Republic of Argentina
Antonio M. Hernandez

INTRODUCTION

General

Argentina is a federal republic located at the extreme south of the South American continent. It is a large country, with a continental land surface of 2.8 million square kilometres. There is substantial asymmetry in the geographic size of the constituent provinces, ranging from Buenos Aires, with an area of 307,571 square kilometres, to the much smaller provinces of Tucuman and Tierra del Fuego, with surface areas of 22,524 and 21,263 square kilometres, respectively. The autonomous city of Buenos Aires is even smaller, with a land area of only 200 square kilometres. There are also substantial differences in population. Of a total population estimated at 37.5 million in 2005,[1] more than 14 million reside in the province of Buenos Aires, and more than three million people live in each of three other areas: the provinces of Cordoba and Santa Fe and the city of Buenos Aires. By contrast, the population of the province of Tierra del Fuego is just over 100,000 people. In 2004 Argentina's per capita GDP was US$12,000, representing a real growth rate of just over 8 percent for the second successive year, after the disastrous year of 2002, in which the GDP fell by 14.7 percent.[2]

Argentina's population is relatively homogenous, apart from a small proportion of indigenous people[3] whose presence in the land before the creation of the state was recognised in the constitutional changes of 1994, which protected their identity and culture.[4] The area that is now Argentina was colonized by Spain in the sixteenth century. The provinces of the Rio de la Plata declared their independence from Spain in 1816, but the people of Argentina still overwhelmingly use the Spanish language, adhere to the Roman Catholic Church, and share a common culture. Like much of the rest of South America, Argentina has experienced waves of immigration, but much of it, particularly around the end of the nineteenth century and the beginning of the twentieth century, emanated from Italy and Spain.[5]

The Constitution of Argentina, originally promulgated in 1853, reflects the dominant influence of the Constitution of the United States in the design of both the federal system and the institutions of government, in combination with a legal system rooted in the civil law tradition. The federation now comprises the federal sphere of government, 23 provinces, and the autonomous city of Buenos Aires,[6] which is also the federal capital. The Constitution divides power between these places for federal purposes. Argentina is a federation that was formed by bringing together pre-existing polities; consequently, as is often the case in federations formed in this way, the provinces also have their own constitutions and governing institutions. The institutional structure of government in both spheres involves a separation of powers between the executive, legislative, and judicial branches, with direct election of the federal president, the provincial governors, and the head of government of the autonomous city of Buenos Aires. The Constitution provides procedures for direct democracy as well, through the initiative and referendum, but they are not used.[7]

Despite these formal features of the federal system, throughout its history Argentina has experienced a high degree of concentration of power in the national executive based in the capital of Buenos Aires, which is also the focus of economic and financial power. This phenomenon, in turn, has had implications both for the operation of democratic institutions and for the operation of federalism. Although, in part, the causes of this power concentration lie in problems of institutional design, which might be remedied by legal change, they are mainly attributable to a lack of respect for constitutional principles and the rule of law, for which remedies are less readily available.[8]

As is the case with other countries in Latin America, Argentina has suffered from serious and continuing political instability, manifested most obviously in the series of military coups d'état that took place between 1930 and 1983, disturbing both democracy and the constitutional order.[9] Yet even after Argentina returned to a democratic form of government in 1983, it experienced a succession of political,

economic, and social crises,[10] triggering repeated use of the Constitution's emergency provisions.[11] This long history of instability has exacerbated the imbalance of power within each jurisdiction and between the spheres of government. Real political power lies in the hands of the president and the provincial governors (within their respective spheres); at the same time, however, the president and national government dominate the governors and the provinces. The resultant concentration of power in the president, which has been termed "hyperpresidentialism,"[12] militates against both federalism and republicanism, as the latter is understood in Argentina.[13]

History

The first national government was formed in Argentina in 1810, and independence from Spain was declared in 1816. However, Argentina did not become a federation until 1853. The adoption of a federal form of government was the outcome of a series of civil wars fought in Argentina between the *unitarios* and the *federales* from 1820 to 1853. Federalism emerged as the only form of government that might resolve the political, economic, and social conflicts in a country of this geographic size. The *unitarios* advocated a unitary state and were centred in urban areas, particularly the city of Buenos Aires. The *federales* were supported by the masses, or *montoneras*, in the rest of the country and were led by provincial strongmen, or *caudillos*. There is a resemblance between the *caudillos* and some contemporary provincial bosses.

The 14 provinces that predated the establishment of the federal state[14] were created between 1815 and 1834 and arose from the cities founded by the Spanish conquerors. Through interprovincial pacts, these provinces laid the foundations for Argentine federalism, which was formalized in the federal Constitution in 1853 as subsequently amended, in important respects, in 1860. The prior existence of the provinces, and their role in creating the federal state and conferring powers upon it, is still reflected in the preamble to the Constitution: "We the representatives of the people of the Argentine nation, gathered in General Constituent Assembly by the will and election of the Provinces which compose it."[15]

It is possible to identify four main stages in the establishment and evolution of the federal system of Argentina. These are outlined briefly below in order to provide a context for examining the country's institutional arrangements.

The first stage covers the making of the Constitution of 1853 itself. In 1852 General Juan Manuel de Rosas, the governor of the province of Buenos Aires and in whose hands political power had been concentrated for a period of 20 years, was defeated in the battle of Urquiza. A constituent assembly was convened in which 13 provinces were represented by two representatives each, but without, significantly, representation from the province of Buenos Aires. The convention had before it, as a model, the text of the Constitution of the United States. In the end, however, it departed from that model in some respects, following the ideas of Juan Bautista Alberdi, now recognized as the father of Argentine public law.[16] In the first place, the federation for which the Constitution of 1853 provided was more centralized than was that of the United States. For example, power to enact the principal substantive legislative codes was conferred upon the federal Congress, together with power to review provincial constitutions, to intervene in provincial affairs, and to impeach the governors of the provinces. Drawing on the 1833 Constitution of Chile, Alberdi also envisaged a somewhat stronger role for the president of Argentina than that enjoyed by the president of the United States.

In other respects, however, the Constitution of Argentina organized power in much the same way as did that of the United States. It established a federal state with distinct spheres of government; allocated particular powers to the federal sphere expressly or by necessary implication, leaving the residue to the provinces; and allowed the provinces substantial autonomy in relation to their institutional, political, financial, and administrative affairs. A senate was established as a core federal organ, in which each province was equally represented by two senators who were appointed by the legislative branch of each province. Despite the absence of its representatives from the Constituent Assembly, the city of Buenos Aires was nominated as the federal capital of Argentina and, as the capital, was accorded equal representation in the Senate.

The beginning of the second stage of Argentinian federalism followed immediately, with the secession of the province of Buenos Aires. In particular, the province was unwilling to surrender to the federation either the authority to collect the valuable customs duties or the port of the city of Buenos Aires from which the duties were derived. Civil war broke out again, culminating in the battle of Cepeda, which was won by General Justo José de Urquiza in 1859 on behalf of the federation. The subsequent Union Pact of San José de Flores, entered into on 11 November 1859, integrated the province of Buenos Aires into the federation and made some changes to the Constitution without, however, settling the questions of the customs duties or of the location of the capital.

The changes were important, nevertheless, contributing to some decentralization of the federal structure. Congress lost the power to review provincial constitutions and to impeach provincial governors. The circumstances in which the federation could unilaterally intervene in the affairs of the provinces were reduced to two: to repel foreign invasions and to guarantee the republican system. Intervention was also possible at the request of authorities of a province on the grounds that it faced sedition or invasion from another province. In a gesture towards the continuing disagreement over the location of the capital, another change to the Constitution extended the principle of territorial integrity that applied to the provinces to the territory of the capital as well, requiring the latter to be established by a law of Congress on territory ceded by the legislature of the province concerned.

These two outstanding questions were resolved over the course of the next 20 years, sometimes described as the period of national organization. Continuing conflict between Buenos Aires and the rest of the country culminated in 1862 in the battle of Pavón. The victor, General Bartolome Mitre of Buenos Aires, became president of Argentina, sponsoring a further constitutional change in 1866, transferring customs duties to the federal sphere. Finally, in 1880, Buenos Aires was established as the federal capital, following agreement by the legislature of the province of Buenos Aires, which was once more defeated in battle.

