

From Dictatorship to Democracy – and from Dirigisme to Rule of Law? Constitutional Learning in Argentina Since 1983

Introduction

“On September 6, 1930, crowds of Argentines stood in the streets of Buenos Aires, and cheered the army as it moved toward the [presidential palace]. President Hipólito Yrigoyen, Argentina's first ‘man of the people,’ had just been forced to resign, and the remnants of the party were about to be ousted” (Davis 1995, 71). Over the next 50 years, Argentina faced a total of 11 military coups and six military dictatorships. The final coup, in 1976, enjoyed widespread support from a population exhausted and terrified by years of civil strife and economic stagnation.

In 1983, democracy returned to Argentina. Two years later, the military attempted another coup. But things were different this time. Contrary to prior coups, which enjoyed overwhelming popular support, tens of thousands of demonstrators descended into the streets, and refused to leave until the military uprising stopped. Democracy was safe. In 2001, Argentina faced one of its gravest economic crises ever, as the country defaulted on its debt, the national currency lost two thirds of its value overnight, streets erupted into rioting and looting, and the country faced a string of five presidents in the span of two weeks. Chaos and political instability reigned. But

there were no calls for military intervention.

The twentieth century was marked by a waltz of legitimate and unconstitutional governments, as detailed in the following list:

1930 - 1932	<i>de facto</i>	2 years
1932 - 1943	<i>de jure</i>	12 years
1943 - 1946	<i>de facto</i>	3 years
1946 - 1955	<i>de jure</i>	8 years
1955 - 1958	<i>de facto</i>	3 years
1958 - 1966	<i>de jure</i>	8 years
1966 - 1973	<i>de facto</i>	7 years
1973 - 1976	<i>de jure</i>	3 years
1976 - 1983	<i>de facto</i>	7 years
1983 - ?	<i>de jure</i>	28 years (so far)

The constitutional regime that has been in place from 1983 to the present is the longest since the first military coup in 1930. It has already weathered its share of crises, and Argentina is still plagued by weak institutions, generalized anomie and scant respect for rule of law. But something obviously changed between 1976 and 1985.

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This paper presents and analyzes both qualitative and quantitative methods of inquiry for feeling the pulse of Argentina's contemporary constitutional culture, and understanding Argentina's contemporary political and economic woes. For a more detailed definition of constitutional culture—the general attitude, thoughts and feelings, conscious and unconscious, about the nature, scope and function of constitutionalism—see Wenzel (2007 and 2010a).

The first section synthesizes the results of qualitative fieldwork I conducted in Argentina. The second section corroborates the qualitative fieldwork through the findings of a quantitative study of Argentina's contemporary political culture. The final section combines the two, drawing overall conclusions on Argentina's contemporary constitutional culture and environment, and offering speculation about Argentina's constitutional future.

I. Qualitative Analysis: Field Research Report.

I spent three weeks in Argentina in the summer of 2006, during which time I interviewed almost 30 experts on constitutional law, history, economics, philosophy and culture.

1. Methodology: Targeted Qualitative Analysis.

There are significant advantages to qualitative work, especially when used to fine-tune or complement the rigor of quantitative work (in this case, Hernández *et al.* 2005, discussed in section II); for all the formal and methodological advantages of quantitative work, qualitative has several distinct advantages, especially when the

results are combined.

The Hernández survey was bound by a methodological straightjacket, as respondents were confined to numerical answers to questions. I was able to add subtlety to the questions, and give respondents the opportunity to add their own nuances. Furthermore, I was able to ask follow-up questions and ask for clarifications and deeper analysis, and respondents were able to build on my own questions to raise further topics. The Hernández survey drew 1,000 people at random; I specifically targeted top experts and thinkers on constitutional matters.¹ And, finally, the survey asked for perceptions and personal opinions; I asked for analysis and explanation (a point especially relevant, since I suspect the Hernández survey, while quite good, did encounter problems of demonstrated versus expressed preferences, as I explain below).

