Judicial elections have been described as a "uniquely American" institution. Initially adopted by a handful of states in the mid-1800s, judicial elections quickly diffused across the country as many U.S. states began rewriting their state constitutions. By 1860, 21 of the 30 American states elected their judges. Today, the vast majority of judges in the United States must stand for election. Yet, while the American legal style is “going global,” judicial elections are rarely used to select or retain judges outside of the United States.

With the adoption of its new constitution in 2009, Bolivia became the first country in the modern world to use judicial elections to select judges for courts with national jurisdiction. On October 16, 2011, Bolivian citizens cast ballots to elect 56 judges to the Bolivian Supreme Court (Tribunal Supremo de Justicia), the Plurinational Constitutional Tribunal (Tribunal Constitucional Plurinacional), the Bolivian Agricultural Court (Tribunal Agroambiental), and the high administrative body of the national judiciary, the Bolivian

Judicial Council (Consejo de Magistratura). Candidates competed in nonpartisan, nationwide contests in which voters cast a single vote for their preferred candidate for each judicial office.6 The top vote-earning candidates were elected as judges and magistrates and sworn into office on January 3, 2012.

What explains the adoption of judicial elections? In this article, we compare the circumstances under which judicial elections were adopted in the United States and Bolivia. In spite of vast differences in terms of time, institutional arrangements, political history and geographic location, we identify four similarities in the political circumstances and normative debates surrounding their adoption in the two countries.

This research contributes to the literature on judicial elections by leveraging the U.S. and Bolivian experiences to identify a set of common political conditions which may explain the adoption of judicial elections. Our comparative research design provides a contrast by which the general applicability of causal explanations advanced by U.S. scholars might be assessed in cases outside of the context in which they were developed.6 In our comparison of the U.S. and Bolivian cases, we argue that not only are judicial elections no longer a "uniquely American" institution, but the political circumstances that explain the adoption of judicial elections are also not unique. Indeed, the radical differences between the two countries make the commonalities we identify all the more striking. While judicial elections in the United States are so commonplace the question of their adoption is seen as "manifest political destiny," the Bolivian comparison underscores the contentious circumstances surrounding their adoption to highlight their political origins and intended effects.7

5. The exception to this rule were judges elected to the Bolivian Supreme Court, who were selected from gender-stratified candidate lists from each of the 9 departments. Voters cast two votes, one for a male and one for a female candidate. Amanda Driscoll and Michael Nelson, The 2011 Judicial Elections in Bolivia, 31(3) Electoral Stud. 628-632 (2012).

6. While our case selection is non-random, we instead compare two cases in which judicial elections have been successfully adopted as methods of judicial selection via structured case study comparison. We acknowledge that this research design provides us tractability but, because our design does not include any cases where judicial elections were considered but not adopted, we cannot make any definitive causal claims about the conditions that are necessary or sufficient to lead to the adoption of judicial elections. However, since the number of cases where judicial elections have been successfully adopted is so small, such inferences would be difficult to make with any degree of certainty even if additional cases were incorporated into our research design. Alexander L. George and Andrew Bennett, CASE STUDIES AND THEORY DEVELOPMENT IN THE SOCIAL SCIENCES (MIT Press: Cambridge, MA, 2005).

7. Shugerman, supra n. 1, at 1073.


9. Croley, supra n. 8 at 714.


12. Shugerman, supra n. 1, at 1067.

13. Shugerman, supra n. 1, at 1067.
hoped that judicial elections would ensure sufficient control of the legis-

lative and executive branches of gov-

ernment by a court whose authority, in-

stitutional legitimacy and inde-

pendence would derive from judges’
direct connection to the voting

public. At the same time, the ele-
toral connection between the public and the judiciary promised public

oversight of judicial behavior and judicial accountability.

