



Radicalization and the Origins of Populist Narratives about the Courts: The Argentinian Case, 2007–2015

BENJAMIN GARCIA HOLGADO

Abstract

In Latin America, presidents from different ideological backgrounds have systematically attacked the judiciary in order to implement their preferred public policies. In many cases, the leaders who control the executive branch have shown an early normative opposition to the power of courts to engage in the process of judicial review. For this article, I conducted a case study of Argentina from 2007 to 2015 under President Cristina Fernández de Kirchner that showed a different pattern and dynamic. After judges started to block public policies, she challenged the conception that liberal democracies require an independent judiciary with the constitutional ability to limit the scope of action of the executive and legislative branches. This view challenged the traditional liberal-democratic conception of the judiciary as a counter-majoritarian branch. The presidential party characterized judges as an aristocratic caste who ruled against the popular will in order to protect corporations' economic interests. Consequently, the president proposed a "democratized judiciary" in which judges rule following the "people's will," which meant whatever the president elected by a circumstantial electoral majority decided.

Keywords: Populism, illiberalism, judicial review, Argentina

In Latin America, presidents from different ideological backgrounds have systematically attacked the judiciary in order to implement their preferred public policies.¹ In many cases, such as with Hugo Chávez in Venezuela (1999–2013), Alberto Fujimori in Peru (1990–2000), and Jair Bolsonaro in Brazil (2019–2022), the leaders in control of the executive branch have shown an early *ideological* and *normative* commitment against the power of courts to engage in judicial review. In this article, I conduct a case study of Argentina from 2007 to 2015 that shows a different pattern and dynamic. During that period, Argentina was a case of a populist president, Cristina Fernández de Kirchner, who became progressively radicalized in her policies against the independence of the media and the courts. After judges started to block the implementation of her public policies, the president developed a populist narrative about the proper role of the judiciary that directly challenged the classical liberal understanding of what judges are required to do in a liberal democracy. This case exemplifies how president's radicalization in her policy preferences against other political and social actors led her to perceive adversarial court rulings as a sign of an illegitimate alliance between judges and her political opponents.

In 2008, a conflict between the executive and rural organizations over taxes launched a reciprocal process of increasing radicalization between President Cristina Fernández de Kirchner (2007–2015) and different opposition parties and the media. President Fernández perceived that the traditional media and, in particular, Grupo Clarín (Argentina's largest media conglomerate), had a biased and unfair coverage of her conflict with rural organizations. Moreover, the executive accused *Clarín* of promoting attempts to force Fernández to leave office. In 2009, the administration began to engage in an unprecedented battle against Grupo Clarín. This led to the passing of a law to de-concentrate the media market with the intent of striking a blow against Grupo Clarín, which was immediately challenged this in court. Multiple judges over many years decided to block the implementation of the media law and the executive reacted by implementing a coordinated strategy to undermine judicial independence. A crucial part of this attack was the creation of a populist narrative, elaborated and promoted by journalists, academics, intellectuals, and lawyers who were supporters of the administration. This view challenged the traditional liberal-democratic conception of the judiciary as a counter-majoritarian branch. Instead, the administration characterized judges as an aristocratic caste who ruled against the popular will in order to protect corporate interests. In this way, the administration and its followers explicitly questioned the judiciary's authority to exercise judicial review.

In 2013, the conflict between the executive and the judiciary reached its peak when Fernández moved forward with a comprehensive judicial reform that would have severely damaged judicial independence. The Supreme Court nullified this reform in a landmark case in which the justices articulated a counter-narrative against the one put forward by the administration. The Court defended a conception of constitutional democracy that requires an independent judiciary with the capacity to limit circumstantial legislative majorities as well as harmonize majority rule with the protection of individual rights. From that moment onward, Fernández and her supporters continued to develop this populist narrative about the courts as just one piece of a more general populist worldview. In order to develop my argument and causal mechanisms for the Argentinian case, I collected evidence from multiple

¹ I am grateful to Benjamin Schnert, Tomás Gold, Cynthia McClintock, Julio Carrión, Cathleen Andrews, and two anonymous reviewers for their helpful comments. Also, a special thanks to Marlene Laruelle for organizing the wonderful workshop, "Illiberalism in Latin America" (April 2022) at The George Washington University.

Radicalization and the Origins of Populist Narratives about the Courts:

sources: semi-structured elite interviews, newspapers, documents, speeches, memoirs, books written by investigative journalists, and other primary documents. I also rely extensively on scholarly works by constitutional lawyers and social scientists who are experts in specific topics discussed in the paper.

Radicalization, Liberal Democracy, and the Judiciary

In this section I explain how actors who have radicalized preferences create a narrative against the liberal-democratic notion that judges should conduct judicial review. This is just one particular dimension of the tension between having an extreme commitment to certain policy outcomes (resulting in radicalization) and a commitment to maintaining liberal democracy.² By *radicalization*, I refer to an antagonistic disposition of actors towards others in the pursuit of certain policies. A radical actor is one who has “intense policy preferences located towards a pole of the policy spectrum.”³ In particular, this conceptualization of radicalization has three components: (1) *polarization* (the actor’s preferences move far away from other political actors), (2) *impatience* (actors feel an urgency to achieve their goals immediately), and (3) *intransigence* (actors reject any compromise when pursuing their policy goals).⁴ Radicalization processes can either start within the executive branch, the opposition, or civil society groups. Likewise, they can be initiated: (1) by transformative actors who aim to radically change the status quo, or (2) by conservative actors who are intransigent in their defense of the status quo.⁵

On the other hand, by the term *liberal democracy*, I refer to a specific type of political regime that has two dimensions.⁶ The *electoral dimension* refers to rules of access to state power that mandate that top legislative and executive positions should be accessed through free, fair, inclusive, effective, and regular elections. The *liberal dimension* refers to rules that impede the concentration of state power, guarantee social pluralism, and protect individual rights.⁷ State power is usually divided among the legislative, executive, and judicial branches, which have specific tasks, including checking and balancing each other.⁸ Moreover, horizontal accountability agencies have been included in many constitutional designs in order to monitor the executive branch.⁹ Besides diffusing state power, liberal democracies also protect an ample set of rights, such as freedom of expression, of the press, of association and assembly, of movement, of religion, and the protection of the right to own private property.¹⁰

2 Arturo Valenzuela, *The Breakdown of Democratic Regimes: Chile* (Baltimore: Johns Hopkins University Press, 1978); Giovanni Capoccia, *Defending Democracy: Reactions to Extremism in Interwar Europe* (Baltimore: Johns Hopkins University Press, 2005); Kurt Weyland, *Revolution and Reaction* (Cambridge, UK: Cambridge University Press, 2019).

3 Scott Mainwaring and Aníbal Pérez-Liñán, *Democracies and Dictatorships in Latin America: Emergence, Survival, and Fall* (Cambridge, UK: Cambridge University Press, 2013), 36.

4 Mainwaring and Pérez-Liñán, *Democracies and Dictatorships in Latin America*, 36.

5 Mainwaring and Pérez-Liñán, 14–15, 36–39.

6 Political regimes are the set of formal and informal rules that regulate both how actors access the main offices of the government and state, as well as the limits of the state’s regulatory and coercive powers over civil society: see Mainwaring and Pérez-Liñán, *Democracies and Dictatorships in Latin America*, 64–65. For the two dimensions that make up liberal democracy, see Carlos Gervasoni, *Hybrid Regimes within Democracies* (Cambridge, UK: Cambridge University Press, 2018), 27–41.

7 Stephen Gardbaum, “The Counter-Playbook: Resisting the Populist Assault on Separation of Powers,” *Columbia Journal of Transnational Law* 59, no. 1 (2020), <https://doi.org/10.2139/ssrn.3485761>.

8 M. J. C. Vile, *Constitutionalism and the Separation of Powers*, 2nd ed. (Indianapolis: Liberty Fund, 1998), 1–22.

9 Guillermo O’Donnell, “Horizontal Accountability: The Legal Institutionalization of Mistrust,” in *Democratic Accountability in Latin America*, eds. Scott Mainwaring and Christopher Welna (Oxford: Oxford University Press, 2003), 34–54.

10 John Rawls, *Political Liberalism* (Cambridge, Mass.: Harvard University Press, 1993), 291.

Given the aforementioned definitions of radicalization and liberal democracy, I argue that radicalized actors will necessarily take a critical view of liberal democracy in general, and of judicial review in particular, for three reasons.¹¹ First, the executive's radicalization pushes for policies that represent an existential threat to other actors' interests or values (for example, Argentina in 1946–1955 under Perón's first and second terms; Chile in 1970–1973 under the Allende presidency; Spain in 1931–1936 under the Second Republic), who then have heightened incentives to try to block the policies or to try to remove the president.¹² Hence, the opposition is itself radicalized in order to respond to the executive's impatience and intransigence. Opposition actors might even believe that the use of "institutional strategies" and "moderate goals" are inadequate to stop an executive who is perceived as willing to go "all the way."¹³ This increases the level of political confrontation and creates uncertainty about how resilient institutions will be.¹⁴ Compromise is less likely because the stakes that actors face are high and because actors conceptualize their differences as "non-divisible" or "either-or" conflicts instead of "divisible conflicts over more or less."¹⁵

The dynamic interaction between different radicalized actors transforms multidimensional and crosscutting conflicts into unidimensional confrontations in which politicians and citizens understand politics in an antagonistic way.¹⁶ Radicalization can increase because it tends to be a self-reproducing process when actors' actions and perceptions of each other reinforce each other over time. Early events in a confrontational sequence generate movement in one direction that is reinforced by the presence of new events that push the process in the same direction. The process self-amplifies because it is "expanded, increased, strengthened, and enhanced."¹⁷ In this sequence, all actors end up understanding politics in a warlike fashion wherein "force monitors persuasion, might establishes right, and conflict resolution is sought in terms of the defeat of the enemy—of the 'other' looked on as a *hostis* [Latin: public enemy]."¹⁸ Actors perceive that they have "public and fundamental disagreements about how their shared system should be structured."¹⁹ In extreme situations, both radicalized groups can embrace mutually exclusive "ways of life" and "highest values" which undermine democratic stability.²⁰ Radicalization undermines key values that are fundamental for democratic stability: prudence, moderation, tolerance, patience, reformism, and a pragmatic view of politics.²¹

11 Mainwaring and Pérez-Liñán, *Democracies and Dictatorships in Latin America*, 37, 43–44.

12 Adam Przeworski, *Crises of Democracy* (Cambridge, UK: Cambridge University Press, 2019), 8.

13 Laura Gamboa, *Resisting Backsliding: Opposition Strategies against the Erosion of Democracy* (Cambridge, UK: Cambridge University Press, 2022).

