Enduring Uncertainty: Court-Executive Relations in Argentina in the 1990s and Beyond*

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...Our country is governed by the judiciary, the only branch that is not chosen by the people, that is lamentable .

Hilda Duhalde, First Lady [1]

On February 1, 2002, six of nine justices on the Argentine Supreme Court ruled in the case of *Smith* that a freeze on bank deposits ordered by the government to prevent the collapse of the financial system was unconstitutional. Although the court averred that it could not be the judge of whether an economic crisis existed, it asserted the right to examine the reasonableness of the measures used by the government to confront the crisis. In the harshly worded opinion that followed, the Court declared that the government's so-called *Corralón* policy did not merely limit the right to private property, it annihilated it.[2] While the ruling only applied to the concrete case of Carlos Smith, a depositor from Corrientes, the threat of subsequent decisions and the collapse of the financial system instantly threw Duhalde's interim government into chaos. Scheduled to unveil his new economic plan that day, the President instead attacked the Court's decision and warned of the dire consequences that it would produce. "Don't be fooled" Eduardo Duhalde told the country, "I could care less if one or two banks go under, (but) if the Corralito explodes like a time bomb then no one is going to get their savings."[3]

The Court's decision was a striking departure from its past rulings. As commentators quickly pointed out, many of the same members of the Court who now claimed that the government had gone too far in restricting individual property rights in the interest of the common good, had given *carte blanche* to Menem's government in an economic crisis twelve

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[1] *La Nación* March 6, 2003.

[2] *La Nación* February 2, 2002.

[3] *La Nación* February 2, 2002.

years earlier. In sharp contrast to the *Smith* opinion, the majority reasoning in *Peralta* (1990) had upheld an executive decree (36/90) freezing bank accounts and mandatorily issuing government bonds in exchange on the basis that, "individual rights and guarantees can be protected only to the extent that the country's overall well-being is ensured (cited in Rogers and Wright-Carozza 1995:57). Now, in the midst of an arguably far worse economic crisis, the Court's majority struck a very different balance between these two concerns.[4]

In making this choice, the Court also helped to fuel a battle with the other two branches of government that took center-stage throughout much of last year's crisis. In the weeks prior to the decision, the interim administration had tried to persuade members of the Court to tender their resignations. When backroom negotiations failed, Congress began impeachment proceedings against all nine of the Supreme Court justices. The *Smith* decision came down precisely one day later. As the head of the Lower House impeachment committee, Sergio Acevedo, put it, "This ruling is a direct reaction to our decision to move ahead with the impeachment proceedings. (It is) a ruling that aims at terminating Argentina's financial system and deepening the crisis."[5] Referring to the decision, a spokesman for the Court bluntly

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[4]The decision was defended on the following grounds. Despite the fact that the Court had ruled just weeks earlier against the depositor in *Kipper*, the policies in question in that case referred to temporary exchange controls taken in the final days by de la Rua's government (Cavallo 2002). The issue at stake in *Smith* dealt instead with the government's right to permanently convert savers' US dollars into pesos at an arbitrary rate. In the latter case, the government had thus gone much further, and the Court was simply acting as a legitimate check on excessive governmental power. In short, the Court's apparent inconsistency between the two cases rests on a misunderstanding of the issues involved in different government policies (Ibid.).

[5]*Buenos Aires Herald*, February 3, 2002.

commented, "Kill or be killed: that was the situation. And they decided to shoot first."[6]

More generally, the Argentine Court's boldness in *Smith* contradicts what many scholars had long concluded was a thoroughly entrenched pattern in Argentine politics: unremitting judicial subservience to the executive branch. Within the literature on Latin America, the Argentine Supreme Court is often used as a quintessential example of the problems associated with delegative democracy and weak horizontal accountability (O'Donnell 1998a; 1998b). Despite clear constitutional provisions granting judges life tenure, members of the Supreme Court had been removed en masse a total of nine times over the last five decades. This trend continued even as electoral democracy thrived. In 1990, one of Menem's first pieces of legislative business was to send Congress a Court-packing plan that allowed him to appoint six of the nine members on the Court. When asked why he was willing to sacrifice the Court's independence, he answered simply, "Why should I be the only in President in Argentine history not to have my own Court?" Given the regularity of executive incursions against the Court's independence, the predominant wisdom is that judges in Argentina rarely, if ever, challenge the government of the day.

Beginning with the Federalist Papers, standard institutionalist explanations have linked politicians' control over selection and sanctioning to judicial subservience. My approach integrates these insights with the novel idea that under an alternative set of circumstances, namely when the government in power is likely to change, judges may be instead induced to rule against the government. Elsewhere I have referred to this as strategic defection (Helmke 2002). Using a simple game theoretic model with incomplete information, here I develop further this

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[6] *La Nación* February 2, 2002.

idea by arguing that both types of strategic behavior, support and defection, are rooted in justices' desire to avoid sanctions and the government's desire to select compatible judges. In brief, my claim is that judges' strategic behavior depends fundamentally on the relationship between politicians' beliefs about judges' preferences and the relative costs of sanctioning sitting judges versus selecting new judges. Under a certain combination of these conditions, strategic decision-making constitutes a logical best response to the institutional insecurity that judges face.

The core insight that this paper seeks to develop is that subservience and defiance are two sides of the same coin of institutional insecurity that has plagued Argentina throughout the 1990s. In terms of conventional wisdom this fits nicely with the idea that sincere judicial behavior requires functioning judicial guarantees. At the same time, however, it suggests an alternative mechanism for checks and balances that is usually left out of most institutionalist accounts. In particular, it calls into question the idea that only institutionally secure or legitimate courts protected by the shield of public support can get away with challenging governments.

In the sections that follow, I elaborate the logic of strategic judicial behavior and develop and test a series of original hypotheses using new individual-level data on the Argentine Supreme Court justices' decisions between 1989 and 1999. I conclude by examining the effectiveness strategic behavior and by raising further theoretical modifications to aid our understanding of how strategic decision-making operates in institutionally insecure environments

Theorizing Strategic Judicial Behavior: A Bayesian Model of Selection and Sanctioning

Under what conditions do judges support the government? Under what conditions will

politicians sanction judges who do not? To answer these questions, I develop a simple game theoretic model based on a modified version of the Beer-Quiche game used to analyze situations of incomplete information (Gibbons 1992; Kreps 1990). Although the model presented below is only provisional, such an approach is well-suited to capture the dynamic of court-executive relations in institutional environments where respect for judicial guarantees is not automatic, actors are uncertain about each other's preferences, and their choices are inter-dependent. In short, it aims to make the constraints that judges face contingent, in part, on the choices they make.

The basic premise underlying the Selection and Sanctioning Game is that politicians want judges who support their policies, but face some uncertainty about whether judges will do so. Such principle-agent problems have been long recognized in the literature on judicial selection. Equally important, but less well understood, is how such uncertainty affects politicians' decisions about whether to retain or not sitting justices. For although politicians have a greater quantity of information about a judge's behavior in this situation (*i.e.* the judge's past voting record), the quality of this information is, arguably, ambiguous. For example, when a judge decides a case in favor of the government, is it because she simply agrees with the government's position in the case? Or, does her decision instead reflect a fear of being punished were she to stand up to the government? Conversely, when a judge decides cases against the government, is it because she truly disagrees with the government's position, or is it for some other reason? These questions are particularly salient for an incoming government who observes how a court interacted with the previous government, but may be uncertain about how its own policies will fare in the hands of the judges.