I am aware of the limitations of my qualitative work. But I am also aware of the limitations of quantitative work, no matter how thorough and conscientious: the questions are limited and limiting; respondents have no opportunity to elaborate; respondents may say one thing and act another way; and, generally, it is doubtful whether one can really package human behavior into discrete numbers ranging from one to ten. The combination of the two methodologies yields interest-

¹I know I did not interview everybody—there were experts with whom I was unable to get an interview, and experts of whose existence I was not aware. However, I was gratified when one interviewee, author/lawyer/professor José Ignacio García Hamilton, looked at my list of interviewees, added two suggestions, then said, with a smile, “*ya tenés todos*” (“you have everybody”).

ing and insightful results, as the rigor and breadth of quantitative analysis can complement and be complemented by the depth and richness of targeted qualitative work.

The methodology for the individual interviews was quite simple and straightforward. I started with a list of experts; at the conclusion of each interview, I asked for follow-up reading and “snowball” interviewee suggestions. I tried to keep interviews as informal, relaxed and conversational as possible, in order to elicit candid responses. In each case, I started with a brief introduction of myself and my research. I then sought general comments, using a set of questions to guide the interviews. Although I ultimately asked all questions in each interview, I let the author's interest and the flow of the conversation take their own course. The field research report is more than 100 pages long. I thus limit myself to relevant summaries.

2. *Interview Themes.*

Instead of reporting on my field research by expert, I report here by theme.

a) General Cultural Atavisms.

I outline here common themes on Argentina's contemporary culture which have a bearing on constitutional behavior. The first is the general legacy of Spanish colonialism. Whereas the United States was founded by families, Argentina was founded by adventurers. A conquistador would steal land and divide it among his friends. These days, things are the same, except wealth rather than land is plundered and divided (generally, see Garcia Hamilton 2005).

Second, psychological explanations

surfaced, pointing to Argentina's “adolescence” as a society. Argentine society is not mature; formal institutional norms are proposed, but they are too advanced for the society. Argentina is an immature, rebellious, chaotic country. The United States had its adolescence too, but it was less turbulent.

The third element is high time-preference and lack of vision: Argentines exhibit impatience, and worry about the political crisis of the moment, rather than building long-term institutions and solutions. Attached to time-preference is a lack of cooperation and a lack of realism (and thus pie-in-the-sky demands from the government), which lead to social tensions and a strong sense of entitlement. Argentines think state services should be free; this is a purely sentimental reaction, as there is no associated thought about who should pay—this was especially the case in the short-lived 1949 Peronist constitution, but remains in the positive “rights”² of Article 14bis to the constitution. Argentines eagerly violate the law in the name of attacking “injustice” (which basically amounts to supporting entitlements).

Fourth, Argentina exhibits fundamental cultural dichotomies. On the institutional side, Argentines exhibit absolutism (state above the individual), religious intolerance, a rural society, militarization and a military society, and mercantilism. On the cultural side, Argentines see themselves as refined (as opposed to boorish American cowboys who lack taste and manners); show solidarity and honor (as opposed to selfish, capitalist Americans); value friendship and family

²See Rand (1967, 322-25) for a superb explanation of the patent philosophical absurdity of positive “rights.”

(unlike Americans who are individualistic and have splintered families); have great heroes (often military); and are cultured (as opposed to Americans who are obsessed with business). Naturally, institutional outcomes are linked to the underlying individual behaviors, but Argentines do not see the link.³

In Argentina, the citizen was invented according to a humanist model, in the Greek tradition (where the educated man is multifaceted, and must excel at the arts, at sports and at general knowledge/wisdom). This tradition lingers in the culture, as lawyers and psychologists are praised; there is a public role for poets; there is (or was) a political role for the military. But there is contempt for technical and practical skills. For example, one interviewee's brother-in-law is an electrical engineer, yet the family refers to him dismissively as an "electrician." Lawyers talk politics and philosophy.⁴ In this tradition, an Argentine economics minister once asked soccer/foot-ball star Diego Maradona for advice on how to run the economy. The thinking was that, since he had excelled

³See, e.g., La Porta *et al.* (1992) on trust in large organizations, Weber (1905) and Barro and McCleary (2003) on religion and economic performance; or Fukuyama (1995) and Knack and Keefer (1997) on social capital and economic performance. See also Garcia Hamilton (2005, 2006). Many thanks to Hernán Rodríguez Vagaría for the cultural explanations.

