

Republic of Argentina

Capital: Buenos Aires
(in Distrito Federal)

Population:
37.9 Million
(2002 est.)



Argentina*

(Argentine Republic)

VIVIANA PATRONI

1 HISTORY AND DEVELOPMENT OF FEDERALISM

Argentina is located in the southern cone of South America, stretching over an area of almost 2.8 million square kilometres and encompassing several very diverse geographical regions. The population of the country is just under 38 million.

The first Spanish settlement in the territories of what is now Argentina dates back to 1526. What was to become Argentina's main port and city, Buenos Aires, was founded in 1536 but due to repeated attacks by the native population was abandoned until 1580 when it was re-established. The colonization of the territory was mostly undertaken from neighbouring countries in the north.

The attempts to organize a national state began immediately after the first proclamation against Spanish rule and the overthrow of the Viceroy in May 1810. As with the rest of the continent, independence (which was declared at a congress of provincial representatives on 9 July 1816)

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was followed by a long period of civil wars, economic decline, the weakening of central authority, and the emergence of dictatorial regimes. In the particular case of Argentina, this was also accompanied by the loss of vast territories that until then had belonged to the Viceroyalty. While independence was sought as a means to advance the commercial opportunities the elites longed for, the institutional means to provide for the political stability required to achieve this objective proved highly elusive.

The economic aspirations of regional leaders sometimes came into conflict with the interests of the Buenos Aires elites. Conflict over the nature of the relationship between the provinces and Buenos Aires, and the particular way in which their diverse interests could come to constitute a nation acquired preeminence in the post-independence period. On one side of the conflict were those primarily, but not exclusively, represented by the Buenos Aires elite – the ‘unitarians’ – who believed that the most expedient form of organizing the country and guaranteeing political stability was through a strong central government and the elimination of provincial autonomy. The opposing forces were unified under the principle of federalism, maintaining that autonomy and self-government for the provinces was the only way of establishing political control in a country of such proportion and diversity.

The clash between these two forces characterized the first half-century of independence in the country. As unitarian forces in Buenos Aires pushed for the acceptance of legal reforms centralizing power, military leaders (*caudillos*) in the interior of the country fought to maintain their autonomy. As the struggle between unitarians and federalists intensified, any vestige of national authority vanished, and the attempts to unify the country under the aegis of Buenos Aires were not only unsuccessful but in many respects also generated deeper fractures. Nonetheless, several inter-provincial treaties signed during this period provided the basis for the eventual reconstruction of the country. Such was the case with the Federal Pact of 1831, which is considered to be the immediate legal antecedent to the constitution that eventually came to give institutional form to the state in Argentina. Nonetheless, the achievement of a general agreement on the possible political organization of the country was only reached in 1853, but at the cost of the secession of the province of Buenos Aires. This province sanctioned its own constitution in 1854 and retained its independence until the defeat of its army by the military forces of the Argentine confederation in 1859. Although defeated in battle, the need to preserve the interests of Buenos Aires explained the reforms introduced to the new constitution in 1860.

Notably, the unification of the country with the constitution of 1853 coincided with the accentuation of the economic imbalances between Buenos Aires and the rest of the country, as the fertile region surrounding the city – known as the *pampas* – gave rise to the cattle and cereal

economies that propelled Argentina's insertion into the expanding world economy of the second half of the nineteenth century. Growing economic opportunities for Argentine exports in international markets added, therefore, an extra premium in achieving the final consolidation of the country's territory and making the power of a national state effective. However, the basis for federalism was weak then and became even weaker as economic inequality among the regions grew. Power came to be increasingly centralized in Buenos Aires, and the dictatorial regimes that became a common feature in the political history of the country continued to centralize the power of the national government.

By the 1890s Argentina was a representative democracy. Politics, however, remained mostly an elite affair either because fraudulent practices restricted effective participation or because a large proportion of the electorate was foreign born. Early in the twentieth century, though, growing working class mobilization and middle class demands for political reform prompted changes in electoral laws that made the political process more inclusive. While these changes did not directly threaten the interests of the elite, the effect of the Depression of 1929 significantly altered the basis for the consensus that had allowed the opening up of the political arena. In 1930 conservative forces put an end to the democratic practices that had marked Argentina as a special case in the context of Latin America and initiated a period characterized by authoritarian rule, limited democracy and political instability that lasted until 1983.

