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Argentina's Abandonment of the Rule of Law and Its Aftermath

Andrés A. Gallo
Lee J. Alston *

INTRODUCTION

After the impeachment of four out of five Supreme Court justices in 1947¹ and the subsequent new constitution in 1949, Argentina has never been able to return to cultivating a belief in a system of checks and balances. Beliefs in the legitimacy of the system matter in order to prevent short-run opportunistic behavior. The impeachment of the Court could be viewed as the culmination of the departure from the road toward a true system of checks and balances that was started by the coup of 1930 but burrowed into the beliefs of constituents with the decade of fraud during the 1930s.²

The legacy of President Peron is one of political instability, which in turn generated sudden changes in economic policies and institutions. Successive military and civilian governments appointed their own Supreme Court justices in order to accomplish their political goals.³ The military government in 1955 removed all the

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1. See *infra* note 153; N. GUILLERMO MOLLINELI, M. VALERIA PALANZA & GISELLA SIN, CONGRESO, PRESIDENCIA Y JUSTICIA EN ARGENTINA: MATERIALES PARA SU ESTUDIO (1999).

2. Lee J. Alston & Andrés A. Gallo, *Electoral Fraud, the Rise of Peron and Demise of Checks and Balances in Argentina* (Sept. 2007) (working paper, on file with author).

3. See *infra* note 153 and accompanying text.

justices of the Supreme Court and nullified the Peronist constitutional reform of 1949 by a simple Decree.⁴ In 1958 the new Democratic President replaced most of the justices of the Court and introduced two new justices; successive governments frequently either forced judges to resign or impeached them.⁵ Though the Supreme Court is not held in high regard, each government has believed that the Court poses some obstacle to their goals or they would not bother to change the composition of the Court.

In this Article we show how, in the last sixty years, political and economic instability in Argentina have been accompanied by judicial instability. As a consequence, Argentina lacks adherence to the rule of law with deleterious effects on domestic business and foreign investment. We contend that in order to reach sustainable growth, Argentina has to solve this institutional problem. Otherwise, economic growth can surge in the short run but it will be unsustainable in the long run.

JUDICIAL AND ECONOMIC INSTABILITY-MACROECONOMIC INDICATORS

Argentina showed stability in the judiciary, from the implementation of the Supreme Court in 1863 to the first impeachment of Supreme Court justices in 1946.⁶ Afterwards, both military and civil governments removed Supreme Court justices.⁷ Furthermore, the return of democracy in 1983 did not solve the problem, as the changes in the Supreme Court continued.⁸ As we show in this Article, the instability in the Supreme Court was closely related to political and economic instability, furthering the weakness in rule of law, key for investment. In Table I we show the changes in the Supreme Court justices before and after Peron's Presidency. Until Peron, no justices had been impeached or "forced" to resign.⁹

4. *See infra* note 153.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *See* Table I, *infra*. See Appendix A for a detailed administration by administration account.

Following Peron, only five of the sixty-five changes in justices have been due to death or retirement.¹⁰ Prior to Peron, governments appointed a new justice approximately every two years.¹¹ After Peron, governments appointed a new justice every eleven months.¹² An alternative measure of instability is tenure: pre-Peron tenure of justices was nearly ten years while in the post-Peron years tenure has fallen to approximately six years.¹³ Oscillations between military and democratic governments matched the instability of the Court.

TABLE I

Causes of Turnover of Justices in the Supreme Court (1863–2006)							
Years	No. of Changes	Death	Retirement	Resignations		Impeachment	Removal ⁽¹⁾
				Involuntary	Voluntary		
1863–1945	38	20	12		6		
1946–2006	65	4	1	20	18	4	17

⁽¹⁾ Removed by military governments.

The fluctuations in the Supreme Court have been mirrored by changes in the executive power.¹⁴ After 1946, almost every change in government implied changes in Supreme Court composition.¹⁵ There is an almost perfect correlation between duration of the executive power and the Supreme Court justices' tenure.¹⁶ After the re-installation of democracy in 1983, the duration of the political regime increased but changes in the democratic government produced changes in the Supreme Court.¹⁷ It is interesting to note that the only president who tried to govern without changing the Supreme Court (De La Rúa, 1999–2001) could not finish his term and had to resign under strong political pressure.¹⁸ This implies that, even though politically the country has stayed democratic, checks and balances

10. *See infra* note 153.

11. MOLLINELI, PALANZA & SIN, *supra* note 1.

12. *Id.*

13. ARTURO PELLET LASTRA, *HISTORIA POLITICA DELA CORTE (1930–1990)* (2001).

14. *See* Figure I, *infra*. Own elaboration from Polity IV Project, <http://www.cidcm.umd.edu/polity/>; *see also* MOLLINELI, PALANZA & SIN, *supra* note 1.

15. MOLLINELI, PALANZA & SIN, *supra* note 1.

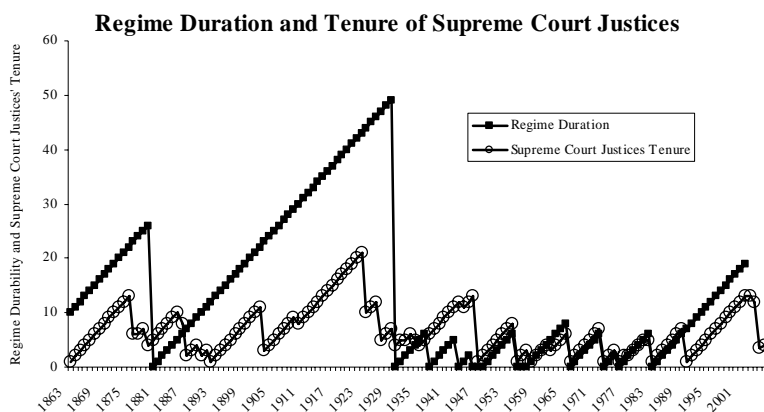
16. *Id.*

17. *See infra* note 153.

18. *Id.*

have continued to be unstable, with each president trying to control all three branches of government.

FIGURE I



The political and institutional instability has been closely related to abrupt changes in economic policy and the rules of the game. Before the 1940s, abrupt changes in nominal exchange rates followed international shocks and the government's response to those shocks.¹⁹ However, after 1940s, the biggest changes in exchange rates have been due to changes in government: the switching back and forth between military and civilian leadership.²⁰ The instability of exchange rate policy can be also related to the instability on other indicators of government policy as shown in Table II. Post-war monetary policy became more unstable, with higher rates of inflation, which eventually led to hyperinflation.²¹ As we show in the next section, governments were able to implement more aggressive

19. MARIE-ANGE VÉGAZONÈS & CARLOS WINOGRAD, ARGENTINA IN THE 20TH CENTURY: AN ACCOUNT OF LONG-AWAITED GROWTH, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, PARIS (1997).