Mississippi was the first state to
elect its state supreme court, in

1832. Over a decade passed before
the next state, New York, adopted the
practice in 1846. However, legislative
indiscretions and fiscal ruin drove
more and more states to revise their
constitutions to allow for the direct
election of judicial authorities in the
years following New York’s adop-
tion of judicial elections. The pace
of adoption quickened, and twenty
more states would move to the direct
election of jurists in the eight years
that followed.14

The Bolivian Context

Bolivia is a constitutional democ-

racy located high in the Andes Moun-

tains of South America. Though she

is the most unequal of her South

American neighbors, Bolivia was for

many years a vision of stable democ-

ratic rule. Governing majorities

were negotiated through a system

of “parliamentarized presidential-

ism,” which fostered an environment

based on elite coalitions within the

traditional party structures.15 Polit-

cial power in Bolivia, as in the United

States, is divided among a president,
a bicameral legislature, and for-

mally independent courts through

a system of separated powers. A

unitary (rather than federal) system,

Bolivia is divided into nine depart-

ments, akin to states in the U.S.

By the turn of the 21st century, this

system of pacted democracy showed

signs of decline. Genera-
tional replacement of the “old guard”

left a vacuum of political power,

and unpopular austerity programs

agonized the majority of Bolivians

who already felt unrepresented

by the government and excluded

from the political process. At the

same time, reforms meant to bolster

public participation and direct
democratic enfranchisement were

adopted, opening the door to new

parties, social movements and politi-

cal leaders.

As a result, the political influence

of the country’s indigenous popula-

tion—a segment of society that has

historically been marginalized from

the democratic process—has grown
dramatically. Demographically, an

estimated 75 percent of the popula-

tion descends from one of more than

thirty indigenous groups within

the country.16 Emerging grassroots

movements have mobilized indig-

enous and mestizo Bolivians on the

basis of their racial, ethnic and lin-

guistic heritage at a time when the

traditional parties have struggled to

convince Bolivians their political

program remained relevant to the

needs of a rapidly transforming

nation.17

At the forefront of this political

transformation has been the Mov-

imiento al Socialismo (Movement

to Socialism, or MAS) party, led

by President Evo Morales Ayma.18

Morales claims to be the first Bolivi-

an president of indigenous decent,

and he has presented himself and

his party as a credible alterna-

tive to the traditional party rule.

As president, Morales has proven

himself both capable and willing to

refound Bolivia as a new “plurina-

tional democracy” with the aim of

revitalizing Bolivian democracy in

the vision of the emergent indige-

nous majority. Morales and the MAS

have won repeated and sweeping

electoral victories, most recently

securing two-thirds control of the

bicameral national legislature.

Traditionally, judicial selection in

Bolivia was a power vested in

the national legislature. In order
to attain a seat on the bench, per-

spective judges needed to win the

support of two-thirds of the bicam-

eral National Congress.19 The super-

majority requirement for judicial

selection meant that no party could

unilaterally nominate their judge of

choice, and political bargaining to

build coalitions around preferred

candidates was an essential part of

the process. In practice, judicial

nominations were frequently nego-

tiated according to an informal

cultural political Cuote (patronage-based

quota) among the major parties re-

presented in the National Congress

such that each party was allocated

judicial posts in proportion to their

representation in the National

Congress.20 Without these carefully

brokered political deals, vacancies in

high courts would simply go unfilled.

This periodically resulted in inquorate

courts.21

14 Shugerman, supra n. 1, at 1066.
15 Eduardo A. Gamarca, Hybrid Presidential-

ism and Democratization: The Case of Bolivia,

in PRESIDENTIALISM AND DEMOCRACY IN LATIN

AMERICA, Cambridge University Press, 363-393

(1997). This hybrid system resembled parlia-

mentary government in that the legislature

would indirectly select the president from

among the top candidates from the popular

vote. Though this frequently meant the 2nd

or 3rd place popular vote winner would be

selected as president, the practice ensured

presidents a stable and workable legislative

majority which necessitated coalition build-

ing and power sharing. This system is com-

monly pointed to as an example of “pacted”

democracy.

