

The Reforms of the Nineties in Argentina

By Rodolfo Diaz

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Introduction

Introduction

THE STARTING POINT

What was changed in the nineties in Argentina was not the "Peronist" state built in the forties nor the postwar ISI economy; instead, what was reformed was the state apparatus built by the military since the sixties (untouched during the democratic transition) and its related economic organization of "assisted capitalism", which was characterized by an active state that used inflation as a tax to extract income from society, and public contracts and state-owned firms as instruments to redistribute that income to certain actors in the private sector.

The process of reforms of the nineties in Argentina consisted of a series of "specific solutions" to a series of "specific problems"; the reforms have been "choices" made to solve those problems, and the starting point was the array of problems that was necessary to be solved at the end of the eighties.

That starting point was not a "chaotic" aggregation of problems; on the contrary, it was a "non-chaotic" aggregation of problems. It was an aggregation of problems structured as a "function" of the economic organization that the Argentine democracy inherited from the military dictatorship. That economic organization was a specific type of capitalism that in this study will be referred to as "assisted capitalism"¹, which in Argentina at the end of the eighties used to be named "prebendary capitalism".² Here, a brief review about

¹ See GERCHUNOFF, Pablo and VICENS, Mario: Gasto Público, Recursos Públicos y Financiamiento en una Economía en crisis. El caso Argentino, Instituto Di Tella (Mimeo); Buenos Aires, 1989.

² The word "prebendary" comes from the latin "prebenda" that means the right to perceive a rent, associated to certain institutional position or privilege.

that "variety" of capitalism³ and its collapse will be presented.

1. The State: the "Bureaucratic Authoritarian Model"

Douglass North wrote that the performance of a society in general, and of an economy in particular, is determined by certain structural characteristics, amongst which the structure of the political and economic organizations are the most important. That is why "models of state should be an explicit part of any analysis of secular changes".⁴ The models of state in Argentina will be referred to in relation to the reform process.

As regards the reforms in Argentina, the conventional wisdom is that in the nineties, the state that was changed was the old "populist" state that the "Peronists" had built in the forties and fifties. That is wrong. The "Peronist" state had disappeared long before 1989, when the process of reforms began. The model of state that was in place in Argentina at that time was the one built by the military regimes since 1966. Military dictatorships had ruled Argentina for a very long period of time: seventeen years -from 1966 to 1983- with a relative interruption⁵ of thirty-five months in the seventies. Those military governments changed the model of "National-Popular State"⁶ and its ISI-type economic organization into a new model: the "Bureaucratic-Authoritarian

³ See: HALL, Peter and SOSKICE, David: An Introduction to Varieties of Capitalism in "Varieties of Capitalism: The Institutional Foundations of Comparative Advantages"; Forthcoming. These authors analyze "legitimate" varieties of capitalism; assisted capitalism could be considered a "bastard" one.

⁴ NORTH, Douglass: A Neoclassical Theory of State; in "Structure and Change in Economic History", Norton, New York (1981) pg. 20.

⁵ Relative parenthesis because since 1973 to 1976 democracy was not consolidated and military formal and informal influence remained significant.

⁶ In the tradition of the Latin American Political Science, the "old populist state" is called "Estado Nacional y Popular": National-Popular State.

State"⁷ and its own economic organization, Assisted Capitalism.

The first democratic government elected after the dictatorship performed well regarding political aspects of democratic transition, liberties and rule of law; the trial and conviction of the Military Juntas that ruled the country from 1976 to 1983 was the paramount example of this, and Argentinians are very proud of it. But the basic structures of the economy remained untouched; most of the economic institutions of the Bureaucratic-Authoritarian State "survived" democratization until the crisis of 1989. So, what was changed in Argentina by the reforms of the nineties were the "surviving" institutional structures of the Bureaucratic-Authoritarian State and its economic organization: "Assisted Capitalism".

To better analyze this starting point, the argument will compare some institutional features of the "National-Popular" model of state with the "Bureaucratic Authoritarian" model. This comparison will have recourse to five legal characteristics based on classic instruments of Administrative and Constitutional Law: i) the juridical "nature" of the state's economic units; ii) the "principle of rationality" that underlies that nature; iii) the "legal status" of the administrators of those economic units; iv) the legal provisions that govern the collection and expenditure of the money of those economic units; and v) the type of legal instrument that linked the state and the economy, defining the juridical and political nature of their relationship.

Table I.1 summarizes the comparison.

⁷ See O'DONELL, Guillermo: Bureaucratic Authoritarianism; University of California Press (1988)

Table I.1
Institutional Comparison Between Models of State

INSTITUTIONS	NATIONAL-POPULAR	BUREAUCRATIC-AUTHORITARIAN
Economic Unit	Public agencies	State-owned Firms
Rationality	Public interest	Efficiency
Administrators	Public officials	Managers
Money	Collection and Expenditure: Public	Collection: Public Expenditure: Private
Legal Nexus	Regulations	Contracts

These two models of state are very different from each other. Each difference is important in itself; but taken all together, they define two absolutely different institutional structures.

a) In the old National-Popular State (NPS) model, most of the state's economic units were public agencies, which belonged to the organizational structure of the public administration; and its principle of rationality was "public interest".

In the Bureaucratic-Authoritarian (BAS) model, most of the state's economic units were state-owned firms (SOFs), which were part of the public sector but not of the organizational structure of the public administration; and its principle of rationality was "efficiency".

b) In the NPS model, people in charge of the agencies were public officials, with public servants salaries and subject to the hierarchical order of the public administration. In the BAS model, people in charge of the state-owned firms were managers, with "market" salaries and not subjected to the public administration hierarchy.

c) In the NPS model, the agencies' money agencies was "public budget money": with certain privileges for its collection (e.g., special enforceability, as special judicial procedures, privileges of states' credits, "solve et repete" principle) and certain restrictions for its expenditure (e.g., special accountability, as budgetary appropriation, public tenders, previous accountable and legal controls).

In the BAS model, the money of the state-owned firms had a special status within the public budget: it was collected as public money (with special enforceability) but expended as private money (with no special accountability).

d) The main instrument of the NPS model for intervening in the economy were "regulations": basically, laws and decrees. The nature of these instruments defined the relationship between the state and the economy as "public"; regulations as norms are general and compulsory; they have "imperium", and within "Merkl's Pyramid"⁸ laws and decrees are immediately below the Constitution; they define a "government" relationship between "the administration" and "the administrated" that is a "statutory" relationship. Laws and decrees have to be obeyed and cannot be "settled" through negotiations.

On the other hand, the most important legal nexus of the BAS with the economy were "contracts"; not only public works contracts, but procurement, service, supply, consulting and—very important in the late eighties—financing contracts. The nature of this nexus defined the relationship between the state and the economy as "private": contracts as norms are "particular" (not general), binding (not compulsory), without

"imperium", and within Merkl's Pyramid are below laws and regulations; they define a "business" relationship between "parties" that is a "contractual relationship". This change from "statutory" to "contractual relationship" is very well illustrated by the "Industrial Promotion Regime": for a private firm to be considered "within" the regime, it was not enough to comply with predetermined requisites established by law or a decision made by the administration—each "promoted" firm signed a contract with the state⁹. Contracts can be fulfilled or not, and can always be "settled" or—as it was the case in the eighties in Argentina—can be "indexed", "adjusted", or rewritten through negotiations, through legal regulations or through judicial decisions. Some mechanisms of this type were applied to private contracts as well, but most of them—and all this "legal technology"—were developed to be applied to the state.¹⁰

In 1989, many institutions of the economic organization of the bureaucratic-authoritarian model were in place: i) Most, if not all, economic units of the state were SOFs, within the public sector but outside the public administration. ii) They were leaded by managers, out of the "line" of the public administration hierarchy and with salaries significantly above the level of public officials. iii) The money of these SOFs was collected with certain privileges of special enforceability, as public money; but it was expended as private money, with no special requirements of account-

⁸ MERKL, Adolf: *Teoría General del Derecho Administrativo*; Ed. Revista de Derecho Privado; Madrid (1935); Segunda Sección, No. 11; especially pgs. 227/229

⁹ See Laws 20,560, 21,636 and complementary regulations; also: PTN, Dictámenes 147:4

¹⁰ For instance: "Hecho del Príncipe", "Gastos Improductivos", "Teoría de los Actos Propios", etc.

ability. iv) A dense web of contracts¹¹ linked the state with the economy as parties in a "private" relationship; those contracts were not always fulfilled, were frequently "settled", and always "indexed", "adjusted" and rewritten.

In other Latin American political economies (certain forms of "late" ISI), inflation, subsidies and "special relationships" between the state and private firms have been described.¹² But the systemic function of inflation over a very long period of time, the contractualization of the state's relations with adjustment mechanisms, and the high level of transfers of public money to the private sector, were structural features of the economic organization that was named "assisted capitalism".

This "variety" of capitalism had had a very poor economic performance since the early seventies and collapsed at the end of the eighties. That performance and this collapse posed a series of problems that needed to be solved; the point of departure for the process of reforms in Argentina in the nineties was precisely that conjunction of problems.

2. The Economy: the "Assisted Capitalism"

Douglass North wrote that "Two general types of explanation for the state exist: a contract theory and a predatory or exploitation theory"¹³. The contract theory considers the state the maximizer of social wealth; its functions are to set an institutional framework that makes cooperation possible, to establish efficient property rights, and to be the third party in the enforcement of contracts. The exploitation

¹¹ Named by an Alfonsín's Minister of Public Works as "la Patria Contratista".

¹² Jeff Frieden called my attention to this fact.

¹³ NORTH, Douglass: Op. Cit. pg. 21

theory considers the state an agency of a group or class; its functions are to extract income from society in the interest of that group, to establish inefficient property rights (favoring the dominant group) and to be the third party enforcer. The criterion that differentiates these explanations is the distribution of the "coercion potential", which is a characteristic of state. The contract theory assumes an equal and consensus-based distribution of the coercion potential; in other words, it assumes a democratic state. The exploitation theory, on the other hand, assumes an unequal and imposed distribution of the coercion potential; it therefore assumes an authoritarian state.

The economic organization that was in place in Argentina in 1989 was—substantially—the one built by the military regimes from 1966 to 1983: Assisted Capitalism. It fits to the "exploitation theory" presented by Douglass North fairly well.

The Argentine economy in place until 1989 has been described as a mixed economy, highly dependent on the public sector¹⁴. The typical Latin American "mixed" economy has two components: the public sector (constituted by the state-owned firms) and the private sector (the privately-owned firms). But the Argentine "mixed" economy had three: the public sector, the private sector and the so-called assisted sector¹⁵, constituted by an array of private firms that were institutionally subsidized by the state. The interplay between the state owned firms and these assisted private firms was the

¹⁴ GERCHUNOFF, Pablo and VICENS, Mario: Gasto Público, Recursos Públicos y Financiamiento en una Economía en Crisis. El caso Argentino. Instituto Di Tella (Mimeo); Buenos Aires (1989); pg. 8.

¹⁵ GERCHUNOFF and VICENS, Op.Cit.; pg. 9

core of the assisted capitalism effective in Argentina in 1989.

a) The Public Sector

In 1983 (the year in which democracy was recovered) in Argentina there were 353 state-owned firms and the state had minority participation in 201.¹⁶ In 1989 (when the process of reforms began) there were 236 state-owned firms (70 national, 4 bi-national and 162 provincial or local).¹⁷

Table I.2 presents those numbers.

Table I.2
State Owned Firms

1983
SOFs: 353
Minority Participation: 201
1989
SOFs: 236
70 National
4 Bi-national
162 Provincial and Local

The SOFs covered a very wide variety of economic activities: i) Exploitation of Natural Resources (Oil, Gas, Energy); ii) Public Services (Water, Electricity, Railroads, Airlines); iii) Infrastructure (Roads, Ports); iv) Industries (Steel, Plastics, Chemicals, Textiles, Food); v) Banking (State Owned Commercial Banks).

The SOFs were institutionally oriented to purchase inputs, capital goods or services in protected markets (i.e. "buy national" regimes, overpaid public contracts), paying prices above the market level, and to sell their products—goods and services—collecting prices below the equilibrium

¹⁶ DIAZ, Rodolfo: El Ajuste Estructural como Cambio de Modelo; MTSS, (Mimeo); Buenos Aires (1992); pg. 7.

level (i.e. subsidized prices of the public services). The rationale of this orientation was "to guarantee current output, employment and total investment to levels higher than those of the market"¹⁸

These policies resulted in a deficit for the public sector and in a transfer of income to the private sector. Over time, the participation of the SOFs in the Public Expenditure had increased: from 11.9% in 1970 to 23.9% in 1989.¹⁹

Table I.3 shows data of every 5 years over a period of 20 years.

Table I.3
Participation of SOFs in Public Expenditures

Year	% PE
1970	11.9
1975	16.9
1980	15.9
1985	22.9
1989	23.9

In the decade 1980/1989, the Treasury transferred 22.4 billion dollars to the 10 major SOFs,; these SOFs only collected enough for 63% of their expenditures; they had a deficit of 37%.²⁰

¹⁷ Data: El Gasto Público en la Argentina 1960-1988. Ed. Fundación de Investigaciones Económicas Latinoamericanas; Buenos Aires (1990).

¹⁸ GERCHUNOFF, P. and VICENS, M.: Op.Cit., pg. 7.

¹⁹ DIAZ, Rodolfo and ZULETA PUCEIRO, Enrique: Reform of the State and Infrastructure Policies Today. Paper presented to the VI Argentine-American Forum; Airlie Center, Maryland, (1993), pg. 17.

²⁰ Ibid

b) The Assisted Sector

The Assisted Sector was composed of private firms that were institutionally subsidized by the state. These subsidies were not to compensate emergencies or misfortunes; those firms were institutionally entitled to be subsidized, because they were encompassed in certain specific statuses defined by law or by contracts with the state. That entitlement included not only the right to postpone or to be exempted from tax payments, but also the right "to benefit from inflation". For instance, the General Attorney's Office at that time considered that the contract of industrial promotion entitled investors to postpone tax payments; that the Administration ought to respect the acquired rights of the investor; that those acquired rights included "the right to benefit from inflation, a right which had been expressly recognized by the law".²¹

The general types of subsidies were: i) Tax Subsidies (industrial promotion, tax exemptions); ii) Price Subsidies (Public services provided by SOFs at below the cost prices) and iii) Credits Subsidies (State Owned Banks Loans at interest rates below inflation). Special types of subsidies were: iv) Protected Public procurement or contracting (as "Buy National") and v) Debt Pardons (Unpaid taxes or Social Security dues-"Blanqueos"). All these subsidies produced substantial transfers of income to the private sector.

But the most negative of the subsidies were the legal mechanisms of indexation of contracts, mechanisms which expanded the assisted sector to all the private firms that conducted business with the public sector. There were an ex-

²¹ PROCURACIÓN DEL TESORO DE LA NACIÓN: Dictámenes 153:11, April 2, 1980

traordinary number of complex legal mechanisms through which the state had to overpay contracts upon the rationale of "to compensate inflation and effects of inflation". In that time, the General Attorney's office decided that the obligations of the state and of the contractor had to maintain their equivalency: if the contractual equilibrium between them was altered because of inflation, its re-establishment required the adjustment of the debt of the state, in order to secure the contractor's constitutional right of ownership.²²

These mechanisms were legal methods to change the nominal amounts of money established in the contract, in order to "correct" currency depreciation caused by inflation. Once these mechanisms were legally accepted, the binding force of contracts began to be undermined, its "self-enforcement" disappeared and a third party arbitrage—in general judges—was always required. The impact of this on transaction costs was enormous.

The technical procedures of adjustment used indexes that were constructed upon general averages, not specific variations of prices. This property of the indexes distorted the pursued correction and produced significant "distributional effects": the higher the rate of inflation, the more significant the secondary effects. The state was greatly harmed by these effects.

c) Interplay between Two Actors

In this model of assisted capitalism, there were two main actors: i) in the public sector, the type of state owned firms described earlier: organized as firms, ruled by managers, its money collected as public but expended as private,

²² PROCURACIÓN DEL TESORO DE LA NACIÓN: Dictámenes 188:35, January 30, 1989

and linked to the economy through contracts. ii) In the private sector, the assisted private firms, which were entitled to be subsidized because of institutional provisions of law.

The business interplay between the state owned firms and the assisted private firms, was established basically through contracts that were the object of different "correction" mechanisms. These produced more substantial transfers of income to the assisted private firms. Transfers through subsidies and through correction of contracts produced a deficit—substantial as well—for the public sector. That deficit was financed by inflation.

3. The Means: Inflation

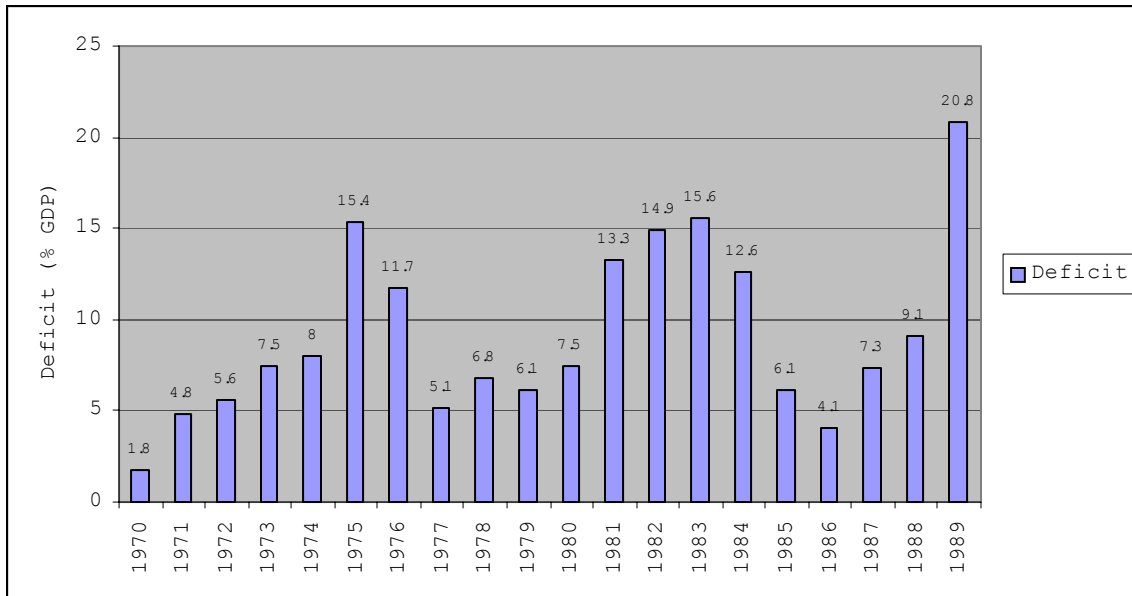
a) *Fiscal Deficit*

The fiscal deficit increased significantly since the beginning of the assisted capitalism: from 1.8% of GDP in 1970, it surpassed 15% twice, in 1974 and in 1984; in 1989 it surpassed 20%. To better assess this level of deficit, it can be reminded that the Maastricht acceptable standard for the European Union is 3%.

Graph I.1²³ shows a series of 20 years variations.

²³ Data: MEOSP: Argentina: A Country for Investment and Growth; Buenos Aires (1993); cited in DIAZ, R. and ZULETA PUCEIRO, E.: Op.Cit., pg. 18. (There are other figures for this measurement; it is due to changes in the method to correct de effects of hyperinflation).

Graph I.1
Fiscal Deficit
(As a % of GDP)



Transfers to the assisted sector were the single most important component of the fiscal deficit over this period. For instance, in 1989, the Ministry of Public Works transferred 8.7 billion US dollars to the State Owned Firms: 1.8 billion for salaries, and 6.9 billion for payments to private contractors; and out of those 6.9 billion, 5.0 billion was deficit.²⁴ Economists say that transfers to the assisted sector could explain half of the Argentine fiscal deficit at the end of the eighties.²⁵

b) Financing the Deficit

The typical options for financing a fiscal deficit are four: in the external market, bonds or credits from International Institutions or Commercial Banks; in the internal market, bonds or emission of monetary base. Bonds and credits

²⁴ Ibid

²⁵ GERCHUNOFF, P. and VICENS, M.: *Op. Cit.*, pg. 39

have a term of maturity and, when it comes, the bond or the loan has to be paid by the state. But both (bonds and loans) are costly: they have an interest rate that—for countries with fiscal deficit—are usually high. Moreover, bonds and credits "shine in red" on the National accounts; and the IMF and international financial markets pay close attention to them.

However, "emission of monetary base" does not have interest rate or term of maturity; so, it is not supposed that the state has to pay for that printed paper. And, although the "monetary base" is actually registered on the national accounts, it does not "shine" as bonds and credits do. In the eighties, the Central Bank became an active player in the financing of the Argentine public deficit, by "emitting monetary base"; in plain English, by printing money. From 1980 to 1989, the fiscal deficit was financed 17.4% by credit, and 82.6% by "emission of monetary base".²⁶

c) Inflation Rate

Since the seventies and until the reforms of the nineties, Argentina had an unusually high level of inflation. For instance: in 1976, 347.5%; in 1984, 688% and in 1989—the moment when the process of reforms began—the crazy record of 5,000% (actually, 4,923%).

Table I.4 presents the peak years.

²⁶ DIAZ, R. and ZULETA PUCEIRO, E.: Op.Cit., pg. 19.

Table I.4
Inflation Rate

Year	Inflation
1976	347.5
1984	688
1989	4,923

d) Institutional Impact of Inflation

Inflation always has institutional effects that vary in direct relation to the level of the rate. When the rate of inflation is at a "normal" level (for international standards) say, from 10% to 25% a year, the country still has functioning monetary institutions, and the macroeconomic instruments developed by economic science have proved to be effective in managing and correcting the phenomenon. However, when inflation is 300% or 600%, the country has very imperfect monetary institutions; so, to maintain the function of the currency, very complex (and costly) methods of measurement and adjustment, such as indexation, are needed; with those "orthopedic" mechanisms the country can use its currency, but at a very high level of transaction costs. But when inflation is 5,000%, the country does not have monetary institutions; in plain English, the country does not have a currency. It is not possible to use that printed paper at any cost; the costs of measurement, adjustment, transaction and enforcement become almost infinite.

Inflation in Argentina over the last 30 years has not been "normal": more than 300% in the late seventies, more than 600% in the mid-eighties, and 5,000% in 1989. This level of inflation means that the country was losing—and finally

lost completely—a central social institution: the currency. Without a "currency" there are no "wages" or "contracts"; without contracts there are no "transactions"; without transactions there is no "cooperation"; and without cooperation there is no "society". Argentina was very near to such a situation at the end of the eighties; it was described as "the risk of Lebanon-ization".

The complexities of this historical experience contributed significantly to explain the Argentine response to the crisis of 1989: the strong political support to the process of reforms of the nineties, to accomplish one central objective: the elimination of inflation.

e) Inflation as a Tax

Economists have explained how inflation functions as a tax: "High inflation is considered as a tax on persons' currency holdings. Its collection base is the named M1 monetary aggregate, that is the conjunct of monetary assets held by private individuals which do not yield interest or indexation, and hence are exposed to inflationary erosion".²⁷

In Argentina inflation was indeed, a tax and by the end of the eighties it was almost the only tax that was actually collected by the state. It was also the most antidemocratic, regressive and impossible to evade of all taxes: antidemocratic, because it was imposed "de facto", not by law; regressive, because it impacted much more on the poor than on the rich; and impossible to evade, because it was collected by the state in advance, by lowering the currency value. Inflation was regressive in regional terms too; most of the provinces' financing come from "shared revenues", that are

²⁷ MEOSP: Argentina en Crecimiento; Buenos Aires (1995); pgs. 16/17

taxes collected all over the country by the federal government and partially distributed to the provinces; revenues from the "inflation tax" were however not distributed

By means of the inflation tax, the Argentine state appropriated income from society and with it financed transfers to the assisted sector of the private economy; thus, inflation was an instrument to transfer income from the whole society to the assisted private sector and from the provinces to the federal government. The inflation tax was also an instrument to transfer income from the poor to the rich: it is well known that inflation has distributional effects, and in Argentina at the end of the eighties, these effects were extremely regressive.

f) The Social Impact of Inflation

Estimates of the impact of inflation on the distribution of personal incomes from 1980 to 1990 confirm that the inflation tax was indeed severely regressive. The average burden borne by the poorest quintile of the population as a percentage of their income was 8.6%, almost three times the burden borne by the highest-income quintile: 3%. In the third quarter of 1989 the ratio was 13.6% for the most vulnerable sectors, compared to 4.8% for the group with the largest relative income.²⁸

Other estimates abound on the importance of this phenomenon. Without considering the decline in real wages that accompanied the long period of inflation in Argentina, nominal wages effectively earned in the period were severely affected by the inflation tax. With a given income pyramid and

²⁸ See MEOSP: Argentina en crecimiento; Buenos Aires (1993), p. 13; and Efectos distributivos del impuesto inflacionario: una estimación para el caso argentino. Working Document FP/01. Secretariat for Economic Planning, September 1992.

a given structure of spending for each level, the inflation tax has an exponentially greater impact on low and middle-income wage earners than on the upper income strata.

An exercise conducted in 1989²⁹ showed this effect very clearly. It assumed two agents of different incomes: one of A500,000³⁰ and the other of A50,000 in a context of hyperinflation; the first had many ways to "protect" the money from inflation (exchange transactions, financial investments) but the second had very few (basically, to expend it as fast as possible). Inflation being 135.7% monthly (the actual rate in June 1989), the "inflation tax" burden was 25% on the income of A50,000 and only 2.1% on the income of A500,000. The sensibility of this analysis is apparent in its second step: if inflation falls to 33% monthly, the tax burden on the low-income earner falls from 25% to 8.6%. Having brought an end to this expropriation is a specifically social and political effect whose importance has been clearly perceived by the Argentine population, and which serious analysis cannot underestimate.

4. The Ends: Transfers to the Private Sector

Now, one step before the end of this Introduction, a very relevant question arises: How much money was transferred to the assisted sector of the Argentine economy through the mechanisms of assisted capitalism, until the reforms of the nineties changed it? There are several elaborations of the answer to this question; here one will be referred to, made

²⁹ LAGOS, Martín: La inflación como impuesto, unpublished paper, Buenos Aires (1991).

³⁰ "A" was the sign for "Austral", the Argentine currency at that time.

within the government in the process of implementation on the Convertibility Law³¹.

Table I.5 present the figures.

Table I.5
Inflation Tax and Overpayments
(millions of 1991 US dollars)

Year	Overpayments	Industrial Promotion	Total Transfers	Inflation Tax
1980	13,392	344	13,736	7,999
1981	9,579	616	10,195	10,941
1982	4,905	436	5,341	9,199
1983	4,607	508	5,115	5,771
1984	4,393	622	5,015	6,904
1985	3,403	753	4,156	2,779
1986	4,120	1,124	5,244	2,835
1987	4,575	2,189	6,784	4,683
1988	4,623	2,354	6,977	5,120
1989	2,533	1,768	4,401	5,173
TOTAL	58,030	10,714	68,744	61,404

The table measures three variables: i) "Overpayments", or excess payments made by the state to private contractors, due to legal mechanisms described in Section 2.b; ii) "Industrial Promotion", the tax subsidies described in Section III.4; and iv) "Inflation Tax", or income collected by the state by means of the functioning of inflation as a tax, as is described in Section III.5.

These data show that through the decade, the state made \$58.0 billion in overpayments to private contractors; and that

³¹ LLACH, Juan and CERRO, Fernando; Informal Memo to the author; Buenos Aires (1992). (Llach was Vice Minister of Economy in President Menem's administration and Minister of Education in President De la Rúa's Government. Cerro was a junior

it gave "industrial promotion" tax subsidies for \$10.7 billion; amounting together to \$68.7 billion. Furthermore, the state collected \$61.4 billion as inflation tax. So, data show that from 1980 to 1999, the state transferred to the private sector \$7.3 billion more than the amount it collected as inflation tax.

Table I.6 compares transfers and inflation tax as annual averages throughout the decade. From 1980 to 1989, the state extracted an average of 6.1 billion dollars a year through inflation, and transferred to the assisted sector an average of 6.7 billion a year. Considering the period before the democratic restoration (1980-1983), or the period after democratization (1984-1989), or the full decade (1980-1989), the money transferred to private firms always exceeded the money collected through the inflation tax.

Table I.6
Inflation Tax and Transfers to the Private Sector
(millions of 1991 US dollars)

Annual Averages	1980/83	1984/89	1980/89
Transfers	8,599	5,409	6,684
Inflation Tax	8,478	4,582	6,140

Though the annual average for the period 1984-1989 is lower than the annual average for the period 1980-1983, in 1986, 1987 and 1988 (in 1989 counts half a year) the amounts transferred to the private sector were higher than the amount transferred in 1983, the last year of the military dictatorship.

economist then and afterwards Director of National Accounts of the Ministry of Economy)

Table I.7
Transfers to the Private Sector and G.D.P.
(millions of 1991 US dollars)

Annual Average	1980/83	1984/89	1990/91	1980/89
Overprices	8,121	3,941	2,389	5,603
Industrial Promotion	476	1,468		1,071
Transfers	8,597	5,409	2,389	6,684
Public Expenditure	24,575	28,307	16,657	26,814
G.D.P.	92,052	92,033	91,653	92,041
%Transfers/Expenditure	35	19	14	25
% Transfers/G.D.P.	9	6	2.6	7

Finally, Table I.7 includes Public Expenditure and GDP as variables in the comparison of Table 6. Before the democratic recovery (1980-1983), annual transfers to the private sector were 35% of the Public Expenditure and 9% of GDP. After democratization, (1984-1989), they were 19% of the Public Expenditure and 6% of GDP. For the full decade, the state transferred to the private "assisted" sector 25% of the total Public Expenditure and 7% of GDP.

Tables I.6 and I.7 show that both before and after 1983 (the year of democratic recovery) inflation tax, overpayments due to "contractual relationships", industrial promotion tax subsidies and income transfers to the private sector, remained institutional characteristics of the Argentine economic organization.

These data sustains the thesis that the basic institutions of the political economy built by the military ("Assisted Capitalism") remained untouched and "survived" the

restoration of democracy, until the 1989 collapse. What was changed by the reforms of the nineties in Argentina were these "surviving"³² economic institutions of the Bureaucratic Authoritarian model of state.

5. The Starting Point: the Collapse of Assisted Capitalism

In 1989, the state in Argentina was not the "populist" state built by the Peronists. Despite the improvements made by the first democratic government, the state still had economic institutions of the authoritarian model built by the military. In 1989, the political economy of Argentina was not the typical ISI oriented model; it was the model described above, which in the eighties was called "assisted capitalism". The logic of that model produced substantial transfers of income from the whole society to a certain sector of the private economy (the "assisted sector"). These transfers were financed through inflation. In Argentina, inflation was a tax: the most antidemocratic, regressive and hard to evade of all taxes.

At the end of the eighties, assisted capitalism collapsed: the Argentine democratic transition sank into a deep crisis, hyperinflation led the economy to the brink of dissolution, uncontrolled conflicts put the society at risk of explosion, and lack of governability strained the polity to the limit.

A wide and deep process of reforms was implemented throughout the nineties to solve the problems associated with that collapse. Appraisals on its outcomes vary; nevertheless, there are certain generally accepted facts: from 1989 to 1999

³² See GERMANI, Gino: Sociología de la Modernización; Paidós, Buenos Aires (1969).

Argentina preserved its democracy, stabilized its economy, grew more than 50% in eight years, and recovered a place in world politics. That process of reforms is the subject of this book.

Chapter I: REFORMING THE ECONOMY

- I. Economic Reform
- II. Monetary Reform
- III. Fiscal Reform

- I -

ECONOMIC REFORM

Reforms in Argentina have been not a blueprint-driven process; instead, they have been specific solutions for specific problems associated with assisted capitalism. Economic reform consisted of measures adopted to solve those problems: to stop transfers of public funds to private firms, to eliminate subsidies and promotional regimes, to declare the Central Bank independent, to stop monetary emission, to liberalize trade, foreign investment and capital markets, to reformulate "adjustment mechanisms" of public contracts and privatization of state-owned firms. The reforms resulted in very positive effects in growth, inflation, investment, economic rationality and international integration; in unemployment, trade, government expenditures and external debt, the effects have been more problematic. There is a significant correlation between policies and results.

The situation in Argentina in 1989 has been extensively analyzed in the Introduction to this book. The "starting point" of the process of reforms of the nineties was a political economy of "assisted capitalism", whose main characteristics were transfers of income from the whole society to private "assisted" firms, financed by inflation. This "variety" of capitalism had a very poor performance over time (more than 15 years with no growth) and, at the end of the eighties, it collapsed.

1. The Collapse of 1989

In August 1988, a program for economic recovery¹ was implemented by the government of President Alfonsín. This famous plan, "Plan Primavera" was not a plan of economic reform (thus different from the one implemented in the nineties). Though the explicit objectives of the Plan Primavera were

¹ Programa de Recuperación Económica y Crecimiento Sostenido. Gobierno Argentino. Agosto, 1988.

sustainable growth, economic openness and integration to the world economy, it did not propose any change in the institutional and regulatory structure of Argentine economy for the achievement of its stated objectives.

This plan had no effect on the economy, and by 1989, the economic situation was extremely adverse: in June, Argentina experienced its worst ever hyperinflation since World War II², with no foreign reserves, a large fiscal deficit and a large inefficient state machinery. As was explained above, state-owned firms were instrumental in providing income transfers to the "assisted sector" that generated the deficit, financed through inflation. And state organisms, whose mission was to explicitly intervene in economic activities, had created such distortions in the domestic market that they were no longer sustainable: the currency was no longer of any value, state employees were not being paid, and there was civil unrest.

The effective institutional framework was inefficient and unresponsive to economic signals and trends. The public perception of the economic situation was one of uncertainty. Private economic agents were not able to function rationally, individuals were reaching a point of social tension, and among academia, there was a consensus that the economy had to be opened to outside markets through deregulation and privatization of existing state-owned firms. The interventionist government model had come to an end in the public's eyes. "Assisted capitalism" was over.

2. "Plan BB"

The economic reform began with a law whose proposal was based on the framework laid out in a plan presented to the newly elected president, Dr. Carlos Menem, by a group of economists of the firm Bunge & Born—the largest Argentine holding in those days—on July 5, 1989 (four days before Menem's inauguration). This plan, the "Program of Government, 1989 and Beyond"³—named by the press as "Plan BB"—was intended to control the situation described above, and to stabilize the market and prices in order to restore credibility domestically and internationally, so as to start the process of economic growth and development.

This new plan—different from the previous government's Plan Primavera—was actually a program of economic reform: it included proposals for changes in the institutional and regulatory structures of the Argentine economy. That is why Orlando Ferreres, the drafter of "Plan BB", considered the true challenge of this economic plan⁴ to be the changing of at least thirty laws and the creation of several new ones (as necessary to implement the reform). Therefore, the first new law proposed was named "Economic Emergency Law", afterwards passed by Congress as Law 23,697. It must be said that this was more than a simple law: since it called for the creation, elimination and transformation of laws, regulations and institutions, it was actually a "framework" law.

² Interview with Orlando Ferreres, Ex-secretary of Economy. Buenos Aires, July 2000.

³ Grupo Bunge y Born. "Programa de Gobierno 1989 en Adelante / ProMenem". Buenos Aires, July 5th, 1989. (Popularly known as "The BB Plan")

⁴ Interview with Orlando Ferreres by Jorge Kukulas; Buenos Aires, July 2000.

The set of laws and regulations embedded in this plan was first presented to the Peronist congressmen that same July of 1989 by Ferreres, who was Vice-Minister of Economy of the new government. He described the presentation of the proposal as "a physical and professional challenge"⁵. Discussions went until late evening. The reaction from the Peronist party was one of surprise because of the radical changes that were being proposed; some proposals were well taken and others were not; some congressmen agreed while others were totally infuriated. Overall, however, there was a sense that the economic situation had to change and that the cause was the current collapsed system.

The executive branch of the new government made it clear that the whole list of reforms was imperative under the current situation. Therefore, the objective of compiling a "package" of reforms in the "Economic Emergency Law" was to create leverage in order to make those changes immediately, using the momentum of the new government. The extremely complicated economic situation created enough room for the reformers to implement the changes described in the next section.

3. Contents of the New Law

The proposed new institutional framework was composed of twenty eight structural changes leading to thirty chapters in Law 23,697, and afterward to several decrees, and eventually to Law 24,144⁶. At the core of Law 23,697 were several mechanisms to stop the transfers of public funds to private firms,

⁵ Interview with Orlando Ferreres.

⁶ The decrees that are being mentioned are: Decree # 435/90, 36/90, 1757/90, 2284/91, 1930/90. Law 24144 was sanctioned in September 1992.

which was the cornerstone of assisted capitalism. Some of the chapters of the law will be summarized below.

a) *Chapter I: State's Emergency Policy Power*

This chapter declares that Law 23,697 is the exercise of the "State's Emergency Policy Power". "Policy Power" was an ancient Argentine legal institution which consisted of the legal capacity of the state to impose, through law, reasonable limitations on individual rights, in order to secure collective goods such as general prosperity and well-being, and community economic interests⁷.

b) *Chapter II: Suspension of subsidies*

Discretionary subsidies were standard instruments of the bureaucratic-authoritarian state and of assisted capitalism, and over time they became so anarchic that in 1989 it was unknown how many subsidies the government granted. Therefore, since some of the subsidies were based on laws, their suspension also had to be in the form of a law. The new government recognized that some of those subsidies would be necessary, but a suspension was required in order to identify and quantify them in the national budget as they were re-awarded. This chapter brought about some initial negative reactions, but once it was made clear that in order to have an efficient and transparent allocation of the government's resources the subsidies had to be known and explicitly spelled out in the budget, public opinion reacted in favor of the measure.

c) *Chapter III: Reform of the Charter of the Central Bank of the Argentine Republic*

⁷ Procuración del Tesoro de la Nación: Dictámenes 208:138; 224:113

The role of the Central Bank in assisted capitalism was to finance the deficit by emission of the "monetary base"⁸. This chapter called for the independence of the Central Bank from political power so as to create monetary stability. Eventually—and from the very beginning⁹—the idea was to create a currency board by which the new currency would be pegged to the US dollar. The intention of giving autonomy to the Central Bank was to preserve the value of money so as to stop inflation and create a prosperous environment for foreign investment. This proposal had wide support because in July 1989, immediately after stopping the printing press at the Central Bank, the impact of lower inflation was felt. This clearly demonstrated the causes of Argentine inflation at the end of the eighties.

d) *Chapter IV: Suspension of the Industrial Promotion Regime*

Promotional regimes (tax subsidies to private firms) were a hallmark of assisted capitalism¹⁰. The rationale of this regime was the creation of jobs, but the allocation of resources for industrial promotion was very inefficient. By 1988 the "promoted" firms were supposed to have created 55,000 jobs, and the cost of industrial promotion for the state the same year was \$2.3 billion: enough money to pay more than 780,000 salaries¹¹. The system was anarchic as well, because it consisted of hundreds (perhaps thousands) of contracts between the state and individual firms¹².

The proposal intended to eliminate that regime and to replace it with a new system that would be general, transpar-

⁸ See Introduction, Section IV.2

⁹ See Chapter I, Section II.2

¹⁰ See Introduction, Section V.1

¹¹ The average industrial wage in 1988 was \$250 monthly

¹² See Introduction, Section III.4

ent and explicitly detailed in the government's budget. This chapter created some controversy in Congress, not only among the opposition, but among members of the Justicialista Party, as well. This was not because of political "traditions" (as populism has been attributed to the Peronists), but because of the interests of provincial and local constituencies that benefited from the "promoted" areas. The firm stance of the executive, the professional discipline of the Peronist legislators and the positive reaction of public opinion overcame those controversies.

e) Chapter V: Suspension of the Mining Promotion Regime

This chapter was similar to the chapter on industrial promotion, but it was more limited. The rationale of the mining promotional regime was "regional development". Considering that the regime had not achieved any positive results in the development of this industry, controversies in Congress were smaller.

f) Chapter VI: Foreign Investment Regime

This chapter reflected the need to cancel the old regime's requirement of official authorization for acceptance of foreign investment. This reform mandated that foreign investors be treated the same as domestic investors. Although the "Foreign Investment Registrar" was maintained, it would take the role of a purely statistical institution. The intention was for Argentina to become compatible with the international markets so as to create credibility for the forthcoming privatization process, allow for technology transfers and encourage foreign direct investment. It was clear to all the participants (government, opposition, business, labor, etc.)

and to the public, that foreign investment was an important source of economic growth.

Other chapters dealt with capital markets, compensation of credits and debts between the state and the private sector, and between the state-owned firms and the state, and a more expeditious prosecution regime for tax evasion.

4. The Approval

In no more than ten days the draft was written by the new economic team, and the bill for the Economic Emergency Law arrived at Congress via the Senate on July 22, 1989. The press mentioned¹³ that this bill entered through the Senate because the executive considered it the "defender" of their initiatives. But the real reason was that due to President's Alfonsín resignation, President Menem had taken office six months in advance, but the new Deputies were to take office on December 10, and so the Chamber of Deputies still had the "old" composition.¹⁴

The Senate initiated the approval process and the bill was discussed on the Floor in a single session on August 8, 1989. There were eleven interventions in the debate: four by the Government's PJ Senators, five by Opposition UCR Senators and two by Senators of other Parties. The general presentation sustaining the bill was made by Senator Juan Carlos Romero (PJ-Salta), and the case against it for the UCR was made by Senator Juan Trilla (UCR-Capital Federal). PJ Senators and

¹³ "Ingresó por el Senado la futura ley de emergencia." El Cronista Comercial. Buenos Aires, 25 of July, 1989.

¹⁴ See Chapter IV, Section I.2

some provincial allies voted for the bill, while UCR Senators voted against the Economic Reform Law.¹⁵

The bill was then sent to the Chamber of Deputies, and it was considered on August 23-25, 1989. There were twenty-one interventions in the debate: two from PJ Deputies, five by UCR Deputies and fifteen by Deputies of Provincial and other Parties. The general presentation was made by Deputy Jorge Matzkin (PJ-La Pampa) and the opposition case was made by Deputy Raul Baglini (UCR-Mendoza).

Matzkin presented the law within the context of "emergency", vividly characterizing the situation in a very well informed speech, and carefully describing all the measures and institutions proposed by the bill. Baglini accepted the idea of emergency, but presented it as the result of a long historic process rather than a responsibility of President Alfonsín's Government, and criticized the proposed measures and institutional changes in great detail. Baglini called some of the conflicting articles "Trojan horses", arguing that they would bring about a loss of parliamentary power in relation to the executive branch. Jose Luis Manzano (PJ-Mendoza) responded, calling Congress's attention to the fact that these tools would only be used to cope with the state of emergency and that without them the crisis would not be solved nor would transparency be achieved.

As part of the agreement negotiated between the UCR and the PJ to make viable Menem's taking office six months early, there was a compromise by the UCR to make approval of this legislation possible. But in the Chamber of Deputies, this law was approved with 105 affirmative votes of the PJ Depu-

¹⁵ H. Senado de la Nación: Diario de Sesiones, 8 y 9 de Agosto de 1989

ties and some allies of Provincial Parties, over 79 negative votes from the opposition and 12 abstentions. The UCR Deputies voted against the Economic Reform Law.¹⁶

The House modified a certain number of articles and sent the proposal back to the Senate for final approval. The Senate, in turn, did not approve some of the changes made, and after meetings between Deputies and Senators, the text was again sent back to the Chamber of Deputies, with some articles including an "insistence" from the Senate not to modify them. The final text was then approved on September 1.

5. Solutions to Problems

Law 23,697 was not a technocratic blueprint or an academic system. It was a rational assembly of specific solutions for specific problems¹⁷, problems which were characteristic of "assisted capitalism": i) Institutionalized subsidies to private firms through taxes, prices, credits and payment regimes (Chapters II, IV, V, VII, VIII, X); ii) Monetary emission (Chapter III); iii) Fiscal deficit: (Chapters IX, XXV, XXVII, XXVIII); iv) Adjustment mechanisms for contractual relations: (Chapters XIV, XV, XVI); v) State-owned firms, autarchic organisms and their managers: (Chapters XVIII, XIX, XX, XXIV); vi) Distorted Market Mechanisms; (Chapters VI, XVII).

This method—addressing specific problems with specific solutions—was followed from the beginning of the process of the reforms, and it proved to be extremely successful.

¹⁶ H. Cámara de Diputados de la Nación: Diario de Sesiones, 24 y 25 de Agosto de 1989

¹⁷ See: Introduction, Section I.1

6. Complementary Measures

After Law 23,697 was approved, several decrees were immediately issued. The most important were the following:

i) Decree 36/90: Declaring that banks and other financial firms will return their deposits in Australes on fixed terms, and honoring their deliver of "External Bonds 1989" (BONEX 89), as well as other measures related to the internal public debt.

ii) Decree 1930/90: Suspending remaining subsidies, as well as reimbursements and tax exemptions; implementing several measures related to the economic emergency, and extending the term of those established by Law 23,697.

iii) Decree 435/90: Ceasing Central Bank monetary emission, suspending new public procurements, freezing vacancies in the public administration and reducing its upper levels; derogating tax exemptions and deciding on other public financing issues.

iv) Decree 1757/90: Limiting public expenditures, downsizing public administration, standardizing public salaries, and simplifying taxes.

v) Decree 2284/91: Deregulating a wide portion of the domestic market and international trade (there were exceptions), eliminating a series of bureaucratic organisms, and among other things, unifying the administration of social security.

vi) Law 24,144, which approved the new charter of the Central Bank, giving it the necessary autonomy for preserving the value of the currency and prohibiting the financing of government activities, should be mentioned as well.

7. Enforcement of Economic Reform

Political support was key to the approval as well to the enforcement of the economic reform. As mentioned above¹⁸, the Economic Emergency Law passed through Congress expeditiously, overcoming obstacles and controversies, due to the support of a broad coalition of political, economic and social actors, built and led by the President. This wide base of support gave the process of reforms a strong political legitimacy. Both supporters and critics of the reforms agreed on the relevancy of the presidential leadership; for instance, in 1991, after the process of reforms had begun but before the results began to show, Menem coined the phrase "We are bad, but we are going well"¹⁹, to express his confidence in the reforms success. The phrase was popularly accepted and, sooner rather than later, confirmed by evidence.

Another key element that enhanced the enforcement of the economic reforms was the empowerment of the ministers in charge of it: Erman Gonzalez and Roberto Dromi in 1989 and 1990, Domingo Cavallo and Eduardo Bauzá from 1991 onwards. They had the responsibility of planning the implementation of the economic reform designed by Law 23,697; and their role and technical capabilities were key to the success of the new economic institutions and their influence on other areas.

The unification of the Ministries of Economy and Public Works and Services (entrusted to Cavallo), and the enlargement and upgrading of the Presidency's General Secretariat (Bauzá's office), were also resources allocated to ensure the reform's enforcement. Although it was argued that there were no check and balances on the ministers' decisions, many of

¹⁸ See this Section, #4

those decisions were submitted to extensive scrutiny and negotiation in Congress²⁰ or challenged by lawsuits in the courts²¹.

Public opinion was focused on the crisis the country was undergoing, while the political, economic and social actors all agreed that something had to be done to put the country back on track. This is why the economic reforms were widely accepted, and when discussed (in Congress as well in public opinion) only their general policy-making characteristics were highlighted—there were no specific controversies over technical details. It was not until the deregulation decrees of 1991 that there was a more visible reaction from social and economic actors as well as the public. But even then, business associations and unions supported the measures taken by the administration, arguing about certain specific policies while accepting broadly the general scope of the reforms. The media was also supportive in those days: for instance, if a newspaper ran an argument against deregulation of markets, it would also run an article about the positive reaction of capital markets to the exact same policy.

Finally, the institutional advantages of the Justicialista Party played a relevant role in the reform's enforcement, securing two key elements: first, professional discipline of the Peronist legislators who were at the time the majority in both Houses; and second, a challenging but constructive attitude from unions that were—and still are—substantial actors in the Argentine political system.

¹⁹ "Estamos mal pero vamos bien"

²⁰ Privatization of Obras Sanitarias and YPF.

²¹ Privatization of Aerolíneas Argentinas (Case Dromi); "Plan Bonex" (Case Peralta)

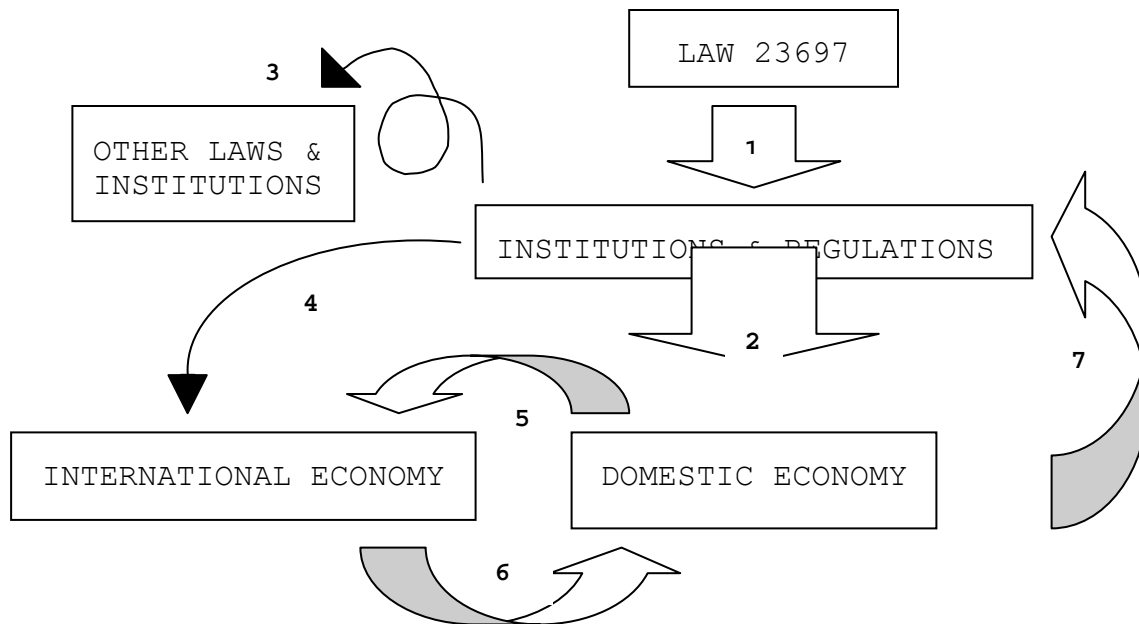
Modifications to the original law and regulations have been noticeably absent; initial reforms remained in their original form and underwent no modification. Nevertheless, further changes and modifications had to be imposed to react to phenomena like the Mexican "tequila" crisis of 1995 and the Asian crisis of 1998.

8. Information flows

The information flows created by the economic reform are represented in the following diagram.²² The Economic Emergency Law created, changed, and eliminated institutions; it also provided for new regulations and changes in existing laws.

The new institutions and regulations set the economic order of the domestic economy and—at the same time—had "reform spillovers" on other institutions and laws that were not directly addressed by Law 23,697. The new institutions and regulations directly affected the view of international economic agents (i.e. sending signals of credibility). The domestic economy sent signals to international markets in the form of economic performance measures. The international markets responded to those signals through investment, credit ratings, etc. The domestic economy fed back information to other governmental institutions that would lead to several outcomes (i.e. change of the institution, change of the law, etc., as it was regarding labor market regulations).

²² Developed by my research assistant Diego Arias Carballo, KSG, Harvard University.



9. Effects

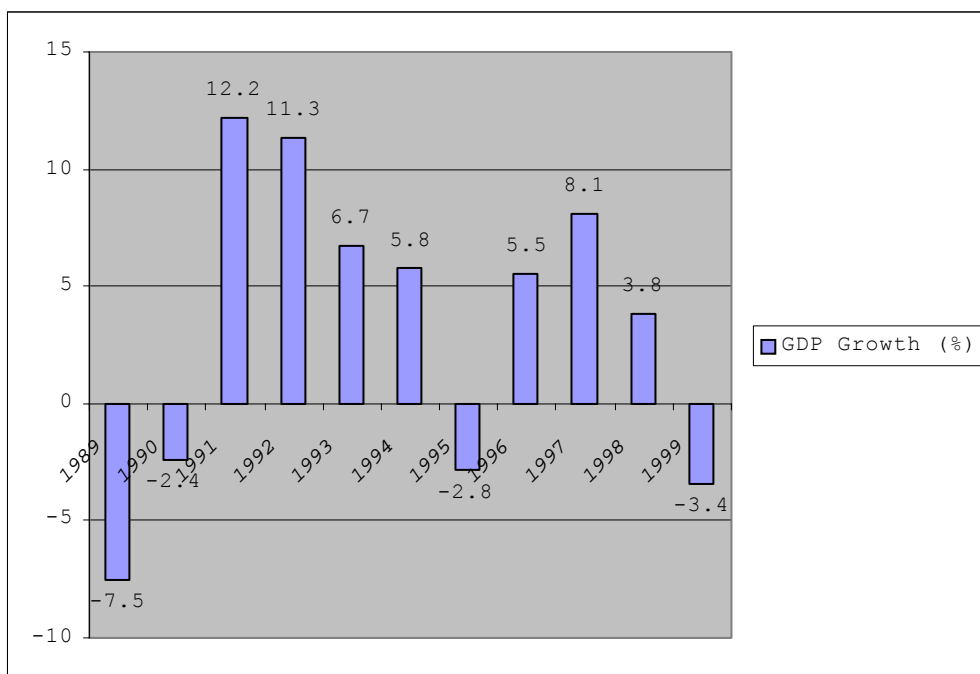
The main economic problems that the country faced in 1989 were solved or significantly ameliorated between 1989 and 1999. After 15 years with no growth, Argentina grew 7 out of 10 years in the nineties: economic growth increased more than 40% over the decade; inflation was terminated: from 5,000% a year to 0%; investment grew every year but two; GDP per capita grew from less than \$8,000, to \$12,000; poverty decreased from 47.3% to 26.7%; subsidies were reduced from 4.7% of GDP to less than 0.5%. Most of the economic indicators show evident improvements from 1989 to 1999. And not only was the reform sustainable over time, but it also had an immediate positive impact in the first years.

Reforms in Argentina have been a series of specific solutions to the specific problems which were associated with

the political economy effective in 1989: assisted capitalism, inflation tax, institutional mechanisms to transfer income from the public to the private sector (subsidies, contracts, "adjustments", privileges) and "the assisted sector" in itself. From this perspective, too, the reforms have been very successful.

The following graphics²³ show the performance of some of the above mentioned indicators:

Graph I.I.1
Economic Growth
(1989/1999)



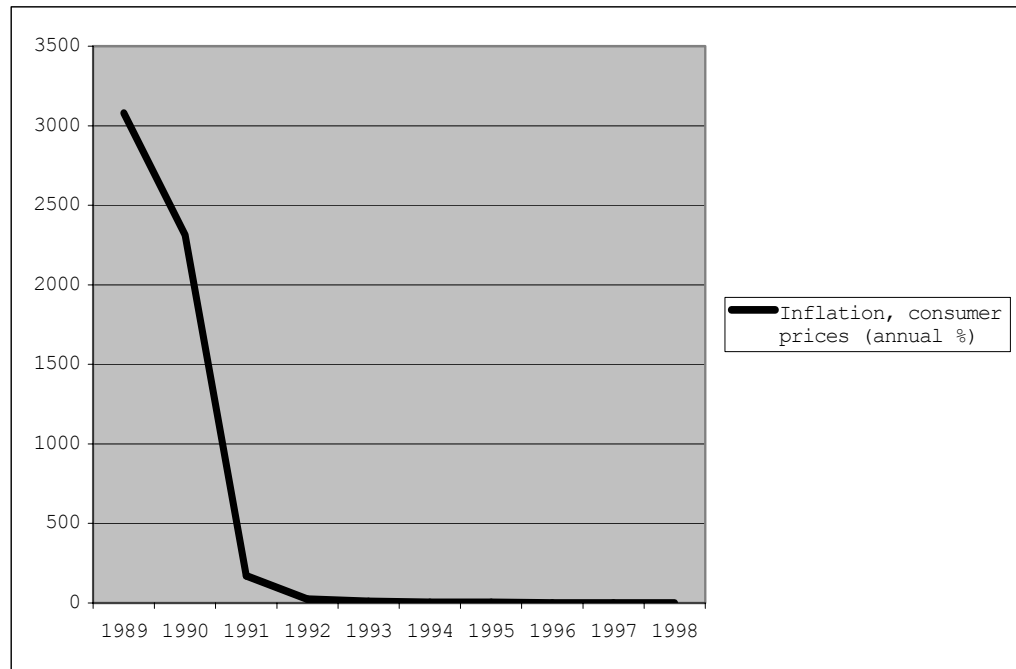
²³ Data: World Bank: World Development Indicators 2000.

The Reforms of the Nineties in Argentina

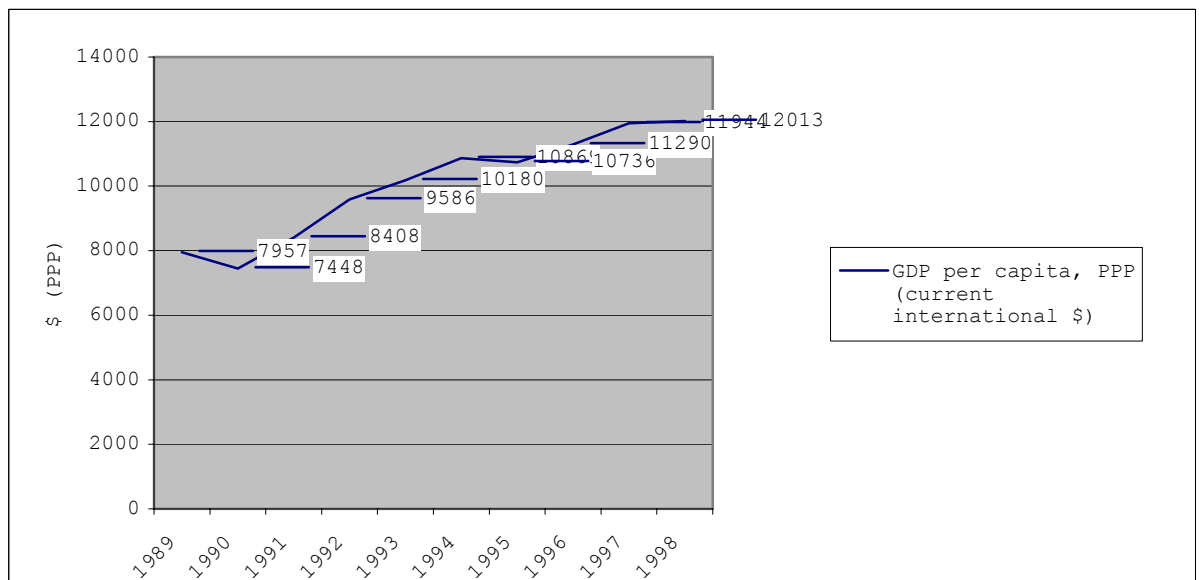
By Rodolfo Diaz

WCFIA Fellow - Harvard University

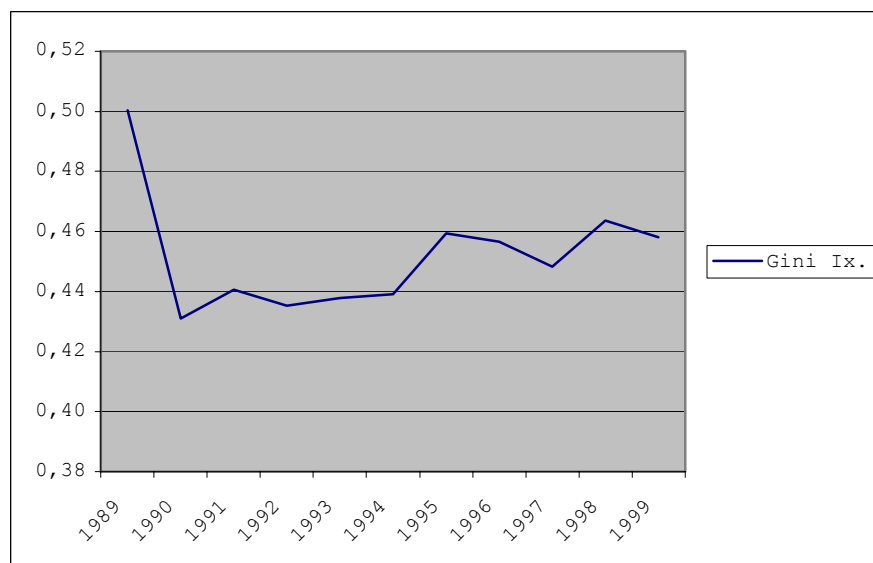
Graph I.I.2
Inflation
(1989/1999)



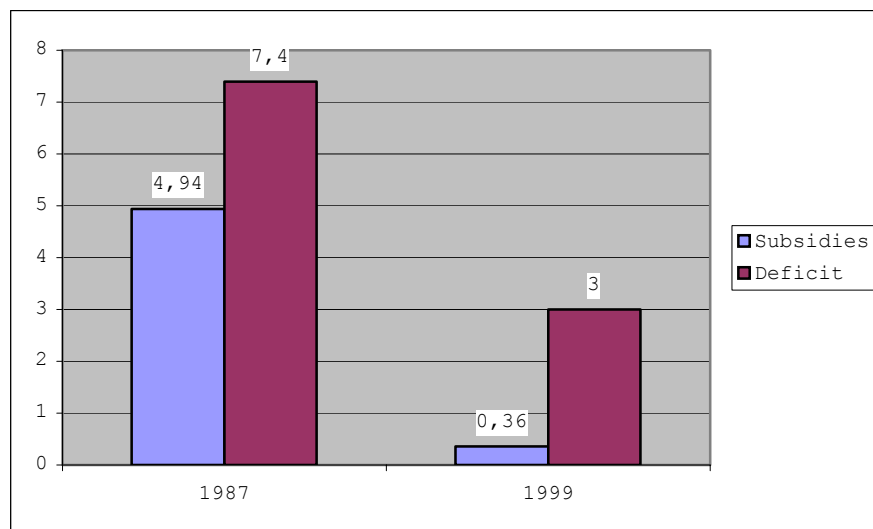
Graph I.I.3
GDP per Capita
(1989/1999)



Graph I.I.4
Poverty (Gini Index)
(1989/1999)



Graph I.I.5
Subsidies As % of GDP
(1989/1999)

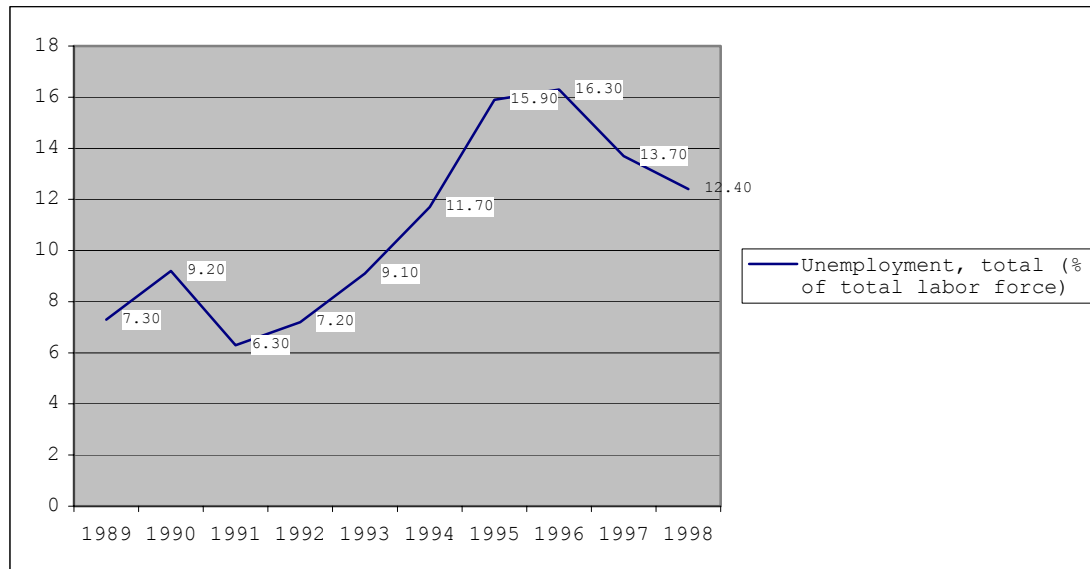


Other indicators had a much less impressive performance: employment, exports, public expenditure and external debt.

Unemployment improved in 1991 and 1992²⁴, but afterwards rose to record levels²⁵; the same evolution is observable regarding balance of trade; government expenditures grew more than the GDP since 1992; exports as percentage of GDP, flattened; total external debt grew, though less than GDP. Although repayment flows grew only slightly, the ratios (relative to exports) grew more significantly; and the Argentine Trade/GDP ratio is lower than the rest of the world.

The graphics²⁶ below, show their evolution.

Graph I.I.6
Unemployment
(1989/1999)

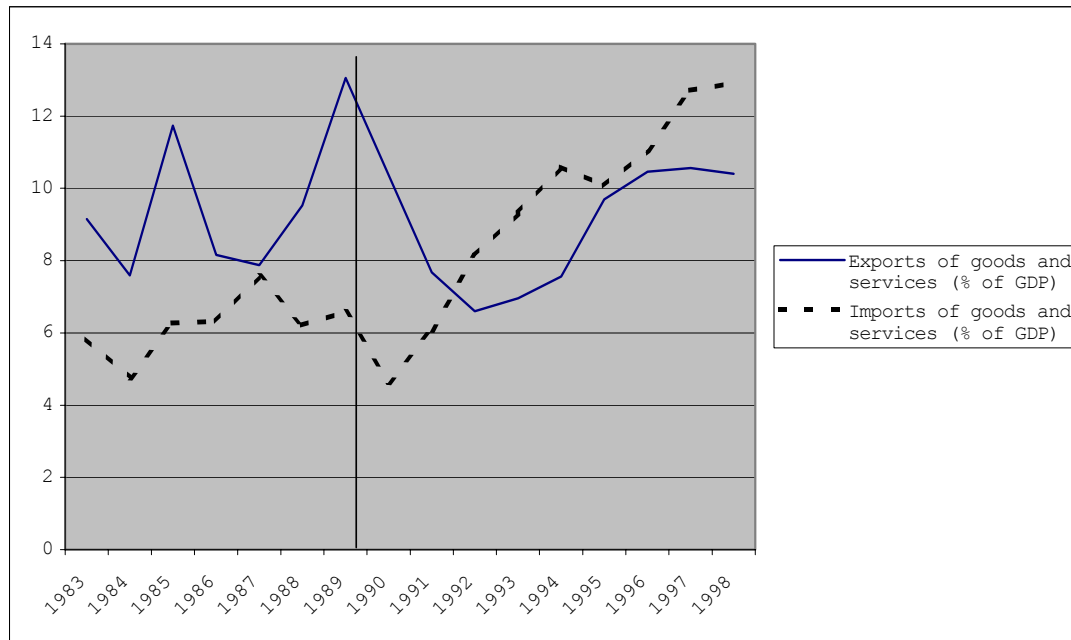


²⁴ The initial years of stabilization, when I was Minister of Labor.

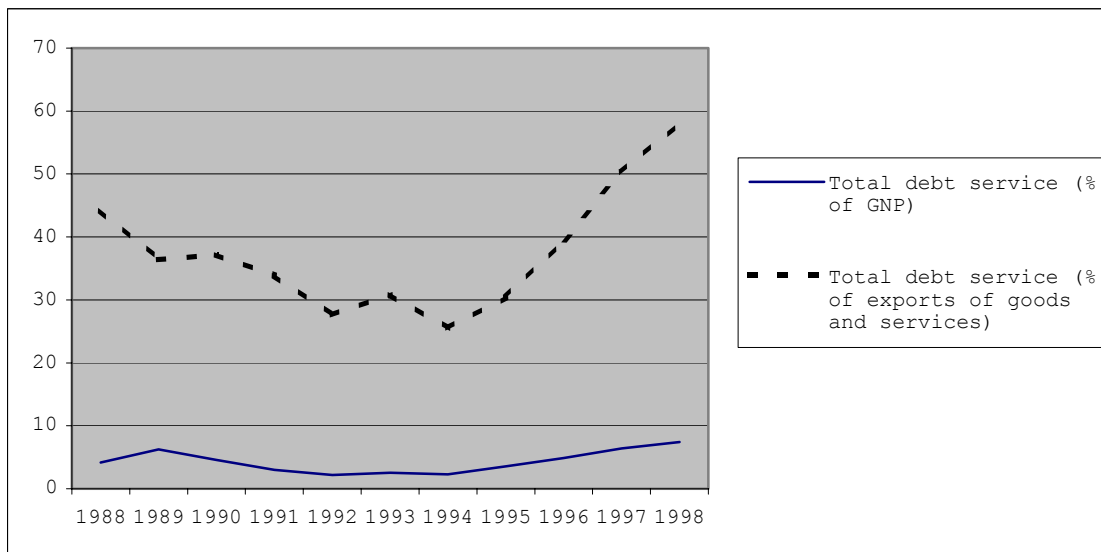
²⁵ This phenomenon is analyzed at length in Chapter II, Section II.

²⁶ Data: World Bank: World Development Indicators 2000.

Graph I.I.7
Exports as % of GDP
(1989/1999)



Graph I.I.8
External Debt and Repayment Ratio
(1989/1999)



10. Measuring the Reforms

One cannot evaluate the reforms simply by measuring "the effects" of the reforms because those effects are—or could be—the result of circumstances and phenomena other than the reforms (for instance, the overall Argentine economic performance was deeply affected by the Mexican, South East Asian and Russian international financial crises, as well as by the Brazilian devaluation). In order to overcome that difficulty, several instruments to measure the reforms isolated from other factors have been created²⁷.

The 'Structural Policies Efficiency Index' has been devised by an expert with the Inter American Development Bank²⁸—to measure "policies" instead of "results". It is defined as "a simple average of the policy indexes of the following five areas: (i) trade policy, (ii) financial policy, (iii) tributary policy, (iv) privatizations and (v) labor legislation. In each of these areas, one or more basic indexes can intervene, and an average of them is calculated. Each of those basic indexes can move from 0 to 1, where 0 corresponds to the worst observation and 1 to the best."²⁹

The following graphs³⁰ present the evolution of each index during the 1990s, calculated for Argentina and the average for nineteen countries of Latin America and the Caribbean³¹.

²⁷ See: BURNSIDE, Craig, and DOLLAR, David: Aid, policies and growth. in "The American Economic Review", Vol. 90, No.4, Nashville (2000), pg. 847; and LORA, Eduardo: Las Reformas estructurales en América Latina: Que se ha reformado y cómo medirlo; Unpublished paper; IADB (Washington) 2001. (and the bibliography there cited).

