AS IF:
THE FICTION OF EXECUTIVE ACCOUNTABILITY
AND THE PERSISTENCE OF CORRUPTION NETWORKS
IN WEAKLY INSTITUTIONALIZED PRESIDENTIAL SYSTEMS.
ARGENTINA (1989-2007)

A Dissertation
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Doctor of Philosophy
in Government

By
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Washington, DC August 5, 2011
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Thesis Advisor: Eusebio Mujal-Leon, Ph.D.

ABSTRACT

This dissertation seeks to understand patterns of systemic corruption that undermine the quality of democracy. It presents a theoretical framework to explain the limits of executive accountability in weakly institutionalized presidential democracies, and explores the emergence, organization and transmission of corrupt practices under weak institutions.

Building upon a case study of Argentina, but also introducing the comparative dimension, this research examines how weak formal institutions and informal rules and practices may hinder executive accountability. The study also addresses how, under these conditions, actors sharing illicit goals are able to agree on informal mechanisms of corrupt exchange to circumvent formal norms, and aims to explain the institutionalization of political corruption.

The strength of checks on the executive is explained by focusing on legislators’ willingness to defend their prerogatives against encroachment—a function of the actual workings of institutions. Legislators with low levels of institutional commitment do not effectively perform their oversight responsibilities nor invest in strengthening the legislature’s capabilities. However, they use oversight mechanisms to informally bargain with the executive for particularistic benefits in exchange for not enforcing sanctions. The executive relies on both formal and informal resources to assert its authority and shrink accountability, neutralizing specialized oversight agencies and paying off legislators. While specialized oversight bodies may produce relevant information, this is hardly consequential if
the linkages between different accountability agents do not work properly and legislators do not hold the executive accountable.

This research identifies the informal institutions that uphold the development of corrupt elite cartel networks, and the mechanisms that facilitate their reproduction by ensuring the impunity of corrupt officials. Actors that share illicit goals craft informal mechanisms that provide critical resources (such as iteration and reputation) to overcome the credible-commitment problems that weak institutions produce. The root causes of impunity arise from the enforcement of an informal rule that allows corruption, which shapes incentives facing accountability agents in charge of punishing corrupt practices through criminal sanctions. Among other means, corrupt practices are transmitted through episodes of rule-breaking and informal sanction. By punishing those who attempt to enforce the law, while protecting those who act within the informal rule, actors indicate the costs of non-compliance and discourage others from taking these actions. Building on this analysis, the dissertation advances recommendations for anticorruption policy reform in new democracies.
ACKNOWLEDGMENTS

In the process of writing this dissertation I have acquired multiple debts with many people. Some of these I should like to acknowledge here. First of all, I would like to thank Eusebio Mujal-León, my dissertation advisor, whom I first met while still a graduate student in Santiago de Compostela (Spain). His firm support through every step of the way during my years at Georgetown University made this a truly rewarding learning experience.

I would also like to thank all the members of my dissertation committee, whose contribution goes well beyond just the reach of this particular project. Every one of them has had an impact on my academic development. Thanks to John Bailey for enhancing my understanding of corruption and crime in Latin America. Working with him as a research assistant was a very fruitful experience. Thanks should also go to Mark Warren, an inspiring scholar, for always setting the higher standards of quality and for inviting me to think deeply on the normative implications of my arguments. I am grateful to Michael Johnston as well for accepting to join my committee on very short notice and for his generosity in providing comments to my work. I am also particularly indebted to him for his notion of corruption syndromes, which this dissertation borrows and builds upon.

One of my greatest professional debts is to Ramón Maiz, my advisor in Spain, who first talked me into staying in academia. A long time has passed since I attended my first Political Science class with him, but he continues to be an intellectual inspiration and a wonderful mentor. I have benefited greatly over the years from many conversations with him on the most varied matters. He has attentively read and provided valuable and insightful comments on several chapters of this dissertation. For so many things, I am grateful.
This dissertation would have not been possible without the funding of Caixa Galicia and Caixanova Foundations, which provided me with three years of generous financial support during my graduate studies and the beginning of this research. I would also like to acknowledge the financial support of Georgetown’s Government Department during some of my graduate years.

In Argentina, I am indebted to a great number of people who generously provided me with names and contacts for my field research and helped me to understand the country’s politics and society. I have benefitted substantially from my conversations with Laura Alonso, Nestor Baragli, Manuel Garrido, Roberto Saba, Damian Staffa as well as many politicians and public officials who kindly accepted to be interviewed for this dissertation. Delia Ferreira and Sergio Berenzstein found time in their busy schedules to provide me with useful advice during the initial steps of my field work. With Enrique Peruzzotti I have had useful exchanges on the theory of accountability. Civil society organizations were a valuable source of primary data and insights for this research. I owe special thanks to the people from ACIJ, and particularly Luis Villanueva, who provided me with access to valuable information on corruption cases.

I have been fortunate in working at the World Bank Institute during my graduate years. I would like to thank Marcos Mendiburu, team leader and friend, and my colleagues of the Transparency and Access to Information Program (specially Luis, Rosario and Silvana). Thank you all for putting up graciously with my dissertation stress.

Being a person of few friends, I cannot help but mention some of them. While at Georgetown, we enjoyed with Gur Hirshberg ardent political discussions over innumerable dinners and bottles of wine. Most importantly, we shared our dreams (and mutual fears) about finishing the PhD. We miss your company truly. Either in Washington DC, Mexico or Córdoba, Silvia Morón generously opened her house, shared her time and friends, and helped us understand and love her country.

During the writing of this dissertation, my family was a constant source of encouragement and support. My father, Francisco, an example of honesty in public office and the ultimate reason of my interest in politics, applied his large mathematical skills to help me sail the difficult waters of
formal modeling. My mother, Piti, is the little engine that moves us all. Thank you for loving me unconditionally and for keeping me company during the last days before the defense. Thanks to Maria, my sister, for being my cable to the ground and for always reminding me about the world outside academia.

Finally, I must note the help and advice of my partner, Ricardo Cruz Prieto, whose influence is reflected throughout this dissertation. He challenges me relentlessly to think deeper and more ambitiously. Most of all, he came unexpectedly to share this and so many other journeys together. Thank you for being my working week and my Sunday rest.
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Chapter 1

1. Introduction

Most of Latin America has inaugurated a period of democratic rule. However, commitment to
democratic values has not prevented citizens from critically evaluating the performance of existing
regimes.¹ Although Latin America has suffered from corruption for centuries,² citizens suddenly
witnessed an apparent outburst of various kinds of corruption even as they became less willing to
tolerate corrupt transactions.³ Citizens’ dissatisfaction with democratic institutions throughout the
region has not yet resulted in coordinated, effective responses to deter and control corruption and
improve the quality of existing political regimes.

A broad consensus has emerged in the quality of democracy literature that political
institutions are central and that the inferior quality of new democracies is the result of weak
accountability mechanisms. Examination of political institutions can offer important insights to
prevent and control corruption. Institutions contribute to the emergence of corruption and shape it in a
variety of ways. The institutional structure sets the boundaries between “state and society; public and
private roles and resources; personal and collective interests; and market, bureaucratic, and
patrimonial modes of allocation” (Johnston 2005, 9); where those boundaries are weak or inexistent,
corruption flourishes. The term “accountability” describes the different institutional components that
are enabled to take action against corruption and other unlawful behavior by state agents (O’Donnell
1999). However, there are limits to what we know about political institutions and about the processes
that could strengthen accountability.

The persistence of corruption cast doubt on prevailing approaches to both corruption and
democratic politics. Those studying institutions and their effects on policy outcomes, in Latin
America and elsewhere, have not yet paid systematic attention to corruption. Recent research has centered primarily on formal political institutions and institutional design, rather than on the actual institutional rules that drive actors’ behavior and shape institutional outcomes. Institutional analyses of corruption often assume that institutions are both stable and routinely enforced. Yet formal institutional constraints are often contested, and informal institutions and rules structure political life in much of Latin America (O’Donnell 1996, 1997; Munck 2004; Helmke and Levitsky 2006). Research on corruption has made important breakthroughs in recent years. Empirical evidence on the causes and effects of corruption is increasingly available, and the topic has been placed at the core of research programs on governance and the quality of democracy. However, due to the nature of the phenomenon, as well as conceptualization and measurement problems, we still know relatively little about the actual mechanisms that connect institutional structures to corruption.

The dissertation takes one step inside the black box of those mechanisms that connect political institutions and corruption. It seeks to explore, both theoretically and empirically, the institutional foundations of corruption to understand the persistence and patterns of corruption that undermine the quality of democracy. Building upon a case study of Argentina between 1989-2007, this research examines how the strength of formal institutions as well as informal rules and practices contribute to the political accountability of the executive (and therefore, affect the costs of corrupt behavior) in presidential systems. The proposed model predicts that legislators with low levels of institutional commitment would not effectively perform their oversight responsibilities, nor would they invest in strengthening the legislature’s oversight capabilities. In a weakly institutionalized setting, both the executive and legislature resort to informal strategies. Legislators use oversight mechanisms to bargain with the executive in exchange for not enforcing sanctions. The executive relies on formal and informal resources to assert presidential power and shrink accountability (by neutralizing accountability agencies and paying off legislators). By highlighting institutional strength and informal institutions, this dissertation seeks to lay a better foundation for understanding how political institutions contribute to corruption.
However, an account of the incentives and opportunities for corruption that emerge when executive accountability is deficient does not provide a full understanding of systemic corruption problems. By applying an informal institutional approach to the study of corruption, this research sheds light on the informal resources that are necessary for the development of corrupt exchanges, and identifies the mechanisms that facilitate their enforcement. From this perspective, corruption is not a historically contingent problem, but rather an informal institution of governance that allows actors to circumvent formal institutional rules to pursue illicit goals.

This introduction discusses the concept of corruption and reviews theoretical approaches to understanding corrupt exchanges. Next, it makes the case for studying corruption in Argentina by taking a closer look at the institutional conditions that explain the persistence of political corruption in the country, as well as the emergence of particular corruption patterns. The next section provides first a preview into this research’s approach, and then describes the research methodology and gives an overview of the whole dissertation.

2. What defines corruption? The problem of conceptualization

Corruption is an elusive phenomenon whose definition has been the subject of considerable dispute. Many authors have proposed different definitions trying to describe corruption (Leff 1964; Nye 1967; Huntington 1968; Rose-Ackerman 1978, 1999; La Palombara 1994; Friedrich 2001). The contemporary debate on what defines corruption focuses on whether we can identify universal and objective standards that make certain behavior “corrupt” in all societies, and, if so, what those standards are. Heidenheimer and Johnston (2001) categorize the definitions of corruption in three groups: those related to public office, those based on market theory, and those based on the public interest.

The public-office definition of corruption is the most common. It views corruption in political and institutional terms, and establishes institutional markers that identify ways of preventing corruption. From this perspective, corruption refers to
Behavior which deviates from the formal duties of a public role because of private regarding (close family, personal, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses). (Nye 1967, 417)

One limitation of this definition is that the notion of public office is a Western concept, and therefore behavior that is considered corrupt in the West may be socially approved in many cultures (Theobald 1990; 1997, 3). Gardiner (2001, 26) also highlights the inadequacies of these definitions to encompass behaviors that constitute abuse but do not necessarily involve gain, or that involve a political rather than a private gain. Warren (2001, 2004, 2005, 2006) stresses that while the approach is well suited to deal with administrative corruption, it fails to deal with the non-behavioral or attitudinal meaning of corruption, as well as with the political dimension of corrupt exchanges. This view does not adequately address corruption of elected public officials who do not have clear-cut rules or procedures constraining their behavior (Theobald 1990).

Despite these objections, public office definitions trace the causes of corruption to structural and institutional causes. They define corruption in behavioral terms, and identify the basic components of corruption at the individual level. This focus, which makes the approach susceptible to numerous criticisms, also makes it particularly useful for building an explanation that treats individual behavior as the main unit of analysis and exploring how individuals behave under institutional constraints. Moreover, they have allowed the development of effective anticorruption tools and strategies (Warren 2005, 4).

Market theory definitions assume that the norms governing public officials’ behavior are difficult to identify or not well articulated, and thus rely on rational actors’ self interest. From this perspective, corruption emerges when public officials regard public office as a private business and seek to maximize the income associated to their office (Van Klaveren 2001 [1957]), or as an extra-legal institution for maximizing influence over bureaucratic processes (Leff 1964, 8). Though this is supposed to be a neutral and objective definition, it implicitly assumes a previous conceptualization of public office and the norms that regulate its exercise.
The third set of definitions relates to the public interest. From this perspective, any action taken by a public official that damages “the public and its interests” (Friedrich 2001 [1972]) is corrupt, even if it is legal. Less essentialist than public office conceptualizations (Thomas 2003, 33), such approaches are also problematic because the definition of the public interest is sometimes difficult to identify. Moreover, in developing countries, the distinction between the public and private spheres is often blurred, and there is no consensus regarding what the public good is. As a result, what is socially permissible may not be legally permissible.

All the three types of definitions encounter problems in distinguishing between corrupt and non-corrupt behavior, and deciding by whom such standards are set. Notwithstanding these various interpretations of corruption, most authors agree on a broad definition of corruption that fulfills the following criteria (Warren 2004, 332): A. An individual or group of individuals is entrusted with collective decisions or actions. B. Common norms exist regulating the ways individuals and groups use their power over collective decisions or actions. C. An individual or group breaks with the norms. D. Breaking with the norms normally benefits the individual or group and harms to the collective. The differences between definitions have to do with the operationalization of these propositions. Building upon such basic agreement on what constitutes corruption, section five of this chapter defines the concept more narrowly and presents a more precise operational understanding of corruption.

3. Understanding the causes of corruption: Existing explanations

There has long been interest in understanding corruption from different fields of study and perspectives. A review of existing explanations reveals three major types of theoretical arguments about the causes of corruption: cultural, functional and actor-centered. This section evaluates their main arguments, and discusses some efforts to assess those theoretical predictions empirically. In so doing, this section lays the foundation for Chapter 2’s discussion of the contributions of institutional approaches to the conditions under which political actors engage in corrupt behavior.
3.1 Cultural explanations

Cultural theory scholars maintain that publicly-shared values define the rules that influence how a society pursues its goals and generate different views about corrupt behavior. Some studies focus on individual attitudes, internalized beliefs and psychological traits (Roldan 1989; DiFrancesco and Gitelman 1984; DellaPorta 1996; Moreno 2002), while others emphasize macro-structural forces at the societal level (Little and Posada-Carbo 1996). All of them attribute a crucial explanatory power to certain structural characteristics—widespread poverty (You 2005); social fragmentation and inclusion-exclusion dynamics along regional, ethnic or other cleavages (Collier 2002, 7; Warren 2004, 18); low education levels; and individual loyalty to traditional elites (Scott 1972). These explanations see corruption in Latin America as an endemic problem which reflects deep cultural traditions—including legacies of patrimonial, corporatist and populist states—and prevailing values of particularism, formalism and discretionality (Nef 2001; Caiden 2001, 28); limited economic opportunities and vulnerability of the middle classes (Little 1996); low political trust (Morris 2002; Morris and Klesner 2008); and the presence of strong personal ties of family and friendship (Rose-Ackerman 1999).

While cultural arguments can be quite persuasive, they tend to tautologically identify a particular political culture and corrupt behavior and attribute too much explanatory power to the value systems of particular societies. They do not explain why and how corruption-prone values are resilient despite ongoing change (Lü 2000, 20), and fail to account for changes in corruption patterns and levels. Moreover, cultural theorists are unable to explain why certain societies will develop and maintain such corruption-prone values, which precludes identifying conditions and instruments for preventing corruption.

3.2 Functional arguments

This approach posits that corrupt behavior may be functional in the economic and political development of societies. From this perspective, corruption emerges at stages of development in which rapid modernization finds feeble sustain in weak institutions (Huntington 1968). Corruption provides an alternative yet informal means of articulating influence and making demands upon the
system, replacing interest group and/or party politics. Corruption thereby helps to strengthen political parties, stimulate economic development, ensure stability and contribute to modernization.\textsuperscript{21}

Empirical evidence has contradicted the functionalist arguments.\textsuperscript{22} A closer look at the economic and political costs of corruption demonstrates that it can hardly be considered as the “grease” that makes things work (Wade 1997). There is substantial evidence about the negative effects of corruption on economic growth and inequality (Mauro 1995; Ades and Di Tella 1996; Aidt, Dutta, and Sena 2006), political legitimacy and support (Morris 1991; Doig and Theobald 2000; Porta 2000; Seligson 2002; Seligson 2003; Scarfo 2002), and government effectiveness and stability (Gould and Amaro Reyes 1983; Mauro 1995; La Porta et al. 1998; Wei 1999; Reinikka and Svensson 2002). Corruption distorts markets and misallocates talent, diverting resources away from crucial sectors for economic development. It hinders foreign investment and total domestic investment, distorts aid flows, restricts trade, adversely affects public expenditures, weakens the financial system, undercuts governments’ ability to raise taxes, and reduces competitiveness and economic growth, which in turn have a negative impact on income distribution and poverty levels.\textsuperscript{23}

Theoretically, corruption does not generate efficient responses to government failures, but creates greater inefficiencies. Potential bribes do not work as an incentive for public officials to fulfill their obligations, but rather make them delay responses and reduce the supply of goods and services in order to obtain greater payments (Myrdal 1968). Moreover, illegality increases transactions costs. Bribes are paid not only to avoid inefficient regulations and taxes, but also to reduce the impact of any state-imposed burden (Rose-Ackerman 1999; Della Porta and Vanucci 1999). Corrupt markets are also less competitive than non-corrupt markets, as those who participate will set entry barriers in order to reduce the costs of exposure (Rose-Ackerman 1999, 101). Finally, participants in corrupt markets conceal information about their utility functions (the bribe level they are willing to pay), which in turn fails to set the proper bribe level (Jin 2004, 23).
3.3 Rational choice explanations

Unlike previous models, individual choice approaches advance the premise that, given institutional opportunities and constraints, corrupt behavior occurs when individual preferences make corruption beneficial. Institutions influence what actors do by working on and through actors’ expectations (Williams 1999, 508). The institutional structure, and actors’ place within it, determines the expected costs and benefits of engaging in corrupt transactions (Jin 2004). This theory has produced two main approaches for understanding corruption: rent-seeking and principal-agent models.24

Rent-seeking refers to “the use of resources both for productive purposes and to gain an advantage in dividing up the benefits of economic activity” (Rose-Ackerman 1999, 2). While all rent-seeking behaviors are not corrupt, all corrupt acts have rent-seeking characteristics. From this perspective, corruption is a consequence of the inefficient intervention of the government in the economy (e.g., through trade restrictions, price controls, foreign allocation). The government generates large rents by trying to promote economic growth through its role as owner and regulator of resources (Rose-Ackerman 1999, 14; Zahran 2008, 137). This intervention generates distortions and scarcity; it creates incentives for individuals to invest resources competitively to gain, extend and protect monopoly positions, special treatment, and related benefits. If those resources are illegally invested, this constitutes corruption. Rent-seeking is economically inefficient, because resources spent on getting rents do not create any goods or services (Congleton 2008, 2). Moreover, citizens will end up paying higher prices for services (Shleifer and Vishny 1993) and public officials spend additional resources on unproductive rent-seeking rather than on fulfilling their goals efficiently (O'Krueger 1974; Klitgaard 1988, 43). While rent-seeking models provide an appealing explanation of the costs of corruption and establish the linkage between corruption, government control, and monopoly power,25 they fail to recognize the distortions that the market produces (Warren 2006, 4). More importantly, they pay little attention to political institutions and the institutional foundations of markets (Johnston 2000), and fail to understand that corruption induces decision makers to create distortions and inefficient rules that generate rents (Lambsdorff 2007, 130).26
Another approach is the agency model of corruption (Banfield 1975; Barro 1973; Rose-Ackerman 1978; Klitgaard 1988, 1997, 2000; Groenendijk 1997; Jain 1998; Gambetta 2000; Aidt 2003). In a simple agency relationship, some individuals (principals) are assumed to be honest and prefer to maximize the public interest, while others (agents) accept the obligation to act on behalf of their principals in exchange for some form of compensation. When authority is delegated to an agent, potential for corruption exists because principals have poor knowledge and information about the agents’ honesty and activities, and it is costly for principals to obtain such information (Besley 2006, 99). Thus, the principals’ problem is to ensure that agents act on behalf of the principals rather than opportunistically. Corruption occurs when it is beneficial for agents to pursue their own goals by betraying the principals’ interests. The institutional structure shapes agents’ incentives and affects the cost/benefit calculation of corrupt transactions; such calculation is defined by the probability of being discovered and punished, the associated penalties, the moral cost of participating in corrupt transactions, and the expected rewards compared with the alternatives (Jin 2004).

This approach also provides insights for designing institutional reforms to curb corruption. The model suggests that principals should configure agents’ opportunities and incentives to encourage them to optimize their duties and minimize malfeasance. Principals play an important role in designing incentives and defining penalties, as well as in shaping the institutional environment (Lambsdorff 2007, 69). They must take actions to strengthen accountability and transparency, and to limit agents’ discretion and monopolistic control over goods and services (Klitgaard 1988). For example, competing jurisdictions may help reduce corruption, as clients can reapply to another servant if they are asked for a bribe (Rose-Ackerman 1978; Shleifer and Vishny 1993). Other actions can provide principals with further control over the agents’ behavior, including the threat of dismissal, establishing a credible schedule of penalties and rewards (Klitgaard op. cit., 74 ff), or increasing transparency (Klitgaard op. cit., 82 ff; Boehm 2007, 3).

This approach has a number of limitations. First, it fails to consider that elected politicians may also be corrupt, thus reducing the agents’ risks as well as the moral costs of corrupt behavior.
Second, it fails to explain integral features of politics like the existence of multiple principals and overlapping agency relations (Boehm 2005, 249; Mishra 2006, ch. 7). Thirdly, even when the principal chooses an optimum level of corruption, losses result from forestalled potential benefits. Corruption may be avoided by choosing a second-best option, which prevents parties from reaping the welfare benefits of the most optimal choice (Lambsdorff 2007, 70). Finally, this approach does not explain why different systems of incentives and opportunities arise in the first place, and the reasons why different actors may choose alternative strategies in a given institutional framework (Ibid.). Institutional strength may be relevant to account for some of those differences.

3.4 Empirical research

Empirical studies using large-N samples bring to the forefront some of the key variables for understanding corruption. Systematic evidence indicates that higher levels of development (Ades and Di Tella 1996; Treisman 2000) and faster growth rates (Mauro 1995) are associated with lower corruption. The size of the informal economy has also been found to be empirically significant in order to explain the level of corruption across countries (Johnson, Kaufmann, and Zoido-Lobatón 1998; Schneider 2007). Although there is less evidence for the cultural determinants of corruption, hierarchical religions have been associated with higher corruption (Treisman 1999; La Porta 1997). Husted (1999) finds that cultural variables such as uncertainty avoidance, power distance, and masculinity are also correlated with higher corruption levels. Gender has also an impact on corruption levels, with bribes being less prevalent when women hold a greater share of power (Swamy, Knack, Lee and Azfar, 2000).

The purpose of this review is not to provide a comprehensive survey of all determinants of corruption, but rather to narrow down the focus of this investigation to a particular subset – political institutions. Cross-country research focusing on macro variables and measuring corruption at the aggregate level helps capture empirical regularities and distinguish countries that are very corrupt from those that are very clean. However, it fails to account for the variety of corrupt incentives in specific settings (like Argentina) that fall in-between (Rose-Ackerman 2006, xxiv). Therefore, it
cannot explain how corruption varies across constitutional structures and electoral systems, nor explain the mechanisms that connect specific institutions and corrupt incentives. More research is needed on the relations between institutions and corruption.

4. Political Corruption in Argentina: A conspicuous problem

Endemic corruption is a structural weakness of democratic governance in Argentina (Linder and Santiso 2002), which endures as an institutionalized component of the political system and a significant public concern.34 Though less socially widespread than in other Latin American countries, corruption spans the country’s political history and is often pointed out as a norm in the local political culture. Corruption scandals have contributed to the eroding legitimacy of political institutions, and higher perceived corruption seems to be paired with an actual deterioration in corruption levels over time.35 Many observers believe the level of corruption increased in the 90s with the process of state reform, when the government sold off shares in state companies and public service concessions but many of those privatizations involved rigged bidding, kickbacks, and other irregularities. Others, like Monti (1999, 52) and Sautu (2004, 71-81), suggest that the historical prevalence of administrative corruption turned into grand-corruption practices that involved high-level public officials, including presidents. Despite variations in the content or modalities of specific corrupt practices (the prevailing corruption schemes) and the resources and actors involved, it is surprising the pervasiveness and endurance of corruption, as well as the persistence of the underlying institutional conditions that explain the development of corrupt exchanges and shape corruption in particular ways.

The country has confronted higher levels of political corruption than those found in countries at similar levels of development (Johnston 2005, 52-53; Svensson 2005, 27).36 In 2009, Argentina ranked in the 38.1 percentile for control of corruption, compared to the 58.7 average for countries in the same income category (Kaufmann, Kraay and Mastruzzi, 2010). The gap between development and corruption indicates that the problem may relate to the institutionalization of Argentina’s polity.37 Political and institutional factors have been crucial to explain the country’s poor economic
performance and policy outcomes (Manzetti 2002). Argentina’s institutions are weaker and more unstable than in consolidated polities and therefore, political actors face fewer institutional restraints and greater uncertainty. The period analyzed (1989 to 2007) is a span of profound transformation. Despite political alternation and social, political and economic changes occurred over those years, political corruption continued to be an enduring feature of Argentine democracy. This dissertation explores how weak political institutions contributed to this continuity.

The following pages provide a glimpse of the institutional conditions under which corruption emerged historically and describe the practices and resources exchanged in the corruption market. They identify some recurrent conditions that help explain the continuity and persistence of political corruption, as well as the development of particular corruption patterns. The next part examines the contemporary democratic period to assess continuity or change in prevailing corruption patterns.

4.1 Corruption in Argentina’s history

A cursory glance into the past suggests that the pervasiveness of corruption in Argentina is not a recent phenomenon. The roots of corruption can be traced to the colonial period, when Buenos Aires concentrated commercial activities regulated by Spain, and the legal and illegal trade with the colonial center of Alto Peru. Two defining features of this period were the profound imbrications between commercial interests and political and administrative power, and the existence of a system of norms and regulations that was systematically violated, even by those in charge of their enforcement. Illegal activities resulted from the inability to enforce Spain’s commercial monopoly, the growing importance of commercial routes under British control, and the incentives for public officials who had bought their offices to “share” their profits by not paying custom taxes for a significant proportion of commercial transactions.

After the 1810 Revolution, corrupt practices revolved around the distribution of land and the concession of public services. In the 1820s, the implementation of the “enfiteusis law” (intended to serve the financial goals of provincial states by leasing public lands) concentrated land in a few private hands, as public officials discretionally favored former users who had obtained large
extensions in usufruct. The failure of this and other institutional mechanisms for land distribution consolidated the oligarchic agro-export state after 1862 (Nino 2005, 58-59). The concession of public services was another avenue of rent-seeking behavior. The state assumed the initial investments and risks, and then transferred public services and infrastructures to private firms in exchange for minimal capital investments. Tax exemptions and guaranteed minimum earnings for foreign (and a few local) investors provided strong incentives for corrupt behavior. Firm owners were able to make extra-normal profits, part of which could easily be returned or shared with public officials (Vitelli 2006, 284-5). Moreover, collusion between politicians, public officials, and external banks resulted in an increase in external debt, which was manipulated to generate extraordinary rents for those managing Argentine debt securities in financial markets. Other mechanisms that facilitated the diversion of public funds were monetary and financial operations related to preferential bank loans (Vitelli 2006, 287 ff.). During this period and before 1916, political elites and powerful interest groups were closely intertwined (Simonetti 2002, 178-9; Sautu et al 2004, 58), and policy decisions that valued particular interests over collective ones were made by appealing to legitimate goals. Informal linkages between political and economic elites were the system’s skeleton, which compensated for weak state institutions (Pomer 2004, 106, 153).

Following the 1916 presidential election, economic and political power changed hands and the middle classes gained access to the formulation of economic policies (Vitelli 2006, 308). In absence of strong and neutral institutions, politicians and the networks they articulated became the main intermediaries between economic and political interests (Pomer 2004, 124). Between 1916-1930, the sources of political corruption continued to be related with the agro-export state. Although land distribution was limited, irregular practices maintained land property concentration. More important was the diversion of state resources at different levels of government. The three Radical governments of this period were accused of numerous instances of corruption, bribes, and illicit behavior (Rock 1987, 213). The extended use of patronage in public administrations facilitated corrupt practices. Public office became a venue to gain access to monetary and other public resources,
which in turn were used for personal or political benefit. At the local level, this was facilitated by the absence of term limits, which allowed the use of state resources for ensuring reelection.\textsuperscript{47} Other mechanisms for rent extraction were monetary and financial operations, including illegal currency emission, discreitional allocations of credits and loans, falsification of money and bonds, bank fraud, and external debt operations. Public enterprises also provided numerous opportunities for corruption through the extension of concession contracts, procurement processes, and public works.\textsuperscript{48}

The 1930s was a decade of economic transition from the agro-export model to the import substitution industrialization (ISI). Frequent corruption scandals characterized this period, such as those in the Argentine Electric Company, the Anglo-Argentine Train Ways Company, or the operation of the Port of Rosario.\textsuperscript{49} In these cases, foreign companies were treated preferentially in the renegotiation of public service concessions, and state bodies approved irregular transactions that became formally legal.\textsuperscript{50} Other relevant sources of corruption included the use of state resources by the military, discreional credit allocation, and monetary operations in which the state regularly assumed costs derived from private transactions. Undue contractual extensions, guarantees of excessive profits for concessionary firms, and the consolidation of networks for sharing benefits and gaining connivance among authorities, firms, and political parties were common.\textsuperscript{51} The profits of corrupt exchanges were used for providing clientelistic benefits for votes, thus ensuring political support for the government (Sautu et al. 2004, 60).\textsuperscript{52}

The five military governments that ruled Argentina between 1930 and 1983 (Rock 1987, 303; Monti 1999) shared the adoption of policies biased toward concentrated interests, as well as the promotion of the corporatist interests of the military.\textsuperscript{53} The pattern of misappropriation of public resources shifted significantly, moving away from political parties towards the military and special interest groups (Vitelli 2006, 384). Many observers identify the generalization of corruption with the first populist government of Juan D. Peron in the 1950s, which strengthened the role of the state in the economy. A highly regulated economy and restricted access to information created favorable conditions for systemic corruption. Returns and kickbacks as well as the payment of favors and
loyalties with positions in the public sector were frequent. The nationalization of key sectors created ample opportunities and incentives for corruption (for example, the nationalization of the railway for 150 million of sterling pounds in 1947 was suspected of irregular payments).54 Common mechanisms were the non-market allocation of foreign exchange and control over agricultural markets.55 Issuing import permits, state controls over export flows, and pursuing the benefits generated by differences in exchange rates were frequent schemes.

Another important rent generating mechanism was the preferential treatment given to industrial interests. Between 1940 and 1976, economic policy revolved around the nationalization of public services and the creation of infrastructure for industrial activity in order to stimulate internal production to the detriment of imported goods. To solve the fiscal deficits created by financing import substitutions, Congress passed Law 20.560 of Industry Promotion in 1973. Preferential treatment and credit subsidies to the industry became the most important rent-inducing policies, since they gave public officials discretion to distribute several benefits that involved huge costs for the public sector: subsidies, preferential credits, tax deferments, exemptions from import rights, and even receiving capital from the state. The industrial promotion regime was characterized by weak state oversight, proliferation of middlemen and brokers, and administrative complexity.56 Not only did these policies create huge benefits, but also those rents were extraordinarily concentrated in a reduced number of domestic firms – beneficiaries of a special relationship with the public sector (e.g., as contractors) and with tremendous ability to gain access to extraordinary benefits over time57 – and the financial sector (Sautu et al 2004, 69; Acuña et al. 2006).

Systemic public corruption was also pervasive in these years. Overpricing in public works, diversion of public funds, bribes, extortion, as well as fraud and irregularities in the management of state-owned enterprises, were usual corruption schemes. As the state assumed an active role in productive activities, it resorted to its increased purchasing capacity to stimulate the economy. Frequent irregularities in public procurement included collusion among firms and non-competitive bidding; these irregularities usually continued during the execution of works or service provision,
with demands for payment of increased costs and false reception of goods. Political connections facilitated the allocation of concentrated benefits to a small number of firms.

The 1976-1983 military government reversed the ISI model and favored economic liberalization. This change benefited certain actors of the local oligarchy (agricultural interests) and financial sectors. The partial privatization and siphoning of some public assets were made at prices notably lower than the capital investments, generating extraordinary profits for private investors. In order to open the economy, the government implemented a change in relative prices that created extraordinary profits for sectors close to the government or with well-positioned intermediaries. Increases in agricultural prices, public service fees, and exchange and interest rates created extraordinary financial benefits that encouraged speculative operations. In 1978, a system of programmed devaluation intended to limit inflation generated extraordinary profits from increasing external debt and capital flight.

By the end of this period, external debt had skyrocketed (USD$37 million increase between 1976-83) and threatened macroeconomic stability (Vitelli 2006, 455). It was an important mechanism to produce concentrated benefits that private actors were willing to obtain illegally. The increase in private debt was often the result of irregular practices that were never questioned by economic authorities, including phantom loans, false transactions, and overpricing in external purchases and payments, among others. Then, the state assumed the large private debt by nationalizing the debt of private firms and providing state guarantees to private firms that never complied with their obligations. Public indebtedness encouraged capital flight and siphoning, as the money was not allocated to public enterprises formally acquiring such debt but to the Central Bank. In all these transactions, local intermediaries and foreign financial institutions were able to obtain high profits.

This overview shows corruption as an enduring feature of Argentina’s political life. Much of the wrongdoing in the early periods was non-systematic and modest, although some of the defining features of political corruption – including the existence of interlocking networks that connected the public and the private sector – appeared early on. Since the 50s, corrupt practices have reached higher
into the state hierarchy while bureaucratic corruption remained. Also, the use of rent-inducing policy mechanisms became a common occurrence, along with the illegal allocation of state resources. These patterns reemerged soon after democratic transition.

4.2 Contemporary patterns of political corruption

Although historically determined variables are important to understand corrupt practices (Porta et al. 1999; Treisman 2000), political corruption is a dynamic phenomenon (Morris 1991, 1999; Rose-Ackerman 1999; Zarhan 2008). Factors like variation in fiscal sources, successful anticorruption campaigns, rapid social and economic change, and modifications in political and economic paths of advancement may explain changes in the patterns and level of corruption (Lanyi and Azfar 2005, 55-57). An exploration of Argentina’s contemporary corruption reveals both continuity and change. While the evidence presented in the following pages shows differences in corrupt practices, exchange mechanisms and resources, those variations did not shift the prevailing pattern of corruption nor its underlying institutional causes.

In contrast with the lower visibility of judicial or police corruption, countless cases of bribery, extortion, fraud, kickbacks, and unexplained wealth routinely attend the upper echelons of the government pyramid. Although the first democratic government inaugurated in 1983 was by all accounts the most honest of the new democracy, it was not free of suspicion (O'Donnell 1991, 2). The weak institutionalization of the political regime created opportunities and incentives for corrupt behavior. In O’Donnell’s words (1991), during the Radical government “there was an important advancement over the state apparatus by the inner circle of the regime (with extensive patronage and allowing privileged access to particular interests).” This state colonization facilitated the formation of corrupt networks and weakened the oversight role of the state, particularly over the financial system, contributing to the development of corrupt exchanges. In scandals such as that of the Banco de Italia, the Central Bank did not fulfill its oversight role and failed to penalize irregular transactions performed by banks and financial institutions, imposing huge costs on the state. Corrupt practices also erupted during the first privatization attempts, showing that the government’s strategy was
undermined by flagrant violations of the formal rules of public contracting. However, none of these cases was very visible, and corruption accusations were not at the forefront of the political agenda.

In contrast, the 90s unleashed a spate of media investigations and corruption scandals involving President Menem and his inner circle. The economic downturn and hyperinflation crisis that signaled the end of the Alfonsin’s government meant a collapse of political and economic institutions and the breakdown of the normal functioning of the state. In this context, the anticipated inauguration of the Menem’s administration in 1989 allowed the executive to claim economic emergency (Sidicaro 1994, 137) and obtain extraordinary powers to pursue structural reforms (Llanos 2002; Tedesco and Barton 2004). The implementation of structural reform amid low accountability and power concentration in the executive created ample opportunities and incentives for corruption (Gervasoni 2001, 10). Armed with extraordinary powers, the government gained control over public institutions to avoid any possible interference (González 2001). As a result, in less than four years (1989-93), there were some 19 scandals of corruption, related in particular to the privatization process, with 29 ministers and senior advisers dismissed (Saba and Manzetti 1997, 363-4; Manzetti 2003, 340). The Swiftgate case in 1990 was the first of a series of highly publicized corruption scandals, including the privatization of the state airline (Aerolineas), the phone service company (ENTEL), the radio-electric space (Thales), and mail services (Correo Argentino). Other scandals involved high-level public officials in fraudulent procurement and contracting processes with transnational firms (like IBM and Siemens).

The first years of Menem’s administration saw an accelerated privatization process, which alleviated short-term fiscal needs and increased business and financial actors’ confidence in the economy (Azpiazu 2001, 88; Acuña et al. 2006, 7). However, the promises of a more efficient public sector were unfulfilled, as privatization concentrated extraordinary rents in a few firms to the detriment of consumers (Azpiazu 2001, 87; 1994, 172). While weak formal institutions facilitated reform, they also were functional to the extraction of corrupt rents (Manzetti 2000, 153). Commissions and kickbacks were a de facto standard to obtain preferential treatment in public
contracts and policy decisions. In exchange for the concession of extraordinary benefits, public officials demanded their share through extortion or firms were willing to return a part of their extra-normal profits. Corruption helped interlink political and economic elites, thus facilitating the transfer of assets to the private sector (Vitelli 2006, 469).

After the initial corruption scandals, in response to international pressures, the government enhanced formal oversight mechanisms and regulatory frameworks; however, in practice, these regulations were not effectively enforced. As the privatization process slowed down, other mechanisms facilitated the extraction of corrupt rents. The implementation of economic policies, particularly the 1991 Convertibility Plan, which linked the Argentine peso to the US dollar at one-to-one parity, offered important opportunities for corruption. Through the reduction of tariffs and the elimination of import quotas, the economic reform program opened the local market to good imports, while maintaining high internal interest rates. This system favored the use of illicit mechanisms (e.g., parallel customs) for the entry of goods to stabilize internal prices and the exchange rate, as well as the illegal export of goods (e.g., arms trafficking) to expand monetary supply. Illicit currency and money laundering transactions helped alleviate monetary restrictions.

Most corruption cases were closely connected with the president and his inner circle, and it was difficult to believe that the president did not know about the activities of those appointed by him and in many cases accountable only to him. In fact, Menem ended his terms involved in six different criminal corruption cases. The economic reform process reconfigured elite networks by shifting the relative balance between economic elites. This change contributed to reveal corrupt transactions, as excluded actors had incentives to expose them. Simultaneously, empowered investigative journalism contributed to the public visibility of the problem.

By the end of Menem’s administration, public demand for eliminating corruption and enhancing accountability was intense. It became the defining feature of the next elected president’s electoral platform. The electoral coalition between the UCR and Frepaso (Alianza) won the 1999 presidential election, and Fernando De la Rúa was sworn as new president. Building upon the active
role that Frepaso had played in denouncing corruption during Menem’s government, the Alianza’s main electoral promise was bringing the abuses of the outgoing administration to an end.\textsuperscript{75} This proved to be an almost impossible goal, and the Alianza’s government fate was signed by a major corruption scandal that involved the president and his inner circle directly. During his short presidency (1999-2001), De la Rúa continued the market reform process initiated by Menem, while implementing new policies to improve government’s transparency and accountability (for example, the creation of the Anticorruption Office). However, the government did not change the relationship between the state and the private sector, and continued to guarantee extraordinary and concentrated profits for private firms that had been beneficiaries of the structural reform (Azpiazu 2001, 97).

Politicians continued to entwine networks with the aim of preserving power, by gaining access to public resources that could be legally or illegally siphoned. Under limited accountability, the discretionary use of state resources to build political support often involved illegal practices. In August 2000, Vice-president Carlos Alvarez demanded a federal investigation into allegations by newspaper \textit{La Nación} that the government had bribed senators to pass the Labor Reform Act. Eleven senators were accused of receiving bribes for approximately 15 million pesos (US$5 million) in exchange for their votes.\textsuperscript{76} Funds came from the Intelligence Agency (SIDE) and had been transferred through a secret executive decree (Charosky 2002; Rigoli 2002, 45). Publicly stating that the president was not committed to the investigation, the vice-president resigned in October 2000, hindering the ruling coalition.\textsuperscript{77} Other scandals also called into question the anticorruption credentials of the government.\textsuperscript{78} These cases revealed the limits of the Alianza’s anticorruption agenda and ethical discourse, as well as the government’s inability to undertake the institutional changes needed to curb political corruption (Charosky 2002). As a result, the government’s legitimacy, which had strongly relied on its anticorruption platform, was compromised (Marcus-Delgado 2002, 11, 13).

Although De la Rúa’s government indicted high-level officials, the cases were not actively prosecuted. Suspicions of behind-doors agreements between Radicals and Peronists regarding former president Menem’s indictment in June 2001 harmed the presidential image even further (Ibid.).
Meanwhile, several external shocks showed the limits of the Convertibility system and raised doubts about the country’s ability to repay its foreign debt. In addition, the President of the Central Bank was accused of malfeasance in prosecuting money-laundering cases. To avoid the depletion of bank deposits, the government restricted bank withdrawals, but violent social protests led to De la Rúa’s resignation in December 2001. The crisis showed the fragile nature of elite networks based on corruption, which sometimes become too rigid and fail to adapt to changing conditions or internal tensions (Johnston 2005, 101).

In the aftermath of the crisis, the focus of the Duhalde’s administration (2001-2003) was on economic and political stabilization. No major corruption scandals erupted during his short government, although denounces of irregularities in the distribution of social programs were frequent. Systemic corruption continued to characterize the relations between state and private actors, but corrupt transactions were more concentrated on particular areas. The breakdown of the Convertibility system and the devaluation of the Argentine peso in January 2002 led Argentina to default its US$141 billion dollar external debt. In this context, there were many opportunities for transferring assets and obtaining financial profits through speculative transactions, especially in the months prior to the devaluation. Capital flight was also significant and encouraged by the Central Bank, which allowed local banks to transform their deposits into external currency at the exchange rate previous to devaluation. The extraordinary benefits that were at stake created ample opportunities for corrupt exchanges.

Opportunities and incentives for corruption did not disappear when Néstor Kirchner took office in May 2003. After Kirchner’s power consolidation in the 2005 legislative elections, there was a general deterioration of control institutions and checks and balances. Simultaneously, the recovery of the economy, based on the agro-export renaissance, augmented the flow of resources under discretionary control by the executive, and increased the importance of economic policies as rent-producing mechanisms. Fiscal surplus and the special powers attributed to the executive for budget management allowed the discreional distribution of state resources, particularly through subsidies
and fiduciary funds. While many of these resources were informally diverted to pay for political favors, others were used to illegally finance political activities and/or for private benefit. Government contracts were a crucial mechanism for producing rents, and the cartelization of public works allowed private firms to extract significant rents from public resources. Those rents were shared with high-level public officials. Other significant rent-inducing policies were price controls and the re-nationalization of privatized services, either directly or through extensive subsidies that preserved the extraordinary profits of service providers. The discretionary distribution of concentrated benefits by the executive created incentives for private actors to illegally invest resources for not being excluded from the spoils.

Corrupt transactions were less visible; no major corruption scandals threatened the Kirchner’s administration until the end of presidential mandate. Just before the 2007 presidential elections, several scandals made it to the news headlines. The Skanska case opened the door to public revelations of other corruption cases involving public officials, as well as illicit campaign financing. The media soon revealed the generalized use of state resources for political and private benefit, as well as suspicions of the president’s illicit enrichment through economic transactions that involved state resources and relied on privileged information. This sudden upsurge in corruption scandals was in part explained by internal disputes among different factions within the government, which used denounces of corruption to obtain political benefits.

Grand corruption does not tell the whole story of corruption in Argentina. Entrenched and systemic corruption also permeates the country’s bureaucracies (Sautu 2004), especially in certain vulnerable areas, administrative procedures and organisms (infrastructure works, social programs, customs, or procurement). As state reform further undermined the already compromised capacity of the state apparatus, the value of systematic political interventions in the bureaucracy increased. A large number of public officials were removed and replaced with transitory personnel, appointed discretionally based on political affinities, personal loyalties, and family connections (Vitelli 2006,
The transformation of the Peronist party into a patronage-based party organization that concentrated decision-making power in the hands of public office holders (Freidenberg and Levitsky 2006, 187) facilitated bureaucratic interventions. As a result, many petty corrupt transactions were the result of political pressures from above (OA 2000). Moreover, corrupt mechanisms in both grand and petty corruption are often similar, and the only difference is the scale of the transactions and the parties involved.

The costs of corruption are significant. A rough estimate (based on the illegal sums or percentages paid by the highest bidders) indicates that kickbacks would have generated between $3.2-$6 billion in cash during Menem’s administration (Manzetti 2000; Basualdo 2001; Sautu et al. 2004, 75). Biscay (2006, 9) estimated the costs of corruption for the period 1980-2006 at $10,145 million dollars. These costs are also relevant in terms of foreign investment losses and increasing costs of doing business. Manzetti (2003, 342-3) estimated an 18.7 billion FDI lost as a result of corruption. In 2004, according to “Doing Business in Argentina,” a 44% opacity score required a return of 5.06% above the US rate of return to offset a company’s risk. The social impact of these costs is significant. Corruption costs equaled 407.8% of the health budget in 2001, and 94% of the 2004 education budget (Biscay 2006, 10-11).

The ubiquity of corruption in Argentina is widely acknowledged both inside and outside the country. The countless anticorruption campaigns attest to its widespread nature. In 1989, President Menem launched an ambitious and radical structural reform program aimed at fighting against corruption and inefficiency in the public sector. In 1999, the mobilization of the anticorruption sentiment helped the Alianza’s candidate Fernando de la Rúa to win the presidential elections. Similarly, in 2003, President Kirchner launched an aggressive anticorruption campaign to strengthen presidential legitimacy. He passed new legislation to enhance transparency, launched a program to catch tax evaders, and fashioned an anticorruption program that fired 80% of the Federal Police
commanders in an attempt to curb police corruption. Yet despite all the rhetorical postures, legal reforms, and anticorruption bodies, the level of corruption has not been substantially reduced.

This review confirms the endemic nature of corruption in Argentina. (See Table 1.1 for a summary of corruption sources in different periods.) Systemic corruption and maladministration are well entrenched in administrative processes, and the relative importance of high-level corruption increases when there is an important distribution of economic assets or greater availability of money (Zahran 2008, 136). Systemic bureaucratic corruption facilitates high-level corruption by providing informally institutionalized mechanisms and resources for corrupt transactions. Power concentration in the executive and limited accountability enable the use of policymaking and state resources for corrupt exchanges (Levitsky 2003, 249). The tenacity of Argentina’s corruption can be illustrated by the discovery in 2004 of ten-year-old mechanisms that different governments used to assign funds to the intelligence agency for money laundering and corrupt transactions (Abiad and Thierberger 2005; Gasparini 2009, 164).

The endurance and pervasiveness of corruption raises important questions for understanding both corruption itself and Argentine institutions. Major theoretical queries center on the causes of corruption and its institutionalization. Specifically, to what extent does the institutional weakness that pervades the political system relates to the development and persistence of corruption? Why do so many anticorruption efforts fail in practice? What role do informal institutions play regarding corruption? This dissertation addresses these and other related issues. It seeks to explore the causal mechanisms that relate political institutions and corrupt exchanges in weakly institutionalized democracies. Moreover, by incorporating this concern with political corruption, it also strives to provide a more comprehensive understanding of Argentina’s polity.
Table 1.1. Sources of corruption in Argentina, 1862-2007

<table>
<thead>
<tr>
<th>Period</th>
<th>Rent-inducing mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1862 -1916 – agro-export state</td>
<td>Land distribution</td>
</tr>
<tr>
<td></td>
<td>Concession of public services</td>
</tr>
<tr>
<td></td>
<td>Bank loans</td>
</tr>
<tr>
<td></td>
<td>External debt</td>
</tr>
<tr>
<td>1916-1930 – golpismo and</td>
<td>Land distribution</td>
</tr>
<tr>
<td>electoral fraud</td>
<td>Management of public enterprises</td>
</tr>
<tr>
<td></td>
<td>Monetary and financial operations</td>
</tr>
<tr>
<td>1930-1943 – the infamous</td>
<td>Concession of public services (renovation of contractual</td>
</tr>
<tr>
<td>decade</td>
<td>obligations)</td>
</tr>
<tr>
<td></td>
<td>Monetary operations</td>
</tr>
<tr>
<td></td>
<td>Credit</td>
</tr>
<tr>
<td>1943-1976 – import substitute</td>
<td>Nationalization &amp; Privatization</td>
</tr>
<tr>
<td>industrialization (ISI)</td>
<td>Controls of agricultural markets</td>
</tr>
<tr>
<td></td>
<td>Foreign exchange controls</td>
</tr>
<tr>
<td></td>
<td>Public contracts and procurement</td>
</tr>
<tr>
<td>1976-1990 – military regime</td>
<td>Preferential treatment (<em>promocion industrial</em>)</td>
</tr>
<tr>
<td>and democratic transition</td>
<td>Credit subsidies</td>
</tr>
<tr>
<td></td>
<td>Private external debt</td>
</tr>
<tr>
<td></td>
<td>Partial privatization</td>
</tr>
<tr>
<td>1990-2001 – neo-liberal reform</td>
<td>Privatization</td>
</tr>
<tr>
<td></td>
<td>Foreign exchange controls</td>
</tr>
<tr>
<td></td>
<td>Public contracts and procurement</td>
</tr>
<tr>
<td></td>
<td>Import/ export controls</td>
</tr>
<tr>
<td>2001-2007 – crisis and</td>
<td>Fiscal surplus</td>
</tr>
<tr>
<td>recovery</td>
<td>Concession of public services</td>
</tr>
<tr>
<td></td>
<td>Price controls</td>
</tr>
<tr>
<td></td>
<td>Re-nationalization</td>
</tr>
<tr>
<td></td>
<td>Fiduciary funds (Fideicomisos)</td>
</tr>
<tr>
<td></td>
<td>Public works</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration
5. This dissertation’s approach

The next pages introduce a working definition of corruption that will be used in the following chapters, and elaborates on the structure of corrupt exchanges. This section also provides a glimpse into the concepts used to explain executive accountability and the development of corrupt exchanges.

5.1 An operational definition of corruption

This dissertation adheres to the standard definition of corruption as actions that deviate from public norms of decision-making, abusing roles or resources, for private benefit. The focus is on public corruption, or the direct exchanges between political, economic and social markets (Rose-Ackerman 1999). This research looks at political corruption (as opposed to bureaucratic corruption)—i.e. corruption of elected officials or high-level political appointees who, in order to win office and/or be reelected, need resources (e.g., votes, money) and may decide to engage in corrupt exchanges to obtain them (Amundsen 2000). Although this understanding means that corruption may take several forms and describe diverse activities in different contexts, it is “safe to assume that, upon gaining office, politicians know what kind of behavior will constitute a breach of the implicit principal-agent contract into which they have just entered” (Kunicova and Rose-Ackerman 2005, 578).

Corruption represents the perversion of the agency relations that constitute democracy (Lancaster and Montinola 1997). Citizens vote for public officials to act on their behalf, thus entrusting officials with control rights over public resources. This obligation involves passing legislation as well as coordinating and overseeing the implementation of policies in exchange for political support. In so doing, public officials simultaneously act as principals of street-level bureaucrats. Although the agreement does not indicate the nature of the goods to be provided, it specifies the nature of the compensation to be received by public officials in exchange for their services (Montinola 1995, 33). Any deviation from that prescribed compensation, which involves skimming off part of those public resources to obtain personal or political gains, will be considered corruption. Thus, misuse of public office refers to the deviation from the public official’s role as an
agent (control rights over public resources) to accumulate or extract rents off public resources in order to obtain a personal or political benefit. Public resources can be appropriated directly (e.g., embezzlement) or indirectly, by charging a price for diverting resources (e.g., bribe). Extraction of state resources for private gain may also involve the sharing and distribution of extracted resources to some extent, with supporters, allies and/or other agents (Grzysmala-Busse 2009, 639).

This dissertation distinguishes between corruption and other practices (e.g., clientelism, pork barrel) that are not illegal, yet undermine the ability to constrain corruption. From a democratic perspective, these practices represent a corruption of political processes, as voters lose their capacity to enforce the principal-agent relation because their vote is ineffective and/or they lack the necessary information (Warren 2005, 6-8). However, this dissertation will treat them as conceptually distinct from the illegal appropriation of public resources because, no matter how inefficient and inequity-producing, these forms of particularism are legitimate ways of winning votes through which politicians “show their competence in exercising control rights over public resources entrusted to them by voters” (Kunicova 2006, 143).

In what follows, this dissertation will focus on systemic corruption problems as opposed to occasional transactions (Riley 1998; Heidenheimer 2002; Rose-Ackerman 2002, 2006; Lambsdorff 2007, 20; Della Porta and Vanucci 1999, 18). When corruption is systemic, “participants act not independently but in concert with one another, maintaining the system that allows them to extract rents and taking their own share of the rents” (Azfar 2007, 260). Under these circumstances, corrupt practices become easily institutionalized, and may work as an informal system of asymmetric exchange between principals and agents (Teorell 2007). Corruption becomes an informal institution of governance (Darden 2003, 2008) and therefore, “those behaving illegally are rewarded and those continuing to accept the older norms penalized” (Della Porta and Vanucci 1999, quoting Caiden 1977, 306). As an institution, corruption is composed of people performing corrupt acts. An informal rule of conduct may develop that allows public officials to commit corrupt exchanges. It grants public
officials broad or even unlimited discretion in their control rights over public resources and also ensures impunity.

5.2 The structure of corrupt exchanges: Introducing elite cartel networks

The structure of corrupt exchanges varies based on the number of actors involved, the continuity of the transactions, the relationships established between actors, and other multiple factors. Although sometimes corruption involves simple dyadic exchanges between two actors, given this dissertation’s focus on systemic corruption and the analytical importance of institutional strength and informal institutions, our concern is with complex networks of corrupt exchanges. When corruption is widespread and systemic, it often involves groups of public officials and of private actors, as well as brokers or middlemen, which form complex webs of exchange (Della Porta and Vanucci 1999, 21).

On the one hand, groups of public officials coordinate with each other to reach public decisions that can be supplied and sold off in the corrupt market. On the other hand, cartels of private parties (such as businessmen) reach agreements on the kind of decisions and resources they would like to demand from public officials in exchange for payoffs. Middlemen often make the exchanges possible by facilitating contacts among actors, operating as carriers of money or other resources, or hiding the illegal exchanges. In addition, there are other actors also involved in these networks. Although they not share political rents, they also receive some benefits in exchange for resources that foster corrupt exchanges. For example, voters provide political support to corrupt political elites in exchange for clientelistic payoffs. Also, as public officials need cover-ups, they exchange favors with other actors who may jeopardize corrupt transactions (e.g., judges or bureaucrats) and in so doing, they reduce the costs of corrupt exchanges by minimizing the likelihood of being investigated and reported. (See Figure 1.1)
Figure 1.1. Complex network of corrupt exchanges
Source: Author’s elaboration based on Della Porta & Vanucci (1999) and Maiz (n.d.)
Not only do public officials and private actors agree and form groups among themselves for engaging in corrupt transactions, but in weakly institutionalized settings these actors also form corrupt cartels of political and economic elites that negotiate and agree between themselves on the exchange of public decisions for payoffs. This complex web of corrupt exchanges can be characterized as an elite cartel pattern of corruption.\textsuperscript{106} Elite cartel networks are interlocking groups based on the informal sharing of corrupt benefits in exchange not only for money, but also for limiting competition, isolating economic and policy advantages, and ensuring influence to govern (Johnston 2005, 90). In response to weak formal institutions, elite cartel corruption networks are informal mechanisms that allow actors to solve credible commitment problems and to reduce transaction costs in illicit corrupt markets. (The emergence of elite cartel networks will be further analyzed in Chapter 3.) In these networks, repetition and iteration over time, as well as bonds of trust established between actors, facilitate the exchanges. In addition, other resources such as coercion or reputation are also crucial for enforcing informal corrupt agreements.

This dissertation characterizes Argentine political corruption as an example of the elite cartel pattern of corruption. While Chapter 3 analyzes how corrupt exchanges are produced and reproduced, and which are the actors involved, Chapters 4-7 address the institutional conditions that explain why those corrupt exchanges happen. Finally, Chapter 8 analyzes the reproduction of elite cartels by looking at the enforcement of corrupt exchanges through informal rules that permit corrupt transactions and ensure the impunity of elite cartel members.

5.3 Executive accountability by the legislature and the development of corrupt exchanges

The aim of this dissertation is twofold: first, to examine the institutional mechanisms that explain the emergence of incentives and opportunities for political corruption in weakly institutionalized democracies; and second, to explore how corrupt exchanges develop and persist in those contexts, thus becoming institutionalized and systemic. To understand the “why” of corrupt exchanges, this dissertation looks at the institutional mechanisms that constrain the violation of the contract between principals (legislature) and agents (executive). As a result of ineffective constraints and monitoring,
and/or informal permissive rules, it may be in individual politicians’ interest to breach such contract without affecting their career prospects. In addition, to understand the institutional conditions that account for corruption, we also need to look at some additional resources that explain “how” corrupt exchanges develop and are reproduced, including informal institutions and rules that reduce the costs and risks of corruption.

Agency models predict that enhanced accountability as well as limited discretion and monopolistic control over goods and services have a significant inhibitory effect on corruption. A wide array of institutional mechanisms can be used to boost accountability and limit corruption. One important mechanism in presidential systems is legislative oversight of the executive. However, the actual inhibitory effect of these mechanisms depends on their effective enforcement (Caiden et al. 2001, 5) and therefore, the critical issue is the institutional capability and incentives of legislators to hold the executive accountable. In practice, such capability in weakly institutionalized democracies depends not only on formal institutions (e.g., regime type), but also on how those institutions actually work in practice and the rules that actually structure actors’ behavior and strategies. Thus, understanding corrupt behavior requires knowing what are “the actual rules that are being followed” (O’Donnell 1996). It also requires identifying all potentially relevant institutions (formal and informal) and how they interact (Voigt 2007, 13), and exploring their effects on actors’ expectations (Spiller and Tommassi 2003).

This dissertation analyzes the institutional mechanisms that enable or inhibit corruption by focusing on executive oversight by the legislature. It explores the formal and informal mechanisms that presidents use to avoid complying with the terms of legislative delegation, as well as legislators’ formal and informal strategies to set limits on the executive. Limited enforcement and instability of political institutions are enduring features of the Argentina’s governance environment, which produces inefficient results in terms of holding the executive accountable. While formal institutions are an important determinant of the strength of checks on the executive, this dissertation argues that
legislators’ level of institutional commitment is an additional factor to explain the effectiveness of executive accountability.

Institutional commitment is legislators’ willingness to defend their prerogatives and the terms of legislative delegation against encroachment by the executive (Palanza 2010, 24). There is variation in the extent to which different legislatures tolerate advances over these prerogatives, as a result of different levels of institutional commitment. Institutional commitment is a function of the factors that affect legislator’s expectations about the future gains they can derive from their prerogatives in the long term. The higher the actors’ expectations about future gains, the higher their level of institutional commitment. These expectations are affected by legislators’ time horizons, their costs from pursuing alternative courses of action, or the arenas where they interact with other actors, among other factors.

While formal institutional rules define the terms of legislative delegation and legislators’ prerogatives, the stability and actual enforcement of formal rules (i.e., how institutions actually work in practice) is critical to shape actors’ institutional commitment levels, Thus, unstable and weakly enforced institutions produce lower levels of institutional commitment, as actors are less willing to defend their prerogatives given their shorter time horizons and greater uncertainty about the future. While the institutional factors that define institutional commitment rarely vary at the country level, there might be differences across policy issues. To the extent that some issues allow legislators access greater profits for furthering their political careers, they would be more willing to defend their prerogatives on those issues than others. Nevertheless, these differences are less noticeable in countries where levels of institutional commitment are generally low.

Legislators’ low levels of institutional commitment limit their incentives and capabilities for holding the executive accountable. Ineffective executive accountability by the legislature reduces the costs of engaging in corrupt transactions and helps create opportunities for corruption. This dissertation also argues that these effects cannot be fully understood without taking informal institutions into account. Both formal and informal institutions matter for explaining corruption. When institutions are weak, actors may behave anomalically or follow informal rules and norms (Lauth 2000, 22). Informal
institutions shape institutional outcomes and may create or strengthen the incentives for complying or not with formal rules (Helmke and Levitsky 2006, 3). They affect the principal’s ability to enforce effective accountability, thus inhibiting (or not) corruption. Also, they shape actors’ capability to develop corrupt transactions. For example, they may provide legislators with resources to monitor the executive beyond those on paper; or they may undermine accountability mechanisms and allow the executive to accumulate power. In short, research must account for the effects of informal institutions on the mechanisms that inhibit or enable corrupt exchanges and their reproduction.

This dissertation also studies the emergence of informal corrupt exchanges, and their reproduction. While weak institutions undermine the effectiveness of accountability mechanisms that inhibit corruption, they also create incentives for actors to rely on informal institutions in order to pursue their goals. Actors establish and enforce informal mechanisms that offer valuable resources to solve commitment problems and carry out corrupt transactions that maximize their benefits. In so doing, corruption may be informally institutionalized and become systemic – it emerges as a rational response to fluid and unstable institutions, and complements or substitutes for them in facilitating compliance and solving agency problems. This research proposes hypotheses to explain the emergence of informal corrupt exchanges and their enforcement. The proposed model suggests that we can expect informal corrupt exchanges to take place when supply and demand for corrupt resources meet. Supply is a function of private actors’ incentives to seek to influence the distribution of state resources. Public officials’ demand depends on the costs of doing politics and pursuing a political career. This dissertation suggests that political and economic actors set networks that enable corrupt exchanges; these networks sustain informal contracting through mechanisms that facilitate the credibility of actors’ commitment such as repeated iteration, trust, reputation, and even quasi-institutional sanctioning mechanisms for holding the corrupt deals together. Explaining the reproduction of these networks requires an understanding of how informal rules are communicated to the relevant actors. Episodes of rule-breaking and sanctioning are important to help communicate the norms of corruption impunity, effectively discouraging actors from taking a stand against corruption.
Those that play by the informal rules of corruption are rewarded, while those who defy the corrupt system are punished.

By systematically considering the strength of political institutions and their effects on actors’ expectations, and how informal institutions affect the enforcement of formal institutions, this dissertation aims to contribute to a better understanding of the institutional mechanisms necessary to inhibit corruption, as well as those that help to carry out and reproduce corrupt exchanges. A more detailed elaboration of the analytical framework will be offered in Chapter 2.

6. Research methods

Effective checks on the executive guarantee other branches’ decision rights and, therefore, constrain unlawful abuses of executive authority. This dissertation maintains that the strength of checks on the executive varies considerably as a result of variation in legislators’ institutional commitment levels. Because institutional commitment varies across countries, but also within countries, these predictions can be tested at both levels of analysis. Variation across countries is a function of the different institutional factors that affect legislators’ expectations (e.g., regarding how long they will remain in office, the costs of pursuing alternative courses of action, or the arenas where they interact). Important in that regard is the actual workings of certain institutions (e.g., electoral rules, party rules), but also their interaction effects with the basic constitutional structure, as well as patterns of stability and change over time. Variation across countries enters into the analysis at the comparative level as well as setting the stage for country-level analysis.

Comparative analysis assumes that the overall level of institutional commitment of legislators determines the extent to which they will tend to guard their prerogatives when delegating policy-making authority to the executive. The empirical analysis across countries then proceeds by establishing levels of institutional commitment through different indicators of institutional stability, legislators’ tenure security, and enforcement of legislative powers. Along this dimension, we would expect to see effective accountability at higher levels of institutional commitment and vice versa.
The overall level of institutional commitment is the basis for the single country analysis. After deriving the level of institutional commitment from a study of the institutional setting, we hold the level of institutional commitment as fixed. The single country analysis proceeds by selecting one country case at a low level of institutional commitment. Argentina represents an extreme case of study in Latin America, characterized by very low levels of institutional commitment. Although the country has been known for its political and economic exceptionalism, a significant group of scholars has relied on the Argentine case to develop alternative theories that apply widely. The country has been acknowledged as an appropriate case to build hypotheses about the causes and effects of weak institutions, including political corruption; it would be representative of a larger sample of developing democracies in which the actual workings of institutions hardly resemble the stable and widely enforced institutions of advanced democracies (Levitsky and Murillo 2005, 14-16). This makes it a suitable case for a theory of corruption that enhances our understanding of the diversity of corruption incentives and constraints, by taking into account variations in institutional enforcement and informal rules.

When shifting attention to specific countries, time and policy relevance cause variation in institutional commitment levels. We can expect legislators’ institutional commitment to be more active regarding relevant policy issues which entail greater prospects of gain (Palanza 2010, 105). On those issues, we can expect legislators to mobilize more resources to oversee the executive. However, in countries like Argentina where overall institutional commitment levels are low, this effect is least likely to show because the costs of buying off legislators is lower (Ibid.). Therefore, while paying some attention to potential variation across issues, this research will focus on a longitudinal analysis to explore implications regarding executive accountability that are specific for that level of institutional commitment, and to assess the effects of changes in formal rules and other variables on those implications.

Two strategies strengthen the research design of the single case study. First, the study is designed to look backwards for the determinants of particular empirical outcomes, exploring the
complex relations that link institutional structure to actors’ expectations to political behavior to outcomes.\textsuperscript{110} The focus is on analyzing the causal paths and mechanisms in a single case\textsuperscript{111} (George and Bennett 2005) to understand the complex causality that connects political institutions with corrupt behavior. Second, the research design assesses covariation longitudinally at the national level by observing the causal mechanisms at work over time (Spiller, Stein and Tommasi 2003, 11; Gerring 2006; Falleti and Lynch 2009).

For the longitudinal analysis at the country level, the period that goes from 1989 to 2007 is an optimal research period for several reasons. It is a reasonable time span of democratic governance that includes different presidential periods and changes in the ruling party (these could be potential sources of change in the level, pattern, and institutionalization of corruption). Also, 1989 represented a critical moment in which the external shock of a profound economic crisis was followed by a radical neo-liberal reform process that introduced significant changes in the market structure. These conditions signal two ongoing political and economic liberalization processes. Despite those processes, corruption continued to be a systematic response of actors to the opportunities and incentives created by weak accountability. This longitudinal design also fits well with the need to measure political institutions by looking at their actual enforcement and stability at different points in time (Voigt 2008).

Chapters 3 and 8 focus on the development and enforcement of informal corrupt exchanges. An important problem in studying corruption is the difficulty of obtaining hard empirical evidence. The most comprehensive data available are based on perceptions. Only recently have there been some attempts to construct objective measures of corruption, and these are not widely available.\textsuperscript{112} This research is not meant to produce any legally sufficient evidence of the existence of corruption, or to quantify its magnitude, but rather to assess patterns that point to corrupt behavior and its institutionalization,\textsuperscript{113} and to describe the characteristics of corrupt exchanges. Primary sources and historical accounts help identify policy issues and resources that informed observers see as leading to corrupt behavior, as well as to specify the types of rents to be measured. In addition to aggregate
country level indicators, this research relied on a sample of over 250 judicial cases on corruption charges; more than 200 cases from the anticorruption office and other specialized oversight agencies; data on the monetary value of corrupt transactions; reports from special legislative committees investigating corrupt practices; and different policy and economic indicators, which were used to estimate the amount of policy-induced rents as a proportion of the individuals that benefit from those rents. These sources were supplemented by information retrieved from a twenty-two-year press archive of more than 5,000 articles. Also, 70 semi-structured interviews with experts from the public and private sector, politicians, personnel from oversight bodies, journalists, scholars and civil society supplemented the information gathered about the dynamics and characteristics of corrupt exchanges.

Chapters 4 to 7 focus on the analysis of the determinants of outcomes. We can infer overall levels of institutional commitment from indirect measures. The in-depth account of how political institutions actually work and how weak institutions affect actors’ expectations is based on both objective (e.g., turnover patterns) and subjective indicators (e.g., people’s assessments of enforcement of formal rules). These measures will be provided for specific institutions (e.g., control agencies, legislative committees) that are pragmatically identified as useful to understand executive accountability and the incentives and opportunities for corruption.

The data used for this study include over 600 audit reports submitted to Congress since 1994; budget laws, budget execution reports, and related legislative initiatives for the 1989-2007 period; data on monetary transfers to the provinces for more than 10 years, and over 5 years of data on the execution of public works programs; survival rates and turnover patterns on over 800 legislative posts, including 45 legislative committees; more than 20 reports to Congress from the Chief of Cabinet; data on Congress’s resources and staff; legislators’ assets declarations; and over 300 presidential vetoes and executive decrees, among others. More than 60 annual reports from oversight bodies and specialized anticorruption bodies allow comparison of the functioning of different institutions for public oversight. In addition, empirical evidence is based on qualitative data and insights obtained from official documents and reports, civil society studies, media archival research
on several national and international newspapers, and dozens of interviews with experts and politicians. These insights are especially relevant for explaining the factual enforcement of both formal and informal institutions, as well as informal processes.

7. Dissertation overview

This dissertation is organized in nine chapters. Chapter 2 provides an overview of existing theories that explain the relationship between political institutions and corruption. The problem with these theories is that they take the enforcement and stability of formal institutions for granted. Because this research’s interest is in providing an explanation that applies to contexts where formal institutions are neither stable nor fully enforced (Levitsky and Murillo 2005), this chapter builds upon the work by Spiller and Tommassi (2003), Stein et al. (2006), and Palanza (2010) to introduce the notion of institutional commitment. Relying on existing models of oversight (such as Weingast et al. 2006), and using the notion of institutional commitment, the chapter presents a model of executive oversight by the legislature. The main prediction stemming from the model is that the strength of checks on the executive is a function of institutional commitment levels. At low levels of institutional commitment, we expect limited accountability and therefore, incentives and opportunities for corruption.

Before moving onto the analysis of the institutional determinants of corrupt exchanges, Chapter 3 looks at the patterns of political corruption in Argentina. The chapter reveals that the country’s corruption is rooted in shared expectations, and aims to analyze in greater detail the structure of informal corrupt exchanges, by examining the emergence and operation of an informal corrupt market. The chapter identifies the development of elite cartel networks of exchange. Particular attention is paid to the characteristics of the actors who engage in corrupt transactions and the resources they exchange, as well as to the informal enforcement mechanisms that help to maintain the deals. At the end of the chapter, short case studies illustrate the characteristics, continuity, and change of corrupt elite cartel networks in the country.
Chapter 4 elaborates on the institutional determinants of political corruption by showing the instability and limited enforcement of Argentina’s basic political institutions, which explains politicians’ low levels of institutional commitment and leads to faulty executive accountability. Chapters 5, 6 and 7 apply the analytical model by focusing on different forms of public oversight and the enforcement of accountability. Chapter 5 analyzes the different strategies, both formal and informal, through which Argentine presidents enhance their powers and the executive’s ability to act discretionally beyond the limits of legislative delegation. Chapter 6 explores the limits of legislative oversight and the role of Congress in enforcing effective accountability of the executive. Chapter 7 assesses the effectiveness of specialized oversight agencies in controlling corruption, and explores the political determinants that account for their limited success.

Chapter 8 looks back at political corruption to assess the extent to which informal corrupt exchanges are informally institutionalized and more or less systemic. The chapter identifies the existence and enforcement of an informal rule that permits (yet does not require) corruption and ensures the judicial impunity of those who commit corrupt practices. Finally, the last chapter (Chapter 9) summarizes the main findings of this research, and introduces the comparative dimension. It emphasizes differences in levels of institutional commitment across countries and their effects on accountability. The chapter also discusses this research’s contributions and implications both in terms of accountability and anticorruption reform.
Chapter 1. Endnotes

1 The majority of people in the region support democracy as the preferred form of government, but show little confidence in the ability of democratic systems to solve their problems. In 2008, the Latinobarometer showed that support to democracy increased to 57% in the region, but the majority of people (63%) was not satisfied with the way democracy worked. Perception of corruption has increased in the last years, though knowledge of actual corrupt exchanges appears to have diminished. On average, Latin Americans believe that 68.6% of public officials are corrupt, but only 15% claim to know about specific corrupt acts. However, people perceive that there has been some progress in curbing corruption (perception of progress increased from 26% in 2004 to 38% in 2008). Cf. http://www.latinobarometro.org

2 Several studies conclude that there is some truth to the popular belief that Latin America is particularly prone to corruption. Treisman (2000) estimates that Latin America and Asia are perceived to be 45% more corrupt than the average for all other continents. Edelman et al. (2005) find Latin America to show higher levels of perceived corruption than would be expected from the values of the independent variables they consider.

3 According to Moreno (2002), based on data from the World Values Survey, the average score of corruption permissiveness in Latin America went down from 1.80 in 3 societies surveyed in 1990-1993, to 1.52 in 9 countries surveyed in 1995-1997, and it slightly increased to 1.56 in 3 countries surveyed in 2000. While in Mexico corruption permissiveness systematically decreased in the 1990s, in Argentina the average score on corruption permissiveness went up. As Naim (2000[1995]) puts it, “it is a paradox that corruption is perceived to be erupting just as new global, political, and economic circumstances are creating unprecedented conditions for the decline of corruption.”

4 On the reasons that explain the interest of researchers in studying corruption, see Johnston (2005, 5).

5 The understanding of corruption as a development problem that is both cause and consequence of uneven liberalization has relegated the study of political institutions, which are only considered as facilitators or obstacles to further liberalization. (Johnston op. cit., 6)


7 Closely connected to the attempts at defining corruption is the debate between corruption as a universal, cross-cultural, cross-national phenomenon as opposed to relativist accounts, which see corruption as a culturally-bounded phenomenon. A third intermediate position maintains that corruption presents some essential features, while others are relative to the particular context in which it occurs. See Thomas (2003, 25-29). Despite these divergences, scholars generally sustain that it is possible to agree on a working definition of corruption that can be applied across countries. (Philp 2001, 42)

8 Bardhan (1997), Susan Rose-Ackerman (1999), Treisman (2000), and Lambsdorff (1998) present similar definitions, which rely on legal standards to identify corrupt behavior.

9 Including “corruption of the processes of contestation through which common purposes, norms, rules are created; the institutional patterns that support and justify corruption; and the political cultures within which actions, institutions, and even speech might be judged corrupt” (Warren 2005, 4). For a definition that incorporates the political dimensions of corruption, see Thompson (1993).

10 For what Warren (2005) calls the democracy-excluding attributes of the modern notion of corruption. For a democratic understanding of these criteria, see Warren (2002 and 2004).


12 Several authors have also suggested that corrupt exchanges may be in the public interest under certain conditions. See for example Leff (1964) and Huntington (1968).


15 For example, a definition including these criteria is proposed by Transparency International, which defines corruption as “as the misuse of entrusted power for private gain” (cf. http://www.transparency.org/).
Political scientists, legal scholars, sociologists, and economists have paid attention to corruption, its causes and implications. For a review of approaches, see Zalaquett Daher (2005), Lambsdorff (2007).

Other alternative classifications have also been proposed. For example, Jin (2004) suggests classifying corruption research based on whether corruption is essentially harmful or beneficial to society and economic development. This is similar to the comparative analysis proposed by Aïdt (2009) between the “greasing” and “sanding” the wheels hypotheses of corruption. Klitgaard (1988) also looks at theories of corruption from the perspective of their developmental effects.

Scott (op. cit.) combines an appeal to cultural values with a functionalist understanding of political and socio-economic development. He maintains that corruption emerges when the prevailing social ties of loyalty to traditional elites are broken down in the modernization process, but new ties to political parties are not in place yet. In these conditions, forms of organization based on particularistic material rewards and reciprocity relations develop and may persist.

Causality between trust (interpersonal and political) and corruption is complex. Theoretically, strong personal ties based on social relationships reduce the costs of corrupt transactions. Interpersonal trust and reputation contribute to reduce risks of disclosure, and provide guarantees of performance in the corrupt exchange; however, they also create entry barriers that limit the number of actors that have access to the corruption market. See Rose-Ackerman (1999), Della Porta and Vannucci (1999), Della Porta (2000). Empirical evidence from Latin America and elsewhere indicates that mutual causality is at work, and the problem is how to reverse the vicious circles between high corruption and low trust. See Camp et al. (2001), Moreno (2002); You (2005); Lambsdorff (2006, 19); Morris and Klesner (2008); Moreno (n/a).

On the weaknesses of cultural arguments about corruption, see Mauro (1995); La Porta et al. (1998); Wei (1999); Reinikka and Svensson (2002).

Yet some empirical claims in favor of the beneficial effects of corruption are still proposed. For example, Egger and Winner (2005) on the positive effects of corruption on foreign domestic investment.

Svensson (2005, 37) points out that these empirical findings are mostly based on case studies and micro-analysis, but macro evidence is not as conclusive. While micro and case study evidence show that corruption hinders development, cross-national data do not indicate that it affects growth. This can result from measurement problems, as well as the different effect on growth that several types of corruption may have. Recent research also supports this view. Aïdt (2009) concludes that corruption has limited impact on the growth rate of real GDP per capita, but it has a significant impact on the sustainability of development.

A third current of research applies game theory within a rational choice framework. According to this perspective, the choice between corrupt and non-corrupt behavior depends not only on the institutional context, but also on the strategic interaction and choices of other individuals (Della Porta and Vannucci 1999, 19; Scarfo 2002, 15). In a context of generalized corruption, the risks of being denounced are lower and the costs of remaining honest increase.


The costs of these flaws became evident when the potential risks of corruption associated with structural reform programs that downsized the public sector in Latin America were misjudged. On corruption and structural reform see, for example, Blake and Manzetti (1996); Manzetti (1999); Schamis (1999); Tulchin and Espach (2000); Ariceta (2004).

This is usually the case in the public sector. See Banfield (1975). Rose-Ackerman’s (1978) agency model applied to the legislature also assumes that voters are not fully informed.

In the classical agency model, this involves a twofold problem. On the one hand, monitoring the agents so that the principal may reward/punish them to avoid opportunism. On the other, selecting those agents that are most competent and most likely to act in the public interest (Bensley op. cit., 99).

by the state; and the speculative sale of permits and licenses, among others (Vitelli 2006, 261).

Investments; external debt to be assumed by the state; leasing of infrastructures that had been built and financed

family property rights. See Vitelli (2006, 120)

beneficiaries (V

9,954,000 hectares). Between 1876 and 1903, 103,784,260 acres (or 42,000,000 hectares) were distributed to

regulations in order to obtain benefits to compensate for what had been paid.

officials, merchants, and smugglers.

Reports at

with an HDI of 0.

Chile, Costa Rica and Uruguay perform better than e

2004). Overall corruption is worse than it should be, considering the region's level of per capita income. Only

also believe that public officials are more corrupt in Argentina (76% of public officials are corrupt compared to

less tolerant of corruption (Saba and Manzetti 1997, 353). This was a result of political liberalization, which

empowered new actors to play a more active role in monitoring government and reporting corrupt practices. Political freedom enabled the press to pursue corruption scandals more aggressively after the return to democracy. For example, Página 12, a left-oriented newspaper founded in 1987, played a very active role in investigating and reporting corruption scandals during Menem administration. Later on, other newspapers of wider distribution began to be more active in denouncing corrupt practices (Author’s interviews. Buenos Aires, July 22, 2005; September 14, 2007). On Argentine newspapers’ activism on corruption, see Di Tella and Franceschelli (2009); for a historical approach, see Simonetti (2002, 17-35). Also, organized civil society, empowered by the defense of human rights violations committed during the dictatorship, began to include in its collective action agenda issues related with the quality of democracy (Manzetti 2000; Peruzzotti 2006; Saba 2008). For an analysis of civil society’s response to corruption, see Manzetti (2000). On how Argentine society has become less tolerant of corruption, see Torre (2005).

From 1984 to 2006, Argentina’s corruption seemed to have worsened, moving from medium to high corruption equilibrium (Bissessar 2008, 64). Corruption remained a significant policy and political problem. The country persistently falls into the bottom category of aggregate indicators of perceived levels of corruption. It has scored between 3.41 and 2.8 (on a 0-10 scale, with 0 being the most corrupt) on the Corruption Perception Index (CPI) over the past 10 years (Cf. http://www.ti.org). The 2001-02 Global Competitiveness Report (GCR) shows Argentina near the bottom, ranking 55th out of 75 countries in the corruption sub-index. In 2008-09, out of 134 countries, it scored 132nd in transparency in policy-making; 125th on the independence of the judiciary; 125th in diversion of public funds (Cf. Schwab and Porter 2008, and http://www.weforum.org/en/initiatives/gcp/index.htm). Survey data confirm that Argentines believe more than other Latin Americans that politics is more corrupt than society (58% compared to 54% regional average). They also believe that public officials are more corrupt in Argentina (76% of public officials are corrupt compared to 68.8% regionally), and it is one of the two countries in the region with less perception of progress in the fight against corruption (22% compared to 38%) (Latinobarometro 2008, 47).

Pervasiveness of corruption in Latin America is significant, but it varies from country to country (Parker et al. 2004). Overall corruption is worse than it should be, considering the region’s level of per capita income. Only Chile, Costa Rica and Uruguay perform better than expected (IDB 2005; Santos 2009).


Vitelli (2006, 38) provides numerous examples that demonstrate the linkages between governments, public officials, merchants, and smugglers.

Buying office was an incentive for corruption, because it led to systematic violations of existing norms and regulations in order to obtain benefits to compensate for what had been paid.

538 enfiteutas, pertaining to a smaller number of families, received in usufruct 24,596,870 acres (or 9,954,000 hectares). Between 1876 and 1903, 103,784,260 acres (or 42,000,000 hectares) were distributed to 1,823 beneficiaries (Vitelli 2006, using Oddone 1936, 54-70 & 220 as source).

For example, direct distribution of public lands to public officials, and exploitation of public lands based on family property rights. See Vitelli (2006, 120-121).

Several mechanisms were used to minimize private capital investments: providing compensations for investments; external debt to be assumed by the state; leasing of infrastructures that had been built and financed by the state; and the speculative sale of permits and licenses, among others Vitelli (2006, 261).
While customs tax exemptions to rail transportation companies between 1908-1945 accounted for approximately 463 million pesos, the revenues for the State from the 3% tax over earnings for the same period was only 120 million pesos. See Ortiz (1964).

Law 8.871 (1912) established universal, secret and obligatory male suffrage. After the law was passed, the conservative sectors, which had stayed in power for decades through fraudulent elections, could no longer consolidate a political party without popular support. Yrigoyen, candidate of the UCR, won the presidential election after the law was sanctioned, inaugurating a period of Radical governments until 1930.

“The rich are not interested in politics […]. Those who make the laws […] are their representatives. Delegating the direction of minor issues, like everyday politics […] speaks about a division of labor, of a way of administrating time” (Ibid.).

Despite measures adopted by Yrigoyen’s government to prevent irregularities, land continued to be frequently allocated for uses not related with agriculture, high-level officials continued to benefit from land allocation, extensions larger than the allowed limits were often distributed, etc. (Vitelli 2006, 335).

Examples of corruption at the provincial level were significant, particularly in caudillo-led provinces. In Mendoza, there were frequent accusations of diversion of funds in the 20s during the Lencinas governments. Similar accusations were made in San Luis during the tenure of Rodriguez Saa as governor and president of the provincial legislature in 1910 and 1920. See Vitelli (2006, 319).

For example, in 1919, the Buenos Aires gas concession was extended until 1940 and then 1945, ten years before the expiration of the contract. Often, these extensions did not require any commitment to further investments or reducing service fees. See Vitelli (2006, 326).

For details on these cases, see Vitelli (2006).

Especially heinous were the benefits given to British interests under the Roca-Runciman Treaty (1933). The treaty insured beef export quotas equivalent to the levels sold in 1932 (the lowest point in the Great Depression), strengthening commercial ties for the benefit of British interests and the Sociedad Rural Argentina. See Di Tella and Zymelman (1973 [1967]); Vitelli (2006, 354-5).

A good example was the extension of the concession contract with the provider of electrical services in Buenos Aires (Ciade). The extension was approved by the local government 15 years before the end of the previous contract and among accusations of bribes to the mayor, several councilors and federal legislators. Irregularities were covered up, and a Special Commission created to investigate the case did not find any irregularities. In the 40s, when the government intended to nationalize electric services, the same firm would have bribed General Peron, then Vice-President, to avoid the nationalization (Vitelli 2006, 360-1).

The General Agustín P. Justo Rolon, who had participated in the 1930 coup, was elected president in November 1931 amidst accusations of electoral fraud. The name “patriotic fraud” was used for a system of control established by conservative groups to prevent any member of the Radical party (UCR) from coming into power between 1931 and 1943.

In the ISI period, new actors disputed economic benefits to the agro-export oligarchy: industrial bourgeoisie, foreign firms, land owners integrated to the manufacture sector, and the military.

For details on the case, see Vitelli (2006, 434).

The case of the Instituto Argentino para la Promocion de Importaciones (IAPI), created in 1946, is paradigmatic. It was an office of control and regulation of agricultural trade, which became the propitious setting for the payment of commission and returns in a context of extraordinary benefits for agricultural producers, who saw their prices increase by 91% between 1943-46. Two schemes related with differences between internal and external prices were common. On the one hand, goods for export were distributed at lower market prices. On the other, IAPI allocated preferential credits and loans that maximized the profits of commercial transactions. See Sautu et al. (2004, 63); Vitelli (2006, 403; 423).

There were several scandals and frauds associated with the industrial promotion regime. Irregular but frequent practices included producing in provinces that were not under the promotion regimen but billing in “promotional” provinces. Also, products were often bought in tax-free areas under the promotional regime (e.g., Tierra de Fuego) and then smuggled for consumption in “no-promotional” provinces. These practices continued under the new democratic government, as illustrated by the Koner-Salgado case during the Alfonsin administration (cf. Clarín Nov. 27, 2005). See Vitelli (2006, 426-29).

“Practically everyone who participated successfully in contracting with the state by the end of the 1980s, later on, during the beginning of the 1990s’ privatization processes, were able to secure shares of the firms they had engaged in business with” (Vitelli 2006, 432). Author’s interview (Buenos Aires, November 2009).
For example, YPF’s capital was siphoned by delaying sale prices and paying private contractors higher prices than those of exporting oil; moreover, oil contracts were renegotiated with guarantees of extraordinary profits. Another example was the public phone company, ENTEL partially privatized in 1977. See Vitelli (2006, 463). For example, in 1983, the most important private debtor was the firm Cogasco, with 918 million in debt obligations. It had acquired this debt through false invoicing, inflated expenditures, and external debts with state guarantee. The irregular transactions were never publicized because the contract as gas transportation provider was secret. See Olmos Gaona (2001), Silenzi de Stagni (1983).

The state nationalized the debt of large enterprises such as Citibank, Deutsche Bank or Bank of America. The concession of state guarantees was beneficial to firms closely related to the government, such as Acindar, Papel de Tucuman, Papel Prensa or Aluar; some of these firms were the same that had benefited from the industrial promotion policies. See Simonetti (2002, 126, 198-199), Vitelli (2006, 457).

For example, money was often deposited in the same bank that had conceded the loan but at a lower rate than that of the original loan (sometimes 2 or 2.5% lower), which soon siphoned all the capital obtained and clearly benefited the bank. The capital disappeared but the debt was still unpaid, and in some cases was capitalized through its conversion into public assets. See Vitelli (2006, 460).

As a result of the “republican probity” image attributed to President Alfonsin, which was extensive to the UCR, whose original statute not only demanded free elections, but also honesty in public administration. The most notorious corruption scandal during Alfonsín’s government was the “Mazzorin’s chickens” case. In an attempt to control inflation, which was attributed to the collusion of local producers, the government (Secretary of Commerce, Ricardo Mazzorin) imported tons of chickens. When public pressure obliged the government to draw back, the chickens had already been purchased. They were stored and left to rot, causing enormous losses for the state. Author’s interviews. Buenos Aires, Sept. 14, 2007, Sept. 19, 2007, and Nov. 16, 2009.

“It happens more or less the same with Alfonsin: entrepreneurs continued to have a lot of power, and very good relationships to undertake business” (Author’s interview. Buenos Aires, November 16, 2009).

Other significant examples were the cases of Banco Iguazu, Banco del Oeste, and Banco Santurce, as well as Bonos Banade. See Molinas (1993).

These attempts to privatize state-owned enterprises were blocked by the Peronist legislative majority. The only privatizations finalized were the petrochemical companies Atanor and Rio Tercero, and the plant of restrained pipes Siat-Commatar. See Azpiazu (1994, 162).

Among the cases investigated was outsourcing the maintenance and construction of railways for EMEPA (Empresa de Ferrocarriles Argentinos) and for the dredging of the Bahia Blanca port, as well as the failed attempts to privatize ENTEL and Aerolineas Argentinas. See Molinas (1993).

In 1989, GDP fell 6.9 % and the inflation reached 5,000% a year. See Quispe and Kay (2002).

The UCR’s legislative majority in Congress agreed to support the new government’s plans until the legislative elections to be held later that year. See Gonzalez (2001) for an insider analysis of the negotiation. Those extraordinary powers were conferred through two laws that articulated the structural reform program: the State Reform Act and the Economic Emergency Act (see Saba and Manzetti 1997, 359). According to some observers, UCR’s fear of investigations facilitated the agreement with Menem (Verbitsky 1991, 63). Corruption accusations against the Alfonsin’s government were used politically during Menem’s administration, when UCR’s accusations against the menemist administration were often responded with denouncements of corruption cases that would have taken place during the 1983-89 period.

Until 1993, privatization generated revenues for more than USD 15,000 million, out of which approximately USD 5,800 million were the market value of public debt bonds capitalized in the privatization (Azpiazu 1994, 164). Revenues from privatization led to fiscal surpluses in 1992 and 1993; in 1994 the fiscal deficit began to rise due to increasing borrowing (Quispe and Kay 2002, 2).

The so-called “diego” was an institutionalized 10% bribe; the name referred to soccer player Maradona, who wore the number 10 in his sports shirt (Author’s interview. Buenos Aires, Nov. 16, 2009).


Including the arms trafficking case, the AMIA case, the Thales case, the Siemens case, the bonus case, and the case for the sale of land to Sociedad Rural. Cf. La Nación (Feb. 26, 2010).

Author’s interview. Buenos Aires, April 1, 2009.

“During Menem’s government there were more [corruption] cases that came out of journalists’ investigations. We had a more mature and professional journalism. At that time, there was more freedom of the press, and journalism was encouraged to say more things” (Author’s interview. Buenos Aires, Sept. 14, 2007).
Among those who declared to have voted for De la Rúa, 26.3% did so based on his anticorruption agenda, 40.2% on his honesty, and 31.8% based on UCR’s ethics (Cf. Clarín October 25, 1999.)


In December 2003, a former Senate Secretary (Mario Pontaquarto) admitted to have personally delivered 15 million pesos from the SIDE to nine senators on behalf of President De la Rúa in April 2000. Despite the evidence, a Buenos Aires court threw out the charges against Pontaquarto, former intelligence chief Federico de Santibáñez, and former Senators Jose Genoud and Emilio Cantarero. In August 2005, federal judge Rafecas acknowledged the information provided by Pontaquarto and decided to reopen the case and prosecute several former legislators and public officials. The case moved to oral trial in August 2006. In 2008, the judge confirmed the prosecution of former President De la Rúa, whose oral trial began in 2009. Author’s interview (Buenos Aires, August 16, 2005). Cf. Clarín (August 2, 2005; August 28, 2005; August 24, 2006;). La Nación (November 21, 2007; August 5, 7, 2009; Oct. 22, 2009).

For example, the Minister of Social Development’s brother-in-law, who had been appointed as receiver (interventor) in PAMI, was brought to oral proceedings as a result of allegedly providing illicit benefits to an institute owned by his wife (Clarín January 23, 2007). When the Anticorruption Office started investigating cases that involved the Alianza government, it found strong resistance and attempts to curtail its autonomy (Author’s interviews. Buenos Aires, April 20, 2005, July 11, 2005 and June 14, 2006).


As Head of the Senate, Duhalde was invested President in January 2002 after the short-lived governments of Adolfo Rodriguez Saa and Ramon Puerta. He called for presidential elections in May 2003.

Duhalde’s record as governor of Buenos Aires province was mixed: although he won praise for confronting police corruption, he spent large amounts of public funds, which led to accusations of corruption, and left the province in bankruptcy (Cf. New York Times, January 3, 2002).

Author’s interview. Buenos Aires, November 16, 2009.

Local banks related to the government and involved in money laundering were the beneficiaries of the special permits given by the Central Bank. See Vitelli (2006, 506).

For example, five days after the 2007 presidential elections, the executive reallocated 140 million pesos from the Fiduciary Fund for Provincial Development to municipal governments from the Buenos Aires province where Kirchnerist candidates had obtained large percentages of votes (La Nación Nov. 2, 2007).


In 2009, opposition politicians filed a criminal complaint against Kirchner accusing him of illicit association with a few firm owners and public officials, including the Minister of Planning, to extract state resources.

Following the 2001 crisis, the watchdog role of the media was limited. Two factors help explain the limits of the media’s anticorruption agenda: first, the benefits obtained by major newspapers at the end of Convertibility to convert their debt into pesos; and the fact that one of the most active newspapers in denouncing corruption (Página 12) saw its policy agenda implemented by the government (Author’s interview. Buenos Aires, July 22, 2005). The truce finished at the end of Kirchner’s term and during the presidency of Cristina Fernandez de Kirchner, when the media regained anticorruption activism, particularly in face of the government’s increasing attempts to control the media.

The “Skanska case” involved payment of kickbacks in the construction of a gas pipeline. Other cases were arms trafficking involving the Ministry of Defense; the discovery of a large amount of cash from unknown sources in the toilet of the Ministry of Economy; irregular appointments and accusations of nepotism affecting the Secretary of Environment; conflicts of interest and illicit enrichment of the Secretary of Transportation, and the discovery of US$ 800,000 by the customs’ officials of Buenos Aires airport in the luggage of a Venezuelan businessman who had traveled with Argentine public officials. On corruption involving high-level public officials during Kirchner government, see Clarín (December 3, 4, 2008; July 2, 2009; November 25, 2009; December 6, 2009); La Nación (March 6, 2008; August 30, 2008; September 19, 2008; Jan. 4, 2009; August 12, 2009); Crítica (March 24, 2008); Total News (Feb. 16, 2009).

Cf. La Nación (Sept. 8, 2008; Feb. 19, 2009), Clarín (Nov. 14, 2009).

The Kirchner government was closed to public scrutiny and strongly centralized information management. Under these circumstances, corruption scandals were mostly the result of internal fights within the government or mere chance (Author’s interview. Buenos Aires, September 14, 2007).
through networks. Furthermore, this overlapping can be explained as a result of a causal linkage between both phenomena (Maiz n.d., 21): both are based on direct exchanges of material benefit and publicity. Two features explain the frequent empirical continuity and overlapping between both phenomena. See for example Della Porta (1992, 1995, 1999) and Caciagli (1996). There are important differences between clientelism and corruption, including the actors involved, resources, legal status, power, and publicity. Two features explain the frequent empirical continuity and overlapping between both phenomena (Maiz n.d., 21): both are based on direct exchanges of material benefits, and both are structured through networks. Furthermore, this overlapping can be explained as a result of a causal linkage between both phenomena.
clientelism and corruption. Under certain circumstances, the actors’ structure of incentives facilitates or requires the introduction of illegal corrupt exchanges to maintain clientelistic networks alive and operational. (Ibid.)

Conventionally, a distinction is made between “petty” and “grand” corruption, based on the hierarchical level of the participating public officials and the amount of the payments. “Petty” corruption refers to the everyday corrupt practices that take place in the normal routines of an organization or “where the public officials meet the public, e.g., administrative procedures and routine service operation and maintenance” (WBI 2007, 10). “Grand” corruption involves larger amounts and parties—including politicians, senior public officials, as well as powerful business and private interests—who usually make an effort to conceal it. In systemic petty corruption, these schemes occur as more or less permanent transactions that do not subvert the whole process. However, grand corruption means that the sector or process is so subverted by these schemes that no other goals are achieved than the fulfillment of private objectives. See Rose-Ackerman (2002), Heidenheimer (2002), Sautu et al. (2004, 35-36), Lambsdorff (2007, 20).

Werner (1983, [151] 192): “systemic corruption occurs primarily because a series of isolated incidents – accidental or intentional- have proven their value… Furthermore, when corruption becomes systemic within an organization, […] a corrupt code of conduct will replace the legal code, and institutionalization of corruption will become a modus operandi for subsequent organizational goals.”

Based on the level of institutional strength, together with the relative balance of political and economic opportunities, Johnston (2005, 38-48) identifies four syndromes of corruption with distinctive characteristics: influence markets, elite cartels, oligarchs and clans, and official moguls.

A case study is an in-depth study of a single unit to elucidate features of a larger class of similar phenomena. They may contribute to theory development, as they allow the identification of new variables and hypotheses, examining the operation of causal mechanisms in detail, and accommodating complex causal interactions (Eckstein 1975; George and Bennett 2005; Gerring 2004, 2008). For example, Huntington (1968), O’Donnell (1973), Waismann (1987), Przeworski and Limongi (1987).

Significant examples are the theory of bureaucratic authoritarianism developed by O’Donnell (1973) and the social accountability theory developed by Smolovitz and Peruzzotti (2006), among others.

Instead of looking at the effects of a particular variable, this dissertation looks backwards for the determinants of particular empirical outcomes. It is closer to a political economy approach than to standard comparative politics analysis. The study follows a modular approach that explores the complex relations that link institutional structure to actors’ expectations to political behavior to outcomes. This analysis requires detailed knowledge of the institutional context and historical background to understand the factors that account for actors’ incentives and behavior. One of the limits of this approach is how to deal with issues of time, historical legacies, and institutional dynamics and change. This dissertation’s approach is not an alternative to historical institutional analysis. To the contrary, they are complementary. The focus on how institutions actually work in practice is a building bloc of the overall analysis of institutions. Understanding pre-existing institutions is a critical consideration for understanding the workings of institutions and institutional changes under way. This dissertation explicitly integrates these considerations by looking at historical patterns of corruption (Chapters 1 and 3) as well as measuring institutions at different points on time (Chapters 4-7).

Causal mechanisms are portable concepts that explain how and why a hypothesized cause, in a given context, contributes to a particular outcome (Falleti and Lynch 2009, 1145).

Golden and Picci (2005) compare the existing amount of physical infrastructure with the level of resources invested. Ades and Di Tella (1997) estimate the magnitude of corruption by comparing the prize paid in hospital procurement transactions. In the education sector, Reinikka and Svensson (2005) rely on the difference between actual disbursements and transfers from central government.

For a similar argument, see Johnston (2005) and Meagher (2006).

Policy induced rents are profits generated by policies that create barriers for firms to entry in particular sectors, thus allowing existing firms to earn extra benefits (Montinolla 1995, 28). The possibility to obtain these extra profits makes firms compete to influence public officials who make the policy decisions that create those rents (Krueger 1974). If the potential gain is large and benefits only a few, there are greater opportunities and incentives for corrupt behavior. By providing an indicator of supply of corrupt resources, this measure serves as a proxy of actors’ incentives and opportunities for corrupt behavior.

Newspapers are a crucial source of information. Official figures on factual enforcement of formal and informal institutions are not readily available (Voigt 2008) and informal processes are hardly subject of written records (George and Bennett 2005, 103). Also, news accounts are essential to contextualize other documents and data, and help recapture the perspective of public officials at the time (Larson 2001, in George and Bennett 2005, 108).
Chapter 2

Executive Accountability and the Persistence of Corruption in Weakly Institutionalized Democracies

1. Introduction

Curbing the incentives and opportunities for corruption depends on the effectiveness of executive accountability by the legislature and specialized oversight agencies. The conditions under which the executive is held effectively accountable in presidential democracies, constraining its capacity to exploit and create opportunities for corruption, have long interested students of both institutions and political corruption. By exploring the strategic calculations faced by legislators that seek to hold the executive accountable, this chapter uncovers the conditions for effective accountability and corruption control.

This chapter places the variation of institutional strength at the forefront. It develops a conceptual and analytical framework to explore how political institutions affect both the causes and characteristics of corrupt exchanges in weakly institutionalized polities. To capture the complexity of the institutional (political) environment in shaping actors’ incentive structure, politics is characterized as a game of hierarchical delegation of authority. In this framework, the process of authority delegation (from voters to politicians, from the legislature to the executive, and so forth) and the associated notion of accountability play a crucial role in the causal mechanisms that link institutions and corruption (Lederman et al. 2005, 3). Institutions do not affect outcomes directly, but rather through their impact on the process by which public officials are held accountable.

Building upon formal models of oversight and accountability, which explore the determinants of the legislature’s ability to effectively oversee and hold the executive accountable, this dissertation proposes to make these models more realistic by challenging some of their basic premises, namely
that political institutions are stable and regularly enforced. This approach responds to the empirical reality of weakly institutionalized presidential democracies, where formal political institutions fail to ensure government accountability. The model proposed here identifies the underlying mechanisms through which weak formal political institutions affect actors’ expectations and the enforcement of executive accountability. Based on these mechanisms, the model revises the strategies of executive compliance and legislative oversight. The chapter claims that effective accountability is a function of legislators’ levels of institutional commitment to defending the terms of legislative delegation and their prerogatives against executive encroachment. The model also identifies a dimension of executive accountability that relies on informal bargaining mechanisms. It explains how legislators may formally oversee the executive while avoiding political liabilities, and how the executive can disguise discretional actions and still adhere to its preferred policies. While these informal mechanisms do not produce the kind of accountability that deters corruption, they constrain the executive in some ways. The chapter suggests hypotheses about the impact of institutional commitment levels and informal rules on executive accountability by the legislature.

This chapter also looks at the production and reproduction of resources that are necessary to sustain and institutionalize informal corrupt exchanges. A second contribution of this chapter is to explore systemic corruption problems. The chapter presents hypotheses about the existence of an informal market for corrupt exchanges, deriving expectations about supply and demand for corrupt resources and when credible commitment contracts can emerge to support corrupt exchanges. Elite cartel networks of corruption are understood as informal institutional mechanisms that facilitate informal contracting for the exchange of corrupt benefits. The chapter also hypothesizes the existence of an informal permissive rule that contributes to the institutionalization of informal corrupt exchanges by allowing actors to engage in corrupt exchanges without being punished. Figure 2.1 provides an overview of the approach pursued in this dissertation.

Following this introduction, the chapter briefly reviews the literature on the effects of institutions on policy outcomes and corruption. Section three introduces the debates about the concept
Figure 2.1. Explaining corruption in weakly institutionalized democracies.
Source: Author’s elaboration.
of accountability, emphasizing some key theoretical antecedents and differentiating this work from them. Section four defines institutional strength and informal institutions, and introduces the concept of institutional commitment. The section also explores the underlying mechanisms through which weak institutions structure actors’ incentives. Section five begins by making the key assumptions explicit, and then presents the game that models the exercise of executive oversight and accountability by the legislature. Finally, the question of how corrupt exchanges are reproduced in weakly institutionalized settings is addressed in section six.

2. The relationship between institutions and corruption: A review of the literature

The institutional theory of corruption stands at the intersection of two broad literatures: one examining institutions and their effects, and the other attempting to explain political corruption. In Chapter 1, we reviewed the extensive literature that explores the determinants of corruption, both theoretically and empirically. The analysis found that the influence of political institutions on public officials’ corrupt behavior required further investigation. Of particular relevance is another stream of the literature, which focuses on political institutions (such as the system of government and electoral rules) and their effects. Both political science and political economics have looked at the effects of institutions on such policy outcomes as economic governance, policy stability, or political accountability, yet for quite a long time they did not focus on corruption. This started to change as scholars realized that one channel through which institutions affect policy outcomes is the level of corruption. This section reviews both theoretical arguments and empirical evidence available about the effects of political institutions.¹

Comparative politics provides important insights into the underlying institutional arrangements that explain variation in government performance. Several scholars have emphasized the perils of presidential regimes, and the need to moderate its core features such as excessive executive discretion (Linz 1994; Linz and Valenzuela 1994; Mainwaring and Scully 1995;
Mainwaring and Shugart 1997). Other authors doubt the relevance of the distinction, as different political and economic outputs cannot be related to the characteristics of each particular system, but to other features such as the centralization of decision-making (Cheibub and Limongi 2002; Cheibub et al. 2002), or “smaller” institutions (Przeworski et al. 2000; Cheibub 2002). For others, unilateral powers and separation of purpose, which are more likely under presidentialism (Cox and McCubbins 2001; Shugart and Haggard 2001; Samuels and Eaton 2002; Cox and Morgenstern 2002), are necessary and sufficient causes to account for different performance, including corruption (Kunicova 2003, 16). The relative merit of different electoral rules is another classical theme in this literature.\(^2\)

The advantages of majoritarian and proportional representation (PR) systems have been affirmed both normatively and on the basis of their impact on policy outcomes (Duverger 1954; Lijphart 1990,1994; Myerson, 1993; Carey and Shugart 1995; Lijphart 1984; Powell 1982).

Political economy approaches focus on the interplay between economics and politics to understand the impact of political institutions on economic outcomes. Following the pioneer work by Rose-Ackerman (1978), this has become one of the most appealing, though underdeveloped, approaches to understanding corruption. New institutional economics inquires into the institutional foundations of economic performance and development, offering potent insights into the causes and effects of corruption. This literature asserts that differences in the nature and quality of institutions explain different levels of economic development (North 1990; Williamson 1996). One group of scholars emphasizes the transactions costs that institutions help mitigate\(^3\) (North 1990, Dixit 1996; Moe 1990; Spiller and Tommassi 2003; Spiller et al. 2003; Steinmo and Thelen 1992). Public choice theory, on the other hand, emphasizes the instrumental value of institutions, which define formal strategic contexts in which actors make decisions to solve collective action problems and principal-agent dilemmas (Buchanan 1962; Tullock et al. 2002). Finally, historical neo-institutionalism has advanced our knowledge of institutions and their effects on economic growth and policy choices (North 1990; 1991; 2005). Institutions are the “rules of the game” that structure human interaction. They reduce uncertainty by stabilizing expectations and constraining choice, and enhance coordination
by reducing transaction costs. The strength of institutions depends on the enforcement of formal and informal constraints and the use of sanctions in case of non-compliance (Santiso 2007, 56).

The role played by institutions for economic growth and development has become conventional wisdom (Voigt 2007). A commonly used proxy for the quality of institutions is corruption control (Kaufman et al. 1999, 2002, 2005, 2007, 2009). Theoretical and empirical evidence shows that institutions influence policy outcomes by structuring actors’ incentives. Institutions constrain the range of options available to individuals, thus affecting the incentives and opportunities for corruption. However, for this to be empirically supported, institutions need to be measurable. Comparative political economy studies seek to explain cross-country differences in economic performance and provide key insights into how differences in political institutions explain variation in economic governance through the crucial link of corruption. These studies assess how different systems of government (Persson, Roland and Tabellini (2000; Persson and Tabellini 2005; Gerring and Thacker 2004; Lederman et al. 2005; Kunicova 2003, 2005; Kunicova and Rose-Ackerman 2005), the fundamental characteristics of electoral systems (Geddes and Ribeiro Neto 1992; Samuels 1999; Ames 1995; Kunicova and Rose-Ackerman 2001; Persson, Tabellini and Trebbi 2000, 2003), or the state’s territorial structure (Seabright 1996; Rose-Ackerman and Kunicova 2005; Blanchard and Shleifer 2000; Wilson 1970; Montinola et al. 1995; Cai and Treisman 2004, 821; Watt, Flanary and Theobald 2000, 48; Shleifer and Vishny 1993; Svensson 2005; Lederman et al. 2005, 6-7) make public officials more or less accountable and thus create different incentives for and constraints on corruption.

Particular attention has been paid to the combination of presidential systems and PR electoral systems, which some scholars consider particularly risky. Presidential systems are expected to be more prone to corruption, since presidents usually have many legislative and non-legislative powers, and legislatures have fewer incentives and less capacity for overseeing the executive, given fixed terms in office and separation of powers (Kunicova 2003, 2005). Presidentialism provides greater opportunities for corruption under closed list PR, where presidents may collude with party leaders to share the spoils of office (Kunicova and Rose-Ackerman 2005, 586-587), reducing politicians’
incentives to denounce corrupt incumbents. Also, voters have less incentive and ability to monitor politicians in large districts, since information about incumbents is less readily available (Rose-Ackerman 2001, Rose-Ackerman and Kunicova 2002, Kunicova and Rose-Ackerman 2005, 581-85, Kunicova 2003, 2005). Other scholars, however, challenge the advantages of majoritarian systems on the basis that they restrict competition (Myerson 1993), and emphasize the role of political parties in constraining corruption (Carey and Shugart 1995; Golden and Chang 2001, 2004). Overall, while several contributions find associations between different institutional structures and corruption, the causal direction remains unclear and different approaches advance contrasting theoretical arguments regarding the effect of institutions in constraining corrupt behavior.

There are hardly any robust findings on the institutional determinants of corruption in cross-country empirical studies. Some empirical studies associate presidentialism with higher levels of perceived corruption (Panizza 2001; Gerring and Thacker 2004; Lederman et al. 2005; Kunicova and Rose-Ackerman 2005), while others find presidential systems to perform better than parliamentarism in controlling corruption (Persson and Tabellini 2003, 216; Adsera et al. 2000, 2003). Majoritarian electoral systems appear to be associated with lower levels of perceived corruption (Blume et al. 2007; Kunicova and Rose-Ackerman 2005; Persson and Tabellini 2005; Persson, Tabellini and Trebi 2003), but there is also evidence of the constraining effect that large district magnitudes associated with PR systems have on government corruption (Persson and Tabellini 2003; Persson, Tabellini and Trebbi 2004). Decentralization’s impact is not unequivocally supported by empirical results either. While some studies find a negative effect of fiscal decentralization (Huther and Shah, 1998; Fisman and Gatti 2002), others find that perceived corruption is higher in federal states (Goldsmith 1999; Treisman 2000; Kunicova and Rose-Ackerman 2005; Gerring and Thacker 2004; Treisman 2002).

This review confirms the great importance attributed to institutions as mechanisms to discipline politicians’ behavior. Institutional literature emphasizes the role of the political structure in determining the expected costs and benefits of corrupt exchanges, shaping the types of incentives that constrain politicians, and affecting the structure of the corrupt market. Two main causal linkages
between institutions and corruption have been explored. One set of studies focuses on institutions that increase political accountability and hence help reduce government corruption by monitoring and sanctioning politicians more effectively. Another perspective focuses on competitive structures for the provision of public goods, which reduce the opportunities to extract rents and the incidence of corruption. Particular attention is paid to the risks of executive discretion, weak checks and balances, and low accountability.

While the role of institutions in shaping outcomes is fairly well established, there are reasons for skepticism among scholars of developing democracies where corruption problems are more significant. Theoretical predictions regarding the impact of government structure, electoral rules, and decentralization on keeping politicians accountable are ambiguous, and so is empirical evidence. Theoretical corollaries often do not hold true empirically, and there are few systematic analyses of the impact of alternative political institutions on corruption. There is also little evidence about how corruption varies across different institutional arrangements within electoral systems or regime types. Moreover, while there is agreement that institutions matter, less is known about how they matter (Haggard and McCubbins 2001, 1), and how they can be measured (Voigt 2009). Building upon the assumption that institutions constrain behavior and are stable, empirical studies have included institutional measures as explanatory variables. However, they assume that institutions are strong, and do not capture variations in actual enforcement (Glaeser et al. 2004; Woodruff 2006; Voigt 2008).

This dissertation seeks to fill these gaps by focusing on the actual workings of political institutions and how they affect politicians’ constraints and opportunities for engaging in corrupt exchanges. The rest of this chapter introduces the debate around the concept of accountability and seeks to improve our understanding of accountability mechanisms. It develops a theoretical framework to analyze executive accountability by the legislature in weakly institutionalized presidential democracies, where institutional enforcement cannot be taken for granted and informal institutions play a significant role in structuring actors’ behavior. The chapter also aims to understand how corrupt exchanges endure and become institutionalized under pervasive institutional weakness.
3. Understanding government accountability in new democracies

Latin American democracies combine presidential systems with proportional representation. Such combination is considered particularly risky in terms of creating opportunities for corruption. However, presidential systems are not a one-size-fits-all category. There is wide diversity within presidential systems (Munck 2004, 440), including vast differences in terms of electoral rules, party dynamics (Shugart and Mainwaring 1997), and institutional strength (Levitsky and Murillo 2005), leading to different policy outcomes (Stein et al. 2006). This dissertation places variations of institutional strength at the center stage to explain the effectiveness of the legislature and specialized oversight agencies in holding the executive accountable in presidential systems.

3.1 Debates over the concept of accountability

Representative democracy requires state authorities to be held accountable so that they act in citizens’ best interest instead of furthering their own (Scharpf 1997, 174; Haggard 2000, 43). The concept of accountability is a contested notion that can be understood in different ways. Different approaches are part of a wider discussion over different models of democracy. In a general sense, accountability involves constraining the abuse of power and establishing checks on the misuse of authority (Santiso 2007, 120). It refers to “the ability to ensure that public officials are answerable for their behavior – forced to justify and inform the citizenry about their decisions, and eventually be sanctioned by them” (Peruzzoti 2006, 5).

Some scholars accept a broad understanding of accountability that includes non-institutionalized ways for public officials to provide an account or be responsible for their actions (Moncrieffe 1998; Schedler, Diamond and Plattner 1999; Dunn 1999; Fearon 1999; Keohane 2002), while others restrict the term to legalized or institutionalized power of oversight and sanctioning of public officials (Kenney, O’Donnell, Mainwaring 2003; Moreno et al. 2003). An unbounded definition enables societal actors as agents of accountability that provide for alternative ways of social control (Schmitter 1999; Smulovitz and Peruzzotti 2000, 2003, 2006, 2009, 2010). Focusing on the logic that guides the process of giving accounts, another distinction is made between political and
legal accountability. While the former refers to responsiveness to citizens’ preferences, the latter refers to procedural and technical aspects of administrative responsibility (Peruzzotti 2009, 10-11).10

A crucial issue is the enforceability of accountability and the imposition of sanctions. Some authors sustain that accountability necessitates direct and credible sanctioning mechanisms (Schedler 1999; Kenney 2003; Moreno et al. 2003).11 This means that one actor has some authority over another, and there is necessarily a hierarchical relationship between them (Laver and Shepsle 1999; Rios-Cazares 2006). This dissertation departs from those scholars, and distinguishes between direct and indirect sanctioning power (Mainwaring 2003; Kenney 2003; Manzetti 2003): while some accountability mechanisms rely on “the legal obligation to answer” (answerability), others involve “the institutionalized right of an agent of accountability to impose sanctions on public officials” (Mainwaring 2003, 7). Accountability relations “do not necessarily entail the power to impose sanctions directly. Rectification can be achieved indirectly by the sanctions enforced by those agencies possessing sanctioning powers” (Santiso 2009, 37). This means that some agents may refer possible wrongdoings to others that have the power to impose sanctions (Lupia and McCubbins 1998; Mainwaring 2003; Manzetti 2003; Rios Cazares 2010,16).

Accountability entails monitoring and oversight, as well as the threat, or imposition, of real sanctions if any transgression is detected (Poor 2005). Oversight refers to controlling, informing and restraining (Fox 2000; Santiso 2009, 37). It can be defined as “monitoring or control of one person or institution (generally termed the agent) by another (the principal) so that the agent acts in the principal’s interest” (Morgernstern and Manzetti 2003, 36). Legislatures can count on different mechanisms for supervising the executive branch’s actions (Llanos and Mustapic, 2007; Aberbach, 1990). In this sense, oversight agencies are auxiliary to accountability institutions (legislature), and both play crucial roles in constraining corruption.12

Two types of accountability relationships can be distinguished (O’Donnell 1994, 1999, 2003; Schedler et al. 1999; Mainwaring 2003, 20; Diamond and Morlino 2005, xix-xxv): elected public officials are accountable to society through electoral or societal mechanisms exercised by citizens.
(vertical accountability), and public officials and bureaucrats are overseen and sanctioned by specialized state agencies (intra-state or horizontal accountability). Intra-state accountability includes different mechanisms (Goetz and Gaventa 2001, 7): first, principal-agent relations that take place in the realm of state institutions (e.g., legislative oversight over bureaucracy); second, the legal system and other state actors that can impose sanctions on public officials in case of any wrongdoing (e.g., legislative oversight over the executive); and finally, oversight agencies or actors that are responsible for monitoring state officials and agencies, even if they are only ascribed indirect sanctioning power (e.g., ombudsman, supreme audit institutions). Therefore, both elected and non-elected officials are held accountable; not only voters act as agents of accountability, but also the judiciary, the legislative, and other oversight agencies (O’Donnell 1999, 39; Peruzzotti 2010). Accountability is an integrated web of control agencies whose credibility depends on the quality of the links and synergies between the different components of the system (O’Donnell 2006, 336, 338; Santiso 2007, 2009). This research focuses on intra-state accountability by analyzing both the role of the legislature and specialized oversight agencies.

3.2 Explaining the enforcement of accountability in presidential democracies

Early concerns over accountability as a mechanism for controlling corruption almost exclusively focused on elections. Competitive pressures increase uncertainty and constrain the monopoly power of politicians in office (Schumpeter 2006 [1942]; Klitgaard 1988; Rose-Ackerman 1999; MacLean-Abaroa and Tran 2006). Repeated elections provide opportunities for citizens to hold their representatives accountable, and to throw corrupt governments out without compromising stability (Przeworski and Limongi 1993; Kunicova and Rose-Ackerman 2001, 2; Lambsdorff 2006, 10). However, problems of accountability persist despite regular competitive elections. There are inherent limitations of electoral competition as a means to control and hold elected officials accountable. Elections offer politicians many possibilities to behave autonomously vis-à-vis their voters, as elections occur periodically, and average voters have limited information and face coordination problems (Przeworski, Stokes and Manin 1999; Ferejohn 1986, 1999; Maravall 1999; Stokes 1999,
2001; Montinolla 1997; Belleflamme and Hindriks 2005). This literature sees accountability problems as inherent to the way democracy works and not to its failures (Munck 2004).

Solutions to the problem of accountability are found by other scholars in the quality and institutionalization of competition, which influences politicians’ incentives and voters' ability to hold them accountable (Barro 1973; Johnston 1999; Doig 2000; Golden and Chang 2001; Adsera et al. 2003, 480; Chang 2004; Svensson 2005, 19). One important line of thought shows that different institutional arrangements have a direct impact on accountability (Cox and McCubbins 2001, 21-22; Moreno et al. 2003, 85). Unlike parliamentary regimes, presidential regimes exhibit multiple paths of delegation and accountability (Strom 2000; Santiso 2009, 38). The executive and the legislature are separate agents of the electorate, and thus executive authority is not mediated through the legislative majority. Governing power is formally divided among several institutions whose members are separately accountable to the same constituency (Scharpf 1997, 191).

This research shows that the institutional design of presidential systems contributes to political accountability by setting up a system of checks and balances. The executive and the legislature engage in horizontal transactional exchanges, as they must cooperate to formulate policies and pass legislation (Moreno, Crisp and Shugart 2003, 87-88). Although the executive has more latitude to enforce its preferred policy, as it is only partially an agent of the legislature, both branches of government can monitor and control each other. The branches of government partially overlap in their functions so they can hold each other in check (Manin 1994; Manin, Przeworski and Stokes 1999; Moreno et al. 2003). Checks and balances constitute mechanisms of intra-state accountability when one government branch has “the constitutional/legal capacity to request an accounting of a public official’s (or agency’s) discharge of duties or to impose sanctions on that official” (Mainwaring 2003, 17). External auditing systems, for example, provide the legislatures with a way to check the executive (Santiso 2009, 39). Indirectly, presidential systems also contribute to accountability because, as a result of inter-branch disputes, checks and balances, and the role of opposition parties and the media, voters receive
information that helps correct the informational imbalances that hinder their retrospective assessment of government’s performance (Munck 2004, 452; Lederman et al. 2005, 4; MacLean and Tran 2006).

However, institutional research also emphasizes the limitations of presidential systems for ensuring executive accountability. These flaws include the possibility of collusion among branches of government that are supposed to check one another. Presidential systems with closed-list PR electoral rules concentrate power in party leaders and increase party discipline, thus reducing actors’ ability to monitor politicians (Kunicova 2003, 75; Kunicova 2006; Bowen and Rose-Ackerman 2003; Kunicova and Rose-Ackerman 2005). The need for the president and the ruling party to cooperate with the opposition for effective problem solving weakens accountability mechanisms, since party leaders will be dominated by competitive pressures that may lead to frustrated agreements or political collusion to share the spoils of office (Scharpf op. cit., 192; Rose-Ackerman 2006). Furthermore, the president may control the executive in a centralized way, as legislative leaders are less powerful (Mainwaring 1993, 1995; Shugart 1998), do not control rents, and must negotiate with the executive (Kunicova 2003, 99). Electoral rules and party systems can make legislators depend on the president and shirk their duties of overseeing the executive (Moreno, Crisp and Shugart 2003, 7-99).

Concerns about the negative impact of presidentialism found new theoretical foundation on Tsebelis’s (1995; 2000) theory, which introduces a different perspective in an attempt to understand political systems beyond the type of regime. He is concerned with policy stability, which is determined by the number and preferences of veto players. Veto players appear as accountability mechanisms that check executive discretion, thereby enhancing policy credibility and controlling corruption. Thus, the number of veto players has been positively related to the strength of the rule of law (Bill-Chavez 2001; Andrews and Montinola 2004). However, other scholars like Ueng (1999, 266) associate veto players with higher corruption, as the ability of legislators to extract bribes from interest groups increases. This can be explained because there are different implicit normative visions in veto players’ analyses. From a majoritarian perspective, the dispersal of power ensures accountability and policy commitment, but it is also associated with government paralysis and
Having fewer veto points enhances the ability to reach and implement decisions, and to have them evaluated at elections by retrospective voters. In contrast, from a proportional approach, scholars see veto actors as inherent to the institutional mix of any polity. Kunicova (2006, 145) observes that these differences may result from bringing different institutions together under veto points, rather than exploring their interaction effects. Although Tsebelis sees the institutional structure as fundamental, he provides little guidance to identify what institutions are relevant and why.

Another particular problem of presidential democracies is the trade-off between executive discretion and good governance, including corruption control, policy credibility and bureaucratic efficiency (Santiso 2007). The implementation of market reforms in Latin America showed the negative consequences in terms of corruption of expeditious styles of decision-making and weak accountability mechanisms (Manzetti and Saba 1996). Recent research shows that the effectiveness of institutional constraints on executive discretion is likely to be influenced by the nature of legislative-executive relations. Policy credibility is determined by the extent to which inter-branch relations balance policy decisiveness (the ability to enact and implement policy change) and resoluteness (the ability to commit to maintaining a given policy). Haggard and McCubbins (2001, 26-27) note that an effective division of powers enhances accountability and commitment to policies. However, there are always tradeoffs between policy decisiveness and resoluteness. The more decisive a political system is, the less resolute it becomes: policy will be more volatile and can be easily reversed in the short-term. In contrast, a more resolute political system is less able to change its policies, yet adopted policies are more likely to endure. Argentina is usually mentioned as example of a highly decisive policy-making process in which accountability and credible commitment to policies are inherently weak (Weyland 1996; Stokes 1999; Corrales 2002; Manzetti 2009).

With a similar concern for policy stability, Spiller and Tommassi (2000, 2003, 2007) seek to understand the Argentine case and, more generally, the determinants of policy-making. They emphasize the institutional arrangements that shape the state’s ability to commit to policies; sustain inter-temporal cooperation; and implement stable, predictable and high-quality policies. These
features are influenced by individual politicians’ incentives, which in turn are determined by political institutions (electoral rules, federal institutional arrangements, and the structure of presidential power and legislative oversight) and their interactions. This dissertation is influenced by their work.

Moving away from policy stability and towards the role of the legislature, there are few analyses of legislative oversight in Latin America. Among the few examples, we can mention the work by Llanos and Mustapic (2007) on parliamentary control in Argentina, Brazil, and Germany, which does not conduct systematic comparative analysis, and Lemos’s (2010) ongoing two-year research project aimed at comparing legislative oversight in Argentina, Bolivia, Brazil, Colombia, Peru and Venezuela. There are some contributions on legislative oversight of bureaucracies such as the analyses of Chile (Siavelis 2000, 2002), Argentina (Eaton 2003), Brazil (Figueiredo 2003), Mexico (Rios Cazares 2010), and the comparison between Argentina and the United States (Morgensten and Manzetti 2003). More specifically, Santiso (2004, 2007, 2008, 2009) has advanced our knowledge of specialized oversight by supreme audit institutions, and Melo, Pereira, and Figueiredo (2009) and Speck (2008) have conducted valuable case studies and comparative work on audit agencies at the federal and local levels in Brazil.

For this reason, literature on the US Congress has become a major source of insights into the legislative process and legislative accountability of the executive. Landmark contributions to this literature by McCubbins, Noll, and Weingast (1989), McCubbins and Schwartz (1984), Epstein and O’Halloran (1999), or Huber and Shipan (2000) provide insights on legislative delegation and legislators’ ability to ensure that policy decisions do not deviate from the intended goals during implementation. Building on this literature, this dissertation recognizes that there are significant caveats regarding the extent to which this literature’s assumptions (for example, the formal powers of the president, legislators’ reelection concerns, or policy preferences) can be transported to other contexts (Morgenstern 2002). The effects of factors such as presidential unilateral powers, electoral rules, federalism, and weak party institutionalization on legislative oversight of the executive are still open questions.
Excessive executive discretion is associated with risk of corruption. Strong checks and balances and the effective separation of powers increase the credibility of government’s commitment to policies and the extent to which they are accountable and responsive to citizens. The empirical dilemma is how to keep the advantages of strong executive authority, while ensuring the institutional checks and balances that guarantee oversight, accountability and corruption control. Effective accountability in presidential systems requires the interplay between checks and balances, electoral and intra-state accountability. However, there is no agreement as to what factors determine the effectiveness of those mechanisms. Underneath these differences are distinct normative understandings of democratic politics.

3.3 Relaxing some premises

While checks and balances and separation of powers are considered crucial conditions for accountability, these are the weakest features of democratic governance in most Latin American countries. Institutional approaches are useful to understand the determinants of accountability and corruption control in comparative perspective and to assess the comparative disadvantage of presidential democracies, particularly under closed-list PR. They illustrate, for example, how presidents who control the executive branch may create opportunities for corruption more easily than in collegial forms of government (Kunicova 2003, 87). The framework, however, was not meant to illustrate in a systematic manner the diversity within presidential systems and the different outcomes they often produce (Stein et al. 2006). It cannot explain why presidential systems often present features that are not inherent to their institutional design, and why players acting within a particular institutional setting may choose strategic actions that deviate from the expected results. For instance, why have strong disciplined parties not been able to ensure that the Argentine legislature engages collectively as a counterweight to the executive (Moreno et al. 2003)? Why did constitutional changes aimed at strengthening checks and balances fail to enhance accountability in Argentina? Furthermore, if constitutional design and electoral rules already provide Argentine presidents with plenty of opportunities and incentives for corruption, why do they actively seek to manipulate and undermine
formal institutional constraints to enhance presidential power even further (Rose-Ackerman et al. 2010)? The diversity of outcomes that presidential systems show in terms of accountability and corruption control cannot be explained by formal institutional rules, but must take into account their level of enforcement and how political institutions actually constrain actors in each case.

The review of the literature on accountability and corruption control from the perspective of a weakly institutionalized presidential system calls for relaxing some premises:

(a) **Institutional strength**: To explain the ability to hold politicians accountable and constrain corruption, we need to consider variations in the actual enforcement of political institutions. Specifically, we need to incorporate the effects of weak institutions on actors’ incentives to hold the executive accountable. Constitutional checks on the executive that formally exist in presidential systems may be scarcely enforced in practice. Differences in institutional strength may account for different outcomes in terms of accountability -- the incentives and capabilities to monitor and eventually punish incumbents-- between systems with similar institutional designs.

(b) **Informal institutions**: Much of the existing debate largely focuses on the institutional (partisan and constitutional) determinants of accountability as the source of monitoring and control incentives. This approach is based on the premise that democratic institutions are the "only game in town" (Przeworski 1991). This dissertation, however, proposes to look at the other side of the coin to understand the extent to which political actors may strengthen or undermine accountability despite and beyond the formal rules of the game (O'Donnell 1996).

These premises should be incorporated into an improved institutional explanation of corruption. One contribution of this dissertation is to investigate the effects of institutional weakness on the conditions that lead to effective executive accountability and constrain corrupt exchanges. There are good and bad institutional environments for effective accountability. Good institutional environments are those in which institutions are both stable and enforced, with actors (including voters and intra-state accountability agents) being both capable and motivated to hold incumbents to account. Conversely, bad institutional environments for accountability are those in which there is a
large gap between formal institutional rules and actual practices. This difference affects actors’ expectations and behavior, and may lead them in a different direction than expected according to the formal rules of the game, rendering them indifferent to or negligent about corrupt behavior. Under these conditions, there are no actual constraints that help actors prevent and avoid political corruption.

4. Institutional strength and informal institutions

This dissertation emphasizes the role of institutions for explaining the development and reproduction of corrupt exchanges. This research moves beyond formal institutional design to incorporate institutional strength and the role of informal institutions. This section defines institutional weakness and informal institutions and introduces the notion of institutional commitment.

4.1 Institutional strength and weakness

Empirical reality shows that assumptions of institutional strength do not travel well. Whereas in advanced democracies institutions are stable and enforced, in Latin American developing democracies the effects of institutions cannot be taken for granted. Formal rules change, are unevenly or sporadically enforced, circumvented, or utterly violated, and democratic regimes show a significant gap between de jure and de facto institutional constraints (Levitsky and Murillo 2005, 271). Therefore, variations in the strength of institutions, and the distinction between formal institutional rules and their enforcement, must be placed at the center of research (Levitsky and Murillo 2005, 3, 272 ff.; Voigt 2008, 7).

Levitsky and Murillo (2005, 3) conceptualize and measure the strength of formal political institutions along two dimensions: a) enforcement, or the degree to which existing rules are actually complied with in practice; b) stability, or the degree to which rules survive fluctuations in the distribution of power and preferences, such that actors develop shared expectations based on past behavior. While strong institutions are stable and effectively enforced in practice, pure cases of institutional weakness are those in which institutions are neither stable nor factually enforced. When institutions are strong, we find a tight coupling between formal rules and actors’ behavior; in contrast,
weak institutions neither constrain actors nor shape their expectations (Levitsky and Murillo 2005, 272-3; Voigt 2008). Intermediate cases are those in which institutions are enforced but unstable (i.e., they are complied with but constantly modified), or when formal institutions are stable but weakly enforced (i.e., rules formally exist but they are routinely ignored). The challenge is to measure institutions’ factual enforcement and stability, instead of focusing only on formal characteristics.

4.2 When formal institutions are weak, informal institutions may settle in

Since the early focus of O’Donnell (1996) on the “illusions about consolidation,” and the coexistence between formal political institutions of democracy and other less democratic practices and forms of institutionalization, growing attention has been paid to informal institutions and rules that are commonly practiced yet different from formal institutions. The advantage of this approach is to focus on the actual rules and dynamics of the political game being played (O’Donnell 1996). Informal institutions – particularly those that emerge in response to the weakness of formal political institutions – influence actors’ behavior and expectations (Brinks 2003; Helmke and Levitsky 2003, 2004, 2006; Levitsky and Murillo 2005). The combination of formal and informal rules should explain a different outcome than the one to be expected if formal institutions operated alone (Helmke and Levitsky 2003, 5). Beyond the instability and failure to enforce formal rules, we need to identify all the relevant institutions that affect outcomes.

Informal institutions have not been fully conceptualized or theorized and systematically incorporated into the study of institutional outcomes. First, they should be conceptually distinguished from formal institutions. In addition to the usual criterion of formality or codification (North 1990), scholars rely on enforcement and rule-breaking sanctioning to distinguish between formal institutions, which are monitored and enforced by a centralized authority, and informal self-enforcing institutions (Jackman 2000; Jackman and Miller 2005). However, an excessive emphasis on the decentralized nature of informal institutions may be criticized on the grounds that informal political institutions that are relevant in Latin America, and elsewhere, often develop a centralized nature in their creation and enforcement, which must be defined in relation with formal institutions (Leiras 2004). Thus, informal
Institutions can be defined as “socially shared rules, usually unwritten, that are created, communicated and enforced outside officially sanctioned channels” (Helmke and Levitsky 2006, 5). In this definition, the central feature of informal institutions (as of formal institutions) is their enforcement, and the existence of sanctions that punish deviations.

This conceptualization draws attention to the strength of informal institutions. As do formal institutions, informal institutions also have normative and factual dimensions (Brinks 2003, 2006) – they set standards of conduct that only constrain actors to the extent that they are actually enforced. Actors must believe that breaking the informal rule involves some sanction (Helmke and Levitsky 2006, 5). Therefore, a crucial test for the presence of an informal institution is whether relevant agents of social control externally sanction any deviant behavior from the informal prescription (Brinks 2006, 205). This conceptualization allows distinguishing informal institutions from other informal regularities, and from the understanding of informal institutions as shared values. These considerations are thoroughly developed and empirically tested throughout the following chapters.

Informal and formal institutions interact. Informal institutions may represent the only credible threat of sanctioning for noncompliance with formal rules. Conversely, they may reinforce the precariousness of formal enforcement if there is no credible threat of informal sanctioning (Voigt 2009, 13). Informal institutions may also involve permissive rules, which allow behavior that deviates from the formal rules of the game. Therefore, informal institutions can reinforce or weaken formal institutions. They may be classified based on the convergence between formal and informal institutions, and the strength of relevant formal institutions (Lauth 2000; Helmke and Levitsky 2006, 12 ff.). When formal institutions are strong, informal institutions may be complementary or accommodating. When they are weak and ineffective, informal institutions may be substitutive or competing. Informal institutions cannot be exclusively categorized under one interaction type, as they relate differently to distinctive formal institutions. Moreover, the balance between formal and informal institutions is dynamic, and how it is redefined and shaped depends on formal and informal institutional change.
4.3 Institutional commitment

Claiming that institutions are weak does not imply that institutions have no effects. Weak institutions shape actors’ behavior and expectations as much as strong institutions do. Moreover, when formal institutions are weak, informal institutions often settle in and interact with weak formal institutions to affect outcomes. Both strong and weak formal rules coexist within the same settings, and often the weakness of some rules builds upon the stability of others. Furthermore, stability and enforcement say little about the origins of institutional weakness, which can be found in both external and endogenous factors (Levitsky and Murillo 2005, 283-8; Tommassi and Spiller 2000). In some cases, institutions are weakly enforced and/or unstable because they were created weak, or rendered weak over time. In others, institutions are weak as a result of actors’ behavior and strategies (Rose-Ackerman et al. 2010). Actors who believe that institutions are weak develop skills and resources adapted to that context, thus reinforcing institutional weakness (Levitsky and Murillo 2005, 286-7). Unstable institutions do not necessarily produce instability and collapse, but may be in equilibrium. As the literature on self-enforcing institutions maintains, sometimes institutions endure precisely because they are weakly enforced – they are the strongest possible outcome given the incentives in place.

To address these problems and assess the effect of weak formal institutions, this dissertation relies on the notion of institutional commitment. Palanza (2009, 97) defines institutional commitment as “politicians’ valuation of their decision rights, which implies their willingness to defend these prerogatives from encroachment.” This valuation is positively associated with the likelihood that actors will defend those prerogatives. Actors endowed with decision rights over a process (legislators) vary in the extent to which they are willing to defend their rights. The causes of that variation lay elsewhere, in the institutional setting. The notion rests on the assumption that politicians want to maximize the gains (e.g., campaign contributions, organizational resources, votes, or bribes) they can extract from their decisions rights and they are unlikely to allow those gains to be deviated to other actors in violation of formal rules (Palanza 2009, 99). They do so under different constraints
(alternative courses of action, arenas where actors interact, time horizons, etc.) that change in different institutional environments.

This dissertation looks at the characteristics of the institutional environment (the actual workings of electoral rules, legislative and executive powers, federalism) that affect the level of commitment. This concept allows us to make explicit the actors’ incentive structure and explore how institutions affect such structure, as well as their effects on enforcing accountability. Moreover, it allows testing variation in institutional commitment levels across cases and issues.

4.4 Determinants of institutional commitment

Institutional commitment emerges in repeated games: legislators that will be faced with similar decisions repeatedly over time estimate what their expected gains will be in the long term (Palanza 2009, 24). Institutional commitment is higher when the expected gains are higher. Institutional commitment is a function of several elements that affect actors’ calculations of expected gains. Some of the underlying mechanisms that drive the effect of institutions are specified below: 26

a) Time horizons / Inter-temporal linkages: Long time horizons have a positive effect on institutional commitment levels. In contrast, when actors are uncertain about the stability of the rules and their constraining effects, they try to maximize their short-term benefits. The gains that legislators extract from their prerogatives are different when they have short or long time horizons. When time horizons are short, politicians are not certain that others will cooperate, and thus is rational for them not to cooperate (Nino 2005, 150). They focus instead on the short term scenario, trying to extract as much private benefit as possible from the exercise of their current control rights over state resources (since they do not expect to have those rights in the future). Moreover, they will be interested in maximizing their future career beyond the legislature.

b) Timing and observability of moves: Effective accountability is less likely if the executive can engage in unilateral actions that are difficult to observe or hard to verify. Under weak institutions, political actors often rely on informal institutional resources and strategies to disguise their actions
and act unchecked. As these informal strategies are less transparent than formal ones, it is harder to enforce executive accountability.

c) **Payoffs**: The elasticity of payoffs compared to alternative actions affects actors’ institutional commitment. In weakly institutionalized settings, the payoffs for deviating from the equilibrium outcomes of formal rules are higher, and therefore opportunistic behavior is more likely. Institutions are not expected to persist and actors do not take them seriously. They can select strategies prescribed by the formal rules or other options, including violating, manipulating, or changing formal rules. As the benefits of alternative options increase, so does the actors’ uncertainty regarding the rules that apply.\(^{27}\)

d) **Enforcement technologies**: The availability of third-party enforcement mechanisms facilitates cooperation and effective accountability. However, when politicians do not expect formal rules to endure, they are less likely to invest time and resources in developing the skills and resources for pursuing their goals through those institutions.\(^{28}\) This undermines the availability and capacity of enforcement technologies and third-party enforcers that contribute to corruption control. For example, in these situations, an independent judiciary that effectively prosecutes corruption is less likely.

e) **Alternative institutional channels**: The costs of alternative means of enforcing accountability may be smaller than those of accountability through the legislature. However, when institutions are weak, alternative institutional channels for accountability are problematic. Anticorruption policies are weakly enforced and cannot effectively prevent future opportunistic behavior. Also, independent agents of accountability such as civil society find limited opportunities to coordinate their actions with formal agents of accountability.

f) **Characteristics of the arenas of exchange**: Effective accountability requires well-institutionalized arenas of political interaction. In weakly institutionalized settings, actors look for alternative arenas in which exchanges, transactions and cooperation may be easier to enforce. Informal institutions and strategies are thus a common and stable response to the instability and unequal enforcement of formal institutions. Although informal institutions may lead to effective
accountability (Stokes 2006; Wit and Akinyoade 2008), political exchanges in those settings are harder to monitor, which can create further opportunities and incentives for corruption.

Encroachment of legislative prerogatives only takes place in certain scenarios. Variation in the level of institutional commitment is a function of different factors that affect legislators’ expectations regarding how long they will remain in office, the number of players, the nature of the arenas in which actors interact, or the existence of alternative enforcement tools. The combination of these mechanisms predict high institutional commitment and effective accountability leading to corruption control if: actors’ time horizons are long; actors develop strong inter-temporal linkages; third-party enforcement (actors and/or technologies) and alternative sources of accountability are strong and widely available, and actors are willing to invest time and resources in their development; and finally, formal and informal institutions are mutually reinforcing to foster political accountability. Otherwise, legislators’ incentives for holding the executive accountable will be low, thus increasing the risk of corruption. The actual workings of political institutions foster (or not) effective accountability by acting through these underlying mechanisms. Institutions such as electoral rules, party procedures, and candidate selection, and factors such as historic patterns of stability are important in this regard.

Variations in levels of institutional commitment are the basis for this dissertation’s analysis. The overall level of legislators’ institutional commitment is expected to determine the extent to which they tend to protect their rights in relation to the executive branch (effective executive oversight and constrained corruption being the outcome). When institutional commitment is low, as in Argentina, we expect executive accountability to be deficient; at higher levels of institutional commitment, we expect executive accountability to be stronger. Many cases fall somewhere in between. In addition, we expect the level of institutional commitment to vary across policy areas for given levels of institutional commitment in a given country (Palanza 2009, 100-101). When politicians consider an issue relevant, they will be more likely to invest in the defense of their decisions rights against encroachment by the executive. In turn, for negligible issues, they will most likely not invest
resources. This derives from the expected gains/payoffs of overseeing different issues over time, taking into account both present and future gains. Different areas involve different prospects of gain extraction. When the stakes around one policy area are high, the expected gains are larger and therefore legislators’ willingness to defend their decision rights in those cases is also high. When one policy area is less important, the expected gains are lower and, as a result, institutional commitment to defending their rights is lower (Ibid.).

5. Constraining corruption: Executive accountability in weakly institutionalized separation of powers systems

Building upon the assumption that constraining corruption requires effective accountability, this section develops a theoretical model of executive oversight by the legislature. We specify the underlying mechanisms that explain the effect of institutional weakness and low institutional commitment on the effectiveness of executive oversight. Weak institutions affect legislators’ institutional commitment and their willingness to defend their prerogatives. Delegation turns into a non-cooperative game and, as a result, effective oversight and accountability are harder to sustain, thus creating incentives for corruption. The model introduces the informal strategies available to actors. It predicts that legislators pursue informal oversight strategies that allow them to satisfy short-term demands of their constituents without jeopardizing their political careers. Also, the proposed explanation acknowledges a consistent pattern of informal discretionel moves by the president to strengthen presidential action while shrinking accountability.

5.1 A theoretical model of executive accountability by the legislature

The theory proposed to explain corruption is based on several premises. The first premise is that corruption is a crime of opportunity and incentives.\(^{29}\) Corrupt rent-seeking opportunities are concentrated in the hands of office-holders, since corrupt exchanges require access to potential rents. Power provides access to resources or to influence decision-making processes to create concentrated rents that can be exchanged for private gain. This is the supply of resources that sustain corrupt
exchange networks. However, holding power does not mean that someone will necessarily be corrupt. Opportunities for private gain need to exist or be actively created by those in office through the exercise of their discretionary power and unchecked actions. For politicians with access to potential rents, incentives for corruption are inversely related to the incentives and ability of other actors to induce compliance, monitor, and hold them accountable. Office holders will take advantage of corrupt opportunities when they are not constrained by the risk of detection or other costs. Corrupt incentives refer to office-holders’ motivations to misuse public office for private gain, given expected risks and costs. The institutionalization of democratic accountability has a deterrent effect: it promises to secure the right incentives for incumbents in office to produce outcomes that respond to voters’ preferences.

The second premise is that the principal-agent framework provides a useful approach to analyze delegation, oversight and accountability and how they relate to corruption. Democratic politics can be understood as a hierarchy of agency relations: a sequence of delegations of power and authority takes place from the electorate to representatives, and from representatives to the bureaucracy (Lupia and McCubbins 1998). For such delegation to be successful, effective accountability is necessary (Strom 2000, 2001; Lupia and McCubbins 1998). Those who delegate authority need effective mechanisms to monitor and induce compliance from agents, who seek to implement their personal, divergent preferences. Thus, legislative delegation to the executive is accompanied by institutionalized mechanisms for overseeing and holding the government accountable (Santiso 2007, 113), and there are different political control strategies for inducing compliance (McCubbins, Noll and Weingast 1987, 1989).

A virtuous democratic cycle can be identified when, following such delegation, the electorate rewards or sanctions politicians for their performance in providing public goods based on an appraisal of their effectiveness (Rios Cazares 2006; Teorell 2007, 4). Conversely, political corruption represents a diversion from that virtuous circle, as elected politicians or appointed bureaucrats pursue their own interests at expense of the electorate. Corruption refers to opportunistic behavior that is the result of an inefficient delegation of power: the principal fails to ensure compliance and effective
accountability, and thus the agents pursue their own private interests. Controlling corruption is a matter of enhancing accountability and minimizing the incidence of corrupt practices (Myerson 1993; Persson and Tabellini 2000).

The third premise is that effective oversight and accountability of the executive by the legislature is critical for controlling corruption in separate powers systems. In presidential democracies, a president who controls the executive branch has both access to corrupt rents and an interest in creating new rent-seeking opportunities (Kunicova 2003). Executive accountability is aimed at guaranteeing a certain degree of control against excesses of the executive power, as in the checks and balances model.31 There are several reasons for this dissertation’s focus on executive accountability. First, the limits of vertical accountability: to the extent that checks on the executive are constrained and intra-state accountability mechanisms are faulty, the executive may engage in informal practices in the electoral arena (e.g., clientelism) that undermine voters’ incentives to hold the executive accountable, even if they had information on corrupt behavior. Second, the intrinsic value of legislative oversight: as Lemos (2010, 5) summarizes, oversight is generally a constitutional or statutory function of parliaments; also, legislatures are subject to vertical accountability (which enhances their legitimacy), are more inclusive and plural, and carry out more transparent and less insulated decision-making than courts or regulatory agencies (Carey, 2003). Finally, legislative oversight is particularly relevant for corruption control, since specialized oversight agencies that assist the legislature produce crucial information to detect and deter corrupt transactions (Santiso 2007).

The fourth premise is that effective executive accountability and compliance face delegation problems, which are exacerbated in weakly institutionalized settings. Congress is the principal in an agency relation with the executive. The principal delegates institutional powers to the executive expecting to receive benefits in return (including information, flexibility in time budgeting, limited responsibility for public policy, among other returns) (Pereira et al. 2005, 181). Monitoring and oversight of the executive are costly, and compliance is never perfect. A necessary condition for effective accountability is that legislators have both the incentives and the capability to control public
officials with access to rents (Ugalde 1999; Kunicova 2003, 74; Rios Cazares 2006). Although both conditions are necessary, legislators' incentives are particularly important. If incentives and/or capabilities fail, there is no effective accountability. When legislators have the incentives yet not the capability, they may invest in developing the skills and resources necessary for enforcing accountability. However, even if they have the resources and skills for effective monitoring and oversight, the lack of incentives renders accountability ineffective. If the incentives exist but capabilities are weak, or vice versa, there will be some form of imperfect or low-quality accountability (Rios Cazares 2006, 7).

The approach pays considerable attention to the gains politicians extract from their legislative prerogatives. Politicians value the resources they can extract from external sources (e.g. lobbyists) or internal sources (e.g. executive), but they do not have direct preferences over policy. Legislators, and politicians in general, are interested in maintaining and advancing their careers, which implies maintaining or extending their positions and those of their allies. All goals are presumed to be interdependent on a vote-seeking ambition in the sense that retaining office (in Congress or elsewhere) allows legislators to maximize their particularistic interests (Mayhew 1974; Samuels 2003; Morgenstern 2004). In pursuing their "progressive" ambitions, legislators are constrained by party discipline, term limits, and the electoral structure (Samuels 2002: 315-6). The means to maximize these goals are provided by either external agents, who are willing to compensate politicians for support in the lawmaking realm (Palanza 2009), or by particularistic payments they may receive from the executive to compensate for their policy support. In both cases, politicians use their prerogatives to gain access to resources, and depending on the extent of resources they can extract, they are willing to defend their decision rights when encroached upon. The conditions under which they will do so vary depending on the institutional commitment levels that derive from the actual workings of institutions.

The last premise is that informal institutions also shape delegation of power and authority. The classic principal-agent model rests on the assumption that “the contractual relation between
principal and agent is the relationship between them defined by formal institutions and the law” (Darden 2003, 8). However, formal institutions are neither stable not perfectly enforced. Agency relations and effective accountability processes are affected by weak formal institutional constraints and the instability of formal political rules. One cannot assume that the rational calculation to comply with the legislative mandate (or to engage in corrupt behavior) is determined by formal institutions alone. Moreover, practices that deviate from the formal rules do not necessarily undermine the enforcement of the principal–agent relation, but may contribute to their enforcement through informal means (Ibid.). When formal institutions are neither stable nor systematically enforced, the contract between principals and agents may be shaped as an informal contract. This dissertation seeks to develop a model that incorporates the workings of both formal and informal rules and strategies in the enforcement of executive accountability by the legislature.

5.2 The game

To explain the legislature’s ability to hold the executive accountable and to outline legislators’ strategies for executive oversight, as well as presidents’ strategic responses, this dissertation builds upon and explores the limits of the delegation model elaborated by McCubbins, Noll and Weingast (2006) and adapted by Rios Cazares (2010) to account for legislative oversight of the bureaucracy.

5.2.1 Players and assumptions

The model has three basic assumptions. First, legislators and the executive have ordered preferences regarding policy areas; second, legislators have limited resources to oversee the executive; and third, presidents have information on legislators’ preferences and resource constraints so that the executive’s decision to comply with the legislators’ mandate is always a strategic response to legislators’ actions and interests. Legislators know the executive has this information, thus they also act tactically in response to executive’s policy preferences.

Legislators seek to maximize the resources they can extract from the legislative process, which are critically linked to the established allocation of decision rights. They have preference over political resources they receive from the executive or external agents, and provide their policy support
in exchange for those resources (Groseclose and Snyder 1996; Palanza 2009). Legislators value their prerogatives because they provide access to resources they can extract from the legislative process, and are willing to take action in defense of those prerogatives. If politicians’ decision rights are violated (for example, executive non-compliance), they will react to defend their prerogatives. The extent to which they do so varies as a function of their level of institutional commitment.

The model represents each policy area as a one-dimensional continuum. Since legislators and the executive have ordered policy preferences, their ideal outcome is represented as a point on each policy dimension. The utility of each actor decreases as the final policy outcome departs from the preferred policy; thus, legislators will evaluate executive actions by the distance between the final outcome and legislators’ ideal policy. Since legislators know that the executive may deviate from the legislative mandate (because preferences over policy may differ from those of legislators), and since legislators also acknowledge the impossibility of detecting every non-compliant action, legislators define an interval of acceptable policy decisions that constrain the “distance” legislators will allow between their ideal and the final policy outcome. This margin expresses the level of discretion legislators are willing to grant to the executive.

It is a sequential model with three stages. It begins when the legislature and the executive have bargained and reached an agreement on a unique policy. First, the legislative body delegates the implementation of public policies to the executive. In the second stage, the executive chooses whether to comply with this mandate. In the third stage, legislators determine an oversight strategy to maximize the probability of detecting non-compliance given their limited resources.

