The Logic of Strategic Defection: Court–Executive Relations in Argentina Under Dictatorship and Democracy
GRETCHEN HELMKE *University of Notre Dame*

*B*uilding on the separation-of-powers approach in American politics, this article develops a new micro-level account of judicial decision-making in contexts where judges face institutional inse-curity. Against conventional wisdom, I argue that under certain conditions the lack of judicial independence motivates judges to "strategically defect" against the government once it begins losing power. The result is a reverse legal–political cycle in which antigovernment decisions cluster at the end of weak governments. Original data on more than 7,500 individual decisions by Argentine Supreme Court justices (1976–1995) are used to test hypotheses about why, when, and in which types of cases judges are likely to engage in strategic defection. Consistent with the theory's predictions, the results of the analysis show a significant increase in antigovernment decisions occurring at the end of weak dictatorships and weak democratic governments. Examining subsets of decisions and controlling for several additional variables further corroborate the strategic account.

> All judges are politicians, whether they know it or not.
>
> Enrique Petracchi, Argentine Supreme Court Justice, 1983–present (Abramovich 1992)

Why do judges rule against the government? Standard answers suggest that judges do so only if they are independent (Larkins 1998; Stotzsky 1993). Although contemporary schol-ars disagree over how to define and measure judicial independence,[1] the assumption that it is a necessary, if insufficient, condition for a functioning system of in-terbranch checks and balances has remained unques-tioned since Hamilton's ([1787] 1961, 471) eloquent observation that judges who lack independence will rarely "hazard the displeasure" of those in power. Yet even casual observation of judicial behavior in institu-tionally insecure environments suggests that the facts do not fully support this assertion. From Franco's au-thoritarian Spain, where judges routinely expressed views at odds with the government, to countries such as Guatemala and Peru, where judges refused to legit-imize *autogolpes* (self-coups) staged by sitting execu-tives, to Argentina, where judges have sent to prison the very politicians by whom they were appointed, ev-idence suggests that judicial decision-making varies a great deal even where the basic institutional requisites for independence are conspicuously absent.

If the existing literature offers little insight into why dependent judges sometimes serve to check their governments, how can we make sense of this behav-ior? I develop one set of answers to this question by building on the emerging separation-of-powers ap-proach in American politics. In contrast to legalistic approaches that assume apolitical judges and ap-proaches that focus on judges' attitudes or ideologies, the separation-of-powers approach treats judges as ra-tional decision-makers who are constrained by other institutional actors (see, e.g., Epstein and Knight 1996, 1998; Ferejohn and Weingast 1992; and Spiller and Gely 1990). Whereas strategic approaches in the American politics literature have been criticized on the grounds that judges are relatively insulated from the alleged pressures imposed by other actors (Segal 1997), I argue that precisely because such institutional protections are in short supply in many parts of the developing world, the separation-of-powers approach should prove par-ticularly compelling for analyzing judicial behavior be-yond the American context.

Extending the separation-of-powers approach to new institutional settings yields several intuitive but novel predictions about judges' reactions to their politi-cal environment. Most fundamentally, in stark contrast to the conventional wisdom sketched above, I argue that under certain conditions the very *lack* of indepen-dence motivates judges to challenge the other branches of government. Specifically, once the government in office begins to lose power, judges who lack institu-tional security begin facing incentives to increase their antigovernment rulings to distance themselves from a weakening government. I refer to this phenomenon as strategic defection. Taking into account factors such as the degree of institutional security that judges face, the number of relevant political actors, and the timing of sanctions, the theory of strategic defection predicts a re-verse legal–political cycle in which antigovernment de-cisions increase at the end of weak governments and are handed down by the very judges whom the government

Gretchen Helmke is Assistant Professor, Department of Political Science, University of Notre Dame, 217 O'Shaughnessy Hall, Notre Dame, IN 46556 (ghelmke@nd.edu).

[1] For surveys of competing definitions of judicial independence and problems of measurement, see Larkins 1996, Rosenberg 1992, and Tate and Haynie 1994.

had earlier appointed. The logic of strategic defection offers an important but heretofore undertheorized mechanism for analyzing a variety of interinstitutional behaviors under dictatorships and democracies alike.

The Argentine Supreme Court presents a textbook case for examining the theory of strategic defection. Despite the constitutional guarantee of lifetime tenure for Argentine Supreme Court justices, the decades of political instability that plagued Argentina from the 1930s through the 1980s resulted in the *de facto* norm of removing and replacing the members of the Supreme Court with each regime transition. In the period examined here, the Court was replaced *en masse* by the military following the coup in 1976 and again by the incoming democratic government of Raul Alfonsín in 1983. This institutional insecurity continued even as democracy consolidated. As recently as 1990 newly elected president Carlos Menem gained control over the Court through a court-packing scheme that ultimately enabled him to appoint six of the nine justices to the bench.

THE SEPARATION-OF-POWERS APPROACH IN A COMPARATIVE PERSPECTIVE: THE THEORY OF STRATEGIC DEFECTION

In extending the separation-of-powers framework beyond the United States, I begin with three observa-

tions. First, in many parts of the developing world, judges face threats far greater than simply having their decisions overturned. In such contexts, sanctions range from impeachment, removal, and court-packing to criminal indictment, physical violence, and even death. Compared to American justices, who serve an average of 16.3 years on the bench, in Argentina in the post-Perón period, the average length of tenure has been a mere 5.6 years (see Table 1). Although judges stepped down for a variety of reasons throughout each of the three governments, multiple resignations clustered at the end of both the military and the first democratic government of Alfonsín suggest that incoming governments in Argentina routinely get rid of their predecessors' judges despite constitutional guarantees.

Second, in many developing countries the *de facto* concentration of power in the executive branch eclipses the formal institutional judicial sanctioning powers granted to the legislature. This is particularly true in Latin America, where despite constitutional guarantees, the functional separation of powers is notoriously weak or absent and power is concentrated heavily in the executive branch (O'Donnell 1994). The weakness of these other institutions thus also tends to increase dramatically the threat judges face, for sanctions against the judges are unlikely to be successfully blocked by third-party actors such as the legislature.