The period of 'oligarchic' rule initiated in 1930 was interrupted by the military coup of 1943 which provided the political platform from which Juan Domingo Perón was to emerge as the most powerful figure of the period. In the decade between his rise to power and the military coup that deposed him in 1955, Perón altered politics in the country in a radical way, particularly by transforming the working class and its organizations into key political players. Far from bringing back the order the military had sought, displacing Perón from power only contributed to further weakening the state's legitimacy and increasing polarization. Not only did Argentina experience recurring institutional crisis, but political conflict also became increasingly violent. Until 1983 political instability was one of the main features of the country and military regimes became a common feature of Argentine politics. Moreover, military regimes acquired new characteristics, growing increasingly detached from any kind of constitutional restriction in the exercise of power. Thus, while until the 1960s military regimes had temporarily suspended important aspects of the constitutional order of the country, for example by dissolving the Congress, the last two dictatorships (1966–1973 and 1976–1983) gave themselves their own legal framework, in effect replacing, and not simply suspending, the

constitution. This reached catastrophic proportions during the last dictatorship and the use of state terror for the suppression of opposition and the curtailment of all civil and political rights were its most obvious manifestation.

In 1983 the Argentinean military handed over power to civilian authorities. The period since 1983, however, has coincided with a process of economic decline that has fostered a growing distrust of politicians and the democratic institutions that in the view of most people have allowed them to rule in arbitrary and corrupt ways. A massive uprising in December 2001 forced the resignation of the elected government but, contrary to early assessments regarding the scope and nature of the crisis unfolding at that time, a final breakdown of existing political institutions was averted. Moreover, the election of a new President in 2003 from the Peronist party and the support he has managed to secure for several of his initiatives indicate the strong backing that traditional political forces in Argentina still enjoy.

2 CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

The constitution of 1853 plus changes made in 1860, 1866, 1880, 1898, 1957 and 1994 together form the body of the current constitution of the country. Other reforms to the constitutions have been short-lived, as was the case with the reform of 1949 under the presidency of Juan Domingo Perón (declared invalid in 1956), and the reform of 1972.

The constitution of Argentina establishes a republican, representative and federal form of government. As a republic, the constitution institutes a clear division of power among the Executive, Legislative and Judicial branches of government. As a federation, the constitution creates the legal framework for the co-existence of a national federal government and the provincial governments and the city of Buenos Aires. According to the constitution, the provinces are autonomous bodies and as such are organized through their own provincial constitutions, which regulate the existence of local political institutions. To be valid, though, these constitutions must respect the representative and republican principles embedded within the national constitution (Article 5). Nonetheless, the provinces are not sovereign since they are bound by federal legislation (Article 31) and are subject to federal control (Article 6). Moreover, under certain conditions – for example, abrogation of republican forms of government within a province, foreign intervention, sedition, or aggression against another province – the federal government can intervene in the provinces, including the removal and

replacement of provincial authorities. Provinces retain all the power not delegated by the national constitution to the federal government and select their provincial executive, legislative and other government functionaries.

Title II, Articles 121–128 of the constitution delimit the powers assigned to the federal and provincial governments. The former has explicit and exclusive power to declare a state of siege, conduct foreign affairs and defence, set custom duties, regulate navigation in domestic rivers and the establishments of ports, print money, regulate commercial relations among provinces and with other countries, enact Civil, Commercial and Penal Codes and regulations pertaining to mining, and legislate over immigration and nationalization (Article 126). It also possesses the implicit power to exercise exclusive authority in areas where provincial provisions could interfere with the prerogatives delegated to the federal government (Article 75(32)).

Article 123 of the national constitution specifies that provinces have the power to sanction their own constitutions, select provincial government officers, monitor the implementation of environmental legislation, and preserve the primary right over natural resources in their territories. There are also areas in which the federal and provincial governments share power, in particular on issues related to the extension of the railway system and navigation channels, and the design of economic policy (Articles 124(1) and 125).

The federal legislative power resides in the National Congress, located in the Federal District in Buenos Aires. The National Congress is a bicameral body composed of the Chamber of National Deputies (*Diputados de la Nación*) and the Senate which is comprised of representatives elected from the provinces and the city of Buenos Aires (Article 44). In addition to the powers listed above, Congress is also responsible for the approval of a national budget. In some circumstances both chambers convene together, receiving in this case the name of Legislative Assembly. The constitutional reform of 1994 established the autonomy of the city of Buenos Aires (Article 129), therefore it will retain the power to elect representatives to the legislative bodies even if it were no longer to be the capital of the federation.

