

## The Nature of the New Argentine Democracy. The Delegative Democracy Argument Revisited\*

ENRIQUE PERUZZOTTI

*Abstract.* O'Donnell's diagnosis regarding the delegative nature of the new Latin American democracies has won wide acceptance in current debates on institutional consolidation. Through the analysis of the Argentine case this commentary challenges the delegative democracy argument as one-sided. The delegativeness hypothesis, it will be argued, turns a blind eye to the truly innovative processes that have taken place within Argentine society and make this democratising wave distinctive.

Guillermo O'Donnell's diagnosis about the delegative nature of the new democracies has won wide acceptance in current debates on the obstacles and challenges at institutional consolidation in Latin America. Latin American democracies, it is frequently argued, have displayed a poor institutionalising performance. Terms such as 'delegative', 'fragile', 'unstable' are commonly used to characterise the unconsolidated status of most of the region's democratic regimes. This commentary challenges the 'delegativeness' diagnosis, arguing that it rests on a one-sided interpretation of current political developments and that it turns a blind eye to the truly innovative processes that have taken place within many of Latin American societies and that make this democratising wave distinctive.

### *I. The nature of the emerging Latin American political regimes: the delegative democracy argument*

What is the institutionalising record of the postdictatorial period? Are Latin American democracies moving toward institutional consolidation? If the latter is the case, which type of democracy is being consolidated?

Enrique Peruzzotti is a Lecturer in the Department of Political Science and Government, Universidad Torcuato Di Tella, Buenos Aires.

\* Previous versions of this paper were presented at the Institute of Latin American Studies, University of London; the Latin American Centre, Oxford University, and at the Latin American Luncheon Seminar, Cornell University. The author is grateful to the participants of those meetings for their helpful comments and criticisms.

The challenges posed by the current democratising wave have produced an extensive corpus of studies aimed at determining the nature and prospects of the emerging Latin American democracies. ‘Transitology’ has gradually been displaced by ‘consolidology’, i.e. the analysis of the dynamics of regime breakdowns has been replaced by the study of the conditions for institutional reconstruction.<sup>1</sup> Such a major analytical shift has been followed by a mood swing: the initial optimism of the literature on democratisation concerning the outcome of current transitions has given way to a more sombre diagnosis about the prospects of democratic consolidation.

Democratisation literature’s disenchantment with recent political processes does not originate, as in the past, from fear of regression to authoritarianism. Analysts are bewildered by the exceptional endurance exhibited by most democratic administrations. At least in this aspect, the current democratising wave deviates from previous continental transitions. The pendulum movement between democracy and authoritarianism characteristic of contemporary Latin American history has apparently come to a halt. Latin American societies seem to have reached a democratic plateau. No sustained authoritarian regression can be seen to loom on the political horizon of most societies. When confronted with serious military, political or economic crises, democratic administrations have displayed unusual manoeuvring skills. Yet, the stopping of the pendulum has not resulted in the solving of the chronic institutional deficit of those societies. The literature on democratic consolidation has called attention to the poor institutionalising performance of these new democracies.<sup>2</sup> As far as democratisation theory is concerned, underinstitutionalisation remains a major problem of Latin American societies.

Guillermo O’Donnell characterised such a peculiar version of a non-institutionalised (but enduring) regime as ‘delegative’ democracy. The model of delegative democracy resurrects Huntington’s argument about

<sup>1</sup> Philippe Schmitter, ‘Transitology: The Science or the Art of Democratisation?’, in Joseph Tulchin (ed.) *The Consolidation of Democracy in Latin America* (Boulder, 1995).

<sup>2</sup> Alberti, ‘Democracy by Default: Economic Crisis, “Movimientismo”, and Social Anomie’, paper presented at the Fifteenth World Congress of the International Political Science Association, Buenos Aires, July 1991; O’Donnell ‘Delegative Democracy’, *Journal of Democracy*, vol. 5, no. 1 (1994), pp. 55–69, O’Donnell, ‘On the State, Democratisation and Some Conceptual Problems: A Latin American View with Glances at Some Postcommunist Societies’, *World Development*, vol. 21 no. 8 (1993), pp. 1355–69; Juan Carlos Torre, ‘El Gobierno de la Democracia en Tiempos Dífíciles’, *Documento de Trabajo del Instituto Di Tella*, no. 121 (Buenos Aires, 1994); Francisco Weffort, ‘What is a New Democracy?’, *International Social Science Journal*, no. 136 (1992), Francisco Weffort, *Qual democracia?* (Sao Paulo, 1992); Laurence Whitehead, ‘The Alternative to “Liberal Democracy”’: A Latin American Perspective’, in David Held (ed.) *Prospects for Democracy* (Cambridge, 1993), pp. 312–29.

the low level of institutionalisation of Latin American polities. Huntington considered institutional underdevelopment to be the most distinctive developmental pathology of Latin American societies.<sup>3</sup> In most of Latin America, he argued, the development of political institutions lags behind social and economic change, leading to the emergence of crisis-ridden praetorian polities. Huntington postulated a direct correlation between underinstitutionalisation and political ungovernability. Recent developments seem to challenge Huntington's equation. At present, underinstitutionalisation has not led to a praetorian scenario but has given birth to a distinctive form of democracy that relies for its integration more on the skills of specific personalities than on formal institutional mechanisms.<sup>4</sup> The glue that holds those democracies together, O'Donnell argues, is charisma, not legality. A discretionary executive is the cornerstone of this distinctive democratic model where presidents rule free of mechanisms of horizontal or vertical accountability, except from post facto electoral verdicts.

The notion of delegative democracy draws attention to a twilight zone between authoritarianism and democracy that does not correspond to any of the scenarios delineated by the literature on democratic transitions.<sup>5</sup> Democratisation literature assumed that the transitions from bureaucratic authoritarianism were going to lead either to the establishment of representative democracies or to regression to autocracy. The other considered options, *democraduras* or *dictablandas*, did not embody alternative regimes but a distinctive interregnum of the transitional period. *Democraduras* and *dictablandas* represented partially liberalised or democratised forms of authoritarianism that were far from fulfilling the procedural criteria of polyarchies.<sup>6</sup> The actual outcome of the transitions, delegative democracy, does not conform to any of the predicted scenarios: it points to an unanticipated outcome in which the successful completion of the transition led neither to representative democracy nor to autocracy but to some sui generis form of unconsolidated democracy.<sup>7</sup> If successful at

<sup>3</sup> Samuel Huntington, *Political Order in Changing Societies* (New Haven, 1968). I have discussed Huntington's diagnosis about the problem of political under-institutionalisation in Latin America in Enrique Peruzzotti, 'Modernisation and Juridification in Latin America. A Reassessment of the Latin American Developmental Path', *Thesis Eleven*, no. 58 (1999), pp. 59–82, especially pp. 67–74.

<sup>4</sup> O'Donnell, 'Delegative Democracy'.

<sup>5</sup> Schmitter, 'Transitology: The Science'.

