

“[D]emocracy is at risk of losing its meaning and purpose in the hands of presidents who, while freely elected, crush freedom once in office.”

## Argentina's Democratic Decay

HECTOR E. SCHAMIS

After decades of instability and on-and-off military rule, Argentina has chosen competitive democracy. Since the transition of the 1980s, the country has experienced uninterrupted turnovers of power from one elected government to another. Certainly this is extraordinary: By now an entire generation of citizens has not spent a day of their lives under an authoritarian regime. On this account alone, democracy seems alive and well in Argentina. But is it really?

Not quite. Beyond this seemingly bright landscape there is plenty to worry about. While electoral competition is meaningful—in the sense that people vote freely and participation is high—when it comes to constitutional procedures and civil liberties, the state of “democracy” in Argentina is, to say the least, troubling. Not unlike other countries in the region, in Argentina, too, it has become acceptable for incumbents to modify constitutional provisions simply to stay in office longer than initially stipulated. Just like Carlos Menem in Argentina in the 1990s, and more recently Álvaro Uribe in Colombia, Rafael Correa in Ecuador, and Venezuela's Hugo Chávez, who even eliminated term limits altogether, it is now Argentine President Cristina Kirchner who toys with the idea of a constitutional reform to seek a third consecutive term.

Democratic theory, of course, does not postulate that a free and fair election automatically ensures a democratic exercise of power. However, in Argentina and much of Latin America the two sometimes seem almost incompatible. In fact, the former has often been the pretext for deviating from the latter. James Madison's tyranny of the majority is more than a metaphor in countries where bending the rules is a tool for executive discretion from the outset—a setting that erases the very

principle of separation of powers. Elections have frequently normalized a political system in which the executive, riding on electoral majorities, legislates at will.

Here is a paradox. For several years now, President Kirchner has delivered the equivalent of the State of the Union address every year, and in the same speech in which she boasts of Asian-type growth rates, she asks the Congress to renew her presidential decree authority (often called *superpowers*)—an authority that the constitution reserves exclusively for times of economic emergency.

Executive discretion has turned checks and balances into a hollow notion, as demonstrated by a government that systematically ignores court rulings and antagonizes the judiciary to unprecedented levels within a democratic political system. If this context is by definition conducive to the infringement of basic civil liberties, the record has been particularly distressing when it comes to press freedom, as the Argentine government has kept up a campaign to silence critics, especially the country's largest news organization, the Clarín Group.

Argentina's democracy, in short, is decaying. It is important, therefore, to try to understand what is happening, and to consider where the country may go in the future. Indeed, this is a time in which the very trajectory of Latin American democracy seems at stake. The perpetuation of “Chavismo” in Venezuela is just one example. As the playing field becomes increasingly checkered—with some nations in the region exhibiting robust democratic procedures and institutions, while others repudiate them—the question of which side of the fence Argentina will end up on may have consequences far beyond the country's borders.

### WIDOWHOOD AND DEIFICATION

On October 27, 2010, approaching the end of her third year in office, President Kirchner's pop-

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ularity ratings were startlingly low; one survey showed just 19 percent of the electorate expressing intent to vote for her. Her husband, former President Néstor Kirchner, who was in office from 2003 to 2007, was polling slightly better, at 26 percent. Yet he was struggling on a very uphill road within the Peronist party system. It was no secret at the time that several labor leaders and party bosses—those who run the buses for the rallies and control territories on election day—had expressly rejected a Néstor candidacy for 2011. After a total of eight years in office, with those meager poll numbers and a complicated internal political juncture, the future of “Kirchnerismo” seemed in doubt, if not completely over.

On that day, however, everything would change, as tragedy hit the Kirchner family. Early that morning, Néstor suffered a heart failure and died in a hospital in the southern province of Santa Cruz, where their political careers had started. The news shocked Argentina and seemed to derail the ambitious, if unabashedly nepotistic, strategy that the Kirchners had explicitly outlined: a ruling couple that would remain in office for 16 years, alternating a presidential term each, twice. They were halfway through this sequence when the family's hold on power seemed very much at risk.

