

ARGENTINA

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I. OVERVIEW

This essay analyzes the tensions existing in Argentina as a federal country, between federal and provincial (state) legislative power. When the Argentine Constitution was drafted more than a century and a half ago, the only federation then existing in the world was the United States, and our Founding Fathers looked to it as a model. The result, however, was substantially different. Nowadays, and for different reasons, Argentina has a highly harmonized legal system, although the harmonization has been mostly obtained at the expense of federalism. Despite the Constitutional design, most legislation is federally enacted while only minor matters remain in fact within the powers of the provinces.

Part one of this essay will deal with the history of Argentina's federalism, trying to find a thread running through the development of its constitutional regime. In Part 2, I will describe the main features of Argentina's federalism, while Part 3 will be devoted to examining the division between federal, concurrent and provincial legislative powers, as well as the degree of harmonization existing at the different levels. Finally, in Part 4, I will try to reach some conclusions regarding the particular features of Argentina's federalism and legal system.

II. A Brief History of Argentina's Federalism

There is no doubt that all federal regimes are transactional regimes:¹ they reflect a transaction between centrifugal, dispersive forces, which emphasizes government within small communities, and centripetal, centralizing, ones trying to make those communities mere administrative divisions subject to central power.² But sociological reality and historical development cause these forces to work differently in different nations. This consideration was clearly present in the minds of the Argentine Constitution's Founding Fathers. While they took the United States Constitution as their model, they turned this model into an original creation in its own right.³ As Alexis de Tocqueville indicated in *Democracy in America*: "the growth of nations presents something analogous to this; they all bear some marks of their origin. The circumstances that accompanied their birth and contributed to their development affected the whole term of their being".⁴

After obtaining political independence from Spain (1810-1816), the people of the former *Virreynato del Río de la Plata*, located at the southernmost tip of the Americas, began a forty-year discussion (which on many occasions turned into military confrontations) about the best possible political structure for the new

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¹ See James Bryce, *The American Commonwealth*, Vol. I, p. 48. Spanish translation by Adolfo Posada and Adolfo Buylla, Madrid, Spain.

² Jorge Reinaldo Vanossi, *Situación Actual del Federalismo*, Depalma, 1964, p. 3. John Jay, in *The Federalist Papers*, N° 2, shows this tension: "It is well worthy of consideration..., whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, or that they should divide themselves into separate confederacies, and give to the head of each the same kind of powers which they are advised to place in one national government".

³ See, among others, Dardo Pérez Guilhou, *Historia de la originalidad constitucional argentina*, Instituto Argentino de Estudios Constitucionales y Políticos, Mendoza, 1994.

⁴ Alexis de Tocqueville, *Democracy in America*, First Part, Chapter II. (1835).

country. For the time being, this situation prevented the adoption of a sustainable constitutional regime. Under Spanish rule, the *Virreynato* had had a *de jure* centralized form of government. Yet, the distances between the different cities (as well as the distance between Spain and the colonies), and the poor means of communication created a need for local governments which, during colonial times, were represented by the institution of the *cabildos* (town councils), following the Spanish continental tradition.

In 1776, the Spanish king Carlos III ordered the creation of the *Virreynato del Rio de la Plata* by separating its territory from the *Virreynato del Perú*. The new viceroyalty (which comprised the territory of today's Argentina, Uruguay, Paraguay, the south of Brazil, the south of Bolivia and the north of Chile) was created as a consequence of the Portuguese menace at the River Plate. For that reason, Buenos Aires, then a small port city of merchants (and smugglers) located on the western margin of the river, was made capital in preference to the more important internal cities of Córdoba and Chuquisaca (now Bolivia).⁵

A few years later, the most important reform of the legal structure of Spain's American colonies was adopted, when Carlos III enacted the *Real Ordenanza de Intendentes*. Under this ordinance, the viceroyalty was divided into eight *intendencias* (provinces) and four *gobernaciones* (governorships), each with their local government with greater power than that held by the previous governors, though each still subject to the legal authority of the viceroy. This ordinance has been considered by some historians as the legal starting point of Argentina's federalism.⁶

In 1806 and 1807, British attempts to invade Buenos Aires were repelled. These attempts made viceroy Sobremonte flee inland to Cordoba, leaving Buenos Aires to its own devices, and creating in its people a strong sense and desire for self-government. This sense was strengthened by the fact that many of the city's leaders were influenced by the ideas of the French and American revolutions, and by the philosophies and political theories of Montesquieu, Rousseau, and Locke.