16 United States Department of State. Back-

ground Note: Bolivia. (October 18, 2011) http://

www.state.gov/r/drl/hr/rlp/55751.htm.
17 Miguel Centellas, Electoral Reform, Re-

gional Cleavages and Party System Stabili-

ty in Bolivia, 1 JOURNAL OF POLITICS IN LATIN

AMERICA, 115-131, 116 (2009); Herbert Klein,

A CONCISE HISTORY OF BOLIVIA (Cambridge Uni-

versity Press.; New York, 2011)

18 James Dunkerley, Evo Morales, the ‘Two

Bolivias’ and the Third Bolivian Revolution,

J. LATIN AM. STUDIES 133-166 (2009); José

Antonio Quiroga Trigo, EL ESTADO PLURINACIONAL

Y EL FIN DE LA REPÚBLICA, in Álvaro García Linera, ed., MIRADAS: NUEVO TEXTO CONSTITUCIONAL

273-359 (Vice-Presidente del Estado Plurinac-

ional de Bolivia, Universidad Mayor de San

Andrés and IDEA-International: Institute for

Democracy and Electoral Assistance: La Paz,

2010).

19 BOLIVIAN CONST. 1994 REFORMS; Andrea

Castagnola and Aníbal Pérez-Liñán, Bolivia: The

Rise and Fall of Judicial Review, in Gretchen

Helmeke and Julio Ríos-Figueroa eds., COURTS

IN LATIN AMERICA, 278-305 (Cambridge University


20 According to former President Carlos

Mesa, this practice was “dogma” amongst legis-

lative leaders who regarded it as inevitable

political compromise to guarantee their politi-

cal influence. Carlos D. Mesa Gilchrist, PRES-

IDENCIA SITIADA, MEMORIAS DE MI GOBIERNO,

66-67 (Fundación Comunidad, 2008); Elaborar

estrategia para evitar el cuote, El Diario, Sep-

tember 30, 2003, Álvaro García Linera, quoted

in Congreso intentará elegir hoy a miembros de


21 Castagnola and Pérez-Liñán, supra n. 14.
Against this backdrop of expanding mobilization, politicized divisions, inquorate courts and the decline of the traditional party system, Bolivians elected a MAS-led constitutional assembly tasked with the rewriting of the nation’s founding constitutional document. Judicial elections emerged as an inconspicuous proposal on a 2006 MAS party manifesto for this constitutional assembly though no direct motivations were offered to justify the change. The constitution was drafted in 2007, and it was ratified by 65 percent of voters via public referendum in January 2009. The new constitution inaugurates an era of the Plurinational Bolivian state providing for increased local control of government, a new electoral code, reforms to bolster the influence of emergent social movements and the national, nonpartisan and direct election of judges for each of the four national courts.

Thus, approximately 160 years after judicial elections were adopted en masse by U.S. states, Bolivia became the first country in the modern era to elect jurists to serve on courts with national jurisdiction. Judicial elections have been celebrated for their comparative novelty and for their promise of placing judicial selection directly in the hands of the Bolivian people. The direct election of judges, official propaganda would later explain, endows the Bolivian justice system “with a new democratic quality,” and promises to restore legitimacy to a branch of government which had long been maligned by and was foreign to the majority of Bolivian citizens.

Comparing the Adoption of Judicial Elections

What can the adoption of judicial elections in the U.S. states tell us about this institutional change in Bolivia? Four commonalities stand out. First, the adoption of judicial elections coincided with the rise of expanded direct electoral democracy. Second, external crises made the need for widespread reforms evident and crystallized the opinion of a broad coalition in favor of the reforms. Third, judicial elections enjoyed wide support across the ideological spectrum. Finally, advocates argued that the direct election of judges promised the courts an independent base of institutional legitimacy while opponents decried elections as politicizing which would undermine judicial neutrality.

Direct Democracy and Populism

A common explanation for the adoption of judicial elections in the United States is the ascendancy of populism and a broader democratic ideology—Jacksonian Democracy—which prioritized the devolution of power away from traditional elites and toward the public. Dissatisfied with an incongruence between public opinion and policy, citizens sought institutional reforms that would force government to reflect publicly will more accurately. This movement privileged the experience and knowledge of commoners while the Populists met intellectual expertise and “rule by elites” with malaise and general skepticism.