20. *Id.*

21. See Table II, *infra*. Own calculations based on VÉGAZONÈS & WINOGRAD, *supra* note 19.

reforms and sudden changes in policies due to their broad control over the judiciary.

TABLE II

Policy Indicators: Argentina 1900–2004					
	Inflation	M3/GDP	(X+M)/GDP	Federal Deficit (% GDP) (*)	Foreign Direct Investment % GDP (**)
1900–1905	2.41	0.56	35.29		6.52
1906–1910	2.66	0.51	48.98	4.19	8.44
1911–1915	2.00	0.52	46.73	2.21	7.71
1916–1920	11.70	0.54	39.06	0.67	0.74
1921–1925	-6.23	0.60	39.00	1.51	1.84
1926–1930	-0.70	0.60	40.92	2.32	2.24
1931–1935	-3.86	0.59	30.19	2.94	1.20
1936–1940	3.01	0.48	27.89	4.34	0.99
1941–1945	5.55	0.42	15.54	9.77	0.55
1946–1950	19.86	0.45	18.09	7.05	0.09
1951–1955	18.14	0.32	12.39	6.02	0.40
1956–1960	38.25	0.23	12.71	4.97	
1961–1965	23.20	0.16	13.42	5.04	
1966–1970	19.33	0.18	12.60	2.62	
1971–1975	64.43	0.18	12.16	8.56	0.18
1976–1980	192.89	0.16	16.37	9.04	0.29
1981–1985	322.63	0.16	17.94	12.14	0.44
1986–1990	583.80	0.12	18.00	5.58	0.81
1991–1995	32.23	0.17	20.06	0.64	1.60
1996–2000	-0.10	0.30	22.98	1.68	4.05
2001–2004	12.06	0.28	21.80	3.80	0.89

Notes: (*) Does not include Public Companies

(**) 1900–1955 Venganzones and Winograd, 1997; 1971–2004 IMF International Financial Statistics.

The confidence of the public in the banking system also declined, as shown by the lower trending levels of M3/GDP after 1950.²² The

22. *Id.*

government ran higher budget deficits, which produced high levels of debt and long periods of default.²³ Finally, the economy became more closed to international trade and the level of foreign investment turned almost insignificant in terms of Gross Domestic Product (“GDP”).²⁴ One of the most used measures of property rights is the “monetary base,” which reflects the confidence of economic agents in the rule of law.²⁵ We use a wide measure of monetary base, M3, which includes certificates of deposit (“CDs”). CDs are important in Argentina, given the different schemes utilized by governments to solve banking problems.²⁶ After 1946 there is a very strong correlation between the median duration of the Supreme Court justices and the monetary base.²⁷ This correlation can be associated with problems of property rights enforcement due to the changes in the political and judicial systems.²⁸ A similar correlation can be observed with respect to the public deficit. A longer tenure of the Supreme Court justices is correlated with higher deficits.²⁹ The correlation arises because more confidence in the enforcement of property rights should increase confidence in the repayment of government debt, and encourage further financing.³⁰ However, changes in the judicial and political system reduced confidence and the government had to reduce the size of deficits.³¹

23. VÉGANZONÈS & WINOGRAD, *supra* note 19.

24. *Id.*

25. Leandro Prados de la Escosura & Isabel Sanz-Villarroya, *Institutional Instability And Growth In Argentina: A Long-Run View* (Economics History and Institutions Working Papers 04-67, Universidad Carlos III, Departamento de Historia Económica e Instituciones, 2004).

26. *Id.*

27. See Figure II, *infra*. Own elaboration based on VÉGANZONÈS & WINOGRAD, *supra* note 19.

28. VÉGANZONÈS & WINOGRAD, *supra* note 19.

29. See Figure III, *infra*. Own elaboration based on VÉGANZONÈS & WINOGRAD, *supra* note 19.

30. *Id.*

31. *Id.* Own calculation based on VÉGANZONÈS & WINOGRAD, *supra* note 19.

FIGURE II

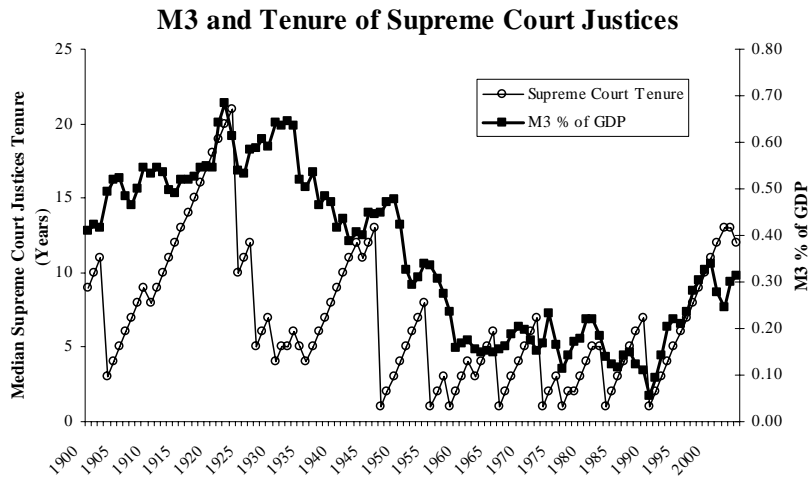
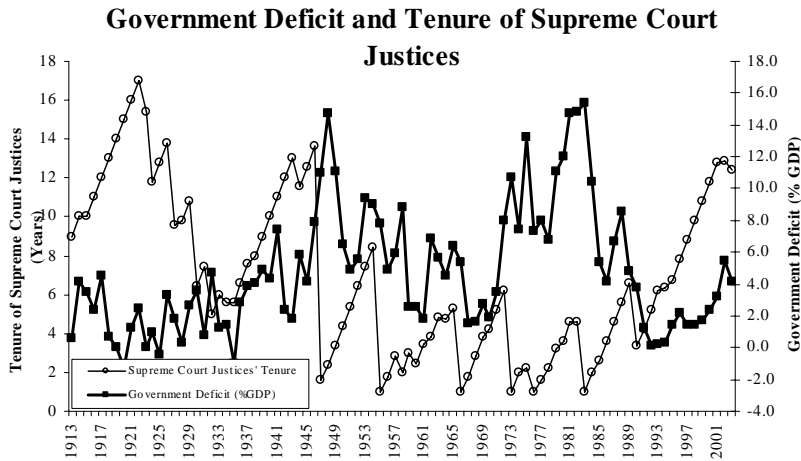
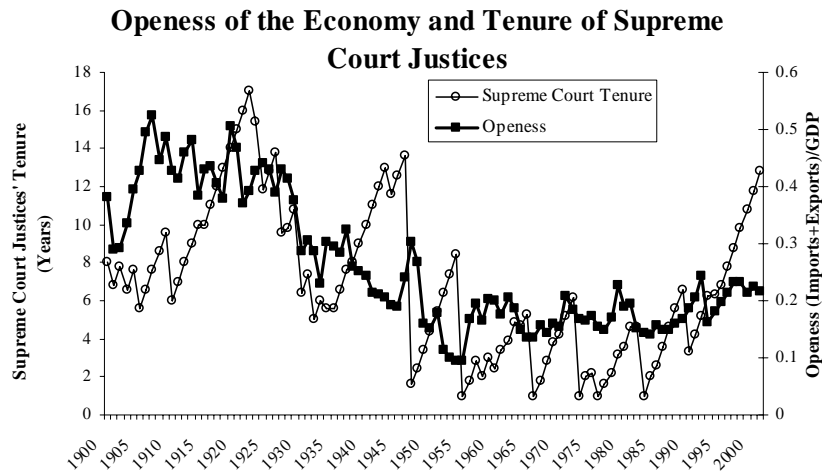