5.2.2 The model’s sequence

1. Deciding the margins of discretion: The game starts with a period in which players reach an understanding about how they will restrict their actions in the future. The executive and the legislature bargain and reach an agreement on a unique policy. The outcome is represented as a point \( (O_k) \) in a \( K \)-dimensional policy space where each dimension \( k \) is independent from the others (the bargaining over policy occurs one dimension at a time). Legislators decide to delegate the
implementation of this policy to the executive and its bureaucratic agencies. Policy mandates “are not precise orders” but “define a range of acceptable bureaucratic actions that are in concordance to their preferences” (Epstein and O’Halloran 1999). The range depends on the relevance of each policy area for legislators and their ability to impose their preferences. If executive choices are within the interval, they will not be punished.

The relevance of a particular policy area is determined by the potential benefits legislators can obtain from intervening in it. Legislators’ benefits are political, including electoral victories, opportunities to move up in the political hierarchy, access to office, policy influence, and rents (Fenno 1978; Schlesinger 1991; Carey 1998; Caillaurd & Tirole 2002; Mejia 2004). They need external resources to maximize those political benefits (as they have resources, they may advance their careers and access to office, thus maximizing policy influence and rents). Decision rights over political processes, determined exogenously by formal rules (i.e., they vary across actors, decisions, countries, etc.), provide access to valuable resources that legislators need to maximize their political benefits. They are part of legislators’ budget and determine oversight costs. Depending on the extent of resources they can extract, they will be willing to defend those rights against encroachment.

When political benefits are high or increasing (because an issue commands more benefits), so does the relevance the policy area has for legislators. For relevant areas, legislators’ willingness to defend their decisions rights are higher, and they are less willing to tolerate deviations from their preferred outcome–i.e., they reduce the discretion granted to the executive in those areas (and vice versa, discretion increases in less relevant areas). Alternatively, when a policy area becomes less relevant, the executive will have more leverage and legislators will more likely tolerate encroachment. Executive monitoring is also constrained by the availability of resources. Legislators maximize their resources by monitoring those areas that are more important to them and paying less attention to areas that render them lesser benefits. Most policy areas oscillate between two extremes: those on which the legislature is indifferent and those in which the legislature is unyielding and does not tolerate deviations.
To illustrate the relationship between the relevance of a policy area and legislators’ tolerance for executive discretion, let $\gamma_k$ denote the relevance policy area $k$ has for legislators, and let $Z_k$ denote the political benefits that policy area $k$ renders to them. Then, $\gamma_k (Z_k)$ such that $\frac{\partial \gamma_k}{\partial Z_k} > 0$ for all $k$.

On the basis of $Z_k$, legislators define a range of acceptable policy outcomes from which the executive decides a final action. Let $\delta_k$ represent the margin of discretion legislators are willing to allow to the executive. Then, $\frac{\partial \delta_k}{\partial Z_k} < 0$ for all $k$ and $\frac{\partial \delta_k}{\partial \gamma_k} < 0$ while $\frac{\partial \gamma_k}{\partial \gamma_k} \geq 0$ for all $k$ and $j$, and $k$ is preferred to $j$ ($k < j$).

The relevance of $k$ and the benefits legislators obtain from it ($\gamma_k$ and $Z_k$) affect the amount of resources legislators are willing to invest in monitoring the executive in $k$.

2. Deciding compliance: The executive seeks to ensure that the final outcome is as close as possible to its ideal point. When deciding compliance, the executive has two alternatives: to comply or not with the legislative mandate. Compliance means that the president implements an action that is within the range of alternatives legislators previously defined. Not to comply means that the president decides to implement a policy that is outside the acceptable range defined by legislators. When deciding whether to comply with legislators’ mandate or to take an action that is not within the legislators’ range, the presidency considers its own preferences (e.g., reelection), legislators’ preferences, and the probability that it may be sanctioned.

3. Defining monitoring and oversight: To fulfill its accountability responsibilities, the legislature must ensure that the executive complies with the provisions of the law it approved – i.e., executive actions are within the range of acceptable actions. Legislative oversight “concerns whether, to what extent and in what way Congress attempts to detect and remedy violations of legislative goals” (Santiso 2009, 46). There are a variety of mechanisms to punish or reward the executive, and different strategies of legislative oversight (McCubbins and Schwartz 1984, 1987; Luppia and McCubbins 1994; Siavelis 2000).35

For the purposes of this model, in order to define their oversight agenda, legislators choose at random a set of actions to monitor ($M_k$) from the total number of actions ($N_k$) in each policy area. To
monitor the behavior of the executive, legislators must pay a cost ($C_k$) that affects the total amount of resources they have. Legislators’ resources are the sum of expertise, time, staff, economic resources, and the formal powers legislators have to affect executive activities, such as the ability to request information from the executive, to create special investigative committees, to call for legislative hearings, to conduct audits, or to impose sanctions. These resources are legislators’ total budget ($B$).

The executive and legislators share a common set of beliefs about the distribution of the executive’s ideal points on any dimension. Legislators’ ideal point and the margins of discretion in each dimension are also common knowledge. However, no actor knows what any others’ decisions are. Consequently, no single agent can affect the likelihood that its behavior will be reviewed.

In the first stage, the legislators’ goal is to set a margin of discretion to protect their ideal policy outcome and to maximize compliance, thus minimizing monitoring and sanctioning costs. During the second stage, the executive attempts to secure a policy outcome that is closest to its ideal point while minimizing the probability of being overseen and possibly sanctioned. Finally, in the third stage, legislators try to monitor the executive as closely as possible in the most relevant policy areas given their limited resources.

5.2.3 Equilibrium

With the information provided so far, this section describes the equilibrium of the game, which can be solved by using backward induction, starting with stage three. Let $NC_k$ be the number of non-complying decisions on any policy dimension. Then $P_k = NC_k/N_k$ is the probability that the executive is non-complying on dimension $k$.

Let $D_{ik}$ be the executive’s decision to comply or not comply with legislators’ policy mandate. The expected gain from detecting a noncompliant decision is

$$E_{ik} = \sum_{i=1}^{NC_k} (P_k \cdot O_k - D_{ik} \cdot N_k)$$

$(O_k - D_{ik})$ represents the policy cost of having an executive decision that is not the legislators’ ideal outcome. The relevance of the policy area and the expected policy change ($\gamma_k E_k$) after supervising all
decisions will determine legislators’ expected cost from monitoring the executive on that policy area. Additionally, the expected cost is also affected by the utility legislators derive from monitoring the executive in the particular area, which is a function of their institutional commitment ($\gamma_k G_k$). Institutional commitment is determined exogenously and varies across issues. It is assumed that it is equal for all members of an institutional body, but varies across bodies.36

In the third stage, the legislature chooses the number of decisions to review across all dimensions ($M_1, M_2, \ldots, M_k$) to maximize the expected payoffs. Since monitoring is costly, the legislature cannot review more decisions than its budget allows; there is a cost constraint. Legislators face an optimization problem which consists of selecting a number of executive actions ($M_k$) to oversee in each policy area that maximizes the benefits each policy dimension renders to them given the levels of institutional commitment (equation 1) within the boundaries of a limited budget and positive oversight costs given the specified level of discretion (equation 2).

\[
\sum_k (\gamma_k M_k E_k) + \sum_k (\gamma_k M_k G_k) \quad (1)
\]
\[
\sum_k (M_k C_k \delta_k) \leq B \quad (2)
\]

Since the legislature does not know if a given action on any dimension complies with its decision or not, the marginal value of reviewing an additional action on dimension $k$ is equal for all cases. Solving the legislators’ optimization problem renders the following outcomes (Annex 1 A and B). First, legislators will not oversee any case if the marginal cost of doing so exceeds the potential benefit, regardless of the policy area. When institutional commitment is taken into consideration, the expected cost of monitoring must take into account legislators’ willingness to defend their rights and monitor the executive ($\gamma_k E_k + \gamma_k G_k$). Oversight will only take place when $G_k$ is large enough so that monitoring costs are equal or lower than potential benefits. If $G_k$ is low (e.g., $G_k \approx 0$), the marginal costs of monitoring increase, as the expected gain from detecting a non-compliant decision diminishes rapidly because such decision does not involve any policy cost (e.g., in terms of losing political support at the individual or party level, or getting caught and facing career liabilities) nor legislators derive utility from oversight. Moreover, as an additional side effect, legislators will not
invest in developing the resources and capabilities for effective oversight and therefore, their budget constraint would get tighter. In consequence, as institutional commitment increases, the likelihood of executive oversight by the legislature is higher. A substantively larger number of executive decisions is monitored and controlled by legislators in comparison to contexts of low institutional commitment. With low levels of institutional commitment, given the legislature’s limited capacity and resources, the costs of reviewing executive’s decisions will be higher than the potential benefits, and legislators are better off ignoring executive actions on any policy dimensions, or may try to reduce oversight costs (e.g. delegating oversight to other agencies).

Second, at higher levels of institutional commitment, when benefits exceed costs, it is not optimal for legislators to under-spend resources; their best strategy is to spend their entire budget. Nonetheless, legislators will be selective. Ranking the policy dimensions in order of relevance allows legislators to define an optimal “investment strategy” which consists of reviewing all the cases in the most important dimension first (e.g., k=1). Then, if there are resources remaining, legislators will move to the next priority area (e.g., k=2) and will review all the cases possible on that policy dimension. Legislators will continue monitoring all possible dimensions in this way until they spend out the budget B. This sequencing in monitoring offers legislators a unique optimization strategy for all policy dimensions in the third stage of the model.

Third, in contrast with formal oversight models, let us assume that agreements can be enforced informally and the parties can agree on simple rules. In that case, legislators may strategically respond to the difficulties for executive oversight not by delegating oversight functions, but crafting informal strategies that reduce the oversight costs. Legislators may activate formal oversight mechanisms and threaten to enforce formal sanctions or impose other costs (e.g., reputation) to informally bargain with the executive over the margins of discretion; in exchange for particularistic payoffs, they do not enforce accountability to its last consequences (sanctions). The outcome of this strategy (informal bargaining cooperative equilibrium) is inferior to the first best for both players, but is preferable to either strict oversight or lack of control. It allows legislators to
maximize their benefits without ignoring executive actions (avoiding social liabilities), yet without affecting legislator’ utility. It allows the executive to avoid sanctions yet prevents the legislature strengthening its oversight capacity in the future. This strategy is feasible to the extent that legislators may present a real threat to the executive by activating oversight mechanisms that are dormant but could be used to affect the executive’s utility (i.e., this strategy depends on a minimum of oversight resources). This explains that legislatures may not delegate oversight functions so easily, since they can use oversight mechanisms available as an informal bargaining chip. (See Annex 2)

In the second stage, the executive makes its decisions given its preferences, knowing how the legislature will behave in the third stage, and the probability that legislators will monitor the policy area in question. The executive does not want to be overturned because it is better off when the final outcome is closer to its ideal point. The executive’s ideal point may be exactly equivalent to the legislators’ ideal outcome; it can be within the range of outcomes legislators deem tolerable; or it can be outside that margin. When the executive’s ideal point is not within the legislators’ margin of tolerance, the choice is whether to comply or not with the legislative mandate. When the ideal point is not within the range that legislators consider acceptable, the executive will minimize the difference (i.e., the distance) between the final policy outcome and its ideal point. Second, the executive will try to minimize the chances that legislators become aware of its final action (and maybe impose sanctions).

In Figure 2.2, the executive’s ideal point on k (A1k) is within the boundaries of the legislators’ margin of acceptable outcomes. The executive does not have to change its behavior or preferences. Now we consider ideal point (A2k), which is outside the legislators’ range. If the executive decides not to comply and stick to its ideal point, it risks being detected and possibly sanctioned. Alternatively, the executive can decide to conform and change its decision to the minimum that legislators are willing to accept (O_k - δ_k). When the executive’s ideal policy is outside legislators’ range, the executives faces a choice between two strategies: either to make its ideal point the final policy outcome or, alternatively, to accommodate the final outcome within the boundaries of legislators’
margin of tolerance. The final decision depends on the opportunity cost of moving away from the executive’s ideal point, and the likelihood that legislators will review the decision and punish it. Such probability depends on the utility legislators derive from revising executive actions, which is a function of their institutional commitment levels.

**Figure 2.2. Legislators’ margin of tolerance and executive’s decision**

Source: Author based on Rios-Cazares (2010).

When a policy area is a high priority for the executive, the opportunity cost of moving away from its ideal outcome increases to the point that the optimal response is to maintain its ideal outcomes regardless of the legislators’ mandate and the cost of a potential sanction. However, if the cost of being sanctioned exceeds the executive’s opportunity cost of moving away from its ideal, the executive will consider complying by selecting a final outcome that is within the legislators’ margin of tolerance, but as close as possible to its own ideal point (i.e., $D_{ik} \in [O_{k-\delta_k}, O_{k+\delta_k}]$). Alternatively, if the executive believes legislators will not scrutinize its decision, it will select a final outcome that is equal or close enough to its own ideal point, regardless of legislators’ preferences (i.e., $D_{ik} = A_{ik}$).

Let $\beta_{ik}$ represent the importance that policy area $k$ has for the executive (i) and let $A_{ik}$ represent the executive’s ideal outcome in that area. The executive’s strategy is to take a decision that reduces the distance between the final outcome ($D_{ik}$) and its ideal point on $k$:

$$\sum_k \beta_{ik} |D_{ik} - A_{ik}|$$

As the distance between the final outcome on $k$ and the executive’s ideal point widens, the executive’s satisfaction with the final policy outcome decreases. Additionally, if the relevance of policy area $k$ for the executive is high, so is the executive’s opportunity cost of abandoning its ideal outcome. When the executive’s ideal point is beyond the boundaries of what legislators consider
acceptable, the executive will keep its ideal point only if the potential gain of maintaining it is higher than the costs over the executive if legislators detect the wrongdoing and impose sanctions, thus affecting executive’s utility. Therefore, when the agent’s ideal point is below the legislators’ margin of tolerance (i.e., $A_{ik} \in [0, (O_k - \delta_k)]$), the executive will keep its ideal point only if the opportunity cost of complying (i.e., by moving its final decision from $A_{ik}$ to $(O_k - \delta_k)$) is higher than the cost to be incurred given the probability that its action will be detected:

$$D_{ik} = A_{ik} \text{ only if } \beta_{ik} |A_{ik} - (O_k - \delta_k)| > \Psi_k |A_{ik} - O_k|$$

where $\beta_{ik}$ represents the relevance $k$ has for the executive and $\Psi_k$ represents the likelihood ratio of being detected ($\Pi_k$) not being detected ($\Pi_k - 1$). By the same token, if the executive’s ideal point is above the legislators’ margin of tolerance, i.e. $A_{ik} \in [O_k + \delta_k, 1]$, then the executive will stick if and only if $\beta_{ik} |A_{ik} - (O_k + \delta_k)| \geq \Psi_k |A_{ik} - O_k|$

The probability of being detected and the opportunity cost of abandoning its ideal policy outcome lead to a unique optimizing strategy for the executive at this stage. In weakly institutionalized settings that command low institutional commitment levels, where the odds of discovery and sanctions are low, the opportunity costs will determine a dominant strategy of non-compliance. As the level of institutional commitment increases, so do the odds of being sanctioned. Under these circumstances, the odds of being found out and the opportunity cost will determine an interval in the policy continuum where the dominant strategy will be to comply (i.e. to change the final decision to either the lower or the upper edge of legislators’ margin of tolerance). These are tipping points at each end of the interval ($L_k$ and $U_k$). Above a certain critical level of institutional commitment, executive’s compliance becomes the optimal choice.

At this stage, the difficulties of the legislature’s control over the executive are compounded by the possibility of executive manipulation. For example, the executive may disguise the precise outcome of its actions. By relying on informal mechanisms, the executive may stick to its preferred outcome yet lower its visibility to reduce the likelihood of being disciplined by the legislature. The
executive may neutralize accountability agencies that provide critical information to legislators and are responsible for enforcing formal sanctions. It may also deliver particularistic payoffs to legislators to minimize the probability of detection and sanctions. Buying off legislators is cheaper when their institutional commitment is low. If the executive can contribute more to legislators than the utility they would derive from revising the executive’s actions, and that cost is lower than the opportunity cost of moving his decision, then the executive will stick to its preferred outcome. At low institutional commitment levels, the costs for the executive of moving away from its preferred option are higher than those of sticking to it; buying off legislators is cheaper, which makes non-compliance the optimal strategy. As institutional commitment increases, buying off legislators is more costly and executive compliance more likely.

In the first stage, the legislature determines the range of acceptable discretion in each policy dimension based on the available resources and its preferences, as well as the executive’s policy preferences. The legislators’ goal is to determine a range of policy outcomes that minimizes the number of non-compliant choices at the second stage to minimize sanctioning costs. Since legislators know the distribution of the executive’s ideal points, legislators can calculate the unique tipping points (i.e., \( L_k \) and \( U_k \)) that determine the executive’s interval of acceptable decisions in policy dimension \( k \) (\( D_{ik} \)) and therefore, estimate the number of non-compliant outcomes (\( NC_k \)) in the third stage. These unique points will determine the legislators’ range of acceptable policy outcomes (\( \delta_1, \delta_2, \ldots, \delta_k \)). Formally, legislators will try to minimize

\[
\sum_k NC_k |O_k - D_k|
\]

This is a constrained minimization where the decision variables, probabilities, and expected payoffs were already defined during the second and third stages, along with an exogenous bargaining cost. Consequently, legislators determine a range of discretion for each policy dimension that induces a unique response by the executive, which is followed by a unique oversight strategy. There are unique optimal strategies for all players at all stages of the game.
5.2.4 Implications from a more realistic model

As described in the literature, formal oversight models are designed to maximize executive compliance at a minimum cost. However, the assumption about legislators’ goals only holds under strong institutions, when legislators have direct policy preferences, are willing to defend their decision rights, and the legislative function of monitoring and controlling policy outcomes is the only goal that matters. The expected equilibrium, however, is not reached if the assumptions shaping legislators’ behavior do not hold. Some crucial implications of a more realistic setting can be identified:

1. Under weak institutions, actors’ constraints differ from those of having strong formal institutions and from those that would exist in absence of formal institutions. The first case would follow the delegation/oversight model, and the latter would simply mimic the ruler’s preferences. The informal bargaining cooperative equilibrium does not occur in a vacuum; weak formal political institutions do have effects (they enter into actor’s calculations and choice of strategies), just not those predicted directly from them alone.

2. While legislators will not likely review executive’s actions on issues that are of lesser importance to them, a focus on those issues that are more relevant does not necessarily mean enhanced oversight: to maximize their benefits, informal bargaining may be an optimal strategy on the more relevant policy dimensions. An implication is that the legislature’s threat to enforce formal oversight does not necessarily lead to executive compliance. Informal bargaining (self-enforcing cooperative solution) allows both players to maximize their benefits (career/electoral concerns for legislators; preferred policy for the executive) without enhancing formal compliance.

3. Formal institutions still matter, as much as informal institutions modify their outcomes. Formal rules set the context of the game; they are still (softer) constraints. They are part of legislators’ resources, as they can threat with potentially enforcing formal control mechanisms (intermittent enforcement). They exist as a tool of last resort. Also, they can be activated under certain conditions (for example, by civil society mobilization).
4. Informal institutions allow for setting equilibrium under weak formal rules. Crafting informal strategies enables unique optimal strategies for all players. Informal institutions provide/substitute for limited institutional commitment, ensuring—to a certain extent—predictability, enforcement mechanisms, etc. for legislators and the executive. Without them, cooperation would be rare, transaction costs would skyrocket, and collective action would stagnate. The informal bargaining cooperative equilibrium is inferior to the first best for both players, but preferred to non-cooperation.

5. Formal oversight resources. Another implication is that legislators do not have incentives for investing resources in strengthening formal oversight mechanisms. Moreover, investing more resources does not guarantee greater executive compliance, as these resources do not translate into greater detection and sanctioning capabilities.

6. The informal bargaining cooperative equilibrium between the executive and the legislature erodes the accountability system. The impact of other specialized oversight mechanisms depends on the effectiveness of legislative oversight over the executive (i.e., they can always be superseded, impeded or dismantled as this game goes on) and on the connections of the accountability system’s components. For example, valuable information produced by the audit agency is inconsequential when legislators do not act upon audit results and recommendations for controlling corruption.

5.3 Checked or unchecked executive power? Exploring actors’ strategies

The strength of checks on the executive is a function of institutional commitment levels. At low levels of institutional commitment, legislators will be less willing to defend their prerogatives and the terms of legislative delegation from executive encroachment. There are two relevant dimensions for understanding executive accountability by the legislature. This section discusses first actors’ optimal strategies that result from varying institutional commitment levels and their effects on oversight payoffs. The next section incorporates the informal dimension of actors’ optimal strategies.
5.3.1 The decision of the legislature: Limited monitoring and constraints on the executive

Legislators’ oversight decisions are driven by their incentives (the utility legislators derive from monitoring and eventually disciplining the executive, given legislators’ institutional commitment levels, and the relevance of policy dimensions) and capabilities (related to available resources).

Firstly, the legislature has to decide whether to oversee or ignore executive actions, by comparing the benefits and costs of overseeing the executive. Provided the benefits are larger than the costs, legislators must decide what is the most cost-effective way of holding the executive accountable.

Under which conditions might legislators prefer granting discretion instead of overseeing the executive? The costs of overseeing the executive may be higher than those of not overseeing the executive, as a function of institutional commitment levels. As the marginal costs of oversight rise, legislators’ possible responses include enlarging their available resources; providing no oversight and granting more discretion to the executive; and finally, trying to reduce oversight costs (e.g., delegating monitoring to specialized third parties). As institutional commitment levels increase, the costs of oversight diminish. We can expect that above a critical level of institutional commitment, oversight of the executive is more likely and effective.

We need to recall that in weakly institutionalized presidential systems with closed-list PR and weakly institutionalized parties with strong influence of provincial party leaders, legislators have low levels of institutional commitment (Spiller and Tommasi 2005). Amateur legislators with short tenures tend to be less competent in the definition of policy mandates in areas of increasing complexity. Short-term legislators will not invest in increasing their oversight budget (given the limited utility they derive from oversight), but rather grant more discretion to the executive. Moreover, high rotation and short-termism increase legislators’ payoffs for deviating from the formal rules and make it more difficult to ensure credible commitment. Although low party institutionalization gives parties flexibility to adapt, it also weakens internal mechanisms of accountability and makes monitoring party leaders difficult. In so doing, weakly institutionalized parties create incentives for collusion and/or defection by individual politicians and limit legislators’
incentives for enforcing oversight of the executive. Also, as weakly institutionalized parties are more dependent on state resources, it is cheaper for the executive to buy off legislators.

Legislators’ resources relate directly to their oversight capabilities. There are two relevant types of resources. On the one hand, legislators have formal powers to affect executive actions, such as their powers to bargain vis-à-vis the executive and to monitor executive activities through different mechanisms (e.g., hearings, committees, etc.). On the other, they have resources that affect their ability to perform oversight responsibilities effectively, such as expertise, or the ability to delegate to specialized bodies. When legislators’ resources are limited, they have less leverage to define their oversight agenda and to reduce oversight costs.

Legislators have weaker capabilities (more resource constraints) for overseeing the executive in weakly institutionalized systems. First, shorter tenures and high rotation make legislators less competent on highly complex issues. Second, legislators’ powers to affect executive activities are more constrained in practice than their formal constitutional powers. Besides strong formal legislative powers, the executive may have extensive de facto powers and resources to prevent unwanted legislative results, thus constraining legislators’ ability to advance their preferences; as the legislature becomes reactive, and has less leverage to reduce oversight costs by changing the margins of discretion, legislators become more dependent on direct oversight resources and capabilities as well as on the enforcement of sanctions (Rios-Cazares 2006, 38-39). However, there are some countervailing forces. In weakly institutionalized settings, policy bargaining between the president and the legislature takes place outside the formal arena of legislative exchange and involves non-legislative political actors. The strength of legislative parties and presidential support does not only depend on electoral rules, as party leaders who bargain with the president may not sit in the legislature but act as brokers of legislative support. This makes it more likely for legislators to try to set some limits to the executive.

In the fulfillment of its accountability responsibilities, and as a response to raising oversight costs, Congress may delegate routine oversight functions to specialized agencies that assist the
legislature in its scrutiny of the executive (e.g., supreme audit institutions). However, if legislators do not have strong incentives for overseeing the executive, because of their short-term horizons and the actual workings on inter-branch relations, formal provisions for oversight will not be effectively enforced, and even very capable specialized institutions will see their impact seriously limited. Moreover, the connections between the components of the accountability network would likely suffer, since Congress does not have incentives to act upon the information produced by these oversight agencies.41

We can expect legislators to invest less in oversight resources, as they do not obtain great utility from performing their oversight functions. In principle, an increase in legislators’ available resources to oversee the executive would give legislators greater leverage to enhance their oversight agenda and strategies. When the actual capabilities to oversee one policy area increase, the margin of tolerance for deviations from the legislative provisions diminishes (Rios Cazares 2006, 12). Thus, as institutional commitment grows, the resulting increase in legislative resources and capabilities to control the executive would reduce the margins of tolerance in all policy areas.

The institutional factors shaping legislators’ time horizons, or the arenas where actors interact, rarely vary within a country, but the factors affecting legislators’ payoffs vary across policy areas. Therefore, given a certain level of institutional commitment in any given country, we expect legislators’ willingness to defend their prerogatives to vary with policy areas (Palanza 2009, 42-3). The relevance of a policy area has been related to institutional variables such as electoral rules, federalism, and particularly to the divergence of preferences between the executive and the legislature. However, the separation of purpose between the executive and the legislature does not guarantee oversight success when formal institutions are only partially enforced. Legislators’ incentives or lack thereof are affected by the actual workings of political institutions and institutional commitment levels. For example, even if there is no divided government, provincial party leaders who affect legislators’ political survival can make legislators try to impose some limits to the executive.
Different issues cause variation in institutional commitment levels: if the stakes are high on a given issue, politicians will value overseeing such issue more than others where the stakes are low (Palanza 2009, 46). This stems from the expected payoffs of overseeing different issues in a repeated game. A change in the relevance of any policy area alters its ranking, which leads legislators to modify their oversight strategy either by changing their “investment” on oversight or by altering the margin of discretion, or both. If a policy area becomes more important, legislators will be willing to devote more resources to oversee the executive in this area. This results in an improvement of direct mechanisms of oversight (for instance, legislators will try to induce compliance by changing the margin of discretion either by reducing the range of alternative policy outcomes available, or by threatening with tougher sanctions) or the creation of new indirect mechanisms. If the policy dimension becomes less relevant, legislators will tend to broaden the margin of discretion, which allows them to relax the oversight effort and devote those resources to more relevant policy areas (Rios Cazares 2010).

The expected payoffs of overseeing the executive on different issues in a repeated game (that drive the relevance policies have for legislators and therefore, their ranking) can make it less optimal for legislators to devote resources to active oversight. In a relevant policy area, in which legislators are more willing to enforce their decisions rights, maximizing payoffs (e.g., resources for reelection, or career prospects) may depend on not taking specific and deliberate actions to bring the procedures and undertakings of the executive into light. Given their limited resources and the extensive de facto resources at hand for the executive to block unwanted results, legislators would have to decide whether to invest their limited resources in some form of ineffective oversight. Congress would have to choose between no oversight or some form of oversight that is acceptable for the executive. This second (informal) dimension of legislators’ optimal strategy will be explored in the next section.

The actual workings of institutions (electoral rules, party dynamics, and local interests) affect legislators’ expectations and institutional commitment levels, and drive them away from effective accountability mechanisms. Career-motivated legislators have weak incentives and capabilities to
hold the executive accountable. However, those same conditions can give a reactive legislature more policy significance than expected. As legislators seek to set some limits on executive discretion, active oversight or lack of oversight may not necessarily be the optimal strategies for legislators. Given their limited leverage, capacities and resources, legislators may reduce oversight costs by relying on informal oversight strategies, without compromising the payoffs they need to further their political careers.

5.3.2 The decision of the executive: Asserting presidential power and shrinking accountability

What is the presidents’ optimal strategy? Presidents are best served if they get their preferred policy outcome. When this outcome is within the range of acceptable outcomes by the legislature, the executive will just stick to this choice and comply with legislative delegation. However, when the executive’s preferred outcome is outside that range, the executive faces a decision: switching his preferred outcome to make it fall within the range, thus renouncing to his preferred policy outcome yet complying with legislative delegation; or sticking with his preferred policy outcome, thus not complying with legislative delegation and encroaching legislative prerogatives. Non-compliance means that the executive risks being reviewed by the legislature and receiving sanctions. How the executive solves this dilemma depends on the opportunity costs of changing its decisions and the costs derived from the legislature’s threat to enforce its oversight strategy, which depends on the utility legislators derive from revising and eventually sanctioning the executive as a result of their institutional commitment levels.

The executive maximizes its payoffs by pursuing its preferred policy outcome and impeding monitoring and sanctioning. As far as the executive reduces the probability of sanctions while increasing the opportunity costs of moving away from its preferred outcome, non-compliance becomes the optimal strategy. As a function of legislators’ institutional commitment levels, not complying may be more or less costly for the executive than complying. The lower legislators’ institutional commitment is, the lower the costs of executive non-compliance as the probability of sanctions is also lower. Moreover, the executive can easily pay off legislators more than the utility
they derive from revising and sanctioning executive actions. As institutional commitment increases, so does the probability of revision and sanction, and it also becomes more expensive for the executive to buy off legislators. Executive payoffs would have to be quite high to compensate legislators’ utility, and thus complying becomes the optimal strategy. Above a critical level of institutional commitment, we could expect executive compliance.

In a perfect oversight game, the executive’s ability to pursue its preferred policy outcomes would be defined by its formal powers. However, in a weakly institutionalized system, the executive’s de facto powers may be broader than its formal powers. Weak institutions open opportunities for the executive to increase the opportunity cost of moving away from its preferred outcome, prevent unwanted legislative results and limit the costs of eventual sanctions. Presidents may accumulate power vis-à-vis the legislature while undermining or violating challenges to presidential authority. As presidents are able to assert their powers and act unchecked while shrinking accountability mechanisms, they may create and exploit opportunities for corruption.

The executive’s strategy to assert presidential authority and pursue its preferred policy outcome relies on both formal and de facto powers, and different electoral and institutional resources (Llanos 2002). The executive may resort to cooptation of political opponents to gain legislative support, decide to govern by executive decree, or circumvent the limits of appointment powers to fill key agencies with loyal personnel. Moreover, informal proactive powers (such as proactive decree and veto powers) allow presidents to go beyond the limits of the legislative mandate, engaging in exclusive decision-making, while undermining the ability of Congress to impose the institutional restraints that arise from the separation of powers. By resorting to de facto powers, presidents may reduce the actual legislative support needed (Mejia 2004, 58), as well as undermine the capacity and incentives of legislators for effective oversight (either directly or through specialized agencies). On its own, or in combination with the explicit delegation of powers by the legislature, they are used to strengthen presidential authority by enacting discipline from the ruling party and exercising control over opposition forces.
Simultaneously, presidents undermine, circumvent, or flagrantly violate challenges to presidential authority. Informal and unlawful actions that neutralize, circumvent or violate intra-state controls are usually undertaken by the president without incurring high costs, given public expectations that formal controls are not fully enforced. The executive is responsible for enforcing managerial accountability and preventing and punishing outright corruption in bureaucratic agencies. As principals of specialized oversight agencies within the executive branch (e.g., comptroller office, anticorruption agencies), presidents have an incentive to neutralize the effective control of executive actions (through several mechanisms, including appointments, budgetary constraints, and limits to the autonomy of specialized bodies) in order to prevent sanctions and minimize the costs of non-compliance. Furthermore, through the delivery of particularistic payoffs, the executive may also affect legislators’ incentives for overseeing the executive through specialized agencies. While specialized agencies can be effective in producing useful oversight information, the legislature will not act upon such information to hold the executive accountable. As the president undermines intra-state accountability and oversight mechanisms, the probability of detecting the executive’s irregularities and of sanctioning them gets lower. This provides an incentive for the executive not to comply with the margins of legislative delegation and reduces the costs of non-compliance. Moreover, by buying off agencies of intra-state control, the executive can stop investigations and gain judicial impunity (for example, facilitating access to certain offices in the judicial system).

Presidents behave strategically to subvert executive constraints. When legislators’ institutional commitment levels are low, it is rational for the executive to accumulate effective power resources to affirm presidential authority and pursue its preferred policy outcomes through unilateral and discretionary action. They resort to formal and informal strategies to act unchecked, and then assert the separation of powers as a way to shield them from further scrutiny and to enhance discretion internal government (Rose Ackerman et al. 2010). The executive lowers the visibility of its actions and engages in active efforts to neutralize the oversight strategies of the legislature and specialized
oversight agencies, minimizing the likelihood of sanction. As a result, the executive is able to stick to its preferred policy outcome, outside the range of acceptable decisions set by the legislature.

5.4 Informal institutions and executive accountability: Another dimension of actors’ strategies

A second dimension of the executive and legislature’s strategies moves beyond formal political institutions to integrate the role of informal institutions. This section explains how informal institutions and rules enabled the executive and the legislature to sustain the fiction of executive accountability and legislative oversight. These informal institutions lower the visibility of presidential actions and accountability mechanisms to release presidents and legislators from potential liabilities (e.g., electoral sanctions, oversight sanctions, etc.), while allowing them to maintain critical support and pursue their political objectives.

5.4.1 The fiction of control: Informal bargaining with the executive

The previous section argued that legislators with low levels of institutional commitment would not oversee the executive given their limited resources and the scarce benefits from executive oversight. This section contends that legislators have a second-best option other than delegate oversight – they may rely on informal mechanisms to replace or complement formal legislative oversight mechanisms as long as they do not become liable for controlling the executive.

Legislators have to decide whether to invest their scant resources in oversight mechanisms that would most likely be ineffective in constraining the executive or ignore non-compliant executive actions. Given low levels of institutional commitment, in the realm of payoffs, formal models predict the latter result. However, by introducing an informal dimension, strategic legislators may have other options to ease oversight costs. Faced with the dilemma of holding the executive accountable, legislators could: a) hold the executive accountable (either directly or delegating to oversight bodies) and lose all government perks, concessions, and payoffs (most go to their provinces, while others may be personally allocated); b) disregard executive actions and ignore accountability and oversight mechanisms (lack of control scenario), thereby holding on to their payoffs, or c) do both, holding the executive formally accountable while holding on to payoffs, since accountability is not actually
enforced (fiction of control). As legislators anticipate the executive’s ability to keep its preferred policy choice and prevent unwanted legislative results, strategic legislators choose between providing no oversight, or some form of oversight that is acceptable to the executive. In the former case, oversight mechanisms would not be activated; in the latter, oversight mechanisms would be activated but they would not involve formal sanctions and the margins of discretion would be not far from the president’s preferences. Legislators can activate oversight mechanisms as long as they do not become liable for holding the executive accountable, the legislative body is not strengthened in its oversight role, and presidents are not effectively sanctioned.

Legislators can safeguard their career concerns without being seen as putting obstacles to the executive. They engage in purely fictional oversight actions that do not tackle structural corruption or result in effective sanctions on the executive. Simultaneously, on relevant issues on which institutional commitment is higher, and influential and experienced legislators may pose a real threat to the executive, informal negotiation, dialogue, and bargaining with the executive may take place and allow legislators to obtain short-term benefits. Informal mechanisms are devised between presidents and legislators to disguise and reduce the visibility of accountability and oversight mechanisms while avoiding the sanctions that come with oversight. This has the added value of giving the appearance of an “orderly administration that is respectful of institutions” (Palanza 2005, 3). Limited transparency of the legislature and the lack of alternative enforcement mechanisms for legislative agreements enable this kind of strategy.

By pursuing this informal strategy, legislators are able to reduce the increasing costs of oversight that result from low levels of institutional commitment. As far as oversight mechanisms exist, legislators can threaten the executive with activating them and affecting the executive’s utility function through eventual formal sanctions or other external costs (e.g., reputation, public scandal). In exchange for not enforcing sanctions, legislators bargain for short-term particularistic benefits. This is an optimal strategy for both parties: legislators benefit in the short term rather than pursuing the costly and uncertain enforcement of sanctions or the empowerment of the legislative body; the
executive prevents the strengthening of the legislature’s oversight capabilities and potential sanctions (Palanza 2005, 36). Annex 2 sketches the legislature’s strategic choice and the informal equilibrium reached with the executive, built on the preceding description.

Informal agreements are sealed with individual legislators (rather than party factions or party leaders) by offering particularistic payments (e.g., pork and patronage) in exchange for delaying or neutralizing oversight mechanisms, and not taking them to the last stage—the public enforcement of sanctions. These legislators are strategic players who formally remain attached to party discipline, yet may take advantage of congressional rules to neutralize oversight mechanisms in exchange for concessions. They have longer experience in legislative positions (remarkable among so many short-term legislators) and a pragmatic style. In the case of legislators from opposition parties, they would be members of traditional parties who have long relations with the ruling party and use their leverage to engage in informal negotiation rather than activate oversight mechanisms that require important coordination efforts of factions and individuals. The experience and influence of individual legislators, and the extent to which oversight mechanisms represent a real threat to the executive, are important factors to understand the strategic response of the executive and the level of payoffs the executive is willing to offer (Palanza 2005, 2009). Oversight success in this case depends not on the actual enforcement of sanctions, but on the ability to signal a credible threat. The more credible the threat, the more leverage legislators have to obtain payoffs.

Effective accountability is only certain to exist when legislators have both the incentives and capabilities to control the executive. When incentives exist but capabilities are limited, accountability will depend on investing to develop the necessary mechanisms for holding the executive accountable. The absence of legislators’ incentives prevents executive accountability. By introducing the informal dimension, we can distinguish two different types of ineffective accountability (Table 2.1).
Table 2.1. Executive accountability by the legislature

<table>
<thead>
<tr>
<th>Incentives</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accountability</td>
<td>Imperfect accountability</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>No</td>
<td>FICTION OF CONTROL</td>
<td>Lack of control</td>
</tr>
</tbody>
</table>

Source: Author based on Rios-Cazares (2010).

On the one hand, when legislators are indifferent or negligent to executive actions. On the other, the “fiction of control” scenario -- when legislators have no incentives and minimum capabilities and resources, they can strategically use oversight to set some limits on the executive without affecting executive’s utility function. This informal bargaining strategy, which secures inter-branch communication and provides some degree of control, plays a substitutive or complementary role for existing formal oversight mechanisms. Legislators are able to set some constraints on the executive, while lowering the costs of oversight and reducing the risk of losing their payoffs. However, from the perspective of the incentives and opportunities for corruption, these informal mechanisms do not constrain political actors as formal mechanisms do, and create shared expectations that impunity rules and corruption is never punished.

5.4.2 Building executive’s political support

There is also an informal dimension of the executive’s strategy when deciding whether to comply or not with the legislative mandate. We established that the executive relies on multiple mechanisms to assert presidential authority vis-à-vis the legislature while undermining accountability. To prevent the reputation costs–or punishments–of visibly acting unilaterally and discretionally, the executive resorts to informal mechanisms for distributing particularistic payoffs to ensure legislative and public support, thereby reducing the legislature’s leverage to constrain and punish the executive. With low levels of institutional commitment, the cost of this strategy of buying off legislators is lower (given the smaller utility legislators derive from oversight), and limited oversight is always more likely. As a result, institutional commitment’s effect across policy issues are least likely to show (Palanza 2009, 122).
Presidents control state resources and use them to build support coalitions in the legislature, prevent oversight, and ensure public support. The distribution of particularistic payoffs allows the executive to consolidate the centralization of authority, while curtailing legislators’ incentives to control and enforce sanctions. Payoffs are negotiated with (provincial) party leaders include appointments, policy concessions, the distribution of pork and clientelistic resources, or particularistic payments. These payoffs are distributed in exchange for ensuring legislative support and party discipline (ruling party), or for breaking the party ranks and voting with the ruling party (opposition legislators). Dissident legislators are strategic defectors who lend occasional support to the president while remaining attached to their own parties. Usually, they take advantage of opposition leaders’ inability to enforce discipline of sub-party units (factions and individuals), by using congressional rules like passing legislation with their abstention to vote, or disabling opposition majorities by breaking the legislative quorum (Mejia 2004, 73). Payoffs also involve resources for patronage and clientelistic networks, which allow the president to mobilize votes and secure re-election. The extensive use of clientelism helps the president undermine electoral accountability, as voters “trade away their vote-based capacity to enforce the principal-agent relationship” (Warren 2005, 7). Clientelism lowers the costs of staying in office and the threat of competition (Gryzmala-Busse 2008).

The direct and informal distribution of particularistic payoffs does not in itself represent an illicit practice. However, given weak executive accountability by the legislature, the informal direct exchange of material incentives can become or overlap with corrupt exchanges. Relying on the distribution of particularistic payoffs for building support provides an incentive for the executive to engage in corrupt transactions to ensure the flow of resources that can sustain the distribution of payoffs (Maiz n.d., 21). Moreover, it provides an incentive for the president to maximize the flow of rents up to the maximum office, thus facilitating the enforcement of corrupt exchanges from above and their institutionalization (McIntyre 2003).
5.5 Predictions

The model suggests that without institutional commitment, as many presume is the case in most Latin American countries and new democracies more generally, we would only observe limited executive accountability and therefore higher risks of corruption. Several testable hypotheses can be derived from the proposed model:

* H1: The effectiveness of executive oversight by the legislature is a function of institutional commitment levels. As institutional commitment varies, so do the marginal costs of oversight and therefore, its likelihood: (i) At low levels of institutional commitment, we expect less executive oversight. (ii) When institutional commitment is lowest, we should expect the legislature to ignore executive actions or try to reduce oversight costs. (iii) Critical values exist beyond which overseeing the executive is preferred to allowing executive non-compliance.

* H2: Executive compliance will take place if and only if institutional commitment is high enough that non-compliance becomes costlier than complying.

* H3: At low levels of institutional commitment, the informal distribution of particularistic payoffs allows the executive to build support (legislative and electoral) while compensating legislators for not enforcing sanctions.

* H4: Given low levels of institutional commitment at the country level, for relevant policy issues which command higher levels of institutional commitment, legislators will be willing to devote more resources to oversee the executive. We expect individual legislators to limit the costs of oversight by informally bargaining with the executive over the margins of discretion and obtaining particularistic payoffs for not enforcing sanctions.

6. Elite cartel networks and the reproduction and institutionalization of corrupt exchanges

The previous section explained the conditions under which executive accountability by the legislature is ineffective, thus creating incentives and opportunities for corruption. But what forces underpin the...
persistence of corruption in weakly institutionalized democracies? This dissertation maintains that institutional weakness and low institutional commitment (and their correlation with informal institutions) provide relevant arguments to explain the development, reproduction, and persistence of corrupt exchanges.\textsuperscript{45} The arguments presented in this section emphasize two dimensions: from a functional systemic perspective, the nature of corrupt exchanges and its organization as an informal market; from an actor-centered perspective, the causal mechanisms that explain why it is rational for political actors to supplement or replace formal mechanisms with informal networks of exchange.

Elite cartel networks are informal institutional mechanisms that facilitate the development and reproduction of corrupt exchanges. This section suggests hypotheses of how these networks emerge and become institutionalized as informal institutions of governance.

6.1 Elite cartel networks and the market for corruption

In Chapter 1, we characterized Argentina’s corruption as the result of informal elite cartel networks aimed at sharing corrupt benefits. This section explores the emergence of elite cartel networks and their interaction with formal institutions.

6.1.1 How do elite cartel networks emerge?

Corrupt exchanges are by definition informal and illegal, which makes it difficult to enforce agreements. The legal prohibition for public officials to engage in corrupt transactions means that formal corrupt exchanges cannot exist. Corrupt exchanges are informal deals by which a corrupter and a corrupt agent, who derives discretionary power from his contractual relation with a principal, exchange resources for the provision of some advantages or services (Della Porta and Vanucci 1999, 20). In a weakly institutionalized setting, both formal and informal contracting is problematic, as transaction costs are high and alternative enforcement technologies are weak or non-existent. Therefore, those participating in corrupt exchanges cannot credibly commit to fulfill agreements, which makes it even less likely that they will enter into them in the first place. Moreover, a poorly institutionalized political setting may limit the credibility of agreements. Since formal contracting of
corrupt exchanges is legally forbidden, and exchanges must be hidden from the public, corrupters may lack confidence that public officials will keep their promises (Lambsdorff and Nell 2006, 5-6).

As supporting the credibility of informal corrupt exchanges becomes difficult, actors have incentives to develop institutional or quasi-institutional informal mechanisms that help reduce the effects of uncertainty and enhance the possibilities of successful contracting (Samuels 2006, 88). Informal institutional mechanisms develop in illicit corrupt markets to sustain and facilitate the reproduction of corrupt exchanges. When no formal institutional rules are possible, informal institutional mechanisms such as elite cartel networks are the only way to generate trust, confidence, and expectations between the contracting parties in the networks of corrupt exchange. The violation of such arrangements by the parties should generate some kind of punishment. The drivers of informal institutional mechanisms of exchange, and whether an informal market for corruption can be said to exist, are explored in the next section.

6.1.2 An informal market for corruption: The payoffs of corrupt exchanges

This chapter established that the deficits of executive accountability in weakly institutionalized political systems create incentives and opportunities for corruption. However, opportunities and incentives for corruption do not guarantee that political actors necessarily follow such courses of action. For informal corrupt exchanges to exist, the payoffs of participating in those exchanges need to be more beneficial than any alternative for the participants. Given incentives and opportunities, corruption will only happen if the following conditions are present: a) the contribution of private actors to a corrupt public official must be less onerous for them than having access to benefits and resources through any alternative channel; b) the costs of obtaining resources from private actors through corrupt exchanges must be less for the corrupt public officials than any alternative. We need to analyze the payoffs of corrupt transactions to understand the reasons to participate and the potential advantage of informal corrupt exchanges over formal transactions.

A simple model of strategic interaction illustrates why actors would take part in corrupt exchanges. Let us assume a simple model with two players. Incumbent (I) is a public official holding
office. The private actor (P) is an individual or group that wants to make a transaction with the state (e.g., get a license). P may decide to illegally compensate the public official responsible to get the transaction done, or not compensate (that is, pursue his goal through alternative legal channels). The form of compensation may be varied, from a bribe to a political contribution, or any other form of compensation. Actor I may decide to dutifully process the transaction (not collaborate) or to demand some form of compensation (collaborate). Collaboration may take different forms, including preferential treatment, policy advantages, etc. Each actor decides what to do based on anticipation of the other’s strategy and the associated payoffs. Players must decide their strategies without knowing what the other player has done. The game is played one time only. Table 2.2 represents the possible results of this game. Each cell represents the payoff of each possible outcome for each player. On the left side is the payoff for P, and on the right side the payoff for I.

<table>
<thead>
<tr>
<th></th>
<th>Collaborate</th>
<th>No collaborate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Compensate</strong></td>
<td>CC 1, 3</td>
<td>CD -2, 0</td>
</tr>
<tr>
<td><strong>Not compensate</strong></td>
<td>DC 0, -2</td>
<td>DD 3, 1</td>
</tr>
</tbody>
</table>

Source: Adapted from Wyddick (2008, 20 ff.)

In this one-time simple game, there are two possible equilibriums with pure strategies, although the dominant strategies are different for each actor. The private actor is always better off with the corruption-free equilibrium, while the public official is always better off with the corruption equilibrium. First, the corruption-corruption Nash equilibrium (upper left cell) in which the public official’s payoff is 3 and P’s payoff is 1. This means that corruption compensates the effort that P makes; he would obtain a payoff of 0 if he does not get the transaction done. The public official gets a compensation of 3 if he collaborates, and 0 if he decides not to do so. If one decides to behave honestly while the other does not, it would increase the chance of dishonest actors being punished, and his payoff falls to -2. Even in contexts of weak institutions, in which the dishonest actor would
not be punished, the honest player is worse off as his payoff falls to 0. Second, the corruption-free Nash equilibrium (lower right cell) in which the public official’s payoff is 1 and P’s payoff is 3. This means that the public official does not expect the private actor to offer him any illegal compensation. If they were to deviate from this self-sustaining equilibrium, his payoff would fall to -2. Corruption is not valuable for actors in this situation because it may be regarded as out of the norm, or has seldom occurred in the past.

From the perspective of the entire system, the corruption equilibrium is always worse than the corruption-free result. However, it is difficult to predict which equilibrium will actually prevail. Past interactions and the weakness of formal enforcement mechanisms are important to explain why corruption prevails. Past play tends to govern future play, and people’s expectations about others’ behavior influence the results. Where corruption is rooted in widely shared expectations among citizens and public officials, and a refusal to go along involves serious costs, corruption is more likely. For example, if participants in a procurement process expect everyone else to pay a bribe and know that they will be excluded from the process if they do not pay, they will most likely make illicit payments (even if the most optimal result would be that nobody pays a bribe) (Nino 2005, 149). Also, when informal permissive rules do not punish corrupt practices yet penalize those who challenge the illicit corrupt market, the corruption coordination outcome will be more likely and reinforcing over time. In a context of weak formal institutions, actors are uncertain about whether formal rules will endure and whether others will play by the rules. As a result, actors will invest in informal mechanisms that solve the problems of credible commitment and enforce corrupt transactions. As the game is repeated over time, and there are no formal sanctions on corruption, this outcome is more likely. For example, a public official who would not be willing to participate in corrupt transactions (either for altruistic motives or fear of potential sanctions), yet cannot be sure that others will not engage in corruption, will most likely do so because it is the only way he can get his second best payoff (Nino 2005, 150). Also, as weak institutions make actors uncertain about the future, they may prefer a less advantageous but more certain outcome. For example, given Argentina’s weak regulatory frameworks,
private holders of public utilities licenses would rather make illicit payments to ensure the government does not change the regulation discretionally and keep their profits than risk more uncertain results.

6.1.3 The role of elite cartel networks

From a functional-systemic perspective, weak institutions are associated with corrupt transactions that are “centralized, organized, and relatively predictable,” and that distribute widely shared benefits among political and economic elites that have some sort of hegemonic control over the political life of a country (Johnston 2005, 90). In a weakly institutionalized context characterized by high uncertainty, elite cartel networks protect political and economic elites and help them defend their hegemony versus potential competitors (Ibid.).

What type of informal institutions are corrupt elite cartel networks? Corruption as an informal institution has a complex, double-edged relationship with formal institutions. Particularistic corrupt exchanges are widely seen as dysfunctional, given their negative effects on democratic governance (in terms of legitimacy, trust, etc.). However, in some cases, informal corrupt exchanges may reinforce and/or complement formal state institutions. By definition, formal institutions that regulate illicit corrupt exchanges do not exist. But we may consider the reference institutions to be the formal institutional rules that prohibit and penalize the formalization of those exchanges. From this perspective, we could argue that they are stable and somehow effective, as actors have some expectations that punishment – even if eventual – could happen; otherwise, illicit exchanges would no longer be informal but formalized.

As for the convergence with the goals of formal institutions, public officials who enter in corrupt exchanges undermine the letter of the law regarding corrupt practices. However, they are not interested in overturning or changing the laws on bribery or other corrupt practices. Therefore, elite cartel networks could be considered as accommodating to informal institutions, as they do violate the spirit if not the letter of laws against corruption, and help reconcile actors’ interests with the existing (weak) formal institutional framework. As an accommodating or complementary informal institution, elite cartel networks may contribute to short-term formal institutional stability (Johnston 2005) and
ensure bureaucratic compliance by reinforcing the formal hierarchy of command within state structures (Darden 2003, 11; 2008). Elite cartel networks help actors hold each other accountable in a context in which there are no legal means to do so. However, they do not sustain the type of accountability that supports democratic governance. Moreover, the informal deals to widely share corrupt benefits can make corruption become institutionalized as an informal and illicit substitute for weak institutions (Johnston 2005; Boesen 2007; Nicholas and Maitland 2007; Teorell 2007). The next section addresses the dynamics of corrupt exchanges and the mechanisms by which informal elite cartel networks emerge.

6.2 Understanding the mechanisms through which corrupt elite cartel networks emerge

Elite cartel corrupt networks are informal mechanisms that provide actors with incentives to overcome the usual constraints that bear over exchange in weakly institutionalized settings that involve high-transaction costs. These incentives are cumulative; only if they are satisfied will elite cartel corrupt networks emerge. For the informal contracting that sustains elite cartel networks to occur, there must be supply, demand and informally institutionalized exchange mechanisms. If these conditions exist, we should see substantial exchanges in the illicit market and thus expect informal institutions to develop. This dissertation investigates several hypotheses regarding the workings of the illicit corrupt market.

1. Supply: Corrupt exchanges provide material, divisible and particularistic benefits for those who participate in elite cartel networks. In addition, members of the network cannot be excluded from the provision of public goods and will also have access to collective goods and services. These benefits provide a rationale for actors to supply money and resources to engage in corrupt exchanges. If there is no supply of resources, there will be no corrupt transactions. As elected officials control the supply and access to government goods and services, and individuals, firms, business groups, etc., want to have access to those goods and services, we can sustain that they are willing to “pay” in exchange for those resources. Given increasing competition, actors will have an incentive to supply resources in order to direct the flow of public goods in their benefit. Different public officials will
have different powers and capabilities for supplying rents and extracting bribes (Della Porta and Vanucci 1999; Chang 2004). We can hypothesize that if private interests desire to access government goods and services, and public officials exert some control over their distribution, private interests will provide resources for obtaining them.

*H1: The overall supply of corrupt resources is a function of the incentives that economic actors have to influence the distribution of government services.

2. Demand: The demand from elected officials for money obtained through corrupt transactions depends on the costs of doing politics, which are higher in weakly institutionalized settings. In fluid electoral markets, with weakly institutionalized parties, where political careers depend on party leaders rather than performance in office, the costs of doing politics are higher. This holds true not only for politicians seeking office, but for those holding office as well. Doing politics requires a large amount of resources to build a party career and gain access to legislative and executive positions. Intra-party competition is fiercer in weakly institutionalized parties, driving up the costs of politics. Moreover, in a weakly institutionalized political system in which transactions costs are high, the availability of resources is critical while in office to limit competition, build support, and ensure continued access to office. When politicians face competition, we need only to assume that they want to build political support and hold office to conclude that there is demand for corruption funds. The extent of demand will depend on the degree of competition and the costs of building support, which are also affected by contextual institutional factors.

* H2: The overall demand for corrupt funds is a function of the degree of competition and the costs of building political support.

3. Expectations regarding the existence of credible commitments: Both supply and demand are necessary but not sufficient conditions for corrupt exchanges to take place and elite cartel networks to emerge. These exchanges require contracting between suppliers and those who produce the demand. In a fluid political setting, contracting is problematic because actors have few guarantees that the terms of the contract will be fulfilled. Moreover, by definition, corrupt exchanges are legally
unenforceable, and the parties cannot rest on institutionalized punishment mechanisms in case of rule-breaking. Therefore, if no alternative credible enforcement mechanisms develop, we would find corrupt exchanges to be scarce because it would be too risky to participate in these transactions. Elite cartel networks facilitate three kinds of mechanisms to enhance the credibility of commitments in contexts with high transactions costs: reputation, repetition, and sanctions.

The first mechanism is reputation. Politicians have an incentive to develop a brand name, individually or collectively. As they develop a reputation as providers of private goods, politicians’ ability to renege from a contract grows limited. Elite cartel networks facilitate the personalization of exchanges, which help build focalized trust and reciprocity and facilitate reputation development. Contribution by each party to the corrupt market is visible and relevant for the success of the transaction. Limited participation in elite cartel networks helps build a reputation: it increases the visibility of each actor, whose loyalty, defection, or success in delivering is highly visible.

Another factor is iteration or repeated transactions amongst the same actors, which reduces the costs of contract enforcement. In absence of formal enforcement and sanctions, politicians face the potential cost from reneging on a contract: the loss of the present value of potential gains from future contracts with the same counterpart, or from others who know about defections. Repeated interaction helps solve this dilemma. The longer the relationship between the parties, the greater the costs of defaulting the contract, reducing the likeliness of defections. Politicians’ time horizon matters in this regard. If they have short-term horizons, as in weakly institutional settings, contract credibility is damaged. Elite cartel networks help establish credible commitments, since they provide a mechanism through which politicians and private actors know each other and expect to repeatedly interact over a relatively long period, thus limiting the incentives for defection. Also, while members of elite cartels trust each other, they mistrust outsiders, and are afraid that if they decide not to participate in the illicit market, others will take their place. This contributes to the generalization of corrupt exchanges.
Finally, sanctions are another valuable mechanism to restrict politicians’ ex post behavior. The institutionalization of corruption requires credible threats to punish defection through sanctioning mechanisms. Sanctioning and enforcement mechanisms emerge informally to enhance credible commitments. The structure of elite cartel networks, characterized by the gatekeeper position of elected politicians, allows the distribution of selective negative incentives (rewards and penalties). As only those who participate in the network receive selective benefits, the costs of being excluded increase significantly. Also, some members of the corrupt network may have monitoring instruments and capabilities that allow them to coordinate corrupt transactions and penalize those that defect or violate the terms of the informal corrupt deals.\textsuperscript{48}

\* H3-H5: Corrupt exchanges will proceed to the degree that (i) politicians desire to establish collective/individual reputations; (ii) politicians and suppliers engage in repeated interactions; and (iii) quasi-institutional oversight and sanctioning mechanisms exist.

\textit{6.3 Permissive informal rules allowing corruption}

In a context characterized by pervasive institutional weakness, corruption provides a self-enforcing informal coordination device that reduces uncertainty and allows actors to pursue their goals. We have established that elite cartel networks emerge as quasi-institutional informal mechanisms that solve the problem of credible commitment and the enforcement of corrupt exchanges. As these mechanisms facilitate the reproduction of corrupt exchanges, corruption acquires a systemic nature and becomes institutionalized. It becomes sticky and generates increasing returns to those that participate (Pierson 2004; Tourell 2007).

When corruption becomes institutionalized, it acquires features of informal institutions. Actors may develop shared expectations about corrupt exchanges, or corruption may be enforced from above and externally sanctioned. Those who participate in corrupt exchanges and share corrupt benefits are usually not punished (while there may be high costs for those who do not go along), and there is high level of social acceptance as well as impunity for corruption.\textsuperscript{49} Drawing on Brinks (2003, 2006), Chapter 8 explores the extent to which corruption is institutionalized in Argentina by focusing on
informal enforcement mechanisms. It hypothesizes and assesses whether there are permissive informal rules that allow, yet do not require, corrupt behavior. This means that while actors may avoid corrupt behavior without fearing any penalties, those who seek to enforce the formal rules that prohibit corruption will be punished (Helmke and Levitsky 2006, 27).

*H6: Corrupt exchanges are institutionalized when informal permissive rules develop that allow, but do not require, actors to engage in corrupt practices.

7. Final remarks

This chapter provides an integrated framework to understand political corruption by addressing both the “how” and the “why” of corrupt exchanges. First, it presents a theoretical framework to understand the limits of executive accountability by the legislature in weakly institutionalized democracies. Second, it advances hypotheses to understand the emergence, organization, and reproduction of corrupt exchanges under weak institutional constraints. (See Figure 2.3)

The proposed model of executive accountability offers some useful improvements. First, it provides an account of executive oversight by the legislature that considers the effects of weak institutional constraints on actors’ behavior. Second, it acknowledges the existence of informal areas in legislative and inter-branch dynamics by formalizing mechanisms that are not fully explored or usually treated as marginal outcomes by most approaches. Finally, the model offers propositions that can be tested against country-specific evidence and enables cross country comparisons.

The strength of checks on the executive hinges on the formal rules in place in a given country and institutional actors’ commitment to those rules, which is a function of how those rules actually work in practice. Since formal rules constrain executive action (and prohibit corruption), we might expect some consideration of formal boundaries and therefore, limited executive discretion and unlawful behavior. However, in contexts where institutional boundaries are constantly changed and disregarded, only legislators’ institutional commitment to defend the terms of legislative delegation against executive non-compliance would ensure effective accountability. Otherwise, overlooking
executive discretion is less costly for legislators. The model considers the interaction between structural (constitutional, partisan, electoral) and individual factors when deciding the level and strategy of legislative oversight over the executive. Finally, the proposed framework illustrates the roles played by informal institutions to provide a better explanation of gray areas in legislative oversight. This model illustrates the conditions under which alternative informal strategies enhance legislators’ capacity to set some limits on executive power.

**Figure 2.3. Theoretical framework**
Source: Author

![Theoretical framework diagram](image-url)
Faulty executive accountability facilitates the development of informal corrupt exchanges. In weakly institutionalized settings with low levels of institutional commitment, actors resort to informal mechanisms to solve credible commitment problems. Elite cartel networks of corruption are informal institutions that emerge to facilitate corrupt exchanges and their reproduction. They bring together political and economic elites, and provide additional resources (reputation, trust, familiarity) that facilitate political and economic exchanges. As networks of exchange grow more complex, corruption becomes systemic – the illicit becomes the norm and those behaving illegally are rewarded. The chapter suggests that high levels of impunity for public officials who engage in corrupt exchanges can be explained as a result of informal permissive rules that allow corruption. Public officials may engage in illicit exchanges, as long as they prevent stalemate and ensure stability.

The following chapters test separate aspects of the proposed framework. Chapter 4 presents evidence of the weak constraining effect of formal institutions in Argentina and explores its impact on actors’ expectations. Chapters 5 to 7 test the executive accountability model. Chapter 5 provides a detailed account of the formal and informal resources used by the executive to assert presidential power and the available payoffs for building support while shrinking accountability. Chapter 6 explores different mechanisms for legislative oversight and advances the informal mechanisms used by legislators to set some limits on executive discretion. Chapter 7 assesses the role and effectiveness of specialized oversight agencies. Chapters 3 and 8 apply an informal institutions framework to understand corruption. Chapter 3 looks at the resources exchanged, the demand for corrupt transactions, and the informal mechanisms that sustain illicit corrupt exchanges. Chapter 8 explores the informal enforcement mechanisms that facilitate the reproduction of corruption.
Chapter 2. Endnotes


3 The costs of negotiating, implementing and enforcing contractual transactions between agents.

4 Institutions may also be defined as equilibria or norms. See Crawford and Ostrom (1995) for a review of different understandings of what an institution is.

5 Parliamentary systems provide a stronger and more immediate control of the executive, since parliaments have the power to remove politicians from executive office. On this issue, see Linz (1990), Linz and Stepan (1996), Bailey and Valenzuela (1997).

6 Within a democratic framework, some authors find that a centralized political order leads to effective accountability, while others suggest that the consolidation of power leads to malfeasance. Both approaches agree on a market-derived model of competition as the most effective way of controlling corruption. (Gerring and Thacker 2004, 314-315)

7 “This combination tends to generate fragmented and volatile party systems, high levels of executive discretion, and low levels of political accountability, all of which reinforce the powers of the president and creates opportunities for political corruption and state capture” (Santiso 2007, 52).


10 The distinction is somehow artificial, as they actually refer to different types of delegation (legislative and bureaucratic delegation) yet are related, since weak political accountability usually restricts the extent to which managerial accountability is effectively enforced (Santiso 2007, 126).

11 It is disputed whether the meaning of accountability should be restricted to successful delegation. From this perspective, horizontal or intra-state accountability is not considered political accountability, but part of the horizontal exchanges that are suitable to presidential systems (Moreno et al. 2003). See Philp (2008) for a critique of the principal-agent approach to the study of accountability. Similar controversies exist around the object and agents of accountability, and whether accountability is an ex post phenomenon or should occur before, during, and after the exercise of public authority. There are also differences as to whether accountability should be limited to legal transgressions (Kenney 2003; O’Donnell 2003) or includes political disagreements that do not constitute illegal behavior (Magaloni 2003; Moreno et al. 2003; Schedler 1999; Schmitter 1999). Also, while some authors set a clear distinction between responsiveness and accountability, in practice the institutional mechanisms that promote responsiveness are likely to be the same that facilitate accountability (Santiso 2007, 123).

12 “The responsibility of accountability institutions, such as the legislature and the judiciary, is to enforce accountability on government based on the information provided by oversight agencies. Prevention, in turn, depends on the credibility of the deterrence effect that emerges from effective inter-agency coordination between oversight and accountability institutions” (Santiso 2007, 130).

13 Electoral accountability refers to elected officials’ accountability to voters. Voters induce the incumbents to act in their interest by anticipating that they will be held accountable and sanctioned by not being reelected. See Barro (1973); Ferejohn (1986); Manin et al. (1999, 40-5). Other scholars (Fearon 1999, ch. 2) suggest that elections contribute to make policies satisfy voters’ preferences by selecting good politicians rather than sanctioning bad ones.

14 O’Donnell (1999, 38-39) defines horizontal accountability as “the existence of state agencies that are legally enabled and empowered and factually willing and able to take actions that span from routine oversight to minimal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.” Horizontal accountability is particularly feeble in new democracies given the weakness of the rule of law and the dysfunctional fulfillment of state obligations and responsibilities.
Strictly speaking, the notion of horizontal accountability (O’Donnell 1994, 1999, 2003) excludes typical examples of accountability, such as the bureaucracy being accountable to the executive and the legislature in presidential systems (Mainwaring 2003).

15 “The point is that the notion of political competition as a limit on corrupt activity presupposes a particular kind of competition: orderly, fair competition among a small-number of well-institutionalized parties with strong links to significant, lasting groups and interests in society. Where competition falls short of this ideal, it may not reduce corruption, but rather could even lead to more of it” (Johnston 1999, 13-14).

16 There is a single delegation chain and linear accountability relationship in parliamentary regimes. Each entity is a single agent of its immediate principal: delegation runs from the electorate to parliament, from parliament to cabinet, and from cabinet to bureaucracy (Moreno, Crisp and Shugart 2003, 85-91).

17 Both presidential and parliamentary systems subscribe the principle of separation of powers, which requires the functions of government be entrusted to different organs. However, only presidential systems establish the executive and legislative as separate and independent agents of the electorate, and provide for a system of checks and balances in order to prevent abuses of authority. See Moreno et al. (2003, 85-91).

18 Actors whose agreement is required for a change of the status quo, which are product of both institutional features and partisan characteristics (Tsebelis 2002, 17).

19 This definition relies on Brinks (2003, 5), who restricts the characteristics of informal institutions to the manner of creation: “[…] informal institutions are those that are not enacted (or created) in accordance with the second-order rules that govern the creation of formal rules in a given organizational context (that is, outside officially sanctioned channels).”

20 Voigt (2008, 8) distinguishes between external and internal institutions. While in external institutions the state is responsible for sanctioning rule-breaking, members of society are responsible for enforcement in internal institutions. He does not exclude the possibility that sanctioning may be the responsibility of centralized organized actors in internal institutions (Voigt op. cit., 13).

21 There are informal regularities that are not rooted on shared expectations, and do not respond to rules whose violation may generate sanctions (Helmke and Levitsky 2003, 13; 2006).

22 In Argentina, the recurrent violation of judicial tenure has not ever been sanctioned; as a result, politicians have usually followed the informal rule of appointing their own judges to the Supreme Court. See Helmke (2005, 2006).

23 Complementary informal institutions shape behavior “in ways that neither violate the formal rules nor produce substantively different outcomes” (Helmke & Levitsky 2006, 13; Lauth 2000, 25); they fill in the gaps within formal institutions, helping actors pursue their goals more effectively, or serve as foundation for formal institutions, creating incentives to comply with formal rules. Accommodating informal institutions create incentives to behave in ways that alter the substantive effect of formal rules but do not directly violate them. Competing informal institutions structure actors’ behavior in ways that are incompatible with formal rules; to follow informal rules, actors must violate formal ones. Substitutive informal institutions help actors achieve outcomes that formal institutions were designed but failed to achieve.

24 Formal institutions may be created with the intention of not being enforced (e.g., to fulfill an international standard) or actors may be unable to enforce them (e.g., their powers are constrained).

25 The focus is on actors’ behavior within institutions. Assuming exogenous weakness, actors behave strategically and in so doing, may contribute to further undermine institutional strength. See Rose-Ackerman et al.’s (2010) comparative analysis of presidential power.

26 These factors draw from the literature on transactions costs, and particularly the framework developed by Spiller, Stein and Tommasi (2003), Tommasi and Spiller (2000, 2003, 2007) and Stein and Tommasi (2008) to explain inter-temporal cooperation and the quality of public policy.

27 The uncertainty reducing effect of institutions can be achieved through actual enforcement, when institutions are strong, or through the substantial content of a rule. For example, a formal rule that in substantive terms does not establish a high protection level of certain rights may, in practice, reduce uncertainty regarding the implementation of such rights when its enforcement is steady (Voigt 2008, 11).


29 Given actors’ incentives and opportunities, corruption is also fueled by external drivers such as the availability of potential rents (Zahran 2008, 136). The sources of rents are diverse, including the macro-economic trajectory of a country, or the kind of government restrictions and regulations on economic institutions (Ibid.). In weakly institutionalized settings, the flow of potential rents often becomes the only factual constraint over corrupt exchanges.
This explains why institutional commitment varies across policy areas. Some areas allow legislators to obtain more of the resources they need to maximize their goals. Particular issues command more resources, and therefore the will to defend those rights is higher on those issues. Institutional commitment means attachment to formal institutional rules that guarantee continued access (in repeated games) to resources that are used to maximize legislators’ goals (Palanza 2010, 46).

Legislators rank all policy dimensions on the basis of these criteria, such that if policy area k is preferred to policy area j, policy dimension k will have a higher ranking than j (it is an ordinal ranking k<j).

A policy area is so relevant that legislators are not willing to accept any deviation from their ideal outcome and devote all available resources to ensure that the executive adheres as closely as possible to the legislative mandate; or it is irrelevant for legislators and they do not invest resources in monitoring.

For example, they may conduct public hearings or investigations; the president can be impeached by congress; or legislators can modify the policy-making responsibilities through legislation. There are two kinds of oversight strategies: “police patrol,” through which the legislature performs routine and direct monitoring, and seeks evidence of misbehavior by the executive; and “fire alarm” oversight in which the legislature waits for signs that executive agencies are improperly executing policy, and relies on complaints from parties affected by their decisions (Siavelis 2000). Given the costs of implementing rewards and penalties, and the inherent limitations of sanctions, these mechanisms are not a complete solution to control problems, but have an important deterrent effect by affecting the executive’s incentives (McCubbins, Noll & Weingast 1987, 249).

Each legislator i values her decision rights at g_i ≥ 0, where Σ_i=1^n g_i = G, and g_i is the same across legislators.

The margins of acceptable discretion are set when legislators delegate policy implementation based on actors’ preferences and resources. More relevant policy areas for legislators result in stricter margins of acceptable discretion, and vice versa. The effects of institutional commitment levels appear in a repeated game. Whenever the repeated game delivers some sort of cooperation (e.g., informal bargaining cooperation equilibrium), the original delegation and acceptable discretion margins would not be modified. Otherwise, the institutional equilibrium would break down. Low institutional commitment limits the ability to enforce cooperation over time (Spiller and Tommassi 2003). Under these circumstances, informal strategies facilitate self-enforceable agreements that prevent more rigid margins of acceptable discretion. However, as a result, the levels of actual (compared to formal) discretion are broadened at stages 2 and 3.

The logic of low accountability applies to all actors. The first act of delegation (from citizens to legislators) affects legislators’ incentives to hold the executive accountable. Legislators only take voters’ concerns into account when voters are able to affect legislators’ utility function in response to poor policy implementation (Ríos Cazares 2010, 17). In a weakly institutionalized setting with low institutional commitment, legislators’ strategies are not fundamentally determined by vertical accountability-- they don’t expect to be sanctioned through elections, or do not mind being so because their careers continue elsewhere. Whereas under strong institutions the threat of electoral accountability creates incentives for overseeing the executive, under weak institutions the potential costs from bargaining with the executive are minimized. It becomes a non-cooperative game in which each actor implements his or her most preferred strategy in the short term. With weak institutions, legislators’ incentives are not motivated by democratic accountability (i.e. accurately translating citizens’ policy preferences). Their interest in activating oversight mechanisms does not derive from taking citizens’ concerns into consideration. They may be motivated for their desire to extract present or future benefits. The resulting bargain over executive monitoring and oversight creates incentives and opportunities for the executive’s unlawful behavior.

If this could happen all the time, one would have strong institutions that include civil society organizations as a lever.

Their careers do not depend on their record, performance and standing in the legislature, but on their linkages with provincial party leaders and connections with the executive. They obtain high payoffs for deviating from cooperative strategies, interacting with other actors in informally institutionalized arenas.

Also, the weakness of alternative enforcement mechanisms such as an independent and strong judiciary limit the impact of specialized agencies in enforcing accountability.

As the executive asserts presidential authority vis-à-vis the legislature, the latter has less leverage to change the levels of discretion, affect monitoring costs and resources, etc.

Coordination problems pervade legislative work (Baldez and Carey 2001; Ames 2002; Nacif 2002).
The effect becomes more relevant as levels of institutional commitment rise, and disappear altogether at very high levels of institutional commitment when the difference across issues is negligible (Ibid.).

Explaining the emergence of political corruption as the result of actors’ rational calculus of expected benefits against costs does not help explain the persistence of corruption. Additional resources are necessary for the development and reproduction of corrupt exchanges. Scholars who address this issue supplement rational explanations with other mechanisms: the frequency of corrupt exchanges (Lui 1986), collective reputation (Tirole 1986), the allocation of talent over time (Acemoglu 1995), or historical context and social institutions like patronage and family (Norlin 1997).

They are substitutive or competing informal institutions (Helmke and Levitsky 2006, 14). For example, systemic corruption contributed to create a structure of informal norms more powerful than state norms in Italy (Della Porta and Vanucci 1999, 15).

Corruption as an institution encompasses the rules of the game and behavioral practices (Parlevliet 2007, 44). MacIntyre (2003) analyzes how Indonesian President Suharto had monitoring capabilities to enforce coordination of corrupt agents and to punish those that deviated from his core preferences.

The institutionalization of corruption could affect the overall level of corruption. According to Shleifer and Vishny (1993), pervasive corruption under a centralized government produces lower individual bribes yet higher overall level of rents, whereas a loosely centralized system results in higher individual bribes but lower rent collection.
Chapter 3
Elite Cartel Networks and the Informal Market of Corruption

1. Introduction

In Chapter 1, we characterized Argentina’s prevalent corruption pattern as “elite cartel corruption” (Johnston 2007). Corrupt benefits are widely shared to build informal networks and alliances between political and economic elites. Uncertainty and increasing competition are not effectively constrained by weakly enforced and unstable political institutions. As an observer affirms: “It is difficult to be an honest businessman in Argentina. Honesty has negative effects in terms of competition.” Elite cartels networks protect from increasing competition, facilitate cooperation, and prevent change, thus preserving power for political actors.

Some authors (Nochteff 1994, 26; Simonetti 1998, 183, 224-225) attribute elite cartel corruption to Argentina’s prevailing pattern of economic development. Unable to rely on innovation and investment, economic elites saw controlling the state apparatus and bringing economic interests into politics as a way to be inserted in the capitalist system and protected from market competition. Political elites, however, were not passive brokers among competitive private actors that sought to maximize their rents. Public officials were also motivated to take regulatory action and to rely on different policy instruments to obtain corrupt revenues and maximize their resulting rents (Lambsdorff 2007, 123-125). In a weakly institutionalized setting, where sustaining cooperation and enforcing authority over time is difficult, corrupt practices allowed politicians to moderate political competition and maintain power. Economic and political elites benefited from, and contributed to, institutional weakness, which enabled the use of state resources and policies for private purposes.

This chapter looks at the mechanisms and resources that are necessary for the development of informal corrupt exchanges. It focuses on the “who” and the “how” of corruption by examining the
conditions that lead to elite cartel networks of corruption; the characteristics of the actors involved; and the resources they exchange. Corrupt exchanges cannot legally exist – i.e., there is a legal prohibition on explicit contracting between politicians and potential corrupters. Therefore, the market of corruption faces a problem of credible commitment – the parties cannot credibly commit to complete their part of the agreement, as there is no external enforcer of the informal corrupt exchanges. However, informal institutions develop in corrupt markets to counteract the effects of uncertainty and foster informal contracting (Della Porta and Venucci 1999, 20; Rose-Ackerman 1999, 97). In Chapter 2, we defined informal institutions as “socially shared rules […] that are created, communicated and enforced outside officially sanctioned channels” (Helmke and Levitsky 2003, 2006). This definition applies to the elite cartel corrupt market: corruption usually appears as a network of illegal exchanges rather than a one-time transaction. Elite cartel networks are informal institutions that solve credible commitment and coordination problems, and hold corrupt deals together. They refer to informal collusive agreements (or contracts) by which political and economic elites can redistribute corrupt benefits and maintain their hold on power. Those arrangements are monitored, and the violation of the terms of the agreement generates some sort of sanction.

This chapter argues that, in Argentina, corrupt exchanges are not informal behavioral patterns but rather informal institutions of exchange. They are rooted in widely shared expectations, and the violation of informal agreements generates punishment. The evidence presented suggests that elite cartel networks served to bridge the gap between public and private sectors, political and economic elites in a weakly institutionalized setting. These networks fostered cooperation among elites to pursue publicly unacceptable goals while protecting their reputations against public scrutiny. They allowed political elites to obtain resources to hold power and advance policy reforms in a system that creates numerous veto points. Economic elites were able to influence the distribution of government services and limit competition.

After providing evidence of widely shared expectations among political actors regarding corrupt practices, the chapter presents an overview of the formal institutional rules that prohibit
corruption. Following this analysis of the formal institutional framework, the chapter applies the hypothetical expectations developed in Chapter 2 to analyze the emergence of elite cartel networks. It describes supply and demand for corrupt resources, and then illustrates the credible contracting commitments that emerge to support the corrupt market. At the end of the chapter, some general conclusions are drawn.

2. The roots of elite cartel networks: Shared expectations about corrupt practices

Corruption in Argentina is rooted in widely shared expectations among citizens and public officials. High levels of perceived corruption since 1989 have profoundly affected public perception of political institutions. Corruption is clearly seen as political in nature, and the public sector is considered to be particularly prone to corrupt exchanges. Both political and economic elites expect corruption to occur:

[In Argentina] corruption is an intrinsic component of the fabric of society that has become an established pattern of behavior, but [...] not all practices are equally widespread and equally bad (Sautu 2004, 163; author’s translation)

Aggregate indicators reveal these shared expectations. Argentina performs below the average for countries with similar income levels and human development indicators on both the Corruption Perception Index (CPI) and the World Bank’s Governance Indicators (WGI), and only slightly better than countries that suffer from endemic corruption. In 2005, Argentina was one of the worse-performing countries in Latin America with a 2.8 score on the CPI, which placed the country as number 97 out of 158 countries).\(^4\) The WGI confirms these results.\(^5\) In 2006, the country was slightly below the regional average in corruption control, and in the 25\(^{th}\) to 50\(^{th}\) percentile (40.8%), only above eight countries over 18.\(^6\) (See Table 3.1.)

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<td>2003</td>
<td>2.5 (12)</td>
<td>30.1</td>
</tr>
<tr>
<td>1997</td>
<td>2.8 (6)</td>
<td>19.2</td>
<td>2004</td>
<td>2.5 (11)</td>
<td>25.3</td>
</tr>
<tr>
<td>1998</td>
<td>3.0 (9)</td>
<td>28.2</td>
<td>2005</td>
<td>2.8 (10)</td>
<td>38.4</td>
</tr>
<tr>
<td>1999</td>
<td>3.0 (10)</td>
<td>29.3</td>
<td>2006</td>
<td>2.9 (7)</td>
<td>42.9</td>
</tr>
<tr>
<td>2000</td>
<td>3.5 (9)</td>
<td>42.2</td>
<td>2007</td>
<td>2.9 (7)</td>
<td>41.3</td>
</tr>
<tr>
<td>2001</td>
<td>3.5 (9)</td>
<td>37.4</td>
<td>Average</td>
<td>3.1</td>
<td>33.9</td>
</tr>
</tbody>
</table>

Source: Transparency International. Number of sources used for estimating the ratings (indicated in parentheses) range from 2 in 1995 to 12 in 2003.
In July 2001, 30% of polled citizens identified corruption as the second most important problem for Argentines (after unemployment). Although changes in government did actually reduce the number of corruption scandals, citizens continued to perceive generalized corruption. According to the Global Corruption Barometer, 80% of citizens perceived that corruption had either remained the same or increased between 2002-2004, and they were not very optimistic about major changes in the near future. Results from the 2008 Latinobarometer show that only 22% of respondents perceived any progress in fighting against corruption. In October 2009, 60% of Argentines considered public officials "corrupt," and 80% thought that the government made decisions based on private interests. Furthermore, an overwhelmingly majority of citizens (81% compared to 50% in 2007) felt that the government was failing to curb corruption. Parties and Congress are perceived as the institutions that are more affected by corruption. While in other countries citizens are concerned with how corruption affects their daily lives, in Argentina corruption is perceived to be mostly a political problem that refers to transactions between public officials and the private sector. (TI 2004-2005.)

Political and economic elites also have widely shared expectations about corrupt practices. At the end of the Menem’s administration, Gervasoni (2001) found that political elites ranked corruption as the second most important cause of state inefficiency and policy-making failure. They also blamed corruption for tax evasion and the failure of public utilities’ regulatory bodies. Surveys including the Corruption and Fraud in Business Survey (2003, 2005) and the Enterprise Survey (2006) also show that the private sector perceives corruption as an important problem for business. In 2006, 60% of the firms surveyed considered corruption to be a “serious” or “very serious” restriction on doing business. Also significant is the amount of time needed to do business as a result of existing regulations, which is 15.6% in Argentina compared to the 14.6% regional average.

Despite these expectations, the costs of corruption are hidden and indirect (Santoro 2006), and most citizens do not experience as much corruption in their daily lives as other Latin Americans do. Corruption victimization levels are lower than in other countries with similar aggregate country levels of corruption. According to the 2004-05 Global Corruption Barometer, only 6% of
respondents claimed to have experienced bribery in the past year. Other victimization data support these results. While citizens perceive high levels of corruption in the public sector, they report lower than average corruption victimization levels, especially from government officials (Del Frate 1998, 19). For the business sector, similar results are supported by the *Corruption and Fraud in Business Survey*. All these indicators show that Argentines expect corrupt behavior from public officials, private sector actors, and even other citizens. Corrupt expectations encourage corrupt exchanges, since people who expect others to behave unethically are more prone to do so themselves. This helps sustain elite cartel networks.

3. **The formal rules that prohibit corrupt practices: Anticorruption rules and policies**

Argentina has a sophisticated legal and institutional apparatus to fight corruption. This means that explicit agreements or formal contracts between public officials and private parties to engage in corrupt exchanges cannot exist. Despite these formal rules, there is plenty of evidence of corruption. Corrupt practices do exist, but they are, by necessity, informal deals by which one party agrees to provide some advantage, service or compensation to a public official in exchange for the misuse of his or her entrusted power.

Argentina has signed three international conventions that criminalize corrupt transactions and provide a comprehensive framework for preventing, investigating and prosecuting corruption: the Inter-American Convention Against Corruption (ICC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention Against Corruption (UNCC). These conventions have been incorporated into the internal legal framework. As a result of the peer-based mechanisms for the follow-up on the implementation of these conventions, Argentina has received numerous recommendations for strengthening the anticorruption framework. These conventions define a comprehensive framework that establishes the obligation to define standards of conduct for the proper performance of public functions; the types of conduct that must be criminalized by the state parties; the obligation for the state parties to penalize
those behaviors; the obligation to establish a statute of limitations period for prosecution and ensure the existence of bodies specialized in combating corruption through law enforcement; provisions regarding the cooperation between anticorruption agencies and other government bodies; and the measures to be taken by the State Parties to face the commission of an offence liable to sanctions.20

Internally, Argentina has adopted the Public Ethics Law,21 created an Anticorruption Office,22 and reactivated the National Prosecutor’s Office of Administrative Investigations.23 There is also a dual system of internal and external audit of government activities since 1992.24 Moreover, there are specific bodies such as the Financial Information Unit that contribute to prosecuting corruption by providing information on financial operations to detect money laundering.25 Different types of corrupt behavior are prosecuted and punished according to formal laws. This includes abuse or incompetence, unlawful administration, subornation, influence peddling, offering of bribery, international subornation, acceptance of bribery, embezzlement of public monies, negotiations which are not compatible with the exercise of a public function, illegal exaction, illegal enrichment of officials and employees, use of confidential information, hiding, intimidation, conflicts of interests, nepotism, and cronyism.26 Public officials are not allowed to receive gifts, courtesies, or donations of material things, services or assets, by virtue of their public functions. They are required to submit affidavits upon assuming and leaving their positions, and to declare the public and private positions held during the years before and after their service. Throughout their positions and for one year after finishing their duties, they are not allowed to carry out administrative tasks related or unrelated to their positions, or enter into contracts with the National Public Administration.27

Public officials (at least within the executive branch) are obligated to report any offense known in the performance of their duties, including corruption offenses,28 through a claim to the Anticorruption Office and/or to criminal courts.29 Public officials must also report administrative offenses against the Code of Public Ethics or ones that involve damages for the state.30 The Anticorruption Office has implemented numerous preventive programs and developed diagnostic studies as well as initiatives to raise awareness about corruption and to improve transparency. Any
citizen may also report acts of corruption through several mechanisms: the federal criminal courts; the specialized anticorruption agencies; other control bodies (Ombudsman, General Audit Office, Internal Audit Office); and offices at specific government agencies (e.g., the Transparency Directorate at the Ministry of Defense). However, the lack of incentives for reporting corruption, the limited protection offered to those who do, and the constraints on specialized bodies and control agencies all undermine the effectiveness of these mechanisms.

Consistent with the elite cartel pattern (Johnston 2005,90), the actual enforcement of formal anticorruption rules is weak, policies and programs are volatile, and results are quite modest:

With 25 years of democratic institutional continuity, the efforts made to make political financing transparent, to have reliable controls to monitor the use of public resources, and to develop the institutional infrastructure necessary to punish corruption offenses, have been isolated gestures, which usually responded to specific political situations and systematically succumbed to the need of negotiating other policy priorities (Jorge 2009, 21; author’s translation). Despite this limited enforcement, some expectation of punishment exists. As Samuels (2006, 88) notes when discussing illegal campaign finance, otherwise, even honest public officials would “flout the formal rules” and begin writing down their informal transactions. In this chapter, we assume that formal rules that prohibit corrupt practices are not wholly ineffective (they minimally constrain actors) to explore the emergence and impact of elite cartel networks as informal institutions that deviate from the formal rules of the game. This assumption will be relaxed in Chapter 8, which explores the extent to which corrupt networks are informally institutionalized.

4. Corruption as an informal market: The emergence of elite cartel networks

Clearly, an informal market of corruption thrives in Argentina. Large payments by businesses to political elites (as political contributions or bribes) buy major policy favors. These exchanges help sustain integrated networks of state and business elites to uphold power:

There is some form of compensation for public officials by businessmen. This compensation may well be supporting any particular policy or decision, or it may be a compensation of economic nature - and based on many well-grounded suspicions, money for electoral campaigns. It seems to emerge some kind of de facto association between non-compliant businessmen, judges and politicians: the businessman obtains a profit that, without the mediation of their counterparts, would have never obtained, while judges and politicians get- in different ways - some of these extraordinary profits (Garcia et al. 2005, 41; author’s translation).
Available data from anticorruption bodies and evidence collected independently by civil society organizations confirm the pattern of elite cartel corruption. Economic elites are significantly involved in informal corrupt transactions with public officials; there is constant confusion between public and private interests. Public officials do not protect the state patrimony or public resources. Consistent with this pattern, the most common illicit practices are fraud against the state, embezzlement and diversion of funds, and fraudulent administration, together with dealings involving conflict of interest (negociaciones incompatibles). (See Table 3.2.) Interestingly, other categories that are usually associated with political corruption (such as bribery, illicit enrichment, illegal exactions, and influence trading) appear less frequently. This section describes how the informal market of corruption emerges and works in Argentina.

**Table 3.2. Types of illegal behavior investigated by FNIA & OA**
(over total number of cases known)*

<table>
<thead>
<tr>
<th>Ilicit</th>
<th>FIA Until 2006</th>
<th>OA 2000-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraudulent acts /administration against State’s interests</td>
<td>114</td>
<td>39</td>
</tr>
<tr>
<td>Breach of public office duty</td>
<td>60</td>
<td>9</td>
</tr>
<tr>
<td>Abuse of authority</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td>Dealings involving conflict of interest</td>
<td>33</td>
<td>16</td>
</tr>
<tr>
<td>Misappropriation of public monies</td>
<td>32</td>
<td>10</td>
</tr>
<tr>
<td>Embezzlement of public funds</td>
<td>22</td>
<td>-</td>
</tr>
<tr>
<td>Irregularities regarding asset declaration</td>
<td>18</td>
<td>1</td>
</tr>
<tr>
<td>Neglect of duty</td>
<td>16</td>
<td>-</td>
</tr>
<tr>
<td>Forgery of public document</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Document tampering</td>
<td>12</td>
<td>-</td>
</tr>
<tr>
<td>Unjustified enrichment</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>Illicit enrichment</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Illegal exaction</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Illicit association</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Bribery</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Resisting arrest or disobeying authority</td>
<td>5</td>
<td>-</td>
</tr>
</tbody>
</table>

*The table reflects the frequency of the illicit type as reported to FIA and OA.

4.1 The rules of formation of corrupt elite cartel networks

Common wisdom about corruption stresses the negative effects in terms of economic growth, equality, and democratic legitimacy, to name just a few. However, in a weakly institutionalized political setting, elite cartel networks may facilitate short-term cooperation, thus surmounting the inefficiencies of the institutional system for advancing policy reform and implementation. This does not mean that corruption is inherently beneficial, as empirical evidence in the long run clearly indicates the opposite. However, Argentina’s style of corruption may have aided economic development and underwritten some degree of political continuity through the aftermath of the successive economic crises. Simultaneously, it preempted the strengthening of political institutions and, as a result, exacerbated the risks of political and economic crises and perpetuated the patterns of inefficient accountability. Elite cartel networks are based on mutual expectations in which political and economic elites believe that the failure to comply carries some kind of external sanction or at least exclusion from the corrupt benefits. In this sense, elite cartel networks can be considered as complementary or substitutive informal institutions (Lauth 2000; Helmke and Levitsky 2006; Darden 2003; Johnston 2007), as they filled in the gaps and/or replaced formal institutions and improved the efficiency of the policy process.

Secrecy is a precondition for participation in these exchanges. The parties in the corrupt exchanges need to protect themselves not only from public censure, but also from possible penalties and punishment. Concealing corrupt transactions is necessary to be able to reap their benefits, while avoiding electoral and judicial liabilities. This explains why accusations of corruption and scandals are often used as a monitoring and oversight instrument to enforce corrupt deals. Government’s denials of irregular transactions reported by the media are also common. When in January 1991 the US Ambassador denounced the government’s demand of a bribe to concede a tariff reduction for importing machinery to the US firm Swift-Armour, President Menem formally required an explanation and clashed with the Ambassador over his accusations. Following the public revelations, the firm parted with the government and denied any extortion. However, when the case went to the
In 2008, when Siemens publicly acknowledged before US authorities the payment of bribes to Menem’s government, former President Menem and two other high-level officials involved in the case publicly denied their involvement. In May 2010, Kirchner’s Minister of Planning issued an official statement denying media information about the payment of overprices for buying fuel oil to Venezuela.

Those who break secrecy are punished; in some cases, they are at physical risk. Some suspicious deaths related with corruption scandals have shocked Argentine citizens in recent years (Alconada Mon 2011, 123). In October 1998, Juan Carlos Cattaneo, key witness in the IBM corruption scandal, was found dead from what police initially ruled suicide, but subsequently the investigating judge ruled suspicious death. In 2010, businessman Raul Espinosa, who had been financing Kirchner’s campaigns, was killed soon after he contacted opposition politicians to denounce corrupt transactions around the fisheries’ exploitation in Santa Cruz (Lopez Masia and Solis 2009, 192-3). Moreover, although denouncing did not always cause so dramatic a consequence, politicians also risk exclusion from elite networks and losing their political careers:

A friend of mine told me that there are three basic rules. The first is, I do my business, and you do your business. The second rule is, I do not interfere in your business, and you do not get into mine. The third rule is, if I offer you a business and you tell me no, you’re out. Bordon boasted that when he was a senator, he had rejected a bonus that SIDE paid to Peronist senators. And I said, "but why did not you report it?" and he replied, "No, I can not denounce it." His honesty was strong enough to reject bribery, but he could not break his ties with the party, because if he did, he was unable to operate politically (Ocampo 2002, 285; author’s translation).

The weakness of political institutions and its effect on actors’ expectations and behavior are crucial to make elite cartel corruption work in Argentina. Discretional behavior and limited transparency facilitate corrupt transactions (OA 2000, 12 & 35), while making it easier to conceal them. Deficient publicity and information about government acts, and the lack of clarity in norms and processes (and sometimes their intentional suspension to make ad hoc decisions) all foster corruption. The manipulation and change of formal norms and institutional rules enlarges the scope for discretionary behavior. The disarticulation of control mechanisms neutralizes them or seriously limits their effectiveness. Formal mechanisms of control function irregularly or not at all, or exceptions become
the norm and they effectively circumvented. Even when control agencies produce valuable information, such information is not used because of the weak links in the accountability system. These facilitating conditions reinforce each other to create an institutional environment in which political corruption thrives.\textsuperscript{40}

4.2 What drives the demand of corrupt resources?

The demand for corrupt resources is a function of institutional weakness and low institutional commitment. Public officials need money to gain access to office and, while in office, to hold and strengthen their power (Kunicova 2003). The costs of electoral campaigns, and the degree of inter-party and intra-party competition, are often identified as critical drivers of corruption (Samuels 2006; Geddes and Ribeiro Neto 1992). Besides the costs of party financing and electoral campaigning, the costs of doing politics while in office are significantly high in weakly institutionalized polities. Resources must be raised and spent to forge agreements and ensure legislative support for the government’s policy agenda, and to prevent veto blocks from provincial party bosses and governors.

In Argentina, the costs of electoral campaigns are high (Espindola 2002).\textsuperscript{41} For example, electoral costs for the 1993 mid-term legislative elections were estimated at 52 million dollars.\textsuperscript{42} In contrast with other well-known cases, like Brazil or Italy, in which the fiercer inter-party and intra-party competition have significantly increased the demand for money, the level of competition has been more stable in Argentina. Although the electoral system (closed list PR) does not create incentives for building up a personal vote (Carey and Shugart 1995), the actual workings of political institutions increase the demand for resources. The resources that party organizations obtain through formal mechanisms (public and private contributions) are not enough to conduct their activities. For example, in 2003-04, PJ and UCR only received 1,567,464 pesos and 535,162 pesos respectively (Leiras 2007). Because party organizations are weakly institutionalized, candidates must raise their own funds.\textsuperscript{33} Since the formal regulation of party financing is weak and seldom enforced,\textsuperscript{44} parties resort to extracting resources from the state and candidates develop informal mechanisms (both legal and illegal) to raise money:
The party receives [the resources]. All the expenses are piled up, even if made by a third party. But many of the expenditures are not reported to the party because they cannot be controlled. Candidates are still very important. We have a two-lane way, because the candidates put together their parallel informal financing structures. In principle, there is a financial responsible and someone in charge of the campaign, but this is purely formal. Each candidate has a foundation, which are legal persons not reached by the law, and that is an open hole since they have no restrictions on what they receive and on what they spend. Restrictions on spending, which if met could be used to find out something -- all this publicity was made in favor of this candidate, they have exceeded the limits, they have not, who spent what, who paid, etc. ... but there is no body to do that and it takes as much as 2 years for individual citizens to get the information ... The parallel informal structure of political financing continues to operate ... It is not like the “second cashbox” in Brazil, which was virtually institutionalized ... No... Here, everything is much darker ... you know who are getting the money and you know they can’t do what they do.45

The amount of state resources distributed according to the party financing legislation is almost insignificant. However, those who hold public office have access to additional resources (Leiras 2007, 81).46 The actual workings of political institutions enable the executives (both federal and provincial) to enjoy ample discretionary use of resources, as well as access to a basket of goodies that can be distributed with scant control:

The political use of controlled funds from government positions is not restricted by internal party rules. The general laws of the Nation and the provinces do not constitute an effective constraint either. To the contrary, the political use of these resources seems to be a rule that all party players accept privately although some of them reject it in public (Leiras 2007, 81; author’s translation).

Increasing competition also drives up the costs of politics. In Argentina, the logic of electoral competition at the national and provincial levels is different (Abal Medina and Cao 2002; Escolar and Calvo 2003; Malamud and De Luca 2005), especially since 2001. Electoral results show an increasing territorialization and denationalization – i.e. the distribution of votes at the national level differs from the distribution at provincial level, and parties obtain very different shares of vote in different provinces. While in small provinces the structure of inter-party competition hardly changed (the vote remains concentrated on the two traditional parties), in large provinces votes were distributed among more parties. More importantly, the patterns of electoral competition do not match those at the institutional level. Only the two traditional parties (PJ and UCR) are able to systematically gain access to office, and therefore the patterns of inter-party competition for access to decision-making power are more stable than the results of elections seem to indicate. However, despite this continuity, effective competition and the costs of politics have been driven up by internal party dynamics. At the
national level, the number of effective parties increased since 1995, and more profoundly since 1999 and 2001, driven by the internal competition within Peronism and the opposition’s attempts to shape a viable alternative (Leiras 2007, 213). As the level of intra-party competition increases, so does the level of spending as well as resorting to informal mechanisms of financing:

If the internal party election is hard fought, you spend a lot of money. Information about the internal elections is zero, because there is no obligation to report anything. The internal elections are outlaw in terms of funding: there are no limits on contributions or expenditures. There is no obligation of transparency, no obligation to keep books ... absolute freedom. However, nobody uses “white” mechanisms to operate, because they leave a trail that would be followed by the press or civil society. It is a field on the fringe of the law and there is no interest in regulating it.47

Internal party elections are particularly expensive because they require a significant mobilization of party affiliates and material resources. Moreover, moderation of intra-party competition is usually the result of building intra-party agreements and systems of incentives that require significant investment.48 Alternatively, party factions may exit the organization and compete outside the formal party structure, but in this case, the moderation of intra-party competition results in an increase of inter-party competition. The costs are in all cases significant:

We are now in the process of holding internal party elections and candidates are spending and receiving money, all is black money and nothing is documented or recorded. There are no invoices, no records, there is absolutely nothing ... It is known that black money is still circulating in large quantities. I have campaign data from the UCR, which has no political weight today. If in this internal campaign there are the volumes of money that I know there are, because I know who have collected and paid, just imagine what is going on in the PJ – it must be an incredible amount of money ... but there is no way to record it. And this is always going to happen to the extent that we have no mechanisms for transparency.49

Money and resources are also needed in office to sustain the power base and ensure governability. Governing is difficult and requires rewarding allies and restraining political competitors. Presidents rely on discretionary payoffs to forge and sustain agreements and avoid vetoes. Furthermore, patronage and clientelistic networks demand high levels of resources. Public employment and social programs are important sources of resources for financing politics.50 All these informal mechanisms require raising and spending money on particularistic goods:
There is still this idea of vote buying: you pay people to vote and you have to transport them. I think that this is not, in volume, the bulk of spending today, because it is done through social plans ... this is the mechanism of pressure. They do not take your freedom to vote away, but the risk is that the mayor that distributes the plan can say: if I win, I will give you the plan; otherwise, I will not. Therefore, in a small place, there is pressure to vote in a certain direction. [...] It's not done with the funds distributed to the parties and is not registered with the parties: these are state funds that can be diverted for this use... especially social plans. What is the volume? In my opinion, to the numbers of political campaigning in Argentina, we should almost add the figures of social plans, as part of the costs of doing politics... I think it is justified to count them in, because in fact they are widely used.51

Policy concessions used to provide discretionary payoffs for building political support are often abused to divert resources illegally. In exchange for policy concessions, publicity firms provide free space for the government’s candidates during electoral campaigns. These candidates obtain an unfair advantage over their opponents, in violation of formal party financing regulation

Building a strong network of elite support is expensive. State resources that complement formal mechanisms of financing political activities are not sufficient (e.g., as a result of the fiscal situation, or the increasing demand when competition is fiercer) and, therefore, firms make payments to political leaders, directly or through intermediaries. Since the 90s, these payments have been quite institutionalized:

‘In 1995 it was launched a new scheme for financing politics. Politics is expensive. From somewhere you have to take the dough ... ’ says a former Kirchnerist public official, who doubles the bet: ‘There is a system for bidding that takes many stakeholders out of the way’ (Cabot and Olivera 2008, 190; author’s translation).

Newspapers reported the mechanisms for making payments.52 Firms preferred to pay secretly, in cash, to individual candidates rather than to party organizations. They coordinated the amounts to be paid to prevent the payments’ escalation. While some of those payments complied with the legal requirements of party financing, others were illegal. Often these payments were hidden in public procedures or masked through false transactions. The cash flow helped maintain party and legislative organizations and paid for elections. Some corrupt revenues went into the pockets of top politicians. Both goals, personal enrichment and cementing strong elite networks to hold power, have been equally important in Argentina’s elite cartel corruption:
First, they are obtained for personal gain. And based on their personal resources, they can grow politically and maintain a political machine. But first the money goes to their accounts, not to the party’s account. And from that moment on, they try to consolidate their position within the party and, by dint of money, they open party offices, mobilize a political structure, ... all of which would not be done without the money. There are some sectors and places in Argentina where politics is moved by money alone.53

Corruption and abuses in the financing of elections and political parties are a common occurrence, particularly given the weakness of formal rules regarding electoral campaigns’ costs and the limited disclosure of party expenses (Pinto –Duschinsky 2002).54 In practice, all parties and candidates systematically violate the formal norms on party financing without any consequences, and usually submit false information regarding political expenses. In 2007, for example, the candidacy of Cristina Fernandez de Kirchner flagrantly violated formal legal requirements, but no sanctions have been enforced yet (Ferreira Rubio 2010).55

These abuses are closely connected to corruption while holding office. The actors are the same. Private parties that benefit from corrupt transactions with office holders are “required” to provide money to sustain parties and help candidates gain elections in order to continue being the beneficiaries of political procedures and policy decisions.56 Party cashiers hold public office and take advantage of their position to bargain with potential donors. During Menem’s administration, the same business groups that were involved in corrupt transactions had been generous contributors to political parties during the electoral campaign, and often were involved in making illegal payments (Verbitsky 1992, 15):

It was being created a network of complicity that made actors’ individual interests non-generalizable, and turned vast areas of the state apparatus in enclaves of wrongdoing between the private and public sectors to benefit certain economic actors over others. Competition, transparency and low costs were relegated by a system of favors that originated in the financing regime. The executive branch facilitated businesses to those actors, control institutions were not looking or monitoring, and party discipline forced legislators and lawmakers to validate processes that enabled the system of public and private complicity (Report Investigative Committee Money Laundering 2001, 375).

According to one of Menem’s campaign cashiers, all major domestic business groups had contributed to the 1989 electoral campaign. The total amount of contributions from private firms added up to 8 million dollars.57 Firms contributed to both UCR and Peronism with different amounts, depending on their guesses on the most likely winner of the election.58 These firms also provided illegal payments
to office holders during Menem’s administration. The press reported an institutionalized mechanism to accelerate administrative procedures in exchange for cash, and judicial investigations revealed an informal system of bonuses (sobresueldos) paid by private firms. Some used these bonuses to complement the formal system of incentives, thus helping enforce bureaucratic authority.

Recent revelations regarding the financing of 2005 legislative elections illustrate the drivers of the demand for corrupt resources. These mid-term elections were critical to consolidate Kirchner’s hold on power and in the Peronist party (Godio 2006). The intense competition with the Duhaldist faction in the Buenos Aires province required extraordinary resources. From the Secretary of Transportation, and relying on intermediaries, public officials put pressure on both national and foreign firms (e.g., owners of privatized services) operating in the country in order to raise the money required to win the elections and strengthen the government’s hold on power; in exchange the firms obtained influence on policy decisions and government contracts:

I can no longer stand the pressure that the number one is exerting on this issue, asking for some kind of result. He is willing to do whatever is necessary in order to receive something, because he needs a lot of money to maintain the necessary force in the campaign. [...] Now the situation is different because he has to win at the national level, but he does not have the funds he needs. In these countries, politics is very expensive. [...] We receive the letter and the name of the secretaries of the minister concerned. We meet with entrepreneurs and businessmen. We say clearly that we are raising money to help defray the costs of the political campaign, the expenditures that have already been made and those still to be paid (La Nación Nov. 23, 2010; author’s translation).

With reference to the character and his intemperance: it is obvious that all this will make him look with more sensitive eyes and heart at all that comes from the corporate contributors. [...] As for the compensation, there is no doubt that everything will be looked more tenderly and sympathetically concerning the contributors and their relationship with the government (La Nación Nov. 24, 2010; author’s translation).

Similarly, the 2007 presidential campaign illustrates the extensive and entrenched networks that bring political and economic elites together for mutual benefit. In 2008, the so-called “drugs mafia” case revealed networks that manipulated legal drugs to sell them to unions’ welfare benefits providers in order to exact resources from the public health system. Some of the pharmacy owners involved had been major donors of Cristina Kirchner’s political campaign, while the public official responsible for overseeing the health insurance system had been the “cashier” of the campaign.
4.3 The cement of elite cartel networks: Supply of valuable commodities and corrupt resources

Why does an informal market of corruption thrive in Argentina, and what supports it? Individuals and businesses are willing to open their wallets because public officials control valuable commodities. First, they control the distribution of valuable and scarce resources including subsidies, exchange rate controls, export permits, and public works contracts. They have decision-making power to assign a benefit, influence the outcome of a public procedure, or avoid taking action (Della Porta and Vanucci 1999, 39). Public officials can generate concentrated benefits for a few beneficiaries, or political rent; moreover, they do so discretionally, with limited transparency and control, reducing the costs of corrupt exchanges. Public officials also have privileged knowledge about public procedures that determine the allocation of policy rents and about decisions that may influence its course (op. cit., 43). Limited transparency of these procedures facilitates corrupt transactions, as it increases the value of privileged information to anticipate policy decisions and defeat competitors. Moreover, in a context of weak institutions, Corrupters often benefit from corrupt exchanges by receiving protection from the uncertainties of state inefficiency and/or potential competitors. In so doing, they may prevent contention with the state (or solve it in their favor), and may create a competitive advantage over their competitors, thus being able to obtain higher profits (op. cit., 45 ff.). Potential corrupters have strong incentives to invest heavily, so that they are not excluded from the division of these valuable commodities. This section analyzes the valuable and scarce resources that public officials distribute, and the reasons why other actors desire to invest illegally in getting those resources. Several examples illustrate the kind of resources that hold elite cartel networks together.

4.3.1 Protection from the uncertainties of state inefficiency

Institutional weakness harms bureaucratic oversight, as political parties will not invest in bureaucratic cadres and legislators become very short-term principals (Spiller and Tommasi 2005). This generates administrative inefficiency and maladministration, as it enhances public officials’ arbitrariness in using state resources for particularistic exchanges (Rios-Cazares 2010). As a result, private parties
that interact with political institutions have incentives to invest to ensure protection from state inefficiency (Della Porta and Vanucci 1999, 48).

Maladministration is common in Argentina. The provision of public services (e.g., health, education, and social services) and state’s control of privatized public utilities provide innumerable examples. Irregularities in the provision of benefits by the National Administration of Social Security (ANSES) are illustrative. False verdicts were entered into the information system to increase the retirement payments of some beneficiaries to raise the beneficiaries’ monthly pay. The difference between the two amounts was paid to an intermediary by the beneficiary, or appropriated directly by the intermediary. The Anticorruption Office also detected other irregularities, including the continuation of benefits that should have been dropped, admittance of beneficiaries who did not comply with the legal requirements or had provided false documents, and the allocation of benefits based on false medical reports.62

In some cases, state agencies do not perform their oversight and regulatory functions. Audit agencies report strong evidence of favoritism in state control over concessionaries of privatized services, as well as the state’s failure to take any punitive action when private firms did not comply with the contractual conditions. Particularly relevant is the limited control over the investment commitments assumed as part of the concessionary firms’ contracts. Despite non-compliance with contractual conditions, it is very uncommon for firms to pay any penalty in Argentina.63 Control over contracts for the provision of goods and services is very weak; in many occasions, funds are diverted to pay firms for goods and services they never provided.64 For instance, despite evidence of non-compliance with their investment commitments to improve security conditions in the metropolitan rail transportation system, the Secretary of Transportation continued to pay discretionary subsidies of more than $13 million pesos to concessionary firms in 2003.65 Procurement processes in the telecommunications regulatory body (National Commission of Communications, CNC) illustrate well the inadequate control over contractual compliance.66 The Supreme Audit Institution found that the body was performing very limited controls over the contracts awarded by concessionary firms and
hardly enforced any sanctions despite the evidence of irregularities. For example, since its creation
and until 1996, the CNC did not apply any sanction and, in 1997, only 11 sanctions were enforced on
1995 and 96 files.67

4.3.2 Public procedures that determine the allocation of rents

The allocation of rent may depend on the outcome of public procedures. Privileged information about
procedures, or decisions to influence its course, may provide an advantage to certain beneficiaries.
According to Argentina’s anticorruption body, four types of public procedures have been of particular
interest for potential corrupters (OA 2001, 2002): expenditure decisions, including public
procurement transactions and allocation of subsidies; revenue decisions, including receiving taxes or
charging penalties; discreional allocation of non-state resources by the state; and control of
compliance with contractual obligations. Some examples are illustrative (OA 2002, 39). The
discreional exemption of taxes to some broadcasting firms by COMFER generated an estimated cost
of $200,000 and benefited a few firms that obtained cash for other activities. In 2000, the health
insurance regulatory body raised over $60 million from payments for health services by single tax
system payers without informing them about this service, and then the money was discreionally
redistributed to some welfare benefit plans that had not provided any services.68 Privatized services
show also many examples of irregularities. For instance, the Secretary of Commerce allowed the
postal service provider to count the compensation paid to workers who had been fired when the
public enterprise was privatized as an investment. The irregular distribution of subsidies was also
frequent in state agencies such as the ONCCA (National Bureau for Farm Trade Control) during the
Kirchner administration.

Corrupt exchanges in these procedures may take different forms, including passing privileged
information, irregular procurement, diversion of public funds, or returns, among others. Following
Ferraz and Finan’s (2005) classification, we define a irregular procurement if: i) there is favoritism in
the selection of beneficiaries, concessionaries or providers (e.g., same firms are selected); ii) there are
irregularities in the competition among bidders for the good or service provision (e.g., the minimum
number of bids is not attained); or iii) there is evidence of fraud in the procurement process (e.g., bids from phantom firms). *Over-invoicing* is any evidence that public goods and services have been bought at higher-than-market prices. *Diversion of public funds* involves any expenditure without proof of purchase or direct evidence that money or resources have been diverted from their ultimate goal. Finally, *kickbacks* or returns are any evidence that a firm has been asked for or provided some form of compensation from its benefits in order to gain advantage. Anticorruption and oversight bodies have found abundant evidence of all of these problems.

Limited coordination between public officials in charge of procurement processes and those who actually receive the goods facilitates irregularities in the awarding of contracts (OA 2000, 22). Insufficient transparency of tenders makes information a valuable resource that can be passed along to corrupters, thus allowing them to increase the probabilities of being the bidding winners. Moreover, the violation of formal norms and the complexity of formal procedures create uncertainty, which gives an advantage to those that obtain reliable information.

A typical irregular practice is the delivery of undervalued or free state resources, which usually takes place between the bid award and the signature of the contract, or during the extension of existing contracts. Sometimes, goods that were not included in the bid conditions are later on incorporated into the contract. Also, with the excuse of cutting costs, goods and services are often underprovided, which makes it possible for someone to benefit from the difference between the formal cost and the real costs of the goods or services actually provided. Inadequate procurement planning and frequent non-compliance with annual procurement plans, as well as the inability to actually control stocks and to conduct needs assessments, contribute to these irregularities. For example, in 2002, public officials from the national lottery extended by five years the contract with the firm managing the Buenos Aires floating Casino for an amount of $4.6 million, when the estimated benefits were actually $600 million pesos. During the Kirchner administration, the concession of the Palermo Racetrack was extended ten years earlier than the expected end of the
contract, violating formal deadlines and proper administrative procedures to benefit one business firm close to the president.\textsuperscript{73}

A common corruption scheme is replacing a competitive procurement process with direct bidding or non-competitive bidding (often justified for reasons of “urgency,” “exclusivity,” or contracting with state equity participating companies) with no proper justification (OA 2001, 31).\textsuperscript{75} In 2000, OA reported that the abuse of direct contracting had achieved 75\% in most ministries (OA 2000, 19).\textsuperscript{76} In 2001, AGN found that 23.61\% of the tax agency’s (AFIP) procurement processes avoided the legal requirements of regular procurement,\textsuperscript{77} which resulted in irregular payments and other irregularities (e.g., omission of guarantees and quality controls, omission of bidding terms and conditions in direct contracts).\textsuperscript{78} In some other cases, while the bidding process formally complied with the formal requirements, in practice the winners were predetermined and there was no transparent or open competition. Restrictions were imposed to limit the number of bidders (e.g., short deadlines, high guarantees), or privileged information was provided to some bidders who gained an advantage over potential competitors. Deficiencies in the preparation of the bidding documents – which in many cases are copies of previous ones, include incomplete specifications, do not include control systems nor sanctions, are elaborated without conducting a previous needs assessment, and are prepared with great discretionality given the lack of procedure manuals – contribute to these irregularities. In addition, the assessment of bidding offers is often purely formal, due to weak technical capacity or lack of information. Audit reports illustrate numerous irregularities and deficiencies underneath formally correct processes; for instance, limited competition is evident in cases where only one bidding offer is presented, there is no evidence of sending out invitations to several potential bidders, or there is more than one bidder but the firms are related to each other.\textsuperscript{79}

In a huge number of cases, particularistic criteria have been used to assess and select bidding’s beneficiaries. In a survey conducted by the anticorruption body, 27\% of respondents found that procurement decisions usually benefit some particular provider rather than being awarded based on price or quality (OA 2000, 21). Changes in the bidding specifications have occasionally been made
after the bid was awarded in order to benefit one particular bidder (OA 2001, 29). Sometimes, state providers formed a pool or cartel, setting barriers to other competitors and affecting the final price. For example, this pattern was commonly found among public works’ contractors during Kirchner’s presidency. It was also usual to modify contracts after the end of the contracting procedure, without conducting a new competitive bid and to the benefit of the bidding beneficiary. In some cases, tender specifications were informally changed to benefit one particular party. In absence of a centralized database of state providers, the engagement of private parties in corrupt exchanges can be easily concealed. State providers have their habilitations automatically renewed despite irregularities or non-compliance (OA 2000). This also promotes corruption by enabling the selection of bidders that have no previous experience (OA 2001, 31). In some cases, the databases are internal to particular organisms (e.g., AFIP), which allowed defaulting contractors to participate in procurement processes called by other organisms.

Diversion of funds is also very common in outsourcing services, when the state neither manages payments nor performs a comptroller role. One usual parallel circuit is giving subsidies to foundations that then call the tender process, but are not subject to the legal requirements of public agencies. One emblematic corruption scandal of the 90s illustrates this exchange. The agency responsible for providing social and health services to the elderly (PAMI) decided to outsource the administration of its services to only one provider, which would then contract with other providers and pay them. What actually happened is that some providers took control of the primary provider and distributed contracts and payments in their own benefit (OA 2002, 39; Charoski 2002). Other frequent schemes for the diversion of funds involved the use of false documentation, payment for non-provided services, and/or phantom bills.

Another common mechanism is over invoicing. The difference between the actual and the formal cost is appropriated for private benefit, and those resources are often returned or kicked back to the public official that facilitated the transaction. The OA (2000, 18) has estimated over invoicing to reach levels that range between 350-800%. The inadequacy of the current system of
reference/witness prices (*sistema de precios testigo*), managed by the internal audit agency, facilitates these irregularities; in other cases, the reference price is just ignored.\(^{88}\) The comparison between prices paid for public goods and services during Menem and De la Rúa’s administrations is illustrative.\(^{89}\) (See Table 3.3.) Overinvoicing in infrastructure and public works was one defining feature of the elite cartel corrupt market during the Kirchner administration.\(^{90}\)

### Table 3.3. Overpricing in procurement of goods and services

<table>
<thead>
<tr>
<th></th>
<th>Menem administration</th>
<th>De la Rúa administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air catering</td>
<td>Breakfast: $20/unit</td>
<td>Breakfast: $5.50/unit</td>
</tr>
<tr>
<td></td>
<td>Lunch: $37/unit</td>
<td>Lunch: $15/unit</td>
</tr>
<tr>
<td>Cleaning services</td>
<td>$700,000 per annum</td>
<td>$200,000 per annum</td>
</tr>
<tr>
<td>Insurance of airplanes</td>
<td>$4,800,000 per annum</td>
<td>$1,200,000 per annum</td>
</tr>
<tr>
<td>Biosensor</td>
<td>$3 / unit</td>
<td>$0.30 / unit</td>
</tr>
<tr>
<td>Real state rental</td>
<td>$7 / m2</td>
<td>$1 / m2</td>
</tr>
<tr>
<td>Books</td>
<td>$60,000</td>
<td>$40,000</td>
</tr>
<tr>
<td>Cleaning rate</td>
<td>$800 per shift</td>
<td>$200 per shift</td>
</tr>
<tr>
<td>Food boxes</td>
<td>$0.66 / unit</td>
<td>$0.33 / unit</td>
</tr>
</tbody>
</table>

Source: OA (2000)

An analysis of criminal charges filed by the anticorruption body, including both lawsuits (*querellas*) and criminal complaints (*denuncias*), allows us to estimate the frequency of these practices for the period 1999-2005.\(^{91}\) As Tables 3.4. and 3.5. show irregular practices are most frequent in procurement processes (44% of total criminal charges, or 89 cases), and they involve the diversion of public funds (24% of total criminal charges, or 49 cases), and over-invoicing (14% or 29 cases).\(^{92}\)

### Table 3.4. Frequency of irregular practices within criminal charges filed by OA, 1999-2005

<table>
<thead>
<tr>
<th>Political corruption</th>
<th>Frequency</th>
<th>% of Total practices</th>
<th>% of Total cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irregular procurement</td>
<td>89</td>
<td>44</td>
<td>52.7</td>
</tr>
<tr>
<td>Over invoice</td>
<td>29</td>
<td>14</td>
<td>17.2</td>
</tr>
<tr>
<td>Diversion of public funds</td>
<td>49</td>
<td>24</td>
<td>29</td>
</tr>
<tr>
<td>Kickbacks/ bribery</td>
<td>6</td>
<td>3</td>
<td>3.5</td>
</tr>
<tr>
<td>Illicit enrichment</td>
<td>7</td>
<td>3.5</td>
<td>4.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Maladministration</th>
<th>Frequency</th>
<th>% of Total practices</th>
<th>% of Total cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organs do not execute their functions</td>
<td>14</td>
<td>7</td>
<td>8.9</td>
</tr>
<tr>
<td>Programs do not function properly</td>
<td>3</td>
<td>1.5</td>
<td>1.8</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>2.9</td>
<td>2.96</td>
</tr>
</tbody>
</table>


*/ The accumulated frequency is larger than the number of cases (N=169), since some cases involve more than one form of corrupt practice. This allows measuring the frequency of each type of corrupt practice.
State agencies that do not execute their functions properly are the most common variety of maladministration (14% of total criminal charges, or seven cases). Irregular practices appear most frequently in the areas of social services (18.9% of total criminal charges, or 32 cases), public utilities (14.2%, or 24 cases), and specific agencies within the public administration (21.9%, or 37 cases). The next section explores the use of policy instruments as a commodity for generating political rent.

| Table 3.5. Policy areas in which corrupt practices appear more frequently |
|---------------------------------|---------------------|
| Frequency | % Total cases |
| Health | 13 | 7.7 |
| Education | 6 | 3.5 |
| Environment | 8 | 4.7 |
| Financial / Banking | 10 | 5.9 |
| Public services | 24 | 14.2 |
| Social services | 32 | 18.9 |
| Police | 2 | 1.2 |
| Public works | 4 | 2.4 |
| Other State organs | 37 | 21.9 |
| Legislative | 2 | 1.2 |
| Not classified | 27 | 16 |
| Other | 4 | 2.4 |
| **Total** | **169** | **100** |

Source: Author’s elaboration based on OA, lawsuits filed in the judiciary between 1999 – Oct. 2005

4.3.3 Policy decisions and distribution of valuable and scarce resources

Corrupters seek to influence policy decisions to their advantage by paying a bribe or other compensation. This is easier in weakly institutionalized political settings where formal rules are unstable and seldom enforced. The resulting increase in discretionary authority facilitates policy decisions that benefit only a few. Also, as weak formal rules facilitate the concentration of power, corruption becomes “simpler and less risky” (Della Porta and Vanucci 1999, 41) – i.e., it is easier to know whom and how much should be paid. In Argentina, governments have relied on different policy instruments to generate concentrated rents for which private actors will be willing to pay and/or to share those extraordinary benefits with office holders. Also, public officials have the ability to use or allocate, legal or illegally, state resources (the so-called “cajas del Estado”) for personal gain and/or political benefit. Chapter 1 provided an overview of different policy instruments used for corrupt exchanges in different periods. (See Table 1.1.) Changes in government did not eliminate corruption,
but the locus of corruption shifted to different rent-inducing policy mechanisms. An analysis of some of the policy instruments used during Menem and Kirchner’s administrations helps to understand the use of this commodity.

(i) The Menem period

The generation of political rents during Menem’s two terms in office relied on three main policy instruments: foreign exchange control, trade and privatization policy. The 1991 Convertibility Law fixed the peso exchange rate to the dollar at one-to-one parity. Monetary policy could no longer be used as an instrument for other economic policies. Currency could only be emitted in an equal amount to the entry of foreign reserves. The differential exchange rates used for foreign transactions were eliminated (the ratio of official to black market exchange rates was small and very stable, and the extra-normal profits obtained through this means were low). As official exchange rates corresponded more closely with black market rates, the advantage of access to foreign exchange at official rates declined, along with the opportunity and incentives of firms and public officials to engage in corruption in the allocation of exchange. However, the locus of corruption simply shifted; new policy mechanisms were used to generate concentrated rates under the new economic conditions. Common schemes involved money laundering and liquid capital outflows to allow the entry of goods and services and foreign currency. This helped maintain internal prices and the exchange rate stable, but also speculative rents in foreign currency and facilitated capital outflows (Vitelli 2006, 471). The lack of effective controls by the Central Bank, as well as the absence of a normative framework to prevent money laundering, facilitated the illegal entry of money to reduce the costs of accumulating reserves that would back up the currency emission. (Table 3.6.)

A good illustration of these mechanisms is the BCCI, a financial institution specializing in money laundering, that operated in Argentina through the payment of bribes or political contributions and through close relationships with public officials. Limited controls by the Central Bank enabled private banks to set huge differences between passive and active rates (e.g., active rates of 24-30% versus passive rates of 2-3%), which enabled them to appropriate large amounts of deposited savings.
The convertibility system also facilitated rent-seeking in external debt operations. Due to the rigid exchange system, the purchase of external debt increased. Creditors obtained more profits in the internal market than in their markets of origin. This generated financial rents larger than any benefits that could be obtained by investing in productive sectors, generating disincentives for foreign investment. High commissions were usually paid to consultants and intermediaries (Vitelli 2006, 490). Minimum controls were enforced over the purchase of debt, which often involved high and increasing costs for the debtor and exceptional benefits for the creditor.101

Table 3.6. Indicators for Argentina’s political economy and policy rents estimates, 1983-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Trade Rents (Thousands USD$)*</th>
<th>Black market to official market rate</th>
<th>Real wages labor</th>
<th>Real interest rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>1.47611E-05</td>
<td>1.11369109</td>
<td>109.0</td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>0.000578396</td>
<td>1.001690002</td>
<td>135.0</td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>0.058026902</td>
<td>1.4</td>
<td>127.0</td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td>0.117171791</td>
<td>1.671974522</td>
<td>126.0</td>
<td></td>
</tr>
<tr>
<td>1987</td>
<td>0.473452182</td>
<td>1.247165533</td>
<td>114.0</td>
<td></td>
</tr>
<tr>
<td>1988</td>
<td>8.018294285</td>
<td>1.342912778</td>
<td>110.0</td>
<td></td>
</tr>
<tr>
<td>1989</td>
<td>24545.42717</td>
<td>2.611806798</td>
<td>89.2</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>3964416.851</td>
<td>1.424093148</td>
<td>93.3</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>7622028.563</td>
<td>1.111945905</td>
<td>94.6</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>6913167.007</td>
<td>1.102204409</td>
<td>95.8</td>
<td>12</td>
</tr>
<tr>
<td>1993</td>
<td>5806523.841</td>
<td>1.102204409</td>
<td>94.5</td>
<td>9.25</td>
</tr>
<tr>
<td>1994</td>
<td>5471187.906</td>
<td>1.01</td>
<td>95.2</td>
<td>9.75</td>
</tr>
<tr>
<td>1995</td>
<td>4243765.089</td>
<td>1.00020004</td>
<td>94.2</td>
<td>10</td>
</tr>
<tr>
<td>1996</td>
<td>4635312.676</td>
<td>1.01020204</td>
<td>94.7</td>
<td>9</td>
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<tr>
<td>1997</td>
<td>4993792.614</td>
<td>1.01020204</td>
<td>95.0</td>
<td>9</td>
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<tr>
<td>1998</td>
<td>4832061.342</td>
<td>1.001001001</td>
<td>95.0</td>
<td>9</td>
</tr>
<tr>
<td>1999</td>
<td>4424782.019</td>
<td>0</td>
<td>97.8</td>
<td>9</td>
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<tr>
<td>2000</td>
<td>3815392.308</td>
<td>0</td>
<td>100.0</td>
<td>9</td>
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<tr>
<td>2001</td>
<td>3604960.827</td>
<td>0</td>
<td>99.2</td>
<td>9</td>
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<tr>
<td>2002</td>
<td>46400008.85</td>
<td>0</td>
<td>85.4</td>
<td>5.52</td>
</tr>
<tr>
<td>2003</td>
<td>70623166.82</td>
<td>0</td>
<td>83.8</td>
<td>2.34</td>
</tr>
<tr>
<td>2004</td>
<td>62625983.38</td>
<td>0</td>
<td>92.2</td>
<td>3.4196</td>
</tr>
<tr>
<td>2005</td>
<td>68445440.35</td>
<td>0</td>
<td>97.8</td>
<td>8.1116</td>
</tr>
<tr>
<td>2006</td>
<td>80786823.19</td>
<td>0</td>
<td></td>
<td>8.82</td>
</tr>
</tbody>
</table>

Sources: 1) Global financial data: Black market rates are monthly averages for wire transfers from New York to each country. Black market rates are taken from Franz Pick, Pick's Currency Yearbook, New York: Pick's World Currency Report (1951-1995). Data from 1995 are based upon the operational rates of exchange used by the United Nations for personnel in those countries. 2) Global financial data for official rate.

*Rents that accrued to owners of firms protected by tariffs (Montinola 1997). Formula: (total tariff revenues / total value of imports) * (value added of the manufacturing sector)
Argentina’s trade policy has experienced great volatility and significant changes since the mid-1970s. After a partial reversal of commercial opening, trade liberalization resumed by the late 1980s and was deepened during Menem’s administration. Between 1989-1991, custom procedures were streamlined, and there was a progressive reduction in restrictions on imports and import licenses until their complete elimination (Leiras and Soltz 2006, 1-2). In this period, the ability to influence policy decisions over imports and exports generated extraordinary rents while increasing the internal supply of goods without affecting the relative level of prices. Illegal smuggling and trafficking of goods, and phantom sales to access export refunds, helped increase exports, obtain foreign reserves, and expand the currency supply.

Table 8 provides a breakdown of the extra-normal profits that firms received from tariff protection from 1970 – 2006. Rents that accrued to owners of firms protected by tariffs were estimated using the following formula: (Total tariff revenues / total value of imports) * (value added of manufacturing sector). The extra-normal profits for 1989-1999 reached an average of 4,850 million US dollars per year. When the protection was reduced (1991-2002), the level of rents decreased. Different corruption schemes involving the customs system were notoriously covered by the press and investigated by a special investigative legislative committee. Significant cases were the illegal sale of arms to Croatia and Ecuador, authorized through three presidential decrees in 1991 and 1995; and the “gold mafia” case.

The privatization of state assets involved numerous corruption scandals. The most accelerated privatization process took place between 1990-1994, when the main state owned enterprises (including Aerolineas Argentinas, ELMA, ENTEL, Gas del Estado, SEGBA, YPF, Obras Sanitarias de la Nación) were transferred to the private sector, and the main roads were handed in concession. Weak accountability conditions, the concentration of decision-making power in the executive, and the urgency of Menem’s administration to undertake privatization—to solve fiscal problems, but also to take advantage of initial public support and to send a clear signal to the markets about the government’s economic policy—facilitated corrupt transactions (Saba and Manzetti 1997; Manzetti
2000, 154; Ariceta 2004, 53). The Law of State Reform defined the normative framework for privatization. Congress delegated the power to decide all details of the privatization process to the executive.105 The strict deadlines set by the government placed the state at a disadvantage vis-à-vis potential buyers.106 Privatizations were undertaken within weak and often contradictory legal frameworks, and no attention was paid to setting strong regulatory structures. Given the fiscal crisis, the state was weakened, yet office holders could hold significant control over state resources to build informal alliances with private business for mutual benefit.

State owned enterprises were not previously restructured to put them in sounder financial, technical and/or productive conditions, and thus the assets to be privatized were often undervalued. Other common problems included the concentrated ownership of the transferred assets; regulatory and normative deficiencies which harmed consumers’ interests;107 and distortions in the structure of relative prices and economic profitability (Azpiazu 2001, 88). The possibility of securing and preserving reserved markets with oligopolistic conditions increased firms’ incentives to share rents with politicians willing to promote their interests in exchange for achieving the privatization and increasing personal wealth. These deficiencies supported the interests of interlocking government and economic actors and created numerous opportunities for the payment of returns and kickbacks:

Instead of extracting resources and transfer them, the State has given letters of marque to the same beneficiaries of the previous scheme, which now can obtain them directly, without regulatory bodies, without defined national goals, without precautions to prevent the establishment of private instead of public monopolies, and with corruption as form of payment for participating in such a waste of the assets accumulated in public enterprises by generations of Argentines (Verbitsky 1991, 28; author’s translation)

The mechanisms used to induce those rents were irregular, opaque bidding processes. Bidding documents and procedures generated concentrated rents, encouraging corruption. Contractual procedures helped achieve elevated rents. Competition was often restricted to potential participants, or biased in favor of some specific bidder by introducing very restrictive conditions to participate in the bidding processes. Non-competitive bidding or consensual bidding processes in which successful beneficiaries were selected ex ante were also common. As occurred in the IBM scandal, in some cases, beneficiaries were able to influence privatization by directly participating in the elaboration of
the bidding documents (Manzetti 1999). Payment of bribes or kickbacks to influence the concession of public services, changes in contractual conditions after the bidding, agreements among public officials to transfer state assets to specific players, as well as lobbying and pressures were frequent:

The formation of monopolistic or oligopolistic activities with high profitability - supported by both the imperfect nature of markets for such activities as well as the initial guarantees, then compounded by the recurrent changes in the original conditions - is achieved through different modalities of the bidding process and / or the original bidding specifications or the original contracts (Basualdo 2001, 80-81; author’s translation).

A second stage of privatization began in 1995 with the purchase and sale of shares of the newly privatized firms (Azpiazu and Basualdo 2001). This process also generated extraordinary benefits, as those firms that had bought undervalued state assets were able to sell them quickly to materialize their patrimonial benefits (Basualdo 2000, 31). In some cases, these quick sales were the façade to cover up the payment of kickbacks (Vitelli 2006, 517).

The privatization of Aerolineas and Entel illustrate how the formal rules regulating privatization were frequently changed. The general conditions for the transfer of Entel had been set through Decree 420/90 (Feb. 28, 1990). The valuation of assets was irregular and very favorable to potential clients. Before the transfer, the government raised users’ fees to ensure a reasonable return rate for potential buyers; the increase (112% on Feb. 7, 300% on Feb. 27, and 433% on March 9) led to escalating social protest. In response, sectors of the ruling party opposed to Entel’s intervention threatened to withdraw their support. Then, Decree 575/90 (May 30, 1990) introduced modifications in the general privatization framework, and also changed the basic bidding documents of Entel and Aerolineas. In the Entel case, for example, it established a floor of 3,500 million dollars in foreign debt titles and changed the base upon which to estimate future profitability from 3,200 million dollars to 1,900 million. All changes in the bidding documents were negotiated with lender banks, which intended to obtain additional benefits from the state. On April 11, Decree 677/90 altered the selling price, the means of payment, and future profitability of the service, significantly altering the rules for the asset transfer during the bidding. In the case of Aerolineas, the bidding process was modified multiple times, depending on the potential buyers that were best positioned at each moment.
bidding document was issued through Decree 461 (March 13 1990). A new decree with changes to the bidding document was issued fifteen days later (on March 28) as a result of the multiple observations raised by the Bicameral Committee. On May 30, Decree 575/90 introduced the final modifications to the bidding document and raised complaints from some potential buyers. Later on, deadlines were extended through Decree 797 in response to requests from potential buyers who were not able to submit their offers on time. The bid was finally awarded to Iberia-Pescarmona, although the group did not comply with the bidding conditions. Both the bidding document and the contract violated formal rules. The contract violated the recommendation of the Bicameral Committee and the firm included as a transaction cost the money that supposedly had been paid as a bribe. Moreover, the final agreement and the first payment soon revealed that the transfer operation had given the majoritarian control of Aerolineas to the Spanish airline.

The regulation of public utilities’ fees was another mechanism to guarantee elevated rents for privatized firms (Azpiazu 2001, 92). Fees were increased and set under maximum ceilings. As the review of fees was not formally allowed for several years, privatized firms obtained market control over extended periods of time. In addition, a particular interpretation of the Convertibility Law allowed service providers to extract increased rents by dollarizing fees and adjusting them based on the US inflation index (Azpiazu 2001, 93-94).

The concentration of extraordinary benefits that followed privatization gives a hint of the huge incentives for firms to supply bribes to influence privatization decisions. Privatization concentrated capital and ownership at the sector and firm level (Caballero 2007). Moreover, it provided some firms with monopolies or oligopolies in the market, which allowed them to further undermine the state’s regulatory capacity, and to access extraordinary rents beyond the process of privatization itself (Manzetti 1993; 2003, 345). Although it is difficult to identify how many firms benefited from corruption, and whether extra-normal profits were more or less-widely distributed, concentration was evident not only in public utilities, but also production and financial services.112 (Caballero 2007, 89; Basualdo 2000, 89 & 110). Privatized firms obtained higher profits and return
rates than other firms. Between 1994 and 1999, the average profitability of privatized services was 15%, while the average of the country’s 100 largest firms was only 3.4% (See Table 3.7). Finally, privatization substantially changed the structure of relative prices and the power of the public sector to affect those prices (Azpiazu & Vispo 1994; Azpiazu 2002). Simultaneously, it penalized consumers, who were unprotected when privatized firms increased their prices at higher levels than those of ordinary profitability (Azpiazu 2001, 97; Ariceta 2004, 54). Firms only agreed to moderate prices in return for further concessions (e.g., subsidies).

Table 3.7. Evolution of profitability of privatized firms, 1994-1999 (%)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Profitability/ Net Patrimony</td>
<td>17.4</td>
<td>17.3</td>
<td>14.3</td>
<td>15.1</td>
<td>14.0</td>
<td>14.2</td>
<td>15.4</td>
</tr>
<tr>
<td>Road concessionaries</td>
<td>40.3</td>
<td>26.6</td>
<td>19.0</td>
<td>23.8</td>
<td>19.1</td>
<td>s/d</td>
<td>25.8</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>13.7</td>
<td>11.8</td>
<td>10.1</td>
<td>10.5</td>
<td>10.2</td>
<td>10.3</td>
<td>11.1</td>
</tr>
<tr>
<td>Electric power</td>
<td>-0.4</td>
<td>5.8</td>
<td>6.9</td>
<td>7.5</td>
<td>8.3</td>
<td>5.5</td>
<td>5.6</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>13.5</td>
<td>13.3</td>
<td>10.3</td>
<td>12.4</td>
<td>15.1</td>
<td>13.3</td>
<td>13.0</td>
</tr>
<tr>
<td>Water and sewage</td>
<td>20.1</td>
<td>28.9</td>
<td>25.4</td>
<td>21.1</td>
<td>17.1</td>
<td>27.6</td>
<td>23.3</td>
</tr>
<tr>
<td>Profitability/Sales</td>
<td>11.3</td>
<td>13.1</td>
<td>12.0</td>
<td>12.7</td>
<td>11.9</td>
<td>12.7</td>
<td>12.3</td>
</tr>
<tr>
<td>Road concessionaries</td>
<td>11.6</td>
<td>9.6</td>
<td>7.5</td>
<td>9.7</td>
<td>9.4</td>
<td>s/d</td>
<td>9.6</td>
</tr>
<tr>
<td>Natural gas</td>
<td>19.4</td>
<td>17.0</td>
<td>14.6</td>
<td>15.5</td>
<td>15.1</td>
<td>14.0</td>
<td>15.9</td>
</tr>
<tr>
<td>Electric power</td>
<td>-0.4</td>
<td>7.5</td>
<td>8.9</td>
<td>9.3</td>
<td>10.1</td>
<td>6.5</td>
<td>7.0</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>17.0</td>
<td>16.4</td>
<td>13.8</td>
<td>15.5</td>
<td>13.4</td>
<td>12.4</td>
<td>14.8</td>
</tr>
<tr>
<td>Water and sewage</td>
<td>8.7</td>
<td>14.8</td>
<td>15.4</td>
<td>13.7</td>
<td>11.5</td>
<td>18.0</td>
<td>13.7</td>
</tr>
</tbody>
</table>

Source: Azpiazu (2002). */ Average profitability for selected sectors in 1999 was estimated w/o roads concessionaries.

Policy-induced rents were not shared with a larger proportion of the population. Workers’ living conditions deteriorated as a result of rising unemployment and income inequality. After 1993, unemployment increased dramatically (Caballero 2007, 91), reaching 12.2% in the second half of 1994 (Galiani and Gerchunoff 2003, 156). Workers experienced a decline in real wages in the second half of the 90s (Caballero 2007, 100). (Table 3.6 above) Between 1990-2000, the income participation of the poorest 10% of the population diminished from 2.3% to 1.4%, while the richest 10% increased from 35.5% to 36.6%. Poverty levels reached figures never experienced before. The benefits from policies accrued to privatized firm owners rather than to workers and other firms (Azpiazu 2002, 76). Privatized firms show a more regressive income distribution than other large firms; between 1995-1999, the relation between productivity/ average salary (proxy for wealth
allocation between capital/labor) in firms related to privatization grew 13% while in other firms it was 5%. Participation of workers in aggregated value went down to 16.5% from 18.6%. By the end of the 90s, the share of labor in the total aggregated value generated by these companies (16.5%) was less than half the participation in non-privatized firms.

Firms that sought these huge and concentrated profits had strong incentives to share the spoils with public officials. Furthermore, beneficiaries were able to continue exploiting their privileged position in the market after privatization ended. Contractual conditions were constantly renegotiated in equally favorable terms, and regulatory agencies – captured by the regulated interests and disarticulated by the executive – did not enforce their watchdog powers. All these conditions created further opportunities and incentives for corruption.

(ii) Kirchner administration

After 2003, the supply of corrupt commodities reflected changes in the government’s economic policy. In response to the Menemist neo-liberal reform, the Kirchner administration implemented a neo-developmental project. However, in absence of strong political institutions, the redefinition of the limits between state and market maintained the elite cartel corruption system. The main policy instruments used in this period to generate political rents were trade, trust funds, and public works.115

The Kirchner administration implemented an increasingly protectionist legislation, which increased the level of rents accrued to owners of protected firms. Tariff protection instruments remained in use and were combined with an active export tax policy. The main instruments to promote exports were duty-free temporary imports and the drawback of paid import taxes, special reimbursements, financial incentives and trade promotion.116 After 2003, the profits generated by these instruments increased to an average of USD$70,620 million year, which continued to benefit only a small number of firms. The concentration of benefits and limited transparency in their implementation has led to abuse and corrupt schemes.117

An active export tax policy was used in the agricultural market. Public officials sought to create extraordinary rents through price controls and the allocation of export quotas and import
licenses. The peso devaluation and favorable international prices generated substantial profits for landowners and agricultural producers. The state levied high taxes to appropriate the proceeds of production. Following the trend initiated during Duhalde’s government, export taxes on commodities rose during the Kirchner administration.\textsuperscript{118} These taxes allowed the government to obtain significant fiscal resources that were used without oversight for ensuring a stable exchange rate and for discretionary payoffs, thus strengthening executive authority and maintaining the support base of the elite cartel system.\textsuperscript{119} (See Tables 3.8 & 3.9.)

Table 3.8. Rents from agricultural markets for selected products, 1996-2008*  

<table>
<thead>
<tr>
<th>Year</th>
<th>Wheat (USD$ M)</th>
<th>Corn (USD$ M)</th>
<th>Soy (USD$ M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>784.18</td>
<td>2887.45</td>
<td>1320.71</td>
</tr>
<tr>
<td>1998</td>
<td>3422.92</td>
<td>1960.34</td>
<td>2389.19</td>
</tr>
<tr>
<td>1999</td>
<td>1448.93</td>
<td>835.93</td>
<td>1070.43</td>
</tr>
<tr>
<td>2000</td>
<td>--</td>
<td>1921.08</td>
<td>1181.36</td>
</tr>
<tr>
<td>2001</td>
<td>1401.51</td>
<td>577.47</td>
<td>1212.59</td>
</tr>
<tr>
<td>Total period</td>
<td>10137.93</td>
<td>10175.34</td>
<td>8274.4</td>
</tr>
<tr>
<td>2002</td>
<td>1481.24</td>
<td>0</td>
<td>860.50</td>
</tr>
<tr>
<td>2003</td>
<td>2289.92</td>
<td>933.87</td>
<td>1054.05</td>
</tr>
<tr>
<td>2004</td>
<td>1113.55</td>
<td>716.91</td>
<td>818.22</td>
</tr>
<tr>
<td>2005</td>
<td>6187.29</td>
<td>2361.33</td>
<td>1703.40</td>
</tr>
<tr>
<td>2006</td>
<td>5502.75</td>
<td>0</td>
<td>711.62</td>
</tr>
<tr>
<td>2007</td>
<td>2729.97</td>
<td>1921.09</td>
<td>2014.25</td>
</tr>
<tr>
<td>2008</td>
<td>8507.40</td>
<td>4215.06</td>
<td>2342.27</td>
</tr>
<tr>
<td>Total period</td>
<td>27812.12</td>
<td>10148.26</td>
<td>9504.31</td>
</tr>
</tbody>
</table>

Source: Author’s estimate based on official data from Ministry of Agriculture  
* Formula (Montínola 1997): (1-NPC) \* (value of agricultural export) where NPC = farm prices / international prices. */ Since 2002, when tax on agricultural exports were introduced, rents are estimated based on \textit{fob} prices in Argentinean ports rather than \textit{fas} prices for farm prices, as prices in the internal market were distorted by export taxes.

The National Bureau for Farm Trade Control (ONCCA), created in 2005 as a decentralized body without regulatory powers, came to exercise wide-ranging de facto powers over exports of most agricultural products.\textsuperscript{120} New procedures for obtaining export licenses and permits were introduced to ensure impartial and fair treatment (for example, the export registry for wheat was closed for most of 2007-2008; also, a system requiring traders to declare their stocks to manage quantitative control on exports in line with domestic requirements).\textsuperscript{121} However, in practice, the discretionary authority of the body and the potential benefits created incentives for illegal payments to obtain export licenses.
ONCCA was frequently accused of corruption in the management of export licenses (e.g., meat and wheat markets) and the allocation of subsidies. It was first investigated by the Anticorruption Office and then, following citizen complaints, one national legislator filed a criminal complaint identifying shade offices, payment of 15-30% bribes, irregularities in VAT returns, allocation of subsidies to nonexistent producers, and other institutionalized corrupt mechanisms.\textsuperscript{122}

<table>
<thead>
<tr>
<th>Year</th>
<th>Million USD$</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-2007</td>
<td>3,137.8</td>
</tr>
<tr>
<td>2007-2008</td>
<td>7,104.5</td>
</tr>
<tr>
<td>2008-2009</td>
<td>4,211.7</td>
</tr>
<tr>
<td>2009-2010*</td>
<td>5,840</td>
</tr>
<tr>
<td>Total*</td>
<td>20,294</td>
</tr>
</tbody>
</table>


Another distinctive source of corruption was the use of fiduciary funds (\textit{fideicomisos}) to finance infrastructure investments and public works, and subsidize private service providers. Fiduciary funds are contracts through which the state transfers the ownership of state goods, or allocates public funds, to a trustee (generally a federal or provincial credit institution) to pursue a public interest goal to benefit a third party (Lo Vuolo and Seppi 2006, 12; Geler et al. 2007, 6; Uña 2007, 3).\textsuperscript{123} They were created to pursue specific policies, particularly infrastructure investments in the face of severe fiscal constraints, but expanded into discretional use with the rising primary surplus, circumventing controls and evading appropriate transparency and accountability standards (Lo Vuolo and Seppi 2006, 3; Uña 2007, 3). In practice, the intangibility and specific allocation of the assets is not respected, and funds are diverted for political and corrupt uses:

> There are but one of the most sophisticated instruments for the concealment of public funds and for its political use in order to create “private businesses” in the public space (Lo Vuolo and Seppi 2006, 6; author’s translation).

Fiduciary funds have grown enormously during the last decade.\textsuperscript{124} While in 2001 there were only eight fiduciary funds, 16 were identified in 2007; expenditures under these trusts increased by 6,000% during the same period, from $96.9 million to $5,947 million (Uña 2007, 4). Moreover, in 2006, 4.46% of total budget expenditures ($4,178,347,992) came from fiduciary funds.\textsuperscript{125} In some cases,
public trust fund expenditures have surpassed the level of expenditures authorized by Congress (Rinaldi et al. 2005, 4).

Several conditions have facilitated the use of fiduciary funds as a commodity for corrupt exchanges. First, fiduciary funds operate under a complex normative framework. This creates contradictions and risks that violate the stability, transparency and security that should be attached to this figure (Lo Vuolo & Seppi 2006, 15; Geler et al. 2007, 7). Although fiduciary funds were incorporated under Law 24.156 of Financial Administration and Public Sector Control and Law 25.152 of Fiscal Solvency included the obligation to report the flow of funds in the budget, in reality, multiple executive decisions and exceptions have contradicted this legislation and placed fiduciary funds outside the budget circuit. Therefore, fiduciary funds are not consolidated nor integrated into the annual public budget, but submitted as an annex to the general budget law; often, some fiduciary funds are omitted (Rinaldi et al., 2005, 3). This means that the use of fiduciary funds circumvents legislative controls, as well as the rules of budget execution. Moreover, the objectives and beneficiaries of fiduciary funds have been frequently modified. For example, changes in the beneficiaries, without any consultation with the current beneficiaries, have transformed fiduciary funds into a major instrument for subsidizing private firms. Furthermore, there is no regulation regarding information and accountability mechanisms, and the obligation for the Chief of Cabinet to inform Congress periodically on the flows of fiduciary funds (Law 25.827/04) has been systematically violated (Rinaldi and Staffa 2006, 1). Information available is segmented and substantial information is omitted; for instance, no information is provided on investment criteria, beneficiaries, achievement of goals, existence of surpluses etc. (Perez and Rios n.d., 8). Finally, there are no requirements regarding the external audit of fiduciary funds, or control standards to provide accounting information (AGN 2004, 15; Lo Vuolo and Seppi 2006, 19; Geller et al. 2007, 11).

Fiduciary funds have been used to finance large investments in infrastructure (e.g., electricity, gas transportation). Given their nature, the execution of these resources was not subject to the same institutional controls as procurement and bidding processes. Since private parties have interest in
getting these big contracts, this weakly institutionalized procedure fostered illegal transactions. The mechanisms used to enable corrupt exchanges are multiple, including direct public awards for large amounts with no control; over invoicing and increasing costs of public works; provision of goods and services in excess of those estimated in the original contracts; abundance of norms and regulations that make it difficult to identify the flows of money and payments; and cartelization of public procurement processes with a few firms being the recipients of many public contracts.\textsuperscript{134}

The most significant scandal of corruption related to fiduciary funds is the Skanska case.\textsuperscript{135} During Kirchner’s administration, the Ministry of Planning authorized the licensees of the North and South gas pipelines to expand them using money from a public trust fund financed with loans from YPF and BNDES, which would be repaid through a new tax on industrial users of gas. The licensees set a baseline budget and identified the contracting mechanism, to be authorized and overseen by Enargas (the regulatory authority of the sector); there was no public tender but a private bid. The bidding process, corresponding payments, and public works were completed with the certification of the executive’s regulatory body. However, during the bidding process, a group of firms formed a cartel and took advantage of the existence of three different works under the bid. The firms agreed to limit competition, and each firm (Skanska, Contreras Hmnos, and BTU) was beneficiary of the contract for one work. All of the contracts were over invoiced, by 83\% to 152\%. The executive’s internal audit body (SIGEN), under close control of the executive, oversaw the implementation yet did not find any irregularities (Abiad 2007, 100 ff.). In order to obtain the required receipts to disburse funds, as many as 22 phantom firms were used to issue unverifiable invoices for goods and services.\textsuperscript{136} The internal investigation by Skanska found that incorrect costs had been charged to the firm’s accounting record, resulting in incorrect VAT reporting. There were allegations not only of tax evasion, but that “money might have been used for some kind of inappropriate payments” to public officials (Skanska 2007).\textsuperscript{137} The impact on Skanska’s operating income was USD$ 1.7 million.\textsuperscript{138} Estimates by the opposition indicate that approximately $25 million of the $285 million costs of the pipeline were diverted. When accused of corruption and bribery, Skanska publicly stated it had
dismissed the directors involved. In reality, the firm bought the silence of former directors with severance payments and rehired them as informal consultants (Abiad 2007, ch. 12). As result of the scandal, President Kirchner dismissed the head of the gas regulatory authority and the manager of the fiduciary fund agency, but despite the scandal, the next stages of the gas pipelines expansion were also suspected of overinvoicing and corrupt deals.

Fiduciary fund resources were also used to provide opaque and discrentional subsidies to public utilities’ providers. In 2003, 90% of the subsidies to private firms were allocated through fiduciary funds (Lo Vuolo and Seppi 2007, 21). Subsidies from fiduciary funds increased by 65% in 2007 (Cippec 2009, 2). The discrentional authority of the executive to use fiduciary funds under conditions of limited transparency (Cippec 2009, 8) and control makes it easier to distribute subsidies in exchange for illegal payments. Circumventing formal rules, the executive was able to rely on extra-budget instruments to increase state subsidies and to distribute these highly concentrated benefits to a few firms. Moreover, through the discrentional allocation of subsidies, the government was able to sustain the support base of the elite cartel corruption system by maintaining the costs of public services. Regulatory frameworks were constantly changed to benefit both private parties and public officials: while the former kept the extraordinary profits that resulted from privatization, the latter obtained financing and sustained the services’ prices in order to control inflation and avoid social protest. Corrupt exchanges consisted of allocating phantom subsidies to skim off public resources, or using subsidies as a policy favor to firms that did not meet their contractual obligations.