⁴In fact, I was surprised by the number of lawyers who teach philosophy, law and economics, or the history of ideas. Argentine founding father Juan Bautista Alberdi was already wrestling with such issues in the 1850s, when he emphasized the importance of practical education rather than the elite's penchant for philosophy and the arts (see Alberdi 2002[1852] and 1954 [1855]).

in sports, he must be also a humanist who could offer advice on matters of state!

b) Democracy: Established, but Incomplete.

On average, between 1930 and 1976 there was a military coup every four years. The first coup was led by an oligarchy that had been excluded from power by an expansion of the franchise. Throughout the century, coups enjoyed the support of a population eager for order to be restored. Even the most recent coup (1976) enjoyed support of the major newspapers and a vast majority of the population. Civilian rule is now secure, as the constitutional culture has matured, and Argentines will no longer support a military coup. Democracy is now safe in Argentina: "The core institutions of democracy remain strong in Argentina: elections are clean, civil liberties are broadly protected, and the military ... has withdrawn from politics" (Livitsky and Murillo 2008). In 2001-2002, at the height of the economic crisis nobody talked about a military coup.

Argentina's democracy may be well established, but it is still fragile and incomplete.⁵ This means, first, that democracy is seen merely as voting, rather than deliberation and citizen participation. Second, in the tradition of Rousseau (see, e.g. Lewin 1967), there is an exaggerated worship of majoritarianism. Democracy is seen as majority rule, and nothing

⁵Generally, see the theory of "delegative democracy" as put forth by O'Donnell (1994): "Delegative democracies rest on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office." For commentary, see Peruzzotti (2001).

more. Since the 1983 return to democracy (after the brutal 1976-1983 dictatorship), the idea is that anything democratically decided is *ipso facto* good, simply because it was democratically decided.

Since the 1983 restoration of civilian rule, democracy has solidly entered the constitutional culture, but democracy of a sort. Argentines feel that their numerous abstract, positive “rights” are not respected, so they routinely feel angry and defrauded, and respond with anomie, *e.g.* by not paying taxes. In addition, since constitutional democracy does not deliver these abstract positive “rights,” and since institutions are broken, with power not readily shared, there has been a turn of late to a direct democracy of sorts: street power. Especially since 2001, Argentina has seen a resurgence of social movements (the so-called *piqueteros*, who block streets and access to cities, students who take over schools, etc.).⁶ Streets are often blocked as political statements. There is no state reaction, and nobody imposes order, as there is a national fear of the exercise of state power, even to restore order (especially among the left, because of memories of the past). Argentina thus exhibits permissiveness simultaneously with a desire to be led. In many cases in the past, the state has not known how to respond, so the street took over, and hijacked the political and constitutional process.

c) Rule of Law: Anomie, Caudillismo, and Weak Constitutionalism.

Anomie was the overall *leitmotiv* of the interviews. Argentina lacks a tradition of respect for laws, both institutionally and on a day-to-day basis; they break the law from traffic lights to the constitution.

⁶See Epstein and Pion-Berlin (2006).

Many interviewees pointed to a lack of self-discipline as a basic problem in Argentina. In the words of one interviewee, with only 10 percent of a society composed of rebels, a society cannot function. Argentina has 30 percent. The famous Argentine *gaucho* cowboy (idealized in literature and national myth) is a rebel, and that spirit lingers.⁷

The military may have been solidly sidelined from politics, but Argentines still want a strong man (or woman, currently) to deliver results, in the lingering *caudillo* tradition of colonial Spain (see Garcia Hamilton 2005). People don't care about institutions; they prefer a strong leader, which in the past has translated into support for the military from various sectors of the population. The Argentine street (*i.e.*, political culture) supports *caudillismo* over inefficiency or instability, rather than constitutional principle: a president who cannot be strong enough to bypass the law when necessary is seen as weak, which was the case of President de la Rúa, who resigned in the wake of the 2001/2002 economic crisis (contrast this with the Kirchner presidency, or current President Fernandez's nationalization of private pension funds, debt-forgiveness for friendly media outlets, or sacking of an independent-minded governor of the central bank).

