ACCOUNTABILITY AND CORRUPTION IN ARGENTINA DURING THE KIRCHNERS' ERA

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Abstract: This article highlights an important paradox: in Argentina between 2003 and 2013 the center-left Peronist government's approach to governance mirrors that of the center-right Peronist administration of the 1990s. While the latter centralized authority to pursue neoliberal reforms, the former have centralized authority in the name of expanding government intervention in the economy. In both cases, corruption has tended to go unchecked due to insufficient government accountability. Therefore, although economic policies and political rhetoric have changed dramatically, government corruption remains a constant of the Argentine political system due to the executive branch's ability to emasculate constitutional checks and balances.

The scholarship on democratic governance postulates that if countries in emerging markets want to create competitive capitalist economies it is necessary to build strong democratic institutions based on checks and balances, which foster political accountability and economic transparency. Guillermo O'Donnell's (1994) work in this regard paved the way for many empirical analyses that stressed how the neoliberal policies adopted throughout the region during the 1990s failed in part precisely because they were implemented in a way that undermined the democratic process. In turn, this allowed serious abuses of public trust, resulting in crony capitalism and/or outright corruption, which in the end undermined the reputation of neoliberalism in the region. Likewise, these abuses contributed to major economic crises in countries that in the early 1990s were hailed as poster children of the neoliberal experiment: Mexico (1994–1995) and Argentina (2001–2002).

For many pundits the popular disappointment with neoliberalism contributed to the election of protest candidates throughout South America, starting with Venezuela's Hugo Chávez in 1999. Indeed, during the past decade socialist and left-wing populist administrations were elected in the region. This phenomenon spurred a debate as to the ideological and policy differences within the new "left" in Latin America. Broadly speaking, academic analyses of this trend use a dichotomy whereby the administrations in Brazil, Chile, and Uruguay are depicted as the "pragmatic" left as opposed to the "populist" left-wing governments ruling in Bolivia, Ecuador, and Venezuela (Castañeda 2006).

Within this context Weyland, Madrid, and Hunter (2010) and Levitsky and Roberts (2011) have argued that Argentina under Néstor Carlos Kirchner (2003–2007) and Cristina Fernández de Kirchner (2007–present), constitutes an intermediate case. This is because in Bolivia, Ecuador, and Venezuela populist presidents

Latin American Research Review, Vol. 49, No. 2.

came to power as political outsiders, whereas the Kirchners are from the Peronist party, which has dominated Argentine politics since the 1940s. Furthermore, the Kirchners are an anomaly within Peronism; they belong to its small left-wing faction, which traditionally has been pro-labor but conservative in nature. In fact, on many issues, ranging from state intervention to free markets, US foreign policy, and foreign investments, the Kirchners have been closer to the populist left.

Moreover, although the populist left's social inclusion and human rights policies have attracted much attention, one should not forget that Chávez and fellow left-wing populists Evo Morales in Bolivia and Rafael Correa in Ecuador also made the fight against corruption one of the central issues of their presidential campaigns. The same is true for the Kirchners during the 2003 presidential contest. However, once elected, did they deliver on their promises or have they fallen into the same traps as their discredited predecessors?

The academic debate on the new Latin American left has paid little attention to this question at a time when increased power concentration by populist administrations has coincided with mounting allegations of corruption. Indeed, Levitsky and Murillo (2008, 24), in describing the Kirchners' power consolidation, warned that "the lack of oversight and accountability increases the risk of major policy mistakes . . . [and] low executive accountability also increases the likelihood of corruption and other serious issues." This article addresses this problem by focusing on the Kirchners' three administrations between May 2003 and June 2013. Consistent with the literature on democratic governance, it shows that such concerns were well founded and brings evidence that the Kirchners' deliberate concentration of authority in the executive branch severely weakened Argentina's institutional checks and balances, resulting in greater opportunities for government officials to engage in corrupt activities.

METHODOLOGY

This article is a case study. As a method, the case study has severe limitations in terms of testing theories in a widely generalizable manner. However, as long as the case under scrutiny is firmly grounded in a broader theoretical debate, a case study can enrich comparative analysis by providing useful insights for causal explanations (Lancaster and Montinola 2001). I chose Argentina because it is one of the leading examples of left-wing populist administrations; and it provides a wealth of information over a long period of time based on diplomatic cables, nongovernmental organization reports, and journalistic accounts. The study uses an institutional analysis approach whereby the most important institutions of horizontal accountability (Congress and the judiciary) are examined to assess whether they have been able to fulfill their mandate or have fallen to the executive branch's co-optation efforts.

CHECKS AND BALANCES AND CORRUPTION

The notion of separation of powers in Western civilization can be traced back as far as ancient Greece. However, it was the United States Constitution that first

enshrined in law the principle of checks and balances. It introduced the principle of limited government, which prevents the concentration of coercive power and its arbitrary use. Limited government espouses the idea of respecting individual rights in the political and economic realm through a number of self-enforcing institutions (checks and balances) and the upholding of the rule of law. Politically, limited government safeguards individual rights and is the fabric holding together the social contract between citizens and their rulers. Economically, limited government is fundamental because if elected or unelected officials do not restrain themselves, investors fearing confiscation and sudden changes in the rules of the game will take their money elsewhere. Limited government institutions vary across democracies but they create overlapping "veto points" in decision making. Thus, the more institutional checks and balances exist, the more confident citizens may be that their rulers will use caution in exercising their authority.

Summing up, restraining officeholders from abusing their power became a defining feature of modern democracies, setting them apart from authoritarian regimes. Within a truly democratic setting, checks and balances are the nuts and bolts that assure limited government and make elected/unelected officials accountable for their actions, which in turn should guarantee fair, honest, and effective government. Equally important from a practical standpoint, checks and balances must be institutionalized to work effectively and to promote political accountability (Schmitter 2004).

Institutional checks and balances enforce accountability at the horizontal level. They include the executive, the judiciary, the legislature, and several specialized institutions: central banks, auditors general, anticorruption agencies, ombudsmen, and special prosecutors. For O'Donnell (1994), horizontal accountability can be violated through "encroachment" of one institution on another (the executive encroaches on the legislature, the judiciary, or autonomous institutions), and/or "corruption" (the use of public office for private gain). O'Donnell's definition confines horizontal accountability to situations when individuals or institutions act illegally. Others propose a broader understanding of accountability, which includes holding elected and unelected officials responsible for their political behavior (Mainwaring 2003). According to this view, violations occur when political actors behave in a way that undermines institutional checks and balances even if that does not represent a violation of the law per se. In this study, I use this second definition throughout the analysis.

So far the discussion has focused on conceptual issues, but what about empirical analyses? Since the early 1990s, the number of scholarly works assessing the relationship between political institutions and corruption in political science, economics, and law has mushroomed. Due to space limitations, I will highlight only some of the most important findings. Suffice it to say, notwithstanding the disciplinary approach, the bulk of the qualitative evidence concludes that checks and balances increase political accountability and reduce power abuse and officeholders' illicit behavior (Rose-Ackerman 1999; Morris and Blake 2010). More to the point, where checks and balances work effectively they create positive incentives that trigger a cycle of virtue whereby elected officials compete to produce transparent policies (Rose-Ackerman 2006).

Statistical analyses reach similar conclusions (Laffont and Meleu 2001). Fiorina (1994) and Persson, Roland, and Tabelini (1997) find that appropriate checks and balances create enough conflicts of interests between the executive and the legislature on public policy to force both institutions to compromise and thus discipline themselves to the voters' advantage. Nonetheless, at a more general level, Andrews and Montinola's (2004) model provides evidence to support the thesis that as the number of veto players exercising checks and balances in government increases, elected officials have less opportunity to collude and engage in corruption. Conversely, their incentives to vote on legislation strengthening the rule of law improve. Other works coming from the field of law and economics have looked at the system of checks and balances by emphasizing the role of the judiciary. This is because it can happen that the executive and legislature may be controlled by the same party (or coalition of parties), thus leaving the judiciary as the lone bastion against corruption if the other two branches of government collude.