The allocation of subsidies to railway companies through the Transportation Infrastructure Trust Fund provides a good illustration. Subsidies were concentrated in a few firms that received extraordinary benefits, thus increasing the firms’ incentives to pay for not being excluded from the division of spoils. This explains that even firms that failed to comply with their contractual obligations were beneficiaries of large subsidies. (Perez and Rios n.d., 13) Subsidies were substantial for each individual provider, and became the most important component of firms’ income. (Table 3.10) This reduced providers’ incentives for enhancing the quality of services, while
increasing the incentives for influencing policy decisions (Vacarezza 2007). As the state exercised a very lax control over these resources, the risk of corrupt increased. The audit body identified “irregularities in the subsidies distributed to rail concessionaries for a total amount of $1,817 million pesos (US$ 477,466,619) between 2005-2008.” Judicial proceedings and newspapers confirmed that an elite cartel network operated from the Secretary of Transportation to collect money for political activities and personal enrichment.

Table 3.10. State subsidies to railway concessionaries, 2003 vs. 2006 ($ AR pesos)

<table>
<thead>
<tr>
<th>Concessionary</th>
<th>2003</th>
<th></th>
<th>2006</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Subsidies month</td>
<td>Fee-based</td>
<td>Total monthly</td>
<td>Subsidies month (% change 03-06)</td>
</tr>
<tr>
<td>FERROVÍAS</td>
<td>2,729,401.33</td>
<td>1,798,006</td>
<td>4,527,407</td>
<td>5,011,502.65 (+84%)</td>
</tr>
<tr>
<td>UGOFE-San Martín</td>
<td>842,079.70</td>
<td>1,543,299</td>
<td>2,385,379</td>
<td>3,538,258.30 (+320%)</td>
</tr>
<tr>
<td>BELGRANO SUR</td>
<td>2,454.164</td>
<td>538,194</td>
<td>2,992,358</td>
<td>4,077,152 (+66%)</td>
</tr>
<tr>
<td>ROCA</td>
<td>1,929,837.80</td>
<td>5,672,581</td>
<td>7,602,419</td>
<td>6,758,329.06 (+250%)</td>
</tr>
<tr>
<td>TBA</td>
<td>2,402,023.87</td>
<td>8,576,468</td>
<td>10,978,492</td>
<td>9,966,386.64 (+315%)</td>
</tr>
<tr>
<td>METROVÍAS</td>
<td>2,559,127.42</td>
<td>14,672,174</td>
<td>17,231,301</td>
<td>12,539,594.8 (+390%)</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on information provided by SIFER.

4.4 Institutionalized market exchanges: Holding elite cartel networks together

We have established that there are incentives to provide supply and generate demand for corrupt resources in Argentina. However, these are not sufficient conditions to explain the emergence of elite cartel networks as informal corrupt exchange institutions. Other conditions support market exchanges, including reputation, iteration, and monitoring and sanctioning. These conditions help sustain corrupt exchanges by addressing the credible commitment problem. They affect the credibility of those who participate in corrupt transactions and help build confidence and trust between the parties. They also provide sanctioning mechanisms for holding the deals together (Della Porta and Vanucci 1999, 54-55; Rose-Ackerman 1999).
4.3.1 Reputation and political career

Given Argentina’s electoral rules, politicians are elected through party lists, and thus individual reputations with the voters are not very important. What matters is reputation with provincial party bosses, who wield enormous power in the candidate selection process (Siavelis and Morgenstern 2004, 3). Since political parties are weakly institutionalized, Argentine politicians strive to construct a strong reputation for delivering particularistic goods for their provinces.\footnote{147} They seek recognition for generating policy benefits for their provinces and providing individualized benefits such as food, jobs, or grants. Such reputation is key to their political career because it makes them valuable to provincial party bosses, whose main interest is holding power. This helps build reputation not only with party bosses, but also with potential contributors to sustain the party’s electoral and political activities.

One might question whether firms and politicians can engage in long-term relations given the high legislative turnover in Argentina. Reelection rates are extremely low and parties rather than individual politicians are in control of legislative careers. (Jones et al. 2000) As Chapter 4 describes, the turnover in the Chamber of Deputies with each election exceeds 75%. However, this does not mean that politicians have short political careers. To the contrary, they are “amateur legislators” but “professional politicians” (Jones et al. 2000). The legislature is a springboard to higher office. Executive positions at the national and/or provincial levels involve significant control over resources and power to supply corrupt resources. The structure of political careers solidifies politicians’ reputations and helps them engage in long-term relations with potential corrupters. Firms seek to invest in enduring relations with politicians who will be able to exert long-term influence over government resources.

Because political careers are long and require constant sources of funding and resources, politicians have strong incentives to develop long-term relationships with potential financiers. Likewise, private firms have strong incentives to support politicians who will hold power for long periods of time and thus have the capacity to provide them with benefits through government contracts, policy concessions, and other policy instruments over the long term. The structure of
political careers in Argentina helps cement the credibility, reputation and long-term iteration that brings together elite cartel networks and supports informal exchange mechanisms.

4.3.2 Reputation and iteration

Familiarity breeds confidence. Argentina’s informal corrupt market is dominated by relatively few actors. Elite cartel networks are narrow informal institutions that bring together a few economic and political elites that share common interests and interact extensively over the years. Groups of both political and economic elites, connected through more or less extensive networks, share the benefits of corrupt transactions while reducing the uncertainty generated by weak formal institutions. The narrow base of elite cartel networks makes any implicit corrupt contract more credible and visible, because public officials and corrupters are highly likely to be personally close to each other in the informal network:

Each government, with its friends in the business sector, is leading “business” in accordance with the opportunities it has. [...] The matrix of corruption is that each government has its friends in the business sector and directs state action to benefit them.\(^{148}\) Argentina’s industrial base has traditionally been highly concentrated, and relatively few people and firms have entered into the corruption market. Traditionally, a core group of domestic firms had a privileged relation with political elites as beneficiaries of government contracts. Because of these connections, they were able to gain access to extraordinary benefits over time (Schvarzer and Sidicaro 1987, 8; Vitelli 2006, 432; Acuña et al. 2006).\(^{149}\) The relatively close nature of the corrupt market means that politicians are likely to be personally familiar with economic elites, which helps building the politician’s reputation and increases the likelihood of iteration. Economic and political elites meet at the same events, frequent the same social circles, attend the same schools, and are clients of the same law and consulting firms. This familiarity facilitates transactions by enhancing the enforcement of informal sanctions.\(^{150}\)

Elite cartel networks blur the boundaries between public and private sectors, facilitating the circulation of elites. On the one hand, economic elites place their representatives in state bodies with regulatory and oversight functions. On the other hand, public officials often move to the private sector
after leaving office and rely on privileged information to facilitate contacts with those interested in doing business, select reliable partners, or obtain the silence of other actors about their illegal activities. For instance, firms and economic actors that were among the main beneficiaries of the privatization process put their intermediaries in the state bodies in charge of overseeing the process (e.g., Consejo Consultivo Bicameral de las Privatizaciones) (Verbitsky 1992, 22). Furthermore, after privatization, public officials moved toward the regulatory agencies or, in some cases, began private practices that provided services to the same firms they benefited when working in the public sector. Regulatory agencies fell captive to the interests of the same firms they were supposed to be watching and overseeing (Manzetti 2003, 346). From their new positions, political elites continued to share with private actors the benefits of their privileged market position. The example of Menem’s Minister of Public Works, Roberto Dromi, is paradigmatic. One of the ideologists of privatization during Menem’s administration, he became a close advisor of the Kirchner government for the re-nationalization of public services.151

The structure of elite cartel networks changed slightly after 2003, when the narrow base of elite cartel networks became even tighter. New economic elites from the president’s province became part of the corrupt cartel networks. On the political side, four main groups participated in corrupt transactions in the 90s (Vitelli 2006, 478): members of the executive and the president’s inner circle; public officials from the Ministry of Economy; groups of national legislators; and some provincial governors. For example, the institutionalized mechanisms to accelerate administrative procedures in exchange for cash during Menem’s administration were managed by “public officials related to what is called the ‘small tent’ of the Casa de Gobierno (government house) and integrated by some close collaborators of the President”; two ministries and one national legislator were also identified as members of the group.152 These groups were closely interrelated although at different moments they fought for the appropriation of benefits and filtered to the press information and denounces about other groups’ corrupt practices.153 After 2003, the circle of beneficiaries was further reduced and limited to members of the executive and the president’s circle, as well as public officials articulated
around the Ministry of Planning. The inner circle of President Kirchner also was tighter and less extensive:

At the beginning of the Kirchner era, corruption seemed to be more controlled. Some shady deals were stopped and you could tell that corruption was concentrated in a few hands, closer and more tied to the top. Some gigs in the military were cut off, an anticorruption office was created in the ministry of defense ... the government did not go there. Also the work Graciela Ocaña did in the PAMI was very good, and she eliminated may corrupt deals there... There were indeed some signs that the government would not tolerate some deals.\textsuperscript{154}

As for the economic elites, during the 90s, the beneficiaries of corrupt transactions included a larger number of firms, including foreign multinational companies as well as big local-capital firms that had traditionally been state providers. While some of those firms continued to enjoy a privileged relation with the state (particularly private concessionaries and some state providers) (Godio 2006, 305),\textsuperscript{155} fewer, smaller firms--run by newcomers to the private sector with close ties with the president--became beneficiaries of major corrupt transactions during the Kirchner administration (Gasparini 2009). A new industrial bourgeoisie originated in Kirchner’s home province and was incorporated into the informal market of corruption. Also, the relative balance of power between political and economic elites within Argentina’s corrupt cartel networks was redefined over time. During Menem’s administration, economic urgencies made the state more permeable to private firms. The extensive penetration of private interests in state structures, which came close to state capture, was illustrated by the incorporation of hegemonic business figures in the Ministry of Economy and of private sector representatives into the cadres of government agencies in different sectors (particularly Public Works).\textsuperscript{156} After 2003, economic recovery increased the relative power of political actors to set the terms of corrupt exchanges, as well as the conditions under which private firms operated (Olivera & Cabot 2008, 27, 115):

That logic changed with the Menemism, when there was process of state capture. Large economic groups took the state and according to its sectoral specialization occupied the corresponding ministries: prepaid medicine companies were given the health ministry, firms involved in manufacturing weapons were given public enterprises that produced weapons, and so on. What happened after the Alianza’s government was different – it has to do with doing business in some state areas in which specific business groups have large incidence … but it is only in certain areas, not in all of them. Since the Alianza until now, I’d say that we couldn’t affirm that any specific economic group has managed to capture the state … I do not see that now. But in the Menem period, it was everywhere … there was a significant penetration of public functions by the private sector.\textsuperscript{157}
Despite changes in their extension and centralization, elite cartel networks continued to protect, as well as to enrich, political and economic elites from loss of power. Kirchner’s dealings with business seemed more adversarial, but he quickly made favored businessmen junior partners in the regime. Soon after he took office, the balance of power clearly favored Kirchner, who privileged business actors on the basis of personal loyalty and support to government’s policies. The model of interaction in the corrupt market was closer to “crony capitalism” (capitalismo de amigos), in which success in business depended on close relationships between businesspeople and government officials.

One reason for increased concentration is that President Kirchner came from a southern province with particular characteristics. With a small population of 200,000 inhabitants, half of which are public employees, the province of Santa Cruz is known for its patrimonial and insular politics. The state plays a critical role in social, economic, and political life. The province’s industrial base is shaped by the exploitation of natural resources. Since there was no economic elite in the province, Kirchner created it during his mandate as governor by benefiting particular economic actors through state contracts. When he assumed the presidency, he relied on the provincial networks he had created, and those firms became beneficiaries of state contracts at the federal level (Olivera and Cabot 2008, 67 & 107; Godio 2006, 50). To facilitate the workings of the corrupt market, he relied on a few large national firms and particularly on a reduced number of firms with strong links with the power in Santa Cruz. Thus, the state was involved in the purchase of strategic firms (such as privatized public utilities owned by foreign firms) through businessmen with short trajectories and close links with the executive. Kirchner’s administration increased “nationalization” and further concentration of the corrupt elite cartel networks and market.

While Menem embraced a neo-liberal reform agenda, Kirchner pursued a neo-developmentalist economic agenda focused on the general strengthening of the state versus the private sector (Godio 2006). Given the fragile economic situation, and the urgent need to obtain fiscal resources, the Menem administration had been under greater pressure to transfer state assets to the private sector. The high levels of economic growth and the availability of fiscal resources during
Kirchner’s administration gave the government greater independence from private firms and encouraged public officials to seek personal and political gain by purposefully changing government interventions. (Table 3.11) Also, in contrast with abuses occurred during the 90s, civil society was more tolerant and imposed lower costs on government officials, reducing their incentives to investigate (Levitsky 2003, 249).

### 4.3.3 Monitoring and sanctioning

The limited number of actors that participate in the informal corrupt market serves as an informal oversight and sanctioning mechanism. Those who participate in corrupt exchanges usually know who else is involved, and given the small number of actors participating in elite cartel networks, firms may observe and share information about public officials’ behavior and reputation.\(^{160}\) Therefore, it is unlikely that public officials will renege from their deals because information about office holders circulates among private parties. However, competition among firms may drive an office holder to break an informal deal if another firm offers a greater payoff.

The threat of punishment for reneging does exist. For example, a firm that fails to receive preferential treatment in exchange for a bribe can refuse to supply additional funds, or can demand additional guarantees in future transactions (e.g., intermediaries and third-party enforcers). During the 90s, the business community preferred to deal directly with the president to make their illegal political contributions as an extraordinary guarantee that the government complied with their informal commitments.\(^{161}\) Similarly, during the Kirchner’s administration, Spanish businessmen demanded the involvement of the highest-level office holders as an institutional guarantee to ensure that public officials held their part of the informal deals.\(^{162}\)

Public officials can also retaliate. If a politician directs a government contract to a firm with the implicit understanding that money (through bribes or kickbacks) or political contributions will be provided in return, but then does not receive them, the office holder may retaliate in different ways. He can refuse to direct any other project to that firm, withhold subsidies, or attempt to delay payments on the current contract, harming the firm’s cash flow.\(^{163}\) During the Kirchner administration, common
Table 3.11. Elite cartel corruption in Argentina. Patterns of continuity and change

<table>
<thead>
<tr>
<th>Pattern</th>
<th>Actors</th>
<th>Mechanisms</th>
<th>Resources</th>
<th>Concentration</th>
<th>Stability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite cartel</td>
<td>Political: - Menem’s family - Members of the executive and inner circle surrounding the Presidency; - Public officials articulated around the Ministry of Economy; - Groups of national legislators; - Provincial governors Economic: -Local economic groups (e.g., state providers) -Foreign firms (e.g., transnationals)</td>
<td>Overpricing, bribes and returns in bidding processes related with privatization Illegal political contributions Gifts Money laundering and financial operations</td>
<td>-Privatization - Foreign exchange controls - Public contracts and procurement - Import/export controls</td>
<td>State more permeable to private interests Less concentrated More intermediaries More exchanges</td>
<td>Less stable: - More public disclosure &amp; media activism -Less protection - Social sanction – public scandals</td>
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<tr>
<td>Menem (1989-1999)</td>
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<tr>
<td>Elite cartel (with provincial roots)</td>
<td>Political: - Inner circle surrounding the President; - Public officials articulated around the Ministry of Planning; Economic: - Selected local economic groups (e.g., concessionaries of privatized services) - Economic elites from Santa Cruz with close ties to President</td>
<td>Overpricing, bribes and returns in bidding processes related with public works Concentrated discrentional allocation of payoffs (e.g., subsidies) Illegal political contributions Phantom firms</td>
<td>-Fiscal surplus - Concession of public services - Price controls - Re-nationalization - Fiduciary funds - Public works</td>
<td>More leverage of political actors with business as junior partners More concentrated Fewer intermediaries Reduced breadth but larger operations</td>
<td>More stable: - Information control - More protection -More social acceptance</td>
</tr>
<tr>
<td>Kirchner (NK, 2003-2007 &amp; CFK 2007-present)</td>
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forms of threat and retaliation involved the use of government agencies such as AFIP or the UIF to threaten firms with investigations for fiscal evasion or money laundering operations. A quite suggestive example occurred in 2005, when the Spanish business group that owned Aerolineas Argentinas rejected to make an illegal payment of USD 1.5 million to Cristina’s Kirchner electoral campaign and paid USD$ 100,000 instead. As the Secretary of Transportation considered this payment insufficient, he pressured the business group to participate in an irregular purchase of airplanes to hide illegal contributions. When the group refused, the Secretary of Transportation withheld for months the government subsidy to pay for combustible because “they did not understand how things work in Argentina.” Economic elites and the business community are well aware of the politicians’ capacity to retaliate should they fail to comply with their part of the informal deal (for instance, by going public and denouncing the informal corrupt market):

A businessman once explained to me: “Look, I agree with what you do with the issue of corruption, but do not ask me to collaborate. Because behind the corruption practices are Menem and Duhalde, and if I get into the corruption issue, I put my firm in political risk (Ocampo 2002, 290; author’s translation). Sanctioning should not occur very often; we should only observe it in extraordinary circumstances. Although detecting such instances of defection is difficult for an external observer, some examples can be identified. “Normal” corrupt exchanges carry the implicit understanding that money buys at least access, if not influence. If not, this violates the accepted practices of the elite cartel networks, and increases the likeliness that the informal corrupt exchanges and the elite cartel networks will crash down. Those excluded or alienated by the system will have an incentive to go public and/or refuse to support the government.

Argentine public officials do not usually fail to share the wealth through their corruption schemes, and thus instances of sanctioning are rare. However, they often abuse the accepted practice by demanding more funds than expected as part of informal deals. Complaints about the abuses and uncertainties of the informal market of corruption are not uncommon:
Bribery is the oil that makes societies work. But there must be clear rules. And a limit. It's like maximum speed. In Japan, for example, if the road sign indicates 80 Km per hour, no one will say anything if you drive at 95. But be careful if you cause an accident, or you exaggerate and drive at 150. That is not allowed neither by the law nor society. As they do not let a public official receive a gift over USD 100. In Argentina, I think, both the rules and the limit are missing. There is too much oil. In Japan, for quoting again the same example, there is a certain degree of corruption. But the difference with Argentina, besides clarity and limits, is that those who commit an act of corruption feel they are violating the law, but here they don’t.\footnote{166}

Later on, during the Kirchner’s administration, public officials were motivated to maximize corrupt gains. They pressured firms into giving money (“You do not have an idea of how they exert pressure on the firms to get money. They call you. They call and they ask”), requested support and, in case of non-compliance, imposed sanctions (Cabot and Olivera 2008, 27; 132-133). According to some sources, the size of bribes increased from the usual 10% in the 90s to 30-40% (Ibid.), and the uncertainty in the informal market regarding the actual enforcement of informal deals as well as office holders’ compliance also increased.

Notwithstanding these abuses, sanctioning is still rare in Argentina. In most cases, private firms do not actually enforce any sanctions despite abuses of informal contracts by public officials. Usually it is not in the firms’ best interest to formally complain, or to enforce the threat of punishment by going public. Rather, they usually resort to intermediaries that are familiar with the informal market of corruption,\footnote{167} to maintain the protection and benefits of being part of the elite cartel networks. Moreover, Argentina’s office holders maintained their ability to serve as guarantors of corrupt deals because of their discretionary control over valuable resources.\footnote{168}

Canceling a bidding process by invoking tender conditions that were not in the bid specification is an arbitrary act. However, private sector actors accept that conduct and do not resort to the judiciary in defense of their rights because they know that, anyway, they may gain exceptional profits, well beyond the investment made in that or other future concession. The only rational response is then to continue having good relations with the government that provides these benefits. Once those relationships move away from a stable regulatory framework, the only limit is the morality of each person involved, in business and government. It is not the most appropriate scheme to avoid corruption, especially in a field in which billions of dollars circulate and having a national tradition of irregular political financing (Verbitsky 1992, 184; author’s translation).

How can it be possible that no one complains in public? We asked an industrial leader. Eloquent answer: "We are making good money. It makes no sense. [...] Here you should not be a hero, but a leader. What benefits did the Argentine Rural Society obtain from being so confrontational? Did they get something for the agricultural sector?" (Olivera and Cabot 2008, 164-166; author’s translation).
However, minor instances of sanctioning can be identified. A good illustration is the Swifgate scandal. As seen in section 4.1, when Swift-Armor was exhorted by intermediaries closely related to the president (Emir Yoma, one of his brothers in law) to pay a bribe in order to obtain a tariff reduction for importing machinery, the firm asked the US Ambassador to pressure the government. Since this violated accepted informal practice, after trying informal channels of negotiation, the Ambassador decided to go public and submitted a formal complaint letter to the government. Although the case was leaked to the press, the government was able to control the damage by pressing the firm to publicly deny the accusations. The Ambassador never denied his complaint and publicly acknowledged the impact of his intervention when affirmed “things will improve” because “many cases have already been solved, and other obstacles and hurdles will be overcome.” The formal investigation by the Legal Counsel and the Solicitor General’s Office (Procuración del Tesoro de la Nación) was archived, and none of the public officials involved were prosecuted. The oversight bodies, however, reproached the firm for having resorted to the Embassy (Verbitsky 1991, 76). Following the scandal, Menem purged a number of ministers and aides, including half of his cabinet.

Despite the prevalence of unilateral governing styles, office holders seldom alienate potential political allies. This gives Argentina’s elite cartel networks more stability over time. For example, despite his political antagonism, even former President Menem was able to bargain with the Kirchner government to delay judicial processes for corruption charges in exchange for his political support in the Senate (Gasparini 2009). The ultimate goal of elite cartel networks is preventing competition. Sanctioning on the political side of the market usually occurs when someone violates these expected norms and decides to compete politically. In these cases, under increasing press scrutiny, the political community withdraws their support, activates formal oversight mechanisms, and leaves the defectors pay the consequences of corrupt practices.

An informally institutionalized political setting facilitates credible informal corrupt exchanges. In Argentina, politicians have long careers, so they have strong incentives to construct solid reputations that will endure over time and that can develop sanctioning mechanisms. The
importance of family and friendship also helps to enforce informal deals. In short, elite cartel networks accommodate the formal prohibitions of bribery and extortion, but reflect the private parties’ desire to influence politics and politicians’ desire for money and resources for their careers. They complement and/or replace formal institutionalized channels of participation in the political market, while competing with formal institutions of accountability.

5. Elite cartel networks at work: Case studies

This section illustrates the operation and internal logic of elite cartel corruption. The IBM and the Entel cases show the relationships between state and economic elites when the process of neoliberal reform significantly changed the formal rules of the game during Menem’s administration. The public works case illustrates the role of regional loyalties in the operation of elite cartels, and the changes in the scope— who could participate in the elite cartel networks and who could not – and mechanisms of corruption that took place after 2003. The Siemens case illustrates the continuity of elite cartel networks across different governments, as well as the imbrications between money politics or grand corruption and entrenched bureaucratic corruption. Although the vehicles and mechanisms of corruption changed over time, all cases show that Argentina’s elite cartel corruption stayed focused on a relatively narrow group of people with the purpose of ensuring limits on competition.

5.1 Menem’s state reform on the verge of capture (1989-1999): IBM & Entel

Peronist Carlos Menem took office in 1989 and launched a state reform process that, under conditions of limited executive accountability, facilitated corrupt transactions. Many corruption scandals during his administration were related to the privatization of state assets and state-owned companies. In this period, corrupt elite cartel networks consolidated, bringing political and economic power and interests together. A growing alliance between political power and corporate wealth was critical for building an elite network strong enough to hold power and to pursue the reform agenda. The privatization of Entel and the IBM scandal illustrate the operations of the elite cartel during this period.
5.1.1 Entel: Privatization of public utilities marred by corruption scandals

Entel (Empresa Nacional de Telecomunicaciones) was one of the first state-owned companies that the Menem’s government decided to transfer to the private sector. In 1989, Decree 731/89 established the division of the country’s phone network in two separate geographical areas, to be served by different private licensees. Two corporations (Sociedad Licenciataria Norte S.A. and Sociedad Licenciataria Sur S.A.) were transferred the necessary assets to supply the phone services before the final allocation of the Entel’s shares. Roberto Dromi was the Minister of Public Works responsible for overseeing this policy area, and Maria Julia Alsogaray (from Menem’s ally party UCEDe) was the appointed receiver (interventora) of the state company in charge of the privatization. In 1990, the two areas were sold to Télécom-Stet (French Italian consortium) and Spain’s Telefónica through an international competitive bidding process. The total value of the sale was US$7.3 billion, including the retirement of US$5 billion in foreign debt. Each company was given an initial 7-year monopoly. The privatization was completed in a record time through atypical mechanisms. The objections of the oversight bodies were ignored and the bidding conditions changed multiple times through several executive decrees. Phone fees were increased by 433% to increase providers’ profits (Galasso 2005, 17). Even the final contract was modified to incorporate additional demands from the bidding’s winners and to ensure that the government’s timeline was fulfilled. The privatization involved the largest debt swap in the world in highly beneficial conditions for the participating banks. While the privatization conditions ensured high profitability for the private firms, it did not guarantee reasonable prices, significant investments, or the quality of the provided services (Verbitsky 1991, 159).

Multiple irregularities took place during the privatization process as well as Alsogaray’s management of Entel. The US consortium interested in taking part in the bidding process (Bell Atlantic-Manufacturer Hannover Trust) denounced that public officials had requested large bribes to allow them to participate. Although none of the European firms that won the bid acknowledged the payment of bribes, subsequent investigations in Italy revealed that Stet had bribed the Ministry of Foreign Affairs to mediate with Argentine public officials (Manzetti 2000, 154). Other investigations
revealed irregularities in Entel’s inventories of assets to be transferred to the private sector, violations of the bidders’ rights, and circumvention of control by the regulatory entity (Comision Nacional de Telecomunicaciones).\(^{178}\) Although the privatization did not include radio broadcasting, a real state property owned by National Radio and valued at USD\$108 million, which had been unlawfully incorporated into Entel’s assets, was irregularly transferred in November 1990 to one of beneficiaries of the bidding process. After the transfer, an expensive housing project was undertaken in the property. Furthermore, Maria Julia Alsogaray was also accused of fraud to the state for hiring an external legal firm during her tenure as receiver, circumventing Entel’s own internal law department.

The most significant corrupt practices involved the embezzlement and misappropriation of funds. Alsogaray approved payments to some of Entel’s suppliers while disregarding others. She approved paying USD\$ 10 million to Pecom Nec when the real debt was US\$ 1 million, and another payment of USD\$ 9 million for a USD\$ 900,000 debt; she also approved a USD\$63 million payment to Siemens. These payments were not registered in Entel’s accounts. A presidential decree gave the receiver great discretionality to make payments personally, which was used to articulate an illegal system of payments to some private firms in exchange for large bribes to Entel’s office holders. Illegal payments were hidden through non-registered payments as well as fake or duplicated promissory notes. A security box with Entel’s notes for USD\$400 millions was found in the Banco Nación in 1992. Other firms such as Pirelli, Sade, and Telettra also benefited from these payments. Prosecutors of the case estimated that illegal payments had reached USD\$100 million.\(^{179}\) An investigation by the internal audit body recommended filing a criminal complaint. However, President Menem’s neutralization of the oversight bodies prevented legal proceedings against Alsogaray. Entel’s public officials also acknowledged to the firm Meller SA a debt larger than the real one and paid it in cash, violating the legal requirement of paying with bonds. Investigations revealed that the documents verifying the debt were never gathered, partial payments already received by the firm were not estimated, and the unusual debt increase from 1,621,312.47 pesos in 1989 to 57,650,463.07 in 1996 was never justified.
Maria Julia Alsogaray became a symbol of the Menemist period and its corrupt practices. By 2010, she was involved in at least ten judicial cases regarding corrupt practices. Her patrimony grew significantly during her tenure. She was also accused of corruption-related crimes during her appointment as Secretary and Minister of Environment, as well as regarding the institutionalized bonuses to high-level office holders during Menem’s administrations. Despite accusations of corrupt practices and investigations since the early 90s, she was not punished; instead, she was appointed to other public offices. She only stepped down when Menem left office in 2009. Most office holders involved in the Entel scandal (including the Minister of Public Works) have been acquitted of most offenses. However, after 20 years, Maria Julia is still under investigation for those charges, and facing oral trial. The only corruption-related crime for which she has been convicted and sentenced was illicit enrichment. In May 2004, she was sentenced to 3 years in prison, 6-year disqualification for public office, and to pay USD$ 500,000 that she had perceived for a consulting service that she could not justify, as well as $650,000 pesos related with the payment of illegal bonuses. Out of 508 judicial files for illicit enrichment opened in the judiciary between 2001 and 2009, she is one of the few public officials convicted. This is in part because Maria Julia was a political outsider; one of the economic and political elites, she did not belong to the traditional parties’ networks and did not benefit from the institutionalized mechanisms that protect them. Her close connection with President Menem was the only link that protected her from investigation. Without political protection, in April 2005, from preventive jail, she publicly denounced Menem’s involvement in the system of informal bonuses through a public letter published in the newspapers. Her testimony helped to prosecute the former minister of economy and former President Menem on those charges.

5.1.2 IBM: business – political – bureaucratic networks of corruption

In the 90s, IBM Argentina was an important government contractor. In 1996, government contracts represented 41% of the firm’s USD$621 million profits (Rodriguez 1998, 46). IBM paid large bribes to public officials in exchange for huge government contracts for computerizing several state
agencies, including Argentine Nation Bank (Banco de la Nación Argentina, BNA), Tax General Directorate (Dirección General Impositiva, DGI), and the Social Security National Administration (Asociación Nacional del Seguro Social, ANSES). This case illustrates the complex informal corrupt networks that brought together business, political and bureaucratic interests. Business actors sought to limit market competition and ensure their significant profits and market position by relying on their connections with office holders, who in turn obtained significant “contributions” while ensuring support for their policy agendas.

The most significant government contract involving corrupt payments was the computerization of 525 offices of the BNA in 1993 (Centennial Project). Investigations found that there was an agreement between office holders and IBM’s executives to select the firm for a USD$ 250 million contract when the real cost of the project was only USD$ 129 million. In exchange, bank’s executives and office holders received illicit payments from the firm. Moreover, bank’s executives committed to pay an additional amount of USD$ 80-120 million to IBM. The public bid document (public bidding process 60/93) was manipulated in order to limit competition so that IBM’s offer was selected, and to prevent any other potential competitor from winning the contract.\footnote{186} Phantom providers facilitated the payment of more than USD$ 21 million in illegal commissions \textpare{\cite{Rodriguez 1998, 98}. Most of the contracted services were never provided to the bank, and the contract was finally declared null after the scandal was made public.}

Two other contracts between IBM and the federal government were also part of this network of corrupt transactions.\footnote{187} A USD$60 million contract without a competitive bidding process was signed between IBM and ANSES in 1994. Investigations found that the IBM had also paid bribes to obtain this contract and the mechanisms were similar to the other cases. The firms that supposedly acted as IBM’s providers of goods and services were actually phantom firms formed by former ANSES’ officials that never provided those services.\footnote{188} The last federal contract that involved the payment of large amounts for political favors was with the DGI. In April 1994, the head of DGI, Ricardo Cossio, contracted IBM for 425,088,000 pesos and 88,547,000 pesos to provide computer
services. IBM relied on the same phantom firms as for the BNA contract to justify inexistent services for 4,700,000 pesos, paying illegal commissions to the public officials that facilitated the contract. In this case, President Menem’s DNU 507/93 approved the direct contracts without a competitive selection process.

According to the investigations, the long-term professional and personal relations between office holders and IBM’s executives made the informal deals possible. The explicit political decision to prevent any bureaucratic delays facilitated the operations of the corrupt cartel network. The required administrative controls for public bidding processes were systematically violated. For example, the Ministry of Economy did not include the BNA’s project in the budget law, and the BNA did not conduct any assessment of the project’s costs; also, the board did not submit any of the decisions on the use of public funds to legislative control (Rodriguez 1998, 49 & 51). Moreover, political elites were able to neutralize the existing control mechanisms. For instance, the required ex ante compulsory control by the Secretary of Public Administration (Decree 990/93) was neutralized; later on, several decrees undermined the body’s competencies to oversee contracts. The intervention of the external and internal audit agencies took place two years after the BNA project had started. Although they identified several irregularities, the information produced by the bodies was not used to undertake any further actions (Rodriguez 1998, 116 ff.). Those refusing to play the corruption game were punished: the BNA’s Deputy General Manager and the Systems Manager, who expressed their opinions against the proposed computer system and the contracting procedures, were removed from their offices along with other public officials that shared their views. The DGI’s public officials who prepared the criminal complaint for tax evasion—which revealed the corrupt transactions—were removed from their offices, while the BNA’s vice-president, accused of participating in the corrupt transactions, was appointed as head of the DGI (Rodriguez 1998, 87).

A special legislative committee formed in 1998 investigated the contracts. In its final report, the committee found Menem’s Minister of Economy, Domingo Cavallo, responsible for approving irregular contracts issued by agencies under the authority of the Ministry; omitting the
appropriate controls of the procurement processes; allowing ongoing violations of formal rules; and knowingly appointing people that had been involved in prior illicit activities. However, he was neither indicted in the judicial cases nor subjected to any type of administrative sanction. A criminal complaint regarding the BNA’s contract was submitted in 1994. In the DGI case, a criminal complaint was submitted in May 1996 by several legislators. This is one of the few corruption cases in Argentina in which the accused have been convicted and sentenced. However, the delays and multiple irregularities in the judicial investigation revealed the mechanisms that institutionalize corruption in Argentina. The trial never took place and only two of the accused admitted what they had done. (See Chapter 8)

5.2 Kirchner’s crony capitalism (2003-2007): Public works and regional loyalties

This case illustrates the role of regional loyalties in elite cartels of corruption. In Argentina, public works projects have been a critical resource for the discretionary distribution of political payoffs as well as a major commodity of the corruption market since 2003. There has been a significant increase in the amount of state resources allocated to public works and infrastructure. These resources were discretionally managed by the Ministry of Planning, which was a critical piece in the distribution of discretionary payoffs to the provinces, as well as in shaping the networks between private firms and the state. Created in 2003, the Ministry absorbed competencies and resources (in the areas of transportation, communications, mining, energy, sewer systems and public works, housing, water, roads and planning of public investments) from other ministries and the presidency. The allocation of resources increased enormously during Kirchner’s administration. (Table 3.12.) The systematic underestimation of the national budget increased availability of resources, which the executive could approve and execute without legislative control. Despite the huge amount of funds, there were no significant improvements in public infrastructure.

Government contracting of public works projects during this period was characterized by political corruption: “hundreds of millions, returns or improper commissions, discretionary management of funds, and pressures to sign contracts with some firms and not with others” (Cabot
and Olivera 2008, 30-31). Some of the most notorious corruption scandals were related to the Ministry of Planning and the execution of public works. High-level public officials of the Ministry enlarged their private assets through multiple corruption cases (Abiad 2007, 33, 177). Although the Minister of Planning was involved in nine judicial cases of maladministration and corruption by the end of the Kirchner administration, he continued in office when Cristina Fernandez de Kirchner became president. In 2010, as part of a judicial investigation, the existence was revealed of an informal corrupt network operating from the Secretary of Transportation to obtain political contributions and cash from private firms through irregular contracts and other illegal transactions.\(^{205}\)

The Ministry also played a critical role in the informal bilateral relations between Argentina and Venezuela, which were suspected of irregular transactions.\(^{206}\)

**Table 3.12. Investment in public works per type, 2002-2008**

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total annual</td>
<td>759</td>
<td>1.877</td>
<td>3.924</td>
<td>8.160</td>
<td>10.770</td>
<td>12.927</td>
<td>17.913</td>
<td>100%</td>
</tr>
<tr>
<td>% Increase</td>
<td>147%</td>
<td>109%</td>
<td>108%</td>
<td>32%</td>
<td>20%</td>
<td>39%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selected public works categories</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roads</td>
<td>224</td>
<td>477</td>
<td>1.054</td>
<td>1.903</td>
<td>2.357</td>
<td>3.208</td>
<td>4.553</td>
<td>25.42%</td>
</tr>
<tr>
<td>Energy works</td>
<td>131</td>
<td>423</td>
<td>447</td>
<td>756</td>
<td>1.821</td>
<td>3.476</td>
<td>19.40%</td>
<td></td>
</tr>
<tr>
<td>Housing</td>
<td>375</td>
<td>703</td>
<td>1.170</td>
<td>3.095</td>
<td>3.224</td>
<td>2.928</td>
<td>2.975</td>
<td>16.61%</td>
</tr>
<tr>
<td>Water-sewage investments</td>
<td>8</td>
<td>20</td>
<td>77</td>
<td>103</td>
<td>481</td>
<td>626</td>
<td>1.158</td>
<td>6.46%</td>
</tr>
<tr>
<td>Railway infrastructure</td>
<td>68</td>
<td>565</td>
<td>311</td>
<td>451</td>
<td>1.021</td>
<td>5.70%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hydraulic works</td>
<td>45</td>
<td>237</td>
<td>311</td>
<td>476</td>
<td>638</td>
<td>687</td>
<td>847</td>
<td>4.73%</td>
</tr>
</tbody>
</table>

Source: Ministry of Planning

While some of the corrupt exchanges around the Ministry were related to privatized services (e.g., roads) and transnational firms (e.g., the Skanska case), investigations also revealed that the beneficiaries of public works' government contracts were a few firms which were based in the province of Santa Cruz, were closely related to high-level public officials and the president, had close commercial relations amongst them, and were able to operate as a cartel or pool\(^{207}\) (Abiad 2007; Carrio 2009; Lopez Masia & Solis 2009). Figure 3.1. illustrates the provincial base of beneficiaries at
Figure 3.1. Beneficiaries of road infrastructure investments (Decree 508/04), 2004
Source: Rios and Perez (2005, 8)
the national level. These firms did not comply with the requirements to be awarded government public contracts and had been involved in illegal practices used to hide corruption (Abiad 2007, 241). The cartelization of public works facilitated corrupt behaviors such as over-invoicing, irregular bidding, bribes and returns:

They are always the same firms which, operating as a holding, are budgeting over the forecast, imposing the price, rising significantly public investment costs, with a total passivity of the contracting state (Ríos 2005, 25; author’s translation).

Phantom invoices were used generate fictitious costs and withdraw money from fiduciary funds, complying with the formal requirements (Cabot and Olivera 2008, 26, 32-33).\(^{208}\) After the Skanska scandal, private firms also started using cash to pay bribes and commissions, although this involved additional costs.\(^{209}\) Over-invoicing became the main mechanism for enforcing corrupt deals, and bribes made over-invoicing possible. According to one businessman: “the bribe is a toll to enter into the public works. But without over-invoicing, there would be no public works to begin with” (Abiad 2007, 12). Firms did not bribe for winning bids, but rather colluded to simulate competition in the bidding process, and the state ended by over-paying for those contracts:

The favored firm keeps the corresponding gain, so that the public officials involved has their incentives and the gap -the 5 above the price- can be returned to the ministry that organized the investment. The bribe is a stimulus to spread the official's pocket; the over-invoicing is what gets the public work done. The over-invoicing is the system (Ibid.; author’s translation).

Great disparity in construction costs across provinces is a good indicator of corruption in public works (Golden and Pizzi 2005, 2006). In the Federal Housing Plan, the gap between the maximum average housing costs ($142,851.81 by ACRI Construcciones from Santa Cruz) and minimal average costs ($37,781.51 from Salta’s Vicente Moncho Construcciones) was quite significant. There were also differences in costs per unit ($56,000 in Santa Cruz versus only $30,000 in Salta). (Rios and Perez 2005.) Generally, the actual costs per unit were higher than the costs initially estimated; in some extreme cases, these disparities made the construction costs higher than sale prices.\(^{210}\) Significantly, firms that concentrated most of the contracts were firms based in Santa Cruz that had extremely high average costs compared to the average costs for the entire country ($91,802.04 compared to $44,531.27) (Rios and Perez 2005, 15) (Table 3.13.) In addition to costs overrun, which
often hid returns and bribes, the concentration of contracts in a few firms cartelized public works. Evidence of the existence of a cartel was provided by the scant differences in the costs estimates presented by different bidders;\textsuperscript{211} the presence of the same firms in different bidding processes; alternation of a few firms as beneficiaries of government contracts; actual entry barriers for new firms; and overprices (Ibid.).

Table 3.13. Total amount allocated to top ten firms at national level. Federal Housing Plan I
(as of 07/31/05) (\$ AR pesos)

<table>
<thead>
<tr>
<th>Firm</th>
<th>Total cost approved</th>
<th>Total number of houses</th>
<th>Average cost per house*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gotti S.A.†</td>
<td>$ 58.131.902,80</td>
<td>459</td>
<td>$ 126.649,03</td>
</tr>
<tr>
<td>Esuco S.A. †</td>
<td>$ 45.153.579,77</td>
<td>352</td>
<td>$ 128.277,22</td>
</tr>
<tr>
<td>Torraca Hnos. Srl. †</td>
<td>$ 40.493.799,90</td>
<td>292</td>
<td>$ 138.677,40</td>
</tr>
<tr>
<td>Roque Mocciola S.A.</td>
<td>$ 35.714.764,13</td>
<td>550</td>
<td>$ 64.935,93</td>
</tr>
<tr>
<td>Juan Felipe Gancedo S.A. †</td>
<td>$ 31.142.803,05</td>
<td>261</td>
<td>$ 120.355,57</td>
</tr>
<tr>
<td>Acri Construcciones S.A. †</td>
<td>$ 23.284.845,30</td>
<td>163</td>
<td>$ 142.851,81</td>
</tr>
<tr>
<td>Vicente Moncho Construcciones</td>
<td>$ 20.779.830,75</td>
<td>550</td>
<td>$ 37.781,51</td>
</tr>
<tr>
<td>Eca S.A.</td>
<td>$ 20.755.030,87</td>
<td>332</td>
<td>$ 62.515,15</td>
</tr>
<tr>
<td>Iaco Construcciones Sa</td>
<td>$ 20.367.810,94</td>
<td>171</td>
<td>$ 119.110,01</td>
</tr>
<tr>
<td>Oriente Construcciones S.A.</td>
<td>$ 20.071.859,44</td>
<td>314</td>
<td>$ 63.923,12</td>
</tr>
<tr>
<td>Sub-total sample</td>
<td>$ 316.166.226,95</td>
<td>3,444</td>
<td>$ 91.802,04</td>
</tr>
<tr>
<td>Grand total / Global country</td>
<td>$ 2,193.298,836,23</td>
<td></td>
<td>$ 44.531,27</td>
</tr>
</tbody>
</table>

Source: ARI report based on data available at http://www.vivienda.gov.ar/pfconstruccionobras.xls */It has to be remember that the highest contracted cost per house was AR$56,000. †/ Firms based in Santa Cruz

Weak oversight and the limited enforcement of formal requirements set by the National System of Public Works facilitated corrupt exchanges:

Argentina’s public works is divided among a handful of companies. The administration of the funds is concentrated in one area, the Ministry of Planning, without efficient control agencies. [...] The formal rules regulating the activity are convoluted, full of exceptions. And the preferred financial mechanism, fiduciary funds, has limited control. The combination is ideal for bids to be fixed in advance and to pay 10 for which is worth 5. The difference is lost between over-invoicing and bribes, which are not synonymous (Abiad 2007, 11; author’s translation).

Projects were often approved without technical ruling; the formal requirement of reporting to Congress is systematically violated; approved projects are modified ex post facto; the list of public works is not incorporated into the budget; and there is limited effective control over the approval and execution of projects (Rios and Perez op. cit., 4). Furthermore, the appointment of the Minister of Planning’s wife as Adjunct Auditor in the internal audit body (SIGEN) contributed to ensure that projects were executed with limited control and accountability.
5.3 Continuity and change of elite cartel networks: The Siemens case

The relationship between Siemens and the Argentine state illustrates the persistence of corrupt elite cartel networks across different governments. Entrenched informal networks brought together economic and political elites for their mutual benefit and, although governments changed, business actors continued to pay reasonable bribes and commissions to public officials and intermediaries to perpetuate major policy favors. Permissive rules allowed corrupt transactions and did not punish those who committed them. 212

Siemens, a transnational engineering firm based in Germany, became a major government contractor. The payment of bribes and commissions for the firm to gain state contracts was institutionalized under different administrations. According to investigations by the US Department of Justice and the Securities and Exchange Commission, between 1998 and 2007, Siemens paid USD$ 1,000 million (including more than USD$70 million in bribes to high-level public officials) to become beneficiary of a contract to digitize the national identity card (Alconada Mon 2011, 17). 213

The contract for USD$ 1,260 millions involved significant over-invoicing to hide the payment of illegal commissions. 214 According to those investigations, in 1998-99, President Menem received a direct USD$16 million bribe to facilitate the contract. The firm also bought influence by spreading approximately USD$30 million among key office holders in the administration, including the former Minister of Interior, Carlos Corach, and the former Director of Migrations, Hugo Franco (Alconada Mon op. cit., 27, 55). 215 A former Ministry of Justice and Judge of the Supreme Court (Rodolfo C. Barra), who was simultaneously a Siemens’ consultant and an advisor to Menem’s government, facilitated the transactions for a legal fee of SD$ 5 million (Alconada Mon op. cit., 49).

By the end of Menem’s government, the contract execution was poor. When De la Rúa’s government put the contract on hold to save a large amount of state resources, only 3,187 documents had been produced (Alconada Mon 2011, 77). The firm tried to hold the informal deal, and even the government of Germany intervened in favor of Siemens, arguing that the contract termination violated juridical certainty and put diplomatic relations between the countries at risk. 216 The firm was
finally able to keep the contract by spreading an additional USD$6 million to public officials close to the president (including one minister). However, the case illustrates the ability of Argentina’s public officials to abuse the accepted practice and increase their demands to private actors (Alconada Mon 2011, 31). In May 2001, the government decided to terminate the contract, but during the following four years, Siemens’ staff received threats to force them to fulfill their commitment to pay additional bribes (Alconada Mon op. cit., 85, ch. 10). As a result, between 2002-2004, Siemens continued to pay approximately USD$ 23 million in “belated bribes.” Specifically, a former executive declared that the firm’s CEO had instructed him to deposit USD$10 million in a Swiss bank account to reactivate the contract during Duhalde’s administration in 2002-03. In the course of judicial investigations in Germany, several witnesses declared that illicit payments continued until January 2007 (Gasparini 2009, 32).

Despite the irregular transactions, Siemens continued to be a privileged government contractor and kept close relations with office holders. During Kirchner’s administration, Siemens signed government contracts for USD$3,400 million. The executive responsible for negotiating those contracts, the Director of Operations in Latin America, was one of the few firm’s executives investigated for the payment of bribes. Siemens won some of those contracts in association with Electroingenieria, one of the Argentine firms that were part of the new economic elite privileged by the Kirchner administration and suspected of corrupt transactions (Gasparini 2009, 17; Alconada Mon 2011, 187). Some of the intermediaries involved in the payment of bribes in the 90s reappeared representing other companies during this period (Gasparini 2009, 32).

In 2005, investigations uncovered bribery and business irregularities in Siemens’s operations. The firm was accused of making illicit payments for approximately USD$2,500 millions to obtain government contracts in Germany, Greece, Argentina, Italy, Nigeria, Turkey and former USRRS republics. In Germany, a high-level employee of Siemens was convicted and sentenced to two years probation and a USD$151,475 fine in 2008. In the US, Siemens was sentenced to pay USD$1.34 billion in fines to American and European authorities to settle charges that it routinely
used bribes and slush funds to secure huge public works contracts.\textsuperscript{226} Despite all the evidence and the acknowledgement by Siemens that the firm paid bribes during Menem’s presidency,\textsuperscript{227} no public official has been indicted or convicted for these corrupt exchanges in Argentina, nor there was any legislative investigation.\textsuperscript{228} The judicial case is still open and illustrates the level of impunity that results from the institutionalization of the informal corrupt market. In August 2004, as part of the investigations, the judge requested the declaration of former President Menem, former Minister of Interior, public officials from the Ministry of Interior, and two Siemens’ executives. However, the lawyers for the defense appealed this request and asked to have the case declared null. It took 13 months for the judiciary to solve and deny the appeals, and the declarations never took place.\textsuperscript{229} In 2008, following the investigations by the German judiciary, the Anticorruption Office asked the judge to issue a search warrant for the firm’s offices in Buenos Aires to obtain and preserve evidence of corrupt transactions, and exhorted the judge to obtain further information from the German judiciary as well as to adopt some additional measures (including a USD$ 50 million embargo); the agency also asked to broaden the investigation to include other people suspected of being involved in the transactions.\textsuperscript{230} Despite this intervention, the case has not been prosecuted any further.

6. Conclusion

The analysis presented in this chapter confirms the proposed hypotheses about the development of corrupt exchanges and their complex organization. Evidence shows that Argentina’s executive branch is the focus of potential corrupters’ largesse. Given the strong capacity of public officials to manage state resources discretionally and to influence policy decisions, corrupters have incentives to provide a supply of resources. On the demand side, political competition in a weakly institutionalized setting increases the costs of doing politics and therefore, public officials need resources to further their political careers.

In absence of strong predictable formal rules to facilitate the exchanges (because corrupt goals are publicly unacceptable and weak formal institutions hinder cooperation), actors craft
informal mechanisms that sustain these interactions: elite cartel networks bring political and economic elites together to share corrupt benefits by providing informal mechanisms that ensure credible contracting to support corrupt exchanges. Professional politicians with party-oriented political careers have incentives to develop a reputation, to engage in repeated interactions, and to develop secure contracting mechanisms that hold corrupt deals together. Private actors also benefit from informal mechanisms to support politicians who are in power for the long haul and who can provide them with benefits. This chapter has also presented evidence of how these informal rules are enforced. Although rare, instances of sanctioning follow rule-breaking by either public officials or private parties. While trust, familiarity, or the strength of reputations provide credible commitments for actors to maximize their goals, these are not the “right” kind of commitments that ensure effective accountability and the quality of democracy.
Chapter 2. Endnotes

1 Author’s interview, Buenos Aires, May 13, 2005.
2 Control of the state was achieved either by taking power directly (through the authoritarian control of the state) or through corrupt mechanisms that ensured obtaining extraordinary political rents.
3 This is a frequent assumption of traditional rent-seeking theory. In the best possible scenario, the theory assumes that public officials seek to maximize their votes and only moderate rent extraction to the extent that it affects their electoral possibilities (see for example Persson and Tabellini 2003).
4 The CPI measures the level of corruption perceived by experts. It ranges from 0 to 10, where 0 is very corrupt and 10 is very honest. In the Southern Cone, only Paraguay performs worse than Argentina over time. In 2007, Argentina received a score of 2.7 and was number 105 out of 179 countries; in 2008, the score was 2.8 and ranked 109 out of 180 countries (La Nación November 20, 2009). More information on the CPI can be found at http://www.transparency.org
5 The Worldwide Governance Indicators (WGI) report aggregate and individual governance indicators for six dimensions: Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; and Control of Corruption. Percentile ranks indicate the percentage of countries worldwide that rate below the selected country. Higher values indicate better governance ratings. Governance scores range between -2.5 and +2.5. More information on the methodology of this index can be found at http://info.worldbank.org/governance/wgi/index.asp
6 Aggregate country indicators have some limitations. First, they only show small differences over time. For instance, the CPI places Argentina in similar positions during Menem and the beginning of De la Rúa’s administrations. Second, they change as a result of factors other than the level of corruption. In 1995, while implementing the structural reform program, Argentina scored 5.2. After 2001, the CPI plumbed down to 2.8 in 2002, and 2.5 in 2003 and 2004. A similar abrupt change was reflected by the WGI indicators: Argentina moved from a percentile rank higher than 50th in 1998 (54.4%) to less than 30th (26.7%) in 2002. In 2006, despite the improvement in governance ratings (40.8%), the country was still behind the 1998 values. In 2008, the indicator continued to decline (40.1%). However, these changes took place only after the country experienced tremendous macroeconomic instability and financial crisis; when economic growth accelerated and corruption was expected to be higher, the aggregate indicators showed a better-performing Argentina. The association between poor economic performance and increasing corruption not only seems counterintuitive, but it goes against empirical research findings. It confirms that the level of corruption reflected by the CPI is shaped by factors other than corruption. On aggregate indicators, see Seligson (2005, 2006).
7 Results from Gallup Survey reported by La Nación (August 12, 2001).
8 According to the Global Corruption Barometer, while in 2006 50% of citizens thought that the government was not effective in fighting against corruption, in 2007 that perception had increased to 73% (La Nación June 3, 2009). For the business sector, in 2003-04, 81% respondents indicated that corruption would remain the same or increase (Corruption and Fraud in Business, KPMG, 2004).
9 Only 12% considered that public administration ruled for all Argentines. Survey by Poliarquia, reported in La Nación (December 4, 2008; October 3, 2009).
11 In a scale from 1 (not at all corrupt) to 5 (extremely corrupt), political parties and Congress scored 4.6 and 4.5 respectively, above the regional averages of 4.5 and 4.4. Other institutions with high scores in some countries, such as public services, tax revenues, or permit services, show significantly lower scores in Argentina. See Global Corruption Barometer (2004).
12 The failure of the state to regulate privatized services, or to successfully implement public policies, was attributed to corruption and political influence, rather than insufficient budget or human resources.
13 Cf. La Nación (April 16, 2009). Corruption perception increased from 60% in 1998 to 64% in 1999, 71% in 2001, and 92% in 2002; it decreased to 67% in 2003-04 (KPMG 2003, 6-7; 2005, 9-10) The sample includes high-level executives from more than one thousand firms, with a 12% response rate.
14 This percentage was above the average for the region (56.1%) and the Latin American medium-income level group (44%). 1063 firms were included in the Argentine survey.
15 As for the type of corrupt exchanges, demand for bribes from public officials seems to be less prevalent than other types of informal payments, as the percentage of firms asked for bribes to obtain licenses (5.4) or file tax
irregularities: lack of formal definition of authorities and responsibilities; submitted March 30, 2000). The Anticorruption Office identified several conditions that facilitated the
39
38
37
36
14, 25, 1991); Página 12 (Jan. 6, 8, 2010); La Nación  (Jan. 10, 11, 1991).

35
2009).

24
23
22
21
20
19
18
privat
officials. While in 2003-04, 84% respondents perceived corruption to be more important in the public than the private sector, only 33% declared to have experienced corruption and/or fraud (KPMG 2005).

17
According to ICVS, Argentina exhibits Latin America’s highest average rate (29%) on bribery by public officials. While in 2003-04, 84% respondents perceived corruption to be more important in the public than the private sector, only 33% declared to have experienced corruption and/or fraud (KPMG 2005).

16
Victimization measures focus on actual citizen experience (either direct or indirect) with public sector corruption. The major sources of victimization data are UN’s International Crime Victim Survey (ICVS), which includes one question on bribe victimization since 1996, the Latin American Public Opinion Project (LAPOP), and the World Bank. On measurement of corruption victimization, see Seligson (2005).

15
22
in December 14, 1999) and Decree 102/99 (December 29, 1999).

14

13
The illicit of "negociación incompatible," included in the criminal code of other Latin American countries (e.g., Chile), is highly frequent in the region. It is rooted in extended socio-cultural traits such as instrumental friendship, familism, nepotism, influence trading or clientelism. See OAS’ Chile preliminary study (http://www.oas.org/juridico/spanish/agendas/Chileprelim.htm accessed August 25, 2007).

12
This can be in part explained because of the technical difficulties to investigate and prosecute corruption cases given the characteristics of the criminal process and in absence of effective witness protection (ACIJ 2009). All assessments of the frequency of different corrupt practices are based on cases that do not have judicial punishment yet. This also confirms the pattern of elite cartel corruption, as it is one dimension of the institutionalization of corruption in the country (See Chapter 8).

11
The press revealed that the Minister of Economy had received a letter from the Ambassador about this matter in Dec. 1990, yet in January 1991 the Minister publicly denied knowing anything about the affair. Moreover, President Menem, who had already been informed by the Minister of Economy of the accusations, called the journalists who revealed the case criminals, and denied any corrupt practice. See Clarín (January 7, 10, 11, 12, 14, 25, 1991); Página 12 (Jan. 6, 8, 2010); La Nación (Jan. 10, 11, 1991).

10
Clarín  (Dec. 19, 2008).

9
La Nación  (May 14, 2010).

8
See Página 12 (October 5, 1998); Clarín  (October 5, 1998)

7
These conditions are well illustrated by the case of ATC Televisora Color (cf. OA Case No. 10.783/99 submitted March 30, 2000). The Anticorruption Office identified several conditions that facilitated the irregularities: lack of formal definition of authorities and responsibilities; neutralization of control instances (for
example, the internal audit unit did not have resources); administrative chaos (lack of budget control, non-compliance with procurement procedures, lack of procedure manuals, etc.).

40 “[The] economic power is able to twist the State permanently through corrupt officials in some cases, and in other cases the state simply has no mechanisms to defend itself. And this has to do with an institutional question: the institutional arrangements that prevent these things from happening are not in place” (Author’s interview. Buenos Aires, November 16, 2009).

41 After democratization, the costs of electoral campaigns in Argentina increased as a result of greater use of media and public relations consultants. It is difficult to estimate the actual costs. According to one interviewed: “There are no specific data. We would have to know how much was spent on publicity, mobilization and events, rental of premises, etc. and we do not have such information. I think that advertising spending is large, considering not only time / centimeters, but communication and production. There are very expensive firms that advise the candidates... all the money that has to be paid to be invited to specific programs, with the appropriate anchor, at the appropriate time ... Compared to the figures paid to marketing and public relations consultants, the money spent in mobilizing people is relatively low. That is not money – the real money is the other” (Author’s interview, August 6, 2006). The press reported a 30% increase in the costs of the 2009 electoral campaign compared to 2007 (La Nación March 29, 2009).

42 According to the local newspapers, the PJ would have spent 30 million and UCR 15 million dollars. Half of the money was from private contributors (Clarín July 4, 5, 1993). Also, Página 12 (Feb. 5, 1995).

43 “Career is built within the party, where it is increasingly important how much money you can contribute with.” (Author’s interview, Buenos Aires, April 25, 2005).

44 Public contributions and funds are hardly enough to sustain political parties, which rely extensively on state resources and private financing. Argentina relies on a mixed (public and private) and decentralized party financing system. Originally regulated by Laws 25.064 and 25.600, a new law on party financing (Law 26.215) was passed in December 2006. Public funds are provided to every registered political party that attains a minimum threshold of votes (generally 2%). Contributions are made in cash according to the percentage of votes obtained in the last legislative elections, or up to their abolition in 1992, by way of "franchises" (indirect financing such as free or reduced-cost access to postage or television time). These funds are granted to the political parties and not to the candidates. Likewise the federal government distributes 80% of the funds to provincial party organizations and 20% to national party bodies (Laws 25.064 and 25.600). Law 25.615 created a new state contribution aimed at supporting non-electoral costs of recognized parties; the Ministry of Interior discretionally distributes these funds. Legislation on party financing is similar at federal and provincial level. Parties impose membership fees, but also rely on contributions from legislators and other elected officials (20% of salary in the case of the UCR and 10% for the PJ). In terms of transparency, Law 26.215 involved a step back from previous legislation (Ferreira Rubio 2007). While Law 25.600 prohibited anonymous donations, required annual accountability through reports on ordinary and electoral funding (before and after the election), and included proactive disclosure provisions to facilitate access to information, Law 25615 created incentives for non-transparent financing (op. cit., 8). First, it eliminated the requirement of having separate bank accounts for ordinary and for electoral expenses. Second, it eliminated “candidates” as subjects of the law provisions and appealed to political parties instead. It also eliminated the automatic suspension of public funds when political parties do not fulfill their obligations. While the new law kept the system of sanctions and penalties set in the previous regulation, it introduced the possibility for parties to avoid sanctions if they plead that they are not responsible for not fulfilling the regulatory requirements. In practice, most political parties do not truthfully report their finances, and there is no electoral organ empowered to impose effective sanctions, which makes irregular party financing extensive. On Argentina’s party financing, see Ferreira Rubio (1997, 2006, 2007, 2008), Raimundi and Tili (2000a, 200b, 2000c, 2003), Zuleta Puceiro et al. (1990), Gruemberg (2004), Maldonado et al. (2004). Also, author’s interviews (Buenos Aires; May 23, 2005; August 5, 2005; June 8, 2006). More generally, on party financing and transparency, see Pinto-Duschinsky (2002), TI (2008), Posada Carbo (2008).

45 Author’s interview (Buenos Aires, August 6, 2006); author’s translation.

46 Newspapers reported the use by President Menem of state resources such as planes for his electoral campaign (Página 12 Feb. 5, 1994). Similarly, Cristina Fernandez de Kirchner relied on state resources for her campaign while Nestor Kirchner was president (Lopez Masia and Solis 2009); also La Nación (March 21, 2009).

47 Author’s interview (Buenos Aires, August 6, 2006); author’s translation.

48 For example, to moderate PJ’s intra-party competition in the Buenos Aires province, Duhalde relied on a careful distribution of resources and power positions. While some factions controlled the budget of the
The absence of annual procurement plans and/or violation of these plans when they exist affects the capacity to plan the timing of purchasing goods and services, as well as the ability to identify deviations between the plans. See Leiras (2007).

In some cases, rather than lack of coordination, the same officials are responsible for bestowing bidding awards and for receiving the purchased goods (Cf. AGN Resolución 129/99, p. 10).

For the period January 1996 – June 1997, several irregularities provided evidence of those constraints: the lack of a procedure manual to standardize control methods over the concessionary firms; problems of information management and filing; lack of uniform criteria to confirm the veracity of the communicated contracts, as CNC did not conduct frequent audits of those procurement processes; excessive delay in processing non-compliance files and the lack of appropriate sanctions. Cf. AGN Resolución 215/01, pp. 10-13

Audit agencies identified irregularities in the body that were functional to corrupt practices since 2002. However, no corrective actions were ever taken in response to these objections (La Nación Sept. 20, 2009).

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The connection between political contributions and illicit practices was discovered by the Special Investigative Committee on Money Laundering. Payments usually were given to both majoritarian parties, although in different amounts, based on the actors’ calculation of the electoral chances to win. This reflects the elite cartel nature of Argentina’s corruption, in which both traditional parties shared power and often the spoils of office despite an apparently highly competitive electoral scenario.

These irregularities were detected in decentralized units of ANSES (OA, Case number 3067/01).

In some organisms, there are no internal norms to apply sanctions, which causes inconsistency in the sanctioning procedure. Cf. AGN Resolución 2/01, p. 12. See also, AGN Resolución 12/99, pp. 5-10.

For example, the Ministry of Interior authorized the payment to INDRA Sistemas for preliminary work conducted for the ballotage of the 2003 presidential election that never took place (FNIA, Denuncia INDRA, on file with author). Another example is the failed control over the concessionary in charge of building the Rosario – Victoria Bridge. Despite numerous defaults, the state never considered the possibility of terminating the contract and even supported the firm’s financial demands (FNIA, Denuncia Rosario – Victoria, on file with author).

OA Case No. 11.616/03, opened in April 6, 2005.

This lack of control is illustrated by inconsistencies between the acceptance record and the acceptance dates, irregular signature of the acceptance records, payments not recorded in the procurement filed, and omission of sanctions for non-compliance. Cf. OA, Case No. 2022; AGN Resolución 226/01; AGN Resolución 179/06, pp. 6-11 & 12-15.

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initial plan and the purchases effectively done. Examples found by the audit body include the Ministry of Culture (Cf. AGN Resolución 129/99, p.5), Hospital Posadas (Cf. AGN Resolución 179/06, pp. 6-11), AFIP (Cf. AGN Resolución 2/01, p. 7), INSSJP (Cf. AGN Resolución 12/99, pp. 3 & 5-10), CNRT (Cf. AGN Resolución 50/07, pp. 26-8), ANSES (Cf. AGN Resolución 89/99, p. 3; AGN Resolución 195/00, p. 2); Yacyrreta (Cf. AGN Resolución 208/05, pp. 10-12), Ministry of Health (Cf. AGN Resolución 22/02, pp. 10-12).

Problems of planning often lead to excessive additional contracts (Cf. AGN Resolución 2/01, p. 13), and to irregular contract extensions (Cf. AGN Resolución 12/99, pp. 5-10).

Sometimes, excessive amounts of public goods are requested under the assumption that the actual purchase will be smaller. There is no adequate planning of procurement processes and no technical studies are conducted to identify the characteristics of the goods and services to be provided (OA 2000, 17).

OA, case number 7629/05, opened in June 2005.

The extension was executed directly by the President through Decree 1851/07 (cf. Denuncia 2009, p. 21). According to the criminal complaint filed against Kirchner for this and other illicit practices, the decree “tiene algunas particularidades en su redacción que no sólo resultan antijurídicas sino revelan en forma desenfadada la voluntad del gobierno de beneficiar a un empresario afín, más allá de las reglas, más allá de las formas, más allá del decoro” (op. cit., 22). In particular, the complaint noticed that the President provided as rationale for the extension the private firm’s arguments regarding its financial losses; also, the decree blurs the boundaries between the public and private realms as the President interferes in the firm management by advising the firm to buy new machines to satisfy the increasing clients’ demand (p. 24).

Cf. AGN Resolución 179/06, pp. 11-12; AGN Resolución 89/99, pp. 4-5; AGN Resolución 195/00, pp. 11-13; AGN Resolución 56/97, p. 3. Resorting to a simplified contracting regime due to alleged urgency violates the fundamental principles of competitive bidding, including: publicity of the procurement process, free participation of as many bidders as possible, different means of price control, registration of bidders, and ex ante intervention of the responsible official in the selection of bidders (Cf. AGN Resolución 50/07, 26-28).

Another common scheme is to falsely segment the procurement process into smaller purchases in order to justify selection processes which involve less stringent requirements that those contemplated in the procurement legislation (OA 2001, 31). For example, the Secretary of Environment hired two firms and three people to conduct an awareness-raising campaign on the effects of forest fires. Not only was the subject of the contract vague, but also the contract was divided into two separate ones to avoid the legally required public procurement process. Moreover, based on alleged urgency, a direct procurement process was conducted and the Secretary did not require the reference price to be provided by SIGEN. It was never verified that the firms did actually provided the services they were hired to perform. See OA, case number 3762/01, opened in March 22, 2001.

Two mechanisms were commonly used to avoid the legal requirements of procurement processes. First, the figure of “legítimo abono,” which is also used to extend contracts irregularly awarded in the first place. The strategy usually involves allowing these contracts to expire and then call a bidding process in the hope that this is going to be impugned, or even actively promote the impugnation, to be able to extend the existing contract. Second, use of Law 19.549 to give subsidies to foundations that fall outside the Law of Financial Administration. For example, the external audit conducted by AGN of the procurement processes in ATC during 1994-5 found that for broadcasting the Pan-American Games, 33 out of 40 purchasing orders were originated in direct contracting processes, with only 6 resulting from competitive ones. Cf. AGN Resolución 15/97, p. 46.

Cf. AGN Resolución 2/01, pp. 9-11.

For example, bills are paid without previous approval, services provided are inappropriately certified, and prices are not correctly weighted. Cf. AGN Resolución 5/97, p. 258.

Cf. AGN Resolución 15/97, p. 46.

Limits to competition as a result of the bidding specifications have also been commonly found by AGN. Cf. AGN Resolución 179/06, pp. 11-12.

Inclusion of a fourth lane in the Rosario-Victoria project without opening a new competitive procurement process. See FNIA, denuncia Rosario-Victoria (on file with the author).

A good example is the procurement process conducted by the Paroissien Hospital in Mendoza. Several bidders were unable to maintain their bids under the new conditions; finally, the contract was formalized with the original bidding specifications. See OA, case number 11.663/00, filed in September 9, 2000.

For example, one of the major beneficiaries of public contracts during the Kirchner administration, Electroingeniería, won bids for large contracts for performing services in which it hardly had any experience in comparison with other bidders (Cabot and Olivera 2008, 118-119). Also, other firms won state contracts when
they could not have been beneficiaries because of their debts with the state (e.g., Gotti) (Denuncia Carrio 2009, 11).

84 Cf. Resolución 2/01, AGN, p. 8. There is a centralized database of public works contractors (Registro Nacional de Constructores de Obras Publicas), but providers’ defaults are often not communicated to the database.

85 Institutionalized corruption mechanisms within PAMI (including a 5% return to officials) were widely covered by the press during Menem’s administration (see, for example, Clarín March 1, 3, 4, 5, 6, 7, 8, 9, 11, 22, 23, 24, 1994; Página 12 March 18, 23; April 13, 15, 1994; Jan. 24, 1995). Another example is the FONCAP case (OA, Case number 17.667/00 opened in December 2004).

86 See National University Arts Institute case: OA, Case No. 8285/05, opened in June 2005. Also, the Skanska case: Cf. Denuncia Carrio (2009, 14); Diario Perfil (November 2, 2008). “The total number of contracts and payments listed here are simulated operations in order to generate funds to pay improper commissions” (Internal audit Skanska, quoted in Cabot and Olivera 2008, 32). On the generalized use of this mechanism by Argentine firms, see Abiad (2007, 234-248).

87 Requests of a 10% cut over the payment to be received for services provided have been often reported. See OA, Case No. 11.663/00, filed in September 9, 2000.

88 Several examples show that the reference price is often not applied: AGN Resolución 179/06, p. 6; AGN Resolución 89/99, p. 6; AGN Resolución 195/00, pp. 11-13; AGN Resolución 56/97, p. 5. Sometimes the reference price is not taken into consideration when contracts are over certain amount (for example, more than $100,000 in Empresa Nacional de Correos y Telefonos SA, Cf. AGN Resolución 56/97, p. 3). When the system of reference prices is not applied, there is no established procedure to estimate the costs (Cf. AGN Resolución 2/01, p. 8). Reference prices are surpassed by as much as 70% in the bidding award (Cf. AGN Resolución 195/00, p. 7). Experts agree that weaknesses in the price estimation processes are facilitating conditions for corrupt transactions in procurement (Author’s interview. Buenos Aires, September 10, 2007).

89 For example, OA, Case No. A-4221 filed May 5, 2000; OA, Case No. 820/00, filed May 3, 2000).

90 A significant example is overpricing in construction contracts for building jails, which led the Minister of Justice to step down when he refused to sign the contracts. Overprices are estimated to have reached 86% in some cases, 65% and 53%. See Cabot and Olivera (2008). The Ministry of Planning was under suspicion of having an institutionalized overpricing system for public works (Abiad 2007, 274).


92 The proposed measure has some caveats. First, the OA only provides information on criminal charges related to corruption cases since 1999, and it does only for the period 1999-2005; thus, we cannot count the cases in previous and later years. Second, given its limited resources, the OA has the ability to select the cases in which it gets involved based on criteria of social, economic and institutional relevance, and therefore, this measure is not capturing all known cases of corrupt practices in the public sector. Moreover, information is sometimes incomplete and does not allow the codification of all cases.

93 This category includes irregular practices in diverse public agencies, including Ministries and executive bodies.

94 Originally “cashboxes” refer to resources received through informal channels that are administered by low-profile public officials and allocated through percentages previously determined based on hierarchical considerations; by extension, sources of state resources that are available for being allocated with great margins of discretion by public officials or other actors (e.g., union leaders). A related system is the phantom public servants or ňoquis, a system traditionally used in Argentina to finance and control low levels of party rank-and-file that are not beneficiaries of more profitable corrupt transactions. See Simonetti (1998, 140-141). On ňoquis, see Clarín (May 7, 2009).

95 The Convertibility was a very tight and rigid policy arrangement, which provided certainty amid institutional weakness (Spiller and Tommasi 2005, 49-50). It depended on certain conditions of fiscal discipline, stable financial sector and a positive balance of international reserves (Quispe and Kay 2002, 1). Simultaneous reforms strengthened the financial system and opened the economy to capital markets.

96 The parallel market returned at the end of the Convertibility (Clarín Jan. 5, 2002). The first day after the end of the fixed system, the black market dollar rate fell 50% under the official market (The Independent Feb. 12, 2002).

97 In the 80s, there was an effective closure of the economy and many public officials were willing to restrict access to foreign exchange, trade and credit subsidies (Mundlak and Regunaga 2003, 251). Official exchange rates were significantly lower than black market rates and highly variable. The ratio of the black market rates to official exchange rates and rents from foreign exchange control for the period 1983-89 was 1.42 on average and
ranged from a minimum value of 1.0 in 1984 to a maximum of 2.6 in 1989. Black market exchange rates were on average almost 50% higher than official rates. This means that firms receiving foreign exchange at the official rate were in an advantageous position, as they faced lower production costs than competitors that had to obtain foreign exchange at black market rates (Montinolla 1997, 44). Extra-normal benefits provided substantial incentives for firm owners to share those benefits with public officials who could influence policy.

Money laundering legislation was only approved in 2000. The institutional system aimed at combating money laundering formally complies with international standards, but in practice produces low-quality information that rarely leads to prosecution of illicit practices. (For example, La Nación November 23, 2009). On money laundering, see Jorge (2008, 2009).

BCCI paid bribes to operate in Argentina for the first time under the Alfonsin government. Then, it contributed to Menem’s campaign in 1989 (80% of the campaign costs). The BCCI had close relationships with the former Secretary of the Presidency, Alberto Kohan; also, BCCI hired the economist J. Gonzalez Fraga who then became president of the BCRA and issued the norms that facilitated BCCI investments in the country. Cf. Report Investigative Committee on Money Laundering (2001, 389 ff.).

Costs were significantly higher that those of external loans. Rates of even 30% were paid, which made the costs of the external debt escalate. Between 1993 and 2001, Argentina’s payments for the interests of the external debt were 53,500 million dollars. See Vitelli (2006, 490).

Decree 1697/1991 (27 August), Decree 2283/1991 (October 31), and 103/1995 (January 24). This is the corruption case in which the largest number of public officials (47) has been involved. Illegal payments to intermediaries close to the highest political authorities facilitated these transactions. Cf. Report Investigative Committee on Money Laundering pp. 33ff; 387; Causa 17062/95 and 798/95 Juzgado Federal; Causa 8830/97 Juzgado Penal Economico. For additional details, see Santoro (1995). Also, Página 12 (March 11, 23, 29; April 6, 13, 1995); Clarín (August 28; Sept. 8, 1995; Aug. 29, 1998).


In one year since the Law of State Reform, ENTEL, Aerolineas and the main national roads had been privatized. In 1990, TV channels, petrochemical, railway and some oil areas; in 1991, oil areas. In 1992, steel enterprises, electricity, water utilities, gas, more railways, Buenos Aires metro rail and more oil areas. In 1993, YPF, the concession of roads to access the capital city, and electrical power plants. In 1994-95, petrochemical, gas, electricity, transportation and defense. See Torre and Gerchunoff (1999, 14-5). These state-owned firms amounted to 30% of the total sales made by firms with the largest production in the country (Basualdo 2001, 62).

Legislative oversight of the process was limited: “The participation of legislators was limited to a bicameral committee created with the aim of monitoring the privatization process, through requests for information to the executive but with no power to make binding decisions” (Torre and Gerchunoff 1999, 8).

For instance, in September 1989, an executive decree set a tight timeline for privatizing ENTEL: bidding would be awarded in June 1990, and the enterprise transferred to the new owners in October 1990.

Regulatory deficiencies have been noted by Gerchunoff and Coloma (1993), Azpiazu and Vispo (1994), Galiani and Petrecolla (1996), Pastor and Wise (1999). Chisari et al. (2002), in their analysis of utility privatization in Argentina, identified the equivalent of a 16% shadow tax on the average consumer paid directly to the owner of the utilities’ assets as a result of deficient regulation. This tax would increase until 20% for the poorest, which accounts for the regressive effects of privatization on income distribution (Ariceta 2004, 54).

One excellent illustration is the case of Aerolineas Argentinas; see Verbitsky (1992, 109 ff.). On the phone market, see Abeles, Forcinito, and Schorr (2000).

Based on Verbitsky (1992, 78 ff.; 126-132) and Manzetti (1993). On Entel, Página 12 (Jan. 31; Feb. 4, 18, 22, 25, 28; March 7, 10, 11, 15, 16, 17, 18, 20, 21, 25, 27-31; April 1, 28; May 13, 23, 24, 27, 29, 30; June 20, 26, 27; August 12, 16, 28; Sept. 4-9, 19, 27, 30; Oct. 2, 4-7, 20, 1990).

On Aerolineas, see Página 12 (March 24, 1991; July 2, 9, 10, 22, 23, 26, 1992; Aug. 7, 8, 28, 1992; Nov. 25, 1992; Dec. 2, 4, 17, 18, 19, 23, 24, 29, 1992; June 28, 1995).

The Supreme Court confirmed the award in a controversial decision, which motivated the impeachment of Court members later on.

There are certain caveats to this measure. Monopolization may occur for reasons other than preferential treatment in economic control; in those cases, concentration of assets would not indicate concentration of beneficiaries of corrupt behavior. Also corrupt firms may control more than one firm. Only with extensive
information, unavailable for Argentina, on the number and type of corrupt firms would be possible to conclude the level of concentration of rents.

113 For an opposing view on the effects of privatization on unemployment and inequality, see Nellis (2007).

114 Between October 1999 and May 2002, the gap between the richest 10% and the poorest 10% increased from 22.6 to 29.8. Middle class sectors were the most affected by this change. In 2000, approximately one third of the population was living under the poverty line in Grand Buenos Aires. This made Argentina get closer to patterns of income distribution prevailing in Latin America. For additional data on Gini coefficient and income level per household, see Caballero (op. cit., 140-9).

115 “There are two major issues: first, foreign trade (and quite connected with foreign trade and some protection of domestic markets, the issue of subsidies) and, second, public works. They are like two legs on which there is the highest degree of discretion, which creates the conditions for the emergence of corruption” (Author’s interview. Buenos Aires, November 16, 2009; author’s translation).

116 These instruments were reformed in the 90s and have been successively modified over the years (Leiras and Soltz 2006, 10).

117 For example, getting a VAT exemption was used for setting phantom firms specialized in providing bills for false services to other firms in order to justify bribes (Abiad 2007, 43). Institutionalized public corruption networks in the tax agency AFIP help to get the VAT exemption in exchange for payments. For details on this mechanism, see Abiad (Ibid.).

118 The Duhalde government approved new export taxes on commodities in 2002: 10% on raw materials in general, 13.5% on grain and oils, 15% on leather, and 5% on agricultural and industrial manufactured products. The government of Cristina Fernandez de Kirchner tried to significantly increase export taxes on grains. In January 2007, all export taxes were set at 27.5% and in November there were additional increases (e.g., from 27.5 to 35% on soybeans, 20% to 28% on wheat, and 24% to 32% on soy oil and flour). Finally, in March 2008 (Cf. AGN Resolución 125/08), the government introduced a new system of mobile export taxes that found strong social reaction and was rejected by Congress.

119 In 2007, the Government levied $7,104.5 million dollars from taxes on soy exports (La Nación March 24, 2008; Nov. 30, 2009).

120 Cf. Decree 1343/96 and Decree 1067/05. Between 2005 and 2008, ONCCA was headed by Ricardo Echegaray, member of President Kirchner’s inner circle. See La Nación (Oct. 10, 2009).

121 Despite the closure of the export registry for wheat, the government allowed certain quantities to be exported, although with daily limits. In October 2009, ONCCA (Resolución 7552/09) began issuing licenses for corn and wheat exports; the granting of licenses was dependent on the farmers’ commitment to supply the domestic market. See Argentina Agribusiness Report 2010.

122 The existence of a parallel administrative structure was reported in 2009. It allowed allocating subsidies to high-level public officials (e.g., AFIP’s Director) and in some cases to beneficiaries who did not comply with the requirements to be beneficiaries and who “returned” it to the broker that facilitated the operation. According to complaints received by legislators, “criminal operations consisted in extorting producers to expedite reportedly delayed procedures, when in fact the files were “parked,” and after collecting the bribe, the files were up for signature for the purposes of continuing the normal procedure [...] Another mechanism was the awarding of compensations to non-existent feedlots or to feedlots that forged the number of animals they had, and thus, given the lack of control and in complicity with the producer, funds could be diverted for personal gain. Another issue was the allocation of compensations to unemployed people whose registration as producers was awarded after receiving the compensation” (author’s translation). On corruption in ONCCA’s subsidies, see La Nación (Oct. 14, 2009; May 29, Aug. 10, 2010), Clarín (Sept. 11, 24, 25, 28, 29 2009; Oct. 16, 19, 28, 2009; Nov. 8, 25, 2009; Dec. 8, 2009).

123 A fiduciary fund can be defined as “a contract whereby the administration, through one of its dependencies, in character of trustor conveys the ownership of State’s property of public or private domain, or affects public funds to a trustee for performing a public interest goal” (Gehner et al. 2007, 6). Fiduciary funds respond to public needs that require a policy response with certain features: temporary activities, easily identifiable; concentration and independence of the goods to be allocated to conduct those activities; and the responsible for achieving the public good objectives is the trustee (Lo Vuolo and Seppi 2006, 14). The main beneficiaries have been the state, provinces, public work contractors, licensees and enterprises from certain productive sectors; assets transferred have mainly come from budget items, revenues and tariffs, assets of privatized firms, and loans from international credit institutions (AGN 2004, 14-16).
After privatization, the state had to pay for public works that no longer were provided by private firms, despite the investment obligations included in the contracts. These works were financed through tariffs. After devaluation, tariffs were converted into pesos and frozen. Fiduciary funds provided an appropriate way to look for stable sources of funds to pay for these works, and in a context of economic recovery and primary surplus, to provide subsidies to firms in order to compensate for the frozen tariffs and assume the investments that those firms were supposed to undertake.

In 2001, they represented 1.33% of total budget resources, 3.57% in 2002, 3.58% in 2003 and 5.08% in 2004 (AGN 2004, p. 7).

In 2002 and 2003, actual expenditures were 107.6% and 117.2% above the authorized level (Ibid.).

The 1995 regulation of private trusts (Law 24.441) together with several laws and specific regulations have shaped the normative framework. Although Law 25.565 (03/06/02) requires a law to create a public trust fund, several exceptions to this requirement have been established through decree (for example, Decree 2209/02 that excludes BNA and BICE from this obligation), creating a normative instrument of inferior status. See AGN 2004, p. 11. For example, out of the 16 fiduciary funds identified in 2007, 5 were created by law, 7 by decrees, 2 through administrative resolutions and 1 through a technical cooperation agreement (AGN 2004, 18).

Some of the most important regulatory problems have to do with the extra-budget nature of fiduciary funds, as well as the compromised independence between trustor and trustee, since the credit institutions that operate as trustees and assume the obligation of administering the assets are also part of the state. This is especially relevant as these banks also concentrate the assets administered by fiduciary agents of fiduciary funds: BNA had 92.3% and BICE 7.42% in December 2004.


These laws have different objects: trusts in general (25.152) and fiduciary funds in particular (24.156). Although the latter will not be applicable to trust with minority of public funds, those trusts would not be excluded of the reporting obligation in accordance to Law 25.152. See Rinaldi et al. (2005, 3).


The power given to the Fiduciary Funds’ Investments Advisory Council (Consejo Consultivo de Inversiones de los Fondos Fiduciarios) (created in the Ministries of Economy and Federal Planning by DNU 906 dated 07/20/2004.) to temporarily allocate available cash flows, which contradicts the stability of this figure, is also important (AGN 2004, 12; Perez and Rios 2005, 29).


Other significant example is the management of the fiduciary fund for electricity transportation infrastructure. Irregularities related with this fund involve another firm that has systematically been awarded public contracts since 2003: Electroingenieria. Overrun costs in the public works undertaken by this firm are frequent. According to journalistic investigations, the extension costs of the electric line joining Choele Choel, Puerto Madryn and Pico Truncado went from 545 thousand pesos per km. in the first tranche to almost 850 thousand in the second; the same firms made the work and would have obtained 50% over price (Cf. Politica online, May 14 2008; also Critica Digital June 3, 2009). The audit agency has reported the significant gap in costs between the 2006 extension Choele Choel/Puerto Madryn at 545.736,71 pesos per km. and the costs of the extension until Pico Truncado, which raised up to 848.812,71 per km. without any factor to explain the difference. Cf. Resolución AGN 203/2009.


Kirchner maintained that this was a case of private corruption (Abiad op. cit., 249). However, there are grounds for suspicion, as the licensee had complained in writing to the regulatory authority regarding the increasing costs of some public works, and the government agency responsible for the public trust fund required
Skanska to work with one of the phantom firms. Public officials close to the Minister of Federal Planning allegedly participated in those meetings (The Economist, May 10, 2007; La Nación May 11, 2007; Noticias No. 1587; Perfil Oct. 24, 2009).

141 Author’s interview (November 16, 2009). Also, La Nación (Nov. 30, 2010)

142 For example, Anticorruption Office, Case No. 11.616/03 (2005).

143 In 2007, subsidies to Ferrovias represented 70% of the concession, while historically it had only been 60%; historically UGOFE had been profitable but, after terminating the concession and awarding a direct contract to another provider, it was receiving 66% in subsidies. (http://argentransport.blogspot.com/2007/02/los-subsidios-en-numeros.html Feb. 9, 2007).

144 The distribution of subsidies to urban buses shows similar patterns. (Cabot and Olivera 2007, 150)

145 “The state must effectively establish if resources have been used for the purpose for which they have been affected and, at the same time, if the accountability obligation has been effectively fulfilled in order to approve a new reallocation of subsidies,” Despouy said yesterday. “Otherwise you may be facing the possibility of covering up irregularities or encourage the continuation of such irregularities, if the state does not have an adequate consideration of the accountability requirements” (Cf. Clarín Nov. 22, 23, 24, 2009). Also, Perfil (Nov. 23, 2009); AGN Report No. 504/09 (http://www.agn.gov.ar/informes/informesPDF2009/2009_206.pdf, on file with author).

146 The Secretary was involved in 37 open judicial cases on corruption charges in 2010, including receiving bribes and kickbacks in the purchase of wagons, and the acceptance of gifts from privatized companies. TheFNIA submitted ex officio a criminal complaint regarding the use of the private jet (http://www.fia.gov.ar/Denuncia%20por%20vuelvos%20privados%20realizados%20por%20el%20Ing.%20Ricardo%20Jaime.pdf, on file with author). See La Nación (May 22, 2009; June 1, 2010; July 16, 2010; Nov. 21, 24, 2010; Dec. 1, 4, 5, 11, 2010); Clarín (Sept. 27, 2009).

147 They serve their provinces in the sense that they are loyal to provincial parties rather than to their constituencies. (Siavelis and Morgenstern 2004)

148 Author’s interview (Buenos Aires, October 16, 2009); author’s translation. The elite nature of political corruption in Argentina makes the problem both easier and more difficult to address (see Chapter 8).

149 “There is a core group of companies that have always benefited and have always been involved in corruption cases [...] Since the construction of highways in the military government to the construction of highways now, no one will see that there were enormous changes: you’ll see the same five Argentine firms that […] still have enormous power and enormous influence, and gain always all bidding processes” (Author’s interview. Buenos Aires, November 16, 2009; author’s translation). See also Abiad (2007, 178); Clarín (Jan. 7, 1991).

150 Familiarity between political and economic elites sometimes results of family and blood ties. Family members and close friends play a critical role in constructing politicians’ reputation and facilitating corrupt transactions. During Menem’s administration, family connections were particularly important, and several members of his extended family were involved in corruption cases (Página 12 March 19, 1995). For example, the president’s sister in law was accused of participating in a money laundering and drug trafficking operation in the “Yomagate” (Página 12 April 7, 1991; July 5, 7, 14, 15, 17, 19, 1992). Also, Clarín June 16; Sept. 21, 1993). The president’s brothers in law were also accused of requesting bribes to firms for facilitating transactions (Clarín March 17, 18, 28, 1993; May 29, 1993; February 9, 1996); Página 12 (Jan. 13, Feb. 24, 1991; March 17, 19, 1993). Irregular transactions facilitated by several official banks benefited people related through friendship or family linkages with Menem. See Report Investigative Committee Money Laundering (2001, 393); Página 12 (March 18, 19; May 26, 1993; Aug. 14, 19, 21, 28, 1994), Clarín (May 16, 19, 1993).

151 During his tenure in the Menem’s government, he was accused of maladministration and corruption practices related with the privatization process. Cf. Página 12 (Feb. 19, 1991); La Nación (Jan. 19, 2010).


153 A well-known case was the accusation by the Minister of Economy, Domingo Cavallo, about the existence of an entrenched mafia in the government, connected to businessman Alfredo Yabran, which would be responsible for blocking the privatization of the postal services in connivance with some legislators. See J.F. Kennedy School of Government, case study 1481.2.


155 For example, the concessionaries of roads during Kirchner’s government were the same firms that had obtained the concessions during the Menem’s administration, although in some cases under a different legal name or business structure. See details in Lopez Massía and Solis (2009, 80-1).
The state penetration by hegemonic economic actors had started during the Alfonsin’s government (Verbitsky 1992, 13). In the 90s, examples of such penetration were the appointments of Roberto Dromi and Rodolfo Barra in the Ministry of Public Works. The business group Macri, for instance, placed people in the Presidency’s Legal and Technical Secretary, the Ministry of Public Works, and state-owned enterprises to be privatized as Entel. See Galasso (2005, 15), Verbitsky (op. cit., 21-23) and Report Investigative Committee on Money Laundering (2001, 375). Also, author’s interview (Buenos Aires, November 17, 2009).

Author’s interview (Buenos Aires, November 16, 2009).


Local service providers continued to have a privileged relation with the state, while foreign companies began to find difficulties in their operations. In some significant cases, foreign firms were forced to abandon the country (e.g., Esson) or were suggested by high-level officials to sale shares to Argentine firms close to President Kirchner as a way to ease their regulatory difficulties (Clarin Dec. 9, 2008; La Nación June 20, 2009). A good example is the case of Repsol YPF; a large share was bought by Enrique Eskenazi, owner of the Santa Cruz’s bank and of one of the constructing firms that were major beneficiaries of public work contracts with the state. The links between Eskenazi and Kirchner went as far back as 1996 (Olivera and Cabot op. cit., 183 & 185; Lopez Massia and Solis 2009, 94). See also The Economist (Feb. 25, 2010).

Firms coordinated their behavior and agreed on the amount of political contributions to avoid competition among them, which would have increased the probability of politicians reneging from their informal deals.

Página 12 (Nov. 15, 1992).

“Everyone agrees: as things work in Argentina, we want to deliver it personally to whom the Number One tells us directly. Anything else, they add more or less diplomatically, is a waste of money; it is not good with someone saying that he comes on his behalf – we must be told directly by the Top” (La Nación Nov. 23, 2010).

According to the executive of a Spanish firm: “The majority of Spanish companies paid political favors to the Kirchner’s government; otherwise, you were out of the game, they drowned you financially, and you ended up as Marsans did” (El Confidencial Dec. 7, 2010).

La Nación (May 15, 2011).

The firm was finally re-nationalized in 2008. (El Confidencial Dec. 7, 2010). On pressures on firms, see La Nación (Nov. 22, 23, 24, 2010).


For example, in the relation between Siemens and the Menem government, intermediaries played a crucial role to enforce the payments: “Medina’s relationship with Menem was vital for Siemen’s collections. The Argentine style of procurement has its own rules: the absolute lack of control in the prices paid is compensated with the difficulties for collecting, which makes it valuable the intervention of brokers and intermediaries” (Verbitsky 1991, 32—author’s translation).

Clarin (Jan. 11, 1991).


Página12 (Jan. 10, 1991). A presidential decree was signed on Dec. 18,1990 approving the tax exemption for Swift-Armor. However, after one month, the government had not replied the Ambassador’s formal complaint letter. The response was sent on January 9, 1991 after the leak to the press. For further details on the Swiftgate, see Verbitsky (1991, 6-11 and 72 ff.).

La Nación (Feb. 25, 26, 2010).

For example, Rousselot, mayor of Moron since 1987, was involved in 28 judicial cases for corruption, but only lost support from Peronism when he decided to compete with Duhalde for the control of the Buenos Aires province’s party organization. He faced the opposition of Duhaldist councilmen who removed him from office on corruption charges in 1991 (Página 12 Jan. 29, 1991; March 13, 16, 1991). After being reelected, support from Peronism was decisive for his final removal from office by an Investigation Committee in 1999 (Diario de Moron Aug. 15, 1998; Jan. 1, 1999. Also, La Nación July 9, 2010). A similar case involved the City of Buenos Aires’ mayor, Carlos Grosso, who lost Peronist support when he was accused on corruption charges (Página 12 Oct. 14-17, 27, 1992; Clarín Oct. 27, 1992; Clarín April 27, 29, 30,1993).

Decree 60/90.
Maria Julia Alsogaray acknowledged before Congress (Verbitsky 1991, 126): “We were asked to follow a strict schedule, because one of the pillars of the credibility in the transformation project proposed by President Menem is the privatization process” (author’s translation).

In March 1990, SIGEP “objected to the transfer of a natural monopoly, which would derive from the exclusivity; the VAT as a cost consideration, as it would generate double counting; the methodology for bids, unusual in the country, in which the envelope containing the financial offer would only be delivered after the prequalification, thus encouraging ‘a possible agreement between the selected firms;’ the division in zones, which will generate expenses whose quantification and economic responsibility do not emerge from the bid specifications” (See Verbitsky 1991, 126).


She was involved in well-publicized fights with significant members of Menem’s government such as the Ministers of Economy, Public Works, and Interior (Clarín May 11, 2005).

Clarín (Feb. 26, 2000).

She was released from jail in May 2005 (Clarín August 13, 2003; May 11, 2005).

Staff of the consulting firm that prepared the bidding document was simultaneously working on the offer presented by IBM (Rodriguez op. cit., 54; IBM’s first indictment, p. 25 ff.). When the offers were opened, IBM’s offer was almost identical to the secret top ceiling set for the contract. The contract with Deloitte to prepare the bidding document was also irregular. See “IBM’s first indictment” (http://www.cipce.org.ar/ProcesamientoIBM1.pdf, accessed Dec. 11, 2010). Also, Página 12 (Sept. 15, 17; Oct. 25, 1995); Ambito Financiero (Sept. 15, 1995); La Nación (Sept. 15, 1996).

IBM was also involved in irregular contracts with the provincial governments of Santa Fe and Mendoza and the municipal government of Avellaneda. See Rodriguez (1998, 219 ff.).

According to the legislative committee that investigated these contracts, “the intermediary companies (providers of computer services to ANSES) had no history or had falsified it.”

The Deputy Secretary of the Nation’s Presidency, Juan Carlos Cattaneo, was a former IBM’s employee. Long-term relations and mutual trust with IBM’s executives and his government position facilitated the informal deals (Rodriguez op. cit., 93-5). IBM’s executives saw him as the person with “decision-making power” (IBM’s first indictment, 68). Regarding the DGI’s contracts, the special legislative committee concluded (1999, 83): “It can be seen in the direct contracts signed by the company with the DGI the familiarity and even ‘informal’ treatment between the former head of the DGI, Carlos Ricardo Cossio, and the directors of the company. It should be noted the operations in which this public official intervened personally, without being able to justify the responsibility of this proceeding. There were also stock and professional links between Cossio and companies belonging to the economic group of IBM subcontractors for the SIJP project.” On the intermediaries involved, see Página 12 (Sept. 24, 1995); La Nación (Sept. 19, 1996).

According to DGI’s officials: “In many administrative actions and ministerial policies, especially at times when collection was the number one priority, there was great pressure on the bureaucracy not to lock the procedure of these projects” (Rodriguez 1998, 142).

IBM’s first indictment, 27 (on file with author).

A working group was formed in January 1994 to assess the Centennial Project. The group prepared a very critical report of the bidding process. However, high-level public officials from the Secretaria de la Funcion Publica disregarded the assessment and allowed the BNA to continue with the contract. (Rodriguez 1998, 114; IBM’s first indictment, 33-34)
Decrees 1778/93, 112/94 and 541/95 changed the nature of control over computer contracts from ex ante to ex post. In 1995, the unit in charge of overseeing the contracts in the Secretary of Public Administration was eliminated and the internal control competencies transferred to SIGEN. See Rodriguez (1998, ch. VII)

Cf. IBM’s first indictment, 23; Legislative Committee Report (1999).

The committee, which found resistance from IBM to be subject of an investigation, concluded its activities in 1999 and issued a report that was sent to the judiciary in support of open judicial cases. See Clarín (Feb. 24, 1997); Ambito Financiero (March 10, 1997).

The Minister had been particularly involved in the DGI contract. Also, Cavallo’s brother was owner of one firm that had been IBM’s service provider in one of the contracts. Cavallo’s niece worked at the Secretary of Public Administration and participated in the internal oversight process of the contracts. See Report Investigative Committee (1999, 6 & 93 ff.).

Significantly, the main party affected by the corrupt exchanges, the BNA, never submitted a criminal complaint. See Causa no 509/05 “Dadone, Aldo y otros s/ defraudacion contra la administracion publica.”

The legislators were Carlos “Chacho” Alvarez, Horacio Viqueira and Alfredo Bravo. Later on, the OA requested the oral trial. The accused were former head of DGI Ricardo Cossio, former IBM’s executives Ricardo Martorana and Gustavo Soriani, and former Consad’s executive Juan Carlos Cattáneo.


A good indicator is the concentration of fiduciary fund resources for infrastructure public works in Santa Cruz during Kirchner’s government. Santa Cruz received $100,973,827 compared with the $1,101,393 received by Tucumán, $6,734,220 by Tierra de Fuego, $12,826,332 by Buenos Aires and $21,859,737 by Misiones (Perez and Rios report fiduciary funds, 27). Investments in roads were also extremely concentrated. Although Santa Cruz only has two important roads, it received $1,960.6 million-$7560.5 million between 2004-08; per Km. investment was $1,682,000, while in highly populated provinces such as Santa Fe or Cordoba it was only $252,000 and $291,000 (Lopez Masia & Solis 2009, 171).

Public works and investments were important during the 12-year Kirchner’s provincial administration (Lopez Masia & Solis 2009, 129). The implementation model was then exported at the federal level and executed by one of Kirchner’s closest political allies, Julio de Vido (former Santa Cruz’s Minister of Economy and Minister of Government), who was appointed as Minister of Federal Planning. In his capacity as provincial Minister of Economy, De Vido oversaw the investment of the “Santa Cruz’s funds,” the US$535 million payout Kirchner negotiated for his oil-rich province when YPF was privatized in 1993. These funds are allegedly related to President Kirchner’s illicit enrichment. On the Santa Cruz’s funds, see Clarín (Nov. 22, 2009); La Nación (August 23, 2007; March 6, 13, 14, 2008; Nov. 15, 2009; May 29, 2010).


See also Ch. 5 for additional analysis.


See La Nación (Nov. 24, 28, 2010); Clarín (Nov. 28, 2010).

In 2007, USD 790,550 cash were found in a Venezuelan citizen’s suitcase at a Buenos Aires airport. He was traveling with the head of Argentina’s regulatory body overseeing privatized roads and other Argentine and Venezuelan office holders. The money was intended to support Cristina Fernandez de Kirchner’s presidential campaign. On this case, see Alconada Mon (2008). Also, New York Times (August 14, 2007); Clarín (Nov. 25, 2009); La Nación (Aug. 9, 2007; Dec. 13, 14, 2007; Feb. 28, 2008; Sept. 14, 2008; Feb. 19, 2010). Moreover, an informal parallel bureaucracy operated within the Foreign Affairs Ministry but under the Ministry of Planning’s supervision to manage bilateral relations with Venezuela. A former ambassador to Venezuela and several firms denounced the institutionalized payment of 15-20% bribes to gain access to bilateral businesses.

See La Nación (April 24, 25; June 10, 19, 20, 21, 25, 26; July 4-6, 8, 11, 16, 21-24, 30; Sept. 3, 4, 2010).

In November 2005, the Minister of Economy publicly stated during a meeting with businessmen that “there are some areas, particularly those having to do with public works, where there is a degree of cartelization, and that means extra costs” (Cabot and Olivera 2008, 23). Lazaro Baez was the head of a pool of firms that included Palma SA, Gotti S.A., Gancedo S.A., Kank y Costilla S.A. y Badial SA. All these firms were government contractors at the federal and provincial level. Cf. Diario Perfil (December 20, 2009). Also, he was involved in a commercial relation with President Kirchner while he was still in office. Rumors placed him as the frontline for Kirchner family’s private business. (La Nación Feb. 7, 2010) On Lazaro Baez, see La Nación (June 26, 2007; June 30, 2008) Cf. Denuncia Carrio (2009, p. 16). See also Rios (2005, 15 ff.); ARI report (2003); Perfil (Nov. 2, 2008).
AFIP inspectors suspected that payments to phantom firms and false receipts were used to cover up the payment of bribes and commissions: “There were several hypotheses regarding the purpose of the firms for using phony bills and receipts, but the most forceful maintains that the money paid to shell companies is to justify the payment of bribes (...). As this group of companies are those that always get public works contracts and other businesses outsourced by the state, in the south there is the hypothesis that the bills conceal the payment of bribes” (Denuncia Carrio 2009, 34 ff). AFIP confirmed that 500 million pesos were invoiced with phantom receipts by Gotti SA, evading 120 million pesos from VAT. Also, DGI confirmed that Baez’s firms Austral Construcciones, Badial SA, and Gancedo SA, as well as Cristobal Lopez’s Casino Club SA had used false invoices. See Perfil (Nov. 2, 2008); Noticias No. 1587 (http://www.revista-noticias.com.ar/comun/nota.php?art=432&ed=1587 accessed Dec. 6, 2010).

A 30% tax must be paid to AFIP over cash advancements without justification (Olivera and Cabot op. cit. 35).

For example, in Lomas de Tafi (Tucuman) the initial cost was $600 per square meter but the actual costs reached between $1,200-1,500 pesos (Lopez Masia & Solis 2009, 180). In El Chaltén (Santa Cruz), the costs per unit are $217,441 and sale costs was $1,794 per square meter; for houses of 60 square meters, the sale price would be higher than construction costs ($108,000). See La Nación (Dec. 9, 2008).

For example, in the bidding process for paving and repaving Provincial Road No 5 and National Road No 3, there were three bidders: Kank y Costilla $ 8,984,206,80, GOTTI S.A. $ 8,911,932,74 and Esuco $ 9,112,398,58. The contract was finally awarded to GOTTI S.A. (Cf. Denuncia 2009, p. 9).

According to Elisa Carrio, “All government operators robbed with a reasonable kickback scheme in which there was some kind of ‘fixed point’. As the Venezuelan fixed point with guarantee of impunity” (Interview in Crítica Oct. 4, 2009). This informal norm that guarantees impunity is explored in Chapter 8.

The New York Times (Dec. 16, 2008). Siemens had been involved in the payment of bribes during the privatization of Entel.


Carlos Menem received USD$ 16 million, Carlos Corach and Hugo Franco received USD$ 9.75 million each, and Carlos Sergi, the Siemens’ executive that facilitated the transaction, received USD$7.5 million. Carlos Sergi was a key intermediary in the elite cartel network, who had close linkages with public officials and controlled critical information: “he knew God and everyone. He knew before anyone else what was happening in Argentina” (Alconada Mon 2011, 36). The firm promised to pay an additional amount of USD$30 million to the president and the cabinet’s ministers (Clarín Aug. 10, 2008).

The firm expected the continuity of the project, as it had contributed to De la Rúa’s campaign with USD$2 million and 6 million in party donations (Alconada Mon 2011, 78 &192).

The negotiations with the government were long and tortuous. The Ministry of Interior (Radical Federico Storan) would have promised to facilitate a favorable report of the internal audit body, SIGEN, which strongly opposed the contract (La Nación Dec. 16, 2008). Although Siemens records confirmed the payment, it could not be confirmed whether the money was actually received by the minister or was kept by some intermediaries (see Alconada Mon 2011, ch. 9-10).

Decree 669/2001 terminated the contract. The firm resorted to Ciadi and claimed a USD$ 600 million compensation (Alconada Mon 2011, 39). In 2007, Argentina was obliged to pay USD$217.8 million dollars for the termination of the contract (op. cit., 192). The Kirchner government tried to exchange the withdrawal of the firm’s complaint for new contracts (La Nación Feb. 17, 2007).

In words of Volker Jung, member of Siemens’ board: “Argentina is worse than Iran. Iranians are also corrupt but at least they keep their word. They pay and comply with the projects. Argentines, in contrast, are also corrupt but in addition they are not trustworthy” (quoted in Alconada Mon 2011, 78). Former Siemens’ executive, Carlos Sergi, working through a consulting firm was the negotiator of the pending payments on behalf of Argentina’s public officials (La Nación Dec. 16, 2008). He threatened the firm in repeated occasions over the years with exposing the corrupt transactions if Siemens did not pay the delayed bribes. He finally resorted to a private arbitration and obtained USD$ 8.8 million from Siemens in exchange for his silence (Alconada Mon 2011, ch. 21).


The New York Times (May 27, 2008); Clarín (Aug. 5, 10, 2008).

Clarín (Aug. 6, 2008); La Nación (Dec. 26, 2008).


The New York Times (May 27, 2008); Alconada Mon (2011, 193).

The firm acknowledged to have violated the United States Foreign Corrupt Practices Act, yet avoided either a guilty plea or a conviction for bribery, thus allowing the firm to maintain its status as a “responsible contractor” with the federal Defense Logistics Agency. See The New York Times (Dec. 16, 2008); La Nación (Dec. 16, 2008).

The firm acknowledged the payment of bribes to the US authorities yet not before the Argentine judiciary (Clarín, June 6, 2009).

The opposition tried to create a legislative investigative committee, but the initiative did not prosper (Clarín Aug. 10, 2008).


Chapter 4
Institutional weakness, checks and balances, and accountability

1. Introduction

The failure to build enduring political institutions has been a constant trait in Argentina despite regime and constitutional changes, rotation of the ruling party, and renovation of political leadership. An analysis of the 1989-2007 period shows the limitations of the country’s democratic regime. Under different democratic administrations, the gap between formal political institutions and how institutions actually work in practice has undermined checks and balances and limited the executive’s accountability to the legislature, creating opportunities and incentives for corruption.

Although Argentina’s formal political institutions provide significant clues for understanding corruption, this chapter emphasizes the importance of looking beyond formal institutions to take into account variations in institutional strength. The chapter seeks to explain the causes of Argentina’s deficient executive accountability. The findings suggest that overall low levels of institutional commitment in Argentina affect the strength of checks on the executive. The instability and limited enforcement of formal political institutions accounts for actors’ low levels of institutional commitment, which undermines legislators’ incentives and ability to hold the executive accountable and enlarges the space for opportunistic corrupt behavior.

Institutional weakness and low levels of institutional commitment have origins in historical patterns of instability and recurrent economic and political crises, but also in endogenous factors linked to actors’ behavior. As actors expect that institutions will not endure and other actors will not respect them, they often undermine, violate or circumvent formal institutional rules to shrink accountability mechanisms and enlarge the scope of executive action. In 1994, Argentina’s Constitution was changed to strengthen checks on the executive. This change allows testing for the
effect of a change in the formal rules of the game (i.e., in actors’ prerogatives and their formal resources and powers) on accountability. As evidence in this and the next chapter shows, the new institutional setting did not have a positive impact on actually constraining the executive, as the actual workings of institutions significantly departed from the new formal provisions.

Rather than assuming that low levels of institutional commitment are present in Argentina, this chapter explores the factors accounting for such levels. Institutional commitment can be inferred from indirect measures that assess the gap between formal rules and actual practices. The chapter combines both objective and subjective indicators to measure this gap; for example, while formally legislators can be reelected, in practice most of them have short tenures in office. Also, the chapter departs from mainstream institutional analysis in considering not single institutional factors (e.g., the nature of the regime) but rather multiple institutional factors and their interaction. While this chapter focuses on the institutional environment and provides evidence for the low levels of institutional commitment, the following three chapters show how institutional weakness and low commitment hinder accountability mechanisms, thus facilitating corrupt exchanges.

The chapter proceeds as follows: section two explores the origins and sources of institutional weakness in Argentina. Section three describes the country’s formal institutional design. Section four combines both objective and subjective indicators to analyze the actual workings of formal political institutions by looking at their stability and enforcement over time. Section five addresses the effects of the gap between formal institutions and their actual workings on actors’ behavior and expectations. Section six draws some conclusions from the previous analysis.

2. The origins of weak institutions and low institutional commitment

Variations in the stability and enforcement of formal institutional rules can be explained by their origins, historical developments, or actors’ behavior (Levitsky and Murillo 2005, 283-288; Tommassi and Spiller 2000). Argentina’s institutional environment features both abrupt changes and strong continuities. While economic and political instability characterize the country’s history, some formal
and informal institutional features (such as the party system and clientelism) have proved to be sticky and enduring (Botana 1995, 5-6; Abal Medina & Suarez Cao 2002, 168, 2003). After 1983, the continuity of the democratic regime provided an opportunity to strengthen institutions, but political and economic instability reemerged in 1989 and 2001. This section presents a brief overview of the sources of Argentina’s low institutional commitment levels before moving on to analyze institutional weakness at work and its consequences.

Argentina failed to achieve institutional equilibrium in the 20th century. After the Great Depression and during the incorporation of the working classes, economic crisis and political instability were remarkable (Nino 1992; Llanos 1999). Numerous obstacles affected the normal enforcement of formal institutions, including a recurrent tendency to change or manipulate them to the advantage of certain actors’ short-term interests. This undermined economic growth and made it almost impossible for legitimate democratic institutions to take root. The Argentine economic and political puzzle – the recurrent inability to achieve the expected political and economic outcomes, despite having the right formal institutions in place – has challenged many analysts, who include among the possible causes of this failure: the legacy of Peronism as a movement indifferent to party institutionalization (McGuire 1997; McGuire 1995, 211); electoral fraud and the rise of populism (Alston and Gallo 2005); the party system and limited partisan alternation in power (Calvo and Murillo 2003, 6); lack of respect for the rule of law; and the built-in defects of the presidential regime (Bouzat 2006, 13), among others.

Argentina experienced a long economic decline. After high levels of economic growth by the end of the 19th century, under an authoritarian conservative government respectful of property rights, the country’s economic growth levels were sustained in the beginning of the 20th century during transition to an open democratic system. However, transition failed and, after September 1930, when the constitutional order was discontinued for the first time, military coups and electoral fraud along with the effects of the Great Depression paved the way to the populist emergence in the mid-40s. In addition to external shocks, institutional changes implemented during the 40s also had a profound
impact on the economy, making relative income per capita fall abruptly (Alston & Gallo 2005, 20). Bad economic performance was evident in high inflation, low investment, and monetary devaluations. Economic conditions deteriorated even further after 1975. Fiscal deficit was persistent and substantial (a disparity between revenues and expenditures of over 60% of total revenues was evident in 1945, 1958, 1975 and 1983). Similarly, positive rates of inflation were constant after 1940 (164 and 343% annually in 1982 and 1983), and reached a dramatic peak with the 1989 hyperinflation (Della Paolera & Taylor 2003, 72-74). GDP fell abruptly (6.24% in 1981 and 5.09% in 1982); in 1983, the balance of payments deficit was ten times the average of the 1970-76 period (Cavarozzi 2006, 64). Declining economic performance was the result of political instability, which led to numerous changes in political institutions, as well as volatile economic policies, which had a negative impact on public finances (Cavarozzi 2006, 65).

Political instability characterized Argentina’s contemporary history until 1983. The level of instability can be illustrated by the succession of military coups and governments – 14 military governments run the country between 1930 and 1983, with only two presidents (Peron and Menem) finalizing their terms in office before 2003. This was preceded by a decade of electoral fraud, in which the manipulation of elections served the short-term interests of the agricultural elite to exclude immigrant workers (Llanos 1999, 31; McGuire 1995). Thus, Argentina’s politics has often been described as a zero-sum game (O’Donnell 1973; Cavarozzi 1987; McGuire 1997) in which the actors’ capacity to block alternative political projects, together with the inability to build consensual solutions, led to the exclusion of relevant political actors (particularly Peronism after 1955) through constitutional and/or non-constitutional means (e.g., fraud, proscription, resort to the military).

In 1931, the end of Uriburu’s de-facto government with the election of Agustin P. Justo inaugurated the so-called “infamous decade,” which was characterized by electoral fraud, the proscription of UCR, and the exclusion and repression of left-wing groups (Nino 2005, 64). This period was followed by the 1943 revolution, led by a group of military officials including J.D. Peron. While the “justicialista” period made significant strides regarding income redistribution and social
justice, there were important authoritarian advances over political institutions (Aboy Carles 2001, 139). Members of Congress and the Supreme Court were removed, and institutions were manipulated to amend the Constitution to allow for Peron’s reelection in 1949. After 1955, when Peron was overthrown, no group was able to forge a minimum consensus around institutional rules for the distribution of power between different sectors (Llanos 1999, 32; Levitsky and Murillo 2005, 286). Given their mobilization power, the exclusion of Peronism and labor by both electoral (1956-1966) and military (1966-1972, 1976-1983) governments made any alternative regime unsustainable. The formal institutional arrangements of those regimes were flawed as they were created without any expectation to actually endure.

Between 1958 and 1983, different democratic and military regimes, all of which repeatedly violated constitutional norms and political institutions, alternated in power. Congress was closed (1962, 1976), the Constitution was violated and illegally reformed (1966, 1972), Supreme Court’s juries were removed, and repression was allowed. Attempts to institutionalize political activity during the second government of Peron (1973-1975) failed because political actors maximized their short-term interests rather than investing in longer-term political constructions (Cavarozzi 2006, 54). This signaled the deterioration of the Peronist government, which was unable to respond to increasing violence and political radicalization. The military dictatorship that followed the 1976 coup sought radical, violent transformation of Argentine society, yet was unable to ensure neither political nor economic stability.

Given the limited expectation that formal institutions would endure and be enforced, actors’ levels of institutional commitment were low. Political actors did not develop resources, skills, and organizations to reinforce existing formal institutional rules, and often relied on alternative venues and skills to advance their interests. Entrenched informal institutions and organizations provided political actors with channels to participate and express their demands. Extra-institutional mechanisms of negotiation became the norm and substituted for institutionalized problem-solving mechanisms and consensual solutions (Cavarozzi 2006, 17). For instance, landowners did not invest
in organizing political parties to represent their interests, but rather were “able to use powerful class organizations as alternative vehicles for political influence” (McGuire 1995, 202; 233). Similarly, unions did not invest in party politics but rather violated formal rules to achieve concessions and to channel their demands through other actors (Cavarozzi 2006, 27). Although political parties were forbidden after the 1976 coup, traditional parties survived clandestinely, given their extended social networks. In the case of Peronism, unions provided one of the alternative institutional arenas for survival, as they had during the 1955-66 proscription. As a result of the proscription and the prevailing leadership style (built outside electoral and party arenas), parties did not value formal organization, particularly in the case of Peronism. The Partido Justicialista (PJ) was created from above to satisfy Peron’s political goals; the organization was pervaded by a hierarchical disposition and military orientation, in which loyalty and inter-personal relations were particularly valuable for defeating the adversaries (Arzadun 2004, 67-8).

Pervasive political instability explains actors’ failure to develop stable expectations about institutions. Political democracy and social justice were seen as antithetical, and hegemonic projects sought to eliminate political competition (Aboy 2001, 222). Excluded sectors never accepted the formal rules of the game, and looked for ways to replace them. Institutions were easily forbidden, undermined, or eliminated, and actors relied on alternative informal institutions. In an attempt to facilitate decision-making, institutional changes mostly affected political institutions other than the presidency, which over time favored the stronger legitimacy and concentration of power in the executive branch:

In a context of political instability, a succession of democratic, semi-democratic and authoritarian regimes diminished the stature of institutions like Congress and the Judiciary, and enhanced that of the President. During the de facto governments, the institutions that imposed control on the Executive were shut down or restricted. This resulted in the accumulation of prerogatives in the office of the Presidency. [...] Presidential predominance also occurred during constitutional interregna. In effect, since constitutional rule often operated alongside hegemonic political projects, the settlement of most inter-institutional conflicts also tilted the balance of power toward the Executive (Llanos 2001, 69).

The return to democracy in 1983 inaugurated a period of democratic stability that extends until today. However, there are countervailing forces. The threat of military coups has vanished, competitive
elections are routinely held and alternation in the national executive has taken place, yet issues of institutional instability remain. Four presidents resigned before the end of their terms (Calvo and Murillo 2003, 8) – two democratically elected, and two others who had been appointed to replace one of those two. In periods of divided government, attempts to reach agreements for cohabitation between the president and the ruling party have systematically failed. Resort to extra-constitutional devices for governing and sidestepping Congress has been too common. Large discretion in the administration of state resources distorts political practices and turns them into a bargaining game over particularistic benefits rather than informed debates over public policies (Bouzat 2006). Alternative political forces remain unstable, contributing to the fragmentation of the party system and the legislative process. The executive’s influence over the judiciary reinforces patterns of institutional instability, as does the cooptation and weakness of regulatory agencies.

Despite episodes of economic and political crisis, democratic stability represents a significant departure from historical patterns. Actors have developed stable expectations about the continuity of democratic rules and competitive elections, but the effects of these expectations on strengthening institutions and institutional commitment are still unfulfilled. Although many actors have focused on enhancing and strengthening democratic institutions, as well as reinforcing accountability (Peruzzotti 2005), the enforcement of formal institutional rules is still weak, actors’ time horizons are short, and inefficient results (including weak representation and limited accountability) continue to undermine the quality of democracy (Levitsky 2005). These may be serious threats to stability over the long run.

3. Formal political institutions in Argentina

This section describes the main features of Argentina’s formal political institutions. While power fragmentation promises stronger checks on the executive and enhanced accountability, in practice, political institutions work very differently from what would be expected given the formal institutional design. As a result, the number of veto points and transactions costs increase, enhancing non-cooperative behavior and constraining political actors’ ability to reach efficient policy outcomes (Cox
As political institutions fail to create stronger checks on executive discretion, they set a propitious institutional environment for corruption.

3.1 Constitutional structure: Presidentialism, Federalism, and Congress

3.1.1 Presidentialism and the executive branch

Argentina is a presidential system, based on a strict separation of powers between three different branches of government. Prior to 1995, the president was elected indirectly through an Electoral College for a six-year mandate; after the 1994 constitutional reform, the president is elected directly by voters for a four-year term through a modified version of the double component rule (Jones 2001, 152). Reelection is limited to one term, after which the candidate must wait four years before seeking reelection. The Constitution provides the President with important formal powers, which makes the country appear on paper as one of the strongest of all presidential systems (Shugart and Haggard 2001, 81). Moreover, Argentina’s presidentialism has deep socio-cultural roots and most citizens identify the president as the center of the exercise of political power (Botana 1994, 6; Novaro 1995, 96; Bouzat 2006, 11).

Presidential powers may be classified in two broad categories: executive and party authority. The nature of executive powers can be proactive (which allow the president to establish a new status quo), or reactive (aimed at maintaining the status quo by reacting to the legislature’s attempt to change it) (Mainwaring and Shugart 1997, 40; Shugart and Haggard 2001, 72). In Argentina, executive authority includes the proactive power to present legislative initiatives for congressional consideration. Only the president may initiate the budget bill, and Congress cannot increase spending without identifying sources of revenue. The president appoints the cabinet and many other public officials without legislative approval. In addition, the president has important legislative powers. Since 1995, the president may issue decree laws that do not require prior authorization by statute in conditions of need and urgency, subject to certain restrictions. The source of decree authority can also be the explicit delegation of powers by the legislature. For example, in 1989, legislative delegation
of powers regarding privatization allowed President Menem to reinforce his authority by issuing several decree laws to create new taxes and further deregulate the economy (Ferreira and Goretti 2000, 3). In addition, the president, who is head of state, the government, the public administration and the armed forces, has important exceptional prerogatives in declaring a state of siege and the power of federal intervention in the provinces. As for the reactive powers, the president has veto power in relation to the legislative process. Once legislation is enacted by the legislature, the president has both total and partial or line-item veto power. Since 1995, the amended Constitution also allows the president to promulgate parts of a bill, while vetoing others.

Unlike constitutionally endowed executive powers, partisan powers are a variable source of presidential strength. Partisan powers relate to the exercise of effective party leadership, including control over the nomination of candidates and party authorities.15 The leadership of the ruling party allows the president to align legislators’ incentives and enforce legislative party discipline, thus strengthening presidential authority. As his or her party leadership declines, the president loses political power. The size and fragmentation of legislative parties are shaped by electoral rules and social cleavages (Mejia 2007, 43). The majority of Argentina’s democratic presidents have been the undisputed leaders of the ruling party. While in some cases party rules formally recognize this leadership, it also has informal roots. Peronism has traditionally unified the head of the party with the head of the executive; in the UCR, the party charter was reformed in 1983 to allow Alfonsin to keep a hold on the party, but then the party returned to the traditional formal separation between the two offices (Malamud 2005, 9).16

Historical developments and actors’ behavior have enlarged the scope of executive action beyond the formal powers described above. It is not the letter of the Constitution but its enforcement that has produced a concentration of authority in the president (Bouzat 2006, 10). The interaction between formal presidential powers and other institutional features contributes to this result.
3.1.2 Federalism

The importance of sub-national politics and processes to Argentina’s politics and policy-making is well established in the literature. The state has a federal structure, being composed of twenty-three provinces and a semi-autonomous federal capital with important competencies attributed by the Constitution. Federalism interacts decisively with other institutional features to define actors’ incentives and expectations.

One important dimension is the taxing and spending authority of sub-national units or fiscal federalism. The main feature of Argentina’s fiscal federalism is a large vertical fiscal imbalance. The mismatch between the revenue and expenditure responsibilities of different levels of government results from a high decentralization of expenditures combined with the centralization of tax revenue collection (Tommasi, Saiegh, and Sanguinetti 2001, 4; Eaton 2002, 96). While the provinces are formally empowered by the Constitution to use indirect taxes, and have exclusive jurisdiction over direct taxes, in practice they have delegated to the central government the task of collecting all major taxation. In 2004, 57% of provincial expenditures were financed through transfers from national taxes and only 43% through direct provincial revenues, with some provinces being particularly dependent on fiscal transfers.

Regarding expenditures, national authorities’ exclusive formal powers are limited to defense and foreign affairs. Areas of shared responsibility include economic and social infrastructure, while provinces have exclusive competence over education and municipal organization and services. The constitutional mandate allows both the national and provincial governments to provide public services, but the tendency has been to decentralize them. Also, provinces are in charge of most social expenditures and economic infrastructure, although the national government retains regulatory power in many of these areas, and can manage national programs in these sectors. The importance of sub-national governments is reflected in their relative weight in consolidated public sector expenditures, which in 1999 was almost 50%, and more than two thirds of public sector expenditures if we exclude pensions (Tommasi, Saiegh, and Sanguinetti 2001, 3).
An important aspect of federalism relates to the formal rules governing revenue sharing or the tax-sharing regime (the so-called *coparticipation*). After six decades of stable formal rules regulating fiscal relations between the central government and the provinces, President Menem drastically altered the rules of intergovernmental relations in 1992. Aimed at ensuring macroeconomic stability, the new fiscal pacts in 1992 and 1993 defined a new framework in which provinces saw their revenue shares reduced by reserving 15% of the shared revenues for social security expenditures. In addition, a minimum floor for revenue transfers was set regardless of actual revenue collection (for example, in 1992, transfers could not be lower than USD$720 million). These de facto agreements were formally institutionalized with the 1994 constitutional reform. However, the constitutional mandate to enact a new law by 1996 has still not been fulfilled and thus the legal framework for tax-sharing is still Law 21.548 (issued in 1988), with the modifications introduced by the above-mentioned agreements.\(^\text{21}\)

Another important feature of fiscal federalism is that all levels of government are allowed to borrow internally and abroad. Provincial indebtedness reached enormous levels in the 1980s and 1990s,\(^\text{22}\) and was one important factor behind the increase of federal government spending and transfers to the provinces. In 1993, transfers to provinces were 12,853.4 million pesos or 5.43% of GDP; in 2006 they reached 42,304.3 million pesos or 6.5% GDP;\(^\text{23}\) in the period 2001-2004 alone, transfers to provinces increased by 140% (Argañaraz 2005).

Federalism interacts with electoral rules and party dynamics to shape actors’ incentives. There is a high overrepresentation of small provinces in the Senate (while small provinces represent only 20% of the country’s population, they control 58% of the Senate), contributing to greater political fragmentation (Shugart and Haggard 2001, 89).

### 3.1.3 Congress

Despite the strong formal powers of presidents, Argentina’s legislature also has important formal attributes. According to the Constitution, legislative initiative belongs to Congress together with the executive (including national customs and foreign trade duties). Congress is responsible for approving the budget and may introduce budget changes provided that sources of revenue are identified.
Congress is empowered to levy taxes, grant subsidies to the provinces, regulate trade, settle debt payments (domestic and foreign), approve federal intervention in the provinces, and declare a state of siege, among other powers. In addition, Congress may exercise important oversight functions over the executive branch, including approval of the budget accounts, external control of the public sector through the Supreme Audit Institution, creation of investigative committees, and legislative requests for information.²⁴

Congress has a bicameral structure. The initiating house has priority on the bills in case of inter-house discrepancies.²⁵ The Chamber of Deputies is composed of 257 legislators who are elected from multimember districts for four-year terms. One half of the Chamber is renewed every two years; each district renews half of its legislators or its closest equivalent. The number of legislators per district is proportional to their population; however, several restrictions (no district receives fewer than 5 deputies, and no district may have fewer deputies that in the last democratic period) lead to the overrepresentation of small provinces. Since 1995, the Senate has been composed of 72 senators, three for each of the 23 provinces and the federal capital. Senators have been elected directly since 2001, although the limitation that no party can hold all three seats (with the third going to the second-place party in the election) still applies. Before constitutional reform, only two senators per province were elected indirectly for nine-year terms by the provincial legislatures using a plurality formula, except in the federal capital where they were elected via Electoral College. One third of the Senate’s members are elected every two years for a six-year term. The vice-president presides the Senate, but only casts his vote in exceptional cases of ties. The Senate has important formal prerogatives: it approves presidential nominees and advisors, authorizes the president to declare a state of siege in case of military attack, and appoints judges; also, revenue-sharing bills must originate in the Senate.

Internally, Congress is structured in a large number of committees, whose composition reflects the proportion of seats held by different parties. However, the house leadership formally holds the ultimate decision-making power regarding committees’ composition, which reinforces party leadership and gives the majority party greater control over the legislative agenda (Jones and Hwang
2005, 127). The legislature’s internal organization and processes are regulated by internal congressional rules.

3.2 Other relevant institutions

Besides the constitutional structure, it is important to analyze the characteristics of the electoral system and the party system as well as party organization and internal procedures. The relevance of electoral rules and political parties and their mediating effects on actors’ incentives has been widely established in the institutional literature.

3.2.1 Electoral rules

Since 1983, Argentina has held free and fair democratic elections. The 1994 amended Constitution introduced several reforms in electoral rules, which affected the election of the president and members of the Senate. The electoral system presents three differentiated tiers at the national level. First, the president and vice-president are elected in one ballot by direct popular vote using a runoff voting system, with ballotage if no formula obtains more than 45% of valid vote, or 40% of the valid vote with a difference of at least 10% over the second formula. The peculiarity of the formula (50% is not required to win) creates incentives for parties to coalesce in the first ballot, which makes the system operate in practice as a plurality system (Malamud & De Luca 2005, 8). Second, members of the Senate are elected since 2001 in provincial-wide districts by direct vote on multi-member lists; since 1995, in three-seat constituencies, with two seats awarded to the most voted party and the third to the second most voted. Usually two parties obtain representation in each province, except in those cases in which a party splits and presents more than one list, which allows winning all the seats in dispute. The third tier is the election of deputies for the lower chamber. Legislators are elected from closed party lists in multimember districts based on a proportional representation using the D’Hondt method with a 3% threshold. It is a party-centered electoral system, in which political parties and party leadership nominate the candidates and rank them in order in closed lists that voters cannot modify at the election. Legislators are elected in multimember districts that correspond geographically with the provinces. The district magnitude is variable, with a median magnitude of
3.25 and a mean of 5.3. Given that only two districts are truly large, most districts work in practice as plurality systems.

Small provinces are deliberately overrepresented in both chambers, but this effect is more pronounced in the Senate (Gordin 2006, 5). The distribution of the electorate is relevant for the election of senators and legislators. Small districts are less competitive and prone to Peronist vote. This gives an advantage to the PJ, which has a stable electoral floor and controls the Senate and the majority of provincial governorships, yet has also benefited the UCR compared to third parties by ensuring institutional power for the party despite its irregular electoral performance (Malamud and De Luca 2005, 9). Electoral rules create incentives for a two-party system, in which third parties face significant obstacles to penetration of districts beyond the City of Buenos Aires. The effects of electoral rules on individual behavior cannot be understood without taking internal party procedures into consideration.

3.2.2 Party organization

Despite deep political and electoral shocks, Argentina’s party system remains relatively institutionalized (Mainwaring and Scully 1995). Two major parties have dominated political life: the Peronist party (Partido Justicialista, PJ) and the Radical party (Union Civica Radical, UCR). Many other minor and provincial parties exist, but they do not have the organizational resources or the national presence of traditional parties. The party system shows great stability, with Peronism and UCR controlling the Presidency, Congress, and most sub-national governments and mayoralties (Jones and Hwang 2005, 117; Abal Medina and Cao 2002, 168).

The PJ and UCR’s formal organizations reproduce the country’s federal structure (Mustapic 2002, 27). They are organized in highly autonomous provincial units, which sometimes resemble a federation of parties. The heterogeneous nature and limited programmatic coherence of both parties enhances internal fragmentation (Manzetti 1993; McGuire 1995; Hawkins and Morgenstern 2000; Alcantara 2004, 2005; De Luca 2004; Malamud 2005). Party factions share mutual interests and compete with other factions for power, candidacies or resources (Leiras 2007, 65). Internal conflicts
are usually the result of personal differences, or fights about resources, rather than irreconcilable ideological disputes. UCR’s internal factions are more stable and usually integrated at the provincial level; although national factions do not necessarily reproduce provincial and local factionalism, linkages across provincial factions are not uncommon. In contrast, given its weaker institutionalization, competition amongst Peronist factions is very intense at the local level, but more limited at provincial level; also, linkages between provincial factions are rare and ephemeral (Leiras 2007, 89).


Despite the stability of the party system, the 2001 crisis produced important shocks. Overall, the party system experienced an increasing fragmentation, both inter-party and intra-party (Escolar et al. 2002; Leiras 2006, 2007; Acuña 2008, 181). This was the result of two simultaneous processes affecting traditional parties. On the one hand, the UCR’s eroding electoral support at the national level, as well as party splits following the crisis, led to the emergence of new parties. On the other hand, increasing factionalization affected both major parties (Rodriguez and Bonvecchi 2004). In the UCR, the integration of factions at the national level was severely weakened, while the heterogeneity of provincial factions increased. In the PJ, the criteria shaping internal factions persisted, yet heightened conflict between them made it more difficult to reach agreements (Leiras 2007, 92; Arzadun 2004, 2008). Regardless of those processes, the two traditional parties maintained their electoral support as a result of the strong electoral stability at the sub-national level: Peronism holds a strong and stable electoral floor at provincial level (Escolar et al. 2002, 29), and the UCR keeps a strong hold on
municipal governments because of its provincial and local roots. Thus, between 1983 and 2007, Argentina exhibited

    a two-party system at the presidential level, a predominant party system at the senatorial level, and a party system of limited pluralism at the deputy level. As a whole, though, the national party system displays a picture closer to concentration rather than fragmentation. Two parties alone, the PJ and the UCR, have alternated in the presidency while consistently accumulating more than 80% of the Senate seats and more than 70% of the lower house seats, albeit the PJ have scored more victories, obtained more seats, and registered a more stable performance. (Malamud and De Luca 2005, 5)

The 1985 Law of Political Parties (Law 23.298) governs the organization and activities of parties at the national level, including party finance. The law requires parties to have an internal charter (carta orgánica) and to hold elections for intra-party leadership positions, but not for selecting candidates for public office. The 1994 Constitution acknowledged the fundamental role of parties and incorporated the obligation for parties to hold internal elections, with the additional requirement of ensuring minority representation. It also gave constitutional status to the right of parties to submit candidates for public office (Ferreira Rubio 1997, 24-26). In 2002, Law 25.611 introduced the obligation for political parties to hold open and simultaneous primaries to select candidates for all national posts. This was short-lived; after being suspended for the 2003 election, in November 2006, the law was abrogated. The internal party charter, according to the Political Parties Law, includes specifications for candidate selection, qualifications of candidates, and re-nomination. Each provincial party has its own charter, which may introduce variations in the national charter, thus enhancing provincial party control over internal party processes.

Given the party-centered nature of the electoral system, internal party procedures for candidate selection are crucial. The recruitment and selection process is controlled by political parties, and particularly by provincial sections and party bosses; this holds true not only for legislative candidates, but also for presidents and governors (De Luca 2004). Methods for the selection of candidates include party leaders’ maximum control over the process (through different forms of elite arrangements) to minimum control (through open primaries). Elite arrangements include the imposition of a party list or candidate by party leaders, negotiations among national or provincial party leaders to agree on a consensual party list, candidates in an uncontested primary, and the ratification of candidates without
dissent from party members. Primaries are held when two or more candidates vie to be included in the party list. Direct primaries may be open to both party members and those not affiliated with the party, or restricted to party members and affiliates only. Primaries are run by the party and involve significant mobilization of resources and affiliates through extensive party networks, which rely on patronage and clientelism. It is a confrontation between party machines, and the result is largely determined by the availability and deployment of financial and material resources (De Luca, Jones & Tula 2002, 2003; De Luca 2004, 8; Jones & Hwang 2005, 125-126).

4. The actual workings of political institutions

Formal institutional rules provide numerous mechanisms to check on the executive and ensure accountability; however, in practice, the actual workings of political institutions reduce legislators’ levels of institutional commitment and encourage Argentine presidents to encroach other powers and act with great degree of discretion. While the institutional system formally ensures the division of powers, it fails to guarantee strong checks-andbalances and effective accountability. This section provides evidence of the limited stability and enforcement of formal institutional rules to support the claim that they have a weak constraining effect on actors’ behavior. It examines specific institutions and assesses the stability of formal rules as well as factually observed behavior over time. Instability associated with external historical factors is taken as a background condition for understanding actors’ behavior within institutions, paying attention to whether actors circumvent, manipulate, violate or change formal institutional rules.

4.1 Constitutional structure: Stability and enforcement of formal executive powers

Although Argentina’s Constitution attributes strong formal powers to the president, these powers are formally constrained by Congress and the Chief of Cabinet. The Chief of Cabinet, who is appointed and removed by the President but politically accountable to the legislature, executes the budget, is in charge of general administration, and makes public officials’ appointments (except those that are competence of the President alone). Congress is formally empowered to counterbalance the
Although mainly reacting to presidential initiatives, Congress can formally approve, delay, amend or reject the executive’s initiatives. Even in cases of legislative delegation, when there is the greatest power imbalance in benefit of the executive, Congress still retains the authority to retract such delegation (Carey and Shugart 1992, chap. 7). Therefore, Congress is formally designed to ensure balance of power and the appropriate checks among the different branches of government. Moreover, regardless of the president’s strong formal powers, institutional dynamics engender executives whose policy agenda is de facto constrained by multiple actors. The different durations of presidential and legislative terms, and the lack of formal mechanisms for inducing cooperation and reaching agreements between the president and opposition parties with legislative majority, mean that Congress can potentially produce legislative stalemate and institutional deadlocks when the president does not control the legislative majority (Figueiredo and Limongi 200, 151).

However, the actual workings of political institutions help presidents overcome these constraints. As a result, the executive is generally perceived as the strongest political institution. There are instances in which the instability and limited enforcement of the formal rules that constrain executive authority have actually strengthened the Presidency (Ferreira Rubio & Goretti 1996, 443). Moreover, strong presidential authority is, to a great extent, the result of actors’ behavior and practices, which expand the scope of executive action beyond its formal limits, and provide the executive with multiple resources (both formal and informal) to act discretionally and enhance its power unilaterally (Rose-Ackerman et al. 2010, 5).

This explains the historical oscillation between omnipotent and weak presidents (Bouzat 2006, 12; Acunha 2008, 27).

**Presidential authority under Menem (1989-1999)**

Menem’s presidency (1989-1999) is frequently characterized as an example of hyperpresidentialism and delegative democracy (O’Donnell 1994; Novaro 2001). The combined effects of economic emergency, strong party cohesion, and electoral rules on executive-legislative relations facilitated strong executive action. The constitutional reform of 1994 significantly altered the formal rules of the
presidency, affecting inter-branch relations and executive accountability. While reform introduced
new formal constraints, it also solidified de facto attacks on the checks and balances that had
characterized Menem’s presidency (Palanza 2009, 164). Reform opened the possibility of a second
consecutive mandate (historically, a resource to limit the president’s power); reduced the president’s
tenure; and changed the electoral system for presidential election from indirect to direct vote.\footnote{After
reform, formal rules no longer guaranteed alternation in the executive office, which depended on the
ability of opposition parties to defeat the ruling party (Botana 1995, 11).}

The strategy through which Menem introduced the reelection issue in the political agenda
early in 1990 illustrates actors’ uncertainty and unstable expectations regarding the continuity of
political institutions:

> For us, this divorce between the written and the lived Constitution, between the formal and the real
Constitution, gives us the imperative and irreversible mandate to reform now the Constitution (Dromi,
1994; author’s translation).

Menem resorted to both institutional and extra-institutional mechanisms for advancing reform,
threatening to call for a popular referendum and manipulating internal legislative norms to obtain the
required votes.\footnote{Menemism modified the rules of the game to suit their needs (reelection) by using tricks and threats,
some of them of dubious legitimacy (as the planned referendum and the intention of manipulating
parliamentary regulations, among others), extorting the political opposition until it gave in (Novaro
2001, 66; author’s translation).}

The UCR facilitated the presidential strategy when former President Alfonsin, who had firmly and
publicly opposed reelection, secretly negotiated with Menem. As evidence of the short-term horizons
of political actors, the negotiation that led to the \textit{Pacto de Olivos} was induced by the electoral results
of 1993, in which the UCR improved its national results but performed badly in the Capital and the
Province of Buenos Aires. The negotiation was also spurred by the internal pressure of Radical
governors, who wished to reform provincial constitutions and were afraid of losing federal resources
(Malamud 2005, 10-11; Cavarozzi 2006, 105). Alfonsín was able to incorporate a new formal
constraint over presidential authority (the Chief of Cabinet) but this formal institution was inherently
weak, given its appointment by the president (Sabsay 1999; Rose-Ackerman 2010, 6).\footnote{Also, given...}
low institutional commitment levels, the opposition’s ability to enforce behind-doors agreements was limited and the government unfulfilled its promises (De Riz 1999). By the end of his second mandate, in violation of the amended constitution, Menem sought, but failed, to get a third consecutive mandate. His failure can be attributed to internal party politics and an adverse public opinion, not the enforcement of formal institutional constraints (Novaro 2001, 102; Helmke 2005, 145-6; Cavarozzi 2006, 121). Reform formally strengthened executive accountability, but in practice, it fell short of its promise given the limited enforcement of these checks on the executive. As reform provided ample margins for the manipulation and change of constitutional norms through legislation (Novaro 2001, 67), it weakened political actors’ commitment with the formal rules of the game, and showed the prevalence of actors’ short-term interests.

Menem was formally elected head of the Peronist party in 1990, but his disregard for party organization led him to violate this mandate and to place his brother, Senator Eduardo Menem, in charge of running the daily party operations (Levitsky 1998). After 1991, he used the party to gain policy support, by enforcing legislative and party discipline through the distribution of rewards and penalties (including the intervention of provincial parties), and to facilitate policy implementation in absence of a strong bureaucratic apparatus (Novaro 1995, 112; Novaro 2001, 84-5). By enhancing the party’s dependence on state resources and blurring the boundaries between state and party, his strategy further de-institutionalized the PJ (Novaro 2001, 86; Arzadun 2008, 239). State resources were easily used as organizational incentives to discipline the party. Moreover, since labor participation was not formally institutionalized, access to public office allowed the substitution of unions’ resources for state resources, which were used to build independent patronage networks as the main linkage with Peronist urban bases (Levitsky 2003; 2005, 190).

This change benefited the president in several ways. It increased his ability to appeal to new segments of the electorate and his capacity for undertaking market-oriented reforms by deactivating intra-party opposition and defusing popular protest in a context of economic crisis (Levitsky 2005, 195-6; Arzadun 2004). The success of his strategy depended on the availability of state resources and
actors’ expectations about the prospects of presidential leadership. As state resources became less available (privatization resources were mostly spent and the economy stalled following the Tequila crisis), and Menem became a lame duck with his reelection in 1995, the party became an informal limit on the president. His hold on the party weakened with the emergence of a strong dissident internal faction (led by former Vice-President and Governor of Buenos Aires, Eduardo Duhalde), and he had to resort to informal mechanisms (e.g., Governors League) rather than formal party bodies to enforce party decisions.51

Menem systematically violated and/or circumvented formal rules constraining the exercise of executive proactive powers. First, he contributed to the instability of institutions other than the presidency and sought to enlarge de facto executive authority. Relying on a strong legislative majority,52 Menem enlarged the Supreme Court (from 5 to 9 members) and packed the court with political allies who validated Menem’s policies unconditionally (Verbitsky 1993; Ferreira Rubio & Goretti 1996, 446-7; Chavez 2004, 455-7). The Court’s reform did not violate the letter of the law, but it showed that the institution was not above political manipulation (Helmke 2005, 142).53 Menem exerted political influence over the judiciary through different mechanisms, including appointments of federal judges, the reform of the highest criminal appeal court (Camara Nacional de Casacion Penal),54 as well as the politically motivated use of impeachment (juicio politico) for removing federal judges. For example, between 1992 and 1997, seven judges were removed (roughly the same number of removals had taken place between 1862 and 1976) (Molinelli et al. 1999, 4.16/18).

Moreover, Menem exercised his power of federal intervention liberally, intervening in four provinces: Corrientes, Santiago del Estero, Tucuman, and Catamarca.55 (See Table 4.1.) Although less politically motivated than previous interventions, these actions were in many instances aimed at solving internal conflicts within Peronism (Novaro 2001, 84).56 Three of these interventions were implemented through executive decree, and in some cases they circumvented the required legislative agreement.57 Finally, Menem frequently exercised his regulatory powers, issuing over 13,500 executive decrees. Some decrees were in accordance with the letter of the Constitution (e.g., decree
2184/90), or the result of legislative delegation (e.g., laws 23.696, 23.697, 23.982), but in other cases, he violated formal constraints in the exercise of executive powers (Ferreira and Goretti 1996, 443-4). Menem sent a large number of bills to Congress, but faced increasing difficulties in gaining policy support; therefore, he increasingly resorted to enforce his veto powers. He vetoed 1097 bills or 13% of total bills (Leiras 2003; Mustapic 1995). More significant was the resort to informal proactive executive powers (like line-item vetoes and DNUs) to circumvent legislative constraints and strengthen presidential authority, particularly during his second term (for more details, see Chapter 5).

Table 4.1. Federal interventions, 1989-2007

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<td>Federal interventions (law, presidential initiative)</td>
<td>1 (Santiago del Estero)</td>
<td>1 (Corrientes)</td>
<td>1 (Santiago del Estero)</td>
</tr>
<tr>
<td>Federal interventions (law, Congress initiative)</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Federal interventions (decree)</td>
<td>6 (1 Tucumán, 2 Catamarca, 3 Corrientes)</td>
<td>0</td>
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<tr>
<td>Total</td>
<td>7</td>
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Source: Molinelli et al. (1999); author’s elaboration based on daily newspapers.


High political instability characterized the administrations of Presidents De la Rúa (UCR, 199-2001) and Duhalde (PJ, 2002-2003). Although both presidents showed more restraint in the exercise of their constitutional powers, they significantly violated and circumvented formal institutional rules during their mandates.

De la Rúa was not the leader or promoter of the electoral coalition that brought him to office in 1999 (Mustapic 2006). He was never head of the UCR, but only a member of an important faction based in the Federal Capital. These circumstances, together with his indecisive character and autonomy from the party in the nomination of his cronies to cabinet positions (Malamud 2005, 12; Cavarozi 2006, 128), seriously debilitated his hold on power. De la Rúa maintained a Supreme Court composed entirely of justices appointed by his predecessor. It is unclear whether this restraint was the
result of respect for formal institutions, or a strategic decision based on his interest in advancing economic reform without the Court thwarting his policies (Helmke 2005, 155-156). De la Rúa limited his resort to federal intervention (only Corrientes was intervened). However, given his weak legislative support, he bluntly violated formal institutional rules to enact legislation. Backed by 47% of party support in the Chamber, but facing an adverse Senate (dominated by PJ with 55.7%), the president was unable to surpass legislative constraints and build consensus around policy reform. He did not make use of formal presidential resources such as the veto, but violated formal institutional rules when he authorized bribing senators to pass the labor reform bill. Amidst economic and political crisis, his direct involvement in the scandal led to his anticipated resignation in December 2001. This created a power vacuum that endangered institutional continuity. Only Peronism seemed able to provide leadership and ensure stability.

Following De la Rúa’s resignation, there was a succession of short-lived presidents, until the appointment of Peronist Eduardo Duhalde as a result of an informal agreement between PJ governors and the UCR Buenos Aires faction led by Alfonsin (Cavarozzi 2006, 132). Duhalde’s strong hold over the PJ was not formalized via the assumption of the party leadership, which was still held by former President Menem. However, Duhalde controlled the strongest party apparatus: the informal clientelistic machine of the Buenos Aires province, the nation’s most populous province and the largest electoral district, accounting for more than one third of the electorate (Arzadun 2004, 117). Duhalde moved against the Supreme Court soon after taking office, but the attempt to impeach the Court’s justices was one of his presidency’s biggest failures. Congress dropped the charges and the Court remained intact. Despite the Court’s decisions against the new government, the president did not have the support or the power to rebuild the Court (Helmke 2005, 160). This is an indication of the limits that the informal pact that had led him to the presidency imposed on his actions.

Although the president managed significant state resources, he was not able to discipline Peronist provincial party factions to become the effective leader of the PJ. This explains why, despite great uncertainty, Duhalde respected his promise to call for presidential elections in 2003. This
enhanced his legitimacy as a politician who was not interested in perpetuating in power (Cavarozzi 2006, 134). Although Duhalde was not able to impose his leadership over the PJ, he firmly controlled the nomination process of a Peronist candidate. He violated electoral rules, allowing three different Peronist candidates to run under different party labels, thus translating intra-party conflict into the institutional arena. In so doing, Duhalde was able to retain significant party power and de facto control over a large number of Peronist legislators. This became a crucial de facto constraint on the incoming president (Cavarozzi 2006, 143; Arzadun 2008, 197).

*Presidental authority under Kirchner (2003-2007)*

President Kirchner’s mandate was characterized by his attempt to reinforce presidential authority, given the weak legitimacy derived from the 2003 presidential elections (Kirchner received 22.2% support and former President Menem 24.5%, but a runoff was never held as Menem withdrew). In a favorable economy, he was able to successfully rebuild political authority after the 2001 legitimacy crisis.\(^60\) He finished his constitutional term in office, enhancing the stability of Argentina’s new democracy. However, the strengthening of presidential authority, particularly after 2005 mid-term legislative elections, involved the deterioration of executive accountability:

Kirchner won by a very big difference the 2005 election and from that moment onwards, it began a very grave and disturbing paradox -- the stronger the presidential power (presidential authority was consolidated - this is something positive about Kirchner’s government, which he managed to install an image of strong public authority, which after the crisis was very good for Argentina), the more power concentrated in the President, democracy did not get stronger, but weaker, because there was a clear abuse in the exercise of power.\(^61\)

Kirchner came to office with a previous background of undermining accountability institutions and not respecting the stability and binding nature of the formal rules of executive authority: as Governor of Santa Cruz, he changed the provincial constitution to allow for indefinite reelection (Curia 2006, 94-7; Levitsky and Murillo 2008; Iglesias 2007) and discretionally managed the oil royalties received by the province.\(^62\) At the national level, Kirchner formally respected the four-year presidential term and fulfilled his public commitment of not seeking reelection. However, he did not feel bound by formal party rules for the nomination of the 2007 presidential candidate. Ignoring the party primaries, which had been suspended in 2003, he imposed his wife as the Peronist candidate.\(^63\)
They will alternate in the presidency as many years as they can, according to the actual political conditions. It won’t be the rules that will stop them, but rather the level of public support (and votes), the behavior of other stakeholders within Peronism, and so on. In this sense, Kirchner’s decision to try to lead Peronism while his wife is in the presidency is key (Interview with P. Ostiguy 2007, on file with author; author’s translation).

In practice, Kirchner did not exercise any formal partisan powers until consolidating his de facto control over the party. He disregarded formal party rules and kept the party judicially intervened, given his inability to build internal consensus and to secure compliance regarding the distribution of power among different factions (specifically, the governors and Duhalde) within the formal party structure (Arzadun 2008, 119). In 2008, after leaving office, he installed the debate about the organizational normalization of PJ and, again disregarding formal rules, was elected party’s president by acclamation, without internal competitive elections.

Kirchner helped to rebuild executive authority by disciplining governors and mayors from the largest urban areas through the distribution of benefits, cooptation of political adversaries, and undermining of Congress’ autonomy (Cavarozzi 2006, 142). He initially showed restraint in relations with the judiciary. He pushed for the legislative impeachment of the Supreme Court’s justices to end the automatic majority era and established a participatory process to appoint the new members, thus restraining presidential discretion in the appointment process (Helmke 2005, 161-2). However, this renovation did not permeate other judicial structures and further presidential actions showed significant ambiguities (Abiad & Thieberger 2005). For example, in 2005, when the Supreme Court was left with a majority of members appointed by him, Kirchner initially resisted the demand of civil society organizations to reduce the number of the Court’s justices (Curia 2006, 194). In 2006, the reform of the Judicial Council against the constitutional mandate (the number of members was reduced from 20 to 13, out of whom 7 were legislators) enhanced political influence over federal judges (Curia 2006, 195; Rodriguez 2006). Executive powers of federal intervention were seldom exercised. Kirchner intervened in the province of Santiago del Estero in 2004, yet this intervention was not politically motivated and took place through a law passed by Congress. Nonetheless, it
created uncertainty regarding the extent to which provincial institutions could be reshaped by the federal government, and the limits of provincial autonomy within the federal system.

In exercise of his regulatory and legislative powers, Kirchner sent a limited number of bills to Congress (e.g., only 45 bills were initiated by the executive in 2004) (Alvarez Guerrero 2005). Although Peronism had control of the Senate (40 senators, or 55.5%) and an ample majority in the Chamber of Deputies (149 seats, or 57.9%), Kirchner was initially supported by a small group of loyal legislators, as most of the ruling party legislative bloc responded to former President Duhalde. As he gained de facto control over the PJ, Kirchner progressively strengthened his legislative support until its consolidation by the 2005 mid-term elections. This limited presidential use of veto. However, Kirchner’s use of informal proactive powers (particularly decrees) to strengthen presidential authority paralleled President Menem’s.72

4.2 Constitutional structure: Stability and enforcement of federalism

While federal institutions have been fairly stable, intergovernmental relations between presidents and provincial governments have varied greatly (Eaton 2005, 110). Federal interventions were traditionally used by the executive to gain power over provinces that were reluctant to accept central control, as well as to discipline governors from the ruling party. Although the core rules of revenue-sharing have proved to be sticky, great instability is visible in the details of enforcing and making those rules operational (e.g., defining the tax bases and revenue shares). Intergovernmental negotiations of the revenue-sharing regime are characterized by the recurrent violation and/or strategic renegotiation of agreements (which were neither stable nor fully enforced), by taking place in extra-institutional arenas, and by the existence of overlapping jurisdictions. Changes in the macro-economic context must also be taken into account, as they affect the availability of resources to be transferred to the provinces. Oscillations in tax collection historically affected the level of transfers to the provinces (estimated as a percentage of revenue). As this flexibility had allowed the political use of transfers, actors sought to set rigid institutional rules that severed the connection between revenues and provincial expenditure. The consequences for both federal and provincial economies were very negative.
4.2.1. Federalism during Menem’s two-term presidency (1989-1999)

Short-term political goals prevailed throughout this period, characterized by the strategic renegotiation of revenue-sharing agreements in response to changing macro-economic conditions. Two fiscal pacts, not called to be permanent (the second pact would be binding only until July 1, 1995), were approved in 1992 and 1993. These pacts were aimed at reducing provincial revenue shares by reallocating 15% of revenues subject to sharing to a key expenditure (social security) in exchange for a minimum floor for revenue transfers (Eaton 2005, 98). Whereas the governors unanimously supported the first pact, they resisted the second one, which included some conditionality clauses (transfers would only be effective contingent on the implementation of further provincial reforms) (Ibid.).

