Introduction

"The central conservative truth is that it is culture, not politics, that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself.”

Daniel Patrick Moynihan

Much has been written about Argentina’s democratization process, and hardly anyone doubts that this country has been progressively consolidating as a democratic regime since the presidential election of 1983 until today. However, there is no such agreement as far as the quality of the Argentine democracy is concerned. Particularly, what this paper intends to demonstrate is that Argentina’s democracy is failing in one of its most essential dimensions: the Rule of Law.

In Argentina, as in many other Latin American countries, there seems to be a gap between the law in paper and the law in practice, i.e., there is a clear divergence between formal institutions and the way in which democracy really works. As a matter of fact, this institutional failure has been recurrently acknowledged by most social scientists working on the region that have tended to describe the phenomenon as ‘anomie’ or as the ‘UnRule of Law’. However, despite being generally recognized, the problem has not been thoroughly studied. In effect, poor analyses on the causes, extent and distinctiveness of this problem have commonly resulted in inadequate solutions to it.

In view of this deficit, the present paper aims at exploring the origins and nature of the weakness of the Argentine Rule of Law in order to offer a better understanding of the problem that might contribute to the future improvement of the this nation’s democratic quality.

To facilitate the accomplishment of our main objective the paper will be structured into three sections: The first section will be especially dedicated to clarify the theoretical and epistemological framework from which the object of study will be approached. In this sense, it will review existing literature that will help to operationalise the main concepts on which this

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investigation is based; these are democracy, the Rule of Law, culture, formal institutions and informal institutions.

Following the methodological guidelines proposed in the first section, the second section will be divided into different parts: in the first one a description of the anomic phenomenon at society level will be presented; then the ineffectiveness of the legal system at state and governmental levels will be examined. Subsequently, we shall particularly concentrate on scrutinizing some prototypical informal institutions such as clientelism, patrimonialism and corruption in order to evaluate how their interconnection with formal institutions affects the quality and stability of Latin-American democracies.

With this regard, this paper will sustain as one of its main arguments that the ‘a-nomie’ generally attributed to these countries refers to a particular type of ‘nomos’ but not to every kind of norm. Fundamentally, what this paper will try to demonstrate is that even though in Latin-America there is a widespread disregard of formal institutions that destabilizes the Rule of Law endangering social order, there exists a parallel world of informal institutionalization that functions as an alternative safety net of social regulation. Therefore, evidence will be provided in order to explain why the relationship between democracy and informal institutions should not necessarily be conceived as a conflictive one, but rather as one in which different types of power coexist in a functional symbiosis of mutual interdependence.

Finally, the third section will offer an explanation of the UnRule of Law from an approach which departs from the traditional normative and state-centred accounts usually given to the problem. The hypothesis to be developed in this section argues that the fragility of the Rule of Law in Latin-America primarily derives from specific features of the region's civic culture. In other words, it sheds light on the fact that institutions alone do not shape social behaviour; but that most of their outcomes are mediated by the influence of a set of values, beliefs and attitudes shared by people belonging to these national communities. As a result, the weakness of the Rule of Law in the region will emerge as a cultural syndrome that needs to be tackled from two different angles: from above, reinforcing state regulatory capacities and trust in government; and from below, promoting a radical shift in values in order to implant a law-abiding culture.

Conceptual Framework

Taking into account the distinctiveness and complexity of the subject the present paper is dealing with, we consider it indispensable to dedicate this opening section firstly, to define the main concepts we will be working with; and secondly, to specify the theoretical approach we have selected to address our different research questions.

We believe that the way in which the problem of the UnRule of Law in Latin-America is disentangled, assessed and treated depends to a great extent on the way in which one operationalises the diverse variables that play a relevant role in its configuration and prospects. In other words, the magnitude and nature of this socio-political problem are affected by the epistemological perspective from where one sets the focus to analyse it. In fact, some traditional structuralist or too legally-oriented approaches would be probably unlikely to notice the existence of such particular phenomena as anomie and informal institutions which—as we will try to demonstrate—require a much more flexible theoretical approach capable of perceiving these peculiar events that are at the same time legal, sociological and political.

The Rule of Law as an essential pillar of Democracy

If one examines a great number of academic books and journals one will certainly find out that the discussion on the definition and relationships between the notions of democracy and Rule of Law has been repeatedly addressed. However, it seems that no matter how deeply or from
which methodological standpoint these concepts are considered, both keep revealing as controversial and disputed categories.

This controversy, we think, rests upon two main factors: The first one has to do with the vagueness of the concepts, that is to say, it is related to the difficulties researchers and scholars encounter in uniquely defining these terms. The second source of debate regarding the Rule of Law and democracy goes beyond the epistemological matter and dwells in the fact that dealing with these issues implies getting involved with the dialectic linking social reality and the world of ideals. In other words, the question brings about a discussion on values as well as a critical reflection on the proximities and distances that, along history and in different societies, have appeared between lexis and praxis, between the 'ideal political order' and the concrete and practical ones.

Bearing this in mind, we are interested in offering consistent definitions of democracy and the Rule of Law that will serve as ideal types with which to measure, compare and analyse the Argentine social reality. In this regard, it is important to notice that the characterisation of the Rule of Law we are proposing pretends to translate the basic features of the notions of Estado de Derecho or État de Droit which better reflect the continental constitutional tradition and which – although sharing a common nucleus with their Anglo-Saxon version – are not its exact equivalent.

To begin with, we can say that the core meaning of the Rule of Law is that power ought to be used only in ways allowed by the law. In essence, it entails the sovereignty of a hierarchical legal system, crowned in a Constitution or ‘Supreme Law’, which is positioned above not just normal citizens but also over the members of government. These latter not only have to rule by it but also must subject their own behaviour to it. The Rule of Law can also be characterised in terms of the attributes of state laws and the way in which they are applied. For an Estado de Derecho to exist the norms must have a general character, they must be universal, they cannot be applied retroactively, they must be stable, and should be written down and publicly promulgated.

Accordingly, when making reference to the Rule of Law we will be alluding to a set of formal rules that possess some basic features or principles, which Guillermo O'Donnell enumerates as follows: 1. All laws should be prospective, open and clear; 2. Laws should be relatively stable; 3. The making of particular laws must be guided by open, clear, and general rules; 4. The independence of the judiciary must be guaranteed; 5. The principles of natural justice must be observed (i.e. open and fair hearing and absence of bias); 6. The courts should have review powers to ensure conformity to the Rule of Law; 7. The courts should be easily accessible; and 8. The discretion of crime preventing agencies should not be allowed to pervert the law. (O'Donnell, 1999:317)

Thus defined, the Rule of Law –or more precisely, a democratic Rule of Law– can be analysed at different levels: First, in relation to the legal system, where we should examine the extent to which this system efficiently presides over every corner of the territory it is expected to cover, as well as evaluate the degree in which it reaches every social stratum. On the whole, this first dimension focuses on the relation between the legal system and society, i.e., it deals with the capacity of state laws to stabilise and regulate social relations.