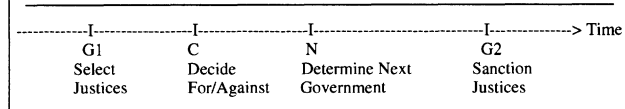### TABLE 1. Characteristics of Argentine Supreme Court Justices' Tenure, 1976–1995

Name of Justice	Dates	Government	Departure	Tenure (Months)
Horacio Herredia	1976–78	Videla*	Deceased	24
Frederico Escalada	1976	Videla*	Resigned	9
Adolfo Gabrielli	1976–83	Videla*	Resigned**	94
Alejandro Caride	1976–77	Videla*	Resigned	21
Abelardo Rossi	1976–83	Videla*	Resigned**	94
Pedro Frías	1976–81	Videla*	Resigned	69
Elías Guastavino	1978–83	Videla*	Resigned**	72
Emilio Daireaux	1977–80	Videla*	Deceased	36
César Black	1980–82	Videla*	Resigned	24
Carlos Renom	1982–83	Galtieri*	Resigned	24
Julio Martínez Vivot	1983	Bignone*	Resigned*	12
Emilio Gnecco	1983	Bignone*	Resigned*	12
Genaro Carrió	1983–85	Alfonsín	Resigned	24
José Caballero	1983–90	Alfonsín	Resigned*	84
Augusto Belluscio	1983–	Alfonsín		192
Carlos Fayt	1983–	Alfonsín		192
Enrique Petracchi	1983–	Alfonsín		192
Jorge Bacqué	1985–90	Alfonsín	Resigned**	60
Julio Oyanarte	1990–91	Menem	Resigned	12
Ricardo Levene	1990–95	Menem	Retired	67
Mariano Cavagna Martínez	1990–93	Menem	Resigned	36
Rodolfo Barra	1990–93	Menem	Resigned	36
Julio Nazareno	1990–	Menem		108
Eduardo Moliné O'Connor	1990–	Menem		108
Antonio Boggiano	1991–	Menem		96
Gustavo Bossert	1993–	Menem		72
Guillermo López	1993–	Menem		72
Adolfo Vázquez	1995–	Menem		48
				(Average = 67.5)

Source: Compiled from data in Carrió 1996; Miller, Gelli, and Cayuso 1995; and Poder Cuidadano 1997.
Note: *Judges appointed during the dictatorship; **judges who resigned during a political transition.

FIGURE 1. The Executive Selecting and Sanctioning Game

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-----------I------------------I-------------------I-----------------------------I--------------> Time
          G1                  C                   N                             G2
        Select              Decide          Determine Next                   Sanction
        Justices          For/Against         Government                     Justices
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FIGURE 2. (A) Policy Preferences without Intertemporal Conflict; (B) Policy Preferences with Intertemporal Conflict

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A   SQ-----------------------------G1-----------------G2--------------------------------->Policy


B   G1-----------------------------SQ-----------------G2--------------------------------->Policy
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Third, in many developing countries the primary threat to judges comes not from incumbent governments but from incoming ones. This follows from the fact that those with the greatest incentives to sanction justices are not those who appoint them but, rather, those who succeed the appointing government. Theoretically, this means that the appropriate locale of what Ferejohn and Weingast (1992) refer to as the "intertemporal conflict of interest" shifts from one between *past* and *current* governments to one based on the *current*, incumbent executive and the *future*, incoming executive. Under this alternative scenario judges face incentives to curry favor not with the current government but, rather, with the future government.

Taken together, the first two points suggest that judges' incentives to engage in strategic behavior in developing democracies are potentially far greater than in developed democracies. The third point implies a difference based not on mere degree but, rather, on the particular repertoire of strategic behavior that emerges. When judges believe that they are constrained by incoming governments who oppose the incumbent government, their best response may not be to support the current government (e.g. Epstein and Knight 1996) but, rather, to defect from it.
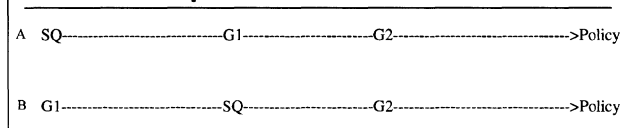
Figure 1 provides a basic strategic setting that illustrates the logic of strategic defection. The figure depicts a sequence of decisions with the current government (G1) moving first, the court (C) second, Nature (N) third, and the future government (G2) fourth. In the first stage, the current government acts by selecting justices for the court. In the second stage, these justices rule on policies of this government, either upholding or overruling the policies of the government.[2] In the third stage, Nature selects the next government, with a probability p that the incumbents will remain and $1 - p$ that opponents will take office. In the fourth and final stage, the future government decides whether to sanction the court based on the court's decisions made under the previous government.

For the sake of simplicity, assume that the basic rule that guides the actors' choices is that if the court has decided cases close to the views of the incoming government, the future government will be less likely to sanction the justices. If the court has decided cases against the views of the new incumbents, however, the future government will be more likely to sanction the justices.[3]

The first implication is that in only two circumstances will the incoming government be unlikely to sanction justices who continued to rule in favor of the previous government. The first condition is when the current government itself is strong and able to maintain itself in power; that is, G1 = G2. The second is when the incumbents lose to the opposition, but the location of the new government's ideal points is such that it prefers G1 to SQ, where SQ is the status quo (see Figure 2A). Such a circumstance might obtain, for example, if there are relatively few policy differences between the outgoing and the incoming governments. In these circumstances, incoming governments will have little incentive to punish their opponents' court, even if the court that served under the previous government continues to rule in its favor.

In all other circumstances, future governments will have incentives to sanction justices who continued to rule in favor of the previous government. If the incoming government opposes the policies of its predecessors such that it prefers that its opponents' policies do not become law, then, in effect, the future government can be said to favor the status quo (that is, the condition that obtains whenever the policies of the current government are not enacted). In short, future rulers will have an incentive to sanction justices loyal to the previous government (judges whose decisions fall between G1 and SQ) whenever SQ is between G1 and G2 (see Figure 2B).

I am now in a position to propose a new set of answers to the question of why, when, and in which cases judges who lack independence are likely to rule against the government. Assuming that judges wish to avoid sanctions, loyalty to the current government clearly may not be the best strategy. Instead, once the government in office begins to lose power, judges will face incentives to engage in strategic defection.[4] Stated as a testable hypothesis, the first prediction is as follows.

HYPOTHESIS 1. *Judges will increase their rulings against the current government once the prospect emerges that the current government will lose power.*

Moreover, to the extent that judges use strategic defection to mitigate the sanctions they face, it follows

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[2] The assumption that the court has a dichotomous choice is simplifying, as judges may decide neither strictly for nor strictly against the government. I assume that governments have well-defined, stable, single-peaked preferences in a unidimensional policy space.