For more than 50 years, from 1930 to 1983, Argentina experienced a series of dictatorships of various kinds, interspersed with occasional periods of electoral democracy.[17] These are not conditions in which the federal principle thrives, and, self-evidently, some of the institutional problems of Argentinian government were exacerbated at this time.[18] With hindsight, however, it is possible to see that this period marked a transition in the long-term character of Argentinian federalism, from "dual" or "competitive" federalism to one that is, in practice, more "cooperative."[19] This third stage in the evolution of Argentinian federalism was characterized by a greater willingness to take advantage of the constitutional authority to "enter into partial agreements aimed at the administration of justice, economic interests and to work in pursuit of their common interests, with notification being filed with the Federal Congress."[20] The movement began hesitantly in 1948, but recourse to cooperation became increasingly marked during the decade of the 1950s to deal with interprovincial problems, including the distribution of water from interprovincial river systems. In a sense, it involved reversion to the practice of interprovincial treaties that had been familiar before federation but had fallen into disuse. Interprovincial cooperation of this kind remains a characteristic of the Argentine federation today.

The beginning of the fourth stage was marked by changes to the Constitution that followed the meeting of a National Constitutional Convention in 1994. While the initial impetus for this round of constitutional change was to enable the re-election of President Carlos Menem for a second, successive term, one of the principal goals that emerged from the convention was to strengthen decentralization as a counter to the concentration of power in the country.[21] To that end, the Constitution was changed to recognise the autonomy of municipal government[22] and the autonomous status of the city of Buenos Aires[23] and to authorise the provinces to "create regions for economic and social development."[24] In the wake of these changes, it is possible to identify four spheres of government of the Argentine federation: federal, provincial, municipal, and the government of the autonomous city of Buenos Aires, each with its corresponding responsibilities and with considerable constitutional autonomy.[25] Significant alterations were also made to the respective powers of the spheres of government, including recognition of the authority of the provinces to enter into international agreements;[26] allocation to the provinces of "original dominion" over the natural resources within their territory;[27] affirmation of the concurrent authority of the

provinces to "continue with their own social security entities for civil servants and professionals; and … [to] promote economic progress, human development, creation of jobs, education, science, knowledge and culture";[28] and the imposition on Congress of a requirement, in exercising its powers over education and culture, to respect local diversity and pluralism in various ways.[29]

Despite these changes, however, Argentina remains profoundly centralized, revealing a gulf between the formal constitution and political reality. It has been suggested that the explanation is threefold. First, the various encroachments by federal institutions into the provincial sphere have met with inadequate resistance from the provinces for reasons that, in part, reflect the provinces' financial dependence on the national government, but which are also attributable to the institutional structure of government, the concentration of power in the executive branch, and the relationship between the president and the provincial governors. Second, the Constitution incorporates some centralizing tendencies in its distribution of powers and the potential for federal intervention in provincial governance. Third, the concentration of social, economic, and political power in the metropolitan area of Buenos Aires occurs to the detriment of the provinces and the balanced development of the rest of the country.[30]

FEDERAL LEGISLATURE

General

Argentina has a republican, presidential form of government with a bicameral legislature called the Congress, comprising a chamber of deputies and a senate. As the principal representative body, Congress is responsible for expressing the will of the people and is the focal point of the democratic system. The main functions of Congress[31] include the enactment of the civil, penal, commercial, and labour codes and of other legislation necessary for the effective exercise of the extensive range of matters assigned to the federal government by Article 75 of the Constitution. In addition, Congress imposes taxation, approves the budget, approves treaties, authorizes declarations of war and peace, initiates a process of constitutional reform,[32] exercises some political control over the other two branches of government (including through impeachment proceedings), and orders or revokes federal intervention in the provinces.

As in any presidential system, the Congress is elected independently of the executive branch for fixed terms of four years in the case of deputies and six years in the case of senators. As in other presidential systems, however, some of the powers exercised by the president impinge on the authority and operation of Congress. Thus the president of Argentina attends the opening of sessions of Congress to report on the state of the nation. The president may extend the period of ordinary sessions and call for extraordinary sessions as well. The execution and promulgation of legislation necessarily lie with the president.

The president also shares in the exercise of legislative power. Most obviously, bills passed by Congress must be approved by the president before they become law. The president thus has a power of veto, which Congress can override with a two-thirds majority vote of both houses. More significantly still, the president may, in "exceptional cases," exercise legislative power by decree, albeit within both procedural and substantive limits now prescribed by Article 99(3), which also authorizes Congress to enact a law to provide for its own participation in such a process. Despite a general rule that legislative power shall not be delegated to the executive, an exception is made in Article 76 for delegation of power in relation to administration and public emergencies, albeit for a specific term and in accordance with any conditions that Congress may prescribe.

In fact, although the importance of Congress and of the responsibility vested in it are clear on the face of the Constitution, the centre of gravity of public power lies with the executive branch. The explanation lies in a range of interconnected factors. The interruptions in the constitutional order, to which reference has already been made, have sometimes caused Congress to be closed down altogether. This was the case, for example, in the coups d'état of 1930, 1943, 1955, 1966, and 1976. During such periods, the executive branch inevitably assumes the leadership role in the political process. Even in more

ostensibly normal times the succession of other political, economic, and social emergencies that have occurred has facilitated the concentration of power in the executive branch, diminishing the role of Congress.[33] Thus during the two terms of President Menem (1989-99), for example, approximately 500 presidential decrees of necessity and urgency were made by reference to emergencies and other special needs. These decrees intruded into the legislative sphere. However, Congress has been compliant in this process. It has failed to enact the laws envisaged by Article 99(3) of the Constitution, which authorizes Congress to structure the procedure for scrutinizing executive decrees made on grounds of necessity and emergency following deliberation by the Joint Standing Committee of Congress.[34] Congress has been all too ready to delegate its authority to the president, effectively waiving its responsibilities in the face of an executive prepared to rule by decree. The citizens, for their part, are distrustful of politicians, and this has created a crisis of political representation that affects the prestige of Congress.[35]

The Chamber of Deputies

The Chamber of Deputies is designed to represent the people of Argentina as a whole by reference to population. According to Article 45 the chamber is "formed by representatives elected directly by the people." Like most such houses, it has exclusive power to initiate bills imposing taxation. In addition, bills for recruiting troops must be initiated in the Chamber of Deputies, which is also where impeachment proceedings begin.[36]

Nevertheless, the federal system exerts a notable influence on the composition of the Chamber of Deputies, both legally and politically. Each province and the city of Buenos Aires constitutes a single electoral district, from which deputies are elected, using a system of proportional representation involving closed party lists. Deputies must have lived for at least two years in the province from which they are elected, and elections to fill a vacancy are called by the government of the relevant province. The number of deputies to which each district is entitled depends on the size of its population, with two qualifications: first, each province is entitled by law to a minimum of five deputies; second, apportionment depends on action by Congress, following a census. There is no compulsion on Congress to act, and the present distribution is based on the census of 1980, despite the fact that more recent census results are available from 1991 and 2001. Not surprisingly, in these circumstances, the most populous provinces are significantly underrepresented in the Chamber of Deputies, and there are disparities in the entitlements of all provinces. At least ten times as many votes are necessary to be elected deputy in the provinces of, for example, Buenos Aires, Córdoba, and Santa Fé as are needed to be elected in Tierra del Fuego and Santa Cruz. Even so, the number of deputies from the largest three provinces and the city of Buenos Aires outnumber deputies from the other provinces in the house.

Members of the Chamber of Deputies serve for four years, and there is no restriction on re-election. Half of the chamber faces election every two years. A closed list system of proportional representation facilitates control of choice of candidates by the political parties. Provincial governors can effectively determine the list of candidates for their party from the province and thus have extensive influence on the voting behaviour of their members in the Congress. In practice, though, most political decisions are taken by the president with the support of provincial governors, who, due to tax-sharing arrangements, are economically dependent upon the federal government. The effect of this particular manifestation of hyperpresidentialism is to subordinate Congress to the executive branch as well as to subordinate the provinces to the centre, thus weakening both the separation of powers and federalism.