<sup>6</sup> Guillermo O'Donnell and Philippe Schmitter, *Transitions From Authoritarian Rule: Tentative Conclusions* (Baltimore, 1986), p. 13.

<sup>7</sup> In contrast to *democraduras* and *dictablandas*, delegative democracies fulfil all the minimal procedural criteria of polyarchies: honest and competitive elections are periodically held and basic freedoms respected (O'Donnell, 'Delegative', p. 56; O'Donnell, 'Illusions about Consolidation', *Journal of Democracy*, vol. 7, no. 2 (1995), p. 38;

installing democracy, the transition stopped short at consolidating it. O'Donnell argues for the need at a 'second transition', the latter entailing the movement from a democratically elected government to consolidated democracy.<sup>8</sup>

How to account for such an unexpected outcome? For O'Donnell, the theoretical tools of transition literature seem ill equipped to provide a satisfying explanation. He argues for a need to move away from the shortsighted focus on strategic elite interactions to introduce historical and structural variables into the analysis of political democratisation.<sup>9</sup> The delegative democracy argument rightly calls attention to long-term variables that might be affecting the outcome of current democratising processes. O'Donnell's model is built upon two distinctive set of arguments: the first one focuses on the type of political culture that sustains such a form of democracy, the second one, on the structural environment in which those regimes emerged. Let us briefly review each of his arguments.

O'Donnell's analysis focuses on the problematic cultural heritage of populism. Although they are referred to as a 'new species that has yet to be theorised', his overview of the most salient features of the political culture that supports delegative democracies seems to imply that the breakdown of bureaucratic-authoritarianism has allowed for the resurrection of past populist styles and identities. See for example the following description:

Delegative democracies rest on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit... The president is taken to be the embodiment of the nation and the main custodian and definer of its interests... Since this paternal figure is supposed to take care of the whole nation, his political base must be a movement... In this view, other institutions – courts and legislatures, for instances – are nuisances that come attached to the domestic and international advantages of being a democratically elected president... Delegative democracy is strongly majoritarian. It consists in constituting, through clean elections, a majority that empowers someone to become, for a given number of years, the embodiment and interpreter of the high interests of the nation...<sup>10</sup>

There is nothing specifically original in the above characterisation of the political culture of delegative democracies. Movementism, radical majoritarianism, nationalism, and paternalism are all ingrained features of populist forms of self-understanding. Rather than indicating the existence

---

Schmitter, 'Transitology and Consolidology', unpublished manuscript, Stanford University, p. 9.

<sup>8</sup> O'Donnell, 'Delegative Democracy', p. 56.

<sup>9</sup> *Ibid.* p. 55.

<sup>10</sup> *Ibid.* pp. 59–60.

of processes of cultural renewal, O'Donnell's argument seems to indicate that Latin American populist traditions are still alive and in good health in most of the region. In fact, delegative democracy emerges only in those countries with populist heritage, like Argentina, Brazil or Peru. In societies where liberal-democratic traditions have been stronger, like Chile and Uruguay, the outcome of the transition has been significantly different, leading to a type of democracy that is closer to the representative ideal.<sup>11</sup>

If in cultural terms delegative democracy seems to be an *aggiornamento* of populist traditions, what is then the source of its distinctiveness? According to O'Donnell, what distinguishes delegative from past versions of democracy is the structural context of its emergence. The argument correctly concentrates on the chronic problem of underinstitutionalisation exhibited by those societies in which delegative democracy emerges. Delegative democracies are found in countries affected by serious economic and political crises. On the one hand, there is a profound crisis of the state that translates into a legitimacy and effectiveness deficit. The state is unable to establish its authority over society since the former is perceived by most actors not as a public institution but as an arena to be colonised by private interests.<sup>12</sup> On the other hand, there is an economic crisis of dramatic dimensions that only exacerbates the crisis of state institutions.<sup>13</sup> Recurrent and escalating inflationary (and hyperinflationary) outbursts are followed by unsuccessful attempts by state authorities to control inflation and reform the economy. Every governmental effort at economic stabilisation is easily challenged by a plurality of unruly corporatist interests.

Repeated failures to achieve economic stabilisation contribute to a perverse process of collective learning: actors assume that every new governmental effort at taming inflation will have the same fate as previous attempts, and therefore bet against the success of the economic policies. Praetorian societies became trapped in a dramatic and spiralling zero-sum game. In each new round, the stakes and the level of praetorianism increases, as does economic and social deterioration. The result is a general crisis of state and society: O'Donnell talks of an 'evaporation of the public dimension of the state' and the 'pulverisation' of society into

<sup>11</sup> *Ibid.* p. 64. Also, Torre, 'El Gobierno', pp. 8–12. The fact that the above clusters of delegative and representative regimes aggregate countries that arrived to each type of democracy through different transitional paths is a further example of the failure at prognosis of transition literature. The mode of transition from autocracy might be less relevant than initially thought. Long terms variables, such as political culture, seem to be more important for understanding current obstacles at institutional consolidation. See O'Donnell, 'On the State', p. 1364.

<sup>12</sup> *Ibid.* p. 1358.

<sup>13</sup> *Ibid.* p. 1363 ff.

a myriad of opportunistic actors. Such a scenario only reinforces the delegative tendencies present in those societies that, in turn, undermine any efforts at institutional reconstruction.<sup>14</sup> As a result, O'Donnell argues,

...Very little, if any, progress is made toward achieving institutions of representation and accountability. On the contrary, connecting with historical roots which are deep in these countries, the atomisation of society and state, the spread of brown areas and their peculiar ways of pushing their interests, and the enormous urgency and complexity of the problems to be faced feed the delegative propensities of these democracies.<sup>15</sup>

These societies are consequently entangled in a colossal prisoner's dilemma that not only perpetuates but also escalates a praetorian game that is inimical to democratic consolidation. 'The prisoner's dilemma – O'Donnell concludes – has a powerful dynamic': Delegative democracy seems to be part of the foreseeable future of many Latin American polities.<sup>16</sup>

O'Donnell's model focuses on some problematic traits of the new Latin American democracies such as the negative implications for democratic institutionalisation of excessive executive discretionality. Presidential delegativeness, he argues, hampers the institutional development of the judicial and legislative branches, depriving democracy of an effective system of horizontal accountability.<sup>17</sup> *Decretismo* also impoverishes the policy-making process. According to O'Donnell, the apparent gain in 'effectiveness' that results from insulating decision-makers from societal pressures is deceptive: a more incremental and consensual process of policy-making might prevent the 'gross mistakes' that could derive from executive arbitrariness, while increasing the likelihood of its implementation. It might also reduce the uncertainty that wild swings in policy-making and in presidential popularity create among the population.<sup>18</sup> Lastly, the argument links the analysis of democratisation to chronic problems of Latin American societies: underinstitutionalisation and political and economic praetorianism.<sup>19</sup> For all these reasons, O'Donnell's observations about delegative democracy should be considered a refreshing departure from the excessive myopia displayed by most of transition literature toward the cultural, institutional and economic environment of democratisation processes. Yet, is the delegative democracy argument the model that best characterises the nature of the recent democratising transitions?

