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2005

Federalism in Argentina -a translation into English of two articles by Dr. Jorge Reinaldo A. Vanossi, and of relevant portions of the Argentine Constitution, with introductory commentary by the translator

Robert S. Barker, *Duquesne University School of Law*



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BACKGROUND NOTES AND CONSTITUTIONAL PROVISIONS
CONCERNING ARGENTINE FEDERALISM

Robert S. Barker
Duquesne University Distinguished Professor of Law
and
former Visiting Fulbright Professor of Constitutional Law,
University of Buenos Aires
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The constitutional history of Argentina is fascinating, not least of all because federalism has been a persistent, and controversial, part of that history. Dr. Jorge Reinaldo Vanossi is one of the most accomplished and articulate experts on Argentine constitutionalism, and one of the most influential participants in the ongoing debate over the role of federalism in his country's past, present, and future. We at Duquesne are most fortunate to have him as a participant in this Seminar.

Because Dr. Vanossi's paper and oral presentation draw upon juridical-historical conditions and events that might not be familiar to everyone, the following background information is offered so that the reader might more fully appreciate the depth of Dr. Vanossi's thought and the significance of his arguments.

The debate between advocates of centralized authority and defenders of local autonomy has been a continuing feature of Argentine public life. Indeed, Argentina's history, including the development of the country's legal and constitutional systems, cannot be understood without an appreciation of the constant tensions between the city of Buenos Aires, on the one hand, and the rest of the country, on the other, as well as between and among the country's various provinces — tensions which have their roots in the colonial era.

In 1810, independence from Spain was declared by the *cabildo* (town council) of Buenos Aires, purportedly on behalf of the entire Viceroyalty of Río de la Plata, which included all of what is now Argentina. But the realities of the situation meant that the independence of all of Argentina (or of the rest of it, depending upon

one's point of view) was not declared until 1816, in the city of Tucumán, a provincial capital quite distant from Buenos Aires. Argentina's two Independence Days – May 25 for Buenos Aires and July 11 for the entire country – are illustrative not only of the particular rivalry between Buenos Aires and the interior, but also of the larger controversy over the proper allocation of governmental authority.

Throughout the first two-thirds of the nineteenth century, there was considerable dispute over the nature of the entity known as Argentina. Indeed, to refer to the country as a “nation”, or a “confederation”, or a “federation” was to place oneself on one side or another of a persistent (and often violent) debate. For several years after 1816, the country operated under a series of documents of constitutional or quasi-constitutional character, whose short lives were due primarily to the continuing differences over the proper balance between central and local authority.

In 1826, a Constitution was promulgated which purported to turn Argentina into a single, unitary state, with its former provinces serving merely as administrative subdivisions of the national government. That Constitution, associated in history with the name of Bernardino Rivadavia, who was the chief executive during its short life, was promptly repudiated by the provinces.

Thereafter, until 1852, the country was governed, at least formally, by a series of interprovincial treaties, the most important of which was the *Pacto Federal* of 1831. In fact, from the early 1830's until 1852, Argentina was dominated by the dictator Juan Manuel de Rosas, whose control, juridically based on interprovincial treaties and in reality dependent on armed force, was identified, at least in theory, with “confederation”.

In 1852, Rosas was defeated in battle, and a Constitutional Convention was called. The delegates to that Convention were strongly influenced by the writings of Juan Bautista Alberdi, whose knowledge of foreign constitutions—particularly those of the United States and many of its states—was extensive and profound. The document produced by the delegates entered into effect in 1853; however, the Province of Buenos Aires (including the city of Buenos Aires) remained outside the “Confederation” created by the new Constitution. After intermittent armed conflict and constant commercial warfare, a settlement was reached: the city of Buenos Aires was separated from the rest of the Province of Buenos Aires, the city was made the capital of the nation, and the Constitution was amended in 1860 to accommodate this manner of achieving national unification within a federal framework.