14 Gerard Alexander, *The Sources of Democratic Consolidation* (Ithaca, NY: Cornell University Press, 2018).

15 Albert O. Hirschman, "Social Conflicts as Pillars of Democratic Market Society," *Political Theory* 22, no. 2 (May 1994), 212–214, <https://doi.org/10.1177/0090591794022002001>.

16 Jennifer McCoy, Tahmina Rahman, and Murat Somer, "Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Politics," *American Behavioral Scientist* 62, no. 1 (January 2018), 18, <https://doi.org/10.1177/0002764218759576>.

17 Tullia G. Falletti and James Mahoney, "The Comparative Sequential Method," in *Advances in Comparative-Historical Analysis*, eds. James Mahoney and Kathleen Thelen (Cambridge, UK: Cambridge University Press, 2015), 220–223.

18 Giovanni Sartori, *The Theory of Democracy Revisited* (London: Chatham House Publishers, 1987), 41–42.

19 Nancy Bermeo, *Ordinary People in Extraordinary Times: The Citizenry and the Breakdown of Democracy* (Princeton: Princeton University Press, 2003), 227.

20 Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971), 105.

21 Norberto Bobbio, *Left and Right: The Significance of a Political Distinction* (Chicago: University of Chicago Press, 1996), 25.

Radicalization and the Origins of Populist Narratives about the Courts:

Second, as noted above, radicalization implies a feeling of impatience: that is, a strong commitment to the immediate implementation of a package of public policies, in many cases inspired by certain values or ideologies. Therefore, radicalized actors are only interested in either maintaining or implementing substantive outcomes, not upholding a specific political regime. Their attitude towards political regimes is conditional on how well they serve the achievement of one's policy goals. Liberal democracy is a political regime, a specific set of institutions and procedures, not a policy outcome.²² The electoral dimension of democracy requires that parties who lose elections respect the results and accept that elections have uncertain results.²³ Moreover, since electoral majorities change over time, it is very unlikely that a political party who defends a fixed set of public policies will remain in power forever. Additionally, in order to win elections and have legislative support, parties may need to moderate their platforms and negotiate with other parties.²⁴ In conclusion, electoral competition by no means guarantees accomplishing the substantive goals that radicalized actors aim to achieve.

Third, by design, liberal democracies include complex institutional arrangements consisting of multiple veto players that make it difficult for executives to implement radical economic and social changes.²⁵ Opposition parties, economic actors, the media, unions, religious institutions, and civil society organizations can use multiple institutional mechanisms to either block or severely limit public policies and institutional reforms that the executive wants to implement.²⁶ There are multiple scenarios in which a radicalized president would face severe limitations on his or her policies. If the president does not have a majority in Congress, the opposition can block legislative initiatives from the incumbent party. Even if there is a unified government and the executive is able to get legislation passed, the state bureaucracy has numerous mechanisms to either delay or significantly alter the implementation of public policies.²⁷ Even when the president has support from the bureaucracy and the legislature, audit bodies, ombudsman's offices, human rights commissions, electoral management bodies, and anti-corruption agencies can expose wrongdoings and abuse of power by public officials.²⁸ Even if the incumbent party controls the executive, Congress, the bureaucracy, and agencies of horizontal accountability, individual rights protect individuals from the abuses of state power. Therefore, the scope of the government's power in implementing public policies and regulating

²² Juan J. Linz, *The Breakdown of Democratic Regimes: Crisis, Breakdown, and Reequilibration* (Baltimore: Johns Hopkins University Press, 1978), 5–7.

²³ According to Adam Przeworski: "The fact that uncertainty is inherent in democracy does not mean everything is possible or nothing is predictable. Contrary to the favorite words of conservatives of all kinds, democracy is neither chaos nor anarchy. Note that 'uncertainty' can mean that actors do not know what can happen, that they know what is possible but not what is likely, or that they know what is possible and likely but not what will happen. Democracy is uncertain only in the last sense. Actors know what is possible, since the possible outcomes are entailed by the institutional framework; they know what is likely to happen, because the probability of particular outcomes is determined jointly by the institutional framework and the resources that the different political forces bring to the competition. What they do not know is which particular outcome will occur." Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge, UK: Cambridge University Press, 1991), 12–13.

²⁴ Adam Przeworski, *Capitalism and Social Democracy* (Cambridge, UK: Cambridge University Press, 1985); Adam Przeworski and John Sprague, *Paper Stones: A History of Electoral Socialism* (Chicago: University of Chicago Press, 1986).

²⁵ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002).

²⁶ Andrew Arato and Jean L. Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (Oxford: Oxford University Press, 2021).

²⁷ Tom Ginsburg and Aziz Z. Huq, *How to Save a Constitutional Democracy* (Chicago: University of Chicago Press, 2018), 101–107.

²⁸ Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (Cambridge, UK: Cambridge University Press, 2021).

civil society is necessarily constrained. In particular, the judiciary can block public policies and institutional reforms when judges consider that they infringe on constitutionally-protected individual rights.²⁹

In conclusion, liberal democracies are political regimes that will very likely produce high levels of dissatisfaction and frustration among radicalized actors. In situations in which judges block numerous decisions by a radicalized president elected in free and fair elections, it is not surprising that the executive will develop a populist narrative against the judiciary and try to implement reforms to undermine its independence.

Two Sequences of Radicalization

In many countries, radicalized presidents show an early, strong, and well-defined commitment to implementing public policies and institutional reforms that they expect will generate staunch resistance from certain actors (see Diagram 1). These presidents are probably aware that autonomous judges can stop their preferred institutional reforms and public policies, since they were appointed by previous political elites whom these presidents oppose.³⁰ Also, in cases where the opposition controls Congress, presidents may feel threatened by the possibility of being removed through an impeachment procedure, and the co-optation of the judiciary would give them an important advantage for blocking the opposition.³¹ Moreover, elected presidents who have considerable popular support often see adversarial courts as actors controlled by the elites to protect the interests of “an oligarchical enemy, the deep state” instead of serving and protecting “the people.”³² The president’s decision to implement illiberal reforms predates any actions taken by the judiciary or the opposition. In fact, the reforms are designed as a pre-emptive attack with the goal of neutralizing the opposition and the courts.

29 Cristina Lafont, “Philosophical Foundations of Judicial Review,” in *Philosophical Foundations of Constitutional Law*, eds. David Dyzenhaus and Malcolm Thorburn (Oxford: Oxford University Press, 2016): 265–282.

30 Nuno Garoupa and Maria A. Maldonado, “Judiciary in Political Transitions: The Critical Role of US Constitutionalism in Latin America,” *Cardozo Journal of International and Comparative Law* 19 (2011), 595–596, <https://doi.org/10.4337/9781785369216.00007>.

31 Gretchen Helmke, *Institutions on the Edge: The Origins and Consequences of Inter-Branch Crises in Latin America* (Cambridge, UK: Cambridge University Press, 2017), 129–135.

32 Andrew Arato, “Populism, Constitutional Courts, and Civil Society,” in *Judicial Power: How Constitutional Courts Affect Political Transformations*, ed. Christine Landfried (Cambridge, UK: Cambridge University Press, 2019), 332.

Radicalization and the Origins of Populist Narratives about the Courts:

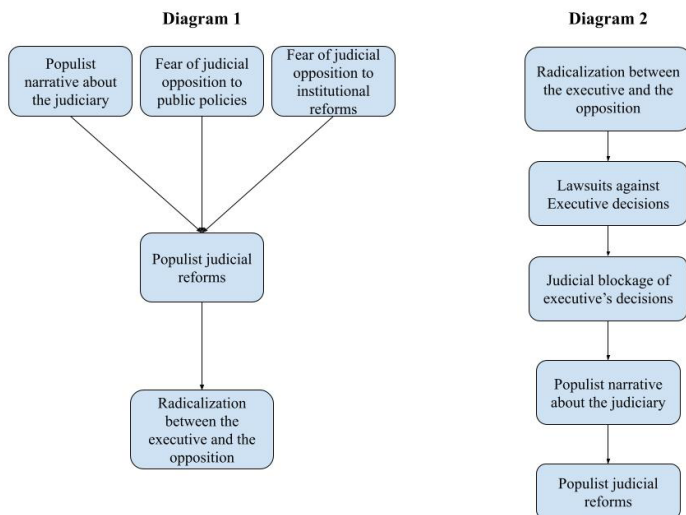


DIAGRAM 1. First Sequence of Radicalization

DIAGRAM 2. Second Sequence of Radicalization

One of the clearest examples of a president committed to undermining judicial independence from the very beginning of his term has been Hugo Chávez in Venezuela (1999–2013). Chávez’s main campaign promise in 1998 was the convocation of a constituent assembly to draft a new constitution.³³ The constitution-making process allowed the executive to remove almost all of the existing justices and appoint new loyal justices in less than a year.³⁴ The constituent assembly also began the process of co-opting the lower courts by creating an ad-hoc entity, which replaced about one-third of lower-level judges without following any constitutional procedure.³⁵ Besides the extreme case of Chávez, there are many other examples of Latin American presidents who very early in their terms either attempted to or even succeeded in effectively neutralizing/co-opting the judiciary in order to implement public policies and/or bring about other institutional reforms: Juan Perón in Argentina (1946–1955),³⁶ Alberto Fujimori in Peru (1990–2000),³⁷ Carlos Menem in

33 Diego González Cadenas, *Un proceso constituyente democrático en Venezuela: La génesis de la Constitución de 1999* (Bogotá: Ediciones Uniandes, 2020).