The second level from where we can study the Rule of Law is in relation to the state and the government. Here we will concentrate in evaluating the extent to which the behaviour of elected authorities and other members of the public administration follows the formal legal rules. Particularly, we intend to shed light on how the system of checks and balances operates; that is, we are interested in observing the way in which those institutions in charge of the horizontal accountability manage –or not– to guarantee transparency and equality by preventing discretionary abuses of power at governmental level.

There is a third dimension which relates the Rule of Law with courts and their auxiliary institutions. In a context of equality under law, it sounds logical that there should be some kind of institutional guarantee in terms of enforcing the law in those specific situations in which it is not abided by. Hence, the judiciary must be independent and free of unjustified influences from
executive, legislative, and corporate powers. On the other hand, the judiciary should not be able
to abuse this autonomy for the pursuit of private interests. (O’Donnell, 2004:44; Saba, 2000)

Departing from this description, and in view of the title of this paper, we must now move to
explain why we consider the Rule of Law to be an essential component of a consolidated
democracy.

When scrutinising the history of democracy, one comes across the fact that it has
exhibited a multiplicity of configurations and thus generated an equivalent number of theoretical
explanations. For example, David Held, in his book *Models of Democracy* (1996) enumerates
several definitions that the idea of democracy adopted along history and distinguishes between
the classical and the contemporary models of democracy. In the first one he includes the Athenian
democracy; Rousseau’s and Machiavelli’s republican proposals; liberal democracy in its moment
of emergence; and direct democracy as proposed by Marxism. As regards the contemporary
versions of democracy, he refers to elitist visions such as the ones presented by Pareto, Max
Weber and Schumpeter, and also to the pluralist approaches.

Due to analytical purposes, and considering the extensive support that Dahl’s democratic
theory has achieved, we will introduce his renowned definition which sustains that a country is a
democracy—or a polyarchy—when it holds the following characteristics: elected officials; free and
fair elections; inclusive suffrage; the right to run for office; freedom of expression; alternative
sources of information; and associational autonomy. (Dahl, 1989:221) In other words, democracy
can be conceived as a set of institutions that allows the adult population to act as citizens by
selecting their leading governors in competitive and regularly scheduled elections.

We agree with this classification, nonetheless, we believe, as many other authors do, that
the above described are necessary but not sufficient conditions for the consolidation of
democracy. In fact, this paper sustains as one of its central arguments what scholars such as
have in different ways already endorsed: that democracy is not only a polycharchical regime, that is,
a regime where elections are institutionalised and which appears as ‘the only game in town’.
Democracy is also a particular form of relationship between state and citizens, and among
citizens themselves, under a specific legal system that, as well as political citizenship, supports
civil citizenship and a concrete network of accountability. This is achieved because the Rule of
Law not only endorses the rights attributed to a democratic regime, but it also involves the
 guarantee that no social actor—citizens, public agents or elected officials—will be above or outside
the law.

Consequently, the democratic character of a country should not be judged solely in
relation to its regime configuration but mostly giving attention to the way in which the state’s legal
dimension permeates and textures society. In view of this, the study of democracy should not be
reduced to the constitutional and legal structure but must also pay attention to the way in which
such formal institutional structure interrelates with the dynamics actually governing social and
power relations. Therefore, and to conclude, we will say that if the ‘Rule of Law dimension’ of a
state is not present or is not sufficiently embedded and effective over a national territory, all the
others dimensions and spheres of such democracy, its quality and possibilities of consolidation
are at risk or put into question.

A Neo-Institutionalist approach to Formal and Informal Rules of the Game

If something has become clear after the preceding reflections, it is that ‘institutions matter’.
They matter for their own sake, but they matter most because—as Douglass North well
expresses—they constitute ‘the rules of the game in a society or, more formally, are the humanly
devised constraints that shape human interaction. In consequence, they structure incentives in
human exchange, whether political, social, or economic.’ (North, 1990:1)
This definition represents the core of the theoretical perspective we have chosen to examine the distinctive nature of the Argentine democracy: the new-institutionalist approach. The choice is not capricious. The institutional framework in its new version will provide us with the necessary tools and flexibility to study not only the performance of formal democratic institutions but also to unveil and decode informal political phenomena. Originated around twenty-five years ago as a response to formalist and behaviouralist approaches, this school of thought comprises today different theoretical frameworks among which we find historical institutionalism, rational-choice institutionalism, and sociological or normative institutionalism.

Even though we cannot offer a profound description and comparison of these sub-paradigms it is worth making clear which of their premises and assumptions result as functional to our research objectives. To begin with, we must observe in the centre of each of these approaches rest the following questions: How do institutions influence the behaviour of individuals? And, therefore, how do these behaviours affect and determine social and political outcomes? In general terms, new-institutionalists provide two types of answers to these problems: one rationalist and another cultural or sociological.

According to the rationalist perspective institutions affect social conduct mainly by supplying actors with greater or lesser degrees of certainty about the actual and potential behaviour of other actors. More precisely, this approach holds that institutions provide information relevant to the behaviour of others, as well as enforcement mechanisms for contracts, punishments for defection, and charges for the non-accomplishment of agreements, which allow actors to make strategic decisions based upon instrumental cost-benefit calculations. Crucially, the point is that institutions affect individual behaviour by modifying the expectations an actor holds about the actions that others may probably adopt in reaction to—or concurrently with—his own action. (Hall and Taylor, 1996:7)

Without necessarily contradicting but rather complementing the previous stance, the sociological approach sustains that what guides individuals’ behaviour is not the maximization of benefits, but mainly their conceptions of ‘appropriateness’ of particular institutional arrangements. From this point of view, conformity to norms takes place because it appears as the ‘right thing to do’. In this sense, institutions can be said to reflect shared understandings of what actors recognise as legitimate, efficient, or correct, that is to say, institutions provide cognitive outlines for interpretation and action. (DiMaggio and Powell 1991; Scott 2001; March and Olsen, 1984)

Explicitly referring to this culturalist approach, Hall and Taylor (1996:8) explain that the ‘individual is seen as an entity deeply imbricated in a world of institutions, composed of symbols, scripts and routines, which provide the filters for interpretation, of both the situation and oneself, out of which a course of action is constructed. Not only do institutions provide strategically-useful information, they also affect the very identities, self-images and preferences of the actors.’ Hence, we observe that this particular paradigm promotes a type of institutional analysis with a special attention on cognitive, symbolic and cultural elements.

