JUDICIAL REFORM IN ARGENTINA IN THE 1990s:
How Electoral Incentives Shape Institutional Change

Jodi Finkel
Loyola Marymount University
Received 8–26–2003; R&R 11–10–2003;
Received Revised 1–12–2004; Accepted 1–16–2004

Abstract: Judicial reform presents a paradox: why would a ruling party agree to judicial reforms that limit its own political power? In the Argentine case, I argue that although the ruling Peronist party could be induced in 1994 to initiate *reforms (introduce constitutional revisions to strengthen the judiciary), the party then proved unwilling to accept the costs of an independent judiciary and failed to* implement *these changes (via enactment of congressional legislation). Only once the Peronists believed that they were unlikely to maintain political power did they implement the revised constitution's judicial advancements. Implementation of judicial reform in such a situation may serve the ruling party as an "insurance policy" in which a stronger judicial branch reduces the risks the ruling party faces should it become the opposition. My research suggests that the likelihood of implementation, the crucial determinant of judicial reform, increases as the ruling party's probability of reelection declines.*

Argentina's 1994 judicial reform, included as part of a larger package of constitutional reforms, was a negotiated deal between the country's two most important political parties, the Peronists and the Radicals. In exchange for the right to reelection, Argentina's Peronist president Carlos Menem agreed to Radical Party demands to swap the "ownership" of the Argentine Supreme Court (which Menem had packed four years earlier) and to establish an independent National Judicial Council to select all lower-level federal judges. However, after Menem's successful reelection bid in 1995, the president failed to recompose the Court and used his control of Congress to delay the creation of the Council. It was not until it appeared that the Peronists would lose control of the presidency in 1999 that the president finally relinquished control over the judicial branch.

Judicial reform presents a paradox: why would a ruling party agree to institutional reforms that limit their own political power? In the

Latin American Research Review, Vol. 39, No. 3, October 2004
© 2004 by the University of Texas Press, P.O. Box 7819, Austin, TX 78713-7819

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

Argentine case I argue that although the ruling party could be induced to *initiate* reforms (introduce constitutional revisions to strengthen the judiciary), they then proved unwilling to accept the costs of an independent judiciary and failed to follow through with the *implementation* of these constitutional changes (via the passage of required congressional legislation). Only once the Peronists believed that they were unlikely to maintain their position of political dominance did they implement the judicial advancements of the revised constitution. Implementation of judicial reform in such a situation may serve the ruling party as an "insurance policy" in which a stronger judicial branch reduces the risks the ruling party faces should it become the opposition. An empowered judiciary may check the capacity of incoming politicians to change the rules of the game in ways that would harm the outgoing ruling party. The Argentine case suggests that the likelihood of implementation, the crucial element of judicial reform, increases as the ruling party's probability of reelection declines.

Judicial reform has become a buzzword in Latin America in the last decade. The development of independent judiciaries, the primary guardians of the rule of law, is integral to the protection of individual rights and to the consolidation of the region's new democracies. Scholarly attention has focused on definitions of judicial independence (Russell and O'Brien 2001), on the judiciary and democratization (Stotzky 1993; Schedler, Diamond, and Plattner 1999), on inputs and outputs to measure reform (Prillaman, 2000), and on detailed country studies (Hammergren 1998; Finkel, 2003). As for research on the Argentine judiciary, Gretchen Helmke demonstrates that antigovernment rulings cluster at the end of weak governments, both democratic and nondemocratic (2002); Matías Iaryczower, Pablo Spiller, and Mariano Tommasi show that judicial independence cannot be measured by judicial reversal of government decisions alone (2002); and Rebecca Bill-Chavez argues that divided government is key for the development of judicial autonomy (2003). We are deepening our knowledge of the Latin American judiciary, but the question of when do politicians take actions to promote the development of more powerful judicial branches remains understudied. My research contributes to this dialogue by disaggregating the constitutional adoption of judicial advancement from its legislative enactment and by highlighting the conditions under which proclaimed judicial independence will be converted, via implementation, into real judicial oversight.

This paper proceeds in six sections. The first discusses Latin America's recent judicial reforms and outlines two stages. The second presents my argument for understanding judicial reform outcomes. The third section discusses the Argentine judiciary and 1994 constitutional changes. The fourth and fifth detail the initiation and implementation phases of

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

Argentina's reform, respectively. The sixth section uses my argument to explain Argentina's experience with judicial reform. In addition, it briefly demonstrates Peru's similar 1990s pattern of delayed implementation of judicial reform. Finally, I conclude by suggesting strategies for attaining meaningful judicial reform in other developing countries.

LATIN AMERICA'S JUDICIAL REFORMS: INITIATION AND IMPLEMENTATION

Upon independence in the early nineteenth century, Latin American countries established presidential democracies that granted formal independence to the courts. However, the judiciary in the region remained the weakest branch and historically has been unable to uphold the rule of law or prevent the unconstitutional exercise of political power. In the late twentieth century, many nascent Latin American democracies, with the stated intent of increasing judicial power, engaged in dramatic constitutional reforms. In general, these reform packages affected the Supreme Court (and constitutional court where it existed), the selection of judges, and judicial administration. With respect to supreme-court changes, judicial reforms altered the selection process of justices, the composition of the high court's membership (either by adding members or by a total replacement of justices), and its powers of judicial review. The reforms established more rigorous credentials for justices and required two-thirds senate approval, rather than a simple majority, to confirm presidential nominees.

As for changes to lower-level judicial selection and administration, national judicial councils were established throughout the region.[1] Even though these councils vary with respect to their specific functions, most are charged with the selection, discipline, and removal of judges below the supreme-court level, with control over the judicial budget, and with professionalization of the judicial career track. Taken together, these supreme-court and lower-level institutional changes are intended to decrease executive influence and increase the quality of judicial rulings and the efficiency of the judicial branch.

In addition to this "recipe" for institutional changes, Latin America's recent judicial reforms were also similar in that they encompassed two distinct phases: initiation and implementation. Initiation can be viewed as a "proclamation period" in which coming judicial changes are formally announced via the rewriting of the national constitution. Implementation entails the passage of congressional legislation that translates abstract constitutional concepts into concrete structures. Thus, although the promulgation of constitutional changes may declare profound insti-

1. Examples include Colombia (1991), Ecuador (1992), Paraguay (1992), and Mexico (1994).

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

tutional changes and elegant new principles, these remain in limbo until the passage of the implementing legislation. It is the vigor and timing of the latter that is crucial in determining the independence and authority of the restructured judicial branch.

As I demonstrate below, understanding the two phases, and their distinct costs and benefits, is necessary to understand Argentina's judicial reform.

A THEORY TO EXPLAIN VARIATIONS IN JUDICIAL REFORM OUTCOMES

The recent global wave of democratic transitions has focused attention on the importance of institutions and how these "rules of the game" establish opportunities for, and place constraints upon, political leaders. Conventional political logic holds that political actors should be expected to take action that increases their political power and their chances to maintain it (Ames 1987; Geddes 1995). Furthermore, those who possess the power to restructure political institutions will seek to do so if this will enable them to replace existing institutions with those that better serve their interests (North 1990).

