. INDEX OF DE JURE AUTONOMY OF INSTITUTIONS ADJUDICATING ELECTION DISPUTES

Country	Years covered	Year*	Fiscal autonomy	Qualifications	Appointment	Tenure	Removal	Number judges	Explicit authority	Index
<i>AMERICAS</i>										
Argentina	1957–2011	2011	2	1	1	1	2	0	0	7
Bolivia	1967–2009	2009	1	2	1	1	0	1	1	7
Brazil	1967–2010	2010	2	2	1	1	2	1	1	10
Chile	1980–2010	2010	1	2	1	0	1	1	1	7
Colombia	1968–2010	2010	0	2	1	1	1	0	1	6
Costa Rica	1965–2010	2010	1	2	1	1	2	1	1	9
Dom. Repub.	1966–2012	2012	0	1	0	0	0	0	1	2
Ecuador	1978–2009	2009	1	2	1	1	1	1	1	8
El Salvador	1984–2009	2009	0	2	1	1	1	1	0	6
Guatemala	1965–2011	2011	0	1	0	0	1	0	1	3
Honduras	1982–2009	2009	0	2	0	1	2	1	1	7
Mexico	1996–2012	2012	1	2	1	1	1	1	1	8
Nicaragua	1984–2011	2011	0	2	1	0	1	1	1	6
Panama	1983–2009	2009	1	2	1	1	1	1	1	8
Paraguay	1977–2008	2008	0	2	0	1	1	1	1	6
Peru	1979–2011	2011	2	2	1	1	0	1	1	8
United States	1976–2012	2012	2	0	1	1	0	0	0	4
Uruguay	1984–2009	2009	0	1	0	0	1	1	1	4
Venezuela	1977–2009	2009	1	2	1	1	1	0	1	7
<i>AFRICA</i>										
Benin	1990–2011	2011	0	2	1	1	1	1	1	7
Burundi	1992–2010	2010	0	2	1	1	0	1	1	6
Ghana	1969–2012	2012	2	1	1	1	1	1	1	8
Kenya	1987–2007	2007	0	2	0	0	0	1	1	4
Liberia	1984–2011	2011	2	2	1	1	1	1	1	9
Malawi	1994–2009	2009	2	2	0	1	0	1	1	7
Nigeria	1979–2011	2011	2	2	1	1	2	1	1	10
Sierra Leone	1991–2012	2012	2	2	1	1	0	1	1	8
<i>ASIA</i>										
Indonesia	2002–2009	2009	0	2	1	0	0	1	1	5
Philippines	1984–2010	2010	2	2	0	1	1	1	1	8
South Korea	1987–2010	2010	0	1	1	1	1	0	0	4
Sri Lanka	1978–2011	2011	2	0	0	1	0	1	1	5

*Table displays values at the time of the last presidential election before 2012 (Year).

democracies from the time of the constitutional change immediately prior to the first democratic election after the start of the third wave of democracy in 1974. Therefore, the time span covered in the dataset varies by country, and extends from 1957 (for Argentina, the first country to enter the dataset) to 2012. The years covered by each country vary because, in order to be included in the analysis, a country needs to have held a presidential election and also to have been considered a presidential democracy between 1974—the beginning of the third wave of democracy—and 2012. Some countries appear earlier in the dataset because legal changes regarding the resolution of election disputes that were in force at the time of the first presidential election had occurred earlier in those countries. For example, the last electoral reform regarding the proce-

dures for adjudicating potential election disputes that were in force in Bolivia for the presidential election of 1979 had been enacted in 1967. Bolivia thus enters into the analysis in 1967. In the case of Mexico, which transitioned to democracy with the presidential election of 2000, the last reform in the area of electoral justice prior to that election had been introduced in 1996, which is why it enters into the analysis in that year, i.e., 1996. Columns one and two in Table 1 show the countries and years covered in the dataset.

This article is part of a larger project in which I have analyzed the conditions under which losing candidates reject presidential election results in democracies. In it, I focus on democratic regimes and essentially follow the procedural and dichotomous classification of regime types of Álvarez et al.

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(1996), excluding countries that fail to elect the legislature and executive in free and fair elections.⁸ I exclude non-democracies because the logic of a loser's non-compliance is different. In authoritarian regimes—particularly in competitive authoritarian regimes—the main reason for participating in elections and protesting them is to contribute to the liberalization of the regime. This is a long-term goal (Gandhi and Lust-Okar 2009; Magaloni 2006; Schedler 2012). In contrast, challenges to election results in democracies occur as a tactic for negotiation with aims that go beyond the electoral arena and are focused on short-term negotiations. Another reason for focusing on democracies is that formal democratic institutions, even if adopted by developing-world elites, are often times subverted by informal institutions. This is especially true for “post-Cold War autocrats [who] increasingly turned to informal mechanisms of coercion [...] The smooth functioning—indeed, the survival—of democratic institutions hinges on actors' willingness to underutilize certain rules and procedures” (Helmke and Levitsky 2006: 283).

Additionally, I focus exclusively on presidential elections in order to simplify the study of the election of the executive. In presidential regimes, the executive is elected directly by the voters instead of being appointed in a parliamentary negotiation. This means that any possible dispute over the election of the executive focuses on the popular vote itself rather than on a parliamentary negotiation. This is known as “identifiability” (Samuels and Shugart 2010).

Tracking the evolution of electoral adjudicating institutions

The data shows a convergence in the type of institutions adjudicating election disputes. The classic model of electoral governance in which parties themselves certified election results in Congress (Lehoucq 2002) is no longer used. Most of the countries in the Americas have used specialized electoral courts to resolve the conflicts that can arise regarding electoral results since their first democratic elections after the third wave of democracy began (Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Peru, and Uruguay). Guatemala transitioned to this model in 1985 and Paraguay did the same in 1992. On

the other hand, democracies in Africa and Asia have converged to a model of election dispute resolution by supreme courts. The Philippines is the only country in the region that originally had an electoral court, but in 1987 a constitutional amendment transferred this responsibility to the country's Supreme Court.

