CHAPTER 2

Argentina (Argentine Republic)

Balancing Centralization with Federalism

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1 History and Development of Federalism

Argentina is located in the southern cone of South America, stretching over an area of almost 2.8 million square kilometres and encompassing several very diverse geographical regions. As of 2016, the population of the country was about 44 million. Argentina is made up of 23 provinces and the Autonomous City of Buenos Aires.

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

The attempts to organize a national state began immediately after the first proclamation against Spanish rule and the overthrow of the Viceroy in May 1810. As with the rest of the continent, independence—although declared at a congress of provincial representatives on July 9, 1816—was followed by a long period of disruption. There were civil wars, economic decline, the weakening of central authority, and the emergence of dictatorial regimes. In the particular case of Argentina, this was also accompanied by the loss of vast territories that until then had belonged to the Viceroyalty. While independence was sought as a means to advance the commercial opportunities for which the elites longed, the institutional means to provide for the political stability required to achieve this objective proved highly elusive.

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

The clash between these two forces characterized the first half-century of independence in the country. Unitarian forces in Buenos Aires pushed for the acceptance of legal reforms that centralized power, while military leaders (caudillos) in the interior of the country fought to maintain their autonomy. As the struggle between unitarians and federalists intensified, any vestige of national authority vanished. The attempts to unify the country under the aegis of Buenos Aires were not only unsuccessful but even generated deeper fractures. Nonetheless, several inter-provincial treaties
signed during this period provided the basis for the eventual reconstruction of the country. Such was the case with the Federal Pact of 1831, which is considered to be the immediate legal antecedent to the constitution that eventually gave institutional form to the state in Argentina. General agreement on a possible political organization of the country was only reached in 1853, but at the cost of the secession of the province of Buenos Aires. This province sanctioned its own constitution in 1854 and retained its independence until the defeat of its army by the military forces of the Argentine confederation in 1859. Although defeated in battle, the need to preserve the interests of Buenos Aires explained the reforms introduced to the new constitution in 1860. The constitution of 1853, though amended multiple times (most recently in 1994), remains in force until today.

Notably, the unification of the country coincided with the accentuation of the economic imbalances between Buenos Aires and the rest of the country. The fertile region surrounding the city—known as the pampas—soon gave rise to the cattle and cereal economies that propelled Argentina into the expanding world economy of the second half of the nineteenth century. Growing economic opportunities for Argentine exports in international markets added an extra premium in achieving the final consolidation of the country’s territory and making the power of a national state effective. However, the basis for federalism was weak then and became even weaker as economic inequality among the regions grew. Power came to be increasingly centralized in Buenos Aires. Then the dictatorial regimes that became a common feature in the political history of the country continued to centralize the power of the national government.

By the 1890s Argentina was a representative democracy. Politics, however, remained mostly an elite affair either because fraudulent practices restricted effective participation or because a large proportion of the electorate was foreign born. Early in the twentieth century, though, growing working-class mobilization and middle-class demands for political reform prompted changes in electoral laws that made the political process more inclusive. While these changes did not directly threaten the interests of the elite, the advent of the Great Depression in 1929 significantly altered the basis for the consensus that had allowed the opening up of the political arena. In 1930 conservative forces put an end to the democratic practices that had marked Argentina as a special case in the context of Latin America. These forces initiated a period characterized by authoritarian rule, limited democracy and political instability that lasted until 1983.
The period of ‘oligarchic’ rule initiated in 1930 was interrupted by the military coup of 1943, which provided the political platform from which Juan Domingo Perón was to emerge as the most powerful figure of the period. In the decade between his rise to power and the military coup that deposed him in 1955, Perón altered politics in the country in a radical way, particularly by transforming the working class and its organizations into key political players. Far from bringing back the order the military had sought, displacing Perón from power only contributed to further weakening the state’s legitimacy and increasing polarization. Not only did Argentina experience recurring institutional crisis, but political conflict also became increasingly violent. Until 1983 political instability was one of the main features of the country and military regimes became a common feature of Argentine politics. Moreover, military regimes acquired new characteristics, growing increasingly detached from any kind of constitutional restriction in the exercise of power. Thus, while until the 1960s military regimes had temporarily suspended important aspects of the constitutional order of the country, for example by dissolving the Congress, the last two dictatorships (1966–1973 and 1976–1983) gave themselves their own legal framework, in effect replacing, and not simply suspending, the constitution. This reached catastrophic proportions during the last dictatorship. The use of state terror for the suppression of opposition and the curtailment of all civil and political rights was its most obvious manifestation. The only public opponents of the 1976 military dictatorship to escape wholesale imprisonment or death were the Mothers of the Plaza de Mayo, who gathered in the plaza every Thursday to protest the kidnapping and killing of their children by the dictatorship.