When the Spanish government fell under Napoleon's hands in May of 1810, the people of Buenos Aires, reflecting the new political ideas of the time regarding the source of political power, held a general assembly (*cabildo abierto*) and demanded the reversion of sovereignty to the people.

On that occasion, however, those in favor of the *status quo* stressed the point that the meeting was only a local one, and that the *cabildo* of Buenos Aires – a local municipal body – alone could not represent the whole of the *Virreynato* and depose the viceroy. In order to solve this problem, an interim *Junta* was established to replace the viceroy. In one of its initial actions, this *Junta* invited the other main cities of the viceroyalty to send their representatives in order to form the *Junta Grande* (Big Junta). In this manner, the federal nature of our national government was fixed from the very beginning of our nation's independent life.⁷

Yet, the discussion at the *cabildo abierto* of May 22, 1810 was in fact the beginning of a major struggle between *unitarios* (those in favor of a centralized government, based in Buenos Aires) and *federales* (favoring the federation); this conflict dominated the first half of the twentieth century and led to petty civil wars and anarchy. During that era, two constitutional initiatives, one in 1819, and the other in 1826, led essentially by the Buenos Aires elites, tried unsuccessfully to organize the national government as a

⁵ For a more complete description on the rise of Buenos Aires, see generally, David Rock, *Argentina, 1516-1987*, University of California Press, 1987, chapter II.

⁶ See, for example, María Laura Sanmartino de Dromi, *La Real Ordenanza de Intendencias de Carlos III y el origen del federalismo argentino*, Universidad Complutense de Madrid, 1989.

⁷ As indicated by Juan Bautista Alberdi, the most influential constitutional scholar of the time and a key influence in the drafting of the Constitution (although he did not form part of the Constitutional Convention): "The May Revolution... created a state of things that over the course of the years has acquired legitimacy: it created the provincial regime" (Juan Bautista Alberdi, *Bases y puntos de partida para la organización política de la República Argentina*, El Ateneo, Madrid, 1913, p. 158).

centralized and unified regime. In between those two failed attempts, the fall of the national government (Directorate) in 1820 marked the beginning of a thirty-year period without any national government. While some scholars considered this an anarchical period, others saw it as a period for the consolidation of the local (provincial) political structures, which years later would give birth to the Constitution.⁸

The final triumph of the *federales* in 1852 led to the adoption of the 1853-1860 Constitution,⁹ modeled along the lines of the US Constitution, the “*sole federative model [then] existing in the world*”, in the words of José B. Gorostiaga, one of the Founding Fathers and a key drafter of the Constitution.¹⁰ This Constitution, which, though amended several times (most recently in 1994) remains in force, specifically provides that “the Argentine Nation adopts the federal, representative and republican form of government”.¹¹

III. THE MAIN FEATURES OF ARGENTINA’S FEDERALISM

Despite being drafted along the lines of the US constitutional model, Argentine federalism has its own unique features. As Juan Bautista Alberdi explained, the differences between the two countries were substantial: “...Different from what has happened in the North American [British] colonies, throughout its colonial history, the Argentine Republic has formed a single people, a sole and big consolidated state, a unitary colony... forbidding us to consider the Argentine Republic as something different than a single state, although federal and composed by many provinces, each with their own sovereignty and limited and subordinated liberties”.¹²

The Constitution acknowledges the prior existence of the member states (provinces), even indicating that the constitutional convention delegates which adopted the Constitution as representatives of the people of the Argentine Nation, did so, “by will and election of the provinces comprising the same”,¹³ and allows Congress to admit new provinces to the national territory¹⁴ (a process which ended in 1984 with the creation of the province of Tierra del Fuego, a former national territory).

The Constitution guarantees the provinces the free enjoyment of their own provincial institutions without interference of the federal government,¹⁵ requiring solely that each member state enact its own constitution under the republican representative form of government, that it guarantee at least those rights and guarantees recognized by the federal Constitution, and that it secure the administration of justice, the municipal regime and the primary education of its people.¹⁶ Under this clause, the whole federal Bill of Rights (the first part of the Constitution, entitled “*Declaraciones, Derechos y Garantías*” (“Declarations, Rights and Guarantees”)) acts essentially as a minimum standard for provincial regulation as it is directly

⁸ Jorge Reinaldo Vanossi, indicates that “the reference included in the Preamble [to the Constitution] to the will of the provinces as the key factor in the establishment of the Constitutional Convention, serves no other purpose than recognizing the role played by the provinces in the entire process leading to it” (Jorge R. Vanossi, *Situación Actual del Federalismo*, Depalma, 1964, p. 22).

