

THIRD PART CONCLUSIONS AND PROPOSALS

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I. CONCLUSIONS

Data from this study produced some good news and some bad news. On the positive side is the high appreciation that the majority of the people polled have of the Constitution, and that respect for the law emerged as the Argentine people's most sought after goal. Enforcement of and respect for the laws are also seen as the most crucial factor for strengthening democracy, along with honest, transparent, accountable governments.

Yet, the study also revealed some brutally honest and disturbing news, including a poor knowledge of the Constitution and great disrespect for the law. Eighty-six percent (86%) of the population polled thinks that Argentina disregards the law most of the time. Particularly serious is the fact that politicians, in the first place, (74%), followed by the police (56%), public officials (49%) and judges (41%) are perceived as the primary violators of the law. Another unpleasant surprise is that 88% of respondents polled consider Argentines disobedient lawbreakers—even though the majority do not rate themselves as such.

In short, the opinion held among most Argentines about our society is that of a social and institutional order where neither the citizens nor the authorities obey and observe the law, and where the government neither imposes nor ensures its enforcement. . This perception extends to the national Constitution and is linked to the prevailing low level of trust in government institutions. It is the picture of an *anomic* society.

These data highlight the great paradox that describes today's Argentine society. On the one hand, there is an enormous demand for legality, great respect for the Constitution and a demand for leaders capable of obeying legislation. But on the other hand, there is a society who knows little about their Constitution and obeys it even less, who self-label themselves for the most part as transgressors, and who, instead of assuming the responsibility for their own transgressions, prefer to pass the buck on to "others." This is a society in which 41% think that at times it is necessary to disobey the law, where 38% claim that if they think they are right they are willing to go against the law, and 23% are not willing to obey a decision that they do not like, albeit made by the majority.

There is also a demand for equality, no small matter, inasmuch as the credibility of the institutions depends largely on this demand being met. In this sense, the poll brings to light another worrisome piece of information, i.w., lack of trust in institutions, especially Congress and the political parties.

Particularly serious is the high level of mistrust of the Judiciary, which grows accordingly from lower-level judges on up to the national Supreme Court. The Judiciary is a cornerstone in any republican system. However, two decades after the birth of democracy, long delays on the part of the Judiciary, difficulties in accessing it, its deteriorating infrastructure, its lack of independence, and suspicions of corruption hanging

over some of its members, have increased citizen mistrust of this authority and, at the same time, stirred up a strong impression of impunity.

We find the knowledge of institutional functions to be at an acceptable level, albeit not without a certain amount of confusion, especially regarding the duties of Congress and of the nation's president, to the detriment of the former and the benefit of the latter. That is a reflection of Argentine hyper-presidentialism, which has systematically upset the balance of powers provided for in the national Constitution, even during these two most recent decades of democratic governments.

One of the most important assets achieved over the last 22 years of democratic life in Argentina is that the Argentine people value and support democracy. Data from the poll leave no doubt about that, and are consistent with many other studies. At the same time, levels of discontent run high with regard to how well our democracy is working. Compared to the rest of Latin America, and according to data from the Latinobarometer 2004, Argentina registers one of the highest levels of support for democracy (72%), yet simultaneously, little satisfaction with its performance. There is a large percentage of "unsatisfied democrats" (34%), but this does not denote a majority in support of military governments or other types of non-democratic systems.

Unfortunately, this support for democracy has not been accompanied by a progressive consolidation of a democratic republican regime and the rule of law. Conversely, we have traveled in the other direction. Democracy's chief attributes—citizens' control of government power, balance of powers, transparency and the openly public performance of government affairs—continue to be weak or non-existent.

We have likewise failed to galvanize the rule of law, that is "...the subordination of all powers to the rule of law, from the lowest level to the very highest" (Norberto Bobbio). On the contrary, in light of the poll data, we concede a contradiction between laws and beliefs. The citizenry does not believe in the lawmakers (representatives in congress) or in those who implement the laws (rulers) or in those who interpret and enforce them (the Judiciary); and at times it is unclear as to precisely who is responsible for each of these functions.

Hence, it is imperative to bridge today's gap separating society from its Constitution and its laws. Surmounting juridical and political obstacles alone, however, is not enough to accomplish this. It is also necessary to make headway in a society's juridical culture, understood, in the words of Diego Valadés, as "...the combination of ideas, convictions, perceptions, traditions and behaviors predominant in a community at a certain time in connection with the organization, functioning, effects and evolution of institutions."

The Argentine people are aware that a minimal sense of responsibility exists with regard to the treatment of public property and spaces, basic rules for community living, mutual respect and uniformity about what is right and what is wrong. As a result, there is no sense of unity and responsibility among the population.

Neither is there a solid defense of freedom of the press, a *sine qua non* for any democratic and republican system because, even though 53% are against government control of the press, a very high 40% is in favor.

Attitudes towards the death penalty, the arrest without a warrant, or vigilanteism are equally disturbing inasmuch as they indicate a conformity with more repressive positions amounting to a curtailment in individual rights and guarantees. These results should be analyzed in the context of a society that admits to breaking the rules and having little

respect for the law, a society that does not trust public institutions and perceives that government and others as lawbreakers.