One final point that we are particularly interested in highlighting in view of our main hypotheses is that while the rational-choice institutionalism seems to be more suitable to justify norms’ original selection, the sociological and historical institutional approaches have proved to be more proficient and functional when one intends to explicate norm compliance and evaluate the way in which institutions configure actors’ preferences. (Stacey, 2003:867; Steinmo and Thelen, 1992)

Based on these premises, if we return to our focal concept and approach it from a neo-institutionalist perspective, we can define the Rule of Law as the supremacy of formal institutions in the political arena; that is, a kind of social configuration that in Weberian terms can be identified with the type of rational-legal legitimacy. (Weber, 1984) Now, even though a quick definition of what to understand by institutions has already been introduced, at this stage of the paper it seems crucial to go deeper into the clarification of the notions of formal and informal institutions and consider their potential interrelations.
As it has already been stated, North (1990:3) defines institutions as any form of constraint that human beings create to shape human interaction. In other words, he understands them as sets of rules or guiding principles which govern the interaction of social actors and which both prescribe and proscribe certain types of behaviour. What is worth noticing about this characterisation is that it is broad enough to include not just formally established rules but also those informal conventions or shared codes of conduct which tacitly rule social relations.

So, what distinguishes formal institutions from their informal counterparts? The main difference between formal and informal institutions is that formal institutions are explicitly codified, i.e. they are rules and procedures that exist ‘on paper’ and thus respond to a positivist conception of norms. This ‘written’ nature is intimately related to the fact that formal institutions are created, communicated, and sanctioned through official channels. For this reason, when speaking about formal institutions we will be principally alluding to state-enforced rules such as constitutions, laws, statutes, decrees, commercial codes and other governmental regulations. (Helmke and Levitsky, 2004:727)

Traditionally, most studies on democracy have tended to focus on this formal realm of state institutions while taking for granted actors’ behaviours were mainly determined by legal constraints. This biased approach may have resulted as helpful when analysing those established democracies where the Rule of Law governs political activity and an extensive ethic of constitutionalism supports written norms. (Bratton, 2007:97) However, this partial view could hardly work effectively in studies on unconsolidated democracies, where legal limits on state power are generally weak and where the Rule of Law is the exception rather than the rule.

For such reasons, this paper is especially interested in laying emphasis on the political relevance of informal institutions. In this regard, we agree with Helmke and Levitsky (2004:276) in that high-quality institutional analysis demands scrupulous consideration of both formal and informal rules due to the fact that social behaviour responds to a combination of both formal and informal incentives. In fact, as we will try to demonstrate in the next chapter, in many cases these informal motivations and constrains are more efficient and have a wider scope than the formal ones.

Precisely because of their importance, we believe informal institutions should not be described simply via negationis as those which are ‘not-formal’. Informal institutions have their own intrinsic nature, features and dynamics. In this sense, and coinciding once again with Helmke and Levitsky (2004:275) but also bearing in mind that their description is based upon previous works of scholars such as Brinks (2004), North (1990), O’Donnell (1996) and Lauth (2000), we will define informal institutions as socially shared rules, generally not-written, that are originated, communicated and enforced outside the channels of the state. In other terms, they constitute behavioural regularities that respond to non-state established norms the contravention of which produces some kind of external sanction.

By external sanction we understand a variety of non-legal enforcement devices that can range from purely symbolic and subtle mechanisms of exclusion to even clear acts of physical violence. To be more graphic, informal sanctions can involve proceedings such as hearsay, boycotting, aggressive criticism, ostracism, social rejection as well as verbal or physical threats. It is worth observing that these enforcement methods are not necessarily against the law, what permits us to draw attention to the fact that informality should –by no means– be taken as a synonym of illegality.

What, then, does informality consist of? While some authors associate informal institutions with vague notions such us traditions, customs and taboos, others are more explicit and offer clear examples of those specific para-constitutional practices that can be exposed as prototypes of informal institutions. Some classic examples of these non-state institutions are clientelism, deep-rooted codes of corruption, kinship-based patterns of authority, patrimonial political relationships, caciquismo, and patronage power arrangements. Despite these being the most popular cases, it is worth noticing that not all informal institutions possess illicit connotations. Actually, some popular mechanisms of conflict solving such as the Mexican ‘concertaciones’;
together with particular ethnic groups codes of behaviour, as well as informal markets' conventions regulating goods exchange should also be considered as informal institutions. (Lauth, 2000; Riggs, 1988)

When reviewing the list of examples we have presented one should become aware of three more relevant distinctions that will help us to narrow the focus of analysis: To begin with, informal institutions are not be confused with weak formal institutions. In this regard, it is interesting to bring in O'Donnell’s argument in which he distinguishes clientelism from cases of abuses of power at executive level. In his view, both cases depart from formal rules, but while the former constitutes an informal institution, the latter should be best recognised as non-institutional behaviour. (O’Donnell, 1996)

A second distinction that can be deduced from the previous inventory is that informal institutions should not be mixed up with informal organisations. Even though scholars frequently incorporate organisations into their characterisation of institutions it is methodologically important to go back to North’s definition and distinguish the political actors -or players- from the rules of the game they play. (North, 1990) Just as formal organisations -such as political parties, trade unions or universities- can be discriminated from the formal rules that structure their functioning; in the same way informal organisations —neighbourhood popular assemblies, clans, street markets, mafias, or religious sects— need to be distinguished from informal institutions. Nonetheless, due to the fact that informal rules are generally implanted within these organisations, we will certainly need to take into consideration the latter while developing our analysis. (Helmke and Levitsky, 2004:727)

A third distinction that emerges as vital for the corroboration of one of our main hypotheses is the one that differentiates informal institutions from the broader notion of culture. As it is common knowledge, the concept of culture has been defined in so many ways that it has become a category that by embracing everything explains nothing. For this reason, and in view of our research objectives, we will understand culture in its subjective way; this is as a set of values, beliefs and attitudes shared by people in a society. Parallel to this definition of culture we will characterise informal institutions in terms of shared expectations. Such differentiation has the merit to allow us to think in potential relationships between culture and informal institutions, i.e., it will permit us to evaluate whether shared social values support or debilitate certain informal institutions and practices. (Helmke and Levitsky, 2004:278)

Apart from dealing with the relationship between culture and informal institutions this paper is mainly interested in analysing the way in which informal institutions affect formal ones. In this regard, we will argue that despite the fact that —at first sight— formality and informality convey an idea of opposition and incompatibility, a sharper analysis reveals that their relationship is quite more complex. Thus, while it is true that the conflict exists, the way in which these two types of institutions interact in the political arena and the outcomes these interactions generate, allow authors such as Lauth (2000:25) and Helmke and Levitsky (2004) to conceive other alternative views on the relationship. In their opinion, the relationship between formal and informal institutions can adopt complementary, accommodating, competing and even substituting formats.

To conclude this first theoretical chapter, let us sustain Burkhard’s (2006:266) contention that ‘formality and informality do not oppose each in a linear manner in which informality tries to overcome a pre-existing formality, only in turn to be challenged by the return of formal rules which set out to limit the extent of the newly arisen informality, and so on. Although formality and informality lend themselves to such a rigid polarised description, they do depend on each other more than such a clear-cut linearity suggests.’