The Selection and Sanctioning Game shown in Figure 1 captures formally the problem that politicians face. In the game there are two types of judges: friendly (F) and unfriendly (~F). The judge's decision (whether to support (S) or not support (~S) the government) acts as a signal to the incoming government about the judge's type.[7] After observing the judge's decision (but not the judge's type), the government's chooses whether to remove (R) or retain (~R) the judge.

[Figure 1 About Here]

The pay-offs for both types of judges are based on two factors: Whether the judge is able to decide a case in line with her preferences (α), and whether she is retained or removed by the government (β). What distinguishes the two types is that friendly judges prefer to hand down favorable decisions, while unfriendly judges prefer to hand down unfavorable decisions.[8] Thus, assuming that $\alpha>0$ and $\beta>0$, a friendly judge earns the highest pay-off for deciding cases in favor of the government and being retained and the lowest pay-off for deciding cases against the government and being removed. Conversely, the unfriendly type earns the highest pay-off for deciding cases against the government and being retained and the lowest pay-off for deciding cases in favor of the government and being removed. Thus, there are four possible pure strategies: {(S|F; S|~F);(~S|F; ~S|~F); (S|F, ~S|~F); (~S|F; S|~F). The first two represent

[7] Note that what constitutes a "favorable" decision ultimately depends on the preferences not of the current government, but of the incoming government. Thus, when the current government is likely to remain in office, favorable decisions for the current government and the incoming government are the same. When the opposition comes to power, however, a favorable decision may mean deciding against the current government. In future iterations, I plan to incorporate this into a more complex game by adding another chance move that determines the preferences of the incoming government. Here, for the sake of simplicity, I solve the equilibria in the model assuming that the preferences of the current and future governments are the same.

[8] These types may be distinguished on the basis of their ideologies or simply on their willingness to decide cases in line with the preferences of the government of the day.

pooling strategies. In one scenario both friendly and unfriendly judges support the government, in the other they both rule against it. The last two represent separating strategies, with each type of judge deciding cases involving the government differently.

The pay-offs for the government involve two types of costs. The first is the cost that the government bears for keeping an unfriendly judge (-*J*). This simply represents the price that the government pays for retaining judges who decide cases against its interests in the future. The second cost the government faces is that of getting rid of judges (-*C*). This cost can be thought of in a number of different ways. In environments where the judges have a high degree of legitimacy, a government who punishes judges may face a public backlash (*e.g.* see Vanberg 2001). A different notion of the cost of removal that is applicable to contexts where courts lack public legitimacy, is as a probability estimate that once the government removes a judge it will be able to replace it with a more compatible judge.[9] This probability may depend on the available pool of possible judges, the ability of the government to adequately screen judges, or on the ability of the government to gain the necessary approval of other political actors in the selection process. Viewed in these terms, the basic idea is that the higher the cost of *C*, the more difficult it is for the government to select compatible judges.

To solve the game, I use the solution concept of Perfect Bayesian Equilibrium (PBE), which consists of beliefs and strategies that meet the following requirements: 1) at each information set the player with the move has a belief about the previous play of the game 2) given these beliefs, the player's strategy must be sequentially rational 3) Bayes' Rule and the players' strategies are used to update beliefs for moves on the equilibrium path 4) Where

[9] I am grateful to Matthew Stephenson for this suggestion.

possible, the same process of updating takes place off the equilibrium path, (Gibbons 1992:175-180). In the game, beliefs for each information set are denoted by (*p, 1-p*), when the government observes favorable decisions and (*q, 1-q*), when the government observes unfavorable decisions.

Here I present and discuss the four salient pure strategy equilibria, leaving a consideration of hybrid strategies for future analysis:

> *Separating Equilibrium 1*. Independent Judiciary, Constrained Government. $C > 0 \geq J$, and $\alpha \leq B$, the equilibrium strategy profile is the following: judges (F|S; ~F|~S) and government (~R, ~R). Beliefs are p=1, q=0
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> *Separating Equilibrium 2*. Sincere Judiciary, Semi-Constrained Government. $J > C > 0$ and $\beta < \alpha$, the equilibrium strategy is judges (F|S; ~F|~S) and government (~R, R). p=1; q=0
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> *Separating Equilibrium 3*. Sincere Judiciary, Unconstrained Government. $J \geq 0 > C$ and $\beta < \alpha$,, the equilibrium strategy is judges (F|S; ~F|~S) and government (R, R). p=1; q=0
>
> *Pooling Equilibrium 1*. Strategic Judiciary, Rational Government. $C<J$, the equilibrium strategy profile is: Judges (F|S; ~F|S) and government (~R, ~R). Beliefs are $p>1-C/J$; $q<1-C/J$

Discussion and Implications

In the first equilibrium both types act sincerely and neither are punished by the government. This equilibrium is sustained by the costs the government faces in punishing judges. Even when an incompatible judge hands down an unfavorable ruling, the costs of punishing the judge prohibit the government from removing the judge. As mentioned above, such an equilibrium is plausible in contexts where violating judicial guarantees results in a strong public backlash. Or, alternatively, the equilibrium could be sustained in settings where the probability of replacing the incompatible judge with a more compatible judge are lower than

the probability of replacing her with less compatible judge.

In the second and third separating equilibria judges also decide cases in line with their preferences, but are punished for doing so. What makes these equilibrium responses is that in both cases at least one type of judge attaches a greater value to the issue (α) than to avoiding punishment (β). Although such situations of strict dominance may be less theoretically interesting, they suggest an important substantive point about judicial motivations. That is, the same pattern of sincere judicial behavior and government punishment obtains across stereotypes of judges that are generally considered to be quite different. For example, imagine a professionally-oriented judge with divergent preferences from the government who is committed to upholding the rule of law. Given her preference ordering, she will never rule in favor of the government in order to keep her job and will indeed lose her job whenever the government has a chance to get rid of her.[10] Similarly, however, a corrupt judge who attaches little value to staying on the bench under a clean government would likewise face very little incentive to decide cases strategically in order to avoid punishment.

The fourth and most substantively relevant equilibrium for the Argentine case captures strategic situations in which an unfriendly judge faces incentives to alter her decision in order to avoid being punished. Note that whereas sincere judicial behavior was derived solely from the preference orderings of the actors, strategic judicial decision-making is driven by an interaction among the government's prior beliefs,[11] the judges' decisions, and the government's relative costs

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[10]An example of this type of behavior might be the three judges on Peru's Constitutional Court who, at the height of Fujimori's popularity and power, dared to challenge his bid to run for a third term and were quickly impeached by the C90-dominated Congress.