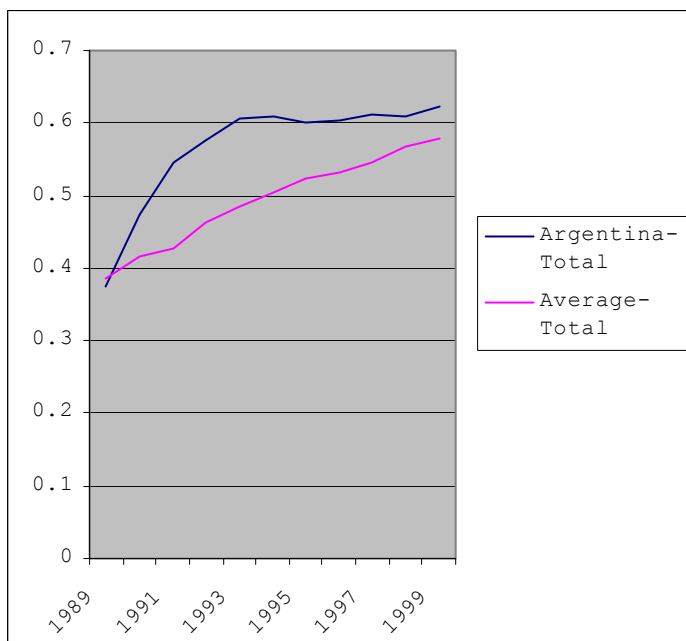
²⁸ Eduardo LORA, from the IADB Research Department

²⁹ LORA, Eduardo: Op. Cit., pg. 23

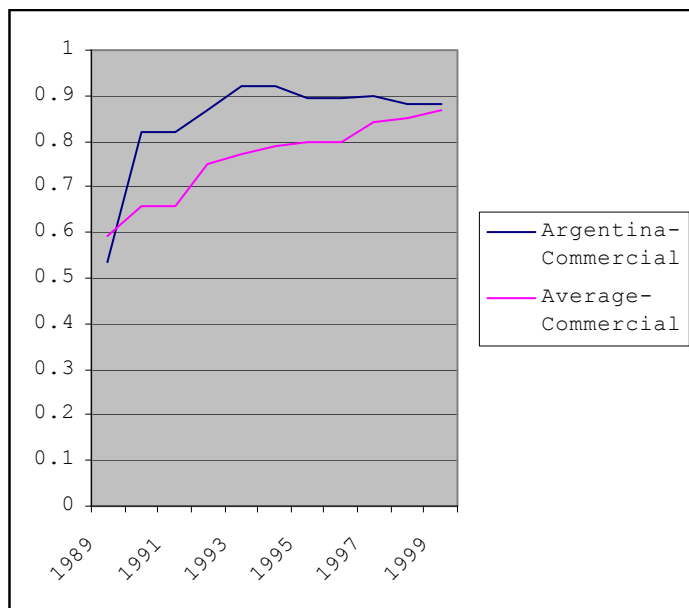
³⁰ Data: LORA, Eduardo: Op. Cit., Apéndice 2

³¹ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

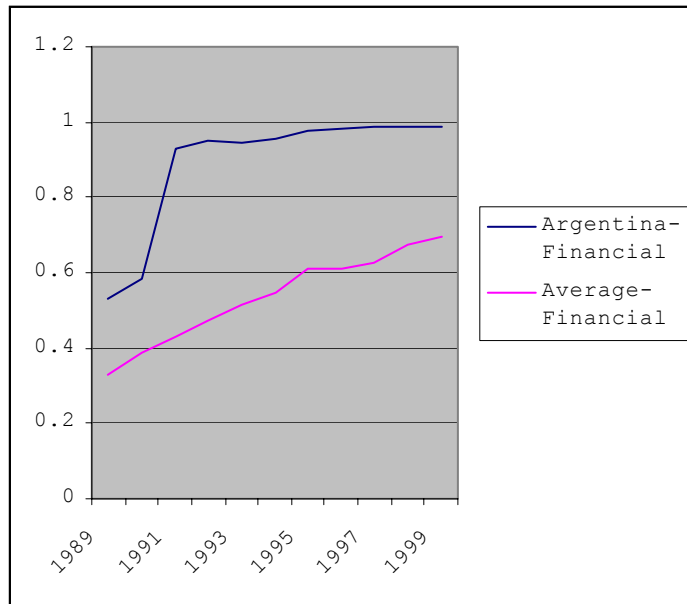
Graph I.I.9
Structural Policies Efficiency Overall Index
 Argentina and Average:
 (1989/1999)



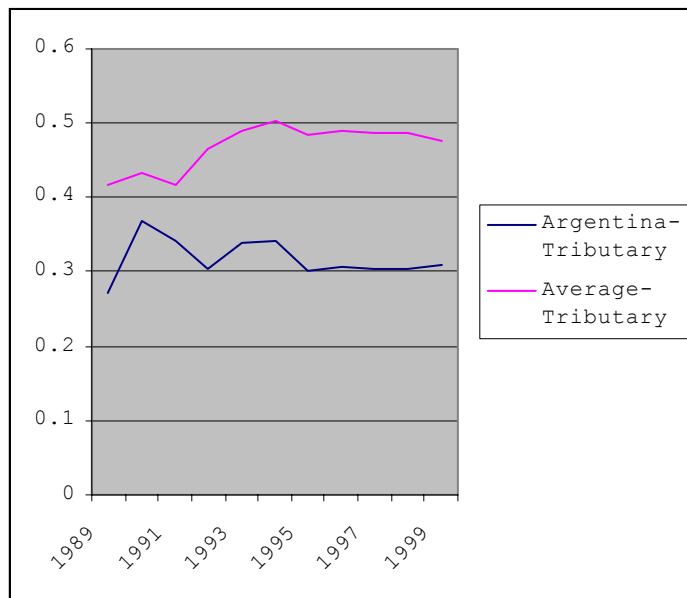
Graph I.I.10
Trade Policy Efficiency Index
 Argentina and Average:
 (1989/1999)



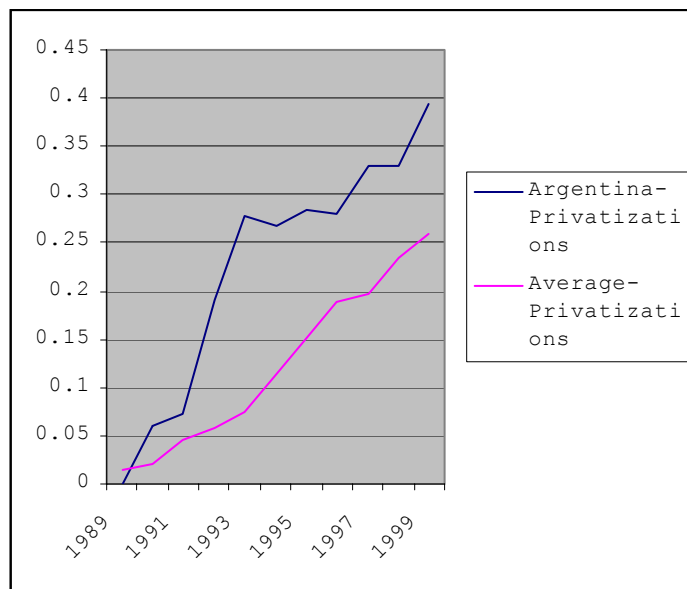
Graph I.I.11
Financial Policy Efficiency Index
Argentina and Average:
(1989/1999)



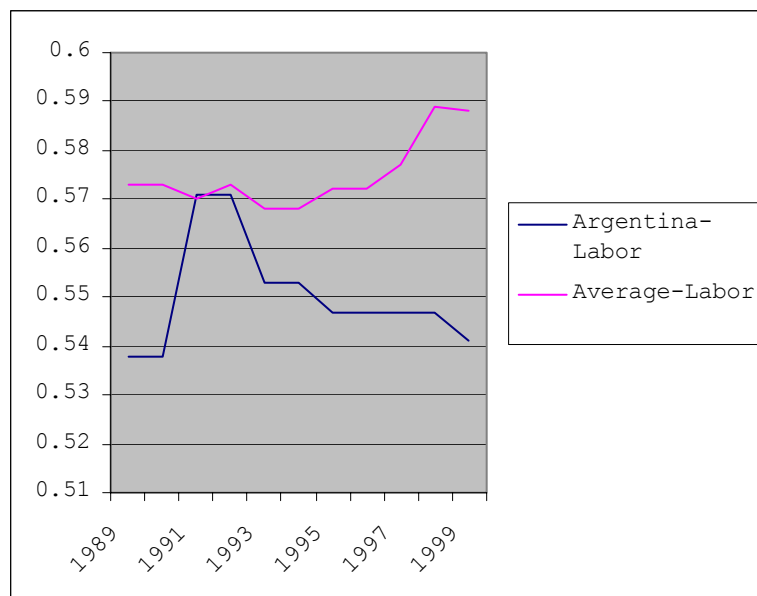
Graph I.I.12
Tributary Policy Efficiency Index
Argentina and Average:
(1989-1999)



Graph I.I.13
Privatization Policy Efficiency Index
 Argentina and Average:
 (1989/1999)



Graph I.I.14
Labor Policy Efficiency Index
 Argentina and Average:
 (1989/1999)



The graphs show visible improvements in structural policies in the region, since "the average index for all the countries and for all the structural policy areas was 0.34 in 1985. At the end of the nineties, it was 0.58."³² But the graphs also show a more impressive improvement in Argentina: the index varied from 0.375 in 1989 to 0.623 in 1999,³³ and the country surpassed the regional average in the Overall Index, as well as in the Trade, Financial and Privatization Indexes. However, in the Tributary and Labor indexes Argentina lagged below the regional average.

These measurements are absolutely consistent with the analysis developed in the chapters that follow, especially with those of Fiscal Reform and Labor Reform which point out shortcomings in the reforming endeavor. On the other hand, these measurements of "policies" are consistent with the measurements of "results": the more problematic results of the process of reforms of the nineties have been the increase of unemployment and the resiliency of fiscal deficit; both phenomena related to the two areas with the worst Structural Policies Efficiency Indexes: Tributary and Labor. It seems a plausible inference that the more the reforms, the better the results.

11. Two "paces"

In terms of targeted objectives, the economic reform of the nineties has been successful and sustainable over the decade. But in terms of more general long-term objectives, there are two different "paces" observable in its perform-

³² LORA, Eduardo: Op. Cit., pg. 1

ance: until 1994, the Argentine economy grew more than 8% a year; in the second half of the decade, the average rate was clearly lower.

To explain the slowdown in the performance of Argentine economy, several approaches have been proposed:

a) The first argues that the lack of further reforms prevented the country from fully capturing the benefits of the "market-oriented economy". Failures in the attempts to reform the labor market are often mentioned as proof of this position.

b) The second focus is on the convertibility law (with the 1 to 1 peg to the dollar) as a source of rigidity that impedes the Argentine economy from reacting to shifts in the international trade environment. The negative effects of the Brazilian devaluation in 1998 on Argentine Mercosur trade are repeatedly cited to support this point of view.

c) The third approach refers to the international financial markets as a "transmission wheel" of economic crisis from abroad to Argentina, even though Argentina has had almost no direct relations with those countries directly affected by the crisis. The Mexican breakdown in 1995, the South East Asian crisis in 1997 and the Russian default in 1998, are the cases used to sustain this argument.

d) The fourth approach considers that "politics" overcame "economics" in the policymaking process, so that political decisions jeopardized the attainment of long-term economic objectives. The increases in public spending after 1992 is frequently cited to support this point of view.

³³ LORA, Eduardo: Op. Cit., Apéndice 2.

All the elements mentioned in these arguments are relevant; all have a great deal to do with the performance of the Argentine economy in the second half of the nineties. However, none of them provides a causal explanation of the above-mentioned slowdown.

Although these arguments will be taken up again later on, a few additional comments should be made.

a) More than "lack of reforms", there have been "failed attempts" that have been the cost of the "trial and error" method of the process and of the democratic procedures followed, which required a threshold of consensus not always possible to attain.

b) Recovering the aptitude for "internal cooperation" in Argentine society required a trustable currency. Yet confidence in the currency came at the cost of "external rigidity", a necessary effect of the convertibility law.

c) International financial markets actually increased Argentina's vulnerability to economic crisis. Yet Argentina decided to defend the reform process and to maintain the currency value, fully aware of the consequent short-term costs in growth.

d) Finally, in the case of Argentine economic reforms, "politics" has been not an obstacle, but rather the driving force that made reforms possible, carried them out, supported and defended them and paid the unavoidable political cost.

For armchair policymakers, reforms are technical decisions without costs. In the real world, there is no such a thing as a free lunch.

- II -

MONETARY REFORM

Inflation was a characteristic of assisted capitalism, and hyperinflation the consequence of its collapse. Convertibility was the cornerstone of the solution: its economic effect was to terminate inflation; its political function was to provide trustable currency and certainty that made social collaboration possible once again. It produced social learning that determined strong political support for convertibility and for the "1 to 1" peg with the US dollar, as well delegitimation of devaluation as an instrument of monetary policy.

In March 1991, the Argentine Congress approved Law 23,928, the "Convertibility Law", which is so named because it allows for convertibility of the domestic currency into dollars; it also established that 100% of the monetary base must be backed by reserves in the Central Bank, which were declared "unattachable"¹. It eliminated all indexation and adjustment mechanisms for all transactions and legal obligations, public or private. And it authorized the creation of a new domestic currency, maintaining the convertibility at a determined rate. Thus the "peso" was created, convertible "1 to 1" to the dollar.

1. Crisis and Hyperinflation

The eighties could be characterized as a time of crisis or transformation, or both; they have been described as "years of economic crisis...understood as a phenomenon of upheaval and destruction similar to an earthquake, after which the Argentine economy will not be the same as in the past"².

For the Spanish word "Inembargable". KAPLAN, Steven: English-Spanish, Spanish-English Legal Dictionary; pg. 492

² Canitrot, Adolfo: La Macroeconomía de la Inestabilidad; Boletín Informativo Techint No 272. October-December 1992; pg.37.

As in most Latin American countries, in Argentina great devaluations caused a slight increase in exports, and produced recession due to the high cost of imports. At the beginning of the decade, imports were therefore closed off.

In 1982 the Argentine military government made public the private debt that had been unpaid due to devaluations. This decision was consistent with the political economy of the "assisted capitalism" described elsewhere³: private firms benefited, and both the already-large fiscal deficit and the external debt in local currency terms were significantly increased.

Savings were flowing out of the country, further depreciating the local currency, and creating rents for domestic firms that lacked competition. The current account surplus, due to the lack of imports, was not captured by the government, because rents from the domestic market were re-deposited in dollars and not accumulated as international reserves. In 1984, inflation reached 20% monthly, and the only way out for the government, with its fiscal burden of external debt, was to turn to the IMF.

In 1985, a new economic policy was launched, implemented with the approval of Washington⁴: the "Plan Austral". Its objective was to stop inflation, but its instrument was a very rudimentary one: a freezing of prices and salaries. This freezing of prices was different for wholesale prices than for consumer prices (they were both changing at different rates). This created a squeeze in the profit margins of "not assisted"⁵ producers, because salaries and taxes were in-

³ See Introduction, Section III.4

⁴ By Washington I mean the USA acting through the IMF and the World Bank.

⁵ See Introduction, Section III.4

creased according to consumer prices, but wholesale output prices remained constant.

Consequently, the real exchange rate appreciated, due to the Plan Austral's fixed nominal exchange rate with respect to increases in domestic prices; this led to government intervention to adjust the nominal exchange rate according to inflation. This nominal depreciation led in turn to more inflation, under a fiscal program which did not lead to good results due in part to the Olivera-Tanzi effect⁶. Increased fiscal deficit and inflation led to more money leaving the country, and motivated an increase in demand for money, which increased interest rates. The Central Bank increased its financing of the fiscal deficit, and raised interest rates to attract money. This increase in interest worsened the public debt problem, since it was the government which held these deposits and therefore more money was printed to finance the public debt, which fueled the already high inflation.

In 1988 this process was slowed down by the "Plan Primavera", which was analyzed in the previous section⁷; the plan attempted to attract more deposits, reduce fiscal deficit and control the flight of capital. However its effect did not last more than a couple of months, because deposits were very short term and at high interest rates. Due to the economic plan's lack of sustainability, the World Bank decided to suspend the disbursement of the loans to Argentina; again, the flight of capital depreciated the currency. The domestic currency's (the "Austral") depreciation started in February and

⁶ Effect by which less income taxes are collected due to the inflationary process. Income taxes are based on last year's income and if there has been substantial inflation, the value of last year's income is less than the present value, so therefore, the government taxes loose value once they are collected.

⁷ See this Chapter, Section I.1

led to an explosive increase in prices in May: the Argentine hyperinflation.

The economic collapse and the political crisis that followed has been described elsewhere.⁸

2. The Proposal

The idea of convertibility had a long tradition in Argentina, though it was only effective for short periods of time. In 1899 it was established by Law 3871 under the initiative of President Pellegrini, and in 1922 it was re-established by President Alvear. Moreover, as a technical principle it was maintained by Law 12,155 in 1935 and by Decree 14,957 and Law 13,571 during the first administration of President Perón.⁹

Regarding the Reforms of the nineties, convertibility was proposed in July 1989 by the "Plan Bunge y Born"¹⁰. Its item "1.1.11. Monetary-Exchange System", stated: "The Central Bank will act...in an automatic form in the creation of money, as if it were a Currency Board system which functioned successfully in the country until 1930...Therefore, it is decided that the monetary system will be based on conversion, but the convenient moment to begin...will be that in which significant structural changes are on track...and in which international reserves are not less than \$3 billion".¹¹

That moment arrived at the beginning of 1991. Notwithstanding two episodes of very high inflation at the beginning of 1990 and 1991, the Economic Emergency Law had addressed

⁸ See Chapter IV, Section I.2

⁹ See Senator Juan Carlos Romero speech; Diario de Sesiones del Senado, 1991, pg.5806/7

¹⁰ See this Chapter, Section I.2

¹¹ Programa de Gobierno 1989 en Adelante - Pro Menem" 1.1.11

most of the major problems of the Argentine economy: the privatization process had begun, the internal debt had been controlled by the "Plan Bonex", and the international reserves in the Central Bank had risen from almost zero to more than \$5 billion US dollars.

3. Contents of the "Convertibility Law"

The Convertibility Law 23,928 was promulgated on 27 March 1991. It is so named because, among other things, it allows for convertibility of the domestic currency into dollars at a specified relationship¹².

There is no unanimously accepted conceptual definition of convertibility. A descriptive one is the following: "A currency is judged to be convertible if people are able to exchange domestic currency for foreign currency at the official rate without many restrictions. If there are a lot of restrictions, the currency is considered inconvertible"¹³

The law has 14 articles, organized in two Titles.

Title I, "Convertibility of the Austral", establishes that: i) The domestic currency will be convertible to the dollar; ii) The Central Bank shall be bound to sell foreign currency for the above-mentioned convertibility and to extract from circulation the received domestic currency; iii) The amount of reserves in the Central Bank (in terms of gold and foreign currency) must be at least 100% of the monetary base; iv) The Central Bank reserves are declared to be "unattachable" (cannot be seized by any judicial order).

¹² It is important to note that there is usually a definition problem of what convertibility means, and Annex IV gives a detail definition and some empirical evidence of the convertibility of the Argentine currency.

¹³ SACHS, J. and LARRAIN, F.: Macroeconomics in the Global Economy; Prentice Hall, 1993, pg. 293.

Title II, "Circulation of Convertible Australs" eliminates all adjustment mechanisms for all transactions and legal obligations, public or private: i) Indexation and all other "adjustment mechanisms" were eliminated from contracts; for judicial decisions, those mechanisms were limited to the past; laws and regulations that authorized indexation or other adjustment mechanisms were derogated from that moment to the future; ii) The Civil Code was modified in order to make payments in foreign currency legally valid; iii) Finally, this title authorized the executive to change the denomination (name and/or number) of the domestic currency, always maintaining the convertibility.

4. The Approval

To change monetary institutions or, furthermore, to change the national currency, is a very sensitive issue. All information about those changes has direct effects on the markets, especially on the foreign currency market. This is why public policy decisions related to these issues have to be made through a clear and fast decision-making process in order to avoid speculative attacks and predictable damage.

In 1985 a new currency had been created in Argentina: the Austral. This was done by a Presidential Decree of President Alfonsín, without congressional intervention and through a process characterized by "secrecy"¹⁴, without informing the public.

Conversely, the Monetary Reform of 1991 instrumented by the Convertibility Law—following the pattern of all the Argentine Reforms of the nineties—was made public throughout

the process of Congressional approval. Nevertheless, in order to make the process as short as possible, it was discussed in a single special session in each Chamber of the Congress, and both were long and very active sessions.

On March 22, 1991, the bill entered the Senate, considered the more pro-reform of the Chambers. In the debate there were more than thirty interventions: four from the Government's PJ Senators, eleven from the opposition UCR Senators and five of Senators of the Provincial Parties.

The general presentation sustaining the bill was made by Senator Juan Carlos Romero (PJ-Salta); Senator Alberto Rodriguez Saa (PJ-San Luis) pointed out certain juridical aspects. The opposition argued minor parliamentary procedural technicalities, and expressed concerns and rejection of the project. The case against the law from the economic point of view was made by Senator Juan Trilla (UCR-Capital); Senator Ricardo Laferriere (UCR-Entre Rios) made juridical observations and Senator Luis Brasesco (UCR-Entre Rios) made political comments. The bill was voted affirmatively by the PJ Senators and some provincial allies. The UCR Senators voted against the Convertibility Law.

The project was then considered in the Chamber of Deputies on March 26, 1991. There were twenty-nine interventions: four by government PJ Deputies, seven by opposition UCR Deputies and eighteen by Deputies of Provincial and other Parties.

The general presentation sustaining the law was made by Deputy Oscar Lamberto (PJ-Santa Fe); he put the bill in the

¹⁴ CANITROT, Adolfo: La Macroeconomia de la Estabilidad; Boletín Informativo Te-chint, No.272, pg. 41

context of the "exhaustion of an accumulation model"¹⁵, and described the elements of the proposed law.

The case of the opposition was made by Deputy Raul Baglini (UCR-Mendoza) and complemented by Deputies Jesus Rodriguez (UCR-Capital) and Osvaldo Alvarez Guerrero (UCR-Rio Negro). Some of the arguments made by Baglini were the following¹⁶: i) The government presented the initiative as a transcendent measure, "able by itself to revolutionize the country's economic functioning"; ii) The economic system was being driven in a direction the UCR did not accept; iii) The law was a risk that the UCR could not take, because if it went wrong, there were only two possible ends: dollarization or hyperinflation; iv) The chapter that eliminated indexation had "problems of constitutionality"; v) The law placed on the Congress the burden of future devaluation.

Political economy aspects supporting the law were developed by Deputy Jose Luis Manzano (PJ-Mendoza). Some of the arguments made by Manzano were¹⁷: i) Devaluations came out of the pockets of people with salaries in the domestic currency; ii) The economic system of Alfonsin's government was financed by an inflationary tax; iii) The inflationary tax was paid by the poor; iv) Menem's government was not going to resort to an inflationary tax.

The law was approved on March 27, 1991, with the same political support as in the Senate: 115 affirmative votes from PJ Deputies and some Deputies of Provincial Parties,

¹⁵ H. Camara de Diputados de la Nacion: Diario de Sesiones, 26 y 27 de Marzo de 1991; pg. 5288

¹⁶ H. Camara de Diputados de la Nacion: Diario de Sesiones, 26 y 27 de Marzo de 1991; pg. 5310/5322

¹⁷ H. Camara de Diputados de la Nacion: Diario de Sesiones, 26 y 27 de Marzo de 1991; pg. 5346/5350

over 65 negative votes by the opposition. The UCR Deputies voted against the Convertibility Law¹⁸.

5. Implementation

Following Law 23,928, there was an immediate decree on March 27 (N°529/91) regulating technical methods to implement the derogation of indexation established by Title II. In October 1991 there was another complementary decree (N°2128/91)—a very important one—through which two competencies attributed by Law 23,928 to the Executive were exercised: i) It changed the domestic currency denomination from "Austral" to "Peso"; ii) It established the parity of "1 to 1" between the Peso and the US Dollar.

A third decree (N°1088/92) in June 1992 established as mandatory the express statement of the unattachability of the Central Bank's reserves in all legal instruments related to public credit. Therefore, all loans made to the government—whether made by national or international lenders—were not to be backed by the reserves of the Central Bank.

The implementation of the monetary reform also involved a change in the way the Central Bank structured its accounts, since it now had to balance the monetary base with its foreign currency and gold reserves. This regime worked very similar to a currency board, in that it moved the exchange rate according to the movements of the balance of payments, and it also closed the connection between the Central Bank—as a "printing press"—and the Government, to finance the fiscal deficit.

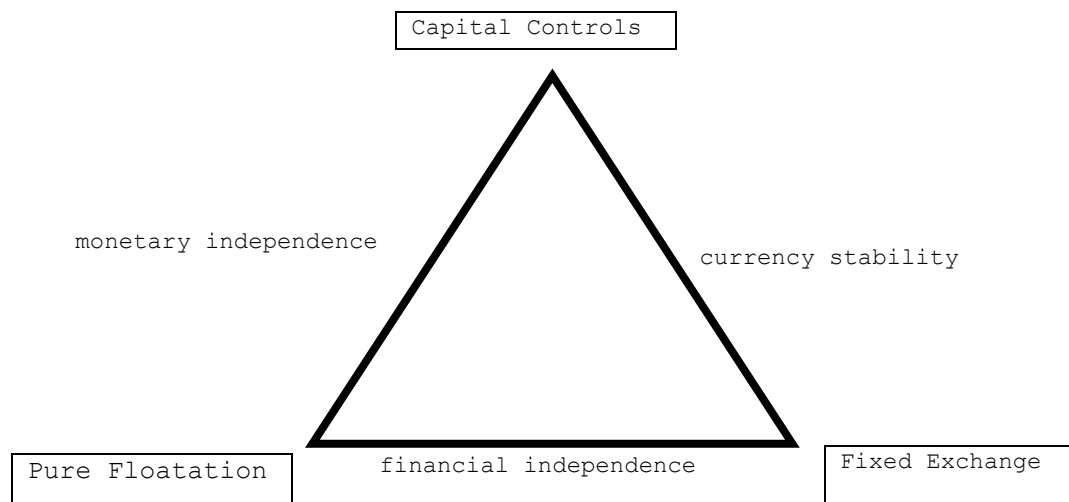
¹⁸ H. Camara de Diputados de la Nacion: Diario de Sesiones, 26 y 27 de Marzo de 1991; pg. 5377.

□

This separation of monetary policy from fiscal policy was especially important, because one of the ways in which hyperinflation came about in Argentina was through fiscal deficits and devaluations. Here, the exchange rate was fixed, and the Central Bank could not do anything to finance the fiscal deficit. This institutional arrangement was promising in that it created immediate stability. On the other hand, it took away from the Government the power of monetary expansion as instrument of macroeconomic policy.

6. The "Impossible Trinity"

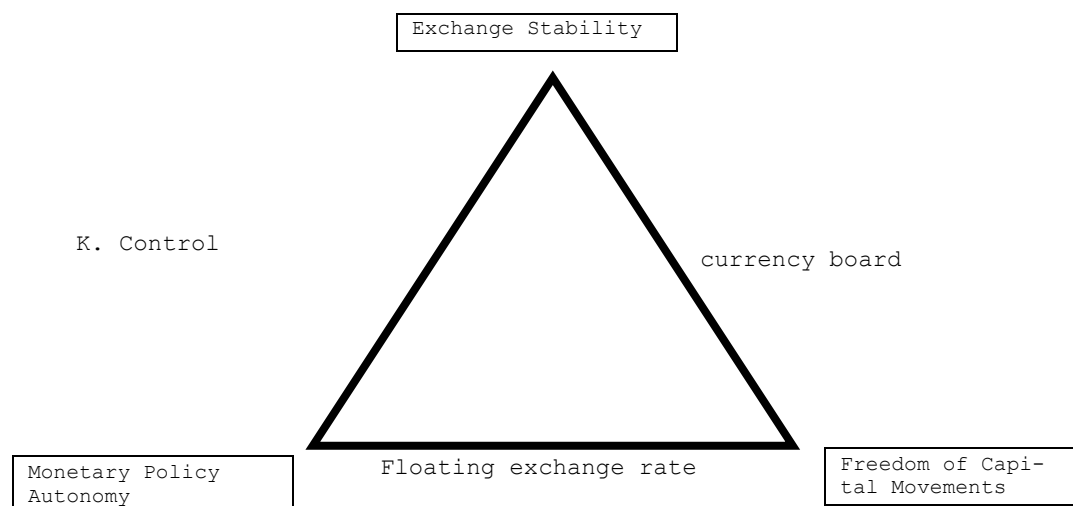
The institutional arrangement chosen by Argentina can be analyzed from the point of view of the impossible trinity among i) currency stability, ii) financial independence and iii) monetary independence¹⁹. This impossibility means that a country cannot have in place the three mentioned options at the same time, having to choose two of them, giving up the other. It is usually graphically represented as follows:



¹⁹ For a recent discussion on impossible trinity, see FRANKEL Jeffrey A.: Recent Exchange-Rate Experience and Proposals for Reform; in "Exchange-Rate Regimes and Macroeconomic Stability"; "The American Economic Review", Vol. 86, No. 2, Papers and Proceedings of the Hundredth and Eighth Annual Meeting of the American Eco-

Argentina had to choose, and it gave up monetary independence to obtain the currency stability and financial independence the country needed to stop hyperinflation and to attract capital into the country.

Another way to present the impossible trinity is among i) currency board, ii) capital control and iii) floating exchange rate; the graphic representation in this case is the following²⁰.



In order to attain exchange stability and freedom of capital movements, Argentina chose the currency board giving up not only its monetary policy autonomy, but also any possibility of capital control or floating exchange rate.²¹

But "some" monetary independence remained. Under the new institutional framework, the Central Bank has the obligation to have at least 100% of the equivalent monetary base in foreign reserves; but it has also the flexibility to invest some

omic Association"; San Francisco, CA, January 5-7, 1996. (May, 1996), pgs. 153-158.

²⁰ Suggested by Devesh KAPUR, when this chapter was discussed in the Research Workshop on the Performance of Democracies (WCFIA-Harvard University)

²¹ Markets reaction toward the inclusion of the Euro in the Argentine convertibility regime in 2001, seems to confirm Prof. Kapur's suggestion.

of those reserves in interest-bearing instruments that are sufficiently liquid (US Treasury bills, National Treasury bills to be paid in gold, etc.). According to the Central Bank Charter, the total amount of these government bonds cannot exceed 35% of deposits in the financial sector. So, the Central Bank could "play" with 35% of its reserves, performing open market operations of treasury bills to expand or contract money supply through interest rates.

Nevertheless, reserves are still subject to international market forces; and in the case of a crisis in which money leaves the country, due to the fixed exchange rate and the limited monetary base, the government would not have any policy instruments to absorb the shock other than to turn to external financing. This institutional set-up calls for fiscal deficits to be financed not by monetary emission but through internal debt instruments and international capital markets.

One downside of this monetary policy was its vulnerability to competitive appreciation or depreciation. This meant that if any of Argentina's trade competitors were to have an exchange rate depreciation, this would create a short-term recession due to the relative expensiveness of exports²². The intended tradeoff of the new monetary system was clear: short-term trade vulnerability vs. long-term credibility and risk reduction. Notwithstanding, at the moment when this was written (Spring 2001) it seems that persistent fiscal deficit has undermined long term credibility and raised country's "credit risk".

²² As was the case of Brazil in 1998

7. The Enforcement of Convertibility

From the beginning, this monetary policy was—and still is today—extremely controversial²³. As it was said before, when the Convertibility Law passed the Congress it was supported only by the Justicialista Party and some minor allies, overcoming the opposition of the Radical Party and some others. But after the law was passed and inflation stopped, convertibility and the "1 to 1" peg gained overwhelming popular support.

Table I.II.1 presents the available data about the approval of the economic policy that comprised convertibility, from a systematic national poll²⁴.

Table I.II.1
Approval of the Economic Policy
(% of responses)

	91	93	94	95	96
Approval	47	56	51	46	41
Disapproval	38	35	40	47	52
DK/DA	15	9	8	7	7

Table I.II.2 presents more specific data about convertibility, from the same systematic National poll; it shows that support is still very strong.

²³ See Chapter IV, Section 3.

²⁴ Gallup Argentina.

Table I.II.2
Should Convertibility To Be Maintained or Abandoned
 (% of responses)

	95	98	99	00
To Maintain	72	70	71	64
To Abandon	6	12	12	16
DK/DA	22	18	17	20

The Government took advantage of this ample approval, and with a determined presidential leadership, the technical prestige of the minister of Economy²⁵ and a Cabinet of committed reformers²⁶, the entire program of reforms was enforced at a very active pace.

The evidence of monetary stability led opposition parties to accept (rather than to support) the Currency Board as an instrument to beat inflation²⁷

The Mexican crisis in December 1994 and the beginning of 1995 produced big capital outflows from Latin American countries, included Argentina; but the Government stood firm with convertibility and the 1 to 1 peg. In May 1995, the incumbent Justicialista Party won the general elections at the presidential, congressional and provincial levels. President Menem was reelected by a landslide margin, with more than 50% of the votes.

The "Tequila Effect" impacted the reserves in the Central Bank, and produced a monetary contraction which led to

²⁵ The minister was Domingo Cavallo, who has a Ph.D. Degree from Harvard University.

²⁶ Eduardo Bauzá (General Secretary); Jose L. Manzano (Interior); Guido Di Tella (Foreign Relations); Erman Gonzalez (Defense); Leon C. Arslanian (Justice); Rodolfo Diaz (Labor); Antonio Salonia (Education); Julio C. Araoz (Health); Domingo Cavallo (Economy).

²⁷ Ricardo Campero, economist of the Radical Party; El Cronista Comercial, June 26, 1992, pg. 12

recession; therefore, in 1996 the Convertibility Law came back into the discussion arena. The public was divided between those in favor of the currency board and those against it; people who were against it argued not about the law itself, but rather about the context of international crisis in which the convertibility -they said- was no longer sustainable.

Economists²⁸ agreed that Argentina had to suffer the recession from the outflow of reserves if it wanted to preserve the credibility of the currency board that had given them the economic growth of the previous four years. And critics of the currency board and advocates of devaluation²⁹, argued that with high unemployment and economic stagnation, a boost was needed to reactivate growth. Since with the Convertibility Law the fiscal deficit could not be financed by monetary expansion, for those advocates the only available tool was devaluation.

Moreover, some books were published with respect to the monetary reform. Although the authors presented them as intended to clarify the dynamics of the Argentine case of monetary policy, they showed academia's lack of support for the currency board. For instance, it was argued that the "Argentine model" did not fit discretionary policy models nor rational expectations arguments; and that the reason for the Convertibility Law to be proper for the country was the "hyper-rationality" of Argentineans with respect to monetary is-

²⁸ Calvo, Guillermo: Hay que bancarse la Recesión; in "Cash", March 17, 1996. Pg.3; Grazing, Walter: De a poco, la economía se independiza de la política, "La Nación", March 31, 1996, Pg.7; El plan de convertibilidad se mira y no se toca; "Clarín", Enero 21, 1996, Pg. 2; Della Paolera, Gerardo: Importa más la política fiscal que no devaluar; "Página 12", December, 1995.

sues³⁰. But the Government maintained its strong stance, based in a very positive attitude of public opinion: the hardship of the economic situation impacted the popular support for the monetary policy only on the margins³¹.

In June 1996 Domingo Cavallo resigned from the position of Minister of Economy. This sparked some questions of whether the convertibility would hold without him.

The then President of the Central Bank, Dr. Roque Fernandez³², was appointed new Minister. The convertibility regime and the "1 to 1" parity were maintained; they functioned well and overcame two major international financial turmoils (the one produced by the South East Asia crisis and the other caused by the Russian default) and one severe regional problem (the Brazilian devaluation).

Furthermore, there were presidential elections in 1999. By that time, it was crystal clear that the population supported this monetary policy; therefore, all parties and candidates committed themselves to maintaining convertibility and the 1 to 1 peg.

During the 1990s, there were no modifications of the Convertibility Law. Despite certain scrutiny, especially in 1996 after the Mexican crisis and more recently after the Asian and Russian crises and the Brazilian devaluation, the institutional set-up of the Argentine monetary regime has remained absolutely stable. Only in 2001 was the regime somewhat modified, when the Euro was added as another reference

²⁹ RODRIGUEZ, Jesus: Falta crecer con equidad, "Ambito Financiero", Abril 1, 1996, Pg. 23; Curia, Eduardo: Es necesario salir de este esquema; "La Nación", Marzo 31, 1996; Pg.7.

³⁰ DELLA PAOLERA, Gerardo; Pagina 12, December, 1995.

³¹ See Table II.1

³² Dr. Fernandez has a Ph.D. Degree from Chicago University.

for the convertibility. However, the change was not well received by the markets or by the public.

8. The Fixed Exchange Rate

The cardinal objective of policy makers in Argentina at the beginning of the nineties was to beat inflation. The episodes of extremely high inflation of 1990 and 1991³³, mentioned earlier in this chapter, had demonstrated that—in the particular case of Argentina—a floating exchange rate could create feedback loops to inflation and currency depreciation. Many Argentines felt that the floating exchange rate imposed a constraint on the monetary contraction policy, and they believed that a fixed exchange rate could overcome that constraint.

There are several models that have been used to explain those phenomena; the following is an oversimplified version of one of them.

a) The monetary policy implemented at the beginning of 1990 was a monetary contraction that increased the domestic interest rate; this increase widened the gap with the international interest rate, which became an incentive for foreign investors to take financial positions in Argentina. As a result, there was an increase of the capital inflows into the country.

These capital inflows produced a temporary surplus in the balance of payments, which in turn created a downward pressure on the exchange rate and resulted in an appreciation of the domestic currency. This appreciation produced both a reduction in the domestic interest rate and a reduction in

³³ See this Section, #2

the domestic output as well; but the fiscal deficit was not adjusted to the new, lower level of output.

The fact that the fiscal deficit was kept constant while domestic output decreased resulted in expectations of further inflation that reinforced the tendency toward capital inflows reversion. This created a new process of currency depreciation and inflation.

b) The next attempt to control inflation, in March 1991, consisted of a monetary contraction as well, but this time with a fixed exchange rate.

When this monetary contraction was put in place, it produced the same initial effects of that in 1990: the domestic interest rate went up, increasing the gap with the international interest rate, creating an incentive for foreign financial investments in Argentina, which increased the capital inflows into the country.

These capital inflows produced the same type of temporary surplus in the balance of payments that could create the same downward pressure on the exchange rate; but this time around, the downward pressure did not result in an appreciation of the domestic currency due to the convertibility regime that functioned as a fixed exchange rate regime.

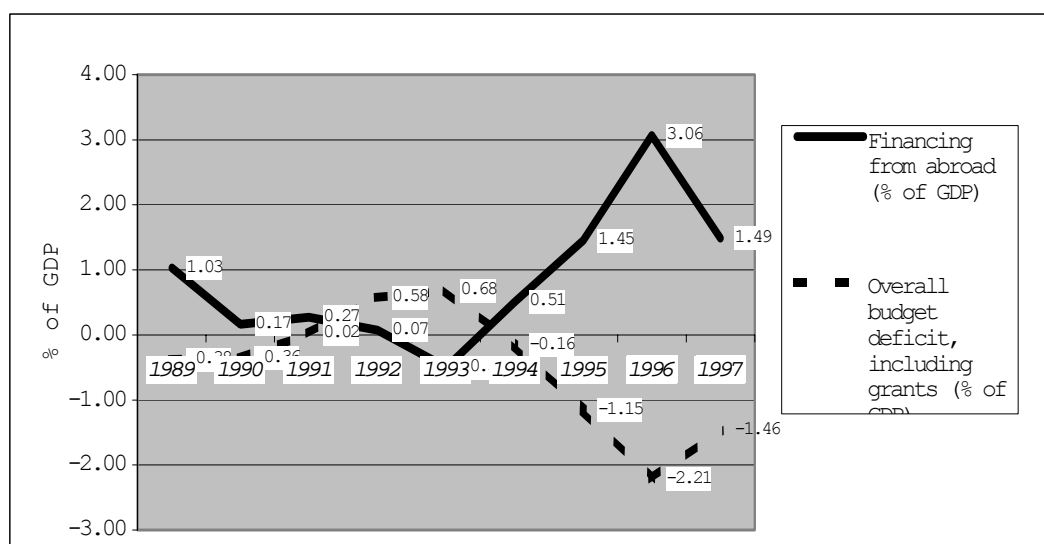
Thus, by avoiding the appreciation, output was not reduced and interest rates adjusted downwards with domestic prices. Since output was not reduced, there was no government spending inconsistency, and no depreciation expectations were created. Therefore, neither the tendency toward capital inflows was reverted, nor was a new process of currency depreciation and inflation created.

10. Effects

The convertibility law has achieved its main purpose. It was designed to cope with hyperinflation, inflation and macroeconomic stability. It has also gone further in that it has established monetary credibility and eliminated the currency risk premium. The targeted problem was the elimination of the Central Bank's role of financing government fiscal deficit, prohibiting—by law—the Central Bank from any kind of lending or printing of money other than to sell domestic currency for foreign currency.

This has been a salient effect of the Convertibility Law, isolating the problem that had led to previous crisis: that of the fiscal deficit. Under this monetary system, the fiscal deficit was left to its own financing. Graph I.II.1³⁴ shows that external financing is almost perfectly negatively correlated with the fiscal deficit.

Graph I.II.1
External Financing and Budget Deficit
(1989-1997, as % GDP)



³⁴ Data: World Bank: World Development Indicators 2000

Besides solving Argentina's inflationary problems, the convertibility law also restored credibility to the public institutions that attracted foreign capital. Over the decade, the amount of foreign direct investment grew from 1 billion in 1989 to 5 billion in 1997.

The indirect effects of the law on the rest of the economy have been two fold: On one hand, it has attracted capital and foreign direct investment into the country; on the other, it has made the economy more vulnerable to external shocks.

The debate has centered on whether this effect of attracting capital (or allowing capital to flow in and out freely) and at the same time dictating the level of monetary base, is a positive or negative one. From the theoretical point of view the answer is ambiguous. It all reduces to the economic argument of whether or not in Argentina a devaluation causes inflation in the first place, regardless of the fiscal balance; or if it is only the fiscal deficit which induces the capital flight which in turn leads to inflation. It is a subtle point but an important one in order to understand the way the monetary system of Argentina works and if in fact Law 23,928 is sustainable or not.

11. Inflationary Effects of Devaluation³⁵

A complete answer to the question of whether or not devaluations in Argentina produced inflation, is beyond the limits of this study; nevertheless, some comments are appropriate.

Economists measure the impact of devaluation on inflation by the "pass through coefficient". "Pass-through"³⁶ is

³⁵ Developed with the assistance of Diego Arias Carballo.

the relation between the exchange rate and domestic prices. When there is no pass-through (coefficient 0), the price of the importing country does not respond at all to the change in the exchange rate. The higher the coefficient, the faster the impact of devaluation on inflation. Pass-through is dependent on country variables such as the amount of tradable goods in the economy (trade to GDP ratio), monopolies and state owned enterprises, number of foreign firms and their degree of competition, product substitutability, and the expectation of future changes in exchange rates.

The impact of devaluations on Argentine inflation shows a significant variation in the eighties. In order to assess the impact of devaluations on the prices' level, variations of the pass-through coefficient for Argentina will be calculated from three different approaches: i) The first will take yearly data over a long period of time: from 1960 to 1990. But this temporal series assumes that the political context in Argentina was a "continuum" of incremental changes; that assumption is not consistent with the historical information: in that period Argentina changed very much, in a discontinuous and more than incremental way. ii) To be more consistent with that process, the second will take yearly data as well, but over a more specific period of time: the decade before the Convertibility Law, from 1981 to 1991. iii) Comparing the

³⁶ Note by Diego Arias Carballo: In order to calculate the pass-through for Argentina, it was formulated the following equation $(EP^*/P)_t = \alpha + \beta(EP^*/P)_{t-1} + \varepsilon$. Then, for a given discrete jump in the nominal exchange rate (E) at time t-1, the effect of the pass-through (γ) will be $(\gamma=1-\beta)$. So if $\beta=1$ (the pass-through coefficient $\gamma=0$), then there is no effect of the change in the exchange rate on prices because the real exchange rate at time t $(EP^*/P)_t$ will carry the change in E at time t-1. On the other hand, if there is perfect pass-through ($\beta=0$), then the real exchange rate at time t will remain the same (α) regardless of the nominal increase in the exchange rate at time (t-1). This means that prices P have adjusted and that the real exchange rate remains unchanged.

first and the second coefficients, it seems reasonable to conjecture an acceleration of the speed of the impact. In order to assess that acceleration, the third approach considers the same decade from 1981 to 1991, but taking the data on a six month basis.

a) The regression of yearly data from 1960 to 1990 produced a resulting pass-through coefficient of 0.4733. This means that for a given increase in the nominal exchange rate (devaluation), the prices' increment will be 47% of that given change at the end of the year. This level of pass-through coefficient is similar to that of the rest of Latin America.

b) The regression of yearly data from 1981 to 1991, resulted in an annual pass through coefficient 0.8498. This means that a given increase in the nominal exchange rate, will be translated in a 85% increase in prices in the next year. This is a extremely high pass-through coefficient by any standard.

c) The high pass through coefficient obtained in the previous regression gives enough reasons to believe that, in Argentina in the eighties, the effect of devaluations may be felt sooner than after a year. Therefore, the pass-through coefficient was analyzed on a six month basis, and the semi-annual resulting pass-through coefficient was 0.7603. This means that a given increase in the nominal exchange rate will determine a 76% increase in prices in the next semester. Although a lower pass-through coefficient is to be expected if the period is reduced from one year to six months, this coefficient is still as extreme as the annual one.

Table I.II.3³⁷ presents world data of pass-through coefficients by continent, in comparison to that of Argentina in the eighties.

Table I.II.3
Pass-Through Coefficient
(Continents 1980-2000)

	6 months	12 months
Europe	0.211	0.360
Africa	0.343	0.643
America	0.539	0.692
Oceania	0.092	0.158
Asia	0.367	0.712
Total	0.426	0.701
ARGENTINA 81/91	0.7603	0.8498

12. Elimination of Devaluation as Monetary Policy Instrument

The "pass-through coefficient" measures the inflationary impact of devaluations; that means how, how much, and how fast an increment in the price of the foreign currency is translated to the domestic prices of goods and services. The analytical usefulness of this coefficient is the following:

Devaluations are instrumental to "cheapening" the domestic prices in relation to international prices. While the "cheapening" effect lasts, the internal prices become more competitive in international terms, and exports increase. When the impact of the devaluation reaches domestic prices, the "cheapening" effect comes to an end, the domestic prices are no longer competitive, the exports become more expensive in international terms and, therefore, exports decrease. The

³⁷ Data: GOLDFAJN, Ilan and WERLANG, Sergio: The Pass-Through From Depreciation to Inflation: A Panel Study. Texto para Discussão No. 423, Departamento de Econo-

pass-through coefficient allows the measurement of the speed at which the "cheapening" effect ends.

In a situation like the one described, a sound solution is to lower the internal costs of improving productivity; a bad solution is to devalue again. Since in a country like Argentina the most important domestic prices are the salaries, the effect of devaluations is...to lower salaries.

In the eighties, the Argentineans were quite aware of the impact of devaluations on their salaries, and consequently the speed of reaction to devaluations was accelerating. By the end of the decade the reaction to devaluations was immediate or—in certain cases—anticipated. The "legal technology" of contracts adjustment that was analyzed elsewhere³⁸ was highly instrumental in this effect.

The Argentine society, in some moment between 1981 and 1989, changed its collective behavior with relation to the value of the currency: accelerating its reaction to devaluations, the public eliminated its "cheapening" effect. This phenomenon underlies the strong political support of Argentine society for the Convertibility regime and for the 1 to 1 parity to the dollar.

Public reaction eliminated the usefulness of devaluations as an instrument of economic policy in Argentina. And—in order to overcome a long period of recession—led the debate from the controversial theme of convertibility, to a more controversial one: dollarization.

mia, Pontificia Universidade Catolica do Rio de Janeiro. (April 2000).

³⁸ See Introduction, Section III.4

- III -

FISCAL REFORM

Inflation was the main tax of assisted capitalism. Stabilization eliminated the "inflation tax" and rendered positive economic effects, but made fiscal reform necessary. In 1992 an audacious fiscal reform was attempted; however, resistance to it twice obliged government to retreat. Lacking reform, the only possible fiscal policy was enforcement and tax collection; nevertheless, despite visible improvements, asymmetry between revenues and expenditures was not balanced, revenues from the "inflation tax" were never replaced and the "spending side" of the equation was never properly addressed; separated attempts to cut public expenditures were impaired by resilient budgetary institutions and political cycles. The "Fiscal Responsibility Law", passed at the end of the period, was not properly enforced.

1. Inflation: The Tax of Assisted Capitalism

Inflation was the dominant characteristic of the Argentine economy over the period ending in 1989; therefore, it played a crucial role in the fiscal situation: inflation was the tax of assisted capitalism.¹ There is a fairly wide consensus amongst economists that inflation can be considered as a tax; in that way it was defined at the beginning of the process of reforms: "High inflation is considered as a tax on persons' currency holdings. Its collection base is the named M1 monetary aggregate, that is the conjunct of monetary assets held by private individuals which do not yield interest or indexation, and hence are exposed to inflationary erosion".²

Considered as a tax, inflation has several characteristics worth pointing out:

a) Inflation was not only the tax of assisted capitalism, it was the single most important source of government

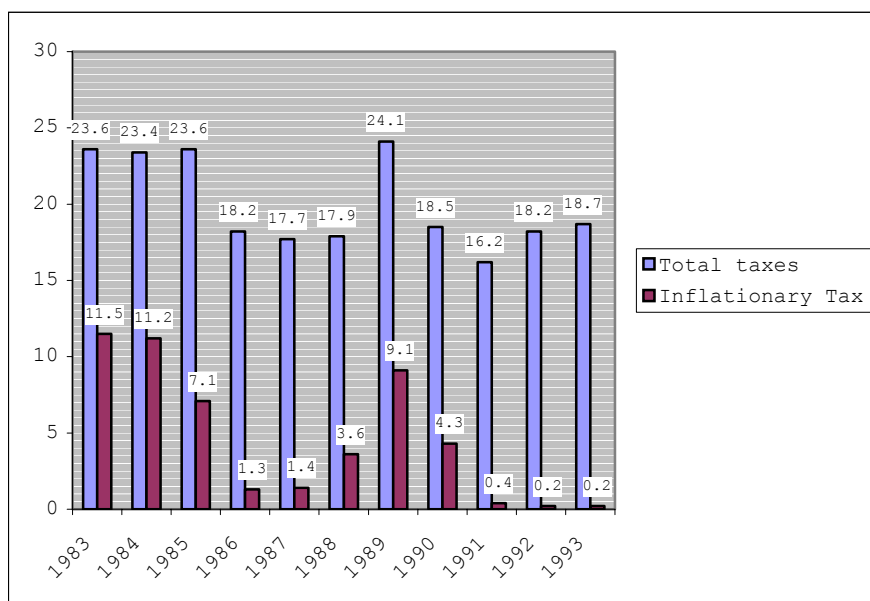
¹ See Introduction 3.e

² MEOSP: Argentina en Crecimiento; Buenos Aires (1995); pgs. 16/17

financing in that period. From 1980 to 1989, government revenues yielded by the "inflation tax" have been estimated to be 61,4 billion (1991 US\$), an annual average of 7% of the GDP³. Until 1989, between one-third and one-half of the total government revenues came from this "inflation tax".

Graph I.III.1⁴ represents the figures.

Graph I.III.1
Participation of "Inflation Tax" in Total Tax Collection
(1983/1993, as % of GDP)



b) Argentina has a revenue sharing system where some revenues are shared among the provinces and the federal government; certain taxes are collected by the federal government and afterwards re-distributed to the provinces according to legally pre-established proportions. But the "inflation tax" was a sort of "de facto" one, so its revenues were not included in the a revenue sharing system. Therefore, the al-

³ Data: LLACH, Juan and CERRO, Fernando: Op.Cit

⁴ Data: MEOSP: Argentina en Crecimiento; Buenos Aires (1995); pg. 17

ready mentioned high participation of the "inflation tax" in the generation of government revenues determined that 60% of those revenues were "not shared revenues", being concentrated in the federal government and not shared with the provinces.

c) Because of the very nature of the Argentine experience along the eighties, the "inflation tax" was almost "universal": it taxed every sector of economic activity (rural, industrial or services), every firm (whatever its size or type), and every economically active individual (professionals and workers). A very important feature of this universality was that, being the "inflation tax" unevadable by definition, it taxed the "black" economy as well as the regular economy; actually, it was the only way—again by definition—to tax the irregular economy.

d) Finally it should be remembered that, as has been argued before⁵, notwithstanding its universality, the "inflation tax" was very "regressive" and produced very asymmetric distributional effects. "The average burden borne by the poorest quintile (8.6%) as a percentage of their income was almost three times bigger than that borne by the wealthiest quintile (3.0%); for the poorest group, it reached its maximum value in the third quarter of 1989 (hyperinflation) with 13.6% against 4.8% for the group with the greatest income".⁶

When inflation was terminated by the process of reforms, it consequently eliminated the "inflation tax". This elimination produced several effects:

⁵ See: Introduction, 3.f

⁶ MEOSP: Argentina en Crecimiento; Buenos Aires (1995); pg. 18

a) It reduced government revenues from an average of 21.7% of the GDP in 1985-1990, to 17.2% in 1991-1998⁷; this reduction clearly determined the necessity of a deep fiscal reform. The lack of such reform, as will be shown below, contributed to the impairment of the government's ability to balance the public deficit.

b) It relieved society from a heavy tax burden (leaving in their hands the 4.5% of the GDP yearly that did not go to the government). In the short term, this probably helped boost the Argentine economy, which had a very good performance the years following stabilization. In the long run, the absence of a new fiscal structure—given the high public expenditure—led to levels of public deficit that undermined the economy.

c) It ameliorated more than proportionally the situation of low-wages earners. As it was explained elsewhere⁸, in June 1989 inflation was 135.7% monthly and the "inflation tax" burden was 25% on the lower salaries; when inflation fell to 33% monthly that burden was reduced to less than 9%.

d) It increased the amount of shared revenues, from only 40% of the total revenues in times of inflation, to 65.8% over the period 1991-1998.

2. Fiscal Situation in 1989

In 1987, while OECD countries were collecting an average of 33% of GDP as tax revenues, Argentina was collecting 19%. Nevertheless, the amount of resources taken from the private sector was much more because of the "inflation tax", though

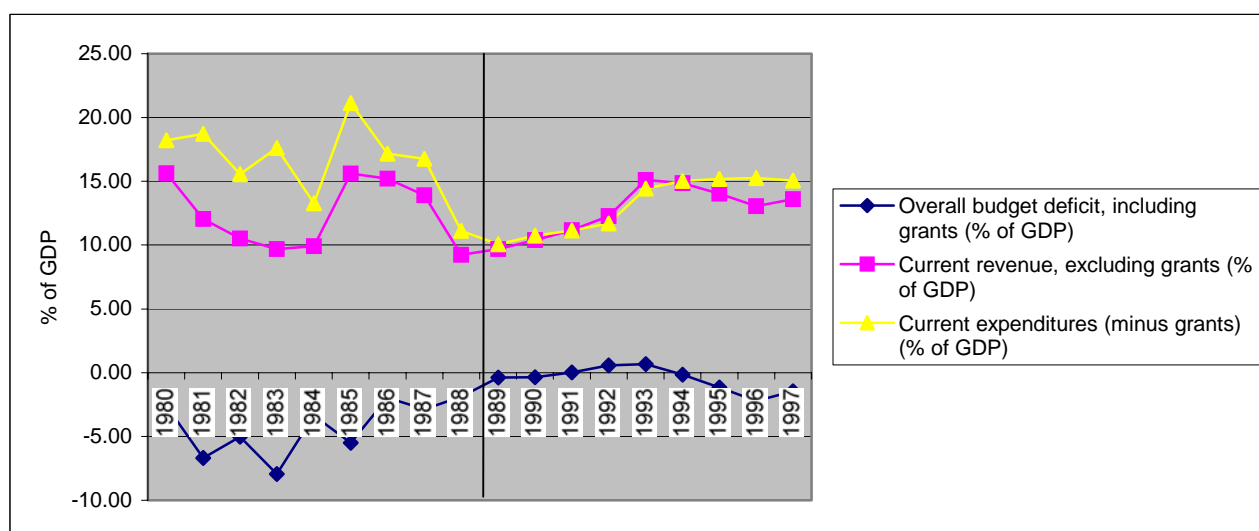
⁷ IAEF: Convertibilidad Fiscal; in "Boletín No. 20", Buenos Aires (1999), pg. 25

⁸ See Introduction, 3.f

its "collection" did not show up in official registrations.⁹ Comparing the periods before and after 1989, the inflationary effect on tax revenues and government revenues is apparent, taking into account that the fiscal deficit was covered with expansionary monetary policy ("inflation tax").

Graph I.III.2¹⁰ shows the relationship among public deficit, government revenues and government expenditures.

Graph I.III.2
Deficit, Revenues and Expenditures
(1980-1997, as % of GDP)



Over the period 1980-1989, the average overall budget deficit was 4.2% of GDP; from 1990 to 1997, this level was reduced to 0.5% of GDP¹¹. Moreover, government's revenue base was substantially more volatile in the eighties than in the nineties: for the period 1980-1988, government's revenue volatility was a standard deviation of 2.7% of GDP, while in the period 1989-1997 this was reduced to 1.9% of GDP.

⁹ FIEL: El Sistema Impositivo Argentino; Ed. Manantial. Buenos Aires (1991), pg.9

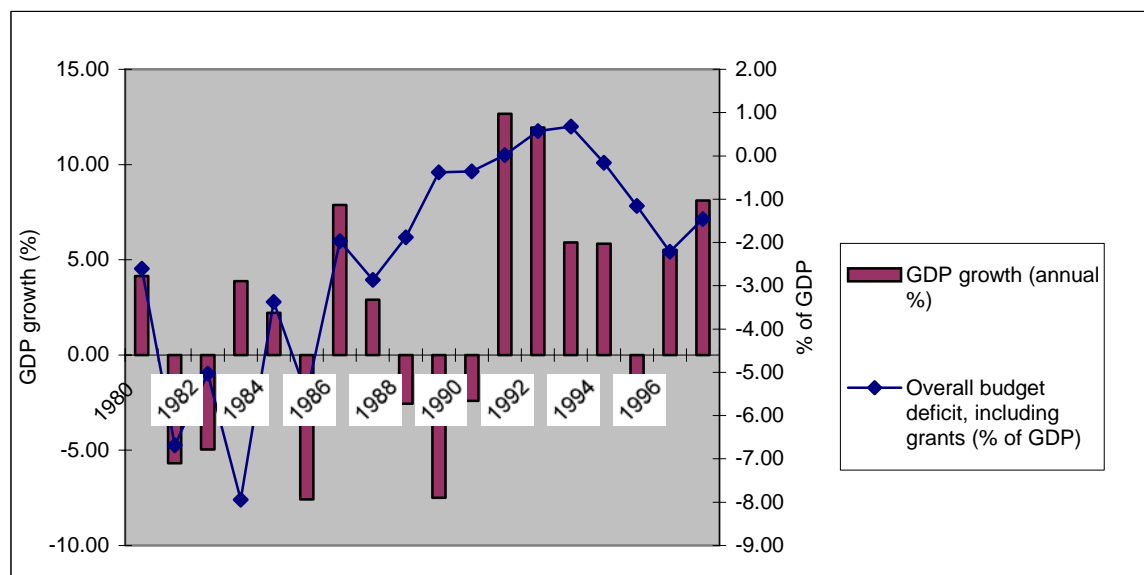
¹⁰ Data: World Bank: World Development Indicators 2000

¹¹ Data: World Bank: World Development Indicators 2000

Fiscal policy over the pre-reforms period was procyclical, with a correlation between fiscal deficit and GDP growth of 0.4 (For each 1% point increase in GDP growth, the budget deficit will increase by 0.4% points in GDP terms). This procyclicality was reduced to 0.22 in the reforms period.

Graph I.III.3¹² illustrates this procyclicality, presenting the relationship between budget deficit and GDP growth.

Graph I.III.3
Budget Deficit and GDP Growth
(1980-1997)



Fiscal policy throughout the eighties looks anti-cyclical, (with the exception of 1983 and 1988), but always running large budget deficits. Throughout the nineties, on the other hand, the signs of procyclicality are stronger, but with a clear tendency towards smaller fiscal deficits.

¹² Data: World Bank: World Development Indicators 2000.

Income tax collection fell from 1.5% of GDP in 1970-76, to 1.1% of GDP in 1983-89. Participation of the "Value Added Tax" (VAT) as a percentage of total revenues, increased, but changes in the VAT implemented in 1984 produced confusion among consumers and retailers, and made government revenues more volatile.¹

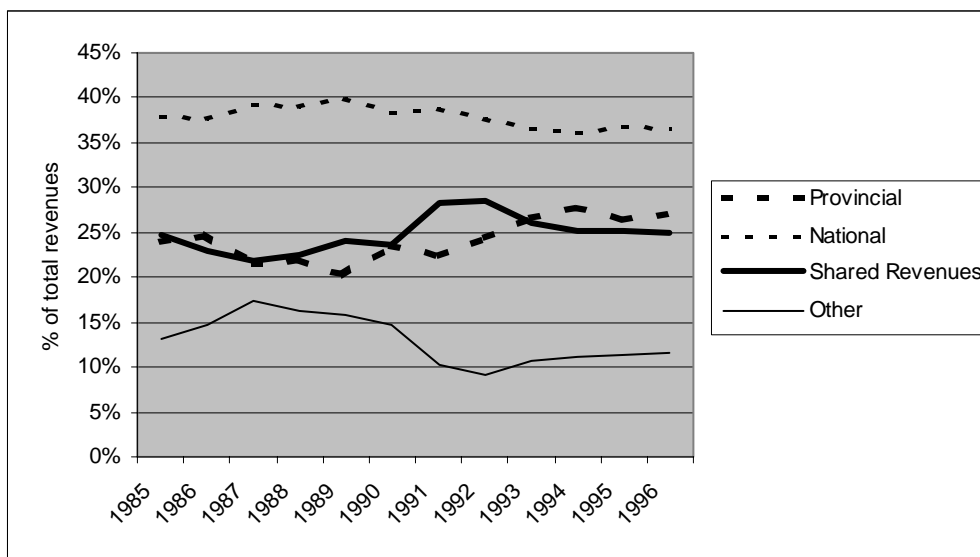
Over the 1985-1989 period, revenues received by the provinces through revenue sharing were as large or equal to the revenues from provincial taxes raised locally by themselves. This created a big incentive to lobby at the national level for increasing the share of the revenue sharing "pool" to be received by the province, instead of incentives to collect more taxes at the provincial level. Only after the reforms, from 1992 to 1996, revenues from locally collected taxes surpassed those received through revenue sharing.

Graph I.III.4² shows the curves.

¹ FIEL: El Sistema Impositivo Argentino; Ed. Manantial. Buenos Aires (1991), pg.11

² Data: World Bank: World Development Indicators 2000

Graph I.III.4
Provincial Governments Revenues
 (1985-1996)

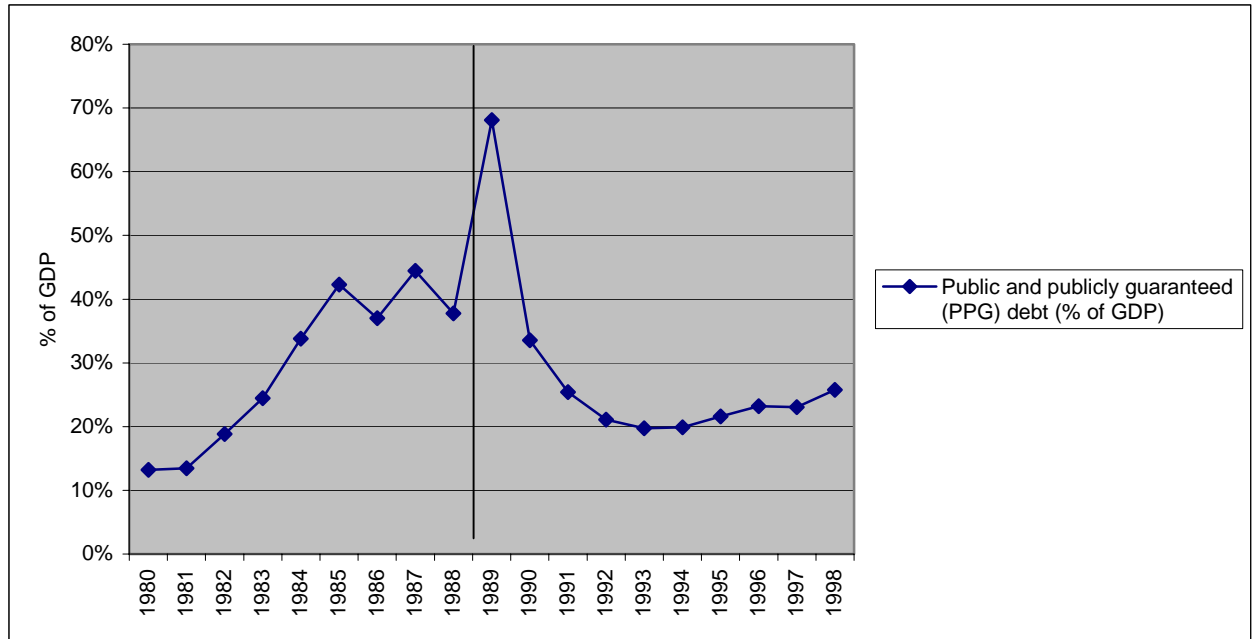


In terms of sustainability of the fiscal deficit in the eighties, the public debt as a share of GDP increased exponentially, from slightly more than 10% in 1980 to almost 70% in 1990; this pointed to the unsustainability of the large fiscal deficit of that decade. The reforms visibly lowered that ratio.

Graph I.III.5³ show the evolution of the Argentine public debt in GDP terms.

³ Data: World Bank: World Development Indicators 2000

Graph I.III.5
Argentina: Public and Public Guaranteed Debt
 (1980-1998, as % of GDP)



Another feature that characterized the Argentine tax system before the reforms of the nineties, was that it was "regressive", that "clearly prevailed taxation on consumption and labor over that on capital, profits or wealth".⁴ That regressiveness was evident during the period of assisted capitalism (1966 onwards) and it was worsened by hyperinflation (measured as in the first quarter of 1991, before monetary reform).

Table I.III.1⁵ show the figures.

⁴ BOCCO, Arnaldo: El Efecto Tacchi; in "Oikós", Buenos Aires, 2 November 1992, pg. 22.

⁵ Data: BOCCO, Arnaldo: Op. Cit., pg. 24

Table I.III.1
Tax Structure
 (% of Total tax revenues)

Type of Tax	1966/1992	1 st . Q. 1991
Income	8.52	3.70
Gross Assets	11.14	9.20
Labor	25.29	34.40
Consumption	40.27	40.60
Trade	10.82	6.00
Others	3.69	6.10

Volatility, procyclicality, unsustainability and regressiveness summarizes the Argentine fiscal policy characteristics throughout the eighties; moreover, the poor quality of the budgetary institutions provided wrong incentives regarding overspending.

3. The Proposal

The Fiscal Reform that was finally approved by Law 24073 was far less profound and innovative than it was supposed to be. The original bill sent to the Congress by the Government at the end of 1991 had substantial policy-making objectives: i) To change the "inflation-dependant" tax system of the assisted capitalism—which was still in place at the end of the eighties—installing a new system which excluded the "inflation-tax". ii) To replace a new tax regime compatible with a stable market-oriented political economy, for the old system belonging to assisted capitalism. And moreover, iii) to redesign the fiscal institutions in order to establish correct incentives regarding budgetary discipline, employment and economic growth.

This project of new tax policy was clearly described by the Government in a 1992 Memorandum⁶ to the IMF as regards an "Extended Facilities Loan" negotiated that year: "13. In 1992, the government is planning to carry out a far-reaching fiscal reform, in order to simplify the tax system, to enhance investment and to reduce the tax burden that is laid upon labor in relation to the other factors of production. This reform, whose approval by Congress is expected for middle year, would gradually replace the current "profits tax" (impuesto a las ganancias)...with two new taxes: the "distributed profits tax" (impuesto a las ganancias distribuidas-IGD) and the "firms primary surplus tax" (impuesto al excedente primario de las empresas-IEPE)". The memo to the IMF lists other proposed modifications, as elimination of employers payroll taxes (replaced by the IEPE), reduction of the rates of some taxes, elimination of others, and an increase of the VAT rate; and it concludes: "As a consequence of these reforms, tax collection will be concentrated on general taxes as VAT, IEPE and Social Security dues, and on certain specific taxes on consumption".

The reform project was based on three pillars⁷: i) Fight against tax evasion: reinforcing the social perception that tax evasion was a crime actually punished, and implementing methods to improve collection efficiency. ii) Expansion of the tax base: interlinked with the other pillars, since increasing the number of taxpayers, through avoiding evasion and increasing the tax payments through a more efficient system, increases the tax base. iii) Simplification of the tax

⁶ MEOSP: Acuerdo de Facilidades Ampliadas República Argentina-FMI; Memorando de Políticas Económicas. Buenos Aires (1992), pg. 6

⁷ MEOSP: Argentina en Crecimiento; Buenos Aires (1995); pg. 13

system: very important as regards efficiency and transparency of the tax system; the original idea was to eliminate over 20 different taxes, replacing them with only three: VAT; IEPE, which replaced labor taxes paid by firms; and IGD, aimed at pure rents.

The expected results of this proposed reform—according to the same Memorandum cited above—were fiscal revenues raising to 24.3% GDP in 1993 and afterwards staying around 24%; and a primary surplus equivalent to an annual average of 2% GDP for the next three years.

Table I.III.2⁸ presents those projections.

Table I.III.2
Projected Fiscal Results
(1991-1994, as % GDP)

	1991	1992	1993	1994
Fiscal Revenues	21.8	24.3	23.8	23.9
Current Expenditures	20.1	20.9	20,4	20.3
Primary Current Surplus	2.1	3.5	3.9	4.3

The proposal of Fiscal Reform above described was ambitious, creative and fairly original, since there were no identical antecedents in the international experience; and it was especially consistent with the whole process of profound reforms being carried out in the country at that time. As will be presented below, this initiative was defeated and the Fiscal Reform was never implemented as it was originally designed. Regrettably indeed; in time, the Argentine fiscal situation became highly vulnerable.

