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0521820596 - Courts under Constraints: Judges, Generals, and Presidents in Argentina

Gretchen Helmke

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## *Courts under Constraints*

This study offers a new theoretical framework for understanding how institutional instability affects judicial behavior under dictatorship and democracy. In contrast to conventional wisdom, the central findings of the book challenge the longstanding assumption that only independent judges rule against the government of the day. Set in the context of Argentina, the study brings together qualitative case studies and statistical analyses with spatial and game theoretic models to explore the conditions under which courts rule against the government. In addition to shedding new light on the dynamics of court-executive relations in Argentina, the study provides general lessons about institutions, instability, and the rule of law. In the process, the study builds a new set of connections among diverse bodies of scholarship, including U.S. judicial politics, comparative institutional analysis, positive political theory, and Latin American politics.

Gretchen Helmke is an assistant professor in Political Science at the University of Rochester. Her research on comparative institutions and Latin American politics appears in several leading journals, including the *American Political Science Review*, *Comparative Politics*, and *Desarrollo Económico*. Her research has received grants from the National Science Foundation and the Social Science Research Council. She has been a visiting research Fellow at the Fundación Carlos Nino in Buenos Aires, Argentina; the Kellogg Institute for International Studies at the University of Notre Dame; and the Weatherhead Center for International Affairs, Harvard University.

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*To My Father and in Memory of My Mother and Grandmother*

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PRESIDENTS IN ARGENTINA

**GRETCHEN HELMKE**

*University of Rochester*



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UNIVERSITY PRESS

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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE  
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK

40 West 20th Street, New York, NY 10011-4211, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Ruiz de Alarcón 13, 28014 Madrid, Spain

Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 2005

Printed in the United States of America

*Typeface* Janson Text Roman 10/13 pt.    *System* L<sup>A</sup>T<sub>E</sub>X 2<sub>ε</sub> [TB]

*A catalog record for this book is available from the British Library.*

*Library of Congress Cataloging in Publication Data*

Helmke, Gretchen, 1967–

Courts under constraints : judges, generals, and presidents in Argentina / Gretchen Helmke.

p. cm. – (Cambridge studies in comparative politics)

Includes bibliographical references and index.

ISBN 0-521-82059-6 (HB)

1. Political questions and judicial power – Argentina – History – 20th century.

2. Civil-military relations – Argentina – History – 20th century. 3. Argentina –

Politics and government – 1983–2002. I. Title. II. Series.

KHA2533.H45 2004

347.82'012 – dc22                      2004052120

ISBN 0 521 82059 6 hardback

Contents

<i>List of Tables</i>	<i>page</i> x	
<i>List of Figures</i>	xii	
<i>Preface and Acknowledgments</i>	xiii	
<b>1</b>	<b>RULING AGAINST THE RULERS</b>	<b>1</b>
1.1	Introduction	1
1.2	Actors, Institutions, and Mechanisms	7
1.3	Design and Overview of the Argument	14
<b>2</b>	<b>THE LOGIC OF STRATEGIC DEFECTION</b>	<b>20</b>
2.1	The Standard Strategic Account	21
2.2	A New Pattern of Inter-branch Relations	24
2.3	Modifying the Separation-of-Powers Approach	27
2.4	Judicial Motivations	30
2.5	Problems of Information	34
2.6	Institutions and Sanctioning Players	36
2.7	Conclusion	39
<b>3</b>	<b>A THEORY OF COURT-EXECUTIVE RELATIONS: INSECURE TENURE, INCOMPLETE INFORMATION, AND STRATEGIC BEHAVIOR</b>	<b>41</b>
3.1	Politicians and Uncertainty	42
3.2	The Model	44
3.3	Discussion	49
3.4	Conclusion: Testable Hypotheses	56
<b>4</b>	<b>JUDGES, GENERALS, AND PRESIDENTS: INSTITUTIONAL INSECURITY ON THE ARGENTINE SUPREME COURT, 1976–1999</b>	<b>61</b>
		vii

	Contents
4.1 The Gap between Formal and Informal Institutions	63
4.2 Judges under the Bayonets: The Military “Proceso,” 1976–1983	68
4.3 Judges under the Alfonsín Government: The Return to Democracy, 1983–1989	75
4.4 Judges under the First Menem Government: The Difficulty of Democratic Consolidation	84
4.5 Judges under the Second Menem Government: The Path toward Democratic Consolidation?	89
4.6 Conclusion: An Analytic Narrative of Institutional Insecurity	92
5 THE REVERSE LEGAL-POLITICAL CYCLE: AN ANALYSIS OF DECISION MAKING ON THE ARGENTINE SUPREME COURT	98
5.1 Data and Methodology	98
5.2 Timing	100
5.3 Importance	105
5.4 Participation	109
5.5 Target of the Threat	115
5.6 Rival Hypotheses: Composition, Legality, and the Mix of Cases	118
5.7 Conclusion	124
6 THE DYNAMICS OF DEFECTION: HUMAN RIGHTS, CIVIL LIBERTIES, AND PRESIDENTIAL POWER	126
6.1 The Military Court and Human Rights	127
6.2 The Alfonsín Court and Human and Civil Rights	131
6.3 The Menem-Era Court and Presidential Power	135
6.4 Conclusion: Did Defection Work?	141
6.5 Epilogue: The Court and the Collapse of Argentina	145
7 CONCLUSION: BROADER LESSONS AND FUTURE DIRECTIONS	153
7.1 Strategic Defection and the Reverse Legal-Political Cycle	154
7.2 Strategic Defection in Comparative Perspective	158
7.3 Further Implications, Future Directions	168
<i>Appendix A Overview of the Federal Argentine Judiciary and the Argentine Supreme Court</i>	175