A variety of institutional reforms emerged from this movement. Popular reforms in the Jacksonian portfolio included the expansion of suffrage to all white men and the routine replacement of bureaucrats and judges to prevent entrenched interests. Disappointed with state legislative decisions that were both wasteful and unpopular, Jackson’s supporters and other political groups sought to make policy more responsive to the public, lobbying for an increase in the number and type of political offices that would be subject to popular election.

At the same time, state judiciaries had become filled with patronage appointees. In the words of Samuel Smucker, a Pennsylvania lawyer writing in 1850, “many of the vacant Judgeships have been conferred upon those faithful, but obscure friends of the Executive, who, for long years, had gropped with him shoulder to shoulder, amid the obscure drudgery of some country law-office, or worked up with him the petty county politics of some remote section of the state.” Because the judiciary was filled with close friends and associates of the very politicians who had led to the political unresponsiveness that angered much of the public, judgeships were targeted as offices that should be subject to direct popular election.

Since the early 1990s, Bolivia has undergone a democratic transformation not unlike the changes that took place in the states during the Jacksonian era. Reformers sought to put Bolivian democracy more squarely
in the hands of the voters, vilifying the previous system of pacted government rule as "colonial," elitist and exclusionary. As a former MAS party leader described, "it is no longer the era of technocrats, that time has passed Bolivia: the 'doctors' and 'lawyers' are the ones responsible for screwing Bolivia up."27 Within the context of the judicial elections, the MAS eventually eschewed a candidate vetting process that relied on professional meritocracy. Criticizing a candidate scoring system that would award the maximum points to candidates with advanced degrees, one MAS insider claimed that "the people ought to re-evaluate the type of meritocracy which for twenty years has only worsened the crisis of our judiciary."28

Institutional reforms have both reflected and deepened this ideological shift. The devolution of power to subnational governments has debased and dismantled traditional strongholds of entrenched elite power, and new mechanisms of direct democracy put government decisions in the hands of common Bolivians. Over the course of more than a decade, the Constitution of 1967 was reformed to extend suffrage for all Bolivians above the age of 18, and for the first time, would overtly recognize Bolivian state as "multiethnic and pluricultural" in 1994.29 Constitutional changes to the electoral code allow half of the lower chamber of the national legislature to be directly elected by citizens, while new instruments of direct democracy, such as citizens' initiatives and public referenda enhance public participation in the proposal and ratification of national legislation.30 Measures in place to protect political elites, such as parliamentary and presidential immunity, have been drastically curtailed while local citizen taskforces have been formally empowered to oversee local administration and governance.31

In addition, the Decentralization and Popular Participation laws enacted in the mid-1990s devolved power away from the central government, establishing 311 municipal governments throughout the country.32 Overnight, the number of elected offices expanded more than tenfold, from 262 nationwide to more than 2900. Each local government was granted political, fiscal and administrative autonomy, which provided new opportunities for grassroots organizations, political mobilization and the distribution of political patronage. Politically speaking, these changes bolstered the emergent indigenous movements while challenging the traditional national parties to establish viable footholds in local political arenas. By one estimate, two-thirds of the 1624 newly established municipalities elected indigenous or peasant leaders to their local councils or mayoral posts.33

Though these political reforms sought to expand democracy and localize politics, the process by which these reforms were adopted revealed a closed, exclusive, and increasingly fragile political system. Party leaders brokered these reforms behind closed doors, with deals struck amongst parties to ensure the Congressional supermajority necessary to adopt the constitutional reforms. This intensified demands for more profound and fundamental reforms, and eventually led to the constitutional assembly that enshrined the direct election of judges into the Bolivian constitution.34

Crystalizing Public Opinion

A second commonality between the U.S. and Bolivian cases is the presence of an external crisis that crystallized public opinion against the legislative branch and in favor of judicial elections. These crises served as a "trigger" which, when coupled with the ascendancy of democratic ideology discussed above, led both the U.S. states and Bolivia to adopt elected judiciaries.35