⁹ While the Constitution was enacted in 1853, the largest province, Buenos Aires, did not participate in the Constitutional Convention, and *de facto* seceded from the federation, even enacting its own constitution in 1854, where it declares its sovereignty. When in 1859, it rejoined the federation, the 1853 federal constitution was subject to a broad reform the following year, giving rise to what is now known as the “1853/1860 Constitution”.

¹⁰ Emilio Ravignani, *Asambleas Constituyentes Argentinas, Instituto de Investigaciones Históricas de la Facultad de Filosofía y Letras de la Universidad de Buenos Aires*, vol. IV, p. 468.

¹¹ Constitución de la Nación Argentina, *hereinafter* Arg. Const., Sec. 1.

¹² Juan B. Alberdi, *cit.*, p. 88.

¹³ Arg. Const. Preamble. See also n. 8, *supra*.

¹⁴ Arg. Const. Sec. 13.

¹⁵ Arg. Const., Sec. 122. As indicated by the Supreme Court in one of its early cases: “*the Federal Constitution of the Republic was adopted for its governing as a Nation and not for the individual government of the Provinces, which according to Sec. 105 (now 122) have the right to be ruled by their own institutions... meaning that they preserve absolute sovereignty in all those matters relating to the non delegated powers*” (*D. Luis Resoagli v. Prov. de Corrientes s/cobro de pesos*, Fallos 7-373 (1869)).

¹⁶ Arg. Const., Secs. 5, and 123.

enforceable against the provinces. Yet, these federal standards do not mean, as Joaquín V. González explained, a requirement that the local constitutions be “an identical, word-for-word copy or an almost exact and equal copy of the national one. For the provincial constitution is the code that condenses, organizes and gives imperative force to the whole natural law that the local community has to govern itself, to all the inherent original sovereignty, which [sovereignty] has only been delegated [to the central government] for the ample and broad purpose of founding the Nation. Therefore, within the legal mold of the codes of rights and powers of a [provincial constitution,] there may be the broadest variety that can be found in the diversity of the physical, social, and historical characteristics of each region or province, or in their particular wishes or collective abilities”.¹⁷ As indicated by one of the current Supreme Court justices, “federalism involves the recognition and respect towards the identity of each province, which constitutes a source of vitality for the republic since it allows a plurality of experiments and the provincial search of their own ways to design, maintain and perfect the local republican systems”.¹⁸

Nonetheless, the Constitution of 1853 included some unique features which placed strong limitations on provincial autonomy and federalism. Among other restrictions, it specifically required that the provincial constitutions be subject to prior approval by the federal Congress, and it subjected local governors to federal impeachment, among other restrictive clauses. The 1860 amendment, however, enacted when the province of Buenos Aires rejoined the federation,¹⁹ eliminated most of these limitations, including the two features just mentioned, with the idea to bring the Argentine Constitution more in line with its American model and to improve federalism. As the Report prepared by the Examining Commission of the Federal Constitution indicated, the reason for the elimination “rested in the respect to the fundamental principle of provincial sovereignty in all matters that do not harm the Nation. As stated before, each province shall have the right to use that sovereignty to its own limits, giving itself those laws it considers most convenient to its own happiness, for which it is not for Congress to legislate in the name of a Province, substituting the representation of that sovereignty, since that action undermines the fundamental principles of the federative association according to which the political personality of the people cannot be eliminated”.²⁰ As we shall see, however, some other limitations on federalism remained.

IV. LEGISLATIVE POWERS

Being a federal country formed by twenty-three provinces and one autonomous city (the city of Buenos Aires), in Argentina legislative power is shared between the federal Congress and the provincial legislatures. Section 121 of the federal Constitution states that “Provinces retain for themselves all powers not delegated by this Constitution to the federal Government”. Residual legislative power thus lies with the provinces. Therefore, the federal congressional power is theoretically limited, since Congress can only pass laws on matters either expressly or implicitly allowed by the federal Constitution.