Given that political leaders prefer to minimize constraints upon their exercise of power, ruling parties should not be expected to willfully enact reforms that increase the judiciary's potential to limit government authority. However, the establishment of a judiciary with the power to constrain the ruling party—the cost of judicial reform—only takes effect after implementation. As detailed below, this has meant that the initiation of judicial reform is easy to achieve, but that implementation is likely to occur under a much more stringent set of conditions.

Beginning with initiation, the promulgation of constitutional revisions increasing judicial power has two primary benefits for a ruling party: those received in exchange for satisfying the demands of international financial institutions (IFIs) and those received by using judicial reform as a "bargaining chip" in a political trade.[2] With respect to the former,

2. Besides the major payoffs, other benefits from initiation may include increases in private investment, a positive international image, and favorable domestic public opinion. However, the payoff from these rewards is minimized as their value is less certain and because they have less effect on short-term political survival. For example, by bolstering investor confidence, judicial reform could lead to increased private investment. Yet, investment levels might not be affected in the current period as it will take time for investors to develop trust in the newly reformed judiciary. Second, although initiation could be used to curry favor with international human rights groups or foreign governments, this may not lead to tangible benefits for the ruling party. Third, judicial reform could be a way for a party to sell itself as the party of the "rule of law," but it is unclear how strongly this will affect levels of support as voters have been hesitant to accept these reforms at face value.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

the initiation of judicial reform allows a government to demonstrate progress on IFI-sponsored structural adjustment programs. In consequence, the initiating country is awarded a "stamp of approval," facilitating economic inflows from international agencies.

The second set of benefits comes from the use of judicial reform in political trades. This is because constitutional changes often require the approval of at least two-thirds of a constitutional assembly, a level of support that ruling parties have lacked. In order to obtain support for other institutional reforms that it was seeking and could not achieve unilaterally, the ruling party was willing to cede constitutional judicial improvements. Thus, in the 1990s the judiciary came to be seen as a valuable "bargaining chip" in deals involving institutional reform.

It must be remembered that initiation also entails a potential cost, specifically, the possibility of judicial interference with the ruling party's exercise of authority. However, at this first stage of reform, *this cost is delayed*. Only after implementation does the ruling party incur the cost of judicial reform. Thus, though the rewards of judicial reform are instant and specific for the ruling party at initiation, at that time its costs are *neither immediate nor certain*.

The opposition also perceives benefits from the initiation of judicial reform: an independent judiciary is viewed as protection against potential abuses of power committed by the ruling party. Because their support is often needed to pass constitutional changes, the opposition is able to modify the ruling party's proposed constitutional reforms in the direction of greater judicial power. As for the costs of reform, these are incurred only if the judicial reform is part of a trade in which the opposition agrees to empower a different institution that is controlled by the ruling party. However, the opposition is amenable to such institutional exchanges because it believes that the reformed judiciary will be a powerful counterweight to the branches of government (controlled by the ruling party) being strengthened. In sum, both the opposition and the ruling party must agree to initiation and, at this stage, both parties can agree to constitutional advancements to the judicial branch.

However, the implementation of judicial reform has proven much more difficult to achieve. I argue that this is because the ruling party's perceptions of the costs and benefits of reform do not remain fixed.[3] On the one hand, the benefits to be obtained by the ruling party by continuing forward with judicial reform have decreasing returns. The IFIs have not offered additional economic assistance for progress on implementa-

3. In contrast, the opposition's preferences remain constant over both periods. In fact, the opposition can only enjoy the benefits of judicial reform once the initiated reforms are implemented.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

tion, nor have they imposed serious penalties for non-implementation.[4] In addition the benefits gained from the judicial trade are exhausted at the time the new constitution is enacted. For example, if the president obtains the right to reelection in exchange for constitutional increases in judicial power, the president may still enjoy his second term even without implementing promised judicial reforms. Thus, implementation does not provide additional benefits to the ruling party.

On the other hand, the costs of judicial reform, which remain only potential costs at initiation, become concrete realities if reform is implemented. For the ruling party, following through with judicial reform means accepting limits on its political power. The ruling party would have to play by the rules; and it would be the courts, not the ruling party, that would decide what those rules were and where they were trespassed. The effect of this convergence of decreasing benefits and increasing costs is the erosion of the ruling party's will to carry through with judicial reform.

Yet, despite the severe costs, in some instances judicial reform is fully implemented. Given the high costs, and the limited benefits, why would a ruling party undertake the second stage of reform? Scholars claim that increases in judicial independence make sense where a ruling party's chances of remaining in office are decreasing (Hirschl 2001; Ramseyer and Rasmusen 2003; Finkel forthcoming 2005). I argue that where a ruling party's probability of reelection is low, the ruling party may seek the implementation of judicial advancements as an "insurance policy." A stronger judicial branch decreases the risks the ruling party faces should it become the opposition; this is because an independent judiciary can limit the capacity of incoming politicians to change the rules of the game in ways that may hinder the former ruling party from returning to power (for example, altering electoral rules or campaign finance laws). It also limits the capacity of incoming politicians to undermine policies established by the outgoing ruling party. In effect, by empowering the judiciary, the current ruling party hedges against potential future downturns in political power.

In sum, the real cost of reform is not fixed; rather, it depends on the ruling party's perception of retaining political power. In presidential systems, performance on midterm elections prior to presidential elections can serve as an indicator of the ruling party's chances of remaining in office. As the likelihood of losing power increases, motivation to enact agreed upon judicial advancements should also increase. Thus,

4. The IFIs have proved unable, or unwilling, to monitor progress on implementation. Only in cases of egregious violations of judicial independence have judicial reform loans been terminated, and even then the disbursement of other IFI assistance was not affected.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

we should expect the implementation of judicial reforms to be closely connected to elections in which the ruling party appears likely to lose its position of political dominance.

THE ARGENTINE JUDICIARY, 1983–94

The Cycling of Judicial Independence

Argentina's tumultuous twentieth-century political history has been shaped by the alternation of civil and military regimes, with its judiciary traditionally serving to uphold laws passed by illegitimate civil and military governments alike.[5] In October 1983, after seven years of repressive military rule, Argentina returned to democracy with the election of Raúl Alfonsín, of the Radical party, as the country's new president. Just days prior to Alfonsín's inauguration, the five-member Supreme Court voluntarily resigned *en masse* to allow the emerging democracy a fresh start. The ideological and party affiliations of Alfonsín's five nominees covered the political spectrum and possessed admirable academic and professional qualifications.[6] Interestingly, the naming of the new Court sparked little political debate or public interest.[7] In fact, Alfonsín offered the position of the chief justice to the Peronists' presidential candidate, Italo Luder, whom Alfonsín had just defeated. Rather than viewing this as an honor, Luder perceived the gesture as "a way of emphasizing Alfonsín's electoral victory and placing Luder in a position of minor relevance" and refused the position (Oteiza 1994, 111). Clearly, in 1983 there existed little expectation that the Court would emerge as an important political player.