Institutionally, this has translated into *de facto* strengthening of an already strong *de jure* president (which commentators call “hyper-presidentialism”). The constitution establishes checks and balances, while also providing for a strong presidency with many prerogatives. There

⁷For insights into Argentine culture, see the classic epic, *El Gaucho Martín Fierro* (Hernández 2000 [1872]) as well as tango lyrics, *e.g.* Palacio (1997, 2000).

is thus a big difference between the constitutional text and the *de facto* constitution. First, the president increasingly rules by emergency decree.⁸ The number of such decrees grew from 25 decrees issued between 1853 and 1983, to 10 issued between 1983 and 1989 (Alfonsín), to 308 under Menem's presidency (1989-2001) and 232 under Kirchner (2003-2007).⁹ Second, other branches of government are overshadowed by the presidency. Thus, the average Argentine appears quite happy that the president is strong, even if he—or today she—is authoritarian, does not follow the constitution, and rules by decree. Today's government is increasingly authoritarian, and there is currently a drop in freedom in Argentina, as evinced overtly in price controls and economic restrictions, and more subtly in restrictions on freedom of the press. In December 2005, when President Kirchner illegally used central bank funds to pay off IMF debts, legislators applauded and the street supported him. The same thing happened with the earlier 2002 debt default under interim President Duhalde.

Weak rule of law is visible in Argentina's everyday political life. While democracy is solidly established, constitutionalism is not. Argentina has lacked a tradition of rule of law since colonial days, and this remains (for details on Argentina's founding, see Wenzel 2010b, building on the work of Boettke *et al.* 2008). Pendulum swings continue, rather than a spirit of constitutional debate. Whereas the swings were initially be-

⁸On *decretismo* and its place in "delegative democracy," see O'Donnell (1994). Generally on *decretismo*, see Goretti and Rubio (1995), Botana (1995), Corradi (1992), Nun (1994), or Sarlo (1994).

⁹See Peruzzotti (2001) and Levitsky and Murillo (2008).

tween oligarchy and populism, then between the military and civilian rule, they are now more subtle (*e.g.* from free-market reforms to populism). Although more gentle than a military coup, there is still a tendency to hold on to power unconstitutionally, and corruption is rampant. The constitution, while brilliant on paper, is simply not respected. In the words of one commentator, there is currently no constitutional conscience because the constitution has been trampled for so long. The constitution has always been a useless piece of paper. This translates into an odd paradox. Although Argentines are not constitutionally minded, there is much reference to the constitution. The military always claimed to intervene in the name of protecting the constitution (and often officially kept it in place, if temporarily superseded by an emergency decree). More recently in Argentina's constitutional culture, every time something goes wrong, there is a call to change the constitution; there is a deluded political and legal culture, which thinks that a textual change will change the reality.

This fits in with Caplan (2003) on idea traps: poor ideas lead to poor policies, which lead to poor performance. Poor performance reinforces poor ideas, thus trapping the country in a vicious cycle. For example, a country's prevailing mental model is interventionist, leading to a policy of nationalization, regulation and *dirigisme*. This, naturally, hurts economic performance. Instead of realizing that state intervention thwarted growth in the first place, national mental models come to blame excessive market forces, and call for more interventionism. This is what happened throughout Latin America in the 1980s, when so-called free-market reforms—writ large, a transfer from state monopoly to crony monop-

oly, without increase of rule of law or decrease of state regulation—failed to deliver. The population thus called for more interventionism. Argentina is no exception.

At the philosophical level, there is no rule of law because there are too many positive “rights” claimed. Unclearly funded and unrealistic positive rights lead to conflict, which leads to government intervention, which hurts rule of law, etc. At the cultural level, there is a similar idea trap, as mistrust of institutions leads to anomie, which weakens institutions, leading to more mistrust in inefficient institutions, more anomie, etc. At the institutional level, poor institutions lead to poor political performance, which leads to a call for a strongman to fix things immediately, without fixing institutions. Until 1976, force was used for change, because the institutional system did not allow for peaceful change from within. Today, Argentina’s hyper-presidentialism creates incentives to seek change outside the system, because it is too difficult to do so from within. Change is difficult to impossible within the system, so people take to the street, which is effective in the short-run, but kills the process of constitutional deliberation and rule of law, as violence and blackmail are used to break a refusal to share power. At the economic level, weak rule of law underlies the economy, along with weak institutions. There is much political uncertainty: there are big returns to be captured by those who are well connected politically (or foreign investors working with politically connected domestic partners); otherwise, the economic environment is uncertain. Argentina is headed for another crash which, if the past is any indication, will further weaken rule of law and institutions ... and thus weaken

economic performance, in an on-going cycle.¹⁰

d) Constitutional Knowledge.