There are a few exceptions to the homogeneous pattern observed in the Americas. The first case is Argentina, where the Constitution of 1853 established that the Electoral College was in charge of electing the president and that the final vote count and any possible rectifications were to be overseen by the congress. The Argentine constitution was amended in 1994 and direct popular vote became the new mechanism for electing the president. Parallel to this constitutional change, Articles 112 and 120 of the Electoral Code gave the Electoral Juntas the authority to revise alleged irregularities, hear claims against the election of the president, and do the final computation of election results. Before this change, the Juntas simply communicated the election results to the congress so that it could declare which candidate had been elected president or call for a run-off election. Since 1972 a National Electoral Chamber has been in place, which is composed of five federal judges who rule on appeals of election results that are presented to the Electoral Juntas. In 1994, the Juntas were authorized to review the election and the National Electoral Chamber, which is part of the judicial branch, was automatically empowered to rule as a last resort on any disputes regarding presidential elections. After this institutional change, the Mechanism for Election Dispute Resolution (MEDR) variable has a value of 1 for Argentina, representing resolution by administrative/supreme courts.

Another case that requires special attention is the United States. Article 1, Section 5, Clause 1 of the United States Constitution states: “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, [...]” This classifies the United States in the model in which the legislative branch is in charge of resolving

⁸My cases are consistent with Cheibub, Gandhi, and Vreeland (2010), who define presidential democracies as countries where 1) the executive and the legislature are popularly elected; 2) there is more than one party competing, with alternation in government; and 3) the survival of the executive does not depend on the assembly.

post-electoral disputes. Elections were placed entirely within the jurisdiction of Congress.⁹ In the first 70 years of the existence of the United States as an independent nation, the Supreme Court refused to consider questions related to elections. “Voting and elections were considered dangerous topics best avoided at all costs” (Zelden 2010: 3). It was not until after the Civil War, with the ratification of the Fourteenth Amendment in 1868 and the Fifteenth Amendment in 1870, that citizenship and the right to vote acquired constitutional status. Only after that had occurred did the Court start to hear electoral cases. In 1972, in *Roudebush v. Hartke*, the Supreme Court held that state courts could order administrative recounts and that this did not interfere with the congressional power to resolve election disputes (405 U.S. 15, 1972).

Over time, the United States has transitioned from a pure system of post-electoral disputes resolved exclusively by the legislature into a mixed system in which the courts also participate. The final move towards the judicialization of election dispute resolution happened in 2000, with *Bush v. Gore*. In that decision, the Supreme Court stated that the judicial system was forced to resolve presidential election disputes.¹⁰ Since the focus of this article is on presidential elections, after 2000, the United States is coded as a case in which the Supreme Court has the final say in a post-electoral dispute regarding a presidential election, giving it a value of 1 in the MEDR variable.

CHARACTERISTICS OF THE INSTITUTIONS ADJUDICATING ELECTION DISPUTES

The mechanisms for resolving election disputes must be designed in a way that encourages parties to accept the final resolution. As a first step, political actors should have access to a specific process to redress electoral inconsistencies. International treaties establishing political and electoral rights stress the importance of having access to an effective remedy and to due process of law.¹¹ This principle of due process has been extended to the electoral arena and, therefore, the mechanisms for resolving election disputes should provide a “fair adversarial process before a knowledgeable, impartial arbiter empowered to redress circumstances in which the certified election result does

not accurately reflect the will of voters” (Bickstaff 2009: 312).

Having clearly defined rules on how to proceed in case of an election dispute is also crucial for achieving a fair process. These rules must establish who has the standing to activate a legal resource, the types of irregularities and the elements that constitute evidence of irregularities, the reasons under which a recount or the annulment of the election may occur, and so forth (Orozo-Henríguez 2010). Recounting ballot procedures with clear rules reduces the level of discretion that authorities could exercise when resolving election disputes. However, only 67.72% of the constitutions (measured by country-year) establish a rule on how to proceed in the event that an election is contested.¹² By 2012, Argentina, El Salvador, South Korea, and the United States did not have any explicit rule in their constitutions designating a specific authority to resolve presidential election disputes.

Electoral autonomy

The most essential element for achieving an impartial resolution is probably an independent, unbiased adjudicating authority. In this regard, it has been noted that “[j]udicial independence is of

⁹The U.S. Constitution is silent about which authority adjudicates disputes related to presidential elections. After the presidential election dispute of 1876, the U.S. Congress enacted the Electoral Count Act of 1887 to resolve disputes related to the states’ certification of presidential electors. It gives full power to the local legislatures to elect their electors to the Electoral College. It also established a procedure for how the U.S. Congress counts votes. Congress is bound to follow local statutes if they were enacted at least six days before the elections, otherwise it has the authority to resolve the issue. The two chambers, separately, resolve objections to vote counts.

¹⁰The per curiam decision of the Supreme Court stated, “None are more conscious of the vital limits on judicial authority than are the members of this Court, and none stand more in admiration of the Constitution’s design to leave the selection of the President to the people, through their legislatures, and to the political sphere. When contending parties invoke the process of the courts, however, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront” (*Bush v. Gore*, 531 U.S. 98, 2000).

¹¹Article 10 of the Universal Declaration of Human Rights establishes that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

¹²My own information based on the analysis of 966 accumulated years of constitutional history and electoral legislation from 31 presidential democracies.

obvious value for securing property and political rights when the government is itself a litigant” (La Porta et al. 2004). At the core of the concept of judicial autonomy is an authority free from governmental control, or control by any other actor involved in the dispute. Howard and Carey (2004) illustrate this point in their definition of judicial independence as: “The extent to which a court may adjudicate free from institutional controls, incentives, and impediments imposed or intimidated by force, money, or extralegal, corrupt methods by individuals or institutions outside the judiciary, whether within or outside government.”