⁸ MEOSP: Acuerdo de Facilidades Ampliadas República Argentina-FMI; Memorando de Políticas Económicas. Buenos Aires (1992), pg. 12

4. Approval: Defeat and Debate

The subtitle seems mistaken, but it is not: the Fiscal Reform was defeated before its parliamentary debate.

The bill was discussed in the public opinion at the beginning of 1992, when inflation had been already curbed, and the "emergency"—the special situation that had made possible the fast approvals of the economic and monetary reforms—had hence also ended; therefore, in order to make the Fiscal Reform project pass Congress, a more extended and complex process of support building was required. But it was difficult.

The president, the cabinet and the Justicialista Party supported the initiative devised by the team of then Minister Domingo Cavallo. The IMF, on its part, did not make observations to the proposed changes.

But there were an array of different groups and different vested interests that—for different reasons—converged to resist the fiscal reform: i) First, a good part of business was against the reform. Insurance companies, banks and transport companies, which did not pay VAT, should pay IEPE; the rural sector, being not labor intensive, paid little social security contributions, but should pay IEPE; exporters had a "VAT-return" regime, but IEPE was not supposed to be returned; small business and independent professionals, whom almost did not pay social security contributions, should pay IEPE; even the oil consortiums joined the resistance too⁹. The arguments made by business to resist the reform were many, for instance: flaws in lawmaking technique; anti-exports, anti-provincial, anti-foreign investment and anti-cooperative biases; unconstitutional components; heavy burden

upon independent workers.¹⁰ ii) Second, the professional practitioners devoted to Social Security (lawyers, accountants, experts), also resisted the fiscal reform, anticipating their further opposition to the Social Security Reform.¹¹ iii) Third, opposition political parties were against the bill too: the conservative UCD followed the arguments of the business lobby;¹² the UCR followed the arguments of the social security practitioners lobby.¹³

The Justicialista block in the Chamber of Deputies was united backing the bill. The president of the Committee of Budget and Finances of the House, Deputy Oscar Lamberto (PJ-Santa Fe) described the bill as "the best tax reform so far designed to make fiscal justice in Argentina, so labor will be not the base of tax collection, and so capital and profits will pay what it corresponds to them".¹⁴ Precisely that Committee, painstakingly overcame the attempts of parliamentary blockade of the opposition and give the bill the Committee approval, required by the lawmaking procedures prior the treatment on the floor. But pressures redoubled; deputies of the provincial parties did not join the government that time, and "there were doubts if the reform could fail or could be totally disarticulated if it was treated in the House".¹⁵

⁹ Clarín: Cómo funcionará y que efectos tendrá la nueva reforma impositiva; Informe Especial; Buenos Aires, 01/28/92, pg. 18/19

¹⁰ YACUBSON, H. and CORTI, A.: Habría inconstitucionalidades en las Clausuras y en la renta presunta. En "Ambito Financiero", 01/24/92.

¹¹ See Chapter II, Section III.4

¹² See: H. Cámara de Diputados de la Nación: Diario de Sesiones, 18 y 19 de Marzo de 1992, pg. 6037 (Deputy Clérico)

¹³ See: H. Cámara de Diputados de la Nación: Diario de Sesiones, 24 y 25 de Marzo de 1992, pg. 6039 (Deputy Santín).

¹⁴ H. Cámara de Diputados de la Nación: Diario de Sesiones, 18 y 19 de Marzo de 1992, pg. 5865.

¹⁵ Clarín: Como se cayo el IEPE. Crónica de un final anunciado. Buenos Aires, 3/19/92

Facing those risks—and taking into account immediate fiscal needs that other parts of the bill could provide—the government accepted “to postpone” the controversial chapters that were the “core” of the fiscal reform: the IEPE and the IGD. Minister Cavallo—present at the Chamber that day—explained that decision: “As the Executive branch has realized that opposition parties have great doubts regarding the IEPE and the IGD, the government—albeit maintain that an important and integral reform is needed...is ready to discuss those aspects in Congress with more time. In order to expedite the treatment of other more necessary and less conflictive issues ...we have proposed to postpone the two chapters on which most discrepancies arose...to considered them in integral form afterwards, with the Social Security Reform”.¹⁶

Having the more important—and conflictive—chapters postponed, the bill was discussed in the Chamber of Deputies on 18 and 19 March 1992. There were twenty-eight interventions in the debate: one by Cavallo, who took part as Minister of Economy, six by government PJ Deputies, six by opposition UCR Deputies and sixteen from other parties. The general presentation sustaining the bill was made by Deputy Oscar Lamberto (PJ-Santa Fe), and the case for the opposition was made by Deputy Raúl Baglini (UCR-Mendoza). The Chamber of Deputies passed the bill by 125 affirmative votes and 84 negative ones. The UCR Deputies voted against the fiscal reform.¹⁷

In the Senate, the bill was considered on 1 April 1992. There were nine interventions in the debate: two by govern-

¹⁶ H. Cámara de Diputados de la Nación: Diario de Sesiones, 18 y 19 de Marzo de 1992, pg. 5859/60.

ment PJ Senators, three by opposition UCR Senators, and three by Senators of provincial parties. The general presentation sustaining the bill was made by Senator Juan Carlos Romero (PJ-Salta), and the case for the opposition was made by Senator Juan Trilla (UCR-Capital). The Upper Chamber approved the Law 24073 with the affirmative votes of the PJ Senators and some allies; the UCR Senators voted against the fiscal reform.¹⁸

5. The Contents of Law 24073

The law finally approved by Congress contained the following seven main elements: i) Profits tax for firms companies was raised from 20% to 30%. ii) Tax on firms gross assets was renewed until year 2000. iii) The principle of "world-taxation-base" was established; taxpayers will pay taxes on assets in the country as well as abroad. iv) The maximum amount allowed to be re-entered into the country was raised from \$100,000 to \$500,000. v) VAT was applied to freight transport, but not to passenger transport. vi) The power of the Argentine Internal Revenue Service (DGI) to close facilities due to tax debts, was extended. vii) Returns and Debts of the DGI to taxpayers were transformed to a sixteen year-20% interest government bond.

Law 24073 was far short of a significant fiscal reform; instead of establishing a new tax system—one that were able to change the old "inflation dependant" one, be compatible with the market economy and implement incentives for fiscal

¹⁷ H. Cámara de Diputados de la Nación: Diario de Sesiones, 18 y 19 de Marzo de 1992, pg. 6067.

¹⁸ H. Senado de la Nación: Diario de Sesiones, 1 y 2 de Abril de 1992; pg. 6000

discipline, employment and economic growth—it only made incremental variations on the old system.

The second attempt to change the tax regime came the following year, and was comprised within the Social Security Reform initiative; although the pensions system was actually reformed, the idea of a substantial tax reform was defeated again. Hence, there was never a real tax reform in Argentina.

6. Enforcement and Tax Collection

Lacking a real fiscal reform, Argentina had only one alternative: to improve enforcement and tax collection. This was precisely what the government did and perceptible changes in that field were made. Although most of those changes were incremental, a few of them were more ambitious. The overall performance of tax collection over the decade attained some remarkable achievements, though evolution in the long run showed the limits of the system as a whole.

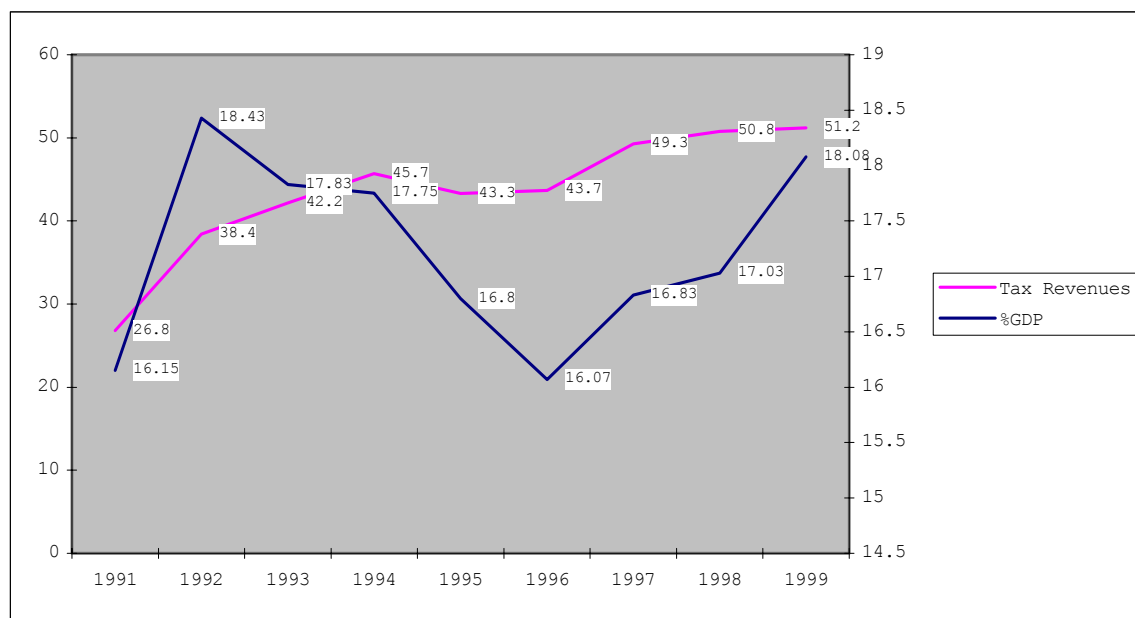
Over the nineties, current tax revenues steadily increased in absolute terms measured in US dollars; notwithstanding, measured in terms of GDP, revenues show a less steady pattern, consistent with the volatility mentioned above¹⁹: it declined from 1992 until 1996 and rose again from then onwards.

Graph I.III.6²⁰ presents that evolution, both in US Dollars and in terms of GDP. (Social Security not included).

¹⁹ See this Section, # 2

²⁰ Data: Ministerio de Economía: Presupuesto Resumen 2000; Buenos Aires (2000); pgs. 111/112.

Graph I.III.6
Argentina: Tax Revenues 1991-1999
 (Billions US dollars and as % GDP)



Two indicators have been used to measure the progress made by the country in its tax collection performance: increases of "fiscal pressure" and declines in "tax evasion":

i) Fiscal pressure increased significantly. In the past twenty years, the overall fiscal pressure average in Argentina rose from 11.7% of GDP to 20.7% of GDP; the average fiscal pressure of the profits tax and the personal assets tax, went from 1.33% of GDP in the eighties to 3.45% of GDP in 1998; and the average fiscal pressure of the VAT, increased from 2.36% of GDP in 1989 to 8.14% of GDP in 1998. ii) Tax evasion declined visibly. Evasion of VAT fell from 65% in 1990, to 40.5% in 1993 and 26.7% en 1997.²¹

As it was said before, lacking a fiscal reform, the only fiscal policy possible in Argentina was to improve enforce-

ment and tax collection; and improvements in that field were actually attained.

a) 1991-1995: the "Tacchi Effect"

This period was named after Carlos Tacchi, then Secretary of Public Revenues, the top tax official of the time. From 1991 to 1993 there was a spectacular increase, both in the number of registered taxpayers and in the amount of collected revenues.

Table I.III.2²² presents the figures.

Table I.III.2
Registered Taxpayers and Collected Revenues
Variation 1989-1993

Tax	Registered Taxpayers			Collected Revenues*		
	1989	1993	Δ %	1989	1993	Δ %
Profits Tax	1079396	2196610	104	15.8	42.7	170
VAT	218036	951884	337	25.4	162.7	541

* Billions 1993 Pesos

Four elements have been credited as explanations of these improvements: i) Organizational changes in the system: few taxes, neutral and simple to collect; more was collected with less taxes. ii) Changes in the tax collection agencies (DGI, Anses and Customs). iii) Expansion of the taxable base. iv) Increase in the rates of some taxes.²³ It has been pointed out that "half of the 'Tacchi effect' is credited to an increase in the tax base, 25% is due to the raise of the rates

²¹ SILVANI, Carlos: La Administración Tributaria en el Centro de la Escena Política; Working Paper; AFIP, Buenos Aires (1999); pg. 1

²² MEOSP: Argentina en Crecimiento. Buenos Aires (1993), pgs. 15/16

²³ El Economista: El 'Efecto Tacchi' en la mira. Buenos Aires, 7/8/94; pg. 10

and the remaining 25% is shared by the fall of the 'Tanzi effect'...and more administrative efficiency".²⁴

b) 1996-1999: The Stage Silvani

IMF Argentine expert Carlos Silvani took office in 1996, and under his initiative a new independent public revenue agency was created (AFIP), unifying the Internal Revenue Service (Dirección General Impositiva) and Customs (Administración Nacional de Aduanas). The results were no less impressive than those of the first part of the decade: in 1996, 1997 and 1998 collections were over 25 billion dollars (overall) more than in 1995. In 1998, collections were 12.2 billion dollars more than in 1997, reaching the all-time record of 61.6 billion dollars. The overall tax pressure in 1998 reached a peak of 20.7% of GDP.²⁵

Explanations of these improvements basically involve enforcement concentration: inspections, closings, administrative inquiries, fines, and lawsuits multiplied by the thousand. For instance, over this period, 4,631 criminal actions for tax evasion were filed, out of which 479 tax-evaders were imprisoned.²⁶

It has been considered that the most important determinant of success in this stage was "to increase the taxpayers 'perceived risk'. Assume that the decision to evade (E) is equal to the sanction (S) multiplied by the probability to be detected (P); if the probability is zero ($P=0$) even if the sanction is infinite ($S=\infty$) the result is zero ($P=0$) \times ($S=\infty$) $=0$,

²⁴ DURAN, Viviana y GOMEZ SABAIANI, Juan Carlos: Lecciones sobre reformas fiscales en Argentina 1990/1993; cited in "El Economista": El 'Efecto Tacchi' en la mira. Buenos Aires, 7/8/94; pg. 10

²⁵ SILVANI, Carlos: Resumen de Hechos y Acciones Relevantes; Internal Memo. AFIP, Buenos Aires (2000).

²⁶ AFIP: Luchar Contra la Evasión es Trabajar a Favor Suyo. Public leaflet. Buenos Aires (2000).

so, the decision is to evade; but if the probability is more than one ($P > 1$) the decision will be different. If the probability increases, the 'perceived risk' increases as well, and taxpayers' behavior changes."²⁷

Other factors of this stage worth mentioning are the following: i) Gradual elimination of exemptions of the VAT, that encouraged the progressive generalization of this tax. ii) Reduction of taxes on international trade, relevant to the "economic openness" policy. iii) Reduction of 50% of the VAT rate for consumption goods comprised in the "family basket" (meat, vegetables, fruits). iv) Creation of the "Simplified Tax for Small Taxpayers" (Monotributo), which consists of a single periodical payment for all the taxes and dues; it made possible the inclusion of 800,000 new taxpayers into the system.²⁸

7. Public Expenditure and Fiscal Deficit

The reform implemented by Law 24,073 was an incremental "tax reform" rather than a "fiscal reform", and it came clearly short of the reform needed on the "spending side" of the fiscal equation; thus, government spending kept increasing more than revenues. "Current Public Expenditure" (which encompasses consumption, debt interests and transfers to provinces, to the social security system and to National universities) almost doubled in absolute terms measured in US dollars: from 29.5 billion in 1991, to 59.5 billion in 1999. Notwithstanding, measured in terms of GDP the trend was less linear: it declined from 19.54% to 18.32% in 1993, remained

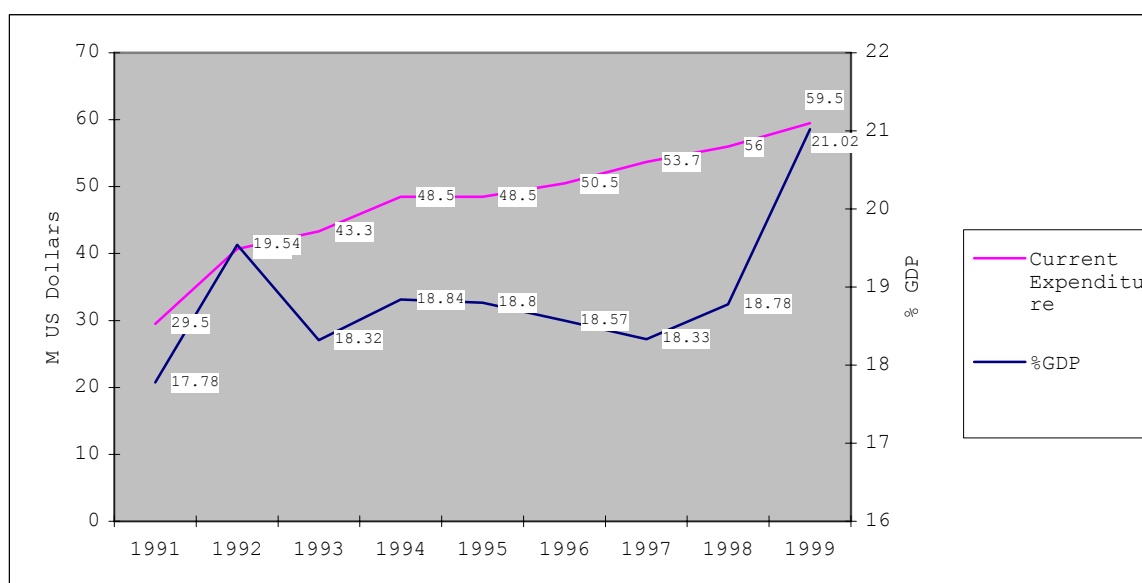
²⁷ SILVANI, Carlos: Interview, by Diego Arias Carballo (2000)

²⁸ Ibidem

fairly stable—varying only in decimals—until 1998, and rose visibly in 1999 to 21.02%.

Graph I.III.7²⁹ presents that evolution, both in billions of US dollars and in terms of GDP.

Graph I.III.7
Current Public Expenditure
 (1991-1999, in billions of US dollars and as % GDP)



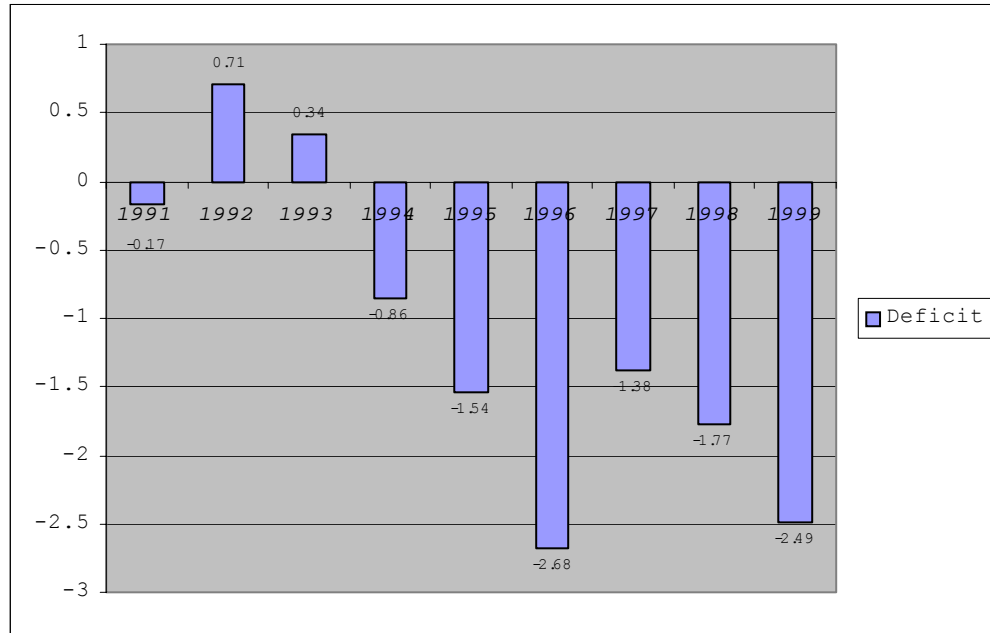
Taking the decade as a whole, the overall fiscal result was a deficit: 9.84% of GDP; considering fiscal revenues without privatization, there was a surplus only in one year (1993); with privatization, in two (1992 and 1993).

Graph I.III.8³⁰ presents those results.

²⁹ Data: Ministerio de Economía: Presupuesto Resumen 2000; Buenos Aires (2000); pgs. 111/112.

³⁰ Data: Ministerio de Economía: Presupuesto Resumen 2000; Buenos Aires (2000); pgs. 111/112.

Graph I.III.8
Fiscal Deficit
(1991-1999, as % GDP)



8. Budgetary Institutions

After Law 24,073, government revenues increased and efficiency improved, but the spending side of the fiscal reform was overlooked and dealt only with short-term solutions; until later in the decade, not very much was done on the "spending side" of the fiscal accounts. From 1991 onwards, government spending kept rising more than proportionally to government revenues, and every questioning of the fiscal deficit was responded to with measures on the revenue side of the equation. The revenue sharing system³¹ was slightly modified, but incentives to collect more taxes at provincial level were not established. The government carried out a full program of substantial reforms that actually limited

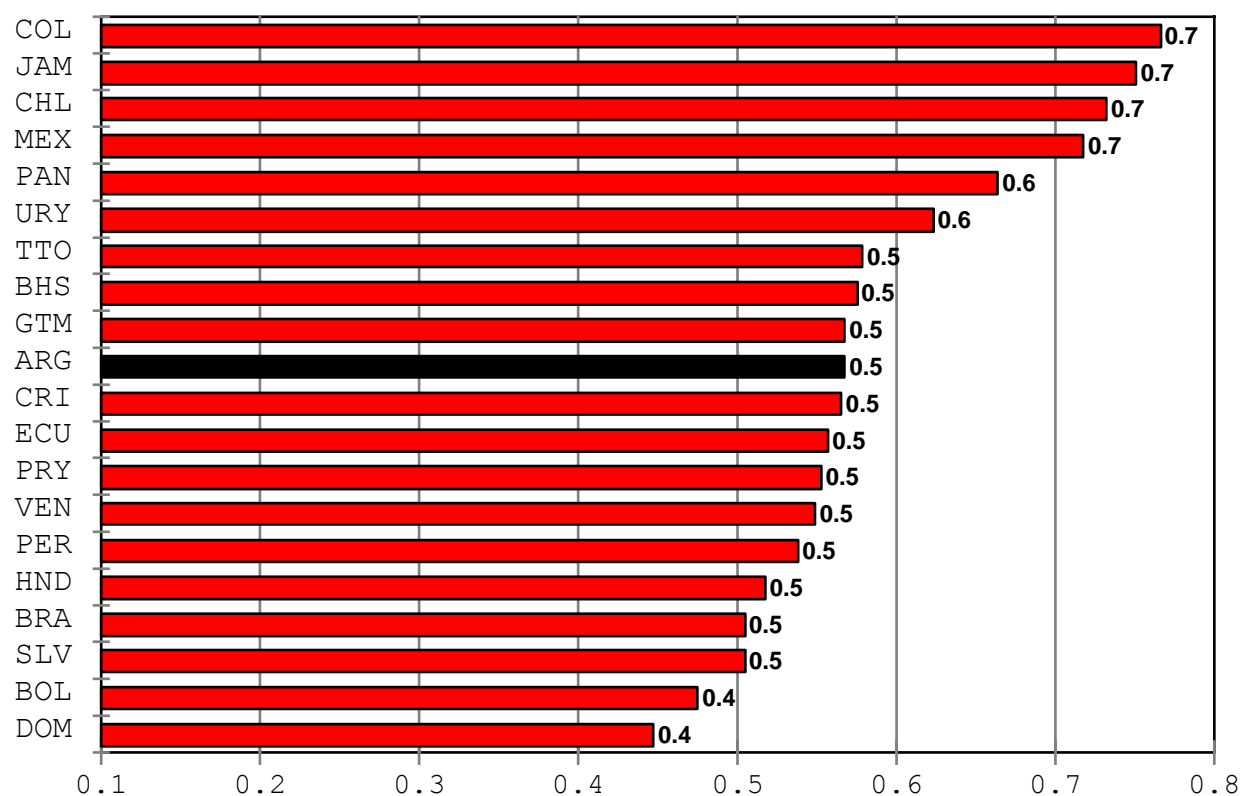
³¹ See this Section, # 1.b

public spending³², but the lack of proper budgetary institutions impaired its ability to control that spending in the long run.

a) Argentine budgetary institutions, in terms of quality, ranked in the middle of those of twenty Latin American countries, not in line with its income level.

Graph I.III.10³³ presents the ranking.

Graph I.III.10
Index of Budget Institutions



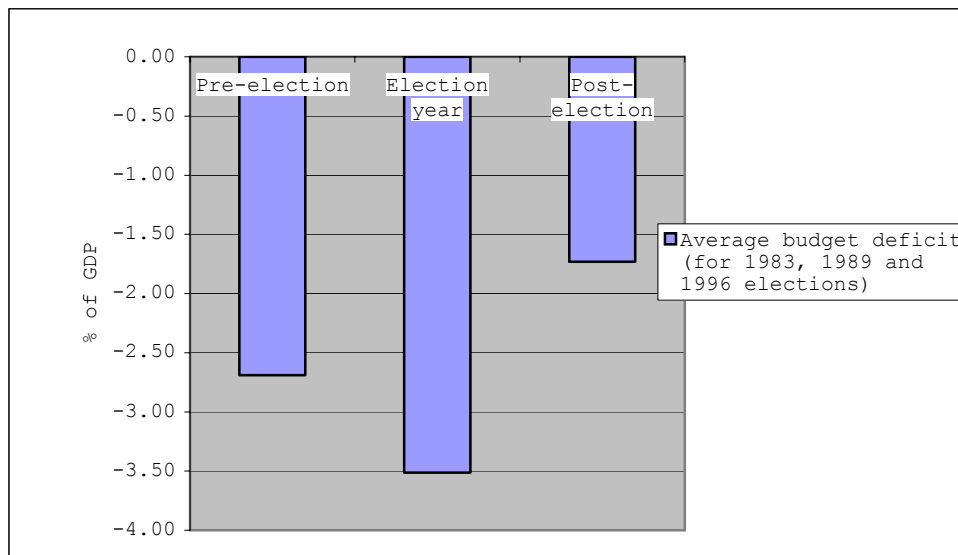
³² Reforming the State, the Economy and the Social Security System.

³³ ALESINA, A.; HAUSSMAN, R.; HOMMES, R.; STEIN, E.: Budget institutions and fiscal performance in Latin America. In "Journal of Development Economics", Vol.59, No.2; Amsterdam (1999), pg. 253

b) Poor budget institutions were also reflected in the effect of electoral cycles. It has been observed in international comparative studies that, without institutional constraints, incumbent politicians have "an incentive to bias pre-election fiscal policy toward easily observed consumption expenditures";³⁴ therefore, fiscal deficits tend to worsen progressively until an election year, and then they tend to improve. It has been considered that this was the case for Argentina in the second half of the nineties, since there were four elections in six years: for Constitutional Conventionists (1994), for President (1995), for Legislators (1997) and for President again (1999).

Graph I.III.11³⁵ represents the data.

Graph I.III.11
Electoral Budget Cycle
(Average 1983-1989-1995)



³⁴ ROGOFF, Kenneth: Equilibrium Political Budget Cycles; in "The American Economic Review", March 1990, pg. 21

³⁵ Data: World Bank: World Bank Indicators 2000.

c) Another factor that contributed to impair the government's ability to curb the fiscal deficit was the "rigidity" of two components of the current public expenditure: i) the payments of debt interest to foreign lenders; ii) the transfers to the social security system for payments to pensioners. Both are quite rigid and both present important obstacles to be reduced in the short term. Regarding their relative weight, transfers to public social security became the major component of the overall public expenditure after 1994 (when the pensions regime was changed, re-directing workers' dues to the private pensions system); they amounted to 40.5% in 1995, 41.7% in 1996, 36.8% in 1997, 37.5% in 1998 and 35.5% in 1999.

9. The Fiscal Solvency Law

As was pointed out before³⁶, the lack of a real fiscal reform left Argentina with only one possible policy in this field: to improve enforcement and tax collection; and so that is what Argentina did. Yet despite remarkable success in doing so, fiscal balance remained elusive and the "spending side" of the equation was addressed with short-term responses. Only at the end of the decade was the problem of limiting the public spending addressed with a serious institutional reform: the "Fiscal Solvency Law", also named the "Fiscal Convertibility Law". But, as will be seen, it was not properly enforced.

The fiscal policy literature points to three types of budgetary institutions: numerical, procedural and transpar-

³⁶ See this Section, # 8

ency rules.³⁷ To establish a numerical target, if properly enforced, "eliminates persistent deficits induced by political distortions or by politicians' opportunism and 'short-termism'"³⁸. As cons, it has been pointed that numerical targets tend-first-to stimulate "creative accounting" and-second-to be inflexible. The typical numerical rules as budgetary institutions are three: i) The "Gramm-Rudman-Hollings" Act (of the US), which imposes a gradual reduction of deficits, until their elimination; ii) The Maastricht criteria (of the EU), which impose limits on deficit and debt; and iii) The balanced budget rules (of the US states), which prevent budgets with deficit.³⁹

The Argentine Fiscal Solvency Law was the result of two different initiatives: one bill introduced through the Senate by Senator José Manuel De la Sota (PJ-Córdoba) and the other introduced through the House by Deputy Jorge Remes Lenicov (PJ-Buenos Aires); both had elements of the above, listing three types of numerical budgetary institutions, and the two bills were combined into one project during the lawmaking process. The objectives of this bill were: i) reducing the deficit until its elimination in 2003, imposing steps to balance the budget, limiting spending increases to no more than GDP growth, and freezing the tributary pressure as percentage of GDP; ii) creating a Counter-cyclical Fiscal Fund, up to 3% of GDP; and iii) improving quality and transparency through

³⁷ ALESINA, Alberto and PEROTTI, Roberto: Fiscal Discipline and the Budget Process; in "The American Economic Review"; Vol. 86, No.2, Nashville (1996), pg. 208.

³⁸ ibidem

³⁹ HAUSSMAN, Ricardo: Course PED 309, "Development Policy Strategy"; Kennedy School of Government, Harvard University; Handout. Cambridge (2001), pg. 6.

pluri-annual budgets and publicity of all information regarding public spending.⁴⁰

The evolution from the original bills presented by De la Sota and Remes Lenicov to the text finally passed by Congress, are summarized in Chart I.III.1.⁴¹

Chart I.III.1
Fiscal Solvency Law Projects
Comparative Analysis

Items	De la Sota	Remes Lenicov	Law 25152
Limit to Public Deficit (% GDP)	Current Expenditure = Current Revenues (Taxes and Social Security)	1999: 1% 2002: 0%	Progressive reduction. 2003: 0%
Limit to Public Expenditure	Δ Overall Expenditure = Δ GDP	Not explicit	Δ Primary Expenditure = Δ GDP
Limit to fiscal pressure	Tax rates frozen for 10 years	18% GDP	Not explicit
Limit to Public Debt	Δ GDP	Not explicit	A formula is provided
Countercyclical Fiscal Fund	Not explicit	Yes. 3% GDP	Yes; up to 3% GDP
Pluriannual budget	Not explicit	Yes	Yes
Officials' budgetary accountability	Yes	Not explicit	Yes
Publicity of fiscal information	High	Moderate	Moderate

The parliamentary debate of the Fiscal Solvency Law had two stages: i) In the first, the bill was supported by the incumbent Justicialista party (which was ending its second administration) and absolutely rejected by the UCR/Frepaso Alianza (which was expected to win the upcoming presidential election). PJ legislators made the case for fiscal discipline and Alianza representatives argued that it was an attempt to "tie the hands" of the forthcoming new Administration.⁴² ii)

⁴⁰ See: H. Cámara de Diputados de la Nación: Diario de Sesiones, 30 de Junio de 1999; No. 5, (Deputy Remes Lenicov).

⁴¹ IAEF; Op.Cit., pg. 54

⁴² See: H. Cámara de Diputados de la Nación: Diario de Sesiones, 30 de Junio de 1999; No. 5; (Deputy Dumón).

In the second, a consensus was attained—probably with the help of the international financial institutions—and the bill was supported from both sides of the aisle.⁴³

In the Chamber of Deputies there were eleven interventions in the first session; the general presentation sustaining the bill was made by Deputy Jorge Remes Lenicov (PJ-Buenos Aires), and the case for the opposition was made by Deputy José Gabriel Dumón (UCR-Buenos Aires); in the second session, the bill was approved unanimously. In the Senate there were eleven interventions as well; the general presentation sustaining the bill was made by Senator José Luis Gioja (PJ-San Juan), and for the opposition by Senator José Genoud (PJ-Mendoza). On August 25, 1999, the Senate also unanimously approved Law 25,152.

Notwithstanding the ample political support showed by its unanimous approval in both Chambers, Law 25,152 was almost immediately modified; there were eleven legal instruments that amended the Fiscal Solvency Law: Administrative Decisions 123/00 and 65/01; Decrees 1017/99, 339/00, 430/00, 1248/00, 799/01 and 992/01; Resolution ME 782/00; and the Budget Laws of 2000 and 2001, that suppressed the spending limits. Hence, the budgetary institution of numerical rule was abrogated.

As has been presented above, Argentina's fiscal deficit trend over the nineties was not good. In some years, it was plainly bad; later, it worsened and the Argentine public deficit skyrocketed.

⁴³ H. Cámara de Diputados de la Nación: Diario de Sesiones, 4 de Agosto de 1999.

Chapter II: REFORMING THE SOCIETY

- I. Educational Reform
- II. Labor Reform
- III. Social Security Reform

- I -

EDUCATIONAL REFORM

The educational context was determined by two conflicts: Nation/Provinces and Schoolteachers/Governments; decentralization and wage increases contributed to solutions, and a better environment for changes was created. Characteristics of the educational reform were an encompassing system, a new structure of levels, expansion of obligatoriness, equality, federalism and labor market orientation. Effects were positive in registration, the literacy rate, learning performance and creation of new universities. Lack of institutional changes kept the relationship between schoolteachers and governments conflictive. Despite significant increases, financing remained problematic.

1. Fairly Good Numbers, Sense of Failure

In 1989, Argentina had 8,075,178 students: 4,998,963 in primary school, 1,937,324 in secondary school, 668,315 in the universities, and some more in other schools. In the entire educational system there were 598,948 schoolteachers, 43,112 schools and colleges, 26 national universities and 23 private universities. Though accessibility to education was relatively high (96.4%), illiteracy was 4% (955,990)¹.

Table II.I.1² presents the illiteracy rates in sample countries.

¹ INDEC: Census 1991

² WORLD BANK: World Development Indicators; pg. 94

Table II.I.1
Adult Illiteracy Rate
 (1990, in percentages)

Country	Illiteracy Rate (%)	
	Male	Female
Israel	3	9
Uruguay	4	3
Argentina	4	4
Cuba	5	5
Chile	6	6
Costa Rica	6	6
Portugal	9	16
Mexico	10	15
Middle Income Countries	13	26
Latin American Countries	14	17
Brazil	18	20

Tables II.I.2 and II.I.3³ show other indicators of the Argentine educational situation before the reform began.

Table II.I.2
School Attendance Rate
 According to age groups
 (1991)

Age	%
6/12	96.9
13/18	67.6
19/29	19.1
30/+	1.9

³ INDEC: Statistical Synopsis - Education; <www.mecon.gov.ar/INDEC>

Table II.I.3
Maximum Educational Level Reached
 People no Longer Attending Educational Establishments
 (1991)

Level	%
Unfinished Primary	18.3
Finished Primary	32
Unfinished Secondary	12.5
Finished Secondary	12.0
Unfinished University	2.9
Finished University	6.2

The Argentine educational indicators at the beginning of the nineties were visibly better than the Latin American averages, and better than those of the Middle Income Countries in general. So, by the standards of a middle-income Latin American country, these figures were normal, or even good; but for the idea Argentines have of themselves, they indicated failure.

At the end of the eighties, Argentina's educational situation was being strongly affected by two conflicts: one was between the federal government and the provinces; the other was between the governments (national and provincial) and the schoolteachers. The first produced institutional inefficiencies that prevented the educational system from responding to the increasing demands of society; the second led to the "functional paralysis" of public schools, which caused a massive exodus of students to private schools.

In order to make reform of the education system possible, these two conflicts had to be addressed.

2. Nation and Provinces

The conflict between the provinces and the federal government had constitutional roots, because both the National and Provincial Constitutions had provisions relating to education. Upon that base, the legal framework of this realm evolved independently at each level. This led to a situation of overlapping responsibilities and structures that resulted in a very low level of institutional performance in the educational field⁴. So, dis-functionalities in the relationship between the Provinces and the Federal Government were the first problem that needed to be resolved to improve the Argentine education system.

The National Constitution has two references to education relevant to the point here analyzed: i) Article 5, which establishes that provinces have to "ensure elementary education"; ii) Article 75:18, which gives Congress the responsibility "to provide...for the progress of education".⁵

On the other hand, the Provincial Constitutions had provisions on education as well, most of which were similar in many ways. Almost all of them provided for the right to learn and to teach, and they gave the provincial legislatures the power of dictating the regulatory laws of education. Furthermore, all mandated that primary education would be free and obligatory, while nine said that education must be "secular." Most provinces had established a decentralized body or council that assumed the responsibility of governing provincial education. Finally, most Provincial Constitutions addressed

⁴ LLACH, Juan J; MONTOYA, Silvia and ROLDAN, Flavia: Educación para todos; IERAL, Cordoba (1999); pg. 192

⁵ The constitutional reform in 1994 did not change these provisions.

the financing of education and many had determined that a fixed percentage of the provincial budget (generally between 20 and 30%) had to be dedicated to education⁶.

The first national policy instrument regarding education was Law 1420, which was passed in 1884; it was considered the cornerstone of public education in Argentina, although it was effective only in the Federal Capital and regarded only primary education, leaving all the provinces and all the non-elementary components of the educational system out of its scope. The second was Law 4874, the "Lainez Law"—named for its author—through which the national state was assigned to build facilities and to establish the curricula, to appoint the schoolteachers and to pay their salaries. Over time, responsibilities regarding elementary education that according to the Constitutional framework belonged to the provinces, were absorbed by the federal government⁷.

As a result, two parallel systems of elementary education had developed: one provincial, the other national; by 1965 the federal government maintained 6,700 primary schools and the provincial governments maintained 9,500⁸. These parallel systems were neither homogeneous nor consistent with one another—national schools were not always better than the provincial ones, and national teachers were not always better paid than their provincial colleagues—and their overall educational outcome was inefficiency, poor educational results, social and regional asymmetries, and institutional gridlock that impeded changes and improvements.

⁶ LLACH, Juan J. et Al.: Op.Cit.; pg. 194

⁷ RODRIGUEZ, Jorge A (Former Minister of Education): Interview by Claudia Curras; Buenos Aires, (2000)

⁸ LLACH, Juan J. et Al.: Op.Cit.; pg.193

In the late sixties, along with the evolution towards the Bureaucratic-Authoritarian State,⁹ a process was initiated that would transfer responsibility for nationally maintained schools back to the provinces, so that by 1978 almost all primary schools were under the direction of provincial governments. This process was carried out by the military governments transferring schools, teachers and obligations to the provinces, but not the financial resources to run them¹⁰. This lack of corresponding financing prevented these transfers from any success, so that: i) educational outcomes were not improved; and ii) by the end of the eighties, a political conflict between the provinces and the federal government had arisen as a relevant feature of the Argentine educational situation.

It took two steps and fifteen years to solve this problem: i) First, in 1988 the Federal Taxes Distribution Law (Ley de Coparticipacion Federal de Impuestos) redistributed 8% of federal tax revenues to the provinces in order to compensate them for the school transfers¹¹; ii) Second, in December 1991, Law 24,049 of the "Transfer of National Educational Services to the Provinces" (Ley de Transferencia de los Servicios Educativos Nacionales a las Provincias) was passed. This law transferred secondary schools and universities to the provinces, further decentralizing the system; its implementation was completed in 1994¹². At the end of the process 2,200 public secondary schools were transferred, as well as

⁹ See Introduction, Section II-2

¹⁰ DECIBE, Susana (Former Minister of Education): Políticas Nacionales del Sector Educativo; Paper presented to the Seminar "Prioridades para la Proxima Etapa"; Partido Justicialista; Buenos Aires (1995); pg. 1

¹¹ RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

¹² Ministerio de Cultura y Educacion: Política Educativa-Balance de la Gestión de Gobierno; Internal Memo; Buenos Aires (1996); pg.1

regulatory competence over 2,000 private ones¹³. From then on, the federal government would send funds for secondary schools through the Ministry of Economy, and for higher education and infrastructure through the Ministry of Education¹⁴.

At this point, substantial improvements had been achieved in the conflict between the federal government and the provinces regarding education. The conditions were established for a comprehensive solution: it came with the approval of the Federal Education Law, which is discussed below. But the other conflict between the governments and the teachers had to be addressed beforehand.

3. Teachers and Governments

In 1989 there were 598,948 school teachers, out of which, 45,100 were of initial education, 280,000 of primary and 247,804 of secondary¹⁵. The 1994 Educational National Census provides a more detailed picture: in that year, the total number of teachers of all the jurisdictions was 655,750; 71% of them were employed by the governments and 21% by private schools. Most of them were women (80%), adults (25 to 50 years old), with no more than 10 years in service, and with no university degree (87%)¹⁶.

Teachers' labor contracts were—and still are—very regulated by special laws under the "Teachers' Statutes" (Estatutos del Docente). The main characteristics of the labor relationship regulated by these statutes were the following: i) procedures of access to the service based upon bureau-

¹³ LLACH, Juan J. et Al.: Op.Cit.; pg.198

¹⁴ Ministerio de Cultura y Educacion: Política Educativa-Balance de la Gestión de Gobierno; pg.1

¹⁵ Data: Ministerio de Educacion y Cultura: Anuario Estadístico 1996

¹⁶ Ministerio de Educacion y Cultura: Censo Nacional Educativo 1994

cratic (not academic) criteria; ii) promotions based on seniority and not on merit; iii) career path with no incentives for training and professional qualification; and iv) a very permissive regime of paid leaves, absence justifications and special permits. Although it is considered difficult to evaluate the exact impact of this permissiveness because "the needed data are jealously guarded"¹⁷, the most accepted estimation is that at the end of the nineties, for each single teacher in front of a class, the government was paying salaries to four. Another element relevant to understand the conflict analyzed in this point is that teachers were—and still are—highly unionized.

In 1988 and 1989, within the context of the collapse of the assisted capitalism,¹⁸ schoolteachers made "serial" strikes. The most difficult characteristic of these strikes were their "nationalization"¹⁹: if there was a problem with the teachers in the province of Santa Cruz, or in Santiago del Estero or in Misiones, then there was a teachers' national strike.

Nationalization of the provincial conflicts reinforced the conflict between governments and teachers in three ways: i) it multiplied the frequency of the strikes, because they were the unified response to causes from twenty four different sources: the provinces; ii) once nationalized, these conflicts were impossible to solve at provincial level—they had to be resolved at the federal level; iii) it de-activated solutions at provincial level—teachers went on strike regard-

¹⁷ LLACH, Juan J. et Al.: Op.Cit.; pg. 216

¹⁸ See Introduction, Section II

¹⁹ RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

less the efforts of provincial governments, and improvements made in their own jurisdictions.

Because of these strikes, public schools were closed most of the time and schoolchildren received less than half of the scheduled classes. The impact of this on society was very important: parents became progressively concerned with the educational situation of their children and "a number of private schools—not all of them good enough—mushroomed, especially in the Federal Capital and Greater Buenos Aires, where parents registered their children to receive the education that state and teachers with their strikes were not delivering to them. This was a sort of 'de facto' privatization of the public educational system"²⁰.

Confusion stemming from the overlapping responsibilities between the federal government and the provinces explained above²¹ created incentives for nationalization of provincial conflicts. Law 24,049 improved the situation by decentralizing the system and financially supporting the provinces. But only in 1994, when the Federal Education Law clarified the respective responsibilities, were conditions for a more lasting solution achieved. Former Minister of Education Jorge Rodriguez said that after the reforms "...public schools began to improve...and as public education improved, many parents viewed that it was no longer necessary to send their children to a private school in order not to lose days of class, and could now send them back to the public school...".²²

²⁰ Ibid

²¹ See this Section, # 2

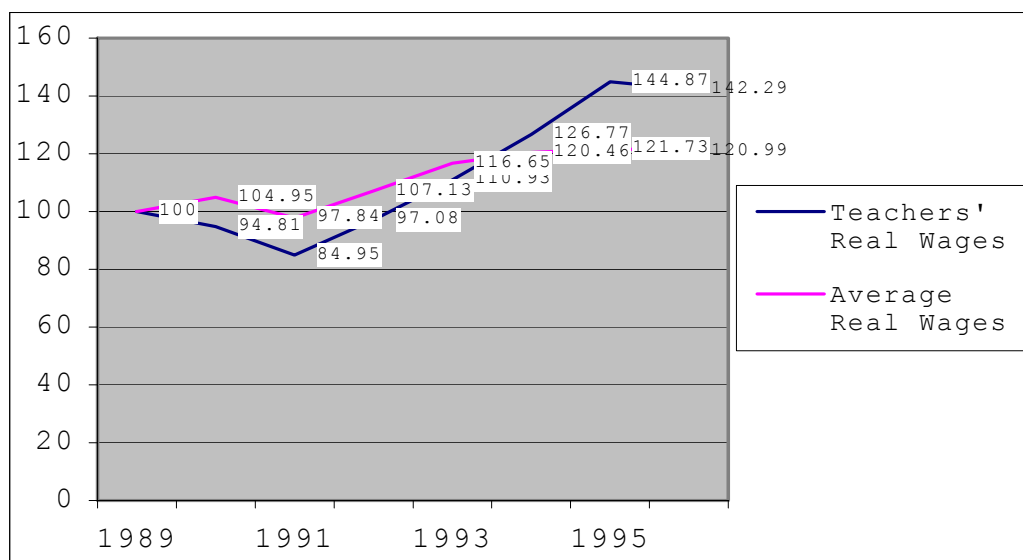
²² RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

Teachers' strikes had two different types of motivations: on one hand, a specific labor goal, salaries; on the other, a general political goal, roughly presented as "defense of public education". Each followed different paths: the first evolved as economic claims within the process of stabilization; the second was transmuted into political activism encompassed in the opposition to the process of market-oriented reforms. Both evolutions are briefly presented here.

a) At the end of the eighties, most Argentine workers' wages were affected by hyperinflation; teachers' too. But after 1991, stabilization led to wage recovery: between 1992 and 1996, Argentine workers' wages in general increased by 20.99%; teachers' salaries more than doubled that rate, increasing 42.3%.²³

Graph II.I.1 illustrates this.

Graph II.I.1
Teachers' and Average Real Wages



This visible increment in teachers' wages and the new institutional framework of the Federal Education Law No. 24,195 made teachers' national strikes almost disappear as a generalized phenomenon in the second half of the decade.

b) The political activism of the teachers' union (CTERA)²⁴, gained national visibility in July 1992 with a massive rally²⁵ in front of the Congress, where by that time the project of Education Reform drafted by then Minister of Education, Prof. Antonio Salonia—a project which at the end of the process would become the Education Federal Law—was being discussed.

There were three controversial issues about this reform: i) to what extent education had to be free or not; ii) how many years of formal schooling had to be mandatory for every child; and iii) the amount and sources of public financing for education.

Although the union's leadership was of Peronist origins, by this time they had decided to join a new political party, the center-left oriented "Frente Grande." This decision transformed their activism in two ways: i) opposition to the educational reform was increasingly "framed" within the context of a more general resistance to "market-oriented reforms"; and ii) at that time, they decided to articulate that resistance through electoral politics.

This evolution from union activism to electoral politics was explained by Mary Sanchez, the then General Secretary of the teachers' union, when she was member of the 1994 National

²³ Data: Ministerio de Educación y Cultura: La situación actual del gasto educativo en el país; Buenos Aires, (1997)

²⁴ "Education Workers Confederation of the Argentine Republic"

²⁵ Supported by other activists' groups and left political parties. The media reported 70,000 people.

Constitutional Convention—elected by the Frente Grande Party—as follows: "The only way to resolve people's problems is listening or interpreting their voting. Here is a Conventionalist who, when he was Minister of Labor told me: 'If you disagree with this, there are the ballots; organize a political party'. I truly appreciate this suggestion that he made to me. We schoolteachers—who teach the history both of the fatherland and of the Constitution—began to think anew on these themes and to see the problems of education, of health, of democracy...of regional economies...People's struggles should not scare us, since they are part of the social conflicts. Who if not those who govern should manage social conflicts?"²⁶

The person to whom she was referring was me; and the story is basically correct.

The quotation is a clear explanation of why and how school teachers moved from labor vindication to political activism. Notwithstanding, their resistance to reforms appeared again, under new forms, after the Federal Education Law was approved by Congress.²⁷

4. The Proposal

As with almost all the reforms after the end of the "emergency"²⁸, educational reform was extensively discussed and negotiated both in Congress and with interest groups. The law that finally passed is a syncretic text, with elements from different sources.

²⁶ SANCHEZ, Maria: Convención Nacional Constituyente; 5° Reunión - 1° Sesión Ordinaria (continuación); 2 de junio de 1994.

²⁷ See this Section, #

²⁸ See Chapter III, Section I.3

a) The reform took some elements from several bills proposed to the Congress. There had been 14 initiatives of Educational Reform law, the first in 1988²⁹: four by UCR legislators, four by PJ legislators, and five of other political parties.

b) The most frequently cited antecedent of the educational reform of the nineties is the "Pedagogic National Congress," which was realized in the eighties. It was a wide and extended process of debate about education, in which all the sectors, institutions and relevant groups related to education in the country took part.

It was conveyed in 1984 by Law 23,114 with the objective of emphasizing the importance of and pursuing projects related to education, collecting and valuing the opinions of people and sectors; and studying and solving the diverse problems, difficulties, limitations and defects of the education system.³⁰

The full process of the Pedagogic National Congress took four years, and its "Final Report" was presented to then Minister of Education Jorge Sábato on March 6, 1988. It addressed the following themes: i) Objectives of education regarding society; ii) Objectives of education regarding individual; iii) Forms of Education: regular and special; iv) Distribution of educational services: Nation and Provinces; v) Pedagogical aspects: curriculum, methods and innovations; vi) Administrative aspects: Training, labor contracts and

²⁹ By Senator Jose Romero Feris (PAL-Corrientes)

³⁰ Congreso Pedagogico Nacional: Informe Final de la Aasamblea Nacional; Cordoba (1988)

evaluation; vii) Financial aspects: resources and expenditures³¹.

These conclusions were the predecessors of many elements of some of the projects mentioned above, as well of the law finally passed in 1993.

5. The Approval

In 1991, the government sent the project to Congress; it entered through the Senate. Minister of Education Antonio Salonia highlighted the following features of the proposal: i) it instituted an educational "system" comprising all education levels; ii) it was a flexible "framework" law; iii) it was "federal," since it transferred all the educational powers and responsibilities to the provinces; iv) it empowered the "educative community," integrating parents into the endeavor; v) it changed the secondary school to a "modalized" labor skill-oriented one; and vi) financing contemplated "compensatory mechanisms" to level regional and social asymmetries. Minister Salonia also mentioned the Pedagogic Congress as a source of elements for the project.³²

It took two years for the Congress to pass the law.

In the Senate, the Education Commission included elements of different projects and reshaped the bill in a new one, based on a bipartisan consensus led by Senator Oligela del Valle Rivas (PJ-Tucuman) and Senator Margarita Malharro de Torres (UCR-Mendoza). The Senate discussed this joint project in several sessions, the last one on May 6, 1992, in which there were seven interventions: three by government PJ

³¹ *ibid*

³² SALONIA, Antonio: Ley Federal de Educación (Síntesis de contenido); Memo to the Cabinet (February 26, 1991)

Senators, two by opposition UCR Senators and two by Senators of Provincial Parties. It is interesting to note that this first version of the law was voted by all the political parties in the Senate; instead, the final version—the one approved by the Lower Chamber—was not.

The bill entered the Chamber of Deputies in May 1992. Its Education Commission opened an ample round of consultation: they met more than seventy institutions related to education and received more than 3000 letters.³³

Table II.I.4³⁴ summarizes the differences at that point of the lawmaking process.

Table II.I.4
Differences on the Project of Educational Reform

Theme	Unions	Congress	Government
Gratuitousness	For all levels and modalities of education	Senate: 7 Years of primary and 2 of secondary. Deputies: PJ-All levels UCR-All levels delivered by State.	Nation and provinces should assure access to education for all. Do not refers to gratuitousness.
Obligatoriness	10 years	Senate: 10 Years Deputies: PJ-Extend obligatoriness to basic cycle of secondary. UCR-Primary	Primary; progressive extension to secondary.
Financing	Assign between 6 to 8% of the GDP.	Senate: Resources determined in the budget. Need of a specific law of educational financing.	Resources determined in the provincial budgets.

The Education Commission made many amendments to the bill sent by the Senate, and the new text was discussed on the Floor from August 27 to September 3, 1992.

There were thirty-two interventions: six by government PJ Deputies, eight by opposition UCR Deputies and eighteen from other parties. The general presentation sustaining the

³³ RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

³⁴ El Cronista; Buenos Aires, 7/17/92

bill was made by Deputy Jorge Rodriguez (PJ-La Pampa), who was later Minister of Education. The case for the opposition was made by Deputy Angela G. Sureda (UCR-Santa Cruz), with complementary comments by Deputy Alfredo Bravo (FG-Capital Federal).

On September 3, the bill was passed, with the affirmative vote of the PJ legislators and some allies; the UCR legislators voted negatively. On April 14, 1994 the Senate, with a similar party-line divided vote, approved the Federal Education Law No. 24,195.

6. Contents of the Federal Education Law

The basic aspects of the law are the following:

a) An all-inclusive national education system:

The law created for the first time an educational system that included all levels of education (primary education through university-level), all the provinces in Argentina, and public education as well as private education. It also included all possible types of education—formal and informal, common and special education, for children and adults—as well as artistic and technological education.³⁵

b) General goals:

The Education Federal Law pursues: i) to improve the quality of education in Argentina; ii) to guarantee that all children in the country acquire the substantive ethical and citizen formation that makes possible the educated performance of society; and iii) to give them skills in and knowledge of contemporary scientific and information technology.

³⁵ LLACH, Juan J. et Al.: Op.Cit.; pg. 198

Equal opportunities and possibilities for all students shall be provided by this education.

c) Specific Goals:

These goals included adapting the education system to the times, and making the education provided more adaptable, flexible, open and oriented toward satisfying the diverse national and regional needs.

d) New structure:

The law outlined a new structure of the grades and levels within the system: i) Initial Education (ages 3-5); ii) General Basic Education (ages 6-15); iii) Polimodal Education (3 years after General Basic Education; and iv) Superior Education (according to criteria determined by each university or educational institution).

e) Expanded obligatoriness:

The law extended the number of years of obligatory schooling for children from 7 to 10 years. These 10 years are made up of the final year of "Initial Education" and the nine years of "General Basic Education."³⁶

f) Equality:

The law required common curricular bases for each grade level, to standardize Argentine education and to guarantee the quality, equality and unity of the education system. These "Common Basic Contents" were to be outlined jointly by the Ministry of Education and the Federal Council of Education.³⁷

g) Federalism:

The law considers education a "concurrent" responsibility of the Nation and the Provinces. It creates the Federal

³⁶ Ministerio de Cultura y Educacion: Anuario Estadístico 1996; pg. 29

Council of Education. In addition to agreeing on the Common Basic Contents, the Ministry and the Federal Council are required by the Federal Law to agree on the objectives and content of educational policy.

h) Evaluation:

The Federal Law introduced for the first time the evaluation of the quality of education, including students' learning level. It assigns to the Ministry of Education and the provincial governments the responsibility for investigating and guaranteeing the quality of education, by bringing in specialists to observe the education system and to guarantee the application of the Education Federal Law's new guidelines. Also, the Ministry of Education is required by this law to submit an annual analysis of the education system and the process of implementation of the law, to the Education Commission of the National Congress.

i) Teacher training:

The law created a network to provide teachers training and a circuit of professional re-qualification for teachers.

j) Financing:

The law established guidelines for generally increasing public investment in education, with the goal of either doubling investment (starting with the 1992 base of \$6.12 billion) over 5 years, or increasing the percentage of GDP reserved for education to 6%. Additional resources would be provided by direct taxes on sectors of greater contributive capacity.

³⁷ Also discussed in LLACH, Juan J. et Al.: Op.Cit.; pg. 201

k) Compensatory mechanisms:

These outlined norms regarding the obligation of the National Government to give financial aid in addressing inequality in education across different provinces, to solve emergencies, and to attack problems of marginalization. It also gave a greater focus to the Ministry of Education regarding schools and school populations with greater needs, and assigned differentiated treatment to schools with greater socioeconomic difficulties.³⁸

l) Labor Market Orientation:

The Federal law seeks to connect education to the world of work and production, providing mechanisms to tailoring upper level polimodal instruction to the foreseeable needs of the labor market.³⁹

m) Educative Federal Pact:

A pact among Nation and Provinces was signed and approved by Congress regarding provincial financing, national contributions to provinces, monitoring and implementation of the Federal Education Law.

7. Implementation

The law distributes responsibilities among the National Government (represented by the Ministry of Education), the Federal Council of Culture and Education (which represents the provincial governments and the city of Buenos Aires), and the authorities of each jurisdiction (the Provinces and the city of Buenos Aires). The law also named the National State,

³⁸ Ministerio de Cultura y Educación: Informe sobre actividades en el año 1996; Press release; (1997)

³⁹ RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

the Provinces and the Municipality of Buenos Aires as the "guarantors" of the national education system.

The implementation mechanisms provided by the law are distinctly federalist: while the National Government can establish educational policies in a broad sense, they have to be approved by the Federal Council. The Ministry of Education has normative, evaluative and supervisory functions, as well as the responsibility for providing financial and technical assistance to compensate for inequalities between different regions or sectors. The Federal Council of Education is the sphere of coordination and concertation of the National Education System and of the new law.⁴⁰ Provincial governments and the city of Buenos Aires have the responsibilities of planning, organizing, administering and supervising the actual educational services.⁴¹

A law related to the Education Federal Law was the Superior Education Law No. 24,521, which passed in August 1995. Its overarching goal was to improve the professional formation of Argentine youth. To reach this goal, the law raised a discussion in society and the university community regarding criteria of academic quality, transparency in the use of public resources, equity in access, and evaluation of results. The law also initiated several programs, including a renovation of the government structures of the universities, a progressive self-evaluation and evaluation of schools, a new regimen of accreditation for plans of study, and a renovation of curriculum/academic offerings.

As it follows from the discussion in this section, the Educational Reform of the nineties in Argentina has been

⁴⁰ Law 24195, Article 54

highly controversial, most times between contenders aligned in terms of political partisanship. That is why the initiative to elaborate a full new project of "Educational Contents" for all the levels of the educational system could be considered a remarkable success in the implementation of this reform: to conduct this ambitious policy design project the Ministry of Education provided a politically independent team of 900 experts led by Cecilia Braslavsky, the most recognized Argentine curricular specialist.⁴²

8. The Enforcement of the Federal Education Law

The Federal Council of Education was very active enforcing the reform; its initial decisions were the following: i) procedures to the agreements among its members; ii) characterization of levels, cycles and general criteria for the implementation of the new curricular structure;⁴³ iii) the "Common Basic Contents" for all levels (excluding universities).⁴⁴

In 1994 the Educative Federal Pact required by Law 24,195 was signed among the National Government and the Provinces (as well as the city of Buenos Aires); progressively, all the provinces (but not the city of Buenos Aires) began the process of implementation of the reforms provided by the Education Federal Law. Congress approved the Pact in 1997, through Law 24,856.

Extension of obligatoriness and improvement of quality required from the provinces substantial investments in infrastructure, equipment, training, and development of new pro-

⁴¹ Ministerio de Educacion y Cultura: Anuario Estadistico 1996; pg.29

⁴² RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

⁴³ LLACH, Juan J. et Al.: Op.Cit.; pg. 389

⁴⁴ Ministerio de Cultura y Educacion: Política Educativa-Balance de la Gestión de Gobierno; pg.4

grams. The National Government supported the jurisdictions with funding, technical assistance and programs with international financial organizations.⁴⁵ From 1993 until 1999, more than 3,000,000 square meters of school buildings were built.⁴⁶

In November 1994, an Educative National Census was conducted—the last educational census had been in 1943. Counting teachers, schools and enrollment figures, it provided basic information regarding the national education system that was used as a base for the enforcement of the Federal Law.⁴⁷

In order to enforce the "Compensatory Policies" provided by the Federal Education Law, the "Educative Social Plan" was launched in 1993, with the general objective of combating educational inequalities. This plan had three programs: i) The Schools Infrastructure Improvement Program, to reconstruct "hut schools", to repair deteriorated ones and to build some new facilities; ii) The National Scholarships Program, to facilitate the enrollment of economically disadvantaged youths in secondary school; and iii) The "Better Education for All" Program, intended to improve labor and pedagogic conditions in schools. The federal government distributed the resources directly to schools, which were selected by the provincial governments.

By 1998, almost half of the schools and more than one-third of all schoolchildren and students were covered by the Educative Social Plan.

⁴⁵ DECIBE, Susana: Op.Cit.; pg. 5

⁴⁶ RODRIGUEZ, Jorge A: Interview by Claudia Curras; Buenos Aires, (2000)

⁴⁷ Ministerio de Cultura y Educacion: Política Educativa-Balance de la Gestión de Gobierno; pg.5

Table I.II.5⁴⁸ presents the figures for the "Better Education for All" Program.

Table II.I.5
Educative Social Plan
"Better Education for All" Program
(1998)

Level	Schools		Students	
	Total	Covered	Total	Covered
Initial	15,219	6,249	692,731	265,892
Primary	22,437	12,858	5,153,256	2,015,795
Secondary	6,419	1,705	2,463,608	550,021
Special	1,194	730	101,637	70,634
Total	45,269	21,542	8,411,232	2,902,342

Over the period 1993-1998, more than \$738 million were transferred directly to the schools by the Educative Social Plan.

Table II.I.6⁴⁹ shows the figures.

Table II.I.6
Educative Social Plan Total Investment
Direct Transfers to Schools
(1993-1998)

Program	1993	1994	1995	1996	1997	1998
Better Education For All	12,188,000	59,284,800	51,668,443	58,850,466	80,444,324	63,059,916
Schools Infrastructure Improvement	49,641,696	66,415,271	47,482,271	70,916,937	82,740,256	35,304,373
Scholarships					10,482,900	50,371,375

The impact of the Educative Social Plan on the educational performance has been measurable: in the provinces where the Plan was applied, the fall of "non promotion" to

⁴⁸ Ministerio de Cultura y Educacion: Plan Social Educativo-programas compensatorios; Brochure; Buenos Aires (1999)

⁴⁹ Ibid

the next grade level, the upturn in test scores and the fall of "leaving school", surpassed the national averages.⁵⁰

9. Effects

The rapidity in which the effects of institutional changes become perceptible varies, depending on the nature of each reform in itself. For instance, the effects of a monetary reform could become apparent almost immediately, while those of an electoral reform will not be perceptible before the next election. It is for its own very nature that the overall effects of the Education Reform will take some time to be fully perceptible.

Nevertheless, there are specific effects that can already be pointed to, and measured. In order to assess those effects, Educational Reform will be considered in a broad sense, encompassing laws 24,195 (Federal Education Law), 24,521 (Superior Education Law), 24,049 (of Transference of Education Services) and other complementary norms and regulations.

a) Over the decade and after the reform, Argentina significantly reduced its already low level of adult illiteracy: from 4% to 3 %, in both genders.

Table II.I.7⁵¹ presents the variations between 1990 and 1999 in sample countries.

⁵⁰ Ibid

⁵¹ WORLD BANK: World Development Indicators; pg. 94

Table II.I.7
Adult Illiteracy Rate
Variations, 1990-1999

Country	1990		1999	
	Male	Female	Male	Female
Israel	3	9	2	6
Uruguay	4	3	3	2
Argentina	4	4	3	3
Cuba	5	5	3	4
Chile	6	6	4	5
Costa Rica	6	6	5	5
Portugal	9	16	6	11
Mexico	10	15	7	11
Middle Income Countries	13	26	9	20
Latin-American Countries	14	17	11	13
Brazil	18	20	15	15

b) School registration shows a perceptible impact: Student enrollment increased from 8,075,178 in 1988 to 10,056,200 in 1997; the number of teachers increased from roughly 598,948 in 1988 to 684,7000 in 1996. Using 1991 as a base year, increases in matriculation have been 15.5% for initial education, 5.1% for primary education, and 23.6% for secondary education.⁵² Overall, the percentage of schooled people vs. unschooled people increased during the period 1989 to 1998. Furthermore, registration in national universities

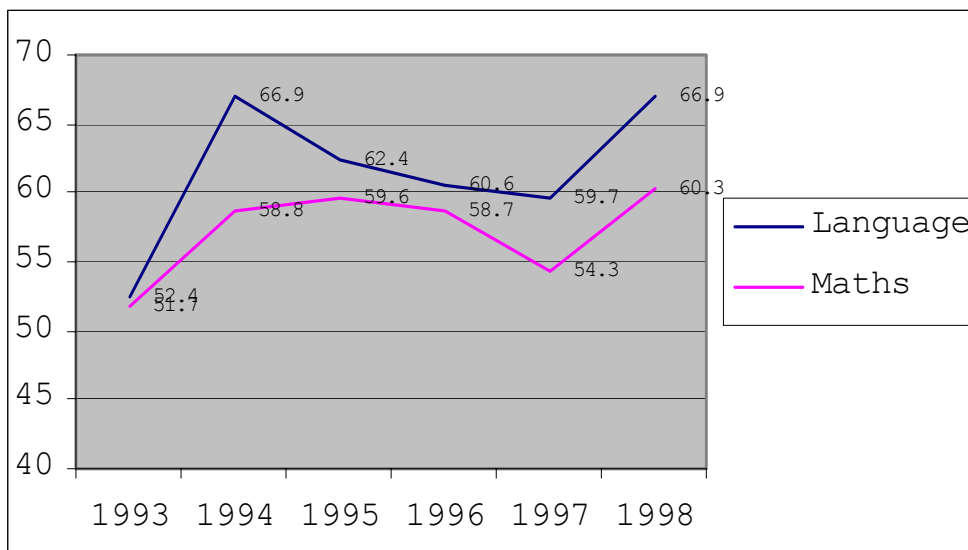
⁵² Ministerio de Cultura y Educación: Informe sobre actividades en el año 1996; Press release; (1997)

rose from 581,813 students in 1986 to 869,440 students in 1997.⁵³

c) National Operatives of Learning Evaluation have been conducted since 1993 onwards. The first one showed "deficient results. Schoolchildren in the 7th grade of primary schools do not surpass 50% of correct answers in language and 53% in Mathematics. In secondary, correct answers varies between 62% in Language and 44% in Mathematics..".⁵⁴ Further Operatives show increasing test scores, but still unsatisfactory according the expected results.

Graph II.I.2 shows the trend in primary schools, while II.I.3 shows the same in secondary schools⁵⁵.

Graph II.I.2
Learning Evaluation
Seventh Grade Primary School
(% of Correct Answers)

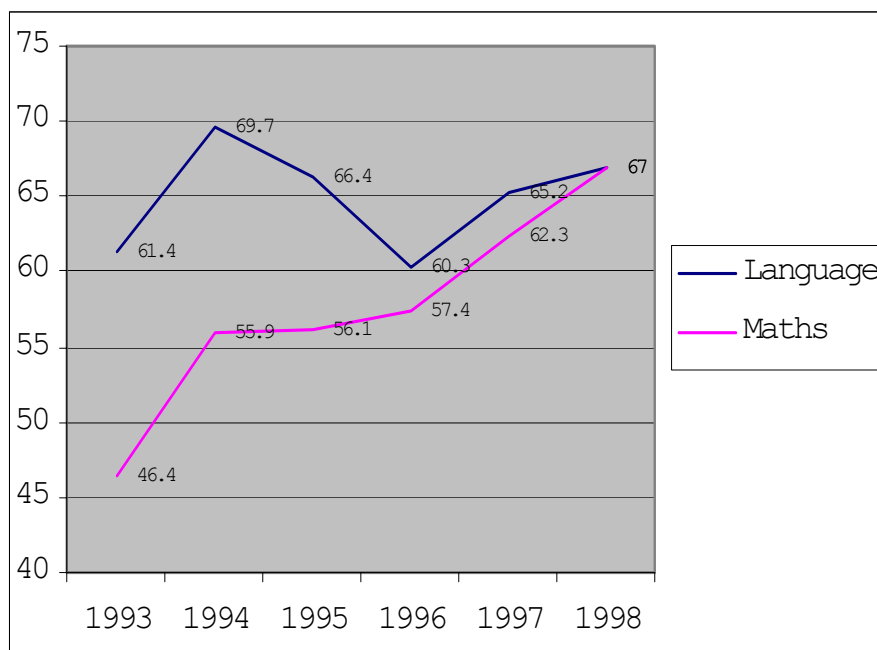


⁵³ Data: Anuario Estadístico 1996 y Anuario 1997 de Estadísticas Universitarias 1997 (1999)

⁵⁴ DECIBE, Susana: Op.Cit., pg. 2

⁵⁵ Ministerio de Cultura y Educación: Enseñar el Futuro 1989-1999; Buenos Aires (1999); pg. 336/337

Graph II.I.3
Learning Evaluation
 Fifth Year Secondary School
 (% of Correct Answers)



d) Another result of the Education Reform was the creation of 33 new universities, 10 national and 23 private. National universities grew from 26 in 1989 to 36 in 1995. Between 1974 and 1990, the creation of new private universities was prohibited. Once the prohibition was lifted, 23 new private universities were established and its number grew to 46 by 1995, with approximately 120,000 students.⁵⁶ Financing of higher education also improved as a result of Law 23,521: in 1991, the budget for higher education was \$750 million, in 1993 it was \$1.25 billion and by 1995 it was \$1.5 billion, or 0.6% of GDP.

10. Financing

A central element of the Federal Education Law (as well as the Educational Reform broadly considered) is Article 61, which establishes: "The total consolidated public investment in education (base 1992: \$6,120,196,000) should be gradually doubled by no less than 20% a year, starting from the 1993 budget; or it will be considered an increase of 50% in the percentage (base 1992: 4%) of the GDP (base 1992: 153,004,900,000) allocated to education in 1992."

There is a debate on whether or not the financial goal provided by the law has been attained, and conclusions depend on which figures are considered, because: i) the figures of Article 61 are not the same as those the Ministry of Economy registers; and ii) the techniques for GDP calculation changed in 1992 and in 1999. Considering the figures stated by Article 61, the goal has been surpassed; considering the other numbers, it has not⁵⁷.

Whatever the calculation base, investment in education was substantially increased over the period, both as educational budget (measured in constant-value pesos) and as public expenditure in the sector (measured in GDP percentage).

Table II.I.8⁵⁸ presents the budget evolution in pesos, while Table II.I.9⁵⁹ the evolution of expenditures in GDP percentage.