In the United States, the adoption of judicial elections came at a time when the state legislatures had vastly mismanaged state funds. These fiscal crises of the 1830s solidified public opinion against established parties in state legislatures, and judicial elections were advocated as a way to dismantle the connection between state legislature and state courts. Historians suggest that judicial elections arose in the U.S. out of a desire to make state courts independent from state legislatures by separating courts from patronage.36 By providing state judges a base of support independent of legislatures, convention delegates reasoned, they could incentivize judges to use
judicial review to impede legislative excesses, thereby restoring the states’ fiscal health.37

Public and elite opinion in favor of judicial elections was so well consolidated that opponents turned their efforts to modifying the rules of implementation rather than blocking the adoption of elections themselves. As one opponent of judicial elections declared midway through the New York convention: “A majority of this Convention have doubtless decided that the judicial office shall be filled by election, and with that decision, so far as this body is concerned, I am not to quarrel.”38 Indeed, the New York delegates did not even vote on whether the state’s judges should be elected or appointed.39 Instead, the debate focused upon the mechanics of the electoral process, such as whether judges should be elected in a district-based or statewide system.40

In Bolivia, widespread disaffection for the “old guard” of politics crystallized public opinion regarding the need for constitutional reform. In addition, legislative dysfunction over the appointment of judges made plain the need for judicial reform: high profile conflicts over judicial nominations were a prominent show of partisan antagonism, political polarization and the contentious nature of judicial appointment processes. Tensions reached an apex over the summer of 2007, at the same time the constituent assembly was embroiled in tense negotiations over the constitutional text.41 After the arrest of several constitutional magistrates sparked a fistfight in Congress, the opposition-controlled Senate blocked the MAS-led impeachments of four constitutional magistrates.42

Citing an unwillingness to continue under circumstances of high political controversy and professional duress, all four constitutional judges ultimately resigned.43 Against this backdrop of institutional antagonism and political stalemate, many parties in the constituent assembly contended that the direct election of judges was the only way these nomination processes could truly be depoliticized. Much like the opposition in the U.S.

states, the opponents to judicial elections in Bolivia targeted key procedural and institutional aspects of the judicial elections clause in advance of the constitutional ratification referendum of January 2009.44 The text that was approved by the Constitutional Assembly in December of 2007 called for the direct election of judges who would be vetted by the judicial council, with few specifics regarding judicial qualifications, partisanship and campaigning.45 In the constitutional text that was eventually subjected to public approval, the candidate selection process remained in the hands of the National Congress and each candidacy required approval by two thirds of the legislature before the candidate could appear on the ballot. In theory, this legislative pre-selection process would prohibit any one party from selecting its favored candidates and ensure opposition parties the opportunity to participate in the candidate vetting process. In addition, later drafts of the constitution stipulated higher levels of magistrate qualifications and stricter regulations on candidate campaigns and party affiliation.46

Not a Partisan Reform

A third commonality between the cases is the lack of a strong ideological motivation for the adoption of judicial elections. While it may be tempting to think of judicial elections as part of a strategy by a weakening majority party who sought to “[stack the deck] to protect itself from future minority status, this does not seem to be supported by the evidence in either case. In both the U.S. states and Bolivia, judicial elections were supported by parties across the ideological spectrum with little, if any, explicit partisan motivation.

In the U.S., convention delegates argued that judges who had been appointed by state legislatures had been chosen because of their strong partisan ties as patronage appointees. Delegates further claimed that appointive systems of judicial selection left more room for partisan politics than judicial elections. The
best way to sever partisan ties, they argued, was to eliminate the legislature's role in judicial selection and put the power in the hands of the public.