The Senate

The Senate is designed as a federal chamber, representing the constituent units of the federation. This is evidenced by a variety of features. As with the Chamber of Deputies, senators must have resided in their province for at least two years, and provincial governments initiate elections to fill vacancies. Most significantly, however, each province and the city of Buenos Aires is equally represented in the Senate, irrespective of population size, by three senators, again using the province as a single electorate, as for the

Chamber of Deputies.[37] The political party that secures the majority of votes takes two Senate seats in each province; the party that secures the next highest vote takes the third seat. Each senator has one vote. The equality of votes is maintained by conferring the presidency of the Senate on the vice-president of Argentina, who has no right to vote unless the votes of senators are tied.[38] Senators serve six-year terms, and there are no restrictions on re-election. One-third of the Senate is renewed every two years.

The current composition of the Senate is the result of substantial changes made in 1994. Before this time, each province was entitled to only two senators, elected by the legislature of the province concerned. In 1994, however, the number of senators for each province was increased to three, with senators being elected by the citizens of each province directly. This latter change mirrors the Seventeenth Amendment to the Constitution of the United States, ratified in 1913, and is regarded as being consistent with the principles of democracy and popular sovereignty. Despite the change, however, some provincial constitutions, including those of San Juan, Córdoba, La Rioja, and Tierra del Fuego, still authorize the provincial legislature to instruct federal senators on matters related to their particular interests. In addition, the legislatures in the latter two provinces can request the Senate to remove senators who do not follow those instructions. Objections have been raised as to the constitutionality of these provisions on the grounds that they limit the authority and immunities of the legislative branch. However, no provincial legislature has attempted to use this procedure.

According to the Constitution, the Senate is a powerful chamber. It must approve all legislation. It has functions of great institutional importance, including the trial of officials impeached by the Chamber of Deputies, authorization of a presidential declaration of a state of siege, and consent to the appointment of a range of officials, including justices of the Supreme Court, ambassadors, and high officers of the armed forces. In addition, since 1994 the Senate has had the sole authority to initiate two forms of legislation with particular potential significance for the federal system: the tax-sharing or co-participation agreements envisaged by Article 75(2) of the Constitution and laws providing for balanced development of the country, enacted pursuant to Article 75(19).

In practice, however, the Senate is inhibited in the exercise of its authority by the same hyperpresidentialism that affects the Chamber of Deputies. In consequence, it does not fulfill a federal role of the kind suggested for it by the Constitution, despite the changes to its composition introduced in 1994. Its failure to do so has been manifested in a range of contexts. Despite the promise of a mutually agreed upon and transparent legal framework for tax-sharing, for example, no law has been enacted, despite a constitutionally prescribed deadline which was passed at the end of 1996. These critical decisions therefore continue to be made in private negotiations between the president and the governors, which avoids a public and transparent debate in the Senate, with the participation of the elected representatives of the provinces.

NATIONAL EXECUTIVE BRANCH

The president is "the supreme head of the Nation, head of the government and … politically responsible for the general administration of the country."[39] Both the president and the vice-president are directly elected, using the entire country as a single constituency, with a second round of voting if required. The president is elected for a fixed four-year term and may be re-elected only once for a consecutive term.

Prior to the constitutional changes of 1994 the president was elected indirectly, through an electoral college. As in the case of senators, the changes that were made in 1994 were designed to better accord with principles of democracy and popular sovereignty. However, some scholars take the view that the new arrangements have had a detrimental effect, diminishing the influence that the smaller provinces were able to exert through the electoral college and, thus, increasing the potential for presidential elections to be decided by only four or five large provinces. Others prefer the current system on the grounds that it is more democratic than is the one it has replaced.

The point was made earlier that the presidency of Argentina was modelled on the Constitution of the United States but that, under the influence of Alberdi, the role of the president was strengthened in some respects. The president has extensive formal constitutional powers, which are both maximized and

further extended by political practice. The categories of presidential power granted by the Constitution include co-legislative and regulatory powers; powers to appoint and remove senior public servants; oversight of financial management; commander in chief of the armed forces; and authority to represent Argentina in foreign affairs. In addition, as noted in the earlier discussion of Congress, the presidency has assumed a significant part of the legislative authority of Argentina through delegations of power from Congress by which the procedures allowing executive decrees in cases of emergency have been abused, thus making Congress a contributing partner in violations of the separation of powers.

The president appoints the chief of the ministerial cabinet and the ministers. There is no established practice of taking ministers from different provinces. The ministers countersign and thus give legal effect to the actions of the president[40] and take responsibility for administering government departments. Ministers are not members of Congress, although they may attend meetings, may be summoned by either house, and must submit reports to Congress annually. They are individually liable for their own decisions and collectively liable for joint ones.

The position of chief of the ministerial cabinet is relatively new. This change was also made in 1994, with a view to limiting the power of the president.[41] The functions of the office, as described in Article 100 of the Constitution, include the general administration of the country; appointment of most administrative employees; preparation of cabinet meetings; submission of certain categories of bills to Congress; and collection of taxes and implementation of the budget. The chief of cabinet has special responsibilities in relation to emergency decrees. He or she must countersign them together with other ministers and must personally submit such decrees to the Joint Standing Committee of Congress within ten days of their promulgation.

Unlike ministers, the chief of cabinet is politically answerable to Congress, attending sessions once a month and alternating between houses in order to inform Congress about government progress. The chief of cabinet can be censured by Congress and may be removed from office by a majority vote of members of each house. In these respects, the position seems to be similar to that of prime minister in a parliamentary system. The similarity is superficial, however. In reality, the position of chief of cabinet is that of a coordinating minister in an essentially presidential system, which has been designed to impose greater discipline on the exercise of presidential power without changing the nature of the system. The chief of cabinet answers to the president, who makes the initial appointment and may terminate it as well. Similar arrangements, with similar objectives, have been put in place in other presidential systems in Latin America, including Uruguay and Peru. Despite the original intentions, however, ten years after the introduction of the position of chief of cabinet, it seems to have had no significant effect on diminishing the strength of the presidency.

FEDERAL ADMINISTRATION

As head of the government, the president is politically responsible for the administration. The chief of cabinet, as head of the administration, answers directly to the president. Congress also exercises some control by virtue of its authority in budgetary matters and through its relationship with the chief of cabinet. In performing this function, Congress is assisted by the General Audit Office, established by Article 85 of the Constitution as an advisory body to Congress. The chairperson of the audit office is appointed on the recommendation of the opposition party with the largest number of members in the Congress.

The federal government administers its own legislation. For the most part, the federal administration is concentrated in the capital. It thus contributes to centralizing the country as a whole around the metropolitan area of Buenos Aires. Thanks to this concentration of activity, less than 1 percent of the territory of Argentina hosts almost 35 percent of the population, and almost 80 percent of Argentine production originates in an area bounded by a radius of 500 kilometres around Buenos Aires. Some national institutions can be found in other parts of the country, however. These include courts, universities, military bases, national banks, and the federal administration of public revenue.

The 1994 constitutional changes foreshadowed the establishment of some other institutions that would be more distinctly federal in character. The provinces are represented on some national regulatory bodies that monitor public services such as gas, electricity, and airports, pursuant to a constitutional provision that authorizes their involvement in the activities of bodies monitoring consumers' rights.[42] The provision dealing with the constitutionalization of the tax-sharing or co-participation arrangements also provides for a federal fiscal commission to control and monitor the arrangements, in effect taking over the current functions of the statutory Federal Tax Commission. The Constitution mandates the representation of all the provinces and of the city of Buenos Aires on the Federal Fiscal Commission. The commission has not been established, however, nor have steps been taken to provide for the participation of the provinces on the board of directors of the central bank, as envisaged by the Constituent Assembly.[43]

FEDERAL JUDICIARY

There is both a federal judiciary and a judiciary for each province[44] as well as distinct concepts of federal and state jurisdiction. Federal jurisdiction is exercised by federal courts below the level of the Supreme Court of Justice and cannot be exercised by provincial courts. The Supreme Court has original jurisdiction only in matters involving diplomatic representatives and cases involving a province as a party, as in the United States. Otherwise, the Supreme Court has appellate jurisdiction over all other matters falling within the federal judicial power.