[11] Note than in this model for all four pure strategy equilibria, the prior beliefs are identical to the updated beliefs regarding the strategies adopted on the equilibrium path. In other words, updating occurs according to Bayes' Rule, but the values of *p* and *1-p* are the same as the prior beleifs.

of keeping incompatible judges versus the costs of removing judges. In particular, the substantive interpretation of the threshold $p > 1\text{-}C/J$ is that as the costs of punishing a judge fall relative to the costs of keeping an unfriendly judge, the higher the prior beliefs about whether a judge is friendly must be in order for the government to retain a judge who hands down a favorable decision. Conversely, when costs for punishing are relatively high, the government will still retain judges who hand down favorable decisions even when the prior beliefs about the judge's type are lower. For example, if $C=1$ and $J=4$, then the government's prior beliefs about the type of judge who hands down a favorable decision must be greater than .75 in order for the government to retain judges who decide cases favorably. If, however, the value of $C=2$, then the probability needed to sustain retention drops to $p>.50$.

What are the model's more general implications for understanding court-executive relations in institutionally insecure environments? One clear advantage of considering selection and sanctioning from the government's point of view is that it provides a theoretical underpinning for the intuition that a judge's uncertainty about her future leads her to behave strategically by supporting the current government when it is strong, and defecting against it when it is weak (Helmke 2002). By endogenizing these constraints, the model thus provides a plausible answer to the question of why a judge who faces the possibility of removal under an incoming government would ever imagine that strategic behavior could work. Put simply, it supplies the missing link for understanding why the threat of removal leads judges to engage in strategic behavior.

A second implication of the model is that claims about strategic behavior under these circumstances require a certain amount of asymmetry in the government's beliefs about the types of judges it faces on and off-the-equilibrium path. Substantively, this suggests that governments

who stay in power will only retain judges who decide cases favorably when they already believe that favorable decisions are more likely to be handed down by friendly judges (i.e. $p \geq .5$). S imilarly, off-the-equilibrium path, a government who stays in power will only remove judges who decide against it when it already believes that unfavorable decisions are more likely to be handed down by incompatible judges. This corresponds roughly to the "Intuitive Criterion" which rules out implausible off the equilibrium path beliefs (Cho and Kreps 1987). Moreover, because there is something odd about assuming that when an incoming government sees unfavorable decisions it will conclude that the judge is at least as likely to be friendly as unfriendly (i.e. $q \geq .5$), even though 1) the friendly judge cannot improve their payoffs by deciding against rather than for and, 2) the unfriendly judge will improve their payoff by deciding against the government and not being punished, this also helps us to rule out the other potential pooling equilibrium in which both types rule unfavorably and are retained and favorable decisions are punished. [12]

A third implication is that if strategic behavior is essentially signaling behavior, then such decisions will be concentrated in important and relatively costly decisions. The logic is that the government's ability to form beliefs about a judge's type based on her actions depends, in part, on the decisions having some relevance for the judges. If a government observes a judge's decision in an important case, then the government is able to draw on its prior beliefs about the type of judge it faces and the game plays out accordingly. If, however, the government sees a judge deciding a case that it knows to be relatively unimportant or costless from the judge's point of view, then beliefs about the judge's type based on their actions become meaningless. Thus, if signaling potentially benefits judges under threat, then only by participating in important decisions and

[12] This point draws heavily on the reasoning and language used by Gibbons (1992:238-9)

deciding them in accordance with the incoming government can they hope to improve their fates. More generally, this suggests is that there may be an underlying tension between the conventional wisdom that courts under threat should duck from deciding important or controversial decisions (*e.g.* see McCloskey [1960] 1994), and the idea that judges under threat should to participate in costly decision-making in order to signal their compatibility with the incoming government.

Taken together, these observations lead to the following testable hypotheses regarding strategic judicial behavior:

> Hypothesis 1: *Judges will maintain or increase their support for the current government, if the current government is likely to remain in power.*
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> Hypothesis 2: *Judges will decrease their support for the current government, if the current government is likely to lose power.*
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> Hypothesis 3: *Changes in judicial behavior, either increased support or defection, will be concentrated in important decisions.*
>
> Hypothesis 4: *Judges will not decrease and may increase their participation at the end of a government's term.*
>
> Hypothesis 5: *Judges will increase their concurrences with pro-governmental decisions when the current government is likely to remain in power. Judges will increase their concurrences with anti-governmental decisions when the current government is likely to lose power.*
>
> Hypothesis 6: *Judges will increase their dissents with anti-governmental decisions when the current government is likely to remain in power. Judges will increase their dissents with pro-governmental decisions when the current government is likely to lose power.*

To begin the task of evaluating empirically these hypotheses, the following sections combine a narrative of Argentine history during the 1990s with new individual level data on Argentina's Supreme Court decisions between 1989 and 1999. In the real world, events are obviously far more complex and actors' underlying beliefs and preferences are notoriously hard to capture. Nevertheless, clear changes in Argentina's political landscape during this decade coupled with

systematic data on judicial decision-making for this period provides an excellent opportunity to examine the question of whether Argentine judges use strategic behavior to maximize their chances of remaining on the bench.

Judges Under Attack: Court-Executive Relations in Argentina in the 1990s

Over the last decade in Argentina, few institutions have received more scrutiny than the federal judiciary.[13] The Menem era (1989-1999) witnessed the judicialization of nearly every national political issue, with the Court being asked to decide key cases dealing with the privatization of the economy, the pardoning of former military leaders, and the emergency powers of the president. In sheer numbers alone, the amount of cases entering the Supreme Court rose from approximately 6,000 cases per year between 1984 and 1994 to over 36,000 cases at the end of 1997.[1] Of these, the Court in the 1990s decided between 5,000 and 8,000 annually, with the remaining lawsuits resulting in an increasingly large case backlog.[14] As one Supreme Court Justice remarked, under the Menem administration "there is no major political issue in the country that does not end up as a legal issue."[15]

Following the passage of Menem's court-packing scheme, the political objectivity and

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[13]The Argentine Supreme Court (*Corte Suprema de Justicia de la Nación*) stands at the head of a federal judiciary established by the Constitution of 1853, modeled on the United States Constitution, and recently reformed in 1994. The Argentine Supreme Court is the highest court in the country, with original and appellate jurisdiction over all federal questions. In 1887, the Court established through its own jurisprudence the power of judicial review. It cannot exercise abstract review.

[14]The reason that the Argentine Supreme Court hands down such a large number of decisions is that it lacks certiorari and, until recently, has had to determine the question of constitutionality for each particular case (Iaryczower, Spiller, and Tommasi 2000).