This commentary will argue that the delegative democracy argument fails to acknowledge the innovative features of the current democratising

<sup>14</sup> *Ibid.* p. 1365.

<sup>15</sup> *Ibid.* p. 1365.

<sup>16</sup> *Ibid.* p. 1367.

<sup>17</sup> O'Donnell, 'Delegative Democracy', pp. 61–2.

<sup>18</sup> *Ibid.* p. 62.

<sup>19</sup> O'Donnell, 'On the State'.

process. While the model rightly highlights cultural and structural variables that conspire against democratic consolidation, it fails to recognise those dynamics that might be leading those societies away from praetorianism and authoritarianism. Through the analysis of the Argentine case,<sup>20</sup> it challenges two basic assumptions of O'Donnell's model: first, the existence of a populist or neopopulist 'delegative' political culture that feeds a vicious cycle of praetorianism and underinstitutionalisation (parts II and III), second, the assertion that the so called delegative democracies operate in an institutional vacuum (part IV).

## II. Political culture I: cultural innovation or return to populist traditions?

Centring exclusively on the political practices and styles of the executive branch, the delegative democracy argument overlooks the dramatic changes that have operated within society at large, and that makes this last democratising wave distinctive. The various arguments about the delegativeness of actual Latin American democracies turn a blind eye to processes of cultural change that are crucially relevant to the analysis of institutional consolidation.<sup>21</sup> The real novelty in the Latin American

<sup>20</sup> Of the three clearest cases of delegative democracies – Menem's Argentina, Collor's Brazil and Fujimori's Peru – only the former has managed to maintain considerable popular support within a democratic framework. The impeachment and fall of President Collor de Melo challenges two defining aspects of the delegative democracy model: the existence of a legitimating delegative culture in civil society and that those regimes lack mechanisms of political accountability. Furthermore, the sanctioning of the 1988 constitution has resulted in the incorporation of a repertoire of mechanisms of accountability that have allowed for new forms of citizen control and participation (Rosângela Batista Calvancanti, *Cidadania e acesso à justiça* (Sao Paulo, 1999); Catalina Smulovitz and Enrique Peruzzotti, 'Societal Accountability: The Other Side of Control', *Journal of Democracy*, vol. 11 no. 4, October 2000). Fujimori, while retaining popular support, has redefined the institutional framework in a direction away from democracy to some kind of *democradura* (Catherine Conaghan, 'Entre las amenazas y la complicidad: el estado y la prensa en el Perú de Fujimori', in Fernando Tuesta Soldevilla (ed.), *El juego político. Fujimori, la oposición y las reglas* (Lima, 1999), pp. 251–72; Nicolás Lynch, *Una tragedia sin héroes. La derrota de los partidos y el origen de los independientes. Perú 1980–1992* (Lima, 1999); Cynthia McClintock, '¿Es autoritario el gobierno de Fujimori?', in Fernando Tuesta Soldevilla (ed.), *El juego político. Fujimori, la oposición y las reglas* (Lima, 1999), pp. 65–96. Since it best illustrates the delegative democracy model, the analysis of the Argentine case is essential when contesting O'Donnell's diagnosis.

<sup>21</sup> Democratisation literature's understanding of civil society failed to acknowledge the potential contribution of social mobilisation to institutional consolidation. Degraded to non-institutionalised and non-institutionalising forms of collective action (mass mobilisations, popular upsurges, etc.), civil society only plays a positive role at destabilising authoritarianism in the period of liberalisation. The concept then loses all relevance for the analysis of democratic consolidation, where efforts are oriented toward institution-building rather than de-institutionalisation. See O'Donnell and Schmitter, *Transitions*. For a critique of the use of the concept of civil society in the

scenario is not the delegative behaviour of political elites, but civil society's consciousness about it.

Political culture does represent a key variable for understanding processes of institutional reconstruction. A fundamental aspect of the institutionalising dynamic is the anchoring of the validity principles of an order in a specific political culture. Comprising the social realm where collective identities originate, the analysis of political developments within civil society emerges as a crucial variable of the process of democratic consolidation. The role of social movements, associations and independent publics in reshaping political identities is decisive for determining the chances of success of current institutionalising processes, particularly in societies where democratic identities and practices have been notably absent.<sup>22</sup>

Far from displaying cultural continuity, there are two innovative features that suggest a profound metamorphosis of Argentine political culture. First, there has been a considerable erosion of past populist/antipopulist allegiances which allowed for the emergence of an autonomous 'public opinion'. Second, a new form of rights-oriented politicisation has developed that has contributed to the constitutionalisation of state–society relations.

1. The erosion of populist traditions created conditions conducive to the emergence of autonomous publics. In the past, populist identities inhibited the formation of a genuine public opinion. Populism's democratic ideals were opposed to a discursive formation of a public will from below, resting instead on an acclamative model of democratic will formation.<sup>23</sup> In this form of self-understanding, there is no institutional space for the formation of a democratic will outside the state. The leader and the movement monopolised public representation: those who opposed them were considered pariahs that did not belong to the demos. The polarisation and over-politicisation that resulted from such form of self-understanding made the formation of publics with certain degree of

---

field of Latin American studies, see Enrique Peruzzotti, 'Constitucionalismo, populismo y sociedad civil. Lecciones del caso argentino', *Revista Mexicana de Sociología*, vol. 61, no. 4, octubre–noviembre, 1999, pp. 149–72.

<sup>22</sup> I have discussed the issue of collective learning, civil society and cultural change in Enrique Peruzzotti, 'Democratising Democracy. Political Culture, Public Sphere and Collective Learning in Post-Dictatorial Argentina', paper presented at the XXI meeting of the Latin American Studies Association, Chicago, September 1998 (a Spanish version is forthcoming in Isidoro Cheresky (ed.), *Instituciones políticas y ciudadanía en las nuevas democracias latinoamericanas* (Buenos Aires, 2001).

<sup>23</sup> Enrique Peruzzotti, 'Civil Society and Constitutionalism in Latin America. The Argentine Experience', unpubl. Ph.D. diss., New School for Social Research, 1996.



autonomy from political society impossible, leading instead to the fragmentation of society into two irreconcilable camps.

The electoral defeat of Peronism in 1983 was the first sign of the breakdown of past allegiances, a tendency that was confirmed in following elections. The dissolution of 'captive electorates' has given way to fluid and unpredictable electoral behaviour. Many electoral analysts have emphasised the weakening of the percentage of captive or loyal voters on both parties, and the existence of considerable transference of votes from election to election.<sup>24</sup> The significant growth of independent voters suggest a healthy process of depoliticisation of civil society, i.e., it indicates a process of autonomisation of civil with respect to political society. This phenomenon should not be unilaterally interpreted as indicating a worrisome trend toward societal depoliticisation and demobilisation.<sup>25</sup> The demise of a type of politicisation linked to populist forms of self-understanding is the precondition for the emergence of more productive forms of politicisation, like the politics of rights and of influence described below.