Under the Alfonsín administration, the Court's liberal interpretation of the law led to an unprecedented expansion of individual rights and guarantees (Bacque 1995). Although not all-powerful during this period, the Argentine judiciary was independent and enjoyed a broad scope of authority (Larkins 1998, 427). On average the Court ruled against the government 37 percent of the time between 1983 and 1987 (Helmke 2002, 296). In particular, the Court effectively blocked some of the president's emergency economic measures. As a response in October 1987, Alfonsín attempted to add two justices to the Court, but the court packing failed

5. Molinelli (1999) presents a more favorable view of Argentine judicial power, arguing that the Court has increased its autonomy over time and has been willing to reverse the government on important cases.

6. Three were affiliated with different branches of the Radical party, one a Socialist, and one a traditional Peronist.

7. Announcement of the new justices merited five short paragraphs in Argentina's most prestigious paper (*La Nación*, December 3, 1983, 1).

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

due to an inability to reach a deal with the Peronist-controlled Senate.[8] During the final two years of Alfonsín's presidency, antigovernment rulings increased to an average of 47 percent of all judicial decisions (Helmke 2002, 296). This fact would not be lost on the country's next president.

In Argentina's 1989 national elections, which took place amid a deepening economic crisis, the Peronists swept the Congress and their presidential candidate, Carlos Menem, won the presidency. In stark contrast to his campaign promises, the newly inaugurated president embarked on an orthodox economic program, which was achieved via an increasing concentration of power in the executive branch. The Court, unlike the Peronist-controlled Congress, did not appear amenable to either the president's economic program or his centralization of authority. According to Adrian Ventura, "Menem knew that the Court was not going to make itself compliant."[9] Menem had publicly promised not to intervene in the Court during his presidential campaign,[10] but having won the election, the president opted to initiate a preemptive strike.

In September 1989 Menem sent a proposal to Congress to add four justices to the Court. Readily approved by the Senate, it was passed, under a questionable quorum, in the lower house on April 5, 1990.[11] Given that the selection process for justices at that time relied on a simple senate majority and that the Peronists controlled the Senate, Menem was able to handpick the four new justices. Two sitting justices resigned in protest to the court packing, and as a result Menem was personally able to designate six of the nine members of the Court.[12] These *Menemista* justices provided for a dramatically different court majority that served to facilitate and legitimate the president's policies.[13]

The new justices possessed either close personal ties to the president and/or a conservative legal philosophy with respect to the role of the

8. The two parties discussed the possibility of increasing the Court's membership to nine, but the deal fell through (Oteiza 1994, 189–91).

9. Legal columnist for *La Nación*, interview by author, Buenos Aires, March 1, 1999. According to Eduardo Grana, a judge and National Judicial Council member, "Menem knew that sectors in society would go to the High Court in opposition to [his] economic reform program." Interview by author, Buenos Aires, March 24, 1999.

10. Verbitsky 1993, 36.

11. Allegedly, custodial staff were instructed to sit in the benches for the hand vote (ibid., 49–51).

12. Paralleling the experience of the high court, lower levels of the Argentine judiciary were also subject to severe executive intervention. A 1991 reform of Argentina's penal code nearly doubled the number of federal judges, and these newly created posts were packed with Menem's appointees.

13. For example, the Supreme Court devised its right of *per saltum*, or the right to be the first-instance court, to rule immediately on the 1992 privatization of the national airlines. The Court declared it constitutional—a victory for the government's economic program.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

judiciary.[14] Legal scholar German Bidart-Campos, commenting on the enlarged Court, acknowledged that, "In cases that do not interest the government, the Court has handed down rather acceptable decisions. In the other cases, however, the Court does not leave one with an impression of impartiality and independence" (Larkins 1998, 429). A brief glance at the voting record of important cases readily confirms this point. Decisions favoring the government were characteristically 6–3 majority opinions, with all six Menem-appointed justices voting in concert (Verbitsky 1993, 135). The Court, following a brief period of independence between 1983 and 1989, became tied to the government once again after its packing in 1990.

Argentina's 1994 Constitutional Reform: Presidential Reelection in Exchange for Institutional Checks on Executive Power

Prior to 1994 the Argentine constitution prohibited a president from serving a consecutive term. The Peronists, buoyed by their successes in the 1991 midterm elections and increasingly confident that Menem could win a second term, actively began pursuing the removal of the constitutional prohibition on immediate reelection. However, the Argentine constitution may only be amended by a national convention convoked specifically for that purpose, and this, in turn, requires passage of a special congressional "Declaratory Law." But, unlike ordinary legislation requiring simple majorities in both houses, enactment of this type of special legislation requires the support of two-thirds of the members of each chamber. Although Menem readily obtained senate approval of a draft Declaratory Law in October 1993, it was unclear whether he could garner this amount in the Chamber of Deputies without the support of the Radicals. However, in July of the previous year, the Radical Party had formally declared its opposition to any constitutional reform to allow Menem to run again. Given that Menem's hopes for reelection depended on the convocation of a constitutional convention, he opted to strike a deal with the Radicals to assure the Declaratory Law's passage in the lower house. The result was the November 14, 1993 signing of the Acuerdo de Olivos, a bipartisan pact between the two parties calling for a constitutional convention.

The Acuerdo served as the basis for negotiations that were formalized as the Nucleus of Basic Agreements, a package of thirteen areas of institutional reforms. On the Peronist side, Menem's primary goal was

14. The new court chief justice was Menem's former law partner and the vice chief justice was the brother-in-law of two of Menem's close advisors (Baglini and D'Ambrosio 1993, 78–82). New justice Rodolfo Barra stated that the Court's role was "to go along with the politics of the president" (Larkins 1998, 6)

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

to obtain the right to run again in the May 1995 presidential election.[15] As for the Radicals, Alfonsín sought to ensure that his party would be able to exercise checks on a reelected ex-president and party leader, Menem; hence, Alfonsín sought to increase Radical control over institutions that could serve as counterweights to executive power. Specifically, the Radicals demanded a reduction in presidential tenure from six to four years; increases in judicial independence; creation of a cabinet chief of staff responsible to both the president and Congress; direct election of the mayor of Buenos Aires; an increase in the number of senate seats awarded to the opposition; and creation of an Auditor General's Office under the leadership of the major opposition party.[16] Along with these constitutional changes, the Radicals also demanded an "extraconstitutional" judicial change—transfer of ownership of the Supreme Court.