Federal jurisdiction extends to cases involving diplomatic representatives; relating to navy and maritime jurisdiction; involving the nation as a party; and arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, or between a province (or the inhabitants of a province) against a foreign state or citizen.[45] It also includes matters arising under the Constitution and under national laws, with the important exception of the legislative codes enacted pursuant to Article 75(12). Jurisdiction under the codes is apportioned between federal and provincial courts depending on their "respective jurisdictions for persons or things." Various mechanisms are available to preclude the emergence of different interpretations of a federal code between different jurisdictions. These include an approach to the Supreme Court of Justice to obtain an authoritative interpretation by extraordinary appeal, which is available only in federal cases, unless the sentence of the provincial court is considered arbitrary; plenary meetings of provincial courts of appeal; or, in the case of the criminal code, a determination of the National Penal Cassation Court. These mechanisms are not comprehensive, however, and there is some incentive to forum shop.

Both federal and provincial courts interpret and apply the national Constitution to cases otherwise falling within their respective jurisdictions. As in the United States, all courts thus have a responsibility to apply the Constitution; unlike in the United States, however, there is no formal doctrine of *stare decisis*. The final arbiter of the meaning of the Constitution is the Supreme Court. To this end, it has an extraordinary appellate jurisdiction from provincial courts. There is an extensive jurisprudence of the Supreme Court exercising its jurisdiction on extraordinary appeal.

The Supreme Court of Justice is recognised by Article 108 of the Constitution, which also authorizes the creation of other federal courts. The tenure and remuneration of federal judges is protected under Article 110 in the interests of securing judicial independence. In 1994 a council of the magistracy was established with the aim of safeguarding the independence of the federal judiciary. The council comprises a mixture of representatives of the executive branch, members of Congress, judges, academicians, and lawyers and is chaired by the chief justice of the Supreme Court. Its functions are to nominate three candidates to the president for appointment to the lower federal courts, following a public, competitive process; to administer the budget of the courts; to take responsibility for disciplinary proceedings; and to make the rules for judicial organization.

Judicial appointments are made by the president, with the consent of the Senate, in a public meeting. For present purposes, it is necessary to distinguish between appointments to the Supreme Court and to other lower federal judicial positions. In the former case, the consent of two-thirds of the members of the Senate who are present is required by the Constitution. In the latter case, an appointment is based

on a short list of candidates submitted by the Council of the Magistracy, and only a simple majority of votes of the present members of the Senate is required. In practice, the will of the president always prevails.

The vast majority of justices of the Supreme Court, moreover, come from the federal capital; very few are drawn from the provinces. In 2005, for example, there were only two justices from the provinces on the Supreme Court. Although the goal of establishing the Council of the Magistracy was to diminish political influence over the judges, it is difficult to eliminate political influence from a procedure that involves appointment by the president and the consent of the Senate. Proposals to reduce the size of the Council of the Magistracy from 20 to 13 members would further enhance the influence of the president on its decisions.

Lack of independence of the judiciary remains a problem for governance in Argentina and for the working of both the federal and the provincial institutions of government. In particular, presidents have intervened markedly and repeatedly in the make-up of the Supreme Court. In 1947, for example, during the first presidency of Juan Domingo Perón, four members of the Supreme Court were impeached and replaced by judges more sympathetic to the regime. Similar exercises designed to influence the composition of the Court through impeachment of judges and appointment of new ones took place in 1955, 1958, 1973, 1976, and 1983. President Menem increased the number of members of the Court from five to nine, thus enabling the appointment of four new judges. President Néstor Kirchner, who took office in 2003, promoted the impeachment of all four of Menem's appointments, two of whom resigned before the proceedings were complete. By 2005 Kirchner had already appointed four members to the Supreme Court and was expected soon to be in a position to appoint two more.

Not surprisingly, in these circumstances, the Supreme Court has not played a significant role as the guarantor of federalism. In most cases of conflict between the spheres of government, it has favoured the power of the federal sphere over that of the provinces and municipalities. In particular, the Supreme Court has taken a broad view of federal power under the commerce clause, following U.S. jurisprudence. It has also declined to determine the constitutionality of federal interventions in the affairs of the provinces under Article 6 of the Constitution, on the grounds that these are political questions. There have been more than 175 such interventions in the history of Argentina, most resulting in the removal of provincial authorities, despite the constitutional guarantees of provincial autonomy and the ostensibly limited nature of the federal power to intervene.

THE PROVINCES AND THEIR INSTITUTIONS

Provincial Constitutions and Provincial Autonomy

The provinces have considerable autonomy in relation to their institutional, political, administrative, and financial arrangements. Each province exercises the right to change its own constitution from time to time, consistent with the national Constitution. The relative constitutional autonomy is reflected in Article 5 of the national Constitution, which requires each province to make its own constitution within the parameters laid down in the article. A provincial constitution must be made "under the representative republican system," must be "in accordance with the principles, declarations and guarantees contained in the federal constitution," and must ensure "its administration of justice, its municipal regime and primary education." The federal government, for its part, guarantees that the provinces can enjoy the exercise of their institutions.

The fourteen provinces that predated the federal state enacted their own constitutions before 1853. These constitutions, together with the interprovincial pacts and the attempts to organize the country from 1810, provide the institutional and historical background to the federal Constitution of 1853. With the enactment of the 1853 federal Constitution, the provinces introduced new provincial constitutions to adapt them to the new federal text. All were revised and approved by Congress, as then required by the federal Constitution. After 1860, however, the task of reviewing the constitutions of the provinces fell to the Supreme Court as part of its responsibility to finally interpret and apply the Constitution.

The provinces have continued to adapt their constitutions from time to time, in response to changes in the federal text. In some cases, changes to provincial constitutions have anticipated federal constitutional change. Thus several provincial constitutions led the way in social constitutionalism in Argentina by recognizing the rights of workers and giving votes to women before corresponding changes were made in the federal sphere.[46] Similarly, at least three provincial constitutions gave effect to human rights treaties before these were recognized in the national Constitution in 1994.[47] An important stimulus to the process of constitutional innovation in the provincial sphere was the creation of new provinces from what previously had been territories in the 1950s, at a time when interest in social constitutionalism was at a height.[48]

Normally, changes to a provincial constitution are made by a constitutional convention. After the legislature's declaration of the need of constitutional reform, the people of the province elect the members of the convention. In some provinces, however, an alternative mechanism is used, whereby the provincial legislature enacts changes to the constitution that are then submitted to referendum for final approval.[49]

PROVINCIAL LEGISLATURES

The structure of the legislative and executive branches and the relationship between them is broadly the same in the provinces and the city of Buenos Aires as it is in the national sphere. In other words, each province essentially has a presidential system of government under which a governor is responsible for the executive branch, and the legislature is independently elected and has a distinct existence, exercising functions broadly comparable to those of Congress.

Fifteen provinces[50] and the city of Buenos Aires have unicameral legislatures; the remaining eight provinces have bicameral legislatures.[51] Generally, the former are the smaller and less populous provinces, with the exception of Cordoba, which abolished its second chamber, the Senate, in 2001, largely for reasons of cost. Provinces with a bicameral system tend, conversely, to be the more populous provinces. In such provinces the lower house, generally called the house of deputies, is constituted so as to represent the people by reference to population size, while the provincial upper house, or senate, represents the various geographic departments of the province. The arguments in favour of bicameralism typically refer to the usefulness of two houses for scrutinizing draft legislation, better representing the different parts of the province, and providing more effective control of the executive branch.