Given the central role that autonomy has in adjudicating disputes, it is necessary to find mechanisms to assess it. Politicized decisions could undermine citizens’ confidence in institutions.¹³ Drawing on the literature about judicial independence, I examine seven parameters designed to insulate authorities from political pressures: fiscal autonomy, professional credentials, method of appointment, length of tenure, removal procedure, and multi-member governing body. The first approaches to measuring judicial independence focused on formal measurements that reflected key constitutional elements that could contribute to judicial independence from the legal point of view (Cingranelli and Richards 2008; Feld and Voight 2003; Keith 2002; La Porta et al. 2004).¹⁴ Following Keith’s (2002) approach, and based on the analysis of 966 accumulated years of evolution of constitutional history and electoral legislation in 31 countries, I built an original index describing de jure autonomy of the institutions that resolve post-election disputes.

I am aware that de jure measurements do not necessarily converge with behavioral measurements of de facto judicial independence, as shown by Ríos-Figueroa and Staton (2012). In fact, formal institutions can be weak and ineffective in the sense that the rules written on paper are sometimes ignored and it would be more useful to look at informal rules in order to explain certain behaviors (Helmke and Levitsky 2006). O’Donnell (2004) has argued that in new Latin American democracies, the lack of effective checks and balances on the executive power contributed to the weak institutionalization of formal rules, and to abuses of power on the part of the executive.

However, from a theoretical point of view, it makes sense to focus on the enumerated items of institutional insulation to see whether they have an ef-

fect on the behavior of losing political parties, what the formal autonomy of these institutions is, and what the different combinations of institutional design in presidential democracies are. Rosas (2010) has shown that the nominally autonomous electoral management bodies (EMBs) increase the elites’ confidence in the electoral process. The same argument could be applied for institutions adjudicating election disputes. In the area of presidential politics, it has been common to look at formal rules established in the constitution to measure presidential powers. These indicators are built by assigning dummy or ordinal variables to entrenched presidential prerogatives such as veto exercise, veto override, decree powers, budgetary powers, and so on. This has proved to be a useful strategy for comparing different types of presidential systems (Shugart and Carey 1992) and choices of constitutional design (Negretto 2008, 2013).

Therefore, I follow a formal approach to measuring autonomy. Appendix B contains the coding rules I utilized to construct the index. A supplementary electronic appendix contains the justification for how each country-year was coded and the excerpts of information with their respective sources.¹⁵ I carefully tracked year by year to see if there was any legal reform related either to the institutions adjudicating election results, or to the six variables I used for the de jure index. This represents the codification of 966 accumulated years of

◀ APP B
◀ AU3

¹³In the final ruling of the U.S. Supreme Court on the 2000 presidential election dispute, Justice Breyer described how it could take years to build confidence in institutions and how easily that confidence can be lost when decisions seem to be politicized: “In this highly politicized matter, the appearance of a split decision runs the risk of undermining the public’s confidence in the Court itself. That confidence is a public treasure. It has been built up slowly over many years, some of which were marked by a Civil War and the tragedy of segregation. It is a vitally necessary ingredient of any successful effort to protect basic liberty and, indeed, the rule of law itself” (*Bush v. Gore*, 531 U.S. 98, 2000).

¹⁴Keith’s measurements of judicial independence derive from standards of judicial independence that the General Assembly of the United Nations adopted in 1985.

¹⁵The supplementary electronic appendix is a 343-page document that is divided into two sections. The first section is titled, “Mechanisms for Election Dispute Resolution,” and it identifies the authority in charge of resolving presidential election disputes by each country-year. The second section, which is titled, “De Jure Autonomy,” indicates the sources of information and the justification for coding the rules designed to insulate authorities from political pressures. (Supplementary materials are available online at <<http://www.liebertpub.com/elj>>).

evolution of electoral legislation in the 31 presidential democracies. The sources of information for this dataset are national constitutions, constitutional amendments, secondary legislation (such as electoral statutes or laws regulating the functioning of the judicial branch) and their respective amendments. I have also included a dummy to specify if the constitution stipulates an explicit procedure for solving presidential election disputes.

The International Institute for Democracy and Electoral Assistance (International IDEA) has an Electoral Justice Database with comparative information about electoral justice mechanisms all over the world (<<http://www.idea.int/elections/ej/index.cfm>>). The IDEA database is a useful source for identifying who the electoral dispute-resolution bodies are and who is entitled to file complaints. It also describes the process for solving election-related disputes (Solijonov 2016). Nonetheless, the database does not have elements for evaluating the autonomy of these institutions and it is further limited by having just one point in time for each country, thus depriving us of the richness of the evolution of these mechanisms over time. The original database that I built up fills in these gaps, since I show the evolution of these institutions over time and I code seven variables to measure the level of de jure autonomy of these institutions. Similarly, the V-DEM data has valuable indicators to determine whether EMBs “have autonomy from government to apply election laws and administrative rules impartially in national elections” and also contains information about the administrative capacity of 175 countries from 1900 to today (Coppedge et al. 2015). However, in presidential democracies these institutions simply organize elections and do not adjudicate controversies related to the election or post-election disputes.

In the following subsection, I offer a brief description of why the seven elements mentioned above are important for achieving formal autonomy. The order in which they are presented does not reflect their respective importance for achieving judicial independence.

Elements for assessing electoral autonomy

Variable 1: Fiscal autonomy. Budget constraints can limit the freedom with which actors behave. Budget restrictions can affect the functional independence of electoral bodies (Orozco-Henríquez 2010) and their ability to fully carry out their func-

tions (Keith 2002). The protection and adequacy of salary is also an important element for protecting judges from corruption and bribery (Howard and Carey 2004).

This variable is measured by determining whether the electoral courts or the institutions in charge of solving post-election disputes are fiscally autonomous—i.e., whether their salaries and/or budgets are constitutionally protected from reduction by the other branches of government. The values are assigned as follows:

- 0= The constitution does not provide this element.
- 1= The constitution provides for this element, but only to a limited degree or vaguely, not fully.
- 2= The constitution provides for this element fully and explicitly.

Variable 2: Length of tenure. Life tenure gives judges more freedom in making their decisions because it takes away concerns about their future professional development (Segal and Spaeth 2002). Life tenure is an ideal extreme, but formal independence can also be achieved when the tenure of the members of electoral institutions is longer than the tenure of the authorities that appoint them (Moreno, Crisp, and Shugart, 2003; Ríos-Figueroa 2011).¹⁶ The longer the term of the appointment, the freer the judge will be to apply the rules (Ginsburg 2003).