Moreover, supporters of judicial elections were often members of strong legislative majorities. Indeed, according to one prominent historian of judicial elections,

[s]ome delegates surely believed that judicial elections would give their party a better chance of winning seats on the bench than appointments had, but this partisan strategy was probably a minor factor, because many pro-election delegates belonged to the party already securely in power and expected to retain power.47

In many of the states that adopted judicial elections, a single party held a strong control over both the governorship and the state legislature, and minority parties had a better chance at winning local or statewide elections than they did convincing the legislature to appoint one of their own members to those judgeships. As mentioned above, support for the adoption of judicial elections was so widespread—even among delegates of varied parties—that only five state conventions held roll call votes over whether or not judges should be elected under their new constitution.48

Moreover, convention delegates believed that, given the option to select their own judges, voters would not approve of explicitly partisan judges. Samuel Smucker, a Philadelphia lawyer, argued in 1850 that

party preferences, however it may operate in inducing legislators to

vote for party measures in the halls of legislation, cannot possibly operate upon the Bench where the whole sphere of the incumbent is altogether professional, scientific and extra-popular... [When the public votes, they] will have no eye to reward, or interest; for there are too many, and too unknown to the candidate, ever to afford him an opportunity even if the nature of his functions allowed it, to reward those to whom he was under obligations.49

Likewise, in the words of Ira Harris, a delegate to the New York convention, "Nothing in this country would sooner seal the political doom of any judge, by all parties and every honest man, than the attempt to bend his decisions from the line of justice to make political capital."50

One might think that some parties supported a move to judicial elections in an attempt to give themselves an influence in judicial selection that they lacked in the current system. If the power of judicial selection was given to the public rather than to legislators, smaller parties may have been able to earn seats on the bench that they could not secure through legislative means. However, the most vocal proponent of judicial elections, the MAS party, was the largest party in the Constituent Assembly and held a comfortable majority of the lower house of the National Congress. MAS members had every reason to expect their party would be influential in future appointment processes had the selection procedures remained the same, and their electoral successes showed no signs of slowing. Moreover, though many small parties supported the direct election of judges, an equal number of small parties opposed them.

In the Bolivian constitutional assembly, support for judicial elections was widespread but not universal. Of the sixteen parties in the constituent assembly, seven parties included the direct election of judges as a central component of their party platform while seven parties explicitly stated they were against the direct election of judges or proposed alternative appointment procedures. Nearly every party manifesto made plain the need for a new constitution in light of the "crisis" situation brought about by the decline of the traditional party system and the need for new democratic politics. However, the parties in favor of judicial elections enjoyed a clear majority, controlling 65 percent of assembly seats.

The adoption of judicial elections had widespread support from across the political spectrum in Bolivia. The President of the Constitutional Assembly Justice Committee, Rebeca Delgado, noted that judicial elections were suggested in nearly every public forum held in advance of the constitutional drafting process. For that reason, she argued, parties advocating for judicial elections were simply obliging the demands of the Bolivian people.51 Likewise, though many advocates of judicial elections in Bolivia were politically liberal, National Convergence (CN), a prominent political force from the conservative end of the ideological spectrum, also supported judicial

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47. Shugerman, supra n. 10 at 113.
49. Smucker, supra n. 26 at 4-5.
elections. Further, several left and center-left parties, including the Socialist Party (PS) and the National Unity (UN), were explicitly against the direct election of judges. Additionally, the coalition of supporters of judicial elections represented a heterogeneous mix of constituencies including parties from the departmental autonomy movement, the student-led AyRA Movement, evangelical Christians and regionally concentrated pro-indigenous parties.

There is some evidence that parties' support for judicial elections was divided along pro- or anti-"systemic" lines. Though historically strong parties have splintered in recent years, groups with roots in the traditional party system were some of the most vocal opponents to the move to judicial elections. Most, though not all, of the advocates of judicial elections were parties who were relative newcomers to the national political scene. Much like the advocates in the American states, these newcomers faulted the traditional parties as the root of the nation's problems, and there was broad agreement that partisan influence ought to be extricated from the judicial selection process. Indeed, there was a large consensus of parties across the ideological spectrum that the judicial system was in a state of crisis that required constitutional reforms. In this sense, disagreement did not stem from whether the system should be reformed, but rather how institutional changes ought to take place.