⁵⁶ Ministerio de Cultura y Educacion: Política Educativa-Balance de la Gestión de Gobierno; pg.11

⁵⁷ Ministerio de Cultura y Educacion: Cumplimiento de la Ley federal de Educacion; Press release; Buenos Aires (1999)

⁵⁸ Ministerio de Cultura y Educación: Ensenar el Futuro 1989-1999; pg.327

⁵⁹ Data: Ministerio de Educacion y Cultura: Ensenar el Futuro 1989-1999, pg. 322; and Anuario Estadístico 1996, pg. 37

Table II.I.8
Educational Budget Evolution 1989/1999
(1999 Pesos)

Year	Budget
1989	992,954,541
1990	1,025,665,241
1991	1,005,945,007
1992	1,079,204,564
1993	1,366,667,456
1994	1,488,788,247
1995	1,488,140,638
1996	1,533,284,028
1997	1,584,366,622
1998	1,718,433,322
1999	1,802,977,018
Δ	81.6%

Table II.I.9
Public Expenditures in Education 1980/1998
(In % of GDP)

Expenditure in Education	1980	1985	1990	1996	1998
% GDP	3	3.2	2.1	3,7	4.1
% Total Public Expenditure	9.5	9.8	10.3	12.7	13.4

11. Resistances and Failures

As has been presented up to this point, educational reform was implemented with an acceptable level of efficiency, and despite the short period of time for a reform of this type, there have been observable results. Nevertheless, it is

fair to say that it was carried out by overcoming schoolteachers' resistance at almost every step along the way.

As was explained earlier⁶⁰, at the beginning of the nineties schoolteachers resisted the process of reforms in general and the educational one in particular with an attitude that evolved from labor vindicationism to political activism. At the end of the nineties that evolution reached a new level which integrated both in a single operation: "The White Tent" (La Carpa Blanca).

This consisted of a big tent (20x8 meters) installed on the Two Congresses Square (Plaza de los Dos Congresos) exactly across the street from the National Congress Palace; there, groups of schoolteachers fasted and received expressions of support from different sectors (e.g., artists, intellectuals, politicians, journalists). The tent was the object of national and international media coverage of infrequent intensity. It was installed on April 3, 1997 and was only dismantled on December 30, 1999.

It was a major political phenomenon in Argentina of the late nineties and its complete analysis largely exceeds the limits of this study of the educational reform. However, its main characteristics could be summarized as follows: i) Its political rationale was "anti market-oriented reforms" (provided by the Primer Congreso Educativo Antimodelo, held in February 1997). ii) It began with a type of protest that has a long tradition in comparative experiences but was new in Argentina: fasting; a group of schoolteachers fasted for a period, and was then replaced by another group, in a sequence that lasted months. iii) Teachers' unions presented two moti-

⁶⁰ See this Section # 3

vations for the tent: resistance to the Federal Education Law and to teachers' wages⁶¹; almost the same motivations as the strikes in the eighties. iii) Besides the tent, the unions made "serial" strikes again, recovering their ability for nationalizing provincial conflicts. iv) The tent became the paramount reference of opposition to government; moreover, it challenged the entire political system⁶². v) In October 1997, the government Justicialista Party lost the first election in a decade to the new Alliance (between UCR and Frepaso); there are analysts that consider the tent a major factor in that outcome.

Government reaction to the tent was to reinforce educational reform enforcement at the provincial level, according to the respective constitutional attributions⁶³; and it was successful in doing so. But after the lost elections, it seemed impossible to avoid a response "at the national level"; the government made two attempts in that direction, and neither was successful.

a) The first was the "Teachers' Professionalization Fund", a bill sent to Congress in November 1997. It consisted of the creation (with a World Bank loan) of a fund to improve teachers' wages in exchange for changes in teachers' labor contract regulations. It was proposed within the government by Minister of Education Susana Decibe, but was never fully accepted by the Minister of Economy Roque Fernandez. It was rejected by CTERA and the Alliance⁶⁴, by the Education Commission of the House (integrated -because of the new Congress' conformation by two former General Secretaries of CTERA: Al-

⁶¹ CTERA: Convocatory to the National Strike on 24 March 1997

⁶² See Marta Maffei (CTRA General Secretary) speech in Clarin 15/4/97

⁶³ See this Section, # 2

fredo Bravo and Mary Sanchez), and finally, rejected by Congress.

b) The second was the "Teachers' Incentive National Fund" (Fondo Nacional de Incentivo Docente)⁶⁵, which consisted of the creation of a fund by means of a special tax on all types of vehicles (from motorcycles to planes) to improve teachers' wages with no specific compromise of changes in the labor contract regulations. The new tax was strongly resisted by transport business organizations and criticized by economists; nevertheless, Law 25,053 was passed by Congress. However, taxpayers resisted the tax, collection was very difficult, Congress postponed the due payment deadline and finally decided its elimination in 2000.

A new government and a new Congress were elected in October 1999 and took office on December 10; on December 20 they eliminated the tax and included the Fund into the National Budget, with no reference to changes in labor regulations; on December 30 the tent was taken down.

⁶⁴ This refers to the government alliance between the UCR and FREPASO.

⁶⁵ See Chapter I, Section III.

- II -

LABOR REFORM

The "European" model of labor relations established in the forties was an "harmonic" of the ISI political economy; it lost efficiency when the ISI model changed for the assisted capitalism. Market-oriented reforms made changes in labor institutions needed; labor reform addressed regularization of "black" labor, new flexible contracting modalities, unemployment insurance and active employment policies. Short term positive effects did not produced enough political support for long term enforceability; at the end of the period a substantial part of this reform attempt was abandoned. Wages negotiation under inflationary conditions was resolved by indexation, which was prohibited by the Convertibility Law; negotiation by productivity was the method successfully implemented under stabilization conditions; it excluded inflation from the equation and was highly congenial with convertibility.

The debate over labor reform in Argentina revolved around the level of institutionalization that employer-employee relationships should take. For economists, one question painted the issue: How could the highly institutionalized, "European-like" Argentine model of labor relations be transformed into a flexible model akin to that prevailing in the United States. For policymakers, the controversial issue demanded wide-ranging compromises and, just as importantly, the realization that Argentina, given its institutional history in this field (as well as the unions' strength and population's "labor culture"), needed to create its own solution. In the early nineties, employment begun to surface as a relevant issue in the Argentine social consciousness, as unemployment figures became visible and could no longer be ignored. It was in this atmosphere—and in the more general context of an Argentina that had experienced hyperinflation, was privatizing public facilities, de-regulating the economy, and

opening the country for trade—that the Employment National Law 24013 was generated and debated, carving an important position for labor reform in the entire reform process of the nineties.

1. Unemployment Became Visible

It has been pointed out that from the beginning of Import Substitution Industrialization, the Argentine labor market was characterized by high capacity for job creation and by medium to low employment levels; for instance, that the average rate of urban employment from 1968 to 1978 approximated 5.6%, a number comparable to that of the United States at the time¹. Historically, the Argentine labor market was characterized by relatively high salaries, maintaining a steady supply of labor through immigration waves. In effect, the aforementioned traditional absorptive capacity of the labor market made unemployment a low priority and a virtually absent aspect of the Argentine social agenda.

Indeed, the historic tendencies of the Argentine labor market created positive effects until the 1970's, ameliorating employment levels, salaries, and income distribution. Nevertheless, those tendencies could not be maintained indefinitely. It has been also suggested that the positive employment experience of the 1970's, dependent on Import Substitution Industrialization (ISI) and a closed economy, thrived temporarily at the expense of the future. The fragility, informality, and productivity drop of the Argentine labor market were soon to be observed: the strong drop in pro-

¹ LLACH, Juan José et Al.: Empleo Para Todos, CEA, Buenos Aires (1997), pg.19.

ductivity within the urban sector amounted to over 25% in the ten years between 1980 and 1990².

A plausible conjecture is that the positive effects on the Argentine labor market gave up when the post-war ISI model was transmuted into "assisted capitalism"³. There are findings that seems to confirm that view.

Over the period from World War II until the end of the eighties, along with the ISI political economy and the above-mentioned "positive employment experience", there were a series of observable phenomena which anticipated the occupational crisis of the nineties. Briefly presented, the phenomena are the following: i) Stable demographic growth rate (1.7%) in a context of diminishing rates (3 to 2 in Latin America, and 1 to 0 in Europe). ii) Extraordinary expansion of self-employment: from 7% in 1947 to 20% in 1980. iii) Expansion of employment in services of very low productivity: between 1980/1990, employment in this sector grew 12%, but productivity less than 1%. iv) From 1980 to 1990, the number of underemployed grew from 235.000 to 900.000. v) Over the same period, the number of full employed remained stable: from 1980 to 1990, no new full-time jobs had been created; all the new jobs were part-time; the "underutilization coefficient" rose from 32% to 43%⁴.

Investigating unemployment in Argentina is circumscribed by statistical restrictions and a lack of methodological options: there is the census every ten years, and there is the Households' Permanent Survey (EPH) that occurs biannually in

² LLACH, J.J. et Al.: Op.Cit., pg. 22/23

³ See Introduction, 3

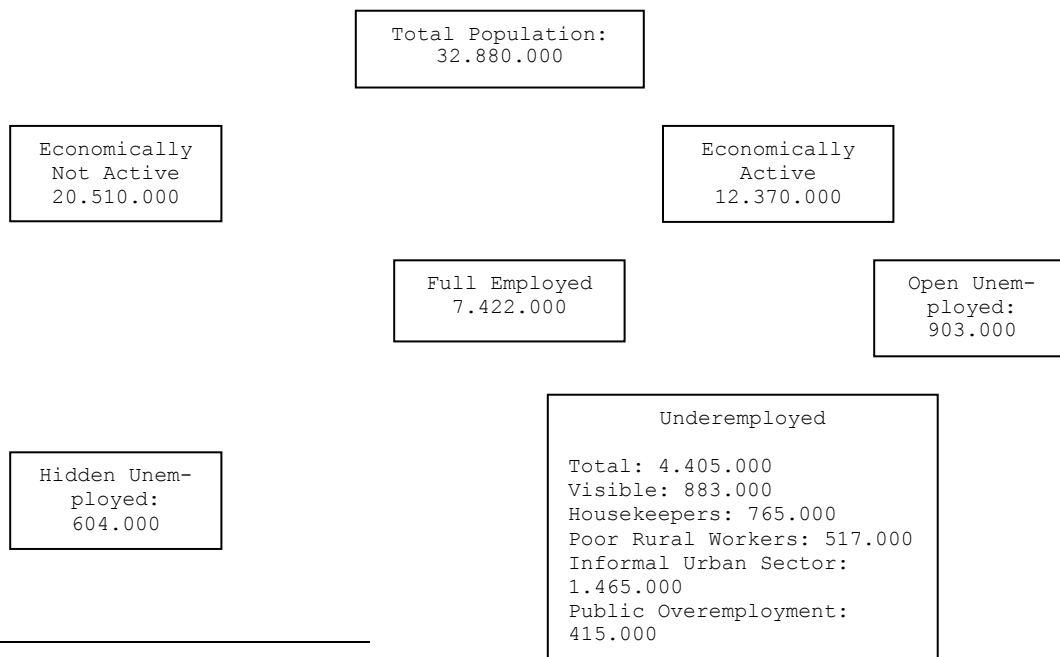
⁴ MONZA, Alfredo: Empleo, Distribución del Ingreso y Gasto Total, Fundación Omega Seguros, Colección de Conferencias. Buenos Aires (1993), pg.3/6.

May and October and which surveys Greater Buenos Aires and 25 other major cities.

An important constraint for policymaking in this field in Argentina, is that the available data—the "numbers" presented twice a year by the government's statistics agency (INDEC)—refers to open unemployment, but Argentine unemployment has many faces. A typology of "seven pathologies" has been indicated in the Argentine occupational situation⁵: i) open unemployment, ii) hidden unemployment, iii) underemployment, iv) informal urban sector, v) housekeeping service, vi) overemployment within the public sector, and vii) poor rural workers.

Graph II.II.1⁶ presents the diagnosis of the Argentine occupational structure, using that typology.

Graph II.II.1
Argentine Occupational Structure
(1990)



⁵ MONZA, A.: Op.Cit., pg. 7

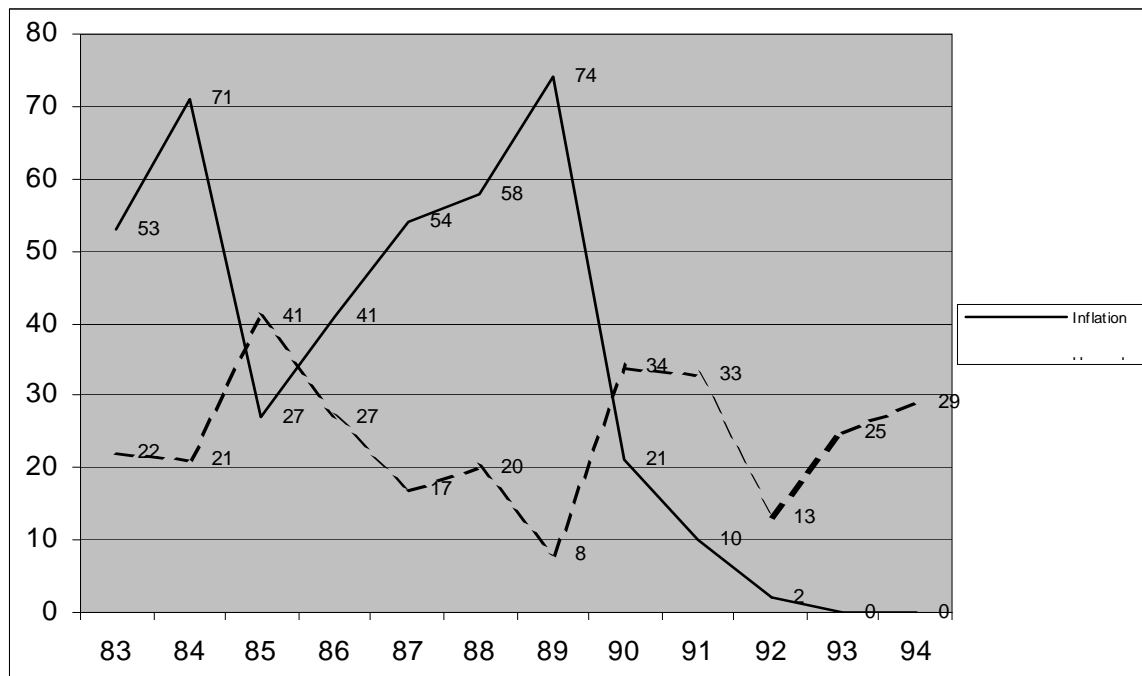
⁶ Proyecto PNUD/OIT-ARG/90/007

Unregistered employment, commonly known as "black labor" is a different type of "pathology", and it will be discussed at length, below in this section.

As employment deteriorated over time from the seventies on, unemployment started to be a visible concern of public opinion⁷. There were two dominant elements in the public opinion economic agenda: inflation and unemployment. In times of very high inflation, attention to unemployment tended to be low; when stability was achieved, unemployment gained saliency.

Graph II.II.2⁸ shows the figures for the 1983/1994 period.

Graph II.II.2
Public Opinion Economic Agenda
(1983-1994)



⁷ DIAZ, Rodolfo: El Empleo, Cuestión de Estado. MTSS, Buenos Aires (1995); pg. 70/74

⁸ Ibídem

Given that the issue had only become ingrained in the Argentine social conscience relatively recently, the nation experienced a tremendous shift in public opinion regarding the issue of employment in the early nineties: a majority of Argentines perceived it as their most pressing problem, noting that the reality of unemployment, coupled with the ample perception of the problem, generated widespread concern. In 1995, one-third Argentines considered unemployment the nation's most pressing problem, and four in ten, felt that a family member could lose their job in the near future.⁹

2. The Proposal

By the time the process of reforms began, employment was neither a technical nor a political issue in Argentina. For instance, for the 1989 presidential elections no political party had proposed a specific policy to create jobs. The Radical Party promised the creation of a tri-sectorial institute dedicated to the investigation and analysis of the problems of unemployment; the Justicialista Party spoke of creating a system of prevention, coexistence and education; the Center Democratic Union wanted to stabilize the currency and to open up economic activity to attract foreign capital to stimulate job creation; the Popular Socialist Party emphasized workers' rights and coverage for temporary unemployment¹⁰.

The CGT (the Central Labor Union Organization) was one of the few institutions during the eighties that made a reference to unemployment. On the other hand, the main entrepreneurial entities did not even broach the issue until 1989.

⁹ DIAZ, Rodolfo: Op.Cit., pg. 91

¹⁰ DIAZ, Rodolfo: Op.Cit., pg. 67

Before the initiative of the Employment National Law (which is the main subject of this section) were launched, there was a previous attempt of labor reform at the beginning of Menem's administration¹¹. It was a short, sharp and target-oriented project which tended to "flexibilize the labor market, allowing firms to contract temporary workers who...can be dismissed without severance pay"¹². Its rationale was the need to improve the Argentine firms' competitiveness, and its fundamentals were standard arguments of mainstream economics. It was supported by the Minister of Economy (then Nestor Rapanelli, a businessman) and by the business sector; the Minister of Labor (Jorge Triaca, a union leader) and the CGT rejected the project, while Justicialista Party Legislators and Vice-president Duhalde expressed concerns about it. When President Menem declared that this project was a personal initiative of its author and not one of the Ministry¹³, the political viability of this first project vanished.

This failed attempt had a long-lasting effect on the forthcoming debate: it seems to have defined the "camps". Since then, almost every new initiative has been considered "not enough" by the business sector, and-generally speaking-"too much" by the labor sector.

In August 1989, barely a month after the new government's inauguration, a team of technicians of the Ministry was set under my supervision as Secretary of Labor¹⁴. Its mis-

¹¹ Its author was Eduardo Curia, then one of the Secretaries of the Ministry of Economy

¹² ARTANA, Daniel: Flexibilización Laboral implica mayor ocupación; en "El Cronista Comercial" (1989)

¹³ Clarín, July 1989

¹⁴ The first group was compounded by: Enrique Rodriguez, Pedro Gallon, Nome Cohen, Alfredo Monza, Hector Szretter, Federico de Anzó, Ana Welti, Silvia Giavedonni, Claudia Berra, Carlos Jordan, Jose Acosta, Leonardo Mallo, Luis Castillo Marín, Carlos Perez Grecia and Marta V. Pascual. Along time, many others were included.

sion was: i) to update a comprehensive diagnostic of the Argentine employment situation; ii) to identify the main problems to be addressed; iii) to gather information on experiences in other countries; and iv) to outline a labor reform project as a public policy aimed at improving the employment situation.

The consensus within the team was that unemployment problem in Argentina had to be addressed through the lens of the efficient utilization of productive capacity and the obvious necessity for economic growth to improve the labor situation. Nevertheless, it was also acknowledged that increased economic activity would not single-handedly solve the problem, thus emphasizing the need for active social policies.¹⁵

Enrique Rodríguez, (a member of the team who afterwards was Minister of Labor) considered that although mainstream economists maintained that economic development was the necessary element for generating employment, basing their assumption on the premise that absolute and total liberalization of the economy would efficiently dictate employment levels, the need for public policies could not be denied¹⁶. Armando Caro Figueroa (who was Rodríguez' successor as Minister of Labor) had presented a long and detailed paper¹⁷ to the 1988 ADEBA Convention proposing reforms of the labor market along the line of active policies.

Thus, this recognition that economic growth needed to be coupled with social policy was the precise element that the drafting team and the Ministry of Labor and Social Security

¹⁵ MONZA, Alfredo: *Op.Cit.*, pg. 11

¹⁶ Interview by Diego Gutiérrez, Buenos Aires, August 2000.

espoused in the law that they would bring to the negotiating table. And the same policymaking approach was maintained in all the projects and proposals made by the Argentine Ministry of Labor until 1998 (and beyond, for the law proposed by the new government in 2000, relays upon the same basis).

The most important technical and theoretical influence on the project of Labor Reform implemented by the National Employment Law was the Spanish experience of the eighties during the Socialist administration of Felipe Gonzalez¹⁸. This was so for a very good reason, as theirs had been the most successful story on employment up to that time: from 1984 to 1989, more than 5.5 million workers benefited from the employment-promotion measures implemented by the Spanish government.

Table II.II.1¹⁹ presents the figures.

¹⁷ CARO FIGUEROA, Armando: La Flexibilidad del Mercado de Trabajo y el Crecimiento Económico; ADEBA, Buenos Aires (1988).

¹⁸ Angel Rubio, Labor Attaché to the Spanish Embassy in Buenos Aires provided a significant amount of information and contacts. Alvaro Espina, then Secretary of Employment of Spain, provided not only advice, but political solidarity: he spent ten days in Argentina sharing with me lectures and seminars in several Provinces.

¹⁹ ESPINA MONTERO, Alvaro: La Política Activa de Recursos Humanos; Ed. MTSS; Madrid (1991); pg. 51

Table II.II.1
Spain: Employment Promotion Measures
 Number of Beneficiaries

Type of Contract	1984	1985	1986	1987	1988	1989	
Temporary	235368	432135	536594	666577	862394	1170000	
Part Time	47665	121905	177449	220846	289325	330000	
Substitution	369	2922	2269	1722	2366	2000	
Permanent for special groups	6885	64364	117688	132526	107055	17100	
Total	290287	621366	834000	1021671	1261140	1519700	5548164

In October 1989 the Draft was presented to the Cabinet, and, following the President's express instructions, to the business and labor organizations, as well as to public opinion. This provoked a widespread debate that was very well reflected by the media, but always along the already mentioned "Not enough/Too much" lines.

The debate lasted years; it was so "spirited" that it many times came very close to personal offense. But from its first stage it was possible to learn, to clarify and to understand many aspects addressed by the project, most of them absolutely new in Argentine intellectual discussions. Consequently, many changes were made on the draft and, on 30 January 1990, the first bill of the Labor Reform was sent to the Congress. It took 21 months, another Minister, and a new revised bill, for it to be approved.

3. The Contents of the Employment Law

Law 24013, sanctioned on 13 November 1991, known as the "Employment National Law" (Ley Nacional de Empleo) was the cornerstone of Argentine labor reform. As the first reform

law to emerge not from emergency but from political debate and compromise, it paved the way for the ensuing discussion, and debate. It also set the legal precedent to allow more room for flexibility within an institutionalized framework. Moreover, the discussion facilitated the formation of a new way to organize certain labor institutions in order to update the problematic old framework and to allow entrepreneurs to have more room for creativity and innovation.

There were two elements which narrowed Government options as regards labor reform: first, the virtual impossibility of agreement between labor and business; second, the "veto point"²⁰ of the unions in Congress as regards labor issues. The chairs of the Labor Commissions in both Chambers were union leaders: Oraldo Britos in the Senate and Osvaldo Borda in Deputies. Taking this into account, as well as the experience of the first failed attempt, Government's option was to address the major occupational problems of Argentina with some innovations, while knowing that it had to accept controls and regulations which inclusion would be required by the Parliamentary Commissions. The outcome was a rather long, complex and multidimensional text; notwithstanding, the International Labor Organization (ILO) considered it, from the technical point of view, "a well crafted piece of legislation"²¹.

The bill had 160 Articles, divided into twelve Titles, each of them organized in different Chapters. The contents of the law were presented in five "modules": i) Programmatic; ii) Regularization of "black labor"; iii) New contracting

²⁰ BATES, Robert: Op.Cit., pg. 236

²¹ ILO: Report on the Argentine Employment Law Project; Geneva, (1991)

"modalities"; iv) Unemployment insurance; v) and Employment Active policies.

a) *Programmatic:*

This module presents the objectives of the law as public policy instrument, in Title I, Articles 1 and 2. Article 1 express the law's political purpose in a threefold mode: i) that employment policy should be the "axis" of government's social policies; ii) that employment policy "tends" to make operative (tends to facilitate the exercise) the constitutional right "to work"; and iii) that employment policy "integrates" the economic and social policies.

It is a political statement, indeed; and the law was strongly criticized for that. But it was expression of the technical assumption that underlie the project: that in Argentina in the nineties, pure mainstream market economic policy was not enough to resolve the employment problem. This programmatic clause was not enforced; regrettably, according to the results that will be presented below.

The objectives of the law, primarily enumerated in Article 2, included: i) the creation of new jobs; ii) the transfer of workers from low-productivity jobs to high-productivity jobs; iii) the regulation of the processes of productive re-conversion; iv) the creation of employment opportunities for groups facing major difficulties in labor market insertion; v) the guarantee that professional training become a basic component of the reform; vi) the development of policies to increase production and productivity; vii) the supervision of the geographic and sector mobility of workers to adequately match supply and demand for jobs; viii) the organization of an efficient system of protection for unem-

ployed workers; ix) the guarantee of a specific minimum wage and minimum wage policies; x) the regularization of labor relations in order to minimize black labor; and xi) the guarantee of tripartite and federal participation and coordination.

b) Regularization of "non-registered" employment:

As it is explained below²² "non-registered employment," or "black labor", was one of the major problems in Argentina's labor situation. Briefly described, this phenomenon consists of labor relations that are not registered or declared for tax or social security purposes. Its proportion in 1990 was more than 30% of the total employment²³.

In order to pursue its objective of regularizing this situation as much as possible, the law established a procedure comprised of incentives and sanctions²⁴: i) The sanctions were indemnifications from the employers to the workers for different cases of no registration. The enforcers of these sanctions were the workers themselves or their unions, whom could summon the employers to both regularize the situation and pay the indemnification. Protective mechanisms for workers who exercised this attribution were also provided. ii) The incentive was that, if the employer regularized the situation "spontaneously"—i.e., without have been summoned and before certain deadline (90 days from the approval of the law, afterward extended)—he was relieved not only of the above-mentioned indemnifications but also of all the debts for taxes or social security dues related to the not-registered labor relation that was regularized.

²² See this Section, 9

²³ GALIN, Pedro: El Empleo Clandestino. Evolución y Características. Proyecto MTSS/PNUD/OIT-ARG/92/009. Informe N.4 (1992). Policopy; pg. 4

²⁴ Carlos Etala -afterwards Secretary of Labor- was the author of the idea and its technical development.

c) New Contracting Modalities:

This was the most controversial part of the labor reform: the so-called labor flexibility. As was said before,²⁵ this was a new issue that came hand in hand with the economic reform. But, at the end of the eighties, it was also an international trend; the Spanish experience has already been mentioned²⁶, and other European countries had followed a similar path on temporary contracts²⁷: Italy (allowing them in 1977, and expanding them in 1984 and 1987); France (extending them in 1979, restricting and extending them several times until 1989); Germany (allowing them in 1985).

In the then-existing legal frame, there was basically one alternative: the "typical contract" for an indefinite term. Although the employer effectively had the right to dismiss the worker with the payment of a certain compensation, there clearly needed to be more alternatives. The logic of the law rested on the belief that incentives needed to be created for employers so that they would indeed hire workers under legal auspices and consequently prevent both unemployment and black labor.

To provide these alternatives, the law designed four "new contracting modalities" to be added to the existing "typical contract for indefinite term", each of which aimed at different types of workers and situations: i) Labor Practice Contract (Art. 51), for youths with training but without experience; ii) Labor Training Contract (Art. 58), for youths without training; iii) Employment Promotion Contract (Art.

²⁵ See this Section, 2

²⁶ See this Section, 3

²⁷ See SIEBERT, Horst: Labor Market Rigidities: At The Root of Unemployment in Europe; "Journal of Economic Perspectives" Vol. 11, N. 3; pg. 40/42

43), for adults registered as unemployed; and iv) New Business Activity Contract (Art. 47), for any type of worker.

These modalities had five common characteristics that functioned as a combination of incentives and constraints to stimulate registered employment: i) Temporality (they were for a "definite term", mostly from 6 to 18 months); ii) Typicality (each specific type of modality was allowed for specific situations); iii) Formality (the contracts by these modalities had to be written and registered); iv) Promotion (labor contracts by these modalities had substantial reductions of taxes and social security dues); v) Habilitation (to become an effective alternative, these modalities had to be accepted by collective bargaining or administrative decision). Temporality and promotion were the incentives to hire; typicality, formality and habilitation were constraints to avoid abuses and black labor.

d) Unemployment Insurance:

Title III established the "Unemployment Benefits Integral System", a typical one-risk (dismissal) insurance scheme. This system was developed with the technical assistance of the International Labor Organization (ILO), upon the European model. Its main features were the following: i) Financed by an special payroll tax (Art. 145) directed to the new "Employment National Fund" (FNE); ii) Linked to previous work: beneficiaries were unemployed registered workers who had contributed to the FNE; iii) Partial: the amount of the benefits was a percentage of the wages collected by the beneficiary when employed; iv) Temporary: limited from four to twelve months, depending on the period of the beneficiary's contributions.

The creation of this system of unemployment benefits was a striking innovation in the country. Prior to this, Argentina had not had any institutionalized protection for the unemployed. From time to time, governments had established certain allowances for certain types of unemployed or for the poor, but totally upon ad-hoc basis.

e) Employment Active Policies:

Besides making economic stability and growth possible, a process of reforms as deep and fast as the one implemented in Argentina in the nineties imposed changes and modifications within firms, which impacted the workforce and employment. In order to contribute to deploying a "safety net" for the affected people, Chapters 3 to 7 of Title III provided resources and instruments for the government to implement programs to give both to firms and to workers opportunities, incentives and assistance to save existing jobs or to create new ones.

The law contemplated a series of programs, each of which combined a set of instruments aimed at different targets. The instruments were intended to enhance market efficiency, to "lower barriers" to contracting, to promote employment directly or indirectly, and to manage crises. The targets were groups of workers, individual firms, economic sectors and geographical regions.

The programs were the following: i) Employment programs for special groups of workers (youth, unemployed with placement difficulties, aborigines, veterans, ex-convicted, handicapped); ii) Re-conversion programs for the informal sector (Marketization); iii) Productive re-organization for sectors

and firms; iv) Procedures for firm crises prevention; v) Programs for occupational emergencies, for sectors and firms.

4. The Approval

The approval of the labor reform by Congress was a difficult and slow process. The government sent the first bill in January 1990²⁸. As was already mentioned, controversy, debate and rejection motivated a complex process of parliamentary negotiation, changes in the bill and political compromises. As result, at the end of 1990 the government retired the first bill from Congress and sent a new one²⁹.

The process was public and open. Society was fully and constantly informed by the media about the different positions, and public opinion surveys reflected a general support for the labor reform, tinged with the same attitudes as those observed in the lawmaking process: concern, uncertainty and doubt. A poll conducted in October 1990 by Gallup Argentina measured the situation.

Table II.II.2³⁰ presents the figures.

²⁸ Poder Ejecutivo Nacional; Mensaje 2381 (1/31/90)

²⁹ Poder Ejecutivo Nacional; Mensaje 2685 (12/19/90)

³⁰ Gallup Argentina

Table II.II.2
Opinion on the National Employment Law

Question	Alternative	%
Is unemployment a problem...?	Very grave + Grave	97.9
Will the "new modalities" favor job creation?	Yes	52.2
Which alternative is better?	Indefinite contracts + more unemployment	22.1
	Temporary Contracts + less unemployment	52.9
Preferred "safety net"	Employment programs	94.4
	Welfare	2.5
"Black Labor" Regularization	Very important + Important	86.4
Unemployment Insurance	Very supportive + Supportive	77.4

On 18 April 1991 the Senate considered the bill. I attended the session in my capacity as Minister of Labor³¹ and took part in the debate. There were twelve interventions: three by the Government's PJ Senators, four by the Opposition UCR Senators, four by Senators of Provincial Parties, and mine.

The general presentation sustaining the bill was made by myself, after some brief remarks by Senator Oraldo Britos (PJ-San Luis). The case against the bill was made by Senator Luis Brasesco (UCR-Entre Rios) and by Senator Hipolito Solari Irigoyen (UCR-Santa Cruz), both of whom, presented general arguments opposed to the market oriented political economy. "We do believe that the alternative consists of planning de-

mocratically the economy", stated Senator Brasesco³². And Senator Solari Irigoyen provided the fundamentals of such statement: "Who can deny that the capitalist world is living a crisis... a structural crisis of the capital accumulation regime. But the developing countries...have seen the decline of our economies because, precisely, the exhaustion of that model of development that affects the industrialized capitalist countries"³³. These arguments denoted a very mistaken perception of reality: seventeen months before the day of that session of the Argentine Senate, the Berlin's wall had fallen; and at the very moment of the session, the Soviet empire was splitting apart.

The PJ Senators and the Provincial parties Senators voted affirmatively for the bill; the UCR Senators voted against the Employment National Law³⁴.

Five months after that, the Chamber of Deputies considered the project of Employment National Law in two consecutive sessions: 26/27 September and 2/3 October 1991; as Minister, I took part of both as well. It was a long and, at moments, spirited debate, with some remarkable and well-informed speeches arguing in favor or against the law. There were twenty-three interventions: two by Government PJ Deputies; seven by opposition UCR Deputies; three by the conservative UCD (opposed to the project); two by Provincial parties Deputies; seven by different center-to-left parties Deputies (opposed too), and mine.

Deputy Osvaldo Borda (PJ-Buenos Aires), a union leader who chaired the Chamber's Labor Commission, made the general

³¹ National Constitution, Article 106

³² H. Senado de la Nación: Diario de Sesiones; April 17 and 18, 1991; pg. 6443

³³ H. Senado de la Nación: Diario de Sesiones; April 17 and 18, 1991; pg. 6471

presentation supporting the bill. In a very well crafted speech, he expressed the attitude of the Peronist labor movement: "There is an Argentina that is not there any more. It is not at all easy for me to accept some of the changes proposed here, but I cannot ignore that this Argentina at the end of the century is far different from the one that we will remain remembering for its goddesses' values. It is impossible to ignore that we cannot go back any more, or be dominated by a paralyzing nostalgia. It is our duty, as people's representatives, to provide solutions; and this is one of them".³⁵

All the opposition parties, from right to left, made the case against the law. The most important intervention was that of Deputy Francisco Mugnolo (UCR-Buenos Aires): been a labor lawyer, he made a good critical analysis of the project; but lacking relevant different proposals, it was not an alternative. Many others, from Alvaro Alsogaray (UCD-Capital) to Luis Zamora (Partido Obrero-Buenos Aires), also intervened. The Lower Chamber approved the bill on 3 October 1991, with 101 affirmative votes of the Government PJ Deputies and some Deputies of Provincial Parties, and over 95 negative votes from the opposition. The UCR Deputies voted against the Employment National Law.

Because of certain modifications made in the text originally passed by the Senate, the bill went back there again. Finally, the Employment National Law 24013, was approved by the Upper Chamber on 5 December 1991.

³⁴ H. Senado de la Nación: Diario de Sesiones; April 17 and 18, 1991; pg. 6495

³⁵ H. Cámara de Diputados de la Nación: Diario de Sesiones; 26/27 September 1991; pg. 3217

5. Modifications

Over time, several modifications were made to Law 24013.

a) Law 24467, enacted on 5 March 1995, which was specifically oriented to small and medium-sized enterprises, known as PYMES. Its objective was to promote growth and development of small and medium-sized enterprises through, for instance, creating incentives for them to utilize the capital markets, improving quality to be in line with international standards and, therefore, improving specialization, competitiveness and access to external markets primarily via Mercosur.

This law included several measures that allowed some flexibility in the labor legal framework, but only for the abovementioned "Pymes": i) Simplifying the registration procedures; ii) Allowing employers and unions to decide, through collective negotiation, substantial changes in payments, dismissals and labor mobility; iii) Simplifying the promoted contracting modalities created by the Employment National Law, eliminating the requirement of its "habilitation" through collective agreement, as well the requirements for registration and severance payments.

b) Law 24557, better known as the LRT or "Workplace Risks Law" (Ley Sobre Riesgos de Trabajo) enacted on 13 September 1995, referred to work-related risks through prevention and reparation of damages suffered by workers from such risks, as well as re-insertion of such workers into the work force. The ARTs, "Workplace Risks Insurance Companies" (Aseguradoras de Riesgos del Trabajo) were created; these entities guaranteed payments established by the law, ensured that an employee who had suffered from work-related injuries

received medical and pharmaceutical assistance, orthopedic care, rehabilitation, professional re-qualification, and even funeral service. The 'ARTs' would fall under the supervision and control of the Superintendence on Work-Related Risks (SRT).

c) Law 24576, enacted on 18 October 1995, dealt with contracting and hiring practices.

d) Law 24635, enacted on 10 April 1996, created an institution for obligatory labor conciliation under the aegis of the Ministry of Labor and Social Security.

e) Finally, Law 25013, enacted on 2 September 1998, recreated old contracting types such as apprenticeship, internship and probation. But it derogated the core of the Employment National Law, the promoted modalities.

6. Effects

The social performance of the Employment National Law 24013 has been diverse, and some of its provisions have been more effective than others. But, as is analyzed below³⁶, its overall effectiveness cannot be considered a success. In order to better assess its effectiveness, quantitative data on Regularization of Non-Registered Employment, on New Contracting Modalities and on Unemployment Insurance Benefits will follow, along with a graphic representation of the unemployment rate.

a) Regularization of Non Registered Employment:

At the beginning, regularization was successful because the law provided a carrot and stick mechanism which gave the workers and unions the power to summon employers; and employ-

³⁶ See this Section, 1

ers took advantage of debt relieves. But the success was only temporary; once the incentive lost its momentum and all actors had become accommodated to the new situation, they all regressed to their old practices. In fact, "black labor" actually increased over the decade³⁷.

The term provided by the law for the regularization process ended on 30 June 1992. By that date, 44,757 submissions of employers regularizing the situation of 344,166 workers had been received in the Ministry of Labor and Social Security³⁸. It has been estimated that the corrected total employers submissions were 46,000 which included 351,000 workers³⁹. As the total number of salaried workers at that time was 7,458,000⁴⁰, this means that almost 5% were included, and that 12% of the "black labor" was regularized⁴¹.

b) New Contracting Modalities:

The original version of the new modalities established by Law 24013 limited its applicability by its specific features of typicality, formality and habilitation⁴²; these requirements were softened by Law 24467. Nevertheless, its utilization was gaining standing over time, reaching its peak in 1998 with more that 200,000 workers employed through these contracts. Then, the modalities were repealed. The numbers reflect this evolution⁴³.

Table II.II.3 present the figures.

³⁷ See this Section, 8

³⁸ FELDMAN, Silvio: Presentaciones espontáneas de regularización de empleo no registrado o insuficientemente registrado; sus alcances. Proyecto PNUD/ARG/88/005 (1992)

³⁹ ibídem

⁴⁰ DIAZ, Rodolfo: El Empleo: Cuestión de Estado. MTSS, Buenos Aires (1995); pg. 99

⁴¹ FELDMAN, S.: Op.Cit., pg. 10

⁴² See this Section, 4.c

⁴³ Sources: a) 1992/1993: DIAZ, Rodolfo: Op.Cit. pg. 100. b) 1994/1999: Revista del Trabajo, N. 13, Buenos Aires (1999), pg.175.

Table II.II.3
Number of Workers Employed by Promoted Contracting Modalities
 (Monthly Average by Year)

Year	Employees
1992	14,456
1993	29,102
1994	49,390
1995	58,039
1996	127,172
1997	198,962
1998	228,767
1999	49,164

c) Unemployment Insurance Benefits

Some critics have pointed out that the Unemployment Insurance System created by Law 24013 covers only part of the unemployed; it is true. Those unemployed that had been working "in black" are not covered, as the entitlement is linked to a previous registered job of the beneficiary.

Nevertheless, the coverage of unemployed registered workers has been very significant: Over the eight-year period from 1992-1998, the Unemployment Insurance System paid more than 8.5 million dollars in monthly benefits, for a total amount of almost 2.4 billion dollars. Furthermore, the average monthly benefit has been higher than the minimum wage established in most Latin American countries; in some cases, significantly higher.

Table II.II.4 presents the data⁴⁴.

⁴⁴ Revista del Trabajo, N. 13, Buenos Aires (1999), pg.175.

Table II.II.4
Unemployment Insurance System
Benefits and Payments

Year	Benefits by Month	Benefits by Year	(\$)Monthly Average	Annual Total (\$ x 1000)
1992	12,806	128,068	202	25,834
1993	73,373	880,479	369	325,193
1994	98,513	1,182,154	320	378,839
1995	122,347	1,468,160	255	374,992
1996	127,885	1,534,621	258	397,366
1997	95,379	1,444,549	274	313,777
1998	90,711	1,088,533	269	292,299
1999 ⁴⁵	105,248	1,052,480	269	285,603
Total		8,651,105		2,393,903

d) Evolution of the Unemployment Rate:

Although largely ignored at the end of the eighties and the beginning of the nineties, there were deep historical and structural conditions that anticipated a worsening in Argentina's occupational situation⁴⁶, and the actual performance of the unemployment rate has not contradicted those forecasts.

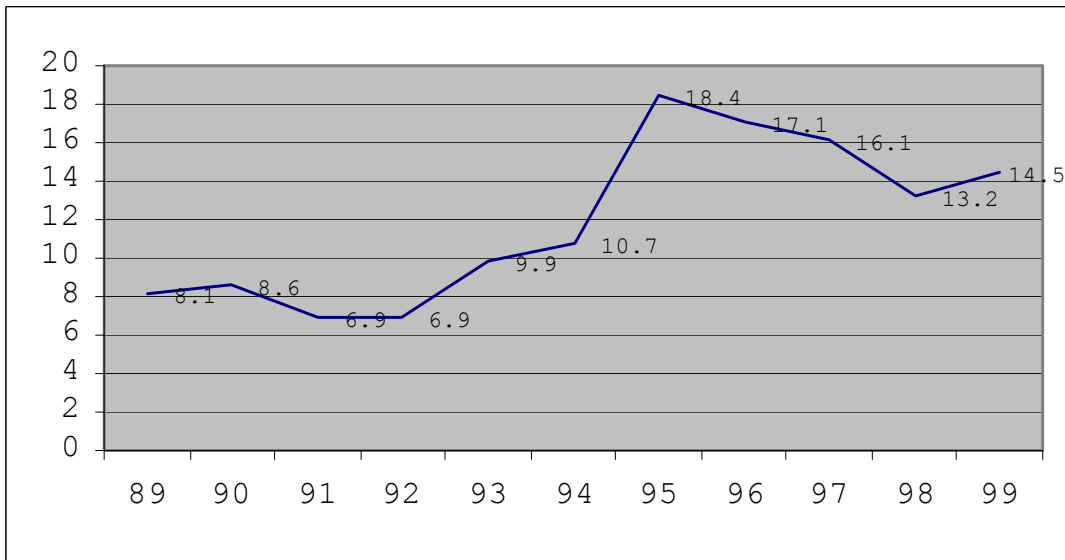
Graph II.II.3⁴⁷ shows that evolution.

⁴⁵ September/December, estimated.

⁴⁶ See this Section, 2

⁴⁷ Data: Fundación Capital: Informe de Coyuntura N. 45; Diciembre 1999; pg. 45

Graph II.II.3
Unemployment Rate
 (1989/1999)

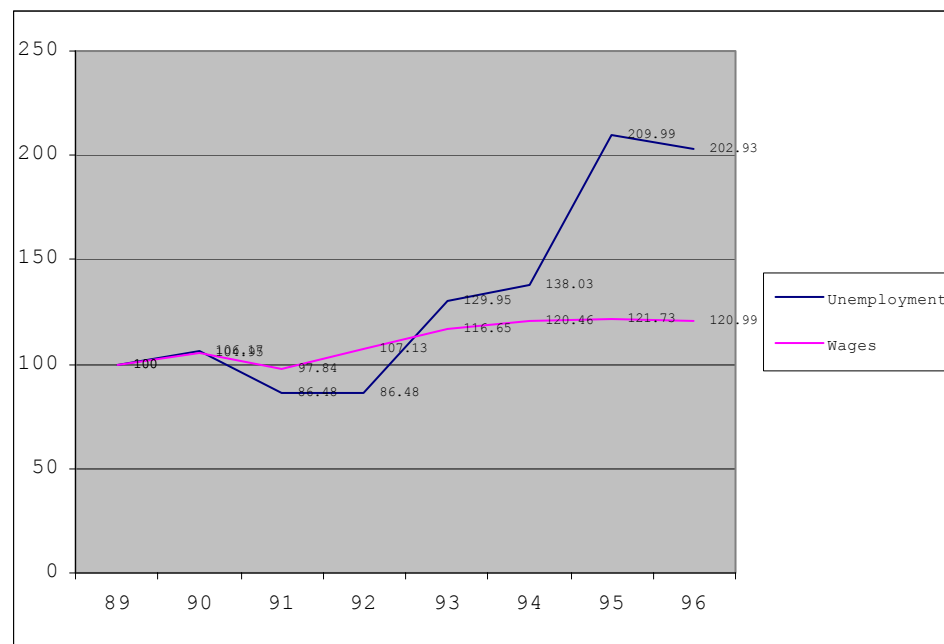


Amongst the canonical explanations of employment evolution in a given economy, three are the most frequently mentioned factors as independent variables: growth, investment, and salaries. Briefly expressed, those explanations consider that the more the growth, or the more the investment, or the lower the salaries, the higher the level of employment; but the increase of the unemployment rate in Argentina in the nineties defies all three:⁴⁸ i) from 1990 to 1997 the Argentine Economy grew—despite the "tequila effect"—40%, an annual average of more than 6.5%; ii) from 1990 to 1996, the Gross Fixed Investment in Argentina grew 122%; and iii) the most spectacular increase in unemployment was between 1994 and 1996, when rose from 10.7% to 17.1 (reaching 18.4 in 1995); throughout that period, real wages remained stable, with variations within decimals of a point.

⁴⁸ DIAZ, Rodolfo: Relaciones del trabajo y flexibilidad Laboral; en "Revista del Trabajo", N. 10, Buenos Aires (1997) pg. 24/25

Graph II.II.4⁴⁹ shows those variations over the period.

Graph II.II.4
Variations in Real Wages and Unemployment
(1989: Base 100)



Unemployment rose despite economic growth, investment increases and wages stability. Whatever the causal relationship, it is impossible to deny the strong evidence of the unemployment rate increase; as regards "open unemployment", the Employment National Law has been less effective than expected.

There are more aspects in the Argentine occupational structure than the "open unemployment"⁵⁰. The Not Registered Employment, the so-called "black labor", can be a contributing factor in explaining the overall evolution of the occupational situation.

⁴⁹ Data: ibídem

⁵⁰ See this Section, 2

7. Black Labor

In the Argentine context, "black labor" has been defined as that which "not being illicit in itself, is not declared to one or more of the authorities which should be notified of it, and therefore, avoids regulations or taxes or leads to a reduction in the social security dues"⁵¹. It does not have to do with the type of work (illegal or not) but with the "hiding from the authorities because of the will of the employer to elude payment of social security dues or to evade taxes"⁵².

Being a "hidden" phenomenon, there are difficulties in its measurement. In Argentina, its quantification comes out from one "question" included in the EPH (Households' Permanent Survey), which asks the interviewed if social security dues are deducted from his salary. It is considered a reliable method that leads to conservative estimations⁵³.

The incidence of black labor as a percentage of the total salaried employment grew steadily in the nineties. Two reductions were observed in its evolution: "In 1992 a slight inflexion is produced [not apparent in the graph because it corresponds to one semester alone between May and October, 1992] coincidental with the regularization procedure established by the Employment National Law"⁵⁴. The other was in 1994, which "coincided with the put in effect of the new pension system" that induced workers to claim their registration to have access to the new fully funded system⁵⁵. (The data

⁵¹ GALIN, Pedro: Empleo en Negro y Políticas Laborales; paper presented to the II Nation Congress on Political Science. Mendoza (1995), pg.1

⁵² PNUD-MTSS, Proyecto ARG/92/009: El Empleo Clandestino. Evolución y Características. Informe N.4 (1992); pg.1

⁵³ *ibidem*

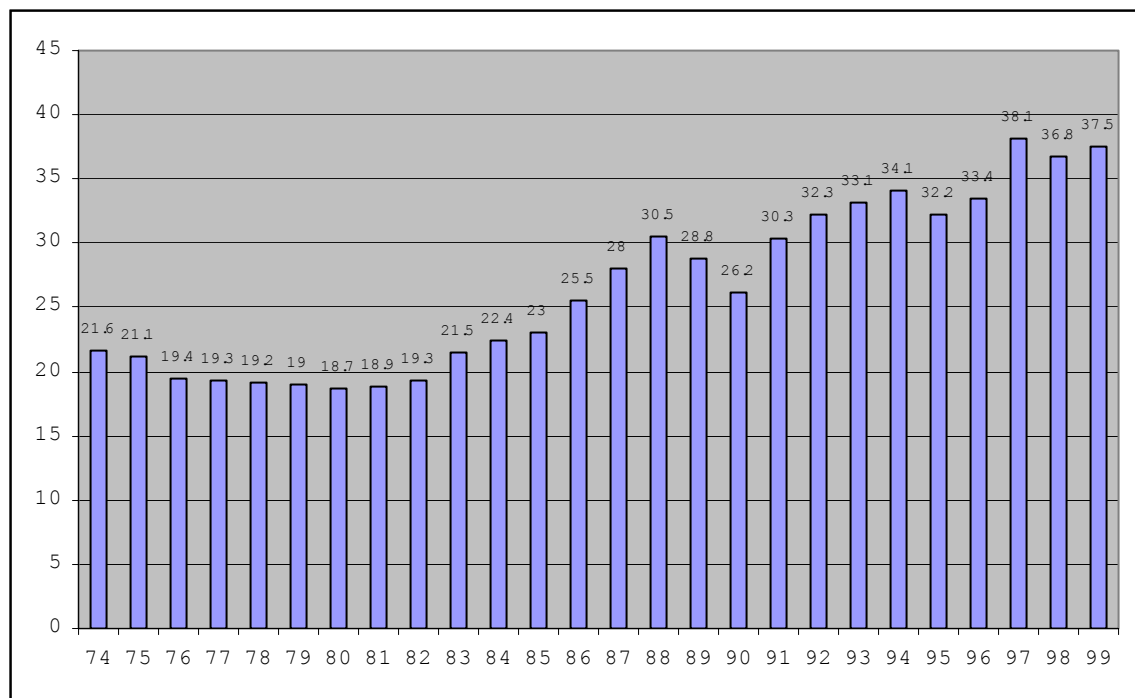
⁵⁴ GALIN, Pedro: Op.Cit., pg.5

⁵⁵ *ibidem*

from Great Buenos Aires coincides with the national average⁵⁶).

Graph II.II.5 presents this evolution

Graph II.II.5
Black Labor in GBA⁵⁷
(As % of Total Salaried Employment)



A study sponsored jointly by the United Nations and the Argentine Ministry of Labor, found that there are three usual stylized interpretations of black labor as a phenomenon.

a) One considers it as a consequence of the lack of enforcement and control by the authorities. But the study points out that black labor fell when significant reductions in labor inspection personnel were implemented and grew when

⁵⁶ GALIN, Pedro: *Op.Cit.*, pg.4

⁵⁷ 89/94: GALIN, Pedro: *Op.Cit.*, pg.5; 95/99: *Revista del Trabajo*, N. 13, Buenos Aires (1999), pg.128

more resources were allocated to labor law enforcement, which contradicts this first interpretation⁵⁸.

b) Other considers black labor as an element of the urban informal sector of the economy. Activities at very low levels of productivity, profitability and technology make paying taxes and fulfilling regulations impossible. But the evidence contradicts this second interpretation too: black labor is not only related to small, unproductive, informal businesses; it is a pervasive phenomenon observable across all the economy, all sectors and all sizes of business.

Tables II.II.5 and II.II.6 present the data.

Table II.II.5
Black Labor: Incidence by Sector⁵⁹
(1989-1994)

Sector	1989	1994
Industry	25.4	29.2
Construction	52.7	58.8
Commerce	38.0	38.0
Transport and Communications	17.7	41.5
Banking	20.5	23.9
Services	30.1	33.4
Total	29.9	34.1

⁵⁸ PNUD-MTSS, Proyecto ARG/92/009: El Empleo Clandestino. Evolución y Características. Informe N.4 (1992); pg.6

⁵⁹ PNUD-MTSS, Proyecto ARG/92/009: El Empleo no registrado en el periodo 1989-1994. Informe N.21 (1995); pg.6 and 10

Table II.II.6
Black Labor: Incidence by Size of the Business⁶⁰
 (1989-1994)

Number of Workers	1989	1994
5 or less	65.8	70.6
6/25	25.6	41.4
26/100	14.8	14.6
101/500	6.2	6.4
501 or more	3.2	9.9
Total	28.8	34.1

c) The third interpretation considers black labor as result of economic rationality. "Confronted with the proliferation of social dues and payroll taxes...firms opt for this irregular way out, to stay in the market competitively"⁶¹. This explanation was "falsified"⁶²—argues the Inform study group—by the fact that black labor grew when employers' social dues were eliminated in 1980-1985⁶³.

Therefore, the Inform concludes that none of these interpretations alone is sufficient to explain the evolution of black labor in Argentina. To some extent it is possible to accept that conclusion: it seems clear that black labor is not just an effect of lack of enforcement or a product of informality. Nevertheless, the third interpretation—the one which links black labor to economic rationality—deserves more attention.

⁶⁰ ibídem

⁶¹ PNUD-MTSS, Proyecto ARG/92/009: El Empleo Clandestino. Evolution y Características. Informe N.4 (1992); pg.5

⁶² In Karl Popper's sense

⁶³ PNUD-MTSS, Proyecto ARG/92/009: El Empleo Clandestino. Evolución y Características. Informe N.4 (1992); pg.6

8. The "exit" choice

From the very beginning of the process of elaboration of the Labor Reform project, the black labor phenomenon was approached more as a "choice" than as a simple "transgression". As it was pointed out in my own intervention in the debate of Law 24013 in the Chamber of Deputies: "This situation of the black labor is not the result of employers' perversity or workers' carelessness, but simply of fifteen years of crises in the Argentine economy. In order to survive as such, productive units in our country had to find countless survival strategies: one of them was the generation of this situation".⁶⁴

And the understanding of black labor as a choice had been stressed in a previous intervention in that debate by Deputy José J. Manny (UCD-Capital Federal), when he said: "A great part of our fellow citizens, took the lead in a virtual runaway from the system...We had runaways of citizens, of brains and of capital; we had had all kind of regrettable runaways...The informal economy reached 40, 50 or 60 per cent...As regards informal employment...very high figures are mentioned...What can we do to recover these runaways...?"⁶⁵

There is a more formalized theoretical approach⁶⁶ which was developed to analyze similar phenomena in Eastern Europe, that can be useful for considering the Argentine case. A brief stylized version of that approach is the following: Social responses to economic hardship or to structural reforms

⁶⁴ H. Cámara de Diputados de la Nación: Diario de Sesiones; 26 y 27 de setiembre de 1991; pg. 3339

⁶⁵ H. Cámara de Diputados de la Nación: Diario de Sesiones; 26 y 27 de setiembre de 1991; pg. 3250

⁶⁶ See GRESKOVITS, Bela: The Political Economy of Protest and Patience, CEU Press (1998); pgs.69/91. And SIK, Endre: From the Multicolored to the Black and White

depend on the social learning determined by previous experiences of a particular society: in Eastern Europe, the legacy of Communism; in Argentina, the experience of the Bureaucratic-Authoritarian State and its economic model, Assisted Capitalism.

The theory of social responses developed by Albert Hirschman⁶⁷ and its concepts of "Voice" and "Exit" help explain how social actors do not always "respond contentiously or collectively in expressing dissatisfaction"⁶⁸. "As an alternative to 'voice'—that is to collectively and politically expressing their dissatisfaction—individuals or firms may 'exit' or abandon their unfavorable circumstances for something supposedly better"⁶⁹. Facing circumstances considered as unfavorable, actors' choices are determined by social conditions. There are two types of basic responses: i) a coordinated, collective, political response—"Voice"; and ii) an uncoordinated, spontaneous, economic response—"Exit".

The typical form of "exit" is "going informal"⁷⁰ through tax evasion and irregular employment. The choice for "exit" is determined by certain specific circumstances: i) the unavailability of "voice" alternatives (as under the Communist regimes in Eastern Europe or under the dictatorship in Argentina); ii) blurred boundaries between legal and illegal; iii) cultural ambivalence on the rule of law; iv) a tradition of repeated breaks of the Constitution. It is evident that the Argentine case fits to these conditions. The theory concludes that, as results, all social groups choose specific paths of

Economy; in "International Journal of Urban and Regional Research"; N. 18; pg. 46/70.

⁶⁷ HIRSCHMAN, Albert: Exit, Voice and Loyalty; Harvard University Press (1970)

⁶⁸ GRESKOVITS, Bela: Op.Cit., pg. 72

⁶⁹ ibidem

non-criminal forms of "exit" from the formal economy and, to some extent, from legality. Its magnitude, frequency and specific forms are relevant elements to explain variations amongst different cases⁷¹.

This is a very plausible explanation for the existence of black labor in Argentina.

9. The "irregular" economy

The "exit" choice, that explains black labor, also led to the irregular economy. Although there has been an ample discussion on how to denominate this phenomenon⁷², I will use "irregular economy", following the criterion used in Title II of Law 24013, which refers to "Regularization of Non Registered Employment".

Within the "not regular" part of the economic system, four sectors have been typified⁷³:

a) The Household Sector, in which production, distribution and consumption of goods and services are within the home; there are no market transactions nor prices; the outputs and its commercialization are not illegal.

b) The Informal Sector, in which production could be either within the home or among small units; distribution and consumption are out of the home; there are market transactions and prices; outcomes and commercialization are not illegal.

c) The Irregular Sector, in which production and distribution could be among small or large firms; there are market

⁷⁰ GRESKOVITS, Bela: Op.Cit., pg. 73

⁷¹ ibidem

⁷² See DALLAGO, Bruno: The Irregular Economy; Dartmouth (1990), Introduction.

⁷³ THOMAS, J.J.: Informal Economic Activity; Harvester-Wheatsheaf (1992), pgs.

transactions and prices; its outcome is not illegal; its production and distribution involve certain degrees of illegality, including tax and social security evasion, black labor and avoidance of regulations.

d) The Criminal Sector, in which the outcome in itself is illegal.

Table II.II.7⁷⁴ summarizes these features.

Table II.II.7
Structure of the Irregular Economy

Sector	Market Transactions	Output	Production /Distribution
Household	No	Legal	Legal
Informal	Yes	Legal	Legal
Irregular	Yes	Legal	Illegal
Criminal	Yes	Illegal	Illegal

Since transactions are the microlevel analytical unit, the variety of types of transactions which the irregular sector of economy consists of, need to be ordered. Following a modified version of the criteria proposed by Istvan Gabor⁷⁵, these transactions could be classified accordingly: i) legality (or different grades of illegality); ii) marketization (done in the marketplace or out of it); iii) integration (different grades of interaction with the regular economy or absence of it); iv) source of income (black labor, social capital, or financial capital).

⁷⁴ THOMAS, J.J.: Op.Cit., pg.6

⁷⁵ SIK, Endre: Op. Cit., pg. 49

The following characteristics of the irregular economy have been pointed out⁷⁶: i) labor intensive; ii) postponement of investment; iii) innovation to survive, not to thrive; iv) short-term profit maximization; v) social capital based (trust and networks amongst transactors).

A reinforcement of the trend to the "exit" choice has been observed related to economic reforms; this also seems to be the case of Argentina. There are three factors that could have contributed to that reinforcement: i) Economic hardship experienced at some point of the processes of reforms led to the "exit" choice as a "defensive" response. ii) Changes and uncertainties associated with reforms led firms and individuals to the "exit" choice as "adaptive" response. iii) Since inflation had been the only unavoidable tax imposed on the irregular sector, economic stabilization—terminating inflation—eliminated that tax as well; and, at the end of the day, the elimination of the inflationary tax could also have functioned as an incentive to the "exit" choice.

The irregular economy has been a long-lasting phenomenon. As in the case of other enduring social situations, its permanency itself has produced relevant effects⁷⁷: i) Generalization: it has pervaded all the economy, even those activities in the regular sector. ii) Socialization: it has comprised the actors within a subculture related to the irregular economy, black labor and non-criminal illegality. iii) Organization: it has structured relations amongst irregular economy actors in a dense network.

⁷⁶ SIK, Endre: Op. Cit., pg. 63

⁷⁷ SIK, Endre: Op. Cit., pg. 67

These effects produced "path dependence"⁷⁸: once a choice has been made, several factors associated with that first decision determine that not changing the choice already made is the "rational" following decision, despite the existence of supposedly better alternatives. In the case of "irregular economy", actors acquired social learning and built networks that generate externalities; most important, they invested in building social capital, on which this type of economy is based. Once the "exit" choice has been made, social learning, externalities and investment in social capital make sustaining it and remaining "irregular", rational.

The abovementioned reinforcing factors—effects of permanency in itself and path dependence—explain the strong resiliency of irregular economy and black labor.

10. Convertibility and Wages

As it was explained above, the Argentine legal system developed an extraordinary number of complex mechanisms to modify the nominal amounts of money established in contracts, "in order to 'correct' currency depreciation caused by inflation"⁷⁹. The first realm where these mechanisms were applied, were public contracts; the second, wages and labor collective conventions.

The method applied was in general the indexing of nominal wages by "past inflation", in order to compensate for the effective loss of value in the currency over a certain period of time. The effect of this type of adjustment method has been widely described in the literature: it functioned as a

⁷⁸ NORTH, Douglass: Institutions, Institutional Change and Economic performance. Cambridge University Press (1990); pg. 93

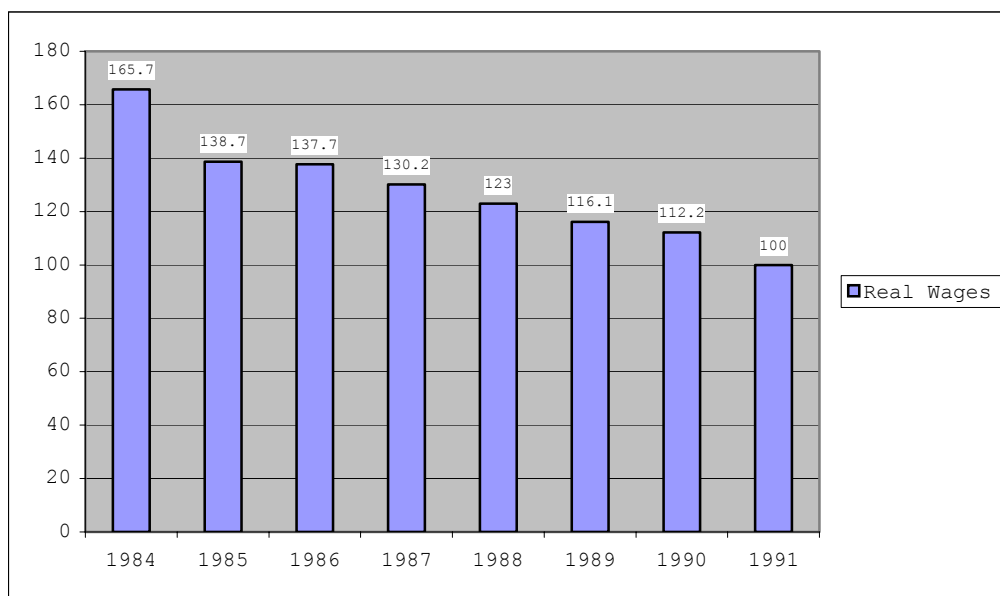
⁷⁹ Introduction, 2

feedback that "fueled" the inflationary spiral, since increases in wages for "past inflation" were transferred to "future prices".

Since 1975, all collective labor conventions in Argentina provided automatic mechanisms for wage indexing by past inflation. Its application was suspended most of the time during the dictatorship, and wages increases were decided by the authorities; but when democracy was recovered, these mechanisms became effective again. However despite indexation and other adjustment mechanisms, real wages deteriorated sharply through the eighties.

Graph II.II.5⁸⁰ shows that evolution.

Graph II.II.5
Real Wages
(1991: Base 100)



The empirical evidence validates a famous observation by former President Peron: "In the race between prices and

⁸⁰ Data: MTSS

wages, prices rise in the elevator and wages climb by the stairs".

In March 1991, the convertibility plan was prepared. Some in the government considered that, in order to avoid the inflationary effects of wages increases, it would be necessary to suspend the effectiveness of collective conventions and to manage the wages by the authorities.

As Minister of Labor at that time, my position was different. I was against the "statization" of wage determination, for several reasons: i) It was inconsistent with the general "market oriented" approach of the whole process of reforms. ii) Concentrating wage management in government's hands would determine that all workers' claims were to be intended not to different employers in a desegregated manner, but to the government in an aggregated one. Each conflict would be a national political conflict, much more difficult to resolve than a multiplicity of normal business-labor conflicts. iii) As a strategic choice, it would define a confrontational relationship with the unions. That was contradictory to the government's persuasion that a type of relationship from "non-confrontational" to "supportive" with the Labor Movement was a requisite for the successful implementation of the process of reforms as a whole.

Instead, my proposal was to maintain (and actually, to expand) the procedures of collective bargaining as regards wages. In order to make it consistent with the convertibility plan, a new technical legal framework was established: that wage increases had to be determined only by increases in productivity, and that their cost could not be translated to

prices. This proposal was accepted by the Cabinet and supported by the President, and was successfully implemented.

11. Wages Negotiation by Productivity

Argentina's legal system guarantees employers and unions freedom of collective bargaining; once an agreement is reached, in order to be binding it has to be "homologated" by the authorities⁸¹. That homologation⁸² is subject to three legal conditions: not to violate "public order laws", not to "significantly" affect the general economic situation, and not to "gravely" hurt consumers⁸³. In addition, articles 7 and 10 of the Convertibility Law 23928 eliminated all forms of indexation and other adjustment mechanisms from contracts, laws and regulations, including collective labor conventions.

Upon these legal bases, Decree 1334/91 was designed. This established a procedure for collective wage bargaining, which, in order to be homologated, had to conform to three objective parameters: i) Not to use indexation mechanisms; ii) Increases in wages had to be determined by increases in productivity; iii) Increases in wages could not be translated to prices.

A specific sequence of four stages was established which negotiators (employers and unions) had to comply with: i) To establish by agreement the methodology and basic criteria to be used; ii) To submit that methodology and those criteria for consideration by the authorities; iii) To determine the wage increase applying to the abovementioned methodology and

⁸¹ Law 23546, art. 6.

⁸² For the Spanish word "homologación": KAPLAN, Steven: English-Spanish, Spanish-English Legal Dictionary; pg. 486

⁸³ Law 14250, art. 4

criteria; iv) To submit the new agreement to the authorities, in order to be homologated.

Moreover, this procedure was applied upon three general assumptions⁸⁴: i) Negotiators, not the government, had to determine the wages, complying with all legal requirements. Authorities' intervention was limited to verify whether those requirements had been complied with. ii) The determinations of wages by productivity had to be duly founded in terms of information, data, technical criteria and logical reasoning. iii) As variations in productivity could differ among sectors, corrections in wages among sectors could differ as well: no "general correction" of wages would be consistent with Decree 1334/91.

Methods of correction could be referred either to properly measured past increases of productivity ("past-productivity"), reasonably estimated future increases of productivity ("future-productivity") or a combination of both⁸⁵. When "past-productivity" was used as the criterion, the core of the negotiation had to do with measurement: which indicators would be used, which sources of data would be acceptable and which calculation formula would be used. When "future-productivity" was used, the center of the bargaining process was the foreseen changes in technology, organization and management.

12. Wages Negotiation and Stability

Decree 1334/91 was issued by President Menem on 15 July 1991 with my own countersignature as the ministerial legal-

⁸⁴ MTSS-Proyecto PNUD/OIT-ARG/90/007: Decreto 1334/91; Pautas Orientadoras. Buenos Aires (1991).

⁸⁵ *ibidem*

zation⁸⁶. The process of collective bargaining was opened for all sectors and a "Technical Advisory Commission on Productivity and Wages" was created within the Ministry of Labor to support the enforcement of the new decree.

Despite certain initial resistance on both sides (unions would have preferred a simple indexation and business a simple fixation by the government) the process began almost immediately, and went on at a good pace. In October 1991 the first agreement that modified wages by productivity was homologated; it had passed the full process of negotiation and technical assessment in less than three months. Thereafter, all the conventional structures of the Argentine labor relations system moved to negotiate wages according to variations in productivity. By February 1992, 255 agreements had been homologated⁸⁷. Almost half of the homologated conventions used "future-productivity" as the criterion for wage determination; the rest was allotted between "past-productivity" and combinations.

Table II.II.8⁸⁸ presents the figures.

Table II.II.8
Productivity Criteria
(1991/1993)

Criterion	Agreements	%
Past Productivity	75	31.2
Future Productivity	114	47.5
Mixed Combinations	51	21.3
Total	240	100

⁸⁶ National Constitution, Art. 100

⁸⁷ Proyecto PNUD/OIT/-ARG/92/009: La Aplicación del Criterio de Productividad en la Negociación Salarial. Buenos Aires (1993), pg. 7

⁸⁸ Proyecto PNUD/OIT/-ARG/92/009: op.cit., pg.7

Out of those that used the criterion of "past-productivity", 80% used the standard indicator of "outcome/labor income" ratio⁸⁹. Those that used the criterion of "future productivity", referred to a more varied sort of indicators.

Table II.II.9⁹⁰ shows this variety and its frequency, presenting figures extracted from 969 clauses comprised in the universe of agreements homologated until 1994.

⁸⁹ Proyecto PNUD/OIT/-ARG/92/009: Op.cit., pg. 10

⁹⁰ NOVICK, M.; CATALANO, A.; DEIBE, E.; MATHEU, P.: Relaciones Laborales y Productividad: Actores, Acuerdos y Flexibilidad. En "Dialógica", Vol. 1, N. 1; Buenos Aires (1996), pg. 245/246.