Based on the text of each constitution, I identified the length of tenure of the judges and the length of tenure of those that appoint them (both measured in number of years). I then assigned the following values accordingly:

- 0= If judges’ tenure is shorter or equal to that of the appointers.
- 1= If judges’ tenure is longer than that of the appointers, if they have life tenure, or if they are appointed by the judiciary.

Variable 3: Professional credentials. Although the level of professional qualifications does not directly increase the degree of autonomy, several measurements of independence include this element

¹⁶Other measures of judicial independence require a minimum appointment of seven years (Cingranelli and Richards 2008).

since it contributes to reaching sound and solid decisions, making them more credible and authoritative (Cingranelli and Richards 2008; Orozco-Henríquez 2010). Moreover, meritocratic appointment should lead to more competent judges who are more committed to their profession (Keith 2002). Furthermore, being required to select judges from a pool of highly qualified candidates makes it more difficult for political actors to appoint those they consider to be more loyal. Formal requirements for the selection of judges or electoral authorities—academic credentials, career achievements and experience, integrity—have become a proxy for measuring their professionalism.

The selection and career of judges should be based on merit—qualifications, integrity, ability, and efficiency—and should be decided by an authority independent of government and administration. This variable was coded as follows:

- 0 = The constitution does not provide this element.
- 1 = The constitution provides for this element, but only to a limited degree or vaguely, not fully, or it is established in a secondary law.
- 2 = The constitution provides for this element fully and explicitly.

Variable 4: Method of appointment. This is the most common element among scholarly measurements of judicial independence. The method of appointment offers varying degrees of independence. The general rule is that the more different branches of government participate in the appointment process (as opposed to direct appointment by the executive alone), the greater the autonomy (Cingranelli and Richards 2008; Feld and Voigt 2003; Hartlyn, MacCoy, and Mustillo 2008). Nevertheless, some scholars argue that greater autonomy is possible with an appointment process dominated by the judiciary, or by civil society (Moreno, Crisp, and Shurgart 2002; Ríos-Figueroa 2011).

This variable indicates whether the nomination for being appointed is done by judges themselves or by at least two different state or non-state entities. It was coded as follows:

- 1 = If the nomination is done by judges or by at least two different state entities and the procedure is established in the constitution.
- 0 = Otherwise

Variable 5: Method of removal. When a single political actor has the power to dismiss judges or members of specialized electoral institutions, their autonomy can be compromised. The threat of being dismissed may lead them to act as agents of the actor that has the power to remove them. More autonomy can be achieved when more actors are involved in the removal procedure in these institutions of electoral governance because it requires overcoming collective action problems (Cingranelli and Richards 2008; Feld and Voigt 2003; Ríos-Figueroa 2011). Based on each constitutional text, this variable identifies who can start the procedure for removing a judge. It was coded as follows:

- 0 = When the president can start the impeachment or removal process.
- 1 = If a simple majority in Congress, or the Court itself can start the process.
- 2 = If the removal procedure requires a supermajority of at least one chamber of Congress.

Variable 6: Limited number of members. Experience shows that presidents have increased the number of court members in order to fill the new positions with justices that they like (court-packing) as a measure to circumvent the authority of the courts when it is in conflict with the president's views.¹⁷ One way to prevent such an attack on judicial independence is by establishing a clause in the constitution that specifies the exact number of justices to serve on the court, to prevent the court from being packed by presidential decree. In his index of judicial independence, Ríos-Figueroa (2011) includes an indicator of whether the number of judges on the court is established in the constitution. However, specifying the number of judges implies a trade-off between speed and accuracy. Smaller deliberative bodies may make decisions faster, but the richness of their deliberation diminishes (Ginsburg 2003). Based on each constitutional text, this variable was coded as follows:

¹⁷Examples of court-packing in presidential regimes have been the cases of Franklin D. Roosevelt in the United States (Whittington 2007), Lázaro Cárdenas in Mexico (Magaloni 2003), and Alberto Fujimori in Peru (Finkel 2008).

0 = If the number of judges that form the institution adjudicating election disputes is not specified in the constitution.

1 = If the number of judges that form the institution adjudicating election disputes is specified in the constitution.

Variable 7: Explicit authority. Institutions are stronger if they have exclusive authority to decide in their own area of competence, or if the finality of their decisions is guaranteed (Keith 2002; Orozco-Henríquez 2010). I therefore identify whether the constitution explicitly provides for an institution with the power to resolve election disputes. Such an institution can have the hierarchy of a fourth branch of government, can be part of the judiciary, or can be an autonomous government agency.

Does the constitution explicitly empower a certain institution to resolve disputes related to the validity of the presidential elections? This variable was coded as follows:

0 = When the constitution does not explicitly empower any authority to resolve presidential election disputes.

1 = If the constitution establishes a specific authority with the power to judge the validity of presidential elections.

Mapping the autonomy of institutions adjudicating election disputes

In order to aggregate the different variables of the index, I simply add up the seven features I have discussed previously. Other indicators of judicial autonomy follow the same approach of data aggregation (Keith 2002; Ríos-Figueroa 2011). When totaling the seven variables, the maximum possible value of the index is 10 and the minimum is 0. It should be noted that some variables are dummies, whereas other variables have a value of 0, or 1, or 2, and the aggregation strategy thus assigns uneven weights among variables. There are alternative ways for aggregating this data, such as normalizing the variables with the maximum value of 2 and then adding up the variables to give an equal weight to all of them, or using a factor analysis as a data reduction method. For the sake of simplicity and following other indexes of de jure judicial independence, I simply

added the variable scores. Table 1 shows a relatively high degree of electoral autonomy worldwide, particularly in Western Africa and South America, but this high degree of autonomy is a recent development.

