

## Electoral Fraud, the Rise of Peron and Demise of Checks and Balances in Argentina

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### Abstract

The future looked bright for Argentina in the early twentieth century. It achieved high levels of income per capita and was moving away from authoritarian government, towards a true democracy, with a system of checks and balances. Unfortunately, Argentina never finished the transition. The turning point away from the road towards checks and balances occurred in the 1930s. To stay in power in the 1930s, the Conservatives in the Pampas resorted to electoral fraud, which neither the legislative, executive, or judicial branches checked. The decade of unchecked electoral fraud contributed to the support of citizens for the populism of President Juan Peron. The aftermath of Peron has been political and economic instability,

## I. Introduction

Institutions matter. Numerous scholars have made the case that institutions are instrumental for achieving sustained economic growth. In this paper we argue that beliefs, an informal norm, matter as much as the formal rule of law. In short they are complements. Adherence to the rule of law, particularly within a legitimate system of checks and balances is the exception rather than the norm for most countries. The development of the rule of law entails solving a coordination problem in which the actors refrain, particularly during crises, from acting in their short-run interests.<sup>1</sup> Here is where belief systems can buttress the formal institutions from crumbling during times of crises. Either authoritarian or democratic governments can establish adequate protection of property rights under the rule of law so as to foster economic growth but the difference is in the legitimacy and beliefs in the system. In the longer run economic growth and higher income per capita tends to induce a transition from autocratic regimes to democracy (North, 1995). For those countries who have managed to consolidate democracy with a system of checks and balances each weathering of a crisis along the way added to the likelihood that they would stay on the path of a legitimate system of checks and balances that maintains the rule of law. For example, with today's hindsight it may not surprise analysts that the public rebelled against Roosevelt's effort to stack the U.S. Supreme Court in 1937 but it surely came as a surprise to Roosevelt and his policy team.

North (1995) and Glaeser and Shliefer (2002) in analytical narratives and La Porta, Lopez-de-Silanes, Pop-Eleches and Shliefer (2002) in cross-country regression analysis stress the importance for economic growth on restraining governments from becoming confiscatory. La Porta, Lopez-de-Silanes, Pop-Eleches and Shliefer (2002) find an important impact on political freedom from the existence of constitutional review. La Porta *et. al.* measure *de jure* constitutional review. No doubt *de jure* is a first step in ensuring rule of law but constitutional review *de facto* can be eroded if there is insufficient public belief in its importance or the integrity of the courts. As Weingast (1997:261) notes: "...citizens in stable democracies not only must value democracy but also must be willing to take costly action to defend democratic institutions against potential violations." In short, seemingly good constitutions, with provisions for checks and balances abound around the world, some work in practice while others do not. We present a case study of the erosion of the budding beliefs in checks and balances in Argentina, a country that was in the top ten of GDP per capita countries in the early twentieth century while in the

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<sup>1</sup> We found Weingast (1997) particularly insightful for highlighting the difficulty in establishing the rule of law.

early twenty-first century it has declined considerably.<sup>2</sup> In many ways our article is the mirror image of the analysis presented in North and Weingast (1989). In their analysis, the Glorious Revolution set in motion a system of checks and balances while in our analysis the fraudulent elections in Argentina in the 1930s eroded an emerging set of checks and balances and gave rise to populism. The lesson from our study for emerging democracies today is that adherence to a system of checks and balances requires more than a constitution; it also requires the cultivation of a belief structure in which both the elites and citizens refrain from short-run opportunistic behavior. Most recently North (2004) places particular emphasis on the importance of a belief structure to buttress the formal institutions in a country. In our example, elites acted opportunistically eroding a nascent belief in checks and balances with the long-run result of fostering populism, and political and economic instability.

With high economic growth in the late 19<sup>th</sup> Century, there was a concerted push for electoral reforms with success coming for the secret ballot in 1912 (Crawley, 1984; Halperin Donghi, 1995; Pucciarelli, 1983; Rock, 1975 and Yablon, 2003).<sup>3</sup> We can view the post 1914 to 1930 period as a **potential** transition to a democratic regime with fair elections and an independent Supreme Court: in short Argentina was on the road to becoming a legitimate democracy with checks and balances and high economic growth. The introduction of free elections allowed the Radical party, a party with ties to the Conservative elite but with wide support from the middle class in the cities and rural areas, to control the presidency, some provinces and the Chamber of Deputies (Rock, 1975). We consider this a significant milestone on the way to legitimate democracy from the former authoritarian rule. In the next eighteen years with some bumps in the road, Argentina maintained its high standard of living while it was in transition to an open democratic system with a *de jure* and *de facto* independent court and more importantly the formal institutions bolstered the beliefs by the lower and middle class that they were part of the process of government.

Regrettably Argentina was unable to solidify the political transition to a democratic regime with checks and balances. From 1930 to 1940, Argentina departed from open legitimate elections.<sup>4</sup> The political tensions between the Radical party in office and the displaced Conservative elite coupled with the effects of the Great Depression, led to a military coup and electoral fraud, which restored the

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<sup>2</sup> From 1890 to 1950 Argentina ranked between 7<sup>th</sup> and 13<sup>th</sup>. From 1900 to 1948, Argentina had 15 years in the top ten. These rankings are in GDP per capita in 1990 purchasing power parity. If we adjust by real prices calculated in the Penn World Table 6, Argentina ranked 37<sup>th</sup> in 2000. Australia and Canada, to whom Argentina is frequently compared, fared much better. Australia was in the top ten from 1890 to 1980 and reached its nadir at 14<sup>th</sup> in 1990. It now stands in 8<sup>th</sup> place. Canada started slower than Australia and Argentina, not reaching the top ten until 1910. Except for the Great Depression, Canadians remained in the top ten (Maddison, 1995 and own calculations, Penn World Table 6.0).

<sup>3</sup> For an analysis of the evolution of suffrage institutions in the new world, see Engerman and Sokoloff (2005). Of the South American countries, Argentina was the first to adopt the secret ballot, perhaps setting the example which other countries followed.

<sup>4</sup> For analyses of this period of Argentine history see (Halperin Donghi, 2004; Ansaldi et. al., 1995; Botana et. al., 1997; Peralta Ramos, 1992; Pereira, 1983; Potash, 1969; Rouquie, 1983; Sanguinetti, 1975 and Schilizzi Moreno, 1973)

Conservatives to power (Halperin Donghi, 2004). Despite receiving high marks for their economic policies during the Great Depression, the electoral fraud perpetuated by the Conservatives along with the silence of the Supreme Court eroded the nascent foundations of a political belief system which might have brought about a true system of checks and balances. The Supreme Court openly approved the military coup of 1930 and countenanced electoral fraud throughout most of the 1930s. These actions paved the way for the populist policies and institutional reforms of Juan Peron.<sup>5</sup>

The populist rise to power of Peron in 1947 was partially a result of the fraudulent elections in the 1930s by the conservatives in the Pampas. The Supreme Court opted to stay on the sidelines during the fraud, perhaps as a strategy for survival.<sup>6</sup> The Court may also have felt that the emergency of the Great Depression warranted a departure from the Constitution.<sup>7</sup> The Argentine Supreme Court in 1930 recognized the government that emerged following the first successful military coup in Argentina and countenanced the electoral fraud throughout the 1930s. Once elected the Peronists impeached four of its five Supreme Court justices on the grounds of their behavior in the 1930s as well as the thwarting of the populist will. From Peron and continuing today, the result has been political and economic instability.<sup>8</sup> Both the military and the democratic governments have interfered with the Judiciary.<sup>9</sup> Indicative of the lack of separation of powers has been the high levels of turnover in the Supreme Court through impeachment and forced resignations.<sup>10</sup> This is critical because we maintain that it was the erosion of a budding belief system - entailing honest elections, and a potential role for the Supreme Court as powerful veto over legislative or executive expropriations - and the failure to solidify this system during the 1930s that lead to the initial populist appeal of Peron. The recent events in the twenty-first century in Argentina once again bear witness to the lack of a belief system in checks and balances. Governments, like Argentina, whose citizens do not have an embedded belief system of the importance of checks and balances, are able to take short-run opportunistic actions which in higher income countries would be viewed as expropriations.

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<sup>5</sup> There is an abundant literature on the origins and consequences of Peronism, see (Brennan, 1998; Ciria, 1983; Crawley, 1984; Di Tella, 1998; Elizagaray, 1985; Fayt, 1967; Ferrero, 1976; Germani, 1973; Gerchunoff, 1989; Halperin Donghi, 1975; Halperin Donghi, 1994; Horowitz, 1990; Jones, et. al., 2002; Kenworthy, 1975; Little, 1973; Matsushita, 1983; Murmis and Portantiero, 1972; O'Donnell, 1973; Rock, 1985; Romero, 1988; Sabato, 1988; Smith, 1972; Smith, 1974; Torre, 1990; Torre, 1989; Torre, 1988 and Waisman, 1987)

<sup>6</sup> We thank a referee for his suggestion of the strategic actions of the Court during the 1930s.

<sup>7</sup> In the U.S. in *Home Building and Loan vs Blaisdell* decided by the Supreme Court in 1934, the court ruled the emergency conditions warranted a temporary departure from the contract clause. The decision allowed the state of Minnesota to issue a moratorium on foreclosures. See Alston (1984).

<sup>8</sup> Spiller and Tommasi (2004) argue that the political institutions in Argentina, especially since 1947 have lead directly to volatility of economic policy. They report that Argentina's economic policy from 1970-1990 ranked as the 7<sup>th</sup> most volatile out of 106 countries.

<sup>9</sup> See Iaryczower, Spiller, and Tommasi (2002) for an analysis of judicial independence from 1935-1998. They argue that the Court was able to achieve some independence at the risk of impeachment.

<sup>10</sup> Spiller and Tommasi (2004) also make the point about the lack of independence of the court. We also note the recent impeachment proceedings and forced resignations under President Kirchner. Prominent in the proceedings has been Senator Kirchner, the President's wife.

## II. The Record of Economic Growth in Argentina

The debate on the precise moment of Argentine economic decline has been highly debated. The two main dates proposed are: 1913 (Taylor, 1992; Di Tella and Zimelman, 1967); and 1930 (Diaz Alejandro, 1970 and 1985; Cortes Conde, 1979 and 1998). Our goal is not to estimate the timing of the decline but rather to show first that the overall long-run relative decline in GDP of Argentina that began in the 1910s rebounded in the 1920s then fell visibly in the post-World War II period. In 1947 Argentina was ranked 10th in the world in per capita income. In Figure I we show the GDP per capita ratio between Argentina and nineteen leading economies in the world market from 1875 to 2001.<sup>11</sup> As you can see Argentina fared reasonably well during the 1920s and 1930s but clearly embarked on decline in the post WW II years.<sup>12</sup> Furthermore, if we compare the performance of Argentina with respect to other Latin American economies, which were not affected by WWII (Uruguay, Brazil, Chile, Colombia, Mexico and Peru), we observe a similar evolution of the relative GDP per capita (Figure II). From the late 1940s Argentina's GDP per capita shows a relatively steady decline with other Latin American countries except for the brief period in the 1990s when many believed the "convertibility plan" to be the economic salvation of Argentina.

### Figure I

### Figure II

We argue that the general relative decline since the late 1940s has been a result of political instability (Spiller and Tomassi, 2004; and Prados de la Escosura and Sanz-Villarroya (2004)). Stop and go policies characterized the post-Peron years. Prados de la Escosura and Sanz-Villarroya (2004) most convincingly tie instability in property rights to long run economic growth. They point to the late 1940s as the turning point in property rights instability for Argentina. Spiller and Tomassi (2004) also show that from 1970 to 1999 Argentina ranked as one of the countries with most volatile policies around the world. Some of the effects of this volatility are observed in monetary and exchange rates policies, which produced high inflation and sharp devaluations. Furthermore, political instability also had effects on investment decisions at the firm level (Spiller and Tomassi, 2004). We agree with numerous scholars that the instability of property rights originated with the Presidency of Juan Peron but argue that a very plausible counterfactual is that Juan Peron would never have been elected had it not been for the electoral fraud perpetrated by the Conservatives in the 1930s.

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<sup>11</sup> This is the set of the World's richest countries in GDP per capita in 1875, the earliest year for which we have data for Argentina. These economies are: Denmark, Belgium, United Kingdom, Norway, Germany, France, Switzerland, Sweden, Spain, Portugal, United States, Australia, New Zealand, Canada, Japan, Italy, Austria, Finland and the Netherlands.