Table II.II.9
Future Productivity
 Indicators

Contents	%
1. Increasing of effective working time 1.1. <i>Modification of conventional leaves</i> 1.2 <i>Extension of operative time</i> 1.3. <i>Regulation of union's activities</i>	5.81
2. Reduction of Costs associated to wages 2.1. <i>Diminution of Subsidies and Bene- fits.</i> 2.2. <i>Diminution of additional payments.</i> 2.3. <i>Habilitation of Promoted Contract- ing Modalities.</i> 2.4. <i>Diminution of fixed crews and re- placements.</i>	20.13
3. Reduction of Costs associated with capac- ity use. 3.1. <i>Additional for presence.</i> 3.2. <i>Management of labor conflicts</i> 3.3. <i>Annual distribution of vacancies</i> 3.4. <i>Timetable reorganization</i> 3.5. <i>Diminution of labor rotation</i>	26.48
4. Labor Incentives 4.1. <i>Additional subject to performance</i>	8.83
5. Work Reorganization 5.1. <i>Functional mobility and team work</i> 5.2. <i>Internal bargaining on norms and methods of work</i> 5.3. <i>Changes in functions, categories, promotion and vacancies.</i>	20.67
6. Increase of current productive capacity 6.1. Personnel training 6.2. Service delivery improvement 6.3. Investment in technological innovation	18.08
Total	100

Negotiation by productivity produced a lasting and significant impact on the Argentine labor relations system. "Analysis of productivity and labor relations, in the case of Argentina, seems particularly interesting, for it demon-

strates that productivity, far to be the expression of a merely technical relationship, is the expression of labor social relationships which requires to build particular forms of coordination and consensus. In this sense, negotiation by productivity, allowed the slow production of deep changes in the levels, actors, forms and matters adopted by collective bargaining. These changes indicates to be in presence of a new logic of collective action and of negotiation between capital and labor"⁹¹

From the technical point of view, the process under analysis was positively assessed: "It was effective...following the convertibility law and giving an economic criterion to negotiations developed in a situation of no inflationary stability".⁹² "As final conclusion has to be underscored the role played by the wages negotiation by productivity in the success of the current stabilization policy...Correlation between nominal wages and productivity make sure, as economic theory demonstrates, that the former do not have relevant incidence on the costs of production...neither in the prices...It is evident that negotiation by productivity contributed substantially to the prices stabilization process"⁹³

The process of wage negotiation by productivity established by Decree 1334/91 yielded the expected effects: i) it stopped the "race" between prices and wages, contributing significantly to the termination of inflation; ii) it created an opportunity for businesses and unions to modify many aspects of the labor relations system; and iii) it created an

⁹¹ NOVICK et Al.: Op. Cit., pg. 241

⁹² STREGA, Enrique: Sindicatos, Empresarios, Gobierno y las Reformas Laborales. Ed. Ciudad Argentina, Buenos Aires (2000), pg.23

⁹³ Proyecto PNUD/OIT/-ARG/92/009: op.cit., pg. 40

opportunity for government and unions to build a consensus supporting the process of reforms as a whole.

13. Twofold results

As was presented earlier⁹⁴, in the eighties in Argentina assisted capitalism and the Bureaucratic-Authoritarian State were related in a "multiple equilibria situation" in which inflation played a strategic role. The labor system was congenial with them: institutions of labor relations (both individual and collective) were adaptive to the type of economic units (private and state owned) characteristic to the model of the time. Furthermore, institutions and procedures to negotiate and to determine wages were highly adaptive to inflation, the model's dominant phenomenon.

In conditions of multiple equilibria, "changes in exogenous variables...can lead to changes in institutions...when...an exogenous variable alters...a new strategy combination may come to form new equilibria"⁹⁵.

When the process of reforms began in 1989, (through the implementation of Law 23696, of State's Reform⁹⁶, and Law 23697, of Economic Emergency⁹⁷) it became clear that those changes in the State's structure and in the economic institutions would determine changes in the labor system as well. Furthermore, when the Convertibility Law 23928 was passed, with the prohibition of all forms of indexation, the reform of the institutions and the procedures for collective bargaining and determination of wages became unavoidable.

⁹⁴ See Introduction, 3 and 4

⁹⁵ BATES, Robert et. Al.: Analytical Narratives; Princeton University Press, NJ (1998), pg. 233/234

⁹⁶ See Chapter III.I

⁹⁷ See Chapter I.I

As was presented in this section, institutions in both realms were changed: the labor relations framework, through the Employment National Law 24013, and wage determination procedures, through Decree 1334, of Wages Bargaining by Productivity.

The outcome was twofold: As regards labor relations, changes were not fully accepted and the new multiple equilibria was reached a certain amount of institutional change (limited use of new types of contracts), a certain number of "exits"⁹⁸, and a certain number of social costs (increasing unemployment). On the other hand, as regards wages, the institutional changes were more accepted, and the new equilibrium was reached with a substantial amount of institutional change (collective bargaining by productivity), and a high congeniality with the Convertibility Regime: excluding inflation from the equation.

Ten years time afterwards, it is safe to say that Decree 1334/91 of Collective Bargaining by Productivity was a remarkable success, and that the Employment National Law 24013 was not.

⁹⁸ See this Section, 8

- III -

SOCIAL SECURITY REFORM

Social security within assisted capitalism was a distorted "pay-as-you-go" system; being exclusively financed with deferred wages, it was highly inequitable, both at the regional and social level. Pervaded by its own inefficiencies and the negative effects of inflation, it collapsed from benefits deterioration, financial unsustainability and judicial claims. The new system has two pillars: the public PAYG and the private Fully Funded; while the public tier slightly decreased, the private one grew more than 80%: it now has over \$20 billion in savings. Ten provincial pension systems were transferred to the federal government. The public component has a very important financial deficit, because of transitional costs and high tax evasion.

The Social Security regime has been a major component of the Argentine state in recent decades. Given its size in relation to the economy as a whole and its present and future significance for different generations, changing it was one of the most hotly debated aspects of the process of reforms during the nineties.

The broad picture of Argentine pensions systems has three different components: the national social security system, the provincial pensions systems and the military retirement regimes. The Social Security Reform comprised the national system, and afterwards included half of the provincial systems, but the military regimes never were included (or reformed).

The initiative for the Social Security Reform was launched after both the Convertibility Law had controlled hyperinflation and the worst part of the economic "emergency" had passed. At that point, the end of the emergency and the nature of the problem led to a type of decision-making proc-

ess different from that of the laws of Economic Emergency, State Reform and Convertibility. Instead of a fast, dramatic approval, a slow, extensive and complex process of consensus building was required, all of which took more than two years of political dialogue, exposure to public opinion, and parliamentary bargaining.

Changes in social security systems are normally initiated to accomplish two primary objectives: to confront the financial crises of traditional systems, and to ensure the provision of expected legal benefits to current and future generations of retirees. Furthermore, since the well-being of a nation's social security system is inextricably connected to its overall economic well-being, it is also expected that adequate and sustainable changes in the social security system will at the same time positively influence the processes of capital accumulation and economic growth.¹

This reform was linked to key aspects of the process of change in which the country was engaged. As in the case of the other reforms, the starting point was a system that had come to the end of its rope and which represented an unbearable weight on the structure of public spending. There had been several specific changes made to the old social security regime at different times, but all of them revolved around the classic principles of the pay-as-you-go (PAYG) system: social security benefits received by current retirees and pensioners were paid for by the contributions deducted from the salaries of currently active workers. But at the end of the day, all failed. Long before 1989 when the whole process

¹ ASAP-FIEL: La Reforma Previsional en la Argentina, Buenos Aires (1998) pg.11-12.

of reforms began, the old PAYG Argentine pensions system was no longer able to function.

The structure of social security systems lies between two extremes: pay-as-you-go (PAYG) and fully-funded (FF). In a pay-as-you-go system, the economically active generation finances the retirement of the retired generation; in a fully-funded system, an individual's contributions finance his personal retirement. Whereas the rate of return for the contributing generation in a pay-as-you-go system equals the growth of the wage mass, in a fully-funded system, returns for each individual equal the real interest rate of the market on personal contributions.

It was pointed out above that the state that was reformed in 1989 was not the "populist" state built by the Peronists². In the same way, the social security regime that was reformed in 1993 was not the "peronist" pension system, which from the legal point of view was of the "fully-funded" (FF) type. The regime that was changed in 1993 was the one created in 1968, during the military experiment of General Onganía, when 'de facto' Laws 18,037 and 18,038 were dictated substituting the original "fully-funded" for the "pay-as-you-go" system that was in place at the beginning of the nineties³.

Despite its "welfare-state likeness", that retirement system was a typical component of assisted capitalism, the political economy associated with the authoritarian scheme of organization of the state apparatus, which has been described elsewhere⁴. The relationship between the type of economic organization and the type of welfare state have been under-

² See Introduction, 1.

³ ASAP-FIEL: La Reforma Previsional en la Argentina, Buenos Aires (1998) pg. 79.

⁴ See Introduction, 2.

scored in political science analysis. An innovative approach considers that "A production regime is defined by the set of complementary institutions...The varieties of capitalist literature distinguishes different clusters of such institutional complementarities. The welfare state...is another such institutional complementarity."⁵

That was the case of the Argentine Pensions system effective at the end of the eighties. Its fundamental characteristic was that it was exclusively financed with deferred wages; whatever the name ("employers' contributions" or "workers' dues") they were taxes on salaries, and economically they affected only one economic factor: labor. Social responsibility and inter-generational solidarity, the ethical basis of welfare state's PAYG systems, were no more than rhetorical statements, as society as a whole did not have very much to do with social security: only one sector, registered dependent workers, had borne the weight of financing the system. Furthermore, its financial unbalances were solved by means of the adjustment variables typical of assisted capitalism: benefit deterioration, fiscal deficit and "inflation tax".

1. A Pensions System on the Ropes

The Argentine pensions system as it existed in 1989 had two basic problems: first, its incapability of complying with the payments of the benefits as they were legally established; second, the persistent deficit in its accounts⁶. In

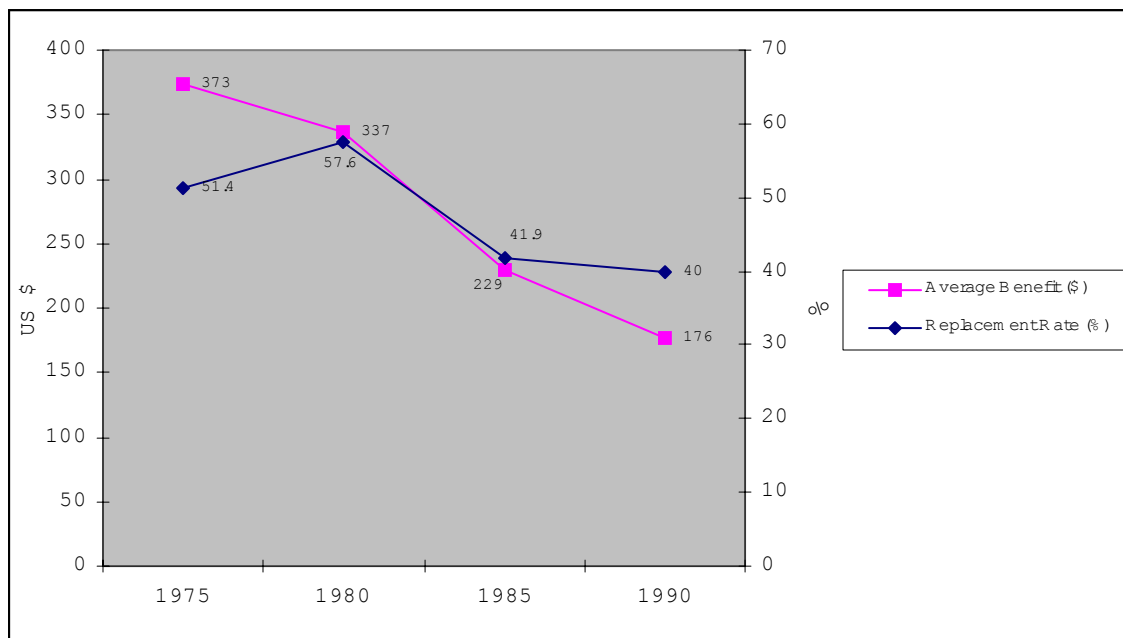
⁵ ESTEVEZ-ABE, Margarita; IVERSEN, Torben and SOSKICE, David: Social Protection and the Formation of Skills: A reinterpretation of Welfare State; pg. 3. In HALL, Peter and SOSKICE, David (Ed.): "Varieties of Capitalism: The Institutional Foundations of Comparative Advantage"; (Forthcoming).

⁶ MTSS: Bases para la Reforma del Sistema Provisional, Internal Memo (1991)

addition, incongruities between expected legal benefits and actual benefits, large-scale evasion, and tremendous debts that created a judicial crisis, also plagued the system. An expression of those weaknesses was the progressive deterioration suffered by the benefits, considering the minimum, the average and the replacement rate: i) in 1989, the minimum benefit had fallen to less than 60 dollars per month; ii) from 1975 to 1990, the average benefit was reduced to less than half; and iii) the replacement rate fell more than 15 percent points from 1980 to 1990.

Graph II.III.1⁷ shows the evolution both of the average benefits and the replacement rate.

Graph II.III.1
Average Monthly Benefit and Replacement Rate
(1975-1990)



Since the sixties, the Argentine social security system had experienced a chronic deficit, thus limiting its viable

self-sustenance. Moreover, the skewed incentives of the old system contributed to high levels of evasion and fraud.⁸ This is a crucial point, because a progressive increase in the level of unemployment and in the precarious labor relations, coupled with high rates of evasion, decreased the number of contributors.

Additionally, non-registered salaried workers ("black labor")⁹ and "informal" labor arrangements undermined the system's revenues. By 1989, the effective number of contributors to the National Social Security System was estimated at five million, while there were some 3,300,000 retirees. The ratio of contributors to beneficiaries is known as the "dependency rate" (contributors/beneficiaries), and its proper proportion is based on the incidence of the payroll taxes on the wage mass. In Argentina at the end of the eighties, that incidence was 26%; therefore, the proper "dependency rate" should be 4 (four economically active persons for each retiree); but that ratio had dropped below 1.7, which made the system impossible to sustain.¹⁰

The system was also characterized by regional inequities. For instance, whereas more than 20% of the population in Buenos Aires City had benefits, the proportion dropped drastically to single digits in smaller provinces; and the economic development of a region was inversely correlated to social security coverage in that region.¹¹

⁷ Data: Ibid

⁸ ASAP-FIEL: La Reforma Previsional en la Argentina, Buenos Aires (1998) pg.14

⁹ BACCARIA, Luis and CARCIOFI, Ricardo: Argentina: La Política Social y el Ajuste Durante los Años Ochenta; en LUSTING, Nora Ed: "El Desafío de la Austeridad", FCE (199); pg. 246

¹⁰ DIAZ, Rodolfo: La Reforma del Régimen Jubilatorio; Mensaje del Ministro de Trabajo y Seguridad Social a la Mesa del Diálogo Político (1991)

¹¹ ISUANI, Aldo and SAN MARTINO, Jorge: El Nuevo Sistema Previsional Argentino: Punto final a una larga crisis?; en "Boletín Informativo Techint", N. 282; pg.49

The social security regime in place in 1989 had an organizational structure that accumulated highly inefficient overlapping structures (regimes, funds, institutes) in which public agencies not only multiplied but came to concentrate functions and quotas of power difficult to reconcile with the demands of basic principles of economic rationality and institutional transparency.¹²

All these characteristics resulted, at the end of the eighties, not only in a very inefficient and bureaucratic organization, but above all in a highly inequitable system. The financing of the system was based on two payroll taxes: workers' dues (10%) and employers' contributions (16%). Within the specific type of economic organization that Argentina had at the time ("assisted capitalism", described elsewhere¹³) institutional provisions and inflationary mechanisms made both function not as "taxes" but in effect as "deferred wages"; hence, and in light of overall income distribution, they were exclusively sustained by the labor sector of the economy.

The economic reason for this is that the tax burden allocation between labor and capital is a function of elasticities¹⁴ of labor demand and labor supply. Graph II.III.2 shows that given a payroll tax MP, employers bear NP and workers bears NM. Graph II.III.3 shows that when the labor supply is totally elastic, the tax is borne totally by employers; Graph II.III.4 shows that when labor demand is totally elastic, the tax is borne totally by workers.

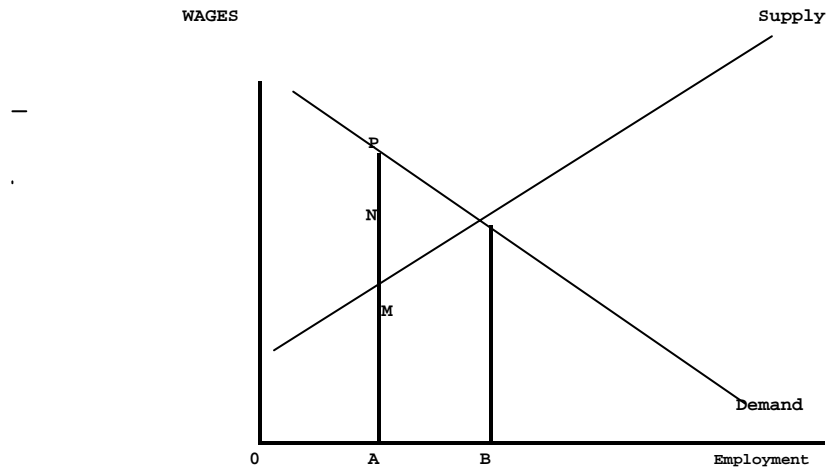
Graph II.III.2

¹² Decree 2284/91 dissolved all those overlapping structures. Afterwards a single agency (ANSES) was created.

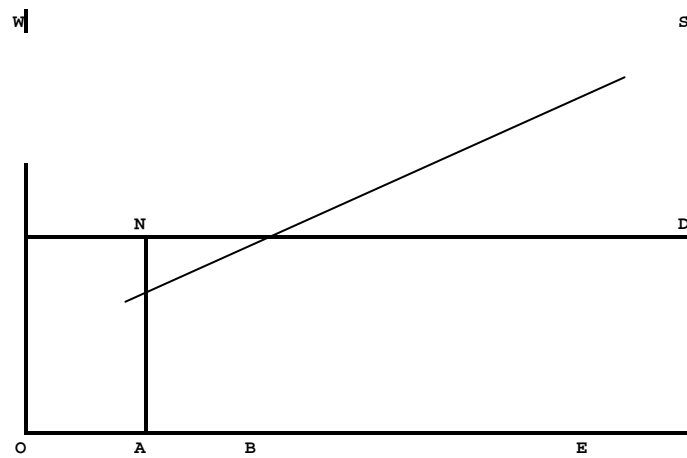
¹³ See Introduction, 3.

¹⁴ LLOSAS, Hernan Pablo: Las ventajas del IEPE: Desempleo y Política Tributaria; El Cronista Comercial, June 3, 1992.

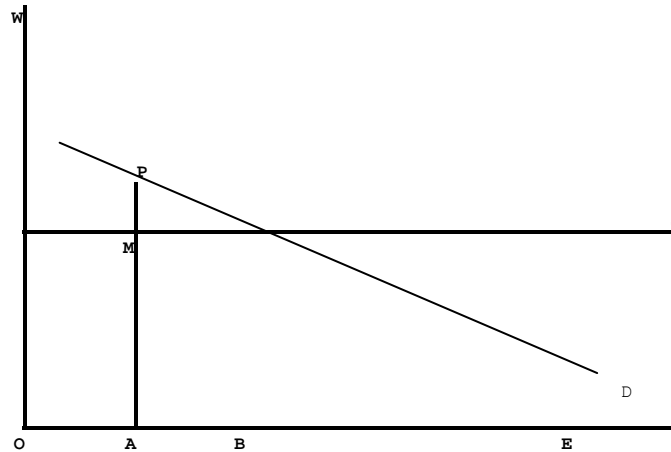
Tax Burden Allocation
Employers-Workers



Graph II.III.3
Burden Totally on Employers
Labor Supply Totally Elastic



Graph II.III.3
Burden Totally on Workers
 Labor Demand Totally Elastic



Therefore, the more elastic the labor demand, the more the burden lays on the workers; this was (and, regrettably, still is) the Argentine case.

Moreover, there was a structural tendency for benefits to decline in relation to average wages, a growing share of minimum pensions (63%) out of the total budget, and a lack of correlation between contributions effectively made and benefits received: contributing large sums on a regular basis or small sums occasionally did not affect the amount of retirement benefits received.¹⁵

Long-term factors, such as the aging of the population, were relevant as well. In a pension system financed by contributions from the working population, the demographic age structure takes on a decisive role in determining the dependency rate between the active and passive population.¹⁶ In Ar-

¹⁵ DIAZ, Rodolfo and ZULETA PUCEIRO, Enrique: Reform of the State and Policies of Infrastructure Today; Paper presented to the VI Argentine-American Forum; Airlie Center, Maryland (1993); pg.23

¹⁶ BECCARIA, L. and CARCIOFFI, R: Op. Cit. pg. 247.

gentina, demographics clearly reflected the relative aging of the population as seen by a higher life expectancy and a decrease in the birth rate. Between 1960 and 1980, for instance, the population above 65 virtually doubled, whereas the total population grew by only 40%.¹⁷

The system had a significant negative impact on the fiscal deficit: more than 20% of the deficit in the late eighties originated from the social security system, since one-third of the benefits were not financed with resources from the system.¹⁸ This was the "consequence of the growing incompatibility between the system's financial needs and its capacity to generate resources"¹⁹.

Table II.III.1²⁰ presents the figures.

Table II.III.1
Social Security Deficit Incidence on Fiscal Deficit

Year	Fiscal Deficit (%GDP) (A)	S.Security Deficit (%GDP) (B)	(B)/(A) x 100	S.Security Deficit (% Benefits)
1986	4.1	0.8	19.5	16.8
1987	6.7	0.6	9.0	13.4
1988	8.6	1.7	19.8	38.7
1989	4.8	1.0	20.8	33.1

2. Debt and Lawsuits

The state was not paying the due benefits established by the system. So, the greatest problem the sector confronted in the late 1980s was the debt of the state towards retirees which was publicly reflected via the myriad of lawsuits filed

¹⁷ Ibid

¹⁸ Ibid

¹⁹ MTSS: Bases para la Reforma del Sistema Provisional, Internal Memo (1991)

²⁰ Ibid

against the state. The government was unable to comply with either the payment of the due benefits, or with the judicial adjudications favoring retirees.

Therefore, in 1986 President Alfonsín, via Presidential Decree 2196, declared the system in a "state of emergency", blocking the initiation of new lawsuits by retirees against the system until December 31, 1988. In April 1987, Alfonsín issued a new Presidential Decree (N. 648), establishing a methodology for the state to pay some of its debts to the elderly: All those who had filed legal action prior to June 1988 received the transactional proposition that if they renounced 40% of the debt, the system would pay them the remaining 60% in 15 consecutive monthly quotas. Many agreed. Law 23,549, on January 8, 1988, established a special tax on the consumption of gasoline and telephone pulses to raise funds for those transactions. But as the problem was a structural one—the exhaustion of the "pay-as-you-go" system—and it was addressed with ad-hoc measures, the result was a failure: more debt and more lawsuits.

This problem was not solved until after 1992, within the context of the process of reforms, through the acknowledgment of social security debts, enacted by laws 23,982 and 24,130: beneficiaries of the national system received—both in bonds and cash—payments for 10 billion US dollars.

Table III.III.2²¹ presents the figures.

²¹ ANSES: Sistema Previsional Nacional. Proyecciones Físicas y Financieras 2000-2010. MTSS, Buenos Aires (1999), pg.10

Table III.III.2
Social Security Debt Paid Off
 1992-1998
 (Millions of Pesos)

Payment	1992	1993	1994	1995	1996	1997	1998	Total
Cash	181.6	1273.4	190.1	1.0	12.4.	46.4	140.7	1845.6
Bonds Series 1	2096.8	1160.4	749.2	78.2	69.2	67.0	97.9	4318.8
Bonds Series 2		2573.5	867.9	91.1	72.8	50.9	27.1	3683.4
Total	2278.4	5007.3	1807.3	170.3	154.4	164.3	265.7	9847.8

3. The Original Proposal

The strategic objective of the reform required inverting the logic of the old system: i) to fully tie the social security system to the economic system as a whole; ii) to reconcile the demands of intergenerational solidarity; iii) to meet the basic needs of the most vulnerable sectors; iv) to attend the demands for equity and proportionality linking the benefits to the effective contribution of each individual; v) to protect society from the risk of individual lack of foresight; and vi) to encourage present conduct consistent with a secure future.

At the end of 1991 and the beginning of 1992, the government convened the political parties and a variety of social organizations to discuss issues on the national political agenda. It was called "Mesa del Diálogo Politico" (Political Dialogue Table), and several commissions were created within it.

The Social Security Commission was chaired by the Minister of Labor and Social Security²²; it included the political parties (Justicialista, Radical, and the other seventeen), the major Business Associations (Argentine Bank Association, Argentine Chamber of Commerce, Argentine Rural Society, Construction Argentine Union, Argentine Industrial Union, and another eleven), the CGT (Labor General Confederation), and the Chairmen of the Social Security Commissions of both Houses of Congress. Upon the common perception that the Argentine social security system had to be reformed, an agenda of ten points was settled, among them: the State's role, Financing, Pension Fund Administrators, and Investment. The "extensive and complex process of consensus building" that was mentioned before, had begun.²³

The government's original proposal²⁴ was developed in the Ministry of Labor and Social Security by a team of outstanding technicians led by Walter Schulthess (then Secretary of Social Security) a recognized specialist with national and international experience. It consisted of a Retirement System of two components—one of them public, the other private—both mandatory and both aimed at the same universe of beneficiaries: all the economically active people, whatever dependents or autonomous, of the formal sector of the economy. It was not a "mixed" system, but a "concurrent" one, because each component had different financing, different administration and different organization; but they "concurred" on the same universe of beneficiaries.

²² Myself, at that time

²³ See the beginning of this Section.

²⁴ DIAZ, Rodolfo: La Reform del Régimen Jubilatorio; Mensaje del Ministro de Trabajo y Seguridad Social a la Mesa del Diálogo Político (1991)

a) The Public Component was a "pure" pay-as-you-go system, administered by the state, which would provide a single benefit—the "Universal Basic Benefit" (PBU)—based on the relation revenues/beneficiaries. Its financing was not based on payroll taxes; employers' contributions were eliminated, and substituted by a different type of tax: the IEPE (Firms Primary Surplus Tax), a "value added" type of tax, with a full deduction of wages, salaries and all other labor related costs.²⁵

This design would have two impacts on the public retirements system: first, a diminution of the pressure on its already large deficit, because the PBU was a function of the revenues of the system; second, the most important expected effect of the change in the financing was a significant improvement of the system's equity, since, by substituting payroll taxes with the IEPE the burden of social security financing would be distributed amongst the different productive factors instead of relying only upon labor.

As the policymaking process progressed this design of the public component was changed: PBU was unchained from revenues, IEPE was discarded and payroll taxes were maintained. Hence, none of the expected effects were attained.

b) The Private Component was a "pure" fully-founded system, administered by specific private entities (AFJP); contributions made by each person throughout their working life were deposited in a personal account; and it provided a Pension Benefit whose amount was in proportion to the contributions made. Financing was exclusively by the personal contributions of potential beneficiaries (workers' dues) that was

²⁵ See Chapter I, Section III.3

not a tax, because it went to the contributor's personal account and not to the state.

Two principal effects were expected of this new system: first, a positive impact on the level of confidence in the system, due to the fact that contributions would go to a personal account and not to a "budgetary nowhere"; second, an increase in domestic savings and capital accumulation.

Since the basic characteristics of this design of the private component were maintained through the lawmaking process, both expected effects have been reasonably attained.

4. The Bill

As a result of the process of negotiated consensus building, the government's original proposal experienced many changes before the bill was sent to Congress. As regards the Private Component of the new regime, there were several innovations, technical developments and fine-tunings in the legal provisions that undoubtedly improved the institutional design. Conversely, as regards the Public Component, a much more conservative attitude prevailed, and the more innovative changes (PBU related to revenues and the IEPE) were abandoned.

The bill for reforming the Social Security System was presented to the Chamber of Deputies on June 5, 1992.²⁶ The proposed system has been described as "the combination of a 'pay-as-you-go' regime, administered by the state, and a 'fully-funded' regime administered by public or private firms, called 'Retirement and Pension Fund Administrators'

²⁶ H. Cámara de Diputados de la Nación: Trámite Parlamentario N. 27/92. The project was signed by president Menem with the countersignatures of Minister Cavallo and myself.

(AFJP). This variant of social security organization is called the "Integrated System of Retirement and Pensions" (SIJP).²⁷

The resulting system is one among several political options that combines technical demands with elements of the Argentine social security culture.²⁸ The fundamentals sent to the Congress enclosed with the bill, mentioned seven "great principles" that "ought to be in the social security systems."²⁹

i) The first is "universality". The new social security regime covers all workers, whatever their activity, gender, geographic location, or age upon entering the workforce. The regime is not voluntary, but compulsory, for both wage workers—full-time employees—and for self-employed workers who derive income from independent activities. The logical sequence of this principle is the finding that there is a public need for a social security system, whatever its design.

ii) The second is "equity". The system tends to recognize proportionality between the levels of an individual's effective contributions to the system and the benefits he or she will receive.

iii) The third is "solidarity". This is to be understood in two main senses: The first is guaranteeing all who pay into the system the ability to receive a certain minimum income that covers basic subsistence needs. Second, it covers the situation of people who, for several duly justified reasons, have not been able to comply with the requirements for obtaining a regular requirement benefit or pension.

²⁷ SCHULTHESS, W. and DEMARCO, G.: El Sistema de Jubilaciones y Pensiones de Argentina A Dos Años de La Reforma; SFJP, N. 5 (1996) pg 4.

²⁸ DIAZ, R. and ZULETA PUCEIRO, E.: Op.Cit., pg. 21

iv) The fourth is "efficacy." Administration, both of the regime and of the funds, has to be considered according to basic economic principles in order to have a rational allocation of resources.

v) The fifth is "freedom". Assuming the government role in social security, given its profound social implications, the new regime tends to allow for contributors to express their desires. Therefore, besides the compulsory requirement to pay dues, the regime offers contributors various options so as to secure a future situation more in line with his or her expectations and possibilities.

vi) Sixth is "transparency". Beneficiaries and affiliates can have access to information to enable them to evaluate the system's performance. Each contributor is owner of his contributions, and as such has the full right to complete information about his own interests, expressed in the statement of his or her social security account.

vii) The seventh and last is "credibility". The system has been designed in such a manner that workers can form a clear idea of the benefits that their contributions will generate, and identifying how it operates with stable regulations autonomous from bureaucracy.³⁰

5. Approval

The project proposed by the government to the Congress was intensively discussed within several Parliamentary Commissions: again, political parties, business organizations, labor unions, retiree associations, the Catholic Church and other groups and experts were invited to give their opinions.

²⁹ H. Cámara de Diputados de la Nación: Trámite Parlamentario N. 27/92

It has been reported that the Parliamentary Commissions met more than thirty institutions professionally related to Social Security, and whose criticisms were focused on the following aspects³¹: i) Inconvenience of the establishment of a Fully Funded system; ii) High cost and difficulties of private administration; iii) No recognition of the contributions made by people under the age of 45; iv) The state's lack of capacity to control the AFJP; v) Difficulties in the investment process.

Those criticisms were a way of expressing rejection of the reform. Nevertheless, there were other voices, mostly in the business community, supporting the idea. In November 1992 there was a meeting among officials from the Ministry of Economy and the Ministry of Labor with the CGT, in which it was agreed that the Unions would be allowed to be part of an AFJP. That agreement opened new opportunities for the consensus-building process; in order to facilitate it, the government decided to take back the first project and to send Congress a second one which, though it substantially maintained the basic design of the first one, took some of the suggested changes into account.

By the end of that year, society was well informed of the ongoing debate, since the media gave the discussion on social security reform great exposure, presenting many controversial issues. Some of the arguments made in the debate were the following: i) a system like the Chilean one—based exclusively on individual capitalization—would be too difficult to apply to Argentina because Argentina's economy is too

³⁰ H. Cámara de Diputados de la Nación: Trámite Parlamentario N. 27/92, pg. 130.

³¹ ISUANI, A. and SAN MARTINO, J.: Op.Cit. pg. 49

cyclical and volatile.³² ii) Considering the 4 million retirees in 1992, there is an important matter of prioritization: who should be more important, current retirees or future ones?³³ iii) There was a grave need to revise the status of federal co-participation; the provinces should cede part of their share of earnings to the federal system.³⁴ iv) The adoption of mixed systems allows for the diversification of risk present in any social security system; pay-as-you-go systems are sensitive to wage fluctuations; fully funded systems are sensitive to the rate of supplies for funds.³⁵ v) Another important consideration in the debates was the transition costs from the existing system to that planned by the reform.

The Chamber of Deputies discussed the bill on April 23, 1993. The general presentation sustaining the bill was made by Deputy Gerardo Cabrera (PJ-Buenos Aires). Deputy Jorge Matzkin (PJ-La Pampa), Oscar Lamberto (PJ-Santa Fe), Juan Gonzalez Gaviola (PJ-Mendoza), and Oscar Castillo (PJ-Buenos Aires) (among many others) made complementary speeches. The case for the opposition was made by Deputy Raul Baglini (UCR-Mendoza); Deputies Santin (UCR-Buenos Aires), and Olivera (UCR-Capital Federal) among many others, also intervened: they made procedural arguments and presented a general political rejection of the project. But three real issues were widely discussed: i) different types of social security systems; ii) the convenience or lack thereof of a change from one system to the other; and iii) the viability of a "fully funded" system in a country like Argentina.

³² Clarín, 09-12-1990.

³³ Daniel Marcú, in El Cronista, 11-22-1992.

³⁴ La Nación, 06-06-1992.

³⁵ El Cronista, 11-12-1992.

The Justicialista bloc of deputies was very active—and successful—in negotiating changes with the Government, and many other specific changes were made over the ongoing session.

On April 30, 1993, the Chamber of Deputies approved the project of Social Security Reform. It was supported by the Government PJ Deputies and some allies from the provincial parties. The opposition UCR Deputies voted against the reform of the Pensions Regime. On September 23 1993, Law 24,241 was approved by the Senate.

6. The New System

As has been explained before, the "Integrated Retirements and Pensions System"³⁶ (SIJP) established by Law 24,241 combines two different regimes: the pay-as-you-go regime and the fully funded one. The pay-as-you-go regime is public, administered by the state, and financed by workers' dues, employers' contributions, and special taxes. The "fully-funded" regime is private, administered by firms (public or private) called the "Retirement and Pension Funds Administrators"³⁷ (AFJP), and financed only by workers' dues. In this regime, each affiliate's dues go to a personal account.

The affiliate has the right to choose which of those two regimes to join, as well as—for two years—the right to change from one to the other. The system is called "Integrated" because, despite the regime choice of the affiliate, the benefits that he/she will receive will always have components provided and financed by the public system. In both cases,

³⁶ Sistema Integrado de Jubilaciones y Pensiones

³⁷ Administradoras de Fondos de Jubilaciones y Pensiones

the "Retirement Benefit" of any individual will have three components:

a) Universal Basic Benefit (PBU): that is a minimal, universal, and equal amount of money paid by the state, financed with resources from the public regime.

b) Compensatory Benefit (PC): paid by the state to affiliates who have made contributions to the public system prior to the reform.

c) "Additional Benefit for Permanency" (for affiliates of the pay-as-you-go-regime) or "Ordinary Retirement" (for affiliates of the "fully-funded" regime).

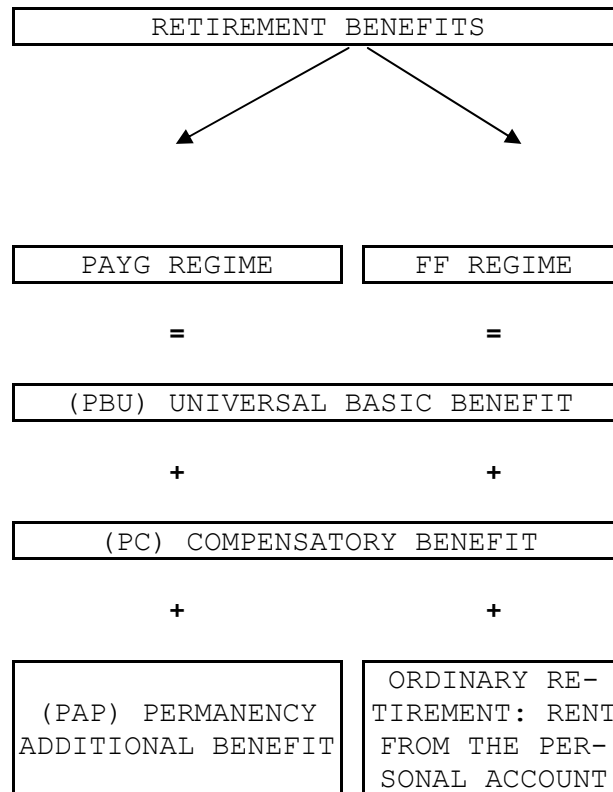
Elements a) and b) are the same for the pay-as-you-go regime and for the fully-funded regime; both are calculated according to standards established by public regulations.

The only difference regards element c). In the case of the pay-as-you-go regime, the Additional Benefit for Permanency will be calculated as a function of the average of salaries received by the affiliate over the last ten years. On the other hand, in the case of the fully-funded regime, the "Ordinary Retirement" will be a function of the accumulated balance of the personal account.

Graph II.III.5³⁸ summarizes the benefits structure.

³⁸ SCHULTHESS, Walter and DEMARCO, Gustavo: El Sistema de Jubilaciones y Pensiones de Argentina a Dos Años de la Reforma; SAFJP, Serie Estudios Especiales, Año 1, N. 1; pg. 15.

Graph II.III.5
SIJP: Benefits' Structure



The system's key difference with respect to other graduated alternatives that had been explored in other countries rested on the active role of private initiative through the "Retirements and Pensions Fund Administrators" (AFJP). These are private or public firms whose exclusive function is to invest the funds contributed by the workers in different types of assets. This investment then yields the capitalization of workers' contributions. In accordance with the general principle of freedom, each contributor chooses the AFJP in which to deposit his or her dues and may switch AFJP as often as two times a year if not satisfied with the one chosen.

The competence of the AFJPs is guaranteed by a Superintendence created for this purpose, and the same law establishes limitations on the minimum volume of capital and cash necessary for the Administrators to operate.

The distinctive property of the new system is its "bi-dimensionality," which comes out of the word "integrated" in its denomination. The following are key characteristics of bi-dimensionality: i) the coexistence of public and private institutions; ii) the reconciliation of the basic values of equality and intergenerational solidarity; iii) the response to social demands of modern democracy reflected in the universal basic benefit; iv) the response to market-oriented demands of modern economy reflected in the capitalization component.

This profile seems to be highly sustainable in political terms, but it is costly in economic terms. Furthermore, as will be seen, Argentina is paying a price for it.

7. Modifications

It has been considered that "It is probable that at the time the new system was put into gear, the authorities had minimized the problems that derived from the transition from one regime to another"³⁹. Regarding pensions-related lawsuits against the state, that seems to be true.

That is why, on March 8, 1995, Congress sanctioned Law 24,463 (otherwise known as the "Law of Previsional Solidarity") introducing reforms to the social security legislation. The objective was to limit costs and to avoid "the reiteration of processes already experienced in the country in re-

³⁹ ASAP-FIEL: Op.Cit, pg. 107

cent times, consisting of the usage of the judicial via to solve situations considered unsatisfactory by affiliates"⁴⁰.

The principal modifications introduced by the Law of Previsional Solidarity were the following: i) It limited the state's guarantee for benefits and related payments to the resources appropriated by the respective Budget Law (Art. 1). ii) The maximum amount of benefits of the public regime will be established by the Budget Law (Art. 3). iii) Judicial sentences condemning the state to make payments will be accomplished within the limits of the resources appropriated each year by the Budget Law (Art. 22). iv) Assets belonging to the Social Security National Administration (ANSES) or to the state are not subject to attachments (Art. 23).

8. Effects

The reform of the Social Security system has been a major change that strongly impacted the Argentine economy, polity, and society. In order to draw a general picture of the direct effects of this reform, aggregated data⁴¹ will be summarized.

a) The total number of people affiliated with the "Retirements and Pensions Integrated System" (SIJP) rose from 5.7 million in 1994 to 10.4 million in 1999. In that period, the pay-as-you-go regime decreased from 2.7 to 2.2 million, and the fully-funded regime grew from 2.2 to 7.9 million: while the public tier slightly decreased, the private tier grew more than 80%.

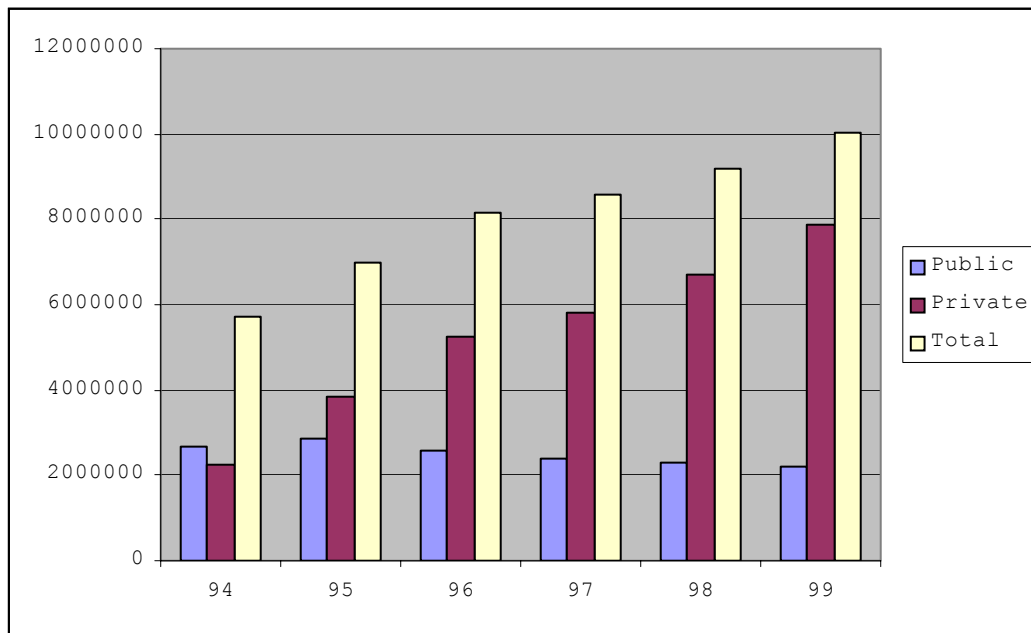
Graph II.III.6 shows this trend.

⁴⁰ SCHULTHESS, W. and DEMARCO, G.: Op.Cit., pg. 33.

⁴¹ Data: SAFJP, Plan Estratégico N. 22; INDEC, Anuario Estadístico 1998; National Budget 2000; SCHULTHESS, W: Interview conducted by Enrique Iribarren.

Graph II.III.5

SIJP: Affiliated with Public and Private Regimes



But not all affiliates (or their employers) pay their dues (or contributions) in both regimes; more than 40% do not.

b) The total amount of the "Retirement and Pensions Fund" managed by the private regime rose from \$525 million in 1994 to \$18.5 billion in 1999. And its profitability was high: 13% as annual average over the period 1994/99 (overcoming the impact of three international financial crises—Mexico, South East Asia, and Russia—as well as the Brazilian devaluation).

c) The number of benefits paid by the SIJP (basically by the public component, as the private one is too new to provide a relevant number yet) has remained stable: it was 3,264,484 in 1995 and 3,369,270 in 1999 (despite the inclusion of some transferred provincial retirement systems). And

the average benefits of the public system which was \$176 in 1990 (and less than \$60 in 1989) rose from \$297 in 1995 to \$360 in 1999.

d) The reform produced important effects on the structure of savings and the capital markets, because of the stability introduced by the AFJPs as institutional investors. For instance, the AFJPs virtually replaced foreign investors during the 1995 crisis, given that the total invested by institutional investors managed to grow, whereas foreign investment fell by 12%. There was also a slight growth in the investment of insurance companies, which tend to expand in part on the expansion pension funds.⁴²

e) A negative aspect of the reform is that the system has not increased the range of coverage; that is, the number of people who effectively contribute to the system. This is aggravated by the fact that, in Argentina, there is no system to substitute for the pensions system, and it has been said that there needs to be an assistance mechanism for those who are not included in the pensions system.

f) Another negative aspect is that there are still delays in the approval of benefits by the state-run ANSEs. Again, a grave problem is the accumulation of lawsuits against the state.

g) The most important success of the new system has been its massive acceptance by the workers, as the above mentioned figures show. This effect has been motivated by one of the structural changes produced by the reform: contributions to the system are no longer perceived as "taxes" but as "savings".

⁴² ASAP-FIEL: La Reforma Previsional en la Argentina, Buenos Aires (1998) pg. 159

In the old system, workers' personal dues functioned as a "tax": the money was detracted from the salary and disappeared into the state's "general revenues", and there was no relation between contributions and benefits. In the new system, personal dues function as "savings": the money goes to a personal account for each worker, who decides which AFJP will manage his or her money, and who always knows where the money is and how much it is. At the end of the day, each worker's retirement benefit will be a function of his or her savings.

Contributors belonged to the workers, and their administration depends on each worker's decisions. This "distributional effect" of ownership and power is a "progressive" characteristic of the new Argentine social security system⁴³, which explains the strong political support of the workers.

9. Deficit

As was pointed out above, the "bi-dimensionality" of the new pension system's institutional design made it highly sustainable in political terms, but costly in economic terms: its public component has a very important financial deficit.

The principal financial source of the public component of the SIJP are the so-called payroll taxes: workers' dues and employers' contributions. The 2000 National Budget Law estimates revenues of \$10,291.6 million for those concepts; from that amount, 5% has to be detracted for the military and police retirement regimes. So the actual amount expected to enter to the SIJP is \$9,786.6 million. On the other hand, the same Budget Law estimates the total amount of the benefits to

⁴³ Which is almost always ignored, as a characteristic.

be paid by the SIJP at \$13,145 million (30% of Total Public Expenditure).

This very simple calculation shows a financial deficit of \$3.359 billion, defined as the difference between the system's own revenues (payroll taxes) and the total amount of the system's benefits. This amount is, on the one hand, 25.5% of the system's pensions payments; on the other hand, it is 76% of the total public deficit estimated by the 2000 Budget Law.

Upon these data, two comments might be made: i) SIJP's Public Component deficit is a hard constraint for its sustainability over time; ii) SIJP's Public Component deficit is the single major determinant of the overall public deficit of Argentina. Thus is the current situation the same as before the reform was implemented?

No. It seems to be the same, but it is not. A major difference is the SIJP's Private Component. In the Fully Funded Regime of the SIJP, people's money belongs to the people, not to the government; it is deposited in people's personal accounts, not in the public treasury; it is destined for a single specific purpose: people's personal retirement benefits; and it cannot be affected by the public component deficit.

So, the deficit problem that the SIJP has nowadays is limited to its Public "pay-as-you-go" Component. In the following section the causes of this phenomenon will be addressed.

10. Transference of Provincial Pensions Systems

Following the 1993 Fiscal Pact, ten provinces transferred to the federal government their own provincial pen-

sions systems. Therefore, almost 365,000 contributors (active workers) and more than 200,000 benefits were included into the National Social Security System.

Table III.III.3 presents the figures⁴⁴

Table III.III.3
Transference of Provincial Pensions Systems
Contributors and Benefits Transferred

Province	Contributors	Benefits
Catamarca	28482	24131
Jujuy	33070	15312
La Rioja	28856	19548
Mendoza	65042	31875
Río Negro	28381	12264
Salta	40107	18750
San Juan	31401	19978
San Luis	15245	9877
Santiago del Estero	35104	24135
Tucumán	59024	32820
Total	364712	207690

11. Transition and Evasion

a) One of the causes of the SIJP Public Regime deficit is the transition between systems.

The reason is that, in the still ongoing transition period, the public regime must continue to pay benefits to current (and some future) retirees, but without the financial contribution of the active workers' dues, which are being de-

⁴⁴ Data: ANSES: Op. Cit., pgs. 3 and 19.

posited in their personal accounts in the Private "fully founded" Regime.

That is why the replacement of a deficitary pay-as-you-go system has been considered "an impossible endeavor from the financial point of view"⁴⁵. Nevertheless, preparatory studies for the reform considered the transition financially viable, though anticipating unbalances in the public component of the SIJP. What seems not to have been expected was the actual size of the problem; one of the drafters of the new system pointed out that "it reveals that processes of economic policy are phenomena of a more complex nature than the mere enunciation and quantification of goals and instrumental variables."⁴⁶

b) Another cause of the SIJP Public Regime deficit is payroll tax evasion.

The number of people encompassed by the SIJP is always presented distinguishing those who are "affiliated", from those who actually pay their dues (and whose employers pay their contributions).

Table III.II.4⁴⁷ shows the figures from 1994 to 1999.

⁴⁵ ASAP-FIEL: La Reforma Previsional en la Argentina, Buenos Aires (1998) pg.108

⁴⁶ SCHULTHEISS, W. and DEMARCO, G.: Op.Cit., pg. 34

⁴⁷ SAFJP: Plan Estratégico, N. 22; pg. 26

Table III.II.4
Evasion in the Social Security System
(SIJP: Affiliates/Contributors)

	Affiliated			Contributors			Rate % (Af/Con.)		
	PYAG	FF	Total	PYAG	FF	Total	PYAG	FF	Total
1994	2,674,035	2,242,188	5,730,485	1,979,942	1,289,961	4,084,165	74.04	57.53	71.27
1995	2,839,948	3,843,099	6,976,522	1,844,194	1,872,145	4,009,814	64.94	48.71	57.48
1996	2,598,248	5,245,208	8,165,926	1,426,603	2,335,091	3,987,127	54.91	44.52	48.83
1997	2,396,397	5,820,534	8,586,961	1,259,600	2,986,667	4,411,608	52.56	51.31	51.38
1998	2,280,960	6,696,248	9,194,290	1,044,022	3,274,847	4,455,454	45.77	48.91	48.46
1999	2,184,657	7,854,363	10,039,323	895,709	3,483,261	4,378,970			43.61

A more precise analysis of evasion in the Argentine social security system⁴⁸ shows the following data for 1998:

Out of 13,034,000 employed people, 3,586,000, because of different legal situations, were not obliged to contribute to the SIJP; therefore, the universe of obligated employees⁴⁹ is 9,447,800: 72% of the workforce. Out of the obligated workers, 4,659,400 were actual contributors; there were also 4,788,400 "evaders." That means that "for each two obligated, only one pays."⁵⁰ In 1998, the level of evasion in the SIJP (obligated workers and their employers who didn't pay) was 50.7%.

This phenomenon, payroll taxes evasion, is part of a more encompassing process: the "exit" social response to eco-

⁴⁸ SAFJP/Instituto Di Tella: Proyecto de Indicadores de Control Previsional. Buenos Aires (1999).

⁴⁹ Along with these obligated employees, their employers are obligated too.

⁵⁰ SAFJP/Instituto Di Tella: Op. Cit., pg. 7.

conomic hardship and structural reform that is observable in Argentina and which has been extensively analyzed elsewhere⁵¹.

⁵¹ See Chapter II, Section II.8 and 9.

Chapter III: REFORMING THE POLITY

- I. State Reform
- II. Constitutional Reform
- III. Civil Service Reform

The Reforms of the Nineties in Argentina

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STATE REFORM

Assisted capitalism rested upon the Bureaucratic Authoritarian State apparatus, notably the State Owned Firms (SOFs); as long as assisted capitalism remained untouched by democratic transition, SOFs remained untouched as well. Privatization of SOFs was a key element in overcoming assisted capitalism, its collapse and hyperinflation. Moreover, they produced substantial changes in the state structure which contributed to its democratization. Although the law provided several methods to privatize, all of them were required to be authorized by the Congress—declaring each single SOF or asset "subject to privatization"—and in this way it was done; moreover, most privatizations were implemented with congressional participation. Their overall effect has been highly positive. Both political legitimacy and economic efficiency gave the state reform strong stability.

1. Survivals of the Past

The eighties ended in a context of vast economic transition and globalization, in which the relations among state, economy, and society had come to be questioned worldwide and hotly debated. The rapid shift to a new framework of those relations posed anew old questions regarding state's functions and the changing boundaries between public and private. Argentina was not isolated; on the contrary, it was a space in which those debates were reproduced. The trend to reformulate the role of the state, which began internationally with the oil crisis of the seventies, took place in Argentina in the eighties and gained momentum at the end of the decade.¹ It was not about the Nation-State, not even about the state as institution of society's power; what was installed in the Argentine political agenda of the eighties was the theme of the state "apparatus": the structure of administrative services

¹ See: Diaz R. and Zuleta Puceiro, E., Op.Cit., pgs. 2/5

and public enterprises, and its behavior in the long run as political and economic "actor".²

The conventional wisdom considers that the state that was changed in Argentina in the nineties was the old populist state that the peronists had built in the forties and fifties; as it was exposed at length above³, that view is wrong. By 1989—when the process of reforms began—the "peronist state" had already disappeared a long time before; the state apparatus in place at that time was that of the "Bureaucratic-Authoritarian State", the state model built by the military regimes since 1966.

Hence, the reform process had to take on the Argentine state not as an institutional abstraction but as a concrete "historic formation", namely the state "model" forged by authoritarianism, which survived the first democratic government. A state that was producer, regressive redistributor of income, and main player—in the best case scenario—of processes of corporatist arbitration. A sort of "ineffective absolutism" revealing the weakness of a corporatized society which, without a consolidated political system that rationalized its relations with the state, was helpless in the face of the arrogance of the power groups and the autism of the bureaucratic apparatus.⁴

2. The Political Nature of State Reform

The constitutional government inaugurated in 1983 when democracy was restored in Argentina, mistook the diagnosis: they considered "the problem of the state" as a matter of

² DIAZ, Rodolfo: El Ajuste Estructural como Cambio de Modelo. MTSS (Mimeo); Buenos Aires (1992), pg. 4.

³ Introduction, 1.

"size", "centralization" and "backwardness", ignoring absolutely its role in the political system; therefore, they addressed the issue with old blueprints of "downsizing" and "modernization" and—hence—failed. On the other hand, the primitive "anti-statism" of the conservative opposition of that time, did not address the political substance of the problem either: they passed directly from ideology to accountability without grazing political analysis.

State Reform is a deliberated process of significant changes in the structure of the state, referring to an essential "presupposed" aspect of the polity: the relationship between "public" and "private".⁵ This relationship remits to some of the central questions of modern political theory: What part of human life should be "socialized" in order to make possible a project of life in common? What "rules" are needed? What type, form and mode of power organization is required? Hence, state reform is a matter specifically political "in nature".

In a broader sense, "state reform" encompasses a wide array of changes; given that several of them are addressed in other chapters of this book, this section will focus on the utmost relevant component of the Argentine process of state reform: privatization.

It is defined as "the partial or total transfer of an enterprise from public to private ownership. As such, it is the precise reverse of nationalization".⁶ Privatization is

⁴ See: Diaz R. and Zuleta Puceiro, E., *Op.Cit.*, pg. 6

⁵ FREUND, Julien: *L'Essence du Politique*, Ed. Sirey, Paris (1965); Chapitre V: Le privé et le public; pg. 280

⁶ BÖS, Dieter: *Arguments on Privatization*; in YARROW, George and JASINSKI, Piotr (Ed): "Privatization. Critical Perspectives on the World Economy". Ed. Routledge, London (2000); Vol.II; pg. 45.

"first and foremost a political process"⁷. It is "a policy of the state...determined by political decision makers", which "although...may aim to limit politicians' interference with...the economy...the transition itself can be accomplished only by state institutions through political means".⁸

State Reform and its most important component, privatization, are political phenomena in nature; therefore, their analysis and overall assessment should be properly political.⁹

3. The Public Sector and the SOFs

By the end of the eighties, the public sector in Argentina was bloated, inefficient, and near collapse in many areas. The public-private structure of assisted capitalism¹⁰ included not only an expansive public component with numerous inefficient state-owned firms, but also a private component (the assisted sector) that propped up inefficient private companies with subsidies and other breaks financed by public money.¹¹

Between 1960 and 1988—the period of the assisted capitalism—the participation of the public sector in the Argentine economy increased substantially.

Table III.I.1¹² presents the figures.

⁷ JOHNSON, Gordon: Privatization in Developing Countries; Center for Privatization, Washington DC (1990); Mimeo.

⁸ JASINSKI, Piotr and YARROW, George: Privatization: An Overview of the Issues; in YARROW, George and JASINSKI, Piotr (Ed): "Privatization. Critical Perspectives on the World Economy". Ed. Routledge, London (2000); Vol. I, pg. 44

⁹ DIAZ, Rodolfo: El Ajuste Estructural como Cambio de Modelo; pg. 5

¹⁰ See Introduction, 2.

¹¹ Ibid

¹² FIEL: El Gasto Público en la Argentina 1960-1988. Buenos Aires (1990), pg. 83

Table III.I.1
Participation of the Public Sector in the Argentine Economy

	1960	1965	1970	1975	1980	1985	1988
Public Expenditure / Public Sector Outcome Gross Value	20.8	19.3	23.0	27.1	30	29.9	29.1
Added Value Public Sector / GDP	19.2	19.8	19.8	24.7	23.6	23.2	22.6
Public Employment / Economically Active Population	19.1		16.3	19.3	17.3	18.4	18.8
Public Consumption + Public Investment /Consumption + Domes- tic Gross Investment	19.4	16.4	21.0	25.5	27.4	23.5	22.9
Public Investment / Domestic Gross In- vestment	41.1	29.9	36.1	48.1	42.0	61.1	66.0

On the brink of privatization in 1989, there existed 236 SOFs in total, made up of 70 national, 4 binational, and 162 provincial firms.¹³ These SOFs covered a wide variety of economic activities: exploitation of natural resources (oil, gas, energy); public services (water, electricity, railroads, airlines); infrastructure (roads, ports); industries (steel, plastics, chemicals, textiles, food); banking (state owned commercial banks). National SOFs took three different forms: i) monopolistic firms in the public services (such as telecommunication, transportation, electricity, gas, water and the postal service); ii) firms that participated in the competitive market (petrochemicals, iron and steel, radio, TV, textiles, and banks); and iii) firms of strategic interest, such as the defense industry.

The state owned media deserves special mention. As a legacy of the Bureaucratic Authoritarian State, many relevant

electronic media were in the hands of the state: three out of four TV channels and six radio stations in Buenos Aires, and a number of local TV and radio stations all over the country. On the other hand, most of the printed newspapers were actually private; however, the provision of paper to print the dailies was in the hand of the state too: the only producer of the specific type of "newspaper paper" required for the rotative presses, was a firm controlled by the state: "Papel Prensa S.A.".

In the Introduction, a full analysis of the Argentine SOFs was presented¹⁴; notwithstanding, a brief summary of it will be useful to better address the process of privatization: i) Assisted Capitalism had two main actors: State Owned Firms in the public sector and Assisted Private Firms in the private sector; the interplay between both (in a business environment characterized by institutionalized subsidies and adjustment mechanisms of contracts) produced substantial transfers of income from the public sector to the assisted private firms; those transfers resulted in a substantial deficit for the public sector, which was financed by inflation. ii) Transfers to the assisted sector was the most important single component of the fiscal deficit over this period, and they explain half of that deficit; the Treasury transferred 22,4 billion dollars to the ten major Argentine SOFs from 1980 to 1989; they only collected enough for 63% of their expenditures, and were left with a deficit of 37%.

There were numerous problems within the SOFs that brought them in 1989 to such a state of near-crisis: Water and Public Works was over-employed and its existing facili-

¹³ See Introduction, 2.a.

ties were deteriorating; the electric sector was very near to collapse, as supply could not keep up with demand, often resulting in rolling blackouts; public transportation was congested.¹⁵ To further complicate and impair improvements in the sector was the severe lack and incompatibility of fiscal data and production numbers between firms. The deficits of the SOFs contributed thus to the overall macroeconomic crisis of Argentina and were in turn affected by the economic downturn. Public firms made up the greatest part of the fiscal deficit, thereby contributing to fiscal imbalance.

Table III.I.2¹⁶ presents the figures.

Table III.I.2
Situation of the Public Sector in the 1980s
(As % of GDP)

	1983	1984	1985	1986	1987	1988	1989
Public Revenues	19.3	22.4	23.1	21.7	20.0	19.1	17.6
Public Expenditures	28.0	24.4.	25.1	23.5	23.4	23.1	19,9
SOFs: Deficits	4.0	3.0	1.9	0.8	1.7	3.5	1.9
SOFs: Investment	3.6	3.3.	2.8	2,6	3.2	4.2	2.5
Total Balance	-16.5	-8.8	-8.2	-5.8	-10.1	-10.0	-10.5

In summary: the role of the SOFs in the—collapsed—assisted capitalism, transferring public money to the private sector, the economic dis-functionalities that prevented them from delivering the expected outcomes and services, and the impact of their financial unbalances on the fiscal deficit that fueled the inflationary process, made privatization of

¹⁴ See Introduction, 1, 2 and 4.

¹⁵ JEFATURA DE GABINETE DE MINISTROS: Las Privatizaciones en Argentina. Buenos Aires, Febrero 1999; pg. 5.

¹⁶ ALEXANDER, Myrna: Privatizaciones en Argentina; in "Privatizaciones e Impacto en los Sectores Populares", Banco Mundial- Ed. Belgrano (2000); pg. 32

the SOFs vital, not only to the recovery of the economy, but also to the consolidation of the democratic transition.

4. Crisis, Opportunity and Change

Not only were reforms necessary, but they were made possible by public opinion and the political situation of the time. By the end of the eighties, 70% of the Argentine public supported a plan to privatize state-owned firms¹⁷, for people were tired of the inefficiencies and substandard service of SOFs and the negative impact they had. And by the beginning of the nineties when the reforms begun, 67% of the public thought that the plan being implemented was necessary to control inflation.¹⁸ Positive public attitude toward reform probably made it easier to implement such a plan, despite certain costs or drawbacks.

The political situation at the end of the decade also enhanced the ability of the state to undergo reform. The Partido Justicialista defeated the Unión Cívica Radical in the 1989 elections, and Carlos Menem became President. Party politics gave the PJ an advantage in implementing reforms because of its great political capital, further strengthened by the failure of the UCR to improve the conditions of the public sector throughout the eighties, and the consequent impatience of the public to see results. The leadership of the new President has also been sighted as a strengthening factor in the state's ability to implement reforms, in that he was a realist, quite persistent, and able to communicate clearly

¹⁷ ROCCA, Agustín and OROMÍ ESCALADA, Miguel: Privatizaciones, Experiencia y Oportunidades; in "Boletín Informativo Techint" No. 287; Buenos Aires (1996), pg. 58.

¹⁸ Generalizada Aceptación; La Nación (Buenos Aires), 5/6/90.

with the public.¹⁹ Finally, the bout of hyperinflation that flared up in 1989 and again in 1990 can be seen as a political opportunity for reform. In 1990, 67% of the public felt that hyperinflation was the most severe economic problem the nation faced, and that a process of privatizations would be necessary to address this problem.²⁰ The public sentiment made politically feasible a greater realm of policy.

The Reform of the State was thus not a progression of the political economy of the time, and it did not emerge as an extension of the state's policy in governing the economy. Rather, the reforms signified a drastic break with the status quo, a complete rethinking of economic policy and the role of the state. This drastic break was a targeted response to a specific set of problems, and was the result of several factors, including: the economic crisis resulting from the SOF's own crisis as well as the macroeconomic crisis (which was related to and partially caused by the SOFs); the shift in political power to the PJ and to the new administration and their strengths in governance, and public opinion and the political opportunities it created. The reforms required, and were a result of, a rethinking in national economic policy and a rethinking of the roles of the private and public sector in the economy, which in turn were sparked by the near-crisis situation of many of the State-Owned Firms.

5. The Proposal

Privatization was defined within the framework of the promotion of competence and the stimulation of investment in a modern market economy, which render impossible the suste-

¹⁹ ROCCA, A. and OROMÍ ESCALADA, M.: Op. Cit., pg. 58.

²⁰ Generalizada Aceptación; La Nación (Buenos Aires), 5/6/90.

nance of inefficient and ineffective activities of production and services carried out by the state. It was considered that all activities capable of being performed by the private sector should be privatized, and the process should be transparent and regulated in order to maintain stability and produce long-lasting changes.²¹ It was also deemed necessary to define a new role for the state as a governing framework for the reforms, because there were many tensions in the environment in which the reforms would be carried out. The core of the State Reform program was the privatization of state-owned firms; but it also comprised a reorganization of state functions and human resources, as well as processes of deregulation and de-bureaucratization.

As early as June 1989, the new administration began the transitional activities. The working group that prepared the reform plan split into two teams, one located in Cerrito and Cordoba²², the other located in the "transitional offices", that was called "La Rosadita", as a reference to the "Casa Rosada", the Presidential Executive Building.²³ Eventually the initial work was divided into two thematic groups, resulting in two laws: Law 23,697 (Law of Economic Emergency) and Law 23,696 (Reform of the State). The first eliminated certain legal dispositions and regulations in order to assuage the grave economic crisis²⁴. The second offered a structural design and procedures for privatization; this one is the subject of this section.

²¹ DOMENICONI, Héctor: La Reforma del Estado en Argentina; in "Anales", No. 5; CLAD, Caracas (1997), pg. 163.

²² The Legal Chambers of Roberto Dromi

²³ Interview with Dr. Rodolfo Barra, by Carlos Roberto Cagnoli (August 2000).

²⁴ See Chapter I, Section I.

The main guidelines of the reform process were based on lessons learned from other countries' attempts at privatization, as well as on elements specific to the Argentine economy and society; some of the guidelines were the following: i) Legality, meaning that the Constitution and the laws would define who had the power to perform each step of the program, guaranteeing respect for equality, reasonability, control and responsibility, and protecting the process from arbitrariness; ii) Integrality, considering the reform program an integral and encompassing model; iii) Celerity, privatizing the strategic sectors in one year; iv) Foreseeability, preventive monitoring, and background work to know the market and the consumers—and to let them know—in order to better design and customize the reform program; v) Flexibility, of methods of implementation, while keeping firm the main goal of the program; vi) Publicity, transparent process to inform the public; and vii) Finality, the political objective of reforms as a democratic endeavor, considering that privatization is the transfer of the state to its citizens.²⁵

The proposal for the State Reform Law was developed basically in June 1989—before the inauguration of the new government on July 9—by a team of legal experts composed of Rodolfo Barra, Juan Carlos Cassagne and myself, and a few more who participated and contributed to specific topics; this team functioned under the supervision of the future Minister of Public Works, Roberto Dromi, a leading legal expert himself. The bill was to be sent to Congress as soon as the new administration took power.

²⁵ MENEM, Carlos and DROMI, Roberto: Reforma del Estado y Transformación Nacional. Ed. Ciencias de la Administración, Buenos Aires (1990); pgs. 93/101.

The response to the privatization proposal was mixed. At first, many Peronist legislators were concerned by the program²⁶; legislators of the Radical Party—having agreed to help facilitate the development of the reform program until December 10—reserved the right to dissent or propose alternatives to particular articles²⁷. Business, including the Union Industrial Argentina and the Sociedad Rural Argentina, announced their support for the program on July 19, 1989, considering that Argentina was in the midst of an economic crisis, and that the reforms were necessary to regain growth and improve the well-being of society.²⁸ The role of unions in the reform process followed a pattern of "a dialectic of participation and resistance"²⁹, becoming at the end of the day a major factor of support as well as committed actors, that contributed visibly to the success of the program.

6. Antecedents

The market-oriented reforms program carried out by the peronist government in the nineties, especially privatizations, has been considered—at least—unexpected. To a certain extent it was unexpected; but to discuss the measure of that extent is far beyond the boundaries of this chapter. Nevertheless, it should not have been so unexpected: there were antecedents that showed an evolutionary process within the peronist party—especially amongst the leaders of the "Renovación"—towards more modern, western, market-oriented policies.

²⁶ Disidencias por el plan, in La Razón, 1989.

²⁷ Estrategia del radicalismo, in Clarín, 1989.

²⁸ Decidido apoyo a las reformas del Estado, in La Nación, July 20, 1989.

²⁹ The phrase is of Georges Vedel, who defines democracy as such a dialectic.

The Justicialista Party was part of the national and international political debate that took place in the mid eighties as regards privatization. In order to illustrate the evolution of the "privatization idea" within the peronist party, five documents will be presented: two publications of my own, two congressional documents, and the 1989 Party's Platform.

a) Starting at least five years before the 1989 elections, there had been several publications by peronist leaders and intellectuals that addressed the theme of privatization. For instance, on August 7, 1985 an article by myself, "Una Estrategia de Privatización" ("A Strategy for Privatization") was published in Clarín, an important newspaper in Buenos Aires. The article considered that the expropriation of centers of production, of solidarity and of power from society was an instrument of the authoritarian regimes, and that democratic rebuilding required the return to society of those centers of production and power, taking out the SOFs from the state's apparatus and integrating them into the market.³⁰ Other articles making the case for privatization upon similar arguments were published as well³¹.

b) In 1985, Deputy José Luis Manzano (PJ-Mendoza) filed in the Chamber of Deputies a project of Privatization Law³². It included two elements that afterwards were included as

³⁰ DIAZ, Rodolfo: Una estrategia de privatización; in Clarín, Buenos Aires, 7 August 1985.

³¹ DIAZ, Rodolfo: Obras Sociales y Estatismo (Trade Unions Health Care System and Statism); in "Los Andes"; Mendoza, (1985). Otra Alternativa para la Privatización (Another Alternative for Privatization); in "Ambito Financiero"; Buenos Aires, (1985). La Burocracia, el eterno enemigo (Bureaucracy, the eternal enemy); in "El Economista"; Buenos Aires, (1985). El Programa de Propiedad Participada (The Shared Ownership Program); in "Dirigencia"; Buenos Aires, (1985). Privatizaciones y Propiedad Participada (Privatizations and Shared Ownership); paper for Justicialista Members of the Congress; Buenos Aires, (1986).

well in the bill sent by the government to the Congress in 1989: i) the requirement that to be privatized, any public asset had to be declared "subject to privatization" by Congress; and ii) the Participated Ownership Program, for workers to become shareholders of a privatized former SOF.

c) In 1986, the Committee of Industry of the Chamber of Deputies approved a Committee Report merging proposals of two different projects: the already mentioned proposal of Deputy Manzano and another by the then chair of the Committee, Deputy Hugo Socchi (UCR-Buenos Aires); this report was named by the press "the Socchi-Manzano bill". This proposal contained several elements that afterwards were included in the Privatization Law 23,696: i) the declaration of "subject to privatization" by Congress, as a requisite for privatization; ii) the "procedure alternatives" to adequate the entities to be privatized; iii) the "selection procedures" for the privatization process; and iv) the Participated Ownership Program.³³

d) In 1987, the "Frederick Ebert Foundation" sponsored a research project on Privatization that I conducted for "Fundación América", a peronist think tank; there we developed some of the theoretical arguments afterwards used in the political and lawmaking processes of the reforms. Some of the contents of the small book that was then published, were the following: I. The Authoritarian State. II. The State's Enterprises; 15. Public Sector Enlargement. III. The Case "Austral". IV. The Case "Greco". VII. Some Antecedents; 51. The

³² H. Cámara de Diputados de la Nación: Trámite Parlamentario, No. 91 (9/17/85), pg. 2192.