34 Carlos Ayala, “El secuestro de la independencia judicial,” in *Libro homenaje a la Academia de Ciencias Políticas y Sociales en el centenario de su fundación, 1915–2015*, vol. I (Caracas: Academia de Ciencias Políticas y Sociales, 2015), 239–242.

35 Rogelio Pérez Perdomo, “Medio siglo de historia judicial en Venezuela (1952–2005),” *Cuadernos Unimetanos*, no. 11 (September 2007), 18.

36 Ezequiel Abasolo, “La Corte Suprema durante el régimen peronista (1947–1955),” in *Historia de la Corte Suprema Argentina, Tomo II: El período de la discontinuidad inconstitucional (1947–1983)*, ed. Alfonso Santiago (Buenos Aires: Marcial Pons, 2014).

37 Yusuke Murakami, *Perú en la era del chino: La política no institucionalizada y el pueblo en busca de un salvador* (Lima: Instituto de Estudios Peruanos, 2012), 241–313.

Argentina (1989–1999),³⁸ Álvaro Uribe in Colombia (2002–2010),³⁹ Evo Morales in Bolivia (2006–2019),⁴⁰ and Rafael Correa in Ecuador (2007–2017).⁴¹ Contemporary examples of this radicalization sequence outside Latin America include the cases of Viktor Orbán in Hungary (2010–present) and the Law and Justice (PiS) party government in Poland (2015–present).⁴²

In this article, I use theory-building process tracing to theorize an alternative sequence of events that lead to the creation of a populist narrative (see Diagram 2).⁴³ I show that a president's populist narrative about the proper role of the judiciary can arise *endogenously* as a consequence of a sequence of events produced by the interaction of the government, social actors, and opposition parties. In particular, I present a causal narrative of certain events that occurred during Cristina Fernández's administrations in Argentina (2007–2015), which shows that a radicalization process between the incumbent party and opposition actors can gradually lead the government to adopt a populist conception of the judiciary, and which eventually leads to the implementation of reforms that can undermine judicial independence. Once the president is determined to implement policies and/or institutional reforms that are considered extreme by opposition actors, the opposition will likely go to the courts to challenge the reforms' constitutionality. In cases where the judiciary is not under the control of the executive branch, and judges find the opposition's arguments persuasive, the president's decisions will likely be stopped by the courts. Ultimately, the adoption of a populist conception of the judiciary is a reaction to judges' decisions to block the executive branch's decisions.

The Gradual Development of the Populist Narrative against a Liberal Conception of the Judiciary, 2007–2015

Since the collapse of the last military dictatorship in 1983, presidential democracy in Argentina has remained the only game in town despite multiple economic and political crises.⁴⁴ Within this post-1983 period, there has been significant economic and political instability, including two periods of hyperinflation (in 1989, and again in 1990), an intense economic and social crisis between 1998 and 2002, and the early resignation of two presidents from the Radical Party. The party system has also changed since 1983. Until the mid-1990s it was dominated by two parties, the Partido Justicialista (PJ) and the Unión Cívica Radical (UCR). However, over time the UCR's share of national votes in presidential and legislative elections declined, while the

38 Alfonso Santiago, "La Corte de los Nueve (1990–2003)," in *Historia de la Corte Suprema Argentina, Tomo III: El período de la restauración democrática (1983–2013)*, ed. Alfonso Santiago (Buenos Aires: Marcial Pons, 2014).

39 Javier Duque, *El presidente y las cortes: Las Altas Cortes en Colombia y sus relaciones con el Poder Ejecutivo* (Cali, Colombia: Universidad del Valle, 2012), 89–220.

40 Aníbal Pérez-Liñán and Andrea Castagnola, "Bolivia: The Rise (and Fall) of Judicial Review," in *Courts in Latin America*, eds. Gretchen Helmke and Julio Ríos-Figueroa (Cambridge, UK: Cambridge University Press, 2010).

41 Efrén Guerrero Salgado, "Reforma del estado como mecanismo de control en democracia delegativa: Caso reforma judicial Ecuador 2007–2014" (PhD dissertation, Universidad Complutense de Madrid, 2016).

42 Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford: Oxford University Press, 2019); Kriszta Kovács and Kim Lane Scheppele, "The Fragility of an Independent Judiciary: Lessons from Hungary and Poland—and the European Union," *Communist and Postcommunist Studies* 51, no. 3 (August 2018): 189–200.

43 Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (Ann Arbor: University of Michigan Press, 2019), 269–277.

44 Scott Mainwaring and Emilia Simson, "Economic Crisis, Military Rebellions, and Democratic Survival: Argentina, 1983–2021" in *Democracy in Hard Places*, eds. Scott Mainwaring and Tarek Masoud (Oxford: Oxford University Press, 2022).

importance of third parties rose.⁴⁵ The economic structure also went through a deep transformation in the 1990s when President Carlos Menem implemented broad pro-market reforms that included privatization of state companies, labor deregulation, and reduction of trade barriers. Although these reforms successfully brought down hyperinflation and created economic growth, by the end of the decade the economy entered a recession, leading to increased poverty, unemployment, and wealth inequality.

This situation ended in an unprecedented economic, political, and social crisis in 2001, which led President Fernando de la Rúa from the UCR to resign. An interim Peronist president took office until the 2003 presidential election. Given the collapse of the UCR, that election was decided among different factions within the PJ. Néstor Kirchner, a Peronist governor from the far southern Patagonian province of Santa Cruz, was elected to a four-year term. From the outset, Kirchner proposed a set of policies that were the polar opposite of what Menem had done a decade before: interventionist economic policies, expansion of the social safety net, prosecuting military officers who were accused of human rights violations during the last military dictatorship, a strong alliance with unions and social movements, and prioritizing relations with other Latin American countries over those with the United States. These policies clearly located his administration on the progressive side of the political spectrum and made him part of Latin America's left turn.⁴⁶ However, his presidency had important differences with the most radical examples of the "pink tide" (for example., Hugo Chávez, Evo Morales, and Rafael Correa).⁴⁷ Kirchner never proposed a wholesale rewrite of the Constitution, used the police or the armed forces to repress political demonstrations, relied upon the judiciary to prosecute journalists and opposition politicians, or proposed any media regulations. Moreover, he decided to broaden his coalition by including politicians from non-Peronist parties.⁴⁸ This is corroborated by the V-Party expert-coded assessments of the level of illiberalism (v2xpa_illiberal)⁴⁹ of the Peronist Party, which was 0.22 in 2003 and 0.20 in 2005, in contrast to Chávez's Fifth Republic Movement score of 0.946 in 1998, and Correa's Alianza País score of 0.95 in 2007.⁵⁰

From the beginning of his term, Kirchner took different measures that increased judicial independence. Days after he took office, he started pushing for important changes to the Supreme Court. A majority of the sitting judges had been subjected to staunch criticism due to their lack of independence from the Menem Administration and their support for executive decisions of dubious constitutional validity.⁵¹ Kirchner's

45 Carlos Gervasoni, "Argentina's Declining Party System: Fragmentation, Denationalization, Factionalization, Personalization and Increasing Fluidity," in *Party Systems in Latin America: Institutionalization, Decay, and Collapse*, ed. Scott Mainwaring (Cambridge, UK: Cambridge University Press, 2018).

46 Steven Levitsky and Kenneth M. Roberts, eds., *The Resurgence of the Latin American Left* (Baltimore: Johns Hopkins University Press, 2011).

47 Kurt Weyland, Raúl L. Madrid, and Wendy Hunter, eds., *Leftist Governments in Latin America: Successes and Shortcomings* (Cambridge, UK: Cambridge University Press, 2010).

48 Marcos Novaro, Alejandro Bonvecchi, and Nicolás Cherny, *Los límites de la voluntad: Los gobiernos de Duhalde, Néstor y Cristina Kirchner* (Ariel, 2014).

49 This is an index built with expert survey responses to four questions: (1) whether politicians use personal attacks or demonize their opponents; (2) the extent to which politicians are committed to free and fair elections; (3) how often parties claim that the will of the majority should be implemented even if it violates minority rights; and (4) the degree to which politicians explicitly discourage the use of violence. When this index's value is 0, it represents a state of complete liberalism, while a value of 1 represents total illiberalism.

50 Anna Lührmann et al., "Codebook Varieties of Party Identity and Organization (V-Party) V1," Varieties of Democracy (V-Dem) Project, 2020; Anna Lührmann et al., Varieties of Party Identity and Organization (V-Party) Dataset V1, Varieties of Democracy (V-Dem) Project, 2020, <https://www.v-dem.net/data/v-party-dataset/>.

51 Alba M. Ruibal, "Self-Restraint in Search of Legitimacy: The Reform of the Argentine Supreme Court," *Latin American Politics and Society* 51, no. 3 (fall 2009): 59–86, <https://doi.org/10.1111/j.1548-2456.2009.00056.x>.

decision to move forward with the impeachment of Menem-appointed justices led to a total reshaping of the Court. Kirchner's four newly-appointed justices were regarded as independent and prestigious, not having strong links to the incumbent party or the president's circle.⁵² Also, the appointment process had an unprecedented level of transparency by including public hearings and active participation of civil society actors. Moreover, Kirchner also supported reducing the size of the Supreme Court, which deprived him of the ability to appoint extra justices.⁵³ The new justices were not willing to simply support any and every executive decision since the new justices were strongly committed to maintaining their independence and strengthening the judiciary.⁵⁴ Despite enhancing the independence of the Supreme Court, Kirchner decided to introduce, from 2006 to 2007, multiple legislative changes that increased significantly the powers of the executive vis-à-vis Congress, the governors, and the lower courts.⁵⁵

The success of Kirchner's economic policy, the weakness of non-Peronist parties, and the disarray of opposition factions within the PJ explains why Kirchner won the 2005 midterm elections and Cristina Fernández de Kirchner, his wife and an influential senator, was elected as his successor in 2007 by a margin of nearly 20 points over the next runner-up. During the presidential campaign, Fernández's proposals were moderate and pluralistic; in addition, her candidate for vice president was a governor from the Radical Party, the main opposition party.⁵⁶ The name of the political coalition that Kirchner and Fernández created was called the Plural Arrangement (Concertación Plural). She explicitly emphasized that her future administration was going to improve "the institutional quality" of Argentina: she insisted that the country needed to be stable, and promised that her government was going to be plural, open, and heterogeneous, incorporating politicians from different parties, always promoting "social dialog."⁵⁷ Moreover, she strongly rejected any political projects that proposed the creation of "hegemonic exclusions," and she differentiated herself from those who wanted to create false conflicts and antinomies.⁵⁸ Therefore, it is unsurprising that the V-Party illiberalism score for the incumbent party in 2007 was 0.241, very similar to the scores for this party for 2003 and 2005. However, in 2008 the government began to radicalize its preferences, which substantially increased its V-Party illiberalism scores to 0.345 in 2009, 0.378 in 2011, and then 0.395 in 2013.