FIGURE III



Additional measures of economic performance that correlate with the tenure of Supreme Court justices are the openness of the economy and the real exchange rate.³² Both the openness of the economy and real exchange rates moved suddenly around the years when Argentina replaced Supreme Court justices.³³ This supports our contention that economic, political and judicial instability are closely related.

FIGURE IV

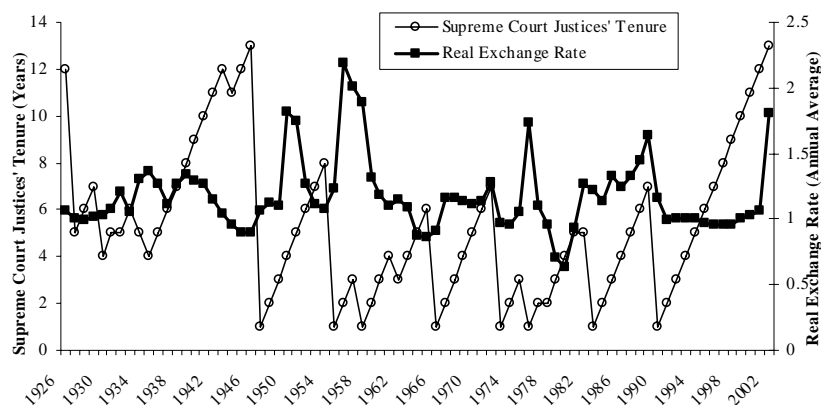


32. See Figures IV & V, *infra*. Own elaboration based on VÉGANZONÈS & WINOGRAD, *supra* note 19.

33. *Id.*

FIGURE V

Real Exchange Rate and Tenure of Supreme Court Justices

POLICY CHANGES IN THE ABSENCE OF AN EFFECTIVE
SUPREME COURT

When Peron won the election in 1946, he embarked on a campaign to solidify his political support and in so doing dramatically changed the political and economic institutions within which Argentina had prospered.³⁴ At the heart of his economic and political plan was an assault on the property rights of landowners in the Pampas, one of Argentina's regions.³⁵ His political support came from urban labor in Buenos Aires, rural tenants and labor in the Pampas, and small landholders in the smaller provinces outside the Pampas.³⁶ Support from the provinces outside of the Pampas was critical for Peron because these regions had influential Senators.³⁷

34. *Id.*

35. EL VOTO PERONISTA: ENSAYOS DE SOCIOLOGÍA ELECTORAL ARGENTINA (Manuel Mora y Araujo & Ignacio Lorente eds., 1980).

36. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 21. The support of urban labor for Peron is well documented and not controversial so we will not discuss it here.

37. *Id.*

Before Peron, the political representatives from these regions had voted with the Conservatives from the Pampas.³⁸ By the end of his first term, Peron, through persuasion and coercion, brought the various constituents together under the Peronist Party.³⁹

INSTITUTIONAL CHANGE IN THE OUTLYING PROVINCES⁴⁰

In order to capture the support of the small provinces, Peron relied on two institutional changes: the Co-Participation System and the Central Bank.⁴¹ Ironically, these changes had been introduced by the Conservatives during the Great Depression. The Co-Participation System authorized the federal government to use the tax base of the Provinces in return for a rebated share of the revenue raised.⁴² This gave the central government enormous leverage over the politicians in the provinces.⁴³ In addition, Peron used the Central Bank for political purposes. Essentially, he would “ask” the Central Bank to cover debts of provincial governments.⁴⁴

Peron initiated his own changes in governance as well as utilized extant institutions. He exercised control over labor through the

38. *Id.*

39. *Id.* at n.40. Fearing a jail sentence, some recalcitrant members of the Radical Party fled to Uruguay. Peron lured the rural Conservatives from the smaller provinces with transfers from the federal government as we discuss in the following section. In later elections, Peron engaged in extensive redistricting in order to increase the number of Peronists elected. *Id.*

40. For another discussion on how the institutions created or maintained by Peron played out in the latter half of the twentieth century, see Spiller, Pablo & Mariano Tommasi, *The Institutional Foundations of Public Policy: A Transactions Approach with application to Argentina*, 19 J.L. ECON. & ORG. 281 (2004).

41. The Conservative government created the Central Bank in 1935 as an instrument to better control the monetary policy during the Depression. On the importance of an independent bank in eventually leading to the privatization of provincial banks in the 1990s, see Lee J. Alston & Andrés A. Gallo, *The Political Economy of Bank Reform in Argentina Under Convertibility*, 5 J. POL'Y REFORM 1–16 (2002).

42. *Id.* at 4.

43. *Id.* Though the rebates back to the Provinces were not arbitrary, the Co-Participation system created a dependency relationship, and the provinces may have feared losing part of their rebate if they did not cooperate with the Central government. *Id.* at 9; see also Spiller & Tommasi, *supra* note 40, at 296 (stating that the relationship between the Central Government and the provinces in the second part of the twentieth century was determined by the dependency of the provinces on Central Government's revenue, and the Central Government's need for political support from the Provinces).

44. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 21.

provincial branches of the Secretary of Labor.⁴⁵ Peron created the branches when he was Secretary of Labor during the military government and expanded on their use.⁴⁶ Peron also nationalized many utilities, which he used for employment of loyal followers.⁴⁷

The use of these diverse instruments permitted the federal government to overcome political resistance from provincial governments to changes in the economic structure.⁴⁸ However, the use of them also increased the fiscal dependency of the provinces on federal government resources.⁴⁹

INSTITUTIONAL CHANGE IN THE PAMPAS

The main political enemy of Peron was the Conservative Party in the Pampas.⁵⁰ The leaders of the Conservative Party consisted of the big landowners (*estancieros*) and their allies, foreign capitalists.⁵¹ The Pampas was the fertile wheat and cattle-producing region and accounted for the majority of the country's exports.⁵² To work the land, the *estancieros* relied on tenants and sharecroppers.⁵³ Prior to Peron, the tenants, sharecroppers, and smallholders voted with the Radical Party.⁵⁴ Peron aimed to help the tenants (and thereby hurt the owners) through controlling rents and the prices of output.⁵⁵ Legislation helping tenants was not new: the Radicals in the Deputies Chambers passed two reforms in the 1920s, though the conservative

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 21.