As a result, some aspects of the second pact, particularly the reform of the provincial tax systems, were only partially enforced (Saiegh et al 2001, 13).

The implementation of the pacts initially involved a huge loss of revenues for the provinces. When federal tax revenues increased under new economic conditions, the provinces that had lost revenue-sharing through transfers were compensated. However, as tax revenue declined again, the federal government had already accepted a rigid institutional scheme (the minimum floor actual revenue guaranteed) that would benefit the provinces in moments of economic distress. For example, it allowed them to circumvent the privatization of provincial banks and run up debts with private banks (Eaton 2005, 11). The conflict ensued during Menem’s second term, after the expiration of the second fiscal pact. In a declining economic context with decreased tax collection, the minimum guarantee was particularly appealing for the governors, who wanted to extend it indefinitely until they had a new agreement. However, the executive argued that it was not legally bound to honor the agreement beyond July 1, 1995. The conflict was finally solved to the benefit of the provinces, which were able to frustrate further reforms of the revenue-sharing system and achieve an increase in the minimum revenue guaranteed in 1998 (USD$850 million monthly). Several factors explain the provinces’ ability to frustrate the position of the federal government (Eaton 2005, 101-5). First, constitutional reform had reinforced the governors’ bargaining position versus the federal government, as it called for a new
revenue-sharing law that would guarantee the level of revenue transfers for a given province to be at least equal to the transfers received in 1994. Also, according to the new Constitution, all changes in revenue-sharing legislation should originate in the Senate chamber, where malapportionment and influence of the poorest provinces is more important. Finally, internal party conflicts within Peronism made it more difficult for the executive to enforce party discipline and build stable territorial coalitions of governors and legislators.

In practice, the new revenue co-sharing regimen was never enforced (Sabsay 1999, 38). While the 1994 Constitution called for a new revenue-sharing law to replace the 1987 legislation by 1996, the law was never enacted within the constitutional deadline.\textsuperscript{76} In this context, governors began to circumvent the fiscal pacts: they preferred to formally enter into the fiscal pacts (given the ability of the executive to impose penalties), but then informally negotiate with the executive on the side in order to increase the amounts of transfers to their respective provinces.\textsuperscript{77} The executive found in this informal mechanism an excellent resource to enlarge the scope of discretionary action.


With a majority of provinces ruled by the PJ (Tedesco and Barton 2004, 128) and less leverage over his own party’s governors, who frequently sided with Peronist governors against the federal government (Eaton 2005, 105),\textsuperscript{78} President De la Rúa faced severe limitations in advancing his policy agenda. As a result, intergovernmental relations featured greater partisanship and conflict than in previous periods, and the revenue floor became a major constraint for the executive. Although the Zero Deficit Law (which included a 13\% cut in public sector wages and revenue transfers) introduced some changes in July 2001, the governors emerged victorious from the negotiation with the federal government and agreed to lower the revenue quota but not to abandon it altogether (Ibid.).

Duhalde’s goal was to eliminate the minimum revenue floor, but the governors were able to negotiate significant compensations (including sharing the proceeds of a new tax on checks, converting provincial debt into pesos at an advantageous rate, and issuing provincial bonds to cover costs) (Eaton 2005, 109). The president’s background as former governor and his de facto control over the large
number of legislators elected by the Buenos Aires province (70 deputies) helped him implement this policy change. Moreover, changes in macro-economic conditions had de facto eliminated the transfer of revenues before it was formally eradicated in February 2002 (Eaton op. cit., 109). After the minimum floor was eliminated, provinces complained about the limited enforcement of the new fiscal agreement (e.g., payment of 30% tax on checks), as well as the federal government’s inability to transfer resources in the new economic conditions, and requested a new pact.

4.2.3. Federalism under Kirchner (2003-2007)

While in previous periods the executive had failed to ensure commitment and avoid violations of fiscal agreements, the 2003-2007 period is characterized by the executive’s attempts to circumvent existing formal arrangements. Against the constitutional mandate of distributing responsibilities amongst levels of government, the government levied federal taxes that did not have to be shared with the provinces, yet without the corresponding obligation of increasing federal services (Diaz Frers 2008, 2). Although Kirchner publicly declared the need to regulate the coparticipation regime, no legislation was enacted during his mandate. As a result, the transfer of resources continued to operate informally.

The inability to pass the law was due to the perverse incentives created by the complex informal system through which revenue sharing was taking place in absence of formal legislation. First, given the inequalities introduced by the actual workings of the system, it was not easy for the provinces to coordinate and reach an agreement to negotiate revenue transfers with the federal government; for example, despite being the largest province, Buenos Aires receives the least benefit (in 2007, it only received 745 per capita from automatic transfers, less than one third than other provinces) and receives a smaller share every year (participation in secondary distribution was over 20% in 2007 while in 1997 was 24%) (Diaz Frers 2008, 4-5). Second, the federal government had limited incentive to enlarge the provincial share, given concerns with maintaining fiscal balance and the limited effectiveness of increasing tax pressure as a result of the government’s benefits from creating new non-coparticipated taxes (Diaz Frers 2008, 6).
Given his background as governor of Santa Cruz, his leading role in the Governors’ League during the 2001 crisis, and the ability to mobilize resources in a favorable economy, Kirchner was able to discipline governors and the legislators over whom they held sway in order to gain legislative support. Despite the complexity and uncertainty of the coparticipation regime, strong economic performance, federal control over the budget, and increased federal spending allowed Kirchner to bring the governors on board and gain provincial support for his policies (including tax restructuring, renewal of the Supreme Court, etc.). Available resources allowed the executive to provide fiscal and economic compensations to alleviate the fiscal situation of most provinces (for example, soy exports were worth 3.2 billion in 2009 and the federal government received an export tax of 20%). However, revenue-sharing continued to operate mostly in informal arenas, through direct negotiations between the governors and the executive. This allowed the executive to use discrecional transfers as rewards and penalties for disciplining the provinces. Some of the least favored provinces resorted to the Supreme Court against the federal government in 2009:

What is the common denominator of these claims? The financial strangulation imposed by the State to the provinces and the survival of a flawed federal revenue sharing system. The central government has historically blocked federalism and owned the rope that pulls the neck of the governors ... But the conflict has a more profound interpretation: these demands laid bare the means that the national government, whichever it is, has at its disposal to benefit the allied provinces or to suffocate the others (La Nacion, July 11, 2009; author’s translation).

The increasing amount of transfers excluded from the revenue-sharing regime, and submitted to discrecional allocation from the executive, contributed to increase the complexity of the fiscal system while enhancing the leverage of the federal government over provinces. For example, out of $12.3 billion spent by the federal government in 2007, approximately $3.5 billion (28%) can be classified as discrecional expenditures. This amount is equivalent to 77% of the coparticipation resources, which reached $4.5 billion in 2007 (Diaz Frers 2008, 7).

### 4.3 Constitutional structure: Stability and enforcement of legislative powers

The bicameral structure of Argentina’s legislature has remained stable over the years. The only significant change was in the composition of the Senate as a result of the constitutional reform. In contrast with this stability, historical factors and the power that both the electoral system and party
organization give to provincial party leaders make legislators have short tenures. This high rotation has a profound impact on legislators’ institutional commitment levels. Variation is also found in the relations between Congress and other government branches, as well as in the enforcement of legislative and oversight powers.

4.3.1. Legislative prerogatives and rules during Menem’s presidency

High turnover is a historical characteristic of Argentina’s legislature. Frequent interruptions of democratic rule produced a constant renovation of the chambers’ composition, negatively affecting legislators’ experience and professionalization (Goretti and Panosyan 1986; Molinelli 1991; Mustapic 1997, 66; Tommassi and Spiller 2000). This pattern was not changed after 1983. Only 16.6 percent legislators were immediately reelected to the Chamber of Deputies during 1985-1997, and around 80 percent of incoming deputies were elected to the Chamber for the first time in mid-term elections between 1985 and 1999 (Jones et al 2000; Jones et al 2001, 4). (Table 4.2.)

<table>
<thead>
<tr>
<th>Table 4.2. Reelection rate, Chamber of Deputies, 1985-2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediate reelection</td>
</tr>
<tr>
<td>Non-immediate reelection</td>
</tr>
<tr>
<td>Reelected as alternate*</td>
</tr>
<tr>
<td>Not reelected</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Source: Jones et al. (2001)</td>
</tr>
</tbody>
</table>

| Immediate reelection | 24 (15.9) | 18 (11) | 14 (11) | 21 (16) | 25 (19.7) | 102 (17) |
| Non-immediate reelection | 15 (9.9) | 6 (3.7) | 4 (3.1) | 2 (1.5) | - | 27 (4.5) |
| Reelected as alternate* | - | - | - | - | - | - |
| Not reelected | 112 (74.2) | 139 (85.3) | 109 (85.8) | 108 (81.8) | - | 468 (78.4) |
| Total | 151 (100) | 163 (100) | 127 (100) | 132 (100) | 127 (100) | 597 (100) |
| Source: Author’s estimation based on data from HCDN, Ministry of Interior, ADC (2006). |

*These are deputies who returned to the chamber as an alternate replacing a resigning or deceased deputy.

High turnover also has effects on the legislature’s internal organization and committee’s membership, including an increase in the number of legislative committees. In this period, the number of
committees in the lower chamber went from 26 in 1986 (Goretti and Panosyan 1986, 29) to 45 in 1998 (Molinelli et al. 1999, 350). (Table 4.3.) Committees’ membership is part of the system of rewards and penalties for extracting legislative discipline, particularly for the ruling party. This explains the large membership (Mustapic 1986, 21) and high turnover in committees’ authorities.\(^91\) (Table 4.4.) Turnover is only limited in committees that are either central (e.g., budget) or completely accessory for the ruling party’s control of legislative affairs.\(^92\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Deputies</th>
<th>Year</th>
<th>Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-85</td>
<td>26</td>
<td>1983-86</td>
<td>28</td>
</tr>
<tr>
<td>1985-87</td>
<td>28</td>
<td>1987-90</td>
<td>31</td>
</tr>
<tr>
<td>1987-89</td>
<td>31</td>
<td>1990</td>
<td>37</td>
</tr>
<tr>
<td>1989-91</td>
<td>31</td>
<td>1993-95</td>
<td>40</td>
</tr>
<tr>
<td>1991-93</td>
<td>35</td>
<td>1996-98</td>
<td>41</td>
</tr>
<tr>
<td>1993-95</td>
<td>36</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1995-97</td>
<td>40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1997-99</td>
<td>41</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999-01</td>
<td>47</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001-03</td>
<td>45</td>
<td>2003</td>
<td>47</td>
</tr>
<tr>
<td>2003-07</td>
<td>45</td>
<td>2003-07</td>
<td>24</td>
</tr>
</tbody>
</table>

Source: Mustapic (2002, 36) until 1995; Molinelli et al (1999); author based on data from Dirección de Información Parlamentaria

Internal norms of the legislature give great power to party leadership. Changes in internal rules are not uncommon to facilitate the majority party’s control over the legislative agenda (Jones and Hwang 2005). For example, while the original chamber rules (approved in 1963) were modified in 1996 (Res. 20/9/96, Dec. 26, 1996) and then amended seven times until 1999,\(^93\) up to twenty modifications took place between 1990 and 1999.\(^94\) However, the enforcement of internal rules is limited. Between 1990 and 1995, when the PJ had a strict legislative majority (Menem had support from his own party only–relative majority in the Chamber and absolute in the Senate – plus cooperation of small parties), it “tended to operate in hegemonic manner, both in the allocation of the most coveted committee presidencies and in the determination of the partisan composition of the key committees as well as in the construction of the legislative agenda in the Chamber Rules Committee” (Jones and Hwang 2005, 128). This often involved violating, changing or circumventing internal formal rules (e.g., the allocation of committee posts, art. 87) in order to maintain the majority party’s control over the
legislative agenda. Rules were also abused to delay the legislative process. For example, in 1990, the lower chamber prolonged the debate of the bill that enlarged the Supreme Court and enacted it through an irregular procedure (the bill was approved in general but not in particular).  

**Table 4.4. Membership of Chamber of Deputies’ selected permanent committees, 1983-2007**

<table>
<thead>
<tr>
<th></th>
<th>83-</th>
<th>85-</th>
<th>87-</th>
<th>89-</th>
<th>91-</th>
<th>93-</th>
<th>95-</th>
<th>97-</th>
<th>99-</th>
<th>01-</th>
<th>03-</th>
<th>05-</th>
<th>07-</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Affairs</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>24</td>
<td>25</td>
<td>27</td>
<td>29</td>
<td>31</td>
<td>34</td>
<td>33</td>
<td>34</td>
<td>35</td>
<td></td>
<td>+10</td>
</tr>
<tr>
<td>Budget</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>30</td>
<td>31</td>
<td>34</td>
<td>37</td>
<td>38</td>
<td>41</td>
<td>45</td>
<td>45</td>
<td>47</td>
<td></td>
<td>+16</td>
</tr>
<tr>
<td>Peticiones, poderes y reglamentos</td>
<td>21</td>
<td>24</td>
<td>21</td>
<td>19</td>
<td>24</td>
<td>26</td>
<td>20</td>
<td>25</td>
<td>28</td>
<td>15</td>
<td>30</td>
<td></td>
<td>+9</td>
<td></td>
</tr>
<tr>
<td>Impeachment</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>17</td>
<td>23</td>
<td>24</td>
<td>22</td>
<td>28</td>
<td>23</td>
<td>30</td>
<td>23</td>
<td>30</td>
<td></td>
<td>+15</td>
</tr>
<tr>
<td>General Legislation</td>
<td>26</td>
<td>24</td>
<td>25</td>
<td>21</td>
<td>25</td>
<td>29</td>
<td>26</td>
<td>29</td>
<td>30</td>
<td>30</td>
<td>29</td>
<td>31</td>
<td></td>
<td>+5</td>
</tr>
</tbody>
</table>

Source: Molinelli et al (1999); author based on data from Dirección de Información Parlamentaria.

The constitutionally endowed powers of Congress – which include the authority to modify and delay the legislative process, to reject executive’s initiatives, and to control the executive – have not been formally changed since 1983. However, the actual enforcement of these powers has been uneven. Between 1990 and 1995, there was limited enforcement of legislative powers. In 1989, in passing the privatization legislation, Congress delegated legislative powers to the executive for the first time.  

The context of emergency that led to the anticipated transfer of power to Menem, as well as some historical precedents, allowed the convergence of different parties and facilitated the approval of this delegation (Llanos 2002, 85). However, delegation was limited in scope and time (Ferreira and Goretti 1998, 40), and was in dispute and negotiation with the executive. Thus, Congress tried to amend laws to satisfy provincial interests and introduce changes in policy design and control mechanisms (Llanos 2002, 190), while the president often transgressed these limitations through different institutional resources (e.g., DNUs). In 1994, the new Constitution formally acknowledged the delegation of legislative authority under exceptional circumstances and for a fixed period. The intense negotiation between the executive and Congress often took place through non-institutionalized mechanisms such as private meetings, deadlines set by the executive, and pressures over Congress (Llanos 2002, 129).
During the second term of Menem’s presidency (1995-99), and particularly after 1997 mid-term legislative elections, as the ruling party faced increasing opposition, Congress recovered its legislative powers in full by enforcing its authority to reject bills submitted by the executive. The institutional conflict was located in the Chamber of Deputies where several privatization bills were significantly delayed after senatorial approval. The ability of Congress to override presidential vetoes also reflected this stronger enforcement of its reactive powers. Between 1989-1007, there were 18 instances of congressional insistence versus only one in the 1983-89 period. Moreover, not only did Congress amend and delay bills, but they denied approval and even exhibited some preventive ability to discourage the executive from pursuing specific initiatives (Llanos 2002, 163).

While both Congress and the executive showed significant legislative initiative in this period, the executive’s legislative success rate was disproportionately higher (51.3% versus 4.6%) (Aleman and Calvo 2010, 15). Nonetheless, legislators were able to introduce major bills during Menem’s presidency (Aleman 2004). Also, while the ability of Congress to modify bills introduced by the executive is limited, which would confirm Congress’ weak capacity to lead the legislative process and to react to the executive’s decisions (Mustapic 1986, 18-9), most presidential bills are passed after substantial amendments by Congress (Aleman and Calvo 2010, 30). Insofar as Congress resigned the enforcement of its formal powers, the executive did take over (and often the judiciary confirmed the expansion of executive authority). (Tables 4.5. & 4.6.)

4.3.2. Legislative prerogatives and rules in the post-Menemist period (1999-2003)

Legislative turnover continued to undermine legislative stability after 1999. Instability in the legislature’s internal organization and committee membership continued. Six new committees that had been created in 1998 (Molinelli et al. 1999, 368) became fully operational, and as illustrated by Table 4.3. above, the size of committee membership continued to expand–most committees had over 25 members. Frequent changes in internal rules continued during the post-Menemist period. The chamber’s internal rules were modified up to 16 times between 2000 and 2002; most of these changes
took place in 2000, when the new government came into power, to facilitate the legislative process, and were less frequent after the 2001 crisis.\(^\text{104}\)

### Table 4.5. Bills passed by initiative and presidential period, 1983-2007**

<table>
<thead>
<tr>
<th>President</th>
<th>Period</th>
<th>Initiator</th>
<th>Number of bills introduced</th>
<th>Bills passed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfonsin</td>
<td>1983-</td>
<td>Executive</td>
<td>7349</td>
<td>325 (52.3%)</td>
</tr>
<tr>
<td></td>
<td>1989</td>
<td>Congress</td>
<td></td>
<td>297 (47.7%)</td>
</tr>
<tr>
<td>Menem</td>
<td>1989-</td>
<td>Executive</td>
<td>13,253</td>
<td>693 (44%)</td>
</tr>
<tr>
<td></td>
<td>1999</td>
<td>Congress</td>
<td></td>
<td>885 (56%)</td>
</tr>
<tr>
<td>De la Rúa</td>
<td>1999-</td>
<td>Executive</td>
<td>3,624</td>
<td>140 (43.3%)</td>
</tr>
<tr>
<td></td>
<td>2001</td>
<td>Congress</td>
<td></td>
<td>183 (56.7%)</td>
</tr>
<tr>
<td>Duhalde</td>
<td>2002-</td>
<td>Executive</td>
<td>2161</td>
<td>66 (39.8%)</td>
</tr>
<tr>
<td></td>
<td>2003</td>
<td>Congress</td>
<td></td>
<td>100 (60.2%)</td>
</tr>
<tr>
<td>Kirchner</td>
<td>2003-</td>
<td>Executive</td>
<td>9198</td>
<td>207* (42.1%)</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>Congress</td>
<td></td>
<td>285* (57.9%)</td>
</tr>
</tbody>
</table>

Source: Author’s estimation based on information from Dirección de Información Parlamentaria. */ Last legislative period (#125) of Kirchner presidency is not computed. **/ Includes laws enacted after president left office.

### Table 4.6. Legislative success rate of the executive and congressional amendment rate for major legislation, 1999-2007***

<table>
<thead>
<tr>
<th></th>
<th>Bills submitted</th>
<th>Bills passed</th>
<th>Success rate by Congress</th>
<th>Amendments</th>
<th>Amendment rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>De la Rúa</td>
<td>91</td>
<td>26</td>
<td>42.6</td>
<td>19</td>
<td>73.1</td>
</tr>
<tr>
<td>Duhalde</td>
<td>68</td>
<td>21</td>
<td>30.9</td>
<td>18</td>
<td>85.7</td>
</tr>
<tr>
<td>Kirchner</td>
<td>166</td>
<td>93</td>
<td>56.0</td>
<td>56</td>
<td>62.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>295</strong></td>
<td><strong>140</strong></td>
<td><strong>47.1</strong></td>
<td><strong>93</strong></td>
<td><strong>66.4</strong></td>
</tr>
</tbody>
</table>

Source: Bonvecchi & Zelaznik (2010)./*** Only laws enacted with president in office.

Although Peronism did not control the lower chamber between 1999 and 2001, it continued to be the dominant force in the Senate. This caused important obstacles to the legislative process of some executive’s bills (e.g., labor reform bill). Nevertheless, the executive continued to show a better rate of legislative success, while Congress still had a significant level of legislative productivity.

At least 80\% of the laws passed are laws submitted by the executive, any executive. If you look at the legislation Congress passed, even with a PJ majority, to De la Rúa, you can not believe it: legislators passed all the laws he asked for (the superpowers for Cavallo, for him, even clauses that allowed the president to encroach and circumvent Congress).\(^\text{105}\)

The enforcement of legislative prerogatives was constrained by the delegation of legislative powers. At the beginning of 2001, President De la Rúa (with support of the PJ in the opposition) obtained legislative powers from Congress through the approval of Law 25.414. Under this law, he handed
down sixty-two decrees using those delegated powers (Mustapic 2006). After the 2001 crisis, Congress again resigned the power to enforce significant legislative powers by granting President Duhalde legislative authority through the Economic Emergency Law. This delegation violated the limited time clause included in the Constitution and was extended on several occasions after 2003.

4.3.3. Legislative prerogatives and rules during Kirchner’s presidency

The inauguration of Kirchner’s presidency found Congress a politically weakened institution, which had lost legitimacy and was seriously undermined in its ability to affirm legislative powers versus the executive. The high level of turnover continued during the 2003-2007 period (on average 17%; see Table 4.2 above), and the Chamber’s internal organization showed similar instability regarding the number and membership of standing committees. Departing from this pattern, the Senate undertook a program of institutional strengthening which reduced the number of standing committees from 47 to 24. Internal rules were more stable during the initial years of the administration, given the limited support that Kirchner had from his own legislative group, which was still divided between supporters of the outgoing and the incoming president (only 14 legislators could be truly counted as Kirchnerists). As presidential control of the legislative bloc consolidated, changes were more frequent, particularly in 2006 (out of 14 changes in the chamber’s internal rules during the entire period, nine took place that year). Internal rules continued to be often circumvented or blatantly violated; for example, committee membership rules were partially enforced and as result, legislative blocs were usually over- or under-represented in most committees (Poder Ciudadano 2006, 153-7).

After 2005, the ruling party’s strong legislative majority resulted in limited enforcement of legislative powers of control and oversight. The PJ tended to operate in hegemonic manner in the legislature. However, while Menem put in practice a more consensual style, Kirchner stressed the role of Congress as source of legitimacy and support for the executive’s decisions:

Congress has its own pace and, ultimately, slowly, with delays, it is up to us what things we want to do, while the executive has other things. The link with the executive can be for good or for bad. There have been congresses that had a strong relationship with the executive and, ultimately, it was for being subordinated to the executive or to pass laws that gave the country away ... And then none complained because they said that congress held sessions every week, and the executive came and held
consultations ... and legislators came here and voted all the privatization laws or laws that gave
national resources away... I do not know if the relation with the executive is good or bad ... what I
know is that it has changed: there is now a different paradigm, a different way of building power
spaces between these two branches of government.  

Menem circumvented Congress, concentrated significant power in the executive and operated
unilaterally, but he perceived the legislature as an institutional arena for bargaining and negotiation in
order to build policy support. During his mandate, there was significant legislative activity, the
executive sent important bills to Congress for approval, and important political operators served as
legislative blocs’ leaders, negotiating and crafting agreements with the opposition. In contrast,
Kirchner’s strategy to affirm power sought to constrain the relative autonomy that the legislature had
gained between 2000 and 2003 (Cavarozzi 2006, 142). He disregarded parties as political mediators,
and Congress as the institutional space in which parties operated; in consequence, he was uninterested
in the legislative process:

The President, in his first speech to the Legislative Assembly, put it very clearly and unprejudiced. He
said, ‘I do not need intermediaries to talk with the people’ - which meant ignoring the people's
representatives in the very own House of Representatives that Congress is - and he called parties
“political corporations.”

The legislative aides who were in the 90s perceive there is much more entrenchment of the ruling party
than in the Menemist period. In the 90s, the opposition had access to the Speaker of the House, opposition legislators were convened to meetings, the ruling party debated with the opposition ... now, they do not.

Congress continued to show significant legislative productivity, but its role in the policy and law-
making processes was still constrained by a relatively low rate of legislative success and by the loss
of relative power vis-à-vis the executive:

Approving bills that are not of interest to the executive branch is very complex. It gets passed what the
executive branch wants, and [Kirchner] has a number of legislators who respond to him and then he
exercises his seductive power over some of those who “walk by themselves.” Today he has a majority
in both houses.

The custom is that what the executive decides, Congress only acts as a notary that puts the rubber
stamp. In our political culture, the parliamentary initiative lies with the executive ... It is very difficult
for legislators – not only opposition, but also ruling party legislators who present bills on important
issues that are going nowhere. If the executive does not submit the bill, then the project does not move
forward ... except in the case of trivial issues, the projects are not even discussed.

Moreover, the delegation of legislative powers was widened. Kirchner turned to Congress for power
to govern, and as part of his policy package to deal with public utility contracts, Congress agreed to
extend the economic emergency law through December 2004. The Public Emergency Law delegated
significant power to the executive, such as the ability to re-arrange by decree the financial, banking and exchange sectors, and re-negotiate public utility contracts and set utility tariffs without Congressional approval. Legislative delegation was extended again in November 2004, and twice more in 2005 and 2006, granting Kirchner the use of these delegated powers during his entire presidency (Doyle 2008, 23).

4.4 Stability and enforcement of electoral and party rules

Electoral rules are among Argentina’s more resilient and stable institutions. They have been fairly enforced since 1983, without any major scandal of electoral fraud or manipulation. Despite this stability, frequent changes have taken place in the electoral calendar and timing of elections to satisfy short-term political goals. Party rules are significantly fluid. Party leadership, particularly in the PJ, has recurrently ignored and violated internal party rules and procedures according to the short-term interests of party factions. Table 4.7 provides an overview of these changes.

4.4.1. Electoral and party rules during Menem’s presidencies

The 1994 constitutional reform significantly changed electoral rules. Changes affected the election of the president and members of the Senate, but left untouched other important features of the electoral system such as proportional representation, closed party lists, or the 3% vote threshold required for party registration. Both the president and vice-president began to be formally elected by a single nation-wide district. The presidential term was reduced from six to four years, and immediate presidential reelection was limited to two terms. Since 1995, three senators instead of two have been elected per province. This altered the functioning of the Senate, where Menem tried to reinforce the disproportional share under Peronist control.

The actual workings of the electoral system show important time effects, which reflect the impact of federalism as well as the autonomy of provincial parties (Malamud and De Luca 2005, 11). In addition to the staggering of elections to the national chambers, which explains why elections may be concurrent or not (both regarding different tiers at the national level and different levels of government), elections have been systematically decoupled (desdobladas) for political reasons since
Decoupling may take two different forms: temporal deconcentration of provincial elections; and dispersion of elections to appoint a given assembly’s members over time (Ibid.).

Table 4.7. Stability and enforcement of formal party rules

<table>
<thead>
<tr>
<th></th>
<th>PJ</th>
<th>UCR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliberative body</td>
<td>Congreso Nacional</td>
<td>Convencion Nacional</td>
</tr>
<tr>
<td>Criteria for determining provincial delegations</td>
<td>Party affiliates per province</td>
<td>Party affiliates per province</td>
</tr>
<tr>
<td>Regularity of meetings 95-03</td>
<td>Irregular</td>
<td>Regular</td>
</tr>
<tr>
<td>Political relevance of body’s decisions</td>
<td>Low (95-98)</td>
<td>High (95-03)</td>
</tr>
<tr>
<td></td>
<td>High (98-03)</td>
<td>Medium (03-07)</td>
</tr>
<tr>
<td></td>
<td>Low (03-07)</td>
<td></td>
</tr>
<tr>
<td>Executive body</td>
<td>Consejo Nacional</td>
<td>Comite Nacional</td>
</tr>
<tr>
<td>Regularity of meetings 95-03</td>
<td>Irregular</td>
<td>Regular</td>
</tr>
<tr>
<td>Political relevance of body’s decisions</td>
<td>Low (95-98)</td>
<td>High (95-03)</td>
</tr>
<tr>
<td></td>
<td>High (1999)</td>
<td>Medium (03-07)</td>
</tr>
<tr>
<td></td>
<td>Low (02-03)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Replaced by Comision de Accion Politica (2001)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dissolved until new internal elections (2004)</td>
<td></td>
</tr>
<tr>
<td>Deliberative body</td>
<td>Congreso Nacional</td>
<td>Convencion Nacional</td>
</tr>
<tr>
<td>Regimen for direct selection of candidates and party authorities</td>
<td>Majority and minority</td>
<td>Majority and minority. Requirement of 2/3 of votes for candidates looking for consecutive reelection</td>
</tr>
<tr>
<td>95-07</td>
<td>1999: designated</td>
<td>1999: open primary in coalition</td>
</tr>
<tr>
<td></td>
<td>2003: several candidates with different party labels</td>
<td>2003: open primary</td>
</tr>
<tr>
<td></td>
<td>2007: designated</td>
<td>2007: designated (extra-party candidate)</td>
</tr>
</tbody>
</table>

As Table 4.8. shows, manipulation in timing and sequence was particularly significant during Menem’s government. The effect of these changes was to benefit incumbents and traditional political parties, reducing the effective number of parties at the national level (Jones 1997, 541). In addition, it helped to reinforce the impact of provincial politics on the national party system. Sequence and timing of elections contributed to power concentration and allowed to enhance party and legislative discipline through rewards and penalties for provincial party leaders.
Political parties have internal binding rules to ensure party discipline and cooperation (Leiras 2007, 93). Three types of formal party rules are relevant: rules that regulate access to party authority within the formal party structure (based on party membership and/or electoral results); those that regulate candidate selection; and those that govern party indiscipline and dissidence. Stability and enforcement of internal party rules moderate internal competition by enlarging the time horizons of party factions and actors (Leiras 2007, 100). When internal rules are weakly enforced, internal competition becomes fiercer and short-term political goals prevail.

Argentine political parties have been only weakly institutionalized, with the two traditional parties showing medium to low levels of institutionalization (Alcantara 2004). Changes and violations to internal party rules regarding membership and candidate selection have been frequent, particularly within Peronism (Levitsky 1998). Even in the UCR, with stronger organizational structures, these rules remain quite flexible. As a result, political parties are able to bring together very different and even antagonistic programmatic proposals and values (Leiras 2007, 83-88). Since ideology is not determinant for internal factions, and weak organizational structures have low reentry costs, parties are able to adapt and survive organizationally despite changes in their environment (Burgess and Levitsky 2003) and internal realignments:

PJ and Radicalism have one thing in common. They are, as they say, anarchical parties, with great internal diversity and a history riddled with fractures, but also with an inexhaustible capacity to regroup. They have a center and a periphery, and leaders alternately move across these spaces. This has

<table>
<thead>
<tr>
<th>Year</th>
<th>No of Electoral dates</th>
<th>Dispersion (months)</th>
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</thead>
<tbody>
<tr>
<td>1989</td>
<td>2 dates</td>
<td>6 months</td>
</tr>
<tr>
<td>1991</td>
<td>3 dates</td>
<td>3 months</td>
</tr>
<tr>
<td>1993</td>
<td>1 date</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>7 dates</td>
<td>5 months</td>
</tr>
<tr>
<td>1997</td>
<td>5 dates</td>
<td>6 months</td>
</tr>
<tr>
<td>1999</td>
<td>3 dates</td>
<td>2 months</td>
</tr>
<tr>
<td>2001</td>
<td>1 date</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>11 dates</td>
<td>7 months</td>
</tr>
<tr>
<td>2005</td>
<td>1 date</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>15 dates</td>
<td>8 months</td>
</tr>
</tbody>
</table>

always worked well for both. They work like a kaleidoscope: they expand, explode and get back together, again and again (Luis Alberto Romero in La Nacion September 1, 2008; author’s translation). At the same time, weak institutionalization means that internal party rules are often ignored, manipulated, and circumvented. Political parties show limited cohesion, and internal conflict is frequent. Party discipline is not a natural outcome, but has to be enforced through material and collective incentives (positive and negative) by party leaders. Internal factionalism takes different forms in the PJ and UCR because of their historical development and links with the electorate:  

In Radicalism, programmatic linkages have greater weight, long-standing internal groupings have greater projection in the current definition of internal factions, and the actors competing at provincial level tend to agree more with the factions defined locally. The factions that compete at the national level do not reproduce exactly the alliances and confrontations of the lowest levels. [...] For the Peronist voting machines, clientelistic linkages are more valuable, previous conflicts have less projection and internal competitiveness tends to be very intense at the local level yet more limited at provincial scale. The inter-provincial ties among factions are almost nonexistent and when they occur, they tend to be ephemeral (Leiras 2007, 89).

During Menem’s presidency, the instability and limited enforcement of PJ’s internal party rules became the norm and allowed the party to successfully adapt to external and internal challenges (Levitsky 1998; 2003; 2003b; 2005). There was little correspondence between actual behavior and party norms, and changes in party statutes were common. The PJ’s supreme authority, the National Council, was routinely ignored, and the sitting executive actually ran the party. After 1983, all party authorities were removed before completing their mandates (Levitsky and Murillo 2005, 187). Menem showed explicit disrespect for the maximum party body when delegated the daily operations of the party, openly violating party statutes. This period also revealed a fluid party hierarchy: several outsiders were parachuted into leadership positions and party nominations. After 1997, internal party differences between Menem and former Vice-president Duhalde translated into their respective control of the party’s National Council and National Congress (which represents provincial affiliates), whose powers and competencies changed according to the evolving results of the dispute.

The low institutionalization of internal party primaries to nominate candidates is another significant feature of PJ. At provincial level, primaries are often circumvented and ignored, replaced with informal mechanisms based on elite arrangements (Malamud 2005, 16). In some instances, a unity list is agreed on or imposed by provincial party bosses; in others, the Peronist national leadership
imposes the “winning” candidates, or a decision is reached by a party assembly made up of elected representatives. At the national level, the system of direct elections for party leadership, in place since 1987, was never actually used in the 90s; National Council’s leaders were selected by party officials, and then proclaimed by the PJ Congress in 1991 and 1995. Party leadership proclaimed the electoral formulas for the 1995 and 1999 presidential elections (Leiras 2007, 101). Despite rule-breaking in party leadership bodies, party hierarchy, and nomination procedures, a strong party identity holds the Peronist party together and accounts for its stable electoral support (Pousadela 2004; Arzadun 2008, 64). Also, Peronist party leaders are brought together by their pragmatism; they think of victory and holding power as the only possible outcome (Malamud 2005, 14).

The UCR, also bound together by a powerful sub-culture and identity and with similarly vague programmatic goals, presents, however, a stronger party bureaucracy with more binding and stable formal rules (Alcantara and Spindola 2003; Malamud 2005). As a result, the ability to mobilize the party rank-and-file becomes more important to decide the party orientation and composition of the party bodies (Convencion Nacional and Comite Nacional). During this period, the UCR showed these characteristics, but also their unintended consequences. Control of the organization by party units based on the Buenos Aires province and the Federal Capital created problems for the renewal of party leadership and harmed electoral results (Malamud 2005; Leiras 2007, 98). Although internal party primaries were well institutionalized, they did not allow for leadership renewal, as winning primaries required the mobilization of significant resources and control of the party machine. Party authorities and candidates were periodically elected according to internal party rules. For example, presidential candidates were selected through internal elections in 1983, 1989 and 1995; in 1999, the National Convention proclaimed De la Rúa the Radical pre-candidate for the internal elections in which the Alianza’s candidate was to be selected.

4.4.2. Electoral and party rules after Menemism

After 1999, no major changes took place in the federal electoral system. However, the sequence and timing of elections continued to fulfill short-term electoral and political goals. The internal
fragmentation of political parties increased in the period. Conflict within Peronism contributed to its
electoral defeat in the 1999 presidential election. This opened a period of party disorder and
fragmentation, which revealed the inefficient results of PJ’s weakly institutionalized organization. The
party bodies were marginalized and ignored (Levitsky 2005, 200), while the open conflict between
Menemists and Duhaldistas to control the party structure spilled over into the political system. Since no
party leader was able to impose intra-party discipline, and being out of the federal executive, the actual
power passed to the sitting executive at the time: provincial governors (Arzadun 2004, 137; 2008, 68-
74).132 The powers of the National Council, ostensibly under Menem’s control, were reduced through
changes to the internal charter in November 2001, and the so-called Political Action Commission
(forming the fourteen Peronist governors) took over those powers (Leiras 2007, 97).

The uncertainty created by De la Rúa’s resignation in December 2001 challenged Peronism
which, in absence of binding mechanisms, fell into a semi-anarchic state. Finding a candidate to run
in the presidential elections called for March 2002 was difficult. Distrust among Peronist provincial
bosses led them to nominate a peripheral candidate (San Luis’ governor, Adolfo Rodriguez Saa), but
his intentions of remaining in office by postponing or taking part in the elections made party bosses
retract their support.133 The situation was only stabilized when Congress canceled elections and
appointed Duhalde as interim President in March 2002. However, with many potential Peronist
candidates, his hold on power was severely constrained, and he called for elections in May 2003.

The nomination of the 2003 presidential candidate reopened the internal conflict. The
enforcement of Law 25.611 (June 2002), which required political parties to hold open primary
elections, was highly problematic for Peronism, because Duhalde could not present a viable candidate
to defeat Menem in the party primaries. While Duhalde kept postponing the primaries, other
candidates made it clear that they would not participate in a primary (given their limited chances of
winning), and would rather run outside the party structure.134 With the party bodies under Menemist
control and deactivated for years, the PJ lacked institutional resources to channel the conflict and
internal factions resorted to manipulating the rules to gain short-term advantages (Levitsky & Murillo
By the end of 2002, the PJ was about to split with dual party structures, the legislative bloc divided into three different groups, and competing primary dates called for by different factions. As Menem had a chance of winning the nomination, Duhalde resorted to an informal mechanism to select the candidate. The party did not endorse any candidate and allowed all of them to run in the election (Mustapic 2002; Arzadun 2004, 225).

Given the fluidity of party rules, and the fact that nobody is ever expelled from Peronism, this solution did not represent a threat to the continuity of PJ. It was the only way to limit the negative consequences of internal party chaos for the political system, but also left the solution of an intra-party power balance to the results of elections. It showed that they “who wish to compete for the Peronist Party’s presidential nomination can not determine with certainty which is the rule that will govern this competition” (Leiras 2007, 101). Cancellation of primaries led to a one-time-only modification of party statutes to formalize the schism. Electoral costs were high for Peronism (Levitsky and Murillo 2005, 280), but even higher were the institutional costs for Argentina’s democracy.

After circumventing party rules for candidate nomination, the problem for Duhalde was to find a candidate who could defeat Menem. While initially he preferred the candidacies of Santa Fe’s governor (who refused to run) and Cordoba’s governor (who was not able to overcome bad electoral prospects), he finally supported Nestor Kirchner, governor of Santa Cruz. Paradoxically, the candidate’s limited visibility at the national level turned him into a more appealing figure, given the discredit of politicians after the crisis. His performance as governor was well regarded and had allowed him to show autonomy from the federal government (Curia 2006, 97-8). Moreover, he had exhibited a critical position (at least rhetorically) of neo-liberalism that could help him differentiate from Menem to the voters’ eyes (Cavarozzi 2006, 139).

The internal dynamics within the UCR were also marked by internal tensions between the party leadership and provincial party organizations, as well as the debacle of the Alianza’s government. Radicalism still retained important provincial and local power, and was able to obtain good electoral results. Given the formal constraints on renewing the national leadership, the internal
power balance started to change from the national to the provincial level, where new party leaders who held executive positions began to challenge the national organization (Leiras 2007, 98). The predictability of the UCR’s internal party rules for the selection of candidates did not prevent party members leaving the party after 2001. This was the result of the party’s declining electoral appeal in particular districts, as well as the obstacles they found to candidacies and to party office. Unlike Peronism, which did not impose any significant costs on members leaving the party organization, abandoning UCR’s formal structure involved more significant internal tensions and personal costs.  

4.4.3. Electoral and party rules during Kirchner’s presidency

Despite frequent public debate about electoral reform after the 2001 political crisis, no significant changes in electoral rules ensued. The only significant change was the abrogation of the law requiring internal party primaries in 2006. However, electoral processes continued to show important time effects due to short-term political motivations. Particularly, the time dispersal of elections reached a peak in 2003, when national deputies were elected in eleven different dates along seven months, between April 27 and November 23 (Malamud and De Luca 2005, 11); in 2007, deputies were elected on fifteen different electoral dates along eight months (between March 11 and October 28).

The leadership positions in PJ’s party bodies were vacant when Kirchner won the presidential election, and would remain so during his presidential term. Given the weakness of formal party bodies and the informal nature of party organization, Kirchner did not need control of the formal party structure to lead Peronism. Aware of his inability to impose party discipline over the strongest Peronist faction (Duhalism), he decided to circumvent the formal party structure and concentrate power in the executive to become the de facto Peronist leader. Three resources facilitated his strategy: the centralization of resources in the executive to use them politically (for example, disciplining governorships and winning over the mayors of the Buenos Aires province), his strong public opinion support, and the strategic coalition with political elites outside the PJ (Arzadun 2008, 99). In 2004, the PJ’s National Council was dissolved and its powers transferred to the Political Action Commission (PAC), with the formal provision of reinstating the Council as soon as its authorities
were selected directly by party affiliates in a single national district. However, Kirchner disregarded the PAC’s advice regarding candidate nomination for the 2005 mid-term legislative elections (Arzadun 2008, 104) and refused to negotiate with Duhalde, imposing his own candidates. Kirchner’s autonomy also allowed him to undertake a programmatic shift towards center-left positions, earning substantial public support and consolidating his hold on power in the 2005 mid-term elections. Only after becoming the undisputed leader of Peronism, Kirchner decided to normalize the formal party organization. In 2008, he was proclaimed party president and head of the National Council without holding internal elections.

The UCR also showed signs of internal disarray. Internal party rules were formally challenged when a number of Radical candidates decided to confront party orthodoxy, leadership and rules to support the Peronist government. This support was later formalized when Julio Cobos, the Radical governor of Mendoza, joined Cristina Kirchner’s presidential formula in 2007 and was expelled from the party. The intense internal debate that took place within the UCR following this challenge showed the significant changes in the dynamics of internal party factions, and put the flexibility of formal party rules to a test. Overall, formal party rules and their actual enforcement were not strengthened between 1989 and 2007. This created coordination problems within the parties, and has increased their dependence on territorial party coalitions (Leiras 2007, 102). The resulting federalization of political parties (Abal Medina & Cao 2002, 167; Abal Medina & Cao 2003) affects the actual workings of political institutions and therefore, actors’ incentives and expectations.

The evidence presented so far in this chapter shows that the stability and enforcement of formal institutional rules (including the basic constitutional structure, electoral and party rules) cannot be taken for granted in Argentina. The following section focuses on the consequences of weak institutions on actors’ institutional commitment levels and behavior.
5. Gap between formal institutions and actual rules of the game: Argentina’s low institutional commitment

The gap between formal institutional rules and how they actually operate in practice is significant in Argentina. Weak political institutions fail to create predictable boundaries and to solve actors’ cooperation problems. The previous section presented evidence about the variation of formal institutional rules in terms of two important qualities: stability and enforcement. This section focuses on the actual workings of institutions by looking at institutional dynamics and interactions, and exploring their effects on actors’ institutional commitment levels.

Presidentialism, strong bicameralism, and federalism are institutional mechanisms intended to enhance the separation and fragmentation of powers. They all bring the promise of stronger checks and balances and enhanced accountability (Sugart and Carey 1992; Montinola and Andrews 2004; Santiso 2007). They also entail the risk of inhibiting policy change and producing institutional paralysis and policy gridlock (Tsebelis 1995, 2000; Haggard and McCubbins 2001; Mejia 2007). As expected, given the formal institutional design, increased fragmentation and multiple veto gates characterize Argentine polity (Spiller and Tommassi 2003, 26-28). For example, the strong constitutional prerogatives of the Senate produce a very symmetrical bicameral system, in which the upper house may act as an actual veto player to the extent that it can delay lower house legislation and even produce legislative paralysis (Llanos 2002, 21). However, the strength of these veto players is not only the result of constitutional engineering, but of how the effects of constitutional design are mediated through electoral rules and party organizations.

Several effects of both electoral rules and party dynamics deserve a closer look. First, they exacerbate the fragmentation effects of separation of powers, thereby creating significant obstacles for actors’ coordination and cooperation (Tommassi and Spiller 2000). Though the electoral formula is party-centered, Argentina presents a mixed system with concurrent and non-concurrent electoral cycles, staggered elections, and malapportioned chambers (Shugart and Haggard 2001, 93; Carey 2003, 29). The effects of malapportionment and time-related factors reinforce the advantage of
incumbents and traditional parties, and strengthen the influence of provincial party organizations and leadership (Jones et al. 2001; Jones and Saiegh 2007; Malamud and De Luca 2005, 10-11). Also, electoral rules and distinctive patterns of party competition make the preferences of the medium voter who selects the president to be quite different from the voter who selects the Senate and the Chamber of Deputies, thereby affecting the probability of divided government (Escolar 2002, 104; Escolar and Calvo 2002, 127). Second, pathways to power in weakly institutionalized and decentralized political parties reinforce the influence of provincial party organization and leadership. Candidate selection and nomination by provincial party bosses make national legislators dependent on provincial party machines, rather than responsive to constituencies or to a strong national party leadership (De Luca 2004; Jones and Hwang 2005). Provincial party leaders become brokers of legislative support. Third, electoral rules combined with provincial-based party organizations shorten legislators’ time horizons significantly. High legislative turnover affects the Congress’ internal organization by increasing decentralization and putting clear limits on incentives for specialization, participation in legislative committees, and effective oversight over the executive (Jones et al. 2002; Jones and Saiegh 2007).

Despite such fragmentation, gridlock and legislative paralysis have historically been avoided (Mustapic 2002, 25; Llanos 1999; Bill Chavez 2001). This can partly be explained by the interaction of the basic constitutional structure with electoral rules and party organization. The rarity of instances of divided government (1983-89, 1997-99, 1999-01), the cohesion and legislative discipline of political parties in the national legislature, the executive’s agenda setting powers and the capacity to build formal and informal coalitions have reduced the risk of gridlock (Aleman and Calvo 2008). The enforcement of party discipline as well as the legislative predominance of PJ (with an absolute majority in the Senate and near-majority or majority in the Chamber) is critical to understand the role of Congress and how Congress avoids paralysis and conflict with the executive.\textsuperscript{152} Electoral rules give power to political parties over legislators, and parties use this leverage to enforce discipline. Discipline does not arise naturally, but rather is a variable by-product of the use of rewards and penalties by provincial party leaders and the executive (Chavez 2001, 123-124). Both negative and positive
incentives—including support to legislators’ political career outside the national legislature—are used to enforce party discipline and to limit the extent to which Congress may block the executive’s initiatives (Jones 2000; Jones et al 2002; Jones and Hwang 2005). Moreover, party discipline is sustained by the majority party’s capacity to exercise its negative agenda power to prevent divisive legislation with negative consequences for the executive reach the floor (Calvo 2007).

Given the importance of provincial parties, the president needs to engage in ongoing negotiations with provincial party leaders (usually governors), with sway over the majority party legislators, to obtain policy support. Therefore, the preferences of provincial party leaders constantly influence the actions of the majority party leadership (this is mostly evident in those out-of-equilibrium moments in which legislative discipline needs to be forged) (Jones and Hwang, 2005, 129). Alternatively, on other occasions, the president directly mobilizes resources to gain specific support. In both cases, the president would rely on his formal powers, were the political institutions strong and fully enforced.

In consequence, the relation between the president and provincial governors is critical. Fiscal rules and the interaction between federalism and electoral and party rules explain that individual legislators do not benefit from discrentional investments that the executive makes in their provinces. All legislators from the same province benefit indiscriminately. Negotiation takes place between the president and the governors, who are the main beneficiaries of the investments made by the federal government. Given legislators’ dependence on the provincial party, governors are gatekeepers of the actual legislative support of the president. Thus, the president’s actual legislative support differs from his or her nominal support; this difference is explained by the difficulties of obtaining support from legislators from provinces governed by the opposition, even if they are legislators from the governing party (Tommasi and Spiller 2000, 67). (Table 4.9.) This veto power of the provinces is an important constraint on presidential control of the legislative agenda.
Table 4.9. Percentage of deputies of the governing party bloc from provinces governed by the president’s party, 1984-2006

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<thead>
<tr>
<th>Year</th>
<th>% Nominal * (% ruling party)</th>
<th>% Actual*</th>
<th>% Orphan*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>50.8 UCR</td>
<td>33.1</td>
<td>17.7</td>
</tr>
<tr>
<td>1986</td>
<td>50.8 UCR</td>
<td>31.9</td>
<td>18.9</td>
</tr>
<tr>
<td>1988</td>
<td>44.9 UCR</td>
<td>9.8</td>
<td>35.1</td>
</tr>
<tr>
<td>1990</td>
<td>47.2 PJ</td>
<td>41.3</td>
<td>5.9</td>
</tr>
<tr>
<td>1992</td>
<td>45.1 PJ</td>
<td>32.3</td>
<td>12.8</td>
</tr>
<tr>
<td>1994</td>
<td>49.4 PJ</td>
<td>35.8</td>
<td>13.6</td>
</tr>
<tr>
<td>1996</td>
<td>51.0 PJ</td>
<td>35.8</td>
<td>15.2</td>
</tr>
<tr>
<td>1998</td>
<td>46.3 PJ</td>
<td>35.8</td>
<td>10.5</td>
</tr>
<tr>
<td>2000</td>
<td>46 Alianza</td>
<td>17.5</td>
<td>31.9</td>
</tr>
<tr>
<td>2002</td>
<td>33.5 PJ</td>
<td>33.5</td>
<td>10.5</td>
</tr>
<tr>
<td>2004</td>
<td>50.2 PJ</td>
<td>38.9</td>
<td>11.3</td>
</tr>
<tr>
<td>2006</td>
<td>45.5 PJ</td>
<td>40.1</td>
<td>9.7</td>
</tr>
</tbody>
</table>

Sources: Jones et al. 2000; author based on data from “La memoria legislativa argentina” (http://www.archivodiputados.gov.ar/diputado/form.htm)
*/Nominal % refers to the total legislators belonging to the party of the president; Directorio legislativo Informe V. Orphan % refers to legislators of the President’s Party who come from provinces governed by an opposition party. Actual % refers to legislators of the President’s Party who come from provinces governed by President’s party.

Although gridlock and paralysis have been avoided, the institutional dynamics sketched above produces inefficient results in terms of reaching and implementing decisions and holding public officials accountable. Contrary to the expectations that multiple constraints on presidential control of the policy agenda would enhance stability and executive accountability by the legislature, policy solutions are inefficient in Argentina (Spiller, Stein, and Tommasi 2003; Spiller and Tommasi 2007). Checks and balances and accountability are not effective, as different actors lack the incentives and/or are too constrained to exercise effective oversight and control over the executive and the bureaucracy (Tommasi and Spiller 2000, 27). Formal institutional design alone does not fully explain these outcomes, which can only be explained by considering the actual workings of institutions.

Chapter 2 describes institutional commitment as a function of actors’ time horizons, payoffs and arenas of exchange. When formal rules are unstable and weakly enforced (as a result of external factors such as recurrent crises, but also of the interaction between institutions and of actors’ behavior), uncertainty increases and short-term political goals prevail. Actors will likely engage in non-institutional behavior or pursue their goals through informal mechanisms and strategies, which often evolve into alternative procedures that complement, replace, or coexist with formal institutions.
Legislators with short-term horizons that pay low costs for pursuing alternative courses of action and may bargain in informal arenas will have limited incentives to defend their prerogatives from encroachment by the executive. It is rational for them to maximize short-term gains and will be more willing to accept violations to their prerogatives.

Given the fragmentation of formal political institutions, these incentives make it difficult to implement inter-temporal agreements between principals (the electorate, Congress or the Executive) and their agents, with agents becoming scarcely responsive to the needs and interests of their principals (Tommasi and Spiller 2000, 90). Actors’ incentives drive them away from effective accountability. Congressional delegation of extraordinary powers to the executive becomes beneficial for provincial party leaders that control national legislators. The exercise of legislative oversight powers is unlikely and irrational when legislators are punished for attempting to control the executive and cannot deliver payoffs to their provincial party bosses if they do. Specialized mechanisms of oversight are neutralized and accept their subordinate roles. Fiercer internal conflict within political parties, as well as responsiveness of representatives to their parties rather than to citizens, undermines electoral accountability.

Two dimensions of how institutions actually work affect politicians’ incentives to enforce accountability. First, the proactive style of presidential entrepreneurship and inter-branch relations: presidents face a fragmented polity with multiple veto players and accountability mechanisms formally in place that they seek to overcome when pursuing their legislative strategies. Executive-legislative relations shape the style of presidential action. The influence of party dynamics (particularly provincial party leaders) on the legislature constrains presidential legislative support, and introduces de facto constraints on presidential authority. President and Congress may opt for either bargaining or giving legislative concessions to the executive in exchange for payoffs. Since formal institutions are weak, credible commitments and actors’ cooperation is difficult. Moreover, as the costs of bargaining increase in a highly fragmented legislature, accepting particularistic payoffs for support and engaging in unilateral action seem better strategies for legislators and presidents. Weak
institutions provide the president with resources to deliver payoffs and to concentrate power (some come from constitutionally endowed powers, while others rely on informal resources and non-institutional behavior). Although the inter-branch balance of power usually favors the executive, it shifts over time.

The second dimension is the actual workings of Congress and legislators’ incentives. The strength of provincial party organizations consolidated the tendency to high legislative rotation. Career paths are party oriented. Individual legislators do not decide whether they will stand for reelection (De Riz 1986, 59; Jones and Hwang 2005, 126). They are responsive to party leaders and keep close ties with provincial party bosses and organizations to move on to positions that allow them to deliver more substantial government resources. Provincial leaders are scarcely interested in contributing to the provision of public goods, such as corruption control at the national level. They have “few incentives for taking a public position very critical of the government […] thus, they are not interested in oversight and control” (Tommasi & Spiller 2000, 84). High turnover shortens legislators’ time horizons and reduces their incentives for developing the resources and capabilities required for effective oversight. Moreover, party discipline and relative majorities of the ruling party in Congress enhance the executive’s capacity to prevent (through procedural and legislative powers, both formal and informal) unwanted legislative results. Even if a reactive assembly (Cox and Morgenstern 2002), Congress substantially affects the legislative and policy process. For example, a high percentage of bills initiated by the executive are not passed by the legislature, and presidents are rarely able to get their bills enacted without legislative amendments (Calvo 2007; Bonvecchi & Zelaznik 2010) (Tables 4.5. & 4.6. above). Also, the executive has been forced to withdraw legislation, been unable to move legislation out of committees and had to answer over 20,000 written inquiries from legislators (Aleman & Calvo 2008). However, this influence hardly translates into substantial amendments or effective sanctions on the executive. This indicates that legislators anticipate the executive’s ability to block unwanted results and decide their legislative and oversight strategies accordingly. They invest their scant resources in pursuing oversight and legislative
strategies that are acceptable to the executive. To the extent that oversight instruments may represent a potential threat to the executive, they become an asset for the informal negotiation between the legislature and the president. The executive, even assuming that it would benefit from exercising certain restraint, is unable to implement it effectively because of politicians’ short time horizons. The politicization of public administration and control institutions hinders control in the medium to long terms, creating a vicious circle of inefficiency and weak accountability.

Institutional dynamics foreign to Congress define an institutional setting in which legislators’ time horizons are short, and the costs of pursuing alternative courses of action and interacting in informal arenas are low. Under these circumstances, legislators are less willing to defend their decisions rights against executive encroachment. This evidence supports the claim that Argentine democracy shows low levels of institutional commitment with deleterious effects on executive accountability and therefore, on the risks of political corruption.

6. Conclusion

Argentina’s formal rules call for separation of powers and strong legislative competencies, and provide multiple actors with veto power to act as checks on the executive. However, formal constitutional guarantees are misleading. Executive encroachment of other branches of government have a long history in the country, and the actual workings of political institutions have obstructed the development of strong checks and balances and undermined effective oversight and accountability of the executive.

The findings in this chapter advance our understanding of the determinants of executive accountability. The chapter provides evidence on multiple changes experienced by formal institutional rules over time and on their limited enforcement. Tables 4.10 and 4.11 provide an overview of these changes for the executive and the legislature. The chapter also shows that federalism, electoral rules, and party organizations interact decisively with the constitutional structure. Some formal rules have changed more than others (the contrast between electoral and party rules is illustrative in this regard), but in general instability and limited enforcement prevail.
Table 4.10. Stability and enforcement of formal institutional rules that structure the executive

<table>
<thead>
<tr>
<th>Term limits</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changed to allow for reelection</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Election of presidential formulae</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control over nomination – designated former vice-president</td>
<td>No influence given interrupted presidency</td>
<td>Violation of formal rules to control nomination</td>
<td>Control over nomination—designated his wife to keep hold on power</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Formal limits to executive powers</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>New formal limits derived from 1994 constitutional reform</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal intervention</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liberal use</td>
<td>Limited</td>
<td>No</td>
<td>Limited</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Executive authority vis-à-vis the judiciary</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advances over judicial independence – automatic majority</td>
<td>Formally respectful of judicial independence</td>
<td>Failed advances over judicial independence, yet forced resignation of one Supreme Court justice</td>
<td>Impeachment and forced resignation of four Supreme Court justices – eliminated automatic majority</td>
<td>Formally respectful of judicial independence</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Budgetary powers</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited use of informal budgetary powers</td>
<td>Moderate use of informal budgetary powers</td>
<td>Limited use of informal budgetary powers</td>
<td>Abuse of informal budgetary powers</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Partisan powers</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal exercise of partisan powers</td>
<td>No partisan powers</td>
<td>De facto partisan powers</td>
<td>De facto partisan powers Disputed until 2005 and consolidated thereafter</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Regulatory powers</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse of proactive informal powers (both DNUs and veto)</td>
<td>Limited use of proactive formal powers</td>
<td>Moderate use of proactive formal powers</td>
<td>Abuse of proactive formal powers (particularly DNUs)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legislative initiative</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>High legislative success</td>
<td>Moderate legislative success</td>
<td>Low legislative success (higher for major bills)</td>
<td>High legislative success</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legislative support</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited legislative support between 1989-93 &amp; 97-99</td>
<td>Strong formal support but limited actual support</td>
<td>Limited legislative support</td>
<td>Limited actual support until 2005 Strong legislative support after 2005</td>
<td></td>
</tr>
</tbody>
</table>

| | | | | |
| | | | | |

Source: Author’s elaboration

The process of constitutional reform changed the formal rules of the game in 1994. However, because it was minimally enforced, the de facto situation after reform did not change significantly. Both before and after constitutional reform, legislators’ levels of institutional commitment were low and politicians did not react to the encroachment of their decision rights by the executive. This result can be explained by the actual workings of institutions beyond Congress, and how they affect legislators’
incentives and expectations. Amidst the instability and limited enforcement of formal institutional rules, a specific subset of weak institutions proved to be quite stable.

Table 4.1 Stability and enforcement of formal institutional rules that structure the legislature

<table>
<thead>
<tr>
<th>Rules for selection of members</th>
<th>Menem</th>
<th>De la Rúa</th>
<th>Duhalde</th>
<th>Kirchner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual tenure</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
<td>Stable</td>
</tr>
<tr>
<td>Changes in internal rules</td>
<td>Multiple changes</td>
<td>Multiple changes</td>
<td>Multiple changes</td>
<td>Multiple changes</td>
</tr>
<tr>
<td>Enforcement of internal rules</td>
<td>Irregular</td>
<td>Irregular</td>
<td>Irregular</td>
<td>Irregular</td>
</tr>
<tr>
<td>Number of legislative blocs</td>
<td>Moderate fragmentation</td>
<td>Moderate fragmentation</td>
<td>Increasing fragmentation</td>
<td>High fragmentation</td>
</tr>
<tr>
<td>Number of committees</td>
<td>Increasing / High</td>
<td>Increasing / High</td>
<td>Increasing / High</td>
<td>Increasing / High</td>
</tr>
<tr>
<td>Regime for selection of committee members</td>
<td>Majority party control</td>
<td>Majority party control</td>
<td>Majority party control</td>
<td>Majority party control</td>
</tr>
<tr>
<td>Committee membership</td>
<td>High rotation and large membership</td>
<td>High rotation and large membership</td>
<td>High rotation and large membership</td>
<td>High rotation and large membership</td>
</tr>
<tr>
<td>Regularity of committee meetings</td>
<td>Irregular</td>
<td>Irregular</td>
<td>Irregular</td>
<td>Irregular</td>
</tr>
<tr>
<td>Committees’ productivity</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Budget powers</td>
<td>Limited changes to budget law</td>
<td>Limited changes to budget law</td>
<td>More significant changes to budget law</td>
<td>Limited changes to budget law</td>
</tr>
<tr>
<td>Oversight powers</td>
<td>Weakly enforced</td>
<td>Weakly enforced</td>
<td>Weakly enforced</td>
<td>Weakly enforced</td>
</tr>
<tr>
<td>Legislative powers</td>
<td>Low legislative success rate</td>
<td>Low legislative success rate</td>
<td>Low legislative success rate</td>
<td>Low legislative success rate</td>
</tr>
<tr>
<td>Relevance of body’s decisions</td>
<td>Low amendment rate to presidential initiatives</td>
<td>Moderate amendment rate to presidential initiatives</td>
<td>High amendment rate to presidential initiatives</td>
<td>Low amendment rate to presidential initiatives</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration

Electoral and party rules interact with the constitutional structure to shorten legislators’ time horizons, reduce the costs of alternative courses of action, and provide political actors with informal arenas in which interaction can take place. These incentives drive actors away from accountability mechanisms. Political actors have been unable to develop stable expectations about formal
institutions; they do not value them as the appropriate channels to maximize their goals and
preferences in the long-term, and therefore are not willing to defend the enforcement of the
prerogatives that those formal institutions allocate.

Argentina’s institutional setting does not ensure the levels of commitment that contribute to
strengthen executive accountability and discourage corruption. The following chapters present
evidence on the consequences for executive accountability of the low institutional commitment levels
derived from the actual workings of institutions. Chapter 5 focuses on presidential strategies that
strengthen discretionary action and shirk accountability. Chapters 6 and 7 assess the effectiveness of
Congress and oversight agencies in holding the executive accountable.
Chapter 4. Endnotes

1 In 1983, total debt was USD 44,377 million compared to 12,496 in 1978 (Cavarozzi 2006, 65). On Argentina’s economic performance see Rock (1987); Vezzanesi and Winograd (1997); Alston and Gallo (2005); Spiller and Tommasi (2003); Della Paolera and Taylor (2001, 2003); Gerchunoff and Llach (2004).
2 Between 1916 and 1983, there were only 3 periods of fairly elected civilian governments: three Radical governments between 1916 and 1930; the two Peron administrations (1946-1955); and the third presidency of Peron in the 70’s (1973-1976). All these periods were interrupted by military coups in 1930, 1943, 1955, 1962, 1966, and 1976. Otherwise, non-democratic elected regimes based on restricted electoral participation through fraud or proscription were in power in 1931-1943, 1958-1962, and 1963-1966.
3 “During these periods, some of the interests and demands formerly expressed by parties were suppressed while other were articulated through individual or group bargaining with officials of the military governments, or through direct-action veto politics in the form of strikes, demonstrations, riots and guerrilla activity” (McGuire 1995, 217). On the relationship between Peronism and unions, see Murmis and Portantiero (2004 [1971], 171 & 184), Torre (1995).
4 Botana (1995, 6) characterizes Argentina’s history as a “cemetery of failed hegemonies” in which a competitive political regime based on party alternation was never fully consolidated. Both Peronism and Radicalism have shown these tendencies. For example, Yrigoyen’s centralizing tendencies and interventionism in the provinces, and the institutional changes implemented during Peron’s first two governments to marginalize political opposition. See Llanos (1999, 34), Aboy Carles (2001, 227).
5 “Since 1983, however, we witness the gradual creation of a political system, i.e. the consolidation, not without surprises, of a tissue of habits and innuendo of political action that, while not contributing to the internalization or deepening of the rules of representative democracy, neither has eradicated them” (Cavarozzi 2006, 81).
6 Judicial rulings are often not complied with by Congress, federal and provincial executives, and private business. For example, the Santa Cruz governor has refused for more than twelve years to comply with a Supreme Court ruling that required reinstating the former Attorney General, unlawfully removed from office (Cf. La Nación Sept. 16, 2010). The federal executive fails to regulate many laws passed by Congress, which de facto suspends their enforcement. Instability and judicial uncertainty are considered structural features of Argentine democracy. See Clarín (May 17, 22; July 9; Sept. 25; Nov. 22, 2009), La Nación (Jan.5; May 21; June 14; Oct. 11; Nov. 19, 2009; March 5, 2010).
7 Cox and McCubbins (2001, 69) relate institutional features that enhance power separation with lesser ability to implement policy change, but also with increased sustainability of the policies adopted.
9 Runoff is held between the top two candidates when no candidate receives more than 45% of the valid vote, or a minimum of 40% of the valid vote with a difference of more than 10% over the second best candidate. Since the new electoral system was established, no president has resorted to the runoff to get elected. The closest call was Kirchner’s election, but the runoff was cancelled when Menem dropped off the presidential race. In the old system, the president could seek reelection after sitting out for one term. See 1853 Constitution, articles 77, 81-82; amended 1994 Constitution, articles 90, 94, 97, 98.
10 The Chilean Constitution inspired these strong constitutional powers (Author’s interview, Buenos Aires; September 4, 2007). For a full account of presidential powers, see article 80 of Argentina’s Constitution. See Shugart and Haggard (2001, 64-81) for a comparative analysis of variations in presidential powers.
11 Author’s interviews (Buenos Aires, July 11, 2005, and September 4 and 19, 2007).
12 These are the agenda-setting and gate-keeping powers of the President (Shugart and Haggard 2001, 77).
13 Cf. article 76 of Argentina’s Constitution. Before the 1994 constitutional reform, the president did not have the authority to issue decree laws, although such decrees were issued in exceptional occasions.
14 On party powers of the president, see Linz (1994), Jones (1995), Shugart (1995), Mainwaring (1999), Coppedge (2001), Carey (2002), Morgenstern (2004), among others. The exception is Fernando de la Rúa, who was leader of one internal faction within the UCR yet had not been the main leader of the coalition that led to the Alianza’s government. This was the third time in history that a UCR President was not the party leader (the party leader was former President Alfonsín). (Malamud 2005, 12).
The national government has exclusive jurisdiction over taxes on foreign trade, and may use direct taxes on exceptional and temporary basis. All competencies not delegated explicitly to the national government remain with the provinces.

Fiscal correspondence was 46% between 1993-1998, and then decreased to 43% (Argañaraz 2005).

The decentralization process affected significantly the structure of the public sector, which is highly decentralized by Latin American standards. On decentralization, see Smulovitz and Clemente (2004).

According to this law, the federal government retains 42% of these taxes while 57% were distributed among the provinces, with the remaining 1% set aside to finance unforeseen crises in the provinces. The law also establishes the percentages of secondary distribution, and is supplemented by other laws regulating the distribution and destination of some specific taxes.

On average, for the aggregate of all provinces, the level of provincial indebtedness rose from 40% of total revenues in 1994 to 53% in 1999. The aggregate provincial debt represented 6.5% of GDP in 1999. See Tommasi, Saiegh, and Sanguinetti (2001, 6 and Table 4). On provincial fiscal crisis, see Página 12 (June 13, 20, 23, 24, 25, 27; July 27, 1995). Provincial deficit reappeared in 2008 (La Nación Feb. 15, 2009). In 2010, when the opposition advanced several legislative initiatives to enhance the transfer of resources to the provinces, President Cristina Kirchner announced the refinancing of provincial debt as a unilateral executive decision; this enhanced provincial dependence on the federal government yet ensured governors the funds for upcoming elections (La Nación May 11, 2010).


See Argentina’s Constitution, Title I, Chapter IV.

Bicameralism is frequently associated with federalism. In bicameral legislatures, the power and expertise provided by the second or upper chamber (which in federal systems represents the sub-national governments) largely affects the nature and character of the legislature’s activity. Argentina reproduces the bicameral structure at the sub-national level, something that is not so commonly found in other polities. This indicates the high degree of fragmentation that exists in the institutional framework. On the advantages and limitations of bicameralism, see Malamud and Costanzo (2003, 3). On bicameralism in Latin America, see Llanos (2002).

Governors and municipal authorities are elected according to the procedures established in their respective provincial constitutions. Each electoral district has its own electoral laws.

Electoral rules have shown extraordinary resilience compared to other institutional characteristics, particularly rules for the election of legislators. For a long time, there has been an intense yet inconclusive debate about the so-called “political reform” and the elimination of party closed lists.

“The territorial distribution of power is quite stable and you have a majority of provinces that respond either to PJ or to Peronist party’s provincial allies. This causes the Senate to have a permanent Peronist or phylo-Peronist sign” (Author’s interview. Buenos Aires, September 4, 2007; author’s translation).


In Dec. 2008, there were 33 national parties, 271 provincial parties, and 500 municipal parties. However, only 2 parties had representation in the entire country. Cf. La Nación (June 15, 2010).

Author’s interview (Buenos Aires, August 30, 2006).

Before the 2001 crisis, some scholars analyzed the transformation of the party system focusing on the emergence of a third party, Frepaso, which had a significant electoral success between 1997 and 2001. See for example, Abal Medina (1998), Novaro (1988, 1998, 1999). After the 2001 crisis, despite the failure of the Alianza government and the virtual disappearance of Frepaso, this tendency deepened. See, for example, Leiras (2007). Author’s interview (Buenos Aires, August 30, 2006).

These splits were the origin of Afirmación para una República Igualitaria (ARI), founded by former UCR deputy Elisa Carrio, and then reshaped into several electoral coalitions; and Recrear para el Crecimiento, founded by former UCR deputy and Ministry of Economy, R. Lopez Murphy. ARI was able to hold 6.2% of the house of deputies in 2001-03, 4.3% in 2003-05, and 5.1% in 2005-07. Recrear formally teamed up with Commitment to Change to form a new electoral front, Republican Proposal (PRO), which obtained a substantial number of votes in legislative elections at the national level (1.3% legislative seats in 2003-05 and 4.3% in 2005-07) and has governed the City of Buenos Aires since 2007 (Jones et al. 2009, table 1).

“Previously, internal factions had a fairly linear composition and the differences had to do with ideology, with those who were more progressive or more moderate. [...] Today we are, so to speak, in chaos, in anarchy. But it is something that has occurred in recent times, when definitions, differences, no longer have to do with
ideological positioning – sometimes they are about personal leadership, many times are related to personal conveniences, and there are people who ends defining its position in exchange for a particularistic payoff” (Author’s interview, Buenos Aires, August 30, 2006—author’s translation).

35 The multiple Peronist candidates to the 2003 presidential election and 2007 legislative elections for the Senate in Buenos Aires province illustrate the inability to forge inter-factional coalitions.

36 For example, both parties dominated the governorships until September 2007. For the periods 1983-87, 1987-91, 1991-95, 1995-99, 1999-2003, and 2003-07, the PJ held 12, 17, 14, 14, 15 and 16 governorships. During the same periods, the UCR held 7, 2, 4, 6, 7 and 6 (De Luca 2004). In September 2007, for the first time, traditional parties lost control of two governorships: ARI won the governorship in Tierra de Fuego, and the Socialist Party in Santa Fe. Legislative majorities also show this pattern. The PJ held an average of 55.2% of seats in the Senate and 45.4% in the Chamber of Deputies between 1983-2003, while the UCR had on average 30.3% in the Senate and 31.9% in the Chamber of Deputies (Jones & Hwang 2005, 118-119). At the local level, PJ controlled on average 55.4% of municipalities with four thousand or more inhabitants and 32.1% were controlled by UCR mayors; in municipalities of one hundred or more inhabitants, the PJ held 61.7% on average and UCR 23.5% (Jones & Hwang 2005, 119-120). Provincial capitals have been under control of traditional parties (48.5% by PJ and 31.8% by UCR) (Jones & Hwang 2005, 121, based on Myers and Dietz 2002). With the exception of Buenos Aires and Rosario, national third parties have been systematically unable to control a significant number of municipalities.

37 Cf. Law 26.191. In 2009, Law 26.571 reestablished the requirement of holding open and simultaneous internal primaries for candidate selection. The new law did not contribute to party democratization but enhanced party elites’ control; for example, the requirements to be candidate are set by party elites (Ferreira Rubio 2010).

38 In addition, some provinces have used double simultaneous vote or Ley de Lemas, particularly for selecting governor, which entails a simultaneous intra-party and general election. Parties (i.e., lemas) may present more than one candidate. Votes are pooled by party, and the elected candidate (e.g., governor) is the highest polling candidate of the party with the most votes (De Luca 2004, 8). On Ley de Lemas, see Tula (1995, 1997). Other informal mechanisms for selecting candidates are explored in section 4.

39 Overall, a small percentage of the electorate participates in most primaries (Jones and Hwang 2005, 125).

40 Winning a primary requires support from punteros or neighborhood-level leaders who are tied to the list, punteros not initially aligned with the list, and other organized groups with ability to mobilize votes. Among the most important resources needed are campaign advertising, deployment of elections’ monitors, and transportation (Jones and Hwang 2005, 125-126).

41 Cf. Argentina’s Constitution articles 99 and 100.


43 As Llanos (2001, 83) points out, the legislative delegation that characterized the first stage of the privatization policy under Menem was not a permanent feature; Congress soon reaffirmed its authority, leaving the President with a strict majority founded strictly on support obtained from his own party.

44 “Over the years, both the legislature and the judiciary have been giving power to the executive in practice; for example, you will find many decisions of the judiciary in which juries of the Court recognized extensive powers to the executive and especially cases in which it is recognized great power at the expense of the legislature. The paradigmatic case is Peralta Case in 1991, where in paragraph 29, the Court said that collective bodies like Congress are unable to make effective decisions in times of crisis, and validated the DNU which were basically an usurpation of legislative powers” (Author’s interview. Buenos Aires, Sept. 4, 2007; author’s translation).

45 Cf. article 90, Argentina’s Constitution.

46 See Clarín (July 5, Nov. 1, 1992). The President publicly pressured Peronist representatives in the constitutional convention (Cf. Página 12 “Peronistas en busca de libreto” and “Menem no quiere mamarrachos”) and there were accusations of vote buying for approving the reform (Clarín Aug. 20, 1993).

47 Author’s interview (Buenos Aires, September 4, 2007). Also, La Nación (May 19, 2009).

48 The Pacto de Olivos was based on some basic agreements (“nucleo de coincidencias basicas”) that were unfulfilled or hardly implemented. In 1995, for example, Congress only had passed into law 1 of the 23 regulatory bills called for the amended Constitution. Cf. Clarín (August 14, 1995).

49 The violation of constitutional norms was avoided because Duhalde, circumventing party rules and resorting to calling a provincial plebiscite, prevented Menem of getting strong internal PJ support to push his candidacy forward. The conflict took place within in the ruling party, and the opposition forces were unable to effectively mobilize public opinion against reform. Formal constraints, and particularly the Supreme Court, were also ineffective to constrain Menem’s attempts (Novaro Ibid.).
50 For example, in June 1993, 8 districts were intervened by the national party (Novaro 2001, 62).
51 The Governors’ League (Liga de Gobernadores) was an informal alliance of provincial governors aimed at building consensus on critical issues of interest to the provinces to gain leverage vis-à-vis the federal government. It dates back as far as 1870, when several governors joined to decide who would run for the presidency. It regained importance after 2001, when governors of small provinces decided to counterbalance the power of the three largest provinces’ governors and played a crucial role in appointing a new president to replace De la Rúa as well as to select the Peronist candidate for the 2003 presidential elections. See, for example, Arzadun (2004, 113 ff.).
52 Alfonsin had tried to enlarge the membership of the Supreme Court but did not have sufficient legislative support (Molinelli et al 1999; Pucciarelli 2006). Reform of the Supreme Court was easily passed by the Senate but faced more opposition in the lower chamber, where it might have been passed in violation of the chamber’s formal rules (Ferreira Rubio and Goretti 1998).
53 The designation of the Supreme Court’s attorney general did violate formal norms. He was appointed by executive decree and without Senate approval (Ferreira Rubio and Goretti 1998, 447).
54 In Argentina, a specialized body deals with extraordinary appeals aimed at declaring null a judicial conviction based on the rationale that such conviction responds to an incorrect interpretation or application of the law and/or has been the result of a process that has not fulfilled the required formal procedures.
55 Cf. Argentina’s Constitution, articles 6, 75 inc. 31, 99 inc. 20. Between 1853-1976, there were 168 federal interventions (on average one every nine months), out of which 114 were through executive decree and only 54 through a law passed by Congress (La Nación April 11, 2004).
56 The PJ organization was intervened in the same districts, plus Córdoba (Novaro 1995, 112).
57 Only the intervention in Santiago del Estero was approved by law (law 24.396). The other 3 were issued by decree (Tucumán, Decree Jan. 15, 1991; Catamarca, Decrees Nº 566/91, 572/91 and 712/91; Corrientes, Decrees Nº 241/92, 1,447/92 and 53/93).
58 For example, in the exercise of delegated powers (CSJN, 2/12/93, “Cocchia c/Estado Nacional y otros”) or in violation of local regulations in the City of Buenos Aires (e.g. Decree 52/93).
59 His hold onto the Buenos Aires PJ apparatus was based on his control over a large number of votes and political brokers (punteros), which allowed him to defeat Antonio Cafiero, a historical Peronist leader and governor of the Buenos Aires province, in the internal elections to become candidate to the governorship in June 1991 (after serving two years as Menem’s vice-president) (Echague 2002, 170-8). Former mayor of the municipality of Lomas de Zamora, Duhalde’s power was rooted on a strong defense of the interests of the mayors that constituted the backbone of the informal PJ apparatus in the province (Author’s interview, Buenos Aires; July 26, 2005).
60 “In an Argentina where the authority appeared impaired, the strong exercise of executive authority, and the flight forward of the authority, helped Kirchner become an unquestioned President for a relatively long period” (Interview with Smulovitz, 2007, on file with author).
61 Author’s interview (Buenos Aires; August 30, 2006; author’s translation).
62 In 1993, Santa Cruz received US$ 535 million in oil royalties, which were deposited in a foreign bank account and personally managed by Kirchner. The funds were repatriated in 2005 (Perfil August 11, 2010).
63 Kirchner’s strategy was intended to get a second presidential candidacy after the first mandate of his wife, alternating both of them in the presidency for two mandates each (La Nación July 23, 2007; May 12, 2010) Kirchner’s strategy could be seen as a successful strategy to avoid the “lame duck” syndrome that has weakened severely all Argentine presidents in the last period of their mandates; by nominating his wife, he was able to lengthen the time horizons and show that his ability to discipline the Peronists remained intact (Interview with C. Smulovitz 2007, on file with author). Kirchner’s sudden death in 2010 truncated the possibility of reelection.
64 Cf. Decree 222/2003. Also, El País (Sept. 30, 2005). The resulting Court was qualitatively superior to the previous ones and gained ample legitimacy.
65 Author’s interviews (Buenos Aires, September 4, 2007; September 11, 2007; September 19, 2007).
66 Author’s interviews (Buenos Aires; August 30, 2006; October 16, 2009).
67 Opposing this measure had high costs for the government, which finally adopted the proposal and made it its own, although insisted that it involved going back to Menem’s times (Author’s interview Buenos Aires; Sept. 19, 2007).
68 See, for example, Página 12 (Feb. 23, 2006). As these judges are responsible for investigating and sanctioning corruption cases, the reform contributed to the institutionalization of corruption by undermining the legitimate sanctioning of corrupt practices by the courts. See Ch. 8.
Civil society organizations had asked for the intervention, given the province’s political and judicial crisis (Diario Feb. 10, 2004).

After the elections, Peronist party bosses from the Great Buenos Aires actually moved to Kirchner’s electoral front (Author’s interview, Buenos Aires; August 2, 2006). Also, Arzadun (2008).

Author’s interview (Buenos Aires, July 26, 2005). Control of the legislative body contributed to strengthening presidential power. On the risks of a strong legislative support, see for example, La Nación (Oct. 31, 2007).

Considering only relevant legislation, in 2004, Congress passed 10 bills initiated by legislators and 5 by the executive, while in 2005 it passed 10 and 4 respectively. In the same period, President Kirchner issued over 30 DNUs (Alvarez Guerrero 2005).

This refers to the basic constitutional provisions that set up the federal structure of the state. See for example, articles 104, 107, 110. The last changes affecting federal institutions were introduced with the constitutional reform in 1994.

Only 16 out of 23 governors signed on the pact before its implementation. Later on, to avoid possible penalties, the others also signed (ibid.).

Two reforms proposed by the government failed. First, the incorporation of rewards from provincial tax effort in the criteria for the distribution of automatic revenue transfers. Second, direct revenue-sharing with the municipalities.

As of 2011, the law has not been legislated by Congress yet. Revenue-sharing is governed by a mix of different laws, which have been amended in different times over the years (Saiegh and Tommassi 1999).

The “unilateral agreements that a province makes with the national government receiving some special favors, are also non-cooperative actions in the game among provinces” (Saiegh et al 2001, 12). They are fostered by institutional features that allow executive discretion.

Following the 1997 legislative elections, 14 provinces out of 24 elected a Peronist governor, 7 an Alianza governor, 1 a Radical candidate, and the remaining provinces elected provincial parties’ candidates.

Discussions around the Ley del Cheque were particularly significant after 2007, when fiscal pressure increased. The government extended the current distribution of the tax (70% for the federal government and 30% for the provinces) despite growing demands from the provinces to co-share the total revenue levied through this tax. See La Nación (Oct. 24, 2008; Nov. 24 & 27, 2008).

“Governors also are disappointed with the first results of the new revenue sharing mechanism, which distributes the taxes "at heads or tails." For example, De la Sota said that the collection of co-participation taxes fell "over 32 percent." Under these conditions, the allocation of funds without a minimum floor jeopardizes the financial situation of the provinces. In addition, the governors complained that the nation did not meet the floor of 1,364 million in March, as it had been agreed in the last fiscal pact" (Página 12 (April 11, 2002).


Cf. La Nación (October 21, 2009).

On the costs of tax evasion, see La Nación (Sept. 4, 2010).

In 2010, the executive controlled 72% of state resources. Cf. La Nación (July 4, 2010).

The government of Cristina Kirchner faced the first episode of provincial insubordination when the executive’s proposal to pass a new tax on agricultural production was rejected in a tight vote in the Senate; the project had the explicit opposition of powerful governors and provincial leaders, including the governor of Córdoba, Santa Fe, Entre Ríos, and powerful provincial party leaders.

The weak fiscal situation of most provinces facilitates executive’s pressure to gain support from governors (directly or in Congress), given provincial dependence on federal transfers. See La Nación (July 20, 2009; July 21, 23, 26, 2009; Nov. 22, 2009); Clarín (Nov. 21, 2009). In March 2009, the government issued a DNU to transfer 30% of the soy export resources to the provinces (La Nación March 21, 2009).

In 2009, only 30% of revenue was automatically transferred to provinces, the lowest value in 50 years (La Nación October 21, 2009).

Cf. La Nación (Nov. 30, 2008; March 20, 22, 2009; April 6, 2009; June 11, 2009; July 20, 2009; October 21, 2009; Feb. 13 & 19, 2010; March 15, 2010; March 27 & 28, 2010); Clarín (Sept. 28, 2009).

After each military coup there was almost a complete renovation of Congress. Moreover, the length of legislators’ tenure fell abruptly after the 1943 coup. On average, since the mid-40s until 2000, members of the Chamber of Deputies have a 3-year experience. See Tommasi and Spiller (2000, 30-31).

In this period, membership increased in most committees in the lower chamber (25 out of 45) with some significant increases. For example, the number of members went from 31 to 37 in the Constitutional Affairs Committee, and from 15 to 22 in the Jury Committee (Molinelli et al. 1999, 369).


New rules were introduced by laws 23.821 (published Oct. 5, 1990) and 23.992 (published Oct. 28, 1991) as well as through different chamber resolutions (09/30/92; 04/30, 92; 06/05/96) (Reglamento Cámara de Diputados at http://www1.hcdn.gov.ar/dependencias/dip/congreso/regladip.pdf).

Cf. Resoluciones 11/05/97; 06/10/98; 07/15/98; 03/11/98; 03/18/98; 06/03/98 (Reglamento Cámara de Diputados at http://www1.hcdn.gov.ar/dependencias/dip/congreso/regladip.pdf).


Changes have taken place in the way Congress exercise some specific oversight powers, for example regarding DNUs.

The Administrative Emergency Act delegated the power to exempt privatized corporations from taxes, the power to authorize reductions and term extensions for the collection of debts by privatized corporations and the power to repeal laws hindering privatization. Later on, the Economic Emergency Act expanded this delegation including the power to establish exceptions to the provisions of the same law, the power to authorize the import of goods whenever local market prices were not reasonable or when goods were not available, and the power to exonerate the accused from penalties in cases of the infringement of tax laws.

While formally forbidden by the Constitution, legislative delegation happened de facto throughout Argentina’s history and was facilitated by the lack of explicit constraints set by the Supreme Court in this regards. See Molinelli (1991), Ferreira and Goretti (1998, 41).

A good example is the YPF privatization. Cf Página 12 (Sept. 10, 19, 22, 23, 24, 1992).

The contrast between the first and the second presidency is illustrative: while 10 out of 11 privatization bills were passed into law in the first term, only 2 out of 5 were approved in the second term. I was not approved and 2 other non-approvals were passed by decree (Llanos 2001, 94; 2002, 161-2). Cf. Página 12 (Jan. 20, 1995; Feb. 12, Feb. 14, Feb. 17, 1995; May 19, 28, 30, 1995; June 1, 2, 4, 6, 7, 8, 9, 1995) Of particular interest is the post office privatization bill, which was suspected of payment of bribes. It was also related to the accusation by the Ministry of Economy of the existence of corrupt networks in the government. See, for example, Página 12 (July 15; Aug. 25, 27, 30, 31; Sept. 7, 8, 9, 10, 1995), Clarín (Aug. 27, 29, 30, 31; Sept. 7, 8, 9, 10, 13, 17, 1995).

Since 1989, the President vetoed 89 bills and Congress only insisted on 6; on May 24, 1995, Congress insisted on 3 vetoes in the context of conflict with the executive regarding the pharmaceutical patents bill (Cf. Página 12 May 23, 25, 1995; June 11, 1995).

Author’s interview (Buenos Aires, September 19, 2007).

Based on information from Dirección de Comisiones, HCDN (accessed May 11, 2010).

Cf. Resoluciones 09/07/00; 03/23/00; 09/07/00; 10/05/00; 08/04/00; 03/23/00; 06/22/00; 11/27/01; 08/15/01; 05/09/02. (Reglamento Cámara de Diputados at http://www1.hcdn.gov.ar/dependencias/dip/congreso/regladip.pdf).

Author’s interview (Buenos Aires, June 18, 2009; author’s translation).

The executive office recovered more easily from the crisis than the legislature (Author’s interviews. Buenos Aires, August 2, 2005 and August 2, 2006). Kirchner showed limited respect for Congress in his inaugural address, when he accused the legislature of being the incarnation of political corporations (Author’s interview. Buenos Aires, August 30, 2006). Nevertheless, political actors recognize the important and successful role played by Congress during the crisis to preserve stability and avoid the total breakdown of the democratic regime. (Author’s interviews. Buenos Aires, August 2, 2006 and September 4 & 19, 2007).

The trend continued in 2007, when only 40 (30%) out of 130 deputies that could run for reelection actually did so. In 9 out of the 24 electoral districts none deputies was up for reelection. Out of those 40 deputies who were running for reelection, 42.5% were running for a political party different from the one they had been elected in the previous 2003 election (ADC 2007, 1).

The institutional strengthening program was supported by the Inter-American Development Bank. The reduction in the number of committees required changing the Senate’s internal rules in March 2003. For details on the program, see Reale (2007).

La Nación (May 4, 2009).

Cf. Resoluciones 06/07/06; 09/27/06; 06/28/06; 06/07/06; 09/13/06; 06/23/06; 12/16/04; 11/10/04; 11/07/07.

Author’s interview (Buenos Aires, August 30, 2006). Legislative oversight will be explored in Ch. 6.
This illustrates different common views of Congress among Argentina’s political actors: Congress as legislator, Congress as source of legitimacy for the government’s policies, and Congress as arena for bargaining and negotiation. While the first and the last involve participation of the minority, the second one does not. See Mustapic (1986, 18 ff.).

Author’s interview (Buenos Aires, August 2, 2005; author’s translation).

Author’s interview (Buenos Aires, August 30, 2006; author’s translation).

Author’s interview (Buenos Aires; September 2, 2009; author’s translation).

Author’s interview (Buenos Aires, August 30, 2006; author’s translation).

Author’s interview (Buenos Aires, June 18, 2009; author’s translation).

Accusations of electoral fraud and/or manipulation have been sporadic. There were some reports during Menem’s presidency; for example, irregularities in the electoral census, in the results of the 1994 provincial elections in Santa Fe, etc. (Página 12, Sept. 3, 20, 26; Oct. 11, 1995; Clarín Sept. 5, 25, 29, 30, 1995). These practices seem to have been fairly stable over the years, particularly in the most decisive electoral districts (La Nación, Oct. 29, 2007; April 6; May 18; June 6, 7, 8, 19, 25, 2009). Experts consider that the electoral system does not guarantee the transparency of electoral results. See La Nación (June 10, 2006; Feb. 20, March 11, 15, 29; Oct. 27, 2009).

This change had formal rather than practical effects, as presidents and vice-presidents elected via electoral colleges had never reflected a different majority than the one decided by popular vote (Malamud and De Luca 2005, 8).

Author’s interview (Buenos Aires, August 16, 2005).

Clarín (August 22, 1998; July 2, 1999), La Nación (March 31, 2009).

Jones (ibid) concludes that the level of electoral multipartism in the Chamber elections should be significantly lower when the gubernatorial and congressional elections are held concurrently than when the gubernatorial and congressional elections do not take place at the same time. Furthermore, the plurality formula to elect the governor that is used by most of the Argentine provinces should foster two-party competition at the provincial level and, hence, strengthen the reductive impact that the gubernatorial election has on the level of multipartism in the congressional election when the two are held concurrently.

The stability and integration of internal party factions depends on the effectiveness of formal party rules as impersonal mechanisms for solving cooperation problems. This effectiveness depends on the linkages with party voters as well as the previous organizational history (Leiras 2007, 89). Each party’s factional map is shaped by the party origins and its electoral bases of support. Peronism originated in the 40s from a coalition of the urban workers in Buenos Aires and local elites in northwestern rural provinces. UCR developed in the 1890s based on Pampean land-owners and urban middle-classes but failed to incorporate urban working class sectors. See, among others, Murmis & Portantiero (2004[1971]); Torre (1989, 1990); Mackinnon (2002); Portantiero (2002); Calvo and Murillo (2003).

Those challenges were mainly related to the erosion of its traditional working-class base labor (Levitsky and Murillo 2005, 8; Burgess and Levitsky 2003; Levitsky 2003).

It represents the provincial party units. It is formed by presidents of the provincial councils, governors and party authorities of both chambers and legislative blocks in Congress.

Clarín (Nov. 20, 27, 28, 1998; Dec. 8, 1998; April 24, 1999).

Duhalde’s nomination in 1999 showed the intra-party tensions between his and Menem’s faction (Clarín Jan. 25; Feb. 26; June 18; July 23, 30; Aug. 2, 3, 4, 12, 16, 22, 31; Sept. 1; Oct. 9, 1999).

Another area in which Levitsky identified evidence of weak institutionalization is the linkage between the party and Peronist unions. This linkage was never institutionalized, and was based on two informal structures never reflected in party statutes: the 62 organizations and the tercio system (McGuire 1997; Levitsky 2003).

While Peronist identity has undergone profound changes to the beat of the triumphs and defeats of successive national party leaders, the historical cultural and identity substrate [...] acquired status of myth; it remains in force and on its symbolic power seem to cling Peronist militants to renew their beliefs in spite of the ideological shifts and pragmatic behaviors of party leaders ” (Arzadun 2008, 64). Also, author’s interview (Buenos Aires, July 27, 2005).

The Radical identity was rooted in the defense of political rights that was at the party’s origins. Originally, the UCR conceived its political mission as “a crusade on moral values and administrative transparency” (Malamud 2005, 7). The party’s programmatic definition was historically signed by its ambiguity. After 1983, Alfonson moved the party to a moderate center-left and reshaped Radical identity emphasizing the liberal values of pluralism, institutional liberal democracy, and tolerance (Ostiguy 1997, 18; Aboy (1996, 18; 2001, 224 ff.).
Radicalism does not have a candidate and therefore we let everyone be free to vote, without losing all those people that, I repeat, some are very good people, people who citizens recognize as Radical mayors and vote for those in favor, this would give formal party rules some flexibility: “freedom of action (which was taking place in reality) to support candidates and vote in the 2007 elections. For the public officials, who could eventually be recovered for the party...

131 Author’s interview (Buenos Aires, August 30, 2006).
132 Particularly of the largest provinces: Santa Fe (Carlos Reutemann), Cordoba (Jose Manuel de la Sota), and Buenos Aires (Carlos Ruckauf), Levitsky (2003) indicates that since 1999, the party had been a “loose confederation of provincial party bosses who could neither trust nor impose discipline upon one another.” See also interview with Carlos Waisman (on file with author), and Clarín (Feb. 25; March 5, 2000).
133 Página 12 (Dec. 29, 2001).
134 Página 12 (Aug. 18, Oct. 18, 2002).
135 This was the second time since 1983 that the PJ resorted to an electoral mechanism for selecting the presidential candidate. In 1988, the candidate was selected through internal party elections (Leiras 2007, 101). This strategy of translating internal party conflict to the electorate was rejected by the opposition (Cf. Página 12, Aug. 18 2002). For further details, see Curia (2006, 152-3, 167).
136 Intra-party conflict exacerbated the crisis while limiting the government’s capacity to address it. It also contributed to weakening democratic institutions even further by eroding public trust in political institutions and the political class. See Levitsky (2003, 203).
137 Clarín (Oct. 18, 2002; March 10, 2003; April 5, 18, 2003).
138 Author’s interview (Buenos Aires, August 30, 2006).
139 Author’s interview (Buenos Aires, August 30, 2006).
140 Violations of the requirement to hold internal party elections were frequent, using different informal mechanisms to replace them; for example the so-called “listas colectoras” (La Nación March 16; April 6, 13; May 17, 2009). As an example of policy volatility, in 2009, a bill requiring parties to hold open simultaneous primaries was passed into law (La Nación July 10, 12; Oct. 20, 27, 29, 31; Nov. 25; Dec. 3, 2009).
141 This strategy of translating internal party conflict to the electorate was rejected by the opposition (Cf. Página 12, Aug. 18 2002). For further details, see Curia (2006, 152-3, 167).
143 Author’s interview (Buenos Aires, August 30, 2006).
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146 The most significant challenge to the enforcement of electoral rules took place after Kirchner left power, with the so-called “testimonial candidacies” (candidates that knew before running that they would not take office if elected) in 2009 mid-term elections. See La Nación (April 9, 12, 16, 19; May 15, 18, 26, 31; June 2, 4, 19, 23, 26; July 31; Oct. 1, 2009), Clarín (April 17, 2009).
147 Political manipulation of the electoral calendar due to short-term political reasons continued after 2007. See for example, La Nación (March 14, 16, 19, 26; May 14; June 2, 2010).
148 Kirchner failed in his attempt to control the formal party bodies in 2004 at the Congreso Nacional Justicialista, which showed the internal conflict between Duhalde and Kirchner. The appointed authorities soon resigned to avoid the potential costs of taking any of the leaders’ part (Curia 2006, 242; Arzadun 2008, 147).
149 La Nación (March 10, 2009).
151 Clarín (April 18, 19, May 9, 21, 29, July 2, 2005), Página 12 (May 1, 29, 2005), Infocielo (May 30, July 11, 2005).
152 La Nación (Feb. 4, 6, 7; March 6, 25; April 18, 2008). He enforced his control over the PJ until the electoral defeat in 2009 mid- term elections, when he resigned as party leader. However, he continued to hold a strong de facto control of the party in support of his wife’s government and his future candidacy for the 2011 presidential elections (La Nación July 3, 2009; July 13, 2010).
153 “I think that, especially with the De la Rúa’s government, which came into power with a strong commitment to change but then there were no changes, the party began to defraud the Radicals first and then the people. As a result, the party started to lose its disciplining capacity. Thenceforward, it became very difficult for the party to say that everyone had to vote something and that everyone voted so, because some said well, we vote something else because De la Rúa did this or that, and they did not feel obliged anymore. Therefore, it is quite difficult to find a disciplining mechanism; the party has lost its disciplining capacity” (Author’s interview. Buenos Aires, August 30, 2006). Also Clarín (April 3, 2003).
154 Internal debate ensued at the 2006 National Convention, where the party discussed whether to give militants freedom of action (which was taking place in reality) to support candidates and vote in the 2007 elections. For those in favor, this would give formal party rules some flexibility: “There are some who want the expulsion of those who support Kirchner. I think the expulsion is a definite break up; it means the permanent loss of a lot of people that, I repeat, are very good people, people who citizens recognize as Radical mayors and vote for them and have great records. Freedom of action, in my opinion, would allow saying, well, this time the Radicalism does not have a candidate and therefore we let everyone be free to vote, without losing all those public officials, who could eventually be recovered for the party” (Author’s interview; Buenos Aires, August 30, 2006). As a proof of this flexibility, the so-called “Radical K”, including Vice-president of the Republic,
Julio Cobos, began to negotiate their possible return to the UCR in August-September 2008, after the vice-president’s vote against the draft bill initiated by the executive to raise compulsory taxes on agricultural exports. It was significant the public statement by the Vice-president that he had never left the UCR (La Nación September 1, 2008).

150 Author’s interview (Buenos Aires, August 30, 2006).

151 Despite formal rules that call for separation of powers, executive subordination of the courts has a long history in Argentina (Chavez 2003, 454). Also, the implementation gap between the legal framework and its actual enforcement is quite large, which indicates that written law is widely ignored. Global Integrity’s implementation gap score was 38 in 2007 and 39 in 2008 (0 indicates the strongest enforcement). In Chile, in 2008, the gap was only 21. The 2007 gap score in the US was only 10. For further details, see Global Integrity http://report.globalintegrity.org/

152 Voting patterns and behavior in Congress show a high level of party discipline. This would have been a major reinforcing factor for high cohesive periods of unified government (e.g., Menem and Kirchner). However, if we look at more subtle indicators (such as % of bills initiated by the executive that are passed, amendments, use of veto, etc.), the picture is more complex: party discipline actually varies and has to be enforced as an ongoing process.

153 Besides appointments, different resources are used to reward the behavior of legislators that vote according to party rules or opposition legislators that defect from their parties and support the executive. See, for example, Perfil (Sept. 15, 2009), La Nación (March 24; Nov. 21, 2009; April 30, Aug. 8, 2010).

154 This contradicts an extended view that attributes to the president strong capability to act as national party leader and being the main source of party discipline, given presidential access to important resources such as economic resources, party lists, party posts, etc. (see, for example, Chavez 2001, 124). Although the president effectively acts as a source of party discipline, the distribution of benefits is usually mediated through the provincial party and the governors.

155 For example, during the legislative treatment of Resolución 125 in 2008, the executive found difficulties to obtain support of ruling party legislators from provinces (e.g., Santa Fe) where the governors had expressed concerns about the bill (given provincial agricultural interests). This situation got worse when interacted when existing differences between factions within the ruling party, even putting into question the possible achievement of quorum for the legislative treatment of the proposal in the Senate, where the governing party nominally had legislative majority and would have approved it without any obstacle.

156 For example, it was an impediment during Menem’s second term to advance new reforms to the revenue-sharing system (Eaton 2002, 101).

157 Weak accountability and lower corruption costs is one inefficient outcome, together with others such as diminished economic growth, volatility of economic policies, or weak interpersonal trust.

158 Legislators typically serve one or two terms in the Chamber (Jones et al. op. cit., 13) and then continue their careers outside the national legislature, returning to provincial politics, moving on to executive offices or to the Senate (Jones et al 2000, 5-6).
Chapter 5
Leveraging Presidential Power: Discretionary executive action, particularistic payoffs and limited accountability

1. Introduction

The last chapter shows that the enforcement of formal political institutions cannot be taken for granted in Argentina. This characteristic of the institutional setting makes it difficult to enforce inter-temporal agreements between political actors and vertical relations of authority delegation (Spiller, Stein and Tommassi 2003). In such a fragmented political environment, there is potential for conflict between different branches of government; and the enforcement of effective accountability and checks and balances is difficult. Even if presidents are formally endowed with strong powers, in practice they face multiple institutional constraints, including veto points and accountability checks. Nonetheless, empirical reality shows counterintuitive findings: presidents were able to overcome these constraints to pass important and radical policy reforms to extract significant corrupt benefits (Manzetti 1999; Ariceta 2004). If we accept these results, the next relevant questions are: What factors explain presidents’ capacity to overcome potential constraints? What are the resources available for presidents to enhance their discretionary authority and shrink accountability?

This chapter focuses on the actual rules of the game that are being followed by political actors (O’Donnell 1996; Helmke and Levitsky 2003, 2006). It shows that Argentine presidents are able to circumvent potential limitations to implement their policy agendas and pursue their goals through unilateral discretionary action. Weak institutions provide electoral and institutional resources, both formal and informal, to enhance presidential authority. These resources broaden the executive’s ability to act unchecked. Furthermore, presidents rely on discretionary payoffs to build electoral and legislative support while limiting incentives for oversight. The chapter shows that weak institutions
facilitate the discretionary use of state resources for political goals. While discretionary payoffs create cooperation between political actors, thus allowing presidents to advance their policy agenda, they also contribute to corrupt exchanges. When executive accountability is weak, discretionary payoffs can easily be diverted to illegal transactions. Also, besides creating political support, they often buy informal impunity for corrupt practices. These exchanges require a constant flow of resources that can be provided by corrupt transactions. Presidents leverage presidential authority through unilateral and discretionary action and by using particularistic payoffs for building support. In so doing, they enhance their ability to maximize rents without constraints and to create new opportunities for corruption. The informal instances of cooperation that are crafted through informal discretionary payoffs help sustain elite cartel networks of corruption.

Following this introduction, the second section of this chapter focuses on the presidency, its formal powers and de facto restraints. Section three briefly presents some of the historical reasons for the enlargement of executive prerogatives over other institutions of government. Section four analyzes the resources, electoral and institutional, formal and informal, that are used by Argentine presidents to leverage presidential powers. Another important mechanism through which presidents build support is the discretionary use of material inducements, which will be analyzed in section five. Section six summarizes this chapter’s main conclusions.

2. Imperial or impotent presidents?

The democratic regime inaugurated in 1983 exhibited new characteristics (such as inter-party competition and full citizen participation), but also featured strong historical legacies of instability and institutional weakness that affected the quality of governmental checks and balances. In Argentina, there are weak formal institutional restraints, both constitutional and judicial, to unilateral actions by the executive branch (Ferreira Rubio & Goretti 1998). As reviewed in Chapter 4, the president enjoys important formal constitutional prerogatives, which include the power to declare a state of siege (article 86), the power of federal intervention (article 6), and strong legislative and
regulatory powers (e.g., veto power). The Constitution also grants the presidents ample control of political appointments (Rose Ackerman et al. 2010). Moreover, executives have historically interfered in the composition of the Supreme Court and used impeachment (*juicio político*) to remove judges that did not agree with the presidency’s positions. This interference diminished the capacity of the Court to oversee the executive and to arbitrate in inter-branch conflicts. The constitutional reform of 1994 was an attempt to curtail the presidents’ strong powers by creating the office of the Chief of Cabinet with ample powers regarding budget execution, general administration, appointments, and enacting executive orders. However, as the new Constitution explicitly regulated some executive prerogatives such as the ability to legislate by decree, the right to use partial vetoes and the conditions for legislative delegation, it increased the de jure legislative powers of the president while decreasing de facto powers by arranging specific restrictions on their use (Jones 2002; Llanos 2002, 39; Palanza 2009). These reforms failed to affect the actual workings of formal and informal political institutions and to prevent abuse.

Hyperpresidentialism has been regarded as one of the main features of Argentine politics. However, the executive faces multiple risks associated with the fragmentation created by federalism and other features of the formal institutional design (Spiller and Tommassi 2000). Despite their strong formal prerogatives, presidents face multiple de facto restraints on their intervention in the legislative process and advancement of policy reform, as a result of the actual workings of the electoral system, together with party organizations, and the federal system. While according to formal institutional design cooperation with other institutions of government through negotiation and agreement is possible (Llanos 2002, 21), in a context of weak institutions, strategic presidents will likely resort to act discretionally to conduct the political process. In so doing, their ability to create opportunities for corruption increases.
3. Unilateral and discretionary executive action

Discretionary political authority and lack of accountability generate corruption. Unstable and partially enforced institutional constraints offer more opportunities for political corruption than clear, stable, precise and formalized rules of the game (Klitgaard 1991). Furthermore, discretionary executive action provides greater scope for corrupt behavior, as it allows political actors to create greater expected gains from corrupt exchanges (Lambsdorff 2007).

Unilateral and discretionary executive action refers to the ability of the national executive power to act unchecked and without being properly constrained by the rules of the game concerning the admissible results of executive action (Spiller and Tommassi 2000, 19). This ability allows Argentine presidents to accumulate power resources to overcome risks associated with the fragmentation created by federalism and other formal institutional features (Spiller and Tommassi 2000). In a weakly institutionalized setting with low levels of institutional commitment, the use of unilateral and discretionary resources potentially available to the executive, rather than cooperation with the legislature, was the avenue chosen to avoid conflicts and potential stalemates associated with the power fragmentation inherent to the presidential regime (Llanos 2002, 40). Moreover, it facilitated dealing with unstable environments and emergency situations. Presidents simultaneously enhance their powers through discretionary actions and appeal to the principle of power separation to avoid executive oversight (Rose-Ackerman et al. 2010, 1). Not only is the ability of presidents to act unilaterally built upon formal constitutional provisions, but also informally and through non-institutional behavior. Given low levels of institutional commitment, presidents often push the legal and constitutional limits, and even manipulate formal institutions that would constrain their power, to satisfy short-term political interests and enhance their powers and resources, further undermining institutional constraints (Rose-Ackerman et al. 2010, 2-4).

Unilateral and discretionary executive behavior has historical roots. A strong horizontal division of powers has not characterized Argentina’s presidentialism (Mayer and Gaete 1998, 221-225). The executive is seen as the most important branch of government, and is in charge of
implementing reforms that the legislature would be unable to implement, mediating and resolving conflicts between particular interests. Power constraints were not traditionally seen as an inalienable right of the Argentine society (Mayer & Gaete op. cit., 227). Moreover, institutional instability, and the combination of a presidential regime with the succession of military and de facto regimes (where institutional restraints on the executive were absent or weak), reinforced the unconstrained character of the executive and its precedence over the other branches of government (Llanos 2002, 21-24; Mayer & Gaete 1998, 234). The short-lived periods of democracy were insufficient to restore consensual policy-making and to strengthen the powers of state institutions other than the executive. The exclusion of some political forces from the political arena did not contribute to channeling conflicts institutionally (Cavarozzi 2006).

The historical development of hegemonic movements reinforced these characteristics. For example, Yrigoyen considered the executive as the incarnation of the popular will with the other power branches being mere technical organs of government (Llanos 2002, 23). Peronist populism strengthened this pattern by relying on a direct and non-mediated connection between the leader and the people.10 Institutional reforms consolidated the electoral majority obtained by Peronism in the 1946 elections by “lowering the opposition’s opportunities to gain access to representative offices and, consequently, its capacity to translate its electoral force into political decisions” (Ibid.), and damaging governmental institutions other than the presidency (Smulovitz and De Riz 1990). In addition, the under-institutionalized nature of political parties – conceived as pure electoral machines – increased political conflict and facilitated presidential autonomy. Presidential leadership becomes crucial when parties win elections and are faced with the challenge of performing bureaucratic functions and exercising policy-making responsibilities.11 Party and electoral systems that fail to establish adequate links of accountability between representatives and citizens, as well as collective accountability to parties, erode executive oversight and contribute to discretionary executive action (Moreno et al. 2003, 94 & 109).12
Weak checks on the executive widen the scope of permissible presidential behavior. Unilateralism and executive discretion may have helped avoid any major stalemates and institutional conflicts that are frequent in other presidential systems. However, presidents also behave strategically to “manipulate or ignore legal and constitutional constraints to enhance their power and freedom of action” (Rose-Ackerman et al. 2010, 54), which may result in substantial abuse of executive authority (O’Donnell 1994; Levitsky and Helmke 2007; Rose-Ackerman et al. op. cit., 56). If executive action is unconstrained by any oversight and accountability mechanisms, it can be easily abused to exploit or create opportunities for corruption:

Just as the hegemony of the executive tends to subordinate Congress and the judiciary, so this way of understanding and practicing politics tends to eliminate the internal controls that assign functional autonomy to the state bureaucracy against the political appointees in government. [...] This sort of internal colonization, opaque and hardly permeable to the scrutiny of the people’s sovereignty based in the legislature, opens the way through which corruption penetrates the most sensitive nerves of the state apparatus. (Botana 1995, 8-9; author’s translation)

In a weakly institutionalized context, political authority is not understood as a channel for articulating interests and expressing demands, but as a pragmatic force that ensures political stability and transforms society into a political community (Mayer and Gaete 1998). Unilateral and discretionary executive actions are effective when they ensure order and solve conflicts, but they fail to offer proper institutionalized channels for cooperation and participation. As a result, they create opportunities for political corruption.

4. Formal and informal resources for enhancing the executive’s ability to act unilaterally and discretionally

Argentina’s presidents rely on two different types of resources to strengthen presidential power and widen the scope of presidential action: electoral and institutional resources (Llanos 2002).13 While some of these resources derive from formal political institutions, others are played out informally.

4.1 Electoral resources

In the electoral arena, reelection, limited party alternation in government, unified government, and the vertical concertation of political forces are powerful instruments for centralizing authority and
widening the scope of presidential action. They allow presidents to build strong support coalitions, monopolize control of state resources, and gain public opinion allegiance. These instruments have also significant implications for political corruption.

4.1.1 Limited party alternation and unified government

Limited party alternation is the result not only of electoral rules, but also of the limited institutionalization of political party organizations and the mechanisms parties use to enforce discipline. At the federal level, party alternation has historically been problematic in Argentina (Botana 1988, 39). The institutionalization of exclusionary politics meant that alternation took place either through violent coups or institutionalizing electoral conditions that limited or hindered party competition. These characteristics transcended the democratic period. There have only been a few instances of party alternation at the federal level since 1983. In 1989, after the Presidency of Radical President Alfonsín, the Peronist Carlos Menem was elected. In 1999, Menem was succeeded by President De la Rúa, who won the election as candidate of the Alianza between UCR and Frepaso. When the 2001 crisis erupted, De La Rúa resigned and was followed by a series of interim Peronist presidents. The 2003 elections’ results placed another Peronist in the presidency, Nestor Kirchner. In short, there have only been two changes of political color in the new democratic period.15

In addition to limited party alternation, periods of unified government in which the same party controls both the executive and legislative branches (as opposed to divided government) have been common. Presidents emerge from elections with strong legislative majorities (Botana 1988, 41) and, frequently, the president’s party enjoys an ample majority in Congress. Since 1946, unified government was facilitated by the predominance of the UCR and the PJ in national politics. Historically, the president’s party had majorities in both houses from 1946 to 1955, 1958 through 1963, and from 1973 through 1976. After 1983, electoral data confirm the continuity of low party alternation and ample majorities of the president’s party. Furthermore, strong party discipline exacerbates the effects of unified government, facilitating unilateral and discretional executive practices while undermining accountability relations (Bill Chavez 2001).
Both Alfonsín and Menem had ample legislative support in the Chamber of Deputies, where they had plurality support that became an absolute majority from 1983 to 1987 and during Menem’s second term (from 1995 to 1997). Despite his legislative support in the Chamber, Alfonsín never had a working majority in the Senate, which has always been under Peronist control. This control of the Senate has helped Peronism to impede the approval of executive’s initiatives when Congress is controlled by the opposition (Llanos 2002, 182), and contributed to reinforce or informally limit the legislative support of Peronist presidents since 1983 (depending on the ability to enforce party discipline).¹⁶ President De la Rúa had also ample majority in the Chamber of Deputies with 120 seats (47%) from 1999 until his resignation, although he did not have a sufficient number of deputies to have quorum. Eduardo Duhalde (and the other interim Presidents) inherited the same distribution of legislative seats, thus having less legislative support (only 99 or 38.8% of seats); given the crisis and Peronist control of the Senate, this support proved to be strong enough to stabilize the political system. In 2003, President Kirchner obtained an important base of legislative support in the lower chamber with 129 seats (41.6%). However, given the internal fragmentation of Peronism, he had to face more challenging legislative conditions until 2005, as some of the Peronist deputies actually responded to Duhalde, with whom Kirchner was fighting for the internal control of PJ.¹⁷ The 2005 legislative elections consolidated Kirchner’s power, as he gained an absolute majority in Congress with 137 seats (53.3%). The Senate continued to be under Peronist control during the entire period.¹⁸

Last chapter described the tools and resources that parties use to enforce party discipline. Overall, Argentine legislators show moderate to high levels of discipline. Based on roll call voting data for the 1989-1997 period, Jones (2002) concluded that both UCR and PJ showed strong party discipline. Legislators who oppose the official position of the party bloc usually miss the session rather than vote against the party or register an abstention (Jones 2002, 157), although there are exceptions to this informal rule (e.g., party factions).¹⁹ The low number of roll call votes (approximately 3-5% of total proposed legislation) also indicates that presidents do not usually have to resort to these votes to enforce party discipline (Jones op. cit., 151).²⁰ Even if the number of roll call votes is consistently low
when compared to overall legislative activity, there are important differences between administrations. Menem faced more difficulties disciplining the party than later presidents. In the lower chamber, the average roll call voting per legislative period for the Menem administration was 64, in contrast to 38 for De la Rúa; 31 for Duhalde, and 22 for Kirchner until 2006. Thus, party discipline seems to be increasing over time. (Kikuchi 2006, 13; ADC 2005-2008.) Similar levels of party discipline are evident in the votes in committees that produce *dictamenes* (majority and minority reports on legislation). For example, in the Joint Standing Committee that monitors decrees of necessity and urgency (DNUs), the ruling party has always voted as a bloc to approve all decrees issued by the executive and the opposition has issued minority reports in separate blocs (ADC 2008, 43).

4.1.2 Reelection

Reelection is an instrument for reducing uncertainty to the succession in power. Reelection of incumbents often takes place in Argentina as a result of changing the institutional rules of the game to allow for reelection. These changes have taken place at all levels of government, although the problem of succession at the federal level remains problematic and shows the limits to cooperation among political actors with low levels of institutional commitment. Given its effects on political actors’ time horizons and accountability mechanisms, reelection has important implications for corruption (Rose-Ackerman 2001).

Deep-rooted in the 1853-1860 Constitution, which allowed for reelection after a 6-year interval, the question of presidential succession has been historically problematic. Until 1916, the implicit rule was that the incumbent president held control over the succession; alternatively, previous agreements crystallized in common electoral lists. After 1916, however, the exclusionary patterns that became the norm in Argentina’s politics made it more difficult to ensure the succession, and the use of force or non-competitive elections were the most common responses to the problem. During Peron’s presidency, the 1949 Constitution maintained the presidential regime, but injected the dynamics of reelection (Botana 1988, 35) and reinforced the legislative support of the president. After 1956, military interventions became the norm to ensure succession. In 1972, a decree issued by the
military government shortened the presidential term from 6 to 4 years with immediate reelection for one time only, and unified the legislative mandates of both chambers. However, the military government showed the same inability to provide certainty to the succession (Botana 1988, 40).

After the first peaceful and democratic handover of power in 1989, which also involved party alternation, the search for an orderly succession remained problematic. The desire for reelection to the Presidency beyond the formal limits set in the Constitution was the main force driving the constitutional reform of 1994. President Menem was able to install the debate about presidential reelection early in his first 6-year mandate. He threatened with a referendum, should the opposition not accept changing the rules to allow his reelection. To ensure legislative support, however, he needed to acquiesce to several demands from the opposition. During his second mandate, he attempted to interpret the “two consecutive term” clause to allow a third mandate. However, he failed in this new attempt to get reelected as a result of the internal opposition within Peronism, where Eduardo Duhalde had already gained power and was able to set informal limits to presidential power. The defeat of PJ in the legislative elections held in October 1999, with the Alianza winning more support than PJ in the Buenos Aires province, made Peronism recognize the need to renew the party leadership to contain the Alianza’s increasing support and win the upcoming presidential elections. After the traumatic resignation of President de la Rúa in December 2001, Peronist interim presidents were tempted to maintain their hold on power beyond the agreed date to call for new presidential elections, and only the ultimate inability of the sitting presidents to secure consensus among Peronist governors thwarted their attempts. Given this inability to secure internal party consensus, President Kirchner decided not to pursue reelection after his first mandate. However, he nominated his wife for candidacy, and focused on strengthening his grip on the PJ as a way to ensure support to eventually become presidential candidate in 2011.

Similar trends in the use of electoral resources for strengthening the executive exist at provincial and municipal levels. Provincial constitutions have been changed frequently to eliminate formal restrictions to indefinite reelection. This allows governors to strengthen their relative power
vis-à-vis other party leaders. In addition, party rotation is quite limited. In consequence, a large number of Argentine provinces have maintained hegemonic or quasi-hegemonic political systems based on one-party control, with ample unilateral powers of the executive branch. Given the electoral stability of Peronism, and their ability to win and retain control of provincial and municipal governments, these sub-national patterns reinforce the comparative electoral advantage of Peronism. For example, President Kirchner governed the southern province of Santa Cruz for three consecutive periods after changing the composition of the provincial Supreme Court and modifying the provincial Constitution to allow for indefinite reelection. Other provincial constitutions (e.g., La Pampa, Santiago del Estero, San Juan, and Formosa) were also changed to allow for reelection. In some cases, formal constitutional rules were even modified more than once (e.g., Formosa). These changes have contributed to prevent alternation in party control in provinces such as Formosa, Jujuy, La Pampa, La Rioja, San Luis, Santa Cruz, Neuquen, Rio Negro (all seven provinces are under Peronist control since 1983). Other provinces (e.g., Buenos Aires, Cordoba, Santa Fe, Catamarca, Chaco, Santiago del Estero, Salta) show limited party alternation. In 2007, two provinces and the Federal Capital were for the first time under control of third parties (PRO, the Socialist Party, and ARI). Similarly, at the municipal level, there are no formal institutional restraints for indefinite reelection. Moreover, in some cases, mayors cannot be removed from their office even when they are under investigation or prosecuted by the judiciary.

In absence of limits on reelection, political actors enjoy a safe seat and long political careers. Reelection gives a great advantage to incumbents, who have access to state resources to build executive authority even further and may use their monopoly position in office to create opportunities for political corruption. The absence of restraints on reelection at the local level is one of the main building blocs of a system of incentives for corrupt behavior in Argentina. For example, in the province of Buenos Aires, mayors such as Jesus Cariglino in Malvinas Argentinas and Manuel Quindimil in Lanús had long political careers that spanned more than 10 and 25 years respectively. This allowed them to build systemic practices of political corruption: extracting resources from
procurement processes, diverting public funds, and extortion in the allocation of social benefits, among others (Maria O’Donnell 2005, 26-44).

4.1.3 Vertical concertation

Another resource for enhancing executive authority is the vertical concertation of political forces from the executive. Concertation is the process through which representatives from different political parties or factions reach an operational agreement to ensure cooperation; while the agreement may be formalized, the success of such coalitions is usually built upon different informal institutions and practices. For the incumbent, the agreement serves the purpose of limiting competition (collusion) and gaining or holding office. For the opposition, it maximizes access to resources; the party or faction aligns itself with the executive and gains control over government resources. In Argentina, such operational coalitions often connect the federal executive and party factions or organizations at other levels of government.

The main axis of party competition in Argentina is the relationship between PJ and UCR. Given the fragmentation and instability of the political institutional environment, traditional parties (which hold office) need to cultivate both formal and informal ties to ensure cooperation. Belonging to a different party from the one in power is not an obstacle for obtaining political benefits (Llanos 2002, 99), particularly for the UCR: when holding the federal government, it needed ties with Peronists controlling provincial governorships to build support; when in the opposition, UCR provincial and municipal office holders needed ties with the Peronist federal government to obtain resources. Concertation or collusion with opposition forces makes it possible for the ruling party to consolidate authority, opening spaces for discretionary actions that create opportunities for political corruption (Botana 2006, 210).

These agreements are an affordable option when political actors face low transaction costs imposed by institutional rules and voters. As with party defection or switching, the decision to engage in these informal agreements is easier in absence of legal sanctions or informal penalties and the presence of voters’ tolerance (Mainwaring 1999, 146). Several conditions facilitate these agreements.
First, the fragmentation of opposition parties contributes to the dominance and unilateralism of ruling parties that do not support party alternation (Botana 1988, 44). This was particularly evident after 1995, when fragmentation increased, and after the 2001 crisis, with the loss of electoral support by the UCR. Weak formal party institutionalization is another factor; it creates low barriers for party defection, switching or collusion. Usually, parties do not sanction their members for defecting or cultivating ties with other parties. Also, voters in Argentina are not strongly committed to specific policy agendas. They show high tolerance of changes in party affiliation and agreements between parties. Finally, another condition that contributes to vertical concertation is the executive’s access to state and fiscal resources (Botana 2006, 214) and the ability to use those resources without any major formal constraints.

Examples of vertical concertation include the Pacto de Olivos, which ensured UCR’s support to Menem’s 1995 reelection, and the informal agreements between De la Rúa’s government and Peronist factions of the Buenos Aires province. In the legislative arena, the UCR has often been accused by other parties of formally maintaining an opposition role but in practice facilitating the approval of the executive’s projects by retiring its legislators during crucial votes. The strategy of “transversalidad” pursued by President Kirchner in 2003 to build his party leadership, outside the party organization, is even more illustrative (Arzadun 2008). This strategy involved informal agreements with office holders from the UCR (so-called “Radical K”), who decided to support the Kirchnerist project to overcome the UCR’s electoral weakness and to access state resources for governing their provinces and municipalities (Botana 2006, 210):

Today the greatest tension is about the relationship with the government, because those who hold executive positions and depend on resources from the national government, have a tendency to tolerate anything, of course. Therefore, although the party’s national leadership has defined a clear position of strong opposition and a very critical view of the federal government, we have a constant internal battle with party members in executive posts.

Given the stronger party institutionalization of the UCR, this support created internal tensions and finally led to the formal expulsion of those members. However, the expected political benefits from supporting the executive exceeded the perceived cost of switching away from their party for “Radical
K” (Mainwaring 1999; Desposato 2003), who not only ensured the resources they needed to govern at provincial or local level, but also gained formal access to federal office with the inclusion of one of its members in the 2007 presidential election ticket.

The collusive nature of political parties is an important characteristic of elite cartel corruption (Johnston 2005, 204). Informal agreements between parties and factions helped preserve the hegemony of traditional parties against potential competitors. Under these conditions, opposition forces did not perform their role as checks on the executive and had limited incentives for denouncing unlawful practices. Political parties’ expectation that they may become ruling parties some day, and will benefit from the same concentrated resources and profits, fostered the permissive behavior of traditional parties.39

Politicians who are away from power are those who complain the most. A Radical senator, Baglini, invented a theorem: the closer to power you are, the more responsible you become. Minority groups are always accused of reporting everything, of being much more intransigent, of not taking responsibility for the consequences that may occur when they decide not to vote, or because they always oppose or denounce ... When Radicals “smell” that they are closer to power, they begin to extend delegated powers, because they know that someday they will have to exercise those delegated powers, or DNUs. And with denounces occurs the same; they have those incentives because they know that one day the judges are going to investigate them. In contrast, other opposition forces do not have those conflicting interests. However, Baglini’s theorem is wrong. The problem is that you do not become more responsible when you are closer to power, but you begin to pact, to agree: you tolerate more, the closer you are. He forgot to tell the last part.

Informal agreements between incumbents and opposition parties, limited inter-party competition, and party collusion contributed to strengthen unilateral executive action and to create opportunities and incentives for political corruption during the studied period.

4.2 Institutional resources

Presidents also resort to institutional resources to enhance executive authority. Although formally the Constitution gives some extraordinary powers to the president, before 1994, it did not give him proactive (decree) powers to intervene in the legislative process, but only reactive (veto) powers. Rather than concentrating power in the executive, Argentina’s formal institutional design produces fragmentation of power (Tommassi and Spiller 2000). However, given the effects of weak political institutions on actors’ expectations, restraints on the executive do not work as expected, and
presidents may resort to extraordinary resources to concentrate power in the executive, thereby accumulating a large amount of discretionary authority. In other words, proactive executive powers are not a necessary result but rather one possible way of conducting the political process:

So, when evaluating the presidential powers over legislation, political practices cannot be left aside. It is because of this, that Argentine presidents’ powers over legislation have almost unanimously been regarded as broad, and their constitutional legislative authority addressed as “potentially dominant” (Llanos 2002, 19).

The exercise of these informal powers allows the president to engage in exclusive decision-making, encroaching congressional decisions rights considerably and undermining the ability of Congress to enforce institutional restraints. Three informal proactive powers weaken significantly Congress’ capacity to check on the executive: first, the ability to issue decrees; second; the partial veto powers of the president; and powers delegated by Congress. However, despite the use of these resources, legislators are not indifferent regarding their role in the policy-making process.

4.2.1 Decrees of Necessity and Urgency

The Constitution did not grant the president the power to issue decrees that become law at the moment of signature without the explicit delegation of powers from Congress. However, presidents have seized these powers informally from the beginning of the democratic period. They assumed legislative prerogatives of enacting new legislation and modifying or even repealing prevailing laws without demanding subsequent congressional approval, citing exceptional circumstances that required extraordinary solutions.

This power to issue decrees of necessity and urgency (DNUs) was significant. It shifted the balance of power from the legislative to the executive branch (Bill Chavez 2001, 130). This allowed the executive to act without restraint and eventually to create opportunities for political corruption. Not only did this informal power contribute to executive dominance, but it reinforced the executive’s legislative initiative by putting pressure on Congress to sanction specific bills (Jones 1997, 288). As presidents may issue multiple decrees, Congress does not have the capacity to react so rapidly to deter the effects of presidential decrees and influence the bill’s content (Mainwaring and Shugart 1997, 46-7). (Table 5.1.)
Table 5.1. Total DNUs issued per president

<table>
<thead>
<tr>
<th>President</th>
<th>Number</th>
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<tbody>
<tr>
<td>Alfonsín</td>
<td>32</td>
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<tr>
<td>Menem</td>
<td>156</td>
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<tr>
<td>Menem</td>
<td>107</td>
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<td>De la Rúa</td>
<td>62</td>
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<td>Rodriguez Saa</td>
<td>6</td>
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<td>Duhalde</td>
<td>155</td>
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<tr>
<td>Kirchner</td>
<td>235</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>753</strong></td>
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DNUs are often seen as one of Menem’s major political innovations. Before Menem, they were a rare occurrence. Only 25 DNUs were issued between 1862 and 1983 (Molinelli 1991, 75-77; Bill Chavez 2001, 131). President Alfonsín resorted more frequently to this type of decree, issuing a total of 10 DNUs, mostly related to the economic crisis. However, the Supreme Court limited his ability to enlarge presidential authority in this way. In 1986, the Court rejected the appeal to economic emergency as a valid justification for a DNU that permitted the state to seize the assets of retired people. President Menem did not face such constraints and abused this informal prerogative. Between 1989 and 1994, he issued 336 DNUs; in his ten years and half of mandate, a total of 545 DNUs (Ferreira Rubio & Goretti 1996, 451). Frequently, the nature of these decrees was not explicitly acknowledged. Many of them dealt with issues that had nothing to do with urgent matters, while others were connected to economic issues: taxation, salaries, public debt, etc. (Ferreira Rubio and Goretti 1996, 453-5). Moreover, he did not face major institutional restraints on his use of this informal power. Congress did not offer any legislative resistance: Congress met 91% of the DNUs with silence, ratified 8%, and only rejected 1%. In contrast to the previous period, the Supreme Court sanctioned the use of DNUs through the Peralta ruling in December 1990. These decrees met the government’s need for rapid implementation of policies and programs. While sometimes the emergency was real, in most cases DNUs responded to short-term government’s interests or implemented discrentional decisions that benefited particular interests (as seen in Table 5.2., for example, 43 DNUs referred to financial issues, 32 to public agencies, and 27 to industrial promotion
regions). Insofar DNUs bypassed institutional restraints and concentrated unilateral resources in the executive (Ferreira Rubio and Goretti 1996, 466), they encouraged political corruption.

<table>
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<th>Table 5.2. Number of DNUs per theme/policy area for selected presidencies</th>
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<tr>
<td><strong>Menem 1</strong></td>
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<tr>
<td><strong>Public services and works, public investment, public employment</strong></td>
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<tr>
<td><strong>Legislative delegation - extension</strong></td>
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<tr>
<td><strong>Fiduciary funds, public debt, mortgage refinancing, exchange regime</strong></td>
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<tr>
<td><strong>Direct contracts</strong></td>
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<tr>
<td><strong>Ministries and other bodies’ competencies</strong></td>
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<tr>
<td><strong>Fiscal benefits</strong></td>
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<tr>
<td><strong>Industrial promotion</strong></td>
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<tr>
<td><strong>Change and repeal of laws and decrees</strong></td>
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<tr>
<td><strong>Salaries, pensions, fringe benefits contributions, family allowances, subsidies, compensations</strong></td>
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<tr>
<td><strong>Emergency - extension</strong></td>
</tr>
<tr>
<td><strong>Modification - Budget-Chief of Cabinet</strong></td>
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</tbody>
</table>

The 1994 constitutional reform transformed this informal instrument into a formal power by giving constitutional status to DNUs, albeit with some important institutional restraints (both substantive and procedural). Therefore, such decrees can only be issued when extraordinary circumstances make it impossible to follow the ordinary constitutional procedures for enacting statutes, cannot be issued in certain areas, require consensus among the cabinet, and must be submitted to a congressional Joint Standing Committee, which in a ten-day period must report to the plenary of both houses for discussion and approval of the DNU. In practice, however, these restraints have not been exercised. In this sense, the effect of the reform was to shrink the “universe of potentially unconstitutional decrees” (Palanza 2009, 176), thus contributing to reinforce the institutional resources available to presidents to act unilaterally. As a result, President De la Rúa issued a total number of 73 DNUs during his short two-year mandate. Despite the constitutional restraints, President Kirchner issued
more DNUs than Menem did during his second mandate (under the same restraints). In the four-year presidential term, Kirchner issued a total of 270 DNUs (on average, 60 DNUs per year), which exceeded the total number of draft bills initiated by the executive (180 in the 4 years). Only a limited number (seven) dealt with real situations of emergency, while most of the decrees dealt with economic issues such as salaries (101), public budget (34), the financial system (18), and public works and services (21). (See Table 5.2. above) They allowed the president to expand resources under presidential control to build political support while bypassing congressional approval and oversight.

The constitutional mandate to regulate the use and approval of DNUs was unfulfilled for more than 10 years, during which the Joint Standing Committee never operated. In 2006, President Kirchner passed the law that created the Joint Committee and regulated the use of DNUs (Law 26.122). In theory, in establishing the procedure by which DNUs were to hold or fall, Congress could reinstate its prerogatives significantly (Palanza 2009, 177). However, this statute shows important weaknesses (Rose-Ackerman et al. 2010, 9-10). First, it does not impose clear deadlines for the legislative approval of DNUs, and it requires an explicit negative vote of both chambers to derogate a decree. Moreover, if the legislature rejects a DNU, the rights acquired before its rejection remain protected. Also, the law does not set a time limit for DNUs, which allows them to stay in force after the end of the emergency. Furthermore, the Joint Committee, with majority of the ruling party, does not examine whether DNUs complied with constitutional requirements. Under these conditions, DNUs continued to be a useful resource for presidents to enlarge the scope of executive action. For example, they enhance presidential ability to change budget allocation unilaterally. Moreover, under control of the ruling party, the performance of the Joint Standing Committee has been deficient, approving most DNUs without major objections (ADC 2008, 40-43). (See Table 5.3.)

4.2.2 Line Item Veto Powers

Argentina’s Constitution gives the president a strong reactive veto power and imposes strong requirements for Congress to overturn that veto. Presidents also enjoy a proactive veto power: the line-item veto. This type of veto is of special value for presidents, as it avoids the high costs of a
total veto, which forbids the bill to be submitted to Congress until the year after it is vetoed. Before 1994, the exercise of the line-item veto involved a violation of the Constitution, which allowed presidents to object a bill in whole or in part but required returning the entire bill to Congress for reconsideration. However, in practice, presidents used to ratify parts of bills and veto other parts, and then return to Congress not the entire bill but only the vetoed parts (Bill Chavez 2001, 127). This informal practice, which undermined the role of the legislature, gained constitutional status in 1994.

### Table 5.3. DNUs Joint Standing Committee

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>% total DNUs</th>
<th>% DNUs revised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total DNUs issued</td>
<td>771</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total DNUs revised by</td>
<td>87</td>
<td>11.3</td>
<td>100</td>
</tr>
<tr>
<td>Total approved committee</td>
<td>84</td>
<td>11</td>
<td>96.6</td>
</tr>
<tr>
<td>Total rejected committee</td>
<td>3</td>
<td>0.3</td>
<td>3.4</td>
</tr>
</tbody>
</table>


While historically line-item vetoes had been rare, their use reached unprecedented levels under Menem. After 1946, as a result of the constitutional status they received from the short-lived 1949 Constitution, as well as a 1967 favorable ruling of the Supreme Court, it became more frequent and Congress did not oppose this informal practice. The use of this informal power continued after 1983, and increased when President Menem came into office. Table 5.4 compares the use of this informal power by presidents Alfonsín, Menem, De la Rúa, Duhalde and Kirchner. There are significant differences between the formal veto and the informal partial veto across periods. This reflects the different configuration of Congress and interaction between legislative and executive. Nonetheless, percentages and absolute numbers are quite significant in all periods.

After 1994, the line-item veto became a formal executive power. Some institutional restraints were stipulated in the amended Constitution (article 82) to prevent abuse of power. The executive can no longer use the argument that Congress tacitly approved a line-item veto. Moreover, according to article 80, the non-vetoed parts cannot be enacted unless they have full normative autonomy or the partial approval does not undermine the spirit of the entire bill. This article requires the same special procedure for approval that is established in article 99 for DNUs. However, in practice, these
institutional restraints were circumvented by the delays in the passage of legislation to create the Joint Standing Committee. In addition, despite the institutional restraints introduced, the Constitution is imprecise regarding the conditions under which this type of partial veto may be used, providing room for its discretionary use (Tommassi and Spiller 2000, 181). Finally, legislators cannot appeal to the Supreme Court about a line-item veto if they think the partial veto might violate the Constitution.

<table>
<thead>
<tr>
<th>President</th>
<th>Period</th>
<th>Number of bills</th>
<th>Total Number</th>
<th>Veto Total</th>
<th>Line-item Veto Total</th>
<th>Total Vetoes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfonsín</td>
<td>1983-1989</td>
<td>622** 645</td>
<td>37</td>
<td>12</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(end term)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Menem</td>
<td>1989-1999</td>
<td>1548</td>
<td>91</td>
<td>104</td>
<td>195</td>
<td>12.6</td>
</tr>
<tr>
<td></td>
<td>1999-2001</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>De la Rúa</td>
<td>1999-2001</td>
<td>325</td>
<td>26 (a)</td>
<td>20</td>
<td>46</td>
<td>14.2</td>
</tr>
<tr>
<td>Puerta / Saa /</td>
<td>2001</td>
<td>0</td>
<td>2 (b)</td>
<td>0</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Caamaño</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duhalde</td>
<td>2002-2003</td>
<td>181</td>
<td>13 (c)</td>
<td>24</td>
<td>37</td>
<td>20.4</td>
</tr>
<tr>
<td>Kirchner</td>
<td>2003-2007</td>
<td>494* 502</td>
<td>13* 2.6*</td>
<td>22* 4.5*</td>
<td>35* 7.1*</td>
<td></td>
</tr>
</tbody>
</table>

Source: Bill Chavez (2001); Suaya (2007); data from Dirección de Información Parlamentaria. */ until July 2, 2007. **/ until 4/30/89
(a) 8 total vetoes correspond to bills passed during Menem’s second mandate
(b) 2 total vetoes correspond to bills passed during De la Rúa’s mandate
(c) 3 total vetoes correspond to bills sanctioned during De la Rúa’s mandate

The line-item veto impedes the normal workings of Congress, which may only accept or reject the vetoed parts of the bill; given the strong requirements for overriding the veto, this results in frequent congressional silence or lack of action (Ibid.), particularly when the governing party has an ample majority in Congress and shows a high level of discipline (e.g., the case of President Kirchner). The comparison of the overriding figures is significant in this regard. While Congress has exercised overrides regarding regular vetoes, this has been less common regarding partial vetoes. Only for Presidents Menem and De la Rúa the total and percentage figures of overriding are significant; Congress insisted on congressional rules in 13.5% of the partial vetoes issued by Menem and in 5% of De La Rúa’s. In addition, vetoes are usually directed towards initiatives coming from other
political forces, with a slight contrary difference in the case of Menem (Suaya 2007, 12-13).\(^6\) This indicates that partial veto, rather than a resource to be used in inter-branch conflicts, is mainly used as a proactive instrument for the president to strengthen presidential authority by enacting discipline from his own party and/ or exercising control over opposition forces (Suaya 2007, 15). (Table 5.5.)

4.2.3 Other informal presidential powers: Delegation of legislative powers and Superpoderes

The executive may also enjoy extraordinary proactive legislative powers as a result of the explicit or implicit delegation granted by Congress. The combination of proactive powers to issue DNUs with the explicit delegation of legislative powers (called “superpowers”) has been used by Argentine presidents to consolidate their powers vis-à-vis the legislature.

<table>
<thead>
<tr>
<th>President</th>
<th>Period</th>
<th>Number of bills</th>
<th>Overriding Line-item Veto</th>
<th>Overriding Total Veto</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfonsín</td>
<td>1983-1989</td>
<td>622**</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1989-1999</td>
<td>645</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Menem</td>
<td>1989-1999</td>
<td>1548</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>De la Rúa</td>
<td>1999-2001</td>
<td>325</td>
<td>5</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>2002-2003</td>
<td>181</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Duhalde</td>
<td>2002-2003</td>
<td>181</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Kirchner</td>
<td>2003-2007</td>
<td>494*</td>
<td>0*</td>
<td>0*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>502</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 5.5. Legislative overriding, 1983-2007

Though not new in the country’s constitutional history, the delegation of powers granted by Congress has been extraordinarily important since 1983. The first delegation took place during the first Menem administration, justified by the need to give a rapid response to the economic crisis. The importance of the issues and the broad scope of the delegated powers considerably strengthened executive authority (Ferreira Rubio 2000, 59). With the approval of the State Reform (L23.696) and Economic Emergency (L23.697) Laws, Congress agreed to delegate legislative powers to participate in the formulation and design of public policies (Llanos 2002, 85).\(^6\) These laws declared a state of emergency of all state’s entities, attempted to reduce public expenditures, and set the general rules for privatization. However, delegation of powers did not prevent Congress attempting to amend the draft
legislation and including mechanisms of control (Llanos 2002, 85). Congress retained control prerogatives through the creation of a bicameral committee to control the executive’ use of the delegated faculties. Yet those attempts did not have the expected impact as a check on executive action. Following the second term of Menem’s presidency, Congress reaffirmed its position more proactively, but the delegation of legislative powers was never taken back. New and significant delegations took place in 2001, through Law 25.414, and in January 2002, through the Law of Economic Emergency. Afterwards, Kirchner’s administration perfected the resort to this instrument to strengthen presidential authority.

The 1994 Constitution explicitly regulated the conditions for legislative delegation (article 76), which is only allowed within fixed terms, on specific topics, and according to the practice established by Congress. It also established that all legislation that had been delegated between 1853 and 1994 would perish in five years, unless explicitly approved by Congress (temporary provision 8a). Finally, the statutes issued in exercise of delegated powers were subject to control by the Joint Standing Committee (article 100 inc. 12). Although explicit institutional restraints on the use of delegated prerogatives were introduced in order to prevent future abuses (Llanos 2001, 38; Jones 1997; Ferreira Rubio & Goretti 2000), those restraints were never fully enforced but rather systematically circumvented and/or ignored. Thus, Congress has systematically and blindly rejuvenated the delegation of preexistent legislation since 1999 (Law 25.148): in 2002 (Law 25.645), 2004 (Law 25.918), 2006 (Law 26.135) and 2009 (Law 26.519). The powers delegated through the Law of Economic Emergency have been extended annually since 2002 (Ibarra 2009, 1). Furthermore, other delegations have taken place informally as a result of the regulation of the DNUs, which has transformed these decrees to allow the executive to issue laws equivalent to those passed by Congress: DNUs are valid sine die and erga omne until legislative treatment, but there are no consequences for delaying the legislative process, and explicit rejection by both chambers is required for a DNU’s derogation (Ibarra 2009). Moreover, monitoring of executive regulations in exercise of delegated faculties has contravened formal norms; given the delays in setting up the Joint Committee, Law
25.414 (article 5) created an ad-hoc legislative committee in violation of the ex ante legislative control envisioned in the Constitution.68

As a result, the constitutional requirements have been disregarded and it has been omitted that what defines the delegation authorized by the 1994 reform is the control of decrees prior to their enactment and not monitoring them ex post facto. (Colautti 2001; author’s translation)

The limited enforcement of institutional restraints on delegated faculties distorts the effects of the de jure recognition of these informal powers, as this becomes a legal justification for future abuses. As a result, the concentration of power in the executive is reinforced (Colautti 2001). The delegation of legislative powers, in combination with DNUs, has been a crucial resource for strengthening executive control over the budget, particularly for formulating and passing the budget and changing public accounts:69

Much delegated authority concerns policymaking. If the legislature declares an emergency (economic, social, sanitary, etc.), it usually gives broad powers to the president so that he or she can take measures to overcome the crisis. Furthermore, through declarations of emergency, the legislature empowers the president to make discretionary use of public funds by modifying budgetary accounts. (Rose-Ackerman et al. 2010, 11)

The reinforcement of executive unilateral and discretionary action as a result of the delegation of legislative powers has implications for corruption (Benson and Baden 1985). During Menem’s presidency, legislative delegation enabled the government to transfer state assets to the private sector before setting the appropriate regulatory frameworks, which facilitated the diversion of resources and created incentives for private actors to seek corrupt benefits. In so doing, delegation encouraged the integration of elite cartel corrupt networks. Later on, during Kirchner’s presidency, superpowers were a critical instrument to undermine corruption monitoring in key sectors. By creating new agencies, the detection of any particular corrupt public official becomes less likely and each official’s incentive to avoid corruption is reduced. For example, using its delegated faculties, the executive created the ONCCA, which was involved in irregular allocation of agricultural subsidies in exchange for bribes.70

5. Leveraging presidential power through the informal distribution of material inducements

Previous sections of this chapter have analyzed the formal and informal instruments available to presidents for enhancing presidential authority. Students of Argentine politics are also well aware of
the fact that politicians frequently rely on pork, clientelism and patronage networks to cement political support between voters and their candidates and within the political elite.\textsuperscript{71} Clientelism and patronage are informal institutions that replace formal mechanisms for the distribution of resources.\textsuperscript{72} Patronage is the discretionary use or distribution of state resources to cement the loyalties of political allies (Mainwaring 1999, 176). Clientelism\textsuperscript{73} is a personal, particularistic, asymmetric and informal relationship between two players, in which an individual with higher socio-economic status (patron) uses her influence and resources to give protection, services or benefits to other individuals (clients), who in turn provide loyalty, personal services, attendance, mobilization and/ or electoral support; third parties may intervene as intermediaries in the exchange (Hutchcroft 1997, 645; Mainwaring 1999; Torres 2002, 48).\textsuperscript{74} Clientelism involves personalized links between individuals with different status with the purpose of accumulating power and, in many cases, obtaining electoral gains by one of the parties. Although it is not empirically correct to assume that clientelism determines electoral results (Auyero 1999, 300; Auyero 2000; Auyero 2004, 16, 61; Torres 2002, 71-3; Massun 2006; Stokes 2002), it is relevant in internal party elections (Torres 2002, 73), and for building broader political support.

The allocation of state resources to specific regions and the clientelistic mobilization of votes are often legitimate practices not proscribed by the constitution and not necessarily linked to corruption. However, informal clientelistic exchanges contribute to corruption as they take place in poorly institutionalized poliarchies, with eroding legal authority and weak accountability relations (O'Donnell 1996).\textsuperscript{75} Where clientelism is pervasive, transparency is limited and there tend to be fewer countervailing powers and agents of restraint to check on corrupt practices (Brinkerhoff and Goldsmith 2002, 12). Also, as clientelistic exchanges are dependent on a constant flow of resources, corruption may become a reinforcing mechanism that provides “the money that greases the machinery, helps to strengthen clienteles, consolidate power within the party, finance campaigns or pay leaders, and gain complicity in the administration” (Maiz n.d., 26).\textsuperscript{76}
These informal practices also reduce the incentives for reporting corruption. The distribution of material inducements for political purposes reduces political opponents’ incentives to monitor and report corrupt transactions. In principle, challengers have a direct incentive to uncover incumbents’ malfeasance, because their probability of winning office increases once the incumbent has been discredited (Rose-Ackerman and Kunicova 2002, 9). Under clientelism, challengers receive particularized benefits (they may even receive spoils from the corrupt system) and are less willing to risk losing them. In addition, providing material inducements expands the system of corruption by enlarging the number of beneficiaries and making the corrupt system more inclusive (Manzetti and Wilson 2006). This enhances the stability of the corrupt system, as those excluded always have an incentive to report corrupt practices (Weyland 1996; Johnston 2005).

Pervasive clientelism places emphasis on personal interaction with voters (rather than on policy reputation), which makes elections less competitive, and thus promotes political corruption. Since there is only one candidate (the patron who has ongoing interaction with a network of clients) that can make credible promises, he will not need many resources to gain the voters’ confidence and may retain more rents once in office (Keefer 2003, 6). Furthermore, the discretionary distribution of material inducements also allows presidents to reinforce their unilateral authority, which creates opportunities for malfeasance. It contributes to concentrated decision-making, which generates incentives for private actors to rely on illicit meant to pursue favorable decisions that keep those benefits for a limited number of recipients (Montinola 1997).

In addition, in a weakly institutionalized federal system, in which provincial party bosses and governors play an important role, legislative coalitions and discipline within the ruling party are built upon the distribution of material inducements to the provinces. Because provinces are dependent on the central government’s resources, particularistic transfers to the provinces are a crucial tool of rewards and punishments. While some authors indicate that these exchanges have been a way of building inexpensive support coalitions for advancing policy reform (Calvo and Gibson 2000), other scholars refer to the inefficiency of cementing legislative support with clientelism, claiming that it is
volatile and expensive (Haggard and Kaufman 1995; Mainwaring 1999; Ames 2001). To the extent that sustaining these exchanges is costly, corrupt practices may ensure the needed flow of resources.

5.1 Building support through informal exchanges

The use of state resources for political purposes (so-called “manejo de la caja”) is a critical mechanism for strengthening executive authority (Botana 2006, 209; Bouzat 2006, 11; Rose-Ackerman et al. 2010, 21-22). State resources are used to gain political support by mobilizing supporters, buying off adversaries, disciplining one’s own political party, and even crafting a favorable public opinion through manipulation of the media (ADC 2005). They become a necessity for ensuring both stability and an efficient response to citizens’ demands.

The thrust of this argument is that, in Argentina, presidents use informal practices and institutions to overcome the constraints imposed by a fragmented and weakly institutionalized presidential democracy with low levels of institutional commitment. More specifically, the use of clientelistic networks, pork, patronage distribution and other informal mechanisms for the discretionary distribution of material inducements help political actors ensure compliance and advance policy reform where political and legislative support is uncertain and unstable. While the use of these informal exchanges may help build collaboration between legislative and executive branches, they are inefficient in terms of executive accountability. They strengthen the executive’s capacity to encroach the legislature’s prerogatives while reducing legislative incentives to oversee the executive. They help lower the costs of corrupt exchanges and raise its potential payoffs by cementing clandestine alliances between political elites or with their constituencies.

In a weakly institutionalized polity, the rationale for the political use of state resources is power preservation and expansion. Informal exchanges of discretionary resources enabled short-term alliances between political elites (presidents, governors and legislators), party constituencies and economic elites. For example, given the provincial dependence on federal resources, the executive often distributes them through informal channels to gain support for the government’s programs and policies from governors and legislators. This was particularly evident after 2001, given the visible
role of governors in the succession of President De la Rúa and thereafter (Bouzat 2006, 26). These informal exchanges are standard practice in Argentine politics. However, they are not as institutionalized as they are in other countries.81

Not all incumbents have the same comparative advantage in using state resources for political purposes.82 Peronism has had more access and benefited from clientelism than other parties (Calvo and Murillo 2003, 34). First, it has better access to fiscal resources – as a result of the electoral system, the geographic over-representation of Peronist constituencies in the least populated provinces, and the nature of Argentina’s fiscal federalism.83 Second, Peronism is able to obtain more electoral returns due to the higher dependency of its constituencies on public resources and the historical ties between Peronism and poorer constituencies (op. cit., 21).84 Peronism uses access to state resources to foster electoral stability and sustain its provincial and local preeminence. This preeminence has been crucial in creating veto points when Peronism does not control the national executive (op. cit., 32). Moreover, clientelistic networks facilitated PJ’s organizational adaptation by allowing Peronism to keep its base of support among the poor, while implementing profound economic reforms (Levitsky 2003; Murillo and Levitsky 2005).

