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The 2011 judicial elections in Bolivia

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On October 16, 2011 Bolivian citizens cast ballots for 56 judges of the national Bolivian high courts. This is the second national election under the new Bolivian constitution, which was ratified by public referendum in January 2009. The candidates who received a simple majority of the valid votes cast assumed responsibilities as national magistrates for the Bolivian Supreme Court (Tribunal Supremo de Justicia), the Plurinational Constitutional Court (Tribunal Constitucional Plurinacional), the Bolivian Judicial Council (Consejo de la Magistratura; the high administrative body of the national judiciary), and the Bolivian Agricultural Court (Tribunal Agroambiental).

This election is notable for several reasons. First, it marked the first time that the Bolivian public directly elected its judges. Additionally, this election marked the first instance of popular election for national high courts in recent world history. Beyond this novelty, this electoral process is consequential for its possible effects on Bolivian judicial independence and the questions it raises about the future of Bolivian democracy. This research note describes this election in comparative historical terms, reviews the development of the electoral law and process, and summarizes the outcome of the elections.

1. Background

Bolivia is a landlocked nation in the heart of South America. It is the poorest and most unequal in the region, with an estimated 35% of the population subsisting on less

than one dollar per day. Over half of all Bolivians are self-identified indigenous with an additional 30% claiming to be of mixed or mestizo origins. Ethnic and linguistic cleavages map onto geographic and economic demarcations: indigenous peasants tend to reside in the high, arid *altiplano* in the west, while Bolivians of European descent are concentrated in the tropical, resource rich and industrially vibrant eastern departments.

Over the past ten years, the country has witnessed a fundamental reconceptualization of Bolivian democracy. Mass political participation has expanded while the political influence of Bolivia's indigenous population – a segment of society that was long marginalized from the democratic process – has increased dramatically. This democratic expansion, accompanied by the decline of the traditional party system, has been punctuated with bouts of serious institutional turbulence, regional fractionalization and flashes of explosive political violence.

President Evo Morales and his *Movimiento Al Socialismo* (MAS) has been a primary vehicle through which Bolivian direct democracy has been revitalized, the national constitution rewritten, and the Bolivian state reborn as a 'plurinational' republic. President Morales and his party have consolidated their presence on the national political scene through repeated and sweeping victories at the ballot boxes in legitimate democratic processes (Alpert et al., 2010; Singer, 2007). In January 2009, 61% of voters ratified the new constitutional text drafted by a MAS-led constituent assembly. In December of that same year, with 95% turnout, 63.9% of voters re-elected President Morales to his second term in office with his MASista co-partisans winning more than 2/3's of the seats of the bicameral Plurinational Legislative Assembly (Alpert et al., 2010). This has made the

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MAS hold on power not only impressive, but seemingly impermeable and indisputably legitimate.

2. Electoral rules

The Bolivian Constitution of 2009 represents a vast reorganization of the Bolivian state and the inauguration of the new period of plurinational democratic rule. The reorganization of the judiciary provides a radical change in judicial selection procedures by requiring direct election of high court judges via nationwide suffrage. By law, any citizen filling minimal requirements can seek judicial office. Before appearing on the ballot, candidates must earn a two-thirds vote in the bicameral Plurinational Legislative Assembly. Candidates must be chosen with “consideration for plurinationalism,” regional representation, and gender equality on candidate lists. Once chosen, the candidacies are passed to the Electoral Court (the Órgano Electoral Plurinacional, henceforth OEP) who is responsible for disseminating candidate information to voters. Candidates may not campaign or belong to political parties, who are also prohibited from campaigning on candidates behalf. Once elected, judges serve 6-year terms with no possibility for reelection. Table 1 describes the candidate selection and electoral regulations for each of the national courts.

This institutional innovation is unique in many respects. Judicial elections are common in many American states, and most sub-national judges in the United States are dependent upon elections to retain their seat (Bonneau and Hall, 2009). Beyond the U.S. states, the direct election of judges is rare.¹ Among high courts, only the Japanese Supreme Court judges face retention elections, though nomination practices, term limits and ballot structure combine to make judge dismissal by popular vote highly unlikely (Ramseyer and Rasmusen, 2001). Where lower court judges are directly elected, their role is often quite limited in scope.