A few months after Cristina Fernández took office in December 2007, an unexpected conflict unleashed a process of radicalization between the government, the opposition parties, economic actors, and the media. In March 2008, the minister of economy,

52 Daniel Brinks, "Judicial Reform and Independence in Brazil and Argentina: The Beginning of a New Millennium," *Texas International Law Journal* 40, no. 3 (spring 2005), 608–613.

53 Irina Hauser, *Los supremos: Historia secreta de la Corte, 2003–2016* (Buenos Aires: Planeta, 2016).

54 Ricardo Lorenzetti, "Políticas de Estado para el Poder Judicial," 2007, <https://www.cij.gov.ar/politicas-de-estado-para-el-poder-judicial.pdf>; Ricardo Lorenzetti, *El arte de hacer justicia: La intimidad de los casos más difíciles de la Corte Suprema de Argentina* (Bogotá: Temis, 2015).

55 Mario Serrafro, "Argentina: Tres reformas institucionales del kirchnerismo," *Revista Aragonesa de Administración Pública* 41–42 (2013): 449–468.

56 Alberto Fernández, *Políticamente incorrecto: Razones y pasiones de Néstor Kirchner* (Buenos Aires: Ediciones B, 2011), 183–191.

57 Novaro, Bonvecchi, and Cherny, *Los límites de la voluntad*, 259–263.

58 Mariano Obarrio, "El cambio institucional va en serio," *La Nación*, December 8, 2007, <https://www.lanacion.com.ar/politica/el-cambio-institucional-va-en-serio-nid969306/?R=bf8374>; Diego Schurman, "Lanzamiento en clave de concertación," *Página/12*, August 15, 2007, <https://www.pagina12.com.ar/diario/elpais/1-89725-2007-08-15.html>; "En el lanzamiento de la fórmula, Cristina Kirchner defendió con fuerza la concertación oficialista," *Clarín*, August 14, 2007, https://www.clarin.com/ediciones-anteriores/lanzamiento-formula-cristina-kirchner-defendio-fuerza-concertacion-oficialista_o_SkNVZeyCFx.html; Diego Schurman, "Ya decían que nos íbamos a separar," *Página/12*, October 5, 2007, <https://www.pagina12.com.ar/diario/elpais/1-92503-2007-10-05.html>.

Radicalization and the Origins of Populist Narratives about the Courts:

Martín Lousteau, raised the tax rate on a variety of agricultural exports, a decision quickly objected to by the four main organizations that represented agricultural producers. For the next three months, they organized multiple strikes, suspended sales and distribution of grains and meat, staged massive demonstrations, and blocked key highways and roads. In turn, the government, unions, and some social movements reacted by organizing multiple demonstrations and rallies against the rural organizations. Both sides exhibited radicalized preferences.⁵⁹ Despite the fact that multiple rounds of negotiations were conducted between the government and the agricultural producers, no definitive agreement was reached. Moreover, the government framed the conflict in terms of an existential battle between fighting for a “country with more justice, with more equality, with better income distribution,” or an elitist and unequal country in which “just a few” can live well.⁶⁰

The executive’s decision to raise export taxes was not only blocked by the direct action taken by rural organizations; many judges ruled that it was unconstitutional to raise taxes without congressional approval.⁶¹ Moreover, some Supreme Court justices privately warned the president that they were not going to support raising taxes by presidential decree instead of a law approved by Congress, given the explicit constitutional prohibition against it.⁶² Given the staunch resistance of rural organizations and the lack of support in the courts, Fernández tried instead to raise taxes through passing a law—which itself failed in July 2008 because the legislative coalition that supported the administration fractured, with even the vice president voting against the bill.

This conflict over tax policy changed the dynamic of Argentinian politics partially because of how the administration interpreted it: as a struggle between “the people” and “the oligarchy.”⁶³ The administration perceived the reaction by the rural organizations as a sign of a nefarious alliance between powerful economic interests, the media, and opposition parties with the ultimate goal of forcing President Fernández to resign.⁶⁴ The administration claimed to be under attack because the president had committed an “sin” in the eyes of the elites—that is, “being voted for by a majority of Argentinians in free, open, and democratic elections.”⁶⁵ According to the administration’s narrative, the agricultural organizations and their supporters were undemocratic because they resisted a decision made by a government elected by the people. Moreover, the government characterized this conflict not as an economic dispute over tax policy, but “a political conflict created by those special interest groups who condemn our human rights policies and those who lost the [last] election.”⁶⁶

59 Sergio Berensztein and María Elisa Peirano, *La primera revuelta fiscal: La 125 y el conflicto con el campo* (Buenos Aires: Margen Izquierdo, 2020).

60 “Discurso de Cristina Fernández en el acto de firma de convenios entre AySA y municipios bonaerenses,” Pink House website, March 25, 2008, <https://www.casarasada.gob.ar/informacion/archivo/16818-blank->

61 “Nuevo freno judicial a las retenciones móviles,” Diario Judicial (website), May 30, 2008, <https://www.diariojudicial.com/nota/57552/noticias/nuevo-freno-judicial-a-las-retenciones-moviles.html>.

62 Silvana Boschi, *Los Secretos de la Corte* (Buenos Aires: Margen Izquierdo, 2017), 106–107; Joaquín Morales Solá, “La Corte, otra barrera para las retenciones,” *La Nación*, June 2, 2008, <https://www.lanacion.com.ar/politica/la-corte-otra-barrera-para-las-retenciones-nid1026592/>; “Días de zozobra para los Kirchner,” *Clarín*, June 29, 2008, Opinión, https://www.clarin.com/opinion/dias-zozobra-kirchner_o_rvVfA33RpKe.html.

63 Novaro, Bonvecchi, and Cherny, *Los límites de la voluntad*, 306; Eduardo Levy Yeyati and Marcos Novaro, *Vamos por todo: Las 10 decisiones más polémicas del modelo* (Buenos Aires: Sudamericana, 2013).

64 “Néstor Kirchner: ‘Somos soldados de la causa nacional,’” *Perfil*, April 11, 2008, Política, <https://www.perfil.com/noticias/politica/Nestor-Kirchner-Somos-soldados-de-la-causa-nacional-20080410-0055.phtml>.

65 “Encuentro por la convivencia y el diálogo en Plaza de Mayo,” Pink House website, April 1, 2008, <https://www.casarasada.gob.ar/informacion/archivo/16854-blank-16096543>.

66 “Palabras de la Presidenta [sic] en el encuentro en Parque Norte,” Pink House website, March 27, 2008, <https://www.casarasada.gob.ar/informacion/archivo/16831-blank-23506459>.

Moreover, Fernández stated that the rural organizations and their supporters were defenders of the last military dictatorship.⁶⁷ Former President Kirchner went even further and explicitly said that the rural organizations were repeating the same actions of those civilians and military officers who had participated in military coups and violated human rights.⁶⁸ What started as a disagreement about a technical-administrative decision to raise agricultural export taxes ended up reinvigorating the historical Peronism/anti-Peronism cleavage.⁶⁹

This conflict had a direct and quick spillover effect on the relationship between the government and the media. In the midst of the 2008 conflict, Gabriel Mariotto, the official in charge of the regulatory media agency, stated that “the mother of all battles is a new broadcast media law.”⁷⁰ At different points during the confrontation with the agricultural associations, members of the incumbent party expressed the idea that these and other powerful economic actors were actively using the media as a weapon against the people. For instance, President Fernández said, “This time they did not come with tanks, this time it’s been with some multimedia ‘generals’ who, besides supporting the *lock out* [*sic*: blackout] against the people, have done an information *lock out* [*sic*], changing, distorting, giving only one side of the story.”⁷¹ In this view, while in the past the armed forces were used by economic actors to topple “national and popular” governments, now the media had become the preferred tool used by economic interests. The media was not only lying to the people; it was trying to silence the president—that is, trying to disrupt her connection to the people.⁷²

Fernández’s rhetoric initiated a process of intense confrontation between the government and the media, in particular with Grupo Clarín, Argentina’s largest media conglomerate.⁷³ In reflecting upon this time, a member of Cristina Fernández’s administration has made a connection between the 2008 conflict and the 2009 media law:

With the conflict with the agricultural organizations, we all had a very strange sensation. Until that moment, politics was more or less normal, and then all of a sudden, the voice of the incumbent party disappeared from all TV stations. What we said, what we communicated, was absent in the media ... We felt that they turned off all the microphones, it was a very fast and sudden process that did not happen before in Argentinian politics.⁷⁴

67 “Palabras de la Presidenta [*sic*] en el encuentro en Parque Norte,” Pink House website.

68 “Conflicto del campo, Néstor Kirchner en la Plaza de los Dos Congresos,” Cristina Fernández de Kirchner personal website, July 15, 2008, <https://www.cfkargentina.com/conflicto-del-campo-nessor-kirchner-en-la-plaza-de-los-dos-congresos/>.

69 Fernando Chávez Solca, “El conflicto con el campo de 2008 en Argentina: Reactivación y desplazamiento del clivaje peronismo-antiperonismo,” *Revista de Estudios Sociales Contemporáneos*, no. 25 (2021): 283–306, <https://doi.org/10.48162/rev.48.023>.