The informal distribution of material inducements does not necessarily involve corrupt transactions. Most of these exchanges are not illegal, either, as no formal rules are violated. The aim of the exchanges is the political use of resources, rather than the accumulation of resources for private or collective enrichment; also, implicit or explicit political support instead of specific resources is exchanged. However, they often gave way to corrupt practices. For example, state funds for intelligence activities were deviated to provide personal benefits (secret bonuses) to public officials, journalists and judges during Menem’s presidency, to legislators during the Alianza government, and to finance political campaigns (Abiad & Thieberger 2006; Rose-Ackerman et al. 2010, 22). The discreitional allocation of state publicity not only built a favorable public opinion, but often hid the payment of returns to the public officials who allocated those resources.85
Informal exchange of material inducements for political purposes requires the availability of a minimum of state resources and the opportunity to use them. The political goals of preserving and expanding power provide the incentive. Although they require resources, the use of these prerogatives will adapt to more stringent fiscal conditions (Gibson and Calvo 2000, 51). While periods of fiscal stability and economic growth ensure abundant resources to build support, availability is limited at times of economic emergency. As the cases of Menem (particularly between 1991-1994) and Kirchner (2003-2007) illustrate, presidents have more leverage to expand and preserve power by relying on state resources under conditions of abundance; in contrast, Presidents Alfonsín (1983-1989), De la Rúa (1999-2001) and Duhalde (2002-2003) faced more stringent economic conditions.

The wide constitutional prerogatives legally granted to the president, and the informal ones that presidents exercise, facilitate these informal exchanges.\textsuperscript{86} Also, authority over the distribution of specific state resources is concentrated in few public officials, and there is limited transparency and insufficient control over the use of resources. The normative framework that regulates the use and distribution of state resources is unclear and inconsistent (or simply nonexistent), and formal are routinely ignored or circumvented.\textsuperscript{87} The following pages of this chapter show how these exchanges took place, the nature of such exchanges, their potential beneficiaries, and whether and how these informal practices were sanctioned.

5.2 The available payoffs for building presidential support

Presidents in Argentina have both constitutionally and informally endowed powers to preserve and expand political influence by bargaining for political loyalty and support from potential coalition partners from its own party, opposition forces, constituencies and private actors. Material and financial resources are used for building support and preserving power. Different sources within the state can provide access to these resources. Commonly known “cajas” include social assistance funds and programs, retirement and intelligence funds, public works and related investments, as well as state-paid publicity.\textsuperscript{88} The use of material inducements frequently includes favoritism and politically motivated distribution of financial and material inducements, benefits, advantages, and spoils.
Power-holders can pay off provincial party bosses and opposition and secure a parliamentary majority. By paying off control institutions, they can stop investigations and gain judicial impunity. Furthermore, by distributing goods and access to certain assistance programs, they can mobilize votes and secure re-election. Table 5.6. illustrates the nature of the available payoffs, and summarizes the presidential prerogatives and beneficiaries and provides examples.

Table 5.6. Discretionary payoffs available to Argentine presidents

<table>
<thead>
<tr>
<th>Nature of payoffs</th>
<th>Beneficiaries (direct/indirect)</th>
<th>Scope</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHOLESALE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabinet appointments</td>
<td>Political parties/factions, their collaborators and constituencies gain ministerial office</td>
<td>National</td>
<td>UceDe, environment ministry (89-95)</td>
</tr>
<tr>
<td>State companies and regulatory agencies</td>
<td>Political parties and factions gain access to money, influence and policy-making authority</td>
<td>National</td>
<td>UceDe, state companies to be privatized; CNRT, etc.</td>
</tr>
<tr>
<td>Superintendence agencies</td>
<td>Political parties and factions gain access to money, influence and control authority</td>
<td>National</td>
<td>ANSES; Central Bank; AFIP</td>
</tr>
<tr>
<td>Public policy, policy concessions</td>
<td>Party constituencies or interest groups</td>
<td>National, provincial</td>
<td>Privatization, tariffs, exchange rate</td>
</tr>
<tr>
<td>Policy concessions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing and contracting</td>
<td>Monetary benefits to individuals and interest groups/firms</td>
<td>Provincial, local</td>
<td>Government contracting in public works and official publicity; Social programs</td>
</tr>
<tr>
<td>Pork &amp; Rents</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budgetary allocations</td>
<td>Party constituencies</td>
<td>Provincial</td>
<td>ATNs; federal housing plan; social programs</td>
</tr>
<tr>
<td>Rents (discretionary spending funds)</td>
<td>Personal benefits</td>
<td>Individual</td>
<td>Cash transfers to reward officials (Menem’s sobresueldos) &amp; to purchase legislators (for passing labor reform by Alianza)</td>
</tr>
</tbody>
</table>

Source: Author’s based on Constitution and legislation, personal interviews and newspapers. For a similar classification, see Mejia (2004)

These prerogatives and payoffs can be classified based on the market value for potential partners, which is associated with the scope of influence (Mejia 2004, 224). For potential partners, the more potential beneficiaries, the higher the value of the payoff, and vice versa; also, the most influential payoffs are the most visible or controversial kind of payments (e.g., cabinet positions), and the least
influential are more personal payments such as business concessions. However, the most visible payoffs often involve high liabilities for both the president and potential partners, and thus less visible payoffs are more effective for building legislative and electoral support. In Argentina, after 1999, the informal exchange and bargaining of pork, policy concessions and particularistic benefits became more important than highly visible payoffs such as cabinet appointments. Some of these payoffs are analyzed below.

5.2.1 Office appointments

Argentine presidents face only weak constraints in their appointment powers, which they have been able to circumvent through political pressures and unilateral action (Rose-Ackerman et al. 2010, 28). While executive appointments are less visible than other payoffs, they are highly influential for building political support. During Menem’s two terms in office, executive appointments were used for coalition building. Political parties allied with the government gained access to cabinet and sub-cabinet appointments, state companies, and regulatory agencies. Afterwards, executive appointments continued to be used for building presidential power. Besides allowing political allies to gain access to office, they were used to ensure policy support from crucial actors through discretionary rewards and penalties. Presidential control has extended even to independent agencies, which have been used to build presidential power and to limit accountability in key policy sectors. To illustrate this argument, the examples of cabinet appointments and regulatory agencies are discussed below.

(i) Cabinet and sub-cabinet appointments

The president has discretionary authority to freely appoint cabinet members. Argentine cabinets have partisan members, meaning that most members are identified with specific political parties or factions. Bargaining around presidential authority to appoint cabinet members was largely limited to the governments of Alfonsín and Menem. Only in those periods, cabinets helped to cement pro-government alliances (Haggard and McCubbins 2001) and granted political parties policy-making influence and access to sources of pork and patronage.
During Menem’s first term in office (1989-95), given the restricted legislative majority of the executive, coalition building with provincial conservative parties ensured support for the state reform process. These parties played an important role in local politics in several provinces and “became full partners in government, occupying high government positions, providing pro-government voting blocks in the Congress, and endorsing the president’s reelection bid in 1995” (Gibson and Calvo 2000, 37). Moreover, the alliance with conservative parties took place in urban areas through UceDe, which gained access to important cabinet and sub-cabinet appointments (including the Ministry of Environment, National Mortgage Bank) and influenced the privatization process through the appointment of María Julia Alsogaray (UceDe founder’s daughter) to manage the privatization of the state phone and steel companies. The appointment of independents to cabinet positions during Kirchner’s term in office was part of the president’s effort to strengthen his own leadership within Peronism by relying on independent left-oriented sectors. This strategy also garnered electoral support from left-oriented urban middle classes.

Afterwards, support-building efforts have not involved bargaining over cabinet appointments. Political parties face strong liabilities for being associated with the ruling party, while the ruling party also faces liabilities in ensuring its own party discipline if it decides to engage publicly in coalition building efforts that involve highly visible payoffs.

(ii) Appointments to regulatory agencies

Following the privatization of public utilities, formally independent regulatory agencies were set up to control private concessionaries in the transportation, water, electricity, gas, and telecommunications sectors. The institutional design of these agencies would formally protect them from capture by political authorities. However, in practice, they have not functioned independently but been subordinated to political considerations.

A closer look at some of these bodies shows the influence of the executive and the discretionary use of appointments to build political support. Moreover, regulatory agencies have been used to reward and penalize private firms. This strategy was also useful in the integration of
corrupt elite cartel networks, as it protected the profits of economic elites and the power of political elites from competitive pressures. The result was weaker state control over private firms and further deterioration of the state position vis-à-vis the private sector. This contributed to the deterioration of public services, but also explains the abundance of corrupt practices involving regulatory agencies.\textsuperscript{95}

Most regulatory agencies were created by decrees (not statutes), and although Congress is generally consulted, it does not have any real veto power over the appointment of authorities. Usually, authorities were not appointed through merit-based competitive processes, and the appropriate professional requirements were violated. Political considerations explain the high turnover of regulatory personnel. Many of them operate under the system of intervention, which means that the executive appoints a single person to head the agency temporarily (in response to detected irregularities), formally violating the legal requirement to appoint a multi-member board. Moreover, interventions often become indefinite, in violation of their purpose as last resort instruments to be used only in cases of grave mismanagement and for a limited time period. The absence of formal regulation of interventions fosters this abuse.\textsuperscript{96} Furthermore, in agencies that have not been intervened, public officials are frequently appointed violating or circumventing formal requirements (e.g., reappointment, staggered terms, removal from office).

Examples from several regulatory agencies are illustrative (ACIJ 2008). The 2004 appointees to ENARGAS did not comply with the required professional requirements. The executive intervention of the agency in 2007 for a six-month period, after a corruption scandal, was extended four times. In the electricity sector, Kirchner’s unilateral appointments to ENRE circumvented the required merit-based process and input from the legislature. In telecommunications, the intervention of the CNC in March 2002 with the goal of reorganizing the agency was extended to the present. Of special significance is the transportation agency (CNRT), because it “supervises private firms that receive several billion pesos each year in subsidies. Thus, its decisions have political import and provide opportunities to favor allies” (Rose-Ackerman et al. 2010, 34). The agency shows clear signs of political capture since its creation in 1996.\textsuperscript{97} In 2001, the executive intervened the body and the
president appointed the “interventor” unilaterally, with no consultation or competitive selection process (Tarzia 2005, 7). This intervention was formally intended to restructure the body and improve its performance; 98 in practice, it was politically motivated – eight years later, no plan to restructure the agency had been approved nor implemented, and the board of authorities had not yet been appointed. 99 The appointment of authorities under different governments demonstrates the political value of controlling the agency. Since its creation, there have been two different boards, whose members were selected discretionally. 100 After the intervention, the unilateral appointment of authorities responded to political pressures and there was great turnover, with seven different individuals appointed between 2001 and 2008. 101 Despite evident irregularities during their terms, none of those individuals was ever dismissed. In 2004, a close ally of the Secretary of Transportation was appointed, despite his lack of relevant experience. He was accused of numerous irregularities in contracting processes, as well as the reception of bribes, extortion, and threats (Tarzia 2005, 10).

5.2.2 Pork and policy concessions

Policy concessions have varying degrees of public visibility, thus attracting different kinds of potential beneficiaries. Policy concessions were allocated to ruling party constituencies and business sectors to build support for policy reform. In the 90s, the government implemented selective policies to protect or benefit specific constituencies while conducting economic reforms. Controversial examples occurred during the privatization processes, when the president agreed to pardon the debt of influential firms, renegotiating it with very lenient conditions, in order to secure the political support of business sectors and obtain resources to address the state’s financial strain. Other examples of policy concessions included lowering trade tariffs, pardoning debts, or imposing special prices on—or granting subsidies to—export products.

A highly controversial policy concession to private utility services was granting subsidies to control prices without affecting the firms’ benefits (Estache et al. 1998). The multiplication and diversification of state subsidies slowed down the initial reduction in fiscal costs resulting from privatization. As seen in Chapter 3, state costs to maintain subsidies skyrocketed over time. For
example, in 2008, railway and metro services received significantly high payments in compensation for increasing costs between 1993 and 2007. These concessions harmed the regulatory position of the state and contributed to corruption after privatization. The failure of state control—in guaranteeing access, ensuring the quality of services, and setting prices—determined extraordinary profits and hence rents to private operators through policy concessions. (Estache, Goicoechea, and Trujillo 2006, 3) For example, compensations to private operators for non-perceived income did not take into account the unpaid penalties that they must have paid for not complying with contractual conditions.

The problematic relationship between the state and private concessionaries left consumers unprotected in terms of quality, price, and access to services while still providing large concentrated rents for concessionaries. Regulatory problems and policy failures became serious enough to offset the short-term gains of privatization. These problems got even worse as a result of the 2001 crisis and the breakdown of the convertibility regime. With the declaration of the railway emergency, the freezing of tariffs and delays in contractual renegotiations, private operators lost the main instruments for protecting their rents. As a result, investments were put on hold and violations of contractual obligations became more frequent. The lack of adequate investment with increased service demand led to further deterioration of services and infrastructure. As the state failed to monitor private firms’ compliance with scheduled investments, the quality of commuter rail transportation services soon deteriorated, triggering users’ dissatisfaction and even social unrest, as well as numerous criticisms from opposition parties and transport experts.

Policy concessions also involved different types of payments, including government contracts, licenses, speedy approval of public works, and social programs. Some important examples of less visible policy concessions are further analyzed below.

(i) Public works

Government contracting of public works has been used for electoral purposes as well as to distribute particular benefits to provincial constituencies and private firms. These policy concessions became
particularly important after 2003, when President Kirchner relied on the discretionary distribution of public works and social programs to strengthen his territorial power. The national plan of public works by the Ministry of Federal Planning was a critical instrument for building political support. (See also Chapter 3)

Weakly enforced formal institutional rules allow the exercise of discretionary faculties, the violation and/or manipulation of formal procedures for awarding contracts, and the manipulation of the criteria used to select among different bidders. Decision-making processes are highly volatile, which creates delays and interruptions in the execution of public works or changes in the contractual conditions during the implementation (Poder Ciudadano 2006, 60). As a result, significant differences can be found between the formal plan of public works and its actual implementation. While many contracts included in the plan are never executed, new ones are implemented and financed with extra-budgetary savings, approved directly by the Chief of Cabinet without parliamentary discussion and approval. In 2005, 60 public works included in the annual plan for a total amount of 440 million pesos were never undertaken, while new contracts for 284 million pesos were executed. These were approved through an administrative decision and most of them were undertaken in the president’s province (Rios and Perez 2005, 6). In 2009, 1077 (94%) out of the 1141 public works included in the budget were not executed, and the 2,600 million pesos saved were reallocated to other projects whose costs skyrocketed.

In some cases, resources were used to subsidize privatized public services or make direct transfers to provinces. In November 2005, more than half of the investment projects included in that year’s budget had not been initiated yet; 30% of those projects were initiated in 2006, but only 1% were executed during that period, and only 10% during the next 3 years (Rios and Perez 2005, 4). A similar pattern occurred with public works that had been promised during electoral campaigns: the execution of some projects was interrupted while others were never initiated. For example, the 2004 Federal Housing Plan projected 120,000 houses, but as of June 2008 only 62% had been finished.
According to official figures, out of 1,596 public investments under execution since 2003, only 643 projects were finished by 2008 (40% over the total).  

Public work contracts were also used to favor particular constituencies and firms. The territorial distribution was concentrated in certain provinces based on political considerations. The province of Santa Cruz was the extraordinary beneficiary of public works and investments during the Kirchner’s administration, while a few other provinces also received disproportionate high levels of investment. For example, in 2004, direct real investment in the province of Buenos Aires was 372 million pesos, 285 million in the City of Buenos Aires, and 175 million in Santa Cruz (or 10% of the total public investment) while the provinces of Chaco, Formosa and Corrientes represented only 0.9%, 0.4%, and 0.7% respectively (Rios and Perez 2005, 9). The discretionary distribution is also illustrated by the implementation of the Federal Housing Plan. The provinces of San Luis and Neuquén, ruled by opposition parties, did not receive any transfer, and Chaco and Corrientes received less than 1% of the total. In contrast, Santa Cruz and Tierra de Fuego received extraordinary benefits that almost covered the entire housing deficit in those provinces (Ibid.). By mid 2010, Buenos Aires, Santiago del Estero, Tucumán, Santa Cruz and Chaco had received 60% of the total state funds for public works (1,868 million de pesos, over a total of 3234 million). In 2009, 53% of the state funds for public works in the provinces were concentrated in five provinces, while the least favored districts (Neuquén, Tierra del Fuego, Corrientes, Catamarca and San Luis) were all ruled by opposition parties and received less than 5% of the total (150 million pesos). When the Chubut governor decided to run for president in 2011 against any Kirchnerist candidate, his province moved down in the ranking of beneficiaries from the 4th to the 16th position.  

Similarly, the distribution among private actors shows that a few firms are recipients of an extraordinary share of public works contracts, both at federal and provincial level. At the federal level, for example, three firms from Santa Cruz were awarded the largest contracts under the Federal Housing Plan and were also the main provincial contractors. In the provinces, contracts are also concentrated in a few firms. For example, in the city of Buenos Aires, 50% of the housing contracts
were concentrated in three firms, and in the province of Buenos Aires, three firms received 38% of the total contracts (Ríos and Pérez 2005, 17, 22). This caused an increase in execution costs, which sometimes reached extraordinary levels. For example, in Santa Cruz, the average cost per house ranged between 142,851 pesos and 62,515 pesos, with the three major beneficiaries charging the second to fourth highest prices (Ríos and Pérez 2005, 14).

The violation of formal rules is frequent in procurement processes for public works. Although all projects over $5,500,000 pesos must be submitted to a prior technical study and dictum, this requirement was usually ignored. For example, 85% of the public works managed by the Ministry of Planning between 2003 and Nov. 2005 did not have such dicta (Ríos and Pérez 2005, 5). In addition, there were frequent violations of the National System of Public Investment, which establishes the criteria and procedures to include public works in the federal budget. For example, in 2005, the national plan of public works and supporting documents from the multi-year public works plan were not included in the budget (Ibid.). Another common violation was to award contracts to firms that did not fulfill the requirements to be recipients of state contracts. Many of these firms had close connections with politicians and the federal government.

The conditions for using public works as an instrument for discretionary payoffs were enhanced after Kirchner took office. The Ministry of Planning, created in May 2003, concentrated budget resources and became the most powerful agency after the presidency. In 2005, its budget experienced a 40% increase, and continued to grow in the following years; in 2007, the budget increased by 10,084 million pesos (76.2% over the budget passed by Congress) (Carrio 2008, 7). The executive approved these budget increases without legislative intervention, thereby concentrating resources under the Ministry’s control (over 35,800 million pesos in 2008) (Carrio 2008, 4). Moreover, the concentration of decision-making powers in the Ministry was facilitated by the delegation of legislative powers to the executive as well as the sub-estimation of budget revenues, which were discretionally reallocated by the executive.
There is insufficient information and control regarding the execution of public works. Neither the internal nor external audit agencies have systematically included this area in their annual audit plans (Ríos and Pérez 2005, 24).\textsuperscript{119} Legislative control through the Committee of Public Works\textsuperscript{120} suffers similar problems to those experienced by other oversight committees. In 2004, the committee approved 218 proceedings over 538 (40%), and requested the hearing of public officials in 48 cases; in 2005, it approved 149 of 393 (38%) and requested 49 hearings. Moreover, internal administrative control of public works’ contracts is quite limited. Control during the planning and execution of contracts is insufficient, and sanctions are usually disregarded when considering firms for future contracts. Also, the lack of a results-based evaluation system facilitates the political use of government contracting (Poder Ciudadano 2006, 79).\textsuperscript{121}

(ii) Official publicity

A controversial example of policy concession is government’s contracting of official publicity, which is used to communicate public interest messages and look for citizens’ adhesion to those ideas. This is a common practice in all countries, where governments implement public campaigns to advertise policy programs, convey preventive messages (e.g., on health issues), or promote specific places or events (e.g., for tourism). In contrast, in Argentina, official publicity has been used as a discretionary payoff to obtain support from the media, punish political adversaries, and manipulate public opinion for electoral support.\textsuperscript{122}

At the federal level, there is no specific regulation of the use of state funds to buy publicity or advertisements. In consequence, there are no clear rules establishing transparent criteria for the distribution of these resources, requiring competition in the contracting processes, or regulating the contents of official publicity to avoid its use as a material inducement. The general regulatory framework (enacted by executive decree) are the norms that regulate public procurement of goods and services, which do not include any specific dispositions regarding official publicity.\textsuperscript{123} These norms identify the body responsible for contracting these services (public news agency), but do not indicate the administrative procedure required (ADC 2005, 65) – i.e., there are no specific rules
regarding the use, allocation, and distribution of official publicity, nor establishing the criteria for where official ads will be placed (ADC 2005, 66). As a result, official publicity is allocated based on criteria other than the effective communication of public messages, and the amounts paid are rarely consistent with the size and frequency of the actual publicity. Contracting is often conducted through non-competitive processes, violating the rules of procurement in the public sector.  

The complexity and ambiguity of the formal rules of the game, and the absence of specific regulation for contracting official publicity at the federal level, encourages its use as a discretionary political payoff. Official publicity is used to obtain electoral benefits by manipulating public opinion. In addition, it works as a system of rewards and punishments to the media, depending on their level of support to the government, and also as an instrument for the cooptation of individual journalists (M. O’Donnell 2007, 10). In her research about the use of official publicity during the Kirchner’s presidency, Maria O’Donnell identified the use of official publicity for the following political objectives (2007, 50): discriminate between specific media and media owners; reward new supporters of the government; inject funds in supportive media; exhibit in the public space publications that treated the government positively; fulfill specific needs of political propaganda; and benefit firms and businessmen close to the government. These objectives constrain freedom of expression and undermine the media’s watchdog role.

Official publicity has been used politically under different administrations. However, since 2003, there has been an increase in the resources allocated to this aim, as well as certain changes in their distribution. During Menem’s presidency, the intelligence agency was usually the main source of payments to the media, relying on secret funds. These payments were implemented in two different ways: handing out envelopes filled with money – “an old agency’s tradition to compensate those who protected the sitting president’s image and vilified the adversary” (O’Donnell 2007, 75); or formally paying a salary to some journalists who had a more organic relationship with the agency. The political use of publicity continued under President Duhalde, who relied on the services of expensive
foreign consultants during the 1999 electoral campaign and after assuming the presidency. In violation of general procurement rules, these contracts were not properly registered and documented, and are suspected of having been paid in black money. During Kirchner’s administration, there was a significant increase and further concentration of resources in a few public officials with capacity to allocate publicity. While in 2003 publicity costs were 46.2 million pesos, in 2008 they had reached 395.3 million or approximately 1 million per day (754% increased compared to 2003).

Kirchner’s strategy enlarged the number of receivers, in theory enhancing the plurality of the media receiving state support. However, in practice, this increased costs above market prices and confused official publicity with subsidizing the media. Since some media were receiving extraordinary resources for official publicity although they did not have similar ratings as their competitors, these resources could only be explained because they were receiving more ads or rates higher than those of the market received by their competitors (O’Donnell 2007, 85). Data on the distribution of official publicity to newspapers and TV channels illustrates the political considerations that guided the distribution. The media with an editorial line supportive of the government consistently received more funding. For example, the newspaper Página 12 received a disproportionate amount of resources during Kirchner’s presidency compared to newspapers of wider circulation (from 1.7 million pesos in 2003 to 9.2 million in 2005 and 33.9 million in 2010) (O’Donnell op. cit., 97).

An improper use of official publicity was also visible in several practices, such as covered production of contents; retirement of publicity or denial of access to information as a reprisal; use of official publicity to influence media contents and individual journalists; use of official publicity to subsidize some media; economic pressure on editors, directors, and media owners; and use of state funds to produce electoral contents. In summary, official publicity was used to subsidize some media, give preferential treatment to supporters, and influence the content produced by independent media.

The concentration of resources for contracting official publicity began during Menem’s presidency, when Decree 993/96 established that ministers and secretaries of the executive branch
would not dispose of their own funds for publicity, but channel their needs through the Secretary of the Press. In 2002, the Secretary of the Press became the Secretary of the Media, within the jurisdiction of the Presidency, and in 2003 it was integrated into the organizational structure of the Chief of Cabinet. With an initial budget of 23 million pesos, the Secretary increased its resources greatly to 250 million pesos in 2007. Counting only centralized resources and those executed by decentralized organisms, the city, and the province of Buenos Aires and their official banks, official publicity represented 10% of the total volume in publicity in 2006 (O'Donnell 2007, 66). The Secretary of the Media, Enrique Albistur, who had been in charge of President Kirchner’s electoral campaigns, managed these resources personally to distribute rewards and penalties among the media and individual journalists. The news public agency (Telam) was an important piece in the concentration and distribution of resources. The agency is responsible for executing the official publicity contracted by decentralized organisms. Moreover, since 2002, the agency contracted the design and production of advertisements. These contracts were direct or with restricted competition, increasing the costs of official publicity and providing opportunities for the discrentional allocation of resources for political considerations.

Information about the distribution of official publicity is scarce. During Kirchner’s government, several requests for access to information on the distribution of these resources were met by disclosure of unclear documents that did not identify the rate paid per minute nor the specific recipients of money. However, the Secretary of the Media’s internal documentation included specific details on the retail allocation of payoffs to different media as well as payments to journalists (O’Donnell 2007, 51-3). In 2010, the government refused to provide any information on the use of official publicity. There are no external controls over official publicity either. According to Telam, the procurement processes are submitted to internal control by SIGEN, but this could not be confirmed by civil society organizations monitoring the use of publicity (ADC 2005, 66). Actually, in 2005, large contracts with one specific firm without any call for tender prompted SIGEN to demand additional information. In response, the agency called for a competitive tender, but the winner was the
same firm (O’Donnell 2007, 130). In absence of any legislative or external control, the executive has leeway in managing resources and contracting out specific services. In 2010, the opposition was able to advance in Congress with some bills to control official publicity, but it failed due to the rejection of the ruling party.

(iii) Budgetary allocations

Budgetary allocations to specific districts or provinces have also been used to benefit constituencies of the ruling party in exchange for legislative cooperation and electoral support. Different mechanisms have instrumented these allocations: the tax revenue sharing system (which favors peripheral provinces), discretionary flows (including federal grants and credits for housing, public works, health and education), and national treasury contributions to provincial governments and funds to aid provinces in fiscal disequilibrium (Gibson and Calvo 2000, 43). Like La Rioja province under Menem, Santa Cruz was the great beneficiary of discretional budgetary allocations during Kirchner’s administration. Until 2003, Santa Cruz received between 2-3% of the annual investment in roads; in contrast, between 2006-09, it received on average 15% of the annual investment in roads, and in the 2007-08 period, the province received 1,600 millions, almost the same amount as the larger provinces of Buenos Aires, Santa Fe and Cordoba. Between 2006-2008, Santa Cruz received 3,148 million pesos in discretionary transfers, 8.6% over the total or seven times more than its 1.5% coparticipation index (it received approximately 1,000 million pesos per year, but based on the index it should have received only 200 million).

Discretionary transfers to the provinces as political payoffs continued after 2007.

One important instrument for these transfers is the Aportes del Tesoro Nacional (ATNs), financial resources that the Ministry of Interior can distribute to provinces and municipalities in situations of financial deficit and emergency. The lack of formal regulation for their distribution facilitates their political use. Beyond the general framework established in the 1988 Coparticipation Law, there is a normative vacuum for the implementation of these transfers (for example, there are no specific criteria for what constitutes an emergency, or to request documentation of the financial
deficit or extraordinary circumstances that prompt the request). The few formal rules that exist are usually circumvented, violated, and/or ignored. Although the courts have acknowledged the regulatory deficit, they have ratified the use of ATNs.\textsuperscript{150}

All democratic governments have benefited from the political use of these transfers, although the Alianza government attempted to enhance the transparency and reduce the discretionality of their distribution (Charosky 2002, 228).\textsuperscript{151} The executive always enjoyed extraordinary discretion to distribute these funds, deciding the timing and destination of resources. In practice, ATNs have not been restricted to situations of fiscal deficit and emergency; recipients included provinces and municipalities, but also individual politicians, private enterprises, and foundations, among others\textsuperscript{152} (SIGEN1997, 5).

The distribution of ATNs has been used to gain electoral support at the provincial level (Manzetti 2003, 353).\textsuperscript{153} Between 1989-1995, Menem relied on budgetary allocations to defray the costs of economic reform in peripheral provinces and sustain the government’s electoral coalition of support (Gibson and Calvo 2000). An analysis of transfers shows an increase in the actual distribution of ATNs beyond the expected pattern of distribution in pre-electoral periods, including both legislative and presidential elections, and then declining immediately after elections (Alvarez 2005, 6-7). Moreover, ATNs have allowed presidents to provide discretionary benefits to their provinces of origin.\textsuperscript{154} During 1990-1999, almost one third (32.2\%) of all transfers under this category were to La Rioja, while the province only received 7\% of ATNs during De la Rúa’s administration. The Alianza’s government did not change the allocation patterns.\textsuperscript{155} The winners during this period were provinces governed by the Alianza (for example, Chaco with a 5\% increase; Mendoza with 4.8\% increase). Other provinces, such as Buenos Aires (from 3.8\% to 10\%) and Santa Fe (from 3\% to 7.8\%), also benefited by allocating transfers to municipalities governed by the Alianza\textsuperscript{156} (ARI report 2001).

Along with the fiscal crisis, the total number of ATNs was significantly reduced in 2001, but then increased significantly since 2004 (5,700 million pesos in 2007 compared to 851 million in 2004).\textsuperscript{157} During Kirchner’s presidency, ATNs’ distribution continued to be discretionary and
politically motivated, and remained particularly important in electoral periods. In 2007, the total amount of ATNs increased by 22% over the previous year, and all the provinces that received more resources (Buenos Aires, Mendoza, Cordoba, Chubut, Formosa, Entre Rios, Tucuman, La Rioja, Salta and Santa Fe) had provincial governments aligned with the national government and were holding elections in that year. Provinces under control of the opposition were punished with limited transfers (e.g., Neuquen and San Luis). Moreover, the non-distribution of ATNs was used as an inducement to align provinces and governors. In 2007, only 158 million pesos were actually transferred to provinces out of more than 5,000 million available; the remaining resources were deposited in the National Treasury.

Several conditions foster the political use of ATNs. The Ministry of Interior has the monopoly on distribution of these funds, without any further requirement of approval by Congress or any other body. However, the distribution must be subject to the conditions and criteria established in the law, which in practice have been ignored and violated. Allocation decisions have been made based on political considerations. Moreover, the distribution of ATNs is hardly transparent. Routinely ignoring the obligation to report every trimester on the allocation of these funds (article 5 of Law 23.548), the Ministry does not provide information on the distribution of resources, which can only be known through technical information provided by the Ministry of Economy (Committee of Inquiry, 6). Control over the distribution of ATNs is insufficient and ineffective. SIGEN (in 1997), the Ministry of Interior’s Internal Audit Unit (in 2000), and AGN (in 2010) found important weaknesses and considered that political considerations had guided ATNs’ distribution. However, none of these findings led to changes in the actual allocation of these funds. Although a special legislative committee of inquiry was created to investigate arbitrariness in the distribution of ATNs since 1990, the results of the investigation had little public visibility.

(iv) Social programs

Social programs and services together with public employment are critical state resources on which clientelism relies to build political support (Auyero 2004, 24). The implementation of a new social
protection strategy based on the focalization or targeting of social protection, along with the deterioration in socio-economic conditions, led to an expansion in the number of social programs during the 80s and 90s. While in 1983 there were 15 social programs, in 1990 there were approximately 30. In 1994, the Secretary of Social Development was upgraded to the rank of Ministry. New programs were created, which experienced severe monitoring and management problems and were used with electoral aims (Di Natale 2004, 36). The most important programs were created after the 2001 crisis. In 2002, there were 41 national social programs and 86 provincial food programs. A macro social program with 2 million beneficiaries and an annual budget of 3,500 million pesos (Plan Jefes y Jefas de Hogar Desempleados, PJJHD) was created in 2002. During Kirchner’s presidency, political control of social programs was centralized in the Ministry of Social Development, headed by the President’s sister. All social programs under the Ministry were unified in three federal social plans (Plan de Seguridad Alimentaria, Plan Manos a la Obra, and Plan Familias); the Ministry of Health had approximately twenty-eight plans, and the Ministry of Labor five plans. The multiplicity of social programs, in absence of a unified registry of beneficiaries, facilitated their discretionary distribution based on political considerations.

Social spending grew in parallel with the programs. In 1990, total social spending was 12,082 million pesos. Between 1997 and 2004, social spending at the federal level was almost doubled (in 1997, it was $31,193 million and by the end of 2005, it amounted to 50,402 million), and targeted social spending went from $4,638.8 million in 1997 to $10,892.2 million in 2004 (Dinatale 2004, 39). Overall, between 2003 and 2009, social spending increased by 700%. However, the overall trend during Kirchner’s administration was to reduce social spending in constant values (accounting for inflation). Aggregated social spending under Kirchner’s administration was 9% below the amount spent by Menem’s government in 1994, and 14.3% below the amount spent in 2001. In 2004, 45,658 million pesos were used for social spending compared to 56.140 million in 1994, and 59.597 million in 2001. Despite the significant amount of resources, poverty levels remained high and inequality increased (almost 11% of population was under the poverty threshold in 2008).
The implementation of social programs often violates or circumvents formal rules. Social programs are used for electoral aims and distributed based on particularistic criteria by intermediaries and party brokers (e.g., neighborhood *punteros*, mayors). For example, although the formal deadline for registration of beneficiaries in the PJJHD was April 2002, the deadline was violated to allow the informal incorporation of more beneficiaries (approximately 700,000 for a total of 2 million) due to political considerations (Gruemberg 2008, 51; CELS 2003, 27). Despite the formal closure of the program, additional plans were distributed in 2003 around presidential elections.¹⁶⁹

There is plenty of evidence for the discretionary allocation of social plans. Some beneficiaries receive the programs without being formally registered (for example, in 2003, 750 beneficiaries were receiving the PJJHD plan in El Bolson (Rio Negro) without being included in the municipal registry as required).¹⁷⁰ Since information regarding beneficiaries is not systematically shared, and there is no integrated list of beneficiaries for all social plans in different jurisdictions, people may benefit from more than one program (when these are supposed to be exclusive and mutually incompatible). For example, in the municipality of San Nicolas (province of Buenos Aires), 300 people were receiving a subsidy from the municipal Social and Economic Council while they were also beneficiaries of social plans distributed by the federal government (CELS 2003, 27).¹⁷¹ Beneficiaries often do not comply with the requirements to receive social programs (for instance, they are local public officials or members of the police), or operate as intermediaries by reallocating those programs to clients (Dinatale 2004, 51; Gruemberg 2008, 22).¹⁷² Other irregularities include distributing more than one plan to the same family, or allocating plans to deceased people, people without the proper documentation and personal identification (or with false documents), or people who submitted incomplete information (Dinatale 2004, 51). Clientelism also appears in the use of intermediaries to distribute the plans (in violation of Decree 565 and the Ministry of Labor’s resolution 312/2002). The Ministry of Labor, for example, resorted to intermediaries for the distribution of the PJJHD, allocating a quota of plans to national legislators in 2002.¹⁷³ In 2009, it was estimated that approximately 10% of all federal social programs were discretionarily distributed by *piquetero*
organizations. These informal exchanges are monitored and enforced. Beneficiaries are threatened with losing their plans if they are not willing to support certain mobilizations, attend rallies, or provide services to their patrons and brokers, who are responsible for mobilizing political support.

In some cases, the payment of a “toll” is required to be included into the list of beneficiaries, to receive the signature that confirms that services required for being a beneficiary have been fulfilled, or as a simple extortion (Dinatale 2004, 100-101).

The discretionary and particularistic distribution of social program through clientelistic networks is facilitated by several conditions, including the concentration of resources, limited transparency, and weak control. Centralization of resources encouraged the political use of social programs for electoral aims. Since 2003, resources have been increasingly concentrated in the Ministry of Social Development, whose budget increased by 200% (in 2007, the Ministry’s budget increased by 1,600 million pesos to a total of 5,100 million, compared to 3,500 million in 2006, and 1,700 million in 2003).

To prevent the discretionary distribution of social programs, the normative framework should objectively define their beneficiaries, provide objective definitions of the eligibility criteria, and identify the authority in charge of defining both the beneficiaries and the eligibility criteria (Gruemberg and Urizar 2005). In the case of PJJHD, the normative framework (Decree 565/02) identified the types of beneficiaries and eligibility criteria, but did not establish the decision-making authority. In addition, by relying on municipalities for implementation and control, it opened important opportunities for the political use of the program. Municipalities have been able to co-opt the instances of participation and control (Gruemberg 2008), to gain both the distribution and control of social plans (Dinatale 2004, 52). The resulting arbitrariness is evident when comparing the PJJHD’s allocation with the percentage of population with unsatisfied basic needs (NBI) and the unemployment rate. More social coverage is found in areas with lower percentage of NBI and less unemployment (Dinatale 2004, 55).
Mechanisms for complaints about irregularities are an important way to limit discretionality in social plans. However, in Argentina, most social programs do not have any specific system for lodging complaints (Gruemberg 2008, 17). For example, the PJJHD did not include any formal mechanism to submit complaints regarding the register of beneficiaries (CELS 2003, 20; Dinatale 2004, 52). It has though a system to formulate complaints about the program’s implementation. The Comisión de Tratamiento de Denuncias de los Programas de Empleo (CODEM) formally provides different channels through which denounces can be submitted anonymously. When a complaint may involve an offence (e.g., corruption, extortion, etc.), CODEM transfers the case to a specialized unit within the Public Prosecutor Office (UFISES), which is responsible for investigating the case and bring it to the judiciary. While the system offers multiple channels to submit complaints, and provides enough distance from the programs to preserve anonymity and ensure personal integrity of those reporting, in practice several limitations have undermined the system’s effectiveness. Access to the system is still quite limited as a result of insufficient information and technical difficulties. There are also important communications and coordination problems relating to the decentralization of the system (Gruemerg 2008, 20-21).

Limited transparency of the allocation criteria and implementation of social plans has contributed to the discretionary use of social assistance resources (Dinatale 2004, 52). As the implementation of the PJJHD illustrates, information about social spending and program implementation is quite limited. While Decree 565/02 emphasized the importance of providing beneficiaries with access to information on the program’s execution to control its implementation, in practice transparency is limited (CELS 2003, 30). For example, the Directorate for Analysis of Public Expenditures and Social Programs published its last report on social spending in 2000, and no additional information has been published since. While the Ministry of Labor was willing to provide information on the social programs under its jurisdiction, the Ministry of Social Development has invoked the Law of Data Protection to deny access to information on the beneficiaries of social programs. In 1995, a system to monitor, evaluate and produce information on the implementation
of social programs (SIEMPRO) was created. Initially designed as an independent source of information, the system succumbed to political pressures (Gruemberg 2008, 13). In 2004, it was deactivated after it published information that contradicted official indicators. Information about programs’ execution is not regularly updated and appears scattered across different sites, which prevents effective monitoring of their implementation.

Control of social programs is also weak. The two bodies in charge of controlling the PJJHD have not been effective. The information provided by CODEM regarding complaints is only available for the period 2002-2004. The National Council of Administration, Execution and Control (CONAEyC), a body in charge of externally monitoring the implementation of social plans, identified some important weaknesses in the PJJHD’s implementation and formulated recommendations to correct them. However, the body faced problems accessing information produced by different levels of government. Its reports were not regularly updated (the last report was produced in 2004); it did not have any compulsory follow up mechanisms, nor institutional channels to correct the weaknesses.

Another control mechanism is the Federal Control Network, created in 2001 under SIGEN’s leadership to monitor social programs in the provinces. Its creation was very slow, and initially only a few provincial control bodies were part of the network. Although it has produced some valuable information, effective control is severely constrained because audit information is not timely (the latest report available was issued in 2006), reports are not compulsory, and there are no follow-up mechanisms. Finally, UFISES has shown political independence and developed effective new techniques to investigate clientelism and corruption in social programs. However, it has limited resources and financial autonomy, and important programs have been excluded from its control. Moreover, it received only a small number of complaints and denounces (due to problems in the reporting system and under-registration), and most cases resulted from the agency’s own investigations. Overall, UFISES has been more effective in investigating the allocation of social plans to non-eligible beneficiaries than specific cases of extortion and abuse. Furthermore, confirmed irregularities have not been effectively punished by the courts (Gruemberg 2008, 21-22).
5.2.3 Particularistic benefits or rents

While most payments discussed above were allocated to parties, constituencies or private firms, governments also used particularistic payments to individuals to gain legislative and policy support. Discretionary spending funds can provide personal benefits to legislators, public officials and other political actors. Through these exchanges, presidents ensured continued policy support. In Congress, selective payoffs were used to ensure party discipline and break discipline of opposition parties or induce party switching. Accusations of vote buying and the delivery of particularistic benefits, particularly in the Senate, were often reported publicly. Besides pursuing rent-seeking objectives, these agents were mostly interested in delivering benefits for their constituents ("obras para mi provincia"). Benefits usually involved public works for the legislators’ provinces, fiscal support, appointments, judicial benefits and other material incentives (e.g., contracts, trips), including in some instances payments in cash. Examples from the Cristina Kirchner administration illustrate the use of selective payments to break and/or ensure party discipline. In October 2009, the executive passed the controversial media law with the votes of several opposition legislators who voted with the ruling party. In subsequent weeks, the media reported payoffs received by legislators. For example, Chubut received 6 million pesos from the federal government after five legislators from the province voted in favor of the law, and Tierra de Fuego received significant fiscal benefits. In 2010, La Rioja’s Senator Teresita Quintela declared that she was against the gay marriage law but would vote with the government to ensure the fiscal solvency of her province. The recipients of these benefits are usually not punished by their parties or congressional rules, which reduces the transaction costs.

One important source of discretionary spending for personal benefits was the intelligence agency (Secretaria de Inteligencia, formerly known as Secretaria de Inteligencia del Estado, SIDE) and secret funds. The normative framework that regulates intelligence activities is ambiguous and leaves great room for discrentional decisions. Some of these resources were used legally, but many others illegally. Until 2001, most of the norms regulating intelligence activities had been adopted as secret norms during non-democratic periods. In 1956, Decree 5315 consecrated the discretionary
distribution of funds when it established that their use would be registered in secret files, accessible by the president only, or a designated ministry on her behalf (Charosky 2002, 238). In the 90s, several bills discussed in Congress aimed to increase transparency and legislative control. The initiatives, however, did not result in a more formalized and transparent framework. Congress was able to limit the state jurisdictions that could rely on secret funds formally, but not in practice. Finally, in 2001, a new Law 25.520 (National Intelligence) established new mechanisms of legislative control over secret funds. In 2006, in another attempt to strengthen legislative oversight, Law 26.124 established that only Congress could approve increases in secret funds. Finally, Law 26.134 (August 16, 2006) derogated all secret laws and limited the use of secret funds to intelligence-related activities, while tightening legislative control through the Bicameral Committee for Oversight of Intelligence Agencies and Activities.

During the 90s, the intelligence agency was suspected of making selective payments to journalists (O’Donnell 2007), judges (Charosky 2002, 239), ministries, and legislators (Rigoli 2000). In 2001, SIDE was confirmed as the source of the money used by the Alianza’s government to bribe senators to gain legislative support for labor reform legislation. After 2003, it continued to be an important source of resources to sustain Kirchner’s hold on power. The significant gaps between the authorized and actual budgets reveal the indiscriminate use of resources for aims other than those established by the law. For example, in 1992, the budget authorization was for 115.7 million pesos but SIDE actually spent 79% more (207,726,531 pesos). SIDE developed a sophisticated mechanism to execute more resources than those initially allocated to the agency, while avoiding any control: they used a system of “cover-up societies” with their own bank accounts in order to make funds transfers (Cheresky 2002, 240). In addition, SIDE used an official bank account to deposit part of its monthly budget while declaring to the National Treasury that the entire budget had been executed; these funds could then be used without any control. (Ibid.)

Until 2006, the distribution of secret funds was concentrated in a few hands. Although the number of organisms with access to secret resources was constantly enlarged in practice (through...
budgetary modifications), control over the distribution of funds in each jurisdiction was concentrated at the top – in the ministry per delegation of the president. This concentration of decision-making authority, together with the secret nature of the funds, fostered their use as discretionary payoffs to buy political support and reward political loyalties. The 2001 Law of Intelligence, approved during the Alianza’s government, did not help to break the monopoly and concentration of resources. On the contrary, the law concentrated all the intelligence functions in only one organism, weakening control over its activities and resources (Cheresky 2002, 245; Ugarte 2000).

In 1992, a bicameral legislative committee was created to control and oversee intelligence activities (Bicameral Committee for Oversight of Intelligence and Interior Security Agencies).\textsuperscript{205} It had the capacity to request information (including secret records of the use of secret funds) and the obligation to submit a public report to Congress. In practice, the committee was never operational and did not request any information or prepare any reports (Charosky 2002, 239). In 2001, the Law of Intelligence created another committee (Bicameral Committee for Oversight of Intelligence Agencies and Activities), with one sub-committee specialized in oversight of secret funds. As part of its function, the committee ensures that secret funds are allocated to their intended purpose; it has to prepare an annual report for the president and Congress on their use.\textsuperscript{206} In 2006, Law 26.134 gave the committee the power to oversee the execution of secret funds by intelligence organisms. The committee may receive denounces and investigate, ex officio, possible irregularities in intelligence activities (Frias 2005). In practice, the effectiveness of the committee has been limited. The composition of the committee is part of the informal legislative arrangements between the two traditional parties, which has constrained its actual control abilities. The committee’s reports are secret. Moreover, the Intelligence Law did not establish any requirement for recording the use and execution of secret funds, which limits in practice the committee’s ability to control them. Legislators depend on the good will of public officials to obtain information about the use of secret funds (Cheresky op. cit., 246).
Limited transparency has characterized the use of intelligence funds since its inception.\textsuperscript{207} Decree 5315/56 only required the publicity of the total amount authorized and the actual execution in general. This requirement was only respected until 1992, when Law 24.156 changed the accounting requirements and made it more difficult to identify which resources were secret, and how they were executed. In 2001, Law 25.520 did not increase transparency, since it consecrated the secret nature of legislative oversight over the distribution of intelligence funds by eliminating the requirement for the legislative committee to approve one public report. While the Senate scandal helped to shed some light on the use and distribution of secret funds as a result of the investigations conducted by the OA and the judiciary, and despite the approval of new legislation during Kirchner administration, the use and allocation of these funds continued not to be transparent. Evidence indicates that they continued to be used for political purposes.

\textbf{5.3 The enforcement of informal exchanges}

Given the concealed nature of these exchanges and actors’ low level of institutional commitment, which makes the enforcement of agreements difficult, monitoring and enforcement schemes were devised from parallel arenas, by triggering (or threatening to trigger) public scandals. The next chapter shows that Congress has formally strong oversight powers and many oversight instruments; however, in practice, these instruments do not result in effective sanctions. Rather, legislators use them as an informal threat that reminds the executive of previous agreements.\textsuperscript{208} When threats are credible, the accused actors face a cooperation dilemma: a) they could comply with the previous agreements; b) they could escalate the conflict by threatening back. An example of the former occurred when President Menem threatened to sanction Peronist legislators if the ruling party bloc was inconsistent in its voting behavior.

The privatization of mail services illustrates a second alternative. When the Ministry of Economy, Domingo Cavallo, considered that the escalating demands for payoffs from legislators had gone too far, he decided to go public. In August 1995, during the parliamentary debate to pass the bill to privatize the mail services, he publicly denounced that legislators (both Peronist and Radicals)
demanded discretionary payoffs to pass privatization bills and sought to give preferential treatment to particular firms. \(^{209}\) In particular, he denounced the intent to benefit the postal magnate Alfredo Yabrán, who Cavallo accused of being part of a network of illicit activities and a closely associate to legislators and the government. \(^{210}\) Ruling party legislators had not agreed with the bill submitted by the Ministry and pushed forward their own initiative, threatening to avoid quorum to debate the bill in plenary session. The Minister’s accusations, which he repeated publicly on TV and in several newspapers, put the informal trading of legislative support for favors and its connection with corruption networks into the spotlight. \(^{211}\) Opposition legislators from UCR and FREPASO launched an attack on the government and demanded the presence of the Minister and the creation of a special investigative committee. \(^{212}\) Initially, Menem averred not to know of the informal practices Cavallo had revealed and threatened to reorganize the Ministry. \(^{213}\) Ultimately, President Menem supported the Minister, \(^{214}\) although he asked him to present evidence through a formal criminal complaint, \(^{215}\) and resorted to informal bargaining with Congress. The Peronist bloc was about to fracture when approximately 20 legislators supported Cavallo against the majority of the bloc; legislators ultimately agreed to limit the conflict, accepting changes in the proposed legislation to satisfy the demands from the Minister. \(^{216}\) However, the bill did not pass and privatization finally took place two years later through executive decree (Decree No. 265/97). \(^{217}\) Public perception of the conflict was that it reflected the political interests of the Minister to position himself as a presidential candidate. \(^{218}\) Ultimately, this and other corruption scandals harmed the president and legislators; mid-term legislative elections meant the electoral rise of FREPASO (with a strong anticorruption agenda) and the presidential candidate lost the 1999 election.

Following the 2008 mid-term legislative elections in which Peronism lost the majority, former President Kirchner threatened to reduce discrentional benefits to the Greater Buenos Aires’ majors who had won the elections but had not delivered good electoral results. The majors fought back and demanded to keep their privileges. However, the press reported the government’s plans to
retaliate and punish defectors as well as to further control on majors’ future requests for payoffs to make sure that they actually built support for the federal government:

The week following the electoral defeat, Nestor Kirchner made a clean copy of the list of "traitors." He scrawled names and numbers. He took note of positions and percentages. He improvised his own scale in the spiral notebook he had used in the campaign. In the column of the worst infidels, were the mayors of the metropolitan area. Sunk in their fear, the victorious chiefs decided to press back. They asked protection to the governor Daniel Scioli to preserve their privileges. And demanded power. In one week, they were "entrenched" to prevent the interference of presidential anger with the flow of what really matters: money to hold onto power. Pressure was not sufficient. In the privacy of Olivos, Kirchner began to transform in orders what he had written in his shabby notebook. A plan of punishment for the “cortes de boleta”, ranging from the freezing of social funds and delays in public works until the interference in local internal party elections (La Nación July 30, 2009).

5.4 Discretionary payoffs and corruption

The use of discretionary payoffs does not necessarily involve corruption. However, there are multiple connections between these phenomena, particularly in a weakly institutionalized system. Corruption and discretionary payoffs feed on each other. Unclear, overlapping or non-existent formal norms and procedures (or their limited enforcement) for conducting government processes facilitate the discretionary allocation of state resources, which can be easily diverted for illegal activities. The concentration of resources and decision-making authority where the executive is not held accountable fosters corruption. A good example is the concentration of resources in the Secretary of Public Works and the Ministry of Planning that, with limited control and transparency, carried out not only their discretionary allocation but also illegal transactions. Most resources were allocated without legislative oversight and used under very weak internal administrative controls. Corrupt schemes (e.g., Skanska and Austral constructions) often included overvaluing public works contracts to provide returns and bribes. After the contract was awarded, the contractor received a certification for 15% of the over-invoiced cost; when the check was cashed, this was returned to the public official. Since this was a black payment, firms bought phantom receipts to avoid taxes. This was made possible by the concentration of awards in a few firms in collusion with public officials (Poder Ciudadano 2006, 59).

Discretionary funds were also used for illegal and corrupt payments. Two highly visible scandals (sobresueldos and Senate) provided evidence of how these material inducements were used for corrupt purposes under conditions of monopoly, ineffective control, and limited transparency:
En la medida en que la concentración de funciones, la ausencia de rendición de cuentas públicas –aun manteniendo la reserva propia del caso– y la falta de requisitos de registro documental de las actividades se mantuviera, la administración discrecional de los recursos podía seguir admitiendo su aplicación a actividades no legítimas y obstaculizar seriamente la posibilidad de que la comisión parlamentaria tomará medidas de investigación exitosas (Cheresky 2002, 246).

Limited control encouraged not only the discretionary use of ATNs for political purposes but also their corrupt use for accumulation and enrichment. These funds were considered by the Anticorruption Office as a potential source for the illegal payment to senators for passing the labor reform law in 2000 (Charosky 2002, 231). The informal distribution of these funds encouraged the appearance of brokers and intermediaries in the Ministry of Interior, who demanded kickbacks or returns in return for the rapid access to these funds.220

Discretionary government contracting of official publicity was also a source of corruption, usually involving collusion between public officials and private providers.221 The concentration of resources in the Secretary of the Media for contracting government publicity with limited control allowed the deviation of resources for illicit goals. Moreover, the lack of specific procedures for publicity contracts led to distortions in prices and facilitated the payment of kickbacks or returns. Public officials responsible for allocating these resources also had personal interests in the providers. For example, the Secretary of the Media during Kirchner’s administration was accused of illicit enrichment and incompatibilities, as well as favoring his girlfriend’s firm in the distribution of official publicity. Most firms that received official publicity were closely related to the Secretary or his family.222 Moreover, a reduced number of firms, owned by government loyalists (or former officials and legislators), repeatedly received state resources through irregular contracting processes (O’Donnell 2007, 56); some firms were owned by journalists who had already taken advantage of extraordinary benefits to become media owners in the 90s (O’Donnell op. cit., 71).

The discretionary allocation of social programs also provides evidence of corruption. 14% of denounces received by CODEM between 2002 and April 2004 referred to cases of corruption and extortion in social plans: a total number of 2,129 denounces related to corruption from a total of 15,275 denounces.223 For example, the payment of a “toll” to political intermediaries may reach up to
20% of the social plan, and has become institutionalized in many programs (CELS 2003, 25; Dinatale 2004, 53). In December 2003, UFISES had approximately 2,000 open files on irregularities in the PJJHD, and in 2004 it had more than 500 denounces for extortion and 200 on corruption. UFISES discovered that almost 3,500 public employees were receiving resources from the PJJHD, and many other public employees were involved in the irregular distribution of the plan in several provinces.

Indirectly, discretionary payoffs contributed to a system of connivance in which those who benefited did not have incentives to report corrupt transactions. One indicator of how discretionary payoffs undermine the incentives for opposition parties to strengthen accountability and denounce corruption is that the Alianza government did not carry out any major reform of ATNs or other mechanisms for the discretionary distribution of resources when it was in power. The UCR, in control of some provinces and many municipalities, was also a beneficiary of these funds. Sustaining the territorial party apparatus and maintaining incumbency at the sub-national level compromised the ability of the UCR to pursue reform. Furthermore, discretionary payoffs helped buy the silence of political actors who were called to play a watchdog role, such as judges or journalists, reinforcing an environment of connivance conducive to political corruption. The distribution of official publicity as a system of rewards and punishment also contributed to political corruption. Official publicity can buy the silence of small and large media, particularly in the provinces. The media and individual journalists that challenged the government reporting corrupt practices have seen their jobs, economic resources, or physical integrity at risk. These pressures often led to strategic changes to news content, preferential treatment for government initiatives, and self-censorship (ADC 2005, 87).

6. Conclusion

The use of electoral and institutional resources, both formal and informal, allowed Argentina’s presidents to enhance executive authority and encroach on the legislature. These resources increase presidential ability to act unchecked and help to exploit and/or create opportunities for corrupt exchanges. In the electoral arena, reelection, limited party alternation in government, unified
government, and vertical concertation of political forces are powerful instruments for centralizing authority. Institutionally, the executive’s ability to issue decrees, the partial veto powers of the president, and the delegation of powers granted by Congress allowed the president to engage in exclusive decision-making, thus advancing considerably on congressional decisions rights and undermining Congress’s ability to check the power of the presidency. Nevertheless, legislators are not indifferent regarding their role and, as the next chapter will show, they engage in informal bargaining with the executive to maximize their preferences without suffering too many liabilities.

The chapter also shows how the informal trade of pork, concessions, and patronage leveraged presidential power and built political support for the executive’s policy agenda. Argentine presidents face weak formal constraints but they have been able to circumvent these limits through discretionary action. The adoption of an informal institutions framework helped describe the observed rules of the game that enabled executive success despite a fragmented political environment. Also, the chapter illustrates the effective use of threats and sanctions to reinforce legislative cooperation and shrink accountability in a weakly institutionalized context. In other words, informal institutions helped enhance the executive’s policymaking capacity and its ability to stick to its preferred policy choice beyond legislative oversight. On the negative side, however, these informal exchanges were used not only for building support and ensuring policy-making capacity but – in a context of weak accountability and limited transparency – also for corrupt exchanges.
Chapter 5. Endnotes

1 See Article 86, and article 6 of the Constitution respectively. The first two powers are aimed at disciplining the provinces. Legislative and regulatory powers allow the president to play a significant role in leading government and involve: (i) sharing power with Congress to present legislative initiatives for congressional consideration (article 86, subsection 3); (ii) power of veto to participate in the legislative process after congressional approval (article 72); (iii) lack of requirement to have legislative confirmation for appointing cabinet’s members or executive officials; and (iv) the combination of the positions of head of state, the government, the public administration and the armed forces (art. 86, 1 & 15). See Llanos (2002, 18-9).

2 See section 5.2 of this chapter.

3 Since Peron’s presidency and until Menem, 5 out of the 17 presidents appointed the totality of the Supreme Court’s judges, while only 1 president of the previous 84 had done so. See Spiller and Tommassi (2000, fig. 11). The use of the “impeachment” for removing federal and national judges has been frequent, while it has only been used in 2 occasions for removing Supreme Court judges. As for the federal and national judges, between 1983 and 1998, 6 judges out of 17 were removed, which is almost the same number as the 7 judges removed between 1862 and 1976 (Molinelli et al 1999). Before 2003, the only historical occurrence of using the “impeachment” for removal of members of the Supreme Court took place in 1946-47, when 3 justices were accused. In 2003, President Kirchner moved forward to remove the 9 members of Menem’s appointed Court. Though generally seen as a transparent process, the removal of justice Boggiano in 2005 was not exempt of controversy, as the Kirchner administration had agreed with him on his vote for approving important policies such as the “pesificación” and the derogation of the Punto Final laws, but then pushed for his removal (El País, September 30, 2005).


5 See Article 100, sections 1, 3, 7 of Argentine Constitution. See this dissertation’s Ch. 4.

6 Hyperpresidentialism is the centrality of the presidency that results from the formal institutional design set in the Constitution. The classical characterization of the hyperpresidential features of Argentina’s political system can be found in Nino (1988, 115-124). See also De Riz & Sabsay (1991), Nino (1992), Botana (1995), Ferraro and Rappoport (2008, 21-38), Laria (2008). Against these arguments, however, the centrality of the Argentine presidency is de facto rather than de jure. This view permeates media analysis of the country’s political life (for example, La Nación Nov. 28, 2004; Oct. 29, 2008; Nov. 29, 2005), as well as political actors’ own interpretation of how the political system works (for example, La Gaceta June 26, 2008; see also, declarations by different politicians in favor of parliamentarism, in Laria 2008, 118-119).

7 Discretionary executive action may facilitate power concentration and building up hegemonic power and movements, but it must be distinguished from them. Hegemony refers to the political power exerted by a dominant group over others regardless of the explicit consent of the latter. The hegemonic nature of Argentina’s political culture – or a hegemonic understanding of how political power is exercised – has been emphasized by different scholars (see Laclau and Mouffe 2001; Laclau 2005; Botana 2006; Bonnet 2008).

8 Strictly speaking, unilateral action discretionary executive action are denominations used by different theories to explain executive decree authority. Unilateral action theory (Lowi 1985; Mayer 1999) claims that weaker presidents resort to executive decrees to bypass the legislature. Delegation theory (McCubbins et al 1987, 1989; Carey and Shugart 1998; Epstein and O’Halloran 1999) claims that the expansion of executive authority happens with the tacit consent of the legislature and therefore, stronger presidents are those who resort more frequently to this resource. However, as Pereira et al. (2005) argue, both theories share a common emphasis on the interaction between formal powers and the dynamics of political support. Executive decree authority is contingent on the political environment, particularly the degree of presidential support in the legislature, which varies over time. This dissertation focuses on the resulting executive action rather than its determinants, and brings both concepts together to indicate that some forms of executive action are not properly constrained by formal institutions (either as a result of unilateral action or with the tacit consent of the legislature).

9 This was evident during Argentina’s first democratic experience with President Hipólito Yrigoyen (1916-1922; 1928-30). With an unfavorable power distribution in the Senate, Yrigoyen resorted to the unilateral powers enshrined in the Constitution (federal intervention) to confine the opposition to the margins of the political system. See Llanos (2002, 22-23).
10 “If the people governed directly, it would be a heterogeneous assembly of explosive interests and it would not be seen which is the unity or the direction of such conglomerate. Now, when you govern in name of the people without mediations, when you say people, you say State, and someone makes decisions in the name of others. This idea of a political will that decides it is an almost imperial vision of politics, because there is no control akin to a democratic government and policies are those of a particular government and not of the State, which result from the political negotiation of the differences. If Congress does not have any other function that to be the mirror of the executive power, then it is a decline in terms of government.” (Interview Liliana de Riz, June 2006, in file with author; author’s translation)
12 The UCR managed to impose certain checks on central party leadership, and established stable and regularly enforced internal elections for candidate nomination; this makes more difficult for Radical presidents to circumvent formal mechanisms of accountability (Author’s interview. Buenos Aires, August 30, 2006). In Peronism, office-holders (including the president) enjoy substantial autonomy from the party hierarchy; the party leadership lacks institutional mechanisms to hold the president accountable (Levitsky 2005, 198). Menem was able to ignore PJ leadership in his presidential decisions, including the substantial reorientation of economic policy and passing through Congress the expansion of the Supreme Court’s members (Levitsky 2005, 198-200). Similarly, in a context in which PJ leadership was completely neutralized and without institutional resources, Kirchner led another programmatic movement towards a more statist program. For Peronists, control of the state involves control of the party, with party and government positions becoming indistinguishable.
13 Exceptional circumstances of economic and socio-political crisis have contributed to assert presidential authority. At those moments, other social and political actors are weakened and the public is more willing to approve exceptional measures and strong and quick actions to cope with the crisis, which gives the president wider margins of action. For a similar argument, Llanos (2002); Rose-Ackerman et al. (2010).
14 This happens since the “conservative order”, which came into power by eliminating political alternation and ended up in 1916 with the first example of alternation between rival parties. See Botana (1985).
15 Historically, party alternation at the federal level has been rare. Since 1946, the two traditional parties dominate Argentina’s politics; only in 1999, a third party in a coalition with the UCR was able to win a presidential election, yet the president was from the Radicalism. Before 1946, party turnover was also very limited, with only two parties rotating in the presidency (Bill Chavez 2001, 106).
16 A good example is the contrasting role of the Peronist legislative majority between 95-97 and after 1997, when lower levels of party discipline limited President Menem’s policy agenda.
17 In the period 2003-2005, deputies from Peronist extraction included 88 legislators loyal to Kirchner, 36 to former President Duhalde, and 5 non-aligned; after the mid-term 2005 legislative elections, the number of deputies loyal to the president was 107, 25 legislators remained loyal to Duhalde, and non-aligned were 5 (Vives Segl 2006, 12).
18 The percentage of Peronist control oscillated between 45% and 61% (Calvo and Murillo 2005, 210).
19 Author’s interview (Buenos Aires, August 28, 2006.)
20 Since 2002, nominal vote is mandatory in the Senate for all bills. However, the rule has only been effectively implemented since 2004 (ADC 2006, 34). In the Chamber of Deputies, nominal vote is mandatory since 2006 for all proposed legislation. In some cases, nominal votes are used also for “draft resolutions” in both chambers, although it is not mandatory (ADC 2008, 31). Usually, nominal vote is used for overriding vetoes, voting legislation over which the ruling party is divided, or proposed legislation of social interest (ADC 2004, 54).
21 For a historical overview, see Botana (1988, 37 ff.).
22 See Chapter 4.
23 In March 1999, the Supreme Court ruled against appeals that would have allowed Menem to be candidate for the third consecutive time. Duhaldist Peronism and other parties joined forces in Congress to oppose Menem’s attempts to another reelection (Carey 2003). The decision by the Court can be explained as part of the strategic interaction with the executive (Helmke 2005; 2006).
24 See Chapter 4.
25 “The dominance of provincial party leaders is based mainly on their control of the governorships. Virtually no governor has ever lost re-election (just two cases) and there are many provinces that have indefinite reelection; this allows them to build solid and strong power bases, and have great access to resources to sustain the organization” (Author’s interview, Buenos Aires; July 27, 2006; author’s translation). Also, author’s interviews (Buenos Aires, June 1, 2005; August 23, 2005.)
The reform to the Organic Law of Municipalities in the Buenos Aires province (Law 13580/06) allowed mayors under prosecution to remain in office until the trial. However, they do not enjoy judicial privileges (“fueros”) or immunity as legislators, ministries, and judges do (M. O’Donnell 2005, 20).

Author’s interview (Buenos Aires, September 17, 2007.)

See La Nación (March 18, 2007); Perfil (October 3, 2007). Questioned regarding his long holding of power in Malvinas Argentinas, the mayor (Jesus Cariglino) replied arguing that only the people could set limits to his tenure and hold on power (M. O’Donnell 2005, 38).

See also Página 12 (December 24, 2006).

Botana (2006) compares this strategy with the horizontal concertation between political parties that characterizes the Chilean democracy. For an analysis of the Chilean case, see Siavelis (2006, 33-55).

This strategy is complementary with the use of selective payoffs for breaking party discipline (party dissent) or inducing party switching or defection of key legislators of opposition parties. See section 5.

For example, support from Peronist governors to De la Rúa’s federal plan of public spending control required allocating 225 million pesos in social plans to the provinces. Cf. Página 12 (Nov. 17, 21, 2000). Also, Página 12 (Nov. 2, 2000; Nov 2, 2001.)

Author’s interview (Buenos Aires, August 30, 2006.)

Increasing party system fragmentation was in part the result of removing one of the major factors that explained the disappearance of political parties: the requirement that political parties had at least a 2% of electoral support in their districts to maintain registration (Botana 2006, 40).

To the extent that institutional channels for the distribution of resources are systematically circumvented or operate in informal arenas, there is great uncertainty regarding how to obtain those resources. This makes incumbents prone to seek speed lanes to access those resources (Author’s interview. Buenos Aires, August 30, 2006). See Della Porta and Vanucci (1999).

This practice is known as the “great jaroslavski” (former leader of the Radical bloc in the Chamber of Deputies): “When approving the budget, legislators opposed in the floor; you will see many opposition legislators, among those who gave quorum, oppose today, but at the moment of voting, some legislators leave the Chamber for the ruling party to win” (Elisa Carrio in La Nación Nov. 11, 2010).

The most visible “Radical K” are Julio Cobos (former governor of Mendoza and Vice-president of the Nation with President Cristina Kirchner), the governors Arturo Colombi (Corrientes), Miguel Saiz (Río Negro), Eduardo Brizuela del Moral (Catamarca), and the mayors Mario Meoni (Junín), Enrique García (Vicente López), Gustavo Posse (San Isidro), Daniel Katz (Mar del Plata), Horacio Quiroga (Neuquén), and Héctor Gutiérrez (Pergamino). On August 12, 2006, the Radical governors and 183 mayors met and decided to found an internal party faction called Radical Federal Movement, which defended the need to concert with the federal government. By the end of August, the UCR’s National Convention declared the official breakdown with the faction. The new internal faction came to crystallize the contradictions of a party that retained important power at the sub-national level but, after the 2001 crisis, was unable to obtain a significant percentage of vote at the national level (e.g., 2.34% in 2003 presidential elections).

Author’s interview (Buenos Aires, August 30, 2006); author’s translation.

Author’s interviews (Buenos Aires, April 12, 2005 and October 16, 2009); author’s translation.

On the delegation of legislative powers, see Chapters 4 and 6.

Presidents have decree powers of a different nature: regulatory decrees to implement existing legislation, and administrative decrees to perform functions within the bureaucracy. They could also have legislative powers delegated by Congress on the topics and periods defined by the legislative. (Cf. Llanos 2002, 20)


Cf. La Nación (April 13, 2008).

Before the constitutional reform, Menem issued 335 DNUs. He acknowledged to use this exceptional instrument in 166 cases (49.6%). After 1994, Menem issued 210 DNUs from which 110 (52.4 %) were recognized as DNUs, while 100 (47.6%) were not. After 1997, there was a considerable increase in the recognition of DNUs. Before the constitutional reform, the higher percentage of recognized DNUs in a year was 69.4% in 1991. In 1997 and 1999, the percentage of recognized DNUs per year was higher: 70.3% and 73.2% respectively (Ferreira Rubio & Goretti 2000).

The ruling in this case demonstrated the effectiveness of changes introduced by Menem in the Supreme Court’s composition. The Court established that decrees could be adopted in ‘extremely grave situations,’ and
by Congress (Página 12 April 19; May 18, 19, 1995). Since 1989, Congress had only insisted six of the 89

61 Congressional participation in the approval of DNUs is mandated. Cf. Constitution, article 99.
62 Cf. La Nación (June 14, 2006.)
63 Cf. La Nación (April 13, 2008.)
64 For details on the distribution of DNU’s issued by Kirchner per year and theme, see Ferreira Rubio (2007, 3-4). Also, La Nación (September 10, 2007; April 13, 2008.)
65 “The Bicameral Committee, which has to consider the exercise of all these faculties that come from the executive in form of decrees, was not created. As a result, all the decrees of necessity and urgency, delegated decrees and partial enactment of laws partially vetoed made by Menem since 1994 are unconstitutional. Because these are all complex acts, which require two wills: President and Congress” (Sabsay 1999, 44; author’s translation).
66 Not only opposition legislators voted against the bill, but also a few legislators from the ruling party, who broke legislative discipline (Author’s interview; Buenos Aires, August 28, 2006). The NGO ADC filed a summary proceeding (“recurso de amparo colectivo”) to declare it unconstitutional, since it allowed the tacit approval of DNUs (Araujo 2008, 5). This request was rejected in first instance and in the appeal, yet reached the Supreme Court where it is still pending (Rose-Ackerman et al. 2010, 10).
67 President Cristina Kirchner continued using DNUs to enlarge the scope of executive action, often violating the Constitution; for example, DNUs were used to discretionally reallocate budget resources (DNU 1472, issued Sept. 15 2008, reallocated more than 36,000 million pesos, or 22% of the total 2008 budget) (La Nación March 8, 2009; Ibarra 2009), modify export taxes (La Nación March 20, 2009; March 23, 2009; August 25, 2009), to use Central Bank reserves without congressional approval and to dismiss the president of the Central Bank (La Nación 28 Feb. 2010). See La Nación (September 16, 2008; September 17, 2008; November 25, 2009; February 28, 2010). After the 2009 mid-term legislative elections, legislative control of the DNUs was a matter of dispute between the government and the opposition (for example, Clarín Dec. 8, 9, 11 2009; La Nación Dec. 14, 2009; Feb. 6, 18, 2010). In 2010, following the DNU that ruled the use of Central Bank reserves for repaying Argentina’s debt, for the first time, the judiciary ruled to constrain the use of DNUs by the executive (cf. La Nación Jan. 21, 24; March 14, 23; May 20, 2010).
68 In 2009 the committee’s membership was in dispute, as the ruling party tried to maintain its control by ensuring the appointment of four members to block committee’s majority rulings (Clarín Sept. 5, 2007; Dec. 8, 11, 12, 2009).
69 Article 83 of the 1994 Constitution stipulates that the President can veto a bill and two-thirds majority in each house is required to override the veto. This is a strong override requirement that would have prevented Congress effectively checking the Executive’s veto power, as reaching the override requirement becomes difficult when the governing party has a strong majority in Congress. The frequent use of veto illustrates the strength of this constitutional veto power.
70 Line- item veto is the power of an executive to nullify or “cancel” specific provisions of a bill, without vetoing the entire legislative package. The line-item vetoes are subject to the possibility of legislative override as are traditional vetoes. For a historical overview of this presidential resource, see Molinelli (1991), Bill Chavez (2001, 127).
71 Cf. Art. 82, Argentina’s Constitution.
72 Cf. Art. 80, Argentina’s Constitution. For a comparative analysis of presidential veto and legislative overriding in Argentina and USA, see Suaya (2007).
73 See for example the case of the drug licenses bill passed by Congress, partially vetoed by Menem and insisted by Congress (Página 12 April 19; May 18, 19, 1995). Since 1989, Congress had only insisted six of the 89
vetoes issued by Menem, but the legislature insisted on three vetoes in May 25, 1995 to send a signal to the Ministry of Economy in its conflict with Congress (Página 12 May 25; June 13, 1995).

In his first term (89-95), the percentage of vetoes against bills submitted by PJ and other forces was balanced. However, since 1995, he vetoed 27 bills initiated by Peronist legislators, which represents 61.4% of the total number of vetoes (Suaya 2007, 13).

The president may issue decrees in exercise of delegated powers, but those should not be confused with DNUs, which do not involve delegation, authorization or agreement by Congress (Ferreira Rubio & Goretti 1996, 449). On the specific contents of these two laws, see Llanos (2002, 83-84).

Six deputies and six senators would form the commission, who would receive all information regarding the implementation of the bill and could ask for further information as well as formulate recommendations, proposals and advice (op. cit., 85).

Art. 76 states that “legislative powers shall not be delegated to the executive power except for issues concerning administration and public emergency, with a specified term for their exercise and according to the delegating conditions established by Congreso.” On the interpretation of this article, see Arballo (2006).

More than 1900 laws delegate faculties to the executive. The delegated powers have not been systematically nor formally organized, which makes it difficult for Congress to explicitly ratify or revert the delegation in each case. Only in 2009, the conflict with agricultural producers brought attention to the delegation of powers to the executive regarding export taxes. The ruling party was able to obtain a new extension. Cf. La Nación (July 13, 2009); Crítica (August 13, 2009); Diario crítico (August 21, 2009); Clarín (August 23, 2009).

The use of DNUs to replace laws approved by Congress was evident in the DNU that removed the President of the Central Bank in December 2009 (DNU 2010/09). (La Nación January 12 & 14, 2010).

Ex post control would be by the judiciary, while ex ante control (concerning whether the decrees have been respectful of the basis for delegation and the deadlines set by the Constitution) would be political by a body emanated from Congress.

After the 2009 mid-term legislative elections the opposition attempted to limit “superpowers”, yet the ruling party did not give quorum to hold the plenary session in Congress (La Nación June 9, 23; Feb. 18, 2010; Nov. 10, 11, 2010).

Author’s interview (Buenos Aires, October 16, 2009.)

The distribution of material goods and services through clientelistic networks is widespread in Argentina. According to UNDP (2004), 32.4% of the population declares to have knowledge of cases of clientelism (Gruemberg 2007, 50). Although this dissertation does not explore the causes of the discretionary use of state resources for political support, some historical and contingent factors can be mentioned. Historically, clientelism appeared related to the expansion of suffrage. Also, the use of state resources for political purposes is a defining feature of Peronism since its origins as a movement and political party. State resources were used for gaining the workers’ allegiance (McGuire 1999), political campaigning, and to benefit large constituencies of poor people (Auyero 1997; Levitsky 2003). For an historical analysis of clientelism in Argentina, see Rodríguez (2002, 157-159).

To the extent that it constitutes “a regularized pattern of interaction that is known, practiced and accepted (although not necessarily approved) by actors with expectations of ongoing interaction under the rules enforced and sustained by that pattern” (O’Donnell 1997, 310). As clientelism gets institutionalized, there are fewer incentives to eliminate it as a form of intermediation and mobilization (Massun 2006, 95).

Clientelism may take different forms. Several scholars (Gay 1997; Trotta 2003; Gruemberg & Urizar 2005) distinguish between “dense” clientelism (characterized for an explicit exchange, involving political or electoral support in exchange for materials goods) and “thin” clientelism (the exchange is implicit, and the resource exchanged usually is the client’s social inclusion -- for example as beneficiary of a social program) (Gruemberg & Urizar 2005, 9). Also, clientelism may be articulated as dyadic relations or networks. In bilateral clientelistic exchanges, the patron has a limited flow of resources to be distributed, and therefore is able to satisfy the needs of a limited number of clients; these relationships are usually face-to-face and do not require intermediaries (Torres 2002, 65). In these cases, the patron does not usually hold office, and does not have direct access to state resources, which are obtained indirectly (Trotta 2003; Torres 2002, 67). In contrast, clientelistic networks are extended and organized political structures that require an ongoing source of resources (usually the state, with patrons holding office). In these networks, “brokers” serve as intermediaries with access to two key resources: the monopoly of goods, and information on how to obtain those goods. Despite intermediaries, relationships continue to be personalized and show two main circles surrounding the broker: the intimate circle of relatives or friends, and the circle of clients or network’s beneficiaries (Auyero 2004, 30-31).
Clientelism appears with greater intensity under conditions of inequality, unemployment, exclusion and poverty (Gruemberg & Urizar 2005, 8). The impoverishment of Argentina’s population and increasing unemployment, particularly since 2001, created a favorable context for clientelism to flourish. For many poor Argentines, clientelism offers informal problem-solving networks through which they can obtain crucial resources to satisfy their material needs (Auyero 1997, 174-177; 2004, 196; 2004b, 11). For example, La Nación (August 16, 2007).

It is important to distinguish between weak institutions (e.g., horizontal accountability agencies), informal institutions (e.g., clientelism) and illegal practices (e.g., corruption). On the distinction between clientelism and corruption see Della Porta (1992, 1995), Caciagli (1996), Maiz (n.d.).

Corruption facilitates resources for sustaining clientelistic networks. At difficult times, looting has been another frequent strategy to obtain additional resources for keeping clientelistic networks alive. On looting and clientelism, see Auyero (2007). Corrupt politicians in turn benefit from developing clientelistic networks of support, as they reinforce their ability to engage in collusionary transactions (McYntire 2003). Also, benefits from corrupt transactions may be reinvested into clientelistic networks that provide protection and connivance for corrupt actors (Della Porta and Vanucci 1999, 262-265). In that sense, corruption perpetuates informal networks and practices over the distribution of resources (Sajo 1998, 39).

The 1994 Constitution stated that within a year, a mechanism for transparent and accountable transfers to the provinces had to be passed by Congress. This still has not happened, which gives the federal government great opportunity to use material inducements to get the provinces’ support on specific issues.

Kitschelt (2000, 860-861) identifies the causal mechanisms that make systems with strong presidential powers more prone to clientelism, including the personalized competition for the presidency, which attracts candidates who are only distinguished by their personal support networks rather than programs and encourages them to deemphasize programmatic appeals; the elected presidents’ incentives to prevent the emergence of a strong programmatic legislative majority, which make them engage in side payments to legislators, and legislators who are not responsible for government survival and thus are more likely to give their support only if they receive selective material inducements to further their own networks and careers. These effects are contingent on electoral and party systems as well as socio-economic and state development.

In Argentina, clientelism and patronage are mostly implemented from the executive, as legislatures do not have access to a comparable amount of resources. These informal practices are particularly useful at the provincial and municipal level, where control over social programs in contexts of extreme economic and social needs often determines the ability to hold power (M. O’Donnell 2005, 39).

Author’s interviews (Buenos Aires, June 18, 2009, August 27, 2009 and September 2, 2009.) See La Nación (March 20, 2009; June 26, 2009; March 29, 2010; July 31, 2010), Clarín (Sept. 23, 2009.)

For example, in Ecuador, Mejía (2004) identifies the existence of informally enforced coalitions (ghost coalitions) that helped crafting alliances between government and political parties for advancing reform.

As Calvo and Murillo correctly argue (2003, 33), literature on clientelism has usually focused on the incumbent’s advantage to establish clientelistic linkages, dismissing the importance of partisan considerations (for example, Stokes and Medina 2002). On the importance of parties’ organizational structures to explain the orientation towards clientelism, see Greene (2001, 2006).

Peronist incumbents have an advantage over Radical incumbents at obtaining access to 70% of all provincial expenditures and 69% of all provincial employment, which was in 2001 equivalent to 945,000 public employees. (See Calvo and Murillo 2003, 20.)

Peronist vote is positively associated with changes in public employment and public spending in contrast with the UCR-Alianza vote (Calvo and Murillo op. cit., 21-28). Peronist voters make them more dependent on public employment “because they are poorer, distributed in provinces with fewer private sector options, and because their lower income allows the PJ to pay for more clients with the same amount of money” (p. 29). In addition, historical factors explain Peronist party allegiances that “generate long-term expectations regarding the distribution of public employment and reinforce partisan loyalties” (p. 30).

Author’s interview (Buenos Aires, September 4 and 19, 2007.)

The problems of agency (monopoly, low accountability and discretionality) that are in the origins of political corruption are also identifiable in the distribution of payoffs for political purposes. At the micro level, the use of state resources for political support also represents the agent’s maximization of his own benefit at the expense of the collective good. However, there is no exchange with a third party to extract resources, which come directly from state sources.

See Gruemberg and Urizar (2005) on the institutional conditions for clientelism in social programs.
Access to some resources is a prerogative of political actors other than the executive. For example, unions’ “obras sociales” (approximately 300) are an important source of funding for unions and has become a critical source of corruption (see Ch. 3).

Formal appointment powers are strongest for core executive appointments. The president has exclusive prerogative to appoint and remove the Chief of Cabinet and the Ministers, the officers of his Secretariat, consular agents, and employees whose appointments are not otherwise regulated by the Constitution (Constitution article 99 (7)). The Chief of Cabinet, in turn, can make all appointments in the administration except those that the president is empowered to make (Constitution, Article 100 (3)). In practice, the president usually appoints high-level officials, and delegates to the Chief of Cabinet and other ministries and secretaries the power to appoint rank-and-file officials. There are no constraints on the president’s appointment powers, such as a requirement to obtain confirmation by the Senate (or the House, or both), or citizen participation mechanisms. Public officials appointed by the president are excluded from the civil service system and do not enjoy stability in office. Even civil service officials often do not enjoy such stability, as they are not permanent employees but rather hired on a contractual basis.

Other significant examples of executive control over independent agencies are related to superintendence agencies like the Central Bank, the AFIP, or ANSES. For example, ANSES manages billions of dollars in social security funds and is governed by a single official discretionally appointed by the president. The body played a crucial role to support the re-nationalization of the pension system in 2009 (La Nación May 18, Nov. 21, 2009; Sept. 12, 2010). Also, in AFIP, President Kirchner appointed a single official member of his inner circle who used the body to pressure media firms and agricultural producers (La Nación Feb. 14, 2010). Similar examples of executive influence are analyzed in Chapter 7 regarding oversight bodies.

Founded in 1982 by Alvaro Alsogaray, former minister of economy during Frondizi’s government in 1959 and principal proponent of economic conservatism in Argentina. See Página (June 24, 1990)

When President Menem left office in 1999, financial transactions in Alsogaray’s name came under scrutiny and she was ultimately convicted of misappropriation of public funds in 2004. See Chapter 3.

For example, in 2009, the executive appointed Enrique Cardesa to ENRE. A former deputy, he was head of the Partido Intrusigente that had supported the ruling party in the mid-term legislative elections. Clarín (July 26, 2009.)

For example, regulatory agencies played a critical role in the re-nationalization of water (Aguas Argentinas) and railway services (San Martín, Roca and Belgrano Sur), and in promoting judicial cases that blocked the distribution of profits by privatized gas and electrical services (TGN, Edelap and Edesur). Clarín (July 26, 2009.)

Authorities appointed unilaterally by the executive were involved in two major scandals of corruption. Flavio Madaro, appointed to ENARGAS, in the Skanska case and Claudio Uberti, the authority of the regulatory agency for roads (OCCOVI) in the valija gate (see Chapter 3).

While the Constitution implicitly acknowledges presidential power to intervene in a national agency (Article 99, section 1), there is no detailed regulation of interventions and their limits.

Delegation of powers through art. 7 Law No. 24.629 (Feb. 22, 1996). Regulatory agencies created through Articles 31 and 40, Decree No. 660 (Jun. 24, 1996). The CNRT was organized through Decree No. 1388 (Nov. 29, 1996). The board is to be appointed by the executive among people with technical and professional background relevant in the sector. The members of CNRT can only be removed through a reasoned act of the executive for violation of their duties (Article 10 & 11, Statute of the CNRT).

Cf. Decree No. 454 (Apr. 24, 2001), points 3, 5 and 5.

The Decree 454/2001 did not indicate a specific time period for the intervention and left it to the discretion of the political authorities. (See “Informe del Jefe de Gabinete de Ministros a la Honorable Camara de Diputados de la Nación. Informe no 68”, August 2006).

The first directory (Dec. 1996- Oct. 1999) was formed by Roberto Alfredo Ciappa (President), Alberto Didier (Vicepresident), Rodolfo Martinez De Vedia, Jose Guillermo Capdevila and Jorge Andres Andrade. The second directory (Oct. 1999 – April 2001) was formed by Jose Emilio Bernasconi (President), Miguel Angel Pereyra (Vicepresident), Alberto Moreno Hueyo, Norberto Osvaldo Bellini, and Guillermo Carlos Lopez del Punta. Cf. Tarzia (2005, 10.)

The auditors were: Rodolfo Francisco Huici (14/05/2001 - 15/05/2001, appointed through Decree 454/01, resignation); Jose Antonio Recio (13/06/2001 - 16/01/2002, appointed through Decree 753/01, resignation); Jorge Telmo Perez (17/01/2002 - 17/06/2002, appointed through Decree 104/02, resignation); Pedro Alberto Garcia (18/06/2002 - 05/06/2003, appointed through Decree 1029/02, resignation); Roque Guillermo Lapadula
This is the case of firms such as Gotti (Santa Cruz) and ODISA (Tierra de Fuego) (Rios an

Three firms from Santa Cruz were recipient of almost half of the total amount contracted for the first 10 firms 

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2008; July 1, 2009); Clarín (May 24; Sept. 27, 2009).

In September 2008, the first budgetary change made by Cristina Kirchner involved approximately 6,500 million pesos for transportation and other infrastructure sectors (La Nación Sept. 17, 2008). See asap.org.ar for data on subsidies. Also, cf. La Nación (May 14, 2009).

When auditing corridor 7 in 2004, the AGN concluded (AGN 102/04): “By the end of the concession, the State has complied with all the compensation payments and subsidies. To the contrary, the concessionary was benefited from not paying the “canon” –changing radically the relation between incomes/expenses- and did not complete its commitments, executing only 17% of improvement works, 11.8% of additional works and 47% of complementary works. However, the profitability rates of the firm between 1992-99 show values over 20% (with high values of 53.32%, 46.93% and 43.7% in 1997, 1995 and 1993 respectively)” (author’s translation). See also AGN 39/04.

104 Decree 2075/02.

105 Law No. 25.561 of Public Emergency put any tariff increase contemplated in concession contracts on hold until the end of the renegotiation process.

106 Systematic delays, deficient state of the railway units, insufficient units for the number of daily passengers, fires, and vandalism have been reported in newspapers. Violent episodes took place in Haedo and Constitucion rail station in 2007. Users have created numerous civic associations and established multiple platforms to complain about the quality of transport services. (La Nación Feb. 24, 2009).

107 Cf. interviews with opposition legislators regarding railway services (http://tbamemata.blogspot.com/2009/04/la-oposicion-critica-el-abandono-de-l.html). Cf. Clarín (May 20, 2007). In 2008, a survey on public transportation found 60% of the interviewee dissatisfied or very dissatisfied; in the city of Buenos Aires and the metropolitan area, these reached 65 and 62 percent respectively.

108 La Nación (May 5, 2005; April 12, Nov. 1, 2009). Before 2009 mid-term legislative elections, former president Kirchner promised loyal mayors from the Greater Buenos Aires 5,000 million pesos in public works (La Nación Feb.9, 2009). In 2010, he hired a consulting firm to undertake a study in order to reorient public works in the Greater Buenos Aires based on electoral considerations. Also, in violation of article 12 of the Public Ethics Law, contractors were obliged to include the picture of President Cristina Fernandez de Kirchner in each public work under construction (La Nación Sept. 18, 19, 2010.)

109 For example, Catamarca’s road #40 was estimated in 1.8 million but 25.5 million were disbursed (1350% more); the Rosario beltway increased its budget allocation by 1241%. La Nación (Oct. 11, 2010).

110 For example, 40 million pesos were transferred from the Ministry of Planning directly to the provinces as capital transfers in 2005 (administrative decision 200/05); an increase of more than 85 million pesos were authorized to the Ministry of Planning to pay subsidies to subway and metro rail private licensees (DNU 772/05). See Rios and Perez (Nov. 2005, 5-6).

111 La Nación (Nov. 23, 2008). Similarly, the plan 700 Schools, launched in 2003, promised to execute them in a 2-year period. Two years later, in May 2005, the under Secretary of Public Works acknowledged in Congress that the project was a “complete failure,” as only 9 schools had been finished (transcript of the Public Works Committee session held on 05/10/05). In 2008, only 576 schools were ready (Rios and Perez 2005, 7).

112 Some emblematic public works experienced severe delays in their execution, while others were never initiated – for example, the 14 million pesos dam Portezuela del Viento (Mendoza) announced by Kirchner, the Northeast pipeline (Misiones), the Acueducto Alto Reye (Jujuy) with a 51 million pesos, the dam El Bolson (Catamarca) planned since 2003, or the pipeline south-south in Cordoba with a 236 million pesos budget. Other public works were related to corruption scandals; for example, the Yacyreta dam or the Skanska pipeline. In some cases, the same projects were promised in different elections yet never executed. La Nación (Nov. 23, 2008; July 1, 2009); Clarín (May 24; Sept. 27, 2009).

113 Clarín (Sept. 20, 23, 2009.)

114 La Nación (July 26, 31, 2010.)

115 La Nación (August 13, 2008.)

116 At the federal level, 550 firms are beneficiaries of all the contracts awarded under the Federal Housing Plan. Three firms from Santa Cruz were recipient of almost half of the total amount contracted for the first 10 firms (143,779,281 million pesos or 45.5%). Cf. Rios and Perez (2005, 14).

117 Firms with debts with the state would not be eligible for participating in public tenders for state contracts. This is the case of firms such as Gotti (Santa Cruz) and ODISA (Tierra de Fuego) (Rios and Perez 2005, 29).
Despite the increase in resources, the budget was usually sub-executed (for example, in 2004, only 48% of the Ministry’s budget was executed) (Ríos and Pérez 2005, 4).

Until 2007, one of SIGEN’s Deputy comptrollers was the Minister of Planning’s wife, which represented a potential conflict of interest. See Ch. 7.

It is composed of 30 members and has representation of the majority and minority opposition forces although is under majority control of the ruling party. For a description of responsibilities, see http://www1.hcdn.gov.ar/dependencias/copublicas/index.html

For example, during a hearing of the Secretary of Public Works in Congress, UCR deputy Miguel Giurbergia denounced that schools in Jujuy had been built without heating system. The Secretary acknowledged: “This is a defect of ours. We have seen the preciosity: we have built schools of adobe, have thought in the building techniques, in preserving the heritage, and everything else except the people” (La Nación November 23, 2008).

La Nación (August 25, 2008; May 6, 2009.)

Including decree 23.354/56, 436/2000, 1023/2001, 666/2003, 204/2004. ADC has denounced that these norms violate the constitutional right to free expression (articles 14 and 32 of the Constitution, and article 13 of the Inter-American Convention of Human Rights) and the principle of legality (articles 14, 19 and 28 of the Constitution and article 30 of the Inter-American Conventions of Human Rights), as the general normative framework that regulates procurement is not established by Congress but through executive decrees; moreover, there is no specific legal regulation for contracting official publicity. Cf. ADC, amicus curiae action (http://www.fideicomiso.diarioperfil.com.ar/documentos/perfil_amicus.doc). Other norms that are relevant for the distribution of official publicity include Law 22.285/1980 that regulates radio and television; Decree 1.301/04, which banned the usual practice of condoning penalties imposed to the media and exchanging them for free time for broadcasting official messages (ADC 2005, 67).

The General Director of Official Publicity during Kirchner’s presidency justified the non-competitive nature of contracting processes based on the urgency of most of those contracts (ADC 2005, 65).

Paradigmatic examples are those of Rudy Ulloa and the Secretary of the Media, Enrique Albistur. Rudy Ulloa, former Kirchner’s driver and member of his inner clique, acquired numerous business interests in the media in Santa Cruz, and his firms benefited with generous funds for official publicity from the provincial government, the federal executive and decentralized organisms; while in 2003 he received 29,500 pesos in official publicity from the federal government, this figure increased to 1 million pesos in 2006 (O’Donnell 2007, 35). Another paradigmatic case is that of the Secretary of the Media. Enrique Albistur was appointed when he still was the formal owner of one important publicity firm, Grupo Al Sur S.A. Only later he put his firms under control of close relatives (former wife and children). His firms would have benefited from important contracts in street publicity at the municipal level, according to a complaint submitted to the FIA by a competitor. He is also suspected of having benefited his girlfriend, journalist and owner of a publicity firm. See La Nación (February 4, 2007), Perfil (August 5, 2007), O’Donnell (2007, ch. 4).

The most relevant case was Editorial Perfil, publisher of the newsweekly Noticias. With a profile very critical of the government, it did not receive any public funding during 2007 (O’Donnell 2007, 50). In 2011, the Supreme Court ruled against the government and required the state to provide official publicity to the publisher (La Nación March 3, 2011).

The allocation of official publicity at the provincial level was subject of an investigation by ADC in 2005. The report concluded that the allocation of official publicity responds to an “entrenched culture of persistent abuse by provincial government officials, who handle the distribution of advertising based on personal and political objectives, in flagrant violation of international and regional freedom of expression standards. The effects are especially dangerous when official advertising is essential for the financial survival of the media” (p. 12). Given the lesser dependence of national media on official resources, the effects are sometimes less direct at the federal level, and there is more space for media independence. On state control of the media and irregular use of publicity in the provinces, see Clarín (Oct. 2, 2009), La Nación (Nov. 14, 2009).

O’Donnell (2007) describes these two mechanisms based on information presented by Young (2006). The existence of journalists salaried by the SIDE would have already been put in practice during the Alfonsín government. The Senate scandal seemed to confirm this practice, when the director of SIDE leaked the existence of a list of journalists paid by the agency. FOPEA (Foro de Periodistas Argentinos) asked President Kirchner in 2006 to disclose the list of journalists, but the president withheld the information by invoking the secrecy of intelligence activities. See O’Donnell (2007, 75-77).
regulatory framework to guarantee its independence. However, the public TV continued to lack any specific framework. The FNIA investigated irregularities in government contracting of official publicity for Loteria Nacional in 2005 and 2004, saw its share diminish significantly when it broadcast a report on irregular business transactions involving the Secretary of the Media (O’Donnell 2007, 215).

The example of America TV is the most notorious: in 2003, it received 5.8 million pesos in publicity versus the 2.95 received by Canal 13, which had a higher average rating; in 2004, it received 160% more official publicity than Canal 9 despite showing similar ratings. The government justified this allocation by arguing that the TV channel America, one of the most benefited in the allocation of official publicity in 2003 and 2004, saw its share diminish significantly when it broadcast a report on irregular business transactions involving the Secretary of the Media (O’Donnell 2007, 215).

In absence of access to information legislation, journalists often rely on “official sources” to obtain information. This provides leverage for the government to retaliate individual journalists if they are critical of the government. This can be illustrated by the difficulties experienced by journalists working for the newsweekly Noticias (ADC 2005, 75). A well-known case of losing official publicity as a reprisal is the newspaper Rio Negro, which lost its official publicity after denouncing a case of corruption in the provincial legislature. Similarly, the TV channel America, one of the most benefited in the allocation of official publicity in 2003 and 2004, saw its share diminish significantly when it broadcast a report on irregular business transactions involving the Secretary of the Media (O’Donnell 2007, 215).

The goals of the Secretary include the formulation, implementation and control of the government’s communication and media policy; dissemination of the executive’s activities and managing its relations with the media; projecting the image of Argentina both internally and externally; administration and control of the publicly-owned media, as well as those media firms in which the Secretary has a share; and planning and contracting official publicity, among others. (Cf. Article 3, Decree 152/2003).

Telam resorted sometimes to inviting a limited number of advertising agencies to participate in a comparative assessment. There were complaints about irregularities in these processes to benefit a particular firm. The FNIA investigated irregularities in government contracting of official publicity for Loteria Nacional in 2005-2006.

Maria O’Donnell (2007, 53) had access to the internal documentation and described the confusing information that was provided to the public. In 2007, the Secretary of the Media declared that the information was public, but the opposition and NGOs had distorted the figures to damage the government (La Nación Feb. 4, 2007).
funds based on reasons other than those indicated in the law; funds were transferred without the proper
requirements without requiring basic information to corroborate and determine whether the request fulfilled the legal
requests from govern-

politically align the governors they are forced to resort to the Nation’s financing, which is u-
through a delicate fiscal situation [...]. This inequality creates such a state of vulnerability in the districts that

through other discretionary transfers.

Inquiry regarding ATNs, 6).

music festival (La Nación July 7, 2010).

support internal party elections (Página

ATNs were used to 
confirm the political use was issued in 2001 (La Nación September 10, 2001). ATNs were used to 
internal regulation that made more restrictive the administrative chan-

La Nación (June 10, 2002).

During the Alianza government, some steps of the administrative process were formalized to increase the 
transparency of the allocation of these funds (Charosky 2002, p. 230). However, a full reform never took place: 
“The Radicals did not change the rules of the game. Former Minister Federico Storani had on his desk an 
desk an 


Media evidence of political use is abundant (for example, Página 12, Feb. 13, 1999). The first official report 
that confirmed the political use was issued in 2001 (La Nación September 10, 2001). ATNs were used to 
support internal party elections (Página 12, May 6, 1999) and for other ad hoc uses such as organizing a folk 
music festival (La Nación July 7, 2010).

In so doing, presidents continue to be the actual party bosses and to exercise authority in their home 
provinces while holding the federal government. Since their hold on power was previously based on the 
distribution of state resources from the provincial government, by channeling resources from the federal 
government into the province, they sustain their power base.

La Nación (June 10, 2002.)

For instance, in 2000, 98% of the $19.895.000 transfers to Buenos Aires was directed to municipalities 
controlled by the Alianza and only 2% to local governments under Peronist control (Special Committee of 
Inquiry regarding ATNs, 6).

Funds come from several sources: 1% of the total net resources of coparticipation; 2% of revenue for income 
tax (law 24.073), and 20 million pesos per year corresponding to revenue for income tax (law 24.699). 
Additional resources come from 1% out of the 93.7 % of revenue for the personal property tax (law 24.699) 
(SIGEN 1997, 2; La Nación, March 10, 2008). The exponential growth of fiscal resources since 2004 resulted 
in the increase of funds available for these transfers (La Nación March 13, 2008).

158 million pesos in 2007 compared to 128.68 million in 2006 (La Nación March 10, 2008).

Contrary to other periods, the president’s province was not particularly benefited with this instrument but 
through other discretionary transfers.

...As the nation shows its coffers overflowing and a strong surplus, the vast majority of the provinces go 
through a delicate fiscal situation [...] This inequality creates such a state of vulnerability in the districts that 
they are forced to resort to the Nation’s financing, which is used by the federal government to condition and 
politically align the governors.” (La Nación March 13, 2008; author’s translation.)

“The process followed by the authorities in charge of the Ministry of Interior was, mostly, respond to 
requests from governors, senators, deputies, mayors, political leaders, in general from the same political line, 
without requiring basic information to corroborate and determine whether the request fulfilled the legal 
requirements.” (Special Committee of Inquiry, 5; author’s translation)

The main findings of these audits included: lack of formal internal procedures and records; allocation of 
funds based on reasons other than those indicated in the law; funds were transferred without the proper
documents to justify the allocation; in some cases, there was no documentary proof that the Ministry’s personnel had taken part in the allocation process; and significant amounts of money were allocated to private enterprises, NGOs and foundations, or were used to finance public works in the provinces. See SIGEN (1997, 5-6), Charosky (2002, 230). Also, La Nación (June 10, 2002.

Such as the Programa de Políticas Sociales Comunitarias (PROSOCO), Programa Social Nutricional (PROSONU), Programa Alimentario Nutricional Infantil (PRANI) and Plan Trabajar. These programs experienced problems related to the limited management capacity of the community organizations that were responsible for their implementation; limited capacity of municipalities to control these activities; and the weakness of provincial governments to guarantee that municipalities and community organizations were complying with the agreements signed with the national government. (Vinocour 2004, cited in Dinatale 2004, 36) In a weakly institutionalized context, focalized programs are susceptible of clientelistic use (La Nación Oct. 21, 2009).

As reported by the media, she was a central piece in Kirchner’s electoral strategy (La Nación May 12, 2009). Data from the Ministry of Economy in file with the author (http://www.mecon.gov.ar/peconomica/docs/gp_cons.xls) La Nación (Aug. 24, 2008; Oct. 12, 2009).

La Nación (July 2004); Clarín April 5, 14, 2003). La Nación (May 21, 2002).

Some plans are allocated to public officials as a hidden salary increase; other plans are distributed by political punteros to clients. See La Nación (July 2004); Clarín (Sep. 3, 2005).

La Nación (May 21, 2002).

La Nación (May 22, 2009) and Clarín (May 24, 2009). The leader of one piquetero organization from Jujuy received from the federal government 8 million pesos per month (Clarín Oct. 20, 2009). Another leader, who was political appointee in the Ministry of Social Development until 2009, controlled 14,000 million pesos in social programs in 2010 (La Nación Feb. 14, 2010). Control of these resources was the source of conflict between local politicians and piqueteros (La Nación Oct. 22; Nov. 8, 2009; Clarín, Oct. 16; Nov. 8, 15, 2009; La Nación Aug. 8, 2010).

See, for example, CODEM’s case Nº 593038 for extortion against Mr. Saúl Bajamon, CTA’s responsible in Olavarría, for charging $ 5 per month to beneficiaries of a dining hall project and for using them to go to demonstrations and piquetes, threatening with losing their benefits if they did not participate; CODEM’s Denuncia Nº 520D38 for extortion against Polo Obrero for charging $5 to beneficiaries and threatening to stop their benefits if they did not pay (Olavarría, Gacetilla Municipal, October 1, 2003). Numerous denounces were reported in the press (for example, La Nación Nov. 21; Dec. 1, 2008; Feb. 2, April 12, Nov. 8, 2009; Página 12 October 2002). In some cases, enforcement does not involve an explicit but implicit obligation: clients know that they can maximize their access to state resources by attending rallies or painting walls with electoral candidates’ names (The American Prospect, April 24, 2003).

These funds were mostly public resources approved by Congress; only 15% came from multilateral bank loans. As for the distribution of these resources, Plan Familias received $ 2000 million; the Plan Alimentario $ 600 million, and plan Manos a la Obra, $ 500 million (Cf. La Nación, January 3, 2007).
Audits (Cf. Dinatale 2004, 96). The AGN found important differences between the number of beneficiaries and the number of unemployed in Formosa, Posadas, Salta and La Rioja. In these provinces, the number of beneficiaries was higher than the number of unemployed, while in seven cities the % of beneficiaries over the % of unemployed reached only 30%. (Dinatale 2004, 54-56.)

This involves a violation of the Law of Administrative Procedure (article 40, Decree 1759/72), which requires providing mechanisms to submit complaints regarding administrative decisions (CELS 2003, 20). Moreover, this is a disincentive for beneficiaries to complain, thus making it difficult to identify the clientelistic use of the programs (CELS 2003, 21).

The applicant only has the right to be informed of the rationale of rejection (CELS 2003, 20). See Resolucion 2258/03 Defensoria del Pueblo de la Ciudad de Buenos Aires.

Created in 2002, the origins of UFISES are related to the investigation of an important fraud case against ANSES for allocating false pensions.

The system has been flexibly adapted to avoid overloads, separating consultations from denounces and complaints. While complaints have been derived to decentralized units and municipalities, CODEM has focused on denounces. 71% of denounces it received until March 2004 were anonymous (Gruemberg 2008, 20).

Decentralized staff does not have the resources nor the technical capabilities to record denounces, which are under-registered (SIGEN 2002, 5-6). In practice, only 2% of denounces come from decentralized units, with 98% concentrated directly in CODEM.

An independent monitoring system established by an NGO (see Social Citizenship Initiative at http://www.prociudadaniasocial.org.ar/QueEs.aspx) found that most complaints had to do with lack of information and difficult access to the free phone line maintained by CODEM (Author’s interview; Sept. 20, 2007). See also La Nación (Feb. 20, 2008). Moreover, Plan Familias, which incorporated part of the PJJHD’s beneficiaries, does not have any information mechanisms or system to file complaints (Author’s interview; Nov. 18, 2009).

La Nación (May 25, 2008).

Created through Decree N° 565/02, it started its activities in May 2002 with the goal of ensuring control, transparency and effective implementation of PJJHD.

For example, enhance monitoring and evaluation of the program, as well as the treatment of irregularities and complaints; strengthen the links between local councils and the national council; increase transparency and information about the plan and CONAEyC’s activities (CONAEyC 2004, 3).

In 2002, the former director of the national council publicly complained about the constraints of the body to perform an effective control of the implementation of social plans, and reported important weaknesses in the implementation of PJJHD (La Nación August 29, 2002).

Initially, Salta, Misiones, Entre Ríos, La Rioja, Corrientes, Santa Cruz and the City of Buenos Aires participated in the network. However, some provinces did not provide full access to information. The external audit body (AGN) was initially a member of the network, but then decided not to continue participating (Dinatale 2004, 96). In 2004, the network was enlarged to incorporate all the remaining provinces and some municipal control bodies.

Author’s interview (Nov. 18, 2009). According to data provided by SIGEN, the Network has conducted 250 audits (Cf. SIGEN, http://www.sigen.gov.ar/red_03.asp, accessed Dec. 26, 2008).
Since its creation, UFISES generated more than 5,000 cases and investigated irregularities that led to cancel more than 43,000 social plans (Cf. Gruemberg 2008, 21).

While UFISES is part of the Public Prosecutor Office, it is financed with resources from ANSES to investigate irregularities in one specific area. This is the result of a formal agreement between the Ministry of Labor, ANSES and the Public Prosecutor Office. The unit has one part-time federal prosecutor, one secretary and 22 employees, who are mostly law students hired temporarily (Dinatale 2004, 102).

La Nación (Feb. 2, 2009).
La Nación (Aug. 25; September 28; Dec. 5, 2009; July 28, 29, 2010; Aug. 7, 8, 2010; Nov. 11, 2010).
La Nación (Sept. 18, Oct. 10, 2009).
La Nación (Aug. 1, 2010). In 2010, a group of seven senators was reported as often defecting from the opposition and voting with the government in crucial bills. The group included former president Menem and six other senators including Peronists that were not part of the ruling party bloc as well as senators from small opposition provincial parties (La Nación Aug. 8, 2010). In November 2010, the legislative treatment of the 2011 budget was followed by numerous accusations of benefits offered to opposition deputies, including cash, contracts, appointments, etc. (La Nación Nov. 10, 11, 12 2010).

In Nov. 2010, the ruling party imposed its majority in the Constitutional Affairs Committee to dismiss accusations of vote buying for the approval of the 2011 budget (La Nación Nov. 13, 18, 2010). Sanctioning legislators is very rare. One of the few examples is the suspension of Varela Cid for asking bribes for passing the mail privatization law (see endnote 216).

Decree 5315/56 (March 22, 1956) and Law 18.302 (July 31, 1969) authorized the existence of secret expenses and regulated the use of secret funds with limited control. Laws 19.373 (1971) and 20.195 (1973), which regulated the modus operandi, mission and functions of SIDE, were modified by the military to enlarge the beneficiaries of secret funds. These laws remained unchanged after 1983, and they only were derogated in 2005. They were disclosed in 2006 as a result of the Law 26.134.

On August 31, 1994 the Senate approved a draft bill of national intelligence that included changes to legislative oversight of secret funds; it increased the powers of the legislative committee in charge, and required the executive to inform about the amounts and destination of secret funds. The bill was never discussed in the lower chamber. On December 10, 1995, several deputies submitted a draft bill to derogate Decree “S” 5315/56 and Law 18.302/69, but the bill was never considered in Congress. On October 9, 1997, there was a draft bill to strengthen control over secret funds, excluding the legislative power of receiving this type of funds and requiring accountability in their use. For details on the bills, see http://www.fas.org/sgp/argen9.html (accessed November 25, 2008).

In 1984, Congress reduced the number of jurisdictions that could dispose of these funds (only SIDE, the Secretary of the Presidency, and the ministries of Defense and Foreign Affairs). This prohibition was in place between 1987 and 1992, but since then many other jurisdictions have been assigned secret funds. These allocations were made in practice, violating the laws approved by Congress. The 1993 budget law contemplated the allocation of secret funds to many jurisdictions. Although Congress rejected this provision, in practice, a total of 4.5 million pesos were allocated to the Ministries of Interior and Economy and the Secretary for the Prevention of Drug Addiction, among others. Formal rules were simply ignored.

In 1999, the periodical XXI revealed that many federal judges were receiving payments from SIDE as informal complements to their official salaries. Neither the legislative committee nor the judiciary investigated the accusation. Menem’s Minister of Economy confirmed in 1993 the existence of these bonuses to public officials (Página 12 Feb. 14, 18, 1993; January 30, 94).

La Nación (October 22, 2000.)

Article 33 Law 24.059.

Article 37 Law 25.520.
Página 12 (October 25, 1994.)

In Argentina, the executive often does not comply with the agreements (Author’s interviews; Buenos Aires, September 2, 2009; July 15, 2010).

Página 12 (November 9, 18, 23, 24, 25, 27, 1995; Dec. 6, 1995); Ambito Financiero (Nov. 22, 1995).

Yabráñ-owned companies provided the state with identity documents, transported letters and documents through privately owned mail, and allowed merchandise into the country at the Ezeiza International Airport. The president vigorously denied any type of close relationship with him. Although Yabráñ always denied that he owned or held shares in these firms, or had close ties with the government, the evidence contradicted Yabráñ and government’s assertions. When the investigations into the murder of journalist J.L. Cabezas moved closer to
him, Yabrán contacted high government officials (the Minister of Justice) and legislators (Rossi 1997; Alconada Mon 2011, 107). Cavallo involved two UCR deputies and two former Radical deputies (Raul Baglini and Cesar Jarolavsky). See, Cherashny (1997), Sanz (1998), Manzetti (2003). Also, Clarín (Jan. 9, 1995; Aug. 18, 24, 26, 1995); Página 12 (June 23; Aug. 24, 26; Sept. 1, 1995).  
211 Clarín (Aug. 18, 19, 1995).
212 Clarín (Aug. 20, 21, 24, 1995); Página 12 (Aug. 24, 1995). The special committee of inquiry was finally created in 1997 (La Nación March 20, 1997). Menem expressed publicly his opposition to the committee (La Nación March 30, 1997).
213 Clarín (Aug. 17, 19, 24, 26, 1995.)
214 Clarín (Aug. 25, 29, 1995); Página 12 (Aug. 25, Sept. 7, 1995.)
215 Página 12 (Aug. 30, 1995.)
216 Página 12 (Aug. 30, 1995.) When the government was pushing the legislative treatment of the bill, the head of one postal firm denounced one PJ legislator (Varela Cid) for requesting bribes between 5,000 and 10,000 pesos from each firm to pass the bill. The legislator was only suspended by the Chamber for 45 days (Página 12 Sept. 10, 13, 14, 15, 1995; Clarín June 10, 11; Sept. 13, 28, 1995). In May 1999, he was convicted of this crime (La Nación June 16, 2001).
217 La Nación (Feb. 25, 1997; July 29, 1997.)
218 Página 12 (Aug. 27, 1995.)
219 Author’s translation. See also La Nación (Sept. 19, 2010); Clarín (Dec. 6, 9, 2009).
220 “Official advertising is a source of corruption for public officials and journalists. It is also a way of doing politics with the media and of holding addict reporters in the air. It is not new, but I have noticed a much more brutal use of official advertising for these purposes with the Kirchner government.” (Interview with Nelson Castro, in O’Donnell 2007, 57; author’s translation).
221 Extortion involves that someone demands the applicant or beneficiary to provide something in consideration for having access to the plan (often through intimidation, or simulation of public authority); if the person who demands the compensation is a public official, this is considered as a case of corruption. Cf. http://www.trabajo.gov.ar/programas/sociales/jefes/codem.htm, accessed Jan. 2, 2009.
222 La Nación (Feb. 15, 2010.)
223 La Nación (August 18, 2003.)
224 For example, the cancellation of Página 12’s column in which a famous journalist and ongoing collaborator of the newspaper denounced the appointment of C. Moroni as head of the internal control agency and accused him and the Chief of Cabinet of financial abuses (ADC 2005, 86).
Chapter 6
Limited Executive Oversight and Accountability by the Legislature

1. Introduction

For most of the new democratic period inaugurated in 1983, Argentine Congress has not effectively enforced its constitutional and legal authority to oversee and control the executive. Although the Constitution and other legislation grant the legislature sufficient powers and instruments to oversee governmental actions, in practice there is a gap between what formal norms establish and how oversight is actually performed (Uña et al. 2004, 5). This gap results from the actual workings of political institutions and their effects on legislators’ institutional commitment levels. The oversight gap reduces the constraining effect of oversight mechanisms and increases executive discretion, hindering effective executive accountability and creating incentives for corruption.

Fiscal scrutiny, or the oversight of public finances, is one major area defining the relationship between the legislative and executive branches in all countries. In Argentina, Congress has played a secondary role, performing only a limited part in overseeing public expenditures in the 1989-2007 period. Many cases of mismanagement and corruption have been known to occur in the public sector in the same period, in areas and agencies which Congress was supposed to monitor, but has not. Congress itself has suffered tremendous discredit as a result of some high-level political corruption scandals and many other petty occurrences of malfeasance.¹

Corruption cannot be solely attributed to the failure of legislative oversight. Yet the weak and limited effectiveness of legislative oversight and control over the executive did contribute, by omission or inaction, to the lack of accountability that characterized Argentina’s government during the period of study. In turn, this limited accountability created incentives for misbehavior and corrupt practices.
This chapter attempts to shed light on the actual performance of legislative oversight in Argentina. It argues that legislative oversight has been limited and, in the best-case scenario, only had a dissuasive effect. In this way, Congress has contributed to create incentives for political corruption by providing only limited control over executive actions. In addition, Congress has not been effective in enacting corruption-proofed legislation or creating the appropriate institutional environment to prevent and fight against corruption. Congress has also been seen as ineffective in representing the interests and demands of Argentine society. This, however, does not mean that Congress is inconsequential for studying policy-making and accountability: without understanding the legislature’s behavior and its impact on the executive’s expectations, we could not explain the conditions that account for the emergence and patterns of political corruption.

The chapter is organized in six sections. After this introduction, the second section highlights the important role that legislatures play in fighting and preventing corruption and identifies the main instruments available to Congress for this purpose. Section three looks at legislative membership over time and provides an overview of Congress’ formal oversight role and powers. Section four characterizes Argentine Congress as an agent of oversight, and examines its incentives and capacity to effectively play that role. The performance of legislative oversight is assessed by looking at different instruments: fiscal scrutiny; the review of public accounts and the role of Congress as centerpiece of the external oversight system; and legislative committees of inquiry, among others. Finally, section five looks back at the determinants of legislative oversight in relation with this dissertation’s theoretical framework, before presenting some concluding remarks in the last section.

2. The role of congress in curbing corruption

Anticorruption efforts have usually focused on the executive and judicial branches of government, while limited attention has been paid to the role of legislatures. However, parliaments play a crucial leadership role in preventing and combating corruption. In presidential systems, strong and effective parliaments may provide an adequate counterbalance against unilateral decision-making by the
executive (Palanza 2005, 5), and contribute to corruption control by ensuring effective checks and balances and serving as an “assurance of government integrity” (Wehner 2006, 90). By providing valuable insights to the dynamics and interactions between branches of government, the analysis of legislative oversight sheds light on the emergence of incentives for political corruption.

Political corruption is a complex and multidimensional phenomenon. Legislatures have to exploit their constitutional mandates, resources, capabilities and responsibilities to lead and effectively oversee effective anticorruption efforts (Stapenhurst et al 2006, 3). Parliaments may contribute to curbing corruption through the exercise of their core functions: to legislate, oversee, and represent the people’s interests. First, they contribute to curbing corruption by enacting anticorruption legislation, as well as legislation that helps create the legal, institutional and social environment in which corruption is less likely to occur and is detected when it does. Parliaments also play an anticorruption role by holding the government accountable through effective participation in the budgetary process and the exercise of legislative oversight through investigation commissions and cooperation with supreme audit institutions. Finally, legislatures contribute to building integrity through better democratic representation (for example, establishing coalitions with civil society).

The second of these legislative core functions – oversight – is particularly important in terms of ensuring integrity of the executive, the realm in which corruption is more concentrated (NDI 2000, 19). Oversight and control refers to “the behavior by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior” (Lees 1977, in Pelizzo and Stapenhurst 2004, 2). Legislators hold the executive responsible for its actions and use their influence to gain leverage over the executive’s future courses of action (Palanza 2005, 11). There are several instruments through which parliaments exercise these functions, and all of them are important for effective legislative oversight. For example, cooperation with audit institutions is critical because congress is the forum in which the information they produce can be discussed publicly to create pressure on governments to be responsive (Wehner 2006, 87; Santiso 2007).
In Latin American presidential democracies, however, oversight is under-implemented and scarcely valued. When parliaments actively control the executive, this is usually the result of high-level political scandals (e.g., the Collor de Melo case in Brazil), or it takes place after the executives have left office (e.g., Fujimori in Peru, Menem in Argentina). Legislatures in presidential systems are worse equipped than those in parliamentary systems to oversee the executive branch; for example, they are less involved in the confirmation and approval of the budget (Pelizzo and Stapenhurst 2004, 1). There are several opportunities and constraints for effective oversight in presidential systems (Desposatto 2004, 33). Separate and fixed mandates for the executive and legislative branches, as well as fixed electoral calendars, produce increased risk of institutional paralysis, stalemate, and regime breakdown. However, presidentialism may also increase the quality of oversight, “as conflict between branches and independent ambition should decrease the potential for collusion present in parliamentary systems” (Ibid.; NDI 2000).

Effective oversight requires several conditions, which have been extensively analyzed in the literature (particularly with regards to the US Congress). Oversight is generally explained as the result of individual rational legislators responding to external factors. Ogul (1981, 1990) identifies a series of structural and motivational factors or incentives for legislative oversight. Structural factors include the formal authority to oversee the executive, as well as budget and staff resources. The incentives include the way members’ goals (e.g., reelection) affect the likelihood of oversight. For example, oversight may help an actor gain public credit or visibility by denouncing government corruption or mismanagement. Rosenthal (1981) contributed to this analysis by indicating the importance of institutional incentives that promote oversight, including legislative authority, staff resources, committee structure and visibility of the issues, and their complementarity with legislators’ individual motivations. Finally, Bowen and Rose-Ackerman (2002, 160) explain the neutral or politicized nature of congressional oversight as a result of the constitutional structure, electoral rules and party strength, as well as the strength of civil society and the judiciary.
In sum, four main factors are needed for effective oversight. Congress must have some formal authority for monitoring the executive; there must be some incentives for Congress to use its oversight authority (which is related to the degree of bargaining and/or collaboration between branches, as well as the individual incentives of legislators); Congress must have the institutional capacity for effective oversight (which is generally an endogenous variable to the previous two); and finally, the executive needs to be willing to comply with legislative enactments. Operationally, effective oversight depends on committees and the reinforcing synergies between audit institutions and the legislature (Wehner 2006, 89).

While in Argentina Congress has the formal authority to oversee the executive, in practice legislators’ incentives to do so are limited as a result of the low level of institutional commitment in a weakly institutionalized setting. Legislators are less willing to defend their prerogatives against encroachment by the executive, and instead maximize the short-term political benefits they may obtain from bargaining with the executive. As a result, they will not invest in strengthening institutional capacity for oversight. However, they will take advantage of the resources they have for bargaining with the executive. Limited incentives and capacity, combined with the lack of executive willingness to comply with legislative enactments, explains ineffective executive accountability by the legislature. Section six of this chapter pays further attention to the conditions that have failed to provide effective oversight in Argentina. Before that, we look at different legislative oversight mechanisms to assess its effectiveness for the studied period.

3. Legislative resources and formal authority for overseeing the executive

As described in Chapter 4, Argentina has a bicameral system. The Senate has 72 members, three for each province and three for the autonomous city of Buenos Aires. Senators are selected by direct election on a provincial basis; the party with the most votes is awarded two of the seats and the third seat is assigned to the second-place minority party. One third of the members are renewed every two years to a six-year term, with no restrictions for reelection. The Chamber of Deputies is composed of
257 members, elected from province-wide multimember districts for four-year terms. Half of the Chamber (127 and 130) is renewed every two years, with each of the 24 electoral districts renewing approximately half of its representatives. Deputies are chosen from closed party lists using a proportional representation system that distributes seats using the D’Hondt method with a 3% threshold. The system has a great degree of malapportionment; each province receives a minimum of five deputies and no province has fewer deputies than it held during the 1973-76 democratic period.10

3.1 Congress membership and executive’s legislative support

Potential for gridlock is high in Argentina’s presidential system, but it has not materialized in practice since 1983.11 Presidents have been able to gain legislative support, although electoral results have led to problematic configurations of power. In 1983, President Alfonsín did not have absolute majority in one of the two chambers in Congress, and faced a divided government. The Senate was in hands of PJ, and after the 1987 mid-term legislative elections, the president also lost the majority in the Chamber of Deputies. Despite the initially strong electoral results obtained in the 1983 election (when UCR obtained more than 50% of the votes), the executive had scarce institutional resources, which opened the possibility of conflict with Congress (Llanos 1999, 80). Gridlock was avoided as a result of the cooperative attitude of political parties,12 which collaborated to pass by consensus (forged in the congressional arena) almost 60% of all government initiatives; the executive relied on its institutional powers to advance other initiatives, some of which were central to the government’s policy goals (Llanos 1999, 48). This latter trend gained increasing importance later on.

Menem’s first mandate (1989-1995) also faced a difficult institutional configuration, as the President did not have an absolute automatic majority in the Chamber of Deputies. The role of provincial parties with a substantial number of congressional seats and the UceDe (Unión Centro Democrático)13 was crucial to achieve the required legislative support. Menem only had absolute majority in both chambers after his reelection in 1995. However, after the mid-term legislative elections in 1997, he faced increasing opposition in the Chamber of Deputies as a result of the limits on the executive imposed by Peronist legislators as well as the emergence of such third parties as
Frepaso and MODIN (Movement for Dignity and Independence), which soon expanded beyond their initially limited territorial reach. The emergence of alternatives to the traditional bipartite system was confirmed with the electoral victory of the Alianza in 1999. Table 6.1 shows the configuration of Congress by legislative period and main political parties, and the increasing fragmentation of legislative representation in Congress.

De la Rúa’s government controlled neither the Senate nor had a working majority in the Chamber of Deputies. In October 2001, the Presidency lost its plurality to the PJ in the Chamber of Deputies, losing control of both chambers. After the legislative election, there was an increasing dispersal and fragmentation of political parties and the party system. As a result, the number of legislative blocks in Congress increased from seven in the Senate and 11 in the lower Chamber in 1983, to 16 and 33 respectively in 2007. (See Table 6.2.) This fragmentation, which resulted from the loss of votes and defections among non-peronist political parties (mainly the UCR) and the increasing internal fragmentation of Peronism, made it increasingly difficult to achieve the required legislative coordination (Rodriguez and Bonvecchi 2004, 38-9).

Table 6.1. Composition of Congress per period and party, 1983-2007

<table>
<thead>
<tr>
<th>Period</th>
<th>President’s Party</th>
<th>Peronist deputies</th>
<th>UCR-alianza deputies</th>
<th>Other parties deputies</th>
<th>Peronist senators</th>
<th>UCR-Alianza senators</th>
<th>Other parties senators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-85</td>
<td>UCR</td>
<td>111 (43.7)</td>
<td>129 (50.6)</td>
<td>14 (5.5)</td>
<td>21 (45.6)</td>
<td>18 (39.1)</td>
<td>6 (13)</td>
</tr>
<tr>
<td>1985-87</td>
<td>UCR</td>
<td>98 (38.4)</td>
<td>129 (50.6)</td>
<td>24 (9.4)</td>
<td>21 (45.6)</td>
<td>20 (43.5)</td>
<td>6 (13)</td>
</tr>
<tr>
<td>1987-89</td>
<td>PJ</td>
<td>114 (44.7)</td>
<td>114 (44.7)</td>
<td>26 (10)</td>
<td>21 (45.6)</td>
<td>20 (43.5)</td>
<td>6 (13)</td>
</tr>
<tr>
<td>1989-91</td>
<td>PJ</td>
<td>120 (47.1)</td>
<td>90 (34.7)</td>
<td>38 (15)</td>
<td>21 (45.6)</td>
<td>20 (43.5)</td>
<td>6 (13)</td>
</tr>
<tr>
<td>1991-93</td>
<td>PJ</td>
<td>124 (48.6)</td>
<td>84 (32.9)</td>
<td>57 (22.2)</td>
<td>28 (61.2)</td>
<td>12 (26.1)</td>
<td>8 (12.7)</td>
</tr>
<tr>
<td>1993-95</td>
<td>PJ</td>
<td>127 (49.8)</td>
<td>84 (32.9)</td>
<td>48 (18.7)</td>
<td>28 (61.2)</td>
<td>10 (21.7)</td>
<td>10 (21.7)</td>
</tr>
<tr>
<td>1995-97</td>
<td>PJ</td>
<td>131 (51.4)</td>
<td>90 (35.3)</td>
<td>57 (22.2)</td>
<td>40 (55.5)</td>
<td>21 (29.2)</td>
<td>11 (15.4)</td>
</tr>
<tr>
<td>1997-99</td>
<td>PJ</td>
<td>119 (46.6)</td>
<td>106 (41.6)</td>
<td>26 (10.5)</td>
<td>40 (55.5)</td>
<td>21 (29.2)</td>
<td>11 (15.4)</td>
</tr>
<tr>
<td>1999-01</td>
<td>UCR-FREPASO</td>
<td>99 (38.8)</td>
<td>120 (47.0)</td>
<td>33 (12.8)</td>
<td>40 (55.5)</td>
<td>22 (30.6)</td>
<td>10 (13.9)</td>
</tr>
<tr>
<td>2001-02</td>
<td>UCR-FREPASO</td>
<td>114 (44.3)</td>
<td>88 (34.2)</td>
<td>55 (21.4)</td>
<td>41 (56.9)</td>
<td>22 (30.6)</td>
<td>9 (12.5)</td>
</tr>
<tr>
<td>2002-03</td>
<td>PJ</td>
<td>122 (47.5)</td>
<td>63 (24.5)</td>
<td>72 (28)</td>
<td>41 (56.9)</td>
<td>22 (30.6)</td>
<td>9 (12.5)</td>
</tr>
<tr>
<td>2003-05</td>
<td>PJ</td>
<td>149 (57.9)</td>
<td>46 (17.9)</td>
<td>62 (24.2)</td>
<td>40 (55.5)</td>
<td>21 (29.2)</td>
<td>11 (15.3)</td>
</tr>
<tr>
<td>2005-07</td>
<td>PJ</td>
<td>149 (57.9)</td>
<td>24 (9.3)</td>
<td>84 (32.7)</td>
<td>44 (61.1)</td>
<td>15 (20.8)</td>
<td>13 (18)</td>
</tr>
</tbody>
</table>

Sources: Calvo and Murillo (2005, p. 212); Ministry of Interior; Molinelli 1999, 242 & 277; Centro de Estudios Nueva Mayoría (http://www.observatorioelectoral.org/informes/analisis/?country=argentina&file=011026)

(1) Data as of Sept. 2001. A year before, Alianza had 47% of seats. (2) 2001-2003 is divided in two to reflect changes produced as a result of the 2001 crisis and the break down of the Alianza. (3) Includes 134 seats for PJ plus 15 for dissident Peronism. (4) Includes 128 seats for FPV, plus 10 for concertation, and 11 for dissident Peronism. */The number of senators increased from 48 to 72 in 1994.
After the 2001 crisis, the Duhalde and Kirchner governments enjoyed ample legislative majorities in both chambers, consolidating the dominance of Peronism in the political system. However, Peronism’s internal fragmentation meant, in practice, that building support within the ruling party to count on a strong legislative majority required a more active role of the president, particularly when both Presidents Duhalde and Kirchner had relative legislative majority. After 2005 mid-term elections, President Kirchner gained an ample legislative majority in both chambers. Peronist predominance did not involve less use of the formal and informal institutional resources available to the executive to gain legislative support and to circumvent Congress when needed. On the contrary, as it had happened during Menem’s terms, these resources allowed President Kirchner to govern in a highly unilateral and discretionary manner (Levitsky 2000, 62).

Table 6.2. Number of blocs in Senate and Chamber of Deputies, 1983-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Senate</th>
<th>Chamber</th>
</tr>
</thead>
<tbody>
<tr>
<td>83-85</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>85-87</td>
<td>n/a</td>
<td>19</td>
</tr>
<tr>
<td>87-89</td>
<td>8</td>
<td>23</td>
</tr>
<tr>
<td>89-91</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>91-93</td>
<td>8</td>
<td>26</td>
</tr>
<tr>
<td>93-95</td>
<td>8</td>
<td>22</td>
</tr>
<tr>
<td>95-97</td>
<td>9</td>
<td>26</td>
</tr>
<tr>
<td>97-99</td>
<td>9</td>
<td>23</td>
</tr>
<tr>
<td>03-05</td>
<td>13</td>
<td>47</td>
</tr>
<tr>
<td>05-07</td>
<td>13</td>
<td>33</td>
</tr>
</tbody>
</table>

Source: Author based on Molinelli (1999, 243, 279); Poder Ciudadano (2006); Data from HCDN; Legislatina – Instituto de Iberoamérica, USAL

Despite ample legislative delegation to the executive, most of government’s reforms have gone through Congress, and episodes of strong congressional opposition and modifications to particular bills initiated by the executive are not uncommon (significant examples are Menem’s bill to privatize mail services, De la Rúa’s labor reform bill, or Duhalde’s attempts to impeach Supreme Court members). To the extent that President Kirchner gained strong legislative support and consolidated party control, he faced less congressional opposition and was able to have executive-sponsored bills quickly approved (Alvarez Guerrero 2005). Nevertheless, instances of legislative obstruction and the importance of executive’s legislative initiative demonstrate that the role of Congress is not trivial, and that executive-legislative relations are complex (Etchemendy and Palermo 1998; Llanos 1999; Levitsky 2000; Eaton 2003; Palanza 2009). Although Argentine Congress may be reactive rather than proactive, its intervention in policy-making (which determines Congress’ ability to set the margins of executive discretion) and, more importantly, how the executive anticipates possible legislative
responses to executive’s initiatives is crucial to the dynamics of presidentialism in the country. If Congress’ reactive role brings it closer to parliamentary systems, one main difference is the limited enforcement of direct legislative oversight and control mechanisms (Mustapic 2005).

3.2 Executive oversight by the legislature: Formal authority and instruments

Traditionally, the role of Congress has been deficient yet not irrelevant. Congress has the formal authority to be an active agent of executive oversight and to affect the legislative agenda.\(^\text{18}\) The Constitution and specific legislation, as well as rules created within the legislature, grant Congress important powers and direct mechanisms of executive monitoring. The main oversight instruments available include the mandatory monthly visit of the Chief of Cabinet to Congress, the summons of public officials or individuals to appear in committee hearings, the interpellation of members of the cabinet, the interpellation and removal of the Chief of Cabinet, impeachment of public officials, the presentation of written inquiries to the executive, creation of investigative commissions, and the ex post control of budget implementation through the Supreme Audit Institution (Auditoría General de la Nación) (Palanza 2005, 8). See Table 6.3. for a summary of available instruments.

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Normative basis</th>
<th>Investigation or sanction?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written Inquiries</td>
<td>Constitution and Congressional Rules</td>
<td>Investigation</td>
</tr>
<tr>
<td>Interpellation of Cabinet Members / Interpellation (and removal) of the Chief of Cabinet</td>
<td>Constitution</td>
<td>Investigation/sanction (direct)</td>
</tr>
<tr>
<td>Monthly visit to Congress by the Chief of Cabinet</td>
<td>Constitution</td>
<td>Investigation</td>
</tr>
<tr>
<td>Impeachment</td>
<td>Constitution</td>
<td>Sanction (direct)</td>
</tr>
<tr>
<td>Summons of officials to appear in Committee meetings</td>
<td>Congressional Rules</td>
<td>Investigation</td>
</tr>
<tr>
<td>Commissions of Inquiry</td>
<td>Congressional Rules</td>
<td>Investigation/sanction (indirect)*</td>
</tr>
<tr>
<td>Ex post controls of budget implementation</td>
<td>Constitution</td>
<td>Investigation / sanction (indirect)*</td>
</tr>
</tbody>
</table>

Sources: Palanza (2005, 9); Argentina’s Constitution; Reglamento de la HCDN.

\(^*/\) Congress may derive irregularities found to the judiciary
In practice, however, legislators’ incentives for overseeing the executive are low and their capacity is limited. A survey conducted among national senators in 2002 (Nolte, Llanos and Sanchez 2002) found that 60% of Argentine senators did not identify “controlling the executive” among the most important functions of the Senate; more importance was attributed to the representation of the interests of their provinces (100%) and law-making (91%) than to executive oversight (Alonso 2005, 30). However, to some legislators, a focus on law making should not be incompatible with the full exercise of oversight functions:

Executive control has to do with legislating because, ultimately, it is about ensuring that what is in the law is enforced. When there are violations of the duties of public office, when there is misappropriation of funds, where there is corruption, this means that laws are not being enforced and that Argentine society is harmed. Society often does not see this as an important issue, yet indeed it is essential. The limited importance attributed to oversight functions seems to be more prevalent among legislators from traditional parties, and especially among members of the ruling party’s legislative bloc. Legislators’ dependence on provincial party bosses and the enforcement of legislative discipline often means that ruling party’s legislators do not prioritize their oversight functions:

There may be differences between traditional parties and those that emerge from the 2001 crisis. But above all, it has to do with different views of what is politics. Some say they represent the province for which they were elected ... But one is representative of the Nation; his or her province is the priority, but always ensuring the national interests. You cannot put one interest over another, because ultimately all Argentine citizens have to be equal before the law. Generally the oldest party structures have these issues in mind, particularly the ruling party, which does have not executive oversight among its main concerns.

It could be that the ruling bloc thinks that it does not have to control its own government. I am not saying that it should be harassing it, but they could help avoid making mistakes. The role of Congress is to improve the initiatives, even of their own government. The notion of checks and balances and intra-state accountability is still a stadium Argentina has to get to.

These limitations are evident when assessing the effectiveness of legislative oversight. Oversight mechanisms are in many occasions put in practice, but they are not followed through, nor do they result in effectively sanctioning the executive (Palanza 2005, 9). Moreover, some instruments only provide Congress with investigative powers and therefore, effective sanction depends on the follow up by other institutions to the information eventually produced by Congress (Speck 2008). Overall, mechanisms of oversight have not been effective in holding the executive accountable. However, in certain instances, particularly when they represent a more credible threat to the executive, they have
led to informal negotiations and contributed to dialogue between the executive and the legislature.

The next section focuses on the performance of Argentina’s legislature in overseeing and holding the executive accountable between 1989-2007.

4. Executive oversight by the legislature at work (1989-2007)\textsuperscript{22}

In general, the role of Congress in overseeing the executive has been consistently limited in Argentina. This assessment extends to different government periods. Although some minor differences can be identified, particularly between the governments of Alfonsín (83-89) and Menem (89-99), as well as between the few periods with divided government (87-89, 99-01) and those in which the government had majority control of the legislature, these differences are less significant than the continuous weak performance of Congress in holding the executive accountable. This indicates the persistence over time of institutional conditions that reduce politicians’ institutional commitment and weaken the role of Congress.\textsuperscript{23}

This section assesses the effectiveness of legislative oversight between 1989 and 2007. Specifically, it focuses on the participation of Congress in the budget process, the role of congressional commissions of inquiry, and the ex post oversight exercised by Congress in collaboration with the external audit institution. Other oversight instruments considered include written inquiries, interpellation and summons of cabinet members, impeachment, and Chief of Cabinet’s reports to Congress. From this analysis, it is evident that there is an important gap between the formal authority of Congress to oversee the executive and actual oversight success. More importantly, formal oversight is usually replaced with informal bargaining in extra-legislative arenas, particularly in situations when oversight presents a credible threat to the executive. This creates incentives for political corruption.

4.1 Fiscal Scrutiny: The Role of Argentina’s Congress in the Budget Process

Control over the budget offers exceptional opportunities for legislatures to hold executives to account, given the periodicity of the budget and its encompassing nature (Wehner 2006, 81). Argentina’s
Congress has important formal powers over the budget process.\textsuperscript{24} During the budget formulation,\textsuperscript{25} Congress only receives information about the general guidelines of the budget proposal. The budget bill, to be submitted to the legislature before September 15, is prepared by the Ministry of Economy (which sets priorities, prepares forecasts, and defines investment programs and budget ceilings), the National Budget Office (which evaluates partial preliminary proposals and puts together the draft proposal), and the executive (which decides the guidelines of budgetary policy and distributes ceilings across agencies).\textsuperscript{26} The centralization of the budgetary process within the executive is intended to guarantee greater fiscal discipline and corruption control, but it also involves risks in terms of undermining accountability (Santiso 2005).

Typically, in Latin America, a major function of Congress is to modify the budget and to overrule presidential vetoes of these changes. Congress is empowered to approve or reject the budget proposal, to introduce changes, and to remove articles in order to ensure that the budget reflects policy priorities. Before 1992, the Argentine Congress did not have any restrictions on modification of the draft budget bill at the legislative approval stage. However, after 1992 (with the approval of Law 24.156), Congress may only introduce changes that increase expenditures to the extent that specific sources of revenue are identified.\textsuperscript{27} With a two-thirds majority, Congress may overrule vetoes to these changes without any restrictions.

During budget implementation, Congress may concurrently control budget execution. Concomitant mechanisms of legislative oversight at this stage include submitting written inquiries to the executive and receiving periodical reports to Congress regarding budget execution from the Chief of Cabinet (since 1995). At this stage, Congress is the only actor that may modify total expenditures, the debt level, or the purpose and objective of expenditures (Jones and Saiegh 2007, 58). The final stage is ex post accountability to hold government to account for performance and results.\textsuperscript{28} In Argentina, the executive conducts internal audits through the internal audit body (SIGEN) and internal audit units. Also, Congress is empowered to review and approve the annual budget execution report submitted by the executive (\textit{Cuenta de Inversión}) through the Committee of Review of Public
Accounts, and may request the National General Audit Office (Auditoría General de la Nación, AGN) to perform audit investigations and prepare reports on specific programs or management periods.

The formal powers of Congress during the budget cycle have not been met by actual legislative performance. In practice, legislative control over the budget has been limited (Delle Ville 2005, 36; Rose Ackerman et al. 2010, 21).\textsuperscript{29} The gap between formal norms and actual performance may be interpreted as an indicator of limited legislative oversight (Santiso 2005, 22). Moreover, at different stages of the budget cycle, it is evident that informal mechanisms replace formal oversight instruments. The analysis below focuses on the effectiveness of concomitant and ex post budget controls by Congress. It also provides an overview of some flaws of legislative monitoring over the executive at other stages of the budget process.

\textit{4.1.1 The role of Congress during budget formulation and approval}\textsuperscript{30}

The executive is the only responsible for formulating the budget, but in so doing it actually affects the analysis that Congress conducts at the approval stage. The budget formulation process presents several weaknesses that limit the ability of the legislature to affect the budget later on. In general, “ministries carry out the terms of the law, but their actions have little relevance for how public funds are actually allocated and spent” (Schick 2003, 77). Uña (2005, 17-18) identifies five major limitations at this stage.\textsuperscript{31} First, macroeconomic forecasts are usually over- or underestimated by the executive, and used strategically to affect economic actors’ expectations (Abuelafia et al. 2005, 19; Santiso 2005, 23). For example, in 2005, the estimated inflation rate was 7.9 while the actual rate was 12.3, and GDP growth percentage was 7.3 compared to the forecast of 3.52 (OECD/World Bank 2005); as total revenues were systematically underestimated, excess revenues could be used discretionally by the executive without legislative control:\textsuperscript{32}

Another [mechanism] that [the government] was using a lot but that after the crisis and the poor economic policies could no longer use, was the underestimation of resources. This is what they used from 2003 until last year [2008] ... Every year, they presented a 4% growth, which that generates a very large amount of resources that can be distributed with absolute discretionality.\textsuperscript{33}
Second, the budget has limited value as an instrument of policy planning and management, because it is based on previous financing needs rather than expected outcomes and results. Goals do not correspond with the actual allocation of resources.\textsuperscript{34}

Unfortunately, the diagnosis [in which the budget is based] is always wrong, it is an old diagnosis; for example, they are estimating an exchange rate of 3 or 3.1 when we are at 3.4. Afterwards, we look at the estimate, the projection they do from that diagnosis. If the diagnosis is already bad, the projections will be bad. If the forecasts for growth and tax collection are poor, the projections will be bad.\textsuperscript{35}

Third, there is budgetary inertia. The budget bill is usually prepared based on a percentage increase over the previous year’s budget (Rodriguez and Bonvecchi 2004, 12).\textsuperscript{36} Also, a significant number of budget items cannot be changed (including wages, pensions, transfers to provinces, debt payments, etc.). For example, in the 2004 budget, approximately 78% of the spending could be considered rigid (Abuelafia, Berensztein, Braun, and Di Gresia 2005, 20).

We also look at past performance, for example in public works. Every year the national budget displays pages and pages of the investment plan, with a number of public works which, in 70% of cases, are repeated from previous years because they are not executed; in 50% of cases, the budget items that will be executed during the year are negligible, and they do not even deserve a project of approval, they do not exist. Then, public works end up being more symbolic than real.\textsuperscript{37}

Fourth, the Advance Report that the executive submits to Congress before June 30 is purely formal. Congress seldom considers it, since there will be significant changes in the final budget submitted for approval. Finally, the requirement to prepare multi-year budgets\textsuperscript{38} is formally fulfilled (Schick 2003, 77), but in practice its implementation is not satisfactory; budget information does not become an input for the following year’s budget (Abuelafia, Berensztein, Braun, and Di Gresia 2005, 22). As a result of these factors, Congress approves a budget that is not very accurate and will be repeatedly modified by the executive to correct the differences between the initial estimates and the actual resources.\textsuperscript{39} Moreover, Congress can only assess the financial aspects of the budget, not conduct a results-based evaluation. These factors limit Congress’ ability to substantially change the budget based on policy orientation.

Although the executive elaborates the budget bill, Congress participates informally at the formulation stage. Legislators –in addition to governors, lobbies and pressure groups –seek to influence the budget formulation process by requesting the continuity and inclusion of specific line-
items and programs. They informally bargain with different jurisdictions, the ministries, and the Chief of Cabinet (Rodriguez and Bonvecchi 2004, 13). There are no formal rules to solve possible disputes, and the enforcement of these informal agreements is often weak. The results are influenced by the relative strength of different actors, with the president making the final allocation when a solution cannot be reached:

[The informal contacts during budget formulation] are not from opposition legislators but the ruling party. This becomes clear when the budget is voted and they say, "... you did not include the 4 million for Chaco, the 5 thousand for..." There is also bargaining to have many laws enacted provided that the budget includes certain items. In fact, I cannot believe that legislators still believe this, because at the end of the day these informal agreements are not enforced and the obligations are not fulfilled. It is mostly something they can advertise in their provinces, to their constituencies - we got so much in the budget - but then, in practice, the money never arrives.

Congress formally enters into the budget cycle at the approval stage. According to the Constitution, Congress is the only responsible for budget approval. It has ample powers to modify the budget at any time during the approval process, either in the plenary discussion or in the course of its treatment by the legislative committees (Jones 2001). Since 1992, the only restriction on introducing budgetary changes is that any change must include its appropriate revenue source (article 28, Law 24.156). The time for approving the budget is approximately two months (September 15 to November 30), but treatment of the budget bill usually expands into extraordinary sessions that take place in December.

In practice, however, Congress does not fully exercise its powers. This is evident in the nature of the changes introduced by the legislature at the approval stage, as well as the purely financial assessment of the budget. Congress does not perform an assessment focused on goals, results and outcomes, but rather approves the budget as a whole and pays attention only to financial considerations. The information available in the budget document, which is disaggregated, is purely financial and useless for assessing the policies to be implemented by each department and their expected results (Uña 2005, 22).

Changes in the budget are very frequent, but it is not Congress that makes them. Congress usually approves the budget the way it is submitted by the executive (Rose-Ackerman et al. 2010, 21). The actual power of the legislature to influence the budget is quite limited (OECD/World Bank
2005). Only a reduced number of changes are introduced by the legislature, and these changes are hardly significant. Table 6.4. summarizes the impact of congressional changes on the budget during the period 1994-2007 (Úña 2005, 22). Changes are usually smaller than 2%, with some exceptions in years 2002 and 2003; in 2004 and 2005, changes were less than 3% (OECD/World Bank 2005). In 2002, Congress increased the budget by 5.7%; however, since it was prepared in the middle of the economic crisis, it is not evidence of a stronger influence. In 2003, the budget was significantly reduced by 6.7% (4,415 million pesos), yet these changes (including 1,000 million pesos to be paid in external debt interests and 3,589 million that had been liberated for the upcoming government) were agreed upon by the executive (Ibid.). Congress plays also a limited role in budget reallocations (Abuelafia, Berenztein, Braun, and Di Gresia 2005, 27):

> These kinds of things: diagnosis, projections, social and economic variables, and obviously the distribution of resources. We have all this into account for approving the budget project, in addition to, first, what possibilities we have to change this and, second, whether it is actually modified. Unfortunately, no matter what we approve, then the executive will do as they please.  

Two other important tools for shaping the budget at the approval stage are presidential vetoes and congressional insistences. The presidential power to veto (totally or partially) budgetary changes approved by Congress can only be rejected by the legislature through a vote of insistence, which requires a majority of two thirds. In the 1983-2007 period, the executive never vetoed the budget in its totality, but line-item vetoes were frequent to eliminate specific articles or parts of them; for example, the president used his veto power 18 times in 2003 (Abuelafia, Berenztein, Braun, and Di Gresia 2005, 24), 28 times in 2004, and 14 in 2005 (OECD/World Bank 2005). Congress has only defended its decision rights by rejecting presidential vetoes and insisting on the approved budget in years 1993, 1994, 1998, 1999, and 2003 (Rodriguez and Bonvecchi 2004; Abuelafia, Berenztein, Braun, and Di Gresia 2005, 25). During the five legislative periods under Kirchner’s presidency, Congress never insisted on overriding the president’s veto. This can be contrasted with Menem’s presidency, when Congress insisted on 29% of the draft bills vetoed by the president. Insistence percentage was 10% with President Duhalde in 2002 and 4% with President De la Rúa.
Table 6.4. Changes from Congress to draft budget bill, 1989-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Draft bill (Millions australes / pesos)</th>
<th>Budget Law (Millions australes / pesos)</th>
<th>Changes by Congress (Millions australes / pesos) (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>A 3911,686,766</td>
<td>A 3911,686,766</td>
<td>0</td>
</tr>
<tr>
<td>1990*</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1991</td>
<td>A 149,021,910</td>
<td>A 149,021,910</td>
<td>0</td>
</tr>
<tr>
<td>1992</td>
<td>P 17,997</td>
<td>P 17,997</td>
<td>0</td>
</tr>
<tr>
<td>1993</td>
<td>P 39,650</td>
<td>P 39,650</td>
<td>0</td>
</tr>
<tr>
<td>1994</td>
<td>P 39,890</td>
<td>P 39,890</td>
<td>0</td>
</tr>
<tr>
<td>1995</td>
<td>P 42,887</td>
<td>P 42,980</td>
<td>93 (0.2)</td>
</tr>
<tr>
<td>1996</td>
<td>P 40,969</td>
<td>P 41,181</td>
<td>212 (0.5)</td>
</tr>
<tr>
<td>1997</td>
<td>P 43,006</td>
<td>P 43,976</td>
<td>970 (2.3)</td>
</tr>
<tr>
<td>1998</td>
<td>P 48,675</td>
<td>P 48,680</td>
<td>5 (0.0)</td>
</tr>
<tr>
<td>1999</td>
<td>P 49,299</td>
<td>P 49,299</td>
<td>0</td>
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<tr>
<td>2000</td>
<td>48,175</td>
<td>49,160</td>
<td>985 (2.0)</td>
</tr>
<tr>
<td>2001</td>
<td>51,232</td>
<td>51,869</td>
<td>638 (1.2)</td>
</tr>
<tr>
<td>2002</td>
<td>42,844</td>
<td>45,307</td>
<td>2,463 (5.7)</td>
</tr>
<tr>
<td>2003</td>
<td>66,173</td>
<td>61,758</td>
<td>-4,415 (-6.7)</td>
</tr>
<tr>
<td>2004</td>
<td>59,709</td>
<td>59,712</td>
<td>3 (0.0)</td>
</tr>
<tr>
<td>2005</td>
<td>77,454</td>
<td>77,453</td>
<td>1 (0.0)</td>
</tr>
<tr>
<td>2006</td>
<td>101,973</td>
<td>93,702</td>
<td>-8,271 (-8.1)</td>
</tr>
<tr>
<td>2007</td>
<td>121,303</td>
<td>121,303</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Una et al (2004, 22); Mecon Oficina Presupuesto, draft bill and budget laws years 2005-2007; Infoleg; Oficina Informacion Parlamentaria, Debates de leyes sancionadas por el Congreso de la Nación

* / The 1990 budget was passed ex post facto, as part of one article of the 1991 budget (as the approval of the budget executed by the executive during the fiscal year)

This lack of congressional insistence between 2003-2007 is testimony to the high party discipline in the legislature and the ample majority held in Congress by the governing party.48 The limited relevance of veto overrides is consistent with a Congress that does not react to executive’s encroachment in the budget process. (See Table 6.5.)

Congressional approval of the budget shows frequent delays (although in general, the budget is approved before the beginning of the corresponding fiscal year). The average time in the period 1995-2003 was 87 days (Abuelafia, Berensztein, Braun, and Di Gresia 2005, 23), with only some exceptions (in a record time of 29 days, the 2002 budget was approved and partially enacted in March). These delays illustrate the slow legislative process and the limited impact of changes that Congress is able to introduce in the budget bill submitted by the executive.49 Despite these delays, the treatment and approval of the budget in the Chamber of Deputies is usually short, particularly after 2003, as a result of the strong discipline of the ruling party. In 2003, it took only eight days for the
<table>
<thead>
<tr>
<th>Year</th>
<th>Introduced</th>
<th>Law</th>
<th>Senate approval</th>
<th>Deputies approval</th>
<th>Definitive approval</th>
<th>Enactment (BOE)</th>
<th>Insistence (override)</th>
<th>Veto</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>11/23/89</td>
<td>23.763</td>
<td>12/7/89</td>
<td>12/20/89</td>
<td>12/20/89</td>
<td>01/04/90</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>-</td>
<td>23.763</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>1991</td>
<td>1/21-2/91</td>
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<td>8/22/91</td>
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<td>12/19/91</td>
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<td>12/30/91</td>
<td>Yes Total: 0; Partial: 4 art.</td>
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<td>12/30/92</td>
<td>-</td>
<td></td>
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<td>24.447</td>
<td>12/25/94</td>
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</tr>
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<td>9/12/95</td>
<td>24.624</td>
<td>12/28/95</td>
<td>12/28/95</td>
<td>12/28/95</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1997</td>
<td>9/13/96</td>
<td>24.674</td>
<td>12/28/96</td>
<td>12/28/96</td>
<td>12/28/96</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>9/15/97</td>
<td>24.307</td>
<td>12/2/97</td>
<td>12/2/97</td>
<td>12/2/97</td>
<td>12/31/97</td>
<td>Yes Total: 0; Partial: 1 art.</td>
<td></td>
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<tr>
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<td>-</td>
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<tr>
<td>2003</td>
<td>9/13/02</td>
<td>25.725</td>
<td>12/18/02</td>
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<td>12/26/02</td>
<td>1/10/03</td>
<td>-</td>
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<td>2004</td>
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<td>11/13/03</td>
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<td>-</td>
<td></td>
</tr>
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<tr>
<td>2006</td>
<td>9/15/05</td>
<td>26.078</td>
<td>12/22/05</td>
<td>12/15/05</td>
<td>12/15/05</td>
<td>01/12/06</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2007</td>
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<td>26.198</td>
<td>12/13/06</td>
<td>12/13/06</td>
<td>01/08/07</td>
<td>-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author based on Rodriguez and Bonvecchi (2004, 54); Abuelafia et al. (2005, 25); Budget Office at Ministry of Economy. a/ 1990 budget was approved in an article of the 1991 budget as an approval of the execution conducted in the fiscal year by the Executive; b/ dates corresponding to congressional insistences; c/ partial promulgation not insisted by congress.
lower chamber to discuss and pass the budget, and 7 days in 2006. This limited debate undermines the effective control of the budgetary process by opposition parties:

The budget is discussed in two weeks; in two weeks we need to discuss 230 billion pesos. When you see how this is disaggregated, you say, it takes you a month minimum to analyze this [...] To have a real and significant debate, you need considerable time, at least a month to discuss the budget point by point, and with inputs and information from all ministers about all the things they are going to implement from then on.  