51. *Id.*

52. *Id.*

53. *Id.*; see also Alan Taylor, *Latifundia as Malefactor in Economic Development? Scale, Tenancy, and Agriculture on the Pampas, 1880–1914* (NBER Working Paper Series on Historical Factors in the Long Run, Working Paper No. 96, 1997) (showing that the system of rent and sharecropping worked well).

54. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 22.

55. *Id.*; CARLOS F. DIAZ ALEJANDRO, *ESSAYS ON THE ECONOMIC HISTORY OF THE ARGENTINE REPUBLIC* (1970); MARIO J. LATTUADA, *LA POLITICA AGRARIAN PERONISTA 1943–1983* (Centro Editor de America Latina, Buenos Aires, 1986); ALICIA SANDOVAL, *LA REVOLUCION DE 1943: POLITICAS Y CONFLICTOS RURALES* (1988).

dominated Senate reduced the impact of the reforms.⁵⁶ Peron faced no such check on his power. It is important to note that Peron's legislation applied almost exclusively to the Pampas.⁵⁷ The legislation established local boards that controlled rents and prohibited evictions.⁵⁸ The government also controlled the price of wheat and cattle by establishing monopoly power over purchases.⁵⁹ After purchase, the government sold much of the wheat on the international market and used the surplus to finance public expenditures, to transfer funds to the smaller provinces in return for political support and some subsidies to industry.⁶⁰

Legislation of rural rents began with the military government. In 1943, the government fixed all rents to 1940 prices minus twenty percent, and declared all contracts extended until 1945.⁶¹ The decree contained this provision just for contracts in the Pampas region.⁶² The government renewed the rural rent controls in 1945, and then approved it by law in Congress in 1948.⁶³ As result, owners tried (partially successfully) to switch to cattle.⁶⁴ The result was a decline in cereal production and a bigger decline in investment in the Pampas.⁶⁵

Peron designed his policies in the Pampas not merely to punish his enemies and help his constituencies, but also to fund the overall institutional changes in the economy, such as the nationalization of most utilities and many industries.⁶⁶ With his allies in Congress, Peron had little difficulty in passing the legislation that proved so

56. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 22.

57. *Id.* From 1943 to 1946, the legislation of the Military government was limited to the Pampas. The law regulating rents in 1948 applied to the whole country, but it affected primarily the Pampas because of the high level of rent and sharecropping contracts. *Id.* at n.45.

58. *Id.* at 22.

59. *Id.*; Susana Novick, *IAPI: auge y decadencia* (Centro Editor de América Latina, Buenos Aires, 1986).

60. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 22.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*; Atilio Antonio Elizagaray, *The Political Economy of a Populist Government: Argentina 1943-55* (1985) (unpublished Ph.D. thesis), University of Illinois at Urbana Champaign (on file with author).

65. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 22; VÉGANZONÈS & WINOGRAD, *supra* note 19.

66. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 22.

punitive to the Pampas.⁶⁷ However, the actions taken surely represented a legislative “taking” which seems unconstitutional.⁶⁸ So the question is: where was the Supreme Court?

THE IMPEACHMENT OF THE SUPREME COURT

Ideally, a Supreme Court would be independent, representing the government's guarantee that the Constitution would be upheld.⁶⁹ Although it is questionable whether the Supreme Court was ever truly independent in Argentina, the Court did present a potential obstacle to Peron's attack on private property rights.⁷⁰

During the military government of 1943–46, the Supreme Court was the only standing check to the unfettered will of the executive power.⁷¹ The radical changes Peron introduced usually clashed with the Court, and the opposition relied on the Court as the protector of the Constitution and its rights.⁷² Given the departure of Peron's

67. *Id.*

68. *Id.*

69.

The Supreme Court's major contribution to the development of constitutional law arises from three simple propositions. First, all laws, decrees, administrative orders, and judicial decisions must obey the Constitution. Second, the judiciary is entrusted with guaranteeing the supremacy of the Constitution. So, third, the Court, as the final arbiter and custodian of the rights granted under the Constitution, is the place all turn to for definitive interpretations and applications of constitutional principles.

GERMÁN BIDART CAMPOS, *THE ARGENTINE SUPREME COURT: THE COURT OF CONSTITUTIONAL GUARANTEES* (1982).

70. Peron attacked not just the Supreme Court, but all sources of opposition to his policies. As a consequence, even if his government came to power through a democratic electoral process, his policies were far from being democratic, and resembled those of an authoritarian regime. EDUARDO CRAWLEY, *A HOUSE DIVIDED. ARGENTINA 1880–1980* (1984); CARLOS H. WAISMAN, *REVERSAL OF DEVELOPMENT IN ARGENTINA. POSTWAR COUNTERREVOLUTIONARY POLICIES AND THEIR STRUCTURAL CONSEQUENCES* (1987).

71. *See infra* note 153.

72.

The key to the problem is this. Since June 4, 1943 the country does not have a legislative branch to discuss the issues pertaining to Congress . . . currently these decisions come from the executive, created by the revolutionary movement, without any control except for the power of the Judiciary, whose pronouncements cannot be immediate because the Court depends on an interested party contesting the constitutionality of a Decree or law.

La Nación (Buenos Aires, Argentina), July 25, 1945.

policies from the Constitution, from 1943 to 1946, it was normal that the Peronist movement reviled the Supreme Court. As Pellet Lastra explains:

If the justices of the conservative Supreme Court would have limited their actions to the support of the military coup on June 7th of 1943 and maintained a neutral position with respect to the de facto presidential power, it is very possible that the history of the Supreme Court and the judicial system would have been very different from what it was. But Repetto and the other justices were not resigned to be complacent spectators of the maneuvers of the de facto governments . . . they had internalized the [R]epublican division of powers and the judicial independence, formally and de facto. Their convictions were liberal and individualistic, considering that everybody occupies their place in a natural and correct way.⁷³

Furthermore, the Radicals and Socialists ran the presidential campaign under the slogan that they wanted to go back to the Constitution, that is, to eliminate many of Peron's reforms.⁷⁴ As a result, public opinion was divided over the role and legitimacy of the Supreme Court. The opposition to Peron viewed the Supreme Court as the last resort to check unfettered power.⁷⁵ On the other hand, Peron's supporters saw the Supreme Court as an obstacle to reform.⁷⁶ Once Peron won the presidential election, the Supreme Court had to be purged in order for reforms to pass the constitutional test and to guarantee the support for further reforms. The Peronist coalition was formed by urban and rural workers, rural renters, and a branch of the Radical party, as well as some conservative parties in the interior of the country.⁷⁷ It is natural that the arguments to impeach the Court were based mainly on its resistance to workers' reforms and its support of the rampant fraud in the 1930s.⁷⁸ These arguments helped

73. LASTRA, *supra* note 13, at 108.

74. TULIO HALPERIN DONGHI, LA REPÚBLICA IMPOSIBLE (2004).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

bring together workers and their Radical allies to support the impeachment.