National deputies are elected directly through simple plurality by voters in the provinces and in the city of Buenos Aires. Deputies are elected for a period of four years. Half the chamber must stand for election every two years. The constitution does not specify how the Chamber of Deputies should be organized but there are regulations within this chamber that establish the existence of a President, a first and second Deputy President, two secretaries and two assistant secretaries elected by members of the Chamber.

There are three Senators for each province and the city of Buenos Aires, two of whom are from the party with the largest number of votes and one of whom is from the party with the second largest number. Senators are elected directly by voters in these districts for a period of six years. One-third of the Senate must stand for election every two years. The constitution establishes that the Vice-President of the country is the President of the Senate. Deputies and Senators must have been born in the province they represent or have at least two years of residence, and both can serve more than one term in office.

Over-representation of less populated provinces in both chambers is a key characteristic in the composition of the Congress in Argentina. In fact, growing proportional representation of peripheral provinces was accentuated by the introduction of new provisions in the constitution that added three deputies to each province in addition to those elected on the basis of population size. Moreover, no province can have less than five deputies in the lower chamber. Over-representation of the less populated provinces is even more marked in the Senate.

Article 14 sets out Argentina's financial arrangements. This article states that the federal government will raise the necessary resources to finance national expenditures with the funds accruing to it from export and import duties, the sale or lease of federal public land, the revenue from postal services, the taxes approved by Congress, and loans contracted for the country and approved by Congress in case of national emergencies or when required by public enterprises. With respect to the power of taxation, the constitution stipulates in Article 75(2) that Congress shares with the provinces the power to set indirect taxes. Congress also has the power to impose direct levies for a specified period of time.

The reform of 1994 explicitly mentions that the taxes raised in accordance with these regulations are to be distributed among the federal government, the provinces and the city of Buenos Aires – except for those earmarked for specific purposes – in a fashion that protects the principles of equity and solidarity, and that promotes similar degrees of development. Also, the reform of 1994 establishes that the remittance of these funds will be carried out in agreement with the terms of legal accords between the national government and the provinces. Notwithstanding the existence of several formal inter-governmental agreements, in addition to the changes introduced in the 1994 constitution, fiscal federalism is far from having been regularized. Thus, although the 1994 constitution stated that a new co-participation law establishing the terms for resource sharing between federal and provincial government should be passed by 1996, this still remains to be done. In practice there has been a strong incentive to use inter-governmental transfers to secure

provincial support for national policies, a fact that explains the complex and highly discretionary nature of fiscal transfers.

Article 116 of the constitution designates the Supreme Court of Justice and Lower Federal Tribunals as having the power to resolve any dispute concerning the interpretation of the constitution, the laws promulgated by Congress, and international treaties. The Supreme Court is also responsible for settling disputes among the provinces (Article 127).

Provisions for the “reform” (rather than amendment) of the constitution are outlined in Article 30. According to this article, it is Congress that proclaims the need for reform through an initiative that requires at least two-thirds of the votes of its members. The constitution does not clarify whether this initiative must take the form of a bill, but most constitutional reforms have been preceded by the enactment of a law promulgated by Congress. Although Congress then declares the need for constitutional reform, the process itself can only be undertaken by a Constituent Assembly. Members of this Constituent Assembly are always elected by popular vote. Congress also establishes the electoral system through which Assembly members are to be selected and their number.

The reform of 1994 introduced a number of provisions aimed at strengthening the federal system in Argentina in an attempt to reverse the “defederalization” of the country. Concern about this “defederalization” was the main motivation in the congressional debate leading to the promulgation of the law calling for the constitutional convention (Law 24.309). As a result of these provisions, the provinces have become the recipients of new powers with respect to the monitoring of the environment, participation in the institutions responsible for the control of public services, the capacity to create special regions with the goal of promoting economic and social development, and the possibility of participating in international agreements with the knowledge of Congress. But the new constitution also allowed for the reelection of the President and thus it is difficult to separate the process leading to it from the political ambitions of the then President Carlos Menem (1989–1999).