At the budget approval, as in other instances of the budget process, actors often behave according to informal rules that replace or complement formal ones. Given that legislators can only introduce changes in the budget if they can identify revenue sources, legislators usually bargain with the executive in informal arenas during the budget formulation, before the budget even reaches Congress (Uña 2005, 23). Also, informal discussions are held during the legislative discussion of the bill in the Chamber of Deputies’ budget committee. During these informal contacts, private sector actors, governors, senators and legislators from other committees try to incorporate new line-items, defend the continuity of others, and increase the allocation of resources to some programs (Rodriguez and Bonvecchi 2004, 13). During the approval process, legislators’ intervention is focused on specific aspects (e.g., public works, funds’ transfers) and usually takes place not on an individual basis, but collectively through party blocs or even legislators’ blocs from the same province or region and across party lines (Ibid.).

Given the limited role that Congress plays during the approval, the most important way for legislators to influence public spending is not through the budget cycle, but via the approval and enactment of substantive legislation (Schick 2003, 76):

From the time it receives the budget (in mid September) until final approval (December), Congress makes many adjustments, but most are minor and all are subject to line-item veto by the President. Congress generally influences budgetary policy through substantive legislation, by passing laws dealing with pensions, health care, taxation, and other issues. In both the Government and Congress, budgeting is regarded more as a means of financing ongoing activities than as an opportunity to define national priorities and policies.

Some examples of the modifications introduced in the legislature help illustrate the features of the budget approval process. In the 1984-1991 period, budget changes derived from legislative discussion were marginal, as they did not modify any of the items that concentrated the core of public
spending (Rodriguez and Bonvecchi 2004, 22). Changes included, for example, control over industrial promotion quotas, modifications to the executive’s proposed reduction in specific allocation funds (e.g., Tobacco Special Fund), and increases in military pensions (Rodriguez and Bonvecchi op. cit., 23). Between 1991 and 1995, Congress contributed to expanding public spending, but only on marginal budget items. Two mechanisms were agreed upon with the executive to expand budget allocations (Rodriguez and Bonvecchi 2004, 29-30): the so-called “happiness account” (which included public works whose financing sources were not identified, but that could be promised to provincial constituencies to obtain electoral benefits), and the limited authorization to enlarge and modify budget credits (based on an overestimation of Obligaciones a cargo del Tesoro). Although the budgetary discussion was polarized, the UCR could not overcome Peronist control of the legislature. In 1995, for example, when the executive requested for the first time the delegation of legislative powers, the UCR threatened to reject the overall budget and submit an alternative draft for discussion. The executive resorted to its decree powers to increase the fiscal deficit. As the opposition insisted on rejecting the budget, the budget committee in the Chamber of Deputies agreed to eliminate the delegation in exchange for approving the budget submitted by the executive.

After 1996 and until 2004, the delegation of legislative powers to the executive lengthened the informal bargaining process around the budget (beyond the formulation stage into budget execution). The role of Congress became less transparent and was mainly focused on legitimizing executive actions:

Since this ongoing budget negotiation takes place under the delegated powers and not regular legislative procedures required by the Constitution and laws, the legislature exercises its role in a context of inevitable opacity - only eventually broken when the scope of the budget restructuring is of such magnitude that the opposition can inflict some public opinion costs on the government (Rodriguez and Bonvecchi 2004, 37).

After 2004, legislative delegation was further expanded, reducing transparency even further and reinforcing the legitimizing role of Congress. The significant percentage of off-budget expenditure enhanced these characteristics (between 6% and 10% over total expenditure in 2004 and 2005, or $7,073.5 and $8,858.3 million pesos respectively) (OECD/World Bank 2005).
4.1.2 Budget execution and concomitant congressional control

Concomitant control of budget execution involves an evaluation by Congress of the way in which the executive actually disburses the approved resources. The formal role of Congress at this stage was reinforced in 1996 through Law 24.629 of State Reform (article 2), which established that the executive must submit a report to Congress on the state of budget execution every three months, within 30 days of finalizing the trimester. However, as this article of the law was not regulated any further, there are important aspects of this requirement that are not well established, including the consequences of executive noncompliance, and whether Congress is obliged to rule on the information provided. This limited normative development has undermined the powers of Congress, and led to informal practices for legislators to get information from the executive. An analysis of reports submitted to Congress shows the limitations of this oversight instrument. The reporting obligation has often been violated. For example, the budget execution report of end of October 2004 was only submitted to the Budget Committee on November 24, when the main guidelines of the upcoming 2005 budget were presented (Uña 2005, 25). More importantly, in cases of noncompliance, Congress has been inactive and has not required the executive to provide information (Ibid.), which is often obtained through other informal channels (e.g., websites, written inquiries, access to information requests).

According to Law 24.156 of Financial Administration, Congress has the power to make the most significant changes in the budget during the execution stage, constraining the executive’s prerogatives in this area (Jones and Saiegh 2007, 60; Uña 2005, 24; Santiso 2005). During implementation, the executive is seen as the agent of Congress, which must approve any change to budget size and allocations. The executive can introduce changes (through Necessity and Urgency Decrees) in the budget size in cases of emergency and disaster, keeping Congress informed. The executive can also make changes through administrative decisions issued by the Chief of Cabinet and the Secretary of Public Finance (Uña op. cit., 24). In practice, however, the executive has clearly exceeded its formal prerogatives and made many budgetary changes during the budget execution. The
executive advances over congressional prerogatives to change the budget without legislative approval. Excessive changes during budget implementation are a clear indicator of a poorly functioning budget system (Wehner 2006, 83); they also expose the constraints on Congress’ ability to ensure effective fiscal scrutiny. Every fiscal year, multiple norms introduce changes to the budget law and budget allocations (particularly after 1999). These norms have had significant impact in terms of the approved amounts. For example, in 2004-05 the executive increased the expenditure of existing programs on 28 occasions (OECD/World Bank 2005). As Tables 6.6. and 6.7. show, during the 1994-2007 period, the executive systematically modified the budget law, increasing the total amount almost every year except 1998 and 2001-2002. Reductions in 2001-02 were related to the crisis and subsequent economic policy measures such as the zero deficit rule (Abuelafia et al 2005, 30). After 2003, budget increases by the executive have also been significant.

<table>
<thead>
<tr>
<th>Year</th>
<th>Law</th>
<th>No of norms that modify, complement or regulate the budget law</th>
<th>Norms that reduce, enlarge or modify the budget allocation</th>
<th>First modification of the budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>23,763</td>
<td>1</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>1990</td>
<td>23,990</td>
<td>9</td>
<td>1</td>
<td>Law 24010 (11/29/91)</td>
</tr>
<tr>
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<td>24,061</td>
<td>13</td>
<td>2</td>
<td>Dec 240/92 (2/10/92)</td>
</tr>
<tr>
<td>1992</td>
<td>24,191</td>
<td>12</td>
<td>Na/0</td>
<td>-</td>
</tr>
<tr>
<td>1993</td>
<td>24,390</td>
<td>17</td>
<td>Na/0</td>
<td>-</td>
</tr>
<tr>
<td>1994</td>
<td>24,447</td>
<td>26</td>
<td>Na/0</td>
<td>-</td>
</tr>
<tr>
<td>1995</td>
<td>24,624</td>
<td>107</td>
<td>33</td>
<td>Law 24,644 (06/18/96)</td>
</tr>
<tr>
<td>1996</td>
<td>24,764</td>
<td>62</td>
<td>28</td>
<td>DA 95/97 (04/04/97)</td>
</tr>
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<td>24,938</td>
<td>59</td>
<td>27</td>
<td>DA 84/97 (1/27/98)</td>
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<td>209</td>
<td>112</td>
<td>DA 64/99 (3/31/99)</td>
</tr>
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<td>130</td>
<td>61</td>
<td>DA 4/00 (2/2/00)</td>
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<td>222</td>
<td>91</td>
<td>DA 5/01 (2/2/01)</td>
</tr>
<tr>
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<td>187</td>
<td>28</td>
<td>Dec. 869/02 (5/24/02)</td>
</tr>
<tr>
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<td>185</td>
<td>70</td>
<td>Dec. 541/03 (3/13/03)</td>
</tr>
<tr>
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<td>103</td>
<td>83</td>
<td>DA 33/04 (3/3/04)</td>
</tr>
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<td>98</td>
<td>72</td>
<td>DA 44/05 (3/9/05)</td>
</tr>
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<td>2005</td>
<td>26,078</td>
<td>102</td>
<td>81</td>
<td>Res. 38/06 Secretary of Finance</td>
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<td>2006</td>
<td>26,198</td>
<td>88</td>
<td>72</td>
<td>DA 30/07 (2/28/07)</td>
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</table>

Source: Author based on Sanguinetti (2004) and official data from Ministry of Economy and Infoleg (accessed February 2009). */ DA: administrative decision by the Chief of Cabinet.
The executive has used three main instruments to perform these changes and circumvent congressional control (Jones and Saiegh 2007, 60; Rose-Ackerman et al. 2010, 22). First, the executive proactively uses its legislative powers and introduces numerous changes in the budget through Necessity and Urgency Decrees (DNUs). The most significant changes in the budget have been made through this instrument (Uña 2005, 27). For example, in 2004, when revenues increased substantially, the executive increased expenditures by $9,510 million pesos over the congressional approval; out of this increase, 70%, or $6,674 million, were approved without legislative consent through DNU (ibid.). In 2005, expenditures increased by 14% through DNUs (10,789 million pesos). Increases are usually related to the discretionary provision of payoffs (e.g., to influence governors and lobbies), as well as to gain popularity through increases in wages and pensions (Abuelafia, Berensztein, Braun, and Di Gresia 2005, 33). In theory the use of DNUs is under congressional control, but in practice (as explained in Chapter 5) legislative control mechanisms have hardly been enforced.

Table 6.7. Changes introduced by the executive in the budget law, 1994-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget law (1)</th>
<th>Budget authorized (2)</th>
<th>Budget executed (3)</th>
<th>Difference 2-1</th>
<th>Difference 3-1</th>
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<td>1994</td>
<td>39,980</td>
<td>42,659</td>
<td>41,220</td>
<td>6.7%</td>
<td>3.1%</td>
</tr>
<tr>
<td>1995</td>
<td>42,980</td>
<td>44,379</td>
<td>42,677</td>
<td>3.2%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>1996</td>
<td>41,181</td>
<td>45,368</td>
<td>43,616</td>
<td>10.2%</td>
<td>5.9%</td>
</tr>
<tr>
<td>1997</td>
<td>43,976</td>
<td>47,543</td>
<td>45,155</td>
<td>8.1%</td>
<td>2.7%</td>
</tr>
<tr>
<td>1998</td>
<td>48,680</td>
<td>48,776</td>
<td>46,462</td>
<td>0.2%</td>
<td>-4.6%</td>
</tr>
<tr>
<td>1999</td>
<td>49,299</td>
<td>51,040</td>
<td>48,874</td>
<td>3.5%</td>
<td>-0.9%</td>
</tr>
<tr>
<td>2000</td>
<td>49,160</td>
<td>51,601</td>
<td>49,238</td>
<td>3.9%</td>
<td>0.2%</td>
</tr>
<tr>
<td>2001</td>
<td>51,869</td>
<td>51,705</td>
<td>47,904</td>
<td>-0.3%</td>
<td>-7.6%</td>
</tr>
<tr>
<td>2002</td>
<td>45,307</td>
<td>49,598</td>
<td>45,064</td>
<td>9.5%</td>
<td>-0.5%</td>
</tr>
<tr>
<td>2003</td>
<td>61,758</td>
<td>64,013</td>
<td>56,824</td>
<td>3.6%</td>
<td>-8.0%</td>
</tr>
<tr>
<td>2004</td>
<td>59,712</td>
<td>69,233</td>
<td>64,308</td>
<td>15.9%</td>
<td>7.7%</td>
</tr>
<tr>
<td>2005</td>
<td>77,453</td>
<td>91,823</td>
<td>86,839</td>
<td>18.5%</td>
<td>12.1%</td>
</tr>
<tr>
<td>2006</td>
<td>93,702</td>
<td>110,369</td>
<td>105,893</td>
<td>17.8%</td>
<td>13%</td>
</tr>
<tr>
<td>2007</td>
<td>121,303</td>
<td>142,299</td>
<td>142,421</td>
<td>17.3%</td>
<td>17.4%</td>
</tr>
</tbody>
</table>

Second, the executive introduces changes through budget quotas, which are the administrative tools for budget implementation. Particularly when resources have been overestimated, the executive controls the allocation of resources by discretionally and selectively deciding which jurisdictions receive their full quota and which ones receive fewer resources (Jones and Saiegh 2007, 60; Uña 2005, 27). This practice has undermined the legislature’s ability to influence the budget process, while strengthening executive capacity for changing budget allocations unilaterally.

Finally, the most critical way for the executive to implement budgetary changes is the delegation of legislative powers in combination with executive decree powers (“superpowers”). Through the use of these powers, the executive has contravened the constitutional provision that establishes that only Congress is authorized to modify total expenditure, the total authorized debt level, and the classification, objectives and function of expenditures (Jones and Saiegh 2007, 60). By virtue of this delegation, the Chief of Cabinet may reallocate resources within the total budget approved and change the total amount of resources in the budget (Uña et al. 2004, 3). Until 1997, the delegation was subject to constraints imposed by Law 24.156 (article 37). In these cases, delegation was an instrument to reduce public spending (Rodriguez and Bonvecchi 2004, 36). In practice, Congress continued to compensate for those restrictive effects: it increased industrial and non-industrial promotion quotas, allocated any excess resources to public works, and reorganized specific line-items during the legislative process to satisfy demands from governors, legislators and executive officials (Ibid.).

During Menem’s second term, the budget was approved under article 37, but later modified through specific laws and decrees; for example, in 1997, Law 24.916 authorized the Chief of Cabinet to introduce changes, and in 1998 and 1999 powers were granted through executive decrees (1.421/98 and 455/99). Since 2000, under increasingly difficult economic conditions, the authorizations were granted annually in the budget laws for years 2000, 2001, 2004, and 2005. In 2002 and 2003, the authorizations were also granted by decree, which in 2002 (1.452/02) and 2003 (435/03) were based on the Economic Emergency Law (Uña et al 2004, 7 ff; Abuelafia, Berensztein, Braun, and Di
Gresia 2005, 37). Since 2005, the delegation of powers also violates article 15 of the Fiscal Responsibility Law. After the Superpowers Law was passed in 2006, the executive was able to fully circumvent Congress, as no particular authorization for delegating budgetary powers needs to be discussed and approved annually by the legislature.

Allowing the Chief of Cabinet to implement budget changes without being subject to those restrictions has progressively enlarged the authorization (Uña 2005, 32). Moreover, in August 2006, the executive was able to institutionalize the exception to article 37 by authorizing the Chief of Cabinet to perform any budget restructuring and allowing him to increase spending even without identifying corresponding financing sources. The use of this instrument in combination with the systematic underestimation of budget resources allowed the Kirchner administration to encroach upon congressional rights, thus strengthening the executive’s unilateral control over the budget (Uña et al. 2004, 12; Rose-Ackerman et al. 2010, 22):

The government of Nestor Kirchner met for five years the requirement of sending to Congress a budget with underestimates for growth, allowing to obtain extra-budget resources that were later administered by former Chief of Cabinet, Alberto Fernández, through the delegation of powers derived from the economic emergency.

These powers allowed the Chief of Cabinet to introduce changes during budget execution, and to modify the agreements previously reached with legislators and governors during the budget formulation (Uña 2005, 32). The Chief of Cabinet can in fact modify the budget credit of any jurisdiction (modifying specific resources and reallocating budget line items) through administrative decisions, with neither a law of Congress nor a decree (op. cit., 33). Since 2004, the Chief of Cabinet has also been authorized to hand over the delegated powers to line ministries. This has weakened the public spending commitments included in the budget. In 2005, for example, the executive was able to modify 6% of the approved budget (expenditures increased by 4,610 million pesos and 1.849 million pesos were reallocated) through the delegated powers. The combined use of delegated powers and DNUs, in addition to the limited information provided on the executive’s budget reallocations, undermined the overall value of the budget as a transparent mechanism for allocating public resources:
The analysis of the evolution of the delegated powers to the Chief of Cabinet allows observing a tendency to increasing the role of the executive on the budget at the expense of the legislature, thus deepening the weakening role of Congress in the budget process. This situation implies further weakening the arena where citizens should have the opportunity, through their representatives, to express their preferences. Thus, the budget tends to become a formal instrument that does not represent the priorities and preferences of society, and can be used to meet the government’s priorities without transparent mechanisms for the allocation of public resources (Uña et al 2004, 12; author’s translation).

In addition to the delegation of powers, the creation and use of extra-budgetary funds to implement policy goals while avoiding the obligation of transferring extra-revenue resources to the provinces via co-participation has allowed the executive to strengthen its authority, particularly under conditions of fiscal surplus. This has also contributed to the loss of integrity of the federal budget. Fiduciary funds (analyzed more extensively in Chapters 3 and 7) are one of the main tools used to circumvent congressional oversight over the budget process, thus enhancing executive unilateral and discretionary authority. They are subject to limited constraints, as the budget does not specify its use and distribution and the obligation to inform Congress about its use has often been violated (Rose-Ackerman et al. 2010, 23). Another important resource for the executive are Obligaciones a Cargo del Tesoro, which have increased significantly since 2007. Formally aimed at paying expenses that cannot be included under any other jurisdiction, they allow the executive to use public resources with limited oversight.

Both through changes during budget execution and providing limited information to Congress, the executive has actually gone far beyond their normative powers during the budget implementation stage. Congress has not reacted through formal channels, affirming its control powers and prerogatives, but rather has replaced oversight formal mechanisms with informal practices. As an indication of the low levels of institutional commitment, attempts to constrain executive prerogatives for reallocating the 2009 budget (following the ruling party’s defeat in midterm legislative elections) were manipulated so that in practice they are not expected to effectively restrain the executive’s de facto budgetary powers.
Now the party-liners sent a project to limit the use of administrative decisions, by restricting them to 5% of the national budget, without counting Obligations of the Treasury. But if one adds the Obligations, that is almost 11% of the national budget. When you calculate how much it was spent in previous years, it is less than 5% per year. Then more than one restriction, this works as a guarantee to keep doing what they want to do.

The analysis of the ex post control of budget execution is the focus of the next section, which explores legislative performance in effectively controlling public sector’s activities through the information available to Congress from external audit investigations and reports.

4.2 Congressional oversight of the public sector: Congress and the Supreme Audit Institution

Legislatures carry out their oversight responsibilities with assistance of Supreme Audit Institutions (SAI). Audit institutions are powerful resources for fighting political corruption since they can detect fraud and abuse through reliable reporting and control systems. They may prevent corruption through deterrence, as well as reporting on criminal and corrupt activities in the public sector (Stapenhurst and Tisworth 2006, 107). In Argentina, the National General Audit Office (Auditoria General de la Nación, AGN) is a specialized audit agency in charge of the external control of the executive and the national public administration. Article 85 of the 1994 Constitution empowers Congress to perform external control (patrimonial, operational, economic and financial) of the public sector, based on specialized technical information provided by AGN, which is in charge of the ex post audit and legal and managerial control of all activities undertaken by the national public administration. The Public Accounts Committee (Comisión Parlamentaria Mixta Revisora de Cuentas de la Administración) is the link between Congress and AGN. This section focuses on the congressional treatment of information produced by AGN, and assesses the degree to which audit reports and the review of the public accounts are used by Congress to hold the executive accountable. Chapter 7 presents an analysis of the limits and strengths of AGN in fulfilling its audit role.

Congress exercises the ex post control of the annual budget execution through the review of a document called “investment account” (Cuenta de Inversión) at the end of each fiscal year. The executive (the Nation’s General Accountant under the Ministry of Economy’s Public Finance Secretary) prepares the budget execution report annually before June 30 of the following year.
reviews the report and, within 60 working days, must make a favorable or unfavorable assessment, or decline to issue an opinion. The AGN’s report and assessment, which are not binding, are submitted to the Public Accounts Committee for approval. Following the committee’s ruling, the report is discussed in plenary session in both chambers, and Congress approves or rejects the budget execution report. Records indicate that only one investment account (the report that analyzed the budget execution during the 1976 dictatorship) has been rejected since 1983. Afterwards, the different budget reports have been either approved or not treated in plenary session; out of the 25 budget execution reports for the period 1983-2007, 12 have been approved, one rejected, and nine have received preliminary approval (three of them have minority reports recommending their rejection, and the other three had not been treated yet at the time of this writing). (See Table 6.8.)

Formal rules governing ex post control are weak, as they do not set clear time limits for Congress to approve or reject budget execution reports; also, control of the Public Accounts Committee by the ruling party facilitates the strategic use of the approval process to satisfy short-term political goals. Moreover, inaction by Congress (cases in which the legislature decides not approve or reject the budget execution report) has no clear consequences (Santiso 2005). As a result, the process through which Congress reviews and approves the budget execution report violates the deadlines established by formal norms. Although this is also partially a consequence of AGN’s delays in submitting its assessment (Table 6.9), delays in congressional treatment of budget execution reports are much more significant:

We have audited the execution of public budgets since 1994, yet Congress never gave treatment to these public account reports. That is, legislators did not approve the way resources were spent. (Despouy 2002)

On average, it takes Congress four years to verify the reports sent by AGN. In 1998, Congress approved the budget execution of fiscal year 1993; this was the last budget execution report approved by Congress until November 2007 – i.e., almost for a decade, congressional oversight of the public budget was not actually enforced. As of April 2010, the budget reports for fiscal years 2005-2006 had not received final congressional approval, and the accounts committee had not reviewed the bud-
<table>
<thead>
<tr>
<th>Year</th>
<th>Entered in committee</th>
<th>Committee decision</th>
<th>Approval Law Number</th>
<th>Date of sanction</th>
<th>Time elapsed (since entered committee)</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>---</td>
<td>---</td>
<td>23.854</td>
<td>Sept. 27, 1990</td>
<td>---</td>
<td>Rejected *</td>
</tr>
<tr>
<td>1984</td>
<td>March 16, 1988</td>
<td>---</td>
<td>23.855</td>
<td>Sept. 27, 1990</td>
<td>2 years, 6 months, 12 days</td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>June 20, 1988</td>
<td>---</td>
<td>24.002</td>
<td>Sept. 27, 1991</td>
<td>3 years, 3 months, 8 days</td>
<td>---</td>
</tr>
<tr>
<td>1986</td>
<td>Aug. 31, 1988</td>
<td>---</td>
<td>24.086</td>
<td>May 20, 1992</td>
<td>3 years, 8 months, 20 days</td>
<td>---</td>
</tr>
<tr>
<td>1987</td>
<td>June 30, 1989</td>
<td>---</td>
<td>24.221</td>
<td>June 16, 1993</td>
<td>3 years, 11 months, 16 days</td>
<td>---</td>
</tr>
<tr>
<td>1988</td>
<td>Nov. 6, 1991</td>
<td>---</td>
<td>24.328</td>
<td>July 28, 1993</td>
<td>1 year, 8 months, 22 days</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>May 13, 1994</td>
<td>Nov. 23, 1995</td>
<td>24.630</td>
<td>March 6-7, 1996</td>
<td>1 year, 9 months, 22 days</td>
<td>---</td>
</tr>
<tr>
<td>1993</td>
<td>Sept. 2, 1994</td>
<td>June 5, 1997</td>
<td>24.963</td>
<td>May 20, 1998</td>
<td>3 years, 8 months, 18 days</td>
<td>---</td>
</tr>
<tr>
<td>1994</td>
<td>July 17, 1995</td>
<td>Nov. 1998</td>
<td>Preliminary approval by Senate (March 14, 2001-expired, June 11, 2003)</td>
<td>14 years, 9 months**</td>
<td>Minority report in senate (01) recommends devolution; minority report in lower chamber and senate (02, 03) recommends rejection</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Aug. 16, 1996</td>
<td>July 2000</td>
<td>Preliminary approval by Senate (Nov. 19, 2002)</td>
<td>13 years, 8 months**</td>
<td>Minority report in lower chamber recommends rejection</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>Sept. 5, 1997</td>
<td>July 2002</td>
<td>Preliminary approval by Senate (Nov. 19, 2002)</td>
<td>12 years, 7 months**</td>
<td>Minority report (deputies) recommends rejection</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Feb. 8, 1999</td>
<td>Nov. 7, 03; Oct. 27, 05; March 2, 06</td>
<td>26.099</td>
<td>May 10, 2006</td>
<td>7 years, 3 months, 2 days</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Entered in committee</td>
<td>Committee decision</td>
<td>Approval Law Number</td>
<td>Date of sanction</td>
<td>Time elapsed (since entered committee)</td>
<td>Vote</td>
</tr>
<tr>
<td>-------</td>
<td>----------------------</td>
<td>--------------------</td>
<td>---------------------</td>
<td>------------------</td>
<td>----------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>1999</td>
<td>July 4, 2000</td>
<td>April 25, 2007</td>
<td>26.328</td>
<td>Preliminary approval (May 23, 2007) Final approval (Nov. 2007)</td>
<td>7 years, 4 months</td>
<td>4 partial dissents</td>
</tr>
<tr>
<td>2003</td>
<td>July 2, 2004</td>
<td>April 25, 2007</td>
<td>26.328</td>
<td>Preliminary approval (May 23, 2007) Final approval (Nov. 2007)</td>
<td>3 years, 4 months</td>
<td>4 partial dissents</td>
</tr>
<tr>
<td>2004</td>
<td>July 4, 2005</td>
<td>April 25, 2007</td>
<td>26.328</td>
<td>Preliminary approval (May 23, 2007) Final approval (Nov. 2007)</td>
<td>2 years, 4 months</td>
<td>4 partial dissents</td>
</tr>
<tr>
<td>2005</td>
<td>July 4, 2006</td>
<td>---</td>
<td>---</td>
<td>Preliminary (12/2/08) Final approval (---)</td>
<td>4 years**</td>
<td>4 partial dissents</td>
</tr>
<tr>
<td>2006</td>
<td>July 5, 2007</td>
<td>---</td>
<td>---</td>
<td>Preliminary (12/2/08) Final approval (---)</td>
<td>2 years 10 months**</td>
<td>4 partial dissents</td>
</tr>
<tr>
<td>2007</td>
<td>July 7, 2008</td>
<td>---</td>
<td>---</td>
<td>In Dec. 2009, the committee informed the report hadn’t been approved on time for lack of response from the Secretary of Finance.</td>
<td>1 year, 10 months**</td>
<td>---</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on information obtained from HCDN & HSN; Molinelli (1999, 477)  
*/ Public account corresponding to the two de-facto governments. **/ As of end of April 2010.
get execution report for year 2007. These delays enable the use of audit information as an additional resource for political bargaining.82

<table>
<thead>
<tr>
<th>Year</th>
<th>AGN request</th>
<th>AGN response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Dec. 15, 93</td>
<td>July 14, 94</td>
</tr>
<tr>
<td>1992</td>
<td>May 13, 94</td>
<td>Jan. 4, 95</td>
</tr>
<tr>
<td>1993</td>
<td>Sept. 20, 94</td>
<td>April 24, 96</td>
</tr>
<tr>
<td>1994</td>
<td>July 21, 95</td>
<td>Sept. 23, 97</td>
</tr>
<tr>
<td>1995</td>
<td>Aug. 23, 96</td>
<td>May 13, 98</td>
</tr>
<tr>
<td>1996</td>
<td>Oct. 3, 97</td>
<td>April 26, 99</td>
</tr>
<tr>
<td>1997</td>
<td>Oct. 5, 98</td>
<td>June 14, 00</td>
</tr>
<tr>
<td>1998</td>
<td>Aug. 18, 99</td>
<td>May 8, 01</td>
</tr>
<tr>
<td>1999</td>
<td>Aug. 17, 00</td>
<td>Apr. 21, 03</td>
</tr>
<tr>
<td>2000</td>
<td>July 16, 01</td>
<td>Nov. 27, 03</td>
</tr>
<tr>
<td>2001</td>
<td>Dec. 27, 02</td>
<td>March 28, 05</td>
</tr>
<tr>
<td>2002</td>
<td>Feb. 26, 04</td>
<td>Feb. 8, 06</td>
</tr>
<tr>
<td>2003</td>
<td>July 13, 04</td>
<td>Sept. 6, 06</td>
</tr>
<tr>
<td>2004</td>
<td>July 26, 05</td>
<td>Feb. 6, 07</td>
</tr>
<tr>
<td>2005</td>
<td>July 13, 06</td>
<td>Nov. 23, 07</td>
</tr>
<tr>
<td>2006</td>
<td>July 16, 07</td>
<td>April 24, 08</td>
</tr>
<tr>
<td>2007</td>
<td>July 24, 08</td>
<td>April 16, 09</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on information available at HSN.

Moreover, reports pending from approval, after being set aside for long periods of time, are often submitted for approval all together and approved through one single statute in the same day and plenary session. For example, budget execution reports of six fiscal years (1999-2004) were approved through a single statute in November 2007 (Law 26.328).83 This results from the ability of the ruling party to take advantage of the weakly institutionalized process to control the timing of the legislative treatment of information produced by the AGN. In so doing, the executive seeks to undermine the effectiveness of congressional control:

The reports with the opinion of the committee [Public Accounts Joint Committee] come to us one day before the floor session in an Excel spreadsheet with a lot of other things, all the reports and the DNUs, things that often are three-year old ... it is impossible to control this. Therefore, in practice, legislators vote the reports without knowing what they vote.84

Delays in fiscal scrutiny make it more difficult to pursue disciplinary measures and corrective courses of action and therefore, undermine executive accountability (Wehner 2006, 87). They are also an indicator of the short-term horizons of political actors; they indicate the inability of institutions to plan ahead regarding budget and fiscal management based on what has been executed in the past...
(Despouy 2002). Finally, these delays contribute to make legislative control of public accounts a low-profile accountability tool, which goes unadvertised not only for society but for many legislators as well (Makon 1999, 8):

The Public Accounts Committee is quite delayed with the review of the investment account, and the AGN is also behind with the preparation of its reports. For me these are bureaucratic issues that have nothing to do with capacity, but with the political need to withhold the information and prevent the information leave in a timely manner. The truth is that we sometimes passed the budget execution reports two, three, ten years later, which makes all this to be outdated – it cannot be used to make a complaint or to check what was the error. [...] This practice has to do with the political will that the system does not work properly. Only now [in August 2009] we got the 2007 investment account... And I do not know what happened last year, what happened to the execution of expenditures, what happened to public works ... All that information is not available ... it is somehow published in some Web page, but we must research and find it ... It is not given to legislators as it should.85

Delays in approving the public accounts have often been interpreted as a symptom of the weak capacity of the legislature to exercise its oversight powers. However, these delays are also an indicator of the actual threat that budget execution reports may represent for the executive, which transform them into strategic devices for informal bargaining between the governing party and the opposition.86 This is also the case with delays that affect other oversight instruments, such as legislature’s written inquiries to the executive:

I believe it is the two interpretations [it is intentional and it is delayed if there is no consensus for its swift passage in the floor]. Everything is related to the same conditions: when there is no political will to ensure that information is properly available, to make it useful, these issues come up. Sometimes the [account] is approved, the times are fast, yet at the moment that there is no consensus, for fear of opening a question they do not want to be public, they end up reaching a parliamentary agreement [between the two major parties], and we [minority opposition legislators] obviously do not participate at all. [...] I think there is a crosscutting that has to do with the need to have information that does not reach the common citizen and even less legislators.87

Therefore, delays in the approval of budget execution reports can be interpreted as an indicator of their political significance. Some of them are not approved, or it takes a long time to have them approved, because - given their incriminating nature - it would be too costly for the majority party to reach the necessary legislative consensus to have them approved. The difficulty of building consensus contributed to further delays in the legislative treatment of post-1996 public accounts. The most problematic budget execution reports are withheld by floor majorities until consensus can be reached to have them passed with no consequences for the executive.88
One may conjecture that those that are more problematic are held back. Floor approval requires getting past the majorities there, so it is never easy for a proposal to pass if it is highly incriminating. (Marcela Rodriguez, ARI legislator, quoted in Palanza 2005, 21)

Moreover, after 2001, the increasing fragmentation of political parties and legislative blocs has enhanced coordination problems of opposition legislators. This makes it more difficult for the opposition to reject budget execution reports submitted by the executive and reviewed by AGN. This was evident in floor debates on the accounts that have not been approved, despite recommendations for rejection. For example, the controversial reports of fiscal years 94-96, including information on the bulk of the privatization process, were reviewed by AGN, which decided to abstain from issuing an assessment and sent them to Congress; however, the ruling party bloc was not able to build consensus to submit them to the plenary session in the Chamber of Deputies, since there was a Senate minority report requesting their rejection:

The responsibility lies with the PJ. We oppose the 1994 budget execution because we object to the criteria that were used to evaluate that state assets subject to privatization. (Gerardo Morales, UCR-Jujuy, member of PAC; author’s translation)

The limited effectiveness of Congress in performing the ex post control of the budget results from a combination of causes, including political and technical factors as well as the institutional limitations of AGN (Uña et al. 2004, 29-30). Technical causes include the problems that AGN finds in issuing its assessment given the differences that exist between budget execution and financial statements.89 Politically, the debate about budget execution reports covers a time span of several governments, which makes it more difficult to generate consensus for their approval. Furthermore, in a context of weak political institutions, audit of public expenditures has often been used as bargaining resource for political actors, particularly when audit reports were not immediately disclosed (Abuelafia, Berensztein, Braun, and Di Gresia 2005; Jones and Saiegh 2007, 61).90 The institutional limitations of AGN (analyzed in Chapter 7) include limited staff and resources to analyze budget execution reports that are increasingly complex;91 the politicized nature of appointments and the minority position of the President within the collegial body; AGN’s inability to file criminal complaints; the lack of specific
time limits; and the unclear definition of the accounts committee’s responsibilities (Santiso 2007; Rose-Ackerman et al. 2010, 21, 40-41).

Congress also receives and approves external audit reports. The number of audit reports produced by AGN has remained fairly constant over time (on average 204 reports per year). Legislative treatment of audit reports hardly contributes to hold the executive accountable. When the Public Accounts Committee receives a report, Law 24.156 (article 129) does not set any specific time frame for committee approval or for either deriving it to both chambers for approval in plenary session or filing it in the archives. The lack of formal procedures enabled the executive—who held majority in committee until 2009—to circumvent formal legislative oversight.\textsuperscript{92} Committee control by the opposition has not enhanced the committee’s effectiveness, given the majority party’s negative control of the legislative agenda and coordination problems of opposition legislators. In Sept. 2010, the committee had over 280 audit reports pending for review, while 50 audit reports that had been reviewed by the committee were on hold for their discussion in the floor since May. Two of those reports included specific recommendations for filing criminal complaints given the irregularities found by the AGN.\textsuperscript{93} As with budget execution reports, the incriminating nature of the findings makes it too costly to reach the necessary consensus to have them approved.

\textbf{It is a structural problem, because it is the oversight system that does not work. The Constitution attributes to legislators a double role, legislate and control, but the latter, which is as important as the former, is not well understood. Many legislators do not know what an audit report is. If they would, they would find that each audit report is pure gold (Heriberto Martínez Oddone, president of the PAC in La Nación Sept. 13, 2010)\textsuperscript{94} Moreover, opinions (dictámenes) issued by the Public Accounts Committee are insufficient to assess and identify follow up actions to audit findings. No specific requests (e.g., to provide further information, to adopt corrective measures) are made to audited public bodies, which, given the lack of sanctions, reduces the incentives to enforce audit recommendations. Information about debates and discussions within the committee is not publicly available.\textsuperscript{94} Limited transparency facilitates the political use of audit information. According to informed observers, internal debates are quite limited and bargaining to build consensus and facilitate the approval of relevant audit reports is frequent.\textsuperscript{95}}
Decisions to send specific audit reports to the archives are not properly justified. A significant number of reports are directly sent to the archive after consideration by the Committee, yet never debated or voted in the plenary. For example, in 2000, the Committee approved 197 audit reports out of which 44 were sent directly to the archives; in 2001, 16 audit reports (out of 213 approved) were directly archived. In these cases, it is impossible for citizens to know the content of those reports and the irregularities found; moreover, the lack of explicit legislative approval of decisions to dismiss audit reports (and their eventual findings) undermines their legitimacy (ACIJ 2005, 16). On the floor, several audit reports are usually approved at a time without any debate. Most legislators are not aware of the content and information contained in the reports that they approve, as they only appear in the Orders of Business with the numbers of file and committee opinion, without any reference to their contents (ACIJ 2005, 17).

In practice, the approval of the Public Accounts Committee’s opinions in the floor sessions works badly. Unfortunately, for many years, and it continues now, the parliamentary debate is fairly poor. The ruling bloc, usually with agreements, approves the opinions (the AGN also agrees to have the reports approved), and therefore, there are no debates. Low government responsiveness follows both audit and ex post budget legislative oversight, as is evident when analyzing the legislature’s written inquiries to the executive (pedidos de informes). Written inquiries are questions that legislators send to the executive requesting information on specific issues of interest. This is a constitutional prerogative (article 71), which is also regulated by the internal rules of both the Senate (title XIX, art. 214 and 215) and the Chamber of Deputies (chapter 23, articles 204-210). Any individual legislator may submit a proposal of written inquiry to the executive through any of the chambers. Moreover, in the Chamber of Deputies, committees have an additional oversight resource, as they are empowered to enact inquiries (provided there is unanimous agreement) without the proposals having to be discussed on the floor for approval. The executive forwards the inquiries to the relevant agencies, but no time limits are set for the executive to provide an answer. Responses are sent back to the corresponding committees, and information is then included in congressional records.
The Public Accounts Committee has the prerogative to send direct written inquiries to the executive about measures implemented to correct the problems observed by AGN in its assessment of the budget execution report. Table 6.10. presents some figures for the 2000-2005 period, which show that about half of the inquiries are indeed answered by the executive (51.2%). However, getting information from the executive takes a long time; for the 2000-2005 period, it has taken between 197 and 302 days on average for the executive to respond to these inquiries (MECON 2005). Moreover, a significant number of inquiries never get a response.

Table 6.10. Written inquiries (pedidos de informes) regarding public accounts

<table>
<thead>
<tr>
<th>Year</th>
<th>Passed</th>
<th>Executive’s reply</th>
<th>% replied over passed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>56</td>
<td>42</td>
<td>75</td>
</tr>
<tr>
<td>2001</td>
<td>100</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>2002</td>
<td>73</td>
<td>48</td>
<td>66</td>
</tr>
<tr>
<td>2003</td>
<td>173</td>
<td>87</td>
<td>49</td>
</tr>
<tr>
<td>2004</td>
<td>72</td>
<td>30</td>
<td>42</td>
</tr>
<tr>
<td>2005 (as of Oct.)</td>
<td>38</td>
<td>6</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>512</td>
<td>262</td>
<td>51.2</td>
</tr>
</tbody>
</table>

Source: Cuenta de Inversion (2005), power point presentation available at MECON (http://www.mecon.gov.ar/hacienda/cgn/xxcongreso/trabajos/comision_mixta.pdf)

Written inquiries regarding audit reports show similar results. Although the percentage of responses (approximately two thirds) cannot be dismissed – given the lack of formal sanctions for non-responding – the delay in providing a response as well as the percentage of non-responses is more significant. In the period 2004-2007, for a total of 254 written inquiries, the executive replied to 180 (70%) while 74 had not received a response by July 2010. For those inquiries that were answered, the average time elapsed between the inquiry and the response was between 250 days and 355 days (with max. of 585 days and min. of 103 days), and the average time between the Committee of Accounts’ report and the response was on average between 384 and 496 days (max. of 830 days and min. of 106 days) (Table 6.11.). This is consistent with results for written inquiries more generally found by Molinelli et al. (1999) and Palanza (2005), and data collected for this research. (Table 6.12.) Non-responses and delays indicate the persuasive threat that Congress (and specific legislators) may present to the executive (Palanza 2005, 23; Lemos 2010, 18). Written inquiries are a call of attention to the executive to attain responses and information.
Table 6.11. Written inquiries (pedidos de informes) regarding audit reports

<table>
<thead>
<tr>
<th>Year</th>
<th>Passed</th>
<th>Reply*</th>
<th>% over passed</th>
<th>Average time elapsed since WI</th>
<th>Average time elapsed since approval in committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>61</td>
<td>55</td>
<td>90%</td>
<td>202 days</td>
<td>298 days</td>
</tr>
<tr>
<td>1999</td>
<td>8</td>
<td>7</td>
<td>87.5%</td>
<td>236 days</td>
<td>350 days</td>
</tr>
<tr>
<td>2000</td>
<td>3</td>
<td>2</td>
<td>100%</td>
<td>251 days</td>
<td>320 days</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>2004</td>
<td>46</td>
<td>32</td>
<td>69.5%</td>
<td>321 days</td>
<td>397 days</td>
</tr>
<tr>
<td>2005</td>
<td>99</td>
<td>61</td>
<td>62%</td>
<td>277 days</td>
<td>420 days</td>
</tr>
<tr>
<td>2006</td>
<td>91</td>
<td>78</td>
<td>86%</td>
<td>355 days</td>
<td>446 days</td>
</tr>
<tr>
<td>2007</td>
<td>18</td>
<td>9</td>
<td>50%</td>
<td>251 days</td>
<td>384 days</td>
</tr>
</tbody>
</table>

Table 6.11. (cont.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Max time since WI (for replies)</th>
<th>Min time since WI (for replies)</th>
<th>Max time since committee approval (for replies)</th>
<th>Min time since committee approval (for replies)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>552 days</td>
<td>97 days</td>
<td>597 days</td>
<td>180 days</td>
</tr>
<tr>
<td>1999</td>
<td>940 days</td>
<td>90 days</td>
<td>970 days</td>
<td>141 days</td>
</tr>
<tr>
<td>2000</td>
<td>240 days</td>
<td>180 days</td>
<td>730 days</td>
<td>330 days</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>2004</td>
<td>573 days</td>
<td>139 days</td>
<td>638 days</td>
<td>192 days</td>
</tr>
<tr>
<td>2005</td>
<td>584 days</td>
<td>103 days</td>
<td>830 days</td>
<td>106 days</td>
</tr>
<tr>
<td>2006</td>
<td>585 days</td>
<td>103 days</td>
<td>765 days</td>
<td>107 days</td>
</tr>
<tr>
<td>2007</td>
<td>303 days</td>
<td>192 days</td>
<td>467 days</td>
<td>331 days</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on information from HCDN. * As of July 8, 2010

Table 6.12. Written inquiries (pedidos de informes).

<table>
<thead>
<tr>
<th>Legislative Year</th>
<th>Requested</th>
<th>Approved</th>
<th>% over requests</th>
<th>Deputies</th>
<th>Executive’s reply</th>
<th>% over approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984-88</td>
<td>2629</td>
<td>444</td>
<td>17</td>
<td>255</td>
<td>255</td>
<td>57</td>
</tr>
<tr>
<td>1989</td>
<td>875</td>
<td>200</td>
<td>23</td>
<td>89</td>
<td>89</td>
<td>45</td>
</tr>
<tr>
<td>1990</td>
<td>1446</td>
<td>360</td>
<td>25</td>
<td>210</td>
<td>210</td>
<td>58</td>
</tr>
<tr>
<td>1991</td>
<td>1266</td>
<td>338</td>
<td>27</td>
<td>243</td>
<td>243</td>
<td>72</td>
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<tr>
<td>1992</td>
<td>1398</td>
<td>289</td>
<td>21</td>
<td>195</td>
<td>195</td>
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<tr>
<td>1993</td>
<td>1372</td>
<td>263</td>
<td>19</td>
<td>178</td>
<td>178</td>
<td>68</td>
</tr>
<tr>
<td>1994</td>
<td>1261</td>
<td>296</td>
<td>23</td>
<td>213</td>
<td>213</td>
<td>72</td>
</tr>
<tr>
<td>1995</td>
<td>1358</td>
<td>371</td>
<td>27</td>
<td>297</td>
<td>297</td>
<td>80</td>
</tr>
<tr>
<td>1996</td>
<td>1671</td>
<td>406</td>
<td>24</td>
<td>165</td>
<td>165</td>
<td>41</td>
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<tr>
<td>1999</td>
<td>1351</td>
<td>354</td>
<td>26</td>
<td>139</td>
<td>139</td>
<td>39</td>
</tr>
<tr>
<td>2003</td>
<td>850</td>
<td>315</td>
<td>37</td>
<td>244</td>
<td>244</td>
<td>77</td>
</tr>
<tr>
<td>2005</td>
<td>1154</td>
<td>159</td>
<td>16</td>
<td>154</td>
<td>154</td>
<td>81</td>
</tr>
<tr>
<td>2007</td>
<td>758</td>
<td>56</td>
<td>7</td>
<td>41</td>
<td>41</td>
<td>73</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on Molinelli (1999, 510-511) and official data from database on legislative projects available at HCDN.
The executive does not always provide the information required by the [Public Accounts] committee. One of the problems that exist is that information always arrives too late and not always turns out well. Sometimes due to an almost operational problem: If you are auditing year 2003 and make a request for information but there is no public officials from 2003 who can remember, the current government officials will answer anything. It is a problem that we could fix if instead of these mechanisms to request for information we had access to information through a computer in real time.99

Yet a subset of written inquiries is problematic, and the executive delays or blocks the response. This oversight tool allows legislators to gain the executive’s attention. Influential legislators have more leverage to bargain with the executive; they often do not seek written responses, but use inquiries to expedite conversations and enter negotiations with the executive. For example, inquiries on local issues may voice concerns of particular interest for constituents; those that are potentially threatening – because they focus on sensitive issues or are made by influential legislators— are likely to go unanswered for longer periods of time. Evidence gathered for this research supports these claims (Table 6.13). In 1999, 60 unanswered inquiries (28%) were made by powerful legislators, 50 (23%) referred to specific local issues, and 60 (28%) referred to sensitive issues (including ten related to corruption). In 2007, four (27%) written inquiries out of 15 without executive reply were made by powerful legislators, eight (53%) dealt with sensitive issues (including three on potential corrupt practices) and three (20%) were focused on specific local matters. The potential threat of this instrument also explains the significant reduction in the number of written inquiries approved after 2003,100 when ruling party control over the legislature became tighter, information more centralized, and the opposition more fragmented. Channels of informal communication became less accessible, particularly for opposition legislators.

<table>
<thead>
<tr>
<th>Table 6.13. Written inquiries without executive reply, 1999-2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total No. WI w/o response</td>
</tr>
<tr>
<td>Sensitive issues</td>
</tr>
<tr>
<td>Corruption*</td>
</tr>
<tr>
<td>Local concerns</td>
</tr>
<tr>
<td>Powerful legislators</td>
</tr>
</tbody>
</table>

* Written inquiries on corruption are also included within sensitive issues. Percentage is over total of inquiries without response.

Source: Author’s elaboration based on data from HCDN.
Legislators from opposition parties often find it difficult to obtain sensitive information from the executive, which formally fulfills the obligation but delays the response or provides information in a way that hinders effective oversight:

The delay has to do sometimes with the actual workings of the Chamber, with who are making the request ... Normally, the ruling party does not makes written inquiries ... it is rare ... it should, but overall it does not. It also has to do with the quality of the information you're asking for: the more specific the information, the more they try that you do not get it. Or with the way you receive the requested information… the format, or giving you open answers that strictly comply with the obligation to answer but in practice they are not answering the questions you are asking ... and if the information is for the opposition, they prefer not to answer some things, because they know it is special information that can be used against them ... and they know it. Although everything the executive does should be public information. As legislators obtain limited (and sometimes meaningless) information from the executive through written inquiries, they often rely on informal practices for obtaining the information needed to perform their oversight functions. Legislators from the ruling party resort to their personal contacts with members of the executive. Opposition legislators resort to additional strategies to monitor, gather, and analyze information; for example, since 2003, they have made increasing use of Decree 1172/03 of access to information to request information from the executive:

We often request information based on the decree on access to information. With the decree, we access as soon as possible: in 10 days the executive should answer; if they don’t, we make a new request, and if they do not respond and the information is very important, we seek legal protection (amparo) and go to the judiciary. There is also the information that one can generate: reading the official bulletins, administrative decisions, etc. and putting together some kind of database.

The consequences of the complex incentives that legislators face in weakly institutionalized settings are evident in the large gap that exists between formal oversight mechanisms and its actual implementation. No ex ante devices exist for a more rigorous control of areas at risk of discretionary and dishonest behavior, and the existing ex post controls are susceptible to short-term interests (e.g., political influence) and often circumvented or manipulated to avoid effective control. The following section assesses the effectiveness of Congress in investigating specific corrupt practices through the committee system.

4.3 Investigating specific cases of corruption through Special Committees of Inquiry

There is no constitutional provision for creating special congressional committees of inquiry, which have instead been regulated through the internal rules of each chamber. These committees enable
the legislature to obtain the necessary information to fulfill the roles that the Constitution attributes to Congress (Bidart Campos 1992, 147; Ramella 1985, 4):

The powers of Congress include the power to form committees of inquiry whose aim is to obtain information essential for effective legislative reform, in those cases where the complexity of the issues to be addressed requires the necessary investigation of the actual workings of public and private institutions, enabling the efficiency and competency of the legislative proposal. Therefore, it should always be linked to topics that relate to the competencies established in Article 75 of the Constitution.104 (Preinforme Comisión Lavado de Dinero 2001; author’s translation)

Following this interpretation, the Senate’s internal rules establish that a special committee may be created to investigate specific issues with a two-thirds majority (article 108). Its membership will respect the representation of political forces (article 110). The duration of these committees will be specifically established in some cases; otherwise, they will remain constituted until the final approval of the committee’s report by the Senate (article 112). In the Chamber of Deputies, internal rules (article 104) indicate that special committees may be created for all those subjects that are not attributed to specific committees. Membership will reflect the representation of political forces in the chamber. Special committees will carry on their activities until they produce a final report (article 107). Inquiry committees, as a subtype of special committees, are created by the Legislative Works Committee (Comisión de Peticiones, Poderes y Reglamento) to investigate specific practices and provide Congress with information to fulfill its oversight role.105

Although they are not limited to investigating corrupt practices, Congress may appoint special committees to investigate cases of mismanagement and corruption. In addition to these special committees of inquiry, there are other special legislative committees that are aimed at monitoring and overseeing the executive on specific issues (for example, privatization, intelligence activities).106 Some of these committees are bicameral, while others are created within one chamber; some of them have had a long trajectory (Bicameral Committee of State Reform and Follow up to Privatizations, which started its activities in 1989, was still operating in 2001, although it would be deactivated later on),107 while others are short-lived.

The creation of special committees of inquiry to investigate the executive has found some difficulties in Argentina. In 1984, the scope of the implicit formal powers of Congress to investigate
irregular practices involving the executive were under discussion when the courts ruled that investigation committees could not employ breaking and entering to gather documentation related to their investigations.\textsuperscript{108} Also, numerous attempts by opposition legislators to create committees empowered to investigate cases of fraud, corruption, and governmental mismanagement have been blocked by the ruling party and or resisted by the judiciary.\textsuperscript{109}

In the democratic period, the first investigation committee was established in 1984; these first committees (created in the lower chamber) focused their investigations on events that had occurred before 1983.\textsuperscript{110} Between 1985 and 1989, no investigative committees were created in Congress. It was not until 1990, and particularly 1992 and 1996, that Congress began to investigate the executive, as well as irregular practices within the legislature. The lower chamber has been more active in the investigation of the executive than the Senate. However, the creation of committees has not been systematic, but has rather followed the reaction of public opinion regarding corruption scandals. Out of the 36 inquiry committees created between 1983 and 2007, 20 are focused on political corruption and malfeasance.\textsuperscript{111} On average, this is less than one committee of investigation created per year (0.83). The Senate has been less involved in the investigation of corruption. Since 1983, only two special investigative committees have been created in the Senate to investigate corrupt practices, not aimed at investigating the executive but rather irregularities committed by senators.\textsuperscript{112} Bicameral committees have been created when the investigations focused on issues in which both chambers are competent (article X). Only one bicameral committee with power to investigate corruption has been created (on the AMIA case). Among the major corruption scandals revealed during the 90s, only four cases (IBM, customs, postal services and money laundering) were subject to congressional investigation. No special committee of inquiry regarding corrupt practices was created between 2002 and 2007, because corruption scandals of the Kirchner presidency only erupted after the president had left office, and strong majority control of Congress by the ruling party dissuaded opposition legislators, who rather resorted to the judiciary.\textsuperscript{113} (See Table 6.14.)
Table 6.14. Investigative commissions (Senate, Deputies, Bicameral), 1984-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Actual inquiry committees created *</th>
<th>Proposals to create inquiry committees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>1985</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>1</td>
<td>1</td>
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<tr>
<td>1987</td>
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<tr>
<td>1988</td>
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<td>1989</td>
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<tr>
<td>1990</td>
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</tr>
<tr>
<td>2003</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>2004</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>2005</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>2006</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>121 (0.3 ratio)</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on Molinelli (1999, 511-2, 359) and data available from HCDN. */The table includes all commissions that have the word “inquiry/investigative” in their name. Other special commission may have involved some type of investigation of the actions performed by other branches of government.

Although few committees of inquiry were created, legislators of opposition parties asked for many more committees: in total, 76 initiatives to create investigative committees were considered in Congress (ten in the Senate and 66 in the Chamber), 28 to create committees investigating corrupt practices. The ratio between the number of committees of inquiry threats and the actual committees created is very low. As with other oversight instruments, carrying out the investigations is a costly and uncertain process compared to the visible opposition act of just threatening to create a committee for investigating executive unlawful actions. These threats need to be credible to actually have an effect on the executive in the sense of setting some limits to executive actions, but also to open some communication and informal bargaining channels between legislators and the executive. This explains why most proposals to create committees of inquiry into corrupt practices were submitted by
influential legislators from the opposition, including current President Cristina Fernandez de Kirchner, former President De la Rúa, former UCR President Gerardo Morales, ARI President Elisa Carrió, and former Ministry of Health Graciela Ocaña, among others. This confirms that powerful legislators use oversight instruments to gain leverage in the course of negotiations with the executive (Palanza 2005, 11).

A closer look at the inquiry committees created in Congress reveals that they have not produced very specific results and their performance has been limited.\textsuperscript{114} For example, 70\% of Argentine senators did not attribute to investigative committees an important role in making governmental activities more transparent (Llanos 2003 in Jones and Saiegh 2007, 85). There is also limited public confidence in the role that these committees may play:

For either lack of authority or sufficient political will, hardly the Argentine legislative committees of inquiry can come to unravel a scandal which results in the downfall of a president, as it happened with Collor de Mello in Brazil. Argentina’s history shows that most of the parliamentary investigative committees concluded their work unnoticed, and only a few had an impact (La Nación April 20, 1997; author’s translation).

In practice, special committees of inquiry (like other special committees with monitoring purposes) experience many of the same problems that affect the performance of legislative committees in general (Vucovik 2007, 20). It usually takes a long time after the committee is created for it to begin its activities.\textsuperscript{115} Committees’ mandates are usually too broad. They usually face time constraints to perform their inquiries and lack the technical capabilities and resources to gather and analyze complex information related to corruption cases. Staff problems (both in terms of number and specialization) also limit their performance. Moreover, control by the ruling party and politicization of their activities makes it more difficult to reach agreements on final majority reports, which delays committees’ activities and hinders the impact of their findings. Finally, given the inability of committees to impose sanctions, follow up actions by actors with sanctioning power is required to enforce oversight. However, as these actions do not usually follow on the findings of inquiry committees, the impact of this oversight instrument is limited.
One of the scarce examples of inquiry committees that led to results is the Committee on Irregular Practices in the Customs Agency; the committee led to the detention of 41 people involved and the judicial prosecution of 170, as well as an impeachment jury and disciplinary actions against one federal judge. However, other examples illustrate the constraints and weaknesses just described. Two of the best-known inquiry committees created were the committee that investigated corrupt practices in the contracts signed between IBM and the Argentine state, and the committee that investigated money-laundering practices during the Menem administration. The Investigative Committee on Money-Laundering was created in March 2001 and ended its activities in November of the same year. The committee was created per initiative of several Peronist legislators (at that time in the opposition to the Alianza’s government) with the goal of conducting

An investigation and assessment of the mass of ill-gotten money or of dubious origin, which entered the legal financial system through the banking system, especially through the following banks: Citibank, Federal Bank, Open Market, Republic Bank, Banco Macro, and those other that may emerge from the investigation (Di Mauro 2007; author’s translation).

Influential legislators were appointed to the committee, including Elisa Carrió (ARI), Cristina Fernández de Kirchner (PJ), Margarita Stolbitzer (UCR), Graciela Ocaña (ARI), and Daniel Scioli (PJ). After eight months of uninterrupted activities, there was no agreement on the final report and four different minority reports were approved in a committee of ten members. The lack of a unanimous agreement limited the capacity of the committee for making a credible threat, and its effectiveness for enhancing the transparency of the financial system and executive activities. More importantly, the committee investigated mainly the activities of the previous Menemist government, which made it more difficult to attribute responsibility. According to some members, the broad mandate of the committee and the inadequate delimitation of the scope of the investigation biased the inquiry according to the particular motivations of some members and against specific interests. The resulting politicization together with technical limitations (e.g., lack of financial and banking specialists, limited technical capabilities to analyze information) explains the committee’s failure. After the early release of a preliminary report, members of the committee also suffered political and judicial pressures from those accused of being involved in money-laundering activities. No
consequences followed from the committee’s investigation. The committee’s recommendations included adopting legislative, judicial, and executive measures to fight and prevent money laundering, but almost simultaneously the government gave green light to money laundering by authorizing any legal entity or physical person to buy public debt without having to declare the origin of the capital used (Dinatale 2002, 127).

Another good example is the special committee of inquiry on the contracts signed between IBM and the Argentine state. The committee was formed in September 1996 and its activities were extended twice before 1999; the committee’s president was Carlos Dellepiane (PJ) and the vice-president was Jesus Rodriguez (UCR). IBM tried to evade the investigation by arguing that Congress did not have the power to investigate private firms. However, the committee continued its activities because it was focused on the contractual relation between the state and IBM, which required investigating the activities of the private firm. The committee found that the 53% overprice paid by Banco Nación to IBM for the purchase of a computer system was used to hide the payment of returns to high-level public officials. The committee also shed light on the corrupt schemes and the actors involved in these fraudulent contracts. However, the final report had limited impact since it was not approved unanimously (2 partial and 1 total dissidences). Although the case was finally prosecuted, this was the result of evidence provided by one key witness rather than legislative investigation.

These examples show the limited performance of one of the congressional instruments that may be used by Argentine legislators to investigate particular cases of corruption. The next section explores other oversight instruments available to Congress.

4.4 Other oversight instruments

Other oversight tools are formally available to monitor executive activities and challenge the incumbent president. In general, these instruments have been scarcely used in practice, which confirms the limited performance of legislative oversight. This section reviews some of these instruments, before analyzing in the next section the factors that explain the limited performance of legislative oversight in relation with the explanatory variables outlined in this dissertation.
4.4.1 Interpellation of Cabinet Members / Interpellation (and removal) of Chief of Cabinet &
Summons to appear in Committee meetings

Congress has the prerogative to summon public officials to appear in committee meetings and
hearings, as well as the power to submit interpellations on specific issues of interest to both the Chief
of Cabinet and cabinet members (Constitution, articles 71 and 108). The internal rules of both
chambers regulate the enforcement of these oversight instruments.125

The interpellation of cabinet members and voluntary summons of public officials has seldom
been used by Congress. Between 1983 and 1995, there were only 31 instances in which cabinet
members provided information in Congress (either through interpellations or voluntary summons).
This trend continued after 1995, when Menem’s government even rejected interpellations to cabinet
members in some controversial cases.126 Between 1999 and 2007, there were only five interpellations
to cabinet members (minister of foreign affairs in 2002 and 2005, minister of health in 1999 and
2000, minister of economy in 1999). The more centralized control of information that characterized
Kirchner’s presidency was also evident in the frequency of this oversight instrument, which became
extremely rare;127

The ministers do not appear before Congress. For example, when the problem concerning the increases
in the gas and water fees, the public works minister [Julio De Vido] appeared for the first time in six
years, but legislators did not know he was going to attend; he came when the Secretary of Energy had
his hearing, and the Minister arrived and denied everything the secretary had just said.128

Requests to remove the Chief of Cabinet, which requires an absolute majority in both chambers, are
even more rare. Between 1990 and 2010, there were 15 removal requests yet none was successful.
Only in 1997, there were seven projects of interpellation/removal of the Chief of Cabinet, two of
which were related to a corruption scandal (the Yabrán case). Afterwards, there were eight removal
are low, this difference between “threats” and “actual” removals indicates that legislators rely on
these instruments as a visible way to remind the executive of some preexistent agreement or to open
opportunities for informal dialogue with the executive.
4.4.2 Monthly report to Congress by the Chief of Cabinet

According to Argentina’s Constitution (article 101), the Chief of Cabinet must submit a monthly report on government affairs to Congress (alternating between the Senate and the Chamber). This formal constitutional provision is further regulated by the internal rules of the Senate (article 214) and the Chamber of Deputies (article 198), which provide details on the methodology of the sessions. In practice, however, the Chief of Cabinet has often violated this obligation. From 1995 until 2007, the Chief of Cabinet only appeared in a significant number of occasions before Congress (nine reports) in years 1996 and 1997 (the ordinary legislative period goes from March to December). After 1997, most years show a few reports to the legislature. On average, 3.7 reports per year were submitted for the 1995-2007 period. Moreover, reports usually fail to fulfill their purpose. Sessions often violate procedural rules, and legislators are not allowed to obtain the required information from the Chief of Cabinet. For example, the advance notice required (so that legislators can prepare the session) is often violated; also, time allocated for the Chief of Cabinet’s responses is insufficient, and sometimes legislators are not even allowed to ask direct questions:

He does not attend, and when he does, legislators - who have previously raised their questions – receive the answers in writing on the same day of the hearing. The answers are not sufficient. In many cases, it is mentioned that the response will be completed within five days, but they never do.

4.4.3 Impeachment

The Constitution gives the Senate (presided by the Chief Justice of the Supreme Court) the power to impeach the president, by a two-thirds majority, in cases of misconduct, crimes committed in the fulfillment of their duties, and common criminal offenses (Cf. articles 53, 59, and 60). Despite the corruption scandals in which Argentine presidents have been involved, and their indictment for corruption-related crimes, Congress has never initiated a formal process of presidential impeachment. Carrying out impeachment proceedings is extremely costly and uncertain given the strong support that presidents usually have in Congress and the lack of coordination among opposition forces when presidential power declines. Reflecting the reactive nature of Argentina’s Congress, one of the few times in which the possibility of impeachment has been actually considered
by members of Congress was after mid-term legislative elections in 2009, when opposition defeated the ruling party yet President Fernandez abused her decree power and threatened to veto congressional decisions systematically.131

The Chief of Cabinet is also politically accountable to the legislature.132 However, the censure process is difficult, and this office does not require up-front legislative approval. These weaknesses undermine the effectiveness of legislative oversight. Also, in practice, impeachment has not yet presented any real challenge to incumbent presidents (in the sense of having actual possibilities of imposing sanctions). Other instruments aimed at holding cabinet members and public officials accountable lack teeth to impose any sanctions or to provide legislators useful information.

5. Further understanding the determinants of limited legislative oversight

Effective executive oversight by the legislature depends on Congress having the formal authority, incentives, and institutional capacity to effectively control the executive, and on the executive’s willingness to comply with legislative enactments. The previous assessment of legislative oversight showed that different mechanisms are formally available to Argentina’s Congress for overseeing the executive, yet in practice they are hardly enforced until their last consequences. This contributes to corruption by reducing the potential costs for the executive of engaging in corrupt exchanges:

Congressional oversight and control mechanisms are very weak in Argentina […], generating mostly formal compliance with regulations but not acting to enforce efficiency and honesty in public administration (Jones and Saiegh 2007, 61)

There are limited incentives for legislators to invest in developing and strengthening legislature’s oversight capacities (Palanza 2005, 2009). These limitations can be explained by looking at the actual workings of political institutions (and their constraining effect), legislators’ institutional commitment levels, and the informal rules that interact with weak formal political institutions in guiding actors’ behavior.133 This section sheds light on these factors.

5.1 Low incentives of Congress for overseeing the Executive

Oversight by the legislature is affected by the way Congress interacts with the executive within the federal system (Mustapic 1997, 70). In Argentina, actual inter-branch relations are characterized by
the de facto concentration of powers in the executive (proactive president) and for the reactive nature of Congress (Cox and Morgenstern 2002). This relation is determined by the formal features of the presidential system, which involves a clear separation between the different branches of government, but most importantly by how the system works in practice, which is shaped by party dynamics, provincial interests, and electoral rules. Additionally, frequent macro-economic instability and financial crisis introduces high uncertainty in the policy process and tends to reduce the oversight role of Congress (Rodriguez and Bonvecchi 2004, 16), while giving the president additional power resources (e.g., delegation of powers) to circumvent any conflicts that may delay a rapid response to the crisis (Mustapic 2002, 40).

Argentina’s presidents have strong constitutional prerogatives concerning legislative powers (line-item and total veto, decree issuing, policy areas of exclusive attribution, and limited ability of the legislature to introduce changes in the budget) and non-legislative powers (appointment of cabinet’s members, congressional powers to question ministries or issuing votes of censure against them, and interventions in provinces, among others). The executive’s legislative powers determine the strategies the president employs to influence the legislative process as well as legislators’ strategies for influencing legislation and the margin of executive discretion (Kiewiet and McCubbins 1988; Cameron 2000). Congress reacts to the proposals submitted by the executive by changing, modifying or vetoing them (Morgenstern 2002, 414).

Congress plays a substantial, though reactive, role in policy making. On the one hand, legislators “have influence through anticipated reactions” (Cox and Morgenstern 2002, 467). The executive needs to anticipate the reaction of the legislature, and thus the executive’s strategies depend on the prospects of support in the assembly (Cox and Morgenstern op. cit., 452). On the other, legislators anticipate the executive’s control of the legislative process and decide how to invest their resources to influence the policy process and set some limits on the executive (Bonvecchi and Zelaznik 2010). They could either exercise no oversight, or doing so in way that is acceptable to the
executive. In the former case, no oversight would be performed; in the latter, oversight will not challenge executive’s preferences or affect its utility.

Therefore, having strong prerogatives to undertake unilateral actions that advance over legislative rights does not mean that executives always put them to work. The actual power balance between the executive and legislative branches changes over time. The variance in congressional powers and influence results from the composition of the legislature (e.g., number of parties), the level of discipline of the governing party, and the opposition parties’ propensity to cooperate (Mustapic 1997, 70, 72; Llanos 1999, 257).\textsuperscript{134} The options for the legislature to exercise some control over proactive presidents range from affirming its role in the policy process or bargaining with a coalitional executive to giving concessions to the executive in exchange for benefits for the legislators’ constituencies (Uña 2005, 46).\textsuperscript{135} This is a coalitional legislature, which either bargains or demands payments, in exchange for acceptable oversight results. Bargaining involves that the president uses his integrative powers to work through the statutory process, rather than circumventing the legislature (Cox and Morgenstern 2002, 448-455). Presidents can exercise control over the legislative agenda and processes by reaching into the legislature and appointing members into the cabinet, proposing bills, and pushing their consideration forward (Cox & Morgenstern op. cit., 460).\textsuperscript{136} The number of parties in Congress and pluralism within the ruling party determine the costs of bargaining (Mustapic 1997, 72), which have increased over time (given rising party fragmentation).

Still, in specific policy areas in which legislators’ institutional commitment levels are higher because those areas command greater access to resources, the legislature has more direct influence over decision-making (Morgenstern and Manzetti 2003, 134; Eaton 2002, 314) and greater ability to restrain the executive.\textsuperscript{137} Evidence from Argentina shows this influence in areas such as labor reform (Etchemendy and Palermo 1998), privatization (Corrales 2000; Llanos 1999, 2001, 2002), tax policy (Eaton 2002), or taxes on agricultural exports (Palanza 2009). The analysis of these decision-making processes shows that legislators sometimes push provincial interests forward, which gives Congress specific impact on policy-making and on setting margins of executive discretion. This influence is
sometimes channeled through the committee system (e.g., changes to fiscal bills by the Budget Committee), and sometimes through floor discussions. For example, although committee members did not enjoy a great degree of autonomy from party leaders, sometimes they were able to “use their membership either to improve the provincial share in tax revenues or to lessen the impact of harmful measures on their provinces” during Menem’s administration; these modifications were not vetoed by the president, as they did not represent a serious challenge to presidential authority over fiscal issues (Eaton 2002, 299). Examples of these changes included the Economic Emergency Law, the solidarity tax, and the distribution of revenues from excise taxes. On the floor, similar examples of amendments to defend provincial interests have occurred (e.g., exempting cargo transport from the VAT in 1990, increasing the tax on minimum assets in 1991, and raising the VAT rate without sharing the proceeds with the provinces in 1995). The analysis of privatization presents another interesting example. During Menem’s second mandate, Congress used its preventive and reactive powers (besides its powers to control policy implementation), collaborating with the executive (approving, modifying and delaying bill proposals) but also opposing some executive bills. Since 1996, approximately 40 Peronist legislators routinely joined the opposition in blocking legislation pushed by the executive (Levitsky 2005, 80). This led to a more balanced power distribution between the two branches, allowing Congress to restrain the executive and to have greater significance over policy outcomes (Llanos 1999, 255-256).

The ongoing game between the legislature and different executives has oscillated from a more significant role of Congress to a balance that leans in favor of the executive. In general, it has been favorable to the executive, while Congress has had limited capacity to set the margins of executive discretion. In 1994, the process of constitutional reform was intended to formally restrain the executive and strengthen the role of Congress. In practice, it did not change inter-branch relations, and rather reinforced a strong executive. This was a consequence of actors’ behavior under the new rules of the game: in a context of weak institutions, legislators’ expectations that the new rules would not be enforced drove them to be less willing to defend their decision rights (defined by formal rules)
against advances by the executive. Instead, they circumvented, manipulated and/or changed the rules in order to maximize their short-term benefits (De Riz 1995, 75).

In addition to inter-branch relations, the electoral system and party dynamics are critical to understand legislators’ incentives and behavior. The closed-list electoral system and the decentralized and weakly institutionalized organization of traditional political parties, with the increased importance of provincial party bosses and provincial-based political careers, lead to high turnover and strong party discipline in the legislature (Jones and Saiegh 2007; Jones 2002; Jones et al. 2001). These features in turn reduce individual legislators’ long-term incentives for providing and investing in effective oversight.

It greatly affects a system in which a significant percentage of legislators are ultimately the effective representatives of local powers. At times like now, where there is a concentration of partisan political decisions, where the president has strong acceptance and support of most provincial governors, this is not very noticeable; but sometimes it is. I have been legislator when we were in the opposition, and it was clear when a governor had agreed with the President: he was more functional to the national government’s policies, while others who had not agreed were less functional. Electoral rules and party dynamics make legislators less able to pursue an independent legislative career. They cultivate relations with both national and provincial party leaders (Eaton 2002, 288). Provincial political careers are very attractive, as provincial executives have many financial, political and institutional resources. Moreover, the decentralized nature of political parties make provincial party bosses important political figures. They mediate the relationship between legislators and their constituencies, severing the channels of vertical (electoral) accountability. Provincial party bosses have great control over legislators’ access to the ballot, and legislators pursue political careers that are closely linked to the party. Therefore, individual legislators are not fully responsible for their performance in Congress and only affect their political careers by playing the (provincial) party line (De Riz 1986, 59; Palanza 2005, 10). This increases the costs of breaking party discipline and voting against the party (for example, it is common that legislators miss a session rather than attending to cast their vote against the party). Party discipline is reinforced by strong party identities and, especially, by the ability of congressional party leaders to control access to resources and...
opportunities (e.g., committees) available to individual legislators for engaging in activities at both the national and provincial level that further their career goals (De Riz 1986, 59): 143

The relative importance in provincial politics and the favor of local party bosses are resources within the legislative chambers, which result in greater chance of getting positions in parliamentary committees. Therefore, those legislators with more power within their own party obtain positions in the most important committees (Uña 2005, 48; author’s translation).

Not only is the actual power of the president vis-à-vis Congress affected by the level of party discipline in the legislature, but also the incentives and ability of legislators to perform their oversight functions. As a result of high party discipline, particularly in periods when the president enjoys support from an ample majority in Congress (Menem until 1997 and Kirchner since 2005), Congress makes an exceptional use of its control functions (Mustapic 1997, 72). 144 In these circumstances, negative control of the legislative agenda and the presidency of committees (Calvo and Sagarzu 2011) are crucial resources to neutralize oversight: 145

Since the one who calls the meeting is the president of the committee, and [he or she] is from the ruling party and has no desire to discuss certain issues, then committee meetings are not summoned. What you need to ensure is that the minorities have greater decision-making capacity to speed up a bit the functioning of committees. In fact, there are committees that began to work with minority legislators only – they could not work with the majority because the majority party legislators did not attend the meetings. 146

The ability of Congress to set the margins of executive discretion is limited, with some exceptions in specific policy areas. Moreover, legislators’ incentives to use direct oversight mechanisms and perform their oversight functions effectively are also limited. These phenomena cannot be understood without taking electoral rules, provincial interests and party dynamics into consideration. In turn, these factors also affect Congress’ internal organization and capacity for oversight.

5.2 The limits of congressional capacity for oversight in Argentina

The effective use of oversight instruments and formal powers available to the legislature requires a certain level of legislative skill and professionalization, as well as the proper internal organization of Congress. 147 In Argentina, as a result of the limited value of long legislative careers (given the low reelection rate) (Uña 2005; Palanza 2005) and the importance of informal bargaining arenas with the executive, Congress presents limited professionalization, legislative specialization and policy expertise, as well as an inadequate bureaucratic apparatus. In addition, legislators with low levels of
institutional commitment do not have incentives to invest in strengthening legislative oversight capacities over time (Palanza 2005).

Several indicators illustrate the limited capabilities for congressional oversight. Congress does not have a specialized budget office and staff support (technical personnel and policy advisors) is insufficient (Wynia 1995; Santiso 2005, 26). Legislative staff often lacks job stability and has limited technical capacity. For example, in 1998, the Chamber of Deputies had almost the same number of permanent and temporary staff (2,840 and 2,074), while in the Senate temporary staff represented a large percentage of the total staff (32% temporary). (Table 6.15.) In absence of formal internal regulation, personnel are usually hired based on clientelistic or political criteria (Levitsky 2003, 255). Another indicator of limited professionalism is that the number of legislative sessions is scarce, which increases legislators’ opportunities to devote time to non-legislative activities (thus reducing the need for good economic compensation) and reduces legislators’ familiarity with the legislative processes (especially in combination with high turnover rates). (Table 6.16.) Moreover, material and financial resources are scarce. These limited resources hinder the effective work of legislative committees. (See Table 6.17.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>6556</td>
</tr>
<tr>
<td>1993</td>
<td>8764</td>
</tr>
<tr>
<td>1994</td>
<td>8231</td>
</tr>
<tr>
<td>1995</td>
<td>8211</td>
</tr>
<tr>
<td>1996</td>
<td>8416</td>
</tr>
<tr>
<td>1997</td>
<td>7627</td>
</tr>
<tr>
<td>1998</td>
<td>7627</td>
</tr>
<tr>
<td>1999</td>
<td>7627</td>
</tr>
<tr>
<td>2000</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>9,708</td>
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<tr>
<td>2002</td>
<td>9,570</td>
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<tr>
<td>2003</td>
<td>9,452</td>
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<tr>
<td>2004</td>
<td>9,434</td>
</tr>
<tr>
<td>2005</td>
<td>9,655</td>
</tr>
<tr>
<td>2006</td>
<td>9,739</td>
</tr>
<tr>
<td>2007</td>
<td>9,850</td>
</tr>
</tbody>
</table>

Source: Author based on Molinelli (1999, 325) and information from HCDN’s Administration. */ Only counts staff from the chambers. Congress also has staff in its Library, Press Services, and the Ombudsman.
Congress’ internal organization is also inadequate for effective oversight. The number of committees is excessive (see Chapter 4). Committees have a large membership but limited budget and technical resources; therefore, the large number of committees does not contribute to enhanced expertise and oversight capabilities. Legislators see committees as instrumental for obtaining resources needed for furthering their own political careers, rather than contributing to effective legislative performance. Access to committee positions allows individual legislators to access human and economic resources (including additional staff allocation and budget resources, media exposure, and possibilities for favor trading), and to remain in good standing with provincial party leaders (Jones and Saiegh 2007, 56).150

Those who preside over a commission or over the block have an advantage and obtain greater benefits. $250 pesos per senator who was part of the bloc were paid, and the bloc leader handled that money without any accountability. That was the amount of “reserved or secret” funds.151

Although the chambers’ presidents formally make all the appointments, legislative party leaders are the main arbitrators in the allocation of committee posts, reinforcing their leverage over individual legislators (De Riz et al. 1986, 59; Mustapic 2002, 36; Jones 2002, 181).152 This reduces legislators’ incentives (from both the ruling party and the opposition) for breaking party discipline and actively overseeing the executive:

Low reelection rates work against professionalization of the legislature, which, in turn, dampen legislative opposition to the executive. [...] At the same time, since the legislators’ progressive ambition implies a need to cultivate the president’s favor, the legislators have little incentive to assert themselves. (Morgenstern 2002, 419)

The [fragmentation of Congress] makes the opposition unable to stop any government initiative; they have fewer incentive to oppose, since small blocs require the support and assistance of the dominant bloc to have any visibility or power space in the Chamber.153

Given the informal process through which committee positions are allocated, and the agenda-setting power of the Legislative Works Committee (formed by Congress’ authorities and legislative party leaders), party blocs become major actors in the internal operations of Congress:

[The] parliamentary blocs receive money from the Chamber’s budget. Theoretically, the funds are for the operation of the block (staff, offices, books, expenses, etc.). In practice, all bloc staff is congressional staff and therefore they do not have to pay staff, and infrastructure (e.g., computers) is charged to congressional budget. The money comes to the bloc authorities, which distribute the funds like they want without being held accountable. The money is used for internal party elections, travel, personal problems, etc. They issue a receipt for the money and the funds are deposited into the personal account of the legislator, who will do what he or she has to do. There is no internal accountability in Congress. If a bloc wants to hire a group of luxury consultants for having the best legislative projects, they could ... but it is not that what they do.154
Within party blocs, there are different provincial interests and loyalties represented, which makes it difficult to forge inter-temporal agreements within blocs and across blocs and coordinate actions across party lines. Decisions within committees are made based upon the discussions and agreements reached within the blocs, rather than agreements reached by committee members, which are not technical but political (Uña 2005, 55). The political nature of decisions regarding important monitoring functions severely limits the effectiveness of congressional oversight. In addition, committees are often marginalized in the legislative process, as they can be bypassed by two-thirds of legislators in any given session to build plenary discussions (sobre tablas) on any president’s proposed bill (Eaton 2002, 300).

Table 6.16. Number of meetings, Chamber of Deputies

<table>
<thead>
<tr>
<th>Period / Year</th>
<th>No sessions: March</th>
<th>No sessions: Dec. 1- Feb. 28-29 ss.</th>
<th>No meetings</th>
</tr>
</thead>
<tbody>
<tr>
<td>118 – 2000</td>
<td>18</td>
<td>3</td>
<td>44</td>
</tr>
<tr>
<td>119 – 2001</td>
<td>11</td>
<td>5</td>
<td>50</td>
</tr>
<tr>
<td>120 – 2002</td>
<td>17</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>121 – 2003</td>
<td>10</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>122 - 2004</td>
<td>26</td>
<td>4</td>
<td>37</td>
</tr>
<tr>
<td>123 - 2005</td>
<td>9</td>
<td>4</td>
<td>45</td>
</tr>
<tr>
<td>124 - 2006</td>
<td>31</td>
<td>5</td>
<td>58</td>
</tr>
<tr>
<td>125 – 2007</td>
<td>17</td>
<td>4</td>
<td>35</td>
</tr>
<tr>
<td>126 – 2008</td>
<td>16</td>
<td>5</td>
<td>39</td>
</tr>
</tbody>
</table>


Committees directly involved in performing oversight functions, such as the Budget Committee and the Public Accounts Committee, also have serious limitations. Compared to other legislative committees, they show greater continuity in terms of membership, as well as more technical skills and experience. Members are usually influential and experienced legislators (Mustapic 2002, 37):

We were lucky for many years, because more or less the same legislators were in the budget committee. We rotated in the presidency of the committee, and we all had very similar decision parameters despite our political differences. Today it is not like that ... there is less expertise and specialization on the issues. Another thing that has happened is that, when I chaired the budget committee, we were 21 members but today there are 47, which makes it much more difficult to work.
[Reelection] was easier for me because for a long time I was the chairman of the budget committee, and therefore I had a good relationship with the central government and was also useful to my province. For the governor, I was a key to access the Ministry of Economy and for the President, I was someone to defend the bills in Congress. These things [the long stay and developing a political career in the legislature] are not really a matter of personal choice. I guess that doing things right has helped me to stay so long, but it was not a choice ... I had never planned to be in Congress for so long.  

However, the institutional capacity of oversight committees is also limited. Legislative staff is short. For example, the Budget Committee only has between two and five technical staff to assist legislators, and the total number of professional staff serving political parties and dealing with budget issues is less than ten (OECD/World Bank 2003). Staff and policy advisers are not permanent, but temporary. There is limited specialization of policy advisors, and the budget research capabilities of these committees are quite limited (for example, there are no technological resources to monitor budget execution or access to the integrated system of financial management). This puts Congress in a clear disadvantage compared to their technical counterparts in the executive (e.g., the Ministry of Economy) (Uña 2005, 52-53).  

All monitoring committees carry out a very lax control. For example, the committee monitoring the public pension funds ANSES. First, the ruling party controls the joint committee, and therefore it will never control the government. Moreover, it is ex post control. And we do not have technical experts, economic resources, staff, etc. It is made for not being able to control. It is a totally precarious mechanism when you would need a rather sophisticated control. These monitoring committees are created to sound very nice, but they are not given the necessary infrastructure to effectively enforce accountability.  

Furthermore, there are no significant investments in strengthening the institutional capacity of oversight committees, as a result of legislators’ limited incentives:  

There is a precariousness in [congressional] facilities that also bears no relation to the Senate budget, which is like 300 million pesos. So it is not due to the lack of money.  

Limited incentives, resources and capabilities contribute to having a low number of committee rulings. (See Table 6.18.) Congress is formally responsible for overseeing the executive, but it does not make use of its formal powers and oversight mechanisms:
I think there are very suitable people. The problem is the extent to which they let you investigate or analyze. I think there should be greater transparency at all levels of control. [...] Sometimes, in some commissions in which the ruling party has a majority, they say, "we do not approve written inquiries"... then, how do you get information if even within the same Chamber they do not allow you to get informed? In these matters is where I believe are the limitations of control; not because there is no suitability, technical capacity, or training, but there are obstacles that prevent you from investigating deeply. For example, we are investigating some mining projects and to access the information we want to access, it is a constant denial and ever-changing details: this is not so, you have to ask this ... It is part of the game to prevent the investigation, but the training and the capacity exist.\(^1\)

However, even if the legislature “remains collectively impotent vis-à-vis the executive,” individual legislators benefit from oversight mechanisms (Palanza 2005, 2). Individual legislators may pick specific issues and bring them to the executive’s attention, posing a credible threat. This often results in informal bargaining with the executive and the concession of benefits for the legislators involved. Therefore, oversight may take forms other than imposing sanctions or changing policies. Oversight mechanisms provide formal venues for legislators to make public claims to the executive, even if they are not followed through to their ultimate consequences and do not result in specific sanctions.

Table 6.17. Congress’ Budget (outstanding credit/authorized expenses), 1993-2007

<table>
<thead>
<tr>
<th>(Thousands $ AR pesos)</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate</td>
<td>123,514,936</td>
<td>167,478,000</td>
<td>162,764,000</td>
<td>130,574,000</td>
<td>128,862,000</td>
</tr>
<tr>
<td>HCDN</td>
<td>163,641,055</td>
<td>221,733,000</td>
<td>222,354,000</td>
<td>218,233,000</td>
<td>205,863,999</td>
</tr>
<tr>
<td>Library</td>
<td>28,144,991</td>
<td>33,023,000</td>
<td>32,753,000</td>
<td>29,418,000</td>
<td>27,651,523</td>
</tr>
<tr>
<td>Press</td>
<td>19,021,364</td>
<td>23,227,000</td>
<td>26,352,000</td>
<td>14,776,000</td>
<td>14,003,000</td>
</tr>
<tr>
<td>Health insurance</td>
<td>16,725,976</td>
<td>20,139,000</td>
<td>18,705,000</td>
<td>16,561,000</td>
<td>13,306,000</td>
</tr>
<tr>
<td>(obra social)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ombudsman</td>
<td>10,548,478</td>
<td>10,080,000</td>
<td>9,879,000</td>
<td>9,929,000</td>
<td>9,946,000</td>
</tr>
<tr>
<td>PAC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>361,596,800</td>
<td>475,680,000</td>
<td>472,808,000</td>
<td>419,490,000</td>
<td>401,190,522</td>
</tr>
</tbody>
</table>

Table 6.17. (cont.)

<table>
<thead>
<tr>
<th>(Thousands $ AR pesos)</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate</td>
<td>129,010,489</td>
<td>125,975,723</td>
<td>138,773,195</td>
<td>175,392,900</td>
<td>210,205,500</td>
</tr>
<tr>
<td>HCDN</td>
<td>195,179,283</td>
<td>207,416,749</td>
<td>226,448,500</td>
<td>270,529,000</td>
<td>320,633,000</td>
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<tr>
<td>Library</td>
<td>28,073,410</td>
<td>31,252,488</td>
<td>33,517,702</td>
<td>44,074,300</td>
<td>56,493,600</td>
</tr>
<tr>
<td>Press</td>
<td>14,412,811</td>
<td>14,352,000</td>
<td>14,727,684</td>
<td>18,364,300</td>
<td>22,542,800</td>
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<tr>
<td>Health insurance</td>
<td>16,346,611</td>
<td>16,945,112</td>
<td>17,679,939</td>
<td>22,814,100</td>
<td>27,496,400</td>
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<tr>
<td>(obra social)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ombudsman</td>
<td>9,911,018</td>
<td>9,714,474</td>
<td>12,260,000</td>
<td>18,237,000</td>
<td>21,123,000</td>
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<tr>
<td>PAC</td>
<td>1,556,442</td>
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<td>1,556,442</td>
<td>1,556,442</td>
<td>1,556,442</td>
</tr>
<tr>
<td>Committee</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>360,000</td>
<td>-</td>
</tr>
<tr>
<td>Control of intelligence bodies</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>394,484,064</td>
<td>407,212,988</td>
<td>455,320,040</td>
<td>540,241,700</td>
<td>645,845,900</td>
</tr>
</tbody>
</table>

6. Conclusion

This chapter’s findings show that legislators in Argentina rarely use the legislative oversight instruments at their disposal until their last consequences – i.e., they rarely follow through to the implementation of a formal sanction. Although data gathered indicate that there are problems of professionalism and congressional capacity (including limited staff support, inadequate structure of the committee system, weak investigative capacities, etc.), the interviews conducted confirm that the main reason for this is the limited incentives that legislators have to oversee and eventually sanction the executive. The short-term horizons of Argentine legislators affect their capacity to effectively oversee the executive. Politicians with short-term legislative careers seek to get the resources they need to further their political careers. In so doing, the electoral system, party dynamics and the importance of provincial interests drive legislators away from accountability concerns and the valuation of their legislative performance.

Table 6.18. Number and percentage of committee decisions per bloc, 2003 -2004

<table>
<thead>
<tr>
<th>Committee</th>
<th>Committee’s presidency</th>
<th>Decisions</th>
<th>Projects PJ</th>
<th>Projects other parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber Constitutional Affairs</td>
<td>PJ</td>
<td>22</td>
<td>5 (22.7)</td>
<td>17 (77.3)</td>
</tr>
<tr>
<td>General Legislation</td>
<td>PJ</td>
<td>39</td>
<td>21 (53.8)</td>
<td>18 (46.2)</td>
</tr>
<tr>
<td>Justice</td>
<td>PJ</td>
<td>53</td>
<td>27 (50.9)</td>
<td>26 (49.1)</td>
</tr>
<tr>
<td>Peticiones, poderes y reglamentos</td>
<td>PJ</td>
<td>2</td>
<td>2 (100)</td>
<td>0</td>
</tr>
<tr>
<td>Budget</td>
<td>PJ</td>
<td>81</td>
<td>52 (64.1)</td>
<td>29 (35.9)</td>
</tr>
</tbody>
</table>

| Senate Constitutional Affairs | PJ | 18 | 9 (50%) | 9 (50%) |
| General legislation Budget  | PJ | 96 | 55 (57.2)| 41 (42.8) |
| Justice and criminal affairs | PJ | 65 | 36 (55.3) | 29 (44.7) |

Source: Poder Ciudadano (2006, 165-7)

Given the low levels of institutional commitment in the country, legislators do not systematically use the formal resources they have at hand to influence policy direction (thus setting limits to executive discretion is not the main strategy of executive oversight). Only in certain policy areas that command
higher levels of institutional commitment (e.g., taxes) are legislators more willing to restrain the margins of executive discretion. Instead, they mostly restrict oversight of the executive to more direct instruments such as the review of the budget and public accounts, committees of inquiry, or written inquiries to the executive. Although these formal instruments have not proved to be effective in the sense of actually leading to sanctions, legislators confirm that oversight mechanisms are strategic devices that allow them to get information from the executive and especially to catch the executive’s attention. This opens the door to informal negotiations with the executive, in which influential legislators with long experience are best positioned to obtain concessions and see their demands satisfied. Although suboptimal, this sets certain limits on the executive.

The review of public accounts and public agencies’ performance is delegated to the Supreme Audit Institution. Despite its capacity limitations, Congress receives very useful information from the SAI, which would allow more effective oversight. However, such information is inconsequential after it reaches Congress. The following chapter presents information on the SAI and other specialized agencies of oversight and discusses not only their resources and capacity constraints, but most importantly how political incentives have affected their performance and impact.
Chapter 6. Endnotes

1 The most significant case was the scandal for bribing legislators to pass the labor reform law in 2001. Similar accusations of illegal payments to get specific legislation enacted or delayed in the legislative process have been common (e.g., YPF privatization, passing constitutional reform, pass legislation in benefit of the food coupon industry) (Página 12 Sept. 12, 1992; Clarín Sept. 16, 1993; La Nación Nov. 21, 2007; Nov. 24, 2007; Jan. 9, 2008). Other corrupt practices in Congress have involved the manipulation of internal procedures for votes and quorum (e.g., diputrucho case), phantom employees (e.g., ñoquis), and the abuse of particularistic benefits distributed by legislators. On the diputrucho case, see Congreso Abierto (http://tinyurl.com/3wz2z3z, accessed March 7, 2011). These irregularities were widely known by political actors: “After establishing a good relationship with the Peronist senators is that I learned about some things that happened. [...] The modus operandi they had was that nothing was free -- everything had a price. It was the first time I felt that politics was fee-based. And I talked about this with the Radical senators and they were aware, they believed that this was so. But nobody said anything” (Author’s interview; Buenos Aires, August 16, 2005). After 2001, the risks of corruption in the legislature persisted yet they were less extensive and visible: “I do not think that there is corruption like in the 90's. What happens is that if you vote this or such a thing, you get an office or something for your province ... That kind of give and take. Bargaining happens. In the 90's, I believe, there was the wide perception that bags of money circulated freely and that the government of De la Rúa did what they did because these practices were common. I get the feeling that there is not such level now. There is more information and society is more aware of the role of legislators” (Author’s interview. Buenos Aires, June 18, 2009 and August 27, 2009).

2 In parliamentary systems, where the executive is not directly elected, parliaments provide citizens with the most direct venue to influence on and control the executive (Stapenhurst et al. 2006, 1).

3 For a complete analysis of these congressional responsibilities, see Stapenhurst at al (2006, 3-6).

4 See also Ogul (1981, 1990), Ugalde (1999).

5 The timing of oversight is quite important. When oversight is delayed or postponed, accountability suffers because it is more difficult to sanction officials who are responsible for certain actions since they may have left office or moved to another position. In Argentina, for example, legislative investigation of corrupt practices occurred during Menem’s two-term presidency took place only after he had left office.

6 The principle of division of powers, which derives from the separate election of presidents and legislatures, generates autonomous powers with veto power. In addition, presidential systems are less able to respond to crisis situations given the fixed electoral calendars, which make the rapid replacement of leadership more difficult. On presidentialism, see Linz (1990, 1994); Horowitz (1990); Lipset (1990); Lijphart (1992); Mainwaring and Shugart (1993); Linz and Valenzuela (1994); Wrage (1998); Persson and Tabellini (2003); Valenzuela (2004); Fukuyama et al. (2010). For a recent review of the debate between presidentialism and parliamentarism in Latin America, see Samuels and Eaton (2002), Colomer and Negretto (2005).

7 For a review of the literature on legislative oversight, see Ugalde (1999). For a comparative and historical review of approaches to legislative oversight, see West (1995, chapter 6), Lemos (2010).

8 Other literature examines legislative oversight from a principal-agent perspective, as a problem of delegation of power between citizens and legislatures and between legislatures and bureaucracy. The aim is ensuring the conditions under which policy decisions are responsive to the needs and interests of citizens as principals, which requires Congress to effectively oversee bureaucratic implementation. For a review of this approach, see McCubbins and Sullivan (1987), Kantor (1993), Shepsle and Weingast (1995), Rios-Cazares (2006).

9 “Legislators do not create capacity without incentives” (Despossatto 2004).

10 The distribution of seats in the Chamber of Deputies is regulated by Law 22.847, which establishes that one deputy will be assigned for each 161,000 inhabitants, based on the 1980 census. The distribution does not reflect the current distribution of population.

11 Historically, this had been one of the major sources of instability and democratic breakdowns in Argentina. In this sense, Alfonsín’s government shows similarities but also substantial differences with situations in the past.

12 Committed to democratic continuity, political parties were determined to prevent institutional paralysis (Mustapic and Goretti 1991, 30-32).

13 Legislatively, small provincial parties (from San Juan, Corrientes or Neuquén) were very important to build a working majority in the Chamber; they individually negotiated their support in specific moments where their votes were key (Palanza and Sin 1997). However, in electoral terms, the UceDe was the most significant third
party before the emergence of Frepaso. Its percentage of vote in the lower chamber rose from 1.7% in 1983 to 9.9% in 1989, obtaining 11 deputies. After 1989, its percentage of vote declined as free-market policies became part of the agenda of both PJ and UCR, and the party became an ally of President Menem, losing its character as an independent party (McGuire 1995, 225; Palanza 2005, 11).

14 The Frente Grande, formed by the Intransigent Party, the Left Movement, the Communist Party, and the FREDEJUSO (a group of Peronist dissidents led by Chacho Alvarez), obtained 3% of votes in the City of Buenos Aires in 1991 legislative elections; in the 1994 elections for the Constitutional Assembly, it obtained 36% percent with almost 13% of national vote. It then formed a broader coalition, FREPASO, which joined into a coalition with UCR, and won the 1999 presidential contest with 48.5% of votes (Levitsky 2000).

15 This started to change with Presidents Kirchner and Cristina Fernández de Kirchner, who responded to the increasing inability to pass legislation through Congress by adopting important policy measures through executive decree (e.g., Resolución 125 and re-nationalization of pensions).

16 This confirms that legislators’ willingness to defend their decision rights varies across policy areas. There are some high-stake policy areas in which they show higher levels of institutional commitment. See Palanza (2009).

17 “It is worth mentioning that it was enough with the President to manifest urgency to have important and complex laws enacted in a very short time: only two days to discuss and approve the intervention in Santiago del Estero; six calendar days to amend the Military Personnel Act that legitimized the appointment of General Bendini as head of the Army, and only eight days to give constitutional status to the Convention on Crimes Against Humanity” (Ibid.).

18 As the Constitution requires public policies to be approved by law, Argentina’s Congress has an extensive participation in the formulation of public policies (Llanos 1999, 47).

19 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

20 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

21 Author’s interview. Buenos Aires, June 18, 2009; author’s translation.

22 Parliaments through their legislative role can also play a major part in creating the legal, institutional and social environment in which corruption is less likely to occur and is detected when it does. As reviewed in Ch. 3, Argentina has abundant legislation and numerous norms to punish corrupt behavior; more limited are, however, the preventive devices to attack corruption before it even happens. For example, the country lacks access to information legislation, as the draft bill was not able to gain enough support in Congress in 2003. Also, passing corruption-proofed legislation does not seem to be a concern for legislators when enacting legislation in other areas (for example, in public procurement) (Author’s interview. Buenos Aires, October 16, 2009). As for legislation that punishes corruption, its legislative treatment has generally experienced significant delays (for example, the UNCAC was signed in December 2003 yet only ratified in August 2006, after discussing numerous bills). Although there is legislation in place to fight corruption, the major problem Argentina faces is the lack of enforcement of existing laws and regulations and the creation of institutions to combat corruption that are born weak (e.g., the National Commission of Public Ethics, formally established in 1999, was never created).

23 Regarding the budget process, Rodriguez and Bonvecchi (2004) identify different roles for Congress in different time periods (1984-91, convalidatorio: 1991-95, expansive; and 1996-2004, legitimizing). However, all these periods have in common the limited performance of congressional oversight, which is the variable of interest in this section.


25 In general, four distinctive stages can be distinguished in the annual budget cycle. Drafting or formulation refers to compiling a budget proposal, based on macroeconomic projections, which can be submitted to the legislature; it usually involves negotiations between spending departments and the central budget office. The legislative stage involves the scrutiny by congress of the proposal submitted by the executive; the budget requires legislative authorization to become effective, which ensures the rule of law in public finance. Budget implementation is in hands of the executive, which apportions funds to different agencies and departments according to the budget proposal. The audit and evaluation stage, at the end of the fiscal year, involves an assessment of budget execution based on government accounts and financial statements submitted by the executive. There are differences across countries in the attributions and influence of different actors in the process, as well as the timing and degree of overlap between different stages. For an overview of the budget
cycle, see Wehner (2006, 82-83). For a detailed analysis of the budget process in Argentina, see Abuelafia, Berensztein, Braun, and Di Gresia (2005). For a comparative look at the features and actors’ influence in the budget cycle in Latin America, see Rodriguez and Bonvecchi (2004, 8-9 & 54).

26 Articles 16, 17, 26 of Law 24,156.
28 In addition, congress contributes to budget transparency and accountability through the scrutiny of fiscal policy and providing information on fiscal issues (Santiso 2005).
29 As an example of the limited control and distortions of the budget process, from 1954 and until 1990, no budget was signed into law by congress (Morgenstern and Manzetti 2003, 155).
30 For a detailed description of the legislative procedure for discussing and approving the budget, see Rodriguez and Bonvecchi (2004, 12-16).
31 Two main factors explain these weaknesses during the formulation stage (Uña op. cit., 21). First, there are significant technical asymmetries between the Ministry of Economy and other jurisdictions within the executive. Second, the complex nature of the budget process, in which actors with different stakes and interests interact within the executive to obtain resources; for example, Secretary of Finance and Undersecretariat of Budget together with the Budget National Office want to maintain fiscal discipline while different Ministries try to obtain more resources.
32 Between 1995 and 2001, total revenues were overestimated. In 2002 and 2004, they were underestimated (by 8% in 2002). In 2003, they were again overestimated, given the higher than expected inflation rate (Abuelafia, Berensztein, Braun, and Di Gresia 2005, 19). See OECD/World Bank (2005) for additional examples of differences between forecast and actual macroeconomic predictions.
33 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
34 Only 20% of expenditure is specifically linked to strategic goals (OECD/World Bank 2005).
35 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
36 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
37 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
38 The Fiscal Solvency Law (1999) established the requirement of preparing 3-year budgets. Although the requirement is usually satisfied, attention is paid only to the budget for the first year (Schick 2003, 77).
39 “The budget is what sets the future agenda. And again this has to do with having a budget that is real, instead of occurring what the numbers actually confirm -- that everything is changed afterwards” (Author’s interview. Buenos Aires, August 27, 2009).
40 The timeframe for executive negotiations between the central budget authority and line ministries takes approximately 3 months (OECD/World Bank 2005), period during which informal bargaining and negotiations take place. Abuelafia et al. (2005, 22) sustain that negotiations with governors are usually a done deal when the formulation process begins, which contributes to the rigidity of the budget process. This means that the ability of legislators to bargain at this stage would be even more limited.
41 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
42 The most important role in the budget process corresponds to the Chamber of Deputies, where the draft budget is submitted. However, the budget committees of both chambers usually work together informally before the Deputies’ committee issues its decision, making less important the role actually played by the Senate’s committee (Uña 2005, 21). Presidents of the budget committees of both chambers meet and discuss the inclusion of demands and concerns collected by the president of the Senate’s committee. If those demands are not satisfied after this informal meeting, then senators lobby their blocs’ presidents for them to lobby in the Chamber of Deputies’ budget committee (Rodriguez and Bonvecchi 2004, 14)
43 Some comparative evidence contextualizes these powers. In terms of the timeframe for budget approval, Argentina is within the average time that is allowed in parliamentary systems for budget approval (NDI 2003). As for the Congress’ powers to make changes in the budget, Argentina actually has ample legislative powers compared to other Latin American countries such as Chile, Brazil, and Uruguay, where the Constitution prohibits Congress from increasing expenditures (Morgenstern and Manzetti 2003, 165).
44 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
45 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
46 The executive has ten business days to veto the budget approved by Congress. Line-item vetoes may veto an entire article or part of an article (e.g., a word or a statement); the latter is very common for budget laws, although it is a violation of Law 24.156 (1992).
47 In both chambers and previous report from the respective budget committees.
La Nación (February 29, 2008).

There are exceptions such as the 1987 budget, which was approved in July (07/14/87) and enacted in August (08/05/87) as a result of mid-term legislative elections. Sometimes delays have happened in submitting the budget to Congress. In periods of unstable macroeconomic conditions, delays have been used to discretionally and informally constrain public spending (Rodríguez and Bonvecchi 2004, 21).

50 Author’s interview. Buenos Aires; August 27, 2009; author’s translation.

51 These examples are based on the analysis presented by Rodríguez and Bonvecchi (2004).

52 The core of public spending includes public sector salaries, social security, debt’s interests, and federal transfers to provinces.

53 Limited fiscal transparency is an indicator of weak legislative oversight (Santiso 2005). According to the 2006 Budget Transparency Index (IBP 2006), Argentina scored 39% over 100% on the amount of information provided to citizens in key budget documents.

54 “The truth is that you conduct the final control when the period is over and they [the executive] tell you how much has been actually spent by each ministry. Meanwhile, there is very little information” (Author’s interview. Buenos Aires, August 27, 2009).

55 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

56 Article 37 of Law 24.156.

57 Article 99.3 of the Constitution empowers the executive to issue these decrees. Resorting to this instrument to modify the budget is part of a broader trend to use executive’s proactive powers to increase discretionary executive action, as analyzed in Chapter 5.


59 “The real superpowers are not delegated faculties or DNUs, but the possibility of using both simultaneously” (Uña, Bertello, and Cogliandro 2004). This instrument has been used since 1996 (Law 24.629 Second State Reform). On “superpowers”, see also Ch. 5

60 Article 37, Law 24.156: “are reserved to Congress the budget changes that affect the total budget amount and the amount of debt expected, as well as changes involving increasing running costs to the detriment of capital expenditures or financial applications, and those which involve a change in the distribution of the budgetary purposes.”

61 Uña et al. (2004, 9) consider that the timing of delegation confirms its informal institutionalization over time and the progressive weakening of the legislative role in the budget process: “while in 1997 and 1998 these [power delegations] were granted a few days before the end of the fiscal year, later on they were granted several months before, until its implementation only two months after the beginning of the fiscal year in 2003.”

62 Article 15 of the Fiscal Responsibility Law mandates that “both national and provincial executive authorities, during budget implementation, may only approve higher costs of other powers provided they have adequate funding” and forbids “approving budget modifications that increase current expenditures at the expense of capital expenditure or financial applications” (Uña, Bertello, and Cogliandro 2004, 3).

63 Cf. La Nación (September 19, 2004); Página 12 (November 5, 2004); Crítica (September 14, 2008); Clarín (September 15, 2008); Also, Interview with Adrian Perez in Todo Noticias (October 4, 2002), available at http://www.ari.org.ar/notas/entrevista_adrian_perez.htm (accessed March 4, 2008).

64 Authorizes the Chief of Cabinet to act without being subject to article 15 of Law 25.917 in order to “authorize the budget restructuring deemed necessary within the total budget approved by each Budget Law, including changes involving running costs, capital expenditures, financial applications and distribution of purposes.” The law was approved by 134 votes against 91. Cf. Clarín (August 3, 2006).


66 “Today, the national budget, even if we generate all the necessary debate and have the best budget bill possible, then there is a series of normative frameworks that allow the executive to manage and dispose of public money as it pleases. [...] The rules in this case have much to do. But it also has to do with political will, because that legislation could be not used. For example, DNUs were available to all governments, yet not all have used them; the Financial Administration Act could be amended.” (Author’s interview. Buenos Aires; August 27, 2009.)

67 Only for the debate of the 2009 budget, the opposition was able to coordinate to try to eliminate the “superpowers” during the legislative treatment of the budget bill. See Clarín (September 8, 15, 2008; July 5, 2009); Perfil (August 4, 2009). With difficulties, these coordination efforts continued before and after the 2009
According to legal requirements only in 1998 and have not been fully consolidated yet (89)

Whether this improvement will continue. See Chamber of Deputies, Orden del Dia No. 3331.

Partial dissents on the approval proposal sent to the floor by the accounts committee. It is still too early to assess whether this improvement will continue. See Chamber of Deputies, Orden del Dia No. 3331.

For example, the evaluation of the budget process by the National Budget Office is not implemented; there are important disconnects between goals and budget allocation; etc. (Uña 2005, 26-27).

In 2009, there was a new modification to article 37, which formally imposed some restriction (maximum ceiling of 5% of expenses) on the executive’s ability to modify budget allocations. In practice, it was ineffective since it left without any restriction important budget resources used for discretionary spending. The legislative approval was controversial amidst accusations of bargaining for favors with the executive. Cf. La Nación (July 29, 2009; August 24, 2009); Clarín (August 27, 2009); Perfil (August 20, 2009). Also, Informador político (http://www.infop.com.ar/editorial/ley-de-superpoderes.html, accessed May 13, 2010).

Problems during budget execution are also a symptom of the executive’s own weakness in the budget cycle. For example, the evaluation of the budget process by the National Budget Office is not implemented; there are important disconnects between goals and budget allocation; etc. (Uña 2005, 26-27).

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Author’s interview. Buenos Aires, August 27, 2009; author’s translation. Also La Nación (Aug 7, 2009.)

Article 1, AGN’s internal rules.

In addition to the partisan nature of its appointments, an important limitation of AGN is the inability to file criminal complaints. This capacity is granted to SAIs in other Latin American countries such as Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Nicaragua, Panama, Peru, or Uruguay.

Argentine Constitution, article 95.

According to Article 4 of AGN’s internal rules, the AGN “inform the investment account referred to in Art.95 of the law. The report, together with the investment account of the exercise, should be sent to the Parliamentary Account Committee within sixty (60) calendar days of receipt.”

Argentine Constitution, article 75 inc. 8; Law 23.847, articles 2 and 5. If the Public Accounts Committee rejects the budget execution report, the executive should prepare another one. In practice, this has never occurred (Uña et al. 2004).

"The legislative committee has no deadlines for control, which makes it less effective. In addition, it has PJ majority, which means that both the controller and the subject of control have the same political color”” (J. Antoniassi, quoted in Dinatalse 2002).

In practice, it takes AGN more than 60 days to issue its assessment. For example, the budget execution report for fiscal year 2002 was approved in 2004. However, AGN has corrected these delays over time. See Chapter 7.

For example, fiscal year 1997 was approved in May 10, 2006, after 7 years, 7 months and 21 days.

As a reaction to this lack of formal deadlines, some bills have been submitted to strengthen the normative framework. For example, bill initiated by Claudio Poggi in Nov. 2008 (http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=6497-D-2008",400,400) Also, civil society organizations have requested changes to Law 24.156 in order to clarify the role of the Public Accounts Committee, to set specific formal deadlines for the approval of budget execution reports, and to include specific enforcement mechanisms to ensure timely approval (ACIJ 2005, 11).

For the first time since 1983, Congress approved public accounts of a government still in office. There were 4 partial dissents on the approval proposal sent to the floor by the accounts committee. It is still too early to assess whether this improvement will continue. See Chamber of Deputies, Orden del Dia No. 3331.

Author’s interview. Buenos Aires, June 18, 2009; author’s translation.

Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

Author’s interview. Buenos Aires, September 12 2007).

Author’s interview. Buenos Aires, August 27, 2009; author’s translation.


While budget execution is reported according to Law 24.156 (1992), financial statements were presented according to legal requirements only in 1998 and have not been fully consolidated yet (Uña et al. (2004, 29-30).
The full and immediate disclosure of audit reports has been implemented since the appointment of Leandro Despouy as Auditor General in 2001. This has been a cause of tensions with Congress, where the practice of using non-disclosed audit reports for political bargaining was common. Author’s interviews (Buenos Aires, September 28, 2007 and June 18, 2009). Also, Santiso (2009).


92 The committee has been strictly under control of the ruling party and the first minority party over the years: “The joint committee [of public accounts] has 12 [members], number I defend with tooth and nail, because there is great pressure to get into it … the newspapers say that we are a closed committee … but if you yield to the temptation to increase the number, we fall into the same. Five years later you have 30 or 40 members and you cannot work” (Author’s interview. Buenos Aires, August 2, 2006). Despite the increasing fragmentation of Congress and the larger number of opposition parties, minority parties were not allowed to become members until 2009 (Author’s interview. Buenos Aires, August 27, 2009).

93 La Nación (Sept. 13, 2010).

94 In 2006, following the monitoring of the committee’s activities by a civil society organization, information was available on the committee’s website for a short period of time. However, this practice of publicizing the committee’s activities was not institutionalized. As of May 11, 2010, no information about the committee (except for the articles of Law 24.156 that regulate its activities) is available on the website (Cf. http://www1.hcdn.gov.ar/dependencias/crcuentas/index.html).

95 Although the committee’s internal rules (article 18) require to hold at least two plenary meetings every month, in many occasions, the committee does not formally hold meetings but only circulates the documents for approval among members. During the presidency of the committee by Senator Augusto Alasino, there would have been payments to delay reports and to decide whether and when to send them to the floor (Author’s interview. Buenos Aires, August 15, 2006).

96 Author’s interview. Buenos Aires, August 15, 2006.

97 Author’s interviews. Buenos Aires, August 15, 2006 and June 18, 2009.

98 Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

99 Author’s interview. Buenos Aires, August 2, 2006; author’s translation.

100 Congreso abierto (at http://tinyurl.com/6dpqvh8 accessed May 2011.)

101 Author’s interview. Buenos Aires, August 27, 2009; author’s interview.

102 Author’s interview. Buenos Aires, August 27, 2009.

103 This interpretation has been used quite flexibly to justify the creation of special committees to investigate almost anything, as can be seen by looking at the list of committees created since 1983 (Molinelli et al. 1999, 110). For a historical review of parliamentary practice, see Ramella (1985). The constitutional limits to this implicit power are set by the constitutional acknowledgement of individual rights in articles 17, 18, and 19.

104 Cf. Article 75, inc. 32.

105 The committee itself may play that investigative role (Chamber of Deputies, internal statute, article 7).

106 Some legislative committees of this kind perform monitoring functions in relation to specific issues or policies (e.g., ANSES committee). Security and intelligence is one of the areas in which more monitoring committees have been created over the years (three in the Senate, two in Deputies, and one bicameral.

107 Cf. La Nación (Feb. 12, 2001.)

108 This decision followed the breaking and entering into a law firm by members of the committee investigating irregularities in the Italo-Argentina electric company (created in March 15, 1984, the final report of the committee was issued in September 1985). Following that decision, no similar actions have been undertook by investigate committees without a warrant. This power of the special committees of inquiry has been subject to discussion in the literature (see Cagnoli 1997 at http://www.adminpublica.org.ar/Publicaciones/ComisionesInvestigadorasFacultadesConstitucionalesParaSuIntegracion.pdf).

109 The limits of congressional powers to investigate vis-à-vis the judiciary was a controversial issue in 1996, when 4 committees of inquiry were functioning in Congress. According to Pellet Lastra, “these (parliamentary) investigations can be done in parallel with the criminal investigation, since they do not aim to establish the guilt of an accused to apply a penalty, but to clarify aspects related to the political responsibilities of public officials related to the facts” (La Nación Dec. 29, 1996). Gil Lavedra also supported the role of Congress: “Congress cannot investigate crimes or unlawful behavior that correspond to the judiciary, but it could inquire into the facts, contracts or irregular circumstances of state actions. Although there was a judicial investigation on the case, there would be no overlap of responsibilities since the purpose intended would be different. It is a

The committee investigating irregularities in the Italo-Argentina electric company and the committee of inquiry into YPF’s debt (created in Sept. 30, 1984.)

Following Molinelli et al. (1999), this number is estimated based on committees that have the word “inquiry/investigation” in its name. Other committees of inquiry may also involve some kind of investigation of irregular practices committed by other branches of government. Taking those into account, the average increases to 1.5 per year.

The inquiry committee aimed at investigating bribes paid to senators was created on August 30, 2000. One of the senators involved had previously been under investigation in Sept. 27, 1999. At least ten other initiatives have been submitted to create inquiry committees in the Senate.

After the government lost the legislative majority in 2009, the opposition began to discuss the creation of inquiry committees to investigate corrupt practices during the Kirchnerism. However, these committees never materialized.

Historically, there are some successful examples, such as the committees of inquiry led by Lisandro de la Torre, which investigated corrupt practices in the meat industry in 1934-5, and the committee that investigated the purchase of lands by the state in El Palomar in 1940. These committees’ investigations were related to the death of two legislators.

Another failed committee was the so-called “anti-mafia committee.” UCR and Frepaso reached a legislative agreement to create a special committee of inquiry to investigate Cavalló’s accusations against Yabráñ (Novaro 2001). The committee was finally created in 1997, after a special hearing of Yabran in Congress. Given the public visibility of the accusations against the businessman, the Peronist ruling party bloc could not stop the investigation. However, it succeeded in broadening the purpose of the committee to include not only investigations on postal services and airports, but also other activities such as gold smuggling and meat trafficking (Clarín March 19, 1997; La Nación March 26, April 11, 1997). By Dec. 1997, the committee had only investigated one of the five themes in the agenda (postal services). The Peronist majority of the committee issued a majority report absolving Yabrán. Opposition legislators issued two minority reports. Even after modifying the majority report (given the opposition of some Peronist legislators), Peronists opposed the debate of the reports in the floor and were able to block the opposition initiative to extend the committee’s activities (La Nación Dec. 13, 1997). The Chamber of Deputies never published the committee reports, which were only partially published by the media (http://www.elfisgondigital.com/fsgw/politica/nota59804, accessed May 20, 2011). See also, legislator Natale’s minority report (on file with author).

Former legislator Alberto Natale, member of the committee monitoring privatizations in the 1990s, said “when unanimous opinions were voted, the executive took our suggestions into account. But when votes were divided, the government did what it wanted” (La Nación April 20, 1997).

According to one of the minority reports, an appropriate theoretical or conceptual framework was never defined to guide the inquiry of the committee (Minority report signed by Cristina Kirchner, Carlos Soria and Franco Caviglia in Dinatale (2002, 125). Politicization became evident in the accusations and public conflicts among committee members, and in the controversial presentation of the draft report by the committee’s president (Elisa Carrió) in a public event amidst accusations from other members of trying to obtain political benefits (Clarín August 10, 2001).

Minority report signed by Cristina Kirchner, Carlos Soria and Franco Caviglia in Dinatale (2002, 128.)

dependent on provincial party organization reproduces electoral divisions in each province; each party develops one national and one provincial authority structure, while not enforced until February 2004. Only 3% of draft bills passed were subject to roll call voting in 2003. 

The decentralized nature of political parties responds to constitutional provisions that create pluri-nominal districts in each province; each party develops one national and one provincial authority structure, while provincial party organization reproduces electoral divisions in each province (Mustapic 2002, 27).

These amendments are facilitated by the procedural advantages of the ruling party to control floor debates and contain internal opposition, including the ability to package or disaggregate the vote, control of the committee chair over the amendment process, and the stipulation that roll-call votes must be held if supported by merely one-fifth of the members present in the session (Eaton 2002, 304-306). Since 2002, roll call voting is mandatory in Argentina’s Senate for voting all draft bills (internal rules of the Senate); however, this rule was not enforced until February 2004. Only 3% of draft bills passed were subject to roll call voting in 2003 (Alonso 2006, 73).

When Congress is under control by the opposition, there is more power balance; under these conditions, Congress may only agree to delegate powers to the executive with inter-partisan agreements and high discipline. When it is under control by the governing party, the final equilibrium depends on the level of discipline within the governing party and the predisposition of other parties to cooperate (Ibid.). This explains the differences between the Alfonsín and Menem’s presidencies, and between the first and second Menem’s mandates.

In Argentina, the appointment of the ruling party legislative bloc’s president to the executive was common in the 90s, and allowed President Menem to have greater access to Congress. For example, Jose Luis Manzano was appointed Ministry of Interior in 1991. Afterwards, it became more common for the president to expedite certain executive proposals; thus, after 2003, the express legislative treatment of executive bills was frequent.

The former role makes the legislature “workable,” while the latter is denominated a parroquial-venal assembly. Assemblies may play two other roles in their interactions with the executive: a recalcitrant role, which corresponds with an imperial president; and a subservient role, which corresponds with a dominant President (Cox and Morgenstern 2002, 446-455).

In some instances, the political fight between the ruling party and opposition parties undermined interpellations to ministries. For example, in March 2010, the Minister of Economy decided not to attend a voluntary summon at the Fiscal Committee presided by the opposition arguing that it should have been summoned by the both the Fiscal and the Budget Committee (the latter under control of the ruling party). See Página 12 (March 17, 2010).

The results of the committee were later published by the committee’s vice-president. A detailed analysis of the case and the judicial prosecution are provided in Chapter 3 and 8.

In Argentina, the appointment of the ruling party legislative bloc’s president to the executive was common in the 90s, and allowed President Menem to have greater access to Congress. For example, Jose Luis Manzano was appointed Ministry of Interior in 1991. Afterwards, it became more common for the president to expedite certain executive proposals; thus, after 2003, the express legislative treatment of executive bills was frequent.

This indicates that some policy areas are correlated with higher levels of institutional commitment (even in countries with low levels of institutional commitment). In those areas, legislators are more willing to restrain executive discretion.

See Eaton (2002) for a detailed analysis of these cases.

These amendments are facilitated by the procedural advantages of the ruling party to control floor debates and contain internal opposition, including the ability to package or disaggregate the vote, control of the committee chair over the amendment process, and the stipulation that roll-call votes must be held if supported by merely one-fifth of the members present in the session (Eaton 2002, 304-306). Since 2002, roll call voting is mandatory in Argentina’s Senate for voting all draft bills (internal rules of the Senate); however, this rule was not enforced until February 2004. Only 3% of draft bills passed were subject to roll call voting in 2003 (Alonso 2005, 82-84); and 11% in 2004 (Alonso 2006, 73).

The results of the committee were later published by the committee’s vice-president. A detailed analysis of the case and the judicial prosecution are provided in Chapter 3 and 8.

Cf. Senate’s internal rules, article 213, and Chamber of Deputies’ rules, articles 204-210.

The decentralized nature of political parties responds to constitutional provisions that create pluri-nominal districts in each province; each party develops one national and one provincial authority structure, while provincial party organization reproduces electoral divisions in each province (Mustapic 2002, 27).

There are examples of legislators that break party discipline, but this usually involves legislators that are less dependent on provincial party leadership or concerning issues of conscience (e.g., abortion).
All types of resources are exchanged (including personal benefits, privileges, patronage, etc.) to build discipline in Congress, and blocs’ leaders play a crucial role in that process (Mustapic 1997, 70). However, legislators from the ruling party are reluctant to acknowledge those exchanges and rather appeal to persuasion as the main way through which discipline is achieved: “It is built upon a cyclopean work of containing and guiding the discussions. During the last 6 months of the past year, I was part of the collegial leadership of the bloc. The task is like politics: it is conviction power. Here there is no power of money. Nothing. It is strictly conviction. And it is working well” (Author’s interview, August 2, 2006). Legislators from opposition parties have a different perspective, and consider that the exchange of resources is part of the regular business in Congress for the ruling party to ensure legislative discipline: “There is more discipline in the ruling bloc, with specific rewards and punishments. Rewards in the form of resources, awards of contracts, etc. and punishments (dropping contracts, reducing resources, etc.) when not voting a law. We do not manage our bloc through rewards and punishments but by building consensus – we try in most cases to agree on a common position” (Author’s interview. Buenos Aires, August 27, 2009.)

See Jones (2002) for a detailed analysis of the factors that explain the high level of legislative discipline.

For example, the Peronist majority in the Bicameral Commission on Privatization blocked the attempts to slow down the process despite the multiple irregularities found by the committee (Manzetti 2003).

Author’s interview. Buenos Aires, August 27, 2009; author’s translation.

Studies on legislative professionalization look at variables that provide legislators with incentives to focus on performing well in their functions (e.g., wages, support of professional staff), or focus on the internal organization of Congress and legislators’ incentives related with the political setting. On legislative professionalization, see Rosenthal (1998), Squire (2007), Jones et al. (2002).

For example, “when PJ won the 1989 election and Duhalde, as Vice-president, assumed the chairmanship of the Senate, he laid off 250 people, mainly from Radical origins. They were replaced with people akin to PJ. It was not a workforce cut” (Author’s interview; Buenos Aires, August 16, 2005). The system for appointing advisors is “chaotic;” they are a scarce resource, which is even exchanged for getting more physical space in the building annex to Congress (Author’s interview, Buenos Aires, July 4, 2006).

Author’s interview. Buenos Aires, August 2, 2006.


Author’s interview. Buenos Aires, August 16, 2005; author’s translation.

The Chamber’s president allocates a number of posts in different committees to each bloc, based on their size. Then, together with legislative party leaders, he defines how the posts are distributed among the blocs. Finally, the blocs’ presidents decide which legislators hold the posts and presidencies in the different committees. Seniority does not play a role, and it is the leadership of the party blocs that decides who will chair each committee (Eaton 2002). The discreetionality allowed by internal rules in both chambers (article 105 in the Chamber of Deputies and article 91 in the Senate) results in irregularities in the percentages of political representation of different political forces in some committees (Alonso 2006, 157).

Author’s interview. Buenos Aires; July 4, 2006; author’s translation.

Author’s interview. Buenos Aires, June 8, 2006; author’s translation.

There is no internal regulation of the bloc system. After 2001, increasing political fragmentation has led to an increase in the number of legislative blocs, which makes it even more difficult to reach agreements. In addition, the possibility of each bloc (even those with only one member) to designate staff and have their own physical infrastructure becomes a negative incentive for encouraging inter-bloc cooperation (Alonso 2006, 146). Coordination of opposition parties across blocs’ lines relies on the ability of blocs’ leaders to informally reach an agreement (Author’s interview, Buenos Aires, August 27, 2009).

Author’s interview. Buenos Aires, August 2, 2006; author’s translation.

Author’s interview. Buenos Aires, August 2, 2006; author’s translation.

Bureaucracy at the Ministry of Economy is considered to be an exception to the high volatility that characterizes Argentina’s public administration. It has lower rotation than other ministries and it is more professional and competent; even political appointees tend to be highly qualified. See Abuelafia, Berensztein, Braun, and Di Gresia (2005, 37).

Author’s interview. Buenos Aires, June 18, 2009; author’s translation.

Author’s interview. Buenos Aires, June 18, 2009.

Author’s interview. Buenos Aires, August 27, 2009; author’s translation.
Chapter 7
The Demise of Specialized Oversight and Intra-State Accountability Mechanisms

“El hombre es bueno, pero si se lo vigila es mejor”
(J. D. Perón)

“No corresponde desmantelar los órganos de control, sino tratar de fortalecerlos”
(C. M. Garrido in La Nación, November 22, 2003)

1. Introduction

In Argentina, different specialized agencies aim to enhance oversight and discourage corruption. If effective, these central mechanisms of intra-state accountability ensure that the state restrains itself (Schedler et al. 1999; Peruzzotti 2010) and provide critical devices in the fight against corruption. However, in practice, multiple corruption scandals indicate that the country continues to lack efficient institutional mechanisms to prevent or deter corruption. Moreover, the proliferation and even overlap of specialized bodies shows that different governments have undertaken anticorruption efforts, yet there has never been long-term systematic planning in the fight against corruption.¹

Specialized oversight agencies are centerpieces of any accountability and anticorruption system. They help curb corruption by ensuring that public officials become accountable: that is, they inform about and justify their decisions and are subject to sanctions for their actions. These bodies are created with “the explicit purpose of preventing, canceling, redressing, and/or punishing actions (or non actions) by other state agencies that are deemed unlawful, whether on the grounds of encroachment or of corruption” (O’Donnell 2003, 35). Although many of these agencies do not impose sanctions directly, they provide crucial information for others to hold the abusers accountable (Moreno et. al. 2003, 81 & 91). These agencies, designed to address some of the shortcomings of the system of check and balances, can be part of the jurisdiction of any of the three state powers or be autonomous (O’Donnell 2006, 337; Peruzzotti 2010, 6).
Some of these bodies oversee the enforcement of criminal law and/or represent the government in judicial proceedings; others ensure public officials’ compliance with the law and investigate corruption, playing the role of devil’s advocate on behalf of the citizens against official malfeasance (Moreno et al. 2003, 100). Specialized agencies also help enforce effective accountability by providing two complementary types of oversight and bureaucratic control: some provide routine and methodic ex ante “police patrol” that seeks to deter corruption by detecting it, while others are activated on demand and function as “fire-alarms” or third-party opportunities to reveal an agent’s misdeeds to the agent’s principal (McCubbins and Schwartz 1987; Moreno et al. 2003, 96; Siavelis 2000, 76; Eaton 2003, 39; Santiso 2009, 35; Peruzzotti 2010, 7). By strengthening institutional frameworks and reducing the arbitrary application of laws and regulations, specialized oversight agencies contribute to make corrupt practices more risky and hence less advantageous (Lorenz and Voigt 2007, 5). Also, many of these agencies are not only aimed at detecting and preventing corruption, but more generally at improving public sector management in a way that limits the opportunity for acts of corruption (Borge 1999, 4; Stapenhurst and Titsworth 2001; Santiso 2007, 2009; Melo et al. 2009).

The performance and effectiveness of these agencies depends on a series of intertwined factors, some internal (institutional design, resources, legal powers, institutional placement, and enforcement mechanisms) and some external (independence from the executive, credibility of the information produced, timeliness of findings, and enforcement of recommendations) (Stapenhurst and Titsworth 2001; Moreno et al. 2003; Santiso 2006, 2007, 2009; OECD 2008; Meagher 2004; Speck 2008; Melo et al. 2009). Another important dimension to assess their impact is the insertion of these agencies with the different components of the accountability network (Speck 2008; Santiso 2009; Peruzzotti 2008, 2010). As these bodies are particularly vulnerable to political interference, their linkages with the legislature and the general public, and patterns of coordination, cooperation and information exchange with other institutions and non-institutional actors also determine their actual performance.
Argentina’s system of specialized oversight was radically reformed in the 90s (Santiso 2007, 2009). With the incorporation of a specialized anticorruption body in 1999, four institutions of specialized oversight are the centerpieces of the anticorruption and intra-state accountability system, specifically designed to control and monitor the executive (Bruno and Schweinheim 2006). While the General Audit Office (AGN) is an auxiliary audit institution that helps the legislature enforce accountability over the executive, the General Comptroller Office (SIGEN) produces information that helps the executive enforce accountability over the bureaucracy. The National Prosecutor’s Office for Administrative Investigations (FNIA) formally has an extra-branch principal (Attorney General) and helps enforce both political and managerial accountability. Finally, the Anticorruption Office (OA) is a multi-purpose agency with law enforcement powers. AGN and SIGEN perform routine oversight, while the FNIA and the OA deal with outright, direct and deliberate corruption. The different institutional insertion of these agencies makes it difficult to generalize the reasons that explain their limited effectiveness; however, this chapter will identify some of the common factors.

These specialized agencies are formally independent (some even have explicit constitutional status as extra-power institutions), and have normative frameworks that on paper provide them with appropriate and strong statutory powers of oversight. In practice, however, the limited enforcement of those formal provisions as well as resort to informal rules and practices to limit their autonomy and powers have undermined their ability to constrain the executive (Santiso 2009; Rose-Ackerman et al. 2010, 39) and to effectively serve as deterrents for corruption. To fully understand the effectiveness of specialized oversight agencies, we need to inquire into their origins and institutional trajectories, and look not only at formal indicators of performance but also at their de facto powers, independence, capabilities, and enforcement of their findings. Formally, it appears that multiple institutions constrain the executive, but this infrastructure has not translated into effective oversight and intra-state accountability. The incentives shaped by the institutional environment are not conducive to effective accountability, nor have created strong synergies between the components of the accountability system:
While the law is complied with formally, reflecting a formalism of control techniques inherited from the country’s legal system, it is not complied with substantially. The absence of evaluation of management performance, both inside and outside the government, precludes substantive government accountability, this façade formalism nevertheless constrains public managers by detecting minor procedural and administrative mistakes, rather than tackling structural dysfunctions and political corruption. (Santiso 2009, 86.)

This chapter analyzes the role of specialized agencies that oversee the executive and inquires into the limited effectiveness of intra-state accountability. Following this introduction, the second section presents a historical overview of specialized agencies of oversight. Sections three to six analyze the main specialized oversight bodies. After a brief description of the formal provisions that rule the exercise of their functions, these sections assess the effectiveness of each agency by comparing those formal provisions with their factual enforcement. Informal practices are used as indicators of the limited autonomy and constrained powers of specialized oversight bodies. In section seven, the limitations of specialized oversight are related with the features of the institutional setting to show how the actual workings of political institutions shape actors’ incentives in such a way that undermines effective accountability. Section eight concludes.

2. An overview of the executive oversight and intra-state accountability system

In 1983, executive oversight was in the hands of three specialized agencies, which had been created under very different conditions to those of the new democratic government. The National Tribunal of Accounts (Tribunal de Cuentas de la Nación, TCN) was a court-type external control body, responsible for controlling legal and financial compliance of federal public finances and with legal, technical and jurisdictional functions. Its five permanent members were appointed with Senate approval, and a political jury was required for their removal (article 78, Law 23.354). Despite its wide powers, the body’s performance was uneven and, by the end of the 80s, there was general agreement that it needed reform. The Sindicatura General de Empresas Públicas (SIGEP) had been created in 1978 as an external decentralized organ of executive control over publicly owned enterprises. SIGEP had to request from the president the suspension of any administrative act that was susceptible of damaging national interests, yet these powers were usually delegated in SIGEP’s
head (Verbitsky 2006, 110). Finally, the National Prosecutor’s Office for Administrative Investigations (FNIA) had been established in 1962 with the aim of controlling the acts of the national public administration. Law 21.383 did not explicitly establish FNIA’s belonging to any of the three government branches, which caused debate, especially after the Supreme Court ruled out that it was aimed at collaborating with the exercise of the judicial function (CSJUN 89.349, Dec. 14, 1989).

Initially Alfonsín’s government expressed a clear commitment to improving executive oversight. However, deteriorating economic conditions, as well as UCR’s electoral defeat in 1987 legislative and 1989 presidential elections, delayed this important mission (Bowen and Rose Ackerman 2003), and the system remained unchanged until the 90s. In 1989, in his inaugural address to Congress, Menem declared that Argentina was “broken, devastated, razed” and described a public sector undermined by corruption. Under the declared state of emergency in the executive branch, Menem tried to enhance the coordination of the oversight system by setting weekly meetings of the agencies’ authorities and preparing a list of the most relevant cases under investigation. As these meetings failed to accomplish their objective, Menem considered the creation of a new superintendence agency aimed at overseeing all the existing bodies. Simultaneously, the existing control bodies started to challenge the government. When allegations of corruption emerged (particularly during the initial privatizations) the TCN, SIGEP and the FNIA questioned several decrees and exposed financial improprieties. This contributed to Menem’s decision to dismantle the oversight agencies (often by pushing the legal limits and/or flagrantly violating the law) and to create a new system of control. For example, when the TCN questioned several executive decisions in March 1990, Menem dismissed its members, violating tenure protection. (Morgenstern and Manzetti 2003; Santiso 2007, 75) Menem sought to concentrate all the investigative capacity of the state in the executive to neutralize external constraints on executive discretion. (Verbitsky 2006, 79; Santiso 2009, 82.)

On April 1991, the executive sent Congress a bill to reorganize financial administration and the oversight system. In 1992, the Law 24.156 of Financial Administration and Control Systems in the Public Sector established a new dual system of internal and external control by creating two new
institutions: the General Audit Office \textit{(Auditoria General de la Nación , AGN)} and the General Comptroller Office (Sindicatura General de la Nación , SIGEN). The constitutional reform of 1994 confirmed the partisan nature of the new oversight system,\textsuperscript{10} in which members of some institutions (e.g., AGN) were appointed based on party affiliation, while others (e.g., the Judicial Council) relied on political parties for nomination, confirmation and/or removal (Bowen and Rose-Ackerman 2003, 171). The FNIA was the only institution of the old system that survived to the Menemist redesign of the control system.\textsuperscript{11}

Despite changes in the oversight system, corruption scandals bloomed during Menem’s presidency. To fulfill its electoral promise of fighting corruption (Tedesco 2001, 108; Cavarozzi 2006, 128),\textsuperscript{12} the new Alianza’s government sought to enhance non-partisan executive oversight and to strengthen control bodies. With this purpose, the Law of Ethics (Law 25.188) was passed in 1999, establishing the duties, impediments and incompatibilities of people rendering services in public administration, as well as obliging public officials to submit an asset declaration.\textsuperscript{13} The creation of the Anticorruption Office (Decree 102/1999) testified to the government’s political will to curb corruption. However, the limits of the government’s commitment surfaced in 2001, when a big corruption scandal involving the government and the Senate triggered a severe institutional crisis (Charosky 2002, 250).

After President Kirchner took office in May 2003, the system of executive control remained formally unchanged, despite public controversies regarding the possible elimination of the Anticorruption Office.\textsuperscript{14} The new government initially took visible steps to strengthen institutions and to control corruption in order to ensure stability and consolidate power. Executive Decree 1172/2003 introduced several mechanisms to increase transparency and promote public participation.\textsuperscript{15} Also, Argentina ratified the UN Convention Against Corruption in 2006 (Law 26.097). Although the fight against corruption seemed to gain momentum, the old and ineffective patterns persisted.\textsuperscript{16} This was evident in appointments to control bodies and attempts to neutralize the agencies that challenged the
executive. In addition, the 2005 reform of the Criminal Code deactivated court cases related to corruption by shortening the statute of limitations.  

3. Legislative delegation of oversight powers: General Audit Office (AGN)

The Auditoría General de la Nación (AGN) was created in 1992 (Law 24.156) as an external oversight agency, and acquired constitutional status with the 1994 constitutional reform.  

Created within the legislative branch, yet as an entity with legal persona, functional independence, and financial autonomy, it is overseen by the special bicameral Committee of Public Accounts (Comisión Parlamentaria Mixta Revisora de Cuentas de la Administración). The AGN is an external auditor, insulated from the audited administration, which assists Congress in the exercise of its comptroller powers. It is a collegial audit body, governed by a board of seven auditors-general designated for eight-year renewable terms. Congress appoints six of them, observing the political composition of each chamber (three by the Senate and three by the Chamber of Deputies). The seventh auditor, the president of the board, is appointed by a joint resolution of the presidents of the Chamber and the Senate, upon proposal of the opposition party with the largest number of seats. Auditors-general may be removed in case of misconduct or evidence of not fulfilling their duties. Once a year, AGN reports on its performance to the Public Accounts Committee.

3.1 Institutional trajectory and autonomy

The AGN was designed as an independent check on the executive. After some initial corruption scandals, international financial institutions demanded the creation of a congressional agency to oversee the disbursement of funds. In 1991, in the context of the congressional debate over the Convertibility Law and as part of broader efforts to discipline public finance (Uña et al. 2005), the government proposed a bill of Financial Administration and Control Systems of the Public Sector. It included the creation of an external audit body with the power to search, suspend ministers, or request their resignation (Verbitsky 2006, 117). However, the legislative debate significantly altered the government’s proposal and constrained the formal powers and competencies of the body. The bill was
modified in the Senate to eliminate provisions for AGN to control assets declarations and investigate presumed illicit enrichment. Other powers were also eliminated: selective ex-ante control of legality; ability to initiate judicial proceedings and act as plaintiff; access to information, and ability to suspend temporarily public officials under investigation. Strict conditions for selecting auditors were also eliminated (Baglini 2002). In addition, the Senate added important protections for high-level public officials, who were excluded from the AGN’s jurisdiction and subject only to generic control by Congress. The executive reduced the areas of AGN’s competence and introduced the collegiate nature of the body as well as the designation of its members along party lines. In sum, the reform was a step backward:

The reforms changed the formal institutions of fiscal control but did not affect the informal institutions and underlying power relationships in which the system of financial scrutiny is embedded. In Argentina, strengthening administrative probity required enhancing ex ante controls, not undermining them. (Santiso 2009, 83.)

The Chamber of Deputies passed Law 24.156 in October 1992. However, by December 1992, while the old system had already been dismantled, the new one was not in place yet, as Congress had not approved AGN’s organic structure and internal rules. Moreover, as the executive vetoed article 134 of the law, which required applying the old control regulations while the new ones were established, there was a huge gap through which many cases and irregularities were automatically pardoned (Santiso 2007, 75). The AGN finally began its activities at the end of 1993, almost twelve months after the enactment of the law, and following “the plenary jubilee year indulgency for the state’s control of accounts and administrative control” (Verbitsky 2006, 119).

The amended Constitution gave the body explicit constitutional status, functional autonomy, and enhanced powers. However, partisan politics and subordination to Congress have compromised the body’s independence and limited its effectiveness. The appointment of auditors has traditionally been closed and secretive, and in some cases has flagrantly violated formal provisions. Article 123 of Law 24.156 established that Congress would appoint the AGN’s president through a bicameral resolution. Disregarding this provision, in 1993, before the constitutional reform that required the president to be appointed by the opposition (Molinelli 1999, 517), Menem offered UCR’s member
Juan Trilla to chair the body—attempting to gain the opposition’s connivance to subordinate the oversight institution. However, the UCR’s National Committee rejected the proposal, and publicly criticized that setting the body was a purely cosmetic measure. The government turned then to Peronist loyalists. A former member of the Supreme Court, Hector Masnatta, was appointed as president of the board, and Norberto Bruno, Emilia Lerner, Julio Cesar Casavelos and Vicente Antonio Barros as auditors. All the auditors were supported by the Peronist majority in Congress and came either from Congress or from the eliminated TCN. When other members of the Tribunal sought appointment, the Minister of Economy vetoed the candidates and requested the Radical minority to appoint them. UCR’s Senators proposed former director of SIGEP for one vacant seat, while the Radical bloc in Congress did not propose any candidate for months.

In 1995, the opposition’s majority party proposed a new president. The Radical Enrique Paixao took office and staffed the agency with people, primarily from his own party (Manzetti 2000, 24). Under his tenure, the body gained visibility as a result of several reports that questioned Menem’s government. However, Peronist members of the board were able to stop some of his initiatives to control the government (Manzetti 2000, 25). In 1999, six years after its creation, Peronism gained again control of AGN’s presidency. Five auditors, including the AGN’s president, finished their terms and were replaced. The new appointees had a similar profile to previous auditors, with close political connections to both PJ and UCR, and previous careers in Congress or executive offices.

In 2001, the AGN experienced another great renovation. Congress appointed Radical Leandro Despouy, a prestigious diplomat without previous experience in audit control, as president. The auditors, who took office in 1999, continued in office until 2008-09. Despite the strong credentials of the new president, politicization continued to undermine the body’s reputation. In 2006, one of the auditors was accused of actively participating in the electoral campaign; one auditor appointed in 2001 was the main informal broker of Kirchner’s government in the judiciary; in 2008, opposition
legislators criticized the appointment of new auditors as an attempt to neutralize the body; and, in 2010, the renovation of UCR’s authorities placed the AGN’s president under rumors of dismissal.

A historical review of appointments reveals that the professional requirement established in the law has not been systematically considered in practice, and party considerations prevail. Top positions at AGN are perceived as good political prizes, given eight-year tenure stability and a relatively competitive salary. According to the Constitution, professional criteria to be appointed include having a degree in law or economics, as well as experience in financial administration and control. In practice, however, while the degree requirement is usually respected, many appointees lacked the required experience (Rose-Ackerman et al. 2010, 41). There is no check on qualifications or citizen participation in the appointment process, which make conflicts of interest likely (ACIJ 2007; Rose-Ackerman et al. 2010, 41). With some exceptions, auditors do not have strong credentials. Moreover, the stability of tenure has not contributed to counterweigh political influence. Since the legislature is renewed every two years, it is impossible for auditors to fulfill an eight-year term and maintain party balance (ACIJ 2007). A good example of these problems is the appointment of Rodolfo C. Barra as AGN president in 1999. A Peronist strongman and holder of several government posts under Menem, his appointment was interpreted as an attempt to neutralize any investigations of corruption in the Menem administration (Santiso 2009, 79). During his tenure, controversial areas (e.g., ATNs) were excluded from AGN’s jurisdiction, and some cases presented a clear conflict of interest. Also, the body was accused of false reports, accepting bribes, delays in conducting investigations, and covering up abuses and wrongdoing.

3.2 De facto powers

The amended Constitution confirmed Congress as the institution that exercises external ex post control over the public sector. AGN assists Congress in this comptroller role by producing technical audit reports (AGN 1997, 2005). On paper, AGN is a powerful institution. It has a broad mandate, extending its jurisdiction over budgetary, economic, financial, legal, and patrimonial management of the federal government and the Federal District of Buenos Aires, including programs financed by international
finance institutions, debt financing and social spending.\textsuperscript{43} It includes both performance and compliance audit, carried out ex post and being non-binding.\textsuperscript{44} The AGN does not possess direct enforcement and sanctioning powers, though it can refer a case to the appropriate authorities. As it cannot conduct audits in all areas every year, AGN selects areas that must be subject to regular and periodic audit, and prepares a strategic and operational plan (submitted for approval to Congress) to audit those areas.\textsuperscript{45} It establishes the criteria for control and auditing, and may receive from Congress special powers to audit entities that are not state-owned or are governed by private law. Finally, AGN may require information from any public body. In practice, several factors undermine these broad formal powers. AGN has the advantage of being an oversight body with explicit constitutional status, but the constitutional requirement for Congress to enact a special law that regulates the creation and operations of AGN has never materialized, and Law 24.156 continues in force without fulfilling the constitutional provision (ACIJ 2005; Rose-Ackerman et al. 2010, 40).\textsuperscript{46} Another serious limitation is that AGN can only make an ex-post facto review of the acts of agencies under its jurisdiction.

Other aspects of AGN operation also violate the spirit of the Constitution. While originally the purpose of party-based control was to ensure balance between political and technical rationality in audit opinions, the political nature of control has led to biased audit rulings and created veto points in the audit process that compromise the body’s independence and effectiveness (Santiso 2009, 79).\textsuperscript{47} Moreover, the collegial nature of the body has contributed to its politicization.\textsuperscript{48} The president is only one of seven auditors in a collegial body that decides by simple majority; the Senate and the Chamber of Deputies appoint the auditors based on the relative party strength in each camera. In practice, the AGN is “literally ‘sliced up’ amongst the two main political parties (Santiso 2009, 79). Four or five members of the body respond to the interests of the ruling party, and if the party has a majority in Congress, the opposition’s role is limited (Rose-Ackerman et al 2010, 41). If the ruling party has the majority in the board, as occurred between 1994 and 2001, it can stop any investigation that could damage the executive (Manzetti 2000, 25). For example, during periods in which Peronism has governed with majority in both chambers, the tendency to cover irregularities committed by party
members (or more specifically members of the same Peronist faction) prevailed (Verbitsky 2006, 117; Santiso 2009). Audit findings are often negotiated, and the board has been accused of bargaining for the approval of important reports that could have significant consequences for the government (Bruno & Schwenheim 2006; Santiso 2009, 79).

A good example of how the automatic simple majority limited the body’s capacity to exercise effective oversight occurred under the presidency of Rodolfo Barra, when the body was divided between three PJ and three Alianza’s appointees. With his vote, Barra was able to block investigations while moving others forward based on political criteria. In 2001, AGN’s investigation of the powers to exchange external debt granted to Cavallo by President De La Rúa was seen as an attempt to reinforce Menem’s defense strategy in a corruption case. The contents of an unofficial report on Cavallo’s actions were leaked to the press, and when the report was submitted to the board, Barra voted twice to overcome a tie vote. The final report was an example of the body’s political use; for the first time in its history, AGN issued an opinion not on a particular case, but on a specific Executive Decree, thus exercising the control of legality that corresponds to the Supreme Court.\textsuperscript{49}

After 2001, given the increasing visibility of AGN in challenging the Kirchner’s government, the collegial nature of the body facilitated attempts by the ruling party to control the board and curtail the president’s powers. In 2006, there was an attempt to impeach the president on allegations of impropriety (Santiso 2009, 81). In 2009, the ruling party’s majority of the board tried to change AGN’s internal statute to limit the president’s powers, yet social mobilization blocked this attempt.\textsuperscript{50}

Another serious limitation derives from the relationships between AGN and the Public Accounts Committee. If the ruling party holds a majority in the committee, it can undermine AGN’s ability to fulfill its mission because it can change the annual plan, constrain the body’s margins of maneuver, or block and make changes to audit reports (Manzetti 2000, 25). In this regard, being accountable to Congress has not guaranteed independence and neutrality.

Finally, the AGN does not have jurisdictional powers and its recommendations are not binding, which limits the effectiveness of audit reports and the enforcement of audit
recommendations (Ghini 1998, 5; Santiso 2009, 81). Based upon its findings, AGN makes recommendations and may file a complaint, but it cannot be plaintiff, have access to judicial proceedings, or follow up on a case.\textsuperscript{51} This makes audit reports inconsequential in terms of judicial redress or legislative accountability (Rodriguez and Bonvecchi 2006; Santiso 2007, 2009). AGN cannot suspend a public official during investigation until proven innocent. The implementation of AGN recommendations is voluntary, and depends on the political will and resources of the audited agencies. Although the AGN’s technical specialization and reputation, together with criteria of transparency and efficiency and internal control by SIGEN, should operate as incentives for implementing audit recommendations, in practice there are almost no follow-up mechanisms and the deficiencies identified by AGN persist over time without ever been adequately addressed (ACIJ 2005, 2007). Furthermore, AGN lacks any mechanism to monitor compliance with its recommendations (Ibid.).\textsuperscript{52} Only highly visible cases are likely to be investigated and prosecuted by the judiciary, which must review all the evidence accumulated by AGN over again, with resulting delays in processing the cases (Ghini 1998, 5). In 2001-2002, for example, approximately one fourth of audit reports were redirected to judicial authorities under suspicion of malpractice, fraud, or corruption, yet they had little effect. Thus, enforcement of audit findings has tended to occur indirectly—e.g., through media or NGOs (Santiso 2009, 81).

3.3 Resources

AGN has scant resources to carry out its functions, and its authorities have often complained about violations of the body’s financial autarchy.\textsuperscript{53} The initial budget was $5 million dollars per year. It was increased to $18 million per UCR’s request. Most of AGN’s funding comes from the National Treasury, and only a small amount corresponds to the body’s own resources (AGN collects fees for its audit services to private banks, the \textit{ANSES}, and \textit{AFIP}). AGN elaborates its annual budget, which is negotiated with the Ministry of Economy, the Chief of Cabinet, and the Public Accounts Committee. The body suffered the consequences of macroeconomic crisis, but in contrast to other control bodies, AGN had already experienced budget cuts of approximately $4 million pesos between 1998-2001.
(See Table 7.1). These budget cuts were decided unilaterally by President Menem, although the power to approve AGN’s budget belongs to Congress (Manzetti 2000, 25). In 2001, AGN formally complained to President De la Rúa, the Chief of Cabinet, and Congress regarding the delicate financial situation, which seriously compromised oversight capacity. Budget increases have usually come together with an increase in audit tasks (AGN 2004), or have only reflected salary raises, without increasing resources for operational tasks.

### Table 7.1. AGN’s Budget: Expenses by source

(Thousands of AR Pesos)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total budget</th>
<th>Executed</th>
<th>National Treasury Funding</th>
<th>Own resources</th>
<th>Other sources</th>
<th>As % of total federal budget</th>
<th>As % of total Congress budget</th>
<th>Total Congress budget</th>
<th>Total federal public sector budget</th>
<th>Change from previous budget (%)</th>
</tr>
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<td>54,823</td>
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<td>0.040</td>
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<td>811,471</td>
<td>148,298,794</td>
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</tr>
</tbody>
</table>


AGN has discretion in its internal hiring, consulting contracts, and internal procedures (Manzetti 2000, 24). Originally, it had approximately 400 employees that came from the dissolved TCN (Verbitsky 2006, 119). The number has increased over the years to approximately 700-800 employees. A high number of technical staff (approximately 400 in 2001) is hired on temporary contracts, with high rotation of personnel. The precarious conditions of many employees, who lack job stability and benefits of permanent staff while performing similar functions, has been a contentious issue. Moreover, technical staff has often been hired based on political criteria (each auditor-general can hire a certain number of staff, usually selected based on patronage or political
Criteria) even in periods when limited resources recommended not increasing expenditures (ATE March 2002).

Compensation of personnel was affected by salary cuts and the abandonment of the one-on-one parity between the Argentine peso and the US dollar. Average salaries for managerial levels were approximately $5,000 Argentinean pesos in 2002 (less than US $2,000 depending on the exchange rate), which is not competitive compared to the private sector; before the end of parity, those employees were making US $4,000-5,000 monthly. In response to the crisis, salaries were cut by 13% in 2001 (ATE March 2002). Overall, between February 2002 and October 2003, salaries were reduced by 40% (ATE October 2003). More significantly, salaries were never raised between 1994 and 2002, which accounts for high turnover rates and the departure of technical staff to the private sector. There is no system of performance evaluation, and compensation is not based on performance or results.