<sup>12</sup> In the immediate postwar years, when the country engaged in extensive expansionary policies, we observe a relative improvement in Argentine growth followed by a rather continuous relative decline.

### III. The Institutional Foundations and Political Evolution of Argentina

During the first period (1880-1912), the Argentine Constitution, established in 1853, was the foundation of the political system. In many respects, it resembled the U.S. model, in which the separation of powers and democratically elected government officials are the foundation of the political system. Like its U.S. counterpart the Argentine political system was Presidential with two legislative chambers, the Deputies (seats according to population) and the Senate (seats by Province), and an independent Judiciary to “check and balance” the power of the other two branches. The political foundation of Argentina was federalist with *de jure* though not *de facto* rule of law.

An important element in a democracy is the protection of the rights of the minorities.<sup>13</sup> In Argentina, the protection of the property rights of the landholders in the Pampas was instrumental in promoting investment and growth (Adelman, 1999; Diaz Alejandro, 1970; Cortes Conde, 1998). Protecting property rights is not an easy proposition for the judiciary is in “continual jeopardy of being overpowered, awed or influenced by its co-ordinate branches” (Hamilton, Federalist Paper No. 78). Hamilton like others saw the solution for independence in the appointment of life tenure for Supreme Court Justices. Argentina followed suit.

Argentina started with an institutional framework that produced considerable economic growth (Adelman, 1999). North (1990) and North and Weingast (1989) credit the establishment of Parliament as a check on the power of the crown as the essential political ingredient in the economic success of England.<sup>14</sup> The Argentine case is an outlier, one where the initial institutions also generated growth but, unlike England and most of the Western world, the institutions ultimately could not withstand the trauma inflicted by shortsighted political and economic interests in the 1930s and 1940s. Our study is an examination of the long-run hazards of violating growth-enhancing institutions on the pretext of economic crisis.<sup>15</sup>

From 1862 until 1930, Argentina provided a good example of political stability, though not an open democracy until 1912.<sup>16</sup> Prior to 1914, Conservative governments controlled the Presidency and both houses of Congress. The Conservatives secured their hold on power through intimidation and fraud, particularly in the Pampas, which was the dominant force in the Conservative party. Conservatives across Argentina were not homogenous but they shared the overall vision of the structure and operation

<sup>13</sup> See in particular, Federalist Paper 51 by Madison. See also Meny and Knapp (1998).

<sup>14</sup> In particular, North and Weingast argue that an independent Parliament constrained the borrowing of the King but also led to the establishment of a credible commitment to honoring its debt. The strong version of their argument has recently been questioned by David Stasavage (2005) who argues that it was not until the hegemony of the Whigs in 1715 that England was able to borrow at lower rates. In short Stasavage argues that partisanship also matters. We do not disagree but checks and balances appear to be a necessary condition for long run stability because partisan majorities can come and go. This is especially true if raising capital in foreign markets.

<sup>15</sup> See Higgs (1987) for an analysis of the role of crises in promoting government intervention.

<sup>16</sup> We begin in 1862 because of the previous split between Buenos Aires and the rest of Argentina. In 1912, Argentina passed legislation adopting the secret ballot and it went into effect in the election of 1914.

of government. It appears as if the President dominated the legislative agenda but this most likely resulted from similar interests because Congress had the power to veto.<sup>17</sup> The Supreme Court exercised some independence though the narrative accounts indicate that they shared a similar ideological view to that of Congress and the President. Accordingly, the division of power, and political institutions, were in place to sustain the Conservative elite in power and foster their economic interests.

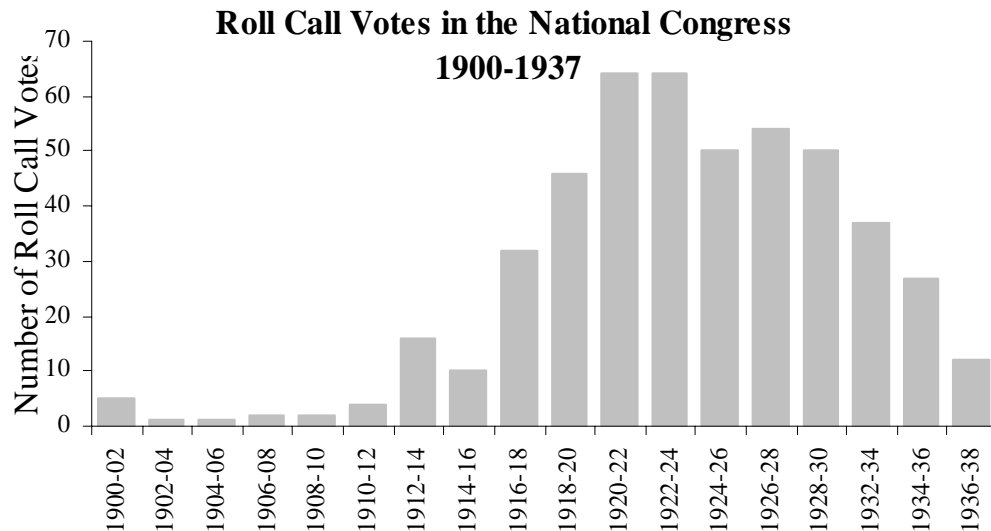
With economic growth in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, pressure mounted for a more open political system.<sup>18</sup> In an effort to maintain legitimacy the Conservative government introduced the Saenz Peña Law in 1912, which established the secret ballot and a more strict control of the electoral roll (Rock, 1975; Halperin Donghi, 1995; Smith, 1974).<sup>19</sup> As a result of the Saenz Peña Law, Yrigoyen from the Radical Party won the Presidency in 1916 and the Radical Party controlled the House of Deputies. The Conservative Party continued to hold a majority in the Senate. Divided governance held through the elections of the 1920s. From 1912 to 1930, the political system became more transparent and we characterize it as period of evolution towards the constitutional precepts of rule of law within a democratic regime. Amidst the political changes during this period economic growth initially fell and then rebounded in the twenties. The increase in the number of Roll Call votes is an indicator that Congress was not simply rubberstamping the will of the President. A Roll Call vote can be used by constituents to measure and monitor the voting behavior of representatives and gave party leaders and constituents a benchmark for rewarding or punishing party members. The use of Roll Call votes increase dramatically after 1916 and then declined in the mid-1930s with the onset of fraud. In the 1930s Congressmen did not depend on the popular vote to be elected, but on the manipulation of the elections.

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<sup>17</sup> For a current view of the agenda setting power of a President, see Alston and Mueller (2006). Spiller and Tommasi (2004) argue that the President in Argentina has considerably greater de facto agenda setting power than Congress. They apply their analysis primarily to the period from Peron to the present.

<sup>18</sup> In the 1890s, the Radical party organized a revolt (La Revolucion del Parque) in order to overthrow the government. It was unsuccessful, and the Conservatives continued controlling the electoral system.

<sup>19</sup> The Radical Party was the most instrumental player forcing the passage of the Saenz Peña Law. Hipolito Yrigoyen, the head of the Radical Party, called voters to abstain from voting until the government reformed the balloting process. Canton (1973)



Source: Own elaboration based on Molinelli, et. al. 1999

The improvement in democracy after 1916 is also reflected in the increase in the number of voters: from 1918 to 1931 the voting population increased by 133.5%.<sup>20</sup> In our view, it was the “Camelot Period” for Argentina: the President had some agenda setting power but was constrained by veto power of the Senate and constitutional review.<sup>21</sup> Within this institutional setting, the Supreme Court exercised some independence from the executive and legislative branches. We are not arguing that the Court always ruled in favor of strong protection of property rights but rather that they were able to exercise independence. We have examples of the Court ruling against as well as for a strict interpretation of property rights. For example the Court in *Ercolano* ruled in favor of regulating rents while subsequently in *Horta v. Harguindeguy* (1922) the Supreme Court verdict struck down an emergency law that controlled urban rents.

Compared to the past, elections were generally clean. The Radical party constrained by the Senate continued to operate the same export driven economic model of the former Conservative dominated governments (Llach, 1985; O’connell, 1986; Cortes Conde; 1998 and 2000). But, there were some significant domestic departures from previous policy. In particular, the Radical party was able to introduce some new legislation favoring agricultural tenants (Solberg, 1987; Ansaldi, 1993). However, the political tension with the Conservatives, which controlled some small provinces, increased, leading

<sup>20</sup> In the decade under fraud, from 1931 to the 1942 election, the number of voters grew only 30.2%, even though the number of eligible voters grew considerably more than in the earlier decades. With a return to democracy in 1946 the turnout increased by 49% between 1942 and 1946 (Molinelli, et. al., 1999).

<sup>21</sup> We stress that the movement to a system of checks and balances is evolutionary and was never completed in Argentina. Hipolito Yrigoyen, the first President from the Radical Party, resorted to Federal Intervention 15 times during his term in order to circumvent the power of the Conservatives. We thank Sebastian Saeigh for this comment.

to several federal interventions and strong confrontations. The Radical party retained its power until 1930, when a military coup, backed by Conservatives and some dissident Radicals overthrew an aging Yrigoyen.<sup>22</sup> This was the first successful military coup in Argentine history and was an affront to the electoral process of the constitution. The military coup marked the beginning of the third stage, from 1930 to 1943, where Conservatives reversed the democratic reforms. Once the military government took power on September 6, 1930, they looked for legitimacy. Perhaps for survival purposes the Supreme Court seemingly gave its approval to the military coup describing it as a “triumphant revolution” (Pellet Lastra, 2001: 63).

According to the Constitution, the role of the court should have been to wait for someone to contest the rule of the military government in a civil suit. The other alternative for the Supreme Court Justices was resignation, the path supported by one Supreme Court Justice, Figueroa Alcorta. (Pellet Lastra, 2001). The military coup, coupled with the approval of the Supreme Court, was a significant reversal in Argentina’s transition to an open democracy (Smith, 1974; Pereira, 1983; Rouquie, 1983; Sanguinetti, 1975; Potash, 1969). The Conservatives thought that the demise of Yrigoyen and the control of the government would give them enough power to defeat the Radicals in clean elections. However, the defeat of the Radicals in April of 1931 showed that they did not have the strength to win a national election<sup>23</sup>. As a consequence, they resorted to fraud to be able to stay in power, although this policy undermined their chances to win in free elections (Walter 1985: 125-126). The military government called for a return to elections in 1931 but forbade any candidates from the Radical Party who had been in government during Yrigoyen’s last term.<sup>24</sup> In a protest response to the prohibition, the Radical Party chose not to participate in the election. As a result, the Conservatives returned to power (Halperin Donghi, 2004).

When the Radical party returned to electoral competition in 1935, observers believed that if fair elections were held the Radicals would win (Walter 1985: 148). The first test was the gubernatorial and provincial congressional elections on November 3, 1935. Fraud pervaded the election<sup>25</sup>. Police

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<sup>22</sup> Yrigoyen was President from 1916 to 1922 and again from 1928 until the coup in 1930. Despite being from the Radical Party, some dissidents still considered Yrigoyen part of the upper class elite. In the interim years, 1923-1928, Alvear, also a Radical, was President.

<sup>23</sup> For the Conservatives of Buenos Aires, electoral fraud was excused as a “necessary evil”. Crucial in determining both their attitude and their reaction to fraud was the traumatic experience of April 1931. ... But the April results had shown that while the Conservatives were strong in the province, the Radicals were simply stronger. Walter (1985), 125.

<sup>24</sup> The imposition of the ban on Radical Party candidates resulted from the electoral results of an election in 1931 for the Province of Buenos Aires. In the 1931 election there was no prohibition of candidates from the Radical Party. The Conservatives anticipated a victory because of the disarray in the Radical Party; its leader was in jail. Nevertheless, the Radicals won the election. The military government nullified the election and imposed the prohibition on Radical candidates for the National election of 1932. (Moreno, 1973).