In 1982, anger by Argentinians towards the military following the British victory in the Falklands/Malvinas War accelerated the downfall of the dictatorship. On July 1, 1982, the military junta appointed General Roberto Bigonone President of Argentina and the General announced plans to return power to a civilian government. In 1983, the Argentinean military handed over power to civilian authorities. The period following 1983, however, coincided with a process of economic decline that fostered a growing distrust of politicians and the democratic institutions. Massive riots in December 2001 forced the resignation of the elected government but, contrary to early assessments regarding the scope and nature of the crisis unfolding at that time, a final breakdown of existing political institutions was averted. With the election of a new President from the Peronist
party in 2003 and the support he managed to secure for several of his initiatives, a chapter of relative stability in Argentina began.

2 Constitutional Provisions Relating to Federalism

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

The Constitution of Argentina establishes a republican, representative and federal form of government (Article 1). As a republic, the constitution institutes a clear division of power among the executive, legislative and judicial branches of government. As a federation, the constitution creates the legal framework for the co-existence of a national federal government and the provincial governments and the city of Buenos Aires. According to the constitution, the provinces are autonomous bodies and as such are organized through their own provincial constitutions, which regulate the existence of local political institutions (Article 122). To be valid, though, these constitutions must respect the representative and republican principles embedded within the national constitution (Article 5) and ensure municipal autonomy (Article 123). The provinces are not sovereign since they are bound by federal legislation (Article 31) and are subject to federal control (Article 6). Moreover, under certain conditions—for example, abrogation of republican forms of government within a province, foreign intervention, sedition (Article 5), or aggression against another province (Article 127)—the federal government can intervene in the provinces, including the removal and replacement of provincial authorities. Provinces retain all the power not delegated by the national constitution to the federal government (Article 121) and select their provincial executive, legislative and other government functionaries (Article 122).

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

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

The federal legislative power resides in the National Congress, located in the Federal District in Buenos Aires. The National Congress is a bicameral body composed of the Chamber of National Deputies (Diputados de la Nación, lower house) and the Senate (Senado de la Nación, upper house) which is comprised of representatives elected from the provinces and the city of Buenos Aires (Constitution of Argentina, Article 44). In addition to the powers listed above, Congress is also responsible for the approval of a national budget (Article 75(8)). The constitutional reform of 1994 established the autonomy of the city of Buenos Aires (Article 129), therefore it will retain the power to elect representatives to the legislative bodies even if it were no longer to be the capital of the federation (Article 45).

National deputies in the Chamber of Deputies are elected by voters in a closed-list proportional representation system from multi-member districts, one district for each province and one for the city of Buenos Aires (Article 45). Deputies are elected for a period of four years and half the chamber must stand for election every two years (Article 50). After each election, the Chamber of Deputies chooses a President of the Chamber and three Vice-Presidents (Article 66).

There are three Senators for each province and the city of Buenos Aires, two of whom are from the party with the largest number of votes and one of whom is from the party with the second-largest number (Article 54). Senators are elected directly by voters in these districts for a period of six years. One-third of the Senate must stand for election every two years (Article 56). The constitution establishes that the Vice-President of the country is the President of the Senate (Article 57). Deputies and Senators
must have been born in the province they represent or have at least two years of residence (Article 48 and Article 55), and they can serve more than one term in office.

Over-representation of less-populated provinces in both chambers is a key characteristic in the composition of the Congress in Argentina. In the Chamber of Deputies, the provinces are represented by a number of deputies proportional to their population plus an additional three deputies. No province can have less than five deputies. This is not a constitutional provision but based on a law enacted by the military regime in 1982. In fact, regressive proportionality is further accentuated by the fact that the allocation of deputies is based on the 1980 census, effectively disadvantaging larger and faster-growing provinces. Over-representation of the less-populated provinces is even more marked in the Senate where each province has equal representation.

Article 4 sets out the country’s financial arrangements. This article states that the federal government will raise the necessary resources to finance national expenditures with the funds accruing to it from export and import duties, the sale or lease of federal public land, the revenue from postal services, the taxes approved by Congress, and loans contracted for the country and approved by Congress in case of national emergencies or when required by public enterprises. With respect to the power of taxation, the constitution stipulates in Article 75(2) that Congress shares with the provinces the power to set indirect taxes. Congress also has the power to impose direct levies for a specified period of time, a task that is otherwise left to the provinces.