70 “La madre de todas las batallas es una nueva ley de radiodifusión,” *La Nación*, April 13, 2008, Cultura, <https://www.lanacion.com.ar/cultura/la-madre-de-todas-las-batallas-es-una-nueva-ley-de-radiodifusion-nid1003957/>.

71 “Encuentro por la convivencia y el diálogo en Plaza de Mayo,” Pink House website.

72 “Encuentro por la convivencia y el diálogo en Plaza de Mayo,” Pink House website.

73 Philip Kitzberger, “Media Wars and the New Left: Governability and Media Democratisation in Argentina and Brazil,” *Journal of Latin American Studies* 48, no. 3 (2016), 459, <https://doi.org/10.1017/S0022216X15001509>.

74 High-ranking official in President Cristina Fernández’s administration, interview by the author.

Radicalization and the Origins of Populist Narratives about the Courts:

According to his testimony, the government believed that it was urgent and necessary to implement a media law, because otherwise “nobody would hear anything we say.”

Reflecting on that year, a high-ranking official from President Néstor Kirchner’s previous administration told me that:

there is a change in 2008, the government starts to create antagonisms with the agricultural producers, with *Clarín*, with ‘the oligarchy,’ it embraces a different conception of politics in which nobody can be neutral, there are only two sides, a confrontation between friends and enemies ... the influence of the left in the government is much higher, including intellectuals such as Ernesto Laclau and his ideas.⁷⁵

Multiple opposition politicians share this view about how 2008 was a critical juncture in terms of the levels of radicalization between the administration and the opposition.⁷⁶

After building a broad social and political coalition, the incumbent party was able to pass in October 2009 a law against excessive media concentration, which limited the number of licenses that one company can hold.⁷⁷ Therefore, Grupo Clarín and other important media organizations would have to be broken up into smaller independent firms. Soon after the media law was passed, Clarín implemented a far-reaching legal strategy against the constitutionality of the media law. It succeeded. The media conglomerate obtained in December 2009 a temporary injunction that included a stay of the law’s implementation. This injunction was renewed multiple times by different judges until October 2013, when the Supreme Court upheld the law’s constitutionality.⁷⁸ However, Clarín then obtained new injunctions challenging the way the government was implementing the law between 2014 and 2015.⁷⁹

Besides the media law, the administration systematically criticized the media and portrayed journalists as neither independent nor autonomous actors.⁸⁰ Instead, the government alleged that media actors were just puppets of powerful economic forces who used them against the people.⁸¹ Professional journalism was just a “window-dressing” of economic interests, used by the opposition against the government.⁸²

75 High-ranking official of President Néstor Kirchner’s administration, interview by the author.

76 One senator and three deputies from opposition parties, interviews by the author.

77 Martín Becerra and Guillermo Mastrini, “The Audiovisual Law of Argentina and the Changing Media Landscape,” *Political Economy of Communication* 2, no. 1 (July 2014), <http://www.polecom.org/index.php/polecom/article/view/31/213>.

78 “La Corte Suprema declaró la constitucionalidad de la Ley de Medios,” Centro de Información Judicial website, October 29, 2013, <https://www.cij.gov.ar/nota-12394-La-Corte-Suprema-declar-la-constitucionalidad-de-la-Ley-de-Medios.html>.

79 “Favorecen a las corporaciones,” *Página/12*, December 20, 2014, <https://www.pagina12.com.ar/diario/elpais/1-262370-2014-12-20.html>; “Ley de medios: la Cámara confirmó una medida cautelar que frena la adecuación de oficio de Clarín,” *La Nación*, February 20, 2015, <https://www.lanacion.com.ar/politica/ley-de-medios-la-camara-confir-mo-una-medida-cautelar-que-frena-la-adequacion-de-oficio-de-clarin-nid1770079/>; “Ley de Medios: Extienden la cautelar a Clarín,” *La Nación*, June 11, 2015, Política, <https://www.lanacion.com.ar/politica/ley-de-medios-extienden-la-cautelar-a-clarin-nid1800766/>.

80 Graciela Mochkofsky, *Pecado original: Clarín, los Kirchner y la lucha por el poder* (Buenos Aires: Planeta, 2011); Philip Kitzberger, “La madre de todas las batallas: El kirchnerismo y los medios de comunicación,” in *La política en tiempos de los Kirchner*, eds. Andrés Malamud and Miguel De Luca (Buenos Aires: Eudeba, 2011).

81 Silvio Waisbord, *Vox populista: Medios, periodismo, democracia* (Barcelona: Gedisa, 2014).

82 Silvio Waisbord, “Democracy, Journalism, and Latin American Populism,” *Journalism* 14, no. 4 (May 2013), 510, <https://doi.org/10.1177/1464884912464178>.

The executive also implemented a judicial strategy by charging the owners of the newspapers *Clarín* and *La Nación*⁸³ with crimes against humanity during the last military dictatorship,⁸⁴ and of money laundering.⁸⁵ Finally, the courts stopped the government from taking control over the only Argentinian paper-producing company⁸⁶ and collecting a tax from *La Nación* that would have imposed a significant financial burden on the newspaper.⁸⁷ Regarding the latter decision, President Fernández blamed the courts for allowing this newspaper to “rip the people off.”⁸⁸

“The Judicial Oligarchy” and the Need to “Democratize the Judiciary,” 2010–2015

Until 2010, neither the government nor any member of the incumbent coalition identified the judiciary as an actor that was part of this coalition “against the people.”⁸⁹ The involvement of the judiciary in the conflict between the government and the media is the origin of the development of Kirchnerism’s populist conception of the courts and its attempt to implement a judicial reform in 2013 that could have severely jeopardized judicial independence.⁹⁰ The strong criticisms against the judiciary began in January 2010 when some judges ruled that the president could not use a decree to order the central bank to use its reserves to pay the country’s external debt.⁹¹ Former President Kirchner (whose wife Cristina Fernández was by this time president) interpreted the fact that judges and the opposition were using similar arguments against the government as a “clear alliance of the judicial party

83 *La Nación* is an important newspaper with a center-right orientation.

84 “Papel Prensa: piden imputar a Magnetto, Noble y Mitre por extorsión,” April 24, 2014, <http://infojusnoticias.gov.ar/nacionales/papel-prensa-piden-imputar-a-magnetto-noble-y-mitre-por-extorsion-3865.html>.

85 “El Gobierno vuelve a la carga por Papel Prensa: Acusaría de lavado a sus accionistas e incautaría bienes,” *El Cronista*, November 14, 2013, Economía y Política, <https://www.cronista.com/economia-politica/El-Gobierno-vuelve-a-la-carga-por-Papel-Prensa-acusaria-de-lavado-a-sus-accionistas-e-incautaria-bienes-20131114-0116.html>; “Papel Prensa: Rechazaron a la UIF como querellante en la causa,” *Perfil*, March 13, 2015, Política, <https://www.perfil.com/noticias/politica/papel-prensa-rechazaron-a-la-uif-como-querellante-en-la-causa-20150313-0033.phtml>; Francisco Peregrín and Alejandro Rebossio, “El Kirchnerismo maniobra para quitar a Clarín su fábrica de papel de periódicos,” *El País* (Spain), May 10, 2013, Internacional, https://elpais.com/internacional/2013/05/11/actualidad/1368223842_571246.html.

86 “Ordenan el fin de la intervención en Papel Prensa,” *La Nación*, September 1, 2010, Política, <https://www.lanacion.com.ar/politica/ordenan-el-fin-de-la-intervencion-en-papel-prensa-nid1300349/>; “La Justicia ordenó que cese [sic] la intervención a Papel Prensa,” *El Cronista*, September 2, 2010, Política, <https://www.cronista.com/imprensa-general/La-Justicia-ordeno-que-cese-la-intervencion-a-Papel-Prensa-20100902-0082.html>; Adrián Ventura, “La Justicia separó a Moreno de Papel Prensa,” *La Nación*, December 22, 2010, Política, <https://www.lanacion.com.ar/politica/la-justicia-separo-a-moreno-de-papel-prensa-nid1335662/>.

87 Three anonymous sources who belong to the judiciary, interviews by the author; “Un amparo que pone freno a la AFIP,” *Diario Judicial* (website), July 16, 2010, <https://www.diariojudicial.com/nota/20560>; “Una a favor de los diarios,” April 22, 2010, <https://www.diariojudicial.com/nota/61750>.

88 “Entregamos la jubilación número 450 mil de la moratoria previsional,” Cristina Fernández de Kirchner personal website, April 7, 2015, <https://www.cfkargentina.com/moratoria-jubilaciones-cristina-kirchner/>.

89 In March 2007, President Kirchner publicly asked some judges of the Criminal Law Federal Court of Cassation to speed up human rights trials. Some members of his administration asked some of the judges on the Court to resign. However, these criticisms were not formulated according to the populist script that characterized the attacks against the judiciary after 2010. Also, Kirchner directed his criticisms towards a very specific group of judges, rather than challenging the judiciary’s right to conduct judicial review; “Palabras del Presidente de la Nación, doctor Néstor Kirchner, en el acto de conmemoración del ‘Día Nacional de la Memoria, por la Verdad y la Justicia,’” Pink House website, March 24, 2007, <https://www.caserosada.gov.ar/informacion/archivo/25040-blank-34934954>; “Desde el Gobierno pidieron la renuncia del juez de Casación,” *La Nación*, March 27, 2007, Política, <https://www.lanacion.com.ar/politica/desde-el-gobierno-pidieron-la-renuncia-del-juez-de-casacion-nid894909>.

90 Alberto Bianchi, “Una Reforma Inconstitucional,” in *Historia de la Corte Suprema Argentina, Tomo III: El período de la restauración democrática (1983–2013)*, ed. Alfonso Santiago (Buenos Aires: Marcial Pons, 2014).

91 Boschi, *Los Secretos de la Corte*, 93–94; Hauser, *Los supremos*, 238–240; Martín Redrado, *Sin reservas: Un límite al poder absoluto* (Buenos Aires: Planeta, 2010).