Yet Cristina Kirchner would capitalize on death. It wasn't the first time this happened in the history of Argentina, a society prone to necrophilia, as the late Tomás Eloy Martínez elaborated in his renowned fictionalized biography of Eva Perón, *Santa Evita*. The parallel is intended. As of that moment, the tears and the mourning attire gave back to the president a center stage she had lost. Constant references to “him,” deliberately avoiding his name, attempted to reconstruct her deceased husband as a deity—“él.” His sacrifices, his legacy, and his light on the nation's path, among other quasi-religious metaphors, became recurrent formulations. Cristina's grief, combined with Néstor's canonization, seemed to give the Kirchner government the narrative it had never before found, the utopia it lacked: in sum, the rituals with which to build a long-lasting political movement.

At the same time, and in terms of less grandiose goals, grief became a basic survival kit, a political shield that granted immunity to a not-very-popular sitting president seeking reelection. As of

that moment, the equation was simple. Each time tears ran down her cheeks, criticism would stop, if nothing else out of basic sympathy for a widow. More importantly, as the tears rolled down, her poll numbers began to go up.

## REELECTION AND RADICALIZATION

Cristina Kirchner won reelection in October 2011 with a landslide 54 percent of the vote and a 36 percentage-point margin over the next-highest vote getter. Hers was the second-largest share of the vote in any election in Argentina's history. Her campaign highlighted the prosperity of previous years, her redistributive social policy, expanded government spending, and the human rights agenda that both Kirchners had kept alive. She also won back control of the House, where 130 seats were in play, and retained control of the Senate, where 24 seats were at stake. This would prove significant, considering that in 2009 midterm elections the government had lost control of the House, which at the time entailed important setbacks for the Kirchners' legislative agenda.

Her victory was not based only on pity and patronage, however. Once criticized for seeming cold and distant, if not also too pretentiously intellectual, she walked the campaign trail with more personality this time. She

was belligerent vis-à-vis opponents and warm with supporters. She explicitly catered to young voters, especially by choosing as her running mate Amado Boudou, then the economy minister, who rides motorcycles and plays guitar in a rock band. In addition, she benefited from a very fragmented opposition, one unable to arrange any form of coalitional politics, and essentially leaderless, lacking a figure who could build consensus and compete with the president on equal footing.

Inaugurating her second term in December 2011, Kirchner made the presidency marital property. She wore black again, and she modified the oath of office. “I swear to God, the country, and the blessed saints to carry out the office of the president and to honor . . . the Argentine constitution,” she declared. And, she added, “If I don't, then let God, the country and *him* take me to task for it,” in what critics deemed an unconstitutional swearing-in ceremony.

Since then, however, Kirchner has gradually departed from the political style of her husband,

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*The Kirchner government has intensified a campaign against independent media organizations.*

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who was more of a traditional Peronist. Her second term has veered sharply to the left, as she has displaced several of the old guard “Nestoristas” to appoint a new breed of “Cristinistas” (both terms increasingly used in the public debate), while opening the doors of her government to the youth she had courted during the campaign. A case in point is the activists of *La Cámpora*, an organization led by her son Máximo. It vindicates the leftist youth and the violent guerrilla organizations of the 1970s. It advocates much greater state control of the economy (however rudimentary) and a more confrontational stance with Washington and the International Monetary Fund (however rhetorical).

The radicalization of her government peaked in April 2012 with the expropriation of YPF-Repsol, the historically state-owned oil company that had been privatized in the 1990s and acquired by a Spanish company. This nationalization seemed more Chávez-like than anything else. For one thing, it was technically a confiscation, since compensation has not been provided. As of January 2013, the government had yet to make an offer. Still unable to return to credit markets, and more so after expropriating Spanish property, the government has undertaken nationalization basically to generate a kitty, just as takeovers of pension funds and the central bank reserves had served earlier. The takeover of YPF-Repsol was largely meant to moderate the effects of energy sector deficits in the trade balance.