Knowledge of the constitutional text is very low among the people. The average Argentine does not know the constitution and does not understand it. In general, Argentine constitutional culture perceives the constitution as good, but the constitution is not followed (*no se cumple*, it is not respected). The constitution is merely a set of bylaws to make democracy function; it establishes the functions of government and symbols of national identity; but it does little more. In the Argentine mind, the notion of citizen rights and obligations is not clear; Argentines only care about the rights and laws that are immediate.

e) Good News: A Constitutional Learning Process.

Although Argentina’s 28-year run of democracy is encouraging, the absence of rule of law is troubling, especially because Argentina appears stuck in an idea trap. To be sure, since 1983 there have been free and clean elections. Elected offices do change, but rule of law is still weak. A number of interviewees pointed optimistically to a process of social learning that started in 1983.

First, democracy. In the wake of the last dictatorship (1976-1983) and the Malvinas/Falklands war, a majority of Argentines adopted democratic faith. Until 1976, a majority of the people was ready for an end to the chaos—not necessarily in favor of the numerous coups, but certainly relieved by the military’s restoration of order. Political options were

¹⁰See also Chavez (2007).

seen as a dichotomy between chaos and order. After 1983, the people simply would not accept a military coup; Argentina's constitutional culture has adopted a stance that supporting interruptions to democracy is a grave mistake.

Second, hyperinflation. Argentina suffered through years of hyperinflation, reaching a peak of 300 percent in the single month of June 1989. Throughout the 1980s, 15 percent inflation per month was considered normal. Now, inflation of more than 1 percent per month is politically unacceptable and the people will demonstrate. In the words of Peruzzotti (2001), "hyperinflation left a deep cultural imprint on Argentine society, only comparable to the one previously left by state terrorism."¹¹ During the 2001/2002 crisis, there was no call for the government to inflate its way out of the problem.¹²

Third, rights. Since 1983, Argentina has seen a growing awareness of rights, and a gradual judicialization of protest, with a rise in the number of legal claims against the state. The people are increasingly claiming their rights, and judges are increasingly receptive. Argentina is still,

¹¹This theory is supported by the recent scandal that erupted when, under the presidency of the late Nestor Kirchner, "senior officials doctored economic statistics to mask an inflation rate of over 20 percent" ("The Passing of Kirchnerismo," *The Economist*, October 28, 2010). On the other hand, anecdotal sources claim that Argentina is again experiencing high inflation (close to 30 percent annually), if not technically hyperinflation; officially, Argentina's annual inflation rate is around 10 percent.

¹²See Blustein (2005) for a good and general overview of the 2001 economic crisis. See also Levitsky and Murillo (2008).

in the title of Carlos Nino's (2005) book, *Un pais al margen de la ley*.¹³ But there has been a process of collective learning. For example, in 2005, after a discotheque fire in Buenos Aires killed several dozen people, the mayor of Buenos Aires was sacked. Twenty years ago, nothing would have happened.

Of course, some experts disagree, and are not quite as sanguine about the learning process. One interviewee emphasized that, in Argentina, change usually leads to abuse of power, thus putting the country back into a vicious cycle. There is a weak judiciary, and the Congress typically legislates exceptions and privileges, rather than (negative) rights or general obligations. The future of democracy is healthy, but pessimism remains about the future of rule of law. Many interviewees are troubled by Argentina's hyperpresidentialism, weak institutions and weak rule of law. One interviewee indicated that Argentina's institutions are worse off now than in 1983.

In closing, the most important changes for constitutionalism and rule of law are cultural, not institutional. Three crises (Malvinas/dictatorship, hyperinflation and 2001-2002) have already led to cultural changes. But cultural change requires patience, and a number of interviewees reminded me of now-stable democracies that went through their own turmoil.¹⁴

¹³A country outside the law.

¹⁴As a side note, democratization has taken place in Spain only since 1975 and in Italy since the end of World War Two, in both cases after centuries of learning and brutal dictatorships. Special thanks to Antonio Cicioni for insights on Argentina's process of cultural and political learning.