It is this particular dialectic relation between the democratic Rule of Law and widespread informal phenomena that we will try to put in evidence in the following chapter.
Anybody who ventured to examine the clinical history of Argentina’s democracy would be surprised by the long-term and spasmodic nature of her most perilous disease: the anaemia suffered by one of its vital organs: the Rule of Law.

One can trace this pathology back to 1930, the year of the first coup d’état which heralded the beginning of a series of military coups that filled the national annals with the images of an inexorable substitution of legitimate presidents by de facto governments. The aberrations perpetrated by these dictatorial regimes as far as human rights and constitutional liberties are concerned are public knowledge; particularly those brutal actions committed by the authoritarian state between 1976 and 1983 that involved tortures, killings and a toll of more than ten thousand desaparecidos.

Without disregarding this obscure phase of the Argentine history, this paper will delimit its temporal focus of analysis to the period starting with the presidential elections of 1983. Since that date, the pendulum dynamics between democracy and authoritarianism that had characterised the previous decades seemed to finally come to an end, giving place to a new process of democratic transition and institutional modernisation. What we are interested in highlighting is that despite the multiple crises the country has had to undergo since the restitution of democracy—let us remember, among others, the military revolt of ‘La Tablada’; the hyperinflation of the late 1980s; and not long ago, the unprecedented political crisis that led to the renunciation of President De la Rúa in December 2001 which was followed by a deep economic depression—there have been no real threats of authoritarian regression, which, to some extent, reflects the strength of Argentina’s democratic institutions.

In fact, the institutions that have proved their robustness during these last twenty-four years are those that constitute the ‘polyarchical package’, i.e., those that have guaranteed free electoral processes, that have facilitated political alternation in government, and that have secured the corresponding political rights of citizens qua voters. This means that when considering Argentina’s democracy at its regime level the principles of polyarchy appear to have finally become ‘the only game in town’. Yet, as we have elucidated in the previous chapter, we are of the opinion that a consolidated democracy entails something more than free and regular elections.

In this sense, it does not matter how stabilised Argentina’s democracy looks after all these years of endurance, we believe it still remains stalled in the ‘Rule of Law dimension’ and this inevitably raises the question of its true quality. As a matter of fact, in Argentina as in many other Latin American countries, the legal system has not been able to impose its empire over the national territory and such incapacity can be assessed by the dramatic size of the gap existent between the pays légal and the pays reel.

To recap our original metaphor we can now sustain that the anaemic condition of the Argentine democratic Rule of Law can be diagnosed by acknowledging the clear distance existent between the ways society and the state are expected to work according to the law –formal (de

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2 Extract from the Argentine National Poem that reflects the spirit of the typical “Gaucho” of the Pampas. It reads: “The law is like the rain, it can never be even, the one that has to bear it grumbles, but the issue is simple: the law is like the knife, it does not offend the one who handles it.”
jure) institutions— and the way in which they actually work in practice – informal (de facto) institutions.

Therefore, the aim of this second chapter is to unveil this gap by describing the way in which the country really functions and the dynamics that actually direct its institutional performance. For this, we will stick to the analytical levels specified in chapter one; we will at first examine the effectiveness of the legal system at society level and secondly observe its functioning at state and governmental levels. Subsequently, we will especially concentrate on scrutinising some prototypical informal institutions in order to evaluate how their interconnection with formal institutions affects the quality and stability of the Argentine democracy.

Social Anomie: A gap between social goals and legal means

The problem of the UnRule of Law is usually focused from above, that is, it is commonly approached from a state point of view, and thus, primarily reveals the failures of governments in the regulation of social relations and the guaranteeing of a certain set of rights to the people. However, there is another dimension of the relationship between society and the legal state that is being disregarded and this is the one that conceives citizens as duty holders, i.e., as bearers of obligations in virtue of their quality as constituents of a social contract.

As the core of social contract theory maintains, the main duty of citizens is to abide by the law which emanates from the state and the major reason for this submission lies in the need to avoid a situation of ‘war of all against all’. (Hobbes, 1964) Actually, such obedience is legitimated by the general agreement on the need to establish social order by means of the foundation of a political authority. On these grounds, state laws are supposed to impose limits on individuals, to guide their conduct and to provide a universal framework of certainty by which social relations are meant to be safely and peacefully conducted.

Paradoxically, Argentine citizens seem never to have heard about such a thing as a contractual commitment, neither do they seem to be able to recognise the multiple benefits of abiding by the law. As a matter of fact, one does not need to be a social scientist to identify the problem, mostly every foreigner visiting the country can offer a diagnosis of it simply because it is everywhere perceptible: the Argentine society suffers a profound state of anomie.

The notion of anomie can adopt different connotations which go from ideas of anarchy and normative vacuums to the concepts of alienation and delinquency. Emile Durkheim, for example, thought of it in terms of deregulation. In the state of anomie, he wrote, ‘the limits are unknown between the possible and the impossible, what is just and what is unjust, legitimate claims and hopes and those which are immoderate. Consequently there is no restraint upon aspirations.’ (Durkheim, 1951:253) In other words, for this author anomie is a condition characterised by the absence of social norms, or more precisely, a situation of social disintegration that is the product of a lack of social solidarity which, at the same time, is originated in a normative deficit.

Robert Merton (1938) offers a more refined conceptualisation of anomie that we think better describes the anomalous attitude that Argentine people have towards the legal system. In his view, anomie is not about the absence of norms but rather a situation in which institutional norms are present but do not have the sufficient regulatory power. What is important to underline about his theory is that he believes the cause of this normative breakdown rests in an instrumental disparity between cultural values and formal institutions. Once again, there is a gap or imbalance between social goals and institutionalised means: laws exist on paper but in practice do not adequately preside over social behaviour. (Orrú, 1989)

Consequently, the Argentine society is anomic not because there is a vacuum in terms of formal institutions (in fact, the legal system is generally described as suffering from hyperinflation) but because citizens do not feel compelled to conform to state regulations. In order to make it more graphic, let us give some examples of the numerous situations in which one can identify this deviant culture of lawlessness that governs Latin-American’s behaviour:
A first place where law transgression can be detected is in the streets; here, neither drivers nor pedestrians appear to observe the minimum traffic rules; crossing, parking and speed limits are normally contravened; besides, if fines are imposed nobody feels obliged to pay them. Also in the street one can visualise that there is a dramatic neglect towards the preservation of public spaces which –ironically– are never regarded as a possession of the whole community. In fact, most playgrounds, beaches, toilets and means of transport that are of public use are generally damaged and in unclean conditions. Related to this, we find that regulations regarding the protection of the environment, smoking restrictions, food quality standards, and workers’ safety rules are similarly constantly infringed. (Nino, 1992; Isuani, 2000)

In addition to these everyday and somehow visible illegal behaviours, we should take notice of some widespread clandestine activities that also take place at society level and that range from tax evasion, violation of copyrights and falsification of legal documents, to prostitution and drug dealing. In addition, in the last years the cases of criminality involving robbery, kidnapping and homicides have reached unparalleled levels making ‘security’ become a main issue of the public agenda.