The "Constitution of 1853-1860", despite some interruptions, remains Argentina's Constitution to this day. Since 1860 it has undergone relatively slight amendment in 1866, 1898, and 1957, and extensive reform in 1994. This most recent reform deals with many subjects, including (according to its proponents) the enhancement of the autonomy of the provinces and the city of Buenos Aires. Dr. Vanossi was the most prominent and outspoken opponent of the calling of the Constitutional Convention which produced the 1994 reforms.

It is Dr. Vanossi's contention that Argentine federalism is today largely a fiction, as demonstrated by the fact that only the city of Buenos Aires and three or four of the country's provincial governments are financially viable, with the rest depending on large and continuing subsidies from the national government. The solution, he contends, is "regionalization", a process by which two or more provinces, through interprovincial agreements approved by the national Congress, would unite for certain specified governmental purposes. This process, Dr. Vanossi points out, has always been authorized by the country's Constitution.

The following are excerpts from the Argentine Constitution that are of particular relevance to the country's federal system and to the course of action recommended by Dr. Vanossi.

Art. 1. [FORM OF GOVERNMENT]

The Argentine Nation adopts for its government the representative, republican, federal form, as established in the present Constitution.

[Text as adopted in 1853]

. . .

Art. 5. [PROVINCIAL CONSTITUTIONS; CONDITIONS; FEDERAL GUARANTEE]

Each province shall dictate for itself a Constitution with a representative republican system, in accordance with the principles, declarations, and guarantees of the national Constitution, that assures the administration of justice, its municipal regime, and primary education. Under these conditions the federal Government guarantees to each province the enjoyment and exercise of these institutions.

[Text as reformed in 1860]

Art. 6. [FEDERAL INTERVENTION IN THE PROVINCES]

The federal Government may intervene in the territory of the provinces in order to guarantee the republican form of government, or to repel foreign invasions, and, upon the request of the [provincial] authorities, to support or reestablish them if they

have been overthrown by sedition or by invasion by another province.

[Text as reformed in 1860]

Art. 7. [VALIDITY OF PUBLIC ACTS AND JUDICIAL PROCEEDINGS OF THE PROVINCES]

The public acts and judicial proceedings of one province shall enjoy full faith in the other provinces; and the Congress may by general laws determine the manner of proving such acts and proceedings, and the legal effects which they shall produce.

[Text as adopted in 1853]

Art. 8. [PROVINCIAL CITIZENS. INTERPROVINCIAL EXTRADITION]

The citizens of each province shall enjoy all the rights, privileges, and immunities inherent in citizenship in the other provinces. The extradition of criminals is a reciprocal obligation among all the provinces.

[Text as adopted in 1853]

Art. 9. [NATIONAL CUSTOMS & TARRIFFS]

In all of the territory of the Nation there shall be no tariffs other than national ones, as shall be established by the Congress.

[Text as adopted in 1853, except that the word "Nation" replaced "Confederation" in 1860]

Art. 10. [FREEDOM OF INTERNAL MOVEMENT]

Goods produced or manufactured in the nation may move duty-free throughout the interior of the Republic, as may all manner of goods and merchandise which have passed through customs.

[Text as adopted in 1853]

Art. 11. [INTERPROVINCIAL TRANSIT DUTIES; PROHIBITION]

Goods produced or manufactured in the nation, and livestock of every kind, on passing from one province to another shall be free from all so-called transit duties, as also shall be carriages, ships, and beasts of burden; and no other duty of whatever name may be imposed in advance by reason of their transit of territory.

[Text as adopted in 1853]

Art. 12. [INTERPROVINCIAL TRANSIT OF SHIPS]

Ships bound for one province from another shall not be required to enter, anchor, or pay duties by reason of such transit, and in no case may preferences be given to one port over another by law or commercial regulation.

[Text as modified by the 1860 reform]

Art. 13. [NEW PROVINCES; PROVINCIAL INTEGRITY]

New provinces may be admitted to the Nation; but no province may be erected in the territory of another or others, nor may sev-

eral [provinces] be formed into a single one, without the consent of the legislatures of the provinces concerned and of the Congress.