3. *Preliminary conclusions.*

First, there was a general consensus on Argentina's political and constitutional micro-level culture. The interviews pointed to a general anomie in Argentine society: a scoff-law, atomistic society; individuals keen on seeing laws enforced for themselves but wholly uninterested in following inconvenient laws; lack of awareness of constitutional rights (except for positive "rights", *i.e.*, privileges); a desire for expediency over constitutional principle; a desire to be led by a strong president; a pragmatic disinterest in constitutional questions (as no link is seen between rule of law and economic growth, the latter being the only thing that matters, even if broken institutions today spell recession tomorrow); and a Rousseauian preference for majoritarianism over constitutionalism. I was surprised to learn of the huge support, throughout the 20th century, for the military coups and dictatorships in broad segments of the population.

Second, while intellectual elites talk about the constitution, the people ignore it and the political classes pay lip service to it but, in reality and practice, ignore it.

Third, Argentina has been undergoing a "cultural learning process" over the past 27 years at the macro-cultural level. There has been a radical shift away from the 1930-1983 mentality of sending in the troops to clean things up. The people will no longer consider the possibility of a coup, and are now dedicated to republican and democratic ideals. But rule of law is weak, and checks and balances essentially non-existent, especially under the current presidency. But a vast majority of Argentines does not care, as long as the economy is solid, or the president is seen to be taking steps to improve it

(whether via nationalization or taxing politically unpopular groups).

II. Quantitative Analysis.

The fear with qualitative analysis is that it may not be sufficiently unbiased or precise. While I was careful in my analysis, and did find dissenting views within the strong and convincing patterns, I prefer to be cautious and complement the detail of the qualitative with the precision of the quantitative. I thus turn to Hernández *et al.* (2005) and their *Encuesta de cultura constitucional, Argentina: una sociedad anómica*. As described above, this survey studies Argentina's constitutional culture in statistical detail, combining theory with the experience of Argentina's most famous survey shop.

1. *Carlos Nino and the concept of anomie.*

My readings and interviews invariably led me to a classic on Argentina's political, civic and constitutional culture, Carlos Nino's (1992) seminal *Un país al margen de la ley: estudio de la anomia como componente del subdesarrollo argentino* ("A Country at the Law's Margin: Studies in Anomie as Component of Argentina's Under-development").

Although Nino's title says it all, it is fitting to start with a brief review of his argument, which can be summarized by paraphrasing the subtitle of his book: Argentine society suffers from profound anomie, defined as an overall tendency to disrespect laws and norms. Nino points to numerous factors in Argentina's 20th century decline: redistributive demands, Peronism, poor institutional choices, a Spanish colonial legacy of weak rule of law, concentration of power. The list goes

on, and Nino deftly outlines Argentina's post-1853 history through a convincing prism of lawlessness. The institutional consequences are well known: hyper-presidentialism, weak legislative checks and balances, broad presidential emergency powers, weak federalism (especially in light of the federal/presidential power of intervention), a submissive judiciary, swings between populism and oligarchy, weak rule of law, etc. (Nino 1992, 72-86). So are the day-to-day consequences: high levels of corruption, rampant tax evasion, scant prosecution of crimes, high inflation (the result of irresponsible and unaccountable deficit spending), corporatism and its privileges, protectionism, political clientism and favoritism, etc. (Nino 1992, 28).

Nino ends with a plea: what Argentina needs is an important number of Kantians in its society, ready to do what they think is right, even if they know others won't do it. They must start cooperation, and the consequentialists will follow when there are gains from cooperation. Alas, as one interviewee lamented, with only 10 percent of a society composed of rebels, a society cannot function. Argentina has 30 percent.

2. *Hernández et al. survey Argentina's constitutional culture.*

In quantitative parallel with my own qualitative fieldwork, Hernández *et al.* (2005) recently published a study on Argentina's constitutional culture. Hernández *et al.* are motivated by worry about Argentina's anomie and seek better understanding as a first step towards suggesting changes for Argentina's institutional quality. As they explain it, their study is designed to find the attitudes, perceptions and values of the citizenry on Argentina's constitution and legality, in

an attempt better to understand Argentina's constitutional culture. To do so, they conduct a national survey consisting of 63 questions. Following established statistical methods, they interviewed a sample of 1,000 adult Argentines drawn from major urban populations, and conclude with four broad themes.