<sup>25</sup> “But, whereas the April 1931 election was considered generally ‘clean’, the November 3, 1935, contest was immediately and universally condemned as one of the most fraudulent and irregular in Argentine history. It was not

intervened and ejected Radical and Socialist monitors from the polls (Halperin Donghi, 2004; Sanguinetti, 1975). The Conservatives replaced votes and induced people to vote against their wishes. Many newspapers reported the fraud. Three of the five members of the Electoral Board, which oversees elections, ruled that the election should be nullified. But, based on a law passed by the Conservatives in 1934, nullification required the support of two-thirds of the Electoral Board, i.e., four of the five members.<sup>26</sup>

The fraud enabled the Conservatives to gain control of the government in the most populous and powerful province of the country. The Supreme Court did not intervene on the grounds that the issue was political and not constitutional. But the Supreme Court could have acted because federal judges from the Province of Buenos Aires ruled on the fraud; they reached a verdict confirming the irregularities denounced by the Socialist and Radical Party. Furthermore, the President of the Supreme Court of the Province of Buenos Aires, who was part of the Electoral Board voted to declare the election null (Sessions Diary Deputies Chamber, 1936).

Fearing similar fraud at the national Congressional elections in 1936, Radicals petitioned the government for guarantees against fraud. The election was important because it was the prelude to the Presidential election in 1937. Though the National Electoral Board had authority over the election, the Radicals still feared that fraud would rule the day:

Great suspicion exists with respect to what will happen today in the Province of Buenos Aires... If citizens find the path of voting obstructed again, the Congress will have a new reason to discuss this. It will have to consider reestablishing the republican government system. This system of government cannot exist if the majority wish -within the constitutional limitations- is not respected or when we cannot tell what the legitimate majority is (La Prensa, March 1, 1936).

True to the worries of the Radicals, the Conservative Party won the election by fraud. Officials monitoring elections reported fraud before and during the elections.<sup>27</sup> The Deputies from the Radical and Socialist parties proposed a declaration in the Deputies Chamber to nullify elections in the Provinces of Buenos Aires, Corrientes, Mendoza, and Santa Fe. The case went to the Petitions and Power

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to be the exception. Over the next decade most national and provincial elections in the province, and many elsewhere, were to repeat the pattern initiated in November 1931 and refined and made much more blatant and widespread four years later." Walter, 1985:148.

<sup>26</sup> The Conservatives changed the Provincial Constitution in 1933, which contained a new electoral system for the elections in the province. Detractors labeled the new electoral law, Provincial law No 4,316, as "the Law of Fraud" (*Ley del Fraude*). The new law created a system in which the electoral board was controlled by the Conservative government which in practice meant that the electoral board rejects any fraud reports. (Congreso Nacional, Diario de Sesiones Honorable Camara de Diputados de la Nacion, 1936, Reunion No 11, June 18<sup>th</sup> 1936, 10-11.) When the Radical Party accepted to go back to elections despite the evident fraud, it opened the door for a loss of legitimacy from its followers. Many people sought this action as an acceptance of the status quo (Ciria, 1975; Halperin Donghi, 2004, Walter, 1985).

<sup>27</sup> Reports of fraud were common. See Diary of the Deputies Chamber (1936) for a complete list of the reports of fraud in the Provinces.

Commission (*Peticiones y Poderes*), which had advisory power to the whole Chamber of Deputies.<sup>28</sup> After reviewing the evidence, the Commission advised the Chamber of Deputies to declare the national election in the Province of Buenos Aires null (Halperin Donghi, 2004). If the Radical party obtained the nullification and then won in clean elections, they would most likely win the Presidential election in 1938. The situation looked good for Radicals. They had a strong case and the questionably elected Conservative Deputies from Buenos Aires could not vote. This gave the opposition a majority in the Chamber of Deputies.

Facing an almost certain loss, the only hope of the members of the conservative coalition, *Concordancia*, was to prevent a vote. Instead of being in the Chamber for the debate or vote, the members of the *Concordancia* voted with their feet and did not appear in the chamber. The absence of the *Concordancia* made it impossible to form a quorum and vote for the resolution. Without a quorum, the Deputies Chamber petitioned the President to use his executive power to force the recalcitrant *Concordancia* Deputies to occupy their seats. The President denied the request. The Deputies continued in session waiting in vain for the *Concordancia* Deputies to return. Finally, the Senate, dominated by the Conservatives, decided to put an end to the struggle (Halperin Donghi, 2004). Without constitutional authority, the Senate declared the election legitimate.

Not accepting defeat, the deputies from the Radical and Socialist parties continued to push for the nullification of the election. They even tried to introduce a bill to impeach the President for allowing the Senate intervention. But again, the *Concordancia* retired their deputies and there was not a quorum. The Congressional session ended with the *Concordancia* still in power. Newspapers and other narrative accounts widely document the electoral fraud in the province of Buenos Aires. In part, because of the fraud, historians refer to the 1930s as the “infamous decade.” (Schillizzi Moreno, 1973; Privitellio and Romero, 2000)

Given that the Conservatives managed to “win” the election by fraud in 1936, they continued to resort to fraud and intimidation through the remainder of the 1930s. Only in 1940 did President Ortiz try to stop electoral fraud (Crawley, 1984). Most of the fraud was located in the Pampas: in Table I we show that the Province of Buenos Aires alone accounts for 28% of the denouncements of fraud. If we consider all of the Provinces in the Pampas they account for nearly 55% of the total reports from 1934-1942. It is important to point out that in Cordoba the Conservatives refrained from fraud but consistently lost the elections to the Radical Party in the 1930s.<sup>29</sup> We believe that it is not coincidental that the province of Cordoba was the only province of the Pampas in which Peron lost to the Radical Party in 1946. The Radical Party held approximately the same degree of support across provinces in the Pampas

<sup>28</sup> The Deputies Chambers elects the members of the Petitions and Powers Commission on the first day of ordinary sessions.

<sup>29</sup> Later in the paper we will discuss the possible explanations for the lack of fraud in Cordoba. We will use Cordoba along with the Capitol Territory as “controls” for clean elections.

during the relatively clean elections between 1918 and 1942 - See Table II. Fraud is most apparent in the 1938 election when the Radicals received only 14.4% of the vote for Deputies across the country. The election of 1940 was relatively clean with the Radicals receiving 54.2% of the vote for Deputies (Molinelli et. al. (1999)). It is important to note that, even with the evident fraudulent practices, voters' participation did not fall abruptly (Table III). This result is most likely because voting is mandatory in Argentina.

**Table I**

| <b>Fraud Reports by Province<br/>(1934-42)</b> |                                              |
|------------------------------------------------|----------------------------------------------|
| <i>Province</i>                                | <i>Percentage of Total<br/>Fraud Reports</i> |
| Buenos Aires                                   | 28                                           |
| Santa Fe                                       | 21                                           |
| Entre Rios                                     | 6                                            |
| Mendoza                                        | 6                                            |
| Corrientes                                     | 13                                           |
| La Rioja                                       | 9                                            |
| San Juan                                       | 11                                           |
| Catamarca                                      | 2                                            |
| Salta                                          | 4                                            |

Source: Molinelli, et. al., 1999

Notes: There was no Fraud reported formally or in the press for Cordoba. For the Provinces of Jujuy, San Luis and Santiago del Estero there is no data from the Electoral Board though there were complaints in Congress of fraud. Data on fraud reports do not exist for the remaining four provinces:

**Table II**

**The Vote for Radicals in the Pampas - 1920-1942**

| Election              | Federal Capital | Buenos Aires | Cordoba | Entre Rios  | Santa Fe    |
|-----------------------|-----------------|--------------|---------|-------------|-------------|
| Deputies 1918         | 44.2            | 60.3         | 31.1    | 40.0        | 29.9        |
| Deputies 1920         | 36.4            | 48.5         | 46.9    | 56.6        | 61.0        |
| President 1922        | 37.7            | 60.4         | 58.7    | 49.6        | 62.3        |
| Deputies 1926         | 42.4            | 59.9         | 48.6    | 32.9        | 42.9        |
| President 1928        | 54.6            | 59.2         | 69.5    | 53.7        | 62.7        |
| Deputies 1930         | 28.0            | 47.1         | 47.3    | 46.4        | 34.8        |
| <b>Deputies 1936</b>  | 51.9            | <b>40.9</b>  | 62.3    | <b>50.4</b> | <b>34.5</b> |
| <b>President 1937</b> | 62.9            | <b>21.9</b>  | 53.0    | <b>44.8</b> | <b>29.5</b> |
| <b>Deputies 1938</b>  | 34.5            | <b>14.2</b>  | 52.2    | <b>40.9</b> | <b>28.8</b> |
| Deputies 1940         | 37.5            | 53.9         | 53.6    | 54.1        | 48.0        |
| <b>Deputies 1942</b>  | 28.9            | <b>17.7</b>  | 49.9    | <b>39.3</b> | <b>25.0</b> |

Note: The elections with bold font are for those elections in which Fraud was reported as pervasive (Canton, 1973; Sanguinetti, 1975; Schillizzi Moreno, 1973). The only districts of the Pampean region without fraud were the Federal Capital and Cordoba.

Source: Own calculations based on Canton (1968) and Molinelli et. al. (1999).

**Table III: Voter Participation 1930-1946**  
**(Percentage of Voters with Respect to Registered People)**

| <b>Participation</b> | <b>1930</b> | <b>1934</b> | <b>1936</b> | <b>1938</b> | <b>1940</b> | <b>1942</b> | <b>1946</b> |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Capital Federal      | 86.1        | 80.3        | 80.3        | 77.9        | 86.0        | 78.7        | 88.5        |
| Buenos Aires         | 66.3        | 46.7        | 62.6        | 56.4        | 60.6        | 52.0        | 83.0        |
| Catamarca            | 75.0        | 73.7        |             | 71.9        |             | 69.6        | 78.8        |
| Cordoba              | 71.1        | 52.0        | 60.2        | 56.9        | 67.2        | 62.5        | 84.3        |
| Corrientes           | 76.4        | 82.5        | 69.3        | 77.5        | 56.5        | 56.2        | 74.5        |
| Entre Rios           | 83.9        | 79.9        | 76.4        | 78.3        | 78.5        | 77.6        | 82.3        |
| Jujuy                | 72.0        | 70.0        | 68.5        | 75.3        |             | 73.9        | 78.4        |
| La Rioja             | 75.6        | 67.0        |             | 64.3        |             | 62.4        | 76.1        |
| Mendoza              | 81.7        | 76.1        | 77.9        | 70.9        | 74.0        | 65.8        | 85.2        |
| Salta                | 63.9        | 65.2        |             | 74.4        |             | 64.7        | 71.7        |
| San Juan             | 75.1        | 84.1        |             | 69.7        |             | 74.1        | 83.1        |
| San Luis             | 0.0         | 0.0         | 67.5        |             | 62.9        |             | 85.1        |
| Santa Fe             | 80.3        | 77.4        | 83.5        | 76.8        | 79.5        | 77.0        | 85.8        |
| Sgo. Del Estero      | 68.9        | 71.6        | 61.7        | 71.5        | 63.6        | 66.6        | 72.9        |
| Tucuman              | 73.3        | 76.3        | 79.3        | 77.0        | 79.1        | 82.3        | 79.2        |
| <b>Total</b>         | <b>75.0</b> | <b>65.9</b> | <b>71.0</b> | <b>68.2</b> | <b>71.3</b> | <b>66.5</b> | <b>83.4</b> |

Source: Own Calculations based on Canton (1968) and Molinelli, et. al. (1999)

The accusations of fraud in the Pampas produced a backlash amongst the electorate, despite a relatively good performance of the Argentine economy during the depression of the 1930s.<sup>30</sup> Increasingly so, the electorate viewed the rule of the Conservatives as illegitimate. This sentiment against the so-called oligarchy accounts for the widespread popularity of the military coup in 1943 and the subsequent policies of Peron<sup>31</sup>.

The Conservative regimes of the 1930s, in spite of their flirtations with fascist reformism, brought to a halt the modest momentum for political and social reform started by the Radical governments. Their failure to buttress the relative healthy economic structure with social and

<sup>30</sup> For a convincing account of the positive policies implemented by the Conservative governments and general economic performance in the 1930s, see Della Paolera and Taylor 1998, 1999 and 2001; Alhadeff, 1989; Balsa (1992; Diaz Alejandro 1970; Di Tella and Zimelman 1967; Cortes Conde 1998; Di Tella 1979; Pinedo 1971; Vazquez-Presedo 1978; and Walter 1985. The historical accounts consistently give good marks for economic policies in Argentina though the economy declined relative to other Latin American countries –see Figure 2.