These formal and informal agreements culminated with the Radicals' voting to approve the Declaratory Law in Argentina's lower house in late December 1993. The Law mandated the convocation of a constituent assembly in spring 1994 and specified the convention's debate procedures and voting rules. The Nucleus would be voted on as a "closed packet," thereby forcing the assembly to approve or reject the package of reforms in its entirety.[17] In this way, the Radicals and Peronists intended to bind each other to their agreed-upon promises. In addition, only a simple majority of representatives would be required to approve constitutional revisions, thereby ensuring that the Radicals and Peronists (who together would hold more than half of the seats in the assembly) would not have to bargain with other parties.[18] Thus, regardless of the

15. The Peronists also sought to obtain constitutional authorization for the executive to issue decrees.

16. Each of these was designed to increase the Radicals' political power. The chief of staff would be responsible to Congress as well as the president, thereby granting some influence to the Radical Party in the legislature. With respect to the judiciary, the Radicals sought to end executive control over judicial appointments. The position of Buenos Aires mayor was then held by a Peronist appointed by Menem. The Radicals expected to win this post in an open election. As for the increase in senators, the Radicals expected to lose four senators in the next congressional election. By creating a third senate seat per district, reserved for the top vote-gathering opposition candidate, the Radicals believed they would gain eight additional senate seats and hoped to break the Peronists' two-thirds hold on the Senate. Finally, the Auditor General's Office, which would be under Radical leadership, was intended to investigate government acts and increase transparency.

17. The Declaratory Law also specified issues, such as popular referendums, indigenous identity, municipal autonomy, and environmental protection, among others, that could be individually introduced at the convention.

18. Seventeen other parties participated in the constitutional assembly but could exert little influence.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

presence of other political parties at the convention, Argentina's 1994 constitution was rewritten by the Radicals and Peronists alone.

INITIATION OF JUDICIAL REFORM IN ARGENTINA

This section details the judicial trades that were pivotal to Argentina's 1994 constitutional reform: the "ownership" of the Court and a decrease in executive influence over the judicial branch.

The Informal Agreement: Swapping the Court

Prior to the signing of the November 1993 Acuerdo, Alfonsín's top negotiators had privately informed Menem's inner circle that the process of constitutional reform could be accelerated if "Menem's administration would be willing to concede increased Radical participation in the Court, and greater control in the naming and obligations of judges."[19] Ricardo Gil Lavedra, the Radicals' principal negotiator, publicly stated, "The Court, how it is now, is an important obstacle for any agreement" and emphasized that constitutional reform could only occur if there existed sufficient court guarantees that the new constitution would be respected.[20]

Menem, on the other hand, initially appeared to be uninterested in altering the Court. A November 22 article confirmed that "the government is not considering 'inducing' changes in the membership of the Court, even though the Radicals continue to demand it as a necessary and prior condition before [they] will approve any constitutional reform project including reelection."[21] Yet, shortly thereafter, one of Menem's primary negotiators, Carlos Corach, announced that if any member of the Court should see fit to step down, "his resignation would be considered a patriotic gesture."[22] Meanwhile, in the Chamber of Deputies, representatives from both the Peronist and Radical parties also began calling for justices to resign.[23] Although the two parties had fleshed out the Nucleus of Basic Agreements by the end of November, the Radicals made it clear that they were unwilling to vote for the Declaratory Law without a renaming of the Court. As the Radicals' December 3 internal convention approached (where they were to decide whether they would approve the Declaratory Law's passage), Alfonsín's spokesman, Simon Lazara, stated, "We are insisting that some members of the Court should

19. Balzan, September 20, 1993, 20.
20. García Lema 1994, 135.
21. Balzan, November 22, 1993, 22.
22. *La Nación*, November 23, 1993, 1.
23. *Clarín*, November 21, 1993, 5.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

go, and if the situation isn't resolved before December 3, then the reform pact could evaporate."[24] On December 1 the first Menem-appointed court justice resigned. Two days later, with the Radical convention already underway, a second *Menemista* justice announced his immediate resignation and another Menem-appointed justice stated his intention to step down at the end of February.[25] Thus, there were now a total of three vacancies to fill, and as long as two of them were filled by "non-*Menemistas*," the government would lose its court majority. In consequence, the Radical National Convention voted that, as long as they could achieve an acceptable agreement with the Peronists on the justices' replacements, they would approve the Declaratory Law later that month.[26]

Finally, on December 12, the two parties came to an agreement on the naming of the three new justices. Their agreement explicitly identified which incoming justice would fill the seat of each outgoing member of the Court.[27] Two of the new justices were from the Radical party and the third was a Peronist, but was viewed as less *Menemista* than the justice he was to replace. One Radical and the Peronist were assigned to replace the justices who had already resigned, and the other Radical would replace the third justice who had announced his February departure; hence, Argentina's Court would be a 5–4 split favoring the Radical party. Having achieved this understanding, Menem and Alfonsín signed a formal agreement the following day that confirmed the convocation of a constitutional convention.

The Formal Constitutional Changes: Court Selection and the National Judicial Council

Argentina's 1994 constitution included important institutional changes that had the potential to reduce executive influence in the judiciary. These changes included a modification of the selection process for court justices and the establishment of a National Judicial Council. First, the new constitution modified appointment procedures for court justices. The president would still be responsible for the nomination of court candidates, but now their confirmation would require the support of two-thirds of the Senate rather than only a simple majority. This increases

24. *La Nación*, November 22, 1993, 1.

25. Justices Rodolfo Barra and Mariano Cavagna Martínez announced their immediate resignations, Justice Levene declared he would resign in February. The Radicals had demanded the resignations of Barra and Cavagna, considering them to be the most militant in their sympathies for the government.

26. *Clarín*, December 4, 1993, 5.

27. The Radical Gustavo Bossert would replace Cavagna, the Peronist Guillermo López would replace Barra, and the Radical Masnatta would replace Levene. Eduardo Grana, judge and Council member, interview by author, Buenos Aires, March 24, 1999.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

the likelihood that future presidents would need the support of at least one other party to ratify their nominees, thereby decreasing the ability of executives to unilaterally name justices.

Second, Argentina's 1994 constitutional reform created a National Judicial Council responsible for judicial selection and administration below the Court. With respect to the former, the Council's powers included the naming, promotion, discipline, and removal of lower-level judges. In the past, first-instance and appellate-level federal judges had been chosen by the president and confirmed by the Senate. Now the Council would conduct written exams for posted judicial openings and the names of the top three candidates would be forwarded to the executive. The president would then select one name from the slate to send to the Senate for confirmation. As for judicial discipline, the Council would be responsible for the initiation of proceedings to investigate alleged judicial misconduct and for the establishment of a special "Magistrates Jury" to determine sanctions. With respect to the changes in judicial administration (previously under the Court), the Council would control the judicial budget, determine internal regulations, and establish standards to improve judicial education and training.

The creation of a judicial council, however, does not in itself ensure judicial independence. For a council to achieve this goal, it must be independent, and this depends on the method of selecting its members. The 1994 constitution left the membership unspecified, stipulating only that the Council was to be "chosen periodically, with an equilibrium of representation from the political branches, judges from all instances, and members from the legal community."[28] In addition, the constitution stipulated that the Council was to be operational by August 1995, one year after the revised constitution's promulgation. In the interim, the president would remain empowered to name judges.

In sum, along with a package of other institutional reforms, the constitutional convention included both an implicit court swap and an explicit set of institutional reforms affecting the judicial branch. The promulgation of the 1994 constitution signaled the completion of the initiation phase of Argentina's judicial reform. At that time, it appeared that the Court's new majority would be an effective check on the president and that Argentina was embarking on a new era of decreased executive intervention in the judicial branch.