THE ARGENTINE CASE

In October 2010, Mario Vargas Llosa, commenting on the sudden death of Néstor Kirchner, stated, "Though I sympathize with Mrs. Kirchner's grief over the loss of her husband, I sincerely hope she will not be re-elected as President of Argentina. The rampant corruption during their combined mandates as well as their own astronomical enrichment during this period has been widely reported."[1] Such a statement ran counter to the many praises that the Kirchners had received since they began to rule Argentina in 2003. Indeed Néstor Kirchner, upon leaving the presidential sash to his wife in 2007, enjoyed an 80 percent approval rating, the highest of any president since Argentina returned to democracy in 1983. Economically, during his presidency (2003–2007) the gross domestic product grew at 9 percent a year, which was an amazing turnaround considering that the economy had experienced its worst crisis since the 1930s between 2001 and 2002. Although this growth was largely due to East Asia's strong demand for Argentine agricultural commodities, Kirchner took full credit for it. This unexpected recovery was instrumental in substantially reducing poverty and unemployment, which endeared him to the lower classes.[2] Moreover, Kirchner's tough stance against foreign-owned utility companies, the International Monetary Fund's economic model, and renegotiation of Argentina's debt at the expense of international investors won him high praise at home.[3] Politically, Kirchner took other popular initiatives. He convinced Congress to repeal the amnesty laws passed in the late 1980s for crimes committed under the last military regime (1976–1983), which brought to justice military officers accused of human rights violations. In the be-

1. "The Kirchner Couple Government 'Is Corroded by Corruption,'" *MercoPress*, October 12, 2010, http://en.mercopress.com/2010/10/12/the-kirchner-couple-government-is-corroded-by-corruption.

2. The economic recovery provided Kirchner with major windfalls, which he used to fund major public works, antipoverty programs, higher wages, and new social security benefits for the unemployed.

3. Alexei Barrionuevo, "Argentine Ex-Leader Dies; Political Impact Is Murky," *New York Times*, October 27, 2010.

ginning, he also forced several Supreme Court justices whose reputations had been tarnished under the administration of fellow Peronist president Carlos Menem (1989–1999) to resign and replaced them with well-respected jurists.

The other side of Néstor Kirchner's style, though, shows a very different story. While campaigning in 2003 he had promised to strengthen government institutions and root out the corruption that had escalated under Menem. In his inaugural speech Kirchner reiterated that "governability cannot be the synonym for impunity . . . obscure agreements, the political manipulation of institutions, or spurious pacts behind society's back."[4] As senator in the late 1990s, Kirchner's wife, Cristina, also denounced the abuse of presidential decrees to circumvent Congress and the delegation to the presidency of legislative powers that Menem obtained in 1989 and that his successors continued to use to enact controversial measures. In 2000, Cristina Kirchner submitted a bill in the Senate limiting the use of such decrees. Initially, Néstor Kirchner seemed to deliver on his campaign pledges. On December 3, 2003, he issued decree 1172/2003, which allowed citizens to obtain documents issued by the executive branch, its departments and agencies, and those of private companies in charge of public services.

However, good intentions were short-lived. As the economic recovery was consolidated, the Kirchners made a U-turn. They concentrated power in the executive branch while undercutting institutional checks and balances. This was exactly what Menem had done in the 1990s and the Kirchners had bitterly denounced during the presidential campaign of 2003. The difference was that while Menem was a conservative Peronist who adopted neoliberal reforms, the Kirchners in 2003 created a Peronist left-wing movement (Frente para la Victoria, FPV), which championed a return to economic nationalism and a state-led development model. Nonetheless, despite differences in economic policy, Menem and the Kirchners shared the same approach: one based on an authoritarian exercise of power, which willfully ignored the principles of limited government and accountability. Consequently, democratic procedures were "circumvented, twisted, and violated" (Schamis 2008, 76). This was disturbing because after the end of the last military dictatorship Radical president Raúl Alfonsín (1983–1989) had made positive strides toward the strengthening of what were yet weak democratic institutions. However, Menem reversed all that, and the Kirchners added some twists of their own, reinforcing the impression that Argentina is further sliding into a pattern of institutional decay.

Not surprisingly, as Néstor Kirchner consolidated his hold on power, cases of alleged corruption began to plague his administration. Initially, the president reacted by firing suspected officials, but when scandals began to involve the president himself and his inner circle his response was a frontal attack against the press and whichever institution was trying to mount a serious inquiry. By 2009, the situation had so deteriorated that a US State Department cable stated that "glaring weaknesses in key components of Argentina's anti-corruption architecture point to an emasculated institutional framework incapable of providing

4. "Socialism for Foes, Capitalism for Friends," *Economist*, February 25, 2010.

needed checks and balances."[5] In the remainder of the article I will examine in detail the way the Kirchners either weakened or bypassed congressional and judicial checks and balances and how these efforts allowed corrupt activities within their administrations to go unpunished.

CONGRESS

Since the return to democracy in 1983, the Argentine Congress's legislative capacity has been weak, but it has been even more ineffectual in keeping the executive branch in check. Several factors explain this state of affairs. Some are structural issues. In many cases legislators owe their election to provincial governors and party bosses, who handpick them. Thus, they are not responsive to their constituents' needs but rather to the political quid pro quo that their sponsors have with the executive branch. Since most of the Argentine provinces (the equivalent of states in the United States) are financially dependent on federal transfers, even opposition governors are often willing to persuade their legislators to vote according to the wishes of the administration in charge in exchange for extra funds (Blake and Lunsford Kohen 2010). The lack of political independence, coupled with low reelection rates, creates a situation where legislators do not develop much of an expertise, and even when they want to do so they have only small professional staffs to help. Thus, as a group, they can be considered more as amateurs than professional law makers. Moreover, many important issues are first addressed at the committee level, where legislators decide according to party lines and the wishes of governors and party bosses. Keeping this background in mind, it must be noted that between 2005 and 2009 and again from 2001 to date the Kirchners' supporting coalition had a comfortable majority in Congress.[6] In fact, progovernment backers controlled legislative committees and effectively blocked any effective oversight, as I will show.

Worse yet, even when opposition parties, after the 2009 midterm elections, captured the majority in both houses and controlled the committee system, in practice no major changes occurred. Their inability to unite, and the capacity of the FPV to deny the necessary quorum to debate crucial bills, is behind much of this legislative ineffectiveness in empowering the legislature vs. the presidency (Balán 2011). In 2010, for instance, the opposition in the Chamber of Deputies (lower house) passed bills that tightened the discretionary use of decrees of necessity and urgency (*decretos de necesidad y urgencia*, or DNUs), revoked presidential emergency power, and tamed the executive control over the Judicial Council (Consejo de la Magistratura), but such bills stalled in the Senate. In fact, some opposition

5. U.S. Embassy classified cable 205821,5/6/2009 21:41,09BUENOSAIRES534, http://bucket.clanacion.com.ar/common/anexos/Informes/07/55607.pdf.