1. *Substantive Law*

Notwithstanding this basic allocation, the power of the federal Congress to enact legislation is broad, since the Constitution grants Congress the power not only to enact federal law with regard to certain limited, subjects (customs, interstate matters –including interstate commerce–, foreign affairs –including approving treaties–, immigration and citizenship, trademarks, patents, etc.) and all required laws to accommodate the federal interest in federal areas within each province (such as national parks, military installations, etc.), the respective laws being enforced by the federal courts; but also gives legislative

¹⁷ Joaquín V. González, *Manual de la Constitución Argentina*, Pp. 648/49.

¹⁸ *Partido Justicialista de la Provincia de Santa Fe v. Provincia de Santa Fe s/ acción declarativa*, Carlos S. Fayt, concurring. Fallos 317:1195.

¹⁹ See note 9.

²⁰ Emilio S. Ravnani, *Asambleas Constituyentes...*, vol. IV, Pp. 773.

power over all substantive law to the federation (civil, criminal, commercial, labor and mining)- a major departure from the US model. This substantive law, although federally enacted, is applied and enforced by local (provincial) authorities.

The reason for this departure –which was the subject of a vigorous debate in the 1853 Constitutional Convention–lies in the history of our country and, to a certain extent, in the political battles of the time. As to the first reason, the system reflects the already mentioned Spanish tradition where, contrary to the US development, the whole *Virreynato* was subject to a single set of laws (other than petty municipal matters entrusted to the local *cabildos*).²¹ As to the underlying political reasons, although the Constitution was the result of the triumph of the *federales* (those in favor of the federation), the supporters of a centralized form of government remained strong. At the Constitutional Convention, the fear of a return to periods of anarchy as a consequence of multiple legislation on the same matters, and a lack of trust of the competence of the provincial legislatures to enact complex laws (both as a political and a technical matter),²² decided the final outcome.

At the Constitutional Convention, Gorostiaga, the main drafter of the Constitution, replied to the objections raised by Zavala, who considered that granting Congress the power to enact substantive law would imply the plain destruction of federalism, arguing that “if each province is left with this power, the country’s laws would become a great maze from which unconceivable ills will result”.²³ Juan Bautista Alberdi concurred with this position: “a country with as many civil or criminal codes as provinces, will neither be a federal or centralized state, it would be chaotic”.²⁴

In this sense, Section 75 of the Constitution, which describes the powers of Congress, is a broad grant of federal legislative power, with subsection 12 being the main source of central government regulation. In its current wording, this clause provides: “Congress is empowered... § 12. To enact the Civil, Commercial, Criminal, Mining, Labor and Social Security Codes, in unified or separate bodies, provided that such codes do not alter local jurisdictions; and their enforcement shall correspond to the federal or provincial courts depending on the respective jurisdictions for persons or things; and particularly, to enact general laws of naturalization and nationality for the whole nation, based on the principle of nationality by birth or by option for the benefit of Argentina; as well as laws on bankruptcy, counterfeiting of currency and public documents of the State, and those laws that may be required to establish trial by jury”.

In addition, Subsection 32 of the same Section 75 increases such powers, by sealing any gaps that might exist in congressional power: “Congress is empowered... § 32. To make all appropriate laws and rules to put into effect the aforementioned powers, and all other powers granted by this Constitution to the Government of the Argentine Nation”.

Therefore, according to the Constitution, all civil (contracts, torts, property, obligations, family law and estates), criminal, commercial, mining as well as labor and social security laws are enacted by the federal Congress, although, as mentioned, their enforcement is entrusted to the provincial authorities, and any cases involving such matters are litigated before provincial judges.²⁵

²¹ For a detailed analysis, see Clodomiro Zavala, *Derecho Federal*, Tercera Edición, Compañía Argentina de Editores, Buenos Aires, 1941, Chap. 1.

²² See José Manuel Estrada, *Curso de Derecho Constitucional*, 2da. Edición, Tomo III, ECYLA, 1927, p. 25.

²³ Emilio Ravignani, *Asambleas constituyentes...*, Vol. IV, p. 528.

²⁴ Juan Bautista Alberdi, *Elementos de Derecho Público Provincial Argentino*, 1ra. Parte, Cap. 1, §I, El Ateneo, Madrid, 1913, p. 285. See also Joaquín V. González, *cit.*, p. 487.

²⁵ Arg. Const., Sec. 75 § 12.