Shortly after being elected, Peron made it clear that he viewed the Supreme Court as illegitimate:

In my opinion, I put the spirit of justice above the Judicial Power, as this is the principal requirement for the future of the Nation. But I understand that justice, besides from being independent has to be effective, and it cannot be effective if its ideas and concepts are not with the public sentiment. Many praise the conservative sentiment of the Justices, believing that they defend traditional beliefs. I consider that a dangerous mistake, because it can put justice in opposition with the popular feeling, and because in the long run it produces a rusted organism. Justice, in its doctrines, has to be dynamic instead of static. Otherwise respectable popular yearnings are frustrated and the social development is delayed, producing severe damage to the working classes when these classes, which are naturally the less conservative, in the usual sense of the word, see the justice procedures closed they have no other choice than to put their faith in violence.⁷⁹

With this speech the battle line was drawn: Peron embarked on a mission to impeach any justices that did not toe the Peronist line. In July 1946, the Peronist Congressman Rodolfo Decker proposed the impeachment of all but one justice.⁸⁰ To a large extent, impeaching the Court matched the public sentiment of Peron's constituents who believed that the Court was, if not illegitimate, an obstacle to social policies.⁸¹ Following the impeachment, the Peronists began to craft a new Constitution which they submitted for approval in 1949.⁸² With a new Constitution in hand and without a backstop of an independent

79. Diario de Sesiones del Honorable Senado de la Nacion Constituido en tribunal, T. VI, at 89 (Dec. 5, 1946).

80. LASTRA, *supra* note 13.

81. In the U.S., following the election of President Franklin D. Roosevelt ("FDR") in 1932, many constituents viewed the decisions of the Supreme Court as an obstacle to achieving social and economic progress under FDR's New Deal proposals. Constituents in Argentina may have felt similarly, although the Argentine Supreme Court was never held in as high regard as its U.S. counterpart.

82. LASTRA, *supra* note 13.

judiciary, the Peronists were able to have their way until the next military coup in 1955.⁸³

THE AFTERMATH OF THE IMPEACHMENT

After the impeachment process and the new constitution, Argentina has never been able to return to cultivating a belief in a system of checks and balances. Beliefs in the legitimacy of the system matter in order to prevent short-run opportunistic behavior. The impeachment of the Court could be viewed as the culmination of the departure from the road toward a true system of checks and balances.

The legacy of Peron is one of political instability, which in turn generated sudden changes in economic policies and institutions. Successive military and civilian governments appointed their own Supreme Court justices in order to accomplish their political goals. However, without the Court as a backstop, institutional volatility ensued. In this section we show some of the policy changes implemented by governments that could have been challenged constitutionally.⁸⁴

BANKING AND MONEY

Banking is one of the most important economic sectors, given the relationship between the banking system and credit to the productive sector. The Central Bank was created in 1935 as an autonomous institution in charge of establishing monetary policy and regulating the banking sector.⁸⁵ In 1946 the Peronist government ended the

83. The U.S. confronted a similar turning point in its institutional history, but the electorate in 1896 came down on the side of maintaining the independence of the Supreme Court. In the election of 1896, the Supreme Court was under assault, but one of its Republican defenders presaged the future of Argentina: "There are two places in this country where all men are absolutely equal: One is the ballot-box and the other is the Supreme Court. Bryan [the Populist candidate] proposes to abolish the Supreme Court and make it the creature of the party caucus whenever a new Congress comes in . . ." Alan Furman Westin, *The Supreme Court, the Populist Movement and the Campaign of 1896*, 15 J. POL. 3, 37 (1953).

84. See Table III, *supra*. Own elaboration based on GRAHAM-YOOLL, *infra* note 93 and De Pablo, *infra* note 87.

85. CARLOS F. DIAZ ALEJANDRO, *ESSAYS ON THE ECONOMIC HISTORY OF THE ARGENTINE REPUBLIC* (1970).

autonomy of the Central Bank, which became a branch of the Ministry of Economy.⁸⁶ Furthermore, the government nationalized the banking system by forcing banks to give all deposits to the government, which would manage and allocate credit in the economy.⁸⁷ The military government that followed Peron tried to rescind these measures by allowing banks to give credit on their own and trying to re-instate the independence of the Central Bank.⁸⁸ However, because of the extensive use of monetary emission to cover fiscal deficits, the government failed to sustain the independence of the Central Bank, and relied on it to finance deficits.⁸⁹

Without the Central Bank having independence, Argentina experienced persistent, high inflation for decades.⁹⁰ Needing to monetize debt, President Illia⁹¹ further reduced the little independence of the Central Bank. After the intervening military government, the new Peron government (1973–75)⁹² re-nationalized banks and granted a tax amnesty.⁹³ The subsequent military government (1976–83)⁹⁴ pursued a financial deregulation that produced high speculation and a financial crisis that affected the banking system. In this case, the government bailed out the banking and financial sectors through public debt and inflation.

The high inflation in late 1980s also produced high speculation in the banking sector, which ended in the freezing of CDs in 1990 (Menem 1989–1999).⁹⁵ The Menem government froze the deposits in banks and offered government bonds to savers.⁹⁶ In the 1990s Menem's government tried to restore confidence in the banking

86. *Id.*

87. JUAN CARLOS DE PABLO, *LA ECONOMIA ARGENTINA EN LA SEGUNDA MITAD DEL SIGLO XX*. L.L. (2005).

88. *Id.*

89. *Id.*

90. *Id.*

91. See Table III, *supra*. Own elaboration based on GRAHAM-YOOLL, *supra* note 93 and De Pablo, *supra* note 87.

92. *Id.*

93. ANDREW GRAHAM-YOOLL, *TIEMPO DE TRAGEDIAS Y ESPERANZAS. CRONOLOGÍA HISTÓRICA 1955–2005* (2006).

94. See Table III, *supra*. Own elaboration based on GRAHAM-YOOLL, *supra* note 93 and De Pablo, *supra* note 87.

95. *Id.*

96. *Id.*

system by re-enacting the independence of the Central Bank and privatizing most of the national and provincial banks.⁹⁷ It also allowed foreign banks to participate in the market.⁹⁸ The crisis of late 2001, however, forced De La Rúa to freeze all bank deposits, as well as term, checking, and savings accounts.⁹⁹ Duhalde's government extended the freeze in early 2002 and confiscated all deposits.¹⁰⁰

Many banks went bankrupt and the government offered account holders government bonds or *pesos* in exchange for their accounts denominated in dollars. The Supreme Court threatened to declare unconstitutional the freezing of deposits.¹⁰¹ The threat by the Court led to the purging of the Court by Duhalde, completed by Kirchner.¹⁰² Once the Court was purged, its new members declared that the freeze on deposits was constitutional and proceeded to find a way to retribute money to account holders. The monetary experience of Argentina in the last decades shows a lack of secure property rights and legislation to protect people's savings from inflation and government takings.