Regarding interpersonal trust, a key issue in the generation of social capital, the Argentine people tend to place great trust in groups in their immediate vicinity (the community in the area where they live) and very little in the institutions and social actors in organized society. On the local level (place of residence), six out of every ten Argentines (60%) say they have confidence in people. This degree of confidence and the perception of comradeship increases the higher a person's age, education and ranking on the social ladder; conversely, the youngest members of the population are those who have least confidence in others.

Regrettably, and just as is the case in other countries, better schooling, better income, or belonging to younger age groups are not always factors that offset social practices or conceptions about legality hostile to building a more tolerant, plural, open-society environment. On many topics, it is the young people who show they know the least and adhere to or observe the law or the Constitution the least.

This state of anomy calls for urgent reforms aimed at developing and firmly establishing a true "culture of legality" in the Argentine society. However, we must be aware that we cannot advance down the road of legal reforms without duly observing said reforms. To do so would not only frustrate the population all the more, but also risk exacerbating already low levels of credibility and legitimacy of the main institutions.

We face, then, a deeply complex problem with no simple solutions over short term. Quite the opposite; its solution requires a long-term integral, ongoing strategy. This is a problem that cannot be solved by a ministry, or a body of inspectors, or a better-prepared, more highly motivated police force, or by improving any partial issue aspect of the many that comprise this phenomenon.

We must realize that the responsibility is a shared one, and that it is not just up to the rulers—on whose shoulders obviously much of the responsibility falls—, but also to the citizens. We must be frank enough and courageous enough to accept this diagnosis and admit that, as the poll confirms, we Argentines are habitual violators of the laws in force; we are very competent at quickly discovering how to violate them and how to dodge punishment. We do not pay taxes as we should, we do not obey traffic regulations, we are always ready to slip a bribe, we look for exemptions of all kinds and have a very weak sense of community, etcetera. Hence, the anomic or illegal antics of Argentine society fan out into an astonishingly vast web.

We are a country known worldwide for admiring a goal scored "by the hand of God," for a Congress that applauds and celebrates the declaration of default, for poor enforcement of law and order, for extremely dangerous driving on our roads, for relentless corruption scandals and high levels of impunity. It is not a question of exaggerating the significance of isolated deeds and symbols that can surely be explained in their own context. But shall not we progress very far either if we do not admit that these deeds are manifestations of a recurrent pattern (a "dumb" anomy, in the words of Carlos S. Nino), which definitely explains why we are a society with one of the lowest performances in the concert of nations. Summing up, the anomy that burdens us is not just anti-democratic, it is also a leading cause of our underdevelopment.

Three angles can be used to tackle this problem: diagnosis, analysis of the consequences and an analysis of what can be done. The diagnosis has been covered in the

study presented here, and opens the door for analyzing the consequences and implications, and the formulation of proposals. Below is a preliminary list of some proposals, more along the lines of initiating a dialogue than suggesting a systematic approach. We the authors would be more than satisfied to at least manage to promote public analysis and debate of this critical aspect of Argentine reality.

II. PROPOSALS

From everything analyzed thus far, the logical main objective would be to achieve full enforcement of the national Constitution and the laws, to ensure that our republican institutions function properly in accordance with the constitutional and democratic rule of law.

This implies full enforcement of citizens' rights, obligations and guarantees, and an adequate system of checks and balances among authorities.

In this sense, and without wishing to list too many items, we recommend the following actions:

- 1) Strengthen the actions of the national Congress and other legislative bodies for an effective performance of their legislative duties and political control of executive agencies. This implies doing away with emergency legislation and the abusive practices of emergency and necessity decrees and delegated legislation.
- 2) Guarantee effective independence of judges vis-à-vis political authorities and other pressure or interest groups, and introduce a thorough amendment of judicial procedures.
- 3) Promote in-depth civic, democratic education at every level of education. No one can ignore the advice of the great Austrian lawyer Hans Kelsen, when he said that the first obligation of democracy was education for it. This implies revising study plans at different levels, both in the National Education Ministry as well as in the provinces and municipalities.
- 4) Set up a commission in each chamber of Congress, as well as in the provincial legislatures and deliberating councils, to ensure an adequate tracking and control of compliance with approved laws.
- 5) Ensure that the right to access information is effectively enforced, so that the government is not only more transparent, but also that the society participates more fully and is better informed.
- 6) Move forward with political reform, on issues dealing with the electoral system, democratization, modernization, and the strengthening of political parties, focusing particularly on political financing. Promote the formation and training of political party leaders in inter-disciplinary studies, including political science, constitutional law, public provincial law, municipal law, administrative law, Argentine history, and constitutional history. There should be strict adherence to Article 38 of the national Constitution which provides for the assignment of funds to political parties for this purpose.

7) Ensure full enforcement of freedom of the Press and freedom of expression. Ensure support from the media, public and private, so that they conduct a pedagogical campaign emphasizing the importance of the Constitution, the law and the institutions.

8) Set up, in the historic city of Santa Fe, the seat of our first Constitutional Congress, a national Constitution Center for the conservation, dissemination, and study of our Constitution. A noted example of such a move is the Center of the United States Constitution recently inaugurated in Philadelphia.

9) Demand knowledge of the Constitution on examinations for people competing for jobs in public office, as well as for granting the Argentine citizenship.

10) Modify the study plans of law faculties to include the teaching of provincial public law and municipal law, because a greater in-depth knowledge of provincial Constitutions and municipal charters is essential.