[15]Julio Nazareno (Chief Justice of the Argentine Supreme Court), interviewed by author, May 1997, Buenos Aires.

qualifications of Menem's justices were repeatedly questioned by public opinion leaders inside and outside of Argentina (Verbitsky 1993; Baglini and D'Ambrosio 1993; Dakolias (date)). Phrases such as "juez adicto" (addict judge), "mayoría automática" (automatic majority), and "oficialista" (officialist) became part of the Argentine newspapers' daily vocabulary used to describe the justices on the Supreme Court. Public opinion survey results indicate that the negative image of the judiciary went from 70.3% in July of 1990 following the Court's controversial decisions to uphold the laws limiting the human rights trials to 80.3% in April 1993 (Ibid. 1993:86). In 1995, only 13% of the those surveyed reported confidence in the judiciary.[16] Between 1990 and 1997 170 impeachment resolutions were introduced by opposition politicians in Congress against judges at all levels of the judiciary and sent to the House Committee on Impeachments (La Comisión de Juicio Político de la Cámara de Diputados).[17] Between August 1990 and March 1993 alone, thirty-one requests were made to impeach either individual Supreme Court justices or the entire Supreme Court (Octavio de Jesus and Ruscelli 1998).

Nevertheless, given Menem's personal popularity and the strength of the Peronist party in Congress during Menem's first term in office (1989-1995), there was relatively little that the political opposition could do to any judge without Menem's assent. Following the government's successful fight against inflation, the Peronist party reaped the benefits at the ballot box, increasing their seats in Congress and in the provincial governments in 1991 and 1993 (Stokes 1999b: 171-172). In 1992, the Peronist party went from holding 48% to 63% of the seats in the Senate. Menem's personal popularity remained consistently high at around 50% (Echegeray and

[16]Instituto de Gallup de la Argentina cited in Dakolias (1995) p. 168.

[17]Poder Cuidadano 1997, p.24.

Elordi 1999).[18] The 1993 Pacto de Olivos signed between Menem and Alfonsín to reform the Constitution attests to Menem's overwhelming political strength. Public opinion polls showed that 65% of the people favored reform and between 50% and 60% favored the reelection, which helped Menem to bring the Radicals into the constitutional reform negotiations (Palermo and Novaro 1996:405). In 1995, Menem won re-election easily.

The political landscape began to change during Menem's second term. Shortly after Menem's victory in 1995 popular support for the government and the Peronist party waned. With employment at an unprecedented 18.6%, labor strikes swept the country and the government's approval plummeted to under 20% in 1996 and 1997 (Levitsky 1999:257). In the 1997 midterm elections the Peronists were defeated for the first time in a decade. According to exit polls, almost 40 percent of those who changed their vote to support the opposition in 1997 did so because of dissatisfaction with the administration's handling of unemployment.[19] Despite outspending the opposition by more than seven times, the PJ lost its majority in the Congress, giving up fourteen seats in the lower house.[20] Almost immediately after the votes for the midterm elections were counted, the race for the presidency in 1999 began**.**

Reluctant to challenge Menem's economic model, presidential candidates across the political spectrum sought to distinguish themselves from Menem by capitalizing on the public's

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[18] Even prior to assuming office in 1989, Menem had hinted that he intended to seek re-election (Palermo and Novaro 1996: 403). By 1992 Menem had already held his first summit meeting to plan his re-election (Levitsky 1999:253), but it was not until November of 1993 that Menem managed to bring the Radicals to the bargaining table to sign the Pacto de Olivos (Acuña 1995:125). Among other agreements, the Radicals allowed Menem to run for a second term in exchange for agreeing to create stronger checks on the executive's powers.

[19] *Clarín* November 2, 1997

[20] *Tres Puntos,* December 3, 1997; *Clarín* October 28, 1997,

disgust with the Court, promising sweeping changes if elected. On the right, Domingo Cavallo, Menem's former economic minister and now leader of the new liberal party, Acción por la República, repeatedly criticized the lack of independence in the Argentine judicial system. One well-known anecdote told by Cavallo was that the former Minister of the Interior Carlos Corach had written a list of the justices controlled by the government on a napkin.[21] In 1995 Cavallo was sued by Justice Belluscio for libel after Cavallo had publicly declared him to be a "corrupt thief."[22] Cavallo, who was subsequently found guilty in a separate criminal case dealing with customs officials during his campaign, claimed that the Menem government trumped up charges against its political opponents and then left the judges to do its dirty work.[23] Playing into citizen's concerns about corruption and lawlessness, he used his own experience with the courts to make more general claims against the Menem government. According to Cavallo, the justice system that Menem had created not only put at risk the country's economic security by scaring away investors, but also meant that "the rights of the innocent, of the honest, and of the average citizen are not guaranteed by the Argentine judiciary."[24]

From the center-left Alliance party, forged between the Radical Party and FREPASO, came equally strident demands to remove the justices on the Supreme Court. In 1996 Radicals in the Chamber of Deputies had published a book entitled, *Juicio a la Corte* (Impeach the Supreme Court, Baglini and D'Ambrosio 1993), in which they chronicled in over two hundred pages the

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[21]*Clarín* July 11, 1997.

[22]*Buenos Aires Herald* August 14, 1997.

[23]*Clarín* July 11, 1997: July 30, 1997:July 31, 1997; August 24, 1997; August 26, 1997; September 30, 1997; October 1, 1997; *Página/12* July 30, 1997.

[24]*Clarín* August 24, 1997.

abuses committed by the Court. Among the charges made in the report the authors included evidence on the suspect procedures used by the Peronists in the Senate to approve the court-packing plan, the political ties of the members to the executive branch, and the specific decisions made the Court. As the authors of the report themselves put it, "we do not consider the current justices guilty of misconduct in one, two, or even ten cases; we consider them worthy of impeachment for their total submission [in all cases] to the politicians in power" (Baglini and D'Ambrosio 1993:36-37). In contrast to the U.S., in Argentina the norm against impeaching justices for the content of their decisions had never developed.

Finally, within the Peronist party came some of the harshest demands for renovating the Court. According to Duhalde, who had deep personal antipathy for Menem, if he were to win the presidency in 1999 he would convoke a Constitutional Assembly to suspend the constitutional clause prohibiting the justices' removal, declare Menem's justices "en comisión" (suspended), and use the Consejo de la Magistratura to select new justices.[25] The Alliance immediately echoed this proposal, asserting that, "we would not have put the denunciation of the judiciary at the center of our political discourse if we intended to afterwards continue with the same judges."[26]

At the same time, however, members of the opposition also hinted that what the justices' did over the course of the campaign could affect how the Court would be handled in the future. This came across particularly clearly during the so-called re-reelection case controversy, in which Menem's political supporters asked the Court to approve Menem's bid for a third term

[25]*La Nación*, September 25, 1997.

[26]*La Nación* September 25, 1997.

(Helmke 2003). In response to the possibility of the court-backing, the opposition threatened to start impeachment proceedings against the Court immediately. One anonymous justice quipped, "If we vote for a third term, we had better hope that [he] wins next year. Because if we allow him to run and he does not win, I can already imagine the hoards on the Plaza Lavalle and in the entrance of Tribunales who will be demanding our heads."[27] Implicit in the threat, however, was the idea that if the Court did not back Menem, it might be left alone. During this period the newspapers were filled with speculation about secret deals being cut between the candidates and the Court.