Radicalization and the Origins of Populist Narratives about the Courts:

with [Grupo Clarín CEO Héctor] Magnetto and [Vice President Julio] Cobos.”⁹² In Kirchner’s view, the fact that judges, the media, and opposition parties were in agreement was confirmation that they were conspiring against the government: “The head of the conspiracy is Magnetto, Clarín, the vice president, the opposition parties, and the judicial party.”⁹³ From that moment onward, any adverse ruling was interpreted as an attempt to “condition the government and restrict its room to maneuver.”⁹⁴ Every time a judge or a prosecutor questioned the executive’s decree or law, the perception was that these actors were trying to govern the country.⁹⁵

Kirchner popularized this new term, “the judicial party,” to describe the behavior of judges who ruled against the government. The term, which has since continually been used by members of the incumbent party, drew a clear equivalence between the judiciary and political parties. The assumptions behind the term followed a simple logic: (1) judges are partisan actors, and therefore they are intrinsically biased; (2) the judiciary is not an independent branch of government whose role is to adjudicate legal disputes according to ordinary statutes, constitutional provisions, and international law; (3) judges are not and cannot be independent actors who rule according what they believe is the correct interpretation of the law.

As in the case of journalists, according to Kirchner’s populist rhetoric, judges are always dependent on “concentrated economic powers” who directly control them: “We need judges who rule not by following the front page of *Clarín*, but according to civil and criminal law.”⁹⁶ Frequently, President Fernández has claimed that judges were bought off by powerful media and economic groups,⁹⁷ and members of her party said that there are judges who release prisoners in exchange for money.⁹⁸ From 2010 until the end of Fernández’s second term, the president and multiple members of the incumbent party used these criticisms whenever judges ruled in a way that the president disliked, claiming that “The judicial party” is a “new battering ram against the government of the people, that it “works in coordination with concentrated economic powers and, mainly, with the monopolistic media trying to destabilize the executive branch and disregarding the legislature’s decisions. That is, a superpower above the institutions arising from the popular vote.” [sic]⁹⁹

After three years of legal battles on the injunction against the media law, on December 9, 2012, President Fernández, in a massive political rally, made an explicit connection between the behavior of the judiciary at that time against her administration and

92 “Kirchner: ‘Hay sectores que quieren derrotar al Gobierno antes de fin de año,’” *La Nación*, January 25, 2010, Política, <https://www.lanacion.com.ar/politica/kirchner-hay-sectores-que-quieren-derrotar-al-gobierno-antes-de-fin-de-ano-nid1225742/>.

93 See Kirchner on the TV show 678, Televisión Pública YouTube channel, “678 23-12-10 (1 de 3) Néstor en 678,” <https://youtu.be/sRooxaoRwL0?t=2760> (46:00–47:00).

94 Congressperson from the Justicialist Party, interview by the author; “Cristina Kirchner afirmó que la Justicia ata ‘de pies y manos’ al Estado,” *La Nación*, October 7, 2010, Economía, www.lanacion.com.ar/economia/cristina-kirchner-afirmo-que-la-justicia-ata-de-pies-y-manos-al-estado-nid1312544/.

95 Congressperson from the Justicialist Party, interview by the author.

96 “Grave denuncia de la Presidenta contra la Justicia,” *La Nación*, March 2, 2010, <https://www.lanacion.com.ar/politica/grave-denuncia-de-la-presidenta-contra-la-justicia-nid1238817/>.

97 Mariano Obarrio, “La Presidenta [sic] denunció un intento de destitución y desafió a la Justicia,” *La Nación*, March 5, 2010, Política, <https://www.lanacion.com.ar/politica/la-presidenta-denuncio-un-intento-de-destitucion-y-desafio-a-la-justicia-nid1239980/>.

98 “El kirchnerismo reiteró que hay jueces que ‘son alquilados,’” Infobae (website), March 11, 2010, <https://www.infobae.com/2010/03/11/505035-el-kirchnerismo-reitero-que-hay-jueces-que-son-alquilados/>.

99 “18F, el bautismo de fuego del partido judicial,” Cristina Fernández de Kirchner personal website, February 21, 2015, <https://www.cfkargentina.com/18f-el-bautismo-de-fuego-del-partido-judicial/>.

the Supreme Court's support of military coups against popular leaders in the past.¹⁰⁰ She explicitly said that the Supreme Court was partially responsible for "the darkest period of our history," since the Court validated the first military coup in 1930. By that time, the populist conception of the judiciary was clear when she contrasted the strong popular legitimacy of the executive and legislative branches with the fact that the judiciary "has remained untouched by the popular will" and under the constant influence of "economic powers and the corporations."¹⁰¹ In her view, the existence of a judiciary that does not obey the incumbent party—the party that represents the will of the people—harms democracy. Commenting on an injunction that favored the Sociedad Rural Argentina, an organization that represented big landowners, Fernández stated that "This not only breaks down the principle of equality before the law, but it also leads to there being a superpower branch above the executive and the legislative branches."¹⁰²

For her, the social makeup of the judiciary also reflected its lack of democratization. It was an elitist and aristocratic body determined to maintain its privileges: "The judiciary is aristocratic and only judges' children and friends can get into it. It is a kind of clique. This is why a thoroughgoing reform is needed, in order to throw open its doors, and to allow the people to participate."¹⁰³ The proposed solution to this threat to democracy was to "democratize the judiciary," to pack it with judges who would not go against the will of the people: "we need a judiciary that serves the people."¹⁰⁴ A legitimate judiciary would be one characterized by "people's power" instead of "aristocratic power," one that follows the will of the people instead of corporate interests.¹⁰⁵

These strong criticisms against the judiciary as a conservative and aristocratic actor strongly resonated with a group of judges, lawyers, prosecutors, and legal scholars, who created an organization called "Legitimate Justice" at the beginning of 2013.¹⁰⁶ In its founding document, they insisted that judges "should be independent from the economic interests of big corporations, from media conglomerates, from judges of higher instances—and they should even be independent from the organizations that represent them."¹⁰⁷ They pushed for a renewed judicial system, one whose main goal should be to strengthen the state and defend the people against interference from "sectors of concentrated economic power" and "the hegemonic media."¹⁰⁸ Members of

100 "9 de Dic. Día de los Derechos Humanos y la Democracia. Cristina Fernández." Casa Rosada – República Argentina YouTube channel, December 9, 2012, <https://www.youtube.com/watch?v=WBfuvi8Z88s>.

101 "9 de Dic. Día de los Derechos Humanos y la Democracia. Cristina Fernández." Casa Rosada – República Argentina YouTube channel, December 9, 2012, <https://www.youtube.com/watch?v=WBfuvi8Z88s>.

102 " 'Esta cámara ha traspasado todos los límites,' dijo la Presidenta [sic]," *La Nación*, January 6, 2013, Política, <https://www.lanacion.com.ar/politica/esta-camara-ha-traspasado-todos-los-limites-dijo-la-presidenta-nid1543226/>.

103 "Cristina Kirchner aseguró que el fallo de la ley de medios la 'dejó sin habla,'" *La Nación*, April 18, 2013, Política, <https://www.lanacion.com.ar/politica/cristina-kirchner-aseguro-que-el-fallo-de-ley-de-medios-la-dejo-sin-habla-nid1573883/>.

104 "9 de Dic. Día de los Derechos Humanos y la Democracia. Cristina Fernández." Casa Rosada – República Argentina YouTube channel, December 9, 2012, December 9, 2012, <https://www.youtube.com/watch?v=WBfuvi8Z88s>.

105 Three high-ranking officials of Cristina Fernández's government and a congressperson from the Justicialist Party, interviews by the author.

106 Three members of Legitimate Justice, interviews by the author; María José Sarabayrouse Oliveira, "Desnaturalización de categorías: Independencia judicial y acceso a la justicia—los avatares del proceso de Democratización de la Justicia en Argentina," *Colombia Internacional* 84 (2015): 139–159.

107 "Pronunciamiento de jueces, defensores, fiscales y funcionarios," Centro de Información Judicial website, December 11, 2012, <https://www.cij.gov.ar/nota-10467-Pronunciamiento-de-jueces--defensores--fiscales-y-funcionarios.html>; member of the Judicial Council, interview by the author.

108 Raúl Kollmann, "Por una Justicia 'justa,'" *Página/12*, January 6, 2013, <https://www.pagina12.com.ar/diario/elpais/1-211306-2013-01-06.html>.

Radicalization and the Origins of Populist Narratives about the Courts:

Legitimate Justice also felt that judges' interpretation of the law is always biased and that judges cannot be neutral or impartial because they are political and ideological actors.¹⁰⁹ They argued that judges need to be aware that they are immersed in social and economic struggles and they need to interpret the law with an awareness of power asymmetries.¹¹⁰ In this sense, for Legitimate Justice, Kirchnerism had brought an awareness of how the judiciary had consciously (or unconsciously) served as a tool for certain political interests. "Beforehand, we judges talked about clothes or about vacations; now we talk about politics," said Legitimate Justice President María Laura Garrigós de Rébori, who added, "Today it is an unavoidable topic in any meeting."¹¹¹

After the creation of a populist narrative about what a legitimate judiciary should look like, the incumbent party passed a comprehensive judicial reform at the end of April 2013, called "The Democratization of the Judiciary." The core of the reform implied that the members of the Judicial Council (the state entity involved in the process of appointing, sanctioning, and removing judges) would be chosen through national elections. As a consequence of how it was designed, the party in power would have had total control over it.¹¹² In the opening of the 2013 legislative year, President Fernández reiterated that the judiciary remained untouched by the forces of democracy and that the doors of the judiciary need to be opened up to the people.¹¹³ When explaining the content of the judicial reform, Fernández said that her husband and immediate predecessor, President Néstor Kirchner, had initiated a profound democratization of the state in 2003 and that it was time that ordinary citizens participated in the judiciary.¹¹⁴

After dozens of judges found that the judicial reform was unconstitutional, the administration said that this opposition to the "democratization of the judiciary" was the reaction of elitist judges who wanted to maintain their privileges against the will of the people.¹¹⁵ Various members of the incumbent party affirmed that judges must not stop the political will of the representatives of the Argentinian people; when the judiciary blocks the will of the people, it is taking the side of the status quo.¹¹⁶ As President Fernández said a few days before the Supreme Court undermined her intended judicial reform:

I am prepared to face anything in order to have a better-organized country, in which the three branches of government are totally democratic and open to the people and most importantly independent from big corporations ... So, I ask myself when someone asserts, some of these constitutional scholars or theorists assert, that the judiciary is a "counterpower" inside

109 Ángel Bruno, "La democratización del Poder Judicial," *Página/12*, March 4, 2013, <https://www.pagina12.com.ar/diario/elpais/1-215036-2013-03-04.html>.