[3] A more general assumption is that judges are uncertain about the incoming government's type. If an incoming government cares about

legitimacy, it might not sanction judges regardless of what the judges do. But if judges are uncertain about the next government, strategic defection will never hurt them and could help them.

[4] Further research on justices' motives, such as seeking to enhance their legal reputations, should examine judges' behavior where the preferences of the legal community and the incoming government diverge. Judges seeking to enhance their legal reputation should appeal to the legal community regardless of the political environment.

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that defection should occur in cases about which the opposition is likely to care most. Thus, the second prediction can be stated as follows.

HYPOTHESIS 2. *All else equal, judges will concentrate their defection in cases that are considered most important to the incoming government.*

Evidence would be inconsistent with these hypotheses if judges facing sanctions remained loyal to the outgoing government or if antigovernment decisions were limited to relatively minor cases.

DATA AND RESEARCH DESIGN

Elsewhere, I have tested the theory of strategic defection by considering high-profile cases such as the reelection case involving Menem's bid for a third term in office in 1999 (Helmke n.d.). Here I use new individual-level data on the Argentine Supreme Court justices' decisions between 1976 and 1995, contained in the *Argentine Supreme Court Decisions Database* (ASCD), which I constructed.[5] I compare the behavior of justices in periods of relative institutional security to their behavior in periods of relative insecurity. Inferences about strategic defection are thus based not simply on the total percentage of antigovernment decisions, which may be affected by any number of factors, but on whether the willingness of judges to rule against the government *changes* relative to changes in their political environment. In this section I briefly describe the organization and decision-making process of the Argentine Supreme Court, explain how the data needed to test the hypotheses were gathered, and discuss the operationalization of several key variables.

The Argentine Judiciary and the ASCD Database

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. Once a case arrives at the Argentine Supreme Court it is circulated among the nine justices,[6] who may either sign the draft opinion or write a separate opinion. The order in which a justice receives the case depends on

the type of appeal filed.[7] Justices meet either weekly or biweekly in sessions called *acuerdos*, mainly to sign opinions and occasionally to discuss cases. There are no oral proceedings and the records of weekly meetings are not publicly available. Moreover, the norm is that while all of the justices who agree with the opinion of the majority sign it, the actual "author" of the opinion remains anonymous (Carrió 1996). Nevertheless, for all full opinions[8] the judges in the majority are listed at the end of the opinion and the identities of those justices who sign separate dissents and concurrences are also clear, allowing me to code the individual justices' positions.

One of the main challenges involved in constructing the database was developing a reliable and systematic method for selecting cases in which the government had an identifiable interest. Unlike the U.S. Supreme Court, the Argentine Supreme Court decides thousands of cases annually.[9] Many of these are relatively unimportant legally and politically, raising the issue of which cases were most appropriate for evaluating the strategic behavior of Argentine justices. After considering several alternatives,[10] I used the indexes contained in the back of each volume of Argentine Supreme Court decisions (*Fallos de la Corte Suprema de Justicia de la Nación*) to generate a complete list of cases that met one or both of the following criteria: (1) the case named the state as a party and (2) the case named a decree passed by the current executive. Using these two criteria ensured that all cases in which the government had an interest would be selected. By coding additional information on case type, appeals brought by the government, and types of issues (described below), I can 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. The total number of individual votes based on these cases is 7,562.[11] These votes are coded

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[5] The ASCD database provides the first systematic collection of information on judicial decision-making in contemporary Latin America. See Molinelli, Palanza, and Sin 1999 for additional data, analyzed in Iaryczower, Spiller, and Tomassi 2000.

[6] Congress determines the number of justices. There were five justices under the military and Alfonsín, and nine under Menem. Two Alfonsín appointees resigned in 1990, allowing Menem to appoint six new justices, or a majority, upon taking office.

[7] In cases that reach the Court on grounds of arbitrariness granted by the appeals courts (*recurso extraordinario*), the order of circulation is determined randomly. In cases where lower courts denied the appeal (*recurso de queja*) or cases involving more than 800,000 pesos (*recurso ordinario*), the Chief Justice determines the order, although in practice another justice may set the agenda (anonymous interview, Buenos Aires, July 2001).

[8] All judicial decisions are either full or summary opinions. However, because justices do not sign summary opinions, individual votes can be coded only for full opinion cases.

[9] From 1974 to 1994 the annual number of cases entering the Court averaged between 4,000 and 6,000, but it has risen to more than 36,000 cases since 1997 (FORES 1988, 1/3; Corte Suprema de Justicia de la Nación Secretaria Letrada de Estadisticas 1998; Molinelli, Palanza, and Sin 1999, 710). Each justice currently receives an average of 50 cases per day (anonymous interview, Buenos Aires, July 2001).

[10] Coding all decisions and randomly selecting cases yielded too many cases with no identifiable interest for the government. Efforts to replicate Dahl's (1957) method also failed, as there is no necessary overlap between constitutional cases and cases where one could identify the interest of the government (but see Molinelli, Palanza, and Sin 1999).

[11] Individual justices votes are recorded on a total of 932 cases, with 325 cases under the military government, 278 cases under Alfonsín, and 329 cases under Menem.

dichotomously according to whether the justice voted in favor of or against the government.[12]

Regime, Government, and Political Timing

Testing the strategic defection explanation requires, first and foremost, a measure of the judges' expectations about the threats they face and the ability of the incumbent government to remain in power. Because it is impossible to measure directly the justices' beliefs about their own and the government's future, I generate proxy measures for the justices' expectations by drawing on primary and secondary accounts of political events during the three governmental periods examined. Each entry contained in the ASCD database records the exact date on which the decision was officially handed down. Based on this information, I created a series of dichotomous timing variables that allow me to model the changes in the justices' perceptions about their political environment. Under the military, the earliest plausible beginning for the transitional period in which judges would have expected the military to lose power was two years prior to the regime change.[13] Under the two democratic governments examined, the midterm parliamentary elections two years before the presidential elections serve as the earliest cutoff points for establishing the transitional period.[14] Beginning with the two-year cutoff point, I then capture each transition by creating a series of dummy variables with adjusted cutoff points at eighteen, twelve, 6, and 3 months. These cutoff points generate a series of *transition* variables—*final 24 months, final 18 months, final 12 months, final 6 months, final 3 months*—which allow me to assess how judges' behavior changes as an election approaches and a change to a new government becomes increasingly likely. I assign a value of one to all decisions falling within the periods of the transitions. All other decisions take a value of Zero.[15]

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[12] Decisions decided against the state on the merits that make important concessions to the government are coded "partially against." Decisions decided for the state on the merits that make important concessions to the other litigant are coded "partially for." Because less than 1% of the cases contain partial votes, here I recoded the "partially against" decisions as "against" and the "partially for" decisions as "for."