Another set of factors tempering the inevitability of removal was that any incoming government would be constrained to operate within the framework set by formal procedures. This was particularly true for the front-running Alliance coalition comprised of the Radical party and the left-of-center Frepaso party. Throughout the campaign the leaders of the coalition also had sought to differentiate themselves from Menem precisely through vowing to build and respect constitutional rules and procedures. The problem was that with only 130 of the 257 seats in the Chamber of Deputies up for election in 1999, even if the Alliance won the presidency, the Senate would remain in the hands of the Peronists at least until 2001. In the post-election period this meant in order to remove the justices, any incoming government would have to craft a coalition with members of the opposition to gain the two-thirds required for impeaching the justices. Most importantly, any incoming government would thus also undoubtedly be forced to select compromise candidates to fill the empty posts.

Putting this narrative of the threats the justices faced during the 1990s decade together

[27] *Clarín,* May 17, 1998.

with the theoretical framework developed in the previous section, the main testable implications are the following: Under Menem's first administration, the strength of the administration meant that judges appointed by Menem faced very little incentive to defect against him. Indeed, in accordance with the first hypothesis, the only plausible form of strategic behavior for this period would have been for judges to increasingly support the government. The likelihood of ideological convergence between the government and Menem's appointees and the absence of independent measures of judicial preferences makes distinguishing sincere versus strategic behavior difficult. Thus, in the following section I focus on whether the growing likelihood of Menem's re-election correlates with an increase in support among the three hold-over justices (Petracchi, Belluscio, and Fayt), whose allegiance to Menem was seen as more questionable.

Under the second administration, by contrast, the Menem government appeared increasingly weak. From the opposition's perspective, the justices' reputations were extraordinarily compromised. Nevertheless, the prospect of working with Menem's Court was not entirely infeasible, especially given the difficulty that any new government would have in appointing new judges. Thus, in accordance with the second hypothesis, the conditions were ripe for strategic defection at the end of Menem's second term. In terms of the last three hypotheses, evidence further consistent with the strategic account would be if changes in behavior corresponding with changes in the relative strength or weakness of the government were concentrated in important decisions (hypothesis 3), if there were no changes in abstention or participation increased as the threat judges faces grows (hypothesis 4), and if judges issued separate concurrences and dissents to appeal to the incumbent government in the first term and the opposition in the second term.

Patterns in Judicial Decision-Making in the 1990s: A Quantitative Analysis

Elsewhere, I have examined the logic of strategic judicial behavior for the decade of the 1990s by considering high-profile cases (Helmke 2003), here I draw on recently gathered individual-level data on the Argentine Supreme Court justices' decisions between 1989 and 1999, contained in the *Argentine Supreme Court Decisions Database* (ASCD), which I constructed.[28] Each decision is coded dichotomously according to whether the justice voted in favor of or against the government, abstained, or issued a separate concurrence or dissent.[2] Inferences about strategic behavior are based not simply on the total percentage of pro- or anti-government decisions, which may be affected by any number of factors, but on whether the willingness of judges' behavior *changes* relative to changes in their political environment.

Timing. To capture the effect of changes in the political environment on changes in judicial behavior, I employ a series of logit models using dummy variables with adjusted cut-points at twenty-four, eighteen, twelve, six, and three months prior to the change in government. These different cut-points allow me to assess how judges' behavior changes as an election approaches and a renewal or change of the government becomes increasingly likely. I assign a value of "1" for all decisions falling within the periods of the transitions. All other decisions

[28] The indices contained in the back of each volume of Argentine Supreme Court decisions (*Fallos de la Corte Suprema de Justicia de la Nación*) allowed me to select all cases that met one or both of the following criteria: 1) the case named the state as a party and/or 2) the case named a decree passed by the current executive, thus providing a systematic way of identifying cases in which the government had an interest. Additional information on case type and types of issues involved help to address the concern that the government may not care equally about winning all of the cases in which it is a party or in which the legality of a particular decree is at stake.

take on a value of "0."[29]

[Table 1 About Here]

Table 1 presents the results for the entire Court and for different subsets of justices for the two Menem administrations. For the first Menem government, both the full court and the subset of hold-over justices show a marked increase in support for the government coinciding with the signing of the Pacto de Olivos in late 1993. Calculating the marginal effects from the coefficients shows that the likelihood of all judges supporting Menem increased by 10 percentage points, and by 16 to 18 percentage points among the subset of hold-over justices. In the second Menem government, the first four coefficients for each group of judges are similarly in the right direction and significant. Substantively, the probability of handing down an anti-government decision increased among the entire Court in the last two years of Menem's second government by between 17 percentage points in the last two years to 8 percentage points in the final six months. Among Menem's so-called "automatic majority" defection against the Menem government occurred at roughly the same rate, with the likelihood of handing down an anti-government decision increasing 14 percentage points to 10 percentage points in the same period. Interestingly, for both administrations it appears that there are no significant changes in judicial behavior in the three month period prior to the change in government (even excluding the prior twenty-one month period). While this could cast suspicion on the strategic view, it could also indicate that judges think of strategic behavior as effective, but only up to a certain point. If true, then the effect of timing on changes in judicial behavior would be consistent with a reverse u-

[29]To control for individual justice effects, for each model I also include dummy variables for each judge on the Court at the time the decision was handed down.

shape pattern suggested by the data, rather than purely linear.[30]

[Table 2 About Here]

Importance. To examine whether the predicted changes in judicial behavior occur in the most important cases coming before the Court, Table 2 shows the effect of being in the last year of both governments in two subsets of important decisions, decree cases and salient decree cases. Decree cases provide a rough measure of importance based on political rather than legal criteria. Because these cases involve only decrees passed by the sitting government, this group represents decisions that deal with timely political issues as opposed to those decisions involving the government as a litigant which, as result of case backlog, may be less important by the time the cases reach the Supreme Court. The second variable, *Salient Decree*, takes account of the fact that not all decrees passed are necessarily of equal importance (e.g. Ferreira Rubio and Gorretti 1998). To deal with this concern, I selected a subset of the decree cases that dealt with issues considered to be especially relevant under each of the three governments, including cases involving issues of constitutional interpretation and amparo cases.[3]

Overall, the evidence is accords well with what we would expect for both periods if judges are behaving strategically. For the first period, among the hold-over justices there is a significant increase in pro-governmental decisions in the last year of Menem's first term, with the likelihood of handing down a pro-governmental decisions increasing by approximately 17 percentage points for both subsets of cases. The results for the automatic majority in the second administration are also encouraging. Although there does not seem to be a significant change in the broader category of decree cases, there is a clear effect of Menem's last year on the judges'

[30] I thank Jason Wittenberg for making this suggestion.

willingness to decide against the government in the most politically sensitive decree cases. The chances of a pro-governmental decision in favor of the government declining by 12 percentage points among Menem's own appointees.

Abstention, Concurrence, and Dissent. Tables 3 and 4 allow us to delve further into the implications of the strategic theory by examining whether and how judges' participation changes at the end of a government.