110 Bruno, "La democratización del Poder Judicial."

111 Irina Hauser, "Antes los jueces hablábamos de ropa o de vacaciones, ahora hablamos de política," *Página/12*, June 2, 2013, <https://www.pagina12.com.ar/diario/elpais/1-221402-2013-06-02.html>.

112 For more on the Judicial Reform, see Bianchi, "Una Reforma Inconstitucional."

113 "Mensaje de Cristina a la Asamblea Legislativa," Cristina Fernández de Kirchner personal website, March 1, 2013, <https://www.cfkargentina.com/cristina-inauguro-las-sesiones-ordinarias-del-congreso-2013/>.

114 "Proyecto de democratización de la Justicia," Cristina Fernández de Kirchner personal website, April 8, 2013, <https://www.cfkargentina.com/proyecto-de-democratizacion-de-la-justicia/>.

115 Mariano Obarrio, "El oficialismo atribuye el fallo a una 'justicia corporativa,'" *La Nación*, June 13, 2013, Política, <https://www.lanacion.com.ar/politica/el-oficialismo-atribuye-el-fallo-a-una-justicia-corporativa-nid1591480/>.

116 "Embate desde el kirchnerismo por los frenos a la reforma del Consejo," *La Nación*, June 1, 2013, Política, <https://www.lanacion.com.ar/politica/embate-desde-el-kirchnerismo-por-los-frenos-a-la-reforma-del-consejo-de-la-magistratura-nid1587658/>; Obarrio, "El oficialismo atribuye el fallo a una 'justicia corporativa.'"

the institutions, I ask myself, “A counterpower to what? A counterpower to the people?” Those who think of themselves as a “counterpower” in the judiciary, I inform them that more than being counterpowers to the power of the people, I think they are delegates of other powers.¹¹⁷

Members of the incumbent party said that judges should not act as part of a system of checks and balances on the people because they believed that “the people cannot vote for something that is unconstitutional,”¹¹⁸ and that “in a democracy, the majority controls the three branches of government.”¹¹⁹ Julián Domínguez, the speaker of the Chamber of Deputies, reaffirmed that “we are the representatives of the will of the people and, therefore, judges cannot stop the political will,”¹²⁰ and that “the judiciary needs to stop fearing the people.”¹²¹ According to Julio Alak, the minister of justice, there was nothing more constitutional than the people choosing the members of the judicial council (the institutional actor that is involved in the appointment, sanctioning, and removal of lower-court judges).¹²²

The core of the judicial reform proposed by the president was quickly nullified by the Supreme Court in the ruling on the *Rizzo* case (June 2013).¹²³ The justices explained at length the legal and theoretical foundations underlying the proper role of the judiciary in a liberal-democratic regime. After the Supreme Court overturned the judicial reform, President Fernández lamented that it had been invalidated since “it was a very good law [to create] a comptroller of the judiciary; it cannot be that we are all monitored and that there is only one actor that answers to no one.”¹²⁴ In 2014, she repeated that the judiciary validated the legitimacy of all the military coups, while the political parties that represented the people were vilified and attacked by the military. She contrasted once again the legitimate popular foundations of the executive and legislative branches with “the judiciary, the only branch of government that is self-governing and self-selecting even through mechanisms that, one of these days, ought to change.”¹²⁵ She was convinced that these changes in the judiciary were inevitable, that sooner or later they were going to happen: “it is a biological question. Some sectors of that branch [the judiciary] are still occupied by the dinosaurs, but

117 “Cristina habló de los jueces de la Corte y dijo: ‘No me gustan los desmemoriados en la República Argentina,’” *Todo Noticias* (TN) website, June 10, 2013, Política, [https://www.cfkargentina.com/cristina-cfk-democratizacion-de-la-justicia-corte-suprema-poder-judicial/](https://tn.com.ar/politica/la-presidenta-esta-democratizacion-de-la-justicia-me-va-a-acarrear-algunos-problemas-pero-estoy-disp_394032/?outputType=amp_(2:30-3:30)”; “Quiero plantear la independencia del Poder Ejecutivo de los grandes poderes concentrados de afuera y de adentro,” Cristina Fernández de Kirchner personal website, June 10, 2013, <a href=).

118 Obarrio, “El oficialismo atribuye el fallo a una ‘justicia corporativa.’”

119 “‘La mayoría gobierna en los tres poderes,’” *La Nación*, April 11, 2013, <https://www.lanacion.com.ar/politica/la-mayoria-gobierna-en-los-tres-poderes-nid1571582/>.

120 “Embate desde el kirchnerismo por los frenos a la reforma del Consejo,” *La Nación*.

121 Obarrio, “El oficialismo atribuye el fallo a una ‘justicia corporativa.’”

122 “‘Por primera vez dejamos de simular que la Justicia tiene un orden natural,’” *Página/12*, May 14, 2013, <https://www.pagina12.com.ar/diario/ultimas/20-219968-2013-05-14.html>.

123 The *Rizzo* ruling is available at Centro de Información Judicial website, “La Corte declaró inconstitucional [sic] cambios en el Consejo de la Magistratura,” June 18, 2013, www.cij.gov.ar/nota-11694-La-Corte-declar-inconstitucional-cambios-en-el-Consejo-de-la-Magistratura.html.

124 “Mensaje de Cristina a la Asamblea Legislativa,” Cristina Fernández de Kirchner personal website, March 2, 2014, <https://www.cfkargentina.com/cristina-asamblea-legislativa-2014/>.

125 “Homenaje de Cristina Kirchner a Perón e Yrigoyen,” Cristina Fernández de Kirchner personal website, July 1, 2014, <https://www.cfkargentina.com/homenaje-de-cristina-kirchner-a-peron-e-yrigoyen>. On this last point, it is unclear what she is referring to since Congress and the president are the only actors involved in the appointment and removal of Supreme Court justices. Regarding the lower courts, representatives of the president and Congress form a majority at the Judicial Council, which is involved in the appointment, sanctioning, and removal of judges.

Radicalization and the Origins of Populist Narratives about the Courts:

dinosaurs are destined to go extinct, new blood is coming in everywhere, whether they like it or not.”¹²⁶ At the end of 2014, in a massive political rally, Fernández rattled off the list of challenges that she and former President Kirchner faced. She said that, afterwards, the corporations resorted to using their “media hitmen” and allied “judicial henchmen” to weaken her administration.¹²⁷

Judges against “National and Popular Leaders,” 2015–Present

At the end of 2014, another element began to be incorporated into the administration’s narrative against the judiciary when judges started to investigate corruption cases more intensively. Indeed, one of the most politically damaging actions against the government was the investigation of Amado Boudou, who served as Cristina Fernández’s vice president, for corruption charges. Only five months after the Fernández-Boudou ticket won by a landslide in the 2011 presidential elections, the judicial investigation started. A trial judge moved forward and indicted Boudou in 2014 on influence peddling and bribery charges.¹²⁸ Until the end of Fernández’s term, the government framed these actions as part of a legal-political persecution. For instance, the chief of the cabinet of ministers commented multiple times that this was the consequence of “a judicial and media attack on members of the executive branch.”¹²⁹ Also, the president indicated that members of her administration, the attorney general, and some prosecutors were victims of political persecution and harassment by the judiciary when they were summoned by different judges to give statements.¹³⁰ The connection between the media, the judiciary, and the persecution of supporters of the administration was drawn explicitly by her: “there are some judges who are very afraid of the media and especially of Clarín ... It is awful having to live in a country where judges issue rulings according to their degree of fear of being criticized or persecuted ... this should come to an end if we really want to live in a democracy.”¹³¹ On this topic, one member of the administration indicated that “there is an impunity pact between the media corporation and the judicial corporation [sic].”¹³²

After Cristina Kirchner left the presidency in 2015, her criticisms of the judiciary intensified as a consequence of multiple judicial investigations against her and members of her administration. The term often used to describe this new situation was “lawfare”: a political-judicial practice that aims to inhibit Latin American populist leaders from running for office in order to protect “neoliberal” presidents who were

126 “Quieren tirar abajo la reestructuración para volver a endeudarnos en cientos de miles de millones de dólares,” Cristina Fernández de Kirchner personal website, September 30, 2014, <https://www.cfkargentina.com/cristina-kirchner-patio-militante-30-09-2014/>.

127 “Feliz cumpleaños democracia argentina,” Cristina Fernández de Kirchner personal website, December 13, 2014, <https://www.cfkargentina.com/discurso-de-cristina-kirchner-en-el-festejo-de-31-anos-de-democracia-en-argentina/>.

128 Natalia Volosin, *Corruption in Argentina: Towards an Institutional Approach* (Abingdon: Routledge, 2020), 123–138.

129 “Capitanich: ‘Hay una arremetida corporativa, mediática, judicial,’ ” Pink House website, February 20, 2015, <https://www.casarosada.gov.ar/informacion/archivo/28397-capitanich-hay-una-arremetida-corporativa-mediatica-judicial>.

130 “Feliz cumpleaños democracia argentina,” Cristina Fernández de Kirchner personal website, December 13, 2014. See also “Apertura del 133° período de sesiones ordinarias del Congreso de la Nación,” March 1, 2015, <https://www.cfkargentina.com/discurso-completo-de-la-presidenta-cristina-fernandez-de-kirchner-apertura-del-133-periodo-de-sesiones-ordinarias-del-congreso-de-la-nacion-cfkapertura2015/>.

131 “Acto de inauguración de la quinta edición de Tecnópolis,” July 17, 2015, <https://www.cfkargentina.com/acto-de-inauguracion-de-la-quinta-edicion-de-tecnopolis/>.