2. I have argued elsewhere that the politics of human rights acted as a catalyst for cultural change, triggering a profound renovation of the country's democratic traditions.<sup>26</sup> The democratic ideal defended by the human rights movement differed drastically from previous forms of populist self-understanding. The discourse on rights reunites two elements that populist political culture has kept apart: democracy and the rule of

<sup>24</sup> The democratic period that was inaugurated in 1983 with the surprise triumph of Alfonsín over the peronist candidate by a margin of 12% of the votes had led to two radical and two Peronist presidential victories (the former in 1983 and 1999 in an electoral coalition with FREPASO; the latter in 1989 and 1995). The 1995 presidential election led to the unusual second place of the electoral coalition of FREPASO that got 29% of the votes, placing the Unión Cívica Radical in a far third place with 17% of the votes. A very good analysis of Argentine electoral behavior can be found in Carlos Gervasoni, 'Estructura y evolución de las coaliciones electorales en la Argentina: 1989–1995', unpub. manusc.; and Carlos Gervasoni, 'Del distribucionismo al neoliberalismo: los cambios en la coalición electoral peronista durante el gobierno de Menem', paper prepared for delivery at the 1998 meeting of the Latin American Studies Association, Chicago, Illinois, September 24–26. See also Cheresky's suggesting analysis of the 1997 legislative elections in Isidoro Cheresky, 'La alternancia en el poder: posibilidades y obstáculos', in *La innovación política* (Buenos Aires, 1999), pp. 115–29. For an analysis of the growing phenomenon of electoral volatility during the 1980s and 1990s from a broader Latin American perspective, see Kenneth Roberts and Erik Wibbels. 'Party Systems and Electoral Volatility in Latin America: A test of Economic, Institutional, and Structural Explanations', *American Political Science Review*, vol. 93, no. 3 (1999), pp. 575–90.

<sup>25</sup> Isidoro Cheresky, '¿Cuál Democracia?', paper presented at the seminar *Democracia en Argentina. Evolución Reciente y Perspectivas*, Instituto de Investigaciones Sociales Gino Germani, Buenos Aires, July 11–12 1996.

<sup>26</sup> Enrique Peruzzotti, 'Towards a New Politics. Citizenship and Rights in Contemporary Argentina', *Citizenship Studies*, forthcoming.

law. The human rights movement inaugurated a new form of rights oriented politics that openly challenges the principles of populist state-corporatism. The politics of rights developed by the human rights movement implies a redefinition of corporatist forms of articulation between state and society in favour of a liberal model. If populist corporatism contributed to the institutional dedifferentiation between state and society, the politics of rights aims instead at drawing clear legal boundaries between those institutional spheres. It also represents a self-limiting form of politicisation that contrasts sharply with the 'movementist' identity of past democratising movements.

The emergence of a rights-oriented politics greatly contributed both to the 'authorisation' and effectiveness of rights as institutions and, consequently, to the juridification of state-society relations.<sup>27</sup> A major heritage of the politics of human rights was the establishment of a permanent associative network for the supervision of state authorities. Human rights groups, legal aid associations, movements and organisations against police and military violence, etc., have played a crucial watchdog role in the defence of societal autonomy and have led to a wide variety of actions aimed at making political authorities accountable. This form of politicisation is not circumscribed to the human rights movement, but has been continued by a second generation of movements and associations. In the last decade, the Argentine political landscape has been shaken by the emergence of multiple social movements, civic associations and to a more inquisitive type of journalism organised around demands for accountability. Social mobilisations, the monitoring of the public authorities by civic organisations, and press denunciations have resulted in a series of widely publicised 'cases' (the most notorious being the Carrasco, the María Soledad and the Cabezas cases) and of numerous media scandals (such as Swiftgate, IBMgate, Yomagate, Armsgate, etc.) that exerted a considerable toll in the Menem administration.<sup>28</sup>

Cultural innovation has restored the authority of constitutionalism and rights as institutions, which allowed for the legal stabilisation of the realm of the social as civil society. The struggle for rights initiated by the human rights movement is aimed at drawing clear institutional boundaries between state and civil society. Such forms of politicisation have been continued and deepened by a second generation of civic associations and movements that adopted a more offensive stand: their actions were not

<sup>27</sup> For the concept of juridification see Jürgen Habermas, *The Theory of Communicative Action. System and Lifeworld*. Vol. II (Boston, 1985).

<sup>28</sup> Peruzzotti, 'Towards a New Politics'; Smulovitz and Peruzzotti, 'Societal Accountability'; Silvio Waisbord, 'Reading Scandals: Scandals, Media and Citizenship in Contemporary Argentina', paper presented at the conference of the International Communication Association (San Francisco, 1999).

simply aimed at protecting society but also at holding public authorities accountable. This phenomenon, which has largely been overlooked by the democratisation literature, distinguishes the last democratising wave from previous transitions to democracy. The real novelty then is not delegativeness but societal efforts at making state authorities accountable:<sup>29</sup> alongside ‘horizontal’ mechanisms of accountability there has evolved innovative forms of making authorities accountable that rely on ‘vertical’ – yet non-electoral – mechanisms.<sup>30</sup>

### *III. Political culture II: economic emergency and delegative crisis management*

It has been argued that the erosion of populist political traditions has been due to the emergence of a new form of democratic self-understanding that has re-legitimised a constitutional form of democracy. However, the irruption of a delegative presidential figure like Menem into the national political scene casts some doubts on the argument about the erosion of populist political culture. Who epitomises the unrestrained presidentialism of delegative democracy argument better than Menem? At first sight, the phenomenon of Menemism seems to confirm O’Donnell’s hypothesis. Before jumping to hurried conclusions, it is necessary to put Menemism into context.

Concerning Menem’s delegativeness, two questions should be raised: (1) what determined his delegative behaviour?, (2) what was the reason for his steady electoral success? It is argued here that neither Menem’s behaviour nor the popular support to his figure were the product of a reawakening of populist majoritarian ideals. Movementism, nationalism, majoritarianism are not central features of Menem’s legitimating discourse. The current phenomenon of delegativeness is not rooted in an authoritarian form of (populist or neopopulist) political culture. The irruption of delegative executive leadership is intimately associated with the breakdown of systemic integration at the economic level. Furthermore, it is argued that this delegative phenomenon at the political level is related to a demand for economic governability that indicates a noteworthy effort at collective self-limitation at the economic level. This

<sup>29</sup> In a recent article, O’Donnell himself acknowledges developments in the political culture that suggest a break with the delegative tradition: the existence of a mood of condemnation of corruption and of a vast network of civic association that play a watchdog role in relation to governmental actions. See Guillermo O’Donnell, ‘Horizontal Accountability in New Democracies’, in Andreas Schedler et al. (eds.), *The Self-Restraining State. Power and Accountability in New Democracies* (Boulder and London, 1999), p. 43.

<sup>30</sup> For a definition and description of this phenomenon of ‘societal accountability’, see Smulovitz and Peruzzotti, ‘Societal Accountability’.

effort complements the culture of political self-limitation that the politics of rights reflects at the political level.

