

The Erosion of Legitimate Government: Argentina, 1930-1947

Lee J. Alston

Department of Economics and Political Science
University of Illinois
Research Associate, NBER

Andrés Gallo

Department of Economics
University of Illinois

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I. Introduction

Legitimacy is an under appreciated concept in the literature in growth and development. Some scholars discuss the importance of rule of law, which is part of legitimacy. We propose to dig deeper and discuss the erosion of legitimacy in Argentina in the period 1930 to 1947. We justify the starting and end points of our analysis because in 1930 Argentina experienced its first military coup and in 1947 the Argentine Congress for the first time impeached four of its five justices. Since 1947, impeachment or forced resignations have become common. This is critical because we maintain that it is the lack of an independent court as a legitimate backstop to potential legislative and executive abuses that has led to the lack of continuity in Argentina's economic policy since 1947. The recent events in the twenty-first century once again bear witness to the importance of an independent Supreme Court whose role is viewed as legitimate by Argentine citizens.

The Argentine case of development in the 20th Century has been one of the most puzzling experiences in economic development. In the first two decades, Argentina achieved high levels and growth rates of per capita and overall GDP, as well as opening up its political system. By 1920 Argentina was a liberal democracy with several active parties. In 1930, a military coup interrupted the democratic system and installed a military government. Importantly, the Supreme Court sanctioned the coup. Shortly after the coup the military called for an election but they would not initially allow any candidates from the Radical party, the party of the overthrown President. As a result, a coalition of conservative parties dominated the government in the early 1930s. The Radical Party was allowed to run candidates in elections beginning in 1935 but fraud marred elections throughout the 1930s, enabling the conservatives to stay in power.

The fraud was denounced by the Radical Party and the press. Despite the transparency of the fraud – termed patriotic fraud – by the conservatives, the Supreme Court did not denounce the fraud. Instead they aligned themselves with the Conservative government. The closing chapter of power for the conservatives came about, like it began, with a military coup in 1943. After two years of martial law, the military government called for elections and Peron won in a landslide setting in motion an entirely new political and economic trajectory for Argentina. Though immensely popular at first,

Peronism was a failure at re-establishing the economic growth that Argentina had achieved in the first decades of the century. Instability in economic growth and politics has been the hallmark of Argentina since Juan Peron came to power.

Naturally, the literature about the rise of Peronism is huge¹. The consensus of most scholars is that the urban areas hold the key to explaining the popularity and support of Peron. There is considerable merit in this view because the basis of Peron's initial support was in the urban areas and his policies favored unions and industrialists at the expense of the rural agricultural sector in the Pampas. That Peron punished the landowners in the Pampas is well established [Veganzones and Winograd (1997)]. Indeed, some of his actions would be viewed as a 'taking' in a country that protects property rights. It is the punishment of the Pampas that we believe holds the early explanation for the dismal record of economic growth attained under Peronism.

Our study is motivated by the question: if the new legislation under Peronism violated the constitutional rights of landowners, where was the Supreme Court? Our explanation for the success of Peronism rests on the erosion of judicial legitimacy in the 1930s that in turn lead to the impeachment of the Supreme Court justices in 1947. Without the Supreme Court protecting property rights, the legislature, dominated with Peronists, was able to set Argentina on a new economic and political trajectory. Subsequent governments acted in the same arbitrary fashion and the Supreme Court became a rubber stamp. Under Peronism, urban industrialists and urban workers initially prospered, as did rural workers in the Pampas and smallholders in other Provinces. The landowners in the Pampas, along with their allies in exporting, suffered considerably under Peron. Unfortunately, it was the Pampas region that was the engine behind growth in the earlier part of the century². We need to set the stage by analyzing the political developments in the 1930s. By the time of Peron's coup in 1943, the majority of the population in Argentina had come to view the Conservative Coalition as illegitimate. In many ways the majority of the population saw Peronism as a justifiable payback to the

¹ The following are some of the most important works on Peronism, its origins and thir roots with the labor movement: Germani (1973), Smith (1972), Kenworthy (1975), Halperin Donghi (1975), Murmis and Portantiero (1971), Torre (1989), Tamarin (1985) Fayt(1967), Torre (1990), Horowitz (1990), Matsushita (1983).

² Diaz Alejandro (1970), Taylor (1994), Véganzonès and Winograd (1997).

Conservatives, whose base of support was the Pampas and whom urban and rural workers viewed as a self-serving elite rather than a legitimate government.

