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Jorge Reinaldo Vanossi

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AN ANALYSIS OF ARGENTINE FEDERALISM

*Jorge Reinaldo Vanossi**

Translated and with an Introduction by Robert S. Barker**

*Professor of Constitutional Law, University of Buenos Aires. Secretary of the Constitutional Affairs Committee of the Argentine Chamber of Deputies. Former Minister of Justice.

**Duquesne University Distinguished Professor of Law, Duquesne University School of Law. Former Visiting Fulbright Professor of Constitutional Law, University of Buenos Aires.

A. *Provinces and Regions in the Argentine Republic*

In 1964, I had the boldness or the courage to publish an essay titled, *The Present Condition of Federalism*, and subtitled, "Institutional and Economic Aspects of the Argentine Reality,"¹ which included a stimulating prologue by Dr. Alberto A. Spota.

Much water has passed under the bridge since then -- years of institutional and political vicissitudes. There appeared on the scene new protagonists, new obstacles, and the newest of problems and questions which were unimaginable until just a short time ago. Moreover, the last decade of the Twentieth Century brought forth ill-advised policies and technical-economic phenomena of unthinkable magnitude and consequences.

Today we must confront the challenges of globalization, and we are also called on to deal with the risky undertaking of "integration," both regionally and beyond. But we continue to operate with structures conceived in the Eighteenth Century, which divided us deeply throughout the Nineteenth Century, and which put us on a downward path throughout the Twentieth Century.

Argentina has been offered four models or patterns of federalism, within a variety that is broader still:

a) the Artigas² model: a strong leader within a confederation;

1. Jorge Reinaldo Vanossi, *Situación Actual del Federalismo; Aspectos Institucionales y Económicos: En Particular Sobre la Realidad Argentina*, Depalma, (1964).

2. *Translator's note:* Jose Gervasio Artigas (1764-1850) was born in Montevideo. In 1811 he joined the revolt of Rio de la Plata against Spain. A few years later he broke with

b) the model of the Constitution of 1853 in its original version: centripetal, although loved by the provincial chiefs of the time, and tamed by Urquiza;

c) the model set forth in the Constitution in the definitive form which it acquired with the amendments of 1860: centrifugal, put forward by the residents of Buenos Aires, and accepted by the people of the provinces (notwithstanding the grumblings of Alberdi³).

d) the model of the so-called Reform of 1994, which would point toward *pro-regionalism*, though with limitations, but which is, in reality, a hybrid resulting from numerous contradictions which swing between centralization and decentralization.

What stands out in the dynamic dimension between 1820, the year of the first great collapse of national power, and the current sad and mediocre state of affairs at the dawning of the new millennium is the predominance of the *centripetal* force, which imposes itself with irreversible character.

Rodolfo Rivarola keenly pointed this out at the beginning of the twentieth century in his powerful work titled *Del regimen federativo al unitario (From the Federative Regime to the Unitary)*,⁴ in which he reviews the factors of unity and federation which Alberdi had inventoried in chapter 17 of his *Bases*,⁵ and comes to the conclusion --beyond the "mixed" character which the great son of Tucuman attributed to our regime --that "while the unitary factors have been maintained and accentuated enormously, the federative factors have been attenuated, diminished, and made hazy."⁶

Now, a century later, the situation is even more grave. Located between the cryptic and the Sybilline, between the confused and the mysterious, between the utopian and the prophetic, between magic and reason, we debate among ourselves with despair about the reissuance in paperback of glorious pasts and lost illusions. Let us not pretend to attribute to ourselves the qualities of Sibyl, the woman whom the ancients believed to be animated by a prophetic spirit; even less are we possessors of the "Sibyline," that is, of the books that the Sibyl of Cumae sold to Tarquinius "the

the other provinces and became a leader of the movement for the independence of the "Banda Oriental," which is now known as Uruguay.

3. *Translator's note*: Juan Bautista Alberdi (1810-1884) is considered the father of the Argentine Constitution.

4. RODOLFO RIVAROLA, *DEL RÉGIMINE FEDERATIVO AL UNITARIO*, (Ed. Peuser) (1908).

5. JUAN BAUTISTA ALBERDI, *BASES Y PUNTOS DE PARTIDA PARA LA ORGANIZACIÓN POLÍTICA DE LA REPÚBLICA ARGENTINA* (1852).

6. RIVAROLA, *supra* note 4 at 361-67.

Proud,” and that, it is supposed, contained the predictions of the fate of Rome.

But, legends aside, it is enough that we reacquaint ourselves with the testimony concerning the evolution of our vertical, or territorial, division of Constitutional power.

If we wish to confront these matters, it is sufficient to have recourse to the judgment of Vittorio Emanuele Orlando⁷ soon after his visit to our country in the 1920's:

What type of federal state is the Argentine Republic? It is, we should say, on the extreme right of federalism, in the sense that, compared with other such States, it nurses unitarianism.⁸

Of all the determining causes of this phenomenon, we can emphasize the following three of those mentioned in our work of 1964:⁹

a) *De facto* governments, which repeatedly and for increasingly long periods, aggravated the unitary process by concentrating and centralizing power.

b) The national political parties most favored by the voters, which were characterized by a centralized structure, and, usually, with personalist leadership.

c) The suctioning-off of the economic and financial resources of the provinces by the central power.

During the 1960's, the situation was already pathetic:

■ Félix Luna¹⁰ spoke to us of the delusion created by the deceptive use of federalist rhetoric in political discourse.

■ Into the framework of classifications and typologies, we inserted the paradigms of “quasi-federalism” or, even worse, “pseudo-federalism.”

■ Economic trends, tendencies, and orientations, for their part, in their totality, obscured the increasing financial dependency of the provinces on the decisions of the Central Bank.

In my legislative career, I have proposed that Argentina return to that sharing of resources that was established in the Historic Constitution, through the harmonious interplay of article 4 and

7. *Translator's note:* Vittorio Emanuele Orlando (1860-1952) was an Italian statesman and constitutional lawyer, best known as prime minister of Italy from 1917 to 1919 and leader of his country's delegation to the Paris Peace Conference, 1919.

8. Un tipo de Stato federale, la Costituzione Argentina, Giuffrè Milano, *Dirretto Pubblico Generale* 337-38 (1954).

9. See, *supra*, note 1.

10. *Translator's note:* Felix Luna (1925-): The most widely-read Argentine historian of the latter half of the twentieth century.

article 67, inciso 2.¹¹ On September 18 of that same year I presented another proposed resolution for the purpose of encouraging programs directed to strengthening the establishment of various regionalization alternatives.¹²

The Reformed Constitution of 1994 contains various contradictions:

■ A new regime of “coparticipation” (art. 75, inc. 2), which [ten] years later forms part of the catalogue of illusions.