³³ H. Cámara de Diputados de la Nación (Comisión de Industria): Expediente 708/86

First "Privatization Law". Chapter Six: The Participated Ownership Program.³⁴

e) Finally, the Justicialista Party's Platform for the 1989 presidential elections ("Plataforma Electoral 1989, Menem-Duhalde") made specific references to State Reform and Privatization: i) Under the subtitle "To reform the state is to democratize it", the platform said: "In Argentine society there is a growing consensus that our economy does not combine activities of the state and of the private sector in adequate form...For Justicialism, state reform is a central component of our 'model of the future'...It is not going to be Productive Revolution without state reform".³⁵ ii) In the section "Privatizations", the document said: "There are...many sectors where it is possible to carry out an ample policy of privatization...For Justicialism privatization has to be addressed not as isolated administrative acts, but as a process which is political in nature and has economic, fiscal and social impacts".³⁶

To implement the reforms policy was an innovative decision by the new peronist administration; but the way had been prepared by intellectuals, legislators and party authorities as well.

7. The Approval

On July 26 and 27 of 1989, the proposed "State Reform Law" was debated in the Senate. There were twenty interventions in the debate: seven by the government's PJ Senators,

³⁴ DIAZ, Rodolfo: La Propiedad Participada como Instrumento de Reforma del Estado. Ed. Fundación América; Mendoza (1988).

³⁵ PARTIDO JUSTICIALISTA: Plataforma Electoral 1989, Menem-Duhalde; Buenos Aires (1989), pg. 18.

³⁶ PARTIDO JUSTICIALISTA: Op. Cit., pg. 171.

nine by opposition UCR Senators and four by Senators of other parties. The general presentation sustaining the bill was made by Senator Eduardo Menem (PJ-La Rioja), and the case against it for the UCR was made by Senator Antonio Berhongaray (UCR-La Pampa).

The parliamentary debate highlights the political and economic situation of the time as well as the major pivotal and divisive points within the reform of the state. Some of the arguments made by Senator Eduardo Menem were the following: i) it was the first time a law significantly attacked the structural deficiencies of the state; ii) it was necessary due to the expectations it had enlivened among the public whom had grasped the gravity of the crisis; iii) two important things have to be considered regarding the reforms: the context of the economic emergency, and the new role the state would have to play.³⁷ Senator Berhongaray, on his part, said the UCR was to honor the political compromise to make possible the treatment of government initiatives³⁸; nevertheless, he and Senators Luis Brasesco (UCR-Entre Rios), Hipólito Solari Yrigoyen (UCR-Santa Cruz) and Fernando De la Rúa (UCR-Capital), brought up concerns regarding the new role of the state, limits on services provided to firms being privatized, and limits on the extent of the calling of "Administrative Emergency."³⁹ The bill was approved—in general—unanimously⁴⁰.

The proposed law was passed in the Senate and then went on to the Lower Chamber of Congress. After the Chamber of

³⁷ H. Senado de la Nación: Diario de Sesiones; 26/27 de Julio de 1989; pg. 1309/1312

³⁸ See Chapter IV, Section 2.d

³⁹ H. Senado de la Nación: Diario de Sesiones; 26/27 de Julio de 1989; pg. 1352, 1368 and 1384

Deputies' Committees of Public Works and Budget and Finance approved its Report on the reform plan, it was debated on the Floor on August 8 and 9. There were twenty-three interventions in the debate: seven from PJ Deputies, five by UCR Deputies and eleven by Deputies of Provincial and other parties. The general presentation was made by Deputy Olga Riutort (PJ-San Juan) and the opposition case was made by Deputy Raul Baglini (UCR-Mendoza).

As in the Senate, the Chamber of Deputies debated issues regarding the level of intervention of the state in the political, economic and social realms, the procedural details of the privatization process, and especially the mechanisms of control over the process. Some of the arguments made by Deputy Riutort were: i) In the past the state served the people, balancing inequalities and repairing injustices; ii) nowadays the state is bureaucratic, adipose, oversized; it serves itself from Argentineans instead of serving them; iii) we do not want this state; it shall be changed.⁴¹

On August 18, 1989 Law 23,696 was approved by the Chamber of Deputies, with the affirmative vote of the PJ Deputies and some allies; the UCR Deputies voted against the State Reform Law.⁴²

8. Contents of the State Reform Law

State Reform Law 23,696 established the legal framework of the privatization process in its Chapter II, under the title "Privatization and Participation of Private Capital". It

⁴⁰ H. Senado de la Nación: Diario de Sesiones; 26/27 de Julio de 1989; pg. 1408.

⁴¹ H. Cámara de Diputados de la Nación: Diario de Sesiones, 8 y 9 de Agosto de 1989; pg. 1854.

⁴² H. Cámara de Diputados de la Nación: Diario de Sesiones, 8 y 9 de Agosto de 1989; pg. 2188

can be said that the performance of this legal instrument has been considered satisfactory. As regards privatizations, this law has four main elements: i) the legal declaration of "subject to privatization"; ii) the competencies of the authorities involved in the process; iii) the methodological structure of the privatization process; and iv) the guarantees and benefits for the employees.

a) Legal Requirement: Declaration of "subject to privatization".

The first step in the privatization process is to declare a state-owned asset "subject to privatization." Articles 8 and 9 of Law 23,696 give the executive branch the power to issue a decree declaring a state-owned asset "subject to privatization", but this decree must then—in all cases—be approved by a law of Congress before a firm can actually be considered for privatization.

The rationale of this procedure is that, as to expropriate a private asset (to transfer its ownership from the private sector to the state) a law of Congress must declare it "subject to expropriation" (National Constitution, Article 17). To privatize a public asset (to transfer its ownership from the state to the private sector), a similar requirement has been established: the declaration of "subject to privatization" by a law of Congress.

The executive branch also has the authority to outline the politics of the privatization process once an SOF is declared subject to privatization, establishing the "specifics" of each case: proportions, modalities, exclusion of monopoly, privileges or discriminations (Art. 9).

b) Authorities involved in the Privatization Process

The system established by the law attributes different levels of competencies to the authorities involved in the process: i) President: decision competency; ii) Ministers: execution competency; iii) Congressional Commission: Political Monitoring; iv) General Controller: Administrative Monitoring; v) Public Accounts Court: Financial Monitoring.

In addition, the actual "Application Authority" (i.e. the office or person with the responsibility of carrying out the privatization process) is the Ministry under which each specific firm falls (Article 13). Thus, for example, privatization of a bank would be run by the Ministry of Economy, whereas privatization of a military industrial facility would be run by the Ministry of Defense. The law provided several checks to the executive's power, however: while the State Reform Law delegated the power to sell the firms to the executive branch, it also established a bicameral congressional commission to give Congress a mechanism of control and oversight over the process; it also limited the power of the executive by laying out a long list of the public firms that had to be sold.

c) The Privatization Process: Methodological Structure

The law organizes the privatization methodology in three levels: "Procedure alternatives" (Art. 15), "Modalities" (Art. 17) and "Selection Procedures" (Art. 18).

i) "Procedure alternatives" are the powers of the executive branch (President and Ministers) to use a wide "options menu" to adequate the "legal situation" of entities "subject to privatization": to dissolve, set up, transform, split or merge state owned companies; to amend bylaws; to renegotiate

its contracts; to grant or eliminate benefits (tax or others).

ii) "Modalities" are the basic forms in which privatization may be carried out (they may also be combined); the five options are: sale of shares; sale of assets; leasing, with or without option to purchase, for a pre-determined time period; management contract, with or without option to purchase, for a pre-determined time period; concessions licenses or permits.

iii) "Selection Procedures" are the established ways to select and to determine the other party in the privatization contract; the possible procedures are five: public tender (bid), public contest, public auction, sale of shares in the public market, and direct contracting (though only in a few special cases).

d) Guarantees and Benefits for the Employees

Chapter III establish the "Participated Ownership Program" (Programa de Propiedad Participada) through which employees of an SOF undergoing privatization can become shareholders (Arts. 21/40); Chapter IV is devoted to the protection of the workers (Arts. 41, 42 and 43).

i) The Participated Ownership Program (PPP): The "State Reform Law" establishes the procedures for workers to become owners of substantial amounts of stock in those companies through this program. It is a method by means of which the employers buy, pay and eventually sell stock equal to that of whatever other investor.

ii) Workers Protection: It is stipulated that all privatization efforts must take into account and attempt to avoid negative effects on workers and the loss of employment posi-

tions that may result from privatization. During the process of privatization, all employees of the firms undergoing privatization remain protected by labor laws and they maintained their rights and obligations regarding social security and union affiliation.

9. Implementation

The implementation of the State Reform Law can be seen as a major factor in the success of the privatization process; to judge the success and efficacy of the privatization of state-owned firms based only on the effects the reforms had would be incomplete and insufficient. One must look not only at the outcome but also at the process by which the reforms were carried out; in this case, the implementation of Law 23,696 lent legitimacy to the reforms, and in turn played a key role in its ultimate success. Three aspects of this implementation can be considered characteristics of the experience under analysis: problem-solution orientation, flexibility of strategies and strong commitment on behalf of the Argentine government.

The law delegated and limited power to the various branches of the government, which ensured a varied and broad participation in the privatization process; the executive and legislative branches of the government had to cooperate and work together in order to declare SOFs "subject to privatization" and to follow through the process.

The government also used institutional incentives to acquire support and participants for the project, as well as to ensure maximum benefits from the project. For example, the Participated Ownership Program described above, which allot-

ted 10% of the shares of privatized firms to the workers; this guaranteed the support of the employees and helped gain support of the unions and of the Peronist party. Also, in addition to the PPP, at least in several cases (for instance, Water and Sanitation and Energy), the workers unions were involved in privatization planning and dealing from the very beginning, which made workers more comfortable with the process as they felt they were part of the plan, and legitimized the process itself.

Given the tough economic climate there were some worries about the interest in buying the firms. Yet the government attracted participants through various methods: i) First, the government accepted public debt bonds as a form of payment for the firms and set realistic prices. ii) Second, the government carried out macroeconomic reforms which reduced country risk and enticed investors. iii) Third, the government divided the firms into different packets, making it easier and less costly to buy the units. iv) Fourth, the firms were sold without the burden of the liabilities of the old SOFs.⁴³ v) Fifth, the process of privatization was not uniform for all firms and sectors; rather, there was considerable flexibility not only in methods of privatization but also in the ultimate goals for each sector.

Other way used to entice buyers was dividing the operation in two steps: In the first, the government would sell 51% or more of the firm at a convenient price. The newly privatized portion of the firm would then be re-organized and reformed by the new owners to make it more efficient and profitable. After those reforms, the government would sell

⁴³ ROCCA, A. and OROMÍ ESCALADA, M.: Op. Cit., pg. 62

the remaining portion of the firm for a higher price (due to the greater value of the firm) and thus make up for the money not collected in the first transaction.⁴⁴

In addition to explicit strategies to entice buyers with economic incentives, the government more indirectly encouraged buyers by demonstrating its strong commitment and resolve to following through with the process of reforms in its entirety. The ultimate decision to sell off all SOFs signaled to buyers that they would not be in the minority (and therefore they would be treated equally under the law) if they owned a privatized firm; they would not have to contend with SOFs and Assisted Sector firms that would get benefits and advantages over them.⁴⁵ This commitment to a full approach rather than a gradualist approach likely encouraged buyers, for through it Argentina showed its resolve to accomplish full privatization. Another show of resolve on behalf of the government to go ahead with these reforms was the decision to always sell the majority of the firm in the first round, even if the entire firm wasn't sold immediately. Portions of firms sold always comprised at a minimum 51% of the firm, so that the buyer would have control.⁴⁶

10. Effects

The process of privatization of state-owned firms carried out in Argentina can be considered highly successful. On a broader scale, the state reform achieved the goals that were set out for the process: i) eliminating the SOFs as instruments for transfers of income from the public to private

⁴⁴ ROCCA, A. and OROMÍ ESCALADA, M.: Op. Cit., pg. 60

⁴⁵ Main idea is from ROCCA, A. and OROMÍ ESCALADA, M.: Op. Cit..

⁴⁶ ROCCA, A. and OROMÍ ESCALADA, M.: Op. Cit., pg. 60.

sector, as they were under assisted capitalism; ii) aiding Argentina in opening up its economy to the world market, bringing in greater trade opportunities, investment and credit; and iii) contributing to terminating inflation, changing the fundamentals that had made it possible.

Table III.I.4⁴⁷ presents the financial results of the privatization process.

Table III.I.4
Revenues for Privatizations
(1989-1999, in Millions US Dollars)

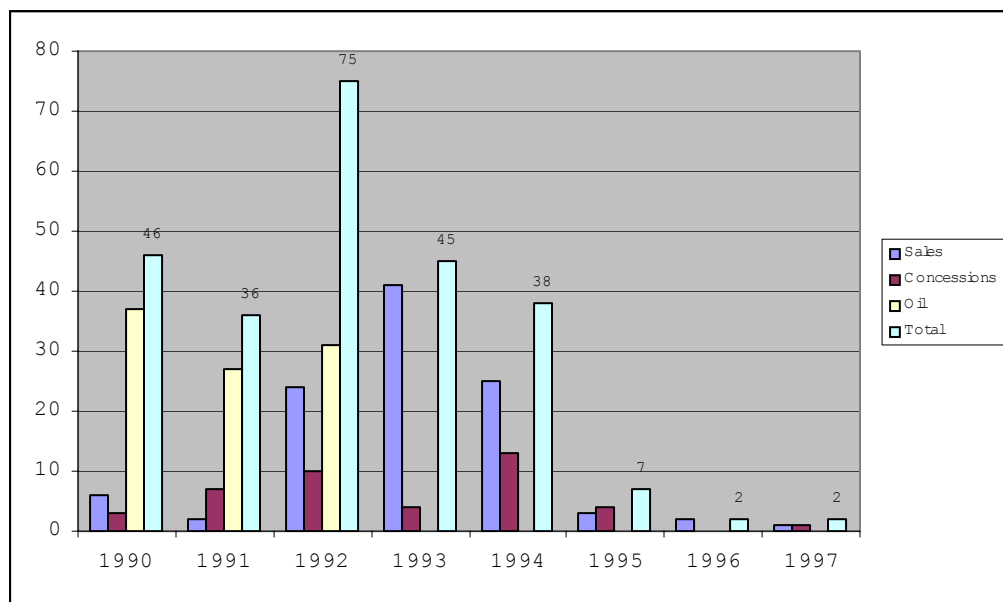
Sector	Form of Transfer	Cash	Bonds	Total
Telecommunications	. Sale of shares . Concession	2,277.90	1,257	3,534.90
Energy	. Association . Sale of shares . Sale of assets	9,701.89	5,657.77	15,359.66
Water and Sanitation	. Concession			0.00
Transport	. Concession . Sale of shares . Sale of assets	804.6	483	1,287.60
Ports	. Concession	16.02		16.02
Defense	. Sale of assets	229.19	36.61	265.80
Banks	. Sale of shares	352.30		352.30
Media	. Concession	13.9		13.9
Government Administration	. Sale of assets . Concession	286.90	9	295.90
Provincial	. Various	1,637.00		1,637.00
Total		15,319.60	7,443	22,762.98

⁴⁷ JEFATURA DE GABINETE DE MINISTROS: Op. Cit.; pg. 4

The reforms were carried out particularly quickly: 80% of privatizations occurred between 1990 and 1993.⁴⁸ Celerity had been one of the guidelines of the reform process outlined by the government from the very beginning, and it was successfully abided.

Graph III.I.1⁴⁹ shows the progression of the process

Graph III.I.1
Business Units Privatized
(1990-1997)



Privatization greatly improved the productivity and efficiency of the firms themselves, benefited the economy as a whole, and improved relations between firms and customers; in addition, it contributed to the consolidation of democracy. A summary of the effects of the process is the following:

a) Impact on the Firms

⁴⁸ Ibidem

⁴⁹ Data: Secretaría de Industria, Comercio e Inversiones. Agencia de Desarrollo e Inversiones. Buenos Aires, (1998).

Privatization proved to have a positive impact on the firms themselves. The reform process lowered operating costs, increased competition, increased the supply and quality of goods and services, improved customer satisfaction, and increased technical sophistication and modernization.

b) Competition

Competition was enhanced in most sectors and is evident in a variety of ways. In the electric and gas sectors, the vertical integration of firms was eliminated and prohibited from then on, thereby preventing favoritism that could occur if a firm were to both transport and distribute certain public utilities. This separation was distinctive of Argentina, for although they may have borrowed some ideas from the British methods and experience of privatizing gas, the British kept distribution and transport together in one monopoly.⁵⁰ Furthermore, in the gas sector, the use of a "by-pass" system for the transport and distribution of gas further increased competition, as large users were able to choose their distributor. Regional monopolies or monopoly-like situations were thus undercut, as choice was given to the consumer. The rise in by-pass use over the past decade is evidence of rising competition in the gas sector: in 1993, by-pass comprised only 3% of the total gas distributed, but in 1998 it comprised 36% of the gas distributed, at which point it comprised more than 30% of the total national demand for gas.⁵¹

Also, the number of competing firms in many sectors increased. In the electric sector, for example, which pre-reforms was dominated by 3 major state-owned firms, by 1999

⁵⁰ INSTITUTO ARGENTINO DE SERVICIOS PÚBLICOS: La Transformación de los Servicios Públicos; Buenos Aires (2000), pg. 27.

⁵¹ *Ibidem*

there were 47 transmission companies, 50 distribution companies, and 44 generators, along with 2 state-owned generators. The 10 largest companies comprised 51% of the market.⁵²

c) Productivity

Privatization also improved the productivity of firms and the production capacity of firms. As a result, the firms were able to serve a larger customer base and expand operations. In the telecommunications sector, the density of telephones (lines per 100 inhabitants) increased from 10.6 in 1990 to 21 in 1998. Over the same time period, the number of installed lines increased from 3.6 million to over 8 million, the number of mobile phones increased from 15,200 to 2.8 million, and the number of public phones increased from 22,549 to 107,580.⁵³ In the gas sector, production, transport and distribution was greatly improved in efficiency and number of customers served. For example, production grew by over 50% from 1993-1999, capacity of transport increased by 34%, number of consumers grew 18%, and total amount of gas sold increased 24%.⁵⁴

d) Investment

Privatization of many sectors was followed in subsequent years by high levels of investment. Private owners were able to put more capital into the firms than was the public sector previously, and the greater efficiency and productivity of firms post-reforms attracted greater investment. For instance, the gas sector saw investment rise from \$238 million in 1993 to over \$588 million in 1998. From the start of re-

⁵² MURILLO, M. Victoria: Public Utilities Privatization in Argentina, Chile and Mexico. Presentation at DRCLAS/KSG "Conference on the Future of Private Utilities in Latin America", Harvard University, Cambridge, MA May 4-5, (2001); Powerpoint.

⁵³ INSTITUTO ARGENTINO DE SERVICIOS PÚBLICOS: Leaflet.

⁵⁴ INSTITUTO ARGENTINO DE SERVICIOS PÚBLICOS: Op. Cit.; pgs. 21/22

forms to 1998, the electric sector has had \$3.6 billion in private investment. Investment in telecom has increased by 1000%⁵⁵ and since 1990 the sector has had over \$16 billion in investment, and transportation (especially airports, ports, and train networks) have invested millions of dollars in new projects to improve infrastructure and equipment.⁵⁶ Water and sanitation, which pre-reforms had investments of about \$130 million per year, averaged \$240 million per year in investments in the first 5 years after privatization; in total, this sector had \$1.2 billion in investments in its first five years after privatization.⁵⁷

e) Impact on the Economy

The process of privatizations also had an excellent impact on the economy as a whole. The income the state received in selling off state-owned firms was used in part to pay off 30-35% of its debt. Furthermore, because 60% of the buyers of privatized firms were from outside of Argentina, a great amount of foreign capital flowed into Argentina.⁵⁸ International trade also benefited greatly from privatization, particularly in the gas sector. One of the original goals or reasons for privatization was to open up the Argentine economy to the world market and to benefit from greater globalization. After privatization of the gas industry, Argentina began exporting natural gas to Chile, Bolivia and Uruguay, and more transportation networks are under construction to

⁵⁵ NAME, Antonio: Presentation at the Seminar on "Public Services Regulatory Framework"; Instituto Argentino de Servicios Públicos, Buenos Aires, 21 March 2000; pg. 54.

⁵⁶ See JEFATURA DE GABINETE DE MINISTROS: Op. Cit.

⁵⁷ PEDERSOLI, Juan Mario: Presentation at the Seminar on "Public Services Regulatory Framework"; Instituto Argentino de Servicios Públicos, Buenos Aires, 21 March 2000; pg. 64.

⁵⁸ DOMENICONI, Héctor: Op. Cit., pg. 186.

Brazil and more to Chile and Uruguay.⁵⁹ These exports increase revenue and profits to the sector, and lead to a greater integration of the Argentine economy in regional markets.

f) Workers' participation

The Argentine PPP (Programa de Propiedad Participada) was developed according to the model of the American "ESOPs" (Employee Stock Ownership Plans) through which millions of American workers participate in the ownership of thousands of American companies; and the Argentine experience has been successful.

Table III.I.3⁶⁰ presents the figures.

Table III.I.3
Participated Ownership Programs
(April 1997)

Companies	Participants	Shares	Face Value (US \$)	Average (US \$)
51	90,589	1,365,194,554	2,534,355,210	27,976

In 51 privatized companies, more than 90,000 employees are or were stockholders; in general, the equity proportion of the PPP in the company is 10%, and the average amount for employees is above 25,000 dollars; as a whole, the PPPs have produced hundreds of millions in dividends. Moreover, the program has produced two other positive effects: support of the workers to the privatization process, and common interests between the new privatized companies and their workers.

g) International credibility

Also, after the start of privatization of state-owned firms, Argentina enjoyed renewed international credibility.

⁵⁹ INSTITUTO ARGENTINO DE SERVICIOS PÚBLICOS: Op.Cit., pgs. 21/22.

⁶⁰ Data: MEOSP: Porcentajes/Participación de los Programas de Propiedad Participada en las Empresas; Buenos Aires, (1997).

Whereas in 1989 Argentine bonds were at 12% of their nominal value, by 1992 they were at 50% of nominal value.⁶¹

h) On the Focus for the Public Sector

In addition to improvements in the economy as a whole, another effect of privatization was a shift in focus for the public sector. Comparing public spending by category both before and after reforms, there is a clear move away from spending on economic subsidies and towards an emphasis on social services, health and education: a substantial change from assisted capitalism to market economy.

Table III.I.5⁶² presents the figures.

⁶¹ MURILLO, M. Victoria: Op. Cit..

⁶² Data: WORLD BANK: Report No. 15402-AR, July 1996.

Table III.I.5
Public Expenditure, Before and After Privatizations
 (As % of GDP)

	Before (1985)	After (1994)	Difference	Variation (%)
Total Public Sector	33	27.2	-5.8	-17.6
Administration	2.1	2.6	0.5	23.8
Defense	2.3	2.0	-0.3	-13.0
Health	4.5	4.7	0.2	4.4.
Education	3.5	3.9	0.4	11.4
Economy (Subsidies)	7.5	2.0	-5.5	-73.3
Social Assistance	8.6	9.6	1.0	11.6
Social Security	5.9	7.0	1.1	18.6
Judiciary	0.4	0.7	0.3	75
Public Debt	4.1	1.6	-2.5	-61

i) *Consumers*

The process of reforms also led to a cultural change on behalf of the Argentine consumer, and specifically the growing prominence of the right of the consumer. Even if there was not a direct causal link, at the very least privatization allowed this new culture of the consumer to flourish. Consumers began to demand more from services and goods, consumer organizations grew, and generally the welfare of the consumer began to take on a greater role in business vocabulary and decision-making and became more of a factor in price setting, as well. In addition, the Constitutional Reform of 1994⁶³ gave constitutional protection to consumers' rights.

⁶³ See this Chapter, Section II.

There are now twenty consumer organizations in Argentina⁶⁴, indicative of a robust civil society and the important role of the consumer. It is interesting to note that Chile and Mexico, which also underwent privatization of public utilities in the nineties, have much lower incidences of consumer organizations: Chile has two, and Mexico has one. Thus privatization alone cannot cause a robust consumer society; rather, laws that protect and inform the consumer, among other things, are also necessary components.

j) Free press

The first privatization actually implemented was that of the state owned media: in January 1990 two commercial TV Channels of Buenos Aires City (Canal 11 and Canal 13) were privatized; in February 1991, six radio stations of Buenos Aires were transferred to the private sector; from then until 1995, all the media that had been in the hands of the state were privatized. Finally, the state sold the shares it had of Papel Prensa S.A.

Gillermo Ocampo, then Legal Undersecretary of the Presidency, recalls the process⁶⁵: "The initiative had no antecedents in Argentina; it meant not only a substantial change in the way the subject was approached, but also the decision to give up communication media which—up to then—had been utilized by all governments for political purposes. Although of no significant economic relevance, privatization of TV Channels had symbolic value to show government's commitment with state reform and democratic consolidation. A Commission comprised by different government offices was constituted and a term of five months was established for the process: in De-

⁶⁴ MURILLO, M. Victoria: Op. Cit..

cember 1989 (less than six months since the new government's inauguration) these privatizations were concluded.

k) Political evidence

In addition to economic indicators, we can also look at political evidence that indicates the success of Argentine privatization: after the change of Administration in December 1999, the Alianza government and De La Rúa's administration have not chosen to undo the reforms. At most, they have modified them. This continuity and non-partisan support is a testament to the efficacy, importance and success of the reform of the state carried out in Argentina throughout the nineties.

11. Challenges Ahead

There are still challenges ahead, however; particularly in the realm of regulation and consumer rights and education. Regulatory bodies should be protected from political pressure, and should strive to eliminate any vestiges of the pre-reform price structure they may still have. The various privatized sectors should also continue to increase competition within the sectors, and should continue to educate and inform consumers of their rights and options.

Eduardo Cevallo, former Secretary of Public Services and President of the Water and Sanitation Service regulatory body (ETOSS), considers that regarding public services, "After eight years...contrast to the previous performance of SOFs is conclusively in favor of the transforming process... Nevertheless, the task ahead is arduous: regulatory frameworks by decree, excessive incidence of political power and weakness of

⁶⁵ OCAMPO, Guillermo: Memo to the author; (2001).

regulatory bodies, are some of the present deficits and simultaneously part of the future agenda in this post-privatization stage"⁶⁶. He made three conclusions: first, the country actually has public services; second, the new model is more efficient than that of the "deliverer" state; and third, there are problems of institutional design that shall be addressed immediately.

The proposed agenda is the following: i) Legal certainty: the regulatory frameworks enacted by decree, have to be approved by a law of Congress. ii) Credibility and independence of regulatory bodies. iii) Strengthening consumers' organizations' role; allowing them to participate in the regulatory and monitoring bodies. iv) Improving economic regulation: rates declining over time. v) Universal access to essential public services. vi) Quality assurance. vii) More competency in public tenders.⁶⁷

12. A Change to Last

A first distinction amongst privatization processes is between "incremental" and "transformational" privatizations⁶⁸. i) Incremental are those which changed the ownership of certain firms, but the system remained the same although-allegedly-improved in its efficiency; cases of this class are the UK and New Zealand. ii) Transformational privatizations, instead, are those processes which not only changed the ownership of the SOFs, but also changed the organization of the system itself, passing from one type of economic organization

⁶⁶ CEVALLO, Eduardo: Presentation at the Seminar on "Public Services Regulatory Framework"; Instituto Argentino de Servicios Públicos, Buenos Aires, 21 March 2000; pg. 3

⁶⁷ Ibidem

⁶⁸ JASINSKI, Piotr and YARROW, George: Op. Cit.; esp. pgs. 5 and 34.

(Socialist, ISI or Assisted Capitalism) to another (in general, some of the varieties of western market economy); Central Europe and Russia are examples of this class.

A second typology distinguishes amongst "pragmatic", "tactical" and "systemic" privatization⁶⁹. i) Pragmatic privatizations are discrete and context-dependent episodes, short term and often ad hoc solutions to immediate problems (such as need of cash); the US at the municipal level is one case. ii) Tactical privatizations are the result of short term political goals of particular parties, politicians or interest groups; they are not an end in itself, and are related to a political situation or to a government decision; some privatizations imposed by international institutions as a prerequisite to receive funds, belong to this type. iii) Systemic privatizations tend to reshape the political and economic institutions of a society. It can take one of the following three forms: "power shift", changing the capacity of existing groups to pursue their own interest; "perceptual shift", changing values and expectations of the active public; and "institutional shift", changing the institutional arrangements of the society, and—transferring SOFs to private ownership—changing their nature from political entities to economic entities.

The Argentine privatization process was "transformational" and "systemic". It changed not only the ownership of certain economic units but also the way and the environment in which they operated. The privatization process modified fundamental elements of the economic and political institu-

⁶⁹ FEIGENBAUM, Harvey B. and HENIG, Jeffrey R.: The Political Underpinnings of Privatization; A Typology; in WRGHT, Vincent and PERROTTI, Luisa (Ed.): "Privati-

tions in Argentina, changing cultural attitudes and expectations of the public, and establishing an entirely new set of institutional arrangements: the survival elements of the bureaucratic authoritarian state were eliminated, the logic of economic functioning was modified and the economic organization was fundamentally changed: assisted capitalism was dismantled.

It has been considered that "the most important criterion for evaluating privatization alternatives is whether they represent substantial and not easily reversible reductions in state responsibility and capacity".⁷⁰ Incremental and pragmatic privatizations did not change the state; hence, they are more readily reversible. Transformational and systemic privatizations, on the contrary, actually produced substantial changes in the state's structure; they established new incentives and constraints, created new interests and constituencies, and produced cultural and political shifts which—all together—give the new situation a high level of stability. That is why State Reform in Argentina is a change that will last.

zation and Public Policy"; Edward Elgar Publishing Ltd., Cheltenham, UK (2000), pgs. 191/208.

⁷⁰ FEIGENBAUM, Harvey B. and HENIG, Jeffrey R.: Op. Cit., pg. 208

CONSTITUTIONAL REFORM

The reform of the Constitution gained momentum because of the erosion of its "majesty" by the abuses of the military, its shortcomings to solve the traumatic end of Alfonsín's administration, and the "epochal climate" of the reforms of the nineties. The Pact of Olivos institutionalized a consensus amongst political parties. The Constitutional Convention introduced many significant amendments: presidential reelection; empowerment of the provinces; new rights regarding political participation, environment, human rights, consumer rights, affirmative action, and ethnicity; new institutions such as the Chief of Cabinet, the Public Ministry, the Ombudsman, the General Controller and the Council of the Magistracy. The new constitutional text was approved unanimously. Afterwards, several laws implementing new constitutional institutions were passed by Congress.

1. The Historic Constitution

The original Argentine Constitution was based on the model of the Constitution of the United States. It should be said that it was not merely a copy, but an intelligent development of the political innovations of Philadelphia, evolved over almost two decades in the writings and debates of some of the leading Argentine intellectuals of that period¹. It was a short, precise, and very well written text of only 110 Articles.

Its contents were the following: Preamble, which introduced the intents and purposes. First Part: "Declarations, Rights, and Guarantees", which was the equivalent of the American Bill of Rights. Second Part: "Authorities of the Nation", divided in two titles: Title I: "Federal Government" encompassing three Sections: Section I, "Legislative Power" (Chamber of Deputies, Senate, Common provisions, Powers of

Congress, Lawmaking Procedures); Section II, "Executive Power" (Nature and duration, President's Powers, Ministers' Functions); and Section III, "Judicial Power" (Nature, duration, and powers of the Judiciary). Finally, Title II: "Provincial Governments".

Except for between 1949 and 1955, when a new and different Constitution was effective², the original text—with a few insubstantial modifications made in 1860, 1866, 1898 and 1957—was the "constitutional text" of the land. It shaped the development of Argentine political institutions, not only at the federal level but also in the Provinces and in the relationship between them with the Federal Government. Nevertheless, the country's democratic performance has been far less than impressive: in the nineteenth century there were many important conflicts (some of them violent) amongst different provinces and between some provinces with the federal government; and in the twentieth century there were six military coups d'Etat: in 1930, 1943, 1955, 1962, 1966 and 1976.

The original Constitution was enacted in 1853 at the end of a long period of civil wars and conflicts between "unitarios" and "federales", the parties which represented the deeply divided society of the time³. The winning coalition established the rules for the national organization not upon consensus but upon victory; the new political order was not agreed to by all the relevant parties and sectors at the time, but decided by the winners. Because of the historical

¹ There were many. Juan Bautista Alberdi for his previous writings (especially "Bases") and José Benjamin Gorostiaga for his contributions during the Convention, probably have been the most important.

² The "Constitution of 1949" established during President Peron's first administration, was an outstanding example of the "Social Constitutionalism".

³ The "unitarios" supported a centralized government, based in Buenos Aires; the "federales", a federation similar to that of the USA.

conditions, the Argentine original Constitution resulted in a system of American legal institutions built over Bourbonic legal traditions; for instance: the Executive power was (and still is) unipersonal; the Ministers were (and still are) appointed by the President "by himself alone" (different from the case of the US Secretaries, which are appointed by the President with the Senate agreement); and the Congress and the Judiciary were not powerful enough to play their role as "checks and balances"⁴.

These historical characteristics of the Constitution have been pointed to as an explanation for the poor institutional performance of the Argentine political system over time; they have undoubtedly been a factor in that underperformance, but not the determinant one. To consider the Constitution among "the causes" of the authoritarian regimes suffered by Argentina, ignores the fact that the Constitution itself was always the object of the authoritarian abuse: in 1930, a Supreme Court rule legitimated the usurpation of the constitutional government; in 1955, a "Proclamation" of the military government repealed the Constitution of 1949; in 1966, the Constitution was submitted to the "Argentine Revolution Act" enacted by the military; in 1972, the military government imposed a constitutional reform by Decree; and in 1976, the Constitution was subordinated to the "National Reorganization Process Objectives" imposed by the Military Junta.

⁴ This role was (and is) played by other actors. Mariano GRONDONA considers that the counterbalances were the command of the Army and the governorship of Buenos Aires (*Dos Poderes*, Emecé Editores, Buenos Aires (1973). Instead, I think that the main "checks and balances" in Argentine democracy are between the Provinces and the Federal Government; elsewhere I developed this hypothesis.

In the eighties, democratic recovery after decades of authoritarianism had put the organization of the political institutions atop the national agenda; as the issue gained saliency, most political parties included constitutional reform in their programs. The abuses by the military had eroded the "majesty" of the original text, creating a sense of acceptability for constitutional reform.

The traumatic end of Alfonsín's administration put the Argentine democracy in a very difficult situation, which made it apparent that the Constitution did not provide specific mechanisms to solve it; this in turn made it apparent that there were necessary amendments to be made to the Constitution.

When Menem's administration launched the process of structural reforms, the economy, the society and the state were being changed; within that "epochal climate", it became a general opinion that the Constitution had to be reformed to make it consistent with all the other changes. By the time of the parliamentary elections of 1993, 58% of the people were in favor of the constitutional reform.⁵

2. The Path to the Constitutional Reform

The collapse of assisted capitalism and the subsequent political crisis⁶ made society and political parties prone to accept a wide discussion about the main national agenda. It matured them enough to afford constitutional amendments oriented to modernize institutions to reinforce democratic stability; and convinced them that constitutional reform had to be based on a general consensus. Neither the government Jus-

⁵ Gallup Argentina, August 1993

ticialista Party nor the opposition Radical Party wanted to re-edit the political contradictions of the 1949 Constitutional Convention⁷ that undermined its legitimacy and paved the way for political destabilization.

The Radical Party had an old "pro-reform" position: its Electoral Platform of 1983 proposed a constitutional reform. In the mid-eighties, seeking President Alfonsín's reelection, they reactivated the idea: the radical government created the "Council for Consolidation of Democracy" as a cabinet Secretariat financed by the National budget, which produced two Reports of good technical level that encouraged an ambitious reform of the Constitution, which included the creation of a Prime Minister and the provision for presidential reelection, among many other institutional changes.

At that time, Dr. Menem—then Governor of La Rioja—supported the initiative of President Alfonsín. In an article published in 1986⁸ he wrote: "Constitutional reform is a real, urgent and impossible to postpone need for Argentina...As a Justicialista, I can not less than celebrate such an initiative...Our proposal has to be clear...Without second thoughts...This attitude shall be probed, for instance, as regards presidential reelection. I do believe that no coherent motive exists for us to oppose that type of a measure. It is a norm that I support because it does not affect any essential element of democracy. Even more: it would be an honor for me to compete loyally with President Alfonsín for the Nation's first magistracy. And to win, of course."

⁶ See Introduction, Section IV

⁷ It was argued that the "necessity of the reform" was declared by Congress without the required special voting majorities. Regardless of political assessments, that objection is now widely accepted.

The Justicialista Party had a long reformist tradition too. Its 1989 Electoral Platform stated: "To complete the process of political reconstruction...Justicialism proposes to agree on three ample, consensual and democratic re-foundational pacts..."⁹: a Federal Pact, a Social Pact and "An Institutional Pact, expressed in the Constitutional Reform, in order to make concrete in juridical terms the new consensus of a society in the threshold of the XXI Century, returning to the Constitution all its majesty as the fundamental norm..."¹⁰.

The reforms proposed in the 1989 Justicialist Platform were, among others, the following: i) the principle that the Constitution never loses effectiveness, despite any act of force; ii) new guarantees for personal freedom; iii) new definition of social rights; iv) inclusion of forms of semi-direct democracy: referendum, popular initiative and social participation; v) federal reform; vi) Congressional empowerment.¹¹

As early as 1991, President Menem conceded that he intended to be president for four more years, and that he favored discussions with the opposition on constitutional reform and presidential reelection.¹² This opened the debate and generated an atmosphere conducive to introducing the analysis of a set of significant constitutional amendments.

⁸ MENEM, Carlos: No se puede vivir con una Carta Magna anacrónica; La Razón, Buenos Aires, 9/19/86

⁹ Partido Justicialista: Plataforma Electoral 1989/1995. Buenos Aires (1989); pg. 16

¹⁰ Ibid

¹¹ See Partido Justicialista: Op.Cit., pg. 16

¹² La Nación, Buenos Aires, 8/13/91

From 1991 onwards, structural reforms in the economy and in the state began to deliver positive effects¹³ and electoral results showed visible support for the Peronist government; the Justicialista Party won both the 1991 and 1993 legislative elections by a difference of more than 10%.

Table III.II.1 presents the figures.

Table III.II.1
Legislative Elections Results
(1991 and 1993, % of valid votes)

Party	1991	1993
PJ	40.7	42.5
UCR	29	30.2

By 1993, inflation had already been defeated, the economy had grown for the first time in more than fifteen years and the Justicialista Party had won its fourth election in a row. Public support for constitutional reform and presidential reelection grew significantly from 1992 to 1993.

Tables III.II.2¹⁴ and III.II.3¹⁵ show the numbers.

Table III.II.2
Constitutional Reform and Presidential Reelection
Public Opinion Attitude
(1992-Capital and Greater Buenos Aires)

	Reform	Reelection
Positive	45.2	31.3
Negative	21.3	43.8

¹³ See economic data in Chapter I, Section I, and unemployment rate in Chapter II Section II.

¹⁴ Centro de Estudios para la Nueva Mayoría; Capital Federal and Great Buenos Aires; La Nación, 25/5/92

¹⁵ HAIME, Hugo y Asoc. Números para una decisión; Clarín, 5/30/93

Table III.II.3
Constitutional Reform and Presidential Reelection
 Public Opinion Attitude
 (1993-Capital and GBA)

Question	Yes	No
Is constitutional reform necessary?	74 %	19%
Agreement with a Plebiscite on constitutional reform	85%	12%
Would you vote for reelection in the plebiscite?	56%	40%
Would you agree to allow Menem to run for reelection?	58%	38%

But the simple arithmetic of votes, polls and political will was not enough, since the game had an institutional constraint: It required the affirmative vote of two-thirds of the members of each chamber of Congress to begin the procedure of constitutional reform. At that time, there were a total of 300 legislators (254 Deputies and 46 Senators); so, 200 legislators were needed to build the required two-thirds majority. The Justicialista Party, even though adding all its possible allies, was always at least thirteen votes short of the required number; so, any attempt at constitutional reform required agreement between the party of the government, the Justicialista Party (PJ), and the major party of the opposition, the Radical Party (UCR).¹⁶

For the Peronists, the situation was a clear opportunity to accomplish the political objective of constitutional reform as well as the possibility of reelecting President Menem; for the radicals, on the other hand, there was a risk of party hegemony that in their view could undermine the process of democratic transition. The actors took positions along the

¹⁶ Centro de Estudios para la Nueva Mayoría; La Nación, 12/22/91

line of these two perceptions; and within both parties there were different positions.

In the Radical Party there were two groups: one led by then Senator and now President Fernando De la Rya that opposed the reform as a matter of principle, whatever the content of the reform might be; the other, of which former President Raul Alfonsín was the more representative advocate, was prone to accepting a reform of certain contents under certain conditions.

By 1993, the Justicialista Party had finished its internal debate and had defined a very strong internal majority for constitutional reform and presidential reelection. The remaining differences were on how to get the required two-thirds to pass the reform through Congress: one group, politically led by Senator Eduardo Menem and then Cabinet General Secretary Eduardo Bauzá, favored negotiations with the Radical Party in order to reach a parliamentary agreement; another group, related to former Cabinet Secretary General Alberto Kohan, favored a "non-binding plebiscite" in order to get a definitive political signal from the electorate to the opposition in Congress.¹⁷

The process through which Radicals and Peronists reached the agreement that made constitutional reform possible was a classic political battle of negotiation under pressure.

After its electoral victory in October 1993, the PJ made two moves: first, the Senate approved a bill "declaring the necessity of the reform"¹⁸, with the constitutionally required majority of two-thirds; second, looking at approval in the other chamber of Congress, the government convened for a "na-

¹⁷ See Diálogo y Consulta Popular, in *El Cronista*, 10/14/93, pg. 15

tional non-binding plebiscite" about whether the Constitution had to be reformed or not, on November 21, 1993¹⁹.

On the other hand, electoral defeat and deep internal party conflicts enervated UCR strength at the negotiation table.²⁰ The party leadership was at the end of its tenure so it did not have enough legitimacy to accept or reject agreements or compromises; the Radical National Convention was to elect a new party president on November 12, 1993, and it was certain that former president Raul Alfonsín would be appointed.

Notwithstanding the lack of advance in negotiations, the Peronists were still looking for an agreement. The president of the Justicialista block in the House, Deputy Jorge Matzkin declared: "We do not have any problem opening our project, to discuss it, because we want to privilege consensus", adding that "presidential reelection is not negotiable...the rest could be talked about".²¹

Despite their concerns and weak political situation, the Radicals were moving towards the consensual track as well. Dr. Alfonsín, shortly before his inauguration as new president of the UCR, declared that it could be a 'utopia' to think Menem would agree with the Radicals on "a change of political scenery" which would result in a constitutional reform that contemplated certain elements as strengthening rule of law, separation of powers and judiciary independence, as well as advances towards 'semi-parliamentary' regime. Asked if in those conditions he would accept presidential reelection

¹⁸ H. Senado de la Nación: Diario de Sesiones; 10/21/93

¹⁹ Decree 2181/93

²⁰ See Radicales Desconcertados, in El Cronista, 10/14/93, pg. 15

²¹ See El PJ podría cambiar su proyecto para acordar con la UCR, in Clarín, 11/1/93, pg. 5

tion, his reported answer was, "Who cares about reelection if that utopian scenery were possible".²²

The above quoted statements of Matzkin and Alfonsín show that up to that moment the parties' positions had evolved toward a common terrain: both wanted constitutional reform, coinciding in many of the proposed institutional innovations; the stress of the Radicals was on limiting presidential powers through semi-parliamentary mechanisms; the stress of the Peronists was on presidential reelection and empowerment of the provinces. The Peronists wanted to legitimate both reforms and reelection, so they preferred to reach a political agreement in order to make it possible for the Radicals to give the required two-thirds in Congress, instead of resorting to the plebiscite. The Radicals wanted to avoid the situation of opposing in Congress a reform that had been strongly supported by the electorate in a plebiscite, so they too preferred to reach an agreement, which, because of the conditions and the contents, allowed them not only to give the two-thirds in Congress but also to defend the proposed reform before their constituency. Despite differences, all the necessary conditions for a successful agreement were already in place.

The process culminated with an impressive denouement: a secret meeting between Menem and Alfonsín, on November 4, 1993²³. Each was accompanied by important leaders of their parties²⁴; the points were presidential reelection, inclusion of a "coordinator minister," not a "prime minister", and re-

²² See Alfonsín pone condiciones para dialogar con Menem, in Clarín, 11/5/93, pg.7

²³ An exclusive report by Carlos Pagni was published by *Ámbito Financiero* on 11/8/93.

²⁴ On Menem's side, Eduardo Duhalde, Eduardo Bauzá and Luis Barrionuevo; on Alfonsín's side, Mario Losada and Enrique Nosiglia.

peal of the plebiscite convocation. It was reported that "The way in which Menem and Alfonsín presented their positions made former Vice-president Eduardo Duhalde say that 'One always has something to learn in politics'"²⁵.

There have been several conjectures about why both political leaders decided to pact. A very persuasive hypothesis is that "the reform occurred when Menem was in position to maximize his gains and Alfonsín wanted to minimize his losses".²⁶ This explanation—based upon the "rational choice theory"—is that "the reform was produced only at the point in which it was the optimal outcome for Menem (reelection with legitimacy) and for Alfonsín (saving the party, projecting his leadership and reforming the Constitution his way). It is very important to note that optimality depends on how Menem and Alfonsín preferences are defined. In other words, what broke the historic antinomy and led the actors to the table was rational, in the sense that it was optimal for both, but this rationality was a function of how preferences were constructed".²⁷

The initial political bases had then been established and the technical developments were commended to a group of legal experts of both parties. At that time, a remarkable democratic achievement was under way: a constitutional reform based on political consensus.

3. The "Pacto de Olivos"

²⁵ CADORIN, Atilio: La reunión Menem-Alfonsín, in La Nación, 11/9/93

²⁶ GRINDLE, Merilee: Audacious Reforms: Institutional Invention and Democracy in Latin America; Manuscript; Kennedy School of Government, Harvard University, Cambridge, (Version Revised August 1999); pg.178; citing: POPIK, Sebastián: Politicians Letting Go?; Unpublished Paper, John F. Kennedy School of Government, Harvard University. Cambridge (1997).

²⁷ POPIK, Sebastián: Op. Cit., pg. 50

The "Pacto de Olivos" is the continuation of an early Argentine constitutional institution: the "pre-existing pacts" mentioned in the Preamble of the Constitution. Before the Constitution of 1853, there were four pre-existing 'pacts of constitutionalization'²⁸: Treaty of Cuadrilátero, Treaty of Pilar, Federal Pact, and Agreement of San Nicolas; before the Constitutional Reform of 1860, there was one: the Pact of San Jose de Flores. It has been pointed out that the "political entity" of those pacts made viable the National constitution²⁹; therefore, they are considered "a valuable and important source of all Argentine constitutional law"³⁰. The principal role of these pacts has been to provide political legitimacy to the constitutional endeavors.³¹

What is generally referred as "Pacto de Olivos" consists of three separate and subsequent documents: the Declaration of Olivos, the Document of the Advisory Commissions and the Agreement of "La Rosada." Each will be analyzed below.

a) Declaration of Olivos

On November 14, 1993 the pre-constitutional process made a major institutional step: President Carlos Menem and former President Raul Alfonsín signed the Declaration of Olivos³². It was the first official document elaborated under a basic consensus between Argentina's major historic political parties in the way of amending the 1853 Constitution. This characteristic-consensus-must be highlighted: it marked the features

²⁸ SAN MARTINO de DROMI, María Laura: Formación Constitucional Argentina; Ed. Ciudad Argentina, Buenos Aires (1995), pg. 15

²⁹ *ibid*

³⁰ SAN MARTINO de DROMI, María Laura: Op.Cit. pg.79

³¹ EKMEKDJIAN, Miguel Angel: Tratado de Derecho Constitucional. Depalma, Buenos Aires (1993) T. I, pg.66

³² Named after the presidential residence (Quinta de Olivos) where this declaration was signed.

of the process of reforming the Constitution, as well as the method, the track, and the scope of the upcoming reform.

Menem (in his capacity of President of the Nation and President of the Justicialista Party) and Alfonsín (in his capacity as President of the UCR National Committee), agreed to impel a constitutional reform "without introducing any amendment in the declarations, rights, and guarantees of the first part of the National Constitution"³³, but by pursuing the following main goals: i) To consolidate democracy and improve the system of checks and balances among the branches of Government; ii) To enhance the independence of the Judiciary Branch and strengthen the Agencies of Control; iii) To redesign the Federal system with the purpose of fostering the economic progress and development of the Provinces and regions; iv) To promote Latin American and continental integration.

The final paragraph of this Declaration referred to three significant provisions: i) that proposals from other parties would be accepted; ii) that all the accepted proposals "once approved by the parties authorities, will constitute a base of coincidences, some definitive and others subject to electoral controversy";³⁴ and iii) that procedures to guarantee the fulfillment of the agreement would be established.

b) Document of the Advisory Commissions

Immediately after the Declaration of Olivos was signed, a group of legal technicians and constitutionalists from both the Justicialista and the Radical parties were commended to

³³ "Declaración de los Dres. Menem y Alfonsín"; in GARCIA LEMA, Alberto: La Reforma por Dentro, Ed. Planeta, Buenos Aires (1994). Documental Annex, pg. 343.

³⁴ Ibid

discuss a set of proposals of reform in order to consider the specific contents of the future reform³⁵.

Having the four goals declared by the Declaration of Olivos as a guideline, the Commissions reached an agreement where the mentioned goals were rephrased through the definition of specific, detailed legal institutions that would be incorporated into the Constitution, modifying previous ones or introducing new figures. This agreement, made public on December 1, 1993, set the critical points of agreement, termed "coincidences," between both parties which, at the end of the day, constituted the basic content of the pre-constitutional documents: the Pact and the law that initiated the procedures of constitutional reform.

The role of these Commissions was important; as a leading American political science scholar has pointed out: "Electoral calculations are important in explaining this case, but they do not fully explain the range of the reforms introduced...the design team played a central role in shaping the content of the reform...all issues were approached not only from the perspective of political advantage but also from the perspective of good governance...The agreement was a negotiated one, but behind it there was a good deal of work of institutional design".³⁶

³⁵ According to GARCIA LEMA (*Op.Cit.*, pgs. 119, 121, 127, 136, 137) the Commission of the Justicialista Party was overseen by Senator Eduardo Menem and Cabinet General Secretary Eduardo Bauzá; its members were Carlos Corach, Alberto García Lema, Augusto Alasino, Jorge Yoma, Carlos Juárez, Jorge Matzkin, Juan Carlos Maqueda and Alberto Piotti. The Commission of the Radical Party was coordinated by Dr. Alfonsín and Antonio Berhongaray; its members were Ricardo Gil Lavedra, Enrique Paixao, Arnaldo Kleiner, Alfredo Orgaz, Alberto Seguí, Raúl Baglini, Raúl Galván, and Jose Genoud.

³⁶ GRINDLE, Merilee: *Op. Cit.*, pg. 180

The contents of the document³⁷ presented under the title "Principal Coincidences" were the following:

i) Attenuation of the presidential system: Creation of the Chief of Cabinet, appointed and dismissed by the President, with political accountability to the Congress; and description of its attributes and responsibilities.

ii) Reduction of the presidential and vice-presidential terms from six to four years and the possibility of one consecutive reelection.

iii) Elimination of the requirement that the President has to be Catholic, in accordance with the freedom of worship.

iv) Increase in the number of senators elected in representation of the Provinces and the Buenos Aires City from two to three, with two going to the majority and one to the minority, and the reduction of their tenures.

v) Elimination of the Electoral College system to elect the President and its replacement with a direct election system with a second round in specific cases.

vi) New legal status for the City of Buenos Aires and direct election of its Mayor.

vii) Unification of the beginning date for all elective tenures.

viii) Regulation of presidential power to enact Necessity and Urgency Decrees (NUDs).

ix) Re-affirmation that Federal Intervention is a Congressional attribution.

x) Institutionalization of the Council of the Magistracy to choose the candidates for judgeships.

³⁷ See GARCÍA LEMA, Alberto: Op. Cit., pg. 344/350

xi) Modification of the procedure to appoint federal judges, except the Justices of the Federal Supreme Court.

xii) Change of the procedure to remove Federal judges.

xiii) Creation of a specific Agency for external control of the Administration, and institutionalization of the Ombudsman.

xiv) Redesign of the Federal regime in order to foster progress and economic development of the Provinces and regions.

xv) Promotion of Latin American and continental integration.

xvi) Guarantees for political rights and safeguards for constitutional order.

In addition to those principal coincidences reached by the Commissions, procedures about how to consider them by Congress and National Constitutional Convention and how to assure the political consensus were provided. Regarding this point, suggestion was made that a set of reforms could be considered mandatory and voted as a "whole".

The "Document of the Advisory Commissions" was an important step towards a substantial covenant on constitutional reform between the major political players. It provided both Carlos Menen and Raul Alfonsín with a detailed presentation negotiated by their own legal experts on what the proposed reforms to the Constitution were. In addition, both the Justicialista and Radical parties received information to discuss what the contents of the agreement were to be. Furthermore, the media, academia and Argentine society at large had a clear picture of what the proposed constitutional reform

was about, in order to take their respective stances on the debate—and they certainly did so.

c) Agreement of "La Rosada"

On December 13, 1993 Menem and Alfonsín signed the third and final document of the Pact of Olivos: the "Agreement of La Rosada,"³⁸ which was the bedrock of the Constitutional Reform of 1994. The contents of this document had to be included by the Congress in the law that would initiate the procedures for the constitutional reform.

The Agreement of La Rosada had three parts:

i) The first was the "Nucleus of Basic Coincidences", which listed a number of specific reforms to be introduced in the Constitution. It followed in broad measure the recommendations contained in the Document of the Advisory Commissions analyzed above; nevertheless, some modifications were made.

The Nucleus had to be considered and voted as a whole, following the rules established in the third part of this document.

ii) The second part was the "Themes Congress should authorize the Constitutional Convention to debate over", which enumerated some issues to be considered during the Reform depending on the proposals that political parties would make in relation to them.

iii) Finally, the last part set a series of legal and political mechanisms to ensure the fulfillment of the Pact; in particular, to guarantee that the interests of both parties (reelection for the Justicialists and attenuation of the presidential system for the Radicals) would be both included.

³⁸ Named after Argentine Presidential Executive Offices Building: "Casa Rosada".

In this regard, three rules were established: i) First, the Nucleus of Basic Coincidences had to be included in the law that declared the necessity of the reform in a single article or Annex; and it had to be considered and voted by the Constitutional Convention as a whole. If the Convention voted affirmatively the Nucleus, all the amendments there encompassed would be introduced in the Constitution; if the Convention rejected approval of the Nucleus, it would mean the refusal of the entirety of those amendments and the subsistence of the existing constitutional texts. ii) Second, the Constitutional Convention would meet with the unique objective of introducing the amendments contained in the Nucleus of Basic Coincidences and the issues that were authorized by the Congress to be discussed and included in the Constitution. iii) Third, the nullification of whatever amendments the Convention would introduce in contradiction to the consensus reached by both main parties.

The reform agenda was thus completed. The next step was to reach the required two-thirds vote in the Congress to pass the law by which Constitutional Reform would be possible.

4. The "Declarative Law"

The procedure to reform the Constitution is provided in its Article 30: "The Constitution may be totally or partially amended. The necessity of reform must be declared by Congress with the vote of at least two-thirds of its members; but shall not be carried out except by a Convention summoned to that effect." The act by which Congress declares the "necessity of reform" must be a law, not a simple declaration, and

that law is called "Declarative Law of the Necessity of the Constitutional Reform".

The technical role of this law has two dimensions: one, to declare which specific articles of the Constitution would be reformed; the other, to establish specific limits to the reforming powers of the Constitutional Convention.

On December 29, 1993, Congress passed Law 24,309 enacting the declaration of the necessity of the Constitutional Reform. In the Senate sessions of that day and the day before, there were 24 interventions: 11 by government PJ Senators, 5 by opposition UCR Senators and 8 by Senators of Provincial Parties. The general presentation supporting the bill was made by Senator Carlos Juárez (PJ-Santiago del Estero). The UCR were split: Senator Jorge J. Cendoya (UCR-Cordoba) argued against the law, while Senator Hipólito Solari Irigoyen (UCR-Santa Cruz) strongly made the case in its favor. Senator Eduardo Menem (PJ-La Rioja), made substantial contributions sustaining the initiative, both from the legal perspective as well as from the political one.

During the parliamentary debate not only the pros and cons of the reform were discussed, but also criticisms and resistances that some legislators had against voting for the Nucleus of Basic Coincidences as a whole. Afterwards, this issue would gain saliency during the imminent electoral campaign and would therefore be extensively discussed in the first sessions of the Constitutional Convention in Santa Fe. However, the Senate with 38 affirmative votes concluded with the procedure to convoke the National Constitutional Convention, fulfilling the requirement of Article 30 of the Constitution, that more than the two-thirds of its members vote

affirmatively. The bill was voted in favor by the PJ Senators, a majority of the UCR Senators and some Provincial Parties' Senators. Seven Senators voted against the Constitutional Reform: three from Provincial Parties and four from the UCR (one of them, Senator Fernando De la Rúa, became President in 1999 under the new Constitution).

Congress lived up to the Pacto de Olivos as "pact of constitutionalization"³⁹: the Nucleus and its safeguards were incorporated into the Declarative Law as expected, and the previous consensus was enhanced. This provided strong political legitimacy to the constitutional reform.

Additionally—as it was provided in the third part of the Agreement of La Rosada⁴⁰—Congress allowed the Constitutional Convention to consider several matters, some already included in the Document of the Advisory Commissions⁴¹ and some new: i) Expansion of municipal autonomy; ii) Institutionalization of the international treaties' hierarchy above general laws; iii) Preservation of the natural environment; iv) Guarantees for Indigenous peoples' ethnic and cultural identity; v) Consumers' rights and guarantees for free competence; vi) Habeas Corpus and Amparo (prompt summary writ of constitutional rights).

5. The 1994 Elections for Conventionalists

Elections for Constitutional Conventionalists took place on May 10, 1994. The Justicialista and Radical Parties campaigned in favor of the reform, especially in favor of keeping the consensus of the Pacto de Olivos unalterable; consid-

³⁹ See this Section, # 3

⁴⁰ See this Section, # 3

⁴¹ See this Section, # 3

ered together, the "Parties of the Pact" received 58% of votes cast. This result showed that Argentines widely supported Constitutional Reform. Therefore, the process was strongly legitimized by popular vote.

Table III.II.4⁴² presents the figures.

⁴² Data: Ministerio de Justicia de la Nación; Centro de Estudios Jurídicos y Sociales: Convención Nacional Constituyente 1994; Digital Version. Buenos Aires (1996)

Table III.II.4
Elections For Constitutional Conventionalists
(1994)

Distrito	PJ	UCR	ProReform (%)	FG	Valid Votes (Total)
Buenos Aires	2578188	934353	58.5	977978	6009204
Capital Federal	455468	282137	39.8	693608	1854306
Catamarca	53388	54694	89.9		120238
Chaco	83397	133135	67	16971	322719
Chubut	57083	64637	81.6		149180
Cordoba	462281	605799	75.2	81478	1420705
Corrientes	104156	37232	38.4		368589
Entre Ríos	226539	131037	65.5	68047	545744
Formosa	87679	49283	86.7		157995
Jujuy	41780	43412	45.9		185408
La Pampa	62901	35296	69.6	11395	141090
La Rioja	60800	34475	89.5		106437
Mendoza	267603	117619	55.4		695887
Misiones	141218	111212	79.4		317804
Neuquén	40680	22147	39.6	49680	170168
Rio Negro	61048	84239	73.7	19186	197159
Salta	130898	35311	49.8		333454
San Juan	94946	14349	41.1		265841
San Luis	73478	34887	77.8		139203
Santa Cruz	34686	21162	90.2		61902
Santa Fe	507068	168100	47.8	144012	1411993
Santiago del Estero	135591	103186	93.7		254782
Tierra del Fuego	11367	4188	49.5	1776	31453
Tucumán	201691	41553	47.2	18315	515436
TOTAL	5973934	3163443	57.9	2082446	15776697

6. The "wrap"

In the parliamentary debate, during the electoral campaign, and at the beginning of the Convention, the most controversial issue was the provision that the Nucleus of Basic Coincidences had to be voted as a whole. By the time of the elections of 1994, constitutional reform and presidential re-election had a very strong support in public opinion⁴³, thus there was not much political room for arguing against them. Nevertheless, to argue "Why not analyze and vote on each reform one by one?" sounded quite rational and made a pretty good headway. Therefore, "the wrap," as the Nucleus was named in the press, became the "piece de resistance" of those opposed to the constitutional reform.

The Nucleus was the core of the Pact of Olivos. The Declaration of Olivos contemplated that "procedures to guarantee the fulfillment of the agreement would be established"⁴⁴; the Document of the Advisory Commissions "presented the suggestion that a set of reforms could be considered mandatory and voted as 'whole'"⁴⁵; the Agreement of "La Rosada" stated that "the Nucleus of Basic Coincidences had to be included in the law that declared the necessity of the reform in a single article or annex and be considered and voted by the Constitutional Convention as a whole"⁴⁶; and finally, Declarative Law 24,309 established in its Article 5: "The Convention could consider in different sessions the contents of the reform, but the themes included in article 2 of this law of declaration must be voted conjointly, being understood that the affirmative voting will mean the constitutional inclusion of

⁴³ See this Section, # 2, Table III.II.3

⁴⁴ See this Section, # 3.a

⁴⁵ See this Section, # 3.b

all of them, but that the negative voting will mean the rejection as a whole of those norms and the subsistence of the constitutional texts currently effective”.

It was in the Preparatory Session of the Convention where the issue was ultimately technically argued. Those who opposed voting the Nucleus conjointly argued that it was a mere aggregation of different norms and the rule that imposed voting all together would be illegitimate, because it would prevent the right to vote in different ways on different issues. They conceded that if the nucleus were a system, conjoint voting would be rational and legitimate; but they denied such a property to the Nucleus. Eugenio Zaffaroni, legal expert and Conventionalist of the Frente Grande concluded: “If it were systematic, it would be rational...but a system is an ‘ontic’ reality...it is not something invented ‘piling’ pieces of materials of the world...There are no rational systematic reasons; there is no system; there is an agreement.”⁴⁷ So, the point was whether the Nucleus was a system or not.

There were several interventions defending the Nucleus’ systemic nature; the ones by Enrique Paixao⁴⁸ (UCR-Capital) and Alberto Masnatta⁴⁹ (PJ-Buenos Aires) should be underscored. My contribution to this debate was in my first intervention⁵⁰; a summarized version of my argument follows.

Within the logic of Olivos, the Nucleus had two dimensions: i) the contents, which described the specific reforms

⁴⁶ See this Section, # 3.c

⁴⁷ Convención Nacional Constituyente: Diario de Sesiones; Ministerio de Justicia, Buenos Aires (1996); Versión Digital; Sesión Preparatoria.

⁴⁸ Convención Nacional Constituyente: Diario de Sesiones; Versión Digital; Sesión Preparatoria.

⁴⁹ Convención Nacional Constituyente: Diario de Sesiones; Versión Digital; Sesión Preparatoria.

⁵⁰ Intervención in the 9th meeting of the 1st Session of the National Constitutional Convention; Santa Fe, 9 June 1994.

that were the substance of the political agreement institutionalized through the pact; and ii) the conditionality that had to be voted as a whole, which was the method chosen as a safeguard to ensure that the interests of the subscribers would be preserved. As regards the contents, the Nucleus was more than a simple agreement: it was a Common Program of Reforms. As regards the conditionality, the Nucleus was also more than an agreement: it was a system.

a) The Nucleus as a Common Program of Reforms

As a political agreement, the Nucleus obligated the subscribers—the Justicialista Party and the Radical Party—only to each other. But this agreement was submitted to voters' consideration in the 1994 national elections; both parties campaigned in favor of the reforms contained in the Nucleus presented as a program. This was the first time that a national election was about a specific program rather than general ideas and personalities. Voters endorsed the proposed reforms by a clear majority (58%)⁵¹; as a result, the Nucleus understood as a common program obligated the subscribers not only between themselves but also to the electorate. This has been an interesting improvement in Argentine political practices.

b) The Nucleus as a System

A system is a conjunct of "elements" interlinked by a certain "combination rule"⁵². The property of being "a system" is determined not by the elements, but by the "combination rule". For instance, the universe is a system: a conjunct of planets interlinked by the laws of "heavenly mechanics"; its

⁵¹ See below, Table III.II.4

⁵² See GODELIER, Maurice: Rationality and Irrationality in Economics; Monthly Review Press, New York (1996); pg. 258

systemic nature does not come from any property or characteristic of the different planets, but from the laws of astrophysics. The Polynesian family is also a system: a conjunct of individuals interlinked by relations of cognation; its systemic nature does not come from any personal characteristic of the individual members, but from the "rules of kinship" proper to the Polynesian culture.

The Nucleus of Basic Coincidences—established in article 2 of Law 24,309—was, as well, a system: a conjunct of juridical-institutional elements, interlinked by a certain "rule of combination". The elements encompassed within the Nucleus were a specific type of object: "juridical objects"; as such, they did not have a sense or a meaning by themselves⁵³; the only meaning or sense that they had was that which a legal norm attributed to them⁵⁴. And article 5 of the Declarative Law established the only possible meaning: Voted conjointly affirmatively, means constitutional reform; voted conjointly negatively, means no constitutional reform; voted not conjointly, means nothing. So, the systemic nature of the Nucleus was determined by the juridical norm of article 5 of Law 24,309—the "rule of combination"—which established only one way for it to exist as a meaningful legal norm: to be voted conjointly.⁵⁵

⁵³ See Chapter IV, Section I, # 3.b

⁵⁴ KELSEN, Hans: Pure Theory of Law; U.C. Press, Berkeley (1967), pg.

⁵⁵ DIAZ, Rodolfo: Sobre la naturaleza sistémica del Núcleo de Coincidencias Básicas (On the Systemic Nature of the Nucleus of Basic Coincidences); in "Obra de la Convención Nacional Constituyente de 1994", T. I, pág. 569/573; Ed. Ministerio de Justicia-La Ley S.A.; Buenos Aires, (1995).

7. The National Constitutional Convention

The Pact of Olivos and the Declarative Law 24,309 established in a very detailed form the Common Program of Reforms⁵⁶ agreed between the two major political parties. Some therefore considered the Convention's role a mere formality to institutionalize the contents of that program; however, this position does not accurately reflect the contributions made by the National Constitutional Convention. Others considered that though "The debates at the convention were not negligible...they were concerned with the fine print of the reforms"⁵⁷. The debates were indeed not negligible, and some data presented below could help to illustrate that the Convention's reforming activity went far beyond fine print.

The National Constitutional Convention functioned from May 25 to August 24, 1994⁵⁸. It was integrated by 305 conventionalists: 138 of the Justicialista Party, 75 of the Radical Party, 32 of the Frente Grande Party, 18 of the MODIN Party and 42 of several smaller parties.⁵⁹

The first indicator of the conventionalists' understanding of their own role and responsibilities is that they presented a total of 1,593 bills proposing constitutional amendments.⁶⁰

The Convention had eleven Committees⁶¹: i) Redaction; ii) Basic Coincidences; iii) Federal Competencies; iv) Federal Regime and Municipal Autonomy; v) New Rights and Guarantees; vi) Control Systems; vii) Democratic Participation; viii) In-

⁵⁶ See this Section, # 4

⁵⁷ GRINDLE, Merilee: Op.Cit., pg. 178

⁵⁸ The Convention had 90 days to fulfil its commission (Law 24,309-art.12)

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Convención Nacional Constituyente: Reglamento; Santa Fe, (1994). Artículo 35

tegration and International Treaties; ix) Ways and Means; x) Financing and Administration; and xi) Parliamentary Agenda. The supporting committees produced 34 Committee Reports; the Thematic Committees held 51 regular sessions and produced 29 Committee Reports; and the Redaction Committee held 25 regular sessions and produced 17 "Orders of the Day", the specific instrument to send the bill to the Plenary to be considered on the floor. The Convention held 38 plenary sessions on the floor, many of which lasted several days.⁶²

The Pact of Olivos and the Declarative Law established that the Nucleus of Basic Coincidences had to be "considered" and "voted" as a whole; but those pre-constitutional instruments did not prevent the Convention from discussing the items there encompassed. The Convention discussed intensively each of those items and several of them were not accepted as proposed by the Pact and by Law 24,309; juridical analysis showed visible differences decided by the convention⁶³.

The modifications introduced to the Constitution by the Convention consisted of: i) addition of a new Chapter; ii) modification of 17 Articles; iii) addition of 19 new Articles; iv) modification of 29 subparagraphs; v) addition of 8 new subparagraphs; and vi) inclusion of 17 Transitory Clauses.

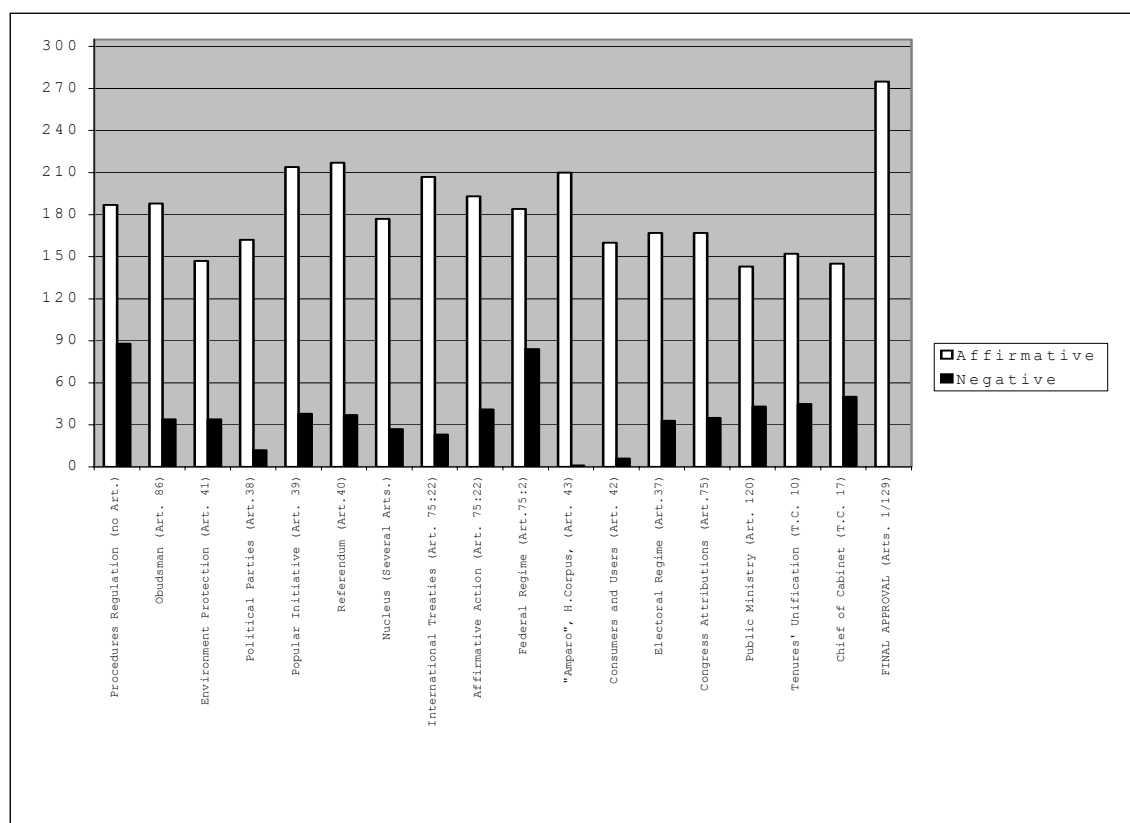
All these changes required extensive research, technical advice, sectorial feedback, political discussion, consensus building and institutional design. To approve each amendment, parliamentary majority had to be negotiated each time upon a

⁶² Data: Convención Nacional Constituyente 1994; Digital Version. Buenos Aires (1996); Translation according to OLOSZEK, Walter J.: Congressional Procedures and the Policy Process; Glossary, pg. 333. Ed. Congressional Quarterly, Washington (1996).

specific basis. The way in which each reform was voted shows that there were no automatic alignments or results taken for granted.