28. The Radicals wanted to have the Council's composition clearly specified in the new constitution to make sure the appointment of its members would guarantee its independence, but were unsuccessful in this bid. Humberto Quiroga Lavie, constitutional convention representative and Council member, interview by author, Buenos Aires, March 26, 1999.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

THE IMPLEMENTATION OF JUDICIAL REFORM UNDER MENEM, 1995–99

In the May 1995 national election, Menem won his reelection bid and the Peronists continued to control the Senate. With the help of smaller provincial parties, the Peronists could control the Chamber of Deputies as well. Thus, it would be up to Menem's second administration to oversee, or to block, the implementation of Argentina's judicial reform.

The Court Swap

Due to the less-than-democratic nature of Argentina's 1994 Court swap, the bargain was never officially included in the preconstitutional documents signed by the two parties nor formalized in any way at the constitutional convention. Thus, in February 1994, when the third justice did not retire as previously announced, the Radicals found that they possessed no way to enforce their "gentlemen's agreement." When the aging justice finally resigned in November 1995, following Menem's May reelection, Menem offered the position to Adolfo Vázquez on November 28.[29] When asked why he was selected, Vázquez replied, "Because I am a friend of Menem's."[30] Vázquez's personal ties to Menem, and his public expression of his whole-hearted belief in the president's economic policies, left little doubt about where his future vote would lie.

With the December 1995 ratification of Vázquez, in a process that violated senate voting procedures, Menem continued to enjoy a *Menemista* court.[31] The president's handpicked five-member bloc repeatedly lined up in his favor, with decisions often coming down as a 5–4 split.[32] Throughout Menem's tenure, the Radicals continued to demand an alteration in

29. The Radicals insisted that the post be offered to the originally intended recipient, the Radical Hector Masnatta. Menem did offer the position to Masnatta; however, he was no longer available as Menem had appointed him to a prestigious position at the United Nation's Office in Vienna.

30. Eduardo Grana, judge and judicial council member, interview by author, Buenos Aires, March 1, 1999.

31. As a result of the modification of senate confirmation procedures, approval of the president's nominee would require the support of two-thirds of the Senate. Until the Senate-elect took office, Menem could still obtain the vote of two-thirds of the Senate. However, once the new Senators were sworn in, in mid-December, Menem's two-thirds vote bloc would be broken by the Radicals. The Peronists, in violation of the Senate's official rules of operation (as their regulations mandated a lapse of seven working days between a vote and its introduction on the floor), called for an early vote and, with the help of several provincial parties, confirmed Vázquez on December 7.

32. For example, an article discussing the Court ruling that declared the president's decree privatizing airports to be constitutional stated, "As *La Nación* anticipated three weeks ago, the judges that always vote in favor of the government (five of nine) once again gave the go-ahead to their boss" (*La Nación*, December 16–22, 1997, 4).

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

court membership, but to no avail. The Court, as it was constituted, served Menem's interests. First, although he was president, his court majority could support his policy goals; and second, once he was no longer in office, the Court could serve to protect Menem's established policies as well as to protect the president himself in any future investigation into activities that had transpired during his administration.[33]

The National Judicial Council

According to the 1994 constitution, the new judicial council was to be operational by August 24, 1995. But, as 1994 passed, the Council was not formally discussed in the Menem-controlled Congress. Menem's reelection in May 1995 brought little change, and although a bill was introduced in a Senate committee, it languished there unaddressed. Given that an autonomous Council could begin appointing independent judges, Menem was in no rush to establish it. In fact, at a meeting with Argentine appellate court judges, Menem declared that "the law sanctioning the [Council] was a project to debate for four years" (Ventura 1998, 268).

According to Humberto Quiroga Lavie, a representative at Argentina's constitutional convention (and future Council member), "The Peronists had accepted the Council easily, but became worried when it came time to define it and then they wanted to weaken it."[34] A second government Council proposal, drafted by Menem's Minister of Justice, sought to create a twenty-three-member Council, thirteen of whom would vote in line with the president.[35] The Senate passed the proposal in March 1996 and sent it to the Chamber of Deputies. Although Menem could enjoy a slight majority in the lower house when working with smaller parties (130 of 257 seats), he could not guarantee that this bill would pass. In particular, the Radicals in the Chamber of Deputies strongly opposed the government's intent to secure a majority on the Council. By June 1996, it appeared that the Chamber would stymie Menem's initiative.

In response, Menem threatened to begin using decree powers to name judges.[36] At that time, vacancies existed in twenty-one federal judicial posts. However, these positions could not be filled because the new constitution stipulated that only the Council could select candidates for judgeships after the termination of the one-year interim period. With Menem content not to face Council-appointed judges, the government decided to "freeze" debate on the Council for the time being.

33. Adrián Ventura, legal columnist for *La Nación*, interview by author, Buenos Aires, March 1, 1999.

34. Interview by author, Buenos Aires, March 24, 1999.

35. *La Nación*, May 30, 1996, 10.

36. Ibid.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

Menem briefly became interested in the Council due to pressures from the International Monetary Fund (IMF). On July 15, 1997, Menem called a meeting with his new Minister of Justice and the head of the Senate's Constitutional Affairs Commission. Menem informed them that:

> The Minister of the Economy, Roque Fernández, [was] in New York negotiating a loan with the IMF, and IMF officials had, once again, expressed their preoccupation with the Argentine judiciary's lack of independence, its inefficiency, and the long delay in the creation of the Council. [The Minister of Justice] told the president that he had received similar comments from the international organization. (Ventura 1998b, 268)

Although the president may have felt the need to give lip service to the IMF about the Council, he was not concerned enough about pressures from the IMF to actually establish it. And, though Menem procrastinated, the IMF did not penalize Argentina for its lack of progress on the Council's creation.

The president's interest in a council, however, began to change when the next round of congressional elections dramatically altered the political landscape. The Peronists were resoundingly defeated by the Alliance, a center-left coalition uniting the Radicals and Frepaso (Frente País Solidario)[37] in the October 1997 midterm elections. Nationally, the Peronists garnered only 36.2 percent of the vote, compared to 45.7 percent for the Alliance.[38] In the city of Buenos Aires, the vote was overwhelmingly in favor of the Alliance over the Peronists, 56.7 to 17.98 percent.[39] The Peronists suffered a major upset in the state of Buenos Aires, which they had expected to win, losing 48 to 41.3 percent.[40] They were also defeated in the states of Santa Fe and Entre Ríos, two traditional Peronist strongholds. In addition, the Alliance took control of the Chamber of Deputies.

With the 1997 midterm election, it became clear that the Peronists' chances of winning the presidential election in 1999 were fading. The 1997 election was expected "to define in good measure the terrain for the presidential race in 1999."[41] This had been true of the 1987 congressional election, in which the rout of the Radicals had been taken as a strong predictor of their defeat in the 1989 presidential election. In fact, "The [Peronist] government's reverse [was] more drastic than that suf-

37. Frepaso itself was an alliance of smaller center-left parties. With a strong showing in the 1995 presidential and legislative elections, it had been challenging the Radicals for the position of dominant opposition party in Argentina.