II. Political Evolution: 1880 to 1943

From 1880 until 1930 Argentina provided a good example of political stability, though not an open democracy until 1912. In the period up until 1914, Conservative governments controlled the Presidency and both houses of Congress. Prior to 1914 the Conservatives secured their hold on power through intimidation and fraud, particularly in the Pampas, which was the dominant force in the Conservative party. In the Pampas, renters and sharecroppers voted Conservative not by choice but by coercion of the landlords. With increased migration in the late 19th and early 20th centuries, pressure mounted for a more open political system. In an effort to maintain legitimacy the Conservative government introduced the Saenz Peña Law in 1912, which established the secret ballot.³ 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 Radical party retained its power until 1930, when a military coup, backed by Conservatives and some dissident Radicals overthrew an aging Yrigoyen.⁴

This was the first military coup in Argentine history and was an affront to democracy and electoral process. Once the military government took power in September 6th 1930 they looked for legitimacy. Paradoxically, despite acting outside of its jurisdiction, the Supreme Court gave its approval to the military coup. It appears as if the Court was acting on its political preferences rather than its constitutional authority

“It is evident that the Justices (of the Supreme Court) proceeded as they did because they were ideologically with the coup, which is historically described as a rebellion,... Nevertheless, the Justices described it as “a triumphant revolution’. ... All of them [Supreme Court Justices], excepting Figueroa Alcorta, had celebrated the overthrow of one of the Argentina’s high class most hatred leaders [Yrigoyen].”⁵

³ 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)

⁴ Yrigoyen was President from 1916 to 1922 and again from 1929 until the coup in 1930. In the interim years, 1923-1928, Alvear, also a Radical, was President.

⁵ Pellet Lastra (2001) page 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 only one Supreme Court Justice, Figueroa Alcorta. (Pellet Lastra (2001))

The military government called for a return to elections in 1932 but forbade any candidates from the Radical Party who had been in government during Yrigoyen's last term.⁶ In a protest response to the prohibition, the Radical Party chose not to participate in the election. As a result the Conservatives with their allies returned to power. The Conservatives from various provinces formed under the umbrella party called the National Democrat Party. They alligned themselves with the Antipersonalistas, a group of Radicals that opposed Yrigoyen, and the Independent Socialists. The three party group formed the ruling coalition called the *Concordancia* [Aguinaga and Azaretto (1991)]. In subsequent elections there was no ban on candidates from the Radical Party. Instead the Conservatives turned to fraud to maintain their reign through the 1930s. (Torre 1989))

When the Radical party returned to the electoral competition in 1934, they expected that the Conservatives would run clean elections. But the experience in the Province of Buenos Aires in 1935 and 1936 demonstrated the contrary. The first test was the gubernatorial and provincial congressional elections on November 3rd 1935. Fraud pervaded the election. Police intervened and ejected Radical and Socialist monitors from the polls. 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.

Accordingly, the fraud enabled the Conservatives to gain control of the government in the most populous and powerful province of the country. The judiciary did not intervene on the grounds that the issue was political and not constitutional. In

⁶ 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, e.g., 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. (Schillizzi Moreno (1973))

Argentina the Constitution established that each Chamber should evaluate the authenticity of the newly elected members and the legitimacy of the election. 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 1st 1936].

As expected by the Radicals, the Conservative Party won the election by fraud. Officials monitoring elections reported fraud before and during the elections.⁷ 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 Commission (*Peticiones y Poderes*), where Conservatives were in the minority. (See Table 1.)