**Normative Arguments**

A fourth commonality between the adoption of judicial elections in the United States and Bolivia is the consistency between the arguments made by both advocates and opponents of these institutions. In the United States, proponents of judicial elections emphasized a need to limit legislative influence on judicial decisions and to cut the ties between judges and their legislative political principals. By making judges dependent upon elections, delegates argued, they could increase judicial independence from the legislature while encouraging judges to heed the will of the people. For example, Samuel Smucker, a Philadelphia lawyer, argued that "[t]he selection of the judges, when chosen by the people, will be accomplished with less mercenary motive and influence on the part of the electors themselves, than is the case under the present system of appointment by the Governor." Likewise, one delegate to the Illinois convention said that he "would rather see judges the weather-cocks of public sentiment" than see them 'the instruments of power, ... registering the mandates of the Legislature and the edicts of the governor.'

Advocates of the Bolivian elections described the direct election of judges as the only means through which the corrupt practices of the old party guard would finally be put to an end. Constitutional scholar Chivi Vargas describes the singular reason why the constituent assembly arrived at its decision: quite simply, there was "no other way. The only way to end party cronynism and patronage appointments once and for all was the direct designation of judges by direct and universal popular vote." As the head of the MAS delegation tasked with writing the section of the constitution would later claim, judicial legitimacy and independence would hang on popular sovereignty expressed in the electoral process: "The greater the popular sovereignty in the direction of judges, the greater the independence, quality and impartiality in the administration of justice."

Opponents of judicial elections in the United States suggested that elections would sacrifice judicial autonomy and expertise. Smucker, the Pennsylvania lawyer, describes the argument like this: "Able lawyers, such as would make good judges, have a lucrative practice, and would not resign it for the humbler compensation of the bench. The people will then be compelled to choose inferior lawyers, briefless and clientless hangers-on of the courts, the worthless drones of the profession." Moreover, opponents argued that the direct election of judges would politicize the courts and thereby decrease the legitimacy of the judiciary. For example, in an 1846 article, Joshua M. Van Cott, a New York attorney, argued that "electing [judges] would bring them into too close contact with party excitement and excesses, and tend to impair their purity and impartiality... [I]f it did not in fact make judges partial and corrupt, [it] would destroy the confidence universally reposed by the people in the courts and in the pure and impartial administration of the laws." Opponents of the Bolivian elections echoed these concerns. Critics feared that the political nature of campaigns and direct elections would further politicize judicial selection processes and exacerbate tensions that were present under traditional party rule. Even if partisanship and overt campaigning was prohibited or strictly regulated, they argued, elections would be inherently political. As one Bolivian constitutional scholar later noted: "...parties' interests in occupying judicial posts is unavoidable because
of the relevance of those positions for the administration of power.... [Those in power] will surely coopt—albeit subtly—judicial candidates who will later be under their sphere of influence. For that reason, we consider that the remedy is worse than the disease."59 As former Bolivian president and former president of the Bolivian Supreme Court Eduardo Rodríguez Veltzé argues, the direct election of judges "converts judges into political representatives. In practice, judges should not represent anyone but ought to resolve cases in accordance with law, not with reference of the opinion of those that elect her."60

Though advocates of elections suggested the direct election of judges would imbue courts with an independent base of institutional legitimacy, opponents questioned this logic. Instead, critics would contend that courts’ institutional legitimacy is founded on procedural fairness, impartiality and judge professionalism, not judges’ “electoral connection” to the public. For example, Veltzé argues: “The legitimacy that is derived from good performance within the judicial profession is more important than the legitimacy that stems from ones’ origin of mandate and it is the legitimacy derived from good performance from which true judicial independence is derived.”61 From this vantage, judges’ apoliticalism and adherence to neutral procedures is a foundation by which the judiciary can ensure its role in the broader system of governance because of the unique role to which judges are assigned: to interpret legal doctrine and to impartially apply the law.

A Difference
Of course, while they are similar in many respects, the U.S. and Bolivian cases are not identical. The most notable difference between the two cases lies in the level of support that the adoption of judicial elections received from the legal community. While lawyers in the United States were, on the whole, supportive of the adoption of judicial elections, their Bolivian counterparts were vehemently and publicly opposed to the switch.