On the whole, it is clear that the Rule of Law does not have solid roots at civil society level; the question is now to determine the reasons of such an extended unlawful behaviour. One of the causes we have already made reference to and on which we will concentrate in the third chapter is related to cultural explanations; the other is directly related to the weakness and partiality of the state at the moment to enforce legality by imposing penalties and rewards.

**Politics beyond the confines of the Law**

When in the first section we defined the Rule of Law, we advocated that its essential attribute consists of the submission of every power to the empire of the law, i.e. it presupposes the sovereignty of a Constitution by which authorities should govern but which should simultaneously delimit their scope of action. As well as this, we introduced a dimension of analysis in which we emphasised the importance of the judiciary in relation to law enforcement at both social and governmental levels.

Now, as we have demonstrated in the preceding section, it seems evident that the Argentinean state proves itself incompetent at imposing the law on the people. Following Skocpol (1985:9) we could well attribute the general situation of anomie and non-compliance to a deficit in state capacities. Actually, we can argue that this disrespect for the Rule of Law is to a significant extent the outcome of specific institutional characteristics of the police and the courts.

The first point to make is that the judiciary is not independent of the executive branch of power, and in general terms, there is a high level of political intrusion in the functioning of the courts. Moreover, this particular division of government has been broadly discredited for its venality, high costs of operation and inefficiency. It is deficient in many respects: material resources are scarce; judicial procedures are extremely formalistic; judges are inadequately trained; and too few magistrates usually administer too many cases which make their resolution take long periods of time. As a matter of fact, this lack of promptness generally leads to the ceasing of many cases for which nobody is ever penalised or found responsible. (Pinheiro, 1998:9)

If the judiciary appears dysfunctional and politicised, the police system is even more infamous. Rather than upholding the law, guaranteeing social order and symbolising physical protection, the police force constitutes one of the most corrupt organs of government. In effect, policemen are publicly known to be implicated in a wide range of criminal activities such as bribery, drug trafficking, kidaps and illegal uses of violence. For these reasons, the majority of citizens -but particularly those belonging to poor sectors- tend to perceive them as oppressive enemies that are not to be trusted.
All these institutional deficits become part of a vicious circle in which people do not feel constrained to keep to the law because punishments are not effective, while, at the same time, those who are victims of illegal behaviours do not denounce the crimes they experience because they know such action will not have any positive outcome. Therefore, we can say that the ineffectiveness of the judiciary and the police affects society’s trust in state justice and this, in turn, contributes to the weakness of the whole system that is in charge of enforcing the Rule of Law.

Besides, how could citizens feel persuaded to abide by the law if the very members of government –including judges and bureaucrats– visibly trump formal institutions to adjust them to their personal and corporate interests? Undoubtedly, the central failure of the Argentine Rule of Law lies in the fact that the powerful usually exempt themselves from following state rules. However, the problem is not only that they disrespect constitutional principles and formal norms; they also tend to make a discretionary and asymmetrical use of the legal system in order to benefit allies and chastise opponents, or —as so many cases demonstrate— to absolve the wealthy and condemn the underprivileged.

This speaks clearly of another Achilles’ heel of the Argentine democracy: the conspicuous deficiencies in the checks and balances between the executive, legislative and judicial divisions of government. As a matter of fact, the equilibrium of powers among branches has evidently shifted to favour the executive and this has given birth to a particular type of regime which Guillermo O’Donnell characterises as ‘delegative democracy’.

This type of institutional configuration rests on the absence of a working system of horizontal accountability, that is, a system capable of controlling and establishing limits on the executive’s behaviour. In essence, the main feature of this kind of under-institutionalised democracy is a caesarean President that, once elected, conceives himself as empowered to govern the country as he judges appropriate. (O’Donnell 1994) For a long time the presidency of Carlos Menem constituted a paradigmatic example of this executive hegemony; yet, today we can say that the both the current and previous Presidents, Cristina and Néstor Kirchner, both represent this model of ‘authority beyond the law’ even better than their predecessor in the 1990s.

The three of them have made an extraordinary abuse of their legislative prerogative by promulgating an excessive number of ‘decrees of necessity and emergency’. Such violation of the constitutional division of power led some analyst to fear the metamorphosis of the Estado de Derecho into an Estado de Decreto; this means, they were alarmed by the ongoing movement from a state run by law to a state governed by decree. As a matter of fact, a research carried out by the Centre for the Application of Public Policies (CEPPA - La Nación, 03-07-06) proves that even when Menem and Néstor Kirchner had a clear majoritarian control over the two chambers of Congress, they both have preferred to rule by decree.

To make this anomaly clearer, the statistics provided by this study show that while in his ten years of administration Carlos Menem dictated a total of 545 decrees of this type, the average monthly number of decrees emitted by President Néstor Kirchner surpassed Menem’s average. However, what makes the matter worse is the fact that these decrees never respond to the ‘exceptional circumstances’ which the National Constitution establishes for their emission. On top of this, a qualitative analysis of the decrees reveals that the majority of them are related to discretionary distribution (and even auto-concession) of public resources, and most of the times imply modifications on the national budget, what constitutionally constitutes an exclusive -if not the main- prerogative of the Congress.

On the whole, we can argue that the weakness of state agencies in charge of guarantying governmental compliance to the law and controlling the legal validity of the actions of the Executive allows us to describe Argentina not as a country dominated by a type of rational-legal legitimacy –equivalent to the Rule of Law- but rather as one governed by patrimonial, corrupted and clientelistic types of informal institutions.
Informal Institutions: a safety net of para-constitutional regulations

The widespread neglect of formal institutions by the Argentine society and government that we have just described could lead anybody to think of the country as being ruled by a Hobbesian state of nature, that is to say, a bellum omnium contra omnes in which the life of individuals is ‘solitary, poor, nasty, brutish, and short’ due to the incapacity of the Leviathan to enforce law and order. (Hobbes, 1964:186)

However, this paper intends to demonstrate that the ‘a-nomie’ generally attributed to the Argentine nation refers –as we have illustrated in the previous sections- to a particular type of ‘nomos’ but not to every kind of norm. Fundamentally, what we are trying to prove is that even though there is a generalised disregard of formal institutions that undermines the Rule of Law jeopardising social order, there is a parallel world of informal institutionalisation that functions as a safety net of social regulation. These informal institutions operate with a microphysical logic decentralising the system of sanctions and rewards in multiple networks of power that despite not being able to claim their legitimate existence by referring to state-sanctioned law, appear as socially accepted and usually respected.

Having introduced this hypothesis, we should now move to examine the real rules of the game by which the Argentineans ‘play politics’. In effect, as we have clarified within the theoretical framework, we are aware of the existence of a wide range of informal institutions and organisations that prevail in most developing countries and that range from parochial religious associations and clandestine markets of baby-selling, to organised mafias of ‘cuida-coches’.