6. The Peronist movement had a majority in both houses from 2003 to 2005, but most legislators belonged to centrist and center-right Peronist factions and had no ties of loyalty to the Kirchners. It is in the 2005 congressional election—in which FPV party lists defeated their internal rivals—that the Kirchners built a comfortable majority of their own. Coincidentally, the Kirchners' big push to expand discretionary authority began precisely in 2006, following the swearing-in of the new legislators in December 2005.

senators at the last minute did not show up for crucial votes, enabling the FPV to block the approval of the lower house's bills.[7] The use of old-fashioned pork-barrel politics partly explains the government's success. A senator described the government bargaining power in these terms, "The poor provinces live off public employment and [federal] subsidies. Who manages the subsidies manages a great deal of the province." In a situation of this kind, a cash-starved governor can be easily convinced to pressure his province's senators to vote according to the president's wishes. Indeed, the senator added, "The government does not want a defeat in the Senate. . . . [It] invites senators, puts pressure on governors . . . or puts briefcases in their hands [allegedly full of money]. . . . The government is not going to lose any vote in the Senate."[8] Additionally, there have been allegations of "vote buying."[9] Several opposition senators accused the government in July 2010 of offering money to some of their colleagues to switch sides in order to renew the legislative powers that Congress had delegated to the executive, which were due to expire in August. Despite the gravity of the accusations, the judiciary failed to pursue an investigation on the matter.

Another set of factors relates to decree powers that the presidency can use immediately to enact key measures, something that the Kirchners have routinely done to bypass Congress. Among them the most effective of such tools is the decree of necessity and urgency (DNU). DNUs had been rarely used until 1989 due to their uncertain legal standing, but Menem made them one of the preferred means to quickly implement his controversial market reform policies.[10] Due to Menem's abuse of this legislative tool, in 1994 Congress introduced several amendments to the Constitution to regulate its adoption through a bipartisan agreement. The 1994 amendments set clear limits on the use of DNUs and stated that the "Executive Power shall in no event issue provisions of a legislative nature, in which case they shall be absolutely and irreparably null and void" (Article 99.3) (see Rose-Ackerman, Desierto, and Volosin 2011). Nonetheless both Menem and the Kirchners easily circumvented or simply ignored these limits. This could be done because a Peronist-dominated Congress did not enact the statute regulating DNUs until 2006. When finally the statute came into effect, the Kirchners' backers in Congress watered down the 1994 restrictions. First, a DNU could be rejected only if both houses of Congress voted against it, which was highly unlikely given the majority status that the Kirchners' bloc enjoyed in at least one house of the legislature up until 2009 and after 2011. Second, DNUs could be considered tacitly approved if Congress did not reject them, and even if repealed the de facto situations created up until that point could not be redressed. Third, DNUs could still be enforced even after the "emergency situation" that justified them had ceased to exist.

7. Joaquín Morales Solá, "El Senado, bajo las peores sospechas," *La Nación*, July 28, 2010.

8. Joaquín Morales Solá, "Poder, dinero y miedo," *La Nación*, August 4, 2010.

9. Allegations of presidential efforts to buy votes in the Argentine Congress are nothing new. In 2000, the administration of Radical president Fernando de la Rúa (1999–2001) faced accusations that it had tried to buy the votes of nine opposition senators (including five Peronists) to whom former senate secretary Mario Pontaquarto allegedly delivered a $5 million bribe.

10. The use of DNUs was absent in the 1853 Constitution.

https://doi.org/10.1353/lar.2014.0030 Published online by Cambridge University Press

Therefore, it is not surprising that during his four-and-a-half-year presidency Kirchner privileged the use of DNUs (249) over legislative bills (176 bills) to pursue his policy agenda. By comparison, during his decade in office Menem enacted 370 DNUs. The ease with which Kirchner was able to use DNUs has much to do with the lack of congressional oversight. In fact, the FPV actively supported this state of affairs, as the Bicameral Commission (Comisión Bicameral Permanente de Trámite Legislativo) in charge of analyzing DNUs purposely ignored whether such decrees conformed to constitutional requirements. For example, the legislative opposition and many civic associations believed that most DNUs had nothing to do with emergency situations. Nonetheless, the chair of the Bilateral Commission, the FPV's Jorge Capitanich, had all the DNUs issued since 1995 approved in one stroke right before Kirchner's term expired in December 2007. Another key bicameral commission supervising the executive budgetary accounts (Comisión Mixta Revisora de Cuentas) failed to take any action when the General Accounting Office (Auditoría General de la Nación, AGN) reported the lack of transparency in government expenditures. When representatives of a nongovernmental association asked legislators how many AGN reports they had approved, most of them responded "none."

Equally disturbing is the fact that in spite of the constitutional provision requiring the president's chief of staff to visit each chamber of Congress once a month to account for the government legislative agenda, this rarely happened. Likewise, when congressional commissions summoned individual ministers for questioning, most of them failed to appear. The FPV did its best to limit opposition legislators from filing requests to the executive to disclose official documents regarding important policy initiatives. To bypass this stone wall, opposition members had to resort to the freedom of information statute.

The other major tool that the Kirchners have used is delegated emergency powers. In fact, from late 1989 on, Congress has delegated to the executive, in various forms, the power to act on a wide range of economic and social policies with very little oversight or none at all. Indeed Argentina has been in a situation of "economic emergency" for most of the past two decades. The most recent tool within this trend is the so-called superpowers through which the executive can change budgetary allocations at will. Congress delegated these superpowers between March and December of 2001. In 2006 Néstor Kirchner, through the Financial Management Act, had Congress permanently approve their use, which allows the Chief of the Cabinet to change budgetary allocations without any legislative control.

Moreover, when the government ran a surplus, as it did from 2004 to 2010, it spent billions of dollars of additional revenue without accounting for these funds in the federal budget. Lastly, the Kirchners managed federal fiduciary funds with little or no legislative control. In fact, although the Chief of the Cabinet is mandated to report to Congress about the use of such funds, he did not present any information in 2003 and filed incomplete accounts from 2004 on. In brief, under the Kirchners, more so than in previous administrations, the executive was able to use large amounts of government funds through DNUs, superpowers, budget surpluses, and fiduciary funds, with little or no legislative oversight. Unfor-

tunately, Congress showed very little interest to reverse this state of affairs for the reasons mentioned earlier. As distinguished legislative scholar Delia Ferreira Rúbio remarked, "The superpowers added to the DNUs turned Congress into a nonexistent institution."[11] The output and importance of legislative activity was modest when compared to presidential DNUs on both counts. In fact, during the 1990s, Congress on average approved just 100 laws a year, reaching the bottom in 2010 with only 69, of which half were ratifications of international treaties.[12]

THE JUDICIARY

From 1930 to 1983 political instability seriously undermined the independence of the Argentine courts in general and the Supreme Court in particular. When the country returned to democracy in late 1983, President Alfonsín appointed a well-respected Supreme Court. Unfortunately, this effort was reversed under President Menem, who made the "packing" of the Supreme Court one of his first priorities, resulting in the appointment of additional justices who tipped the balance in his favor. Consequently, the Supreme Court played a partisan role in upholding Menem's most controversial policies, which discredited its reputation and effectively neutralized the oversight functions of the judiciary in the 1990s.

As noted, shortly after his election in 2003, Néstor Kirchner forced the resignation of six Supreme Court justices. Although his decision received bipartisan support "it reinforced the pattern of executive encroachment" on the Supreme Court (Levitsky and Murillo 2008, 25). In fact, it was soon clear that as long as the Supreme Court ruled according to the government's wishes, things would go smoothly, as in human rights cases. However, relations began to sour when the Supreme Court issued decisions that ran counter to the government agenda. For instance, in September 2010, the Supreme Court pressed legal charges against Santa Cruz governor Daniel Peralta, one of the Kirchners' closest allies, who ignored two rulings to reinstate the former attorney general of Santa Cruz Eduardo Sosa. Coincidentally, Néstor Kirchner, in 1995 when he was governor of Santa Cruz, had unconstitutionally fired Sosa. In response, President Cristina Kirchner blasted the Court's decision, sided with the governor, and effectively prevented his removal. This meant that Supreme Court decisions would be enforceable if the executive approved. Otherwise the administration would use all means to delay or bypass them. This event partly explains why the Supreme Court has been reluctant to challenge the Kirchners where it most matters, until 2013. For instance, in 2006 several civil rights organizations filed a case challenging the constitutionality of the law that permits the Chief of the Cabinet to reallocate spending without congressional approval or oversight. To this date, the Court has still to rule on the case.