<sup>31</sup> "...tainted by a decade of graft and electoral fraud, neither the Concordancia nor the Radicals was capable of arousing a pessimistic and apathetic public. In 1943 "the average man-in-the-street" wrote Ysabel Fisk, "was embittered and disillusioned by the spectacle of the fraud and corruption of the Conservative governments.." Goldwert, 1972, 77-78. Walter (1985) explains the mechanism of fraud for the 1938 election: "The Concordancia was to use fraud selectively. In most provinces and in the federal capital, the contests were to be honest, the conservatives expecting to triumph in certain districts and the Radicals allowed to win in others. But the keys to the election were the provinces of Santa Fe and Buenos Aires, both in the hands of Concordancia supporters, and the 'official' victories were to be guaranteed. Buenos Aires again provided the most notorious examples of fraud in the nation with abuses which were carbon copies of those perpetrated in November 1935 and March 1936. ... If the results in Buenos Aires had gone the other way, Alvear [the Radical candidate for president] would have recaptured the presidency, although there were reports that in such eventuality the armed forces would have prevented the UCR-standard-bearer from taking office." Walter, 1985: 165.

political arrangements allowing for growing security and political participation for rural and urban masses contributed to the creation of revolutionary possibilities.” In short, the Conservatives appeared to have won the battle by fraud but lost the war by abandoning the rule of law. Diaz Alejandro (1970: 107-108).

## **Peron’s Rise to the Presidency: the Military Rule 1943-1945**

The military coup of 1943 opened a new era in Argentina, one characterized by political and economic instability.<sup>32</sup> Like Diaz Alejandro we argue that the failure of Argentina to sustain the transition to a system of checks and balances led to the rise of Peron and the new Peronist institutions. When the military coup ousted the Conservative government in 1943, many thought that the new government would limit its action to restoring democracy in the country and establishing an alliance with the U.S. against the Axis powers. This might have happened but a branch of the army with a nationalistic ideology shortly replaced the initial military government (Crawley, 1984; Rouquie, 1983 and Ciria, 1975). Peron was part of the nationalistic branch called the *Grupo de Oficiales Unidos (GOU)*.<sup>33</sup> Peron occupied several important positions: First he was Vice-minister of the Ministry of War and Head of the newly created Secretary of Labor in 1943; he also was Vice-President and Minister of War when Colonel Farrell, a friend of Peron’s assumed the Presidency of the Country in 1944. From his position as the Head of Labor, Peron lured labor union leaders into backing him politically. Peron used both the carrot and stick with unions. He proposed legislation improving work conditions for labor and he jailed union leaders who disagreed with him (Matsushita, 1983). As a result, the emerging Labor Party would form the backbone for his bid for the Presidency in 1946.<sup>34</sup>

The largest traditional political parties formed the opposition to Peron: the *Unión Cívica Radical Comité Nacional*, Socialist, Progressive Democrat and Communist parties. They formed the *Union Democratica*, and sought to capture power once the military government called for national elections. The Conservatives, who had been in government during the 1930s, supported the *Union Democratica*, but they were not part of it.<sup>35</sup> Indeed the support of the Conservatives may have hurt the *Union Democratica* as some voters may have taken this a signal that the Conservative elite were still in power. The traditional parties emphasized the lack of democracy of the military regime and its political heir, Peron. They called themselves the “defenders of Democracy and the Constitution.” They vowed to return to the provisions of the Constitution, which meant that they planned to nullify many of Peron’s

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<sup>32</sup> Clearly the outbreak of WW II opened up a new divide in Argentina between those favoring the Fascists and others supporting the Allied forces.

<sup>33</sup> The GOU drew their inspiration from Hitler and Mussolini. (Crawley, 1984)

<sup>34</sup> The labor party endorsed Peron but they had hoped to maintain their independence. See Gay 1999 and Horowitz 1990.

<sup>35</sup> Indeed, the *Union Democratica* initially formed in 1942, hoping to win against the Conservatives in what would have been an election in 1943.

policies.<sup>36</sup> The political confrontation was a clash of two different political models of government. On one side, the *Union Democratica* proclaimed that they wanted to return to the road leading to a legitimate system of checks and balances. On the other side, the Peronist coalition represented a populist movement that opposed the Constitutional dictates of rule of law. The Peronist movement promised future revolutionary changes in institutions for its constituencies.<sup>37</sup> Though they may not have known it at the time, citizens in Argentina found themselves not just electing a new president but also choosing between two different systems that would determine the institutional structure of the country for many decades to come. Though close, the citizens choose populism over a return to path interrupted by the coup of 1930 and the fraud of the 1930s.

The appeal of Juan Peron was in part a reaction to the electoral fraud in the 1930s<sup>38</sup>. As a test of the importance of fraud in the election of Peron, we estimated the following logistic regression model:

$$Peron46_i = \alpha_0 + \alpha_1 Fraud_i + \alpha_2 Cattle_i + \alpha_3 IndustryEmployment_i + \alpha_4 Renters_i + e_i$$

where:

*Peron46* is the natural logarithm of the percentage of votes the Peronist party obtained in the 1946 election divided by one minus the percentage of votes obtained by the Peronist party in the 1946 election

$$Peron46 = \ln(\% Peron / (1 - \% Peron));$$

*Fraud* is the difference in the share of votes for the Radical party between the elections of 1940 and 1938. This variable captures the importance of fraud because the 1940 election was relatively clean.

*Cattle* is the log of the number of cattle per farm and represents the strength of the landed elite who opposed Peron;

*Industry Employment* is the log of the industrial employment in each county and represents the strength of unions who supported Peron;

*Renter*: is the percentage of farms under some form of tenancy.

Ideally, we would like to use fraud reports (listed in Table 1) by county but we only have fraud reported at the Provincial level. By all accounts, the election of 1938 was fraudulent with the Radicals

<sup>36</sup> Foreign capital and the U.S. embassy aligned with the Democratic Union and declared their distaste for Peron's policies. Given the nationalist sentiments at the time the public position of the U.S. may have helped Peron.

<sup>37</sup> The Peronist movement in Argentina shares an ideological space with the late 19<sup>th</sup> century Populist Party in the US. The U.S. Populists opposed big business and drew its support from the Mid-West and the South. Like the Peronists, the U.S. Populists saw the Supreme Court as aligned with big business. After the U.S. Supreme Court nullified the income tax, some members of the Populist Party in Congress called for impeachment of the Justices who sided with the majority in declaring the income tax unconstitutional. Not until the New Deal when FDR proposed a bill to enlarge the Supreme Court would there be another threat to the independence of the Supreme Court.

<sup>38</sup> "...Conservative association with fraudulent political practices over the past fifteen years, with Buenos Aires as the most glaring example, did much to damage public opinion of and respect for the traditional political parties. This disrepute, in turn, enhanced Peron's image as someone fresh and new on the Argentine scene, relatively untainted by association with the political excesses of the 'infamous decade'. Walter, 1985: 198.

receiving on 14% of the votes. The election of 1940 was reputedly clean with the Radicals receiving 54% of the vote a level that they had not reached since 1930. In 1940, President Ortiz, a Conservative, vowed to prevent fraud in the 1940 election of Deputies and Governors. When confronted with fraud in the electoral contest for governor of Buenos Aires, President Ortiz nullified the entire election despite little protest from the Deputies in the Radical Party. In the re-election, the Radical party won a majority of seats in the Deputies Chamber. We posit that the voters most discouraged by fraud and who wanted a change to populism were those who voted for Radicals in the clean election of 1940 but whose votes in earlier elections, especially 1938 had been reported as votes for Conservatives. We consider the voters where fraud was most prevalent as those who most wanted a departure from the ways of the 1930s perpetrated by the Conservatives. We expect the discouraged voters to most likely vote for Peron in 1946 because Peron offered a clear departure from the past. Also, the dwindling support for the Radical party after its lack of action against fraud in the second half of the 1930s and the shift of some Radical leaders to the Peronist movement, gave Peron support from those voters discontented with the current platform of the Radical Party in the 1946 election. As you can see from the Descriptive Statistics in Table IV, the variation in the percentage difference in vote for the Radicals between 1938 and 1940 was huge: from a decrease of nearly 30 percentage points to an increase of 74 percentage points. The mean difference was an increase of 26 percentage points suggesting that fraud was prevalent though varied considerably. The remaining variables seem self-explanatory and capture special interests of the elite (cattle) or the populist policies of Peron – support of unions and rent controls for tenants.

**Table IV: Descriptive Statistics**

| Variable                               | Mean | Standard Deviation | Minimum | Maximum |
|----------------------------------------|------|--------------------|---------|---------|
| Peron Vote (Percentage)                | 0.47 | 0.133              | 0.1021  | 0.76    |
| Fraud (Percentage)                     | 0.26 | 0.193              | -0.2955 | 0.74    |
| Logarithm of Cattle per Farm (density) | 4.59 | 0.042              | 1.3006  | 6.42    |
| Natural Logarithm Industry Employment  | 6.26 | 1.62               | -3.31   | 2.47    |
| Percentage of Rented Farms             | 0.62 | 0.58               | 0.01    | 0.95    |

Source: National Census 1947 N= 234; Our data set consists of observations by county for the Provinces of Buenos Aires, Cordoba, Entre Rios, Santa Fe, Corrientes, Santiago del Estero, Tucuman and Mendoza. The remaining Provinces did not have elections in 1940 so our data set is limited to the most populous Provinces. The votes in the remaining Provinces could not have influenced the outcome.

In Table V, we present the regression results. The results indicate that the vote for Peron increased in counties where fraud was greater<sup>39</sup>. The importance of this coefficient, as well as its

<sup>39</sup> Changes in the percentage of votes the Radical party received in 1938 and 1940 have two sources. On one hand, as we postulate, the change is an indication of the fraudulent practices of the Conservatives. Or, not mutually exclusive the changes can be due to the changes in the preferences of voters. In order to isolate these two effects we calculate the average change in the percentage of Radicals' votes in the provinces that ran clean elections, Cordoba and Capital Federal. The average growth was 1.8%. Accordingly, we deducted this percentage from the provinces where fraudulent practices prevailed. The econometric results are the same and we will provide them upon request.

robustness to a variety of specifications, supports our narrative that the rise of Peron and *Peronismo* was in part a response to the fraudulent elections of the during the decade of the 1930s. Our control variables all have the expected sign and most are reliable at the 5% confidence level or lower. The vote for Peron depended positively on the importance of industry and the strength of tenants, as proxied by total farms rented. Peron faced opposition from the elite, as proxied by Cattle production. Most importantly for our narrative of the rise of populism, in those counties where fraud was the greatest in 1938, (and most of the decade) the voters tended to opt for Peron because they had lost their belief that checks and balances would work in practice, especially in times of crises. Even though there was dissatisfaction by some for the status quo and strong support by special interests favored by Peron, he only won the total vote by a margin of 10%.