Table 1:Members of the Petitions and Power Commission

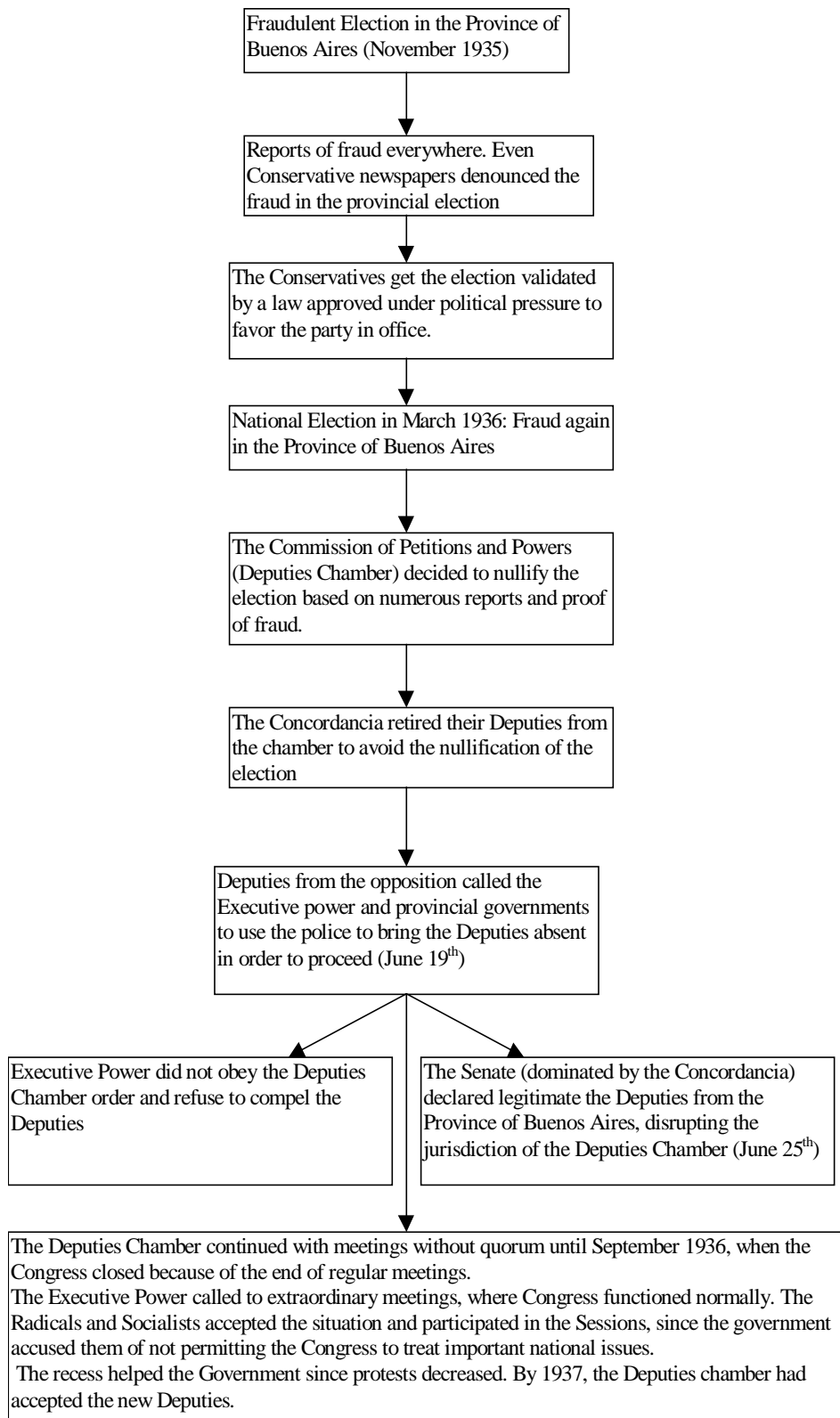
Name	Rank	Party	Province
Eduardo Araujo	President	Radical	City of Buenos Aires
Avelino Sellares	Secretary	Progressive Democrat	Santa Fe
Adrian C. Escobar	Member	Conservative	Buenos Aires
Reynaldo Pastor	Member	Conservative	San Luis
Pedro Numa Soto	Member	Conservative	Corrientes
Ernesto Sammartino	Member	Radical	Entre Rios
Guillermo Korn	Member	Socialist	Buenos Aires

After reviewing the evidence, the Commission advised the Chamber of Deputies to declare the national election in the Province of Buenos Aires null. 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.

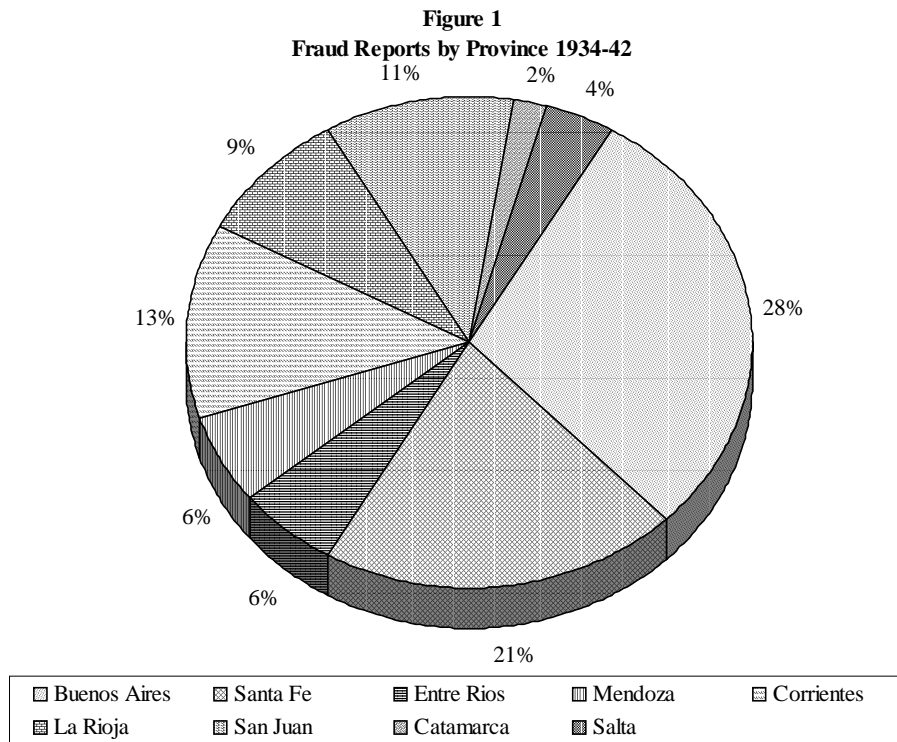
Facing an almost certain loss, the members of the *Concordancia* only hope was to prevent a vote. Instead of being in the Chamber for the debate or vote, the members of the *Concordancia* voted with their feet and did not appear in the chamber. The absence of the *Concordancia* made it impossible to 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. Without constitutional authority the Senate declared the election legitimate. Once again the Supreme Court stayed on the sidelines and did not intervene.