Similar to Menem, the Kirchners manipulated the rules of the game to sub-

11. Laura Serra y Gustavo Ybarra, "Más decretos que leyes en el Congreso de Kirchner," *La Nación*, September 10, 2007.

12. "El Congreso Nacional argentino aprobó 79 leyes durante el año 2011," *Télam (Argentina News Agency)*, January 10, 2012.

ordinate the judiciary to their own agenda. The 1994 constitutional amendments created a new institution, the Judicial Council, in charge of recruiting judges and administering the judicial system. The initial idea was to restrain the executive's politicization of judicial selection and management by creating an independent institution composed of representatives from the legislature, the courts, the legal profession, and academia.[13] However, since Congress was in charge of specifying the Judicial Council's structure and operations, the Peronist legislative majority was able to delay its creation. It was only when the Peronists lost their congressional majority in 1997 that the opposition could act on it later that year (Law 24,937). Although the Judicial Council had to wait until December 1998 to become fully operational and was often plagued by internal divisions that slowed down its activities, it made some improvements affecting the independence and professional standards of the judiciary (Chavez 2007). However, this proved too much for Néstor Kirchner to tolerate.[14] In 2006, citing the "shameful" performance of the Judicial Council (without giving any details), he had Congress approve a bill that reduced its size from twenty to thirteen members. This act politicized its nature by increasing the de facto share allocated to government supporters (Cárdenas and Chayer 2007). Since the most important decisions (judges' recruitment, sanctions, and impeachment) must reach a two-thirds majority, government backers had enough votes to block any initiative that the executive opposed (Rose-Ackerman, Desierto, and Volosin 2011).

At a more general level, although the 1994 amendments had been proposed with good intentions, in practice things still worked out in favor of the executive. This is because the top three names on the Judicial Council's list of nominees for the bench (selected through an examination process) must be submitted to the president, who eventually selects those who should be confirmed by the Senate. Therefore, the presidency has retained the role of gatekeeper and used this institutional advantage to stall the appointment of candidates that it did not like.[15] This situation created a stalemate in which the executive used delay tactics to leave many vacancies unfilled, replacing them with temporary appointees who are malleable to political pressure. In 2013, about 20 percent of federal judgeships in lower courts, and 30 percent in appeal courts, remained vacant mostly because the president refused to act on nominees for months and, in some cases, even years.[16] This had the effect of paralyzing many cases, as Supreme Court Justice Ricardo Lorenzetti denounced. Moreover, according to opposition parties and

13. The Judicial Council, after the 1994 amendments, was made up of four judges plus the Supreme Court Chief Justice; eight legislators (four per chamber of which two represented the majority party, one the first minority, and one the second minority); one representative from the executive; four representatives of the legal profession; and one academic.

14. Up until 2007, the Judicial Council investigations led to the dismissal or voluntary resignation from the bench of eighteen federal judges, as opposed to only twenty-nine in the previous decades (Cárdenas and Chayer 2007, 47).

15. Rose-Ackerman Desierto, and Volosin (2011, 35) noted, "It is widely believed that even if a candidate is approved by the Judicial Council, she will not have any chance of being selected by the president and confirmed by the Senate if she does not have sufficient political connections."

16. Bernardo Vázquez, "Más del 20% de los juzgados del país se encuentran vacantes," *El Cronista Comercial*, July 11, 2013.

reputable nongovernmental organizations, this foot-dragging was intentional since it affected particularly the criminal courts, where several corruption cases were languishing involving the Kirchners and high-profile administration officials.[17] In April 2013, Cristina Kirchner went a step further. Citing the need to "democratize" the courts, Mrs. Kirchner's congressional majority passed a number of bills severely restricting the ability of magistrates to issue injunctions against the government's measures and allowing the popular election of party-affiliated candidates, coinciding with general elections, of two-thirds of the Judicial Council. In practice this could allow an elected president to bring the judiciary under executive control, as denounced even by the United Nations. "By providing the opportunity for political parties to propose and organize the election of the directors, the independence of the Magistrates Council is put at risk, which seriously compromises the principles of separation of powers and independence of the judiciary, which are fundamental elements of any democracy and any rule of law."[18]

In her defense, Cristina Kirchner candidly stated that whereas the executive and the legislature are the expression of the popular will, this is not the case for the judiciary. Therefore, the judiciary should not be a countervailing power against the decisions of the other two branches of government since that would contradict the popular will. Consequently, the judiciary has to comply with executive-legislative decisions, not be an obstacle to them, since it lacks their popular legitimacy. Faced with such an unprecedented attack and supported by a broad coalition of opposition parties and civic organizations, the Supreme Court eventually ruled the reform unconstitutional, but tensions between the court and the government remained high.

The Kirchners' ability to exert influence over the Attorney General's Office is even more overt than in the cases of the Supreme Court and the Judicial Council, since this office reports directly to the presidency. In 2004, Kirchner appointed Esteban Righi as attorney general. Righi was a longtime Peronist politician and in the 1990s had defended Néstor Kirchner, then Santa Cruz governor, in a lawsuit for illicit enrichment. Righi proved his loyalty when the administration came into a collision path with Judge Manuel Garrido, the head of the National Investigative Prosecutor Office of the Public Administration (Fiscalía Nacional de Investigaciones Administrativas, FNIA). From 2005 on, the FNIA filed over one hundred cases of administrative irregularities involving several senior administration officials. By early 2009 Garrido's activism had irritated the government enough.[19] In fact, at the time, the FNIA had appealed the Attorney General Office's decision to

17. "Las causas sensibles, sin magistrados nombrados: Están a cargo de los jueces subrogantes," *La Nación*, March 7, 2011.

In the criminal courts dealing with economic cases four judgeships have been vacant for five years. In 2007, the Supreme Court deemed unconstitutional the practice of appointing temporary judges without proper norms, but to this date the presidency has refused to cooperate on this issue with Congress.

18. "Argentina Must Ensure Independence of Its Judiciary—UN Expert," *UN News Centre*, April 30, 2013, http://www.un.org/apps/news/story.asp?NewsID=44788.

19. Gabriel Sued, "El fiscal anticorrupción dijo que lo limitaron y renunció," *La Nación*, March 13, 2009.

dismiss a case regarding a possible illicit enrichment by the Kirchners; opposed the renewal of the concession contract for the management of all Argentine airports due to irregularities benefiting Eduardo Eurnekian, a businessman close to the Kirchners; denounced the powerful secretary of domestic trade Guillermo Moreno, one of the Kirchner's closest advisers, for illegally manipulating the way the National Statistic and Census Institute calculated key economic indexes; investigated the company Electroingeniería, in charge of building an electrical grid in Santa Cruz, for overcharging for its services with the complicity of government officials; and accused the Santa Cruz construction company Caminos del Valle of fraud in public procurement.[20] Righi decided to severely restrict Garrido's pending corruption investigations on the grounds that his own prosecutors were investigating the same matters.[21] This initiative eventually forced Garrido to resign in March 2009, charging that Righi's decision was shielding "powerful interests."[22] Kirchner's temporary replacement for the job abandoned his predecessor's inquiries, and the FNIA ceased to be an independent watchdog enforcing political accountability.[23]