■ Article 124, which apparently will remain in the repertoire of inoperative clauses. A confederation?

■ The so-called “development clause” (art. 75, inc. 1°) insofar as it confirms the mandate to the Congress to “. . . promote differentiated policies which tend to *bring into balance* the unequal relative development of provinces and regions. . . .”

■ The new system of presidential election (art. 14), by direct vote in two rounds, treating the whole country for this purpose as “a single district.”

■ The new system of election of Senators (art. 54): “The Senate shall be composed of three senators for each province and three for the Federal Capital, elected *directly and together*, two seats going to the party which obtains the greatest number of votes and the third seat to the party with the next-highest number of votes. Each senator shall have one vote.”

■ The initiative of the Senate: art. 75, inc. 2. “Treaty-law, which moreover may not be modified unilaterally or regulated and shall be approved by the Provinces. . . .”? A Confederation?

■ Art. 75, inc. 19: regional and provincial equilibrium (in combination with art. 124).

II.

In the face of all this, it is appropriate to ask: Are we confronted with irreversible tendencies? Our first response is that it seems so. But then, should we or can we joust with windmills? Or are there other roads? And in that case, what would be the options or

11. Bill presented to the Chamber of Deputies of the Nation, expediente no. 1526-D-91, July 10, 1991.

12. Expediente no. 2734-D-91. On this subject one is encouraged to read the work of Hector Serravalle entitled *Atribucion de las potestades fiscales a los diferentes niveles de gobierno* (*The Allocation of Fiscal Powers to Different Levels of Government: Fiscal Federalism and the Distribution of Taxes*). Hector Serravalle, *Atribucion de las Potestades Fiscales a los Diferentes Niveles de Gobierno*, *La Ley: Periodico Economico Tributario*, July 27, 2000, at 9-10.

courses of action to follow? We see some hypotheses, which have support in history and in constitutional norms.

Congress shall promote the economic growth of the Nation and the populating of its territory; promote differentiated policies *which tend to bring into balance the unequal relative development of provinces and religions*. In these matters, the Senate shall be the Chamber of origin.¹³

This would seem to reestablish the orientation of Manuel Dorrego¹⁴ in the Congress of 1824-1827. In the thinking of Dorrego, the *sine qua non* was the formation of units more or less equivalent to each other.

Let us see what Romeo Carranza, Rodríguez Varela, and Ventura say concerning Dorrego in their well-known and erudite work *Political and Constitutional History of Argentina*:¹⁵

This is the man who, *elected deputy for the province of Santiago del Estero*, takes on most ardently the defense of federalism.

I have said—he asserts—‘that the province which I represent will agree to association on the condition *sine qua non* that it shall not be subjected to another province; I have not said that it will associate in such a manner that it will not become part of another province.’

Proceeding on this basis, Dorrego proposes to reconcile the federalist inclination of the provinces with their socioeconomic reality—the creation of a new state on the basis of the existing ones:

‘In the judgment of the speaker’—he continues—‘persuaded by practical considerations, the nation can constitute itself on this order or another like it. . . . For example, the Banda Oriental could form one State; Entre Ríos, Corrientes, and Misiones another, as they did when, commanded by Colonel Ramírez, they formed one province; another State could be the province of Santa Fe with Buenos Aires, with its capitol in San Nicolás or Rosario or at a more central point. The province of Córdoba has all the qualities, including wealth, necessary to be a single State. La Rioja and Catamarca together can constitute another State; the prov-

13. CONST. ARG., Art. 75, inc. 19, 2d. part (emphasis added).

14. *Translator's note*. Manuel Dorrego: A leader of the provincial opposition to the Unitarian Constitution of 1826. Elected Governor of the Province of Buenos Aires in 1827. Killed in December, 1828 by forces rebelling against his government.

15. 2 ROMEO CARRANZA & RODRÍGUEZ VARELA, *HISTORIA POLITICA Y CONSTITUCIONAL DE LA ARGENTINA* 57-58 (A-Z ed. 1993).

inces of Santiago del Estero and Tucumán another; the province of Salta is in the same situation as Córdoba; the [three] provinces of Cuyo, another; and thus all difficulties are overcome. For the internal organization of each province what is necessary is practical knowledge and a desire to improve, and this matter is most appropriately left to those who live in the place than to those who come from outside.¹⁶

For his part, Orlandi, in *Principios de Ciencia Política y Teoría del Estado*,¹⁷ asserts:

Dorrego was the first who advanced the thesis of *region* on the basis of *geographical proximity*. Our regionalism and regionalization is a socio-economic problem, but the solution is a federal-political one.¹⁸

We ask ourselves: How many provinces are self-financing? Which of them can we say are self-sustaining? The answer: the minority, perhaps no more than the Federal Capitol, Buenos Aires, Córdoba, Santa Fe, Mendoza, and Entre Ríos.. According to pathetic data, Alvaro Ruiz Moreno states categorically in "Rethinking the Argentine Federal Fiscal System"¹⁹ the following:

The average in the 24 jurisdictions [*i.e.*, the 23 Provinces and the City of Buenos Aires] of the relationship between debt and revenue is 55.5%, reaching in some cases more than 100%. The promised coparticipation exceeds in some cases 60%, reaching in some instances 97%, and the share of their own tax revenue in relation to total revenue, except in . . . the City of Buenos Aires and the Province of Buenos Aires, does not exceed 35%, and in extreme cases is less than 10%.²⁰

Between the power of the Central Bank and that of the National Treasury there is configured a new coercive form, subtle but effective, of "federal intervention," not foreseen in article 6 of the National Constitution.

On the other side of the coin, provincial legislatures and governors do not overuse, but rather underuse, the autonomy guaranteed them by article 5 of the Constitution, in the following respects:

16. *Id.*

17. Orlandi, *Principios de Ciencia Política y Teoría del Estado* (Plus Ultra ed. 1985).

18. *Id.* at 643.

19. Alvaro Ruiz Moreno, *Repensar el Sistema Fiscal Federal Argentino*, Clarín, July 31, 2000.

20. *Id.*

(a) They do not make strong efforts to collect taxes, perhaps because this may be unpopular.

(b) There results a “double-taxation,” when this seems easier (as in the case of Catamarca).

(c) They spend extravagantly (as in the case of La Rioja).

(d) They engage in rash financial practices which then produce failures, which in turn cause them to pay large reparations (as in the case of Tucumán).

(e) When the water “rises to the collar,” they come as suppliants to the Federal Capital.