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. The future looked dim for the Radical Party at the polls. Strategically, it might have improved their long-run prospects had the Radicals abstained from participating in fraudulent elections. But they decided to stay and continue to participate in elections that they knew were fraudulent. In this way they ironically legitimized the process and lost popular support. The following figure shows the events that followed the initial electoral fraud.

⁷ Reports of fraud were common. See Diary of the Deputies Chamber (1936) for a complete list of the reports of fraud in the Province.



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 and up until the military coup in 1943 [Crawley (1984)]⁸. Most of the fraud was located on the Pampean region, the richest and most productive region of the country. As Figure 1 shows, most of the reports of fraud during this period were concentrated in the Province of Buenos Aires, which was the center of Conservative power and the key district in order to win national elections. If we consider the Pampean region, it accounts for nearly 55% of the total reports form 1934-1942.⁹

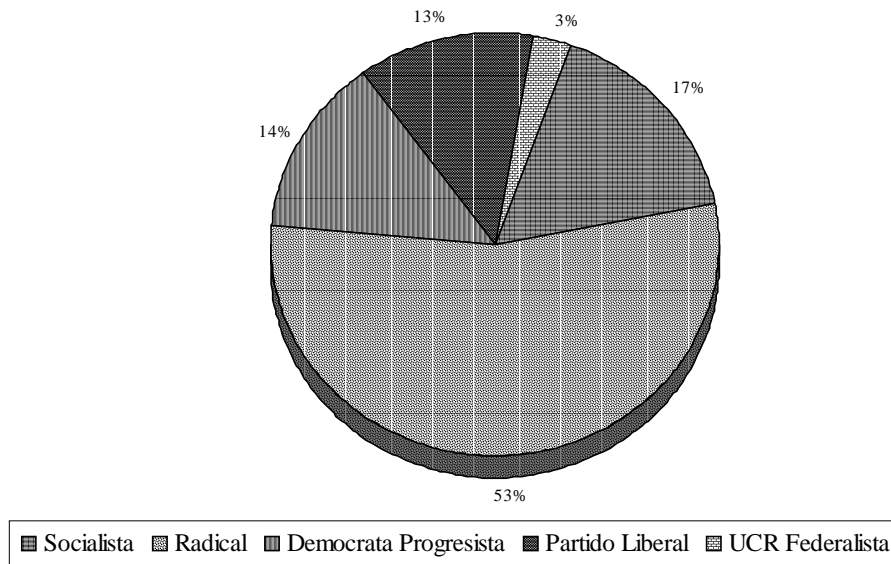


If we break down the data on reports of fraud by the party registering the denouncement, we find that the Radical Party lodged slightly more than one-half of the denouncements (See Figure 2).

⁸ The only exception was President Ortiz, who tried to return to normalcy.

⁹ The Pampean region contains the Provinces of Buenos Aires, Cordoba, Entre Rios and Santa Fe, along with La Pampa, which was a Federal Territory. Most of the fraud occurred in Buenos Aires, Entre Rios and

Figure 2
Fraud Reports by party (1934-1942)



Not surprisingly, the Conservative Party did not register any reports of fraud against other parties. The concentration of fraud against the Radical Party in the Pampas by the Conservatives produced a backlash amongst the electorate, despite a relatively good performance of the Argentine economy compared to the rest of the world during the depression of the 1930s.¹⁰ Increasingly so, the electorate viewed the rule of the Conservatives as illegitimate. There was mounting resentment within the country against the elite in the Pampas. This sentiment against the so called oligarchy accounts for the widespread popularity of the military coup in 1943 and the subsequent policies of Peron. In short the conservatives appeared to have won the battle by fraud but lost the war by eroding legitimacy.

Santa Fe. In Cordoba the Conservatives refrained from fraud but consistently lost the elections to the Radical Party. Other Radical strongholds like Mendoza also registered significant fraud.

