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.

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To My Father and in Memory of My Mother and Grandmother
Courts under Constraints

JUDGES, GENERALS, AND PRESIDENTS IN ARGENTINA

GRETCHEN HELMKE
University of Rochester
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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.
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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, George 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...
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.