3. Candidate selection and electoral campaign

The pre-selection of judicial candidates took place over the course of 60 days in May and July 2011. In contrast to previous legislative negotiations regarding judicial nominations, this process was remarkably swift. Attempts were made to ensure the candidate selection process was transparent and meritocratic, yet the opposition and the Organization for American States criticized the process as highly politicized. Meritocratic qualifications were eschewed, prioritizing ethnic identification over professional qualifications and experience. Despite the formal ban on party affiliation, many selected candidates had direct connections to the MAS as party organizers, legislative aides or legal advisors. Following the legislative vote, MAS Assembly backbenchers admitted to having little knowledge of the candidates, but rather voting in line with party leaders' directions.

¹ Previously, Nicaragua and Honduras elected judges via universal suffrage, but these constitutional articles were eliminated in the early twentieth century (Castangola and Pérez-Liñán, 2011).

Perhaps the most challenging aspect of the electoral process was ensuring full and informed participation while prohibiting political campaigns. Candidates were barred from self-promotion or criticizing other candidates, or independently communicating with potential voters. Though they could accept interviews with the national media, media outlets faced censure and fines for biased or unequal media coverage. To educate the public, the OEP published print and online advertisements in which candidates' academic, professional and intellectual achievements were listed. Finally, a number and picture, identical to those listed on the ballot, were provided and publicly distributed. Examples of both the candidate profiles and the ballots are available at <http://jedi.wustl.edu/data-bolivia-dataset.php>.

By all accounts, this state-run media campaign fell decidedly short. In the days preceding the elections, judicial candidates protested that voters remained uninformed regarding candidate merits and the electoral process. Though the OEP claimed the diffusion of the campaign materials was widespread, other reports suggest the official campaign materials had been distributed to only 70% of rural areas (Página Siete, 2011a). By one estimate, 76% of urban Bolivians polled felt uninformed, many of whom were also skeptical of the independence of the OEP from President Morales (Miranda, 2011).

The opposition actively politicized the elections as a referendum on the state of democracy in Bolivia. Opposition parties and leaders campaigned openly – not for or against any candidates – but in boycott of the election entirely. Pamphlets were circulated giving instructions on how to properly ensure one's vote was counted as null, as opposed to a blank ballot or abstention. Null votes were promoted as the only way to prevent vote fraud, ensuring blank ballots could not later be filled in. President Morales cast this campaign as anti-democratic, claiming those who campaigned for the null or abstention votes were “enemies of democracy, the Constitution and against [all] indigenous people and women” (Los Tiempos, 2011). He encouraged massive voter turnout to consolidate the revolution and to repeat electoral victories of recent years. Still, in late July, Morales publicly conceded the direct elections were a risky political calculation, and perhaps an incorrect one.

Several procedural aspects call the validity of the elections into question. First, last minute change of plans in vote procedure abandoned the use of indelible ink – traditionally used to mark voters' hands to ensure only a single ballot is cast. As early as June of 2011, a reported 73% of the public suspected electoral fraud (Página Siete, 2011b). Second, though international observers provided procedural oversight, they did not participate in the actual count or verification of ballots. Indeed, following the election various reports of irregularities surfaced across the country, including pre-marked ballots in some locales.

4. Results

Voting is compulsory in Bolivia, and over 4.1 million votes were cast. In numeric terms, voter participation was one of the highest in Bolivian history, however the turnout rate was comparably low. Table 2 reports the vote totals and

Table 1
Candidate Selection and Seat Allocation Formula.

	District	Candidacies	Seats	Votes	Seat Allocation	Gender/Ethnicity Quota
Plurinational Constitutional Tribunal	Nationwide District	28 candidates	7 magistrates and 7 alternates	Voters select 1 candidate from list. ^a	The 7 candidates with the most valid votes will be named the official magistrates, with the following 7 selected as alternates	50% female candidates, with at least one indigenous candidate per list
Bolivian Supreme Court	Department level District	6 candidates per district, for a total of 54	1 magistrate and 1 alternate per district, for a total of 9 magistrates and 9 alternates country wide	Voters select 2 candidates, one male and one female, from each of a gender stratified list. ^a	In each department, the candidate with the highest vote total is named the official magistrate. If the official magistrate is male, the alternate position goes to the female candidate with the highest number of votes, and visa versa.	50% female candidates, with at least one indigenous candidate per list
Bolivian Judicial Council	Nationwide District	15 candidates	5 councilors and 5 alternates	Voters select 1 candidate from list. ^a	The 5 candidates with the most valid votes will be named the official magistrates, with the following 5 selected as alternates	50% female candidates, with at least one indigenous candidate per list
Bolivian Agricultural Court	Nationwide District	28 candidates	7 magistrates and 7 alternates	Voters select 1 candidate from list. ^a	The 7 candidates with the most valid votes will be named the official magistrates, with the following 7 selected as alternates	50% female candidates, with at least one indigenous candidate per list

Source: Bolivian Electoral Law N. 26 and Bolivian Constitution 2009.