¹⁰ For a convincing account of the positive policies implemented by the Conservative governments in the 1930s, see Della Paolera and Taylor 1999.

III. Peron's Rise to the Presidency: the Military Rule 1943-1945

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 (1985), Rouquie (1983) and Ciria(1975)]. Peron was part of this branch called the *Grupo de Oficiales Unidos (GOU)*.¹¹ 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, it was the emerging Labor Party that would form the backbone for his bid for the Presidency in 1946.¹²

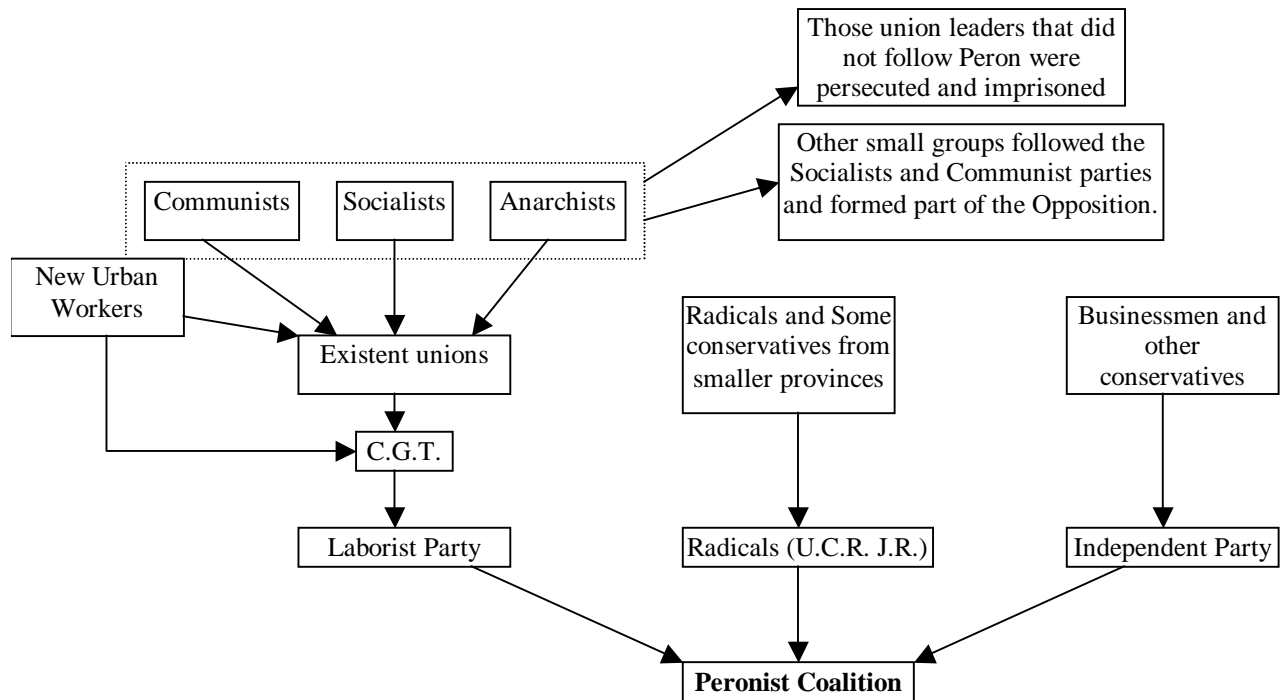
From his position as Secretary of Labor, Peron created unions loyal to the government and grouped them in the *Confederacion General del Trabajo* (General Work Confederation), which brought all unions under its jurisdiction. To capture the support of rural workers Peron instituted the *Estatuto del Peon Rural* (Peasant Statues) which greatly improved working conditions. To capture urban worker support Peron intervened in negotiations between business owners and urban workers. To monitor and enforce working conditions Peron created branches under the Ministry of Labor in all the provinces and federal territories. This was an important institutional change, because previously enforcement of federal laws was in the hands of provincial governments. Finally, a few months before the election in 1946 the military government issued a decree giving all workers in the country an extra monthly payment each year. This bonus payment increased the already high popularity of Peron [Mackinnon (1995)].

But in order to succeed in the election, Peron needed other allies beyond labor: the *Union Civica Radical Junta Renovadora*, composed of a subset of previous adherents

¹¹ The GOU drew their inspiration from Hitler and Mussolini. (Crawley (1985))

¹² The labor party endorsed Peron but they had hoped to maintain their independence. See Gay (1999).

to the Radical Party, and Conservatives from the smaller Provinces; and the *Partido Independiente*, composed of urban businessmen. Figure 4 shows the Peronist coalition prior to the election.¹³



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 Democrática*, and sought to get capture power once the military government called for national elections. The Conservatives, who had been in government during the 1930s, supported the *Union Democrática*, but they were not part of it.¹⁴ 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, claiming that the order would be restored once they won the election. They

¹³ Importantly, the coalition formed by Peron included Conservatives from the less populous Provinces. This was important to control the Senate.