III.

Art. 13 [Showing the great wisdom of the Constitutional delegates!]:

New provinces may be admitted to the Nation, but a new province may not be created within the territory of one or more others, nor may several provinces be combined to form a single one, without the consent of the legislatures of the provinces involved and of the Congress.²¹

Thus, the Dorrego formula could be achieved or approximated.

Does it make sense, really and practically, that the Nation is composed of 25 jurisdictions? There is a notorious inviability, aggravated by the reduplication twenty-five times of governmental organs with the same or similar functions and without any additional benefit. That multiplication—does it not appear unnecessary?

The complexity of the present-day state apparatus produces periodic crises that batter and punish the already precarious local economies of large geographic areas of the country; and with each emergency that occurs, the assistance is always insufficient or the constant repetition of the shortages and tensions would seem to indicate the presence of a historic fatalism that is very difficult to overcome.

Is it not true that the delegates of 1853-1860, being wise and farsighted, ingeniously wrote the hypotheses contemplated in article 13 with such finality that some future generations might “take the bull by the horns” and come up with a solution of major sur-

21. CONST. ARG. art. 13.

gery? As Hans Kelsen would say, this constitutional norm offers us a framework full of possibilities.

Art. 13 "from several provinces to form a single one . . ." This requires only the agreement of the respective (provincial) legislatures and the consent of the national Congress. This is one of the procedures that can be a viable means of drawing to a close "regionalism" without arriving at a unitary situation. It does not transform the structure of the State and it permits new groupings on the basis of territorial contiguity and economic complementarity. It is true that decreasing the number of entities [*i.e.* provinces] would bring about a weakening of their political powers in the Senate, where each province is now separately and equally represented; but this would be compensated for by the salutary results that would be achieved in other areas.

The price of the pride of not accepting this solution will invariably be misery and underdevelopment,²² as Maticrozo pointed out in his significant comparison: "in the Argentine Republic—he said—whose provinces, almost always afflicted by budget deficit, ordinarily find themselves in possession of a useless sovereignty, a sovereignty like that of poor nobles who, lacking money, display titles and parchments which have nothing to do with the necessities of existence."²³ It is this same pride which runs through our history, from 1820 until 1826, when the Constitution caused the provinces to defiantly proclaim their independence and sovereignty. Throughout that period, the country lacked—as Bas pointed out — "even the economic capacity to govern, as demonstrated by a secret article of the 'Pacto Federal,' according to which Buenos Aires undertook to subsidize monthly the administrative expenses of the other coastal provinces."²⁴ It is time, then, for a public recantation!

In my opinion, along with the application of the aforementioned article 13, it would be possible to strengthen the *municipalities* and the other productive units, in order to arrive at a more rational distribution of revenues and resources.

The Reform of 1994 proclaims the municipalities' "autonomy."

22. See CARLOS SANCHEX VIAMONTE, *DERECHO POLITICO* 255 (Bibliografica Argentina 1959); JUVENAL MACHADO DONCEL, *REFORMAS CONSTITUCIONALES Y REVOCABILIDAD*, *Estudios sobre la Constitucion nacional argentina* 169, 264 (Universidad del Litoral 1942)

23. José Nicolás Matienzo, *El gobierno representativo federal en la República Argentina*, 337-38.

24. Bas, *Derecho público provincial* at 23

Each province shall dictate its own Constitution, in conformity with the provisions of article 5, assuring municipal *autonomy* and regulating its extent and content in institutional, political, administrative, economic, and financial areas.²⁵

The principle of immediacy and the advantage of proximity are virtues of a municipal regime that puts in harmony the rules of democracy and the demands of efficiency. The people grant or withdraw their confidence at the level of the neighborhood, as in the legendary "*polis*."

It is good to recall that, already in 1908, Rodolfo Rivarola, in his dissection of the pathology of our handicapped federalism, asserted accurately:

Because of our federal organization, each citizen is subjected to three levels of government, each having the power to demand that he pay taxes for his governance: the national government, the provincial government, and the municipal government. Is it not clear that [of the three], the provincial is surplusage? We cannot be rid of the national because it is that [government] which provides the common external defense and provides harmoniously security and internal welfare for all, great and small. We cannot do away with municipal government because it attends to our most immediate needs. By process of elimination, the one to be eliminated is the provincial.²⁶

IV.

Argentine constitutional history also offers us precedents of considerable consistency. Let us consider the wise—though disappointingly, failed—Constitution of 1826, whose financial provisions in particular were very realistic for the times and the circumstances.

No form of government has an absolute goodness: the goodness of each one is relative to the condition of the society to which it applies.²⁷

In the erudite works of Ravnani, *Historia Constitucional Argentina*,²⁸ and *Asambleas Constituyentes Argentinas*,²⁹ the author points out the condition of Argentine society in 1826:

Population: scarcely 150,000 inhabitants, widely scattered.

25. CONST. ARG. art. 13 (emphasis added).

26. RIVAROLA, *supra* note 4. at 30

27. Report of the Argentine Committee on Constitutional Matters

28. 3 RAVIGNANI, HISTORIA, CONSTITUCIONAL ARGENTINA 324

29. 3 RAVIGNANI, ASAMBLEAS CONSTITUYENTES ARGENTINAS 160, 223

Poverty: there was no source of public income to subsidize the needs of the community.

Incapability: either destructive democracy or oppressive oligarchy.

In the face of these categorical averments of the majority of the Constituent Congress, according to Galletti it does not appear certain that there was an active intervention on the part of Dorrego, as is currently asserted. In order to rescue the truth, let me review some of the provisions of that Constitution:

■ Provincial revenues were derived from *direct* taxes, since indirect taxes were designated for the national treasury. If there was anything left over after provincial expenses were paid, *it was invested in the same Province*, in works approved by the National Legislature (which also approved the accounts).

■ “Councils of Administration” were established at the provincial level. These were composed of between seven and fifteen members, who were chosen by direct popular vote for terms of two years (with one-half of the members being elected each year), *and who served without compensation*. It was the responsibility of these Councils to prepare the [respective] provincial budgets (subject to the approval of the national legislature), and to impose and collect direct taxes.

In a word: a limit was placed on waste!!