Chart III.II.1 presents the data.

Chart III.II.1
Voting in the National Constitutional Convention
Selected "Orders of the Day"



8. The Reformed Constitution

Neither the Preamble nor Chapter I "Declarations, Rights and Guarantees" of the First Part of the historic Constitution were modified; instead, a new Chapter II, "New Rights and Guarantees," was included. This Chapter refers to: i) political rights; ii) defense of democratic order; iii) politi-

⁶³ See BIDART CAMPOS, Germán: Manual de la Constitución Reformada; Ed. Ediar, Bue-

cal parties as basic institutions of democracy; iv) mechanisms of semi-direct democracy; v) environmental protection; vi) users' and consumers' rights; vii) habeas corpus and "amparo" (prompt summary writ of constitutional rights); viii) equal opportunities for men and women in electoral politics; ix) public ethics; and x) universal, equal, secret and compulsory nature of the suffrage.

It was in the Constitution's second part, "Authorities of the Nation", where most of the reforms were made. The reforms introduced to this part refer to: i) Presidential election: form, time and procedures; ii) President's tenure and reelection; iii) Prerequisites for being President and the swearing-in formula; iv) President's attributions; v) Presidential Decrees; vi) Chief of Cabinet: attributes and responsibilities; vii) Senate: composition and tenure; viii) Congress' attributions; ix) Lawmaking procedures; x) Council of the Magistracy; xi) Justices: appointment and dismissal procedure; xii) Judges: appointment and dismissal procedure; xiii) National General Controller; xiv) Ombudsman; xv) Public Ministry; xvi) Federal Regime: regions and international agreements; xvii) Federal regime: reserved, delegated and concurrent powers; xviii) Provincial Governments and Municipal Autonomy; xix) City of Buenos Aires' autonomous government regime.

In the last Ordinary Session, on August 24, the full text of the reformed Constitution was considered: it was approved unanimously. This circumstance reinforced the most frequently cited value of the 1994 Constitutional Reform: political consensus.

Assessments of this reform, as expected, vary. The President of the Constitutional Convention, in his final remarks in the Closing Session, anticipated that, being history, it was going to be told in different ways. For the record, he pointed out the following characteristics of the Convention: political representativeness, clear rules of the game, freedom of expression, hard work and dedication, consensus orientation, openness to society's feedback. And he concluded: "Because of how it was integrated, how the work was done in the committees as well as in the plenary, and in definitive because the grade of consensus attained in the redaction of many articles, I dare to affirm that this is not the Convention of one party or of one sector, but the Convention of all, made with and for all Argentines." ⁶⁴

From the point of view of a constitutional historian, it has otherwise been considered that "as a work of men it can be perfected, but it has the merit of having united without making uniform the different political wills that coexist in our country. It was the consensual fruit of an ample political spectrum. As any political agreement, it has parts that satisfy some but not everyone. But that is precisely the art of politics, and that is what our constitutionalists did: to constitutionalize the possible, not the ideal". ⁶⁵

9. Constitutional Laws

Several of the most important institutions established by the reform required implementation through specific laws. Some of those institutions already existed before its consti-

⁶⁴ MENEM, Eduardo: Convención Nacional Constituyente: Diario de Sesiones; Versión Digital; Sesión de Clausura.

tutionalization; for instance: the Habeas Corpus, the "Amparo", the Ombudsman, the General Controller, and others. All of these were already regulated by specific laws. Other institutions included by the reform were totally new; for instance: the Council of the Magistracy, the Chief of Cabinet, the Buenos Aires City's Autonomous Government and others. These required definite congressional decisions.

In order to fulfill that requirement, on August 30, 1994, just a week after the reformed Constitution was sworn, the government issued Decree 1541/94, creating the "Commission for Elaboration of Legislative and Regulatory Bills Complementary to the Constitutional Reform". It was chaired by the Cabinet General Secretary; and composed of the Minister of Interior, the Minister of Justice, the Secretary of Justice, the Legal and Technical Secretary, the Legal, Administrative and Technical Secretary of the Ministry of Economy, the Attorney General, the Deputy Cabinet General Secretary, and the Deputy Public Function Secretary.⁶⁶ Its mission was defined as "the study and elaboration of those projects of legal and regulatory norms which are needed due to the reforms included in the National Constitution, especially those related to articles 36, 37, 39, 40, 41, 42, 43, 75 (several items), 85, 86, 99, 100, 114, 120 and 129, and also to the National Constitution's transitory clauses; all, according to the priorities order to be established".⁶⁷

The Executive Branch, the Commission and the Congress collaborated and worked together both in formal and in informal ways in order to design, to propose and to pass the re-

⁶⁵ RAMELLA, Susana: La Constitución Nacional de 1994; in "Los Andes", Mendoza (9/94)

⁶⁶ Decree 1541/94, article 3

quired legislation: ten new laws were passed besides six that were maintained or updated.

Table III.II.5 presents the information.

Table III.II.5
Constitutional Laws

Theme	Art.CN	Number	Title	Date
Constitutional Rights Protection (Amparo)	42	16986	Constitutional Summary Protection Law	10/18/66
Political Rights	37	19945	Electoral National Code	9/30/85
Ministries	100	22520	Ministry's Law	12/10/99
Personal Freedom	43	23098	Habeas Corpus Procedure Law	9/28/84
National General Controller	85	24156	Financial Management and Control Organisms Law	9/30/92
Consumers' and Users' Rights	42	24240	Consumers Protection Law	9/22/93
Ombudsman	86	24284	Peoples Defender Office Law	12/1/93
Buenos Aires City Autonomous Government	129	24588	National Interest in Buenos Aires City Guarantee Law	11/8/95
Judges Appointment	114	24937	Magistracy's Council Law	10/12/97
Judges Dismissal	115	24937	Magistracy's Council Law (Title II: Jury)	10/12/97
Independent Prosecutors	120	24946	Public Ministry Law	3/11/98
Anti-Trust Guarantee	42	25156	Competency Defense Law	8/25/99
Public Ethics	36	25188	Ethics in Public Service Law	9/29/00
Personal Data Protection	43	25326	Personal Data Protection Law (Habeas Data)	4/10/00
Referendum/Popular Initiative	39/40	25432	Binding and Not Binding Referenda Law	5/23/01
Environment Protection	41	43 Laws and International Treaties		

⁶⁷ Decree 1541/94, article 2.

The 1994 Constitutional Reform was defined as "the Reform for the XXI Century". When the new century began, the Reformed Constitution was fully implemented and enforced.

The Reforms of the Nineties in Argentina

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- III -

CIVIL SERVICE REFORM

Civil Service enlargement and distortion was a characteristic of the Bureaucratic Authoritarian State; thus, downsizing and professionalization were the aims pursued by the reform, through four main instruments: Administrative Career (SINAPA), New Legal Regulation of Public Employment, Collective Bargaining in Public Sector and Collective Agreement for Public Employees. Positive effects have been reached at the national level: personnel is selected and promoted by contests; and systematic qualification is required for career improvement. But not all the national public employees are encompassed in the SINAPA, and at the provincial level, the reform has yet to be implemented.

1. Enlargement and Deterioration

Argentineans have historically viewed the government as a significant source of employment, particularly for those living in the less developed provinces. Government jobs had traditionally rewarded individuals with higher education by way of secure jobs and good salaries, making public employment positions particularly appealing. By 1989, however, the "status" associated with government jobs had dwindled. Employment by the government could no longer be equated with financial security. A cursory look at presidential salaries illustrates this change: In July of 1985, Alfonsín's monthly salary was \$ 1,270; in July of 1989, Menem's salary corresponded to \$152 a month.¹

A visible characteristic of the Bureaucratic-Authoritarian State that remained untouched after the democratic restoration in 1983 was the enlargement and distortion

¹ Uno de cada cuatro trabajadores es empleado público; "La Nación", Buenos Aires (1989)

of the Civil Service.² In the eighties, the total number of public employees grew from 786,931 in 1981, to 878,259 in 1983 and 928,034 in 1990. After the restoration of democracy, the civil servants (without the State Owned Firms employees) grew from 529,350 in 1983 to 591,755 in 1990³.

Table III.III.1⁴ presents more encompassing data:

Table III.III.1
National Public Administration Personnel

Sector	1983	1990	Variation	%
National Administration	529,350	591,755	62,405	10.1
State Owned Banks	36,648	33,400	-3,248	-10.4
State Owned Firms	312,261	302,879	-9,382	-3.1
Total	878,259	928,034	49,775	5.4

Along with this increment in personnel, public salaries in terms of GDP fell from 5.8% in 1974, to 3.1% in 1990, which implies a significant deterioration of public real wages.⁵ Hierarchical levels tended to disappear, taking with them career rights and expectations. The relationship between maximum and minimum salaries fell from 10:1 in 1970 to 4:1 in 1990; the relationship between operational and support personnel was 1:1; 35% of employees were in categories 10 to 13 and 39% were in categories 21 to 24.⁶ The structure was "a

² "Civil Service" will be used in a broad sense, meaning all employees of the State in general.

³ MINISTRY OF ECONOMY: Administrative and Technical Coordination Undersecretariat. "Hacia un Estado Moderno: Un Programa para la Reforma Administrativa." (1990). Internal Paper.

⁴ Ibid

⁵ Ibid

⁶ Ibid

sort of rhomboid with narrow extremes and the 'belly' too wide, which impeded a career of promotions as it should be."⁷

2. The Proposal

A major reform of the Argentine Public Administration was in evident need: political parties, business, academia, media—and even labor—agreed on that. In 1990, the government made its first systematic proposal: "Hacia un Estado Moderno: Un Programa para la Reforma Administrativa", a white paper elaborated by the Administrative and Technical Coordination Undersecretariat⁸. Its objectives were the following: i) to reduce public expenditures and to improve the administration's efficiency; ii) to organize the higher posts of the civil service in a hierarchy; iii) to re-establish a relationship between the maximum and minimum remuneration, compatible with career logic; iv) to step up a system of incentives to gain the effective commitment of the public servants with the process of reforms; and v) to professionalize the Civil Service career.

The Civil Service reform was commended to the Secretariat of the Public Function, which—with the active participation of the most representative union of public employees⁹—developed a process of reforms at three levels: downsizing, professionalization, and qualification.

3. Downsizing

After the high inflation episode of January 1990, an aggressive program of Administrative Reform was launched. De-

⁷ RODRÍGUEZ, Andrés, UPCN General Secretary. Interview conducted by E. Iribarren. Buenos Aires (2000).

⁸ MINISTRY OF ECONOMY: Op. Cit.

cree 435/90¹⁰ set up several measures related to public employment: prohibition of overtime hours and double employment; freezing of vacancies and promotions; limits to the higher remunerations; anticipated retirements; and a deep restructuring of the Ministries, reducing the number of Secretariats and Undersecretariats. And Decree 1757/90¹¹ set up two high-level committees to enforce these measures.

Decree 495/90 was issued in March 1990, but there were some doubts about the commitment of the Government to enforce this reform; in April, an economist from a conservative think tank¹² declared that it had failed. But officials¹³ considered that the recent and complex nature of the decree required more time to envision its results.

It was at the beginning of the new administration, in times of "emergency", when inflation was still to be defeated. Within the Government, there was a deep persuasion that the public deficit was still too high, despite certain progress achieved through transitional measures, which should be deepened with the structural and permanent ones; that the state should reduce its dimensions through a coherent program; and that if not, inflation would provoke a collapse and the same effects but through an irrational and costly way.¹⁴

Despite the skepticism of some, the objectives were attained. In the first year (1991), public personnel was re-

⁹ UPCN: Unión del Personal Civil de la Nación

¹⁰ See Chapter I, Section I.6

¹¹ See Chapter I, Section I.6

¹² BOUR, Juan Luis, of FIEL (El Cronista Comercial, 4/23/90).

¹³ PROL, Luis; Undersecretary of Administrative and Technical Coordination (El Cronista Comercial, 4/23/90).

¹⁴ MINISTRY OF ECONOMY: Op. Cit., pg. 4.

duced to 63,257 agents;¹⁵ by 1997, the downsizing had reached 455,935 agents (48.6%).

Table III.III.2¹⁶ presents the numbers.

Table III.III.2
Public Personnel Downsizing

Sector	1990	1997	Variation	%
National Administration	591,755	431,540	160,215	-27.07
State Owned Banks	33,400	19,232	14,168	-42.42
State Owned Firms	302,879	31,327	281,552	-92.95
Total	938,034	482,099	-455,935	-48.60

Public employment at the sub-national level (provincial, municipal, and Buenos Aires City) is not a subject of this analysis. Nevertheless, it has to be noted that public personnel at sub-national level increased from 956,200 in 1990 to 1,575,500 in 1997; 35% of that increment (222,198 agents) was due to the transfer of educational and health services from the federal government.

The Civil Service "strictu sensu" excludes the State Owned Firms, the State Owned Banks, the Military, the Police, the Legislative and Judiciary branches, the school teachers, the doctors of public health services, and the Public Ministry. Considered in these terms, the members of "Civil Service Agents" at the national level steadily decreased: 144,009 in 1995,¹⁷ 120,029 in 1996, and 107,862 in 1997.¹⁸

¹⁵ INAP, National Institute of Public Administration: "Temas," N.1, pg. 13 (1995).

¹⁶ Sources: SIGEP, INDEC, Ministry of Economy (IRIBARREN, E., Memo to the author)

¹⁷ INAP, "Temas" N.2, pg. 10.

4. Professionalization

Decree 993/91 created the National System of the Administrative Profession, SINAPA (Sistema Nacional de la Profesion Administrativa). Its purpose was to ensure the proper administration of human resources for the National Public Administration, the reinforcement of institutional and labor-related functions, and the adequate application of the norms regulating administrative positions. But its overall objective was "the professionalization of the career."¹⁹

The SINAPA (1991) was the first link in a series of changes regarding the civil service that also includes the Law of Collective Bargaining for Public Employees (1992), the Regulatory Framework Law of Public Employment (1999) and the first Collective Agreement for Central Administration's Employees (1999). These changes did not happen in a void or solely because of the will of the actors. On the contrary, these changes were carried out within the context of the Reform of the State, and their starting points were Law 23,696²⁰, and particularly the chapter on public employment of the Economic Emergency Law."²¹

On May 27, 1991, President Menem issued Decree 993/91, which created the National System of the Administrative Profession (Sistema Nacional de la Profesion Administrativa, SINAPA), encompassing 160,000 government employees. Menem declared that from that day forward, talent, capacity, prepara-

¹⁸ IRIBARREN, Néstor Enrique; memo to the author. (Source: INDEC, Ministry of Economy).

¹⁹ RODRÍGUEZ, Andrés (UPCN General Secretary); Interview conducted by E.IRIBARREN.

²⁰ See this Chapter, Section I.

²¹ See Chapter I, Section I.

tion, and ethics would reign in the National Public Administration.²²

SINAPA eliminated the old 24 category system and replaced it with a system composed of 6 levels, each associated with different salaries and requirements. It created the "Career Permanent Commission", presided by the Secretary of the Public Function, and comprised of one member of the Ministry of Economy, two by the Secretary of the Public Function, and three representatives of Union del Personal Civil de la Nacion (UPCN); this commission would set the stage for future collective negotiations²³. Most significantly, SINAPA eliminated seniority as a requisite for promotion and rewarded capacity and ability. After signing the decree, Menem assured that the revised governmental structure would eradicate the problems plaguing the administration at this point, including corruption.

Secretary of Public Function Gustavo Béliz expressed his belief that this reform would be successful because it had union support, and, moreover, general support by the public. According to him, the previous administration had not enjoyed the same support because of two factors: the lack of labor union support, and the distortion of the rank and file as a means to cover up salary increases; the union's support and the professional career based on merits instead of seniority set by SINAPA, was gaining support by the general public.²⁴

Andrés Rodriguez, Secretary General of the UPCN, concurred with the belief that the general public supported the creation of SINAPA. Rodriguez cited the re-establishment of a

²² "Ámbito Financiero", 5/28/91

²³ GONZALEZ, Manuel, GUIBERT, Armando and LEMOINE, Graciela: El Desarrollo de la Alta Gerencia; in "Boletín Informativo Techint".

hierarchical system in public administration as the fundamental aspect that ensured the success of SINAPA. As he indicated, a hierarchical system redefined the roles and responsibilities public employees were held accountable for in a logical, "pyramid-like" system. This change to a system of promotions according to qualifications was also accompanied by a corresponding increase in salary²⁵.

5. Description of the SINAPA

The leading specialist on the system of UPCN, defines SINAPA as follows: "SINAPA has a structure of six vertical levels—from the superior A to the inferior F—which categorizes the agents according to the basic functions of direction, coordination, technical or operatives; these comprise the 'vertical career.' Each level has different grades, which comprise the 'horizontal career.' The vertical career implies certain requirements of formal education, qualification, age, etc. The horizontal career development supposes the attainment of requirements of performance and qualification, evaluated on an annual basis."²⁶

SINAPA was considered particularly noteworthy because of its creation and impact on four systems: the system of Personnel Selection, the system of Evaluation of Effort and Productivity, the national system of Qualification, and the permanent program of Public Management.

The Decree is organized in seven titles: I. Structure of the System; II. Groupings (General, Scientific-Technical, Specialized); III. Systems of Selection (General, Vacancies

²⁴ El Cronista Comercial, 11/23/90.

²⁵ RODRÍGUEZ, Andrés (UPCN General Secretary); Interview conducted by E.IRIBARREN.

²⁶ IRIBARREN, Néstor Enrique; Memo to the author.

Covering, Executive Functions); IV. Performance Evaluation; V. Qualification; VI. Remunerations and Incentives; VII. Working Hours.

a) *Title I: Structure of the System*

The system consists of three groupings: General, Scientific-Technical, and Specialized. The groupings consist of six levels with corresponding grades arranged in order of complexity and responsibility. The Functional Nomenclature would establish the functions to which each level of rank and file would correspond. A special category of "Executive Functions" was created, which would be those overlooking sectors with a high incidence of public policy, essential public services, budgetary issues, and reforms of the state. Agents, independently of their rank and file, would be given equal opportunity to obtain an executive function by means of the system of selection established in Title III and prior completion of the general prerequisites associated with the respective function. The career of the agent would be determined by his progress in his corresponding placement within the rank and file, by means of promotion. Moreover, promotions to higher rank within each level would be carried out according to the norms set by SINAPA.²⁷

This was the major change introduced by this system: promotions would no longer be a "lineal function" of seniority, but a "complex function" of several elements, particularly qualifications and performance.

²⁷ SINAPA (Decreto 993/91)

b) *Title II: Groupings*

Chapter 1: General Grouping

This Grouping comprises administrative, technical, professional, and services functions. Six levels, A-F, are created in descending order. Each level corresponds to particular functions and is further subdivided into various grades. Minimum prerequisites for reaching each level of rank and file are set, from Level A—requiring candidates who are at least thirty years of age, university educated, and having work experience—to Level F, which required candidates to be of at least sixteen years of age and have completed an elementary education²⁸.

Chapter 2: Scientific-Technical Grouping

This category corresponds to those functions aimed at generating, improving, and diffusing scientific knowledge, investigation and development of technology; formation of specialized human resources; and activities in the scientific field. This category would consist of six levels, also A-F, in descending order. Each level corresponded to particular functions, and was also subdivided into various grades within each level. A description of these functions, as well as the prerequisites needed to advance into each level, were denoted.²⁹

Chapter 3: Specialized Grouping

This category is comprised of professional functions involving consulting and formulation of highly specialized areas of the State's management. It would consist of two levels, denoted A-B, in descending order, with specialized functions associated with each, as well as the subdivision of

²⁸ SINAPA (Decreto 993/91)

each level into various grades. The prerequisites stated for Level A asked that candidates be at least thirty years of age, bilingual, university educated with degrees recognized by the Ministry of Culture and Education, in careers requiring at least two additional years of graduate study, and having obtained exceptional intellectual recognition for their work. Level B required candidates to be at least twenty-five years of age, with requirements similar to those of Level A, but not required to have obtained the same intellectual recognition³⁰.

c) *Title III: Systems of Selection*

For Personnel Selection, all open positions would be filled following the new system of selection approved by Resolution 30/92 of the Secretary of The Public Function. This system, unlike previous ones, established objective and transparent mechanisms for selecting new personnel, eliminating biases, "connections," and other unfair selection processes. Throughout this selection process, candidates would be chosen by way of various interviews, tests, and evaluations, in search of the most qualified individuals³¹.

d) *Title IV: Performance Evaluation*

With respect to the system of Evaluation of Effort and Productivity, superiors would evaluate agents in SINAPA on a yearly basis. Up to ten percent of agents who demonstrated outstanding effort and productivity would be rewarded with an extra monthly salary. Furthermore, the evaluation would serve to facilitate proper administration, to improve individual and collective productivity of its employees. Employees would

²⁹ SINAPA (Decreto 993/91)

³⁰ SINAPA (Decreto 993/91)

³¹ SINAPA (Decreto 993/91)

be evaluated on ten factors: competency, initiative, autonomy, productivity, capacity to analyze and act, knowledge, cooperation, diligence, interpersonal skills, and adherence to dress code.

e) *Title V: Qualification*

SINAPA establishes Qualification as mandatory for public agents. Each year, all national public administration employees in Levels D and E must pass at least one qualification credit, equivalent to thirty hours of course credit. Those occupying Level C must approve a course, "Superior Qualification Course". Fulfillment of these prerequisites would permit the employee's promotion and the ability to apply for vacant positions.

6. Institutionalization of the Changes

The reform of the Civil Service was a progressive process of institutional re-building: it began with SINAPA and several other measures adopted to enforce it. It was institutionalized by Law 24,185, which established the mechanisms for collective bargaining for public employees; by Law 25,164, which redesigned the legal framework of public employment; and by the signature of the first collective agreement for the National Public Administration.

a) *Law 24,185: Collective Agreements for Public Employees:*

The right of collective bargaining for public workers developed relatively late: it was not until 1981 that the ILO approved Agreement No 154, which encourages collective bargaining for all sectors, including public employees. The Argentine Congress approved this agreement in 1988, and in 1991

Law 24,185 of Collective Bargaining for State Employees was passed.

It was the result of an intense and productive process of negotiation between the Ministry of Labor³² and all the Unions representing public workers: UPCN (Union del Personal Civil de la Nacion, ATE (Asociacion Trabajadores del Estado), CTERA (Confederacion de Trabajadores de la Educacion de la Republica Argentina), and several other sectorial unions. Upon a strong consensus, the project was sent to the Senate in 1991. It was finally approved in November 1992.

In essence, the law ended the period of "unilateralism" in which the state as employer established by itself all the conditions of public employment, and it opened a new stage of "participationism" in which the workers, through their unions, are allowed to negotiate a wide range of issues, from mechanisms of selection to salary structures.

The main features of this law are the following: i) To be applied at the National Public Administration; provinces and municipalities could also adhere to it. ii) Personnel not included were the following: politically appointed officers, military, diplomats, others encompassed in special regimes. iii) Workers will be represented by recognized unions. iv) The state as employer will be represented by the Ministry of Economy and the Secretariat for the Public Function. v) All matters related to the labor relationship are subject to negotiation: labor conditions (not the structure of the state) as well as salaries (within the provisions of the Budget Law). vi) The Agreement will be "ultra-active": it would will

³² I was Minister of Labor and Social Security, and Enrique RODRÍGUEZ was Secretary of Labor.

be effective until a new one is signed. vii) The Agreement should be homologated by the Ministry of Labor.

b) *Law 25,164: Regulatory Framework for Public Employment:*

The National Constitution in its Article 14 bis, guaranteed job "stability" for public employees; however, the labor relationship between public workers and the state had been highly unilateral and subject to political discretion. This new law implied a significant development of that constitutional guarantee in order to limit both unilateralism and discretion through professionalization and participation.

The main features of this law are the following: i) Encompasses the personnel of the Executive Branch (personnel of Legislative and Judicial Branches are excluded); also excludes politically appointed officers, military, diplomats, and others encompassed in special regimes. ii) Establishes the requirements and impediments to be accepted as public employee. iii) Defines different labor regimes: of stability, by contract, of cabinet staff and transitory. iv) Establishes a specific set of enforceable rights, duties, and prohibitions for public employees. v) SINAPA³³ is subject to collective negotiation in order to be modified. vi) Establishes a Disciplinary Regime, and its decisions subject to Judicial review.

c) *General Collective Agreement for the National Public Administration:*

The process of Civil Service Reform analyzed in this section culminated with the signing of the First Collective Agreement for the National Public Administration. It has been described as "the crowning of a series of positive results"

³³ See this Section, #6

and a "turning point" towards democratization of labor relations within the State.³⁴

The Agreement was signed on December 15, 1998 by representatives of UPCN, ATE, and the state, and it was homologated by Decree 66/99 on January 29, 1999.

The main features of this Collective Agreement are the following: i) Personnel are encompassed into the agreement with a very ample criterion; exclusions are the same as those of Law 24,185. ii) On conditions and impediments of acceptance as well as the nature of the labor relationship, it follows the criteria of Law 25,164. iii) With respect to career, it follows the criteria of SINAPA, with more technical precision. iv) It sets up participative mechanisms between unions and the state, as well as regards union representation and conflict resolution. v) Right to information, and equality of opportunities and treatment are also addressed.

7. Qualification

SINAPA made public agents' qualification mandatory, so they should participate in courses and training activities that are programmed by INAP (National Institute for Public Administration) on an annual basis. These courses and activities enable agents and officers within the civil service to be promoted through the established procedures.

Employees of levels D and E should attend at least one "qualification credit", equivalent to 30 class hours. Employees of level C should pass the "Superior Formation Course", structured in six curricular areas. And for officers of levels A and B, there is the "High Public Management Permanent

³⁴ RODRÍGUEZ, Andrés (UPCN General Secretary); Discurso, in "1er Convenio Colecti-

Program", organized in fifteen modules³⁵. The effort made in the qualification field by the Civil Service has been enormous. More than 200,000 agents attended different courses all over the country.

Tables III.III.3, 4, and 5 present the data.³⁶

Table III.III.3
SINAPA: Agents Qualified
(Capital Federal)

Level	1994	1995	1996	1997	1998	Total
A	430	59	527	479	491	2436
B	1651	1681	2005	262	2204	963
C	6747	7381	6391	6177	4663	31359
D	2176	4232	4088	4904	3934	19334
E	2649	3241	2535	2993	1050	12468
F	119	342	254	285	253	1253
Total	13772	17386	15800	16900	12595	76452

Table III.III.4
SINAPA: Agents Qualified
(Overall Country)

	1994	1995	1996	1997	1998	
Capital Federal	13772	17386	15800	16900	12595	
Interior	0	6628	4215	5892	10918	
Total	13772	24014	20015	22792	23513	104106

vo del Sector Público," Buenos Aires, 1999; pg. 3.

³⁵ Secretariat of the Public Function; Infoad

³⁶ Source: FRANGANILLO, Virginia: INAP 1989-1999: Una Década de Apoyo a la Reforma del Estado Argentino; 1999.

Table III.III.5
SINAPA: Agents Attended Specific Qualification

Level	1995	1996	1997	1998	
A	2	9	7	0	
B	7	70	18	17	
C	2139	1899	1639	3796	
D	1830	2124	2144	4135	
E	1121	1318	1192	2640	
F	121	118	87	238	
Total	5229	5538	5141	10826	26374

8. Follow up

There is a systematic follow up of the Civil Service Reform. The Secretariat of the Public Function conducts an annual survey³⁷ amongst the State's personnel to monitor the process. The following are the results of the first of these surveys (1996) which reflects the evaluation of the Civil Service Reform process five years after it had been introduced.³⁸

To over 60% of government employees surveyed by EPAOYE, the impact of the administrative reforms were considered positive or very positive. However, approximately eighty per cent of these employees perceived public opinion in Argentina to have a neutral (42%), bad (33%), or very bad (5%) image of public employees. Yet when asked how this image had changed in the past five years, 52% of agents reported that they perceived public opinion to have significantly improved.

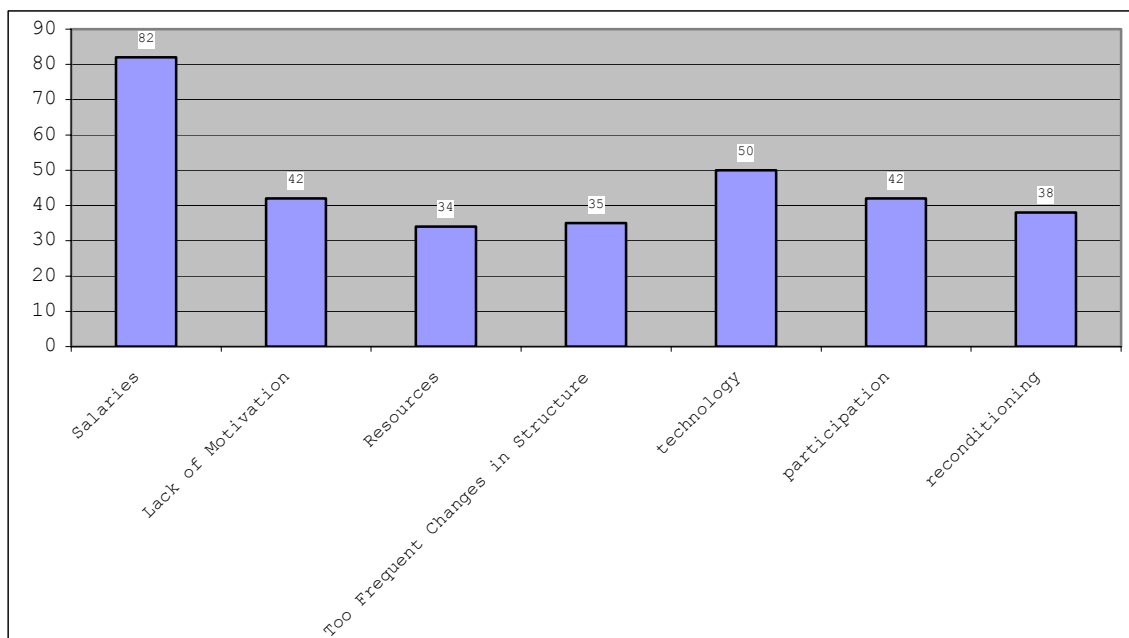
³⁷ EPAOYE: Encuesta Permanente de Actitudes, Opiniones y Expectativas del Personal del SINAPA.

³⁸ Secretaria de la Funcion Publica: EPAOYE 1996; Coleccion Modernizacion del Estado N. 12.

Agents were also asked to identify the most important problems affecting government employment at the time. Salaries, lack of motivation, lack of resources and too frequent changes in the structure were identified.

Graph III.III.1³⁹, presents the data.

Graph III.III.1
Most important problems of the Civil Service



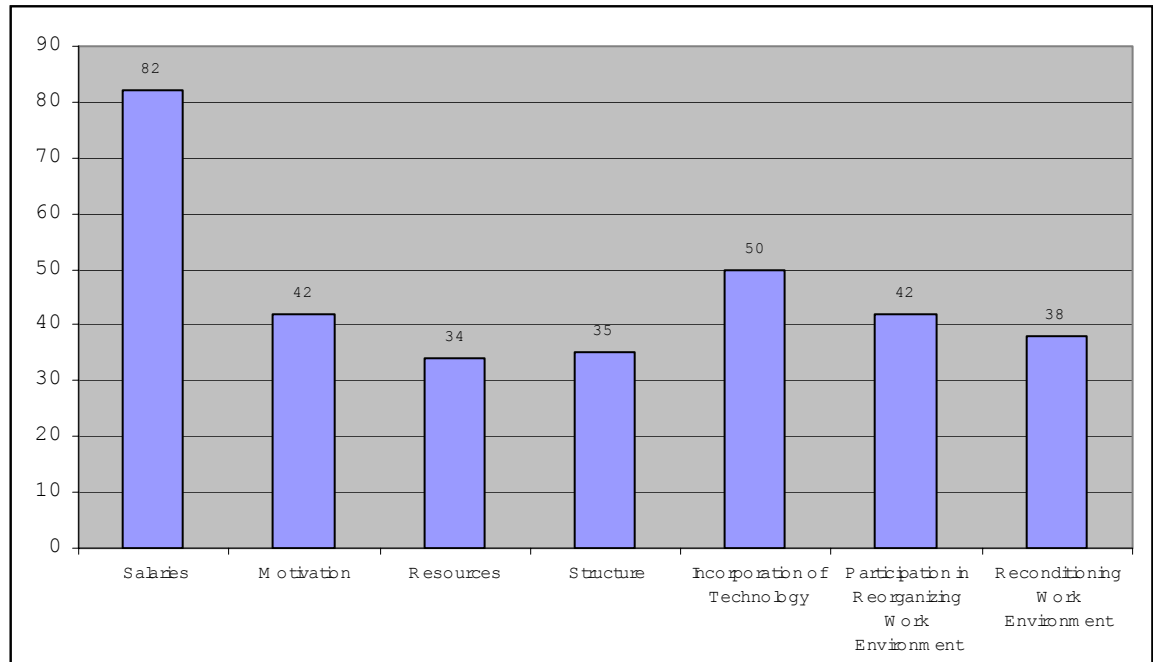
Asked to propose necessary measures to improve the labor situation, technology, participation and workplace environment were mentioned.

Graph III.III.2⁴⁰ presents these results.

³⁹ EPAOYE: Op. Cit.

⁴⁰ Ibid

Graph III.III.2
Measures to improve the Civil Service



9. Effects

The foremost changes introduced by SINAPA have been: i) Reduction of the rank and file from 24 categories to 6 levels. ii) Selection of personnel through contests. iii) Elimination of seniority as a prerequisite for promotion. iv) Creation of the "Executive Function" category. v) Creation of the "Career Permanent Commission."

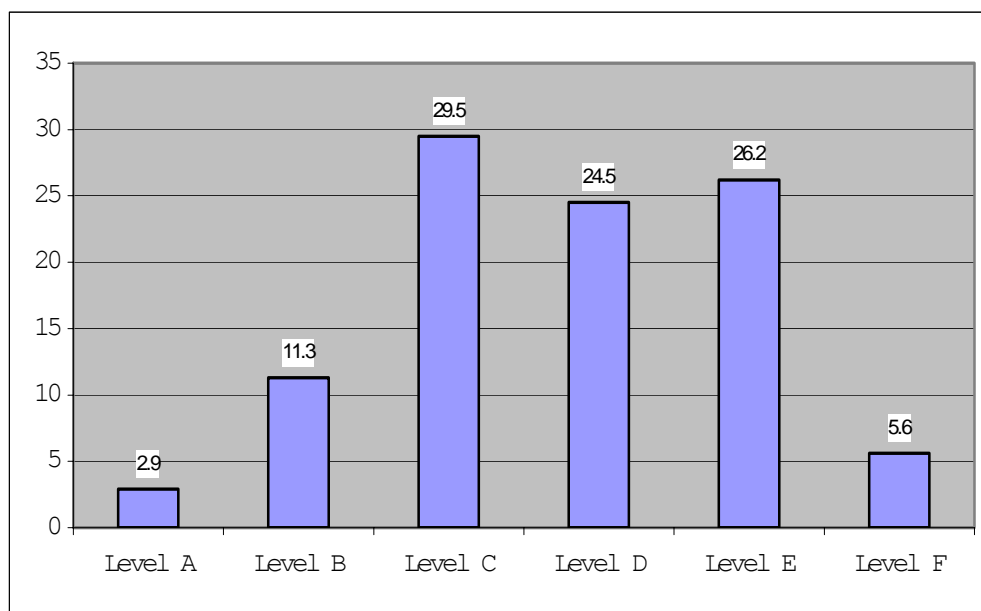
Throughout this chapter, the impact of the reforms at different levels of the Civil Service have been pointed out. But the indicator that best shows those effects at a more comprehensive level is that of the processes of selection and promotion of agents within the SINAPA system.

Between January 1, 1993 and June 30, 1999, the processes of selection sought to fill 8,052 positions within SINAPA,

which are approximately one-fourth of the personnel encompassed by the System.⁴¹

Graph III.III.3, presents the percentage by level.

Graph III.III.3
Selection Contests by Level
(1993/1999)



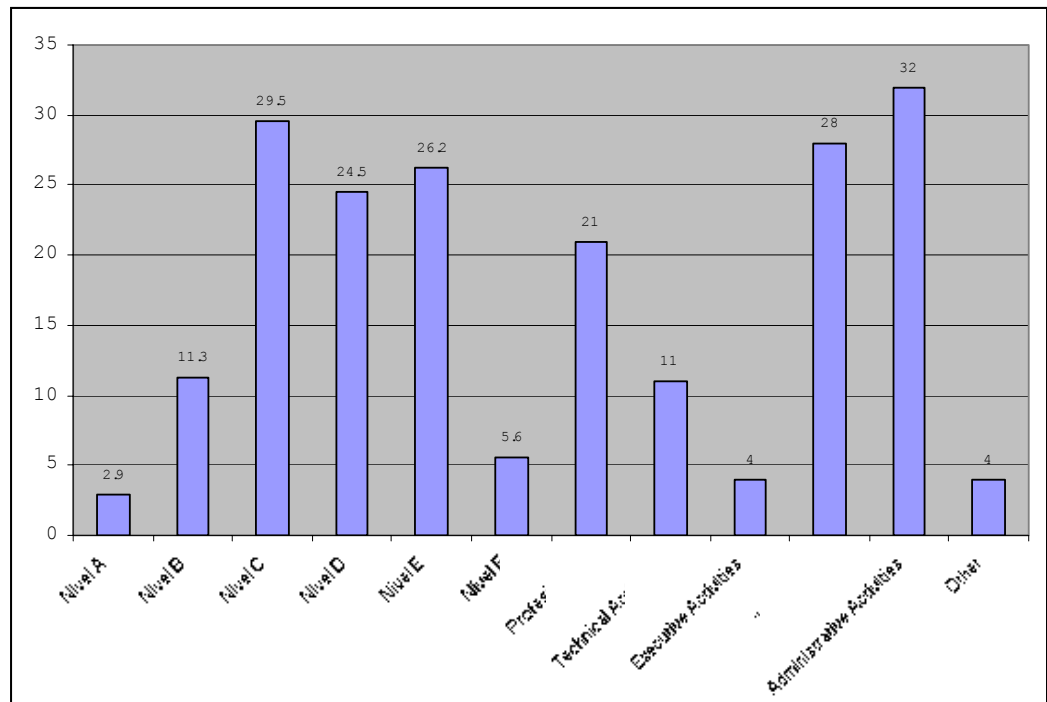
Out of those, 6,542 were for "simple posts" of different groupings, and 1,510 for "Executive Functions"⁴².

Graph III.III.4, shows the proportions.

⁴¹ SALAS, Eduardo and GARCÍA, Isabel: Los Procesos de Selección de Personal en el Sistema Nacional de la Profesión Administrativa; Buenos Aires (1999), pg. 5.

⁴² SALAS, E. and GARCÍA, I.; Op. Cit., pg. 6.

Graph III.III.4
Selection Contests by Type of Post



Looking at the type of contest, almost two-thirds were closed to existing public agents. This represented a real incentive to the current personnel to improve, and a clear intention to structure the administrative career in a definite hierarchy.⁴³

Looking at the level of the posts selected through these contests, 4,361 (54%) were posts of the higher levels of the rank and file (A, B, and C)⁴⁴. Looking at the type of function covered by the contest, 61% of them were of a managerial, professional, or technical nature. This asymmetry towards the upper levels of the personnel pyramid shows a clear effort to professionalize the civil service.

⁴³ SALAS, E. and GARCÍA, I.; *Op. Cit.*, pg. 7.

⁴⁴ Ibid

Table III.III.6 presents the profile of all the contests over the studied period.⁴⁵

Table III.III.6
Selection Contests, by Type of Function

	1993	1994	1995	1996	1997	1998	1999
Managerial	39.3	25.9	25.2	12.8	42.5	28.5	19.7
Professional	17.0	23.3	25.4	18.4	23.8	16.2	16.2
Technical Personnel	19.5	7.4	7.6	6.7	11.6	16.9	15.7
Administrative	20.1	28.8	26.5	57.1	17.7	34.6	45.6
Operatives	4.1	4.5	5.3	5.0	4.4	3.8	2.8
Total	100	100	100	100	100	100	100

For the first time in the Public Administration, an effective system was designed which recruited more than 1500 executives based on their capacity and talent. Moreover, the process of recruiting capable candidates has continued, and employees have the opportunity to climb the career ladder and ascend to higher levels, or to rotate between various positions available within a level in SINAPA. Furthermore, since certain contests were open to any interested public, there were incentives for new talented people to join the public administration. Moreover, SINAPA enhanced effectiveness, transparency and equality of opportunity in civil servants careers.⁴⁶

But two important shortcomings have to be mentioned and stressed in reference to the Civil Service Reform: i) First, the augmenting of the number of public employees at the Provincial and Local levels. While the National Public Administration reduced its personnel by a significant rate of 48%,

⁴⁵ SALAS, E., and GARCÍA, I.; *Op. Cit.*, pg. 31.

the Provincial and Local Administrations enlarged their pay-rolls by a rate significant as well: 65%. ii) Second is the limited number of national public agents actually included within SINAPA. Out of 107,862 agents of the National Public Administration, only 29,702 (27.6%) have been encompassed by the system.

Aside from these accomplishments and shortcomings, the most important value of SINAPA was—according to one of its main enforcers⁴⁷—"that it stands as a powerful example that it is possible to put the Public Administration in order, with general rules that privilege hierarchical structure and permanent qualification."

⁴⁶ SALAS, E., and GARCÍA, I.; Op. Cit., pg. 10.

⁴⁷ IRIBARREN, Néstor Enrique: Memorandum to the author (2000).

Chapter IV: CRITICISMS

- I. On Presidential Decrees
- II. On Political Corruption
- III. On Public Debate

- I -

ON PRESIDENTIAL DECREES

The idea that the reforms of the nineties in Argentina have been carried out by Presidential Decree (or NUD: Necessity and Urgency Decree) is a mistake challenged by available evidence. A systematic analysis of all NUDs issued from 1989 to 1999, shows that there were less than some authors account, that most of them were related to emergency circumstances, and that only a few referred to complementary aspects of the reforms.

1. Delegative Democracy

Mainstream American political science has characterized the Argentine political regime in the nineties as "Delegative Democracy"¹. To discuss this characterization is beyond the boundaries of this work; instead, a few elements that have to do with the core of the subject of this book, the reforms of the nineties, will be referred to.

a) The analytical usage of the concept of delegative democracy—which is often used normatively as well—refers to a type of political regime that is "democratic" but not "representative" according to the standards of western developed countries. Such regimes have been labeled "delegative" to "point to a conception and practice of executive authority as having been electorally delegated the right to do whatever it

¹ O'DONNELL, Guillermo: Delegative Democracy; "Journal of Democracy", 5-1, pg. 56; and in DIAMOND, L. and PLATTNER, M. Ed. "The Global Resurgence of Democracy"; The Johns Hopkins University Press, Baltimore (1996), pg.95. Following O'Donnell's view: SCHMITTER, Philippe C: Dangers and Dilemmas of Democracy, in DIAMOND, L. and PLATTNER, M. Ed: Op. Cit. pg.80 and 92 (Note 4); LOWENTHAL, Abraham F.: Battling the Undertow in Latin America, in DIAMOND, L. et al., Ed. "Consolidating The Third Wave Democracies", The Johns Hopkins University Press, Baltimore (1997), pg.60; LINZ, Juan and STEPAN, Alfred: Problems of Democratic Transition and Consolidation, The Johns Hopkins University Press, Baltimore (1996), pg.396; DIAMOND, Larry: Developing Democracy Toward Consolidation; The Johns Hopkins University Press, Baltimore (1999), pg. 35.

sees fit for the country"²; and although they may endure, they are not "consolidated" democracies³.

b) The most often mentioned indicator of this phenomenon as regards Argentina are the "Presidential Decrees" or "Necessity and Urgency Decrees" (NUDs) issued over the decade⁴.

Following the doctrine of the highest legal office of the executive branch of Argentine government⁵, a Necessity and Urgency Decree is an act of the Executive Power that assumes, exceptionally and transitorily, a legislative competence that belongs to the Congress. It is not a "de facto" decision but a "de jure" one; it is not a law because the Executive doesn't dictate laws: it is a mere administrative act of legislative content, that has to be limited to a restrictive interpretation of the "state of necessity".

2. Democracy at Risk

In 1989, Argentine democracy was far away from being a consolidated political regime; on the contrary, it was a regime in deep crisis.

a) While in 1983-84 the armed forces had accepted the trying of the Juntas, they would not accept prosecution at all levels of the services. Due to military pressures, Dr. Alfonsín's Government proposed—and Congress passed—the "Final

² O'DONNELL, Guillermo: On the State, democratization and Some Conceptual Problems; Note 3; in "World Development", 21-8, pg. 1367

³ O'DONNELL, Guillermo: Delegative Democracy; "Journal of Democracy", 5-1, pg. 56

⁴ PRZEWORSKI, Adam: Sustainable Democracy, Cambridge University Press, New York, (1995), pg.80; DOMINGUEZ, Jorge: Democratic Politics in Latin America and the Caribbean, The Johns Hopkins University Press, Baltimore (1998), pg. 132; HAGGARD, Stephan and KAUFFMAN, Robert R.: The Challenges of Consolidation, in DIAMOND, L. and PLATTNER, M, Ed., "Economic Reform and Democracy", The Johns Hopkins University Press, Baltimore (1995), pg. 12, Note 8; GRINDLE, Merilee: Audacious Reforms: Institutional Invention and Democracy in Latin America (Manuscript), pg.170

⁵ PROCURACIÓN DEL TESORO DE LA NACIÓN: Dictámenes 195:69, 207:272, amongst many others.

Point Law" (Ley de Punto Final), that established a fixed final term for denunciations against the military. Subsequently, several conflicts with officers cited by the judges culminated in the rebellion of the "carapintadas" during Easter Week of 1987. Pressed, the radical government proposed—and Congress passed—the "Due Obedience Law" (Ley de Obediencia Debida), which exonerated lower rank officers from any indictment. But there were new rebellions in January and December 1988 (Montecaseros and Villa Martelli).⁶

b) It is well known that in 1989 the Argentine economy collapsed: hyperinflation, a huge fiscal deficit, a large, inefficient and self oriented state machinery, currency loss of value, a non-responsive institutional framework, lack of international reserves; those were the features of the situation. That process has been treated above⁷.

c) The crisis exploded all along the social spectrum: capital flight at the top, riots and looting at the bottom. The political institutions were there—the President, the Congress, the Central Bank—but none reacted. The private institutions were there, too—Business Associations, Labor, the Church, the Media—but none of these reacted either.

d) In May 1989 there were elections: the Justicialista Party won both the Presidency and the majority in Congress. The due date for transition was December 10, 1989. Because of the already described situation, President Alfonsín decided to resign six months before the end of his tenure. This mutated the institutional paralysis into institutional crisis.

⁶ See MASSUN, Ignacio: Alfonsín, una Transición Difícil; cited in Castro, Jorge: "La Gran Década", Ed. Sudamericana, Buenos Aires, 2000.

⁷ See Chapter I, Sections I.1 and II.1

To resolve it, the major political parties—UCR (incumbent) and PJ (incoming)—made a non-written agreement: President Menem would take office six months in advance⁸. In the midst of the crisis, it was the Presidential Institution that was trusted; not the Congress or the Courts. Looking for "delegative" signals, this was the first and foremost.

Since the new Congress—with a PJ majority—was not going to be installed until December 10, the UCR agreed to the compromise of not blocking President Menem's initiatives. As regards "delegative" signals, this was the second.

3. Necessity and Urgency Decrees

a) As a "harmonic" of the supposed "delegative" character of Argentine democracy, it has been said that "the government made repeated use of ambiguous constitutional prerogatives, such as executive decree authority"⁹, adding that "fewer than 20 NUDs were issued by constitutional presidents between 1853 and 1983. Between 1983 and 1989, President Alfonsín issued just 10 of them. By contrast—proceeds the argument, citing figures reported by two Argentine writers¹⁰—"President Menem issued 335 NUDs between July 1989 and the August 1994 constitutional reform, and he issued a total of 545 during his ten years in office"¹¹.

b) The figures mentioned above are different from those registered in the official records¹². The reason for the dis-

⁸ This solution was not previewed in the Constitution. Nevertheless it was widely supported by society and none act of President Menem was objected upon this base.

⁹ LEVITSKY, Steven: *Argentina, From Chaos to Consolidation*, in "Constructing Democratic Governance", DOMINGUEZ, Jorge and SCHIFFER, Michel editors; John Hopkins University, Baltimore, (forthcoming); pg. 7

¹⁰ FERREIRA RUBIO, Delia and GORETTI, Matteo: Executive-Legislative relationship in Argentina. (Unpublished paper)

¹¹ LEVITSKY, S.: Op. Cit., pg. 8

¹² See below, #5

crepancy is because the writers include in their numbers two different legal objects in their numbers: not only NUDs, but also what they call "not recognized NUDs".

These authors argue that in some cases "the preambles of the decrees explicitly recognized them as NUDs"¹³; they add that in other cases "the Executive did not acknowledge that they were NUDs, although careful analysis indicates that they effectively were"¹⁴.

Their argument concludes that if a decree is intended to exercise lawmaking power, modifying or repealing a law or a NUD, that decree is a "not recognized NUD". The fundamental point of this argument is that since a "rule shall only be modified or repelled by another rule of the same or of superior status"¹⁵, the intention to modify or to repeal a law implies that it has to be of at least the same status: that Decree has to be a NUD, although "not recognized".

c) From the point of view of juridical science, the above reasoning ignores "essential features of legal systems"¹⁶; the conclusion is therefore misleading.

Proper knowledge of legal objects depends on "two essential features of legal systems. First, the interdependence of legal rules and concepts that comprise a legal system, and second, the fact that law is a cognitive institution"¹⁷. i) "Interdependence" means that most rules "require further explanation in the form of explicit or implicit references to

¹³ FERREIRA RUBIO, Delia and GORETTI, Matteo: When Presidents Governs Alone, in "Executive Decree Authority", CAREY, J. M. and SHUGART, M.S. editors, Cambridge University Press, 1998, pg. 43.

¹⁴ *ibid*

¹⁵ FERREIRA RUBIO-GORETTI: Executive-Legislative Relations in Argentina, pg. 7

¹⁶ PISTOR, Katharina: The Standardization of Law and its Effect on Developing Economies. G-24 Discussion Paper No.4; UNCTAD/CID-Harvard University; June 2000, pg.1

¹⁷ *ibid*

other rules, terms or concepts"¹⁸. ii) Related to that, "cognitiveness" implies that the "meaning" of a rule depends on its cross reference to a "given legal order"¹⁹

The cited authors' reasoning mistakes the role of two elements of the analyzed decrees: the "object" ("The matter or content on which the act decides, certifies, appraises or opines"²⁰) and the "cause" ("The factual and legal fundamentals that motivated it"²¹). The logic of their reasoning is that from the "object" of the act (the exercise of lawmaking power) it is possible to conclude the "nature" of the decree (that it is a NUD). Technically, it is not so. What differentiates a NUD from a simple decree is not the "object", but the "cause": the factual and legal fundamentals that motivated it (precisely, the "necessity and urgency circumstances")²². It is the "cause" which expands—exceptionally—the competence of the Executive; without that expansion, the exceptional exercise of lawmaking powers is impossible.

The conclusion is misleading because, lacking the "cause" expressly invoked and properly sustained, the act lacks the only element which can change its nature; therefore, it remains a simple decree. Moreover, within the context of the actual Argentine legal order, a simple decree which has as its "object" the exercise of lawmaking powers, is nothing but a null and void simple decree.

In "Verrocchi, Daniel vs. Administración Nacional de Aduanas", Argentina's Supreme Court accepted this idea argu-

¹⁸ *ibid*

¹⁹ See PISTOR, Katharina: *Op. Cit.* pg.8

²⁰ DROMI, José Roberto: Derecho Administrativo. Ed. Ciudad Argentina; Buenos Aires (1996) , pg.173

²¹ Law 19549, art. 7:b

²² Law 19549, art. 7:b. See MARIENHOFF, Miguel S. Tratado de Derecho Administrativo, Ed. Abeledo-Perrot, Bs. As. 1995, T.I, pg. 275, among others

ing that "The National Constitution defines the state of necessity and urgency that justifies the exception to the general rule and thus the admission of NUDs...The NUDs that have been dictated without the requisites required by the Constitution are null...When there is no urgency or necessity, the so called necessity and urgency decrees are null for they violate the National Constitution"²³.

The legal objects that the cited authors call "not recognized NUDs" are, therefore, simple decrees. Hypothetically speaking, it is possible that one-or many-amongst them were null and void simple decrees; but not NUDs.

4. NUDs Over Time

NUDs have often been used in Argentina as a means for regulating different situations for more that 100 years. In the Argentine doctrine, NUDs are decrees signed by the President, using attributions that constitutionally belong to Congress. Their cause is an "emergency" that requires an immediate legal solution, thus making it impossible to wait for the normal timing of the lawmaking process by Congress. Different kinds of "emergencies" have been invoked as immediate causes of NUDs: natural catastrophes, national security matters (state of siege declarations), social emergencies, economic emergencies, political chaos in different provinces, among others.

Until the Constitutional Reform of 1994, this kind of decree was not regulated by the Constitution. Nevertheless, constitutional praxis and several pronouncements of Argentina's Supreme Court since 1865 had accepted their constitu-

²³ Fallos 322:1726

tionality. The Supreme Court has had two different periods regarding this subject: i) At first—more than a century ago—it declared some NUDs were constitutional, mainly because it took into account that those decrees had—by the time the Court made its pronouncement—been approved by Congress²⁴. ii) Lately, the constitutionality of NUDs was declared on the basis of the actual facts that had taken place in the country by the time they were signed: thus, social and economic emergencies, among others, have been considered by the Court as a justification for these decrees. During the period immediately before the Constitutional Reform of 1994, Congress' silence was considered an approval of the President's acts²⁵.

In 1994, one of the reforms of the Constitution was the incorporation of the Presidential attribution to dictate this kind of decree, according to rules that were included in Article 99, referring to the President's competencies. Since then, the President is expressly allowed to sign NUDs if matters of necessity and urgency so require it. To do so, certain rules have to be followed: i) First, this kind of decree cannot refer to regulation of political parties, electoral subject, criminal law or taxes. ii) Second, it must be signed by the President and all of his cabinet ministers and the Chief of Cabinet. iii) Third, the Chief of Cabinet must take the decree to a special Commission of both Chambers of the Congress.

5. NUDs in the Nineties²⁶

This section will analyze the NUDs issued by President Menem during both his periods of government: i) There were

²⁴ Fallos 2:88; 11:405; 14:257; 23:257

²⁵ Fallo "Peralta": LL. 1991-C-141

²⁶ Developed with the assistance of Dr. Maria Cecilia Recalde

262 registered NUDs issued from July 9, 1989 to December 9, 1999, on the list provided by the Presidency's Legal and Technical Secretariat. That will be the "universe". ii) The method will be a sequence of distinctions amongst them, as a function of their respective "objects"²⁷. iii) Above, in Sub-section 3.c, the "cause"²⁸ was the "distinction criterion" used to distinguish two different legal objects: NUDs and simple decrees. In this section, the "object" will be the criterion to distinguish different "classes" of the same legal object: NUDs.

a) Out of the total of 262 registered NUDs, there were 60 that made only insubstantial amendments to previous NUDs (mostly, extending terms); these are typified as "modifiers". And there are 202 which made substantial decisions; these are typified as "normative".

b) Out of those 202 "normative" NUDs, only 183 implied the exercise of lawmaking power as Congressional attribution; these are typified as "legislative". The remaining 19 were "formally" NUDs, because their invoked "cause" were necessity and urgency considerations; but "substantially" they were regular administrative acts, because their "objects" were not matters that involved the exercise of lawmaking power as Congressional attribution; so, these are typified as "administrative".

c) Thirdly, not all of these 183 NUDs of legislative content were related to the process of reforms. Actually, most of them (116) were decisions on other governmental matters.

Table IV.I.1 presents the figures.

²⁷ See above, 3

Table IV.I.1
Necessity and Urgency Decrees (NUDs)
(1989-1999)

YEAR	TOTAL	MODIFY A NUD	NORMATIVE	ADMINISTRATIVE	LEGISLATIVE	NOT REFORMING	REFORMING
1989	6	1	5	–	5	–	5
1990	29	8	21	1	20	6	14
1991	59	18	41	4	37	17	20
1992	32	4	28	2	26	16	10
1993	18	8	10	2	8	2	6
1994	9	–	9	3	6	4	2
1995-I	3	1	2	1	1	–	1
1995-II	4	1	3	–	3	–	3
1996	11	3	8	–	8	6	2
1997	26	5	21	2	19	17	2
1998	26	5	21	1	20	20	0
1999	39	6	33	3	30	28	2
TOTAL	262	60	202	19	183	116	67

d) The 183 "legislative" NUDs classified by the specific matter of their object, show a wide variety of contents.

Table IV.I.2 presents the figures.

²⁸ See above, 3

Table IV.2
Necessity and Urgency Decrees (NUDs)
By Matter

Matter	Legislative
Reforming	67
Budget	23
Public Administration	7
Radio, TV, Cinema	5
Pensions	9
Industrial Promotion	8
Federal Interventions	5
Commercial Societies	3
Real Estate	3
Public Health	3
Central Bank-Customs	9
Buenos Aires City	3
Checks-Bonds	8
Natural Emergencies	5
Others	25
TOTAL	183

e) It has to be noted that of those 67 NUDs considered "reforming", 35 were related to taxation (a matter allowed before the Constitutional reform). Out of the other 32 "reforming" NUDs, 20 made express reference to the Emergency Laws 23,696 and 23,697; 6 did not made such reference but are direct consequences of the regime established by those laws; 5 have an accessory relationship with the process of reforms itself; and one approved previous simple decrees on matters

that belonged (originally or by delegation) to the Executive²⁹.

Table IV.I.3 summarizes those numbers.

Table IV.3
Reforming Necessity and Urgency Decrees (NUDs)
By Content

Contents	Reforming
Taxation	35
Referred to Emergency Laws	20
Consequent to Emergency Laws	6
Accessory Relation to Reforms	5
Approved Simple Decrees	1
TOTAL	67

6. Democratic Consolidation

Despite their sometimes strongly connotative language, it is possible to agree with mainstream American political scientists that in the Argentina of the nineties there were "delegative tendencies". The economic collapse and the institutional crisis of 1989 led to a bipartisan agreement that significantly empowered the Presidential Institution³⁰.

The reforms of the nineties not only solved the major economic problems, but saved the democratic transition. It has been pointed out that "democracy benefited from several fundamental strengths, including institutionalized elections and civil rights, a powerful independent media, a vibrant

²⁹ Decree 842/97

³⁰ See this Section, 2

civil society, and a relatively strong and effective party system"³¹.

On the NUDs issue, the reasons and data presented above prevent any hasty generalization. President Menem issued an unusual number of NUDs; but that was not an illegal "usurpation" of Congress' lawmaking power³²: it was an exceptional but legal resource to face exceptional circumstances³³. Most of the NUDs were issued before the end of the emergency and their number did not increase after the Constitutional Reform that included NUDs within the President's competencies; the observable increment in the last year might be related to economic recession³⁴.

To conclude it can be said:

a) First, the label of "delegative democracy" could fit Argentina only in the initial periods of the reforms process³⁵.

b) Second, the NUDs have been used as an instrument to solve certain problems related to emergency; they were not used as an instrument to carry out the process of reforms.

c) Third, neither "delegative tendencies" nor the use of NUDs in Argentina throughout the nineties should be overstated³⁶: the scope of "Executive Decree Authority"³⁷ has been much more limited than in other transitional democracies³⁸.

³¹ LEVITSKY, S.: Op. Cit., pg. 1

³² FERREIRA RUBIO-GORETTI: When Presidents Govern Alone; pg. 33

³³ See PROCURACIÓN DEL TESORO DE LA NACIÓN: Dictámenes 207:272

³⁴ FERREIRA RUBIO-GORETTI: Executive-Legislative Relationship in Argentina, pg.4

³⁵ LEVITSKY, S.: Op. Cit. pg.12

³⁶ ibid

³⁷ CAREY, John M. and SHUGART, Matew S: Executive Decree Authority; Cambridge University Press, 1998.

³⁸ LEVITSKY, S.: Op. Cit., pg. 1

- II -

ON POLITICAL CORRUPTION

Corruption matters in Argentina. It has been consistently perceived as the second most important problem; factual data assigns the phenomenon a slightly lesser importance. Changes and innovations to curb corruption were implemented; notwithstanding, perceptions remained high and the theme gained prominency in the public debate: the second problem became the first political issue. Political corruption as collective perception does not only depend on factual determinants, but on a social process of "symbolic construction" that attaches meanings to facts. The alleged intention of a second presidential reelection was perceived as objectionable; corruption and re-election were both merged into the idea of "abuse of power", to which the political meaning of "offense" to certain political values was attached.

1. Political Corruption in the Nineties

"Good governance" has been one of the main objectives of the processes of structural changes carried out in many countries during the nineties; control and reduction of corrupt practices in the public realm were therefore explicit goals to be achieved through the reforms. But while the reform process is a public policy endeavor, there is the "paradox" that the process itself is liable to be subject to the same problems that it aims to solve.¹ This is probably this one of the reasons why, along with the world wide process of market-oriented reforms during the nineties, there was an "emerging consensus within both academic and policy literatures that [there is] an epidemic of corruption", both at the national and international levels².

¹ JASINSKI, Piotr and YARROW, George: Op. Cit.; pg. 18.

² See WILLIAMS, Lames and BEARE, Margaret: The business of bribery: Globalization, economic liberalization and the "problem" of corruption; in "Crime, Law and Social Change", No. 32 (1999), pg. 115. (The authors criticize that assumption)

Regarding Argentina, the phenomenon has been the subject of academic and non-academic writings, political discourses, and polls. i) In American political science, references to corruption in the process of reforms of the nineties in Argentina are numerous; for instance: "blemished by scandals"³, "corruption and institutional degradation"⁴, "clouded by high levels of corruption"⁵, "carried out hastily and under a cloud of corruption allegations"⁶. ii) In the domestic political debate of the nineties, corruption was a salient issue too: the political opposition of the time placed its argument within an ideological framework of "market criminality", "macroeconomic corruption" and "a perverse fabric of institutional engineering...serving corruption".⁷ iii) The Peronist government, for its part, argued that the opposition made "imputations without foundations"⁸, that it had found the country in a "state of moral emergency" and that, through privatization, it had eradicated "structural corruption".⁹ iv) The press, it is worth pointing out, considered its own role in this debate as one of "leadership impossible to deny"¹⁰, without which most denunciations of corruption "would not have been exposed".¹¹ v) Last but not least, different polls and surveys conducted throughout this period, showed a

³ LOWENTHAL, Abraham: Battling the Undertow in Latin America; in DIAMOND, Larry et al. Editors, "Consolidating the Third Wave Democracies. Themes and Perspectives"; The Johns Hopkins University Press, Baltimore (1997), pg. 61.

⁴ DIAMOND, Larry: Developing Democracy; The Johns Hopkins University Press, Baltimore (1999), pg. 41.

⁵ HAGGARD, Stephan and KAUFMANN, Robert R.: The Political Economy of Democratic Transitions; Princeton University Press, New Jersey (1995); pg.205.

⁶ SABA, Roberto P. and MANZETTI, Luigi: Privatization in Argentina: The implications for corruption; in "Crime, Law and Social Change", N. 25 (1997); pg. 353

⁷ ALIANZA: Presentation of the Center for Special Investigations on Corruption; Press release, Buenos Aires (1998)

⁸ MENEM, Carlos: Corrupción: Volvió la Polémica; Clarín, Buenos Aires, (8-5-98)

⁹ MENEM, Carlos: Presidential Discourse, 18 February 1998.

¹⁰ LA NACIÓN: La Corrupción no tiene Patria ni Partido; Editorial 4-4-93

¹¹ *ibid*

strong perception in public opinion that corruption was a relevant problem¹².

In the second half of the decade, a shift in the way corruption was studied took place. This began after the works of a young Argentine economist (now teaching at Harvard) who wrote that, corruption being "a major social and economic phenomenon", there has been a "lack of empirical discipline" in those studies; and that with the "availability of systematic data on corruption...empirical tests are beginning to emerge".¹³ A substantial contribution to this change has been made by the World Bank's chief expert on corruption, who considers that amongst the "new frontiers" that have to be explored to improve studies on corruption as a social phenomenon, the focus must be shifted from individualized prosecutions to a systemic approach—from individuals to systems, processes and institutions¹⁴—overcoming the limitations of the ex-post legalistic enforcement measures¹⁵. In this, two guidelines for the proposed shift should be: i) conceptualizing corruption as "as a public sector developmental challenge rather than merely as a private criminal activity"¹⁶; and ii) enhancing the "primacy of empiricism"¹⁷.

2. Two Asymmetries, Two Questions

The approach of this chapter will follow these criteria: it will consider political corruption as a systemic phenome-

¹² See this Section, 1.c

¹³ ADES, Alberto and DI TELLA, Rafael: The Causes and Consequences of Corruption; in IDS Bulletin, Vol. 27, No. 2 (1996); pg. 6

¹⁴ KAUFMANN, Daniel: Corrupción y Gobernabilidad. Handout; OECD/OAS Conference "The Fight Against Bribery in International Transactions"; Buenos Aires (1998)

¹⁵ KAUFMANN, Daniel: Challenges in the Next Stage of Anti-Corruption. Handout. Workshop: Combating Bribery in International Business; Buenos Aires (1998); pg. 12.

¹⁶ Ibid

non, and the analysis will rely on empirical data both of perceptions and facts. Another important point taken into account is the necessity of not confusing politicians in question with the institutions themselves, in order not to repeat the errors of the past century that led to potentially undemocratic political reforms¹⁸, or to similar developments that can be observed taking place in Latin America today. Instead, allegations of political corruption in Argentina will be addressed from the perspective of the social sciences, using data that reflect the systemic dimension of the phenomenon; therefore, no individual case will be considered.

Three types of information about political corruption as a socio political phenomenon will be used here: i) "perceptual" data based on surveys and polls, both at the national and international levels; ii) "factual" data based on two different independent official sources; and iii) "institutional" information, on the changes and reforms carried out regarding corruption and transparency.

From those data, two asymmetries will be extracted: i) one, between perception and factual information: while perception of corruption is high, the factual information only verified a limited pervasiveness; ii) the other, between relevance of corruption as a perceived problem and importance as a political issue: corruption has been consistently perceived as the country's number 2 problem, but it eventually became the number 1 political issue.

These characteristics pose two questions: i) What explains the asymmetry between the perceptions and the factual

¹⁷ Ibid

¹⁸ See: LAPALOMBARA, Joseph: Structural and Institutional Aspects of Corruption; in "Social Research", Vol. 61, No. 2 (1994), pg. 326

information? ii) Why did a phenomenon that has consistently been perceived as the number 2 problem become the number 1 political issue?

In order to answer those questions, the chapter will proceed as follows: Section three presents the "analytical approaches" usually applied to study corruption as a socio-political phenomenon. Sections four to six present available perceptual, factual and institutional data about corruption in Argentina. Section seven summarizes an empirical assessment of the extent and characteristics of the studied phenomenon, analyzing the abovementioned asymmetries between perceptions and facts on the one hand, and between social relevance and political prominence on the other. Finally, section eight proposes some hypothetical conjectures to explain the characteristics of the phenomenon as observed in Argentina.

3. Analytical Approaches

The subject of political corruption has been approached from several perspectives: moral, political and economic. In addition, there is a "communicational approach" that is particularly suited to explain corruption as "perception".

a) Moral

The moral approach to political corruption considers the phenomenon by comparing certain behaviors to a set of standards of acceptability. These standards tend to change over time as a function of social and cultural evolution, although changes in actual behavior tend to be slower. As moral standards in regards political corruption tend to change faster

than the actual behavior of bureaucrats and politicians, the social perception of corruption tends to evolve as well. According to this approach, the "asynchrony" among these evolutions explains the changes in political reactions to the phenomenon, "even when the purportedly 'corrupt' behavior remains constant".¹⁹

But "moral condemnation of corruption has utterly failed to curb it";²⁰ therefore, a shift from an "ethics focus" to a "technocratic program"²¹ has been proposed by leading international experts.

b) Political

Along with violence, treason, secrecy and propaganda, corruption has been defined as one of the "pathologies of politics", an array of "political phenomena that are ubiquitous, though universally condemned"²². Corruption "is not necessarily tied to a particular type of political regime"²³, and "no contemporary democratic society, to say nothing of the countries of Eastern Europe and the former Soviet Union, would get a complete bill of health where corruption is concerned...The much more basic point however is another: the widespread political turmoil associated with the issue of corruption is...a manifestation of a much deeper and more persuasive loss of public confidence in the institutions and

¹⁹ KIM, Una A.: Corruption As Rhetoric: The politics of Legitimacy in South Korea. Unpublished BA Thesis; Harvard College, Cambridge (1998), pg. 5. See LEYS, Colin: What is the Problem About Corruption? in "Political Corruption: Readings in Comparative Analysis", ed. HEIDENHEIMER, A., New York 1970), Pg. 37; and HUNTINGTON, Samuel: Political Order in Changing Societies, New Haven (1968), pg. 60; (both cited by UNA)

²⁰ NAIM, Moises: The Venezuelan Story. Revisiting the Conventional Wisdom. Carnegie Endowment for International Peace; www.ceip.org/files/Publicatons, pg. 5

²¹ KAUFMANN, Daniel: Corrupción y Gobernabilidad. Handout; OECD/OAS Conference "The Fight Against Bribery in International Transactions"; Buenos Aires (1998)

²² FRIEDRICH, Carl J.: The Pathology of Politics. Harper & Row, New York (1972), pg. 1

process of democracy".²⁴ In effect, this turmoil affects the political legitimacy of the state in itself. It has been argued that "If the citizens believe their generals, judges and tax gatherers to be corrupt, the 'reach' (what Mann refers to as intensive capacity) of the state is seriously diminished"²⁵.