Figure 1 shows a steep upward trend in the global average level of electoral autonomy since the late 1970s, rising from a value of 2.8 in 1977 to an apex of 6.8 in 2010. In this panel of de jure autonomy of institutions adjudicating election results, the mean value over time was 5.26. The minimum value in the panel was 0 for Argentina (1957–1993), Bolivia (1967–2008), Guatemala (1965–1984), Paraguay (1977–1991), and the United States (1976–1999). The reason why all those countries scored zero in that period of time is that in each of them the congress was the ultimate authority in charge of resolving election disputes. Therefore, when I applied the coding rules with respect to the insulation of institutions adjudicating election results from the pressure of political parties or elected branches of government, they automatically took the minimum value of zero.

The only exception of a country that has received a score of zero without having its congress adjudicating election disputes is Bolivia. Despite the existence of a specialized electoral court to rule on election disputes (*Corte Nacional Electoral*), this institution did not have any of the key constitutional or legal elements to safeguard its autonomy until 2009. The constitutional amendment of that year created a *Tribunal Supremo Electoral* and gave it fiscal autonomy, enumerated the qualifications necessary for appointment, established an appointment procedure

◀ F1

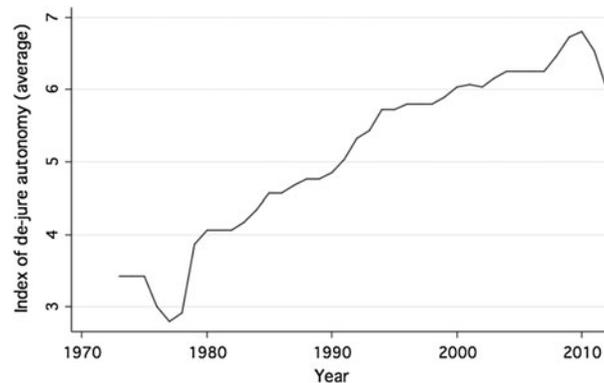


FIG. 1. Global Evolution of De Jure Autonomy.

involving several branches of government, stipulated a tenure for electoral judges that is longer than that of the authorities that appoint them, established the required number of seven members of the court, and lastly, it recognized this electoral authority as a fourth branch of government with exclusive authority to resolve election-related disputes. As a consequence of those changes, the *de jure* autonomy score for Bolivia moved from 0 to 7.

The maximum score in the index (10 points) was obtained by Brazil (1967–2010), which has a specialized electoral court (the *Tribunal Superior Eleitoral*). This institution exemplifies all of the aforementioned legal devices to protect it from the meddling of political parties. The military dictatorship's constitution, i.e., the Constitution of 1967, already included these features of *de jure* autonomy with regard to the *Tribunal Superior Eleitoral*. The Constitution of 1988, which was in place just before the first democratic election in 1989, kept the same features of institutional design regarding electoral justice that were enacted under the dictatorship. The Constitution of 1988 has been amended several times since then, but the articles relating to the *Tribunal Superior Eleitoral* were only amended in 1997, 1998, and 2004. In any case, these amendments did not change the coding of the variables included in the index, which is why Brazil appears as a straight line with no changes in Figure 2.

Figure 2 shows the evolution in the index of *de jure* autonomy of the institutions adjudicating election results by country in the Americas. The graph illustrates how all the countries in the region either remained at the same value of *de jure* autonomy (six countries)¹⁸ or improved their score (13 countries).¹⁹

Presidential democracies in Africa and Asia (Figure 3) follow a similar pattern of stability (seven countries),²⁰ or improvement (four countries).²¹ The only exception is Sri Lanka, whose value in the index of *de jure* autonomy decreased one point in 2011, because the members of the Supreme Court are now appointed directly by the president with no intervention on the part of any other branch of government.

Nevertheless, this positive trend does not mean that there have been improvements in each of the seven variables used to construct the index. When I disaggregate some of the individual variables

that compose the index, it is possible to observe movements both upward and downward. The method for appointing the members of the institutions adjudicating election results is one of the causes of these movements.

Ecuador, for example, went through improvements and setbacks over time. Ecuador's Constitution of 1978 did not have any provisions regarding the procedure for appointing members of the *Tribunal Supremo Electoral*, so I coded this variable as zero. Article 109 of the Constitution of 1984 established that three branches of government participate in the appointment procedure, and this variable changed to one. But there was a setback in terms of autonomy with the constitutional amendment of 1998 when the National Congress alone obtained the power to appoint the members of the Supreme Electoral Tribunal. After this change the appointment variable again had a value of zero. Finally, Article 224 of the new Constitution of 2008 established that the Council for Citizen Participation and Social Control would appoint the members of the Supreme Electoral Tribunal. The council selects the members of the Tribunal from among the candidates that participate in the competitive exam for public service posts and consequently this variable again had a value of one.

Are there any differences regarding the degree of autonomy according to the type of institution adjudicating election disputes? Paired-samples t-tests were conducted to compare levels of *de jure* autonomy among the three types of institutional arrangements. There was a significant difference in the scores for supreme or administrative courts (mean=6.4, std. dev.=0.09) and specialized electoral courts (mean=5.4, std. dev.=0.13); $t(868)=5.69$, $p=0.05$. These results suggest that the level of *de jure* autonomy of administrative/supreme courts is higher than that of specialized electoral tribunals. However, any method of dispute resolution by courts

¹⁸Brazil, Chile, Costa Rica, Dominican Republic, Mexico, and Uruguay.

¹⁹Argentina, Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, the United States, and Venezuela.

²⁰Benin, Indonesia, Kenya, Liberia, Malawi, Nigeria, and Sierra Leone.

²¹Burundi, Ghana, Philippines, and South Korea.