I insist on demonstrating the reasonableness and sensibleness of the statesmen of that era. The Constitution which the Constituent Congress of 1824-1827 approved—under the inspiration of Rivadavia—in the early hours of Christmas, 1826, attempts to create a “composite” government by synthesizing models of federalist orthodoxy with attempts at centralization. Thus, in the Report of the Commission on Constitutional Affairs—on June 4 of that same year—it had been recognized that a simple and strict federation was the form of government least adaptable to the status and circumstances of the country. And in the *Manifiesto* which accompanied the Constitution it was said that there had been selected “all the advantages of federal government, separating out only the troublesome things; and . . . adopting all of the good features of a unitary government, excluding only that which could be harmful to public and individual rights.” It consecrates, thus, “the *consolidation* of our union,” as that form of state which most closely approximates decentralization within a unitary system; and it escapes the accusations based on the liberal notion of dividing vertically or territorially the power to guarantee rights, warning:

The benefits of liberty and happiness, to which we aspire, are not to be found in federation. History presents us with sad examples of nations which, governed under federal forms, have been even more enslaved than those under the terrible power of Asiatic despots.³⁰

The Rivadavia Constitution [that is, the Constitution of 1826], in consonance with the ideas defended by Rivadavia himself during the period of the Triumvirate and during the government of Martín Rodríguez, unites to its progressivism a zeal for a mechanical perfecting of power, by harmonizing the required efficacy in functioning with the “demarcation” and “balancing” of the organs of government in “just equilibrium.” As is indicated in the Manifesto, “it does not create dangers of confusion or conflict, because if any one [organ] should attempt to encroach upon the prerogatives of another, a constitutional reaction would [ensue that would] cause the offender to retreat into its own orbit.”³¹

The aforementioned qualities are for the most part concentrated in the eighth section of the 1826 Constitution, which is devoted to guaranteeing the inherent rights of man as being necessary for the existence of free government. Thus, the 1826 Constitution follows the pattern of the French Declaration of 1789 in regarding those rights, together with the division and harmony of governmental powers, as essential to a constitution, in the proper sense of that term While the Constitution of 1853-1860 retained some of the features of the 1826 Constitution, such as many of the procedures for the enactment of laws and the operation of the national government, this was not so in other areas, especially with respect to the provinces, where the later document created a federal State.

. . .

Among the differences between the two Constitutions, that of 1826 provided (in article 148) for a clear distribution of tax revenues between the Nation and the provinces, a noteworthy feature in a unitary Constitution. Another norm of the 1826 Constitution which is decidedly favorable to provincial development—one which is not often noted in the commentaries on our constitutional antecedents—is the provision of article 151 that, after the payment of

30. Manifesto a la Constitución de 1826.

the administrative expenses of a province, the remaining tax revenues derived from that province, "shall be invested in that same province," in such public works as the local council shall agree upon.³³

Thus, we see that in the Rivadavia [*i.e.*, 1826] Constitution there are two component parts, each of which has run a distinct course. They are, first, the form of government, "consolidated in unity," which failed to gain approval; and, second, the perfected clauses concerning powers and rights, which have been the authentic source of the Constitution of 1853. That combination was, in turn, an advance over the norms of the immediate antecedent—the Constitution of 1819—; as the Committee on Constitutional Matters did not fail to acknowledge in its report signed by Valentín Gómez, Manuel Antonio de Castro, Francisco Castellanos, Santiago Vásquez, and Eduardo Pérez Bulnes.

In synthesis, it can be said that the unitarian cause has had in the judgment of history the disfavor received by any defeated party. Beyond that . . . the principles and solutions contemplated in 1826 need a critical evaluation which rests on bases other than the *parti prid* which accompanies all judgments about the rancor between unitarians and federalists. In making this evaluation, one cannot ignore the figure of Rivadavia without being guilty of inexcusable neglect. Rivadavia embodied the last attempt at a civil, national, and representative government prior to that death known to us as the confederal anarchy and the Montonero excesses. This proves, once again, the inexorable law of Argentine history: that the failure of a man and of a party bring about not only their own downfall, but also the inevitable collapse of the institutions with which they were involved. It is because of this that every mistaken policy of government, whether of act or—even worse—of omission, leads to the results that we all know.

. . .

We cannot overlook the "circumstance" that we are in the Twenty-First Century and are distancing ourselves from the Nineteenth; that we are closer to the world of tomorrow than to a past over which there falls the balance-sheet of *history converted into*

31. Manifiesto a la Constitución de 1826

32. Manifiesto a la Constitución de 1826

33. CONST. ARG. art. 151.

judgment. From everything seen, from everything proved and tested, from the great deal that is known, there remains standing the historical entity of the country, Argentina.³⁴

V.

Let us move now to face, with contemporary sensibility, the theme of the "regions," as dealt with in the new article 124 of the National Constitution. This norm contains a facultative power:

The provinces *shall be able to* create regions for economic and social development and establish organs with powers for achieving their purposes.³⁵

Today, the word "region" and the term "regionalization," are on everyone's tongue. These terms have been used and abused, most of the time without sufficient precision as to their significance and reach. Sometimes they are used in gross error, as was the case with Onganía.

The idea of "regionalization" is not novel and its antecedents are acknowledged in the report of the majority of the Advisory Committee on Institutional Reform of 1971. That document was signed by Drs. Bidart Campos, Bidegain, Botana, Oyhanarte, Ramella, Rouzout, and Vanossi. It states:

Only two matters, it seems to us, justify the introduction of normative reforms. The first is that which may be called '*the region.*' The constitutional norms contemplate only two state centers of decision—the Nation and the Provinces—and they exclude any intermediate authority. In this as in so many other aspects, nevertheless, the reality surpasses the norm. Socioeconomic boundaries, determined by nature, overflow the political boundaries fixed by the discretion of man. Thus, beside the juridical figure of the Province, there comes forth the extrajudicial figure of the Region, composed of several provinces tied together by a community of life and the accident of destiny. This second figure, the Region, cannot be ignored. The plural interest which it represents, and which moreover adjusts itself to the modern doctrine of 'poles of development,' deserves to be juridically protected. It is equivalent to recognizing that the bipartite scheme of the Constitution is insufficient and that the rule that everything that is su-

34. See Jorge Reinaldo Vanossi, *El Poder Judicial en las ideas de Rivadavia y la Constitución de 1826*, REVISTA DE LA FEDERACION ARGENTINA DE COLEGIOS DE ABOGADOS, No. 37-38, 11 *et seq.* (January/April 1975)

35. CONST. ARG. art. 124 (emphasis added).

praprovincial is national, derived especially from article 67, clause 12, should be modified to create *the valuable possibility that the supranational be regional; that is to say, that it belongs to an order still decentralized*, still immediately connected to interests which remain local, and which look better when we look at them close-up.