[13] Although there was great uncertainty about the democratic transition (Munck 1998; O'Donnell and Schmitter 1986), by 1981 the opening of dialogue with the opposition, mass human rights protests, the palace coup against Viola, and the failing economy suggested that the military regime could lose power (Nino 1996). In Argentina's leading law journals the future fate of the military's justices was debated, suggesting that the justices were aware of the threat they faced if the military left power (Carrió 1996).

[14] During the last two years (1987–1989), Alfonsín's government was crippled by labor strikes (McGuire 1997), mass protests, military rebellions, and successive rounds of hyperinflation. The Radicals lost seats in the 1987 midterm elections, and Alfonsín's approval ratings fell steadily, from 42% in April 1987 to 9% prior to the 1989 election (Catterberg 1991). Menem's popularity grew during the first administration (Levitsky n.d.; Stokes 2001). In 1993 the Peronist Party swept the midterm elections. The 1994 constitutional reforms changed the presidential term from a single six-year term to two four-year terms, allowing Menem to win a second term in 1995 (Acuña 1995).

[15] The theoretical justification for treating the timing variables as dichotomous is that it is not the elapsing of time *per se* that increases

Additional Control Variables: Case Importance, Composition, Issue Categories

All of the individual votes analyzed in this article are based on full opinion cases. Thus, the data on individual decisions already deal with a subset of cases considered sufficiently relevant by the justices to warrant a full opinion. To provide additional measures of case importance, I constructed four dummy variables.[16] The first variable, *Decree*, provides a rough measure of importance based on political rather than legal criteria. Because these cases involve only decrees passed by the sitting government, this measure distinguishes decisions that deal with timely political issues from 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, amparo cases,[17] and habeas corpus cases. To address the further concern that the government may not care equally about winning all cases, I constructed *Appeal* as a dichotomous variable that distinguishes cases in which the government lost in the lower court and filed an appeal to bring the case to the Supreme Court. Finally, to measure the Court's level of effort as an indicator of importance, the fourth variable, *Overturn*, distinguishes cases where the Court had to overturn a favorable decision handed down by a lower court to rule against the government from cases where it upheld a negative decision. To account for individual-specific effects, I include dummy variables for each judge on the Court at the time the decision was handed down. Additional dummy variables are included to deal with the possible effects of the Court's composition and the mix of cases coming before the Court. The Appendix includes a complete list of the issue variables used in the analysis.

EVALUATING STRATEGIC MODELS OF JUDICIAL DECISION-MAKING ON THE ARGENTINE SUPREME COURT

Confidence in inferences about strategic defection increases as alternative explanations for such change can be ruled out.[18] For example, if the mix of cases being

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the probability of antigovernment decisions but, rather, the judges' perception that the government will lose power. Dummy variables model the change in the judges' perception as discontinuous.

[16] The descriptive statistics for each of these dummy variables are listed in Table 3.

[17] The *recurso de amparo* accelerates judicial review to remedy a government's abuse of constitutional guarantees (Rogers and Wright-Carozza 1995, 168)

[18] Ideally, to evaluate the strategic account one would use an independent measure of the justices' attitudes, for example, a

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decided by judges is relatively stable over time, a significant increase in antigovernment decisions clustered at the end of a government's term cannot be fully explained by a nonstrategic account. Put differently, the null hypothesis is that if the mix of cases is stable and judges are not reacting strategically to changes in their political environment, then antigovernment decisions should occur at approximately the same rate throughout the government's term.

Timing

The timing hypothesis states that when judges lack secure tenure, antigovernment decisions will increase once judges perceive that the government in office is beginning to lose power. Given the evidence regarding the growing weakness of the military and Alfonsín governments, the specific prediction is that judges during both periods began to turn against the government once it began to lose power. As discussed above, I examine this shift in justices' perceptions between two years and three months prior to the change in government. For the third period examined, the relative strength of the first Menem administration suggests that the justices lacked similar incentives to defect at the end of Menem's first term. Thus, evidence would be consistent with the timing hypothesis if antigovernment decisions increased at the end of the first two governments but not at the end of the third government.[19]

Figure 3, showing trends in antigovernment decisions by year across each of the three governments, strongly supports the patterns predicted by the first strategic defection hypothesis. Under both the military and the Alfonsín governments, judges increased their antigovernment rulings during the last two years of each government as it became increasingly likely that the incumbents would lose power. Under the military regime in the years through 1980, judges ruled against the government in 36% of cases on average. But in 1982 and 1983, once it became likely that a transition would occur, judges increased their percentage of antigovernment rulings considerably, to 48 and 46%. Under the Alfonsín government, antigovernment rulings also began at a relatively low level and then rose as the government became increasingly weak. From 1983 to 1987, antigovernment rulings occurred in only about 37% of all decisions. In 1988 and 1989, antigovernment rulings rose to an average of 47% of all judicial decisions.

liberal–conservative scale is used in the American literature (Segal 1997). No comparable data on judicial preferences exist for developing countries. Assuming that governments appoint like-minded judges, the fact that each Argentine government selected its own majority partially alleviates this problem.
[19] Using timing variables raises ambiguities for the strategic account: Justices may rule against unpopular governments to build popular support (Epp 1998; Gibson, Caldeira, and Baird 1998). However, to the extent that democratically elected incoming governments reflect the public's views, this is hardly at odds with a strategic account (Epstein and Knight 1998; Stimson, Mackuen, and Erikson 1995; Vanberg 2000, 2001). Future research can further determine whether changes in public opinion are *sufficient* to cause a change in the behavior of the Court by examining judges' decisions in cases where the government's and the public's preferences diverge.