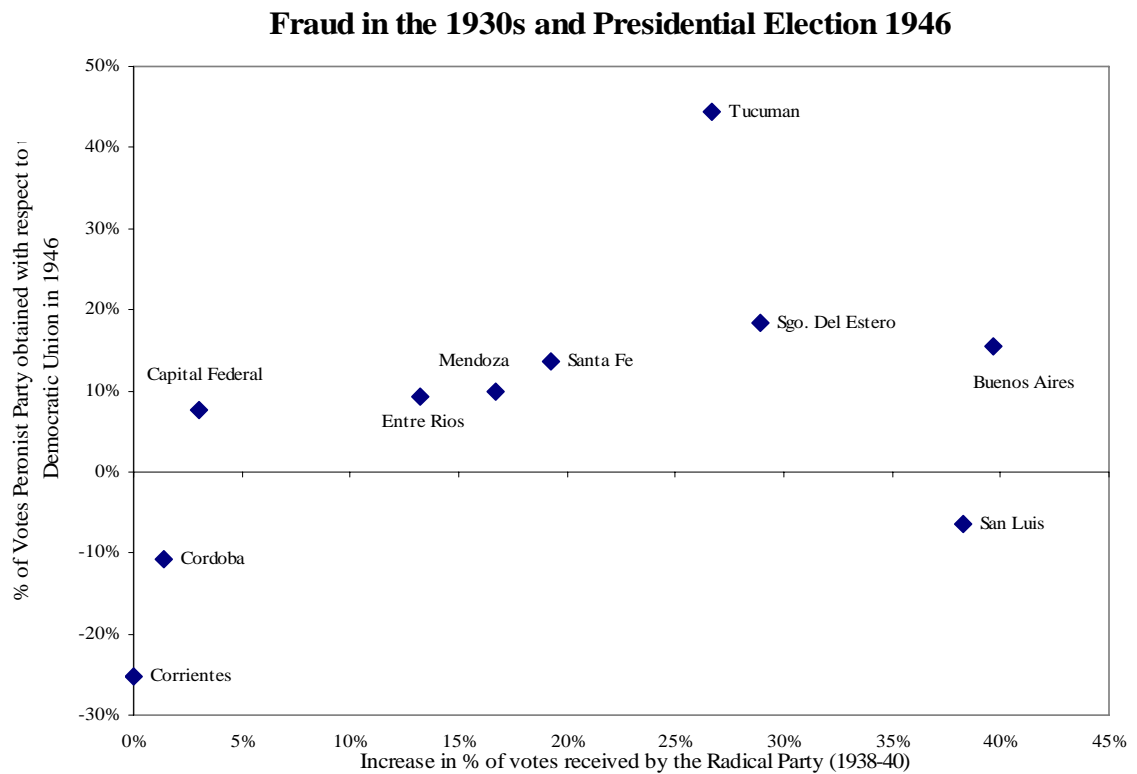
| <b>Table V: Presidential Election 1946</b>                                                                       |                        |
|------------------------------------------------------------------------------------------------------------------|------------------------|
| Dependent Variable: $\ln(\text{Percentage Peron vote per county}/(1 - \text{Percentage Peron vote per county}))$ |                        |
| <b>Variables</b>                                                                                                 |                        |
| Fraud                                                                                                            | 0.87 (***)<br>(0.17)   |
| Industry Employment                                                                                              | 0.14 (***)<br>(0.03)   |
| Cattle per Hectare                                                                                               | -0.203 (***)<br>(0.05) |
| Renters                                                                                                          | 0.38 (**)<br>(0.17)    |
| Constant                                                                                                         | -1.57 (***)<br>(0.19)  |
| R <sup>2</sup>                                                                                                   | 0.35                   |
| F-Test                                                                                                           | F(4,219)=31.44         |
| Probability F                                                                                                    | 0.000                  |
| No. Observations                                                                                                 | 224                    |
| Note: This model has been corrected for heteroscedasticity using robust standard errors.                         |                        |
| Std Errors in parentheses: (***) 1 % and (**) 5% .                                                               |                        |

The coefficients on our control variables for special interests, especially the proxy for renters and industry, capture Peron's largesse to these groups. The result on the coefficient for fraud in the 1930s is especially important because it demonstrates that the success of Peron in the 1946 election did not depend just on his populist policies but also on the lack of democratic participation of the 1930s. The coefficient of the Fraud variable shows that the probability of voting for Peron was 46%, with the other variables held at their means. If the Fraud variable increases by one standard deviation, the probability of voting for Peron increases to 51%. If the Fraud variable is zero, the probability of voting for Peron drops

to 40%. As a consequence, we maintain that a reasonable counterfactual world is one where Peron would not have been elected had it not been for the electoral fraud in the 1930s.<sup>40</sup>

An important supporting piece of evidence connecting fraud in the 1930s with the election of Peron was the behavior of the Conservative Party in the Province of Cordoba, the third most populous province in Argentina, contrasted with the experience in the Province of Buenos Aires, the largest and most important province in Argentine politics. The Conservatives in Cordoba did not pursue the same fraudulent practices as in other provinces in the Pampas (Halperin-Donghi, 2004). As Figure III shows, and as we showed in the regression analysis, there is a positive correlation between the difference in votes for the Radical party in the 1938-1940 elections and the percentage of votes received by Peron. Cordoba and Buenos Aires are at the extremes of this correlation, and, given that both provinces followed a different electoral path in the 1930s, they offer an important comparison on the impact of fraud.

Figure III

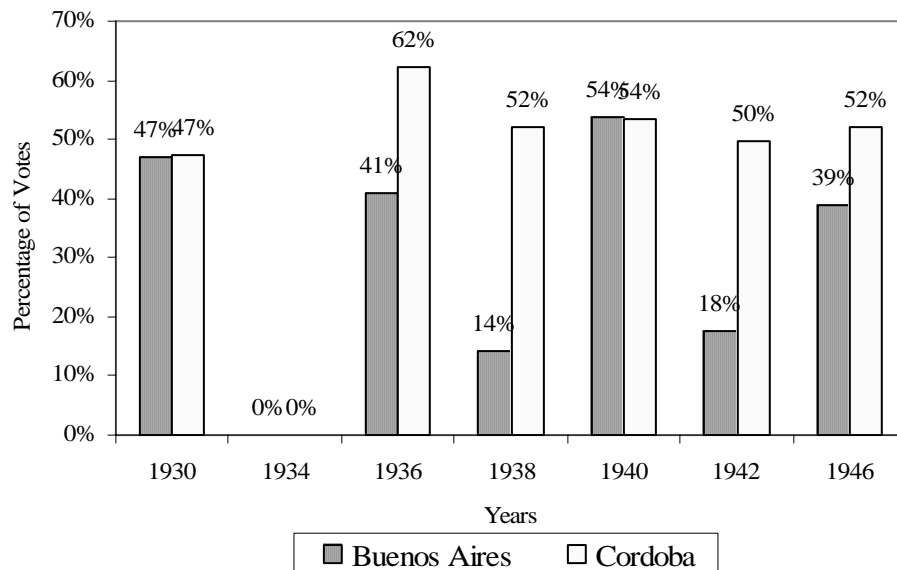


<sup>40</sup> Using a simple OLS model with the percentage of vote for Peron as the dependent variable and our independent variables identical to those of the logistic model we obtain similar results. Setting fraud equal to zero the vote for Peron falls 11% and he would have lost the election.

The most popular rationales for the differing behavior in Cordoba are: 1) the Conservatives felt strong enough to defeat the Radicals cleanly -they defeated the Radicals and Yrigoyen in the 1930 election; and 2) the leadership of the Conservatives in Cordoba was “morally” opposed to using fraudulent means to win an election (Ciria, 1975, Ferrero, 1976, Halperin-Donghi, 2004). The Conservatives wanted Cordoba to be the example for the rest of the provinces on how they could win elections without having to resort to Fraud (Halperin-Donghi, 2004). Despite the optimism of the Conservatives, the Radicals won every election in the province of Cordoba during the 1930s, and in the election of 1946 Peron lost in Cordoba to the Radicals in the presidential race by a margin of 10%, despite a large number of renters. As we discussed before, in the Province of Buenos Aires, fraud was the norm in the 1930s, and Peron obtained a strong victory in the 1946 presidential election. Fraud in the Province of Buenos Aires depressed the percentage of votes obtained by the Radical party, as compared with the free election in Cordoba (Figure IV). The Radicals obtained the same percentage in the 1930 and 1940 elections, which were considered clean in both provinces, but they obtained a much higher percentage in the 1946 presidential election in Cordoba than in Buenos Aires. The evidence indicates that Peron faced a less hospitable climate in Cordoba, where democracy was preserved in the 1930s, than in Buenos Aires, where, voters felt disenfranchised by the electoral system and welcomed Peron’s policies.

**Figure IV**

**Percentage of Votes for the Radical Party in Buenos Aires and Cordoba**



## **The Presidency of Juan Peron**

When Peron won the election in 1946, he embarked on a campaign to solidify his political support and in so doing dramatically changed the political and economic institutions within which Argentina had prospered. At the heart of his economic and political plan was an assault on the property rights of landowners in the Pampas (Mora y Araujo and Llorente, 1980). His political support came from urban labor in Buenos Aires, rural tenants and labor in the Pampas and small landholders in the smaller provinces outside the Pampas. The support of urban labor for Peron is well documented and not controversial so we will not discuss it here. Support from the provinces outside of the Pampas was critical for Peron because of the influence of Senators from these regions. Before Peron, the political representatives from these regions had voted with the Conservatives from the Pampas. By the end of his first term, Peron through persuasion and coercion brought the various constituents together under the Peronist Party.<sup>41</sup>

## **Institutional Change in the Outlying Provinces<sup>42</sup>**

To capture the support of the small provinces Peron relied on two institutional changes, ironically introduced by the Conservatives in the Great Depression: the Co-participation System and the Central Bank.<sup>43</sup> The Co-participation System authorized the Federal Government to use the tax base of the Provinces in return for a rebated share of the revenue raised. This gave the central government enormous leverage over the politicians in the provinces.<sup>44</sup> In addition, Peron used the Central Bank for political purposes. Essentially, he would “ask” the Central Bank to cover debts of provincial governments.

Peron initiated his own changes in governance as well as utilizing extant institutions. He exercised control over labor through the Provincial branches of the Secretary of Labor. Peron created the branches when he was Secretary of Labor during the military government and expanded on their use. Peron also nationalized many utilities, which he used for employment of loyal followers.

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<sup>41</sup> Fearing a jail sentence, some recalcitrant members of the Radical Party fled to Uruguay. Peron lured the rural Conservatives from the smaller provinces with transfers from the Federal government as we discuss in the following section. In later elections, Peron engaged in extensive redistricting in order to increase the number of Peronists elected.

<sup>42</sup> For an elaboration on how the institutions created or maintained by Peron played out in the latter half of the twentieth century, see Spiller and Tomassi (2004).

<sup>43</sup> The Conservative government created the Central Bank in 1935 as an instrument to better control the monetary policy during the Depression. On the importance of an independent Central Bank in eventually leading to the privatization of Provincial banks in the 1990s, see Alston and Gallo, 2002.

<sup>44</sup> Though the rebates back to the Provinces were not arbitrary the Co-participation system created a dependency relationship and the Provinces may have feared that they might lose part of their rebate if they did not cooperate with the Central government. As noted by Spiller and Tomassi (2004), the relationship between the Central Government and the Provinces in the second part of the 20<sup>th</sup> Century was determined by the dependency of the Provinces on Central Government’s revenue, and the need of the Central Government for political support from the Provinces.

The use of these diverse instruments permitted the Federal government to overcome political resistance from provincial governments to changes in the economic structure. However, the use of them also increased the fiscal dependency of the Provinces on Federal government resources.

## **Institutional Change in the Pampas**

The main political enemy of Peron was the Conservative Party in the Pampas. The leaders of the Conservative party consisted of the big landowners (*estancieros*) and their allies, foreign capitalists. The Pampas was the fertile wheat and cattle-producing region and accounted for the majority of the country's exports. To work the land, the *estancieros* relied on tenants and sharecroppers.<sup>45</sup> Prior to Peron, the tenants, sharecroppers and smallholders voted with the Radical Party. Peron aimed to help the tenants (and thereby hurt the owners) through controlling rents and the prices of output (Diaz Alejandro, 1970; Lattuada, 1986; Sandoval, 1988). Legislation helping tenants was not new: the Radicals in the Deputies Chambers passed two reforms in the 1920s, though the conservative dominated Senate reduced the impact of the reforms. Peron faced no such check on his power. It is important to note that Peron's legislation applied almost exclusively to the Pampas.<sup>46</sup> The legislation established local boards that controlled rents and prohibited evictions. The government also controlled the price of wheat and cattle by establishing monopoly power over purchases. After purchase, the government sold much of the wheat on the international market and used the surplus to finance public expenditures, to transfer funds to the smaller provinces in return for political support and some subsidies to industry (Novick, 1986).

Legislation of rural rents began with the military government. In 1943, the government fixed all rents to 1940 prices minus 20%, and declared all contracts extended until 1945. The decree contained this provision just for contracts in the Pampas region. The government renewed the rural rent controls in 1945, and then approved by law in Congress in 1948. As result, owners tried (partially successfully) to switch to cattle (Elizagaray, 1985). The result was a decline in cereal production and a bigger decline in investment in the Pampas (Veganzones and Winograd, 1997).

Peron designed his policies in the Pampas not simply to punish his enemies to help his constituencies but he needed the policies to fund the overall institutional changes in the economy, e.g. the nationalization of most utilities and many industries. With his allies in Congress, Peron had little difficulty in passing the legislation that proved so punitive to the Pampas. However, the actions taken surely represented a legislative "taking" which seems unconstitutional. So the question is: where was the Supreme Court?