The modification which we advise should establish, without prejudice to the powers of the national State, regional authorities and organizations, with power of administration and decision, authorized by the Congress and born of the agreement of the interested provinces. These regional authorities and organs would have capacity for regional planning and the operation of regional development entities.³⁶

Antonio M Hernández maintains in his work *Intergración y globalización*³⁷ that before the reform [of 1994] Vanossi interpreted the Constitution as permitting different levels of regionalization, according to alternative hypotheses: a) the formation of a single province out of several;³⁸ (b) the exercise of concurrent powers of the Nation and the provinces;³⁹ (c) legislation by Congress concerning zones of national jurisdiction;⁴⁰ (d) interprovincial treaties;⁴¹ and (e) the enforcement of the laws of the Nation by the "natural agents" or by the federal services: its distribution and regionalization.⁴² On analyzing this question, Ricardo Vergara, now adjunct professor of Public Provincial and Municipal Law of Córdoba, wrote:

The options described in points (c) and (e) do not seem appropriate to federalism, since they tend toward centralization Of all the hypotheses stated, within the federal system of the Argentine State, the formulations in points (b) and (d) seem to provide adequate framework for regionalization, in that they offer a rich range of alternatives for the creation of new federal organisms, as well as for the formation of national and zonal jurisdictions. This is to say, the constitutional provisions cited (arts. 67, inc. 16, and art. 107) make possible the insertion of economic regionalism into

36. *Comisión Asesora para el Estudio de la Reforma Institucional- Dictámenes y Antecedents*, Ministry of the Interior, at 33-34, 47 (May 20, 1971).

37. ANTONIA M. HERNANDEZ, *INTERGRACION Y GLOBALIZACION* 91 (Editorial Depalma 2000).

38. CONST. ARG. art. 13.

39. *Id.* at art. 67, inc. 16, art. 107.

40. *Id.* at art. 37.

41. *Id.* at art. 107.

42. *Id.* at art. 110.

the framework of political federalism, *since as Vanossi well points out*, 'the wide range of possibilities which the (cited) constitutional provisions offer, authorize everything, minus 'political' regionalization; that is to say, the regionalization possible within the present constitutional framework is economic, cultural, and judicial, provided, however, that it does not assume a political character.'

VI.

The second part of the new article 124 is a dangerous rough edge. The aforementioned norm, after referring to the power (of the provinces) to create regions, says that:

they [the provinces] may also celebrate international conventions insofar as those are not incompatible with the foreign policy of the Nation and do not affect the powers delegated to the federal government or the public credit of the Nation, with notice to the national Congress⁴⁴

Loans and investments are other aspects of finance which have implications for federalism. By virtue of article 67, item 3, it is the Congress that is charged with "borrowing money on the credit of the Nation" and, because of article 107, the provinces can attend to the "introduction and establishment of new industries, the importation of foreign capital and the exploration of their rivers, by means of laws protective of these ends, and with their own resources." *The simultaneous undertaking by the Nation and the provinces of borrowing activities in other countries has provoked harsh criticism because of the excesses involved and has motivated many writers to propose that the provinces be prohibited from contracting foreign loans.*

Today the question has international relevance. In effect, the Vienna Convention on the Law of Treaties, which we [Argentina] adhered to by Law 19.865⁴⁵ expressly warns in article 27 with respect to internal law and the observance of Treaties:

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty⁴⁶

Thus, without doubt, the Argentine National State must assume responsibility for the debts incurred by the provinces as local member-states of the Argentine Federation; in other words, all the

44. CONST. ARG. art. 124.

45. Law No. 19.865 (1972).

46. Vienna Convention on the Law of Treaties, art. 27.

Argentine people must bear the cost of the obligations contracted by the provinces pursuant to the very permissive norm that is the new article 124.

Antonio María Hernández, in his work *Integration and Glogalization: The Roles of the Regions, Provinces and Municipalities*,⁴⁷ remembers well that the debate over provincial celebration over international agreements began well before the 1994 constitutional reform. On the affirmative side were Frías, Abad Hernando, Castorina de Tarquini, Quiroga Lavié, and Zarza Messaque, while opposing it were Bidegain, Ramella, Vanossi, and Vinuesa, the opponents believing that the practice impaired the power of the federal government to conduct injured foreign relations.⁴⁸ So sensitive is the question under consideration that . . . Hernández . . . observes with respect to this norm:

f) Notice to the national congress.

Article 124 of the Constitution requires that the creation of regions as well as the celebration of international treaties be carried out 'with notice to the national Congress.' The constitutional assembly of 1994 imposed the same requirement of old article 107 for 'domestic' treaties among provinces. In other words, it ratified the departure from the United States precedent, which provides for the 'consent' of Congress (art. I, §10, cl. 3), by requiring only 'notice.'

The objective has been nothing other than to favor even more the autonomy of the provinces, since requiring congressional consent or approval would have implied a marked dependence on the Congress. In any case, the requirement of notice makes a telling point about the connection between federal and provincial powers and interests.⁴⁹

I permit myself to be definite in this criticism, since the issue involved is not trivial; on the contrary, it concerns the very origins of our form of State. It is obvious that the provinces are not enabled to contract with other countries over things about which they cannot contract among themselves. Former article 108 of the National Constitution (article 126 since the 1994 Reform), conclusively limits the provinces power to contract:

47. ANTONIO MARIA HERNÁNDEZ, *INTEGRACIÓN Y GLOBALIZACIÓN - ROL DE LAS REGIONES, PROVINCIAS Y MUNICIPIOS* (Editorial Depalma 2000).

48. *Id.* at 61-62.

49. *Id.* at 106.

The provinces . . . cannot make treaties of a political character.⁵⁰

This norm is adopted, and adapted, from the text of article I, §10 of the Constitution of the United States of America, according to which: "No State shall enter into any Treaty, Alliance, or Confederation . . ." ⁵¹

As is obvious, the barrier established by the United States Constitution is stronger than that of Argentina. In synthesis, from the theory and practice of Argentina and the United States (although there is a long road between what is said and what is done), one may infer that:

1)The Argentine Constitution expressly permits the Provinces to enter into treaties "of partial reach"⁵² for purposes of the administration of justice, economic interests, and works of common usefulness, "with notice to the Congress of the Nation . . ." just as it expressly provides that "they cannot enter into treaties of a political nature."⁵³ The reasons for these norms go back to the struggles of the past between unitarians and federalists, which fan the memories and fears of the so-called "leagues of governors," which have made attempts against institutional unity.