FIGURE 3. Percentage of Antigovernment Individual Judicial Decisions by Year
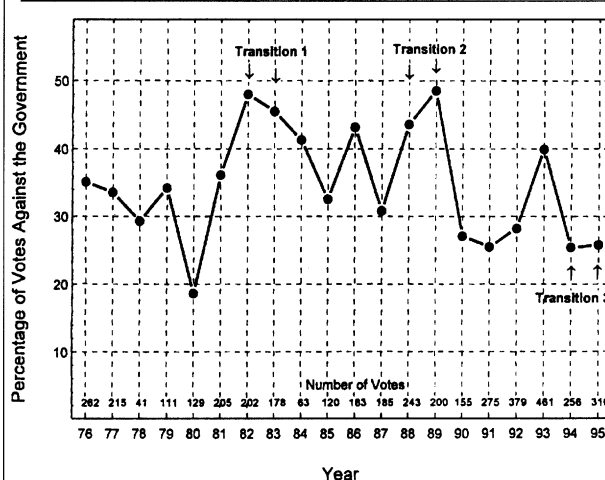
Note: Based on justices' votes in full opinion cases.

In contrast, during the first Menem government (1989–1995), when the justices did not face a credible threat, there was no increase in antigovernment decisions. Indeed, consistent with the logic of strategic defection, the patterns in the individual-level data show that as Menem became increasingly popular and as it became more likely that he would stand for a second term, the percentage of antigovernment decisions declined. Under Menem, the percentage of antigovernment rulings began at roughly the same level as in the early years of the two previous governments, increased to 40% in 1993, but then fell to roughly 25% during the last two years of Menem's first administration. This was a period of success for Menem's economic policies and an increasing likelihood of Menem's bid for reelection.

To delve further into the relationship between changes in the political environment and changes in patterns of judicial decision-making, I employed a series of logit models.[20] The results for each period are presented in Table 2. Beginning with the military period, the results for Models 1–6 overwhelmingly support the timing hypothesis. Consistent with the prediction that judges would increasingly decide cases against weak governments, every transition coefficient for the military period contained in Models 1, 2, and 3 is negative and statistically significant at the $p \leq 0.05$ level or better. Calculating the marginal effects for these coefficients reveals that in the 24, 18, and 12 months prior to the regime transition, the likelihood of the justices voting against the government increased by 20, 21, and seven percentage points, respectively. Somewhat less convincing are the results of Models 4 and 5, which examine the decisions of judges during only the last six- and three-month periods prior to the regime transition. Here the coefficients are also negative but fall short of statistical significance. One interpretation,

[20] I calculated descriptive statistics with SPSS 10.0; all logit models used STATA 6.0.

TABLE 2. Individual Supreme Court Justices' Antigovernment 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
	Military Government, 1976–83					
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Constant	0.51*	0.49*	0.49*	0.49*	0.49*	0.49*
	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)	(0.24)
Transition	−0.81***	−0.85***	−0.38*	−0.11	−0.29	−0.61*
	(0.15)	(0.15)	(0.17)	(0.22)	(0.26)	(0.27)
N	1,339	1,318	1,318	1,318	1,318	1,037
Significance of χ^2	0.001	0.001	0.399	0.769	0.685	0.432
	Alfonsín Government, 1983–89					
	Model 7	Model 8	Model 9	Model 10	Model 11	Model 12
Constant	0.90***	0.75**	0.71**	0.63**	0.63**	0.59*
	(0.22)	(0.22)	(0.22)	(0.22)	(0.22)	(0.28)
Transition	−0.39**	−0.30*	−0.40*	−0.39	−0.59*	−0.62*
	(0.13)	(0.15)	(0.16)	(0.23)	(0.26)	(0.27)
N	989	837	837	837	837	552
Significance of χ^2	0.014	0.170	0.141	0.379	0.207	0.311
	Menem Government, 1989–95					
	Model 13	Model 14	Model 15	Model 16	Model 17	Model 18
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	1,640	1,613	1,640	1,640	1,640	1,272
Significance of χ^2	0.001	0.001	0.001	0.001	0.001	0.001

Note: The unit of analysis is a justice's vote in a (full opinion) decision, coded 0 = against the government or 1 = for the government. Transition is measured as described in the 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. *$p \leq 0.05$; **$p \leq 0.01$; ***$p \leq 0.001$ (two-tailed test).

somewhat troubling from the perspective of strategic defection, is that the willingness of justices to decide cases against the government peaks at the beginning of the transitional period but declines in the final months before the regime change. A different interpretation is that when the timing cutoff points are altered, the model ends up lumping the previous transitional period effects into the pretransitional period, thus decreasing the effects of moving from one period to another. This could also explain why the likelihood declines from 21 to 7 percentage points when moving from the 18- to the 12-month period prior to the transition.

To examine which of these two interpretations provides the better explanation, I excluded all decisions between 24 and 4 months prior to the end of the regime, thus enabling me to compare directly the period in which judges had the least information about the prospects of the sitting government (before the last two years) to the period in which judges had the most information (the last three months). The results clearly favor the second interpretation. Consistent with the strategic account, the coefficient, final 3 vs. pre-24 months, for Model 6 (−0.61) is negative and statistically significant, suggesting that as the transition drew near,

justices were continuing to defect against the government. According to the marginal effects, compared to the first five years of the dictatorship, in the final three months of the transitional period justices were more likely to vote against the government by 15 percentage points.

Repeating the analysis for the second period under the new democratic government of Raul Alfonsín yields equally impressive results. In Table 2, all of the coefficients from Models 7–12 are negative, and with the exception of the six-month transition variable (−0.39), all are statistically significant. Indeed, the statistical significance of the coefficient (−0.59) in Model 11 shows that even without excluding the interim period, justices in the final three months of the Alfonsín regime were significantly more likely to rule against the government. The willingness of judges to rule against the government increased by approximately 9 percentage points for each cutoff point, reaching to 15 percentage points in the final three months prior to the 1989 presidential election compared to the period prior to the 1987 midterm elections.