Throughout the Kirchners' tenure the Attorney General's Office has been largely oblivious to many denunciations of government corruption and misuse of public funds by newspaper reports and nongovernmental associations. Although judges and state prosecutors in Argentina are in principle independent from political influence, in practice they are not. By law state prosecutors should investigate allegations of corruption; however, if such allegations expose government officials then nothing happens or initial investigations are quickly abandoned and left dormant. Indeed, under the Kirchners, although federal prosecutors have been active in pursuing corruption cases involving members of the opposition, they have been reluctant to launch inquiries affecting government officials. In the few cases in which this happened, inquiries ended with acquittals or were invariably stalled (Abiad 2007). A US embassy cable noted that "Argentina's corruption scandals frequently make a big splash at the outset, only to dissipate into oblivion due to the languid pace of the 'investigations' and the endless juridical ping-pong to which they are submitted." I also underscored that the "country's courts take 14 years on average to resolve corruption cases, with only 15 out of 750 resulting in convictions."[24]

20. Allegedly, Caminos del Valle was compensated for all the works under contract but completed only eleven out of twenty-three. Despite breaching many contractual obligations, the government granted the company permission to increase its tolls and dropped forty-one penalties that had accumulated due to repeated cases of noncompliance. In the end the government paid in full for many projects that were never started and disbursed an additional ARS$11 million for new public work bids to build the original works. "Textual, la ampliación de denuncia de Carrió contra Kirchner y Lázaro Báez," *Perfil*, November 27, 2008.

21. An indication that Garrido's inquiries had become troublesome rests on the fact that several government agencies had either severely limited or altogether denied access to their own data. Paz Rodríguez Niell, "El acusador más duro de la era kirchnerista," *La Nación*, March 13, 2009.

22. Ibid.

23. The public concourse to replace Garrido failed in March 2011 for lack of suitable candidates, thus paralyzing the institution. Ibid.

24. Michael Warren, "Leaked Embassy Cable: Argentina Awash in Drug $," *Washington Times*, December 2, 2010.

EMPIRICAL CASES

So far the analysis has shown how, between 2003 and 2013, the Kirchners progressively tightened their grip on power by undermining horizontal accountability to which, on paper, the Argentine constitution subjects the executive branch. With the complicity of a FPV-dominated Congress (2003–2009, 2011–2013) and part of the judicial branch, the Kirchners—much like Menem in the 1990s—proceeded to mute, bypass, or ignore institutional checks and balances, creating windows of opportunity for government officials to engage in corrupt activities. In this section I will detail the most important corruption cases that emerged through 2013; these remain mostly unpunished precisely because of the lack of effective horizontal accountability.

The first indication that the lack of checks and balances had allowed a fertile ground for key members of the Kirchner administration to pursue alleged corruption activities came in November 2005 from then minister of the economy Roberto Lavagna (Majul 2009). Lavagna implicitly accused Julio De Vido—one of Kirchner's closest confidants and the man in charge of the powerful Ministry of Planning, controlling about US$10 billion annually for public works and state subsidies—of awarding federal contracts to a "cartel" of friendly companies charging amounts well above market prices.[25] Indeed, several of the corruption scandals that emerged from 2005 on either directly or indirectly involved De Vido, who is regarded by diplomats and pundits alike as the gray eminence behind the Kirchners' "fund-raising" activities.[26]

Lavagna's remarks came after congressional opposition leader Elisa Carrió issued a report detailing how many of the construction works that De Vido had approved were overpriced or never executed. Indeed, in 2006 alone, the Argentine Highway Authority found that many contracts awarded to construction companies close to the Kirchners exceeded their budgets in the range of 29 percent to 90 percent. Accordingly, the agency decided to suspend ten contracts, as these irregularities would have caught the eye of the World Bank, which was contributing US$200 million toward their completion.[27] Notwithstanding these charges, the judiciary did not launch any investigations, while FPV legislators blocked a

25. For example, 63 percent of highway works were awarded to Esuco SA, Equimac, Gotti Hnos. and Contreras Hnos. All these companies were from Santa Cruz, where they had obtained similar business deals in the 1990s from De Vido, then minister of government under Governor Néstor Kirchner.

26. On May 24, 2003, Néstor Kirchner issued Decree 1,283 creating the Ministry of Planning, which concentrated many tasks previously ascribed to other ministries and state agencies. See http://www.scribd.com/doc/8943818/Carrio-Denuncia-a-Kirchner; "Textual, la ampliación de denuncia de Carrió contra Kirchner y Lázaro Báez," *Perfil*, November 27, 2008; Christian Sanz, "Julio de Vido y la cartelización pública," *Tribuna de Periodistas*, August 26, 2006, http://www.periodicotribuna.com.ar/2403-julio-de-vido-y-la-cartelizacion-publica.html.

27. An example is different construction prices for two sets of companies building provincial highways. In one case, Kirchner's business associate Lázaro Báez won a contract to build a highway in the province of Chaco at a cost of ARS$2.9 million per kilometer. Another construction company for a similar job in Chaco charged ARS$1.6 million per kilometer. See "Textual, la ampliación de denuncia de Carrió contra Kirchner y Lázaro Báez," *Perfil*, November 27, 2008; Christian Sanz, "Julio de Vido y la cartelización pública," *Tribuna de Periodistas*, August 26, 2006, http://www.periodicotribuna.com.ar/2403-julio-de-vido-y-la-cartelizacion-publica.html.

congressional inquiry. Meanwhile, Néstor Kirchner's retribution was swift. He replaced Lavagna, within a week of the minister's initial revelations, with Felicia Miceli. Miceli herself quit in 2007 after US$64,000 was found in her office. In December 2012 a court convicted her and sentenced her to four years in prison (pending appeal), making her the only administration official found guilty to date.

US diplomatic cables substantiated Carrió and Lavagna's charges, proving that by 2005 the US embassy and some European embassies (Spain, Germany, and Finland) in Buenos Aires had exchanged information about increasing evidence of corrupt activities within the N. Kirchner administration's inner circle, pointing specifically to De Vido's ministry. This resulted from complaints from US and European companies alleging demands coming from Argentine government officials in charge of public work bids and the regulation of foreign-owned public utilities. Allegedly, the bribes usually averaged 15 percent of the total value of a contract award.[28] A US cable also noted that Facundo De Vido, one of the minister's sons, used his post as his father's personal secretary to extort bribes from companies requesting private meetings.[29] In 2008, Carrió's exposé was partly confirmed by another cable of the US ambassador to Argentina, Earl Anthony Wayne (2006–2009), who commented that the level of corruption under the Kirchners was as bad, if not worse, than that recorded under Menem. Wayne reported, "One German CEO went in to see Planning Minister De Vido to complain that one of his deputies had solicited a bribe and the CEO had refused. De Vido reportedly took no interest in getting the name of the offending official but instead recommended the CEO film and record the next bribe solicitation."[30]

The first major scandal linking De Vido to alleged corrupt activities involved the Swedish infrastructure company Skanska, which admitted that seven of its Argentine managers had paid US$5.5 million in bribes to government officials through "phantom" companies to win a tender for the construction of two gas pipelines commissioned by Transportadora de Gas del Norte (TGN) and Transportadora de Gas del Sur (TGS). Although both companies are privately owned, the construction was heavily subsidized by different regulatory agencies and trust funds (Abiad 2007). Moreover, TGN officials confirmed that the Secretariat of Energy, under De Vido's direct control, had put pressure on them to accept Skanska's bid (as well as those of other companies) despite the fact that it was overpriced by 152 percent.[31]

However, the greatest beneficiaries of De Vido's largesse in awarding public works, as well as oil and gas concession contracts under very suspicious circumstances, were a handful of companies (denounced by Lavagna), mostly from Santa Cruz. All of them had boomed economically first when Néstor Kirchner became governor of that province and even more so when he assumed the presidency in

28. Marcelo Veneranda, "Grave acusación de EE.UU. por la corrupción en el país," *La Nación*, February 9, 2011.

29. U.S. Embassy classified cable 115466, 7/15/2007 22:37, 07BUENOSAIRES1352.

30. U.S. Embassy classified cable 139928, 2/4/2008 15:29, 08BUENOSAIRES129.

31. Oxford Analytica, "Argentina: Corruption Crackdown Remains a Promise," May 16, 2007, *Offnews.info*, http://www.offnews.info/verArticulo.php?contenidoID=8510. Although the companies were private, the pipeline projects were funded through a government-controlled trust fund.