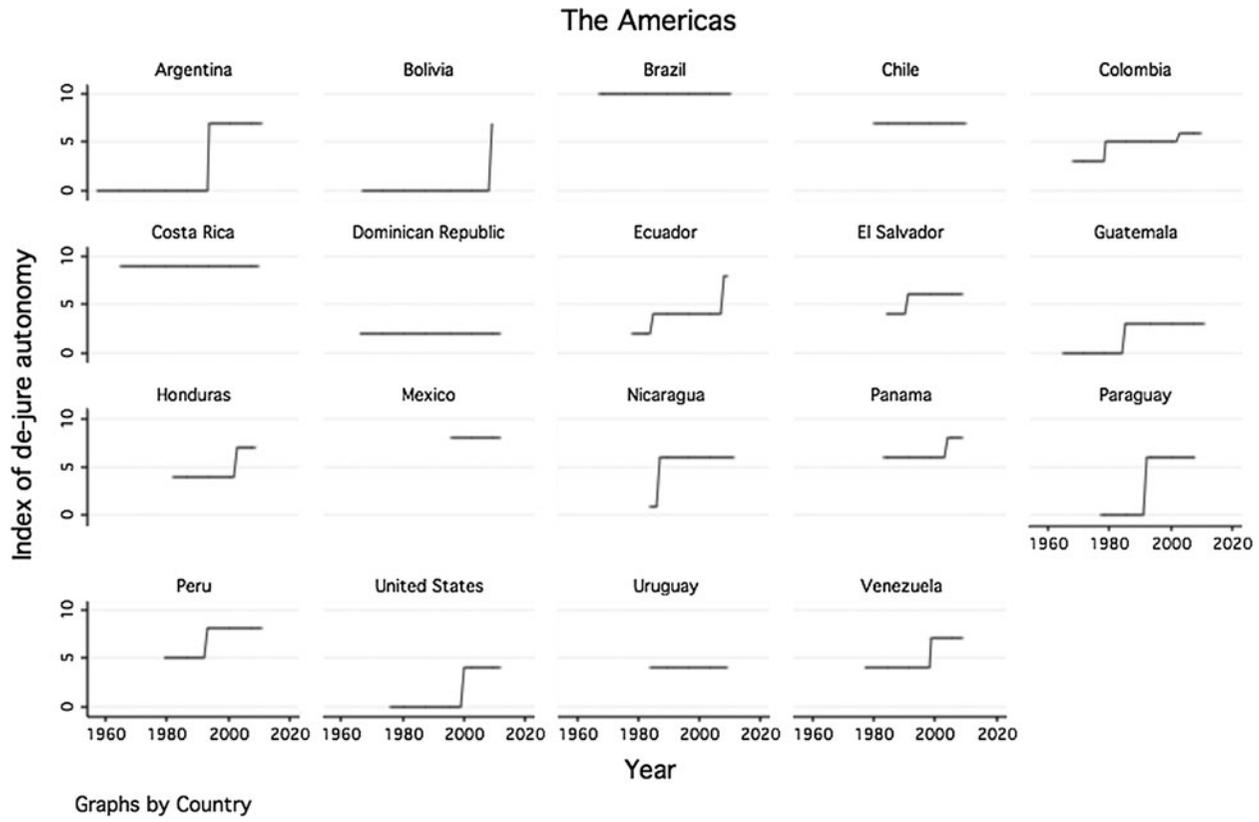


FIG. 2. De Jure Autonomy in the Americas.

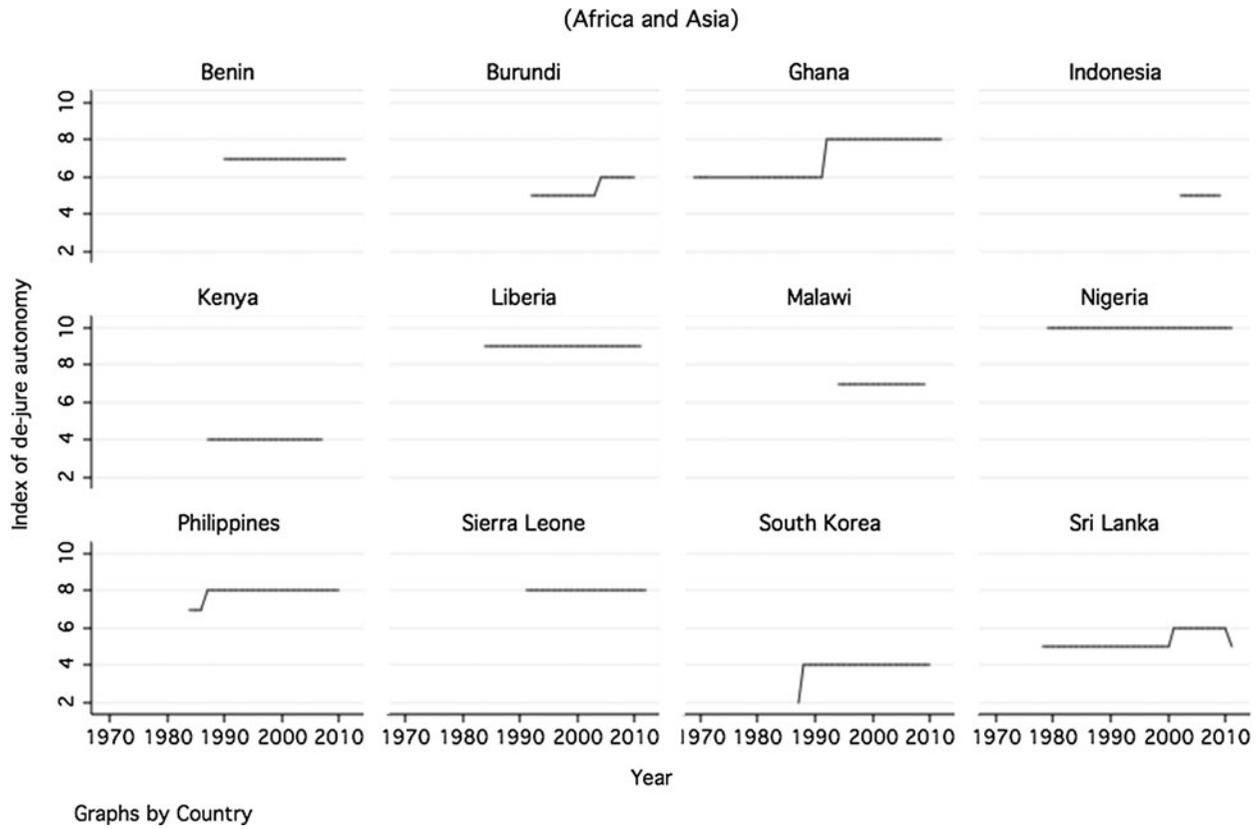


FIG. 3. De Jure Autonomy in Asia and Africa.