[Text as adopted in 1853, except that by the 1860 reform the word "Confederation" was replaced by "Nation"]

. . .

Art. 23. [STATE OF SIEGE]

In case of internal disturbance or foreign attack which place in danger the operation of this Constitution and the authorities created by it, the province or territory where the disruption of order exists shall be declared in a state of siege, suspending constitutional guarantees there. But during this suspension the president of the Republic may not himself convict anyone or apply punishments. His power shall be limited in such case with respect to such persons to arresting them or moving them from one place to another in the Nation, if they do not prefer to leave Argentine territory.

[The 1860 reform replaced the word "Confederation" with "Nation"]

. . .

Art. 31. [SUPREMACY OF THE NATIONAL CONSTITUTION, LAWS, & TREATIES]

This Constitution, the laws of the Nation made by the Congress pursuant thereto and treaties with foreign powers are the supreme law of the Nation; and the authorities of each province shall be obligated to conform themselves to it; anything in the provincial laws or constitutions notwithstanding, except for the province of Buenos Aires the treaties ratified following the Pact of November 11, 1859.

[As modified in 1860, and with the elimination in 1994 of a scrivener's error.]

. . .

Art. 54. [COMPOSITION OF THE SENATE]

The Senate shall be composed of three senators for each province and three for the city of Buenos Aires, elected directly and together, with two seats going to that political party which obtains the largest number of votes and the remaining seat to that political party with the next-highest number of votes. Each senator shall have one vote.

[As amended in 1994. Prior to that amendment, the Senate was composed of two senators per province and two for the Federal Capital (i.e., the city of Buenos Aires), and all senators were elected by their respective legislatures.]

. . .

Art. 75. [POWERS OF CONGRESS]

The Congress shall have power:

1. To legislate with respect to customs. To establish import and export duties which, like the assessments on which they fall, shall be uniform throughout the Nation.

2. To impose indirect taxes as a power concurrent with that of the provinces. To impose direct taxes, for fixed periods, proportionately equal throughout the territory of the Nation, provided that the defense, common security, and general good of the State demand it. The taxes referred to in this [section], except for those which have a specific designation, may be shared [with the provinces].

A compact-law [*ley convenio*], based on agreements between the Nation and the provinces, shall establish regimes of co-participation in these taxes, guaranteeing automatic allocation of funds.

The distribution between and among the Nation, the provinces, and the city of Buenos Aires shall be carried out in direct relation to the powers, services, and functions of each one of them keeping in mind objective criteria of sharing; it shall be equitable, based on solidarity, and give priority to the attainment of an equivalent level of development, quality of life, and equality of opportunities in all of the national territory.

The compact-law shall originate in the Senate and shall be approved by an absolute majority of the totality of

Art. 75. [POWERS OF CONGRESS] (CONT.)

members of each House; it cannot be modified or regulated unilaterally and shall be approved by the provinces.

There shall be no transferral of powers, services, or functions without a corresponding reallocation of resources, approved by law of Congress when applicable and by the interested province or the city of Buenos Aires, as the case may be.

A federal fiscal organ shall be in charge of the control and enforcement of that which is established in this section, in such manner as the law may determine, which law must ensure the representation of all of the provinces and the city of Buenos Aires in its makeup.

[Text as modified in 1994]

3. To establish and modify specific designations of coparticipable [that is, shareable] resources, for a fixed period, by special law approved by an absolute majority of the totality of members of each House.

[Added in 1994]

. . .

19.

. . .

To provide for the harmonious growth of the Nation and the population of the territory; to promote differentiated policies which tend to equalize the unequal relative development of provinces and regions. For these initiatives, the Senate shall be the house of origin.

. . .

[Introduced in 1994]

. . .