Nevertheless, in view of the nature of this paper we shall restrict our analysis to some typical cases of political informal institutions in order to subsequently evaluate how their interaction with formal institutions affects the dynamics and performance of the Argentine democracy.

To begin with, we shall argue that the earlier description of the customary unlawful behaviour of presidents in their unhindered use of power for personal profits should be visualised as the tip of a larger iceberg of particularistic informal institutions, which comprises a pervasive network of corruption, clientelism, and patrimonialism.

As far as corruption is concerned it is important not to conceive it in its common meaning, that is, merely as isolated cases of abuse of public positions for private business that usually entail large amounts of money. From our theoretical perspective corruption needs to be understood as an institutionalised widespread network of concealed exchanges between social, economic and political elites that involves a permanent interaction between the legal and the illegal channels of the public and economic systems.

This particular network operates as a hinge between governmental officials and the private sector by facilitating for the latter the illegitimate access to public resources and providing the former with material or symbolic benefits. In effect, these types of exchanges are usually carried out by means of briberies, extortion, nepotism and embezzlement; (Brinkerhoff, 2002:15) mechanisms that are generally used to avoid market competition, guarantee illicit transactions and provide political shelter to transgressors.

Accordingly, the way in which corruption takes place in Argentina is as an informal regulatory framework that enables a particular type of transaction by courses not contemplated within the legal institutional order. In other words, it represents an alternative configuration of

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3 This is a particularly interesting and common phenomenon in Argentina: thousands of men distributed all over the main cities of the country look after cars parked in streets and avenues in order to get money from the car owners. Such activity started decades ago as a survival strategy of men and children from the lower social sectors who offered the service to ‘keep an eye’ on cars in exchange of a couple of pence. However, today, in times in which spaces for parking are limited, public garages are expensive, and car stealing is common, these men have achieved such a level of power and organization that they can say to constitute a real mafia: those drivers willing to park in a public –free of charge- area who dare refuse to pay the price that they impose (which is no longer some pence) take the risk to suffer from physical aggressions or to have their cars seriously damaged. On the other hand, the paradox is that this informal institution seems to be at present one of the most inventive and attractive mechanisms of social distribution.
incentives and constraints that coexists in a constant competition with the formal institutional structure and that erodes the legal – republican – boundaries between the public and the private.

Actually, it is the illegal nature of corruption which distinguishes it from another established scheme of mediation of interests and exercise of political influence. We are now making allusion to what is commonly identified as the archetype of informal institutions: clientelism. Despite being usually associated with corruption, patron-client relations are not to be viewed as illicit but mainly as loosely anchored in state law.

In general terms, clientelism can be characterised as the distribution of resources by political office holders or party candidates in exchange for political support, principally –but not exclusively – in the form of votes. (Auyero, 2000:57) However, what we are interested in highlighting with regard to clientelism is its normative essence, i.e., the fact that it constitutes a specific set of unwritten rules that determine not only the way in which the exchange between patrons and clients is to be done, but also functions as a symbolic framework of reference that structures actors’ expectations and obligations.

To make this more graphic, let us briefly describe how a typical clientelistic network operates in Argentina. The first relevant point to make is that the actors playing the role of clients belong to the extended social sector that lives in slums located in peripheral zones surrounding the main urban centres of the country. It is precisely this situation of poverty and deprivation that originates and legitimates the informal relation of submission to political benefactors. These ‘punteros’ (brokers representing different political parties who preside over clearly delimited territories) provide slum-dwellers with goods ranging from money, food and medicine, to short trips to the seaside or tickets for football games. In exchange they expect their own ‘protégés’ to attend party rallies, vote in primaries, and guarantee their votes in final elections. Certainly, during electoral times the quantity and quality of goods to distribute shows a conspicuous increase and, as a result, people know that it is in this particular political conjuncture that they can elevate the level of demand.

What matters to our argument is that even though there is no formal regulation to organise this process, i.e., despite the absence of explicit sanctions for those not abiding by the system’s norms, clientelism appears as an internalised code of loyalty between patron and client that indicates to every actor how to behave. This code defines who gets what, why and when; it sets the costs and benefits of every action and omission; but perhaps the most remarkable thing is that it shapes the conscience collective in such a way that any individual behaviour contradicting the informal system of norms is usually punished by the community as a whole.

Patrimonialism is another widespread informal institution that presents virtually the same normative dynamics as clientelistic politics. Instead of speaking of patron-client relations, in this case we can refer to some kind of lord-vassal linkages. As a matter of fact, it was Max Weber (1947) who first introduced the label patrimonialism to portray a particular model of public administration that –in his opinion- was the absolute negation of the ideal-type of rational-legal domination. The latter rational bureaucratic system of public management is based upon a set of attributes that include a hierarchical structure of authority, written records, remunerated full-time employees, and political neutrality. Yet, its essential characteristic rests in the fact that it rules and is ruled by a highly respected set of formal institutions that every official is obliged to follow.

In opposition to this ideal-type, patrimonialism can be described as a para-constitutional system of norms and practices in which what counts are not the formal rules but the personal bond between the leader and the employees. As Brinkerhoff (2002) explains, under a pure patrimonial system bureaucrats are responsible only to the top political leader, which means that in general terms recruits are free to choose how to accomplish their administrative responsibilities.

In this organisation there is no attachment to formal law or procedures and the real rules that guide the system’s operation are mostly informal or off the record. Moreover, while in the model of rational administration bureaucrats are not supposed to charge for their services, in this patrimonial system public jobs are esteemed as a source of extra incomes for private purposes. In this sense, patrimonial administration ‘is closely associated with clientelistic politics, for
administrative jobs are among the choicest plums a boss or patron can offer his protégés. Such jobs are more valuable than the equivalent posts in a state subject to the Rule of Law and that have carefully circumscribed job descriptions.' (Brinkerhoff, 2002:6-7)

Informal institutions as a double-edged sword pointing to Democracy

In the previous section we tried to put in evidence the way in which different types of informal institutions developed in the Argentine political arena as a corollary of a clear incapacity of the state to enforce the Rule of Law. Above all, we intended to illustrate how these particular para-constitutional institutions operate as a substitute regulation system providing the country with basic standards of social integration and order.

Expanding on what we have said thus far, we can now sustain that while the spreading out of informality is commonly assessed as an aggravation of anomie, we consider that such expansion eventually contributes to reduce 'the gap' and assuage the anaemia the Argentine democracy suffers from. As a matter of fact, we believe that the latent functions of informal institutions are many more than those superficially evident.

Among others we should emphasise their capacity to operate as alternative channels of political mediation and social demand. In addition, we should consider them as instances of problem-solving. As Auyero well explains, in contexts of severe material poverty and socio-cultural deprivation, these informal institutions operate as problem-solving systems that institute a network of material and symbolic resource distribution. They function ‘as a source of goods and services, a safety net protecting against the risks of everyday life, one of the few remaining paths of social mobility, and a solidaristic community that stands in opposition to the hardship and exclusion visited on those living in poor and destitute areas.’ (Auyero, 2000:58)

From this viewpoint, informal institutions need to be valued highly as significant social bonds that despite operating through illegal means are aimed at legitimate social ends. However, on the other hand, we acknowledge that the relationship between informal institutions and democracy should not only be considered from a normative perspective. In fact, we believe it necessary to judge institutions such as clientelism, corruption and patrimonialism in terms of their effect on democratic stability, representation, fairness and transparency.