## DECLINE AND DECAY

In March 2012, barely three months after the inauguration, Vice President Boudou was under investigation for corruption. The case, still in the courts today, linked Boudou to a company that had obtained favors in biddings for currency printing contracts. The company also received a tax amnesty from the revenue collection agency. All this happened at the time Boudou was economy minister.

As a result of the investigation, a quasi-institutional crisis developed. The executive branch called the probe a “conspiracy by opposition media” in combination with “coup plotter elements of the judiciary,” and so recused the prosecutor. This was followed, in April, by the resignation of Esteban Righi, the solicitor general

and longtime member of the Peronist Party who, moreover, had been appointed by Néstor Kirchner in 2003. For the Peronist rank-and-file, that a newcomer guitar player, now turned vice president, had been able to force the exit of someone with the career trajectory of the solicitor general was insulting beyond belief. It was also indicative of the government’s direction in coming months.

By mid-2012 it was clear the economy was in trouble. Growth had slowed sharply, and inflation (which the authorities regularly deny by misreporting data) was on the rise. The attempt to cope with macroeconomic disequilibrium and avert an imminent balance-of-payment crisis led the Kirchner regime toward currency controls and heavy restriction of imports. The creation of multiple exchange rates and the closing of the capital account followed, limiting citizens’ ability to gain access to foreign exchange. In a country with high-inflation memories and current inflationary pressures, this decision effectively took away an important savings instrument from the average middle-class citizen. The protectionist measures

were equally crass and irrational, in some cases not allowing goods—needed industrial inputs, and even medical instruments—out of customs.

Corruption, inflation, and urban insecurity (common problems in most Latin American countries) became too evident to be swept under the rug. A president who won reelection in October 2011 with 54 percent of the vote, and was inaugurated in December 2011 with a 70 percent approval rating, saw that positive image halved to 35 percent approval by September 2012. With her popularity in a free-fall, Kirchner began to look out of touch. A tour of US universities (Georgetown and Harvard), where, unlike her press conferences at home, she took questions, showed her in denial and arrogant with students. “Guys, you are at Harvard, not at the University of La Matanza [a school in a working-class suburb of Buenos Aires],” she told them dismissively, insulting students in the United States and in Argentina as well.

The arrogance, also on display at home, and economic malfeasance bred discontent, to the extent of sending thousands of Argentines to the streets in several rounds of social media–led demonstrations and *cacerolazos* (at which participants make noise by hitting pots and pans), the preferred form of protest. The government once again responded

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as if out of touch with reality, claiming that the protests were staged, a destabilizing conspiracy by opposition media together with members of the upper classes who only care about purchasing dollars and vacationing in Miami.

Simultaneously, 107 members of the House and 28 senators from opposition parties signed an agreement intended to block a second reelection of Cristina Kirchner and presented it to the legislature in early November 2012. To run for a third term, the president would require a constitutional amendment, which can only be passed in the Congress with a two-thirds majority vote. Although she has made no formal announcement that she intends to run again in 2015, many in her inner circle talk about it. The 107 signatures in opposition represent about 40 percent of the 257-seat lower house.

### PRESS AND JUDGES AT RISK

The way some Kirchner loyalists see it, however, another reelection would be possible, if only opposition media could be silenced and Argentines could access “truthful” media outlets, that is, government-sanctioned information. It is in this context that the Kirchner government has intensified a campaign against independent media organizations—especially the Clarín Group, the largest private journalistic organization in the country, which owns newspapers, magazines, and television and radio stations, and which provides cable and internet services.

The story goes back to 2009, when the Congress passed a new media law. Meant to prevent concentration by limiting the number of licenses and frequencies that can be held, the law mandated the expropriation of Clarín's cable operations and the distribution of its licenses among other entities. (These remain undefined; critics suspect friends and cronies of the government would be taking over the companies.) Clarín quickly responded by requesting an injunction on the grounds of the unconstitutionality of provisions in the law that ordered the company to disinvest. A court ruling granted Clarín a temporary stay, which was to expire on December 7, 2011—“7D” as the crucial deadline came to be known.