A mixture of electoral systems is used for provincial elections. The majority of the provinces and the city of Buenos Aires use the same closed list and proportional electoral system for the house of deputies or its equivalent that is used for the national Chamber of Deputies. As to the provincial senates, generally one senator is elected for each department, or administrative unit, of the province. Some provinces with a unicameral legislature, however, use a mixed or combined electoral system, in which some members are elected from departments of the province and others from a list (for the province as a whole) in order to achieve proportional representation. Other provinces use a system in which one member is elected from each department or electoral district, without additional recourse to a list. There is thus a multiplicity of electoral systems in the provinces and the autonomous city of Buenos Aires.

Typically, the qualifications for election as senator are more stringent than are those for the lower house, on the grounds that, as with Congress, a provincial senate has greater powers in relation to, for example, the approval of the appointment of judges. This is a hangover from former conservative times, but in fact senates, where they exist, are politically more important than is the houses of deputies.

The provincial legislatures have an important federal role, in addition to their responsibilities in relation to general provincial legislation and scrutiny of administration. In particular, they must approve any fiscal co-participation agreement, interprovincial agreement, and agreement with the federal government or with other spheres of government. Such agreements are an important means of involving the provinces in the process of national and supranational integration within the framework of the globalized world. For instance, the provinces of Córdoba, Santa Fé, and Entre Ríos created the central economic region in 1998-99 by interprovincial agreement for the purpose of enhancing its social and economic development, using the procedures available in Article 124 of the federal Constitution. In such

a case, the provincial governors first sign the interprovincial treaty or agreement, which must subsequently be approved by the legislatures.[52]

Nevertheless, the provincial governors, like the president, dominate the legislatures - and for similar reasons. Governors have extensive formal constitutional powers, and the political practices associated with hyperpresidentialism are also at work in the provinces. In some provinces, governors use executive decrees and exercise their own emergency powers. As in the federal sphere, these practices weaken the system of checks and balances, with particular implications for the role and operation of the legislatures.

THE PROVINCIAL EXECUTIVE

A governor is the provincial head of state; the head of government of the city of Buenos Aires is in a comparable position. The governors also preside over the government and the provincial administration. They have powers similar to those of the president, including co-legislative and regulatory powers, powers to appoint and remove public officers of various kinds, budgetary responsibilities, and authority to represent the province within a variety of contexts. Each governor appoints ministers and assigns competences to them, in accordance with provincial law. Ministers are subject to impeachment in the legislature but can also be removed by the governor. Ministers countersign decisions of the governor in relation to their areas of responsibility and are required to report annually to the provincial legislature on the affairs of their ministries.

The governors are the focus of political power in the provinces. They are elected by a simple majority of votes in all jurisdictions, except in Corrientes and Tucuman and in the city of Buenos Aires, where a second round of voting is used when necessary. All provinces also have vice-governors, who are directly elected with the governor on a joint ticket and who replace the governor in the event of his or her absence. In addition, as in the national sphere, vice-governors preside over the provincial legislatures in unicameral systems or the provincial senate in bicameral systems.

All governors hold office for four years. Some provincial constitutions forbid re-election for a consecutive term,[53] but a majority allows re-election for one consecutive term.[54] In six provinces[55] the constitution allows the re-election of the governor indefinitely. These provisions appear to entrench incumbents in power, to the detriment of republicanism. Governors have been repeatedly re-elected in almost all of these provinces, consolidating political hegemony in another illustration of the political and democratic difficulties faced by Argentina. For example, in Santiago del Estero, the same person, Carlos Juárez, was elected as governor for five consecutive periods, after which, in 2003, he was succeeded as governor by his wife. This episode was ended by federal law in 2004, in consequence of federal intervention in the affairs of the province under Article 6 of the national Constitution on the grounds that the arrangement violated the republican system. But there were, and are, other situations like this one.

Together with the president, provincial governors exercise the real political power in Argentina. They are the leaders of their political parties, and they define the list of provincial candidates for the provincial legislatures and the Congress. On the face of the constitutions, provincial governors also have important functions in relation to the federal system, although, for the most part, they do not do much to defend provincial autonomy against federal inroads. In general, the governors follow the political directives of the president and of the federal political parties, to the detriment of provincial interests and powers. In the dynamic between the president and the governors, the political and economic power of the federal government dominates, and governors do not act together to press the president. This is not new: it is the product, in part, of the long-standing economic dependence of the provinces on the national government, and it underscores the need for enactment of the tax co-participation law.

PROVINCIAL ADMINISTRATION

Each province has its own administration. As head of the provincial government, the governor is politically responsible for the provincial administration. The provincial legislatures also exercise some control, by virtue of their authority in budgetary matters.

The provinces do not administer federal legislation. Oddly, in these circumstances, Article 128 of the national Constitution describes the governors as "natural agents" for the enforcement of national laws, a provision to which governors sometimes point when sponsoring provincial legislation that complies with federal law. The federal government also points to this provision, from time to time, to indicate the duty of a province to comply with federal law. Otherwise the provision has little effect. Structurally, Argentina is a dual federation. Specific intergovernmental arrangements aside, there are no formal links between federal and provincial bureaucracies.

The core unit of the provincial administration is the ministry, headed by a minister appointed by the governor. The number and denomination of the ministries vary between provinces. Some administrative reform is under way in the provinces, although it is slow. Cordoba is one of the leaders. The provincial constitution lays out the objectives and principles of provincial administration, in terms of effectiveness, efficiency, economy, and equality of opportunity. Efforts are also under way to achieve decentralization in the interests of responsiveness and greater efficiency.

PROVINCIAL JUDICIARY

Article 5 of the national Constitution obliges the provinces to ensure the administration of justice and of the republican regime, but it does not imply any specific organization and structure for the provincial judiciary. The provinces thus have broad discretion to institute the system that each deems suitable for the adequate exercise of the judicial function. There is a hierarchy of courts in each province, with a superior tribunal of justice or supreme court of justice at its apex and a series of lower courts below. The constitution of each province provides a framework for the judiciary. Typically, the constitution refers at least to the higher courts; the remainder may be left to establishment by ordinary law.

The provincial constitution also prescribes the jurisdiction of the courts and aspects of judicial procedure. Each province has its own code of procedure, although there are no significant differences between them. The provincial judiciary has exclusive authority to exercise judicial power, although jury trial is available in some lower courts.

Provincial courts exercise the function of constitutional control and may declare the unconstitutionality of any rule or act of the legislature or executive of the province. In the first instance, they apply the provincial constitution, but they must also apply the federal Constitution. In addition, as noted several times already, they must apply the federal codes in circumstances that fall within their jurisdiction.

Approximately half of the provincial constitutions provide for a council of the magistracy, constituted by representatives of lawyers, judges, the provincial legislature, and the provincial executive. The council has responsibility for selecting judicial officers for appointment to the lower courts through a system of public competition, in much the same way as the comparable council operates in the federal sphere following the changes of 1994. As in the federal sphere, a provincial council presents a list of three candidates to the executive branch from which the latter must, with legislative agreement, select the new judge. The council also deals with the initiation of disciplinary proceedings against judicial officers. Other provinces continue to use the traditional mechanism for appointment of judges by the governor with the approval of the legislature.

LOCAL GOVERNMENT[56]

Provision for municipalities was included in Article 5 of the federal Constitution of 1853 as one of the features for which provincial constitutions were obliged to provide. After extensive discussion of its legal implications, the changes to the federal Constitution in 1994 added a further acknowledgment of municipal autonomy, in Article 123, in the following terms: "Each province enacts its own constitution …

ensuring municipal autonomy and regulating its scope and content in relation to institutional, political, administrative, economic and financial affairs." The obligations thus placed on the provinces to ensure municipal autonomy extends, in the case of larger municipalities, to authorizing enactment of a municipal charter. More than 110 municipal charters had been enacted by 2005. Where charters exist, they represent a third sphere of constitutional power.[57] Pursuant to the constitutional requirement, the provinces must also provide for the popular election of local authorities; assign administrative functions to them, which are not dependent on another sphere of government, in relation to utilities and other services; and allow them to collect and invest local revenues.