As a consequence of this broad delegation of authority, the provinces are expressly forbidden to enact legislation on these matters.²⁶ In this sense, the federal Supreme Court has interpreted the constitutional grant of authority in a manner highly deferential to the federal power, indicating that “all laws providing for the private relations of the inhabitants of the Republic... are within the power to enact the fundamental codes that the Constitution grants exclusively to Congress”,²⁷ and that “*our decisions have reiterated that this power is exclusive...[, therefore], its exercise cannot be shared by the provincial autonomies, who may only consider the advantages or disadvantages of the [congressionally enacted] institutions, leaving them subsistent or promoting their reform*”.²⁸ Only if Congress fails to enact those codes, or in subjects not covered by them, do the provinces retain their lawmaking power as regards such matters.

2. Exclusive Provincial Legislative Power

The provinces may, therefore, enact laws only on subjects other than those delegated to Congress by the Constitution. This includes all matters pertaining to the structure of their respective provincial governments, police and municipal matters, as well as the power to lay and collect direct taxes (most of which, however, through the usage of uniform laws, has been delegated to the federal government), as well as on concurrent matters (see *infra*. 3.3.). Defining the areas of provincial authority is not easy, given the broad federal grant. However, as one prominent and oft-cited scholar on federalism has indicated, that provincial power extends to all matters required for “the satisfaction of the needs required by the civil government of each province, having as their limits the inherent competences of the central government for the direction of the foreign relations and the satisfaction of the general requirements of the Nation”.²⁹

3. Concurrent Powers

The Constitution expressly maintains certain delegated matters as concurrent powers of both the federal government and the provinces. This includes matters concerning human and economic development; the protection of natural resources and of the environment; education, recognition and protection of native communities, as well as the laying and collection of indirect taxes; the promotion of new industries; and the development of means of transportation.³⁰ In all these matters, however, federal law wins over local law in the event of conflict.

The Supremacy Clause, Section 31 of the Argentine Constitution, which is worded almost identical to Article VI, Paragraph 2 of the US Constitution, is clear in stating the supremacy of federal law: “This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, shall be the supreme law of the Nation; and the authorities of each province shall be bound thereby, notwithstanding any provision to the contrary included in the provincial laws or constitutions...”.

In practice, in most areas of concurrent powers, the federal Congress enacts the framework rules, while the provinces complete the details with their local legislation. This authority has been strengthened by the 1994 amendment to the Constitution. Section 41, for example, requires Congress to “regulate the minimum [environmental] protection standards, and [require] the provinces [to enact] those rules necessary to reinforce them, without altering their local jurisdictions”. In the same sense, Section 75, §19, empowers Congress “to enact organization and framework laws (*“leyes de organización y de bases”*) referring to education, consolidating national unity and respecting provincial and local characteristics”.

²⁶ Arg. Const., Secs. 121 and 126.

²⁷ *Rossi y Roca*, FALLOS, 147:29. *Id.* *Juan F. Shary*, FALLOS, 103:373; *Etcheverry c/Pcia. De Mendoza*, Fallos, 133:161, among others.

²⁸ *Arizu*, Fallos, 156:20, En igual sentido: *Manuel de la Orden c/Ingenio San Isidro S.R.L.*, Fallos, 235:304.

²⁹ Arturo N. Bas, *El derecho federal argentino. Nación y provincias*, t. I, Ed. Abeledo-Perrot, 1927, p. 70.

³⁰ Arg. Const., Sec. 75 §18 and 19.

4. Federal Establishments

Another area of potential conflict between national and provincial legislative power is the enactment of legislation to be applied in those geographic areas which, although within the territory of a Province, are used for federal purposes. In this matter, the original Section 75 §27 of the Constitution, modeled along Section 1, Subs. 8, §17 of the US Constitution, empowered Congress “to exercise exclusive legislation over... those places acquired by purchase or cession in any of the provinces, for the purpose of establishing fortresses, arsenals, magazines or other establishments of national service”. The federal government considered that, according to the plain reading of the clause, those territories were in fact federalized so that all provincial power over them were excluded.³¹