38. "Informe Electoral," *Clarín*, October 27, 1997.

39. Ibid.

40. *Latin American Regional Report*, November 11, 1997, 6.

41. "La elección: Comicios claves que trascienden la renovación legislativa," *Clarín*, October 26, 1997.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

fered by the Radicals in 1987" and "gave the impression of a hard blow" against the Peronists' 1999 presidential prospects.[42]

As for the strong performance of the Alliance in the 1997 election, judicial concerns had been one of their campaign's top priorities. The Radical-Frepaso coalition had called for the immediate establishment of the Judicial Council and had also demanded changes in the membership of the Court.[43] An Alliance proposal for an independent Council was passed in the Chamber immediately after the new legislature took office. It proposed the creation of a twenty-member Council with representatives from all three branches of government, the majority and minority political parties, and legal professionals. The mixed membership guaranteed that no single party or political group could control it. Furthermore, the Council was granted all the responsibilities originally assigned to it in the 1994 constitution. The bill was sent to the Senate, where it was signed into law on December 18, 1997.[44]

It must be remembered that Menem still controlled the Senate at that time, and the president could have blocked the bill's passage. Yet, he allowed the Alliance's proposal to be passed in the upper house, thereby acceding to the creation of an independent Judicial Council.[45] However, by delaying the selection of Council members, Menem postponed the establishment of the Council for more than a year. In fact, the Council's representatives were not sworn in until November 18, 1998,[46] and the Council only began operating in early 1999—nearly five years after the promulgation of Argentina's new constitution. Yet, because it would take at least six months for the Council to name judges, the earliest that Council-appointed judges would be on the bench was not until the end of 1999—at a time when it was extremely unlikely that Menem would still be in office.[47] By November 1998, the Alliance was polling 40.3 percent versus the Peronists' 27.6 percent for the next presidential election.[48] Thus, the Council that Menem had agreed to establish in 1994 would finally

42. "La elección: Es la primera vez que pierde el Peronismo estando en el poder," *Clarín*, October 27, 1997.

43. *La Nación*, December 15–19, 1997, 8.

44. Law 24.939, published January 2, 1998.

45. According to Council member Quiroga Lavie, eleven of the members were independent, nine had ties to the government. Interview by author, Buenos Aires, March 24, 1999.

46. One of the academic representatives was the last to be chosen. This representative was to be selected by the deans of thirty-two national law schools, and many of these were smaller universities that depended on the government for their budget (Ventura, "Nazareno decidío convocar al Consejo de la Magistratura," *La Nación*, October 14, 1998).

47. The Council was considering a six-month selection procedure to fill new appointments, with examinations beginning in May and appointments no earlier than November. Quiroga-Lavie, interview, Buenos Aires, March 25, 1999.

48. Centro de Estudios de Opinión Publica, November 1, 1998.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

serve to check presidential power, but the true costs of the Council were to be passed on to Argentina's next president.

ANALYZING ARGENTINA'S JUDICIAL REFORM: INITIATION AND DELAYED IMPLEMENTATION

In 1994, with the initiation of judicial reform, Menem appeared willing to cede his control of the Court, to decrease the partisanship of future court justices, and to establish a judicial council to strengthen the independence of the judicial branch. In exchange for these constitutional changes in the judiciary, the Peronists received specific and immediate benefits. First, agreeing to Radical demands to free the judiciary from executive influence was the only way that Menem could obtain the right to a consecutive reelection. The Radicals had made this explicitly clear in both their private and public statements about constitutional reform.

Second, writing a judicial council into the constitution satisfied international financial institutions, which benefited the Peronists' ability to access foreign funding. It also satisfied the Radical Party, which was seeking to decrease the ability of the executive to intervene in the judicial branch. The Acuerdo de Olivos, though it did include a general agreement to decrease politicization of the judiciary, makes no mention of a judicial council.[49] In fact, neither the Radicals nor the Peronists had ever suggested the creation of a judicial council in any of their previous individual proposals or bipartisan pacts. Instead, the idea of a council emerged as a result of the involvement of international organizations in Argentina's judicial reform. According to Alberto Garcia Lema, a chief member of Menem's negotiating team, the Radical-Peronist constitutional commission responsible for proposing judicial reform relied heavily on the Inter-American Development Bank's September 1993 *Report on the Reform of the Administration of Justice in Argentina,* a document that advocated the creation of a council to promote judicial independence and to modernize court administration.[50] From the viewpoint of the Peronists, they had already agreed in principle to increase judicial independence. With a judicial council, they could simultaneously satisfy international financial institutions, which would provide access to

49. Specifically, the Acuerdo only stipulated that the new constitution "ensure judicial independence by substantially modifying the method of designating judges so as to guarantee that 'moral fitness' be the primary reason for their selection" (Lacana, *Después de la Reforma*, 22).

50. García Lema 1994, 214–18. According to Ventura, the Radical-Peronist judicial constitutional commission began to work with the report immediately following the signing of the Acuerdo, which was an important source behind the creation of Argentina's Judicial Council (1998, 183).

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

economic assistance, and the Radical party, who was needed to approve constitutional reforms.

Thus, the initiation of judicial reform had direct benefits for Menem and his party. And, though it also had potential costs, these were minimized because they could be evaded or postponed. First, Menem did not force the third justice to resign in February 1994. When the justice finally stepped down, the Peronists rapidly filled his position, in a move of dubious legality, with a *Menemista* justice. Second, although the Peronists had agreed to increase the confirmation of prospective justices (to two-thirds of the Senate), the cost of this pledge was minimized because it was uncertain if a vacancy on the Court would occur during Menem's second term. Finally, as for the Council, the costs of this new institution would be imposed only upon passage of congressional legislation. Given the likelihood that Menem would return to office and that his party would control at least one congressional branch in 1995, the details of this legislation, and vigor with which it would be sought, would most likely remain at the Peronists' discretion.

With respect to the Radicals, the initiation of judicial reform also had benefits. According to Argentine political scientist Catalina Smulovitz, Alfonsín believed that if immediate reelection was not possible, a stand-in for Menem would most likely win the 1995 presidential election, and that the highly popular Menem would then run again for the presidency in 2001. Thus, from Alfonsín's point of view, the most likely scenario was twelve more years of *Menemista* government. Faced with the strong possibility of the Peronists in power until 2007, Alfonsín opted instead to enable Menem to run again, but to hold office for only four more years, and thereby allow the Radicals a better chance of winning back the presidency in 1999 (as indeed they did).[51] In addition, opinion polls at that time indicated that 70 percent of the population favored a national constituent assembly to allow reelection, making it difficult for the Radicals to oppose a constitutional convention.[52]

With the Acuerdo, the Radicals believed they were obtaining judicial checks on executive power. First, they believed that a Radical-dominated Court would be an effective constraint on the reelected president. They also received other institutional judicial advancements. For example, should a member of the new Radical-majority Court resign, the two-thirds senate confirmation meant that Menem could not name a partisan appointee. In addition, the Radicals believed they were removing executive influence over lower-level judges via the creation of the Coun-

51. Interview by author, Buenos Aires, March 24, 1999. See Smulovitz, 79–81.

52. García Lema 1994, 135. In fact, Menem threatened to convoke a national plebiscite on constitutional reform in late November and circumvent the Radicals altogether.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

cil.[53] Furthermore, the Radicals also believed that they were receiving several additional institutional reforms that would augment their ability to constrain the reelected president, including the direct election of the mayor of Buenos Aires (which they expected to win), additional seats in the Senate (which would allow them to break Menem's two-third's domination), and control of the Auditor General's Office (increasing the transparency of the president's office).