1. Menem's delegative behaviour can be understood as a dramatic attempt to restore the steering capacities of a state overburdened by economic praetorianism. Menem took power in the midst of the worse hyperinflationary crisis of Argentine history, a crisis that forced an impotent Alfonsín to hand power to the recently elected administration six months ahead of time. In an environment where all institutional channels of interest intermediation had long been overwhelmed by unruly socio-economic powers, only decisive state action could restore acceptable levels of governability. As Juan Carlos Torre argues,

When prices increase at a daily rate it is almost impossible to negotiate a social truce... in such a conjuncture the basis for co-operative action is missing... Once a certain inflationary threshold is reached, the intervention of an agent that can assure a quick and effective economic stabilisation becomes imperative... there are not many candidates to fulfil that role apart from the executive.<sup>31</sup>

In the absence of effective 'filtering' institutions, the enhancing of the state's steering capabilities appears as the only way out of the crisis. The latter requires the insulation of the administrative system from both the praetorian societal environment and from 'colonised' state institutions. Concentrating executive power and administrative technocracy (represented respectively by the figures of Menem and finance minister Cavallo) contributed to restore the steering capacities of the administration – by insulating the state from the praetorian struggle. Through centralised executive authority, the Menem administration could restore a minimum of regulatory power that in turn would increase the efficiency of democratic institutions. The effective insulation of the process of economic policy-making circumvented earlier policy stalemates generated by defiant corporate interests. The combination of decisive executive authority with a strong electoral mandate successfully faced down the coalition of interests that had so effectively blocked previous attempts at economic stabilisation and reform.

At this point it is important to make a digression about the issue of accountability. The problem of accountability highlighted by O'Donnell and others refers to the embeddedness of the executive's decisions horizontally (in other state institutions) and vertically (in the electorate and on the autonomous associations of civil society). O'Donnell advocates horizontal accountability across state institutions, although he acknowledges – within the praetorian context of Argentina, Brazil and Peru – the permeability of the state to the influence of powerful corporate interests capable of blocking state initiatives. As he himself puts it, in a

<sup>31</sup> Torre, 'El Gobierno', pp. 15, 17.

praetorian context the government ‘dances at the rhythm of the crisis, its capacity to formulate policies is very limited, and very often their implementation is cancelled or captured by the disaggregated strategies just described.’<sup>32</sup> The colonised state is victim of a perverse form of accountability that destroys the public dimension of institutions. When discussing accountability and delegativeness it is important to keep in mind the praetorian context in which the processes of economic stabilisation described above took place. To initiate any effective process of institutional reconstruction in a praetorian situation, it is first imperative to insulate institutions from colonising particularistic powers. In other words, before making state institutions accountable, it is necessary to restore state sovereignty. The fundamental challenge of the next stage is to make state institutions accountable while avoiding the reemergence of rent-seeking ‘bureaucratic rings’.<sup>33</sup>

Seymour M. Lipset has long argued that legitimacy and effectiveness are both indispensable attributes of any democratic regime.<sup>34</sup> Democracies need to perform both functions simultaneously and consequently a point of equilibrium between institutional legitimacy and the material outcomes of governmental policies must be reached. For decades, the Argentine polity suffered a double crisis of legitimacy and efficiency that translated into political and economic praetorianism. The process of collective learning described in the previous section restored the legitimacy of democratic institutions. Yet, throughout the Alfonsín administration, democratic institutions showed a troublesome economic performance. Democracy successfully confronted authoritarian challenges to its legitimacy, yet the Alfonsín administration finally fell due to its inability to maintain minimum levels of economic governability. After that, any further crisis of governmental performance such as the one suffered throughout that administration would have greatly diminished the prospects at democratic consolidation.<sup>35</sup> Economic praetorianism is incompatible with political institutionalisation. Menem’s contribution to democratic consolidation was to restore efficiency to the policy-making process, thus solving the effectiveness crisis that had strained Argentine democracy.

2. After highlighting the historical obstacles to political and economic

<sup>32</sup> O’Donnell, ‘The State’, p. 1363.

<sup>33</sup> On the ‘colonised state’ see Roberto Da Matta, ‘A propósito de microescenas y macrodramas: notas sobre el problema del espacio y del poder en Brazil’, *Nueva Sociedad*, no. 104; Guillermo O’Donnell, ‘Privatización de lo público en Brazil: microescenas’, *Nueva Sociedad*, no. 104 (1989); O’Donnell, ‘Estado y Alianzas’.

<sup>34</sup> S. M. Lipset, *Political Man* (London, 1960).

<sup>35</sup> Stepan Haggard and Robert Kaufman. ‘The Challenges of Consolidation’, *Journal of Democracy*, vol. 5, no. 4 (1994), pp. 6–7.

institutionalisation in societies characterised by a chronic institutional deficit and a high propensity to praetorianism, O'Donnell asks himself whether there is any way out of those downward spirals. Such perverse dynamics can be broken, he argues, only when most actors perceive the costs of the game as intolerable. Such 'ceiling consensus' is likely to emerge in societies where the crisis has reached its culmination.<sup>36</sup> I have previously argued that in Argentina the dramatic experience of state terrorism triggered a process of collective learning that put an end to political praetorianism. Is the electoral support to the policies of economic stabilisation and reform a signal of a similar process of collective learning at the economic level? If this were the case, the delegative phenomenon would have a much more ambiguous meaning than the one attributed by recent debates on unconsolidated democracies.

This commentary argues that the phenomenon of delegativeness is intimately associated to processes of collective learning triggered by the experience of successive hyperinflationary crises that culminated in the dramatic events of 1989. In 1989, Argentine society, borrowing O'Donnell's expression, 'reached bottom'. Hyperinflation left a deep cultural imprint on Argentine society, only comparable to the one previously left by state terrorism. Both events represent turning points in Argentine history: if state terrorism contributed to the emergence of a culture of political self-limitation, the 1989 hyperinflationary crisis ushered a similar consciousness of self-limitation at the economic level. Both forms of self-limitation denote a conscious collective effort at avoiding a reversion into praetorianism.<sup>37</sup> The episodes of state terrorism and of hyperinflation acted as catalysts of crucial learning processes that, by re-legitimising the media of power and money, greatly contributed to the establishment of a cultural environment conducive to political and economic institutionalisation.

The economic emergency drastically altered the political agenda of Argentine society: demands for constitutionalisation and political accountability were postponed in the face of a more immediate need at re-establishing normal economic conditions. Monetary stabilisation became the unifying cry of a society tore by economic ungovernability. Such a

<sup>36</sup> O'Donnell, 'On the State', p. 1366.

<sup>37</sup> The popular support enjoyed by the stabilisation plan and by the overall project of economic reform, even among those sectors that are directly affected by many of those policies, have puzzled rational choice theorists. The latter highlights the theoretical limitations of the model when confronted to non-strategic forms of self-limiting action. For a review of some of the interpretations of possible reasons of the popular support to stabilisation policies, see Mario F. Navarro, 'Democracia y reformas estructurales: explicaciones de la tolerancia popular al ajuste económico', in *Desarrollo Económico*, vol. 35, no. 139 (Oct.–Dec. 1995), pp. 443–65.