2)In the United States, the consent of Congress is required for interstate compacts, although there is no fixed formula concerning the timing and mode of soliciting such approval. The consent may be given before or after the compact; it may be express, implicit, or tacit.⁵⁴ Neither is there any established formality for approval by the Congress. It can be done by means of an express statute, by a joint resolution, by ratification of a state Constitution which contains such a compact, or by means of a compact between the Congress and the interested states.⁵⁵ The Congress can even give *carte blanche* approval to certain future compacts within certain specified limits.⁵⁶

50. CONST. ARG. art. 126.

51. See Jorge Reinaldo Vanossi, *La Influencia de la Constitución de los E.U. de Norteamérica en la de la Republica Argentina*, 10/11 Revista Jurídica de San Isidro, December 1976, at 147-48.

52. CONST. ARG. art. 125 (formerly art. 107).

53. *Id.* at art 127 (formerly art. 108).

54. See *Virginia v. Tennessee*, 148 U.S. 503 (1893).

55. See *Burton's Lessee v. Williams*, 16 U.S. 529 (1819).

56. See JORGE REINALDO VANOSI & ALBERTO RICARDODALLA VÍA, RÉGIMEN CONSTITUCIONAL DE LOS TRATADOS 387-395 (Abeledo-Perrot, Buenos Aires 2d ed 2000).

VII.

Finally, there remains in view the possibility offered by the former article 107⁵⁷ of the National Constitution. The norm is as old as the Constitution and has antecedents in the United States Constitution and in the Swiss federal model of 1848, in both of which Alberdi found sources.

According to the tenor of article 107, "the provinces *may* enter into *partial* treaties for purposes of administration of justice, economic interests, and works of common usefulness, with notice to the federal Congress" This is the norm generally cited by the authors in studying this material. Its context offers an ample range of possibilities for understandings among the provinces. Their realization remains within the free volition of the provinces with only those limitations which arise from the norm itself, that is, that they be partial agreements which do not deal with an objective of a political character,⁵⁸ and that they be made known to the Congress of the Nation.

Such agreements may be entered into by two or more provinces and, indeed, by all of the provinces. This can be the most appropriate road to achieving the unification of certain institutions whose regulation has remained in the hands of the provinces, with the present-day result of an anachronistic diversification, when not indeed an obstacle to national action.

. . .

Notwithstanding the ample breadth of the words of the norm, it cannot be understood without considering it in light of its sources. In addition to the norm set forth in former article 107, it is good to remember that in the *Reports and Background (Dictámenes y Antecedents)* of the Advisory Commission for Institutional Reform of the year 1971,⁵⁹ already referred to, we had proposed:

VIII. Federative structure of the State.

It is proposed that consideration be given to the establishment, by agreement of the provinces concerned, with the approval of the Congress, and without prejudice to the powers and policies of the Federal government, of regional organs

57. CONST. ARG. art. 125 according to the 1994 reform.

58. See CONST. ARG. art. 108, 126.

59. Comisión Asesora para la Reforma Institucional (1971).

with authority to engage in regional planning and development, through the legitimate implementation of article 107.

Basic proposition: Without damaging the indestructible historical basis of our federalism, or impairing the character of the provinces as the foundational units of the Argentine State, we will bestow on ourselves the advantage of regional groupings for the fixed purposes of planning and the operation of development agencies. Such integration is here proposed in order to resolve at a level intermediate between the federal State and the provinces those problems common to the various zones in our country which have distinctive characteristics.

The common participation of the interested provinces themselves and the federal State (through the Congress) assures, in the formation of the regions and their supra-provincial organs, an equilibrium which is indispensable to the structure of the federal regime.⁶⁰

As is clear, the "regionalist" idea is not new and has been put forward periodically in our country. These antecedents are valuable as guides to the better interpretation of that which recently has been inserted into the text of our Supreme Law. It may serve to inspire and orient those called on by destiny to give effect to this our hope for a functional organization of governmental bodies of a non-political character. The recent experiment between the provinces of Córdoba and Santa Fe is the embryo of a framework which may come to be more widespread and about which it is premature to make a judgment as to its wisdom and efficiency. We must await concrete results in order to find out if that is the most advantageous way to achieve the objectives which are part of the eternal ambition of modernizing the State

IX

I have, in my normative framework surrounding the Supreme Law, alternative outlines which constitute appropriate ways to attempt a reasonable regionalization, and which are part of a political-institutional process of three successive stages. From interprovincial treaties to the mechanism foreseen since the dawn-

60. *Id.* at 47.

ing of national organization and set forth in article 13, everything indicates that it is practicable to depart from the status quo and begin the journey down the long road to a new "rationalization of power" (Nirkine Svetzevich), in this case directed to the vertical or territorial division of the Argentine Federal State.

We must take care not to provoke greater bureaucratization; rather, on the contrary, we must seek to lighten the apparatus of intermediation, without overburdening the already heavy and onerous structures of "partition," always being aware that the objective is to achieve a greater and better functionality. In any case, it should be kept in mind that "*lo inderizzo*" [that is, the direction or orientation] traced by article 124 of the Constitution (as reformed in 1994) is a directive clause of the Supreme Law, conditioned by the limits enunciated by articles 125 and 126⁶¹ on which we have commented hereinabove.

To take out of context the norm of article 124 would be like opening Pandora's box and awaiting resignedly for the fulfillment of incalculable surprises: A "Trojan horse" stuck into the delicate machinery of our constitutional system, whose original authors were conscious of its mixed and atypical character, not able to be confounded by either the extreme of unitarianism or the "transvestism" of a confederation (a misused term which survives—in name only—in article 35 of the National Constitution).

At the present time one can find many unitary states that are more decentralized (e.g., Spain and Italy) than are some others that are called federal, in much the same way as we see constitutional monarchies that have a more democratic life than some little "banana republics." This points out to us and teaches us that in matters of forms of government and forms of State we must rid ourselves of myths and slogans.

Just as Alberdi's formula was that of constructing a "mixed" form, we must now apply the same mental criterion and the same methodology of constitutional engineering to look for a way out of this grave problem of the imbalance of power in what is called, euphemistically and ironically, the Argentine Federal State. Alberdi was asked: "What kind of State do we need?" Our response must be the same as his: that which allows us to overcome the crisis that paralyzes us, and to do so in spite of a state of affairs that disguises itself in the cloak of permanence.

61. CONST. ARG. art. 125, 126 correspond to art. 107, 108 in the historic, pre-revision text.

What is the ultimate goal, beyond the immediate objective? It is to bring about a State which can bestow on our Society a higher *quality of life*. For this we try to work. The apparatus of state is a means and not an end in itself; and so the form of the State, just as the structure of a Government, must adjust and readjust itself—as often as necessary—in order to serve the “general welfare,” which is set as the objective by our constitutional Preamble, full of humanism and universality.