Shifting the focus to the decision-making pattern among judges under the government of Carlos Menem,

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TABLE 3. Number and Percentage of Individual Antigovernment Judicial Decisions by Year in Decree Cases, Salient Decree Cases, Government Appeals Cases, Cases Overturning Second Instance Court, and Habeas Cases

			% Against (*N*)		
Year	Decree	Salient Decree	Govt. Appeals	Overturning 2nd Instance	Habeas
1976	— (0)	— (0)	53% (87)	26% (175)	— (0)
1977	0% (13)	0% (13)	46% (79)	18% (103)	— (0)
1978	0% (3)	0% (3)	100% (4)	22% (37)	— (0)
1979	19% (21)	19% (21)	68% (37)	21% (62)	100% (4)
1980	17% (24)	17% (24)	37% (41)	11% (85)	— (0)
1981	24% (38)	24% (38)	50% (103)	25% (92)	0% (11)
1982[a]	48% (100)	45% (95)	64% (86)	33% (101)	69% (39)
1983[a]	51% (75)	48% (71)	66% (82)	29% (93)	100% (3)
1984	13% (32)	13% (32)	74% (19)	27% (44)	— (0)
1985	17% (29)	21% (24)	55% (40)	12% (50)	— (0)
1986	58% (47)	64% (42)	57% (75)	32% (77)	— (0)
1987	25% (103)	27% (98)	53% (49)	29% (93)	— (0)
1988[a]	35% (102)	40% (92)	43% (63)	48% (105)	0% (5)
1989[a]	67% (51)	67% (46)	58% (77)	43% (106)	— (0)
1990	19% (63)	21% (57)	36% (44)	7% (56)	0% (5)
1991	14% (37)	14% (28)	27% (113)	25% (111)	— (0)
1992	40% (101)	41% (92)	27% (151)	22% (126)	— (0)
1993	37% (248)	36% (237)	53% (186)	30% (152)	— (0)
1994[a]	30% (178)	30% (178)	26% (70)	22% (101)	— (0)
1995[a]	25% (185)	25% (166)	42% (98)	18% (119)	— (0)
Total	34% (145)	34% (133)	45% (1,504)	26% (1,888)	51% (67)

[a] Transitional period.

the evidence presented in Table 2 overwhelmingly supports the prediction for null cases consistent with the theory of strategic defection. As expected, none of the coefficients in Models 13–18 is negative, confirming the expectation that antigovernment decisions would not increase at the end of Menem's highly successful first government. Indeed, in the midst of Menem's run for reelection, the coefficients (0.48 and 0.49) for the final year and the final six months before the end of this first term show that justices were significantly *more* likely to support the government in its last year prior to Menem's reelection. The marginal effect of the last year on the justices' behavior was to increase by 11 percentage points the justices' willingness to hand down a favorable governmental decision. Although it is difficult to distinguish here between strategic and sincere behavior, the fact that the justices under Menem increased their progovernmental decisions in the final year before his reelection fits well within the longstanding suspicion that insecure tenure amplifies the willingness of judges to curry favor with the government, but only when governments themselves are seen as likely to remain in power. In sum, the patterns in the data on judicial decisions under each of the three governments support the prediction that when judges face uncertain futures, they increasingly decide cases against the outgoing government.[21]

Importance

I now turn to the second main hypothesis, which predicts that when judges defect, they will do so in the most important cases. Table 3 provides information on the behavior of Argentine judges in the most important decisions they make. Among decisions involving decrees and in the subset of salient decree decisions, these data show large increases in antigovernment decisions clustered at the end of the first and second transition periods. In each of the first two groups, the overall number of decisions increased as the cases involving decrees passed by the executive reached the Court, and, quite dramatically, so did the percentage of antigovernment decisions, as shown by the jump from 21% in 1981 to 48 and 51% in 1982 and 1983, respectively. A similar trend occurred at the end of the Alfonsín government, with the sole exception of 1986, when antigovernment decisions peaked. Also in line with the theory of strategic defection is that antigovernment decisions among both groups of decree cases did not exhibit a similar pattern under Menem.

The findings for the three additional categories are somewhat more mixed. In cases where the government clearly had an interest in appealing a negative lower court decision, the percentage of antigovernment decisions increased only modestly in the first transition and actually declined to its lowest level in 1988. The subset

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[21] Logit regression models were estimated comparing the last two years of the previous government to the first two years of the next government in the second and third transition periods. Both coeffi-

cients (0.42 and 0.40) were significant at the 0.05 level, showing that justices defect more at the end of the governments' terms.

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TABLE 4.   Antigovernment Votes by Time to Transition in Decree Cases, Salient Decree Cases, Government Appeals Cases, and Cases Overturning Second Instance Court

	Decree	Salient Decree	Govt. Appeals	Overturn 2nd Instance
	Military Government, 1976–83			
	Model 19	Model 20	Model 21	Model 22
Constant	1.10 (1.15)	1.39 (1.19)	0.24 (0.40)	0.85* (0.35)
Final 24 months	−2.52*** (0.64)	−2.46*** (0.64)	−0.93*** (0.24)	−0.67** (0.23)
N	176	172	515	748
Significance of χ^2	0.001	0.001	0.085	0.059
	Alfonsín Government, 1983–89			
	Model 23	Model 24	Model 25	Model 26
Constant	1.44 (0.44)***	1.30*** (0.45)	−0.20 (0.40)	1.51*** (0.35)
Final 24 months	−0.63* (0.26)	−0.63** (0.27)	0.25 (0.23)	−0.86*** (0.20)
N	263	248	323	470
Significance of χ^2	0.067	0.130	0.777	0.001
	Subset of Four Military-Era Justices, 1976–83			
	Model 27	Model 28	Model 29	Model 30
Constant	2.34*** (0.60)	2.34*** (0.60)	0.05 (0.13)	1.36*** (0.14)
Final 24 months	−2.34*** (0.63)	−2.26*** (0.63)	−0.89*** (0.23)	−0.59** (0.22)
N	148	144	354	480
Significance of χ^2	0.001	0.001	0.001	0.008

Note: The unit of analysis is a justice's vote in a (full opinion) decision, coded 0 = against the government or 1 = for the government. 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. *$p \leq 0.05$; **$p \leq 0.01$; ***$p \leq 0.001$ (two-tailed test).

of decisions in which the justices had to overturn a pro-government decision supports the theory of strategic defection, particularly for the second transition, when the percentage of antigovernment decisions increased dramatically, from an average of 25% in the first four years to 45% in the government's final two years. Undoubtedly as a result of the Dirty War waged by the military against "subversives" in the late 1970s, most habeas corpus cases were concentrated under the military government. Despite the relatively small number of decisions in this category, the jump from 0% in 1981 to 69% in 1982 strongly supports the idea that when defection occurs, it is in the most politically charged cases.

Logistic regression models estimated for each subset of cases under the military and Alfonsín governments (Table 4) confirm these overall patterns. All of the coefficients for the final 24 months for the first transition are negative, with three of the four coefficients achieving statistical significance at the 0.001 level. The likelihood of antigovernment decisions increased by 56 percentage points among decree cases, by 55 percentage points among the salient decree cases, by 23 percentage points among government appeals cases, and by 16 percentage points among cases overturning a favorable lower court decision.