FISCAL SITUATION AND DEBT

The structural changes introduced by the Peronist government in 1946–55,¹⁰³ provided more sources of revenue but also generated higher expenses, and increased the scope and intervention of the national government in the economy.¹⁰⁴ The government resorted to several sources of revenue to maintain a system of subsidies and intervention: increased taxes, monetary emission, revenue from state companies, the coparticipation law, and export taxes.¹⁰⁵ As a result of Peron's spending, deficits mounted and Argentina could not borrow

97. Alston & Gallo, *The Political Economy of Bank Reform*, *supra* note 41.

98. See Table III, *supra*. Own elaboration based on GRAHAM-YOOLL, *supra* note 93 and De Pablo, *supra* note 87.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. De Pablo, *supra* note 87.

105. DIAZ ALEJANDRO, *supra* note 85.

in the international market.¹⁰⁶ After the Peronist government was ousted, the military regime tried to undo some of the confiscatory and redistributive policies, but the high number of public employees, and the strength of public unions, did not allow a rationalization of the state bureaucracy and the scope of intervention. Argentina became part of the International Monetary Fund (“IMF”) in 1955, which allowed the country to resort once again to external financing.¹⁰⁷ However this proved difficult in future years when debt repayments became problematic.¹⁰⁸

The fiscal relationship between the national and provincial governments also oscillated following Peron who first intervened in the coparticipation law. In the late 1960s the military government changed the coparticipation law by decree, drastically reducing the percentage going to the provinces.¹⁰⁹ According to the Constitution, this can only be done through a special agreement among the provinces.¹¹⁰ As a result, the situation in the provinces worsened, and the government created the *Fonds de Aportes del Tesero Nacional a las Provincias* (the Fund for Contributions from the National Treasury to the Provinces, which we will refer to as the “ATN”), for discretionary transfers from the national government to the provinces, apart from the coparticipation funds.¹¹¹ This institutional change was quickly adopted by subsequent governments, becoming one of the most important instruments used by executive power to recompense or punish provincial governments.¹¹² Nonetheless, the constitutionality of that institutional change was never challenged in court, and successive governments used it as an accepted policy instrument.¹¹³

The availability of foreign financing in the 1970s generated high private and state debt.¹¹⁴ Due to the crisis in the early 1980s the

106. *Id.*

107. *Id.*

108. De Pablo, *supra* note 87.

109. *Id.*

110. BIDART CAMPOS, *supra* note 69.

111. GRAHAM-YOOL, *supra* note 93.

112. *Id.*

113. *Id.*

114. *Id.*

military government nationalized the private foreign debt, creating an unbearable weight for public accounts and forcing the country to default.¹¹⁵ This default lasted until 1990, when Argentina became part of the reorganization of Latin American debt known as the Brady Plan.¹¹⁶ However, new debt in the late 1990s produced a new default in 2002.¹¹⁷ In this case, the government forced bondholders to accept a cut of seventy-five percent of the nominal value of the debt.¹¹⁸ The default also affected private pension plans, which had to accept cuts close to one-third of the nominal value.¹¹⁹ This debt reduction represented the most significant default in sovereign debt in Argentine history. As in the case of monetary policy, the mismanagement of public debt and the successive defaults have undermined the credibility in the institutional foundations of the economy. Not surprisingly, the ability of the government to nullify contracts and eliminate any judicial resort for private investors promotes low investment and credibility.

PRICES AND LABOR MARKETS

The period after 1946 witnessed extensive government intervention in both prices and the labor market. The first Peronist government extended a freeze on rural rents and evictions, which was later reversed by the military government in 1955, but re-instated by other governments until its elimination in the 1960s.¹²⁰ Various governments also controlled urban rents, as well as other prices of mass consumption.¹²¹ As a result, government intervention in the goods and services markets continued and became the rule, rather than the exception, for future governments.¹²²

115. *Id.*

116. *Id.*

117. Werner Baer et al., *The Achievements and Failures of Argentina's Neo-Liberal Economic Policies*, 30 OXFORD DEV. STUD. 63, 63–85 (2002).

118. Andrés Gallo et al., *The Role of Political Institutions in the Resolution of Economic Crises: The Case of Argentina 2001–2005*, 34 OXFORD DEV. STUD. 193, 193–217 (2006).

119. *Id.*

120. Andrés Gallo, *The Political Economy of Argentine Development* (2003) (unpublished Ph.D. Dissertation, University of Illinois at Urbana-Champaign) (on file with author).

121. *Id.*

122. DIAZ ALEJANDRO, *supra* note 85.

Recently, President Kirchner's government has set the prices for numerous public services, most goods in the consumer basket, and beef and other exports, as well as established rent controls and the suspension of evictions. These actions create considerable uncertainty for investors, who cannot count on the government to maintain the contractual rules. For example, in the 1990s the contracts of privatized companies had a clause establishing that in case of devaluation, prices would move according to the price of the U.S. dollar or some other stipulated currency.¹²³

However, when the government faced a crisis in 2002, it set new prices and did not allow any adjustment even though many contracts were negotiated in U.S. dollars.¹²⁴ Instead, the government resorted to subsidies for companies close to the government to keep services running.¹²⁵ Nonetheless, most privatized companies stopped investments in new infrastructure, causing decay in the quality of the services offered.

In the case of the labor market, the first Peronist government clearly went against the Constitution when it decided to regulate labor conditions. According to the Constitution of 1853, labor conditions have to be regulated by the provinces.¹²⁶ However, the military government in 1943 to 1946 enacted regulations by decree, establishing national regulations for labor conditions.¹²⁷ This was one of the main issues that led to the impeachment of Supreme Court justices in 1946.¹²⁸ Furthermore, Peron created the *Aguinaldo*, which is an extra month of salary.¹²⁹ These changes, together with the creation of loyal unions, created a highly concentrated, statist system of setting salaries, determining wage increases, and regulating the labor market.

As a result, the economy moved to a cooperative system of bargaining between unions and firms though there were constitutional

123. Gallo et al., *supra* note 118.

124. *Id.*

125. *Id.*

126. CONST. ARG. of 1853.

127. Alston & Gallo, *Electoral Fraud*, *supra* note 2.

128. *Id.*

129. *Id.*

underpinnings.¹³⁰ Furthermore, labor regulations became a highly debated issue for every government, and the unions occupied an important position of power with respect to the national government and the provinces.