*delegative mandate* should not be misinterpreted as the resurrection of majoritarian democratic ideals or of authoritarian validity claims. On the contrary, this *delegative mandate* pinpoints to an element of collective learning that should not go unnoticed. The demand for accountability and constitutionalism is still present in society, though in a latent state. It first re-emerged on the constituent elections of 10 April 1994. The latter represented a rare occasion for ‘pure’ political voting (designation of candidates to the constituent assembly) in which the issue of economic stability was not at stake. The impressive (and unexpected) electoral strength shown by the improvised coalition organised around the Frente Grande, which emerged as a credible third alternative to Peronism and Radicalism, suggests far-reaching changes in the political culture. Throughout the campaign the Frente criticised the authoritarianism of the Menem’s administration and demanded greater transparency in the political system.<sup>38</sup>

The demands for accountability intensified after the removal of Finance minister Cavallo from his post. The latter represented a tacit acknowledgement by the administration that the economic emergency (which had gained renewed urgency after the Tequila crisis) was finally over. In subsequent months the administration has been bombarded by denunciations of corruption and by media scandals. The unexpected public impact of the murder of the journalist Cabezas is a clear case of the *unfreezing* of juridifying demands in the post-economic emergency period. Albeit a parenthesis on the demand on constitutionalisation, the support to the process of economic reform represents a noteworthy collective effort at economic self-limitation that helped to restore the efficiency of state institutions.

#### *IV. Institutional differentiation: the ‘constitutionalising’ record of Argentine democracy*

It has been argued that a delegative façade has prevented us from seeing fundamental processes of change in the political and economic culture of Argentine society. However, changes in the political culture do not guarantee political institutionalisation. Normative learning can affect the democratising path only if the institutional context can be redefined. Transposing normative learning into specific institutional changes is perhaps the fundamental problem of the present period of democratic consolidation. Broadening the perspective to include the analysis of political and institutional dynamics to evaluate the success of current processes of political institutionalisation is necessary. What is the

<sup>38</sup> Cheresky, ‘Las Elecciones’.

institutionalising record of the process of democratic consolidation? To determine the index of ‘constitutionalisation’ of the Argentine democratic regime, it is necessary to distinguish two different dimensions of the concept of constitutionalism:<sup>39</sup>

(a) the institutional differentiation between state and society and their legal stabilisation through the establishment of an effective rights complex and,

(b) the institutional differentiation of the state in the direction of a separation of powers.

The emergence of rights-oriented politics, it was argued above, expressed a juridifying process from below aimed at establishing clear institutional boundaries between state and civil society. Cultural and institutional change within civil society restored the authority of rights as institutions, after they had been badly damaged by the corporatist and movementist practices of populist movements. This favoured the constitutionalisation of state/civil society relations.

However, it is the second dimension of the process of constitutionalisation, which is at the centre of O’Donnell’s critique of current democracies, and which is perhaps more problematic. It refers to the processes of institutional differentiation within the state in the direction of a separation of powers. The constitutionalisation of state authority is crucial for ensuring societal autonomy, for the very possibility of a rights complex depends on the existence of an effective separation of executive, legislative and judicial powers. Has democratisation been followed by the constitutionalisation of the Argentine State? The delegative hypothesis gives a clear negative answer to the question. However, as a more detailed analysis of the institutional dynamics will show, the institutionalising record of the democratic period has been more mixed and ambiguous than that suggested by the delegative democracy argument.

It would be unfair to catalogue Alfonsín’s administration as delegative. Both in its rhetoric and political practices, the Radical government disconfirmed the delegativeness argument. Under Alfonsín’s administration, the executive power made a conscious effort at political self-limitation, particularly in relation to the judicial power. The strategy of self-limitation followed by the executive under Alfonsín’s tenure broke with an well-entrenched tradition of judicial subordination to the executive branch.<sup>40</sup> The strengthening of judicial autonomy was attained

<sup>39</sup> Enrique Peruzzotti, ‘Civil Society and the Modern Constitutional Complex. The Argentine Experience’, *Constellations. An International Journal of Critical and Democratic Theory*, vol. 4, no. 1 (April 1997), pp. 94–104.

<sup>40</sup> For a general historical overview of the Argentine judicial power see Eduardo Oteiza, *La Corte Suprema. Entre la justicia sin política y la política sin justicia* (La Plata, 1994). For the obstacles to judicial independence in Latin American, see Gabriel Negretto and



at a considerable cost to the administration. Indeed, this contributed to the failure of the government's human rights strategy. Judicial autonomy translated into continuous challenges to presidential resolutions. The legal logic of the judiciary clashed with the political goal of the executive power: namely, to exert limited and exemplary punishment for human rights violations committed under military rule.

Judicial authorities constantly challenged the official human rights policy. These challenges came from ordinary judges right up to the Supreme Court. The administration made many attempts at bringing the juridical procedures to a close. The ruling by the Federal Court concerning the sentence passed on the military junta, far from closing the chapter on human rights violations as was the government's aspiration, left legal channels open for the initiation of new trials. The subsequent attempt by the Ministry of Interior to limit prosecutions encountered the open opposition of Federal Courts. The executive tried to settle the controversy by appealing to the Supreme Court but the latter supported the position of the federal courts. The sanctioning of the 'Punto Final' law backfired on the administration due to a new challenge from the judiciary, which suspended its summer recess and speeded the indictment of hundreds of cases involving human rights violations that would otherwise have been prescribed because of that law.<sup>41</sup>

The combination of (a) a politics of rights within civil society that relied on the judiciary as its main interlocutor, (b) the redefinition of the judiciary's own self-understanding and (c) a politics of self-limitation in the executive, contributed to a successful process of institutional differentiation in the direction of a separation of powers. The judiciary moved from its traditional subordinated role to the forefront of political developments. The national and international impact of the trial of the military leaders redefined the historical position of the Argentine judicial power and marks its entrance into the national landscape as an autonomous and legitimate branch of the state, with institutional weight of its own. Since then, the judiciary has established itself as a central actor within the institutional landscape, to the extent that some analysts are

---

Mark Ungar. 'Judicial Independence, Rule of Law, and Democratisation in Latin America', paper presented at the Seminario de Sociedad, Política e Historia, Universidad Torcuato Di Tella, Buenos Aires, May 1996; Joel G. Verner, 'The Independence of Supreme Courts in Latin America: A Review of the Literature', *Journal of Latin American Studies*, no. 16 (1984).

<sup>41</sup> For the analysis of Alfonsín's human rights policy see Peruzzotti, 'Civil Society and Constitutionalism'.

talking about a *judicialisation* of political conflicts that place the judiciary at the very centre of political development.<sup>42</sup>

This redefinition of the institutional role of the judiciary was a significant accomplishment in the direction of a constitutionalisation of state power to contradict the delegativeness argument. However, such an auspicious trend has unfortunately suffered a major reversal with the packing of the Supreme Court by the Menem administration. Taking advantage of the majority that he enjoyed in both houses of congress, Menem began his first term by raising the number of Supreme Court Justices from six to nine, filling the three new seats with judges beholden to the government. The government also demanded the resignation of the Public Prosecutor and of the Attorney General. Undoubtedly, the administration's actions represented a serious setback to judicial autonomy. However, the demands for justice and the tendency toward the *judicialisation* of conflicts remain an established feature of post-dictatorial politics. The judiciary as an actor has far from vanished from the public scene.