All municipal authorities are elected by the people of the municipality. Typically, there is an executive body, under the charge of the mayor, or *Intendente*, and a deliberative organ, the municipal council, or the *Concejo Deliberante*. In some provinces, of which Cordoba is an example, there is also a tribunal of accounts (*Tribunal de Cuentas*), which is an organ of control, also elected by the people.

For the most part, municipalities are subject to control only on the grounds of legality, as exercised through the courts. Only in really exceptional situations, provided by the provincial constitution, may a province intervene in the affairs of a municipality. Typically, intervention requires a law passed by the provincial legislature with a higher-than-usual quorum. Municipalities may challenge laws or actions of either the federation or a province in order to protect their own autonomy. Generally, a challenge to the action of a province must begin in a provincial court but may reach the Supreme Court of Justice, either through an extraordinary appeal or through an *amparo* action against the province, invoking the original, exclusive jurisdiction of the Supreme Court.

It is clear from what has been said already that the obligation to establish and structure municipalities in accordance with the Constitution lies on the provinces. But the power of the provinces must be exercised within the constraints imposed by the federal Constitution; in particular, it must provide for the autonomy of municipalities in the four respects to which the Constitution refers. Failure to comply with the Constitution in this respect may lead to federal intervention. Thus, while there is no direct relationship between the federal sphere of government and the municipalities, there is an indirect relationship. In any event, the dominant political, economic, and financial power of the federal sphere gives it significant influence in local life.

There are no intermediate entities between the municipalities and the provincial governments. But the idea of "intermunicipal relationships" is growing. These involve the creation of institutions or bodies to achieve shared goals. Examples include associations of municipalities and intermunicipal regulatory or service-delivery bodies. For the moment, these exist only in some provinces. Entities of this kind are created by the municipalities without the involvement of the provincial government. Appointments are made by decision of the participating municipalities, represented through an appropriate officer, who is usually the mayor. It follows that there is no popular election for the leadership of such intermunicipal entities.

The powers of municipalities are established by the provincial constitution and by municipal charters, where these have been enacted. In general, the provincial constitutions authorize not only intermunicipal cooperation but also interjurisdictional relationships, encouraging local government to interrelate increasingly with the other spheres.[58]

Notwithstanding the greater measure of constitutional protection accorded to municipalities since 1994, in this as in other respects, there is a notable distance between the rule and reality, detracting from the autonomy of local self-government. At one level, the cause is the economic dependence of the municipalities on the provinces. At another level, however, it can be ascribed more generally to the political and legal culture of Argentina, manifested in continuing violations of the constitutional order.

INTERGOVERNMENTAL RELATIONS

From the outset, in the versions of the federal Constitution of both 1853 and 1860, the provinces were authorized to enter into domestic treaties with each other. The potential of this procedure began to be realized from the middle of the twentieth century, as Argentina evolved from a dual federation to one

characterized to a greater degree by cooperation and consensus, in what was described earlier as the third stage of the history of the Argentine federation. The initial catalyst for the development of interjurisdictional cooperation was public works. Prominent examples include the construction of bridges, the interprovincial tunnel under the Parana River, the common management of interprovincial river basins, and the creation of hydroelectric committees.[59] Federal councils were created afterwards, involving participation by representatives of the federal government and all provincial governments.

One intergovernmental body of particular importance is the Federal Investment Council.[60] The council was created in response to a federal pact signed in 1959 between the provinces of Argentina, the municipality of the city of Buenos Aires, and the then national territories of Tierra del Fuego, the Antarctic, and the islands of the south Atlantic. It is a research, coordination, and advisory body responsible for advising on national investment in order to achieve development based on decentralization. Each province is represented on the assembly of the council by a minister. The assembly is the highest governing body, which appoints a secretary-general who is in charge of the technical and administrative running of the council. The costs of the council are shared proportionately between the federal government and the participating provinces.

The objectives of intergovernmental agreements now vary greatly, however. Federal councils, comprising ministers, exist in relation to a range of matters of common concern, including public works, energy, roads, education, and the environment. There is no need for federal authorization of such councils. Nevertheless, some councils have been established by laws passed by Congress. The Federal Council of Interior Security is an example.

The constitutional reform of 1994 took a number of important initiatives that are relevant to interjurisdictional relations. These included the provision for legislative agreement on tax co-participation and the associated establishment of the federal fiscal institution, about which much has been said already;[61] authorization of the establishment of economic regions;[62] the provision for a federal bank, which was intended to enable representation of the provinces, although the measure has not yet been put into effect;[63] and provision for provincial participation in public service regulatory institutions, also only partially complied with in practice.[64] In the wake of these changes, the text of the Constitution suggests that the federation of Argentina is cooperative in character. Failure to comply with many of the most significant of these constitutional provisions, however, means that the reality is somewhat different.[65] Something is needed to break this cycle. One possibility is that the creation of a forum of governors, as in the United States and Mexico, would help to create a different dynamic in relations between the federation and the provinces and, in particular, in relations between the president and the governors.

ANALYSIS AND CONCLUSIONS

Constitutional framework

In Argentina, as in general across Latin America, there is a large gap between legal standards and political practice, reflecting historical and continuing difficulties with the enforcement of constitutions and the rule of law. Dramatic violations of the institutional order in the form of coups d'etat have been further compounded by a state of almost constant political, economic, and social emergency, undermining the stability of government and respect for human rights.

The shortfall in respect for and compliance with constitutional principles has been attributed to "anomia": the violation of moral, social, and juridical norms.[66] For present purposes, it has a detrimental effect on both the institutions of government in Argentina and its federal system. Although the national Constitution establishes a federal form of government, for most of the 150 years of national government the country has been marked by profound centralization focused on the metropolitan area of Buenos Aires and dominated by the national government. Although the Constitution establishes a separation of powers, in practice pre-eminent authority lies with the executive branch, which persistently exceeds the limits on its power vis-à-vis the legislative branch without adequate check from the judiciary.

Federal interventions in provincial affairs offer a particular manifestation of these difficulties. There have been more than 150 such interventions in the history of Argentina. Initially, in the first decades after the enactment of the Constitution of 1853, the president appointed a federal commissioner, or *interventor federal*, to mediate between the groups in conflict in order to resolve the immediate problem. Later, however, the federal *interventor* took the place of the governor in the exercise of provincial executive power. A federal *interventor* also had some legislative competences because a federal intervention usually affected the provincial legislature as well as the judicial power of the province. In time, the period for which the intervention lasted started lengthening, and more powers were conferred on the commissioners. Federal interventions came to be used by presidents to pursue the political unity of the country rather than as a constitutional means for dealing with exceptional emergency situations in order to secure the principles of the federal system.

Thus was consolidated a process whereby the provinces became politically, economically, and socially dependent on the national government. This problem was further exacerbated by repeated emergencies, with the result that emergency became a virtually permanent state.

Hopeful signs of improvement nevertheless appeared with the reestablishment of democracy in 1983. Provincial and municipal autonomy was enhanced, and the constitutional system was modernized through reforms to provincial constitutions and the enactment of municipal charters. Key changes to the national Constitution were introduced in 1994, with apparent relevance to both institutions of government and federalism. However, in part because of failure of implementation, these changes have not been effective. The country continues to be marked by a high degree of centralization and by considerable asymmetry in regional and provincial development, and this contributes to problems of social disintegration, poverty, and social injustice.[67]

There is some question as to what the solutions might be. Possibilities include the effective execution of the principles of the federal system, as prescribed in the national Constitution; dispersion of the concentration of political, economic, demographic, and cultural power that exists in the metropolitan area of Buenos Aires, through some kind of new territorial ordering of the country, possibly involving the transfer of the capital; realization of the roles that both the Senate and the Supreme Court might play in the operation of the federal system; further development of the mechanisms of intergovernmental cooperation for a range of purposes, including national development; strengthening provincial and municipal autonomy, giving them a greater role in national and supranational integration; greater use of regions for economic and social development; and inculcation of federal principles into the doctrine and organization of political parties.

None of these necessarily requires constitutional change; rather, what is required to deal with the political and institutional problems that are endemic in Argentina is the implementation of the existing Constitution.