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<sup>45</sup> As Taylor (1997) shows, the system of rent and sharecropping worked well.

<sup>46</sup> From 1943 to 1946, the legislation of the Military government was limited to the Pampas. The law regulating rents in 1948 applied to the whole country, but it affected primarily the Pampas because of the high level of rent and sharecropping contracts.

## The Impeachment of the Supreme Court

Ideally an independent Supreme Court represented the government's guarantee that they would uphold the constitution.<sup>47</sup> It is questionable whether the Supreme Court was ever truly independent in Argentina but the court did present a potential obstacle to Peron's attack on private property rights.<sup>48</sup>

During the military government of 1943-46, the Supreme Court was the only standing check to the unfettered will of the Executive Power. The radical changes Peron introduced usually clashed with the Court, and the opposition relied on the Court as the protector of the Constitution and its rights.<sup>49</sup> In mid-1945 Peron faced a crisis, because many of the military inside the government did not want him to continue.<sup>50</sup> The military government called for general elections, but in September they changed some of the electoral rules in order to decrease the power of traditional political parties (Halperin Donghi, 2000). The opposition, the Radical, Socialist and other parties, called for a popular march: "Marcha de la Constitucion y la Libertad (March of the Constitution and Freedom).<sup>51</sup> The government tried to prohibit the March and even organized a strike on public transportation to stop the march, but it was a success anyway (La Nación, September 20, 1945; and Halperin Donghi, 2000).

It was an impressive and prematurely triumphal demonstration. Describing this event in his book, **El 17 de Octubre**, Hugo Gambini says, "That day (19 September 1945) antiperonistas of all colors –Radicals, Conservatives, Socialists, Communists, Progressive Democrats and Democratic Catholics- and of all the social classes- high, middle and markedly left-wing union

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<sup>47</sup> "The Supreme Court's major contribution to the development of constitutional law arises from three simple propositions. First, all laws, decrees, administrative orders, and judicial decisions must obey the Constitution. Second, the judiciary is entrusted with guaranteeing the supremacy of the Constitution. Third, the Court, as the final arbiter and custodian of the rights granted under the Constitution, is the place all turn to for definitive interpretations and applications of constitutional principles." Bidart Campos (1982:13).

<sup>48</sup> Peron attacked not just the Supreme Court, but all sources of opposition to his policies. As a consequence, even if his government came to power through a democratic electoral process, his policies were far from being democratic, and resembled those of an authoritarian regime. Crawley (1984); and Waisman, (1987).

<sup>49</sup> "The key to the problem is this. Since June 4 1943 the country does not have a legislative branch to discuss the issues pertaining to Congress. .. Currently these decisions come from the Executive, created by the revolutionary movement, without any control except for the power of the Judiciary, whose pronouncements cannot be immediate because the Court depends on an interested party contesting the constitutionality of a Decree or law." La Nación, July 25 1945.

<sup>50</sup> The London Times, argued that: "there is an element in the Argentine government, which is headed by the powerful Vice-President, Minister of War and Secretary of Labor, Colonel Peron, which has been pushing for the support of the working class. But the armed forces seem to be divided... the officers of the Argentine Navy have threatened to recognize the Supreme Court as their main authority if the government does not call for immediate free elections," Translated from La Nación, August 8<sup>th</sup> 1945.

The Argentine Federation of Lawyers denounced the arbitrariness of the military government and asked for the government to be led by the President of the Supreme Court. They claim that the public no longer trusts the government, La Nación, September 8 1945.

Furthermore, the Supreme Court declared unconstitutional a Decree from the Executive that imprisoned a group of military that conspired against the Peron wing of the military government. The Supreme Court nullified the sentences and ordered those imprisoned freed, La Nación, September 2 1945.

<sup>51</sup> The night before the March, Peron gave a public radio address to the Argentine people, especially workers, to remind them of the real purposes of the organizers of the March, and telling them that they were being deceived by "obscure" forces. "Their previous defeat – in the recent coup - increased their courage, and today they do not attack the Secretary of Labor, but the government, based on the Constitution, that they despoiled previously with fraud and violence which allowed them to build personal wealth and political and economic privilege." La Nación, September 18, 1945.

sectors- poured out in a compact multitude that paraded through the avenues of the city centre with an air of victory'. ... The older generations of the Argentine working class were still standing, and the 'Radical mass', though already hesitant and in the throes of dispersion, was still a fact of life. (Crawley, 1984: 89)

It is important to note that the organizers of the demonstration called it "a march for the Constitution. This reinforced the belief amongst the participants to return to free elections as the constitution established.<sup>52</sup> Prior to elections the demonstrators called for: 1) handing over the government to the President of the Supreme Court, as the Constitution prescribes; 2) free elections, and in particular respect for the Saenz Peña law; and 3) no to the government of the military, or the government in the name of the military (La Nación, September 20, 1945).

The march also had an important impact in the interior of the country, with some demonstrations and business closures in some provinces (La Nación, September 20, 1945). The march was a success and the support for Peron inside the military government declined. The military government of Peron answered the March by limiting political freedoms, reestablishing martial law, occupying the universities and persecuting their political and military opponents (Halperin Donghi, 2000). Under pressure, Peron was forced to resign on October 9, 1945. The march weakened the military government and they tried to form a coalition government until the elections.

The military were themselves divided as to the most appropriate course of action. The majority seemed to favour keeping Farrell on with a decidedly anti-peronist cabinet, but there were many strong voices calling for the replacement of the entire government, Farrell included. When leading politicians were consulted, they flatly rejected both alternatives and, picking up an earlier call of military dissidents, demanded that Executive powers be handed over to the Supreme Court. This solution was turned down by the military... Towards noon on 12 October, the civilian opposition began to rally against the Circulo Militar and to press its demand of *el Gobierno a la Corte* -the Government to the Supreme Court (Crawley 1984: 92).

The same day as the protest for *el Gobierno a la Corte* - October 12, 1945 – the military government imprisoned Peron. The Military government and the opposition asked the Attorney General, Doctor Juan Alvarez, to form a government with members of different political parties led by the Supreme Court (Pellet Lastra, 2001). Alvarez almost succeeded, and the Supreme Court was very close to taking over the government, but the Peronist counterattack was devastating (Pellet Lastra, 2001). The Unions mobilized in support of Peron. The Unions viewed the Court as its enemy because they perceived the Court as an ally of the oligarchy and the old regime. In a public document produced on October 16, 1945 the Unions clearly established their position:

1) Against handing over the government to the Supreme Court and against any oligarchic cabinet; 2) for the formation of a government that would guarantee democracy and liberty for the country, consulting the opinions of the unions; 3) for the holding of elections as announced; 4)

<sup>52</sup> The Radical Party from the Province of Buenos Aires invited people to the march stating: "The Radicalism of the Province of Buenos Aires, which has proved its sincere and sacrificed devotion to the defense of the republican institutions through fifteen years of uninterrupted fight against fraudulent and dictatorial governments, has gained the leading role in the March of the Constitution and Freedom." La Nación, September 18, 1945.

for the lifting the state of siege and the liberation of all civilian and military prisoners who had distinguished themselves for their clear and firm democratic convictions and their identification with the cause of the workers; 5) for the preservation of the ‘social conquests’ and their enlargement, and for the application of the new statute governing trade unions; and 6) for the immediate passage of the decree on wage increases and the introduction of the mandatory minimum, index-linked salary (Crawley, 1984: 94-95).

The document clearly states the views of the Peronist movement towards the Court. In their first point the unions lump the Court and former oligarchic regime together. In the second point, Unions did not believe that the Court was a guarantee of democracy and freedom. Points 5 and 6 are very important because many of the measures passed by Peron to favor the workers may have been deemed unconstitutional and, in the case of Peron losing the elections, the Court most likely would nullify these reforms. As a result, the Supreme Court was on the opposite side of Peronism and was condemned to impeachment if Peron won the elections.

Union fervor continued to mount and on October 17, 1945 workers marched to Buenos Aires and petitioned the government to release Peron. The government responded to the demands of the unions and allowed Peron to make a galvanizing historic address in the Plaza de Mayo. The address marked a turning point in Argentine history. Peron came back stronger with wide support from unions and workers in general. From that day, the country was divided in two, and the Court, because of its role, was aligned with the opposition to Peron.<sup>53</sup>

Many of Peron’s reforms were under scrutiny by the Supreme Court, and faced the threat of unconstitutionality. Among the most important reforms we note the following:

1. Under the auspices of the National Department of Labor and as Secretary of Labor, Peron implemented numerous labor reforms from 1943 to 1945. Peron lured Union leaders, and formed new loyal unions by displacing former union leaders from the Socialist and Communist party. Through the National Department of Labor Peron implemented revolutionary regulations, like the *Estatuto del Peon*, and other legislation in favor of workers. He also used this agency to reach salary agreements with business, which gave large wage increases to workers. The problem with the National Department of Labor was that all its reforms were potentially unconstitutional, and if the Radicals, or any other traditional party, came back to power, businesses were going to petition the Supreme Court to nullify the reforms. The constitutional issue over the National Department of Labor was one of abusing its jurisdictional authority. The National Department of Labor was created in 1907 by Presidential Decree, and not authorized by Congress until 1912. In its authorization in 1912, Congress specified that the National Department of Labor could regulate labor relations only in **Federal** territory, the

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<sup>53</sup> After winning the election, but before assuming the presidency Peron asked the military government to pass other sweeping reforms: creation of IAPI (Instituto Argentino para la Promocion del Intercambio), which monopolized all foreign sales of grains; the nationalization of the Central Bank; and the nationalization of the banking system.

provincial governments were in charge of their own regulations.<sup>54</sup> Constitutionally, Peron only had authority in the city of Buenos Aires and the National Territories.<sup>55</sup>

2. The Supreme Court had already ruled against some of the reforms of Peron. In 1945 Peron created a special court for work related cases; workers could go to this special court instead of going to ordinary courts. The Supreme Court declared that the manner in which the government created the special court was unconstitutional.<sup>56</sup> Peron, attacked the decision stating: “The truth is that this decision, adopted a few days before the elections, is intended as a rude strike to the Secretary of Labor and it constitutes a first step toward undoing the social improvements reached by the workers” (Diario de Sesiones del Honorable Senado de la Nacion Constituido en tribunal, T. VI, December 5<sup>th</sup> 1946: 90). Despite the ruling by the Court the government created the new courts though the Supreme Court justices refused to participate in the inauguration of the new judges, as a sign of protest (La Nación, July 21, 1945).<sup>57</sup>

3. In December 1945, just a month and a half before the election, Peron created the *Aguinaldo*. This legislation forced businesses to pay workers an extra monthly salary per year. This measure was very popular among workers and the Unions, but businesses tried to organize a general lockout, which was successful in terms of the number businesses that complied. Of course, businesses claimed that

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<sup>54</sup> See Gallo, 2006, for a general discussion of the dominance of provincial authority over federal authority concerning most regulatory matters. See Schoultz, 1983: 33-34, for a specific discussion of the creation of the National Department of Labor and how Peron’s use of it led to purging the Supreme Court.

<sup>55</sup> The Supreme Court ruled that the Executive Power Decree of November 27, 1943, violated the Constitution by transforming a provincial institution into a federal institution. The Court stated that: “Not even the Congress has the authority to do such a thing.” (La Prensa, 2/3/46)

<sup>56</sup> The Association of Lawyers backed up the decision of the Supreme Court: “Even though The Supreme Court has recognized certain powers to the de facto government, it has resolved that the creation of new courts by decree, eliminating the jurisdiction of existing courts, is incompatible with the articles 18 and 94 of the Constitution. This affects the independence of the Judicial Power and it is not indispensable for the correct functioning of the state” (Supreme Court resolution of April 2 1945 as reported in La Nación, July 12, 1945). The very next day, in a public speech to workers, Angel Borlenghi (a Union Leader) said: “... when in 1930 a de facto government was established that was allied with the oligarchy, did the constitutionalists say that that government did not have legislative attributions? That was a bloody dictatorship that incarcerated workers, students and political opponents, tortured people in prisons and killed without having a state of war... There was none of the current constitutionalists that defended the National interests. ... The revolution of June 4<sup>th</sup>, despite all its mistakes, can offer the legacy of its social justice work. In this matter the working class claims that it does not have any scruples with respect to the Constitution. It can be part of the history of the country if the actions of Peron purges the country of fraud, bribes and special arrangements, and listens to the people from different sectors and especially the workers’ unions which are the only associations that do not have relations with the oligarchy” La Nación, July 13, 1945.