FOREIGN SECTOR AND INDUSTRY

Beginning with first Peron government and continuing until the present, governments have intervened extensively in foreign trade. The first Peronist government created IAPI (“*Instituto Argentino para la Promocion y el Intercambio*”), a national agency in charge of foreign trade.¹³¹ The IAPI set domestic crop and livestock prices and sold the products abroad at world prices.¹³² The government used the difference between what they paid farmers and what they received for the exports to subsidize a variety of government projects and promote industry.¹³³ As a result, there was a disincentive to invest in agriculture and other exporting sectors. Even though the military government after Peron eliminated the IAPI, successive governments resorted to different types of interventions in trade, including: exchange-rate controls, tariffs, taxes on exports, the prohibition of exporting, and the prohibition of certain imports.¹³⁴ These kinds of policies are a staple of current economic policy, with taxes on exports and prohibitions on certain exports, for example, beef, in order to keep prices low for consumers.¹³⁵

There was an emphasis to develop industry, but with strong state intervention through state companies, subsidies through the credit market, and subsidies from taxes on exports.¹³⁶ Nonetheless, there were successive changes in the way state companies operated, or the extent of foreign participation. For example, Frondizi’s government (1958–62) tried to increase oil production by contracting with United States companies, but the contracts were later nullified by Illia’s

130. *Id.*

131. NOVICK, *supra* note 59.

132. *Id.*

133. *Id.*

134. DIAZ ALEJANDRO, *supra* note 85.

135. DE PABLO, *supra* note 87.

136. DIAZ ALEJANDRO, *supra* note 85.

government.¹³⁷ By the 1980s the government realized that many state-owned companies were bankrupt and highly corrupt, and it decided to privatize many firms.¹³⁸ President Menem continued with this trend.¹³⁹ However, the way in which the government privatized, and the corruption in the process damaged the reputation of the privatization process.¹⁴⁰ President Duhalde and President Kirchner's governments have breached these contracts and, in some cases, re-nationalized the companies.¹⁴¹

CONSTITUTION AND POLITICS

The policy oscillations since the first Peron government put the Constitution under attack. The Peronist government in 1946 replaced the Constitution of 1853 with a new one in 1949.¹⁴² The Peronist Constitution lasted until 1955, when the new military government went back to the pre-Peron Constitution.¹⁴³ The military government proceeded to reform the Constitution in 1957, without allowing the Peronist party to participate.¹⁴⁴ However, the reforms were not as ambitious as the 1949 Constitution. The Constitution was reformed again in 1973 and 1994. In the last case, the main purpose of the reform was to allow the re-election of President Menem. The "reform" was reached through the infamous *Pacto de Olivos*, where Menem and former President Alfonsín agreed on the constitutional reform.

On the political side, the changes in the Supreme Court allowed governments to concentrate power and alienate, or eliminate, the opposition. The first Peronist government persecuted and incarcerated members of the opposition and controlled all three

137. EDUARDO CRAWLEY, *A HOUSE DIVIDED: ARGENTINA 1880–1980* (1984).

138. GRAHAM-YOOL, *supra* note 93.

139. *See* Table III *supra*. Own elaboration based on GRAHAM-YOOLL, *supra* note 93 and DE PABLO, *supra* note 87.

140. Roberto Pablo Saba & Luigi Manzetti, *Privatization in Argentina: The Implications for Corruption*, 25 CRIME, L. & SOC. CHANGE 353 (1997).

141. IMF, STAFF REPORT FOR THE 2005 ARTICLE IV CONSULTATION 27 (2005).

142. MARIO J. LATTUDADA, *LA POLITICA AGRARAIN PENNISTA 1943–1983* (I and II Centro Editor de America Latina, 1986).

143. LASTRA, *supra* note 13, at 192.

144. *Id.*

branches of power.¹⁴⁵ Afterwards, this has been the main goal of all governments.¹⁴⁶ The military governments in 1955 and 1962 virtually prohibited the Peronist party from participating in elections.¹⁴⁷ After the return to democracy, presidents have used decrees and declared the country under “Economic Emergency” in order to obtain permission from Congress to govern using decrees instead of laws.¹⁴⁸

Controlling the Supreme Court has played an important role in concentrating power in the executive and giving the President the flexibility to implement diverse policies. For example, in the 1990s, the Court allowed Menem to introduce sweeping reforms and privatize most state companies.¹⁴⁹ President De La Rúa did not attempt to change the Supreme Court, and governed with a weak Congress and strong opposition in the provinces.¹⁵⁰ Such weaknesses determined his quick demise. President Duhalde and President Kirchner have learned their history lessons and proceeded to control the Supreme Court, which quickly supported the freeze on bank deposits and the default, and tacitly supported increased government intervention and regulation of the economy.¹⁵¹ As a result, the key in Argentina for governing the country is based on the control of the Supreme Court and Congress, through agreements with the provinces. The only way to stay in power is through total power, though for all it is fleeting.

145. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 5.

146. *Id.*

147. GRAHAM-YOOL, *supra* note 93.

148. MOLLINELI, PALANZA & SIN, *supra* note 1.

149. See Table III *supra*. Own elaboration based on GRAHAM-YOOLL, *supra* note 93 and DE PABLO, *supra* note 87.

150. Gallo et al., *supra* note 118.

151. GRAHAM-YOOL, *supra* note 93.

TABLE III: ECONOMIC POLICY BY SECTOR

Government	Institutional Changes by Sectors				
	Banking and Money	Fiscal and Debt	Prices and Labor Market	Foreign Sector and Industry	Constitution, Politics
Peron 1946–1955	Eliminated independence of the Central Bank. Nationalization of Banking System (Government Controls all deposits).	Government uses monetary emission to finance public expenditures.	Labor law applied federally. Price and rent controls throughout the economy. Creation of Aguinaldo (13th wage payment).	IAPI controls foreign trade. Created public companies. (Telephone, Railroads, Water, etc)	Constitution of 1949 changed the political setup of the country. Total control of the three branches of government.
Military Regime 1955–1958	Re-instated independence of the Central Bank. Privatized bank deposits.		Elimination and posterior re-enactment of price controls. Rent controls in agriculture and urban sectors extended.	Elimination of IAPI. Creation of a National Railroad Company.	Elimination of Constitutional Reform of 1949. New Constitutional reform without allowing the Peronist party to participate. Political persecution of Peronist officials and execution of military who tried to pursue a military pro-Peron coup.
Frondizi 1958–1962			Price controls throughout the economy. Evictions are suspended. Rent controls extended.	Law against economic speculation. Nationalization of oil and some electric companies. Law allowing foreign investment (Oil).	Opening of political system. Amnesty to Peronist leaders. Peronist party allowed to compete in elections. Increase number of Supreme Court Justices to seven.