^a Candidates' list position determined by random draw by OEP officials in public forum. Candidates were then assigned a number which was listed on the ballot along with the candidates' pictures. Ballot examples were publicized and disseminated by the OEP ahead of the election, and are also available at <http://jedi.wustl.edu/>.

turnout rates in recent national elections. The 20% abstention rate is double that of previous elections.

More dramatic is the extremely high number of spoiled and blank ballots. For example, 44% of votes cast in the Constitutional Tribunal contest were null votes, surpassing the 42.1% of valid votes. When combined with blank ballots, the percent of invalid votes was nearly 60%.² By way of contrast, the combined average rate of vote invalidation in previous elections approximated only 5%. Table 3 shows the distribution of vote totals across electoral contests, listing the percentage of votes each candidate received, as a function of all valid and total votes cast. Though we only list elected candidates here, the full report of vote returns is available at <http://jedi.wustl.edu/data-bolivia-dataset.php>.

Of those candidates competing in nationwide contests (for the Constitutional, Consejo and Agricultural Courts), only four surpassed a threshold of 10% of valid votes. Interestingly, all four of these candidates are indigenous, and were easily distinguished as such in their picture on the ballot. The most successful candidate in terms of vote share

was an indigenous woman, Cristina Mamani Aguilar, who garnered 26% of valid votes nationwide. Beyond these four, most of the newly elected judges did not win more than 6% of the national vote. When null and blank votes are taken into account, only Christina Mamani Aguilar earned more than 10% of all votes. Candidates elected to the Bolivian Supreme Court garnered much larger vote share due to the small number of candidates on each departmental ballot.

The constitution stipulated quotas on the basis of gender and indigenous origins, requiring that 50% of all candidates be women and that each list include at least one candidate of indigenous decent. Women secured four of the seven positions on the Constitutional Tribunal, and three posts on both the Agricultural and Supreme Court. Also, over half of all posts available were filled by judges of indigenous background. Six of seven judges elected to the Agricultural court are indigenous, and three indigenous judges were elected to the other three courts. To give a sense of this historical significance, the first national jurist of indigenous decent was nominated to the Supreme Court in 2007. In short, this level of indigenous representation on the national courts is unprecedented.

Finally, though candidates were barred from party affiliation and parties formally prohibited from campaigning, several of the winning candidates are known MAS affiliates. Independent journalists confirm that four of seven of the judges elected to the Agricultural Court had previously held positions within the current administration, along with four

² Turnout and vote invalidation rates map onto well-established lines of sub-national political conflict. For example, in the four departments that are a traditional stronghold of the political opposition, null votes for the Supreme Court candidates surpassed 45%, in contrast to only 33% in the rest of the country. Similarly, abstentions in this region approximate 30%, or 10 percentage points higher than in remaining departments.

Table 2

Voter turnout and Participation in National Elections 2009–2011.

	Valid Votes	Valid %	Null Votes	Null %	Blank Votes	Blank %	Abst.	Turnout %
Judicial Elections (Avg. Across Institutions), October 2011	1,759,623	42.1%	1,793,039	42.9%	622,816	14.9%	1,067,897	79.6%
Plurinational Constitutional Tribunal	1,758,283	42.1%	1,838,903	44.0%	579,363	13.9%	1,066,826	79.7%
Supreme Court of Justice	1,582,393	38.6%	1,535,455	37.5%	978,340	23.9%	1,147,188	78.1%
Consejo de Magistratura	1,752,010	42.0%	1,760,789	42.2%	659,617	15.8%	1,070,959	79.5%
Agro-ambient Court	1,768,576	42.3%	1,779,425	42.6%	629,469	15.1%	1,065,905	79.6%
General Elections, December 2009	4,462,411	94.3%	116,839	2.5%	155,089	3.3%	236,119	95.2%
Constitutional Referendum, January 2009	3,360,592	95.7%	91,583	2.6%	59,524	1.7%	379,617	90.2%

Sources: <http://www.oep.org.bo/Resultados2011/>; <http://www.cne.org.bo>.