[Table 3 About Here]

In particular, the results presented in Table 3 help to adjudicate between two alternative views about how strategic behavior plays out under uncertainty.[31] According to one view, mentioned above, actors under scrutiny will duck rather than defect by adopting a strategy of wait-and-see.[32] By contrast, the signaling model claims that if judges believe that they have chance of improving their fates through the choices they make, then they are better off increasing their participation. Although more analysis is needed, the preliminary results provide little support for the ducking hypothesis, at least for this period.[33] Aside from one coefficient during the first administration, there is no evidence that abstention increases at the end of either government's term. By contrast, at least in the second administration, there is substantial evidence supporting the idea

[31]Note that given the construction of the dataset, I can only measure abstention among cases have been decided. Thus, this does not allow me to get at cases that the Court has delayed deciding altogether.

[32]A theoretical analogue from the literature on political-economy is that members of the Federal Reserve whose re- appointment depends on the future president, will delay changes in monetary policy until after the elections (Alt 1991).

[33] Although this awaits future analysis, under Duhalde, the evidence may well suggest a different pattern. For example, a major part of the Court's strategy post-*Smith* has been to delay deciding cases until the impeachment proceedings were dropped and for justices to seek to recuse themselves individually.

that the judges most under threat (the automatic majority) increases its participation as the Menem era draws to a close.

[Table 4 About Here]

Finally, Table 4 includes the preliminary results for the data on separate opinion writing. As students of U.S. courts have long recognized, writing a separate opinion is potentially one of the strongest signals that the justice can send about his or her preferences. In Argentina, where each judge decides an average of fifty cases each day, separate opinion writing would seem to be an especially costly endeavor. Unlike majority opinions in which only the signers (but not the author(s)) are recorded, the identity of the author of separate concurrences and dissents is clear. Thus, the information contained in a separate opinion potentially gives a much more direct and detailed picture of a justice's views. Yet, in other ways, separate opinion writing also potentially offers judges a perfect opportunity to engage in cheap talk. For example, if we think about inter-court dynamics as analogous to a Voter Pay-Raise game, then the best outcome for judges who want to stay on the bench but have preferences over outcomes is to issue separate dissents and concurrences, but only when the outcome is likely to go in the direction that they want (*e.g.* Helmke and Sanders 2002).

To adjudicate among these different possibilities, I thus examine the four possible combinations of separate and majority opinions under each government: concur with a pro-government decision, concur with an anti-government decision, dissent from a pro-government decision, dissent from an anti-government decision. As above, separate strategic opinion writing involves a judge voting against the preferences of their appointing governments. Where preferences are divergent with the current government (hold-over justices), this involves writing

separate opinions supporting the government. Where preferences are convergent (automatic majority), this involves issuing separate opinions unfavorable to the government. What distinguishes costly from cheap separate opinion writing is whether the majority outcome in is line with the judge's preferences. Thus, assuming divergent preferences among the hold-over justices in the first period, both separate concurrences in pro-governmental decision and separate dissents in anti-governmental decisions are strategic, but the former is arguably costlier because the majority decision also goes against the justices' preferences. Conversely, for the automatic majority during the second administration, both separate concurrences in anti-governmental majority decisions and separate dissents in pro-governmental decisions are strategic, but concurring is again more costly than dissenting.

Turning to the empirical evidence, the results for both periods suggest some support for both types of strategic opinion writing. First, in neither administration are judges more willing to write separate opinions to register their sincere preferences. Indeed, at the end of the second administration the automatic majority's likelihood of handing down a separate dissent from an anti-governmental majority decision declines by 15 percentage points. In terms of distinguishing between the two types of strategic behavior, the preliminary results suggest that justices in the first administration pursued a costlier form of signaling via separate opinions than did the automatic majority in the second Menem government. In the first government, the probability of the hold-over justices issuing a separate concurrence with a pro-governmental decisions increases by around 13 percentage points. Under Menem, there is no significant effect among anti-government concurrences; rather, the action seems to be in separate dissents from favorable decisions, which is arguably a far less costly signal to send.

In sum, overall the patterns in the data for the decade of the 1990s are highly consistent with the theory of strategic behavior. Similar to analyses of earlier periods in Argentina history, the results support the core timing and case salience hypotheses associated with the theory of strategic defection (Helmke 2002). Moreover, although further analysis is needed, the results are also encouraging for new hypotheses that emerge out of the game theoretic model regarding abstention and separate opinion writing as signaling behavior.

Why the Court Stayed: The 1990s and Beyond

From the judges' perspective, the logic of strategic behavior rests on beliefs about what incoming politicians *will* do, not necessarily on what they ultimately do. Whether or not defecting or supporting a government at the right time works is thus a related, but separate question. More generally, this is why testing rational choice arguments requires specifying actors' beliefs and expectations *ex ante*, not simply inferring motives from outcomes *ex post*. Still, while there is always likely to be some slippage between what actors expect will happen and what does happen, the stronger the links are between judges' behavior and politicians' decisions to retain them, the more confident we can be in the strategic model. For example, if we find that incoming governments automatically punish judges who behaved strategically or pay no attention to judges' decisions, then the usefulness of strategic explanations is far more limited.

In the case of Argentina, the overall evidence suggests that strategic behavior has paid off. First, as described above, Menem's dominance in the early 1990s stymied any efforts by the opposition to sanction Menem's judges. According to a member of the Chamber of Deputies Impeachment Committee, Melchor Cruchaga, the impeachment committees of both Houses were

dominated by Peronists who protected judges perceived as loyal to Menem from being investigated (Poder Cuidadano 1997:27). In the Chamber of Deputies the Committee was headed by César Arias who, along with Granillo Ocampo, had been a strong proponent of the initial court-packing plan (Verbitsky 1993). Of the seven member committee in the Senate, four were Peronists presumably loyal to Menem(Poder Cuidadano 1997:29). In Cruchaga's words, "The majority of committee members respond to political pressures, which turns many of the impeachment cases into political trials" (cited in Baglini and D'Ambrosio 1993). Thus, the outcome for much of the 1990s suggests that the judges were correct in casting their lots with the Menem government.[34]

Turning to the final years of the Menem period and to the transition to de la Rua's Alliance government, it appears that strategic defection was also relatively effective. Despite de la Rua's campaign pledges to renovate the judiciary, his administration stands out for being the first in over five decades to leave intact a Court appointed entirely by earlier presidents. According to one source, even proposals for renovating the lower federal criminal courts, which Menem had also packed, were not pursued under De la Rua. Likewise, it is unclear whether the alleged "supplements" paid to judges under Menem through SIDE were entirely cut-off during de la Rua's administration. Undoubtedly, the Court benefitted enormously from the weakness of the executive branch vis a vis Congress. In terms of the model laid out above, the relatively low

[34]Two of Menem's most loyal supporters, Barra and Cavagna Martinez were asked to tender their resignations in order to facilitate the Pacto de Olivos, but both judges went on to powerful or lucrative careers under Menem's second administration. Barra was immediately appointed Minister of Justice, until he was forced to resign over revelations about Nazi ties in his youth. Even then, however, he continued to play a major behind-the-scenes role in Menem's government, including master-minding Menem's bid for a third term. Cavagna Martinez formed a successful private practice, which has since been joined by two of Menem's other appointees to the federal criminal courts, who were widely suspected of corruption.

probability of the incoming government being able to select judges perfectly in accordance with its own preferences lowered the bar for Menem's judges. In other words, in their use of strategic defection the judges merely had to convince de la Rua that they could be negotiated with, not necessarily that they constituted the ideal court for the new government.