First, Argentines desire more respect for the law, less social inequality and more physical security (less petty crime). Only 17 percent indicate a desire for "a more democratic society." For a vast majority of Argentines, respect for law is associated not with democracy, but with security. There is a perception of widespread corruption and institutions enjoy low credibility; most Argentines point to a lack of cooperation, a general disrespect for the rules and norms necessary for harmonious social living, and a general anomie and fragmentation within society. 40 percent favor press restrictions, as necessary.

Second, there is wide support for democracy as a form of government. However, democracy is viewed in social, rather than political terms, *i.e.*, goodies redistributed by the state. Democracy is the best option, in spite of its numerous perceived problems: corruption, low credibility of political parties and Congress, and low levels of trust in democratic institutions (45 percent presidency, 41 percent media, 29 percent army, 20 percent judiciary, 14 percent Supreme Court, 14 percent executive branch, 14 percent police, 12 percent Congress, 11 percent unions and 4 percent trust in political parties). There is a desire for more honesty and accountability, and a general lament that there is too much corruption and fragmentation—but all coming from other Argentines, rather than the respondents themselves, who pride themselves on

their adherence to the law. Indeed, 71 percent *claim* they will bow to the majority will, and 68 percent *claim* laws should bind the individual, and that they prefer a weak leader who respects the law (20 percent admit that they prefer a strong leader, even if he or she breaks the law).

Third, Argentines are relatively knowledgeable of the country's institutions, with one strong exception. There is a general tendency to assign to the presidency many more functions than it has. Hernández *et al.* (2005, 73) explain that many identify the figure of the president as being responsible for "everything" having to do with governing, in the broadest sense of the term (decision, administration, and execution), and do not have a clear understanding of institutional separation of powers. However, there is awareness (and fairly strong disagreement) with presidential abuse of legislative functions.

Fourth, there is widespread perception that most Argentines live outside the law and routinely violate the constitution and national laws (although most Argentines believe they themselves follow the law, but most others do not). In addition to widespread anomie and illegality, there is a general sense that state figures are the greatest violators of the law (politicians, police, public employees and judges). Almost all Argentines believe the constitution is "important" or "very important," but they are widely ignorant of it (77 percent know nothing or little about it). There is a widespread perception that the constitution is not followed and there is insufficient protection from state abuses. The perception is that the most violated constitutional rights are the following, in order: (1) the right to work; (2) the right to learn; (3) the right to complain, petition or strike; (4) the right to free transit;

(5) the right to teach; (6) freedom of speech and freedom of the press; and finally, (7) commercial and property rights.

The general themes from Hernández *et al.* are thus the following:

1. Argentines value and support democracy, even if they are not satisfied with its functioning, and have a particular (redistributive) conception of it.
2. Rule of law is very weak, yet there is a high demand for it.
3. Anomie and corruption are widespread. The micro-foundations (anomie, weak social capital, weak trust, fragmentation, personalism, localism) are too weak to support rule of law at the macro level (separation of powers, laws above men, etc.).
4. The constitution is highly valued, yet there is weak knowledge of it. Conversely, there is high knowledge of institutions (with the exception of presidential powers) and weak respect for them.

Conclusion: Constitutional Culture, Parchment and Alternatives.

Several conclusions, some methodological, others substantive, can be drawn from these two parallel and complementary studies.

First, the quantitative corroborates the qualitative. Qualitative work, by its very nature is detailed, messy, rich and somewhat imprecise. Samples were not randomly selected, each interview ultimately reflects the interviewer's opinions, and the threat of confirmatory bias looms large over the results. Fortunately, the

quantitative work of Hernández *et al.*, in spite of its inherent flaws, matches the themes emerging from my qualitative fieldwork to an extent sufficient to believe the qualitative words, and not just the quantitative numbers.