It is important to note that the relationship between the federal government and the provinces has been a major area of tension since 1983. President Fernando De la Rúa (1999–2001) faced continuous conflict with Governors over fiscal transfers and the size of provincial debts. As happened under the administration of Raúl Alfonsín (1983–1989), he was forced to find terms of negotiation with a majority of Governors from the opposition Peronist party and thus partisan politics was a key component in the development of inter-governmental conflict. While the control of the federal government

by a Peronist administration, as was the case under the provisional government of Eduardo Duhalde (2002–03) and now with President Kirchner, reduces the weight of party politics in the relationship between the federal and provincial governments, it certainly does not eliminate it. In the first place, the Peronist party itself is deeply divided, and regionalism plays no small role in the configuration of its various contending factions. But equally important, key economic areas of conflict – in particular the size of provincial deficits and debts – are not going to be resolved easily under the current difficult economic conditions of the country.

3 RECENT POLITICAL DYNAMICS

With the return to democracy in Argentina in 1983 the country entered a period of constitutional stability virtually unprecedented in its history. However, the country has also experienced major economic dislocations over this period, and poverty and unemployment have become a major concern.

While the crisis in December 2001 did not result in the reversion of this process, it nonetheless made painfully evident the various deficits that still need addressing. In this sense, the challenges of the new presidency of Néstor Kirchner are not only limited to solving the pressing economic and social problems that afflict the country. Finding the means to address successfully the crisis of representation that permeates key political institutions in Argentina is a primary and arduous task that cannot be delayed.

Federalism has become a key area of debate, not only for its significance in terms of consolidating democratic institutions, but also because of the changes implemented in the structure of the state and the delivery of public services. Three issues are particularly relevant in understanding the shortcomings of federalism in Argentina. One is the political implications of the over-representation of smaller provinces in the National Congress. Because of the power Governors and local party bosses exercise over the drafting of the list of party candidates to the legislature, they also enjoy an inordinate amount of power over the candidates' political future. As a result, provincial deputies and Senators tend to vote en bloc according to the interests of the Governor of the province they represent and, thus, provincial Governors played a major role in federal politics. The same dynamics gives small provinces a strategic role in Congress since they are proportionally over-represented. This *de facto* power in the hands of Governors, usually aggregated through inter-provincial alliances, overrides the power formally vested in the National Legislature and means that most na-

tional policy must be negotiated with provincial Governors. In turn, the resources secured through these negotiations with the federal government provide the means to further entrench the power of provincial party leaderships.

Thus, very closely connected to the power of Governors is the discretionary use of fiscal transfers through which the national executive attempts to consolidate alliances with sub-national units in the pursuit of its objectives and targets. This is another key problem that the federal government will need to address, particularly as it will become more critical to increase its ability to find a resolution to the serious fiscal difficulties faced by the provinces. However, conceiving of alternative institutional arrangements to tackle these problems will only provide partial relief to the dilemmas of federalism in Argentina if no serious attempt is made to balance the country's deep regional inequalities. Thus, the third area of concern is the capacity of federal institutions to respond to the diverse developmental needs of the country's various regions. In this sense, a national development plan will have to transcend provincial divisions in order to make regional economies viable.

Relations between the national government and the provinces have been a delicate issue for all democratic regimes since 1983. The spirit of the reforms of 1994 was to strengthen the federal system in the expectation that this would also contribute to the promotion of democracy. The task has not been easy, however, and conflict has remained a key aspect of the relationship between the federal government and the provinces, particularly over financial and budgetary issues.

Against the hopes created originally by the reforms introduced early in the 1990s, Argentina entered the new century as a country in collapse. Unprecedented levels of poverty and unemployment, deteriorating public services, recession and a foreign debt crisis formed the backdrop to a profound questioning of the meaning of and limits to democracy in Argentina. Nonetheless, the growing economic plight of the country has not obscured the manifest desire of its citizens to defend and extend the democratic rights secured through what has been a painful process of transformation.