After the ruling, the government mounted a vigorous public campaign, insisting that on 7D, 2011, Clarín's licenses would expire and the government, which even created a special agency for the purpose, would seize control of those assets. For most local observers and several international

nongovernmental organizations, while the text of the media statute is simple and couched in the language of antitrust law, the subtext is clearly more complex and significant, as the government seeks to stifle dissent and, in particular, to dismantle the Clarín Group.

As international press freedom watchdogs have repeatedly documented, for a long time Clarín and many other news organizations have suffered from systematic legal and administrative acts of harassment. Independent journalists have been subjected to various forms of intimidation. And the government has effectively bought itself control of media content through preferential placement of state advertising, even ignoring a 2007 Supreme Court ruling that ordered the government to advertise in a nondiscriminatory fashion.

As the struggle over the media law intensified, it was fought in the legal as well as the political arena. In the months and weeks before December 7, in its attempt to secure a friendly venue for the case, the Kirchner government began to recuse and intimidate independent judges, and requested that the Supreme Court circumvent the lower courts and rule itself on the measure. The Supreme Court turned down the government, sending the case back to a lower court where it likely would be extended for months. Additionally, the high court upheld the injunction in favor of Clarín, and ordered the federal appeals court to quickly rule on the constitutionality of the disputed provisions in the media law.

The government, through Kirchner herself, responded by ratcheting up the rhetoric, accusing judges of having supported “the military tanks that overthrew democratic governments in the past.” Justice Minister Julio Alak claimed that the appeals court now in charge of the Clarín case has always ruled against the executive. A professional group of lawyers responded by accusing the government of abusing its power. The group, virtually a union of judges, with two Supreme Court justices on its board, accused the government of inappropriate attempts to recuse some judges, while defaming or filing criminal charges against other judges. It demanded that the executive branch respect and uphold the independence of the courts.

In many ways, Argentina today evokes Peru of the early 1990s. Back then, President Alberto Fujimori shut down the Congress: A legitimately constituted branch, the executive, suppressed another legitimate branch, the legislative. In

Argentina today, the executive, a legal and legitimate power, is relentlessly attempting to subjugate another branch of the state, in this case the judiciary. At the time of this writing, the country is on the verge of an institutional crisis of unpredictable proportions.

The blessing in disguise of this potential crisis, as long as things do not get out of hand, is that the average Argentine citizen today discusses, over the family dining table and in the coffee shop with friends, such crucial issues as judicial independence, checks and balances, and other procedural pillars of liberal democracy. Perhaps things will turn out differently from what President Kirchner intended.

### **WOLVES IN PROGRESSIVE CLOTHING**

Kirchner belongs to a group of somewhat populist and ostensibly leftist leaders in Latin America who persistently emphasize egalitarianism and social justice. In their view, concentrating power in their hands is necessary to avoid the lengthy decision-making routines of liberal democracy and expedite redistribution—as if one type of justice could be pursued at the expense of another.

This is just a clumsy excuse and self-defeating logic. First, because history has amply demonstrated that successful redistributive programs are sustainable only when they are rooted in the procedural fabric of the constitutional state. And second, because when the business cycle turns and an

economic downturn occurs, a backlash against redistribution in a weak normative order only serves to reinforce the old inequalities, hurting the poor disproportionately.

Social policy through government discretion in a system marked by concentrated executive authority is fundamentally a tool to give rulers more resources for their patronage—that is, to control social groups and diminish the autonomy of civil society. The idea that some rights have to be violated for others to be advanced is thus perverse; it is just about abusing power, which plants the seeds of an undemocratic political order.

To be sure, long gone are the days of systematic torture and forced disappearances. Still, the right to political dissent remains unfulfilled. In Argentina, as well as some other Latin American countries, democracy is in trouble. This is so not because of the threat of military takeovers, but because democracy is at risk of losing its meaning and purpose in the hands of presidents who, while freely elected, crush freedom once in office.

So far, proto-authoritarian leaders like Cristina Kirchner have gotten by with no more than a slap on the wrist from the international community, as if her progressive rhetoric makes her immune. It is time to go back to the 1980s, perhaps, when abuses were vigorously denounced, and condemn the infringement of democratic rights today, whichever those rights are and wherever they are violated. ■