Consistent with the overall patterns identified in Table 3 for the Alfonsín period, three of the four timing coefficients in Table 4 are also negative. For this period, the likelihood of handing down an antigovern-

ment decision in decree cases, salient decree cases, and cases where the decision of the lower court had favored the government increased by 12, 12, and 16 percentage points, respectively, during the final two years of the Alfonsín government. Overall, the data reveal systematic support for the hypothesis that when judges defect, they do so in the most important cases.

Assessing Alternative Explanations

Composition. I now consider two sets of competing explanations for the increase in antigovernment decisions. The first alternative explanation is that changes in the composition of the Court during each of the governments' terms may account for the increase in antigovernment decisions. If the composition of the Court changed during a single government's tenure, how can one know whether the increase in the justices' votes against the government was driven by strategic defection or by the replacement of justices?

Because the composition of the Court remained stable during Alfonsín's government between 1983 and 1989, a compositional explanation for the observed change in voting pattern of the judges is relevant only for the military period. Between 1976 and 1983 there were no fewer than 10 compositions of the Supreme Court (Molinelli, Palanza, and Sin 1999, 703). Of the 12 justices who sat on the bench during this period, only two remained during the entire military regime (Justices Gabrielli and Rossi) and only four sat on

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the bench during portions of both the pretransitional and the transitional periods (Justices Gabrielli, Rossi, Guastavino, and Black).

To deal with the possibility that only later appointees ruled against the government, I reestimated several of the previous models to examine the impact of timing and case importance only for the subset of the four justices who served during both periods. Similar to the findings for the full set of judges' decisions, the coefficients for each of the final 24 months timing variables are statistically significant, with the subset of justices increasing their antigovernment decisions in the last two years of the military government by 41 percentage points in decree cases, by 39 percentage points in the salient decree cases, by 21 percentage points in government appeals cases, and by 11 percentage points in overturning cases (see Table 4). These results suggest that the increase in antigovernment decisions cannot be explained away by the changing composition of the Court at the end of the dictatorship.[22]

Mix of Cases. The second set of alternative explanations is that the increase in antigovernment decisions at the end of weak governments was driven by changes in the types of cases coming before the court. One plausible alternative hypothesis is that if governments acted less legally at the end of their terms, then the increased rulings against the government might be due to changes in the cases themselves, not strategic defection. While plausible, this interpretation does not square fully with what is known about the actions of recent Argentine governments. For example, it is highly dubious whether increasing illegality explains the actions of the Court at the end of the military period. Cases involving the most egregious violations of human and civil rights began coming to the Court immediately after the military seized power.[23] Thus, what changed was not the legality of these cases but, rather, the decisions of the justices.

To test this claim, I isolated the cases that involved writs of habeas corpus filed on behalf of prisoners detained or "disappeared" by the military and estimated a separate logit model (not shown here) with a constant, final 24 months, *habeas*, and an interaction term, *final 24 months * habeas*. Consistent with a strategic interpretation, the coefficient for the interaction term is negative and significant at the $p \leq 0.05$ level, but the coefficient for the *habeas* term is indistinguishable from zero. In other words, in nontransitional periods habeas cases were no more or less likely than all other types of cases to be decided against the government, but in transition periods they were more likely to be decided against the government. Thus, the judges' willingness to decide against the government in habeas corpus cases coin-

cided not with a change in the legality of the cases per se, but with the unraveling of the military dictatorship.

A somewhat different alternative explanation posits that regardless of the legality of the government's actions, the mix of cases coming before the Court may have included more that were likely to be decided against the government. To examine this possibility, I ran logistic regressions for each of the first two final 24-month transitional periods with all of the 19 issue variables contained in the database.[24] The results in Table 5 suggest that a change in the mix of cases does not erase the timing effect predicted by the theory of strategic defection. Consistent with the strategic argument, Model 31 shows that during the first transitional period under the military, controlling for the issue categories has virtually no effect. The coefficient for the final 24 months under the military (-0.83) remains negative and significant at the $p \leq 0.001$ level.

For the second final 24-month transitional period Model 32 shows that cases involving several types of issues (*armed forces retire, customs, emergency, federal, procedures*, and *public administration hiring/firing*) were significantly more likely to be decided against the government.[25] Thus, I constructed a new dummy variable (*Issue Group*), which subsumes all of the issues with negative and significant coefficients. Inconsistent with the alternative explanation, however, the coefficient from the second timing variable (-0.31) remains negative and significant at the $p \leq 0.05$ level. Although less impressive than the findings for the first transition, the data show that when controls for cases of a type more likely to be decided against the government were introduced, the justices still increased their decisions against the government during the second transition period by a margin of six percentage points.

CONCLUSION

Scholars have long assumed that only judges free of political pressure and manipulation are capable of ruling against the government. In many parts of the world, this explains why judges who lack institutional security support incumbent governments but not why they also make decisions that go against the government. I have argued instead that under certain conditions institutional insecurity may be the very reason why judges rule against the rulers. Once the incumbent government begins to lose power, judges who lack institutional security face incentives to distance themselves from the outgoing government by ruling against it, engaging in strategic defection. The results reported here strongly support the strategic defection account: Under both dictatorship and democracy Argentine judges tended

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[22] Only the dummy variables for Justices Black and Renom were statistically significant. That these justices were among the last to be appointed undermines the view that later appointees were more likely to vote against the military than earlier appointees.

[23] During the military period 4% of cases dealt with writs of habeas corpus. Among the leading human rights cases under the military were *Ercoli* (1976), *Lokman* (1977), *Pérez de Smith* (1977), *Timerman* (1978, 1979), and *Zamorano* (1977) (Carrió 1996).

[24] The vast majority of cases (85%) includes only one or two issues.
[25] To deal with the separate question of whether the effects of the changing political environment obtained across different issues, I ran separate logistic regressions for each issue category with the votes of justices as the dependent variable and the 24-month timing variable as the independent variable. Although the timing variable achieved statistical significance in some issue categories and not in others, in none of the issue categories did the justices increase their support for the outgoing government.