The reform of 1994 explicitly mentions that the taxes raised in accordance with these regulations are to be distributed automatically among the federal government, the provinces and the city of Buenos Aires—except for those earmarked for specific purposes—in a fashion that protects the principles of equity and solidarity, and that promotes similar degrees of development. The constitution envisages joint participation for these taxes (coparticipación), governed by a so-called agreement-law that originates in the Senate and is approved by both houses as well as the provinces. Such law could not be modified or regulated unilaterally. This tax-sharing regime was supposed to increase the autonomy of the provinces by reducing their dependence on the willingness of the federal government to provide funds. However, to this day, a sustainable system of revenue sharing has not been established, with some areas being completely unregulated and others facing dispute over the implementation of
the legal framework. Thus, notwithstanding the existence of several formal inter-governmental agreements, in addition to the changes introduced in the 1994 constitution, fiscal federalism is far from having been regularized. In practice there has been a strong incentive to use inter-governmental transfers to secure provincial support for national policies, a fact that explains the complex and highly discretionary nature of fiscal transfers.

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

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

The reform of 1994 introduced a number of provisions aimed at strengthening the federal system in Argentina in an attempt to reverse the ‘defederalization’ of the country. As a result of these provisions, the provinces have become the recipients of new powers with respect to the monitoring of the environment (Article 41), the capacity to create special regions with the goal of promoting economic and social development (Article 124) and the possibility of participating in international agreements with the knowledge of Congress as long as these do not affect foreign policy (Article 124). The constitution of 1994 also allowed for the re-election of the President and thus it is difficult to separate the process leading to it from the political ambitions of the then-President Carlos Menem (1989–1999).

In general, although federalism has always been a key element of the Argentinian constitution, the country has shifted to a fairly centralized form of government. The federal government has been allocated crucial powers, and this is further accentuated by the high dependency of provincial governments on federal funds.
3 Recent Political Dynamics

With the return to democracy in Argentina in 1983, the country entered a period of constitutional stability virtually unprecedented in its history. However, the country has also experienced major economic dislocations. While the crisis in December 2001 did not result in the reversion of this process, it nonetheless made painfully evident the various deficits that still need addressing.

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

Very closely connected to the power of Governors is the discretionary use of fiscal transfers through which the national executive attempts to consolidate alliances with sub-national units in the pursuit of its objectives and targets. This is another key problem that the federal government will need to address. It will become more critical to increase its ability to find a resolution to the serious fiscal difficulties faced by the provinces which have been emphasized by demands for austerity measures caused by the high level of debt. Although some progress has been made for joint participation in tax revenue, this does not extend to all areas of fiscal transfers. Furthermore, even the fiscal transfers regulated by agreement-law have been a source of dispute, with the government going so far as to retain payments from the provinces, a practice later ruled unconstitutional by the
Supreme Court. However, conceiving of alternative institutional arrangements to tackle these problems will only provide partial relief to the dilemmas of federalism in Argentina if no serious attempt is made to balance the country’s deep regional inequalities. Thus, the third area of concern is the capacity of federal institutions to respond to the diverse developmental needs of the country’s various regions.

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

In 2015, Mauricio Macri was elected as the first President from a non-Peronist and non-Radical (social-liberal Radical Civic Union) party, defeating Peronist candidate Daniel Scioli who had already served as Vice-President under former President Néstor Kirchner. Macri’s support in the population is broad, resulting in his coalition winning the majority of votes in the five most important provinces representing two-thirds of all voters in the 2017 national elections. However, his presidency is and will be shaped by the overall economic situation which includes high inflation, high national debt, high unemployment and a low and sometimes even negative GDP growth rate. The economic factors pose tough challenges to federalism in Argentina. At the time of the publication during the transition period, the new government, with its own agenda, works to give shape and meaning to its commitments. They have concentrated initial efforts on external debt and seeking projects to help with the main economic demand of the population—employment. Outside the credit markets, a weight of difficulties and uncertain global scenario, the Covid-19 shock, Argentina finds itself facing an opportunity to reverse the crisis of macroeconomic instability and weak growth in a world that is transiting gradually towards a new normality. Alea Jacta est.
Fig. 2.1 Argentina. (Credit: vectorstock.com/ingomenhard)
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