Clearly, for the Radicals, the initiation of judicial reform was not without its costs; Menem obtained the right to reelection. However, the real costs did not become apparent until the Court was not delivered to them, but by then it was too late to alter course. The third justice, who had announced his February 1994 resignation, was still on the Court when the constitutional convention convened in May 1994. Yet, for several reasons the Radicals proceeded to uphold their end of the deal: first, because of the public's overwhelming support for constitutional reform; second, because reneging on the deal would have made it appear that the Radicals were only interested in control over the Court; and third, because the new constitution's other institutional changes improved the Radicals' political position.

Thus, for both the Peronists and the Radicals, the benefits of the initiation of judicial reform outweighed its costs, and both parties could agree to proceed with constitutional revisions. However, once Menem was reelected, his cost-benefit analysis of judicial reform changed dramatically. Although he would obtain no additional political benefit from relinquishing his hold over the Court or from setting up an independent judicial council (the Radicals had nothing new to offer and the IFIs were not linking economic assistance to the creation of such a council), real implementation of his bargain would impose great costs: the establishment of real judicial constraints on executive authority. Thus, with his reelection, Menem had no incentive to proceed with implementation and accept the costs of judicial reform. In contrast, the Radicals, who sought the legislative enactment of judicial reform, did not possess the political power necessary to implement it.

In the end Menem never altered the membership of Argentina's Court. A Court allied with the president served Menem's interests: it prevented judicial constraints upon his authority during his administration and could also protect him and his established policies in the future. On the other hand, Menem did eventually allow the establishment of an independent Judicial Council. Menem could have blocked passage of the Council via his control of the Senate, but did not. It was neither the demands of the Radicals nor the concerns of the IFIs that proved sufficient

53. The Radicals did not formalize membership of the Council at the convention. But, given their assumed control over the Court, they had less to fear from lower-level judges.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

to entice the president to create the Council. Rather, its creation coincided with the dramatic deterioration of the government's political position in October 1997, a reversal that signaled the likely defeat of the Peronists in 1999. Once Menem perceived that his party would not retain office, he had the incentive to seek the establishment of the Council, albeit one that would only become effective after his presidential term had expired.

Interestingly, in the 1990s, Peru experienced a pattern of judicial reform very similar to the pattern of reform in Argentina (see Finkel 2001). In Peru in 1993, as in Argentina in 1994, institutional changes empowering the judicial branch were part of a larger package of constitutional reforms that allowed the incumbent president to seek immediate reelection. Unlike Menem however, Peru's then-president Alberto Fujimori controlled the constitutional convention and did not have to bargain with another party. Originally, the government sought to allow the executive and legislative branches to have ultimate authority over judicial selection and to abolish Peru's Constitutional Court. However, the new constitution had to be ratified in a public referendum, and opinion polls in June 1993 showed that popular support for the revised constitution was waning, in particular due to the elimination of the Constitutional Court.[54] Thus, the president was forced to modify his judicial proposals. In order to ensure approval of Fujimori's right to reelection, at the last minute the government opted to strengthen the judicial branch. As a result, Peru's 1993 constitution granted the National Judicial Council complete control over the naming of all judges (including court justices) and reintroduced the Constitutional Court.[55] In consequence, the Peruvian electorate ratified the new constitution 52 to 48 percent on October 31, 1993 (Domingo García Belaunde 1996, 390).

However, after the 1995 election in which the president was returned to office and his party retained control of the legislature, Fujimori used his party's congressional majority to eviscerate all judicial advancements proclaimed in the new constitution. In 1996 the judiciary was placed under an executive committee. Shortly thereafter, as a result of executive actions, both the Judicial Council and Constitutional Court ceased to function. Once Fujimori had enjoyed the benefits to be obtained from the initiation of judicial reform—his own reelection—the costs of implementation were not offset by any additional gains. Instead, Fujimori acted to remove all potential judicial obstacles to his exercise of power during his second term. In Peru, as in Argentina, the same president and ruling

54. "Carta Magna," *Caretas*, July 1, 1993, 16.

55. Domingo García Belaunde, Peruvian constitutional scholar invited to submit a judicial proposal to the constitutional convention, interview by author, Lima, July 23, 1997. Peru's council is called the National Magistrates Council.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

party who had agreed to initiate judicial reforms then undermined them in the period following their own reelection. It was only after Fujimori announced his resignation following a September 2000 corruption scandal, seven years after the initiation of Peru's constitutional reforms, that the Peruvian Congress enacted legislation to remove the judiciary from executive control and to reestablish the judicial institutions specified in the 1993 constitution. Thus, in Peru as in Argentina, not until it appeared that the president would not be returning to office did the ruling party implement reforms to increase the independence of the country's judicial branch.

CONCLUSION

Judicial reforms in Argentina during the 1990s were delayed despite constitutional increases in judicial power. In 1994 the ruling party was apparently willing to decrease its influence over the Court and to strengthen the independence of the national judiciary via the creation of a judicial council. In exchange for these judicial changes, the ruling party received specific benefits. First, these changes satisfied the international financial institutions. Second, and more importantly, agreeing to increases in judicial independence was the only way the president could obtain the right to reelection. However, neither of these two benefits was sufficient to induce the ruling party to then follow through with reform and accept the costs of real judicial independence. In the end, Menem never gave up his control over the Court. However, in December 1997, once it appeared that the Peronists' political power was evaporating, he allowed passage of legislation to establish an independent Judicial Council. Although Menem never confronted the costs of two-thirds senate approval of prospective justices or of Council-appointed judges, these changes bode well for the development of a judiciary free from executive interference in Argentina.

Argentina's experience with judicial reform highlights several points of interest to those seeking to promote judicial reform in the developing world. First, though Argentine political leaders were willing to acknowledge the IFIs' calls for judicial independence, immediate political consideration outweighed the IFIs' concerns. External agents, whether multilateral agencies, foreign governments, or nongovernmental institutions, should recognize that linking economic assistance to judicial reform will be ineffectual without imposing real penalties for failed performance. Second, constitutional increases in judicial power may be undermined or postponed by legislation that often remains in the hands of the ruling party. Thus, the benchmark by which to evaluate a country's progress on judicial reform should be its implementation, and not its initiation. In addition, politicians who seek to strengthen the judicial

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

branch should push to specify the details of new judicial institutions in the revised constitution, and they will need to find creative ways to lock in these changes on a fixed time-line. Finally, judicial independence in Argentina only became a reality when the ruling party perceived it would lose the next election. The Argentine case suggests that as the probability of retaining control over political office decreases, the likelihood of meaningful implementation of judicial reform increases.