What, then, has happened under Duhalde? Returning to the story of *Smith*, it appeared that at least initially in Duhalde's administration, the logic of strategic defection had broken down entirely. Rather than use decisions to appeal to the new government, the Court's decision only exacerbated Duhalde's desire to get rid of the justices. Indeed, immediately following the decision, Duhalde's government came out strongly in favor of impeaching all nine justices. Yet, shortly thereafter, in the midst of the impeachment proceedings, Duhalde shifted course and poured his administration's energy into saving the justices. After months of backroom negotiations within his party and among members of the opposition, Duhalde's Peronists in Congress managed to achieve a quorum and the proceedings against the justices were dropped.

Meanwhile, in exchange for dropping the impeachment the government allegedly struck a separate deal with the Court in which the justices would not rule against the administration's economic policies. Overall, this bargain has been relatively successful for both sides. One year later, only Bossert has tendered his resignation. The Court has, for the most part, refrained from undoing the government's attempts to revive the economy. After repeated delays, last week the Court finally handed down a split decision overturning the government's pesification plan. Although the details are still be worked out, the general consensus has been that the decision was not nearly as bad as the government feared.[35]

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[35] *La Nación*, March 6, 2003.

Several factors have played a role in the Court's stability during the crisis. First, the IMF made it known relatively early on that it disapproved of Duhalde's efforts to do away with the Court. Second, perhaps even more so than under de la Rua, an important factor in keeping the current Court has been the limitations that Duhalde faces in being able to gain approval of the Senate in selecting new justices. This was made all too clear in the recent appointment of Maqueda. Although Duhalde got to appoint a judge who supported his policies, it was hardly a coincidence that Maqueda was himself a Senator at the time. Third, and perhaps most importantly, the Court's own behavior has been a significant part of the story. In a counter-factual world in which the justices had continued to hand down *Smith*-like decisions, it is hard to imagine that either the IMF or the difficulties involved with appointing a new Court would have kept Duhalde from going forward with the impeachments. At the same time, however, the events under Duhalde also suggest an further modification to the existing model in which the judges not only choose which signal to send, but also, potentially, affect the ability of the government to remain in power. Although beyond the scope of this paper, a future challenge is thus to explain not only why Duhalde kept the Court, but why the Court kept Duhalde.

Conclusion

Over the last decade, the members of the Argentine Court have stayed the same. Their willingness to support the current government has not. Beginning with Menem's court-packing scheme in 1990s, the general impression of the Court throughout much of the last decade– further verified in this paper–has been that the judges were subservient to the government of the day. A decade later, this situation often appears to have been reversed. Indeed, as the first lady Hilda Duhalde bitterly complained only last week, Argentina is "governed by the judiciary." Using a

simple game theoretic framework based on incomplete information, this paper has sought to reconcile these two different snapshots of court-executive relations by arguing that under certain conditions judges face incentives to engage in strategic decision-making in order to maximize their chances of remaining on the bench. Specifically, depending on the relative strength of the incumbent government, its beliefs about the sitting judges, and the relative costs that it bears in replacing them versus keeping them, strategic support and defection alike constitute logical responses for judges whose fates are not automatically guaranteed. While more theoretical and empirical work remains to be done, the foregoing discussion thus provides a unified theoretical framework for interpreting the shifting allegiance of the justices throughout the 1990s and beyond, and for better understanding politicians' reluctance to ultimately remove them.

Figure 1. **Selection and Sanctioning Game**

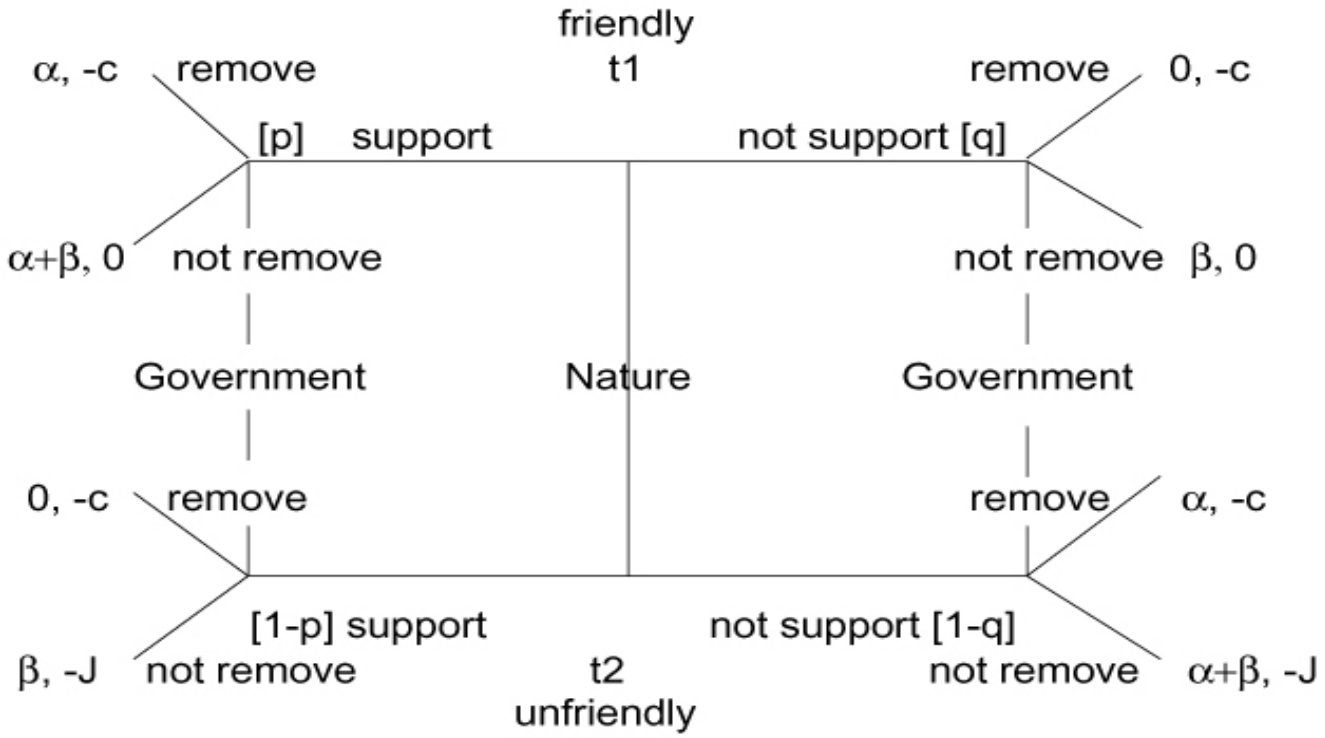

Table 1
Individual Supreme Court Justices' Anti-Government Votes by Time to Transition