3.4 Performance

AGN’s performance may be evaluated in light of the body’s annual audit plan. Congress elaborates and approves an action plan that includes audits and investigations to be conducted ex officio, as well as specific audit requests. This poses an inherent risk of constraining AGN’s autonomy and affecting its performance:

The text of the law is clear in stating that the Public Accounts Committee and the Budget and Finance committee of both houses of Congress have the power to approve the annual action plan, per AGN’s proposal. These committees are part of Congress and are formed by deputies and senators; their composition respects political representation. Therefore, they are composed largely of the President’s party. On the other hand, if the AGN order further tests, there is the problem of how they are funded, because the oversight body should ask Congress for additional budget. This is so because the AGN does not have guaranteed a proper budget to fulfill its constitutional mandate. Again, it is the political majority in Congress, responding to the President, which decides on this issue (Balbín in La Nación April 6, 2009; author’s translation).

In absence of any formal legislation, the body’s operational plan usually shows significant differences with the action plan approved by Congress, which makes it difficult for the legislature to monitor compliance and to assess the body’s performance. The operational plan is often changed after
approval, and there are frequent delays in opening investigations included in the annual plan. Moreover, ad hoc activities and investigations are frequently prioritized\(^{63}\) (ATE May 2002).

Before 1997, the priority was financial auditing designed to assess the consistency and reasonability of financial information. In 1997, AGN adopted an integral concept of audit (based on efficiency and economy criteria) to assess whether the public budget’s goals had been achieved, so that Congress could evaluate the quality of public management (AGN 2005, 18). However, in practice, AGN still conducts primarily financial and compliance audits, which require fewer resources, thus providing a diminished snapshot of public administration and focusing on lower-level details of administrative and financial probity (Santiso 2009, 80). The extent to which change towards performance audit has actually taken place is difficult to assess, as the AGN does not gather aggregated statistics of its outputs and there are no available performance indicators (ATE 2002).\(^{64}\)

AGN produces between 200 and 300 audit reports per year.\(^{65}\) (See Table 7.2) In addition, it conducts ad hoc audits when there are suspicions of irregularities in any agency under its jurisdiction. However, the relevant information produced is seldom used outside of the small information network to which AGN reports (ACIJ 2006, 1). One limitation on the impact of audit reports is the excessive delay that the body has historically suffered in conducting its investigations, as well as the delays that audit reports experience in Congress.\(^{66}\) These delays clearly limit the effect of audit findings and recommendations, as well as the possibility of any reform (ATE, May 2002). This historical problem was only corrected in August 2004, when AGN acknowledged that it had completed all pending investigations and would begin controlling concomitantly the Kirchner government.\(^{67}\)

Although audit reports have good technical quality and help identify problems in the operations of public bodies, they also suffer important deficiencies. They did not incorporate the perspective of the audited organs until 2003. Reports frequently provide a superficial analysis of important issues. They treat each audited organ as an isolated and independent unit, which makes it difficult to conduct comparisons (ACIJ 2005).\(^{68}\) Also, the informal practice of approving almost all reports by unanimity within the board allows the ruling party to dilute or veto audit findings and
results in a bargaining process about the content of reports that mitigates the audits’ impact. Finally, the non-binding nature of AGN’s observations and its inability to monitor the implementation of corrective measures represent a serious obstacle for maximizing impact:

I think that the law (regulating AGN’s powers) was amputated for undermining the Audit Institution’s control powers. They took away the power to demand compliance. They took away the capacity, for instance, to prevent a public official from further committing the same irregularities. I believe an audit agency with greater faculties and more capacity to follow up on the recommendations is necessary. The country is at a crossroads. We can’t continue managing the State in this way, because it is precisely what made the state unviable. It is time to think if we want to move on or remain in a country as it was in 1995, when there were no controls.

The more timely publication of audits since 2001 has increased their impact and facilitated social control. For example, AGN’s recommendations concerning privatized public services and compliance with privatization contracts by licensing firms have had greater impact, and the body has recommended executing contractual guarantees or terminating contracts in the case of serious irregularities. Nevertheless, Congress should play a more active role in verifying the implementation of corrective measures, and AGN could have greater powers and more clear criteria to monitor compliance with its recommendations (Despouy et al. 2002).

AGN’s competencies include the review and analysis of the revenue and investment accounts of public funds before submitting them for approval to the Public Accounts Committee. Although delays in the certification process originate in the legislative stage (as analyzed in Chapter 6), AGN has also suffered a “historical delay” in fulfilling this mission. In 2004, AGN reviewed the public accounts for 2001; year 2002 was approved in 2005 (AGN 2004; 2005), and years 2003 and 2004 in 2006 (Santiso 2009, 85). This indicates that there has been an active effort to speed up the certification of public accounts. However, the major constraint on AGN’s effectiveness in reviewing the public accounts does not have to do with the body’s capacity but with politics. The overall weakening of the budget process increases the risks of auditing while reduces audit capacities:

As far as the macroeconomic guidelines of the budget are beyond the control of parliament and run outside the scope of Decree 1023/2001 on Government Procurement and the scope of the Ministry of Finance, the audit universe gets larger and larger [...] no matter how much the Audit Office is strengthened institutionally, it will not be able to easily control the new audit universe.
3.5 Safeguards and relationships

Formally, the AGN has three main safeguards against political pressure: the technical nature of audit reports; the existence of multiple points of decision in the audit process, which makes it difficult for any political pressure to have an impact; and the collegial nature of the board which approves the audit reports.\(^7\) While institutional safeguards formally protect the body against advances from the executive, in practice, the relationship between AGN and Congress has undermined the independence and effectiveness of the audit process (Gonzalez Salas 2005, 148).

### Table 7.2. Audit reports produced by AGN per year and type, 1993-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Performance (% over total)</th>
<th>Financial (% over total)</th>
<th>Special (% over total)</th>
<th>Of accounts (% over total)</th>
<th>Int. control (% over total)</th>
<th>Environmental (% over total)</th>
</tr>
</thead>
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<td>26 (12)</td>
<td>6 (3)</td>
<td>61 (28)</td>
<td>9 (4)</td>
<td>6 (3)</td>
</tr>
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<td>67 (29)</td>
<td>6 (3)</td>
<td>32 (14)</td>
<td>11 (5)</td>
<td>6 (3)</td>
</tr>
<tr>
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<td>27 (11)</td>
<td>21 (8)</td>
<td>0 (3)</td>
</tr>
<tr>
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<td>220</td>
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<td>85 (38)</td>
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<td>30 (14)</td>
<td>6 (3)</td>
<td>0 (3)</td>
</tr>
<tr>
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<td>137 (54)</td>
<td>1 (0)</td>
<td>32 (13)</td>
<td>7 (3)</td>
<td>0 (3)</td>
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<td>119 (47.2)</td>
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<td>5 (2)</td>
<td>25 (13)</td>
<td>6 (13)</td>
<td>0 (3)</td>
</tr>
<tr>
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<td>5 (2)</td>
<td>37 (18)</td>
<td>5 (2)</td>
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<td>40 (20)</td>
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<td>0 (2)</td>
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<tr>
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<td>80 (29.8)</td>
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<td>5 (1.9)</td>
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<td>888 (100)</td>
<td>983 (30.7)</td>
<td>74 (34)</td>
<td>445 (2.6)</td>
<td>85 (15.4)</td>
<td>22 (2.9)</td>
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</tbody>
</table>

Source: Author based on ACIJ (2005); AGN Annual Reports for years 1993-2006 (<www.agn.gov.ar>); Molinelli (1999, 517).

* Financial auditing reports of programs funded by multilateral credit organizations

** For year 2007, the annual report does not allow to distinguish the different types of audit report produced neither to have the aggregated figure for the total number of audits performed.
The institutional connection between AGN and Congress is formally granted to the Public Accounts Committee, which has important responsibilities in the external control system (ACIJ 2005b). It shapes the AGN’s annual action plan, may request information, and may ask AGN to conduct special and ad-hoc investigations. It also influences the body’s budget and may not endow it with sufficient resources (Santiso 2009, 80). AGN must submit all audit reports to the committee for approval. Not only does the committee present important normative and structural deficiencies, but it has also held a strained relation with the AGN. While article 85 of the Constitution grants AGN functional autonomy and prohibits any interference, even from the organ which AGN assists technically, this mandate has been violated in practice:

Both some of the rules contained in the Financial Administration Act and the regulations of the CPMRC seriously undermine rules of highest rank, plainly violate the Constitution, and transform the AGN in a mere accessory to the CPMRC (ACIJ 2005b, 21; author’s translation).

While the Constitution attributes all aspects of external control to the legislature, the 2004 committee’s internal statute establishes that “corresponds to the CPMRC any matter related to the national public sector’s control” (article 1). This ambiguity has allowed the committee to appropriate powers and competencies, and to undermine the functional autonomy of AGN. Moreover, Law 24.156 and article 3 of the committee’s internal statute establish that the committee will be in charge of controlling AGN’s activities and following up on Congress’s requests. This reinforces the risk of political subordination as political retaliation for audit findings (González Salas 2005, 150), and gives the committee discretionary powers to control AGN. The body’s functional autonomy, which should guarantee effective oversight, has been severely constrained in practice:

The Audit Office is constrained by many aspects of the dynamics of the committee and its composition and therefore, the political structures and affinity of this committee with the government may be an impediment to the required impartiality of external public control (González Salas 2005, 175; author’s translation).

In addition, the committee has put significant hurdles before the approval of audit reports and has not followed up on audit findings. A common way of discrediting the reputation and institutional profile of the AGN has been to weaken the opportunity of an audit report by delaying its treatment, requesting complementary information and investigations (Santiso 2009, 79), and applying informal
pressure to delay information from the audited agencies: “It is not necessary to press for changing decisions, because the approval [of audit reports] is so delayed that, when it finally takes place, audit reports are no longer relevant or timely.” Tables 7.3. and 7.4. illustrate the limited performance of the committee and the delays in approving audit reports.

Table 7.3. Projects entered into and approved by the Public Accounts Committee

<table>
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<tr>
<th>Year</th>
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<th>Approved</th>
</tr>
</thead>
<tbody>
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<td></td>
<td>Petitions / AGN</td>
<td>Projects of Resolution / Senate</td>
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<td>1997</td>
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<td>2</td>
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<tr>
<td>2007</td>
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</table>

Source: Author’s elaboration based on Anuario Legislativo 2002 and information provided by HSN.

Coordination problems undermine relations with other oversight agencies. Although AGN has established institutional relationships to collaborate on training and professional development issues (AGN 1999), there is no institutionalized mechanism to coordinate actions, identify priorities, design common agendas, and share information. For example, AGN does not have any established criteria to decide which audit reports are sent to other control bodies. It depends on an ad hoc decision of the board, which has raised concerns and complaints from other control bodies that often informally look for the information on AGN’s website rather than making a formal request. Some control bodies that lack technical capabilities but have jurisdictional powers, such as FNIA, have requested AGN to conduct specific audits through the bicameral committee, but always in an informal way. Conflicts with the internal audit body (SIGEN) increased significantly during the Kirchnerist period, and AGN complained that SIGEN withheld relevant information for conducting external audits. Also, AGN
does not have any cooperation agreement with the Attorney General’s Office to compensate for its lack of jurisdictional powers.

Table 7.4. Approved projects according to the year they entered the Public Accounts Committee

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Table 7.4. (cont.)

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<th>2007</th>
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<td>22</td>
<td>66</td>
<td>37</td>
<td>6</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>2003</td>
<td>1</td>
<td>169</td>
<td>131</td>
<td>93</td>
<td>22</td>
<td>4</td>
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<tr>
<td>2004</td>
<td>-</td>
<td>24</td>
<td>158</td>
<td>45</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>-</td>
<td>-</td>
<td>38</td>
<td>113</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>76</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>314</td>
<td>402</td>
<td>210</td>
<td>309</td>
<td>220</td>
<td>148</td>
</tr>
</tbody>
</table>

Source: Author’s elaboration based on Anuario Legislativo 2002 and information provided by HSN.

Overall, relations with audited agencies have been correct. However, after 2001, AGN has complained about difficulty in collecting information for its investigations—for instance, from regulatory agencies (AGN 2002). AGN has also asked for greater powers to request and search for information from banks or AFIP, which have often resorted to “fiscal secrecy” to avoid disclosure (AGN 2005, 29). The law
does not formally establish any time limit for the audited organs to respond to information requests from AGN or Congress, which undermines the ability to audit in real time (AGN 2003). Observations made by AGN are generally well received by the audited organs (AGN 1999-2005), but this does not involve any formal commitment to comply with its recommendations. Relations with civil society have traditionally been weak. However, since 2001, AGN’s president has promoted citizen participation through NGOs and civic associations, some of which monitor the institution, provide information for audits, participate in the elaboration of the annual audit plan, and monitor the implementation of the body’s recommendations (Gonzalez Salas 2005, 202).

Furthermore, AGN began to publish audit reports on its website after their approval by the board in 2002. This undermined the informal veto power of the Public Accounts Committee, which strongly resisted the immediate publicity of reports (ACIJ 2005) as this prevented “parking” (cajonear) adverse audits (Santiso 2009, 80). According to its internal rules (article 3; article 23. Inc. b), the committee will determine the materials that should have reserved nature and be exempt of publication, as well as establish the public or private nature of the audits conducted by AGN. Without clear formal limits to these powers, the exercise of the rights of access to information and publicity of government actions depends on the discretion of the committee (Ibid.). The online publication of audit reports has created an informal circuit of control, as AGN’s observations are often discussed by the public and the media before being treated by Congress; this increases the opportunity for audit reports to set the public agenda regarding external control, thus increasing AGN’s de facto independence from Congress. AGN has also frequently resorted to the media to improve the disclosure of relevant audit reports and stimulate the indirect enforcement of audit findings through social pressure. This increased visibility generated tensions with the Kirchner government, which tried to neutralize the body and to curtail the powers of the AGN’s president.
4. Overseeing bureaucratic implementation: General Comptroller Office (SIGEN)

The Sindicatura General de la Nación (SIGEN) and the Internal Audit Units (approximately 142 in 2005) were created in 1992 (Law 24.156) to implement a new model of integral control based on the principles of economy, efficiency and effectiveness (Garcia 2005, 17). SIGEN has administrative and financial autonomy, and it reports directly to the president. It exercises the internal control of state jurisdictions, decentralized agencies, and public companies and corporations that depend on the executive branch, and oversees privatizations. The body is chaired by the General Comptroller (Síndico General de la Nación) and three Deputy Comptrollers (Síndicos Adjuntos). SIGEN is not a collegial body: deputies serve as advisors, yet the ultimate authority belongs to the General Comptroller. The body issues, applies, and supervises the enforcement of internal control regulations, and reports to the president any facts that may cause damage to the national wealth.

4.1 Institutional trajectory and autonomy

SIGEN’s predecessor was the Sindicatura General de Empresas Públicas (SIGEP), responsible for the external and concomitant legal, financial and managerial control of state-owned enterprises. When SIGEP requested compliance with legal requirements in the initial privatization processes, Menem eliminated the formal control role that SIGEP was supposed to exercise over state reform (Manzetti 2003, 339). He placed the body under the hierarchical authority of the Secretary of Planning, within the Office of the President, and empowered the General Secretary of the Presidency to decide in case of any objection.

SIGEN has been characterized by the politicization of appointments, subordination to the executive, limited transparency, tensions between the legal versus the managerial nature of internal control, and the continued weakness of internal bureaucratic control. The institutional arrangements and enforcement of internal control facilitated politicization, particularly in those periods in which political dominance facilitated the neutralization of accountability institutions. There are serious limitations to the independence of SIGEN’s governing authorities, the impartiality of its staff, and the
autonomous exercise of its functions. Appointments at the top managerial level have always had a clear political nature. Moreover, the authority of each jurisdiction appoints the internal auditors (SIGEN can only issue a non-binding opinion) and can dismiss them discretionally. This enhances rotation and de facto subordinates internal auditors, limiting the independent exercise of its functions (Poder Ciudadano 2009).  

The president appoints the General Comptroller for an indefinite term. The professional profile of General Comptroller was broadened in 2000 to include not only professionals in economics, but also lawyers with at least eight years of experience in financial management and audit (Garcia 2005, 21). However, General Comptrollers and Deputy Comptrollers have been appointed based on political criteria, without meeting the professional requirements. The first head of SIGEN was Alberto Abad, who neither challenged President Menem’s decisions nor played an active role in controlling the executive. His “good” behavior was rewarded with a ministerial post after two years in office (Manzetti 2000). His successor in 1993 was Hector Agustini, one of the three Deputy Comptrollers during Abad’s term. He resigned after two years in office, and was succeeded by a former member of the Public Accounts Committee. Upon taking office in 1999, President De la Rúa appointed Rafael Bielsa, a well-known jurist, who did not have the financial management and audit experience required by the law. Despite the higher profile and independence that Bielsa brought to the body, his appointment was also political. Nevertheless, during his mandate, the body played a more active role in denouncing mismanagement and corruption, which finally led to his resignation in 2001 (Charosky 2002, 251). SIGEN’s presidency was vacant until February 2002, when President Duhalde appointed Rodolfo Comadira, a well-known administrative jurist, who was in office for 14 months. His mandate was thought to provide SIGEN with greater independence, but also was biased to legal rather than managerial aspects of internal control.  

In 2003, Kirchner made several changes at the top level of SIGEN. First, Alberto Iribarne held office for 13 months between 2003-2004, before his appointment as cabinet minister. His successor, Miguel A. Pesce, performed his duties for only one month. None of them met the
formally required professional criteria to head the body. In addition, they had a much more political profile than their predecessors: not only were they close and loyal to the president, but also could be identified with specific factions or political families.\(^97\) In 2004, Claudio Moroni, a close friend and former collaborator of the Chief of Cabinet, was appointed. His appointment was very controversial, given his involvement in a presumed case of corruption when he was in charge of the *Superintendencia de Seguros de la Nación* in 1995-1998 and 2002-2004.\(^98\) Also, political influence over the body became evident with the appointment of the Minister of Planning’s wife as Deputy Comptroller. Her appointment violated the basic rule of independence and objectivity of the auditor, and raised concerns about a potential conflict of interest\(^99\) (Poder Ciudadano 2009, 66). These appointments signaled the politicization and limited autonomy of the body.\(^100\) Internal control does not seem to rank high in the concerns of those in charge of the national public administration. Control over SIGEN has become one of the focal points for power concentration, raising suspicions about its transparency and objectivity.

### 4.2 De facto powers

SIGEN is a normative, supervisory, and coordinating body,\(^101\) responsible for the internal audit control of the executive, which is performed through a network of Internal Audit Units (IAUs). While SIGEN has administrative and financial autarchy, the IAUs are hierarchically subordinated to the authority of the corresponding agency. They exercise the subsequent internal control of financial and administrative entities of the executive branch, and report and make recommendations to each agency’s direct authority (who is responsible for maintaining an adequate internal control system) and to SIGEN. SIGEN has, on paper, large powers, which include not only issuing and applying internal control rules, but also supervising their enforcement, verifying the implementation of audit recommendations, and exercising control over privatizations and privatized services.\(^102\) It has jurisdiction over approximately 105 public entities, including all government departments and secretariats depending on the presidency, as well as universities and state-owned enterprises. However, SIGEN conducts ex post control only, which limits the impact of its actions.
The implementation of the internal control system has also been constrained by the lack of continuity at the top managerial level. Despite its formal powers, frequent changes at the top level have harmed SIGEN’s performance. For example, successive leadership changes delayed the approval of general rules for internal control and severely undermined their application; until 2002 there was no complete normative framework guiding SIGEN and IAUs’ actions (SIGEN 2002), and the operations manual was only approved in 2003.\textsuperscript{103} Different General Comptrollers had different orientations regarding the role of SIGEN and the nature and principles that should guide internal control.\textsuperscript{104} In practice, internal control has been mostly limited to formal compliance with the law and accounting standards, and confined to administrative procedures and officials rather than to high level authorities and policy implementation (Garcia 2005, 21). In contrast, only a few Comptrollers have emphasized the managerial/functional dimensions of control and the role of SIGEN in reporting executive irregularities.

Politicization and limited autonomy have severely constrained SIGEN’s factual powers, and the body has not effectively complied with its executive oversight functions. A frequent complaint is that SIGEN produces reports on past governments but never on the current one, since “any that could question the behavior of high government officials was going to be stopped.”\textsuperscript{105} Moreover, since 2003, the new authorities changed SIGEN’s profile by emphasizing the political nature of internal control and the need for cooperation with the executive, thus limiting its role in ensuring effective accountability:

\begin{quote}
Control is always political. We understand the control system as a feedback mechanism to correct government policies. Control is an information system to improve management, not only to investigate situations where budgetary and procurement procedures have not been complied with.\textsuperscript{106}
\end{quote}

Another limitation on the factual enforcement of the body’s powers derives from the lack of immunity of its auditors. SIGEN’s personnel has been the object of criminal complaints, media campaigns, and threats in relation to some visible cases in which the body reported irregularities that were prosecuted by the judiciary.\textsuperscript{107} The body’s reputation has suffered as a result of these attacks. Moreover, SIGEN’s recommendations are not binding, thus limiting SIGEN’s effectiveness.
Irregularities may never be addressed, and can be found in audit reports year after year, since there are no penalties for failing to comply with the body’s recommendations.  

4.3 Resources and personnel

SIGEN is not financially autonomous. The body’s total budget is approximately 20-30 million Argentine pesos per year. In 2002, as a result of the crisis, the budget experienced a 6% decrease compared to the previous year, and was the smallest in six years ($19,671 thousand Argentine pesos). (See Table 7.5.) The body has approximately 450 employees, whose salaries are considered to be low. Since the original staff (inherited from SIGEP) was formed by external control specialists in an administrative environment in which private sector laws were applied, they had to be retrained in the principles of internal control and public administration management. The new internal control principles were not easily rooted in the new body, which explains why the audits performed in the initial years were mainly oriented toward financial and legal compliance (Garcia 2005, 20).

Table 7.5. SIGEN’s Budget  
(thousands of AR pesos)

<table>
<thead>
<tr>
<th>Year</th>
<th>Authorized credit</th>
<th>Executed</th>
<th>As % of total federal budget</th>
<th>Total federal public sector budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>26,527</td>
<td>24,706</td>
<td>0.054</td>
<td>48,776,000</td>
</tr>
<tr>
<td>1999</td>
<td>24,837</td>
<td>23,043</td>
<td>0.049</td>
<td>51,040,000</td>
</tr>
<tr>
<td>2000</td>
<td>25,127</td>
<td>22,894</td>
<td>0.049</td>
<td>51,602,000</td>
</tr>
<tr>
<td>2001</td>
<td>21,702</td>
<td>20,818</td>
<td>0.042</td>
<td>51,725,100</td>
</tr>
<tr>
<td>2002</td>
<td>23,875</td>
<td>19,671</td>
<td>0.048</td>
<td>49,598,100</td>
</tr>
<tr>
<td>2003</td>
<td>23,347</td>
<td>21,821</td>
<td>0.036</td>
<td>64,018,300</td>
</tr>
<tr>
<td>2004</td>
<td>24,917</td>
<td>22,496</td>
<td>0.036</td>
<td>69,222,700</td>
</tr>
<tr>
<td>2005</td>
<td>28,550</td>
<td>24,109</td>
<td>0.037</td>
<td>77,754,400</td>
</tr>
<tr>
<td>2006</td>
<td>33,975</td>
<td>33,053</td>
<td>0.031</td>
<td>110,369,282</td>
</tr>
<tr>
<td>2007</td>
<td>38,846</td>
<td>37,177</td>
<td>0.026</td>
<td>148,298,794</td>
</tr>
</tbody>
</table>


SIGEN’s personnel have been shown to lack tenure security, particularly when the body’s activism upsets the executive. In 2001, the voluntary retirement of 50% of the top managerial staff was approved. These offices were filled with professionals “who did not meet the suitable requirements and depended on political or personal support to maintain wide wage differentials” (Garcia 2005, 21). In 2003, the General Comptroller replaced the top managers of SIGEN’s seven units. The political
nature of staff appointments is considered a potential threat to auditors’ independence (Manzetti 2000, 25). Formal employment procedures were redefined in 2002, based on job qualifications and a competitive access system (SIGEN 2002). However, there is still a need for enhanced professionalization and a performance evaluation system linked to continuity in office.\textsuperscript{114} Although personnel are well regarded in terms of integrity and neutrality, there have been internal problems between management and medium and low-level employees, and even suspicion of corruption within the organization:

SIGEN’s managers kept for themselves the money allocated for merit-based salaries for all employees. Furthermore, there was a strong suspicion that some of SIGEN’s top level managers engaged in collusive activities with the business and government agencies they were supposed to control.\textsuperscript{115}

\section*{4.4 Performance}

It is difficult to assess SIGEN’s effectiveness in fulfilling its annual objectives, given the delayed development of a strategic plan (SIGEN 2005, 2006). Moreover, SIGEN does not have any external performance evaluation system (internal control is exercised by an internal audit and the body reports to the president\textsuperscript{116}), and there are no aggregated statistics available to measure its performance.\textsuperscript{117} The economic growth generated as a result of SIGEN’s control is one indicator of its effectiveness. The body claims to have generated $16.6 million Argentine pesos in savings in year 2001 and $87 million in 2005 through the system of witness pricing (precios testigo), which establishes reference prices for state agencies to conduct their bids and procurement processes. The number of reports containing reference prices has increased since 2003, though exceptions to the system have also been frequent for political reasons.\textsuperscript{118} SIGEN has also intervened in processes of fiscal consolidation (public debt) to detect debts attributed to the state that cannot be verified and for which the state should not have to pay. According to its estimates about debts of the National Institute for Retirees and Pensioners (INSSJP), SIGEN claims to have generated total savings of 117,409,105 Argentine pesos between 1997-2002, which represents 18.5\% of the total amount claimed (SIGEN 2002).

The number of internal audit reports conducted, and particularly the number of recommendations issued over the years, shows the limited capacity of the body.\textsuperscript{119} (Table 7.6) SIGEN
also monitors the number of recommendations that are actually acted upon by the bureaucracy. A good example of SIGEN’s limited performance is control of the controversial *Aportes del Tesoro Nacional* (ATNs), funds that are formally transferred to the provinces for responding to emergencies and financial imbalances, but in practice are discretionally distributed based on political criteria. SIGEN is the only oversight body that controls these funds, but it has been unable to prevent their discretionary use. Although the body seemed to tighten its control over ATNs as a result of an investigation conducted by the OA, requests for information from civil society, and continuous newspaper coverage, in practice, control was limited to verifying disbursement procedures and judging whether provinces’ requests fell within the legal framework. There was no control over whether the money was actually used to respond to emergency situations and financial imbalances; by the end of 2005, SIGEN had not issued any report regarding the use of ATNs during Kirchner’s government.

### Table 7.6. Number of audit reports by SIGEN per year and type

<table>
<thead>
<tr>
<th>Year</th>
<th>Audit reports</th>
<th>Recommendations</th>
<th>Interventions in cases</th>
<th>Debt consolidation procedures</th>
<th>Reports auditing commissions</th>
<th>Witness price reports</th>
<th>Federal Network</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>113</td>
<td>96</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>214</td>
<td>*</td>
</tr>
<tr>
<td>2002</td>
<td>211 audits</td>
<td>165</td>
<td>425</td>
<td>2,368</td>
<td>*</td>
<td>233</td>
<td>*</td>
</tr>
<tr>
<td></td>
<td>110 internal control system</td>
<td>110 internal control system</td>
<td>110 internal control system</td>
<td>110 internal control system</td>
<td>110 internal control system</td>
<td>110 internal control system</td>
<td>110 internal control system</td>
</tr>
<tr>
<td>2003</td>
<td>316 audits</td>
<td>128</td>
<td>327</td>
<td>3,850</td>
<td>*</td>
<td>495</td>
<td>*</td>
</tr>
<tr>
<td></td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
</tr>
<tr>
<td>2004</td>
<td>--</td>
<td>11</td>
<td>488</td>
<td>2,582</td>
<td>95</td>
<td>506</td>
<td>*</td>
</tr>
<tr>
<td></td>
<td>294 internal control system</td>
<td>294 internal control system</td>
<td>294 internal control system</td>
<td>294 internal control system</td>
<td>294 internal control system</td>
<td>294 internal control system</td>
<td>294 internal control system</td>
</tr>
<tr>
<td>2005</td>
<td>--</td>
<td>5</td>
<td>*</td>
<td>*</td>
<td>26</td>
<td>494</td>
<td>*</td>
</tr>
<tr>
<td></td>
<td>269 internal control system</td>
<td>269 internal control system</td>
<td>269 internal control system</td>
<td>269 internal control system</td>
<td>269 internal control system</td>
<td>269 internal control system</td>
<td>269 internal control system</td>
</tr>
<tr>
<td>2006</td>
<td>84 audits</td>
<td>*</td>
<td>324</td>
<td>16</td>
<td>23</td>
<td>351</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
<td>111 internal control system</td>
</tr>
<tr>
<td>2007</td>
<td>88 audits</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td></td>
<td>115 internal control system</td>
<td>115 internal control system</td>
<td>115 internal control system</td>
<td>115 internal control system</td>
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<td>115 internal control system</td>
<td>115 internal control system</td>
</tr>
<tr>
<td></td>
<td>84 audits</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>142</td>
</tr>
</tbody>
</table>

4.5 Safeguards and relationships

SIGEN lacks institutional safeguards. The president appoints its authorities and management, who find it difficult to act independently and with autonomy (Manzetti 2000, 25). The body is required to inform the president about all public bodies that fall under its jurisdiction in order to provide technical advice and collaborate in the formulation of programs and policies. Also, it reports to AGN about the actions of those organs under its jurisdiction. In addition, IAUs are not functionally independent, which compromises the effectiveness and objectivity of oversight (Poder Ciudadano 2009).

SIGEN conducts economic and financial analysis, but it does not have formal powers to investigate or prosecute misconduct. As a result, it plays a key role in producing information that enables other control bodies, which analyze such information and may file complaints or undertake criminal actions to prosecute illicit behavior. However, the relationships between SIGEN and other control institutions (especially those that are empowered to file criminal complaints and actions) have typically been limited and informal, and they have deteriorated over time. This has helped to subordinate and neutralize other control bodies. For instance, the relations between SIGEN and OA have been under strain since 2003, affecting OA’s ability to investigate and prosecute corruption cases. There are also limits in SIGEN’s relations with oversight bodies at the sub-national level. The exchange of information with internal audit bodies at the provincial level was not institutionalized until 2002, when the Federal Network of Public control was established, yet only in 2005 were all provincial control bodies integrated into the network (SIGEN 2005).

Relations between internal and external audit agencies are crucial for ensuring accountability (Santiso 2009, 39). However, the relationships between SIGEN and AGN have often been competitive, rather than collaborative. In theory, the institutions share information, identify focal points to facilitate cooperation, and seek to coordinate their operational plans. In practice, there have not been significant advances in the articulation of external and internal auditing. For SIGEN’s authorities, the body would benefit from a better and faster operation of AGN: when the external auditor is strong, the internal auditor is seen by the controlled jurisdictions as less threatening and as a
resource to avoid interventions by the external auditor. However, SIGEN’s authorities think the AGN has a more complex institutional structure and it is more politicized, which makes collaboration difficult.

Relations with the organs under SIGEN’s jurisdiction have also gone through difficult periods, especially when the body played a more active role in reporting irregularities. For example, during Bielsa’s tenure, the Central Bank refused to provide information to SIGEN. Also controversial was the decision by the Legal Counsel and Solicitor General’s Office to exclude the Intelligence Agency from SIGEN’s control in an attempt to stop the investigation for the bribes paid in the Senate; SIGEN rejected this decision and appealed directly to the president to solve the conflict, while the director of SIDE filed a criminal complaint against the General Comptroller. In relation to this case, SIGEN was not only denied access to information, but also its reputation and technical capabilities questioned by people very close to the executive. Although relations would have improved over time, they differ across jurisdictions.

The body has traditionally been closed to public scrutiny. In contrast with other control institutions, the top management has refused to establish working relations with civil society organizations, and there has been no clear strategy to reinforce the body’s visibility. In 2002, as part of an effort to improve communication and information channels, SIGEN enhanced the transparency of its activities by publishing all audit reports and recommendations on its website (SIGEN 2002). However, it is still difficult to access information about SIGEN’s activities and outputs. Relations with civil society organizations have frequently been antagonistic, particularly during those periods in which SIGEN has experienced greater subordination to the executive. There are no institutionalized (formal or informal) channels for the participation of civil society in SIGEN’s activities. Nevertheless, newspapers frequently rely on information provided by SIGEN, which suggests how the information produced by the body could activate other agents of accountability to effectively control the executive.
5. Specialized anticorruption bodies: Anticorruption Office (OA)

The Oficina Anticorrupción (OA) was created in 1999 to investigate, control and prevent corruption within the executive branch (Law 25.233 and Decree 102/99). It has two functions: first, control the performance of public officials and the proper use of state resources; second, formulate public policies against corruption in the public sector. The body’s institutional structure reflects these functions with two independent but complementary areas. The Department for Investigations deals with allegations of corruption within the national public administration; it can bring charges and request prosecution if there is evidence of any wrongdoing. The Department for Transparency Designs policies to enhance transparency and prevent corruption. It runs the Financial Disclosure Unit, which manages the asset disclosure system, identifying possible conflicts of interest and incompatibilities, and documenting preliminary findings of illicit enrichment. The Administrative Control Prosecutor (Fiscal de Control Administrativo) coordinates and supervises both departments. All authorities are appointed by the President upon recommendation from the Minister of Justice, and may be removed in case of improper performance of their duties.

5.1 Institutional trajectory and autonomy

The OA was created to fill the vacuum left by the paralysis of the FNIA and the failure of the Office of Public Ethics. One of the electoral promises of the Alianza government was to fight corruption, yet there was no consensus about how to fulfill this promise. While FREPASO advocated investigating the Menemist excesses by creating an ad-hoc bi-cameral committee in Congress (this was neither a permanent nor a specialized oversight agency, and would be aimed at investigating past cases of corruption), President De La Rúa’s preferred option was a multiple-agency approach that would rely on traditional judicial and administrative agencies (Charosky 2002, 208-9; Meagher 2004, 70). The idea of creating an anticorruption agency with key capabilities, responsibilities, and resources to fight against corruption was not initially considered. However, difficulties dismissing the head of the FNIA, and pressure from different constituencies supporting the government, led to the creation of a new and specialized control body.
A serious limitation on the OA’s de facto independence and effectiveness was its insertion within the executive branch, under the hierarchical authority of the Ministry of Justice and Human Rights. The president formally has the power to appoint and dismiss the head of the body upon recommendation from the Ministry of Justice (article 6, Decree 102/99). Hence, the OA is a specialized office within the ministry, and is dependent on the political power rather than being an extra-power institution. This insertion has allowed the executive to undermine the body’s authority and constrain its investigative capacities, and has increased the political conflict that results from its actions. As a result, the trajectory of OA is marked by the body’s efforts to affirm its de facto independence, both symbolically and through its actions. OA initially played a very active role in investigating allegations of corruption involving not only public officials from the Menemist government, but also from the Alianza. The staff realized that, in order to gain public credibility, they needed to investigate the government, so that the OA would be seen as “a state body rather than a government’s body.”

Our goal was to bring court cases, not to make a history book on Menemism. We were there to drive any public official (from the current or the past government) mad, and the government did not expect that. Thus, six months later, for the Alianza government, [OA] became a serious problem, especially for the Minister with authority over the agency, because the investigation of other ministries generated constant political conflict. And we could not be dismissed, because it was a huge political cost for the government, given the presence OA had gained in the media.

However, this attempt to gain independence generated political conflicts within the government coalition and put the body at higher risk. The recruitment of specialized personnel, relying on judicial rather than political criteria, soon became an uncomfortable and unintended effect for the government. The problems were already evident in 2000, and worsened when the legitimacy of the Alianza government started to fade. Economic crisis and social protest did not help: “when economic conditions became the top priority, anticorruption was no longer a concern in Argentina.” In addition, the active role played by OA gave the body high public visibility and credibility, but also created political enemies (for example, former President Menem accused OA of being an anti-Peronist and unconstitutional body).
The appointment of the body’s governing authorities illustrates the attempts to subordinate and influence OA, both in the frequent changes of the authorities and the nature of the appointments that replaced the initial team. In many cases, changes in personnel and authorities were due to political reasons. For instance, many observers viewed the appointment of President De la Rúa ’s brother as Minister of Justice as an attempt to neutralize the OA, though the new Minister finally confirmed all the body’s authorities. Especially significant were changes in the OA’s authorities that resulted from Executive Decree 23/2001, which limited the salary that could be received by high-level public officials to $3,000 pesos. Issued during the ephemeral presidency of Rodriguez Saa as a sign of austerity, and confirmed by Presidents Duhalde and Kirchner, this policy was unequally complied with in the public sector. For the OA, it meant that the highest authorities (who are political appointees) were in many cases earning lower salaries than many of their subordinates. Facing severe constraints and limited expectations, the team that had given the body its initial impulse left the OA. The new appointees were more ephemeral and less successful in terms of the body’s independence and effective performance.

The body experienced frequent leadership changes, with four different heads in only five years. The new appointees were officially highly qualified and competent, but also showed stronger political ties. Some of these politically motivated changes helped to constrain OA’s actions. For instance, in November 2003, Emilio Morin, who was reported in the newspapers to be part of a group of close collaborators to the Secretary of Security (Abiad & Thieberger 2005), took office as the new head of the OA. One year later, he was pressured to resign due to his excessive independence in heading the body, which had moved forward several cases involving the Kirchner’s government. In December 2004, Fleitas Ortiz de Rozas replaced Morin but showed limited interest in pursuing cases against the Kirchner administration (Global Integrity 2007). Similarly, the effectiveness of the OA was under siege when the Director of Investigations’ office was vacant for more than two years. The appointment of Martin Montero in 2005 was controversial, as he was member of a ministerial
commission that had approved construction projects suspected of over-invoicing.\textsuperscript{151} The lack of continuity in the OA’s leadership harmed the body’s effectiveness:

I have the feeling that the Anticorruption Office is not working well after the change of authorities, specifically after the appointment of Fleitas. I think it’s an Anticorruption Office that does not control well the executive power. Moreover, I believe that it goes along with [the government] and has lost its role as comptroller.\textsuperscript{152}

Moreover, the body’s activism and visibility in overseeing the executive explain the attempts by President Kirchner to dismantle the body upon taking office, despite electoral promises to strengthen institutions. In practice, the agency was increasingly subordinated and neutralized after 2003.\textsuperscript{153}

5.2 De facto powers

OA’s jurisdiction includes the centralized and decentralized national public administration, state enterprises, and any other public or private entity in which the state participates.\textsuperscript{154} The body submits an annual report, as well as reports on the results of its investigations to the Minister of Justice. While formally the body has broad investigation and prevention powers, in practice the judiciary has refused to acknowledge its formal powers and competencies to be party to judicial proceedings (OA 2001, 1). Moreover, the overlapping competencies with the FNIA as well as the political influence of the executive have severely curtailed its de facto powers.

In October 2000, given the overlapping competencies of the two bodies, the Attorney General’s Office recommended removing all investigative powers from the OA to concentrate them in the FNIA.\textsuperscript{155} The project intended to give all of OA’s attributes – except the powers for being party in judicial processes where public officials or state interests are at stake, which had upset the judiciary – to a reactivated FNIA,\textsuperscript{156} while limiting the OA to formulating and coordinating anticorruption policies in the public sector. Though the executive denied any involvement with the project, the bill was perceived as the result of an agreement between Menem and De La Rúa to enhance the government’s legitimacy.\textsuperscript{157} However, given the weakness of the FNIA, the bill seemed a clear attempt to subordinate the OA and limit its powers.

The bill was not passed into law, but the Attorney General’s Office continued to sustain this interpretation. In November 2001, the Attorney General requested that OA be excluded from the
judicial proceeding that led to the incarceration of Victor Alderete, former head of PAMI. Following the motion of the defense to exclude the OA, the Attorney General recommended the Supreme Court to rule OA as an extraneous party in judicial proceedings. After this ruling, several courts denied OA its ability to file criminal actions, and even its right to access to information and make copies of open files (OA 2000, 81-3). Defense attorneys’ arguments against OA’s intervention asserted that judicial functions could not be attributed to a body that is part of the executive branch. They also tried to limit OA’s competency only to cases in which the state’s interests are directly affected. However, the Supreme Court acknowledged that OA’s intervention was not a violation of the Constitution, as its intervention in judicial proceedings was the result of the powers that the Law of Ministries (Law 25.233) and Decree 102/99 had given to the body as the ultimate guarantor of the state’s interests against any possible act of corruption.158

The OA has the ability to select and pursue cases, based on three criteria: economic (how a particular case quantitatively affects the functioning of a government institution); institutional (how cases may prevent a public institution from accomplishing its mandate and functions); and social (the number of people significantly affected by corrupt acts). These criteria aim to maximize the body’s limited resources, based on the assumption that other institutions may be able to pursue cases that OA decides not to investigate. In practice, this has been the informal criterion that has avoided duplication with the FNIA.

The agency’s institutional design combines both investigative and control functions along with preventive powers. This design is rooted in the understanding that corruption cannot be reduced through investigations and prosecution only, and prevention and education are necessary to institutionalize anticorruption values and incentives (Johnston 1999, 224-5). However, some observers cast doubts about the effectiveness of this institutional design, as they consider that the effective exercise of preventive functions may have distorted an effective control of corruption. The implementation of preventive plans and policies requires finding internal allies and champions within public agencies; when corruption is extended and systemic, like in Argentina, gaining these internal
allies to implement prevention effectively may require disregarding cases of corruption in which those same allies could have been involved.\textsuperscript{159}

The body has neither immunity from legal actions in the exercise of its duties, nor the power to protect witnesses (Meagher 2002, 2004). While the first benefit could raise suspicion in Argentina as being prone to abuses, the second is an important limitation to the agency’s investigations. In contrast to other anticorruption agencies, OA does not have powers to make arrests, search or seize, or conduct surveillance operations. Another limitation is that the OA reaches only the executive branch at the federal level, thus opening opportunities for corrupt behavior at the sub-national level. Finally, in 2008, the Ministry of Justice amended OA’s internal regulation to limit the ability of staff attorneys to initiate investigations ex-officio. According to the new regulations, only the director of the body (a political appointee) may initiate investigations without receiving a prior accusation.\textsuperscript{160}

\textbf{5.3 Resources}

OA is not an exception to the limited resources that oversight agencies experience in Argentina. Besides suffering the consequences from macroeconomic instability and crisis, its recent creation and small organizational size have also limited access to resources. Furthermore, the declining political support since 2001, and the attempts to subordinate or even eliminate the body, meant cutting the OA’s already limited budget. (Table 7.7.) OA would have gone from being a well-resourced agency staffed by highly paid professionals to a more typical Third World anticorruption agency suffering from shortfalls in funding, underpaid staff, and diminishing morale. (Meagher 2002)

The body lacks fiscal autonomy and a large part of its resources come from ad hoc sources. It is funded from the federal budget, donations from multilateral institutions, and taxes charged by the Ministry of Justice on some services. In general, the budget has been underexecuted, which has traditionally been explained as a result of austerity measures paired with the difficult economic conditions that hit Argentina soon after the OA was created (Meagher 2002). The scarcity of resources has affected both transparency and control. Due to the lack of appropriate resources, the area of control has been unable to monitor most of the filed complaints. OA’s 2003 Annual Report claimed
that it was able to monitor only 5% of the complaints, and had only followed up on 97 out of 1059 criminal complaints (less than 10%) filed since 1999. The OA authorities confirmed those constraints:

The agency has more goals than resources. We have support from the Ministry of Justice [then headed by Gustavo Beliz], which thawed all staff vacancies and allowed us to travel abroad to monitor closely some investigations, but the structure of the OA is small since it was created.161

The area of prevention benefited from a 1999 World Bank donation to enhance public transparency.162 These resources supported OA’s participation in the follow-up mechanism of the ICAC; the implementation of Provinces Plan; 163 a diagnostic study to identify areas that were prone to corrupt behavior, and several courses and publications, among other initiatives. However, when the donation ended in 2004, not only was OA affected by the termination of this support, but Kirchner’s government decided no longer to include the body among the priority institutions that could benefit from international organizations’ loans and programs.164

<table>
<thead>
<tr>
<th>Year</th>
<th>Treasury</th>
<th>Resources w/ specific allocation</th>
<th>Disbursed</th>
<th>External transfers</th>
<th>Cooperating entities (entes cooperadores)</th>
<th>Total disbursed (all sources)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td></td>
<td>3,378</td>
<td>1,461</td>
<td>201</td>
<td>974,470 disbursed</td>
<td>2,544,771</td>
</tr>
<tr>
<td>2002</td>
<td></td>
<td>1,126</td>
<td>975</td>
<td>209</td>
<td>668 disbursed</td>
<td>1,717,718</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>1,159</td>
<td>1,057</td>
<td>657</td>
<td>1,198 disbursed</td>
<td>2,392,873</td>
</tr>
<tr>
<td>2004</td>
<td></td>
<td>450</td>
<td>1,044</td>
<td>992</td>
<td>1,631 disbursed</td>
<td>3,066,547</td>
</tr>
<tr>
<td>2005</td>
<td></td>
<td>1,406</td>
<td>1,166</td>
<td>188</td>
<td>2,022 disbursed</td>
<td>3,187,402</td>
</tr>
<tr>
<td>2006</td>
<td></td>
<td>2,864</td>
<td>1,760</td>
<td>462</td>
<td>2,955 disbursed</td>
<td>4,931,165</td>
</tr>
<tr>
<td>2007</td>
<td></td>
<td>2,948</td>
<td>2,777</td>
<td>563.4</td>
<td>4,000 disbursed</td>
<td>7,169,086</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>687</td>
<td>15,345</td>
<td>11,156</td>
<td>13,448.47 disbursed</td>
<td>25,009,562</td>
</tr>
</tbody>
</table>

Source: Ministry of Economy (<http://sg.mecon.ar/ejecucion/>); other figures from Anticorruption Office Annual Reports, years 2001-07. */World Bank grant concluded in 2004 without completing disbursement **/ Additional grants from British council and PNUD
In 2004, budget estimations for next year indicated cuts of approximately 6% ($1,204,000 vs. $1,275,000 from the previous year), which in practice would be almost 20% ($264,000), as only resources provided by the Treasury ($1,009,000) would be used for expenses, while resources from the donation ($195,000) would be used for previous commitments. This made impossible for OA to continue implementing some of the transparency policies and mechanisms that had been supported through the donation. According to press reports, the OA had budget enough only for running business, but not to investigate (92% of the resources to be obtained in 2005 were to cover salaries and only 8% for consumption goods).\textsuperscript{165} In 2008, the budget was only $9.4 million pesos (OA 2008).

The OA is a small agency with only 30-40 employees. However, the political will to fight corruption that accompanied the creation of the body brought together a group of young, highly motivated and qualified people.\textsuperscript{166} With an average age between 30-32 years, the initial team had an inter-disciplinary profile to respond to the complex challenges of corruption (De Michele 2001, 2). However, limited compensation and the scarcity of personnel (due to the impossibility of filling in the existing vacancies as a result of budgetary cuts) have compromised the continuity of staff.\textsuperscript{167} In addition, most technical staff was hired on temporary contracts and experienced precarious employment conditions (OA 2002, 1).

5.4 Performance

Performance can be measured in three different areas: first, OA’s oversight role regarding the financial disclosure system, which tracks changes in public officials’ wealth and detects possible conflicts of interest; second, the body’s effectiveness in the investigation and prosecution of corrupt behavior; finally, its role ensuring compliance with the international anticorruption treaties of which Argentina became part.

Through its Financial Disclosure Unit, the OA is responsible for the formal and substantive verification of the assets declarations of high-level public officials and a selected sample of other public officials.\textsuperscript{168} In case of non-compliance, the Department for Investigations follows two possible courses of action: either it files a criminal complaint or it initiates administrative actions. If there is
evidence of possible illicit enrichment, the Department evaluates the available evidence and considers whether there could have been a significant patrimonial increase. If so, it conducts an investigation in which the public official has to justify the increase. If the increase is justifiable, the case is archived; otherwise, a criminal complaint is filed. OA has made significant advances with the financial disclosure system, including the development and improvement of an electronic system to submit financial disclosure forms; providing public access to financial disclosure forms; and the development of a manual of procedures. Nevertheless, in 2004, an external audit identified serious weaknesses in the system. Some of these problems could be traced to the limited material and financial resources of the OA, while others had to do with institutional structure and procedures. Another remaining challenge for the body is the implementation of a system that allows crossing information held by different control bodies.

Since its creation, OA has overseen approximately 4,000 declarations per year (out of a total universe of approximately 25-30,000 public officials), including high-level public officials and a sample of lower lever officials. (Table 7.8.) The initial high level of compliance (around 96% in 2001) increased over time to almost 99% (De Michele 2001, 4; Meagher 2004). Providing public information about compliance rates, as well as reducing the cost of filing (from USD$70 to USD$8 under the new system), has helped to increase compliance. The financial disclosure system also results in the monitoring of incompatibilities and conflicts of interest. In this area, OA has also been very effective. In 2005, 41 conflicts of interest and 91 incompatibility cases were solved, with 30 and 62 cases processed respectively (OA 2005, 31-33). (Table 7.9.)

<table>
<thead>
<tr>
<th>Year</th>
<th>New Files</th>
<th>Failed to submit forms</th>
<th>Omitted information</th>
<th>Possible illicit enrichment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-2002</td>
<td>172 (0.68)</td>
<td>14 (0.06)</td>
<td>66 (0.26)</td>
<td></td>
</tr>
<tr>
<td>2000-2003</td>
<td>396 (0.81)</td>
<td>14 (0.03)</td>
<td>76 (0.16)</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>118</td>
<td>76 (0.64)</td>
<td>2 (0.02)</td>
<td>40 (0.34)</td>
</tr>
<tr>
<td>2005</td>
<td>89</td>
<td>2 (0.02)</td>
<td>37 (0.42)</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>251</td>
<td>45 (0.18)</td>
<td>59 (0.24)</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>148</td>
<td>108 (0.73)</td>
<td>--</td>
<td>39 (0.26)</td>
</tr>
</tbody>
</table>

Source: Author based on OA’s Annual Reports, years 2000-2007.
OA was particularly effective during the first years in the investigation and prosecution of corruption, despite its limited resources. With fewer powers than the FNIA, less than half of its personnel, and a smaller budget, OA brought many more complaints to justice. The strength of OA’s actions relied upon the guarantee of independence and objectivity in its investigations. OA has achieved some significant results despite insufficient resources (Rose-Ackerman et al. 2010, 42) and the absence of appropriate mechanisms for monitoring criminal complaints and criminal actions (lawsuits) filed by the body, as well as ongoing investigations. However, the average time per investigation is still too long (OA 2004, 1), and until 2005, there was not a rational division of tasks between the admission of cases/complaints, their investigation, and filing complaints and/or actions (OA 2005).

Table 7.9. Conflicts of interest and incompatibilities: Total accumulated solved cases, Dec. 99-Dec.07

<table>
<thead>
<tr>
<th>Origin</th>
<th>Total</th>
<th>Abstract</th>
<th>Non-considered</th>
<th>Detected</th>
<th>Excused</th>
<th>Preventive recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflicts of interest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultation</td>
<td>145</td>
<td>13</td>
<td>27</td>
<td>17</td>
<td>3</td>
<td>85</td>
</tr>
<tr>
<td>Complaint</td>
<td>90</td>
<td>13</td>
<td>44</td>
<td>17</td>
<td>-</td>
<td>16</td>
</tr>
<tr>
<td>UDJ</td>
<td>527</td>
<td>15</td>
<td>432</td>
<td>30</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>Total</td>
<td>762</td>
<td>41</td>
<td>503</td>
<td>64</td>
<td>3</td>
<td>151</td>
</tr>
</tbody>
</table>

| Incompatibilities |       |          |                |          |         |                           |
| DIOA          | 25    | 8        | 16             | 11       | -       | -                         |
| UDJ           | 240   | 18       | 155            | 67       | -       | -                         |
| Consultation  | 167   | 88       | 61             | 18       | -       | -                         |
| Complaint     | 53    | 11       | 28             | 14       | -       | -                         |
| Anonymous complaint | 14  | 5        | 5              | 4        | -       | -                         |
| Total         | 509   | 130      | 265            | 114      | -       | -                         |


Despite these constraints, the body has created an effective mechanism that connects preliminary investigations and information from the asset disclosure system to formal investigations within the judiciary (Rose-Ackerman et al. 2010, 42). The percentage of cases solved per year of the total number of new files opened is high, although it has decreased since 2003 (simultaneously, there was an increase in the number of pending cases that are solved). In 2004, there was a significant increase in the total number of new cases opened, but OA was able to respond effectively, with the same resources than in the previous year, and to raise the number of cases solved by almost 26% (from 709
to 893); however, the number of cases filed in the judiciary diminished by almost 20% (from 327 to 263). (OA 2004, 12) In 2007, the number of resolutions sent to the judiciary dropped to 100. (OA 2007) (See Table 7.10)

Table 7.10. Distribution of OA’s total actions according to stage of processing, 2000-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>New files ***</th>
<th>Total opened files ***</th>
<th>Rulings (yearly &amp; on total open files)</th>
<th>Investigati on</th>
<th>Archived</th>
<th>Sent to other organs</th>
<th>Submitted to the Judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Current year</td>
<td>1144</td>
<td>1144</td>
<td>1076</td>
<td>365</td>
<td>350</td>
<td>183 (0.17)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Current year</td>
<td>671</td>
<td></td>
<td>161 (0.24)</td>
<td>174 (0.26)</td>
<td>127 (0.26)</td>
<td>208 (0.31)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>1815</td>
<td>1784</td>
<td>339 (0.19)</td>
<td>602</td>
<td>340</td>
<td>503 (0.28)</td>
</tr>
<tr>
<td>2002</td>
<td>Current year</td>
<td>431</td>
<td></td>
<td>120 (0.24)</td>
<td>100</td>
<td>81</td>
<td>121 (0.29)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>2246</td>
<td>2206</td>
<td>340 (0.15)</td>
<td>754</td>
<td>445</td>
<td>667 (0.30)</td>
</tr>
<tr>
<td>2003</td>
<td>Current year</td>
<td>949</td>
<td></td>
<td>230 (0.24)</td>
<td>244</td>
<td>138</td>
<td>327 (0.35)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>3195</td>
<td>2779</td>
<td>406 (0.13)</td>
<td>1099</td>
<td>581</td>
<td>1059 (0.34)</td>
</tr>
<tr>
<td>2004</td>
<td>Current year</td>
<td>1368</td>
<td></td>
<td>455 (0.34)</td>
<td>327</td>
<td>303</td>
<td>263 (0.20)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>4563</td>
<td>4550</td>
<td>731 (0.16)</td>
<td>1508</td>
<td>907</td>
<td>1404 (0.31)</td>
</tr>
<tr>
<td>2005</td>
<td>Current year</td>
<td>850</td>
<td></td>
<td>400 (0.24)</td>
<td>201</td>
<td>134</td>
<td>115 (0.14)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>5413</td>
<td>951</td>
<td>59 (0.13)</td>
<td>452</td>
<td>188</td>
<td>232 (0.09)</td>
</tr>
<tr>
<td>2006</td>
<td>Current year</td>
<td>688</td>
<td></td>
<td>329 (0.13)</td>
<td>89</td>
<td>100</td>
<td>81 (0.09)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>688</td>
<td>6101</td>
<td>638 (0.12)</td>
<td>108</td>
<td>262</td>
<td>149 (0.11)</td>
</tr>
<tr>
<td>2007</td>
<td>Current year</td>
<td>513</td>
<td></td>
<td>513 (0.35)</td>
<td>282</td>
<td>123</td>
<td>82 (0.05)</td>
</tr>
<tr>
<td></td>
<td>Cumulative</td>
<td>6614</td>
<td>725</td>
<td>70 (0.24)</td>
<td>401</td>
<td>154</td>
<td>100 (0.05)</td>
</tr>
</tbody>
</table>

Significantly, the number of investigations initiated per year was higher in 2000 and 2003, after presidential elections in which transparency and anticorruption had become important issues. When citizens’ expectations are high because there seems to be political will to fight corruption, they are more willing to denounce cases of corruption and show higher levels of trust, which supports more feasible investigations (OA 2003, 21). However, these higher expectations do not always translate to
complaints with known identity, particularly when the judiciary does not give an appropriate response to those complaints (op. cit., 28). In 2005, the number of proceedings in which OA was a claimant increased compared to the average of previous years (OA 2005). In 2005, there was an increase of almost 50% in cases in which OA filed criminal actions, compared to 2004. By December 31, 2005 OA had filed a total of 75 criminal actions. No action or complaint filed by the body has ever been dismissed by the judiciary. (See Table 7.11.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Referral to other body</th>
<th>Criminal complaint w/o prosecution</th>
<th>Complaint w/prosecution (lawsuit)</th>
<th>Complaint referred to the judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>181</td>
<td>19</td>
<td>26</td>
<td>127</td>
</tr>
<tr>
<td>2001</td>
<td>-</td>
<td>24</td>
<td>5</td>
<td>288</td>
</tr>
<tr>
<td>2002</td>
<td>-</td>
<td>12</td>
<td>11</td>
<td>145</td>
</tr>
<tr>
<td>2003</td>
<td>-</td>
<td>5</td>
<td>14</td>
<td>323</td>
</tr>
<tr>
<td>2004</td>
<td>-</td>
<td>-</td>
<td>7</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>-</td>
<td>67</td>
<td>11</td>
<td>147</td>
</tr>
<tr>
<td>2006</td>
<td>149</td>
<td>60</td>
<td>5</td>
<td>54</td>
</tr>
<tr>
<td>2007</td>
<td>-</td>
<td>58</td>
<td>3</td>
<td>39</td>
</tr>
<tr>
<td>Total</td>
<td>330</td>
<td>245</td>
<td>82</td>
<td>1123</td>
</tr>
</tbody>
</table>

Source: Author based on Anticorruption Office’s Annual Reports, years 2000-2007.

Cases sent by other control organs are few. While the number of cases sent by public agencies diminished, the number of files initiated ex-officio increased, especially in 2002-03 (yearly average increased to 27%). This is significant, as in 2002 the body still did not have any standardized procedure to identify cases to be investigated ex-officio (OA 2002, 15). In 2005, the total number of complaints filed by private individuals decreased, yet its percentage of the total remained stable. As for the nature of the complaints, the historical average of anonymous complaints is still too high (33%). Moreover, anonymous complaints increased in 2001 (35%), 2003 (47%) and 2005 (38%), compared with the 33% historical average and the value of the respective previous year. An increase in the number of identified complaints is associated with greater legitimacy of the body’s oversight and anticorruption actions. Nevertheless, this low number also reflects the lack of an appropriate normative framework for protecting whistleblowers and witnesses.
One major obstacle to OA’s effective corruption control is that criminal actions and complaints filed in court suffer serious delays during the judicial process, and therefore do not result in the effective punishment of corrupt behavior, increasing social dissatisfaction with the way oversight agencies operate. For instance, between December 1999 and 2004, only three causes in which OA participated as petitioner had reached trial; in December 2005, the number had increased to 5, with 7 more cases pending final ruling (OA 2005, 19). OA has been more successful playing an active role as petitioner, having 148 public officials make statements to answer the charges against them during preliminary interrogations/examinations, moving indictments forward, or revoking prior dismissals (more than 30 in 2005).

The intervention of the Department for Transparency Policies is not mandatory; it responds to voluntary requests from public agencies interested in enhancing transparency and the accountability of their employees (De Michele 2001). This makes it more likely that those agencies in which corruption is higher will not request OA’s intervention. Another limitation to OA’s prevention role is political: the instability of authorities in the executive branch limits the body’s ability to design and effectively implement long-term transparency plans and norms (OA 2002, 13). Despite these constraints, there are some successful stories, including OA’s intervention in PAMI, the Federal Penitentiary Service, or the Directorate General of Customs. Also, the Department for Transparency has gathered information about the modalities of corrupt behavior and the structural conditions that facilitate corruption.174

The OA has also promoted several measures to control corruption in public procurement and bidding processes by increasing access to information and enhancing market competition. The body claims that these interventions resulted in significant savings for citizens and the Treasury (OA 2001, 2; 2003, 32).175 It also plays an active role in the ICAC’s follow-up mechanism, evaluating other countries’ implementation efforts and taking the necessary steps to enhance implementation in Argentina. In addition, OA has prepared draft bills in different areas such as information access, lobbying, public hearings, participatory rule-making and the protection of witnesses and
whistleblowers, as well as proposed modifications to the Law of Public Ethics (OA 2002; 2003, 28), and played an active role in anti-corruption activities within multilateral organisms (e.g., negotiation of the UN Convention Against Corruption). More limited have been OA’s efforts in education and outreach campaigns to promote corruption prevention.  

Through the investigation and prosecution of corruption, and advancing transparency in the public sector, OA was able to gain public recognition and media presence. The good reputation and public visibility of the body has, to some extent, operated as a safeguard to defend the institution against excessive intromission from the political power. It has also contributed to maintain a high level of complaints from private citizens. Nevertheless, it has not avoided curtailing its autonomy and severely constraining its ability to obtain results.

5.5 Safeguards and relationships

The OA does not have any structural safeguards or guarantees of independence, which could limit its ability to pursue its mandate independently (Meagher 2002). The extent to which OA is able to shield itself against interference depends on its effectiveness, neutrality, political dynamics and the relationships established with other institutions and civil society (Meagher 2004, 93). As these factors have become compromised over time, political interference has increased.

The deterioration of OA’s relations with other control bodies has harmed its performance, as anticorruption agencies must rely on other institutions to be successful (TI 2000, 171). The body has been denied access to financial information from AFIP, withheld for reasons of fiscal secrecy (Manfroni 2007, 10). SIGEN was initially cooperative, as the organs exchanged information that was useful to both (Meagher 2002). Moreover, per OA’s request, SIGEN monitored the agency’s progress toward its planning goals and verified OA’s compliance with audit and confidentiality rules (Meagher 2004, 93-4). However, Kirchner’s government moved to subordinate the internal audit body and to break its links with specialized oversight bodies that have powers to file criminal complaints. As established in Reglamentary Decree 1162/00, most of the criminal complaints made by OA resulted from its obligation to do so in cases in which SIGEN had identified unlawful acts. When a new
General Comptroller took office in 2003, he curtailed all contact between the two bodies for several months. He believed that the role of SIGEN was to prevent mistakes rather than report them and that excessive information was being sent to OA.\textsuperscript{178} This was a response to the OA’s independent role exemplified by its objections to the appointment of the Minister of Planning’s wife as Comptroller.\textsuperscript{179}

Relations with Congress have been occasional, given the limited oversight role that the legislature plays. Ad hoc technical advice has been provided to some legislators, but is not well institutionalized. At some points, there have been tensions with Congress; for example, when Peronist legislators close to former President Menem, in an attempt to avoid investigations of their political allies, suggested disbanding the OA to reduce the federal budget (Meagher 2004, 89). Relations with ministries have weakened due to constant changes in personnel and because successive administrations have not prioritized anticorruption (Meagher 2002).

As a positive development, OA has increased accountability by institutionalizing several mechanisms of communication and cooperation with civil society.\textsuperscript{180} In addition, OA has worked closely with civil society in the implementation of Decree 1172/03 and involved civil society in contracting, purchasing and bidding procedures as well as in law making processes (through participatory processes and promoting the disclosure of information and lobbying regulations). All OA rulings are public and therefore can be monitored by civil society. In addition, the body has received and responded to multiple requests to provide access to information, including access to assets declarations.\textsuperscript{181} The agency has also participated in several initiatives from civil society to increase transparency and strengthen the rule of law.\textsuperscript{182} However, to the extent that OA is part of the executive branch, it is not fully accountable. Also, the body has not been able to capitalize on these relationships to protect its autonomy and transparency. This serious limitation undermines its role as a specialized anticorruption agency.
6. Specialized anticorruption bodies: National Prosecutor’s Office for Administrative Investigations (FNIA)

The Fiscalía Nacional de Investigaciones Administrativas (FNIA) is a specialized body that investigates corrupt practices and mismanagement committed by public officials of the national administration. In 1998, it became part of the Attorney General's Office (Procuración General de la Nación), which formally guarantees its independence from the controlled organs.\textsuperscript{183} The body is chaired by the Administrative Investigations’ National Prosecutor (Fiscal Nacional de Investigaciones Administrativas), and formed by General Prosecutors (Fiscales Generales), Adjunct General Prosecutors (Fiscales Generales Adjuntos) and Administrative Investigations’ Prosecutors (Fiscales de Investigaciones Administrativas).\textsuperscript{184} Officially, all of them are selected through competitive examination and consideration of background and antecedents. In practice, the body’s unclear legal mandate and limited resources, as well as political interference, have undermined its ability to ensure effective executive oversight.

6.1 Institutional trajectory and autonomy

The FNIA has historically been a weak and subordinated institution. The autonomy of its authorities has been constrained de facto as a result of limited resources, self-compliance with the executive, and active attempts by the executive to subordinate or dismantle the body. The FNIA was created by the de facto government of Jose Maria Guido to denounce irregularities committed by officials from the legally invested government of Arturo Frondizi. Under the authority of Conrado Sadi Masue (1962-1981), the body lacked the autonomy necessary to effectively oversee the executive. The situation changed in 1983, when President Alfonsín appointed Ricardo Molinas, a respected and independent lawyer.\textsuperscript{185} Molinas effectively reactivated the institution, despite some tensions with the judiciary, which resented the FNIA’s powers and visibility (Verbitsky 2006, 99).

Between 1983-89, FNIA enjoyed a relatively high degree of independence, as the executive did not interfere with the autonomy of the institution. The body had credibility and public visibility, was well regarded by public opinion, and performed its tasks independently.\textsuperscript{186} During his tenure
(1983-1991), Molinas opened 10,000 investigations, which in some cases reached high-level officials.\textsuperscript{187} However, upon taking office, President Menem actively sought to dismantle the FNIA. First, he reverted previous investigations for political reasons.\textsuperscript{188} Then, he campaigned against the head of FNIA, by publicly disclosing possible irregularities committed by Molinas. Especially notorious was the accusation that Molinas’ son, who was employed as his personal assistant, had obtained a loan from someone investigated by the FNIA.\textsuperscript{189}

To the extent that FNIA was willing to support government’s actions and to focus on investigating past governments, the government seemed willing to allow certain degree of formal autonomy.\textsuperscript{190} However, when FNIA tried to reaffirm its independence and initiated the investigation of high-level government officials (e.g., Dromi, Granillo Ocampo, Alsogaray), the President tried to dismiss Molinas and a compliant judiciary helped Menem achieve his goal.

Menem asked Granillo Ocampo to assess the situation of FNIA. Granillo Ocampo, who was being investigated by FNIA, established that Molinas should be dismissed from his office.\textsuperscript{191} Meanwhile, federal judge Servini de Cubría, who had been assigned one of the cases opened against Molinas, dictated his indictment without the need of political impeachment by Congress. The argument was, that as Menem had appointed the Attorney General without Congress’ agreement and the Supreme Court had not ruled against this appointment, by the same token congressional intervention was not required to indict and dismiss Molinas –who had been appointed by another President with Senate approval. Following this court decisions, Menem dismissed Molinas by executive decree. Though he appealed the decision and won the appeal, the government never reinstated him in office. Instead, Jorge Pinzón, an unconditional supporter of the government, was appointed as head of the FNIA.\textsuperscript{192}

After the appointment of new authorities, the FNIA entered a stage of self-compliance with the executive. Its oversight functions remained unchanged, but its position in the institutional framework was substantially modified. In 1998, the body’s de facto independence and effective performance were severely curtailed with its incorporation into the Attorney General’s Office. This institutional insertion increased the number of “veto” gates and “pressure points,” as the Attorney General was able to decide on the body’s internal rules, thus restricting its margins of maneuver for investigating corrupt practices. Thus, the FNIA was subject to intervention when the Attorney
General considered that the body was paralyzed, and many competencies of the body were in practice limited or subject to controversial interpretations. As a result, between 1991-2001, the FNIA completely ceased its activities. It focused on administrative responsibilities, instead of investigating the corruption scandals that affected the Menemist government.

The FNIA’s independence was not enhanced until November 2003, when C. Manuel Garrido (former Director of Investigations at the Anticorruption Office) was selected through a competitive process to head the body. He envisioned the FNIA as an agency able to ensure long-term oversight and control in Argentina’s unstable institutional framework. He showed great independence, making the FNIA a leading actor in controlling and investigating corruption charges, and strengthening its links to other components of the accountability system. However, the reactivation did not last. As FNIA authorities tried to enhance the body’s de facto independence, the Attorney General curtailed once again the body’s powers, and Garrido resigned in 2009.

6.2 De facto powers

Formally, the FNIA has powers to investigate, advance and intervene in administrative summaries, and to advance and intervene in criminal cases. The body’s functions include conducting investigations about the behavior of agents within the public administration (centralized and decentralized) or companies, corporations or entities with state share; intervening in administrative summaries that result from the investigations; and making criminal complaints in cases in which investigated acts may constitute offense. In criminal cases, public prosecutors lead prosecution with the necessary intervention of the Administrative Investigations’ National Prosecutor or those that he determines. The FNIA must submit an annual performance report to the Attorney General’s Office.

Despite its formal powers, the FNIA authorities decided not to conduct investigations nor to promote new criminal cases or intervene in open criminal cases for most of the 90s. The body “had self-limited its capacities and competencies to the participation in administrative investigations” (FNIA 2005), affecting its responsibility in judicial processes. FNIA became a passive/reactive body rather than a proactive mechanism of control: it did not prosecute any criminal cases; seldom
communicated information between administrative and criminal cases related to the same subjects; and did not develop work flows to collect and analyze information in order to conduct its own investigations (FNIA 2005, 2006).

Limited proactive interventions blurred the body’s role as a specialized oversight agency. On the one hand, in administrative investigations, FNIA tended to agree with the conclusions of the summary instructor and did not submit appeals or administrative remedy against the conclusions of the process. On the other hand, in criminal cases, FNIA intervened only to learn the state of the process rather than move the prosecution forward; it verified the application of administrative norms, but not criminal law dispositions, agreeing with the judges’ conclusions without additional examination of evidence (FNIA 2005). An indicator of this reactive role is the large number of administrative investigations in which the body was involved, especially after 1999, when a new internal statute (Regulation of Administrative Investigations) mandated FNIA’s intervention in all administrative investigations. The average number of cases initiated per month was 11.25 in 1998, 85.5 in 1999, and 155.55 in 2000 (FNIA 2000). While only 5 administrative cases were communicated to FNIA between January and mid-May 1999, 567 cases were between mid-May and mid-October. (See Table 7.12.)

In November 1999, the interpretation of FNIA’s internal statute by the Legal Counsel and Solicitor General’s Office limited further the ability of the body to intervene in criminal cases and administrative investigations that do not result from its own investigations. In criminal cases initiated by FNIA’s investigations, the body is unable to prosecute the case because the Statute of Administrative Investigations does not establish the details of its intervention; otherwise, cases should be communicated to FNIA, but its role and competencies are not formally specified, and judges have, in practice, delayed the communication of cases. In 2008, the de facto powers of FNIA were restricted even further when the Attorney General issued resolution 147/08, which limited the body’s intervention in judicial processes to cases initiated ex officio and only when the public prosecutor decides not to pursue the case.202
Table 7.12. FNIA- Files initiated and processed per year, 1988-2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Communication of Admve Cases</th>
<th>Communication of judicial cases</th>
<th>Initiating Own Investigations (criminal complaints / ex-officio)</th>
<th>Total</th>
<th>Total Processed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>-</td>
<td>46</td>
<td>128</td>
<td>1444</td>
<td></td>
</tr>
<tr>
<td>1999 (Jan. 1- May 14)*</td>
<td>5</td>
<td>12</td>
<td>36</td>
<td>53</td>
<td>1237</td>
</tr>
<tr>
<td>1999 (May 14- Oct. 15)</td>
<td>567</td>
<td>23</td>
<td>47</td>
<td>635</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>1740</td>
<td>23</td>
<td>67</td>
<td>1833</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1476</td>
<td>3809</td>
</tr>
<tr>
<td>2002</td>
<td>1255</td>
<td>27</td>
<td>78</td>
<td>1360</td>
<td>3171</td>
</tr>
<tr>
<td>2003</td>
<td>1417</td>
<td>21</td>
<td>96</td>
<td>1534</td>
<td>3485</td>
</tr>
<tr>
<td>2004</td>
<td>1235</td>
<td>121</td>
<td>147</td>
<td>1503</td>
<td>2112</td>
</tr>
<tr>
<td>2005</td>
<td>1295</td>
<td>104</td>
<td>221</td>
<td>1620</td>
<td>2112</td>
</tr>
<tr>
<td>2006</td>
<td>801**</td>
<td>109</td>
<td>361</td>
<td>1271</td>
<td>1440</td>
</tr>
</tbody>
</table>

Source: Annual reports FNIA, years 1998-2006. * In force the new Regulation of Administrative Investigations (Executive Decree 467). ** The 2006 Annual report explicitly mentions that the reason why the number of summaries communicated to the body declines in 2006 is unknown: it could be a decrease in the number of administrative summaries initiated or an increase in violation of the mandate to inform the FNIA.

Another constraint for FNIA derived from the creation of the Anticorruption Office (OA) in 1999. The OA has the power to file criminal complaints, and the FNIA plays only a subsidiary role in criminal cases when the public prosecutor in charge decides not to prosecute a case. However, their similar competencies have been used to limit the FNIA’s intervention; for example, in 2003, the Attorney General referred to such overlap to explain the paralysis of FNIA, and there was a controversial attempt to eliminate the OA and concentrate all control competencies in the FNIA, although the body was neutralized. In absence of formal rules, the criteria to avoid overlap have been informal and purely pragmatic. After taking office, Garrido decided that the FNIA would not intervene in cases in which OA was acting and focused instead on cases in which the OA would not intervene for political reasons:

There is no overlap because we do not have the same cases. And it's very easy to know which cases they [OA] are going to deal with and which they are not. If the government makes a complaint, they will take that case. But a complaint against any [government’s] public official, they are not going to take it or investigate it with great dedication.

In addition, given some exclusive powers of FNIA as a body of the public prosecution, its actions could serve as a de facto reassurance that OA’s actions would be followed up:
There is some sort of informal agreement that if they [OA] close a case, the FNIA exerts its own powers and moves it forward. The criterion is not legal, but pragmatic, because if you look at the formal norms, you say, these bodies do exactly the same thing.  

Moreover, since 2004, there was an attempt to redirect the administrative bias of FNIA, allocating additional resources to strengthen its investigative powers. A reduction in the number of administrative cases (in 2006, almost 1,400 cases opened from previous years were closed) allowed the reallocation of resources to investigations. In 2004, 78% of resources were allocated to administrative summaries, 6% to criminal cases, and only 16% to ex officio investigations; in contrast, in 2006, 43% of resources were for developing investigations, 17% for criminal cases, and 40% for administrative cases (FNIA 2006).

6.3 Resources

The lack of financial and material resources has been a serious limitation on FNIA investigations. The body does not have an autonomous budget to fulfill its mandate. In August 2000, a $3 million pesos budget was considered to be excessive for an inactive body, and was cut back to only $1.8 million pesos. Limited financial resources have compromised technical capacity. Another serious limitation comes from its personnel structure. FNIA traditionally suffered from lack of control over phantom employees (the so-called ñoquis), which led to formally having a large number of officials, as well as high level of instability. After the intervention by the Attorney General’s Office, personnel were reduced by 37% (from 90 employees in 1998 to 50 in 2000), while the average number of cases increased fourteen times. Overall, there was a 5% reduction of personnel in a twenty-year period, while workload increased six times, from 250 to 3,200 files (FNIA 2006). Moreover, while the number of prosecutors increased by 50%, technical and administrative staff was reduced by 40% (FNIA 2004). As a result, the body lacked intermediate cadres and specialized personnel: everyone was a boss, but with authority over no employees (FNIA 2004, 2005, 2006).

Under a structure that resembled an inverted pyramid, specialization, teamwork and internal communication became severely impeded. This exacerbated the problems created by an internal organization and workload distribution based on functional areas, rather than specialization and
Human resources problems were aggravated by the absence of a performance-based evaluation system (FNIA 2006). Also, although remuneration is higher than in other control bodies (e.g., OA), this has not served as a strong incentive.  

6.4 Performance

Normative limitations, restricted autonomy and political subordination, lack of resources, and structural problems help explain the body’s limited performance. Between 1962 and 1984, over a total of 2,697 cases, FNIA only got convictions in fewer than 1%. Between February 1984 and March 1987, there were 2,650 cases processed, but no convictions; between 1991 and 2001, only 1 case was denounced in federal courts. These limited results explain why, in 2000, the Attorney General publicly affirmed: “It is a completely paralyzed body. As it is, it spends much money, has many resources, yet it does not serve any purpose. Do you know that the FNIA has made any complaint to the judiciary?”

This situation started to change in 2003. The number of criminal complaints as well as the number of people investigated and brought to trial increased significantly. Whereas FNIA had filed only 4 criminal complaints between 1995-2003, 19 were filed in 2006, which meant a 237% increase compared to the previous period and 317% compared to the total number of complaints filed between 1995-2003. In 2005, 63 persons were investigated, 2 were formally accused in criminal court, and 31 dismissed; in 2006, 81 persons were investigated, 28 were formally accused, and 35 dismissed (FNIA 2006). (See Tables 7.13.) The number of investigations as well as the number of criminal cases also increased. In 2006 alone, the body filed 19 criminal complaints; in contrast, only 6 were filed in the 1995-2003 period. Another indicator of this reactivation was an increase in the number of formal complaints that led to investigations (compared to investigations ex-officio), which suggests that citizens were more aware of the institutional role of the body. It is also important to consider the number of preliminary investigations initiated by the body and the number of actual denounces made by the institution.
Table 7.13. FNIA’s interventions in judicial proceedings

<table>
<thead>
<tr>
<th>Results of interventions</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>People investigated</td>
<td>63</td>
<td>81</td>
</tr>
<tr>
<td>People accused</td>
<td>2</td>
<td>28</td>
</tr>
<tr>
<td>People acquitted</td>
<td>31</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Types of interventions</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active participation with prosecutor in charge</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>Assumes Public prosecution</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>No intervention</td>
<td>81</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Annual reports FIA 2005-06.

Regardless of these advances, it was difficult for FNIA (as for other control agencies) to investigate high-level cases of corruption. On the one hand, “severe corruption cases are not brought to the attention of control bodies, are not reported.” On the other, FNIA’s participation in administrative summaries at the higher levels of the executive branch finds formal obstacles, as high-level public officials are exonerated from disciplinary responsibility. Also, as indicated in FNIA (2006), the number of administrative investigations communicated to the body declined simultaneously with its institutional strengthening; though this could indicate a decrease in the number of administrative investigations actually initiated, it might also result from a growing violation of the normative mandate to inform FNIA.

A new internal statute was approved in March 2005 to support the reactivation of the body. Other innovations also aimed at revitalizing the role of the FNIA as a specialized oversight agency and enhancing the body’s performance, reducing its intervention in administrative investigations and stimulating its role in criminal cases and own investigations. These changes included the development of annual work plans, reform of Law 24.946, reorganization of the internal structure, identification of new criteria for administrative cases, more personnel and technical resources, as well as improvements in infrastructure. However, the incipient activism of the body and the implicit threat to the executive, given the body’s visibility, was truncated with the resignation of the FNIA’s maximum authority.
6.5 Safeguards and relationships

Prior to 1998, the extra-branch nature of the FNIA did not protect it from political pressures. Afterwards, the placement of the FNIA as a specialized unit within the Attorney General’s Office has not been a strong safeguard either, given its hierarchical subordination to the Attorney General’s instructions (CELS 2005, 53-33) and executive interference in the Attorney General’s Office. For example, Attorney General’s resolution 147/08 limited the FNIA’s powers to intervene in both administrative and judicial processes.

Relationships with other control agencies were traditionally very limited and coordination seldom occurred. However, after 2003, as the FNIA actively sought to investigate and prosecute cases ex-officio, the body increasingly needed information held by other oversight bodies to support its investigations. Reasons of fiscal secrecy were used to deny FNIA access to withheld information, which created tensions in the relations with the AGN, SIGEN and even the OA (which denied the FNIA access to information contained in asset declarations). Moreover, given the normative ambiguity regarding FNIA’s intervention in judicial processes, links with the judiciary have been problematic, affecting the body’s performance.

The FNIA traditionally lacked mechanisms of social accountability. Its activities were hardly known by the public, and it did not maintain strong relationships with other stakeholders. However, as part of the institutional strengthening process initiated in 2003, the body reached out to civil society and achieved increased social presence (FNIA 2006). For the first time, it was possible to find information on the body’s website about its investigations. Channels of cooperation with civil society organizations were institutionalized, and media visibility increased significantly. Relations with Congress improved and the FNIA participated for the first time in congressional hearings and collaborated with the legislature on specific bills. While the credibility of FNIA as an impartial body increased, this visibility put the body at higher risk and created incentives for the executive to neutralize it.
7. The fiction of oversight. Explaining the demise of specialized control bodies

Argentine specialized oversight agencies show limited effectiveness in curbing political corruption. To determine the actual level of autonomy and effectiveness of oversight bodies, we have considered several practices that violate the formal rules outlined in the Constitution and legislation. Specifically, we considered the following practices: an opaque appointment process, violation of professional requirements and tenure protection, de facto limitation of powers, inconsequential findings, and agency’s unwillingness to challenge the president. Indeed, tracing the gap between formal rules and informal practices over time for different agencies shows that oversight bodies have been mere façades that mask subordination and limited enforcement of their oversight powers. Table 7.14 summarizes the results.

Mechanisms of control are in place, but they do not result in the effective sanction of unlawful executive action. There is the illusion that the executive is being constrained or that is possible to control it, but in reality oversight agencies have limited impact. This limited effectiveness is not the result of inadequate technical capacities, limited financial resources, or institutional arrangements; rather, it is mostly a “failure of politics” (Santiso 2007, 2009). The politicization of control institutions and the lack of actual independence severely constrain their capability to oversee the executive (Santiso 2007, 79), and raise suspicions about their performance and effectiveness: “it seems that they end up acting in accordance with the political needs of the executive rather than by technical criteria.”225 This perception damages the reputation of control institutions.

7.1 Low incentives for overseeing the executive

Political institutional factors explain the limited performance of specialized oversight agencies. The actual workings of political institutions (inter-branch relations and the functioning of congress as a result of electoral rules and party dynamics) fail to produce the right political incentives for effective oversight.226 Oversight agencies are unlikely to challenge the executive and if they do, they face the risk of being dismantled. Moreover, when oversight institutions produce useful information for constraining the executive, their principals are unlikely to have the incentives to act upon such
information. In this context, there are few synergies and links between the different components of
the accountability system, so that the actors who have the capacity to enforce sanctions (legislators,
courts, citizens) will most likely not act upon the information produced by specialized oversight
institutions to hold government to account. The limitations of oversight bodies reflect the absence of a
long or medium-term strategy to enhance democratic accountability:

A system (of control) that has been built on the way, by the daily will of those who exercise control
functions. What is still pending is the construction of a sustained and broad political consensus about
the need for a consistent and long-term transparency policy. (OA 2002, 1.)

Inter-branch relations are characterized by enlarged presidential authority vis-à-vis Congress and
frequent discrentional action by the executive. The executive strategically seeks to shrink
accountability by neutralizing specialized oversight agencies. When there has been a continued
concentration of power around the presidency, the investigative and control capabilities of oversight
agencies have suffered. Politicization has increased, and control bodies have been virtually
dismantled or subordinated, perpetuating the weakness of these agencies and their inability to
effectively fight against corruption. Between 1989 and 1992, President Menem either eliminated
institutions in charge of government accountability, or appointed loyalists that would neutralize any
concrete control actions against his government (Bill Chavez 2001; Meagher 2002). President
Kirchner pursued a similar strategy of shrinking accountability through politicized appointments,
political pressures, and neutralization of the most active oversight bodies through restrictive
interpretations of their powers. This diminished the incentives to investigate corruption, even as
reports of corruption increased. Although oversight bodies were not completely free of constraints,
some positive developments occurred in periods of lesser power concentration; for example, advances
in the review of public accounts when the opposition had expectations of gaining power in 1991-93
and 97-99 (Santiso 2009, 89) or the discussion of projects to reform the AGN when the opposition
gained relative legislative majority in 2008.

The role of the legislature is crucial to ensure that the information produced by specialized
oversight bodies has actual consequences for preventing and sanctioning corrupt practices (Santiso
This requires the legislature to have both the incentives and the capacity for executive oversight, and to foster strong operational links with specialized oversight bodies. However, as a result of electoral rules, party dynamics and local interests, and their effects on legislators’ institutional commitment, both conditions are weak in Argentina.

Formal and informal political institutions and practices contribute to strong party discipline and the breakdown of the interrelation between vertical electoral and intra-state accountability. The formal features of the electoral system in combination with weakly institutionalized party structures, federalism, informal electoral institutions (e.g., clientelism), and informal rules operating within the legislature (e.g., trading political favors for legislative votes), hinder the development of a programmatic connection between voters and political parties. Individual legislators become more dependent on provincial party leaders than constituents, and more interested in maximizing short-term access to resources for furthering their political careers than in using information from oversight bodies for holding the executive effectively accountable. The less overlap between party and citizens’ interests, the less interest the legislature will have in delegating oversight responsibilities to specialized bodies (Bowen and Rose-Ackerman 2003, 160-1). Strong party discipline enhances the politicization of executive oversight, as party leaders will be interested in scoring against the opposition rather than the executive (Ibid.), and negatively affects the legislature’s ability to hold the executive to account (Wang & Rakner 2008). Party leaders want the executive to be accountable to provincial party interests rather than to citizens, and the opposition has fewer incentives to strengthen oversight. In these circumstances, specialized oversight agencies do not serve as effective checks on the executive, and legislators seldom use the information they produce to hold the executive accountable. However, such information is a valuable asset for legislators to gain leverage vis-à-vis the executive. It provides legislators with a credible threat that can be used to bargain for benefits in exchange for ensuring oversight results that are acceptable to the executive, thus maintaining the fiction of control.
7.2 Few synergies within the accountability system

The effectiveness of oversight agencies is ultimately determined by the quality of their insertion into the accountability system, as well as the efficacy of their coordination with other components of the system (Diamond 2001, 1; Lorenz and Voigt 2007, 10; Speck 2008, 6; Santiso 2009, 125, 141). The existence of effective complementary judicial institutions is critical for strengthening the deterrent effect of specialized oversight agencies (TI Sourcebook 2000, 171). Judicial inefficiency in prosecuting corruption cases based on information produced by oversight bodies can be related to normative issues, limited judicial independence, or a legal culture in which the investigation period has excessive relevance. In general, Argentine oversight bodies perceive that “faltan señales desde la justicia, señales que muestren imparcialidad y celeridad para sancionar” (OA 2001, 1). As Chapter 8 explores, informal permissive rules that allow corrupt practices undermine effective sanctions and contribute to the institutionalization of corruption.

The relation between specialized oversight agencies at the federal and provincial levels is also important. Given the federal structure of the Argentine state and the decentralization of important functions and services to provincial governments, a great part of the state operations and resources fall outside the jurisdiction of federal oversight bodies. This is a serious constraint, as public officials at the sub-national level represent 81.1% of the entire public sector. Provincial and local control agencies have gained power but, with few exceptions, they are weaker than federal institutions. Furthermore, there are important coordination problems between federal and sub-national oversight institutions, particularly regarding audit control (Gonzalez Salas 2005).

Cooperation and exchange of information between oversight bodies is critical for effective accountability (Borge 1999, 10). Oversight agencies widely acknowledge, “the possibility of deepening our knowledge of possible irregularities, as well as of formulating policies to enhance transparency, depends on the complementary action of the different oversight bodies” (OA 2001, 14). However, control bodies still suffer the consequences of problematic inter-agency relationships. The deterrent impact of oversight institutions often fails because audit findings are not
acted upon. Dysfunctional links with the judiciary hamper effective executive accountability. Especially significant is the deficient cooperation between agencies and specialized units that have technical capacity to produce relevant information and those that have powers to file criminal complaints and be party to judicial processes. For example, the intervention of the OA or FNIA in corruption cases was often the result of information leaked through the press rather than deferral of cases by the AGN (Santiso 2007, 78).

Attempts to institutionalize mechanisms of cooperation between oversight agencies have failed (FNIA 2006; Poder Ciudadano 2009, 93-94), and synergies within the accountability system are limited. Although this failure could be attributed to the institutional weakness of oversight bodies (therefore, strengthening them would be a fundamental condition to bring about further cooperation), in most cases mistrust among oversight bodies, along with their politicization and limited independence, becomes the major obstacle for cooperation. Also, limited cooperation blurs the responsibilities for effective oversight functions (Santiso 2007). Specialized oversight institutions have been modestly successful in limiting the executive and promoting effective sanctions when they have reached out and effectively coordinated with non-institutional actors that are able to enforce vertical accountability, particularly civil society and the media (Peruzzotti 2007, 2008; Rose-Ackerman et al. 2010, 53). Cooperation between oversight bodies and civil society is a relatively new development that shows great potential. It allows both oversight bodies and civil society to enhance their mutual strengths and compensate for their constraints (Stapenhurst & O’Brien 2004; Smulovitz and Peruzzotti 2006; Peruzzotti 2007, 2008; Ramkumar and Krafchik 2005; Ramkumar 2007; Poder Ciudadano 2009). Although still incipient, cooperation with civil society shows a positive impact on enhancing the effectiveness of specialized oversight, strengthening executive accountability, and contributing to anticorruption.
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8. Conclusion

This chapter has analyzed the effectiveness of specialized agencies of executive oversight that help to prevent and curb corruption. After describing the formal provisions regarding their structure, functions, and powers, we have focused on the actual practices regarding the appointment of authorities, de facto independence, actual powers, and institutional trajectory. Several other factors that explain the success or failure of specialized oversight institutions have also been analyzed, including resources, safeguards, and relationships with complementary institutions.

The findings in this chapter confirm that these bodies experience similar constraints to those of other political institutions: “oversight bodies do not work, because no institution does.” These bodies suffer from excessive politicization, weak enforcement of their powers, limited coordination of activities, scarce resources, and some normative problems. Their autonomy and institutional reputation are often curtailed. In some cases, the executive seeks to neutralize the system of control through informal practices that subordinate oversight agencies and constrain their powers. In other cases, under more or less explicit political pressures, oversight agencies themselves decide not to act and rather play a reactive role. They cannot monitor the degree of compliance with their observations and recommendations, nor follow up on criminal cases in which they became party. In addition, there is no systematic monitoring and evaluation of their actions. These limitations have contributed to create incentives for political corruption, as it has perpetuated patterns of executive discretionary behavior and lack of transparency in the public sector. Only the professional ethics and isolated effort of individuals within these institutions overcame severe structural deficiencies to achieve partial successes.
Chapter 7. Endnotes

1 Interview with C. M. Garrido (La Nación November 22, 2003). The lack of systematic and long-term anticorruption efforts is an indicator of Argentina’s volatile public policies. Moreover, it is also an indicator of prevailing patterns of elite cartel corruption, which may present significant anticorruption activity, advanced by those excluded of elite cartel networks and by the government, which uses anti-corruption campaigns to punish disidents or rivals (Johnston 2005, 90).

2 Overseeing that policies and laws are implemented correctly is also a way through which voters’ accountability is achieved (Bowen and Rose-Ackerman 2003, 157-8).

3 The normative framework governing these institutions was established by Law Decree 23.354 (1956), Law 21.383 (1976), and Law 22.639 (1978) respectively.


5 Article 53 of the Constitution gives Congress the power to assess the responsibilities of public officials from the executive and judiciary, and to remove them from their offices when any wrongdoing is detected.

6 It replaced the Corporación de Empresas Nacionales (created in 1974), which was responsible for the direction, auditing and control of state-owned enterprises.

7 This was part of the recommendations of the Council for Democratic Consolidation, a presidential commission set up by Alfonsín. See Bowen and Rose-Ackerman (2003).

8 See Ch. 9, endnote 95.

9 According to Verbitsky (2006, 80), coordination meetings failed because information was systematically leaked to the press. Suspicion about those leaks led to excluding the FNI and TCN authorities from the meetings. The presidency of the new super-agency of control was offered to Vice-president Duhalde, who declined as he considered it political suicide. Coordination amongst different oversight agencies remains one of the most important problems of the intra-accountability system.

10 See Second Part of 1994 Constitution. The AGN and the Ombudsman are established in the Constitution as institutions of the Republic that do not belong to any branch of government.

11 In an attempt to provide some non-partisan oversight, Law 24.284 created in 1993 the National Ombudsman Office to defend the public interest in issues of human rights, consumer affairs, the environment, and the performance of public administration. This body is insulated from partisan politics and has its own budget and service (Maiorano 2000, 362). In practice, the body’s success depends on the person appointed to the office. Furthermore, “although the ombudsman may initiate some judicial actions, it largely relies on persuasion through warnings and recommendations, and the office carries no authority to amend or nullify administrative measures” (Bowen and Rose-Ackerman op. cit., 178). It is most effective when able to appeal to the courts—for example, to force the executive to call for public hearings, or to gain access to administrative policy-making (Rose-Ackerman et al. 2010, 44).

12 Clarín (August 18, 1998; June 12, 1999); La Nación (August 26, 1999).

13 See articles 1 and 4 of Law 25.188. On the Ethics Law, see Tesoro (2000).

14 La Nación (May 11, 2003; May 23, 2003).

15 Decree 1172/2003 introduced the following mechanisms: public hearings; lobby management; participatory elaboration of norms; access to public information for the executive branch; open meetings of public utilities’ regulatory bodies; registration forms, registration and presentation of opinions and proposals; and free Internet access to the daily edition of the Official Bulletin. See Baron (2004), Poder Ciudadano (2006, 2006b).

16 La Nación (November 22, 2003; December 27, 2004).

17 By shortening the statute of limitations while leaving unchanged the Criminal Procedure Code, which delays judicial proceedings and presents many obstacles to investigate cases, the reform compromised complex corruption cases. This reform contradicts the UNCAC and the OECD Convention on Combating Bribery, which require adequate deadlines for the investigation and prosecution of corruption. (La Nación, Feb. 6, 10, 2005).

18 Article 85 of Argentina’s Constitution. It is outside the administration under control (AGN 2005, 14).

19 Article 116, Law 24.156. There are three ideal types of audit agencies: the monocratic model, the court model and the board model. The board model is an agency with collegial decision-making, headed by a board of auditors, but without jurisdictional authority or quasi-judicial powers (Stapenhurst & Tiksborth 2001; Santiso 2007 and 2009, 50; Ramkumar 2008; Nino 2008).
The nomination by the opposition party with the largest number of legislators is a practice rather than a formal requirement (article 85 of the Constitution only requires the body to be chaired by the opposition).

In 1989, Congress discussed several projects aimed at creating an agency of executive oversight. One of these projects proposed the creation of the Congress’ collegial comptroller, presided by a member of the opposition. Other projects would create one autarchic control agency to be financed by the jurisdictions under control and whose members would have six-year long tenures requiring Senate approval.

After being passed by the Senate, the bill was dormant in the Chamber of Deputies. The World Bank demanded to the Ministry of Economy to have the bill passed as a sine qua non condition for disbursing the Public Sector Reform Loan ($325 million) (Verbitsky 2006, 118; Author’s interview, September 14, 2007).

According to the original bill (article 121. i), AGN should “keep patrimonial registry of public officials and undertake investigations to verify illicit enrichment or other irregularities.” The approved law, however, stated (article 118. j) that AGN could only verify that the “public administration’s bodies keep the patrimonial registry of their public officials.” The power to investigate and control assets declarations would only be vested to the OA in 1999.

Previously, the TCN had the powers to investigate any presidential act, while congressional intervention was foreseen in cases in which the president decided to maintain a decision despite the TCN’s objections.

“This government, which has destroyed all control agencies, now intends to use the opposition to validate executive acts. We are not going to be part of a distorted structure that the ruling party has transformed into a mere shell, without content or effectiveness. The republican task of controlling government acts cannot be the subject of a cosmetic policy operation.” Quoted in Verbitsky (2006, 120). Página 12 (Dec. 9 & 12, 1992.)

The AGN’s presidency had been vacant for one year when he was nominated by the UCR. The UCR had delayed the nomination in protest for the limited powers of the body’s presidency and the negative of Congress to pass a law regulating the functioning of the AGN. Cf. Clarín (Aug. 17 & 23; Sept. 6, 10,1995)

The body had gained visibility since mid-1994. Policy areas where AGN raised concerns included social spending, management of external debt, and customs, among others (Página 12 July 7, 8, 9, 10, 12 & 15, 1994. Clarín Aug. 8 &9; Oct. 16, 23, 1994; May 15, 1995. La Nación Sept. 11, 1996; Aug. 26, 1998). The most significant case was the investigation of procurement fraud in a USD 38 million environmental project under the supervision of Maria Julia Alsogaray (Santiso 2007, 77). In 1999, he resigned involved in a scandal for receiving a retirement payment besides his regular salary (La Nación Dec. 28, 1999).

Only Julio Casavoselos (Peronist close to Duhalde), who had assumed in 1998 after the demise of Vicente Barros, continued in office. Rodolfo C. Barra (Menemist) was appointed as president, and Hector Duran Sabas (Menemist), Cesar Arias (Menemist), Mario Nalib Fadel (FREPASO), and Francisco Fratoso (UCR) as auditors-general.

La Nación (March 19, 2002).

Only Horacio Pernasetti (former leader of the UCR bloc in the Chamber of Deputies) was appointed in December 2005, after the demise of Francisco Fratoso.

Proceedings CPMRC (November 30, 2006), on file with author.

Javier Fernandez, appointed in 2001 and with two 8-year mandates, had been advisor to the controversial AGN president and Menemist strongman Rodolfo Barra. This indicates the continuity of members of elite cartel networks across different governments and Peronist factions (La Nación Oct. 6, 2009).

Critica (June 3, 2008); La Nación (December 10, 11, 2008).

La Nación (March 20, 2010).

Auditors are appointed for an 8-year tenure with possibility of reelection (Article 121-122 of Law 24.156). For the first appointed auditors, the law established that three of them (to be selected by lot) would be dismissed after four years in office, while the other four would continue for a total tenure of eight years.

Author’s interview (Buenos Aires; August 15, 2006).

Barra was Secretary of Public Works and Vice-Minister of Interior before being appointed to the Supreme Court in 1990. He served on the Board of Directors of the National Public Administration Institute in 1993-94, and in 1994 was elected as delegate to the Constitutional Assembly representing the Province of Buenos Aires. He was Minister of Justice between 1994-1996. During his tenure in the Minister of Public Works, he was involved in the irregular adjudication of 25% of the total road network by toll. For a critical profile of Barra, see Verbitsky (2006).

La Nación (May 14, 2005).
For example, the investigation of the airport regulatory agency. Barra had served as board member of the body responsible for controlling the privatized airports (ORSNA) until May 1999, when the Alianza gained the presidency. Immediately, in December 1999, he was proposed by PJ to head AGN. See La Nación (October 28, 1999), Clarín (January 16, 2000), Página 12 (Feb. 19, 2000).

After leaving the AGN, Barra was accused of abuse of authority and violating the duties of public office during his tenure, as he had purposely delayed the request to investigate a program of shared ownership aimed at giving workers stock of privatized phone companies. (La Nación August 24, 2004; Clarín Sept. 11, 2006).

The distinction between “public administration” and “public sector” is relevant in Argentina. External and internal control bodies have jurisdiction over public administration, while the national public sector enjoys further leeway in executing the budget (author’s interview, Buenos Aires; August 25, 2006).

AGN performs comprehensive compliance audits to determine the extent to which entities comply with laws and regulations; state their accounts in a complete, clear and truthful manner; and administer fiscal interests according to principles of good management. It also performs audits of economy, efficiency and effectiveness, or performance audits.

AGN estimates that it fully audits all public sector’s areas every eight years. Other areas are selected based on the following criteria: matters of special interest for Congress or specific audits requested by Congress; amount of funding involved; reliability of internal audit systems; and social, economic or environmental impact of programs, projects or operations (Audit Profile 1995). Author’s interviews (Buenos Aires, August 15, 2006; August 25, 2006.) Also AGN (2005, 20.)

The contrast with Brazil is pertinent. While appointments to the Tribunal de Contas da Uniao are also party-based, this has not compromised the body’s independence (Author’s interview. Buenos Aires, Sept. 14, 2007).

Clarín (Aug. 21, 1995) For a summary of the conditions that limit AGN’s effectiveness, see La Nación (April 6, 2009).

This case was perceived as a manipulation of AGN’s structure to produce immediate political effects. See Clarín (May 10, 2001; June 25, 2001; October 2, 2001); La Nación (October 2, 2001).

“According to the project signed by the four AGN’s pro-government auditors of the AGN, it will no longer depend on Despouy [the board’s president] the preparation of the agenda, which sets the issues to be discussed at the Board’s meetings. The president will only be able to call for special sessions if he or she has the requirement of three of the auditors general, and to include in the discussion a topic not covered will require "the unanimous vote of the members of the Board" (so far, it was enough to have consent of the majority of attendants). The initiative removes even an entire article, which describes in detail the functions of the presidency, of the regulations of the Board.” La Nación (February 11, 12, 23, 25, 26, 2009; April 9, 2009); Clarín (February 1, 10 & 25, 26, 2009).

Between 2001 and 2004, AGN filed approximately 80 criminal complaints in the judiciary, some of which provided evidence of important irregularities regarding social plans and the management of PAMI. However, AGN does not have any power to follow up on those cases. This is one area that the current President of AGN asked to be changed. See La Nación (October 6 2004).

As explained in Ch. 6, the absence of formal mechanisms to follow up on AGN’s recommendations is extensive to the CPMRC.

AGN has complained that the Ministry of Economy’s Budget Office sends smaller amounts than expected and denies AGN’s requests to reallocate funds, thus impeding audit investigations and hiring of temporary personnel (La Nación October 6, 2004).

“The audit agency is practically closed. If we do not have the budget lost over the past two years replenished, it won’t be able to control the State,” AGN’s Vice-president in La Nación (August 13, 2001).

La Nación (October 6, 2004). Author’s interview (Buenos Aires, August 15, 2006.)

Author’s interview (Buenos Aires, August 24, 2006); see also La Nación (August 13, 2001). This number (700 employees) is more appropriate to the important functions that AGN plays and concordant with similar agencies (e.g., Chile’s audit institution has 600 employees, 400 in Bolivia, and 1,200 in Mexico), though still below the numbers for Germany (4,000 employees) or the US General Accounting Office (5,000). In Argentina, at the provincial and local level, control agencies have also significant numbers of employees (e.g., Formosa’s Tribunal de Cuentas has 180, 200 in Buenos Aires and Tucumán, and 100 in La Rioja’s municipality of Chilecito). See Verbitsky (2006).

La Nación (August 13, 2001).

AGN’s unions have denounced this situation. See, for example, ATE (July 2005).
that does not identify the sites and concessionary companies. The report on the National Commission on the Joint Commission's agenda there are outstanding issues that generate resentment in official channels, for they have foundations that, in our view, are deba

77 November 30, 2006, on file with author).

76 activities without external influence" (Speck 2008, 8).

75 interview, Buenos Aires; August 25, 2006). The prevailing informal rule has been un

74 interview. Buenos Aires, August 15, 2006).

73 CPMRC November 30, 2006, on file with author).

72 by the body (e.g., road licensing, fiduciary funds, etc.). See La Nación (August 24, 2004).

71 Implement measures aimed at correcting the irregularities (AGN 2005, 14; ACIJ 2006).

70 which reduce the immediate impact of auditing, clearly limit the efficacy of external control (Author's

69 Author's interview (Buenos Aires, August 15, 2006.) For a comparative study of the adoption of performance audit by SAIs, see Pollitt and Summa (1997). Actually, the lack of performance indicators in the public sector more generally is an obstacle for AGN to be able to investigate effectively.

68 Audit reports produced by AGN have three main components: first, comments about the irregularities found during the investigation; second, conclusions based on the findings; and finally, recommendations to adopt and implement measures aimed at correcting the irregularities (AGN 2005, 14; ACIJ 2006).

67 See, for example, La Nación (October 6, 2004; October 15, 2009). Although external control is ex post, it has sometimes taken as long as five years for AGN to produce some audit reports; the reasons adduced are often the lack of resources, but political reasons are also suspected. AGN’s current president, Leandro Despouy, has accused Congress of refusing to consider key documents produced by the oversight body. These problems, which reduce the immediate impact of auditing, clearly limit the efficacy of external control (Author’s interview. Buenos Aires, August 15, 2006).

66 Consequently, Congress approved an extension of AGN’s Action Plan to incorporate new areas to be audited by the body (e.g., road licensing, fiduciary funds, etc.). See La Nación (August 24, 2004).

65 According to ACIJ (ACIJ 2005), the Ministry of Economy would have requested AGN to make an effort to systematize its audit reports regarding public services in order to assess the level of compliance with licensing agreements by private firms and regulatory organs.

64 Author’s interview (Buenos Aires, August 15, 2006.) For a comparative study of the adoption of performance audit by SAIs, see Pollitt and Summa (1997). Actually, the lack of performance indicators in the public sector more generally is an obstacle for AGN to be able to investigate effectively.

63 In 2002, AGN estimated that the Operational Plan had been complied with by 90% (AGN 2002).

62 “The problem we have with the Action Plan is that things that are voted or approved then are amended in the Operational Plan. We propose one thing and then the AGN, in exercise of its powers or because it does not have a manual, do otherwise. When the plan is put into practice, it is never verified and when it is checked, one finds multiples inconsistencies.” (Oscar Lamberto, President CPMRC, proceedings CPMRC November 30, 2006 on file with the author).

61 Accusations of personalism and politicization have been made regarding performance evaluation and internal promotions (ATE November 2002; February 2004; February 2006). There is no gender representation in AGN, neither at the board nor at the top managerial levels. For example, there has only been one female auditor-general, one manager, and one sub-manager (Author’s interview. Buenos Aires, August 15, 2006).

60 Accusations of refusal to consider key documents produced by the oversight body. These problems, which reduce the immediate impact of auditing, clearly limit the efficacy of external control (Author’s

59 In 2002, general managers earned on average $5,500, sub-managers $5,000, and managers $4,500 Argentine pesos; all managerial positions received some extra compensation in concept of coordination/supervision ($540) and exercise of hierarchical responsibility ($630). See ATE (2002).
Transport Regulation (CNRT), questioned by the AGN for performing discretionary controls, is also controversial.” (La Nación Nov. 16, 2008; author’s translation)

78 Author’s interview (Buenos Aires, August 15, 2006.) For example, the FNIA found difficulties in getting information from AGN, which even led to a criminal complaint against the auditors appointed by the ruling party for falsifying a document that denied an information request submitted by FNIA on overpricing in Santa Cruz (La Nación November 16, 2008; March 11, 2009).

79 In 2010 and 2011, AGN resorted to the courts to obtain over 300 reports withheld by SIGEN. See La Nación (July 20, 2010; Sept. 5, 2010; Feb. 22, 2011).

80 “We have had audit reports totally blocked due to fiscal or banking secrecy that is alleged when we request information to some ministry” (Leandro Despouy, in La Nación October 6 2004). Also, interview with L. Despouy (La Nación April 17, 2005); La Nación (Sept. 19, 2005); La Nación (Feb. 22, 2011).

81 Proceedings CPMRC, November 30, 2006, on file with author.

82 It can also be argued that AGN’s observations are accepted as long as the information is not made broadly public through the media. If that is the case, observations will most likely be rejected.

83 AGN has come to acknowledge that public control has a social dimension because it defends the public interest and contributes to the protection of citizens’ rights. AGN is the only control agency that formally regulates civil society participation. NGOs’ participation in the planning process was first informal (2003-05) and then formalized in 2005 (Author’s interview, Buenos Aires; August 25, 2006). AGN sees its partnership with civil society as a way to create a constituency that will pressure Congress, which is in charge of approving findings and recommendations made in audit reports, to follow-up on AGN recommendations and enforce action against executive agencies cited for irregularities (Dialogue on civil society engagement in public accountability, Manila, 7-8 Nov. 2006).

84 AGN Resolución No. 221/02. AGN also prepares short executive summaries of relevant audit reports, summarizing the main findings in non-technical language easily understandable by average citizens.


86 When audit reports were not made public immediately but had to wait 90 days after being approved by the CPMRC, there were rumors that audit reports were bargained, put to sleep, or even sold in exchange for bribes by members of the commission (Author’s interview, Buenos Aires; August 15, 2006).

87 Between 1997 and 2001, audit reports that had not been approved or had been blocked by the committee were often leaked to the press and supported corruption investigations in major newspapers (Santiso 2007, 74). After 2001, the relationship with the media was actively looked for by Despouy’s presidency as a way to balance the Peronist control of AGN, both in the Board and CPMRC (Author’s interview, Buenos Aires; August 25, 2006). For example, the publication of several reports on the licensing of road toll services in July 2006. Also, reports on Electroingeniería, a firm close to President Kirchner. (La Nación July 25, 2006) The limit of this relationship is that the press tends to focus on the most visible corruption scandals (Ibid.). In February 2009, the Kirchnerist majority in the Board tried to create a Communication Office to constrain the power of AGN’s President to publish the reports (La Nación Feb. 11, 2009; Clarín Feb. 12, 2009).

88 Law 25.233 by its article 12 replaced article 109 of Law 24.156, establishing the education and professional requirements to be eligible as Síndico.

89 Paradoxically, the head of SIGEP (Mario Truffaut) was very close to Menem, since he had managed his electoral campaign. Particularly relevant were objections to the privatization of public phone company (Entel), the state-owned airline (Aerolíneas Argentinas), and the bidding process to build a petrochemical plant in Bahía Blanca. In the Entel case, SIGEP’s objections actually helped prosecute the state representative, Maria Julia Alsogaray.

90 See Verbitsky (2006) for a detailed account of SIGEP’s neutralization during Menem’s first mandate.

91 Cf. article 5, Decree 971/93 (May 6, 1993).

92 La Nación (December 23, 1999).

93 For example, denunciations of the media group Vila-Manzano, investigations of PAMI, and the scandal of the bribes paid to Peronist senators with money from the Intelligence Services, which targeted the inner circle of President De la Rúa (and ultimately the President himself) and led to Bielsa’s resignation. La Nación (June 19, 20, 21, 22, 2001).

94 La Nación (May 24 2003).

95 La Nación (June 9, 2003).

96 He was appointed Vice-president of the Central Bank (La Nación July 27 2004).
Alberto Iribarne was Vice-Minister of Interior with Menem and director of Duhalde’s electoral campaign, but had good relationship with Kirchner. (La Nación July 2, 2003).

The judicial investigation involving Moroni was part of a bigger investigation (with more than 50 people called to provide testimony) about the presumed fraudulent bankruptcy of six insurance companies during the 90s. The operation created parallel companies to which the insured were transferred, but not the claims; the insured that had accidents did not have any coverage as they were kept in the original company. See La Nación (June 17, 2006); also editorial by C. Rath, “A demolishing denunciation of the government and State “Tolls” and the political crisis” (on file with author).

This appointment received severe criticisms (cf. La Nación June 24, 25, 2003). The government’s response to OA’s request to avoid conflict of interests was that Minicelli would excuse herself from intervening in cases related to her husband’s activities, as there was no explicit legal prohibition for this appointment. However, this was considered by observers to be a generic statement that did not comply satisfactorily with the formal requirements of administrative procedure, which requires applying for authorization to be excused to the hierarchical superior for each particular case in which a conflict of interest may exist. Several newspapers reported that the Deputy Comptroller was frequently performing advisory functions in the Ministry regarding issues under SIGEN’s jurisdictions (e.g., privatized services). See La Nación (June 25, 2003; June 29, 2003; August 27, 2003; August 28, 2003; July 28, 2004; August 22, 2004; August 23, 2004; October 8, 2004; November 18, 2004; December 27, 2004; December 11, 2005; January 3, 2007). A similar conflict of interest took place with the appointment of Diego Bossio as head of ANSES while his wife was a Deputy Comptroller at SIGEN (Clarín July 10, 2009).

Politicization and instability of leadership continued after 2007. In 2009 the General Comptroller was removed because the body challenged the government’s intervention in Papel Prensa. See La Nación (Nov. 20, 2009) and Clarín (Nov. 21, 2009).

The challenge of internal control is how to coordinate internal control systems within the executive to strengthen government auditing. In Argentina, the control system established in 1992 solved this problem by creating a central coordinating mechanism to oversee departmental and agency internal control systems (cf. Law 24.156, articles 97 & 100). For this reason, some scholars call SIGEN a “superintendence for internal audit and control” (Santiso 2009, 39).

Within this framework, SIGEN’s functions include: to issue and apply internal control rules; to issue and supervise the enforcement of internal audit rules; to guide the program, project and operational assessment; to report to the President the facts that may cause severe damage to the national wealth or patrimony (Garcia 2005). SIGEN’s functions <http://www.sigen.gov.ar/main/index.html> (accessed April 21, 2007).

The manual was approved through Resolution 7/ 2003, providing SIGEN with a basic instrument to assign responsibilities and functions; a modification was proposed in 2005 (SIGEN 2002, 2005). See also La Nación (May 24 2003).

Author’s interview. Buenos Aires, August 24, 2006.


Interview with General Comptroller Miguel A. Pesce published in La Nación (July 28, 2004); author’s translation. Also La Nación (October 20, 2003.)

Some public officials involved in irregularities have been very active in trying to damage SIGEN’s reputation by accusing the body of committing politically motivated technical irregularities; for instance former Menemist secretary of civil service, Claudia Bello (La Nación August 26, 2000). Accusations have gone further; former Comptroller Rafael Bielsa, for example, denounced to the judiciary threats and a plot to hurt him in relation with the Senate’s bribes case. La Nación (May 7, 2001; October 21, 2001).

Former Comptroller Alberto Iribarne submitted a proposal to make SIGEN’s recommendations binding and make public officials pay a fine from their personal patrimony in cases of non-compliance with the body’s recommendations. However, Congress rejected this so called “whip clause.” La Nación (June 9, 2003; October 6, 2004; September 19, 2005).

The body has requested to gain complete financial autarchy from the Ministry of Economy as a way to improve its performance and operational autonomy (La Nación October 6 2004).

La Nación (September 19 2005).

Author’s interview. Buenos Aires, August 28, 2006.

See La Nación (October 21, 2000; March 23, 2001; March 28, 2001). For example, in the midst of the Senate scandal, the General Comptroller (Rafael Bielsa) was virtually dismissed from his office by the president’s
personal assistant. Public complaints and criticism from the media made the president reconsider and attribute the event to a misunderstanding.

114 La Nación (October 6, 2004). In 2003, SIGEN’s strategic goals included enhancing and consolidating the body’s public recognition based on its reputation and experience, as well as enhancing staff’s technical capacity and values (SIGEN 2003). In 2005, human resources planning and management was still incipient, with typical job profiles being defined independently of the associated offices and career patterns being identified for the first time (SIGEN 2005).
116 La Nación (August 20, 2000).
117 This weakness was identified by the ICAC’s follow up mechanism, but it has not been corrected yet. See Mecanismo de Seguimiento de la Implementación de la Convención Interamericana Contra la Corrupción. Respuestas a las preguntas formuladas por la Secretaría Técnica de Mecanismos de Cooperación Jurídica (Sept. 9, 2002) available at http://www.oas.org/juridico/spanish/arg_res7.doc
118 In December 2002, President Duhalde signed an executive decree authorizing circumvention of reference prices to contract services or goods for the April 2003 presidential elections (La Nación December 16, 2002). After reforming the witness pricing system in Sept. 2010, SIGEN failed to provide reference prices for significant procurement processes (La Nación March 9, 2011).
119 SIGEN makes recommendations to organs under its jurisdiction to ensure appropriate normative compliance and the correct application of internal audit norms and principles of economy, efficiency and efficacy. See Article 104 (j) Law 24.156.
120 The Committee of Internal Evaluation was created in 2002 (Resolution 175/02) to monitor compliance with SIGEN’s recommendations (SIGEN 2002).
121 During Menem’s presidency, ATN amounted to 270 million pesos per year. Since Kirchner took office and until 2005, 177 million pesos were disbursed; although the annual budget was stable around 80 million, the executed budget increased in electoral years (La Nación May 14; Dec. 19, 2005). See Chapter 5.
122 Control Committees were created in 2003 to improve integration between audit units and management authorities in the different jurisdictions (SIGEN 2003).
123 Author’s interview. Buenos Aires, August 24, 2006.
124 In 2002, under Comadira’s mandate, there was an effort to increase information exchange with OA and the Public Prosecution (SIGEN 2002). See La Nación (August 20, 2000; November 30, 2005).
125 SIGEN provides information over particular cases upon request to the OA and FNIA. These agencies also use SIGEN’s public reports, yet they are responsible for collecting the information. Coordination is informal (Author’s interview Buenos Aires; August 24, 2006).
126 La Nación (October 20 2003).
127 Federalism presents special challenges to internal control. The Federal Network is composed of audit institutions at the provincial level and internal audit units, and focuses on overseeing the execution of social programs, particularly the largest programs that transfer federal funds to the provinces (Author’s interviews, Buenos Aires, August 24 2006; September 14, 2007; September 5, 2007).
128 This is an international standard as established by INTOSAI’s Lima Declaration (October 1977).
129 Author’s interview. Buenos Aires, August 24, 2006.
130 Author’s interview. Buenos Aires, August 24, 2006.
131 La Nación (February 27, 2001; March 8, 2001).
132 SIGEN was authorized to access SIDE’s accounts by the Vice-president, since the President was in an official mission (La Nación September 15, 2000). The Vice-president, who was the FREPASO leader and close to Bielsa, played an active role in denouncing the executive’s implication in this case and finally resigned. SIDE’s director, Fernando de Santibañez, resigned and accused SIGEN and the General Comptroller of violating state secrets to prepare the report that discovered the irregular use of funds by the intelligence services. (La Nación October 19, 21, 24, 2000; November 1, 2000; March 2, 2001). He declared that the audit report in which SIGEN denounced irregularities included “stolen data.” SIGEN replied reasserting the technical nature of its work: “This is not a political fight. Or personal. This is a technical report and the conclusions are in sight, whether we like them or not” (La Nación Oct. 20 2001).
133 Author’s interview. Buenos Aires, August 24, 2006.
134 La Nación (June 9 2003).
Formally, SIGEN is required to inform citizens about its actions and outputs (article 107 Law 24156); however, the General Comptroller has discretion in deciding which information to publish. SIGEN’s activities are only available online since 2001 (La Nación May 24, 2003; October 6, 2004).

Both media and civil society organizations are perceived as exercising an “illegitimate control that do not represent the citizens’ interests but those of powerful private interests.” From this perspective, “only an effective institutional control may generate forms of social accountability, but not vice versa” (Author’s interview, Buenos Aires, August 24, 2006).

The body had in the Office of Public Ethics its most immediate (and failed) institutional predecessor. Created by Executive Decree 152 (February 14, 1997) under the authority of the President, the Office of Public Ethics experienced successive changes in its name and conformation. In September 1997 (Decree 878), it was created the Advisory Council on Public Ethics formed by representatives of civil society organizations and the private sector, yet it was in the power of the Office’s head to decide the specific membership of the Council. The objectives achieved by the Office were scarce (the signature of a Cooperation Agreement with the US Office of Government Ethics in 1998 and a draft Regulation on Public Ethics), which explained its lack of visibility and recognition. It is considered another example of the kind of cosmetic institutions that were created by Menem during his mandate. See Monasterolo (1999, 23-4); Tesoro (2000); Meagher (2002). Also, La Nación (October 30, 2003).

The advantages of a single-agency alternative are that anticorruption agencies solve coordination problems, centralize information, have ample powers to investigate and prevent corruption, and more importantly are perceived to be untainted in contexts in which corruption is endemic. See Johnston (1997), Pope (1999, 2000), Meagher (2004), Doig (2004, OECD (2008).

This dependence is openly criticized by civil society organizations (La Nación December 6, 2004; September 19, 2005) and is also recognized as a limitation by OA’s authorities (Author's interview, Buenos Aires, July 7, 2006).

La Nación (October 29, 2000).

Author’s interview. Buenos Aires, July 11, 2005; author’s translation.

Author’s interview. Buenos Aires, July 11, 2005. Also, La Nación (November 22, 2003.)

La Nación (October 29, 2000).

In March 2001, a plan to rationalize the watchdog body involved a significant reduction in salaries, contradicting previous announcements that the body would achieve the hierarchical level of a Ministry. At least 40 OA’s officials were reported as considering leaving the body (La Nación March 29, 2001).

This policy applied until the end of 2003 and was extended for 3 months by Kirchner. The maximum salary of $3,000 pesos was applicable to political appointees, but with exceptions such as legislators or ambassadors; it was not applicable to other public officials, including members of the judiciary. In addition to these legal exceptions, there was extended suspicion that many political appointees were receiving illegal bonuses to complement their salaries. Compliance with this policy was fairly unequal with 90% rates in the Presidency and Ministries, but only 75% in state enterprises, 11% in public universities, and 29% in public banks and financial institutions (La Nación August 17, 2003; November 2, 2003; March 30, 2004).

Roberto de Michele, head of the Directorate of Transparency Policies resigned in October 2001 and joined an international organization. C. M. Garrido, Director of Investigations, was selected in a competitive process to lead the FNIA. Jose Massoni, OA’s maximum authority, resigned to avoid losing his pension benefits as a magistrate, which were higher than his OA’s salary (La Nación October 24, 2002; December 17, 2002).

Changes in leadership and vacancies led to changes in OA’s formal structure in 2007 (Decree 466/07).

See La Nación (November 28, 2003).

Morin, who had also expressed his dissatisfaction with the salary limits implemented in the public sector, requested from Kirchner the declassification of Decrees through which SIDE would have received funds beyond the amounts formally included in the budget; also, OA became petitioner in the investigation of a complaint for the use of reserved funds for the electoral campaign of President Kirchner. La Nación (October 28, 2004; November 18, 2004; December 27, 2004).

A former appointee at the Ministry of Justice, he was reported to be a political person, someone “which pertains to the same power circle over which he should perform oversight functions” (Cf. La Nación December 17 & 27, 2004). He was appointed per suggestion of the Chief of Cabinet instead of the candidate preferred by the Ministry of Justice (Curia 2006, 272).

This case was denounced by ARI in 2005.

Interview with Adrian Perez (“Puntos de vista,” La Red AM910 Sept. 12, 2005); author’s translation.
directly of the OA’s head, did not have hierarchical authority to coordinate its activities and to report to the systematic controls of the databases maintained by the decentralized units; also, included the lack of formalized criteria to select the sample of lower level officials, as well as the absence of systematic controls of the databases maintained by the decentralized units; also, the Unit, which depends directly of the OA’s head, did not have hierarchical authority to coordinate its activities and to report to the physical conditions in which the declaration was made were not adequate. Other deficiencies included the lack of formalized criteria to select the sample of lower-level officials, as well as the absence of systematic controls of the databases maintained by the decentralized units; also, the Unit, which depends directly of the OA’s head, did not have hierarchical authority to coordinate its activities and to report to the recording and monitoring system was not available; and the physical conditions in which the declarations were maintained were not adequate. Other deficiencies included the lack of formalized criteria to select the sample of lower-level officials, as well as the absence of systematic controls of the databases maintained by the decentralized units; also, the Unit, which depends directly of the OA’s head, did not have hierarchical authority to coordinate its activities and to report to the limitations in the information management system; a recording and monitoring system was not available; and the physical conditions in which the declarations were maintained were not adequate. Other deficiencies included the lack of formalized criteria to select the sample of lower-level officials, as well as the absence of systematic controls of the databases maintained by the decentralized units; also, the Unit, which depends directly of the OA’s head, did not have hierarchical authority to coordinate its activities and to report to the old system, on paper forms, did not allow making automatic and systematic controls, and had a very competitive, and the top management could earn as much as US$ 11,500 monthly, while technical staffers could make US$ 4,000-5,000 monthly (Meagher 2002). However, at the end of 2000, with worsening economic conditions, the average salary was only $2,500 (La Nación October 29, 2000). After devaluation, the top salaries did not exceed US$ 1,000 per month or $3,000 pesos. 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Administrative Control Prosecutor. See AGN (2004) “Audit Report to verify the actions of the Anticorruption Office regarding the financial disclosure system, 2001-02.”

170 Compared to 36,000 public officials that had to submit the forms under the previous normative framework (Decree 41/99), Law 25.188 identifies a more reduced universe of public officials obliged to submit the assets declaration (Follow up mechanism report 2002).

171 La Nación (August 26, 2001).

172 When filing a criminal complaint, OA informs the judiciary but does not play an active role in the proceedings, except in a reduced number of cases in which follows up on the complaints or decides to file a criminal action (private suits). In criminal actions, OA plays an active role on behalf of the state’s interests that have been damaged, and suggests pieces of evidence. The decision to follow up or file a criminal action (when OA becomes a claimant) is based on two criteria: damage to state assets and/or social, institutional and economic relevance (OA 2002, 32). For an explanation of the criteria, see OA (2001, 5-6).

173 Ex-officio investigations play a preventive role and are more likely to result in filing a criminal complaint (OA 2004, 15). They involve more strict control and increase the probability of detection. The percentage of ex-officio investigations that are derived to the judiciary is significantly larger than those originated in private complaints, and that gap has increased over time. In 2002 the percentage of ex-officio investigations was 42% versus 25% from private complaints, while in 2004 it was 40% compared to 18% (OA 2002, 34; 2004, 15).

174 See OA (2000), Exploratory study on transparency. The study’s methodology was criticized for not being based on strong evidence but opinions and subjective evaluations (Tesoro 2000).

175 Overall, total savings were estimated in $11 million pesos in 2001. More specifically, for example, OA’s participation in the procurement process to provide meals to Ezeiza penitentiary resulted in 60% savings or more than 2 million pesos; in 2003, it participated in the bidding process to find suppliers of auto motor IDs, and the estimated total savings were 26% over previous prices (OA 2001, 42; 2003, 32; 2003b, 28-31).

176 This has been identified as one of the key dimensions for the success of the Hong Kong’s anticorruption agency. See Johnston (1999). This area was not systematically pursued by OA until 2005, when the body launched an online training program for public officials and developed materials on public ethics for primary education.

177 Linkages to oversight bodies and to the public may provide insulation from control by factions within government, and enhanced legitimacy and independent support for the agency (Meagher 2004, 93).

178 An advisor to Iribarne was quoted in La Nación (October 20, 2003) saying that “the OA received an excessive amount of denounces. It had become a habit to send everything to OA, filling it with papers, as a form of protection;” he indicated the role of SIGEN is “to act before errors take place.”

179 La Nación (August 28, 2003; October 20, 2003).

180 Working with civil society contributes to the development of more responsible, equitable and accountable institutions; promotes awareness of issues otherwise ignored by political parties and special interest groups; and empowers civil society organizations to work as public interests’ defenders. It also enables civil society to advocate for political, legal and institutional reforms, as well as demand more democratic decision making processes (Raigorodsky 2004). OA provides technical assistance to the Follow up Commission set up by civil society organizations to monitor the implementation of ICAC.

181 Since 1999 until 2005, OA received 2,160 requests to have access to assets declarations (OA, 2005). Most of these requests were from journalists, NGOs, students, professionals and public officials. OA is also responsible for receiving citizens’ complaints in cases in which access to information is denied.

182 For instance, in 2003, OA was part of Argentine Dialogue, a platform that gained commitment from several presidential candidates to make anticorruption a state policy (OA 2003, 7).


184 Article 43, Law 24.946

185 After Masue, Luis C. Cabral headed FNIA for one year (1982) before the appointment of Dr. Molinas. The son of Luciano Molinas, co-leader with Lisandro de la Torre of Partido Democata Progresista, he was very respected as cofounder and co-president of the Permanent Assembly for Human Rights during the dictatorship (Author’s interview, July 11, 2005). Also Verbitsky (2006, 99); La Nación (May 23 2006).

186 Author’s interview. Buenos Aires, July 11, 2005.
practice subordinates FNIA to the Legal Counsel and Solicitor General’s Office legal services of the federal offices, and it represents the State before local or foreign courts. This article in (see http://www.ptn.gov.ar/)

Molinas’ decision not to prosecute the General Secretary of the Presidency and the Ministry of Interior for irregularities in the direct purchase of school aprons that had been denounced by the Tribunal de Cuentas was controversial. Verbitsky (2006, 100-102) explains that given an open campaign against the institution, Molinas tried to please and support the government by quickly dismissing the case and using political arguments in his judgment. This support paid off when his son was prosecuted and he was subpoenaed to declare against Alfonso’s Minister of Health: adjunct prosecutors were summarized and he tried to impeach the federal judges involved. However, it would prove to be useless when FNIA began to investigate Menem’s government.

Given the neutralization of the body, Law 24.946 “put in paper what it was already happening in practice.” FNIA’s crucial powers to conduct its own investigations were eliminated (e.g., request public documents, conduct searches without warrant, etc.), its powers to intervene in administrative cases were questioned, and its intervention in criminal cases constrained (Author’s interview. Buenos Aires, July 25, 2006).

When FNIA was intervened, Prosecutor Santiago Teruel conducted an audit that identified some irregularities and excessive personnel. General Prosecutor’s Office requested Pinzón’s resignation in different occasions, but he remained in office until his death. The body’s subordination to the executive and politicization continued after Pinzón’s death, with the appointment of Guillermo Noailles in 2001 (La Nación Aug. 26, 2001). Through Resolution 90/01, the General Prosecutor’s Office suspended the competitive examination to select the head of FNIA in October 2001, although the office was vacant. The rationale was the possible modification in the normative regime of FNIA, though this never took form (La Nación November 24, 2001) When Garrido took office, he promised “working for strengthening oversight agencies and institutions in Argentina;” his goal was to reactivate the state’s main control body, paralyzed since 1991 when Molinas had been dismissed (La Nación November 21, 2003).


As established by Law 24.946 (article 45, 49) and Decree 467/99.

Rebak (2002); La Nación (November 22, 2003).

Article 134 of the Statute of Administrative Investigations (Decree 467/99) attributes to the Legal Counsel and Solicitor General’s Office the authority to interpret the statute and to propose new regulations. This body (see http://www.ptn.gov.ar/) is charged with overseeing, coordinating and directing the activities of all internal legal services of the federal offices, and it represents the State before local or foreign courts. This article in practice subordinates FNIA to the Legal Counsel and Solicitor General’s Office, and made it possible to
sanction Dictamen 190/99, which limited FNIA’s participation to those cases initiated as a result of its own investigations. This opinion was used to restrain FNIA’s powers and to limit its intervention, seriously compromising the transparency of administrative processes by forbidding the intervention of an independent body under the authority of the Nation Prosecutor’s Office (FNIA 2000). This interpretation was fought by FNIA, which understood that Law 24.946 is silent as to the intervention powers of FNIA and that the Statute of Administrative Investigations (article 3) includes the powers to understand of any administrative case (as it was initially mandated by Law 21.383 derogated) (FNIA 2004).

The Law of Public Prosecution recognizes the necessary intervention of FNIA in the cases, but the lack of specific regulation of such intervention has in practice limited its occurrence.

This resolution was against article 36 of the UNCAC. In response to this decision, Prosecutor Garrido indicated: “we will not be able follow a case that we do not start. Or if they smell that we are onto something, they can send anyone to make a complaint and thus inhibit our intervention forever.” (Crítica Nov. 8, 2008). Also, La Nación (Nov. 11, 14, 19, 30, 2008.) After Garrido’s resign, the Attorney General publicly denied limiting the body’s powers (La Nación March 14, 2009).

The OA was created due to the inability to dismiss the head of the FNIA from office. The Alianza government decided to create a specialized agency to avoid FNIA’s paralysis; however, the norm that regulates OA “refers frequently to FNIA’s competencies and powers, creating thus a clone of FNIA in the Executive branch” (Author’s interview. Buenos Aires, July 11, 2005).

This power was eliminated by Law 24.946 (FNIA 1998).

The Attorney General affirmed that FNIA was paralyzed: “in recent times there is no activity, due to legislative overlap. The FNIA has overlapping authority with the OA” (La Nació, October 30, 2003).

The Attorney General has the power to issue instructions to guide the actions of public prosecutors. This power is not properly regulated, is scarcely transparent, and prosecutors have limited mechanisms to object those instructions. In the case of the FNIA, for example, after resolution 147/08 was issued, the Prosecutor Garrido decided to resign. The political interference of the executive over the Attorney General’s Office increased significantly in the 90s, when President Menem reformed the office to increase its dependence of the executive (Law 24.946). As an indication of this influence, President Kirchner appointed his personal lawyer,
Esteban Righi, as Attorney General. His firm continued to manage the Presidents’ legal affairs while Righi was still in office (Abiad and Thierberger 2005).

222 For details on the conflict with the OA, see Manfroni (2007, 15-17).

223 In April 2004, FNIA signed with the NGO Poder Ciudadano a Public Commitment Agreement for Transparency aimed at enhancing the body’s transparency and giving publicity to its resources and personnel, decision making processes, channels to receive denounces etc. Though the body did not have budget to implement the agreement, the signature showed a different disposition to reach out civil society.

224 Author’s interview (Buenos Aires; July 11, 2005)

225 La Nación (January 3, 2007). See also, La Nación (November 18, 2004).

226 There is a double problem of incentives. On the one hand, oversight institutions may or may not have incentives to perform their oversight job effectively based on the relation with their respective principal. On the other, principals may or may not have the incentives to act upon information produced by oversight agents to enforce accountability. See Lorenz and Voigt (2007).

227 As Verbitsky (2006, 80) critically observed: “From the moment he took office, [Menem] was neutralizing or capturing with unconditional people each oversight body. At most, he allowed the exercise of unlimited power by the authorities, and harassment of political or personal opponents. At least, this served to conceal criminal acts committed from political power after July 8, 1989, or before that date by public officials appointed by the new government. He followed the tactics of the ten little Indians, advancing one after another on all the impediments.”

228 La Nación (July 19, 2010)

229 “The official policy of paralyzing controls has been favored by the opposition’s lack of interest which, while denouncing presumed corrupt transactions, has delayed in Congress the presentation of projects and bills to redesign oversight agencies and strengthen their powers” (La Nación, Nov. 30, 2008).

230 Certain conditions (e.g. macroeconomic stability, media, efficient judiciary) are important for oversight bodies to succeed. It is even possible that these external conditions may bring about positive results in terms of fighting corruption without strong and powerful specialized control institutions, or that strong oversight bodies may also have an impact in facilitating those conditions. See Meagher (2002).

231 La Nación (October 9, 2005; December 6, 2004).

232 This limitation was clearly identified in the assessment conducted as part of the Follow-up Mechanism to the ICAC convention. See Report of the Experts’ Committee (February 2003).

233 A good example is the limits of the Federal Control Network in integrating provincial and local oversight agencies and setting standardized control norms and procedures for performing oversight functions (Author’s interview Buenos Aires; September 14, 2007).

234 Coordination, exchange of information, and cooperation amongst different components of the accountability system is considered an international standard in the fight against corruption (articles 38 and 39 of UNCAC). Authorities from Argentina’s oversight bodies have acknowledged the need to enhance cooperation in numerous occasions. See, for example, “Global Consultations on strengthening World Bank Group engagement on governance and anticorruption” (Buenos Aires, Dec. 12-14, 2006); “Knowledge sharing and best experiences for improving coordination among non-executive control agencies” (World Bank Institute, Buenos Aires, June 12, 2007). This has also been included in the recommendations of the ICAC’s follow up mechanism (MESICIC 2nd round, July 2006, 21). See La Nación (November 27, 2003).

235 On tensions between AGN and Congress, see La Nación (February 28, 2003; December 6, 2004). One example is the accusation of illicit enrichment against Maria J. Alsogaray (Santiso 2007, 77-8).

236 Collaboration with civil society organizations may help to overcome obstacles that inhibit the role of oversight bodies, thereby enabling civil society organizations to contribute to oversight. For example, civil society organizations can help build citizen literacy on financial management and oversight; audit agencies could learn from the experiences of civil society in tracking public funds and adapt their methodologies; with the assistance of citizens, civil society organizations can identify issues for oversight bodies to investigate, or can contribute with relevant information. Alternatively, civil society organizations may conduct supplementary investigations on issues that have been identified in audit reports; contribute to strengthen the autonomy of oversight bodies by keeping a cautious watch over the appointment of authorities; help monitor the executive’s follow-up to audit reports and to subsequent decisions taken by parliamentary committees on the reports; and help build and maintain pressure on the executive to enforce corrective actions (Pynn 2006; Ramkumar 2007; Ramkumar and Krafchik 2007; Nino 2008; Wang and Rakner 2008; Van Zyl et al. 2009; Velasquez 2009).
A successful experience is the articulation between the AGN, the Ombudsman Office and civil society to report irregularities in programs aimed at cleaning the Matanza-Riachuelo river basin. Based on findings by AGN and the Ombudsman, a group of neighbors sued the Federal Government, the Government of the Buenos Aires Province and the Government of the Capital City for damages suffered due to the river’s pollution. This coordinated action led to a series of hearings and a Supreme Court ruling that held the three governments responsible for the basin’s cleanup and for preventing further damage. The decision left open the possibility of imposing fines, which would be paid by the Secretary of Environment as head of the inter-jurisdictional authority. It also ordered the NGO and the Ombudsman to set a monitoring body to oversee the implementation. Some other examples include collaboration between the NGO ACIJ and AGN, and AGN’s reliance on data provided by an association of disabled people, among others. See Nino (2008) and Poder Ciudadano (2009) for a review of examples.

238 La Nación (September 19, 2005); Author’s interview (Buenos Aires, July 25, 2006).
240 La Nación (Nov. 16, 30, 2008).
Chapter 8
Corruption as an Informal Institution of Governance:
The Persistence of Argentina’s Elite Cartel Corruption

"Son más los crímenes desconocidos que los registrados,
e infinitamente mayores los que han quedado impunes que los castigados,
"
Javier Marías

1. Introduction

Pervasive corruption, and more generally the failure of the rule of law, has often been explained by
the presence of informal institutions that undermine formal political institutions and state capacity.
However, in a weakly institutionalized setting, the institutionalization of political corruption can be
used to reinforce and/or complement rather than undermine formal state institutions, as well as to
ensure compliance (Darden 2008, 36). Assuming that relations between political actors can be
informal and not necessarily grounded on the law, corrupt practices may become informal institutions
of governance that contribute to enhance the capacity of state agents to secure compliance with their
directives.¹ Elite cartel corrupt networks may be an illicit substitute or complement for ineffective
formal institutions of exchange between the public and the private sector and/or between public
actors, thus contributing to political stability.² However, as corrupt networks are an imperfect
substitute for formal institutions, they are not fully able to forestall change. Elite cartel networks and
pervasive corrupt practices may contribute to political stability, but they also require substantial
resources and capabilities (e.g., monitoring, surveillance, coercion) to enforce deals over time and to
ensure cohesion. Therefore, instabilities can arise and change may happen, and when it does, it
usually is sudden, sharp and discontinuous (Johnston 2005, 90).

Corruption becomes institutionalized when actors share expectations about corrupt exchanges,
and/or corrupt exchanges are organized from above and externally sanctioned.³ In this context, those
who engage in corrupt practices are usually not punished, and there are high levels of impunity and social tolerance for political corruption. Episodes of rule-breaking and sanctioning communicate the informal rules that allow the impunity of corruption, effectively signaling the costs of non-compliance. This explains the reproduction and persistence of corrupt exchanges over time, which may result in well-functioning states that show persistent medium to high levels of political corruption. When corruption becomes informally institutionalized, it operates through two main mechanisms (Darden 2008, 42). First, it allows for alternative forms of compensation that operate as an incentive for loyalty and compliance. Second, it contributes to reduce uncertainty by enhancing central control over agents; it increases the potential sanctions in the event of noncompliance as the threat of exposing wrongdoing operates as a powerful sanction that allows exacting loyalty and obedience. These mechanisms may be used within the administrative hierarchy (over lower-level public officials) and within networks of high-level political and economic actors that share corrupt benefits.

This chapter focuses on corruption and its institutionalization as an informal institution of governance. The main goal of this chapter is to examine the processes and mechanisms that explain the impunity of corrupt practices in Argentina. One possible explanation is the presence of informal institutions. Given the high levels of impunity for participating in corrupt exchanges, one might conclude that there is an informal institution that gives public officials broad latitude in the fulfillment of their public duties. The hypothesized informal institution would give public officials broad or unlimited discretion in the use of public resources. If informal institutions are driving the impunity of corrupt practices, we should be able to identify informal rules that, at minimum, permit this kind of behavior among Argentine public officials. To do so, we need to operationalize informal institutions and rules. Thus, another goal of this chapter is to apply a rigorous definition of informal rules and institutions to political corruption by using the operationalization standards developed by Brinks (2003, 2006). Following this introduction, section two applies such theoretical framework, which operationalizes informal institutions based on informal enforcement mechanisms, to Argentina’s political corruption. Section three concludes and addresses the patterns of interaction between the
informal institution at issue here and formal institutions (according to the typology developed by Helmke and Levitsky 2006).

2. Is corruption informally institutionalized? Explaining the persistence of elite corrupt cartels

To which extent is corruption institutionalized in Argentina? What explains the persistence of elite cartel networks of corruption? The main goal of this section is to explore the mechanisms and processes that contribute to the informal institutionalization of political corruption and give rise to high levels of corruption impunity in Argentina. Corruption is institutionalized when there is an informal institution that gives public officials broad latitude in the fulfillment of their duties. Actors are allowed, if not encouraged, to participate in corrupt activities and exchanges (Darden 2008, 46).

The hypothesized informal institution is one that grants public officials broad or even unlimited discretion in the illicit use of state resources for private or political benefit. We should be able to identify informal rules that allow (but not require) corrupt exchanges. When this happens, corrupt practices can be committed without factoring in the cost of a sanction for violating formal rules. Moreover, the enforcement of the formal rules that prohibit corruption is selective, limited to cases of disloyalty and disobedience, and benefits from the use of surveillance and monitoring institutions.

To determine whether political corruption is institutionalized and corrupt elite cartel networks constitute informal institutions, this chapter applies the analytical framework proposed by Brinks (2003; 2006, 201 ff.) for operationalizing informal institutions. This framework relies on several questions that help us to verify whether certain behavior actually constitutes an informal institution that permits otherwise illegal behavior. Specifically, the next pages aim to answer the following questions: (i) do we observe regularities that cannot be explained by reference to the formal rules; (ii) do people describe certain behavior in terms of an enforceable rule of conduct?; (iii) are deviations from the hypothesized informal rule punished?; (iv) is the behavior at issue observed and not punished by official/formal enforcement agents?; and (v) is there evidence that relevant actors know the rule, anticipate the consequences of a transgression and guide their conduct accordingly?
2.1 Regularities not explained by formal institutions

The regular engagement of Argentine public officials in corrupt practices, despite the formal laws and regulations that purport to outlaw such practices, is the regularity of behavior to be explained in this chapter. The hypothesis proposed here is that there is an informal institution that permits political corruption in Argentina. Because the rule is a permissive one, the actual conduct that the hypothesized rule purports to proscribe is punishment of public officials who act under the protection of the rule by agents of social control (e.g., state leaders, judges, and prosecutors). In this chapter, political corruption is taken as a given, without seeking to explain it, in order to explore the failure of formal enforcement mechanisms to punish corrupt practices committed by public officials.

Public officials’ conduct is inconsistent with the formal rules that prohibit corrupt behavior. As reviewed in Chapter 3, Argentina has signed numerous international treaties that criminalize corruption and advance institutional reforms to prevent it. These laws have been incorporated into the domestic legal framework. Moreover, numerous institutional and policy reforms have been enacted to enhance transparency and fight against corruption. Despite those formal laws, corrupt practices have been quite significant throughout Argentina’s history, in frequency, amount of resources illicitly exchanged, as well as the number of actors involved. The problem became particularly visible in the 90s and has remained high in the priorities and concerns of Argentine citizens until now. Complete information about corrupt practices is hard to come by as considerable political corruption likely goes unreported. However, some systematic evidence about the extent and patterns of corruption has been provided earlier in this dissertation. What we know about corruption indicates that the incidence of corruption is high in the country and has remained significant over the years. Argentina presents a high level of corruption relative to its income and development levels. Moreover, the costs of corrupt transactions are significant. For example, in 2005, the judicial proceedings concerning criminal charges affecting the public administration and involving public officials represented a total cost of 7 thousand million pesos. According to civil society’s estimates, between 1980 and 2006, corrupt practices represented a total cost of USD$10,000 million dollars (Brodschi et al. 2008, 11).
Evidence also shows that the legal response to corrupt practices is very low; at least in some instances and to some extent, the Argentine public state leaders and courts are prepared to tolerate political corruption. The punishment of corrupt practices has usually been the result of isolated efforts that responded to particular political circumstances but have not been sustained over time; rather, they succumbed to other political priorities. (Jorge 2009, 21-22) In Argentina, the conviction rate for corruption charges is so low and the investigation, prosecution, and judicial processing of corruption-related cases so extremely long and tortuous that it could be construed as official complicity with the conduct in question. A recent study found that, between 1980 and 2005, out of over 750 cases of corruption, there were only 14 cases (3%) with effective convictions for corruption-related charges (Gruemberg and Biscay 2007, 8). For a smaller sample of 50 cases filed with the federal justice, only 5 cases (10%) resulted in conviction, while most cases resulted in prosecution (15 cases or 31%) or the dismissal of charges (19 cases or 41%) (Cipce 2007, 9 ff.) (See Table 8.1.) Although many variables affect conviction rates and make cross-national comparisons virtually impossible, compared to other countries, Argentina’s low conviction rates for corruption are particularly noticeable. 8

Table 8.1. Criminal action regarding corruption cases

<table>
<thead>
<tr>
<th>Stage</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>Outcomes</td>
</tr>
<tr>
<td></td>
<td>No. of cases/percentage</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigation</td>
<td>112 (46.9%)</td>
</tr>
<tr>
<td></td>
<td>Indictment</td>
</tr>
<tr>
<td></td>
<td>15 (31%)</td>
</tr>
<tr>
<td>Convictions</td>
<td>7 (2.9%)</td>
</tr>
<tr>
<td></td>
<td>Dismissal</td>
</tr>
<tr>
<td></td>
<td>19 (41%)</td>
</tr>
<tr>
<td>Plenary</td>
<td>15 (6.3%)</td>
</tr>
<tr>
<td></td>
<td>Lack of ground</td>
</tr>
<tr>
<td></td>
<td>2 (4%)</td>
</tr>
<tr>
<td>Sentence</td>
<td>2 (0.8%)</td>
</tr>
<tr>
<td></td>
<td>Acquittal</td>
</tr>
<tr>
<td></td>
<td>2 (4%)</td>
</tr>
<tr>
<td>Acquittal</td>
<td>84 (35.1%)</td>
</tr>
<tr>
<td></td>
<td>Conviction</td>
</tr>
<tr>
<td></td>
<td>5 (10%)</td>
</tr>
<tr>
<td>Committal proceedings</td>
<td>3 (1.2%)</td>
</tr>
<tr>
<td></td>
<td>N/D</td>
</tr>
<tr>
<td></td>
<td>5 (10%)</td>
</tr>
<tr>
<td>Oral trial</td>
<td>16 (6.7%)</td>
</tr>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td>48 (100%)</td>
</tr>
<tr>
<td>Total</td>
<td>239 (100%)</td>
</tr>
</tbody>
</table>

Source: Cipce (2007)

Table 8.2. compares the proportion of convictions to prosecution for corruption in different countries, and also includes the level of corruption (as measured by the CPI in 2010). The data show that countries with higher rates of corruption usually present the lowest conviction rates. However, in countries like Zambia, Romania or India, with corruption levels similar to Argentina, conviction rates are significantly higher. 9 Countries with systemic corruption problems like the Philippines or
Tanzania show extremely low conviction rates, thus revealing similar patterns of impunity and protection.

**Table 8.2. Ratio of convictions to prosecution for corruption charges**

<table>
<thead>
<tr>
<th>Country</th>
<th>Period</th>
<th>Convictions as % of Prosecutions</th>
<th>CPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>1980-2005</td>
<td>3</td>
<td>2.9</td>
</tr>
<tr>
<td>Botswana</td>
<td>Late 1990s</td>
<td>84</td>
<td>5.8</td>
</tr>
<tr>
<td>Botswana</td>
<td>Currently &amp; recently</td>
<td>Above 70</td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
<td>2009 - 2010</td>
<td>91.5</td>
<td>8.4</td>
</tr>
<tr>
<td>India (federal only)</td>
<td>2009</td>
<td>64</td>
<td>3.3</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2010 and recent years</td>
<td>100</td>
<td>2.8</td>
</tr>
<tr>
<td>Malaysia</td>
<td>1979 - 2010</td>
<td>28.7</td>
<td>4.4</td>
</tr>
<tr>
<td>Mauritius</td>
<td>Prior to June 2006</td>
<td>100 (1 case)</td>
<td>5.4</td>
</tr>
<tr>
<td>Mauritius</td>
<td>After June 2006</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>Nepal</td>
<td>2002 - 2005</td>
<td>86.7</td>
<td>2.2</td>
</tr>
<tr>
<td>New Zealand</td>
<td>2002</td>
<td>100</td>
<td>9.3</td>
</tr>
<tr>
<td>Philippines</td>
<td>2001</td>
<td>5</td>
<td>2.4</td>
</tr>
<tr>
<td>Philippines (after new Ombudsman appointed)</td>
<td>2003</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>2008</td>
<td>56</td>
<td>3.7</td>
</tr>
<tr>
<td>South Africa</td>
<td>1999 - 2004</td>
<td>93</td>
<td>4.5</td>
</tr>
<tr>
<td>Tanzania 1995 – April 2010</td>
<td>6.8 (average)</td>
<td>(high of 19 in 1999)</td>
<td>2.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(low of 0 in 2001)</td>
<td></td>
</tr>
<tr>
<td>Taiwan</td>
<td>Oct. 1995 - Nov. 1995</td>
<td>61.21 (average)</td>
<td>5.8</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2007 - 2008</td>
<td>68</td>
<td>2.6</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2009 - 2010</td>
<td>91</td>
<td></td>
</tr>
<tr>
<td>United States (federal only)</td>
<td>2009</td>
<td>88</td>
<td>7.1</td>
</tr>
<tr>
<td>Zambia</td>
<td>1966 - 2000</td>
<td>41 (average)</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(high of 80 in 1997)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(low of 24 in 2000)</td>
<td></td>
</tr>
</tbody>
</table>


There is no reason to believe that a permissive rule applies to other crimes such as homicide and crimes against public security. Conviction rates are quite high for these types of crimes in Argentina (47.6% for homicide and 48% for crimes against public security). In contrast, conviction rates are low for other types of crimes, including corruption (13.53% conviction rate). Besides corruption, other crimes with extremely low conviction rates are robbery (4%) and drug trafficking (6.83%). The pattern is similar at the provincial level, with several provinces showing extremely important differences in convictions rates for corruption compared to other crimes. (See Figures 8.1-8.3.)
However, regarding corruption, there is not a blanket permissive rule. Not all of these cases go completely unpunished. Based on comments made from some of the people interviewed as well as the observation of cases reported in the newspapers, the rule might work only in cases in which the defendants are high-level public officials (while low-level bureaucrats might have more probability of being punished). With the only exceptions of Maria Julia Alsogaray, responsible for some major privatization processes and former Minister during Menem’s administration, and Jose Manuel Pico, former mayor of the City of Buenos Aires, most of the convicted people for corruption crimes were low-level public officials.\textsuperscript{11}

It is possible to think that this low conviction rate, as well as the obstacles for the judicial prosecution of corruption offenses, is the result of structural weaknesses of the judicial system.\textsuperscript{12} The failure to enforce the law could be due to weak courts or prosecutors who are unable to gather the evidence necessary for a full investigation and prosecution of corruption cases. If that were the case, however, conviction rates should also be low for other types of crimes.
In contrast, the evidence indicates that corruption related cases present lower conviction rates and longer duration of the trials than other types of crimes, which seems to confirm that the hypothesized informal rule operates in Argentina. (See Table 8.3.) Therefore, an alternative explanation for the judicial inefficiency in dealing with corruption cases is the existence of an informal norm that permits but does not require corrupt practices. In a particular situation, public officials can decide between being honest and being corrupt, yet they will not be punished either way.