In this sense, while the democratic Rule of Law supposes equality of everyone under the law and the publicity of governmental activities, informal institutions tend to operate in clandestine paths and undermine the fair and equal treatment of citizens. Furthermore, as we have shown, clientelistic and patrimonial relationships take place between actors of unequal power and status; but what is worth noticing is that these domination relations are based upon traditional or charismatic fundaments rather than on open democratic consensus and legitimate representation.

As far as corruption is concerned, studies on the subject have underlined the many ways in which this informal institution weakens the popular trust in democratic authorities, as well as diminishing the administrative efficiency of the government in its capacity to implement public policies and respond to the requirements of the citizenship. Linz and Stepan (1996) are some of the authors who have explicitly analysed the negative impact of corruption in the legitimacy and stability of the political system. Their argument is that in countries like Argentina, this loss of legitimacy originated in social perceptions of corruption goes to the detriment of institutional quality and erodes the entire process of democratic consolidation.

To conclude we can sustain in agreement with Brinkerhoff (2002:9) and Lauth (2004) that it is generally common to perceive the relationship between para-constitutional politics and democracy as a conflictive one, i.e., as one in which the former seems to be hostile to the latter. In other words, it is easier to see the damage caused by informal institutions than it is to detect their positive features, but the fact remains that no democratic system could work effectively without some degree of institutional dualism, some balance among informal practices and formal
ones. The clue lies in finding an equilibrium in which formal and informal types of power could effectively coexist in a functional symbiosis of mutual support and interdependence.

**The UnRule of Law as a Cultural Syndrome**

In the preceding chapter we have approached the problem of the UnRule of Law predominantly from the perspective of state capacities. Essentially, we have described how as a consequence of the weakness of the state in enforcing legality, Argentines have a tendency to behave unlawfully and to conduct their relations through clandestine channels and by means of informal institutional networks.

Even though we endorse the above justification we still believe that a potential – but unlikely – future enhancement of the state’s capacities would not automatically lead to the emergence of the Rule of Law. The reason for this suspicion finds its explanation in our last hypothesis: *the fragility of the Rule of Law in Argentina primarily derives from specific features of the national political culture*. In this sense, we agree with Godson (2000) in that law enforcement is only one wheel of the two-wheeled coach that runs a democratic Rule of Law. The other wheel is a ‘culture of lawfulness’, which implies that the prevailing culture or *ethos* in a society should be sympathetic to legality.

Therefore, if above we contended that ‘*institutions matter*’, we must now claim that ‘*culture matters too*’. Institutions alone do not shape social behaviour; most of their outcomes are mediated by the influence of a set of values, beliefs and attitudes shared by people belonging to a particular community. It is precisely this cultural influence which we deem principally explicates the lawless status of the Argentine nation. As a matter of fact, the country’s formal institutions are just as republican, liberal and modern as those operating in most Western democracies; yet, the way in which democracy works in Argentina departs to a great extent from the constitutional ideals that effectively rule most of those developed countries.

Certainly, we are not the first ones to identify the impact that culture can have on institutional performance. Alexis de Tocqueville (2000), for example, explicated that what made the North American political system work efficiently was a culture congenial to democracy. Conversely, when referring to South Americans, he argued that despite having lands as prosperous and large as the ones in the north, the particular customs, moral and intellectual temperament of people in the South prevented them from establishing democratic regimes. Similarly, Max Weber, in his masterpiece *The Protestant Ethic and the Spirit of Capitalism* (1958) brought in the thesis that Protestantism promoted the rise of modern industrial capitalism and thus forced the development of rational-legal political structures. In his view, Protestantism—in opposition to the catholic culture that prevails in Argentina—defines and sanctions an ethic of everyday behaviour conducive to economic and political modernisation.

In this same line of argument, we should consider the works of Talcott Parsons (1937), Seymour Lipset (1986), Robert Putnam (1993), and Lawrence Harrison and Samuel Huntington (2000). In general terms, what these authors sustain is that there are some distinctive features in any national culture that affect the performance of formal institutions, hence affecting the quality of democracy. In their opinion, some of the cultural characteristics that contribute to a nation’s success or failure are related to the levels of social cooperation, the motivations to defend mutual interests, the feeling of being part of a community, the firmness of a shared ethical system, as well as to aspects of the exercising of authority, and attitudes towards labour, progress and savings.

Above all, perhaps the most significant cultural feature influencing the extent of law-abidingness in a society is the degree of interpersonal trustworthiness; namely, that element, which Robert Putnam (1993) defines as *social capital*, and that consists of a culture of trust and tolerance that tends to generate networks of voluntary association. From this point of view *trust* needs to be seen as an integral part of a cultural pattern that stimulates individuals’ political engagement increasing the inclusiveness, transparency and strength of the institutional system.
Bearing this in mind, we can now sustain that the weakness of the Argentine democracy is instigated by the fact that compatriots do not identify themselves as parts of a national common project. This is related to a recurrent shared attitude that we described earlier when referring to social anomie: in Argentina, there is no concern for what is public; to say it bluntly, nobody cares for matters that do not bear upon his personal interests. In effect, we believe the origin of this disengagement rests precisely in the low levels of trust existent among fellow citizens and between citizens and the political elite.

With this regard, we find that Argentineans possess a peculiar individualistic culture that leads to the prevalence of micro-solidarities and the disdain for norms of universalistic nature. In fact, the World Values Survey (2006) directed by Ronald Inglehart portrays Argentina as one of the countries with a lower proportion of people willing to cooperate and associate for collective aims. Adding to this, this study reveals a generalised preference for particularism in opposition to universalism, for diffusiveness in opposition to specificity, and for elitism in opposition to egalitarianism. Furthermore, it sheds light on the fact that Argentineans are fond of energetic and charismatic types of political leaderships. Undoubtedly, all these abnormal predilections are irreconcilable with a culture in which the Rule of Law is highly valued.

From a less systematic perspective –but arriving at the same conclusions- Marcos Aguinis (2000) also offers a detailed portrait of the standard traits of the Argentine culture. Not by chance, the main characteristics mentioned in his book are the frivolous indifference to rules and the usual predisposition citizens have to celebrate transgressions and worship easy wealth. Actually, the attitude of the prototype Argentine towards the law is so unique that the words that define such cultural features are often unintelligible to non-Argentines: for instance, we find the ‘chanta’ (crook or scoundrel), who is allergic to effort and indifferent to legality; the ‘vivo’ (opportunist), whose survival depends on the credulity of others and who is always taking clandestine shortcuts to achieve his aims; and the classic ‘ñoqui’, which is a label given to employees of the public administration who occupy a position thanks to nepotism or patrimonial decisions –not on merit basis- and who receive a monthly salary in spite of the fact that they do not perform any concrete work or accomplish any productive function.