Cambridge University Press  
0521820596 - Courts under Constraints: Judges, Generals, and Presidents in Argentina  
Gretchen Helmke  
Frontmatter  
[More information](#)

---

**Contents**

<i>Appendix B The Argentine Supreme Court Decisions Data Set</i>	182
<i>Appendix C Equilibria Proofs</i>	189
<i>References</i>	195
<i>Index</i>	209

*List of Tables*

2.1	Four Modes of Inter-branch Relations	<i>page</i> 26
3.1	Judges' and Executives' Payoffs	45
3.2	Equilibria Results	50
4.1	Characteristics of Argentine Supreme Court Justices' Tenure	66
4.2	Number of Justices Selected by Each Government, 1862–1995	67
4.3	Institutional Insecurity on the Argentine Supreme Court, 1976–1999	96
5.1	Individual Supreme Court Justices' Anti-government Votes by Time to Transition	103
5.2	Number and Percentage of Individual Anti-government Judicial Decisions by Year in Decree Cases, in Salient Decree Cases, in Government Appeals Cases, and in Cases Overturning Second-Instance Court	106
5.3	Individual Supreme Court Justices' Anti-government Votes by Time to Transition among Decree Cases, Salient Decree Cases, Government Appeals Cases, and in Cases Overturning Second-Instance Court	108
5.4	Individual Supreme Court Justices' Abstentions by Time to Transition	110
5.5	Supreme Court's Appeals Acceptances by Time to Transition	112
5.6	Justices' Separate Dissents by Time to Transition	114
5.7	Subset of Individual Supreme Court Justices' Anti-government Decisions by Time to Transition among	

Tables

	Decree Cases, Salient Decree Cases, Abstention, Pro-government and Anti-government Dissent	117
5.8	Individual Supreme Court Justices' Anti-government Decisions by Time to Transition among Decree Cases, Salient Decree Cases, Government Appeals Cases, and in Cases Overturning Second-Instance Court	120
5.9	The Effects of Transitional Periods under Alfonsín and Menem's Second Government on Decisions in the Second Instance Compared with the Supreme Court	122
5.10	Individual Supreme Court Justices' Anti-government Votes, Controlling for a Changing Mix of Cases	123
6.1	Military-Era Supreme Court Justices' Anti-government Decisions in Habeas Corpus Cases by Time to Transition	129

*List of Figures*

1.1	The Standard Separation-of-Powers Game	<i>page</i> 12
2.1	The Executive Selecting and Sanctioning Game	28
2.2	Policy Preferences without Inter-temporal Conflict	29
2.3	Policy Preferences with Inter-temporal Conflict	29
3.1	Court-Executive Signaling Game	47
3.2	Equilibria Predictions	55
5.1	Percentage of Individual Anti-government Judicial Decisions by Year	101

Cambridge University Press

0521820596 - Courts under Constraints: Judges, Generals, and Presidents in Argentina

Gretchen Helmke

Frontmatter

[More information](#)

## *Preface and Acknowledgments*

As concern with the rule of law in Latin America and elsewhere continues to grow, this study provides a new framework for understanding how courts under constraints operate. The assumption that only independent judges rule against the rulers has long been the accepted wisdom among social scientists, policy makers, and citizens alike. Although this study initially shared the same premise, it arrives at a markedly different set of conclusions. Set in the turbulent institutional context of contemporary Argentina, the book demonstrates that sometimes the very lack of independence provokes judges to act as a check on their government, including the very government by whom the judges were earlier appointed. I refer to this important, if heretofore unexamined, phenomenon as strategic defection. In elaborating the specific mechanisms through which this dynamic occurs, the book challenges a range of classic and contemporary understandings about judicial behavior under conditions of institutional instability and uncertainty. In addition to solving several theoretical puzzles about court-executive relations in such environments, the study explores the substantive consequences of this reverse political-legal cycle for elites and citizens in Argentina and beyond.