(either supreme courts or specialized electoral courts) is superior to resolution by the congress. Given that the Americas, Asia, and Africa have converged to systems in which election disputes are resolved either by specialized electoral tribunals or by already existing institutions within the judicial branch, e.g., supreme courts, it might not matter what type of institution adjudicates electoral conflicts. However, there is still room for improvement within this pair of options and countries like Sri Lanka, South Korea, and Uruguay have ample margin for improving the institutional design of their institutions of electoral justice.

There are also countries that need more clarification about which is the competent authority for resolving electoral disputes. In some cases, there is straightforward determination of who is in charge of solving any disputes related to presidential elections, but in cases such as Argentina or Colombia, contradictory legislation needs to be harmonized to avoid potential disputes regarding exactly who is the authority of last resort. In Colombia, for example, the *Consejo Nacional Electoral* is authorized to rule on disputes regarding the counting of votes at the precinct level, and to resolve appeals regarding the general counting (Decree No. 2241 of 1986, Articles 12, 122, 180, and 187). Nevertheless, Article 189 of the *Código Contencioso Administrativo* (1984) authorizes the Council of State to rule on electoral suits within its jurisdiction, and Article 189 of Law 167 of 1941 established that the Council of State could resolve claims against the election of the president of the Republic. It is therefore not totally clear which authority actually has the last word in the case of a disputed presidential election.

DATA AT WORK

What is the usefulness of this data? What type of empirical questions can be answered by using it? Institutions create elements of order and predictability. They bring order to social relations, reduce uncertainty, and restrict the behavior of actors (March and Olsen 2006). From this viewpoint, institutions of electoral justice may influence the behavior of actors involved in elections. For instance, they can strengthen the

citizens' confidence in elections and democracy if the institutions revise the constitutionality of election laws, resolve disputes regarding the drawing of electoral districts, protect freedom of speech during campaigns, enforce voting rights, and generally apply preventive rulings to guarantee that the steps of the electoral cycle adhere to the norms of electoral integrity. Institutions of electoral justice can also shape the strategies followed by losing candidates after the results of the election have been announced, by offering institutional routes to channel their demands. The data can also be used as a dependent variable. Why do politicians decide to empower electoral courts? Under conditions of increasingly competitive elections, reflected in smaller margins of victory, incumbent politicians may decide to grant constitutional powers to specialized electoral courts to resolve potential conflicts over the organization of elections, cases of electoral misconduct, and even more important, conflicts over election results. These are examples of how the data can be used to answer research questions that could not be empirically evaluated otherwise.

I will now briefly develop the second example, i.e., how institutions of electoral justice may affect the strategies followed by losing candidates. The available alternatives for a candidate that rejects the result of an election are either to present a legal complaint before the authority in charge of adjudicating election results, or to engage in non-institutional protests, or to pursue both courses of action. Out of the 38 presidential elections that have taken place in democratic countries since the beginning of the third wave of democracy in which the runner-up party announced its decision to reject the outcome of the election, it engaged in some legal action to revert the outcome of the election in 30 cases; it initiated some sort of protest or popular mobilization against the results of the election in 20 cases; and lastly, it engaged in both tactics in only 17 cases.²² In order to study the determinants that led to each course of action, I ran separate

²²Information gathered from the newspapers *El País*, *ABC*, the *New York Times*, and the *Guardian*. I also consulted academic articles and books on the history of the respective countries. The coding rules and the excerpts of information with their respective sources are displayed in the supplementary electronic appendix.

T2 ►
AU4 ► logistic regressions for each dependent variable (Table 2).²³

Models 1 and 2 show the determinants of presenting a legal challenge to election results. The key independent variable is the index of de jure autonomy. As control variables, the analysis uses the presence of irregularities and flaws in the presidential election,²⁴ the history of previous protests in relation to presidential elections,²⁵ and the degree of democracy.²⁶ One of the findings in these regressions is that the degree of de jure independence of the institutions in charge of adjudicating election disputes does not affect the likelihood of presenting a legal complaint. However, if the constitution for a given country-year establishes an explicit rule as to how to proceed in the case of an election dispute, then it is more likely that a losing candidate will take the legal route to complain about the result of an election. Only 67.72% of the constitutions, by country-year, establish a rule as to how to proceed in the event of a contested election. Having clearer rules about the procedures to be followed in order to dispute an election might provide incentives for taking the legal route. Regarding the determinants of protest, Models 3 and 4 both support the idea that the greater degree of autonomy in the institutions in charge of adjudicating election disputes demobilizes protests in the streets. This finding is in line with the thinking of Eisenstadt (2004) who, for the case of municipal elections in Mexico, has argued that as electoral courts became more autonomous, political parties moved their protests from the streets to the courts. This is just one example of the type of analysis that can be undertaken using the index of de jure autonomy of the institutions in charge of adjudicating election disputes.

CONCLUSION

This article has presented a variety of methods for resolving election disputes in presidential democracies. Viewed from detailed geographical and temporal perspectives, it is possible to observe some clear patterns. First, since the late twentieth century there has been a trend in the Americas towards adopting specialized electoral courts to resolve post-electoral disputes. There is not a single country in the region where the adjudication of presidential elections continues to be the responsibility of the congress, and it is only in Argentina, Colombia,

the United States, and Venezuela that this function is not performed by a specialized electoral court. In contrast, the presidential democracies in Asia and Africa have converged to a model in which their supreme courts have the responsibility of resolving electoral conflicts. The Philippines was once the only country in the region where an electoral court had this responsibility, but it eventually adopted the model of resolution by a supreme court which prevailed throughout the rest of the region. Consequently, until 2012 there were two clearly identifiable geographical clusters of adjudicating electoral institutions: electoral courts in the Americas, and supreme courts in the Eastern Hemisphere.