One prominent theme of the genesis of judicial elections in the United States posits that elections were adopted because of a desire to elevate the status of the legal profession and were, therefore, supported overwhelmingly by the legal profession. While historians debate the extent to which this desire is a leading cause of the U.S.’s adoption of judicial elections, they have amassed a variety of evidence that the legal profession was actively involved in the adoption of judicial elections, and the legal community typically supported the reforms.62

In particular, Kermit Hall notes that lawyer-delegates played a large role in the drafting of new state constitutions, always controlled the committees that drafted the provisions for the judiciary and typically dominated discussions of the issue.63 The dynamic was much different in Bolivia, where the legal profession actively lobbied against judicial elections. The national lawyers’ and magistrates’ associations spoke out repeatedly against the direct election of jurists throughout the constitution writing process and would continue to do so in advance of the elections.64 Prominent jurists and legal scholars decried the direct
election of jurists as a governmental ploy to undermine the separation of powers and stack the bench with pro-MAS affiliates. In protest, many noted legal professionals refused to advance their candidacy for the judicial positions. Ultimately, though attempts were made to render the candidate preselection process more transparent and meritocratic, the nomination process was reportedly negotiated behind closed doors, and many candidates were identified for their direct affiliations with the MAS as party organizers, legislative aides or legal advisors.

Conclusion
We have identified several commonalities between the adoption of judicial elections in the U.S. states in the mid-1800s and the adoption of Bolivian elections in 2009. While our cases were not randomly chosen and our analysis too narrow to definitively attribute causality, we argue that the commonalities we identify between these two cases are striking in light of the differences in time, history and political circumstances. More importantly, our comparative analysis allows the assessment of theories developed in the U.S. as they apply outside of the U.S. context. We hope future research will build on our efforts here to further identify facilitating conditions for this type of reform, or to better delineate the scope of our theory.

This comparative research design also points to larger questions regarding the political consequences of these elections for the Bolivian judicial system, the MAS leadership or Bolivian democracy more generally. Indeed, when considering the adoption of judicial elections in the American states, many reformers argued that "[e]lections mattered most not because of whom the voters chose... but because of the influences that the elections themselves created." A growing body of empirical scholarship has addressed these influences in the American case, which in turn points to fruitful opportunities for future research on the Bolivian experience.

For example, opponents of judicial elections in both countries have repeatedly argued that a change in judicial selection procedures has the potential to turn judges into political representatives who are both held accountable to the public directly for their decisions but are also motivated to appeal to public sentiment to obtain or keep their positions. In the U.S., empirical scholarship has supported this claim, suggesting that elected judges are more likely to follow public opinion in their decisions. Paradoxically perhaps, this tendency appears to be most pronounced when judges face non-partisan elections like those used in Bolivia. Future scholarship on the Bolivian judiciary should assess the tendencies the Bolivian courts to be congruent with public opinion before and after the adoption of judicial elections.

Second, future research ought to assess the consequences of judicial elections on the legitimacy of the Bolivian judiciary. As discussed above, the institutional legitimacy of courts was an object of discussion for both advocates and opponents of judicial elections, but the impact of judicial elections on public esteem for courts remains an empirical question. However, research on the U.S. states suggests that judicial elections may enhance the legitimacy of the judiciary, lending preliminary credence to advocates' position. Public opinion polls conducted several months following the elections revealed that Bolivians remained divided on the legitimacy of the 2011 electoral contest itself: on the eve of the new Judicial Year, 47 percent of respondents reported that they did not think the elected officials ought to assume their elected positions. On the other hand, more than half of all respondents were in favor of direct judicial elections as a preferred method of selecting high court judges. By understanding how the Bolivian experience both mirrors and diverges from the American case, we may build a better understanding of how these institutions affect law and politics both in the U.S. and abroad.

AMANDA DRISCOLL
is Assistant Professor in the Department of Political Science at Florida State University. (adriscoll@fsu.edu)

MICHAEL J. NELSON
is Ph.D. Candidate in the Department of Political Science at Washington University in St. Louis. (mjnelson@wustl.edu)