Does all the above described imply –as the first part of epigraph above suggests- that there is no way out of lawlessness and informality; that the Argentine society is condemned to failure; and that the anaemia from which its democracy suffers is congenital and hence untreatable? Personally, we are of the opinion that ‘politics can change a culture’ and save democracy from falling into the gap between written law and social practices. Unfortunately, it is far beyond the scope and possibilities of this paper to explore the specific kind of policies that need to be designed in order to promote an urgent cultural change. Still, we do want to make a final point with reference to policy-making and the relationship between culture and the UnRule of Law in Argentina.

Principally because of an erroneous diagnosis of the problem we have been dealing with, policy makers in Argentina have generally responded to the ineffectiveness of formal institutions by taking three kinds of actions: The first solution to law weakness has not been law strengthening but the incorporation of a complementary set of also breakable norms on the same subject. The second answer to inoperative laws has been the replacement of these particular norms for substitute norms with the same aim; this could prove functional if there were some kind of conscientious analysis of the causes of such ineffectiveness which would guarantee that the new legislation is covering the deficits of the preceding one. The third type of action taken by policy-makers who acknowledge the malfunction of the national legal system has been to follow the recommendations of many International Organisations such as the World Bank or the International Monetary Fund and ‘transplant’ institutional packages, which have already been successfully implemented in other countries.

As we alleged at the very beginning of this paper, a wrong understanding of the problem necessarily results in wrong solutions to it. Paradoxically, none of the actions that we have just described has taken into consideration the cultural roots of the anomic phenomenon in Argentina.
As a matter of fact, they are basically normative reactions to a problem which is not normative, but political and cultural. They all approach the problem imposing changes ‘from above’ when the visible syndromes should be tackled ‘from below’ since they are actually entrenched in the national culture. To conclude with this last chapter, another thing that policy-makers seem not to realise is that foreign institutional recipes should never be exported; they should only be imported once the local socio-economic, educational and political conditions for their effective functioning are actually given.

Conclusion

This paper has intended to elucidate a particular problem affecting the Argentine and many Latin-American democracies: the failure of its Rule of Law. With this aim, the starting point of this investigation was to explain that Argentina appears to have finally consolidated as a democratic regime. This achievement can be verified in two ways: firstly, by recognizing that free and regular elections have been taking place in the last twenty-four years; secondly, by scrutinizing the Constitution and regulations that are theoretically meant to rule this country.

Even though it significantly increased the complexity of the analysis, the originality of this research has rested precisely in deviating from an exclusively regime-based approach in order to demonstrate how the Argentine democracy really works; i.e. in order to examine not solely its formal existence but mainly its actual scope and quality. Fundamentally, the main objectives of this paper have been to shed light on the gap between the law in paper and law in practice, and to reveal the real ‘rules of the game’ by which Argentineans play politics and conduct their social relations.

In this sense, numerous examples have been provided with the intention to show how the Argentine state proves itself incapable of effectively enforcing the law at social and governmental levels. Moreover, it has been suggested that this failure is to a great extent originated in specific deficiencies of the police and the courts, as well as in the malfunctioning of the system of checks and balances that is supposed to guarantee horizontal controls between the executive, legislative and judicial branches of government.

While most studies on this subject have tended to associate this weakness of the Rule of Law with a situation of social deregulation or anomie, this paper has sustained as one of its main arguments that the inoperativeness of formal state-sanctioned institutions does not necessarily conduct to a Hobbesian state of nature. In effect, this normative vacuum is compensated by the emergence of a set of informal institutions that functions as a substitute regulatory and symbolic framework of reference which structures social behaviour establishing basic standards of cohesion and order.

However, if on one hand these para-constitutional norms contribute to democratic stability by operating as legitimate networks of political mediation and social cooperation; on the other, a deeper analysis of their modus operandi confirms that these micro-spheres of power are intrinsically undemocratic. Actually, as it has been explained, institutions like clientelism, patronimialism and corruption violate in various ways fundamental principles of democracy such as fairness, transparency, equality and freedom. Besides, one particular point that is worth highlighting is that when acting under these informal rules individuals renounce to their quality of citizens to take up the roles of clients or servants. This implies that the very notion of popular government behind the idea of democracy is put into question. Certainly, informal regulations do not emanate from public debate and free consensus, neither are they enacted by democratically elected representatives; but they are usually imposed by charismatic leaders whose authority derives from conditions of social deprivation and low levels of civic education.

Bearing this in mind, one important step policy-makers should take in order to improve Argentina’s democratic quality is to start by eradicating the situations of poverty and social vulnerability in which informality is more easily cultivated and where it appears as more deeply
embedded. Another set of policies should be oriented to securing the transparency of the formal channels of interests’ mediation as well as to the restoration of the system of horizontal accountability within government. With this regard, the restitution of the autonomy of the judiciary is probably the ideal point of departure of a wider institutional reform indispensable for guaranteeing the effectiveness of the legal system.

A further point this paper expects to have made clear is that these reforms should not be based –as many have believed- on modifications in existing legislation or on the multiplication of formal institutions. In fact, the weakness of the Argentine Rule of Law is not normative but political: it is the state that fails to enforce the democratic rules already existing on paper. Additionally, beneath this political deficit the problem presents also another foundation which is frequently overlooked: Argentineans lack an internalized culture of legality.

In view of this hypothesis, the last section of this paper has tried to elucidate the linkage between some particular features of the Argentine culture and the widespread inclination of the people from this country to evade the law. Among others values, the absence of a shared sense of community, the low levels of mutual trust, and a predisposition to privilege private interest over public objectives have been emphasized.

Therefore, after demonstrating that the Argentine unlawfulness derives from multiple sources, we have concluded by suggesting that the building of the Rule of Law is a challenge to be tackled from two different angles: from above, strengthening state regulatory capacities; and from below, promoting a radical shift in social values. Fundamentally, we firmly uphold that the change in cultural orientations is something that should not be expected to take place spontaneously, but a task that requires strategically designed policies in which the ideological state apparatus has a vital role to play.

But above all this, we regret to say that probably none of these changes will be implemented until the national political elite acknowledge the benefits of reinforcing the Rule of Law. Thus far, they seem to have found more incentives in preserving the actual conditions of informality and institutional weakness than in promoting law-abidingness. Actually, nothing has contributed more to undermine the Argentine democratic legitimacy that the popular awareness of the fact that those responsible for creating and applying the laws are precisely the first ones in breaking them.

On the whole, we can conclude by sustaining that the establishment of the Rule of Law not only demands political will, state force and a culture of lawfulness; it also requires that legality is accompanied by legitimacy. Without all these elements, the gap between law and practices will never be filled and the Argentine democracy will remain searching for its missing link.
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