¹⁴ Indeed, the *Union Democrática* initially formed in 1942, hoping to win against the Conservatives in what would have been an election in 1943.

vowed to return to the rules of the Constitution which meant that many of Peron's policies would be nullified.¹⁵

The Peronist movement promised future revolutionary changes in institutions for its constituencies. Before the election the changes that Peron had put in place were viewed by many as temporary, with the charisma of Juan Peron as the only guarantee for their durability. The reason why Peron alone appeared so instrumental is because the military government began to distance themselves from Peron. In early October 1945, Peron was put in jail. Meanwhile negotiations for a smooth transition to democracy were proceeding between the military government and the opposition. In a popular uprising, workers organized and marched toward Buenos Aires and petitioned the government to release Peron. Peron was released and was now in complete command of the military government prior to the election [Alexander (1979) and Torre (1995)]. The popular uprising enabled Peron to personify himself as the hope for the future of workers' rights against the oligarchy of international capitalists and their supporters, the Democratic Union.

Cast in these terms, the choice for most voters was simple. Peron won in a landslide. 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.

IV. 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)].¹⁶ 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

¹⁵ Foreign capital and the U.S. embassy aligned with the Democratic Union and declared their distaste for Peron's policies.

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.¹⁷

Institutional Change in the Outlying Provinces

To capture the support of the small provinces Peron relied on two institutional changes brought in by the Conservatives in the Great Depression: the Coparticipation System and the Central Bank. The Coparticipation System authorized the Federal Government to use the tax base of the Provinces in return for a share of the revenue that was raised. This gave the central government enormous leverage over the politicians in the provinces. In addition Peron used the Central Bank for political purposes. Essentially, he would “ask” the Central Bank to cover debts of provincial governments and more recently of state banks¹⁸.

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 had created the branches when he was Secretary of Labor during the military government and expanded on their use. Peron also nationalized many utilities and these could be used for employment.

The use of these diverse instruments permitted the Federal government to overcome political resistance from provincial government to changes in the economic

¹⁶ The provinces in the Pampas include: Buenos Aires, Santa Fe, Entre Rios, Cordoba, part of San Luis and the Federal Territory of La Pampa. The smaller provinces include: Corrientes, Santiago del Estero, Salta, Jujuy, Catamarca, La Rioja, San Juan and Mendoza.

¹⁷ 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.

¹⁸ The Central Bank was created in 1935 as an instrument to better control the monetary policy during the Depression. Meanwhile, the Federal Government created the Coparticipation system in order to increase revenue from taxes whose tax-base belonged to the provinces, and then to overcome the sharp decline in taxes from international trade. On the importance of an independent Central Bank in eventually leading to the privatization of Provincial banks in the 1990s see Alston, Lee J. and Andres Gallo) “Evolution and Revolution in the Argentine Banking System under Convertibility: The Political Economy of Banking Reform” Journal of Policy Reform (forthcoming).

structure. But 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.¹⁹ 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. Legislation helping tenants was not new: the Radicals passed two reforms in the 1920s. The impact of the reforms in the twenties were blunted by the Senate which was controlled by the Conservatives. Peron faced no such check on his power. It is important to note that the legislation implemented by Peron was mostly applied to the Pampas²⁰. The legislation established local boards that controlled rents and prohibited evictions. The government also controlled the price of wheat and cattle because it became the sole buyer. After purchase the government sold much of it on the international market and used the surplus to subsidize industrialization, and to transfer funds to the smaller provinces in return for political support [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 Pampean region. It was renewed 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)].

¹⁹ As Taylor(1997) shows, the system of rent and sharecropping worked well.

²⁰ First, from 1943 to 1946 the legislation from the Military government was limited to the Pampas. Second, the law that was passed in 1948 was applied to the whole country, but it affected primarily the Pampas because of the high level of rent and sharecropping contracts.

Peron designed his policies in the Pampas not simply to punish his enemies to help his friends but the policies were necessary 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. But, the actions taken surely represented a legislative “taking” which seems unconstitutional. So the question is: where was the Supreme Court?