Interaction between federalism and representative institutions

There is, or should be, a convergence of objectives between representative institutions and federalism so as to ensure freedom and human rights and to limit power. One feature of a republican system is its acknowledgment of the freedom and the equality of persons, secured in part through the horizontal separation of the powers of the state. Federalism is another form of decentralization of power, secured in Argentina through a vertical distribution, which can be given full effect only under a democratic political regime that gives power to the citizens in both spheres.[68] The quality of government in the provincial and municipal spheres, and their capacity to act as either a check on or a partner with the federal sphere, presuppose an active participation on the part of the citizens in the respective jurisdictions.

Unfortunately, neither the republican institutions nor the federal system operate effectively in Argentina. The central problem is the concentration of power in the executive branch in both spheres, compounded by the domination of the provinces by the centre. The institutional design of the Argentine federation is reasonably apt to achieve the goals of both republicanism and federalism. In practice, however, in the manner and with the effects already described, there is a shortfall in constitutional

compliance. To this extent, the solution is obvious, although the manner of achieving it is not. Given the institutional history of Argentina and the scale of its current problems, it is somewhat difficult to imagine the future.

Notes

[1] <http://www.cia.gov/cia/publications/factbook/geos/ar.html#People>, viewed 1 January 2006.

[2] Index Mundi, Argentina GDP, <http://www.indexmundi.com/argentina/gdp.html>, viewed 28 January 2006.

[3] The precise proportion is disputed, but it is less than 3 percent: <http://www.cia.gov/cia/publications/factbook/geos/ar.html#People>, viewed 1 January 2006.

[4] See Constitution of Argentina, Article 75(17).

[5] Andrés Solimano Development Cycles, Political Regimes and International Migration, World Institute for Development Economics Research, discussion paper no. 2003/29, 1-30, p. 3. <http://www.wider.unu.edu/publications/dps/dps2003/dp2003-29.pdf>, viewed 28 January 2006.

[6] In herarchical terms, the status of the autonomous city of Buenos Aires is similar but not the same as that of the provinces.

[7] Constitution, Articles 39, 40. The initiative enables a proportion of the voters to require Congress to consider particular measures within a period of 12 months. The procedure does not apply to bills dealing with constitutional change, international treaties, taxation, budgetary matters, and criminal law. In addition, Congress may submit a bill to referendum, which, if passed, automatically becomes law.

[8] I have argued elsewhere, following Carlos Santiago Nino, that Argentina is an anomic society in the sense that it is characterized by failure to adequately observe legal norms. See Carlos S. Nino, Un país al margen de la ley [A Country at the Margins of the Law) (Buenos Aires: Emecé, 1992); Antonio M. Hernández, Daniel Zovatto, and Manuel Mora y Araujo, Encuesta de Cultura Constitucional: Argentina - una sociedad anómica [Survey on Constitutional Cultures: Argentina - an Anomic Society] (Mexico: Universidad Nacional Autónoma de Méjico, 2005). This book analyzes the result of a survey in which, to take a few indices as examples, 77 percent of 1,000 people polled declared a total or partial lack of knowledge of the Constitution, 86 percent thought that Argentina lives most of the time on the edge of legality, and 88 percent thought that Argentine people lack respect for the law and disregard it.

[9] In addition to the coups d'état Argentina has experienced 52 states of siege, more than 150 federal interventions in the affairs of the provinces, and more than 80 years of economic emergencies.

[10] Antonio M. Hernandez, Las emergencias y el orden constitucional [Emergencies and the Constitutional Order], 2nd. ed. (Mexico: Institute of Juridical Investigations of the National Autonomous University of Mexico and Rubinzal-Culzoni, 2003).

[11] See in particular Article 76, authorizing Congress to delegate power to the executive branch in a case of "public emergency"; Article 99(3), authorizing the president to issue decrees of a legislative character on grounds of "necessity and urgency"; and Article 6, authorizing limited federal intervention in the affairs of a province "to guarantee the republican form of government,"

[12] The descriptor is common in Argentina. See, for example, Philippe Faucher and Leslie Elliott Armijo, "Currency Crises and Decisionmaking Frameworks: The Politics of Bouncing Back in Argentina and Brazil," <http://www.mindspring.com/~leslie.armijo/03currencycrises.pdf>, 17, viewed 3 January 2006.

[13] Important principles of the republican form of government include the sovereignty of the people, the separation of powers, regular elections, the accountability of public officials, the public nature of acts of government, and the freedom of the press: Néstor Pedro Sagüés, Elementos de derecho constitucional [Elements of Constitutional Law], vol. 1, 2nd. ed. (Buenos Aires: Astrea, 1997), 277-280; Mario Midón, Manual de Derecho Constitucional argentino [Handbook of Argentinian Constitutional Law], 2nd ed. (Buenos Aires: La Ley, 2004), 78-84; Pedro J. Frías y otros, Derecho público provincial, [Public Provincial Law] (Buenos Aires: Depalma, 1987), 64.

[14] Buenos Aires, Córdoba, Santa Fe, Entre Ríos, Corrientes, Mendoza, San Luis, San Juan, Santiago del Estero, La Rioja, Catamarca, Tucumán, Salta, and Jujuy

[15] See also Article 121: "The Provinces reserve to themselves all powers not delegated to the Federal Government by this Constitution, as well as those powers expressly reserved to themselves by special pacts at the time of their incorporation."

[16] Bases y Puntos de Partida para la Organización de la Confederación Argentina [Foundations and Starting Points for the Organization of the Argentine Confederation] (Buenos Aires: ed. Estrada, 1959).

[17] Guido Pincione, "Constitutional Government and Liberal Freedoms: Lessons from Argentina", 2002, <http://www.utdt.edu/departmentos/derecho/publiciones/rtj1/pdf/pincione.pdf> , 1-7, viewed 28 January 2006.