<sup>57</sup> On July 25, 1945 Peron inaugurated the new Labor Courts and said: “the saddest thing that can happen to a country is that there are many men that claim for justice and they cannot obtain it, when this justice is claimed by the poorer. ... Laws have value when they are enforced. Everyone should be included in the law and when this law is violated he should resort to its judges and the Nation will support his claim through the representatives of the law. Sadly, in our country, laws are not respected because there is no legal conscience in the people. I, as the Secretary of Labor, hope that the working mass has a legal conscience for labor laws so we can give the example to the rest of the Argentines on how to respect the law.” La Nación, July 26 1945. On July 30 the newspaper La Nación answered “The Supreme Court has constantly watched over the respect of the fundamental law, restraining the political power inside its limits. ... These are precedents that are important to consider in the analysis of the claim that laws are not respected because there is no legal conscience among the people. If this problem would exist, the cause would be the attitude of the governments that depart from the law. By doing that, Governments give a bad example, which is very influential. When governments respect the Constitution and the laws, it would be unnecessary to ask if the people have a legal conscience.” La Nación, July 30, 1945.

this measure was unconstitutional and waited for the elections, hoping for a Radical victory and for the Supreme Court to reestablish order.

Given the departure of Peron's policies from the Constitution, from 1943 to 1946, it was normal that the Peronist movement reviled the Supreme Court. As Pellet Lastra explains

If the justices of the Conservative Supreme Court would have limited their actions to the support of the military coup on June 7<sup>th</sup> of 1943 and maintained a neutral position with respect to the de facto presidential power, it is very possible that the history of the Supreme Court and the Judicial system would have been very different from what it was. But Repetto and the other justices were not resigned to be complacent spectators of the maneuvers of the de facto governments. ... They had internalized the republican division of powers and the judicial independence, formally and de facto. Their convictions were liberal and individualistic, considering that everybody occupies their place in a natural and correct way (Pellet Lastra: 108).

Furthermore, the Radicals and Socialists ran the presidential campaign under the slogan that they wanted to go back to the Constitution, that is, to eliminate many of Peron's reforms. As a result, public opinion was divided over the role and legitimacy of the Supreme Court. The opposition to Peron viewed the Supreme Court as the last resort to check unfettered power. On the other hand, Peron's supporters saw the Supreme Court as an obstacle to reform. Once Peron won the Presidential election, the Supreme Court had to be purged in order for reforms to pass the Constitutional test and to guarantee the support for further reforms. The Peronist coalition was formed by urban and rural workers, rural renters, and a branch of the Radical party, as well as some conservative parties in the interior of the country. It is natural that the arguments to impeach the Court were mainly the resistance of the Court to Workers' reforms and the support of the fraud in the 1930s. These arguments helped to bring together workers and their Radical allies to support the impeachment. It is interesting to note that a little more than a year after a popular demonstration asked for the Supreme Court justices to take over the government, the same justices were impeached.

Shortly after being elected, Peron made it clear that he viewed the Supreme Court as illegitimate:

In my opinion, I put the spirit of justice above the Judicial Power, as this is the principal requirement for the future of the Nation. But I understand that justice, besides from being independent has to be effective, and it cannot be effective if its ideas and concepts are not with the public sentiment. Many praise the conservative sentiment of the Justices, believing that they defend traditional beliefs. I consider that a dangerous mistake, because it can put justice in opposition with the popular feeling, and because in the long run it produces a rusted organism. Justice, in its doctrines, has to be dynamic instead of static. Otherwise respectable popular yearnings are frustrated and the social development is delayed, producing severe damage to the working classes when these classes, which are naturally the less conservative, in the usual sense of the word, see the justice procedures closed they have no other choice than to put their faith in violence. (Diario de Sesiones del Honorable Senado de la Nacion Constituido en tribunal, T. VI, December 5<sup>th</sup> 1946: 89).

With this speech the battle line was drawn: Peron embarked on a mission to impeach any Justices that did not tow the Peronist line. In July 1946, the Peronist Congressman Rodolfo Decker proposed the impeachment of all but one Justice. To a large extent, impeaching the court matched the public sentiment of Peron's constituents who believed that the Court was, if not illegitimate, an obstacle to social policies.<sup>58</sup> Peron's goal was to transform the basic institutional framework in Argentina. In the accusation against the Court made in the Deputies chamber we can extract the sentiment against the old system and all that it represented:

Since a military government interrupted the normal cycle of constitutional government (1930), and after the Court granted this victorious movement both a title and its overt recognition, the country saw the disconcerting show of arbitrariness. This episode lasted almost 17 years. Those were seventeen long years in which the basic principles of our constitutional system have expired right in front of those in charge of keeping them with all the integrity with which they were created. This fact has been stated by respected sectors of public opinion and the general media. After this military government legitimized by the Court recognition, there was a succession of arbitrary governments of fraud, treason and lie. Governments openly called constitutional, which in fact were merely -or better said continued to be- *defacto*. They applied the theory wrongly used by the Court when it legalized an unconstitutional government violating the Constitution. The initial mistake of the Court and its lack of courage to impose the return to the true constitutional path cost the country a new military movement (1943). Luckily, it would have the glorious deed of honor after a hard path filled with ups and downs, surrounded by difficulties –which the Court also experienced- to restore the entire rule of the Constitution. These difficulties were overcome by a magnificent movement of social justice led by the creator of the Secretary of Labor and Prevision, Colonel Peron. The recognition of two outlaw governments and its guilty passivity during the years of the reign of arbitrariness and unruliness have given the highest justice tribunal of the Nation a loss of reputation. The role of the Court played in the latest years until recently has reinforced it.<sup>59</sup>

Sessions Diary of the Honorable National Senate Constituted in Tribunal. Tomo VI, 1947: 29.

The Deputies went to great lengths to tie the impeachment of the court not only to their denial of reform but to their duplicity in passively accepting the fraud perpetuated by the Conservatives in the 1930s. Not surprisingly, Congress impeached the accused Justices. Naturally, Peron replaced them with Justices who favored his agenda. The impeachment proceedings represented the last hurdle for Peron to change the institutional trajectory of Argentina.<sup>60</sup> Following the impeachment, the Peronists began to

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<sup>58</sup> In the U.S. following the election of FDR in 1932 many constituents viewed the decisions of the Supreme as an obstacle to achieving social and economic progress under FDR's New Deal proposals. Constituents in Argentina may have felt similarly though the Argentine Supreme Court was never held in as high regard as in the U.S.

<sup>59</sup> Naturally the speech by Decker was biased but nevertheless the countenance of fraud was used as a justification for the impeachment Report from the Deputies Chamber to the Senate accusing the Supreme Court members.

<sup>60</sup> "Peron's success in ridding himself of his opponents on the Supreme Court had clear and immediate repercussions for his ability to govern as he saw fit. The newly appointed court did little to challenge Peron's harassment of his political opponents. ... the long term effect of the impeachments was to introduce the informal institution of giving incoming regime leaders the prerogative to retain or remove the sitting judges. Whereas prior to 1947 the norm had been to respect secure judicial tenure, after Peron incoming governments could expect to remove the justices appointed by their predecessor's regime with very little effort." Helmke, 2005, 64-65.

craft a new Constitution which they submitted for approval in 1949. Without a backstop of an independent judiciary, and a new constitution in hand the Peronists were able to have their way until the next military coup in 1955.<sup>61</sup> As a poignant example, we do not believe that the former Court would have allowed the rent controls and price controls established by Peron in the Pampas.<sup>62</sup>

## **The Aftermath of the Impeachment**

After the impeachment process and new constitution, Argentina has never been able to return to cultivating a belief in a system of checks and balances. Beliefs in the legitimacy of the system matter in order to prevent short-run opportunistic behavior. The impeachment of the Court could be viewed as the culmination of the departure from the road towards a true system of checks and balances that was started by the coup of 1930 but burrowed into the beliefs of constituents with the decade of fraud during the 1930s.

The legacy of Peron is one of political instability, which in turn generated sudden changes in economic policies and institutions. Successive military and civilian governments appointed their own Supreme Court Justices in order to accomplish their political goals. But, without the court as a backstop, institutional volatility ensued. Examples of the institutional volatility are abundant: The military government in 1955 removed all the Justices of the Supreme Court and nullified the Peronist constitutional reform of 1949 by a simple Decree. In 1958 the new Democratic President replaced most of the Justices of the Court and introduced two new Justices. Successive governments frequently either forced judges to resign or impeached them. Though the Supreme Court is not held in high regard, each government believes that the court poses some obstacle to their goals or they would not bother to change the composition of the Court.

In Appendix A we show the changes in the Supreme Court Justices before and after Peron's Presidency. As we show, until Peron, no Justices had been impeached or "forced" to resign. Following Peron, only 5 of the 58 changes in Justices has been due to death or retirement. Prior to Peron, governments appointed a new Justice approximately every two years. After Peron, governments appointed a new Justice every 11 months. An alternative measure of instability is tenure: pre-Peron tenure of Justices was nearly 10 years while in the post-Peron years tenure has fallen to approximately 6 years (See Table VI). Oscillations between military and democratic governments matched the instability of the court.

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<sup>61</sup> The U.S. confronted a similar turning point in its institutional history but the electorate in 1896 came down on the side of maintaining the independence of the Supreme Court. In the election of 1896, the Supreme Court was under assault and one of its Republican defenders presaged the future of Argentina: "There are two places in this country where all men are absolutely equal: One is the ballot-box and the other is the Supreme Court. Bryan (the Populist candidate) proposes to abolish the Supreme Court and make it the creature of the party caucus whenever a new Congress comes in..." (Westin, 1953: 37)

<sup>62</sup> Presumably the majority of citizens approved of many of Peron's policies since they were similar to the policies carried out during the military government of the 1940s.

**Table VI**

| <b>Causes of Turnover of Justices in the Supreme Court (1863-98)</b> |                |       |            |              |           |             |                        |
|----------------------------------------------------------------------|----------------|-------|------------|--------------|-----------|-------------|------------------------|
| Years                                                                | No. of Changes | Death | Retirement | Resignations |           | Impeachment | Removal <sup>(1)</sup> |
|                                                                      |                |       |            | Involuntary  | Voluntary |             |                        |
| 1863-1945                                                            | 38             | 20    | 12         |              | 6         |             |                        |
| 1946-1998                                                            | 58             | 4     | 1          | 14           | 18        | 3           | 17                     |

<sup>(1)</sup> Removed by military governments.

Source: Molinary, Guillermo, et. al. 1999, 690, and Pellet Lastra (2001)

Furthermore, the political and institutional instability was closely related to abrupt changes in economic policy and the rules of the game. Before the 1940s, abrupt changes in nominal exchange rate followed international shocks and the government response to those shocks. However, after 1940s, the biggest changes in exchange rates are due to changes in government: the switching from military coups to democratic governments, which are coupled with changes in the Supreme Court. As a result, economic policy, the rule of law and political and policy instability are closely related since the postwar. This instability on the exchange rate policy can be also related to instability on other indicators related to government policy. Post-war monetary policy became more unstable, with higher rates of inflation, which led to hyperinflations (See Table VII).