Government	Institutional Changes by Sectors				
	Banking and Money	Fiscal and Debt	Prices and Labor Market	Foreign Sector and Industry	Constitution, Politics
Military Regime 1962–1963				Amnesty to Argentines who bring capital from abroad.	Eliminates participation of Peronist party. Fight between two sides of the military (Blues and Red).
Illia 1963–1966	Reforms to the Central Bank.		Declared economic emergency for one year. Exchange rate and price controls. Rent controls continue. Price controls for medicinal drugs.	Cancelled oil contracts with American companies. Prohibition on imports of “luxury” goods. Limits to export of beef.	
Military Regime 1966–1973		Creation of ATN (Discretionary Transfer to Provincial Governments) besides the Coparticipation law.	Price and controls. Wages are frozen. Government authorizes evictions.	Limits to consumption of beef. Exchange rate is freed. New amnesty to Argentines who bring capital from abroad. Law of buying national products.	Censorship of media. Control over universities. Supreme Court Justice is named Ministry of Interior.
Peron-Peron 1973–1975	Re-nationalization of banks and tax amnesty. Nationalization of bank deposits.	Expropriation of foreign bonds.	Increase in wages. Price controls. Increase in tariffs of public services. Suspension of evictions.	Suspension of some exports. Law of amnesty for Argentines bringing capital from abroad.	Control over Universities. Elimination of some foreign media services (AP and UPI). Law restituting properties to Peron.

Government	Institutional Changes by Sectors				
	Banking and Money	Fiscal and Debt	Prices and Labor Market	Foreign Sector and Industry	Constitution, Politics
Alfonsín 1983–1989		Use of ATN.	Price Controls. Wage Freeze.	Exchange rate controls.	
Menem 1989–1999	Froze CDs in banks (1990) and forced exchanging them for government bonds.	Changes to the Coparticipation law through special agreements with the provinces based on economic emergency arguments. Use of ATN. Constitution of 1994 established that a new Coparticipation law should be in place by 1996. Never passed.	Price liberalization and de-regulation of the economy.	Privatization of public companies by decree and lack of transparency. Deregulation of the economy by decree. Governed by decree instead of by Congress, using the argument of economic emergency.	Increased number of Supreme Court Justices from five to nine
De la Rúa 1999–2001	Provincial governments issued their own currencies (14 different currencies).			State of Economic Emergency gave special powers to the government.	
Transition Presidents and Duhalde 2002–2003	Expropriation of Deposits in Banks. Transformation of Loans in Dollars to Pesos.	Default of foreign debt.	Suspension of Evictions. Suspension of privatization contracts. Price controls.	Special Tax on Exports (20% gross receipts).	Forced resignation of one Supreme Court Justice.
Kirchner 2003–2008		Foreign investors got a reduction of 75% in the nominal value of defaulted bonds. Pension funds received a large cut.	Continued with suspension of evictions. Price controls. Prohibition of some exports.	Subsidies to public services. Re-nationalization of some privatized companies. Prohibition of beef exports.	Impeachment and forced resignation of four Supreme Court Justices. Eliminated automatic majority.

CONCLUSIONS

Institutions are important for economic growth. An adequate system of rule of law is one of the most important requirements for investment and long term growth. Checks and balances in the political system, especially an independent judiciary, help to limit the ability of governments to expropriate private investments. In the case of Argentina, Peron's government introduced changes that suppressed judicial independence and set in motion a cycle of continuous changes in the judicial system. After Peron all but one government impeached, forced resignations, or added Supreme Court justices.¹⁵² As we showed, judicial instability has been closely related to political and economic instability, creating an uncertain environment for investment. Furthermore, even though the country returned to democracy for over twenty years, judicial instability remains ingrained in the political system and undermines the institutional framework for economic growth.¹⁵³

152. Alston & Gallo, *Electoral Fraud*, *supra* note 2, at 23–24.

153. N. GUILLERMO MOLLINELI, M. VALERIA PALANZA & GISELLA SIN, CONGRESO, PRESIDENCIA Y JUSTICIA EN ARGENTINA: MATERIALES PARA SU ESTUDIO. CEDI-FUNDACIÓN GOBIERNO Y SOCIEDAD (1999).

APPENDIX A
SUPREME COURT JUDGES' TENURE

Year	Change	President	Political Regime
1863	The Supreme Court is formed.	Bartolome Mitre (Liberal)	Limited Democracy
1864–1916	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Sarmiento (Independent) Avellaneda (1874–80) (Nacional) Roca (1880–86) (PAN) J. Celman (1886–90) (PAN) Pellegrini (1890–92) (PAN) L.S.Peña (1892–95) (Independent) Uriburu (1895–98) (PAN) Roca (1898–1904) (PAN) Quintana (1904–06) (PAN) F. Alcorta (1906–10) (PAN) R.S.Peña (1910–14) (Independent) De La Plaza (1914–16) (Conservative)	Limited Democracy
1916–30	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Yrigoyen (1916–22) (UCR) Alvear (1922–28) (UCR) Yrygoyen (1928–30) (UCR)	Democracy
1930–32	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Uriburu (1930–32)	Military Government
1932–43	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Justo (1932–38) (Independent) Ortiz (1938–42) (UCR) Antipersonalista Castillo (1942–43) (Conservative)	Limited Democracy
1943–46	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Ramirez (1943–44) Farrel (1944–46)	Military Government
1946–55	Impeachment of four of the five Supreme Court justices.	Peron (1946–52) (Peronist) Peron (1952–55) (Peronist)	Democracy
1955–58	The military government forces resignation of the entire Supreme Court.	Lonardi (1955) Aramburu (1955–58)	Military Government
1958–62	The new constitutional government forces some resignations and added two new justices.	Fronzizi (1958–62) (UCRI)	Limited Democracy (Peronist Party is banned from elections)
1962–66	Changes in justices accounted for by death, retirement (old age) or voluntary resignation.	Guido (1962–63) (UCRI) Illia (1963–66) (UCRP)	Military Coup (Guido), and limited democracy (Illia)

Year	Change	President	Political Regime
1966–73	Military government forced resignations of all justices. It reduced the number of justices to five and made the appointments.	Onganía (1966–70) Levingston (1970–71) Lanusse (1971–73)	Military Government
1973–76	The new constitutional government replaces all the five justices.	Campora (1973) (Justicialista) Lastiri (1973) (Justicialista) Peron (1973–74) (Justicialista) Martinez (1974–76) (Justicialista)	Democracy
1976–83	The military government replaces all five justices.	Videla (1976–81) Viola (1981) Galtieri (1981–83) Bignone (1983)	Military Government
1983–89	The new democratic government replaces all five justices.	Alfonsín (1983–89) (UCR)	Democracy
1989–2001	In 1990 President Menem added four new justices to the Supreme Court in order to get a favorable majority.	Menem (1989–95) (Justicialista) Menem (1995–99) (Justicialista) De La Rúa (1999–2001) (UCR)	Democracy
2001–2003	Congress started impeachment to the justices that named Menem. Duhalde forced resignation of one justice.	Primero Dec 21–Dec 23 2001 (Justicialista) Rodríguez Saa Dec 23–Dec 31 (Justicialista) Segundo Jan 1–Jan 2 2002 (Justicialista) Duhalde Jan 2002–June 2003 (Justicialista).	De La Rúa ousted, 4 Presidents in 14 days. Duhalde provisional President
2003–	Congress continued with impeachment. One justice impeached, other three forced to resign.	Kirchner (2003–) (Justicialista)	