As for the role of the legislative power in the new democracy, the results are also far from being conclusive. A close look at executive-legislative relations shows a much complex picture than the one delineated by O'Donnell. Different analyses of executive-legislative dynamics show a legislative power that has refused to play a subordinated role in relation to the executive. The independence displayed by the legislative power under the Radical administration led to a drastic curtailment of presidential ambitions. Alfonsín was forced to share power with a legislative power divided between a Radical controlled house of deputies and a Peronist controlled Senate. Such parity of forces at the legislative level did not lead, however, to the paralysis of congress as a legislative body. Radicals and Peronist found modalities of cooperation. A sign of cooperation was the high proportion of laws sanctioned by a bipartisan majority of votes.<sup>43</sup> Even in very controversial issues, such as the budget or fiscal reform, cooperation prevailed over confrontation.<sup>44</sup> The emergence of a culture of compromise should not be misinterpreted as an abdication of the role of congress as a comptroller of executive ambitions. Although compromise was reached on issues that prevented the paralysis of the administration (such as the approval of the budget), Congress did not abstain from blocking many presidential initiatives.

<sup>42</sup> Catalina Smulovitz, 'El poder judicial en la nueva democracia. El trabajoso parto de un nuevo actor', *Agora. Cuadernos de Estudios Políticos*, no. 2 (1994), pp. 85–106.

<sup>43</sup> See Ana María Mustapic and Mateo Goretti, 'Gobierno y oposición en el Congreso: la práctica de la cohabitación durante la presidencia de alfonsín', in *Desarrollo Económico*, vol. 32, no. 126 (1992), pp. 251–69. <sup>44</sup> Mustapic and Goretti, 'Gobierno'.

With Menem in the presidency, a pattern of government by decree was established that profoundly affected the equilibrium between executive and legislative powers. During his first presidential tenure, Menem enacted 308 decrees (figures are for the 1989–1993 period).<sup>45</sup> The figure is even more impressive if contrasted with the number of decrees enacted from the establishment of the 1853 constitution to 1989: 35 in total, ten of which were enacted under the Alfonsín administration. The repeated resort to the so-called decrees of ‘urgency and need’ represent a clear invasion of legislative prerogatives by the executive. While traditionally, decrees had a ‘political content’, such as the irregular declaration of a state of siege or of a federal intervention, most of the decrees enacted since 1983 entailed an arrogation of legislative prerogatives by the executive. Of the 305 decrees enacted by Menem, 159 fit this latter category.<sup>46</sup>

*Decretismo* has been further complemented by the repeated use of the veto prerogatives by the executive. Both under Alfonsín and Menem, the number of presidential vetoes to congressional initiatives increased way above the historical media.<sup>47</sup> Alfonsín vetoed 8 per cent of the total of legislative initiatives (49 vetoes) while Menem vetoed 13 per cent of them (109 vetoes).<sup>48</sup> Moreover, the Menem administration has resorted to the device of enacting part of the bill it had just vetoed. The dramatic increase in legislation by decrees and presidential indicates the existence of worrisome de facto presidential practices that openly contradict the spirit of the constitutional principle of separation of powers. As Ana María Mustapic rightly argues, those practices contributed to the crystallisation of institutional mechanisms not contemplated by the constitution.

At first sight, the review of presidential practices seems to corroborate O’Donnell’s hypothesis. Indeed, a considerable amount of literature supports his diagnosis.<sup>49</sup> Yet, the presence of hegemonic presidential practices should not lead to overhasty conclusions. Delegative executive behaviour does not necessarily imply the existence of an institutional

<sup>45</sup> Mateo Goretti and Ferreyra Rubio, ‘Gobernar la emergencia. Uso y abuso de los decretos de necesidad y urgencia (1989–1993)’, in *Agora. Cuadernos de Estudios Políticos*, no. 3 (1995), pp. 75–94.

<sup>46</sup> Guillermo Molinelli, ‘Relaciones Presidente-Congreso en Argentina 1983–95’, paper presented at the II Congreso Nacional de Ciencia Política, Mendoza, November 1995.

<sup>47</sup> Ana María Mustapic and Natalia Ferreti, ‘El veto presidencial bajo los gobiernos de Alfonsín y Menem’, Buenos Aires, *Documento de Trabajo de la Universidad Torcuato Di Tella* no. 14 (1995).  
<sup>48</sup> Mustapic and Ferreti, ‘El veto’.

<sup>49</sup> Natalio Botana, ‘Las transformaciones institucionales bajo el menemismo’, in Ricardo Sidicaro and Ricardo Meyer (eds.), *Política y sociedad en los años del menemismo* (Buenos Aires, 1995), pp. 11–18; Juan Corradi, ‘The Argentina of Carlos Saúl Menem’, in *Current History* no. 562 (1992), pp. 80–4; José Nun, ‘Populismo, representación y menemismo’, in *Sociedad. Revista de Ciencias Sociales*, no. 5, October 1994, pp. 4–12; Beatriz Sarlo, ‘Argentina under Menem: The Aesthetics of Domination’, in *NACLA. Report on the Americas*, vol. XXVIII, no. 2 (1994).

vacuum at the legislative and judicial levels. In fact, they might well be indicating the opposite: that the executive is bypassing congress due to the latter's refusal to act as a mere rubber stamp. Viewed from this perspective, the repeated resort to emergency decrees and presidential vetoes by the executive could reveal the existence of an important degree of institutional conflict between legislative and executive powers; conflict that might indicate a clash between autonomous institutional clusters due to institutional differentiation.<sup>50</sup> These presidential practices suggest a conflict of powers due to the refusal of congress to adopt a subordinate position toward the executive.<sup>51</sup> It is congressional autonomy that has been forcing the executive to bypass normal legislative procedures. The analysis of Mariana Llanos of the privatisation process seems to corroborate this hypothesis.<sup>52</sup> In her view, the whole privatisation process was carried out not in an institutional vacuum but within an institutional frame. She distinguishes a delegative, a cooperative and a conflictive phase in the relationship between legislature and the presidency throughout the privatisation process:

(a) The *delegative phase* corresponds to the launching of the process of structural reform and economic stabilisation and is characterised by an uneven relation between legislative power and the presidency due to the express delegation of legislative powers to the president by congress.