Art. 121. [POWERS OF THE PROVINCES]

The provinces retain all power not delegated by this Constitution to the federal Government, as well as that which has been expressly reserved to them by special pacts at the time of their incorporation [into the regime of this Constitution].

[Article 104 of the 1860 text. Renumbered in 1994.]

Art. 122. [PROVINCIAL GOVERNMENTS]

[The provinces] are given their own local institutions and are ruled by them. They elect their own governors, their legislators, and other provincial officials, without the intervention of the federal Government.

[Article 105 of the 1860 text. Renumbered in 1994.]

Art. 123. [PROVINCIAL CONSTITUTIONS]

Each province shall establish its own Constitution, in conformity with article 5, assuring municipal autonomy and regulating its extent and content in institutional, political, administrative, economic, and financial matters.

[The reference to municipal autonomy was added in 1994, and the article was renumbered, having previously been article 106.]

Art. 124. [MULTIPROVINCIAL REGIONS; INTERNATIONAL AGREEMENTS]

The provinces may create regions for economic and social development and establish organs with powers to carry out their objectives, and they may also enter into international agreements insofar as these are not incompatible with the foreign policy of the Nation and do not affect the powers delegated to the federal Government or the public credit of the Nation, with notice [*conocimiento*] to the national Congress. The city of Buenos Aires shall have such regime as may be established to such effect.

To the provinces belongs the original dominion over the natural resources present within their territory.

[Introduced by the reform of 1994.]

Art. 125. [CONCURRENT POWERS]

The provinces may enter into partial treaties [among themselves] for purposes of the administration of justice, for economic purposes and for works of common utility, with notice to the federal Congress; and may promote industry, immigration, the construction of railroads and navigable canals, the colonization of provincially-owned lands, the introduction and establishment of new industries, the importation of foreign capital and the exploration of their rivers, by laws directed toward these ends, and with their own resources.

The provinces and the city of Buenos Aires may maintain organisms of social security for public employees and professionals; and may promote economic progress, human development, the generation of employment, education, science, learning, and culture.

[As modified in 1994.]

Art. 126. [POWERS DELEGATED TO THE NATION]

The provinces may not exercise power delegated to the Nation. They may not enter into partial treaties of a political character; nor issue laws concerning commerce or internal or external navigation; nor establish provincial customs; nor coin money; nor establish banks with the authority to issue currency, without authorization of the federal Congress; nor may they promulgate Civil, Commercial, Criminal, or Mining codes after Congress shall have adopted such codes; nor may they adopt laws regarding citizenship and naturalization, bankruptcy, counterfeiting of money or State documents; nor establish tonnage duties; nor arm warships or raise armies, except in case of foreign invasion or of a danger so imminent that it does not permit delay while the federal Government is informed; nor may they designate or receive foreign agents.

[As modified in 1994.]

Art. 127. [INTERPROVINCIAL CONFLICTS]

No province may declare or make war on another province. Their complaints shall be submitted to the Supreme Court of Justice and resolved by it. Hostilities [between provinces] are acts of civil war, classified as acts of sedition or riot, which the federal Government must repress in accordance with the law.

[Renumbered in 1994. Previously it was article 109.]

Art. 128. [PROVINCIAL GOVERNORS]

The governors of the provinces are natural agents of the federal Government for purposes of carrying into effect the Constitution and laws of the Nation.

[The 1860 reform substituted the word “Nation” for “Confederation”. The 1994 reform renumbered the article, which had previously been article 110.]

Art. 129. [CITY OF BUENOS AIRES: AUTONOMY]

The city of Buenos Aires shall have a regime of autonomous government, with its own powers of legislation and adjudication, and its own head of government, who shall be elected directly by the people of the city.

A law shall guarantee the interests of the national State as long as the city of Buenos Aires is the capital of the Nation.

Within the framework set forth in this article, the Congress of the Nation shall convoke the inhabitants of the city of Buenos Aires so that, through the representatives whom they shall elect for that purpose, they may enact the organizational statute for their institutions.

[Introduced in 1994.]