Second, the qualitative completes the quantitative. For all of its disciplinary virtues, the quantitative work is ultimately thin and insufficient. Its very rigor imposes upon it a methodological straight-jacket: respondents are unable to elaborate on their answers, or give nuance or explanation; detail is impossible; learning over time is not captured; and the conflict between actual and expressed preferences casts some doubt upon results. For example, it seems odd that, in a society rife with anomie, a vast number of respondents claim to follow the law. Argentines overwhelmingly desire more rule of law: as stated above, 71 percent claim they will bow to the majority will, and 68 percent claim laws should bind individuals. Given Argentina's instability, one can conclude either that the sample used in Hernández *et al.* is woefully biased or the respondents' expressed preferences differ from their actual preferences. In light of the methodological pains taken by Hernández *et al.*, I favor the latter explanation. Somehow, all respondents are angels, and anomie can be pinned on their demonic brethren!

In sum, the quantitative and the qualitative complement each other. From this, four overall themes emerge. First, democracy is now solidly established, but a Rousseauian democracy more interested in voting and redistribution than in rule of law or deliberation. Second, rule of law is weak. Third, for all the bad news, Argentina's constitutional culture seems to be engaged in a learning process which is guiding the country, if slowly, in the right

direction. Finally, Argentina's constitution is (still) broken and out of touch with the underlying constitutional culture.

What, then, can we recommend and conclude? I see three conclusions.

1. In *The Theory of Moral Sentiments* (1997 [1759], VI.II.2, 59-60) Adam Smith reminds us of the consequences of our own conceit:

The man of system ... is apt to be very wise in his own conceit, and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong opposition which may oppose it: he seems to imagine that he can arrange the different members of a great society, with as much ease as the hand arranges the different pieces upon a chess board: he does not consider that the pieces upon the chess board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess board of human society, every single piece has as principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be, at all times, in the highest degree of disorder.

I thus make any recommendations with great caution, lest I myself become a Smithian "man of system." Argentina is troubled enough on its own, without my own hubris added to the miasma. Identifying difficulties is one thing; offering solutions that will do less harm than good is another entirely. The recommendations

in Hernández *et al.* (2005) are as disappointing as the analysis is instructive, as they essentially ignore political and constitutional culture completely, and call for institutional reform (ironically, after an insightful presentation of constitutional culture and its deficiencies for rule of law and constitutionalism).

2. I am skeptical about institutional reform. After all, Argentina's cultural misgivings about constitutionalism generally—to which is added the trauma of 150 years of fraud, violence, coup, and economic vicissitudes—do not bode well for a sudden respect for rule of law and limited government. Especially not if the change comes from above. Granted, the 1994 constitutional convention was more of a political pact than a real attempt to change the institutional environment; still, its failure is telling, as its attempt to mitigate presidential absolutism through a clumsy, hybrid, mixed-parliamentary system backfired and ended up strengthening the presidency. Change will have to come from below; it will have to emerge. If constitutionalism and rule of law are to blossom in Argentina, they will have to arrive, bottom-up, in the same way as respect for democracy, and the other elements of Argentina's collective learning process. If change happens, it will happen on the cultural level, not the institutional level.

3. Finally, things may not be as glum as they seem. To be sure, Argentina suffers from weak rule of law and ineffective institutions; democracy may have replaced stratocracy, but Argentina is not out of the woods yet, politically and economically. I anticipate another major crisis in the near future, as Argentina's administration sallies forth, hell for leather, with all the policies proscribed by prudence and the New Development Econo-

mists (or New Institutional Economics).¹⁵ Still, the learning process to which so many allude is encouraging. After all, change—especially in mental models and culture—does not happen overnight, and is not forced on a country with impunity. Argentina's successful embracing of democracy, even in the face of a crisis as bad as that of 2001, is in itself a major victory, and a major source of optimism.

Besides, might it not be possible to draw another sanguine parallel from other countries which are now stable, but suffered their share of constitutional turmoil? Italian democracy, after all, is a mere six decades old, and Spain's a generation. And what of France, whose move from the despotic *Ancien Régime* to modern constitutional democracy took place over 169 years of turmoil, bloodshed and 21 constitutions?

History has shown that Rousseauian culture can co-exist with successful constitutionalism, and that countries once written off as hopeless can eventually get the institutions right. Surely there is hope for Argentina in these parallels.

¹⁵See, *e.g.* Gwartney et al. (2009), Scully (1992, 1988), Rosenberg (1960), Jensen and Meckling (1979), North and Weingast (1989), Boettke and Coyne (2003), or Coyne and Leeson (2004).

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