4 SOURCES FOR FURTHER INFORMATION

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Table I
Political and Geographic Indicators

Capital city	Buenos Aires
Number and type of constituent units	<p>23 <i>Provinces</i>: Buenos Aires, Catamarca, Chaco, Chubut, Córdoba, Corrientes, Entre Ríos, Formosa, Jujuy, La Pampa, La Rioja, Mendoza, Misiones, Neuquén, Río Negro, Salta, San Juan, San Luis, Santa Cruz, Santa Fe, Santiago del Estero, Tucumán, Tierra del Fuego</p> <p>1 <i>Federal District</i>: autonomous city of Buenos Aires</p> <p>5 <i>Regions</i>: Andina, Centro, Litoral, Norte, Patagonia (Note: Argentina also claims sovereignty over the Falkland/Malvinas Islands, South Georgia, the South Sandwich Islands and part of Antarctica.)</p>
Official language(s)	Spanish
Area	2 780 092 km ²
Area – Largest constituent unit	(province of) Buenos Aires (307 571 km ²)
Area – Smallest constituent unit	Tierra del Fuego – 21 263 km ² (Federal District – 200 km ²)
Total population	37 928 000 (2002)
Population by constituent unit (% of total population)	<p>Buenos Aires 38.1%, Córdoba 8.5%, Santa Fe 8.3%, Autonomous City of Buenos Aires 7.7%, Mendoza 4.3%, Tucumán 3.7%, Entre Ríos 3.2%, Salta 3.0%, Chaco 2.7%, Misiones 2.7%, Corrientes 2.6%, Santiago del Estero 2.2%, Jujuy 1.7%, San Juan 1.7%, Río Negro 1.5%, Neuquén 1.3%, Formosa 1.3%, Chubut 1.1%, San Luis 1.0%, Catamarca 0.9%, La Pampa 0.8%, La Rioja 0.8%, Santa Cruz 0.5%, Tierra del Fuego 0.3%</p>
Political system – federal	Federal Republic
Head of state – federal	President Néstor Kirchner (2003), Partido Justicialista (Justicialist Party, Peronist). Elected on a ticket with a Vice-President.
Head of government – federal	President Néstor Kirchner
Government structure – federal	<p>Bicameral: National Congress (Congreso Nacional). <i>Upper House</i> – Senate, 72 seats. Senators are elected for a 6-year term, and can seek re-election indefinitely.</p> <p><i>Lower House</i> – Chamber of Deputies, 257 seats. One-half of the members are elected every 2 years to 4-year terms.</p>
Number of representatives in lower house of federal government of most populated constituent unit	Buenos Aires – 70

Table I (continued)

Number of representatives in lower house of federal government for least populated constituent unit	Tierra del Fuego: 5
Distribution of representation in upper house of federal government	There are 3 Senators for each province and the city of Buenos Aires (2 of whom are from the party with the largest number of votes and 1 of whom is from the party with the second largest number). Beginning in 2001, every 2 years, one-third of the 72 members are elected to a 6-year term by direct vote.
Distribution of powers	The constitution assigns 28 exclusive powers to the federal government that include foreign affairs, defence, citizenship, international commerce and customs, internal trade, finance, banking, currency, coinage, and nationwide public services. It also gives the national government power over areas such as secondary and higher education, economic planning and the enactment of the criminal, civil, commercial, mining, labour and social security codes. Provinces are responsible for education, public health, provincial justice, police, infrastructure, social welfare, natural resources within their territory.
Residual powers	Residual powers belong to the provinces.
Constitutional court (highest court dealing with constitutional matters)	Supreme Court of Justice (Corte Suprema). The 9 Supreme Court judges are appointed by the President with approval by the Senate.
Political system of constituent units	Approximately two-thirds of provincial legislatures are unicameral and the rest are bicameral. Each are directly elected to serve a 4-year term. In the Federal District the national Congress exercises exclusive legislation.
Head of government – constituent units	Governor. Directly elected to serve a 4-year term.

Table II
Economic and Social Indicators

GDP	us\$401.9 + billion at PPP (2002)
GDP per capita	us\$10 594 at PPP (2002)
National debt (external)	us\$136.7 billion (2001)
Sub-national debt	us\$14 356 million (as of 30 June 2002)
National unemployment rate	15.6% (May 2003)
Constituent unit with highest unemployment rate	Jujuy – 20.5% (May 2003)
Constituent unit with lowest unemployment rate	Santa Cruz – 2.7% (May 2003)
Adult literacy rate	96.9% (2001) ¹
National expenditures on education as % of GDP	4.0% (1998–2000)
Life expectancy in years	74
Federal government revenues – from taxes and related sources	us\$13.4 billion (est. 2002)
Constituent unit revenues – from taxes and related sources	us\$3.2 billion (est. 2002)
Federal transfers to constituent units	us\$5.6 billion (est. 2002)
Equalization mechanisms	Federal transfers are based on a tax-sharing regime called “Coparticipación Federal de Impuestos.”

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Note

- 1 Age 15 and above.