The second observable pattern is a global upward trend in the degree of autonomy of these institutions. At the individual level, all presidential democracies have either experienced stability or improvements in the degree of de jure autonomy among the institutions in charge of adjudicating

²³Models 1, 3, and 5 include logit regressions clustered by country for the cases in which the runner-up party announced its intention to reject the outcome of a presidential election. Models 2, 4, and 6 use Heckman probit models that reflect the nature of the self-selection process of the post-election strategies. Losers first decide whether they reject the outcome of the election or not, and then decide if they will file a case before the court, protest in the streets, or do both. If the error terms of the initial decision (rejection) are correlated with the errors in the post-rejection stage, then the estimate of the rejection tactic would be biased (Heckman 1979). In this case, simply using the cases in which losers decided to reject election outcomes (32 out of 163 elections) to estimate rejection tactics could potentially lead to an estimation bias. To deal with this problem, I run the Heckman probit model, which reflects the self-selection process of the first stage and also assumes that the probability of announcing the rejection of election results might be correlated with the subsequent selection of the rejection tactic. However, the correlation of the error terms of the selection and outcome election is effectively zero, indicating that the outcome equation is not contaminated by selection bias. Therefore, the results are the same using both econometric techniques.

²⁴To account for the presence of "Irregularities and Flaws," I used a dichotomous measure, distinguishing between elections with null or minor irregularities (assigned a value of 0) and elections with medium and high levels of irregularities (assigned a value of 1). To make this distinction, I used the "as2" variable from the Quality of Elections Dataset (Kelly and Kiril 2010). For elections in which this information was not available I used two variables from the National Elections Across Democracy and Autocracy (NELDA) dataset: if allegations of significant vote fraud were made by Western monitors after the election, or, in absentia, if there were significant concerns before an election that the proceedings would not be free and fair (Hyde and Marinov 2011).

²⁵The same sources that identify each course of action.

²⁶Polity IV.

JUDGING PRESIDENTIAL ELECTIONS AROUND THE WORLD

TABLE 2. STRATEGIES TO FOLLOW WHEN REJECTING ELECTION RESULTS

<i>Second stage: Variables</i>	<i>Legal challenge</i>		<i>Protest</i>		<i>Both</i>	
	<i>2.1[§]</i>	<i>2.2[±]</i>	<i>2.3[§]</i>	<i>2.4[±]</i>	<i>2.5[§]</i>	<i>2.6[±]</i>
Index electoral justice	-0.394 (0.293)	-0.220 (0.164)	-0.448* (0.237)	-0.223* (0.121)	-0.520** (0.248)	-0.316** (0.128)
Legal mechanism	3.990** (1.680)	2.703*** (1.021)	2.479* (1.436)	1.796** (0.782)	3.209* (1.815)	2.568*** (0.996)
Irregularities and flaws	-2.620 (1.931)	-0.943 (1.009)	0.653 (1.004)	0.577 (0.652)	-1.251 (1.188)	-0.349 (0.673)
Protest	1.003** (0.484)	0.668** (0.290)	0.461 (0.344)	0.334* (0.185)	0.646 (0.460)	0.409* (0.247)
Polity IV	-0.165 (0.222)	0.0587 (0.206)	0.0603 (0.192)	0.0928 (0.152)	-0.0902 (0.143)	0.181* (0.105)
Constant	2.067 (1.682)	-0.519 (1.639)	-0.430 (1.623)	-1.909 (1.651)	0.0298 (1.313)	-1.943 (1.285)
ρ Corr(ϵ_{it} , v_{it})		0.1449		0.5058		-0.2984
LR test of indep.		0.03 (0.8608)		0.59 (0.4424)		0.21 (0.6479)
<i>First stage: Intention to challenge</i>						
Loser's seats (%)		-0.0194** (0.00954)		-0.0184* (0.00979)		-0.0200** (0.00974)
Previous challenge		0.398 (0.309)		0.489 (0.302)		0.403 (0.276)
Margin of victory		-0.0355*** (0.0122)		-0.0342*** (0.0133)		-0.0366*** (0.0126)
Age of democracy		-0.0110 (0.0104)		-0.0104 (0.0101)		-0.0101 (0.0107)
Irregularities and flaws		0.373 (0.351)		0.339 (0.354)		0.385 (0.350)
Opposition victory		-0.544* (0.307)		-0.550* (0.294)		-0.518* (0.288)
Index electoral justice		0.0696 (0.0510)		0.0652 (0.0501)		0.0706 (0.0517)
EMB's autonomy		-0.410*** (0.157)		-0.401*** (0.153)		-0.412*** (0.158)
Constant		1.349** (0.664)		1.267* (0.686)		1.343** (0.657)
N	32	163	32	163	32	163
Prob > Chi2	0.0974	0.0513	0.2839	0.0732	0.4698	0.0433
Pseudo R-squared	0.2812		0.2005		0.2585	

Standard errors (SE) in parentheses, * $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$
[§] Pooled logit with clustered SE by country; [±] Heckman probit.
 EMB, electoral management body.

election disputes, with the sole exception of Sri Lanka. However, this does not mean that the individual variables used to construct the index have not experienced fluctuation over time. As the Ecuadorian example illustrates, some variables, like the method of appointment, can experience upward and downward movements several different times.

Future research may be able to explain differences in the design of institutions of electoral justice. I have documented the fact that there has been a wave of Latin American countries adopting autonomous electoral courts to handle election dis-

putes since the late twentieth century, and that most presidential democracies in Asia and Africa have converged to a model in which their supreme courts try to resolve electoral conflicts. But how can we explain the existence of these two regional clusters of institutions of electoral governance on different sides of the Atlantic? Are these institutional arrangements shaping the behavior of those who resolve election disputes? What effect do different institutions of electoral justice have on a losing party's decision to reject the results of an election? And finally, once a party decides to contest the outcome of an election, does the degree of

autonomy of these institutions affect the strategies that losers follow (public statements, legal challenges, and/or street protests)? These are crucial questions that lie beyond the limits of this article, but it may be possible to answer them by using the examination of institutions of electoral justice presented here as our point of departure for future studies in this field.

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Address correspondence to: ◀AU6
V́ctor A. Herńandez-Huerta
Universidad de los Andes
Departamento de Ciencia Poĺtica
Cra 1 # 18A-12
Edif. Franco, piso 3
Bogot́
Colombia

E-mail: hernandezhuerta.victor@gmail.com

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