The provinces, however, never accepted this interpretation and attempted in numerous instances to exercise police and taxation power over these territories, which the provinces continued to consider to be provincial. The Supreme Court was then required to specify the scope of the constitutional clause. It indicated that “exclusive legislation by the federal Congress in those areas acquired in the provinces for establishments of national service is that which concerns the fulfillment of the purpose of the [federal] establishment; and provincial legislative and administrative powers in the area are not excluded, except as they interfere, directly or indirectly, with the fulfillment of the federal aim”.³² The Court considered that the national purpose of the establishment cannot “damage the constitutional foundations of provincial autonomy, which would happen if the acquisition of the property would transfer to the new owner, if that is the Nation, the political power over the same”.³³

The discussion was finally settled by the 1994 constitutional amendment, which amended the clause (now Section 75 §30) deleting the “exclusivity” provision, and clarifying its scope. The clause now reads, along the lines of case law precedents: “Congress shall have the power... to enact the legislation necessary for the achievement of the specific ends of premises of national interest in the territory of the Republic. Provincial and municipal authorities shall hold power to levy taxes and power of police over these premises, insofar as they do not interfere with the achievement of those ends”.

5. Uniform Laws - Taxation

In addition, Congress has found other mechanisms to increase its lawmaking power at the expense of the provinces. The constant usage, since the mid-1930s, of “Uniform Laws” (*leyes convenio*), to be approved and adopted by the component provinces, and the already mentioned precedence that federal law has over provincial law in concurrent matters (education, environmental, development, etc.), have greatly diminished the role of local legislatures.

Under these schemes, some provincial legislatures have entered into harmonization agreements with the federal government. These agreements were then for other provinces to join (e.g. under the Inter-Tribunal Communications Act, Law 22,172). In addition, the federal Constitution encourages the provinces to enter into inter-provincial treaties for purposes of their economic and social development.³⁴ Still, most of the harmonization process is federally-driven, especially as regards the imposition and collection of taxes.

Congressional legislation usually “invites” the provinces to adhere to national standards. While such adherence is voluntary in theory, the political pressure from the central government is high, and the

³¹ Joaquín V. González, *Manual...*, cit., p. 493.

³² *Marconetti, Boglione y Cía.*, FALLOS 154:312; *Frigorífico Armour*, FALLOS 155:104; *Cardillo c/S.A. Marconetti Ltda.*, FALLOS 240:311.

³³ *Cardillo*, cit.

³⁴ Arg. Const., Sec. 125.

provinces usually either follow the national directive or suffer the consequences of not receiving federal funds.

In this context, the federal government is allowed to grant subsidies and other financial aids to those provinces whose own funds are insufficient. This mechanism has been customarily used by different administrations to align the provinces with the federal government's aims.

In addition, the Constitution, after the 1994 amendment, expressly allowed the federal creation and collection of concurrent taxes, a matter which had formerly been within the exclusive realm of the provinces (but a matter which the provinces had long ago surrendered). The amendment requires that these taxes should be shared between the federal government and the provinces by means of an agreed sharing regime (*coparticipación*), and that the transfer of funds to the provinces be automatic.³⁵ The underlying rationale for this mechanism was that it would help to reduce the development gap between rich and poor provinces, creating what has been called "concerted federalism" (*federalismo de concertación*).³⁶ Yet, even though almost twenty years have passed since the constitutional amendment was enacted, no sustainable agreement as regards the sharing of the funds has yet been reached. As a result, the system still operates under a rule established by the military government back in the 1970s, a time when federalism was de facto suspended.

This sharing regime has essentially proven a failure since the federal government maintains the highest portion of such funds, and the richest provinces are reluctant to reduce their share, arguing that they receive the highest portion of internal migration (roughly 40% of the country's total population live in the Province of Buenos Aires alone –which does not even include the city of Buenos Aires).

A specific body, the *Comisión Federal de Impuestos* (Federal Tax Commission) formed by representatives of the federal and provincial governments, is entrusted with the task of overseeing the system and of resolving conflicts that may appear between local and federal claims to shared taxes. This body acts as a main source of harmonization as regards tax legislation at all levels.