	Final 24 months	Final 18 months	Final 12 months	Final 6 months	Final 3 months	Final 3 vs. pre-24 months
	First Menem Government, 1989-1995					
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Constant	0.45***	0.44***	0.40***	0.44***	0.46***	0.42***
	(0.09)	(0.09)	(0.08)	(0.08)	(0.08)	(0.09)
Transition	0.09	0.10	0.48**	0.49*	0.13	0.28
	(0.13)	(0.13)	(0.17)	(0.23)	(0.24)	(0.26)
N	1640	1613	1640	1640	1640	1272
Sig of X^2	.001	.001	.001	.001	.001	.001
	First Menem Government (Hold-Over Justices), 1989-1995					
	Model 7	Model 8	Model 9	Model 10	Model 11	Model 12
Constant	0.25	0.24	0.21	0.27	0.29	0.19
	(0.16)	(0.16)	(0.16)	(0.16)	(0.16)	(0.17)
Transition	0.26	0.26	0.75**	0.91*	0.64	0.67
	(0.20)	(0.20)	(0.26)	(0.41)	(0.42)	(0.42)
N	574	565	574	574	574	448
Sig of X^2	.301	.301	.012	.055	.222	.140
	Second Menem Government, 1995-1999					
	Model 13	Model 14	Model 15	Model 16	Model 17	Model 18
Constant	0.41**	0.31*	0.21	0.15	0.10	0.48
	(0.16)	(0.16)	(0.16)	(0.16)	(0.15)	(0.20)**
Transition	-0.74***	-0.66***	-0.43***	-0.36**	0.06	-0.34
	(0.10)	(0.10)	(0.11)	(0.14)	(0.17)	(0.18)
N	1807	1807	1807	1807	1807	1023
Sig of X^2	.001	.001	.001	.001	.013	.103
	Second Menem Government ("Automatic Majority"), 1995-1999					
	Model 19	Model 20	Model 21	Model 22	Model 23	Model 24
Constant	1.20***	1.06***	0.97***	0.94***	0.88***	1.27***
	(0.17)	(0.16)	(0.16)	(0.16)	(0.15)	(0.22)
Transition	-0.61***	-0.56***	-0.33*	-0.40*	0.04	-0.31
	(0.13)	(0.13)	(0.15)	(0.18)	(0.23)	(0.24)
N	1056	1056	1056	1056	1056	592
Sig of X^2	.000	.000	.046	.055	.287	.279

Note: The unit of analysis is a justice's vote in a (full opinion) decision, coded 0=against the government, 1=for the government. Transition is measured as described in column headings. Cell entries are logistic regression coefficients. Dummy variables for each justice are included in each model, but the results are not presented here. Standard errors are in parentheses. *$p \leq .05$; ** $p \leq .01$; *** $p \leq .001$, two-tailed test.

Table 2
Anti-Government Votes by Time to Transition
Among Decree Cases, Salient Decree Cases

	Decree Subset	**Salient Decree Subset**
	First Menem Government (Hold-Over Justices), 1989-1995	
	Model	Model
Constant	-0.01 (0.27)	-0.07 (0.27)
Last 12 Months	0.72* (0.32)	0.74* (0.33)
N	219	205
Sig of $X^2$2	.123	.119
	Second Menem Government ("Automatic Majority"), 1995-1999	
	Model	Model
Constant	1.03*** (0.20)	1.20*** (0.23)
Last 12 Months	-0.21 (0.20)	-0.52* (0.23)
N	657	490
Sig of $X^2$2	.377	.099

Note: The unit of analysis is a justice's vote in a (full opinion) decision, coded 0=against the government, 1=for the government. Transition is measured as described in column headings. Cell entries are logistic regression coefficients. Dummy variables for each justice are included in each model, but the results are not presented here. Standard errors are in parentheses. *$p \leq .05$; ** $p \leq .01$; *** $p \leq .001$, two-tailed test.

Table 3
Justices' Abstention Rates by Time to Transition

	Final 24 months	Final 18 months	Final 12 months	Final 6 months	Final 3 months	Final 3 vs. pre-24 months
	First Menem Government, 1989-1995					
	Model 13	Model 14	Model 15	Model 16	Model 17	Model 18
Constant	-1.25***	-1.26***	-1.25***	-1.27***	-1.27***	-1.21***
	(0.07)	(0.08)	(0.07)	(0.07)	(0.07)	(0.08)
Transition	0.02	0.08	-0.02	0.34*	0.34	0.30
	(0.12)	(0.12)	(0.14)	(0.17)	(0.19)	(0.21)
N	2731	2704	2731	2731	2731	2155
Sig of $X^2$2	.052	.050	.052	.015	.015	.009
	Second Menem Government, 1995-1999					
	Model 19	Model 20	Model 21	Model 22	Model 23	Model 24
Constant	-0.52***	-0.57***	-0.60***	-0.60***	-0.61***	-0.58***
	(0.11)	(0.11)	(0.11)	(0.10)	(0.10)	(0.14)
Transition	-0.27**	-0.22*	-0.17	-0.28*	-0.44*	-0.59**
	(0.09)	(0.09)	(0.10)	(0.13)	(0.17)	(0.18)
N	3438	3438	3438	3438	3438	1890
Sig of $X^2$2	.000	.000	.000	.000	.000	.000

Note: The unit of analysis is a justice's abstention in a (full opinion) decision, coded 0=not abstain, 1=abstain. Transition timing is measured as described in column headings. Cell entries are logistic regression coefficients. Dummy variables for each justice are included in each model, but the results are not presented here. Standard errors are in parentheses. *$p \leq .05$; ** $p \leq .01$; *** $p \leq .001$, two-tailed test.

Table 4
Justices' Concurrences and Dissents by Time to Transition

	Pro-Govt Concurrence	Anti-Govt Concurrence	Pro-Govt Dissent	Anti-Govt Dissent
	First Menem Government (Hold-Over Justices), 1989-1995			
	Model 13	Model 14	Model 15	Model 16
Constant	-0.89***	-1.49***	-0.55**	0.56*
	(0.22)	(0.31)	(0.22)	(0.25)
Transition	0.59**	0.52	-0.08	-0.14
	(0.25)	(0.35)	(0.25)	(0.32)
N	356	356	356	218
Sig of $X^2$2	.081	.713	.713	.651
	Second Menem Government (Automatic Majority), 1995-1999			
	Model 19	Model 20	Model 21	Model 22
Constant	-1.08***	-0.58*	-0.47**	-0.28
	(0.20)	(0.30)	(0.18)	(0.29)
Transition	0.29	-0.10	0.47**	-0.63**
	(0.17)	(0.23)	(0.16)	(0.22)
N	696	360	696	360
Sig of $X^2$2	.636	.842	.030	.017

Note: The unit of analysis is a justice's decision in a (full opinion) decision, coded 1=concur, 0=not concur, 1=dissent, 0=not dissent. Transition timing is measured as described in column headings. Cell entries are logistic regression coefficients. Dummy variables for each justice are included in each model, but the results are not presented here. Standard errors are in parentheses. *$p \leq .05$; ** $p \leq .01$; *** $p \leq .001$, two-tailed test.

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