The Impeachment of the Supreme Court

An independent Supreme Court represented the government’s guarantee that the constitution would be upheld.²¹ Unfortunately for the sanctity of property rights, the Peronists viewed the Supreme Court as being in the control of the opposition, in particular the Conservative faction in the Pampas. There was merit to this view. During the military government’s discussion of the transition path to democracy in the mid-1940s, the Democratic Union, dominated by the Radicals and Socialists, proposed the following:

1. Until the democratically elected government takes control, the government should be given to the President of the Supreme Court
2. General elections should be done under the Saenz Peña law.
3. Marshall law should be terminated.²²

The supporters of Peron countered with the following:

1. They opposed giving the government to the Supreme Court.
2. They proposed a government that was a guarantee of democracy and freedom for the country and which had to consult unions.
3. Elections should occur on the already arranged date.
4. Marshall law should be terminated. All political prisoners, military and civilians, who had clear democratic convictions and identified with the worker doctrine, should be freed.
5. Social improvements should be maintained and widened. The regulation of professional associations should be maintained.

²¹ “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), page 13.

²² See Gay (1997), page 26.

6. Immediate signing of the Decree to increase wages, the minimum basic wage. The Decree further stipulated that profits should be shared with workers.
7. Solving the agrarian problem by the distribution of the land by giving it to those that work it and the fulfillment of the *Estatuto del Peon*.²³

One month prior to the election, the Supreme Court added fuel to the fire by declaring as unconstitutional the provincial branches of the Secretary of Labor²⁴. The military government naturally denounced the decision while the opposition, i.e., non- Peronists voiced their approval. The rural constituencies that favored federal intervention in the provinces saw the election of Peron as instrumental in continuing the federal presence. Peron, personally 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.²⁵

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.²⁶

²³ Gay, Luis (1997), page 44.

²⁴ “The Supreme Court considers that the Executive Power Decree from November 27th 1943, which creates the Secretary of Labor and Prevision, by establishing in articles 12 and following that the departments, directions or offices of labor established in the Provinces are converted to Regional Branches of the Secretary of Labor and Prevision. . . , has violated a provincial law, it has transformed the provincial organism into a federal one and given a federal institution jurisdiction to operate in the provinces. The Court signals that it is evident the violation of the constitutional principles enumerated. Not Even the Congress could do such a thing.” (Newspaper La Prensa, 2/3/46)

²⁵ Diario de Sesiones del Honorable Senado de la Nacion Constituido en tribunal, T. VI, December 5th 1946, page 90.

²⁶ Diario de Sesiones del Honorable Senado de la Nacion Constituido en tribunal, T. VI, December 5th 1946, page 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. In submitting the impeachment bill, Decker stated:

If the charges we report are not made effective (impeachment) then all the social improvements that the Honorable National Congress passes will collide with the reactionary and class feeling of the sitting members of the Supreme Court, with the mentioned exception (i.e. the judge named by the military government). The seriousness of such a situation is easy to understand. Because, if the workers that achieved electoral victory are denied the source of justice, they would not have any choice but revolution, the authentic proletariat revolution that would destroy all existent state, social and economic organization. Everybody's obligation is to avoid such a thing happening by facilitating the social work to be done with a rapid evolution within the framework of our democratic institutions. But, for this to happen, it is indispensable to dismiss the Supreme Court Justices and disqualify them from occupying any other honor or confidence of paid National office.²⁷

To a large extent the words of Decker echoed public sentiment: the constituents who voted for Peron believed that the Court was an obstacle.

The charges against the members of the Court can be summarized into two main categories: 1) those charges in which the Court attacked Peron and his revolutionary changes, (I.a.2, I.a.3, I.a.4, I.a.6, I.b.1, II.b and II.c)²⁸ ; 2) those charges in which the Court seemed to be acting favoring the old regime, (I.a.1, I.a.7, I.a.8, I.a.9, I.b.2, and II.a.)²⁹. In the first set of charges, Peron's constituency saw the Court as a clear threat to Peron's policies and reforms that favored workers against the conservative elite. In the second set, the charges resulted from the Supreme Court's active role in legitimating the military government and the more passive role in permitting vote fraud in the 1930s. It is clear that with these wide sweeping charges, Peron was out to transform the basic institutional framework in Argentina. In the accusation of the Deputies chamber to the Supreme Court we can extract the sentiment against the old system and all that it represented:

²⁷ Diario de Sesiones de la Camara de Diputados. 1946, T. 1, page 515.

²⁸ See Appendix A.

Since a military government interrupted the normal cycle of constitutional government, 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 being- 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. 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.³⁰

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. Following the impeachment, the Peronists began to 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.

²⁹ See Appendix A.

³⁰ Report from the Deputies Chamber to the Senate accusing the Supreme Court members. Sessions Diary of the Honorable National Senate Constituted in Tribunal. Tomo VI, 1947, page 29.

IV. The Aftermath of the Impeachment

After the impeachment process and new constitution, Argentina has never been able to return to its former institutional path of economic development. Successive military and democratic governments appointed their own Supreme Court Justices in order to accomplish their political goals. But, without the court as a backstop, institutional volatility ensued³¹. In Table 2 we show the changes in the Supreme Court Justices before and after Peron's Presidency.