2003. In filing a criminal lawsuit against Kirchner and De Vido, Congresswoman Carrió detailed how this cartel of companies cooperated to receive a large share of construction contracts. According to Carrió the partition of public works followed a pattern. The cartelized companies bid for the same contracts (with few or no independent competitors), offered very similar terms, and alternated in winning the public tenders to keep an appearance of competition.[32] Among the Santa Cruz entrepreneurs whose fortunes skyrocketed with Kirchner's election was Lázaro Báez, an obscure bank employee until the early 1990s, whose Austral Construcciones in 2003 had assets for a little over US$3,000 but by 2008 had earned public contracts worth US$1 billion.[33]

In 2005, official documents also showed that Austral Construcciones was in business with Néstor Kirchner for a real estate development. According to the Argentine tax agency, Austral Construcciones in the mid-2000s made payments to phantom companies for ARS$500 million, using a procedure similar to the one described in the Skanska affair. Its subsidiaries also evaded taxes for ARS$120 million.[34] Coincidentally, in 2006, prosecutors from Liechtenstein began to investigate a possible money-laundering scheme through one of its banks involving Austral Construcciones worth US$10 million. Equally important is that in 2010 Báez's companies received credit financing from the government-owned Banco de la Nación totaling ARS$235 million (roughly US$59 million).[35] According to Argentine bankers, this was very unusual since some of Báez's companies were under investigation for tax fraud and money laundering and therefore could not be eligible for such a generous treatment.[36]

Another of Báez's business ventures was in the oil sector, a business in which he had no experience. In March 2007, Báez and another entrepreneur close to the Kirchners won fourteen of the fifteen oil exploration concessions awarded by the government in Santa Cruz. According to the US Embassy in Buenos Aires, the tenders were explicitly designed to favor companies that Néstor Kirchner had handpicked.

The Kirchner-Báez connection also attracted close scrutiny due to the purchase of municipal land in the resort of El Calafate (Santa Cruz province) at bargain prices. Besides Báez and Néstor Kirchner, other important government and business representatives close to the president were involved in the real estate venture. Less than two years later Kirchner sold part of the same property for US$2 million, or forty times his purchase price. Upon receiving legal suits filed against Kirchner for illegal enrichment, the Santa Cruz authorities entrusted the

32. An example is the public bid for the Provincial Route No. 5 and the National Highway No. 3, for which three companies, all linked to Néstor Kirchner, offered very similar amounts: Kank y Costilla ARS$8,984.206.80, GOTTI S.A. ARS$8,911.932.74 pesos, and Esuco ARS$9,112.398.58; GOTTI S.A. was the final winner. "Textual, la ampliación de denuncia de Carrió contra Kirchner y Lázaro Báez," *Perfil*, November 27, 2008; Christian Sanz, "Julio de Vido y la cartelización pública," *Tribuna de Periodistas*, August 26, 2006, http://www.periodicotribuna.com.ar/2403-julio-de-vido-y-la-cartelizacion-publica.html.

33. "Textual, la ampliación de denuncia de Carrió contra Kirchner y Lázaro Báez," *Perfil*, November 27, 2008.

34. Ibid.

35. Florencia Donovan, "Inusuales créditos al empresario Lázaro Báez," *La Nación*, May 12, 2010.

36. Ibid.

investigation to state prosecutor Natalia Mercado, the president's niece, who had participated herself in the real estate venture. Her investigation never brought any charges.[37] According to critics, this and other operations could explain why the Kirchners' declared assets soared from ARS$6.8 million in 2003 to ARS$89.3 million in 2012.[38] The allegations hypothesized that companies benefiting from the Kirchners' policies were paying back the presidential couple in a variety of illicit forms through bank accounts in Europe. Indeed, under Garrido the FNIA had detected twenty-five inconsistencies in the Kirchners' asset disclosure, but on three different occasions federal prosecutors quickly dismissed legal suits for illegal enrichment.[39]

In 2013 the Kirchner-Báez relationship took a new twist when investigative journalist Jorge Lanata videotaped two former Báez associates, Leonardo Farina and Federico Elaskar, who claimed that in 2011 alone "they used private planes and front companies in Panama, Belize and elsewhere to spirit offshore upward of 55 million euros (US$71 million) in cash siphoned from state contracts won by Báez."[40] Although both men shortly thereafter retracted their account, their story was confirmed by Néstor Kirchner's former director of presidential communication Miriam Quiroga and former Santa Cruz governor Sergio Acevedo (2003–2006), who reported that Báez was just a front man for the business ventures of the late president. Before a federal judge, Quiroga added that suitcases full of money were shipped weekly from the presidential mansion back to Santa Cruz. Lanata's allegations charged that Báez laundered his and the Kirchners' money abroad.[41]

A separate stream of corruption scandals were tied to investments made by Transportation Secretary Ricardo Jaime, one of De Vido's closest associates. Jaime was indicted for allegedly taking bribes in return for the purchase of railway and aviation equipment at vastly inflated prices from foreign companies. Citing the need to improve Argentina's decrepit railway system, Jaime engaged in a spending spree, purchasing in two separate contracts 298 used locomotives and wagons, of which only 86 were in working condition.[42] Manuel Vásquez, Jaime's assistant in these business transactions, reported in several emails in 2004 alone that he could personally "gain" from these "deals" a minimum of US$2.1 million, €1 million, and ARS$3.6 million (roughly US$1.2 million), depending on the client. Large amounts of money so obtained by Jaime and Vásquez ended up in bank accounts in the Cayman Islands. In describing the negotiations the emails often mention the requirement that foreign companies pay "political costs" associated with the purchase, which could be recovered by charging inflated prices

37. U.S. Embassy classified cable 205821, 5/6/2009 21:41, 09BUENOSAIRES534 OO RUEHWEB.

38. Maia Jastreblansky, "El crecimiento de los bienes de los Kirchner: De 7 a 89 millones de pesos," *La Nación*, December 11, 2012.

39. Veronica Smink, "Polémica por la fortuna de los Kirchner," *BBC Mundo*, July 23, 2009, http://www.bbc.co.uk/mundo/america_latina/2009/07/090722_0351_kirchner_patrimonio_mz.shtml.

40. "Jorge Lanata mostró la ruta del dinero de Lázaro Báez," *La Nación*, April 15, 2013.

41. Michael Warren, "Argentina Offers Tax Amnesty for Undeclared Cash," *Associated Press*, May 7 2013, http://bigstory.ap.org/article/argentine-leaders-polling-plunges-peso-drops.

42. "Ricardo Jaime Spent $1500 Million in Trains but Most Do Not Work," M24Digital.com, October 19, 2009, http://m24digital.com/en/2009/10/19/ricardo-jaime-spent-1500-million-in-trains-but-most-do-not-work/.

for the material sold to Argentina. For instance, in purchasing railway material from the Portuguese company SDV Transitorios Lda., Vásquez asked in December 2005 to increase the sale price from €1.2 million to €1.7 million.[43] Jaime also approved the purchase of trains from the Spanish companies Renfe and FEVE, for which Vásquez and his Spanish counterpart were initially asking a "commission" of €1.4 million, which later was increased to €3 million. In other emails Vásquez detailed his efforts to obtain funds from Spanish companies to finance the Peronist campaign for the 2005 midterm elections, and how to hide them to bypass Argentine campaign financing laws.