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TABLE 5. Individual Supreme Court Justices' Antigovernment Votes, Controlling for Changing Mix of Cases

Independent Variable	Model 31	Model 32	Model 33
Constant	0.68* (0.29)	0.77** (0.29)	1.23*** (0.23)
Final 24 months (military)	−0.83*** (0.17)		
Final 24 months (Alfonsín)		−0.13 (0.16)	−0.31* (0.14)
Military (hiring/firing)	−0.44 (0.43)	0.24 (0.26)	
Military (other)	0.28 (0.23)	−1.00*** (0.29)	
Amparo	1.23*** (0.32)	−1.02*** (0.28)	
Monetary claims	−0.19 (0.15)	−0.04 (0.18)	
Constitutional issues	0.81*** (0.22)	0.61** (0.22)	
Customs	−1.05** (0.31)	−1.92** (0.56)	
Emergency powers	0.25 (0.98)	−1.09* (0.56)	
Federal–provincial	−1.55* (0.73)	−0.49 (0.28)	
Federal (other)	1.05 (0.64)	0.95 (0.56)	
Habeas corpus	−0.99** (0.33)		
Interpretation	0.09 (0.15)	0.04 (0.17)	
Judiciary	0.59 (0.47)	−0.12 (0.42)	
Jurisdiction	−0.35 (0.47)	1.30** (0.43)	
Procedures	−0.14 (0.27)	−1.23*** (0.29)	
Property	−0.54 (0.35)		
Public employees (hiring/firing)	−0.49* (0.22)	−0.72* (0.32)	
Public employees (other)	−0.50* (0.24)	0.30 (0.29)	
Taxes	−0.83** (0.25)	0.07 (0.31)	
Issue group			−1.23*** (0.16)
N	1,335	971	989
Significance of χ^2	0.001	0.001	0.001

Note: The unit of analysis is a justice's vote in a (full opinion) decision, coded 0 = against the government or 1 = for the government. 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. $* p \le 0.05; ** p \le 0.01; *** p \le 0.001$ (two-tailed test).

to support governments when governments were strong and to desert them when they grew weak.

Several broader implications emerge from examining judicial behavior under institutional insecurity. The analysis not only reveals that there is more than one way in which checks and balances can emerge, but also suggests that the nature of checks and balances may differe depending on whether they are induced by secure or insecure tenure. Students of the U.S. Supreme Court have long observed that secure tenure tends to produce judges who are backward-looking or conservative (Dahl 1957). A major area of debate among scholars of the U.S. judiciary is whether courts can be at the forefront of social change (McCann 1994; Rosenberg 1991; Schultz 1998). Although much work remains to be done on the relationship between civil society and courts beyond the United States, this analysis suggests a new mechanism by which even a Court that lacks basic institutional security may become forward-looking and even progressive, depending, of course, on the nature of the incoming government. Under such conditions, it may be that social movements *should* choose a legal course of action, if only to speed up or reinforce an expected policy shift in that direction. This may explain why, despite the overall lack of confidence in the independence of the judiciary, many social movements in Argentina have sought redress through the courts (Brysk 1994).

The flip side of insecure tenure, however, is that when the incumbent government is secure the court is com-

pletely captured. This may be good news to some democratic critics of the court who argue that judges should not be allowed to overrule the will of the people, but it is more problematic in a context where elected representatives do not necessarily respect that will. Under conditions of insecure tenure, judges are continually and directly affected by politics. If one thinks of judges as part legalist, part politician, then under conditions of insecure tenure the latter role tends to dominate the former. Thus, in addition to suffering from the same institutional deficits as their tenured counterparts (i.e., having neither the purse nor the sword), the legitimacy of judges is compromised by their subservience to the government of the day. Moreover, when political influence is limited to selection, the question remains whether judges will actually prove loyal. Politicians may fail to anticipate all issues that will come before the court, or judges may turn out differently than expected. The possibility that judges will eventually be able to operate independently of political considerations is absent under conditions of insecure tenure, where the mechanisms of control and influence are contemporaneous and thus comparatively more effective.

The foregoing analysis does not imply that insecure judicial tenure automatically increases the power of all political actors. It does not. Notably, the power of executives does not uniformly increase where institutional insecurity obtains. On the contrary, insecure tenure may be one of the very mechanisms by which presidential power is reduced: Just when executives are most in

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need of a loyal court, they are least likely to get one. That Latin American presidents are not all-powerful is familiar to scholars of presidentialism (Shugart and Carey 1992). Strategic defection provides a new twist on this phenomenon by explaining why even the most loyal supporters of presidents turn against them once they begin to lose power. Moreover, to the extent that institutional insecurity obtains more broadly, the analysis reported here establishes a new agenda for explaining the behavior of various other institutional actors who may face similar incentives to defect strategically from weak presidents, such as legislators, bureaucrats, and nonindependent central bankers.

Finally, with respect to broader questions about democratic consolidation and the rule of law, strategic defection offers no panacea. Strategic defection may lead to progressive decisions in some contexts, but so too might things work in the other direction. The character of decisions depends not on the judges' sincere reading of the law, but on their ability to adjust their interpretation of the law in light of the values and preferences of the incoming government. Thus, even though judges challenge governments, as long as insecure tenure obtains and judges are forced to take into account political actors' views, the rule of law will continue to prove elusive.

APPENDIX

The issue variables are coded as follows. *Military (hiring/firing)* = 1 when the case involved the hiring or firing of military personnel. *Military (other)* = 1 when the case involved any military issue that is not hiring or firing. *Amparo* = 1 when a case involved an injunction against the government (referred to in Latin American law as a writ of amparo). *Monetary claims* = 1 when the case involved monetary claims made by or against the state. *Constitutional issues* = 1 when the case involved a federal or provincial constitutional question. *Customs* = 1 when the case involved customs claims. *Emergency powers* = 1 when the case involved the emergency powers of the executive contained in Article 23 of the 1853 Constitution. *Federal–provincial* = 1 when the case involved a dispute between the federal and the provincial governments. *Federal (other)* = 1 when the case involved a federal question not subsumed by the other variables. *Habeas corpus* = 1 when a case involved a writ of habeas corpus. *Interpretation* = 1 when the case involved a federal statutory interpretation. *Judiciary* = 1 when the case involved judicial salaries, hiring and firing, or promotion. *Jurisdiction* = 1 when a case involved a question of jurisdiction. *Procedures* = 1 when the case involved criminal procedures and due process. *Property* = 1 when the case involved private property. *Public employees (hiring/firing)* = 1 when the case involved the hiring or firing of any nonmilitary public employee. *Public employees (other)* = 1 when the case involved any nonmilitary public employee and was not about hiring or firing. *Taxes* = 1 when the case involved federal taxes.

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