(b) The *cooperative phase* is characterised by an attempt by congress to regain some of the institutional power it had delegated at the initial stage. This translated in a slower rate of the reform and in the introduction of congressional modifications to the projects submitted by the executive. The Congress did not refuse to collaborate in Menem's policy of reform, but it demanded participation in the process of legislation. In this period, we witness a tendency of the executive to resort to the veto in order to preserve some of the initiative it had on the previous stage.<sup>53</sup>

(c) The *conflictive phase* indicates a situation of relative institutional equilibrium between the executive and the legislative that led to a series of confrontations due to the refusal of the latter to endorse some of the initiatives of the former. Due to the lack of congressional support, many of the laws were passed by executive decree. As Llanos rightly indicates, in such conditions the resort to decree measures is a sign of the weakening of presidential leadership even within the ruling party.

<sup>50</sup> See Peruzzotti, 'Modernisation and Juridification', pp. 64–6.

<sup>51</sup> For a similar interpretation see Molinelli, 'Relaciones'; Novaro and Palermo, 'La Contribución'. <sup>52</sup> See Mariana Llanos's article in this issue of *JLAS*.

<sup>53</sup> The fact is that not only presidential vetoes but also congressional *insistencias* have increased. *Insistencias* refer to the congressional prerogative to overrule a presidential veto. Menem's vetoes spawned ten congressional *insistencias*, the highest number since 1862 (Molinelli, 'Relaciones', p. 7).

The fact that many of the vetoes were directed against a Peronist-dominated congress further contradicts the delegativeness argument. The conflict not only reflects a clash between powers but also disagreements between the administration and the official party.<sup>54</sup> The latter is clearly at deviance with the hypothesis of a rebirth of movementism, instead it indicates processes of institutional differentiation operating at two different levels: on the one hand, a trend toward a constitutional separation of powers within the state and, on the other hand, a process of differentiation between state and political society. Both types of conflicts would have been unthinkable under the classical Peronist regime, where a vertically integrated movement and a submissive congressional majority followed the populist leader's directives.<sup>55</sup> This fusion of administration and movement that characterised previous populist democratic experiments are clearly absent under Menemism.

Overall, the current balance seems detrimental to the legislative; although it should be noted that congress has registered important victories over the Menem administration.<sup>56</sup> In any case, the picture is far from indicating a situation of institutional vacuum. Far from endorsing all presidential initiatives, congress modified or blocked many presidential initiatives. The cases of the social security and labour reforms were two notorious examples.<sup>57</sup> The packing of the Court and of key hierarchical positions in the judiciary by Menem have not prevented the existence of many independent initiatives by lower rank magistrates and, occasionally, by the Court itself.

Finally, it should be added that delegativeness exerts its toll on the presidency. Menem's tampering with the court and judicial designations triggered national and international criticism. His attack on judicial

<sup>54</sup> Javier Corrales, 'State-Ruling Party Relations in Argentina and Venezuela, 1989–1993. Neoliberalism through Party Building', paper presented at the Conference 'Economic Reform and Civil Society in Latin America', David Rockefeller Center for Latin American Studies, Harvard University, 12 April 1996; Javier Corrales, 'From Market-Correctors to Market-Creators: Statist Political Parties Shrinking the State in Argentina and Venezuela (1989–1993)', Harvard University, unpublished manuscript.

<sup>55</sup> For the relationship between the Menem administration and the Peronist party see Corrales 'State-Ruling' and 'From Market-Correctors'. Also, Sebastián Etchemendy, '¿Límites al decisionismo? El poder ejecutivo y la formulación de la legislación laboral (1983–1994)', in Ricardo Sidicaro and Jorge Mayer (eds.), *Política y sociedad en los años del menemismo* (Buenos Aires, 1995), pp. 127–54. In his analysis of the failed initiatives at labour reform, Etchemendy argues that the increase in the number of Peronist legislators after the 1991 congressional elections intensified the conflicts between the executive and congress, curbing Menem and Cavallo's attempts at restructuring labour legislation, see Etchemendy, 'Límites'.

<sup>56</sup> Etchemendy, 'Límites'; Novaro and Palermo, 'La Contribución'.

<sup>57</sup> For a detailed analysis of the failed attempts at restructuring labour legislation see Etchemendy, 'Límites'.

autonomy only contributed to heighten public consciousness of the need for an independent judiciary.<sup>58</sup> *Decretismo* is also not free of cost: policies unilaterally implemented by the executive, sometimes in open opposition to congressional will, are often less effective at generating trust in the prospects of the reforms than policies that are consensually reached. While discretionary executive authority may have been crucial for overcoming the stalemate of praetorianism and stabilising the economy, the consolidation of reform required the reduction of discretionality and the establishment of calculable institutional arrangements. If the process of economic reform is perceived as resting exclusively on a strong-willed president, then the prospect of an electoral defeat can be highly discouraging to prospective investors, since they may justly believe that a future administration could reverse many unilaterally imposed policies. The discretionary path toward economic reform is self-defeating for it fails at establishing the long-term frame that only legal institutions can provide. The success of any long-term project at economic restructuring requires some important degree of congressional collaboration and of juridical calculability.<sup>59</sup> Decisionism can backfire on the administration, hurting the very prospects of the reforms.

*V. Evaluating post-populist democracies: toward a juridification of politics?*

Does the concept of delegative democracy do justice to current processes of democratisation? Is delegativeness the most distinctive feature of the new democracies? This commentary has argued that the ‘delegativeness’ diagnosis overlooks the innovative processes taking place in many Latin American societies that clearly differentiates this democratising wave from previous populist processes of democratisation. Through the analysis of the Argentine case, it has shown that, both in cultural and institutional terms, the new democracy greatly differs from the populist democratic model that for decades provided the hegemonic form of democracy in the region. Cultural learning, it has been argued, has eroded populist identities, leading to the emergence of a political culture supportive of a *constitutional* form of democracy. This has resulted in the emergence of a new type of politics organised around demands for transparency and accountability. Such societal efforts at making public authorities ac-

<sup>58</sup> Verbitsky, Horacio. *Hacer la Corte* (Buenos Aires, 1993), pp. 15–18.

<sup>59</sup> Finance Minister Cavallo was conscious of this dilemma: ‘although decrees are easier to enact, he argued a few weeks after his appointment, laws enacted through regular legislative procedures give the impression of more perdurable and solid solutions, contributing to create an atmosphere of legal calculability and security that is more propitious for investment and economic growth’ (quoted from Novaro and Palermo, ‘La Contribución’, p. 3).

countable represent a major push toward the constitutionalisation of the state and of the political system.

The form of politicisation described above, as well as the type of interaction that exist within political society, differ greatly from the unrestricted majoritarianism of past populist movements. The politics of civil society has contributed to the re-legitimation of rights and constitutionalism as institutions while the dynamics of political society have permitted the stabilisation of a competitive party system. Finally, at the institutional level, the analysis shows that far from operating in an institutional vacuum, the Argentine democratic system has made significant progress towards constitutionalism, both in the direction of a legal stabilisation of state-society relations and of a separation of powers.

A great contribution of O'Donnell's model was to broaden the perspective of democratisation analysis by bringing into the picture long term cultural and institutional variables that might have historically hindered the development of stable democracies. His argument called attention into the praetorian and populist heritage of many of those societies. It is precisely from such a historical comparative standpoint that this commentary has argued that Argentine society has entered a post-praetorian and post-populist political stage.