<table>
<thead>
<tr>
<th>Crime</th>
<th>Total</th>
<th>Total per 100,000 inhabitants</th>
<th>% Conviction</th>
<th>Total number convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>2,305</td>
<td>5.80</td>
<td>47.46</td>
<td>1,094</td>
</tr>
<tr>
<td>Robbery</td>
<td>398,361</td>
<td>1002.28</td>
<td>3.99</td>
<td>15,877</td>
</tr>
<tr>
<td>Sexual crimes</td>
<td>10,360</td>
<td>26.68</td>
<td>13.33</td>
<td>1,381</td>
</tr>
<tr>
<td>Crimes against public security</td>
<td>5,992</td>
<td>15.08</td>
<td>47.98</td>
<td>2,875</td>
</tr>
<tr>
<td>Crimes against public administration</td>
<td>16,101</td>
<td>40.51</td>
<td>13.53</td>
<td>2,179</td>
</tr>
<tr>
<td>Drugs</td>
<td>30,003</td>
<td>75.49</td>
<td>6.83</td>
<td>2,050</td>
</tr>
</tbody>
</table>

Source: Author based on official data from Ministry of Justice (http://www.jus.gov.ar/areas-tematicas/estadisticas-en-materia-de-criminalidad.aspx accessed January 2011)

In addition, corruption trials show other differences when compared to ordinary trials: criminal law and due process guarantees are applied differently whenever cases relate to corruption charges and high-level political and economic elites are involved (Gruemberg and Biscay 2007, 5). Thus, the principle of being judged within a reasonable deadline has been applied differently across cases to give an advantage to those involved in high-level political corruption and financial crimes. A good example from a case of private corruption is the Gotelli case where the Argentine state acknowledged before the Inter-American Court of Human Rights to have violated the right to a reasonable deadline for trial in a case in which the investigation took more than 15 years. Table 8.4. illustrates the violation of the reasonable deadline standard. For a sample of 90 cases of corruption in federal courts, as of May 2010, 73% were at the investigation stage; some of those cases had been under investigation for so long as 7 (case 16132/039) or even 9 years (case 10783/99). Furthermore, for the sample of 50 cases mentioned above, an analysis of the reasons for the dismissal of charges shows...
that most cases (11 or 58%) were dismissed because the statue of limitations applied. On average, the
duration of the judicial process for these cases was 14 years. This indicates that the extraordinary
duration of the process becomes in fact a way to allow and protect corruption. (See Table 8.5.)

Table 8.4. Argentina’s differences in due process for corruption cases.

<table>
<thead>
<tr>
<th>Stage of judicial process</th>
<th>Number (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>66 (73.3)</td>
</tr>
<tr>
<td>Archived</td>
<td>5 (5.5)</td>
</tr>
<tr>
<td>Acquittal</td>
<td>3 (3.3)</td>
</tr>
<tr>
<td>Appeals court</td>
<td>1 (1.1)</td>
</tr>
<tr>
<td>Request of oral trial</td>
<td>1 (1.1)</td>
</tr>
<tr>
<td>Oral trial court</td>
<td>12 (13.3)</td>
</tr>
<tr>
<td>Finalized (abbreviated trial)</td>
<td>1 (1.1)</td>
</tr>
<tr>
<td>N/A</td>
<td>1 (1.1)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>90 (100)</strong></td>
</tr>
</tbody>
</table>

Source: Author’s based on ACIJ (2009).

Similarly, there is a differentiated application of the right to remain free during the trial. In Argentina,
judges do not usually observe this right, which appears as an exception for ordinary criminal
charges. However, it has repeatedly been granted regarding high-level corruption cases, where
preventive incarceration is not applied or only for short periods of time (Gruemberg and Biscay
2007, 5.) All these differences cannot be explained by formal rules and institutions, or by the strength
of enforcement agencies, as they take place within the same judicial system. However, these
differences, which are difficult to explain in relation to other variables, can easily be predicted by the
hypothesized informal rule. This is initial evidence in support of finding an informal institution
allowing corrupt exchanges at work. In sum, the failure to convict public officials that engage in
corrupt practices is a regularity that cannot be explained by the formal rules in Argentina. This has
contributed to the extended social perception that public officials, and particularly political elites,
enjoy high levels of impunity. In addition, there is also abundant testimonial evidence, which has
been reported extensively in the major national newspapers, that suggests that an informal rule of
some kind is operative in this regard. This brings us to the next question.
Table 8.5. Duration of judicial process for selected sample of corruption cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Months</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banco Alas</td>
<td>146</td>
<td>12</td>
</tr>
<tr>
<td>Banco Italia</td>
<td>252</td>
<td>21</td>
</tr>
<tr>
<td>Banco Basel</td>
<td>248</td>
<td>21</td>
</tr>
<tr>
<td>Komer-Salgado</td>
<td>204</td>
<td>17</td>
</tr>
<tr>
<td>Bruno</td>
<td>192</td>
<td>16</td>
</tr>
<tr>
<td>Banco Iguazu</td>
<td>109</td>
<td>9</td>
</tr>
<tr>
<td>Pedro Pou</td>
<td>132</td>
<td>11</td>
</tr>
<tr>
<td>Ceccone</td>
<td>249</td>
<td>21</td>
</tr>
<tr>
<td>Banco Coronel Pringles</td>
<td>222</td>
<td>19</td>
</tr>
<tr>
<td>Banco San Miguel</td>
<td>71</td>
<td>6</td>
</tr>
<tr>
<td>De La Rúa</td>
<td>17</td>
<td>1</td>
</tr>
<tr>
<td>Banco Cabilido</td>
<td>226</td>
<td>19</td>
</tr>
<tr>
<td>Adm. Atc</td>
<td>109</td>
<td>9</td>
</tr>
<tr>
<td>Gostanian</td>
<td>53</td>
<td>4</td>
</tr>
<tr>
<td>Banco Intercambio Regional</td>
<td>175</td>
<td>15</td>
</tr>
<tr>
<td>Banco Palmares</td>
<td>195</td>
<td>16</td>
</tr>
<tr>
<td>Rollin</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Licari</td>
<td>150</td>
<td>13</td>
</tr>
<tr>
<td>Monterisi Ricardo</td>
<td>144</td>
<td>12</td>
</tr>
<tr>
<td>Pressacco</td>
<td>101</td>
<td>8</td>
</tr>
<tr>
<td>Banco Medefin</td>
<td>76</td>
<td>6</td>
</tr>
<tr>
<td>Banco Del Oeste</td>
<td>220</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total months</strong></td>
<td><strong>3303</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Average months</strong></td>
<td><strong>165</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Average years</strong></td>
<td><strong>14</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Cipce (2007, 13)

2.2 Describing corrupt behavior in terms of an enforceable rule of conduct

According to testimonial evidence, it is a plausible hypothesis that, in Argentina, public officials that engage in corrupt practices in the course of their duties are protected by a broad rule against their prosecution. Therefore, it is not uncommon to find testimonies in which elected officials, social and political actors, and members of the judiciary seem to approve that public officials that commit corrupt practices are not punished. In the 90s, the slogan “robo para la corona” expressed the protection that public officials gave to their own when they committed corrupt practices for supporting the highest political levels and activities.19

The party protects anyone who steals. For those who steal for the party, the party returns the protection. This means not going through the judiciary and, if this happens, the case ends in dismissal or prescribed by the time. […] It turns out that if I ask to steal for the crown, I must protect to whom steals for the crown.20

Moreover, public officials who are suspected of corruption are not penalized but often promoted.

Being suspected of, or under investigation, for corruption does not affect the possibilities of having
access to electoral lists or being appointed to public office. For instance, in November 2000, the judge responsible for the investigation of the Senate scandal dismissed the case due to lack of evidence against the senators involved. The public prosecutors appealed the judge’s decision because, in their opinion, the judge had not conducted the investigation efficiently: expert work was irregular; there were not face-to-face confrontations between the suspects, and the investigation was limited. Despite the evidence against them, some of the senators involved continued their political careers (e.g., senator Ricardo Branda was appointed to the Central Bank’s directory). (Di Mauro 2003, 83-85)

Other examples from the kirchnerist period are illustrative. The Secretary of Transportation, Ricardo Jaime, with 16 criminal cases open against him in 2009, continued to hold office and only resigned when the defeat of the ruling party in 2007 mid-term legislative elections made him expect the end of judicial protection. Particularly desirable for those involved in corruption practices is to have access to legislative seats, which guarantee parliamentary privileges against judicial investigations.

The protection of those who commit corrupt practices is well illustrated by the motto a journalist attributed to the Kirchner government: “if there is corruption, hide it; if it cannot be hidden, that no one can prove it. If it is public and can be proved, then the public official involved must leave office, not for being dishonest but for being a bungler.” Another good example of the acceptance of corrupt practices is a public comment on television from Luis Barrionuevo, a trade union leader appointed to a government post during Menem’s administration, who said: "The crisis in Argentina, can be resolved if we stop robbing [the state] for two years." (Manzetti 2000, 146) There is public acceptance of corruption, which is not seen as prejudicial, particularly at moments of economic and political stability. The principle “roba pero hace” is well ingrained in a society in which those who commit corrupt practices rarely go to jail. (Mauro 2003, 422) This protection has also been underlined by civil society organizations, which point out that in Argentina “it operates a model in favor of the defendants, which taking advantage of their class privileges and their high socioeconomic status obtain advantages in the application of human rights standards vis-à-vis the
complainants and the witnesses, who face serious obstacles to obtain legal protection” (Biscay and Gruember 2007, 33). As a result, the most important cases of corruption are never prosecuted:

When the investigation gets really close to the core of the offense and to the political power, automatically and for any opportunistic reason, the investigation is stopped. Insolvent individual rights are alleged, or false lack of evidence, and the cases are archived or enter into a futile lethargy (Gasparini 2009, 15).

Protection against prosecution is facilitated by the use of surveillance institutions that help public officials cover their tracks and can also be used for intimidation and selective enforcement. Argentina’s intelligence agency (formerly known as SIDE) has played a critical role in the articulation and institutionalization of the corrupt market since the 90s. The agency has been the main recipient of state resources to be used discretionaly and without control under the protection of secrecy laws. Accordingly, the agency’s budget has increased exponentially, particularly secret expenses (there was an 83% increase in the “reserved funds” between 2004-2008). Simultaneously, the agency has performed illegal surveillance of political actors, including both members of the ruling and opposition parties and judges, not for the purpose of enforcing the formal rules that prohibit corruption but for intimidation and selective enforcement27 (Lopez Masia and Solis 2009, 58-59). In this regards, some observe a change in the application of the informal rule that protects public officials after 2003. Compared to the 90s, President Kirchner protected a smaller circle of public officials (particularly after 2009), and used surveillance and judicial actors to intimidate and threaten political opponents (or to punish disloyalty) with selective enforcement of the formal rules that prohibit corruption.28 As one Peronist leader affirmed: “one of the great differences between Menem and Kirchner is that, while Menem had friendly judges to save his friends, Kirchner has friendly judges to put his enemies in jail.”29

Judicial actors play an important role in protecting corruption. Experts agree on identifying a “power culture” among Argentine federal judges, which refers to their ability to strategically take advantage of their decision-making power over corruption cases in order to obtain particular benefits for themselves based on how they lead an investigation. (ACIJ 2009, 18; Gasparini 2009, 107) Being in charge of investigating significant corruption cases gives federal judges leverage:
a federal judge shields himself when the destiny provides him with a relevant case for the government, which can serve him like an element for bargaining, pressure or - advancing in the scale - extortion (Abiad & Thierberger 2005, 190; author’s translation).

Corruption cases are used to bargain with the political power in order to be appointed, promoted, or to avoid sanctions. Judges engage in strategic decision-making regarding the investigation, and advance or delay corruption cases in order to maximize their chances of remaining on the federal bench (Helmke 2005, 162). They decide whether to advance or retain a case based on the belief of the potential threats they face (e.g., a disciplinary process) as well as the relative strength of the incumbent government. Thus, judges are only willing to enforce the formal rule when they do not have much to lose (for instance, at the end of their careers) or when the political power is weakened and they anticipate a change. The strategic use of cases is facilitated by weaknesses in the case distribution system. Although a computer makes the allocation of cases randomly, there are sounded suspicions of manipulation in the system to concentrate highly sensitive cases in judges with a background of using cases politically and susceptible to political influence. This bargaining capacity gives extraordinary leverage and power to the federal judges in charge of the investigation of the summaries (as opposed to those responsible for the oral trials), and explains the limited number of cases that reach the trial:

The most institutionally relevant processes, in most courts of the federal jurisdiction, hardly move on from the instruction to the oral trial stage, because retaining a case is to retain power. [...] The oral trial becomes a myth; it is as if there were no connection between the instruction and the oral courts. Cases that come to trial are the least significant in terms of the public interest (possession of drugs, small dealers, forgery, etc.) (Interview with federal judge R. Rafecas, October 26, 2007, in ACIJ 2008, 7).

Defense attorneys and civil society experts with experience in denouncing corrupt practices describe the existence of a system of impunity in which both politicians and judges contribute to create the structural conditions that sustain political corruption. Judges do not punish the corrupt activities of public officials either because they are afraid of the possible adverse consequences, or because they are accomplices of those practices. In so doing, they protect those who commit corrupt practices. Defense attorneys believe that changing existing laws and norms will not bring more convictions to corruption crimes: there must be a political decision prior to those normative or institutional changes:
Judicial institutions [...] are already part of the impunity network upon which the corrupt public official relies to assess that it is profitable to commit illegal acts. The formalism and slowness that characterizes the advance of judicial institutions, their systems of guarantees, the lack of human and material resources, their political weakness – that easily makes them susceptible to capture from the political power - and so many other characteristics turn them useless to implement an effective anticorruption policy. (Alberto Binder, CEPPAS, quoted in B et al. 2008, 23)

This evidence indicates that it is at least a plausible hypothesis that public officials that commit corruption crimes are protected by a broad informal rule against their prosecution. We need to test this hypothesis with more strict standards that simply the presence of a behavioral regularity and some scattered testimonial evidence.

2.3 Punishing deviations from the hypothesized informal rule

The next question brings us to the enforcement activity surrounding the rule. Because the rule under examination is permissive, we must look for deviance and enforcement at the secondary level. What we are looking for is not merely lack of enforcement that is consistent with the informal rule and not with the law, but more importantly, the punishment of deviations from that pattern. What adverse consequences might flow from an attempt to strictly enforce the law? Because judges and prosecutors behave strategically and anticipate and avoid negative consequences, these instances are rare. The very limited number of convictions in corruption cases in Argentina makes it difficult to determine what the consequence might be from the attempt to strictly enforce the law. Nevertheless, there is some evidence that the rule is enforced in both official and unofficial instances, in ways both subtle and forceful. Prosecutors, judges, lawyers and enforcement officers take measures to impede the effective prosecution of cases in which public officials – particularly high-level public officials – engage in corrupt practices. In addition to being rare, the effective prosecution of corruption cases is selective, limited to cases of disobedience or political disloyalty; in these cases, the information gathered by surveillance institutions is crucial to intimidate and eventually punish those who try to enforce the formal laws that prohibit corruption.

2.3.1 Enforcement from below

One way in which the informal rule is enforced from below is through the activation or delays in police cooperation with other enforcement agents. In Argentina, courts depend on the ordinary police
for their regular business, as it is the police that serve warrants, locate witness and bring them into court, and serve the hundreds of oficios – a general purpose writ requesting that something be done. If the police see judges and prosecutors being too active on a case that should not go any further, then oficios never arrive, witnesses are not found, documents are misplaced, and there are no police officer available to conduct their requests. 37

According to the Argentine law, the judge is responsible for directing the investigation of the crimes that are susceptible of punishment, but may delegate this responsibility in the public prosecutor office. 38 However, in practice, this is seldom the case when dealing with corruption cases. In order to enforce the informal rule, and particularly in relevant cases in which the prosecutor could be seen as pushing an investigation too far, federal judges usually keep for themselves the lead of the investigation. 39 In so doing, they can delay the advance of judicial proceedings, which facilitates the political use of cases (ACIJ 2008, 8):

[The files] are stopped intentionally. The judges are not brave people, but they want to keep their benches. […] They explained to me once: “we are warming up the files over a low heat because we know that if we advance and investigate into someone who has a strong hold on power, we know that the investigation is not going anywhere and we know that it is going to fail - for example, if he or she is public official with privileges (fueros), they are not going to take those privileges back (desaforar). In addition, we the judges do not have the judicial police and therefore, if we issue a search warrant for an office, they are going to call them and let them know they are coming, and the evidence will be destroyed. […] They are cooked over a low fire until a moment of weakness presents itself, and then we are going to knock them when they are down.” 40

Argentina’s legislation does not envision special techniques for the investigation of corruption cases. Moreover, after 2006, public prosecutors face formal restrictions to access to information that may be relevant for investigating corrupt practices. 41 (Jorge 2009, 38) As a result, prosecutors are constrained to actively pursue the investigation, thus contributing to the enforcement of the informal rule. In addition, cooperation of judicial actors (e.g., between prosecutors in charge of the investigation and prosecutors in the oral trial) and with specialized agencies that are empowered to intervene in the judicial process and advance the investigation is quite limited, so that the informal rule may be enforced. 42 For example, while the Anticorruption Office (OA) has filed relevant criminal complaints regarding corruption cases, it has failed to actively follow up on those complaints in order to obtain
effective convictions (ACIJ 2009, 23). Between 1999 and October 2005, the anticorruption body had not obtained any effective conviction in a corruption case. (See Table 8.6.) Moreover, the body found numerous obstacles from judicial actors and defendants to be part in the judicial proceedings for corruption charges.\(^{43}\) (See Chapter 7)

\[
\text{Table 8.6. OA's effectiveness in moving the judicial process forward, 1999-2008}
\]

<table>
<thead>
<tr>
<th></th>
<th>1999-2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td>28 (24.8%)</td>
<td>8</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>(86 defendants)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indictment</td>
<td>33 (29.2%)</td>
<td>7</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>(40 defendants)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dismissal</td>
<td>10 (8.8%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lack of ground</td>
<td>11 (9.7%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Indictment</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>confirmed</td>
<td>-</td>
<td>-</td>
<td>(34 defendants)</td>
<td></td>
</tr>
<tr>
<td>Request oral trial</td>
<td>-</td>
<td>2</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>(8 defendants)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oral trial</td>
<td>-</td>
<td>5</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Action to avoid</td>
<td>-</td>
<td>-</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>prescription</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>Action to avoid</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8</td>
</tr>
<tr>
<td>Acquittal</td>
<td>0 (0%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Acquittal</td>
<td>0 (0%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Conviction</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>ND</td>
<td>31 (27.4%)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Another good illustration is the case of the National Prosecutor's Office for Administrative Investigations (FNIA). In 2003, the newly appointed Special Prosecutor of Administrative Investigations began to actively pursue corruption cases, although also with limited effectiveness (for more than 100 investigations, there were no convictions).\(^{44}\) However, his deviation from the informal rule and his attempts to strictly enforce the law found adverse consequences. The body found many resistances to participate in corruption cases (for example, it was denied access to the case files)\(^{45}\) and to obtain information from relevant agencies. In 2008, the Nation’s Prosecutor General in a controversial decision restricted the possibility of the FNIA to act in criminal proceedings regarding corruption cases (subordinating it to the actions of the public prosecution) and limited the body’s intervention to administrative procedures.\(^{46}\) As a result, the special prosecutor resigned from office in 2009 and declared:\(^{47}\)
The present situation is both deficient and ineffective, circumstances that cannot be only remedied by the commitment and effort of some people, as it happened in the FNIA for these past five years, during which with my team […] we tried to overcome with varied success infinite difficulties, setbacks, obstacles, indescribable resistance, normative and structural deficiencies. […] It is clear that corruption is a phenomenon that occurs to a greater or lesser extent in all the countries, but sadly ours stands out by the almost absolute impunity of that phenomenon and the lack of decision and seriousness to deal with it. (Garrido 2009, 19)

In some cases, prosecutors, judges and enforcement agents have suffered intimidation, threats and adverse consequences in order to affect the investigation of corruption cases. In 2002, a criminal complaint was filed against the OA for irregularities in the use of resources from a donation. The charges were made up and the evidence fabricated by someone close to former President Menem and to Victor Alderete, who were under investigation by the body. The complainant publicly aired the irregularities in different media in order to affect the reputation of the oversight body’s authorities. In 2009, the federal electoral judge reported being under surveillance in her own office with the purpose of intimidating her for the investigation of the Kirchnerist campaign financing in the 2007 and 2009 elections. Newspapers reported that she had been previously intimidated when an anonymous citizen, whose lawyer was one of the Kirchnerist representatives in the Judicial Council, filed a criminal complaint against the judge for her actions in a 1994 case.

Other enforcement agents have also suffered negative consequences in terms of career expectations as a result of being serious about investigating corruption cases and trying to enforce the formal laws against corruption. In the 90s, Menem’s government used the powers of the Nation’s Prosecutor General to disarticulate a group of nine prosecutors (the so-called “centaurs” led by Norberto Quantin) that was actively investigating corruption cases involving high-level public officials. During Kirchner’s government, Daniel Morin, responsible of the OA’s investigation unit, abandoned his office under pressures and threats when he tried to advance with the investigation of the use of secret funds from the intelligence agency (Abiad & Thierberger 2005, 226-229). The Supreme Court’s accountant expert responsible for the analysis in that case, as well as in the arms trafficking case, was threatened, received administrative sanctions, and even the attempts to indict him in a criminal process. Similar pressures suffered Alejandro Rúa, in charge of the special unit
created for the investigation of the AMIA case (terrorist attack against the Argentine Israeli Mutual Association) (Gasparini 2009). Besides threats and intimidation, those who defy the informal rule also suffer from political and professional marginalization. Kirchner’s first Minister of Justice, Gustavo Béliz, who tried to reform the federal police and to eliminate the monopoly and privileges of the 12 federal judges responsible for the investigation of corruption, was dismissed from office in 2004; his successor cancelled the reform of the federal justice immediately upon taking office (Ibid.). Public officials of the General Taxation Directorate responsible for investigating the Skanska case were removed from their offices and their career prospects curtailed. Also, the FNIA’s expert accountant that alerted about multiple inconsistencies in the Kirchners’ asset declarations was transferred to investigate an old corruption case.  

2.3.2 Enforcement from above

Before 1994, the enforcement of the rule was mainly ensured through the discretionary appointment of judges close to the executive. In addition, Menem’s government advanced over the Nation’s Prosecutor General Office and enhanced its dependence on the executive. Given the Prosecutor General’s broad powers over public prosecutors, this became another important resource for the enforcement of the informal rule that ensures impunity. The government also gained the complicity of federal judges responsible for investigating corruption cases through illegal payments made with funds from the Intelligence Agency (SIDE). This complicity was reinforced by the lack of enforcement of judicial sanctions and the ineffectiveness of the system for removing judges from the bench, as political parties were reluctant to remove the same judges they had appointed. For example, until 1998, only 27 judges were accused for misconduct, out of which 19 were actually removed (including the 4 members of the Supreme Court removed by Peron in the 50s) (Rodriguez 2006, 9). Overall, the Menem’s enforcement style was perceived as being more conciliatory than the one implemented after 2003.

After 1994, the Judiciary Council (Consejo de la Magistratura) became a critical instrument for enforcing the informal rule. Created through the constitutional reform, the body was not
effectively conformed until 1997.\textsuperscript{59} Initially, it was formed by 20 members (the President of the Supreme Court; 4 judges; 8 legislators - 4 designated by the majority block in both chambers, 2 by the first minority and 2 by the second minority; 4 representatives of federal lawyers; 1 representative from the executive, and 2 representatives from the academia), but a reform passed in 2006 by President Kirchner reduced the number of members from 20 to 13, yet leaving untouched the number of councilmen appointed by the executive.\textsuperscript{60} (Rodríguez 2006, 6) This reform enhanced the ability of the executive to influence the judiciary (with 5 members, the relative weight of the executive went from 25\% to 40\%) and to ensure the enforcement of the informal rule.\textsuperscript{61} After the reform, the Council became the arena in which judges and politicians bargained over the enforcement of the informal rule through the exchange of judicial benefits such as appointments, career progress, sanctions, and removals (\textit{juicios políticos}).

Political control over judicial appointments contributes to the enforcement of the informal rule that permits corruption. The appointment process is complex and involves a competitive process run by the Council, which results in a short list of three candidates who are submitted to a public and participatory revision process; then, the executive selects one of the three candidates and sends the appointment to the Senate for final approval. In practice, the executive arbitrarily delays the selection of candidates and accumulates short lists (while it takes approximate 10 months for the Council to select the candidates, the final appointments take on average 2 years).\textsuperscript{62} (See Table 8.7.) (Rodríguez 2009, 37) This results in a large amount of vacancies in both national and federal courts.\textsuperscript{63} In so doing, the executive increases its influence and discrecional control over the appointment process. (Rodríguez 2006, 23) Favoritism towards specific candidates explains the manipulation of the short lists of three candidates:\textsuperscript{64}

This can happen, for example, in a case in which the candidates in the short list that the executive dislikes are also included in other short lists and, when that happens, the executive can send them to courts of lesser importance. This happens because many candidates register themselves in several successive competitive processes and the best ones are selected in more than one short list. Thus, the executive can designate in other courts to the candidates who are in the short list for an important court and, in so doing, enable that a candidate that is placed in the fifth or sixth place in the merit order is selected for the desired court. (Rodríguez 2006, 23.)
The government may appoint more independent judges to less relevant courts while ensuring that the most relevant courts (e.g., those that investigate corruption cases) are filled in with loyal judges; also, the government ensures that, after leaving office, judges appointed by them will pay off the favor by enforcing the informal rule that does not punish public officials for corruption.\textsuperscript{65} (Rodríguez 2009, 38.) Moreover, the competitive selection processes are suspected of irregular transactions (for example, candidates that get the exams in advance, or selection processes illegally suspended) and susceptible to the influence of particular interests, political parties, or the executive in order to give some candidates an unfair advantage.\textsuperscript{66} (Rodríguez 2009, 13 ff.) The Council reviews the results of the exams and may change the grades obtained by the candidates (granting or taking additional points) based on criteria of “amiguismo” and personal closeness to council members.\textsuperscript{67} There have also been cases of conflict of interest with some candidates who were personally too close to government members. (Rodríguez 2006, 24-25.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Short lists submitted</th>
<th>Appointments by the executive</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>2001</td>
<td>49</td>
<td>33</td>
</tr>
<tr>
<td>2002</td>
<td>30</td>
<td>46</td>
</tr>
<tr>
<td>2003</td>
<td>38</td>
<td>10</td>
</tr>
<tr>
<td>2004</td>
<td>82</td>
<td>41</td>
</tr>
<tr>
<td>2005</td>
<td>30</td>
<td>71</td>
</tr>
<tr>
<td>2006</td>
<td>56</td>
<td>43</td>
</tr>
<tr>
<td>2007</td>
<td>52</td>
<td>13</td>
</tr>
<tr>
<td>2008</td>
<td>58</td>
<td>94</td>
</tr>
<tr>
<td>2009*</td>
<td>25</td>
<td>46</td>
</tr>
<tr>
<td>Total</td>
<td>430</td>
<td>397</td>
</tr>
</tbody>
</table>


Another mechanism through which the government ensures the enforcement of the informal rule is the subrogation regime (“regimen de subrogancias”), which seeks to make temporary appointments to cover judicial vacancies. Before 2008, the Judicial Council had great discretion to appoint judges through this system. Following a 2007 Supreme Court ruling, new legislation (Law 26.376) was passed in May 2008 to enhance the independence of subrogate judges. The law required subrogates to be appointed by the chamber of appeals of the corresponding jurisdiction among other
judges of such jurisdiction and/or a pre-existent list of judges prepared by the executive with senatorial approval. However, in violation of the Supreme Court ruling, the government did not enforce the law and extended the subrogate judges while delaying even further judicial appointments.68 (Rodríguez 2009, 62) The subrogation regime has been used for having “loyal judges as accomplices, or taking those who are not sympathetic to their interests as hostages, threatening to cut off an effective appointment if they rule against the government.” (Rodríguez 2006, 8) It makes judges easily influenced and more likely to enforce the informal rule permitting corruption to maximize their hold on the bench and ensure career prospects.69

A judge suffers all kinds of pressures, and can only take them if he or she feels that the system backs him or her up, ensuring independence. A subrogate judge does not have these qualities and therefore, can see his or her continuity at risk if he or she rules against the political power, which then will have to confirm him/her (or not) in his/her temporary bench. (R. Recondo, in López Masía and Solís 2009, 33.)

Surrogate judges [...] have a huge incentive to get along with the power so that they can eventually be appointed; therefore, they do not investigate anything, or archive the cases and, in the meantime, they participate in a competitive process in the Council, and are nominated to be appointed judges; or threaten to subpoena a public official in order to strengthen their bargaining position and go with the “judicial brokers” to get some benefit.70

The Judicial Council is also competent to sanction and remove judges found responsible for punishable actions.71 The processes of sanctioning and removal of judges has been an effective mechanism for the government to ensure the enforcement of the informal rule and to affect judicial decisions.72 Until 2006, the Council conducted 16 impeachments; 9 judges were removed from their offices, 2 judges reinstated, and 5 judges resigned after being formally charged; several other judges resigned while being under investigation.73 After 2006, only 2 judges were removed from their benches, while 6 others suffered disciplinary sanctions. These figures contrast with the large number of total complaints processed by the Council (144 by September 2009).74 (Rodríguez 2009, 66) The difference between the number of disciplinary threats and the actual sanctions (See Table 8.8.) confirms the use of sanctions as a signaling game aimed at reminding the costs of non-compliance. In addition, the Council’s disciplinary competencies are used to grant impunity to some judges and to discipline others in exchange for pro-government decisions. Usually, when the Council proceeds with an accusation, the judge responds by advancing the investigation of cases of public interest or cases
that affect the government directly; this often results in postponing the judge’s citation before the Council. Thus, there are multiple examples of judges accused for serious charges who were never sanctioned as a result of bargaining executive’s support in exchange for judicial action or inaction (Rodríguez 2006, 29; 2009, 87).\textsuperscript{75} Moreover, the 2006 reform established a 3-year deadline for the Accusation Committee to solve a case; otherwise, the accusation against a judge goes directly to the plenary for discussion. Although this measure was defended by both professional associations of judges and civil society organizations as a way to limit the permanent uncertainty and suspicion pending over the judges, in practice it created incentives for delaying the investigations even further and avoiding any sanctioning.\textsuperscript{76} (Rodríguez 2009, 88) The Judicial Council has helped grant impunity to federal judges that investigate corruption, and in return those cases of corruption are not pushed forward in court.

\begin{table}[h]
\centering
\begin{tabular}{lcc}
\hline
& \textbf{Council w/ 20 members} & \textbf{Council with 13 members} \\
\hline
Removal from bench & 12 & 2 (Judges Tiscornia and Solá Torino) \\
Accusation w/ pending jury & ---- & ---- \\
Acquittal & 5 & ---- \\
Resigning after formal accusation & 10 & ---- \\
Disciplinary sanction & 18 & 6 \\
\hline
\end{tabular}
\caption{Disciplinary sanctions, 1998-2008}
\end{table}

Despite surmounting evidence, the Judicial Council has often avoided taking any disciplinary sanctions against judges that in return delay the advance of corruption cases and make decisions favorable to the government.\textsuperscript{77} For example, in the AMIA case, the Council’s investigation into the accusations against judge Galeano was purposively delayed in order to avoid any disciplinary sanctions; when the plenary of the Council took over the case –meaning that any council member could conduct the investigation –representatives of the ruling party refused to take the lead, and the judge was only removed when two council members in representation of the lawyers and one minority opposition party conducted the investigation. In this case, the Council’s members in representation of the ruling party were formally accused of delaying the investigation.\textsuperscript{78} (Rodríguez
The protection granted by the Council was also extensive to the judge in charge of investigating Galeano’s actions. In a clear violation of the Council’s operating rules, his case was directly assigned (without vote in the internal committee) to the Disciplinary Committee, instead of the Accusations Committee, where it was soon dismissed under the protection of the committee’s president and the councilman leading the investigation.79 (Rodríguez 2006, 32)

Another relevant case is that of the judge in charge of investigating the “parallel customs” operating in the 90s.80 When the Council’s plenary submitted the accusations against the judge for his actions in the case, the government representatives refused to vote.81 Without the required votes, the accusation was dismissed and the file sent to the Disciplinary Committee, which did not impose any effective sanction. The judge was then promoted as General Attorney of Tierra de Fuego, but the publicity given to the case made the government finally desist from his appointment. Another good example is provided by subrogate judge Araoz de la Madrid, who dismissed the charges for bribing against the Secretary of Transportation in June 2008. However, when the Appeals Chamber reviewed the judge’s decision, it found lack of grounds for dismissal and required him to reopen the case.82 In other cases, the accused judges were involved in corrupt practices to obtain particular benefits, or they did not fulfill their duties.83 Also, a former councilman accused three federal judges of delaying the investigation of corruption cases.84 However, the Council rejected the accusations on the grounds that:

Delays were due to the complexity of the causes, and it must be highlighted, in this regards, that in most cases these are transactions and frauds of patrimonial and accounting nature, which involve high-volume documents and a large number of defendants. (Rodríguez 2009, 80.)

The same judges that are protected and granted immunity by the Judicial Council are compensated with promotions, appointments, and other benefits. For example, the Council declared null the competitive process to fill the vacancy in federal court No.9, in which judge Araoz had been ranked 23rd, and thus he continued acting as a subrogate and had the opportunity to participate in a new competitive process. During that time, he sent a clear signal to the government by dismissing charges against the Minister of Planning and his wife for illicit enrichment in February 2009. Similarly, the judge who dismissed the case for the explosion of military facilities in Rio Tercero (Córdoba),
supporting Menem’s government position that the explosion had been an accident instead of a cover-up related with the arms trafficking scandal, was not investigated by the Council (against the opinion of minority legislators) but promoted as member of the Federal Chamber of Appeals (camarista federal). (Rodriguez 2006, 35) Also, the illegal designation by the Council of judge Furnari in 2007 was compensated with his favorable ruling regarding the re-nationalization of Aerolineas Argentinas. (Rodríguez 2009, 36.)

There is evidence that, in Argentina, oversight institutions, prosecutors and judges take measures to impede the effective prosecution of cases in which public officials have committed corrupt practices. Moreover, those who seek to enforce the formal norms that punish corruption are usually harassed by their superiors in the legal and oversight systems, as well as elected public officials. However, it is still possible that in these cases the failure to enforce the law is due to weak judicial capacity or the inability to gather the necessary evidence for a full investigation and prosecution, even though it is difficult to explain why this would affect more to corruption-related cases than others. In order to enhance the evidence regarding the enforcement of an alternative rule of decision, we will examine two remaining questions.

2.4 Observing and failing to punish the behavior at issue

An examination of some corruption cases suggests that the negative outcomes in prosecuting corruption are not the result of the judiciary’s failure to observe the violations of the formal rules that prohibit corruption. Corrupt practices often go unpunished whether or not all the information and evidence that might be needed to produce a conviction is present.

Corruption cases are well publicized in Argentina through major newspapers. Opposition parties do also engage periodically in publicly reporting abuses and corrupt practices committed by public officials. Despite their constraints, audit institutions and control bodies produce relevant information that can be used as supporting evidence for investigating corruption. Some of those agencies (OA and FNIA) even have the capacity to file civil and criminal complaints, and to act as
parties and prosecutors in judicial proceedings. There are also institutional mechanisms through which citizens can make formal complaints and report corrupt practices.\(^{87}\)

However, evidence from some well-publicized cases is compelling, and argues for an alternative rule of decision rather than a failure of enforcement resources. One such case involves the dismissal in 2005 and 2009 of the charges of illicit enrichment against President Kirchner and his wife.\(^ {88}\) In March 2005, after nine months of investigation, federal judge Julian Ercolini acquitted the presidential couple of the crime of illicit enrichment for the period 1999-2004.\(^ {89}\) The judge based his decision on the accounting information submitted by the President and his wife, without requesting any independent accounting analysis. The case’s prosecutor, whose son was abducted the first day of the formal deadline for appealing the ruling, did not appeal the decision (Abiad & Thierberger 2005, 198-9). In February 2008, a private lawyer filed another accusation regarding Kirchner’s patrimonial increase since 2004. The Federal Court of Appeals ruled to dismiss the case, confirming the previous ruling of federal judge Canicoba Corral. None of the federal prosecutors appealed the ruling, which was only appealed by the Administrative Investigations Prosecutor, who asked for reopening the case and conducting additional investigations. However, the Court of Appeals dismissed his request.\(^ {90}\) A third accusation for illicit enrichment was filed in November 2008 and broadened in July 2009 by the opposition party Civic Coalition.\(^ {91}\) The accusation presented evidence on the unjustified patrimonial increase of Nestor Kirchner and his wife, which grew by 527\% between 2003 and 2008.\(^ {92}\) In December 2009, federal judge Oyarbide dismissed the charges based on a technical report of the Supreme Court’s accounting experts that considered that they had not committed any crime in their patrimonial justification; the federal prosecutors did not appeal the ruling.\(^ {93}\) In making his decision, the judge rejected alternative independent evidence from civil society that identified irregularities in the accounting analysis, and showed that the patrimonial increase of the former President had not been properly justified.\(^ {94}\) (ACIJ 2010, 19.)

Although there are some objective constraints in terms of enforcement resources, a closer look at the judicial proceedings of several corruption cases, and the way evidence of corrupt practices
is gathered, seems to confirm that an alternative decision rule is at play. Judicial investigation is aimed at gathering enough evidence to be able to substantiate the violation of the formal rules that prohibit corrupt practices in order to effective sanction them. However, the investigation often does not allow collecting the information needed for an effective conviction, not because of the lack of resources, but because is not rightly planned and organized. Disarray results functional for the enforcement of the informal rules that allow corruption. Potential sources of information are inefficiently used, and some irregular practices (as well as the intervention of different people in committing those practices) are completely dismissed:

Due to poor planning and organization, in some cases, the investigation was focused on one or two actions, when in fact there were several irregular activities that were susceptible of being punishable crimes. (ACIJ 2009, 20.)

The role of technical experts in analyzing collected evidence of corrupt practices is critical for having effective convictions. In Argentina, one enforcement limitation is that the corps of accounting experts (cuerpo de peritos) does not work closely with federal judges and prosecutors, because it is a centralized body, hierarchically dependent on the Supreme Court. However, other features of the investigation of corrupt practices seem to go beyond enforcement constraints to point out in the direction of an alternative decision rule. The above-mentioned deficiencies in the investigation affect the ability of technical experts to produce results that may assist prosecutors and judges in getting corrupt practices effectively sanctioned. Frequently, the request for the intervention of experts is vague and does not include specific questions to be responded in support of the judicial investigation. (ACIJ 2009, 29; 2010, 4) Delays in the intervention of technical experts are also a common occurrence that affects the opportunity of effectively sanctioning corruption. Experts conduct their analysis slowly and sometimes reluctantly (in some cases, it takes up to 6 months to get any relevant conclusions), violating the formal deadline required by the law, and as a result, the investigating judge usually stops the investigation in the meantime. (ACIJ 2010, 7) Moreover, the selection of technical experts has been characterized by lack of transparency (ACIJ 2008, 12; 2010, 15). Until 2010, judges had the prerogative of handpicking technical experts, and thus could rely on those who
were functional to their interests – i.e., strategically delaying or advancing a corruption case\(^\text{97}\) (ACIJ 2010, 11). As for the quality of the expert reports, it is often deficient, yet judges do not usually rely on external experts to compensate those deficiencies (ACIJ 2010, 19), thus undermining the effective prosecution of corruption cases.

Delays in the criminal process are the most important cause of failing to sanction corruption. Although judicial actors frequently justify these delays due to the formal requirements of the criminal process, they are the result of prevailing informal practices (ACIJ 2009, 24). Excessive formalism during the process often contributes to delays.\(^\text{98}\) Corruption cases are frequently inactive for extended periods of time (for example, due to judicial vacation); also, judges and prosecutors usually request multiple proceedings one by one rather than simultaneously (ACIJ 2009, 22) to keep control of the timing of the process. Although experts in criminal law agree that the deadlines formally set in the Criminal Code may be insufficient for dealing with complex cases such as those of political corruption, the inobservance of formal deadlines is generalized and, even more, justified by judicial actors (ACIJ 2009, 24).\(^\text{99}\) These delays are a crucial resource for avoiding punishing corrupt behavior:

Indeed, the terms that limit the criminal procedure, and especially the instruction, are not respected in most cases by the investigative bodies. This problem of the constant breach of procedural deadlines is worrying in itself. Even more alarming is that judicial actors do not identify this deficiency as a problem, but choose to justify it legally. (Ibid.)

The delays and obstacles that undermine the effective sanction of corruption-related cases are also evident when looking at the figures provided by control organism that have the power to file court complaints. According to the Anticorruption Office, between December 1999 and December 2005, out of the 43 lawsuits (querellas) in which the body was party, only 5 had reached the trial stage. (OA report 2005, 22) Table 8.6. above illustrates the delays of the OA’s corruption cases.

These delays explain that only a limited number of corruption cases reach the oral trial (in 2009, only 5% of the cases in the federal justice) (ACIJ 2011, 25). Also, it is not uncommon that the statute of limitations expires in many cases.\(^\text{100}\) Before 2005, the statute of limitations expired as a result of “the commission of another crime or procedural action”. The last statement was broadly interpreted in a way that allowed extending the duration of criminal processes beyond reasonable
limits, thus affecting the guarantee of a due process. In 2005, an amendment to Article 67 of the Criminal Code, intended to reduce the duration of judicial processes, actually benefited many public officials accused of corruption as the statute of limitations expired:

Many public officials indicted for corruption were benefited. Thus, a correct criterion from a human rights’ perspective, adversely affected the possibility of effectively prosecuting and getting convictions in trial for crimes that seriously endangered the national treasury. The law was a significant advance in human rights, but brought negative consequences for the prosecution of corruption cases, consequences that are attributable to the public officials responsible for carrying out the investigations into these crimes, who took years to take significant steps towards their definite solution. (Gruemberg and Biscay 2007, 9.)

Moreover, after a case reaches oral court, several factors contribute to delay the trial (ACIJ 2011). First, the court may order a complementary investigation if it considers that the evidence submitted is insufficient. Usually, the complementary investigation repeats the same weaknesses occurred in the previous investigation (for example, delays in the accounting assessment). Second, judges and prosecutors in oral courts are not better specialists in complex corruption crimes than their counterparts at previous stages of the judicial process. Limited collaboration between prosecutors at the investigation stage and at the oral stage is another relevant factor. For example, between 2002 and 2010, there are only two instances of collaboration between prosecutors (ACIJ 2011, 14). Fourth, as it happened during the investigation, appeals and incidents from defendants’ lawyers paralyze the case and delay the trial even further. Finally, there are capacity and resource constraints. There are only six oral courts (two of them occupied by subrogates) that have to deal with a high volume of complex cases, including imprescriptible cases for violations of human rights. Resources and personnel are scarce, and even the number of available rooms to hold the trials is insufficient.

The delays and multiple irregularities in the judicial process of the IBM-Banco Nacion case illustrate these mechanisms. Despite all the evidence, the case was only brought to oral trial in 2004. The eight defendants requested to apply the statute of limitations. In 2006, the higher court rejected the request. Finally, in 2009, after agreeing to a plea bargain, the defendants were convicted in an abbreviated trial and sentenced to suspended jail time and to pay more than 18 million pesos (USD$ 4,711,425). The trial never took place and only two of the accused admitted the crime. In June
2010, three of the convicted appealed the sentence to which they had agreed to delay the enforcement and seizure of assets.\footnote{106}

Besides delays and difficulties during the process, another indication of the operation of an alternative rule of decision is that acquittals are easily granted in corruption related cases. This explains, for example, the multiple initiatives by the OA aimed at making courts revoke the acquittal granted and/or prevent granting them in the first place. However, the results of these actions have been limited.\footnote{107} In 2005, for example, over 30 acquittals were revoked (OA Report 2005, 22). In 2007, OA undertook 10 actions aimed at revoking acquittals, but at the end of the year, only 2 had been effectively revoked while the others had been rejected or were pending resolution. (OA Report 2007, 33) In 2008, despite the OA’s intervention to prevent the acquittal in 8 cases, 2 cases were acquitted.\footnote{108} (OA Report 2008, 31.)

While the actions described above rely on procedural methods and resources to leave corrupt practices unpunished, in other cases the failure to punish corruption relies on more forceful methods. Therefore, for example, some judges have been involved in fraudulent operations to tamper with evidence in order to benefit politicians in particular court cases. One significant example was the investigation of the AMIA case. In 2009, former President Menem was indicted for obstructing the investigation of the case. The judge in charge of the investigation was accused of making an illegal payments of USD$ 400,000 with money from the Intelligence Agency in order to tamper with evidence and cover up the case, hiding the possible responsibilities of the Minister of Interior and the President.\footnote{109} (Rodríguez 2006, 30; 2009) Afterwards, the judge designated to investigate the wrongdoing did not challenge himself for partiality despite being a close friend of the main accused parties (the Minister and the President), and was also accused for obstructing the investigation. (Ibid.)

While no Argentine judge or prosecutor affirms directly that corrupt public officials should not be convicted, in many cases there is no doubt that the violation of the formal rules that prohibit corruption was observed by the system, and still there were hardly any sanctions of corrupt practices. This indicates that some alternative rules of decision were applied. The decisions rely on formal legal
technical terms to dismiss or acquit corruption cases, and/or to delay judicial proceedings, mentioning the lack of evidence to support a finding that public officials (particularly high-level politicians) committed corrupt practices. In many cases, courts simply fail to rule at all. Acquittals are easily granted. Very often, corruption cases languish for years until the statute of limitations runs out. In many cases, judicial officials fail to investigate and do not undertake any efforts to uncover the facts of what really happened. This “laziness” of judicial officials to act (Gruemberg and Biscay 2007, 8) suggests that the Argentine courts will not easily convict in corruption cases, even when the available evidence clearly would require it.

2.5 Affected individuals know the rule, anticipate its enforcement, and guide their conduct accordingly

Public officials show considerable reliance on, and expectation of, the lack of enforcement of formal rules in corruption cases, particularly high-level political elites. They seem to expect impunity. There is evidence of different methods used to hide corrupt transactions (see Chapter 3), but also to tamper with the formal prosecution process in anticipation of the likely enforcement of the informal rule. Outcomes are predictable and actors behave accordingly. A good example occurred during the “valijagate” scandal. At the US trial, the prosecutor, the main defendant’s lawyer and a key witness provided an account of the Argentine government’s strategy to hide the origin and destination of the money found in the suitcase, by making the defendant hire a Buenos Aires lawyer to put “everything under a curtain of silence in the Argentine judiciary.”

Sometimes evidence is hidden or false evidence or witnesses are produced to impede prosecution, by creating the appearance that someone else committed the crime or that corrupt practices never took place. For example, in the AMIA case, false exculpatory witness declarations and evidence, provided to deviate attention from the involved public officials, were accepted by the prosecution without any questioning. In the case for illicit enrichment against former President Kirchner, there were public suspicion that his accountant had worked with public officials from the federal tax agency (AFIP) to manipulate evidence. A well-known strategy to ensure the
enforcement of the informal rule is criminal self-reporting (*autodenuncia*). This allows the defendants to either obtain a quick exculpatory ruling that ensures their impunity, and/or handpick the judge that will most likely protect them and enforce the informal rule (this practice is known as “forum shopping”). The Yoma case provides a good example of the latter strategy. When the scandal went public, one of the defendants’ lawyers, former public official Mario Caserta, self-reported him to the federal police. In so doing, they were able to have the case assigned to federal judge Servini de Cubria, known for her close connections with Menem’s Minister of Interior. The judge’s irregular actions regarding the case were severely criticized by the prosecutors and the Federal Cassation Chamber, but the Peronist majority in Congress prevented her impeachment.

Moreover, it is very common that defendants’ lawyers resort to diverse and creative actions to delay the advance of judicial proceedings (e.g., impugnation of expert analysis, motions for the annulment of certain procedures), thus impeding or obstructing prosecution. One method to do so is by filing issues before court as proceeding incidents. These so-called “false trials” make open case files expire in the process of different criminal procedural recourses that involve different judicial instances (courts, appeal courts, and superior courts). (Biscay and Gruember 2007, 6) In a sample of 10 corruption cases involving high-level public officials, incident trials were on average 20 per file in cases of illicit enrichment, and over 100 in cases of fraud against public administration. (See Table 8.9.) This huge number involves significant consequences. Since any simple recourse for common crimes may take as long as 2 to 12 months to be sorted out, the huge number of recourses in corruption cases explains the long delays that contribute to make these cases languish until the statute of limitations expires. (Ibid.)
Defense attorneys in corruption cases are well-prepared lawyers from big firms. The enforcement of the informal rule granting protection is facilitated because they usually belong to the same elite networks that judicial actors and politicians. One significant example is Esteban Righi, Kirchner’s personal lawyer and Nation’s Prosecutor General, whose law firm was one of the most important firms involved in the defense of public officials accused for corruption crimes. In anticipation of the informal rule, defense lawyers see their role as that of delaying the case investigation as much as possible, and rely on all the instruments available in the criminal procedure to achieve this goal (ACIJ 2008, 14), as well as on judicial brokers (operadores). Although the judges should play an active role in limiting these strategies, in practice they do not do so:

The rules of due process, rather than guiding the proper development of the trial and respect for the fundamental rights of the parties, are used by the defendants to delay the process and to benefit from the prescription of criminal investigations, and therefore with the deposition of the allegations. However, the biggest problem in this regard is not so much the abuse of incidental motions but their disproportionate acceptance by the courts, which gives entry to a clear problem in terms of judicial independence […]. (Biscay and Gruemberg 2007, 7.)

The anticipation of the enforcement of the informal rule could explain the reluctance of judges and prosecutors to grant civil society organizations access to corruption cases. If they have access to such
information, they may become advocates for the public interest, provide additional evidence, and conduct public campaigns that would make outcomes unpredictable. Thus, in Argentina, despite the provisions of the Inter-American Convention against Corruption, there is no legislation to promote and facilitate citizen participation in monitoring corruption cases. Following the numerous cases of corruption involving high-level public officials in the 90s, civil society organizations began to resort to the figure of amicus curiae in order to provide expertise that would help develop mechanisms and tools for the recovery of assets related to corruption cases. However, in most cases, courts have rejected the application of this legal instrument. Out of a sample of 14 cases, courts rejected the role of civil society in 50% of the cases, and only acknowledged the legitimacy of civil society to monitor corruption cases in 21% of them. This indicates that “lower-level judges, who are responsible for criminal investigations on corruption, show a direct rejection of the use of such mechanisms to monitor the follow up on cases of public interest.” (Biscay and Gruember 2007, 17.) Similarly, the efforts by civil society organizations to access open corruption cases in order to monitor the delays they experience in court produced similar results. Out of the 12 federal courts, only 2 federal judges acknowledged their legitimacy and granted access. The Federal Court of Appeals’ position was mixed: while one of the courts (sala I) ruled restrictively, the other (sala II) ruled in favor. In response, the federal judges that had denied access did not strictly enforce the favorable ruling, thus granting access only in some cases or partial access. The arguments used to deny access to civil society included some relevant testimonies as to the application of the informal rule that interest us. For example, one of the judges indicated that he would allow civil society organizations to have informal access to the cases, but he would never admit it in writing. He emphasized:

> the pressures that judicial officers receive daily from political power in relation to proceedings they are investigating, and judicial work becomes even more difficult if civil society organizations shed light on the details of the legal proceedings concerning the investigations that are undertaken. (ACIJ 2009, 9.)

Another judge explicitly rejected that courts could be accountable to civil society:
Given my experience in dealing with civil society organizations ... I think that they intend to become a sort of "controllers" of the judges’ activity (they only request to intervene in particularly egregious cases, and then request access to our financial assets disclosure forms, and sometimes promote investigations against judges before the Judicial Council), with which I understand that the procedural system gets completely distorted and even judicial independence is compromised. (ACIJ 2009, 11.)

Although all the evidence suggests the permissive rule that allows corruption is quite broad in Argentina, it may be not totally unbounded. Some evidence seems to indicate the permissive rule actually applied by judicial officers may be limited to corrupt practices that do not gain too much public visibility, thus affecting less the judges’ career prospects, or involve public officials that maintain a strong hold on power.\textsuperscript{123} For example, after Menem left office in December 1999, state prosecutors began to uncover some of the scandals that had occurred in the 90s (Manzetti 2003, 341). Political actors are well aware of the fact that if their political position gets weaker, they may lose judicial protection and cases against them will likely move forward. In some corruption cases, actors involved carried out very public campaigns to report corrupt transactions, and some suffered personally the consequences of speaking out loud.\textsuperscript{124} Some cases indicate that exceptional measures and violence may be necessary to keep information from the courts and make prosecution difficult. This is facilitated by the fact that Argentina’s judicial system does not effectively protect victims of corruption, which are susceptible to retaliation from those who commit the crimes. The general regime of witness protection is not intended to, and does not have effective means of protecting witnesses in corruption cases.\textsuperscript{125} There is no repentant law to protect those who collaborate with the judiciary providing evidence on corrupt practices.\textsuperscript{126} This condition, which is also a negative incentive for reporting corruption, makes victims of corruption vulnerable and at risk:

It is so much so, that there have been cases of corruption where whistleblowers and witnesses submitted a number of complaints and reports to the State and civil society organizations regarding threats against their physical integrity. These threats took shape not only as personal intimidation, but also through criminal complaints and "mounted" criminal cases in which arbitrary detentions were ordered against the claimants. These threats were of such magnitude that they were also addressed to the case’s prosecutors, affecting their reputation and integrity through unfounded political judgments. (Biscay and Gruemberg 2007, 12.)

As a result of this lack of protection, those who defy the informal rule at issue suffer threats, and even put their lives and families at risk. This holds true under different governments. For example, in the IBM case, one of the defendants’ brother and key witness for the prosecution was found dead under
strange circumstances, and so was the former secretary of Emir Yoma (Menem’s brother in law) and key witness in the arms trafficking case (Alconada Mon 2011, 123). The key witness in the Senate’s scandal also suffered negative consequences for revealing details on the payment of bribes and had to resort to a newspaper to help him protect his family and to afford a good lawyer. Also, a businessman who reported irregular transactions in the Santa Cruz’s fisheries during Kirchner’s government was killed ten days after providing evidence to one opposition politician (Lopez Masia and Solis 2009, 192-3). Former Ombudsman, Eduardo Mondino, reported threats after declaring as witness in the investigation for corrupt exchanges in commercial transactions with Venezuela. As one former prosecutor describes:

> Secrecy is easily up for sale. One looks for witnesses and people are afraid, because they may end up being turned in, there is always someone who ends up selling the information... The most important witnesses of corruption cases ended up dead: Marcelo Cattaneo (IBM case) hanging on the university campus, Yabran with a shotgun, Brigadier Echegoyen shot in the temple... There is evidence that demonstrates that those who have come out to report certain situations– or that if they open their mouth, they can mess with the system– are at risk and die. This is real ... in the dock case in Santiago del Estero, there are three witnesses dead. There are many cases in the country that show how witnesses die. This creates an awareness of non-engagement, of letting things happen.

The use of extreme measures to impede prosecution (e.g., killing or threatening witnesses) is evidence that the implicated public officials thought they could not completely rely on judicial official complicity, but had to take other steps to ensure their impunity. These efforts to punish deviations from the informal rule were aimed at discouraging others from such actions.

3. Conclusion

In summary, there is evidence that an informal institution that permits corrupt transactions is operational in Argentina, where corruption is informally institutionalized. The rule of conduct included in this institution is applied by legal actors (including prosecutors, judges and even higher-level courts) as evidenced by the failure to convict public officials that participate in corrupt transactions, despite clear violations of the formal rules that come to the attention of the legal system. While judicial inefficiency in dealing with corruption cases could be explained as a result of limited judicial capacity, an alternative explanation is the existence of an informal norm that permits but does not require corrupt practices. In a particular situation, public officials can decide between being
honest and being corrupt, yet they will not be punished either way. We can observe a high number of corruption cases that are reported to the judiciary. Then, there is the absence of secondary conduct enforcing the opposite (formal) rule – the rates of conviction of public officials for corruption-related charges are almost inexistent. The informal rule is enforced through several mechanisms including the appointment and sanctions of judges and prosecutors, delays in gathering and analyzing evidence, dismissing relevant evidence to protect those who commit corrupt practices, or even through the use of violence against witnesses. Those who try to enforce the formal rule against the prevailing informal norms are punished. Enforcement agents within the system (such as some prosecutors or agents of oversight bodies) that attempt to enforce the law are themselves punished for doing so. The rule that governs is one of impunity for public officials that engage in corrupt transactions.

Finally, a relevant question is what type of informal institution this is (complementary, substitutive, accommodating or competing), given the typology presented in Chapter 2. The answer depends on how we define the outcomes of the formal and informal institutions at issue. This example shows that informal institutions may compete with some formal institutions while complement or substitute others. One goal of the criminal justice system is to maintain the social order by bringing those responsible for committing punishable crimes to justice, with protection of individual rights to due process and physical integrity. In this sense, the informal rule that ensures the impunity of public officials that commit crimes of corruption are competing with formal rules. However, the assessment would be different if we had considered the informal rules to the light of formal institutional rules that are aimed at exacting compliance. While the informal rule that permits public officials to engage in corrupt practices and not being prosecuted clearly competes with the formal rules of the criminal justice system, it is also an effective substitute for the state’s ability to obtain compliance in a weakly institutionalized context, thus contributing to a fragile stability. In short, the particular pattern of interaction between formal and informal institutions, and how they both affect expected and unexpected outcomes, needs to be assessed in each particular case.
Chapter 8. Endnotes

1 Even if corruption undermines the rule of law and economic development, it may enhance the organized domination associated with the state. On this argument, see Darden (2003).
2 The idea is that corruption moves from being a competing informal institution to being a substitutive one (categories from Helrke & Levitsky typology).
3 The institutionalization of corruption may be uneven (i.e., it may vary across branches of government or policy sectors), since “it is difficult to imagine a functional state where the primary rewards are illicit across all branches of the state administration” (Darden 2008, 42).
4 See Brinks (2006, 202-208) for a detail explanation of the theoretical framework used for operationalizing informal institutions and rules.
5 An explanation of the roots of the problem is presented in other chapters of this dissertation and broadly discussed in the literature.
6 See Chapter 3.
7 Cf. Clarín (July 22, 2007); La Nación (July 5, 2010). Between 1983 and 2001, only 4 people were convicted for corruption-related charges in Argentina. (Clarín Nov. 25, 2001) Similarly, only 2 people were convicted in the country for money laundering since 1989 and none since 2000. (http://www.knowyourcountry.com/argentina.html, accessed January 28, 2011) See La Nación (Nov. 27, 2007; Dec. 16, 2008; Nov. 1, 2009; May 14, Oct. 22, 2010; April 28, 2011)
8 In the Philippines, for example, prosecutors must bring to court any case they receive no matter how flimsy the evidence. In other countries, prosecutors sometimes dismiss cases they are not completely sure they can win in order to maintain a perfect conviction rate.
9 In India, at the sub-national level, some states have conviction rates as high as 78% (Bihar) while in others the rate is as low as 0% (Goa); for most states, rates are around 50%. For disaggregated data, see http://prsindia.org/corruptioncasesindia.php (accessed May 15, 2011)
10 One possible explanation of why these crimes seem to also benefit from some permissiveness in Argentina is that they have been related to police corruption and illegal activities.
11 They were convicted to four years in prison in 2004 and five years in prison in 1999, respectively.
12 Indicators of judicial efficiency usually track the volume of cases passing through the system, the speed of decision making/duration of proceedings and the nature of decisions that are finally reached. More specifically, such indicators look at the total number of court decisions rendered in a year, the total number of new cases and the total number of cases registered but still pending (backlog). The capacity of the judiciary to process efficiently corruption cases is dependent on budget allocation, personnel assigned to corruption cases, case management and administration procedures. Judicial independence and integrity also affect such capacity. See Gonzalez de Asis (2006), Chene (2008).
13 In Figure 8.2., rates for some types of crimes are over 100% because (i) each conviction sentence may include more than one type of crime; (ii) rates reflect new cases for year 2008 but sentences refer to accumulated cases.
14 This is an international human right standard that involves that “the people have the right to being judged within a reasonable term, which means that the defendant has a guarantee in his or her favor against judicial inaction.”
15 This is a case of bank fraud against the Gotelli family, who had diverted private savings from Banco de Italia y Rio de la Plata SA for their own enrichment through a series of shell companies. Cf. Informe 68/99 Caso 11.709 (Luis María Gotelli (h) – Argentina), May 14 1999 at www.cidh.org/annualrep/99span/Admissible/Argentina11.709.htm
16 This produces a large number of preventive incarcerations. Moreover, preventive incarceration is usually for very long periods of time. In 2004, for example, at the federal level, there were more people on preventive incarceration than convicted; in the province of Buenos Aires, those incarcerated preventively were more than four times the population with effective convictions. Cf. Gruemberg and Biscay (2007, footnote 11). On the abuse of preventive incarceration, see also Beanatte and Olguin (2007) and CELS (2005, 2008)
17 Gruemberg and Biscay (2007) refer to the case of several bank directives very close to the political power that had been involved in money laundering of assets from corrupt transactions and were released after two years of preventive incarceration. Other significant case is that of former Presidents Menem and De la Rúa. The former was under domiciliary arrest in 2001, but never incarcerated despite having been formally accused in several
cases. De la Rúa has never been preventively incarcerated despite being formally accused and indicted in the Senate corruption scandal. (La Nación Feb. 26, 2008.)
18 See, for example, Clarín (November 29, 2009).
19 This phrase, attributed to Menem’s cabinet minister Jose L. Manzano, was published in May 1990.
20 Author’s interview. Buenos Aires, August 4, 2005.
21 There are numerous examples of public officials under investigation for corrupt practices that were elected and appointed to public office. For example, former President Menem, indicted for several corruption cases, was elected senator thus benefiting from legislative privileges. A well-known case in 90s was that of the Ambassador to Brazil (Alieto Guadagni), who was indicted for corruption charges but confirmed in his post by President Menem (Clarín April 16; June 12, 1993). He only resigned after being preventively incarcerated (Clarín May 10, 11; June 30, 1993). In 1999, he was appointed Ministry of Industry and Ministry of Energy in 2000. Also, majors and councilmen involved in corruption cases have remained in office (Clarín May 4, 1994), won primary elections and been electoral candidates (La Nación Dec. 9, 2008).
22 He continued working in support of the Kirchnerist electoral campaigns. Cf. Clarín (July 2, 2009); La Nación (July 5, 2009; April 26, 2011). Other examples are also significant. Kirchner’s Secretary of the Media, with 3 open cases for corruption, held office for more than 6 years (La Nación Dec. 11, 2009); this was also the case of Kirchner’s Chief of the Army, prosecuted for misappropriation of public funds (La Nación Sept. 19, 2008).
23 Public officials indicted for illegal campaign financing and the drug mafia case continued to be part of Cristina Kirchner’s government, as did the Minister of Planning who also had several corruption cases open against him (La Nación Feb. 13, 2011).
24 La Nación (May 15, May 19, 2011).
25 La Nación (July 9, 2010).
26 This public acceptance is well expressed in the lyrics of a popular tango, which proclaims: “Nobody seems to care if you were born honest. It’s all the same. Whether you work like an ox all day and night, or work off others or kill for a living, whether you’re a healer or live outside the law, it’s all the same.”
27 In the PAMI scandal, Menem publicly defended the official involved by arguing that she could not be suspected because she had a good record as public manager (Página 12 March 12, 1994). According to one interviewed: “This is a society where there is a particular way of understanding what is public. If my neighbor happens to be councilman and three years later he changes his house and builds a castle, people congratulate him when it happens, and obviously he did not do it with the salary of a councilman. And the same happens with the leader who is a trade unionist and had nowhere to drop dead. It is a way of understanding what is right” Author’s interview. Buenos Aires, Sept. 20, 2007; author’s translation. Also, author’s interview. Buenos Aires, July 7, 2006.
28 The agency was suspected of threatening private actors to enforce corrupt deals in significant state contracts such as the Siemens case (Alconada Mon 2011, 30). For a list of politicians under surveillance by SIDE, see López Masia and Solís (2009, 59). See also Critica (March 1, 2009); La Nación (May 12, 2009). Leaks from the intelligence agency have been used to intimidate and threaten political opponents (La Nación May 14, 2009).
29 This phrase, attributed to Menem’s cabinet minister Jose L. Manzano, was published in May 1990.
31 For example, in the Thales case, which involved former President Menem, the judge in charge of Federal Court No7 (Jorge Urso) issued letters rogatory to different countries to gather evidence and information. However, the letters were badly prepared; hypothetically, this was aimed at inducing them “to get stuck or be rejected, or to be delayed in order to make the judicial action useless” (Gasparini 2009, 88; author’s translation). As a result, by the end of Sept. 2004, before receiving response to the letters rogatory, the case was dismissed. Menem was never asked to testify during the investigation. In 2002, the same judge was suspected of threatening Siemens’ executives with judicial actions if they did not fulfill their corrupt commitments with Menemist public officials and intermediaries regarding the DNI contract (Alconada Mon 2011, 271).
32 “The judges’ bargaining capacity is strengthened if they have open cases concerning public officials – do not mess with me because I have an open case... Politicians benefit from owing favors to the judges because, at some point, they will need them. It is not enough with permanent tenure of judicial offices, with the
intangibility of remunerations. Those who fought, great ... but it only happens when they sense they have nothing to lose, for example, a judge ready to retire ... only in those circumstances they get brave enough, by the end of their careers” (Author’s interview, Buenos Aires, Oct. 16, 2009; author’s translation). Also, author’s interview, Buenos Aires, Sept. 11, 2007. Some federal judges have been accused of repeatedly manipulating the investigation of high-profile corruption cases in favor of the sitting government (La Nación Feb. 26, 2011).

33 Judicial actors refer to a “back door” mechanism that allows manipulating the computer system that distributes the cases; they also refer to the existence of brokers and intermediaries that seek to influence the distribution of cases (La Nación June 5, 15, 2011).

34 For example, in 2009, only 11 cases reached oral trial out of 207 new open cases for corruption (La Nación May 7, 2011).


36 Interview with Edgardo Donna (November 2007), in ACIJ (2008, 8).


38 Article 196 Criminal Procedure Code.

39 Interview with Jorge Rimondi (October 8, 2007) in ACIJ (2008, 8).


41 In 2006, the public prosecution saw its ability to access financial information without a court order during preliminary investigations restrained (See Res. AFIP 08/06). This has made it difficult for public prosecutors to gather evidence in support of the presumed commission of a crime in order to submit the case to the judge. (Jorge 2009, 38) Also, author’s interview. Buenos Aires, Sept. 11, 2007.

42 La Nación (May 7, 2011).

43 For example, the judge rejected the OA as plaintiff in case 9789/00, and in cases 2014/98 or 5803/01, the defendant’s lawyers made a similar request. (See OA 2005.)

44 La Nación (Feb. 9, 2011).


46 See Resolution PGN 147/09. After this resolution, which confirmed the resistance of Argentina’s public prosecution to have specialized prosecution bodies that may concentrate in a few hands the prosecution of corruption and other crimes, a coordination office specialized on crimes against public administration was created. (Jorge 2009, 38-9) The specialization might result in activism in enforcing the formal rules, thus undermining the informal rule at issue.


48 For example, federal prosecutor Eduardo Taiano, who was leading the investigation of the allegedly illicit enrichment of former President Kirchner, received phone threats and had his son kidnapped. The prosecutor decided not to appeal the judge’s decision of dismissing the charges (Gasparini 2009, 161). See also Clarín (Dec. 29, 2009), Perfil (Dec. 28, 29, 2009).

49 OA’s (Querella Falsa Denuncia Colombo, 2002.)

50 The electoral judge was Servini de Cubria, publicly suspected of politically using cases to obtain benefits from different governments (see endnote 109; also La Nación September 30; October 1, 2009). Another judge suspected of using politically his cases (Oyarbide) was intimidated in relation to the investigation of corrupt practices involving unions; when his office was intentionally set in fire, he declared that “it was a message” (La Nación Feb. 24, 2011).

51 Clarín (August 6, 1995.).


53 Perfil (Nov. 2, 2008.)

54 La Nación (March 9, 2011.)

55 The Minister of Interior, Carlos Corach, was protagonist of a famous anecdote when he allegedly wrote down in a bar napkin the names of the judges that were loyal to the government (Verbitsky 1993; Gasparini 2009; Abiad & Thierberger 2005). In 1991, the creation of oral courts to try criminal charges at the federal level allowed the government to control a key stage of judicial proceedings by appointing loyal judges which in most cases did not comply with the required standards to be appointed (e.g., did not have a law degree) (Author’s interview. Buenos Aires, August 23, 2005; Verbitsky 1993, 47-51, 391-411, 445-455; Página 12, July 30, 1993). Political control of the judiciary was completed with the irregular appointment of judges to the Federal Cassation Chamber, which led Menem’s Minister of Justice to resign in 1992 (Página 12, Sept. 10, 19, 22; Oct. 4; Dec. 24, 1992; Dec. 5, 1993).

56 La Nación (Oct. 16, 1996.)
there were 190 surrogates over 895 judges in all jurisdictions. (Lopez Masia & Solis 2009, 19) A good example of an informal rule is evident given the large number of surrogates. According to the Association of Judges, in 2009, the government's resistance to reform invited pressures to make decisions favorable to the executive. (La Nación April 30, Dec. 18, 2009) The relative importance of this mechanism for the judicial sector and the Supreme Court in particular, in what traditionally was in charge of the judiciary: budgeting, administrative management, regulation of supervision and discipline of judicial employees. That is, the project seems to return to the situation prior to the existence of the Council” (Lopez Masia and Solis 2009, 123-4; author’s translation).

This reform was criticized by civil society organizations on the basis that it would create further opportunities for the Council’s political capture by the executive. (Rodríguez 2006, 4.) A document signed by civil society organizations assessed the reform in these terms: “It strengthens the political sector in what traditionally was the responsibility of politicians. That is, the selection and removal of judges. And, on the other, it strengthens the judicial sector and the Supreme Court in particular, in what traditionally was in charge of the judiciary: budgeting, administrative management, regulation of supervision and discipline of judicial employees. That is, the project seems to return to the situation prior to the existence of the Council” (Lopez Masia and Solis 2009, 123-4; author’s translation).

According to one public prosecutor: “Menem treated everyone well. He sent emissaries who knew how to move. However, these (Kirchner’s) bark orders over the phone, threatening us, or requiring us to do something or to stop bothering someone” (La Nación July 5, 2009; author’s translation).

Cf. Argentine Constitution, article 114. This delay virtually paralyzed the judiciary during three years. During that time, President Menem ensured the designation of friendly judges through transfers, i.e. moving officially appointed judges from their courts and replacing them with temporary judges (Rodríguez 2006, 11). See Clarín (Aug. 17, 1995); La Nación (Sept. 21, 1997; March 5, 1997; July 10, 1997).

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The government resisted opposition’s attempts to reform the Council in order to avoid the executive’s veto power. Only after 2009 mid-term legislative elections, the opposition was able to advance the reform process. (La Nación July 16, 21, 2009; Feb. 24, June 8, June 9, August 30, Sept. 16, Nov. 11, 2010)

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As of September 2009, 186 courts (or 20% of the 900 federal and national courts) were vacant. (Rodríguez 2009, 13; La Nación April 5, 2009) In May 2011, 5 out of 6 Federal Oral Trial Courts were vacant. (La Nación May 7, 7, 2011) In 2010, the executive had 113 short-lists frozen without proposing any candidates for appointment. (La Nación Sept. 4, 14, 2010) This lack of executive decision to appoint judges was even denounced by the Supreme Courts (Cf. La Nación May 15, 2011).

For example, in order to favor one candidate who was ranked third for occupying the bench in La Rioja, the two candidates that preceded him in the ranking were promoted to other courts. As a result, with only 40 points over 100, the third candidate, brother of a former member of the Council, was promoted to the first position. (Rodríguez 2006, 28.)

Author’s interview. Buenos Aires, October 6, 2009.

On the illegal suspension of the competitive process for federal courts No. 7, 8 and 9 of the Federal Capital, see La Nación (Sept. 16; Oct. 3, 2008). The process to select judges for four critical federal courts (occupied by surrogates) that deal with corruption cases was suspected and investigated for fraud with the exams. (Author’s interview, Buenos Aires; Oct. 16, 2009) (La Nación Sept. 5, 8, 24 and Oct. 31, 2009; Clarín Dec. 18, 2009). On other cases of fraud, see La Nación (Aug. 13, 2020).

La Nación (April 15, Nov. 4, 12, 2010).

This susceptibility to governmental influence has been even acknowledged by Supreme Court justices. In a recent interview, one of the Court justices declared: “Surrogates do not have the stability that has the judge assigned to a particular court, which is appointed with all the guarantees. This facilitates – it does not mean it necessarily happens -- pressures, attempts to influence. - Are they more susceptible to influence? Much more. That is unquestionable, because they are in a more precarious situation” (La Nación May 15, 2011; author’s translation). Surrogate judges have reported publicly receiving pressures to make decisions favorable to the government. (La Nación April 30, Dec. 18, 2009) The relative importance of this mechanism for enforcing the informal rule is evident given the large number of surrogates. According to the Association of Judges, in 2009, there were 190 surrogates over 895 judges in all jurisdictions. (Lopez Masia & Solis 2009, 19) A good example of the risks surrogates face occurred in 2004, when a surrogate decided to advance a case against Kirchner for...
illicit enrichment and his subrogation was terminated in October 17; 3 days later, another judge, who finally dismissed the charges against the president, took the bench (Abiad & Thierberger 2005, 190-1).

70 Author’s interview. Buenos Aires, October 16, 2009.

71 Prior to the Council, disciplinary sanctions were enforced by a special legislative committee, which also was accused of purposively using sanctions to reward or punish judges (see, for example, Clarín May 24, 1993; March 15, 1994). In the Council, two committees (Accusation Committee and Disciplinary Committee) deal with these issues. The process for sanctioning and removing a judge involves an investigation by the Accusation Committee of the complaints against the judge. For conducting the investigation, committee members draw lots to decide which member will play the role of investigator, which suggests the direction and leads the investigation. If there is sufficient evidence, an accusatory ruling is submitted for approval to the committee. If approved, it is considered by the Council in a plenary session, requiring two thirds of the votes of the members present in the meeting for approval. During the meeting, the Council also decides which members will act as prosecutors in the impeachment (juicio político), and the accused judge is suspended until the process finalizes. (Rodríguez 2006, 28.)

72 Judges and lawyers have complained about political interference and the use of disciplinary processes in order to affect judicial decisions. For example, Argentina’s Association of Criminal Law Professors stated in 2009: “It is increasingly common for the political power, both nationally and in many provinces, to advance over the judiciary whenever politicians do not like judicial decisions, or those do not suit their desires. In this sense, it is criticized that politicians ‘intend to impose, through the threat of impeachment and dismissal, the adoption of resolutions that meet their sectoral interests rather than the rule of law in accordance with the Constitution’” (Página 12 April 3, 2009; author’s translation). There are numerous examples in which government members filed complaints against judges who had ruled against the government in particular cases. (Ibid.) When judges rule against the government, they have often been threatened with the intervention of the Judicial Council, with being investigated, and even personally intimidated. (La Nación June 27; July 12, 2008; Feb. 27, March 11, March 20, April 13, March 17, 2010.) Also the higher criminal courts (Cassation Court) have been intimidated with the use of disciplinary processes (La Nación May 4, 2009; March 25, 2010), and even some Supreme Court’s justices have suffered the government’s pressures. (La Nación Sept. 5, 2010.)

73 By 2009, 31 judges had resigned during the investigation by the Council Clarín (July 11, 2009).

74 In many cases, complaints for serious charges against judges are dismissed by the Council and never become formal accusations. (Rodríguez 2009, 70) According to one judicial expert, “the Council has been reluctant to move impeachments forward and when it has done so, it has always been as a result of a public scandal” (Author’s interview. Buenos Aires, Sept. 11, 2007; author’s translation.)

75 A good example is the case of judge Faggionato Marquez, suspected of corruption and with 38 disciplinary cases opened against him. The Kirchnerist majority in the Judicial Council blocked his dismissal from the bench. Cf. Clarín (Nov. 21, 2008; March 6, 2009); La Nación (May 16, 2008; May 17, 2009; June 11, 2009; October 17, 2009; Feb. 23, 2010; March 25, 26, 27, 2010).

76 It is not clear, for example, whether this deadline is a statute of limitations or a termination date, and thus it is unclear whether it is possible to reinvestigate the judge. Also, it is unlikely that an individual citizen would submit a new accusation against a judge after 3 years if the previous one has not led to any concrete results (Rodríguez 2006, 42).

77 For a detailed analysis of several cases, see Rodríguez (2006, 29-41; 2009, 70-81).

78 Cf. Página 12 (January 16, 2006).

79 Moreover, the ruling issued in Feb. 2006 dismissed “facts that were contained in another complaint recently sent to the Council against Bonadio, which had not been assigned to the Disciplinary Committee or the Accusation Committee yet. Curious obdrictum that was aimed at immunizing Bonadio against the facts which the new complaint dealt with, since the dismissal, at some point, would become res judicata” (Rodríguez 2006, 33; author’s translation).

80 See Chapter 3.

81 Representatives from the executive usually do not vote when the accusation would require them to vote but as a result of political decisions they cannot do so. In this case, senator Pichetto, former senator Yoma, and former deputy Casanovas did abstain from voting (Rodríguez 2006, 36).

82 Cf. La Nación (November 6, 2008.)

83 According to experts, judicial corruption and the demand of bribes for conducting administrative procedures in the judiciary are more extended than judicial actors acknowledge. (Author’s interview. Buenos Aires, Oct. 16, 2009.)
and formally require either the formal acquittal or the trial. Cf. ACIJ (op. cit., 24).

Claimant and the prosecutor, who have the opportunity to say whether in their opinion the instruction is closed (Investigation were not any irregularities, instead of requesting the necessary additional documentation to continue the advancing a case or dismissing charges (La Nación April 8, 2011). Manuel Garrido

Selection of experts and the organization of work. (ACIJ op. cit., 14.)

Experts in 2006 for conducting 796 analysis), other experts consider that these delays have to do with th

In the accounting experts office. See ACIJ (2010, 8-10) While some attribute the delays to limited staff (10 experts in 2006 for conducting 796 analysis), other experts consider that these delays have to do with the selection of experts and the organization of work. (ACIJ op. cit., 14.)

According to one expert, “when a case is sent to the state’s accountant experts, you ensure a two-year delay” (Author’s interview, Buenos Aires; Nov. 16, 2009). One significant example is Case No 4200/04 “Fondo Especial del Tabaco s/ delito contra la adm. publica” (Criminal and Correctional Court No 5), which investigates irregularities in the allocation of financial resources from the Secretary of Agriculture to the Province of Catamarca. 6 years after the criminal complaint and more than 10 years after the irregularities were first reported, the investigators were still trying to gather all the information. The case was for more than 1 year in the accounting experts office. See ACIJ (2010, 8-10) While some attribute the delays to limited staff (10 experts in 2006 for conducting 796 analysis), other experts consider that these delays have to do with the selection of experts and the organization of work. (ACIJ op. cit., 14.)

Cf. Perfil (December 28, 29, 2009). Changes in the team of accountant experts can be determinant for advancing a case or dismissing charges (La Nación April 8, 2011). Manuel Garrido complained that, in some cases in which FNIA had intervened, in absence of elements of proof, the experts formally declared that there were not any irregularities, instead of requesting the necessary additional documentation to continue the investigation (Interview with M. Garrido, October 2007, in ACIJ 2008, 12).

Examples of this excessive formalism include: the judge must require each proceeding through a formal order (diligencia). At the end of the instruction stage, when the judge considers it closed, he must formally inform the claimant and the prosecutor, who have the opportunity to say whether in their opinion the instruction is closed and formally require either the formal acquittal or the trial. Cf. ACIJ (op. cit., 24).

The deadlines set by Article 207 of the Criminal Code and Article 306 of the Code of Procedure (Código de Forma) are often violated. The former sets a 4-month deadline for instructing a case, with a possible 2-month
extension granted by the Chamber of Appeals. The second sets a 10-day deadline counted from the inquest for indicting the accused, provided there is evidence to do so. Sometimes, the Cassation Chamber or the Federal Chamber of Appeals have asked judges to accelerate the proceedings for specific corruption cases (e.g. Skansaka case) (see for instance La Nación July 18, 2010; Sept. 7, 2010).

Significant corruption cases such as IBM-ANSES (1996), Yoma (1998), Tandanor (1991), and Sociedad Rural (1991) prescribed in 2010-11 because the duration of the judicial proceedings (between 13-20 years) exceeded the maximum sentence possible for the crime investigated (Author’s interview, Buenos Aires, April 1, 2009; La Nación April 29 & May 7, 2011). On the Tandanor case, see ACIJ (accessed May 4, 2011); on the Yoma case, see ACIJ (accessed May 4, 2011); on Sociedad Rural, see ACIJ (accessed June 15, 2011).

Law 25.990 (enacted on December 16, 2004, and promulgated on January 10, 2005) amended Article 67 (Title X – Termination of criminal actions and punishments) of the Criminal Code regarding the reasons for the interruption of prescriptive period.

In the case of the contract with ANSES, opened since 1996, the defendants’ lawyers requested the application of the statute of limitations in March 2011 (La Nación March 9, 2011).

Clarín (January 23, 2006).


ACIJ’s Sin corrupcion (accessed Dec. 11, 2010)

Notife June 11, 2010


The declining figures regarding OA’s success in revoking / preventing acquittals indicate the increasing constraints suffered by the body to play an active role in the process as a result of greater political interference in its activities. See Chapter 7.

Case 9040/02 “Bastos, Carlos s/ malversacion de caudales publicos” and Case 7629/05 “Gallo, Carlos Alberto y otros s/ negociaciones incompatibles”. Cf. OA (Annual Report 2008, 31-32.)

He was also accused of manipulating and producing false evidence, irregular interrogation of witnesses, producing a secret file with information about the case, and illegal wiretapping, among other charges. (Ibid.) See La Nación (Oct. 2, 2009.)

The Venezuelan state-owned oil company would provide the millions of dollars required for the operation (La Nación Sept. 10, 2008); also, Alconada Mon (2009). The jury found the defendant guilty for trying to silence Antonini Wilson, who was the carrier of the money and the key witness in the case (La Nación Nov. 4, 2008).

According to the ruling of the Federal Oral Court No. 3, public officials, judges and prosecutors created false evidence to cover-up political responsibilities (La Nación Feb. 26, 2006). In the Senate scandal, judge Rafecas accused people close to former President de la Rúa of providing false testimony (La Nación Feb. 27, 2008). Another example of hiding evidence took place in 2010, when former Ambassador to Venezuela reported corrupt exchanges in commercial transactions with Venezuela; in response, the Minister of Foreign Affairs publicly stated that the Ambassador should have talked to him privately, instead of writing a public official report (La Nación June 16; July 8, 2010).

La Nación (Dec. 14, 2009). Also, when a former ambassador publicly reported the payment of bribes in commercial transactions with Venezuela, the government intimidated several businessmen to go out publicly and deny such accusations of illegal activities (La Nación April 25, 2010).

See Clarín (March 2, 3, 1993); La Nación (August 5, 2010). Caserta was vice-president of the PJ in Buenos Aires and former treasurer of Menem’s first electoral campaign. A former judge acknowledged in 1995 that Menem had called him to try to influence this case (Página 12 Jan. 12, 1995). Caserta was liberated in 1995 (Página 12 May 31, 1995).

Página 12 (March 24; April 7, 12; Oct. 10, 1991; July 7, 16; Aug. 9, 11, 19; Oct. 15, 1992); Clarín (May 27, 29; June 2,3, 1993).
In non-criminal courts (civil, administrative), these practices have been restricted. See ACIJ (2008, 14).

A court secretary said that “in corruption cases, the defendants have the best lawyers. Yet I am not the best” (quoted in ACIJ 2008, 15).

Cf. La Nación (May 15, 2011.) Experts consider that approximately only 20 law firms are involved in the defense of all corruption cases (Author’s interviews, Buenos Aires; April 1, 2009). The networks have an important center at the Buenos Aires University’s Criminal Law Department, where many politicians, lawyers, and judicial actors studied with the same professors, who are significant judicial actors and/or public officials. According to one lawyer: “In Argentina, academia is not well isolated, thus many judges are professors ... and lawyers too ... they all move in two areas, in courts and academia ... And some flirt with politics, and come and go ... and contacts always stay behind. Borders are fluid, blurred ... Then, someone who was Minister of Justice, now is a lawyer, and then returns to politics, or goes to school because is an important professor. Everyone knows everyone, and everyone meets with everyone. Therefore, there are so many conflicts of interest that the freedom to speak, to think, is taken away, and perhaps sometimes conditions them” (Author’s interview, Oct. 16, 2009-- author’s translation). For example, former Minister of Justice, Leon Arslanía, was the defendant lawyer of Cristina Kirchner’s secretary, accused of illicit enrichment (La Nación April 8, 2011). See also Abiad & Thierberger (2005).

Judicial brokers play an important role to delay corruption cases: “they are the people who dare to do the things that lawyers would not do, through various channels of influence. For example, this operator/broker is the partner of someone who was clerk of the court of someone else and thus, has an entry point into what is happening in the proceedings ... They are people who have multiple channels to gain access to the cases, and go on getting information about where is going and where isn’t going the case, and can operate on the basis of such information, influencing certain judicial decisions, which maybe are not of great significance (for example, they are not operating on whether someone is released from prison, but in the middle, regarding expert accountants), but affect the development of the case” (Author’s interview. Buenos Aires, Nov. 16, 2009). Also, author’s interviews. Buenos Aires, August 4, 2005 and April 1, 2009.


On the role of civil society in monitoring corruption cases, see Gonzalez de Asis (2006).

In 2004, the Supreme Court acknowledged the Amicus Curiae, which acknowledges the active role that individuals and organizations with specific expertise may play in judicial proceedings (Acordada 28/2004).

Sala I ruled that civil society organization could access the cases only if the accused accepted to open the case to the public. To the contrary, Sala II provided access without any restrictions. (ACIJ 2009, 13-14)

The electoral defeat of the government in the 2009 mid-term elections marked the re-activation of judicial cases against Kirchnerist public officials: “The judicial attack will take some time, because it responds to the progressive loss of power that the judiciary feels in the Casa Rosada, which they respected-or feared-for the last six years” (La Nación July 5, 2009; March 31, 2010, October 11, 2010; Nov. 6, 2010). In the 90s, cases against Cavallo were reactivated when his conflict when President Menem increased (Página 12 Aug. 27, 1995). Another good example took place before 2011 presidential elections. When union leader Hugo Moyano lost presidential support, he publicly declared his concern regarding several judicial cases open against him. As judicial experts reported at the time: “The CGT leader, Hugo Moyano, has a certainty and a doubt. He knows that a judge will launch a hard judicial attack against him, but he does not know whom. In recent weeks, several signals and information made him worry. When he said that some people see him as a "candidate to jail," he showed such scenario. [...] The question is who will take to the judicial level the political decision of “freezing” the truck driver” (La Nación May 19, 2011; author’s translation).

There are examples of threats against witnesses regarding the investigation and prosecution of corrupt practices committed by majors from the Buenos Aires province. The threats were brought to the attention of civil society organizations that made requests in order to guarantee the physical integrity of witness and informants and ensure the independence of judicial investigations. See CELS (Human Rights in Argentina Report 2006). Newspapers have also reported similar threats against journalists or public officials reporting illegal activities. (See La Nación Feb. 5, 2009; Oct. 23, 2010; Clarín Oct. 9, 2009.)

The witness protection system is aimed at protecting victims of drug trafficking. The special agency created through Decree 262/1998 (Oficina de Protección de Testigos e Imputados) has not been effective in protecting corruption victims and witnesses. As an expert explains: “Argentina is very dissimilar in their towns and cities, and an outsider is immediately detected. It is not easy to transfer a person; budget is not enough for the program to have its own personnel, and it is difficult to trust the police in other jurisdictions. While formally the law
gives protection, in practice it does not.” (Author’s interview. Buenos Aires, August 4, 2005; author’s translation.)

126 Some experts believe that the government is not interested in passing repentant legislation because it would make the enforcement of the informal law that protects corrupt practices more difficult: “Without an “informants’ law” there is no way. But Argentina’s political class is not prepared, because it is not convenient for them ... If among the political class there are still people who dismissed complaints and turned a blind eye, I do not relieve they might be interested in raising their hands to pass an “informants’ law” so that tomorrow any informant might come and get them involved. It is going to be very difficult” (Author’s interview. Buenos Aires, August 16, 2005; author’s translation.)

127 Página 12 (Dec. 22, 1990.)
128 La Nación (March 6, 18, 2003; June 15, 2003; July 5, 2006; Jan. 8, 2008.)
129 Author’s interview. Buenos Aires, August 16, 2005.
130 For a similar case at the provincial level, see La Nación (May 6, 2011.)
131 La Nación (August 5, 2010). In the 90s, the ombudsman of the City of Buenos, who investigated an extended network of corruption in the local government, also reported threats against him and his family (Clarín May 3, 1994). Similar threats suffered a former prosecutor and councilman of the City of Buenos Aires who investigated corrupt practices in the provision of social services for the elderly (PAMI); a key witness in the same case also suffered a kidnapping attempt (Clarín April 30; May 4, 1994).
132 Author’s interview. Buenos Aires, August 4, 2005.
Chapter 9
Conclusions

Weakly institutionalized democracies have repeatedly failed to ensure effective accountability and sanction corrupt practices. The significant political, economic, and social costs of this failure have contributed to erode citizens’ confidence in their political system. This dissertation aimed to explain why Argentina has proved unable to effectively hold the executive accountable and how, under these conditions, actors sharing illicit goals are able to agree on informal mechanisms of corrupt exchange to circumvent formal norms. This research also investigated the reproduction of practices and mechanisms that account for the institutionalization of corruption. Legislators’ willingness to defend their prerogatives against executive encroachment—a function of the actual workings of political institutions—was identified as a crucial factor to understand the strength of checks on the executive and the performance of the accountability system. In the informal corruption market, actors’ ability to craft informal mechanisms (elite cartel networks) to solve credible commitment problems sustained the development of corruption practices. Moreover, corrupt practices are transmitted and institutionalized through informal mechanisms of enforcement that ensure the impunity of corruption.

This concluding chapter highlights the dissertation’s main theoretical contributions and summarizes its most relevant findings. The discussion draws on those findings to explore the theory’s predictions for the comparative level. Finally, it discusses the main implications of the analysis, and suggests an agenda for further research.

1. Contributions to accountability and corruption research

This dissertation offers four significant improvements over existing works. First, the study presents a comprehensive account of corruption that integrates both the “how” and the “why” of corrupt
exchanges. Secondly, it offers a dynamic account of corruption in weakly institutionalized democracies where political actors, constrained by institutional arrangements, turn to informal rules and practices to pursue their goals and maximize their gains. This dissertation highlights the gap between expected and observed behavior, and looks at the actual rules of the game played by political actors, going beyond existing accounts that describe corruption as deviations from a normative ideal, and focusing instead on informal rules and practices. Finally, by looking at executive accountability by the legislature and exploring the emergence and institutionalization of informal corrupt exchanges, this dissertation provides empirical evidence to test premises advanced by institutional and corruption theories in an institutional context with low levels of institutional commitment such as Argentina.

Corruption research has focused on providing a thick description of corrupt practices or exploring the causes and consequences of corruption. Conversely, this study emphasizes the importance of understanding the mechanisms of corruption in order to investigate its causes. Still, merely identifying the incentives actors face (such as limited accountability) is insufficient to understand how corruption networks are established and institutionalized. In applying a rigorous definition and operationalization of informal institutions, this dissertation makes explicit the mechanisms through which these networks develop and become systemic. Corrupt networks are informal mechanisms that allow actors to maximize their goals in a context where corrupt exchanges are not publicly acceptable and weak formal institutions do not facilitate actors’ cooperation. Unable to resort to formal rules for enforcing exchanges, actors turn to informal mechanisms. Corrupt networks emerge endogenously from formal institutional arrangements and, therefore, how they are organized and their dynamics (how they work, persist, and change) reflect the institutional setting. Informal mechanisms provide actors with additional resources to sustain cooperation, counteract the uncertainty and limited credibility that weak formal institutions produce, and guarantee the enforcement of informal contracts between political actors.

Corrupt practices persist because they are transmitted to the relevant actors. A critical mechanism for the communication and enforcement of informal corrupt practices emerges out of this
dissertation. In Argentina, an informal permissive rule allows corrupt exchanges and ensures public officials’ discretionality and impunity. Corrupt practices are communicated and transmitted through visible episodes of rule-breaking and sanction. By punishing deviations from the informal rule that allows corrupt exchanges, actors indicate the costs of non-compliance and effectively discourage others from such actions. The punishment of those who dare to investigate (or formally sanction) corruption helps transmit the norms of corruption impunity, strengthening the stability and institutionalization of elite cartel networks.

This dissertation elaborates on how informal institutions explain the gap between formal institutions and the actual behavior of political actors. Most of the literature focuses narrowly on the formal institutional conditions that affect executive accountability, such as divided government or the strength of opposition parties. In practice, however, Argentine legislators have repeatedly failed to secure accountability and oversight, regardless of the executive’s legislative support and the size of legislative parties. This dissertation analyzes the informal bargaining strategies that enhance legislators’ ability to secure short-term benefits while providing for some level of executive restraint. By using formal oversight mechanisms to signal the executive how far they would be willing to go if necessary, legislators are able to maximize their benefits today while opening informal communication channels with the executive. However, they are unable to enhance the oversight role of the legislature in the long-term or to constrain corrupt exchanges. Simultaneously, the executive gives up some valuables, but ensures that the legislature remains collectively weak and that the linkages between the components of the accountability system are undermined. The focus on informal mechanisms proposes an alternative perspective to enhance the understanding of executive oversight and accountability and the role of the legislature.

Institutional approaches have made significant contributions to the study of democratic transitions and consolidation, electoral rules, party systems, and inter-branch relations. Building upon these contributions, the study of corruption has focused on the formal rules that explain the effects of alternative political systems and the impact of different electoral rules. In this sense, scholars have
identified formal political arrangements that contribute to effective accountability, increasing the costs of corrupt exchanges. However, limited attention has been paid to the possibility that political actors may turn to or craft alternative informal strategies to further their own goals. Informal institutions allow actors to pursue anything from unpopular to illegal activities that cannot stand public scrutiny. In this dissertation, legislators that are unable to hold the executive to account through formal oversight mechanisms rely on informal mechanisms as a second-best strategy to set constraints on the executive and to maximize their short-term benefits. Moreover, elite cartel networks are a useful example of how Argentine politicians and firms that could not turn to the law to enforce corrupt agreements achieved highly predictable outcomes by exchanging resources for political influence among a small group of elites that interacted repeatedly over time.

This dissertation seeks to reconcile rational choice approaches with the need to empirically test formal models. Actors that share illicit goals and seek to circumvent formal norms, or who see informal mechanisms as a second-best strategy for oversight, are able to agree and enforce informal norms as a result of a bargaining process that ensures coordination. Given an uneven distribution of power and resources, actors seek to maximize their benefits given their beliefs about other actors’ strategies. The proposed model of executive oversight by the legislature and the proposed explanation of the emergence and institutionalization of informal corrupt exchanges take into account the ambitions and motivations of individual politicians to predict their strategic choices under a given set of institutional constraints and opportunities, but also seek to derive testable propositions about actors’ strategies (specified in Chapter 2) that are verified throughout the dissertation.

Finally, Argentina has provided us with evidence to inform a particularly well-suited case study of low institutional commitment, which is conventionally identified as featuring multiple veto players, weakly institutionalized political parties, policy volatility, and low levels of accountability with persistent problems of political corruption. The presented theory relates the features of the institutional environment to actors’ prioritization of short-term benefits, playing out in informal arenas and through alternative courses of action. Evidence and analyses presented throughout this
dissertation test and support the impact of formal and informal mechanisms to strengthen presidential authority to act beyond the margins of legislative delegation, the motivation of legislators to use oversight instruments strategically to bargain for benefits with the executive, the use of government payoffs and concessions for advancing policy while shrinking accountability, the neutralization of specialized oversight bodies and agencies through politicized appointments and hindering the linkages of the accountability system, and the use of informal agreements between the legislative and the executive. As this dissertation shows, in Argentina, ample resources sustain informal networks of corruption, and informal mechanisms are used to monitor and enforce corrupt exchanges.

2. Summary of results: The fiction of accountability and the persistence of corruption

This dissertation refines the institutional understanding of political corruption by looking at the gap between the formal dimension of institutions and the actual practices, and by incorporating the role of informal institutions that allow political actors who share illicit goals to circumvent formal institutions. Chapter 2 presented a theory of executive oversight and accountability by the legislature that has implications for both domestic politics and comparative analysis. It also applied an informal institutions framework to understand complex networks of corrupt exchanges, and advanced hypotheses regarding the development of corrupt exchanges and its reproduction. Elite cartel networks of corruption are informal mechanisms that facilitate the development of corrupt exchanges by providing additional resources to ensure actors’ credible commitment. The theory sustains that the transmission and reproduction of corrupt practices takes place through the enforcement of informal norms that ensure the impunity of those who engage in corrupt practices. In so doing, impunity helps stabilize corrupt elite cartel networks and contributes to the systemic nature of corruption.

Chapter 2 argued that legislators’ institutional commitment levels affect the strength of checks on the executive and the legislature’s incentives and capacity to hold the executive accountable. In weakly institutionalized settings, legislators are less willing to defend their prerogatives from executive encroachment and, therefore, they have limited incentives for effective
oversight. Both the legislature and the executive respond strategically given their beliefs about the strategies available to the other. The decision to comply or not with legislators’ mandate depends on the probability that they will monitor and sanction the executive. This probability critically depends on institutional commitment levels; as institutional commitment is low, the executive will most likely not comply. The legislature, however, has the capacity to pose a credible threat in terms of formal sanctions and/or to impose some external costs on the executive. As legislators have minimal resources to monitor and eventually formally sanction the executive and they anticipate the executive’s ability to prevent unwanted legislative results, both actors choose to engage in a bargaining process as a result of which legislative oversight mechanisms are not activated until their last consequences (the executive is not sanctioned) in exchange for concessions to legislators. Simultaneously, the executive resorts to strengthening presidential authority to limit the legislature’s capacity to set the margins of discretion and takes actions to undermine other accountability mechanisms that provide critical oversight information.

The “lack of control” scenario does not necessarily characterize a weakly institutionalized democracy. Rather, Argentine legislators with short-term horizons typically pursue a “fiction of control” strategy (See Ch. 2). Confronted with the choice of ignoring or monitoring the executive, evidence shows that legislators invest their scant resources in oversight mechanisms that minimally monitor the executive, but in a way that is acceptable for the executive. As a result, unlawful executive actions are not sanctioned. Informal strategies explain this paradox. Legislators can formally monitor the executive, while informally maintaining cooperation incentives and setting some limits to executive actions. It is in the actors’ best interest to maintain this fiction and give the impression that the executive is being controlled, or that it is possible to do so. This allows legislators to gain leverage vis-à-vis the executive to maximize their short terms benefits, and protects the executive from eventually facing an “effective control” scenario. While the strategy can produce “efficient policy outputs,” it had serious implications for thwarting intra-state accountability. The “fiction of control” scenario does not effectively constrain corruption, but actors who seek to engage in corrupt exchanges
need to account for the fact that institutions are formally in place and constrain minimally, and adapt their strategies accordingly.

Chapter 3 analyzes the emergence of an illicit market of corruption. Although formal norms prohibit corrupt exchanges in Argentina, shared expectations about corruption, weak enforcement of formal rules, and limited oversight and accountability of the executive, provide space for actors that share illicit goals to craft informal institutions to pursue them. Elite cartel networks of corruption fulfill this role. The chapter presents evidence of a demand and supply of valuable commodities and corrupt resources. Moving beyond incentives, the chapter explores how actors were able to agree on, and enforce informal mechanisms of exchange. Reputation, political career considerations, repeated iteration of a reduced group of elites, and instances of monitoring and rule-breaking sanctioning appeared as critical resources for holding elite cartel networks together. Several case studies show patterns of continuity and change in elite cartel networks of corruption, the importance of territorial dimensions and loyalties, and the relative weight of state and private elites in the corrupt market.

Chapter 4 provides evidence on the instability and limited enforcement of Argentina’s formal political institutions, including basic constitutional norms, electoral rules, and political parties. The chapter explores the distance between formal norms and actual practices, and its effects on actors’ expectations. The ultimate purpose of the chapter is to assess where the country stands in terms of institutional commitment, that is the extent to which politicians are willing to act in defense of their established prerogatives. The main finding is that Argentine politicians are encouraged to maximize the short term benefits they can extract from their current positions, which allow them to continue their political careers. As they can obtain high benefits for deviating from the outcomes of formal rules and alternative means of enforcement are weak, they will likely resort to informal arenas of interaction. This chapter sets the stage for the country-specific analysis. The three subsequent chapters explore legislators’ involvement in holding the executive accountable (a critical condition for deterring corruption) and the role of specialized oversight agencies.
The margin of executive discretion vis-à-vis the legislature is the focus of Chapter 5. Consistent with model expectations, presidents resorted to multiple mechanisms to overcome constraints over executive powers and advance their policy agenda beyond the limits of congressional delegation. Manipulation of formal rules to allow for reelection, limited rotation of the ruling party, or vertical concertation of political parties facilitated leveraging presidential authority. In addition, evidence shows that presidents made widespread use of unilateral resources such as DNUs or “superpowers.” However, the legislature was not inconsequential and sought to constrain the president (particularly in specific policy areas). Therefore, presidents resorted to discretionary payoffs to secure legislative support while neutralizing oversight (e.g., bargaining with legislators to prevent sanctions). Moreover, state resources for discretionary payoffs under limited legislative oversight were in some cases directly diverted for illicit transactions.

Chapter 6 focuses on the role of the legislature in overseeing and holding the executive accountable. The analysis shows that legislators rarely employed formal instruments of monitoring and oversight until their last consequences. While many oversight mechanisms were formally in place, they seldom resulted in formal sanctioning. Evidence indicates that this was the result of low institutional commitment levels. Legislators who prioritized their short term-benefits rather focused on ad-hoc ex-post oversight and control mechanisms such as the review of accounts and written inquiries, which could be used strategically to bargain for benefits with the executive. While these informal instruments set some limits on executive actions, they rarely compelled the executive to strictly comply with the terms of legislative delegation. As the accountability cycle was broken, corruption risks increased.

Chapter 7 complements the previous two with an analysis of the effectiveness of specialized oversight agencies. Whereas these agencies have formally ample powers, these powers are seldom enforced and their performance is limited. The evidence presented shows that these agencies are neutralized through different strategies, including the politicization of appointments, rotation of personnel, and budget cuts. The main contribution of these agencies to fighting corruption is through
the information they produce about how executive agencies work. However, this information is hardly consequential if the linkages between different agents of accountability do not work properly, and legislators do not use the information they have to hold the executive accountable but as a bargaining chip to get short-term benefits from the executive.

While there are important weaknesses in many of Argentina’s accountability institutions, this dissertation argues that the root causes of impunity arise from an informal rule that allows corrupt transactions, which shapes the incentives facing accountability agents in charge of formally punishing corruption through criminal sanctions. Chapter 8 provides evidence of how people who commit corrupt practices are protected, while those who try to exit the corrupt market are penalized. The chapter highlights the limited enforcement of the formal rules that prohibit corruption (with virtually no convictions), and reports the high levels of corruption impunity in Argentina. The informal rule is enforced through judicial and other accountability agents, using different mechanisms including appointments, oversight bodies, and procedural resources. Moreover, the chapter provides a qualitative account of how those who attempted to enforce the law were punished (through formal sanctions, limited professional advancement and, in extreme cases, threats against their physical integrity), while those who acted within the informal rule enjoyed ample impunity. This is a hardly explored yet critical condition to understand the persistence of corruption in Argentina.

The combined evidence from these chapters supports the claim that corruption is systemic in Argentina. The limits of executive accountability influence the patterns and persistence of political corruption. While formal institutions of accountability are in place, the accountability system as a whole has failed to effectively constrain executive’s unlawful behavior. The root of the problem is that legislators lack sufficient incentives to oversee the executive, as the executive has the capacity to shrink accountability and undermine the connections among accountability actors. Weak accountability alone does not explain how corrupt exchanges develop. Actors that share illicit goals craft informal mechanisms (elite cartel networks) that provide critical resources (e.g., reputation) to overcome the credible commitment problems that weak institutions produce. Moreover, corrupt
practices persist through episodes of rule-breaking and sanctioning that communicate the norms of corruption impunity. While weak oversight and elite cartel networks of corruption ensured some “efficient” outcomes (advancing policy reform and ensuring elite control and compliance), they have negative implications in terms of democratic accountability.

3. A framework for comparative research

This dissertation explored the results of persistent institutional weakness on the capacity to constrain corruption by looking at the case of Argentina. However, as many new democracies suffer from weak institutions, it is critical to explore variation within weakly institutionalized systems. The theory of executive accountability by the legislature presented in Chapter 2 has implications for comparative research. The legislature’s incentives and capacity for monitoring the executive is determined by legislators’ willingness to defend their decision rights (as determined by formal rules) against potential encroachment by the executive. While levels of institutional commitment can be taken as fixed within specific countries (as a result of more or less stable and enforced institutional arrangements) for single country analysis, cross-country comparisons require analyzing variations on such dimension.¹

A preliminary look at comparative data provides support for the explanatory framework presented here (even if specifying the particular mechanisms of individual cases would require more detailed research). Explaining variation across countries in the strength of executive accountability and legislative control, requires considering the different levels of institutional commitment in each case – i.e., the variation in the extent to which legislators are willing to act in defense of their formal prerogatives. These levels of commitment are in turn determined by the effects of the institutional setting on actors’ expectations, particularly their time-horizons, the payoffs of pursuing alternative courses of action, and the costs of interacting in informal arenas of exchange. Where legislators are amateur and do not hold their seats for long periods of time, we can expect them to value short-term gains. Their decisions are not oriented to performing better in their current post but to benefit their
political careers (Palanza 2009). Moreover, limited enforcement of formal institutions increases legislators’ payoffs for deviating from the equilibrium outcomes of formal rules, while reducing the costs of enforcing accountability through informal means. Conversely, where legislators expect to hold their seats for long periods of time, the costs of departing from formal rules are high, and there are strong alternative enforcement agents, legislators will have incentives for overseeing the executive and defending their powers and resources against encroachment.

In order to place Argentina’s case in a comparative context, and to provide broader support to the theoretical framework introduced by this dissertation, the next section briefly evaluates where different Latin American countries stand in terms of legislators’ institutional commitment. This review, based on empirical findings and assessments already established in the literature, lays the foundation for drawing some preliminary comparisons and possible implications for legislative oversight and accountability.

3.1 Legislators’ institutional commitment in selected Latin American countries

Different countries present varying levels of institutional commitment, as shown by their legislative reelection rates and selected indicators of congressional capabilities. Argentina suffers from a gap between formal rules that encourage stable legislative careers, and the empirical reality of a high parliamentary turnover rate, with two out of three seats occupied by freshmen in every election. High legislative turnover has been fairly consistent over the years. In several studies, Jones (2000, 2002, 2005) has documented legislative incentives and motivations, and explained the low legislative reelection levels as a result of internal party procedures and dynamics rather than voters’ decisions.

High legislative turnover rates (92.4% in 1997; 88% in 2000) are easier to explain in Mexico, where formal term-limits prevent legislators from seeking immediate reelection (Marenco dos Santos 2006, 8). The result is that turnover is total every period, and each legislature is entirely new. The rate of return in subsequent legislatures is also low as a result of the difficulties in maintaining party loyalty and support (Carbonell 2000). Between 1994-2000, only 168 legislators held more than one mandate (Marenco dos Santos 2006). In Brazil, reelection rates are higher than in Argentina. Morgenstern
(2001) reports that in 1997, 70% of Brazilian incumbents sought reelection, and out of those 62% actually kept their seats. Although parliamentary turnover was a salient feature of the political system, it has significantly decreased over the years. One significant difference of the Brazilian case is that the decision to run or not for reelection does not depend on party bosses, but on legislators themselves (Samuels 2003). In contrast, the Chilean Congress has historically had great power and influence (Siavelis 2002, 83). The country stands out within the region for having high levels of legislative reelection. Membership of the Chamber of Deputies has enjoyed great continuity. Re-election rates for incumbents have also been considerably high. Committee assignments are stable, particularly in highly salient committees (Rhodes et al. 2006, 443). Based on legislative turnover rate, the levels of institutional commitment increase as we move from Argentina towards Mexico, Brazil and Chile.

Stein et al. (2006) provide an examination of congressional capabilities that reinforces the characterization presented above. In Argentina, congressional capabilities are quite low compared to other Latin American countries. Legislators are inexperienced, committees are large and barely specialized, and lawmaking effectiveness is low. Despite the total turnover rate, Mexican congress shows medium congressional capabilities. Although legislators are more inexperienced than in other countries, the legislature shows intermediate levels of lawmaking effectiveness and committee specialization. Congressional capabilities are comparatively strong in Brazil. Legislators are quite experienced, committees are very specialized, and average congressional lawmaking effectiveness is high. Chile also stands out in terms of congressional capabilities with experienced legislators, high committee specialization and strong lawmaking effectiveness. (See Table 9.1.)

<table>
<thead>
<tr>
<th></th>
<th>Average tenure (years)</th>
<th>Average committees per legislator</th>
<th>Law-making effectiveness (1=ineffective; 3= very effective)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2.9</td>
<td>4.5</td>
<td>1.6</td>
</tr>
<tr>
<td>Brazil</td>
<td>5.5</td>
<td>0.92</td>
<td>3.1</td>
</tr>
<tr>
<td>Chile</td>
<td>8</td>
<td>1.95</td>
<td>3.7</td>
</tr>
<tr>
<td>Mexico</td>
<td>1.9</td>
<td>2.43</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Stein et al. 2006.
Saiegh’s (2010) recent study of legislative capabilities and the reactive/proactive nature of Latin American legislatures confirms this characterization. Argentina’s Congress is characterized as reactive, with low capabilities and a passive and sometimes obstructionist role in policy-making. The Mexican legislature plays a similar role, but congressional capabilities are stronger and Congress was fairly reactivated after democratic transition. Legislatures in both Chile and Brazil are endowed by high capabilities and, even if still reactive, they play a more constructive role in policy-making. As Table 9.2. shows, recent research largely confirms the findings of the current study.

<table>
<thead>
<tr>
<th>Country</th>
<th>Congressional effectiveness</th>
<th>Congressional capabilities</th>
<th>Potential political control capacity</th>
<th>CPI 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>3.7</td>
<td>High</td>
<td>6.3</td>
<td>7.8</td>
</tr>
<tr>
<td>Brazil</td>
<td>3.1</td>
<td>High</td>
<td>6.8</td>
<td>3.7</td>
</tr>
<tr>
<td>Mexico</td>
<td>2.0</td>
<td>Medium</td>
<td>6.05</td>
<td>3.2</td>
</tr>
<tr>
<td>Argentina</td>
<td>1.6</td>
<td>Low</td>
<td>9.8</td>
<td>2.9</td>
</tr>
</tbody>
</table>

Sources: World Economic Forum Survey (2004-2005); Stein et al (2006); Alcantara et al. (2005); Transparency International (2011)

a/ Congressional effectiveness: Mean score given by business to the question “How effective is your congress as a lawmaking and oversight institution?”
b/ Congressional capabilities: aggregated index calculated as the simple average of 8 dimensions in a 1-3 scale, including: average legislators’ experience, effectiveness of lawmaking bodies, percentage of legislators with university education, number of committee membership per legislator, or technical expertise, among others.
c/ Potential political control capacity: constructed from 9 parliamentary oversight instruments: control over presidential nominations, interpellations of government officials, creation of investigative committees, presidential report, confidence vote, inquiry of information from the executive, parliamentary questions, interpellations and instruments that imply political responsibility (impeachment).

3.2 Drawing some preliminary comparisons

As this dissertation has established, we could expect a direct relation between the level of institutional commitment and the strength of accountability checks on the executive, holding formal powers fixed. (See Figure 9.1.) This means that, for identical formal oversight powers, we should be able to place different countries along the curve depending on legislators’ institutional commitment. At higher levels of institutional commitment, we should see stronger executive accountability by the legislature.
Figure 9.1. Institutional commitment and accountability effectiveness
Source: author’s elaboration based on Palanza (2009)

Estimating specific countries’ level of institutional commitment for the legislative branch is not straightforward. Nonetheless, we can preliminarily rely on indicators that reflect legislators’ experience, time horizons, and incentives to build a weak indicator of institutional commitment. Figure 9.2. plots legislators’ experience and an indicator of perceived legislative effectiveness to map the four countries along an imaginary line. Argentina appears on the southwestern quadrant, and Chile on the upper-right one. As we move on the right, we find Mexico first and then Brazil. If we take that imaginary line as representing the level of institutional commitment, Argentina would have the lowest levels, followed by Mexico and Brazil, while Chile shows the highest level. Using this rough indicator of institutional commitment, we could place the countries on Figure 9.1. Chile would be on the far right end, Argentina on the left of the dotted line, and Mexico and Brazil would fall somewhere in between.

The predictions stemming from the chart are that at higher levels of institutional commitment, we expect the legislature to be more involved in monitoring and overseeing the executive. This is precisely the observation in the cases of Chile and Brazil. In Brazil, oversight “represents a great amount of what Congress performs routinely – about 36% of all initiatives in both chambers are
oversight-driven, and they are increasing over time” (Lemos 2010, 23). For example, powerful temporary parliamentary investigation committees are effectively created and succeed in their investigations, particularly in the Senate; also, there have been a large number of resolution of inquiries, committee hearings and oversight bills.\(^8\)

Source: authors’ elaboration based on World Economic Forum Survey (2004-2005); Stein et al (2006); Alcantara et al. (2005); Transparency International (2011)

Although the Chilean legislature is quite constrained by limited formal oversight powers, consistently with this dissertation’s predictions, available oversight mechanisms are widely used. For example, impeachment proceedings have been undertaken and succeeded, and written inquiries and investigation committees are frequent (Siavelis 2000, 26-31).\(^9\) Moreover, the legislature has enhanced its capacities for oversight by institutionalizing the joint budget committee in 2003, formalizing several protocols for inter-branch cooperation, and advancing anticorruption reform. In Chile, the expertise of long-term legislators compensates for capacity constraints (Santiso 2007, 117). As institutional commitment decreases, the role of the legislature in holding the executive accountable becomes weaker. This is the
case of Argentina, where evidence has shown the limited effectiveness of oversight instruments in actually constraining the executive and imposing any sanctions on corrupt practices. Legislators rely on informal instruments to bargain for particularistic benefits rather than control the executive.

A more comprehensive analysis of legislative oversight would take into account the interaction between the formal institutional framework and legislator’s level of institutional commitment. Because we have held formal powers constant, we are poorly equipped to predict the effect of formal changes, and differences in legislative powers and instruments to hold the executive accountable (e.g., Mexico and Argentina after 1990 and 1994 constitutional reforms, or the differences between highly capable legislatures like Chile and Brazil). However, a first exploration of variations in formal oversight powers promises interesting results. Alcantara et al. (2005) built an indicator that measures potential capacity for political control by the legislature based on the presence of formal oversight mechanisms. (See Table 9.2. above.) According to this measurement, Chile and Mexico are among the countries with the lowest capacity for oversight by the legislature, Brazil follows in the middle, while Argentina is among the countries with the strongest potential oversight capacity. This can be interpreted differently in the light of our theory. On the one hand, it can be noticed that countries with low levels of institutional commitment often adopt quite rigid formal mechanisms to solve credible commitment problems (Spiller, Stein and Tommasi 2003; Spiller and Tommasi 2003, 2007). On the other, an alternative possibility is that formal oversight mechanisms are created as cosmetic measures to signal the public that things work as they should, when in practice these mechanisms are actually born weak and hardly enforced. At higher levels of institutional commitment, finally, countries with similarly capable and effective legislatures will have an advantage to effectively check the executive if they have more formal powers of oversight and invest in enhancing their own capacities.

This theory has interesting implications for cases at intermediate levels of institutional commitment as well as for corruption control. Limited legislative oversight can easily lead to serious problems of corruption. However, even countries with effective legislative oversight may suffer from corruption. While legislative control of the executive reduces the risks of corruption in particular
areas, it does not eliminate such risks altogether. Even then, countries are better equipped to provide an effective response to persistent corruption problems when there is more involvement of the legislature in overseeing the executive. In the case of Brazil, the impeachment of President Collor de Mello by the legislature in 1992 on corruption charges showed the potential of effective oversight. In 1993, following a corruption scandal concerning budget amendments, Budget Offices were created in both Chambers (Lemos 2010, 22). Moreover, the federal audit agency and external audit agencies at the state level have been quite effective in terms of reporting and publicly disclosing maladministration and corruption, thus contributing to enhanced accountability (Speck 2008; Ferraz and Finan 2005, 2008, 2009; Lemos 2010). This evidence contrasts significantly with Argentina.

In cases at intermediate levels of institutional commitment, we can expect to see mixed results in terms of accountability and control of the executive. The result is determined by what is at stake in different policy areas, provided that a certain level of institutional commitment ensures a minimum of control capacity. Some evidence from Mexico is illustrative. While the Mexican Congress had historically been considered a rubber stamp of executive initiatives, it gradually took a more active stance particularly in high-stake policy areas. In certain valued topics, Congress enacted significant legislation to check on the executive, such as electoral legislation in the 1990s and the access to information law in 2003. Moreover, Congress contributed to setting powerful autonomous accountability mechanisms (such as the Federal Electoral Institute and the Federal Institute of Access to Information), thus encouraging enforcement and preventing reversals of these “oversight islands” in a context of intermediate-low institutional commitment levels.10

The comparative perspective introduced in this section lends support to the theory presented here. Levels of institutional commitment have implications in terms of legislators’ expected involvement in constraining the executive and fighting corruption, and on the effectiveness of specialized oversight agencies. Both the Brazilian and Chilean legislatures pay attention to oversight and have taken steps to limit the legislative prerogatives of the executive, whereas the Argentine congress has failed in its attempts to reinstate its rights and oversee the executive. The Mexican
congress has only taken such steps in specifically valued policy areas. Legislators’ levels of institutional commitment appear positively related to effective oversight and accountability across cases, and are sensible to inter-case variation. The implications of these findings in terms of their impact on checks and balances, accountability and the combat against corruption can significantly advance our understanding of the quality of democracy in Latin America.

4. Informal institutions, democratic accountability and policy reform

This section explores the broader implications of informal institutions and mechanisms in terms of accountability, and presents a number of important policy implications that derive from this research.

4.1 Informal institutions and accountability

Informal institutions have usually been seen as obstacles to democratic accountability, since they are unwritten and unregulated, and lack the transparency or oversight of formal institutions (Levitsky and Helmke 2005, 11). This research also suggests that, as part of the strategic game between the executive and the legislature, legislators often resort to informal mechanisms to set some limits over the executive. This research shows that informal institutions ensure some sort of accountability in Argentina, yet not the right kind. Chapters 3 and 8 confirm that informal institutions serve as the glue that holds illicit corrupt exchanges together. By providing iteration, reputation, familiarity, and trust, elite cartel networks solve the credible commitment problems inherent in corrupt transactions and accentuated in a weakly institutionalized environment. While informal institutions can provide for some degree of accountability, the critical question is whether they reinforce the right kind of credible commitments that enhance democratic accountability (both electoral and intra-state).

In terms of intra-state accountability, this research shows that democratic mechanisms for legislative oversight of the executive (impeachments, inquiry committees, the review of public accounts, etc.) as well as the information produced by oversight agencies become political instruments in Argentina. They are bargaining chips that can be used to enhance individual legislators’ leverage vis-à-vis the executive, and eventually to sanction or threaten with sanctioning
the executive in case of non-compliance with informal agreements (particularistic payoffs or even illicit corrupt exchanges). As shown in previous chapters, there were many legislative threats to create inquiry committees, but only a few were actually created; also, the timing and treatment of audit reports by the legislature allowed to negotiate strategically with the executive; and written inquiries were used to open informal channels of communication and bargaining with the executive. Legislators rely on formal oversight instruments to signal the executive their capacity to impose sanctions (formal or other types of sanctions) and, therefore, renew or renegotiate informal agreements and particularistic payoffs. Legislators maintain the fiction of control and benefit from keeping a public image of greater independence.

Although vertical linkages between legislators and their voters are not formally severed in Argentina (reelection is possible), low reelection rates, party dynamics, and the influence of provincial interests undermine them in practice. As a result, there are de facto impediments for legislators to be accountable to voters. In this context of poor accountability, have informal mechanisms of oversight further contributed to the breakdown of accountability links between legislators and their constituents? These informal mechanisms could allow legislators to obtain pork and resources for delivering at the local level, be used for legislators to elevate their political profile by uncovering corruption scandals or threatening with imposing sanctions over the executive, and also help individual legislators to advance their political ambitions.11 In practice, however, the determinant role of provincial party bosses for having access to public office, the effects of electoral rules and party dynamics on the benefits that can be obtained from pork, informal rules that punish those who report corruption, and the increasingly significant delivery of discretionary payoffs directly from the executive seemed to constrain the potential benefits of these informal mechanisms to reconnect legislators with their voters. Legislators benefit from these exchanges, yet they hardly do it in ways that make them more responsive or accountable to their electorate.

Scandals affecting Argentina’s Congress took a toll on public perception of political representative institutions, including the legislature and political parties. The expression of public
discontent was clearly articulated in 2001 and has continued to permeate political life thereafter. Surveys show consistently low citizen trust in Congress and politicians.\textsuperscript{12} Although citizen participation through elections remains significant, it is doubtful that this is the result of some “reconnection” between politicians and their voters. Besides compulsory vote, informal clientelistic mechanisms for the discretionary distribution of payoffs contribute to mobilize voters while further hindering connections between legislators and citizens.

Furthermore, legislators have blocked or opposed measures aimed at promoting legislative transparency. Not surprisingly, roll-call votes were implemented quite late in Argentina, despite the existence of electronic voting boards that would have facilitated personal voting.\textsuperscript{13} Internal rules of both chambers do not include specific requirements in terms of transparency and information of legislative activities. Access to information requests have been routinely ignored and never responded.\textsuperscript{14} Legislators have consistently resisted providing information on committees’ activities or legislative staff, and to disclose their assets declarations.\textsuperscript{15} Interviewed legislators and experts clearly articulate legislators’ preference for avoiding transparency measures.\textsuperscript{16} Lack of legislative transparency obviously gives legislators more flexibility for using informal mechanisms and strategies for bargaining with the executive without public scrutiny.

4.2 From fiction to reality: Ideas for policy reform in Argentina

The findings of this research suggest different courses of action for both strengthening democratic accountability and advancing anticorruption reform in Argentina. Concerning accountability, one clear implication is that enhancing congressional capacity, or pouring more resources into the legislature, is not panacea for accountability without having the right incentives in place. In Argentina, legislators’ incentives for overseeing the executive and bureaucratic agencies, and to perform legislative duties are weak (Spiller & Tommassi 2000). Although the uninterrupted democratic experience might contribute over time to create the right incentives, additional reforms are needed to strengthen institutions so that legislators are motivated for performing effectively their oversight functions. Effective accountability demands a stronger connection between voters and representatives (Carey 2003; Rios-Cazares 2006,
2010) and lengthening the time horizon of legislators. Reforms of electoral rules and intra-party selection processes may contribute to strengthening the electoral link between voters and legislators, which is currently mediated by provincial party bosses. Moreover, legislators’ ability to set the margins of executive discretion can be improved by regulating narrowly the legislative instruments of the executive (Spiller & Tommassi 2000). Furthermore, enhancing legislative transparency can help limit the resort to informal mechanisms and practices that hinder formal oversight and accountability.

Several other implications from this research are relevant for anticorruption reform. Congress plays a critical role in curbing corruption by overseeing and monitoring the executive, but also by passing legislation that helps fight against corruption. Therefore, enhancing the role of Congress in policy making can contribute to advance further anticorruption reforms. For example, Congress may enhance the effectiveness of oversight bodies by enacting critical pieces of legislation still missing in Argentina (such as the regulation of the external audit body mandated by the 1994 Constitution), as well as complementary legislation (such as money laundering) to help prevent and investigate corruption. Also, modifications to the Law of Public Ethics could strengthen the role of the Anticorruption Office and the mechanisms to prevent and combat conflicts of interest.

Further reforms should also be aimed at enhancing the effectiveness of specialized oversight bodies. First, the role of the external audit agency can be strengthened by empowering it to file criminal complaints, reinforcing its ability to access information (e.g., warrants), and regulating the implementation and follow-up of audit recommendations. Second, the autonomy of the Anticorruption Office, and its ability to investigate corrupt practices, can be improved by strengthening mechanisms for the appointment of authorities, enhancing financial autonomy, and ensuring staff’s stability. Thirdly, setting mechanisms for improving the coordination of oversight bodies and their collaboration with the legislature and the judiciary will strengthen the linkages of the accountability system. Also, ensuring the confidentiality of the information oversight bodies receive from other control agencies can create incentives for sharing information. Fourth, cooperation between oversight bodies and civil society can be encouraged to strengthen the autonomy of oversight
bodies (e.g., civil society can monitor appointments or denounce attempts to neutralize oversight agencies) and provide institutional safeguards. Cooperation with civil society can also contribute to enhance oversight bodies’ capacities and responsiveness, providing information, raising issues for control bodies to investigate, helping monitor the executive’s follow-up to audit reports and to subsequent decisions taken by parliamentary committees, or building and maintaining pressure on the executive to enforce corrective actions based on oversight findings.

Effective sanctioning of corruption also depends on enforcement agents having the right incentives. Political influence constrains the ability of Argentine judges and prosecutors to effectively investigate and sanction corrupt practices committed by public officials. Reforms could include, first, reinvigorating the role of the National Prosecutor's Office for Administrative Investigations (FNIA) through normative changes and acknowledging the body as a specialized prosecution office with competencies to prosecute any corruption case regardless of the origins of the complaint. Coordination and communication between FNIA and public prosecutors can also be improved. Second, mechanisms for denouncing corruption can be enhanced by establishing specific channels for reporting corrupt practices committed in the legislature and the judiciary, and ensuring adequate legal protection for those who report cases. Protection of witnesses and complainants may help limit the enforcement of sanctions on those who dare to break the informal protection of corrupt activities, thus contributing to hinder the informal institutionalization of corruption. Thirdly, reducing the impunity of corruption crimes also requires specific reforms aimed at strengthening the investigative capacities of the judiciary and limiting delays in judicial processes. Clear deadlines for investigation, reforming the accounting experts body, enhancing the specialization of public prosecutors or appointing specialized prosecutors for corruption cases, reinforcing the role of the public prosecution office to advance corruption cases (e.g., setting internal guidelines for prosecuting corruption), and ensuring the public scrutiny of judicial proceedings (e.g., civil society access to court cases) are other promising venues of reform. An effective reform agenda can be structured around such proposals.
5. Directions for further research

This dissertation has advanced several questions in need of further investigation. Theoretically, further work should concentrate on the concept of accountability. It would be interesting to explore the still misunderstood causal linkages between accountability and closely related concepts such as transparency and access to information. Another important line of work is to develop the vertical political dimension of accountability that goes beyond elections in order to understand how political systems may become more responsive to citizens’ demands.

This research has mainly relied on a case study of Argentina and it merely introduced a comparative dimension in the concluding section. Advancing comparative research on legislative oversight and executive accountability is needed to understand the role of Latin American legislatures in shaping the region’s presidential democracies and contributing to the patterns and persistence of corrupt exchanges. Another venue for research is to explore the impact of enhanced legislative transparency on oversight by constraining legislators’ ability to engage in informal exchanges with the executive. This dissertation sustained that institutional commitment levels vary across policy areas. Although the effects of this variation are less relevant in settings with low institutional commitment, scattered evidence indicates that some policy areas command a stronger role of congress. Additional research is needed to gather systematic information that allows testing the strength of legislative oversight across policy areas and its implications for political corruption. Regarding the role of specialized oversight bodies, recommendations for further research include exploring the incipient collaboration between civil society and oversight agencies and its impact on strengthening executive accountability.

This dissertation yields predictions about the institutionalization of corruption through permissive rules. Data about conviction rates and recoveries in corruption cases is not easily available in the public domain. Further work is needed to collect systematic data about corruption cases in Latin America and elsewhere. As data becomes available, further research (single country and comparative studies) should be conducted to determine factors other than judicial capacity that affect the impunity of corrupt practices, and to understand how impunity contributes to the reproduction of complex
corrupt networks. Research should also focus on the entire accountability cycle, from the oversight of corrupt practices to their effective punishment, in order to understand the interactions between different accountability agents, explore opportunities for the development of informal strategies of monitoring and control, and assess their impact on accountability.

Ultimately, additional research in the field of accountability and political corruption must contribute to set more empirically-grounded assumptions for understanding and advancing the quality of democracy in the region.
Chapter 9. Endnotes

1 We assume institutional commitment levels to be fixed yet not constant, as there is within-country variation across policy areas. See Chapter 2.
2 In 1997, turnover was 66.9%, 76.4 in 1999, and 69.3 in 2001 (Marenco dos Santos 2006).
3 92.4% in 1997; 88% in 2000 (Marenco dos Santos 2006, 8).
4 Historical rates of parliamentary turnover stayed at around 50% (Desposato 2001). More recently, in 1990 the turnover rate was 58.3%; in 1998, 39.4%, and 39.6% in 2002 (Marenco dos Santos 2006).
5 Navia (2000) reports that, in 1993, 73% of incumbent deputies sought re-election and 70% did in 1997. Among deputies seeking re-election, 80% kept their seats in 1993, and the percentage of successful incumbents reached 86% in 1997. The turnover rate for the legislature was 31.2% in 2001 (Marenco Santos 2006).
6 It is affected by multiple factors, which vary from one country to another (Palanza 2009, 221).
7 Oversight by the legislature depends on legislators’ incentives and capabilities, but only with the right incentives will legislators invest in building oversight capacities and resources (Ch. 2). Thus, we can use these indicators of congressional capabilities to build a rough indicator of institutional commitment levels.
8 From 1988 through 2004, 15,341 resolutions of inquiries were introduced in the Chamber of Deputies and 3,097 in the Senate, and they were followed by committee hearings (1,495), oversight bills (344) and summons of cabinet ministers (353) (Lemos 2010, 24).
9 For example, special committees of inquiry have no punitive powers (Siavelis 2000, 28).
10 New legislation enacted by Congress in 1996 reinforced IFE’s independence and autonomy by completely dissociating the executive branch from its integration and functioning. On the role of IFE, see Acosta (2008). On access to information legislation, see Fox et al. (2007), Luna Pla (2007), Puddephatt (2009).
12 For the 1995-2009 period, only 3% of Argentines highly trusted Congress, while 72.5% showed little or no confidence in the institution (over a total of 16,858 cases). Cf. Latinobarometer (http://www.latinobarometro.org accessed May 1, 2011).
13 In the Senate, it has been implemented since 2004, although the electronic voting system and the provision for roll-call vote existed since 2003. In the Chamber of Deputies, where it was not included in the internal rules and was resisted by legislators, it has been implemented since 2006. Even small opposition parties rejected the proposal, as they were afraid that public record of their vote would limit the benefits they could informally extract from the ruling party (Author’s interview, Buenos Aires; July 4, 2006). See also Poder Ciudadano (2006). On legislative voting and accountability, see Carey (2009).
14 Just 18 of 30 information requests submitted by an NGO were responded in 2005 (Poder Ciudadano 2006, 62).
15 In 2005, only 25% of the senators and 6% of deputies disclosed their asset declaration (Poder Ciudadano 2006, 46, 51). Civil society’s efforts to access assets declarations have found strong resistance and they often had to resort to the judiciary to obtain the information. Regarding legislative staff, in the same year, only 1% of deputies published information on personnel working in their offices. (Poder Ciudadano op. cit., 46)
16 In 2004, for example, there were no written transcripts of committee’s meetings in the Senate (Author’s interview, June 18, 2009). The situation is even worse at the provincial level, where legislatures are hardly transparent (Author’s interview. Buenos Aires, July 4, 2006 and July 15, 2010). As one interviewee acknowledged “transparency does not win elections, so legislators do not have incentives for being transparent” (Author’s interview. Buenos Aires, August 5, 2005).
17 These policy proposals are further developed in Dassen and Guillán Montero (2009).
18 To avoid international sanctions, Congress passed money-laundering legislation in May 2011. Other anticorruption bills were discussed in the Chamber of Deputies on May 31, 2011. Showing the low priority that legislators attribute to anticorruption, the PJ bloc and a significant number of opposition legislators did not attend the session (see http://sincorrupcion.wordpress.com/2011/06/01/pasito-a-pasito/, accessed June 1, 2011).
Annex 1. Legislators’ optimization problem

(A) Legislators’ optimization problem before considering institutional commitment
Source: Rios Cazares (2010)

Max \( \sum_{k} \gamma_k M_k E_k \) \( \gamma_k E_k \geq 0 \)

s.t.

\[ \sum_{k} M_k C_k \delta_k \leq B \]

\[ M_k \leq N_k \]

\[ M_k \geq 0 \]

Lagrange function (Kuhn-Tucker conditions)

\[ Z = \sum_{k} (\gamma_k M_k E_k) + \lambda_1 \left( B - (\sum_{k} M_k C_k \delta_k) \right) + \lambda_{2k} (N_k - M_k) \]

First order conditions

I)

\[ \frac{\partial Z}{\partial M_k} = \gamma_k E_k - \lambda_1 C_k \delta_k - \lambda_{2k} \leq 0 \]

\[ \frac{\partial Z}{\partial M_k} = 0 \]

II)

\[ \frac{\partial Z}{\partial \lambda_1} = B - \sum_{k} M_k C_k \delta_k \geq 0 \]

\[ \frac{\partial Z}{\partial \lambda_1} = 0 \]

III)

\[ \frac{\partial Z}{\partial \lambda_{2k}} = N_k - M_k \geq 0 \]

\[ \frac{\partial Z}{\partial \lambda_{2k}} = 0 \]

Solution

I)

\[ \frac{\partial Z}{\partial M_k} = 0 \]

I.1)
If $M_k = 0$ then
\[ \frac{\partial Z}{\partial M_k} < 0 \]
\[ \gamma_k E_k - \lambda_1 C_k \delta_k - \lambda_2 k < 0 \]
\[ \gamma_k E_k < \lambda_1 C_k \delta_k + \lambda_2 k \]

I. 2)
If $M_k > 0$ then
\[ \frac{\partial Z}{\partial M_k} = 0 \]
\[ \gamma_k E_k - \lambda_1 C_k \delta_k - \lambda_2 k = 0 \]
\[ \gamma_k E_k = \lambda_1 C_k \delta_k + \lambda_2 k \]

II)
\[ \frac{\partial Z}{\partial \lambda_1} = 0 \]
\[ \text{If } \lambda_1 = 0 \text{ then } \frac{\partial Z}{\partial \lambda_1} > 0 \]
\[ B - \sum_{k} M_k C_k \delta_k > 0 \]
\[ B > \sum_{k} M_k C_k \delta_k \]
\[ \frac{\partial Z}{\partial \lambda_1} = 0 \]
\[ B - \sum_{k} M_k C_k \delta_k = 0 \]
\[ B = \sum_{k} M_k C_k \delta_k \]

Consider $k = 1, M_1 > 0$
y $\lambda_{11} > 0$
then $N_1 = M_1$
if $B = M_1 C_1 \delta_1$ then $M_k = 0$ for all $k > 1$

however,
if $B = M_1 C_1 \delta_1 + M_2 C_2 \delta_2$
for $k = 2, M_2 > 0$ y $\lambda_{22} > 0$
then $N_2 = M_2 y M_k = 0$ for all $k > 2$

thus, for $k = j \ 1 < j \leq K$

$M_k > 0 \iff B = M_1 C_1 \delta_1 + M_2 C_2 \delta_2 + \sum_{k>2} M_k C_k \delta_k$
\( \lambda_{2k} > 0 \) such that \( N_k = M_k \) only when potential benefits exceed potential cost (I.2 above), otherwise \( \lambda_{2k} = 0 \) such that \( N_k > M_k \) y \( M_k \geq 0 \)

III)

\[ \frac{\partial Z}{\partial \lambda_{2k}} = 0 \]

If \( \lambda_{2k} = 0 \) then \( \frac{\partial Z}{\partial \lambda_{2k}} > 0 \)

\[ N_k - M_k > 0 \]
\[ N_k, M_k \]

If \( \lambda_{2k} > 0 \) then \( \frac{\partial Z}{\partial \lambda_{2k}} = 0 \)

\[ N_k - M_k = 0 \]
\[ N_k = M_k \]

\( \$ \)  \( \$ \)

(B) Legislators’ optimization problem adapted to account for institutional commitment

Source: Author’s elaboration based on Rios-Cazares (2010)

Max \( \sum \gamma_k M_k E_k + \sum \gamma_k M_k G_k \) \( \gamma_k E_k \geq 0 \) and \( \gamma_k G_k \geq 0 \)

s.t.

\[ \sum M_k C_k \delta_k \leq B \]

\[ M_k \leq N_k \]
\[ M_k \geq 0 \]

Lagrange function (Kuhn-Tucker conditions)

\[ Z = \sum (\gamma_k M_k E_k) + \sum (\gamma_k M_k G_k) + \lambda_1 \{B - (\sum M_k C_k \delta_k)\} + \lambda_{2k} (N_k - M_k) \]

First order conditions

I)

\[ \frac{\partial Z}{\partial \lambda_{2k}} \]
\[
\begin{align*}
\quad = \gamma_k E_k + \gamma_k G_k - \lambda_1 C_k \delta_k - \lambda_{2k} \leq 0 \\
\frac{\partial}{\partial M_k}
\end{align*}
\]

Mk --- = 0
\[
\frac{\partial}{\partial M_k}
\]

Solution

I)
\[
\begin{align*}
\frac{\partial Z}{\partial M_k} \\
\text{Mk} --- = 0 \\
\frac{\partial}{\partial M_k}
\end{align*}
\]

I.1)
\[
\begin{align*}
\text{If } M_k = 0 \quad \text{then} \quad \frac{\partial Z}{\partial M_k} --- < 0 \\
\gamma_k E_k + \gamma_k G_k - \lambda_1 C_k \delta_k - \lambda_{2k} < 0 \\
\gamma_k E_k + G_k < \lambda_1 C_k \delta_k + \lambda_{2k} \\
\gamma_k (E_k + \gamma_k G_k) < \lambda_1 C_k \delta_k + \lambda_{2k}
\end{align*}
\]

I. 2)
\[
\begin{align*}
\text{If } M_k > 0 \quad \text{then} \quad \frac{\partial Z}{\partial M_k} --- = 0 \\
\gamma_k E_k + \gamma_k G_k - \lambda_1 C_k \delta_k - \lambda_{2k} = 0 \\
\gamma_k (E_k + G_k) = \lambda_1 C_k \delta_k + \lambda_{2k}
\end{align*}
\]
Annex 2. The congressional game of oversight and sanctioning

Figure 1 represents the structure of the congressional game. Legislators’ valuation of their institutional prerogatives defines their level of institutional commitment. Legislators’ decision to activate oversight mechanisms is critically dependent on their level of institutional commitment, \( G \). Each legislator values his/her decision rights at \( g_i \geq 0 \), where \( \Sigma g_i = G \), and \( g_i \) is the same across legislators. All things being equal, legislators react to executive actions whose adoption implied a violation to their decision rights, and they do so as a result of their institutional commitment level.

One way legislators can react is by sanctioning the executive, who has benefited from the encroachment of their decision rights. We assume that following effective oversight of the executive, there is immediate reversal of the policy at stake and the executive’s utility is affected.\(^1\) However, according to the previous discussion, when institutional commitment is low, the benefits of

\[ \begin{align*}
\text{OVERSEE} & \quad \text{SANCTION} \quad \text{NO SANCTION} \\
\text{DELEGATE OVERSIGHT} & \quad S \text{ (enforcement)} \quad \neg S \text{ (not enforcement)} \\
\text{NOT OVERSEE} & \quad \text{FICTION OF CONTROL} \quad \text{DO NOTHING}
\end{align*} \]

Ex = U \{\beta_k (O_k +/- \delta_k)\} - P
Leg = \sum g_i

Ex = U \{\beta_k (O_k +/- \delta_k)\}
Leg = \sum g_i

\[ \begin{align*}
S \text{ (enforcement)} & \quad \text{Ex} = U (\beta_k A_{ik}) - [(g_i + \epsilon)^* \\
& \quad \text{Leg: (MC+1)} = \sum (g_i, \epsilon) \\
& \quad (N-MC)-1 = 0
\end{align*} \]

\[ \begin{align*}
\neg S \text{ (not enforcement)} & \quad \text{Ex} = U (\beta_k A_{ik}) - R \\
& \quad \text{Leg} = 0 \\
& \quad \text{OR move to SANCTION}
\end{align*} \]

\[ \begin{align*}
\text{Ex} = U (\beta_k A_{ik}) \\
\text{Leg} = 0
\end{align*} \]
overseeing the executive are lower than the potential benefits and legislators would end up by not overseeing the executive. Under these circumstances, formal oversight models consider only the possibilities that legislators either do nothing or delegate oversight functions to other agents in order to reduce oversight costs. However, in weakly institutionalized systems, the situation worsens as the probability that delegated oversight agents will follow legislators’ directives is low. Moreover, the executive can affect oversight agencies’ incentives so that these are not aligned with those of legislators. This further reduces the probability that sanctions by specialized oversight agencies are enforced. Therefore, it is strategic for legislators to look for alternatives to formal sanctions in order to set some limits on the executive. Assuming actors can agree on simpler enforceable informal rules, we introduce an informal dimension and consider an alternative strategy for reducing legislators’ oversight costs.2

Legislators may affect the executive’s utility of persisting in non-compliance through external costs (e.g. reputation, public scandal, hindering policy-making) as well as by posing a credible threat that formal sanctions may be eventually enforced (for example, in particular policy areas of relevance for the legislature). To describe the equilibrium of this game, we must determine whether legislators are better off by investing their scarce resources in posing a credible oversight threat to the executive and bargaining (“fiction of control”) or just ignoring executive actions. Although the dominant strategies are different for each actor (the executive is always better off in the “do-nothing” scenario, while legislators are better off overseeing the executive), an informal bargaining equilibrium can be reached.

In the fiction of control equilibrium, legislators’ payoff is \[\Sigma (g, \varepsilon)\] and the executive’s payoff is \[U (\beta, A) - [(g + \varepsilon)* (MC+1)]\], where \(\varepsilon\) is the particularistic payoff to the minimum coalition of legislators, MC, required to prevent any effective legislative control initiative. Some legislators (MC+1) get some compensation for engaging in informal bargaining, and the rest of the legislators get 0 as they are not necessary for the informal agreement.3 For the executive, particularistic payoffs compensate for the effort made – the executive would not obtain its preferred policy outcomes if it does not negotiate and legislators are able to affect its utility (even if they do not have ability to enforce
formal sanctions, we assume they can do so through other means like going public and imposing reputational costs, R). If the executive decides to keep its preferred outcome without informal negotiation, legislators’ payoff falls to 0; in turn, if legislators decide not to negotiate, the executive has to resign its preferred outcome and risks its utility being affected by sanctions (either external costs, or eventually formal sanctions enforced by oversight agencies or congress).  

The fiction of control equilibrium would require certain conditions (i) legislators having minimal and viable resources to pose a real threat to the executive or affect its utility (B different from 0), and (ii) the executive being able to afford to compensate for legislators’ institutional commitment (i.e., buy off legislators). The executive’s contribution to each legislator must exceed his or her expected utility from oversight and sanction. Note that legislators’ valuations alone may be sufficient to render the executive unable to prevent sanction when legislators’ valuations are higher than what the executive has to offer. Indeed, if the payoffs required to pay off a minimum coalition exceed the executive’s budget, there is nothing the executive can do. Also, the executive will only accept the informal agreement if the total cost of buying off legislators is lower than the utility loss of reversing its preferred policy outcome and the associated penalty (P). Therefore, in a setting with low institutional commitment levels, it is cheaper for the executive to buy off support, as legislators’ willingness to defend their rights is lower.

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1 We assume that, when institutional commitment is sufficient for the benefits of oversight to overcome its costs, legislators are able to enforce sanctions following the activation of oversight mechanisms.

2 As presented in the theoretical framework, under weak formal institutions are more likely to interact in informal arenas. These informal institutions can be enforced through additional resources such as iteration, reputation, etc. See next section for an application to the informal corrupt market.

3 In this simple model, the executive would only need to compensate a group of legislators for the cost of their institutional commitment. However, in a more complex model, we would have to take into account other factors such as whether legislators receive any compensation from actors other than the executive, and the particular formal legislative procedures and requirements for specific oversight mechanisms. In the complex version of the game, the executive should compensate for any competing payoffs and would require support from a minimum coalition of legislators that allows neutralizing oversight mechanisms so they do not lead to their ultimate consequences (sanction) (if the decision rule is r, then \( nr^{-1} + 1 \) is required to stop sanction).

4 For example, legislator could decide to use the information produced by specialized oversight agencies, particularly audit agencies that act as legislators’ agents, to effectively sanction the executive in relevant policy areas or in particular cases of high public visibility in which legislators’ public image or utility could be adversely affected. Although rare in weakly institutionalized settings, these are possible results.
Annex 3. List of interviews

Interviews conducted by the author

1. Alejandro Bonvecchi, Universidad Torcuato di Tella
2. Alfredo Popritkin, Contadores Forenses
3. Ana María Mustapic, Universidad Torcuato di Tella
4. Andrea Pochak, Directora adjunta CELS
5. Andrés Rodriguez, Leader UCPN and union leader in the PJ Capital Federal
6. Aníbal Fernández, Minister of Interior
7. Aníbal Ibarra, Former Jefe de Gobierno de la Ciudad de Buenos Aires
8. Anselmo Sella, Director de Administración, Defensor del Pueblo de la Nación
9. Carlos Álvarez, Former Vice-President
10. Carlos Caramello, Director of Political Training, INCaP
11. Carlos Guido Freyes, Administrative Secretary of Congress
12. Carlos Manuel Garrido, Fiscal Nacional Investigaciones Administrativas, Ministerio Público
13. Carlos March, Fundación Avina
14. Carola Lung, Asesora legislativa, Senado de la Nación
15. Claudio Omar Moroni, Síndico General de la Nación
16. Damian Staffa, Auditoria General de la Nación
17. Daniel Arzadun, Scholar
18. Daniel Santoro, Diario Clarín
19. Delia Ferreira Rubio, Centro de Estudios en Políticas Públicas Aplicadas (CEPPA) and legislative staff
20. Eduardo Bertoni, Universidad de Palermo
21. Eduardo Guarna, Abogado
22. Eduardo Jauregui, Gerente Planificación del Control del Ente Regulador de la Ciudad
23. Enrique Peruzzotti, Universidad Torcuato Di Tella
24. Esteban Bullrich, Diputado Nacional, PRO
25. Ezequiel Nino, Asociación Civil por la Igualdad y la Justicia
26. Fabian Perechodnik, Director Programas Políticos, Conciencia
27. Fernanda Reyes, Diputada nacional, Coalición Cívica, Ciudad de Buenos Aires
28. Fernando Laborda, La Nación
29. Gerardo Berthin, Accountability and Anti-Corruption Project, Casals and Associates
30. Guillermo Schweinheim, Personal Organismos de Control
31. Gustavo Maurino, Asociación Civil por la Igualdad y la Justicia
32. Hugo Sutton, Síndico General Adjunto
33. Juan Antoniassi, Asociación Civil por la Igualdad y la Justicia
34. Juan Gonzalez Bertomeu, Asociación por los Derechos Civiles
35. Juan Manuel Olmos, Legislative candidate Ciudad de Buenos Aires
36. Juan Manuel Urtubey, Diputado Nacional, FPV-PJ, Salta
37. Kelly Olmos, PJ Capital Federal
38. Laura Alonso, Poder Ciudadano
39. Leandro Despouy, President, Auditoria General de la Nación
40. Luis Villanueva, Asociación Civil por la Igualdad y la Justicia
41. Marcela Lacueva Barragán, Subsecretaria de Reforma Institucional y Fortalecimiento de la Democracia, Jefatura del Gabinete de Ministros
42. Marcela Santos, Lawyer, Estudio Luis Moreno Ocampo
43. Marcelo Cavarozzi, Director, School of Politics and Government, Universidad de San Martín
44. Marcelo Leiras, Universidad de San Andrés
45. Marcelo Oliver, Fundación Creer y Crecer
46. Marcelo Ugo, Fundación El Otro
47. Margarita Stolbizer, Secretaria General, UCR Comite Nacional
48. María Baron, Fundación Directorio Legislativo
49. María Eugenia Estenssoro, Senadora, Coalición Cívica, Ciudad de Buenos Aires
50. Mario Pontaquarto, Former Administrative Secretary of the Senate
51. Marta Oyhanarte, Subsecretaria para la Reforma Institucional y el Fortalecimiento de la Democracia
52. Martín Lardone, Universidad Católica de Córdoba
53. Martín Montero, Director de Investigaciones, Oficina Anticorrupción
54. Martin Sabbatella, Mayor, Municipality of Moron (Buenos Aires Province)
55. Néstor Baraglío, Oficina Anticorrupción
56. Nicolás Dassen, Banco Interamericano de Desarrollo
57. Nicolás Gomez, Oficina Anticorrupción
58. Oscar H. Lamberto, Diputado Nacional, FPV-PJ, Santa Fe
59. Oscar Oszlak, CEDES
60. Osvaldo Mario Nemirovscí, Diputado Nacional, FPV-PJ, Rio Negro
61. Pablo Fontdevila, former congressman, PJ
62. Paula Oliveto, director, Escuela de Transparencia, ARI
63. Pedro Biscay, Cipce
64. Rafael Bielsa, Diputado Nacional, FPV-PJ, Ciudad de Buenos Aires; former Minister of Foreign Affairs
65. Ricardo Hermelo, Gallup Argentina
66. Roberto Saba, Asociación por los Derechos Civiles
67. Rodolfo Díaz, Former Minister of Labor
68. Santiago Corcuera, Juez de la Cámara Nacional Electoral
69. Sergio Berenzstein, Universidad Torcuato Di Tella
70. Silvia Lemos, Diputada Nacional, UCR, Mendoza

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