REFERENCES

Ames, Barry
1987 *Political Survival*. Berkeley: University of California Press.
Bacque, Jorqe
1995 "Corte suprema de justicia de la nación: Cambio de jurisprudencia en materia de derechos individuales." *No Hay Derecho* 6 (12): 9–12.
Baglini, Raúl, and Andrés D'Ambrosio
1993 *Juicio a la Corte*. Buenos Aires: Baglini and D'Ambrosio.
Balzan, Mario
1993a "El gobierno dice que no inducirá cambios en la Corte Suprema." *El Cronista*, November 22, 22.
1993b "Menemistas y Radicales siguen negociando." *El Cronista*, September 20, 20.
Bill-Chavez, Rebecca
2003 "The Construction of the Rule of Law in Argentina: A Tale of Two Provinces." *Comparative Politics* 35 (4): 417–37 (July).
Caretas
1993 "Carta Magna: El Cuerpo de Delito," July 1, 16.
Clarín
1993a "Piden renuncias en la Corte Suprema." November 21, 5.
1993b "La UCR admitió que presionó para lograr cambios a la Corte." December 4, 5.
1996 "Polémica Jurídica." June 4, 2.
1997a "La elección: Comicios claves que trascienden la renovación legislativa." October 25. http://www.clarin.com/. (Accessed February 12, 2000)
1997b "Informe electoral." October 27. http://www.clarin.com/. (Accessed February 12, 2000)
1997c "La elección: Es la primera vez que pierde el Peronismo estando en el poder." October 27. http://www.clarin.com/. (Accessed February 12, 2000)
Finkel, Jodi
2001 "Courting Power in Peru: Explaining Variations in the Implementation of Peru's 1990s Judicial Reforms." Paper presented at the 97th Annual American Political Science Association Conference, San Francisco, August 30–September 2.
2003 "Supreme Court Decisions on Electoral Rules after Mexico's 1994 Judicial Reform: An Empowered Court." *Journal of Latin American Studies* 35 (4): 777–99 (November).
n.d. "Judicial Reform as an 'Insurance Policy' in 1990s Mexico: A Supreme Court Willing and Able to Enter the Political Fray," *Latin American Politics and Society* (forthcoming Spring 2005).
García Belaunde, Domingo
1996 "La reforma del estado en Perú." *La reforma del estado: Estudios comparados*. México, DF: Universidad Nacional Autónoma de México.
García Lema, Alberto
1994 *La reforma por dentro*. Buenos Aires: Planeta.
Geddes, Barbara
1995 "A Comparative Perspective on the Leninist Legacy in Eastern Europe." *Comparative Political Studies* 28 (July): 239–74.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

Hammergren, Linn
1998 *The Politics of Justice and Justice Reform in Latin America*. Boulder, CO: Westview Press.
Helmke, Gretchen
2002 "The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy." *American Political Science Review* 96 (2): 291–303 (June).
Hirschl, Ran
2001 "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Israel's Constitutional Revolution." *Comparative Politics* 33 (3): 315–35 (April).
Iaryczower, Matias, Pablo Spiller, and Mariano Tommasi
2002 "Judicial Independence in Unstable Environments, Argentina 1935–1998." *American Journal of Political Science* 46 (4): 699–716 (October).
Inter-American Development Bank
1993 *Report on the Reform of the Administration of Justice in Argentina*. Unpublished paper. September 6.
La Nación
1993a "Peligra por la Corte el Acuerdo Reformista." November 22, 1.
1993b "El gobierno espera 'gestos patrióticos' en la Corte." November 22 , 1.
1993c "El gobierno espera 'gestos patrióticos' en la Corte," November 23, 1.
1993d "Quedó constituida la Corte Suprema," December 3, 1.
1993e "Aeropuertos: Otro sí al gobierno." International ed., December 16–22, 4.
1995 "El pliego de Vazquez, en lista de espera." December 1, 18.
1996a "Nazareno: No hay que rifar la Corte." May 8, 8.
1996b "Menem se apuraría para nombrar jueces." May 30, 10.
1997 "La Alianza analiza pedir el juicio político," December 15–19, 8.
Lacana, Mario
n.d. *Después de la reforma de la constitución*. Buenos Aires: Biblioteca del Congreso de la Nación.
Larkins, Christopher
1998 "The Judiciary and Delegative Democracy in Argentina." *Comparative Politics* 30 (4): 423–42 (July).
Latin American Regional Report-Southern Cone
1997 "Menem Tries to Reassure His Troops." November 11 , 6.
MacKay, Maria Luisa
1993 "Cambiaría el funcionamiento de la Corte como parte del Acuerdo Político." *Clarín*, November 17, 4–5.
Molinelli, Guillermo
1999 "La Corte Suprema de Justicia de la Nación frente a los poderes políticos a traves del control de la constitucionalidad, 1983–1998." Mimeo. Universidad de Buenos Aires.
North, Douglass
1990 *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press.
Oteiza, Eduardo
1994 *La Corte Suprema: Entre la justicia sin política y la política sin justicia*. La Plata: Librería Editora Platense.
Prillaman, William
2000 *The Judiciary and Democratic Decay in Latin America*. Westport, CT: Praeger.
Ramseyer, Mark, and Eric Rasmusen
2003 *Measuring Judicial Independence*. Chicago, IL: University of Chicago Press.
Russell, Peter, and David O'Brien, eds.
2001 *Judicial Independence in the Age of Democracy*. Charlottesville, NC: University Press of Virginia.
Schedler, Andreas, Larry Diamond, and Marc Plattner
1999 *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder, CO: Lynne Rienner Publishers.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press

Smulovitz, Catalina

1995 "Constitución y poder judicial en la nueva democracia argentina: La experiencia de las instituciones." In *La nueva matrix política argentina*, edited by Carlos Acuña, 71–114. Buenos Aires: Ediciones Nueva Visión.

Stotzky, Irwin, ed.

1993 *Transition to Democracy in Latin America: The Role of the Judiciary*. Boulder, CO: Westview Press.

Ventura, Adrián

1997 "Aeropuertos: Otro sí al gobierno." *La Nación Internacional*, December 22, 4.

1998a *El consejo de la magistratura*. Buenos Aires: Depalma.

1998b "Nazareno decidió convocar al Consejo de la Magistratura." *La Nación*, October 14. www.lanacion.com.ar/98/10/14/p10.htm.

Verbitsky, Horacio

1993 *Hacer la Corte: La construcción de un poder absoluto sin justicia ni control*. Buenos Aires: Planeta.

https://doi.org/10.1353/lar.2004.0045 Published online by Cambridge University Press