In yet another government contract, in 2004 Argentina bought 279 wagons for the Buenos Aires subway system from the Chinese company CITIC. During the negotiations Jaime and Vásquez apparently met their match. In fact, in an e-mail exchange they lamented the absurd requests that Chinese executives made for the wagons, which were vastly overpriced even by their own standards. When in 2008 the deal was finally sealed, CITIC's price per wagon had mushroomed between 100–160 percent (depending on the car type).[44] In another, unrelated incident, the Argentine tax agency discovered that Jaime had authorized subsidies amounting to ARS$10 million for maintenance works of the Belgrano Cargas Railway Co., which were based on false receipts for repairs that never took place.[45]

In airline business, Jaime granted LAN Chile permission to expand its operations in Argentina, and a year later Vásquez received from a LAN subsidiary US$1 million in "consulting" fees. In another business deal, the Argentine investigators found that Jaime had approved the purchase of twenty Embraer jets from Brazil at US$4 million each, well above their market price.[46] Eventually, Argentine investigators found that Jaime's wife had charged US$471,535 in "consulting fees" for the Portuguese train purchase through a phantom company in Costa Rica, and that Jaime also had a US$4 million jet and a large yacht registered under his name in Brazil.

The Jaime-Vásquez duo also pressured major Spanish companies to "help" the Kirchners' campaign fund. The list included Iberia, BBVA (Banco Bilbao Vizcaya Argentaria), Telefónica, and Banco Santander, among others. Jaime and Vásquez repeatedly attempted, often without success, to convince Spanish corporations to make "campaign donations" for Cristina Kirchner's presidential bid in 2007 totaling an estimated US$12 million in return for favorable treatment.[47] Vásquez proposed that the Spaniards pay "commissions" to a consulting firm that he controlled to perform an analysis of the Argentine market; the money would then be

43. Hugo Alconada Mon, "Sospechas de coimas en una compra de trenes a Portugal," *La Nación*, January 9, 2011.

44. "Denuncian sobreprecios en el subte," *La Nación*, November 14, 2008.

45. "Ordenaron la detención de Ricardo Jaime, ex secretario de Transporte," *El Cronista Comercial*, July 12, 2013.

46. "Abren una decena de causas por los mails sobre Jaime," *La Nación*, December 5, 2010.

47. Ramy Wurgaft, "El escándalo del ex ministro de transporte, Ricardo Jaime, salpica al Gobierno," *El Mundo*, November 26, 2010, http://www.elmundo.es/america/2010/11/26/argentina/1290802916.html. Spanish government officials described Jaime's visit with Argentine business leaders as "scandalous," due to the corrupt nature of their business propositions.

transferred to the Kirchners' campaign fund.[48] The outbreak of the scandal forced Jaime's resignation in July 2009. Subsequently, Ricardo Cirielli, a former transportation undersecretary, stated that Néstor Kirchner and Jaime were always in close contact and, given the late president's tendency to micromanage everything, he must have been aware of Jaime's activities.[49]

Another alleged scandal again involved De Vido, this time directly, related to the Venezuelan-Argentine bilateral trade agreement or what the press dubbed the "parallel embassy" affair. Eduardo Sadous, the former Argentine ambassador to Caracas (2003–2005), told state prosecutors that at the beginning of the Néstor Kirchner administration De Vido directly ran a corrupt scheme that bypassed the Argentine Embassy and involved Venezuelan authorities at the highest levels. Until 2002, it was the Argentine Embassy in Caracas that supervised bilateral trade with Venezuela, but that changed drastically in 2004. According to Sadous, Argentine companies told him that high-ranking officials in De Vido's ministry had warned them that if they wanted to get access to the Venezuelan market they had to use Plamat, a Miami-based import-export company, which in turn charged between 15 to 20 percent of the contract's potential net worth.[50] Allegedly, Plamat was a front to hide the corrupt nature of the transaction as money was then channeled to Argentine and Venezuelan officials. Companies that refused to pay or tried to bypass De Vido's representatives found it impossible to sell to Venezuela. Shortly thereafter Sadous informed the Argentine Foreign Ministry that US$90 million had disappeared from the trust fund set up to finance bilateral trade. Despite repeated attempts by the Argentine foreign minister Héctor Timerman to prevent Sadous from testifying before Congress, and a smear campaign that the government launched against him, the ambassador confirmed all his accusations to lawmakers in a closed-door session and added that Néstor Kirchner was aware of De Vido's "transactions" while he was in office.[51] The ambassador's testimony was also confirmed before Congress by the former national ombudsman Eduardo Mondino (1999–2009), who had gathered enough information suggesting that Argentine companies interested in selling to Venezuela had to pay bribes. Mondino passed it to the federal investigators before stepping down in 2009.[52]

Alleged corruption scandals later implicated Vice President Amado Boudou (2011–present). In April 2012, he came under investigation for an influence-peddling scheme affecting the Ciccone Calcográfica, a company that printed money for the central bank. According to the judicial inquiry, Boudou, then minister of the economy, allowed a little-known investment fund, of which he may

48. Joaquín Morales Solá, "Vázquez, la pieza clave que los mails revelaron," *La Nación*, November 24, 2010.

49. "Cirielli: 'Jaime se llevaba bolsos donde supuestamente había dinero,'" *La Nación*, May 6, 2013.

50. Laura Serra, "Sadous vinculó a de Vido con la embajada paralela," *La Nación*, June 24, 2010. Chief of Ceremonial of the Ministry of Planning José María Olazagasti, one of De Vido's closest aides, was in charge of deciding which companies could get Venezuelan contracts.

51. Hugo Alconada Mon, "Sadous: Kirchner tenía que saber todo lo que pasaba," *La Nación*, July 11, 2010.

52. Fernando Bertello, "Nuevas sospechas sobre las ventas de maquinaria," *La Nación*, July 30, 2010. The Argentine National Ombudsman has broad powers to investigate abuses related to human rights and the public administration but cannot prosecute case.

have been a partner, to rescue Ciccone. The following August the executive decided to take over Ciccone and clear its debts, which government critics perceived as tantamount to a cover-up.[53]

As for the Kirchners, their unusual accumulation of wealth while in office, coupled with all these scandals, raised suspicions well before the 2013 journalistic reports that it could be related to lax money-laundering controls. A US diplomatic cable stated: "Some Embassy contacts argue that the current GoA [Government of Argentina] leadership, including the President, stands to lose from honest and vigorous pursuit of money laundering. . . . It is probably unrealistic to expect that the GoA will funnel resources to prosecutors or make a concerted effort to pursue money launderers. The Kirchners and their circle simply have too much to gain themselves from continued lax enforcement."[54]

In fact, Switzerland, Luxembourg, and Liechtenstein reported suspicious money transfers through their banks involving the Kirchners and members of their administration. The permeability to illegal transactions of the Argentine financial system was further confirmed by the Financial Action Task Force (FATF), the Paris-based international organization in charge of the fight against money laundering, which found Argentina to meet only minimal standards.[55] In 2011 the FATF determined that Argentina's Financial Information Unit (Unidad de Información Financiera, UIF), the government agency in charge of money laundering, did not fulfill its already-limited prevention and supervision tasks.[56] Instead of complying, in February 2013 the UIF announced that fraudulent alerts coming from foreign countries would no longer be investigated.[57]

These events further reinforced earlier concerns made in March 2009 by US Ambassador Wayne, who cited the misgivings of Ombudsman Mondino with regard to the 2008 tax amnesty law 26,476 that Cristina Kirchner had Congress pass early that year. According to the cable, there existed a strong possibility that "the real goal of the law is to allow government officials and their accomplices in the private sector to legalize money coming from bribes and shady business deals."[58] In December 2009, Wayne's successor in Buenos Aires, Vilma Martínez, suggested that the lack of political will to crack down on money laundering rested on the fact that "the Kirchners and their circle have too much to gain from the continued lax controls." According to the same cable Rosa Falduto, the head of the UIF, "refused to respond to requests on suspicious operations by the Kirchners

53. "Lawmakers Approve Ciccone Expropriation Bill," *Buenos Aires Herald*, August 22, 2012.