The political approach to corruption considers "The abuse of power...[to be] at the heart of corruption"²⁶, and it "is more likely to be reduced by reducing the opportunities for it, by not charging the government with all kinds of tasks involving valuable discretionary power"²⁷.

c) Economic

"Economics is a powerful tool for the analysis of corruption...to understanding where corrupt incentives are the greatest and have the biggest impact"²⁸. Several economic factors are considered determinants of corruption: regulations and authorizations, taxation, public spending decisions, public provision of goods and services at below-market prices, and subsidies.²⁹ Corruption produces distortionary effects, introducing wrong incentives that redirect the allocation of resources rendering economic activity less efficient. On the other hand, corruption also has disincentive effects, intro-

²³ LAPALOMBARA, Joseph: Structural and Institutional Aspects of Corruption; in "Social Research", Vol. 61, No. 2 (1994), pg. 329

²⁴ LAPALOMBARA, Joseph: Op. Cit., pg. 326

²⁵ "LITTLE, Walter: Political Corruption in Latin America; in "Corruption and Reform", No. 7 (1992), pg. 43.

²⁶ FRIEDRICH, Carl J.: Op.Cit., pg. 134

²⁷ FRIEDRICH, Carl J.: Op.Cit., pg. 151

²⁸ ROSE-ACKERMAN, Susan: Corruption and Government; Cambridge University Press, New York (1999), pg. xi.

²⁹ TANZI, Vito: Corruption Around the World; IMF Staff Papers, Vol. 45, No. 4; Washington (1998), pgs. 565 and 571.

ducing new risks and uncertainties that deter economic prospective, especially investment.³⁰

Depending on different economic analytical models, proposed policies to fight corruption vary as well. i) The "helping hand model" considers regulations and government intervention legitimate responses to "market failures", and corruption is seen as a "personal failure" of bureaucrats and politicians; the solutions are therefore, better salaries for, more controls upon, and correct incentives for public servants. ii) The "invisible hand model" views the market as working very well without regulation or government intervention; corruption is seen as a "rational response" of economic actors to government failure, and it is judged as beneficial for economic development. iii) In the view of the "grabbing hand model", bureaucrats and politicians—whether in a democracy or not—do not act to maximize social welfare, but to benefit their own constituencies, special interests or themselves, and that regulations are instrumental to their empowerment; corruption is therefore seen as the result of regulations that create opportunities for corrupt behavior. Hence the solution is better served by privatization, deregulation and liberalization, leaving as little discretionary power as possible in the hands of politicians and bureaucrats.³¹

d) *Communicational*³²In this approach "society's perception of reality is determined by its exchange of symbolic

³⁰ GOUDIE, A.W. and SATASAVAGE, David: A Framework for the Analysis of Corruption; in "Crime, Law and Social Change", No. 29 (1998), pg. 138.

³¹ See SHLEIFER, Andrei and VISHNY, Robert: The Grabbing Hand. Harvard University Press, Cambridge (1998), pgs. 1/5 and 11/12.

³² This approach has been recently developed in two unpublished theses: BORCHERS, Timothy: The Rhetorical Construction of Allegations of Political Corruption. Unpublished Ph.D. Dissertation; Wayne State University (1996); and KIM, Una A.: Corruption As Rhetoric: The politics of Legitimacy in South Korea. Unpublished BA Thesis; Harvard College, Cambridge (1998)

communication"³³. The basic concept here is that "what we know of reality is the result of our interactions with society and other individuals"³⁴, because "however important to us is the tiny sliver of reality each of us has experienced firsthand, the whole overall 'picture' is but a construct of our symbol systems."³⁵ Therefore, "Our subjective reality is dependent upon our interpretation of symbols"³⁶. This theory argues that "the symbolic construction of reality extends to the concept of politics...but with an important intermediary factor—the mass media"³⁷, and that "the media's interpretation of political events is vital to our creation of reality".³⁸

Upon this basis, the communicational theory reaches the following conclusions regarding corruption: i) First, "corruption should be viewed as a phenomenon in which perceptions are as important as an 'act' that may have occurred"³⁹. ii) Second, "the public's response to acts of corruption does not necessarily depend on a rational judgment of actions that take place. Rather, the members of the public...weigh factors [such] as the alleged corrupted 'ethos', their attitude toward government officials at the time, and the degree and manner in which allegations of corruption are magnified in the media"⁴⁰. iii) Third, in order to understand the public's reaction to allegations of corruption, the process through which people attach meanings to symbols related to corruption

³³ BORCHERS, Timothy: Op. Cit., pg. 4

³⁴ BORCHERS, Timothy: Op. Cit., pg. 29

³⁵ BURKE, Kenneth: Language as Symbolic Action. University of California Press (1968), pg. 5; cited in BORCHERS, Timothy: Op. Cit., pg. 30

³⁶ BORCHERS, Timothy: Op. Cit., pg. 30

³⁷ BORCHERS, Timothy: Op. Cit., pg. 30

³⁸ Ibid

³⁹ BORCHERS, Timothy: Op. Cit., pg. 13

⁴⁰ BORCHERS, Timothy: Op. Cit., pg. 11

needs to be examined.⁴¹ And iv) fourth, "the political outcome of allegations of political corruption does not depend upon the severity of the crimes of which a politician is accused, but on the symbolic construction of the charges through the media and the political rhetoric".⁴²

The question that follows here is "How are allegations of political corruption symbolically constructed?"⁴³; or, in more theoretical terms, "How is meaning attached to symbols?"⁴⁴

Symbolic construction of allegations of political corruption has been described as "a set of social rules"⁴⁵ involving four steps: i) a 'sociolinguistic process' that 'names' certain acts, attaching to them two levels of meaning: first, the institutional meaning of "crime"; second, the political meaning of "cultural offense";⁴⁶ ii) a 'dialectical process' that publicly exposes accusations and defense, setting two competing dramas; iii) a 'narrative process', through which the media provides a third "public" drama in which the people may become involved.⁴⁷ And iv) a 'ceremonial process', that "visualizes" the punishment and purgation of the offender.

4. Perceptions

"Corruption is a perception of society...what is judged is not only corruption, but the appearance of corruption, too". While this statement, made by Herbert Alexander in Buenos Ai-

⁴¹ BORCHERS, Timothy: Op. Cit., pg. 11

⁴² BORCHERS, Timothy: Op. Cit., pg. 3

⁴³ BORCHERS, Timothy: Op. Cit., pg. 28

⁴⁴ BORCHERS, Timothy: Op. Cit., pg. 32

⁴⁵ GRONBECK, Bruce: The Rhetoric of Political Corruption; in HEIDENHEIMER, A. et Al. Ed.: "Political Corruption", London (1990), pgs. 173/189

⁴⁶ See GRONBECK, Bruce: Op. Cit., pg. 176.

res in 1993⁴⁸, was not original—the same thing was said two thousand years before in regards to Caesar's wife—it nonetheless expressed a generally accepted opinion. Perceptions of corruption over the decade were reflected in polls and surveys, both at the national and international levels.

a) The TI Index

The "Transparency International Corruption Perception Index" is the best-known index of corruption; it is based upon surveys of the opinions of businessmen, academics and country specialists who rank countries from 10 (least corrupt) to 0 (most corrupt). However, opinions are not everything; one of the most important International Monetary Fund officials points out that "It is important to keep in mind that the indexes reflect perceptions and not objective and quantitative measures of actual corruption".⁴⁹ For his part, the World Bank's expert cited earlier warned that "the margin of error in the ranking of a particular country can be very large".⁵⁰ Notwithstanding these limitations, the TI index is widely used, if not as a direct measurement, then as a reflection of opinions considered relevant. In this, Argentina has been placed consistently in the middle of the lower half of the rankings, below such countries as Chile, Spain, Italy and South Korea, and above countries as Colombia, India, Venezuela and Russia.

⁴⁷ Ibid

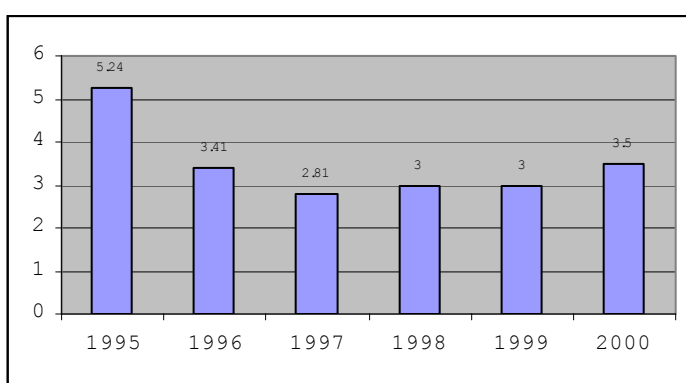
⁴⁸ *Ámbito Financiero*, Buenos Aires, 06-11-93

⁴⁹ TANZI, Vito: *Op.Cit.*.. pg. 577.

⁵⁰ KAUFMANN, Daniel: *Challenges in the Next Stage of Anti-Corruption*. Handout. Workshop: Combating Bribery in International Business; Buenos Aires (1998); pg.

Graph IV.II.1 shows the scores of Argentina in the TI Surveys from 1995 to 2000. Table IV.II.1 presents an abridged version of the TI Index Ranking over the same period.⁵¹

Graph IV.II.1
Transparency International Index
Argentina's Scores
(1995-2000)



⁵¹ Data: TANZI, Vito: Op. Cit. Pg. 579/580 (1995/1998); Transparency International Website (1999/2000).

Table IV.II.1
Transparency International Index
 Sample Countries
 (1995-2000)

Country	1995	1996	1997	1998	1999	2000
Denmark	9.32	9.33	9.94	10.00	10.00	9.80
New Zealand	9.55	9.43	9.23	9.40	9.40	9.40
Canada	8.87	8.96	9.10	9.20	9.20	9.20
Singapore	9.26	8.80	8.66	9.10	9.10	9.10
United Kingdom	8.57	8.44	8.22	8.70	8.60	8.70
Australia	8.80	8.60	8.86	8.70	8.70	8.30
United States	7.79	7.66	7.61	7.50	7.50	7.80
Germany	8.14	8.27	8.23	7.90	8.00	7.60
Chile	7.94	6.80	6.05	6.80	6.90	7.40
Spain	4.35	4.31	5.90	6.10	6.60	7.00
France	7.00	6.96	6.66	6.70	6.60	6.70
Japan	6.72	7.05	6.57	5.80	6.00	6.40
Hungary	4.12	4.86	5.18	5.00	5.20	5.20
South Africa	5.62	5.68	4.95	5.20	5.00	5.00
Greece	4.04	5.01	5.35	4.90	4.90	4.90
Italy	2.99	3.42	5.03	4.60	4.70	4.60
South Korea	4.29	5.02	4.29	4.20	3.80	4.00
Brazil	2.70	2.96	3.56	4.00	4.10	3.90
Argentina	5.24	3.41	2.81	3.00	3.00	3.50
Thailand	2.79	3.33	3.06	3.00	3.20	3.20
Colombia	3.44	2.73	2.23	2.20	2.90	3.20
China	2.16	2.43	2.88	3.50	3.40	3.10
Philippines	2.77	2.69	3.05	3.30	3.60	2.80
India	2.78	2.63	2.75	2.90	2.90	2.80
Bolivia		3.40	2.05	2.80	2.50	2.70
Venezuela	2.66	2.50	2.77	2.30	2.60	2.70
Russia		2.58	2.27	2.40	2.40	2.10
Indonesia	1.94	2.65	2.72	2.00		1.70
Nigeria		0.69	1.76	1.90		1.20

b) International Surveys

A 1997 worldwide study conducted by Gallup International celebrating its Fiftieth Anniversary measured perceptions of corruption at three levels: first, as a problem; second, among leaders; and third, among people in general. It was based upon a public opinion poll representative of all the population, answering a set of specific questions. The results were presented (according to the percentage of mentions) as a ranking of problems in the first case and as a ranking of countries in the other two.

Corruption is considered the number 1 problem in Latin America, the Far East and Africa; in the Middle East it is number 2, in Eastern Europe it is number 3 and in Western Europe number 5. Regarding perceived corruption among both leaders and the general population, Argentina was again placed in the middle of the lower half of the ranking, below Greece, Bolivia, Japan and Colombia, and above Taiwan, Italy, South Korea and Russia.

Tables IV.II.2, 3 and 4⁵² show the figures.

⁵² Gallup International 50th Anniversary Study (1997).

Table IV.II.2
Perception of Corruption Among the Leaders
 Differences Less-More
 (Forty Countries-1997)

Positive Scores			Negative Scores		
1	Denmark	74	19	Greece	-2
2	Norway	67	20	Estonia	-6
3	Sweden	65	21	Bolivia	-14
4	Hong Kong	59	22	Belarus	-19
5	Netherlands	53	23	Romania	-23
6	Luxembourg	41	24	Belgium	-26
7	New Zealand	41	25	Japan	-33
8	Switzerland	37	26	South Africa	-34
9	Finland	34	27	Colombia	-34
10	Uruguay	30	28	Argentina	-35
11	United Kingdom	28	29	Taiwan	-36
12	Israel	27	30	Yugoslavia	-36
13	Germany	21	31	Hungary	-37
14	Chile	18	32	Italy	-37
15	Portugal	14	33	Bulgaria	-44
16	Ireland	12	34	Ukraine	-49
17	Costa Rica	8	35	Russia	-50
18	Spain	4	36	Pakistan	-51
			37	Turkey	-59
			38	India	-67
			39	Nigeria	-70
			40	Korea	-79

Table IV.II.3
Perception of Corruption Among People
Differences Less-More
(Forty Countries-1997)

Positive Scores			Negative Scores		
1	Norway	65	24	Belarus	-3
2	Denmark	60	25	Bulgaria	-5
3	New Zealand	57	26	Ukraine	-6
4	Sweden	54	27	Romania	-6
5	Hong Kong	54	28	India	-8
6	Finland	45	29	Argentina	-9
7	Bolivia	43	30	Hungary	-10
8	Switzerland	41	31	Belgium	-11
9	Uruguay	41	32	Taiwan	-16
10	Luxembourg	36	33	Italy	-17
11	Netherlands	34	34	Russia	-17
12	Israel	30	35	Pakistan	-21
13	Ireland	27	36	Yugoslavia	-23
14	Greece	26	37	Korea	-31
15	United Kingdom	26	38	South Africa	-31
16	Chile	23	39	Nigeria	-32
17	Costa Rica	22	40	Turkey	-38
18	Germany	19			
19	Portugal	18			
20	Estonia	16			
21	Japan	7			
22	Spain	0			
23	Colombia	0			

Table IV.II.4
Country's Most Important Problems
Ranking by Region
(Forty Countries-1997)

Problem	W-Europe	E-Europe	L-America	F-East	M-East	Africa
Corruption	22%	42%	45%	56%	33%	55%
Poverty	20%	51%	43%	18%	30%	13%
Violence	25%	10%	18%	17%	28%	23%
Unemployment	48%	44%	37%	34%	27%	21%
Crime	33%	34%	12%	28%	23%	32%
Environment	11%	7%	5%	27%	9%	2%
Drugs	36%	8%	35%	13%	38%	13%

c) National Surveys

Gallup Argentina conducted systematic surveys at the national level showing that domestic public opinion over the nineties considered corruption a problem of importance, within a set of problems comprised of unemployment, education, security, and poverty. The ranking was headed by unemployment for eight of the ten years; corruption has consistently placed second.

Table IV.II.5⁵³ presents the figures for each year. Table IV.II.6⁵⁴ presents the averages for the decade.

⁵³ Data: Gallup Argentina

⁵⁴ Data: Gallup Argentina

Table IV.II.5
Country's Most Important Problems
Argentina
Ranking (1991-1999)

	1990		1991		1992		1993		1994	
	Problem	%	Problem	%	Problem	%	Problem	%	Problem	%
1°	Unemployment	34	Unemployment	33	Corruption	16	Unemployment	26	Unemployment	32
2°	Inflation	21	Corruption	16	Education	16	Corruption	19	Corruption	13
3°	Corruption	15	Security	11	Unemployment	13	Education	10	Poverty	12
4°	Security	7	Inflation	10	Retirement	12	Salaries	10	Salaries	7
5°	Drugs	5	Drugs	8	Drugs	11	Drugs	9	Retirement	7

	1995		1996		1997		1998		1999	
	Problem	%	Problem	%	Problem	%	Problem	%	Problem	%
1°	Unemployment	37	Unemployment	39	Corruption	30	Unemployment	36	Unemployment	40
2°	Corruption	13	Corruption	23	Unemployment	28	Corruption	24	Corruption	19
3°	Education	12	Poverty	13	Poverty	9	Poverty	9	Poverty	10
4°	Salaries	10	Education	8	Justice	9	Education	8	Security	10
5°	Poverty	10	Justice	9	Security	7	Security	7	Education	7

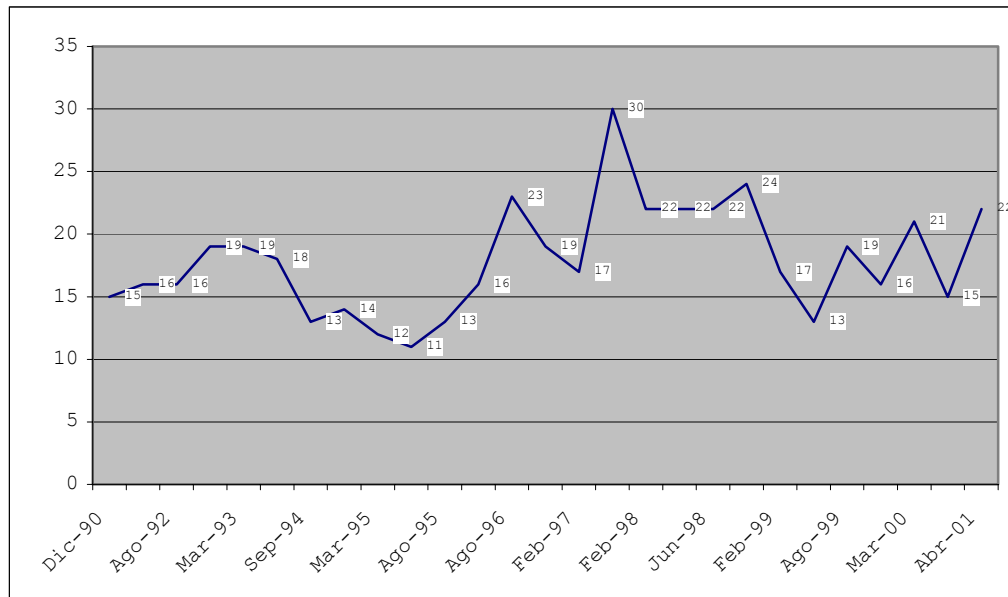
Table IV.II.6
Country's Most Important Problems
Argentina
Average 1991/1999

	Problem	%
1°	Unemployment	31.8
2°	Corruption	18.8
3°	Poverty	10.5
4°	Education	10.1
5°	Security	8.4

Perceptions of corruption in Argentine public opinion varied over time. In the period of more active reforms (1991-1995) it tended to decline; it visibly rose from 1995 to 1997, coinciding with the political campaign that, based on the issue of corruption, led to the opposition's electoral victory in October 1997. From then on, it tended to decline again, stabilizing below the peak but above the average for the decade.

Graph IV.II.2⁵⁵ shows the trend.

Graph IV.II.2
Perception of Corruption as a Problem
Argentina
(1990-2000)



Polls are powerful instruments for studying social perceptions and attitudes, not measuring facts. That is why "the recognition of the limits of each single corruption indicator or index does point to the desirability (for researchers and

⁵⁵ Data: Gallup Argentina

policy-makers alike) of always applying a multi-pronged empirical approach"⁵⁶. In the next section a different approach (based on facts, not perceptions), will be applied.

5. The Facts

It has been said that if corruption could be measured, it could probably be eliminated, but that this is impossible because any attempt to measure acts of corruption would require counting many relatively unimportant actions and identifying each one, and (it is argued) that information is simply not available.⁵⁷ Strictly speaking, this is correct. Nevertheless, if the usefulness of an instrument can be accepted despite certain limitations—as polls and surveys are accepted despite theirs—other methods can provide reliable “factual” direct information.

In the case of Argentina there are two official reports from two different independent offices under two different administrations that identify and enumerate acts of corruption reported over two different periods of time: the "1998 Report of the General Attorney's Office" (Procuración del Tesoro de la Nación)⁵⁸ and the "2000 Report of the Anti-Corruption Office" (Oficina Anticorrupción)⁵⁹. Although each report follows a different methodology, both consist of factual information, analyze hundreds of denunciations using technical standards, consider each act on an individual basis, and present the results in a quantitative manner.

⁵⁶ KAUFMANN, Daniel: Op.Cit., pg. 13

⁵⁷ TANZI, Vito: Op.Cit., pg. 566

⁵⁸ PROCURACIÓN DEL TESORO DE LA NACIÓN: Informe sobre las Presentaciones efectuadas ante la Procuración del Tesoro de la Nación (Decreto 197/980). Buenos Aires (1998).

a) *The 1998 Report of the General Attorney's Office*⁶⁰

During the electoral campaign and the months following the October 1997 mid-term elections, opposition politicians and Congressmen made public references to corruption in the Federal Government. The President instructed me, as General Attorney⁶¹ (Procurador del Tesoro de la Nación), to conduct the proper investigations and to take the necessary steps to ask them to put the information they had at judges' disposition.

An important number of opposition Congressmen⁶² and political leaders—including current President Fernando De la Rúa, who was then Chief of the Government of the City of Buenos Aires and president of the Radical Party—presented the General Attorney with a quantity of documents and materials of diverse type and value: 1008 documents in 5883 pages. The event received more than ordinary media coverage.

Table IV.II.7⁶³ summarizes these documents, classified by type.

⁵⁹ OFICINA ANTICORRUPCIÓN: Informe Anual. Buenos Aires (2000)

⁶⁰ "General Attorney " is the conventional translation for Procurador del Tesoro de la Nación, who is the top Legal Officer of Government's executive branch. It is similar but not identical to the US "Attorney General".

⁶¹ Decree 197/98; during my tenure as Procurador del Tesoro.

⁶² Bordenave, Marcela; Bravo, Alfredo; Cafiero, Juan Pablo; Castro, Alicia; Conti, Diana B.; D'Alessandro, Dario; Fernandez de Combes, Elsa; Gonzalez, Maria América; Parentella, Irma; Vago, Ricardo; Vensentini, Marcelo; Villalba, Alfredo; Viqueira, Horacio.

⁶³ PROCURACIÓN DEL TESORO DE LA NACIÓN: Op. Cit., pg. 4

Table IV.II.7
Documents Presented to the General Attorney's Office
(According to Type)

Type of Documents	Number
Congressional Resolution and Declaration Drafts	609
Congressional Bills of Laws Drafts	138
Copies of Reports of the General Auditing (AGN)	103
Copies of letters	74
Copies of presentations to the Judiciary	37
Copies of contracts and auxiliary documentation	14
Copies of files and administrative documents	13
Copies of documents-letters	5
Copies of parliamentary working papers	5
Copies of Reports of the General Controller (SIGEN)	2
Total documents presented	1008

This data was systematized in four steps: i) identification of documents containing any type of mention referring to corruption; ii) deletion of redundant materials; iii) determination of non-redundant references to acts of corruption; and iv) determination of non-redundant references to administrative irregularities. In order to classify these documents, corruption was defined in accordance with the Inter-American Convention Against Corruption.

Out of one thousand denunciations, half made no mention referring to corruption, while one-fourth contained repeated charges. However, after technical review, there were only twelve referred to alleged acts of corruption, out of which ten were already under judicial procedures, while the remaining two had been subject to previous administrative inquiries and the involved personnel acquitted. In addition, there were

sixteen mentions of administrative irregularities, nine of which were already under judicial procedures, while the remaining seven were minor mistakes or wrongdoings.

Table IV.II.8⁶⁴ presents the figures.

Table IV.II.8
Documents Presented to the General Attorney's Office
(Contained Mentions According to Type)

Type of Mention	Number
Generic mentions of corruption	484
Not redundant generic mentions of corruption	254
Not redundant mentions of "acts of corruption"	12
Not redundant mentions of administrative irregularities	16

The acts of corruption mentioned in the denunciations analyzed in the 1998 Report of the General Attorney's Office referred to the following matters: i) public procurement; ii) public works; iii) judicial transactions; iv) military sales; and v) public benefits. None of them referred directly to the process of reforms.

b) The 2000 Report of the Anti-Corruption Office

In December 1999 the new administration created a new "Anti-Corruption Office" (ACO), replacing the "National Office of Public Ethics"⁶⁵. The competencies of this new office included the following: i) To receive denunciations related to public corruption; ii) To investigate public agents and officers; iii) To present denunciations to the judges. Furthermore, the Anti-Corruption Office would produce an annual report on its activities.

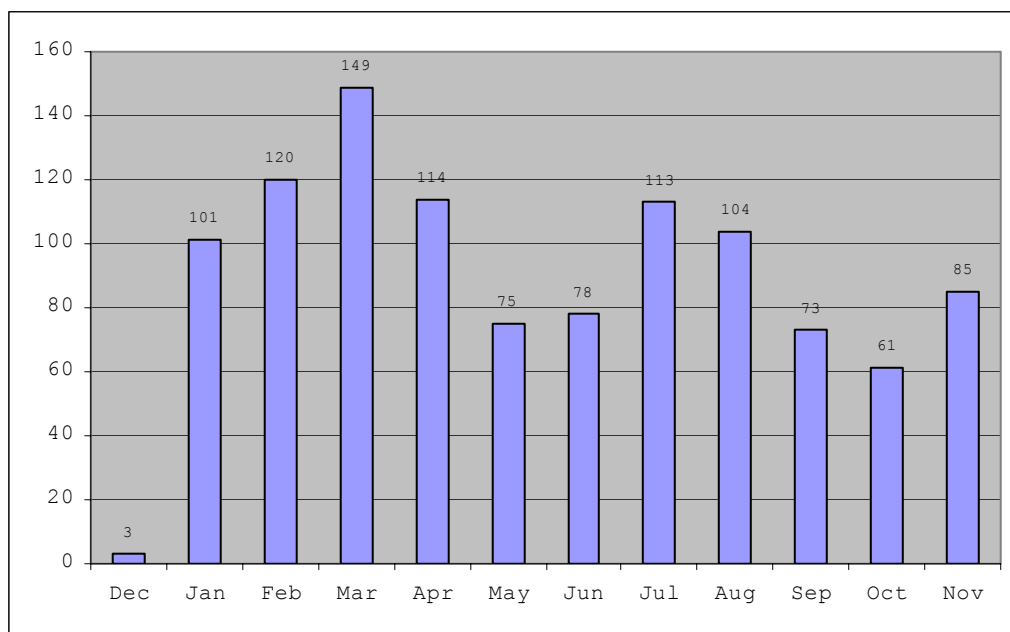
⁶⁴ PROCURACIÓN DEL TESORO DE LA NACIÓN: *Op. Cit.*, pg. 9

⁶⁵ The creation of the National Office of Public Ethics is referred in this Section, 3.

The Annual Report of the year 2000 was the first from the new ACO and the new Administration. It reported that throughout the year, 1076 files were opened, based on denunciations of private citizens, officers, monitoring agencies and the media.

Graph IV.II.3⁶⁶ shows the number of files opened by month; Table IV.II.9⁶⁷ presents the number of opened files, classified by type of denouncer.

Graph IV.II.3
Files Opened by the Anti-Corruption Office
(Monthly-2000)



⁶⁶ OFICINA ANTICORRUPCIÓN: Informe Anual 2000; pg. 22

⁶⁷ OFICINA ANTICORRUPCIÓN: Informe Anual 2000; pg. 31

Table IV.II.9
Files Opened by the Anti-Corruption Office
(According to Type of Denouncer)

Denouncer	Number
Citizens	817
Ex officio	119
Public office	104
Media	25
Monitoring agencies	11
Total	1076

Out of all these denunciations, one-third were dismissed; one-third were reserved for further examination because there was not enough information to determine whether the act actually took place; almost 20% were remitted to other offices because they were not acts of corruption but administrative irregularities; something more than 10% was brought to the attention of the judges for evaluation; the ACO decided to take active judicial engagement in a small number of these cases.

Table IV.II.10⁶⁸ presents the figures.

Table IV.II.10
Files Opened by the Anti-Corruption Office
(According to Procedural Situation)

Procedural Situation	Number
Dismissed (to archives)	350
Remitted to other offices	183
Under examination	365
Brought to notice of Judges	127
Active Judicial denunciation	17

⁶⁸ Ibid

The acts of corruption mentioned in the denunciations analyzed in the 2000 Report of the Anti-Corruption Office referred to the following matters: i) public procurement; ii) public works; iii) public benefits; and iv) officials' personal enrichment. None referred directly to the process of reforms.

c) Resulting data

There were more than two thousand denunciations in both reports; made, without any restrictions, by the most important leaders of the opposition, private citizens, officers, monitoring agencies and the media. The denouncer did not have to "prove" that a corrupt act had been committed; they only had to present information of facts that could be a corrupt act. However, the result of both reports rendered less than thirty identifiable cases that would have conformed to the general definition of "Act of Corruption" under the "Inter-American Convention Against Corruption".

6. Reforms and Institutional Changes

There is a growing consensus that "well-designed and properly executed market-oriented reforms" are the most effective anti-corruption tools⁶⁹. For instance, the "inventory of elements to combat corruption" proposed by Transparency International⁷⁰ is basically comprised of the following: economic reform (liberalization, deregulation, privatization and trade opening); administrative, civil service, budget, tax

⁶⁹ KAUFMANN, Daniel: Corruption: The facts. "Foreign Policy", Summer 1997, pg. 122. And: Are we being "Good" or "Smart" About Corruption?. Handout, 8-ICACC; Lima (1997)

⁷⁰ SCHLOSS, Miguel: Combating Corruption for Development; Paper presented at the OECD/OAS Conference "The Fight Against Bribery in International Transactions"; Buenos Aires (1998); pg. 2 and Attachment 1.

and legal reforms; enhancing the independence of judges and prosecutors; and setting up special anti-corruption agencies.

As data presented in the respective chapters show, all these reforms have been fully carried out in Argentina with a more than acceptable degree of success. Privatization of state-owned firms⁷¹ in a context of deregulation, economic reform⁷² and civil service reform⁷³, eliminated the most relevant "structural determinants" of corruption. Privatization of the state-owned media complex (that in 1989 owned most of the country's TV and radio stations⁷⁴) not only improved the free press to unprecedented levels, but was also a very important change as regards transparency: the media became a major actor, monitoring government activities and the loudest voice in the public debate about corruption.

In addition to the general process of structural reforms, a number of specific institutional changes instrumental to fight corruption were also implemented:

i) Inclusion of the "Ethical Clause" in the Constitution; the new Article 36, in which the last sub-paragraph states: "He who, procuring personal enrichment, incurs in serious fraudulent offense against the Nation shall also attempt against the democratic system, and shall be disqualified to hold public office for the term specified by law. Congress shall enact a law on public ethics which shall rule the exercise of public office"⁷⁵.

ii) Inclusion at the constitutional level of three new monitoring agencies: Article 85 created the General Auditing

⁷¹ See Chapter III.I

⁷² See Chapter I.I

⁷³ See Chapter III.III

⁷⁴ See Chapter III Section I.10.j

Office, as a technical and autonomous body; Article 86 created the Ombudsman, as an independent official; and Article 120 created the Public Ministry as an independent body, headed by the General Prosecutor.

iii) To enhance the independence of the judiciary, the reformed Constitution created in Article 114 the Council of the Magistracy, as an independent body which selects and proposes candidates for judgeships.

iv) Special laws enhanced the independence of the General Attorney (PTN-Law 24776) and the General Comptroller (SIGEN-Law 24156).

v) Argentina signed the "Inter-American Convention Against Corruption" on March 29, 1996, which was approved by Congress on January 17, 1997.

vi) Creation of the "National Office of Public Ethics" (Decree 152/97) upon the model of the U.S. Anti-Corruption Office (re-created on a similar basis as the "Anti-Corruption Office" by the new administration by Decree 102/99).

vii) Enactment of the "Code of Public Function Ethics" (Decree 41/99).

viii) Congress passed the "Law of Public Function Ethics" in September 1999.

Nevertheless, despite these reforms and institutional innovations, the polls show that public perception of corruption in Argentina did not improve.

7. Characteristics of the Phenomenon in Argentina

Corruption, along with other political pathologies, is ubiquitous, and it is probably impossible to make it totally

⁷⁵ Constitution of the Argentine Nation; English version; Argentine Senate web-

disappear. Nevertheless, "it is equally patent that when it became too widespread it became destructive of the political community...and only within...strictly circumscribed limits can it function without creating a serious threat to the survival of the political order".⁷⁶ Did corruption in Argentina pass those limits? From the evidence, it does not seem so.

While perception of corruption is high, the measurements are far from the extremes: i) In the TI Ranking, Argentina has been placed consistently in the middle of the lower half of the ranking, and its score has been improving since 1997. ii) In the Gallup International study, Argentina was again placed in the middle of the lower half of the ranking, regarding perceived corruption both among leaders and general population; and perception of corruption as a problem ranks lower in Argentina than in the Latin American average. iii) While corruption is considered a problem of importance in the Gallup national surveys, it ranks below unemployment; the average percentage of mentions throughout the decade was 18.8%, surpassing 25% only once.

While available factual information confirms the existence of acts of political corruption in Argentina, it does not do so to an extent that authorizes consideration of corruption as a "property" of the Argentine state. Both reports summarized above⁷⁷ are the result of massive amounts of documentation produced directly and indirectly by a wide, diverse and unrestricted array of sources. Both reports analyzed the materials following technical standards, and both arrived at similar findings: i) demonstrating the existence of elements

site.

⁷⁶ FRIEDERICH, Carl: Op. Cit., pg. 2

⁷⁷ See this Section, 3.

that supported the allegations of political corruption; ii) identifying a small number of such allegations (less than two in one hundred) as suitable to the internationally accepted definition of "act of corruption"; and iii) verifying that none of the identified acts directly referred to the reforms process.

From those perceptual and factual data, two asymmetries can be identified in the phenomenon of political corruption as it has been described in Argentina:

i) First, the asymmetry between the social perception and the factual information: While the perception of corruption is high, the measurements are far from the extremes: in national and international surveys, Argentina is in the middle of the lower half of the ranking. On the other hand, available factual information seems to confirm the existence of acts of political corruption in Argentina, though its pervasiveness is limited.

ii) Second, the asymmetry between its perception as social problem and its relevance as political issue: While corruption is considered a problem of importance in the national surveys, it has been consistently the number 2 problem, with an average percentage of mentions of 18.8%; the number 1 problem has consistently been unemployment, with an average of 31.8% mentions. However, from 1997 on, corruption was almost always the dominant issue in the political debate.

These characteristics raise several questions: Why have perceptions of political corruption been so resilient? Why did corruption become so prominent? In more specific terms, these characteristics pose two questions: i) What explains the asymmetry between perceptions and factual information?

ii) Why did a phenomenon that has consistently been perceived as the number 2 problem become the number 1 political issue?⁷⁸

The theoretical elements presented earlier, have prepared the ground for finding the answers.

8. Hypotheses

Here it will be argued that the social construction of corruption allegations explains the first question, and that the perceived intention of President Menem to attempt a second re-election contributes to an explanation of the second.

a) The perception of corruption does not depend on factual determinants, but on symbolic construction.

The first question refers to the asymmetry between perception and factual information: while perception of corruption is high, factual information does not verify the phenomenon with an equally high level of pervasiveness. What explains this asymmetry?

The elements provided by the communicational theory⁷⁹ fit the case best: i) The social perception of reality is determined by the exchange of symbolic communication upon which depends the public's subjective reality; this symbolic construction encompasses politics through the mass media; therefore, the media's interpretation is vital to the creation of subjective reality. ii) Regarding corruption, perceptions are as important as 'acts'; the public's perceptions do not depend on a rational assessment of actual acts, but on factors such as attitude toward government, the public "persona" of the accused, and the mode in which the allegations are

⁷⁸ I thank Leonardo Vivas (WCFIA, Harvard University) for his contributions on this point.

⁷⁹ See this Section, 5.d

treated in the media. iii) The political outcome of allegations of corruption does not depend upon the severity of the accusations but on the symbolic construction of the charges through the media and the political rhetoric.

Perception of corruption is not dependent on factual determinants but on symbolic construction. That symbolic construction is in turn built upon certain facts, through a three steps process: i) the 'naming' of the acts by both the actors and the media, attaching to them meanings of legal and political offenses; ii) the public exposition of accusations and defenses as two competing dramas; and iii) the media 'narrative' of a third drama, in which the people may play a part.

Chart IV.II.1 summarizes this process.

Chart IV.II.1
Symbolic Construction Process
 Of Allegations of Political Corruption

Step	Who	What
Naming	Actors + Media	Legal + Political Meanings
Debate	Actors	Competing Dramas: Accusation + Defense
Narrative	Media	Public Drama: people take part

This process of the social construction of allegations of political corruption is what brought reason to the asymmetry between perception of corruption and factual information.

b) Political corruption and re-election were "merged" into the encompassing idea of "abuse of power", becoming a political symbol of institutional offense and of political transgression.

The second question refers to the asymmetry between relevance as perceived problem and importance as political issue: while corruption has been consistently the Number 2 problem, it became the number 1 political issue. What are the reasons for this?

According to public opinion polls, corruption has consistently ranked second in the country's perceived problems. However, available factual information would place corruption lower in the ranking, and no new salient scandals appeared over the considered period. Nevertheless, from 1997 onwards corruption was almost always the dominant issue in the national political debate. If there were no significant changes in the conditions (perceptions, factual data, or scandals) but the political prominence of corruption increased, the cause has to be another concomitant phenomenon, for a constant does not explain a variation. It will be argued here that the concomitant phenomenon was the alleged intention of President Menem to attain a second presidential re-election.

A combination of political and communicational elements⁸⁰ will be suitable for this case: i) President Menem was elected for the first time in 1989; the constitutional text effective at that time did not allow presidents to be re-elected. However, in 1994 several reforms were included in the Constitution⁸¹, among them, the possibility for a presidential re-election. Public opinion strongly supported this

⁸⁰ See this Section, 3.b,d.

reform⁸². ii) Under the new constitutional rules, President Menem was re-elected in 1995; he was the first Argentine president re-elected since President Perón, almost half a century before. Voters strongly supported Menem in his re-election, with more than 50% of the votes. iii) Around 1996 the idea of a second re-election for a third term appear within certain circles. President Menem publicly denied any intention of running again and never personally made a single institutional movement towards re-election. Nevertheless, some of his aides made two attempts through lawsuits to attain a judicial interpretation of the new Constitution, favorable to a second re-election; neither succeeded. As a matter of fact, President Menem did not run in 1999. iv) The idea of a second re-election (named by the press "re-re-election") produced strong reactions both from the opposition and from some Justicialista leaders as well⁸³. But—more relevant for this argument—it received a clear rejection in the public opinion surveys.

Graph IV.II.4⁸⁴ presents the figures.

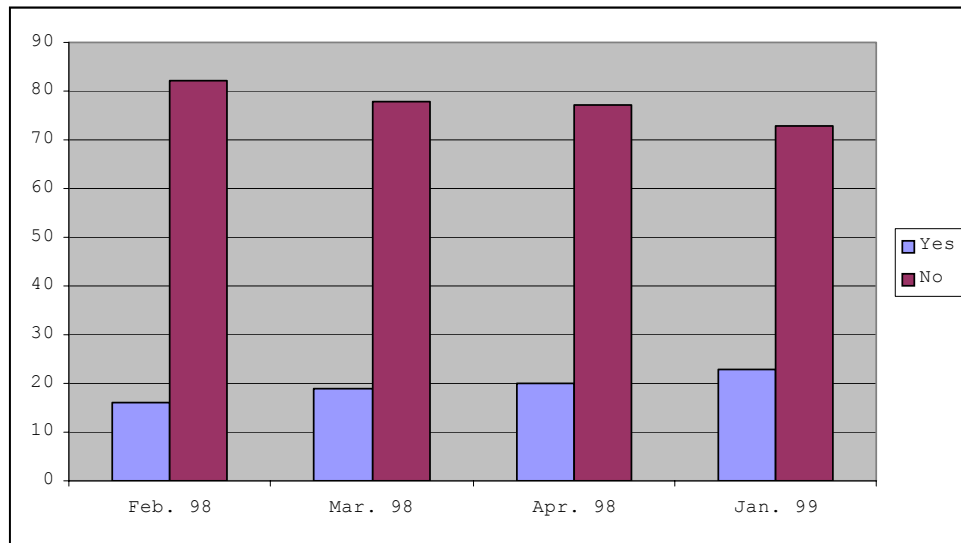
⁸¹ See Chapter III, Section II.

⁸² See Chapter III, Section II, 1.

⁸³ Governor Duhalde (PJ-Buenos Aires), actually issued a decree calling a provincial referendum against re-election.

⁸⁴ Data: La Nación. Buenos Aires, 2/4/99

Graph IV.II.4
Attitude Towards a Second Re-election
(1998/1999)



As was said earlier, the first step of the symbolic construction of allegations of political corruption is the 'naming' of the acts, by which actors and media attach meanings of legal and political offenses. That naming implies three levels: i) "factual" (mentioning the acts as direct reference to experience); ii) "institutional" (giving the acts technical or legal meaning); and iii) "cultural" (giving the acts meanings linked to values considered basic for the symbolic environment). Through this process, simple facts are first upgraded to the level of institutional offense, and then to the level of cultural offense.⁸⁵ Facts are thereby transformed into cultural and political symbols.

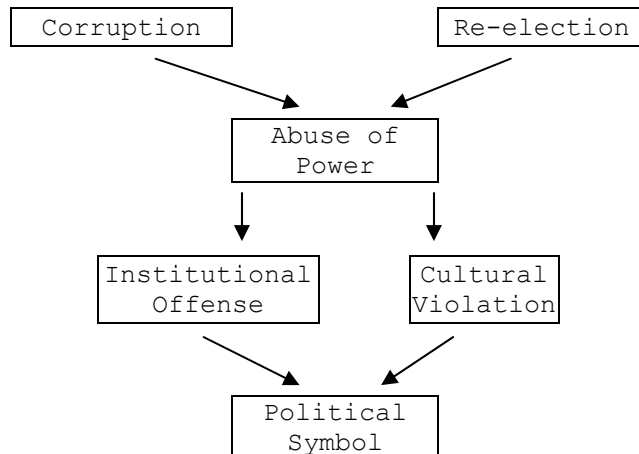
How was the "re-re-election" debate linked to corruption? The argument is the following: i) The political "sub-

⁸⁵ See GRONBECK, Bruce: *The Rhetoric of Political Corruption*; in HEIDENHEIMER, A. et Al. Ed.: "Political Corruption", London (1990), pg. 176.

stance" of corruption is the idea of "abuse of power"⁸⁶; and an attempt at a second re-election was widely perceived as an abuse. ii) Corruption and re-election were "merged" into the encompassing idea of "abuse of power". iii) This idea of abuse of power was "named" as an institutional offense first, and as a violation of the political values after. iv) Thereby, political corruption (encompassed within the idea of "abuse of power") was transformed into a political symbol not only of institutional offense but also of political violation.

Graph IV.II.5 illustrates this process.

Graph IV.II.5
Corruption and Re-election: Symbolic Construction



This hypothesis helps to answer why the phenomenon of political corruption in Argentina, which has consistently placed second in public perception, became first in the political discourse.

⁸⁶ See this Section, 3.b.

- III -

ON PUBLIC DEBATE

It has been said that successful reforms require "isolation" of reformers. This has not been the case for Argentina, where reforms have been successful and widely debated—in the political field, academia, the business community and society at large—and the media has reflected that debate. A quantitative study of publications of the debate on convertibility in four major newspapers of Buenos Aires in terms of coverage, actors, arguments and circumstances, portrays a society which has learned how to make its voice be heard.

1. Reformers and Society

Conventional wisdom regarding political costs of economic reform is that they are subject to a "time inconsistency" problem and a "collective action" problem.¹ i) The first is that although effects of reforms are positive in the medium and long run, there is a "valley of transition that must to be traversed before climbing higher hills".² ii) The second is that those affected by the short run economic hardship, would engage in collective action against reforms (union mobilization, electoral rejection, business lobbying).

In order to overcome those problems, the "isolation" of reformers has been suggested. The Chilean experience in the early eighties, where a coherent team of technocrats with enough delegated authority fostered a successful process of

¹ See HERRERA, Yoshiko: Government 1102, Harvard University; Lecture Notes (2000).

² PRZEWORSKI, Adam: Democracy and the market; Cambridge University Press UK (1991); pg. 138

reforms, has been cited in this regard³. Other case frequently recalled is that of South Korea, where successful reforms were "imposed by technocratic elites who were 'insulated' from the political pressures of interest groups and mass publics".⁴

This was not the case in Argentina. There was no "time inconsistency" problem, since the immediate effects of the reforms were visibly positive; as it has been pointed out above, "one of the outstanding values of this reform has been not only its sustainability over time, but its immediate positive impact in the firsts years"⁵. In addition, there was no "collective action" problem either, since the reforming government won four elections in a row after the process of reforms was launched.

Argentine reformers of the nineties were not isolated; on the contrary, for good or bad they had to be in close interaction with the political, economic, and social environment of the country in that time. As it has been presented throughout this book, every reform had to be discussed in Congress; most of them required a very complex process of consensus building and institutional design in which political parties, unions and business took part; and one—the reform of the Constitution—involved a political pact of historic dimensions.

"The reforms of the nineties in Argentina—as stated in the Introduction⁶—have been 'choices' made to solve certain

³ WILLIAMSON, John: *In Search of a Manual for Technopols*; in "The Political Economy of Policy Reform", Ed. Institute for International Economics, (!994), pg. 11

⁴ DIAMOND, Larry and PLATTNER, Marc F.: *Introduction*, in "Economic Reform and Democracy", Ed. By the authors; The Johns Hopkins University Press, Baltimore (1995), pg. xi.

⁵ See Chapter I, Section I.9

⁶ See Introduction, 1.

problems". Both problems and choices had been subject to reflection and permanent public debate; and belonging—as they did—to the public opinion, those analysis and proposals were reflected in the media. Fundamental problems and their possible solutions generated very deep and persistent public debates, to which the media devoted extensive coverage. This short section will consider a very representative case of the press coverage of that debate: the discussion on the Convertibility Plan.

2. The media contribution

During the nineties, the Argentine mass media institutions were, at the same time, subject of specific reforms and "part of the communications processes existing and operating in and around" political and economic changes as a whole.⁷ They were the subject of specific reforms because—as it has been presented elsewhere⁸—the privatization of numerous TV channels, radio broadcastings, and stock in press-related enterprises, was a very important component of the early stages of the reforms. On the other hand, from privatization onwards, media redefined their role as an independent actor of the system, and played it with increasing power.

In a quite oft-cited article⁹, Harold Lasswell summarized the communications process of society as follows: "The communication process in society performs three functions: (a) surveillance of the environment, disclosing threats and

⁷ ROGERSON, Ken: The role of the media in transitions from authoritarian political systems: Russia and Poland since the fall of Communism; in "East European Quarterly"; (Fall 1997); pg. 329.

⁸ See Chapter III, Section I.10.j

⁹ LASSWELL, Harold: The Structure and Function of Communication in Society; in "The Process and Effects of Mass Communication", edited by Wilbur SCHRAMM and Donald F. ROBERTS; U. of Illinois Press, (1971); pg. 84

opportunities affecting the value position of the community and of the component parts within it; (b) correlation of the components of society in making a response to the environment; (c) transmission of the social inheritance". And it concludes: "In democratic societies, rational choices depend on enlightenment, which in turn depends upon communication; and especially upon equivalence of attention among leaders, experts, and rank and file".

The subject of this section—media coverage of the social debate on convertibility—was encompassed in Lasswell's second function of the societal communication process: correlation of society's components in the building of collective responses to environmental changes. Studies about the effects of mass communications on social change consider that "Mass communication does not usually serve as necessary and sufficient cause of something, but rather functions with other factors and influences"¹⁰; and different forms of prior political knowledge have been pointed as one of the most relevant of those other factors and influences.¹¹ In the Argentine case, choices made by society supporting convertibility above almost any other consideration have been based to a great extent upon one specific type of "prior political knowledge": the social learning produced by a long period of inflation, in particular the "first hand" experience of hyperinflation.

It was in that situation in which the social communication through media of the debate among professionals, made substantial contributions correlating experts, decision mak-

¹⁰ See KLAPPER, Joseph: The Effectiveness of Mass Communication, cited in ROGERSON, Ken, Op. Cit., Note 16.

¹¹ WOONG RHEE, June and CAPPELLA, Joseph: The role of political sophistication in learning from news: Measuring schema development; in "Communication Research", Vol. 24, # 3, June 1997, pg. 197.

ers, actors and public opinion in legitimating convertibility as well as in re-shaping the patterns of social behavior: Argentineans changed from being a society "adaptive to inflation", to a society "defensive of stability".

3. The Study

a) This study will focus its attention on the following: i) the permanence of the debate over the Convertibility Plan in the media; ii) the actors of that debate; iii) the arguments used by both supporters and opponents of Convertibility; iv) the variations in the frequency of the publications related to this debate.

b) Although this debate has been a "multimedia" phenomenon—since it took place in graphic media as well as on TV and radio—this study will encompass only the printed press. It will consider the coverage in four major Buenos Aires' dailies: i) La Nación; ii) Clarín; iii) *Ámbito Financiero* and iv) *Página 12*.

c) The search and selection of the materials was done through Internet, checking the digital issues of the above mentioned four newspapers. The collection of *La Nación* and *Clarín* were available from 1996 onwards, but those of *Ámbito Financiero* and *Página 12* were partially on line since 1999; nevertheless, that small number of available issues of these two newspapers has been included.

d) The public debate on the Convertibility Plan has been in the media since its implementation, in March 1991, and is still there; hence, whatever period of time considered would be representative enough for a study like this. It would have been beyond the limits of this work to consider a span of ten

years—and taking into account the availability of the newspapers' digital issues—thus the temporal extent covered by this analysis is the period of twenty months beginning on April 1, 1999 and ending on December 10, 2000. This is a relevant period because it encompasses: i) the last year of President Menem's administration; ii) the campaign for Presidential elections; and iii) the first year of President De la Rúa's administration.

4. The Analysis¹²

a) *The considered universe*

Over the period of time determined for this study, a total of 500 articles on Convertibility were published in the four selected newspapers: 281 in La Nación, 187 in Clarín, 18 in Página 12 and 14 in Ámbito Financiero. This will be the "universe" considered in this study.

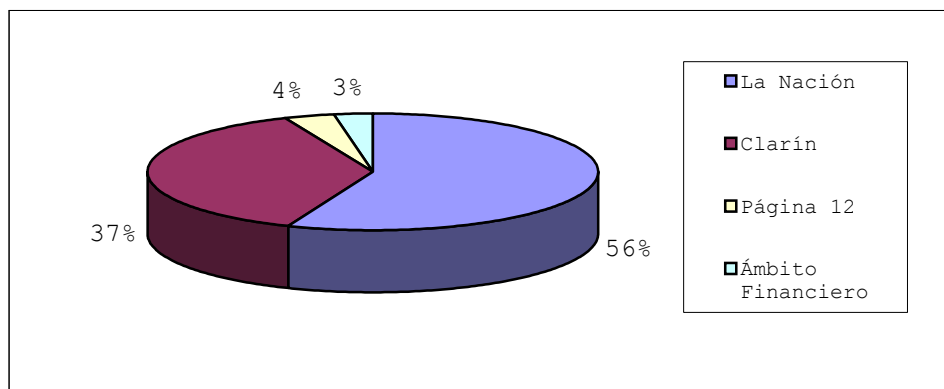
Table IV.III.1 presents the data and Graph IV.III.1 shows the percentages.

¹² This section was developed with the research assistance of Lic. Carolina Coronado

Table IV.III.1
Articles on Convertibility
(April 1999-December 2000)
Totals

Newspaper	Articles
La Nación	281
Clarín	187
Página 12	18
Ámbito Financiero	14
Total	500

Graph IV.III.1
Articles on Convertibility
(April 1999-December 2000)
Percentages



b) The stance towards convertibility

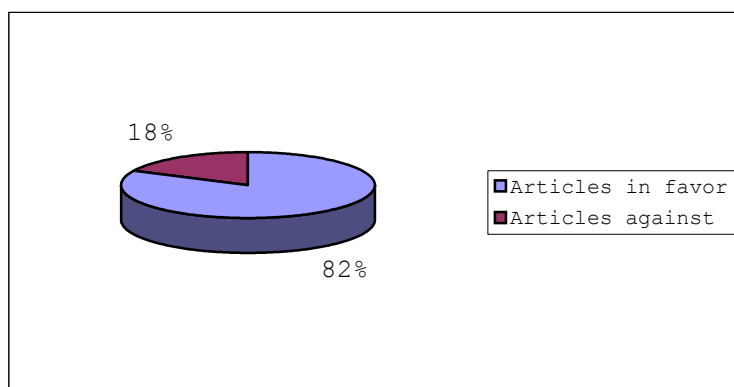
Out of that total, articles were distinguished between those in favor and those against convertibility. A significant 82% of the analyzed texts presented at least one argument supporting the model; the remaining 18% presented only criticisms.

Table and Graph IV.III.2 present the data.

Table IV.III.2
Articles on Convertibility
(In favor-Against)
Totals

Newspaper	In Favor	Against	Total
La Nación	236	45	281
Clarín	152	35	187
Página 12	10	8	18
Ámbito Financiero	13	1	14
Total	411	89	500

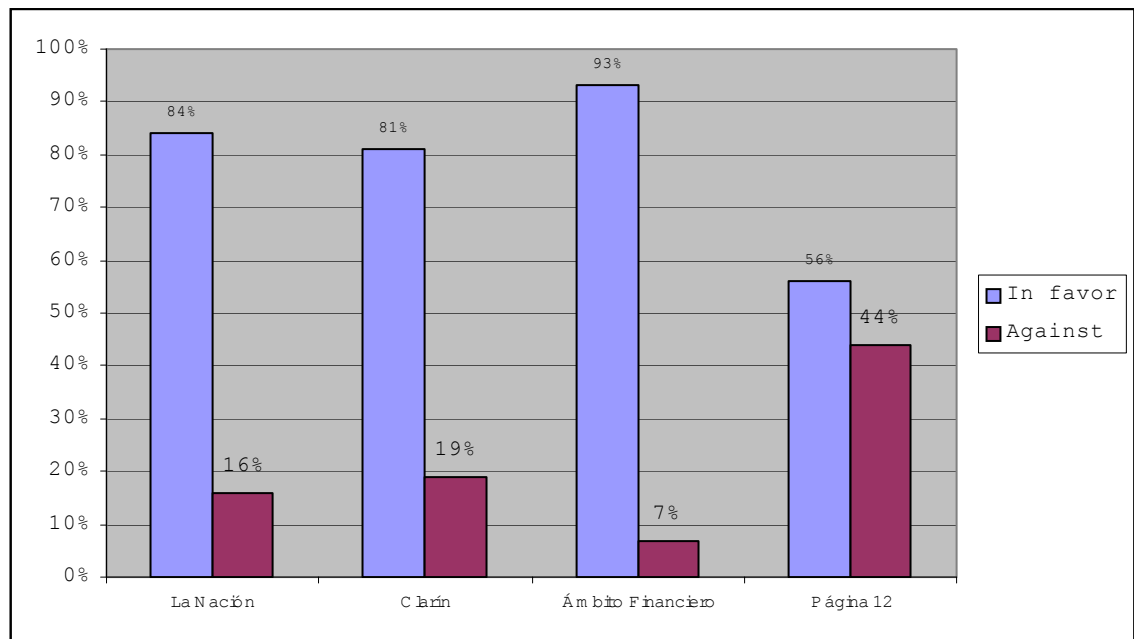
Graph IV.III.2
Articles on Convertibility
(In favor-Against)
Percentages



This general proportion between articles in favor and against convertibility was repeated considering each one of the four newspapers. In La Nación, out of 281 articles referred to convertibility 84% were in favor of the model and 16 against it; in Clarín, out of 187 articles 81% were in favor and 19 against; in Ámbito Financiero were 93% and 7%; and in Página 12—the most critical of the market oriented reforms—there were 56% in favor and 44% against the model.

Graphs IV.III.3 presents the percentages for each daily.

Graphs IV.III.3
Articles on Convertibility
(In favor-Against)
Percentages in Each Daily



c) The voices of the published opinions

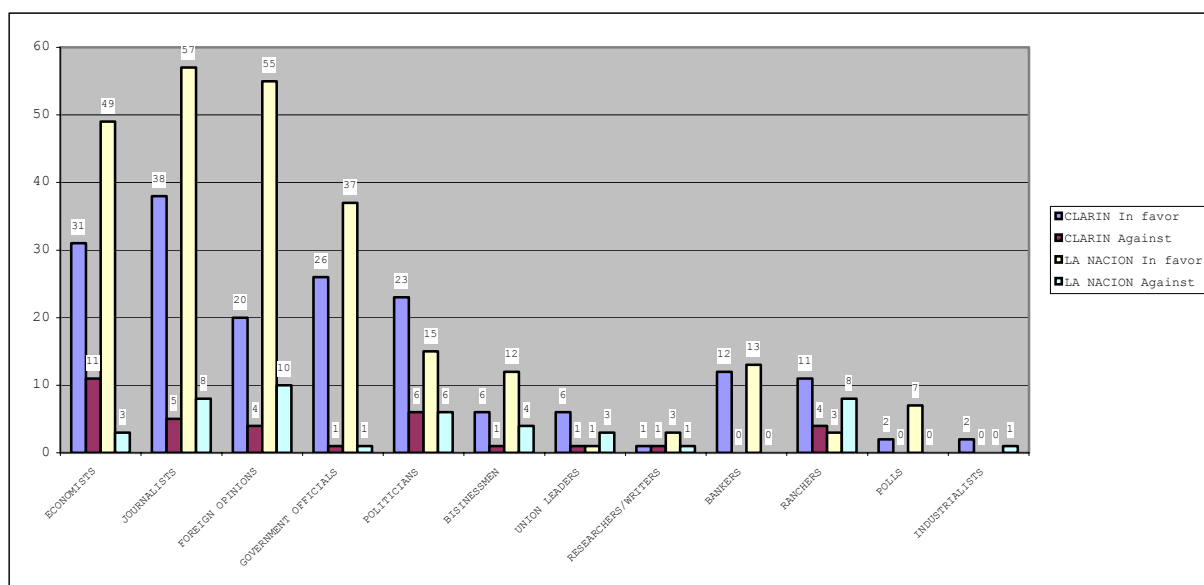
Every author of articles or voice of the opinions or judgments published by any of the four selected dailys, be they opinion supporting or opposing the model, have been included in one of the twelve categories of the following classification: i) Economists; ii) Journalists; iii) Foreign Opinions; iv) Government Officials; v) Politicians; vi) Businessmen; vii) Union Leaders; viii) Researchers/Writers; ix) Bankers; x) Ranchers; xi) Polls; and xii) Industrialists.

Table IV.III.3 and Graph 4 present the figures.

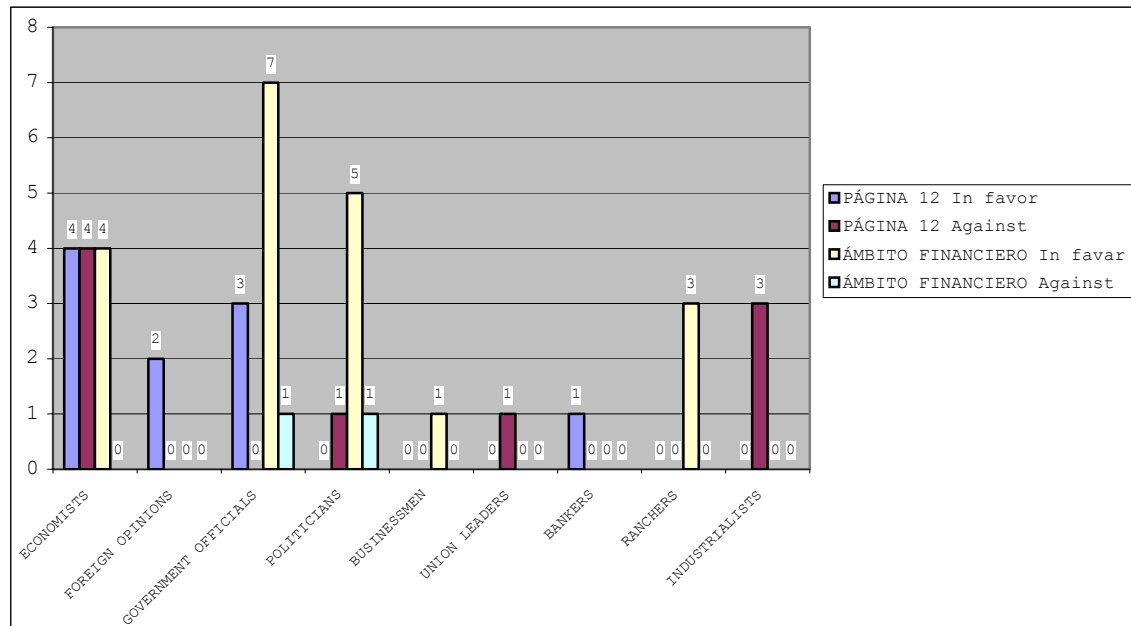
Table IV.III.3
Voices of Opinions

Voices	Clarín		La Nación		Página 12		Ámbito Fi- nanciero		Total (%)	
	In favor	Against	In favor	Against	In favor	Against	In favor	Against	In favor	Against
Economists	31	11	49	3	4	4	4	-	83	17
Journalists	38	5	57	8	-	-	-	-	88	12
Foreign Opinions	20	4	55	10	2	-	-	-	85	15
Government Offi- cials	26	1	37	1	3	-	7	1	96	4
Politicians	23	6	15	6	-	1	5	1	75	25
Businessmen	6	1	12	4	-	-	1	-	79	21
Union Leaders	6	1	1	3	-	1	-	-	58	42
Researchers/Writers	1	1	3	1					67	33
Bankers	12	-	13	-	1	-	-	-	100	
Ranchers	11	4	3	8	-	-	3	-	59	41
Polls	2	-	7	-					33	67
Industrialists	2	-	-	1	-	3	-	-		

Graph IV.III.4
Voices of Opinions
(Clarín and La Nación)



Graph IV.III.5
Voices of Opinions
(Página 12 and Ámbito Financiero)



Since newspapers are the source of this research, it is not unexpected that the majority of observed voices are journalists (136 cases); economists (94 cases) and foreign opinions (which encompasses several categories, 89 cases); then, there are politicians (50 cases) and government officials (41 cases); sectorial representatives (businessmen, bankers, union leaders, ranchers and industrialists) come next; and polls are referred to as well.

Also unsurprising are the stances of the different categories of voices towards convertibility, according to the articles considered in this study: bankers, government officials, journalists, foreign opinions and economists were above 80% in favor; businessmen, politicians, intellectuals, ranchers and union leaders were above 50% in favor; and industrialists were 67% against.

d) *The arguments*

The arguments made in the articles—either in favor or against convertibility—can be ordered according to a simple typology.

The typical arguments in favor of convertibility were the following: i) It was the successful economic model which society accepted as the only possible option (243 articles); ii) It stopped inflation, and was the cause of stability (95 articles); iii) It encouraged growth (29 articles) iv) It encouraged productivity (20 articles); v) It re-established national currency (13 articles); vi) It opened financial markets (10 articles); vii) It encouraged Foreign Direct Investment (10 articles); viii) It lowered poverty indexes (4 articles).

Table IV.III.4 presents these figures.

Table IV.III.4
Arguments in Favor of Convertibility

Arguments	Clarín	La Nación	Página 12	Ámbito Financiero	Total
This model was the only possibility	88	139	4	12	243
It stopped hyperinflation	32	52	5	6	95
It encouraged growth	9	18	1	1	29
It increased competitiveness	15	5	0	0	20
It re-established currency	1	11	0	1	13
It opened international financial markets	3	7	0	0	10
It encouraged FDI	6	4	0	0	10
It lowered poverty indexes	1	3	0	0	4

On the other hand, the typical arguments against the model were the following: i) It was an inflexible economic model (18 articles); ii) It diminished competitiveness (15

articles); iii) It increased production costs (13 articles); iv) It caused social crisis (12 articles); v) It caused unemployment (11 articles); vi) It caused recession (10 articles); vii) It was a "National Tragedy" (8 articles); viii) It caused currency overvaluation (7 articles); ix) It increased public expenditure (1 article).

Table IV.III.10
Arguments Against Convertibility

Arguments	Clarín	La Nación	Página 12	Ámbito Financiero	Total
Inflexible economic model	5	10	3	0	18
It diminished competitiveness	5	8	2	0	15
It increased production costs	3	9	0	1	13
Cause of the social crisis	8	4	0	0	12
Cause of unemployment	7	3	1	0	11
Cause of recession	3	7	0	0	10
"National Tragedy"	2	4	1	1	8
Cause of currency overvaluation	3	2	2	0	7
It increased public expenditure	1	0	0	1	2

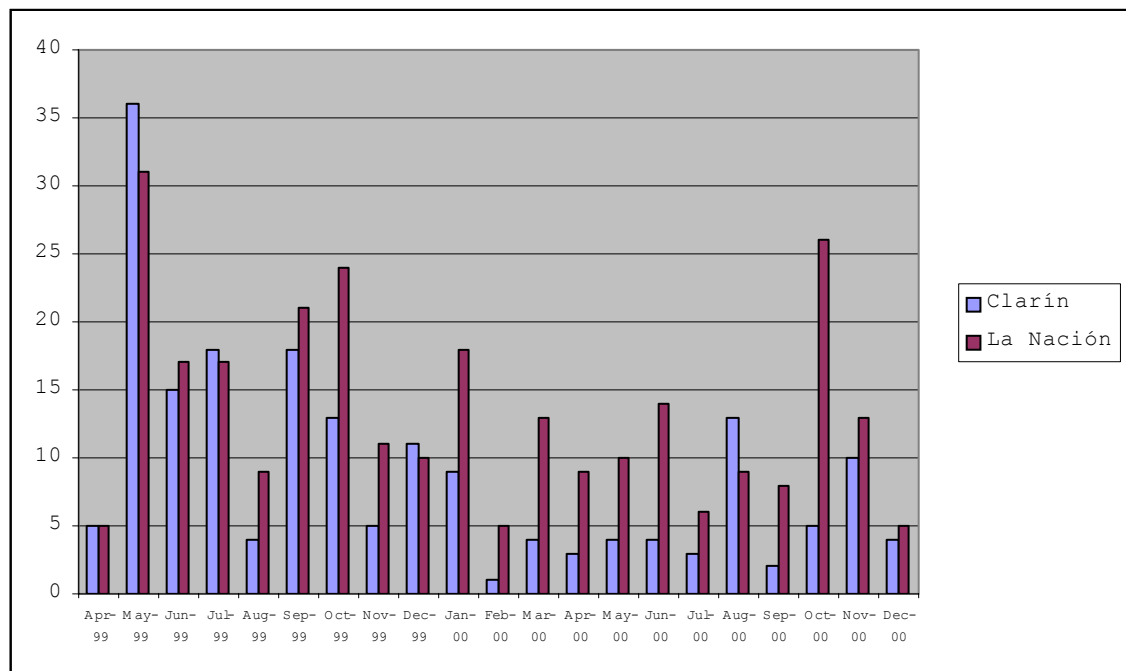
e) Variations in the frequency

The frequency of the publication of materials on convertibility in the selected newspapers varied over time; figures of those variations are presented on a monthly basis in Table and Graph IV.II.11.

Table IV.III.11
Articles on Convertibility
Published in Clarín and La Nación
(Monthly Totals)

Period	Clarín		Total	La Nación		Total
	In Fa- vor	Against		In Fa- vor	Against	
Apr-1999	4	1	5	3	2	5
Mar-1999	31	5	36	26	5	31
Jun-1999	14	1	15	16	1	17
Jul-1999	13	5	18	15	2	17
Aug-1999	3	1	4	7	2	9
Sep.-1999	14	4	18	19	2	21
Oct-1999	12	1	13	20	4	24
Nov.1999	5	0	5	10	1	11
Dec.-1999	10	1	11	8	2	10
Jan-2000	8	1	9	16	2	18
Feb-2000	1	0	1	5	0	5
Mar-2000	3	1	4	11	2	13
Apr-2000	2	1	3	9	0	9
May-2000	3	1	4	5	5	10
Jun-2000	3	1	4	11	3	14
Jul-2000	0	3	3	5	1	6
Aug-2000	9	4	13	8	1	9
Sep-2000	2	0	2	7	1	8
Oct-2000	4	1	5	18	8	26
Nov. 2000	7	3	10	13	0	13
10-Dec-2000	4	0	4	4	1	5
TOTAL	152	35	187	236	45	281

Graph IV.III.11
Articles on Convertibility
Published in Clarín and La Nación
(Monthly Totals)



In order to situate the observed variations in the frequency of the publication of materials on convertibility in the political context, some relevant political events in the considered period will be pointed.

i) May 1999: President Menem admitted it was possible to implement dollarization by presidential decree. Launching of Political Parties Electoral Platforms. ii) June 1999: Arrival to Buenos Aires of an IMF delegation. iii) September 1999: Annual IMF Assembly. iv) Presidential Elections. v) December 1999: President De la Rúa's inauguration. vi) January 2000: First "fiscal adjustment" of De La Rúa's administration. vii) May 2000: Second "fiscal adjustment"; first public salaries curtailment; Buenos Aires Majorial Election. viii) August 2000: Political crisis within the ruling Alianza; Rumors of

replacement of the Minister of Economy. ix) October 2000: Former President Alfonsín strongly criticized convertibility; Vice-president Alvarez's resignation.

No specific "detonants"—other than the political process at large—have been observed in relation to the variation in the frequency of the publication of material related to convertibility. It seems that the convertibility issue in itself was at the same time the subject and the motivation of the public discussion. A pattern similar to the one described here regarding convertibility, could be observed in cases related to privatization (Aerolíneas Argentinas), labor reform (new flexibilization bill), civil service ("adjustments") and others.

The reforms of the nineties in Argentina have been (and still are) patrimony of public opinion: any event that affects any major reform, actualizes the polemic in society and its consequential debate in the media.

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