[18] In 1949, during the dictatorship of Juan Domingo Perón, constitutional changes were made via a procedure that, arguably, was unconstitutional. The changes were rescinded in 1956 and the previous constitutional order restored: Pincione, "Constitutional Government," 4
[19] Frias, Berardo, Cordeiro Pinto, Hernández, Iturrez, Vergara, Zarza Mensaque, Derecho Publico Provincial [Provincial Public Law] (Buenos Aires: Depalma, 1985) , 389
[20] See Article 125 (formerly, Article 107)
[21] The author had the honour of participating in this initiative as vice-president of the Drafting Committee of the National Convention. See generally Antonio M. Hernandez, Federalismo, autonomia municipal y ciudad de Buenos Aires en la reforma constitutional de 1994s [Federalism, Municipal Autonomy, and the City of Buenos Aires, under the Constitutional Reform of 1994) (Buenos Aires: Depalma, 1997); Susana Albanese, Alberto R. Dalla Via, Roberto Gargarella, Antonio M. Hernández, and Daniel Sabsay, Derecho Constitucional [Constitutional Law] (Buenos Aires: Editorial Universidad, 2004); Enric Argullol Murgadas, ed., Federalismo y autonomía [Federalism and Autonomy], (Barcelona: Editorial Ariel, 2004); Antonio M. Hernandez, Reforma Constitucional de 1994 [Constitutional Reform of 1994] (Buenos Aires: Imprenta del Congreso de la Nación, 1995).
[22] Although without disturbing the exclusive relationship between the provinces and municipal government: Article 123.
[23] Article 129.
[24] Article 124.
[25] The regions do not constitute a further sphere of political government because they are created by the provinces and limited to the purposes of economic and social development.
[26] Article 124 (1), empowering the provinces and the city of Buenos Aires "with the knowledge of Congress, to enter into international agreements provided they are consistent with the national foreign policy and do not affect the powers delegated to the Federal Government or the public credit of the Nation." The authority is particularly useful in relation to the development of binational frontier subregions, within the framework of Mercosur. See generally Antonio M. Hernandez, Integracion y globalizacion: rol de las regiones, provincias y municipios [Integration and Globalization: The Role of Regions, Provinces and Municipalities] (Buenos Aires: Depalma, 2000). For an analysis of the role of the provinces under this authority see Néstor Pedro Saguës, "Los tratados internacionales en la reforma constitucional de 1994" [International Treaties under the 1994s Constitutional Reform], La Ley, 11 March 1994.
[27] Article 124(2).
[28] Article 125 (2).
[29] Article 75(19).
[30] Pedro José Frías, Introducción al derecho público provincial (Buenos Aires, Depalma, 1980), 6-8.
[31] For a more detailed classification of the various roles of Congress, see Daniel Sabsay Legislative Power," in Susana Albanese, Alberto R. Dalla Via, Roberto Gargarella, Antonio M. Hernandez, and Daniel Sabsay, Derecho Constitucional [Constitutional Law] (Buenos Aires, Editorial Universidad, 2004), 562.
[32] Article 30. A 2/3 majority of each house, voting separately, is required to declare the need for reform and a National Convention is convened to carry out the reform.
[33] See Hernandez, Las emergencias y el orden constitucional, for an analysis of the effect of more or less permanent emergencies on constitutional principles, through the aggrandisement of the executive branch and the decline of Congress, with insufficient control on the part of the judiciary. This work also studies the economic emergency declared in 2002, the effects of which are still felt. The most serious consequence was the imposition of a financial and banking *corralito,* freezing $70,000 million dollars in the bank deposits of several million savers, who were gradually given back part of this money in pesos and bonds at a value that was not that of the dollar in the free market, with severe damage to the right of property and other constitutional rights.
[34] Hernández,Las emergencias y el orden constitucional, 29-37; Ferreira Rubio Delia y Matteo Goretti, "Gobierno por decreto en Argentina," El Derecho 158 (1994): 748; Midón Mario, Decretos de necesidad y urgencia en la Constitución Nacional y en los ordenamientos provinciales [Decrees of Necessity and Urgency in the National Constitution and the Provincial Order] (Buenos Aires: La Ley, 2001), 59-69; and "Controles sobre los decretos de necesidad y urgencia" [Control over the Decrees of Necessity and Urgency], La Ley, 14 February 2000, 3-10.
[35] See Hernández et al., Encuesta de cultura constitucional: Argentina - una sociedad anómica [Survey on Constitutional Cultures: Argentina - an Anomic Society) noting the results of a poll in which 45 percent of respondents expressed trust in the president, 14 percent in the National Supreme Court of Justice, 12 percent in Congress, and only 4 percent in the political parties (64, 74). Likewise, 63 percent expressed little or no interest in the discussions in Congress, and 93 percent consider that decisions are taken in Congress without concern for the people (74).

[36] The officers subject to impeachment under Article 53 are the president, vice-president, chief of the ministerial cabinet, ministers, and justices of the supreme court.
[37] Article 54.
[38] Article 57.
[39] Article 99(1).
[40] In this respect, the Constitution of Argentina was influenced by that of France.
[41] Other measures to this effect include the establishment of the Council of the Magistracy and conferral of autonomy on the city of Buenos Aires, resulting in the election of the mayor by the people of the city rather than in the appointment of the mayor by the president.
[42] Article 42.
[43] See, for example, the speech to the Constituent Assembly by Juan Carlos Maqueda, Member of the Drafting Commission. See also Antonio María Hernández, Federalismo, autonomía municipal y ciudad de Buenos Aires en la reforma constitucional de 1994 [Federalism, Municipal Autonomy, and the City of Buenos Aires under the Constitutional Reform of 1994] (Buenos Aires: Depalma, 1997), 73-75.
[44] Article 5 requires each province to enact its own constitution "ensuring the administration of justice."
[45] Article 116.
[46] Mendoza (1916); San Juan (1927); Entre Rios (1933); Buenos Aires (1934). The federal changes were first introduced in 1949 and finally incorporated into the National Constitution by the constitutional reforms of 1957 and 1994.
[47] Neuquén (1957); San Juan (1986) and Córdoba (1987).
[48] Chaco (1951); La Pampa (1951); Misiones (1953); Neuquén; (1955); Rio Negro (1955) ; Chubut (1955) ; Santa Cruz (1955) ; Formosa (1955). Tierra del Fuego became a province in 1990.
[49] The provinces of Buenos Aires, Chaco, Chubut, Mendoza, Misiones and Neuquén use this procedure, although generally for the amendment of only one or two articles.
[50] Córdoba, Chaco, Chubut, Formosa, Jujuy, La Pampa, La Rioja, Misiones, Neuquén, Rio Negro, San Juan, Santa Cruz, Santiago del Estero, Tierra del Fuego, and Tucumán.
[51] Buenos Aires, Catamarca, Corrientes, Entre Rios, Mendoza, Salta, Santa Fe, and San Luis.
[52] See Hernández Antonio María, Integración y globalización: rol de las regiones, provincias y municipios [Integration and Globalization: Role of the Regions, Provinces and Municipalities] (Buenos Aires: Depalma, 2000). The author served as adviser to the government of Córdoba at that time and drafted the interprovincial treaty.
[53] Entre Rios, Mendoza, Santa Fe, and Tucumán
[54] Buenos Aires, Cordoba, Catamarca, Chaco, Chubut, Jujuy, Neuquen, Rio Negro, San Juan, Tierra del Fuego, and the city of Buenos Aires
[55] Formosa, La Pampa, La Rioja, Santa Cruz, Salta, San Luis, and Santiago del Estero
[56] See, in general, Hernández Antonio María, Derecho Municipal [Municipal Law], 2nd ed. (Buenos Aires: Depalma, 1997); also Derecho Municipal-Parte General (Méjico: Universidad Nacional Autónoma de Méjico, 2003)
[57] Hernández, Derecho Municipal Parte General [Municipal Law General Part], 140, where the subject of municipal charters is analyzed, and it is argued that they are true local constitutions, constituting a third level of constitutional power.
[58] Hernández Antonio María, "Relaciones del municipio con otros municipios, la Provincia y la Región" [Relationship of the Local Government with Other Local Governments, the Province, and the Region], Revista de Derecho Público 2004-2 Derecho Municipal, Buenos Aires, Rubinzal-Culzoni Editores, 25-50.
[59] Frías Pedro José, Derecho Público Provincial [Public Provincial Law] (Buenos Aires: Depalma, 1985), 104-113.
[60] For the Web site of the council, see <http://www.cfired.org.ar/ingles/indices/f_cfi.htm>, viewed 31 January 2006.
[61] Article 75(2).
[62] Article 124. Regions already established include Gran Norte Argentino, Nuevo Cuyo, Patagonia, and Centre; they are, however, barely operational in practice.
[63] Article 75(6).
[64] Article 42.
[65] Hernández Antonio María, "El federalismo a diez años de la reforma constitucional de 1994" [Federalism Ten Years after the Constitutional Reform of 1994] A una década de la reforma constitucional [A Decade after the Constitutional Reform of 1994] (Buenos Aires: Germán J. Bidart Campos-Andrés Gil Domínguez-Coordinadores, Ediar, 2004), 263-298.

[66] Carlos S. Nino, Un país al margen de la ley [A Country at the Margins of the Law] (Buenos Aires: Emecé, 1992). See also Antonio María Hernández, Daniel Zovatto, and Manuel Mora y Araujo, Encuesta nacional sobre cultura constitucional: Argentina - una sociedad anómica [Survey on Constitutional Culture: Argentina - An Anomic Society] (Mexico: Universidad Nacional Autónoma de Mexico, 2005).

[67] See Antonio María Hernández, "El. Fracaso del proyecto centralista" [The Failure of the Centralist Project] La Nación, 8 January 2003, analyzing an index of human development produced under the auspices of the United Nations in 2000, showing that the development index in the city of Buenos Aires, at 0.867 points, was six times higher than that in the province of Formosa, at 0.15 points.

[68] Thomas Fleiner, Walter Kalin, Wolf Linder, and Cheryl Saunders, "Federalism, Decentralization and Conflict Management in Multicultural Societies," Federalism in a Changing World: Learning from Each Other, ed. Raoul Blindenbacher and Arnold Koller (Ottawa: Forum of Federations, 2002), 197.