54. Michael Warren, "Leaked Embassy Cable: Argentina Awash in Drug $," *Washington Times*, December 2, 2010.

55. Mary Anastasia O'Grady, "Is Argentina Washing Dirty Money?," *Wall Street Journal*, December 6, 2010.

56. *Informe de evaluación mutua: Argentina*, December 16, 2010, Grupo de Acción Financiera Internacional (FATF-GAFI), Grupo de Acción Financiera de Sudamérica (GAFISUD), http://www.gafisud.info/documentos/eng/evaluaciones_mutuas/Argentina_3ra_Ronda_2010.pdf.

57. Hugo Alconada Mon, "Dejaron de investigar sospechas de lavado de dinero," *La Nación*, February 18, 2013.

58. More specifically, the 2008 Law 26,476 promoted the repatriation of offshore capital in a way that allowed the laundering of money obtained through bribes. "Crónica inacción en la lucha contra el lavado de dinero," *La Nación*, November 5, 2013.

in Switzerland."[59] The US cables gave the impression that the UIF's goal was to protect the Kirchners from foreign inquiries while leaking damaging information against opposition leaders.[60] In May 2013, as foreign reserves dwindled to dangerously low levels, and lacking foreign investments, Cristina Kirchner had Congress approve yet another amnesty so that tax evaders could repatriate their money and invest in dollar-dominated bonds. However, according to critics, the law provided another opportunity for criminals to launder money in dollar-dominated bonds with no questions asked about the origin.[61]

Despite all these scandals, the co-optation of the judiciary resulted in most cases mentioned above either languishing in court or being thrown out. In July 2011, a federal court dismissed the Skanska case for lack of evidence even though Skanska admitted its own corrupt practices. Likewise, the lawsuits against the Kirchners' illicit enrichment were closed on similar grounds. The multiple investigations launched against Ricardo Jaime have yet to be tried in court. Only Miceli, who had no personal ties with Cristina Kirchner, has so far been found guilty, which she bitterly resented, claiming that other administration officials had been implicated in worse scandals than hers.[62] Congress has been just as ineffectual. After the Sadous hearing FPV legislators blocked any further inquiries on the alleged bribes linked to the "parallel embassy" case. More to it, Congress consistently ignored the audits that the AGN kept sending for review. In 2011 Congress ignored 432 audits detailing serious cases of administrative irregularities and possible corruption.[63]

CONCLUSION

Although some scholars have warned recently about the authoritarian means that populist administrations have used in implementing their policies, analyses of the relationship between the weakening of checks and balances vs. corruption have been lacking. This article has tried to fill this gap by focusing on Argentina. Its findings confirm the theoretical and empirical literature on democratic governance. The more the executive branch concentrates political power and becomes less accountable to institutional checks and balances, the greater the chances for corruption and misuse of scarce government funds. Argentina experienced this very trend under Menem during the 1990s when it embarked on an ambitious, and often corrupt, market reform effort that unraveled with the financial crisis of 2001–2002. From 2003 on, under the Kirchners, the country reversed its course, adopting policies endorsing strong government regulation, renationalization of strategic companies, and generous welfare transfers. Despite the stark differences

59. U.S. Embassy classified cable 1257. "EE.UU. expuso sospechas sobre manejos financieros de los Kirchner," *La Nación*, December 2, 2010.

60. Mary Anastasia O'Grady, "Is Argentina Washing Dirty Money?," *Wall Street Journal*, December 6, 2010.

61. Taos Turner, "Argentine Tax Evaders Win Investing Route to Pardon," *Wall Street Journal*, May 30, 2013.

62. "No tuve estructura y lo estoy pagando," *La Nación*, December 28, 2012.

63. "Otra señal de pasividad del Congreso," *La Nación*, January 3, 2012.

in economic policy, Menem's and the Kirchners' management styles have one point in common: a deliberate effort to act unilaterally by emasculating the institutions of horizontal accountability. Thus, O'Donnell's warning about how pernicious "delegative democracy" was under Menem applies today. Since 2003 the judiciary launched more than thirty corruption inquiries, but only one (Miceli's) has gone to trial. If we compare the control of corruption under Menem to that under the Kirchners using the World Bank governance indicators, the results show that Menem fared better, with an average score of −.20 as opposed to −.45 under the Kirchners. (A lower score indicates poorer control of corruption.) If we use the Transparency International Corruption Perceptions Index, the results are similar, with Menem scoring an average of 3.5 between 1994 (when the survey started) and 1999, as opposed to the Kirchners' 2.9 between 2003 and 2013.[64] Although these are rough measurements, they indicate that respondents perceive government corruption under the Kirchners to be as bad if not worse than under Menem.

One may ask, if corruption has been so pervasive, why the Kirchners have been able to survive all these scandals. The most common explanation about the lack of public outrage against corruption is that the Kirchners have been fortunate to govern at a time when Argentina's commodity export prices boomed. Export taxes enabled them to maintain public support by transferring money to cash-strapped provinces, subsidizing a host of public services and boosting welfare programs. However, the price that the country will pay in the long run, from an economic and political standpoint, is severe. Corruption and lack of rule of law discourage investments and set in motion a pernicious cycle of political alienation and distrust. Economic history teaches that all commodity booms eventually end. When the current one is over, Argentina will find itself in an even deeper hole as current government spending becomes unsustainable. The pro-Kirchner constituencies that today enjoy generous subsidies will mount a vigorous opposition when the administration that will replace Cristina Fernández de Kirchner in 2015 will likely be forced to cut them. The tragic end of the De la Rúa administration offers a real-life reminder of what may happen when the economy melts down and people's unmet expectations turn into rage.

Sadly, whereas Chile, Uruguay, and Brazil have made steady progress to enhance checks and balances and political accountability, Argentina, after an encouraging start in the mid-1980s, has regressed. The end result is that smaller economies like Chile and Uruguay have attracted more foreign investments in per capita terms than Argentina. Indeed, a Finnish diplomat admitted that one of his country's biggest multinationals invested in Uruguay rather than Argentina because of the much larger incidence of corruption in the latter. In the end, corruption affects the bottom line. Unless this phenomenon is tamed and checks and balances can work as they should, Argentina's socioeconomic instability will continue to penalize the lower classes that the Kirchners claim to represent. Left-wing Chilean, Uruguayan, and Brazilian elites have understood that more transparent government action and political accountability benefit the poor most of all.

64. For the World Bank data see http://info.worldbank.org/governance/wgi/index.aspx#home. For Transparency International see http://www.transparency.org/research/cpi/overview.

Unfortunately, their Argentine counterparts still have to learn that lesson, and they are not giving any indication that they will any time soon. In conclusion, this case study shows once more the dysfunction of poor governance and the corruption associated with it. In order to make a balanced and fair assessment, future comparative studies of the new left governments in Latin America must analyze whether political accountability factors have made a difference, for better or worse, in their overall policy performance.

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