At every stage of writing this book, I have benefited immeasurably from the advice, guidance, and support of others. As a doctoral student at the University of Chicago, I was extremely fortunate to begin this project under the guidance of my thesis advisers, Susan Stokes, Gerald Rosenberg, Cass Sunstein, and David Laitin. Susan Stokes was a constant source of support and inspiration. Gerry Rosenberg provided a wonderful introduction to the field of judicial politics. Cass Sunstein and David Laitin offered thoughtful comments and advice throughout. Along the way, I have also received extremely helpful suggestions from many other scholars

Cambridge University Press

0521820596 - Courts under Constraints: Judges, Generals, and Presidents in Argentina

Gretchen Helmke

Frontmatter

[More information](#)**Preface and Acknowledgments**

and colleagues, including James Alt, Delia Boylan, Carles Boix, Daniel Brinks, Greg Caldeira, John Carey, Mark Chaves, Lee Epstein, James Fearon, John Ferejohn, Barry Friedman, Hein Goemans, Stacia Haynie, Jonathan Katz, Jack Knight, Steven Levitsky, Scott Mainwaring, Luigi Manzetti, Gerry Munck, Guillermo O'Donnell, Adam Przeworski, Richard Snyder, Matthew Stephenson, Georg Vanberg, and Ashutosh Varshney. In particular, Andy Gould gave encouragement and advice throughout my dissertation and the early stages of the book project. Participants in diverse fora at the University of Chicago, Harvard University, University of Michigan, New York University, University of Notre Dame, and University of Washington at St. Louis have also provided provocative questions and helpful suggestions on most parts of this project. Mark Fey, Daniel Gingerich, Macartan Humphreys, Luis Fernando Medina, Elena Plaxina, and Randy Stone provided invaluable advice and suggestions for the formal model contained in Chapter 3. For the final version of the book I am also deeply indebted to two anonymous reviewers at Cambridge University Press, to Margaret Levi for her incisive comments and encouragement, and to Lew Bateman for his support and patience. Whatever errors or insufficiencies remain in the book are entirely my own responsibility.

During my field research in Argentina several people helped to make this project possible. In particular, I want to thank Carlos Acuña, Pedro Caballero, Andrés D'Alessio, Roberto Gargarella, Hernán Goulco, Jaime Malamud-Goti, Jonathan Miller, Guillermo Molinelli, and Catalina Smulovitz, who generously shared their time and insights about Argentine politics and law. I am grateful to Roberto Frenkel and the Centro de Estudios del Estado y Sociedad (CEDES) for their generosity, especially during my pre-dissertation work in August 1996, and to Martin Böhmer and Roberto Saba at the Fundación Carlos Nino. Most of my time in Argentina was spent in the Palacio de Justicia; I am grateful to the librarians at the Biblioteca de la Corte Suprema, Dra. Silvina Oubel de Novo and the staff at the Secretaría de Jurisprudencia, and the staff at the Oficina de Estadísticas and to the many lawyers, judges, and justices in the Tribunales who taught me about both the formal and informal sides of Argentine law. For his excellent research assistance, I thank Pablo Augustín Lafuente, with whom I spent many months coding cases in the upper reaches of the seventh-floor library of the Supreme Court. Above all, I want to thank Mara Rosa Ferino for her friendship and humor.

Field research in Argentina was made possible by grants from the National Science Foundation Graduate Fellowship (SBR-9617896) and the

Cambridge University Press

0521820596 - Courts under Constraints: Judges, Generals, and Presidents in Argentina

Gretchen Helmke

Frontmatter

[More information](#)**Preface and Acknowledgments**

Social Science Research Council International Dissertation Research Fellowship. The Mellon Foundation Final Year Dissertation Fellowship at the University of Chicago, the Kellogg Institute at the University of Notre Dame, the Weatherhead Center for International Affairs at Harvard University, and the Lanni Fellowship at the University of Rochester provided generous support for writing and additional research. For their outstanding research assistance in helping to extend the Argentina Supreme Court Decisions data set and for sharing their insights about the Argentine judicial system, I am extremely grateful to Maria Eve Miljiker and Santiago Boccardo. For help preparing the final draft of the manuscript, I would like to thank Deniz Aksoy, Tugba Guvenc, Ann Marshall, and, most especially, Elena Plaxina.

Parts of Chapters 2 and 5 have been published in *American Political Science Review* under the title, “The Logic of Strategic Defection: Court-Executive Relations in Argentina under Dictatorship and Democracy” (also translated and reprinted in *Desarrollo Económico*). Parts of Chapters 2 and 6 have been published in *Comparative Politics* under the title, “Checks and Balances by Other Means: The Argentine Judiciary in the 1990s.”

Throughout this project, I was extremely fortunate to have had the love and support of my family and friends. Most especially, I am grateful to my stepmother, Linda; my aunts, Karen and Jan; and to friends Stephanie, Liz, and Christina. I also want to thank Mitch for his help, humor, and love while I finished this project. Finally, I want to dedicate this book to my father, Stephen, for his constant encouragement and support, and to the memory of my mother, Linda, and grandmother, Nora, who are always with me.