132 “Capitanich: ‘Hay una arremetida corporativa, mediática, judicial,’ ” Pink House website.

implementing economic policies against the interests of the people.¹³³ In this view, Fernández's successor, the center-right President Mauricio Macri (2015–2019), in league with the Supreme Court, lower courts, prosecutors, and the media, resorted to illegal practices to indict and imprison politicians from the “democratic and popular camp.”¹³⁴ According to the populist script, while Fernández was president, the “judicial party” blocked the executive's decisions that could have harmed the interests of the media or important economic sectors. Instead, the populist narrative argues that when the executive is directly under the control of these economic elites, judges started to act to prevent popular leaders from returning to office.¹³⁵

To conclude, I follow Pierre Ostiguy's conceptualization of populism to locate the place of the judiciary within Cristina Fernández's populist script more generally (see Diagram 3).¹³⁶ Based on the elite interviews I conducted and the analysis of multiple speeches, I argue that she systematically divides the political space into popular and anti-popular forces. The popular forces are comprised of “the people” and the “national and popular” movement that Fernández incarnates. Also, the Argentinian people have the international support of other Latin American peoples and their popular leaders. On the other hand, the domestic anti-popular coalition is under the leadership of a “nefarious minority” comprised of economic actors and the media that also have the support of “hostile global/international forces” (such as the International Monetary Fund, transnational corporations, and vulture funds). Finally, there are local “state or political elites” (the opposition parties and “the judicial party”) who are also part of the domestic “anti-populist” coalition, but they clearly have a subordinate role insofar as they just implement orders coming a “nefarious local minority” and “hostile global/international forces.”¹³⁷

133 Rafael Bielsa and Pedro Peretti, *Lawfare: Guerra Judicial-Mediática—desde el primer centenario hasta Cristina Fernández de Kirchner* (Buenos Aires: Ariel, 2019). N.B. This use refers to the term's appropriation into Spanish by the authors of this book. In English, its use is generally restricted to the realm of international relations, as a form of international conflict strategy short of outright warfare, or to contests over matters related to national security or intelligence gathering.

134 “Día de la Democracia y de los Derechos Humanos,” Cristina Fernández de Kirchner personal website, December 10, 2021, <https://www.cfkargentina.com/dia-de-la-democracia-y-de-los-derechos-humanos-en-plaza-de-mayo/>. See also “Discurso en el anuncio de obras de viviendas y escuelas,” Cristina Fernández de Kirchner personal website, December 18, 2020, <https://www.cfkargentina.com/discursos-en-el-anuncio-de-obras-de-viviendas-y-escuelas-en-la-ciudad-de-la-plata/>; “A un año... balance,” Cristina Fernández de Kirchner personal website, December 9, 2020, <https://www.cfkargentina.com/a-un-ano-balance/>; “Conferencia en la Universidad Nacional Autónoma de Honduras: ‘Los pueblos siempre vuelven,’” Cristina Fernández de Kirchner personal website, January 26, 2022, <https://www.cfkargentina.com/los-pueblos-siempre-vuelven/>.

135 In many instances the United States is also included as an important actor in this “anti-populist” coalition. See Silvina M. Romano, ed., *Lawfare: Guerra judicial y neoliberalismo en América Latina* (Madrid: Mármol Izquierdo, 2019).

136 See Pierre Ostiguy, “Populism: A Socio-Cultural Approach,” in *The Oxford Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser et al. (Oxford: Oxford University Press, 2017), 76–78; Pierre Ostiguy, “The Socio-Cultural, Relational Approach to Populism,” *Partecipazione e Conflitto* 13, no. 1 (2020), 40–41, <http://siba-ese.unisalento.it/index.php/paco/issue/view/1724>.

137 See, for instance, Cristina Fernández's final speech before the end of her second administration: “Cristina en la última Plaza de su segundo período presidencial,” Cristina Fernández de Kirchner personal website, <https://www.cfkargentina.com/discursos-de-cristina-kirchner-en-la-ultima-plaza-de-su-segundo-periodo-presidencial/>; Cristina Fernández de Kirchner, *Sinceramente* (Sudamericana, 2019), 373; Alejandra Vitale, “The Farewell Speech of Cristina Fernández de Kirchner,” in *Rhetorics of Democracy in the Americas*, eds. Adriana Angel, Michael Butterworth, and Nancy Gomez (University Park: Pennsylvania State University Press, 2021), 187. For the meaning of the terms “nefarious local minority” and “hostile global/international forces,” see Ostiguy, “The Socio-Cultural, Relational Approach to Populism,” 40–41.

Radicalization and the Origins of Populist Narratives about the Courts:

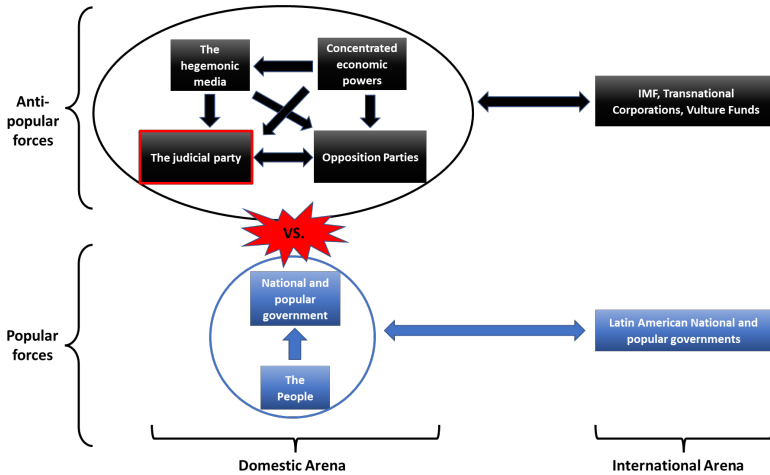


DIAGRAM 3. Cristina Fernández's Populist Script

It logically follows from the premises of Cristina Fernández's populist script that the separation of powers among different branches of government is extremely undesirable for implementing public policies that reflect the will of the people. The system of checks and balances and the classical liberal understanding of what a constitution is, allows concentrated economic powers and hostile global/international forces to infiltrate the state and co-opt opposition parties and judges who protect their interests against the people. In November 2018, then-former president Fernández participated in the International Forum for Critical Thought and gave a presentation entitled "Capitalism, Neoliberalism, and the Crisis of Democracy." She explicitly proposed the replacement of the system of separation of powers through checks and balances with new institutions that could preserve the functioning of democracy in a globalized world in which domestic and international economic actors as well as the media enjoy much more power than the nation-state and remain totally unregulated and uncontrolled by the Constitution.¹³⁸ In April 2022, she reiterated that the liberal-republican constitutions that provide for the separation of powers have weakened the state, making it vulnerable to being co-opted by social and economic elites. The existing constitutions are antiquated, since they do not recognize that the "real power" is not located within the state, but lies with domestic and international economic actors. Therefore, in her view, it is necessary to create new institutions that centralize the power of the state in order to avoid social and economic elites from controlling it.¹³⁹

¹³⁸ "Cristina Fernandez De Kirchner - Capitalismo, neoliberalismo y crisis de la democracia - #CLACSO2018," CLACSO TV YouTube channel, November 19, 2018, <https://youtu.be/Yq-ENh--JiQ?t=2696> (45:00–52:00).

¹³⁹ "Discurso en la apertura de la decimocuarta sesión plenaria de Eurolat," Cristina Fernández de Kirchner personal website, April 13, 2022, <https://www.cfkargentina.com/discursos-en-la-apertura-de-la-decimocuarta-sesion-plenaria-de-eurolat-en-el-centro-cultural-kirchner/>.

Conclusion

An in-depth analysis of the Argentinian case shows that it is critical to differentiate various types of non-liberal conceptions of the judiciary: that is, those seemingly inseparable from a more comprehensive illiberal ideology and those that arise, largely by accident, within a particular policy confrontation in which the administration and the opposition adopt an intransigent stance. In the latter case, the populist narrative is created as a consequence of the radicalization between the president and opposition actors. In particular, I have traced how the radicalization of Cristina Fernández's administration and different actors (mainly the media) led to the creation of a populist narrative about the legitimate role of the judiciary in a democracy. Although one cannot simply treat Cristina Fernández and her predecessor and husband, Néstor Kirchner, as expressing one and the same viewpoint, it is notable that neither Kirchner nor Fernández displayed any particular hostility to the judiciary prior to 2010. In this sense, Fernández and Kirchner clearly depart from the pattern of other Latin American presidents who are considered as part of the region's "left turn" (for example, Hugo Chávez, Rafael Correa, and Evo Morales). Hence, the Fernández administration's increasingly hostile rhetoric regarding the judiciary represents a case in which a particular policy controversy can generate opposition to an independent judiciary, even where no prior desire to undermine an independent judiciary is publicly expressed. Indeed, Fernández displayed both (1) impatience and (2) intransigence in attempting to achieve certain policy goals, leading her to not only reject compromise with the opposition, but also to perceive the media as well as the judiciary as illegitimately standing in the way of these same policy goals. What resulted was a process of radicalization, not only of those who initiated this process (namely, the Fernández administration) but also different opposition actors, who responded in kind to the perceived inflexibility of the executive.

Insofar as Cristina Fernández and her supporters began to see the judiciary as a political opponent because the latter proved to be an obstacle to the chief executive's policies regarding the media (2009–2015), I argue that the president adopted a populist stance toward the judiciary by seeking to undermine its independent status and ability to conduct judicial review—that is to say, Kirchnerism's narrative about the proper role of the courts in a democracy directly challenged one element that is a necessary component of liberal democracy and also of the Argentinian Constitution. Moreover, the analysis of dozens of speeches reveals that Kirchnerism's understanding of the judiciary is not only illiberal but also strongly populist (as illustrated in Diagram 3). Cristina Fernández and many members of her administration believed that the judiciary should be subordinated to the will of the people, which is, in turn, expressed by a "national and populist government." However, this neither implies that she also embraced other more extreme versions of illiberalism, nor that she had a well-defined plan to replace democracy with an authoritarian regime.