6. Municipal Legislation

The Constitution, in its 1853/1860 wording, required the provinces and their constitutions to ensure the municipal regime.³⁷ That, however, was the beginning of a long discussion as to whether the municipalities were true autonomous bodies or mere decentralized agencies of the provincial governments. The 1994 constitutional amendment, following the trend pursued by the Supreme Court in the *Rivademar* case,³⁸ added to the constitutional older provision the requirement that the municipalities be autonomous *vis-à-vis* the provincial (state) government.³⁹ Based on that, each municipality within the provinces is entitled to enact its own municipal charter, determine the form of government (within the representative republican model), elect its own officers, enact local regulations and collect local taxes (generally, permits, sewage, lighting, and other local utilities' fees). Despite the autonomy granted by the federal constitution to provincial municipalities, it is important to note that municipal legislation is pretty similar throughout the country, although no specific harmonization rules exist.⁴⁰ In addition, since not all provinces have yet completed the system reform required by the 1994 constitutional amendment, in many provinces a unique and unified municipal system exists (e.g., in the province of Buenos Aires). Finally, big municipalities within the greater Buenos Aires area, whose low income population exceeds that of

³⁵ Arg. Const. Sec. 75 §2.

³⁶ Pedro J. Frías, *Introducción al derecho público provincial*, 1980, p. 217.

³⁷ Arg. Const., Sec 5.

³⁸ Fallos 312:326.

³⁹ Arg. Const., Sec. 123.

⁴⁰ See, María Gabriela Abalos, *Autonomía Municipal: ¿Realidad o utopía?*, Mendoza, 2007.

many small provinces, are also usually hostages to political pressures from the federal government: either they agree with national directives (sometimes contrary to the political orientation of the provincial government) or they find themselves excluded from large grants of federal funds. This system allows the local officers to stay in power, and it *de facto* contributes to legal harmonization.

Another source of legal harmonization is that it has been customary for provincial governments to enter into agreements with sister provinces of their same region on common matters - practice that is encouraged by the Constitution after the 1994 amendment.⁴¹ In this context, the provinces have established a number of inter-provincial agencies to help them in reaching common grounds vis-à-vis the federal government (for example, the *Consejo Federal de Inversiones* – Federal Investment Council).

7. Regionalization

One of the key aims proclaimed by the 1994 constitutional amendment was to improve federalism. In order to improve the situation of the provinces, the Constitution expressly authorized them to create regions for their social and economic development.⁴² This new feature of the Argentine Constitution will help the provinces to adopt harmonized policies and legislation to solve their common needs. It is therefore a key instrument towards harmonization of the law in the country.

8. Case law as a Source of Harmonization – Court Reports - Legal Education and Admission to the Bar

The legislative system in Argentina must be considered highly harmonized because, as mentioned above (3.1.), all substantive legislation is federally enacted (though locally applied), and for the other reasons explained in this essay.

Still, as also mentioned, according to the federal Constitution, the judicial jurisdiction over federally-enacted substantive law remains with the provinces (save for those limited cases of federal *in personam* jurisdiction).⁴³ Thus, each province enacts its own procedural rules and sets up its own provincial courts whose decisions are final and not appealable to the federal courts, save for special situations in which the supremacy of the Constitution or of federal law is at stake. To the extent that the provinces are autonomous bodies, there is no court with the power to unify the interpretation given by provincial judges of substantive federally-enacted law (unlike the situation, e.g., in France with the *Cour de cassation*). Even in those limited cases where a provincial high court decision involving substantive law can be taken to the National Supreme Court by means of a special discretionary proceeding (*Recurso Extraordinario*), the Supreme Court does not have the power to extend its ruling beyond the particular case at hand since there is no constitutionally-mandated *stare decisis* principle.

Yet, although the absence of a final authority regarding the interpretation of (federal) substantive law may lead to substantially different legal constructions, this has not occurred. Many factors have contributed to maintaining a highly harmonized system.

To begin with, until very recently, law reviews and case reports (managed by private commercial companies) were focused mainly on cases from the main jurisdictions (essentially the city of Buenos Aires) even though they had a nationwide circulation. Therefore, lawyers and judges in the provinces have as their main source of reference the same set of cases. This is also the case with law treatises and other reference materials.

⁴¹ Arg. Const., Secs 124 and 125.

⁴² Arg. Const., Sec. 124.

⁴³ Arg. Const. Sec. 75 §12.

In addition, courts at all levels are increasingly trying to interact, searching for common grounds to resolve cases. In 1994, provincial supreme courts established a body called JUFEJUS, the *Junta Federal de Cortes y Superiores Tribunales de Justicia*, which unites all members of the highest judicial bodies in each province. Its aims are, among others, to foster the independence of the judiciary and to contribute to the training of provincial judges and magistrates. Since 2006, on the initiative of the National Supreme Court, an annual judicial conference has been held which involves both provincial and federal judges. These bodies actually help judges to share their experience and to reach common grounds, thus serving as a major source of harmonization of judicial practice and interpretation. We must also mention that, at the request of the Second National Judicial Conference, the National Supreme Court established an internet portal, the *Centro de Información Judicial* (Judicial Information Center, www.cij.gov.ar), to act as a resource sharing tool for judges of all jurisdictions. Finally, there are other internet sites both official and private, which provide access to judicial decisions and academic publications.