Table 2

Year	Change	President	Political Situation
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) Avellaneda (1874-80) (Nacional) Roca (1880-86) (PAN) J. Celman (1886-90) (PAN) Pellegrini (1890-92) (PAN) L.S.Peña (1892-95) (Independent) Uriburu (1895-98) (PAN) Roca (1898-1904) (PAN) Quintana (1904-06) (PAN) F. Alcorta (1906-10) (PAN) R.S.Peña (1910-14)(Independent) 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) Alvear (1922-28) (UCR) 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) Ortiz (1938-42) (UCR Antipersonalista) Castillo (1942-43) (Conservative)	Limited Democracy
1943-46	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation.	Ramirez (1943-44) Farrel (1944-46)	Military Government
1946-55	Impeachment of four of the five Supreme Court Justices.	Peron (1946-52) (Peronist) Peron (1952-55) (Peronist)	Democracy

³¹ 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. On the economic side, stop and go policies characterized the post-Peron years.

Year	Change	President	Political Situation
1955-58	The military government forces resignation of the entire Supreme Court.	Lonardi (1955) Aramburu (1955-58)	Military Government
1958-62	The new constitutional government forces some resignations and added two new Justices.	Frondizi (1958-62) (UCRI)	Limited Democracy (Peronist Party is not permitted to participate in elections)
1962-66	Changes in Justices accounted for by death, retirement (old age) or voluntary resignation..	Guido (1962-63) (UCRI) 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) Levingston (1970-71) Lanusse (1971-73)	Military Government
1973-76	The new constitutional government replaces all the five Justices	Campora (1973) (Justicialista) Lastiri (1973) (Justicialista) Peron (1973-74) (Justicialista) Martinez (1974-76) (Justicialista)	Democracy
1976-83	The military government replaces all five Justices.	Videla (1976-81) Viola (1981) Galtieri (1981-83) 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) Menem (1995-99) (Justicialista) De La Rúa (1999-) (UCR)	Democracy

Source: Molinelli, et. al. 1999.

In Table 2 we show that 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 3).

Table 3

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

⁽¹⁾ Removed by military governments.

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

V. 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 1930s engaged in electoral fraud, which the Supreme Court passively condoned. The fraud was no secret and was labeled “Patriotic Fraud.” But, ex-post “good” policies if achieved by illegitimate means may erode the very foundations of representative democracies. By sanctioning illegitimate government, the Supreme Court sowed the seeds of destruction of their judicial independence. The electoral fraud came to an end with a military coup in 1943, followed by a landslide Presidential victory by the populist Colonel Peron. To achieve their goal of redistributing land and income to rural tenants, 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, such legislation would have been declared unconstitutional by an independent Supreme Court. But, the Peronists had no fear of their legislation being overturned. They had impeached four of the five Supreme Court Justices on the grounds of sanctioning illegitimate government 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, the Peronists believed that the ends justified the means. Unfortunately, in the long-run, the result has been economic and political instability.

Appendix A

The charges leveled against the Supreme Court in the impeachment legislation follow:

I. Public office crimes

a. Abuse of Authority and Violation of Official's Obligations.

1. Court resolution of 1930 and 1943 legitimizing the military governments.
2. The Court was involved in political issues by trying to control and avoid the fulfillment of the social ends of the revolution of 1943 and dictating resolutions that involved political issues.
3. The Court failed to recognize the creation of the Appeals Chamber of Chaco.
4. The Court assumed political-administrative faculties by not accepting the exoneration of judges by the revolutionary government of 1943.
5. The Court impeded the fulfillment of the acephalia law, No. 252, by the president of the Court.
6. The Court did not recognize the judges of the Labor Ministry. This violated the decree creating the Ministry and retarded the functioning of the Labor courts.
7. The Court filled the annual list of aspirants to the Judiciary with lawyers from the belonging to the dominant oligarchy or their allies.
8. The Court applied different criteria on the solicitation for habeas corpus with respect to the political prisoners in 1930 and 1943. They went over the powers ceded to the Executive under martial law.
9. The Court exceeded their power by extending its jurisdiction on cases that were not authorized by the article 14th of the law 48.

b. Prevarication

1. The Court dictated verdicts contrary to the law by denying benefits of laws 11.729 and 9.688 to workers and employees with the pretext that they were affiliated to retirement systems.
2. The Court falsified citations in order to legitimize the military governments of 1930 and 1943.

II. Misconduct

- a) The Court named its own president in 1930.
- b) The Court let the General Prosecutor to accept a political position without forcing him to resign.
- c) The Court permitted the Secretary of the Court to participate in a political meeting.³²

³² Diary of Sessions Senate Chamber (1946).

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