Abstention is calculated as the difference between registered voters and the total number of voters who participated in the elections. For the judicial elections, the vote totals reported are the average rates of votes and participation across judicial institutions elected by a national constituency (Tribunal Constitucional, Consejo de Magistratura, and the Tribunal Agroambiental). Supreme Court Justices were selected at the departmental level, where voters selected two candidates, one from each of a gender stratified list. Vote totals were averaged across candidate slates, then aggregated to the level of the department.

of seven judges elected to the Constitutional Tribunal. Finally, Jorge Isaac Von Borries Méndez, winner of the Supreme Court election in the department of Santa Cruz, has served as an interim Supreme Court President since his appointment by President Morales in February 2010.

5. Effects

This represents the first electoral defeat of the Morales administration. Following the election, media reports were

quick to claim that the elections represented a stark challenge to Morales' ability to govern, pointing to the large number of blank and spoiled ballots as evidence of a largely illegitimate electoral process. This victory has revitalized an opposition that has otherwise struggled to counter balance the MAS electoral machine.

The government has emphasized the elections' international novelty, and their significance of in terms of direct and popular democracy. From their view, the procedural aspect of direct elections is sufficient to restore

Table 3

Results of the October 2011 Elections of National Judicial Authorities in Bolivia.

	% Valid Votes	% Total Votes	Indigenous	Sex	Known Government Affiliate?
<i>Constitutional Tribunal Plurinacional</i>					
Gualberto Cusi Mamani	15.70%	6.61%	Y	M	Y
Efren Choque Capuma	10.57%	4.45%	Y	M	Y
Ligia Mónica Velásquez Castaños	7.26%	3.06%	N	F	Y
Mirtha Camacho Quiroga	5.95%	2.50%	N	F	
Ruddy José Flores Monterrey	5.77%	2.43%	N	M	Y
Neldy Virginia Andrade Martínez	5.25%	2.21%	N	F	
Soraida Rosario Chanez Chire	5.08%	2.14%	Y	F	
<i>Consejo de la Magistratura</i>					
Cristina Mamani Aguilar	26.34%	11.06%	Y	F	Y
Freddy Sanabria Taboada	8.75%	3.68%	Y	M	
Wilma Mamani Cruz	8.69%	3.65%	N	F	
Roger Gonzalo Triveño Herbas	7.97%	3.35%	N	M	
Ernesto Aranibar Sagárnaga	6.85%	2.88%	N	M	
Wilber Choque Cruz	6.37%	2.67%	Y	M	
<i>Tribunal Agroambiental</i>					
Bernardo Huarachi Tola	16.55%	7.01%	Y	M	
Deysi Villagomez Velasco	9.05%	3.83%	Y	F	Y
Gabriela Cinthia Armijo Paz	7.04%	2.98%	N	F	Y
Javier Peñafiel Bravo	5.75%	2.43%	Y	M	Y
Juan Ricardo Soto Butrón	5.38%	2.28%	Y	M	
Lucio Fuentes Hinojosa	5.34%	2.26%	Y	M	Y
Paty Yola Paucara Paco	4.63%	1.96%	Y	F	
<i>Tribunal Supremo de Justicia</i>					
Norka Natalia Mercado Guzmán	76.62%	30.54%	N	F	
Gonzalo Miguel Hurtado Zamorano	56.92%	16.80%	N	M	
Romulo Calle Mamani	56.41%	26.90%	Y	M	
Jorge Isaac Von Borries Méndez	56.24%	16.87%	N	M	Y
Antonio Guido Campero Segovia	51.33%	16.67%	N	M	
Maritza Suntura Juaniquina	48.66%	20.31%	N	F	
Fidel Marcos Tordoya Rivas	42.40%	18.64%	Y	M	
Pastor Segundo Mamani Villca	41.09%	17.71%	N	M	
Rita Susana Nava Durán	40.96%	16.06%	Y	F	

institutional legitimacy to a long maligned judicial system. The direct election of high court judges is cast in stark contrast to judicial nominations under the antiquated party system, where nominees were agreed upon by a small circle of political elites. Pointing to the gains in descriptive representation, MAS leadership casts the new jurists as a break with the past and the new face of a democratically legitimate plurinational justice system. These elections give the MAS party a controlling seat share in at least two of the national courts, including the Constitutional Tribunal.

The consequences of direct election of judges on judicial behavior and institutional legitimacy in practice remains to be seen. Studies of elected judges in the United States has demonstrated that, while particular features of judicial elections detract from judicial legitimacy, they can also result in a net increase in public esteem for courts (Gibson et al., 2011). Likewise, research on American state judicial behavior has indicated that judicial elections shape the decisions that judges make (Huber and Gordon, 2004). Only time will tell the extent to which these effects will be replicated in Bolivia.

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