While the influence of non-state actors in the harmonization process is limited, one major source is legal education. Most law schools in the country are federally accredited, which means that they follow national standards and that their degrees are recognized countrywide. While the law school curricula in the provinces (even in national universities) include courses on “provincial laws and institutions”, most of their curricula are heavily loaded with courses on substantive (uniform) law and on federal laws and regulations. Additionally, provincial law schools do not attract as many students as the national ones (Buenos Aires and Córdoba being the most important), which draw their pool of students from throughout the country.

Law degrees allow law school graduates to practice law in the whole country without having to pass any additional exam or admission test. The only requirement for admission to legal practice is the (formal) registration before the local (provincial) bar. Thus graduates can set up their practices anywhere within the country, which has also helped the creation of a unified view of the law.

Local bar and lawyers’ associations throughout the country usually organize continuing legal education courses, and such courses or seminars rarely relate to local laws and practices. Their pool of professors and instructors is generally drawn from bar associations of large cities. While the courses are not mandatory, they contribute to form a common vision of the law countrywide.

9. *International and Community Law*

The influence of international law and community law (*Mercosur*) on the practice of law in the provinces is limited, essentially due to lack of knowledge and training of local judges and practitioners.

The 1994 constitutional amendment, however, has granted international law a key position in the Argentine hierarchy of rules. The 1853 Constitution, with a wording similar to the US Constitution, established that international treaties, together with the Constitution and federal laws were the “supreme law of the land”, taking precedence over provincial laws.⁴⁴ Still, the possibility that a local court had to deal with a matter involving an international treaty was very limited. This situation has recently changed due to the proliferation of Human Rights’ treaties which establish obligations of countries as regards all people within their jurisdiction and which require federal countries “to adopt appropriate provisions for the fulfillment” of the obligations by the constituent units of the federation.⁴⁵

⁴⁴ Arg. Const. Sec. 31.

⁴⁵ See, for example, American Convention on Human Rights, Sec. 28§2.

Endorsing a 1992 Supreme Court decision⁴⁶ holding that international treaties have precedence over internal legislation, the constitutional amendment of 1994 ratified this principle and even gave “constitutional hierarchy”⁴⁷ to a series of enumerated international documents. All these treaties are self-executing and thus constitute binding domestic law, enforceable in both federal and state courts. The same is true for the rules enacted by the *Mercosur* and other international bodies, which the Argentine Constitution also grants precedence over federal and state laws.⁴⁸ Moreover, recent Supreme Court’s decisions have required that judges take international laws and international rulings (such as those of the Inter-American Court of Human Rights) into consideration. In their exercise of judicial review, judges should thus subject internal laws and regulations to scrutiny under international conventions; this entails the power to declare such laws “unconventional”.⁴⁹

This situation is surely a major step towards legal harmonization, not only at the national, but also at the international level.

V. CONCLUSION

The analysis shows why the constitutional design of Argentina can – and has been - defined as a “Unified Federation” (*Unidad Federativa*): although the underlying regime is a federal system, the Constitution allocates numerous and crucial powers to the central (federal) government. In reality, the federation has shifted to a highly centralized government. The main reasons for that development are the limited practice of democratic government (during most of the period 1930-1983, the country was under military rule which mostly disregarded provincial autonomy), and the recurrent economic crises, which have made the provinces highly dependent on federal funds., Recent trends, however, which have started with the constitutional amendment of 1994, can bring new strength to federalism, at least in the form originally envisaged by our Founding Fathers. Harmonization of laws at both the national and international levels is an important goal, but it should not be pursued at the expense of the autonomy of the constituent entities of the country or the sovereignty of nations.

⁴⁶ *Ekmekdjian c. Sofovich*, FALLOS 315:1492.

⁴⁷ Arg. Const., Sec. 75 §22.

⁴⁸ Arg. Const. Sec. 75 §24.

⁴⁹ *Mazzeo*, Fallos 330:3248 (2007).