It is not necessary to copy foreign models for the sake of copying. In the search for paradigms, it would be enough to make a serious act of contrition; and then, on the basis of that clarification, assimilate the national experience, which is very rich in teachings. Comparative law could help us, but in a subsidiary way. Let us not forget that comparative law is more a working tool than an objective in itself. We may utilize it, but with the care used by the experimental sciences in their laboratory practices.

X.

On the horizon of our anxious waiting, the view provokes in us a question: Does Argentina, as a “Nation-State,” have a viable future? Any reordering attempted internally must take into account conditions beyond our frontiers. The Argentine Republic is the only Federal State in the Southern Cone. Chile and Uruguay are unitary States; and they form part—with us—of a sub-region which can be called, correctly, “Euro-America.” The reasons for this are obvious and need not be detailed here. We know how to preserve and fertilize these affinities.

So-called “integration” is not achieved by labels alone. Sailors say that “the flag covers the goods.” This is not so here. Let no one be confused by the signs, as seductive as they may be: a free-trade association is one thing, a customs union is something else. Much more complex still is achieving the goal of an embryonic “common market,” however good the inspirations and noble the intentions.

We need associative relations and we need partners for great enterprises. Yes, by agreement, but understandings for such ends must rest on fundamental pillars:

1) There is no society without *afectio societatis* [i.e., mutual confidence] among its component parts.

2) He who wishes to enjoy the *commodum* [i.e., the advantage] must accept the risk of the trial (just as ancient Roman law warns).

An interested party cannot be permitted to demand a share of the benefits and not carry with solidarity the burden of the sacrifices. One comes with the other; otherwise there is no common interest and the society is a fiction. Either we understand this, or we will be destroying ourselves. For now, the only real and effective institution that saves us is the telephone, which enables the heads of state to communicate whenever a crisis arises. But we must ask ourselves: What will happen if this precarious institution should be insufficient to avoid that which, brilliantly, Ortega y Gasset called "the suddenness of change"? I do not believe in fantasies. I do not have faith in the supposed philanthropy of the internationalists, who are all Eurocentrists, although they need to hide this from others so as to project an image of universality.

CONCLUSION

I believe that the emotions and the passions conspire against a rational debate about this topic. Arguments are inhibited and reason yields to sentiment. If those emotions, summed-up in the respectable sediment of nostalgia for past glories, do not prevent us from opting for schemes such as those which I have noted herein, then the key to resolving the problem is within reach: the visionary clauses contemplated in the historic Constitution of 1853-1860⁶² offer it.

But let us remember that the future places demands on us, and that the past does not condemn us. The classic and orthodox conception of a chemically pure federalism is today for us very costly, inadequate, and insufficient to satisfy the needs of the present and the expectations for the future.

When one applies federalism to countries that are highly *unbalanced* in their geo-economic and social reality, the stereotypical formulas lead to a repetition of old failures. Formulas of federalism lack forward movement if they do not measure out to a minimum of equality of opportunities,⁶³ *replacing unequal development with harmonic growth*.

This very day, the much-mentioned "right of access" is a cruel fiction. Will we persist in living amidst such fantasies? It would

62. See CONST. ARG. art. 4, 13, 67, 107, 108 and related norms.

63. See CONST. ARG. art. 75, incision 2, 19 2d.

seem that the feverish mind has no limits. There is a superabundance of analyses and diagnoses, but we do not see on the horizon statesmen with transforming force—such as those “profiles in courage” portrayed by the President of the United States, mysteriously assassinated. With all the reservations that it merits, it would be good if constitutional freight appropriate to equilibrium and equality of opportunity required for the healthy function of a minimum of federalism were applied really and effectively (and not just rhetorically).

Art. 75. Congress shall have power to:

2. Impose indirect taxes as a power concurrent with that of the provinces; to impose direct taxes, for a specified time, proportionately equal in all territory of the Nation, provided that defense, common security, and general good of the State demand it. The taxes described in this section, with the exception of those which have a specific destination, may be shared [with the provinces].

A *treaty-law*, based on agreements between the Nation and the provinces, shall institute regimes of *coparticipation* in these [tax revenues], guaranteeing automatically the remission of the funds.

The distribution among the Nation, the provinces, and the City of Buenos Aires . . . shall be carried out in direct relation to the powers, services, and functions of each of them, keeping in mind objective criteria for sharing; it will be equitable, equal in participation, and *shall give priority to the achievement of an equivalent level of development, quality of life and equality of opportunities in all of the national territory.*

The *treaty-law* shall originate in the Senate and shall be approved by an absolute majority of members of each House, shall not be modified or regulated unilaterally, and shall be approved by the provinces.

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

A federal fiscal organ shall have charge of the control and implementation of the provisions of this section, in such manner as shall be determined by law, which [law] shall ensure the represen-

tation of all of the provinces and the City of Buenos Aires in its composition.⁶³

As I have announced a "conclusion," I offer in support of it a gem of (once again) Rodolfo Rivarola, which seems to have been written for 100 years after its writing, so clear and visionary is it:

The desire to explain existing conditions in terms of their immediate or remote roots, is not sufficient to justify the present and future usefulness of the federative regime. We men who today suffer through Argentine life under institutions dictated in 1853 and 1860, find ourselves subjected to the conscience, the passions, and the will of men who have already passed on. The dead are governing us through the letter of the Constitution, through words which were interesting and useful to them. Critical thought demands the examination of the value which those words still have, and for this critical inquiry the explanation of what happened [in the past] is not sufficient; rather it is necessary to see what is happening today, what is possible in the immediate future that reaches out to touch us, more than in the interests for our children and later descendants, who shall be given the laws that are useful to them, in our own sentiments and in our own interests.⁶⁴

In our book, *El Estado de derecho*,⁶⁵ we maintained that the *federal* system of division of power is not a *sine qua non* for assuring liberty as a value consubstantial with the principle of the lofty dignity of the human person. The most powerful tool in this effort is the limitation of power, safeguarded effectively by means of contract and through mechanisms of responsibility. The distribution of power through the allocation of specific competencies is an adequate technique which can be implemented in many and varied forms. There is no single way of effectively distributing governmental powers.

And, in the manner of an epitaph, let us recall one more time that *decentralization* is a genus, and that federalism is but one species of many that we may choose from an ample menu of options for the organization of the State. May we know how to hit the mark in the search for the most plausible alternative!