Table VII

| <b>Policy Indicators Argentina 1900-2004</b> |           |        |           |                                |                                         |
|----------------------------------------------|-----------|--------|-----------|--------------------------------|-----------------------------------------|
|                                              | Inflation | M3/GDP | (X+M)/GDP | Federal Deficit (%<br>GDP) (*) | Foreign Direct Investment<br>% GDP (**) |
| 1900-1905                                    | 2.41      | 0.56   | 35.29     |                                | 6.52                                    |
| 1906-1910                                    | 2.66      | 0.51   | 48.98     | 4.19                           | 8.44                                    |
| 1911-1915                                    | 2.00      | 0.52   | 46.73     | 2.21                           | 7.71                                    |
| 1916-1920                                    | 11.70     | 0.54   | 39.06     | 0.67                           | 0.74                                    |
| 1921-1925                                    | -6.23     | 0.60   | 39.00     | 1.51                           | 1.84                                    |
| 1926-1930                                    | -0.70     | 0.60   | 40.92     | 2.32                           | 2.24                                    |
| 1931-1935                                    | -3.86     | 0.59   | 30.19     | 2.94                           | 1.20                                    |
| 1936-1940                                    | 3.01      | 0.48   | 27.89     | 4.34                           | 0.99                                    |
| 1941-1945                                    | 5.55      | 0.42   | 15.54     | 9.77                           | 0.55                                    |
| 1946-1950                                    | 19.86     | 0.45   | 18.09     | 7.05                           | 0.09                                    |
| 1951-1955                                    | 18.14     | 0.32   | 12.39     | 6.02                           | 0.40                                    |
| 1956-1960                                    | 38.25     | 0.23   | 12.71     | 4.97                           |                                         |
| 1961-1965                                    | 23.20     | 0.16   | 13.42     | 5.04                           |                                         |
| 1966-1970                                    | 19.33     | 0.18   | 12.60     | 2.62                           |                                         |
| 1971-1975                                    | 64.43     | 0.18   | 12.16     | 8.56                           | 0.18                                    |
| 1976-1980                                    | 192.89    | 0.16   | 16.37     | 9.04                           | 0.29                                    |
| 1981-1985                                    | 322.63    | 0.16   | 17.94     | 12.14                          | 0.44                                    |
| 1986-1990                                    | 583.80    | 0.12   | 18.00     | 5.58                           | 0.81                                    |
| 1991-1995                                    | 32.23     | 0.17   | 20.06     | 0.64                           | 1.60                                    |
| 1996-2000                                    | -0.10     | 0.30   | 22.98     | 1.68                           | 4.05                                    |
| 2001-2004                                    | 12.06     | 0.28   | 21.80     | 3.80                           | 0.89                                    |

Notes: (\*) Does not include Public Companies

(\*\*) 1900-1955 Venganzones and Winograd, 1997; 1971-2004 IMF International Financial Statistics.

Source: Own calculations based on Venganzones and Winograd 1997, Ministry of Economy of Argentina and IMF, International Financial Statistics.

The confidence of the public in the banking system declined, as shown by the lower levels of M3/GDP. The government ran higher budget deficits, which produced high levels of debt and long periods of default. Finally, the economy became more closed to international trade and the level of foreign investment turned almost insignificant in terms of GDP. As it is well documented, this instability hurt growth performance in the economy (Tomassi and Spiller, 2004); and Prados de la Escosura and Sanz-Villarroya (2004). The only time when the branches of government - Executive, Legislative and Judicial - were moving towards the Constitutional ideal of checks and balances was the period 1912-30. After the military coup of 1930, instead of returning to open democracy the conservative elite resorted to fraud in order to stay in office and dictate economic policy. This must have shaped the belief systems of the citizens of Argentina towards a desire for populist rule. The Conservatives may be given high marks for economic policy but their short-sightedness gave rise to oscillations between democratic/populist and conservative/military governments.

## IV. Concluding Remarks

The government of Argentina is given high marks for the policies that they implemented to fight the Great Depression. Unfortunately, to stay in office the Conservative governments in the 1930s engaged in electoral fraud. The fraud was no secret and was labeled “Patriotic Fraud.” Despite denunciations by the Radical Party in the Chamber of Deputies, the Senate and the President openly condoned the fraud, while the Supreme Court stayed passively on the sidelines. By eroding the still developing beliefs by citizens in the rule of law, the fraud kindled a desire for populism. The electoral fraud ended with a military coup in 1943, followed by a narrow Presidential victory by the populist Colonel Peron. To achieve their goal of redistributing land and income to rural tenants, and to finance populist policies and industry, the Peronists passed legislation controlling rents and forcing owners to sell their land to tenants. This legislation only pertained to land in the Pampas. Undoubtedly, an independent Supreme Court backed by a belief in the rule of law would have declared the legislation unconstitutional. But, the Peronists had no fear of their legislation being overturned. They impeached four of the five Supreme Court Justices on the grounds of sanctioning illegitimate governments in the 1930s, and obstructing legislation favoring urban and rural workers during the military rule of 1943 to 1946. Naturally, the Peronists replaced the impeached Justices with appointees favoring the redistributive policies of the Peronists.

Like their Conservative predecessors and military successors, the Peronists believed that the ends justified the means. The policies of the populists, like the policies of their conservative predecessors further eroded the possibility of achieving a government grounded in the belief in the rule of law buttressed with a system of checks and balances. The aftermath has been economic and political instability. Argentina is a dramatic case of a country that was on the path of solving the coordination problem in which the political actors refrain from acting in their short-run interests. During the Great Depression, Argentina strayed from the path of consolidating democracy within a legitimate system of rule of law and has yet to find its way back.

## Appendix A Supreme Court Judges Tenure

| Year      | Change                                                                                                                        | President                                                                                                                                                                                                                                                                                                                                                                   | Political Regime                                                            |
|-----------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1863      | The Supreme Court is formed                                                                                                   | Bartolome Mitre (Liberal)                                                                                                                                                                                                                                                                                                                                                   | Limited Democracy                                                           |
| 1864-1916 | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.                                    | Sarmiento (Independent)<br>Avellaneda (1874-80) (Nacional)<br>Roca (1880-86) (PAN)<br>J. Celman (1886-90) (PAN)<br>Pellegrini (1890-92) (PAN)<br>L.S.Peña (1892-95) (Independent)<br>Uriburu (1895-98) (PAN)<br>Roca (1898-1904) (PAN)<br>Quintana (1904-06) (PAN)<br>F. Alcorta (1906-10) (PAN)<br>R.S.Peña (1910-14)(Independent)<br>De La Plaza (1914-16) (Conservative) | Limited Democracy                                                           |
| 1916-30   | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.                                    | Yrigoyen (1916-22) (UCR)<br>Alvear (1922-28) (UCR)<br>Yrygoyen (1928-30) (UCR)                                                                                                                                                                                                                                                                                              | Democracy                                                                   |
| 1930-32   | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.                                    | Uriburu (1930-32)                                                                                                                                                                                                                                                                                                                                                           | Military Government                                                         |
| 1932-43   | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.                                    | Justo (1932-38) (Independent)<br>Ortiz (1938-42) (UCR Antipersonalista)<br>Castillo (1942-43) (Conservative)                                                                                                                                                                                                                                                                | Limited Democracy                                                           |
| 1943-46   | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.                                    | Ramirez (1943-44)<br>Farrel (1944-46)                                                                                                                                                                                                                                                                                                                                       | Military Government                                                         |
| 1946-55   | <b>Impeachment of four of the five Supreme Court Justices.</b>                                                                | Peron (1946-52) (Peronist)<br>Peron (1952-55) (Peronist)                                                                                                                                                                                                                                                                                                                    | Democracy                                                                   |
| 1955-58   | The military government forces resignation of the entire Supreme Court.                                                       | Lonardi (1955)<br>Aramburu (1955-58)                                                                                                                                                                                                                                                                                                                                        | Military Government                                                         |
| 1958-62   | The new constitutional government forces some resignations and added two new Justices.                                        | Fronidizi (1958-62) (UCRI)                                                                                                                                                                                                                                                                                                                                                  | Limited Democracy<br>(Peronist Party is banned from elections)              |
| 1962-66   | Changes in Justices accounted for by death, retirement (old age) or voluntary resignation..                                   | Guido (1962-63) (UCRI)<br>Illia (1963-66) (UCRP)                                                                                                                                                                                                                                                                                                                            | Military Coup (Guido), and limited democracy (Illia)                        |
| 1966-73   | Military government forced resignations of all Justices. It reduced the number of Justices to five and made the appointments. | Ongania (1966-70)<br>Levingston (1970-71)<br>Lanusse (1971-73)                                                                                                                                                                                                                                                                                                              | Military Government                                                         |
| 1973-76   | The new constitutional government replaces all the five Justices                                                              | Campora (1973) (Justicialista)<br>Lastiri (1973) (Justicialista)<br>Peron (1973-74) (Justicialista)<br>Martinez (1974-76) (Justicialista)                                                                                                                                                                                                                                   | Democracy                                                                   |
| 1976-83   | The military government replaces all five Justices.                                                                           | Videla (1976-81)<br>Viola (1981)<br>Galtieri (1981-83)<br>Bignone (1983)                                                                                                                                                                                                                                                                                                    | Military Government                                                         |
| 1983-89   | The new democratic government replaces all fives Justices.                                                                    | Alfonsin (1983-89) (UCR)                                                                                                                                                                                                                                                                                                                                                    | Democracy                                                                   |
| 1989-2001 | In 1990 President Menem added four new Justices to the Supreme Court in order to get a favorable majority                     | Menem (1989-95) (Justicialista)<br>Menem (1995-99) (Justicialista)<br>De La Rua (1999-2001) (UCR)                                                                                                                                                                                                                                                                           | Democracy                                                                   |
| 2001-2003 | Congress started impeachment to the justices that named Menem.<br>Duhalde forced resignation of one Justice                   | Primero Dec 21-Dec 23 2001 (Justicialista)<br>Rodriguez Saa Dec 23-Dec 31 (Justicialista)<br>Segundo Jan 1-Jan 2 2002 (Justicialista)<br>Duhalde Jan-2002- June 2003 (Justicialista).                                                                                                                                                                                       | De La Rua ousted, 4 Presidents in 14 days.<br>Duhalde provisional President |
| 2003-     | Congress continued with impeachment. One justice impeached, other two forced to resign                                        | Kirchner (2003-) (Justicialista)                                                                                                                                                                                                                                                                                                                                            |                                                                             |

Source: Own elaboration based on Molinelli, et. al. 1999

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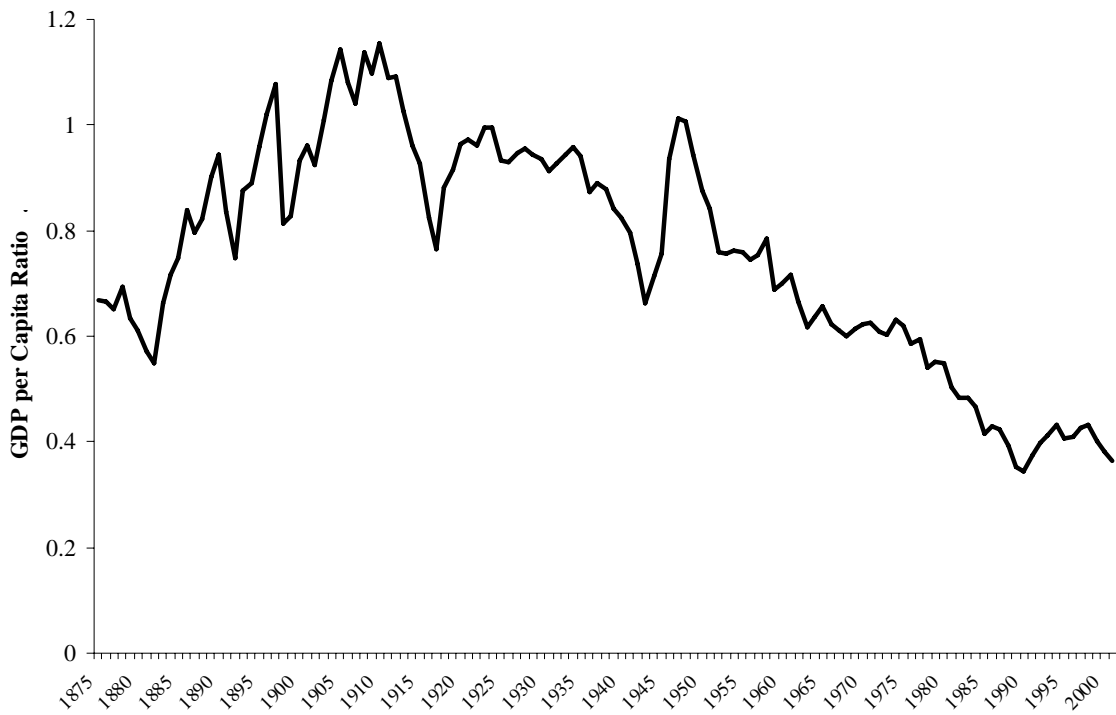
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**Figure I**

**GDP per Capita Argentina/Developed Countries**



Source: Our calculation based on Madisson (1995) and WPT 6.0

**Figure II**

Source: Our calculation based on Madisson (1995) and WPT 6.0