63. CONST. ARG. art. 75.

64. RIVAROLA, *supra* note 4 at 225.

65. JORGE REINALDO VANOSI, *EL ESTADO DE DERECHO* (Ed. Eudeba 2d ed. 1985).

B. Federalism? Regionalization? Or What?

I believe that the country urgently needs a federal State with units in a situation of equivalence, because, at the present time, federalism is a fiction. I believe that the road to regionalization did not require reform of the Constitution of 1853 because that document perfectly well permitted regionalization by means of interprovincial treaties or other norms such as those of article 13, which even permit the fusion of provinces among themselves. To be brief I refer to the judgment of Dorrego, who was not a unitarian but rather a champion of federalism, who opposed the unitarianism of 1826 and said so emphatically in the debates of that year: Misiones—he said—should join with Corrientes, the Chaco with Formosa, Tucumán with Santiago del Estero, Salta with Jujuy, La Rioja with Catamarca; in other words, one must establish units that are equivalent to one another, because it makes no sense to have repeated twenty-four times “more of the same,” at the cost which this signifies and the poor quality of life that it offers.

It is necessary to call attention to the need for replacement of the traditional law of equilibrium, which has reigned, or pretended to reign, in Federal States, by the more realistic law of “equivalence.” The old law of “equilibrium” refers to the permanent tension which is felt in Federal States between the centripetal forces, which fight for the growth of central power, and the forces of the local units, which do the opposite.

The study of [Argentina's] past reveals constant or recurring temptations either to return to a Confederation or to move to a unitary consolidation. In either event, the federal state would disappear. The fear of dissolution, which comes with the separation of the Provinces was, in the terminology of Fromm, the equivalent of *tanatos*, that is, death, while the centralist movement, which points toward a State without autonomous units, was like “eros”: all-embracing and forged like iron. In the midst of such tensions and temptations, there remained the hybrid, which few envisioned as a permanent status, and most believed to be intrinsically fugacious.

II.

This theme is always seized [as by an illness] with certain gnostic-logical difficulties, whether because of its cryptic or confused character, or because of its mysterious and arcane aspect—

seeming in the eyes of the people to be a square circle—an apparent contradiction. In reality, the issue forms part of the “perpetual” crisis of States, which, as the great Spanish master Adolfo Posada has said, ever since the State has existed it has been known to be in such a situation of crisis, always existing in a condition of permanent transformation and, like each situation of change, producing a considerable dose of anxiety in its protagonists and its citizens.

The federal equilibrium has always offered an image of crisis for the simple reason that the statal and social reality which it attempts to represent is eminently “dynamic”: the State is the least static entity that one can imagine. Because of this, it is useless to attempt a logical analysis. Sometimes it has been the fruit or response to a predominantly “illogical” manifestation. Nowadays what the authors George Burdeau and Maurice Duverger call “Social Federalism” seems to be imposed, responding to an interplay of the natural order of society and the autonomy of the will, that is to say, the road to novel forms of social contract.

That which some authors present as the paradigm of the “vertical” or territorial division of power, other thinkers reduce to one more variety of what in itself is a very rich gamut of possible forms of state “decentralization.” It is often said that decentralization is the “genus” while federalism is the “species.” Already many decades ago, that great jurist of the Twentieth Century, Hans Kelsen, warned that all of these forms are part, or points of location, of an “iter” [road] which runs from maximum concentration (whose extreme leads to State absolutism) to the maximum decentralization (whose extreme leads to the disintegration or dissolution of the State). In the middle, between one extreme and the other, one can focus on diverse “species” of organization, whether for the creation or the application of law, and of the political decisions which revise juridical forms by means of norms. Let us not forget that according to the famous author just cited, the State and the law identify with one another and the State is nothing other than the metaphorical personification of the whole juridical order. From there it is deduced that the law regulates its own creation and does so with a variety of modalities.

That “species that is federalism,” follows in history from a multiplicity of causes, since as is pointed out by the Cordoban philosopher Orgaz, “in history there are no single causes.” The following are a few examples:

1. Thirteen [English North American] colonies without structural ties among them;

2. City-towns within the same [Spanish colonial] viceroyalty;
3. Confederations of [Swiss] cantons of diverse origins;
4. Nations of continental dimensions, where federalism was created to ensure governability;
5. Quasi-artificial creations that are a consequence of peace treaties;
6. Ideological impositions to disguise hegemonic goals (*e.g.* the former U.S.S.R.);
7. Domination by one nationality over another or others;

The great question that always remains in each such situation was how to maintain or recapture "equilibrium." In every class of "transaction" recorded in the annals of the history of federal experiences, from territorial compensations to forced migrations, financial "assistance" or fiscal sharing almost always has been an important part of the picture.

. . .

Federalism has caused the shedding of as much ink as blood: the ink of the intellectual and the blood of the innocent. Was it worth it? Let us not make the calculation of the financial-economic costs or try to establish by equation the famous cost-benefit analysis. Federalism is expensive. I prefer unitarism, with certain forms of decentralization, themselves limited by considerations of "effectiveness." Decentralization is good only insofar as it ensures reasonable levels of efficiency. Beyond that, it does not serve us.

But this is not a case of crying over spilt milk. Today, the key to the vault leads us to another perilous undertaking. The current problem is one of ascertaining and attaining "equivalency" of the units or component parts of the federation. From the known phenomena and the results of various experiments, conclusive data can be inferred which provides a basis for evaluation and selection in achieving the long-sought goal of unity in diversity.

This goal of centralization is not attainable when the component units (that is to say, the local, federated units) are so dissimilar one from another that there is no equivalency, either qualitatively or quantitatively. A fundamental datum in this evaluation is the percentage of the resources of the local units that are provided to them by the central government. The question is: At what point is the enjoyment of local autonomy dependent upon the National Treasury? Where does real activity end and the fiction or farce begin?

CONCLUSION

a)The answer is not to be found by following the way of sentimentality or passion, but rather by the road of reason; that is, by finding a wise connection between means and ends. What is needed is neither hypernormativism nor hyperfactualism, but constitutional realism.

b)In the matter of the territorial distribution of governmental power, there are no worthwhile rules to be imported or exported.

c)Equivalency should begin by the grouping of the weakest units, not the strongest.

d)Those countries of Latin America that have adopted, in their constitutions, the federal form of state (Mexico, Brazil, Venezuela, and Argentina), in reality have types of quasi-federalism, semi-federalism, and pseudo-federalism—usually with a net imbalance in favor of centralism. One finds (local) autonomy without (local) self-government, and vice versa. It amounts to a paradox: legislating without electing, or electing without legislating or adjudicating.

e)The old “law of equilibrium” has been superseded. In its place should be the “law of equivalencies.” Whether implemented by the fusion of preexisting local units, or through agreements of regionalization and integration, these processes tend to configure a country whose component parts do not suffer the asymmetries that become insurmountable at a time when relations of equality should govern the interplay of governmental institutions.